



House of Commons
CANADA

Standing Committee on Finance

FINA • NUMBER 048 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, March 22, 2005

—
Chair

Mr. Massimo Pacetti

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Standing Committee on Finance

Tuesday, March 22, 2005

• (1115)

[English]

The Chair (Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.)): Good morning, everybody. Some of the members will probably be rolling in a little bit later, but I'd like to get started.

Thank you for appearing, Mr. Intscher. Could we go over the report, as some of the members may not have the annual report? It was sent to our office last November, so some of the members may not have it.

Also, could we address some of the concerns that were brought forward by the Auditor General's Office based on the last report we have? I think we have that in the orders of the day.

I understand there's a 15- or 20-minute presentation. You can take all the time that's needed, as long as you clarify and make it easy for the members to understand the whole process and the way FINTRAC works.

Thank you. Go ahead. The floor is yours.

Mr. Horst Intscher (Director, Financial Transactions and Reports Analysis Centre of Canada): Thank you, Mr. Chair.

I'm very pleased to have been invited to appear before this committee to speak about FINTRAC and the work we're doing. I'd like to use this presentation to provide an overview of what FINTRAC does, what its mandate is, and also to comment on our annual report and some other questions that have been flagged by the committee.

Joining me today are my colleagues, Sandra Wing, who is the deputy director of external relationships for FINTRAC; Denis Meunier, the assistant director, reporting entity relationships, which manages our compliance program; and Paul Dubrule, general counsel at FINTRAC.

I propose to make this short presentation, and that will leave quite a lot of time for questions and answers. We will be happy to address any questions you have.

I understand the presentation deck that we prepared has been circulated to members. The first slide provides you with a general outline of my presentation today. I understand the committee is particularly interested in two issues: the annual report and reporting for the money services business sector. I plan to address both of these in my presentation as well as provide an overview of FINTRAC and the work we do. My colleagues and I will then be happy to answer any questions you have.

Turning to the next slide, I'd just like to say a few words about who we are. The Proceeds of Crime (Money Laundering) Act was passed in June 2000 and amended in December 2001 to become the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. The act aims to facilitate the detection and deterrence of money laundering and terrorist financing in Canada and around the world.

FINTRAC is Canada's financial intelligence unit, or FIU. We were created under the act to receive reported information, analyze it, and, as appropriate, make disclosures to law enforcement and other investigative agencies, including foreign financial intelligence units.

We're an independent agency reporting to the Minister of Finance, who is accountable to Parliament for the activities of the centre. We are mandated to operate at arm's length from those agencies to which we disclose information. We're a relatively small agency with a staff of around 180 and an annual budget of approximately \$30 million.

I'd like to turn now to a description of what we do.

The act places obligations to keep records, identify clients, and report certain financial transactions on a wide range of financial institutions, including what we call financial entities, which are the deposit-taking institutions—banks, credit unions, and so on—accountants; casinos; money services businesses; foreign exchange dealers; securities dealers; life insurance companies; and real estate brokers and agents.

Financial entities or intermediaries covered under the act must report to FINTRAC, first of all, transactions of any type and any amount that are suspected of being related to money laundering or terrorist activity financing. In addition to that, they're also required to report cash transactions of \$10,000 or more and wire transfers into or out of Canada for \$10,000 or more. They are also required to report on their terrorist property holdings.

Under part 2 of the act, anyone crossing the border must report to Canada Border Services Agency movements of cash or monetary instruments of \$10,000 or more into or out of the country. All such reports are sent to FINTRAC by the CBSA. The CBSA also has authority to seize currency that is unreported or suspected to be the proceeds of crime, and FINTRAC also receives reports of these seizures.

Each report that is received goes into FINTRAC's database and this information becomes available for analysis. FINTRAC's case analysis could have a variety of starting points. For example, it may be triggered by a report or a series of reports from reporting entities, such as the reports I just indicated, or by voluntary information received from law enforcement or CSIS about a case they are working on, or by information provided by a foreign financial intelligence unit.

Whatever the starting point, analysts search through the centre's database using specially designed technological tools to see if there are related transactions and related parties. They also make use of publicly available information, commercial databases, and federal and provincial law enforcement or national security databases to which the centre has access, and they use this information to uncover patterns or transactions suggesting a suspicion of money laundering or terrorist activity financing.

When, as a result of its analysis, FINTRAC has reasonable grounds to suspect that information would be relevant to the investigation or prosecution of a money laundering or terrorist activity financing offence, the centre must make a disclosure to the police. In cases where there are reasonable grounds to suspect a threat to the security of Canada, including terrorist financing, FINTRAC must disclose to the Canadian Security Intelligence Service. In some cases, we are also required to disclose to the Canada Revenue Agency or the Canada Border Services Agency. In those instances, we must first meet the test of reasonable grounds to suspect money laundering or terrorist financing and then meet a second test that would relate to information that is relevant to a tax evasion offence, which must be disclosed to the Canada Revenue Agency, and information relevant to offences under the Immigration and Refugee Protection Act or to the evasion of customs duties, for disclosure to CBSA. FINTRAC may also disclose to foreign financial intelligence units with which we have an information-sharing agreement.

The Canadian regime was set up to strike a balance between the privacy of personal information and the needs of law enforcement. Contributing to this balance is the fact that the information that FINTRAC can disclose to law enforcement and intelligence agencies is explicitly set out in our legislation. This "designated information" includes information about the transactions—where they took place, the individuals conducting them, and any accounts, businesses, or other entities that were involved in them. A FINTRAC case disclosure containing this information provides valuable intelligence to law enforcement, as it provides them with leads they can investigate. A typical case disclosure would likely identify about six or seven individuals, five businesses, and involve a considerable number of transactions, and often these transactions have been reported by two or more reporting entities.

However, designated information doesn't tell law enforcement the whole story. Our legislation provides a mechanism for the police or CSIS to obtain additional information from FINTRAC in the context of a money laundering or terrorist financing investigation. With a court-issued production order, an investigator may obtain FINTRAC's full case analysis.

FINTRAC is also mandated to ensure that reporting entities comply with the act and regulations. We've established a modern and

comprehensive compliance program that includes a variety of activities—outreach and assistance to reporting entities, assessing the risk of non-compliance for all of the reporting sectors, monitoring the quality and volume of reporting, verifying compliance through examinations, and referring cases of wilful non-compliance to law enforcement for possible criminal investigation and prosecution.

In the last 16 months we've sent out 2,000 compliance questionnaires to reporting entities to assess the risk of non-compliance among all reporting entity sectors. Just over a year ago we began conducting on-site compliance examinations, and to date we have conducted nearly 200 such examinations. Many of the financial services sectors required to report to us are already regulated. Some, like banks, are regulated federally, and others, such as security dealers and casinos, are regulated provincially. In order to reduce the regulatory burden, FINTRAC is negotiating agreements with regulators to share compliance information. To date, we have concluded five such agreements, including one with the Office of the Superintendent of Financial Institutions.

Let me turn now to our work with the money services and foreign exchange sector. FINTRAC recognizes the challenges posed by the unregulated sectors—money services, business, and foreign exchange bureau. We have undertaken a variety of activities as part of our compliance program to reach these businesses. For the purposes of compliance with our act, a money services business is one that issues or redeems travellers cheques and money orders and/or wires or transmits funds by other means. Such a business may also offer other services, including cheque cashing or payday loans, but these are activities that are not covered by our act.

