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Chair

The Honourable John McKay

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• (0845)

[English]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): I will call this meeting to order. This is meeting 78 of the Standing Committee on Public Safety and National Security and we're studying Bill C-21 pursuant to the order of reference dated Wednesday, September 27.

In the first hour, we have with us the Auditor General of Canada, Mr. Michael Ferguson.

Sir, I'll ask you to make your remarks and introduce your colleagues.

The floor is yours.

Mr. Michael Ferguson (Auditor General of Canada, Office of the Auditor General): Thank you.

[Translation]

Mr. Chair, thank you for this opportunity to discuss Bill C-21, pertaining to the Customs Act. Joining me at the table are Martin Dompierre and Nicholas Swales, the principals responsible for our two recent audits that touched on the subject matter of this bill.

In 2016, we issued a report on the Beyond the Border Action Plan, and in 2015, we issued a report on controlling exports at the border.

[English]

Mr. Chair, I'll summarize for the committee our relevant audit findings related to the Customs Act. However, it's important to note that our audit work on the Beyond the Border action plan was completed in September 2016 and our audit work on controlling exports was completed in August 2015. We haven't conducted further work on these topics since then.

In December 2011, Canada and the United States released the perimeter security and economic competitiveness action plan, better known as the Beyond the Border action plan. The action plan consisted of 34 initiatives aimed at establishing a long-term partnership between the two countries to enhance security and accelerate the legitimate flow of people, goods, and services across the border.

We estimated that these initiatives had a total planned spending of over \$1.1 billion, of which approximately \$585 million had been spent as of March 2016. The audit examined the progress made by departments and agencies in meeting the commitments set out in the action plan and in achieving results toward the intended benefits. We

also looked at how Public Safety Canada reported on progress, performance, and costs in its annual reports.

The action plan had several initiatives that focused on enhancing security. Of the \$700 million that departments and agencies had planned to spend on them, approximately \$410 million was spent as of March 2016. However, departments and agencies faced challenges in completing a number of the initiatives and they couldn't demonstrate that they had improved security at Canada's borders. Even when departments and agencies met their commitments for certain initiatives under the action plan, they achieved limited results toward the intended benefits. They also had few performance indicators to use to assess results.

One of the security initiatives that wasn't completed was the entry-exit initiative. The initiative, which had a budget of \$121 million, is intended to allow the Canada Border Services Agency to track who enters and leaves the country. It was initially planned to be completed by June 2014. As of March 2016, \$53 million had been spent, but the initiative couldn't be fully implemented under current legislation that doesn't allow the exit information of Canadian citizens to be collected, used, or disclosed.

Without new legal authority, the Canada Border Services Agency cannot achieve the initiative's security benefits. For example, the ability of the agency and law enforcement to identify and prevent high risk travellers from leaving or attempting to leave Canada is currently limited.

[Translation]

Let me turn now to the issues of controlling exports.

Exports are vital to Canada's economy, but some are controlled to achieve a range of policy objectives, such as protecting Canadians' safety and security. Although several federal entities play a role in controlling exports, the Canada Border Services Agency is the last line of defence to prevent goods that contravene Canada's export laws from leaving the country.

Our audit focused on whether the agency had the necessary information, practices, and controls at the border to enable it to implement its enforcement priorities, prevent the export of goods that contravened Canada's export laws, and facilitate legitimate trade.

We found weaknesses in the information, practices, and authorities the agency applied to assess export risks, assign its resources, and act on its priorities. As a result, the agency missed opportunities to stop some goods that did not comply with Canada's export control laws from leaving the country.

●(0850)

Limitations on its authorities posed a particular challenge for the agency in examining shipments that were not reported on export declarations. The agency could not open such parcels at random as it could for imports or exports reported on declarations. Agency officials believed this reduced their effectiveness in preventing the export of illegal drugs. The inability to open shipments at random also meant the agency could not assess the level of compliance for non-reported shipments.

The bill before you today includes provisions about the two legislative limitations we raised in our reports.

[English]

Mr. Chair, this concludes my opening remarks.

I hope our audit findings will be of assistance to the committee in its current review.

We would be pleased to answer any questions the committee may have.

Thank you.

[Translation]

The Chair: Thank you, Mr. Auditor General.

I will now give the floor to Mr. Picard for seven minutes.

Mr. Michel Picard (Montarville, Lib.): Thank you, Mr. Chair.

Mr. Auditor General, thank you for being here. It's always a pleasure to have you here, and we look forward to your recommendations because your advice is always well targeted, and very well thought out.

Earlier, among other things, you mentioned an issue with the computer system that did not allow you to determine whether security had improved at the borders. What is the basis for your assessment of our current security? Can your examination provide us with an assessment of the current level of security? Is it so insufficient that we need to put in place a computerized system—which still seems to be deficient on performance indicators—to allow us to have adequate security? Is our security adequate, given that the initiatives taken here aim to improve what is considered to be a sufficient level of security at the borders?

Mr. Michael Ferguson: Thank you for your question.

I am going to answer one part of your question. Then I will ask Mr. Dompierre to add his comments.

First, the audit showed a possible deficiency regarding how performance was measured pertaining to security at the border. We noted that a \$1.1-billion budget was allocated to all of these projects, and that it was important that there be some way of measuring the results and the performance. Moreover, we noted that there was a lack of information on this.

I will ask Mr. Dompierre to add some details in this regard.

Mr. Martin Dompierre (Principal, Office of the Auditor General): The purpose of the audit was not to examine the current state of security, nor to compare the before and after. As Mr. Ferguson said, our goal was to see how the departments and

agencies implement performance measurements to show that they have achieved the objectives of the Beyond the Border Action Plan. There were 34 initiatives in total, a certain number of which concerned travellers, exports and imports, as well as security.

In the context of what you are studying today, entries and exits, this was an initiative pertaining to security, and we concluded that performance indicators were insufficient to allow the departments or agencies, among others the Canada Border Services Agency, to report on progress regarding that initiative.

Mr. Michel Picard: For the moment, we do not have a base assessment that would allow us to establish that there has indeed been progress. If our security is extremely deficient, the smallest advantage would be progress. But our security is on par with that of most of our five allies, the Group of Five. Our security is more than adequate, it is even very good. Progress is small, but there nevertheless.

We do not have that assessment at this time. Moreover, from the time the computer system was installed, the absence of performance indicators, among other things, did not allow us to see whether there was any progress.

●(0855)

Mr. Michael Ferguson: Once again, the purpose of the audit was to establish whether these organizations had the capacity to measure the success of their measures in connection with these projects. So it was not our audit's goal to determine the level of security as such.

The purpose of these initiatives was to improve some aspects of security at the border. And so we wanted to determine whether the department or organizations concerned had ways of determining whether security had improved.

Mr. Dompierre could perhaps add a few words.

Mr. Martin Dompierre: What we wanted to point out is that the performance measures were not in place to demonstrate that results were achieved. That said, that does not necessarily mean that the agency is not aware of the security parameters that exist. We really focused on these particular initiatives.

Mr. Michel Picard: So in establishing performance measures, the procedures were followed, and afterwards, people realized that the performance seemed deficient.

I expect that before the systems were put in place, there were specific objectives, so that after this system was implemented, they could assess whether those objectives had been reached. This would lead to the conclusion you have presented. However, it seems there is still work to do. Am I mistaken?

Mr. Martin Dompierre: Thirty-two performance indicators are indeed going to be put in place after the complete implementation of the initiative.

Mr. Michel Picard: Very well.

Mr. Martin Dompierre: Afterwards, the agency will be able to gather the information and report on the results.

Mr. Michel Picard: One last point concerns me regarding exports, and the fact that we may have let a certain number of products through, although their export may have been prohibited under some customs laws.

Is the inability to adequately verify shipments that leave Canada due to the entire implementation process or to information technologies? In his testimony, the union president talked about a lack of resources. Could that in part explain why we can't manage to search the shipments sufficiently?

Mr. Michael Ferguson: I will answer again, and ask Mr. Swales to add details.

We did note that there aren't many resources allocated to inspecting exports at the border, because this may not be a priority for the agency, since its priority is imports.

Mr. Swales can probably add some details.

The Chair: Please be very brief.

Mr. Nicholas Swales (Principal, Office of the Auditor General): In our 2015 report, we discussed two points related to what you've raised.

First, the computer systems were not very useful in targeting exports. That was certainly a problem.

Afterwards, we also noted that a significant percentage of targets, even when they were identified using the information systems, were not inspected by the field officers. That was partly due to the fact that there were not enough agents available when those exports were about to leave the country. The officers who were on holiday, for instance, were not replaced. That meant that even if a target was identified...

[English]

The Chair: You'll have to work those answers in when responding to another question.

[Translation]

Mr. Paul-Hus, you have seven minutes.

Mr. Pierre Paul-Hus (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair.

Good morning, gentlemen.

Mr. Ferguson, when I read your reports yesterday, my first reaction was to be somewhat scandalized at the waste of public funds, once again. Action plans like Beyond the Border were put in place to ensure extraordinary efficiency. Now we see that we are wasting more than \$1.1 billion. According to what I understand, there is currently some waste going on.

