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Chair

Mr. James Rajotte

Standing Committee on Finance

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•(0845)

[English]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call to order meeting number 78 of the Standing Committee on Finance. According to our orders of the day, pursuant to Standing Order 108(2), we are continuing our study of terrorist financing in Canada and abroad.

Colleagues, we have two panels this morning. The first panel is from 8:45 to 10:15. With us here at the session in Ottawa we have presenting as an individual, Mr. Edwin Black, author and historian. Representing the Canadian Bankers Association is Mr. Ron King, senior vice-president of corporate and Canadian banking compliance. From TD Bank Financial Group we have Mr. Michael Donovan, vice-president and deputy global anti-money laundering officer. From the Canadian Bar Association we have Mr. Samuel Schwisberg, executive member for charities and not-for-profit law. From Carters Professional Corporation, we have the managing partner, Mr. Terrance Carter.

Welcome to the committee, everyone. Thank you all for being with us. You'll each have five minutes maximum for an opening statement and then we'll have questions from members. We'll start with Mr. Black.

Mr. Edwin Black (Author and Historian, As an Individual): Good morning to the committee. Thank you very much for inviting me. My time is short, so I'll be quite direct.

I've been asked what are some of the more important routes of terrorist financing in North America, Canada, and abroad. The documentation shows that the most entrenched, organized, and institutional financier of terrorism both worldwide and in Israel is the Palestinian Authority. When I say the Palestinian Authority, I mean all the way up to its president, Mahmoud Abbas. I have in my possession just a fraction of the 4,000 documents recently unsealed by a court in Brooklyn which delivered a \$680 million judgment against the PA.

Here's how it works.

When an ordinary citizen commits an act of terrorism in Israel, that person immediately goes on salary and that salary increases by the number of lives he takes and the amount of devastation he causes. It's specifically outlined in a graduated scale in a published law called the law of the prisoner. This money can be just \$500 a month for say a five-year sentence and it could be \$2,000 a month if you've killed enough people to get a 30-year sentence. None of these prisoners actually believe they're going to serve their entire period of incarceration; they think they'll be released.

This money is funnelled through the Ministry of Prisoners. The Ministry of Prisoners pays out about \$3 million to \$7 million a month. It's issued through a POA—the POA is a power of attorney—and that money is redirected to the prisoner's girlfriend, his mother, his club, his soccer team, whatever he likes. This and other similar programs total approximately 16% of the Palestinian Authority budget. There is an analogous organization that most people have never heard of called the Martyrdom Establishment. The Martyrdom Establishment has paid out hundreds of millions of dollars for terrorist activities around the world, especially where the person becomes martyred, that is, killed or wounded. These names are enshrined on the Martyr's Roster. These details are studied all the way up to the president and these are reviews that go on for years.

I have a case here of Ahmed Barghouti, who was involved with killing at least a dozen people. We can see that his rank in the government went up each and every year. I can provide these to the committee if you wish. His rank went from corporal to sergeant to warrant officer. His salary went up each and every year. His family got benefits each and every year. The documentation shows that this was specifically reviewed and authorized under rigorous conditions by the president himself. The organizations in the government that are contributing to this are not only the Ministry of Prisoners but the police, the sports, and everything else. Even when there's an economic shortfall, this money will be prioritized above all other welfare and health activities.

That's it.

•(0850)

The Chair: Thank you, Mr. Black.

We'll go to Mr. King, please, for your presentation.

Mr. Ron King (Senior Vice-President, Head, Corporate and Canadian Banking Compliance, Canadian Bankers Association): Thank you, Mr. Chair.

I would like to thank the committee for inviting the Canadian Bankers Association to appear today to contribute to its study on terrorist financing in Canada and abroad. The CBA works on behalf of 60 domestic banks, foreign bank subsidiaries, and foreign bank branches operating in Canada, and their 280,000 employees.

I am chair of the Canadian Bankers Association's anti-money laundering and terrorist financing specialists group. Our industry recognizes its key role in combatting money laundering and terrorist financing, while protecting the privacy of law-abiding customers. Banks in Canada have a long history of working in co-operation with the federal government, law enforcement, and intelligence agencies, and the Financial Transactions and Reports Analysis Centre of Canada to develop and implement an effective anti-terrorism financing and anti-money laundering regime. In addition to the hundreds of millions of dollars that the banking industry spends each year to defend against money laundering and terrorist financing, all the CBA's member banks have policies and procedures in place covering AML/ATF, including key elements such as "know your customer" rules and the reporting to FINTRAC and the Canada Revenue Agency of prescribed transactions. These policies and procedures are designed to help protect Canadians as well as the safety, soundness, and reputation of the Canadian financial system.

We would like to propose some recommendations for the committee to consider that we believe would significantly enhance the ability of banks in Canada to detect and prevent terrorist financing and other criminal activity.

We believe it is important to highlight the distinction between money laundering and terrorist financing. Money laundering involves converting the profits of criminal activity into a seemingly legitimate asset, whereas, on the other hand, terrorist financing is about the intent to use funds for terrorism-related purposes. For terrorists, the origin of the funds, whether legitimate or criminal, is entirely irrelevant. Terrorist financing often occurs in small amounts and the use of those funds can seem entirely ordinary, including things like normal travel and living expenses.

The current AML/ATF regime includes provisions to address the prescribed one-way sharing of information with government and law enforcement. However, there are no specific provisions to allow the sharing of information among Canadian financial institutions or between FINTRAC and reporting entities. We believe that the government should consider allowing enhanced disclosure and information sharing in these areas. Current privacy legislation, with the exception of the investigative bodies regime under PIPEDA restricts the disclosure of personal information without the knowledge or consent of the client. This makes it challenging to restrict a customer who presents a higher risk for terrorist financing. For example, if a financial institution terminates its relationship with a customer for their suspected involvement in terrorist financing, there is virtually nothing that prevents that client from obtaining the same services from another financial institution. By allowing greater information sharing among financial institutions, the AML/ATF regime as a whole would be strengthened.

Furthermore, we believe that Canada's AML/ATF legislation would be enhanced if FINTRAC were allowed to disclose information to banks and other reporting entities. FINTRAC could then request additional information from financial institutions about a specific report and provide feedback on the reports submitted to reporting entities. This would assist reporting entities, such as banks, to more effectively implement a risk-based approach to identifying higher risk customers. This issue was raised in the Senate banking committee's 2013 report on the AML/ATF regime.

There is significant benefit to be gained by having all partners in the regime work more closely together—banks and other regulated entities, policy-makers, regulatory agencies, and law enforcement. If given the opportunity and agility to act quickly, banks can provide greater assistance to the overall effort to combat money laundering and terrorist financing.

In this regard, we are recommending that the current regime be strengthened to enable an information exchange among financial institutions, FINTRAC, and law enforcement regarding persons of interest, including real-time feedback on terrorist financing activities. This would enable Canadian banks to better detect complex money laundering and terrorist financing schemes.

As part of the effort to ensure that Canada has a consistent regulatory framework applying to all entities that may be vulnerable to money laundering and terrorist financing, we believe that payments services providers and new technology that are currently unregulated should be captured by the current regime. Leaving gaps in the regime only shifts the risk to someone who is likely to be less able to prevent, detect, and report on suspicious transactions.

● (0855)

In closing we would like to reiterate the strong support of the banking industry for the AML and ATF regimes. Banks take very seriously their role in preventing the financing of terrorism, while balancing the need to protect the privacy of Canadian citizens.

We are pleased to have an opportunity to work cooperatively with the government and parliamentarians to ensure that Canada's AML and ATF systems are thorough and effective.

Thank you once again for providing the CBA with this opportunity to offer our views.

The Chair: Thank you very much.

We'll go to TD Bank, next, please.

Mr. Michael Donovan (Vice-President, Deputy Global Anti-Money Laundering Officer, TD Bank Financial Group): Thank you.

Good morning, Mr. Chair, and members of the committee. Thank you for the opportunity to appear before you here today on this very important topic.

For the past four years I have been the deputy global AML officer for the TD Bank Group. Prior to joining TD, I worked at FINTRAC for approximately 10 years.

I concur with the points made by my colleague, Ron King, in particular with the need for policy change that would allow for greater information sharing among Canadian financial institutions, as well as between FINTRAC and reporting entities.

TD is committed to our responsibility to detect and deter money laundering and terrorist financing, and we believe that allowing for more information sharing between Canadian financial institutions would make Canada's financial system more effective by building a more comprehensive picture of a customer's activities when potential money laundering or terrorist financing is suspected. Our experience has been that other jurisdictions have considered this same issue and have created AML regimes that allow for information sharing amongst financial institutions, all the while still respecting an individual's privacy rights.

In addition we were pleased to see the economic action plan 2015 announce better access to basic banking services by allowing a broader range of personal identification to open an account. TD supports a policy framework that provides for the expanded use of customer identification techniques for both face-to-face and non-face-to-face transactions.

From an AML regime perspective, financial institutions' use of existing and emerging technologies provides them with new techniques to identify their customers, particularly those operating in an online environment. The use of pass codes, out-of-wallet-type questions, credit bureau checks, and even markers from the computing devices being used all provide valuable information when identifying a customer. They can significantly enhance customer due diligence practices, gathering numerous pieces of information in a safe and secure manner for use in customer identification. This can also assist in identifying suspicious transactions that might be related to money laundering or terrorist financing.

These policy changes would not lighten the regulatory burden or weaken the regulatory environment. They would actually enable regulators—in this case, FINTRAC and OSFI—to review and judge the practices of individual institutions and make risk-based decisions about the anti-money laundering and anti-terrorist financing program of each institution.

We look forward to seeing the details of these specific government proposals in the coming days and weeks.

In conclusion, TD believes that these changes, combined with greater information sharing among financial institutions, will significantly strengthen the Canadian regulatory regime to prevent money laundering and terrorist financing.

I look forward to today's discussion and I am pleased to answer any questions that committee members may have. Thank you.

● (0900)

The Chair: Thank you very much for your presentation.

We'll now hear from the Canadian Bar Association, please.

Mr. Samuel Schwisberg (Executive Member, Charities and Not-for-Profit Law, Canadian Bar Association): Thank you very much.

I'm here on behalf of the Canadian Bar Association's charities and not-for-profit section. The CBA, as I think you all know, is a professional association of some 36,000 lawyers, notaries, law teachers, and law students, and the charities and not-for-profit section is composed of Canadian lawyers who advise charities and who sit on their boards.

In my personal capacity, I'm also general counsel and corporate secretary of the Canadian Red Cross Society. I am here today not in that capacity but rather as a representative of the Canadian Bar Association.

Now, I'll be taking a somewhat "unlawyerly" approach to my little chat with you today by talking about the big picture and not very much about the details. The theme I want to share with you today is that charities are actually an asset in countering terrorism. While the vulnerability of charities to abuse by potential terrorists has been noted quite often, I think it's important to make the point that charities are in fact an asset in countering terrorism. This is not something you need to take from me or from the Canadian Bar Association, but you might merely consult the guidance of the financial action task force of 2013 regarding its best practices for combating abuse for not-for-profit organizations.

In that guidance, the organization says that "NPOs can also play an important role in preventing the causes of radical ideology from taking root and are, therefore, potential allies in the fight against terrorism". Moreover, if you couple that with the fact that one of the four pillars of Canada's counterterrorism strategy is prevention, it's important to note that charities can play an important role in the prevention element of the strategy as well, given their outreach to communities both within Canada and outside Canada.

Now, when you consider that charities in this context are an asset, it's instructive to also consider the kinds of regulatory compliance costs they face when they're in fact trying to comply with the laws of Canada. That, of course, needs to be done, but the costs are significant. Sophisticated financial systems, volunteer and donor screening, and legal and financial advice must be paid for. There are procurement policies, gift acceptance policies, audit rights, and sophisticated contracts for the control of funds disbursed to others. There is project planning and sophisticated governance for boards of directors, including good governance, bylaws, policies, and training.

All these things cost charities a great deal of money, and when you consider that in Canada and elsewhere the public expectation is that most donated dollars must go to the beneficiary and that administrative costs must be kept low, you can see the bit of a bind that charities find themselves in. Moreover, donated dollars are possibly only one source of revenue, but investment policies must be very conservative. That's the law. As a charity, you can't take risks with charitable assets, and you can't really go into business, because the Canada Revenue Agency requires your business to be subordinate to your charitable objects.

So where do charities find the funds to comply with these important compliance requirements?

The Canadian Bar Association's written submission has a number of suggestions for the committee to consider, one of them being Canada Revenue Agency education on a pre-audit basis before ill-equipped charities get into trouble so that they know what they're getting into in terms of compliance costs. The Canadian Bar Association also suggests possible cost recovery and allocation of funds to charities for the specific purpose of achieving greater compliance.

These are some of the suggestions the Canadian Bar Association is sharing with this committee today to try to find creative solutions to assist charities in complying with legal requirements in Canada.

That is essentially my presentation, and I thank you very much for your time, as does the Canadian Bar Association.

The Chair: Thanks very much for your presentation to the committee.

We'll now hear from Mr. Carter, please.

Mr. Terrance Carter (Managing Partner, Carters Professional Corporation): Good morning, Mr. Chair and members of the committee.

It's my privilege to be asked to be here today as a witness dealing with the matter of terrorist financing. My focus will be on the matter of best practice measures for charities and non-profit organizations.

As background, I'm managing partner with a law firm that works with charities and not-for-profits across Canada and internationally, and we have acted for thousands of charities with regard to their operations, including operations outside of Canada and in conflict areas. In the course of advising charities, we've had to advise boards of directors and senior management on the appropriate due diligence that the organizations need to carry out in order to be compliant with Canada's anti-terrorism legislation.

