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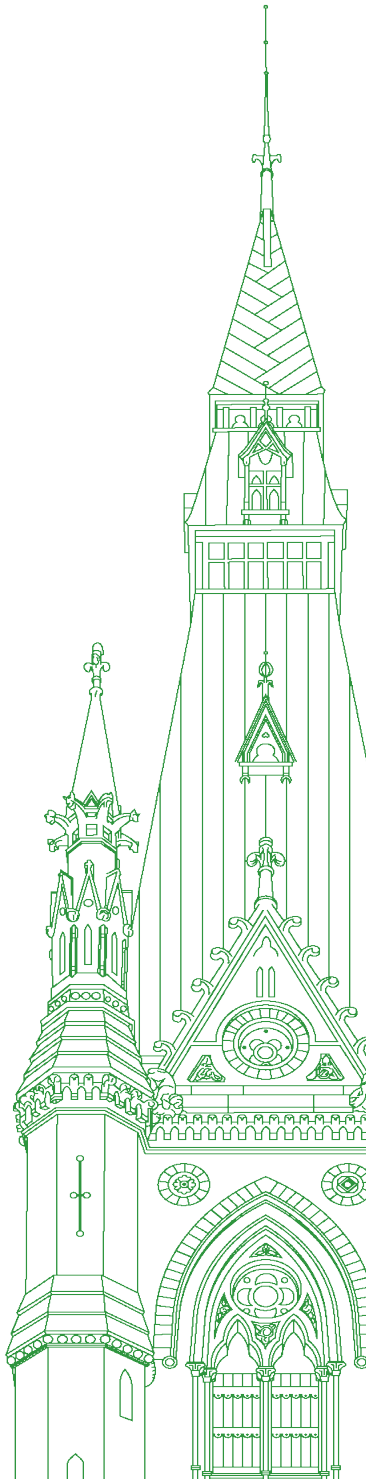
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Chair: Iqra Khalid

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Iqra Khalid (Mississauga—Erin Mills, Lib.)): I call this meeting to order.

Welcome to meeting number 43 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of April 22, 2026, the committee begins its clause-by-clause study of Bill C-29, an act to establish the financial crimes agency and to make consequential amendments to certain acts and regulations.

Today's meeting is taking place in a hybrid format pursuant to the Standing Orders. Members are attending in person and remotely using the remote Zoom application. I would like to confirm that sound tests were made successfully.

For the benefit of all members who are here in person and appearing on Zoom, please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your microphone, and please mute yourself when you're not speaking. For those on Zoom, at the bottom of your screen, you can select the appropriate channel for interpretation: floor, English or French. For those in the room, you can use your earpiece and select the desired channel.

I want to make sure the witnesses in the room have their interpretation selected.

As a reminder, all comments should be addressed through the chair. For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the “raise hand” function. The clerk and I will manage the speaking order as best we can. We appreciate your patience and your understanding in this regard.

Appearing before us today in the first hour we have two organizations. We have the Canadian Bankers Association, represented by Brent Mizzen, who is senior vice-president, payments and digital. He is appearing by video conference. We also have Hartland Elcock, assistant general counsel and vice-president, legal affairs and risk. We have the Federation of Law Societies of Canada, represented by Noah Arshinoff, executive director, policy and public affairs.

Welcome, everyone.

The two organizations will have five minutes each to make their opening remarks.

We will start with the Canadian Bankers Association.

Please go ahead.

Hartland Elcock (Assistant General Counsel and Vice-President, Legal Affairs and Risk, Canadian Bankers Association): I would like to thank the committee for the opportunity to speak to the study of Bill C-29, an act to establish the financial crimes agency and to make consequential amendments to certain acts and regulations.

My name is Hartland Elcock. I'm an assistant general counsel and a vice-president at the Canadian Bankers Association. With me is my colleague Brent Mizzen, senior vice-president, payments and digital, at the CBA. We are pleased to be here today to speak to Bill C-29.

The CBA is the voice of more than 60 banks operating in Canada, employing more than 300,000 Canadians and helping to drive Canada's economic growth and prosperity. Our members welcome the tabling of the bill and the creation of a financial crimes agency. We support the goal of creating a leading enforcement agency to spearhead the fight against complex financial crimes in Canada.

