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# DOSSIERS

FEDERAL LAW ENFORCEMENT UNDER REVIEW (FLEUR)

X Vol. 4 No. 3 / September 1992

## Leaving No Stone Unturned

*The mandate of the Controls Program is to prevent, detect and correct fraud and error in the three programs administered by the Income Security Programs Branch. Cases of suspected fraud, forgery, etc., are referred to the RCMP subsequent to internal investigation by controls staff to determine if a violation has occurred.*

It is neither practical nor financially viable to have someone checking the work of every federal employee who deals with government money. That said, accuracy of public payments is crucial; the Income Security Programs Branch of Health and Welfare paid out some 33 billion dollars last year. On this large a scale, even minor errors can be costly.

That's why the Income Security Branch's Controls Program regularly samples transactions to check whether or not payments are correct .... or if a margin of error is small enough to live with. But there are limits as to how closely one can monitor — employees cannot be harassed continually. So the branch conducts in-depth reviews of payments by taking periodic samples.

### Of Errors and Fraud

It's a common scenario: an individual receiving Old Age Security dies and the bereaved do nothing to cancel payments. Ignorance or deceit? It can be either, according to Charlotte Roy who heads the Controls Program. Grieving relatives have a lot on their minds and some may

not even know of their obligation to contact Health and Welfare. Occasionally an OAS cheque is deposited directly into a joint account and goes unnoticed by the surviving spouse who has grown so accustomed to receiving it — particularly if the deceased attended to all financial matters. It may take some time for Health and Welfare to notice as well. Even though the department receives each province's vital statistics, the tracking system is a manual one and its capacity is therefore limited. And sometimes the information the department receives is not enough to identify an individual — people don't necessarily die where they were born, for instance.

Admittedly, the greatest component in losses is error. The Income Security Programs Branch has a tremendous amount of work to do in a very short period of time and simple encoding errors, such as the wrong birth date, can have a serious impact. And when they're on the receiving end of an administrative error, people who wouldn't go out of their way to "rip off" the government suddenly find the temptation too great.

For a suspicion of fraud to be considered reasonable, two conditions have to be met: there must be a loss to the government and a lie by the individual. As the Controls Program has no investigative powers, all justifiable suspicions of fraud are immediately referred to the RCMP for investigation. The

RCMP decides whether to pursue an investigation and whether to lay charges. It is the RCMP that presents the case in court, with members of the Income Security Programs Branch often acting as witnesses.

### Recovering Funds

Any monetary loss to the public accounts — be it simply administrative error or full-fledged public fraud — must be reported and accounted for. The branch makes every effort to recover whatever amount was improperly paid. While people are prosecuted primarily for this purpose they are also brought to court in order to deter others from attempting similar transgressions. Each case is considered individually — whether or not the funds to be recovered justify the court costs, for example. In cases where the sum is very large, the guilty party is often allowed to make instalment payments as opposed to a lump sum.

The Controls Program exists "to assure management that the right thing is being done right," explains Roy. The branch is committed to good management practices and wants to be the first to know if and where there is error so that when an internal audit is conducted or the Auditor General comes along, the

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# Transporting Dangerous Goods: A Matter Not to Be Taken Lightly

*The Compliance and Operations Branch of the Transport of Dangerous Goods Directorate at Transport Canada manages a program of inspections, investigations, enforcement and remedial measures under the authority of the Transportation of Dangerous Goods Act. Administered through a network of six regional offices nationwide, the program's main focus is to promote public safety in the transportation of dangerous goods. This is achieved primarily through an inspection program designed to ensure that all dangerous goods transported in Canada are contained and identified properly, and that all persons dealing with dangerous goods are adequately trained to handle the products safely and respond properly in cases of accidental spills.*

**T**he Transportation of Dangerous Goods Program is quite new to Canada — particularly when compared to the hazardous materials program in the United States. Legislation, in the form of the *Transportation of Dangerous Goods Act*, was passed in 1980 with its initial regulations coming into effect in 1985. The Act, established to regulate the large quantity of dangerous goods that is transported nationally and internationally, was also drafted to be as consistent as possible with United Nations' recommendations .... since many major

industrial nations were then moving toward adopting that system. At first, classifications, product identification and training were the main focal points in the Canadian legislation. Containment was addressed more during the early 1990s.