I'd like to get to the root of the problem. We invest a billion dollars and at the end, things don't work, or not very well. Is this a structural problem having to do with the organization? Will Bill C-21 solve everything, as by magic, and make everything work well in the future?

I think that Bill C-21 is an important contribution to improving the system. However, is there something else causing the problems that we should be aware of?

● (0900)

Mr. Michael Ferguson: We did detect a few issues. For instance, we discovered that certain initiatives were lagging behind and that the deadlines were not being met. We also noted that it was necessary to complete all of these projects before obtaining all of the benefits and results expected from them.

Moreover, we discovered a few situations where the lack of authority prevented projects from being implemented.

Perhaps Mr. Dompierre could add to my answer.

Mr. Pierre Paul-Hus: When you speak of a lack of authority, do you mean legal authority, or the authority of the personnel there?

Mr. Martin Dompierre: For instance, in the case of the Entry/Exit Initiative, we meant the legal authority to pursue phase III, the land phase, and phase IV, which concerns air carriers.

Remember that the Beyond the Border Action Plan is a partnership with the United States. And so it requires a lot of collaboration and discussions with our partners. It involves 18 departments in total, nine of whom played a leadership role in implementing initiatives.

As you mentioned, the total budget was \$1.1 billion. However, in March 2016, the investment was \$600 million. Of course, there were delays for various reasons. In the case of the Entry/Exit Initiative, these were mostly due to a lack of authority allowing people to communicate information to our partners.

Mr. Pierre Paul-Hus: Today, we are discussing Bill C-21.

Do you think that this bill, as it stands, will improve efficiency and allow several problems to be solved? In your opinion, are there elements in the bill that should be improved?

Mr. Michael Ferguson: I cannot make comments on details in the bill.

We identified a problem regarding the lack of authority pertaining to the Entry/Exit Initiative, for instance. And so we reported that problem in the audit. It is important that the agency have the necessary authority to communicate information in the context of that initiative.

Our role is to perform audits. Perhaps we could in future do a follow-up to our audit and determine whether the new act does indeed solve these problems. However, it is not really our role to give our opinion on bills.

Mr. Pierre Paul-Hus: Fine.

This year, you prepared a report on the prevention of corruption in immigration and border services. You spoke about a corruption issue, or about the risk of corruption. You mentioned that neither Canada Border Services Agency nor immigration services had adequately examined what could happen.

Based on your observations, is this a major concern? Could it have repercussions on the future legalization of marijuana? Is it possible that some Border Services Agency employees could collude with certain groups for the purpose of trafficking, for example?

[English]

The Chair: We are straying a little bit from relevance to Bill C-21, so if you could, please confine your response to how Bill C-21 may or may not respond to the concern raised by Mr. Paul-Hus.

[Translation]

Mr. Pierre Paul-Hus: That was the purpose of my question.

Mr. Michael Ferguson: It is a bit difficult to answer that.

We conducted several other audits that might be of interest to the committee.

In the audit you refer to, we identified problems pertaining to the management of corruption risks at the border.

In the context of the bill, it's another example of the challenges the agency must meet at the border. In studying the bill, it is important that you be up to date on all of the challenges the agency must try to meet.

• (0905)

Mr. Pierre Paul-Hus: Mr. Chair, you said that my question was not related to Bill C-21. However, the bill refers to the exchange of information on individuals among border services. If there are corruption issues, this could eventually be connected to the bill.

I'm done.

Thank you.

The Chair: Thank you.

[English]

I just caution all members that we are studying Bill C-21. If we can tie our questions to Bill C-21, all questions are relevant.

Mr. Dubé, you have seven minutes.

[Translation]

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Mr. Chair.

Mr. Ferguson, in 2011, you testified before the Standing Committee on Public Accounts. I want to take this opportunity to congratulate you on your French. You made the commitment to work on it, and it is excellent. I wanted to say so publicly.

Before the chairman takes me to task regarding the relevance of my questions and comments, I'll get back to our topic.

I want to discuss another aspect of the audit report regarding the decision to communicate information to several departments, and the privacy concerns that are raised in this report.

Could you give us more details on that aspect?

Mr. Martin Dompierre: As we mentioned, we examined the performance metrics, and we noted that the main obstacle to pursuing the work on this initiative was the possibility that it could be extended to other departments. We also noted that the Privacy Commissioner had taken part in the discussion and had shared his concerns in that regard.

We did not do any additional work beyond that. We simply acknowledged this delay and provided the reasons for it in our report.

Mr. Matthew Dubé: Fine.

My next question concerns human resources at the border, both for the entire program and for the specific aspects that have been raised. The union president explained that there was a concern as to the capacity of the human resources to execute some elements of the bill and of the program.

Could you share your thoughts on that?

Mr. Martin Dompierre: We did not necessarily examine the human resources aspect in detail, nor the agency's capacity to implement this initiative. In our report, we mentioned that the agency had a budget of 121 million dollars for the period from 2011 to 2014. Initially, the initiative was supposed to end in June 2014. A new deadline was set and now it is supposed to conclude in 2018.

As to whether the human resources are sufficient, I cannot comment.

Mr. Matthew Dubé: In that case, can you tell us more about the observation regarding how the money was spent? Where were the investments made, specifically? If not in human resources, was it infrastructure?

Mr. Martin Dompierre: In the context of the Entry/Exit Initiative, there were specific deliverables regarding the development of a system to collect information and communicate it subsequently. I can say that most of those deliverables were attained.

As I mentioned earlier, there were delays pertaining to phases III and IV which prevented activities from continuing. I think the report even mentions that Treasury Board must release funds for that initiative to continue. Once the amendments have been made to the Customs Act, the agency will be able to continue its work with its partners.

• (0910)

Mr. Matthew Dubé: The Entry/Exit Initiative already exists in a certain form. Since 2013, certain specific persons who are not citizens have been targeted. In your audit, did you discuss the current program concerning permanent residents, for instance?

Mr. Martin Dompierre: We did look at performance indicators. Eight performance indicators concerned those activities, in the main. We noted that out of those eight indicators, there were three about which the agency could report. We deemed the indicators to be reliable. We noted that the agency was in a position to prepare its own departmental report to submit to Treasury Board and Parliament.

Mr. Matthew Dubé: I know that you talked about this, but I would like to follow up on the comment regarding the lack of performance indicators and the fact that you think that departments and agencies will now be able to provide more information for a proper assessment.

You may have said it already, but I want to make sure I understand why there is a lack of performance indicators and an inability to provide information. The program was implemented in 2013, and I feel that three indicators out of eight is little, given that the program is already in place, although it won't apply to Canadian citizens until the bill has been passed.

Mr. Martin Dompierre: When it comes to all the initiatives, the challenge is to collect information and be able to make a report afterwards. If there are delays, it is more difficult for the department to make a report. In the context of the entry/exit initiative, I believe that departments and agencies have already reported on the indicators I mentioned. It remains to be seen whether, once the initiative has been implemented, the department will be able to develop those indicators and collect the required information.

Concerning all the initiatives, the biggest challenge consists in collecting information beyond activities and deliverables. Departments often tend to say that they held a meeting and developed a policy. Those are not really long-term performance measurements used to show the benefits of the beyond the border initiative.

Mr. Matthew Dubé: That's great.

I have one last question about citizens' ability to challenge the accuracy of the information provided. Representatives of various departments have told us that, if an investigation has been launched—for example, with Immigration, Refugees and Citizenship Canada on the status of an application for permanent residence or citizenship or even for employment insurance with another department—the citizen could challenge the information specifically as part of that investigation. That would not necessarily be done directly with the relevant department or agency.

Do you have an opinion on whether there should be a mechanism Canadians could use to challenge the information provided by the agency regarding their entries or exits?

Mr. Martin Dompierre: In our audit, we did not look at whether there was a challenge mechanism. We limited ourselves to performance measurement and the reaching of objectives by the beyond the border initiative. So I cannot give you my opinion on that.

Mr. Matthew Dubé: Thank you.

[English]

The Chair: Thank you, Mr. Dubé.

Mr. Fragiskatos, go ahead.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you, Chair.

Thank you for being here today, all of you.

I want to ask about smuggling and the illegal movement of goods more generally. You have found that improvements are needed to combat the illegal export of goods, such as illegal drugs and stolen property.

Can you elaborate on that finding and tell us exactly what the problems have been in that regard?

Mr. Michael Ferguson: Again, I will start and then turn it over to Mr. Swales.

First of all, Canada has certain obligations about controlling exports, what is going out of the country. It's important that they have ways of making sure they are doing that. You mentioned things like illegal drugs. We identified that the Canada Border Services Agency had determined that the export of illegal drugs was a high risk, but then, because they felt they didn't have all the authorities they needed to do random inspections of exports leaving the country, they didn't end up doing a lot of specific work aimed at identifying the export of illegal drugs.

Maybe Mr. Swales can provide more detail.

• (0915)

Mr. Nicholas Swales: Certainly. There were four things we were primarily concerned about. One was that it looked as if there was a risk that the electronic system they used for targeting was about to be switched off without a plan in place to replace it. Then we observed that even when items were targeted, as I mentioned before, they weren't always examined because of a variety of reasons, one being staffing levels, so we recommended that something be done to improve that.

