



Canada Revenue
Agency

Agence du revenu
du Canada



OECD International Academy for Tax Crime Investigation

Managing Financial Investigations



Managing Financial Investigations

OECD – Rome
September 2022



OECD International Academy for Tax Crime Investigation

Managing Financial Investigations



Jason Rauh, Operations Manager

Criminal Investigations Division, Western Region
Canada Revenue Agency (CRA)

Agenda

PART I: Importance of Managing Financial Investigations

PART II: Conducting Financial Investigations
Investigative Skills/Case Management

1. Evidence
2. Investigative Interviews
3. Investigative Note-Taking
4. Investigative Planning

Agenda (cont'd)

PART III: Managing Major Criminal Investigations

1. Major Case Management (MCM) Methodology
2. MCM Model
3. Major Case Operational Plan
4. Communication with Stakeholders
5. Leadership

PART IV: Case Management Tools

PART I:

Importance of Managing Financial Investigations

Why Is Case Management Important?

The work of the most dedicated, skillful, and highly motivated investigators and supervisors and forensic scientists can be **defeated by the lack of effective case management systems and the lack of systems to ensure communication and co-operation** among law enforcement agencies.

One of the key concepts of the case management system is that there needs to be **standardized investigation techniques** — the same processes and procedures used in each and every major investigation — because one can never know which **investigations may later be linked.** (The Campbell Report)

Manager's Responsibilities

- Program responsibilities
 - Managing active cases
- Performance responsibilities
 - Recognizing achievements and addressing performance issues
- Organizational responsibilities
 - Meeting business strategy

Manager's Considerations

- Financial budgets
 - Overtime
 - Travel
 - Equipment needs
- Training
 - Formal courses and informal training
 - Knowledge transfer
- Staffing plans
 - Talent management
 - Hiring specialist

Group Discussion

As a manager, why is effectively managing financial investigations important for your organization?



Case-Specific Considerations

1. Case Selection
2. Case Assignment
3. Case Planning & Progress Approval

Case Selection

The decision to criminally investigate a file

Adopt a strategic risk-based approach to file selection and focus on the most serious cases. Examine all sources of information, and if the information warrants further investigation, the file is then assigned to one of the six regional offices.

1. Program Mandate
2. Prioritization and National Standards
3. Significant Sectors

Prioritization and National Standards

- Use of timelines and guidelines
- Focus on the best cases to ensure timely case conclusions:
 - Refining years
 - Refining schemes
 - Focus on issues rather than complete non-compliance picture

Case Assignment

- One investigator vs. Team approach
- Management of financial resources
- Allocation of human resources
- Priority/Complexity Rating
- Major Case Management (MCM) considerations

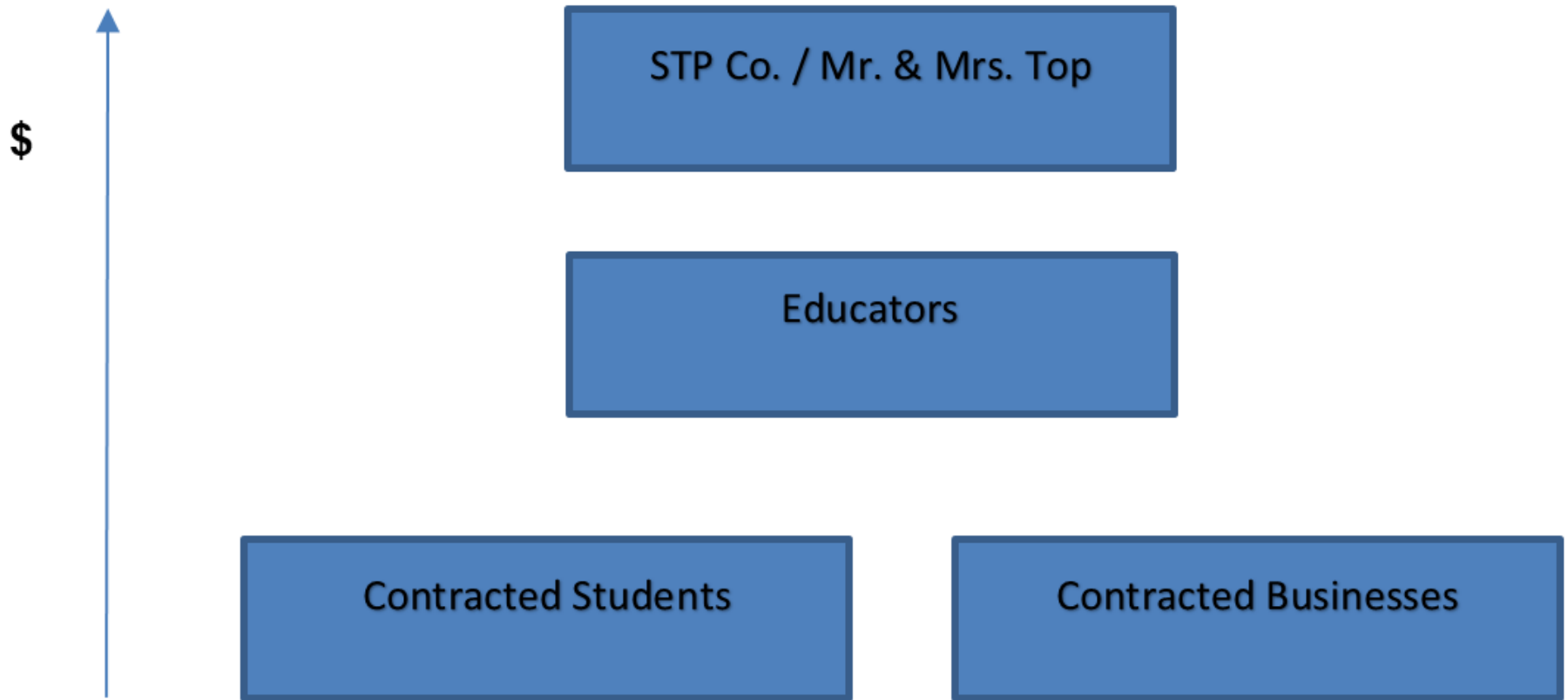
Case Study – Part I

- Shiny Tax Protestor Company (STP Co.) operates a tax education business that promotes non-compliance with the Income Tax Act and Excise Tax Act (VAT)

STP Co.

- Students
 - Pay 7% of their gross income for 24 months to their Educator
- Contracted businesses
 - Withhold 7% of their employee's pay for 24 months, where the employee was a contracted STP Co. Student
 - Remit the 7% withheld pay and 3% of the Student's income to the Educator on the Student's behalf

STP Co. (cont'd)



Case Study - Debrief

- Discuss the merits of this case
 - Possible offences, potential suspects, evidence, and considerations
- Discuss the case assignment
 - Who would you assign this case to?
 - One investigator or a team of investigators?
 - What qualities/characteristics would you want in your investigator(s)?
 - Any other considerations?

Recap

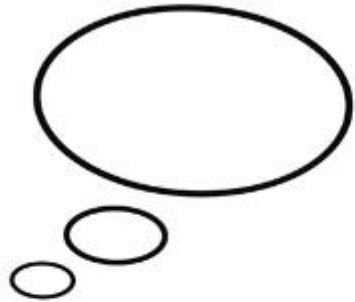
Why is managing financial investigations important?

- Manager's responsibilities and considerations
 - Program, performance, and organizational
- Case-specific considerations
 - Selection, assignment, planning, and approval

PART II:

Conducting Financial Investigations Investigative Skills/Case Management

Conducting Financial Investigations



What knowledge or skills do your investigators need to conduct financial investigations?

Conducting Financial Investigations (cont'd)



1. Evidence
2. Investigative Interviews
3. Investigative Note-Taking
4. Investigative Planning



Evidence

A dramatic sky with a bright sun partially obscured by clouds, creating a lens flare effect. The sun is in the upper right, and its light rays fan out across the blue sky. Large, white, puffy clouds are in the lower half of the image, with some darker, more shadowed areas at the bottom. The overall tone is bright and clear.

Investigative Interviews





PART III:

Managing Major Criminal Investigations

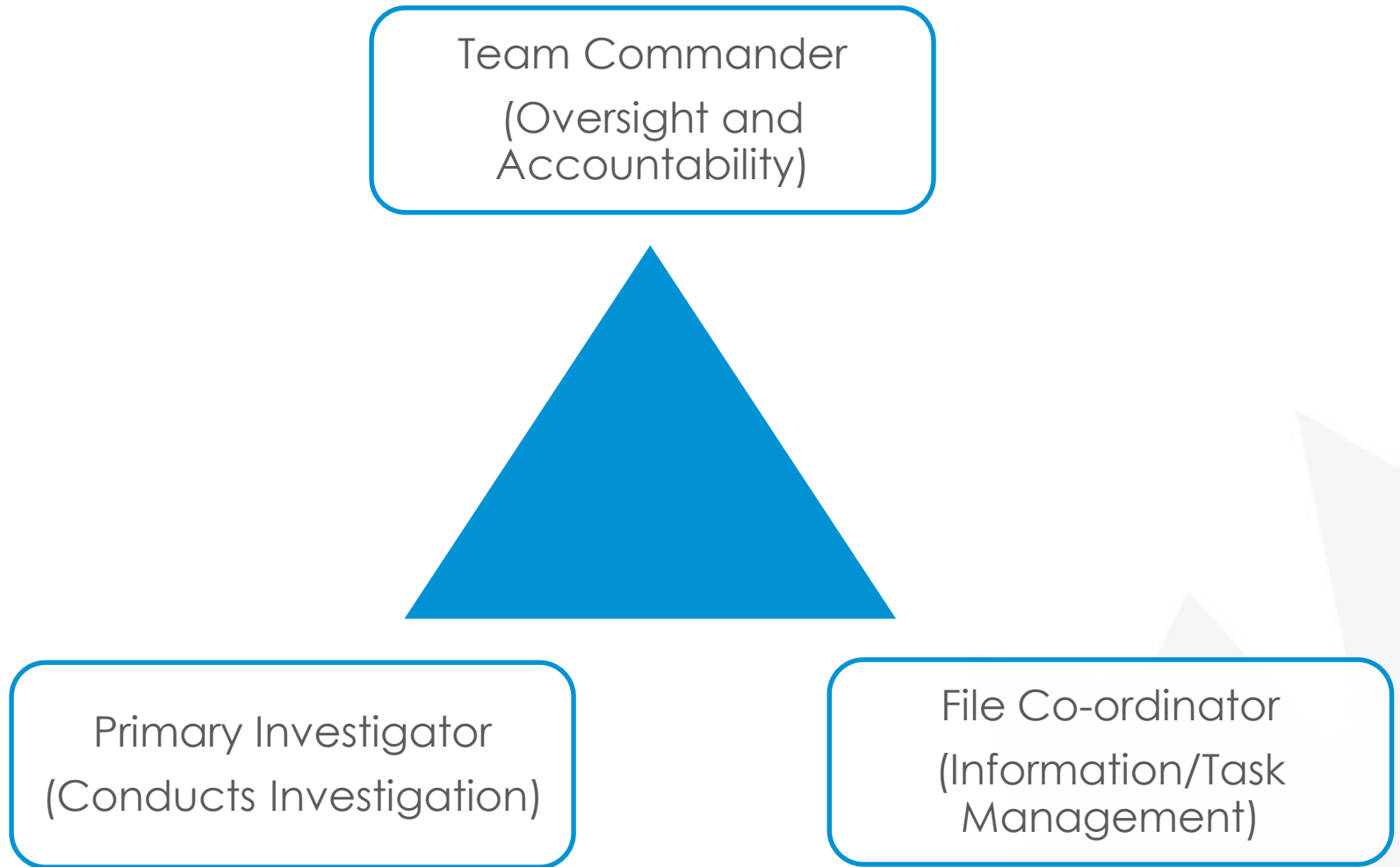
Major Case Management (MCM)

MCM is a method for managing large complex investigations, and it should include:

- Structure and accountability
- Clearly defined goals and objectives
- Specific case direction and assignment of tasks
- Proper investigative techniques
- Information sharing and management
- Operational plan
- Prosecution plan
- Budget/plan for resource utilization



Command Triangle Structure



Team Commander

- Flexible and realistic with goals/objectives
- Able to (re)assign tasks and resources
- Willing and able to make the tough investigative decisions
- Has oversight and is accountable for the case
- Liaison with senior management and Crown Counsel

Primary Investigator

- Knows the case thoroughly
- Must be assigned to the case full-time
- Must be prepared to testify as to the case status
- Must work with other investigators on the case, as needed

File Co-ordinator

- Ensures there is a reliable system for managing documents in the case
- Information management in its truest sense of tracking and managing of all tasks
- Maintains an accurate account of documents, evidence, and witnesses
- Generally responsible for case disclosure requirements



Major Case Management Model

- The case manager has overall charge of the case and supervises a team of between three and five investigators
- Each of the investigators in the team has assigned tasks and responsibilities, which are monitored by the case manager

Features of the Major Case Management Model

- Clearly structured roles for each team member (match the skill set to the task)
- An organized task log/reporting system to provide a case overview and task control
- Regular team meetings to ensure everyone is aware of case goals, progress, and deadlines
- Early consultation with Crown Counsel to develop a file management system that can be easily rolled into a disclosure/evidence package

Major Case Investigative Team

Case Manager

- Oversight
- Secures human/financial resources
- Maintains relationships with 3rd parties
- Senior Management liaison
- Controls speed, flow & direction
- Develops operational strategies/objectives
- Identifies & delegates tasks
- Facilitates investigational briefings
- Prosecution Report and Internal reports



Investigator

- Interviews
- Search coordination
- Obtaining judicial authorizations
- Identification/elimination of suspects
- Research

Investigator/File Coordinator

- Manages materials & information
- Exhibit management/Disclosure
- Management of tasks
- Maintains briefing minutes
- Manages/Coordinates Identified Tasks

Investigator/Analyst

- Analysis Research
- Data support

Group Discussion

What are the challenges of managing a complex case?



Characteristics of a Major Case

- Voluminous evidence including digital evidence
- Complex schemes
- Inter-jurisdictional issues
- Complex money flows
- Legal issues
- Disclosure issues
- Numerous accused and potential witnesses
- International transactions and foreign evidence

Characteristics of a Major Case (cont'd)

- Voluminous evidence including digital evidence
 - Trends towards larger digital seizures
- Complex schemes
 - Tax protestors
 - Carousel scheme (VAT Scheme)
 - Immigration fraud
 - Capital market fraud

Characteristics of a Major Case (cont'd)

- Inter-jurisdictional issues
 - Accountability in other jurisdictions
- Complex money flows
 - Offshore transactions
 - Multiple corporate layers
 - Underground financial systems

Characteristics of a Major Case (cont'd)

- Legal issues
 - Presumptive ceiling on case lengths in court
 - Regulatory vs. Criminal
 - Admissibility
- Disclosure issues
 - Electronic disclosure

Characteristics of a Major Case (cont'd)

- Numerous accused and potential witnesses
 - Tax protestor cases
 - Donation scheme cases
- International transactions and foreign evidence
 - International requests
 - How best to obtain and enter into evidence

Supervisory Challenges

- Being flexible but with a focus on the best case concept
- Task coordination and time management
- Effective management of human resources
- Effective management of financial resources
- Consultation with the various stakeholders

Major Case Operational Plan

This is a plan that incorporates both the detailed **investigative plan** and the **prosecution plan**. It features the following:

- Case description
- Summary of the investigation
- Proposed structure
 - Criminal Investigations & Crown
- Financial impact
- Detailed investigation plan
- Detailed budget
- Team chart
- Prosecution plan



Communication

- Internal Stakeholders
 - Public Affairs
 - Senior management
- External Stakeholders
 - Law enforcement partners
 - Prosecutors
 - Government
 - International partner investigative agencies

Case Study – Part II

- Managing resource issues
- Managing performance

Case Study - Debrief

- Discuss the management of resources for completing this case in a timely manner
 - Human resources, financial resources
- Discuss the management of the team's performance
 - Potential issues of A, B, C, and D
 - Potential impacts on the case and the team
 - Appropriate managerial actions

Major Case Key Success Factors for Case Managers

1. Strong leadership skills
2. Task oriented skills that focus team members towards the accomplishment of tasks - delegation
3. Organizational skills
4. Interpersonal skills
5. Communication skills
6. Team building skills
7. Experience and investigative ability
8. Knowledge of criminal investigations and the law

LEADERSHIP

TEAM

MANAGER

MOTIVATION

LEADER

TRUST

POWER

COMMITMENT

DELEGATING

SELF-RELIANT

SUCCESS

COACHING

INSPIRING

COMPETENCE

STYLE

NEEDS

ROLE

RESPONSIBILITY

EMOTION

EXPERT

BEHAVIOR

MEMBER

COLLABORATING

DISCIPLINE

APPRECIATION

GOAL

TRAINING

RESPECT

SUPPORTING

EMPOWERING

SKILLS

TOOLS

DIRECTING

FEEDBACK

MANAGEMENT

ATTITUDE

INFORMATION

ESTEEM

SAFETY

Management Considerations

Leadership & Performance Management

- Goal setting
- Ongoing monitoring
- Provide ongoing feedback to investigators on their progress & their achievements
- Recognize performance results and address performance issues

Management Considerations

Recognizing Achievements

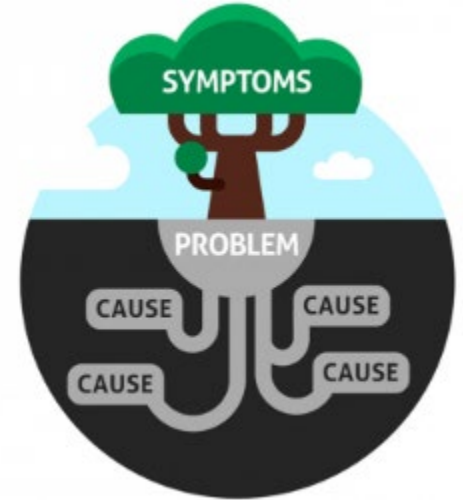
- Formal recognition
 - Award programs
- Informal recognition
 - Positive feedback (timely)
 - Small gifts (e.g. tea, coffee...)
 - Informal team awards
 - Advanced training course



Management Considerations

Performance Issues

- The Root Cause(s)
 - Environmental vs. Individual Barriers
 - Structure, Competence or Commitment
 - Non-Culpable (unable) vs. Culpable Behaviour (unwilling)
 - Organizational or Other Environmental Constraints



Group Discussion

Recall one of your former (or current) managers/leaders – who you considered to be a great leader.

What made this person a great leader? What qualities or characteristics do you want in your leader?



Leadership Challenges in a Major Case

- Ensuring the right people are available for the case to be undertaken
- Ensuring that the leader or case manager has the necessary skillsets to lead the team (i.e. to get the team member to do something that has to be done because they want to do it)
- Embracing the diverse knowledge, abilities, and skills possessed by others
- Ability to be tolerant of the diverse personalities and styles of team members
- Ability to see the “big picture”
- Being innovative but practical



PART IV:

Case Management Tools

Case Management Tools

- Electronic file management
- Scanning
- Digital forensic analysis
- Electronic courtroom

File Management

- 01 Search Warrants
- 02 Production Orders
- 03 Foreign Requests (MLAT)
- 04 Seized Items
- 05 Produced Items
- 06 CRA Records
- 07 Public Records
- 08 Other Documents
- 09 Witnesses
- 10 Accused Statements
- 11 Auditor's File
- 12 Investigator's Analysis
- 13 Notes and Reports
- 14 Related Applications
- 15 Court Documents from PPSC
- 16 News Releases and Media Reports
- 17 Privileged Material
- 18 Disclosure Correspondence

Example of a File Index

John Doe Disclosure Index.xlsx [Read-Only] - Excel

FILEHOMEINSERTPAGE LAYOUTFORMULASDATAREVIEWVIEWACROBAT

D19:fx

	A	B	C	D	E	F	G	H	I
1	04 SEIZED ITEMS								
2									
3	LOCATOR #	ITEM	DESCRIPTION	PAGES	DATE	SEIZED BY	E/D	Remarks	
4									
5									
6			*Can use format provided by Scanning Centre with modification* - see example						
7									
8		1	Seized Records from Search Location 1						
9			Location: Personal Residence of Smith at 1223 4th Avenue						
10			Date: January 1, 2017						
11									
12			Seized Paper Records						
13	S01-01-AAA-001		Tax documents for Smith dated for December 2012 - January 2013	44	2017-01-01	Andy Anderson			
14									
15			Seized Electronic Records						
16	Report		Forensic Report for electronic evidence seized from computers at residence of Smith	22	2017-01-01	Sandy Sanderson			
17									
18									
19		2	Seized Records from Search Location 2						
20			Location: Business Premises of Smith at 1223 5th Avenue						
21			Date: January 1, 2017						
22									
23			Seized Paper Records						
24	S02-01-AAA-001		Corporation documents for Smith & Friends dated for July 2013	44	2017-01-01	Andy Anderson			
25									
26			Seized Electronic Records						
27	Report		Forensic Report for electronic evidence seized from computers at business premises of Smith	22	2017-01-01	Sandy Sanderson			

Formulas01 Search Warrants02 Production Orders03 Foreign Requests (MLAT)04 Seized Items05 Produced Items06 CRA Records07 Pi ...

Scanning

- National scanning centre vs. In-house
- Certified true copies
- Continuity of records
- Specialized software – Bank statements
- Timelines

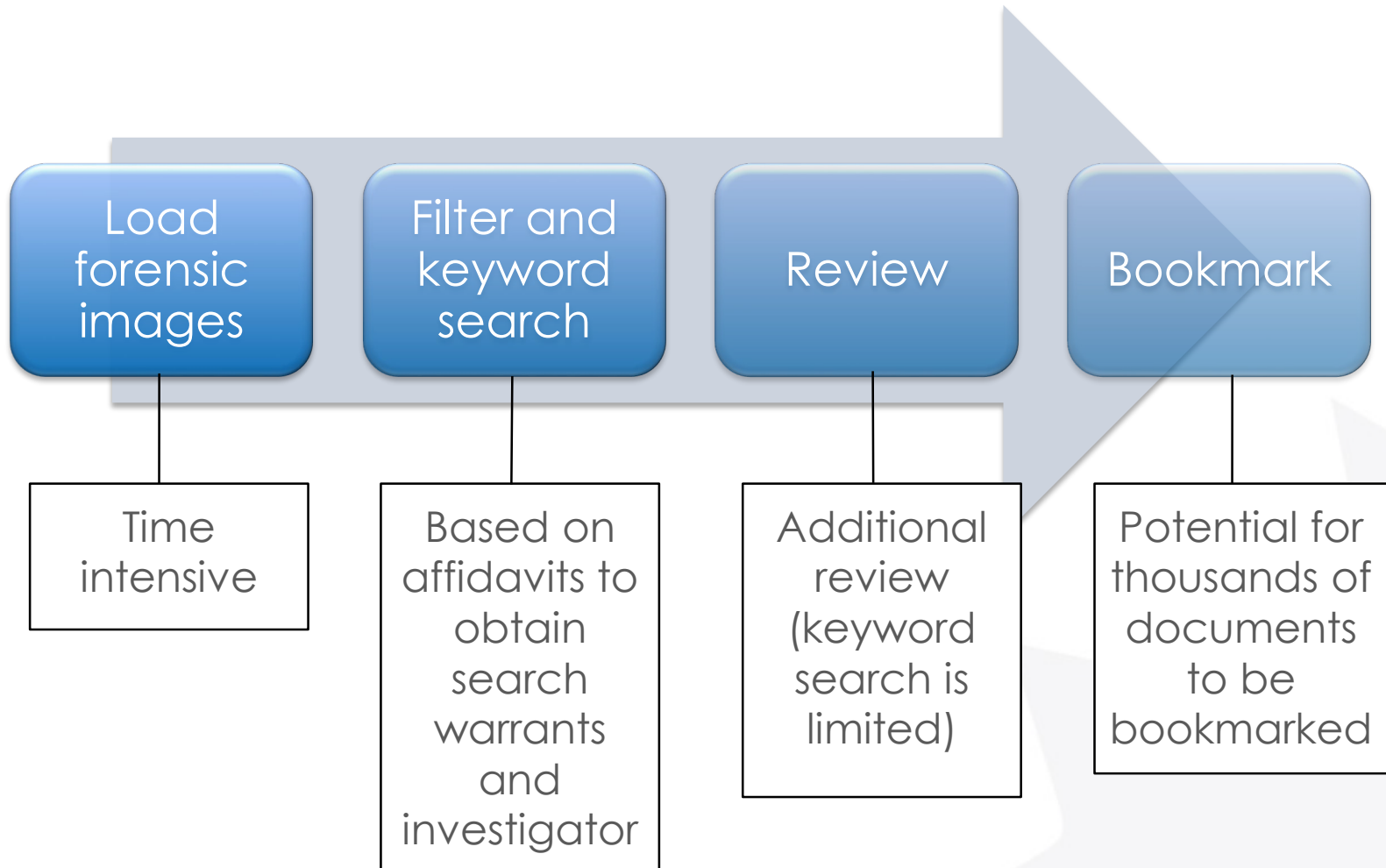


Digital Forensic Analysis

- Computer Forensic Analysts (CFA)
 - Who are they?
 - What do they do?
 - Pre-Search
 - During search
 - Post-Search
- Gatekeeper
- Challenges



Post-Search – Digital Forensics



Electronic Courtroom



Recap

- The Command Triangle Structure is used by law enforcement to manage complex cases
- The Major Case Management (MCM) model can be used for tax investigations
- Strong leadership skills and defined roles are critical to successful outcomes when using MCM

Key to Successfully Manage Financial Investigations

Managing a financial investigation to a standard where it can withstand the scrutiny of court requires a structured approach, careful planning, appropriate resources, skilled investigators, and a great leader!