What we've observed over the last 15 years in working with charities is that, without exception, they all want to be compliant with Canada's anti-terrorism legislation, but many find it challenging to do so. From a practical standpoint in this regard, many charities either take the position that the obligation associated with complying is not material to their charitable operations or, if it is, their efforts to comply may not be as robust as they could be due to perceived or real limitations in their operating budgets or overall resources. A limited number of charities have instituted comprehensive due diligence policies and procedures, but they are generally the exception to the rule.

The inability of most charities operating in the international arena to become appropriately engaged in the due diligence required to be compliant with Canada's anti-terrorism legislation is due to a great extent to the anti-terrorism legislation itself and to a general lack of guidance and direction from the Canadian government on how charities can best comply with the legislation.

First, when Canada's anti-terrorism legislation is explained to senior management and/or members of the boards of directors of charities operating outside of Canada, they find the legislation to be overly broad, confusing, and difficult if not impossible to comply with on a practical basis.

As an example, under subsection 83.19(1) of the Criminal Code, it's an offence to "knowingly" facilitate a terrorist activity. However, the *mens rea* element of the offence—i.e., knowingly—is rendered virtually meaningless by the paragraphs under subsection 83.19(2) in stating that a terrorist activity is in fact:

...facilitated whether or not

(a) the facilitator knows that a particular terrorist activity is facilitated;

(b) any particular terrorist activity was foreseen or planned at the time it was facilitated;

(c) any terrorist activity was actually carried out.

Such overly broad provisions subject historically legitimate means of providing humanitarian aid in conflict areas to criminal sanctions, something that the boards and senior management of Canadian charities operating abroad are understandably very worried about.

Second, charities operating in the international arena generally find a lack of clear rules or guidance from the Canadian government to assist them in knowing exactly what it is that they should do or not do in order to be compliant with Canada's anti-terrorism legislation. In this regard the brief checklist, such as the 2009 CRA charity directorate checklist for charities in avoiding terrorist abuse, which has only passing reference to international guidelines, does not provide sufficient information for domestic charities to be properly informed to adequately conduct the necessary due diligence investigations required for practical compliance purposes.

References to international guidelines, such as the FATF or the U. S. treasury guidelines, should only be used to enhance clearly written due diligence guidelines that Canadian charities need to follow and should not instead result in a moving target for compliance, as is currently the case.

In response to the challenges, I would like to make the following recommendations. First, with regard to the legislation itself, amend the appropriate provisions of the Criminal Code to eliminate the strict liability element of facilitation offence, and require the Crown to prove criminal intent to find any person guilty of such an offence.

Second, consistent with what the Canadian Bar Association and others have mentioned, I would suggest that made-in-Canada guidelines should be adopted that would allow charities that wish to be compliant to have clear parameters with what they need to do and what they should not do in order to comply with Canada's anti-terrorism legislation and be able to evaluate their performance. In this regard, the Canada Revenue Agency should be encouraged to work in collaboration with the charitable sector in the development of these guidelines.

It's been my pleasure to provide input to the Standing Committee on Finance, and I look forward to the opportunity of providing further comments.

• (0905)

The Chair: Thank you very much for your presentation, Mr. Carter.

Colleagues, we'll do six-minute rounds, and we'll start with Mr. Cullen, please.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Chair.

Let's start with charities. Mr. Schwisberg or Mr. Carter, do we know how many of the 170,000 charities in Canada have actually been listed by the government as providing funds to terrorist activities?

Mr. Terrance Carter: Just to clarify, there are not 170,000—

Mr. Nathan Cullen: There are 85,000 registered, and 170,000 non-profits and others.

Mr. Terrance Carter: —85,000, but there are non-profits.

Mr. Nathan Cullen: Let's take either of those numbers, either the 85,000 or the 170,000 non-profit, do we know how many have been listed by the government as providing funds to terrorist activities?

Mr. Terrance Carter: I know of only one.

Mr. Nathan Cullen: Broadly speaking, the charitable sector in Canada is one we are all broadly encouraging. I look around this table, and all of us have appeared at events and donated money. I look at the recent tragedies in Nepal. Many of us and our constituents give generously.

Here is the conundrum I have with the way the law is described, particularly as you have outlined it, Mr. Carter. I donate to the Red Cross, Oxfam, or Feed the Children, and they go in to help provide aid in Kandahar to children going to school. The one section of the act that you outlined, in terms of the culpability of the board of the Red Cross, Oxfam, or any of these charitable organizations, seems to put a lot of liability on the board for being able to determine if any of that aid ever ended up in the hands of someone who later committed a terrorist activity. In places, particularly in international development and international aid, this is challenging.

How do we square this? The intention is right. We don't want Canadian funds passing through legitimate charities and then ending up in the hands of people looking to do harm there, or to us. How do you assign culpability to a board of directors in Canada—for example, Save the Children, which provides \$100,000 worth of food aid and school books—if some of that food or materials end up in the hands of a terrorist entity?

• (0910)

Mr. Terrance Carter: Sir, what you have just described is exactly the response I get from members of charities' boards of directors when I explain what the law is, and particularly the section dealing with facilitation, which says “directly or indirectly facilitate”.

Mr. Nathan Cullen: There is also “knowingly or unknowingly”.

Mr. Terrance Carter: Exactly.

Mr. Nathan Cullen: Again, with good intention in the law to prevent Canadian funds from landing in the hands of terrorist organizations, how can someone be held criminally liable for unknowingly passing aid through reliable and good organizations? If, in confusing places like Syria, some of that aid ends up in the wrong place six months later, four hands down the line, the board of directors back here in Toronto, Halifax, or Vancouver is held criminally liable. Is that the way the law is designed right now?

Mr. Terrance Carter: That is the way the law is written. It exceeds the recommendations and the international standards of FATF and other UN bodies. We have much more onerous legislation in Canada than anywhere else in the world.

Mr. Nathan Cullen: The law of unintended consequences is important in trying to understand how to limit terrorist activities here.

The ones that come to mind are some of the larger organizations. I am thinking about some of the smaller ones, some of the Christian charities that work out of my riding, with two or three staff and 20 or 30 volunteers. They hold a fundraiser. They are trying to get food or aid into Iraq. For that board of directors, who are all volunteers, is there any assistance provided by CRA to comply with the law as it is written right now? I mean financial assistance to do the proper accounting.

Mr. Schwisberg, do you have any experience in this? You talked about upfronts and meeting with the charities early on, to comply.

Mr. Samuel Schwisberg: Yes. Sometimes contracts with DFATD can provide some funding for compliance costs, but you have to ask for it and you have to know about it. Certainly some education is required.

Even for a larger organization, the way the law is constructed now.... Picture me at a board of directors. They ask me, "Are we compliant with all the laws of Canada?" Can I state that with any great confidence, given the way the law is stated? It is quite possible that some would-be terrorist, three years down the road, after getting treatment at an emergency response unit, a MASH we've set up there, goes and commits an act of terrorism.

If you look at the pure writing of the law, the literal meaning of the law, we could be held liable for that. There is a lot of reliance on prosecutorial discretion, which we don't feel is consistent with the rule of law. In our submission, there needs to be more clarity in the law so that charities have a clear understanding of what they can and cannot do.

Mr. Nathan Cullen: Thank you, both.

I'll quickly go over to our friends in the banking association. Do you get any feedback from FINTRAC once you make one of these reports of suspected activities? Do they tell you what to do, what is working, or what is not working?

Mr. Ron King: We get general guidance, but we don't get any specific feedback with respect to any of the specific reports we submit.

Mr. Nathan Cullen: You submit a report and say you suspect there may be wrongful activity here. FINTRAC says "Thanks", and they move on. Would not some level of back-and-forth between your member associations, such as TD Bank, CIBC, and others, be more helpful in actually determining and eliminating false positives, and not sending law-abiding Canadians' information on and spreading it through the Canadian intelligence organization?

The Chair: Let's get a brief response to that, please.

Mr. Ron King: Yes, we believe so, which is partly why we're recommending more information sharing between the various constituents

The Chair: Okay, thank you.

Thank you, Mr. Cullen.

We'll go to Mr. Saxton, please.

Mr. Andrew Saxton (North Vancouver, CPC): Thank you, Chair.

Thanks to our witnesses for being here today.

My first question is for Mr. Black.

Mr. Black, you talked about the Palestinian Authority financing terrorism, but who finances the Palestinian Authority?

• (0915)

Mr. Edwin Black: It's the taxpayers of the United States of America, to the tune of about \$450 million a year; the taxpayers of the EU; individuals; Qatar; different organizations, but I would say that one of the leading funders of this terrorism is my country.

Mr. Andrew Saxton: What efforts are being made by these countries—your country in particular—to make sure that those funds do not end up in the hands of terrorists?

Mr. Edwin Black: Originally, I revealed this information at the end of 2013 in my book, *Financing the Flames*, which I brought a

copy of for the committee. In fact, I believe that I actually published in *Financing the Flames* a copy of the law, the public law, with the amounts of money that would be given to each terrorist. Now, these are not from the Islamic jihad or PLO; these are just ordinary citizens. Sometimes they just need to provide money for their family or a wedding, and it lays this out.

I visited four parliaments in four weeks: the House of Commons in London, the European Parliament, the Knesset, and the House of Representatives, and you are my fifth, and they were in disbelief. In the United States there was a great deal of discussion about it. At the last omnibus spending bill in December, a specific line item was put in that any of this money that goes in to pay these terrorists will be deducted from the overall amount of foreign aid given to the PA. Every banker knows that the concept of fungibility makes that an impossible goal. When the Palestinian Authority heard of this—and they never denied this, there's no denial here, this has been known for years—they said they were going to make an outside commission so they could run the money through several tunnels, and therefore it wouldn't be the PA.

I would like to differ on the concept of charitable organizations. Many of the charitable organizations that I have studied are actually intertwined with the terrorist activity or intertwined with the organizations who are financing terrorist activity in terms of fungibility and support. There's a 2003 report by the Israeli military government—actually it's the foreign ministry—that outlines the various specific charitable organizations that are involved in funnelling a lot of this money. And remember, charitable organizations are now transnational. They're international, they're supranational, and in some cases they bear no allegiance to any nationality, especially when you have organizations, as we do in the United States, that have offices in Switzerland. Nobody knows where the money's coming from. They take money by credit card. They have something called "donor-advised" in the United States. You can just give your money. What we need to do to cure this is not to make better regulations for the NGOs—I think you call them NPOs here—or any of the banks, but to dismantle the actual establishment, the institution—

The Chair: One minute.

Mr. Andrew Saxton: Okay.

I have very limited time. Thank you very much for your answer, but I do have to move on to some other witnesses. You'll have another chance, I'm sure, with my colleagues.

For the CBA, can you explain what banks are doing currently to help combat terrorist financing?

Mr. Ron King: The primary activities we have in respect of terrorist financing are twofold. One is screening of names. There are names published by the United Nations, Canada, and other countries that are on the terrorist lists. We screen our client lists globally against those names on the terrorist lists, with the aim of preventing and blocking funds if it exists. The other thing we do is monitor transaction activity looking for typologies of terrorist money.

Mr. Andrew Saxton: Very quickly, can you tell me what innovative, new methods are they using today for terrorist financing?

Mr. Ron King: Terrorist financing, as I said in my earlier remarks, is difficult to identify, because often it's about the intent of the use of the money. We've seen some innovative typologies where they've actually employed criminal activities, including credit card fraud, the trans-shipment of goods, and the drug trade. But as often as not, it's legitimate funds that are misdirected to finance terrorist purposes ultimately, which makes it one of the reasons it's difficult to identify.

• (0920)

Mr. Andrew Saxton: Thank you.

The Chair: Thank you, Mr. Saxton.

We'll go to Mr. Brison, please.

Hon. Scott Brison (Kings—Hants, Lib.): I have a question for the banking industry representatives to begin with.

When we think of shadow banking, often the risks associated with shadow banking are around the prudential risks to the system and credit issues. But what are the risks of shadow banking in terms of potential terrorist financing completely outside the realm of traditional banking? That's number one.

Second, is there a risk that if we do all the right things in clamping down on potential activities within traditional banking and helping to provide the tools to do that, those involved in terrorist financing will simply pursue their activities outside of traditional banking?

Mr. Ron King: In answer to your second question first, I think the answer is yes. And one of the things that we've observed is that to the extent that we've been successful in our attempts to limit money laundering and terrorist financing, it's an amorphous type of threat and it will change very quickly to adapt and find the path of least resistance.

I think to your first question, whether it's shadow banking or alternative payment systems or other forms of unregulated entities, to the extent that they provide some of the features that can be exploited by the criminal element, they will pass. Very often, criminals are looking first, to place cash, and, second, to move money across borders between various individuals, and so to the extent that they can use mechanisms to move money or transfer value from one person to another, particularly if it breaks an audit trail and it becomes obscure, they will use it. And third, anonymity is something....

Regardless of what type of financial services you are providing, we take a risk-based approach and have to look for those types of vulnerabilities and think how they might be exploited.

Hon. Scott Brison: Thank you.

Mr. Donovan.

Mr. Michael Donovan: I would agree with what Mr. King said. It's important to keep in mind as we think about how criminals continue to evolve in their methods and techniques that to do this they will look for the path of least resistance to be able to facilitate their means, be it from a money laundering or a terrorist financing perspective. So the things that Ron was talking about are exactly what they're looking to do.

