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50 WAYS TO FOIL A FRAUDSTER

Winning strategies to deal with fraud

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BACKGROUND

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TOPICS TO BE COVERED

I: Fraud's Impact on Your Business

II: Why More Fraud Today?

III: Key First Steps on Discovery of Fraud

IV: Investigate the Fraud

V: Electronic Evidence

(i) Seek and Secure

(ii) Data Collection

(iii) Sources of E-Evidence

(iv) Deleted Files

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TOPICS TO BE COVERED

VI: Stop Losses

VII: Maximize Recoveries

(i) Contact Financial Institutions

(ii) Investigate Perpetrator

(iii) Insurance

(iv) Court Remedies

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TOPICS TO BE COVERED

VIII: Current Scams

IX: Best Practices to Deter Fraud

X: Conclusion

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I: Fraud's Impact on Your Business

- It is estimated that the business community loses $400 Billion annually to fraud.
- Approximately 4% of business failures are directly attributable to fraud.
- Don't be a victim and learn to fight back!

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II: Why More Fraud Today?

- Personal financial needs or disenchantment may drive fraudulent behaviour by employees
- Technology developments facilitate fraud/theft
- Redundancies leave control and supervision gaps
- Pressure on senior management to manage costs and protect financial results – may lead to financial statement manipulation
- Insolvency proceedings will uncover some fraudulent activity

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Why More Fraud Today?

- "Lessons learned" and the need to restore public confidence will lead to enforcement/regulatory initiatives
- Greater management scrutiny of costs and operations as employees leave/change roles
- Market related frauds of recent years will continue to be revealed
- Rise of the sophisticated fraud ring

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III: Key First Steps on Discovery of Fraud

- Clear understanding of goals and strategy
- Key goals:
  - stop any further loss
  - understand the fraud
  - preserve evidence of the fraud
  - termination of employees or other contractual relationships (ie supplier) involved in fraudulent activity

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Key First Steps

- maximize recoveries of losses
- regulatory concerns
- publicity concerns
- Inform Board of Directors/Audit Committee
- criminal prosecution
- preventing fraud in future
- Develop strategy with goals in mind

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Key First Steps

- Establish team to respond to fraud
- Internal Team (business/legal)
  - clear division of duties among HR, Investigations, Recovery and Regulatory/Operational components
  - subject internal and external investigation to privilege where appropriate
- External Assistance with defined retainers (legal counsel/forensic accountants/investigators)
- Speed and planning are essential

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IV: Investigate The Fraud

- Focus on Fraud Investigation First
  - gather facts on fraud and perpetrator(s)
  - sufficient understanding so can stop loss, preserve evidence and maximize recoveries
  - to get court's assistance in securing evidence or maximizing recoveries, may need an affidavit under oath explaining fraud

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Investigate the Fraud

- Gather Evidence
  - hard copy
  - search of perpetrator's desk/office
  - Interviews
  - court remedies
    - Norwich orders
    - civil search warrant
  - e-evidence

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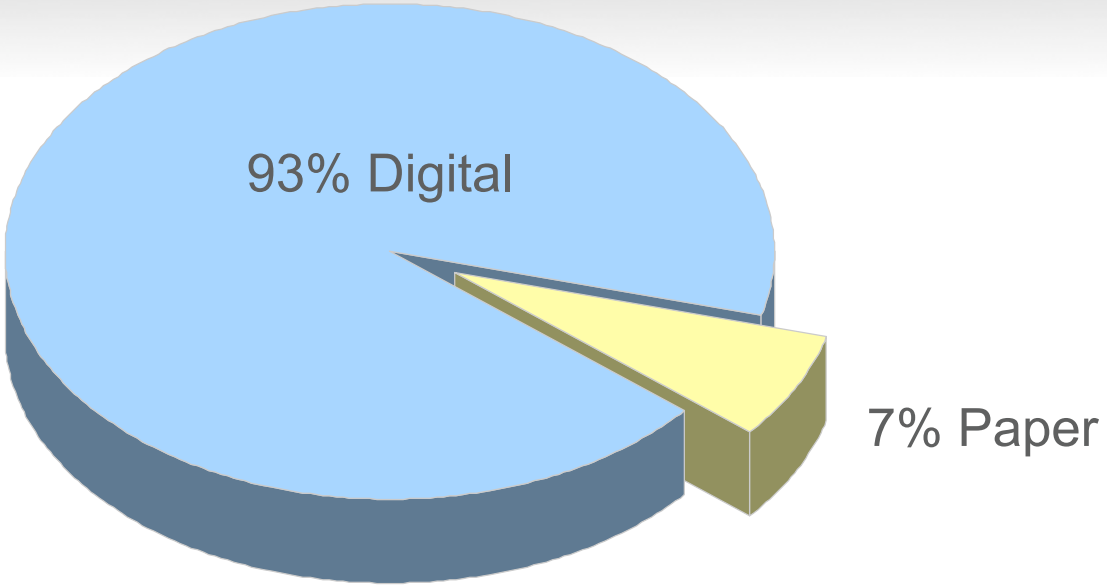
V: Electronic Evidence



Source: ***Lynn P. and Vatian, H. "How Much Information? http://info.berkley.edu/how-much-info/ (2000)***

Seek and Secure

- When dealing with e-evidence, first consideration should always be about securing the evidence.
- It is important to identify the “universe” of electronic evidence. What types of information are you dealing with?
- E-evidence is very volatile and dynamic if left in use.
- It is imperative to take immediate steps to secure the evidence

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Data Collection

- A suspect's drive should be secured and imaged as soon as possible.
- Often conducting the investigation without the employee's knowledge is important
- Server based information can be easily collected without the employee's knowledge, but requires IT dept assistance
- Employee's PC can be imaged after hours
- Laptop can be imaged remotely or under the pre-text of "hardware upgrades"
- Chain of custody

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Sources of e-Evidence

- Hard Drives (internal, external, iPods)
- Floppy Disks
- Portable Memory (thumb drives, flash)
- Notebook PCs
- Handhelds (PDAs, Blackberries)
- Back-Up Tapes (on site, off site)
- Servers (email, file, application, ISP, external hosting)
- Cell Phones
- Logs (phone, fax, print, security)

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Deleted Files

- Computer forensics is powerful because data that is deleted from a hard drive still resides on the disk's surface.
- The deleted file may not be accessible through conventional means, but using specialized forensic tools, deleted files can be recovered.

