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Chair

Mr. Paul Zed

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•(1530)

[English]

The Chair (Mr. Paul Zed (Saint John, Lib.)): I would call this meeting to order.

Colleagues, I'd like to welcome, from Canada Customs and Revenue Agency, the commissioner, Michel Dorais; Elizabeth Tromp, the director general; Maurice Klein; and Donna Walsh.

Welcome to our committee.

I understand you have an opening statement. Please proceed.

Mr. Michel Dorais (Commissioner, Canada Customs and Revenue Agency): Thank you very much, Mr. Chair.

Thank you for this opportunity to reinforce the necessity of this legislation. This act is essential to prevent the abuse of Canada's charitable sector by terrorists who would exploit our country's longstanding tradition of compassionate giving. Canada's more than 81,000 registered charities perform a vital public service in supporting individuals and strengthening our communities. We want to make sure Canadians can have confidence that their charitable donations are put to legitimate use so that the valuable contributions of charitable organizations are not compromised.

[Translation]

Governments worldwide have become increasingly concerned about the misuse of charitable, religious, cultural, and educational organizations to finance terrorist activities.

[English]

In January 1999 the Special Senate Committee on Security and Intelligence reported that terrorist groups seek registration as charities because it enhances their credibility, enabling them to deceive well-meaning Canadian taxpayers who unwittingly subsidize terrorist activities through their charitable giving. Charitable status under the Income Tax Act provides these organizations with an air of legitimacy. It also creates a layer of deniability regarding the inappropriate use of those funds.

The charities registration act is designed to deal with the situation where relevant security and intelligence information shows that an organization is supporting terrorism. This evidence is needed to establish that the organization should not be allowed to obtain or retain registration as a charity.

[Translation]

This legislation focuses strictly on terrorism and on organizations that may try to improperly use charitable status in Canada to support terrorism. The Act supports Canada's anti-terrorism objectives by demonstrating Canada's commitment to participating in concerted international efforts to deny support to those who engage in terrorist activities; protecting the integrity of the registration system for charities under the Income Tax Act; maintaining the confidence of Canadian taxpayers that the benefits of charitable registration are made available only to organizations that operate exclusively for charitable purposes.

•(1535)

[English]

The legislation allows the Minister of Public Safety and Emergency Preparedness and the Minister of National Revenue to issue a certificate stating that, based on the classified information before them, there are reasonable grounds to believe that an organization provides support to a terrorist group. This allows the charities directorate to make proper use of all information relevant to deciding whether an organization should be registered as a charity under the Income Tax Act.

The existence of the certificate provision provides an effective deterrent. Although no certificate has been issued to date, it is important to underline that we use whatever powers we have under the Income Tax Act before invoking the certificate powers contained in the charities registration act.

While existing income tax provisions are sufficient to bar an organization from registration under normal circumstances, the charities registration act provides prudent reserve power to address cases of terrorism. In such cases, classified information may be needed to establish an organization's support of terrorism.

I also want to point out that the charities registration act has not directly imposed any new burden on charities such as increased reporting requirements, nor did it suddenly make supporting terrorism a new basis for deregistration. Registration has always required organizations to exercise due diligence in ensuring that all of their resources are put to charitable use. What the act does is allow CRA to take into consideration and protect classified information in its decision regarding registered status.

[Translation]

The CRA is uniquely placed to play a proactive role in uncovering links between terrorist groups and registered charities or organizations applying for registration. We have specialized knowledge in how charities operate in Canada and registered charities have a statutory requirement to report to us annually. The CRA alone has the mandate to audit registered charities and, in this capacity, is entitled to review all corporate and financial records.

Our objective is not to interfere with the valuable work of Canada's legitimate charitable organizations, but to discourage and stamp out the nefarious use of the Income Tax Act to support terrorism.

[English]

This is consistent with the commitment we made in signing the UN International Convention for the Suppression of the Financing of Terrorism.

As the committee may know, I've been in my current job only a few months, and therefore I would be hard-pressed to refer to myself as an expert witness. But I'm confident that with the help of my colleagues around the table, we will do our best to answer the committee's questions.

Thank you very much, Mr. Chairman.

The Chair: Thank you, Monsieur Dorais.

Mr. Sorenson, please.

Mr. Kevin Sorenson (Crowfoot, CPC): Thank you for coming here today. We appreciate your being here. I should add that it's a good thing you're here this week and not last week.

I'm trying to get a little bit of a grasp of the process for these certificates. We have two ministers who would have to sign on, the Minister of National Revenue and the Minister of Public Safety and Emergency Preparedness. If evidence was brought forward, the judge would still have to make a decision. The two ministers would go to a judge. Is that correct? Ministers would sign the certificate, take the evidence to a judge, and a judge would then give it the go-ahead for the certificate. What measures are in place for an appeal? That is my first question.

The people or the organization or the entity that would have their charitable status taken away or revoked, what measures do they have? They don't see all the evidence? They see a summary by the judge of the evidence that would be presented—is that correct? Would they have an opportunity to argue before the judge? And if a certificate is still granted, is there any measure to bring forward an appeal? Would it be before the same judge? Would it be before someone else? As I understand it, it would be before the same judge.

That would be my first question.

Mr. Michel Dorais: There are a number of checks and balances that are built into the system, and they're not appealed per se, as we know them. The proposal is similar to the one used for the security certificate in the Immigration Act. That is the first check and balance. Two ministers have to sign. It's not a single minister; two ministers have to sign the certificate.

Then it's brought in front of a judge and there is a seven-day period, if I'm not mistaken, during which the judge has to make a judgment about whether the name would be published or protected. That is to protect any possibility that the name of an organization would become public. If the judge feels that it should remain private, it stays private.