Hon. Scott Brison: Are there indications or even evidence that, for instance, stored value devices are being used increasingly? Is it

an anachronistic rule we have now to report \$10,000 or more in cash when you're crossing the border? Does that reflect reality when people could have \$50,000 on a stored value device as they cross the border?

Are we effectively handling this in a way that doesn't reflect the technological sophistication of the people who are engaged in this activity?

Mr. Michael Donovan: I think a challenge that we are facing collectively right now, as a partner in the regime, is emerging technology and different ways to transact in a mobile environment. We have to keep pace with that in the way we construct our policies and procedures to onboard or monitor clients. Law enforcement has to look at that as well.

Hon. Scott Brison: But increasingly it's possible for somebody to obtain credit, to transfer money, and to receive all the services traditionally associated with banking without being a bank client, both within Canada and particularly within emerging economies in the developing world, where the growth of mobile banking and technologically driven banking is completely outside the realm of a regulatory framework.

Do you have any thoughts on how we, as a country and part of a multilateral framework, could address that?

I'd be interested, Mr. Carter or Mr. Schwisberg, if you had some thoughts on this as well, because it strikes me as something that we've got to be concerned about. I agree with the Senate banking committee's 2013 report that identified the issues of information sharing between the banking system and the Canada Revenue Agency.

We've even heard from earlier witnesses that there are issues in the sharing of data between the Canada Revenue Agency and FINTRAC. Are there some countries that are perhaps doing more on the whole technology side, and how could we participate in or support those initiatives?

• (0925)

The Chair: Who'd like to start with that?

Mr. King.

Mr. Ron King: If I may, there are two points I'd like to make.

One is that all of these alternative technologies very often ultimately need to find a link into the legitimate or the traditional financial system in some way, shape, or form. In some respects, if you can put in place safeguards at those points of entry, that's helpful. One of the things that new legislation is contemplating, or new regulations, is the idea of requiring financial institutions to identify where foreign money services businesses are registered in Canada.

I think the other thing, though, is that this very much is an evolving world. We have to think about the financial system in its entirety and think about safeguarding all aspects of it.

The Chair: Thank you. We'll have to return to this theme later. The round is up, unfortunately.

We'll go to Ms. Bateman, please.

Ms. Joyce Bateman (Winnipeg South Centre, CPC): Thank you very much.

Thank you to all of our witnesses. This is very interesting. I thank you for spending some time with us this morning.

I want to focus in on your comments, Mr. King and Mr. Donovan. You both mentioned FINTRAC, you have particular insight into FINTRAC, and you both mentioned that while the investments we're making with taxpayers' dollars are good, they could be better.

I would really appreciate you walking through a transaction, and from both sides. That's the accountant in me coming out that I want to see both sides of this entry. One side is where FINTRAC is alerting you and what potential improvements could be found. But maybe the side where you're alerting FINTRAC is the best one to start on. With that transaction, how could we be more effective and efficient with taxpayers' resources in the best interests of all Canadians?

I leave it to the two of you to figure out how you would like to answer that. Clearly you have the background, and you both mentioned it in your presentation.

Mr. Michael Donovan: Yes.

Maybe I'll start with the hypothetical where we see unusual or suspicious activity happening in a bank account. That information may involve money coming in from other institutions within Canada or being sent out. It may actually be transactions that are happening among a number of different subsidiaries within, say, the TD Bank Group or any of the big banks' affiliates.

That information we assess. If we work that up and we say, yes, we believe we have reasonable grounds to suspect that it might be related to money laundering, we have to then file it to FINTRAC. FINTRAC will take that information and look across their database of information and reports that they receive from other institutions, other reporting entities. Following their processes to reach reasonable grounds to suspect, and bringing in other intelligence that they may have in their possession, they get to their threshold to then refer it to law enforcement.

There are a number of different parties in that process. Where we hand it over, as Mr. Cullen mentioned before, we don't get direct feedback on that. Actually, the law prohibits FINTRAC from being able to disclose any type of information back to us. It only allows FINTRAC to disclose that information to law enforcement when they've met their threshold. FINTRAC plays as a bit of a gatekeeper to protect that information from abuse.

Where we do see potential, though, is with regard to the example I gave you, where I saw, in my case, money coming in from another institution or going out to another institution. I'm not allowed to query that other institution, or query the institution that my bank is sending the money to, in order to let them know that, hey, we have a suspicion here.

Ms. Joyce Bateman: You're not allowed? TD couldn't let Scotiabank know that there was a problem?

Mr. Michael Donovan: No. That's one area that we're proposing should be looked at, to allow for that to happen. Right now, because of the way the privacy legislation is constructed, and the fact that the current AML legislation is silent on this fact, we aren't allowed to be able to provide each other with that type of information. We feel that this is something we could probably be doing better.

Again, we want to make sure that we have the right framework in there to protect individuals' privacy and to make sure that it's not a fishing expedition between two firms, that it's really based on criteria that we can all work with.

• (0930)

Ms. Joyce Bateman: That's interesting.

Do you have anything to add, Mr. King?

Mr. Ron King: I agree with those comments. I would just add that this is a relatively immature business, this whole thing of anti-money laundering and anti-terrorist finance, with most of the progress being achieved in the last decade or so. I think some of our learnings have been that it very much changes. To the extent that we can be agile in adapting our methodologies, in a fairly proactive way, to risks as they emerge....

We've seen greater cooperation between government agencies and the regulated entities more recently, and I encourage that. We also look forward to the threat evaluation that's presently being prepared by the finance ministry. We look forward to receiving that to help us better understand what the threats and vulnerabilities are. That needs to be a continuous part of a cycle of risk assessment, building controls, and evaluation.

Ms. Joyce Bateman: It's interesting that you're noting greater cooperation between various government entities. Breaking down these silos is so important if we're going to communicate cross-sectorally.

The Chair: You have one minute.

Ms. Joyce Bateman: Thank you, Mr. Chair.

I'm curious. Do either of you have specific policy recommendations for us to maybe entrench that? Sometimes cooperation between agencies can be the result of individuals who are collegial and cooperative. Do you have comments on things that you'd like to strengthen or do you see opportunities?

The Chair: Just give a brief response, please, Mr. Donovan.

Mr. Michael Donovan: Between federal agencies there is a lot of work happening in that regard, and I understand there is regulation to allow for that to happen.

What we're interested in, as we are a key partner in the regime providing that information to FINTRAC and then further on to law enforcement, is whether there is an opportunity there for us to be part of that as well, bringing in the private sector in that greater information sharing.

The Chair: Thank you.

Thank you, Ms. Bateman.

I'm trying to be fair on time here, but we can return to that.

Monsieur Dionne Labelle, *s'il vous plaît*.

[*Translation*]

Mr. Pierre Dionne Labelle (Rivière-du-Nord, NDP): Thank you, Mr. Chair.

For a few weeks, we have been studying terrorist financing in Canada and abroad and from Canada to abroad. I am starting to get some idea of the way that works.

Most of the stakeholders from institutions, such as banks, the Canada Revenue Agency, FINTRAC and the RCMP, have talked about the need to have more information sharing. There is a lot of information. Since January, banks have been required to inform FINTRAC of any electronic funds transfers of \$10,000 or more. This year, FINTRAC will have to process over 10 million pieces of information. That is a lot of information.

What I have learned here is that, in reality, terrorist financing from Canada to abroad is done through small amounts of money that are not covered under those reports. It could be someone who sells his car and sends the money to his brother in some other country. Once the money is there, we don't know whether it will be used to finance terrorist activities. It could also be someone whose mother is in the Middle East and to whom he sends \$800 or \$500 a month. The person at the other end might be using that money for food or may transfer it to terrorist organizations. The problem is that the type of information we now have does not really reflect the reality.

I would like to go to Mr. King, who is asking to be informed in real time. Based on what I have heard so far, it does not seem that large amounts go from Canada abroad. Even if that was the case, how can we separate the wheat from the chaff among the 10 million electronic funds transfers?

● (0935)

[*English*]

Mr. Ron King: Thank you, Mr. Labelle.

It is difficult, and very often where thresholds are set for the reporting of information, one of the first things the criminal element does, whether money launderers or terrorist financiers, is to find ways of avoiding those thresholds. The other thing they do is to try their best to mask movements of money and other transactions to make it appear as legitimate activity. It's the commingling of these, among many millions of legitimate transactions, that is the challenge that faces us. So some of the things we are advocating for are better information sharing and better analysis on an ongoing basis to enable us to be more focused so that we aren't unnecessarily generating a large number of reports, but can be more focused. That is how the various—

Mr. Ron King: The constituents in the regime need to work closely together.

[*Translation*]

Mr. Pierre Dionne Labelle: At any rate, that is one of my conclusions.

I really liked the remarks of the official from the Canadian Bar Association, completed by Mr. Carter. At the beginning of the meeting, it seemed that Canadian charities were transferring money to terrorists. However, based on what Mr. Carter said, that is not the case at all. That use is insignificant, just 0.001% of cases.

Mr. Schwisberg, you said that charities are an asset in countering terrorism. Could you comment on that?

Mr. Samuel Schwisberg: Clearly, complying with Canadian laws costs a lot of money. That is money well spent, but it is a problem for us. I am thinking of very small charities. It is even more difficult for them to comply with the laws. That is why we have suggested in our document that assistance be provided to those charities so that they can comply with Canada's laws.

Mr. Pierre Dionne Labelle: In what way are they an asset in countering terrorism? Is it because they are working on prevention?

Mr. Samuel Schwisberg: It is through the way they connect with people around the world. Providing humanitarian aid can touch people and their thoughts. In that sense, charities allow friendships to develop. Even though that is not the actual goal of what they do, that's what happens when they provide financial assistance to those who need it.

Mr. Pierre Dionne Labelle: So it is a corollary impact.

Mr. Samuel Schwisberg: That's right.

Mr. Pierre Dionne Labelle: You also talked about raising awareness before doing the audits. What type of awareness are you suggesting? Are you referring to the legislative framework or other aspects?

Mr. Samuel Schwisberg: It is a question of education. Charities don't have a lot of tools allowing them to comply with the legislation. We feel that the CRA can do more to provide information to people. Mr. Carter said the same thing. There are notices, but that is often not enough.

In other areas, the CRA does a good job. We can also find a lot of information on the website and elsewhere. We think this aspect of the legislation is a little weak.

[*English*]

The Chair: Okay.

Just briefly, Mr. Carter.

Mr. Terrance Carter: Yes, I'll speak to that just briefly.

Back in 2007 this committee made a recommendation that CRA should consult with the charitable sector to develop made-in-Canada best practice guidelines to assist charities to be able to comply.

Justice Major for the Air India inquiry back in 2010 said:

It is essential that measures to defeat the use of charities or NPOs for TF not unnecessarily impede the valuable activities of legitimate organizations. Any new guidelines or best practices that the CRA may contemplate to help it address [terrorist financing]...

should take into account the input of the charitable sector.

The Chair: Okay.

Thank you. Merci.

We'll go to Mr. Cannan, please.

Hon. Ron Cannan (Kelowna—Lake Country, CPC): Thank you, Mr. Chair.

To our witnesses, good morning, and thank you for being here.

As you know, Finance Minister Oliver sent the letter to the committee requesting that we look into this serious issue of terrorism financing and the implications, not only locally but across Canada and globally.

My first question would be for Mr. King, who I understand is a former Okanagan resident. It's not too far from home, so it's good to see a fellow British Columbian.

In your opening comment you talked about money laundering versus terrorist financing and you described them differently. I just want to clarify to follow up on the comments of my colleague, Ms. Bateman. Do you see them as being mutually exclusive?

• (0940)

Mr. Ron King: They're not mutually exclusive because these two typologies share a number of things in common. Very often they're the same vulnerabilities within the financial sector and other regulated entities that the criminal element will seek to exploit. As I mentioned earlier, things like the ability to convert cash into something that's non-cash or a legitimate asset, the ability to move money across borders or between persons and entities, and the ability to conceal the activity behind some form of anonymity or some way of breaking the information flow or the audit trail, if you like, are all things that they seek to exploit.

The two typologies, money laundering and terrorist financing, are very difficult, and each presents its own challenges in trying to identify them.

Hon. Ron Cannan: Thank you.

I'll follow up with Mr. Donovan. Maybe he can answer this question as well.

You both alluded to the need for enhanced disclosure of personal information. Our committee has heard from numerous witnesses. Actually, last week we had a former RCMP officer for over 30 years advocating the same perspective. Sitting right next to him was a wonderful lady, a British Columbian and a civil libertarian, saying, "Well, no, you can't do this and you can't do that."

Maybe you can provide some balance as to how you provide that personal sharing of information while still protecting the privacy of your customer and Canadians.

Mr. Ron King: Obviously, there are existing safeguards behind the walls of FINTRAC that prevent and limit how they disclose information when it comes to them. Our role in the financial sector is

providing the information to FINTRAC so that they can convert it into intelligence. I think what we're advocating is a method that would allow us to be more focused in our efforts as opposed to being more broad-brushed, which in turn could actually reduce the amount of inappropriate personal information that is disclosed.

Mr. Michael Donovan: I think it's important to remember that part of why the banks exist is the trust that our customers put in us to protect their information and their assets, and the privacy related to that. So we have a vested interest that anything we want to do in trying to combat money laundering or terrorist financing that allows for greater information sharing of a customer's personal information be done within the proper framework to keep that information secure.

We do send that personal information now over to FINTRAC. That has been working for a number of years now. There haven't security or privacy breaches by submitting that information into FINTRAC. Millions of reports a year go to FINTRAC. What we're looking for is the reciprocity of getting some information back so we can target more of our activities, which we think will help the regime as a whole and really focus on where the risk is the greatest.

