

Twelve years ago, a Canadian forensic accountant began investigating the collapse of a Jamaican financial institution. This summer, his work may finally have come to an end **BY PAUL McLAUGHLIN**

# CHAOS IN THE Caribbean

As **Tedd Avey** stands to attention when Justice Donald McIntosh enters Courtroom 9 of Jamaica's Supreme Court of Judicature, it crosses his mind that this sweltering first day of summer 2006 might mark the end of a fascinating, often challenging 12-year assignment that has brought him many times to the Caribbean island of approximately 2.8 million people.

Dressed in a dark charcoal suit, 58-year-old Avey is in Kingston in anticipation of being cross-examined by Abe Dabdoub, the lead counsel for the chief defendants in a J\$2-billion (\$36.94 million) civil suit concerning the collapse under fraudulent circumstances of a merchant and trust bank, a building society and an industrial

Photography by **PAUL ORENSTEIN**

Tedd Avey and h





his colleagues made at least 50 trips to Jamaica to help unravel a financial crisis

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and provident society, known collectively as the Blaise Financial Entities.

Blaise had been the first of three similar cases — Century National Bank and its related financial entities and Eagle Merchant Bank and its related financial entities had also collapsed under allegations of fraud and mismanagement — that Avey and his firm, Navigant Consulting (it was Lindquist Avey Macdonald Baskerville when most of the work was done) had investigated on behalf of the Jamaican government, which had taken control of all three banks in the 1990s.

Justice McIntosh, who sounds like actor Morgan Freeman, sits on a high-backed chair in the small courtroom, dominated by an elevated wood-paneled dais. An imposing physical figure who smiles broadly even when delivering barbed comments, he

sports the traditional wig and black robes.

When solicitor general Michael Hylton, QC, the lead counsel on behalf of the government, informs Justice McIntosh that all parties in the suit have reached an out-of-court settlement, Avey knows his intensive cramming in the past few days, like a graduate student preparing for an exam, was for naught.

“I’m sorry to have brought you all down here,” Hylton told Navigant’s Dave Horner the previous day when he knew a settlement was imminent, “but if they hadn’t seen that all of you were here and ready to testify, I don’t think this [agreement] would have happened.” (Under part of the settlement, the government received legal control over a considerable amount of the defendants’ assets, including several businesses in Kingston.)

Horner and colleague Peter McFarlane played lead roles in the Jamaican cases and had accompanied Avey on this trip to assist in finding facts or documents, during what they had anticipated would be a grueling and perhaps unpleasant cross-examination.

In 2003, Dabdoub, who had been lead defence counsel in a civil action launched by the government in the matter involving the Eagle financial entities, had unsuccessfully challenged Avey’s qualifications as an expert witness and had thrown a hissy fit when Avey drank water while in the witness box.

“It was a really hot day and there was no air conditioning in the low-ceilinged courtroom — it was so bad I almost fainted — so I took a sip from a bottle of water I’d taken up with me,” Avey says. “There was an absolute hush in the courtroom. I didn’t know that in a Jamaican court you have to ask for permission to drink water. Well Dabdoub got up and he’s got these black robes on and they look like huge wings when he’s flapping them around, and he’s very agitated and can’t believe my lack of respect for the court.” The presiding justice took no offence, but Dabdoub’s histrionics gave Avey a taste of just how far the lawyer would go to rattle him.

As Avey and his colleagues drive back to their hotel, they pass a large black billboard containing the quote: “Don’t make me come down there” — God. The stern message elicits a chuckle from everyone but also serves as a reminder of the approximately 50 times Avey and members of the Canadian forensic accounting firm packed their bags and headed to Kingston, a vibrant city with the dubious distinction of being the murder capital of the world. Happily, none was ever in any real danger, but they did become immersed in a financial crisis that, if not for the Jamaican government’s intervention, could have resulted in rioting and chaos in the streets.

In November 1994, Patrick Hylton (no relation to Michael), managing director of

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National Commercial Bank in Kingston, had been appointed managing director of Blaise Merchant Bank and Trust Co. Although excited about this opportunity, it took him only an hour on the job to notice something was wrong — approximately J\$14 million of income tax withheld from clients' deposit interest accounts in the past year had not been paid to the government, and the bank did not have the cash to make the remittances. Another 31-year-old who'd just landed a plum job might have kept quiet, but Hylton — whose father was an inspector in the Jamaican Constabulary Force and whose mother was a school principal and community leader — had been raised with a sense of honour and public duty. At first he assumed it had been the result of mismanagement that just required Blaise to repay the money. However, as he delved further into the bank's financial condition, Hylton discovered numerous other serious problems.