Then a summary is given. In cases where some information needs to be protected, and only in these cases, the judge will judge whether that information should be protected. In those cases, it is not divulged to the applicant. And there is no appeal there.

• (1540)

Mr. Kevin Sorenson: There is no appeal process.

Mr. Michel Dorais: Not on the process.

Ms. Elizabeth Tromp (Director General, Charities Directorate, Policy and Planning Branch, Canada Customs and Revenue Agency): That is absolutely correct.

Just to add to that, once a decision is rendered and an organization is revoked, if it was an existing organization, they can apply for an early review of the certificate if there's been a material change in circumstances. That again would go through a process of ministerial review, be signed, and go again to a Federal Court judge for a review.

It's a seven-year certificate.

Mr. Kevin Sorenson: So then your agency is the agency that does what? You talk about your powers. You mentioned that you would usually use your powers to address it before it came to a certificate. What specific powers are you making reference to?

Mr. Michel Dorais: The power to register and to revoke charitable status.

Mr. Kevin Sorenson: So you would do that before it had to come to a certificate?

Mr. Michel Dorais: Yes. We have that power now.

Quite often, frankly, in cases when a charitable organization is showing some problems, it is not necessarily going to be directly tied to information that needs to be protected. It's information that is public. There are activities that the organization performs that are not deemed charitable, and in these cases we have powers to audit. We receive complaints and we have the power to act, to contact the organization and ask for some corrections. And if those corrective measures are not taken, we can currently revoke that status.

This would be invoked only in cases where there is no other information available, only information that needs to be protected for national security reasons.

Mr. Kevin Sorenson: I have one other question out of foreign affairs and international trade. We've been going through the IPR, the international policy review, and in that review one of the parts deals with these NGOs and CIDA funding. As I understand it, we have hundreds of these NGOs now across the country that are being funded. Many of them go about carrying on little projects in different countries. Now, with this IPR, they're basically going to be going under 25. A lot of these NGOs—some from my constituency—are very concerned.

One of the things that has been brought to me by these agencies is that they are afraid that part of the reason the government may be cutting only to 25 major groups that would be giving out these relief efforts around the world would be because of terrorism. There may be a question as to whether or not some of these groups are involved in relief projects or efforts where, down the road, there may be a benefit to some group that might have ties to terrorism. Is that possible?

Mr. Michel Dorais: It's possible, but I have no information allowing me to confirm that.

The one point I would like to make, though, is that those organizations that receive CIDA funding are not necessarily charitable organizations. They could be organizations that are not registered charities. There are two very independent systems there.

Mr. Kevin Sorenson: How would you be involved? Would there be a complaint that would be issued? Would someone say he or she is highly suspicious of this, or are you actively...? What are your resources? Do you have people going out investigating the many different charitable groups out there?

• (1545)

Mr. Michel Dorais: There are two things that will make us verify this information with a given charity, either a complaint or information that is brought to our attention. But we do conduct roughly 500 audits per year on charitable organizations to make sure that in fact donations are used for charitable purposes, that the actual reports we're asking for from charities are completed properly, and that Canadians are ensured that the purpose of the organization is for charitable activities.

Mr. Kevin Sorenson: Out of all the different charities since this legislation came down in 2001, how many charities have been deregistered? How many cases can you tell us of where you stepped in? There were no certificates, as I understand, right?

Mr. Michel Dorais: No, none.

Mr. Kevin Sorenson: Did you also say that no charities were deregistered? You said no certificates. How many charities would have been—

Mr. Michel Dorais: No certificates, certainly, and I'll defer to my colleagues on the statistics on decertification.

Ms. Elizabeth Tromp: Decertification can happen for a number of reasons. For example, about 1,800 charities were revoked in the past year, but half of that was voluntary. The other half was for failure to file their annual returns. There were a handful of others that were revoked for cause. Cause would mean that through an audit process we determined that they were not spending their money on charitable programs. There was no control or direction over their resources.

Mr. Kevin Sorenson: When you say for cause, were any of those revocations because the organization had a tie to questionable groups?

Ms. Elizabeth Tromp: Not in this past year, no.

Mr. Kevin Sorenson: Since 2001, how many were there?

Ms. Elizabeth Tromp: Have we had any?

I defer to my colleagues on that.

Ms. Donna Walsh (Director, Special Compliance Initiative Division, Charities Directorate, Policy and Legislation Branch, Canada Customs and Revenue Agency): I don't believe so, no.

Mr. Michel Dorais: In all fairness, if there was an organization that had some link with terrorist organizations, it would probably be faulting on other grounds, so before we'd get to that point the process of decertification would already be launched on the grounds of money not flowing for charity purposes or books not being kept properly. This might explain that answer.

The Chair: Thank you.

Monsieur Ménard.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I understand that this new responsibility you were given did not excessively increase your agency's workload. So you did not hire any additional employees.

Ms. Elizabeth Tromp: Yes, we received additional resources and we are creating a new capability for more in-depth analysis. We are also sharing more information with other agencies on suspicious cases in order to check on problems. We need to create an infrastructure to protect the data we receive. That being said, we do not have— [Inaudible]

Mr. Serge Ménard: This is 2005 and you were given this new responsibility in 2001. No case involving a terrorist organization was submitted to you. Why did you decide to hire additional staff?

[English]

Mr. Maurice Klein (Senior Advisor, Anti-Terrorism, Charities Directorate, Policy and Planning Branch, Canada Customs and Revenue Agency): Perhaps I can clarify in the sense that there are organizations that will apply for registered status by virtue of the fact that we have some concerns.