Hon. Ron Cannan: You also mentioned in your comments, Mr. Donovan, other countries that have this personal sharing of information and the protection of privacy. Do you have any examples?

Mr. Michael Donovan: In TD's experience because of our North American presence, we have a fair number of branches located in the U.S. The U.S. has a regime there under the Patriot Act, section 314 (b), that allows for this type of information sharing among financial institutions. It's under the auspices of their equivalent of FINTRAC—FinCEN. You register with them and you share information, and it's very prescribed as to what type of information you can share, the reasons you can share that information. It's been working quite well in that regard.

Hon. Ron Cannan: Thanks. I'm also a former small business operator and I'm concerned, every time we put a regulation in place, about all of the burden that also puts on small business. I had an example from a realtor yesterday. He emailed me and talked about the FINTRAC program and how the extra paperwork is burdensome. From your experience in banking, and from FINTRAC, does that help, or is it just more of a perspective to look like we're doing something to try to control the terrorism? He's just saying it's a waste of time and money and he can still usually illegally proceed without any signature. It's just a facade.

Mr. Michael Donovan: I'll maybe answer more from a TD perspective. To my earlier opening comments about the responsibility to detect and deter, having a lot of these procedures and processes in place has a deterrent effect of keeping the bad guys out of our financial system. We also then do further monitoring and risk assessment of the ones who are in the system, to identify them to FINTRAC and hopefully get them out of our system and dealt with by law enforcement,

To the extent that brings a compliance burden on us as a bank, we do look for opportunities to make sure that what is coming to us from the government, from a regulatory or guidance perspective, works in practical terms with how banking works. We have dialogue with the Department of Finance, with FINTRAC, with OSFI, in these regards. To the extent that is working, I think we've had a good relationship in that regard. Can we always do better? Of course we can, and we continue to have those dialogues.

I wouldn't say that it's an overly burdensome concern for us, but we're always looking for opportunities to make sure it's efficient and effective.

• (0945)

The Chair: Thank you.

Thank you, Mr. Cannan.

[Translation]

Mr. Côté, the floor is yours for six minutes.

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you, Mr. Chair. My thanks to all the witnesses for joining us today.

I will just continue along the lines of what Mr. Cannan said. Clearly, I took the time to examine the 18 recommendations in the Senate committee report entitled *Follow the Money: Is Canada Making Progress in Combatting Money Laundering and Terrorist Financing?* In fact, the Canadian Bankers Association testified before the committee as part of its work.

Mr. Donovan, recommendation no. 10 clearly indicated that, under the legislation, FINTRAC had to provide entities required to report with quarterly, personalized feedback on the usefulness of their reports. Unfortunately, I understand that FINTRAC is not currently following this recommendation. There is no regular and personalized feedback so that you can understand the usefulness of your reports?

[English]

Mr. Michael Donovan: FINTRAC has in the past provided feedback to TD at, I would say, a very macro level as to the data quality of our reporting. But, no, we do not currently receive regular

updates from FINTRAC or feedback on our reports, nor do we receive more tactical information back on the reports we've submitted to FINTRAC.

[Translation]

Mr. Raymond Côté: Thank you.

Mr. King, I am going to talk about recommendations no. 14 and 16 specifically.

Recommendation no. 14 seems to echo what you said in your presentation, in terms of implementing “a risk-based approach to identifying higher risk customers.” This recommendation does not seem to have been implemented. It reads as follows:

The federal government enhance Canada's existing anti-money laundering and anti-terrorist financing regime by placing additional emphasis on: the strategic collection of information; and risk-based analysis and reporting.

Does that correspond to what you recommended in your presentation?

[English]

Mr. Ron King: Thank you, Monsieur Côté.

I think we do apply a risk-based approach today in Canada. In fact, the guidance from FINTRAC—and FINTRAC is working on additional guidance now on the risk-based approach—and the guidance for Canadian federally regulated financial institutions from the Office of the Superintendent of Financial Institutions advocate a risk-based approach. Also, the work being undertaken now by the finance ministry on Canada's threat assessment is very much about identifying threats and vulnerabilities to augment the risk-based approach.

Can we do better? Perhaps, and I think this is always something in an area that is evolving. I'm very much in favour of greater information sharing and ways of making the regime better, but also of an agility, an ability to react quickly to changing and emerging threats or typologies.

[Translation]

Mr. Raymond Côté: Absolutely. I agree with you.

I will follow on the observations made by my colleague Pierre.

In light of the volume of information you have to transfer, we may wonder whether there is a level of efficiency in that.

Recommendation no. 16 in the same report states:

The federal government eliminate the current \$10,000 reporting threshold in relation to international electronic funds transfers.

Mr. King, what do you think about that recommendation of the Senate committee?

[English]

Mr. Ron King: Certainly for financial institutions it would remove a burden that today is fairly onerous in respect of reporting of transactions at the \$10,000 threshold. Not only must we report transactions individually that meet the \$10,000 threshold, but we must aggregate multiple transactions that together, within a 24-hour period, add up to that \$10,000 threshold, which makes it a complicated task.

We do know that when thresholds are set, the criminal element immediately tries to circumvent those thresholds to avoid reporting. It is a real challenge that we need to address.

• (0950)

[Translation]

Mr. Raymond Côté: How much time do I have left?

The Chair: You have a minute and a half.

Mr. Raymond Côté: Wonderful.

Mr. Schwisberg, in the testimony we heard at a previous meeting, Mr. Clement, a former RCMP officer now self-employed, said that this Herculean task of gathering information did not lead to convictions, unfortunately. He also said that there was a problem with maintaining the expertise within the RCMP and that it was difficult to have truly dedicated and experienced prosecutors take cases.

Could you comment on the issue of implementing this entire information gathering system to have convictions?

Mr. Samuel Schwisberg: It is a question of funding. We need to invest money if we want laws to be enforced properly. You cannot pass legislation without allocating the resources and funding needed to enforce them. We agree on that up to a point.

We believe that the Crown has some very talented and outstanding lawyers. I must add that it is always a question of education. Lawyers are trained to properly understand legislation that has been amended. I have no problem with that.

[English]

The Chair: Merci.

Mr. Van Kesteren, please.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Chair. Thank you all for being here.

It's an interesting discussion. As I said at our last meeting, it's getting more and more interesting as we get into this thing. I want to direct some of my questions, maybe all of them, to Mr. Black.

Mr. Black, I'm going to be 60 years old this year, and I have found in life that the older I get, the more I thought I understood things, the less I understand them. Often what we think is reality, we find out is not. I think you know what I'm talking about. Some of the things you mentioned are startling. I guess I shouldn't be surprised.

I want to ask you first of all if Canada is participating in this like the United States, I suspect possibly through the UN. But this seems to be an American problem. I don't want to be critical of Mr. Schwisberg, but I think a lot of this had good intentions at one time. We thought we might be able to alleviate some of the misery in the Middle East and well-intentioned people pressured their legislators to forward millions, probably billions of dollars, but we're being fooled.

I wonder if you could let this committee know whether or not we as a Canadian government are participating in this as well.

Mr. Edwin Black: First of all, it's not just the United States that's involved; it's also Europe and charitable organizations worldwide. These charitable organizations do not work on an A to B routing

system. When charitable organization A gives money to charitable organization B, that then goes to charitable organization C, and then goes to non-charitable organizations and operations. For instance, if you had money going from A to B, and it ended up at the Union of Good, headed by Sheik Qaradawi, that's the chief Hamas charitable organization. So it's going there.

There's the Ministry of Social Affairs in the Palestinian Authority. I hear everybody here talking about criminals, but that's the wrong word. You need to talk not about the criminals, but about the politicians. You're nibbling at.... one of the colleagues here spoke about \$150. That's not the money we're talking about. The Ministry of Social Affairs, which interacts with all these charitable organizations, did an internal audit and found that it had given financial assistance in 13,351 cases to terrorist activities outside of Palestine. That's anywhere from Tokyo to Toronto. That was approximately \$20 million. When you start creating an elaborate infrastructure to monitor \$1,000 here and \$10,000 there, that's the little stuff. The big stuff is the \$450 million a year that the U.S. is giving. I think Canada is giving upwards of \$66 million, through various non-governmental entities or organizations, or the UN. Naturally the UN, especially through UNRRA, is providing massive support for terrorism. These are intertwined

I'm happy that you have an elaborate infrastructure to try to figure out who is sending out \$150, but if you really want to go to the centre of this financing, you need to go to Brussels, Washington, and other capitals, where the taxpayers and their representatives do not know they are funnelling millions of dollars to terrorism every day.

• (0955)

Mr. Dave Van Kesteren: I wonder if you could clarify, or maybe you could just give us your opinion. I want more than your opinion, but your evidence.... I think about organizations, and we all support charitable organizations. I like to support Samaritan's Purse, for instance, and probably many of us do.

Those aren't the organizations we're talking about. They're not funnelling money to the terrorists. Aside from the things you're talking about, I suspect the ones that are suspect are the ones that are directly involved in raising money for terrorists' activity.

Do I have a misconception there?

Mr. Edwin Black: I would say that the charitable organizations are indirectly involved in supporting it. They're interactive. Since they all work with the Ministry of Social Affairs and other UN bodies, it is very common for someone on the inside, especially with Hamas, to recommend an individual go on a payroll. There were some 80,000 phantom employees, so that's how that's done.

These prisoners, these terrorists who are getting monthly stipends, each has a government title: a clerk, an undersecretary, a corporal.

So when you here in Ottawa get a report that you're spending money to support an organization and these are the clerical jobs, those clerical jobs are people who have slit the throats of infants and who are convicted terrorists. Everybody knows this.

What I'm telling you now is not some dark secret that I figured out in a café because I met someone. These are the known published materials of the Palestinian authority. So continue spending your time on trying to track down the \$150 payment that's going, but more important is the \$450 million payment that is infused all throughout the various entities of the Palestinian Authority and the Martyrs Establishment, which is the worldwide funder of these terrorist activities.

After my time I'll be happy to share with you further.

The Chair: Thank you.

Thank you, Mr. Van Kesteren.

We'll go to Mr. Adler, please.

Mr. Mark Adler (York Centre, CPC): Thank you, Chair.

I do want to begin first of all with Mr. Carter.

You had indicated earlier in a question that you were not aware of any charitable organization that had had its status withdrawn?

Mr. Terrance Carter: No, the question was if any had become a listed entity. In relation to charitable status, that's a totally different matter.

Just to clarify, lots of charities lose their charitable status, and some of them lose their charitable status because of questions concerning involvement in terrorist funding, but that's different from the question that was asked.

Mr. Mark Adler: Okay, thank you.

Mr. Black, yes, what you're talking about is a huge issue: public money, taxpayers' money going to fund these terrorists.

Can you address any of the private side of things, the activity of these terrorist organizations here in Canada who actively raise money from the public? Do you know how much that would be, how active these organizations are, and who they are? Can you just run with that please?

• (1000)

Mr. Edwin Black: I can't give you specifics on Canada, because I was given only a couple of days' notice to come here, but I can tell you that some of the same organizations that are supported, for instance, by the New Israel Fund in the United States, which has a Canadian office and also a Swiss office—I'm not sure why an American charity working in Israel needs a Swiss office—and other

organizations such as Adalah and B'Tselem are also getting money from the Welfare Association of the Islamic Bank and the NGO Development Fund, which are controlled by Iran, and Saudi Arabia, and other countries in that neck of the woods. So what is it that these organizations have in common with Iran and charitable organizations?

When I did my original investigation for "Funding Hate", on the Ford Foundation, which resulted in them dismantling their entire funding operation for racist NGOs, I found that they were giving millions and millions of dollars to support the anti-Semitic and terrorist-supporting organizations at the Durban conference in South Africa, and ultimately they had to establish rules that none of the grantees could allow their money to be commingled or to support the terrorists.

So once again, it's an impossible task for bankers to track the money going from organization A to organization B. Maybe they are registered NGOs or 501(c)(3)s, which is what we call charitable organizations in the U.S. What happens on the ground when they are funding guys who are travelling to distant locales to explode themselves, when they are taking care of families, when they are putting people on the payroll? You need to examine the root problem and the infrastructure. The paymaster, the central bank that is dealing with all of these moneys—the little moneys from Canada, and the giant moneys from Qatar, and the EU, and the United States—is the Palestinian Authority, and that is not denied by them. They have their known laws, they defend those laws, and they say they are in the right.

All of the numbers I'm giving you, about \$20 million and 13,000 recipients, are from internal documents. People said this is charitable, but they came back recently and said, "Don't insult our warriors. This is not charity. This is their salary". And they used the Arabic word *ratib*, and *ratib* means salary.

Mr. Mark Adler: Last year we had a case here in Canada. A few years ago, first of all, the Muslim Association of Canada had their charitable status withdrawn because they were found to have been raising money, \$300,000, to send to Hamas. IRFAN-Canada last year raised \$14.5 million that we know of, which was sent to Hamas, and they also had their charitable status withdrawn.

Could you talk a bit about some of the organizations you're aware of in the States that have activities here in Canada that are...?

Mr. Edwin Black: I can't give you the specific names.

Mr. Mark Adler: Talk about the U.S. then.

Mr. Edwin Black: I can tell you that we have organizations in the U.S. that are funnelling money to things such as the Holy Land Foundation, which has been put out of business, and to other charitable organizations. It's the end-game recipients who make the difference. We've had restaurants in Detroit that have been shut down for passing money to terrorist organizations. There was one called La Shish. It had very good food.