- (1120)

The MSB/FX sector accounts for a significant volume of the transaction reports submitted to FINTRAC. Last year, for example, 35% of the suspicious transaction reports we received came from the MSB/FX sector. By comparison, deposit-taking institutions—banks, credit unions, and so on—provided 60% of the suspicious transaction reports received.

Certainly the MSB sector has been the subject of much discussion both in Canada and around the world. The Financial Action Task Force has included in its revised 40 recommendations that countries should have measures in place to register MSBs, and many countries, including Canada, are considering their options in this regard.

FINTRAC has identified approximately 600 distinct reporting entities in the MSB and foreign exchange sector operating in Canada. This includes some large entities with multiple locations, but also many small operations with one or two storefronts. As we know, there are some MSBs, particularly those offering money remittance services, that do not have storefronts and operate in a much more informal way.

FINTRAC is aware of the challenges associated with ensuring compliance in the MSB sector and has addressed these challenges head on. Our compliance officers based here in Ottawa and in our regional offices in Vancouver, Toronto, and Montreal have undertaken extensive outreach activities aimed at raising awareness of the record-keeping and reporting obligations of our act within the MSB sector. Their work has also included quite a lot of effort in identifying who the reporting entities should be in this sector. This has included meetings with a number of these entities individually.

To date, our compliance examinations have focused primarily on the unregulated MSB foreign exchange sector. In fact, about 181 examinations have been conducted in this sector alone.

Each compliance examination results in the identification of deficiencies within the reporting entity's compliance program. To date, we've found an average of four deficiencies within each entity we've examined. The vast majority of these entities wish to comply and have cooperated and taken action when deficiencies were brought to their attention. A small number have been or will be shortly referred to law enforcement for investigation and possible prosecution, as provided for under the act.

I'd like to say a few words now about our 2004 annual report. As you know, last November the Minister of Finance tabled FINTRAC's third annual report. The report documents FINTRAC's results for fiscal year 2003-04 and our priorities for 2004-05. We're very proud of our accomplishments, especially considering that we're a very young organization. FINTRAC began in July 2000 with no employees, no offices, no infrastructure, and no operating systems, and rapidly became a fully functioning agency that delivers solid financial intelligence.

We built IT systems capable of receiving large volumes of reports each year. We were the first FIU in the world to achieve full electronic reporting at start-up, and this feature of our systems is the envy of many organizations like ours around the world and has attracted quite a lot of attention from them.

Working with our reporting entities, we implemented a phased-in approach to reporting, beginning with suspicious transaction reporting, followed by wire transfer reporting and large cash transaction reporting. In 2003-04, the first full year in which we received the full spectrum of mandatory reports, we received nearly 9.5 million reports.

We've also trained our analysts and equipped them with the tools to use this data to develop their cases. Last year we made 197 case disclosures of financial intelligence on suspected money laundering and terrorist activity financing, up from 103 the previous year. These 197 cases involved transactions valued at some \$700 million, up from \$460 million the previous year. Of these case disclosures, 48, involving some \$70 million in transactions, related to suspected terrorist activity financing or other threats to the security of Canada.

FINTRAC takes great pride in its results, and I look forward to being able to report on the current fiscal year in our next annual report.

• (1125)

I am pleased today, however, to be able to provide you with some of our results as of the end of the third quarter, in other words, to the

end of December 2004. In the first three quarters of this year we have received more than 8 million reports, which is about a 10% increase over the same period last year. We made 99 case disclosures to law enforcement, CSIS, and foreign financial intelligence units. In those three quarters, FINTRAC's disclosures involved more than \$1.25 billion in transactions suspected of being related to money laundering, terrorist financing, or threats to the security of Canada.

As I stated already, last year the dollar value associated with terrorist activity financing and threats to the security of Canada was \$70 million. Based on what we've seen so far this year, I expect this number could double by the end of this fiscal year.

The marked increase in the value of transactions disclosed indicates our growing experience and the increasing volume of transactions in our database are allowing us to disclose larger and sometimes more complex cases. We know the size and the scope of these cases have increased over the past year. Last year, for example, the average case amounted to about \$3.5 million in transactions suspected of being related to terrorist financing or money laundering. This year, in the first nine months, it would appear the average is nearly \$13 million per case.

In 2003-04 we also enhanced our information-gathering reach by signing a number of information-sharing agreements with our foreign FIU counterparts, making it possible for us to query their information holdings and to disclose information to them. When we tabled the annual report in the fall of last year, we had 16 such agreements. To date we have 19 in place and we're actively negotiating a number more.

As I mentioned, FINTRAC's financial intelligence disclosures provide valuable leads to law enforcement. We're able to provide more information to police, and linking more individuals and businesses together to show more extensive transaction activity allows us to give a more complete picture of the financial dealings within a criminal or terrorist organization.

It is important to keep in mind, however, that the volume and quality of FINTRAC's analysis hinge directly on the quality of the financial information we receive. Therefore, we continue to give priority to developing and maintaining sound and cooperative working relationships with all of our reporting entities as part of our risk-based approach to ensuring compliance and in order to maximize the quality and quantity of their reporting.

We're very proud of all that FINTRAC has accomplished, particularly when one considers that we've been in existence for less than five years and fully operational for just over three years. There are still a number of challenges and opportunities ahead, of course. Included among them are preparing for Parliament's review of our legislation, which will probably begin later this year, and preparing for the financial action task force's mutual evaluation of Canada's anti-money-laundering and anti-terrorist-financing regime, which I gather is slated for some time in 2006.

FINTRAC will also continue to build on our success. We're implementing the recommendations of the recent Auditor General's report. We will continue to enhance our capacity to provide law enforcement and intelligence agencies with timely, high-quality financial intelligence. We will continue to foster a cooperative approach to ensuring compliance and to conduct examinations on those reporting entities at risk for non-compliance. We will continue to work with our partners to build an environment that is hostile to money laundering and terrorist activity financing in Canada. FINTRAC has taken its place as one of the world's leading financial intelligence units, and we will continue to work with our international partners to strengthen the global fight against money laundering and terrorist financing.

I'll conclude my presentation here.

I thank you for inviting me here to speak to you, and I hope you found the presentation useful. I know I've covered a lot of ground, and I hope we have addressed some of your questions with respect to the annual report and reporting within the money services business sectors.

We would be happy to answer any questions you may have.

Thank you, Mr. Chair.

• (1130)

The Chair: Thank you, Mr. Intscher.

Mr. Penson.

Mr. Charlie Penson (Peace River, CPC): Thank you, Mr. Chair.

I'd like to welcome the members of FINTRAC here this morning.

I just want to say, Mr. Chairman, that when I noticed the name of the director, it looked very familiar. I just had a chance to confirm with Mr. Intscher that it is the same gentleman who attended the same high school I did in Grande Prairie, Alberta, quite a number of years ago. We also have Mr. David Emerson, Minister of Industry, who was a classmate, so one day we'll have to have a reunion here, Mr. Intscher.

This is an interesting topic, but I am going to turn it over to my colleague, Mr. Harris, who has been following it a lot more closely than I have. I'd like Mr. Harris to take this session.

Mr. Richard Harris (Cariboo—Prince George, CPC): Thank you for the presentation, ladies and gentlemen.

I think it was about two years ago that you first appeared in front of this committee. To my knowledge, that was quite a good presentation. You were explaining to us what you were doing. It's now interesting to see what has happened in the interim period.

