



Canada Border  
Services Agency

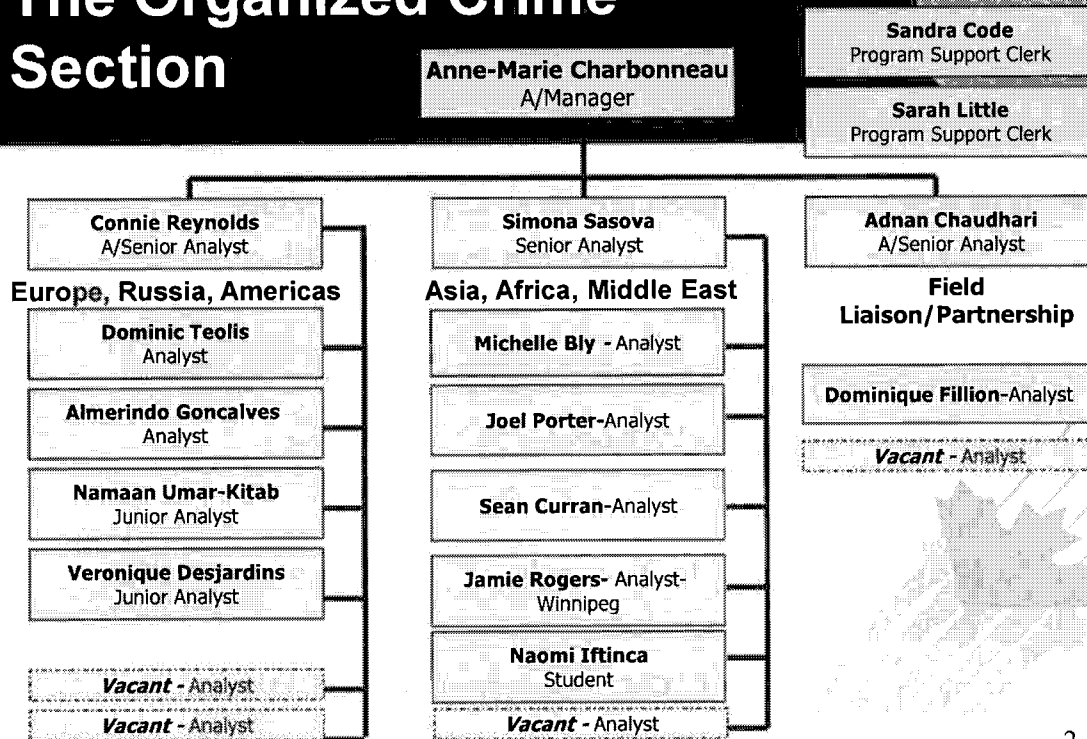
Agence des services  
frontalières du Canada

# IRPA, Organized Crime, & CBSA NSD Organized Crime Section

EDMONTON  
February 2009

Canada

## The Organized Crime Section



## OCS Mandate

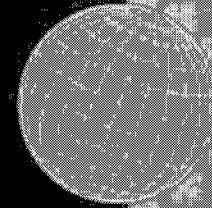
- **Advice** to decision makers
- Develop subject matter **expertise** on topics related to organized crime
- Act as **repository** for research, intelligence, and cases of organized crime interest
  - OSINT, LE Partners, Overseas, Inland, POE
  - STS – Secure Tracking System (used by all NSD)
- Ministerial **Relief Cases**
- Review of **Danger Opinion cases**
  - *Nagalingam v Canada* 2007 FC 229
    - Risk, Complicity: “nature and severity of acts committed” 3

## OCS Clients

- Minister & Department Executives
  - Briefs, QPNs, decks on high profile cases/issues
- Overseas decision makers
  - Immigrant applications (C-Checks)
- POE
  - Respond to EII Arrivals: Red Phone:
- Inland – CIC, CPC, Enforcement

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## OCS Products

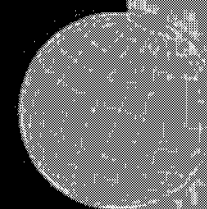


- **Case Assessments**
  - Provide advice on 37 inadmissibility
- **Country Snapshots**
  - Somalia, Russia, Colombia
- **Organized Crime Group Snapshots**
  - OMGs, African Mafia, Albanian O/C
- **Screening Aids**
  - Gangs
- **Background Papers**
  - Money Laundering