As highlighted in the Financial Action Task Force's recently released mutual evaluation, Canada needs to increase its efforts to detect, pursue and bring before the courts cases of money laundering related to high-risk predicate offences. Once established, this new organization promises to be a key tool for improving the demonstrable outcomes of Canada's anti-financial crimes regime, including increased prosecutions of financial criminals, and for protecting the safety, security and well-being of our country.

Banks take the fight against financial crimes seriously. They are among the most active reporting entities in Canada's anti-money laundering regime, devoting resources to their AML programs, including internal controls and employee training. Much of this investment focuses on continuous improvements to address the shifting landscape of compliance requirements and the evolving nature of risk. Their goal is to effectively detect, deter and report suspicious activity and to mitigate money laundering, terrorist financing and sanctions evasion.

Banks also play a leadership role in public-private partnerships with FINTRAC. One of those PPPs is Project Guardian, which is focused on identifying transactions or attempted transactions where there are reasonable grounds to suspect money laundering related to fentanyl trafficking. This project led to FINTRAC operational alerts that highlight indicators of suspicious transactions for all reporting entities.

The FCA should reinforce these efforts. Its proposed focus on combatting complex financial crime, including money laundering, should help to ensure that public sector resources remain dedicated to this priority, rather than being diverted to competing issues in the future as they emerge. That focus would also help build specialized experience and capacity in this technical area. Promising individuals a career in investigating financial crime would allow the FCA to recruit, train and retain specialized talent. Further, the FCA's proposed ability to coordinate prosecutions and collaborate with relevant agencies in domestic and foreign jurisdictions is promising. These developments should all help yield demonstrable results for Canadians.

To support the FCA and help translate financial intelligence to action, additional reforms and changes are needed. We encourage the government to pursue the following.

Ensure that the FCA is influential in coordinating and priority setting within Canada's response to financial crime.

Enhance public-private information sharing through targeted safe harbour and confidentiality legislative amendments to enhance financial intelligence and increase focus on emerging risks.

Evolve Canada's approach to financial crime intelligence gathering, including streamlining suspicious transaction reporting to better focus on risk.

Amend the Criminal Code to better address and deter the rapidly evolving financial crimes landscape, including modernizing offence and sentencing guidelines.

Embed prosecutors in the FCA to work alongside investigators in order to improve outcomes.

Work with the provinces to strengthen asset tracing, forfeiture, and recovery mechanisms in order to ensure that criminal organizations cannot continue to benefit from the proceeds of financial crime. Also, work with the provinces to expand the range of civil, administrative and alternative enforcement tools available to combat financial crime.

Thank you, again, for the opportunity to speak to this bill. My colleague and I look forward to answering your questions.

● (1535)

The Chair: Thank you. You saved us a whole minute. We really appreciate that.

I will move on to the Federation of Law Societies of Canada.

You have five minutes. Please go ahead.

Noah Arshinoff (Executive Director, Policy and Public Affairs, Federation of Law Societies of Canada): Thank you very much, Madam Chair and members of the committee, for the opportunity to appear before you today on behalf of the Federation of Law Societies of Canada.

The federation is the national association of Canada's 14 provincial and territorial law societies. Our members regulate lawyers, Quebec notaries and Ontario's licensed paralegals in the public interest. They're also an integral part of Canada's anti-money laundering and anti-terrorist financing framework as the AMLTF regulators of the legal profession across Canada.

The federation supports Bill C-29's objectives and a specialized agency to investigate serious and complex financial crime. The new agency must operate effectively while respecting the constitutional principles governing regulation of the legal profession and the protection of solicitor-client privilege. Our comments focus primarily on three aspects of the bill.

First is collaboration and information sharing. We welcome subclauses 24(1) and 24(2) of Bill C-29, which provide for agreements or other arrangements on information sharing and collaboration and financial crime investigations. These provisions offer an opportunity for structured collaboration between the new agency and Canada's law societies.