OECD International Academy for Tax Crime Investigation

Managing Financial Investigations



Questions?



OECD International Academy for Tax Crime Investigation

Managing Financial Investigations



CONDUCTING FINANCIAL INVESTIGATIONS HANDBOOK



This document is a practical guide aimed at helping you conduct and manage financial investigations. It is not all-inclusive and needs to be modified to fit your specific case situation.

Throughout the guide we have tried to provide reference material that could be useful in your work as a financial investigator. It is up to the user of this guide to determine whether the tools fit their case.

DISCLAIMER -- *This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.*

TABLE OF CONTENTS

Financial Investigations	4
Evidence Basics	4
Principles of Good Planning	6
Reasons for planning.....	6
Investigation planning.....	8
Planning steps.....	8
Major Case Management Approach.....	12
Investigation Stage.....	15
Moving forward with an investigation	17
Note Taking.....	20
Best practices: Notebook.....	20
Note-taking tips for interviews	22
Using notes when testifying.....	23
Things to avoid	23
Sources of Information.....	24
Internet and open source.....	25
Internal, public and government records.....	26
Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).....	26
Foreign records.....	27
Financial Institutions.....	28
Types of records or information from financial institutions	28
Hawala	29
Cryptocurrency.....	29
Methods of proving income.....	29
Direct versus Indirect methods	30

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

Search and Seizure Powers	36
Obtaining information from third parties	37
Information to Obtain (ITO).....	38
The search.....	40
Legalities.....	40
Other Investigative Techniques	43
Foreign Evidence.....	46
Exchange of Information.....	47
Mutual Legal Assistant Treaty (MLAT)	47
Electronics (pre and post search)	48
Document scanning.....	49
File organization and disclosure.....	50
Electronic courtroom.....	50
Court Stage.....	50
Prosecution Report.....	51
Organizing documentary evidence for Court.....	51
Disclosure.....	59
Trial Processes and Testifying.....	61
Roles in the Court process.....	61
Preparing for Court.....	62
Examination-In-Chief	63
Cross-Examination.....	67
Verdict.....	70
Sentencing.....	70
Case Finalization	71

FINANCIAL INVESTIGATIONS

A financial investigation is an examination and analysis of financial misconduct, money laundering, financial fraud, regulatory breach, bribery, or other corruption-related matter, generally involving an individual, who abuses their authority for monetary gain, with a view of prosecuting the individual for their financial crime.



Financial investigations can help uncover tax evasion, public corruption, health care fraud, telemarketing fraud, terrorist financing, and other illegal activity that costs all taxpayers money.

Large scale fiscal crimes need banks and other vehicles (such as technology like cryptocurrency) to store and move funds. Even if the business is conducted in cash, such as the sale of drugs, criminals will want to use their proceeds to purchase assets or to invest; therefore, they will need to use some financial mechanism to convert the cash or insert it into the financial system.

Criminals generally like to maintain some degree of control over their assets, and as a result there is usually a paper or digital trail. The financial investigator can unravel the trail and follow it back to the offender.

At its simplest, a financial investigation tries to determine where money comes from, how it moves, and how it is used. In other words, within a financial investigation you will need to *“follow the money.”*

The Organisation for Economic Co-operation and Development (OECD) provides many publications that may be useful to a financial investigator, on topics ranging from money laundering to bribery and corruption awareness. You can access these publications at the following link: <http://www.oecd.org/ctp/crime/publications-and-reports-on-tax-crime.htm>

EVIDENCE BASICS

In order to effectively conduct a financial investigation, you must have at least a basic understanding of evidence and how it works.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

What you see, hear, or read during the investigation will be either a clue, evidence, or noise. Being able to recognize the difference between a clue and evidence will allow you to plan more effectively. Being able to differentiate between evidence and noise will allow you to be more efficient and successful.

WHAT IS EVIDENCE?

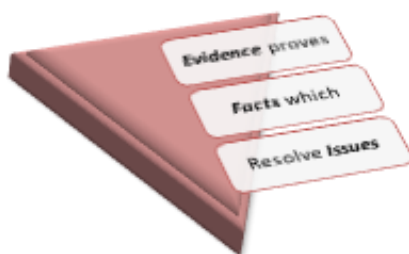
Evidence is something that tends to prove whether something else is true or valid. It is a means of allowing facts to be proven. Evidence can be physical, including documentary, demonstrative or oral / testimonial. The rules of evidence control which facts are allowed to be placed before the judge or the jury. They also control how the relevant facts are proven. Evidentiary principles regulate (1) what facts are or are not admissible before the court; and (2) the method by which admissible facts are proven.

Not everything you hear, read, or see can be used in court; you will need to understand the rules and limitations. Always ask yourself:

- What *facts* do I want to prove?
- Are these facts allowed to be placed before the courts?
- Does the *evidence* I have tend to prove any of those facts, either directly or indirectly?
- Is that evidence *admissible*?
- How do I place that evidence (witness, seized record, expert opinion, etc.) before the court?

EVIDENCE, FACTS, AND OPINIONS

Investigators frequently confuse facts and evidence, or use the words interchangeably. They are not only different, but they are fundamentally different concepts.



- A **fact** is something that is known or proved to be true.
- **Evidence** is the means to prove a fact to be true.

Issues of fact arise when a fact is maintained by one party and is contested by another. **Evidence** proves logically relevant facts. **Facts** are the reality of events. **Evidence** proves **facts** which resolve **issues**.

The other important distinction is to not confuse opinions for facts. You must not present your own opinions as facts.

Remember: A fact is an *event* or an *act*.

Opinions, conclusions, inferences, assumptions, or any other analytical tools, are not an **event** or an **act**. Analytical tools are used to weave proven facts into findings of fact by the court that will resolve disputed facts (the trial issues).

Do not let your instinct to jump to a conclusion hamper your need to identify further issues and facts that need to be brought to light. Not everyone will come to share your opinion and, more importantly, you may be wrong. Failure to dig deeper may result in an incorrect understanding of the reality of events.

PRINCIPLES OF GOOD PLANNING

All investigators and managers must use case planning, as it is an effective technique that ensures resources are used efficiently and objectives are accomplished. When planning cases, investigators must adhere to the *early decision principle* and the *best-case concept*. Managers are responsible for focusing on case plans and following up on them.

REASONS FOR PLANNING

While it takes time to prepare a plan, a properly prepared plan will help save time over the long run.

A good case plan will highlight important deadlines that must be met. In criminal investigations, being late could very likely result in a case being lost.

Tip: Set the dates in your plan by working backwards from the date charges have to be laid. That way if you meet all your deadlines, you won't be late.

WHY DO WE PLAN?

1. Increases efficiency

Planning makes optimum use of all available resources. It helps to reduce waste and avoid duplication. Planning thus increases the overall efficiency of an individual and a team.

Planning encourages a methodical and logical approach to the investigation and helps management co-ordinate the activities of the group or division. The case plan is also a good reminder of key dates.

2. Reduces risks

Planning helps to forecast and prepare for risks and allows for you to take the necessary precautions to avoid these risks. When you properly plan, you are able to distinguish between investigative decisions that address investigative steps (which is a good thing) and investigative decisions that prematurely assume the guilt or innocence of a party or the legality of a transaction. Deciding on guilt or innocence too early can give you tunnel vision, which could in turn cause you to miss important investigative steps. For example, you may not interview employees because you prematurely believe they will just lie to you anyway.

Solid planning reduces risk by helping you decide which information to follow and what to ignore, where to spend effort and where effort would be wasted. It helps support the early decision principle.

Criminal investigation cases must move through the investigation stage as expeditiously as possible. In order to achieve this and maintain a high quality investigation, you must select the years/periods or prosecution items that appear most promising for prosecution. This does not mean focusing on “low hanging fruit” but rather recognizing the CRA has numerous civil remedies available to it and needs to focus efforts on the most egregious transactions.

3. Facilitates proper coordination

Planning keeps you and the investigation on track. Following a well thought-out plan helps you coordinate the various aspects of the investigation, helps you and your manager coordinate group activities, and helps forecast individual and collective goals. Having a written record of actions planned and taken will help you defend those actions should they ever be called into question.

4. Aid to organizing

Planning helps to organize all the available information and resources. It allows you to stay focused on the case that is being investigated and not follow interesting but not relevant trails. This is not to suggest that investigators ignore evidence that may exonerate the subject; we must always be aware of evidence that is in the subject’s favor and ensure that we investigate all relevant facts. We just don’t want to spend valuable time and effort pursuing evidence that does not relate to the case we are trying to prove or on additional or unnecessary charges that will never be laid.

Planning also helps in monitoring the progress of an investigation and controlling the expenditure of time.

5. Gives right direction

Direction means to give proper information, accurate instructions, and right guidance to subordinates or team members. You cannot provide direction to the investigation without quality planning, as planning tells us what to do, how to do it, and when to do it. Therefore, planning helps to maintain the right direction.

6. Helps to achieve objectives

Planning helps keep an investigation focused on its objectives. Planning also helps us to avoid doing some random (done by chance) activities and instead “follow the evidence” by keeping the investigation focused on deciding which transactions are examined and then obtaining all the relevant evidence.

The **best case** is the one that can be successfully prosecuted and which will produce the desired deterrent effect with the most efficient use of resources. With this in mind, a good plan assists investigators and managers in establishing priorities and focusing their attention towards the most important aspects of investigations and highlights important deadlines.

7. Helps in decision making

As an investigator, you will review case plans and objectives with your manager and consult with them if or when considering changes to the existing plan. The frequency of the reviews will depend on your experience and the complexity of the case. Your manager will provide guidance throughout the planning process by approving the proposed activities and targets and/or suggesting alternative approaches or steps.

8. Streamlines time and effort

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

As the case progresses, managers and investigators will review the results of actions taken and discuss future planned actions. The best case also involves not spending extra investigative hours and money pursuing evidence which, although "nice to have," will not advance the investigation. You should instead be focusing on gathering pertinent and relevant evidence to a transaction that we allege is criminal.

This is particularly relevant in the context of acceptable delays in bringing cases to trial. Careful planning will ensure timely disclosure and reduced delays thereby ensuring you meet the principles of a timely trial as articulated in [R. v. Jordan, 2016 SCC 27 \(CanLII\)](#), a Supreme Court of Canada ruling whereby a new framework is applied for the analysis of delay under subsection 11(b) of the *Canadian Charter of Rights and Freedoms*.

INVESTIGATION PLANNING

A plan is key to every good investigation. A plan:

- is prepared **before** commencing an investigation;
- is the road map of who, what, why, and how;
- facilitates effective supervision;
- becomes part of good record keeping; and,
- promotes accountability and transparency.

Keep these principles in mind as you develop your plan, as they help explain the planning process (i.e., the reason you are doing this).

Having a plan is only the first step; you must proceed accordingly and execute the plan. There are any number of ways in which you may draw up your investigation plan; the important point is to ensure you have one developed.

Helpful Tips

While it is important that you start with a plan, investigations rarely proceed as originally predicted. You should therefore be ready to revise your plan, perhaps drastically, as new evidence emerges during the course of an investigation.

Always follow the facts, rather than trying to make the facts fit into your plan.

PLANNING STEPS

In planning and throughout your investigation, keep in mind the distinction between *information gathering* and *evidence gathering*. You must undertake all steps in the investigation with either of these purposes in mind, and you must always be aware of whether an investigative step has generated evidence or merely information which gives you knowledge of something. To be evidence it must be in a form that can be entered into court. For example, you may have knowledge that there is a bank account but you would need the bank statements and supporting affidavit in order to use that information as evidence.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

A good plan is a road map to an objective. The objective of an investigation is NOT to prosecute a subject, but rather to gather admissible evidence to support a conclusion that either an offence has or has not occurred. If the evidence leads to the conclusion that an offence has occurred, then we recommend charges based on admissible evidence via a Prosecution Report (also known as a Report to Crown Counsel or a Crown Brief.) If an offence has not occurred or cannot be proven, then we must abort and prepare an Investigation Abort Report.

A good investigation plan usually includes the following components.

1. INVESTIGATION OVERVIEW/BACKGROUND

This is a brief narrative about how the investigation came into existence. You should state how the information came to your attention, the scope of the investigation, the details given by the source, and any other relevant information. Remember you must be able to link to the elements of the offence, including **actus reus** (non-compliance with the Act(s)), **mens rea** (the existence of intent to accomplish a fraudulent scheme), and **quantum** (financial gain).

2. CLARIFY THE SCOPE AND PURPOSE

As the investigator, you would have been given a scope and purpose for the investigation; you need to be clear on what it is you have to investigate. If at any stage during the investigation you think that the scope and purpose need to be changed, seek prior approval from management.

A common pitfall of investigations is to lose focus by inquiring into interesting but irrelevant issues. If a matter does not fit within your scope and purpose, you should either seek approval to change your scope and purpose or just omit the matter from your investigation.

The purpose of an investigation is to obtain relevant and admissible evidence, both pro and con.

3. THE ALLEGATIONS

The initial stage of any investigation requires an investigator to determine whether or not the person under investigation has committed a criminal offence. That is, whether or not the facts support offences subject to criminal penalties within the jurisdiction of the statutes administered by the Agency.

Identify the conduct/event being investigated. The investigation plan should include only those allegations that are to be investigated. The investigation plan should deal with the following aspects of each allegation:

PROOF/FACTS AT ISSUE

What facts need to be established to determine if the allegation is true or false?

ARE THE NECESSARY INVESTIGATORY POWERS AVAILABLE?

In nearly all investigations, the three chief sources of information are:

- Witnesses,
- Experts or other people with relevant knowledge, and
- Informative records.

Remember: information can be evidence but not all information is evidence. For example, you interview the bookkeeper and they say that certain procedures were followed and entries were

made because the target's accountant told the bookkeeper to "do it that way because that is what the target wanted." That information should lead you to interview the accountant to confirm this information. The bookkeeper's oral evidence would be what the accountant told them directly but it would not be evidence that the target gave these instructions to the accountant. This would be hearsay coming from the bookkeeper. You will need to verify this information with the accountant to use it as evidence.

AVENUES OF INQUIRY

Here you identify the potential sources of evidence that will help you to establish the facts at issue. This may be by means of interviewing specific witnesses, examining documents and so on. This component of the investigation plan assists an investigator to consider what evidence is required to test the allegations, and what sources may be used to get that evidence. It also compels the investigator to weigh the advantages and disadvantages of different methods of gaining evidence. It is useful to break down the sources into:

- documents that should exist or that might be obtained,
- things that might have been used or created, and
- people who might have witnessed events, created documents or handled things (see 'Deciding who should be interviewed').

Your focus should not be on trying to prove or disprove something, but on thinking broadly about all possible sources of evidence about a matter. The sources may come from within your organization or from outside it.

4. INTERVIEW SEQUENCE PLAN

The interview sequence plan lists the witnesses you plan to interview, the order of the interviews, the allegations you intend to discuss, and the questions you intend to ask.

DECIDING WHO SHOULD BE INTERVIEWED

People are a valuable source of information during an investigation because:

- they may have directly perceived something with their senses — 'I saw', 'I heard', 'I touched', 'I smelled', 'I tasted';
- they may have created a document or acted upon it;
- they may have used something; and,
- they may have left a trace (for example, a computer audit trail) when using something.

All witnesses who are relevant to the investigation should be interviewed. As part of the process of preparing the investigation plan, you should identify those people who can assist in the investigation. Ask yourself: 'What people may have information or created documents or used things relating to the subject matter of my investigation?' If other sources of evidence become apparent during the investigation, revise your investigation plan accordingly.

DECIDING THE ORDER OF INTERVIEWS

The order in which the witnesses are interviewed will depend on:

- The importance of their evidence and the need for their evidence at points in time consistent with the investigative plan. For example, witness evidence needed for an ITO will be needed sooner than a confirmation statement on an invoice from a supplier.
- Their degree of association with the person who is the subject of the complaint.
- Their availability.

When witnesses are interviewed sequentially, avoid delays between one interview and the next to minimise the opportunity for collusion.

5. ISSUES/OTHER RISKS

As part of your case planning exercise, identify any potential issues up front. For example:

- The source is a public official.
- Fears exist that documents might be destroyed.
- Certain people might release information to others.
- The media may take an interest if the matter becomes public.
- A conflict of interest may be involved.
- What is your access to sources of evidence?
- Outline all issues related to culture, language and capacity.

6. RESOURCES

Create an estimate of the resources you will need to conduct a successful investigation. This could include:

- People required (including forensic and other experts)
- Travel and related costs (this includes for interviews, searches, witnesses, etc.)
- Translation
- Research
- Computer facilities
- Audio- or video-recording equipment
- Vault / storage facilities
- Transportation and vehicles

Case plans should also consider any significant vacation/leave time that is planned as this will affect the people resources that are available at any time.

7. TIMEFRAME

Give a rough estimate of the timeframe for the investigation. When determining your timing, keep in mind the national standards for completing the case stages.

You must ensure a timely conclusion to your investigation while at the same time making sure that the process is fair. Your investigation plan should include a list of specific tasks to be performed based on the avenues of inquiry you have come up with, the resources available, and the timeframe for the investigation. Try to arrange the tasks in the order they will likely be completed.

Remember that there are very hard timeframes and deadlines within the criminal investigation world, whether it is a tax investigation or a police investigation.

MAINTAINING YOUR PLAN

Follow the plan but be prepared to be flexible. A case plan is not a static document but it evolves along with the case.

You must review your plans of action, immediate objective(s) and time targets with your manager, and consult with your manager if and when major changes to the existing plan are necessary. Note that the term “manager” used here can also refer to a team leader.

Some examples of things that can occur to necessitate a change in the case plan include:

- Identification of additional search locations, or
- The need for additional production orders.

Any time you modify your allegations, you are in essence modifying your proof of the case and evidence needed. Updating your case plan will help to keep you focused on what is really needed to prove your case. Remember, a common pitfall of investigations is to lose focus by inquiring into interesting but irrelevant issues.

The manager should act as a guide and consultant throughout the planning process by assisting investigators, concurring with actions planned and targets set and/or proposing alternative approaches or steps. The manager, with their experience, may be in a better position to help determine if a plan is realistic.

Case plans are often referred to when seeking further detention orders, which have very specific timelines.

If further detention past one year is required, the court considers the complexity of the case, not the volume of work, when considering whether or not an extension will be granted. It is important to monitor case plans to ensure they reflect all the steps taken, when they were taken, and what remains to be done.

Poor Planning = Poor Quality

Poor planning is the main reason investigations suffer in terms of quality. Careful planning to reach each of the decision points in an investigation on a timely basis will maximize the utilization of time and effort and will ensure adherence to the early decision principle.

MAJOR CASE MANAGEMENT APPROACH

Major case management is an approach to solving major case crimes and dealing with complex incidents. Major cases include those crimes which need a substantial commitment of resources for a prolonged period of time or which require the application of complex investigative techniques.

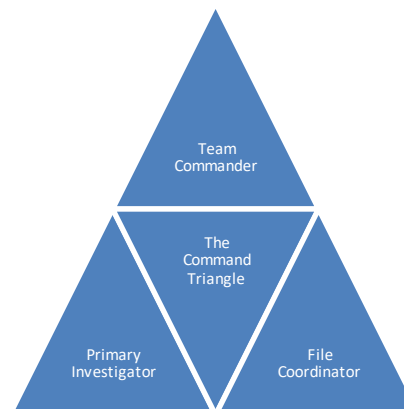
All investigations need structure. The more serious and complex the investigation, the more rigorous that structure needs to be. Within the major case management structure, investigations must include:

- Clear goals and objectives for the investigation;
- A plan for resource utilization;
- Specific direction of the case; and,
- Assignment of accountability.

The following diagram outlines the command triangle. It illustrates how the team commander, primary investigator and file coordinator must work together in order to control the flow and direction of the investigation, to lend accountability to the investigation, and to provide a balance to the investigative steps required to complete the investigation.

The responsibilities of the **Team Commander** include:

- Be flexible and realistic with goals / objectives.
- Reassign tasks and resources as needed.
- Willing to make the tough investigative decisions.
- Has oversight and is responsible / accountable for entire project.
- Will be held accountable for the investigation and the use of resources.
- Liaise with investigative partners (PPSC, other law enforcement and DOJ).



The responsibilities of the **Primary Investigator** include:

- Must know the case thoroughly.
- Must be assigned to the case full-time.
- Must be prepared to testify to the status of the case.
- Must work with other investigators, as needed.

Note that each allegation within the case may require separate investigators.

The responsibilities of the **File Coordinator** include:

- Ensure there is a reliable system for managing all sensitive material within the case.
- Track and manage all tasks and information in the case.
- Maintain an accurate account of documents, evidence, and witnesses.

MAJOR CASE MANAGEMENT TIPS AND SUGGESTIONS

When planning your team, consider the skills and personalities of the people. Generally, a major case requires:

- A disclosure coordinator assigned from the beginning of the case. Disclosure is a major component of major case management and this person should be an experienced and senior officer.
- A team composed of investigators and clerks. The size of team may vary during the case depending on the tasks being completed (e.g., more help may be needed during inventorying of seized records and at court stage).
- Team management, including teamwork, communication, and objective setting. The team must also have excellent case and evidence management skills and an organized case manager who is able to manage and delegate tasks to the team and oversee the entire case.
- A team that must be willing and able to complete the tasks assigned by the primary investigator properly with minimal supervision. Consider assigning each person a separate element of the case so that everyone has different and specific responsibilities.
- A primary investigator who must be flexible and listen to the team. You must be open to ideas and insights that may go beyond your original plan.
- A need to plan for attrition. Expect that over the course of your investigation, people will be added to your team and others will leave. Therefore, investigative processes and working papers should be standardized so that the information is clearly laid out, easily explainable and understandable.

Communication is a key element of these cases. Regular meetings where the team can share their progress, challenges and any best practices is important. Also, be flexible; working in a team can be difficult. Leaders need to assess each member's strengths and weaknesses and appoint tasks based on skillset.

SOME CHALLENGES IN MAJOR CASE MANAGEMENT

Whether working on a major case or a small file, remember that your planning techniques and skills will go a long way to ensuring success. Be aware of the following potential challenges:

- Underestimating the complexity of the investigation.
- Incorrect assumptions about roles and assignments.
- Inappropriate shifting of priorities.
- Working in a 'silo.'
- Failure to do timely reviews of case and case progress.
- Problems with multi-jurisdictional accountability.
- No accountability to senior management.
- Pride of authorship or defensiveness.
- Inadequate investigator cooperation.
- Absence of experienced supervisors.
- Shortage of experienced investigators.
- Interference from non-team personnel.
- Team information leaks.
- Unsuitable file management.
- Absence of investigative innovation.
- Failure to ask for appropriate help when needed.

- Absence of team cohesion / harmony of purpose.
- Team stress.
- Unproductive media relations.
- Absence of public support or cooperation.
- Community pressure.
- Deficiencies in finances and resources.

“A good investigation starts with careful planning and preparation, a clear understanding of the parameters of the investigation, and with proper authority. Care and attention spent in getting it right at the outset will avoid considerable difficulties later on.” [NSW Ombudsman – Investigating complaints – a manual for investigators, Sydney 2004]

INVESTIGATION STAGE

When we choose not to investigate, we will never know the outcome. On the other hand, we often do know about the outcome when we choose to investigate when we should not have - the results might even make the daily news. Generally, as long as our actions have been reasonable, we should not have major problems. Our investigations are legal; however, the way we investigate is often the subject of further litigation.

