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Chair

Mr. David Sweet

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● (1105)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen. *Bonjour à tous.*

Welcome to the 39th Meeting of the Standing Committee on Industry, Science and Technology.

Again we have witnesses here in regard to Bill S-4.

From Borden Ladner Gervais, we have Éloïse Gratton. Welcome.

From the Canadian Life and Health Insurance Association, we have Frank Zinatelli, vice-president and general counsel; and Anny Duval.

From the Credit Union Central of Canada, we have Marc-André Pigeon, director of financial sector policy; and Rob Martin, senior policy adviser.

From the Insurance Bureau of Canada, there is Randy J. Bundus, senior vice-president, legal and general counsel; Madalina Murariu, acting manager, federal affairs; and Richard Dubin, vice-president, investigative services.

We will begin with the opening statements in order.

I think you've been advised that you have five to six minutes for your opening statements.

Madame Gratton, please begin.

Dr. Éloïse Gratton (Partner, Borden Ladner Gervais LLP): Thank you very much for providing me with the opportunity to speak to you today.

My name is Éloïse Gratton. I am a partner at Borden Ladner Gervais. I also teach a privacy law course at the University of Montreal law faculty.

I've been practising in the field of privacy law for over 15 years and I represent a range of clients, mostly private sector businesses from various industries. I appear today in a personal capacity, representing only my own views and not the views of my firm or its clients.

My time is limited, so I'm going to first mention two provisions in Bill S-4 that have my support, and then two that raise concerns.

I offer my support to two important provisions in the bill: mandatory breach notification and business transaction exception.

I have concerns with two provisions in Bill S-4, the first one being the clarification on valid consent. I know that many have appeared before me to discuss Bill S-4 and they have expressed their approval of the proposed amendment to clarify the requirements for valid consent.

Yes, in theory, not many people would logically object to having more stringent provisions governing valid consent; still, I have a few concerns with this proposal.

PIPEDA currently requires that consent be reasonably understandable by the individual. The questions that should be asked are: do we have a concern with this consent requirement, and if so, will the proposed amendment address such concerns?

If the proposed amendment is accepted, the message sent to organizations is that the way they used to get consent may no longer be valid and that perhaps they should be taking additional steps.

PIPEDA is based on a "notice and choice" model that may prove to be a real challenge in 2015. In my recent book *Understanding Personal Information*, I have a chapter dealing with the challenges with this notice and choice approach. I was raising that in our day and age, it is debatable whether this model still makes sense and is a realistic one. Very busy individuals with limited time are expected to review, understand, and agree to various different—sometimes online—terms of use agreements, and keep up with new technologies and business models constantly evolving.

We have also already begun witnessing how consent forms are now requiring a few additional clicks to ensure that express consent is obtained in compliance with the new Canadian anti-spam law, since under this law certain information has to be brought to the attention of the user separate and apart from the standard terms of use agreement. I am mostly concerned that this type of amendment will be translated by organizations including additional verbiage in their already very long privacy statements and by requiring more clicks from users already overloaded with information.

I also have some reservations about the two new proposed paragraphs 7(3)(d.1) and (d.2), which would allow an organization to disclose personal information to another organization without consent in certain circumstances, although I understand in some situations the necessity for this proposal.

A few files have landed on my desk over the last few years in which this type of provision would have come in handy. One example worth noting was the case of Stevens v. SNF Maritime Metal. It's a case that ended up in the Federal Court in 2010. This was the case of SNF, a company purchasing scrap metal from another company. That company's employee, Mr. Stevens, opened a personal account with SNF and started selling a high volume of scrap metal to them. SNF disclosed the fact to his employer, who was already suspecting that someone was stealing scrap metal from them. The company realized that its employee was indeed stealing from them. They fired him and the employee then sued SNF for breach of his privacy.

Although SNF was probably right to disclose this information to its client, it was nonetheless a technical breach of PIPEDA, since they had disclosed personal information about Stevens, the fraudulent employee, to its employee and their business partner without his prior consent.

The bottom line is that I agree that we need to have a provision authorizing the disclosure of personal information without consent to address these types of situations. Still, given the way the proposed provision is drafted, I am concerned that the amendments could lead to excessive disclosures, used for broad purposes justified under the investigation of a breach of an agreement provision, or the purposes of detecting fraud provision. These disclosures would further be invisible to both the individuals concerned and to the Office of the Privacy Commissioner.

If we could find a way to minimize the risk of over-disclosing, while including a provision under which companies disclosing in such a situation would have to be transparent about these disclosures, I would offer my support to this type of amendment.

Thank you. I welcome your questions.

● (1110)

The Chair: Thank you very much, Ms. Gratton.

We'll now go to the Canadian Life and Health Insurance Association. Who will be making the opening remarks?

Mr. Frank Zinatelli (Vice-President and General Counsel, Canadian Life and Health Insurance Association Inc.): We will both be making a presentation, Mr. Chair.

My name is Frank Zinatelli. I'm vice-president and general counsel with the Canadian Life and Health Insurance Association. I'm accompanied today by my colleague Anny Duval, who is counsel with the CLHIA.

The CLHIA represents life and health insurance companies, accounting for 99% of the life and health insurance in force across Canada. The Canadian life and health insurance industry provides products that include individual life and group life, disability insurance, supplementary health insurance, individual and group annuities, including RRSPs, RRIFs, TFSAs, and pensions.

The industry protects almost 28 million Canadians and about 45 million people internationally. The industry makes benefit payments to Canadians of $76 billion a year, has $647 billion invested in Canada's economy, and provides employment to over 150,000 Canadians.

We welcome this opportunity to appear before the committee as it reviews Bill S-4, which makes important amendments to the Personal Information Protection and Electronic Documents Act.

For over 100 years, Canada's life and health insurers have been handling the personal information of Canadians. Protecting personal information has been long recognized by the industry as an absolutely necessary condition for maintaining access to such information. Accordingly over the years, life and health insurers have taken a leadership role in developing standards and practices for the proper stewardship of personal information.

For example, in 1980 we developed right to privacy guidelines that represented the first privacy code to be adopted by any industry group in Canada. Since then, the life and health insurance industry has participated actively in the development of personal information protection rules across Canada, starting with Quebec's private sector privacy legislation in 1994, the development of PIPEDA, Alberta's and B.C.'s personal information protections acts in the early 2000s, and health information legislation in various provinces.

The industry's overarching theme is to achieve harmonization in the treatment of personal information across Canada as much as possible. The operations of life and health insurers are national in scope, and many common day-to-day transactions may involve interprovincial collection use and disclosure of personal information. Thus, the coordination or harmonization of the provisions of PIPEDA with privacy legislation at the provincial level is very important to avoid unproductive duplication and confusion for consumers, organizations, and regulators alike.

With harmonization in mind, let me turn now to Bill S-4, the digital privacy act. The industry is generally supportive of the bill, as it contains some needed updates that move PIPEDA to be more consistent with other private sector privacy legislation in the country.

For example, B.C. and Alberta deal with the use of information without consent of the individual more effectively than is now the case in PIPEDA. In this regard, the industry strongly supports those amendments to section 7 of PIPEDA, particularly proposed paragraph 7(3)(d.2), which would help industry efforts to detect, deter, and minimize fraud. The impact of fraudulent and deceptive conduct on insurance and other financial services can be extremely costly and damaging.

The industry efforts to control the incidence of fraud are not in conflict with our protection of personal information, but we note that there's a gap in the current legislation that restricts the ability of organizations to disclose information without consent of the individual for the purpose of conducting an investigation into a breach of an agreement or of a law of Canada.

While it is industry practice to obtain consent, there exist clear instances where this cannot be done—for example, where the suspected perpetrator is a third party that is not directly involved with the insurance contract, such as a service provider to a member of a group benefit plan.

In some instances, obtaining consent makes no sense. For example, this latter situation is contemplated in a note to principle 3 of the CSA model code for the protection of personal information, which forms part of PIPEDA:

> When information is being collected for the detection and prevention of fraud or for law enforcement, seeking the consent of the individual might defeat the purpose of collecting the information.

For these reasons, we support Bill S-4's amendments to section 7 of PIPEDA, which more clearly set out when personal information can be collected, used, and disclosed during an investigation.

● (1115)

This will allow all parties to more clearly understand the range of acceptable circumstances when there is an exception to consent and will have the additional advantage of being harmonized with the approach used in both the Alberta and B.C. PIPA.

[*Translation*]

Ms. Anny Duval (Counsel, Canadian Life and Health Insurance Association Inc.): Mr. Chair, we would like to comment briefly on two other provisions of the bill. I will discuss the first aspect and my colleague Mr. Zinatelli will discuss the second one.

With respect to the breach notification provisions in the bill, the life and health insurance industry has long supported a method of notifying individuals that is proportional to the risks of harm that may be experienced by those whose personal information has been compromised. We appreciate the effort that has taken place to harmonize provisions as much as possible with the provisions now present in the Alberta legislation. But we believe there could have been even more harmonization.

For example, the record-keeping requirements in the bill require that an organization maintain a record of every breach involving personal information under its management. Given that in some instances there would be no impact on the individual or the organization, we suggest that consideration be given to linking the record-keeping requirements to the level of risk associated with any particular situation. This could probably be done through regulations.