Law societies have significant statutory powers to audit, investigate and discipline members of the legal profession, including for breaches of anti-money laundering obligations. Importantly, because of their regulatory role, law societies can exercise powers in relation to legal professionals and privileged material that are not available to law enforcement in the same way. Law societies can be valuable partners, therefore, in addressing suspected misconduct involving legal professionals. Agency information can help them identify non-compliance, focus investigations and, where appropriate, take regulatory or disciplinary action.

We ask the committee to ensure that clause 24 expressly supports formal information sharing and collaborative arrangements with law societies.

Second, Bill C-29 must expressly protect solicitor-client privilege. Clauses 16 to 18 grant the agency investigative powers, while clause 19 allows certain designated agency employees to exercise the powers of police and peace officers. However, the bill does not expressly protect solicitor-client privilege or establish specific procedures for handling privileged documents. This is not a theoretical concern.

The Supreme Court of Canada has repeatedly emphasized the fundamental importance of solicitor-client privilege. In its 2015 decision in Canada v. the Federation of Law Societies of Canada, the court struck down provisions of the federal anti-money laundering regime as they applied to legal counsel because, among other things, the regime did not adequately protect solicitor-client privilege and undermined lawyers' duty of commitment to their clients' cause.

The bill should therefore establish an independent review mechanism for searches, seizures or production orders that risk capturing privileged communications or records, such as privilege–filtered judicial review. These protections would not frustrate the agency's mandate. They would ensure that its important work proceeds within Canada's constitutional framework.

Third, the legislative framework must provide appropriate safeguards for the agency's handling of information. The federation recommends robust rules governing the collection, retention, use, disclosure and removal of information. Bill C-29 leaves important elements of this framework to regulations. We recommend public consultation with the federation and law societies as formal consultees. Consultations should particularly address the designation of agency employees as police officers and the handling of information obtained by the agency.

These recommendations all serve the same objective. Canada can better combat financial crime through collaboration between the agency and law societies each exercising distinct statutory responsibilities. That collaboration must respect solicitor-client privilege, the independence of the legal profession and constitutional limits on state access to privileged information.

We therefore ask the committee to consider three measures: one, ensuring clause 24 supports formal arrangements between the agency and law societies; two, establishing express protections and independent review procedures for privileged information; and three, providing for meaningful consultation with the federation and law societies as the agency's regulatory framework is developed.

The federation and Canada's law societies are committed to working constructively with the government and the new agency to strengthen Canada's response to financial crime.

We would be pleased to answer any of your questions.

That concludes our opening remarks.

● (1540)

The Chair: Thank you very much.

We'll go right into our first round of questions, starting with Mr. Khanna for six minutes.

Arpan Khanna (Oxford, CPC): Thank you, Madam Chair.

Thank you to the witnesses for coming today and sharing their perspective from their individual organizations.

Some of the discussion we've had in this committee regarding the financial crime agency is that there might be a duplication of bureaucracy, an extra layer of bureaucracy that's developing. When I spoke to the CBA last time, there were concerns about that. They were saying that currently the law is very fragmented. I just wanted to see if you confirm that statement.

Hartland Elcock: Our view of the financial crimes agency is that it can be a strong complement to the existing enforcement bodies, such as the RCMP. The freestanding nature of the FCA provides advantages, we feel, for the investigation of financial crime in the long term. I think our current law enforcement agencies do fantastic work, but priorities shift frequently.

We want to ensure that by ring-fencing those resources, they're protected. Our hope is that the FCA would provide that ring-fencing and ensure the development of expertise in this area to drive forward investigations and prosecutions, which we currently have had some challenges with.

Arpan Khanna: In your perspective, obviously being in the financial world, how long does it take to develop that financial expertise where someone could detect and actually crack down on financial crime?

Hartland Elcock: In terms of timing, I can't provide a firm prediction as to how long the organization will take to build expertise, but our view has been, as an external player, that we often see investigators do great work and then move on to new priorities. Our feeling would be that if they can build a career in financial crimes, which we hope the FCA will provide them, that will lead to sustained success.