That is why decisions on whether an investigation should continue need to be made early on and revisited throughout the investigation.

MAKING THE DECISION TO CONTINUE AN INVESTIGATION

During the initial analysis of any investigation, the information you gather will assist in deciding whether the case should be continued or not, to ensure we prosecute the right cases and not the wrong cases. This analysis will determine what your first steps will be, and sketch out additional investigative steps.

The main objectives of these initial steps of an investigation are:

- to determine whether to continue the investigation, and
- if continuing, to help plan the rest of the investigation.

In making our decision we need to be guided by both the *early decision principle* and the *best case concept*.

Let the evidence guide you. We may not be able to prove the offences and identify the evidence available if we have not completed a thorough analysis early in the investigation. There may be other factors that will come out.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

Make sure you address the following in analyzing any decision whether or not to proceed in an investigation:

- What offences?
- What evidence?
- Charter concerns?
- Other factors?

At the end of the investigation, we decide whether to recommend that charges will be laid. We will need evidence to prove those offences. In order to assess the evidence for your case, ask yourself:

- What facts do we need to prove the actus reus and the mens rea components of each offence?
- What evidence is there to prove the facts?
- What can we do to cover the shortfall?

A **weakness** is the inability to prove any fact or set of facts that prove the elements in an offence. Continue to look for potential weaknesses while conducting the investigation and continue to look for evidence to use to overcome them. You should consider and address any possible defences as well.

In assessing the strength or weakness of evidence, you must consider:

- The requirements of the legal system as it relates to evidence.
- The relevance of the evidence.
- The admissibility of evidence.
- The materiality.
- The related costs to obtain evidence.
- The necessity.

Once we know the evidence we will need and if it is available, we also need to ensure that the evidence is obtained in a manner that does not breach the *Canadian Charter of Rights and Freedoms*. Charter violations could result in:

- Charges being stayed due to issues such as delay or abuse of process. (Subsection 24(1) of the Charter)
- The exclusion of evidence. (Subsection 24(2) of the Charter covers exclusion of evidence.)
- The nullification of a judicial process, e.g., a search warrant.

Ultimately, if the crucial evidence is excluded the Crown may no longer be able to prove the case.

You may have to decide whether proceeding with the investigation is in the public's interest. Factors that may inform this decision include:

- Health and/or age of subject,
- Previous criminal convictions,
- Quantum (\$) / significant case,
- Statutory / prosecution limits, and,

- Alternative remedies.

Before making the decision to proceed or abort an investigation, ask yourself this important question: **Does it make sense?**

If something does not make sense, there is probably important information that is missing. Did you make any assumptions in your rationale? What are the risks if the assumptions made are not accurate? Can we realistically prove this case? It's not just a question of guilt or innocence.

We must objectively review all the evidence gathered with an open mind to see how it pertains to the alleged offences. Watch out for these common errors made during the initial analysis of the evidence gathered.

INITIAL ANALYSIS - COMMON ERRORS

- Ignoring exculpatory information.
- Failure to anticipate and address all reasonable defences.
- Failure to understand the business and the accounting process, thus not recognizing possible key evidence
- Assuming that the subject will testify.
- Not considering statutory deadlines.
- Not planning and preparing for witnesses.
- Not developing a theory of the case.
- Not properly assessing the application of the *Jarvis* and *Ling* cases.
- Failure to consider proof of mens rea early in the investigation.

At this point, when evaluating the case, you must ask yourself some key questions. Is it likely that there will be enough evidence to prove the case in criminal court? This includes whether the case meets your Crown's prosecution criteria such as "is there a reasonable prospect of conviction" and whether the prosecution of this case serves the public interest. It is important for investigators to realize that even though they feel they have the evidence to prove the case, they have to meet the mandate of their Crown counsel.

MOVING FORWARD WITH AN INVESTIGATION



Remember to keep updating your case plan!

The initial analysis of an investigation is designed to ensure the right cases are prosecuted and the wrong ones are not. This process will provide you with a complete understanding of the case,

including the processes, the operations, the people, and the evidence, so that everyone can make informed decisions.

At this point, you should have a summary of key information gathered during the initial analysis and the decisions made concerning whether to conduct a full investigation. This should include who is targeted, what years, what offences, and how the evidence will be obtained. A full scale investigation will gather the evidence to prove the case “beyond a reasonable doubt.”

Remember, the purpose of an investigation is to **obtain the evidence** needed to prove or disprove the offence(s).

Now that you’ve completed the analysis, you’ll put your recommendations into action. You may have to gather additional evidence based on what information and evidence has already been gathered to support the alleged offence(s). Evidence and information are constantly re-evaluated.

Evidence is gathered by using various investigative tools, such as warrants, production orders, interviews, and surveillance. It would include:

- Evidence that the investigator knows and believes to exist. For example, the search warrant identifies documents and things that the investigator has reasonable grounds to believe exist and may afford evidence.
- Evidence that investigators came across that was not listed on the warrant.
- Information that became apparent through various investigative activities that led to other evidence.
- Evidence from witnesses including statements and documents provided such as invoices, receipts, cheques, and emails.

At the conclusion of the investigation stage, you will make a recommendation regarding the prosecution of the case, including decisions on the offences, parties to be charged, time periods, and the evidence to be used. The recommendation to proceed with the case in court is summarized in a prosecution report, and it outlines the evidence secured and how the evidence will prove the case. If at any time during an investigation you believe that the case cannot be proven, the case should be closed and an investigation abort report should be prepared.

Many factors can influence how strong or weak an investigation may be. The key factor is evidence: whether or not we will have the evidence to prove the facts which will be needed to prove the offence(s), but also whether the evidence is available, and if there is a cost to obtain it. Other factors include type of publicity expected, cost of the investigation, and coverage.

In considering the evidence, remember these points:

- The prosecution report requires a breakdown of the offences arranged into elements, and you must prove the elements with evidence.
- You should revisit the offences and how the evidence proves or disproves them throughout the investigation stage.
- Be aware of any gaps in the evidence and try and determine ways of securing the evidence to bridge those gaps.

DEVELOP A THEORY OF THE CASE

Every investigation needs a theory. You'll follow clues to develop a theory, and then your job is to prove or disprove your own theory by examining the information you uncover. Without knowing what you are investigating, i.e., having a theory, you will not have a methodology for proving or disproving the case. For example, the search or other investigative activities may uncover important information or evidence that changes the dynamics of the case. This could include additional schemes, additional culpable persons, additional offences, additional assets or liabilities, possible defences, quantum, and even the intent. But without a theory you will just be analyzing information without being able to understand its importance or context.

RE-EVALUATE THE THEORY OF THE CASE

As you continue the investigation, you must continue to ask yourself questions. Is the theory still valid based on the evidence discovered to date? Is the evidence that you thought would be available still available? Are there any alternative theories to prove the elements of the offence?

Re-evaluating the theory of the case may require additional or different offences being alleged. It will be up to you as the investigator to consider how any changes or unexpected developments affect your case.

FACTORS TO CONSIDER DURING THE INVESTIGATION STAGE

During the investigation stage, these factors may influence the outcome of the investigation:

- Additional evidence points to the innocence of the accused or brings into doubt their guilt.
- Key evidence turns out to be unavailable and there is no alternative means to prove a key element – e.g., a key witness dies and no video interview has been completed.
- Target flees the country. A case may be aborted if this happens, but there are other alternatives such as laying a charge in absentia, trial in absentia, or extradition. The Crown will advise on the alternatives in a situation like this.
- A Charter issue in the case will affect the admissibility of evidence. If key evidence is not available due to a Charter/Constitutional issue, you must consult with Crown counsel to determine if sufficient evidence still exists.
- Evidentiary issues such as privilege and disclosure. These circumstances will also require you to consult with Crown counsel for direction.

At the end of the investigation stage you will have one of two outcomes:

- A prosecution report outlining your case, including the elements of your recommended offences and the evidence gathered to prove the elements.
- An investigation abort report specifying the evidentiary deficiencies that have been uncovered that make the case unsuitable for prosecution.

Your case documentation will include the actions taken to that point and the reasoning behind the actions. This is important to help defend a lawsuit stemming from the intrusive nature of our investigative activities.

NOTE TAKING

Notes are *crucial* and the foundation of an investigation. They can often come into play months or years after an incident.

WHY IS IT IMPORTANT TO KEEP GOOD NOTES?

There are three common barriers to effective note-taking: stress, interference, and time. You must overcome these barriers to ensure your notes are thorough and clear.

Notes are not limited to simply refreshing your memory. Notes play a critical role in judicial proceedings where there is a direct link between your notes, your report, and your testimony.

Notes prepare you for court. Notes assist in recounting details that are difficult to remember months or years later.

It is no longer acceptable to make statements without your notes. You may remember details without looking at your notes but defence counsel will call you into question if your statements are not covered off in your notes.

The courts recognize that an investigator's notes can become a point of discrepancy that will determine whether or not the investigator is credible.

Notes can capture details that seem very routine but at a later date become relevant facts.

Remember, both the prosecution and the defence can use the notes to their advantage.

WHAT IS INVESTIGATIVE NOTE TAKING?

Investigative note taking is the clear and accurate recording of:



- What was heard,
- What was touched,
- What was smelled (e.g. drugs and tobacco), and
- What was seen.

More than just a brief memorandum to assist the memory, investigative note taking is a series of memoranda giving an outline of facts, topics, events, communication, observation, comments, etc. You can record notes during an investigation by hand in a notebook or other stationery, or electronically.

BEST PRACTICES: NOTEBOOKS

Bound notepads make best notebooks: Notebooks should be bound notepads which can be compact to store in your pocket or on your person. Use a single book for each case.

Identification: Put in your name in your notebook. Also, the case name and/or number should be clearly identified.

DISCLAIMER -- *This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.*

Dates and times: Insert the date, the beginning and the ending times in your notes. This is very important for notes taken when executing search warrants and taking statements. Ensure you note time of entry, time an item is seized and passed on to another officer, time of any notable incident, and time of exit.

Page numbering: All pages should be consecutively numbered.

Think a minute about your material before you start making notes.

Document the **who, what, where, when, and how**. Be careful of assumptions or opinions, especially around the “why.”

Diagram or Describe. The identification of subject at an event/search is a very important detail to include in your notes. It may establish the identity of the accused in court. Also, a description and a diagram of the scene is also beneficial to include in your notes.

When you are under time constraints, pressure, stress or interference, just focus on the **key words or phrases**.

Develop abbreviations for words that are used frequently. However, in formal reports abbreviations should be avoided unless clearly defined.

Do not discuss events with others prior to making your notes about those events.

Make notes as soon as possible. Make your notes as events occur or, if that is not possible, at the first opportunity. The longer the delay in making your notes, the greater the question will be regarding their reliability.

Just the facts. Investigator’s notes must not contain any opinions.

When using **verbatim quotes**, do not deviate from the actual words spoken by the person.

Review notes immediately and fill in any missed information.

Never tear out pages. Do not remove pages from your notebooks. If you do so, you will have to testify to why they were removed, and may lose credibility.

Correct errors with a single line and initial. Write the correct entry in the area as close as possible to the crossed out portion. Do not erase or use “whiteout” or other corrective fluid.

Do not leave any **blank spaces**. Draw an “X” or diagonal line across blank areas.

Secure your notes. Maintain secure custody of your notes to prevent loss or misplacement.

Keep everything. If you type out a copy of your handwritten notes, the original handwritten version must be preserved for disclosure purposes.

Do not include anything about **confidential informants** in your notes.

WHY INVESTIGATORS KEEP NOTES

The following list summarizes why investigators must keep good notes:

- Refreshes memory/aid to memory.
- Records an event/file history.
- Aids in preparing reports.
- Assists in defending accusations of misconduct.

DISCLAIMER -- *This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.*

- Provides a record of the reason(s) justifying a particular course of action (especially in the context of search and seizure.)
- Demonstrates professionalism.
- Improves your testimony.
- Improves your credibility in court.
- Normal investigative procedure.
- Provides details for Information To Obtain.

EFFECTIVE LISTENING

Almost everyone believes that they are effective listeners. However, effective listening, especially in an interview situation, is a skill that needs attention and practice. Note-taking helps you listen; it does not interfere with listening and comprehension.

To be an effective listener, remember to stay focused on the interviewee and the topic at hand. Resist distractions. Don't hesitate to ask for clarification. Keep an open mind, and listen for ideas worth following up on. Be aware of your own body language and how the subject might interpret your reactions.

NOTE-TAKING TIPS FOR INTERVIEWS

1. Always be prepared in advance and discuss strategy with your partner.
2. Use recording devices as needed.
3. Tell interviewees that notes will be taken and the interview will be recorded.
4. Separate questions asked from the interviewee's replies.
5. Capture quotes verbatim.
6. Be efficient, but don't rush, and don't hesitate to ask for more time to write if required.
7. Capitalize on thought speed. People usually speak 100 – 200 words per minute, but can think up to 500 words per minute.
8. Check to ensure all questions were asked.
9. Type up the notes of the interview as soon as possible after each interview.
10. Have the interviewee review the notes.

In general, don't worry about spelling or omissions. Do your best to capture the dialogue but it is more important to keep the conversation flowing. Use abbreviations and point form as needed, and ask for time to finish writing as required.

Note taking does not capture:

- Emotion
- Body language
- Voice tone
- Background (record distractions, etc.)

Remember, note taking captures the words as spoken but not necessarily the truth.

USING NOTES WHEN TESTIFYING

In the days leading up to a court appearance, take the time to:

- **Review** your notes, reports, working papers, the evidence, and the charges to ensure you have everything you need to testify.
- **Read** everything to ensure your understanding of the theory, processes, and events of the investigation.

On the court date, remember to bring everything you'll need to support your testimony, including your notes and reports, the working papers, the evidence, and the charges.

If you have made proper and thorough notes, it will be easy to refresh your memory. At trial, your credibility as a witness is enhanced when you refer to your notes only when necessary and demonstrate that you have an independent recollection of the events.

Remember to ask for permission to refer to your notes. Your testimony should be based on what you remember, saw, heard, felt, or smelled. Your notes are hearsay and cannot be used as evidence. When you cannot remember a detail, a judge may give you permission to review your notes to refresh your memory.

THINGS TO AVOID

Bad notes lead to bad testimony; bad testimony can cause your case to go off the rails. You may lose credibility, rendering your hard work unreliable in the eyes of the judge. If that happens, you will likely lose the trial.

Here are things you should avoid when it comes to note-taking.

1. **Lack of notes or no notes** – Cases have been lost by the failure to provide adequate notes. It is not just search notes that are important. You need to log and document each telephone call, personal call, investigative step, and decision along the way and ensure that others working on the case do the same.
2. **Inconsistency.** Consider this scenario, where two investigators have taken notes:
 - 1st partner - thorough notes
 - 2nd partner - sparse notes

Inconsistency between two investigators shows a weakness, which be exploited by the defence. In a case like this, it is the second partner who may be grilled for they lack of detail but it is also possible for defence to allege the first partner fabricated their story.

Investigators should communicate before making notes to ensure they have a consistent naming convention for locations during the search. This is not to collude in taking notes, which is not permissible, but rather to ensure consistency in descriptors and avoid confusion later, especially at trial. It is okay if the notes vary, as perceptions may be different or watches not synchronized, but the major events should be described using the same terms.

3. **Illegible notes.** If your notes are not legible, there are two possible implications. It's possible that you will not be able to decipher your own notes and therefore lose credibility as a witness. It's also possible that defence counsel could claim that disclosure has not been met, since they cannot ascertain what the notes mean.

SOURCES OF INFORMATION

Investigators of financial crimes develop hypotheses and draw conclusions based on available information. A financial investigation combines investigative techniques with accounting and auditing practices. Facts that are relevant to a financial investigation may come from a variety of sources. Traditional fact-finding methodology is highly relevant in financial investigations, and includes interviews with suspects, searches of residences and/or offices, forensic examination of computers, and the collection and analysis of financial and business records such as bank statements, tax returns, etc.



Identifying the type of information needed allows you to determine where such information might be held. Once you have determined where the required information is held, you will consider the appropriate method to obtain the information and what challenges you may face. This will help you develop an action plan to collect the information.

Discovering, understanding, analyzing, and using information are key to a successful investigation since:

- Sources of information can *be* evidence or *lead to* evidence.
- Sources of information will provide reasonable grounds for search warrants, production orders, and other investigative steps.

It's critical to focus on the information that will resolve the allegations, and not just information for information's sake.

Things to remember:

- Anyone may be a source of information. While information from the target is best, other sources of information may include relatives, business associates, ex-spouses, etc.
- Go to the source.
- Have the legal authority to obtain the information.
- Ask yourself, who will speak to this in court?
- Consider privacy, privilege, and confidentiality issues or concerns.

INTERNET AND OPEN SOURCE

The internet and related technologies make a wealth of information available through general search and with specialized online search tools. “Open source” intelligence, or OSINT, is that which is readily available to the public, usually through internet search. Types of open source information include:

- the media (e.g., newspapers, television, radio, newspapers, books, magazines, etc.);
- user-generated content on social media sites such as YouTube, Facebook, blogs and Reddit;
- government (federal, provincial/territorial, municipal or foreign) sites;
- geospatial (location) data;
- photos (including metadata); and,
- commercial business sources.

The benefits of open source information include its ease of access, and how much information is available through passive search. Two of the main drawbacks include the sheer volume of information, and the challenge of assessing its reliability and credibility.

Open source information is not limited to that which can be retrieved with a search engine like Google, although the “surface web” is an important component of open source. In fact, up to 99 per cent of the web may be inaccessible via search engines.¹ Investigators can use other tools to access and sort the data that exists in websites, databases, and other online sources that are not indexed by Google or other search engines. For example, search engines such as Shodan.io search the “internet of things,” the network of devices that can send and receive data embedded in everyday objects such as printers, alarm systems, and appliances.

Given the volume of information that is currently available, let alone the millions of new data points that are created every day, you must consider your goals and objectives when beginning an open source search. You should develop and follow a framework to ensure you are collecting only data that will be relevant to your investigation, and not just chasing trails that may be interesting. There are tools that can help narrow your search and sift through reams of data to narrow down the results to more reasonable and manageable proportions, with varying levels of intrusiveness and risk of discovery by the target.

When dealing with open source / internet searches, remember the following:

- Start with a focused list of what you know and what you want to learn about the target – education, interests, addresses, phone numbers, websites, etc.
- Consider safety and security. Websites, in particular those of your target, will likely be tracking your IP address.

¹ <https://www.seeker.com/how-much-of-the-internet-is-hidden-1792697912.html>

- Understand your findings and potential limitations. Is the information from a credible source? Is it reliable?
- Are there any privacy issues that need to be considered?

INTERNAL, PUBLIC AND GOVERNMENT RECORDS

Information records can be obtained from a variety of sources. Records internal to the CRA include:

- Colleagues
- Industry specialists
- Headquarters
- Knowledge and research portal
- Wiki

Public records include:

- Real estate (land title, assessments, etc.)
- Corporate registry
- Partnerships
- Personal property search
- Court records

Sources of information from the municipal, provincial/territorial and federal government include:

- Law enforcement
- Tax authorities
- Business licencing
- Building permits
- Passport applications
- Citizenship and immigration
- Motor vehicle licensing
- Securities branch
- FINTRAC (see below)

FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA (FINTRAC)

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada's financial intelligence unit. Its mandate is to facilitate the detection, prevention, and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information under its control.

Consider using a Voluntary Information Record (VIR) at the early stages of cases with an offshore/international element or where you identify transactions that a reporting entity would be required to report to FINTRAC. The existence of such a transaction indicate that FINTRAC may be in possession of information concerning the target of the investigation.

FINTRAC will review all VIRs and will examine their database to determine if a disclosure is warranted under the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

FINTRAC will only release information when they have met the thresholds included in the PCMLTFA. They may conduct an analysis of their records based on the VIR; however, there is no guarantee that you will receive a disclosure in return. Additionally, even if FINTRAC responds to the VIR it will not be immediate and therefore, you must continue actively pursuing other investigative steps to keep the investigation progressing in a timely fashion. The information that may appear in a disclosure of designated information is set out in the PCMLTFA and in the regulations, and includes the following:

- Case overview;
- Fact sheet;
- Transaction spreadsheets;
- I2 chart; and,
- Publically available information.

FOREIGN RECORDS

You may be required to contact law enforcement agencies such as the International Criminal Police Organization (INTERPOL) or the European Police Office (EUROPOL) during the course of an investigation. When exchanging information with another country, you must be aware of guidelines and restrictions outlined in the relevant tax treaty, tax information exchange agreement (TIEA), or mutual legal assistance treaty (MLAT).

A financial information unit (FIU) is a central, national agency responsible for receiving (and as permitted, requesting), analyzing, and disseminating disclosures of financial information to the competent authorities. FIUs offer law enforcement agencies an important avenue for information exchange. FIUs are able to provide a rapid exchange of information (between financial institutions and law enforcement / prosecutorial authorities). What FIUs can disclose or share varies from country to country. In general, they disclose information:

- concerning suspected proceeds of crime and potential financing of terrorism, or
- required by national legislation or regulation in order to counter money laundering and terrorism financing.

For additional information about the exchange of information with foreign sources, including Competent Authority, see “Types of Foreign Evidence” in the next section.

FINANCIAL INSTITUTIONS

Financial institutions include:

- banks (including authorized foreign banks),
- trust companies, and
- credit unions.

Non-traditional financial institutions include:

- insurance companies,
- investment/security firms,
- casinos, and
- money service businesses (MSBs).



There are four categories of financial services provided by MSBs:

- Money transmission (data networks security corp.)
- Cheque cashers (payday loans.)
- issuers, sellers or redeemers of traveler's cheques, money orders, or stored value (such as American Express.)
- Currency dealers or exchangers (such as Forex.)

TYPES OF RECORDS OR INFORMATION FROM FINANCIAL INSTITUTIONS

Financial institutions, both traditional and non-traditional, can be a rich source of information during an investigation. Key types of records and information include:

- Opening documents
- Signature cards
- Copies of identification provided
- Incorporation documents
- Account statements
- Cancelled or cleared cheques (both sides)
- Deposit slips and supporting documents
- Withdrawal slips
- ATM deposits and withdrawals
- Credit and debit memos
- Large cash transaction reports
- International wire transfer records
- Electronic funds transfer records
- Loan applications
- Loan ledger sheets
- Loan disbursement documents
- Loan repayment documents
- Loan correspondence files
- Collateral agreements
- Credit reports

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

- Mortgage documents
- Details of annual interest paid
- Loan amortization statements
- Term deposits
- Security/Investment purchase and sale records
- Insurance policies

HAWALA

In earlier times, International Financial Transfer systems were used for trade financing. They were created because of the dangers of traveling with gold and other forms of payment on routes beset with bandits. Local systems, known as hawala systems, were widely used in China and other parts of East Asia and continue to be in use there.

At present, primary users of hawala are members of expatriate communities who send remittances to their relatives in East Asia, Africa, Eastern Europe, and elsewhere. The system is swifter than formal financial transfer systems partly because of the lack of bureaucracy and the simplicity of its operating mechanism:

- Instructions are given to correspondents by phone, facsimile, or e-mail.
- Funds are often delivered door to door within 24 hours by a correspondent who has quick access to villages even in remote areas.
- The minimal documentation and accounting requirements, the simple management, and the lack of bureaucratic procedures help reduce the time needed for transfer operations.

CRYPTOCURRENCY

Cryptocurrencies are a type of digital currency created using computer algorithms. It's not available as bills or coins, though it can be converted into traditional currencies. No single organization, such as a central bank, creates digital currencies. They are based on decentralized, peer-to-peer (P2P) networks. The “peers” in this network are the people that take part in digital currency transactions, and their computers make up the network.

The most popular cryptocurrency is Bitcoin. Bitcoin is a digital currency created in 2009 that uses decentralised technology for secure payments and storing money that doesn't require banks or people's names. Bitcoin works on a public ledger called blockchain, which holds a decentralised record of all transactions that is updated and held by all users of the network. It is not backed by any country's central bank or government. Bitcoins can be bought, sold, saved or transferred. Bitcoins can be traded for goods or services with vendors who accept Bitcoins as payment. They can also be converted into traditional currencies.

