



# Blaneys on Business

This newsletter is designed to bring news of changes to the law, new law, interesting deals and other matters of interest to our commercial clients and friends. We hope you will find it interesting, and welcome your comments.

Feel free to contact any of the lawyers who wrote or are quoted in these articles for more information, or call the head of our Business Law Department, Steven Jeffery at 416.593.3939 or [sjeffery@blaney.com](mailto:sjeffery@blaney.com).

*“It has taken on a particularly gruesome urgency in the wake of the terrorist attacks in the United States of September 11, 2001...to track down the sources of funding and financing that are used to train and equip terrorists.”*

## **NEW LAW TO COMBAT MONEY LAUNDERING PLACES HEAVY ONUS ON REAL ESTATE, BANKING, INVESTMENT AND INSURANCE PROFESSIONALS**

Lou Brzezinski, Felix Semberov

A new law to combat money laundering that takes effect later this month places a heavy new onus on a wide range of business people to report any “suspicious” client behaviour to the federal government.

The law, the *Proceeds of Crime (Money Laundering) Act*, is Ottawa’s key response to G-8 efforts to tackle money laundering – legitimising the proceeds of criminal activity – more forcefully.

It has taken on a particularly gruesome urgency in the wake of the terrorist attacks in the United States of September 11, 2001 and the commitment of governments around the world to track down the sources of funding and financing that are used to train and equip terrorists.

[In fact, the government has proposed an amendment to rename the statute the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and to explicitly include in it any suspicions of “terrorist financing activity.”]

The Act creates a new agency, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). It requires business people to report suspicious and certain defined transactions to FINTRAC, and it prohibits them from informing their clients that a report is being made.

Anyone can voluntarily report to FINTRAC, but the Act puts a greater burden on specific business individuals and entities, including life insurance brokers and agents; securities dealers, including portfolio managers and investment counsellors; foreign exchange dealers; legal counsel; accountants; and real estate brokers and sales representatives.

How to know that a transaction is suspicious? FINTRAC has developed some general and industry-specific indicators, including:

- Client is secretive and reluctant to meet in person;
- Client over-justifies or explains the transaction;
- Client refuses to provide personal identification documents;
- Client uses aliases and a variety of similar but different addresses;

*“Once a suspicion exists, there is an obligation to fill out a FINTRAC form and report a range of information,...together with specific reasons for why the transaction is suspect.”*

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- Transaction seems to be inconsistent with the client's apparent financial standing or usual pattern of activities.

Once a suspicion exists, there is an obligation to fill out a FINTRAC form and report a range of information, from the client's name and address to details of the transaction itself, including the time and amount, together with specific reasons for why the transaction is suspect.

If the form is not filled out within 30 days, there is the threat of a fine or jail. The fine for filing a late report can be as high as \$1 million. In addition, once a report has been filed the person doing the filing cannot disclose the contents of the report or the fact of its filing to the person about whom the report is written.

Once FINTRAC receives a report, it must determine whether the transaction is suspicious. If it believes the transaction is suspicious, it will disclose certain designated information to the local police authorities. In addition, the information in a report could end up in the hands of the CCRA (Canada Customs and Revenue Agency), CSIS (Canadian Security Intelligence Service) and the Department of Citizenship and Immigration.

Suspicious transactions are just one example of what will eventually have to be reported to FINTRAC. Beginning next Spring, there will be an obligation to report any hard cash or electronic funds transactions that are over

\$10,000, and any clients who are willing to pay extra for a better foreign exchange rate.

By mid-2002, there will be a reporting requirement for all cross-border currency and monetary transactions of \$10,000 and more. ■

#### EMPLOYERS ADVISED TO TAKE PRECAUTIONS WHEN SERVING LIQUOR AT STAFF PARTIES

Timothy P. Alexander

It is traditional at this time of year for employers to throw a party for employees to celebrate the season and the accomplishments of the year. Typically, alcohol is available at these events and it is not unusual for a guest to have one too many and become inebriated. Employers should be aware, however, that if the intoxicated guest subsequently injures himself or causes harm to others, the courts are increasingly prepared to place some of the responsibility for the resulting damages on the employer.

Most people are aware of the Ontario Court decision earlier this year in which a Barrie realtor was found partially liable for the damages suffered by his employee who had become intoxicated at the company Christmas party and was involved in a serious car accident when driving home. The court found that by permitting the employee to become drunk, the employer was obliged to either insist upon taking her keys, call her husband

*“Employers should also confirm that the facility they intend to use has appropriate liability insurance that will respond to any claims that may arise.”*

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to pick her up, drive her to a local hotel, find another driver or even telephone the police if she had insisted upon driving.

