



House of Commons  
CANADA

**Subcommittee on Public Safety and National  
Security of the Standing Committee on Justice,  
Human Rights, Public Safety and Emergency  
Preparedness**

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SNSN • NUMBER 009 • 1st SESSION • 38th PARLIAMENT

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EVIDENCE

**Wednesday, April 13, 2005**

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**Chair**

**Mr. Paul Zed**

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## Subcommittee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

Wednesday, April 13, 2005

• (1620)

[English]

**The Vice-Chair (Mr. Kevin Sorenson (Crowfoot, CPC)):** I call this meeting to order pursuant to the order of reference of December 9, 2004, the study of the Anti-terrorism Act. This is Wednesday, April 13, meeting number 9.

Today we're pleased to have a number of witnesses with us. Because our timeline is somewhat diminished and because we have two different groups of witnesses who are appearing, and also because another committee meets at 5:30 p.m., I would suggest that we try to move the first segment to adjourn at 4:50 p.m. so we can hear the second until 5:30 p.m.

Does that seem agreeable?

**Some hon. members:** Agreed.

**The Vice-Chair (Mr. Kevin Sorenson):** All right.

We have with us today individuals from the Financial Transactions and Reports Analysis Centre of Canada.

Welcome. Whoever wants to take the first 10 to 15 minutes...that is how we normally do it, and then there will be questions from each side.

Welcome, Mr. Intscher.

**Mr. Horst Intscher (Director, Financial Transactions and Reports Analysis Centre of Canada):** Thank you very much, Mr. Chairman.

I have some prepared remarks for about 15 minutes, but if you'd like me to scrunch that down, I can.

**The Vice-Chair (Mr. Kevin Sorenson):** That's all right.

**Mr. Horst Intscher:** I'm very pleased to have this opportunity to appear before the committee today to talk a bit about FINTRAC and how we've operationalized the terrorist financing provisions of the Anti-terrorism Act.

I'm joined by my colleagues, Sandra Wing, the deputy director of external relationships at FINTRAC; and Josée Desjardins, senior counsel from our legal services.

I'd like to just speak briefly about our mandate and evolution, what we do, our results, and the way ahead.

The Proceeds of Crime (Money Laundering) Act was passed in June 2000. The main aim with this act was to strengthen the

detection and deterrence of money laundering in Canada and around the world by requiring financial intermediaries to report suspicious and other prescribed transactions and keep records pertaining to customer identification; requiring persons or entities transporting large amounts of currency or monetary instruments across the border to report such movements; and establishing the Financial Transaction Reports Analysis Centre, or FINTRAC.

We were created under the act to receive information on certain prescribed transactions, analyse them, and, as appropriate, make disclosures to law enforcement and other investigative agencies and foreign financial intelligence units.

The term "financial intelligence unit" is internationally recognized as describing a central or national unit that gathers, analyses, and disseminates financial transaction information related to suspected money laundering, and, more recently, suspected terrorist activity financing.

FINTRAC is Canada's financial intelligence unit, or FIU. We're an independent agency reporting to the Minister of Finance, who is accountable to Parliament for our activities. FINTRAC is also required to operate at arm's length from the investigative bodies to which it is authorized to make disclosures of financial intelligence. This independence was designed to balance the need to safeguard the privacy of personal financial information with the investigative needs of law enforcement.

In the aftermath of September 11, 2001, governments began to attach a much higher priority to combating terrorism. The FATF called for a new standard for bodies like ourselves to include terrorist financing in their mandates. In the late fall of 2001, Parliament passed the Anti-terrorism Act, which expanded our anti-money laundering regime to guard against the use of the financial system by terrorist groups.

The ATA amendments to FINTRAC's legislation changed the name to Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and changed the reporting to FINTRAC in three key ways. Suspicious transaction reporting would also include suspicions of terrorist financing, not only money laundering. A new requirement was put in place for FINTRAC to receive reports on known terrorist property and any transaction related to such property, and FINTRAC was authorized to receive voluntary information related to suspected terrorist financing, not just money laundering.

Amendments also required that where we had reasonable grounds to suspect financial intelligence would be relevant to the investigation or prosecution of terrorist activity financing offences, such intelligence would be provided to the police. A similar authority was created for disclosures to CSIS related to suspected threats to the security of Canada, which includes suspected terrorist activity financing.

These amendments built on our anti-money laundering mandate and capabilities and enabled us to play a unique and important role in the government-wide effort to combat terrorist activity financing.

On what we do, our legislation requires financial institutions and other businesses involved in financial and related services to keep certain records on their clients and transactions, and to report prescribed transactions to FINTRAC. The financial transaction information we receive this way includes transactions of any type in any amount that are suspected of being related to money laundering or a terrorist activity financing offence—we call these suspicious transactions; cash transactions of \$10,000 or more, although this does not include withdrawals; wire transfers into or out of Canada of \$10,000 or more; and terrorist property holdings.

This reported information is provided to us by a wide range of institutions and intermediaries, beginning with deposit-taking institutions such as banks, credit unions, and caisses populaires, but also including money services businesses, foreign exchange dealers, securities dealers, accountants, life insurance companies, real estate brokers and agents, and casinos.

In addition, anyone crossing the border must report to the Canada Border Services Agency movements of cash or monetary instruments of \$10,000 or more in or out of Canada, and reports of that kind are forwarded to FINTRAC.

The CBSA also has the authority to seize currency that is unreported or suspected to be the proceeds of crime, and FINTRAC receives copies of those seizure reports as well.

In addition to our authority to receive voluntary information related to suspected money laundering or terrorist activity financing, FINTRAC can also make use of publicly available information and it can access commercial databases and federal or provincial law enforcement or national security databases.

I'll give you a bit of the nuts and bolts of our operations. We're a relatively small agency with a staff of around 180 and an annual budget of about \$30 million. We have two main operational functions tied to our detection and deterrence mandate—analysis and compliance. FINTRAC's requirement to detect and deter money laundering and terrorist financing is supported by our analysis of the financial information we receive. This is done with a view to disclosing quality intelligence that can be of use to agencies that are responsible for investigating terrorist financing and/or money laundering.