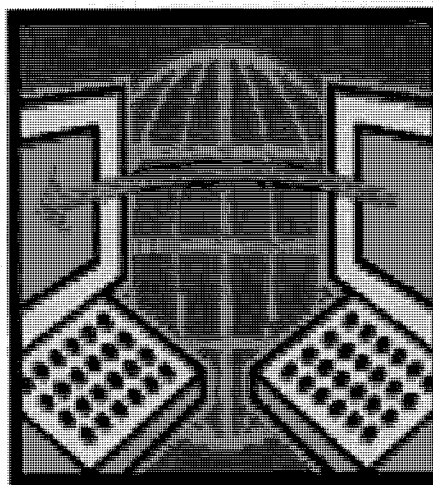


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## OCS Tools



- **Legacy CIC: STS, FOSS, CAIPS, NCMS, DWS**
- **Legacy Customs: IMS, ICES**
- **Open-Source: Open Source Center, Lexis-Nexis, Internet, OCS Library**
- **Partners:**
  - CPIC/NCIC
  - Research Coordination
  - FINTRAC – transactions data
  - RCMP – NCDB, SCIS, PIRS, PRIME



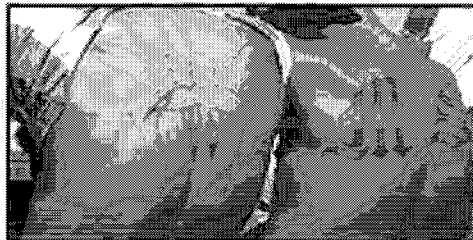
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# Subject Matter Areas

## Primary OC groups of interest:

- Asian OC
- Traditional OC (Italian Mafia)
- Russian / Eastern European OC
- Outlaw motorcycle gangs (OMGs)
- Latin American OC
- Albanian OC



## New and Emerging Issues:

- Street Gangs
- Distraction Theft Rings
- ATM / Credit Card Fraud
- Human smuggling/trafficking
- Money Laundering



# Standard of Proof: Reasonable Grounds

- IRPA s. 33 Rules of Interpretation:
  - Facts arising from omissions
  - Reasonable grounds to believe
  - Have occurred are occurring or may occur
- Lower than balance of probabilities
- Connotes a bona fide belief in a serious possibility based on **credible evidence (information)**

Mere suspicion

Reasonable  
Grounds

Balance of  
Probabilities

Beyond a Reasonable  
Doubt

## Evidence

- What is CREDIBLE evidence?
  - A detailed interview that has been recorded or videotaped
  - A solemn declaration in question and answer form
  - Police report
  - Reliable source (Internet, agencies with expertise investigating such organizations)

Note: The Act accepts credible and reliable testimony, hearsay, double hearsay, a solemn declaration and documentary evidence that is not solemn

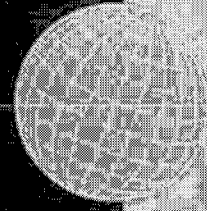
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## Evidence: A Few Notes

- Formal rules of evidence do not apply in IRB setting
- Board Member decides weight apportioned to evidence supplied by CBSA
- Dropped charges would be relevant and applicable
- Charges that did not result in convictions also may be used
- Hearsay:
  - Can be used in IRB proceedings: newspapers, reports etc
  - The board errs in law if it rejects hearsay as not “admissible”
  - IRB assesses whether it is ‘credible or trustworthy’ and why
- See IRB Report “Weighing Evidence”:
  - [http://www.irb-cisr.gc.ca/en/references/legal/all/weighevid/index\\_e.htm](http://www.irb-cisr.gc.ca/en/references/legal/all/weighevid/index_e.htm)