In a number of cases, we ask them for additional information that will prompt the organizations to withdraw the applications. In other cases, when an organization is already registered, concerns have arisen, and we have grounds to take a closer look at what they've been doing, for example, that may also prompt organizations to not question when a revocation action has taken place.

We have the work, and we do the analysis.

• (1550)

[Translation]

Mr. Serge Ménard: Does this additional work you are talking about involve organizations that financially support terrorism?

[English]

Mr. Maurice Klein: Yes, the concerns might involve terrorist financing or the concern might be in the area of logistics for groups associated with terrorism. These are issues that arise.

[Translation]

Mr. Serge Ménard: Recently, the media reported on some cases that may have led you to reflect on the situation. The tsunami devastated a number of countries. These countries were controlled partly by the official government and partly by a rebel government that was occasionally involved in terrorist activities. According to the news reports, official governments were of the authoritarian or dictatorial and corrupt kind, while the rebels had established educational and healthcare infrastructures. It seems as if relief and money needed by the citizens of these countries would be better channeled by rebel governments, even though they were involved in terrorist activities.

In such a situation, how would you react if someone wanted to organize an immediate fund drive for the people of these countries?

Mr. Michel Dorais: I would ask my colleagues to answer the technical part of your question.

Of course, we are still talking about charitable organizations and not about money being directly channeled to foreign governments or organizations.

Mr. Serge Ménard: I thought you were given the task to prevent financing of terrorist organizations through charities. In the last century, terrorists in some countries cared more about the needs of the people than official governments did.

How do you react to such cases? There are terrorist organizations that help the people living in areas under their control. Yet these organizations use terrorism against the governing dictatorship. What would you do if someone wanted to organize a fund drive in Canada? Very often, these are organized by refugees from these countries who live in Canada.

Mr. Michel Dorais: Mr. Chairman, in order to understand, you have to step back and review the issue of the status of the charity concerned. If a charity has a mandate to support activities in a foreign country suffering from a difficult situation due to poverty, lack of education, religious beliefs and so on, if this charity is certified and donations are made, everything is in order if the money is used for charitable purposes. Of course, the organization must be accountable. If part of the money is used for purposes other than charity, for purposes other than those mentioned in the organization's charter, we would act and revoke its charitable status, not under the new act, but under the present Income Tax Act.

Mr. Serge Ménard: Basically, even without the new powers provided by the antiterrorist legislation, you can readily exercise the type of control you are required to exercise. Right?

• (1555)

Mr. Michel Dorais: Absolutely, Mr. Chairman, and I think this is an important aspect. However, it's also important to note that these powers can deter some organizations which may consider registering as charities in Canada for terrorist purposes. It has never been done. At this stage, it's extremely difficult to say whether, in the last three years, organizations have been deterred by these provisions or if they would have applied for charitable status had these provisions not been in place.

Mr. Serge Ménard: This can also deter people from collecting funds for populations having a difficult time in a rebel-controlled area, where the rebels had previously been involved in terrorist activities.

Mr. Michel Dorais: Mr. Chairman, this is a very important issue. We were asking ourselves the same question as the member did.

The amount of money sent to foreign countries by Canadian-based charities has constantly increased since 1999, almost in linear fashion. The same can be said about the number of donations, which continued to increase linearly. The number of applications and the number of approvals was almost the same between 2000 and 2003. So there is no direct effect.

The Chair: Thank you, Mr. Ménard.

[English]

Mr. Wappel, please.

Mr. Tom Wappel (Scarborough Southwest, Lib.): Thank you very much, Mr. Chairman.

Good afternoon.

I have a pedantic question to start with, if I may. The orders of the day refer to witnesses from the Canada Customs and Revenue Agency. Is that still the correct name of the agency?

Mr. Michel Dorais: It is until the legislation is changed.

Mr. Tom Wappel: When is that going to happen? Effectively, you're not doing anything in customs any more, are you?

Mr. Michel Dorais: You're absolutely right. It's a little out of our hands; it's in the hands of the.... But the moment the legislation is changed, it will become the Canada Revenue Agency.

Mr. Tom Wappel: Okay, that was number one. Number two, there are 500 audits a year out of 81,000 registered charities. I don't have my calculator here, but that's probably half a percent. It seems very insignificant. Is that normal?

Ms. Elizabeth Tromp: You may be aware that in 2004 the government launched a charities regulatory reform initiative, and one of the themes of that was to strengthen and enhance our monitoring of charities. Our goal right now is to grow that number, absolutely, to about double that amount so that we cover a greater proportion of charities.

Mr. Tom Wappel: About one percent.

Ms. Elizabeth Tromp: It's still very small, but again, that's with respect to audits. The vast majority of those 81,000 charities want to comply and do comply. We rely very heavily on voluntary compliance, education, training, and lesser types of monitoring, where we are engaged with charities to provide them with assistance and help them to comply.

We really reserve those types of audit powers for more serious cases or areas we're looking at, as generated either through ongoing monitoring of our returns or—

Mr. Tom Wappel: How many people are in the charities division now?

Ms. Elizabeth Tromp: We have around 200, and we'll be growing by about 30 more.

Mr. Tom Wappel: We are reviewing this act, and your interest in it is part 6. Do you have any recommendations for changes to part 6?

Mr. Michel Dorais: No, not at this stage.

Mr. Tom Wappel: We all know that Revenue Canada has strong powers. You can investigate what you want to investigate as long as it has to do with application of the Income Tax Act. So would it be fair to say that the real *raison d'être* of part 6 is found in the first paragraph of page 3 of your remarks?

