Legislative Summary **LS-388E**

BILL S-16: AN ACT TO AMEND THE PROCEEDS OF CRIME (MONEY LAUNDERING) ACT

Geoffrey Kieley
Law and Government Division

21 February 2001

Library of Parliament
Bibliothèque du Parlement

Parliamentary Research Branch

LEGISLATIVE HISTORY OF BILL S-16

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	26 April 2001	First Reading:	20 February 2001
Second Reading:	10 May 2001	Second Reading:	1 March 2001
Committee Report:	30 May 2001	Committee Report:	22 March 2001
Report Stage:	4 June 2001	Report Stage:	
Third Reading:	11 June 2001	Third Reading:	4 April 2001

Royal Assent: 14 June 2001

Statutes of Canada 2001, c.12

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

PAGE

CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

BILL S-16: AN ACT TO AMEND THE PROCEEDS OF CRIME (MONEY LAUNDERING) ACT

INTRODUCTION

In its entirety, Bill S-16 consists of four amendments to the recently enacted *Proceeds of Crime (Money Laundering) Act* (the Act) which received Royal Assent on 29 June 2000. Bill S-16 responds to concerns raised in the course of hearings on Bill C-22[(1)] before the Senate Standing Senate Committee on Banking, Trade and Commerce in June 2000.

The Act establishes the Financial Transactions and Reports Analysis Centre of Canada (the Centre). The Centre, a government agency, will require financial industry participants to collect certain transaction data and remit that data to the Centre which will analyze it for evidence of money laundering. If the Centre finds evidence of such an offence, it may then disclose certain "designated" information to national, foreign or international law enforcement agencies. The Committee raised several questions, such as:

- How long will the Centre retain the information it collects?
- When and how will it dispose of that information?
- What information may the Centre disclose to law enforcement authorities?
- Can the Federal Court order the Centre to disclose an individual's file under the *Privacy Act* and *Access to Information Act*?
- Who may assert a claim to solicitor-client privilege?

Bill S-16, which aims to address these concerns, was given first reading on 20 February 2001.

---

(1) See http://www.parl.gc.ca/36/2/parlbus/chambus/house/bills/summaries/c22-e.htm for the Library of Parliament's Legislative Summary on Bill C-22.

CLAUSE-BY-CLAUSE ANALYSIS

Clause 1

Under current section 54, the Centre is required to retain all reports and information for at least five, but not more than eight, years. This amendment would retain the five-year period, but would mandate a longer, eight-year period for any document or information that had been disclosed (where prescribed conditions were met) to domestic law enforcement agencies, or to foreign or international organizations with powers and duties similar to the Centre. The eight-year period would be calculated from the date of the disclosure. In addition, with the addition of subsection (e), the Centre would be specifically required to destroy reports and information on the expiry of the time periods.

Clause 2

The Centre is only entitled to disclose to law enforcement agencies information which has been "designated" by regulation. But what information may be designated? Section 55(7) subsections (a) to (d) set out certain types of information that may be designated, i.e., disclosed. Currently, in addition to subsections (a) through (d), a fifth subsection – subsection (e) – functions as a "catch-all" clause authorizing the designation of "any other similar information." Witnesses appearing before the Committee on Bill C-22 expressed concern over the meaning of this section, i.e., information "similar" to what? The question of precisely what sort of information is included in the phrase "other similar information" must, of course, be determined with reference to the preceding subsections, (a) through (d):

> *(a)* the name of the client or of the importer or exporter, or any person acting on their behalf;
>
> *(b)* the name and address of the place of business where the transaction occurred or the address of the customs office where the importation or exportation occurred, and the date the transaction, importation or exportation occurred;

(c) the amount and type of currency or monetary instruments involved or, in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;

(d) in the case of a transaction, the transaction number and the account number, if any.

In order to give some meaning to the term "similar" in subsection (e), there would have to be some identifiable "similarity" among the types of information described in subsections (a) through (d). Although the types of information described in the four subsections may suggest certain similarities, the similarity is not obvious, nor is it easily defined or expressed; as such, it is difficult to say exactly how the word would be interpreted as it currently appears in subsection (e).

The amendment in Clause 2 would add only one word to subsection (e) – "identifying." Accordingly, instead of reading "any other similar information that may be prescribed," it would read "any other similar *identifying* information that may be prescribed." This strongly suggests that the information contemplated under subsections (a) to (d) is, in fact, of a class called "identifying" information. Accordingly, the amended subsection (e) appears to contemplate the information could be designated under subsection (e) only if it is "identifying" information "similar" to the "identifying" information described in subsections (a) through (d).

Clause 3

Under the *Access to Information Act*, the Information Commissioner (or any person whose request for a record is refused) may apply to the Federal Court for an order for disclosure of the record by the appropriate government institution. Identical provisions exist under the *Privacy Act* for any person (or the Privacy Commissioner) to make an application. This section, as originally drafted, would have deprived the Court of jurisdiction in respect of these matters. The amendment appears to resolve the conflict.

Clause 4

Subsection 64(2) prohibits an agent of the Centre from copying documents in the possession of a lawyer over which the lawyer asserts solicitor-client privilege on behalf of a named client or former client. Accountants appearing before the Committee on Bill C-22 suggested that their profession – like the legal profession – demands a high degree of client confidentiality and, as such, the right to claim privilege should extend to their profession as well. No equivalent privilege now exists in common law.(2) This section appears to address the concerns voiced by the accounting profession without overriding the common law. It affords persons other than lawyers who are in possession of documents the opportunity to contact the lawyer entitled to assert the claim.

(2) J. Farley expressed the matter succinctly in *Sun Squeeze Juices Inc. (Re)* [1994] O.J. No. 1451 (General Division) June 26, 1994: "I merely state the obvious when I state that there is a recognized solicitor client privilege…without which the legal system could not function. I do not see that there is any such relationship between a client and auditor/accountant/bookkeeper."