

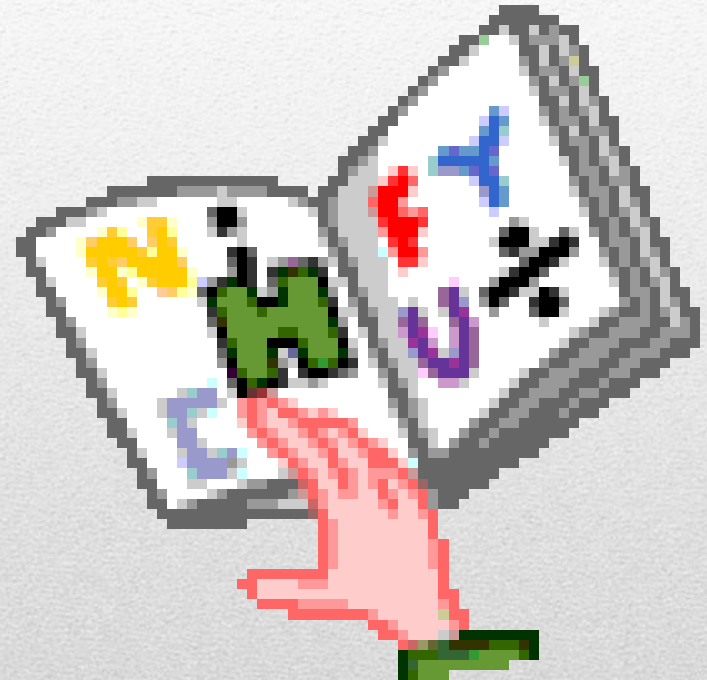


Special Techniques for the Investigation of Predicate Offence, Money Laundering & Asset Recovery.

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Presentation Content

- Techniques – perspective of a forensic examiner
 - Information gathering tools
 - Bank statement analysis
 - Concealed Income Analysis



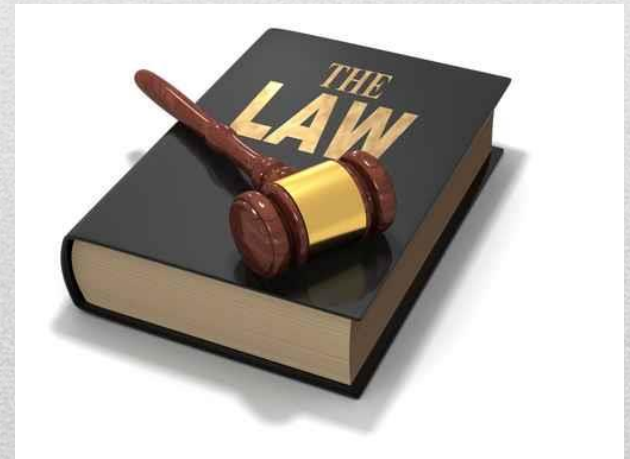
Characteristics of Money Laundering

- The processing of criminal proceeds to disguise their illegal origin. “Making dirty money appears clean”.
- The nature of the crime makes it difficult to detect.
- The crime is very complex - predicate offence, financial instruments, money (cash) flow, commingling with legitimate businesses, use of nominees (corporate vehicles), professionals and multi jurisdictions.
- 2009 UNODC estimate - criminal proceeds account for 3.6% of global GDP, with 2.7% being laundered. (US\$2 trillion in 2013).
- Less than 1% of illicit wealth recovered.



Legislative Infrastructure

- Domestic law must facilitate the use of investigative techniques for financial crimes.
- Legal system is to recognize and encourage their use in keeping with the rules of the court and the rules of evidence.



Jamaica's Legislative Framework

- ❖ POCA and FIDA
- ❖ FIDA – essentially establishes the FID & outlines its functions, responsibilities & powers
- ❖ POCA, 2007
- ❖ Mirrors UK POCA, 2002
- ❖ Criminalizes ML & provides framework for AML regime
 - ❖ CDD, recording keeping
 - ❖ STR, TTR & Request for Consent
 - ❖ Use of cash in business transactions
 - ❖ Cross border movement of funds declaration

