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A good country for crooks: Canada's losing war against white-collar crime

Two former top cops in the RCMP's elite IMET squads are blowing the whistle on a justice system that is losing the war on white-collar crime.

By [John Gray](#)

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Canada isn't having much luck cleaning up its image as a country that is soft on white-collar crime. While Conrad Black faces up to 35 years in prison after his recent conviction in a Chicago courtroom, Canadian authorities are still licking their wounds after the recent acquittal of former Bre-X chief geologist John Felderhof on civil charges of insider trading.

It wasn't supposed to be this way. Four years ago, the RCMP launched its Integrated Market Enforcement Teams, or IMETs, elite squads of investigators who were supposed to work together to crack down on white-collar crime. The results have been disappointing, to say the least. While the U.S. Justice Department has racked up more than 1,200 convictions against high-level executives and scammers in the past five years, the IMETs have managed just two — against the same person.

Canadian Business senior writer John Gray talked with Craig Hannaford and Bill Majcher — two IMET officers who recently left the force — about the problems cops face in getting their man, and what can be done about them. Both have spent their careers trying to protect investors from fraudsters. Hannaford, now a private consultant in Toronto, oversaw the investigation into the collapse of Livent Inc. Majcher is best known for his work in the Bermuda Short sting, a joint RCMP-FBI undercover operation that nabbed corrupt Canadian lawyers Martin Chambers and Simon Rosenfeld in 2002. Majcher is now managing director at the Baron Group, a Hong Kong-based investment bank.

Their message: When it comes to white-collar crime, it's worse than you think.

Canadian Business: How would you describe the state of Canada's justice system when it comes to dealing with white-collar crime?

Bill Majcher: The system is pretty much non-existent. You can fix something that is hemorrhaging, but if the body is already lifeless, you have to start fresh. We need politicians to admit that the system is broken from the top to the bottom. Canadians have to understand that we have a two-tiered justice system, where people with money can play the system. Show me a person who has gotten any sort of satisfaction from going to the authorities after being victimized by a white-collar fraud... who got their money back in a timely fashion and didn't go through a lot of grief. I can't think of a single person like that.

Craig Hannaford: This is not a quick fix. The delays in these cases are just terrible. There is no reason why it should take 10 years to get a resolution in the Bre-X case. Can someone please tell me why Livent has dragged on for so long? Charges in that case were laid in 2002. Here we are, five years later, and there is still no resolution.

Does Canada deserve its reputation as a haven for white-collar crime?

Majcher: Canada is seen as a haven for criminals. We have strong trust laws, a strong and stable banking system, strong privacy legislation and weak enforcement. But don't take my word for it. When I was undercover in the Martin Chambers case, he told me I should move my [fake] criminal operations to Canada. There is far less risk, and you don't spend time in a U.S. prison. When I asked him how much safer it was, he said it was 20 times safer. Simon

Rosenfeld [a Canadian lawyer convicted of money laundering in 2005] said it was 100 times safer. Rosenfeld called Canada “la-la land.”

Canada is seen as a soft touch. In a global criminal or terrorist organization, it’s very useful to have a Canadian nexus. Then the whole network has the protection of the Canadian charter. If you can show that the Canadian police are involved in an international investigation, you can serve a disclosure application and the Canadian police can be compelled to disclose all the investigation information—even the information given by other law enforcement or intelligence agencies. Canada is absolutely an Achilles heel for international criminal and terrorist investigations.

That’s making it harder for Canadian police to work with investigators from other jurisdictions because they view us as a big sieve of information.

I worked with the FBI on the Bermuda Short case, and they brought charges against Jack Purdy [a Canadian stock promoter who was charged with money laundering, but later acquitted in a U.S. court]. Purdy was never charged with anything in Canada, but his lawyer demanded that the RCMP give up all its documents in that case. The court ordered us to turn over all our documents, including the FBI’s operation plan on the case—which the FBI never gives out.

The FBI was livid. One FBI guy said that maybe they have to start treating Canada like a Third World country; if they need our help on a case, they will tell the RCMP to go to the U.S. embassy to read the file. You can’t take notes or take it with you so the courts can’t force you to disclose it later and maybe compromise other investigations.

How do you think that reputation is affecting Canada?