Then the issue that relates most directly to the subject matter of Bill C-21 was that there were certain kinds of parcels, under certain circumstances, that they couldn't open. This meant they couldn't even do the risk analysis, which would be the start of the process of figuring out what they should be looking for.

Finally, back to the staffing point we were discussing earlier, the last one had to do with the fact that in some places where exports went out, they simply didn't do any export reviews at all, because of staffing issues. You shouldn't be able to predict, as an exporter, where you are not going to have any chance of being looked at.

Mr. Peter Fragiskatos: We've heard this at the committee before, but I would like your thoughts on this. Is it safe to say that a gap exists? The power to inspect with respect to imports is in place, but with respect to exports, there's less ability and less authority, and therefore a need exists to remedy that. Could you comment on that?

Mr. Nicholas Swales: Yes. One of our observations was that there was a difference between the authorities to examine goods that were coming into the country versus those leaving the country. Specifically, agency officers can look at any package, any shipment when entering the country, but when they are leaving the country, there are certain rules the officers have to follow.

Those rules are primarily that either the shipment was reported—and many shipments are not because there are rules that allow you not to—or they had to have a reasonable suspicion, which meant that they had to have already seen some indication that there was a problem they could justify in terms of a legal process that might follow.

Those are different authorities and they meant that the ability of the agency to do risk assessment in some key areas was limited. Risk assessment is sort of the foundation for being able to do efficient border control, because that determines where you put your efforts and how much effort you should put into certain types of activities.

Mr. Peter Fragiskatos: Much has been said in your report and here today about performance indicators. I want to ask a general question about the best ways to implement performance indicators from your perspective, from a very high level perspective. What are the sorts of performance indicators that you're hoping to see or had hoped to see?

Mr. Michael Ferguson: Performance indicators can be a challenge. They need to be focused on the results and the objective that you're trying to achieve. Again, the Beyond the Border action plan audit that we did had a number of initiatives that were designed to improve security at the border. How do you know whether the security has been improved?

They had different activities that they wanted to do, for example, putting in new screening equipment at airports. You can measure whether they have done that or not—have they put in place the new screening equipment—but that doesn't necessarily tell you whether the security is any better or not. That's really the challenge in performance measurement.

Often what ends up happening is that organizations measure what's easy to measure—did they put in a new piece of equipment—rather than measuring what I'll call important to measure, which is, did what they did actually improve security at the border?

I think what all organizations need to work very hard on is identifying not just whether they put a piece of equipment in place, but how they have a sense of whether they feel that the security is better or not.

Thank you.

Mr. Peter Fragiskatos: I only have one minute, so I'll skip to a shorter question.

In the report, it says that 11% of exporters whose goods were detained for more than a week reported experiencing a major impact. Nearly half of the legitimate exporters that were surveyed who had goods temporarily detained had little to no impact. Eleven per cent is not an insignificant number. What exactly are the reasons for that?

• (0920)

Mr. Michael Ferguson: I'll ask Mr. Swales to provide the details.

First of all, all of that part of what we talked about is in paragraph 2.63 of the audit that we did on controlling exports at the border.

I think it's important to understand that we said that there was not a lot of negative impact on Canadian trade by delays of exports at the border. When you're talking about the 11%, I believe it was 11% of the compliant shipments that were detained. It's not 11% of all exports. It was what was detained, which ones were compliant. Maybe Mr. Swales can provide the details.

The Chair: We'll have to save Mr. Swales' response for another occasion.

Mr. Motz, you have five minutes, please.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you, Mr. Chair.

Thank you, sir, and your team for being here today and giving us information on the implementation of Bill C-21.

Sir, you had noted several times in the past that in some of your reports you see the same issues repeatedly coming up over and over again in the delivery of programs from different organizations that you have done audits on. Since we know that what's predictable is preventable, what would you suggest are the top predictable risks in this bill?

Mr. Michael Ferguson: Well, I'm not sure I can talk in detail about the bill. There are risks that the bill is intended to help address. For example, on the entry-export, the government was going to spend over \$100 million on that initiative, but to be able to get the full benefit of all that money, they need to have the authority to share the information on Canadian citizens. Likewise, on the exports, the issue was the need for the authority to inspect on a random basis all exports to identify whether they include things that shouldn't be there.

In a general sense, when the departments are starting to spend money on an initiative—in the case of the entry-export they had already spent about \$50 million and planned to spend more—there is a risk of not getting the authority to do what you want to do and then not getting the benefit of the money you're spending. That was what we were trying to identify in that audit. We wanted everybody to understand that if the government is going to get the full benefit of the money it's spending, there is a need to make sure that the assumed authority is actually put in place. That was the general risk. The risk in terms of Bill C-21 has to do with whether it will give the government the authority it needs to get the benefits. I can't speak to that. That's something we would look at in a follow-up audit, which would tell us whether they could do what they needed to do with, for example, the entry-export initiative.

Mr. Glen Motz: Thank you.

Through the chair, Mr. Swales, you indicated just a moment ago to Mr. Fragiskatos that the CBSA had no mechanism in place to determine what packages to check on leaving Canada. I'm wondering whether you foresee this bill filling the gaps that currently exist in the identification of those types of packages. How are they going to do that? Do they have processes in place to even begin that process?

Mr. Nicholas Swales: It's not all packages. Let's be clear about that. We're talking about the ones that are non-reported. There is a series of exemptions under the exporting goods regulations for those kinds of packages. These are the ones where the authority, prior to Bill C-21, did not exist to open them at random.

It goes back to the point I made earlier, that the starting point for efficient border management is risk assessment. We know that in the great majority of cases people who are exporting or sending packages abroad are doing it for legitimate purposes. You don't want your border services attempting to open or look at every package. You want them to be able to identify the ones that are likely to be in non-compliance. One of the fundamental ways you do that is by doing random checks from time to time, to see what you find when you look in a series of packages. Are there new types of risks, new types of configurations? If so, you can create a system, a mechanism to look for those indicators, those tags, and pick those packages to look at.

• (0925)

Mr. Glen Motz: You indicated in your report that the bill before us today includes two legislative limitations: the limitations on authorities, and the limitations on the security initiatives around the tracking of people. Based on your initial assessment of Bill C-21—and I know you're going to have to do an audit down the road—does the bill cover off the concerns you had in the 2016 report?

Mr. Michael Ferguson: The two issues we identified were the sharing of information on Canadian citizens in the entry-export and the ability to inspect exports more randomly to identify possible risks. I think the bill contains sections intended to deal with those two issues. How effective these measures will be, however, we won't be able to comment on until we've looked at those areas again.

Mr. Glen Motz: Thank you.

The Chair: Thank you, Mr. Motz.

[*Translation*]

Mr. Picard, you have five minutes.

Mr. Michel Picard: Thank you.

The implementation of an electronic IT system that would enable better performances in terms of information exchange at entry/exit, particularly in preparation for Bill C-21, depends on a computer system.

I would like to come back to a point Mr. Swales raised earlier.

In your report published in 2015, you said that you noted a lack of resources caused by past cuts or the fact that the people who were leaving were not being replaced. Were the 2015 observations so significant that we could say that any future project, including the one concerning the implementation of an entry/exit system, would be compromised because of a considerable lack of resources? Could the type of initiative with the implemented computer system compensate for what was apparently a lack of resources?

Mr. Nicholas Swales: You are drawing a link between two things that are not directly related.

The entry/exit system has to do with individuals, while our concerns over exports and the lack of resources—or the absence of resources in some cases—have to do with exports. The entry/exit system will not change the situation in terms of information technology.

That said, I will briefly come back to my idea that we need to have a proper risk analysis from the outset. If you had a proper risk analysis and a system that could help you respond to those risks, you could do a better job of targeting needs and sending resources to the right places.

The concerns we outlined in the report on exports were not related to cuts or the fact that employees were not being replaced. The agency actually decided to move staff elsewhere. The agency can change those decisions and, with a better risk analysis and a better targeting information system, it will find better places for individuals.

Mr. Michel Picard: Does the Border Services Agency have a good grasp of what a performance evaluator should be? Will your office, thanks to its analytical rigour, be able to collaborate and

propose a direction when it comes to what must be assessed and the way to assess it to both reach the agency's objectives and fulfill the criteria you could use to establish a better analysis.

Mr. Michael Ferguson: The way the department decides what type of work all its staff will be doing is a general issue. Of course, it's important for the agency to organize the necessary information to identify risks in order to determine the right way to assign staff to those duties. I cannot comment, but I can ask Mr. Swales whether he would like to.

Generally speaking, that has to do with the way the agency assigns work to its staff.

• (0930)

Mr. Nicholas Swales: In the 2015 report on exports, two of our recommendations concerned the fact that there should be information on performance in some cases. More specifically, agency employees worked on maintaining the targets sent to them by other departments. One of the roles related to export control is to ensure that things handled by other departments do not leave the country if they shouldn't. There was no way to check whether that was working. So that is an area where we could have a measurement system.