• (1600)

Mr. Michel Dorais: Absolutely. It's strictly to protect information.

Mr. Tom Wappel: Right, it's so that you can gain access to otherwise protected information. That's the whole point of it.

Mr. Michel Dorais: Yes.

Mr. Tom Wappel: I'd like to turn your attention to section 4 of the Charities Registration (Security Information) Act. There are three circumstances for issuing a certificate, and paragraphs (b) and (c) are what I'd like to ask about.

Here you have an applicant or a registered charity that has “made available any resources”—now that's the past tense—to an entity that was “at the time, and continues to be, engaged in terrorist activities..”.

I have two questions about that. First, “terrorist activities” is plural. What if it were engaged in a “terrorist activity?” What if it were singular, a single terrorist activity?

Secondly, why is it necessary that it “continues to be”? If a registered charity made available resources to an entity at a time when it was engaged in a “terrorist activity”, why shouldn't it have its charitable status revoked?

Mr. Michel Dorais: I will have to defer to those who can give you the technical answer.

Ms. Elizabeth Tromp: I've just got some advice on “activities” versus “activity”. Essentially, it is “activity” in the Criminal Code, so it doesn't make a difference. That's what I'm being told.

Mr. Tom Wappel: Ms. Tromp, let's look at that. Subsection 83.01 (1) of the Criminal Code defines “terrorist activity”. That's singular. So why isn't the term “terrorist activity” used in section 4 of the Charities Registration (Security Information) Act? Why is it “terrorist activities?”

Mr. Michel Dorais: I don't think we have the technical explanation. Certainly one activity is more than enough as far as we're concerned.

Mr. Tom Wappel: I would agree.

Mr. Michel Dorais: We'll provide the committee with the technical answer to that. I cannot answer it now.

Mr. Tom Wappel: Would you please take a look at it?

Mr. Michel Dorais: The intent is that one activity is more than enough.

Mr. Tom Wappel: On my next point, why does the entity have to continue to be engaged in the terrorist activity? Why can you not revoke or issue a certificate regarding a past event?

Ms. Donna Walsh: At the time that the legislation was enacted, the feeling was that there might be cases where organizations that had previously been involved in terrorist activity had decided to renounce those activities. It was felt that this was a consideration that should have bearing on the use of the certificate power.

Mr. Tom Wappel: But this isn't retroactive. This only came into force when it passed. So if something comes into force when it passes, and if a registered charity makes available resources to an entity that was committing a terrorist activity, and that subsequently stopped—the terrorist activity, not making resources available—why shouldn't that charity's status be revoked?

Ms. Donna Walsh: The rationale was that a case where contributions to a terrorist activity had been discontinued or renounced would be different from a case where contributions were being continued—i.e., where there was an ongoing application of resources.

Mr. Tom Wappel: Okay. I hear you, Ms. Walsh; I just don't accept that as a logical reason.

I'd appreciate it if you people would go back and talk about what I just raised, and then maybe get back to us in writing. Because I don't think that can be what you really mean.

Ms. Elizabeth Tromp: Perhaps I can add a little bit more information. Certainly if we can provide more in writing, we'd be happy to do so.

Again, there could be situations where a terrorist organization under the cover of a charitable organization, or even an existing charitable organization, could take over those activities, and funds could be diverted for terrorist causes, for example, for a period of time.

If that situation changes and those people are no longer in control, and they can demonstrate that the individuals no longer have anything to do or are not engaged any more, and they have sufficient control and direction over their resources, legitimately carrying out charitable programs, those would be the kinds of circumstances where we wouldn't want to deregister—

•(1605)

Mr. Tom Wappel: But that's covered off by section 10, isn't it. They can always go back and trigger an appeal. And I say "appeal" loosely. It's not a judicial appeal; we were talking about judicial appeals. So they could always appeal to the ministers if there is a material change of circumstances, which you brought up.

Ms. Elizabeth Tromp: They could if they were in fact an organization against which a security certificate process had been invoked. However, there could be a situation where, for example, today we uncover that three years ago, for a period of nine months or a year, there was a problem with respect to a particular organization, which has since been corrected, and the organization is legitimate. It is carrying out purposes and activities that are charitable; it has sufficient control and direction over its resources; it is not associated in any way with terrorism; and the board of directors has changed, and so forth. I believe that would be the kind of situation where we would not, in those cases, be using a security certificate to revoke that type of organization, in that set of circumstances.

Mr. Tom Wappel: All right.

Mr. Michel Dorais: In most cases, if we discovered activities like these, under the Income Tax Act, those would be activities that are not related to the charitable status of the organization.

Mr. Tom Wappel: Clearly.

Mr. Michel Dorais: So we would use these powers to exercise a certain amount of surveillance and auditing of those organizations, to make sure that if a correction has been made in time, the correction stays on.

Mr. Tom Wappel: The chairman tells me this is my final question.

Is it not true that the Income Tax Act already has very specific rules as to when a charity can contribute outside of Canada, or indeed outside of a province, depending on its charitable status? So it's very restricted and there are very specific guidelines that have to be followed by these charities in order to send money outside of Canada.

Ms. Elizabeth Tromp: Yes, absolutely. And we have guidance to that effect for charities, on our website.

Again, the bottom line is that charities have to have charitable purposes and activities, and they have to have sufficient control and direction over their resources to ensure that the money is going to those charitable programs.

Mr. Tom Wappel: But even beyond that, you can't just send to any charity in the world—

Ms. Elizabeth Tromp: Absolutely. So you can do a number of things. You can deliver those programs yourself, on the ground. Therefore, you're exercising direct control, and you of course have to be able to demonstrate that to us. You can enter into an agency agreement with sufficient checks and balances to demonstrate where that money is going and how it's being used, with sufficient controls and checks. Or you can give that money to what we refer to as a "qualified donee"—an international UN organization, for example, or another registered charity if it were in Canada.