Operation Stingray



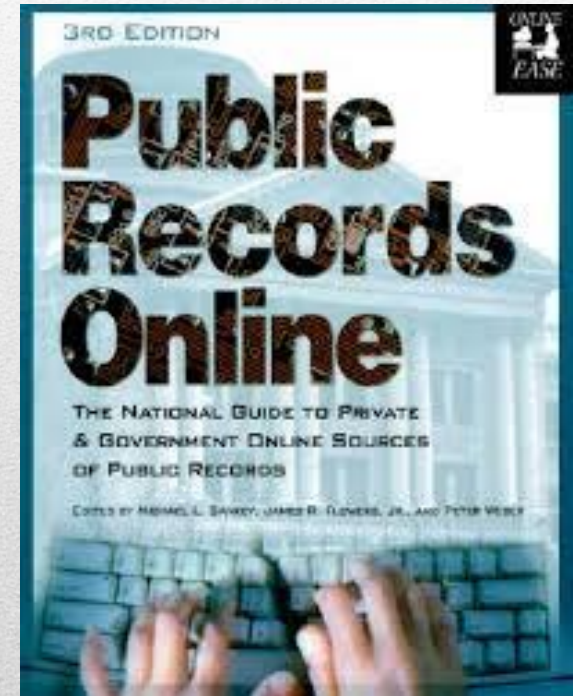
Main Features of POCA

- ❖ Restraint Orders
 - ❖ Obtainable at different stages
 - ❖ Ex-parte application
 - ❖ Assets identified or not & assets acquired post RO
 - ❖ Order to make RO effective.
- ❖ Types of Investigations
 - ❖ Money laundering
 - ❖ Conviction-based forfeiture/confiscation
 - ❖ Cash seizure
 - ❖ Civil recovery of property
- ❖ Authorized Financial Investigator
 - ❖ Constable designated by CP
 - ❖ Officer of the Agency (forensic examiners)



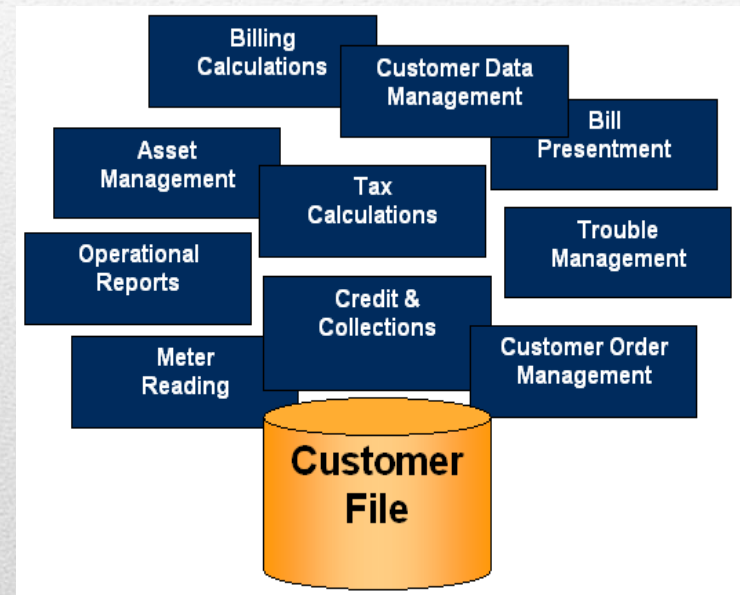
Information Gathering Tools

- ❖ Powers of Investigation (FIs, DNFBPs, businesses)
 - ❖ Customer Information Order
 - ❖ Disclosure Order
 - ❖ Account Monitoring Order
 - ❖ Search Warrant
- ❖ FID has access to and can use any information held at MDA of government – pre/post POCA. (public entities)
 - ❖ TRN, direct and indirect taxes (Commissioner)
 - ❖ Company, mv, property, aircraft, vessel & stock registries
 - ❖ Building permits via Parish Council
 - ❖ Credit bureau
 - ❖ Vital statistics, immigration, social security
 - ❖ Criminal records



Customer Information Order

- ✓ Pre-charge investigative tool
- ✓ Order mandating a FI to provide customer information relating to a specified person.
- ✓ Requirements
 - ✓ ML, forfeiture or CRP investigation.
 - ✓ “Reasonable grounds for believing”
 - ✓ Substantial value to the investigation
 - ✓ In the public interest
- ✓ Coverage
 - ✓ All FIs or FIs of a particular description.



