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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting 52 of the Standing Committee on Justice and Human Rights. Today is Monday, December 7, 2009.

You have before you the agenda for today. We're considering Bill C-52, An Act to amend the Criminal Code (sentencing for fraud).

We've divided today's meeting into two panels. First, we have a panel that includes witnesses from the RCMP. This is their third attempt to appear before us on this bill. We apologize for the inconvenience that we've put them through.

I know that you people have done your best to be here on time, but owing to a number of unforeseen circumstances we weren't able to accommodate you. We're eager to hear what you have to say today, so thank you for attending.

During the second hour of review, we'll be hearing additional witnesses on Bill C-52.

If there's any time left at the end, we can move to consider any committee business that members may want to raise. We have a budget for travel that we need to consider.

I wanted to note that this meeting is being televised and to remind you to turn off your BlackBerrys and take any phone calls outside the room.

Thank you.

Who's going to start for the RCMP?

Commissioner Stephen White (Acting Commissioner, Director General, Financial Crime, Royal Canadian Mounted Police): I will start.

Good afternoon, Mr. Chairman, members of the committee. Thank you for inviting the RCMP to participate in today's proceedings. I am pleased to have this opportunity to speak about the RCMP's efforts to address financial crime in Canada.

White-collar crime is local as well as global, and it comes in many different forms. We have mass marketing and payment card frauds, identity theft, and identity fraud. There are capital markets frauds, including Ponzi schemes and insider trading, and money laundering. Whether it is local or global, white-collar crime has devastating effects on individuals and communities. When businesses and individuals are victims of fraud, we see an increase in personal and corporate bankruptcies. With the loss of investments, homes, and life

savings, the social damage can be severe and can undermine the trust people have in their society.

Many financial crimes are complex and difficult to uncover. They are time-consuming and labour-intensive to investigate and to prosecute. For example, a couple of recent investigations consumed between 50,000 and 70,000 person-hours, involved the gathering of millions of documents, and incurred combined forensic accounting costs of several million dollars.

The reality is that many of these investigations are lengthy, complex, and costly. Although the external environment in which law enforcement operates continues to pose challenges, as a national organization the RCMP has the experience and expertise to carry out these long and complex investigations. It is important to highlight that enforcement of the fraud-related provisions in the Criminal Code of Canada, including enforcement related to capital market fraud, is a mandate that the RCMP shares with every police service in Canada.

[Translation]

Our ability to carry out this work is clearly strengthened by our partnerships with regulatory and other law enforcement agencies within Canada and internationally. Our efforts to combat white collar crime reside in the RCMP's Financial Crime Directorate's three programs: the Commercial Crime Program, the Integrated Proceeds of Crime and Money Laundering Programs and the Integrated Market Enforcement Program.

I would now like to speak about how each is working to combat financial crime.

[English]

The mission of the RCMP's commercial crime program is to detect and prevent threats to the Canadian economy and to help ensure the integrity of Canadian institutions. Commercial crime investigators deal primarily with fraud, offences against the Government of Canada, the corruption of public officials, the insolvency process, and bank note counterfeiting.

The RCMP has 26 commercial crime units strategically located across the country. These units are staffed with experienced investigators and employees who are supported by subject matter experts in different fields, such as forensic accounting and criminal law.

•(1535)

[Translation]

In terms of financial crime trends, the RCMP is seeing an increase in the volume and complexity of mass marketing frauds and identity thefts. Payment card and counterfeit payment card frauds have also increased substantially.

[English]

In recent years the Canadian Anti-Fraud Call Centre has documented an increase in the overall number of reported incidents of mass marketing fraud in almost all provinces. Mass marketing fraud also remains a significant cross-border crime issue between Canada and the United States.

To combat it, the RCMP has established several specialized teams. Project Emptor in Vancouver and Project COLT in Montreal are teams that involve U.S. and Canadian law enforcement partners, while our investigators in Toronto take part in the Toronto strategic partnership, which is made up of various law enforcement agencies in the greater Toronto area.

In addition, according to PricewaterhouseCoopers' 2009 global economic crime survey that was released last week, 56% of Canadian companies say they have been a victim of economic crime in the past 12 months, which is 4% higher than in 2007. Of those companies, 24% indicated their direct fraud losses were greater than \$500,000. Approximately 59% indicated that the perpetrator was from outside of the company.

The cost to an individual whose identity has been stolen can be enormous. Financial loss and the investment of hundreds of hours spent trying to re-establish identity and good credit all take their toll. In 2008 the Canadian Anti-Fraud Call Centre received identity fraud reports from more than 11,000 Canadian victims, who collectively lost more than \$9.6 million. While this figure indicates an increase of more than 48% over the losses reported during the previous year, it's estimated that the complaints received by the call centre represent just a small portion of the problem.

A study by McMaster University estimated that in 2008, 1.7 million Canadian victims of identity theft spent 20 million hours and \$150 million clearing their names. The McMaster study also indicated that only 19% of identity frauds are ever reported to the police or the credit agencies. With the vast majority—roughly 81% of all identity frauds—going unreported, the actual losses are probably staggering.

In consultation with key stakeholders and other law enforcement agencies, the RCMP is developing an identity fraud strategy to address criminal intelligence and analysis; prevention through education and awareness; and disruption, enforcement, and prosecution of identity fraud cases.

[Translation]

We are also heading up the creation of an international identity fraud working group, the objective of which is to obtain an overview of other countries' identity fraud strategies, discuss related joint priorities, and develop an international strategy.

[English]

In 2004 Canada had the highest level of currency counterfeiting among G10 countries. In 2005 the RCMP, in cooperation with the Bank of Canada, developed a national counterfeit enforcement strategy to combat counterfeiting by providing national focus in three key areas: enforcement, prosecution, and prevention. By using new and existing resources, the RCMP established integrated counterfeit enforcement teams in Toronto, Montreal, and Vancouver.

I am pleased to report that this effort has resulted in a dramatic decrease in the level of counterfeit activity in Canada. The National Anti-Counterfeiting Bureau statistics indicate that since 2004, currency counterfeiting has dropped approximately 80%, from more than 500,000 notes in 2004 to just 107,000 notes in 2008. Even lower numbers are forecast for 2009.

When you eliminate profit, you eliminate the incentive to commit profit-driven crimes. Therefore, the main objective of the integrated proceeds of crime program is to identify, restrain, and forfeit all illicit and unreported wealth accumulated through criminal activities. Across the country the RCMP operates in partnership with other law enforcement and government agencies in 13 integrated proceeds of crime units. Since 2003 these units have obtained the forfeiture of more than \$64 million in cash and property. They have an additional \$142 million seized and waiting for disposition.

•(1540)

[Translation]

The mandate of the RCMP's Money Laundering Program is to implement specific measures to detect and deter money laundering and to facilitate the investigation of these types of activities. The RCMP Money Laundering Program participates in the exchange of information between initiative partners, such as FINTRAC and the Canada Border Services Agency. It also provides an investigative assessment of money laundering intelligence and monitors national and international money laundering trends.

[English]

In 2003 the integrated market enforcement teams, or IMETs, were established in Toronto, Montreal, Vancouver, and Calgary. The teams are made up of RCMP investigators, Public Prosecution Service of Canada legal advisers, forensic accountants, and, at some locations, representatives of security regulators and local law enforcement agencies. The IMETs investigate serious Criminal Code market fraud offences that threaten investor confidence or economic stability in Canada.

In 2007, Mr. Nick Le Pan, former federal Superintendent of Financial Institutions, was appointed by government as the senior expert adviser to the RCMP to help develop and guide the implementation of recommendations aimed at improving the IMETs. His report was tabled in October 2007, and key to the recommendations made throughout his report is the challenge of equipping an IMET with the tools and resources it needs to succeed in the environment it operates in.

Since his report was tabled, the RCMP has implemented Mr. Le Pan's recommendations. Today the IMET program is achieving results and working effectively. Over the last year the IMETs have laid criminal charges in a number of major investigations, and more investigations are proceeding.

As I indicated in my opening remarks, white-collar crime is pervasive and increasingly complex, but we do have the experience, expertise, and partnerships to get results. As Canada's national police service, the RCMP will continue to play a critical role in combatting economic crime and helping to protect Canada's economic integrity.

Thank you. We look forward to answering your questions.

The Chair: Thank you, Mr. White.

I was remiss in not mentioning the two individuals you have with you, Stephen Foster and Superintendent Dean Buzza.

Welcome here.

We'll move on to Madam Jennings, for seven minutes.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you very much, Mr. Chair.

Thank you for your presentation.

I listened very carefully to the presentation and read earlier the written copy. I don't seem to see anywhere in your presentation where you make a statement—positive, negative, neutral—about Bill C-52.

What is the RCMP's view of Bill C-52?