While similar to and compatible with those in the United States, Canadian regulations are distinct in several ways. There are subtle differences in some product classifications, for one thing. Canada also requires some industries to prepare an Emergency Response Assistance Plan, which is assessed and approved for activation in the event of an accident or spill involving the industry's most hazardous products. And finally, Canada requires all those handling or transporting dangerous goods to be able to produce a training certificate if an inspector asks for it. Regardless of these differences, reciprocity is achieved for the vast majority of consignments moving across the Canada-U.S. border. Continuous liaison and negotiations are necessary with the U.S. Department of Transport to overcome the differences and to ensure Canada-U.S. trade is disrupted as little as possible. The Compliance and Operations Directorate is currently trying to work the same magic with Mexico, which has virtually no dangerous materials regulations but is seriously considering adopting the UN recommendations. Harmonious regulations and enforcement from Mexico through the United States to Canada is the ultimate goal.

Enforcement of the *Transportation of Dangerous Goods Act* is a shared duty in

Canada. Transport Canada is responsible for the inspection and enforcement of regulations for air and marine carriers and all shippers, while the provinces and territories provide highway inspection and enforcement in conjunction with their other commercial vehicle and highway traffic programs. "The main target of the Canadian program is the initial shipper of the dangerous goods," says Robby Thomason, Director of Compliance and Operations, "the premise being that if it starts right when it enters the transportation system, it will probably stay right until it reaches its final destination."

## **The Inspector as Chameleon**

Six regional offices across Canada are home to 35 inspectors who carry out primary shipper inspections. Inspectors inspect, educate and debrief; they have the power to detain, the power to prosecute and, once the *Contraventions Act* comes into play, they'll have the power to ticket. Peace officers they're not, and search and seizure is carried out under the provisions of the *Criminal Code of Canada*. As a general rule, therefore, inspectors tend to take a local police officer with them when they execute a search warrant.

In addition to these "surface" TDG inspectors, there are also "modal" and "specialist" inspectors from the Canadian Coast Guard, Aviation Group and the Railway Safety Directorate of Transport Canada, as well as Environment Canada, (continued on page 6)

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## DOSSIERS Talks To Owen Davey

In response to a number of different studies, the Interdepartmental Committee of Deputy Ministers Responsible for Federal Law Enforcement was established in 1986. It was to be supported by FLEUR — a small group of experts seconded primarily from five different departments (Customs, Justice, RCMP Taxation and Transport). Formed to study the activities, policies, and procedures of the 14 departments and 46 agencies that had major federal law enforcement responsibilities, FLEUR explored such priority concerns as the granting of powers and the use of discretion.

Convinced of the value of the Secretariat, the committee of deputies decided to establish it as a permanent body. In addition to the six person years and operating funds from 12 FLEUR departments, six new person years were approved by Treasury Board and a permanent representative was contributed from both the RCMP and Justice. Hence, an organization of 14 persons was approved by Treasury Board in February 1992.

By making FLEUR permanent, Treasury Board gave the committee of deputies a formal mandate to coordinate law enforcement at the federal level. A mandate for broad "system" coordination only, the permanent role for FLEUR would in no way detract from the enforcement responsibilities already assigned by statute to the individual departments. Responsibility for managing the FLEUR Secretariat — including giving it a home — was assigned to the office of the Solicitor General.

Earlier this year, Owen Davey was appointed Director of the FLEUR Secretariat. A career public servant, Davey has spent most of his professional life since 1971 with the Solicitor General of Canada. His previous appointment was as Director General, Police and Law Enforcement.

In a recent interview, Davey emphasized how it is the deputies themselves who are responsible and accountable for coordinating enforcement; the Secretariat has no independent mandate. "In its simplest terms, the Secretariat is tasked with assisting the deputies to achieve their mandate," explained Davey. "The deputies, along with the men and women actually carrying out the enforcement mandate, are the Secretariat's primary clients."

