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Effective sentinels or unwitting money launderers?

The policy effectiveness of combatting illicit financial flows through professional facilitators (lawyers, accountants and real estate agents).

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Abstract

As ‘gatekeepers’ to the financial system, lawyers, accountants and real estate agents play an indispensable role, intentionally or unwittingly, when criminals use their services to facilitate real estate transactions with illicit funds. Recognised as a high-risk, high-value sector for money laundering, empirical research in this area is, however, scarce. The important question then becomes how effective is the policy objective to detect and deter money laundering through professional facilitators in the real estate market?

This thesis answers that question with new empirical evidence drawn from New Zealand criminal proceeds real estate transactions facilitated by professionals. Unlike other countries where professionals are partly or wholly exempt from anti-money laundering regulations, obligations to detect and report suspicious real estate transactions have applied to professional facilitators in New Zealand since 1996, yet inexplicably there is almost no objective evidence in this area. This thesis uses primary sources including court records to fill a knowledge gap in the use of professionals enabling financial transactions with illicit funds. It concludes that policies to detect and deter laundering through professional facilitators achieved intended outcomes in just four percent of research cases over a 20-year period. It found that when presented with property transactions involving proceeds of crime, professionals were more often enablers than inhibitors. This thesis also maps characteristics empirically associated with criminal investment in real estate found to be more, and less, susceptible to masking by criminal actors. These new empirical findings represent a significant advance in knowledge because they point to policy, enforcement and regulatory settings to help transform professionals unwittingly enabling financial transactions with criminal proceeds into more effective sentinels.

This thesis also constructively critiques a new global framework for evaluating the effectiveness of anti-money laundering regimes against defined ‘outcomes’. With surprisingly little dialogue at the intersection of policy effectiveness/outcomes and money laundering scholarship and practice, the obvious question is whether the new methodology reflects an outcome-oriented effectiveness framework, as it purports. This thesis finds that it does not yet do so. This represents a significant contribution if it helps advance policy, regulatory and enforcement strategies and further research to improve crime detection and prevention capabilities and outcomes.

The purpose of this research, in three quotes

Albert Einstein

Tribute to Pablo Casals, 30 March 1953 (Corredor, 1957, p.11).

He perceives very clearly that the world is in greater peril from those who tolerate or encourage evil than from those who actually commit it.

Sam Koim

Department of Justice and Attorney General, Papua New Guinea (Koim, 2012).

This is no theoretical process. When money that is supposed to build hospitals or buy medical equipment is used to buy real estate in Cairns or Brisbane, people die. And, quite frankly, those who turn a blind eye to this are as guilty as the offenders.

Ron Pol

From **section 2.7.1** below, discussing research case 18.

Professionals enabling the real estate transaction with illicit funds reported no concerns. It is unsurprising the accountant failed to report criminal activity that implicated him. Likewise, the vendor's solicitor; she was used unwittingly, missing or failing to understand the few red-flags observed. The outcome might have been different if the purchaser's solicitor and another lawyer who facilitated the offender's subterfuge had made further enquiries in the face of multiple identified indicators of the criminal activity their services assisted. Absent which, the result, plainly foreseeable, was equally clear. For a few hundred dollars for their services, the offender's large-scale criminal activity, and serious economic and social harm to local and regional communities, continued unchecked for another nine years. Serious crime was enabled, and perhaps inadvertently encouraged and invigorated, by the services of professionals.

Preface

A former law firm chief executive shared a personal observation:

I went to an auction where a young guy walked up, put in an opening bid of \$1 million and bought a property for well over market price. A guy I was talking to said 'drug money'. No one really cares where the cash is from, just that it shows up (Anon, 2016b).

Two news reports on the same day from separate continents illustrate differing perceptions about the use of professional facilitators (lawyers, accountants and real estate agents) to help launder criminal proceeds. After the United States government announced that it would monitor certain property transactions, a realtor claimed money laundering concerns were 'overblown.' He added, "We're going to say [to prospective buyers] 'we're not looking into your pocketbooks, your bank accounts. If you have money... we'll work with you'." (Iannelli, 2016). Meanwhile, in Nigeria, a country seeking US help to stem outflows from corruption and other crime, Professor Angwe regretted that "countries that readily accept stolen funds... were aiding people in looting funds that could have been used to improve dying infrastructures" (Ikhilae, 2016).

It was later revealed in New Zealand that hundreds of millions of the billions of dollars allegedly looted from a Malaysian development fund were funnelled into luxury real estate in Manhattan, Los Angeles, London, Singapore and Hong Kong, owned by secretive New Zealand trusts (US DOJ, 2016, Nippert, 2017, *Low v Rothschild*, 2017, *Rewcastle-Brown*, 2017a). The ownership structures facilitating alleged corruption on a grand scale were described as "planned deceptions" designed by lawyers. "By pretending that there is seriously any other substantial reason" for such mechanisms "is participating in the fraud" (*Rewcastle-Brown*, 2017b). When professionals facilitate such transactions, some may knowingly assist criminal enterprise. Many others may be unwitting. Others still may turn a Nelsonian eye, disassociating money from how it was generated, and the social and economic harm caused by profit-motivated crimes such as corruption, fraud, drugs-, arms- and human-trafficking. This thesis examines the use of professional facilitators by criminal actors, across the full spectrum of their participation in the process of enabling financial transactions with proceeds of crime.

If there is value in this new research, delusions of relevance and impact (Cohen, 1988, p.30) in ‘speaking truth to power’ (Wildavsky, 1979) are shattered if Lord Keynes’ observation is accurate that "there is nothing a government hates more than to be well-informed; for it makes the process of arriving at decisions much more complicated and difficult" (cited in Banks, 2009b) and hinders “policy-based evidence making” (Alldrige, 2016, p.13). It is, however, arguably the absence of data that hampers effectiveness. "Without evidence, policymakers must fall back on intuition, ideology, or conventional wisdom", and "the resulting policies can go seriously astray" (Banks, 2009a, p.5). This resonates in the context of contemporary anti-money laundering practices driven by a dominant narrative arguably poorly connected with the effectiveness and outcomes discourse. This thesis joins the nascent discussion at the confluence of those strands. It asks not whether we have rules, or the extent to which they are complied with, but whether they work. It provides new empirical evidence on the role of professionals enabling financial transactions with proceeds of crime, it measures policy effectiveness, and it offers original analysis on the global anti-money laundering ‘effectiveness’ and ‘outcomes’ framework. Evidence may complicate the decision-making process but, if relevant, it extends the scholarship and, if timely, may assist policymakers and practitioners advancing evidence-based decision-making for better outcomes.