METHODS OF PROVING INCOME

A key component of financial investigations is determining the financial gain or profit derived from the predicate offence. Establishing the amount of the illegal proceeds often supports the motive for the crime and provides circumstantial evidence of the predicate offence. For this reason, it is essential that financial investigators be proficient in the various methods of proving income and determining which method is applicable, based on the facts and circumstances of a particular investigation.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

DIRECT VERSUS INDIRECT METHODS

DIRECT METHOD

“Specific item” is the most common method of proving unreported income. It is supported with direct evidence, making it the most difficult for the subject to refute. The evidence identifies the specific transaction(s) involving the subject. It is best suited to cases where the books and records are complete and reliable but they do not reflect some of the transactions. Direct methods of proving income:

- are supported by direct evidence,
- prove a fact,
- do not prove that everything else is correct, and
- can be corroborated with an indirect method

Examples of direct evidence:

- A duplicate bank deposit slip to support the deposit.
- A cancelled cheque from the bank to support the deposit slip.
- A sales invoice supporting the payment made by cheque.
- An eyewitness confirming the reason for payment, receipt of sales invoice.
- Books and records fail to include this transaction.

With direct method prosecution, you have to prove:

- Quantum – financial gain.
- Actus Reus – the act of non-compliance.
- Mens Rea – intent/knowledge.

If the direct method cannot be used, the only option will be to use an indirect method.

INDIRECT METHOD

Indirect methods don’t provide direct evidence of tax evasion. They quantify the amount of unreported income available to the subject during a particular period and place it in the hands of the subject. This can be very helpful in proving that the subject under investigation intended to commit tax evasion. For example, you may observe the subject’s apparent wealth and/or standard of living is greater than reported income. If the suspect is taking cash or other payments that cannot be directly traced, you may not be able to use specific item methodology to trace the transactions if the books and records are non-existent, incomplete or unreliable. Indirect methods quantify the money and place it in the hands of the accused and either directly or indirectly establish that the money received is from a taxable source.

With all indirect methods an investigator has to prove:

- the accumulation of wealth,
- the likely source of the funds, and
- the intent/knowledge of the subject.

Indirect methods use circumstantial evidence to lead the court to draw inferences. There are four types of indirect methods of proof:

- Net worth,
- Expenditures,
- Bank deposits, and
- Cash.

Indirect methods are supported by circumstantial evidence. They apply when you cannot follow a direct trace for specific transactions, and inferences are needed to establish a fact.

With indirect method prosecution, you have to prove:

- Quantum – accumulation of wealth, expenditures, opening balances (every item must be proven for criminal purposes), etc.
- Actus Reus – probable non-compliance (likely source / non-reporting.)
- Mens Rea – intent/knowledge.

As an investigator, you will need a thorough understanding of the business operation, accounting systems, follow the money/cash, which will help determine which method to use.

The prosecution report must specifically address the mens rea; that is to say, the willfulness of the subject. All indicators must be reported to inform the Crown of all the relevant details. For example, it is much easier to demonstrate mens rea when we can demonstrate that the subject did not report a certain number of specific sales but we can show his implication in the transactions. For indirect methods, we may not have specific sales (or we may have a smaller number). Hence, all relevant details that will show his knowledge and involvement must be included.

Possible Charter violations must be considered in all cases in terms of impact on available evidence.

What can someone do with their money?

<u>If they:</u>	<u>Look for the:</u>
Deposit it	BANK ACCOUNT
Keep it home/hoard it	CASH ON HAND - ASSET
Buy something	ASSET OR EXPENDITURE
Spend it on something	EXPENDITURE
Pay off a debt	DECREASE IN LIABILITY

COMMON FACTORS AMONG ALL INDIRECT METHODS

There are some factors common to all indirect methods. We're trying to establish what happened during the investigation period to cause the change in the target's financial position. The most important starting point is the cash on hand. If you were to review all indirect method cases, you'd find that the most common defence is: "my beginning cash on hand was much higher than what the government purported it to be." When investigating a case using an indirect methodology, remember the following points.

- The likely source of funds provides a theory for the case.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

- Follow the leads and claims of innocence made by the subject and any other person or piece of evidence and investigate them.
- The dollar value of the discrepancy doesn't have to be proven with absolute certainty. It should be the least amount the subject had during the period.
- Make sure all calculations are correct and supported. Inputting errors or mathematical mistakes can come back to bite you on the stand and hurt your credibility.



The following section contains four formulae for using indirect methods: the net worth formula, the expenditures method formula, the bank deposits formula and the cash method formula.

NET WORTH FORMULA

<i>ADD</i>	ASSETS
<i>LESS</i>	<u>LIABILITIES</u>
<i>ADD</i>	NET WORTH
<i>LESS</i>	<u>PRIOR YEAR'S NET WORTH</u>
<i>EQUALS</i>	INCREASE IN NET WORTH
<i>ADD</i>	ADJUSTMENTS – ADDITIONS
<i>LESS</i>	<u>ADJUSTMENTS - DEDUCTIONS</u>
<i>EQUALS</i>	INCOME PER ADJUSTED NET WORTH
<i>LESS</i>	REPORTED INCOME
<i>EQUALS</i>	<u>UNREPORTED INCOME PER NET WORTH</u>

For criminal prosecution, the known personal expenses must be fully supported by evidence.

EXPENDITURES METHOD FORMULA

ADD: APPLICATION OF FUNDS:

PERSONAL EXPENDITURES

INCREASE IN ASSETS

DECREASE IN LIABILITIES**LESS: SOURCES OF FUNDS:**

REPORTED REVENUE

NON-TAXABLE SOURCES

DECREASE IN ASSETS

INCREASE IN LIABILITIES***EQUALS*****UNREPORTED INCOME**

BANK DEPOSITS FORMULA

<i>ADD</i>	TOTAL DEPOSITS
	INCREASE IN CASH ON HAND
	CURRENCY EXPENDITURES
	<u>NON-CASH INCOME</u>
<i>EQUALS</i>	TOTAL FUNDS AVAILABLE
<i>LESS</i>	NON-INCOME DEPOSITS AND ADJUSTMENTS
	<u>INCOME FROM OTHER SOURCES</u>
<i>EQUALS</i>	GROSS REVENUE FROM LIKELY SOURCE
<i>LESS</i>	<u>REVENUE REPORTED FROM LIKELY SOURCE</u>
<i>EQUALS</i>	<u>UNREPORTED REVENUE FROM LIKELY SOURCE</u>

CASH METHOD FORMULA

<i>ADD</i>	ALL CASH USES
<i>LESS</i>	<u>KNOWN CASH SOURCES</u>
<i>EQUALS</i>	<u>UNREPORTED INCOME</u>

RECOMMENDATIONS WHEN USING AN INDIRECT METHOD OF PROOF



If you are conducting an investigation that will require an indirect method of proof, keep the following tips in mind.

- Discuss issues with Crown early and throughout your investigation.
- Analyze every item.
- Prove Cash on Hand opening balance with reasonable certainty.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

- Establish the likely source of the money.
- Follow ALL leads; even if the lead seems insignificant and whether it may be to the advantage of the target or not, follow all leads.
- Reverse engineer. Start at the end and work your way back to the evidence to make sure there are no gaps.
- Conduct regular technical reviews and ask for feedback.
- Share what you learn with your team members.
- Regular team discussions can be helpful to avoid tunnel vision and ensure no leads are left unexamined.
- Keep your mind open at all times. If you need to change your strategy, it's better to do so earlier rather than later.
- Remember when testifying that the judge is not an accountant. You will be required to clearly explain your case and the methods used without using jargon.
- Consider and then eliminate potential defences by completing a thorough investigation of ALL financial activities.
- In proving your case you must get used to proving negatives such as no other source of income exists.

CONSIDERING DEFENCES TO INDIRECT METHOD

Through experience, we see certain defences arising time and time again. Considering them as you are assembling your evidence will help you to build a solid theory of your case.

In looking at cash on hand, ask yourself what evidence there may be that the money could be from loans or repayments of loans. Can you request production orders for bank accounts of potential lenders or borrowers? You will need reasonable grounds to pursue this.

The subject may claim "it's not my money." Ask yourself who is benefitting from the money. Where does it go? Is it being drawn in cash with nothing to show for it? If it's being drawn, there is a purpose – expenses, liabilities paid down, personal expenses. Could it be illicit activity? You will need to know what the subject is doing with the money to prove who benefits from it.

The subject may insist the income is not taxable. Make sure that you have followed all leads, solidified your likely source, and investigated all potential non-taxable sources claimed.

FACTORS THAT CONTRIBUTE TO A STRONG ANALYSIS

By having a complete and thorough understanding of the business, the financial activity, patterns, and the life of the target, you will be able to contradict certain arguments made by the defence, simply because they don't make sense given the set of facts.

These factors will help support a strong analysis, and lead to a stronger case:

- Oral and documentary evidence.
- Credibility.
- Reasonable and realistic analysis.
- Supporting analysis (corroboration).
- Reasonable defences have been addressed.

- Presentation: Your road map. How will you present your analysis, the schedules? Your presentation should be simple, easy to follow and understand
- Evidence – tear down your case in order to build it up. Consider supporting evidence to corroborate your analysis (such as a projection). Identify any weaknesses and discuss them with the Crown.
- Understand the effect of the various elements on your analysis. This will help you on the stand in explaining the effect (or lack thereof) of any possible errors pointed out by the defence.

If you:

- have a thorough understanding of the business operations and accounting systems; and,
- analyze the flow of money.

This will:

- help determine which method to use,
- assist in explaining the method and theory of the case,
- assist in developing your presentation, and
- enable you to refute defence arguments.

It's very easy, especially if you have an accounting background, to get carried away with numbers. You can rarely prove intent with numbers alone. Once you discover improper accounting, you must find evidence to support suspected offences. The numbers alone can't testify, just as they alone do not tell a story of dishonesty or greed. You need evidence and witnesses for that.

Remember that books and records don't commit fraud; people do.

SEARCH AND SEIZURE POWERS

Canada has a *Charter of Rights and Freedoms*, which is a great protector of our rights. As an investigator, it creates some challenges that we must be cognizant of when taking any action. We must respect the protections outlined in the Charter, such as privacy interests that people have, and act accordingly.

Investigators need to obtain evidence to prove the allegations of an offence. To do so, you may need to gain legal custody of documents and information to use as evidence or to make additional inquiries pertaining to the offence.

The easiest way to get evidence is for the owner to consent the investigator taking custody of the thing to be used as evidence. This may be the case if the owner is also a victim or a third party who no longer has a connection with the subject of the investigation. Although consent may be the easiest method, consent given can also be withdrawn at any time.

For a seizure to be of value to the investigation, it must be lawful. A search warrant gives judicial authority for a seizure. However, having a warrant does not necessarily guarantee a lawful search, as it matters how the search warrant was acquired.

You must consider a **reasonable expectation of privacy**. This means that it is reasonable for a person to expect that a place or thing will not be examined or inspected by an agent of the state without judicial authorization. Just because someone is willing to give information or documents (without a warrant or production order) doesn't mean you should take it. There are three privacy interests you need to take into account when dealing with search and seizure actions:

1. Personal (the body),
2. Territorial (home, car etc.), and
3. Informational (bank records, emails, etc.)

You must start with the presumption that all items you will require have an expectation of privacy in them...

...and then determine if there is any way that the privacy expectation has been lifted or lowered.



Whether an expectation of privacy is reasonable depends on a number of factors that need to be analyzed, initially by us but ultimately by the courts. Some factors to be taken into consideration include:

- Possession or control of the property or place searched.
- Ownership of the property or place.
- Historical use of the property or item.
- The ability to regulate access, including the right to admit or exclude others from the place.
- Whether the person believes that they have a an expectation of privacy.
- The objective reasonableness of the expectation. What would an objective third party think?

Searches of computers and electronic devices raise special privacy interests. Computers contain vast amounts of information that users cannot control and that they may not be aware of or may have chosen to discard. One cannot assume that the justice who has authorized a search of a place has taken into account the privacy interests that may be compromised by extending the search to information contained on a computer found at that place. In [*R. v. Vu*](#), the Supreme Court of Canada ruled that this traditional approach does not extend to a search of a computer unless the warrant specifically authorizes a computer search.

OBTAINING INFORMATION FROM THIRD PARTIES

You should first consider obtaining information from third parties voluntarily or by production order before you decide to obtain a search warrant, unless the following conditions apply:

Obligation. There may be a legal/professional obligation to **not** make the records available. Professional bodies, for example, have an obligation to not make records available unless there is some legislation that supersedes privacy laws.

Self-interest. The third party may have their own reasons for not wanting the documents to become public. Competitive reasons might be an example of this.

Relationship. The third party might be related to the subject by blood or marriage. Strong financial ties may be the basis of a close relationship.

Expectation of privacy. The documents sought may carry an expectation of privacy, such as bank documents for financial institutions.

Special care must be taken when obtaining a search warrant for a lawyer. You must consider any conditions set out for law offices searches as well as any solicitor-client privilege attached to legal documents. In these situations, seek assistance from Crown counsel prior to proceeding.

Where this is an expectation of privacy or a close relationship exists between the third party and the accused, it is probably best to obtain a **search warrant** instead of a **production order** (see below.) If a production order is used, we are relying on the integrity of the third party to make the documents available. They may decide to withhold documents that may incriminate them or leave them in ill-repute.

Considerations to take into account when dealing with third parties are:

1. Are there any indications that the third party participated in the scheme?
2. Does the third party have the power and/or authority to release the documents and things?
3. Is the information investigators are seeking likely to be found on the third party's computer? (Remember, a search does not extend to the search of a computer unless the warrant specifically authorizes it.)

INFORMATION TO OBTAIN (ITO)

To obtain evidence, you need to have the legal authority to do so. You will prepare an Information to Obtain (ITO) to seek the judicial authorization to execute a search warrant, general warrant, or production order to collect evidence and information. Note the differences between the three investigative tools:

Search warrant: the most common judicial tool used by investigators. It allows peace officers or public officers named on the warrant to search and seize the things listed on the warrant such as books and records, missing cash register tapes, etc.

General warrant: can only be used for situations when there is no other provision under the legislation that would provide for a warrant, authorization, or order permitting the technique, procedure, or device to be used or the things to be done. If you are considering using a general warrant, you need to remember that it can only be issued to a peace officer and not a public officer. The peace officer named in the warrant will need to be familiar with the ITO, serve the warrant, be involved with the activities associated with its execution, and cause those records to be placed in your custody.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

Production Order: an order to a person who is not under investigation to produce documents or copies of documents certified to be true copies to a peace officer or public officer within a time frame and at a place named in the order.

During the initial analysis of the investigation, you will have identified facts supported by evidence that you will need to prove the case beyond a reasonable doubt. That is an important step as it has a bearing on how you will write the ITO, which investigative tool is needed, and what you will include as “things to be searched for” and “places to be searched.”

For example, in order to follow the money, a net worth may be required. You may decide that there is a need to go to the residence, and the search warrant will dictate things to be searched for, such as personal records and business records. You may also require a general warrant, if you need to take pictures for evidentiary purposes. Those decisions may be made early in the investigation, but it is possible that new information arises from a search that will lead to further ITOs for production orders or additional warrants.

The biggest critique to searches will come at the time of trial, when the defence challenges the application or ITO. This scrutiny is often due to Charter/Constitutional challenges related to reasonableness, etc. This is because your application (ITO):

- Is ex parte (decided by a judge without requiring all of the parties to the controversy to be present), and
- Involves a balance between the rights of the state and the rights of an individual.

TIPS FOR DRAFTING A SUCCESSFUL ITO

In all cases, write your ITO with the reader in mind; it’s more than just an information dump. When drafting an ITO, remember to **consider the purpose**. The offences you allege in the ITO will be transferred to the search warrants and/or production orders. The purpose of the ITO is to enable you to acquire evidence pertaining to the allegations. Ensure the allegations you name under Offences allow searchers to acquire the best evidence available.

Remember, your belief of the offences alleged must be **supported**. Before you swear or affirm your application, you must **believe it to be true** – that means all of it. If you are not sure, either it should not be in the ITO or you need to do more investigating.

The reader of your ITO needs to be able to:

First: determine what the offence is, who committed it, and how it was committed. This means you need to develop the scheme and show involvement of those who you are alleging have committed the offence.

Second: identify what it is that exists that will be evidence or pertain to the offence.

Third: identify what evidence there is that demonstrates where this evidence is located, whether it is somewhere last seen, an address where it is mailed to, or where it normally ought to be.

Fourth: confirm the search location. What have you done to confirm those things will be there?

Consider the following points when drafting an ITO:

- Present your case in your own words. Consider your reader and make it easy to read and follow. Remember to tell the story. There are no bonus points for being the longest, shortest or most complicated.
- Build your case one step at a time. Break it into digestible chunks of information and then tie the chunks together. Separate the elements or clues for each.
- Complete each thought; do not assume the reader can figure out what you believe even if it seems obvious to you. State where you went, what you looked at, who you spoke to and when it took place. When relying on what others have told you, provide more information about those sources to build on their credibility.
- Re-create the events that occurred that lead to your allegations. Chronological order is normally the best way to tell the story but there are other logical methods. Deal with one situation at a time.

THE SEARCH

The search and seizure is:

- One of the most important responsibilities for an investigator.
- One of the most visible and most intrusive aspects of an investigation.

LEGALITIES

What is your authority to conduct searches?

Members of the search team must understand what it is that gives them authority to enter a premise, search, and seize things. Financial investigations typically involve thousands of documents and often involve searches at multiple locations. You need to get it right the first time as you may not get another chance.

The **reasonableness** of the search can be challenged on three fronts:

1. Is the law that authorizes a search reasonable?
2. Should the warrant have been issued? For example, were there reasonable grounds to believe that the things to be searched for will afford evidence of the alleged offences and will be found at the places to be searched?
3. Was the conduct of the search reasonable?



This section provides guidance to help ensure that the actions of the search members attain the desired results and that the conduct of the search team members can withstand the scrutiny of the courts.

In most cases, Charter/Constitutional challenges relating to the reasonableness of the execution of the search are raised at trial. A search deemed not reasonable could result in exclusion of the

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

specified evidence, or even exclusion of *all* the evidence. Other possible outcomes could include damage to the credibility of the investigation, or damage to your reputation.

A successful search will result in gathering and preserving all available evidence. Success also means the credibility of the investigation remains intact, through executing the search in a reasonable and yet thorough manner.

Careful planning is a key to a successful search. The following points should be covered in the planning process:

- Premises to be searched,
- Search personnel,
- Supplies and equipment,
- Transportation,
- Computers at search locations, and
- Interviews during the search.

It is very important that you conduct a thorough search to ensure you find all potential items to be seized. But, finding the items is only half the battle. The other half is seizing the items or documents in such a way that the integrity of the evidence remains intact.

CONTINUITY OF SEIZED EVIDENCE

You must be able to testify that any seized records, documents, or items remained under your control from the time they left the searched premises until they were placed in the designated storage area, in order to prove the **continuity of possession**.

- Continuity must be maintained at all times. Once seized, items should never be left unattended or unaccounted for.
- Continuity starts when you take possession of a record or item.
- Continuity ends when it is entered as evidence or returned.
- It is the responsibility of the lead investigator to demonstrate continuity throughout an investigation.
- Note taking with regard to continuity is a must and crucial for any challenge on continuity by defence.
- Bond room or vault security is important.

PRIVILEGE CLAIMS ON A SEARCH

Solicitor-client privilege is the protection of communication between a lawyer and a client for the purpose of receiving legal advice. If you identify any documents or records that could potentially be subject to solicitor-client privilege, you should bring the documents to the attention of the search leader. The search leader will give the subject, their lawyers, or other third parties the opportunity to claim solicitor-client privilege. Also, there exists a presumption that most documents in the possession of a lawyer are covered in order to protect privileged legal advice. There are exceptions, however, such as pre-existing business records that are given to a lawyer.

DISCLAIMER -- *This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.*

INTERVIEWS DURING THE SEARCH

This may be the only chance you have to interview a witness or the accused that can identify key pieces of evidence and elaborate on the scheme.

If you decide to interview a witness or the subject during the search, it is important to plan out the interview in advance, including having copies of key documents that you may wish to pose questions about. Ensure you have enough personnel to conduct the search and the interview simultaneously. The lead investigator should plan this activity.

DIFFICULT SITUATIONS

With regard to dealing with difficult situations during the search:

- Be prepared for the unexpected. Envision how you will deal with a dilemma before it arises; chances are a different dilemma will arise but the preparation will pay off. Take a breath and act with thought.
- Know and understand both your and others' rights and obligations. Help them understand them when you can and ensure everyone's rights are respected.
- Be empathetic towards the intrusive nature of the search. This will help you carry out procedures in a respectful manner. **If it is not right, don't do it** – talk about it with your manager or peers.
- Be decisive when the time calls for it. Be firm and reasonable. This means considering other people's interests but ensuring your interests are also addressed.
- Safety first, including the subject.
- Ask for help or reassurance. It is not a sign of weakness. Every search is a learning experience for you and everyone else involved. Share best practices and observations.

SEARCH EXECUTION – COMMON ERRORS

Some errors made in past cases that you can avoid are:

- Inconsistent approach to seizures.
- Failure to anticipate the scope of the search.
- Not prepared to obtain an additional warrant.
- Searchers' notes are contradictory.
- Poor coordination.
- Lack of pre-search due diligence.
- Poor communication.
- Poor control over the premises.
- Privileged documents not recognized.
- Notes not properly maintained.

Before and during a search, keep these points in mind to help fend off any future challenges:

- Know your authorities, rights, and obligations regarding the execution of search warrants.
- Know and follow the general rules of conduct.
- A good plan is worth its weight in gold.
- Be reasonable.
- Document your actions in writing, including your reasoning.

In most cases one error may not nullify a search, but numerous errors (especially with regard to procedures and reasonableness) can damage the credibility of the investigation.

OTHER INVESTIGATIVE TECHNIQUES

In planning various investigative activities, you must consider the timing of each element. Some activities take longer due to their nature, or because the activities are completed by other parties. For example, it may take months for you to obtain the results of a production so you can begin your analysis. Identify these needs as early as possible in the investigation so you can account for the timing in your plan.

FORENSIC ANALYSIS

Forensic analysis is a useful investigative technique within financial investigations. A forensic document examiner (FDE) can analyze signatures, paper, machines, and materials put to paper such as stamps and ink. The results will be a qualified opinion with a court-ready document and an expert witness to testify.

Regardless of the results of the FDE's analysis, you will still have investigative duties to complete. For example, an FDE might show that the ink on a document is likely the same as the ink retrieved from the accused's place of business. If there are other people with access to that place, you will need to prove the accused was active in making the document. This information will likely come from a witness.

Your case should not rely solely on the testimony of a FDE. Their report and testimony will be but one piece of the circumstantial case. Consider what you will need to find while (and sometimes before) the FDE does their work. Consider if there is a better way to show your allegations before the resources are undertaken.

Another type of forensic analysis that may prove useful is fingerprint analysis. If you intend to use this type of analysis, ensure you first make a photocopy of the original document and have it certified, as the fingerprinting analysis will obliterate the details of the document.

POST-SEARCH INVESTIGATIVE INTERVIEW

This is an area that is under-utilized by most investigators yet it is one of the most important activities. We often focus too much on the paperwork aspect of the investigation. Conducting

witness interviews is vital for the case to be successful, as witnesses can put context to the facts uncovered in the investigation.

Interviewing key witnesses can make or break your case; thus, it is a very important aspect of your case. You will need to use your interview skills to identify what witnesses will say and to ensure the Crown does not get any surprises at trial. These are some of the objectives of post search interviews:

- To eliminate/determine potential accused.
- To identify sources of information or to clarify information.
- To save time and resources.
- To determine interviewee's position in relationship to the alleged offence(s), e.g. disinterested third party, assisted, conspired.
- To provide a written record of facts to be used in the future such as a will-say, or confirming the case theory.
- To identify exculpatory explanations or defences.

When confirming the case theory and preparing witness statements (or sometimes referred to as "will-says") ensure you drill down to the small details.

A third party witness can provide context for transactions or identify notes made by the suspect or other persons. Third party witnesses could be accountants, suppliers, customers, neighbours, relatives, and even employees. Their testimony may be directed towards specific facts or certain documents.

- They may testify to certain facts based on personal knowledge in cases where they have relevant knowledge, such as being present when a transaction occurred.
- They may testify what normally occurs, such as the company policy for ringing-off a till and giving the owner the proceeds.
- They may testify to knowledge of certain documents, but not to facts of the case such as a custodian of documents (similar to a bank employee).
- They may testify to the meaning of what is contained within the documents.
- They may testify to both facts of the case and to documents, such as the customer who bought something and was given an invoice for the purchase.