It's very common for ad hoc charitable organizations.... I'll give you an example. There is an NGO in the Palestinian Authority called the Prisoners' Club. The Prisoners' Club is specifically designed to make sure that the Ministry of Prisoners prioritizes every dollar it gets from any source to pay prisoner terrorist salaries before it pays for welfare or infrastructure.

Thank you.

• (1005)

The Chair: Thank you .

Mr. Carter, just very briefly on this, please.

Mr. Terrance Carter: I just wanted to clarify one matter. A gentleman said that the Muslim Association of Canada had its charitable status revoked, and it hasn't. So I just wanted to clarify that.

The Chair: Thank you.

I wanted to follow up with the time remaining on a couple of issues.

First of all, the Canadian Bar Association. And Mr. Carter, you talk about "Made in Canada" guidelines that will allow charities that wish to be compliant to have clear parameters with what they need to do and what they should not do in order to comply with Canada's anti-terrorism legislation

If you go to the CRA website, they actually have a checklist for charities on avoiding terrorist abuse. It's quite substantive. It's linked to all of the links to public safety. It's a series of questions for charities to follow. It seems to me this is what you'd be requesting. Is there something beyond this that the two of you would want?

Mr. Terrance Carter: Well, thank you, Mr. Chair, for the question.

Certainly the checklist is a step in the right direction. It was introduced in 2009, updated in 2010, so we certainly applaud CRA for having that in place. But it's not adequate in itself and it's certainly not what—

The Chair: What would you add?

Mr. Terrance Carter: When you compare it to the FATF guidelines, and if you take a look at the U.S. Treasury guidelines, at the Charity Commission of England and Wales, they have much more comprehensive terms.

What you have is a very short list that does not give justice to the complexities of what's involved with the anti-terrorism legislation. It asks questions such as, do you have a good understanding of the background and affiliation of your volunteers? That's a question. How do you do that? How do you implement that on a practical basis? Do you know who's using your facilities and your office, and your telephone and fax, and what they're saying? How can you

possibly take that from a practical context and put that into meaningful terms of reference?

For clients, we have prepared long policies—some 27 pages—trying to put that into context. What would be much better would be for CRA to work with the charitable sector to come up with something practical so it's not just the questions, but rather recommendations about what needs to be done similar to what's been done in the U.S., similar to the international FATF, and similar to England and Wales.

The Chair: So those are all good examples. In your view, then, for Canada to look at for a model?

Mr. Terrance Carter: Yes.

Mr. Samuel Schwisberg: We would concur with that.

We have procurement policies in place that we've developed because we have in-house lawyers doing them. We have all kinds of policies dealing with due diligence, how you check out organizations. You have to have a screening policy in place for volunteers and staff. All these are detailed policies that require a lot of expertise, and a checklist like this just doesn't give you sufficient detail.

The Chair: I appreciate that very much.

So the next item I want to go on to is with the two representatives from the banking sector.

Mr. Donovan, you concurred with the point by Mr. King to allow for greater information sharing among Canadian financial institutions, as well as between FINTRAC and reporting entities. But I think you said in response to a question that it's challenging getting FINTRAC to get the information back. Did I hear that correctly?

Mr. Michael Donovan: On a tactical level, Mr. Chair, they're actually forbidden under the law to be provide us details on the information we've provided them.

The Chair: So you not only want greater information sharing between Canadian financial institutions, but also between FINTRAC and them on a go-forth end basis?

Mr. Michael Donovan: That's right.

The Chair: So that would be obviously a legislative or regulatory change that we'd have to look at.

In terms of FINTRAC itself and its activities, though, other witnesses before the committee have recommended having some kind of an enhanced oversight review with respect to FINTRAC. Would the two of you share that view, or do you have a view on that matter?

Mr. Ron King: So a separate body to oversee the activities of FINTRAC?

The Chair: Is there a way of having more insight into what FINTRAC is doing, as to whether FINTRAC is actually doing an effective job respecting the privacy concerns that the Privacy Commissioner raised? Are there ways to do that, then?

Mr. Ron King: As I've said before, these risks of money laundering and terrorist financing are evolving continually. As opposed to necessarily an oversight body, I believe the regime is subject to periodic parliamentary review, and I think as part of that review we should have a comprehensive, third-party, independent analysis of the entire regime to identify potential areas for improvement that would include perhaps FINTRAC as well as others.

•(1010)

Mr. Michael Donovan: I would just like to add that FATF, the Financial Action Task Force, also does a major evaluation of Canada, and part of that major evaluation is also looking at FINTRAC as a financial intelligence unit. They recently changed their methodology to include an effectiveness component to the way they assess different countries' regimes. So that also would give us an indication of the overall effectiveness of FINTRAC and the regime as a whole in Canada.

The Chair: Thank you.

I only have a minute left and I did want to follow up on information sharing between different financial institutions. I see the sense of that; I think many Canadians have different accounts with different institutions so it makes sense to track that, but then it obviously raises the flag of concern about an individual's privacy in moving information about in a very legitimate manner. Again, it's a longer question than 30 seconds, but how would you ensure that you are respecting privacy if this committee recommended greater information sharing between different financial institutions?

Mr. Ron King: I think the industry would be looking to the government to provide parameters that would define in which circumstances and precisely what type of information could be exchanged, and requirements as well for the participants in those information-sharing activities to be legally bound to protect the additional information that comes to their source. We already gather an awful lot of information about our customers on an ongoing basis that is highly confidential, including where they are sending money and activities of that nature. So the financial services community, banks in particular, care very deeply about protecting the confidentiality of our customers' information. That's part of what we need to do to foster trust in the system. I think appropriate checks and balances would be some of those ones that I've indicated.

Mr. Michael Donovan: Agreed.

The Chair: Thank you, I appreciate that. I wish we could continue this discussion, but we have another panel coming forward. I want to thank all of you on behalf of all the committee members. If you have anything further for the committee to consider, please submit that to the clerk and she will ensure that all of us get it.

Colleagues, we'll suspend for a few minutes and bring the next panel forward.

Mr. Michael Donovan: Thank you, Mr. Chair.

The Chair: Thank you.

•(1010)

(Pause)

•(1020)

The Vice-Chair (Mr. Nathan Cullen): Committee members, I'll ask you to take your seats, and we'll get started. We're a few minutes late.

I would like to welcome our witnesses, both here in Ottawa and those appearing by video conference from London and Milan.

To all our panellists, I'll have to make some apologies initially. It seems that we are setting up for some votes in the House of Commons, but what we've decided as a committee is that rather than interrupt our process here—because time is precious—some of the committee members will remain and some will have to return to the House to vote. We'll get as much of your testimony and the questions and answers as we can.

Let's start with witnesses here in Ottawa, for up to five minutes, and then we'll turn to our guests via video conference.

Perhaps we'll start with you, Mr. Hunter.

Mr. John Hunter (Hunter Litigation Chambers, As an Individual): Thank you, Mr. Chairman, and thank you for the invitation to appear today.

I have to confess that I was a little surprised to get the invitation, because unlike the rest of your invitees I'm not an expert in terrorism or terrorist financing. I am assuming that I was invited because I have had a little experience with your statute, because I was counsel for the Federation of Law Societies of Canada in challenging provisions of that statute related to the impact on lawyers.

What I've done is prepare a brief for you, which I hope you have, that summarizes the litigation that has taken place. It really took place over about 15 years and ended a couple of months ago with a judgment from the Supreme Court of Canada that struck down certain provisions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act) and read down other provisions.

What I thought I might usefully do—and hopefully it will be of assistance to you—is to discuss briefly what happened there and why it happened, so that this could be avoided in the future.

It's obviously tempting to try to bring in legislation that will enlist lawyers to obtain information from their clients that could be used to combat money laundering and terrorist financing. But of course that comes into conflict with constitutional principles in this country, both the principle, which has been said to be a principle of fundamental justice, of solicitor-client privilege, the privilege of information and confidentiality of information from clients to their lawyers, and also, as the Supreme Court of Canada has just pronounced in this decision a couple of months ago, the principle that a state must not undermine the lawyer's commitment to the client's cause. In other words, a lawyer has a duty to his or her client, and it has to be an undivided duty, subject to ethical principles, and the state must not undermine that duty.

The additional problem in the legislation had to do with the search and seizure provisions that provided for warrantless search, which the courts are frankly never going to allow on a law office.

There are a couple of messages, it seems to me, out of that litigation. If you're contemplating new legislation with respect to terrorist financing, I'd urge you to be cautious with respect to any efforts to enlist lawyers in that effort against their clients. The legal profession is very sensitive about these matters, and the courts have been pretty protective too of client confidentiality. These are important principles in our constitutional structure, and it seems to me that one of the messages out of the courts pretty consistently is that those confidences will be protected by the courts. The lawyers have a role in the administration of justice, and this all fits together in respect of that role.

The second message, I would suggest, that comes out of this process is that law societies can play a role in this process. Law societies—and I use that term generally for all the legal regulators in Canada, which are provincially and territorially based—have regulation-making powers. As you'll see from the brief, law societies have stepped up in the course of the last 10 to 15 years with regulations that minimize the prospect of lawyers being used as dupes for their clients by, for example, forbidding lawyers from taking large amounts of cash that could be used for money laundering and things of that nature.

There may well be a collaborative role that law societies can play, if the results of your inquiries conclude that there are some additional steps that lawyers could take to ensure that they're not being used inadvertently to assist clients in activities they shouldn't be engaged in.

Thank you.

• (1025)

The Vice-Chair (Mr. Nathan Cullen): Thank you very much, Mr. Hunter.

Mr. Amicelle, you have five minutes, please.

[*Translation*]

Anthony Amicelle (Criminology Professor, Department of Criminology, Université de Montréal, As an Individual): Thank you, Mr. Chair.

Members of the committee, in light of the research that I have done and that I continue to carry out in Europe and Canada on countering terrorist financing, I would like to take the few minutes I have to address a point of tension that defines the fight against terrorist financing.

As you know, the fight against terrorist financing—the financial aspect of counterterrorism—was promoted as being built around two officially complementary strategies.

The first strategy is to publicly identify individuals or entities suspected of terrorist financing activities or of supporting those activities and to freeze their financial assets and bank accounts, in the hope of reducing the resources of groups considered to be terrorist and thereby reducing their ability to act.

This strategic assumption deserves to be discussed and may be highly nuanced. I am at your disposal during questions to point out the controversies and challenges related to the specific and practical implementation of this strategy.

The second strategy looks at, or seeks to see, the money and the financial trail as a source of information. The final objective of this second strategy is not so much to freeze financial flows, but rather to track them in order to produce financial intelligence on individuals or on financial relationships between individuals.

I would really like to stress this second strategy that brings together funding and security. In other words, financial intelligence and surveillance practices are, to some extent, the meeting point between very different players who, even a few years ago, were not at all accustomed to working together or even speaking to each other. This means that, on the one hand, there are people from the economic and financial world—starting of course with banks—and on the other hand, there are people from the security and intelligence world, starting with the financial intelligence unit, FINTRAC, in Canada, and law enforcement and intelligence agencies.

Such cooperation exists. It produces effects, but I think it indicates a point of tension, or balanced tension, even a misunderstanding crystallizing completely around the concept of risk. In fact, the fight against terrorist financing and money laundering is based on risk and a risk management approach. All the players I mentioned share this terminology and speak the language of risk. However, this does not necessarily reflect a common view of the risk being managed.

In other words, if I may say so, the players agree on the use of the same word, which is the concept of risk, but they are not necessarily talking about the same thing. Depending on the mission entrusted to them, police and intelligence officers, when they talk about the concept of risk in relation to terrorist financing, refer primarily to the risk of violence or attack on society and the public.

In contrast, when bank compliance officers talk about the concept of risk in relation to terrorist financing, they refer primarily to the risk to their financial and legal reputation for themselves, their employers and their institutions. So some refer to societal risks while others are more focused on institutional risks.

To some extent, there is a convergence between the two. There is some cooperation, but it comes at the cost of a misunderstanding, or at least a difference of interpretation of this idea of risk in relation to terrorist financing.

We might think and assume that these two concepts of risk can go in the same direction, converge and overlap. However, our empirical studies on these issues rather show the opposite: compliance officers, in banks in particular, take action in a context of organizational defence, with a view to defending their institutions. As a result, a lot of compliance officers tend to make what are called complacent or defensive statements. This means that they will tend to turn any small doubt into sufficient suspicion to declare and report any unusual transaction.

In the name of institutional risk aversion, they prefer to report the transaction, at the risk of doing harm and reporting it in an abusive manner to the competent authorities, including the financial intelligence unit. Ultimately, this may well produce more information noise than useful financial information. Of course, this institutional risk management can be useful to protect financial institutions. Whether this is productive or not in terms of managing the risk terrorist financing poses to society remains an open-ended question.

• (1030)

The debate is therefore about that misunderstanding, the concept of risk and the cooperation based on this misunderstanding in terms of what the fight against terrorist financing needs to be.

To conclude, we could say that this cooperation to counter terrorist financing is effective in the sense that it produces effects; there is some daily cooperation. However, determining whether this cooperation is efficient in addition to being effective is a question that triggers debate and is still open today.

The Vice-Chair (Mr. Nathan Cullen): Thank you very much, Mr. Amicelle.

We will continue by videoconference with Ms. Napoleoni for five minutes.

[English]

Ms. Loretta Napoleoni (Author and Economist, As an Individual): I think we should analyze what has happened with the Islamic State, which has developed a new model for financing terrorism. I think the greatest risk is that this model will be emulated by other groups and then taken from country to country. The most important elements are the territorial control of areas with strategic

resources, in regions which are plagued by war and political anarchy; constitution or joint ventures with the local population in order to seek consensus but also to maximize revenues; and finally, the creation of a fiscal structure whereby the Islamic State levies taxes upon the population for the use of infrastructure, and services such as electricity and water, but also for access to the judiciary system.