Commr Stephen White: In summary, it's a bill that we support. We see no major concerns with the legislation.

I believe mandatory sentencing has the potential to be a useful deterrent against any criminal activity. Potential criminals will know with certainty that there will be a consistent minimum consequence for carrying out fraudulent activity that exceeds \$1 million.

So in that regard, yes, it is a piece of legislation that we're supportive of.

Hon. Marlene Jennings: Thank you.

Next, in your presentation on page 6, when you talked about the IMETs, the integrated market enforcement teams, you said, in the very last sentence of that section, the following:

The IMETs investigate serious Criminal Code capital market fraud offences that threaten investor confidence or economic stability in Canada.

What kind of capital market fraud offences are you speaking of?

Superintendent Dean Buzza (Director, Integrated Market Enforcement Team, Royal Canadian Mounted Police): The frauds we see most often are in the news and are today known as Ponzi schemes. We see something that we refer to as “pump and dump”, a scheme in which people will flood the market with shares, wait for the price to go up, and then withdraw their moneys. We see false prospectuses being issued. We see miscommunication of the financial situation of a company.

These are the mainstays.

Hon. Marlene Jennings: Thank you very much, because I'm assuming that you've read Bill C-52 and that you would have therefore noticed that the amendment being brought for a minimum mandatory sentence does not apply to certain related offences such as fraud affecting the market, fraudulent manipulation of stock exchange transactions, insider trading, or a false prospectus.

Now, given what you've just talked about, would you not consider that as offences involving more than \$1 million, these might be those to which a mandatory minimum sentence would and should apply?

• (1545)

Commr Stephen White: Yes. I think to have those types of offences included would be consistent, in line with it being, if it's over \$1 million, a type of major fraudulent activity.

Hon. Marlene Jennings: Thank you.

My next question has to do with the next paragraph on page 6 of your report, where you talk about the IMETs reformulation. You give a brief description of the fact that Mr. Nick Le Pan was appointed senior expert adviser to the RCMP to help you “develop and guide” the implementation of recommendations aimed at improving the IMETs.

Apparently, one of the challenges he identified through his recommendations is that of equipping the IMETs with the tools and resources they need to succeed in the environment they operate in. What are those tools and resources you need that you do not have sufficient of at this time?

I'm assuming that Bill C-52 will apply if in fact we succeed in convincing the government to bring in the amendment so that the mandatory minimum applies to these capital market frauds, which it does not do at this time. There are other resources and tools you need. What are they?

Commr Stephen White: On the big components that were recommended by Mr. Le Pan in his report, a lot of them had to do with adding new resources to help us expedite some of our investigations.

As I mentioned earlier, these investigations are long and very paper-intensive. A number of the recommendations dealt with adding additional resources for things like transcribing documents and for overall major case management for these big cases.

As well, they dealt with additional resources for our technological crime units. A lot of the work we do in the area of IMETs and financial crime has a technical component to it. There was a lot of reorganizing of the whole HR structure and the IMETs in order to help us retain expertise within the program. There's a multitude of new resources. I say resources, but I would look at them as tools at the same time.

Hon. Marlene Jennings: From your description, these new resources clearly call for an additional budget. Or are you going to tell this committee—you may very well do so—that the current budget IMETs have to operate with is more than sufficient to, again, cover the cost of these new resources?

If it isn't, have you seen an increase in your budget? What is the budget right now? What kind of increase would you need or have you received in order to be able to implement these recommendations about new resources?

Commr Stephen White: Yes. There was additional funding provided at the time for the implementation of these recommendations.

Hon. Marlene Jennings: And it was how much?

Commr Stephen White: It was an additional \$10 million.

Hon. Marlene Jennings: Okay. And that covers you for what period of time? Is it recurrent?

Commr Stephen White: My understanding is that it will be ongoing funding. Yes.

Hon. Marlene Jennings: Okay. Thank you.

I have no further questions at this time.

Thank you very much for your answers. They were very clear and very succinct. I appreciate that immensely.

The Chair: Thank you.

We'll move on to Monsieur Ménard for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): In your brief, which I read, you talk about cooperation with forensic accountants. Could you tell us what context they work in? Do they work within squads like the ones you already have in Canada or do you, rather, ask them for advice on occasion?

• (1550)

Commr Stephen White: Most of the forensic accountants are permanent staff, embedded within the actual teams.

[*English*]

There's definitely one full-time forensic accountant in each of the IMETs in Vancouver, Calgary, Montreal, and Toronto. On an as-needed basis if we require additional forensic accountants, we will go out and obtain that service.

[*Translation*]

Mr. Serge Ménard: Do those people have the same university education as the CA?

[*English*]

Commr Stephen White: Yes. In my understanding, they are all either general accountants or chartered accountants, but they are accountants.

[*Translation*]

Mr. Serge Ménard: Are they civilian members of the RCMP?

[*English*]

Commr Stephen White: No, most of them are contracted through the forensic accounting group at Public Works and Government Services Canada.

[*Translation*]

Mr. Serge Ménard: So they are with the Department of Public Works?

[*English*]

Commr Stephen White: Yes.

[*Translation*]

Mr. Serge Ménard: What advantage would this legislation give you in prosecuting frauds currently?

[*English*]

Commr Stephen White: I can't speak in terms of prosecuting; I can only speak from an investigative standpoint. Obviously, public prosecution or provincial prosecutors would have to speak from a prosecution viewpoint, but the bill is a sentencing bill, as it is, from my understanding, so it would not impact the investigation.

As I mentioned at the outset, I would hope that this type of legislation, at least in some instances, would be a deterrent to any individuals looking to become involved in significant fraudulent activity, so in that way it would be a potential benefit from an investigator's standpoint. But I can't speak to the prosecution standpoint.

[*Translation*]

Mr. Serge Ménard: This bill aside, are current laws adequate for the fight against frauds that you are aware of?

[*English*]

Commr Stephen White: I would have to say yes. This current legislation is not adding any new offences and the primary offence we always work with, whether it be in the area of capital markets or any type of other fraud, is the fraud provision within the Criminal Code of Canada, which covers a very broad spectrum of fraudulent activity, obviously.

[*Translation*]

Mr. Serge Ménard: The Criminal Code provisions on aiding and abetting are rather broad. In the case of a major fraud, do you charge all of the people who perhaps knew that the organization they were working for was committing a fraud?

[*English*]

Commr Stephen White: We would definitely hope we have sufficient evidence of any individuals being involved in fraudulent activity. Again, it's difficult to articulate without having a specific case in front of us. In every investigation we try as much as possible to identify the broadest scope of individuals involved in a fraudulent activity and, as much as possible, develop evidence to eventually charge and prosecute as many of those individuals as possible. I can't say whether in every instance we were able to do that; however, that is our goal.

[*Translation*]

Mr. Serge Ménard: Insofar as these people are aware that the business is in the process of defrauding the population or some people, whether it be an accountant, a president, a secretary or a receptionist, and you have evidence of their participation, you are prepared to charge them, are you not?

• (1555)

[English]

Commr Stephen White: If we have evidence of their participation, certainly we... That's the key part of our investigation now, whether or not an individual may have knowledge that something is going on. They may have knowledge. They may have no role at all, in terms of participating in criminal activity, but through their role in a company or an organization they may come into knowledge that something is happening. At that point they would become a witness. We would definitely hope, if that individual is identified, that they would come forward as a witness, or they would agree to cooperate with law enforcement if and when they're approached.

[Translation]

Mr. Serge Ménard: But do you tell them that they could be charged?

[English]

Commr Stephen White: Again, it depends on their potential or actual involvement in the particular fraud or criminal activity. It would come down to a very specific case. We'd look at that case and the evidence, together with the prosecutor, as well. Obviously, they would have some determination in looking at the evidence and determining whether or not there were sufficient evidence to criminally charge someone.

[Translation]

Mr. Serge Ménard: Lately, we have read in the newspapers about several fraud cases with a value of over several million dollars. In fact, do you recall a person being convicted for fraud over a million dollars who was sentenced to less than two years?

[English]

Commr Stephen White: I am not aware of any recently where they were the principal suspect in a fraud over \$1 million and got less than two years.

I'll refer to my colleagues to see if they're aware of any recently.

Steve.

Superintendent Stephen Foster (Director, Commercial Crime Branch, Royal Canadian Mounted Police): My understanding is that there have been a few. I'm aware of a few instances of fraud involving an amount over \$1 million where the sentence received was less than two years.

But there aren't many. As I recall, the minister had said the number was 12, actually.

The Chair: Thank you.

We'll move on to Mr. Comartin, for seven minutes.

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

Thank you, gentlemen, for being here.

I guess the difficulty I'm having is trying to get my head around the frequency and the volume.