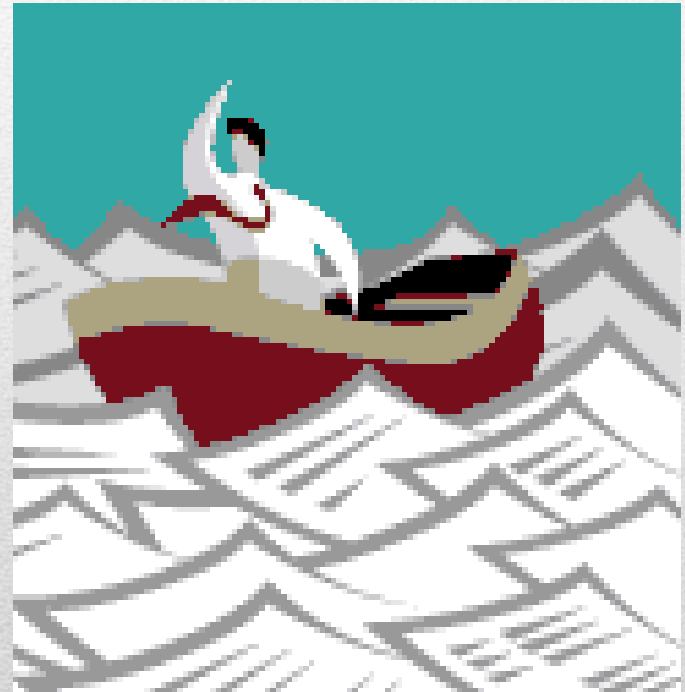
Customer Information

- ✓ Discovery Information
 - ✓ Whether a person holds or has held any account – a/c #
 - ✓ Conducted any transaction – transaction #
 - ✓ Address & previous addresses
 - ✓ CDD material
 - ✓ Details concerning joint a/c holder
 - ✓ Details on a/c re signatory
 - ✓ TRN
 - ✓ Nature of business (company)
 - ✓ Country of incorporation (company)
 - ✓ Registered address & place of business
- ✓ Doesn't require additional information – not admissible



Disclosure Orders

- FATF Recommendation 31:
compulsory measures for the production of records held by FIs, DNFBP etc.
- Mandates a person to produce specified information deemed necessary to an investigation and the information appears to be in the possession or control of the person.



Disclosure Orders

1. DO – Three (3) Options
 - a. Take away – information or material
 - b. Access information or material within stated period (7 days generally - Judge's discretion)
 - Order to grant entry
 - c. Person to answer questions at once or at a specified place & time.
 - Officer is authorized to take copies of any info/material produced, or to which access is given.



Disclosure Orders

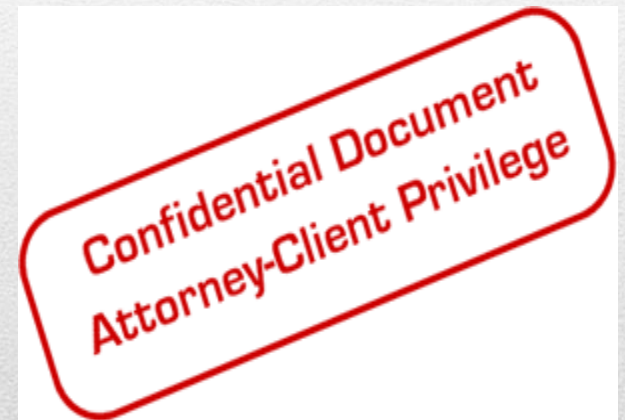
❖ Excluded information/material

- ✓ Legal professional privilege
- ✓ Accounting records used by banks
- ✓ Excluded material
 - ✓ Medical records
 - ✓ Human tissue or fluid (taken for diagnosis or medical treatment and which is held in confidence)

❖ Considerations

- ✓ Conveyancing files are not LPP material
- ✓ Material obtained by a journalist not excluded
- ✓ Certificate for documents generated from a computer – Evidence Act
- ✓ Statement from appropriate official
- ✓ Disclosure of production order during trial

R v Baines & Baines, 1988 – “The records of the financing of a transaction for the purchase of a property were not to be subject to legal professional privilege.....as the conveyancing matter was wholly unconnected with litigation”.