Arpan Khanna: The way the FCA is set up right now, if you look at the legislation, it is using RCMP officers, 150 of them, to come over, and it's practically using the same RCMP resources that currently exist, and is trying to figure out how to house them in one building. That's the only difference I've seen so far from testimony.

The RCMP says that it is maxed out already. Do you think that, by using the existing RCMP personnel, it would change the result we're going to get? Right now, with the way I see things, the prosecution numbers are very low for financial crime. Would that lead to more financial crime prosecutions, or would it be the same old, same old?

● (1545)

Hartland Elcock: Our hope would be that it will. I would contextualize it by saying we support strong investment in both the RCMP and the FCA. We support investment in law enforcement.

Our hope is that an organization like the FCA will combine the efforts of prosecutors, of specialized investigators, to lead to better outcomes. As you've said, at the moment we need to see more prosecutions. We need to see investigations and prosecutions proceed.

For the FCA, our hope is, again, that it will be able to build that specialized expertise. It's very technical when this financial intelligence information is received, and it needs to be able to maximize the value of it, perhaps perform as a clearing house for intelligence to really put forward investigations and lead to successful prosecutions.

Arpan Khanna: Financial crime is not very straightforward. There are multiple angles to it, and there is human trafficking, transnational repression and proceeds of crime. It's very diverse. It captures very diverse types of offences.

In your understanding of the law, which type of crimes would the FCA take over?

Hartland Elcock: Our hope would be that the FCA focuses on complex financial crimes, sophisticated schemes.

Arpan Khanna: Like what? Can you define that for me, please?

Hartland Elcock: Money laundering would be an example, or very complex frauds, high-value frauds. You certainly wouldn't want the FCA to be focused on minor infractions. What you'd like, we hope at least, is that the FCA be focused on those large schemes that have a significant impact on the safety of Canadians, the safety and security of the financial system.

Arpan Khanna: Right.

Noah, I'll shift over to you.

How many lawyers have been convicted of misusing trust accounts, let's say, in the last little while? Do you have any stats on that for us?

Noah Arshinoff: I can't give you a number in terms of criminal convictions. The law societies work in a regulatory model, so there are—

Arpan Khanna: How many infractions were there, according to the Federation of Law Societies?

Noah Arshinoff: I would have to count them up for you. We have a public document that's available, which we submitted as part of the Financial Action Task Force evaluation, where—

Arpan Khanna: Is there—

Noah Arshinoff: —there is a table that lists all the different—

Arpan Khanna: Is there general concern of lawyers using their trust account sometimes for wrong uses?

Noah Arshinoff: There's general concern. I think that's why law societies are regulating in this field to begin with. I think that's the risk the legal profession faces.

Arpan Khanna: Has that, in your eyes, increased in the last little while or is it steady?

Noah Arshinoff: We haven't seen any evidence of it necessarily increasing. I think there is increasing awareness in the legal profession of the need to protect your trust accounts and what goes in and what comes out, and understanding who the various clients are who you serve.

I don't know that we have the data to back up evidence that says there has been an increasing usage of lawyers' trust accounts for nefarious purposes, though.

Arpan Khanna: We've been hearing a lot of media reports of lawyers, especially in Ontario, where the proceeds of crime are being funnelled through trust accounts. Do you think that's a failure on the law societies' part in terms of auditing, or do you think that's just the way of doing business nowadays? What ownership would the law societies take on some of the problems that exist?

Noah Arshinoff: I think the law societies do take quite a bit of ownership in terms of their regulatory responsibilities. For example, in any of the media stories that you see, if a lawyer has actually been sanctioned and the media is reporting on the sanction of the law society, there's an argument to be made that the law society has performed its role of sanctioning the lawyer who has gone offside of the various anti-money laundering obligations they have, which is, quite frankly, the regulatory role to ensure that the lawyers are not running offside those obligations.

Arpan Khanna: Thank you.

The Chair: Thank you very much.

Now we'll move to Ms. Gladu for six minutes.

Please go ahead.

Marilyn Gladu (Sarnia—Lambton—Bkejwanong, Lib.): Thank you, Chair.

Thank you to the witnesses for being here today.