The Pricewaterhouse study obviously was an international study. Have you done any analysis as to whether their methodology is accurate? Does it give us a clear picture? There is not much on

Canada, but does it give us a clear picture of the problem internationally?

Commr Stephen White: I can't speak to the methodology. Unfortunately there aren't a whole lot of studies that deal specifically with trying to measure the magnitude of fraud. Without actually knowing and looking at what their methodology is, no, I wouldn't be able to comment on that.

Mr. Joe Comartin: They repeatedly indicate that there are four major sectors where the fraud is taking place. Is that accurate for Canada as well?

Supt Stephen Foster: Could you quickly identify those four sectors?

Mr. Joe Comartin: Sure...but I lost the page.

It was insurance, financial services, technology, and... I'm trying to find the fourth one. I think banking was the fourth one. I think they were differentiating between the financial sector—stock markets and that kind of thing—and the banking sector. I think that was the fourth one.

Have you any sense of whether that is mirrored in Canada?

Supt Stephen Foster: Without trying to explain it in too much detail, there are different types of crime committed. Some of those crimes would involve banks. Other crimes would involve financial institutions. Technology crimes might be frauds involving the Internet.

Those are areas where we see significant activity, but I don't know that I would categorize them in the same way that report does.

• (1600)

Mr. Joe Comartin: Is there one sector that would be at the top of the list currently, say in 2007 to 2009? I am looking at both the frequency of the crimes and the dollar volume.

Supt Stephen Foster: From the fraud perspective, commercial crimes area, we see significant fraudulent activity in the area of counterfeit cheques and mass marketing fraud.

Mr. Joe Comartin: In that regard, the mandatory minimum being imposed if this bill goes through starts at \$1 million. I know that the members of the committee are struggling with this as well. I'm trying to get some sense of how many there are. We have a few cases that the minister's office sent us over the weekend.

Have you any sense as to whether that is a proper cut-off? In particular, should it be lower? I'm not asking so much for an opinion. Is there any evidence as to what figure we should be using as an appropriate one?

Commr Stephen White: I don't think there's any definitive evidence of what that amount should be. I think it would be safe to say that there is a lot of fraudulent activity happening that collectively would be in excess of \$1 million.

As Superintendent Foster just said on mass marketing fraud, for example, a lot of it is perpetrated right across the country. Individually, in a lot of small towns and communities across Canada, you may only have a handful of victims who are the subject of that particular criminal activity, but if you take that and multiply that by most small communities right across Canada, you could have an organization that's victimizing a large number of people and collectively would definitely be over \$1 million.

I can't say the number of instances we've seen recently where the fraud has been over \$1 million, but I would think there are quite a number of them, yes.

Mr. Joe Comartin: You set out both in your statement and in a written form that the number of incidents you're investigating has gone up. Can you give us any sense of whether that's because of the increased number of personnel you have working in the field or whether it in fact indicates a rise in the occurrence?

Commr Stephen White: I would say a bit of both, but definitely a rise in the level of occurrences. Especially with the increase in technology, committing a lot of fraudulent activity today is so easy, and it's very lucrative. When we talk about the mass marketing frauds, for example, what before would take a large group to do a large telemarketing type of fraud, now one individual can do sitting in front of one computer and hitting hundreds of thousands of potential victims in a short period of time.

Mr. Joe Comartin: Are there any recommendations from the RCMP in the preventative area? Is there technology we could be deploying to prevent that from happening? Are there regulations, say, under our consumer legislation that would help prevent them from ever happening?

This bill obviously deals primarily with—other than maybe the prohibition section—accepting that we failed, and then deals with penalties. Does the RCMP have any recommendations on prevention?

Commr Stephen White: In terms of tools for that, I think we have largely what we need. Where we're trying to put a lot of emphasis right now is in the area of education and prevention. I say enforcement is very costly; the better we can do at educating and awareness to prevent these crimes, the greater impact for Canadians.

I'll just mention one thing that we're trying to do right now. Because a lot of the victims who are targeted are right across the country and any one particular area may only have a small number of victims, locally it may not look like there's any major type of criminal activity taking place. However, when you take that right across the country, instead of a pocket of ten victims out in northern British Columbia, now you have several thousand victims across the country being perpetrated by one organization. One thing we're trying to put a lot of emphasis on is getting all that intelligence in as real time as possible, to bring it together so we're able to see very soon, at least in the early stages, that it isn't a small-scale fraud, it is a large-scale fraud with multiple victims across the country. The quicker we can see that, the quicker we can get out with public messaging to Canadians and try to prevent, educate, and make them aware of this activity happening so that when it does come to their community or they get calls, or messages over the Internet, they're aware. That is the key to prevention, and it's a challenge.

• (1605)

The Chair: Thank you.

We'll move on to Mr. Woodworth for seven minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): *Merci, monsieur le président.*

Thank you to the witnesses for appearing here today. I want to repeat my own apologies for the fact that it has been a bit of a struggle to get you here. We do appreciate your patience.

I want to zero in on one particular part of your presentation, Superintendent White.

Often we hear the notion that crime rates are going down in Canada, and therefore, if crime rates are going down, what in the heck is the government doing by trying to tweak up our justice system?

The logic of that has always escaped me. If only a thousand people are being defrauded instead of two thousand, it seems to me that the government still ought to be improving our justice system.

Your evidence today is very important, and I'm going to repeat some of it. You say, in terms of financial crime trends, the RCMP is seeing an increase in the volume and complexity of mass marketing frauds and identity thefts. Payment card and counterfeit payment card frauds have also increased substantially. An increase in Ponzi schemes is also emerging. In recent years, the Canadian Anti-Fraud Call Centre has documented an increase in the overall number of reported incidents of mass marketing fraud in almost all provinces.

I'm glad we were able to hear that evidence. It serves to buttress our government's approach, in my opinion, in making some much-needed changes to the law on sentencing and fraud.

Apart from that, as you know, Superintendent White, our committee is currently undertaking a study on organized crime. If I'm not mistaken, you have appeared before us on that. Can you tell me how involved organized crime groups are in these kinds of frauds that I've just mentioned? In terms of mass marketing fraud, identity theft, and payment card and counterfeit payment card frauds, how much of that is coming out of organized crime groups?

Commr Stephen White: I can't say definitively. I guess what I would be able to say, though, with any degree of accuracy, in answer to whether organized crime is involved in some of these activities, is definitely. We haven't gone out to study exactly to what extent.

I guess it comes back to what I mentioned earlier. White-collar crime today can be conducted a lot more quickly and with a lot more ease than in the past, and it's very lucrative. In just by those two elements combined, I would think we're going to see a larger migration of organized crime groups towards that type of activity.

Have we seen some organized crime groups involved in this type of activity? Yes, we have.

Mr. Stephen Woodworth: I suppose in my non-expert way of looking at it, it seemed to me that some of these schemes are so sophisticated that they, by definition or by nature, require a degree of organization. So it would not surprise me, at least, if you see more along that trend.

The other item of interest for me in this has to do with what you just said, that these crimes are very lucrative. Of course, when it comes to fraud, we know that it's all about making a quick buck and it seems sometimes as if people engaged in fraud treat sentencing, in some cases, as the cost of doing business.

These offences are non-violent. The people involved in them are naturally good at charming people. Consequently, when they come to court, it's not a surprise to see that they are able to put on a convincing show and justify conditional sentences, reduced sentences. So we're wrestling with the idea that a million-dollar fraud is a serious crime that will automatically put people away for two years regardless, in fact, of whether there are any other aggravating factors.

What we want to do is restore confidence in the justice system. We want people to know that there is no chance an offender will be sentenced to anything less than two years. We feel that it will go a long way toward restoring the public's confidence in our justice system.

I wonder if you might comment on that. Do you agree or disagree? Have you any thoughts about how the victims of crime are going to react to that minimum mandatory penalty?

• (1610)

Commr Stephen White: I would assume they would react positively. Minimum mandatory sentencing has the potential to be a good deterrent for those committing the crimes. But at the same time, victims would expect at least a minimum consistent consequence for anyone carrying out fraudulent activity of that magnitude. From my perspective, any fraudulent activity of \$1 million or more is significant. I think victims would look very positively at that.

Mr. Stephen Woodworth: It'll be interesting to see if some of the mass marketing crimes will attract the minimum mandatory, at least for those who are organizing the crimes. I think letting the public know that we're enacting a mandatory minimum penalty will give people some extra confidence in what the law has to do.

My last question stems from your comment that eliminating profit eliminates the incentive to commit profit-driven crimes. You spoke about an integrated proceeds of crime program that would identify and forfeit illicit and unreported wealth accumulated through illicit activities. You mentioned that there has been more than \$64 million in cash and property seized since 2003, and that another \$142 million has been seized and is waiting for disposition.