So there are certain organizations that you can pass that money to, but they need to be qualified donees under the Income Tax Act.

Mr. Tom Wappel: Thank you.

The Chair: Thank you.

Mr. Jaffer.

Mr. Rahim Jaffer (Edmonton—Strathcona, CPC): Thank you, Mr. Chair.

Thank you for your presentation today. I missed the initial remarks, but I did go through your statement.

I want to pick up from where Mr. Wappel started, about the issue of how many audits are actually carried out, or how many checks are made, on various charities.

I understand, Ms. Tromp, you said that you're in the process of strengthening and enhancing the review process over charities. What is that current number? Did I hear that it's 500-and-some?

Mr. Michel Dorais: It's around 500 per year, at this point.

Mr. Rahim Jaffer: With that, I guess one thing I'm curious about is whether the review process lumps all charities into one category. Is there a separate type of focus for charities that may be suspected to be linked with terrorism, and then other charities that may not be terrorist-linked but that are just abusing their status as charities?

Ms. Elizabeth Tromp: Charities will be selected for audit based on any number of circumstances where there have been complaints and where, upon a review, there seems to be something of substance there. It could be something we uncover through our ongoing monitoring of their annual returns or other information that's provided to us. So in that sense, yes, if we were undertaking an audit, we wouldn't capture and number separately those audits that might be taken where we may have a suspicion that there is something going on that relates to terrorism, for example.

•(1610)

Mr. Rahim Jaffer: So there is a separate focus.

I'll give you an example I was going to raise just to say how the process goes through, how certain groups are picked. For instance, I was dealing with a case for the Canadian Hostelling Association. They've been going through some huge struggles in keeping their charitable status. I think it's being reviewed currently. How would that group be picked, and would they be all lumped under a group that would be potentially...? Whether they're being audited or whether they're abusing their status, are they in a separate category, as opposed to those charities that are under suspicion for terrorism activity?

Mr. Michel Dorais: We don't categorize organizations by their types, but obviously if there was an organization for which information from a security agency was provided to us and we needed to protect that information, it would be directed to a special group. But all the others are being audited by auditors devoted to charities.

Mr. Rahim Jaffer: So everything is lumped in one for the auditing process?

Mr. Michel Dorais: Except audits for charities, which would require protected information for national security purposes.

Mr. Rahim Jaffer: So when the anti-terrorist legislation was passed, were there additional resources allocated to CCRA for CCRA to be able to focus specifically on terrorist activity?

Ms. Elizabeth Tromp: Yes, we have since received supplemental resources and are in the process of putting in place the necessary infrastructure, because again, we are now in a position to be managing and analyzing more information than we had previously, and building those case files where we need to, for example, and making sure that we're making the appropriate connections.

We have, first of all, vast amounts of open-source information, as well as any classified information we have. But we have the ability to analyze and pull that together in order to be able to, if the need develops, proceed with a certificate, in conjunction with partners.

So yes, there is a need to build that infrastructure in a way that protects secure information in the appropriate manner.

Mr. Rahim Jaffer: Again, on that particular case that I highlighted, how are these charities chosen—for instance, that particular one, the hostelling one? Are they randomly selected just to be reviewed, and then if there's a potential problem that CRA sees, do they go after them to say that they should be deregistered?

I was almost under the impression there's almost been some sort of mandate from CRA to try to deregister as many charities as they can, because I've had some weird cases that have come forward where it's clear to me that they're charities, but they're going through such huge struggles with CRA to keep their charitable status, and some often aren't even approved.

I'm just hoping you can clarify and give us some confidence in that process of reviewing, because it seems to me that sometimes some groups are left out, they're not being pursued—the ones that maybe should be—and then the ones that are more vulnerable, unfortunately, are getting stuck having to defend their charitable status and often don't have the resources to do so.

Mr. Michel Dorais: Mr. Chairman, of course we conduct random audits, but generally speaking—and I cannot speak about this particular case the member is referring to—we receive complaints. This is what would trigger an audit. It could be complaints from competitors that are not charities. It could be complaints by other charities that have different views, and they bring to our attention activities of a charitable organization that should not be considered charitable, or a part of their activities that are not considered charitable, and on that basis we could undertake an audit.

Does that summarize it?

The Chair: Thank you, Mr. Jaffer.

Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): Mr. Chair, thank you. How much time do I have?

The Chair: Five minutes.

Hon. Roy Cullen: Five minutes. Okay.

Mr. Michel Dorais: Mr. Chairman, if I may add just a complement of information for the committee, and especially for the member, I'm informed that under the Interpretation Act, plural will include singular, and singular will also include plural. We will

provide the committee with the exact reference in the Interpretation Act.

Hon. Roy Cullen: Thank you to the panel.

I want to talk about the Canada Customs and Revenue Agency. I'll use that terminology for now. You brought in, some years ago, a bill of rights for taxpayers. I don't know if that's the exact name, but it basically gave taxpayers the right to.... There was a set of principles involved. Are you familiar with that in the Canada Revenue Agency?

Mr. Michel Dorais: I think the member is referring to the code, but I have to admit, after four months, I haven't gone through it yet. It could be the code of conduct.

Hon. Roy Cullen: The code of conduct, is that what it's called exactly?

• (1615)

Ms. Donna Walsh: It goes back many years. I can't remember the exact phrasing, but the essence of it is what you're referring to, a taxpayer's....