[*English*]

Mr. Frank Zinatelli: Finally, Chairman, we would like to touch on a provision that has already received a lot of attention by other witnesses: proposed PIPEDA section 6.1, in clause 5 of the bill, describing when consent is valid.

We believe a clear and consistent understanding of consent for the purposes of privacy legislation has developed across Canada during the last decade or so. We are concerned, therefore, that the attempt at clarification may well create more confusion than fulfill the purpose for which it was created. We understand that this amendment is aimed at supplementing the test for informed consent in the context of, for example, minors in their online interactions. But proposed section 6.1 is not limited to the areas of concern expressed. Without clarification in the bill, in regulations, or by some other formal means, it raises questions for organizations as to what is expected of them and how it would be applied and interpreted. We suggest that such clarification is necessary and can be achieved through guidelines or regulations.

Chairman, the goal of our industry is to improve the workability of personal information privacy rules by promoting the adoption of provisions that are practical, predictable, and harmonized across the country as much as possible.

The industry greatly appreciates this opportunity to participate in the committee's review of Bill S-4. We would be pleased to answer any questions you may have.

Thank you.

The Chair: Thank you very much, Mr. Zinatelli.

Now on to the Credit Union Central of Canada.

Please go ahead.

[*Translation*]

Mr. Marc-André Pigeon (Director, Financial Sector Policy, Credit Union Central of Canada): Thank you, Mr. Chair.

I also thank the committee for the opportunity to share with you our thoughts on Bill S-4.

Before addressing our views on this bill, I would like to begin by making a few preliminary remarks regarding the role of my organization, Credit Union Central of Canada, and more generally, the credit union system in Canada.

[*English*]

Canadian Central is the national trade association for its owners, the provincial credit union centrals. Through them, we provide services to about 315 affiliated credit unions across the country.

As you may know, credit unions represent an important part of the Canadian economy. We have about 1,700 credit union branches that serve 5.3 million Canadians. We have $170 billion in assets and 27,000 employees.

Credit unions in Canada come in all shapes and sizes. It's important to understand that some of our smallest credit unions have less than $10 million in assets, one full-time employee, and one part-time employee. Our biggest credit unions have $20 billion in assets and literally thousands of employees. So there's a lot of disparity or gap there. Regardless of size, however, as member-owned and controlled institutions we believe we have an inherent responsibility to be open and accessible while, at the same time, demonstrating the greatest respect for the protection of our members' privacy.

The Credit Union Code for the Protection of Personal lnformation, adopted by credit unions in advance of the 2004 compliance deadline, really speaks to the system's long-standing commitment to member privacy. In fact, well before it was required or fashionable, this code reflected the credit union system's commitment to protect member privacy by proactively implementing consent requirements for the use of personal information. This commitment to member privacy is enhanced through employee training programs, strong internal policies and procedures, and member awareness programs.

In general, we think Bill S-4 does a lot of things right. We are especially pleased with the provisions that would make it easier for credit unions to share personal information with the next of kin or authorized representatives when the credit union has reasonable grounds to suspect that the individual may be a victim of financial abuse. However, we think this measure could be refined somewhat by making it possible to disclose suspected abuse to a member of the individual's family. Research has shown that often, in the case of elder abuse especially, the next of kin are the abuser. We think a little stretch would help with that situation.

We are especially encouraged by attention to this important public policy issue because the credit union system has taken a bit of a lead on this issue of elder abuse. We've designed a course for front-line credit union employees on financial elder abuse detection and prevention and recently made an announcement to that effect with Minister Wong in Winnipeg. We also like Bill S-4 because it does a lot to reduce some of the regulatory burden that results from the current framework.

To give you an example, we are supportive of the proposal that would make it less difficult for institutions to share information when they're in merger discussions. As you may know, the credit union system is rapidly consolidating, so this is a welcome development. Similarly, we support the proposed amendments that permit the sharing of information between organizations for the purposes of fraud prevention. This too will reduce the administrative burden associated with some of the activities of Canadian Central, my organization's Credit Union Office for Crime Prevention and Investigation.

We note, however, that as drafted, the information sharing between financial institutions appears to be limited to the detection and suppression of fraud. We would recommend that financial institutions be allowed to share information related to criminal activity to cover the broader range of activities that we want to capture: bank robberies, ATM breaches, and that kind of thing. We also have some concerns about provisions that may increase regulatory burden.

Specifically, the legislation proposes requirements that would compel financial institutions to keep records of all data breaches. As you know, the reporting requirements say that breaches must be divulged when they pose a real risk of significant harm to individuals. We're not clear why it is necessary to impose record-keeping requirements that are not aligned with this reporting test. The usefulness in recording incidents that do not meet the significant harm reporting threshold is not readily apparent to us. We would recommend aligning the record-keeping requirement with the proposed reporting requirements. We also question the proposed potential penalty of $100,000 for non-compliance with this new record-keeping requirement. While this may not be a material amount to some of our larger competitors, you can imagine the impact of a fine like this on a small credit union with $10 million in assets and whose profits are well under $1 million. This could really harm the credit union. We'd recommend that the fines be geared to the size of the institution.

● (1120)

To help put these concerns in context, just to give you a sense of why these large and small institution issues matter to us, we did a study back in 2013 on regulatory burden. We found that small credit unions, those with fewer than 23 employees, devote fully one-fifth of their staff time to regulatory administration. It's a huge burden for our smaller institutions. Our bigger institutions devote only 4%, and keep in mind that our biggest institutions are many times smaller than the biggest banks out there.

The unintended consequence of a lot of the regulations that get imposed on the credit union system is that they inadvertently create a competitive advantage for larger institutions, and that's a concern for us. In fact, we raised that concern with the finance committee here at the House of Commons, and they agreed. They said that “the government should examine means by which credit unions and caisse populaires could be on a level playing field with Canada’s large financial institutions”. We think there are a couple of areas in this proposed legislation that could be tweaked to address that concern.

To conclude, we want to thank the committee for this opportunity to share our thoughts on Bill S-4. We applaud the government for some important and positive changes, especially around information sharing to prevent financial abuse of seniors and to reduce administrative burden.

That said, we would recommend adjusting the bill to allow financial institutions to share information related to criminal activity in order to cover crimes such as bank robberies, ATM compromises, and so on. We are also recommending that the bill be modified to make it possible to disclose suspected abuse to a member of the individual's family, not just next of kin. Finally, we would just ask that the government continue to be sensitive to the needs of smaller financial institutions by, for example, aligning record-keeping with record-reporting requirements and making fines for non-compliance proportional to the size of the institution.

We want to thank the committee again for our opportunity to share these perspectives, and we look forward to your questions. Thank you.

● (1125)

The Chair: Thank you very much.

We'll now move on to the Insurance Bureau of Canada.

Mr. Bundus, you actually get the award for the most persevering. I understand that this is your second attempt.

We're glad you were successful, and will appreciate your testimony.

Mr. Randy Bundus (Senior Vice President, Legal and General Counsel, Insurance Bureau of Canada): I'm glad as well, Mr. Chair. Thank you.

My name is Randy Bundus, and I am senior vice-president, legal and general counsel, with lnsurance Bureau of Canada. I am joined by my colleagues Maddy Murariu, with IBC government relations, and Rick Dubin, with IBC's investigative services. We are pleased to be here today.

IBC is the national industry association representing over 90% of private home, car, and business insurers in Canada. My remarks will focus on how Bill S-4 will affect my industry's ability to continue to combat insurance crime, which includes fraud and auto theft.

Insurance crime is big business in Canada. A recent Ontario government task force estimated that in that province auto insurance fraud alone costs up to $1.6 billion yearly. Insurance crime costs everyone in higher premiums and increased costs to our legal and medical systems.

Our industry works hard to suppress and prevent insurance crime through early detection, and also works hard to protect our customers' privacy. Insurers know that they must safeguard customers' personal information or risk losing business.

There are different types of insurance crime. It can be opportunistic. For example, a driver hits a guardrail and then invites a friend, a “jump-in”, to falsely state that he was also in the vehicle and suffered an injury for which he then claims compensation. Opportunistic claims are handled by insurers, but PIPEDA does not allow one insurer to verify facts by reaching out directly to another insurer that might also have been victimized by the suspected fraudulent incident.

Insurance crime can also be premeditated and organized. Large crime rings stage collisions that involve fraudulent injury claimants and others such as auto body shops and medical rehabilitation clinics. A crime ring can generate several million dollars in fraudulent claims.

IBC's investigative services, or ISD, was the first designated investigative body under PIPEDA, and it plays a critical role in the investigation of organized insurance crime. ISD is uniquely positioned to investigate organized insurance crime that involves multiple insurers, multiple claims, and multiple claimants. An example of this is the case of a police officer in Peel Region who was convicted in February on 42 counts, including 21 counts of fraud. This officer falsely reported nine collisions and, as a result, 14 insurers paid out almost $1 million in false claims to 69 participants.

ISD begins an investigation as a result of being made aware of an anomaly in an insurance claim. Information triggering an investigation may come from an insurer, a victim, law enforcement, or a tip from an informant. ISD then acts as a case file manager, coordinating investigations and identifying linkages between parties that are then submitted to regulators and other enforcement agencies. Individual insurance companies are not well positioned to handle organized crime on this scale.