I do have a couple of questions. In your work, does your mandate allow you to be proactive or to strike out on your own in investigations of money laundering, or are you limited to being reactive to reports that are given to you regarding suspicious money laundering transactions, as we heard earlier, meaning transactions over \$10,000, etc.?

Mr. Horst Intscher: Actually, we're not allowed to conduct investigations. We're an analytic intelligence body. The information we can draw on is either the information that is reported to us by the reporting entities—in other words, the transaction information—or information that we're authorized to have access to, which includes law enforcement databases, which includes voluntary information from law enforcement and from CSIS, and which also includes publicly available and commercially available information sources. In that sense, we don't proactively go out and investigate. In fact, once we've analyzed a case, we then turn it over to the police for investigation.

But I wouldn't characterize us as a passive agency, because we pretty actively mine the transaction database that we have accumulated. We're also mindful of information that is available from public sources, such as media reports of activity that suggests itself as being connected to money laundering. We receive voluntary information from law enforcement agencies about individuals they are tracking or cases they're involved in. We also receive information from foreign agencies like our own about cases or parties that are of interest to them. We very actively work all of those data sources to generate cases.

• (1135)

Mr. Richard Harris: Let me ask that question on another leg then. I understand what you're saying. If the RCMP or CSIS wanted to gather some financial background on a particular organization, given that your organization has the databases and the technology to do just that, would you reply to a request from them to assist them in their investigation and then provide the information they wanted? Could you? Is it in your mandate?

Mr. Horst Intscher: It's in our mandate, but you've put your finger on a very complicated aspect of that mandate. The police cannot directly query our database, because in essence that would constitute a warrant for search on their part. However, they are able to share information with us about parties who are of interest to them in relation to money laundering or terrorist financing, and that's information we would take very seriously. We would certainly work that information against our database and against our other information sources if we had transaction information about the parties they've mentioned to us or parties that we discovered from our analysis were related to those parties. If that information reaches the threshold of reasonable grounds to suspect relevance to a money laundering or terrorist financing investigation, we would disclose that back to the police.

Perhaps I can illustrate how it works. Often we will get voluntary information about Joe and Fred Smith, who are of interest to the police in some jurisdiction. They're involved in drug trafficking, and they're also suspected of being involved in money laundering. The police will give us some information about Joe and Fred Smith, including their address and so on. We then look at our database, and we might discover that Joe and Fred Smith have transactions that are of interest. We might also discover, for example, that Joe and Fred Smith don't have any transactions, but the address that has been given for Joe and Fred Smith is also an address given by two other people who have a huge number of financial transactions. Because they're using the same address and may have some other information in common, that would probably then lead us to do a complete work-up to see whether we could establish that those parties were related. If they're related, we can disclose back to the police not only any information we have about Joe and Fred Smith, but any other parties we have identified through whatever network is at play.

If we had no information that was disclosable, the police would in any case get a response from us thanking them very much for their voluntary information and telling them that we didn't have anything we could disclose to them at the time. We would also retain that information in our database. Subsequently, if transactions began occurring involving Joe and Fred Smith, we would still be able to reopen our analysis and make a disclosure to the police at that time.

• (1140)

Mr. Richard Harris: The Auditor General had suggested that your reporting contributed primarily to ongoing investigations, but as she put it, it was generally too limited to initiate new investigations. Is that because of the Privacy Act and things that protect disclosure of certain things like what we were just discussing?

Mr. Horst Intscher: It's partly the perception that that's the case. There's no question that if we could disclose more information, it would make for a richer package and possibly a more appealing package. But certainly the picture as it stands now is by no means bleak.

First of all, we have made quite a large number of disclosures to police that we know relate to investigations they're conducting. Those disclosures are quite useful to them, and they're able to act on them.

We're a very young organization, and we had to establish a bit of a track record. In the first year, when we made some case disclosures about people whom the police had never heard of, they were probably reluctant to undertake an expensive investigation. Since then, they've become more familiar with us and with our product. It's our understanding now that many of the cases that we disclosed to them, even when they don't know the parties we're identifying for them, will nonetheless lead to investigations because so many of the other facts we're disclosing to them are quite compelling.

We would almost never disclose a single transaction or one or two transactions. We almost always put together transactions—dozens or hundreds of transactions in some cases—involving five or six individuals, and sometimes over a hundred individuals, who we can show are linked either by common addresses, common identification, or sometimes commonly used fraudulent identification. When

we put together a package like that identifying a number of players and we attach to it a chart that shows how they are connected, that's pretty compelling for police.

Mr. Richard Harris: Is it fair to speculate, or is it at least realistic, that the multi-billion-dollar grow-op business in Canada is an area of a lot of interest to you folks?

Mr. Horst Intscher: That's a very safe speculation.

Mr. Richard Harris: Thank you.

The Chair: Thank you, Mr. Harris.

Mr. Richard Harris: Thank you, Mr. Chairman.

The Chair: Monsieur Côté.

[Translation]

Mr. Guy Côté (Portneuf—Jacques-Cartier, BQ): Thank you for your presentation. I would like to ask two quick questions.

If I understand correctly, you look at some 8 million transactions per year. Is that correct?

[English]

Mr. Horst Intscher: Yes.

[Translation]

Mr. Guy Côté: You have 128 employees, who have examined 8 million transactions, and 197 cases have been passed along to the police. I am not suggesting that too few cases were sent to the police. My point is that there seems to be a huge workload for 128 employees. How could you be more effective, given your limited human resources? That is my first question.

Second, your organization seems to be very effective in identifying the various trends in money laundering. Up to this point, have you found that there is a favourite holiday destination for money laundering?

[English]

Mr. Horst Intscher: Thank you.

You've put your finger on two very interesting aspects of our work. The nine million transaction reports that we received last year are, by and large, objective transaction reports; these are wire transfer reports and large cash transaction reports. I think about 17,000 were suspicious transaction reports. We don't treat them all the same way. First of all, it's impossible for us to examine individually millions and millions of wire transfer reports, but we do examine individually all of the suspicious transaction reports that are made available to us.

What we have done to be able to cope with that volume of data is we've invested quite heavily in IT systems and analytic tools to facilitate our work. In fact, we're now in the process of even upgrading some of those analytic tools to be able to speed up the work of the analysts. Some of what we now do has to be done through individual search runs initiated by an analyst. The capability we are equipping ourselves with will allow us some time later this year to fully automate all of the matching and searching so that the analyst can start at a higher level of presented information.

When we make a case disclosure, as I mentioned earlier, it almost never involves a single transaction; it almost always involves more than 20 transactions, and we've had a number of cases where the transactions have gone into the thousands. It would be impossible for us, even if we doubled our analytic manpower, to do that without the benefit of the technology we have available to us for this purpose.

We're pretty confident that even with the level of technology we now have, we could cope with the growing volume of our database. But it's our objective to be able to identify larger and larger criminal networks involved in laundering, and therefore we're not satisfied to simply be able to identify a Mrs. Smith or Mrs. Brown who makes a \$25,000 deposit somewhere that she can't explain. We're much more interested in a Mrs. Brown or Mr. Brown who is leading a group of people who are laundering \$250 million in a year or so. To be able to do that, we need to have the large database that we have, and we need to have the technology we have developed and continue to develop to allow us to carry on that kind of analysis.