The other recommendation had to do with what stood out about detained goods. We said that there should be a better understanding of why it happens and for how long. That's another type of performance measurement that helps ensure that this does not cause any issues....

Mr. Michel Picard: Allow me to interrupt you.

The Chair: You have 30 seconds left.

Mr. Michel Picard: I agree with my colleague Mr. Paul-Hus in saying that the invested amount is considerable. That's a lot of money. Can the size of the investment be explained by the obsolescence of the systems in place or is it an investment that is in line with as updated modern value, an investment in preparation for future progress?

Mr. Martin Dompierre: Assessments were done to identify each initiative, its value and its budget. I could not tell you whether it was for major replacements of outdated systems.

After all, we are talking about 34 initiatives within 18 departments. Each entity had its own particularities in terms of implementing systems or other activities. Those were not only activities related to information technology, but also collaborations, discussions and policies to be implemented. So there was an array of activities.

I can't tell you whether the budget was developed to resolve obsolescence issues.

[*English*]

The Chair: Thank you, Mr. Picard.

Mr. Van Kesteren, you have five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Leamington, CPC): Thank you, Chair.

I just have a few short questions, and then I'm going to pass it on to Monsieur Paul-Hus, if I could, after I'm finished.

I first want to echo what my colleague said. I think I was serving in finance at the time, Mr. Ferguson, and nobody doubted your credentials, but there was some real criticism about your inability to speak French. Anybody that was born in the same decade we were born in knows how difficult it is to learn another language, and I want to commend you. I think you've accomplished something that's quite extraordinary.

There was a question raised, and I don't know if we got clarification on it, at least not in my mind. I googled "marijuana order in Canada" just now, and I had 10 sites that popped up. An example is Ganja Express, "a Canadian company based in BC that provides legal, safe access to high quality...Marijuana" for medical and recreational use across Canada. This is an advertisement at a time when we have not yet legalized marijuana.

I'm wondering with the complications we have at the border, where you see that in another.... Well if the Liberals do legalize marijuana by July 1, as they've said they're going to do, what do you foresee in the future as far as that legislation is concerned in regard to this legislation?

Mr. Michael Ferguson: Again, I can't really speak to other legislation.

The item we raised in the audit was that at the general level there are restrictions on the export of certain items. What we would expect is that the Canada Border Services Agency, or any other government organization involved in that, would make sure that any restrictions on exporting things would be respected.

In terms of something like the export of marijuana, obviously it depends on what the export rules or export restrictions would be on marijuana in the future—how those might or might not change. In the period of time that we looked at, obviously the exportation of illegal drugs was something that was not allowed and should be managed and controlled at the border.

However, what we found, again, was that the agency felt—and primarily because they didn't have the ability to do the random inspections of the non-reported shipments—that they didn't have the authority to systematically identify where there may be some exports of illegal drugs.

Again, fundamentally, the issue is always whether there are things that are restricted under Canadian law and regulation to export and if there are, how the government organizations are making sure those export restrictions are being respected.

• (0935)

Mr. Dave Van Kesteren: Okay, thank you.

[Translation]

The Chair: You have two minutes, Mr. Paul-Hus.

Mr. Pierre Paul-Hus: Thank you, Mr. Chair.

Mr. Swales, you identified an issue in the continuity of goods movement.

Individuals or small businesses send small packages, while large companies ship containers. Have you identified a bigger problem when small packages are sent individually compared with large shipments?

When large companies are compared with small companies or individuals, is there a major difference in terms of inspection?

Mr. Nicholas Swales: Mr. Chair, the key difference is that small shipments may not have been declared. So the agency had less authority to develop the necessary risk analysis to determine how involved it should get.

Mr. Pierre Paul-Hus: For example, a business or an individual may send a package to the United States, but they may not file a customs declaration. The package is sent, and no screening is performed. Is that correct?

Mr. Nicholas Swales: It's not that there is no control at all, but the officers must have reasonable suspicion before opening a package for a thorough analysis.

Mr. Pierre Paul-Hus: Don't companies such as Canada Post or FedEx have an obligation to clear a package before it is shipped? Is it not mandatory for those companies to perform screening?

Mr. Nicholas Swales: One of the issues is knowing whether the declarations are accurate. Screening is performed for mailouts. That said, it is somewhat different because people are not required to declare if the content is worth less than \$2,000.

Mr. Pierre Paul-Hus: Okay.

The Chair: Thank you, Mr. Paul-Hus.

[English]

Mr. Fragiskatos, you have the final five minutes.

Mr. Peter Fragiskatos: Thank you very much.

We have heard today that Bill C-21 addresses an important gap as far as exports are concerned, when we're trying to deal with the export of illegal goods in particular. I want to ask about, or even confirm, really, the importance of taking a dynamic approach to this.

Recent CBSA reports indicate that intelligence-led cocaine seizures have increased 49% because of tips and other intelligence that have come in and been utilized by the agency. This intelligence has also led to a rise in large-scale heroin seizures as well. If we can take what's been applied in terms of intelligence to imports and apply it to exports, from an intelligence perspective, I think you would agree that in addition to the changes that would be brought about by Bill C-21, we would have a robust approach to dealing with these sorts of exports, these illegal materials.

Mr. Michael Ferguson: Mr. Chair, in terms of exports, I'm going to refer to paragraph 2.60 in our audit on controlling exports. In there, we say that the agency had in fact identified illegal drugs as a high-risk area. In fact, during the period of time that was under audit, the agency had in fact made several drug seizures. I'm talking, again, about exports. They were acting on that type of intelligence that they were getting, even on exports, to try to identify if there were illegal drugs being exported. Also, the reason that looking for illegal drugs at export is important is that it's one way of helping to combat organized crime.

What the agency had identified was that they had limits on their authority to examine the non-reported packages, and that reduced their effectiveness in preventing the export of illegal drugs. Because of that, they didn't actually set illegal drugs as one of their examination priorities. What was happening was that they were acting on whatever intelligence they had, whatever suspicions they had, to try to identify whether illegal drugs were being exported. However, they didn't have all of the authority they needed to perhaps have an overall systematic approach to whether illegal drugs were being exported.

Certainly if the bill does give them the authority they need to do those random inspections of all exports, then they should be able to adjust their approach to illegal drugs.

● (0940)

Mr. Peter Fragiskatos: Okay, thank you very much.

I have a final question.

In your report, it states, "...while departments and agencies had implemented many of the commitments for a number of initiatives, they experienced significant challenges, such as delays in implementation and low adoption rates by users."

I want to ask to what extent this sort of problem is a common phenomenon when it comes to new programs being introduced. We're talking about Beyond the Border. Your report looks at the implementation of a new approach, a new program.

My instinct is to think that these sorts of issues, challenges, are in fact common. Can you comment on best practices that you've seen when it comes to the implementation of a new program to address initial challenges like this?

Mr. Michael Ferguson: With any new program, in fact with any program, one fundamental management practice is to identify risks. If the risk is that this is a new program and, for example, we may have a risk of not enough uptake, then the organization should have a plan for how they're going to make sure they get the appropriate uptake, the appropriate number of users.

My memory is fuzzy on it, but I think that where we talked about uptake was primarily on the single window for goods.

Mr. Dompierre can maybe provide those details.

Mr. Martin Dompierre: Basically, that initiative was to engage with the trade organizations in order to use a system to allow and facilitate trade to come into Canada. The uptake was low because trade companies had to invest a lot of money in their systems, and there was not a lot of appetite for that. We did make a recommendation in the report that CBSA should design a strategy to engage their partners. In terms of best practices, they should at the forefront try to get as much buy-in as possible from the trade or any organization engaged in a new program, while ensuring that they have the capacity to take on new requests to adopt a new program.

Mr. Peter Fragiskatos: Thank you very much.

The Chair: Thank you.

That brings the questioning to a close.

I appreciate your efforts to be here. I also want to compliment you on your French.

The benefit of being around here for about 20 years is that you complete an entire circuit of this table. I've been in the opposition, I've been in a third party, and I've been in government. I've been here and I've been there. In all instances, your reports have been done with complete integrity. They are fact-based. We as parliamentarians appreciate the work of the Auditor General, so thank you very much.

The meeting is suspended.

● (0940)

_____ (Pause) _____

● (0950)

The Chair: We're back on, and we have our second set of witnesses.

From the Department of Employment and Social Development, we have Elise Boisjoly, assistant deputy minister of the integrity services branch. We also have Cyndee Todgham Cherniak, counsel for LexSage Professional Corporation.

Welcome to you both. I will call on Ms. Boisjoly to speak first, and then Ms. Todgham Cherniak.

Thanks very much.

[*Translation*]

Ms. Elise Boisjoly (Assistant Deputy Minister, Integrity Services Branch, Department of Employment and Social Development): Thank you very much, Mr. Chair.

Members of the committee, good morning. Thank you for the opportunity to appear before you this morning.

My name is Elise Boisjoly, and I am the Assistant Deputy Minister of the Integration Services Branch at Employment and Social Development Canada, or ESDC.

Today, I would like to inform you on how ESDC proposes to collect and use information as a result of Bill C-21.