I'm happy to hear that you are supportive of this legislation. I think that you're correct in saying that the intent is for the FCA to complement what is there already, not to rob the RCMP but to take that expertise and put it in a place where it can address these multi-jurisdictional, very complicated, multiple crime scenarios.

You work with these various partners today. How do you envision that this bill would change the interactions?

● (1550)

Hartland Elcock: There are various promising structures that this bill provides. One is the ability to coordinate across jurisdictions. Currently, our members liaise with numerous different law enforcement agencies. I think an ability to have an organization that can really drive priorities and harmonize engagement will be quite effective.

Also, our members are the largest providers of suspicious transaction reporting to FINTRAC by a large metric. I think the ability to have an agency that can really maximize the value of financial intelligence and enrich financial intelligence.... FINTRAC is only one source. There are numerous other sources that I think can be brought together and applied that would be incredibly valuable in driving forward prosecutions.

Also, one of our significant hopes for the agency is that it can play a priority-setting role within the anti-financial crime framework. At the moment, we've seen some comments that Canada needs to move to be more risk based. It's hard to be risk based if you don't have priorities. The FCA can help provide those priorities and coordination within the regime, we hope, to allow the regime overall and all of the stakeholders, both public and private, to better focus resources on risk, drive prosecutions and ultimately lead to better outcomes for Canadians.

I'd also mention that having statistics from the FCA would be fantastic. That's something we don't have currently on how many prosecutions exist in Canada for financial crime activities, particularly money laundering. To see those statistics come out of the FCA would really assist the overall regime and provide for evidence-based policy-making.

Marilyn Gladu: We've heard testimony that it would be very important in the regulations to know who's going to take the lead on which types of investigations and to know as well what the parameters are going to be. There was some discussion about whether that should be in the legislation to be clarified there or should be left in the regulations. The witnesses were saying that they prefer the flexibility of putting it in the regulations so that, as things change, they have some agility there.

I'm going to turn to you, Mr. Arshinoff.

In your perspective on how the agency can respect this constitutional protection, as you're talking about the solicitor-client privilege, do you believe that the clause 24 provisions would allow formal contracts or NDAs that would protect that privilege?

Noah Arshinoff: That very much depends on how it's framed and on what information is shared. I think, under clause 24, our hope is really for a deepening partnership with the financial crimes agency. We already have a very good relationship with various government departments with a joint working group, but I think what this provision offers is an enhanced partnership and an ability to share certain information.

Where that gets challenging is with certain information that the FCA might want to receive from the law societies that they have, because they are able to access privileged information, whereas that can't necessarily just be packaged and sent to another body, so it's hard to give you a very direct answer on that, but—

Marilyn Gladu: You are a lawyer, sir, so that was well said.

One thing you mentioned was that it would be important to define how information will be shared and stored. Is it your preference to see that in the legislation or to leave that to regulators in consultation with the law societies?

Noah Arshinoff: I think we can see it either way, truthfully. As long as we find a way to codify it or put it into writing, that would satisfy us. As long as it's done with our participation and that we agree on that, then it can be workable.

Marilyn Gladu: Thank you.

I'll go back to you, Mr. Elcock.

Do you have any concerns or other information you'd like to provide us about what we need to do in order to make sure that this is successful?

Hartland Elcock: It's a great question.

Information sharing, I think, is critical, particularly public-private information sharing. We see in other jurisdictions models like the U.K. JMLIT, which allows for the sharing of certain data between the public and private sectors to better focus the private sector programs on risk. We have seen, I think, starts toward that in Canada. We have private-to-private information sharing for AML purposes.

That was a step forward. We saw in part 16 of Bill C-2 amendments that proposed public-to-private information sharing for AML purposes strictly. We believe reintroducing those elements of Bill C-2 in part 16 would be a significant bolstering of the FCA and drive forward the ability, I think, to really enable the information sharing that's envisioned already under Bill C-29. I think those safe harbours and confidentiality protections are critical.

● (1555)

Marilyn Gladu: Thank you so much.

The Chair: Thank you very much.

[*Translation*]

Mr. Fortin, you have the floor for six minutes.

Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Madam Chair.

Good afternoon, Mr. Elcock and Mr. Arshinoff.