In terms of the manpower deployment within FINTRAC, we have several mandates, one of which is analysis and another of which is compliance. We have about 24% of our staff, I think, allocated directly to the analytic function. But they are supported by about another 40 people in the information technology department who do nothing but develop tools for the other staff, fine-tune and refine the tools, develop new ones, and teach them how to use those tools. It's this leveraging of the technology that allows us to do our work and to deal with these large volumes of transactions.

As for your second question about the destination, it won't surprise you that a fair number of the cases we deal with involve transfers to what are called tax havens or offshore financial centres—some in the Caribbean, but some in other parts of the world as well. But in addition, there's also a substantial amount of money flowing to jurisdictions that wouldn't naturally catch your attention; in other words, these are countries that have well-developed financial centres and robust anti-money-laundering legislation and measures in place. But for them, as for us, when those transfers are coming in, it's often difficult to recognize at first glance whether those are legitimate transactions—which most of them are—or whether there is some taint to them.

We're among the most advanced financial intelligence units in this regard. To my knowledge, we're one of two financial intelligence units that routinely collect information about international wire transfers, which allows us to search for that kind of transaction activity in a way that others cannot.

I've spoken in various fora on this subject to other practitioners in my field, and it has attracted quite a lot of attention; other countries are now also in the process of equipping themselves with the capacity to routinely collect that information and analyze it. I would mention, for example, our counterparts in the United States who have not previously collected this information but are now proceeding to get authority to collect it. Some of the newer, larger financial intelligence units, in South Africa and Russia, for example, are also looking at routinely collecting this information, which will make it possible for all of us, as we exchange information, to identify more clearly the ultimate destination of some of these funds.

For example, if we're monitoring international wire transfers that might be going to London or Dubai or Singapore, it's quite likely those are not the ultimate destinations of those funds. In many cases, we're sure they are not the ultimate destination of those funds. So we're establishing relationships with those bodies in those countries to be able to query them about the onward movement; and we're also encouraging them to collect the same kind of data routinely, so that they can easily do that kind of analysis themselves and provide us the information about the ultimate destination or the ultimate point of origin of those transactions.

• (1150)

The Chair: Merci, Monsieur Côté.

Ms. Minna, do you want to go first?

Hon. Maria Minna (Beaches—East York, Lib.): That's fine.

The Chair: Ladies first. Then I'll go to Mr. Penson and Mr. McKay.

Hon. Maria Minna: Thank you.

I was reading the report and some of the things from the Auditor General from November. There seemed to be some concern with respect to compliance by accountants and real estate agents, and that whole other industry that may not be financial institutions. I'm wondering if you could elaborate on what the concerns are there, and what if anything is being done to assist. Obviously they're not structured in the same way as financial institutions. It's not as easy for them to....

Mr. Horst Intscher: There are a couple of factors I would mention, and then I'll ask my colleague, Denis Meunier, to comment in more detail.

With some of the reporting entities we have, such as banks and credit unions, it's inconceivable that they would not have reportable transactions of some kind or other. So we get a high level of reporting from them.

When you look at professional groups like accountants or real estate agents, although there are large numbers of them, the proportion that is likely to ever have any reportable transactions is quite small. I think there are roughly 70,000 accountants in Canada. I doubt that many more than 2,000 would possibly have reportable transactions, because most of them don't conduct transactions. There may be some that do, and we're working with them and with their self-regulatory bodies to encourage reporting. We're doing compliance work with them as well.

Similarly with real estate agents, there are 70,000 or 80,000 of them, but many of them would not conduct their businesses in ways that would ever lead them to have reportable transactions. So we've been working with the real estate associations to educate them about the risks and explain to them the circumstances in which they would have to report. A number of the real estate associations across the country have developed training modules in their licensing programs that directly address this issue.

We're beginning to see an increase in reporting from that sector, but it doesn't come anywhere near in volume to what we would get from a bank, say. But it's difficult to compare the level of reporting from a deposit-taking institution and the level of reporting from an industry like the real estate industry.

Perhaps Mr. Meunier could comment a bit more in detail on that.

• (1155)

Mr. Denis Meunier (Assistant Director, Reporting Entity Relationships, Financial Transactions and Reports Analysis Centre of Canada): Thank you.

To add to what Mr. Instscher has said, in fact, we have been providing a lot of information and conducting intensive outreach to these particular sectors. I would say that, particularly over the last year, we've been working very closely with the associations in the case of the regulators or self-regulating bodies in those instances, including those in the accounting field, as well as those who are responsible for regulating real estate, the securities industry, and pretty well all of the regulated bodies, to essentially make sure everyone understands clearly what their obligations are.

We feel that not only have we achieved that in terms of building a good relationship, but we're building the relationship for the future. We're here for the long term, so we have built up some train the trainer programs, etc. We have developed pamphlets, compliance videos, etc., because that's at the basis of the compliance effort that we want to accomplish.

With respect to reporting, we have started conducting on-site examinations in all of the sectors. While we've concentrated in the last year in the MSB/FX sector, we have now conducted some examinations in the other areas, such as real estate and with accountants and securities sectors. Probably within the next year we'll be in a better position to establish the level of compliance and the extent to which reports should have or should not have been sent to us.

However, on initial results, as Mr. Intscher mentioned, we have sent out over 2,000 questionnaires. We call these compliance questionnaires. The results are very encouraging insofar as they declare their compliance to us in most sectors. In some sectors, we realize there's probably some additional awareness that needs to be done in some areas, but as we progress next year and do the examinations, we'll be able to verify whether what they're telling us and what we actually see is accurate or not. So far, we're very pleased with the reaction from the sector as a whole in terms of compliance.

Hon. Maria Minna: Thank you.

On one other area, I'm going back to the Auditor General's report. This is an issue that came back the last time we met. It has to do with FINTRAC providing the financial institutions and others that handle illicit funds with little feedback on the reports and trends of money laundering. This is an issue that we raised last time. I'm trying to remember what the main impediments or the problems with feedback were the last time we discussed this. It appears yet again in the Auditor General's report.

Mr. Horst Intscher: We actually do provide quite a lot of feedback to the financial reporting entities. We cannot provide

feedback with respect to individual cases. We're precluded from doing that, but we do provide extensive feedback to them both on the reporting for their industry sector generally and on the reporting by their particular entity. And I think the Auditor General picked up on an observation that had been made by the Canadian Bankers Association probably a year or so previously when we had just begun doing our outreach and feedback to the banking sector. But since then, we have provided very extensive feedback sessions to, I think, all of the major banks, and this is something we will continue to do on an ongoing basis with them.

We can also often provide feedback to them in relation to quality of reports or individual reports. Sometimes when we're doing our analysis, we see that a report they filed was left blank in a very important field or has provided information in a field that is not actually intelligible to us. And if we see two or three reports of this kind from a reporting entity, they would then get a visit from a compliance officer who would review the practice and the reporting procedures with them and try to achieve a correction of this.

Something not widely recognized is that we provide what I would call feedback up front to reporting entities in a way that is probably much more comprehensive than that which is provided by any other organization like ours elsewhere. We issue guidelines with respect to transaction reporting to all of the reporting entities, and those are also available on our website. They are very detailed guidelines, and they indicate the sorts of things they should be looking for, the types of behaviour they should be alert to, the types of transaction patterns or transaction anomalies they should be alert to.

This is information that some of our counterpart organizations provide in "feedback sessions" when they meet with those reporting entities. But we have developed a very comprehensive set of guidelines that is available to all reporting entities up front. They have been very well received by our reporting entities, and they're being avidly copied by a number of financial intelligence units elsewhere who have looked at our website and seen these and said, "Well, we should be doing this too". This is really useful direction that we can provide up front to the reporting entities.

