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The undersigned hereby certify that they have read and recommended for Acceptance a thesis title **Structural Contradictions and Lawmaking: Observations on Organized Crime and Anti-Money Laundering Legislation in Canada within the Context of International Protocols**

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Abstract: My research encompasses a critical, historical analysis of organized crime and anti-money laundering legislation in Canada. Through the employment of structural contradictions theory, I explore the effects of structural contradictions on Canadian lawmaking. Accordingly, “the importance of fundamental contradictions in political, economic, and social relations [are] the starting point for a sociological understanding of law creation” (Chambliss, 1993b, p. 61).

Organized crime and money laundering are reflective of the contradictions, conflicts, and dilemmas within the social, political, economic, and ideological spheres of society (Block & Chambliss, 1981). Furthermore, structural contradiction theory posits that law is also reflective and shaped by these tensions. Consequently, an understanding of law and lawmaking should be inclusive of these variables since it is introduced as a resolution to these problems.

It is my argument that Canadian anti-money laundering laws are reflective of the contradictions, conflicts, and dilemmas within the global marketplace. Ultimately, the Proceedings of Crime (Money Laundering) and Terrorist Financing Act, and the designation of money laundering as a criminal offence, represent an attempt to resolve the tensions within society that breed organized criminal activity. However, this resolution has been constrained and shaped by Canada’s international responsibilities and the tensions within the system. They affect the resources that are available in Canada’s organized crime control which, in turn, only produce further domestic contradictions, conflicts and dilemmas. McGarell and Castellano (1993) comment that it is a dialectical process that continues unabated (p. 335).

In an effort to resolve organized criminal activity, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act has inadvertently created more contradictory and conflicting issues. This thesis explores the multitude of problematic issues that this act poses within Canada. Civilian policing and infringements on privacy and tax regulations are only a few of the dangers that this act has unleashed.
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# Table of Contents

**CHAPTER 1: INTRODUCTION**
- Introduction ................................................................................................................. 1
- Background .................................................................................................................. 2
- Problem Statement ..................................................................................................... 5
- Research Objectives and Contribution ....................................................................... 7
- Chapter Outlines ......................................................................................................... 9

**CHAPTER 2: STRUCTURAL CONTRADICTIONS THEORY**
- Introduction ................................................................................................................ 11
- Basic Contradictions of Capitalist Society ................................................................. 12
- Structural Contradictions and Organized Crime ........................................................ 15
- Structural Contradictions and Law ............................................................................ 19
- Conclusion .................................................................................................................. 26

**CHAPTER 3: METHODS**
- Introduction ............................................................................................................... 28
- Structural contradictions and a Dialectical Methodology ......................................... 28
- Data and Analysis ..................................................................................................... 30

**CHAPTER 4: GLOBALIZATION, INTERNATIONAL FINANCE AND MONEY LAUNDERING**
- Introduction ............................................................................................................... 37
- Globalization ............................................................................................................ 38
- The Globalization Debate ....................................................................................... 40
- Globalization and International Finance ................................................................... 44
- Money Laundering in the Global Marketplace ......................................................... 48
- The International Fight Against Money Laundering ................................................ 53
- The United Nations' Vienna Convention .................................................................... 55
- Basle Committee on Banking Supervision .................................................................. 56
- Financial Action Task Force ...................................................................................... 56
- Anti-money Laundering Legislation in Canada .......................................................... 58
- Conclusion ................................................................................................................. 61

**CHAPTER 5: STRUCTURAL CONTRADICTIONS AND LAWMAKING: THE PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT**
- Introduction ............................................................................................................... 63
- Level One: Primary Contradictions, Ideologies, Strategies and Triggering Events ....................................................................................................................... 64
- Level Two: Secondary Contradictions, Conflicts
Chapter 1
Introduction

The following research proposal encompasses a critical, historical analysis. In this study, I aim to reveal and evaluate the contradictions, conflicts, and dilemmas that surround Canada’s anti-money laundering policy. This will be achieved through the implementation of the structural contradictions theory, originally authored by US criminologist William Chambliss. According to Chambliss (1993a), this “model of lawmaking differs from models that give law and society a life of their own that is independent of the decisions people make. Reifying ‘law’ and ‘society’ as though they had a consciousness independent of the agents who make decisions” (p. 25). Hence, the study takes a look at contradictions within structures (ideological, political, cultural, and economic), triggering events, interest groups, strategies, and international protocols as determining factors in the creation of these laws. It explores these variables as driving forces behind the lawmaking process and the impact they have in shaping laws.

Anti-money laundering legislation is aimed at intersecting and stopping money laundering, and the conflicts and dilemmas that it presents to the legitimacy of the state. It is my argument that the Canadian anti-money laundering regime represents a resolution to the threat posed by organized crime (and terrorist financing) and its inherent contradictions, conflicts, and dilemmas. However, such a resolution breeds further domestic contradictions, conflicts and dilemmas for the Canadian state. In an attempt to curb organized criminal activity, Canadian legislators have created a myriad of problems and concerns.
Background

The Canadian Criminal Code defines organized crime as three or more persons who organize to commit an offence with the intent to profit as one of its main objectives (Royal Canadian Mounted Police [RCMP], 2005, para.2). In addition, the Solicitor General of Canada states, organized crime is:

Economically motivated illicit activity undertaken by any group, association or any other body consisting of two or more individuals, whether formally or informally organized, where the impact of said activity could be considered significant from an economic, social, violence generation, health and safety, and/or environmental perspective (Porteous, 1998, p. 2; as quoted in Beare & Naylor, 1999, p. 4).

Academic definitions of organized crime stress the nature of the activity, the number of persons involved, and the manner in which individuals interact in a criminal fraternity. Albanese (1996) suggests that organized crime is a “continual enterprise that rationally works to profit illicit activities that are often in public demand. Its continuing existence is maintained through force, threat, monopoly, control, and/or the corruption of officials” (p. 3). Liddick (1999) insists that organized crime refers to the “provision of illegal goods and services, various forms of theft and fraud, and the restraint of trade in both licit and illicit markets sectors, perpetuated by informal and changing networks of underworld and upperworld societal participants...” (p. 50). Lyman and Potter (2000) maintain that organized crime is nonideological, codified, hierarchical, monopolistic, self-perpetuating, violent, and has a specific division of labour (p. 7). Conversely, Schulte-Bockholt (2001) states that at times organized crime can be ideological and defines it as “a group generally operating under some form of concealment with a structure reflective of the cultural and societal stipulations of the societies that generate it, and which has the...
primary objective to obtain access to wealth and power through the participation in economic activities prohibited by law” (p. 23).

On the other hand, Kenney and Finckenauer (1995) point to the difficulty in defining the meaning of ‘organized’. They argue that “the attributes of actors or acts that make organized crime in fact include a self-perpetuating, organized hierarchy, which exists to profit from providing illicit goods and services in public demand or providing legal goods and services in an illicit manner” (Kenney & Finckenauer, 1995, p. 25). Such definitions vary according to the attributes afforded to organized crime. They all agree on the public demand, whether licit or illicit, for these goods and services and the continuity of organized crime. There is less agreement on the violent, monopolistic, corruptive, hierarchical, and ideological nature of organized crime.

According to Canadian law enforcement, organized crime poses a serious threat to Canadian society. Criminal Intelligence Service Canada [CISC] (2004) states, in its Annual Report on Organized Crime, “Organized crime groups and their criminal activities have diverse and varying negative impacts affecting individual Canadians and communities nationally with various societal, economic, health, and safety repercussions” (Executive Summary, para. 19). Initially, Canadian officials, in certain provinces, even refused to acknowledge the existence of organized crime within Canada (Beare, 1996, p. 72). Indeed, a national initiative to address organized crime did not take place until the 1960s and was likely prompted by progress in organized crime legislation and research in the US (Beare & Naylor, 1999, p.11). Soon Canadians were doing their own research which resulted in the creation of the CISC in 1970. One of its aims was to:

Monitor and control the spread of organized crime.... the ‘threat’ organized crime was thereby established, and a consensus among
Police departments confirmed the seriousness of the enemy. Eventually, new legislation would address organized crime and money laundering, the facilitation of international law enforcement, record-keeping, and proceeds of crime-asset sharing (Beare, 1996, p. 143).

Following the acknowledgment that organized crime represented a growing danger, a series of legislative efforts to control organized criminality were implemented in Canada. While the Canadian Criminal Code viewed the use of illegal monetary gains, or ‘proceeds of crime’, as an offence, it was not until the 1980s that money laundering was designated as a criminal act. The creation of anti-money laundering policies is based on the governmental belief that the intersection of laundered money by law enforcement officials provides a more efficient means of curbing organized crime.
Problem Statement

Members of criminal organizations exercise great skill in the laundering of their funds. In addition, globalization has made organized crime activities more flexible and profitable. The evolution of the International Banking System (IBS), namely the liberalization of international financing, greatly aids the laundering of criminal funds. Members of the IBS are representative of Transnational Corporations (TNCS) who are unattached to, and go ungoverned by their respective states. Consequently, in the global economy, the boundaries between the legitimate and illegitimate worlds are increasingly blurred (Flynn, 1995, p. 19). The laundering of criminal funds is evidence of this state.

Money laundering represents a threat to the legitimacy of the state. Schulte-Bockholt (2005) notes that the control of organized crime is made even more difficult by the “hostility to such measures in the international banking community [and] law enforcement agencies fail to seriously interrupt the illicit flow of funds” (p. 18). Martin and Schuman (1998) aptly point to the presently dominant neoliberal doctrine “that the market is good and state intervention is bad” which helps explain the lack of cooperation on the part of international banks (p. 8). Also, international cooperation between nations in the area of international financial controls is relatively weak.

Against this backdrop of resistance in the banking community and nation states, lack of significant cooperation between nations, and the ingenuity of criminals, national laws are introduced as resolutions. Where a previous law was inadequate, a new one is introduced in an effort to match the skill of organized criminals and the complexity of the global market place that aids their enterprise.
Beare (2003), however, claims that “compliance with money laundering laws has moved forward with incredible speed – but with consequences we do not know” (p. XIV). My research analyzes these national consequences of globalization in regard to Canada. For example, civil and financial issues are now being criminalized as a result of legislation, while the policing power has been significantly extended to detect and report suspicious transactions (Beare & Naylor, 1999, p. 24 & 42).

In addition, Chambliss (1993) notes that “if we see law as shaped through struggle and conflict… then the forces to understand, then, are… the social forces of power, conflict, contradictions and dilemmas that create the ‘necessity’ for legal institutions to respond and for law to change” (p. 30). The literature documenting and assessing the Canadian experience is weak. In addition, research needs to be done on the factors shaping these anti-money laundering laws and their implications. These include: international protocols, interest groups, strategies, and triggering events.
Research Objectives and Contribution

Anti-money laundering legislation is the latest governmental solution for controlling organized crime. The strictness of these laws has increased with each legislation revised. The advent of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act\(^1\), in the year 2001, has raised many eyebrows. Historically, Canada has followed the United States’ lead in its effort to control organized crime. However, whereas the US policies have produced a significant amount of research, Canada’s initiatives have received little academic attention.

The objective of this research is to document and evaluate the conditions that lead to the creation of anti-money laundering policies. By conditions, I am referring to structural contradictions, conflicts, dilemmas, international protocols, strategies, triggering events, and interest groups linked to these laws.

The Canadian Criminal Code acknowledged ‘proceeds of crime’ as an offence. However, it was not until the late 1980s that Canada designated money laundering as a criminal offence. Hence, the second objective is to provide a general examination of the initial governmental efforts to control organized crime. This, in turn, will provide the pathway for the discussion of anti-money laundering legislation in Canada. The goal is to present a systematic documentation of the development of these policies and the environment in which they have emerged.

In addition, through my analysis, the legislative background from which anti-money laundering policies emerged will “allow us [an]… examination of transformation in the operation definition” of organized crime (and terrorist financing) control (Zatz & McDonald, 1993, p.138). The study will show how this has evolved.

\(^1\) From hereon, this will be referred to as the PC(ML)TFA or the Act.
Thirdly, I will examine the nature of Canada’s present anti-money laundering legislation, particularly the second-order contradictions, conflicts and dilemmas that arise within the Canadian state from creation of this law. For example, Beare and Naylor (1999) note that despite the fact that “the entire notion of controlling crime by taking away the capital and the motivation is superficially appealing, there is no proof in logic or in practice that it actually works. There is, however, ample proof that it can pose a threat... [to] civilian control over police forces” (p. 52).

Many studies have been done on the nature of organized crime and the reasons for its existence. In addition, studies on organized crime focus on the application and effectiveness of policies against it. On the other hand, my research will facilitate an understanding of how these crime policies are created through a case study of Canadian anti-money laundering legislation. Consequently, this leads me to the fourth objective which is to add to the literature on structural contradictions and its theory of lawmaking. I will do so by specifically analyzing the Proceeds of Crime (Money Laundering) and Terrorist Financing Act as attempts at ‘resolution’. I will explore how it produces national contradictions and/or conflicts to which lawmakers may once again respond to with additional ‘resolutions’. 

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Chapter Outlines

Chapter 2: Theoretical Framework: Structural Contradictions Theory

The following chapter sets forth my theoretical framework. This approach is informed by structural contradictions theory. This framework lays the groundwork for understanding the research and also sets the stage for documenting, questioning, and analyzing Canadian anti-money laundering policies.

Chapter 3: Methodology

This qualitative research is contingent on a historical analysis. I will employ what Chambliss (1993a) calls a ‘dialectical methodology’. Through this, the various contradictions, conflicts, and dilemmas, relevant to the Canadian context, will be extracted. These include the social tensions that conditioned the PC(ML)TFA and the national tensions that are borne from it.

Chapter 4: Globalization, International Finance and Money laundering

I will review key texts on issues such as globalization and international finance to investigate the workings of the global capitalist economy. This chapter will also deal with the role of the state in the age of globalization. The purpose is to examine the nature of the global system that fosters money laundering and how it unfolds internationally.

Chapter 5: Structural Contradictions and Canadian Lawmaking: The Proceeds of Crime (Money Laundering) and Terrorist Financing

The starting point for this chapter focuses on US policy as a triggering event for Canadian anti-money laundering legislation. From thereon, the international protocols, strategies, and interest groups will be assessed. Based on these categories, my study

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explores how the PC(ML)TFA was created and implemented. Most importantly, this affords the extraction of the contradictions, conflicts, and/or dilemmas that brought about the existence of this legislation. This thesis further assesses and analyzes the second-order contradictions, conflicts and dilemmas that arise, within the Canadian state, from this law.

Chapter: Conclusion

My study posits that the PC(ML)TFA has been implemented with serious consequences. It has increased national contradictions, conflicts and dilemmas with no real promise of being effective.
Chapter 2
Theoretical Framework: Structural Contradictions Theory

Farther we suggest that dialectical theory – with its conceptualization of contradictions, conflicts, and resolutions as necessary formulations to comprehend how people go about making their histories in face of constraints inherited from their past – provides us with the best framework for understanding criminality (Block & Chambliss, 1981, p. 228).

Introduction

The theoretical framework for this study is structural contradictions theory, which employs the Marxist concept of dialectics. Marx himself did not write substantially on crime. However, his perspectives have been applied to provide a very different view on the causes of crime. Structural contradictions theory can be seen as an extension of Marxist thought to explain crime by taking into consideration the socio-economic structures of capitalism\(^2\).

The perspective was introduced by William Chambliss and has been further developed by several criminologists, who added other variables, such as ideological and cultural contradictions. This perspective helps explain further contradictions, conflicts and dilemmas that may emerge from law making and its implementation. Resolutions are introduced in order to address the conflicts and dilemmas. However, they fail to deal with the contradictions produced by the economic structures (Chambliss, 1993a, p. 15). Rooted in a historical analysis, this perspective delves into the structural contradictions under which organized crime and law formation originate. Structural contradictions

\(^2\) It should be noted that the theory can be applied to societies with different economic arrangements. However, the contradictions, conflict, dilemmas, and resolutions may differ from capitalist nations (Chambliss 1993: 9; Zatz and McDonald 1993: 133).
theory will be explained in order to facilitate a framework for the emergence of organized
crime and anti-money laundering legislation, as a response, within the Canadian context.

**Basic Contradictions of Capitalist Society**

Marxist dialectic addresses the contradictions that are parts and parcels of capitalist
practices. Dialectics is a revelation of the dynamics that produce and constitute these
contradictions. The negation is relational.

Two concepts are dialectically related when the elaboration of one
draws attention to the other as an opposed concept that has been
implicitly denied or excluded by the first; when one discovers that
the opposite concept is required (presupposed) for the validity or
applicability of the first (Heilbroner, 1980, p. 41).

For example, the opposite of the master would be the servant. The negation does not
subscribe to the non-existence of a master. Instead, it subscribes to the contradictory
state of the master which is the servant. This is not a logical contradiction but a relational
one (Hegel, 1934, p. 399; as quoted in Heilbroner, 1980, p. 36).

In addition, another feature of dialectics is therefore that contradictory or
antagonistic elements form a conceptual whole (Heilbroner, 1980, p. 85). In this ‘unity
of opposites’, these elements are interdependent and are conditioned by each other in the
material world.

The dialectical process is part of the materialist interpretation of history by Marx.
Several historical stages are identified with their distinctive mode of production. These
include: tribal, antiquity/slave, feudal, asiatic, and capitalist. Marxist thought argues that
the antagonistic forces of dialectics are generated by the class struggles of these various
epochs. This places one class above the other and facilitates some form of exploitation
and inequality. This is resultant from the relationship between the forces of production
and the relations of production. The forces of production are the material means of production and the relations of production refer to the social arrangements that guide it (Heilbroner, 1980, p. 64-65). Class struggle results from the unequal distribution of wealth between the classes. Those who possess the forces of production control the relations of production. As a result, conflicts are borne. The negativity of class struggle threatens the mode of production (economic system) but at the same time, it is imperative for its continuance (Marcuse, 1954, p. 314; as quoted in Heilbroner, 1980, p. 69). Or, as described by Marcuse (1968), the same forces that drive capitalism, hold the source of its destruction; “that which is real opposes and denies the potentialities inherent within itself” (p. X). The factors that facilitate capitalism’s success simultaneously threaten it.

To further illustrate, Spitzer (1980) notes that:

The institutions which make up the superstructure of capitalist society originate and are maintained to guarantee the interests of the capitalist class. Yet these institutions necessarily reproduce, rather than resolve, the contradictions of the capitalist order. In a dialectical fashion, arrangements that arise in order to buttress capitalism are transformed into opposites – structures for the cultivation of internal threats (p. 232).

Chambliss also claims that these contradictions impede on some “fundamental aspects of existing social relations” (Chambliss, 1993a, p. 9; see also Mandel 1970). Structural contradictions theory acknowledges that there are a multitude of contradictions that are inherent in capitalism. For example, they originate from the chronic tensions between “social production and private appropriation, between growth and stability, and between overproduction and underconsumption” (Michalowski, 1993, p. 89). These basic contradictions are also termed primary or first-order contradictions (Chambliss, 1993a, p. 9; Michalowski, 1993, p. 89). Structural contradictions theory specifically analyses how
these basic dilemmas affect and create organized crime and lawmaking. As noted by Chambliss (1976), “In capitalist societies, crime and criminal law are the result of the social relations created by the system which expropriates labor for the benefit of a capitalist class” (p. 5). The theory also examines the further contradictions that emerge from these responses, which Michalowski (1993) describes as ‘second-order contradictions’. For example, certain contradictions give rise to organized crime, which in turn, results in law enforcement. However, organized crime adapts to the legislation by innovating further contradictions within the system.