Our information technology capacity is a critical part of this process. The different types of transaction reports that I mentioned earlier are received electronically into FINTRAC's database and become immediately available for analysis. Our case analysis can have a variety of starting points. For example, it might be triggered by a report or a series of reports from reporting entities such as banks

or credit unions and so on, by voluntary information received from law enforcement or from CSIS about a case they're working on, or by information that's provided to us by a foreign financial intelligence unit. Whatever the starting point, the analysts search through our database using specially designed technological tools to uncover patterns of transactions suggesting a suspicion of money laundering or terrorist activity financing. When as a result of that analysis FINTRAC has reasonable grounds to suspect that its information would be relevant to an investigation or prosecution of money laundering or terrorist financing, we must make a disclosure to the police. In cases where there are reasonable grounds to suspect that the information would be relevant to threats to the security of Canada, including terrorist activity financing, FINTRAC must disclose to CSIS.

In some cases, we must also disclose to the Canada Revenue Agency or the Canada Border Services Agency, but in these cases we must meet a dual test. First, we must suspect either money laundering or terrorist activity financing. Second, we must determine that the information would be relevant to an offence under the legislation of those organizations.

We may also disclose to foreign financial intelligence units either spontaneously or in response to queries. We have to have an information-sharing agreement in place with them, and these bilateral agreements must be approved by the Minister of Finance.

The information that we can disclose is explicitly set out in our legislation. This "designated information" that you may hear about includes information about the transactions, where they took place, the individuals conducting them, and any accounts, businesses, or other entities involved.

A FINTRAC case disclosure containing this information provides valuable intelligence to law enforcement, since it provides them with leads that they can investigate. A typical case disclosure would likely identify six or seven individuals, five businesses, and a considerable number of transactions of varying kinds often reported by two or more reporting entities.

Designated information, however, does not tell law enforcement the whole story, and 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.

Our legislation prohibits any unauthorized disclosure or use of information received by FINTRAC from reporting entities, as well as information prepared by FINTRAC based on those reports. The penalties for unauthorized use of the information can be as high as a \$500,000 fine and/or imprisonment for up to five years.

●(1625)

I have spoken about analysis, but I should also say a few words about compliance. Compliance augments the level and quality of the reporting for analytical purposes, but it also helps to ensure that Canada's financial services sector maintains the standards designed to protect it against becoming a conduit for illicit funds.

FINTRAC is mandated to ensure that reporting entities comply with the act and the regulations, and we've established a modern, comprehensive, risk-based compliance program. The quality of our analysis hinges directly on the quality of the financial information we receive. To that end, we attach importance to developing and maintaining very positive, sound, and cooperative working relationships with all our reporting entities as part of our risk-based approach to ensuring compliance and maximizing the quality and quantity of reporting.

To date, we have conducted over 200 on-site compliance examinations in every reporting entity sector, recognizing the challenges posed by the unregulated sectors, such as money service businesses and foreign exchange dealers. These examinations have focused primarily on money service businesses and foreign exchange dealers.

Each compliance examination results in the identification of deficiencies. The vast majority of these entities wish to comply, and they have cooperated and taken action when deficiencies were brought to their attention. A small number of them have been or will be referred to law enforcement for investigation and possible prosecution, as provided for in our legislation.

I'll mention a few words about our results.

During the 2003-04 fiscal year, FINTRAC made 197 case disclosures of financial intelligence on suspected money laundering and the financing of terrorist activity involving transactions valued at approximately \$700 million. Of those 197 disclosures, 48 involve approximately \$70 million in transactions related to the suspected financing of terrorist activity and/or other threats to the security of Canada.

Our more recent results between April 1 and December 31, 2004, in other words, the first three-quarters of the last fiscal year, saw us make a total of 99 case disclosures involving more than \$1.25 billion in transactions. Of these, 25 were suspected cases of financing of terrorist activity.

As I indicated, for the fiscal year 2003-04, the value of disclosed transactions suspected of being associated with the financing of terrorist activity and other threats to the security of Canada was roughly \$70 million. Based on the cases that we've seen in our disclosure process at the agency, at the three-quarter-year mark, I would expect the total value of those transactions related to the financing of terrorist activity or threats to the security of Canada will double for the full fiscal year.

The marked increase in the value of financial transactions that we've disclosed indicates to us that our growing experience, as well as the growing volume of transactions in our database, allows us to disclose larger and often more complex cases. However, these increases are not necessarily indicative of an increase in financing of terrorist financing.

Based on a review of cases of terrorist financing of the last fiscal year, we could see that a large portion, roughly 80%, involve international electronic fund transfers that are often sent to locations of specific concern to us. We have also seen that for one-third of the suspected cases of financing of terrorist activity, the financial transactions comprised both large cash deposits and electronic fund transfers in or out of the country.

I'll mention a quick word about the way ahead.

We're very proud of what we've been able to accomplish. We've been in existence for less than five years and fully operational for just over three years. We began in July 2000 with no employees, no offices, no infrastructure, and no operating systems. We 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. We've also trained our analysts and equipped them with the tools to use this data and to develop their cases.

Most importantly, the feedback we have received from law enforcement and from CSIS indicates that the intelligence we provide is assisting ongoing investigations and providing new investigative leads.

Before I close, I'd like to briefly mention that although we're a relatively young agency, we've already been quite successful, and we will continue to enhance our capacity to provide law enforcement and intelligence agencies with timely, high-quality intelligence.

●(1630)

We will also continue to foster a cooperative approach to ensuring compliance and we will conduct examinations on those reporting entities at risk of non-compliance. We will continue to share our experiences and will work with our partners to build an environment that is hostile to money laundering and terrorist activity financing in Canada and globally.

We are also implementing, and in some cases have already implemented, the recommendations of the recent Auditor General's report. For example, we're working with the Department of Finance on a consultation paper it is preparing in advance of the July 2005 parliamentary review of our enabling legislation. That paper will propose a number of enhancements, including the expansion of the scope of the information we can provide in our disclosures.

Again, I thank you for inviting us to appear today. I'll be happy to answer any questions.

●(1635)

**The Vice-Chair (Mr. Kevin Sorenson):** Thank you, sir.

We will proceed down through the opposition and back to the government, but we're going to keep our questions to four minutes. We're going to cut back from the seven.