This brings me to Bill S-4. We support the proposal in Bill S-4 to repeal the sections in PIPEDA that create investigative bodies and instead allow for an organization to disclose information to another organization in limited circumstances. These circumstances, as set out in Bill S-4, are to investigate a breach of an agreement or contravention of a law of Canada, and to detect, prevent, or suppress fraud.

My industry's experience under PIPEDA in investigating and detecting insurance crime has been of mixed success. While IBC's investigative services have been successful in combatting large, organized insurance crime, that has not always been the case for insurers in handling the opportunistic fraud. This is because many of the insurers are not able to disclose to each other information about suspected insurance crimes.

The proposed changes in Bill S-4 would help investigations into opportunistic or one-off insurance crimes involving only two claimants with two insurers, such as the jump-in example I gave earlier. Bill S-4 would allow insurers to disclose, in those very limited circumstances, when it is reasonable to do so, information to another insurer without the involvement of an investigative body.

● (1130)

An insurer could also disclose that information, in the same very restricted circumstances, to an organization such as ISD in the investigation of insurance fraud. In our view, this new process would be efficient and effective in detecting, preventing, and suppressing fraud, while still being respectful of privacy rights. Under Bill S-4, ISD could continue to function as a case file manager for organized insurance crime.

In our written comments to this committee, we address a number of other important issues in Bill S-4, including some minor wording changes to ensure consistency among the provisions allowing for responsible fraud investigations. We would be pleased to discuss these matters with this committee or with Industry Canada officials.

Thank you for your attention. I'd be happy to take any questions.

The Chair: To all of our witnesses, thank you for your testimony.

We'll move on to our rounds of questions now.

I think we'll do a very similar approach to what we did last time—that is, eight minutes per person.

We'll begin with Madam Gallant.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you, Mr. Chairman.

First of all, to the Insurance Bureau of Canada, as a designated investigative body, IBC's investigative services division can already share information to investigate contraventions of the law. Why are the proposed changes to this framework in Bill S-4 necessary?

Mr. Randy Bundus: I'm going to ask my colleague Mr. Dubin to address that question.

Mr. Richard Dubin (Vice-President, Investigative Services, Insurance Bureau of Canada): I think the best way is to give a very brief scenario and show you why we support this.

Here's a scenario that we've run into several times. We have a left-turn situation in front of what seems to be an innocent vehicle. The other vehicle turns in front, and there's a collision. There is not significant damage, just bumper damage to the front of this so-called innocent vehicle. The driver says there are three occupants in the vehicle. In reality—and this is what we're going to get to, these are what we call jump-ins—they weren't in the vehicle at the time the collision took place.

Keeping in mind that the vehicle making the left turn is usually presumed to be at fault, the adjuster now receives this claim and does what we call a Carfax or AutoPlus report, where they're looking into a general history of the driver and vehicle that they insure, and he would contact IBC. They'd find out from that information that this driver and the vehicle were involved in a previous collision. It does identify the other insurer as well in those public reports. What that information has that they're not able to get to yet is that the other insurer also had a left-turn situation with multiple occupants in this vehicle.

Now, this accident happened late at night in a quiet neighbourhood, obviously at an intersection, and there were no witnesses. All three occupants were claiming soft tissue injury, but they didn't report it at the scene of the accident so the police didn't attend.

Under the current law, the adjuster obviously can't contact the other insurer to find out the facts of the other collision, so they're in the dark at this point. In the meantime, the claim starts getting paid and the occupants receive weekly income disability payments. They attend rehab facilities for extensive treatment, all of them usually receiving the same type of extensive treatment of physiotherapy, massage therapy, or chiropractic. At the same time that these bills are building up, the body shop is now doing the repairs to a vehicle that could very well have been previously repaired in the other accident.

It's reported to IBC at this point by the insurer just to let us know that they have some concerns, but the other party looks at fault. They can't contact the other insurer, so they start payments.

We support the bill because if the bill were passed, it would allow the insurer of this vehicle to contact the other insurer. They would find out some of the scenarios, that the same scenario existed with the same service suppliers: they used the same rehab facility, the same body shop, everything was virtually the same. This accident even took place in the same area.

What I'm getting into is an identified social network. It creates linkages among the possible participants in the suspected fraud, but because they couldn't contact the other insurer, because they didn't want to be found to be in bad faith, they started payment. They would have informed IBC, and we would get to it at some point.

The problem that exists here is that by the insurer contacting the other insurer immediately when they had these red flags coming up, they could quickly ascertain that this is a very suspicious situation, and they're in a position to at least stop payment and deny the claimant, stop the bleeding. With the way things stand right now, because they don't want to be accused of bad faith, they start payments right away.

Finally, just to give you an idea of how serious this is in the province of Ontario, the Insurance Bureau of Canada has the statistics that the average accident benefits payment per person in Ontario is $31,785. This is the staged collision capital of Canada, right here in the GTA. The average in Atlantic Canada for accident benefits is $8,668, and in Alberta it's $3,766.

A major problem that exists here is the identity theft we're seeing with service suppliers. That's a key reason these individuals get these accident benefits forms submitted to the insurers; there's a lot of forgery going on.

● (1135)

Mrs. Cheryl Gallant: When an applicant first applies for automobile insurance, as in your example, does the insurer not have access to a record of the accidents that an applicant may have been involved in?

Mr. Richard Dubin: I've been in the insurance industry for 35 years as a senior investigator and a solicitor and negotiator, so I'm very familiar with the general practices. An underwriter will look at prior accidents. They won't necessarily be contacting the other insurer for facts. They'll see that there was another accident.

What we do find is that in order to camouflage this a lot, they change the ownership of the vehicle that seems to be involved in let's say a multitude of different staged collisions. That really creates difficulty for an underwriter to know that this same individual was involved in suspicious circumstances.

They intentionally change the scenario as to ownerships of vehicles and run between different insurance companies. All the underwriter is going to see is that possibly there was another accident, but they won't get into the specific investigation of the facts of that particular accident.

Mrs. Cheryl Gallant: Are not police reports required to be submitted in order to apply for a claim after an accident?

Mr. Richard Dubin: Actually, no, and I have to say that this is a concern. If an injury is not reported at the scene of an accident...and these individuals intentionally do not report, in a lot of cases, at the scene of the accident and will go to a collision reporting centre afterward. At that point in time there will be a report taken.

The insurers have access to that report, but again, it's very limited information. All it's basically going to say is a left-turn situation. They probably charge the driver doing the left-turn situation that was staging this collision intentionally. It would just show the fact that the other driver drove into them. That's all they're going to have.

Actually, at the time, initially after the accident, they won't even have the names or facts of occupants, because the police didn't attend the scene of the accident. They've got up to 24 hours for these occupants to show up, let's say at a collision reporting centre, and claim that they were involved in an accident. In a lot of cases they don't even bother, and the next thing you know they've hired counsel and put the insurer on notice.

● (1140)

Mrs. Cheryl Gallant: You referred to soft tissue injuries. I understand that an accident is not required to be reported to the police if it's just a single-vehicle accident and there are no other vehicles involved. How would the insurer distinguish between somebody who is genuinely having an accident and the soft tissue injury not manifesting itself until later versus somebody who is obviously committing fraud?

Mr. Richard Dubin: Well, I think the example I gave is.... The insurance industry is quite well trained in terms of first contact and the type of information they need to receive. They're just going to start acquiring what I gave you in terms of certain information: the time of the accident, where it took place, how many occupants, the nature of the damage, how soon was the tow truck driver there, did somebody recommend the body shop, how much damage was there to your vehicle, where were you going at the time, where were you coming from, how do you know these individuals, things like that.

They're going to start developing certain red flags. Based on those red flags, it doesn't mean that there's fraud; it means that it requires further investigation. This is the point that a prudent individual, having reasonable grounds, such as what I suggested, should be contacting the other insurer and saying, “What's happening here?”

In terms of another problem that exists, in 2014 IBC investigated on an ongoing basis 52 rings. A ring investigation usually involves at least 20 to 50 suspected staged collisions that we have to investigate. On top of that, we took 14 new ones. Even though the insurer reports it to us, we can't take these claims right away. They're going to sit until we can get to them, and unfortunately these payments are continuing all the way through. By the insurer being able to contact the other party, they would be able to stop the payment at this point in time.

The Chair: Madame Borg, eight minutes.

[*Translation*]

Ms. Charmaine Borg (Terrebonne—Blainville, NDP): Thank you.

I thank the witnesses for their presentation.

My first question is for Ms. Gratton.

In your presentation, you spoke of the need to change the mode of consent. Do you have some concrete proposals on what we could do? This could be done through an amendment to Bill S-4, or an amendment to the Personal Information Protection and Electronic Documents Act, PIPEDA, so as to change the method of consent to bring it more into line with what you have described.

Dr. Éloïse Gratton: Basically, we have a problem with the fact that people are constantly being asked for their consent. They are exposed to a lot of information and I am afraid that with the proposed amendment, businesses will simply include more information, and ask for additional consent, and so on. I have the impression that we are not solving the problem.

If there are concerns with regard to the consent given by minors, that should be handled in another way, regarding the type of consent to be obtained from a minor through his or her parent or parental authority. Our concern is more in regard to obtaining the consent of an adult. We have to look at the issues and target them more precisely.