Mr. Elcock, I'd like to hear your views on the substance of Bill C-29. We see that it could be very useful, and most stakeholders are in favour of it. That said, I am concerned that parts of the bill, such as the description of a financial crime, are vague. Clause 2 defines financial crime as “any offence, under an Act of Parliament, relating to financial assets…”. “Financial assets” strikes me as quite vague. A dollar is a financial asset.

What exactly is this trying to capture?

Do you see room for improvement there? I'm not suggesting that the bill should not be passed, but do you think the definition of “financial crime” should be clearer?

[*English*]

Hartland Elcock: That's an excellent question.

We see the definition as potentially positive, as it provides enough breadth to be evergreen. Financial crimes are incredibly complex and constantly evolving. Criminals find a way. As an outside observer, we hope that having this flexibility will allow the agency to grow and adjust to financial crimes. Again, however, we do believe the agency should focus on complex financial crimes. That is critical.

[*Translation*]

Rhéal Éloi Fortin: We agree on that. However, those who drafted the bill also recognize the ambiguity I'm talking about. Section 17 reads as follows: “In order to focus the Agency's efforts on serious and complex financial crimes, the Commissioner may establish criteria respecting which matters should be investigated....”

It seems to me that this is just kicking the can down the road. The legislator is saying that it's not quite sure what it wants to include, so it's going to let the commissioner decide what counts as “financial crime”. To me, this approach is problematic. What are your thoughts on that?

[*English*]

Hartland Elcock: Again, I think the importance will be in engagement through priority setting. The FCA will have a strong view, we think, of where resources should be applied.

[*Translation*]

Rhéal Éloi Fortin: I don't mean to make you repeat what you said. It's not a trick question. I just want to know if you think this should be more specific and if the criteria should be defined now rather than after the commissioner takes office.

[*English*]

Hartland Elcock: We wouldn't suggest that at this time. We certainly view it as evergreen and positive, but to your point, it will be critical that they focus on complex financial crimes. That will be the most effective use, we think, of resources in this area. Currently, we're supportive of the language.

[*Translation*]

Rhéal Éloi Fortin: Mr. Elcock, if I understand correctly, you're a lawyer. Is that right?

[*English*]

Hartland Elcock: Yes.

[*Translation*]

Rhéal Éloi Fortin: As a lawyer, are you at all concerned about the provisions of section 22? It says, “If the Attorney General of Canada believes that an offence referred to in section 20 has been committed in any province, the Attorney General of Canada may issue a fiat...”. I'm not going to read section 22 in its entirety; you've probably read it already. This section allows the Attorney General of Canada to decide that the listed offences will, for reasons including the national interest, fall under the authority of the Attorney General of Canada.

When I read that, I think it opens the door to so much litigation and jurisdictional debate that could hamper the agency's work. Do you think I'm worrying unnecessarily? Would it be better to proceed as with any other act and leave prosecution to the prosecutors who normally have jurisdiction?

● (1600)

[*English*]

Hartland Elcock: I won't presume to pass judgment on constitutional challenges. I will leave that to the government.

One thing that we feel is needed is greater coordination across Canada to address complex, multijurisdictional financial crimes. Our hope is that the FCA will provide that very badly needed coordination. As mentioned, one of our hopes for the agency is having prosecutors work hand in hand with investigators so that resources are focused on those complex cases that require the coordination of federal and provincial authorities.

[*Translation*]

Rhéal Éloi Fortin: Thank you. It seems we agree.

I have a few seconds left, and I want to make sure we understand each other. Subclause 22(2) of Bill C-29 states that the Attorney General may take into account factors such as whether the offence is transnational in nature or has been committed in more than one province.

Those factors appear to be largely uncontroversial, but instead of saying “may”, shouldn't it say “shall”, such that the Attorney General can only issue a fiat in cases where, as you say, a matter is more transnational in nature or an offence was committed in more than one province? Wouldn't that be a more appropriate way to draft it?

[*English*]

Hartland Elcock: From our perspective, whatever can be done to encourage coordination is a step forward. Right now, our members interact with various different law enforcement agencies and not always in a coordinated manner. This ultimately undermines investigations and prosecutions.