So four minutes, Mr. MacKay.

**Mr. Peter MacKay (Central Nova, CPC):** I know we're really under time constraints here, Mr. Chairman. I'm just wondering, given the shortness of time and the complexity of some of this, whether we should really make the most of the presence of our witnesses here and have the other witnesses come back, rather than try to rush through this particular presentation and questioning.

I put that before the committee for brief consideration.

**The Vice-Chair (Mr. Kevin Sorenson):** I'll tell you what, Mr. MacKay. Perhaps you could start with the question, and we'll go up to four or five minutes. We'll check with our other witnesses and see if that works out for them.

**Mr. Peter MacKay:** Let me begin by thanking the witnesses for their presentation. This is a very important, very comprehensive subject matter. That's why we're a little concerned with the time constraints.

I'd like to begin by asking, if I may, about the difference between the types of listings. As I understand it, there are two types of listings of terrorist entities under the Anti-terrorism Act. One relates to terrorist entities pursuant to the Criminal Code section 83.05. This type of listing happens when the entity has been knowingly participating in terrorist activity, knowingly attempting to carry out an illicit terrorist act, whereas the second listing relates to entities that come under the United Nations suppression of terrorism regulations. I'm wondering if you can perhaps differentiate between those types of listings and the implications that come from being listed as a Criminal Code terrorist list designate as opposed to being on a United Nations suppression of terrorism regulations list, and if they in fact correspond.

**Mr. Horst Intscher:** I don't think I can really answer that question. FINTRAC is not involved in determinations involving the listing or in any way in that process. We are the recipients of those lists and we're the recipients of terrorist property reports, but we have no role in the listing process.

**Mr. Peter MacKay:** So you simply examine the list as provided. You have no input or no knowledge of how that list process works.

**Mr. Horst Intscher:** That's correct.

**Mr. Peter MacKay:** Secondly, there have been a number of cases—well, one that I'm aware of. It's a case that originated in the United States. If you're not familiar with this case, simply say so, but it was concerning an individual here in Ottawa. It resulted from a listing in the United States, which was later adopted by the United Nations, as I understand it. It was a gentleman by the name of Liban Hussein here in Ottawa. His brother was an American in Massachusetts. Both were charged with a money transfer that resulted in their listing. They were members of the Somalian Canadian community. There were allegations of money going back to Somalia. Assets were seized and the head office of this particular organization was searched, as I understand it.

In June 2004 Mr. Hussein was extradited from Canada to the United States, or that was the plan. It was stopped and eventually the whole process appeared to break down.

Are you familiar with this case?

**Mr. Horst Intscher:** I'm only familiar with it in terms of what I've read in the press. I'm not familiar with it in any other capacity.

**Mr. Peter MacKay:** When this type of case occurs and a person has been listed and then apparently delisted, or had their name removed, do you know if property seized in the course of this activity would be returned? Is there a means of compensation through FINTRAC, or any other process when assets have actually been seized? I know this is a rare circumstance.

**Mr. Horst Intscher:** We're really not in a position to answer that question. I think that's a question the Department of Justice would have to answer.

Our only role in relation to terrorist activity financing is to comb through the transaction data reported to us. When we identify activity or patterns of activity that might be reasonably suspected of being related to terrorist financing, we then make that disclosure to the RCMP or CSIS. They would conduct the appropriate investigation.

•(1640)

**Mr. Peter MacKay:** You simply pass the information on?

**Mr. Horst Intscher:** We're just an intelligence-generating or lead-generating organization passing it on to the investigative bodies.

**Mr. Peter MacKay:** Are you involved as witnesses in the potential prosecutions that might occur?

**Mr. Horst Intscher:** Potentially we could be called as witnesses, yes.

**Mr. Peter MacKay:** In cases in which assets may in fact be seized, as I indicated, are you aware of where that money would be vested—how those assets are frozen, or perhaps put in a trust?

**Mr. Horst Intscher:** No, I'm sorry, I'm not familiar with that.

**Mr. Peter MacKay:** Thank you.

Thank you, Mr. Chair.

**The Vice-Chair (Mr. Kevin Sorenson):** Monsieur Ménard, for four minutes.

[*Translation*]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** I have to admit that I didn't know about your organization. I'd like to know what it is that you do exactly. As I understand it, all transactions in Canada over \$10,000 must be reported to you.

[*English*]

**Mr. Horst Intscher:** We're made aware of specific kinds of transactions. Those are cash transactions, but not cash withdrawals, in excess of \$10,000; international wire transfers, either in or out of the country, of \$10,000 or more, but not domestic wire transfers; and suspicious transactions of any value. They could be as low as \$5 or \$1 if the financial institution, in observing or effecting the transaction, has reason to suspect they may be connected to terrorist financing or money laundering. They could report those to us, even though the value might be below the \$10,000 threshold. For all other transactions, generally the reporting threshold is \$10,000 or above.

[Translation]

**Mr. Serge Ménard:** I understood you to say in your presentation that all transactions over \$10,000 had to be reported to you. Then that's not the case. A judgment is required prior to any such transactions being reported to you.

[English]

**Mr. Horst Intscher:** The suspicious transactions require a judgment by the reporting entity as to whether or not the transaction can be reasonably suspected of being relevant to terrorist financing or a money laundering offence. The other transactions are reported to us on an objective test, which is that they exceed the \$10,000 for that purpose.

[Translation]

**Mr. Serge Ménard:** There must be millions, if not billions, of transactions over and above \$10,000 made in Canada. It's impossible to purchase a vehicle or a home without spending more than \$10,000.

Many companies operating in Canada export paper, furniture and other goods. It would be almost impossible to tally the number of international transfers. Are all such transactions reported to you?

[English]

**Mr. Horst Intscher:** Domestically, the transactions that would be reported would be cash transactions of \$10,000 or more. If someone used \$20,000 to buy a car or \$40,000 cash to buy a house, it presumably would be reported to us. If they paid for it with a cheque drawn on their bank, or by a money transfer from their bank to their lawyer or to the vendor, it wouldn't be reported to us. Only cash transactions within Canada would be reported to us.