You're familiar with the restitution provisions of the new act, which require a judge to consider making a restitution order and to give reasons if he decides against making one. Could you comment on how that will work with the integrated proceeds of crime program that you mentioned?

The Chair: Short answer.

Commr Stephen White: A short answer is that we'll be able to do a better job of identifying and forfeiting proceeds generated from the criminal activity. In the current regime, this is forfeited to the government. In respect of its restitution potential, I'm not sure how the mechanics would work. But from a proceeds-of-crime perspective, the more that can be identified, restrained, and eventually forfeited, the better. How this would be incorporated

into a regime that would support victims is something that has to be looked at in more detail.

The Chair: Thank you.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

Members of the panel, most of my questions will centre on the integrated market enforcement teams, or IMETs.

You covered a lot of territory in your submission, so I think we need to drill down on what IMETs have been doing since 2003. In particular, since we're discussing whether there has been a growth in commercial crime activity—and I think there has been—it might be useful to put more flesh on the IMET bones.

I understand they were established in 2003 in Toronto, Montreal, Vancouver, and Calgary. Is there a plan to expand to other locations? Are they cooperating well with the prosecution services, forensic accountants, and financial advisers? Are there any statistics on the number of crimes that have been detected and brought to conviction by IMETs? Does this bill do anything for IMETs? Are you sufficiently resourced to do what you do?

What were Nick Le Pan's recommendations? He tabled a report, I understand, in 2007. He talks about tools and resources. You say that you're trying to meet those needs. How's that going? I wonder if in his 2007 report any of the aspects of Bill C-52 were the tools asked for. I suspect that it had more to do with resources; with bringing down the barriers between the financial sector, commercial crimes units, and prosecution offices; and with encouraging more cooperation and an easier flow of electronic information.

We're very much in favour of IMETs. Could you give us a history of how this has gone since 2003 and tell us where you want to go in the future?

• (1615)

Commr Stephen White: Certainly. I look forward to that opportunity.

I'll give you just a 30-second history. They were created in 2003. As with any new unit being created, there were a lot of challenges. You have to do everything from going out to identify individual staff, to getting locations, to building up investigative teams, and to getting them working. Even though the concept was created in 2003, there was still a period of emergence, and that took a bit of time.

We're cognizant that there have been a number of criticisms of IMETs over the last number of years in terms of the timeliness with which their investigations were completed, but from my perspective, from the law enforcement perspective, those investigations have progressed very much in line with any other major type of investigation that's conducted by law enforcement.

So from about 2005-06, they were really up and running and into their investigative stage, and they started doing a lot of these investigations. As I said earlier, the vast majority of these investigations are multi-year investigations, two- or three-year investigations. In 2009 we started to see with a lot of these investigations that the investigation phase came to a conclusion and resulted in the laying of criminal charges.

Over the last few years, in the four locations across Canada, of the 18 major investigations that were on the go, nine of them have now been completed and have resulted in criminal charges and are currently before the courts. We hope to have a number of other investigations conclude in the near future, and then we have a number of other investigations that are continuing.

I think the results over the last little while show that IMETs are now working effectively, and we are getting the results in, as I said, a number of major investigations.

With regard to Nick Le Pan, I think there were just over 30 recommendations in total, so there were quite a number of them. A lot of them dealt with, as I mentioned earlier, the new resources for those key components, the sort of labour-intensive components of investigations to help us. What we didn't want to do, for example, was major case management, transcribing, getting all the disclosure material together in an investigation. We didn't want to have our front line police officer investigators in the office doing that type of work, so that's why the additional support staff was critical to doing that. We brought in more support staff, and that freed up some time for our investigators to do the main investigations.

It's a huge topic that would take quite a while to go into. I can do a lot more, but I'm cognizant of time.

The Chair: Thank you.

Monsieur Lemay, you have five minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chairman.

Thank you for this third visit. It was third time lucky, and very interesting by the way.

I am going to continue the same line of questioning as Mr. Murphy. I would like to know if the integrated market enforcement teams are solely intended to follow market developments, frauds that are perpetrated on the Vancouver, Toronto or Montreal markets. Is that in fact what you are saying, or is the mandate broader than that?

• (1620)

[*English*]

Commr Stephen White: The mandate is primarily any type of investigation related to capital market fraud, so it could be directly related to the stock exchanges located in those cities. A lot of that type of activity would occur primarily in those cities, and that's why those units were set up in those locations. Even if there is a market-related type of fraud in another part of Canada, we have what we call a quick-start capacity through which we will take a number of resources from our team here at our headquarters in Ottawa,

probably take a number of investigators from existing units, and we will go and try to quick-start a related investigation.

That would, again, be in partnership as well with our commercial crime units, which are located in 26 different areas across Canada. Even though the IMETs are the primary lead in doing those types of investigations, our commercial crime units are also doing a number of capital market fraud-related investigations as well.

[*Translation*]

Mr. Marc Lemay: Thank you.

As far as money laundering is concerned, we have seen a lot of that currently with organized crime. In some cases they take control of businesses in order to launder sums of money, and very often these are legitimate businesses.

Is this program currently working well? Moreover, are you able to follow the money trail, not only in Quebec in particular, but also in Canada and outside of the country, that is to certain tax havens? Are you currently able to follow the money trail?

[*English*]

Commr Stephen White: The short answer is, yes, we can follow the money. Obviously the number of cases we can do are limited by the resources we have. However, you hit on a key component of money laundering, and that is establishing a legitimate business and integrating your illegal proceeds from criminal activity with the legitimate revenue of the company. It's a very mainstream way of laundering funds. Indeed, a lot of funds are laundered internationally before they're brought back into Canada.

Again, the success we could have chasing the money outside of Canada is dependent on the partnerships we have with those countries. Around the world we have fairly well-established partnerships for doing this type of work. When we have the opportunity to do so, I think we have been and can be very successful in following the money trail outside of Canada.

[*Translation*]

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Thank you.

We'll move on to Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. White.

I have a question for you. Earlier on, at the beginning of your presentation, you talked about minimum sentences. I would like to draw your attention to the fact that I come from Quebec, where the Lacroix case has acquired great importance.

Lacroix was a broker who had a company that was legally sold by the Caisse de dépôt et placement du Québec. He had all the Quebec licences but he nevertheless managed to defraud 9,200 people using a very particular system. As for Earl Jones, he had no licence but he dealt with the bank with which he held accounts in trust. It would appear that they worked on the trusts. The third case is that of Mr. Lafleur, which is related to the sponsorship scandal. He had assets that were traced to Belize, where he was living in a mansion. Then, we had the case of Mr. Coffin who was sentenced to less than two years in prison even though he had perpetrated frauds of over a million dollars. He paid the government back one million dollars, but he did not go to jail.

I would like to know what purpose minimum sentences serve? As you can see, in everything I have mentioned, there are legal issues and vast sums of money involved. Do you believe that a two-year minimum sentence will be significant? How will you follow the money trail? In the case of Mr. Lafleur, we know where the assets are but we are having difficulty getting to them. What would you do in such a case?

•(1625)

[English]

Commr Stephen White: First, as I said earlier, the two-year minimum mandatory sentence probably will be, in some cases, a very strong deterrent for some individuals. Others, who are definitely committed to doing large-scale fraud, may commit to that fraud anyway, regardless of whatever minimums are out there. I'm a firm believer that in a number of cases it has a strong potential to be a useful deterrent. As I mentioned earlier, in terms of chasing the money outside of Canada, it depends on partnerships and the cooperation of foreign countries, as well. It's out of our jurisdiction. We have no jurisdiction in those countries.

We have a number of mechanisms to assist in our investigations. For example, the Mutual Legal Assistance in Criminal Matters Act is a mechanism under which we do most of our bilateral-type investigative work with foreign countries. Again, it depends on the country. It depends on the type of case. No two investigations in a foreign jurisdiction are alike.

Again, without speaking of any specific investigations, I can say that I think we do a good job trying to locate money. It comes down to how we interact and engage that foreign jurisdiction to cooperate with us and work closely with us.

The Chair: Thank you.

Before we let you go, I just want to clarify something Ms. Jennings asked that had to do with the provisions in the Criminal Code that address the whole issue of stock market manipulation and insider trading. I believe it is subsection 380(2).

It's my understanding that subsection 380(1) is actually the general fraud provision. If the elements of the offence were made out under subsection 380(2), which are the stock market provisions, that would still make a case under subsection 380(1). So it would be open for there to be a mandatory minimum sentence if in fact that particular offence were made.

Is that your understanding?

Commr Stephen White: Yes, it's not clear; I think it would require a clarification of whether it is only section 380 or whether it is...

Right now I'm assuming it is only section 380—

The Chair: It would address subsection 380(1).

Commr Stephen White: —the general fraud provision.

But I would assume for any major fraud that's over \$1 million, for consistency in application, I think there would be value in considering that.

