



Bob Aaron bob@aaron.ca

June 2, 2001

## Ottawa to force lawyers to snitch on clients

### 'Suspicious' financial transactions must soon be reported

What is the common factor in each of these scenarios?

- Paul and Joanne are buying a new house in Mississauga with help from Joanne's parents in Hong Kong. For closing, they show up at their lawyer's office with a \$20,000 bank draft drawn on a Hong Kong bank.
- Alec works in Toronto for a U.S.-based firm, which pays his salary into his bank account in Cleveland. When Alec and his wife Kim buy a house, they hand their lawyer a certified cheque in U.S. dollars drawn on the Ohio bank.
- Stan operates a video game business and brings his lawyer \$15,000 on closing in \$100 bills. His brother operates a pizza franchise, buys the house next door, and brings the same lawyer \$10,000 cash on the closing day. Both brothers are totally honest and pay income tax on all of their earnings.
- Nick is a brilliant 21-year old computer science graduate. He made a killing in the stock market and sold his Internet business to a public company for \$2 million. He declared all of his earnings to what used to be called Revenue Canada. Without the need for a mortgage, he buys a \$1 million condo on Toronto's waterfront. Since he is a very private person, and embarrassed about his success, he is reluctant to tell his curious lawyer (who is only making a fraction of what the young man makes) the source of the purchase money.
- Mike is 48 years old, and the wealthy partner of a company that manufactures widgets in Canada, the States, South America and Asia. He and his wife buy a beautiful Victorian home in Riverdale for \$1.5 million and the purchase money is wired to his lawyer's trust account from the company's bank in Nassau.

All of these people are honest, tax-paying Canadians. Each transaction is a genuine, bona fide house purchase. But the significant common factor in all of these scenarios is they each contain a component that will soon require their lawyer to report the transaction to a new government agency called FinTRAC, which has been created to spy on the financial activities of all Canadians, honest and otherwise.

Supposedly operating independently from the country's law enforcement agencies, the Financial Transactions and Reports Analysis Centre of Canada is the central repository for all information collected about money laundering activities.

Under the requirements of Canada's new Proceeds of Crime (Money Laundering) Act, which has been passed by Parliament and is to be proclaimed into law within weeks, lawyers and their office staff, and many other service providers, will be required to forward detailed reports with FinTRAC of certain transactions. These include:

- Large cash transactions exceeding \$10,000.
- Cross-border monetary instruments (cheques, money orders and the like) in excess of \$10,000.
- Suspicious transactions. Guidelines have been established to help identify a "suspicious transaction." Some of them are:
  - The client appears to be living well beyond his or her means.
  - The client's normal business transactions are inconsistent with the nature of his or her employment, profession or business.
  - The client is reluctant to discuss financial affairs or requests anonymity.
  - The client refuses to discuss the business purpose of the transaction
  - The client wants to set up a dummy company or trust for deposit of funds.

When the circumstances trigger a report by the lawyer, as many as 100 different pieces of information must be filed with FinTRAC. Failure to report could lead to a fine of up to \$2 million and/or five years as a government guest.

One of the most offensive provisions is that the lawyer is prohibited by law from telling the client a report was made. Breaching this restriction could result in a two-year jail term.

Although the goals of the legislation - preventing the laundering of illegal money - are commendable, the law tramples far too broadly on the centuries-old tradition of solicitor-client privilege. When Canadians visit their professional advisers - doctors, lawyers, accountants, even their clergy - they are entitled to know that whatever is discussed or transacted is subject to the absolute privilege of privacy.

The Supreme Court of Canada has ruled that solicitor-client privilege is a fundamental legal right enjoyed by all Canadians. The Proceeds of Crime Act takes away much of that protection. It is offensive, odious and draconian.

The Law Society of Upper Canada has joined all law societies in the country to ask Ottawa to defer proclamation of the worst sections of the legislation. In legal circles across the country, court action against the federal government is not only being discussed, it is being planned.

The legislation is not just a problem for clients. Most lawyers will find the requirement to "snitch" on their clients extremely offensive. It places us in a dreadful conflict of interest where we will be required to act for and against our clients at the same time.

As if this legislation wasn't enough, it is now apparent that Canada Customs has been routinely opening letters sent from outside Canada, including letters sent by foreign clients to Canadian lawyers.

It's time for Canadians who care about their rights of privacy in a lawyer's office to write their MPs.

---

***Bob Aaron is a leading Toronto real estate lawyer.***  
*Please send your inquiries and questions to [bob@aaron.ca](mailto:bob@aaron.ca) or call 416-364-9366.*

---

***Bob Aaron is a Toronto real estate lawyer. [www.aaron.ca](http://www.aaron.ca) ©Aaron & Aaron. All Rights Reserved.***