Greenberg (1981) notes that crime cannot be studied or understood outside of its environment, but that “it must be analyzed in the context of its relationship to the character of the society as a whole” (p. 17). Structural contradictions theory is in line with the Marxist belief that the nature of political and social relations in society depends on the organization of its economy (Cole, 1973, p. 37). The contradictions that emerge from the capitalist mode of production have a significant bearing on all other aspects of social existence, including crime and criminal law.

It should be noted that this view does not imply a narrow economic reductionism. Greenberg (1981) reports that Marx, and his advocates recognize the influence and the dynamics of other variables such as socio-psychological process, legal, and political institutions. They are not asserting that “economic situation is cause, solely active, while everything else is passive effect. There is rather an interaction on the basis of economic necessity, which ultimately, always asserts itself” (Marx & Engels, 1969, p. 50; as quoted in Greenberg 1981, p. 15).
Chambliss explains the emergence of a given organized crime group by locating it in a specific time and place. Block and Chambliss (1981) criticize previous studies for focusing on the structure of organized crime instead of the social history of capitalism in order to investigate the origin of this form of criminality. Accordingly, “organized crime always reflects the structure and tension in civil society, the opportunities for profit and power and the contradictions in the political economy” (Block & Chambliss, 1981, p. 131). The interplay between the forces of production and the relations of production creates a disadvantaged class. The authors refer to the creation of an urban milieu, or underworld, in early industrialized Europe where the legitimate world is linked to the illegitimate one (Block & Chambliss, 1981, p. 129). This dialectical crisis coincided with the new and profitable business enterprises created by the emerging socio-economic and political structures of capitalism. The dialectics of the economic base created a synthesis of poverty and opportunity resulting in the formation of organized criminality.

For example, in his study of the Mafia in Sicily, Hess (1986) observes that “the Mafiosi typically emerge out of very poor and social economic conditions…. Crime for almost every Mafiosi was an attractive vehicle for social advancement and economic mobility” (p. 116). Their services were vital to the community and emerged under the conflicts and dilemmas typical of structural contradictions. They appeared during a period of feudal strife when the “ruling class was in a state of decay… and the state was not able to assume authority” (Hess, 1986, p. 115). According to Kelly (1986) “the weight of the evidence suggests that criminal networks or underworlds evolve in response to conditions unique to the political economies of their host societies” (p. 17).
Organized crime is also caused by another contradiction in capitalism. Block and Chambliss (1981) maintain that capitalist society endorses a consumer culture through its emphasis on the consumption of pleasurable commodities and services (p. 131). However, these goods and services are at the same time prohibited by law which reflects the moral interests of society. But this does not erase their existence. Thus, the clash between the artificially generated desires and the “demands of the regulatory state” created a highly profitable area for organized crime to operate (Block and Chambliss 1981, p. 131).

Chambliss and Seidman (1971) further note that organized crime is contingent on consensus on laws, the need for certain illicit pleasures, and individuals willing to provide such services if the gains warrant the risk (p. 490). Scholars associated with enterprise theory of organized crime have come to similar conclusions. Smith (1975) and Schelling (1967) report that the existing demand for illegal goods and services are not satisfied by the legal market, and are supplied by organized crime groups. Organized crime emerges to satiate this demand through the provision of such goods and services. The demand itself is neither legal nor illegal. It is the policy of law which makes these goods and services illegal. In other words, the law creates crime. The demand will continue to exist since the “law does not necessarily end demand” (Smith, 1975, p. 336). The era of prohibition provides a good example. While the Volstead Act of 1919 declared alcohol consumption illegal, it did not eliminate the demand for such beverages among the US public. Thus, organized crime groups moved in and made large profits. As maintained by Chambliss (1988), in capitalist societies “profit is value: something intrinsically worth striving for... profit may necessitate comprising strict adherence to the
law but... you use whatever resources you can to maximize profits and increase capital” (p. 188).

Structural contradictions theory also acknowledges the influence of state officials on organized crime activities. The primary goal in capitalist society is the accumulation of wealth and profit. Chambliss (1988) argues that wealth is the cornerstone of capitalism and suggests that business people, law enforcement officials, and political office holders “are at the forefront of organized activity” (p. 49). Hess (1986) reports on Sicilian organized crime that the Mafiosi were closely aligned to the political world. He states further that following World War II, Sicilian organized crime essentially came to the agreement with the ruling Christian Democratic Party to “kill off the bandits, threaten and kill peasants in revolt, and support the Christian Democratic Party” (Hess, 1986, p. 124).

According to Chambliss (1988), some members of the societal elite recognize the profitability of organized crime and may become active participants in its activities. He also claims that the criminal profits of such groups, combined with the need for large sums of money, are attractive to politicians who run for elected office. Organized crime “may not be something that exists outside the law and government but may be instead a creation of them” (Chambliss, 1988, p. 6). Similarly, Pearce (1981) points to a close relationship between public officials and organized criminals. Accordingly, political and economic interest groups decide when to make use of organized criminal resources and when to dispense with them. Allsop (1970) reports that:

[Al] Capone and others really believed that they were running the city, but I don’t believe they were. They were the executives and the technicians. The city was being run by the politicians and City Hall, and the big bosses weren’t interested if gangsters killed each other, providing they kept delivering the money (p. 75, as quoted in Pearce 1981, p.160).
Chambliss (1988) further argues that members of the elite are the real corruptors and those called criminals are merely employees. Hess (1986) also rejects the notion that the political elite are victims. Instead, he concedes that these “alleged victims purposely make use of organized crime, sponsor it, and even create it where none had existed” (Hess, 1986, p. 127).

Chambliss (1993c) reports that social elites sometimes commit state organized crime. This refers to “acts defined by law as criminal and committed by state officials in the pursuit of their jobs as representatives of the state” (Chambliss, 1993c, p. 291). Examples include involvement in 18th century piracy, drug trafficking, arms smuggling, assassinations, and murder. Pearce (1981) maintains that the CIA’s involvement in the heroin trade in South East Asia aided their fight against communist insurgent groups. In 1976, the CIA plotted to assassinate former Jamaica Prime Minister Michael Manley. During this time, Jamaica tried to establish their version of with democratic socialism, while maintaining close ties with Communist Cuba, and its leader, Fidel Castro (Chambliss, 1999, p. 147).

Chambliss (1993c) and Hamm (1993) also document the CIA’s plans to assassinate Fidel Castro between 1961 and 1965. Prior to the Cuban revolution of 1959, the Batista government in Havana was supported by the United States, and organized crime flourished in Cuba. Pearce (1981) maintains that the Cuban “governments were invariably corrupt, plundering the treasury and organizing rigged lotteries” (p. 176). The overthrow of the Batista dictatorship ousted capitalist interests from the island, and Castro’s assassination was seen as a viable answer. Chambliss (1993c), Pearce (1981), and Hamm (1993) demonstrate the contradiction between state law to adhere to its rules.
and the demands of the capitalist economy. It is reflective of “the contradiction between the legitimacy of the capitalist state and the interest of a particular group of capitalist” (Chambliss, 1988, p. 328; see also Hamm, 1993, p. 334 & 335).

Structural contradictions theory demonstrates how a conflict may be resolved by law, which in turn creates a second-order contradiction. Hamm’s (1993) perspective constitutes a development of the theory as it documents not only macro-level relations but also those occurring at the micro-level. He does this by examining the interests and actions of businessmen and organized crime members who were involved. It shows how the structural contradictions, stemming from the economic and political base, influence and assert themselves. Overall, state organized crime depicts the contradictions of ideology, economic, and political base. Chambliss (1988) claims that:

There is an inherent tendency of business, law enforcement, and politics to engage systematically in criminal behaviour. This is not because there are too many laws but rather because criminal behaviour is good business, it makes sense, it far the best, most efficient, most profitable way to organize the activities and operations of political offices, business, law enforcement... in a capitalist society (p.180-181).

**Structural Contradictions and Law**

This theory has also been used to explain the creation of criminal law. Greenberg (1981) asserts that criminal law cannot be fully explained by merely looking at its function. In order to obtain a complete picture, one has to look at the “time when they were created, not because they have not changed, but because they have changed in ways that are constrained and shaped by a historical heritage” (Greenberg, 1981, p. 19).

Chambliss and Seidman (1971) state that law can be understood as a consequence of the economic, political, and social structures of a society (p. 473; see also Chambliss 1993, p.
It is noted that the state has fostered capitalist accumulation which engenders changes in the economy and must respond to the contradictions that result from the actions of state institutions (Michalowski, 1993, p. 90).

Contradictions and conflicts are inevitable occurrences within any society, whether capitalist or not. McGarrell and Castellano (1993) note that they might vary in intensity, which does not erase their potentially pervasive impact (1993, p. 347-348). The state is acknowledged as an advocate of capitalist practices and its goal is the preservation of the existing socio-economic order. It accommodates the existence of such an economic base. Thus, one of the responsibilities of the state is to respond to these contradictions and conflicts that result from the practices of capitalist society. Such a response is seen in the formation of state organizations, as well as the creation, implementation, and enforcement of laws as resolutions. Michalowski (1993) notes that:

Facilitating accumulation results in threats to the legitimacy of the economic system because the accumulative process generates substantial inequality... and leads to disruption of social and physical environment.... To facilitate legitimacy, the state (a) helps socialize capitalist values through promotion of an ideology of liberalism, individualism, private property, and rational self-interest, (b) tempers both the oppressiveness and volatility of accumulative processes through subsidization of capital and welfare, (c) contributes to the reproduction of class relations through the development of state law... (d) reproduced classes based distribution of wealth...Thus, the state has the ideological task of encouraging belief in the social order and the coercive task of repressing efforts which threaten than social order (p. 93).

In other words, the runnings of the state openly legitimize capitalist society. Therefore, conflicts or threats that arise from the political, economic, social and ideological contradictions are sanctioned through the creation of state policy. Structural contradictions theorists see “law creation as a process aimed at the resolution of
contradictions, conflicts, and dilemmas that are historically grounded in time and space and inherent in the structure of a particular political, economic, and social structure” (Chambliss, 1993a, p. 9). The theory posits further that people make law. Hence, the social forces impacting on these people need to be grasped in order to fully understand the lawmaking (Chambliss, 1993a).

According to Chambliss (1993a), after the abolition of slavery landowners in Brazil no longer an adequate and reliable workforce.

The police were enlisted... to enforce nonexistent ‘vagrancy’ laws against people who refused to work for wages offered by the landowners. The alternative was simply; work for the wages offered or go to jail. Thus the dilemma created by the inherent contradiction was resolved in this instance by the creation of a fictitious ‘law’ which was used to justify the blatant use of force to ensure an adequate labour supply (Chambliss, 1993a, pp. 24-25).

Another example of the impact of social forces on lawmaking is seen through the implementation of the Special Areas acts in Britain between 1934 and 1937. These acts were passed during the Great Depression and sought to revitalize industry during this period. However, Chambliss (1993a) adds that every capitalist society is subject to economic highs and lows. Despite this, the state will seek to resolve the conflicts and dilemmas that emerged from this situation but hardly ever the basic contradictions. The Special Areas acts were a response to the tensions that emerged from the characteristic basic contradictions of a capitalist economy. Alan Page reports that “in the subsequent process of conflict and amendment the legislation and its meaning emerged from the interactional sequence between the demands of the economy, the proponents of change, and the actions of politicians and bureaucrats” (Page, 1976; p. 189; as quoted in Chambliss, 1993a, p. 17).
The work of Zatz and McDonald (1993) represents an extension of the model to the micro-level. They identify four distinct spheres of ideology: these include the social (eg. ideologies of family, institutions, and the private sphere), the cultural (eg, ideologies of culture, mass media, values, and philosophy), economic (eg., ideologies of production and distribution) and political (eg., ideologies of the state, democracy, and the legal-judicial system) (Zatz & McDonald, 1993, p. 130). These ideologies may intertwine or exist in a contradictory state in relation to each other and other structural contradictions.

In any given society, one encounters competition between the supporters of the dominant ideology and those in favor of alternatives. Law is categorized as part of the political sphere but it affects the social and cultural domains of society, while it reflects the ideological beliefs of those in power (Zatz & McDonald, 1993, p. 130-131). In addition, law precipitates contradictions as the ideological orientation of the political leadership exists in a dialectical relationship with the structural contradictions.... it orients and directs the ways in which contradictions are dealt with, such that potential resolutions to conflicts and dilemmas are met in a manner consistent with the leadership’s ideological goals for the society (Zatz & McDonald, 1993, p. 128).

Chambliss (1993b) also adds that ideologies are ever changing and can take on a force of their own as they “influence the development of legal institutions, which reflect the interplay of material conditions and ideology” (p. 61).

Zatz and McDonald (1993) introduce the role of strategies to this process as mechanisms towards resolution, an inclusion that acknowledges the impact of human agency in the creation of laws. Chambliss (1993a) similarly maintains that “people make law, although, of course, they do not make it out of the whole cloth. They build it on existing ideologies, institutions, and structures. But these... do not have a mind of their
own but are interpreted, altered, and shaped by human agency” (p. 25). For example, Chambliss (1993a) notes that law did not transform into a more democratic form because of some inherent tendency towards accord or mere legal reasoning. It was achieved through open conflict whereby “people responded to institutionalized contradictions between the ideology and the reality of the political and economic conditions” (Chambliss 1993a, p. 13). Such responses, or strategies, are employed by various state institutions and interest groups in order to shape legislation. The specific set of strategies chosen at a particular time is contingent on the historical conditions, the ideology of the political leadership, and the structural forces operating within and upon the society. These are “shaped but not determined by the constraints and resources of a particular historical period” (Chambliss, 1993a, p. 8).

As previously noted, structural contradictions theory can be extended beyond capitalist societies. However, the contradictions, conflicts, and dilemmas facing communist or socialist societies usually take on a different form. Consequently, Zatz and McDonald (1993) add that the strategies chosen to resolve these may also differ. In addition the forces acting on the state, whether capitalist or non-capitalist, are not only internal. Structural contradictions theory also takes into consideration the state’s place in the international scene and the contradictory and conflicting forces outside of the state. “This positioning and contradictory forces operating within the larger system both contribute and constrain the potential resolutions available to a nation” (Zatz & McDonald 1993, p. 132). That is, how it affects law. In their case study of Cuba, Zatz and McDonald (1993), analyze how the now dominant socialist ideology, the dilemma of the US embargo, and structural forces affected the content and form of lawmaking.
Socialist Cuba faced considerable pressure and sabotage from forces outside of the state. The conflicts and dilemmas generated by these external forces included: economic sanctions by the US and her allies; the increased costs and loss of technology that followed; sabotage from US sponsored Cuban exiles; military attacks by the US; and “the very realistic fear of invasion meant that money that could otherwise be used for the economic development had to be redirected for defense purposes” (Zatz and McDonald, 1993, p. 139).

In addition, Cuba lost a significant number of its professionals due to its new ideological orientation. As a result of these external social forces, Professor Renen Quiros Perez comments that during this period of turmoil, Cuba had to use all the available resources. Hence, the criminal law was used as a means to counter spies, saboteurs, assassins, and treason (Prez as quoted in Zatz & McDonald, 1993, p. 141). However, overtime, Cuban socialist law moved from a means of weaponry towards to a less repressive system as “the criminal policy [they previously] had been applying in the country did not fit the social, political, and economic conditions... attained” (Zatz & McDonald 1993, p. 141; see also Escalano, 1988). This also marked a change in the ideology of the government. Despite the consistency of external forces, Cuba had achieved significant social and economic progress during the 1980s which no longer permitted the usage of criminal sanctions as a means of national defense. Social forces within Cuba had also changed during this period as petty theft, traffic crimes and minor assaults constituted the majority of crimes. “Thus the interpretation of criminal justice as a weapon for defense of the state changed, and with that a repressive criminal justice
system was transformed into a system that relies most heavily on education and resocialization, rather than incarceration” (Zatz & McDonald, 1993, pp. 144-145).

In their work, McGarrell and Castellano (1993) argue that the structural base of society is made up of religious, economic, gender, and racial components. The greater the economic imbalance, inequality, and heterogeneity within these structures, the greater the conflict and calls for punishment (McGarrell & Castellano, 1993, p. 350). These authors also identify cultural contradictions and triggering events which force the state into action by creating law. These forces can also be within or outside of the state. The inclusion of these factors aid in expanding structural contradictions theory to the micro-level. Cultural factors affect persistent ideologies and, in turn, affect perceptions and responses. It is held that “culture has a direct influence on the fear of crime and the concern the public has about crime, independent of actual crime levels or trend... fear and concern for crime helps shape the nature of demands on government” which tends to be largely in favour of punitive measures (McGarrell & Castellano, 1993, p. 352).

Evidence of this cultural factor is the persistent myth in America that crime is consistently increasing and is being “committed by predatory strangers” which has great significance for those with conservative ideological beliefs (McGarrell & Castellano, 1993, p. 350; see also Scheingold 1984). This interplay of contradictions and conflicts might wholly, or individually, precipitate a triggering event that pushes forward a policy. “A slight dislocation, a random event, a vocal political opportunist, or a disgruntled governmental bureaucrat can trigger events that mobilize the political arena to consider and enact crime legislation and policy” (McGarrell & Castellano, 1993, p. 353). Other triggers may include: an election, lobbyist movement, or a series of appellate court
decisions. In addition, events may happen in conjunction with each other to trigger the creation of a given law. For example, a terrible crime may take place during an election year that prompts lobbyists, the media, and/or politicians to demand a legislative response; that is a harsher law.

The resulting policies are not always remedial as they themselves might introduce other contradictions, conflicts, and dilemmas.

These fuel existing legitimation deficits (representing the ‘policy dilemma’ of crime), generate continued media attention to crime issues, and feedback into the cultural and structural foundations of society... Thus, the dialectical process continues unabated (McGarrell & Castellano, 1993, p. 355).

For example, in the wake of concerns regarding environmental pollution, legislation aimed at appeasing both moral entrepreneurs and capitalists interests have emerged in the US. “These laws however, reveal other contradictions in the form of increased monopoly, which itself will lead to further conflicts and dilemmas resulting in other legislative innovations” (Chambliss, 1993a, p. 20).

**Conclusion**

Overall, structural contradictions theory demonstrates that the creation of law reflects a dialectical process, through which people struggle and create the world in which they live (Chambliss 1993a, p. 30). Heilbroner (1980) observes of Marxist thought that the

most convincing and most portentous of all implications... [is that] the world ‘develops’... by the dictates of capital as self-expanding value. The consequence is a world continuously in imbalance—monetary imbalance, trade imbalance, resource imbalance, developmental imbalance. And this imbalance will continue—despite the best government efforts to patch up or offset more
dangerous manifestations [of] the stimulus of private accumulation (p. 134).

Structural contradictions theorists strive to locate the social forces that shape law. They view lawmaking as a dialectical process that further creates more tensions in society. Law, as a resolution, generates more contradictions, conflicts, and dilemmas that legislators will ultimately have to address. A vicious cycle ensues as legislators “generally limit their efforts to manipulating the symptoms of the contradictions (ie., resolving conflicts and dilemmas” (Chambliss, 1993b. p. 62).

The aim of my research is to explore the social forces that affected and shaped Canadian anti-money laundering legislation. What were the contradictions, conflicts and dilemmas that this anti-money laundering regime sought to address? What was Canada’s global positioning? Who were the lobbyists and interest groups that pushed for such legislation? How did these factors constraint and affect the resources available to Canada in its fight against organized crime and money laundering? How has the implementation of the PC(ML)TFA, as a resolution, created more tensions within Canada and what are the implications?
Chapter 3
Methods

Introduction

This section encompasses the methods employed for this research. I will extrapolate how my theoretical framework informed the methods chosen for my study. In addition, this section introduces the data used for the study and divulges how such data was chosen. From thereon, the relevant categories for an analysis will be revealed. These will be extracted from my theory which will also direct the research questions.