The Chair: And I'm assuming that when you undertake to charge an accused, you would charge them not only under the stock market provisions, you'd probably charge them under the general provisions as well. Is that correct?

Commr Stephen White: Yes, that is correct. Almost in all cases there would be a section 380 charge of fraud that would accompany it. So it would be covered in that regard.

The Chair: All right. Thank you for that clarification.

Thank you to all three of you for providing testimony. It's very helpful, and it will go a long way in helping us go to clause-by-clause on this bill.

Thank you.

• _____ (Pause) _____

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•(1635)

The Chair: We'll reconvene this meeting of the Standing Committee on Justice and Human Rights.

We now have with us a number of additional witnesses on Bill C-52. I'll just go through them for the record.

First of all, representing the Government of New Brunswick, we have the Attorney General and Minister of Justice, the Honourable Michael B. Murphy.

Welcome here.

We also have the Canadian Bar Association, represented by Suzanne Costom as well as Gaylene Schellenberg.

Welcome back.

The Department of Finance is represented by David Murchison, Manuel Dussault, and Joan Monahan.

Welcome to the three of you.

By video conference out of Toronto, we have Mr. Al Rosen, representing Accountability Research Corporation.

Welcome to you as well.

We'll begin with the Honourable Michael Murphy.

Each organization has ten minutes to present. Then we'll move to questions from our members.

Mr. Murphy, please.

Hon. Michael B. Murphy (Attorney General, Minister of Justice and Consumer Affairs, Province of New Brunswick, Government of New Brunswick): Thank you very much, Mr. Chairman.

I am pleased to have the opportunity to speak in favour of Bill C-52 and to provide the committee with some information with regard to our government's position on it.

Before I touch on Bill C-52, I want to give you some background on our government's views with regard to our agenda on these matters and what has led us here today.

[*Translation*]

Part of my responsibility as Attorney General of New Brunswick is to support efforts that will increase the criminal justice system's efficiency and to promote reforms that will inspire a solid level of confidence in the system. I firmly believe that all law-abiding citizens have the right to live in a safe and secure community. They must be able to count on a criminal justice system that protects them against harm and the fear of harm. It is essential to maintain the public's confidence in our judicial system. They must be wholeheartedly convinced that the system protects them against harm and enables them to live free from the fear of becoming a victim of crime. They must have confidence that the system will deal appropriately with those who break the law.

[*English*]

Since I became Attorney General in June of this year—after three wonderful years as Minister of Health—I have supported many of the measures brought forward by Justice Minister Nicholson here in Ottawa. I believe the laws with regard to our criminal justice system must have meaningful and proportionate consequences for those who offend. There are very serious offences of a violent nature out there, but of course there are very serious offences of a non-violent nature that cause complete disruption to certain lives. Often those crimes are committed against our most vulnerable.

Just to give you some past record, we have in New Brunswick supported Bill C-25 in terms of losing the two-for-one remand. We believe remand lost its purpose with regard to the reason that there was a two-for-one credit.

We supported Bill C-15, with its mandatory minimum sentences for those involved in the production or trafficking of drugs, because it was to protect our most vulnerable, those being our children and those afflicted with drug use. I did see that close up as Minister of Health. That is a very sad picture across the country.

Of course, we're also pleased with Bill C-36, the faint hope clause, and the progress being taken towards passage.

In New Brunswick we have taken some steps to make our communities safer. Last week we partnered with the Child and Youth Advocate in his request that there be a law in New Brunswick for consumer protection. This stems from the report that there ought to be a law protecting children's online privacy in the 21st century. We partnered with them for a working group that includes the Child and Youth Advocate's office and the Department of Justice. We also put on that working group a member of the opposition in New Brunswick, because we do not believe—I am sure members of this

committee will agree—that this is in any way, shape, or form a partisan issue.

The working group will come forward with legislation in the spring of 2010. We hope to bring that into the Legislature next fall. We believe this will complement Bill C-58, which, as you know, is the federal bill that will require mandatory reporting by Internet providers when it comes to child pornography.

• (1640)

[*Translation*]

For that reason, I have asked the officials in my department to form a working group with representatives of the Child and Youth Advocate's Office to study possible amendments to our province's legislation that would allow us to achieve these goals. The working group will be submitting its report to me in the spring of 2010.

[*English*]

With respect to the bill under consideration, Bill C-52, we're pleased that this is a bit of a crackdown on white-collar crime, because white-collar crime is committed most often at the expense of the life savings of our most vulnerable. These victims are, by and large, the elderly, those who sometimes do not have the wherewithal to see some of the red flags that are there, but we know one thing: all of these victims are individuals who worked their entire lives for what savings they have. Those savings may be \$15,000, \$50,000, \$300,000, or possibly \$1 million, but it means absolutely everything to them, so I want to make three points with regard to Bill C-52.

First of all, the New Brunswick Securities Commission has been active and effective in taking steps to protect investors from unfair, improper, and fraudulent practices, and I'm confident that Bill C-52 will complement the work of the securities commission in New Brunswick by providing for a minimum two-year sentence for fraud exceeding, cumulatively or in a single instance, \$1 million. It will send a very clear message to those who believe they can perpetrate this crime.

On this first point, though, I'd like to say that while there is an inclusion of additional aggravating factors that can be applied in sentencing, I'm going to urge this committee to consider a figure below \$1 million, and I will get into a story very shortly. Suffice it to say that \$20,000, \$30,000, or \$50,000 means absolutely everything to a person who's worked all his or her life. The person gets it and starts to use it at the age of 65 and plans to use it very sparingly between ages 65 and 85 to make ends meet. When they lose that money because of a fraud, it is just as devastating to them as the loss of several hundreds of thousands of dollars or a million dollars.

The second point I want to make with regard to Bill C-52 is that the bill will require judges to consider restitution. In New Brunswick we have a provincial proceeds of crime unit that's been very successful, but we are also bringing forward a civil forfeiture act in January that I think will complement Bill C-52 and our proceeds of crime unit. The civil forfeiture bill in January will allow the Department of Justice, through its lawyers, to sue individuals who have used their property—whether it's their home office, their computer, their small office building, their big office building, or whatever—essentially as a tool of crime. They will sue for that property.

We have, in this country and in New Brunswick, seen far too many times someone who was sentenced to six months—or a year and a half, or even two and a half years—go back to the very large home or office building or whatever property the person had that had been used to perpetrate the crime. The civil forfeiture act that we envisage in New Brunswick will be in compliance with the same civil forfeiture act that's been tested before the Supreme Court of Canada and found valid. The civil forfeiture act under a different name in Ontario and British Columbia has been very successful; 99% of the time the defendants walk away, because they don't want to sign an affidavit outlining that they have a \$20,000 income and \$1 million in assets. They were told, I think it was in Ontario, that they had three years to be self-sufficient, and in fact that was attained after 18 months. As you know, it is on a balance of probabilities, which is somewhat easier in that sense than the “beyond a reasonable doubt” onus.

•(1645)

[Translation]

Lastly, I want to point out that if we are to succeed in the fight against securities fraud, it is crucial to be able to count on sufficient resources to provide the expertise required in the complex fields of investigation and detection. Canada's other orders of government have said that federal assistance is essential for improving their detection and law enforcement capabilities, and I echo their arguments. Increased probability of detection can be a key deterrent to crime.

[English]

Look, ten minutes is not a lot of time. It usually takes one of the Murphys ten minutes just to clear our throats.

Suffice it to say, I would think there is no magic in this \$1 million figure. I think this Bill C-52 is a very good bill, and I applaud the government for bringing it forward. At the same time, you know, if you have 30 acts against individuals who lost on average \$30,000, that can be just as devastating to that family or to many families as a bullet would be to any of those victims.

I think it has been a long time that we have been looking at the rights of the offender. We've certainly considered and we respect the charter, and we respect the principles of the Criminal Code of Canada, but there is no reason why we should not be theming within our federal acts, and our provincial acts, the rights of the victims of crime. I think all of these bills—federal and provincial—should consider that.

[Translation]

It is because we want to set the record straight.

[English]

We want to bring the pendulum back so that the people in the communities across this country know those acts are designed to protect them on deterrence and punishment, and on restitution. The restitution aspect can be accomplished in some part by Bill C-52 but also considerably enhanced by a civil forfeiture act's being brought forward in all the provincial legislatures.

I'm asking the committee to consider a figure below \$1 million. I'm certainly fine with the two-year minimum sentence, but I do

believe we have to consider that there is just no magic in that. There are an awful lot of people who can tell you a story where their lives have been ruined and their extended families' lives have been ruined on figures of \$30,000, \$40,000, or \$100,000.