Prior to contacting an individual for an interview, consider what type of witness that person will be. Will they be cooperative, hostile, or have no feelings one way or the other? Prospective witnesses can be categorized into three general types:

Neutral: This is an uninterested third party such as a custodian of public or financial records. This person has no interest in the outcome of the investigation and provides documents or unbiased information.

Friendly: A friendly witness is one who cooperates. Witnesses are friendly for a variety of reasons. Note: even if the witness appears cooperative you still need to ensure you understand the relationship to the accused to ensure there is no hidden vendetta against the accused.

Reluctant or hostile: This is an uncooperative party who is typically a friend or associate of the suspect. This witness may also be hostile due to his or her own culpability in the criminal activity under investigation.

It is always important for you to understand the relationship between the witness and the accused to put the information provided by the witness into context.

Ensure you get the witness's background information; this should be part of your routine. It will also indicate how the witness may be material to the investigation as well as showing their competence and ability.

Take your time with them and allow them to recall any details and events surrounding your questions. Ask for those details and what else they can remember. Allowing them to recall and express themselves demonstrates voluntariness and allows the witness to understand their importance.

Get their perspective. Everybody likes to tell their side of a story. Allow them to supply information.

Ask the hard questions. You need to determine if there is any complicity, vendettas or biases by the witness, even with confessions or admissions, the investigator needs to make the case.

EVIDENTIARY ANALYSIS

Evidentiary analysis means analyzing evidence and evaluating how it will be presented in court. This analysis is an on-going process and should be re-evaluated throughout the investigation as new information comes to light. Be sure to consider the "best case scenario" so you don't get tunnel vision and so you will put your time to the most beneficial use in finding and showing what happened.

To determine what evidence is required, break down the accusations into elements or issues and look for methods to prove those elements or issues. There will often be more than one course of action to take. You should:



- Consider all options to gather evidence.
- Risk-assess each course of investigative action to obtain the evidence (overt vs. covert, interview 5,000 customers or a sample, etc.)
- Consider the likelihood that potential evidence still exists and whether will be preserved.
- Consider the best case scenario.
- Evaluate collateral values to each possible action (e.g., value a witness may have vs. affidavit, etc.)

The concept of preservation of evidence is something that you can control. For example, the continuity of records when conducting searches or the control over the evidence in the office are two important areas where you control the preservation of the evidence.

The best case concept is designed to keep the investigator focused. You don't want to go off on tangents.

When dealing with evidence, ask:

- How it might be relevant
- How it might be material
- Under what conditions it would be admissible
- If it proves who offended
- If it proves an event (such as a sale or commission.)
- What their next step would be.

Remember: **Evidence** proves **Facts** which resolve **Issues** (EFI).

AFFIDAVITS

During your investigations, ensure that you are obtaining all necessary affidavits. Affidavits are a 'human' voice. They are a substitute for oral testimony. Affidavits are used:

- To introduce documents where oral evidence is not needed to show relevance or to maximize the probative value of the documents, or
- When oral evidence would be preferred but a competent witness is not available.

Obtaining affidavits at the time you receive the information will save you time later on when you are preparing for court. It is always more difficult to go back and get an affidavit than it is to get it up front.

An affidavit is a document with a purpose. A solid understanding of what affidavits are all about will help you achieve the purpose for which you are drafting your affidavit.

FOREIGN EVIDENCE

There are several methods of acquiring foreign evidence:

1. Voluntary cooperation: the owner of the information may be willing to provide it if you go through Competent Authority (see below).
2. Exchange of information services by way of tax treaty, tax information exchange agreement (TIEA) or the Convention on Mutual Administrative Assistance in Tax Matters with participating countries.
3. Mutual legal assistance treaty (MLAT).
4. Financial Investigations Unit.

During an investigation, tax treaty partners are:

- Obligated to collect information sought in the same manner as if they were carrying out a tax audit or investigation for their own purposes.
- Not obligated to exceed the bounds of their own internal laws and administrative practice.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

Note: Some countries are under a legal obligation to notify the taxpayer named in the exchange request when foreign tax authorities are contemplating responding to a request. Such notification may:

- enable the taxpayer the opportunity to “quash” a request,
- be detrimental to an audit/investigation, and/or
- result in delays.

EXCHANGE OF INFORMATION

Competent Authority is a delegated position. Each tax treaty, Tax Information Exchange Agreement (TIEA) or convention country has a delegated Competent Authority and, with respect to information exchanges, they deal exclusively with each other. This permits the exchange of information between treaties, TIEA and convention partners without contravening domestic confidentiality provisions.

The authority to exchange information with other tax administrations is found in tax treaties, TIEAs or the convention. Each treaty contains an exchange of information article that provides for the exchange of information between treaty partners. While these articles envisage information exchanges to “the widest possible extent,” they do not allow fishing expeditions or requests for information that is speculative in nature. The balance between these two competing considerations is captured in the standard of **foreseeable relevance**. An exchange request must contain sufficient information and supporting documents to demonstrate the foreseeable relevance of the requested information to the case.

More information on exchange of information can be found through the [OECD](#).

MUTUAL LEGAL ASSISTANT TREATY (MLAT)

A mutual legal assistance treaty (MLAT) is an international agreement under which the parties may seek and/or render assistance in criminal matters where a treaty provides for gathering information, documents, and evidence.

Types of legal assistance:

- Examining objects, sites, and immobilizing assets.
- Exchanging information, documents, and objects.
- Locating or identifying persons.
- Serving documents (subpoenas, notice of criminal proceedings, etc.)
- Compelling witness evidence (such as testimonies and statements) including via video link.
- Providing documents, records, and articles of evidence.
- Transferring sentenced persons in custody to give evidence or assist in investigations.
- Executing search and seizure warrants.
- Enforcing foreign fines (limited).

These methods can be used to get foreign evidence into court:

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

1. **Agreed statement:** have the accused admit to the facts. It may not be very likely, but possible if part of an early resolution or guilty plea. Defence will likely want some concession to agree.
2. **Affidavit:** Affidavits taken in another jurisdiction must be taken by the legal means applicable to that jurisdiction.
3. **Through a witness:** a foreign witness may agree to voluntarily be a witness.

ELECTRONICS (PRE AND POST SEARCH)

Computer Forensic Analysts (CFAs) are specially trained in the safe retrieval and examination of evidence found in computers and digital storage media.

During an investigation, CFAs will aid in preparing and planning for the search, will examine and process the digital evidence, and will assist in court presentation.

During the pre-search stage, the lead investigator should determine as much information as possible on:

- Computers at each location.
- Users.
- Software and operating systems.
- Type of digital storage and the types of digital devices being used.
- Location of digital evidence.

You must be prepared to explain why the digital evidence is important to your case. Try to identify existence of targets' use of devices (if known) and what they use these devices for, as it will affect the wording on the search warrant and safeguarding of evidence.

Searches of computers and/or electronic devices require specific, prior judicial authorization. If the intention is to search any computer found within a place, the authorizing justice must first be satisfied that there are reasonable grounds to believe that if computers are found at that place they will contain evidence of tax offences under investigation.

Also consider when the subject likely to be logged on to their computer. This is very important in the event that they are running encryption such as BitLocker. A BitLocked computer that is turned off has the evidentiary value of a rock. Also, are they using cloud computing? Cloud computing is a generic term for the delivery of information technology services over the internet.

Talk to your CFA. Communication is vital to ensure that you have considered all sources of information and that you are fully prepared for any search.

Communication doesn't stop with the search. It will take time for the CFA to process all the digital evidence that is seized. You need to work with the CFA to ensure that the CFA is able to prioritize the processing to allow you access to the most relevant and useful evidence first. This will ensure you can continue with other investigative steps and that there are no delays in the investigation.

DOCUMENT SCANNING

There are numerous advantages to scanning documents. Scanning is beneficial for the organization, management, storage, protection, referencing, disclosure, and use of the many documents that form part of our investigation.

Benefits of electronic over paper documentation of a case include:

- Reduced risk of misplacing documents.
- Less handling of documents maintains better continuity.
- Sustainable development.
- Search and hyperlinking capabilities.
- Credibility factor.
- Ease in working with documents.
- Quick access to documents.



All of these factors result in reducing time and adding efficiency when accessing the documents. In addition, these aspects of an investigation all benefit from the use of electronic version versus paper documents:

- Search application sourcing.
- Disclosure.
- Extracting evidence/information.
- Resourcing the prosecution.
- Trial documents.
- Electronic trail.

These characteristics make electronic documents preferable to boxes of paper files at the trial stage of an investigation:

- Documents to be disclosed can be easily copied or duplicated onto a USB or other storage media, including an index based on the inventory of documents. This also makes it easy to keep a control copy of disclosed material.
- Searching all documents is easier and more efficient. By typing in a search term, we can find all references made in all documents seized or obtained throughout the investigation.
- You can prepare trial folders by clicking and dragging documents from one folder to another. The inventory can be manipulated to create an index for the trial folders complete with hyperlinks.
- You can display relevant documents to defence, Crown and judge simultaneously on the click of a button by hyperlinking to documents.
- Instead of appendices in various reports, a click of a button will automatically take the reader of the report to the resource information.

FILE ORGANIZATION AND DISCLOSURE

An investigation is not about managing and applying *evidence*; it is about managing and applying *information*. Some of that information may become evidence.

The initial setup of the information framework, your filing and indexing system, is most important as it will dictate the degree of ease that will allow you to locate and extract key documents. Investing time in this at the beginning will pay off at the end.

You will need to establish where documents will be stored (one central location) and how the documents will be organized. This involves the setting up of folders (paper or electronic) to house all classes of documents. Usually offices will have a set structure regarding which documents are classified together.

Creating the index at the outset and expanding it as the case develops avoids last-minute disorganization and allows the investigator and prosecutor to focus on more important matters when charges are being approved. Ideally, our criminal investigation files go to trial. One of the requirements for a trial is that defence gets a copy of our investigative papers and the evidence. **Disclosure** is the term used when meeting the court requirement of providing defence with the evidence and our investigation.

Disclosure is not just a case of providing copies of all documents generated through an investigation. Disclosure needs to be organized and indexed. In other words, when it comes to disclosure, you need to make everything easily accessible to defence. Disclosure can be provided in paper copies or electronically, subject to the approval of the courts. If paper copies are provided, the specific items need to be indexed and organized. Electronically, this is much easier.

ELECTRONIC COURTROOM

Using presentation tools will facilitate communication with judges and jurors by improving their focus on the evidence being presented. It will also increase trial speed through simultaneous viewing of evidentiary exhibits on display monitors, eliminating time previously spent waiting for evidence to be distributed and reviewed. The electronic courtroom also increases control over proceedings by allowing for the ability to provide or restrict any exhibit selected to any or all members of the courtroom. During the trial, searching and retrieving electronic documents can be completed within seconds upon request, thereby, eliminating the burden of flipping through numerous binders and boxes of documents. It also vastly improves the storage and handling of case evidence by eliminating the daily task of unpacking and packing boxes of evidence.

COURT STAGE

The prosecution lawyer, also known as the Crown counsel, has a two-fold test when deciding whether to prosecute:

- Does the evidence demonstrate there is a ***reasonable prospect of conviction?***
- If so, does the ***public interest require prosecution?***

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

Crown counsel must consider any defences that could affect the prospect of a conviction, such as the existence of any violation that will undoubtedly lead to the exclusion of evidence essential to sustain a conviction. Crown counsel must also zealously guard against the possibility that they have been afflicted by “tunnel vision.”

If you feel there are any weaknesses in your investigation, they need to be dealt with before a trial as they will assuredly magnify at trial. Discuss all concerns with your manager and the Crown as early as possible.

PROSECUTION REPORT

The prosecution report, is where the investigator presents the theory the case and sets out the evidence that proves that theory. It doesn't matter how good the evidence is if it is not accurately and clearly presented in the report. A prosecutor might have to make a quick decision on the merits of proceeding with a case; all that prosecutor will usually have on which to base the decision to proceed is the report you provided.

The prosecution report enables Crown counsel to assess the case, approve the charges, do post charge screening, and prepare for trial. It also enhances full disclosure to the defence. Finally, it allows Crown counsel to identify issues prior to charge approval, or during the post charge screening process, that may be fatal to a successful prosecution.

The prosecution report should refer to facts, not conclusions. The source of these facts should be clearly and accurately set out, so that the accuracy of the prosecution report can be confirmed.

The prosecution report will:

1. Lay out the offences.
2. Show all facts relevant to the investigation, whether or not they support your theory.
3. Outline the evidence you have to support your facts.
4. Lead the reader to a conclusion of guilt – the one *opinion* you may express.
5. Ask for action.

Since evidence of mens rea is an essential ingredient of an offence, you should be cognizant of the evidentiary items and situations which identify mens rea and be prepared to include the relevant documentary and oral evidence in the report and witness reports.

Strive to present the best case; this does not imply that the case cannot be expanded for trial on the advice of counsel. On the other hand, recognize that the merits of a prosecution recommendation will be judged solely on the “best case” that has been presented in the report.

ORGANIZING DOCUMENTARY EVIDENCE FOR COURT

When organizing your documentation for court (something you should be keeping in mind throughout the investigation), it is sometimes effective to start with the end and work backwards. You can then identify problems with the documentary proof early in the case and take the necessary steps to rectify the problem well in advance of the expiry of a retention order or the beginning of the trial. You can also assess, at an early stage, whether sufficient documentary

evidence has been obtained to prove a particular fact, resulting in a more efficient and less intrusive investigation.

When organizing documents for court, you must understand that:

- there are a number of different ways that documents can be admitted into evidence,
- more than one way can be applicable to a given document, and
- the fact(s) that are to be proven by the document will govern which way(s) are chosen to support the admission of the document and what further evidence might be needed.

PREMISE #1 - NOT EVERY DOCUMENT OBTAINED IN AN INVESTIGATION IS USED IN COURT

Typically, a great number of documents are obtained in an investigation, but many of these documents might not be used in the prosecution of the case. Documents which are not ultimately used in court can be helpful in other ways, such as providing information that assists in gathering additional evidence, to refresh a witness' memory, etc.

As an investigation progresses, you must continually review the case and decide which documents are needed to prove the Crown's case and meet possible defences. You must not simply give everything to the Crown and assume that the Crown will make sense of the evidence, or, equally problematic, present the case to the Crown in a disjointed or unfocussed manner, hoping the Crown will make sense of it. The Crown may not have the time or the expertise to do this, and the referral may end up being rejected.

By the time a case is referred to the Crown, you will know it better than anyone, so you are in the best position to organize the evidence so that the theory of the case is clear, the issues are defined, and the facts that need to be proven are identified.

Documents which are not needed to prove facts that resolve the issues in the case must be set aside. The remaining documents must be organized in a clear and understandable manner. How well this is done will be an important deciding factor in whether a referral is accepted, and will have a significant impact on how the case is ultimately structured and prepared for court.

PREMISE #2 - BEFORE A DOCUMENT CAN BE USED IN COURT, A NUMBER OF LEGAL REQUIREMENTS MUST BE SATISFIED

There are a number of technical rules governing the admission of documentary evidence. A document is not just submitted to the judge or clerk of the court and marked as an exhibit. There is a formal process that must be followed.

A document is tendered to the court and the judge is asked if that document may be entered into evidence. If the judge is satisfied that the technical rules of evidence governing the admissibility of that document have been met, the document is then admitted into evidence and marked as an exhibit.

If the technical rules have not been met, there are two possible consequences: the document may not be admitted for the purpose for which it is tendered, or, it may not be admitted at all.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

DOCUMENTS, EVIDENCE, AND ISSUES OF FACT

Presenting a case in court is no more than telling a story. But the story has to be told in a certain way, through the leading of evidence.

Documents are not tendered to the court in isolation. To be effective, documents must be viewed as a means to a very specific end, which is the telling of, and proving, the story. The Crown must submit a “theory of the case” to the court, as a framework to assist the court in understanding the evidence. This is the story the Crown is telling. Essentially, it is: what is the accused alleged to have done wrong, and how was it done?



The theory of the case, or the story, will raise issues between the Crown and the accused that will have to be resolved by the court.

To resolve issues, the judge will rely upon the facts that are proven. Facts are proven by the evidence admitted by the court. The evidence is demonstrative, documentary, and oral.

You must apply these procedures and concepts from the beginning of an investigation, and as the investigation progresses. Without this ongoing analytical approach to an investigation, important factual issues may be overlooked, resulting in a referral not being accepted or a case being lost.

In order to determine which documents we need, we must first identify the issues in the case. We are not concerned about *issues of law* (this is up to the lawyer). As investigators, you are only dealing with *issues of fact*.

An *issue of fact* arises when a fact is maintained by one party and is contested by the other. The most important aspect of case planning is to identify the factual issues in the case. Until admissions are made by the accused, you must proceed on the basis that the Crown will have to prove in court all of the facts that are necessary to substantiate the charges. Everything is at issue until the accused makes formal admissions. You will be expected to identify these factual issues and collect evidence to resolve them. The Crown will then research the law and apply it to the evidence collected by the investigator.

There will be many issues of fact arising in a case. The following process, used by many trial lawyers and judges, will help you to identify and organize factual issues and then organize the evidence to resolve them.

- First, when the investigation starts, create a list **a list of factual issues**.
- Second, as new factual issues arise as the investigation progresses, they are added to the list. The issues should be broken down into sub-issues, if necessary. If a factual issue is no longer relevant, it is deleted.
- Once the factual **issues** have been identified, the next step is to identify the **facts** that will be required to resolve those issues.
- Finally, the **evidence** that the investigator believes exists and that will resolve the issue should be noted beside each issue or sub-issue. This gives the investigator a target of things to look for. As evidence is gathered, it should be applied to each factual issue or

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

sub-issue. In effect, the investigator creates a “checklist” of factual issues, which are “checked off” as the evidence which will resolve the issue is obtained.

The only documents you need are those that constitute evidence that tends to prove the existence or non-existence of a fact, which relates to an issue in the case.

Looking at facts without relating them to the factual issues to be resolved, or gathering evidence without reference to specific facts to be proven, is at best inefficient and creates a confusing and poorly organized case; at worst, it will result in a case that cannot be proven.

Facts are the reality of events, as found by the court. The facts are determined by the evidence accepted by the court. For example, you may be told about a certain event by a witness, which is based on what this witness was told by someone else. This evidence is hearsay and inadmissible. If you want to have the court find as a fact that this event occurred, the person who provided the information must be called to testify. Similarly, you may wish to use a document, or a group of documents, to prove a fact. If the document or documents are not admitted into evidence, or are not admitted for this specific purpose, then that fact will not be proven. The consequence is that for the purpose of the court proceeding, the fact does not exist.

WITNESS INTERVIEWS

When someone testifies, they become a witness. Therefore, the interviews of potential witnesses are an important investigative step.

We conduct the interviews by:

- asking questions.
- getting answers to questions asked.
- getting answers to questions not asked.
- listening to the witness.
- observing the witness

Each witness can only do so much to advance the case – do not ask witnesses to give evidence relating to an event that places them and their evidence outside their scope.

In order to properly prepare for the interview, you need to prepare a roadmap for the interview, by identifying:

- the issues in the case and the facts you need to prove.
- the facts you want to prove with this witness.
- what evidence you expect this witness will provide to prove these facts.
- how the witness’ evidence will prove a fact (e.g., the witness identifies a document and the document itself is used to prove a fact, or, the witness speaks directly to that fact.)

Always ask yourself: “do I have the **right** witness to prove this fact?”

When dealing with witnesses, you must:

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

- focus on the issues of case.
- observe and listen with critical eyes and ears.
- keep witness and evidence “inside the box.” This metaphorical box is formed by six sides: admissibility, competency, relevance, credibility, reliability, and probative value. When witnesses and their evidence meet all of these criteria, they are “inside the box” and therefore usable in court for that event.
- be objective and neutral.
- stick to just the facts.

When preparing the witness, provide copies of the documents you intend to ask the witness to speak to, such as documents the witness:

- created or received,
- acted upon,
- can place in the possession of the target, or
- can identify as ones that the target acted upon and provide the documents in a meaningful sequence (chronological, topical, by author or recipient).

Remember to instruct witnesses that they may not discuss their evidence with anyone else and do not tell the witness what the evidence of other witnesses is or may be, or what documents unrelated to this witness say.

When conducting witness interviews, be sure to **let witnesses tell the story in their own words**. Don’t ask leading questions. Don’t put words in the witness’ mouth. Don’t tell the witness what others have said, or about the other evidence in the case, apart from evidence relating to this witness.

But, **do not hesitate to clarify or confirm** words used by the witness, or any evidence given by the witness, as long as you do not seek to influence the witness while they are giving their evidence. Ask clear and precise questions and be aware of words that have more than one meaning. For example, if asking “when did you sign this,” *when* can be interpreted as asking for a specific date, or as asking for evidence relating to the sequence of events. The reply may be “I don’t remember” to one, and a specific answer to the other. Use words carefully in asking questions or recording evidence, e.g., “indicated” is not the same as “said” or “stated.”

Watch out for words that **weaken evidentiary value or the admissibility of the evidence**, such as:

- *we did, he did, they did*
- “I was told”, “I heard”, “I suppose”, “I believe”
- *would have, might have, could have*
- qualifiers such as *probably, likely, maybe, possibly*



Continuously **ask yourself the following question** as the witness is giving evidence: “Does the witness truly know or remember this, or is the witness guessing, speculating, offering an opinion, drawing inferences, or engaging in a process of deductive reasoning?”

Assist the witness in refreshing his / her memory *without* asking leading questions or coaching the witness. For example, refer the witness to a document they created, such as a letter that says “further to our discussion yesterday,” to assist the witness in recalling the discussion, the date it took place, what was discussed, and the next steps taken by the witness.

Critical eyes and ears: *listen* to the witness and *observe* his / her demeanour. Be alert for biases or anything else that indicates that the witness is not impartial. Look for internal contradictions or inconsistencies in the witness’ evidence or conflicts with evidence they have provided on prior occasions and point these out to the witness and clarify. Don’t be reluctant to ask hard questions to verify credibility and reliability. Is the evidence reliable, e.g., supported by or consistent with known facts, consistent with other documents, internally consistent? Is the memory refreshed by reliable means? Is the witness credible and impartial? Does the witness deliver his / her evidence in a candid and forthright manner?

Be flexible in how you approach the interview. Each witness has different testimonial characteristics and capacities. You must find the key to unlock each witness’ memory, without leading or coaching the witness, or influencing the result.

Depersonalize the interview process. Put aside discomforts about asking personal questions or invading the witness’ privacy. Topics such as substance abuse, romantic involvement with the target, or transgressions of their own must be thoroughly explored in order to properly assess credibility and reliability. Do not be judgmental – this is not the same as assessing credibility. Be objective in assessing the witness and the evidence; do not let your judgment be affected by whether you like, dislike, approve of or disapprove of the witness. Be candid, forthright, and direct with the witness.

Record the interview accurately. This is important in assessing whether the witness and the evidence you wish to use are “in the box.” Use verbatim quotes on key evidence and do not interpret, add to, or subtract from what the witness says. Record only what the witness actually says. Clarify and confirm evidence that is unclear to you and take your time. Be thorough, and cover all relevant events that this witness can speak to. Explore all of the witness’ evidence for each event. It is not enough to only have the witness identify documents from a transaction; you must obtain all of his/her evidence relating to the circumstances (i.e. the accompanying or attendant facts, events or conditions) of the transaction.

Do not ask witnesses to do more than they can do, or let witnesses try to do more than they can do.

TELLING THE STORY

When presenting a case to the court, the Crown does not call witnesses in a random order, and place all of the documentary evidence in a box and then just give the box to the judge. Lawyers and judges follow an accepted framework for the presentation of oral and documentary evidence. This framework tells the **story of the case**.

The “story” is the theory of the case and the consequent allegations against the accused which, if proven, will result in a conviction on the charges. Out of the theory of the case and the allegations arise the facts that must be proven to substantiate the theory and the allegations. The evidence is then organized so that it relates to and proves each of these facts. The exposition of the story is usually **chronological**, focused on what the accused did in a chronological order.

In even the most complex cases, the story should take only a few sentences. The idea at this stage is to reduce the investigation to a very simple exposition of **what the accused did** and **what the harm was to the Crown**. Nevertheless, the investigator must make sure to include all of the relevant events that support the charges without including opinions or conclusions.

There are basic questions that must be answered in telling the story:

- Who are we talking about (who is the accused)?
- What did the accused do?
- What is the harm to the Crown?
- What is the connection between what the accused did and the harm to the Crown?