"I'd say that within seven to 10 days, I came to the conclusion the company was massively insolvent," he says. "When I looked at the total debtor liabilities against total assets, I saw a significant deficit, in excess of J\$600 million." More disturbing was the discovery that the three Blaise entities — the merchant bank, Blaise Building Society and Consolidated Holdings Ltd. — appeared to be inextricably intertwined. "Not only did they share the same buildings and staff, funds had been moved from one to the other with no indication of the customer's knowledge or consent." Something was seriously wrong and it was beginning to look as if mismanagement wasn't the only cause.

By mid-December, Hylton's concerns were such that he refused to allow Blaise to accept any more depositor funds. On December 18, the Minister of Finance assumed temporary management of Blaise and Hylton was asked to manage it. The government calmed depositors' fears by promising to honour their deposits.

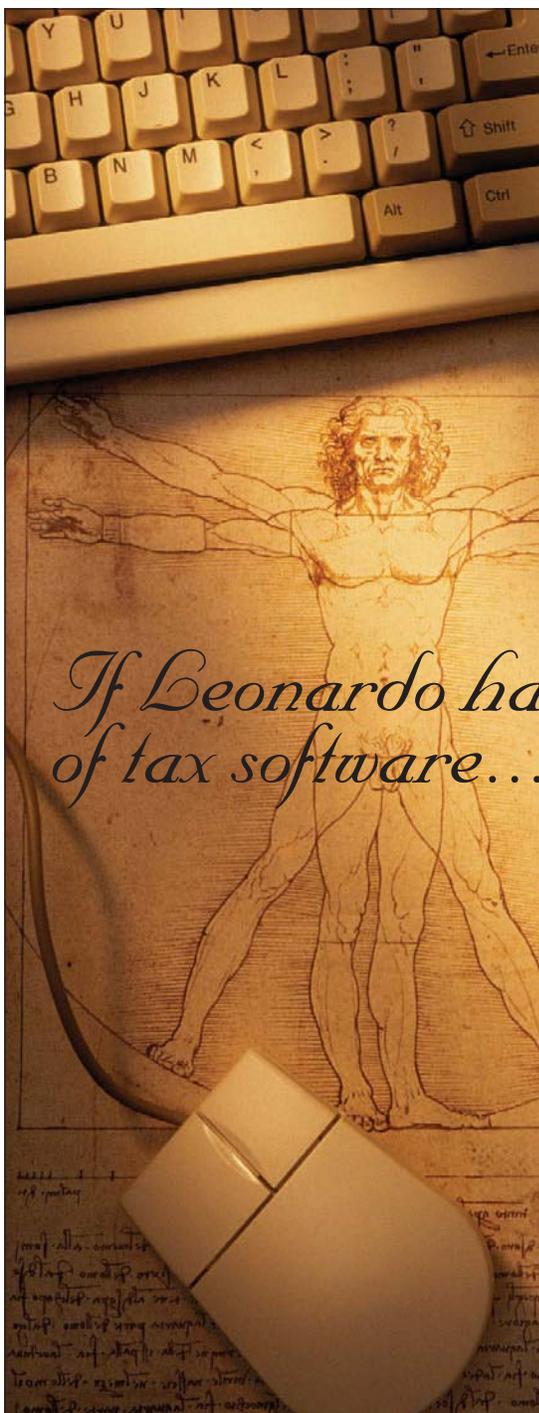
A few days later, Avey received a phone call from a senior vice-president of the Bank of Nova Scotia, which has a prominent presence in Jamaica. He suggested to Jamaica's Minister of Finance that Avey's firm might be able to help investigate Blaise. White-collar crime was not common in Jamaica at the time and there were no independent forensic accountants in the country. Following a meeting in Toronto with the vice-president, Avey flew to Kingston and spent the days before Christmas speaking with government and Bank of Jamaica offi-

cial, examining documents and answering questions about how he would approach the case. They retained his firm.

Avey and his colleagues, comprised primarily of forensic accountants and corporate investigators, began their work in Kingston in January 1995. "It soon became apparent to us that the bank's funds were used to acquire the bank in the first place [in 1984]," he says. His team discovered an extensive amount of self-dealing — lending money from one Blaise financial entity to

companies controlled by its principal shareholders, Donald Panton and his Canadian wife, Janet. "In effect, depositors' money was used to fund business enterprises of the owners," he says. "There never seemed to be any intent to pay back any of the loans."

To cover up their actions, Avey discovered the Pantons kept moving bad loans off the merchant bank's balance sheets to the balance sheets of a building society and an industrial and provident society owned by Blaise. This was done because, at the time,



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such societies (similar to credit unions) were not governed by Jamaica's banking laws.

