

Report on **Business**

The fraud hunter

Tracking down the world's worst white-collar fraudsters requires a certain amount of pluck. Fortunately for Martin Kenney—the Canuck lawyer who does this stuff for a living—the job comes with one decent perk: Many of the big tax havens are in the Caribbean

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Published on Thursday, Oct. 29, 2009 1:54PM EDT Last updated on Monday, Nov. 30, 2009 4:54PM EST

It's a demanding job chasing fraud artists around the world. But Martin Kenney can't complain about at least one imposition of his vocation—the need to relocate. The best place to pursue ill-gotten gains, it turns out, is where they're most often hidden. That just happens to be the Caribbean.

From the luxury island of Tortola in the British Virgin Islands, amidst an archipelago of tax havens, Kenney runs one of the world's most successful asset-hunting and recovery firms. The Canadian-reared lawyer—elder brother to federal Immigration Minister Jason Kenney—has seen his staff complement grow from five people to 17 in four years. And things are bound to get better: “With the explosion of global fraud we are seeing an enormous number of new cases,” says Kenney. Even after spectacular anomalies like the Bernie Madoff case are put aside, he estimates that white-collar theft has swollen to \$1 billion (U.S.) a month over the past three years.

But the money he'll make from this crime wave is not his motivation. “What inspires me to work hard in these cases is to help right wrongs and help folks who have been vanquished by villains....I just think it's a good thing to do,” says the impeccably dressed Kenney, seated behind an antique desk in his Road Town office, his Afghan hound Jackpot at his feet.

After ruthlessness, perhaps the most consistent trait of fraudsters is the lengths—and distances—they'll go to evade justice. Legal systems that stop at national boundaries are ill-equipped to bring them to justice. The secret of Kenney's success was to realize, more than a decade ago, that a specially armed legal firm could tread where police and courts could not.

Kenney, 49, is from an “old school” family; indeed, the Kenney men have distinguished themselves in diverse fields. Kenney's grandfather Mart led the Western Gentlemen, Canada's leading dance band in the thirties and forties. Uncle Jack was a respected lawyer and chairman of the Ontario Jockey Club. Younger brother Jason headed the Canadian Taxpayers Federation before successfully running for federal office in 1997.

As for Kenney's father, also named Martin (nicknamed “medium” to his father's “well-done” and son's “rare”), he is a onetime fighter pilot who, in the late seventies, saw a need to toughen up his son as he neared the end of high school. The oil patch would do the trick. “My dad got me this job, saying, ‘You're okay at school, okay at sports. Let's see how you are at being a workingman.’” Kenney recalls.

“It was really horrendous that first summer: The men I was working with were violent, often drunk. They were always getting thrown into jail. I wasn't really accepted at first. It was 12-hour days, 14 days straight. But by the end of the summer, I'd risen from roughneck to motorman and then derrick hand, and had \$20,000 to take away for my studies.”

Kenney followed his uncle into law, moving rapidly through the world of commercial practice. By his early 30s, he was a high-flying partner with a British litigation firm in New York and one of the world's few specialists in multijurisdictional litigation.

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That post introduced him to the dangers inherent in chasing criminals. An early assignment was to pursue a \$6-million (U.S.) gambling debt owed by a Japanese real-estate investor, Akio Kashiwagi, to an Atlantic City casino owned by the one and only Donald Trump.

Upset at being forced to quit playing at 4 a.m., Kashiwagi had refused to pay up. So Kenney was dispatched to Tokyo, where he had a court freeze Kashiwagi's palatial house on Lake Fuji. Kashiwagi would later be found murdered, with more than 150 wounds from a samurai sword. Only with this news did Kenney learn that his quarry had been connected to a yakuza crime syndicate.

New York lawyer Irving Cohen, who would later become a partner of Kenney's, recalls meeting the “hard-nosed” young advocate when they were representing opposite sides in a legal battle in 1992. “But then I watched him retrieve \$5 million in 90 days, offshore. It was the most remarkable thing I'd ever seen.”

The man had found his *métier*. Diving into the space created by traditional law enforcement's inability to recover illegal gains, Kenney raised money privately and founded Interclaim in Dublin in 1997. The firm changed its name in 2002 to Martin Kenney & Co., but the model remains substantially the same.

Kenney's work would be impossible without two British court decisions that gave rise to a legal tool that is more elegant in application than appellation: the Norwich Pharmacal/Bankers Trust order. The document, when supplemented with a “seal and gag” order, can force third parties such as banks to disclose client information—and to do so secretly, so as not to tip off the customer.