I'll conclude by saying this. There was a gentleman who came to my office about two months ago, and he had been defrauded of a figure many times smaller than \$1 million. He was embarrassed. He was 75 years old. He was crying. He didn't know what to do, and the fact was that all I could tell him was that there would be an investigation by the securities commission with regard to fraudulent practices and that the prosecutors would deal with this and would look at the statute. I would have liked to tell this individual that there was a minimum sentence of two years for something such as that, but I couldn't. I would have liked to tell him that there would be a minimum sentence of two years for the amount he had been defrauded, which was every bit as powerful to his family as a bullet right through any member of his family.

Sometimes it takes the visuals, and sometimes it takes the story and the face of a victim before you to understand the significance of the crime. While we have acts of violence that are looked after by the Criminal Code of Canada, the repercussions of acts of white-collar crime against our vulnerable can be every bit as devastating as the violent act.

Thank you.

•(1650)

The Chair: Thank you very much.

By the way, we are going to have some victims here at our next meeting on Wednesday.

We'll move on to the Canadian Bar Association.

Ms. Schellenberg, are you presenting?

Ms. Gaylene Schellenberg (Lawyer, Legislation and Law Reform Directorate, Canadian Bar Association): I'm beginning.

Thank you for the invitation to present the Canadian Bar Association's views on Bill C-52 to you today. I'm Gaylene Schellenberg, a lawyer with the legislation and law reform department of the CBA. The CBA is a national association of more than 37,000 members, including law students, lawyers, notaries, and academics. An important aspect of our work is seeking improvements to the law and the administration of justice. It's from that perspective that we appear before you today.

With me is Suzanne Costom, an executive member of the CBA's national criminal justice section. The section represents crowns and defence lawyers from every part of the country. Ms. Costom is a defence lawyer from Montreal who also practices in ad hoc prosecutions.

I'll pass it over to her to present the substance of our brief.

Ms. Suzanne Costom (Executive Member, National Criminal Justice Section, Canadian Bar Association): I want to reiterate the thanks that Gaylene just expressed, both to the chair and to the committee, for allowing the Canadian Bar Association to express its views today on Bill C-52.

I want to start by saying that the Canadian Bar Association certainly understands and supports the thought process and the concerns that went into this bill. Anything that would deter crime and anything that would deter people from being victimized by white-collar crime is certainly something that the Canadian Bar Association wants to support.

As a Montrealer, I can tell you I recently walked into the lobby of my office building and overheard a gentleman telling another gentleman at the elevator that he'd been a victim of Earl Jones. He had lost absolutely everything. He had thought he was going to retire, but it wasn't looking so good for him. I can tell you, both as members of the committee and on a personal level, that these are things we are certainly heartbroken about when we hear them.

The other thing the Canadian Bar Association certainly supports is the concept of making victims whole. If restitution could be effected to victims through our criminal justice system, that would be a phenomenal result.

We recognize legislation that recognizes the particular features of particular victims and recognizes that different victims are heard differently, depending on the nature of the crime and the nature of the offender. All of those sorts of concerns, which we see reflected in this bill, are good concerns.

That being said, you have our brief, and so I'm not going to surprise you when I tell you that the Canadian Bar Association does not believe this bill should be passed into law. I'll tell you why. It's not because we don't sympathize with the concerns that have gone into the drafting of this bill. It is because we feel that the tools already exist in the Criminal Code.

What the bill does is to make more complex an already very complex criminal justice system, and we think it creates a risk with regard to the administration of justice and justice efficiencies at a time when our resources are such that we need to be working towards justice efficiencies and not away from justice efficiencies.

The other thing I'm going to say, which will not be a surprise to those of you who I know have heard submissions from the Canadian Bar Association before, is that we do not support any legislation that would tie the hands of judges. We, the lawyers, the defence lawyers, the crown prosecutors, the academics on the committee, have enormous confidence in the judges who mete out sentences day after day in the various courtrooms across our country. The hallmark of the Canadian justice system is proportionality in sentencing and the individualization of sentences. When we impose mandatory minimums like the ones being proposed in this law, we by definition move away from those principles, and that is something the Canadian Bar Association has consistently advocated against.

If I can be more specific and concrete with reference to how we believe the administration of justice is an issue in this bill, one of the expressions that jumped out at us is the expression in clause 2, which creates the mandatory minimum sentence of two years' imprisonment for a fraud when the subject matter of the fraud is in excess of \$1 million. We're concerned about the breadth and scope, and also the ability to define, really, what the subject matter of the fraud is.

I will remind everybody—and I know that you all know this—that the Supreme Court has said since 1978, in the case of Olan, that in

order for there to be a fraud there doesn't have to be economic loss. So you have a situation where the subject matter of the fraud may have been \$1 million, but there may have been absolutely no economic loss whatsoever by any individual victims or by any communities. It would seem to us, given the sorts of concerns that went into drafting this bill, that we are very far away from what the goal of this legislation is.

Again, given that we've said before that the subject matter of the fraud is the triggering effect here, and given how important that's going to be, particularly to accused who are looking at being subject or not subject to a mandatory minimum sentence of two years' imprisonment, we foresee, from the justice efficiency perspective, that sentencing hearings are going to become much more complicated and much more complex.

• (1655)

There is no longer going to be any sort of admission as to what the subject matter of the fraud, if you will, will be. We're going to have a situation in sentencing hearings where we're going to have to trot every single victim into the courtroom in order for the crown to be able to prove what the exact amount of the fraud may have been, be it a potential risk, a potential loss, or an actual loss.

In the Criminal Code now, you might point out, there already is this concept of \$1 million as an aggravating factor, and that's true. It was already in the Criminal Code. But in practice, I can tell you that what happened is that it was used as a signal to prosecutors, to defence lawyers, and ultimately to judges that the more significant the amount of the fraud, the more significant the sentence would be.

In that \$1 million mark, the legislators had sent a clear message that this was particularly aggravating. In practice, what that meant was that if the fraud was \$900,000, or if the fraud was \$1.1 million, it was a big fraud, and that was an aggravating factor, but it didn't really matter that it be quantified very specifically. What's going to happen now, because an offender is facing a potential two years' imprisonment upon this \$1 million trigger, is that this amount is going to be very, very important to quantify. So again, we're concerned from a justice efficiency perspective that it's going to create all sorts of blockages.

As an aside, despite the fact that we are not at all in favour of this mandatory minimum or of this triggering of \$1 million, I would submit to the committee that if this part of the bill remains intact, this committee may wish to at least consider adding a provision for notice to the offender, which would require the prosecutor to notify the offender that they consider that the subject matter of the fraud is in excess of \$1 million and therefore they will be seeking this mandatory minimum term. We think that's a fundamental justice sort of addition to the law that can make the law fairer, so we would ask you to consider that.

In terms of other sorts of administration of justice issues, one of the things we're concerned about, despite being in favour of restitution, is that the restitution mechanisms already exist in the Criminal Code. As we know, it's already one of the options that exist in the sentencing provisions of the Criminal Code. Again, I can tell you as a defence lawyer that when our clients can make restitution, we make it, because we know that is going to be very positively looked upon by the judges and hopefully will yield a less significant and less harsh sentence.

The concerns about restitution that were shared among the criminal justice section of the Canadian Bar Association came, believe it or not, from prosecutors, who were concerned that victims were now going to confuse them as being their lawyers, and not advocates of the public interest, because victims were going to turn to them and expect that they would deliver restitution. There is certainly a renewed emphasis on restitution in this bill in that the judge "shall" make inquiries of the prosecutor and the prosecutor "shall" make inquiries of the victim. I can tell you that in practice it happens all the time, but by spelling it out, the crowns in our committee were concerned that it would put them in a somewhat difficult position.

The other thing that I can tell you as someone who is involved in the criminal justice system as a day-to-day practitioner is that when victims of crime and fraud go to the police to lay a complaint, they are routinely told by police officers that if their goal here is to get their money back, they're in the wrong place, because that's not the goal of the criminal justice system. Again, one of the concerns of this committee is that by emphasizing restitution, and by making it a sort of presumption of restitution, people may start to look at the criminal justice system as a sort of collection agency.

The last point, which flows from what I just said, is on the short title of the bill. The criminal justice committee of the Canadian Bar Association has noticed that we've moved away from neutral short titles of legislation and now have short titles like the one we have here, which talks about "retribution" for victims of crime. We would respectfully submit that we might want to consider going back to more neutral titles for our short titles of bills.

Thank you.

• (1700)

The Chair: Thank you very much.

We'll move on now to the Department of Finance, with Mr. Murchison, Monsieur Dussault, and Ms. Monahan.

Please go ahead.

Mr. David Murchison (Director, Securities Policies, Financial Sector Policy Branch, Department of Finance): Thank you, Mr. Chair, and committee members.

We've given you three sets of documents. One is a statement, two is a short presentation deck that describes the enforcement world today, and the third is an expert panel report. Perhaps I can pick a few bits out of the statement and not read the whole thing. Then I'll be relatively brief.