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## Key Elements of Sec. 37

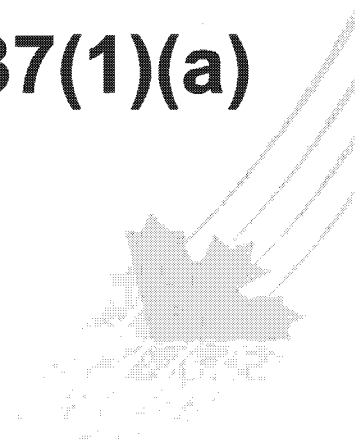


- Membership
- Criminal Organization
- Criminal acts engaged in as part of a conspiracy
- Transnational crimes
  - Human smuggling
  - Human trafficking
  - Money laundering



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## IRPA Section 37(1)(a)



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## IRPA Section 37

**37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for:**

- (a) Being a member of an organization that is believed on reasonable grounds to be or to have been engaged in an activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert...; or
- (b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

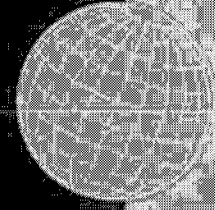
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## IRPA Section 37

- In order to determine whether a person meets the definition in this section, the Minister's representative must establish **three** separate facts:
  1. Person must be a PR or FN
  2. Membership
  3. Organization

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## FACT # 1



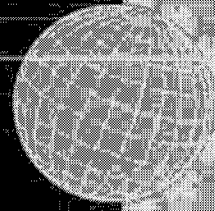
### Person must be a PR or FN

Question: How can we establish this?

- we can obtain a certificate saying that a person is, or is not, a PR
- in the case of a FN, we can also, during the interview:
  - ask about citizenship and place of birth;
  - ask whether the person is a PR in Canada;
  - obtain copies of travel documents in the person's possession

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## FACT # 2- MEMBERSHIP



- What is membership?
  - Anyone knowingly linked to an organized crime group and deriving benefit from that link (is, was or will be a member); not only anyone with the intention of committing a crime here, but also anyone whose presence in Canada could serve to strengthen a criminal organization or further its objectives; case law allows for a broad and unrestricted interpretation
- **NOTE:** A person need not have been officially accepted or hold a membership card to be considered a member or former member of a criminal organization.

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## Membership- (in a gang) can be shown as follows:

- involvement directly or indirectly in a gang-related crime or incident;
- acknowledges gang membership or gang association;
- identified as a gang member or gang associate by physical evidence;
- identified as a gang member or gang associate by reliable source information;
- police information provided or received as the result of directly observed association with other known gang members or gang associates;
- common or symbolic gang identifier(s) or paraphernalia;
- previous court findings including, but not limited to sworn testimonials that the person is a gang member or gang associate

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## Membership

- Broadly defined:
  - *MCI v Thanaratnam* [2005] FCA 122;
  - *Chiau v MCI* [2001] 2 FC 297
- *Thanaratnam* [2005] FCA 122:

*"The structure of paragraph 37(1)(a) makes it clear that "membership" of a gang and engaging in gang-related activities are discrete, but overlapping grounds on which a person may be inadmissible for "organized criminality"... Parliament should be taken to have intended it to extend to types of involvement with gangs that are not included (or not clearly included) within "membership". "*

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## Determining Membership



- **Knowingly associating with a group** ( is defined in *Chiau*):
  - a person's participation in a legitimate business, knowing that it is controlled by a criminal organization, in some circumstances may support a reasonable belief that the person is a member of the criminal organization itself.
  - Like the standard of complicity in war crimes:
    - The activities further the organization's "interests"
    - Knowing the group's purpose is also considered

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## Determining Membership



- **Includes past and current membership:**
  - *Sittampalam v MCI* [2005] FC 1211:  
"I find ...that the words 'being a member of an organization' in section 37(1)(a) of IRPA includes not only a person who was at the time of reporting a member but also a person who, at least within a reasonable period in the past, has been such a member"
- Note: "once a member " always "a member"

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## 37(1)(a) - Determining Membership

- **By showing how the person's actions have helped the organization to achieve its objectives:**
  - Performing specific tasks:
    - Selling drugs, intimidation;
  - Involvement with the group's finances – debt collection;
  - Other *specific* assistance:
  - spying, providing vehicles, etc

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## 37(1)(a) - Determining Membership