Consider these questions when writing out the story, as ultimately they are the questions that will have to be answered by the evidence. Look back to these questions at the various stages in the organization of evidence outlined earlier to ensure that the facts which are proven by the evidence answer these questions. The evidence must be organized and presented in a manner that clearly answers these questions. The reader of the investigator’s report must be able to clearly see the answers to these questions in the report.

The charges provide only a basic outline of the story. The persons, places, and years are identified and the offence is stated in a general way. This is the only information the court has before the start of a trial. **When a trial starts, the judge knows nothing about the case aside from the information contained in the charges.** If you step back from the case and look only at the charges, you will see how little information the judge has before the case commences.

Don’t forget that the Crown has the burden of proving its case **beyond a reasonable doubt**. When you prepare a case with Crown counsel, you will review the evidence many times, especially the critical evidence. Your familiarity with the theory of the case and the evidence allows you to easily see the evidence in its totality and apply the evidence to the facts that must be proven to support a conviction, irrespective of how the evidence may be presented. **The judge, on the other hand, only hears the evidence once.** The judge must be persuaded that the accused is guilty of the charges, beyond a reasonable doubt, after hearing the evidence *one time only*. If the evidence is not presented in a manner that allows the court to clearly apply it to the facts that must be proven to substantiate the charges, the court will likely acquit the accused. *Remember, a confused judge is an acquitting judge!*

The next and more difficult step in making a story understandable to the court is the application of the evidence to the facts that will need to be proven to resolve the issues. Much of the evidence will apply to more than one fact. Crown counsel, once he/she understands the story, will ask “how do we prove it?” Your role in answering this question is to sort through all of the evidence and apply it to each of the facts that must be proven. Proper organization will help ensure:

- Facts that must be proven will not be overlooked.
- The use of the evidence will be maximized, by ensuring it is applied to all of the facts to which it relates.
- The story and the evidence are tied together in a way that is readily understandable by Crown counsel.

When identifying the evidence that will be used to prove a fact, you must refer to *all* of the evidence that can be applied to prove the fact. Often, investigators will list only the preliminary evidence, and not refer to secondary or corroborative evidence when identifying evidence that will prove a fact.

There is a three-stage process. The facts to be proven and the evidence that is relied upon must address all three stages:

1. Identifying to the Crown the statement that is the “big lie,”
2. Proving that it is in fact a lie, and
3. Proving that the accused knew it was a lie when it was made to the Crown, or was wilfully blind.

This is a critical part of any fraud case, as the answers to these points distinguish a case of negligence, carelessness, or error from a case of fraud.

The big lie generally goes to the intent of the accused, but can also be relevant to the actus reus of the offence. It is usually the first question asked by Crown counsel when they are handed a file. The “big lie” is clear and simple, and goes to the heart of the case. *There may be other lies. While they may be important, the investigator must focus his attention on the lie that is central to the fraud.*

In financial investigations we follow the money, and therefore we must make the connection to the accused and the big lie. The court must be able to follow the money in three ways:

1. the actual flow of the money,
2. the loss to the Crown resulting from the big lie, and
3. that the accused is responsible for the big lie.

You must make sure, in telling the story and in organizing the evidence, that all three of these aspects of following the money are addressed, and that the facts which can be proven by the evidence clearly resolve this issue in a manner which is clear to the reader.



EACH DOCUMENT HAS TO BE A PAGE IN A STORY

When organizing documents (and oral evidence) for court, make sure that each document and each piece of evidence has a role to play in telling the story.

When Crown counsel first looks at a file, the linkages will not always be apparent, especially in more complex cases. This is the same problem that judges are faced with when presiding over a trial. Crown counsel, when looking at a file, will generally look at it from the viewpoint of how the case will look in court. If you make the linkages when organizing the evidence for Crown counsel, it will greatly assist counsel in understanding how the case will be proven and how strong the evidence is. Conversely, if the linkages are not made, counsel may come to erroneous conclusions about the evidentiary foundation for the case and its strength.

You must link each document (or the oral evidence) to a fact to be proven, and then link that fact to be proven to an issue that needs to be resolved arising out of the events in the story. If you cannot make these linkages, that evidence has no place in the case presentation.

When making the linkages between the evidence and the facts to be proven, you must remember to identify all of the evidentiary uses that a document will have in the presentation of the case in court.



SO WHAT??? Investigators should always ask, “So what?” This question is designed to remedy “documentitis,” a bad habit of investigators and lawyers to throw every piece of evidence at the court, hoping that the judge will be able to pull the relevant evidence out of the pile. It is usually based on a fear of missing something, and results from a lack of preparation and analysis of the case. This concept of “when in doubt, include it in the prosecution report” is

not the proper way to organize a case for court, by either the investigator or the lawyer. You and Crown counsel must be able to provide an answer to the question SO WHAT with respect to each piece of evidence called, with express reference to the following elements of the framework:

- the events in the story,
- the resulting issues that need to be resolved, and
- the facts that need to be proven to resolve the issues.

You must organize the evidence so that as the story is being presented, it is apparent that the Crown’s case against the accused is substantial.

While we have said that the presentation of a case is the telling of a story, it should not be like a mystery novel, with the reader wondering until the very end, “Who did it?”

It must, in fact, be the opposite. Keep this in mind when organizing evidence. Focus your storytelling and evidence presentation on answering the basic questions rather than simply stating all of the events and itemizing all of the evidence uncovered during the investigation.

DISCLOSURE

DISCLAIMER -- *This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.*

Disclosure is the sharing of the investigation's case file with defence counsel. Rather than handing over crates of paper in binders, in today's digital courtroom disclosure happens via a portable storage device like a memory stick. And, rather than simply making copies of files at the end of an investigation, you will plan your case around a disclosure index.



With electronic disclosure, there should be no excuses for not disclosing information. Every step of the investigation should be linked to a disclosure index as the investigation proceeds. Today the investigator only needs to ensure the information is saved digitally and the hyperlinks work. Disclosure also needs to be made in a format that is searchable. Disclosure should be ready by the time the referral is sent to the Crown.

Completed disclosure for your case gives you two assurances:

- There should be no reason for court delays while defence counsel waits for disclosure. A complete disclosure package satisfies defence's right for being able to make full answer to any allegations. Delays that are attributed to the Crown can be costly, as judges do not tolerate incompetence. A case can be lost because of incomplete or late disclosure that causes delays.
- A complete disclosure package sends a message to defence: it says you are organized and prepared, and this may make it less likely that they will want you in the witness box. The case is easier for them to understand, too, which creates more doubt that they could win at trial. It allows them to search through the material quicker to see there are no legal issues. If there are no obvious legal challenges and the evidence is overwhelming, they are better off to plead guilty.

TRIAL PROCESSES AND TESTIFYING

Opening statements give both lawyers the opportunity to give the judge a brief overview of the case – what it is about, what evidence they will hear during the course of the trial. This is each lawyer’s first opportunity to tell the trier-of-facts about the case. The Crown goes first. This is where the story being told in court starts.



Crown witnesses will be called. All witnesses are excluded until the court is ready for their testimony. Once the Crown is finished with the examination-in-chief, it is the defence attorney’s turn to cross-examine a witness. After cross-examination, the Crown will have a second opportunity to re-examine the witness, but this re-examination is limited to the topics first brought up in cross-examination.

Defence Witnesses: Once the Crown rests, the defence might have some witnesses of their own. Or, they might not. If they do, the judge might allow the Crown to present further evidence. However, it would be limited to the matters raised in the defence evidence.

Closing Arguments: These are concluding statements by each lawyer. Each side will raise the important points, pointing out evidence that they feel the trier-of-facts needs to consider in their decision.

Verdict: Where there is a verdict of “guilty,” it will be followed by sentencing.

ROLES IN THE COURT PROCESS

THE CROWN PROSECUTOR

The Crown is responsible for trial preparation and introduction of evidence. He or she will work with you in preparing the case for presentation and in deciding the order of witnesses. The Crown will look for your input but ultimately, it is their decision. If you are not the first witness heard, then you will be excluded from the courtroom until the court is ready to hear your testimony. The evidence will be introduced through witnesses and documentation introduced by witnesses (in some cases, by affidavit). Introduction of evidence also includes rebutting defence witnesses.

One of the objectives of the Crown will be to simplify the case. This will include your testimony and the theory of case. It doesn’t matter how complicated a case you think you have, the Crown will want to simplify it and the judge will expect it.

DEFENCE COUNSEL

The defence counsel has been hired to defend the client and protect the client's rights. In protecting the rights of the client, the defence attorney might file applications for violations such as delays or unreasonable searches.

"The trial of the accused is merely a side show. The trial of the investigation is the main event."

~ Justice David Watt – Court of Appeal, Ontario, Canada

In defending the client, the defence will test the Crown's case. While the Crown must prove the case beyond a reasonable doubt, the defence needs only to plant doubt in the Trier-of-fact's mind to obtain a verdict of "not guilty." The defence will test the case by cross-examining the prosecution witnesses and by presenting argument(s) to the theory of the case. The lawyer has a duty to raise all issues and ask all questions that he/she thinks might help the client. If you've conducted your investigation in a haphazard way, defence will bring it up. If you failed to make an important note, defence will bring it up. If you have made a mathematical error, defence will bring it up. Ultimately everything you did within the investigations could be questioned or challenged.

THE WITNESS

While you, the investigator, are a witness, the list of witnesses it is not limited to the investigator. All witnesses are bound by what they know. They can only testify to what they know firsthand (no hearsay) and they must tell the truth. Any witness who lies may be subject to perjury charges. Whether they are a witness for the Crown or the defence, the witness must be objective in his or her testimony.

Unless you are an expert witness, stick to the facts. Your analysis is based on facts and you reached a conclusion based on the review of all the facts.

Once you've testified to what you know and what you did, let the chips fall where they may.

PREPARING FOR COURT

The amount of preparation you do before testifying will directly affect your testimony. Keep the following tips in mind:

- Make the time to prepare. You will be glad you did.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

- Be familiar with the legislation, relevant case law, and your policy manual. Refresh your memory when necessary. You can be sure that the defence attorney will be familiar with your policy, so you better know it better than defence.
- Review your notes, your reports, the evidence, analysis, case plans, etc. If you've kept an investigation diary, review it as well.
- Be comfortable in explaining the theory of the case using non-jargon to someone who knows nothing about your case or a tax evasion investigation. Be able to explain the elements of the offence and what evidence there is of each element.
- If your case is complex, be prepared to explain it in a simple way.
- Identify the potential defences, issues, and possible lines of questioning. This will enable you to give an objective and effective testimony and defend valid arguments.
- Consider a dry run.
- Visit the courtroom ahead of time.
- Rest: You might have put in a few extra hours in the past few weeks. Try to rest as best as possible.

Your thorough understanding of the case facts will enable you to deliver them, no matter what the question or how it is posed.

If there is any time as an investigator where your personal appearance matters, it is in the witness box. You will be the center of attention and you want to reflect a professional appearance – both for yourself and for whom you represent. You've heard the saying: you don't get a second chance to make a first impression; this applies here as well. By personal appearance, also think about your posture and voice. Maintain good posture. Your voice should be loud enough for everyone to hear. Speak clearly, and remember that the judge, Crown, defence, and court reporter must all be able to hear everything you say. Stay clear, concise and focused on your testimony.

Do not discuss your testimony outside the courtroom; this is not allowed.

Be respectful in the courtroom. Stand, look at the judge and properly address the judge as per your courtroom rules.

Remember, your goal is not to "get" the accused. Your goal is to give the facts to the court, and then let the court make its decision based on all the facts given by all witnesses. Give your testimony in an objective fashion, and always be truthful. If you make a mistake, admit it and correct it as soon as possible. Try to detach your personal feelings from the testimony. It is highly likely that the defence will try to get a rise out of you. Try to remain neutral and check your feelings at the door.

You will not be able to confer with a manager or colleague. When you take the stand, you must answer all questions posed to you, unless an objection is raised by the Crown. You are on your own.

EXAMINATION-IN-CHIEF

Once you've taken the stand and you've been sworn (or affirmed), the Crown will go through some general questions with you, such as your name, occupation, background, etc.

DISCLAIMER -- This guide is for learning purposes and is to be used as a reference tool only. Where there is a discrepancy, Investigators must follow CRA policy and the laws of Canada.

When this is done, the Crown will direct you to the case at hand. The Crown will direct the sequence of the testimony but only through the line of questioning. As the witness, you will have to take the court to the facts of the case.

Your listening skills are very important. To be standing in that witness box is a stressful experience. Remember: listen to the question, think, and then answer the question.

How will your testimony proceed? Each case will differ. Each Crown, courtroom and defence attorney will work differently. Don't expect all your trials or testimonies to be a cookie-cutter replica of each other.



In general, however, you can expect the following:

- Your testimony might start with the Crown asking you to identify yourself – your name, who you work for, your experience. Then, you might be asked to introduce the case and your role in the investigation.
- The facts of the case will be introduced. Focus on the elements of the offence when the time comes. Remember that the judge doesn't know anything about this case now, other than what he/she has heard so far. If you're the first witness, the judge has heard the opening statements and seen the charges, and that's likely as much as they know about the case.
- People tend to remember the first and last thing they heard. Begin and end on a high note. If you want to make a specific point in a specific piece of evidence, consider repeating it at the end.

As a witness you need to be both **credible** (i.e., the court believes you are telling the truth) and **reliable** (i.e., the court can rely on your evidence), which is why notes are important as a memory aid. It is possible that the court may believe a person is telling the truth (credible) but doubt their memory (reliability issue).

The definition of “credibility,” according to *Webster*, is “the quality of being believed or accepted as true, real or honest.” That is your goal. If you exhibit professionalism, honesty, objectivity, and knowledge of the facts, the court is more likely to view you as a credible witness.

What happens when you hear someone you feel is credible? You're more likely to trust them. The court needs to trust that you've conducted an objective investigation in a professional manner and that your testimony is truthful. Build trust with the judge.

TIPS FOR CREDIBLE TESTIMONY

A good general rule for court testimony is: listen, think, and then answer.

Answer the question only. No need to give out more information than what was asked. If the Crown wants to get a statement out of you, they will ask you that question specifically. Don't go off into left field, answering questions that were not asked. If a "yes" or "no" is all you need to say, then say that. If you need to qualify your "yes" or "no" then go ahead.

The non-verbal communication skills you learn during your training will again come into play here. Your non-verbal behaviour will help or hinder your credibility. This is not only important during your interviews to build rapport, but in court as well. In fact, through your testimony, you are building rapport with the trier-of-facts.

If you are well-informed of the facts, your testimony will be much easier. This will enable you to answer any question, no matter how it is posed to you.

Don't be argumentative, whether during direct, cross, or re-examination. This might be more difficult during the cross-examination. If you start acting argumentatively, you will lose credibility in the eyes of the court.

Keep your answers brief and to the point.

Be yourself. It will be much easier for you to look and sound credible if you are being yourself.

Who are you talking to? You can talk to counsel or the court. By speaking to counsel and directing your attention to counsel, you might facilitate the discussion or communication and you might also appear more courteous to counsel. Or, you can talk to the judge. The court is the official recipient of the evidence. Watch the judge to make sure he/she is following you. Is he/she making notes? If so, maybe you need to slow down and let him/her gather all the pertinent facts. Does he/she seem interested? You can use a hybrid approach where you pay attention to both counsel and the judge, depending on what your testimony is. For example, for short answers, you might decide to focus on counsel but when explaining an analysis or whatever you think is important for the judge, it may be more important to focus your attention on the judge.

Measure your pace and speak clearly. This makes sure that the Crown, judge, and yes, even the defence, can follow your testimony. It also allows you the time to think before speaking. Don't use any organizational or technical jargon in your testimony. Use lay terms where possible. Focus on simple and easily understood words. It is not the time to show what a big vocabulary you have.

Avoid distracting actions. Don't jiggle your change in your pocket. In fact, don't bring change with you. Don't bring a pen, you might be tempted to click or play with it. Don't bring anything that might distract you. Don't fidget. Just sit (or stand) and focus on your testimony.

You may only refer to notes with the approval of the court and you will have to ask permission to do so. Your notes should be used to refresh your memory on specific details. Be familiar with your notes and don't read them but only refer to them. For example, you might need to refer to your notes for the exact location of a seized item (from memory: the accused's desk; from your notes: the accused's desk, in-basket on the top right hand corner of the desk.)

Where appropriate, use demonstrative evidence such as charts, summaries, photos, diagrams, and maps to support and explain your analysis or evidence. It facilitates understanding and retention by the judge.

CROSS-EXAMINATION

So you've gone through the examination-in-chief. You're proud of the way you handled yourself. You feel that the judge found your testimony to be credible and truthful thus far, and you were able to give your explanation in simple terms to enable his/her understanding. Now is the time for the cross-examination.

Things might get a bit more difficult during cross.

Defence attorneys are hired to *defend* the accused. They will bring up any argument that they believe will help their client; that's their job. Their objective is to *create reasonable doubt*.

Don't take it personally. "Check your feelings at the door." This will make it easier to stay focused and objective. The defence wants to bring out hostility in your testimony.

Where the case against a target is strong, unless the defence takes some risks, they are likely to lose. Attacking the credibility of a witness is a risk they are willing to take. Sometimes it pays off, sometimes it doesn't.

The defence will try to create doubt. A slight possibility that something else happened is all he/she needs. How might the defence try to create doubt?

- Eliminate, exclude or discredit evidence unfavourable to the defence (i.e., attacking your credibility puts doubt in your entire testimony.)
- Bring favourable evidence to light (i.e., 'tunnel vision' on the part of the investigator would affect reliability)
- Persuade through questions: leading you down the path from A to Z to support the theory of the defence (i.e., "Isn't it true...?")

It may happen that, on the surface, some statements might appear contradictory or might even be contradictory. If that is the case, explain the reason why.

- **Tunnel Vision:** if you've left a stone unturned, the defence might ask you why. They might ask you if you thought this "stone" would play in a favourable light for their client, which may be the reason why you decided not to follow through on that lead. Note: this is all the more reason to follow all leads during your investigation. If you didn't follow through a particular lead, just say why. If the reason is that you didn't think of it, then that's what it is. You can't change now what you did or didn't do before.
- **Bad Behaviour or Action:** In today's world, you might be surprised what defence might know about you. Any comments made on a social media site might come back to haunt you! Be careful what you might write on social media sites.
- **Mathematical Errors:** If the defence brings up a mathematical error in your analysis and you agree, then concede to it. Explain how the error might affect the quantum, or if does not, then explain that as well. It becomes extremely important to understand your analysis and the formulas that you used. If you have used an indirect method of proof, you need to know how any changes will affect the bottom line. Basically, it goes down to

understanding the formula and the accused's financial affairs. Don't use a formula because it is dictated to you, but because you understand the inner workings of the formula.

- **Contradictory Evidence:** Where your testimony and that of a colleague might differ, the defence will direct the Trier-of-facts' attention to this contradiction. Stick to your testimony and what you remember. You cannot testify to someone else's recollection of the events and if they differ from yours, then so be it.
- **Specific Details:** Defence might focus on a specific detail that is not relevant to the case. They may be attempting to discredit your recording or memory of these details to cast doubt on your investigation or your witness testimony. Do not anticipate where the questioning is going but rather maintain a professional demeanour and *listen, think and then answer*.

Ultimately, what is the defence attorney trying to do? ***Discredit you and your testimony either by showing you not a credible witness (i.e., lying) or that your evidence isn't reliable (i.e., incompetent).***

During cross-examination, you will be subject to leading questions. The defence will often ask a "yes" or "no" question. If you need to qualify your answer, do so. If you need to say more than "yes" or "no", don't start off your answer with it as defence might cut you off.

The defence will try to lead you right where he or she wants you. Stay alert and stay in the moment and rely on your knowledge of the facts to be able to answer the questions.


Answer the question, don't fence or try to outsmart them.

Once you've given an answer that you're sure about, stick to it no matter how much defence tries to shake you up. If you need to give the same answer over and over, do it.

The best tip that you can use in cross-examination is to ignore the defence attorney's tone and body language. Focus on the words only and answer the question.

There are some common and recognizable approaches used over and over again by defence attorneys. If you anticipate these, it may make it easier to remain unaffected by them.

- **Flattery / Warmth:** Defence might shower you with compliments, to make you think that defence understands and sympathizes with you, or they might flatter your professionalism or years of experience as an investigator. Once they put you up on a pedestal, they will knock you down by telling you what "you should have known."
- **Rapid Fire Questioning:** Defence may ask a quick succession of questions to get you to answer without thinking about your responses. As the witness, you can control the pace by slowing down. Don't rush your answer; that is exactly what they are trying to get you to do. If you won't control the pace, the defence will control it for you. Remember, listen, think and then answer.

- **Numerous Questions:** When asking numerous questions at once, the defence is trying to get you to agree to all the facts. And if you answer “yes”, you are agreeing to all the facts. Be careful not to answer a question where more than one question was posed, unless the answer to all these questions is the same. Otherwise, reiterate the questions and answer them one at a time.
- **Interruptions:** If you were not finished answering a question, you can ask the judge if you can finish your response. Do so where you feel it is important for you to relay the whole response. Crown counsel might also request that you be allowed to finish your answer. Pick your battles. You might not want to try this one several times in a row. 
- **Repetition:** Defence may ask the same question over and over. They may re-word the question to see if you respond differently or just come back to it later. Don't become argumentative – just answer the question, again and again and again. You may have said the same thing several times already but say it again. If defence keeps it up for a length of time, the Crown might object to repetitive questioning.
- **Intimidation:** Counsel might try to intimidate you by standing very close or talking loud in an attempt to disrupt your concentration. This technique might affect you, or it may not bother you at all. Try to ignore counsel's tone of voice and body language.
- **Silent Treatment:** The defence is trying to convey an “are you sure?” attitude on the witness. If you are positive about what you said, don't fall for this trap. Keep silent as well. If no question is asked, don't talk.
- **Hypotheticals or Leading:** The “I suggest...” approach is an invitation to argue. It also relays to the court the theory of the defence. Don't argue with defence, that's the Crown's job and only when he/she feels it is necessary. The suggestion made by counsel is normally one that challenges the evidence you've given. It is meant to irritate you. Just answer the question.
- **Personal Affronts:** These might be the most difficult. The defence is attacking you – he/she might suggest incompetence, bias, or unprofessional behaviour. It's about you, your professionalism, and your credibility. It might help if you talk directly to the judge and turn away from the defence. Don't take the attack personally. However you deal with stress in your life, such as deep calming breaths, use it here but you can't have a time-out. The defence has been hired to fight a case and where the defence sees an in, he/she will go.

RE-DIRECT EXAMINATION

Once you're finished with cross examination, Crown counsel will be allowed to re-examine. However, he/she will be limited to subjects that first came up in the cross examination. This will give the Crown the opportunity to clarify some of your statements.

VERDICT

Once all the evidence in the case is entered, there will be a verdict. At the end of the day, the verdict will depend on how well the case was presented to the judge. Remember, a judge can only analyze the case put in front of the court. That means all facts are supported by admissible evidence.

In Canada, tax evasion is a criminal offence. Once convicted, tax evaders can face penalties, court fines, and even incarceration—in addition to having to pay the taxes they tried to evade, plus interest.

Under the Canadian income tax and the excise tax laws, persons convicted of tax evasion will face fines ranging from 50% to 200% of evaded taxes and up to two years imprisonment. Further, upon conviction on an indictment, a fine ranging from 100% to 200% of evaded taxes and up to five years imprisonment can be imposed.

SENTENCING

A judge sentences a person after they have been found guilty of a crime. The sentencing hearing may take place immediately following a trial, or at some time in the near future.

After a determination is made about the facts being relied on for sentencing, and hearing from both the Crown and the defence about what the appropriate sentence should be, the judge must pick from a number of different sentencing options in order to render the sentence.

Sentencing in Canada is governed by principles that ensure the court determines a fair sentence. The purpose of sentencing, as explained in the *Criminal Code*, is to promote respect for the law and to maintain a just, peaceful, and safe society by imposing just sanctions that have one or more of the following objectives:

- Denunciation – making sure the punishment reflects society's abhorrence for the crime committed;
- Deterrence (both specific for the accused and general for the population at large) to reduce criminal conduct;
- Rehabilitation – to change the behavior of an offender and reconstitute them as productive citizens;
- Protection of the public – through incarceration and/or the imposition of conditions to control the offender's behavior in the community and to prevent the repetition of the criminal activity;
- Reparation – to repay, repair, or compensate the victim or community loss and harm; and,

- Responsibility – for the offender to acknowledge the harm done to the victim and the community.