I guess I'll start by saying that the fact I showed up with three people reflects the fact that we don't actually touch the Criminal Code very much, at least in my division. That may change.

First of all, perhaps I'll say that strengthening the integrity of Canada's capital markets is a key priority, of course, for the government and the Department of Finance. It's critical to both protecting investors and promoting healthy capital markets. It's from that vantage point that we come at this.

It's broadly recognized that capital market integrity requires effective regulation, sound governance, and strong enforcement. In that context it's important to distinguish between actions to improve criminal enforcement and those to improve regulatory enforcement.

You've just heard from the RCMP, and they touched on the criminal side of that.

Regulatory enforcement, on the other hand, is currently conducted by the 13 provincial and territorial securities regulators and supported by a number of self-regulatory organizations, SROs. I'll touch on the regulatory side for a moment to say that the government is taking significant action there. The centrepiece of that initiative is the establishment of the Canadian securities regulator with willing provinces and territories.

The final report of the Expert Panel on Securities Regulation—of which I was the executive director, by the way—released in January 2009, underscored that the Canadian securities regulator will help to improve enforcement by

[*Translation*]

consolidating enforcement resources and expertise of up to 13 provinces and territories into a single entity; eliminating unnecessary duplication and overlap; supporting greater consistency in investor protection across Canada; and improving cooperation with federal and international criminal enforcement authorities.

[*English*]

There are a couple of other points to make before I close.

The Canadian securities transition office, which was announced in June, is leading and managing the transition to a Canadian securities regulator. Consistent with its government mandate, the transition office is working to ensure that the Canadian securities regulator has legislative powers and appropriate organizational structure to properly enforce compliance with the securities regulatory system.

It is the transition office that's developing the securities act, which is to be completed in spring 2010, as well as the transition plan, with the input of the advisory committee of participating provinces and territories. At this point we have ten participating jurisdictions, which are each representing themselves on that advisory committee. The work of the transition office is expected to culminate in the establishment of the Canadian securities regulator sometime in 2012.

That concludes my opening statement, Mr. Chair.

The Chair: Thank you. And thank you for your brevity.

We have one last witness. Appearing by teleconference from Toronto, we have Mr. Al Rosen.

Mr. Rosen, you have up to ten minutes to present.

• (1705)

Mr. L.S. (Al) Rosen (Accountability Research Corporation, As an Individual): Thank you.

My background is in investigating many of the big frauds in Canada. If you went through the list of major situations, I think you'd find we were probably involved in two-thirds of them.

I'm not unsympathetic to the comments from the minister in New Brunswick, but I think we have to get realistic about what it's going to take to prevent many of these Ponzi frauds and pyramid schemes and so on.

I have a handout. For full disclosure, I come from two directions. One is that Accountability Research represents research done for investors, and they are subscribers to our newsletters and so forth. The other is that, having testified in court over 100 times on various types of these issues, it's quite different listening to what I've heard from the previous three speakers versus the actuality of Canada.

I want to give some context to what's happening here. If you go back to the Ponzi schemes of 1910, 1920, and if you look into the stock market and trace through what happened in the 1920s leading to the 1929 stock market crash, the U.S. moved in and put in some fairly interesting and tough legislation at the time, in 1933, 1934, with some in 1935. If you look at what Canada has done over the past 80 years, it's not very much; I think that would be the polite expression.

I want to summarize what I think has to seriously happen if we want to protect the average person.

The first thing we have to do is to have an independent body, a Canadian equivalent of the SEC. It's going to be more than a national regulator—it has to be—to look at the prosecutions, the investigations, and all those aspects. We don't have that in Canada now, and there's no sense pretending that we do. I'm being very blunt about this situation.

About two or three years ago, we sent major packages across Canada showing what the problems were. We got very little in the way of response. This was at our cost. We kept at it. I've been writing for more than ten years, especially in *Canadian Business* magazine, and done dozens of other articles. So having been involved in these cases, I see the situation far differently from what I've heard this afternoon.

A perfect example of where we have a major problem in this country is something called international financial reporting standards. This has been adopted in Canada without the legislatures debating it. It's been brought in by the auditors of Canada.

I am astounded that it's gotten this far. And yet, in spite of all the material, the speeches and so on, there it is. IFRS is extremely full of holes that are going to make securities regulation just about impossible in Canada. The reason for that is that management has choices. The rules were written for a country other than Canada.

We've adopted them here in spite of the U.S. going in its particular direction, which is forcing the U.S. companies to use Canadian accounting and reporting.

We have had enough problems over the years. I've published long lists of the cases in Canada where the prosecutions have not occurred; many of them are civil, and the restitution is essentially zero. I think we have to gather considerable facts—and they are available—before we assume that Canada is safe.

Now, not having an independent body to go to in order to ascertain whether some of the legislation going through the system—Bill 198 in Ontario, for example, or this IFRS material—is devastating. Let me explain why.

• (1710)

In December 1996, the Supreme Court of Canada heard a case called *Hercules Management*. The arguments from the Canadian Institute of Chartered Accountants and from the particular large auditing firm being sued in this case were that annual audited financial statements were not to be used for investment decisions.

So on that particular basis, you say to yourself, “Well, just a minute. This destroys what's in companies acts, what's in securities acts. Why do we have financial statements if that's the conclusion?”

The Supreme Court agreed with them. I automatically thought that each of the provinces in Canada would come in with legislation that would correct that matter. But it didn't happen.

That's just one issue. But unlike most of the rest of the world, Canada has allowed the auditors to set the accounting and auditing rules. Here they have a declared statement that they are not acting on behalf of shareholders. The whole concept of shareholders' auditors has disappeared.

So we then have a number of cases...and I have and pages and so on that I could show. If you look just at this decade, we've had Bre-X, Nortel, literally hundreds of income trusts that weren't tax problems first and foremost, they were Ponzi frauds. We've seen very little prosecution of those. We've had the asset-backed commercial paper, and now we have this IFRS.

We're not seriously addressing what is causing Canadians to lose money. On that basis, then, how can we possibly de-regulate, which is what's happening with this IFRS? The U.S. has rejected that, and we're living next door to them. If we want to seriously protect the investors across Canada, we need a whole revamping of the system and not some tinkering in a minor bill.

Let me try to look at some aspects that are particularly important on this.

The *Hercules* decision has devastated the plaintiff lawyers across Canada—I think devastate is the right word—because they will not pursue these types of lawsuits where there's a director, officer, auditor, defendant. If you need names, there are plenty of them around.

In terms of the costs of the class actions, this is a major problem as well. Bill 198, in Ontario, and the changes in the Securities Act are such that the costs of running these cases can be \$5 million, \$10 million, \$40 million. We're just out of context with what's happening.

There's a case in Toronto with huge dollars involved. There's another one in Montreal, Castor Holdings. They've gone on for 20 years.

We've lost the respect of the international community.

That's the nature of what I'm saying. I would assume it's not going over very well to those listening, but that's the reality. I think we have to cease pretending and we have to face the issues.

The Chair: Thank you, Mr. Rosen.

You have one minute left. Or are you done?

Mr. L.S. (AI) Rosen: No, that's fine.

The Chair: You're done? All right.

Mr. L.S. (AI) Rosen: I thought you were warming up to tell me to stop.

The Chair: No, no.

We'll open the floor to questions now.

I believe, Mr. Murphy—the *other* Mr. Murphy—you're going to start.

Mr. Brian Murphy: He's the other Mr. Murphy here.

Thank you, Mr. Chair.

Mr. Rosen, I think we all are listening to what you're saying. You may be illustrating that what we have here is a bit of a silo mentality. We're a justice committee, but many of the questions you're talking about should probably be before the industry committee. At some point, we have to break down those silos and those walls and get into more international standards.

I am quite familiar with the case law on Hercules Management and Castor Holdings. In respect of Hercules, if there had been derivative action, I think there might have been some relief. Nonetheless, your point stands that we're not doing a good job of being modern in securities regulation.

I want to turn my attention to the Canadian Bar representatives, whom I thank for coming. We've had the debate on mandatory minimums. We could spend some time on that—we've been at this for three or four years and the debate goes on. But it's not really the gist of this bill.

I have to take you to task, Ms. Costom, for saying that people who look to the criminal justice system to repair financial loss are looking in the wrong place. I think we have to make it more the right place.

You commented that rewriting aspects of restitution that were already in the code might give people a false sense that something is being done about restitution. I don't think anything in this act helps to increase expectations of restitution. It says that the judge "shall" consider making a restitution order. I don't know any judge who wouldn't consider making a restitution order in most serious cases.

So I think it's surplus. It gives the wrong impression, and we have to do more, perhaps by amending it at committee.

