

# 3<sup>rd</sup> National Anti-Money Laundering Conference

## *Prosecuting Money Laundering Crimes*

9 November 2011  
Holiday Inn, Suva

- TOPIC:** **Highlights of Successful Money Laundering Prosecutions in Fiji**
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# **Highlights of Successful Money Laundering Prosecutions in Fiji - Five Money Laundering & Proceeds of Crime cases**

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**9 November 2011**

# Preview

- Money Laundering became an offence in Fiji under section 69 of the Proceeds of Crimes Act 1997.
- Apart from prosecuting criminals for the predicate offence the State can also pursue the proceeds of crime. This was initially conviction based.
- Amendment to the Proceeds of Crime Act in 2005 allowed for non conviction based forfeiture.

# The offence

## **69. Money laundering**

(1) In this section:

"transaction" includes the receiving, or making, of a gift.

(2) A person who after the commencement of this Act, engages in money laundering commits an offence and is liable on conviction, to:

(a) if the offender is a natural person - a fine not exceeding \$120,000 or imprisonment for a term not exceeding 20 years, or both; or

(b) if the offender is a body corporate - a fine not exceeding \$600,000.

(3) A person shall be taken to engage in money laundering if, and only if:

(a) the person engages, directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime, or

(b) the person receives, possesses, conceals, disposes of or brings into Fiji any money, or other property, that is proceeds of crime,

and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

# Elements of the offence

- A person (natural or corporate)
- 3(a) Engages directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime, or
- 3(b) The person receives, possesses, conceals, disposes of or brings into Fiji any money, or other property, that is proceeds of crime,
- The person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

# Timothy O'Keefe Charge

On 31<sup>st</sup> October 2005 accused charged with:

- (i) Forgery – 341(2) Penal Code
- (ii) Obtaining money by false pretence- 309(a)
- (iii) Obtaining registration by false pretence - 311
- (iv) Money laundering – 69(3)(b) Proceeds of Crime Act 1997**

# Basic facts

- The accused, an Australian national, came to Fiji using fake papers;
- He partnered a local person in forming a company Asia Pacific Finance that was registered on 6 June 2005;
- The company opened a cheque account 9801091720 with Westpac Banking Corporation;
- This company placed an advertisement in the Australian media offering loans on the condition that borrowers pay fees up front – “**advance fee fraud**”
- The accused spent the fees without giving any loan to borrowers;

# Transaction

- By 25<sup>th</sup> August 2005 about 26 people had remitted money into Asia Pacific Finance Bank account amounting to \$46,216.85;
- Total money received was F\$90,930.70;
- The money was used by the accused to buy properties and meet his extravagant living expenses;
- Only \$1,487.74 was recovered from the accused when arrested;
- Money was proceed of crime being derived from an unlawful activity;



# Allegation and guilty plea

- Accused charged with money laundering contrary to section 69(3)(b) of the Proceeds of Crime Act 1997;
- The allegation was that the accused received money amounting to F\$90,930.70 that was proceeds of crime knowing that the money was derived directly or indirectly from an unlawful activity;
- He pleaded guilty to the charge on 16/12/05;
- He was convicted and sentenced by the Court on 22 December 2005;
- The accomplice matter is still pending in Court;

# Magistrate Court sentencing process

- There was no sentencing guideline for money laundering offences in Fiji;
- The Court considered the statutory penalty and the need to deter would be offenders and sentenced the accused to 5 years to be served concurrently to the other counts;
- The accused appealed the sentence to the High Court;

# High Court sentence

- There was no sentencing guideline in Fiji;
- Maximum sentence for Money Laundering in other jurisdiction was different – NZ (7yrs), Australia (20 yrs) & UK (14 yrs)
- The tariff established from the guideline in other jurisdiction is 5-10 years;
- The tariff adopted in this case was 6-8 years.

# High Court observation on sentence

- A custodial sentence was warranted for ML offences to serve as deterrent for future offenders;
- There was premeditation, planning and sophistication in the offending;
- It is hard to arrive at an appropriate sentence because the ML offence often accompany another serious offence;
- The Court is relying on the same fact when sentencing accused;
- In the absence of Prisoner Transfer Agreement between State parties accused has to serve his term in Fiji;
- Appeal dismissed;

# Fiji Court of appeal

## State v Timothy O'Keefe Criminal Appeal NO.AAU0029/07

**“ When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person who is to be sentenced. Money laundering is clearly potentially a very serious offence. It can be, and is, used to disguise the true nature of money derived from criminal activity and so make it available for legitimate use. It is essential for large criminal organisations if they are to be able to maximise the proceeds of their unlawful activities. Of necessity, it is an international problem and undoubtedly smaller jurisdictions may be seen as useful and unsuspecting conduits. That is why Parliament imposed the heavy penalties under the Proceeds of Crime Act.”**

# FCA

- **“However, where, as here, the court is also sentencing for the associated criminal offences which produced the money to be laundered, it must base its sentence on the relative seriousness of the individual offences.”**
- The Court observed that the sentence for money laundering was harsh and excessive because it doubled the 2 years sentence imposed for actual fraud;
- The Court held that only 1½ years should be added for the use of the money therefore the sentence was reduced to 3½ years;
- The appeal was successful in this respect;

# Highlights

- The case provides useful guideline to courts and prosecution when addressing sentence for money laundering offences – the case went as far as the Court of Appeal;
- Criminal using shell companies to commit offence that appear genuine and or legitimate;
- Transnational nature of the offence with money obtained from Australia;
- Local partners;
- Knowledge and use of banking systems;