These principles are all shaped by the overarching concept that any sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender for his or her conduct.

CASE FINALIZATION

After any case is completed, you will have tasks that you need to complete in order to put the matter to rest. What these tasks are depend in large part on your local policies but they usually include returning evidence once all appeals are exhausted and reporting on the outcome of the case. Various reports may include a report on publicity or a report on the completed prosecution.

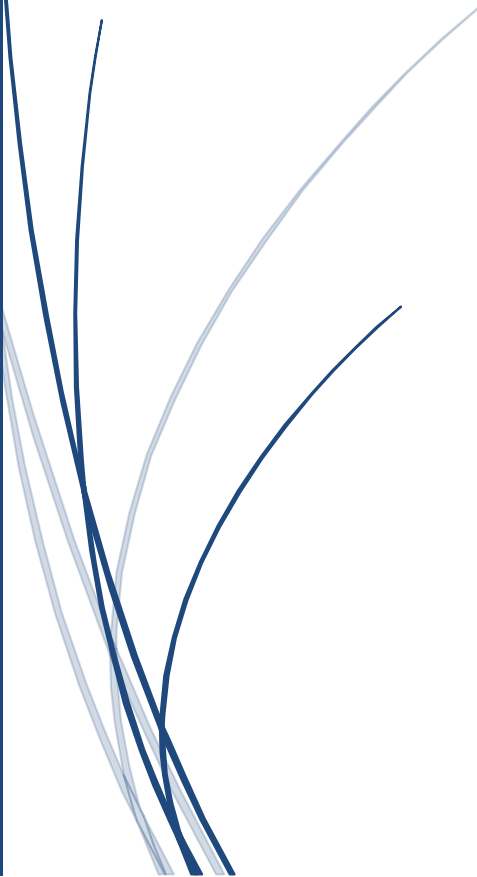
You will then need to archive or store your case file in accordance with local rules for document maintenance.



11/25/2019

Major Case Management Handbook

Information Guide



Criminal Investigations Program / Programme des
enquêtes criminelles
GOVERNMENT OF CANADA / GOUVERNEMENT DU CANADA

TABLE OF CONTENTS

Executive Summary.....	2
Major Case Management Overview	3
MCM Guiding Principles.....	4
Team Hierarchy.....	6
Roles and Responsibilities.....	8
Strategic - Case Manager.....	8
Tactical – Primary Investigator.....	12
Operational – File Coordinator	13
Other Roles	15
Specialists and Support Services	16
Building an Effective Team.....	17
Communication.....	20
Case Planning.....	22
Business Rules.....	24
Accountability.....	25
Document and Evidence Management	25
Exhibits.....	26
Task Management.....	27
Surveillance	28
Interviewing.....	29
Experts.....	30
Investigative Challenges in Major Cases	30

EXECUTIVE SUMMARY

The major case management system is designed to provide for a flexible, yet standardized, response to major case investigations based on the requirements of the particular case. The circumstances of each case will dictate the level and extent to which resources will be assigned to each investigative function. The principles outlined in this handbook can be applied to all cases and team sizes.

The principles outlined may be utilized as an investigative checklist by an investigations manager to conduct a systematic and ongoing examination of the circumstances of a case. The objective is to ensure that the CRA's response is commensurate with the requirements of the particular investigation.

In every defined major case investigation a Command Triangle shall be formed consisting of the functions and responsibilities of a Major Case Manager, Primary Investigator, and File coordinator. All three roles must work together in order to control the flow and direction of the investigation, to lend accountability to the investigation, and to provide a balance to the investigative steps required to complete the investigation.

The importance of planning the team structure at the outset of a major case cannot be overestimated. Investigative teams with clear roles and responsibilities, decision making authorities, and effective communication, are critical components of major case management. Keeping everyone in tune with the investigation will prevent feelings of uncertainty and misunderstandings about the direction of the case and the importance of their assigned tasks. When selecting a team, it is important to make sure that the right people with the right skillset, personalities and interests are selected for the major case.

Systems must be in place to support the effective implementation of major case management. The power of any system is enhanced when used consistently within and across office jurisdictions. Effective management of major cases requires close coordination, synchronization and information sharing. It is imperative that all major cases develop an operational plan with corresponding business rules.

MAJOR CASE MANAGEMENT OVERVIEW

The Criminal Investigation Program has evolved over time, adapting to changes in legislation and jurisprudence, combatting highly sophisticated tax schemes, including the use of off-shore jurisdictions, and adjusting to resource challenges. Throughout all these challenges, our mandate remains consistent in that we want to ensure significant cases of tax evasion are investigated and, where appropriate, referred to the Public Prosecution Service of Canada for criminal prosecution.

Major case management theory is generally applied to all complex cases. These complex cases will have similar features to our Tier 1 investigations, as determined by CID-HQ's prioritization committee.¹ Such cases would typically include: voluminous evidence, complex schemes, such as money-laundering, cross-jurisdictional issues, multiple targets, possibility of the existence of foreign evidence and the potential for complex legal challenges.

Although these complex cases would warrant the application of major case management, all team investigations would also benefit in applying the major case management framework.

"A good investigation starts with careful planning and preparation, a clear understanding of the parameters of the investigation, and with proper authority. Care and attention spent in getting it right at the outset will avoid considerable difficulties later on." (NSW Ombudsman Investigating complaints - a manual for investigators, 2004)



Figure 1 - Planning Steps

¹ [Prioritization and Governance Framework](#)

MCM GUIDING PRINCIPLES

The CRA's major case management approach will encompass the following guiding principles:

- **Investigative teams with clear roles and responsibilities, decision making authorities, and effective communication, are critical components of major case management.** The leadership of the command triangle, supported by an investigative team, is a cornerstone of major case management. The responsibilities of each member of the investigative team must be defined and members must have appropriate training and experience for their assigned role. Regular, open communication within the command triangle and with the rest of the investigative team is essential to the team's effectiveness.
- **Systems must be in place to support the effective implementation of major case management.** A robust infrastructure for information and evidence management and documentation of investigative tasks and decision making is essential. In addition to organizing and managing information, electronic systems also provide valuable investigative and analytical tools.
- **The power of any system is enhanced when used consistently within and across office jurisdictions.** Common tools support collaboration on investigations and aid in the detection of links.
- **Accountability mechanisms are critical for major case management.** Key among these is team structure. Accountability of team members in carrying out their responsibilities is assured through collaboration and communication with the command triangle, and other members of the team, as appropriate. While the case manager has overall responsibility for the speed, flow and direction of the investigation, oversight by and accountability to senior levels ensures investigations are being managed responsibly and resourced appropriately.
- **Critical analysis is a hallmark of effective major case management.** The case manager and command triangle must maintain an atmosphere that encourages critical reflection and open communication within the investigative team. External critical analysis is also important, for both individual investigations (e.g., having operational plans reviewed by someone who is not closely tied to the investigation) as well as the team or unit's general practices. At the individual case level, this helps to ensure that all reasonable investigative avenues are pursued, and provides an opportunity to identify and mitigate risks to the investigation or prosecution.

- **Major case management involves a range of investigative strategies to keep the investigation moving forward and avoid critical errors.** This means capitalizing not only on internal and external resources, but also taking a multi-disciplinary approach, involving Public Prosecution Service of Canada (PPSC) counsel and other relevant experts who may be outside of the criminal investigations program. For example, the schemes used in complex offshore structures to commit tax fraud often require the need for subject matter experts in civil tax law concepts in order to interpret facts and applicable laws so that a sound criminal investigative theory can be developed and advanced.
- **Major cases may involve significant interest by the media and the public in general.** The impact of investigative strategies and decisions on public trust should be considered when sharing information about an investigation with the media.
- **Many investigations will lead to a prosecution; this must be anticipated and planned for early.** It is essential that throughout the investigation, measures be in place to address the prosecution aspects that arise in any investigation, including early and ongoing communication with PPSC counsel. This ongoing communication will aid the investigation in managing all complex evidentiary and legal issues such as obtaining the requisite intent and addressing any known legal defences as well as identify early on any potential evidentiary gaps.
- **Effective file management** ensures that files are structured so that investigators can provide disclosure in a timely and complete fashion and that materials are organized and analyzed to provide PPSC counsel with the materials needed to make the decision to prosecute.
- **Linked cases present additional case management needs.** Multi-jurisdictional investigations require timely, effective and unhindered cooperation and coordination whereby information sharing is essential. Tools must be in place to support the prompt establishment and management of joint investigations. Where joint investigations occur, overarching authority and responsibility must be clear.

Although the Standards identify certain types of investigations where major case management *must* be applied, there are many other circumstances where it may assist in structuring the investigation. Many of the practices outlined in these standards are suitable for a wide range of investigations, not limited to major cases.

TEAM HIERARCHY

Command Triangle:

In every defined major case investigation a Command Triangle shall be formed consisting of the functions and responsibilities of a Major Case Manager, Primary Investigator, and File coordinator.

In a large or complex investigation, the investigative functions of a Major Case Manager, Primary Investigator, and File Coordinator may be performed by different individuals. Alternatively, in a small or less complex investigation, one person may be responsible for more than one function.

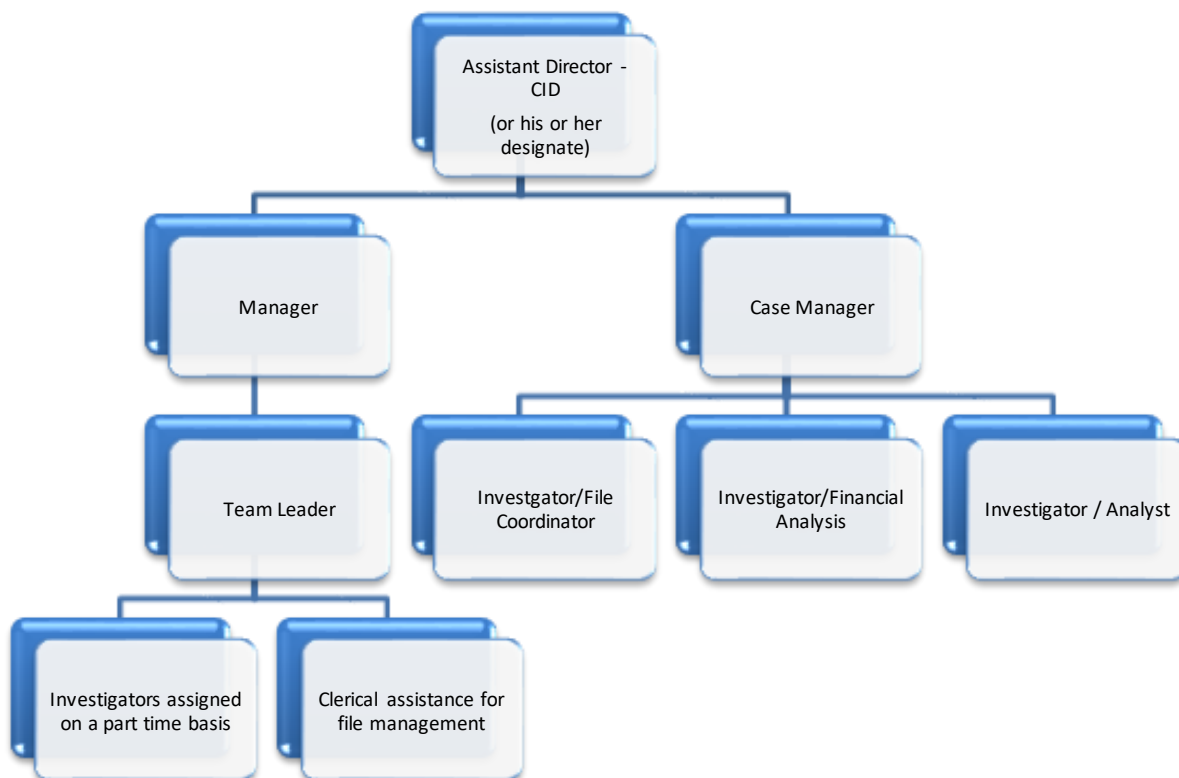
The following diagram depicts a command triangle. All three roles must work together in order to control the flow and direction of the investigation, to lend accountability to the investigation, and to provide a balance to the investigative steps required to complete the investigation.



Effective management of large cases requires close coordination, synchronization and information sharing. The features of the command triangle include:

- Model reserved for major cases.
- Allows for a clear definition of the roles and responsibilities of everyone in the file.
- According to the experience of police agencies, this model makes it possible to better investigate: more quickly, by examining more evidence and producing better files.
- The CID management must first jointly designate the case manager who will be assigned to this file.
- The other members of the investigation team must be chosen based on the profiles required to properly carry out the investigation (experience in the field, desired technical and behavioural skills). Interviews should take place with candidates in order to ensure the compatibility of their personality, as well as to survey their motivation to work on a long investigation.
- Long investigations risks being affected by the inevitable turnover of staff that would have an impact on a case for a few years. However, in order to reduce this risk, a succession plan must be prepared.

When aligned with the CRA reporting structure, a team case might look as follows:



ROLES AND RESPONSIBILITIES

This section will discuss the various roles and responsibilities within a major case, from the case manager and primary investigator, to document coordination and clerical support.

The roles outlined in this document represent a suggested structure and are not meant to be restrictive. What is important is that planning take place at the outset of an investigation to ensure all the responsibilities identified under each of the roles is accounted for and assigned to someone. In larger more complex cases, the roles will likely be distributed amongst more individuals, such as adding in affiants, evidence managers etc. whereas in a smaller case they may be assumed by one person.

The importance of planning the team structure at the outset of a major case cannot be overestimated. The roles and responsibilities of each team member need to be clearly articulated and written out to ensure the team understands who is doing what task, and that all aspects of the case are covered.

The larger and more complex the case, the greater the need for the local office as well as headquarters to provide oversight, particularly in regards to any case that crosses office boundaries.

STRATEGIC - CASE MANAGER

The case manager, who is also known as team commander in law enforcement MCM structures, takes on the strategic responsibilities and ultimately has the responsibility for the case. The case manager supervises the investigation and manages the human, material, and financial resources. He or she also assumes the role of liaison with internal and external partners of the criminal investigations division.

The case manager's strategy is the foundation that all subsequent planning and deployment rely upon. For this reason, the case manager's leadership ability and strategic oversight is paramount to the successful planning and deployment of a case.

Necessary Characteristics:

- Strong leadership skills
- High level of experience
- Strong communication skills
- Highly organized with an ability to reassign tasks & resources
- Ability to manage a team of investigators
- Flexible & realistic with goals / objectives
- Willing to make the tough investigative decisions

Responsibilities²:

1. Conducts investigations into financial schemes of taxpayers suspected of tax evasion in the most complex cases of domestic and international tax fraud schemes, with a forensic approach, employing current and innovative investigative techniques and tools. This can include directing/leading investigators in the most complex investigations requiring the involvement of multiple investigative resources.
2. Develops operational strategies and objectives through an operational plan. In setting out an operational plan, the following information should be considered:
 - a. Location, size and scale of the case;
 - b. The number of individuals involved in the alleged offences;
 - c. Wider implications the case may have on other areas within the CRA (i.e. on audit, collections, other jurisdictions, both interprovincial and international);
 - d. The role of any CRA partners, including PPSC and other law enforcement agencies;
 - e. Pertinent legal issues;
 - f. Available information and intelligence; and
 - g. Potential for media interest;
3. Where criminal organizations are involved, a risk/safety assessment should be considered.
4. Responsible for the development of a media plan.
5. Keeps investigation on track through regular team meetings and overseeing the appropriate tasking of assignments. Part of the planning process will be to set a schedule for the timing of the meetings.
6. Identifies and informs management of necessary investigative and support resources required for the investigation. Identifies and secures human/financial resources with the assistance of regional management.
7. Assumes overall control, responsibility, accountability as well as determines strategies to control the speed, flow and direction of the case. In consultation with officers performing primary investigation and file coordination functions, develops and ensures the implementation of investigative strategies.
8. Preparation of all internal reports, including operational plans. Ensures adherence to prescribed reporting and communication procedures.

² These responsibilities are not meant to limit or alter the relevant work descriptions.

9. Reports to/briefs senior management and Headquarters, as required, on the overall direction and management of the investigation and makes decisions to change investigative strategies or directions. This includes instances where situations discovered in the course of an investigation that appear to result in unintended applications of the provisions of the various statutes, as well as recommends corrective changes in policies or legislation.
10. Provides instruction and specialized on-the-job training to criminal investigators.
11. Develops, maintains and cultivates a network/partnership with involved stakeholders: *[Note the following list is not all inclusive and depending on your case you may need to establish additional or new partnerships.]*
 - a. **PPSC** – Assists PPSC lawyers in fulfilling the legal requirement to disclose all relevant information, documents and materials to the taxpayer and their counsel; assists in the preparation of evidence and witnesses for trial; acts as the primary witness in court regarding the conduct of the investigation; and, assists with the enforcement of court ordered sentences including fines.
 - b. **Parties to the offence** – Participates in negotiations between the PPSC and taxpayers concerning fraudulent actions or financial benefits associated with tax evasion and assists collections officers by identifying sources where the amounts due can be recovered.
 - c. **Computer Forensic Analyst Team** – Liaises with the computer forensic analyst team and representatives from other disciplines and agencies.
 - d. **Public Affairs Branch** – Sets out communication strategy in partnership with the Public Affairs Branch. This includes the preparation of media releases in consultation with headquarters and regional communications, in accordance with appropriate guidelines, as part of the criminal investigations program priority to create awareness, maximize deterrence and enhance compliance.
 - e. **International Partners** – Liaise, where possible, with international partners to determine the type or nature of information that exists in order to improve the quality of our international requests.
 - f. **Law Enforcement Agencies (RCMP, CBSA, etc.)** – Liaises with law enforcement partners to further the investigation. Ensures communications are consistent and solicits cooperation and joint participation on cases and the sharing of information (e.g. performing surveillance/executing search warrants and seizures). This includes such agencies as the Royal Canadian Mounted Police (RCMP), Canada Border Services Agency (CBSA), etc.

12. Upon notification of any potential linkage between major cases identified through any investigative technique or process, ensures the linkage is investigated.
13. Ensures duplication of effort and counterproductive interference are eliminated through a task reporting system.
14. At the earliest opportunity, considers the need for a case conference involving representatives from identified stakeholders (e.g., PPSC and involved police services) to review the known facts of the case from an inter-disciplinary perspective to develop protocols, for the processing of forensic exhibits, and to gather expert input to assist the case manager in developing an investigative plan.
15. Where applicable, in consultation with the members of the respective command triangle(s) of the linked investigations, develop an operational plan to be approved by management.
16. Participates in a case review or operational de-briefing for the purpose of making recommendations relating to the direction, speed and flow of the investigation.
17. Reviews all legal documents such as information in support of search warrants, affidavits, documentation to support court orders for the detention of seized records, and recommendations for the laying of criminal charges under the various statutes administered by the CRA.
18. Provides advice and assistance to team members where there are conflicting issues or in negotiations between the PPSC and taxpayers and their representatives.
19. Discusses significant or controversial cases with senior management, Headquarters officers and PPSC counsel to resolve contentious issues.
20. Consults with Headquarters and PPSC concerning the impact of court decisions, jurisprudence and case resolution, and seeks advice on specific or general application of the various legislation enforced by the CRA.
21. Manages the unit's operating budget, including monitoring expenditures vs. planned spending and reporting on same. Participates in the allocation/reallocation of the budget for the division.

TACTICAL – PRIMARY INVESTIGATOR

This role is generally taken on by a senior investigator and involves leading the investigation, as well as preparing reports, under the direction of the case manager. The level of operational responsibilities assigned to this role depends on how the role of the case manager position has been structured. If the case manager's role is designed to be mainly strategic in nature, then the main tasks of this role include the planning, organization, and coordination of the investigation. However, if the case manager role is set up with an operational component, then the primary investigator's role is to provide operational assistance to the case manager through the delegating, assigning and following up on tasks to other investigators who are assisting with the investigation. It should be noted that some of these tasks may be done directly by the case manager himself or herself and that all of the tasks outlined in this section would be at the case manager's direction.

Necessary Characteristics:

- Must know the case thoroughly
- Must be assigned to the case full-time
- Must be prepared to testify to the status of the case
- Must work with other investigators, as needed
- Primary investigator – experienced investigator

Responsibilities³:

1. Reports directly to the case manager who has ultimate control over the following tasks.
2. Reports as soon as possible any potential linkages to other cases.
3. Helps identify the human and material resources required to conduct the investigation and advises the case manager.
4. Examines all information relevant to the investigation and ensures the communication of the information to the Investigative Team.
5. Maintains appropriate scheduling of the Investigative Team.
6. Assigns duties, authorities and responsibilities to personnel within the Investigative Team commensurate with their skills, experience and training.
7. In consultation with the case manager, controls the direction, speed and flow of the investigation.

³ Id. 2

8. Provides clear, concise instructions on job duties or tasks to all personnel.
9. Ensures the completion of all assignments in a timely fashion.
10. Prepares and presents monthly case reports.
11. In consultation with the File coordinator, if applicable, ensures the preparation and maintenance of the detailed chronology of the investigation.
12. Coordination of obtaining information and documents from third parties, including through interviews and searches.

OPERATIONAL RESPONSIBILITIES – FILE COORDINATOR

The operational component involves evidence gathering and management, including becoming familiar with all of the investigation's documentation and all the evidence elements collected by investigators. Additional operational considerations are the drafting of any judicial applications related to search warrants and production orders as well as ensuring that evidence elements are classified, indexed and searchable; organizing the preparation of evidence disclosure from day 1 of the investigation.

Based on the size of the investigation, various roles such as file coordinator, evidence manager or affiant may be assigned to one or several investigators dedicated to evidence management and writing judicial applications. A decision as to the reporting structure and duties will need to be outlined at the outset of the investigation.

Tasks to be assigned:

- Prepare all judicial authorizations
- Managing all information
- Organizing all evidence
- Disclosure procedures
- Preparing all court exhibits (in conjunction with investigators)

Responsibilities of the persons assigned these operational tasks⁴:

1. Has a clear understanding of the overall case strategy.
2. Maintains an accurate account of documents, evidence, witnesses.

⁴ Id. 2

3. Ensures business rules are followed and the elements of evidence have been collected in compliance with laws and jurisprudence, in order to make them admissible as evidence.
4. Ensures there is a reliable system for managing all sensitive material within the case.
5. Scrutinizes all documents received during the investigation to ensure their, consistency, quality and completeness. This is particularly important with a team spread over different jurisdictions or sections.
6. Reports any potential linkages to other cases.
7. Ensures all materials and information are appropriately organized and indexed for exhibit management and disclosure.
8. Implements standards and controls for the file coordination system.
9. Creates and maintains the detailed chronology of the investigation, in consultation with the Primary Investigator or Team Leader.
10. In conjunction with the Primary Investigator or case manager, ensures each tip/message is quickly and thoroughly investigated or prioritized for action.
11. Ensures the appropriate security of all records and information.
12. Ensures classification and dissemination of records in accordance with established policy or directions received from the Case manager.
13. Maintains minutes of the Investigative consultant team meetings in the records of the investigation.
14. Manages, coordinates and tracks identified tasks (examples of a task log, task report).
15. Obtains all required Judicial Authorizations.
16. Depending on the Judicial Authorization sought, liaises with institutions in possession of documents/evidence sought after so that the documents/evidence can be gathered within a sufficient time frame (i.e. 30 or 60 days).
17. Acts as an advisor with respect to evidence collected by the regional investigation teams in order to ensure that the business rules are followed and the elements of evidence have been collected in compliance with laws and jurisprudence, in order to make them admissible as evidence. It provides advice on the preparation of evidence disclosure.

OTHER ROLES

Depending on the size and scope of your investigation, the command triangle may consider separating out some of the duties and assigning them to separate individuals. Some of the roles that should be considered are:

AFFIANT

Consideration should be given to assigning one or more affiants in your major case to write and obtain all required Judicial Authorizations. This individual would review all material gathered during the investigation to ensure that judicial authorization they were assigned makes full, fair and frank disclosure. Additionally, they would maintain a source document binder, in either electronic or hard-copy format that contains a copy of all referenced investigative material related to their assigned judicial authorization.

EVIDENCE MANAGER

The evidence manager will make tactical decisions with respect to evidence management and the investigation's documentation. He or she becomes familiar with all of the evidence collected by investigators. The evidence manager will conduct quality control in order to ensure that the business rules are followed in relation to the evidence and that all evidence has been collected in compliance with laws and jurisprudence. Other duties will include document management and preparation of disclosure.