[*English*]

First, I would like to talk about the department I represent.

ESDC's mandate is to improve the standard of living and quality of life for all Canadians. Many Canadians benefit from our old age security and employment insurance programs, which you probably are very familiar with. Let me tell you just a little bit more about these two programs.

Employment insurance, or EI, provides temporary income for people who have become unemployed as a result of specific events, for example, if you've been laid off, if you're on maternity leave, if you're taking care of a new child. These are all instances when you would get EI.

Old age security, you're probably very familiar with as well. Seniors are eligible for this. We have pensions for people over 65, a guaranteed income supplement for people who have low incomes, and also some spousal and survivor allowances for people in receipt of GIS.

It is the responsibility of the department to ensure the integrity of those programs and the stewardship of our funds, and to ensure that only eligible Canadians receive benefits to which they are entitled. It's critical for us to detect errors or abuses in those programs and to ensure that these programs will be sustainable for future generations. That's why I'm here today discussing Bill C-21, because some of those programs have residence eligibility criteria, and that's where the intersection with CBSA becomes very important.

For EI, claimants need to be in Canada because they need to be available for work. If they go outside Canada, they're not eligible for EI. There are some circumstances when you can go outside Canada, for example, to attend a funeral, or for medical reasons. There are specific reasons but they are quite limited. If you go outside Canada and you don't tell us and you continue to receive benefits, there will be overpayments, potential penalties, and we will ensure that the amount is paid back.

Pensions are payable outside Canada in two instances: if you've been in Canada for 20 years since you've been 18 years old, or if we have an agreement with another country that allows for the sharing of the pension. This would apply to most Canadians. Also, you're allowed to leave Canada, even if you don't meet those two obligations, as long as you've been out of Canada for less than six months. Again, the majority of Canadians would fall under that purview. As to the allowances I talked about, and the guaranteed income supplement, you will not be eligible if you're out of the country for more than six months. There are residence requirements related to the eligibility for those programs.

It is important to note that the information being collected through entry-exit is information that we're already asking from our beneficiaries. It's part of our act. We already have the right to request this information. Beneficiaries are asked to provide that information to Service Canada when they leave the country. It applies to all beneficiaries. We are trying to be extremely transparent and clear about those requirements. When people are entitled to those benefits, we give them that information. It's on our website. We continue communication with recipients to make sure they understand their rights and obligations.

That being said, ESDC doesn't have the means to verify the information provided to us by beneficiaries. We think most beneficiaries are legitimate. However, sometimes errors can happen, and sometimes fraud can happen. This will allow us to ensure that we can validate the information received from beneficiaries.

By amending the Customs Act to provide entry and exit information, we'll be able to use that information to verify requirements for EI and OAS.

Just so you know, we already receive EI information through customs form E311, the form people fill out when they come back into the country. Bill C-21 would expand the information to people leaving the country by air and also land travellers entering and exiting the country.

• (0955)

Getting this information is important for us because we have had good success identifying errors or potential abuse of the program in the past using the information we had. We were able to recover

between \$15 million to \$20 million in overpayments with the information we had in the past, and we think that, with the information we'll get from entry-exit, we'll be able to save probably an additional \$5 million in overpayments. These are conservative estimates, but again, this is about the integrity of the program and ensuring that people who are entitled are receiving the benefits.

In addition, as I've mentioned, we could only use this information for employment insurance. Now we will be able to use this information for old age security, OAS. It will allow us to use that information to look at eligibility under that program as well. Conservative estimates look at up to \$47 million in overpayments that could be potentially identified. It's quite significant in terms of the potential for us to improve the integrity of our programs with that information.

There are a few things I would like to add. This bill, if approved, would not have any impact on people who are supposed to receive their benefits or are entitled to the benefit. It would have no impact on the rules of the existing program. It's already part of our legislation. It's already something that we clearly indicate and communicate to recipients. Obviously, if the bill passes, we would add information that this information is shared between our two departments, and it would be communicated to recipients.

Also, we don't anticipate that it will impact a lot of OAS recipients. As I've mentioned, a lot of the recipients of OAS fall into the category of having pensions that can be transferred even if they are not still living in Canada, and so it could represent maybe 0.01% of the 5.7 million people who are crossing the border, although, as I mentioned before, the overpayment could still be substantial, and it's important for us to ensure the integrity of our programs for future generations.

In terms of additional burden on beneficiaries, we don't expect any. We already ask for this information, and the information is already provided by Canadians, and it will ensure the highest level of integrity for our program.

One thing I want to ensure that people on the committee understand is that we will not stop any benefits just because we receive that information. Beneficiaries will always have the opportunity to come to us if some anomalies are detected, and they will be able to provide substantiating documentation. It's only as a last resort that we would come to overpayment if the beneficiary is not entitled to the claim.

Something I think that is dear to this committee is privacy of personal information, and how we protect that information. We're a steward of public funds, but at ESDC we're also stewards of private personal information, as you can imagine, and we take that very seriously. First, the department would do a privacy impact assessment. They would share the results with the Privacy Commissioner, obviously, and they would take all the recommendations seriously and look at implementation.

We will also establish an agreement between ourselves and CBSA to ensure the rules on how we share the information and the responsibilities are clearly established. That's a common practice, and that's something we already have in place for E311 information exchange. The exchange of information will be done through technology, and we'll ensure that security measures are put in place. Also, we'll only receive personal information that is directly relevant to our programs. The information is going to be matched with our system, so if there's no match, the information is purged. Only people who are authorized to access the information will have access to the information. We're not going to share the information with other departments.

In closing, our main concerns are about protecting the integrity of our program and providing great service to Canadians, and we need a robust system to ensure that we have the right information to give the right benefits to the right person at the right time.

Thank you again.

●(1000)

[Translation]

Thank you again for allowing me to appear before the committee today.

I look forward to answering your questions.

The Chair: Thank you, Ms. Boisjoly.

[English]

Ms. Cyndee Todgham Cherniak, you have 10 minutes, please.

Ms. Cyndee Todgham Cherniak (Counsel, LexSage Professional Corporation, As an Individual): Thank you, Mr. Chairman.

Thank you for inviting me to provide comments on Bill C-21, an act to amend the Customs Act. My name is Cyndee Todgham Cherniak. I am a Canadian international trade lawyer, and I specialize in the areas of customs law and export controls and economic sanctions.

Bill C-21 amends the Customs Act to implement the Beyond the Border initiative between Canada and the United States. It has three main parts.

Bill C-21 starts with the provision to authorize the CBSA to collect limited information about persons and conveyances that are leaving or exiting Canada. Then, Bill C-21 adds proposed new section 94 of the Customs Act, which requires that, if requested, every person who is leaving Canada present themselves to the CBSA and answer questions truthfully. Bill C-21 also amends section 95 of the Customs Act, which puts a positive obligation on persons to report all goods that are exported. Finally, Bill C-21 adds a new export smuggling offence in subsection 159(2) of the Customs Act.

Whenever a new offence provision is created, the government needs to be careful. When interpreting a statutory provision, we must ask what the intention of Parliament was when they passed this provision. The rules for an export smuggling offence need to be very clear. It's not fair to Canadians and travellers to Canada for there to be punishable export-related smuggling rules and only be told when the rule has been broken. Proposed new subsection 159(2) of the Customs Act provides:

Every person commits an offence who smuggles or attempts to smuggle out of Canada, whether clandestinely or not, any goods that are subject to duties, or any goods the exportation of which is prohibited, controlled or regulated under this or any other act of Parliament.

What does smuggle mean? This term is not defined in Bill C-21 or the Customs Act.

Proposed subsection 159(2) of the Customs Act tells us what can't be smuggled out of Canada: one, "goods that are subject to duties", and, two, goods that "the exportation of which is prohibited, controlled or regulated" under the Customs Act or any other act of Parliament.

Let's start with goods that are subject to duties. The term "duties" is defined in section 2 of the Customs Act with reference to imported goods. There is no definition of duties in the context of exported goods. Bill C-21 does not amend the statutory definition of the word "duties" in the Customs Act.

The words "subject to duties" must have meaning. Is it the intended result that all goods that are not duty-free when imported into Canada are covered by the new export smuggling provision when they are exported? Or, is the intended result, by virtue of amended subsection 95(1) of the Customs Act, which requires all goods to be reported, that all goods will be considered to be regulated and therefore all goods must be reported, and if the goods in your luggage or my luggage are not reported, they will be considered to be smuggled?

What is envisioned? Will there be export clearance at Canadian airports for all passengers, so that they must report the goods in their luggage? Will there be a new export checkpoint staffed by the CBSA? When travellers pre-clear U.S. customs, do they also have to go through a CBSA export checkpoint, or this going to be like the requirement in the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, which puts a positive obligation on persons to report all exports of more than \$10,000? Are travellers supposed to find the small CBSA office in the airport and complete some paperwork before leaving Canada?

With respect to the second category of goods to be covered by the export smuggling offence, do any of you know what are “goods the exportation of which is prohibited, controlled, or regulated” under the thousands of acts and regulations that we have? What does this even mean? The terms “prohibited”, “controlled” and “regulated” are not defined in Bill C-21 or the current Customs Act. I can tell you from experience in my practice that most people do not know how many restrictions there are under Canadian laws and regulations relating to exports.