- **Self Admission**
  - Acknowledged gang membership or gang association
  - In the absence of any other evidence is admission enough?
  - For 34 cases – yes, so for 37 why not?
- **Physical membership identifiers**
  - Tattoos, Patches, Rockers, Missing Pinkies, Photos

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## 37(1)(a) - Determining Membership

- **By carrying out a detailed interview:**
  - Solemn statement (in “question and answer” format);
  - Confronting the person about his associates, his contacts, his activities
- **Confessions**
  - Acknowledging membership in, or association with, a gang;

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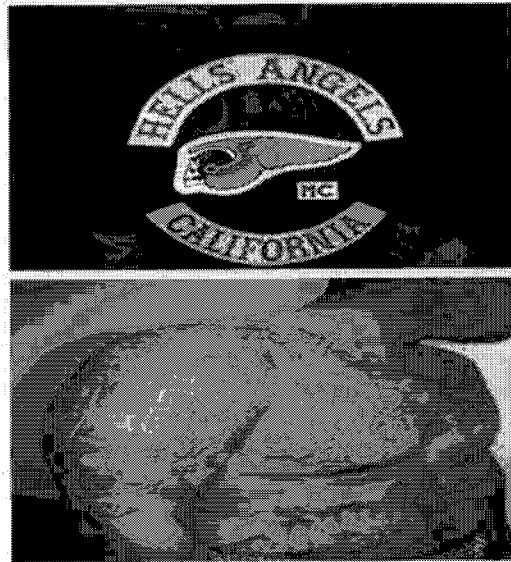
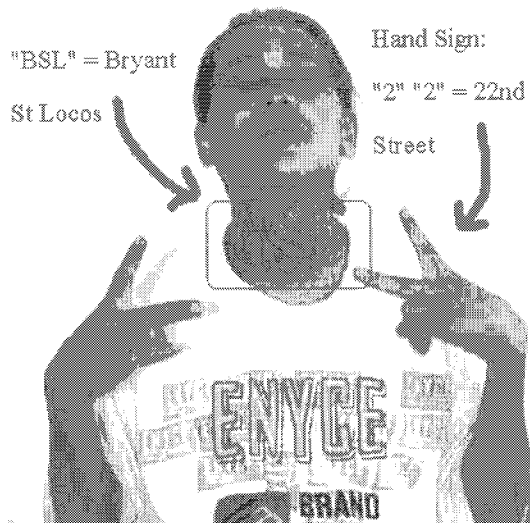
## 37(1)(a) - Determining Membership

- **The length of membership**
  - Is likewise of little importance. A Minister's representative does not have to prove that a person is, or has been, a member of a group for a specific length of time for that person to be considered a member of the group.
- **Duress**
  - the criteria concerning the defence of duress ( imminent harm, lack of reasonable alternatives, proportionality of the infraction committed, etc)
- **Age**
  - Bottom line is that a person who understood the nature and purpose of the organization they were a member of, even if they were a minor at the time can be reported.

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## Common Physical Identifiers



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## Establishing Membership

- LE partners
  - Provide CBSA with list of known gang members (incl. subject) in jurisdiction
- Expert witness attesting to subj. membership
  - Testify at hearing
  - Provide sworn affidavit
- Previous criminal convictions
  - Does the crime have O/C dimension?
    - Pimping, extortion, drugs, gang-inspired violence

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## FACT # 3– Criminal Organization

### What is an organization?

An organization includes the following elements:

- A common goal, and a stable structure and decision-making processes;
- Possibly centralized and local structures;
- Control mechanisms, structured or unstructured, that run the group's activities on an on-going basis (almost a leadership structure);
- A collection of groups can be an organization;
- A non-structured criminal network.