The proposed amendment is probably going to create confusion. That said, I think that fundamentally, the acts raise problems in the sense that everything has to be authorized by consent. In my book, I suggest that we protect less personal information and target the potential uses of information that can be nefarious for individuals. The issue of consent has been well managed over the past 10 years. I don't want to call the whole bill into question, but I think that the proposed amendments are simply going to create confusion.

Ms. Charmaine Borg: Thank you.

In your presentation, you said that paragraphs 7(3)*d1*) and 7(3)*d2*) could be useful. You referred to a case you were involved in. I find your opinion on this very interesting. Even if you understand the importance of these provisions, you think that they could lead to abuse.

Could you tell us more about that? Since the two provisions could be problematic, should we amend them or simply delete them?

● (1145)

Dr. Éloïse Gratton: We need this type of provision. But I am a little worried that they will be used in fishing expeditions, so to speak. Information will be exchanged, to see if something comes out of it and if a file has to be opened. That is our concern.

I listened to the testimony of representatives of the insurance companies and other organizations. I understand the fraud issues. We need to target the type of situation that could arise with that type of information exchange. We have to ensure that before an exchange is authorised, there is a reasonable doubt, and that a certain amount of investigative work has already been done and that this is not a fishing expedition.

I think part of the solution could also be transparency. If there were transparency during an investigation it could happen in some cases that one did not obtain the necessary information. Could transparency be a factor afterwards? We would to think about that, but I feel transparency would be appropriate in this type of exchange between organizations, whether we are talking about insurance companies or other private sector businesses.

Ms. Charmaine Borg: Thank you very much.

I also have a question concerning the breach notification mechanism proposed in Bill S-4. In your opinion, could this model adequately protect people's personal information?

Dr. Éloïse Gratton: I missed the beginning of your question.

Ms. Charmaine Borg: I was talking about the breach notification provisions.

Dr. Éloïse Gratton: Yes, those suit me. I know that certain reservations were expressed with regard to the record. All of the records need to be kept. I'm also aware of the position of the Canadian Bar Association, which also has certain reservations as to the records that would have to be kept.

Bill S-4 suggests that the commissioner and individuals be notified in this type of situation where there is a high risk of prejudice. I like that. In practice, when I divulge breaches, I advise individuals, but I also often advise the commissioners. These things are often done together. It does not bother me that the same criteria do not apply to disclosure.

Ms. Charmaine Borg: Thank you.

Mr. Bundus or Mr. Dubin, I would put the same question to you.

In your testimony at the Senate on Bill S-4, you said that you preferred the breach notification mechanism model that is used in Alberta. Do you still feel that way? If so, can you explain why?

[*English*]

Mr. Randy Bundus: Our opinion on that is unchanged from our previous testimony. The reason is that harmonization is critically important for our industry. Our members operate across the country, and if they were to have to take separate approaches for different parts of the country, it would make the cost of the product much larger once you try to specialize for smaller provinces, different provinces.

That's the main reason we would want to have that.

[*Translation*]

Ms. Charmaine Borg: So you are concerned about the use of several models.

Ms. Gratton, could we have your opinion on that?

Dr. Éloïse Gratton: No, that's okay. Of course, in an ideal world, notification provisions would be standardized.

Ms. Charmaine Borg: Thank you very much.

Ms. Gratton, do you think that the compliance agreements as proposed in Bill S-4 are sufficient to really encourage businesses to respect people's personal information?

Dr. Éloïse Gratton: It's hard to say. We will have to see whether there is a compliance problem and how businesses behave.

Of course, I am sitting on one side of the fence. Businesses contact me because they want to comply with the law. So I am in a bad position to tell you that we have a problem and that people are not respecting the law. I am always on the side of respecting the law and ensuring that we do it well.

Ms. Charmaine Borg: Thank you.

Still on this topic, it is certain that complying with the law always requires certain resources. This may be an issue that all of the witnesses can relate to.

Mr. Pigeon, you talked about the fact that there are some very small cooperatives with only one employee. In larger businesses with many employees, there may be a specific department for privacy protection.

Do you think resources will be sufficient to comply with the bill once it is passed?

● (1150)

Mr. Marc-André Pigeon: I will repeat what we said before. We support the bill as such, but we would also like to see some minor changes.

We have mechanisms to improve the situation or lessen the burden for our small credit unions, even if the burden is much too heavy for them. At the central, we work together, for instance to learn the rules and communicate them to our smaller members. We certainly are proposing that the fines be adjusted, because a $100,000 fine would be a huge punishment for a small credit union that barely generates a million dollars a year. That is our main concern.

The Chair: Thank you, Mr. Pigeon.

[*English*]

Mr. Carmichael, eight minutes.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Mr. Chair.

Welcome to our witnesses. Thank you for appearing today.

I'd like to begin with Mr. Pigeon and Mr. Martin on the credit union side.

You spoke about elder abuse and fraud. You suggested, in your opening comments, that we're doing some things right with Bill S-4. I wonder if you could expand on it. You say in here that the measure could be refined, however, by making it possible to disclose suspected abuse to a member of the individual's family, and that research has shown that often, in the case of elder abuse, the next of kin is the abuser. You also talk about CUSOURCE as a training program, or you've taken some of your solutions and are applying them to day-to-day operations.

I wonder if you could talk about Bill S-4 and how this is making it more feasible to track elder abuse. What are you doing through CUSOURCE to make it work?

Mr. Marc-André Pigeon: Just briefly, we recognize that this is a major issue as the population ages, and that's part of the reason we're very supportive of this measure. In our day-to-day interactions, we do see instances where these kinds of situations arise, so it's in the interests of our members to have legislative override that gives us that capacity to talk to family members about these suspected cases. That's a very positive thing for our members and for society as a whole.

I don't know if Rob wants to add anything to that.

Mr. Rob Martin (Senior Policy Advisor, Credit Union Central of Canada): I would just reiterate that the one concern we have in this section is the fact that it's targeted at next of kin rather than, more generally, family members being able to disclose.

There's not a definition of next of kin in the legislation, so it's hard for us to interpret that as institutions. If you take a vernacular view of it, then it could be fairly broad, but if it's based on family law, then it may be very restrictive in terms of who we could actually disclose to.

We'd like to see it expanded out a bit. You can imagine in a small town or someplace where a credit union is fairly prevalent that there may be knowledge by the credit union staff that the person who is actually carrying out the financial abuse is, say, the person who's next of kin.

I'll leave it at that.

Mr. John Carmichael: Clearly it is an area that's conflicted, because you want to solve the problem, yet if the problem is the individual you are reporting to, you have a serious obstacle.

I'll come back to you in a few minutes, but first I'd like to talk to the IBC.

Again, congratulations for making it today. We are delighted to have you here.

Mr. Dubin, you said that the average Ontario payment for accidents is $31,785. I think you said that's in Ontario?

Mr. Richard Dubin: Yes: $31,785 is the average accident benefit payment per person in Ontario.

Mr. John Carmichael: I am anxious to know how you track these fraudsters who come into the system. In your opening remarks, you talked about organized crime, different body shop organizations, and other types of groups that come into this. There has to be a way of tracking this.

Does Bill S-4 give you the tools to do what you need to do in order to start to address some of these issues?

● (1155)

Mr. Richard Dubin: I would say it is certainly in the right direction, and it is a positive way of moving forward. Obviously, if the insurers can't contact each other, they can't identify the social networks that develop within organized criminal rings. That's the key. Right now, yes, it's a manual process, but it doesn't take very long, and it doesn't take too many files, to start identifying a possible trend and pattern. Once that exists and we are brought into the scene, we will start looking into our database, where we store all of our investigations going back to 2002, when we got into organized activity. We would start looking at whether there is overlap, and often there is overlap. It's a start of identifying and dealing with each insurer independently, giving them reasonable grounds why we believe there may be a suspected fraud. Then, on the other side, they have reasonable grounds to feel that they can disclose that information. It's like putting together a puzzle.

As you know, in the fraud task force—I was a member of one of the committees dealing with this—there was a recommendation to move to analytics to identify that information, so that it would very quickly raise a flag over a certain threshold, saying, “You may want to investigate this further.” It doesn't mean there is fraud. This bill allows the insurers at this point in time to take that manual type of approach and identify possible red flags that give them reason to hold off on payment, bring us into the picture, and possibly involve other insurers so that they know the same thing: time to stop the payment.

Mr. John Carmichael: As I listen to you, it strikes me that the damage on payments, etc., is already done by the time you establish any type of trending.

Mr. Richard Dubin: Absolutely.

Mr. John Carmichael: That would be a concern—no police reports, tracking inconsistencies. Once you have identified the perpetrators by the trends of a particular group, I take it they disappear at that point, and that is where the types of numbers that we heard on payouts have skyrocketed to such a high level.

Mr. Richard Dubin: Yes: organized crime is extremely creative, and they keep changing their approach. They take advantage of the fact that insurers are unable, currently, to share information with one another, and that is why they are ahead of the curve.

Mr. John Carmichael: Thank you.

How does the IBC maintain an appropriate balance between being accountable for its customers' personal information and privacy, and its industry's need to deal with insurance crime and fraud? How do you find a balance in that?