The transfers in and out of the country—yes, any transfer in and out of the country over \$10,000 is reported to us. Part of the reason for the selection of the reporting threshold of \$10,000 for international transfers was to reduce the volume; partly it was an effort to exclude from that automatic reporting the kind of day-to-day transactions people or families might have. If someone is transferring \$9,000 to their daughter who is at university in San Francisco, it is really of no interest to us and no business of ours, but if they're transferring over \$10,000, it would then be reported to us. The volume of those transactions—the international wire transfers, both incoming and outgoing—is running at about six million per year.

• (1645)

[Translation]

**Mr. Serge Ménard:** When I was Minister of Public Security in Quebec, I was very involved in the fight against organized crime, in particular crime associated with the Hells Angels.

What kind of useful role can you play? For example, can you trace the money amassed by these types of criminal organizations? We're talking about millions of dollars, are we not? How can you help our cause?

[English]

**Mr. Horst Intscher:** There would be a number of things that we could contribute. First of all, we could identify transactions that are being conducted by individuals or groups who would be of interest

to law enforcement or to the security agencies. Because we receive the international wire transfer information, we can also see the destination or the point of origin of those transactions.

To help us extend our reach even further, we're in the process of concluding as many memoranda of understanding as we can with other bodies like our own in other countries to be able to follow up and query. So if, say, hypothetically, a transfer of \$100,000 was made from Canada to the Cayman Islands, if we have an agreement with our counterpart body there we could query them to find out if that money had remained in the Cayman Islands or had moved on to some other jurisdiction. We already have about 20 such agreements in place, and we hope to be able to conclude about another 20 or 25 over the next couple of years as a means of extending our reach.

As we extend our reach we're able to include more and more of that kind of information in our disclosures to law enforcement agencies so that they will be able to see not only that Mr. and Mrs. X, who are suspected of laundering money, transferred money out of the country, but they also might be able to see what the ultimate destination of that money is in order to try to take steps to pursue it.

**The Vice-Chair (Mr. Kevin Sorenson):** Thank you, sir.

We have a consensus here that we're going to continue with FINTRAC for today. We will try to get the group from the office of the superintendent back at their convenience, hopefully as soon as possible. I can see here where it would have been very beneficial to have these two together. The lists and such, even some of the questions that have come up, perhaps should be directed to the office of the superintendent.

If that is a consensus, we'll continue with FINTRAC today, and we'll try to reschedule the others. My apologies to you.

We'll continue with Mr. Cullen.

**Hon. Roy Cullen (Etobicoke North, Lib.):** Thank you, Mr. Chair.

Thank you, Mr. Intscher, Ms. Desjardins, and Ms. Wing.

Mr. Intscher, when you talked about international wire transfers, six million a year, that's six million transactions, not \$6 million, right?

**Mr. Horst Intscher:** That's six million transactions, yes.

**Hon. Roy Cullen:** When we talk about international wire transfers that you are now monitoring—and this may be a dumb question—does that include transactions via the Internet or not?

**Mr. Horst Intscher:** At the moment it doesn't. It includes transfers that are conducted through financial institutions that use the SWIFT transfer system, and it also includes other established transfer systems for transferring money by financial institutions.

At present, these Internet transmission systems or systems based on Internet payment are not covered by our legislation.

**Hon. Roy Cullen:** Are they not covered by the legislation, or is this not technically feasible, or both?

First of all, let me ask this. Do you suspect that significant amounts of money could be laundered via the Internet, or is the risk low?

**Mr. Horst Intscher:** It's hard to assess that. Theoretically, we know the possibility exists. We have seen some instances in which some of these Internet-based payment systems have been involved in ways that then connected them to the conventional financial system, and they were involved in cases that were of great interest to us. As for how large a phenomenon this is, we don't really have a fix on it, but certainly the potential exists.

• (1650)

**Hon. Roy Cullen:** You're saying that right now legislatively you don't have that mandate. Is that correct?

**Mr. Horst Intscher:** That's correct.

**Hon. Roy Cullen:** Coming back to—

**Mr. Horst Intscher:** If I might just add to that, it would be quite a challenge to try to penetrate that, let alone regulate it.

**Hon. Roy Cullen:** That was my question about the feasibility. My mind boggles as to how you could actually do that, but right now you're not able to because legislatively you don't have that mandate.

Could I come back to...? There are rumours afoot that the United States, through the treasury department, may be seeking ways to get more information about wire transfers back and forth, into the United States and out of the United States. Have you heard that same thing, and is that happening? What would be the reasoning, apart from the obvious, and what would that mean to Canadians transferring money in and out of the United States via wire transfer?

**Mr. Horst Intscher:** We've heard that they are obtaining that authority to monitor and receive reports on incoming and outgoing wire transfers. Without sounding boastful, we may be partly responsible for that. We noticed very early on in our work that the intelligence value of that reporting was extremely high, perhaps even higher than the value of the suspicious transaction reporting. In our discussions, both bilateral and multilateral, with our American counterparts, we apprised them of our experience in this regard, as did the Australians, who also collect this information routinely. When we gave them a briefing on the extent to which that type of reporting figured in our terrorist financing disclosures, they became very interested in that and then proceeded to see if they could get authority to collect that same information.

In terms of the relevance to Canadians, or the impact on Canadians, any Canadian who transferred above whatever threshold they will establish into the United States would be the subject of an automatic report presumably, in much the same way they are here. The volumes of those transactions in the United States, of course, would be much higher than they are here, but these are objective reports and in themselves, certainly in our system and I think probably also in theirs, would not, on their own, trigger any analysis. There would have to be some other information or some other transaction information that triggered any further analysis of those.

**The Vice-Chair (Mr. Kevin Sorenson):** Thank you, Mr. Intscher.

Mr. Comartin.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair.

Thank you for being here.

Mr. Intscher, I'm a bit concerned about actually some of the questions I would like to pursue and the ones we had from Mr. Cullen. I'm concerned about security and your not feeling comfortable to be able to tell us things. If I asked, "Can you do this?" or "Do you do it this way?" are you under any limitations in terms of being able to answer those questions?