INTERVIEW COORDINATOR

If your case requires a large volume of interviews, it may be prudent to assign an interview coordinator. This person would coordinate all of the interviews. They would also provide a written narrative summary of all audio and/or videotaped interviews and develop appropriate interviewing strategies that will maximize the value of information and evidence obtained from interviews.

FIELD INVESTIGATORS

In every major case, field investigators shall be selected and assigned by the command triangle based on the nature of the investigation and the experience of the person to undertake specific functions and duties.

Under the direction of the command triangle, they perform the tasks that are assigned to them such as, interviews, preparation of orders, evidence review, etc. They are responsible for operational decisions for the tasks that are assigned to them.

SPECIALISTS AND SUPPORT SERVICES

Every major case requires additional support and specialized expertise in order to be successful. Therefore, when preparing to conduct a major case, consideration should be given to the requirements needed for various specialists or support services. The type or range of support needed is based on the nature and scope of the investigation.

The appropriate specialists or support services from the various sectors may be part time or full time. A plan needs to be made to integrate these resources in to the investigation team either, remotely or on site. To ensure effective oversight, it is understood that for each of these services, task definitions will have to be established, as well as expectations regarding the services to be performed.

Support services can range from individuals who conduct various types of research such as open source information to a stenographer to transcribe interviews.

Specialists that need to be considered range from internal technical expertise such as tax avoidance specialization, to specialists on various software such as an individual who is proficient in eDiscovery, to specialists who will qualify as experts in court such as a forensic accountant. A data analyst is a common type of specialist that should be considered when forming a major case management team. With early planning this person can ensure their work aligns with that of your file coordinator and evidence manager.

The need for specialists needs to be part of the preliminary planning so that they can be brought into the team early on. For example, all major cases should identify their computer forensic resources so that they can engage in early consultation.

When deciding on a specialist, consider whether or not you just need the expertise to help move the case along or whether they will also be required to testify as an expert witness.

BUILDING AN EFFECTIVE TEAM

“Gathering a group of individuals in order to have them achieve a specific mandate does not necessarily represent a sufficient condition for establishing a work team.”

(http://wcours.gel.ulaval.ca/2011/h/GEL1001/default/References/TravailEquipe_A07.pdf)

With a view to form a cooperative and dynamic team towards long-term achievements, immediate consideration to the composition of the team will be necessary. It will also assist, on a proactive basis, in dealing with some of the investigative challenges mentioned later on in this document. Some of the factors that should be considered in order to build an effective team are discussed in this section.

SKILLS AND PERSONALITIES OF THE PEOPLE INVOLVED

It's important to make sure that the right people with the right skillset, personalities and interests are selected for the major case. Selection of team members should not be made solely on the availability of staff but rather on ensuring they have the right skills needed by the team. This will not only help in setting up an effective team but also in the individual job satisfaction of the team members.

Some things that should be considered when setting up the team include:

- All team members should have the necessary technical knowledge to enable them to complete their duties efficiently with little guidance;
- Beyond the technical abilities of the Case manager, the ability to lead the team is also paramount to foster an attitude of trust;
- The primary investigator must be flexible and listen to the team, be open to ideas and insights that may go beyond the original plan;
- The file manager must be organized and have an eye for quality control;
- Roles should be assigned based on experience, knowledge, skills and interests;
- Where training is required for one or more members of the team, it should be prioritized at the start of the investigation where possible.

Although it is important to consider the already-acquired knowledge of the investigators, the Case manager should also make sure to further extend individual learning throughout the duration of the case. The extent to which the team members are motivated and have initiative will go a long way in the efficiencies of the team as a whole.

TEAM CHARACTERISTICS

The following include the characteristics of an effective team:

- Everyone should be aware that the investigation is a “CRA” investigation, not “mine” or “ours”;
- Each team member must be able and willing to work in a team environment;
- Although change is inevitable, a long-term commitment to the team should be foreseen;
- It is essential that all members see each role as important. Each team member will bring a different set of experiences and values to the team;
- Effective communication is key within the team as a whole and amongst team members;
- The team dynamics will have a strong impact on how the team performs.

In the work environment, where feasible, a space should be planned to allow the team to meet on a regular basis to:

- Hold its regular meetings;
- Have discussions daily;
- Solve minor conflicts where necessary;
- Feel valued as a member of the team;
- Preserve the work environment and products.

This space could be used for variety of tasks including but not limited to:

- Weekly meetings and monthly case plan meetings;
- Special meetings to develop and maintain team spirit;
- Know your teammates information sessions;
- Discussions to better understand and accept each other's differences and similarities;
- Share monthly reports and present deliverables by each member to allow a common comprehension;
- Allow for all members to see the big picture by promoting brainstorming and innovative ideas.

By enhancing communication within the team, trust will be built and members will be more apt to step outside the box. This will promote creative thinking.

POTENTIAL MANAGEMENT AND NON-CASE RELATED ISSUES

It's important to note that many challenges involving individual and team aspects may be avoided or mitigated by considering some of the human resource issues as we progress.

- Performance issues:** It is critical that tasks be assigned to investigators who have the necessary expertise or ability to complete it. This doesn't necessarily mean that the individual members don't require training or can't complete research for a particular task. If performance is an issue, it is important to deal with it early. State your factual observations to the team member. Make sure that you are able to personally observe the situation and not solely rely on other members of the team. It is also important to determine if it is a learning issue. Perhaps coaching, mentoring or training is needed. Document your discussions and brainstorm inclusion of the team member in various forms.
- Stress:** While some stress will be a reality of the situation, the management of ongoing stressors will help alleviate problems. There are four types of stress – situational, critical event, work/home stress, and cumulative. Cumulative stress is the most hazardous to the investigators and should be monitored. Members should feel like they are working together, not in silo. When investigators feel supported and as part of a team, they are less likely to take the stressors that go with a major case personally. Make sure that individual members are not over-worked and can deal with their individual workload. It is important for investigators to know that a certain amount of stress is normal for a member of a major case.
- Turnover / attrition:** Due to the longevity expected of a major case team, you should assume that there will be changes to the team as time passes. In order to deal with this, it will be best to standardize investigative processes, task management, working papers to make the process easy to explain to all members. By rotating the roles of investigators or by setting up backup roles, you will make sure that each investigator is aware of the other's duties and expectations. It will make it easier for investigators to cover for each other in time of long-term absences or unforeseen turnover. This should also promote teamwork and collaboration.

Whatever the situation, communication is key. Always be willing to listen to the employee's side of the story before considering the courses of action. Always be willing to deal with the situation. One-on-one meetings with each member on a monthly basis to assess each of their needs and motivation will be an asset in mitigating risk and in assessing job satisfaction and stress levels.

One of the biggest impact by the case manager will be to make sure that investigators who are selected in participating on the team are interested to be part of the team. Beyond that, their interest can be preserved by applying the concepts discussed above.

COMMUNICATION

Communication is a key element in conducting successful major cases. Regular meetings where teams can share their progress, challenges and any best practices is an important aspect when working in a team environment. Keeping everyone in tune with the investigation will prevent feelings of uncertainty and misunderstandings about the direction of the case and the importance of their assigned tasks.

At the inception of a major case, the command triangle need to establish business rules to ensure a clear line of timely communication. The business rules should cover items such as conduct and timing of meetings.

INVESTIGATIVE TEAM MEETINGS

Investigative team meetings are an essential tool and play a vital part in the command triangle's ability to effectively run any major case investigation. They allow the command triangle to set out clear goals for the investigation while providing team members with clear assignment of responsibilities. Investigative team meetings will help establish and maintain the pace of the investigation by keeping everyone focused on the goals and investigative strategies (short, medium and long term) while also allowing for team building, providing everyone the opportunity to participate fully. Investigative team meetings will highlight the efforts of the members of the team, and establish a form of accountability for team members.

ELECTRONIC COMMUNICATION

As a large part of our communication is now done electronically, business rules will need to be established to ensure that all electronic communication is properly captured. When considering protocols around electronic communication it is important to remember these definitions.

DEFINITIONS

1. **Record:** any information contained in any physical medium that is capable of being preserved. This includes audio-visual records, photographs, maps, drawings, film, sound recording, videotape, microform, magnetic tape, paper or electronic files and any other documentary material.
2. **Corporate Information:** is information required to carry out operations, to make decisions or to account for activities of the CRA:

Examples are:

- Emails or BBM messages that contain information pertaining to operational and/or investigative decisions, actions and transactions are a legitimate source of evidence. Such as:
 - Summaries of debriefs;
 - Summaries of surveillance;
 - Direction(s) or decision(s) given regarding an investigation.
3. **Transitory Information:** is information required only for a limited time to complete a routine action:

All communication needs to follow agency and criminal Investigations policy. More information can be found in the criminal investigations manual at: [Criminal Investigations Manual 1.14 Mail, email, facsimile and secured shared drives](#)

Emails and other forms of electronic communication have become second nature as a means of communicating both within organizations, including the CRA, as well as externally. As a result, consideration must be given to the effective information management within an investigation in order to satisfy disclosure obligations. A starting point is to utilize [good email management practices](#).

CASE PLANNING

Planning is the process of thinking about and organizing the activities required to achieve a desired goal or objective

Planning is important in all cases but is an absolute necessity in any major case to ensure that **objectives are achieved** and the investigation is conducted in an efficient manner.

WHY PLANNING IS SO IMPORTANT?

By conducting proper planning we have a path to meet our objectives. Planning allows us to monitor our progress and facilitates the coordination of tasks and resources. Proper planning is essential and makes us better investigators.

It takes less time to do a thing right, than it does to explain why you did it wrong – Henry Wadsworth Longfellow

MAJOR CASE OPERATIONAL PLAN

A **major case operational plan** is the combination of a **detailed investigative plan** and a prosecution plan. The detailed investigation plan which is part of the operational plan will become your road map for the investigation. It will guide you through your decision-making process and ensure you stay on track.

The **prosecution plan** is also part of the major case operational plan and will initially be prepared at the earliest possible point in a major case when meaningful information can be provided. The plan should be regularly updated and re-submitted as the investigation progresses and new information becomes available.

This document is an evergreen document that will be updated during significant events in the case. Although there is no set time period for its update, it is recommended that, as a minimum, it be prepared at the inception of a case and updated after the search action and prior to referral.

Once the CRA has determined that a case may require a major case management team, the Manager of the team in charge of the file will:

- a) Draft an operational plan; and
- b) Inform the PPSC of the existence of a major case and discuss the possibility of assigning PPSC advisory counsel.

The Manager will develop an operational plan that structures the investigation in contemplation of a prosecution. This may include, amongst other things:

- Establishment of a team structure to ensure adequate resources are recognized with an outline of roles and responsibilities for the investigation;
- Succession Planning (there needs to be a range of investigators and prosecutors assigned to this case to ensure the case survives changes within an organization);
- A case management process for documents, electronic data, and scanning capacity; and
- A plan for handling disclosure.

The CRA will forward the operational plan to PPSC and consult on the possible assignment of PPSC advisory counsel.

The preparation of the initial operational plan is the responsibility of the Assistant Director, Criminal Investigations of the Canada Revenue Agency (CRA).

Once the approved structure for the team is in place, the case manager will take over the responsibility of the updates of the operational plan

It is incumbent on the Assistant Director, Criminal Investigations and the PPSC, to ensure that a viable and realistic operational plan is created and all necessary updates meet the requirements of the CRA's investigative plan and the Deputy Director of the PPSC's prosecution plan.

CASE PLAN

A **case plan** may be prepared as soon as the detailed operational plan is approved and the team is in place.⁵ The case plan needs to have sufficient detail to provide a high level description of the investigative steps that should be done and achieved to move the case forward.

The written plan includes an estimate of time requirements, the actual time consumed, a work completion date, a review date and the supervisor's comments on review of the plan and the results. It should be directly tied to the project management.

This case plan should be updated on a monthly basis. Updating your case plan on a monthly basis has been shown to be an effective way for supervisors to manage their operations.

Remember that investigations rarely proceed as planned. As the investigation changes course your plan must also change to reflect the new direction of the investigation.

The monthly update provides an overview of the work to be performed during the month and the tasks needed to be completed. It's the responsibility of the case manager to prepare and ensure follow up on the Monthly case plans.

BUSINESS RULES

A **business rule**⁶ defines or constrains some aspect of the investigative process. Business rules are intended to assert business structure or to control or influence the behavior of the management of the case. Business rules describe the operations, definitions and constraints that apply to the investigation of the major case. Business rules can apply to people, processes, corporate behavior and computing systems in

⁵ Project management is the practice of initiating, planning, executing, controlling, and closing the work of a team to achieve specific goals and meet specific success criteria at the specified time. It should be directly tied to the detailed investigation plan.

⁶ Guidance can be found on the development of business rules for a major case in the Business Rules Supplemental Document

an organization, and are put in place to help the organization achieve the goals of the investigation.

While a business rule may be informal or even unwritten, we recommend documenting the rules clearly. When carefully managed, rules can be used to help the command triangle to better achieve goals, remove obstacles to case progress, reduce costly mistakes, improve communication, comply with legal requirements, and increase the quality of the final investigative product.

For major case management, the investigative workflow is spelled out through the use of business rules. These rules identified at the inception of a major case will outline the specifics around who will conduct what task, how it will be conducted along with communication and document management protocols. Business rules will cover, but are not limited to the following:

ACCOUNTABILITY

The case manager has ultimate responsibility for the tasks assigned within a major case investigation. The case manager and primary investigator are responsible for identifying the tasks to be completed and assign them through the File coordinator. The File coordinator is responsible for maintaining a record of all identified tasks and results.

DOCUMENT AND EVIDENCE MANAGEMENT

The effective management of all documents is important in any criminal case but it is especially important when handling a major case which will have exponentially more documentation and evidence. Without good document and evidence management practices the case is put at risk. A plan for effectively handling the documents and evidence needs to be established at the inception of a major case. Specific details as to how to handle the documents should be put as part of the case's business rules to ensure the consistent handling of all documents and evidence.

The plan and corresponding rules need to include elements such as:

- How the evidence is handled;
- Who controls the storage and maintenance of the evidence;
- The approach to using any technological solution such as ringtail; and
- A disclosure protocol

Many investigators think that the principles underlying evidence organization for court only become relevant at the referral and court preparation stages. It is important to continually emphasize the importance of applying these principles and concepts commencing at the beginning of an investigation, and continuously during the investigative process. Sometimes it is effective to start with the end and work backwards.

The benefits to the investigator and CRA are that the investigator can identify problems with the evidence early in the case and take the necessary steps to rectify the problem well in advance of the expiry of a retention order or the beginning of the trial, and the investigator can assess, at an early stage, whether sufficient evidence has been obtained to prove a particular fact, and if so, the investigator can move on to other issues. This will result in a more efficient and less intrusive investigation.

Early on, all major cases need a **disclosure protocol** that will outline how they intend on managing, vetting, redacting and disclosing the evidence in the case.

A major issue facing investigators is what to include in the “investigative file”. The investigative file will include: the “fruits of the investigation” and may also include privileged records and/or irrelevant records. “Fruits of the investigation” are, in the strictest sense, all evidence gathered throughout the investigation and records relating to how the investigation was conducted. All of these records are relevant and must be produced to the defence.

EXHIBITS

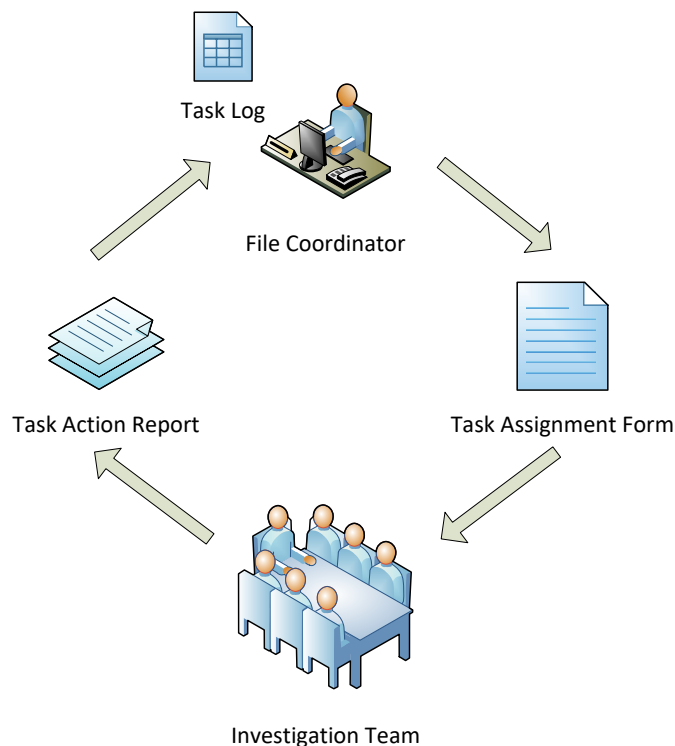
Continuity of exhibits is of utmost importance, and the continuity of exhibits remains with, and is the responsibility of the exhibit coordinator (**depending on resource availability, this role may be assumed by another member of the investigative team**).

All exhibits will be seized and handled in accordance with CRA policy. The process for handling the exhibits needs to be clearly outlined in the business rules set up at the outset of the investigation.

In the event of multiple locations, consideration may be given to assigning an exhibit coordinator and exhibit persons for each location. The exhibit coordinator will oversee all work conducted by the individual exhibit persons.

TASK MANAGEMENT

In order to maintain control over the task assignment, all major cases must utilize a **task log** which is to be maintained by the file coordinator. A task log is a chart that documents all tasks within the investigation. All task assignments are individually numbered and assigned by the file coordinator. Team members will in turn prepare a report on the progress and results of each of their assigned tasks and submit these back to the file coordinator.



A **task assignment form** will be used by the File coordinator to administer all aspects of the investigation. A **task action report** will be used by the investigator or other personnel to write a detailed description of all actions taken with respect to the assigned task.

Note: The business rules established by the command triangle will determine the form and format for these tasking documents. For cases utilizing major case management software, these documents will be generated by the software. For other cases, particularly those not involving other agencies, it may be sufficient to use T2020 Memos for File when assigning tasks or reporting on the actions taken.

RESPONDING TO TASKS (TASK ACTIONS)

The investigator will work on the task and document their investigative activities in a task action report. If an investigator is not assigned the task but completes work to help with the task, he/she will need to identify the assigned task number and submit a separate task action report. The "Action(s) Taken" should be written in third person, past tense and in a professional manner in order to facilitate the efficient drafting of an Information to Obtain (ITO) or Affidavit.

If documents, exhibits, or multimedia are seized/collected as part of the task, this fact must be mentioned in the task action report. Documents referenced should be listed clearly at the bottom of the task action report in a format established in the business rules.

In addition to the above, obtained documents should also be recorded on a **document submission spreadsheet**. This spreadsheet also must be submitted to the file coordinator at the conclusion of the Task and will assist him/her in making entries in the **documents intake / exhibit register**. Information received by the investigator in electronic format will be described in the task action report and submitted to the file coordinator as is.

DOCUMENTS OBTAINED WHILE PERFORMING TASKS

How investigators are to submit documents that are referenced in a **task action report** will be established in the Business Rules.

SURVEILLANCE

Surveillance is an investigative technique involving the deployment of various types of resources to observe the activities of one or more individuals for the purposes of gathering evidence or information. Any surveillance action contemplated as part of a major case must comply with [Criminal Investigations Manual Chapter 25 – Covert Operations](#).

INTERVIEWING

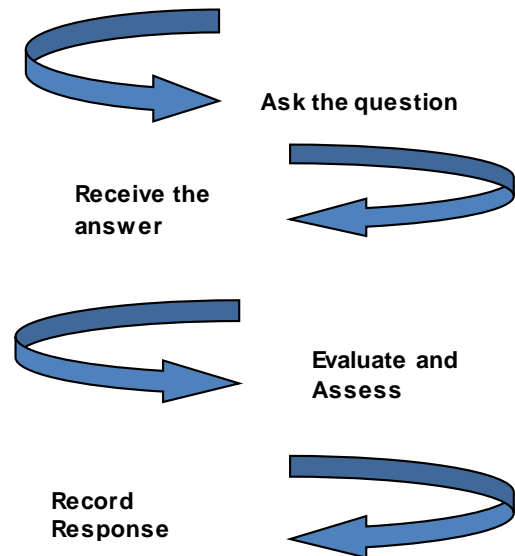
Interviews are one of the most critical elements of a successful CRA investigation. The aim of an investigative interview is to obtain accurate & reliable information / facts from a witness or from the accused. In a major case you may have multiple individuals who need to be interviewed. Therefore, consideration may need to be given to assigning an interview coordinator.

Whether or not you assign an interview coordinator, it is important that all interviews are prepared for properly.

A starting point in your interview preparation may be to create a profile of your witness prior to conducting the interview. This information is captured in a **witness profile summary**.

Before every interview you should create a roadmap for the interview you by identifying

- the issues in the case & the facts you need to prove
- the facts you want to prove with this witness
- what evidence you expect this witness will provide to prove these facts
- how the witness' evidence will prove a fact (e.g. the witness identifies a document and the document itself is used to prove a fact, or, the witness speaks directly to that fact)



Always ask yourself “do I have the right witness to prove this fact?”

You want to obtain admissible, relevant and reliable evidence that has probative value, from a witness that you can identify as credible, not simply answers to questions

INTERVIEW SEQUENCE PLAN

Witness interviews should be planned out in an order that will enable the investigator to maximize the value of the information gathering process. The **interview sequence plan** lists the witnesses you plan to interview, the order of the interviews, the allegations you intend to discuss, and the questions you intend to ask. When witnesses are interviewed sequentially, you should avoid delays between one interview and the next to minimise the opportunity for collusion.

The order in which the witnesses are interviewed will depend on:

- the importance of their evidence. The need for their evidence at points in time consistent with the investigative plan, for example witness evidence needed for an ITO will be needed sooner than a confirmation statement on an invoice from a supplier,
- their degree of association with the person who is the subject of the complaint, and
- their availability.

EXPERTS

Major cases may need experts to aid in proving or disproving some aspect of the case. As it takes time and resources to acquire the correct expert, these decisions need to be made in a timely fashion and should be captured as part of the **major case operation plan**.

The decision to use expert resources to conduct examinations shall be made by the command triangle.

INVESTIGATIVE CHALLENGES IN MAJOR CASES

Although all cases have challenges, these challenges are often accentuated in major cases due to the need to work in a team, the volume and complexity of evidence, and the increased scrutiny by senior management as to the progress.

The CRA's major case management approach needs to take into account the challenges facing the organization in handling these types of cases. Some of the challenges that the investigative team will need to consider when embarking on a major case are:

- Underestimation of investigation complexity
- Volume of documents and evidence to be handled
- Keeping the case focused and on track (in other words not letting the case snowball without planning and control)
- Inappropriate shifting of priorities
- Incorrect assumptions about roles and assignments
- Work in a silo
- Failure to do timely reviews of case and case progress
- Problems with Multi-jurisdictional accountability
- No accountability to senior management
- Pride of authorship, defensiveness

- Interference from non-team personnel
- Unsuitable file management
- Absence of investigative innovation
- Failure to ask for appropriate help when needed
- Lack of experienced investigators and investigator turnover in a team
- No team cohesion or a lack of cooperation amongst members
- Team stress
- Unproductive media relations
- Deficiencies in finances and resources
- Distinction of roles in PPSC between investigative and prosecutorial counsel

If you do not plan for or address these challenges:

“The work of the most dedicated, skillful, and highly motivated investigators and supervisors and forensic scientists can be defeated by the lack of effective case management systems and the lack of systems to ensure communication and co-operation among law enforcement agencies.

One of the key concepts of the case management system is that there needs to be standardized investigation techniques — the same processes and procedures used in each and every major investigation — because one can never know which investigations may later be linked.” (The Campbell Report)

Major Case Management (MCM) is a proven approach for dealing with large and/or complex investigations. The CRA recognizes that certain cases stand out from others in terms of the seriousness of the offence, the scope or complexity of the investigation, or the resources required to successfully carry out the investigation. These investigations must be effectively planned and managed from the earliest opportunity to make effective and efficient use of limited resources, and to ensure a timely progression of the investigative process.

“MCM structures an investigation by providing clear goals and objectives; establishing lines of responsibility and decision-making authority; and creating infrastructure for the recording, storage and sharing of information, and contributing to operational efficiencies.”

— Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary, p.21

– END –