I'd like to ask my cousin and former law partner of 14 years a tough question. The reason you were here wasn't to compliment the government on all those bills. I asked you to be here to talk about restitution, about civil forfeiture, because I believe that people coming into the criminal justice system looking for restitution are misled by this bill. There's nothing in this bill that helps with restitution.

I would like you to elaborate on what New Brunswick, British Columbia, and Ontario are doing to help people recoup some of their terrible financial losses, which you describe quite dramatically. In these aspects of restitution, there's nothing—there are no teeth. What would you suggest we put in the act to help people get some of their lost money back? Would you agree that people aren't looking at the criminal justice system to get financial reparations, and that they shouldn't be looking at the system as a bill collecting agency?

• (1715)

Hon. Michael B. Murphy: Thank you, Brian, for that very difficult question; I appreciate it—especially its length.

Look, the Criminal Code of Canada of course is not a collection agency mechanism. Having the element of restitution within the bill arguably creates some redundancy, because the restitution provisions are already there in the Criminal Code and the judge can use them. But I don't think it hurts to have it there as something that a judge can consider. I'm not looking at this as an academic, and I'm not representing the elaborate and well-researched views of the Canadian Bar. I'm looking at this from the point of view of victims' rights in the federal legislation and the Criminal Code.

While we are not doing a full revision of the Criminal Code, all the laws we have—Bill C-52, the Criminal Code, and its various amendments—are supposed to be a codification of community values. We might have to do this piecemeal, failing a full revision of the Criminal Code, with some emphasis on victims' rights.

Having it in there might lend some clarity to a judge's consideration in sentencing. According to my colleague from the Canadian Bar, if they can make restitution, they certainly will. So having it in there may affect the judge's views on sentencing.

I believe that Bill C-52 is a good start, but I also believe that it is an offer of partnership to the provinces. The civil forfeiture act that we envisage enacting in New Brunswick will allow us, where Bill C-52 fails, to go after these tools of crime. Sometimes it's a home; sometimes it's a larger property like an office building. Other tools include the mechanisms that they use, even the bank accounts. Whatever moneys are available could be tools of crime.

So it's a partnership, and I think it's a reasonably good start. It's not perfect, though, and we're doing things piecemeal.

• (1720)

The Chair: Thank you.

We're going to move to Monsieur Ménard. We are going to restrict it to three minutes because we're trying to get a question for every party.

[Translation]

Mr. Serge Ménard: I see that many people give great importance to the two-year mandatory minimum. Is anyone here aware of studies done in Canada on the effectiveness of mandatory minimum sentences to reduce crime?

Hon. Michael B. Murphy: New Brunswick has not done any study. However, we had a debate on mandatory minimums for offences and frauds that were sometimes in the order of hundreds of thousands of dollars. It is not a study, but our conclusion was that we found sentences to be too short. We do not have any studies available.

Mr. Serge Ménard: Therefore, you do not know. The federal Department of Justice wanted to know, and they ordered a study: I quote:

Although mandatory sentences of imprisonment have been introduced in a number of western nations, few jurisdictions have evaluated the impact of these laws on prison populations or crime rates. The studies that have examined the impact of these laws reported variable effects on prison populations, and no discernible effect on crime rates.

I would like the lawyers present to answer me on this issue. I will give you a striking example of something that we have experienced. We established a seven-year mandatory minimum for the importation of marijuana. It was at that moment that the use of marijuana had its greatest increase in this country.

Do you not believe that if we wanted to do something truly effective, we should move towards the solutions proposed by Mr. Rosen? Rather than considering a small bill like this one to justify some kind of principle according to which mandatory minimums are included in legislation, popularity is increased and justice better served, we would do better to move towards stricter regulations that would convince people who are prepared to perpetrate major frauds that if they try, they will be caught.

Ms. Suzanne Costom: I would like to say something.

You asked if there were any experts among us who had ever carried out studies on the effectiveness of mandatory minimum sentences. I can tell you that within the CBA, the Canadian Bar Association, we have studied these issues several times. I know that we do not have much time, but we came to more or less the same conclusion as that stated by the Honourable Mr. Ménard, according to which mandatory minimum sentences do not prevent crime. They take discretion away from the judge, who plays such an independent role in our system.

[English]

The Chair: Thank you.

Mr. Comartin, you have three minutes.

Mr. Joe Comartin: I have two quick questions.

Mr. Rosen, you're obviously not much of a supporter of the U.S. model. Is there a model elsewhere in the world internationally that we should be looking at in terms of trying to regulate?

Mr. Minister, are you proposing to designate the proceeds of the civil forfeiture to a specific source, or will they go into general revenue?

Hon. Michael B. Murphy: I believe in the other provinces they're going into general revenue, but there is nothing to preclude special funds being designated for that. So we're in the process of drafting that. It's something we're considering. It has to go to cabinet, but it's something under discussion, and its time may come.

Mr. Joe Comartin: Mr. Rosen.

Mr. L.S. (Al) Rosen: I think a combination of what's happening in the U.K. and the U.S. is workable in Canada. The whole point that has caused immense concern to investors, which will probably result in many of them withdrawing from the Canadian market, is that there is just no one to really tell your story to, to pursue it. In the U.S. you can get so far with the SEC, as you can with the U.K. system. In some of the European systems—I'm out of date—it's quite possible that there's something there. Australia is another one that comes to mind.

I think if we made a Canadian version of the best parts of the others, it would be better than having zero, which is what we have now. We have the self-regulating organizations, and they are not helping.

• (1725)

Mr. Joe Comartin: That was the experience with Madoff in the U.S. and with the exchange commission there. I didn't gather much confidence from the experience: you had whistle-blowers going in, you had clear evidence, and yet it took ten years.

Why should we be at all confident that the U.S. model would be workable here?

Mr. L.S. (Al) Rosen: I think the U.S. model was workable. To be frank, the Bush administration, towards the end, put pressure on the SEC. You saw a number of meltdowns in the last term. If you go back to the prior periods in the U.S., you can see...

I know for sure that there are frauds that are caught in the U.S.—they've been worked with, and we've been involved with them—that are not prosecuted at all in Canada. As imperfect as the U.S. may be, Canada is very far behind, and I'm not exaggerating. I've had too many cases and too much experience to pretend that we're not far behind.

The Chair: Thank you.

Mr. Rathgeber, you have one last question.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): I am intrigued by this whole debate regarding minimum mandatory sentences.

Ms. Costom, you indicated that sentencing principles require proportionality and individualization of sentences, and that in the view of the Canadian Bar Association, judges are in the best position to determine those matters.

I have two questions. What role does Parliament play in sentencing guidelines, since we live in a democracy, not a judiciary? As well, why does the Canadian Bar Association consistently lobby against minimum mandatory sentences but not maximum mandatory sentences, such as 14 years for fraud? Why is it only on the minimum side that we hear the Canadian Bar Association voice its opposition?

Ms. Suzanne Costom: The Criminal Code has always been modelled on a system of maximum sentences, not minimum. The Canadian Bar Association doesn't generally take issue with that model because identifying the maximum sentence in relation to a particular crime is an indication of Parliament's views as to the seriousness of an offence. A sentence may be six months, 18 months, two years, five years, 10 years, or 14 years. The maximum sentence is a sign from Parliament as to what level of moral culpability we generally would find associated, at the highest level, with that offence. It doesn't tie the hands of judges at all, but it does send the message that you talked about to those people within the justice system, and it's a message Parliament certainly must send, because it's their job to do so.

Mr. Brent Rathgeber: Do you agree with me that if you were truly in favour of not restricting judicial discretion, you would also be against the maximums? You would leave it to the judges to individualize the sentences and to determine a sentence that was proportional.

Ms. Suzanne Costom: I don't think that there has to be an all-or-nothing choice between parliamentary democracies and judiciocracies. I don't think one has to choose one or the other. I think that the appropriate balance is to set maximum sentences, and that Parliament should do that and should continue to do that. Certainly we've seen bills over the past few years, for example, even in the fraud provisions, that have upped maximum sentences from 10 years

to 14 and so on. That is the right way for Parliament to send a message, and the Canadian Bar Association generally does not take issue with it because we do support the role of Parliament, which is not inconsistent with allowing for a broad range of judicial discretion within that range at the same time.

Mr. Brent Rathgeber: It's because you support leniency.

Thank you.

The Chair: Thank you to all of our witnesses. We thank you for—

Mr. Brian Murphy: On a point of order, she should get a chance to say yes or no to that. It wasn't a question, it was a drive-by schmear.

The Chair: Well, she said thank you, so....

Before we adjourn, I want to thank our witnesses for appearing.

Each one of you has made a significant contribution to our discussion on this bill. I'm sure a lot of this will be taken back and we'll have a look at the bill again and see what other elements we can add to it to make it stronger.

Thank you to all of you.

We're adjourned.

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