Davey sees the Secretariat as a focal point for the suggestions and concerns of both operational staff and policymakers from the different law enforcement departments. He hopes FLEUR will help the deputies achieve the Secretariat's objectives through a sensitive awareness of enforcement problems as well as through cooperation and consensus. Only two-way dialogue between FLEUR and the various departments can ensure that the deputies receive useful proposals for improving law enforcement as a whole. "How well we listen .... how well we understand .... how well we interpret .... will go a long way to ensuring that the deputies are plugged in to what is going on." But none of this will happen, he feels, without the trust and respect of the

law enforcement community. "I aim to have enforcement officials see us as having the same professional commitment and dedication to the job as they themselves continually demonstrate and of which they are justifiably proud," said Davey.

To keep the Secretariat attuned to operational realities, one half of the positions in the Secretariat will be staffed by people on secondment. That way, the most appropriate person will be recruited to do the job at hand, bringing a certain expertise or a specific talent to FLEUR as needed. At a time of very scarce resources, the Secretariat has been given great flexibility in person-years and in salary dollars to pay for — and thus attract — first-rate personnel. "This says a great deal about how seriously senior management feels about this initiative," noted Davey. "Clearly, there are expectations that this investment will reap quality improvements in law enforcement."

When asked how his background fits into this contemporary picture of FLEUR, Davey explained how his many years of dealing with police and law enforcement issues have given him an understanding of the enforcement community. "People at the operational level do a terrific job in Canada" — a job which he characterized as difficult and for which the people involved deserve a lot of credit. Moreover, he has always had a keen interest in government and is comfortable working at both the operational and management levels. He added: "My forté is my ability to keep things in the realm of the possible. And my task, to ensure that the Secretariat meets the deputies' expectations, promises to be exciting. I look forward to it. My colleagues and I intend to do the very best job we can." ♦

# The NTA: Flying High

*The National Transportation Agency is a crown agency that reports to the Minister of Transport. It has certain judicial powers and its mandate is the economic regulation of the Canadian transportation industry. The Market Entry and Analysis Branch licenses transportation companies under the National Transportation Act of 1987. The Field Investigations Directorate makes sure that all carriers (that fall within the purview of the Act) are properly licensed and that they comply with the conditions of their licence. However, their mandate excludes highway carriers (they come under provincial jurisdiction), most shipping companies (Canadian companies do not need a licence) and rail carriers (there are so few that another branch deals with all aspects of rail). This leaves northern marine, pipeline and air carriers. The bulk of this branch's work — over 90 percent — is with publicly-available air carriers.*

**J**ust two years old, the enforcement program of the Field Investigations Directorate is divided into three parts. The Periodic Carrier Inspection Program, which takes up about 60 percent of the directorate's time, ensures that all licensed carriers are inspected every three years, with high risk companies inspected more frequently. And while there's always a safety angle to this work, the directorate's focus is strictly on the economics of transportation. Does the carrier have an appropriate licence? Are its terms and conditions being respected? Is the carrier properly and adequately insured? Does the operator have a correct Transport Canada Operating Certificate? Is the carrier Canadian-owned within the meaning of the Act?

The Targeted Investigations Program, on the other hand, concentrates on companies that are suspected of operating illegally. A suspicion may stem from an investigator's observations, from a customer's or competitor's complaint, or from another law enforcement agency's observations. By their very nature, targeted investigations tend to deal with high profile, sensitive issues with tight timeframes and thus take precedence over regularly scheduled inspections. Although some investigations involve licensed carriers, the majority deal with those that are unlicensed.

And finally, Special Field Projects includes the directorate's public relations and educational role.

## **Routine Inspections and Full-scale Investigations**

Of the 350 licensed air carriers in Canada, only a dozen or so are the larger, well-known airlines such as Air Canada and Canadian Partners. "The remainder are owner-operated," explains Dave Western, Director of the Field Investigations Directorate. "This usually means a pilot flying a Cessna out of his or her backyard with Mom on the radio back home." It's this group of carriers that tends to be the focus of the directorate's attention, although the larger carriers are by no means exempt from scrutiny. Adds Western, "the small operators are hurting economically so they're more tempted to cut corners .... to play games with insurance premiums .... to accept a contract that may be out of their league." What's more, air transportation in the south of Canada was largely deregulated in 1987 while the north remained regulated. Since most of the smaller operators are located in this northern area, it's not surprising that most — but certainly not all — of the directorate's enforcement activities take place there.