Value Added Processes

- Direct methods of proof – ideal for criminal prosecution.
- Indirect method – useful (compelling) to draw inferences. (irresistible inferences on criminal conduct)
 - ✓ accumulation of significant wealth
 - ✓ no or inadequate records about criminal proceeds
 - ✓ impractical to directly trace money flow to specific criminal activities
- Application (investigation/prosecution)
 - predicate offence
 - money laundering
 - asset recovery



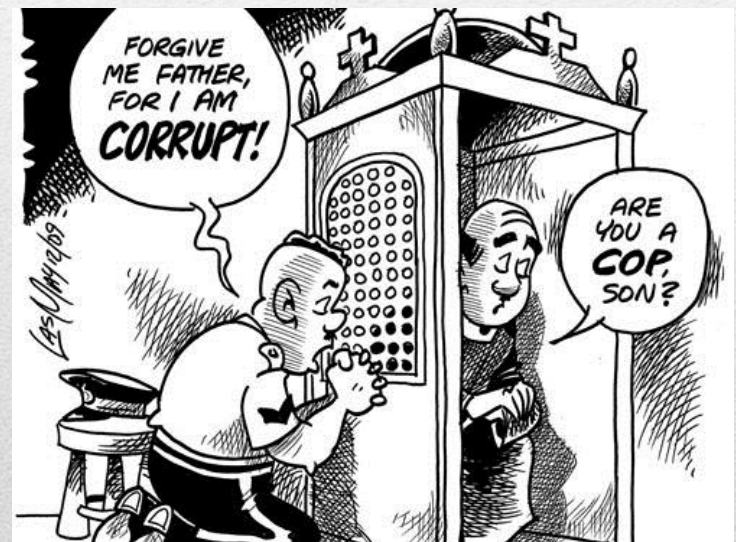
Corruption Prevention Act

Where a public servant-

(a) owns assets disproportionate to his lawful earnings and (b) upon being requested by the Commission or any person duly authorized to investigate an allegation of corruption against him, to provide an explanation as to how he came by such assets, he-

✓ (i) fails to do so; or (ii) gives an explanation which is not considered to be satisfactory,

He shall be liable to prosecution for the offence of illicit enrichment, and on conviction thereof, to the penalties specified in section