**Mr. Horst Intscher:** If we drifted onto ground that either identified or potentially identified the author or subject of a report, I would have to decline to respond because I'm prohibited by my act from doing that. If we drifted into territory that got into detail on our analytic methods, I would ask your forbearance to permit me not to answer that because if we reveal that information it's really providing a road map for people to avoid our radar. But I think I can answer pretty much anything you'd ask me.

**Mr. Joe Comartin:** Okay. Then I'm going to pursue Mr. Cullen's point.

In terms of the electronic transfers, is there a methodology at this point to assess them? I realize you don't have the legislative mandate, but is there a technological methodology to be able to catch those transfers?

**Mr. Horst Intscher:** The Internet transfers?

**Mr. Joe Comartin:** Yes.

• (1655)

**Mr. Horst Intscher:** We don't have it now.

**Mr. Joe Comartin:** Does anybody in the world?

**Mr. Horst Intscher:** I don't believe they do.

**Mr. Joe Comartin:** Has anybody in the world done an analysis of how many transfers occur this way in Canada? Have any of our allies undertaken this—the United States, the U.K., Australia?

**Mr. Horst Intscher:** I'm not aware of any. So far, we have tackled that question by looking at points of intersection with the traditional financial system. In other words, if one of these payment mechanisms or Internet money transfer mechanisms at some point connects with a financial institution, which happens fairly often, then that institution has a reporting requirement in its jurisdiction.

**Mr. Joe Comartin:** Have you contemplated how someone might do it? If someone was trying to make a transfer without getting caught by your agency, how would they use the Internet to do it? I don't know if you can answer that.

**Mr. Horst Intscher:** I'm not sure how I would do that. I don't know enough about how they operate, or even whence they operate, to be able to offer an explanation of that.

**Mr. Joe Comartin:** I can't conceive of how I would do transfers without having contact with the institutions you are monitoring. Have you seen any way that you can avoid having the transfers come out of your bank, your credit union, or some other financial institution as a private business?



**Mr. Horst Intscher:** We already know that there are mechanisms for at least partly avoiding financial institutions, though not in Canada. In some jurisdictions where they have value cards, it is possible to transfer value from one card to another without there being a record in any financial institution. So that transaction would be unreported. Cards of that kind aren't, to my knowledge, issued in Canada. But we've heard that some European jurisdictions have issued such cards and that sometimes they can store substantial amounts of value on these cards. They come with readers that can be used to transfer value, say, from my card to your card. My bank would know that my bank account was richer if and when I took my card back, but there would be no record of that transaction between the two of us.

**Mr. Joe Comartin:** Going from the other direction, of money coming into Canada, is there any way they can avoid transferring money into institutions that you are monitoring?

**Mr. Horst Intscher:** Within Canada? No.

**Mr. Joe Comartin:** The Auditor General did a report on your agency and published it in November of last year. There were a number of criticisms. I just want to ask first about the lawyers. Has there been any development? Have we resolved any further the discrepancy she noted?

For the record, I'm referring to lawyers' trust accounts.

**Mr. Horst Intscher:** The work on this issue is being led by the Department of Finance, rather than by our agency, but my understanding is that discussions are ongoing with the law societies and that there's considerable hope.

**Mr. Joe Comartin:** But at this point you're not monitoring lawyers' trust accounts.

**Mr. Horst Intscher:** No. But let me clarify. We're not monitoring lawyers' trust accounts, but if a lawyer makes a large cash deposit to his trust account, the bank would be required to make a large cash transaction report to us.

**Mr. Joe Comartin:** The bank does?

**Mr. Horst Intscher:** Yes.

**The Vice-Chair (Mr. Kevin Sorenson):** Mr. Wappel, four minutes.

**Mr. Tom Wappel (Scarborough Southwest, Lib.):** First of all, before I begin, let me congratulate you for being able to start up from ground zero and get to where you are in a very short time. That's very impressive. Good luck and good work.

This committee is set up to review the anti-terrorism bill. That's its purpose. Part 4 of this bill deals with you guys. Do you have any concerns or recommendations about any of the sections of the bill that deal with you? If so, what are they?

• (1700)

**Mr. Horst Intscher:** I think we're quite satisfied with how that's operating for us. I think we're able to work quite effectively with those provisions. These provisions were, in a sense, built on our original anti-money laundering mandate. They were built on that because we were already the recipients of cash transaction and wire transfer reporting information, and so on. Therefore, it was thought that the search for terrorist financing would most usefully be

conducted in an entity that was already doing that sort of work on that database for other purposes.

**Mr. Tom Wappel:** I'm sorry to interrupt, but I have only four minutes.

I'm just asking you, there are no sections of the act that you would like us to consider amending?

**Mr. Horst Intscher:** I don't think so.

**Mr. Tom Wappel:** All right. And there are no sections of the act that you think should be repealed? I'm talking specifically as it relates to part 4.

**Mr. Horst Intscher:** That relates specifically to us? No, sir.

**Mr. Tom Wappel:** Is there anything you would like added to part 4 that isn't there that you think would enhance your work?

**Mr. Horst Intscher:** Nothing comes to mind immediately, but I would like to mention that our overall legislation will be the subject of the five-year parliamentary review later this year, and that would be the context in which we would be coming forward with proposed amendments to any part of our act, not just those specifically relating to terrorism financing.

**Mr. Tom Wappel:** Okay. Thank you.

Subsection 56(1) permits you to disclose designated information to foreign agencies that have powers and duties similar to your own. Have you done that?

**Mr. Horst Intscher:** Yes, we have.

**Mr. Tom Wappel:** Can you tell us anything about that—for example, what kinds of foreign agencies?

**Mr. Horst Intscher:** They would be our counterpart organizations. Any state that has established a financial intelligence unit and that has been subject to certain conditions that we have imposed upon ourselves in assessing whether or not we should enter into an arrangement with them would then be eligible for us to conclude a memorandum of understanding with them. We have about 20 of those in place, and we have exchanged information with approximately five or six of those agencies. Some of them we have exchanged information with on multiple occasions, but that's for all aspects of our mandate, both money laundering and terrorist financing.

**Mr. Tom Wappel:** Thank you.

What do you do about places like auction houses and jewellers? They're not required to report to you, are they?