Structural Contradictions and a Dialectical Methodology

This research constitutes a critical, historical analysis grounded in the socio-political economy. The study is of a critical and qualitative nature which involves a historical analysis of Canada’s anti-money laundering legislation. Paul Feyerabend (1993) advocates the usage of “whatever procedure seems to fit the occasion” (1993, p.10). In this study of the impact and implications of social forces on Canadian anti-money laundering legislation, it is best to use the methods inherent in structural contradictions theory. Studies done by Chambliss (1993b), Michalowski (1993), Zatz and McDonald (1993), and McGarrell and Castellano (1993) are models of such an analysis. According to Chambliss (1993), a key feature of structural contradictions theory is its dialectic methodology. This places emphasis on the reactions of people to social forces. An analysis of social relations, including lawmaking, has to take this as the initial point of reference. This methodology stays true to structural contradictions theory as it views people as continually shaping their world based on the constraints and resources they encounter. The 'dialectical methodology'
grants a large role to choice, intentions, and the like... but it also recognizes that choices tend to be made within the limiting frameworks of assumptions and social structures.... It recognizes that social organization has a determinate influence on the course of events while at the same time insisting that social organization consists of intentional activities and meaningful practices of people that are modifiable (Benson, 1983, pp. 335-336 as quoted in Chambliss, 1993a, p. 9).

In addition, the implications of these actions are paramount to this methodology. From this standpoint, it is imperative that my study highlights and assesses the social forces, or structures, which framed the actions of Canadian decision makers. Based on my theoretical framework, I can surmise that these structures are both internal and external to the state. Consequently, the relevant forces include contradictions, conflicts and dilemmas that shaped the implementation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PC(ML)TFA)*. My analysis is contingent on the assessment of the structural contradictions that had a bearing on the creation of this piece of legislation. These contradictions, conflicts, and dilemmas are of economic, political, cultural, social, and ideological dimensions. McGarrell and Castellano (1993) note that “these variable clusters generate the primary contradictions, conflicts, and dilemmas in society, of which behaviour defined as criminal is one manifestation” (p. 349). Other relevant forces, extracted from my theory, include triggering events, interest groups, strategies, and Canada’s international positioning and responsibilities. These social forces are not mutually exclusive but exist in unison to constrain and shape the *PC(ML)TFA* as a resolution to organized crime and money laundering.

Through an examination of the socio-political economy, an exploration of the contradictions, conflicts, dilemmas, triggering events, interest groups, strategies, and external forces that impacted the passage of the PC(ML)TFA can be afforded. Chambliss
(1993b) maintains that people create their reality based on the forces that shape their lives. Similar to the painter, they “must fit their creative efforts to the size and shape of their canvas, the paints they have, and the way they have come to see the world they wish to depict. All these things, and more, result from personal experiences... but in the long train of history they also result from larger forces that shape our lives” (Chambliss, 1993b, p. 62). An examination of these larger forces reveals the tensions that culminated into the designation of money laundering as a problem for the state. This simultaneously reveals the forces that shaped Canadian anti-money laundering legislation. From thereon, the \textit{PC(ML)TFA} can be assessed based on the criteria of national contradictions, conflicts, and dilemmas that it further generates.

\textbf{Data and Analysis}

My data for this research were chosen from both academic and governmental sources. Given the interdisciplinary nature of my research I will rely on material from a diverse number of fields, particularly globalization studies, international finance, international relations, money laundering, and organized crime control in Canada. This also served as a part of the criteria for choosing relevant material. The sources consisted of Canadian anti-money laundering legislation, international protocols regarding money laundering, books and journal articles.

The data constituting international protocols were chosen based on their international significance, mandatory power, and Canadian membership. These international protocols are imperative to the study since Canadian anti-money laundering legislation was partially triggered by their existence.
Scholarly journals and books were gathered using Novanet Library Catalogue and EBSCO Academic Search Premier. There was no time limit placed on these materials. As a result of the complexity of organized crime and money laundering, it is necessary to include works by scholars from fields like globalization studies, international relations, and international economy. The keywords and subject terms used during theses searches include: ‘globalization’; ‘money laundering’; ‘globalization and money laundering’; and ‘money laundering and legislation’. These materials were further screened based on the applicability of their information to the thesis matter. In addition, other relevant materials on organized crime and money laundering issues were gathered from Canadian government websites and my research advisers.

The following data represents documents and legislations that were selected for the study. They are:

- The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

  The main aim of this study is to locate and assess the social forces that shaped this law and the subsequent domestic contradictions, conflicts and dilemmas that arise from its existence.


  This bill was passed by the Canadian Senate and became what is known as the PC(ML)TFA. The Hansard debates on the bill were gathered from both the Canadian House of Commons and the Canadian Senate. The Solicitor General viewed that the “proposed legislation is a key element in the government’s fight against organized crime and in Canada’s co-operation in the global effort to combat money laundering” (Rose.
2000, p. 61). An examination of the debates on this bill will reveal ideologies, interest
groups, strategies, and potential national conflicts and dilemmas that may be attached to
the subsequent \textit{PC(ML)TFA}. The research does not include data gathered from
representatives who were involved in the process of creating money-laundering laws. In
addition, my research does not include reports from bank officials, law enforcement
officials and legal-judicial officials on the impact of these anti-money laundering
policies. These exclusions, however, should not adversely affect the research. Sufficient
information from interest groups and politicians, who were influential during the process
of lawmaking, can be obtained from the Hansard debates. The national contradictions,
conflicts, and dilemmas generated by the legislation can be deduced without their input.

- The \textit{Privacy Act} of Canada

This act is evaluated in relation to the \textit{PC(ML)TFA}. The PC(ML)TFA grants
considerable leeway for the collecting and reporting of personal information.
Consequently, the research assesses the national conflicts and dilemmas that the
aforementioned act poses in regard to Canadian privacy rights.

- United Nations Office of Drugs and Crime. Based on its Global Programme
Against Money Laundering (GPML) and model legislation, I will use the
\textit{‘Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic
Substance’ (Vienna Convention, 1988)}. This document was chosen based because it was the first international law to make
provisions against money laundering. Hence, its passage and content is assessed as an
external factor that shaped Canadian anti-money laundering legislation.

- Financial Action Task Force (FATF) and its \textit{‘Forty Recommendations’}. Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
FATF is the main international body geared at fighting money laundering. Consequently, its ‘Forty Recommendations’ is assessed as an external force that shaped the PC(ML)TFA. Along with the Vienna Convention, Canada’s international responsibilities and related constraints can be deduced. What were the external pressures placed on Canada? These documents inform the research by revealing Canada’s international positioning and thereby fashioning the resources available in controlling money laundering.


Money laundering statutes have placed great responsibility on banking officials. I chose this document for the research in order to ascertain the banking community’s purported stance on the fight against money laundering. This makes it possible to assess the relation in which this document exists with the aforementioned data. This, in turn, will inform the domestic tensions which this study seek to extract.

My analysis is “focused on the historically grounded, indeterminate nature of the unfolding of processes toward a resolution of social conflict” (Zatz & McDanold, 1993, p. 158). For my data analysis, ‘structural contradiction’ is operationalized as “when the working out of the logic of… political, economic, ideological, and social relations must necessarily destroy some fundamental aspects of existing social relations” (Chambliss, 1993a, p. 9). In addition, Claus Offe’s statement that “a contradiction is the tendency inherent within a specific mode of production to destroy those pre-conditions on which its survival depends” aids in this conceptualization (Offe, 1984; as quoted in Kammerer,
as quoted in Chambliss, 1993a, p. 9). These ideas were used when extracting the contradictions from the data. I extracted and assessed the contradictions from which anti-money laundering legislation in Canada is created. This involved locating the social conditions from which money laundering is generated, thrives and simultaneously threatens the system. In turn, the conflicts and dilemmas embodied in this contradictory state are also revealed. My analysis assesses the social tensions that arise from the contradictions, which also produce money laundering and create a need for anti-money laundering legislation. Based on these criteria, the social forces that had an impact on the PC(ML)TFA were assessed and analyzed. Chambliss (1993a) notes that

it is the conflicts that create the dilemmas; and it is the conflicts towards which state intervention is directed. Rarely, except in revolutionary circumstances, are the basic contradictions addressed. The contradictions create conflicts and dilemmas which people try to resolve. In the resolution of conflicts and dilemmas other contradictions are revealed and created, other conflicts generated, and a multitude of dilemmas ensue (p. 15).

Based on the study done by McGarrell and Castellano (1993), I conducted my data analysis at two levels. Level one deals with primary or first-order contradictions, conflicts and dilemmas. These are the social forces previously mentioned. From the literature on structural contradictions theory, I also developed several other categories that were relevant at this level. These include: the interest groups, strategies, ideologies, and triggering events. Interest groups refer to the lobbyists who had an impact on the existence and content of the PC(ML)TFA. Zatz and McDonald (1993) report, “the choice of strategies is an arena for considerable struggle as different organized interest groups and state institutions attempt to influence the process of mediating social conflict and thus shaping governmental policy” (p. 132). Triggering events refer to those internal or
external events that prompt the creation of the PC(ML)TFA. Ideologies encompass the set of ideas, or beliefs, of the key decision makers or those actors having an impact on the legislation. In addition, an assessment of the international protocols and documents of which Canada is a signatory will reveal the global setting in which Canada has developed its anti-money laundering regime. By analyzing these various dimensions, I aim to demonstrate some of the most important factors that shaped the PC(ML)TFA. Chambliss (1993a) maintains, “the processes that lead to the creation of law... [are] wanting.... What we should thus be concerned with [are]... the critical events: the points at which laws are produced that provide a new approach to the problem” (p. 3). By employing the abovementioned categories, my research is able to dissect the social forces that Canadian decision makers were responding to in the creation of the PC(ML)TFA. What were the contradictions, conflicts, and dilemmas that the PC(ML)TFA sought to resolve? What interest groups were represented in the shaping of this legislation? What were the persistent ideologies and strategies used to fashion the PC(ML)TFA? What were the triggering events that pushed this law into being? In what kind of international atmosphere was the PC(ML)TFA created and implemented?

From thereon, the national implications of this law will be evaluated. This is conducted at level two, which encompasses secondary or second-order contradictions (eg., democratic notions of due process and privacy), conflicts (eg. infringement on tax regulations and corporate rules/regulations), and dilemmas (eg., civilian policing by bank officials). Based on these categories, my research reveals the antagonisms, internal to the Canadian state, which this ‘resolution’ further creates. “Research is needed to address the consequences of such large-scale political, social, economic, and ideological
transformations, and what they portend in terms of the types of contradictions and
conflicts we expect in the future” (Zatz & Chambliss, 1993, p. 429). Ultimately, an
examination and assessment of the $PC(ML)TFA$ will reveal this by employing the
‘dialectical methodology’ inherent in the structural contradictions theory.
Chapter 4

Literature Review: Globalization, International Finance and Money laundering

It seems to be a permanent task for man to shape order out of contradictions (Willy Brandt, 1980; as quoted in Sampson 1981, p. 280).

Introduction

The following chapter takes the process of globalization as its starting point. It presents the multi-faceted phenomenon that is globalization. Globalization is a main manifestation of present-day capitalism, which comes with both positive and negative features. This chapter explores some of the complexities of globalization with particular attention paid to its impact on international finance. This will, in turn, lay the groundwork for my argument that the contradictory forces of globalization have aided and facilitated the commission of money laundering within the global financial marketplace. Passas (2001) posits that:

the global age is accompanied by a rise both in the risk of transnational crime and in official concern about it. This rise is fuelled chiefly by the fast integration of world markets and speedy conclusion of transactions thanks to technological advances, the gradual loss of border controls and the lack of appropriate normative and regulatory frameworks (p.22).

The contradictions of globalization may have profound negative consequences. Findlay (1999) notes, “both crime and globalization hold out for each other contexts in which paradox is normality” (p. 225). Likewise, Passas (2001) argues, “ultimately, globalization creates, perpetuates or activates criminogenic asymmetries” (p.33). In turn, governments have made efforts to contain and curb these consequences. Hence, the
chapter will also present international efforts to curb money laundering and a background on anti-money laundering legislation in Canada. Globalization has afforded many countries an array of benefits. However, the liberalization and deregulation of the international financial market place also had negative consequences for governments and law enforcement worldwide. In general, the chapter explains the environment in which anti-money laundering laws are created. It looks at the contradictions within the global capitalist economy that give rise to the creation of anti-money laundering laws.

Globalization

Early manifestations of globalization can be traced to the period of European expansion in the 16th century and thereafter where geographical boundaries were crossed and economies merged. Capital, goods, and services flowed between Europe and their newly conquered lands. The globalization of today can be described as a modern manifestation of colonialism, however, the process has picked up speed and increased in intensity. Ellwood (2001) notes that computer technology, the break down of trade barriers, and the increasing economic and political power of transnational corporations (TNCs) has furthered this outcome. In addition, the Economic Council of Canada (1989) reports that globalization has changed the behaviours of corporate managers, investors, and borrowers by expanding “their horizons to the point where today their market options are worldwide in scope and their financial decisions are based on global considerations” (p. 7).

Naylor (2004) provides us with a simple definition of globalization, namely “the process by which information about trade and finance opportunities spreads across national and regional frontiers, and goods and money soon follow” (Naylor, 2004, pp. 4-
Wolf (2004) defines globalization as the merging of economic activities, which has a driving force of policy changes and technology, which further affects and preconditions the social, cultural, and political (p.19). Conversely, there are definitions of globalization which present it in a less positive light. Beck (2000) refers to “the processes through which sovereign national states are criss-crossed and undermined by transnational actors with varying prospects of power, orientations, identities and networks” (p. 101). Similarly, Passas (2000) posits that globalization embodies the primacy of economic growth, which is thought to be benefiting the whole planet. Consistent with that prime directive, country after country has been and/or forced to promote ‘free trade’ and consumerism, to reduce government regulation of business, and to adopt the same economic model regardless of local specificities and differences (Mander 1996; Bello 1999; as quoted in Passas, 2000, p. 22).

Overall, whether positive or negative, the term globalization denotes global interconnectedness of the political, social, cultural, and economic spheres. The oppositional features and effects are reflective of the contradictory force that is globalization. This is further reflected in the debates on the process. Wolf (2004) observes that “for many of its proponents it is an irresistible and desirable force…. For many of its opponents it is a no less irresistible force, but undesirable…. Globalization is, on balance, resistible. But globalization is also, on balance, highly desirable” (p. 13).

Tabb (2002) further notes:

the clash is between advocates of free-market neoliberalism who espouse deregulation of the political economy, open borders for increasingly mobile investment, trade and money flows with minimal government intervention, and world-wide acceptance of Western-style democracy and those who privilege social justice and call for alternative globalization which regulates capital, respects local cultural preferences, and builds a shared international sense of how best to meet global societal needs (pp. 1-2).
An inquiry into the process of globalization calls for a consideration of layers of a paradox (Findlay, 1999). Globalization is not a one-sided process. It involves good and bad, benefits and risks, advantages and disadvantages which all keep the wheel turning. These contradictory elements maybe inherent to its functioning or borne from it. In any case, the co-existence of these oppositional forces is characteristic and definitive of globalization.

*The Globalization Debate*

Wolf (2004) stresses the importance of the economics of globalization because of their inherent value. He states that they are the driving force for almost everything and “drive ever-wider exchanges and, with those exchanges, create bigger and more complex political institutions” (Wolf, 2004, pp. 147 & 105). Globalization is praised for the many achievements that it disseminates. For example, it has afforded the availability and variety of goods from all over the world and improvements in technology. Despite these advancements, Wolf (2004) also believes that these advancements are taken for granted, he insists that the globalization protesters are misguided and idealistic. According to Wolf (2004), they are

> fearful that the liberal world economy will sweep away hard- won domestic regulations or exacerbate perceived global environmental damages.... concerned about the overhang of debt or the devastation... by the structural adjustment and liberalization.... exploitation.... [and the erosion of] traditional ways of life (p. 6).

Wolf (2004) also comes to the defense of Transnational Corporations (TNCs) and posits that they do not dominate and wield more power than countries. In other words, they have not undermined governments. Governments have a choice, and that has been
to liberate the market place to the advantage of their people. This, Wolf (2004) posits, does not render governments impotent. In fact, with the advancements in technology and communication,

governments can oversee and regulate the movement of people even more easily; they can impose barriers upon movement of capital, by failing to recognize or enforce contracts with foreigners; and they can limit international flows of services by controlling the convertibility of domestic means of payment into foreign exchange (Wolf, 2004, p. 17).

Intrinsically, Wolf (2004) is stating that globalization has not undermined the sovereignty of the state. This, he believes, is intact as governments are free to decide on what policies to implement. Hence, the function of TNCs should not be overstated. Also, in contrast to the arguments of protesters, they present more fruitful and better alternatives to poor workers around the globe (Wolf, 2004, p. 247). However, Tabb (2002) refutes this by stating that “large transnational corporations used their considerable power to influence governments.... [they have] expanded their influence through the creation of new rules that restrict what governments can and cannot do in terms of interfering with globalized corporate interests” (p.2). Wolf (2004) fails to acknowledge the force of external and internal pressures that exert themselves on domestic policies. Furthermore, globalization is said to undermine the sovereignty of nations as global misconduct becomes increasingly hard to prosecute and regulate under national laws. “Moreover... decisions that constituted and symbolized sovereign powers now have to be shared and coordinated” amongst countries (Passas, 2001, p. 29).

In addition, opponents of globalization stress that it has increased the disparity between the richest and the poorest individuals of the world. Also, it has widened the gulf between the rich and poor nations. Wolf (2004) agrees with these observations.
However, he dismisses arguments that globalization has augmented global inequality, the population with very low incomes, the magnitude of the world’s poor and lowered the quality of life for the poor around the world. In further supports of his arguments, Wolf (2004) concludes that

human welfare... has risen. The proportion of humanity living in desperate misery is declining. The problem of the poorest is not that they are exploited, but that they... live outside of the world economy.... The challenge is to bring those who have failed so far into the new web of productive and profitable global economic relations (p. 172).

One of the major opponents to globalization, Stiglitz (2002), acknowledges that globalization indeed has inherent advantages and has the capability of improving people’s lives. In accordance with Wolf (2004), Stiglitz (2002) further acknowledges that globalization has improved the life span and standard of living of people around the world. In addition, foreign investment can “lead to the introduction of new technologies, access to new markets, and the creation of new industries” (p.5). However, Stiglitz (2002) insists that “the way globalization has been managed, including international trade agreements.... needs to be radically rethought” (pp. IX-X). Ellwood (2001) argues similarly when he points to the potential of human progress in globalization but believes “it is being overshadowed by a corporate-led plan for economic integration which threatens to undermine the whole project” (p.10).

Transnational corporations (TNCs) are also guilty of such a charge. The presence of their industries can undermine state-owned industries, and exploit cheap labour in developing countries. These foreign investors often “leave unceremoniously. In turn, governments of developing countries are faced with an upsurge in unemployment... debt” and other domestic crises (Bowes, 2003, p. 43). Passas further (2000) observes:
Promises of freedom, prosperity and happiness for a large number of people have turned out to be chimerical. Economic and power inequalities have widened within and across countries within the last two decades. The number of poor has reached unprecedented levels, while welfare programs and safety nets are reduced or abolished. Enormous populations have become vulnerable to exploitation, criminal victimization and recruitment in illicit enterprises or rebel or fundamentalist groups (p. 17).