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## Criminal Organization

- **Conceptual limits of an “organization”**
- In general terms, this area of the law conceives “organized” crime as having a structure that:
  - implies a hierarchy;
  - implies on-going continuity of operation – the organization will survive its members;
  - does not involve non-structured networks

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## Criminal Organization

- “Criminal organization” **not** defined in IRPA
- An **“unrestricted and broad”** interpretation accorded to “organization” in IRPA
  - *Sittampalam v MCI* [2006] FCA 326 at para. 36
- Criminal Code:

*A group, however organized, made up of three or more persons and has as one of its main purposes the commission of serious criminal offences that yield some kind of benefit to members of that group*

- As a guideline does not restrict our definition

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## Conceptual Limits of “Organization”

- LE practitioners accustomed to structural approach to understanding what is “organized” crime:
  - Assumes hierarchy
  - Implies perpetual “going concern” – entity will outlive its members
  - Does not account for informal networks
- Modern criminal enterprises involve collusion among players in non-hierarchical relationships:
  - Specialization and division of labour → “outsourcing”
    - Money launderers
    - Human smugglers
  - Amorphous – structures of authority or decision-making not formalized

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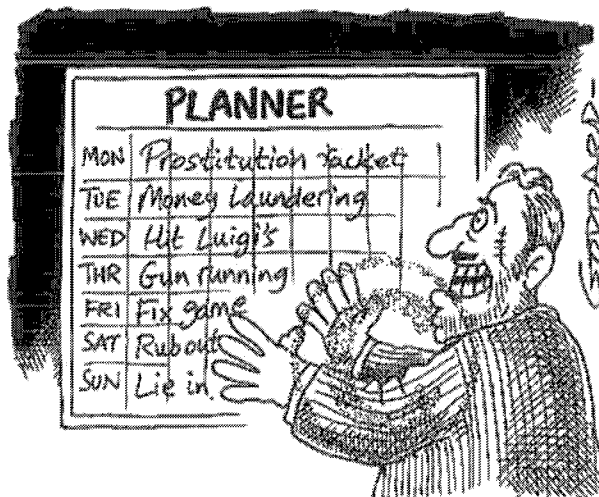
## Conceptual Limits of "Organization"

- When there is no "organization" only crime that is well organized → criminal conspiracy
  - This is also organized crime – trans-national crimes
- IRB prefers cases where an organization exists
  - Street Gang
  - OMG
  - Other **identifiable** groupings of criminals
- Notable Exception: distraction theft rings

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## 37(1)(a) – Pattern of criminal activity

- Signifies a common scheme, plan or motive
- Not a series of disconnected acts
- Contemplates multiple transactions or episodes, to promote an illegal objective



"Now that's what I call organised crime."

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## Establishing Where a Criminal Organization Exists

- Supply evidence the group is involved in serious crime that is planned and “organized”
- Open source: media and/or research reports on group
- Reports from police investigations into a group
  - Biker Enforcement Units
- Court documents attesting to group’s activities
  - RICO indictments in US on HA, Cosa Nostra, Bandidos, etc
- Expert testimony about group’s activities, location, types of crime, level of violence, etc

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## Some groups described Under IRPA 37(1)(a)

- Mara Salvatrucha MS 13
- 18<sup>th</sup> Street
- 22<sup>nd</sup> Street/Bryant Street
- Texas Mexican Mafia [Mexikanemi]
- Black Dragons
- Red Scorpions
- OMG (Hells Angels/Bandidos)
- Mad Cowz
- AK Kannan
- Triads
- Ledbury Banff Crips

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# Activities Typical of Organized Crime Groups

- Examples of activities undertaken by organized crime groups:
  - Drugs, guns, and contraband smuggling
  - Drug dealing
  - Drug Production/Cultivation
  - Counterfeiting – intellectual property, credit cards, etc
  - Payment/Debit card fraud
  - Money laundering
  - People smuggling
  - Human trafficking
  - Prostitution
  - Racketeering
  - Extortion



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## IRPA 37 (1)(b)

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## IRPA 37(1)(b)

37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for ...