We take advantage of any of our compliance contacts, of course, with the reporting entities to provide some feedback, but with the large entities we're routinizing probably an annual or biannual major feedback presentation where we would have done an analysis of the reporting they've done—the characteristics of it, how it compares to the rest of their sector—to give them quite a good indication.

Finally, we can also tell them the extent to which their reporting is being used in our case disclosures to law enforcement. Again, we can't discuss individual cases with them, but we're able to give them quite useful information about the type of case their reporting has been featured in. In some cases, I think that provides them with information that helps them review some aspects of their client base to see whether they've got among their clients a certain group that has a propensity for a certain type of behaviour that's undesirable.

• (1200)

Hon. Maria Minna: Thank you very much.

Thank you, Mr. Chairman.

The Chair: If I may ask, you can't disclose individual cases?

Mr. Horst Intscher: Not the reporting entities, no.

The Chair: If we use the example you cited to us regarding addresses, how does that work? Is there a fishing expedition, because then you in turn provide them with a list of 20 transactions? How does it tie in? It has to work somehow.

Mr. Horst Intscher: You're now asking in relation to queries from law enforcement.

• (1205)

The Chair: That's right.

Mr. Horst Intscher: We can respond directly to the names, but in essence, when law enforcement makes a voluntary information disclosure to us, we look at not only the names of Joe and Fred Smith that they have given us, but when we're looking through our transaction database, we would look at anything that is related to Joe and Fred Smith. It might be other people who are transacting on their account. It might be other people who are residing at the same address, using the same telephone number, any of a number of common features, but when we disclose back to the law enforcement agency, we would include not just the address but the names and other transaction information relative to those people.

When I say we can't disclose individual cases in relation to providing feedback to reporting entities, we have no authority in our act to disclose specific case or individual case information back to a reporting entity.

The Chair: Such as a bank?

Mr. Horst Intscher: Yes, such as a bank.

The Chair: Why would they require any of that information?

Mr. Horst Intscher: Sometimes they might be interested in knowing whether a disclosure they've made to us is leading to an investigation, because they're trying to make a decision about whether they should or should not maintain the account, but we're not permitted to disclose to them that kind of information.

The Chair: In that case, what kind of information would they be able to have access to?

• (1210)

Mr. Horst Intscher: We provide feedback information on their reporting generally, how it fits into the disclosures we're making, the types, and so on, but the decisions about the individual accounts or the behaviour of their account holders, they have to make on their own.

The Chair: Thank you.

Mr. Penson.

Mr. Charlie Penson: Thank you, Mr. Chairman.

Mr. Intscher, it seems to me that having a good, cooperative effort on this whole thing with the United States would be very important to Canada. I'm looking at a Canadian Press story from March 16, talking about how a U.S. report just released as part of a larger annual study of international narcotics says Canadian laws are dogging efforts to catch terrorists and other criminals trying to sneak large sums of money across the U.S. border. It goes on to say that

American officials have echoed concerns that Canadian privacy laws and the high standard of proof required by Canadian courts on the solicitor-client privilege aspect are inhibiting your ability to have full disclosure of intelligence that would be helpful to them. How do you react to that?

Mr. Horst Intscher: I think that report was based in part on their reading of the Auditor General's report, which made an observation about the degree to which the limits on our ability to disclose information are an impediment to effective investigation. It would always be easier for us, easier for law enforcement, and more convenient for everyone if we were able to disclose more information. In the intelligence business and in the investigation business, more information is always thought to be better, but I would not conclude that this has been a major impediment. I think it has required law enforcement to some extent to adapt its investigative techniques to deal with the kind of intelligence that we're able to provide to them.

Early on in our existence, there probably was some grumbling on the part of some law enforcement agencies that the information they could get from us was not very detailed or very useful. They were probably right, because early on we had very little experience and we had a minuscule database to work with, so what we could disclose to them was not only limited by the type of information but by the quantity of information that we had in our possession. As they've become more familiar with our product and with our work and as our database has grown and we've been able to make larger and larger disclosures that show relationships, I think quite a lot of that concern has faded away.

Mr. Charlie Penson: You must be familiar with your counterpart in the United States. Are they subject to the same kinds of restrictions that you are on these two categories?

Mr. Horst Intscher: They're set up in a very different way. It's difficult to compare them, but I'll try to explain.

They are set up essentially as a database that is available to all accredited law enforcement agencies. So the transaction reporting that comes to them ends up in their database, and any of 2,100 law enforcement agencies in the United States can access the FinCEN database and make a query.

That has a certain kind of superficial appeal to it, but what it means is that most of the use that's made of that data is really limited to a very simple name query. In other words, they'll enter "Joe Schmidt", and if they have a date of birth they'll enter that too. If they have an address they'll enter that, and they'll get an answer. Now if Joe Schmidt is actually also using three aliases, or conducting transactions through his wife, Nancy Brown, who is using another name, none of that would pop out. So the law enforcement agency that makes the query just gets back any transaction that Joe Schmidt made.

Mr. Charlie Penson: I'm sorry to interrupt, but my time is short here. Are you saying then that because you have a fairly young organization, it is getting better and these criticisms are dated?

Mr. Horst Intscher: I'd say that to some extent they're dated. There's no question the data we can disclose is circumscribed by the act and the regulations. We are looking at whether there are additional authorities that we wish to seek, and the finance department is also looking at how we're doing our disclosures and what we can disclose to see whether there's additional information we should seek authority to disclose.

In addition to that, within our organization we have what we call the disclosure enhancement project. It is looking at how we do our disclosures, with a view to maximizing the amount of information we can disclose within the law. Certainly our internal initiative has already yielded some enhancements, and in the course of the five-year review we will probably be seeking authority for some additional information that we would like to be able to disclose. But just the extent of our analytical ability is also adding greatly to the information that is contained in our disclosures.

So the information is a bit dated, but I wouldn't say it's invalid. There are aspects of our disclosures that we could enhance if we could disclose certain other information.

Mr. Charlie Penson: I guess that's part of why we're here today. We'd like to know what we can do as parliamentarians to help you have a better system that will work more effectively. We do know that there's always a balance between privacy concerns and security, but I guess we're interested in whether it has shifted too far. Would it be helpful if you had more authority to be able to disclose more than you are now?

Mr. Horst Intscher: We're just in the process of preparing that review, in preparation for the five-year review of our legislation, and I think we will probably be identifying some mechanisms and specific types of information that we would like to get authority to disclose.

Mr. Charlie Penson: There's just one further thing I'm interested in, and that's the business of what might be terrorist organizations raising money in Canada, even using charity status in order to do that. Looking at that data, do you get information from the RCMP and Foreign Affairs that some organization may actually be a terrorist organization from some other country and have a wing in Canada that's raising money to supply funds to that terrorist organization? How do you judge whether there's a need to have a look at that fundraising ability?

• (1215)

Mr. Horst Intscher: We get voluntary information from CSIS and from the police. We also often obtain information from public sources, from media sources. Sometimes groups are identified as being the subject of an investigation in some other jurisdiction. That will often spark a search and a case development exercise within our organization.

We have also, I'm proud to say, been able to learn from those experiences and are now able to recognize certain transaction patterns that are associated with that type of activity. Sometimes we're able to identify groups that have not been identified to us by anyone else, based on the transaction patterns.