This is a system which is very difficult to alter when it comes to terrorist financing because it's completely self-funded. If we look at how it is structured, it is a closed economy that does not tread internationally. There is no movement of funds going through the Islamic banking system or the traditional banking system. Everything takes place at a local level. Often, the population of the neighbouring areas with whom most of the smuggling and trade takes place has no other choice. These are people who are not part of the Islamic State but they are, to a certain extent, conditioned by its economy. The only possible way of intervening in this new model of terrorist financing is through the small donations from the west that are still taking place, mostly from families and friends of the jihadists who have joined the Islamist State, or even the jihadist brides.

We can call these a sort of micro sponsorship. Transfers take place through the informal banking system, Western Union, the hawala, and from friends travelling to neighbouring countries. The transfers are always in very small amounts. We're talking about amounts below the \$500 limit. Another way of micro financing is through electronic currency. This is something that Hamas has also used in the past. It is very difficult to monitor this kind of transaction because every single day there are so many taking place around the world. There are often communities that live on transactions of this kind from the diaspora of their own nations.

In conclusion, I have two recommendations.

The first one is that we absolutely prevent the success of the Islamic State model, because if it is successful, it is going to be the model for the 21st century. War or military intervention is not going to help, because as we've seen, this is a model that blossoms within that kind of environment. It would be much more effective to offer a choice, an alternative to the communities which are interlinked economically with the Islamic State, for example, those communities that trade and bordering countries. This of course requires a pacification of those regions. As long as we are in a war and there is political anarchy there is very little we can do about that.

The second recommendation is the screening of these micro sponsorships. This screening should take place through profiling. Many people regularly to send money to their families and friends. Through profiling we can create a database that will help us pinpoint when somebody is sending money for reasons unrelated to their family, but rather for sponsoring jihadists, or people joining the Islamic State or any other organization..

• (1035)

Thank you.

The Vice-Chair (Mr. Nathan Cullen): Thank you very much, Ms. Napoleoni.

Let me pause for a moment before we turn to our next witness. Committee members, I'll need unanimous consent to continue the meeting beyond this point. Votes are now 28 minutes away.

Do I have that consent?

Some hon. members: Agreed.

The Chair: Thank you.

Mr. Keatinge, you have up to five minutes for your testimony.

Mr. Tom Keatinge (Director, Centre for Financial Crime and Security Studies, Royal United Services Institute): Thank you very much.

Good morning, everybody. I'm delighted to have this opportunity.

My name is Tom Keatinge, and I'm director of the Centre for Financial Crime and Security Studies at the Royal United Services Institute, a defence and security think tank in London. Prior to this I was an investment banker at J.P. Morgan for 20 years.

At the centre, we are dedicated to researching matters related to finance and security. We focus on two themes. One is financial crime policy, such as developing the relationship between governments and private sector banks in the fight against money laundering and terrorist financing. That includes enhanced information sharing. Then there are topical matters, such as ISIS financing, the role of financial intelligence in identifying foreign fighters travelling from the U.K., and the like.

Terrorist financing as it relates to ISIS has become mainstream news. The way, as has been indicated, that ISIS finances itself is from taxation, extortion, oil, and looting of antiquities. It has really become a mainstream news topic, but of course it's not a new phenomenon; it goes back for many years. Immediately following 9/11, the first shot that President Bush fired in his war on terror against al-Qaeda was to announce a strike on the financial foundations of the global terror network. From the U.K. perspective, obviously further back, the Provisional IRA created impressive financing models prior to that.

Those groups that want to move from a hand-to-mouth existence to a more planned and organized model need finance if they are to achieve their objectives. Finance is their lifeblood, but it's also their main vulnerability. Whilst individual attacks are cheap, building and maintaining an infrastructure and an enabling environment is not.

Global CTF policy, as I'm sure we know, is set at a multi-lateral level through the recommendations of the Financial Action Task Force, along with the raft of CTF-related UN Security Council resolutions, such as 1267, 1373, and the range of ISIS financing-related resolutions that we've seen in the past 12 months.

In general, terrorists can draw financing from two primary sources: internal and external. Internal financing occurs in places in which groups control territory and population. Funds are generated by taxing businesses, people, and transport, operating smuggling routes, and profiting from trade. As has been pointed out, ISIS is excelling in this regard.

Funding may also be provided from external sources: from donors, be they wealthy supporters such as those we've seen from Gulf countries, members of a diaspora community, or simply those who are inspired to support a particular cause.

Stemming the flow of external funding is clearly easier than disrupting internally generated funds, but even external disruption is challenging, if the international community fails to unite. Witness the extent to which the charcoal industry continued to finance al-Shabaab, despite international condemnation and UN Security Council resolutions to the contrary. Kidnap for ransom is another external source when international coordination has failed.

But if terrorist groups are to establish themselves, survive, and thrive, they need to develop reliable sources of financing based on the territory, population, and resources where they operate. Al-Qaeda in Iraq recognized the critical importance of finance. A declassified "lessons learned" document captured in Iraq following the 2003 invasion revealed that poor money management and irregular income were viewed as critical contributors to the group's failure.

But reporting regularly brings into question how effective global CTF efforts are. Donors fund more money to Syria; ransoms continue to be paid; trade flows, such as of oil, narcotics, and charcoal, continue to finance terrorist groups; and despite the evaluation work of the FATF and other multi-lateral organizations, the CTF regimes of many countries fall short of expectations. The extent to which terrorist groups appear to be proliferating suggests that groups are adapting to take advantage of what Osama bin Laden referred as the cracks in the western financial system.

So national and international CTF architecture must be constantly reappraised. Unlike money laundering, which represents a relatively consistent and static risk, terrorist financing risk fluctuates and evolves with geopolitical developments. It's not long ago that companies and banks were investing heavily in Turkey and Libya. Now they are exposing themselves to terrorist financing through those investments.

• (1040)

The Vice-Chair (Mr. Nathan Cullen): You have just one more minute, Mr. Keatinge, if you wish.

Mr. Tom Keatinge: Sure.

There have been a number of questions raised in the previous session and in this session that should be considered and that we can come back to. But perhaps the most important and valuable issue to consider, and something that has gained significant focus in the U.K., is an emphasis on greater public-private partnership and information sharing between the authorities and the banks.

Banks have been heavily criticized and heavily penalized, but governments rely on banks to defend the national and international financial borders. This can only be done if constructive partnerships are developed between public and private sectors. David Cohen, formerly CTF lead at the U.S. Treasury, has noted that the private sector has the potential to be a force multiplier for a nation's CTF efforts. That's something that I recommend the committee study closely.

Thank you. I look forward to your questions.

The Vice-Chair (Mr. Nathan Cullen): Thank you very much, Mr. Keatinge.

Committee members, I think with the reduced membership here we can have rounds of up to seven minutes.

[Translation]

We will begin with Mr. Côté.

Mr. Raymond Côté: Thank you very much, Mr. Chair. My thanks also to all our witnesses for joining us today.

I will turn to Mr. Hunter first.

Thank you for telling us about the problems caused by the disclosure requirement imposed on the legal profession subsequent to the Supreme Court decision.

Perhaps I misunderstood what you said in your presentation, but I am wondering about one thing. Does the mandatory disclosure relate to a bill dealing with countering terrorism or with combatting crime?

[English]

Mr. John Hunter: That's right. The existing statute, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, contained some provisions initially, which were then withdrawn, with respect to lawyers. Regulations were then added in 2008 that required lawyers to gather information from clients and prepare reports. That's what the litigation was directed to.

[Translation]

Mr. Raymond Côté: I have had the honour of sitting on the Standing Committee on Finance since the beginning of the year. I was also a member in 2013. At that time, the committee was studying a huge bill, Bill C-48. It was a very technical bill amending some parts of the Income Tax Act. That bill also created problems in terms of the disclosure of tax information. Have you dealt with that bill? Can you tell us about it?

It seems there is a trend in wanting to make lawyers breach their duty of confidentiality or to no longer honour it, in order to fight against tax evasion, crime or terrorism. I would like to hear what you have to say. Are you concerned about that approach?

• (1045)

[English]

Mr. John Hunter: Yes. I'm not familiar with the bill, but I've certainly encountered in the past—not so much personally but through involvement with the regulators—an approach by CRA, which I understand the need for at a certain level, that's directed towards lawyers and that seeks to require lawyers to provide information that, on its face, is protected by solicitor-client privilege. CRA can be fairly aggressive in this, and the profession has pushed back.

I'm not aware of any particular current issues. They tend to be one-offs, but more than a few of them have occurred. It is an issue that seems to recur.

[Translation]

Mr. Raymond Côté: Thank you.

Ms. Napoleoni, I followed your testimony only in part. It is always a challenge for parliamentarians to find references given the limited time that we have. I sort of lost the thread of your testimony and I apologize.

You talked about the problem with the approach of governments using armed interventions to directly fight against the Islamic State. This has been a long-standing debate in the House of Commons. The government found itself quite alone with that approach.

What are your concerns? What consequences do you fear in this approach that consists of investing a lot of energy and resources so that western countries take military action in Iraq or Syria to fight against the Islamic State?

[English]

Ms. Loretta Napoleoni: Well, the reason I said that military intervention is not going to work is that, if we look at the model of terrorist financing that Islamic State has developed, it is based upon war, in this case a civil war that has degenerated into a war by proxy. Within these environments, it is very easy for an organization such as Islamic State to seek very good sponsors, but also to use the money of the sponsors, instead of fighting the war by proxy, to establish control over the enclaves I discussed earlier, where there are strategic resources, and then to establish its own state.

These enclaves today trade—illegally, of course, as we're talking about smuggling—with neighbouring regions that are not necessarily part of the Islamic State but are still plagued by war and in a situation of political anarchy. The smuggling of oil is one example of the many such products traded; another strategic trading item is agricultural products, which are sold regularly to neighbouring regions. Often these regions have no other choice. This is the situation also for Syria, of course: it's either buying electricity, buying oil from the Islamic State, or not having any at all.

A better strategy would be to pacify these areas and so to encircle the Islamic State. Instead of working from inside, go around and cut off all of the financial structure that is based upon illegal trade by improving the economic condition of this region. This, of course, requires a political solution at an international level. A part of the region in which the Islamic State is particularly strong is the north of Syria, and of course it's trading with the south.

I think if we continue with military intervention, we're just empowering this model, which was born through military intervention, through war; it would just empower the Islamic State. It will expand, as we are seeing happen. We bombed them in the north of Iraq, we managed to reconquer strategic positions, and they moved south. So the borders also move. They move in relation also to the strategic resources that the state needs to maintain itself.

• (1050)

[Translation]

The Vice-Chair (Mr. Nathan Cullen): Thank you, madam.

Thank you, Mr. Côté.

[English]

We'll now turn to Mr. Saxton for up to seven minutes, please.

Mr. Andrew Saxton: Thank you, Chair. Thanks to our witnesses for being here today.

Ms. Napoleoni, I want to continue on that train of thought, because I'm trying to get my head around where you're coming from with regard to military intervention.

First of all, you said that ISIS is selling oil—on the black market, I presume—to fund its activities, as probably one of the major sources of funding for its activities. Then you're saying that military intervention isn't going to help.

Well, surely you realize that military intervention is going after those oil fields that they are using to finance their activities. So I'm trying to understand where you're coming from. Perhaps you could explain yourself on that.

Ms. Loretta Napoleoni: Military intervention has gone after those oil fields, but it has not produced what we wanted to happen, to detach the larger population from the Islamic State. Islamic State is actually benefiting from a consensus among the population because of this joint venture created through the tribal leaders with the larger population in the running and exploitation of these resources. The population, to a certain extent, is benefiting from the advent of the Islamic State in those particular regions. If we bomb them, the population will look at us and will say, these are the enemies, while Islamic State is actually protecting us.

We must understand that we are fighting an armed organization that has morphed into a state. This state has control of the territory, and it has control of the resources. The population is looking at that as a better option than the one they had before, when they were in the hands of warlords, criminal gangs, a dictatorship.

Of course, this is not democracy, this is not the ideal situation, but it is better than what they had before. This is why I say that military intervention can actually be a boomerang.

Also, from the point of view of support, we're never going to win unless we have the support of the local population.

Mr. Andrew Saxton: I have to interrupt, because I have a brief period of time to ask questions.

I take your point, but I think what you're neglecting to point out is the targets of the bombing, and if the targets are to reduce the capability of the Islamic State to sell oil and to make or store armaments, then surely this is going to have an impact on their ability to make war against their own people and against the coalition as well.

So I take what you're saying about the local population and winning over the minds and hearts of the local population, but I think you're neglecting to point out that military intervention also severely weakens the Islamic State's ability to make war, by cutting off its resources and by destroying its weapons. In any case, that's our understanding.

I'd now like to go to Mr. Keatinge.

Mr. Keatinge, in your opening remarks you talked about, as one of the sources of funding for the Islamic State, the sale of antiquities. But I thought they were destroying most of their antiquities. Can you explain that?

Mr. Tom Keatinge: They certainly have made plenty of videos of destruction, but it's clear that there are smaller pieces that are being sold for gain. So on the one hand they are destroying sites, but on the other hand they are also peddling pieces that are taken from these sites, particularly in Syria.

• (1055)

Mr. Andrew Saxton: Could you expand on their sale of oil as a source of income for the Islamic State? Who's purchasing this oil? How is it getting to market?