Mr. Randy Bundus: That is the critical word, finding the right balance. Insurers will respect the privacy of their customers; they have to. They compete with each other. Once a breach happens, once they are known to be abusive of information, customers will no longer go there.

In addition, the insurance contract is a contract of utmost good faith, which means that if the insurers do not act appropriately, they could be subject to punitive damages for a claim of bad faith. The high-water mark at this point in Canada is $1 million. It was approved by the Supreme Court of Canada a number of years ago, but that does not mean that this is as much as will be awarded against an insurer for a bad faith claim. It's really because of the bad faith risk that insurers take every effort to make sure that they proceed carefully before they allege that someone has committed fraud.

Mr. John Carmichael: Do I have time?

The Chair: Fifteen seconds.

Mr. John Carmichael: Thank you very much.

The Chair: Thank you very much, Mr. Carmichael and Mr. Bundus.

Now we go on to Madam Sgro for eight minutes.

Hon. Judy Sgro (York West, Lib.): Thank you very much, Mr. Chair.

To all of our witnesses, thank you for taking the time to come out and to help us deal with an important piece of legislation.

I think we could talk to the Insurance Bureau an awful lot more. What other changes would you like to see in Bill S-4 that would ultimately help you in your quest to have the tools you need to deal with the kind of insurance fraud that's going on—related to Bill S-4? You mention in your brief about having other issues other than the ones that you mentioned today.

● (1200)

Mr. Randy Bundus: I'd like to highlight four of them. It's not that we would say, “Stop the bill and make these happen”, but in our mind, they would make for a better bill.

For example, in paragraph 7(1)(b), which is collect without consent in certain circumstances, we would also like to have a reference to collecting for the purpose of detecting, preventing, and suppressing fraud. We have the right to disclose for that purpose. Just to balance it out, having the right to collect would sort of be the other bookend to that.

We would also propose a small change to proposed paragraph 7(3)(d.2), and that's in the written submission we gave. It's to make sure we really have the ability to conduct those fraud analytics in a way that was recommended by the Ontario fraud task force.

A third change is with respect to proposed paragraph 7(3)(c.1). This is the provision that says you don't have to give access when someone makes an access request in certain circumstances. There's a reference in proposed paragraph 7(3)(c.1) to no access. We want to make sure there should be no access if the information is collected as part of the work product. We've added that work product aspect to the bill if we're able to collect information as part of a work product.

For example, insurers have claims files, adjusters have claims files, and we collect personal information in those claims files. In those claims files is also the reserve amount that has been set for that particular claim. It would be quite inappropriate in our mind to have to release the amount of that reserve amount for a particular claim via a PIPEDA request at the request of the person who is at the other side of the transaction. We would like to have that fixed if we could.

The fourth item is with respect to paragraph 9(3)(a). An amendment has been made already under Bill S-4. We suggest in addition to having solicitor-client privilege, that litigation privilege also be a basis for that.

I would not stop the bill from being passed, but just have those changes. It would be a better world.

Hon. Judy Sgro: That's why it's here; it's about how we make it better. Clearly we hear that it is an important thing.

The issue of the mandatory record-keeping for all breaches of security safeguards has been raised. Do you any of you have a problem with the mandatory record-keeping of all breaches?

I'll start with Mr. Zinatelli.

Mr. Frank Zinatelli: We have a concern where the breach might be of a minor nature but it would still be subject to very serious penalties, as was being referred to earlier. Including those as part of the requirement for record-keeping would be inappropriate.

I mean, think of an example where you step away from your computer, and a colleague from another department who doesn't have access might come to visit and see something on your screen for a second. They see some piece of personal information. Technically that could be a breach. It would be subject to putting it on the list and, if you don't do it, it could be subject to the penalties.

I think there are examples like that, very minor in nature, where we could clarify that those kinds of things are not covered. That can be done, as we suggested earlier, by regulations, by guidelines, or some other means.

I like the risk-based approach so that if we're talking about a real risk of significant harm, then those should definitely go on the list. What should go beyond that on the list is something I think should be discussed and clarified in a guideline or in regulations.

Hon. Judy Sgro: Mrs. Gratton, do you want to talk a little bit more about the issue of sharing without consent? Part of all this is, again, dealing with minors, and trying to keep things simple but at the same time making sure that the protections are in place. Do you want to take a minute and elaborate a bit more on your concerns?

● (1205)

Dr. Éloïse Gratton: I'm sorry, I thought you were asking him the question.

Hon. Judy Sgro: I'd like to hear your concerns around the consent issues, which you'd elaborated on earlier.

Dr. Éloïse Gratton: Yes: so it's why I have an issue with valid consent.

Hon. Judy Sgro: Perhaps you want to elaborate on that a bit, specifically to do with the issue of minors.

Dr. Éloïse Gratton: When I saw the proposal, I wondered why we needed a change, because I think PIPEDA, to a certain extent, is clear enough on the fact that you need to make sure that consent is valid and people understand what you're collecting. Then I realized that the concern originally related to minors: maybe it's not stringent enough; how do we get consent from minors; maybe vulnerable groups; aging investors. So my testimony today is saying if that's the concern, maybe we should specifically address these types of issues in the law, not reopen the whole consent issue. That's what I'm trying to say.

Yes, my concern is with the anti-spam legislation; it's providing for a very stringent express consent provision, and some of the information has to be obtained outside of the standard terms of use agreement, privacy policy. So already when people buy something or they subscribe to something, they have to accept the policy, accept the terms of use. Now they have to agree to receive commercial messages and so on. So we're going to go back to the same situation when people are overloaded with information and they don't read it. I'm saying if the concern is minors and vulnerable groups, let's focus on these people and make sure that consent in specific situations is properly addressed.

Hon. Judy Sgro: Thank you.

Mr. Pigeon, on the issue that you raised about the sharing of information, clearly the sharing of information is important, whether it's the insurance industry or our banks and institutions. Today, other than going to the police, if you have concerns about some criminal activity via the credit union, you don't have the ability to share that concern currently with the Bank of Montreal or another bank. Would you like to elaborate a bit there?

Mr. Marc-André Pigeon: I don't know if there's too much to add, other than that is correct. We have seen instances, especially, again, in smaller regions, as Rob was pointing out, where there may be criminal activities within a very small regional area. You can't talk to the person next door even though you might see them on a daily basis in a social context.

So there's a real challenge for us there, and again, I would just maybe underline a point that was made earlier that we hope for elaboration on some things in the guidance. On the fraud, if it's not addressed in legislative change, maybe there could be an interpretive guidance on that to capture other kinds of criminal activity.

The Chair: Thank you very much, Mr. Pigeon.

Madam Sgro, that's all the time we have there.

Mr. Daniel, you have eight minutes.

Mr. Joe Daniel (Don Valley East, CPC): Thank you, Chair.

Thank you, witnesses, for being here. This is a very interesting discussion on all of this, particularly with the insurance fraud, etc.

To the Insurance Bureau, you're obviously investigating a lot of these criminal activities for preventing fraud. Why don't you let the police investigate these suspected contraventions and let the law engage in fraud suppression?

Mr. Richard Dubin: We've run into a real difficult time getting police to take these investigations. First of all, they're only going to take high-priority investigations, for one thing. They're overloaded. They want to deal with the more serious crimes of personal harm—assault, attempted murder, murder, things like that—and unfortunately, with their limited resources, these departments are small...that will have a fraud component to the police. They'll only take the more serious ones, the ones that actually have been investigated fairly thoroughly and put into a crown brief sort of format, which takes an extensive amount of work on our part. Then at that point in time we'll meet with the police officer who's in charge of accepting investigations and we'll run it through with them, showing them the connections, the social networking among the parties. But their ability to take on these investigations is fairly limited. They're only going to take on the high-priority ones.

Now, the other thing that we do is share investigations with the Financial Services Commission of Ontario, and as a result of doing that as well, they have laid numerous charges and actually shut down illegal operations. Unfortunately, the police over the years have kept reducing their head count in the areas of insurance crime and have concentrated in areas where personal harm exists.

● (1210)

Mr. Joe Daniel: Just to give me an idea, how big is the problem in terms of the revenue that you're spending on the investigations and your losses?

Mr. Richard Dubin: I can tell you that in a study we're involved in for which we provided data, organized insurance crime itself in Ontario was estimated to be as high as $1.6 billion. Last year alone, as I said, in ongoing investigations we investigated 52 suggested insurance crime rings and we accepted an additional 14. These involved a significant amount of work.

We think this is just the tip of the iceberg, because unfortunately we rely on our member companies to at least give us a tip to say "There's something that seems a little out of norm here; can you guys at least look into it?" This is the area in which it is important that they be able to speak to each other.

Mr. Joe Daniel: So Bill S-4 will actually assist in its current form?

Mr. Richard Dubin: Absolutely.

Mr. Joe Daniel: That's wonderful. Thank you.

To the credit union folks, you talk about a lot of takeovers and mergers and things such as those. How often do these happen in a year, on average?

Mr. Marc-André Pigeon: We've come down. When I started at CUCC about four years ago, we had 450 credit unions or thereabouts; now we're down to 315. It's a very consistent trend. Even a few years ago we were at close to, I think, 1,000. There may be 20-odd mergers a year, speaking roughly.