(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

- Notice: no mention of
  - Membership
  - Organization
  - Pattern of criminal activity
- Instead, focus of 37(1)(b): **Types** of crimes that are deemed by IRPA to be *de facto* “organized crime”
  - Transnational:
    - Smuggling, Trafficking, Money Laundering

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## IRPA 37(1)(b)

- Separate section to distinguish transnational crimes as “organized crime” apart from group membership:
  - UN Convention on Transnational Organized Crime (TOC)
    - Palermo December 2000
    - Separate Protocols on Smuggling and Trafficking in W & C
    - Encourage states to enact measures against ML as pivotal to fighting organized crime
- IRPA 117 – 123, 37(1)(b) Canada’s commitment to UN TOC Convention
  - Tough penalties against organizing entry, trafficking
  - Categorizing smugglers and traffickers as organized criminals

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## UN TOC: Transnational Crime

- **UN TOC Section 2, Article 3:**

An offence is transnational in nature if:

  - (a) It is committed in more than one State;
  - (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
  - (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
  - (d) It is committed in one State but has substantial effects in another State.
- **Onus in applying 37(1)(b) is to prove the alleged is:**
  - Engaged in crime that breaks laws in more than one state
  - Is in collusion with persons in various states - “organized”
  - Is smuggling, trafficking, or money laundering

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## Human Smuggling /Trafficking

- **Activities instrumental to human smuggling/trafficking**
  - Boarding pass swapping
  - Escorting irregular migrants on airplane
  - Document Courier – bringing lost, stolen, counterfeit documents from source to client
  - Transporting migrants in a conveyance across border
  - Harboring illegal migrants – “safe house”
  - Counselling or aiding and abetting misrepresentation
    - Consultants
  - Document manufacturer
  - Collecting/enforcing smuggling debts
  - Confining migrants
  - Owning/Operating establishments employing trafficked persons
  - Extorting migrant workers – unfair rents, coercing kickbacks

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## Applying 37(1)(b) to Human Smugglers

- Preferably person has been charged under IRPA or in another jurisdiction
  - Again, dropped charges should be considered
- Subject identified as smuggler by migrant/other witnesses
- Evidence of transaction
  - Were payments made or expected after success
  - Migrant(s) attest they had to pay a fee

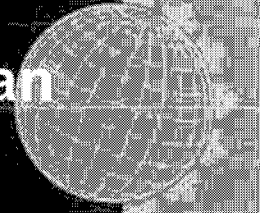
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## Applying 37(1)(b) to Human Smugglers

- Evidence that smuggler is acting in concert with others
  - Establish smuggler's role as unique in relation to larger smuggling operation
  - Portray the smuggling as part of a larger conspiracy
  - Background check on smuggler for previous incidents
    - MIOs
  - Link the smuggler to other known or suspected smugglers/organized criminals
    - Intelligence – LE Partner JFOs or other information
    - US DHS Border Patrol

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# Applying 37(1)(b) to Human Smugglers

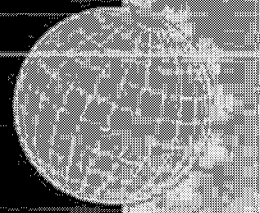


- Example, escort:
  - Where did the documents used by the migrant come from?
  - Who got the migrant to where you picked them up and how did you know where to pick them up?
  - Who was going to receive the migrant after you smuggled them into Canada/U.S.?
  - Is this your first job?

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# Money Laundering



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## Money Laundering: Legislative & Law Enforcement Players

- Proceeds of Crime, Money Laundering and Terrorist Financing Act (PCMLTFA)
- Financial Transactions and Reports Analysis Centre (FINTRAC)
- RCMP: Integrated Proceeds of Crime (IPOC)
- CBSA
  - BSOs enforce border currency reporting requirements
- Financial Action Task Force (FATF)
  - 33 Member countries develop anti-ML & TF strategies
  - Created in 1989 by G7 countries & EU Commission
  - 40+9 Recommendations
- Egmont Group – Financial Intelligence Units