Hon. Roy Cullen: Like a taxpayer's bill of rights. In other words, if someone comes barging into your home and says they want to do an audit, and they're flippant and rude, or something, this would deal with stuff like that, right? Is it not a living, breathing thing over there?

Mr. Michel Dorais: It is. We refer to the code; it's just the terminology that I don't....

Hon. Roy Cullen: It's just the terminology.

You say that was brought in some years ago, was it? So it's been there for a while. Since you brought that in, I'd like to know a bit about how many complaints you've received and how you deal with them.

Mr. Michel Dorais: You mean complaints generally to the entire agency?

Hon. Roy Cullen: Yes, or from any taxpayer who feels they've been treated badly. There's a mechanism, right? Do they call a number or write a letter and say they think the agency hasn't complied with this principle of the code and here are the reasons why? There must be a process to evaluate that, or dialogue or something.

Mr. Michel Dorais: In fact it's all of the above. I'm not being cynical when I say that. We do have our telephone system and Internet, allowing any taxpayer to access an internal system of problem resolution in every region and in fact in every tax office in the country. Any letter is obviously treated in the same way. And there's a whole appeal division, which gets into a more serious area: if a taxpayer feels that the assessment has not been done right, or something like that, then there's a formal appeal system that exists.

Hon. Roy Cullen: So when the code was established, you didn't set up any new infrastructure to deal with that, did you?

Mr. Michel Dorais: Not that I'm aware of. There was no need for it, because the code applies everywhere.

Hon. Roy Cullen: In other words, that's basically to say that if a taxpayer feels aggrieved, but doesn't really know what benchmarks they should be working against, the code at least gives them the benchmarks to use in terms of a code of conduct expected of revenue officers. They have something to benchmark the performance of revenue officers against.

So you didn't set up a whole new infrastructure or processes, or anything like that?

Mr. Michel Dorais: I don't think so, except that a little more than five years ago the whole organization switched from a period when there were difficulties with service into a service organization. We've been keeping that all along. The organization, as we know it today, has been created to ensure a high level of service, so we have a board of management from the private sector supervising that part of our activities.

Hon. Roy Cullen: Maybe, Mr. Chair, they could submit to the committee a bit of the history of when that started, how it was set up, whether any infrastructure was involved, and whether they were the same processes, etc., and the level of compliance, as benchmarked against the code.

One of the reasons I asked the question is that I presumed the code also applied to customs. Did it?

Mr. Michel Dorais: It must have applied to customs in the first five years, yes.

Hon. Roy Cullen: It must have applied to customs, because as you know, customs is now over at the Canada Border Services Agency. Frankly, it's an area I've been exploring with the agency, as we hear stories about racial profiling and people being pulled out for secondary inspections and feeling they've been treated unfairly at customs.

When you describe this for us, could you maybe tell us what was in place then for customs and what the experience has been. I'm just wondering if the same template or model could be used by the Canada Border Services Agency, as it relates to people coming across the border and interacting with customs and immigration officers, or even with the Canadian Food Inspection Agency.

Mr. Michel Dorais: Mr. Chairman, we will provide the committee with the basic material. I will have to consult with my colleague at CBSA, because if there is any infrastructure or any material, it has moved with that agency.

Hon. Roy Cullen: I'm sure it did, yes. I'll be able to get a full briefing from them, but I was curious about the origin and the history and the infrastructure and what you had then.

Do I have any more time, Mr. Chairman?

The Chair: Yes, very short, for a last question.

Hon. Roy Cullen: I was interested in two things, and maybe I'll throw out two questions. I've been around here long enough to know that you can try to sneak a couple of questions into one, but my chairman will probably discipline me.

What do you do with an organization, for example, when you discover there's one director, the organization has generally been

acting appropriately in the sense of a charitable organization status, but there's a rotten apple who has been appropriating money to feed terrorist causes? If they can excise that, can they keep the charitable status? How does that have an impact on charitable status?

My second question is this. How do you deal with organizations when they say that they're ostensibly a charitable cause? I'll use an example, not to single it out, but the same model. I'm talking about, for example, Sinn Fein and or the IRA. Of course, Sinn Fein would argue that they're a political organization and there's no connection between the two. There would be other examples.

That's a poor example, in a sense. But in terms of the model, how do you differentiate to make sure there's no leakage of money from what might be a good charitable cause, but it's in fact structured in a such a way that all they do is filter money into a terrorist cause? How do you deal with that? How do you track that?

● (1620)

Mr. Michel Dorais: On the first example, if someone on the board of directors is appropriating money and channeling it to other purposes, it is obviously something that, if it's brought to our attention or comes out in an audit, is a cause for potential revocation, because part of the money that was given to an organization is going elsewhere. It's also something that could be remedied by the organization.

On the second case, every charitable organization has to report to us every year on the types of activities and on where the money is going. On the basis of that reporting, we will sometimes launch an audit, but they have to report quite accurately on how the money was used.

If it's diverted to activities other than the charitable purpose of the organization, then they put their charitable status in jeopardy.

The Chair: We're going to go to Mr. Sorenson and then Mr. Wappel.

Mr. Kevin Sorenson: With all the new resources that are allocated to you, what are the work qualifications? Are you all accountants? Are you auditors?

Have you recruited any new personnel from intelligence agencies or law enforcement agencies? Where are you getting these new recruits from?

Mr. Maurice Klein: I think we look for an esoteric mix of new recruits. We're interested in auditors. We're interested in forensic accountants. We're interested in people with significant charity experience. Canada has a fairly large security intelligence and criminal intelligence community. We try to take people from within and from external organizations as well.