Routine inspection normally uncovers minor infractions. Nine out of ten turn

out to be small potatoes — a public tariff sheet may be out of date, for example. But even minor infractions have important repercussions: important clauses in the tariff relate to consumer protection — like how much insurance you can carry and what your rights are should the carrier lose your luggage. (And, interestingly enough, a consumer can insist that a carrier charge whatever rates it has listed — even if they're 20 years old!) Occasionally, routine inspection will turn up serious infractions such as insurance violations. Carriers discovered operating without insurance have their licences suspended immediately and may face criminal prosecution.

Investigations that involve licensed operators usually centre on the conditions of their licence. There's a clause in most insurance policies that clearly states the carrier must be operating legally. A pilot recently flew on a route that he wasn't authorized to use; he flew the plane into the side of a mountain, killing everyone on board. The surviving families were unable to recover anything from the insurance company since the unauthorized route rendered the carrier's policy null and void.

Faced with a violation by a licensed carrier, NTA investigators have two choices: they can act administratively using the Agency's legislated powers or they can place the matter before the courts. Proceeding administratively gives investigators recourse to a series of measures ranging from a formal written warning through an Agency Cease and Desist Order to a licence suspension or cancellation. Warnings are usually reserved for very minor infractions or for a genuine misunderstanding of the law, whereas licence suspension or cancellation — a rather extreme measure that can place heavy economic strains on the car-

rier and the communities it serves — is an option that is exercised only in very serious situations. Field investigators are not peace officers. Once they have determined reasonable and probable grounds to believe that an infraction has taken place — and that court action is the most appropriate course of action — they turn their case over to the RCMP for final investigation and prosecution. Fortunately, the Field Investigations Directorate enjoys a very good relationship with the RCMP; many investigators are ex-members. Hence, an investigator will often accompany an officer when a warrant is being served and will provide expert advice and guidance on the provisions of the *National Transportation Act* and on technical aspects of the alleged violation. Investigators are often called upon to testify in court as expert witnesses.

Unlicensed operators are, for the most part, the bad apples in this barrel. An economic threat to licensed operators, they also avoid NTA inspection. And, chances are they wouldn't meet commercial safety standards if they were inspected. In Western's experience, bad apples are usually rotten to the core. Translation: if air carriers don't have NTA licences, they probably don't have operating certificates. In many cases, they don't have insurance and often don't hold a valid pilot's licence! Interdiction of these unlicensed operators normally involves the courts. The Agency can, however, issue Cease and Desist orders which supplement (they don't replace) court action. And while the NTA cannot directly enforce these orders, they can be readily translated into a federal court order, enforceable using contempt proceedings.

### **Making Progress**

There are six senior investigators in the organization and one more in training. They are spread out across Canada in six regional offices, while three people hold down the fort in Ottawa. They keep in touch primarily by telephone, networked computer and meetings — two a year, budget permitting. While each situation varies, regional offices are, for the most part, one-person operations .... field investigators are lone soldiers who deal

with everything from inspections through investigations to public inquiries for information. They even get to make the odd public speech. There are, nonetheless, times when cases demand that NTA inspectors work closely with other investigators. A recent case in the Maritimes involved six different federal departments and agencies.

Last fiscal year, the Field Inspections Directorate carried out 297 inspections. As a direct result, 180 infractions were identified. Of these infractions, 144 were very minor: carriers received only warnings from inspectors. The majority of those remaining were still relatively minor, with the agency issuing more severe warnings. Only a couple resulted in prosecutions. During this same time period, 186 investigations were completed. Of the 76 violations that were identified, four cases were referred to the agency for administrative action while 44 were referred to the RCMP for prosecution. Of 12 decisions handed down to date 11 have been in the directorate's favour.

There has been a tremendous amount of progress in a very short period of time. When Western joined a relatively unstructured group two years ago, the average penalty set by the courts for violations of the *National Transportation Act* was \$25. Today, after working very hard with crown attorneys and with the RCMP to improve the quality of material presented in court, the average penalty for an infraction is \$1250. And much has been done to reshape the Field Investigations Program in this time: a new program structure has been put in place; an operations manual has been published; new performance indicators (which not only measure the quantity but also the quality of work) have been developed; and, an ongoing Operational Review System has been established. But Western feels much still remains to be done, particularly in the realm of legislation. He would like to see officers' powers better delineated and their ability to levy penalties for minor infractions increased, for starters. That said, the directorate is certainly well on its way to becoming an efficient and effective law enforcement body. ❖

## **Leaving No Stone Unturned**

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department can respond informatively. Health and Welfare wants not only to be able to acknowledge an error but also to say how it is being corrected or why the margin of error is acceptable given current resources.