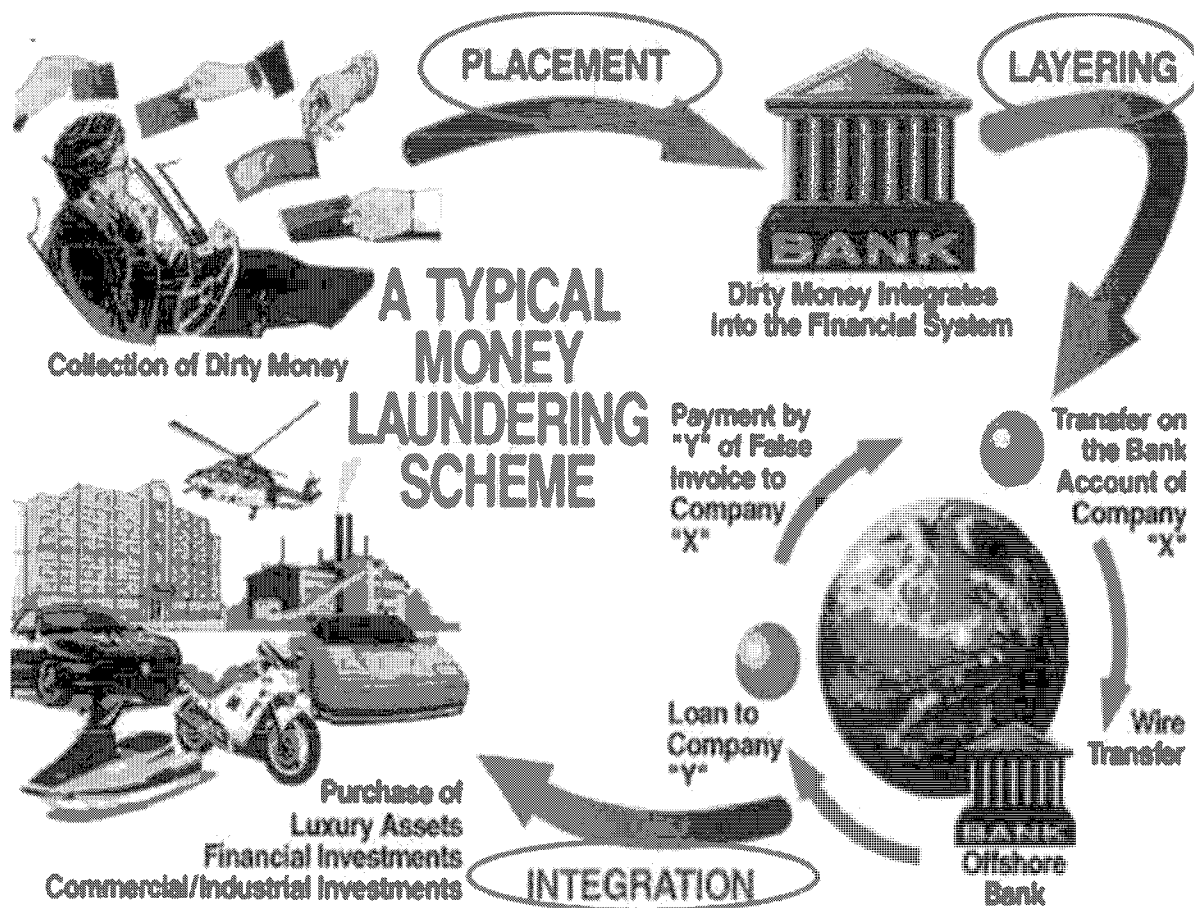
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## Money Laundering:

What is it?

- Simply:
  - Converting proceeds of illicit activities into legitimate uses
- Reality:
  - Complex, especially given increased reporting requirements adopted to combat terrorist financing
- Execution of ML Schemes:
  - Corporate & Banking Lawyers, Accountants
  - Currency smugglers, “front” & legitimate businesses
- Law Enforcement:
  - Requires auditing/finance, legal, & trade expertise

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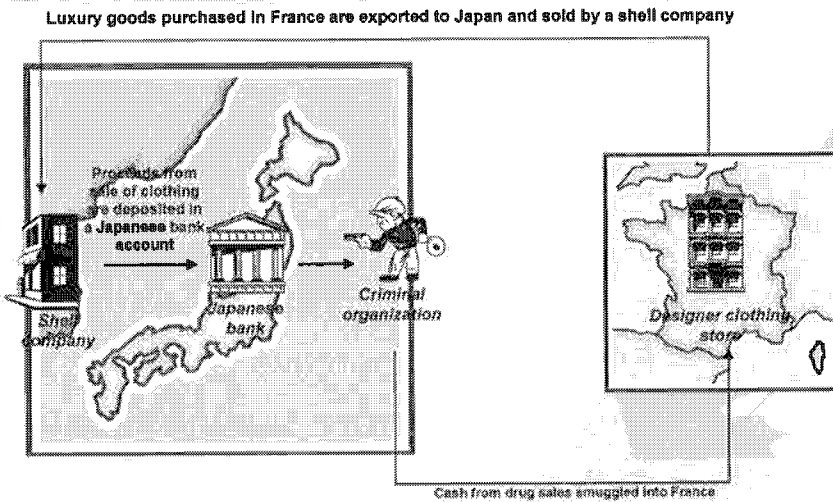
## Money Laundering: How It is Done