This is not just the Export and Import Permits Act and the export control list that place restrictions on exports. There are hundreds of restrictions that are not obvious, and there are hundreds of different disconnected statutes and regulations. Do you have a complete list? Does a complete list even exist?

• (1005)

The export control list is only one list, and not an easy list for the average person or even a business person at a small to medium-sized business to use. Dual-use goods, miscellaneous goods, U.S.-made goods, computers, encryption software—the export control list is really complicated. In addition, the export control list does not contain or include many other export-regulated items, such as, rough diamonds, hazardous materials, fireworks, live animals, cultural property, fish, seafood, health products, regulated drugs, precursor chemicals, and the list goes on.

Did you know that there are restrictions on exports of honey, maple syrup products, and peanut butter under different and disconnected regulations? These and other goods are covered by other laws and other regulations.

My recommendation would be that there needs to be some clarity with respect to which goods must be reported and will be considered to be smuggled out of Canada if they're not reported. There needs to be a consolidated list of goods that are subject to export restrictions, and if there isn't a single, consolidated, searchable database of export restrictions and regulations, good Canadians will make mistakes.

There are inconsistencies between the regulatory schemes. A second recommendation I'd like to give you is that there needs to be some consistency. As you know, the minister of foreign affairs does not have the authority to issue export permits to non-residents, but non-residents of Canada leave by air, ship, and rail. How is this new smuggling offence provision going to be applied to the millions of foreign visitors to Canada who can't obtain export permits? As you know, when a Canadian resident uses a general export permit to export controlled goods under the Export and Import Permits Act, they must refer to the general export permit number on the export documentation. How will the CBSA enforce this general export permit requirement in respect of the individual traveller who does not use export documentation when leaving with goods in their luggage?

While I can understand that the Government of Canada would like to be able to charge individuals who try to break export control rules by personally exporting the goods, this proposed provision is going to capture a whole lot of other people. Further, the Export and Import Permits Act and other statutes contain punishment for not obtaining export permits and export licences when required. Ask what the

export smuggling provision is really supposed to accomplish. We may already have this covered in our law.

What about information on electronic devices? On September 27, 2017, Mr. Martin Bolduc of the CBSA testified before the ETHI committee that the CBSA's position is that, pursuant to the Customs Act, the word “goods” includes electronic records on electronic devices. He took the position that the CBSA may examine all electronic documents that are being imported. The CBSA's analysis on imported goods would also apply to exported goods.

Based on the proposed amended subsection 95(1) of the Customs Act, all electronic documents on your computer, my computer, or our electronic devices must be reported. There have to be regulations promulgated to support proposed subsection 95(1). I would hope that, in those regulations, electronic records would be specifically addressed and an exception cover electronic records. Laptops contain hundreds of thousands of emails and documents, and it would take a long time to report these goods at the airport before leaving Canada, and it's not even feasible to report all the goods.

Anyone, including all of us, could commit a smuggling offence if every electronic record on our computer must be reported to the CBSA, and anyone with a NEXUS card would be at risk of losing their NEXUS card if they failed to recall one document.

We should also protect solicitor-client privilege at the border. Solicitor-client privilege is fundamental to the proper functioning of the Canadian legal system. As a result, steps must be taken to ensure that solicitor-client privilege is protected at Canadian airports and Canadian ports of exit when lawyers and clients are leaving Canada. It is essential that the CBSA maintain a transparent policy and process to address solicitor-client privilege when questioning persons leaving Canada.

• (1010)

Finally, on the issue of privacy and the sharing of information, the CBSA's information can be wrong. We need to have a mechanism so that travellers can correct the information relating to answers they've provided to the CBSA and when they've left.

I'd be happy to answer any of your questions.

The Chair: Thank you, Ms. Cherniak.

Our first questioner is Ms. Dabrusin.

You have seven minutes, please.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): Thank you to both of you for your presentations. I have a pile of notes because you gave us a lot to ask questions about.

I'd like to start with you, Ms. Cherniak. You mentioned that there is no definition of “duties” in the Customs Act for exports. Is that right?

Ms. Cyndee Todgham Cherniak: That's correct.

There is a definition in section 2, but it only focuses on imports. There is not an element of that definition relating to exports.

Ms. Julie Dabrusin: Would that problem be solved if there were an amendment to have that cover “exports” as well, in the same definition? Would that be your recommendation?

Ms. Cyndee Todgham Cherniak: I'm not sure, because there aren't duties on many exports beyond softwood lumber, which has export charges under a different statute.

We don't charge on goods leaving Canada. We charge on goods entering Canada, so that those goods are put on a higher level and Canadian goods can be more competitive. It kind of goes against the principle of duties to have a definition. However, the smuggling provision makes reference to "duties", so it's confusing.

Ms. Julie Dabrusin: In many different places you've really zeroed in on the language of the statute and some issues.

What is your solution to how to deal with the fact that the word "duties" is unconnected? Would you have a recommended change of wording? Would you remove the word "duties", or is there something else that you would do?

Ms. Cyndee Todgham Cherniak: My question is the intention of Parliament.

I was listening to the previous witnesses where it seems there appeared to be a gap in Canadian legislation and that's why they needed this, but I'm not sure that gap is there. It should be that any goods that are subject to the controls or licence provisions, you shouldn't export those goods without the proper permits.

I'm not sure if an export smuggling offence within the Customs Act is the right way to go about it, because the Export and Import Permits Act has an offence provision. I'm a little confused by the provision and what they're trying to get at, over and above what's covered by other legislation.

Ms. Julie Dabrusin: You looked at the words "prohibited", "controlled", and "regulated" and said that they're undefined.

You seem to be well aware of all the statutes that link up together on this issue. Is there a statute that you believe properly defines those terms that could be linked in to this legislation?

Ms. Cyndee Todgham Cherniak: Unfortunately, there are so many pieces of legislation within which there are export restrictions and regulations relating to exports.

The first act to look at is the Export and Import Permits Act, and the export control list and the area control list under it.

The second obvious one is the United Nations Act and the Special Economic Measures Act, which in some cases relate to goods, but in many cases relate to listed persons and prohibitions on doing business with particular listed persons. You need a lot more information about a particular good to know whether that good should be restricted in some way or another. Then we have, for rough diamonds, for honey, for maple products, and so on.... There are over a hundred, if not over a thousand, different pieces of legislation that have restrictions on exports in one way or another.

That's why they say "another act of Parliament" as a catch-all basket, but it doesn't really help small to medium-sized businesses or individuals.

•(1015)

Ms. Julie Dabrusin: Can this be resolved through regulations? They can be updated more easily when there are changes to export controls.

Would that be one means of resolving this issue through the regulatory part of this bill?

Ms. Cyndee Todgham Cherniak: In part.

However, in listening to the previous witnesses, I noted they were talking about the \$2,000 Canadian limit and that certain goods don't meet that threshold and they're not being captured. That particular threshold or condition is in the reporting of exported goods regulations. The export control list is another regulation that can be changed, but it is very difficult to manoeuvre that piece of legislation. That piece of legislation sends you over to the guide that is on the Global Affairs website. From there, you have to try to interpret words like "intrusion software", which is on the list. I'm sure there aren't many people in the room who know what intrusion software is, so you'd have to go somewhere else.

The average Canadian and the small to medium-sized business, both trying to comply with Canada's export laws, have another issue to deal with when it comes to the smuggling provision and the reporting of goods requirement in Bill C-21.

Ms. Julie Dabrusin: Have you looked at any models of this type of legislation in other countries that might provide hints as to how to draft it in a way that would respond to some of your concerns?

Ms. Cyndee Todgham Cherniak: I have not looked at it for the narrow issues in Bill C-21. I have looked at the U.S. export control rules. I have looked at U.K., Australia, and Japan export control rules, but in the creation of a smuggling offence, I have not looked there with a focus on what this particular piece of legislation is doing.

Ms. Julie Dabrusin: Sure, fair enough. If you do come upon an example that you think would be helpful as a comparison model, that would be wonderful.

Thank you.

Ms. Cyndee Todgham Cherniak: Thank you.

Ms. Julie Dabrusin: You mentioned that it's hard to get a list of prohibited control regulations. Are there lists available? You've pointed us in a few different directions, like going through Global Affairs' website and here and there. Is there a comprehensive list that you are aware of?

Ms. Cyndee Todgham Cherniak: There isn't, and I'm working on a mini-book right now. In the past few weeks, I've been trying to compile a list for small to medium-sized businesses, and I've already failed miserably. I have some general items—well over 100 of them—on my list, but the list is a lot longer than that, and it's very difficult, even for someone who has experience in export controls, to make a comprehensive list. It would be very nice if the government did that for small to medium-sized businesses and Canadians.

It is something that was raised with the FAAE committee earlier this year in connection with their review of export controls and the freezing of assets of corrupt foreign officials, which I call the “beyond Magnitsky report”. They recognized the exact same issue in the area of export controls, that there aren't consolidated lists.