Mr. Michel Dorais: In CCRA, we would not try to replicate what the RCMP or CSIS are doing. I don't know if that was the question.

Mr. Kevin Sorenson: No, the question was on whether you are recruiting.

The Chair: Are you looking for a job?

Mr. Kevin Sorenson: No, I'm not. A few months down the road, I anticipate that I'll still be here, but you never know.

It's not a recruitment program in CSIS or the RCMP, but do you get people from intelligence agencies who would apply there?

Ms. Elizabeth Tromp: Well, we could, if they apply. Again, if they have the skill sets that we're looking for with respect to some of the analytical positions, then that might be one area, out of many, that we would draw from.

Mr. Kevin Sorenson: Mr. Wappel asked some good questions. On the 500 audits, I may have missed the figure. Over the last four years, how many charitable status designations have been revoked because of your work?

Mr. Michel Dorais: There were 1,200 last year.

Ms. Elizabeth Tromp: Over the last four years, I'd have to get that figure.

Mr. Kevin Sorenson: A lot of those, as you say, were legitimate groups, but they didn't file annual statements.

Would you be the group that would audit religious organizations?

Ms. Elizabeth Tromp: If they were registered charities.

Mr. Kevin Sorenson: If they were registered charities. How many of those audits were religious organizations?

Ms. Elizabeth Tromp: We wouldn't know that offhand.

Mr. Maurice Klein: We'd have to get back to you on that.

Mr. Kevin Sorenson: Can you give me a breakdown by religious organization? How many were churches, how many were synagogues, how many were mosques?

• (1625)

Ms. Elizabeth Tromp: We could do our best.

Mr. Maurice Klein: Yes, we could do our best. That data is not normally captured per se.

Mr. Michel Dorais: What we've got to understand is that sometimes one's religious organization might register with a number of charities, not a single one, with different purposes, or slightly different purposes. This is why the answer to the member's question is not obvious, but we'll try our best.

Ms. Elizabeth Tromp: We'll do our best with the information we have. About 40% of registered charities are organizations that advance religion. That is the sort of charitable purpose for which they were registered, just to give you a rough sense.

Mr. Kevin Sorenson: Thank you.

The Chair: Mr. Wappel, go ahead, please.

Mr. Tom Wappel: Thank you, Mr. Chair.

Ladies and gentlemen, back to section 4. The Tom Wappel Foundation, a registered charity, made available resources to an entity that was at that time engaged in terrorist activities. I'm presuming that paragraph 4(1)(b) would allow a certificate to be issued. Correct?

Mr. Michel Dorais: If we knew that from protected sources.

Mr. Tom Wappel: Yes. I asked the question very specifically. I didn't say that the entity "continues to be engaged", so listen to my question carefully. The Tom Wappel Foundation gave resources—and we're not talking here about *mens rea*, which is another issue—to an entity defined under section 83.01 that was engaged in terrorist activities. Let's say this entity is no longer engaged in terrorist

activities, but was at the time that the Tom Wappel Foundation gave it the money, and the Tom Wappel Foundation knew it was giving it the money. Let's push it further: the foundation knew it was engaged in terrorist activities at that time, but since has, if we could put it that way, recanted and doesn't continue to be.

The way I read paragraph 4(1)(b), a certificate couldn't be issued against the Tom Wappel Foundation.

Mr. Michel Dorais: I will not venture to answer this one, but I will ask my colleagues if they can bring some precision to the question.

Ms. Donna Walsh: I don't disagree with the way you've interpreted this. I think the emphasis is really placed on the purposes for which the act was enacted, and the emphasis there is "to deny support to those who engage", in the present tense, "in terrorist activities to protect the integrity...".

Mr. Tom Wappel: But I'm a lawyer and my job is to look for loopholes. Would it not be easy, then, to have an entity, give it money, have that entity renounce its terrorist ways, and then give to another entity and have that entity renounce its terrorist ways? As long as you're not doing it continuously, that's a way of funneling money, and you can't touch me, the Tom Wappel Foundation, can you, if it isn't a continuing activity of the entity?

• (1630)

Mr. Michel Dorais: Certainly the intent of the original idea as it was explained to me and I understand it was to go after organizations that currently conduct activities that are related to terrorism. I don't know if the idea was to go back to organizations that at one point could have, but there's a technical answer to that and I cannot give it personally.

Mr. Tom Wappel: How about if you put my scenario to whoever is going to be considering this and get back to the committee with a written answer at some point? I'm concerned about this "has to be continuous", because it seems to me that schemes could be set up that would allow people to avoid—and we all know in the Income Tax Act about avoidance and attempts to avoid—a circumstance under paragraph (b). I'm just worried about that "continuous", and I want to make sure that you're clear that I'm not concerned about the activities of the charity, but the activities of the entity that are relevant: one, whether they're engaged in terrorist activities, and two, whether they're continuing to engage.

My second point is that it appears that there doesn't need to be any knowledge by the Tom Wappel Foundation that it is making funds available directly or indirectly to an entity. There doesn't appear to be any *mens rea*. I could be doing this totally unknowingly, and a certificate could be issued under paragraph 4(1)(b). Is that not true?

Ms. Elizabeth Tromp: In theory, yes, it could be. But I think the reality would be, given the onerous requirements of the certificate process, that it will be saved for the most egregious cases, not what I would term inadvertent support that has since been corrected. I think that a lot of this depends on case-specific circumstances.

Mr. Tom Wappel: Of which you have none at the present time, right?

Ms. Elizabeth Tromp: Not in terms of a certificate, no.