**Mr. Horst Intscher:** That's a very good question. They're not now covered by the act or the regulations, but in the preparations for the five-year review, we are looking at whether other types of business that involve either high-value goods or the potential for the exchange of lots of cash ought to be brought under coverage of the legislation.

**Mr. Tom Wappel:** And what do you think?

**Mr. Horst Intscher:** At this point, I could only offer a personal opinion, because we don't actually have objective information on the extent to which cash is used in those businesses, but we certainly have received a fair amount of anecdotal information about cash being used in car dealerships, in jewellery stores, and so on.

•(1705)

**Mr. Tom Wappel:** It just seems to be an excellent place to take cash and get some good value items.

I'm just thinking out loud now. If you walked into an auction house and bought two or three expensive watches for cash, I guess the auction house wouldn't have to report that transaction, but when the auction house put the money in the bank, assuming they did, then the bank would have to report that to you, and then presumably, if you thought it was somehow something that could be flagged, you would make further inquiries. Is that the idea? Is that how it works?

**Mr. Horst Intscher:** That's correct.

**Mr. Tom Wappel:** How am I doing for time?

**The Vice-Chair (Mr. Kevin Sorenson):** You're a minute over. Thank you, Mr. Wappel. Thanks for reminding me.

We'll go back to Mr. MacKay.

**Mr. Tom Wappel:** I have my hand up for another round, please.

**Mr. Peter MacKay:** I would like to follow that line of questioning. I'm curious. We know that large amounts of money go through banks, other money managers, accountants. What about stock traders? Is there any requirement here for reporting it? When it comes to banks, can you clarify for us the enforcement to which banks are required to comply or not comply, and is there any sort of warrant process that is followed in the instance where there is non-compliance?

**Mr. Horst Intscher:** With respect to your first question, yes, securities dealers are required to report.

With respect to banks, and really any other reporting entity, the compliance powers of our act entitle us to enter any premises at any time, without a warrant, to review any material relative to compliance. We would not normally act quite so formally. We call on reporting entities, but if we had reason to think that there might be serious compliance issues, we would notify them formally that we were going to come for an examination and under what authority.

Following that examination, we would then apprise them of our assessment of any deficiencies. We would give them 30 days, or in some instances maybe 60 days, in which to rectify those deficiencies. We would then check back to see whether that is happening. If that has not happened, or if there are repeated omissions or violations, we would have the option of referring them for criminal investigation and prosecution under the provisions of our act in relation to the penalties for non-compliance with the act.

**Mr. Peter MacKay:** Thank you.

I'd like to come back to the issue of lawyers, because as I understand it, lawyers were contemplated and included in the original act, then exempted as the result of a court challenge. There has been further discussion on this subject quite recently. In fact, I think there's an RCMP report that said lawyers, in some cases, are now targets for Mafia and mob activity involving bribery and money laundering. And if I'm not mistaken, there was a case recently involving a Toronto lawyer who was convicted and sentenced to upwards of four years in a federal penitentiary.

I'm wondering if you have any knowledge of current discussions or negotiations around bringing lawyers back into being covered by

this legislation. I suspect this has a lot to do with the solicitor-client privilege that is claimed.

Can you tell us whether it is being contemplated that the lawyers be brought in to be covered by this legislation?

**Mr. Horst Intscher:** Yes, they are. In my understanding, there is active discussion between the Department of Finance and the various law societies about some options for how that can be accomplished to respect solicitor-client privilege but still bring them under coverage of the legislation.

The original language of the coverage explicitly excluded from reporting obligations anything that was covered by solicitor-client privilege. But the law societies challenged that on the basis that they thought that was not sufficient protection or not broad enough protection, and as a result of those challenges, they obtained injunctions and the application of the act was suspended. But it is the intention to bring them under coverage.

In terms of the anecdotal reporting about lawyers being either involved in money laundering or subject to pressure from unsavoury elements, that is a somewhat separate issue from compliance with the reporting obligations. Members of any profession and members of any business can, and sometimes do, engage in criminal conduct, and will do so, including employees of financial institutions or financial intermediaries, irrespective of whether there are reporting requirements.

•(1710)

**The Vice-Chair (Mr. Kevin Sorenson):** Mr. MacKay.

**Mr. Peter MacKay:** With respect, again, to the Auditor General's report, there was mention of your activities being hamstrung by virtue of privacy laws and their application. It talks specifically about the inability you have to disclose information that would put the context around your actions in the hands of investigators, the RCMP specifically. I understand there has really been very little in the way of your ability to disclose for the purposes of prosecution, and I'm asking you as director whether you feel there would be more prosecutions available if you were able to provide that context through your evidence to the Crown and to the investigators.

**Mr. Horst Intscher:** Both from an intelligence standpoint and from an investigative standpoint, more information is always better. The more you have and the more you can use, the happier you are, whether you're in the intelligence business or in the investigative business.

The observation that was made by the Auditor General was, in a sense, a snapshot taken at a particular time and at a particular place. That would have been approximately a year ago when we had been operational for about a year and a half. Since then, both we and the law enforcement agencies that are recipients of our product have become much more familiar with the usability or the utility of this product and what it represents and what it doesn't represent.

Although we are, in one sense, constrained in the information that we can disclose about identifying transactions and parties to transactions and so on, we are nonetheless able to layer that information so that we would not, for example, make a disclosure that Mr. Brown made a cash deposit of \$12,000 last Tuesday. The kind of disclosure we would make would probably be that Mr. Brown, Mrs. Smith, Mr. White, and Miss Pink made the following 263 transactions over the last three months at the following 12 financial institutions. That tells the recipients of those reports quite a lot about who's involved, what the nature of the activity is. They can even see by the different kinds of reports which way the money is flowing and where it's likely ending up. As we have become better at identifying larger groups and supplying more information, and as law enforcement has gained more experience in using our product—

**Mr. Peter MacKay:** Has there ever been a successful prosecution under FINTRAC?

**The Vice-Chair (Mr. Kevin Sorenson):** Mr. MacKay, no, we can't. We have to cut this off here.

Mr. Macklin.

**Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.):** Thank you very much, Chair, and thank you, witnesses.

There are so many things that come to mind when you start to think about the way in which we conduct ourselves and the arbitrary limits that we place on these transactions. You do start to query whether in fact there has been any change within the general banking system. In other words, anecdotally, are we getting more \$9,000 transactions that are actually going on now, and do we have any way of acknowledging that or dealing with that type of information to see whether in fact this particular bill is being defeated in any way, using that type of mechanism?

•(1715)

**Mr. Horst Intscher:** It's my understanding that financial institutions monitor their transactions below that level. If someone is consistently coming in and making deposits of \$9,900, \$9,200, and so on, that would probably catch their attention and result in a suspicious transaction report being filed. I know some of the institutions are also in the process of implementing some software solutions that would systematically comb their transaction data, looking for exactly that kind of pattern. So they'll be able to report that even more effectively than they are now.

That being said, it takes an awful lot of \$9,900 transactions to move \$10 million. Anyone who has large sums of money that need to be laundered is unlikely, in my view, to resort to that kind of smurfing just below the reporting threshold. They're more likely to look for other mechanisms. People who have \$40,000, \$60,000, or \$80,000 to launder might be tempted to try to do that. But financial institutions are very alert to that technique. We certainly provide guidelines on that, but they knew about that long before we came on the scene. So when they see that kind of behaviour on the part of clients, more so clients whose occupations or businesses wouldn't naturally involve lots of cash, they'll report that as a suspicious transaction.

It's good to be alert to it, and I'm glad that financial institutions are monitoring below that level. But I don't see that as a huge risk, or a huge opening in our anti-money laundering regime.

**Hon. Paul Harold Macklin:** If you did see that was something that needed to be dealt with, you'd bring forward a recommendation at the five-year review.

**Mr. Horst Intscher:** Absolutely.

•(1720)

**Hon. Paul Harold Macklin:** Can you give us some insight on what type of analysis you actually perform? We see these random accounts coming in. Does the analysis you're talking about just look at related transactions? Is that the way you go forward? Can you give us some insight? I'm interested to know what prompts you to go to CSIS or the police.

**Mr. Horst Intscher:** Essentially we troll through our database looking for transactions or transaction patterns that stand out in particular ways. I don't want to identify all the ways they might stand out. We also compare, for example, wire transfer reporting with large cash transaction reporting or suspicious transaction reporting. We might be the recipients of voluntary information from a police force somewhere that these three individuals are the targets of a money laundering investigation. That's also in our database. So if suddenly a large number of cash transactions or wire transfers start connecting to that kind of information, we would look at that more closely.

Sometimes we identify an account or an account number that is attracting a lot of a particular kind of transaction, so we might look at that more closely to see who the conductors and beneficiaries of those transactions are. Are they also connected to other transaction patterns elsewhere? What is it about this that doesn't fit? Sometimes you have to apply a lot of context to it. For example, what is absolutely benign in one context may be suspicious in another.

I'll give you a hypothetical example. If a fast food franchise outlet was rolling up to the bank every three days with \$15,000 cash deposits, that's at best curious and not suspicious, because they do a lot of cash business. If that same fast food franchise was suddenly transferring money to Singapore or Dubai, that would catch our attention because that's a transaction pattern that is inconsistent with the kind of business they're in.

That in itself still wouldn't lead to a disclosure. We'd do more work to reach the level of suspicion that would cause us to disclose. But it's that kind of incompatibility or inconsistency of transaction behaviour that we would look for. Sometimes we respond directly to a query from a foreign financial intelligence organization, or they may make a disclosure to us that suddenly connects some dots for us that we didn't know about before.

**The Vice-Chair (Mr. Kevin Sorenson):** Thank you, Mr. Intscher.

Mr. Ménard.

[Translation]

**Mr. Serge Ménard:** I may have been misled by the notes I read. Generally speaking, legitimate transactions by persons like you and me are conducted by cheque or other financial instrument.

There's nothing illegal about paying \$15,000 cash for an automobile. Yet, that is the way members of organized crime operate because they have large amounts of cash on hand. They are also able to put down \$60,000 cash for a home theatre system. This is the starting point for your investigation. No doubt you consider certain types of transactions to be of a suspicious or questionable nature.

We are the guardians of the public purse. You have a budget of \$30 million and a staff of 180 people. On reading your paper, I couldn't see the advantage of having someone, somewhere, tracking every single house or vehicle purchase in Canada, as well as all business transactions over \$10,000. Apparently, that's not what you do.

One thing intrigues me. How will you identify persons associated with organized crime who pay cash for such expensive items as home theatre systems, luxury automobiles and so forth? Will the system in place allow you to trace these individuals and report them to the police?

[English]

**Mr. Horst Intscher:** You've posed quite a number of interesting questions. First of all, as I said earlier, the purchase of a house, irrespective of how valuable or modest it was, would not normally involve us at all. If the house were paid for in currency and that was reported to us by the real estate agent, notary, or lawyer involved in the transaction, that would certainly catch our notice. But in and of itself, that's still not suspicious. Some people keep lots of cash, and if they decide to spend \$100,000 or \$200,000 on a house, it's curious but it's not yet suspicious.

If the same person did that three times in three months, that would really catch our attention in a major way, and we would start looking at who that person was and whether we knew anything about him. We would use the information provided voluntarily to us by law enforcement, our access to law enforcement databases, and access to publicly available information and commercially available information to form a judgment as to whether there's something going on here. Usually when that much cash is being used repeatedly, something will turn up to suggest there's underlying criminal activity.

● (1725)

**The Vice-Chair (Mr. Kevin Sorenson):** Very quickly, Mr. Ménard.

[Translation]

**Mr. Serge Ménard:** Do you share that information with Revenue Canada?

[English]

**Mr. Horst Intscher:** We can disclose to the revenue department, but only under very specific circumstances. If we make a determination that there are reasonable grounds to suspect money laundering or terrorist financing, we must disclose that to the police or to CSIS. If we also determine there's a basis for tax evasion, then and only then would we be able to disclose to the revenue department.

If we were looking at our transaction data and saw a particular individual or group of individuals engaging in what we thought was

tax evasion, we couldn't disclose that unless we first made a determination that they could reasonably be suspected of money laundering or terrorist financing.