Mr. Tom Keatinge: We have to remember that there are smuggling routes in this region that have been there for several decades. The question is who is using them and controlling them at any given time. When Iraq was under sanction from the western world in the 1990s, those smuggling routes were being used by the Saddam Hussein regime.

So those smuggling routes into places such as Turkey have existed for many years. The question is, who benefits from them? Right now, to a great extent, it's Islamic State that is benefiting from those smuggling routes, moving the oil into the border region of southern Turkey. Also, there's plenty of evidence to show that there is an accommodation between the Assad regime and Islamic State when it comes to the sale of oil. So there are buyers of the oil in the region that Islamic State can tap in to.

Mr. Andrew Saxton: These are mostly transported through tanker trucks or ships; is that right?

Mr. Tom Keatinge: Yes, tankers, and then there are make-shift pipes that cross the border in certain places as well.

Mr. Andrew Saxton: I found it quite alarming that you're saying that the Assad regime, which appears to be fighting the Islamic State, has an accord to purchase oil from the Islamic State.

Mr. Tom Keatinge: I think many people would question the statement that the Assad regime is fighting the Islamic State. I think, as I said, that there is an accommodation, which at times means that it's helpful for the Assad regime not to fight the Islamic state.

Mr. Andrew Saxton: What do you think is the most effective thing we can do as a government to combat terrorist financing?

Mr. Tom Keatinge: As I mentioned, there are the internal sources that we have talked about already, the taxation and the like. It's very difficult to switch those off. I think what Canada as a government and other governments around the world can do is to make sure that the external sources are restricted to the greatest extent possible.

Now, as has been pointed out, the Islamic State benefits much more from internal funding, but nonetheless external sources have played a role. So making sure that the countries that surround Syria and Iraq are standing by their international obligations, that they have the necessary capabilities to monitor financial flows, to monitor informal systems—remittance companies, for example—all those things need to be done in a united fashion, and at the moment they are not.

Mr. Andrew Saxton: Thank you.

The Vice-Chair (Mr. Nathan Cullen): Thank you, Mr. Saxton.

Mr. Van Kesteren, you may have up to seven minutes, please.

Mr. Dave Van Kesteren: Thank you, Chair.

Thank you all for being here. It's a fascinating discussion again. We could go off in so many directions, but I want to drill down to what we're really talking about, and I'm going to go to you, Mr. Amicelle.

Unfortunately, I'm going to have to converse with you in English, but we have good translators, so I don't think you'll have as much trouble as I would have on your end.

I want you to tell us what works when it comes to monitoring terrorist financing activities. I have a number of questions; maybe you can just answer them when I'm done.

What works when it comes to monitoring terrorist financing activities and what doesn't work? From a bird's eye view, are governments and financial institutions around the world taking antiquated approaches to this issue? And what needs to change, and what do you recommend?

Perhaps you could comment on all of the above.

[Translation]

Anthony Amicelle: Clearly, this is a huge area. As I mentioned earlier, we must always bear in mind the fight against terrorist financing as we know it today. I also talked about the two strategies. They are both targeted sanctions similar to the UN system and financial intelligence practices. Initially, the fight was against money laundering, but the terrorist financing aspect was added later.

Internationally, the interesting part is that a report published in June 2001 said that anti-money laundering measures were not suitable in the fight against terrorist financing. Then, the events of September 11, 2001, happened. Terrorist financing was then included in the recommendations. We know that terrorist financing is unique in the sense that it does not always come from an illegal

source. The funds are not necessarily illegal, but the destination may be. The amounts are often relatively small.

The tension between these two aspects has to do with the overvaluation of terrorist financing. We used to think that financial intelligence could eventually prevent some terrorist attacks or problems. However, it turns out that its use is most effective after an attack, in the context of a classic criminal investigation, when an attack is committed by one or more individuals. That is the starting point for trying to trace the financial trail and to establish financial relationships in order to “map” a number of relationships between potential suspects. The idea is to use this method after an attack, as an investigation.

The emphasis on targeted sanctions is another issue. I am thinking of the UN measures dealing with al-Qaeda and the Taliban. The idea is to identify individuals or groups and then freeze their bank accounts. However, it is not easy to tell whether those individuals are actually using bank accounts. Another practical challenge is the major controversy over the way individuals and groups are designated. By this we mean respecting rights and knowing why someone is on any given list and how they can defend themselves if they think a mistake was made.

However, I think there is a pivotal issue that has not yet been raised today. It has to do with the practical challenges in freezing assets. We assume that, once the person or group is on the list, their bank account will be automatically frozen, without further analysis. In reality, bankers have a great deal of trouble identifying and detecting the individuals on lists because they often don't have identifiers. They sometimes have a last name or a first name, but that's it. Imagine if they just have the first name Anthony. The challenge is that they then have to filter several million financial transactions every day and for each bank to determine whether it is the real Anthony they found, the person on the list, or whether it is what is called a “false positive”.

It is important to always keep in mind that the balance lies in countering terrorism, of course, but without disrupting the existing financial order. That is how the system was designed. The two objectives are to protect the existing financial system and to counter terrorism, but if the fight against terrorism disrupts the financial system, problems will ensue. The flow of money must not slow down while terrorism is being countered. Clearly, it is difficult to do that right now.

• (1100)

The Vice-Chair (Mr. Nathan Cullen): Mr. Van Kesteren, the floor is yours.

[English]

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

The Vice-Chair (Mr. Nathan Cullen): You have just a little shy of three minutes, Mr. Van Kesteren.

Mr. Dave Van Kesteren: This discussion is starting to split here just a tad. We are talking about fighting in the Middle Eastern region, but this study is supposed to engage us in the issue of terrorist financing. I suspect that what we want to do as a government and a society is to keep that terrorist activity—not necessarily keep it there, as we certainly need to help the Middle Eastern region come to terms with itself, but we certainly don't want it to happen here either.

My question is this. Are we doing what is sufficient to stop those activities here? How much of that money is flowing into the Middle East, or whatever country is involved with fighting, and how much of it is going to, in our particular case, North America? Is there a split there, or are they intertwined?

[*Translation*]

Anthony Amicelle: In that respect, the main challenge is figuring out what types of financial vehicles are being used.

If you go through the conventional banking system, transactions will go through the U.S., simply because those international transactions are in dollars and go through the corresponding banks, in the U.S. or in Canada. The main challenge is to monitor those financial flows in the banks and in other institutions of the financial and economic sector, in order to filter those transactions and trace their profile.

Once again, there is a major problem not only in terms of money laundering—which is already complicated—and terrorist financing, but there could also be transactions that are completely innocuous. The challenge is with small funds, small amounts where the money is earned legally and sent to such and such an organization that may not even be aware that the money would then be used by an organization considered as terrorist by some states.

Furthermore, the broader issue that you raise goes beyond the financial system and banking system and deals with the potential use of other routes—or simply suitcases full of cash. Once again, the challenge is different. Basically, the system in place in Canada is a financial flow oversight system going through the conventional banking system. That has been the focus of the work.

In my presentation, I have listed all sorts of challenges in terms of detection, which is extremely difficult to do, as well as the possible misunderstanding between the two. Bankers and others will first try to protect themselves from regulators. They will show that their hands are clean and say that they have reported what had to be reported. How useful will that be afterwards for financial intelligence services? That is the question.

If I had one recommendation to make, it would be for you to reflect on that. In addition to the use of this concept of risk, whose definition seems obvious, we need to ask how each player in the process interprets risk management, how they see it and what type of surveillance and reporting that entails. Reflecting on this cooperation and on how everyone sees their role could be a very Canadian issue.

•(1105)

The Vice-Chair (Mr. Nathan Cullen): Thank you, Mr. Amicelle.
[*English*]

Thank you, Mr. Van Kesteren.

We go over to Monsieur Côté.

[*Translation*]

You have seven minutes.

Everyone will have another round of questions.

Mr. Raymond Côté: Perfect, that's excellent.

Mr. Amicelle, since you are on a roll, I'll seize the opportunity.

I would like to bring you to another area. At a previous meeting, one of our witnesses, Haras Rafiq, gave a very interesting presentation on radicalization. He stressed the fact that, to dry up the funding and support of terrorist organizations, we would have to work hard to understand how people become radicalized and why. I asked him about the current problem with funding for basic research, more specifically the funding for human research based on an article in *The Globe and Mail* about a research group focusing on terrorism, security and society, whose federal funding was eliminated.

I assume you also face funding problems in your work. We know that the Quebec university network complains of lack of support. We will not talk about the relationships with the provincial government, but the federal level has a responsibility in that sense. Do you think, like Mr. Rafiq, that allocating funding for groups that will be able to report on various aspects of the radicalization trend would make a significant contribution to countering terrorist financing and support in other ways?

Anthony Amicelle: Thank you for your question.

I happen to be part of those research networks that have been cut. I think the main point in understanding the value of empirical research on these issues is that, every single time, we try to look at both radicalization and the fight against radicalization.

Of course, we are talking about terrorist financing, but at the same time, we need to understand the fight against terrorist financing. All the elements that I presented to you and that I tried to explain today are actually based on field research that I have done with other colleagues in Europe and here. That research definitely requires funding, because you need funding to observe the practices of the subjects being studied. You need research funding to conduct interviews and to have research teams. Having tools for analysis is actually key.

From that perspective, if we don't want to limit ourselves to broad generalities or to empty platitudes on the Islamic State—such as what we read in the papers—and if we want to go a bit further, which is what we are trying to do, in terms of the daily surveillance and intelligence practices on radicalization and terrorist financing, yes, we must do sociological or criminological research that really gets to the bottom of those practices. We need to try to observe them and understand them to identify the challenges and ambiguities that I was trying to point out earlier.

You are absolutely right, funding for research on those issues is important.

Mr. Raymond Côté: Mr. Amicelle, in the desire to find immediate practical applications at all costs, we often seem to be restricting some freedom in basic research, rather than letting researchers decide which angles or areas they wish to explore.

Would you say that, by providing more latitude, by solidly supporting basic research, including in the social sciences, even if the subject of the study is not terrorism, the result could be major benefits for the fight against radicalization and terrorism?

Anthony Amicelle: Yes, as I was suggesting just now, it must be realized that a number of security measures come together. In other words, fighting terrorist funding can tie in with measures that also apply to the fight against money laundering, whether it is the proceeds of corruption, tax fraud, and so on. You have joint tools and joint discussions.

Researchers can certainly have difficulty if the research mandate they are given is extremely closely defined. For example, the mandate could ask for recommendations or solutions for such-and-such a topic. As I see it, it seems much more logical and productive to provide researchers with some latitude so that they produce knowledge based on what they see, on the approaches they take. Certainly, we have legislation, but we then have to see how it is applied and the tensions and difficulties it causes.

In my opinion, that simple production of knowledge already points the way to well-founded policy decisions in the future. The ability and the freedom to do that seem to me to be absolutely central.

• (1110)

Mr. Raymond Côté: Mr. Keatinge, Mr. Rafiq talked about the wrong turn taken by the United Kingdom in its reaction to the 2005 attacks. He felt that Canada was starting to take the same wrong turn by trying to use repression to combat radicalization and terrorism, rather than working to prevent them.

It is clear that the United Kingdom has learned some lessons and is putting many more resources and much more emphasis into drying up the sources of financing and also the recruiting sources that allow terrorist groups like the Islamic State to be so easily supplied.

Do you want to comment on the steps the United Kingdom has taken and that Canada could learn from?

[English]

Mr. Tom Keatinge: Where that debate has obviously been very hot recently is around the issue of individuals travelling from the U.K. to Syria and Iraq to fight, the so-called foreign fighters.

What is clear is that the U.K. government has espoused a hard line with regards to individuals who want to return to the U.K. In contrast, other European countries, such as Denmark, have tried to make it easy for these individuals to return and engage with them. The U.K. has sent a much stronger message.

There's a large debate in the U.K. as to whether that is the right approach. The fact of the matter is that a lot of individuals have travelled from the U.K. to Syria and Iraq. There is pretty clear evidence that a number of those people would like to come back, but the fact that the penalties imposed potentially by the U.K. on people who do come back are seen to be so strong perhaps means that they decide not to return necessarily. The debate is whether that is the right approach to take.

We have an election going on. There's a lot of discussion about the overall approach that the U.K. takes to what we call prevent as part

of our countering strategy, and it's clear that, whatever government we have after next Thursday, that matter will be reassessed across the board, so I think the U.K. strategy will change. Whether it becomes harder or softer will depend on who is in 10 Downing Street next Friday morning.

The Vice-Chair (Mr. Nathan Cullen): Thank you very much, Mr. Keatinge.

[Translation]

Thank you, Mr. Côté.

[English]

Mr. Saxton for up to seven minutes, please.

Mr. Andrew Saxton: Thank you, Chair.

I'd like to go back to Ms. Napoleoni with a couple of questions.

Ms. Napoleoni, can you tell us what the present danger is that terrorism poses, specifically to the west, and how terrorist financing plays a role in this?

Ms. Loretta Napoleoni: I think the most serious threat that Islamic terrorists are posing to the West is the formation of an anti-imperialist front that goes all the way across the Muslim world. We've seen that Boko Haram has pledged allegiance. It's very important to look at the language, at what words they use: they "submitted" themselves to the authority of the new caliph.

We've also seen the presence of groups that are linked to the Islamic State in Libya. The same thing is happening in Yemen and all the way across to southeast Asia. We've seen the Philippines, just yesterday, and some groups also in Afghanistan. It's just a matter of time before we see central Asia joining this front.