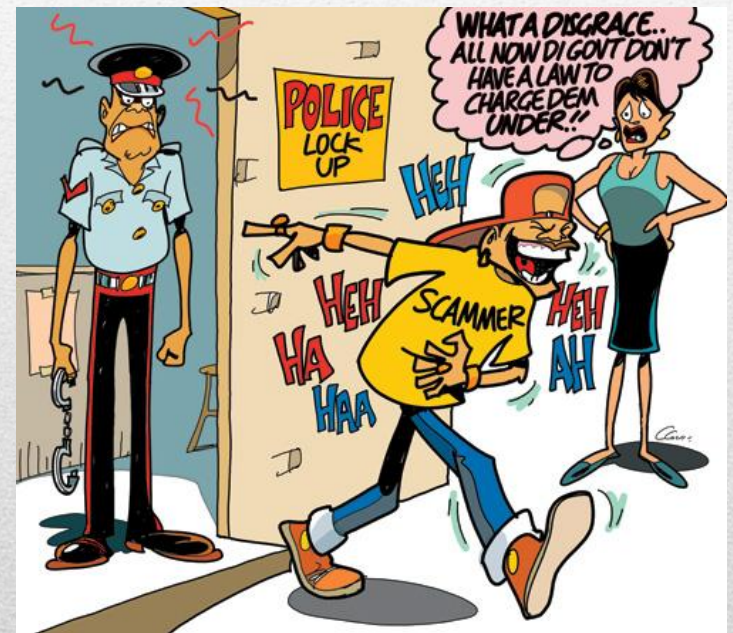


Law Reform (Fraudulent Transaction) Act

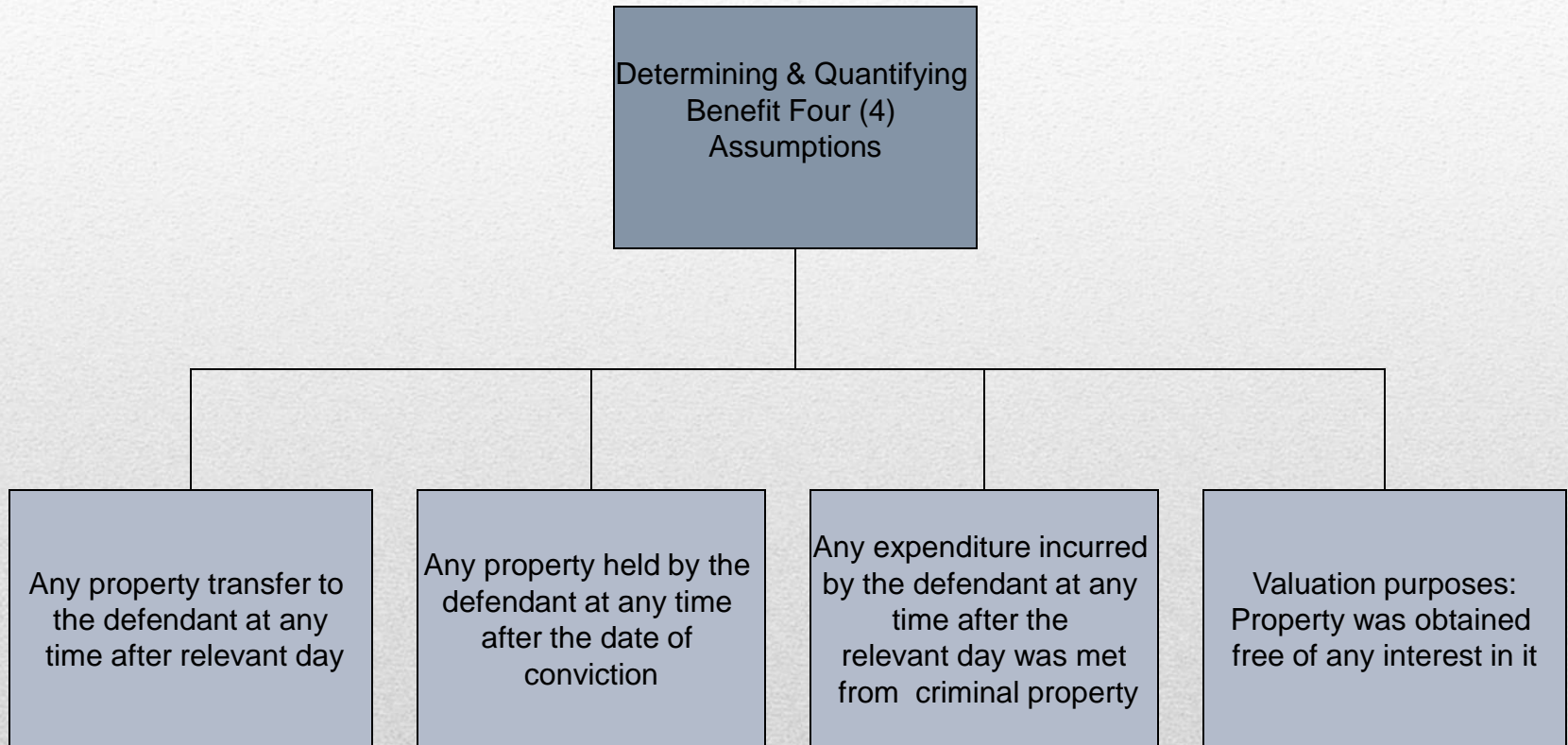
In a trial for an offence under this Act, the fact that a person

- (a) is in possession of property for which he cannot satisfactorily account and which is disproportionate to his known sources of income or
- (b) had at or about the time of the commission of the alleged offence, obtained an accretion to his property for which he cannot satisfactorily account,

may be taken into consideration by the Court and is admissible as evidence to the extent relevant to any issue in the trial.



POCA – Assessment of Benefit



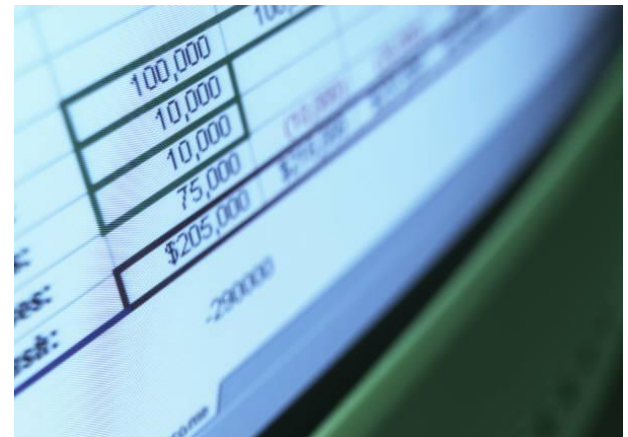
Relevant day – 10 years prior to the day of proceeding