Majcher: I’m in the investment industry now, and I see how this hurts Canada. I have talked with money managers and investors who have told me they will not invest in Canada. One multibillionaire I met recently, who has extensive private holdings in Canada, says he won’t invest in Canadian public companies because there is no recourse if anything goes wrong. Canadians believe this Pablum we are fed that we have a trade surplus and our economy is doing great, but it’s doing well because the world wants our raw materials. Where is the investment in research and development, biotech, manufacturing and other things that make a diversified economy? What happens when the commodity boom starts to bust?

Money is the greatest coward in the world. There are money managers out there looking at Canada and wondering about Bre-X or Livent. They are wondering, Why did that Canadian bank pay a US\$2-billion penalty in the Enron case to the U.S. while Canada did nothing? They look at Conrad Black convicted in the U.S. They wonder about Nortel.

What tools do the police lack that would help improve our track record on white-collar crime?

Majcher: One thing that would really help would be administrative subpoenas that would compel witnesses to talk. I think Canadians would be scandalized to learn that foreign police forces have more power over Canadian citizens than the RCMP in that regard. Under the Mutual Legal Assistance Treaty [MLAT], U.S. law enforcement can force Canadians to give sworn testimony in an investigation, but we don’t have that power.

Hannaford: The inability to compel witnesses to give us a sworn statement is a big problem. I served some of those orders under the MLAT and dragged people into a court reporter’s office where they were sworn-in and forced to give a deposition in a U.S. criminal investigation. I didn’t have tools like that, and it would really frost me. It’s not right. There is no comparable power in Canada for white-collar crime—there is for terrorism investigations, that’s a recent addition to the Criminal Code. We would go to an accountant or other professional that we thought had knowledge of a crime and they would say, “I won’t talk to you because I have client confidentiality.” Or we would go to a high-level executive and their in-house counsel would tell them not to talk to us because they are worried that what they told us would get out and hurt them in a civil suit.

Under the Canadian Charter of Rights and Freedoms, doesn’t everyone have the right to remain silent?

Hannaford: The charter is for people who are accused of a crime, not witnesses. There is no charter implication here.

Could you charge uncooperative witnesses with obstruction of justice?

Hannaford: No, it would be nice, but it doesn't work that way.

Majcher: This is what is so frustrating. We would go to a stock promotion that is really just an illegal share distribution and try to talk to the seed investors—the victims—and they would say, “Oh, you have to talk to my lawyer.” So we are stymied right out of the gates.

Does the fact that most fraud investigations are so complicated and involve so many documents make them harder to complete?

Hannaford: In a lot of cases, we now have disclosure paralysis. Most times a fraud case comes down to a few key documents, but you still have thousands of other documents that have to be processed. Now, that has some investigative value, but it's primarily done so that at the end of the day we can provide an electronic copy of every bit of paper to a defence lawyer and head off a challenge that the big, bad police have suppressed evidence. A lot of the IMET budget went to build a disclosure system, an electronic major case management system that would computerize all that stuff.

How does Canada's lacklustre record of obtaining white-collar crime convictions affect the morale of cops and regulators?

Hannaford: This is hard on morale. Look at the Bre-X case. The OSC worked very hard; they stuck with it for years and still lost. What type of reverberations do you think that has within the OSC? Are they going to want to go through that again only to achieve the same results? Maybe they're thinking: would it be better to spend my time and resources focusing on the regulatory process? You know, levy some fines, suspend some bad guys from the industry and stay away from the big stuff?

Majcher: There is some defeatism. It's easy for investigators to lose heart. From the police point of view, we are taught and trained to gather the evidence, not question the court decisions. But as citizens and as human beings, you want to see some fulfillment and satisfaction for what you do. And when you don't see it, you become disillusioned. You can't keep the same level of enthusiasm for a system that you know is broken and is not serving the people it is supposed to serve. It's very disheartening. We know what the bad guys are doing, but we don't have the tools or the resources to go out and get them.

There has been a real loss of talent and experience in law enforcement in the area of conspiracies. All white-collar frauds are essentially a conspiracy, and conspiracy laws and investigations are unique animals. A lot of good people have retired or left the force, and they have not been replaced. And it's hard to recruit the hunters we need in this business. If you are a bright young guy, a job in Canadian securities market enforcement is great for you... if you have masochistic tendencies.

Does that reputation make it harder to convince witnesses to co-operate with police in their investigations?