Two and a half months later, Avey presented a report outlining his findings. "It was a straightforward forensic accounting case," he says. "I thought that maybe this would be the end of our work there." In fact, it was only the beginning.

It's unlikely many solicitors general have a framed copy of Bob Marley's CD "Legend" on their wall, with a thank you from Tuff

Gong records commemorating the sale of 10 million copies of the CD. But during the 15 years prior to being appointed Jamaica's solicitor general in 2001, Michael Hylton had served as the Marley family lawyer.

The 53-year-old Hylton has a calm aura and highly focused intellect, which softens an intensely driven nature underneath. Navigant's McFarlane says: "He's one of the most talented lawyers I've ever worked with."

Hylton was a partner at Myers Fletcher & Gordon, Jamaica's largest law firm, when

he first encountered Avey in 1995. It was midpoint in a decade that was turning out to be financially tumultuous for the island. In the early '90s, the island liberalized its foreign exchange regime, allowing citizens, for the first time in 20 years, to buy and sell unlimited amounts of foreign currency. The Jamaican dollar plunged in value, moving to a 22 to one ratio to the US dollar in just months from seven to one (it's now about 60 to one). Interest rates ballooned, reaching 55% to 60%, with inflation soaring to as high as 80%.

Those circumstances, along with financial crises in Asia and Mexico, contributed to serious problems in 40 Jamaican financial institutions, including such banks as NCB, building societies, industrial and provident societies and insurance companies (some of which were related, as in the case of Blaise, Century and Eagle).

One contributing factor, says Hylton, was the belief by bankers and financial institution managers that if they took depositors' funds and invested them in real estate that had long-term foreign exchange earning capacity, they could earn a fortune. "But when the exchange rate stabilized and the interest rates went down," he says, "they had a serious problem. And that's without any issue of dishonesty."

Avey believes dishonesty was the main cause of the problems at Century National Bank, which was run by Donovan Crawford, a former manager at Scotiabank in Kingston. Avey had been shown some of its records while working on Blaise and recognized a pattern — the use of depositors' funds to acquire such assets as real estate (which had also been the case with Blaise) for the potential personal gain of the individuals who controlled the financial institutions.

"It was really a Ponzi scheme," he says. "They were using depositors' funds, which they obtained by offering very high interest rates, to lend money to entities they owned with no possibility of earning a higher interest rate of return, if any, on the loans. It was just a matter of time before it collapsed, like any Ponzi scheme."

Nor was there a question in Avey's mind as to whether Blaise and Century's financial troubles resulted from mismanagement rather than fraud. "If you mismatch your assets and your liabilities, creating a situation where you have little or no liquidity, you have to take corrective action to ensure that your investments and your obligations match and you remain solvent," he says. "But if you keep mismatching your assets and ob-

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ligations and you keep representing to the public that you're solvent over an extended period of time, then at some point you're not mismanaging, you're lying and deceiving the public and committing fraud."

When the Ministry of Finance (which took control of Century in 1996) saw what Avey and his team did on the Blaise investigation, they retained them to do the same with Century, which Myers Fletcher had also been engaged to work on.

"I'd never worked with a forensic accountant before," says Hylton, "and was extremely impressed by the professionalism and care with which they approached what they did. One of the most helpful things

was their ability to demonstrate how several related financial entities were in reality just one entity. They were also able to identify and prove that a document dated one year was actually created in another year. Then they would find other documents and show how when you tied them together they had been deliberately created to give a wrongful impression."

While Avey and his team worked on the Century file, a third, more demanding one was added to their list in 1997. "Blaise was the baby, Century was the mama, but Eagle," he says, "that was the big daddy. That one was huge."

The Eagle Financial Network, consist-

ing of Eagle Merchant Bank, Crown Eagle Life Insurance Co. Ltd. and several related entities, was, at one point in the 1990s, the largest Jamaican-owned financial conglomerate, with thousands of depositors in a country where many people didn't own a bank account. It was headed by Paul Chen-Young, an economist and entrepreneur. The recipient of numerous awards, including Entrepreneur of the Decade in 1990, Chen-Young was regarded as a shining example of how a hardworking Jamaican could rise from relatively humble beginnings to become a success in the business world.

In 1997, however, his financial empire collapsed and the government took con-

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trol of his companies for \$1. It then initiated a civil action against Chen-Young and companies under his control for breach of fiduciary duty, among other torts.