So we're actually strengthening our ability to detect terrorist fundraising. This is an issue that's being grappled with by every organization like ours everywhere.

The transaction patterns are sometimes difficult to recognize and are difficult to identify. We have a singular advantage in the fact that we have the mandatory reporting of international wire transfer reports, because those feature in practically every suspected terrorist financing case we have disclosed. Something like 85% or 87% of the terrorist financing suspected cases we've disclosed have involved international wire transfer activity, usually to destinations or from jurisdictions that are of known concern.

Mr. Charlie Penson: Other countries have removed certain organizations from raising money and getting charitable status in order to do that, where that has already been identified in other countries as a concern, yet they are still allowed to do it in Canada. Would that not send up a red flag for you to have a look at that organization, as a result of the international component of it?

Mr. Horst Intscher: That is a process that's not really done on the basis of our recommendation.

Mr. Charlie Penson: Are you not allowed to do it as a result of your mandate? Is that what you're saying?

Mr. Horst Intscher: We provide our case disclosures to CSIS or to the RCMP, and there is a process for them to recommend to ministers that a particular group be listed.

I can say that listing a group is not the end of the path for these activities. Some of the activities we've seen and have reported on are conducted by groups that probably grew out of an organization that had been listed somewhere. Listing them has certain advantages and a certain appeal for the freezing of their assets, but it's not in itself reason for us to relax our vigilance or relax our search, because groups can reconstitute themselves or change their location and continue with their activities. We are constantly on the lookout for that.

The Chair: In follow-up to what Mr. Penson was saying previously, do you disclose restrictions? Are most of the restrictions FINTRAC is under based on their guidelines, or are they based on the Privacy Act?

Mr. Horst Intscher: They're Privacy Act and Charter of Rights and Freedoms restrictions.

The Chair: Does FINTRAC as well work under certain restrictions itself?

Mr. Horst Intscher: What we are doing at FINTRAC is re-examining the interpretation of the legal advice we received on some of those. We're also looking at—

• (1220)

The Chair: Is it based on its mandate, or is it based on the Privacy Act?

Mr. Horst Intscher: It is based on the Privacy Act and the Charter of Rights and Freedoms.

Mr. Paul Dubrule (General Counsel, Financial Transactions and Reports Analysis Centre of Canada): The Proceeds of Crime (Money Laundering) and Terrorist Financing Act states expressly what FINTRAC is allowed to disclose. That definition has been expanded by regulation, but that is the entire universe of the information FINTRAC is authorized to disclose.

The Chair: So every time you mention the fact that we can't disclose any type of specific information, it's basically because of the Privacy Act.

Mr. Paul Dubrule: The requirements of our legislation are to ensure that privacy is taken into account and that the section 8 provisions of the charter are adhered to.

The Chair: As Mr. Penson had indicated, some of the issues... We're here to try to see whether there's anything we can do to help this process. If we look at the Auditor General's report, it is quite critical in various areas as to whether it is compliant. There are a whole bunch of things, such as disclosure. How is FINTRAC going to address these areas? We didn't really touch on those issues, but there's quite a bit here.

Mr. Horst Intscher: A number of the recommendations that have been made by the Auditor General... First of all, we've accepted the recommendations, and in many cases, we've already implemented or are implementing the recommendations. Some of them require action not only by ourselves, but also by some of the other partners in the anti-money-laundering initiative, so there's a process that is being led by the Department of Finance at developing and implementing the responses to those recommendations.

The Chair: One of the major areas is the unregulated sector, whether it be unregulated, non-licensed, non-regulated, or non-compliant entities—name it what you'd like. I don't think the issue is really the people who are reporting or regulated, but again it's the entities that are not.

We spoke about the real estate agents or the accountants. But how do we force these people to be compliant? I understand we can inform them and we can send all kinds of pamphlets, but in the end, I think there has to be some type of...whether it be a penalty or a fine imposed that addresses the issue of, well, I didn't read the pamphlet or I never got the information. This is the issue. This is why I think we're here today—to try to get the people who are not reporting. Again, I refer to the Auditor General's report where it indicates that the task is even further complicated when these services go in and out of business at a high turnover rate. This is the issue. How do we get the non-compliant, the unregulated, the unlicensed?

Mr. Horst Intscher: There are several aspects to that question and I'll try to address all of them.

First of all, with respect to sectors like real estate or accounting, the proportion of the members in those professions that would actually have a requirement to report because of the nature of their business is fairly low, but we are doing compliance work with them to try to identify which of them have those sorts of responsibilities, and then we intensify our compliance focus on them. And our compliance, although it is fundamentally cooperative in its character, does lead to examinations and identification of deficiencies. In the face of wilful non-compliance, we can refer those entities to the police for investigation and prosecution. Our act provides significant criminal penalties for failure to keep records and failure to report. So

we do focus on them. We do have mechanisms to reach out to them to encourage them and we do have mechanisms to trigger enforcement action.

What we do in our—

The Chair: If I may, my point is—and you're correct—that in situations where someone is a money launderer or a terrorist, the person is not going to go to an entity that is going to be regulated. The individual is probably not going to go to an accountant or a lawyer and may not go to a bank. That's the issue, trying to prevent these so-called terrorists or money launderers getting away from the system.

● (1225)

Mr. Horst Intscher: Some money launderers are very inventive and have found techniques, I think, for bypassing most of the entities that are required to report to us. You'd be surprised at how many of them bank at the main banks, the local credit unions or caisses populaires. A fair number of them resort to money services businesses and foreign exchange bureaus. Those are not otherwise regulated, but those entities are also pretty conscious of the reporting requirements and they're actually keeping reporting requirements in respect of our act. As we mentioned earlier, we have identified some 600 of these entities in Canada. That doesn't mean 600 outlets. It means 600 legal entities in some cases.

For example, with Western Union, there will be thousands of Western Union agents across the country. They're all covered by our act, and Western Union is required to report on any transactions that meet the reporting criteria for them.

The 600 that we have identified are not all listed in the telephone directory. We have devised a number of means for identifying reporting entities that probably would have preferred not to become known to us. They weren't listed in telephone directories, but they were advertising in various places. We somewhat systematically looked for the advertisements and then sent compliance officers out to bring them into the fold.

In some cases, they're reported to us by other reporting entities in the course of their reporting. They might file a suspicious transaction report or they might file a wire transfer report that identifies their client as being a money services business. We have reached out to quite a few.

Yes, there is a lot of turnover in that sector. That's part of why we focus so much of our compliance effort on that sector. Of the 600, there are probably 100 new ones in the last year or so. In some instances, we think when we called on MSBs that didn't actually want to be known to us, they just went out of business and reopened across the street. We also found them across the street, and we're still pursuing them. We've already made some referrals to law enforcement for investigation and prosecution, and we will make more as we discover entities that are evading reporting and record-keeping requirements.

If I might wrap up, one of the questions that's being examined not only by Canada but by a number of countries is on implementing a registration scheme for money services businesses. That may well come about. I think it's being looked at here and it's being looked at elsewhere. Even with such a system, it will still be necessary for us to focus a lot of compliance effort on those sectors. If they're really determined not to report to us, chances are they'll also be pretty determined not to be registered.

The Chair: Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis (Winnipeg North, NDP): I wanted to pursue this a little bit more.