The Chair: Thank you, Ms. Dabrusin and Ms. Cherniak.

[*Translation*]

Mr. Paul-Hus, the floor is yours for seven minutes.

Mr. Pierre Paul-Hus: Thank you, Mr. Chair.

Ladies, thank you for your reports, which are very comprehensive and informative.

I will first turn to you, Ms. Boisjoly. You did a really good job of analyzing the impact of Bill C-21 on ESDC. You determined that you could potentially save \$5.5 million. So you already have a good idea of the number of people who commit employment insurance fraud.

I assume that the amount was obtained based on a percentage of cases you know about and over which you have no control. Is that correct?

Ms. Elise Boisjoly: Thank you for the question.

That is correct. For us, what is important during investigations is the level of existing risk. We build analytical models. We try to determine the sources of potential errors, which can be very legitimate. For example, someone may put down the wrong date for the end of their employment, and that makes it seem like the individual left their job after more than six months. Then they tell us that they did not leave on that date. So we really look into errors and fraud, and we use analytical models. That gives us an opportunity to identify overpayments we could recover.

• (1020)

Mr. Pierre Paul-Hus: My other question is about the information that will be collected once Bill C-21 has been passed. Proposed subclause 92(1)(a) talks about the surname, first name, date of birth, citizenship or nationality and sex. How can you obtain reliable information if you have my surname, for example, but there are four other people named Pierre Paul-Hus in Canada. You don't have my social insurance number. How can reliability be ensured?

Ms. Elise Boisjoly: That is an excellent question.

The important thing to point out is that this is only one of the tools we will use. All the corresponding elements that will arise are not necessarily subject to investigation because we look at other factors. At that point, if other factors show that there could be issues, investigations could be launched.

So once again, the important thing to point out is that in cases where we note an anomaly, the claimant can always come back to see us to obtain certain information. We can also establish connections with a passport number, for instance.

I think it is important to point out that the claimant has an opportunity to say that they are not the person we have identified.

Mr. Pierre Paul-Hus: So for you, that information will be added to a database you already have, and it will be an additional red flag that will help you identify system fraudsters.

Ms. Elise Boisjoly: Exactly.

Mr. Pierre Paul-Hus: Have you calculated how much your department could save once Bill C-21 has been passed? Have you determined that savings may be made in terms of labour or resources?

Ms. Elise Boisjoly: That's an excellent question.

Unfortunately, I can't say that we have done the exhaustive work of using quantitative data to determine how much we will save. There can be several effects. Analytical models are only good once they have been tested. There may be more cases, and that could generate more work. Currently, some of the work is done manually, but we are doing less of it. Will the list raise more red flags?

It would be difficult to say right now what the quantitative savings might be in terms of work. There's no doubt that some things will help us be much more efficient and more specific in our assessments. Will that generate more work? It remains to be seen.

Mr. Pierre Paul-Hus: Thank you.

Ms. Todgham Cherniak, in your blog, at www.canada-usblogger.com, you talk about your concern over the thickening of the U.S. border. You list eight ways to reduce those problems.

Are the problems you listed earlier part of your summary? Do you have another document to submit to the committee?

[*English*]

Ms. Cyndee Todgham Cherniak: Normally, when we talk about thickening the border, we're talking about imports and the Canadian regulations on imports. This is going to be a new thickening of the border for exports, because goods are going to be heading outside of Canada to the United States and overseas. They are currently being detained from time to time, and there is a requirement to provide an export declaration for any goods being shipped outside of Canada that are valued at over \$2,000.

We already have some mechanisms in place, but if we now have to look at each and every good and, on top of that, to look at goods at airports and border crossings that individuals are taking across the border, there's going to be considerable new thickening at the border. If we take away that \$2,000 threshold—that's something the previous witnesses seemed to be concerned about—then we are really going to have some delays on goods leaving Canada, and we may not be seen as a desirable party to persons overseas who need the goods quickly. They might pick some other country that doesn't have these problems.

[*Translation*]

Mr. Pierre Paul-Hus: In your presentation, you said that non-resident Canadians were not subject to the same rules as confirmed Canadians, so to speak. Does your data contain information on aboriginal communities such as the Mohawk community?

This week, we met with the Mohawk Grand Chief. He talked about border issues. From an economic or business point of view, is the Mohawk reserve part of your analyses?

• (1025)

[English]

Ms. Cyndee Todgham Cherniak: I don't have any information on that but it goes back to the Export and Import Permits Act. The minister of foreign affairs can only issue export permits to residents of Canada. It has to be a person who's a resident of Canada and it wouldn't matter whether or not the individual is in the aboriginal community. If they're a resident of Canada, they can get an export permit. I was referring more to foreigners who come to Canada to do business and to travel. They would have that reporting requirement, and they wouldn't be able to get export permits if they are taking controlled goods out of the country.

[Translation]

Mr. Pierre Paul-Hus: I have no more questions, but before I finish, I would like to make a request.

[English]

The Chair: You have 20 seconds.

[Translation]

Mr. Pierre Paul-Hus: We have no copy of your presentation. We can always consult the blues, but would it be possible to send it to our clerk?

The Chair: Mr. Dubé, go ahead for seven minutes.

Mr. Matthew Dubé: Thank you very much, Mr. Chair.

Ladies, thank you for joining us today.

Ms. Boisjoly, concerning data retention, I have a few questions on how data is collected. You said that, if there is no match, the data was eliminated. So a match can concern any claimant of the programs in question. Is that right?

Ms. Elise Boisjoly: To protect privacy, we try not to have information that is not relevant to us. In the case of employment insurance, we recommend to the CBSA to limit its information collection to people aged 16 and over who have spent more than five days outside the country and those over the age of 60 who have spent more than 213 days, or about seven months, outside the country.

That information targets people who fall outside established standards.

Mr. Matthew Dubé: Do the matches represent all those individuals who satisfy the criteria you just listed?

Ms. Elise Boisjoly: We collect the information and, if there is a match with the records in our database, the information—

Mr. Matthew Dubé: Based on those criteria?

Ms. Elise Boisjoly: Yes, based on those criteria.

Mr. Matthew Dubé: How do you determine whether the information on an individual is pertinent? For instance, in the case of an EI claimant who is older than 16 and who has left the country for more than five days, does CBSA send you the information electronically? Will department staff do an assessment?

Ms. Elise Boisjoly: In a case like that, the information is shared via computer systems.

We will ensure that a privacy impact assessment is done, that any concerns raised by the Privacy Commissioner are taken into account, that the systems used are highly secure, that only employees dealing with the files in question have access to the information, and that staff are properly trained on how to handle the information.

Mr. Matthew Dubé: What I actually want to know is this.

The agency is going to send you all the information. A mechanism has to be established to access the information collected. The agency is going to collect information on everyone who leaves the country and send it to you. Will there be some sort of mechanism to screen the information before the data deemed pertinent, according to your criteria, is shared with you?

How will the information be screened? Will an employee sitting at a computer do it? That's really what I'm trying to understand.

Ms. Elise Boisjoly: It will be done electronically. An electronic platform will be set up to collect the information that meets the criteria and match it against the information in our systems.

Mr. Matthew Dubé: Given all the problems associated with Phoenix and Shared Services Canada, information technology systems don't exactly inspire confidence these days.

Who is implementing the system? What steps are being taken to ensure the matching process works as it should, so that the department doesn't go after recipients who are entitled to continue receiving their benefits? What is being done so that people who haven't done anything wrong aren't forced to chase after ESDC to provide documentation justifying their claim?

Ms. Elise Boisjoly: That's a great question, given the factors you mentioned.

Platforms already exist for other data-sharing arrangements, and we haven't had that kind of problem. Obviously, from a technology standpoint, we make sure we have solid processes and sound methods to test the information; we make sure we take an iterative approach and verify the information. The data will be subject to oversight to ensure accuracy and security.

We also do what we call a system security clearance prior to deployment, the purpose being to make sure the security features are indeed in place and that staff are properly trained.

• (1030)

Mr. Matthew Dubé: When the system produces a match, you keep the information, according to the criteria, obviously. How long do you keep the information on file?

Ms. Elise Boisjoly: In the case of a match, the retention period differs for the two programs.

With EI, for the purposes of retention and redemption—I'm not sure whether I'm using the right terminology—it's approximately 12 years. For OAS, it's six years. The information is highly secure. The department has a number of systems in place. We make sure that the information is destroyed properly and in accordance with Library and Archives Canada rules.

Mr. Matthew Dubé: Take, for example, an employment insurance claimant. I've had constituents in my riding tell me that processes can be extremely lengthy and contentious.

Have you put in place any mechanisms or rules to deal with situations where the information is kept longer than planned?

Ms. Elise Boisjoly: In cases under dispute, holds are often put on the destruction of information. In rare circumstances, information can be retained for extended periods, such as in court cases.

Mr. Matthew Dubé: Now, for my last question.

You mentioned a potential savings of \$47 million over five years, or money collected in connection with OAS overpayments. You also said, though, that you didn't expect much of an impact on OAS recipients. Unless I'm mistaken—bear with me as I look for it in your speaking notes—the proportion would be something along the lines of 0.1%.