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Investigate The Fraud

- Documenting and Reporting
  - Reports of internal team should adhere to factual and observational finds only; no opinion or speculation;
  - Internal reports should not make any recommendations on next step if not appropriate (ie HR Defalcation Reports, Privileged Investigation Reports);
  - Regulatory and Operational concerns should be addressed in separate secondary reports to investigation, recovery and HR components
  - Take steps to preserve privilege “Prepared on Instructions of Counsel in Anticipation of Litigation”

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VI: Stop Losses

- Understand fraud
- Deal with perpetrator
  - Vacation, paid or unpaid leave of absence
  - Terminate, after interview, if possible

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VII: Maximize Recoveries- Contact FI

- Notify FIs where proceeds of fraud are known to be held
- Check to see if any fraudulent cheques can be returned through clearing to the negotiating institution (materially altered, forged/ missing endorsement) and advise own bank of fraudulent cheques within account verification period
- Trace stolen funds/assets
  - FI can use authority under PIPEDA as “investigative body” to trace through other FIs

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Investigate Perpetrator

- Investigate assets, bank accounts in perpetrator's or family's name
- Identify registered companies in perpetrator's or family's name
- Information required for court proceedings to seize assets

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Insurance

- Review the policy
- Time frames
- Subrogation
- Mitigation

Court Remedies

- Mareva injunction
  - grants broad powers to assist in recovery of losses
  - stops fraudster from selling, removing or encumbering assets
  - requires fraudster's banks to freeze accounts and deliver up fraudster's bank records
  - can extend to assets and accounts held jointly with others
  - can require fraudster to deliver statement of assets and submit to examinations under oath
- Burden on Applicant
  - strong prima facie case of fraud
  - risk of dissipation of assets
  - undertaking as to damages
  - test less onerous if claim proprietary interest in asset to be frozen

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Court Remedies

- Certificate of Pending Litigation to prevent sale of Real Estate
- Interim preservation of property
- Freezing bank deposits, SDB, investments, etc.
  - Ensure order is worded broadly to capture joint accounts
  - FIs can use s. 437(2) Bank Act to immediately restrain bank accounts on service of claim without use of injunction
  - FIs may also consider an interbank indemnity for smaller amounts on deposit
- Court appointed receivers, inspectors
- Go to court without notifying fraudster, necessity for full disclosure

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Court Remedies

- Remedies against third parties benefiting from or facilitating the fraud
- Interview simultaneously for no-story-comparison opportunities
- Fraudulent preferences
- If negligence of professional allowed fraud to happen (auditors, lawyers, appraisers, real estate agents/brokers), sue professional
- Report professional's negligence to applicable governing body

Other

- Serve third party FIs immediately with order and obtain confirmation of restraint of accounts
- Where a priority dispute may occur, agree to freeze now and defer issues until later
- Notify applicable insurers (ie CMHC for mortgages) if employee fraud is involved
- **Report to Police:** where there are significant assets to recover, report to police after interviews and civil restraints orders are obtained and served
- Notify Media Relations Department or if appropriate, retain/appoint media spokesperson to address reactive media inquiries; update standby statement as case evolves

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VIII: Current Scams

- **Ponzi Schemes**
- Earl Jones – the English Canadian Madoff
- Norbourg – Vincent LaCroix – the French Canadian Madoff
- Tom Petters – US pre-Madoff
- **Cheque Frauds**
- Fake Out-of-Jurisdiction Law Firm Client – counterfeit certified cheques
- Counterfeit cheques – Survey Participant for Money Service Business
- Lawyer Trust Account Identity Theft

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IX: Best Practices To Deter Fraud

- **Lessons Learned – Operational Considerations**
- Once investigation is complete and maximum recovery has occurred or is ongoing, take the time to address operational and/or HR issues that permitted fraud to occur
- Write a separate report to business on issues identified and recommendations for improvement

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Best Practices To Deter Fraud

- Top Management Sets the Tone for the Integrity culture of the Organization
- Organizational Policies and Procedures Apply to EVERYONE
- Fraud Deterrence is a Pro-active Process
- Cardinal Rule (Borrowed from the IRS)
  - "In God We Trust, All Others We Audit"

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Best Practices To Deter Fraud

- Watch for employees/contractors exhibiting unusual behaviour indicative of stress
- Watch for employees who live beyond their means, are reluctant to take holidays or are protective of records they maintain
- Proactively protect IP and other intangible assets, especially when key employees are departing
- Maintain a good channel of communication to all employees at all times and provide employees the opportunity to ask questions, raise concerns
- Frequent changes in auditors or in senior finance positions

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Best Practices To Deter Fraud

- Ensure executive behaviour exceeds the standards set for employees
- Maintain control and segregation procedures; review key processes again if there have been changes
- Act decisively on any concerns

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X: Conclusion

- Final Points
- Questions?

- **THANK YOU!**

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