Again, a central issue was the misuse of depositors' funds, particularly in relation to the construction of a hotel originally intended as a 130-room-suite apartment complex. Constructed at a cost of J\$1 billion, it was located some distance from Kingston's business sector. The building "made no business sense whatsoever," says Michael Hylton.

It did, however, look down on a nearby upscale apartment building, where Chen-Young used to live and where he is rumoured to have had a conflict with its own-

ers. "Chen-Young's building was a trophy for the owner, like Donald Trump building the Trump Tower," says Avey. "It was a monument to his ego."

When it failed as an apartment building, Chen-Young negotiated with the Crown Plaza chain to turn it into a hotel, which it agreed to do, provided numerous renovations and retro-fittings were made. Avey and his investigators discovered that many of the imported fixtures and fittings were funneled through a company in Florida owned by Chen-Young.

"Many of the charges for the imported goods, which the bank was ultimately paying for, were subject to additional fees by the

Florida company," says McFarlane.

The collapse and subsequent bailout of the Eagle group cost the Jamaican government J\$13 billion. Part of that cost, as was also the case with Century and Blaise, was the government's repayment to depositors of their investments. "In Blaise it was about 90¢ to the dollar," says Patrick Hylton. In Eagle, it was 100% plus accrued interest.

"We went from a country that had an internal surplus in the early '90s to one that now has a crushing deficit that we will be dealing with for generations to come," says Shirley Tyndall, former financial secretary of the Ministry of Finance and currently chair

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of the National Contracts Commission and FIS. A former accountant general, she was one of Avey's liaisons at the ministry. "We knew that there was a possibility that [Blaise, Century and Eagle] and other financial institutions were operating in an inappropriate manner," she says. "We knew we needed help from an international forensic accounting firm, because we did not have the skills to uncover the inappropriateness of the actions that could have contributed to the demise of the companies."

For example, Avey's team uncovered that Century had been making term-deposit investments to a bank in the Bahamas in which it had a financial interest. The Bahamian bank, in turn, loaned the money to companies in Jamaica that were controlled by Century. "It was a mirror loan," says Horner, set up in response to regulatory directives to cease related-party transactions and structured to deceive the regulator.

The government's decision to bail out depositors has been a costly one — the debt caused by the crisis now accounts for approximately 40% of Jamaica's GDP, says Patrick Hylton. "I believe ours was the third most severe crisis in the banking sector in

the world in the 1990s." To Tyndall it was a most necessary cost to absorb. "First, we needed to maintain some kind of confidence in our financial sector and avoid capital flight to other countries," she says. "But you also have to consider that the persons who suffered most were pensioners and people on fixed incomes — we don't have a very expansive social security system and these were often their life savings."

The bailout, she says, likely prevented social upheaval in a country where violence often infects the political arena. "If the government had done nothing, it could have been very dangerous for a country that is so heavily dependent on tourism," she says.

As with any crisis, there can also be benefits. In the past 15 years, Jamaica has introduced a banking act governing commercial banks, a financial institutions act governing merchant banks, trust companies and finance houses that take deposits from the public, and has made revisions to the Bank of Jamaica Act, all of which should prevent a recurrence of what happened in the '90s.

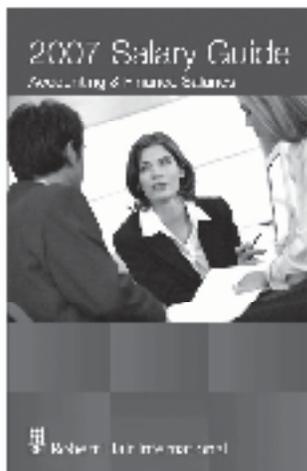
Successful civil actions were achieved in the Blaise, Century and Eagle cases, and there are Mareva injunctions still in effect

freezing the assets of Donovan Crawford, Paul Chen-Young and Donald Panton. The one disappointment for Michael Hylton is that no criminal charges have been laid in Century or Eagle and that existing charges in Blaise will likely not go ahead. "Criminal charges are completely under the control of the director of public prosecutions," he says, and beyond his jurisdiction.

As for Avey, his time in Jamaica may be over, but he believes there's more Navigant can contribute. On his last day on the island he met with Tyndall. "I just wanted her to know we could help search and locate assets [from the three cases] that now belong to the Jamaican government," he says. Beyond that, Avey says he would like to help a country he has come to know and care about since his first visit 12 years ago. "My view of the island back then wasn't very positive. It was skewed by stories you see in Toronto about crime and violence. But I've met so many decent, intelligent people here, and they have changed my understanding of the country. I'd like to come back."

*Paul McLaughlin is a Toronto-based writer and a consultant with Navigant Consulting*

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