Majcher: People in the market are losing confidence. I talk with people involved in corporate compliance with major financial firms. If they find a major fraud, they are reluctant to go to the police. They know it's going to take years, they will have to keep documents on file and there isn't even a strong probability that it will go to trial.

A few years ago, I met Eliot Spitzer [then New York State attorney general and crusading anti-fraud prosecutor]. I walked right up to him, shook his hand and told him it was a pleasure to meet Canada's top securities regulator. Just ask people on Bay Street who they are afraid of. It's not the cops, it's not the OSC. It's the U.S. Securities and Exchange Commission because they have real teeth.

Conrad Black faces up to 35 years in prison for his conviction in the U.S. Those kinds of sentences are unheard of in Canada. What effect does that have on Canada's ability to crack down on white-collar crime?

Majcher: Sentences for white-collar crime in Canada are a joke. A non-violent fraudster is going to get a sentence of three or four years... maybe. Even then, under our system he will usually serve only one-sixth of that sentence. That means he will serve five or six months in a minimum-security Canadian prison that doesn't even have bars. Look at Michael Mitton (the only man convicted of fraud by IMET.) He was sent to jail this year and could be paroled as early as next year. The guy has 105 criminal convictions. What do you think the chances are that he will be going for 106?

The sentences handed down in the U.S. have the power to motivate people to co-operate. If you come clean early, show some remorse and provide evidence, it will go a long way to reduce your sentence.

Canadians, by and large, are not calling for tougher jail sentences, they are not calling for the government to build more prisons. Canadians and the political establishment have accepted that we have these levels of crime, and we seem to be prepared to let it go higher because we are not taking the steps to combat it. There is an acceptance level that is ingrained in the Canadian psyche now.

Hannaford: Getting a criminal conviction still sends a message. The police used to have a saying: “The worst thing we could do to some of these fraudsters is give them a criminal record so they can’t cross the border and go down to Florida and enjoy their luxury condos.”

Why do you think that IMET had such disappointing results?

Hannaford: The IMET model still holds promise, but the police are products of the law. We can only do what the law allows and can only use the tools that we are given. If we had the right tools, then it would be easier to get the job done. The police don’t have power over the courts, and they can only do what the law allows them to do. There were some bureaucratic difficulties with IMET. We tried to hire people with some street knowledge of the financial industry but were hampered by our staffing and classification issues.

Majcher: The IMET concept is sound. But even in IMET it became form over substance. We wanted to hire a lawyer to consult with us on a proactive investigation and were told to put the contract out to tender. Can you imagine, putting out a tender to work on a secret investigation? Some fault lies on the shoulders of the people like us in the RCMP, but a big part of it was issues that were outside our control, such as the law and prosecutions. The RCMP can do a million-dollar investigation, but if you get a 10¢ prosecution, what kind of result are you going to get?

The first search warrant that we did was on a company that said it found oil, but it took them 25 press releases to say they actually found salt water. The company went to court to get the warrant tossed and our exhibits back. We notify the lawyers at the Department of Justice a month before the hearing. The day before the court case, they send an environmental lawyer to argue the case. He was a good guy, but he practises environmental law. He doesn’t know anything about securities, and he’s going up against a top-notch securities lawyer. Of course, the judge tossed the warrant. We ended up doing a search warrant on ourselves to get our exhibits back.

There has been a big push by the federal government to form a national securities regulator. Do you think that will solve the problem?

Majcher: A national securities regulator would be a nice first step, but no one should fool themselves into thinking that will solve all our problems. What a national regulator will do is bring a more streamlined system where there are some more enforcement synergies. It will also help our image for foreign investors, but the underlying issue will still exist. There is no effective deterrence because there is no punishment that fits these crimes, and we just don’t have the mechanisms to bring people to justice in a timely and efficient manner.

Hannaford: A national securities regulator is not going to solve this. There are serious structural problems throughout the system. You can’t just throw money or bodies at this problem and expect it to go away. I’m not particularly hopeful. We don’t seem to have the political will. Politicians get up and say we can solve this with a national securities commission, but the problems are not going to go away. We have the same issues with the courts, the same issues with disclosure, the same issues with sentences and parole. If you don’t deal with all of those problems from beginning to end, we will wind up in the same spot—with a national securities regulator that everyone is angry with because it can’t seem to do the job. With a national securities regulator, we are still playing the same game, just the teams have changed.

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