It may be that these alternative financial services are only small players in terms of the whole area of money laundering, but we've seen an explosion of these outfits in the last ten years as the banks have left communities. We've had a huge growth in Money Marts, payday lenders, cheque cashers, rent-to-owns, and whatnot. As you said, by and large, they are unregulated and unlicensed.

I know you tried to develop your own ways to find out who they are and get them to comply. There is an association now that may be helping. On this whole agenda of trying to find the right scenario and the right package to regulate in this area, is there any advice you would offer in terms of what would or would not work?

For example, one concern that has come out of the province of Quebec, I think, is when they lowered the criminal interest rate. It simply forced these characters underground so that there's less and less chance of finding out who they are.

Manitoba is now exploring the possibility of trying to get some concessions from the federal government to do its own pilot project, where they may actually allow for criminal rates to be much higher than 60% in the hope of covering off interest management fees, etc., and not forcing them underground.

Is it a problem that we should worry about in this context? We have other reasons to worry about it, but I mean in this context. What advice would you have in terms of how government should proceed in regulating these fringe financial institutions?

• (1230)

Mr. Horst Intscher: Well actually, our mandate extends to only one portion of their business, and that is to the extent that they either issue or redeem traveller's cheques or exchange money and so on, or transfer money for a client from point A to point B. The activity of payday lending doesn't fall within our ambit at all, and I don't know that I'd have any advice really as to how to proceed on that.

Even in terms of the activities they are engaged in that are subject to our mandate, they've certainly sprung up over the last ten years, as you point out, but they're not unknown to us, even though they may not be regulated by us. They have storefront presences for the activities that we monitor for them. They usually have an agency relationship with some larger entity, whether it's a traveller's cheque supplier or whether it's a money transfer service like MoneyGram or Western Union or Thomas Cook. So for those activities on their part, we have a fairly good handle on them, but our writ does not extend to their lending practices. I have some personal views about that, but I don't have any FINTRAC views on that.

The Chair: Thank you.

Go ahead, please, Mr. Pallister.

Mr. Brian Pallister (Portage—Lisgar, CPC): Thank you for being here. I apologize for missing the early part of your presentation, and I hope I'm not going to till a field that's already been tilled too thoroughly, but I would like to ask you about a couple of specific issues of concern.

The Auditor General's report makes a number of suggestions and recommendations. One of those is the observation that you have several federal organizations involved with your organization, and the suggestion is that cooperation among them could be improved, including with respect to accountability mechanisms. I'm interested in knowing how you interface with, say, Revenue Canada, just as an example. In terms of the ramifications of misbegotten gains, Revenue Canada obviously would have some interest in that.

Give us an example of how that process might work and also how that process might be improved.

Mr. Horst Intscher: Our relationship with Revenue Canada is quite indirect. It's more complex than our relationship with say the police or with CSIS because in order for us to be able to disclose anything to Revenue Canada we must first have made a determination that the information we have can reasonably be suspected of being relevant to money laundering or terrorist financing investigations. After that determination we have to make a separate determination as to whether or not it's reasonable to suspect tax evasion, in which case we could then disclose to them.

Mr. Brian Pallister: Help me understand the impediment. From the Revenue Canada side, it's a complaint-driven organization. We all have our complaints about our taxes, I'm sure, but I'm told that they will act on a complaint. For example, they acted on complaints in regard to abuse of the charitable rules in the last election. Some organizations were going too far and stuff like that. So what's the impediment? You have to make the case to yourselves before you're willing to make the case to them? Is this essentially it?

• (1235)

Mr. Horst Intscher: Yes, we're required to make the case—

Mr. Brian Pallister: Under our legislation that governs your operations—

Mr. Horst Intscher: We're required to reach a separate determination of relevance to tax evasion.

It's sometimes tempting to just say, "Oh well, if they're laundering money, they certainly won't be paying their taxes", but our experience is, and what we've learned from others is, that's not a safe assumption. At certain stages of money laundering it's likely that they're not paying taxes, but in other stages of money laundering—in other words, where they're layering or kind of reintegrating their ill-gotten gains—they're probably being enthusiastic taxpayers as a means of protecting the original source of the money.

Mr. Brian Pallister: So the converse is also true. I realize I'm getting into a sidebar, but there are also impediments to Revenue Canada's notifying you, so we have a kind of tubular structure. I see what the Auditor General is getting at, and we all know.

Mr. Horst Intscher: We have, however, embarked with them on a joint project of identifying mechanisms and transaction indicators that would help us ascertain whether or not it was reasonable to suspect tax evasion.

Mr. Brian Pallister: Isn't this a difficulty you face, though? You have the material; \$10,000 is the threshold. I'm involved in money laundering and I know that, so I do transactions of \$9,999 all the time. Isn't this like water? It's just going to find a way to get down there through gravity, finding the easiest way to go all the time, right?

Mr. Horst Intscher: You'd be amazed at how many suspicious transaction reports we get from reporting entities that report exactly that kind of behaviour.

Mr. Brian Pallister: So it becomes suspicious when it's \$9,999.

Mr. Horst Intscher: That's right. If Joe walks in three times a week and makes deposits of \$9,500, that will arouse the interest of the institution and possibly suspicion, which will then result in a report to us.

One could conceivably lower the threshold further on the reporting requirement, but at \$10,000 it's already quite low. Ten thousand dollars is a lot for me. I never walk around with that amount of money in my pocket, and I've never made a cash deposit of \$10,000.

Mr. Brian Pallister: I won't follow you home then.

Some hon. members: Oh, oh!

Mr. Horst Intscher: But for people who are in the laundering business, \$10,000 is a drop in the bucket. With our having a threshold even at that level, for them to try to sneak under it would require so much labour and so much dust would be churned up that a number of institutions would—and we know they do—detect that activity and then report it as suspicious activity.

Mr. Brian Pallister: It would seem to me, at least just from my cursory reading of the materials, the AG's report and so on, the larger concern is basically the issue of the disclosure being totally denied—for example, by the legal profession through the use of client privilege as an argument. Right?

I know people in the legal profession are also concerned and say this argument should not be used because it's being used to protect criminal activity. Obviously, there's a concern among law-abiding members of the legal profession that this isn't something we should hide behind, but the fact remains that this is an impediment because

it would almost encourage people to use a lawyer as an intermediary, wouldn't it?

Mr. Horst Intscher: That would certainly be a temptation, and it's certainly a concern of ours and a concern of the Department of Finance, which has the policy lead on these issues. They are actively working on this file, trying to find a way to bring the legal profession under coverage of the act. So there are significant efforts under way to try to bring them under coverage, because yes, one would have to acknowledge that it is a potential loophole.

Mr. Brian Pallister: I expect someone else has already asked you this, but this is, I expect, an issue. There are other organizations and other jurisdictions that are senior to yours in the sense that they've been in place for a longer time period, and they must have dealt with this issue of lawyer-client privilege. How has it been dealt with in other jurisdictions, or has it been dealt with successfully? You were talking about—I don't know if the word is "dichotomy"—an issue here of inevitable friction: lawyer-client privilege versus the disclosure of potentially improper activities. Has it been dealt with in France or, say, Germany?

• (1240)

Mr. Horst Intscher: It's been dealt with badly in a number of jurisdictions and it's not yet been dealt with in a number of other jurisdictions. There's a concern generally about this loophole. There's probably more concern in some jurisdictions than in others because in some jurisdictions lawyers cannot act as financial intermediaries; that requires a separate licence. In some jurisdictions, like ours and a number of others, the legal profession has spread into some of the financial services areas. That makes it more difficult for us to grapple with it, but also it's more important that some solution be found to it.