This demonstrates not only the benefits to be garnered from globalization, but also stark the disadvantages. Present day neoliberal globalization has hurt particularly the developing countries. Stiglitz (2002) maintains that developing countries are encouraged to partake in international trading agreements at their expense. These agreements facilitate a flood of goods onto their domestic markets, while export restrictions are placed on their goods by the more developed nations. Consequently, according to Stiglitz (2002), the disproportionate share of global trade benefits ends up in the laps of developed countries, leaving those in the developing world in far worse conditions. The policies of institutions such as the International Monetary Fund (IMF), the World Trade Organization (WTO), and the World Bank greatly hurt the economies of developing countries. Contradicting Wolf’s (2004) claims, and in accordance with World Bank statistics, the gap between the rich and the poor and has indeed widened, while the number of the world’s poor increased 1000 million (World Bank, 2000, p. 29; as quoted in Stiglitz, 2002, p. 5). According to Martin and Schuman (1998), “since 1960 the gap between the richest and the poorest fifth of nations has more than doubled- which confirms in figures the bankruptcy of any promise of fairness in development aid” (p. 29).

Stiglitz (2002) states that globalization is not going away; but has become a permanent feature in our world. The desire is not to stop or reverse it but to make it
responsible and work for all. Wolf (2004) states that it is the right of every individual in a liberal society, to freely own and have access to property in accordance with clearly defined governmental rules on private ownership (p. 25). Hence, an increase in globalization is advocated. Wolf (2004) maintains that the world would be worse off without globalization. Eradicating it would mean the loss of years of progress (Wolf, 2004, p. 11). However, Ellwood (2001) cautions that “unless we begin to alter the current global economic system… the tangible benefits of globalization will be swamped by a rising tide of inequality and injustice” (p.11; see also Martin & Schuman, 1998, p.233). Rodrik (2000) further maintains that the genie cannot be pushed back into the bottle and that it is essential to provide alternative responses to the inequalities and contradictions of globalization.

**Globalization and International Finance**

Ellwood (2001) notes that international finance may be complex but it has one goal, and namely, profit. It represents and is part of “a wider movement towards the global integration of economic and other activities… with multinational companies operating plants operating throughout the world for customers who are from every corner of the planet” (Economic Council of Canada, 1989, p.2). The Economic Council of Canada (1989) states that several factors have contributed to the globalization/internationalization of financial markets. The collapse of the Bretton Woods Agreement was likely the most important factor (Economic Council of Canada, 1989, p.2). Ellwood (2001) acquiesces, as the fixed currency-exchange scheme decided on, at Bretton Woods, collapsed. The Bretton Woods Agreement aimed at securing stability and the regulation of finance after World War II. However, when countries such as Canada, Switzerland, the Federal
Republic of Germany and the United States relinquished controls on capital, in the 1970s, ‘speculators.... Negotiated exchange rates among themselves, and the fixed-rate system fell apart” (Martin & Schuman, 1998, pp. 47 & 48). Other countries such as Britain, Japan, European Union (EU), Spain, Portugal, France and Italy later followed this path. Other factors contributing to the globalization of finance include: changes in regulation in some countries, and the increases in interest rates and exchange rates which called for a variety in the sources of funds.

Ellwood (2001) notes that the 1980s saw a drastic increase in the deregulation of economies by governments such as the Reagan administration in the United States and Margaret Thatcher in the United Kingdom, while other countries followed suit. Martin and Schuman (1998) report that nations “dismantled controls... and greatly reduced the capacity for state intervention, using sanctions or other pressure to force unwilling partner-countries to follow the same course” (p. 109). According to Ellwood (2001), “hand-in-hand with the spread of free trade... came the deregulation of world financial markets. Banks, insurance companies and investment dealers...were suddenly unleashed” (p.20).

Globalization provides a number of benefits for the international banking system. The liberalization and deregulation of finance has afforded the easier flow of money across borders, and banks can now easily extend their services abroad. This, in turn, has hastened the access and quality of information transferred between banks, which further makes them more “able to capitalize on opportunities and to manage risks” (Economic Council of Canada, 1989, p.7). Likewise, Wolf (2004) posits that the advancements in globalized technology has affords easier regulation and monitoring of goods, objects, and
people by governments. With the advancements in computer technology and financial deregulation, financiers are able to move and make millions of dollars within seconds (Ellwood, 2001, p.75). Transaction costs are cut and it is easier to determine the credit worthiness of potential customers.

But this came at a price. According to Barnet and Cavanagh (1995), “deregulation, whether by circumvent of official policy or by law, had unanticipated and extremely unpleasant consequences” (p. 392). Martin & Schuman (1998) note that governments, “like the sorcerer’s apprentice, [politicians] now complain that they are no longer in control of the spirits that they and their predecessors called into being” (p. 47). The members of the international banking system are so powerful and influential that their actions can direly affect the economies of countries, while politicians struggle to impede it. These manifestations are not only taking place in developing countries but also in the most developed regions. The exchange rates of Britain, Italy, Germany, and Japan have all been affected at some point, while governments stood helpless (Martin & Schuman, 1998, 46).

The Asian financial crisis is exemplary. Wolf (2004) notes that this crisis of 1997 and 1998 has “changed our understanding of the risks of financial openness and stimulated a controversy that has not ended to this day” (p. 279). Countries such as South Korea, Thailand, Taiwan, and Malaysia opened their markets to an influx of capital investment by relaxing their government controls. Fearful that sufficient returns were not being made, investors began to pull out. What ensued was an extreme case of capital flight as $105 billion left the entire region over a period of 12 month (Ellwood, 2001, p.22). This catastrophe had a far-reaching effect around the world. Wolf (2004)
attributes these incidences to the laxity of bankers. According to Ellwood (2001), “it was the first time that the ‘global managers’ and finance kingpins showed that the system wasn’t all it was made out to be… [it] planted the seeds about the merits of globalization” (p.23).

Despite these occurrences, Wolf (2004) still holds that, to a degree, liberalization of the financial markets is desirable and necessary. Accordingly, this is so for the following reasons: investors can successful exploit foreign markets, while countries can likewise benefit from foreign investments. The benefits from such investments can be reaped at a manageable cost, while controls can be expensive and ineffective. However, Wolf (2004) cautions that the liberalization of finance has to be carried out in a “in a carefully thought out and disciplined manner’ whilst reviewing the laws and behaviour of banks (pp. 288 & 304). Dorn (1993) shares these sentiments, as he believes governments should desist from overregulation and allow financial markets to evolve naturally in free markets. On the other hand, Ellwood (2001) calls for controls on reining in of international financial institutions. Evidently, the liberalization and deregulation of international finance generates both positive and negative consequences. As Barnet and Cavanagh (1995) observe “the volume and reach afforded by instantaneous banking transactions across the world make global banking highly profitable, but some economists fear that these same characteristics could also be its undoing” (p. 390).

Globalization not only provides advantages for international finance. Given its contradictory nature, it simultaneously produces shortcomings that may ultimately undermine the global financial marketplace. Although an advocate of globalization, Wolf (2004) admits that the “institutions set up to manage the global economy do not work as
well as they might, particularly in finance” (p. 11). Ellwood (2001) goes further and argues that it is the largest and most dangerous change in the global marketplace. Wolf (2004) maintains that it is harder to manage the liberalization of trade than finance because “too often it has created opportunities for blunders matched by equally spectacular malfeasance, by both suppliers and recipients of capital” (p. 284). Some of the associated risks within include the instability of interest and exchange rates. In addition, although computer technology has afforded many benefits, it resulted in an increase in the loss of transparency. Banks are finding it “more difficult to monitor cross-border flows and to obtain information on the counterparts to the international transactions… as a result, the system operates, to a large extent, in unmonitored and unsupervised conditions” (Economic Council of Canada, 1989, pp.7 & 13). This, in turn, makes banks more susceptible to criminal enterprises and tax evasion.

**Money Laundering in the Global Marketplace**

Organized crime is driven by the attainment of funds. In addition, its sustenance depends on the successful laundering of such funds. In order to continue the cash-flow generated by organized crime, these individuals must be efficient in hiding and/or masking the origin of the accumulated wealth: more commonly referred to as money laundering. In addition, such profit must be laundered as it can be used as evidence against the organized criminal/group, and/or be seized by law enforcement.

Schneider (2004) notes that, despite its criminal implications, money laundering does not constitute any economic deviation as it thrives on the same commercial and financial transactions used by legitimate businesses (p. 290). Naylor (2004) also states that money laundering is, in itself, a harmless act that is quite old. Similarly, Barnet &
Cavanagh (1995) note that although hiding money is an ancient art, global computer networks have revolutionized the way it is done (p. 389). According to Serio ((2004), money laundering can be traced to the days before Christ. Merchants would exaggerate exchange rates in order to make up for the interest that they had to pay or hide their wealth from local authorities. Pirates were also involved in laundering activities. They were sometimes commissioned by England to plunder foreign ships. Naylor (2004) reports they would sometimes hide portions of the stolen wealth before turning it over. In addition, when piracy was outlawed, the accumulated wealth was taken to countries that were more forthcoming.

Evidently the act of laundering funds is nothing new. The term money laundering is said to have originated from the funneling of illegal derived funds into the operation of Laundromats by Al Capone and his associates. However, the term is also said to have first appeared during the Watergate scandal (Robinson 1996; Serio, 2004, p. 436). Richards (1997) provides a summary of the varying definitions attributed to money laundering.

Money laundering is the process by which one conceals the existence, illegal source, illegal application of income, and then disguises that income to make it appear legitimate.... or... [it] is the process of taking the proceeds of criminal activity and making it appear legal.... or ... [it] is the act of converting funds derived from illegal activities into spendable or consumable form (Richard, 1997, p. 2).

The three aims of money laundering are to conceal, convert and create a legitimate “explanation or source for the funds and/ or assets” (Schneider, 2004, p. 282). The process itself includes distinct stages. Theses are termed placement, layering and integration. The placement stage is said to be the most important for the detection of
money laundering because of the direct link between the crime and the profits (Stessens, 2000; Cao, 2004). Placement can take place in several ways. Organized criminals make use of the financial marketplace at various points. This can range from simply depositing funds\textsuperscript{3} to purchasing shell companies\textsuperscript{4} and other assets such as real estate, jewelry, et cetera. Financial institutions are not necessarily the initial point of entry, as organized criminals may simply invest in the aforementioned activities and use the financial system at a later stage. Cash is not the only kind of monetary value; cheques and money orders may also be used. “The concept is that monetary instruments must be of a nature where the source and the holder of those instruments are not generally traceable” (Manzer, 2004, p. 4).

Offshore havens/centres are attractive to money launderers because of their minimal regulation and secrecy laws enforced by their banks.\textsuperscript{5} Some offshore havens even openly flaunt these features and thereby solicit illicit money.\textsuperscript{6} Through a simple internet search, I was able to find offshore bank accounts, banking licenses, and nominee services ranging from 990-49,000 Euros. Organized criminals can easily deposit their money in the

\textsuperscript{3}“The placement of currency in multiple deposits of relatively small amounts is known as structuring of ‘smurfing’, which developed in response to a system of notification on deposits exceeding a certain limit... $10,000...” (Serio, 2004, p. 439).

\textsuperscript{4}A shell companies “a registered companies that do little if any normal trading: they serve as a way of passing money” (Suter, 2002, p. 362).

\textsuperscript{5}“An off-shorebank can be defined as a financial institution which is legally domiciled in one jurisdiction, but conducts business solely with non-residents... but as a result of their fiscal and secrecy rules, some jurisdictions attract a very high number of off-shore transactions and offshore banks and have thereby become known as offshore financial centers” (Stessens, 2000, p. 93).

\textsuperscript{6}The United Nations Office on Drugs and Crime (2005) give the following as the ideal characteristics of an offshore haven: no deals for sharing tax information with other countries; availability of instant corporations; corporate secrecy laws; excellent electronic communications; tight bank secrecy laws; a large tourist trade that can help explain major inflows of cash; use of major world currency, preferably the United States dollar, as the local money; a high degree of economic dependence on the financial services sector;[and] a geographic location that facilitates business travel to and from rich neighbours (Features of an ideal Financial Haven, para. 1).
banking institutions in these countries, and through a series of transfers have them deposited into account in countries which have stricter laws against money laundering.

Other attractive and enticing features offered by some of these offshore havens include tax advantages for foreigners, citizenship through the purchase of a passport, and internet gambling licenses which can be beneficial to someone trying to launder money (Wechsler, 2001, p.43). Offshore centers create further problems when they refuse to cooperate with countries that have anti-money laundering provisions in place.

The second stage of money laundering is layering, which is also called ‘agitation’ or ‘commingling’. This stage involves the moving around of money in order to distort the origin. Lilley (2000) notes that illicit funds can be moved around within the same banking institution, to other banks, in various currencies, to various countries, to different kinds of investments, or by investing in real estate (p. 49). All these activities can be done quickly through a series of electronic transfers between several bank accounts. Also, the launderer may pretend to pay off a fictitious contract or pay a shell company for goods and/or services rendered. A launderer may even own his/her own offshore bank, which is quite easy to purchase.

Integration is the final stage of money laundering, whereby the illicit funds have been incorporated into the financial system and can now be used legitimately and/or reinvested. Throughout these stages, knowing third parties/nominees or unknowing parties may assist in the laundering of illicit funds. In summary, Lilley (2000) succinctly states:

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According to (Suter, 2002), a. offshore bank in the Cayman islands costs $10,000 and Lilley (2000) reports that it can be bought for $25, 000 via the internet.
Everything the money launderer needs is now available online: they can open a bank account; order an International Business Company; enroll in a multitude of stock trading schemes; communicate by anonymous e-mail; trade using electronic cash systems that are already available; funnel money through online casinos; buy houses online; funnel money through online auctions; open their own offshore or online bank; you name it, it can be done (p.120).

An interpol officer observes that “what is good for free trade is also good for criminals” (International Herald Tribune, 1995; Martin & Schumann, 1998, p. 208).

Passas (2001) posits that the dynamics of globalization increases and intensifies asymmetries, which in turn, further increases criminality. “Just as globalization serves well the needs of legal capital, so does it facilitate criminal enterprises. Just as ordinary international business transactions can be concluded at the speed of light, so can unethical and illegal ones (Passas, 2001, p. 28 & 30). Schroeder (2001) adds that globalization has transformed the financial system in to a money launderer’s dream. Stessens (2000) acquiesces that globalization has aided international money laundering whilst at the same time creates problems for law enforcement. The advancements in technology and cross-border transfers make it difficult to track the laundered funds of organized criminals.

Computer technology affords several benefits to organized criminal networks. These include: its cost effectiveness, its novelty, anonymity, its breadth of reach, and the difficulties with verifying identity (Lilley, 200, p. 107). In addition, it is difficult for law enforcement to prosecute these crime committed in other jurisdictions. Huge chunks of the world’s wealth are thereby being traded outside the sphere of supervision (Robinson, 1998, p. 394). Helleiner (1998) argues that “states have many ways of responding to the [se] challenges.... Although IT enhances the mobility of capital, they also enable states to

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regulate money movements more effectively than in the past if they choose to do so....

As such, the IT revolution might just as likely reinforce the power of the sovereign state as weaken it” (p.409).

According to Lilley (2000), at least $1.5 trillion dollars is laundered each other.

Several other authors give a variety of staggering estimates. One might be inclined to second-guess these figures, but Lilley (2000) insists that the numbers are hard to ignore and may indeed be twice the amount quoted. However, Naylor (2004) argues that we are never made aware of how these figures are calculated and no one truly knows how much illegal money is being laundered. In addition, these figures should be viewed as merely guesstimates as it is impossible to determine.

Serio (2004) and Hetzer (2003) contend that money laundering is dangerous for several reasons: it can be pumped back into criminal enterprises thereby ensuring its continuance which, in turn, may kill legitimate businesses; it undermines democracy and good governance; it cheats tax revenues and creates problems for public planning; and it destabilizes and undermines the financial system. Conversely, Schneider (2004) states, “it could be argued that money laundering has some marginal benefits for society, in that it involves investing funds from the underground economy into the legitimate economy, which can be used for economically productive ventures” (p.290).

The International Fight Against Money Laundering

Findlay (1999) notes, “in its harmonious state, globalization tends to universalize crime problems and generalize control responses” (p. 224). Naylor (2004) identifies several factors that precipitated the introduction of anti-money laundering laws. These
include: the so-called ‘war on drugs’ and the shift to targeting upper-level criminals; the conception of organized crime groups as powerful societal actors because of the massive wealth; the notion that removing the profit from criminal activity will act as a deterrence, the shift to targeting market based crimes\textsuperscript{8}; and the budget deficit experienced by the US in the 1980s which, in turn, pushed the move to confiscate the untaxed illegal wealth.

Thereafter other countries were pressured to criminalize and implement U.S.-style laws in order to trace laundered funds (Naylor, 2004). Consequently, international actions were taken to address this issue. International efforts to combat money laundering, organized through groups such as The United Nations and the Financial Action Task Force, are grouped as ‘anti-money laundering regime’. Accordingly,

\begin{quote}
\small
\today’s global marketplace and world order present new problems for international regimes. These challenges require them to be flexible, stable, and able to make decisions, expand resources, enact laws, provide judicial assistance, and otherwise cooperate in transnational criminal matter” (Zagaris & Castilla, 1993, p. 2).
\end{quote}

According to the Presidential Commission on Organized Crime (1984), money laundering is the backbone of organized criminality because ‘without the ability to freely utilize its ill-gotten gains, the underworld will have been dealt a crippling blow” (Presidential Commission on Organized crime, 1984, p. 7 as quoted in Schneider, n.d., para. 3). In addition, by focusing on illicit money, it is anticipated that the major organized criminals will be prosecuted instead of merely low-level participants (Beare, 1996). Other driving principles behind anti-money laundering legislation are that it will stop criminal enterprises from penetrating the legal market place, and also hinder the reinvestment of accumulated wealth back into these criminal enterprises. Sherman (1993)

\textsuperscript{8} Predatory crimes include offences such as extortion and embezzlement whilst “market-based crimes involve the production and distribution of new goods and services that happen to be illegal by their very
and Stessens (200) report that there was recognition that money laundering undermines the financial marketplace by attacking its integrity and increasing its risks.

The United Nations’ Vienna Convention

The United Nations implemented the first international provision against money laundering. The ‘United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances’, also known as the ‘Vienna Convention’, was issued in 1988. Over one hundred countries were signatories to this agreement. Although its main focus is on narcotics, Barbot (1994) reports that this treaty is modeled on US anti-money laundering law. This suggests some pressure from the US for the international recognition, by other states, as a global problem. Although the Vienna Convention did not criminalize money laundering, it requires signatory states to do so and make provisions for the forfeiture of the proceeds of crime. However, it only makes provisions to criminalize laundered money derived from drug trafficking. Schroeder (2001) reports that the US Department of State found that sixty-six states did not criminalize the laundering of money derived from other criminal offenses. Other general stipulations within the treaty include the institution of a financial regulatory system, implementation of proper enforcement measures against money laundering, cooperation between states on matters of extradition and mutual legal assistance, and forfeiture of the proceeds of crime. Barbot (1994) notes, despite this achievement, the Vienna Convention’s viability as an effective weapon in the anti-money laundering arsenal is marginal. Although of great political and ideological significance, the Convention’s effectiveness is limited in nature” (Naylor, 2004, p. 252).
various ways. For example, the Convention only applies to international offenses and is subject to constitutional constraints of each member state (p.24).

**Basel Committee on Banking Supervision**

Central bank Governors of the Group Ten countries formed the Basel Committee\(^9\) on Banking Regulations and Supervisory Practices in 1974. The committee, in 1988, issued the ‘Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering’. In accordance with this document, banks should “ensure that all persons conducting business with their institutions are properly identified; that transactions that do not appear legitimate are discouraged; and that cooperation with law enforcement agencies is achieved” (Basle Committee on Banking Regulations and Supervisory Practices, 1988, para.6; as quoted in Gilmore, 1996, p. 275). Under these principles, governments are advised/required to monitor the international activity of their “home-based banks and share information with one another” (Barnet & Cavanagh, 1995, p. 418). Although the document is not a legally binding document, the Basle committee encourages banks to operate in line with these principles although its implementation is dependent on state law and practices.