I'd just like to add something. Earlier, I think I may have misunderstood Ms. Sgro's question. I want to add a clarification, if I can. I was thinking in the going forward sense. Currently we have a credit union office of investigation whereby we can share information around criminal activities. The concern is that if, going forward, the definition is limited to fraud, we may have trouble with that kind of information sharing.

I just wanted to clarify that.

Mr. Joe Daniel: Thank you.

In your opinion, does Bill S-4 reduce the red tape for businesses by giving them access to information necessary to conduct due diligence in a merger or accusation without compromising the privacy of individuals?

Mr. Marc-André Pigeon: I think that's a fair statement. The information sharing happens now, but it's under a cloud of uncertainty. There is no legal clarity about what is permissible.

This change would, I think, remove a concern that we have around the current situation. We welcome this change.

Mr. Joe Daniel: Thank you.

Ms. Gratton, do you agree that organizations that oversee the activities of such professionals as lawyers and doctors should be able to look into allegations of wrongdoing on the part of their members and protect Canadians against harm from rising misconduct?

Dr. Éloïse Gratton: Maybe; I guess it depends which groups and what kind of threshold we're talking about.

One thing is for sure; the concern that I've had with this bill and that we're trying to address with the sharing of information without consent is that this privacy law should not be used to commit fraud, to hide behind. We need to make sure that we can have access to information and can conduct investigations.

Mr. Joe Daniel: Thank you.

To the folks from IBC, one trend in the technology industry is data mining. I know that already you have a number of companies that are data mining for the insurance companies such as your folks'. How does this impact them in terms of producing the data you need to make reasonable decisions?

Mr. Randy Bundus: I would suggest that insurers will comply with the privacy law as they do their data mining.

I'm not sure, really, how to answer that question, to be honest with you.

Mr. Richard Dubin: I think the key point with the data analytics is that it will raise almost immediately, once the claims information is in the system, whether there is a social network and whether it's a heads-up to the insurer to say, "You have to look into this now, further, rather than automatically start paying." That's the beauty of it, because the main problem we see right now is that payments are going on and on, and it's building up, and nothing is happening. This allows them to get some immediate information and shut it down pretty quickly.

● (1215)

Mr. Joe Daniel: Thank you.

How much time do I have?

The Chair: You have one minute.

Mr. Joe Daniel: Okay.

Here is a general question to all of you in terms of this bill being applicable here in Canada, but clearly the Internet doesn't have any borders. What's your opinion in terms of other countries data mining or getting private information that they can distribute—of Canadians?

Does anybody want to take that on?

Mr. Randy Bundus: I'll give it a try.

It's very difficult for any particular government to control the Internet. There is always a risk that rules you make here just drive the wrongdoers outside the country—not that you should make the rules for here, but they will just move away. You need cooperation internationally to resolve those problems.

The Chair: Thank you very much, Mr. Bundus.

Mr. Frank Zinatelli: One of our themes, as I said, is harmonization within Canada, but clearly, also for our regulators who deal with other privacy commissioners internationally and do a lot of work together this is very useful, because it creates similar rules—to some degree, at least—across various countries.

The Chair: Thank you, Mr. Zinatelli.

Now we go on to Madame Papillon, for eight minutes.

[*Translation*]

Ms. Annick Papillon (Québec, NDP): Thank you, Mr. Chair.

I would like to thank the witnesses for having travelled here to come and testify on this bill. My first questions are mainly for the representatives of the Credit Union Central of Canada.

How does the system you set up to prevent fraud work?

Could you describe, one by one, the steps you follow in your investigation?

Mr. Marc-André Pigeon: I'm going to ask my colleague Rob to answer you.

[*English*]

Mr. Rob Martin: It's a fairly broad subject. It comes down to there being a training element at the credit unions. We have our own organization, CUSOURCE, which would train individuals to identify fraud and the various features of fraud. Our lenders and our front-line staff will be put through that sort of thing.

There will be some sharing of information through our Credit Union Office of Crime Prevention and Investigation. We have agreements with the Bank Crime Prevention and Investigation Office, so we are able to share some information back and forth. Of course, that is subject to policies and procedures that are developed in alignment with the legislation, so it is fairly carefully guarded. But it does currently help us to prevent, for example, a bank robbery or an attack at an ATM: we are able to share some information with the banks and other credit unions through our office.

That's about as far as I can elaborate on it.

[*Translation*]

Ms. Annick Papillon: Would you say that the system functions well, both overall and in its details?

[*English*]

Mr. Rob Martin: What is attractive about the bill is that it would eliminate the need for the crime prevention office. As you can imagine, in the credit union system we have fairly small institutions. There is an administrative burden that goes along with it.

We actually like the way the bill is going. We would hope that the information could be shared between credit unions, possibly without the intervention of the crime prevention office but based on the requirements of the legislation. We would just like to see it focused on being able to detect and deter not only fraud but other types of criminal activity that would seem to be excluded as it is currently drafted.

That's all I have to say.

[*Translation*]

Mr. Marc-André Pigeon: I would like to add a comment.

Ms. Annick Papillon: Yes, of course.

Mr. Marc-André Pigeon: Thank you.

Even following the change in legislation being proposed here, we will most likely keep our office open, but in a more informal way.

Currently this imposes a regulatory burden because we have to meet certain criteria. People who work on this have to qualify. There has to be an investigation in the institution.

This will reduce our burden somewhat. We will probably keep the association, but implementing the changes proposed here will mean that the work will be less demanding in regulatory terms. It is a good thing for us.

As I said in the beginning, in situations where we have to compete with banks, we have to reduce our costs in every possible way; it is really important that we remain competitive.

● (1220)

Ms. Annick Papillon: I understand.

Let's talk about the regular interaction between the credit unions and police institutions. Can you tell us, for instance, how many voluntary instances of communication there are between the credit unions and police forces in a given year?

Mr. Marc-André Pigeon: That is a good question. Unfortunately, I don't have that information here, but we could provide the answer later by sending it to the clerk.

Ms. Annick Papillon: Generally speaking, how do these voluntary communications take place, without going into all of the details?

[*English*]

Mr. Rob Martin: It's a bit of a complicated question, but we can try to provide you some of the data, if any of that's going on. But you have to keep in mind that there is now anti-money-laundering and anti-terrorist financing legislation that, to my understanding, requires that this sort of information be shared with FINTRAC and not to the police forces directly. There are rules around that. When I joined the credit union system many, many years ago, there was much more informal communication between credit union front-line staff and local RCMP and police. That was cut off with the anti-money-laundering and anti-terrorist financing legislation.

I don't think our office is tracking that, but we can look into it for you.

[*Translation*]

Ms. Annick Papillon: Very well, thank you.

My question is addressed to representatives of the Insurance Bureau of Canada. You talked about providing information if you suspect that a crime is afoot, such as elder abuse or something like that. If it is a simple civil matter, if an insurance company is looking for information to study a file, what prevents you from providing more specific information?

[*English*]

Mr. Richard Dubin: I'm not sure I understand the question.

You're mentioning that it's just a brief civil matter of some kind...? Perhaps you could be more specific.

[*Translation*]

Ms. Annick Papillon: If we are talking about a civil matter, if an insurance company is seeking information on a file, what would prevent you from providing the information? Can you answer me on that?

[*English*]

Mr. Richard Dubin: Here's how it actually works. They're not going to look further if they don't have...as a reasonable prudent person with reasonable grounds to believe that a possible fraud exists. So unless those grounds are there, they're not going to be contacting us or another insurer. We wouldn't get involved.

Last year alone we trained 1,300 people across the country, including police officers and insurance companies. We teach them PIPEDA. We teach them that you need reasonable grounds to believe that as a prudent person you have concerns that you need to investigate further. If they find that, then they go to their supervisor in most cases and they get a confirmation to share that information or obtain further information.

If they don't see those grounds, they're not going further. They won't come to us. They won't contact the other insurer. What they will do as a matter of practice is that based on the accident that's called in, they'll ask us to look at our database just to see if there were any previous accidents. They can get that information as well from AutoPlus and Carfax.

[*Translation*]

Ms. Annick Papillon: I would also like to know if you have an ethics code, and what guidelines there are for the disclosure of personal information for life and health insurance companies, more specifically.

● (1225)

[*English*]

Mr. Randy Bundus: We have an agreement among insurers that they will conduct themselves according to certain ethics. That's set out in a claims agreement among themselves. As my colleague Mr. Dubin said, because insurers are subject to bad faith claims, if they act inappropriately in handling a claim, that in itself has gone a long way to dealing with their acting properly in handling these sorts of matters.

The Chair: Did you have more to add?

Mr. Randy Bundus: Yes: specifically with regard to a code of conduct, apart from what's in the claims agreement, no, we do not have one in our industry.

The Chair: Thank you very much.

We will move on to Mr. Warawa, for eight minutes.

Mr. Mark Warawa (Langley, CPC): Thank you, Chair.

Thank you to the witnesses.

I'd first like to provide a brief history of how we are where we are, and then ask for general comment from each of you on whether you support Bill S-4 going ahead or not going ahead. Then I will have some specific questions.