Mr. Tom Wappel: Not in terms of a certificate. Okay. And if I might, we have a briefing book from the Department of Justice, and it talks about some international tips on how charities can take care in providing services or resources to qualified donees—we were talking about qualified donees earlier. It's called *Combatting the Abuse of Non-Profit Organizations: International Best Practices*, and it says that it offers some useful guidance and “some preliminary practical guidelines and establishes a basis for best practices on how to prevent charities and non-profit organizations from being misused to finance terrorism”.

That's all well and good, but none of that, even if it was followed, would be a lawful excuse if the person or the charity happened to fall unknowingly into giving to a terrorist entity. Right?

So *mens rea* is irrelevant here. If you happen to give, too bad. You could be certified, so to speak. Right?

Ms. Elizabeth Tromp: Yes, that's right.

Mr. Tom Wappel: Okay.

Finally, there's a question here that our researchers have, and I think it's a good one, so I'd like to ask it. Have you made use of other elements of part 6 allowing for the exchange of information with other agencies? If so, can you describe the other agencies, the type of information, and the process?

Mr. Michel Dorais: I will ask my colleagues to be more precise, if they can, but of course we have relationships with other organizations, and that was part of the answer, maybe, to the question.

The Security of Information Act simply allows us to protect information that we may receive from other agencies for national security purposes. In the hypothetical example on the table, which is possible, obviously an organization that did that repeatedly, and had some link to a terrorist organization, would be under some kind of surveillance. And that exchange of information would allow us to track and survey and exercise a certain amount of surveillance on the organization so that sort of loophole is not exercised.

The committee should, in my view, understand that the Security of Information Act is a minute part of a much broader system, and it's hard to look at it in total isolation.

Now, in terms of the effective use of the exchange of information, I will ask my colleagues, who have been there longer than I.

Ms. Elizabeth Tromp: Absolutely. The act itself provides that information can be shared for the express purpose of this act, and in fact that has been a provision that has allowed us—and we've benefited from—the ongoing exchange with partners of classified information. For example, if we have reason to believe there is an issue, because a variety of risk factors are present either in an

application for registration or in an existing registered charity file, and we are pursuing that further, we would seek information from our partner agencies to see whether they have information that would help us determine whether this is or is not an issue. And that's something we do on an ongoing basis.

Mr. Tom Wappel: And your partner agencies are what? Internal Revenue Services of the U.S.?

Ms. Elizabeth Tromp: No, principally the RCMP and CSIS would be our partners.

Mr. Tom Wappel: But do you have any relationship with agencies outside Canada?

Ms. Elizabeth Tromp: No, not at this time.

Mr. Michel Dorais: No, we rely on the other security organizations to maintain those relations.

Mr. Tom Wappel: Thank you, Chairman.

The Chair: Thanks.

Before we excuse these witnesses, I understand that Mr. Cullen has a short comment.

Hon. Roy Cullen: Thank you, Mr. Chair.

I wanted to pick up on Mr. Wappel's point. Do you have any agreements with FINTRAC?

• (1635)

Mr. Michel Dorais: We don't have an agreement.

Ms. Elizabeth Tromp: We don't with respect to this act. No, we do not.

Hon. Roy Cullen: If FINTRAC was tracking certain transactions that were suspected of money laundering and they came across huge volumes of cash going to Nassau or some other tax haven that had the air of tax evasion associated with it, could they...? If it was associated with terrorist activity or criminality, in the sense of drugs, there are avenues, but if they exhausted those avenues and said that it was not really terrorism, it was strictly tax evasion in their judgment at that point, could they send that information over to you?

Ms. Elizabeth Tromp: You're talking about something separate and apart from issues pertaining to charities at this point, is that correct? You're talking about tax evasion generally?

Hon. Roy Cullen: Yes, that's right. I'm talking about FINTRAC, in their regular routines, coming across some transactions that initially look like they involve drug money or terrorist money. Then they exhaust that and find it's not really that, but it sure looks like tax evasion, because someone is just stacking up these huge amounts in Nassau or somewhere.

Ms. Elizabeth Tromp: I can just give you the basics of what my understanding is of the relationship there, which has nothing to do, again, with the Charities Registration (Security Information) Act but relates more to the act that created FINTRAC. Of course, as you know, they disclose information. They have the ability to disclose specified information to organizations like the RCMP and CSIS or other law enforcement agencies when there are reasonable grounds to suspect money laundering or terrorist activity financing. If, in addition to having passed that bar, they also see there is a reason to suspect tax evasion, then and only then could they disclose that information to the CRA.

Mr. Michel Dorais: Then we'd take normal action in those cases.

Ms. Elizabeth Tromp: Then there would be investigative action taken.

Hon. Roy Cullen: I know it's not totally related to the topic here today, but are you seeing any buildup in the amount of money moving offshore, basically to evade Canadian taxes, and what are you doing about it?

Mr. Michel Dorais: There is a huge amount of money moving offshore, and I've answered a number of questions at the finance committee on this.

We have to be very careful not to associate all the investments Canadians make offshore with tax evasion schemes. The last budget contained a provision for \$30 million to be devoted to tax evasion and tax schemes in tax havens, so that would be an increased effort to go after those schemes. It's not only for tax havens; it's for a combination of a number of activities internationally.

The Chair: Thank you.

Colleagues, I'm going to thank the commissioner and his colleagues for appearing today.

Commissioner, you undertook to take a few things under advisement and get back to us, and we'd appreciate receiving that in due course.

Thank you very much for presenting today, and thank you for your contribution.

Colleagues, we're going to suspend for a minute and then come back in camera to deal with a few housekeeping items, if that's agreeable.

[Proceedings continue in camera]

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