**Financial Action Task Force**

The Financial Action Task Force on Money Laundering (FATF) was created by the Group of Seven (G-7) nations in 1989 after proposals made by the US. It is claimed to be the most functional international body against money laundering. It is made up of

\(^9\) Its members include the United States, Canada, France, Germany, Italy, Switzerland, United Kingdom, Luxembourg, and Belgium.
twenty-six states and two regions\textsuperscript{10}. Through cooperation, FATF is aimed at combating money laundering. FATF issued its ‘Forty Recommendations’, in 1990, which are counter measures to be employed by governments, law enforcement, and the financial sector. “These initiatives establish the framework, ground rules, and benchmarks for national anti-money laundering legislation and regulation” (Lilley, 2000, p. 53). The Forty Recommendations reinforce the Vienna Convention by criminalizing money laundering. Initially, anti-money laundering legislation targeted proceeds from illicit drug activity. However, under FATF, anti-money laundering laws targets the profits from various criminal offenses. It additionally includes other serious offenses from which laundered money represents a criminal act.

Annual reports and evaluations of anti-money laundering initiative of member states are performed. In addition, countries that are found to be lax with the countermeasures have been blacklisted and threatened to be restricted from conducting financial business with those abiding nations. Israel, Liechtenstein, Marshall Islands, Cayman Islands, the Bahamas, the Cook Islands, and Panama have made steps to incorporate these principles. However, full recognition is absent and some other states have made no steps in implementing the FATF’s recommendations. Despite this, Wechsler (2001) surmises that such policy action, on the part of the OECD, can be productive without the global collaboration granted that the acquiescing collaborators are powerful and have a vested interest in combating money laundering. Member countries are expected to issue formal advisories, to their financial institutions, on the dangers of doing business with blacklisted countries (Schroeder, 2001). Hence, sanctioning non-collaborators is seen as

\textsuperscript{10} These include Canada, The United States, The United Kingdom, France, Italy, Japan, Germany, The European Commission, and The Gulf Cooperation Council.
the part of the forward movement in the fight against money laundering. However, Passas (2001) is more critical of the international collaboration against money laundering. He believes such a consensus is vital but it is unplanned and selective which in turn creates legitimation problems and new asymmetries. A more “appropriate international normative framework, law-making process or regulatory mechanism with real enforcement power” is advocated as this will hinder offenders from escaping due to national laws and law enforcement (Passas, 2001), p. 23).

**Anti-money Laundering Legislation in Canada**

Martin & Schumann (1998) state, “as the flow of goods and capital has become available worldwide, regulation and control have remained a national responsibility… [and] it is obvious that any counter-strategy has to be based upon international cooperation” (p. 211 & 213). As a signatory, to the Vienna Convention, Canada took quick legal action against money laundering. The Mutual Legal Assistance in Criminal Matters Act was passed in 1988 to facilitate cooperation with other countries in money laundering matters. Also, in 1988, amendments were also made to the Narcotic Control Act and the Food and Drugs Act to incorporate money laundering. Later, the Canadian Criminal Code, in 1989, was amended to criminalize money laundering. This was seen as the new initiative in combating organized crime, especially that relating to drug trafficking. Accordingly, the Criminal Code creates an offence of ‘laundering proceeds of crime’ when one

uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposces 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 (a) the commission in Canada of a designated offence, or (b) an act or commission anywhere that, if it has occurred in Canada, would have constituted a designated offence (Criminal Code, s462.31(2); as quoted in Duquette & Theriault, 2003, p. 225).

Money laundering is an indictable offence and punishable by a prison term which cannot exceed ten years. Canada’s first legislation against money laundering was The Proceeds of Crime (Money Laundering) Act (PC (ML)A) which came into effect in October, 1,1991. The Act criminalized money laundering, in accordance with the Canadian Criminal Code. Rose (2000) states that this legislation was “intended to create a paper trail of transactions to assist in the investigation of money laundering offences, but there was no obligation to report suspicions of money laundering to any authority” (p.48). This came forth after the FATF’s recommendations, since Canada was a signatory. Manzer (2004) also reports, based on the recommendations of FATF, Canadian chartered banks also made regulatory changes. Further complementary legislation was introduced with the passage of the Seized Property Management Act in 1993.

In 2000, a new money laundering legislation was implemented. The new PC(ML)A was enacted on July, 5, 2000. After the terrorist attacks, September 11, 2001, Canada took steps to stay in line with US and UN policies, (Duquette & Theriault, 2003). Beare & Naylor (1999) note that the US has a great influence on Canada that is hard to resist at times. The fact that they have a shared border generalizes organized crime enforcement issues between the two states (Beare & Naylor, 1999, p.35). Hence, in 2001, the new PC(ML)A was amended and—renamed the ‘Proceeds of Crime (Money Laundering) and Terrorist Financing Act’ (PC(ML)TFA). The act is now inclusive of suspicious transactions related to the financing of terrorist activity.
The PC(ML)TFA brought forth several amendments to Canada’s fight against money laundering which brought it in line with the legislations of other G-8 countries. Theriault (2003) reports that these amendments were made based on criticisms that voluntary reporting, stipulated by the PC(ML)A, was inadequate.

It was felt that Canada... was nevertheless a haven for money laundering and that mandatory reporting of large deposits and suspicious transactions as well as transfers of money into and out of Canada would be required to make laws pertaining to money laundering more effective (Duquette & Theriault, 2003, p. 223).

FATF consolidated these criticisms in its 1997 evaluative report of Canada. It criticized the absence of a mandatory suspicious transaction report system, a cross border reporting system, the lack of extensive education pertaining to money laundering, and a need for systematic guidance in several areas (Rose, 2000). The US State Department also commented, in their 1997 International Narcotics Control Strategy Report, that Canada had an unsystematic approach and lacked effective controls (Bureau for International Narcotics and Law Enforcement Affairs, US department of State, 1997; as quoted in Schneider, n.d., p. 8). In addition, under the 1991 PC(ML)A, the only convictions came from the RCMP investigations which proved to be costly.

The PC(ML)TFA sought to eliminate the criticisms made by the FATF evaluation and the US. It widened the scope of persons who could report money laundering activity, it set up a central agency to collect money laundering information (Financial Transactions and Reports Analysis Centre of Canada- FINTRAC), and it made provisions for mandatory transaction reporting (Manzer, 2000). In addition, it introduced cross border currency reporting and made compliance provisions.
The PC(ML)TFA is comprised of five sections. Part 1 is geared at the detection and deterrence of money laundering; Part 2 stipulates mandatory reporting of financial transactions exceeding the required amount ($10,000) which carries seizure and forfeiture and/or criminal sanctions; Part 3 establishes FINTRAC to carry out the stipulations of Part 1; Part 4 “authorizes the Governor-in-Council to make regulations for carrying out the purposes and provisions of the… Act”; Part 5 makes offenses of the failure to report suspicious transaction(s), disclosure and improper use of FINTRAC information and stipulates the respective sanctions (Manzer, 2004, p. 5).

**Conclusion**

While global capitalism is here to stay, it brings not only benefits but also significant disadvantages. This is clearly reflected in the international financial system as the contradictory features of globalization have aptly aided the money laundering of organized criminals. Cao (2004) notes, “the rise of global markets has not only meant a parallel rise of the conventional markets for the exchange of goods, technology, or ideas, but also induced the rise in markets of violence or markets of crime” (p. 95). Suter (2002) also reinstates that

Money laundering is part of the downside of the globalization process. The same attributes of globalization, more open borders, increased volume of international trade, advances in technology and communications that have benefited developed countries, have also facilitated the growth of international crime, such as money laundering (p. 365).

This has forced governments to implement laws and policies that are geared at attacking this problem. Today we have seen an array of laws, both international and domestic. The issue now surrounds the further national contradictions that are brought forth by these
legislations. If money laundering is a “driving force, galvanizing contradictory social, political, and economic systems” then what are the domestic contradictions that come from the legal response to it? (Hetzer, 2003, p. 269).
However, there has been so much chewing gum, baling wire and paper clips put to this bill at this particular point I do not have a lot of confidence that we will not see a big problem in three or four years after this bill comes into effect. I am very concerned about that” (Jim Abbott, Canadian Alliance Party, Hansard Debates, House of Commons, 36th Parliament, 2nd Session April 6, 2000).

**Introduction**

The following chapter provides an analysis of the PC(ML)TFA by using the principles of structural contradiction theory. The previous chapter has introduced external factors that have constrained and shaped the resources available to Canada in its fight against money laundering, namely, the features of the global marketplace and international protocols on money laundering. With these in mind, the purpose of this chapter is to document and further explore the contradictions, ideologies, triggering events, strategies, interests groups, dilemmas, and conflicts that molded the PC(ML)TFA. These categories are not mutually exclusive but intertwine as they exude pressure on legislators during the lawmaking process. According to structural contradictions theory, an analysis of lawmaking should heed to the crucial instances where laws are introduced as resolution to a problem. In addition, “contradictory elements… are the moving forces behind social changes- including law…. Thus the social forces influencing those people in a position to make the laws must be understood if we are to understand the process of lawmaking” (Chambliss, 1993a, p. 9).
From thereon, the chapter assesses and analyzes the secondary contradictions, conflicts and dilemmas that arise, within, Canada, from the implementation of the PC(ML)TFA). This will reveal changes in the content of the law.

**Level One: Primary Contradictions, Conflicts, Dilemmas, Ideologies, Strategies and Triggering Events**

Structural contradiction theory demonstrates that there are several features of capitalist society, which foster the existence of organized crime. The creation of anti-money laundering legislation is a response to these basic contradictions. The conflict between the forces of production and the relations of production is a part of the basic contradiction within any capitalist society. This, in turn, creates class struggle or a disadvantaged section of the population that threatens the system. Organized crime originates partly as a result of this condition. Another factor is the predominant ideology in capitalist society which emphasizes capital accumulation through potentials for profit. A pervasive culture of consumerism complements this ideology. Boundless wealth can be garnered through the provision of goods and services. However, law prohibits many of these goods and services. The commingling of these features creates lucrative opportunities for organized criminals. The basic contradiction between this “ideology and the reality of the political and economic relations” creates the dilemma of organized crime for the state (Chambliss, 1993a, p.13).

The problem of money laundering also reflects a basic contradiction in the capitalist economy. The internationalisation, liberalization and deregulation of the global financial markets have afforded many advantages for the international banking system. However, criminal enterprises also make use of this state. The basic contradiction lies in the fact
that although advantageous, the aforementioned features have simultaneously created a vulnerability and insecurity within the market that can threaten it.

In addition, initial laws against organized crime proved to be ineffective which, in turn, rendered a new approach to the problem. This came in the form of anti-money laundering legislation. Canada’s implementation of anti-money laundering laws can be seen as part of the mindset that the confiscation of laundered funds will provide a tremendous upset to organized criminal networks and further offer a more effective way of controlling this threat to the state. It is the belief that the targeting of laundered funds will make it easier to catch the leaders of these organized crime networks, stop the reinvestment of funds into these networks, and protect legitimate businesses. In turn, the source of income of organized crime will be removed and its continuance depleted. Rose (2000) notes, “the international community recognized that the penalties available to control such illicit activity did not allow for attacking the proceeds of organized crime. The solution was to rely on the ancient doctrine of forfeiture to attack the modern problems of drug abuse and organized criminal activity” (p. 62).

The state’s resolution to the problem of organized crime now becomes the implementation of anti-money laundering legislation. Resolutions are implemented in an effort to quell the further conflicts and dilemmas arising from organized crime. This is done so as to preserve the state. However, these laws do not address the root causes of organized crime. They are piecemeal, and will continue to be problematic, since they do not aim to resolve the basic contradictions from which organized crime and money laundering originate. This response is also connected to the ideology of the state.

If according to the old view, economically motivated crime was largely the consequence of unequal social and economic
opportunity, then the government would be expected to correct the imbalance. But if, according to the new view, the criminal came to be... a simple cost-benefit calculator. It followed that crime could be addressed by merely tilting the likely outcome of such calculation to reduce the profitability of the criminal's actions (Naylor, 2004, p. 251).

Chambliss (1993a) also points out that "needless to say, how to resolve the basic contradictions will not be part of the discussion. The discussion will focus instead on the wisdom of intervening to counteract what is a "natural consequence" of the capitalist economic system and, if the intervention is to take place, what form it should have" (p. 16). The new resolution to the problem of organized crime was an anti-money laundering regime.

Despite these factors, there were other reasons for the movement towards anti-money laundering laws. These anti-money laundering laws were partially in reaction to another basic contradiction within capitalist society. Chambliss (1993a) notes that capitalism is prone to peaks and slumps because of its fundamental features and contradictions (p. 15). Hence, a capitalist society is prone to undergo periods of crisis. The collapse of Bretton Woods in the 1970s, and the US economic deficit in the 1980s are indicative of such periods. Attacking the wealth of organized criminals was an easy way to resolve this problem. Laundered organized criminal funds were seen as a huge reservoir of untaxed illegal money. This coincides with the ideology that organized crime is a pervasive, dangerous evil that must be removed from society. Conveniently, this coincides with, and envelops, the American crime myth which evokes demands for punishment by the public (McGarrell & Castellanao, 1993, p. 370). Naylor (2004) comments,
so contrived is the crime of money laundering that for law enforcement to win public acquiescence, the popular imagination had to be stoked by conjuring up images of great crime cartels dripping filthy lucre as they rapaciously eyed the commanding heights of the legitimate economy. It took a big lie to create a phoney offence and set law enforcement off on a chase for money rather than criminal offenders (p. 285).

Likewise, the Solicitor General Of Canada (1999) purports, “the federal government views as essential the creation of an effective anti-money laundering framework to help Canada fight organized crime, protect the integrity of its financial institutions and financial system, and build safer communities…. [because it] has the potential … to undermine national economies and threaten democratic systems” (p. 2 & 9). This was part of the rhetoric of impending danger and international responsibility. A second reading on Bill C-22 reinforced the notion that organized crime was a growing challenge and legislators needed to empower law enforcement with the appropriate tools in order for Canadians to feel secure and have faith in the system (Hansard Debate, 36th Parliament, House of Commons, April 6, 2000). It was portrayed as a scourge; a poisoning evil. Consequently, the public would more easily accept a push for anti-money laundering legislation.

The first steps towards provisions against money laundering laws were made by the US. These were in place under the Racketeer Influenced and Corrupt Organizations Act (RICO), The Bank Secrecy Act, and the Continuing of Criminal enterprise Statute of 1970. In addition, all of these acts contained provisions for the forfeiture of the proceeds of crime. However, the US’s first concrete anti-money laundering law was not passed until 1986 in the form of the Money Laundering Control Act. This country’s dedication to the prosecution of the money laundering is unchallenged internationally. As a part of
its ‘anti-money laundering regime’, cases can be tried both in criminal and civil courts.

With its uncharted emphasis on anti-money laundering legislation, the US was going to make sure that its lead was followed internationally. Evans & Prefontaine (1995) note that its “influence was effectively institutionalised internationally” in the Vienna Convention (p. 24). Haynes (2000) notes that this was achieved through constant lobbying and arm twisting (p. 4). The US’s precedence in anti-money laundering legislation can be viewed as a major triggering event for the passage of such laws. This, along with the Vienna Convention, ultimately hastened the implementation of such laws internationally. Canada was the last G-7 nation to implement anti-money laundering legislation. A member of the House of Commons expressed, “Canada's procrastination and tardiness in not addressing this issue earlier is unconscionable. It is unfortunate that the government had not seen the need to address this issue earlier” (Hansard Debates, House of Commons, 36th Parliament, 2nd session, April, 2000). Hence, it had to be pushed in that direction. Since Canada and the US share borders, US policy would again affect Canadian policy like it always has in relation to organized crime. Beare and Naylor (1999) comment, “any organized crime enforcement issues on one side of the border are shared on the opposite side” (p. 41).

In an influential 1990 report, Senator John Kerry’s stated that Canada was one of the countries most used to launder narcotic funds from the US (United States Senate, 1990; Evans & Prefontaine, 1995). Thus, if Canada did not implement a currency transaction system similar to the US, access to their currency clearing system would be denied (Beare & Naylor, 1999, p. 61). But there lies within a more sublte factor for this push towards a more stringent anti-money laundering regime. Eventually, anti-money
laundering legislation in the US, started to affect its banking. The crack down on banking regulation was discouraging the wealthy from using US financial institutions. John Kerry’s anti-money laundering amendment ensured that the US Treasury “negotiate[d] with other countries the imposition of reporting regulations similar to those enforced in the United States” (Naylor, 2004, p. 254). If other countries had in place similar reporting requirements, then the US would not be at such a huge disadvantage.

This strategy, commingled with international duties, via the Vienna Convention, served as triggering events that significantly shaped the constraints and resources available to the Canadian government. Its neighbour was coaxing it to improve its organized crime control policy and now it was bound by international law to do so. The US offered “model legislation, model reporting schemes, a model asset sharing formula, model training, programmes…. A refusal to imitate becomes, at times, an act of national courage” (Beare, 1992, p. 34-35). However, Canada was not in a position to dismiss these demands. It was been cornered by the US who was using strategic tactics. Senator John Kerry later threatened to impose sanctions if a Currency Transaction Reporting (CTR) system was not in place. The forceful tactics employed by the US proved to be quite effective since Canada passed its first anti-money laundering legislation in 1991.

Canada proceeded to execute a series of anti-money laundering legislations after US pressure and international protocols ensued. Similar to the US’s pressure to acknowledge and criminalize organized crime, this push for action could not be ignored. Hence, these international demands had to be appeased. These external forces served as a dilemma for Canada in its fight against organized crime. Its position and relations in the international global marketplace conditioned its resolution to organized crime control. Based on these
constraints, Canada’s only available resource was the passage of anti-money laundering provisions. Evidence of is the Mutual Legal Assistance in Criminal Matters Act which was passed the same year as the Vienna Convention. Canada criminalized money laundering the following year, under the Criminal Code, and later introduced its first law against money laundering three years after the Vienna Convention.

Later, demands for more action were reflected in the 1997 First Annual Statement on Organized Crime. Elected official, Peter Mackay, in the second reading of Bill C-22, expressed that “according to that task force, the major weakness of Canada’s current legislation which was passed in 1991 is the inability to effectively and efficiently respond to requests for assistance in relation to restraint and forfeiture.... Legislation to allow Canada to enforce its responsibilities in foreign forfeiture requests is needed” (Progressive Conservative Party, Hansard Debate, 36th Parliament, House of Commons, April 6, 2000). The Solicitor General of Canada commented,

> a key recommendation out of the organized crime forum was to continue to improve the ability of the police to investigate money laundering.... These measures will give the police more information on illegitimate financial activity, and put us in step with our international counterparts (Solicitor General of Canada, 1997, as quoted in Rose, 2000, p. 53).

Canadian legislators were now eager, and somewhat coaxed, to be on par with their American counterparts.

Canada’s present anti-money laundering legislation, the \textit{PC(ML)TFA}, did not come about through mere legal reasoning on how to improve Canada’s anti-money laundering regime. Disdain by legislators was even expressed to other members for the delay in the introduction of Bill C-22, which was to become the \textit{PC(ML)TFA}. The criticisms laid out in FATF’s 1997 evaluative report and the 1997 International Narcotics Control Strategy
Report were the first push towards new amendments to Canada’s anti-money laundering regime. It was these criticisms that solicited the introduction to mandatory reports in the \textit{PC(ML)TFA}. FAFT’s Forty Recommendations also heavily influenced the content of the latter legislation. In addition, internal lobbyist movements also came from the Canadian Association of Chiefs of Police and the Bloc Quebecois. Since 1997, the latter had been pushing for tighter measures against money laundering. The Bloc Quebecois was very influential in the withdrawal of the $1,000 bank note, which it believed would better facilitate the laundering of criminal funds. In the 1997 election campaign, the Bloc Quebecois called for a more stringent anti-money laundering regime. Michel Bellchumeur reports, “finally, the government over there had no other choice, since the Americans have even told it Canada was an all-round champion as far as money laundering is concerned, but to decide to comply with the Bloc Quebecois’ demands by introducing the bill [C-22] we now have before us” (Bloc Quebecois, Hansard Debates, House o Commons, 36th Parliament, 2nd Session, April 6, 2000). The new \textit{PC(ML)TFA} ensured that such concerns, among others, were addressed. These events are indicative of the external and internal forces exerting pressure of Canada’s lawmaking. The actions of legislators were shaped by the recommendations and criticisms that these contradictions, events and ideologies asserted.