PIPEDA was passed in 2000. It came into force in 2001 to 2004, I believe. We can make changes to legislation in Parliament by legislation or by regulation. If it is by regulation, you regulate changes to existing legislation. It is also very common, and often required, that legislation be reviewed every five years. PIPEDA was reviewed in 2006-07, and some of you were involved in making recommendations as witnesses or by presenting submissions. The responsibility of the government is to listen to those and try to create a balance. Any legislative change is not going to get support from everyone for everything, because there are opposing ideas. But in general, I think, our government has reached that balance, and most of the witnesses from whom we have heard want Bill S-4 to go ahead.

We are about eight weeks away from this Parliament ending, and you may be the last group of witnesses that we hear from before we start dealing with the bill and working as a committee to see if we have any amendments. If there are amendments to this bill, given that there are only eight weeks left, it would be just about impossible, in my opinion, for Bill S-4 to move ahead, because it would then have to go back to the Senate.

I think I have heard general support for the bill going ahead.

Mr. Bundus, I think you said you don't want to stop it with these amendments; you want it to move forward.

I think, sir, you noted that changes could be made by regulation, which they can, if there are additional changes that need to be made.

Perhaps you could make a quick comment: do you support Bill S-4 moving ahead as it is now, or do you not support it moving ahead?

Maybe I could start with the Credit Union Central of Canada.

Mr. Marc-André Pigeon: Certainly.

We would be supportive of it going ahead, I think, for some of the reasons we outlined in our opening remarks. Maybe just to underline a couple of other points, we would also support the idea that this is taking us a step forward in terms of harmonizing with some of the provincial rules, and that's a good thing. We might ask that the committee, in its report, flag some of the concerns that were addressed here that could be taken up subsequently in regulation or given some detail on in another review later on. But we would be generally supportive of it going ahead, yes.

Mr. Randy Bundus: We would support it going ahead as well, as it achieves better balance than what we had before. We've learned, over the past number of years, of the weaknesses of the existing legislation, and this bill addresses a number of them. In five years we'll look at this again and maybe get it perfect.

Dr. Éloïse Gratton: I would also support the bill going ahead.

Mr. Frank Zinatelli: We would also support the bill. We've heard, even today, some suggestions that are useful—for example, the one about extending fraud to crime and so on. But I think the bill is a very good one and should proceed as it is.

● (1230)

Mr. Mark Warawa: Okay. Thank you.

To the credit union, you mentioned the $100,000 penalty for non-compliance. As with in the Criminal Code, if there's a crime, a criminal offence, there are maximums. Rarely are there minimums, but in some cases there are. In this case, it's a maximum that could be fined, a penalty, and it would be up to the commissioner to decide whether or not that is appropriate. So the commissioner has the discretion to provide an appropriate penalty, but $100,000 would be the maximum.

Do you have a similar understanding?

Mr. Rob Martin: My understanding is that the amount is up to $100,000. Our concern is that if the maximum amount would be imposed on a small credit union, as you said, with say $10 million in assets, that would have very significant consequences, compared to what might happen if a bank faced the same penalty, which would be quite small, I guess, for a large competitor of ours.

That's what we want considered. Of course, there has to be some relationship between the severity of the breach or the issue, and the fine, but there should also be some recognition that institutions of different sizes have different capacities to deal with that.

Mr. Marc-André Pigeon: Just to add to that, there's always a concern when you're dealing with a regulator. They may not be too sensitive to that size differential, despite the fact that they have some latitude. That's our basic concern. We want to make sure that there's some signal that they should take that into consideration, because that could really sink a small credit union that provides services to communities that need them. I think that's important.

Mr. Mark Warawa: Yes, I've heard that a lot.

Apparently the Insurance Bureau represents 90% of insurers. Is the Insurance Corporation of British Columbia one of the members?

Mr. Randy Bundus: The Insurance Corporation of British Columbia, as a government-owned insurer, is not one of our members. We have privately owned insurers as our members.

Mr. Mark Warawa: The principle of insurance is that we all share in the expense of a loss. When everybody puts money into the bucket, if some small group of people experience a loss that year, we all share in that loss. The principles are that you do not gain, you do not benefit, other than being as best as possible being put back to the position before the loss, but you don't gain.

You're saying people who have not experienced a loss are gaining from that at everybody's expense. It makes everybody's insurance much more expensive when you have corruption. Most of the people who are in the investigative portion of your business, in my understanding, have police backgrounds, a large percentage of them, so they understand how the whole system works.

You also have houses involved. You've given examples of cars, but you could have fraudulent burning down of a house, or a loss of personal property, or even a car being burned because it's going to cost too much to fix the transmission, so now they can get $2,000 for the car that really was worthless.

There are many different ways. For houses, is this also a problem, where you can be tracking these losses to make sure that we're not all paying for fraudulent claims?

Mr. Richard Dubin: One area that jumps out is organized auto theft. This has significant impact. We pulled $8.8 million worth of stolen vehicles at the ports of Montreal and Halifax last year alone. We're well over $55 million since we started this in 2009 at those two ports.

The point I'm getting at is that it's just another form of organized insurance crime, as you've mentioned, that has a very significant impact on the premiums that everybody else is going to end up paying for.

The Chair: Ms. Nash, for eight minutes.

Ms. Peggy Nash (Parkdale—High Park, NDP): Thank you, Mr. Chair.

Thank you to all the witnesses for your testimony.

I must say, before I ask my questions, that because PIPEDA was passed in 2006, the review was to have been completed by 2011. So while I hear my colleagues commenting that we can't improve this bill because we're running out of time, frankly it reminds me of one of my three sons saying, “I don't have time to clean my room right now or I'm going to be late for school” when he had all weekend to clean his room.

The government has had four years. This review should have been completed four years ago, and the fact we're getting these amendments now at the industry committee, after they have already gone through the Senate, is frankly a bit of brinksmanship. So I would encourage the witnesses to keep an open mind that while, of course, we want to modernize this law, and we want to address the concerns people have, we also want to have a good law, and we should take the opportunity to try to address the concerns that witnesses, yourselves and others, have brought to us.

One of the concerns that has been raised—I'd like to put this to all of the witnesses—was that this bill does not comply with the Supreme Court Spencer decision, and therefore we need to update our legislation, and other jurisdictions will need to address this as well. I'd like to get your thoughts on that. Do any of you have concerns that this doesn't adequately protect privacy in light of the Spencer decision, or is it something that you feel your legal counsel says is not going to impact your interpretation of how this law would be viewed?

Who would like to start? Mr. Bundus.

● (1235)

Mr. Randy Bundus: The Spencer decision, which relates to the ability of the police to request information of the service provider—the Internet service provider, if I recollect the facts properly—doesn't really have a big impact on our industry. However, we do require as an industry that, when the police come to us requesting information, they illustrate their lawful authority for that.

If as a result of the Spencer decision they have to show a greater degree of scrutiny in providing that lawful authority, then it's really up to the police to make sure they do that. I don't believe our industry will have any difficulty in having the police come forward with the appropriate lawful authority to show they are entitled to receive the information they are asking for.

Ms. Peggy Nash: So when the court says that Canadians have a reasonable expectation of privacy with their information, you don't think that's going to have an impact on your industry.

Mr. Randy Bundus: With regard to what's meant by a reasonable expectation of privacy, we have to balance privacy rights against the fact that there's fraud out there, so what is reasonable has to be determined in that context.

Ms. Peggy Nash: Thank you.

Who else would like to answer?

Mr. Pigeon.

Mr. Marc-André Pigeon: I'll ask my colleague Rob to deal with this.

Mr. Rob Martin: We haven't had our counsel review it from the constitutional perspective in light of the Spencer decision. We're working on the basis that the government has vetted this bill through its own lawyers—Justice—and that it would actually hold water in that context.

Ms. Peggy Nash: Thank you.

Mr. Zinatelli.

Mr. Frank Zinatelli: We're in a very similar position as expressed by the Insurance Bureau of Canada, but I would also note that subsequent to the Spencer decision—I'm not going to remember what—there was a decision in December having to do with access to cell phones that maybe changes that again the other way. I think that's an ongoing discussion that will take place.

Ms. Peggy Nash: It's an evolving field, for sure.

Mr. Frank Zinatelli: Yes, very much so.

Ms. Peggy Nash: Ms. Gratton.

Dr. Éloïse Gratton: Definitely; in Spencer, the court said that individuals have an expectation of privacy in their online activities, and therefore, before you come knocking at the door of an ISP to get the identity behind an IP address, you need to have a warrant in hand.

Now with the sharing without consent provisions, are ISPs going to be exchanging information in copyright infringement cases, therefore without a warrant? Definitely, I think, if there's one clause that perhaps should be changed before the bill is passed, in my view it would be toning down the sharing without consent, making sure there is transparency exactly for this reason, to make sure it's consistent with the transparency trend.

● (1240)

Ms. Peggy Nash: You raised this earlier, and you said that you were concerned about the potential for a fishing expedition. I think the industry expressed its concerns, which I think are reasonable, that you want to prevent fraud and make sure that there aren't illegitimate cases that are coming forward and really raising all of the costs for everyone else in the insurance business.

Ms. Gratton, you made the comment that you think there is concern about the potential for a fishing expedition, and then you said greater transparency maybe after the fact. I'd just like you to explain what you meant by that.