Bank Statement Analysis

Bank Statement Analysis

- Detailed documentary a/c of all financial activities, both debits and credits, for a period of time for a bank a/c.
- Relevant when proceeds of crime is laundered through a bank a/c.
- Structuring & use of nominees
- Cash deposits
- Layering to complicate trail



A close-up photograph of a bank statement. The document is slightly blurred, showing a list of transactions. Several amounts are visible: 100,000, 10,000, 10,000, 75,000, and \$205,000. The text is printed in a standard font, and the background is a light blue color. The image is positioned on the right side of the slide, partially overlapping the text area.

| | |
|-----------|--|
| 100,000 | |
| 10,000 | |
| 10,000 | |
| 75,000 | |
| \$205,000 | |
| -250,000 | |

Uses of Bank Statement Analysis in Money Laundering Investigation

- Link a person to an object through purchase and ownership.
- Link a person to another person (association)
- Link a person to a place or a time period – ATM/CC transaction





**Concealed Income Analysis/Expenditure
Method of Proof**

- Quantifying the extent of benefit obtained by a target from concealed (unknown) sources. Irresistible inference of criminal proceeds when supported by other circumstantial evidence.

Primary Use

Concealed Income Analysis

Assessment of Net Worth

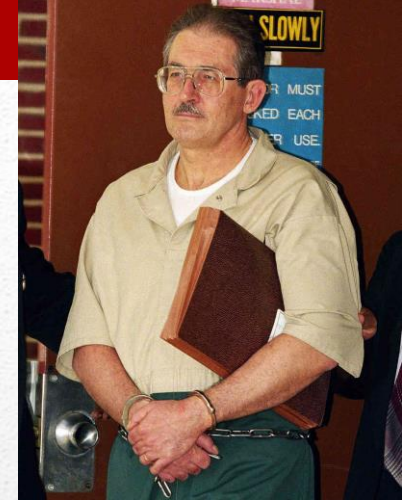
- Net worth is the individual's total assets less total liabilities at specified time.

$$\text{Assets} - \text{Liabilities} = \text{Net Worth}$$

Concealed Income Equation

$$\begin{array}{r} \boxed{\text{Change in}} \\ \boxed{\text{NW}} \\ + \boxed{\text{EXPENSES}} \\ \hline = \boxed{\text{TOTAL}} \\ \boxed{\text{OUTLAY}} \\ - \boxed{\text{INCOME}} \\ \hline = \boxed{\text{CONCEALED}} \\ \boxed{\text{INCOME}} \end{array}$$

Expenditures Method of Proof: Aldrich Ames, Double Agent - CIA April 1985 through November 1993



Expenditures Method of Proof April 1985 through November 1993

Sources of Funds Salary

\$340,000

Total Known Sources

\$340,000

Expenditures

Home Purchase

\$540,000

Home Improvements

99,000

Furniture

7,000

1992 Jaguar

25,000

1989 Honda

19,500

Telephone Bills

29,800

Credit Cards

455,000

Tuition - Georgetown Univ.

25,000

Stocks & Securities

165,000

Total Expenditures

\$1,365,300

Less: Known Sources

340,000

Funds From Unknown Sources

\$1,025,300

Case Example – Concealed Income Analysis

- Lotto Scamming
 - Victim defrauded – US\$622,350
 - US\$254,350 (J\$17m) in 2006
 - US\$368,000 (J\$24.6m) in 2007
 - Cashiers cheques to friend of main suspect
 - ID main suspect via telephone number (visa application compared to victim's telephone records)
 - Concealed income
 - 2006 – J\$11.48m vis-à-vis alleged criminal proceeds of J\$17m
 - 2007 – J\$18.23m vis-à-vis alleged criminal proceeds of J\$24.6m
 - Main suspect, mother & friend – ML charges
 - Victim – Alzheimer (capacity)
 - Main suspect & nominee – killed
 - Utilized civil recovery provisions per POCA – 2 mv & J\$3.5m surrendered to the FID. Settlement discussion re J\$20M house.

Thanks for your attention

“And whosoever will not do the law of thy God, and the law of the king, let judgment be executed speedily upon him, whether it be unto death, or to banishment, or **to confiscation of goods**, or to imprisonment.” Ezra 7:26