The passage of anti-money laundering laws also marks a change in the operational definition of organized crime control. This also represents a change in ideology. It moved from targeting the act of organizing crime to the creation of an economically based crime. To further this notion, Evans & Prefontaine (1995) note that it is based on the ideological assumption that “if economics and power are the incentives then efforts to
deter or dissuade should focus on economic loss, hence forfeiture (p. 23). Canadian law is now been used in uncharted territory as a tool in the fight organized crime. Organized crime control now targets the criminal organization rather than the individual. It is directed at the rewards of the criminal act than the act itself. Academics (Schneider, 2000; Naylor, 2004) point out that the transactions that make up the laundering of funds are in fact legal procedures that are also performed by legitimate businesses. However, in the case of organized crime, it is the source of the funds that makes these transactions illegal and the designation of money laundering as an offence. Consequently, organized crime control now becomes centered on the peculiarities of this criminal activity rather than the root causes of organized crime. What also becomes evident is the use of law as a financial regulator in the suppression of organized crime. Where law enforcement has failed, anti-money laundering legislation is set up as an apparatus to catch organized criminals. Naylor (2004) aptly adds, “such use of the law both trivializes the real offenses and casts a chill over the entire criminal justice system by announcing that laws are there not to address crimes but to cater to the convenience of prosecution” (p.270). Upon the implementation of Bill C-22, Senator James F. Kelleher expressed, “given our concerns, we will also be giving careful consideration to the need for a strict review of the new legislation every five years” (Hansard Debates, Senate, 36th Parliament, 2nd Session, May 17, 2000).
Level Two: Secondary Contradictions, Conflicts and Dilemmas

The Vagueness of the Proceeds of Crime (Money Laundering) Terrorist Financing Act

The overall stated objectives of the PC(ML)TFA are: to detect and deter money laundering (and terrorist financing); set record keeping and client identification requirements; respond to threat posed by organized crime; require the reporting of suspicious transactions and cross-border currency movements; establish a central agency (FINTRAC); and fulfill Canada’s international commitments (Proceeds of Crime (Money Laundering,) and Terrorist Financing Act, 200, c.17, s. 3 (a) to (c)). The entities required to record, retain, and report financial transactions include: banks, cooperative credit societies, credit and saving unions, casinos, trust and loan companies, persons with dealing foreign exchange, money orders, among others. The Act also applies to the employees of these entities. Non-compliance with reporting measures is punishable by a summary conviction or indictment. Failure to retain records also carries a summary or indictment conviction.

11 Failure to report is punishable by a summary conviction. For the first offence, the sanction includes a maximum fine of $500,000; or a maximum prison term of six months; or both. Any subsequent offence is punishable by a maximum fine of $1,000,000; a maximum prison term of a year; or both. If this offence warrants a indictment conviction then the punishment is a maximum fine of $2,000,000 or a maximum prison term of five years or both.

12 Under section 74, the summary conviction is equivalent to a fine of maximum $50,000; or a maximum prison term of six months; or both. The indictment is equivalent to fine of a maximum $500,000 fine; or a maximum prison term of five years; or both. Other offences punishable by these sanctions include: officials who misuse powers and duties; officials who disclose information; employees of FINTRAC who misuse power and duties; any one in contract with FINTRAC, or who offers goods and services, who discloses information; lawyer who has made claim of solicitor-client privilege but does not appropriately seal and retain document until it is handed over to a judge; and owner or person in charge of a site who does not give ‘reasonable’ assistance to authorized personnel.
In addition, if a person or an organization reveals that they have made a report to FINTRAC, then this is punishable by a summary conviction or an indictment which has a maximum prison term of two years. Organizations and their employees are required to report ‘prescribed’ transactions, which are equivalent to $10,000 or above, and suspicious transactions that point to money laundering (or terrorist financing). Under section 7 of the *PC(ML)TFA*, such ‘suspicious transactions’ are to be made based on ‘reasonable grounds’ and ‘good faith’. However, an offence is not committed if an employee exercises ‘due diligence’ in informing his/her employer or takes ‘due diligence’ to stop the offence.\(^{13}\) However, the *Act*\(^{14}\) makes no indication of how ‘due diligence’ or ‘good faith will be determined and by whom. Is there really a way to objectively determine this? How is such a determination arrived at? The *Act* gives no indication. Also, terms such as ‘reasonable grounds’ and ‘suspicious’ transactions are problematic. Senator Dick Procter interjected that “it is perplexing that even the definition of a suspicious transaction, a fundamental principle indeed, is to be determined after the legislation is passed” (Hansard Debates, Senate, 36\(^{th}\) Parliament, 2\(^{nd}\) Session, June 22, 2000). This could be a possible dilemma, as the *Act* does not clarify what these terms truly mean. This in itself is quite dangerous as this *Act* places the policing of criminals in the hands of the public and arms it with vague guidelines. Manzer (2004) reports, “when asked the question of what constitutes reasonable grounds, FINTRAC representatives, in public speaking forums, have stated ‘when in doubt, report’” (p. 22).

\(^{13}\) An organization can also say that it exercised ‘due diligence’ in prevent the offence.

\(^{14}\) From hereon, any reference to the ‘Act’ means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.
Such a statement points to the wide casting net that the PC(ML)TFA allows in order to catch organized criminals.

The statement is also indicative of the intrusiveness of the Act since anyone can be a suspect of money laundering merely based on his/her financial activities. The vagueness of these provisions is twofold. Intrinsically, the detection of money launderers, or organized criminals, is partially based on mere judgment which could result in one of two things. Firstly, such vagueness on the part of legislators could either result in money launderers who slip through the system because they did not fit some 'suspicious' requirement based on 'reasonable grounds'. Depending on one’s stance on the fight against organized crime and money laundering, this may be considered a significant deficiency in the Act.

We would recommend to the government that a clearer and more precise definition of what constitutes a suspicious transaction be formulated. The subjective nature of the definition could provide an excuse for compliance failure and as a result many suspicious transactions might not be reported (Dick Procter, National Democratic Party, Hansard Debates, Senate, 36th Parliament, 2nd Session, June 22, 200)

Conversely, such vagueness in the Act could inspire the wrongful targeting of the innocent. Senator Dick Procter comments that “the use of a vague definition could result in institutions over-reporting for fear of involuntary non-compliance, thus creating unnecessary, unwarranted scrutiny of innocent individuals” (Hansard Debates, Senate, 36th Parliament, 2nd Session, June 22, 2000). In addition, therein lies a presumption that one is actually guilty of money laundering since information is being collected to be used against one based on some feeble requirement of suspicion. Scott Brison exclaims,

The responsibility to report suspicious transactions is described in this legislation, but it is not really spelled out in terms of what
would define a suspicious transaction. I have some concerns about that. I would hope that as the legislation progresses we would define in a more comprehensive way what criteria would be required for an agency, an individual or a professional to define a transaction as being suspicious (Progressive Conservative Party, Hansard Debates, House of Commons, 36th Parliament, 2nd Session, April 6, 2000).

The vagueness of these terms leaves too much area for interpretation and discretion which could be quite harmful. In a confidential memorandum, Anne Lawson, Counsel at the Human Rights law Section of the Department of Justice, states that the lack of clarity in the PC(ML)TFA is not consistent with the fundamental principles of justice for it to warrant the removal of liberty of an individual (1996, p. 2). Consequently, words such as ‘reasonable’, ‘suspicious’, ‘due diligence’, ‘relevant’ and ‘good faith’ do not sufficiently demonstrate how the PC(ML)TFA should be legally interpreted, how such interpretations are constitutionally warranted for the fight against money laundering, and the further violation of privacy. Many concerns were expressed in regard to Bill C-22 and pleas were made for further considerations and amendments to the subsequent legislation. Some Senators saw nothing wanting in the bill, however, Senator Donald Oliver and Senator Tkachuk expressed, these principles are so fundamental that they should be corrected now before the bill receives Royal Assent and certainly before the bill is proclaimed. I am concerned that there should be no proclamation of the offending clauses of this bill until such time as the government can bring forward the amendments it has promised us in writing...why do we not have the courage to amend it and do the right thing? Is this not what is meant by the oath we took when we arrived here...There is no reason we could not have had these amendments made now, sent back to the House, reported back to Parliament in the fall, and dealt with in an appropriate manner (Hansard Debates, Senate, 36th Parliament, 2nd Session, June 22, 2000).
However, these pleas fell on deaf ears and the bill was passed on the same day with all its deficiencies and intrusive potential intact.

**Democratic notions of and privacy**

Under Subsection 3(b), the *PC(ML)TFA* states, it is its objective to “respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves” (Proceeds of Crime (Money Laundering) Terrorist Financing Act, 2000, c.17; 2001, c.41). Despite this proclamation, “perhaps the most troubling aspect of this bill is whether it adequately protects the privacy rights of Canadians” (Hansard Debates, Senate, 36th Parliament, 2nd Session, May 17, 2000).

The Privacy Act of Canada states as its purpose, the extension of “present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information” (1980-81-82-83, c.11, Sch. II “2”). However, as part of its Consequential Amendments, section 90 of the *PC(ML)TFA* amends the Privacy Act so that FINTRAC falls under its list of designated ‘government institutions’. “Thereby extending to the Centre the obligations” attached to these institutions (Parliamentary Research Branch, 2000, Transitional Provision, Consequential and Conditional Amendments, Repeal and Coming into Force, para.7). However, the amendment not only specifies its obligations but also grants FINTRAC enormous powers in the gathering of
personal information; power that it would not otherwise have if it was not a designated
‘government institution’. This amendment also has greater significance as it affords
FINTRAC great leeway in the erosion of privacy. FINTRAC can refuse to disclose
information to individuals about themselves, which is granted by subsection 12(1) of the
Privacy Act. Its refusal of such disclosure is based on the following reasons. It is a
‘government institution’ that: upholds a law of Canada; is in the investigative course of
detecting, preventing, and suppressing a crime; and, its disclosure of information would
hurt the enforcement of PC(ML)TFA and hurt international affairs.\(^{15}\)

Another intrusive privacy amendment is made under section 97 of the PC(ML)TFA.
This amendment is made to the Personal Information Protection and Electronic
Documents Act (PIPED). The purpose of PIPED is to “govern the collection, use and
disclosure of personal information (Personal Information Protection and Electronic
Documents Act, 2000, c.5, s.3). Consequently, its provisions would apply to ‘every
organization’ that “collects, uses or discloses [personal information] in the course of
commercial activities; or is about an employee of the organization and that the
organization collects, uses or discloses in connection with the operation of a federal
work, undertaking or business” (Personal Information Protection and Electronic
Documents Act, 2000, c.5, s.4 (1). Ultimately, all the prescribed persons or entities under
the PC(ML)TFA would have to abide by this statute. However, the legislators of the
PC(ML)TFA were aware of this and moved to make an amendment. Consequently,
under subsection 7 (3) (c.2) of the PIPED Act, an organization may divulge personal
information, without the knowledge or permission of an individual, specifically to

\(^{15}\) For other reasons see subsection 19 (1), section 21, subsection 22(1), and subsection 22(3) of the Privacy
Act 1980-81-82-83, c.111, Sch. II.
FINTRAC. This makes it a lot easier for prescribed persons /companies to carry out their reporting and collecting duties under the $PC(ML)TFA$ without hindrance or sanctions.

The $PC(ML)TFA$ has ensured that such privacy issues are eroded and will not provide obstacles in its fight against money laundering (and terrorist financing). Section 97 of the $PC(ML)TFA$ has significantly increased the intrusive potential of FINTRAC. To further increase this potential subsection 97(1) (c) of the $PC(ML)TFA$ amends the PIPED Act so that under subsection 9(2.3) (a.1), an organization may specifically refuse disclosure of information, upon request of an individual, if such information would be hurtful to the “detection, prevention, or deterrence of money laundering” (Personal Information Protection and Electronic Documents Act, 2000, c.5). In addition, it must notify FINTRAC, and the Privacy Commissioner, if an individual makes such a request and not inform the individual of such notifications. The $PC (ML)TFA$ has ensured that prescribed and suspicious financial transaction reports can easily take place and without the knowledge of an individual. This, in turn, ensures that an investigation continues and more potentially incriminating evidence can be continually gathered on an individual.

Subsection 9(2.3) (a.1) of the PIPED Act ultimately works in favor of FINTRAC. If a person is notified about the collection of such personal data, he/she can make a complaint\textsuperscript{16} to the Privacy Commissioner. If the Privacy Commissioner is satisfied of such claims, then he/she is empowered to make an investigation. Section 34 of the Privacy Act empowers the Commissioner to summon an individual(s) to give evidence in

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\textsuperscript{16} Grounds for such complaints include, errors in information collected and information not being used for the purpose it was collected, amongst others. See Section 29, Section 12 (1), section 7, and section 8 of the Privacy Act for overall issues relating to complaints to the Commissioner.
\end{flushright}
regard to the complaint. The Commissioner also has the power to enter FINTRAC, granted security requires are fulfilled, and inspect and duplicate any document. “No information that the Commissioner may examine under this subsection may be withheld from the Commissioner on any grounds” (Privacy Act. 1980-81-82-83, c.111, Sch. II, ss.34 (2)). The Commissioner will then make possible recommendations and notify the complainant of the outcome of the investigation. However, as the Senate debates revealed,

We do know that the new centre will be monitoring our transactions. What we do not know is who will be monitoring the monitor. The Office of the Privacy Commissioner simply does not have the necessary resources to conduct an annual audit of this [FINTRAC]... government department and agency” (Hansard Debates, Senate, 36th Parliament, 2nd Session, May 17, 2000).

Hence, the Privacy commissioner may not be able to mitigate or check the intrusive potential of FINTRAC. In a speech to the Standing Senate Committee on Banking, Trade and Commerce, the Privacy Commissioner expressed concerns regarding clauses in BillC-22 that are now in place under the PC(ML)TFA. The Commissioner expressed, “I am concerned that it [Bill C-22] lacks clear rules to protect the privacy of Canadians.... We need to keep in mind Canadians do not loose their privacy just because they are suspected of a crime” (Privacy Commission, 2003, Speaking Notes prepared for the Commissioner’s Appearance before the Standing Senate Committee on Banking, Trade and Commerce, para. 3 & para 6). The Commissioner also had concerns about the lack of clarification regarding terms such as ‘reasonable grounds’ and ‘suspicious transactions’. In addition, the Commissioner stated that sufficient guidelines do not exist in regard to the ‘relevant’ information that FINTRAC can collect; another indication of the vagueness entrenched the PC(ML)TFA. Hence, this allows FINTRAC to gather an
abundance of information that relates to a person’s “employment history, income, professional relationships, travel patterns, in addition to the information provided by financial institutions and other organization covered by the legislation” (Privacy Commission, 2003, Speaking Notes Prepared for the Commissioner’s Appearance before the Standing Senate Committee on Banking, Trade and Commerce, para. 11). This further contradicts the PIPED Act which stipulates that only necessary information should be collected. In addition, since FINTRAC can disclose information to the police, the subsequent bulk of personal information gathered by the later will go a step further in the erosion of privacy rights. A Supreme Court ruling in Canada established that Canadians are entitled to a reasonable expectation of privacy against governmental intrusions.

The restraints imposed on government to pry into the lives of the citizen go to the essence of a democratic state...where privacy is outweighed by other societal claims, there must be clear rules setting forth the conditions in which it can be violated. This is especially true of law enforcement, which involves the freedom of the subject” (Supreme Court, Queen v. Dyment; as quoted by Privacy Commission, 2003, Speaking Notes Prepared for the Commissioner’s Appearance before the Standing Senate Committee on Banking, Trade and Commerce, para. 21).

However, as one delves more into the PC(ML)TFA, one sees accumulating provisions which facilitate the erosion or intrusion Canadians’ privacy rights.

As part of its compliance regime, the PC(ML)TFA empowers authorized personnel to enter any establishment and affairs of those required to make reports. FINTRAC has “sweeping powers to collect vast amounts of personal and private information about mostly innocent Canadians” (Hansard Debates, Senate, 36th Parliament, 2nd Session, June 22, 2000). It is allowed to store the information collected for five or eight years, after
which the information has to be destroyed. The Act makes no provision to ensure that this is actually carried out.

*Search and Seizure*

Section 62 of the PC(ML)TFA authorizes the examination of data and business of prescribed entities or individuals by authorized personnel. The duplication of records is also allowed. In such instances, ‘reasonable assistance’ should be given in order to enforce the detection, prevention and deterrence of money laundering (or terrorist financing). These investigative powers are extended without the need of a warrant. However, in order to enter a dwelling house, consent must be given by the dweller or a justice of peace must issue a warrant. In such a case, the authorized personnel can only enter the room which he/she ‘reasonably’ believes that the prescribed person or company is carrying out its operations. If ‘reasonable assistance’ is not afforded, a person could be punished with a summary or indictment conviction. Again, this term is too vague a leaves too much area for potential abuse. Manzer (2004) aptly surmises that the “2000 Act provides criminal investigative powers, and essentially criminal sanctions for the breach of statute, without the counterbalancing of the criminal law protections that have evolved under the Criminal Code and in legislation preventing civil rights’ (p.52). Concerns were raised in the House of Commons regarding the infringement of the Canadian Charter of Rights and Freedom. Under section 8 of the Charter, everyone is protected from unreasonable search and seizure. Senator Dick Procter reports, “there is a potential for charter violations. The guarantees of reasonable search and seizure appear to be at risk. For example, the Criminal Lawyers' Association argues that “the standard of suspicion
outlined fails to meet even the first and fundamental requirements of reasonable grounds” (Hansard Debates, Senate, 36th Parliament, 2nd Session, May 17, 2000).

Section 86 of the PC(ML)TFA amends section 40(3) of the Canada Post Corporations Act so that officers can demand and retain, from the latter, mail that was in the course of posting (Parliamentary Research Branch, 2000, Transitional Provision, Consequential and Conditional Amendments, Repeal and Coming into Force, para. 3). Other amendments to the Canada Post Corporations Act include section 42(2) to (3). In addition, section 88 of the PC(ML)TFA amends section 48 of the Canada Post Corporations Act thereby allowing an officer to open, keep, secrete, delay or detain mail, without committing an offence (Parliamentary Research Branch, 2000, Transitional Provision, Consequential and Conditional Amendments, Repeal and Coming into Force, para. 5). These amendments to the Canada Post Corporations Act make it easier for officers to search and seize cross-border currency they believe is related to money laundering. Hence, under subsections 17(1) and 17(3) of the PC (ML)TFA an officer may open mail on ‘reasonable grounds’ for suspicion that its contents is equal to, or more than the prescribed amount. Mail may be also opened if it weighs thirty grams or less. This can be in the presence of the receiver, sender or some one authorized by any of the two. The only exception, and possible loophole, is that under subsection 17(2) an officer cannot open any mail that weighs thirty grams or less unless there has been authorization by the sender or receiver or if a form is attached17.