How do you explain such a minimal impact and, yet, such a large amount of money?

Ms. Elise Boisjoly: It really comes down to the risk model that was put in place.

The proportion of 0.1% may seem minimal when compared with the dollar figure. Nevertheless, it's important to take into account how we estimate the overpayments. It is not just the amount that has been overpaid up to this point, but it is also the amount that would be overpaid if the beneficiary continued to receive benefits. In the case of old age security, that is the appropriate model—a prediction model. Under the model, if the problems were not detected in time, the overpayments would continue for an average of seven years.

Mr. Matthew Dubé: We are talking about very serious cases of fraud continuing for a number of years.

Ms. Elise Boisjoly: Not necessarily. With respect to OAS, it has to do mainly with the fact that, if the fraud isn't identified at a given point, the person could continue to receive payments for another 10, 15, or 20 years. Therefore, the overpayments could really add up. If the fraud was detected in time and at the right time, the overpayment would be minimal. If, however, payments continued to be made, the overpayment would be considerably more.

The prediction model assumes that people could continue to receive payments for a period of approximately seven years, so that's how the amount is estimated.

The Chair: Thank you, Mr. Dubé.

[English]

We have four questioners and we have 12 minutes total left.

Mr. Fonseca, welcome to the committee. You have seven minutes.

Mr. Peter Fonseca (Mississauga East—Cooksville, Lib.): Thank you very much, Mr. Chair. I'll be sharing my time with Ms. Dabrusin.

I want to thank the presenters for their very comprehensive submissions. It was very interesting to listen to both of you.

In our ridings, usually immigration and citizenship are the top issues for many of our constituents that come through the door. After those, I'd say it would be EI and OAS and GIS. Some of the border

issues on trade that we're talking about, Ms. Todgham Cherniak, don't come up as often, but I have a couple of questions for you.

As these laws and rules change, it would be great, Ms. Boisjoly, to have a communications package for our constituency offices. As we hear more issues from our constituents who cross the border often, we need clear information and processes to address their concerns. I know I'm putting the cart before the horse, but it's just to keep us ahead of the game.

My first question is for ESDC. One of the Auditor General's studies was on the state of the information technology infrastructure at CBSA. Is ESDC ready for phase three of the entry-exit initiative? Do we have the proper cybersecurity measures in place to protect the information of Canadians on your end?

•(1035)

Ms. Elise Boisjoly: Having a good platform between the two departments is paramount in ensuring the protection of information. We already have systems that exchange information, so we have some history in building these technologies and exchanging information. As we are developing our plans to build a platform, we will ensure that we have the proper testing, the proper cybersecurity. We will also be doing a certification of security, an assessment, to make sure we have the right security measures in place before we launch a platform. To achieve this, we will be doing proper testing and monitoring of the information that is going to be in place. Everything has to be working properly.

Mr. Peter Fonseca: Thank you very much.

Ms. Todgham Cherniak, the committee members heard from first nations representatives on the effects on snowbirds, exporters, national security, and criminality. On your website you wrote a piece called "What Businesses Should Know About Bill C-21 Amendments to Customs Act (Canada)". Taking the lead from your title, what's going to be the effect of Bill C-21 on businesses?

Ms. Cyndee Todgham Cherniak: Small and medium-sized businesses are going to have more regulations to comply with. At the present time, however, small and medium-sized business don't understand their obligations under the Export and Import Permits Act. They don't understand the Special Economic Measures Act. They don't understand the UN Act. The new Magnitsky Act will be an issue for them. There are all the teeny-tiny little regulations that impose export restrictions, reporting requirements, and licence requirements on the exporting of goods.

Canadian businesses want to comply, but they don't know where to look for the information, and they can't always afford advice from lawyers and consultants on how to do things properly. In the face of creating a smuggling offence on a reporting requirement, they're going to want to comply, but they're not going to know how to do it. They're going to make mistakes and they may unfortunately get charged with smuggling when they never intended to do anything wrong.

Mr. Peter Fonseca: We're always looking for a smart, secure, efficient border, and sometimes there are competing interests. What would your recommendations be for providing straightforward, easy, streamlined information so that owners of small businesses can be in compliance?

Ms. Cyndee Todgham Cherniak: First and foremost, I'd recommend a consolidated list that is searchable and has a number of terms, because people may not use the same term to describe the same good. Some people might put in "live animals"; other people will put in "cow", and others will put in "calf". It would have to cover the various permutations. Have a list that's searchable. If you're asking if you need a permit or a licence to export something, search what you're exporting, and then be told what legal requirements are there. That would be extremely helpful to small to medium-sized businesses, and if we can link that to the SIMA consolidated list that just came out, add the UN sanctions to that list, and add the Magnitsky sanctions, you only go to one list for individuals and sanctioned goods. That would be a huge step forward. We just don't have the resources. We also don't have resources to answer every question that's posed by a small to medium-sized business. There aren't the government resources.

Mr. Peter Fonseca: Thank you, Ms. Cherniak.

I'll pass it over to my colleague.

The Chair: Ms. Dabrusin, Mr. Fonseca has generously left you with a minute and a half.

Ms. Julie Dabrusin: My question is for Ms. Boisjoly.

It's come up a few times that we've had witnesses come from Akwesasne to speak to us about the challenges around the fact that they leave the country to get back into the country, but there's no check-in on the other side, so if there's exit information that goes in, it might not be clear how long they were gone.

From your department's perspective, is there any modelling that's been done to take into account what the impact could be or how that could be resolved to respond to that concern?

• (1040)

Ms. Elise Boisjoly: I think that's an excellent question. It's more of a border issue, which would be a little bit more difficult for me to answer, not having that particular mandate. Obviously, for us, working closely with the Akwesasne community is very important because they have certain different conditions. Our role has really been focused on building awareness around the rules and regulations of the program and making sure that they understand what their entitlement requires in terms of—

Ms. Julie Dabrusin: I'll just jump in, because I'm short on time. The concern is more about turning in false positives, for example, because you will get the exit information but not necessarily the entrance information. You will only have half of that picture when it might track up into your department for an investigation. I'm putting it out as a flag. If there has been any thought on this, it would be helpful for us to have that.

Ms. Elise Boisjoly: I will say thank you very much for pointing out that flag to us, and obviously we'll do whatever we can from our perspective to look into this issue.

Ms. Julie Dabrusin: Thank you.

The Chair: Thank you, Ms. Dabrusin.

As chair, I encourage you to read the blues from last Tuesday. I thought that the information provided by the Akwesasne nation was.... There's a rule in law called unintended consequences, and this was one.

Mr. Motz, you have the final five minutes in three, please.

Mr. Glen Motz: Thank you, Mr. Chair.

Thank you very much, ladies, for being here.

I'm going to direct my questions to you, Ms. Cherniak, if I could. It's just a statement and then a request, with the indulgence of the chair.

I initially thought, as we reviewed C-21 and generally reached an all-party agreement on the gaps that this was going to fill—and we had some amendments that needed to be made to the existing legislation—that we were on the right track. After hearing you, I'm not so confident that we are. You mentioned that we're missing some key definitions, which don't exist anywhere else in legislation, to help identify and clear up some ambiguity. We know that those who play out the practical application of this legislation will struggle with it and have difficulty.

I'm wondering whether you would be gracious enough to provide us with some recommendations on amendments that we will take under advisement in addition to the report you've given us, recommendations specific to those issues you identified where we still have major gaps in this legislation, so that we complete the intent, which is what we want to do as a committee. You can respond if you wish. If you could provide that to the committee, I know I personally would appreciate it as we start going through this act clause by clause. These are things we could tighten up.

Ms. Cyndee Todgham Cherniak: I would be happy to. I will go one step further and say that I'll work with some of my export controls and economic sanctions and customs colleagues so that we have more than one viewpoint coming to the table to present a solution.

Mr. Glen Motz: Thank you.

If I have 30 seconds left—

The Chair: You have more than 30 seconds.

Mr. Glen Motz: Great, I'm going to pass it over to Mr. Van Kesteren.

Mr. Dave Van Kesteren: I'd just like to answer that.

I remember when we were in government, we passed FINTRAC. There were probably some people who were shooting some warnings out at that particular time too, and I think I was one of them. I thought, you know, I'm not a criminal and I don't have to worry about these things. That was until two weeks ago, when they froze two of our kids' accounts under that very legislation. You are absolutely right. Oftentimes we, with good intentions, pass legislation....

I read an article a number of weeks ago that emphasized how many laws we break every day unintentionally, so I commend you for what you are doing. I'm not a member of this committee, but, as parliamentarians, I think we need to have a really good look at this to see if there are safeguards.

Thank you for your information. I encourage you to keep on doing what you are doing, and we will do what we do.

Ms. Cyndee Todgham Cherniak: Thank you.

The Chair: With that very positive note, I want to thank both witnesses for their testimony. It was very timely, and we'll be taking it into consideration as we move on.

Our next meeting is Tuesday with our final set of witnesses, and the anticipation is that we will go to clause-by-clause study on Thursday.

Thank you.

The meeting is adjourned.

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