**The Vice-Chair (Mr. Kevin Sorenson):** Thank you, Mr. Intscher.

Mr. Comartin.

**Mr. Joe Comartin:** Thank you, Mr. Chair.

Mr. Intscher, I have to say the aura you're placing around your agency is not reflected in the report from the Auditor General. She was very critical. She said it was pervasive, that at both ends—both at the institutions that report to you and the ones that receive information from you—there was a real lack of communication. Those sending in reports weren't getting feedback as to whether the reports were of any value, and on the other end your agency was not hearing back from CSIS and the RCMP as to whether the information you were giving them, the form in which you were giving it to them, was useful.

I realize that information is about a year old now. Can you point to anything specifically that your agency has done to deal with those criticisms?

**Mr. Horst Intscher:** I could first answer regarding the reporting entities. Even prior to the report coming out, we had in fact been providing a fair amount of feedback to financial institutions about both the nature and the quality of their reporting, and more generally as to how that reporting was being used. We are not permitted to disclose to them the disposition of individual reports they have made to us, but we can provide quite a bit of information to them on how their reporting stacks up with the industry—whether it's useful, what types of things aren't that helpful to be reported, and what types of things are helpful.

We have in fact provided fairly in-depth feedback sessions to all the major financial institutions, and that's going to be a continuing feature of our feedback program. Admittedly, when they did their review, we had, I think, made such presentations only to a couple of institutions; now we've done it with all of them, and it's ongoing. We're also quite regularly making outreach presentations and feedback presentations to other reporting entity sectors.

In terms of the utility of the product and whether or not recipients of it are finding it useful, we had in fact received feedback from law enforcement recipients of our product that was somewhat more positive, I would say, than that which was reported by the Auditor General. That was still at an early stage of our disclosing to them. Since then, we have expanded both the nature and the quantity of the reporting that goes to them. We're attempting to put in place systematic feedback mechanisms from CSIS and from the police—and not just from the RCMP; we're also now trying to put in place a routine feedback mechanism for non-RCMP police forces, whether they be provincial or municipal police forces, who are the recipients of our disclosure.

● (1730)

**The Vice-Chair (Mr. Kevin Sorenson):** This is the last question, very quickly. There is one more to hear.

**Mr. Joe Comartin:** Thank you, Mr. Chair.

Is any of that information going to be available either to us, as members of Parliament, or to the public generally—that in fact the communication is working, that there are results here, that we're getting some benefit for the \$31 million a year we're spending?

**Mr. Horst Intscher:** We would certainly be reporting on that in our annual report.

**The Vice-Chair (Mr. Kevin Sorenson):** The last question of the meeting goes to Mr. Wappel.

**Mr. Tom Wappel:** Mr. Chairman, thank you. I don't know if it's only one question.

I refer you to slide 5 in the English version of your presentation. You're talking about 197 case disclosures. That comes out of about 9.5 million reports. Is that right?

**Mr. Horst Intscher:** That's correct.

**Mr. Tom Wappel:** On those 197 case disclosures, your slide shows that 48 are on terrorist activity. I presume you mean on suspected terrorist activity.

**Mr. Horst Intscher:** Yes.

**Mr. Tom Wappel:** On those 48 suspected cases of financing of terrorist activity, how many turned out to be actual terrorists?

**Mr. Horst Intscher:** Let me take one step back in relation to the case numbers and in relation to your observation about the nine million reports. The case numbers do not equate to reports. Cases can sometimes involve half a dozen reports, often they involve hundreds of reports, and we have had cases that have involved thousands of reports. They're cases rather than individual transactions, whereas what's reported to us are individual transactions.

On the 48 disclosures of suspected financing of terrorist activity, these are disclosed by us to CSIS and the RCMP on the basis of reasonable grounds to suspect. It's really up to the investigative bodies, i.e. the RCMP and CSIS, to determine whether or not that is actually financing of terrorist activity, how extensive it is, and whether it's broader than we disclosed or narrower than we disclosed.

**Mr. Tom Wappel:** Yes, but don't you have any follow-up to see if you were right or if your analysis was correct? You need to have some kind of scorecard to determine whether or not the people who are doing the job in your office are in fact flagging what they should be flagging.

**Mr. Horst Intscher:** The feedback we get from CSIS is that our reports are very useful to them in their investigations. The RCMP have similarly told us that all of our reports have been very valuable

to their investigations. In some cases, our reports have sparked new investigations or investigations of people who had not previously been within their focus.

**Mr. Tom Wappel:** But can't you answer my question? On the 48 disclosures of suspected financing of terrorist activity, have any of them materialized into actual financing of terrorist activity, to your knowledge?

**Mr. Horst Intscher:** We wouldn't be able to answer that.

**Mr. Tom Wappel:** Thank you.

Thank you, Mr. Chairman.

**The Vice-Chair (Mr. Kevin Sorenson):** Are you not able to answer because you don't know or because you aren't willing to disclose that?

**Mr. Horst Intscher:** At this juncture, we don't know. If we eventually knew, I would be able to answer in terms of aggregate numbers, not in terms of individual cases. We understand that the intelligence we have provided is valuable and is being included in their investigations.

Both in relation to money laundering and the financing of terrorists, some of these investigations are quite complex and sensitive, and they can drag on for quite a long period of time. I'm not actually surprised that there haven't been large numbers of prosecutions at this point on the basis of the disclosures we've made, but I would say there ought to be quite a number in another year or two. Many of them take a couple of years to be concluded because of the complexity and the often transnational character of the activities.

● (1735)

**The Vice-Chair (Mr. Kevin Sorenson):** All right. First of all, I want to thank Mr. Intscher, Ms. Desjardins, and Ms. Wing for being here. Our apologies again to the Office of the Superintendent of Financial Institutions.

We have another committee here at 5:30.

Mr. Comartin.

**Mr. Joe Comartin:** I understand. I only want to make this point, and I want to make it while Mr. Intscher is still here. We don't have enough information, Mr. Chair. I think we have to leave with the possibility that we'll need to call him back.

**The Vice-Chair (Mr. Kevin Sorenson):** It is so noted, and the clerks have noted it.

We stand adjourned.





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

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