This decision was well publicized and has created concern among employers that they are exposing themselves to lawsuits by holding such events. While cancelling a party would eliminate this, it might also deprive employees of a well-deserved event with their colleagues. By taking the appropriate steps, employers can eliminate or significantly reduce these risks and still throw an enjoyable party.

The best way to protect yourself is to hold your party at a hotel, restaurant, bar or other licensed establishment whose employees are trained in the responsible service of alcohol. The Barrie realtor hosted the party on its premises, during working hours which resulted in the court imposing many of the obligations placed on licensed establishments, even though the typical employer has none of the experience or training characteristic of that industry.

When selecting a facility, the employer should confirm that it is appropriately licensed to serve alcohol and that all of the servers have received appropriate training. The Ontario hospitality industry, through its Smart Serve, provides such training to individuals who serve alcoholic beverages or work in licensed establishments in the province.

Training involves education in areas such as monitoring and controlling consumption,

recognizing the signs of impairment and dealing with intoxicated individuals.

Employers should also confirm that the facility they intend to use has appropriate liability insurance that will respond to any claims that may arise. If an intoxicated partygoer does cause harm to themselves or others, their lawyer will typically sue the entity that provided the alcohol. If that business no longer exists or has few assets, the protection that the employer thought they had proves illusory. (On the subject of insurance, employers should confirm that their own liability will provide coverage against any claims arising out of the service of alcohol.)

If circumstances prevent you from having your party off site, consider hiring a professional catering service, once again with the appropriate training, to serve alcohol. If you do not wish to use a trained individual, then an employee should be designated to be responsible for serving drinks and should be told to carefully monitor consumption. Avoid having an open bar where guests can help themselves to a drink. A self-serve bar encourages heavy drinking and does not permit any monitoring of the rate of consumption, which is a key element in responsible alcohol service.

Regardless of the location of the party, employers should encourage moderate alcohol consumption. This can be done by having a cash bar or providing a limited number of drink tickets to employees. Alcohol free

*“Most lawsuits where over-consumption [of alcohol] is an issue result from car accidents and it is important to take steps to prevent intoxicated guests from driving.”*

drinks should be readily available and offered free of charge. There should also be an ample amount of food available. In addition to slowing the absorption of alcohol into the system, it gives people something to do other than drink.

Guests should be monitored over the course of the event for such signs of intoxication as slurred speech, changes in speech volume, red eyes, loss of co-ordination, decreased alertness, clumsiness and sleepiness. Remember, however, that not all individuals show the same signs of intoxication. Experienced drinkers or alcoholics can be legally impaired but appear quite normal.

Most lawsuits where over-consumption is an issue result from car accidents and it is important to take steps to prevent intoxicated guests from driving. Before the party, you should encourage people to leave their cars at home and offer to make cabs available to employees free of charge after the event. You can also encourage car pooling among guests and designate a driver, who will not drink during the evening, to drive people home.

An individual, preferably with appropriate training, should be stationed at the exit to assess guests' ability to operate a motor vehicle. If an intoxicated guest insists on driving themselves home, attempts should be made to encourage the person to take a cab or accept a ride with another. If they are reluctant, their car keys should be demanded and alternative transportation arranged. If all else fails and

they insist upon leaving, the police should be called.

While many of the measures outlined above may seem unduly onerous and costly, they are reflective of an increasing willingness of the courts to place at least some responsibility for the consequences of drunk driving on those who provide the alcohol. Although following these measures will not totally eliminate the risk, they would decrease the likelihood that someone will come to harm following your party and you will become the subject of a lawsuit. ■

#### BLANEYS NEWS

Blaney McMurtry is pleased to announce that:

**Steven L. Nemetz** has joined the firm's Corporate/Commercial Group where he will continue his practice in intellectual property law, emphasising trademark, copyright, technology law and licensing matters, and related business law issues. Steven can be contacted at 416.593.3958 or [snemetz@blaney.com](mailto:snemetz@blaney.com).

**John C. Papadakis** has joined the firm and will continue his practice in corporate/commercial law and commercial real estate. John can be contacted at 416.593.3998 or [jpapadakis@blaney.com](mailto:jpapadakis@blaney.com).

*Blaneys on Business* is a publication of the Business Law Department of Blaney McMurtry LLP. The information contained in this newsletter is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.

We welcome your comments. Address changes, mailing instructions or requests for additional copies should be directed to Chris Jones at 416.593.7221 ext. 3030 or by email to [cjones@blaney.com](mailto:cjones@blaney.com). Legal questions should be addressed to the specified author.

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