- Placement:
  - Currency Smuggling from source abroad
  - Goods purchased at source for cash & later trade
  - “Smurfing” – depositing small amts into numerous bank accounts
- Layering
  - Under/over invoicing of goods – trade based
  - Exchange agreements – “black peso”
- Integration
  - Investment in legitimate businesses
  - Purchase goods, real estate, securities



## Case Study: Currency Smuggling and Purchase of Goods

- Org sells drugs in Japan.
- Smuggle the cash out of Japan into France
- Purchase luxury goods in designer fashion stores, which are then exported to Japan and resold by a shell company.
- Proceeds from the sales of these luxury goods are deposited into the Japanese banking system.



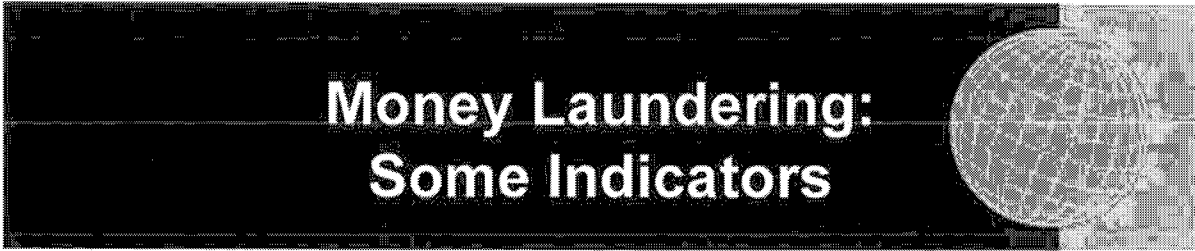
Source: FATF Report on Trade Based Money Laundering, June 2006

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## Money Laundering Case: Evidence

- FINTRAC disclosures: LCTRs, EFTRs, STRs
- IPOC Investigation Reports
- Business Financial statements & Personal Net Worth (PNW) statements
- Link Charts
  - Visually demonstrate complexity of business schemes used to integrate ill-gotten wealth
- CBSA currency seizures
  - Seized from subjects or those clearly linked to them
- Corporate directorships & property titles (value)

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## Vulnerable Programs for ML

- Provincial Nominee Programs
  - BC & Quebec Investor have been accessed by accused tax cheats and embezzlers
- Investor
- Entrepreneur
  - Set up businesses in Canada to assist overseas laundering schemes
- Independent Immigrant
  - Tax evaders or embezzlers
  - White collar criminals – lawyers, bankers

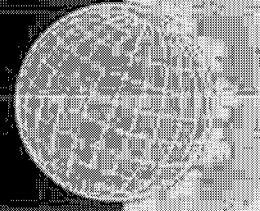
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## Summary of elements required - Sec.37

- To summarize, to apply 37 CBSA must demonstrate the subject is either:
  - A member;
  - of an organization;
  - That is engaged in the planning and perpetration of serious criminal activities
- Or,
  - Is involved in transnational crime of human smuggling, trafficking or money laundering

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## Contact Information



- **Organized Crime Section:**

- Intranet: <http://infozone/cbsa-asfc/eb-dgel/ourp-nosp/Intel/nationsecur/org-crime/index-e.asp>
- Generic Mailbox:  
[Nat\\_Organized\\_Crime@cbsa-asfc.gc.ca](mailto:Nat_Organized_Crime@cbsa-asfc.gc.ca)
- Fax: (613) 952-0694
- 24/7 Red Phone:

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