Using Norwich Pharmacal orders and similar powers (such as Anton Piller search orders), Kenney's investigative teams can obtain documents or enter premises, much as a law enforcement agency can.

But there are other crucial elements in the Kenney panoply. His chief of investigations, former U.S. Secret Service agent James McGunn, oversees surveillance and stings. Forensic accountancy skills come from chief operating officer John Bagalini, who traces money trails on FBI-inspired “link analysis” software, building a pictorial model of how crimes were committed.

After an investigation is successfully concluded, the team freezes the target's assets via civil courts—right across the globe, often at exactly the same moment. A Mareva Injunction (freeze order) and other legal manoeuvres prevent the villain selling any of those assets before they are liquidated to satisfy the claims of Kenney's clients.

Kenney either charges an hourly fee (typically \$650) or makes a hybrid deal wherein a lower hourly rate is supplemented if he wins the case. The top-up depends on jurisdiction: If the case is fought in the U.S., Kenney takes a success fee of 20% to 25% of the winnings; if the case is conducted under the British system, Kenney gets a surcharge of as much as double the discounted rate.

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But Kenney will work for poorer victims as well as the most moneyed, sourcing private backing when the costs of a case are beyond the resources of a client and the firm itself. He has recently launched a private equity fund, dubbed Echemus, to raise \$150 million (U.S.) for such cases.

After all the legal and financial strategies, the final ingredient in the success of Kenney's team is toughness. They found out in their first major case that targets can fight back. Although the firm is not especially active in Canada, its initiation was here.

Kenney pursued Vancouver's ██████████, who pleaded guilty to a gambling charge arising from American pensioners' complaints that their money—some \$200 million (U.S.)—had disappeared in a lottery scheme. At the end of that multijurisdictional battle, Interclaim won a record-breaking \$36-million (U.S.) jury award from a class-action firm that had betrayed its clients to cut a secret deal with ██████████.

The contest involved "some bad times, very bad times" when Kenney's firm was nearly destroyed, according to McGunn. "They're heavy hitters, for sure," says McGunn of the firm's targets in general. "The general public doesn't realize how powerful these characters are, because they have so much money. They can be very challenging adversaries. You just can't underestimate them. That's a serious mistake."

McGunn has to regularly sweep the firm's offices for electronic bugs. "We fish in troubled waters," he explains.

For his part, Kenney has no time for the romanticized idea of con men that pervades popular culture. "The media call them rogue traders—as if they're something nice, not really evil. Hah! I've had a banker have a heart attack, seen others lose careers. People lose their edge, they lose their confidence, because they've been tricked and lost faith in themselves. It's like rape. It's that kind of violation."

The ease with which money now flows over boundaries both physical and ethical suggests Kenney's business will not dry up any time soon.

"There's a huge portion of the world's legitimate economy owned by nefarious criminals," says Kenney. "And it's very hard to distinguish between the legitimate economy and that which is not, because they have blended. How do you distinguish between the two?" He utters a short, puffy laugh. "You know, in most normal communities, if a bank robbery takes place and someone has taken a gun and shot a teller, stolen money and run off down the street—people will help!"

The firm has recently been tackling two separate cases involving dodgy American preachers ripping off their flock via Caribbean Ponzi frauds. On one of these files, Kenney is working for a Halifax-based PricewaterhouseCoopers senior vice-president, Marcus Wide. In another case, a \$15-million Ponzi scheme run out of Vancouver, the firm represents 632 victims.

Kenney and his team are involved in the fallout from Wall Street titan Bernie Madoff's fraud too, investigating two of the major British Virgin Islands feeder funds that poured around \$10 billion (U.S.) of reported value into Bernard L. Madoff Investment Securities LLC. Kenney is working on behalf of a European bank and some investors.

Kenney has also been working on a big case in the war-torn West African state of Liberia. The investigation has required one colleague to carry out his work with more than half-a-dozen bodyguards in tow. In the process, he caught malaria. "He still stuck it out, though," nods Kenney approvingly.

Kenney himself has had to hire bodyguards on his visits to Latin America, where he has dug into corruption behind the collapse of several Brazilian banks. And he recalls one meeting where a fraudster, forced to the point of bankruptcy, "frothed and used many unkind expletives, explaining that he had lain awake all the night previous, thinking of ways to kill me!"

"It becomes very personal when you get the guy by the pocketbook," he adds, with a serious look. "But it just washes over me: It doesn't stick."