If an officer suspects on ‘reasonable grounds’ that some one has currency equal to or exceeding the prescribed amount, such currency can be seized. The capital may be

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17 This form should be in agreement with article 116 under the Detailed Regulations of the universal Postal Convention.
returned if a payment of the fine has been made or if the officer believes that the funds are not proceeds of crime. Hence, one can be fined although one might not be trying to launder criminal funds, which does not tie in with the stated objectives of the Act.

Again, based on 'reasonable grounds' for suspicion that a mail has equal or more than the prescribed amount, an officer can demand that Canada Post hand over such mail. Under subsection 21(5) of the Act, such mail is considered 'non-mailable matter'. Such seizure is made possible since under section 87 of the PC(ML)TFA, the Canada Post Corporations Act makes reference to the Act so that mail handed over to an officer is said to remain in posting unless it is seized. Notice would then be given to Canada post of any consequent seizure (Parliamentary Research Branch, 2000, Transitional Provision, Consequential and Conditional Amendments, Repeal and Coming into Force, para. 4).

This is another good example of a search and seizure that could not have taken place if the PC(ML)TFA had not made an amendment to the Canada Post Corporations Act. Manzer (2004) notes, “this appears to be an attempt to avoid civil liberties issues as to the interference with mail”. Under other circumstances this would have been an unconstitutional invasion of privacy. However, the PC(ML)TFA has ensured that such action is legal and thereby further erodes privacy rights. If such funds are forfeited, it is sent to the Minister of Public Works and Government Services. All such forfeitures are conclusive under the Act. The exceptional circumstance is if the owner requests of the Minister of National Revenue reasons for the seizure and further provides evidence for his/her case. The Minister of National Revenue may return the fine or the seized funds. If the Minister of National Revenue decides to stick to the forfeiture, the respective party
may make an appeal to the Federal Court. The court will make the final decision and the
Minster of National Revenue has to act on its decision.

Under subsection 14(1) cross-border currency, currency can be retained if a person
indicates that they have such to report but did not make a complete report (subsection
4.1). Also, if the person decides not to continue with the importation or exportation, such
currency can still be retained and then forfeited to the government.

An officer may perform a search if he’ she suspects on ‘reasonable grounds’ that a
person has currency equal to or more than the prescribed amount. Here again, the vague
term is used to justify a search and seizure. Under subsection 15(4) and section 19, the
Act empowers officers to conduct search and seizures along with a person the officer
deems suitable. Hence a layperson may be called upon to do so and is empowered by the
Act to perform such duties. This indicates and strengthens the argument that the
legislators have left a lot of room for interpretation and discretion of the law by the
layperson. In other instances, the individual may to be taken to a senior officer who may
then decide whether or not there are reasonable grounds for the search. This is indicative
of the grey area surrounding this matter and the subjective nature of these provisions. In
addition, in any case, an unwarranted search or detainment can take place without
‘reasonable grounds’ since the senior officer might later disagree on the grounds for
suspicion. The law has left too much subjectivity for its application by person not trained
in the detection of money laundering. It has merely handed them numerous
responsibilities with vague guidelines to do so.

*Disclosure of Information
The information gathered through search and seizure procedures can be disclosed to law enforcement officials. Overall, no FINTRAC official is allowed to disclose information under subsection 36(1)(a) to (c)). This is the case because subsection 12.1 of the Privacy Act allows any citizen of Canada to request personal information about him/herself that is collected by an information bank. However, FINTRAC can disclose ‘designated information’ to the police, the Canada Customs and Revenue Agency and the Department of Citizenship and Immigration if it believes that this will aid in the investigation of money laundering (or terrorist financing) case. FINTRAC can also provide the Canadian Security Intelligence Service with ‘designated information’ if it believes such information is applicable to a threat to Canadian security. It can also disclose information to countries or foreign organizations, that have similar responsibilities and powers as FINTRAC, for the purpose of investigating money laundering (or terrorist financing). This demonstrates that many government organizations might have access to such personal information. These data would not become available if it were not for the existence of the PC(ML)TFA. ‘Designated information’ includes, among other things, or the name of a client, importer, exporter or third party; the name of the business or place where the transaction took place; the amount or type of funds; the transaction number and account number (PC(ML)TFA, 2000, c.17, ss. 55(1) (1) - (e)). Everything is susceptible to scrutiny and only leads to an abundance of information which the center will never use. Privacy rights are being eroded in the name of catching a handful of criminals. Over a five-month period, FINTRAC received 3, 747 suspicious transaction reports of which only 30 were
suspected money laundering cases (Financial Transaction Report and Analysis Centre of Canada, 2002; Schneider; n.d.; p. 19).

The only instances in which an official\textsuperscript{18}, or a employee of FINTRAC, has to abide by a summons, subpoena, or ‘an order for the production of documents’ are: during any criminal case that begins with the laying of an information or an indictment; during a legal proceeding relating to the disclosure of information by FINTRAC; during a case relating to money laundering terrorist financing or any other offence under PC(ML)TFA; or for investigating a threat to Canadian security (PC(ML)TFA, 200, c.17, ss. 36(5)(a), (b) & ss. 59(1)). Besides the Privacy Commissioner, the Attorney General of Canada and the Director, or an employee, of the Canadian Security Intelligence Service may make an application to a judge to obtain information from FINTRAC. If this is granted, the ‘order of disclosure of information’ will “allow a police officer named in the order to have access to examine all information and documents to which the application relates or, ... to produce the information and documents to the police officer and allow the police officer to remove them (PC(ML)TFA, 200, c.17, ss. 60.4). However, the Director can deny this release but has to document specific reason for this. If the judge is satisfied with the reasons provided by the Director, the aforementioned parties could make an appeal to the Federal Court of Appeal in Ottawa. What becomes evident is that several persons, or organizations, can make an application for the disclosure of personal information despite the fact that FINTRAC should operate at ‘arm’s length’ from other institutions.

Senator James Kelleher quips,

\textsuperscript{18} Official here means anyone who has or had access to information made in a report to the Centre, information disclosed by the center or information gathered from the previous two (PC(ML)TFA, 2000, c.17, ss. 36.1 (a)-(c)).
as a former solicitor general of Canada, I find it odd that the new centre will report to the Minister of Finance. It seems more appropriate that an agency that will be involved with law enforcement would report to a minister with some expertise in the area such as the Office of the Solicitor General (Hansard Debates, Senate, 36th Parliament, 2nd Session, May 17, 2000).

The Minister of Finance is the overseer of FINTRAC. Again, although the Act has strict clauses regarding the disclosure of information, the Minister may take on anyone to advise him/her on directing FINTRAC and on matters that influence public policy. Such counsel is likely to reveal information that should be confidential within FINTRAC. Also, subsection 52(4) also allows the Director of FINTRAC to disclose information to such an appointed person in order to aid the counsel of the Minister. The problem herein lies with the fact that there are no guidelines as to the delegation of such an appointed advisor. In addition, subsection 55.6 of the Act makes an exception whereby ‘a person may disclose any information … if the disclosure is necessary for the purpose of exercising powers or performing duties and functions under this part” (PC(ML)TFA, 2000, c.17). Therefore, this looseness in the Act again runs the risk of empowering a layperson with confidential personal information on Canadian citizens. The aforementioned clause also leaves too wide a room for discretion in the disclosure of such personal information. In addition, Senator Scott Brison notes,

A Canadian citizen being persecuted by this agency on a given case would not have the protection offered by ministerial intervention to potentially defend that citizen. Only if systemic abuse were suspected would the minister be able to intervene. Whenever I see these new agencies, whether it is the new Revenue Canada agency or this new agency to police money laundering, I have some concerns about the lack of direct ministerial accountability and potential intervention on behalf of an individual Canadian who may be treated unfairly by one of these agencies (Progressive Conservative Party, Hansard Debates, Senate, 36th Parliament, 2nd Session, May 17, 2000).
The Minister has no direct involvement in the running of FINTRAC. So again, the question arises as to who will monitor the monitoring done by FINTRAC. Who will make sure that there are checks and balances for potential abuses by the Centre?

*Solicitor-Client Privilege*

Initially, Bill C-22 proposed that lawyers report suspicious transactions in regard to their clients. During hearings in the Senator James Kelleher and Senator Dick Procter opposed this clause on several grounds. Pleas were made to respect the sanctity of the solicitor-client relationship as its erosion could possibly create “irreconcilable conflict for professionals, such as lawyers who remain subject to certain codes of conduct that prohibit them from disclosing information” (Hansard Debates, Senate, 36th Parliament, 2nd Session, June 22, 200). However, there were others who viewed the removal of the clause as a possible loophole. Criminals could potentially use lawyers to aid their money laundering activities. However, great opposition came from the Criminal Lawyers’ Association and the Canadian Bar Association as this clause would have removed the solicitor-client privilege. Soon provincial courts in British Columbia, Nova Scotia, Saskatchewan, Alberta and Ontario were ruling against this provision. The clause was eventually removed.

According to section 11 of the *PC(ML)TFA*, “nothing in this part requires a legal counsel to disclose any communication that is subject to solicitor-client privilege”. In addition, under subsection 64 (3)(a) and (b), a FINTRAC official cannot confiscate or copy any ‘communication’ that is subject to solicitor-client privilege. In addition, ‘reasonable’ time must be afforded in order for the lawyer to make this claim. Indeed, this can be considered a possible loophole in the legislation whereby criminals can use
the counsel of their lawyers to their advantage in the laundering of funds. Also, the term 'reasonable' time limit afforded to make this claim may potentially be problematic as there might be disagreements as to what constitutes reasonable time in such a situation. The lawyer must then reveal the name and address of the client, so that the client can be informed of the claim made by the lawyer, and thereby have the opportunity to waive such a privilege before a judge makes decision. If such a claim is made, the lawyer and the authorized person have to make certain that the document or relevant pages are marked or sealed. The lawyer will hold the document until a judge acquires it. First an application must be made to the Deputy Attorney general of Canada for an order by a judge. Once granted, the judge will determine whether the solicitor-client privilege exists. If so, the document will be returned to the lawyer; if not, then the judge will order that the document be examined or copied by the authorized person. To ensure that this is done, the judge will initially offer reasons identifying the document without revealing its specific contents. In a mouse-trap kind of way, if the lawyer does not make the numerous timely applications, then the judge will immediately order that the lawyer turn over the documents to the authorized personnel. Consequently, although this clause can be a possible loophole in the Act, it can also strike down the solicitor-client privilege within law. Duquette and Theriault (2003) also point out that the “lack of definition... of expressions such as 'communication' or 'solicitor-client privilege' does not provide a clear protection of the solicitor-client privilege. Whether any information of document is protected by solicitor-client privilege will be a question of fact to be addressed in each case, thus rendering the situation problematic” (p. 235).
In addition, section 89 of the PC(ML)TFA has made an amendment to the Criminal Code. The Canadian Criminal Code sets out a procedure for determining solicitor-client privilege. However, section 488.1 (11) of the criminal Code states that such procedures do not apply to solicitor-client privilege that is claimed under the PC(ML)TFA. As such, the PC(ML)TFA sets out its own guidelines for determining this claim. There are two main differences between these respective guidelines. The Criminal Code stipulates that the sealed information can be held by a sheriff or agreed upon custodian before it is passed to a judge. The PC(ML)TFA states that lawyer should keep hold of the document until the judge acquires it. This nullifies any possible claim by a lawyer that the document might be missing as he/she will be ultimately responsible. The clause also ensures that unwarranted parties are not included at this stage of the investigative process. The other significant difference is that, section 488.1 (5) of the Criminal Code extends privilege to the document in question, after a solicitor-client privilege has been determined, so that the said document is inadmissible as evidence in court unless the client grants this. The PC(ML)TFA does not have such a provision and thereby leaves room for the document to be obtained, or presented in court, on other grounds in the future.

A layperson may argue solicitor-client privilege in relation to the document. In this instance, the authorized person cannot make use of the documents in that person’s possession. He/she must then afford ‘reasonable’ time for the person to contact a lawyer so that the lawyer can make the claim of solicitor-client privilege on behalf of the client. The all too familiar vagueness of the Act and the potential for abuse or intrusion becomes
evident once again. Under the PC(ML)TFA, the whole concept of privacy in a
democratic state takes on a new meaning.

*Democratic Notions of Due process*

All democratic states pride themselves on timely fair trials. However, the
PC(ML)TFA attacks the guarantee of due process in the prosecution of money laundering
cases. Beare and Naylor (1999) note that in an enterprise offence such as money
laundering, the role of authorities “may consist of both finding and taxing hidden
revenues (the sensible approach) and of finding and forfeiting misbegotten profits (the
popular approach fraught with dangers”). Canadian legislators have opted for the latter.
Under the PC(ML)TFA, all monetary instruments or assets that are seized are forfeited to
the government of Canada and will not be returned to its owner, or third party, unless an
appeal is made to the Minister of National Revenue. If a party is unsatisfied with the
decision then another appeal can be made to the Federal Court. The problem with
forfeiture, under the Act, is that it assumes that an individual is guilty of money
laundering (or terrorist financing) before an individual is even able to defend
himself/herself. This undeniably goes against democratic concept of due process which
entrenches the presumption that one is innocent until proven guilty. The democratic
principle has been totally discarded. This constitutes the erosion of a fundamental right
which every person in a democratic country is entitled to. In addition, the likelihood that
such forfeited property will be returned is quite low. Article 5, paragraph 7 of the Vienna
Convention recommends, “each party may consider ensuring that the onus of proof be
reversed regarding the lawful origin of alleged proceeds or other property liable to

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confiscation” (United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988; as quoted in Gilmore, 1996, p 82). This is exactly the option Canada has chosen. Not only is the accused robbed of the presumption of innocence and fair trial, but also he/she has to prove that his/her funds or assets are not the derivatives of criminal activity. This reversed onus is absurd for a criminal offence. In addition, Manzer (2004) notes that there is “no standard which indicates the basis upon which an appeal might be accepted, but presumably, it would remain the reasonable grounds required for the officer’s power to seize. This effectively means that penalties usually imposed... are being imposed without the protection of the criminal standard of proof” (p. 52-53). The forfeiture of the proceeds of crime within the PC(ML)TFA has been adopted from US legislation. But if their laws show anything it is that

US civil forfeiture laws violate the basic tenets of American due process protections: the right not to be punished until proven guilt beyond a reasonable doubt; the right to be free from unreasonable searches and seizures; the right not to be deprived of property without the due process of law; the right to equal protection of the laws; and, the right to be free from unwarranted or disproportionate punishment (Taifa, 1994, p. 95; as quoted in Beare & Naylor 1999; p. 43).

This is the gloomy direction in which Canada is heading and it is blatantly evident from the conflicts and dilemmas arising from the implementation of the PC(ML)TFA. An even more disheartening law is The Remedies for Organized Crime and Other Unlawful Activities Act which was passed by the Ontario provincial government in April 2000. This law authorizes the seizure and forfeiture of assets, from the proceeds of crime, by civil courts. The threshold of proof now decreases to a ‘balance of probabilities’ for a criminal act. However, Ontario’s provincial government has argued that the law is based on civil, not criminal, principles hence it has jurisdiction to do so. Plus, property rights
are not protected by the Charter (The National Post, December 7, 2000. p. C19; as quoted in Schneider, n.d., p. 38). Hopefully this is not an insight to the future of provincial or federal prosecution of the proceeds of crime. As the US experience shows, such a movement will only further infringe on fundamental democratic principles and encourage corruption.

Third party interests are minimally protected by this Act. One will have to fill out an application to the court and the Commissioner of Customs regarding the forfeiture. Such a case may go all the way to the court of appeal. In order for the third party to receive the forfeited property, or his/her share, certain grounds will also have to be fulfilled. Under section 33 (a) to (c), the third party has to show that he/she obtained the property in ‘good faith’, was not an accomplice to the offence, and had taken ‘reasonable’ care to make sure that the person to whom the funds were given would have reported the funds. The flaw with these stipulations is that they also place the burden of proof on the third party. In addition, the vague expressions, ‘good faith’ and ‘reasonable’, appear again and further makes it more difficulty for someone to make a case.

**Infringement on tax regulations and corporate rules/regulations**

Beare and Naylor (1999) note that, in today’s world, the boundaries between economic regulation, civil law, and criminal law are blurred. Once mutually exclusive domains, we now see a greater move towards their integration where law enforcement is moving into areas that were once that of revenue and tax officials. This also marks the transformation in the definition of organized crime control. As an interpretative note to its 15th recommendation, FATF comments, “suspicious transaction should be reported by
Countries should take into account that, in order to deter financial institutions from reporting a suspicious transaction, money launderers may seek to state inter alia that their transactions relate to tax purposes” (Financial Action Task Force, 1999; Walker, 2001, p. 442). Consequently, Mackay comments that the information collected by FINTRAC is relevant to tax evasion offences (Progressive, Conservative Party, Hansard Debate, 36th Parliament, House of Commons, April 6, 2000). Hence, with the appropriate court order and the sufficient demonstration of grounds, Canada Revenue can have access to such information. In certain instances, FINTRAC will voluntarily provide Revenue Canada with this information if the “Centre... determines that the information is relevant to an offence of evading or attempting to evade paying taxes or duties imposed under an Act of Parliament administered by the Minister of National Revenue; (PC(ML)TFA), 2000, c.17, ss. 55(3) (d)). Beare and Naylor (1999) add that this has “serious possibilities of compromising the integrity of a tax system based on confidentiality and self-assessment” (p. 50).

The laundering of funds is not an economic deviation by commercial standards. However, the PC(ML)TFA has delineated it as such and forcefully recruited others to do the work of law enforcement. Legislators systematically entered the realm of tax and corporate regulation and tagged one of its prevalent practices as a criminal offence. Scott Brison cautioned,

We do not want to create a system of fear in Canada for the average taxpaying citizen that at the other end of the tax enforcement side we are actually creating a turbocharged Revenue Canada agency... that has a greater level of power to pursue and persecute Canadians... We do not want to tilt the balance against the average Canadian taxpayer who in the past has had to deal with...

Civilian Policing

The Basle Committee on Banking Regulations and Supervisory Practice devised its own principles, in 1988, to counter money laundering. The Committee noted that the responsibilities of banking supervisors might vary from country. However, the overall role was to instil faith in the banking system by protecting it from criminal enterprises and building public confidence in banks. The Committee encouraged: customer identification; identifying ownership of accounts; adherence to financial transaction regulations; informing and training banking staff in its policy against money laundering; internal audits to determine effectiveness of principles; and, working with law enforcement. Evidently banks had their own guiding principles for dealing with money laundering. The Basle Committee even encouraged a balance between fully cooperating with “national law enforcement authorities to the extent permitted by specific local regulations relating to customer confidentiality” (Basle Committee on Banking Regulations and Supervisory Practices, 1988; as quoted in Gilmore, 1996, p. 277). It should be noted that the Committee’s ‘Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering’ was adopted the same time as the Vienna Convention. However, the former was not a legally binding document. Hence, article 5, paragraph 3 of the Vienna Convention states that “each party shall empowers its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A party shall not decline to act under the provisions of this paragraph on the grounds of bank secrecy”. (United Nations
Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, 1988; as quoted in Gilmore, 1996, p. 80). Although the Basle Committee had its own guiding principles, the Vienna Convention set the precedence for legal compliance by banks which is now reflected in FATF’s Forty Recommendations. This, in turn, has affected the PC(ML)TFA whereby we now see a call for mandatory reporting and compliance measures. According to the Solicitor General of Canada (1999), “it is in the interests of financial institutions and businesses to provide assistance to government regarding the problem of money laundering, so as to preserve the integrity of the Canadian financial system and ensure the public security of Canadians generally” (p. 9). Although the Canadian Banking Association supported voluntary reporting, they “adamantly opposed mandatory reporting” (Schneider, n.d., p. 7). But they had to comply with the new provisions of the PC(ML)TFA or else they would be criminally sanctioned under this new piece of legislation.