This is extremely dangerous. The message of the Islamic State is very different from al-Qaeda's. It's also not so strongly religious as nationalistic. That is a very strong component that is appealing to young people coming from the West—Muslims born in the west who feel that this experience of joining the Islamic State is a sort of patriotic experience. It is the implementation of the Muslim political utopia: the dream of their parents, grandparents, ancestors. This is serious, because of course it's not true, but this the message that the Islamic State has been projecting.

Terrorist financing, frankly, has played a very important role. Initially, from 2011 to 2013, this group was bankrolled by our Gulf allies; it was officially bankrolled, together with the pledges of other groups. Of course, nobody could predict that this group actually had a completely different agenda, which was a nationalistic agenda. But the truth is it took place.

Terrorist financing did not take place through the international banking system. Since 9/11, very little goes through the international banking system; it's either the informal banking system or we're talking about cash—suitcases, and cash shipped also in bulk. It would have been really difficult to stop that through the normal instruments that we have, including the terror list.

I think the real danger today is this phenomenon, which is taking place because our system of checks and balances for terrorist financing has not worked. Now we face a new enemy, a new model, and you sit up here using the old technique. We have to look ahead, because this also involves radicalization. This involves a new narrative, which is a nationalistic narrative, so we have to look at the phenomenon from a completely new point of view. This is why I made my remarks initially about how to fight this phenomenon, not with the traditional instruments we have used until today.

• (1115)

Mr. Andrew Saxton: Thank you very much.

My questions now go to Mr. Keatinge.

Mr. Keatinge, are you familiar with the Club de Madrid and how they're proposing to tackle terrorist financing?

Mr. Tom Keatinge: No, not under that name.

Mr. Andrew Saxton: Okay.

In your opinion, how has terrorist financing evolved over the years? We just heard Ms. Napoleoni describe how the financing is no longer going through the traditional banking system. In your opinion, how else has it evolved over the last number of years?

Mr. Tom Keatinge: Money is like water; it will find the cracks and will flow through them. As has been rightly pointed out, the banking system, whatever one thinks, has spent a lot of money and a lot of time trying to seal the formal financial borders.

You don't move money through the formal financial system if you want to get it from A to B in an illicit way; you move it through remittance companies; you move it through bulk cash, as has been mentioned; you move it through trade-based mechanisms.

It's very important that one acknowledge that terrorist financing changes according to geopolitical situations and that it will change the direction it flows in depending on the barriers it faces.

Mr. Andrew Saxton: Thank you very much.

My next question is for Mr. Amicelle.

Mr. Amicelle, how successful have we been in Canada in combatting terrorist financing?

[*Translation*]

Anthony Amicelle: Before I talk about that, I would like to make a small clarification.

For a while, we have been talking about terrorist financing and terrorism in the singular. However, there are extreme differences among the groups labelled as terrorist. We focus a lot on the Islamic State. But, for a number of years, the European Union's terrorist list has run the gamut from three-person Italian anarchist groups to Hamas and FARC. This is just to say that the notion of terrorism applies to a number of different groups and is not synonymous with the Islamic State. That point is a real issue.

In regard to effectiveness, Canada does indeed have a system in place. It is quite unique compared to other states in that, for a dozen or so economic sectors, it is based on a requirement to make a declaration based on suspicion and a certain threshold. In other words, any transaction of more than \$10,000 has to be sent to

FINTRAC, the cell where financial intelligence is kept. In Canada, all our eggs are in that basket.

Let me put that into perspective. In Europe, most declarations each year, almost 200,000 of them, are received in the British cell, the one in the United Kingdom. The figure may be lower now. In Canada, we receive two million each year. The main issue is the opposite. Financial information goes to the financial intelligence cell. The main issue is how that mass of information is processed. That also raises questions, especially from the privacy commissioner, about the use of personal information collected because of that \$10,000 threshold, or whatever it is, not because of specific suspected cases.

That is the issue. To an extent, the information is going around, cooperation really is being established with its points of tension and its ambiguities. However, the issue remains to analyze the information and produce financial information. That is really what it revolves around here in Canada.

• (1120)

The Vice-Chair (Mr. Nathan Cullen): Thank you very much.

[*English*]

Thank you, Mr. Saxton. I'll take one round now.

Mr. Hunter, I wasn't following the court proceedings so much. Have specific sections been struck down by the court, or are they still in litigation?

Mr. John Hunter: They have been struck down.

The Vice-Chair (Mr. Nathan Cullen): Again, to be very specific, these particular aspects were with regard to a lawyer's inability to undermine a client's particular cause and the confidentiality breaches that were required under the act, were they?

Mr. John Hunter: Well, those were the legal principles engaged. What the court did was enunciate.... For example, solicitor-client privilege is well-known and has been accepted for many years as a principle of fundamental justice. But this concept that the state must not undermine a lawyer's commitment to his or her client's cause is a newly expressed principle of fundamental justice, which ties in the independence of the bar and the lawyer's duty to the client and that sort of thing. That was the underlying principle.

The Vice-Chair (Mr. Nathan Cullen): I'm not sure whether you have familiarity with this, but leading up to the creation of this act—the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the other amendments—what consultations or work was done with the legal community, which is obviously a vital component, as the banking community is, in attempting to stop not just terrorist financing but also potentially terrorist activities? Was there a lot of consultation? Was there a bringing in of the law societies or the various groups that represent lawyers in this country?

Mr. John Hunter: I wasn't personally involved at the outset, but from putting the case together I'm not aware of any significant consultation.

It really took place in two stages. Around 2001, when the first legislation was enacted and hit counsel, as far as I'm aware there was no consultation at all. In 2008, when regulations were brought in, there was some discussion, but it was basically a matter of presenting the regulations and asking the law societies whether they would agree.

The Vice-Chair (Mr. Nathan Cullen): So, having gone through that experience, in our first iteration of a major piece of anti-terror legislation, and having sections of the act struck down by the courts and therefore not accessible in this effort to stop terrorism, we now have moved forward. We've heard some testimony at this committee respecting Bill C-51, the next effort to counter terrorism. Has the government taken a new approach towards the legal community, having made legal errors in the first iteration from a previous government, or has the same pattern continued?

Mr. John Hunter: Well, I'm not aware of any consultation that has taken place with the legal community on Bill C-51, but I'm also not aware of anything in Bill C-51 that has the same kind of impact that the—

The Vice-Chair (Mr. Nathan Cullen): Well, let me take just one piece, because the third element that you mentioned was around the search and seizure—

Mr. John Hunter: Yes.

The Vice-Chair (Mr. Nathan Cullen): —and warrantless search at law offices in particular. Bill C-51 seeks to have some warrantless search and seizures, not towards law offices but towards a broader section of the Canadian society.

Are those different principles under the law? Are law offices and lawyers' contents a more particular concern than those over warrantless seizures for somebody's phone account or Internet usage?

Mr. John Hunter: Warrantless searches always raise problems, whether they're of law offices or not. The courts have been particularly sensitive to law offices because of the problem of client confidentiality that is in the files. Protocols have been developed by the courts to deal with that. I think in the general criminal law those protocols are generally observed. They weren't present in the legislation, which was one of the problems. But there are issues with respect to warrantless searches for all Canadians, not just lawyers.

The Vice-Chair (Mr. Nathan Cullen): The court said, at least in this particular instance... because we've tried this now; this has gone to the Supreme Court of Canada, and it has been tried with respect to law offices. Judges across all iterations of the courts are hesitant to allow the state warrantless seizures. That is a principle that we hold, that there is some judicial oversight when the state seeks to search an individual's or a lawyer's personal information.

• (1125)

Mr. John Hunter: Yes.

The Vice-Chair (Mr. Nathan Cullen): Okay.

Ms. Napoleoni, I'll start with you and then perhaps go over to Mr. Keatinge.

We've talked at some length in this committee about ISIS in particular. Do you have any sense of what proportion of the funds they are using to fight their war are coming through the sale of oil

versus that from transfers from out of country, out of state, coming from Europe and North America?

Ms. Loretta Napoleoni: I think the bulk of the money actually comes from their fiscal system. They're acting as a proper state, so people who need to access infrastructure pay fees to the Islamic State. We're talking about a very large number of people.

The smuggling is not as important, I think, because the smuggling is taking place through a joint venture with the local population. The people who are actually extracting the oil, smuggling the oil, and carrying it to the borders are not members of the Islamic State but are individuals who then pay a percentage of their profits to the local government.

The structure of the Islamic State is such that, very differently from other armed organizations, including the Taliban or the FARC or even the Red Brigades, we have a group—which is the military wing, let's call it, of the Islamic State—that only fights, and this is predominantly composed of foreign fighters. Then there is an administrative organization, a bureaucratic organization, which is generally composed of local people. At the end of the day we have a sort of interaction between the local population and whoever represents the Islamic State, and this is where the bulk of the money comes from. So it is run exactly as a state.

Can I just say one thing about the Club de Madrid? I was the chairman of counterterrorist financing for the conference of the Club de Madrid 2005 and I wrote the section related to country finances in the proposal. I think the entire proposal that the Club de Madrid did in 2005 is still incredibly valid today. The problem is that in order to be implemented it required cooperation at a global level that, in 2005, we did not achieve. But even today, the entire proposal I think can still be incredibly valid.

The Vice-Chair (Mr. Nathan Cullen): Okay.

Thank you very much.

Allow me to just pause for a moment and assume my chairmanship. We have a second motion to adjourn in 18 minutes. Would the committee like to allow five more minutes for Mr. Van Kesteren?

Mr. Andrew Saxton: We can do five more minutes.

The Vice-Chair (Mr. Nathan Cullen): Does that seem okay? That will give us a little less than 15 minutes to get over to the House.

Is that acceptable?

Okay, Mr. Van Kesteren, it's over to you for five minutes.

Thank you, Ms. Napoleoni.

Mr. Dave Van Kesteren: Okay, I guess I get to wrap up.

It's almost impossible to wrap up this conversation, because we have gone in so many different directions, all of them fascinating. I don't doubt your expertise, madame, on terrorism and financing and all of those things, but there are so many aspects that you left out and so many areas—the geopolitical for instance, including Islamism. We had testimony about a week ago about that radicalism. I really don't think we need to go any further on that.

What I'd like to do is bring it back home. The intent of this study was to examine how we as a nation, Canada, can stop the flow of funds so that terrorism—we're going to try to do as much as we can across the seas—will not grow here.

I'm just going to give you all chance in a really quick roundup to say whether the systems we are putting in place are effective and whether you have a suggestion regarding how we can become more effective.

I've used up about two minutes of my time, so I guess that means you have three minutes divided by four. So do the math; that's 45 seconds each.

Let's start with the professor.

• (1130)

[*Translation*]

Anthony Amicelle: It has to be clearly understood that the fight against terrorist financing has in a way come to be inseparable from the fight against money laundering. They start from the same premise, that money is the sinew of war. With that view, we feel that, by attacking their funds, we can disrupt some terrorist groups just as we can disrupt some criminal groups. The question is finding out how important money is for those groups.

Clearly, the Islamic State is a specific armed organization. In a case like that, we can imagine, money is important. However, there are cases in Canada where the importance of cash flow may be questioned. How expensive is it for a single person to go and plant a bomb, or do this, or do that? The idea that we can put an end to terrorism, to terrorist activities, in Canada in particular, just by drying up finances is open to question.

However, in terms of a classic criminal investigation, having access to financial information is appropriate in completing the investigation. That may be the actual issue.

We must not put too high a value on what can be done in the fight against terrorism in Canada, but we must identify what the issues are for us, what kind of political violence we could have in Canada and how we can best use the financial aspect in a criminal context, rather than thinking that we are going to prevent an attack with that type of approach or by drying up financial resources.

[*English*]

Mr. Dave Van Kesteren: Mr. Hunter, do you want to weigh in?

Mr. John Hunter: My concern here is simply to remind you of the constitutional constraints on some of the things you might otherwise do. Beyond that, I'll cede my time to our experts from Europe.

Mr. Dave Van Kesteren: We have Mr. Keatinge.

Mr. Tom Keatinge: Whatever the form of non-violent extremism, terrorism funding, or political violence, I think the question that you should be asking yourselves, as should any country, is whether vulnerable sectors such as remittance companies and charities are being given the support, guidance, and regulation they require to avoid being abused.

Those informal channels need to be continuously scrutinized and assessed.

Mr. Dave Van Kesteren: Ms. Napoleoni, you have the wrap-up.

Ms. Loretta Napoleoni: I think one thing that Canada could do is to work on radicalization by preventing these young people from being seduced, because we're talking about true seduction from this Islamic anti-imperialist front.

On terrorist financing, I must stress that there is a big difference between money laundering and terrorist financing. Money laundering is always done with illegal funds. Terrorist financing is sometimes done with legitimate funds. Often the funds become dirty or illegitimate only when they are used to carry out a terrorist attack. The key issue we must address is how to deal with money that is earned legitimately and then sent somewhere and then used for terrorist financing or for carrying out an attack.

I did a calculation before 9/11 and the amount of legitimate funds within the total terror economy was about one third. We're talking about large sums.

In reference to Canada, the money that is sent by the diaspora, such as the Iraqi diaspora in Canada or the Somali diaspora, is money that is clean. It is earned legitimately by people. But when it gets there, part of this money is used for terrorist activity. That is an area that requires a lot of research to find the legal framework within which we can legally block these kinds of funds.

The Vice-Chair (Mr. Nathan Cullen): Thank you, Ms. Napoleoni.

To all our witnesses, thank you very much.

My apologies for the disruptions. We tried to keep some semblance of order here today. Your testimony is very important to the study. Thank you again

Thank you committee members.

The meeting is adjourned.

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