### **Investigating It All**

All complaints of alleged fraud are looked into, even though only a handful turn out to be genuine. Quite often, uninformed friends and neighbours turn each other in. They'll see someone they know is receiving disability payments out in their garden bending over a flower bed and immediately assume there's fraud. But the average person is not necessarily in the best position to judge whether someone should be receiving payments; they don't know the reason why the decision to grant payments was made nor do they know all the legal ramifications of the legislation. An individual who can manage a half hour in a garden cannot necessarily handle eight hours in a regular job.

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While the vast majority of people are essentially honest, there will always be those who will try to beat the system.

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And what with human error on the one side and human ingenuity on the other, fraudulent use of Canada's payment plans seems almost inevitable. Keeping it down to a dull roar, however, is the responsibility of units like the Controls Program of the Income Security Branch of Health and Welfare. In the end, entitlement, not fraud, does indeed prevail. ❖

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# Transporting Dangerous Goods

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the Atomic Energy Control Board and Energy, Mines and Resources — to name just a few. (The idea here is that if someone's expertise is in environmental science, why not leave that person in his or her rightful domain and have them provide expertise to the TDG program as required?)

TDG Directorate inspectors wear several different hats. They inspect shippers, containment manufacturers and refurbishers, provide education and awareness, investigate alleged wrongdoings, enforce legislation and prepare Crown briefs. While conducting an inspection, they look at what is shipped, how it is shipped, how it is packaged and how it is identified .... with slightly different rules applying to different modes of transport. "Their primary concern is that all dangerous goods transported in Canada be contained safely and identified properly," explains Thomason. In addition, inspectors check that everyone engaged in handling or transporting dangerous goods is adequately trained. Some of the modal and specialist inspectors, however, have a limited knowledge of the investigative, enforcement and legal side of things.

These inspectors generally hand suspicious cases and suspected violations over to the RCMP or a TDG Directorate inspector, although some of them are currently being trained in law enforcement.

## So Far .... So Good

For the first two years after the initial regulations went into effect, the major efforts were directed toward education and awareness. It was soon discovered, however, that the most effective educational device was the arrival of an inspector to perform an inspection. By late 1987, the focus of the Transportation of Dangerous Goods Program thus shifted from education to enforcement in order to better achieve Transport Canada's goals of "regulatory compliance and increased safety through risk reduction". Of all the sanctions inspectors have dished out to date, detaining a shipment of dangerous goods is still one of the most effective. Detaining a shipment costs the industry money — which tends to make people move very quickly to correct a situation or violation. But the judicial system is still needed to impose

finances that are large enough to correct particularly troublesome cases.

It was also quickly discovered that companies shouldn't be given advance notice of an inspection. At one time, inspectors scheduled inspections with the aim of having a senior company official available to discuss their findings. But they found the exact opposite happened: the person responsible was frequently not on site. So now, inspectors simply show up unannounced .... and they invariably find that the accountable person is around.

To date, the Transportation of Dangerous Goods Program has been quite successful and, generally, companies throughout the manufacturing and transport industries have been very cooperative. In fact, once a situation is corrected, inspectors seldom have to go back for another four or five years. And since there are more than 60,000 Canadian manufacturers and distributors of 3,000 different kinds of dangerous goods that ship over 27 million consignments a year — with a 12-percent change in client base every year — this is a tremendous advantage. ♦

## Clarence Kallhood Retires

Clarence first joined the federal government as a tax auditor for Revenue Canada in 1965. He soon became an investigator, moving to Toronto in 1967. Then, as part of a bi-cultural exchange program, Clarence worked in Sherbrooke, Québec between 1973 and 1975, moving to Ottawa thereafter as part of Revenue's Special Investigations Division. He joined FLEUR in 1990 and stayed until his retirement August 14, 1992.

Everyone at FLEUR wishes Clarence good luck as well as a happy, healthy and long retirement.



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