## **Salendra Sinha [2010] FJHC 480; HAC046.2008**

- The accused established a company called Honeymoon Beach Resort Limited as part of the scheme before opening a cheque account at Westpac under the Company's name;
- Accused obtained 2 forged FIRCA cheques amounting to \$272,219.57 and deposited it into the company cheque account;
- The accused withdrew a total of \$187,333.57 from the Bank Account;
- Accused/company never lodged any tax return;



# Charge

- He was charged with:
  - 1) Forgery,
  - 2) causing payment using forged documents, &
  - 3) Money Laundering;
- The allegation of the prosecution in the money laundering charge was that the accused directly engaged in transaction of money that was proceeds of crime knowing fully well that the money was derived from some form of unlawful activity;

# Money Laundering

- The money laundering charge was based on the 2 withdrawals transactions made from the Westpac account before the Bank froze the account;
- A person identifying himself as the accused called inquiring about the account but did not appear in person to the bank;
- The State relied on the accused admission in the caution interview;
- Court was of the view that the cheque was forged within FIRCA in a conspiracy to defraud the State;

# Sentencing

- Money Laundering is a serious offence given the heavy penalty imposed by the Proceeds of Crime Act;
- Money laundering offences must be dealt with separately from the other offences committed by the accused;
- The High Court adopted a starting sentence of 4 years increased to 6 years and finally arrived at 2 years for the fraud and money laundering offence to be served concurrently;
- Reduction in sentence was due to delay in prosecution and time accused spent in remand;

# Highlights

- A conviction after trial;
- Sentence relied on O'Keefe but took other facts to arrive at 2 years;
- Prosecution relied on the caution statement, oral and documentary evidence;
- Accused assisted to obtain the FIRCA cheques;
- It was clear from the evidence that cheques were forged and the company not entitled to cheque because it did not lodge any tax return;
- Banks prompt action saved the State \$85,000;

## **State v. Anand Kumar Prasad et al [2011] FJHC 214; (14/4/11)**

- All 6 accused were charged with conspiracy and fraud related offences such as forgery, causing payment and money laundering;
- It was alleged that Mr Anand Kumar whilst working as an Accounts Clerk at the Turtle Island Resort forged the company cheques and cashed the same using his sister who was working with ANZ;
- The money derived from the fraud was used to purchase properties including a house and vehicles;

# Accused/sentence

- 1) **Anand Kumar Prasad** - 6 years, with a minimum term of 5 years, the sentence to start from the date of his arrest;
- 2) **Reenal Praneel Chandra** - 2 years, with a minimum of 18 months, the sentence to start from the date of his arrest;
- 3) **Reenal Rajneil Chandra** - 2 years, with a minimum term of 18 months;
- 4) **Deo Narayan Singh** - 4 years, with a minimum term of three years;
- 5) **Shirley Sangeeta Chand** - 4½ with a minimum term of 3 years;
- 6) **Atishma Kirti Singh** - 2 years, suspended for a period of two years;

# Highlights in Anand Prasad Kumar

- The accused was convicted in absentia and sentenced to 6 years for money laundering;
- The High Court relied on O'Keefe and sentenced the accused separately for the money laundering offence;
- The court held that the tariff for money laundering in Fiji would be around 8-12 years;
- 6<sup>th</sup> accused sentenced to 2 years suspended for a period of two years;
- Non-conviction based civil forfeiture ordered;

# SACHIN DEO

- He was charged with possession/cultivation of Illicit Drugs and Money laundering;
- The money Laundering charge was withdrawn;
- The \$46,000 was found under a bed and no transaction done to justify the money laundering count;
- The accused was acquitted of the drugs matter;



# Highlights

- The \$46,000 found in the accused house was Proceeds of Crime;
- A non-conviction based forfeiture application was made by the State pursuant to Sections 19C – 19E of the Proceeds of Crime (Amendment) Act No 7 of 2005;
- On 1<sup>st</sup> December 2010, the High Court ordered that the \$46,000 be forfeited to the State;
- The forfeiture order is not affected by the acquittal;

# Naomi Vakagi Veibataki & Others

- This is a civil forfeiture application by the State under section 19C of the Proceeds of Crime (Amendment) Act 7 of 2005;
- The tainted property was derived from the commission of a serious offence that is robbery with violence;
- The accused stole \$14,132.96 in cash and cheques amounting to \$221,067.45

# Tainted property

- Forfeited properties included:
  - i. \$2000 cash in Naomi's bank Account;
  - ii. \$1500 in cash recovered from Sachin Raj;
  - iii. 4 cell phones seized from Sachin, Naomi & Aisake
  - iv. Wedding ring seized from Naomi;

# Restraining Order

- The State had initially taken out a restraining order against the tainted property under section 34 and 39 of the Proceeds of Crimes Act, 1997 – HAM 17/05
- This application was necessary to prevent the disposal of the tainted property;
- A restraining order application can be made if a person has been convicted or charged of a serious offence. In this case, they had been charged of a serious offence;

# Highlights- Civil forfeiture

- This is one of the 1<sup>st</sup> non conviction based forfeiture;
- The prosecution need to prove on a balance of probability that the property was tainted or derived from the commission of a serious offence;
- The Court referred to section 19E(2) saying that it would have rejected the States application for forfeiture if there were other legitimate claims to the property;
- There was none in this case thus the forfeiture Order was granted to the State.

# Concluding remarks

- The Proceeds of Crime Act 1997 and Amendment No: 7 of 2005 allows the State to:
  - 1) Prosecute perpetrators of money laundering offences;
  - 2) Apply for non conviction based civil forfeiture targeting the proceed of crime;
  - 3) Law allows for parallel prosecution to be made by the State;

**Thank you**