PC(ML)TFA requires that banks report, suspicious transactions, prescribed transactions and cross-border financial activities. Whereas prescribed transactions and cross-border transfer of funds have a set amount, suspicious transactions can be of any value. Hence, bank officials are given great responsibility in deciphering financial transactions that they believe is connected to money laundering (terrorist financing). Manzer (2004) states, “you cannot always tell when initiating a transaction whether it will turn out to be suspicious or not, and it is difficult to obtain the required information” (p. 67). In addition, since nothing in the Act legally defines a suspicious transaction of a ‘financial transaction’, the decision is wholly left to prescribed entities and their employees. Although FINTRAC has issued guidelines and indicators of suspicious
transactions, these are not legally enforced and still leave too much room for discretion and error. Naylor (2004) comments that bank officials have become “police informants.... Indeed, to protect itself-ironically from the police rather than the client- the institution may go over board. Fear can lead into paranoia, which can impede efficiency, clutter operations, and compromise the banks responsibility to the client” (p. 272).

In these instances, third party interests again take a back seat. This greatly increases the likelihood of innocent parties being deprived of their funds and assets. In addition, the fight recommendation by FATF is that “the offence of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances” (Financial Action Task Force, 1996; as quoted in Alexander, 2001, p. 433). Therefore, a third party would also have to prove otherwise, and this will be a lot harder.

“Other documents to be kept include copies of operating agreements, deposit slips, demo and credit memos, account statements sent to the clients, every cheque drawn on or deposited to the account, unless certain conditions are met, client credit files and transaction tickets in respect of every foreign currency exchange transaction” (Duquette & Theriault, 2003, p. 229). This greatly increases the workload and paper work of bank officials, and other prescribed entities. These additional responsibilities, in turn, have incurred more costs to these institutions. These costs are sure to be transferred to customers. As part of its compliance regime, the Money Laundering Regulation requires prescribed companies to: assign some one to put in the compliance regime; develop and carry out compliance measures; review the effectives of compliance measures by an internal or external auditor; and ensure that employees are trained regarding compliance
measures. Despite the costs and labour, these responsibilities have to be adhered to or else the prescribed organization runs the risk of being legally sanctioned. A prescribed organization or its employee cannot make claims of not knowing the statute, or its compliance measures. Such a claim will not exclude one from being sanctioned (Manzer, 2004). Hence, it is the duty or every prescribed organization to inform and educate its employees in regard to the (PC(ML)TFA. Regardless of costs or workload, they have no choice but to adhere to the compliance regime. Concerns were raised both in the House of Commons and the Senate regarding the potential for ethnic stereotyping and paper glut based on these mandatory suspicious transactions reporting.

Despite compliance measures, the second reading of Bill C-22 reveals that neither bank officials, nor FINTRAC representatives, are able to detect or intercept funds that are laundered through electronic transfers. Neither of these is equipped with the resources to do so and the PC (ML)TFA does not address this. Organized criminals are easily taking advantage of this loophole. Admittedly, this leaves the system in a quite vulnerable state.

The only envisioned solution by legislators was the “the centre.... It can be a great opportunity for those trained in this capacity, and hopefully we will, and I have every confidence that we will, continue to produce very bright, intelligent people who will be able to help us in this task” (Hansard Debate, 36th Parliament, House of Commons, April 6, 2000). Despite this, Dick Procter questions the system's effectiveness. There remains a series of concerns about the planned reporting effectiveness. There is a warning that the new regime has the potential to create a bureaucratic monster and there is a chance that organized crime would be able to short circuit such a system through a series of shadowy, sophisticated transactions. We wonder whether money might not be better spent granting law enforcement and investigative bodies additional resources to detect and prosecute money laundering offences.
Informants

The Act stipulates that persons making reports cannot disclose that they have done so. Also, no one can file a civil or criminal case against that person. However, Manzer (2004) insists:

there are some very real constitutional issues which could affect the availability of this liability protection. There is some very real doubt that the federal government has the constitutional authority to validly enact a provision which purports to deal with property and civil rights.... The federal power over peace, order and good government is secondary to explicit provincial powers. Similarly, the federal jurisdiction over trade and commerce has generally given way to the provincial powers over property and civil rights in the province (p. 62).

This could be seriously damaging for entities or employees who have made reports to FINTRAC. In addition, such provincial powers could also be damaging to the $PC(ML)TFA$ as it might not be entirely able to afford this designated safeguard to those it has forced to make mandatory reports to FINTRAC. This, in turn, might possibly affect the volume of reports made to FINTRAC. The Director of FINTRAC cannot disclose information that could identify a person or organization that provided the centre with information. The legislators of the law have made sure that the Act protects the persons or entities that are feeding FINTRAC with information. In addition, it makes these parties more likely to do so. However, this might not truly be the case because provincial powers may lessen the protection that $PC(ML)TFA$ can actually afford.

Senator James Kelleher expressed great concerns in regard to the funding of the Centre. He insisted that, “we cannot, as parliamentarians, give our stamp of approval to this or to any other piece of legislation without knowing exactly how much taxpayers'
money the government proposes to spend' (Hansard Debates, Senate, 36th Parliament, 2nd Session, May 17, 2000). However,

In a report on the legislative history of Bill C-22, Geoffrey Kieley acknowledges the creation and operation of the Centre [FINTRAC] would likely involve additional federal expenditures. Moreover, if the system were to generate more criminal investigations and prosecutions, government expenditures in those areas would likely increase. These costs could well be recovered, however, through taxation and forfeiture of illegal proceeds, as well as through levying criminal fines and penalties (Parliamentary Research Branch, 2000, Cost of the New System, para. 1).

Similarly, Schneider (n.d.) reports that “proceeds of crime enforcement also engendered the added benefit of producing revenue for the state; revenue that some optimistically predicted would exceed enforcement costs, thereby generating a net profit for the government” (p. 2). Such asset sharing is also evident in the US and runs at a great risk. It was the “US proceeds of crime forfeiture programme and an enthusiasm for sharing these riches with foreign police agencies… [which] served to encourage the Canadian police to demand the same access to their seized assets and a sharing protocol” (Beare & Naylor, 1999, p. 41). In a 1988 report, a RCMP officer expressed that the proceeds of crime seizures would “not cost the tax payer a nickel” (Toronto Star, December 4, 1988, p. A19; as quoted in Schneider, n.d., p. 2). Whether or not this is true, it is clearly evident that the forfeiture of money laundering assets to the government, under the PC(ML)TFA has cost the taxpayer a significant erosion of privacy and other fundamental rights.

Prior to the passage of the PC(ML)TFA, the Integrated Anti-Drug Profiteering Units (IADP) and the Integrated Proceeds of Crime (IPOC) programme were set up in order to investigate and seize the proceeds of criminally derived funds. The IPOC programme was granted a federal loan whereby it would repay this loan from the funds and assets forfeited to the Treasury Board (Beare & Naylor, 199, p. 42; Schneider, n.d., p. 6).
However, it was unable to do so from the forfeited proceeds of crime. Despite this, such
asset sharing, among these policing programmes, is inherently problematic. These
programmes are not only geared at the geared at the detection, prevention, or deterrence
of money laundering. A potential rat race for the proceeds of crime is not unlikely. Their
sustenance is contingent on the number of successful forfeitures and runs the risks of
contaminating the investigation process. A far greater risk is the incrimination of the
innocent because of programme needs. In addition, Schneider (n.d.) points out that this
might push these programmes: to go after smaller cases which reap faster and greater
rewards when accumulated; and encourage plea bargains whereby the accused agrees to
the existing forfeiture and the government desists from further investigation of the
proceeds of crime (p. 17; Beare & Naylor, 1999, p. 43). In addition, Robinson (1998)
notes, “with cash dangled like an apple on a stick to motivate mule, some agencies go
after cases that produce big cash rewards instead of pursuing more difficult and often
more important cases where the prize is nothing but a conviction” (p. 393). The same can
be said in regard to FINTRAC. The problem was even more potentially damaging since,
in 2003, there were disagreements to the decrease of federal funds to IPOC and the
increase funding for FINTRAC. In other instances, forfeitures by local law enforcement
are obtained by the provincial government. Although the money does not go back directly
to these law enforcement, it is in the hands of the provincial government who provides
the funding. Therefore, the financial interests of local law enforcement are being
indirectly represented. Such a scenario is far from the US experience where corrupted law
enforcement and government officials have sought proceeds of crime cases, sometimes
wrongfully, in order to maximize gains for their own pockets. Naylor calls these “self financing bounty-hunting organization” (Naylor, 2004, p. 248).

The effectiveness of the reporting and compliance regime under the PC(ML)TFA is also called into question. The Act does not address electronic transfers done via the Internet. This is an elusive and efficient way for criminals to launder their funds. Scott Brison aptly comments, that “legislation is definitely long overdue, but that it addresses a problem which is really yesterday's problem, as opposed to addressing a problem which is clearly a problem of today and the future, that of electronically based money laundering” (Progressive Conservative Party, Hansard Debates, House of Commons, 36th Parliament, 2nd Session, April 6, 2000). Such a commented is truly warranted. Besides electronic transfers, the PC(ML)TFA does not address informal financial system. Neither FATF nor the PC(ML)TFA makes provisions for money transfer systems such as hawala. Cao (2004) reports that hawala has fluid and informal characteristics which attracts money launderers.

The essential characteristic that defines [it] is trust. This trust is possible because the transaction is undertaken by members of a common ethnic community with a shared sense of identity, affiliation, and obligation, thus reducing the transaction costs involved in screening, monitoring, and enforcement normally associated with conventional, mainstream, non-ethnically based economic activities (Cao, 2004, p. 74).

Jim Abbott’s sentiments become even more meaningful at this point.

There has been so much chewing gum, baling wire and paper clips put to this bill at this particular point I do not have a lot of confidence that we will not see a big problem in three or four years after this bill comes into effect. I am very concerned about that” (Jim Abbott, Hansard Debates, House of Commons, 36th Parliament, 2nd Session April 6, 2000).
Chapter 6
Conclusion

This study has shown how globalization has set the stage for the designation of money laundering as a problem for the state. The internationalisation, liberalization and deregulation of financial systems have proven beneficial for many economies. Simultaneously, this has created vulnerability within the system as innovative organized criminals have exploited these developments. Hetzer (2003) concludes, “with the liberalization, deregulation, and globalization of the financial markets, the problem of money laundering has taken on a new dimension” (p. 264). The emergence of Canada’s anti-money laundering regime is partially in response to this basic contradiction. The employment of structural contradictions theory in this research demonstrates that social forces internal and external to the Canadian state shape the PC(ML)TFA. My research reveals that \textit{PC(ML)TFA} exists as a resolution to the contradictions, conflicts and dilemmas that are generated by organized criminal activity. The \textit{Act} exists as part of the prevalent belief that removing the profit from organized criminal activity will deter and decrease this behaviour. This, in turn, will diminish money laundering activity and remove the threat it poses to the stability of the state and the international financial system. The creation of a so-called money laundering offence is the latest of the state to control the ‘dangerous evil’ that is organized.

In addition, my study shows that there were other social forces prompting anti-money laundering legislation in Canada. The dilemma of the drug problem in the US and the economic deficit experienced in the 1980s influenced the push for attacking the untaxed dollars of criminal enterprises. The US government did not want to harm its own
domestic financial market by deterring investors with the stringent banking policies inherent in its anti-money laundering regime. This, in turn, aided in triggering an international campaign against money laundering by the US. The outcome is seen in the Vienna Convention and the establishing of FAFT, which were set up after persistent lobbying by the US. With these bodies in place, the institutionalisation of an international anti-money laundering regime became more highly likely. The US also employed the strategy of directly exerting great pressure on Canada to implement similar anti-money laundering legislation. They resorted to aggressive tactics and threats. Other external forces that constrained Canadian response include damaging reports by the US and FATF which labelled Canada as facilitating money launderers. Canada’s policies were labelled as lax. Internal pressures came from interest groups such as the Bloc Quebecois and the Canadian Association of Chiefs of Police. Further analysis demonstrates Canadian fiscal constraints also played a part. All of these forces came together in conditioning the PC(ML)TFA. They provided the base on which Canadian officials had to implement an anti-money laundering regime. To elaborate, these contradictions, conflicts, dilemmas, triggering events, interest groups, strategies, and ideologies are the social variables which aided in conditioning the PC(ML)TFA. Together, they constrained and shaped the action and intentions of the parties involved in the fight against money laundering. The PC(ML)TFA now represents a resolution to these tensions within the social structures. However, the tensions it seeks to resolve are the conflicts and dilemmas but not the inherent contradictions that facilitate organized crime and money laundering.
These findings do not suggest some kind of structural reductionism. Instead, the study demonstrates that human agency is shaped, or takes form, within the limits of social structures. The aforementioned forces merely represent the social conflict to which Canadian officials were inclined to respond. They shape or condition, not wholly determine, the response of Canadian state officials.

A main feature of structural contradictions theory is its emphasis on secondary contradictions, conflicts, and dilemmas. My study establishes that there are considerable domestic tensions that are further generated by the *PC(ML)TFA*. A major dilemma with the *Act* arises from the usage of vague terms such as ‘relevant’, ‘good faith’, ‘suspicious’, ‘reasonable’, and ‘due diligence’. The *Act* does not designate what constitute these terms. Hence, the Act leaves considerable room for interpretation and discretion. This, in turn, can allow the targeted culprits to get away. A more serious consequence of this dilemma is the targeting of innocent parties.

The potential intrusiveness of the *PC(ML)TFA* jeopardizes some of the fundamental notions of what constitutes a democratic society. Based on my analysis, the *Act* blatantly strikes down some of the fundamental principles entrenched in the Privacy Act. Under the *PC(ML)TFA*, FINTRAC, and other designated persons and entities, are allowed to collect, report, and disclose personal information that is otherwise forbidden by the Privacy Act. Consequently, certain provisions of the *PC(ML)TFA* conflict with the privacy rights guaranteed in Canada. In an attempt to catch money launderers, legislators have shattered some of the guiding principles of the democratic state. The *Act* also attacks the democratic principle of due process. Funds and assets are seized, on the basis of suspicion, and forfeited to the Crown before a trial is even granted. The assumption of...
‘innocent until proven guilty’ is discarded and the onus is placed on the accused party in this criminal matter. The basic contradiction that the PC(ML)TFA generates is that it is implemented to protect the state from the threat posed by organized crime and money laundering. However, in so doing, the Act also threatens the stability of the state by encroaching on some of the fundamental principles on which the state rests.

The Act continues to jeopardize fundamental rights by making amendments to the Canadian Charter of Rights and the Canada Post Corporations Act. These amendments have granted considerable search and seizure powers to designated persons and entities. It should be noted that such powers were previously forbidden and are now permitted under the PC(ML)TFA.

Another area of conflicts, and subsequent dilemmas, is the civilian policing instituted by the Act. Although the Basle Committee on Banking Regulations and Supervisory Practices has made commitments to aid the fight against money laundering, the PC(ML)TFA has followed suit by placing overwhelming responsibilities on banking officials. Canadian law enforcement has been directly placed in the hand of the layperson with vague guidelines as his/her tool. This has had the added effect of burdening banks with bureaucratic details and paperwork.

The fact that the Act allows the funding of law enforcement programmes from the seized proceeds of crime is also a consequent dilemma. In addition, although legislators have instituted considerable measures to curb money laundering, the PC(ML)TFA has no provision for attacking funds that are laundered electronically or through the informal financial system. Wechsler (2001) begs the question, “how can anti-money laundering provisions be applied to the growing Islamic banking system and underground banking
mechanisms such as the hawala system, which caters to Middle Eastern and South Asian populations around the world” (p. 55). The answer, in regard to the PC(ML)TFA, is that it cannot. Also, the fact that the Act does not apply to lawyers, creates room for money laundering based on solicitor-client privileges. These, and other issues, have called into question the effectiveness of the Act. In addition, Schroeder (2001) adds, “the inability to determine the amount of money laundered impedes an adequate understanding of the magnitude of the crime... and the effectiveness of current counter laundering efforts” (p.5). The rights and freedoms of Canadians have been impinged without any evidence of significant gains.

A United Nations report stated that “globalization opens many opportunities for crime, and crime is rapidly becoming global, outpacing international cooperation to fight it” (United Nations, Human Development Report, 1999; as quoted in Serio, 2004, p. 435). Wechsler (2001) insists, “any strategy had to be global and multilateral, since unilateral actions would only drive dirty money to the world’s other major financial centers” (p. 49). Barnet and Cavanagh (1995) note that domestic anti-money laundering legislation makes no provisions for countries that do no want to share money laundering data (p. 418). Plus, there are no penalties for being blacklisted by FATF (Suter, 2002). In defense of offshore havens, Lester Bird, Prime Minister of Antigua, comments that more money is laundered in Miami than in the Caribbean (Lilley, 2000). In other words, the act of laundering funds itself is not deviant. Hence, there is less inclination to strike against it. Consequently, his government would not put in place measures to counter the laundering of criminally derived funds. In addition, another Caribbean Prime Minister
comments that the financial sector has afforded the people of his country a better standard of living. Hence, he aimed to demonstrate why this [offshore financial center] should be permitted to keep a kind of less strict money laundering... while demonstrating that every effort had been made to keep money laundering by serious organized criminals out in line with FATF Recommendations on legislation (Oberg, 2003, p. 157).

This is the environment of resistance in which Canadian anti-money laundering efforts are implemented.

Suter (2002) notes, “crime is global but law enforcement is not” (p.361). Schroeder (2001) and Suter (2002) advocate the international harmonization of laws and law enforcement strategies. Schroeder (2001) posits, “because globalization represents an overarching international phenomenon, the international community’s response to the challenge posed by money laundering has to address the financial, legal, and enforcement issues in a universal manner through harmonization of remedies (p. 1). Martin and Schuman (1998) note that attempts at global governance has a history of failing (p. 215). At the heart of this is the loss of sovereignty. Despite this, money laundering represents an international problem that demands a cohesive international response. My study has shown that a national response to such a problem only creates further tensions within the state. Naylor (2004) concludes,

The bald fact remains that after fifteen years of progressive escalation of its use, no one has been able to determine with any remote degree of confidence whether the proceeds-of-crime approach to crime control has had any discernible impact on the operation of illegal markets or on the amount, distribution, and behaviour of illegal income and wealth. The entire exercise rests on a series of inaccurate, or at least unprovable, assumptions and involves the commission of a series of sins against common decency and common sense. In the hands of law enforcement, the modern policy of attacking the proceeds of crime by finding,
freezing, and forfeiting laundered money has been, to all intent and purposes, one great washout (p. 286).

In addition, he argues that tax laws would sufficient in countering money laundering activity. Accordingly, “tax codes provide for fines and forfeiture, interest and penalties, and interestingly enough the means to seize wealth by using a reversed burden of proof” (p. 285).

Structural contradictions theory is useful in understanding the social forces that have shaped the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. This Act was implemented as a resolution to the tensions within the socio-political system. Instead of addressing the contradictions from which money laundering is borne, the Act has focused on the subsequent conflicts and dilemmas. The study demonstrates that this resolution only further generates more national contradiction, conflicts, and dilemmas. The PC(ML)TFA holds serious implications for democratic notion of privacy, among other things. The subsequent tensions derived from the PC(ML)TFA will require some kind of resolution on the part of Canadian officials in the future. As Chambliss (1993a) surmises, this law “reveal[s] other contradictions... which itself will lead to further conflicts and dilemmas resulting in yet other legislative innovations” (p. 20). In addition, there are conflicts and dilemmas generated by money laundering that the Act has not even attempted to address as of yet. The social forces impacting the creation of the PC(ML)TFA, and its subsequent implications, adequately demonstrate that the dialectical process does indeed continue undiminished.
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