It's critical that the FCA play that role in bringing together all the different players in the room and drives forward investigations into complex financial crimes, leading to prosecutions.

[*Translation*]

Rhéal Éloi Fortin: Thank you.

[*English*]

The Chair: Thank you very much.

I'll move on to Mr. Baber.

Please go ahead.

Roman Baber (North York, CPC): Mr. Elcock, welcome. Thank you for your submissions today.

You recently assisted Deloitte, I believe, with a report. It suggests that a financial crime agency is an opportunity "for it to assume an active role in coordinating the operational response to financial crime". Be that as it may, our understanding is that the financial crime agency proposed by this bill would not assume the role of coordinator. Instead, it would simply be supplementing the existing framework.

Is that correct?

Hartland Elcock: That's correct.

Roman Baber: Would you perhaps like to tell some of the Liberal members on this committee that we need to figure this out and allow someone to take the lead on coordinating these efforts, instead of having so much duplication and lack of clarity?

Hartland Elcock: We certainly believe the FCA should grow into a coordinating role. It's critical, as I said, to have an operational lead that is able to identify priorities and have those priorities influence a risk-based approach across the financial crimes regime, particularly in the AML space. That's something we don't have currently in Canada. We would welcome the FCA taking on that role.

In terms of how that develops, we would be very pleased to continue discussions with the government.

Roman Baber: Mr. Elcock, and for viewers at home, we already have the superintendent of financial institutions, the Canadian anti-fraud centre, FINTRAC, integrated money-laundering investigation teams, the financial crime coordination centre, integrated market enforcement teams and the federal policing serious and organized crime bureau.

I'm afraid that we'll be back here in a year or two trying, again, to modernize fighting financial crime. There is lack of clarity and overlap among all the agencies I just listed, and this bill doesn't address this.

Hartland Elcock: Our hope is that the FCA will evolve and grow into a coordination role.

To your point, there are numerous agencies working in the financial crime space. I think 13 currently work on issues related to AML. It is critical that we have greater coordination. This should be influenced by operational priorities. If you look at other jurisdictions, like the United Kingdom, you'll see the operational lead playing that coordinating role. We strongly encourage the government to have the FCA evolve into that.

We are pleased to see the FCA moving forward, though. As in everything, it's important in an iterative process to grow and continue to build on early success. We look forward to working with the government.

● (1605)

Roman Baber: Mr. Elcock, a couple of years ago, I used my debit card to pay a Toronto taxicab. I was astonished later in the evening to determine that there was $2,000 withdrawn from my account that night. I went to the bank the next day. They replaced my card. Two days later, my bank—your member—reimbursed the money that was stolen out of my account.

Unfortunately, we hear too many stories in the news media about victims of financial fraud having to go through a cumbersome process. At times, in fact, they are not able to recover the money they were defrauded of. This is despite the fact that there is no contention or suggestion that the client participated in the fraud.

Could you kindly tell me what criteria, if any, members of the Canadian Bankers Association have in place for reimbursing customers who are subject to bank fraud?

Hartland Elcock: We certainly don't have any criteria set by our organization.

My colleague Brent Mizzen, who's on the line, will be able to speak to your question.

Brent Mizzen (Senior Vice President, Payments and Digital, Canadian Bankers Association): Thank you, Hartland.

First of all, I'm sorry to hear of your experience with that fraud.

One of the things we are seeing today, as mentioned, is that fraud is a complex issue. There are multiple players involved. It's quite sophisticated. It can be in the context of a debit card issue, as you mentioned, or other means. We often see multiple sectors involved, including platforms and telecommunications, and the financial sector plays an active role in addressing any issues that come up with fraud.

My general response to your question is that, when there is fraud, there are measures in place to investigate and determine what has occurred in that particular case.

Roman Baber: I'm sorry, sir; I have about 10 seconds left.

Should victims of fraud not be compensated every single time they're subject to fraud and they are innocent? Is that not your position?

Brent Mizzen: Our position is that there needs to be a framework in place to prevent and detect fraud. The government is pursuing a national anti-fraud strategy, and the rules need to be clear in terms of what the players and sectors within that code must adhere to. That is a first step towards protecting Canadians.