Mr. Brian Pallister: Given the StatsCan report last week that talked about an eightfold increase in the use of foreign-controlled financial institutions, essentially tax havens, to what degree is that relevant here? My observation is, why in the heck would you launder money into Canada and pay high tax rates when you can launder it into the Barbados and pay virtually nothing? Isn't it a reality that misbegotten gains of our multiple grow-op profiteers in this country are going to be sucked off Canada's shores anyway and taken to the Caymans or Barbados?

Mr. Horst Intscher: Some likely will be. For that money to be transferred, the financial institution is required to file a wire transfer report with us. So if individual X or his lawyer makes the transfer to Cayman, Bermuda, Dubai, or wherever, that's reported to us. If the transfer is made by the individual directly, his identity becomes known to us. If it's made by his lawyer, the beneficial owner is not visible to us, but certainly the lawyer who makes the transfer is identified to us.

Mr. Brian Pallister: A suitcase with the bills in it is beyond our—

• (1245)

Mr. Horst Intscher: Again, the suitcase with the bills used to be easier when there were no restrictions on the import and export of money. Now anyone travelling in or out of the country with \$10,000 or more has to file a declaration and—

Mr. Brian Pallister: They're supposed to file a declaration.

Mr. Horst Intscher: There are interdiction teams at work in a number of jurisdictions that verify that. I have been present to observe the work of one of them at Pearson Airport in Toronto. They look at the outgoing flights, do a risk analysis on the destinations of those flights, and then screen passengers who are leaving the country. If they fail to declare, then the money they're carrying is subject to seizure and ultimately forfeiture.

Mr. Brian Pallister: At the subsequent destination, the cooperative nature of the relationship you have with those jurisdictions would seem to be of utmost importance. Assuming I get my suitcase out of the country and land in the Barbados, am I free at last, or when I deposit it in an institution there do I run the risk that they're going to report me to you?

Mr. Horst Intscher: Yes. Most of these places have implemented, through encouragement and suasion from various international bodies, regimes similar to ours that have reporting requirements. They have bodies like ours, and we're busy establishing memorandums of understanding with them for the exchange of information so we can query them or make disclosures to them, and similarly they can query us or make disclosures to us.

Mr. Brian Pallister: If I use a lawyer in Barbados, I'm protected by client privilege.

Mr. Horst Intscher: Partly.

Mr. Brian Pallister: It's not that I'm trying to develop a plan here.

The Chair: Okay, I just want to—

Mr. Brian Pallister: My colleague does have a question.

Mr. Horst Intscher: Your outgoing transaction might not be visible to us.

Mr. Brian Pallister: Rona has just two questions.

Thank you very much for those insights.

Ms. Rona Ambrose (Edmonton—Spruce Grove, CPC): I just have a really specific question about client-lawyer privilege. From what I was reading in the Auditor General's report, this was called a large gap. I won't get into the details because you obviously know a great deal about it, but I know that your legislation calls for a parliamentary review this July.

You've addressed it very quickly here, but would you actually recommend closing that gap?

Mr. Horst Intscher: Yes, absolutely. I'm uncomfortable with any gap in the system. There will always be some, and we will always be catching up, in a sense. But that's one that I would very much like to see closed.

The Chair: I have just a couple of quick questions before we wrap up. In your opening remarks I think you referred to securities regulation that's mandated by provincial jurisdiction. I think you mentioned it before when you were answering one of my questions regarding credit unions. Is this a way of getting away from reporting under your act?

Mr. Horst Intscher: No. They report, but to the extent possible, we enter into arrangements with their existing regulators to conduct some of the compliance work on our behalf, as our agents. We do that as a means of reducing the burden on those reporting entities so that they're not visited by their regulator on Tuesday, followed by us the following week. But they still have to report.

We could exchange information with their regulators so that we could identify high-risk entities. The regulators could report to us that they visited dealer X or credit union Y and have reason to be concerned about some aspects of their compliance, and we would then probably follow that up.

The Chair: When you enter into these agreements, are there ever any exceptions? For example, you can go into their branches, but you can't go to their head office, or, in regard to the casinos, they have limited amounts so that they're all in compliance with the same regulations you're looking at.

That leads me to the next question. Is there any overlapping with other federal agencies—possibly like CRA, but the superintendents in particular—such that there's duplication of work?

Mr. Horst Intscher: I don't think so. We're quite a specialized organization, and both the analytical work and the compliance work that we do was substantially not done prior to the passage of this legislation. I'm not conscious of an overlap in our mandate, nor is there actually any competition. In a nice way, we cannot consume any of our intelligence ourselves because we have no investigative mandate. We exist only for the purpose of generating intelligence for investigative bodies that do have a mandate to conduct investigations.

The Chair: The only reason I ask is that in the Auditor General's report I think there was a total amount of \$140 million in the last four years that was spent on national initiatives to combat money laundering, and FINTRAC got \$92 million of that \$140 million. The other agencies that got funding were CRA, the RCMP, Justice Canada, Citizenship, and Finance Canada. The next highest after FINTRAC was obviously CRA, followed by the RCMP. That's why I was asking the question.

Mr. Horst Intscher: FINTRAC exists at the front end of an anti-money-laundering, anti-terrorist-financing process. We generate the intelligence from the financial transaction information that's reported to us. We then feed it to investigative bodies. The process involves us, then the investigative bodies, then the prosecutorial bodies, and ultimately the institutions of incarceration if there are convictions and so on. But we're the only part of that process that is an absolutely new function.

Before we came along, the police were already investigating proceeds of crime and prosecutors were already prosecuting cases of that kind. The purpose behind creating FINTRAC was to make that investigative process and the prosecutorial process much more efficient by driving a lot more intelligence into the front end, into the investigative part of it.

We received resources to be created and to become functioning. They received resources for incremental things they would have to do as a result of our creation and as a result of our work. That's why the amounts they received were smaller. They were an add-on to allocations they already had for work they were already doing in this field.

• (1250)

The Chair: As a final question, of the many disclosures that you've made, be they to the agencies, police agencies, or under the refugee act, have any of those disclosures led to either arrests or penalties like incarceration, whether they were for terrorism or for money laundering? It's just been in the last three years that you've been reporting, right?

Mr. Horst Intscher: We know of some instances, but they're not formally reported to us. Sometimes we learn about them from the newspaper, sometimes we learn of them anecdotally from discussions we have with law enforcement bodies, and sometimes I think we don't learn about them.

We are working with the RCMP as well as with the non-RCMP police forces across the country to develop a more systematic

tracking mechanism that would allow us to get that kind of feedback so that we can report on it, because that is obviously of interest to parliamentarians and of interest to the public.

I would note, though, that it's not that surprising that we haven't seen a lot so far. For one thing, we've been in existence a very short period of time. In our first annual report we had very little to report. We have had substantial numbers of case disclosures over two years. A complicated proceeds of crime investigation can easily go on for 18 months to two years before the police are able to lay charges. If a year from now or two years from now we still weren't hearing about prosecutions and convictions, I think that would be cause for some concern, but I'm pretty confident we'll be hearing quite a lot more.

The Chair: Thank you. I think we're going to wrap this up.

I want to thank you for appearing. I thank all the witnesses for their time. We'll keep your comments in mind and see whether we need to address this further.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.