Dr. Éloïse Gratton: I'm thinking that we need to think very closely about the threshold at which this type of information could be exchanged to make sure that we avoid fishing expeditions. I would propose making sure that there is some type of transparency so that people are aware that these exchanges are taking place.

Ms. Peggy Nash: So you're saying after the fact, if there has been information sharing, that there be some kind of informing of the—

Dr. Éloïse Gratton: I would need to think about that a bit more, whether it be at the time of or after the fact, depending on the case. The idea is being transparent.

Ms. Peggy Nash: Yes.

Anyone else?

Mr. Frank Zinatelli: I just wanted to comment that certainly the life and health insurance industry has very rigorous due diligence processes in place, and indeed it has oversight within the company itself. Of course, there's the overall oversight by the Privacy Commissioner, who has also appeared before this committee.

I think there might be the need for the discussion, but certainly we are going in intending to completely follow the act and not use it for fishing expeditions.

Ms. Peggy Nash: Thank you.

Yes.

Mr. Richard Dubin: I can verify that with the significant training we do on an ongoing basis with member insurance companies, one of the first things we train them on is that you never go on a fishing expedition. You have to have reasonable grounds, acting as a reasonable, prudent person would, and if you are going to contact the other insurer and if you are going to get into the discussion, you document your file accordingly so that you stay away from that type of situation.

Ms. Peggy Nash: Thank you.

Do I have time for just one quick question? Maybe I'll just throw it out there and maybe it's something I can get later.

The Chair: Okay. One minute is fine.

Ms. Peggy Nash: There was a question that got raised at the last meeting about work product, and if pharmaceutical companies get access to the prescriptions that doctors are writing through pharmacists and then go back and it becomes a marketing tool for them, it seems to me that could also raise insurance premiums. I'm wondering if your sector has a concern about the potential for that work product in terms of marketing use.

Mr. Frank Zinatelli: I would love to be able to answer that, but I'll have to think about it.

I would be happy to speak with you bilaterally later on, or through the clerk.

Ms. Peggy Nash: Okay. Thank you.

The Chair: Through the clerk would be great.

Thank you very much.

Mr. Lake, you are our final questioner.

Hon. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

I'm in the same position I was last week, when many of the questions I would have had were already answered.

I was struck by listening to the testimony today. You go through so many of the different areas that we've talked about, and we've heard witnesses say one thing to one extent and then different witnesses at a different time have said something completely on the other side of an issue and suggested that we move in a different direction.

I remember one witness in a previous meeting talking about the importance of getting this right, and I noticed that phrasing was in the Credit Union's opening statement saying that in this case they thought Bill S-4 does get it right, or gets a lot of things right.

On consent, for example, we've heard arguments that we should go in one direction or another. We've heard that with breaches: people saying it goes too far; people saying it doesn't go far enough. On information sharing now we're hearing the same thing.

Ms. Gratton, in your comments it was interesting, because I think your opening statement captured that balance, and the question of balance that we're trying to strike. It sounds like you think the legislation needs to go forward—you said that in questioning—but at the same time you have some questions. They're not necessarily declarative statements that this is what's going to happen down the road, but you asked whether we can find ways to avoid "over-disclosing".

As this legislation hopefully passes and moves forward, what you are going to be watching for over the next few years in terms of the execution of this? We've heard, for example, on that issue, that in Alberta and B.C. there haven't been issues with that. Someone said that it's different circumstances with the federal legislation.

● (1245)

Dr. Éloïse Gratton: For the sharing?

Hon. Mike Lake: Yes, the information sharing.

Dr. Éloïse Gratton: I advise private sector businesses, so I'm going to be answering these calls: "Can I share or can I not share?" I'm going to have to guide them on whether they have reasonable grounds, or if it makes sense, or if it's in compliance with the amended law.

I'm going to have to see the kind of findings that are issued. I'm going to have to stay really up to date to see how the market is reacting and what is the best business practice, depending on the industry.

Hon. Mike Lake: You asked if we can find ways to avoid over-disclosing, but interestingly, I don't believe you laid out amendments potentially—

Dr. Éloïse Gratton: Specific? No.

Hon. Mike Lake: What thoughts might you have, though? Or do you have thoughts on that?

Dr. Éloïse Gratton: I'm concerned about fishing expeditions and about sharing to investigate in case. I guess that would be my concern as a consumer.

Hon. Mike Lake: Are there specific wording changes you would make that you think would tighten that up?

Dr. Éloïse Gratton: Yes, but I would have to take my pen and draft something. I can't answer—

Hon. Mike Lake: That's never a bad idea. You can always through the chair at some point.

Dr. Éloïse Gratton: I didn't prepare it. Okay.

Hon. Mike Lake: To revisit consent—I'll just stay with you because you're talking now—your concern about consent is interesting, looking at the version, because the clause on consent is very short. It strikes me as very reasonable in the way it's worded, that it's only valid if the person "would understand the nature, purpose and consequences of the collection". You made the point about clicking through and getting these long statements that you're required to click through. I think most consumers would welcome some form of a statement that says that they would have to "understand the nature, purpose and consequences of the collection". Most parents, of course, would understand the importance of that.

I don't see the problem to the same extent you do, but—

Dr. Éloïse Gratton: You said the word “parents”, so that's interesting.

Hon. Mike Lake: Yes.

Dr. Éloïse Gratton: PIPEDA currently requires that consent be reasonably understandable by the individual. For me there's a clear understanding in the industry what that means. Current practices have evolved over the last 10 years. I'm concerned that we're reopening a door or trying to address a problem that perhaps we don't have.

Hon. Mike Lake: Do you not think there's a problem already? If I'm talking to a round table with my constituents about technology and the use of different apps or different software that you'd sign up for, these endless series of windows that no one ever reads and just clicks “I accept”, is there a problem already with that?

Dr. Éloïse Gratton: There's already a problem, and I don't see how the proposed amendment will address that.

Tomorrow, if this becomes law, I'm going to have clients saying the consent they had before is no longer valid; perhaps we need to reopen the door. How can I be sure the consent of the individual is valid because it is reasonable to expect that the individual “would understand the nature, purpose and consequences of the collection, use, or disclosure”? How do I do that? How do I achieve that? Do I include more wording? More clicks? Do I have a longer policy? I'm not sure we're going to address the problem that we have with this current notice and choice model.

Hon. Mike Lake: It's interesting that you say that, because when I read this the first time, I thought it was certainly not longer and more clicks. I don't think right now that everybody understands “the nature, purpose and consequences of the collection, use, or disclosure of the personal information”. I certainly don't understand it all the time. I can't imagine that everyone else does and I'm the only one who doesn't.

Peggy maybe says that's understandable, but....

Voices: Oh, oh!

Hon. Mike Lake: I do think that needs to be changed. Hopefully, your clients are looking at this change and asking themselves how they change their policy to—

● (1250)

Dr. Éloïse Gratton: I'm advising them to be extremely transparent and to be clear and to have proper consent in place. We still have a problem at the end of the day that people click and don't read. That's a reality. How is this going to address the problem? I don't know. I don't know, and I'm just concerned about the confusion it's going to create.

Hon. Mike Lake: I have only a minute left, so I'll switch over to the CLHIA.

I noticed you mentioned that in your statement, so I'm just going to throw the ball to you and ask what your organization or your company is doing to try to make things more understandable for your clients.

Mr. Frank Zinatelli: Well, we're certainly paying attention to the amendment. We're scratching our heads a little bit as to what exactly it means. I have been asked the question by a variety of my clients. We represent more than 99% of the life and health insurance industry, and many of the legal folks within that industry have come to me and said, “What does that mean that we have to do, technically?” That's technically in the sense of “On the ground, what am I supposed to do to ensure that this kind of understanding is there?”

As well, what's the difference from the rules now? Again, I think there's been a sense of knowing what you at least have to disclose to the consumer: what is the change going to be? I've certainly been asked the question, and I don't know what the answer is. That is why, in our opening statement, we said that we need to have that discussion with the folks at the department, with the folks at the OPC, whom I saw supported this. Obviously, the department supports it because they put it in, and the OPC was a witness indicating that.

I think we'll need their help with the provision, because we're a compliance-driven industry and we want to comply.

Hon. Mike Lake: It will be interesting to hear from the department as we go through clause-by-clause, because surely members from all sides will have those types of questions for the officials too.

The Chair: Thank you very much.

Thank you to the witnesses. Again, thank you for your persistence in getting here and your very wise counsel to us regarding this bill.

Colleagues, I understand there have been conversations in regard to amendments. There's a principle in that an amendment is the same as a motion. If it's presented to the clerk, it's considered confidential until it's moved in the committee. If you'd like to share amendments —I understand that is a desire—and if that's agreed upon, I need unanimous consent to have the clerk proceed in that fashion.

Do I have consent on that?

Some hon. members: Agreed.

The Chair: I see it's agreed 100%.

Please make sure that, if you have any amendments, they are given to the clerk by April 9. That way we'll be able to translate and distribute them amongst the members.

An hon. member: Is that a Thursday?

The Chair: Yes. We added a couple of extra days there. That will give the clerk ample time to get them out before we get back.

Our next meeting will be April 21, when we'll be going clause-by-clause. We will not be having a meeting next Tuesday.

Thank you very much, colleagues. We're adjourned.