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

I'm now moving on to Mr. Chang for five minutes.

Please go ahead.

Wade Chang (Burnaby Central, Lib.): Thank you, Chair.

Mr. Elcock, we know that financial crimes don't just cost Canadians hard-earned money. They can also help fuel other serious crimes, including drug trafficking and human trafficking.

From the banking sector's perspective, how much of a concern is the impact of these crimes on Canadians' trust and confidence in our financial system?

Hartland Elcock: Our members are very concerned with financial crime, as is the CBA itself. They're significant players, as I outlined in the anti-money laundering regime, and they invest significant funds in their programs and policies and the training of their staff.

We hope the FCA will provide an effective tool for combatting this deleterious threat to Canadian society.

Wade Chang: Thank you.

The Chair: I'm sorry to interrupt, Mr. Chang.

I'm just wondering why Mr. Mizzen has his hand raised. I'm not sure if that is related to this.

Brent Mizzen: I was going to add to Mr. Elcock's comment.

You raise a very valid point that victims of fraud deal with multiple issues. There are not just the financial issues; there are the emotional issues and so forth. We think it's an important issue to address.

Again, I speak to the national anti-fraud strategy that the government is pursuing. The objective there is to reduce the amount of fraud being perpetrated on Canadians. Certainly, the banking industry has played a leading role when it comes to protecting Canadians. We have been active in standing up the Canadian Anti-Scam Coalition, which brings a cross-sector approach to this. That is the same cross-sector approach we see the government pursuing through the national anti-fraud strategy. That is an important step, and one that, if we look to other jurisdictions such as Australia, has been successful thus far.

● (1610)

Wade Chang: Thank you.

This question is for Mr. Elcock again.

I'm glad to hear you mention that the FCA will be a strong complement.

One of the goals of this new FCA will be to break down the silos and bring different government efforts together. I imagine that the private sector needs to take a similar approach.

How are banks working with government, technology companies, telecom providers and social media platforms to better detect, prevent and combat financial crimes?

Hartland Elcock: I'll begin with a comment on their engagement with FINTRAC, and then I'll pass it to my colleague Mr. Mizzen.

As I outlined in my initial comments, banks—our largest members—play a strong leadership role in driving forward public-private partnerships. These various public-private partnerships focus on specific types of crime and any money laundering indicators linked to those crimes. What they can do with those is amplify reporting.

These public-private partnerships design actual indicators of what might be a crime that suggests money laundering in the context of fentanyl trafficking or human trafficking. This sort of intelligence, I think, empowers the regime overall, but their work goes far beyond simply these public-private partnerships.

I'll turn to my colleague, Mr. Mizzen, to provide some extra context.

Brent Mizzen: I'll pick up on the comments earlier about the cross-sector nature of the approach to addressing fraud and financial crime in Canada.

I mentioned the Canadian Anti-Scam Coalition, and through that, there were pilots in information sharing among banks as well as telecoms. That work led to a recent announcement in October.

Some of you may be familiar with what is known as the cross-sector anti-fraud exchange, otherwise known as CSAFE, which effectively comprises financial institutions, telecom providers as well as a platform through EnStream. This is a real-life example, which started with the banks' leadership in standing up the coalition, in which we now see confirmed fraud intelligence being shared through a single common platform to further help protect Canadians against fraud.

These are the founding members that are in place right now. There is openness to including others to come on board. As others come on board, that will only strengthen the information sharing and the protection for Canadians.

Wade Chang: Thank you.

My final question is for the CBA as well.

If you don't have time to respond, a written response would be good.

Could you share a bit more about what other countries are doing to tackle fraud? What lessons can Canada learn from their experience?

Hartland Elcock: Thank you very much.

I'll turn again to my colleague, Mr. Mizzen.

Brent Mizzen: I'm happy to address that quickly.

What we see, in a nutshell, is the approach we point to in Australia. They are taking an ecosystem-wide approach that is tackling the root issue, which is to say, looking at digital platforms, telecommunications and financial services and seeing how, as a whole, the issue can be addressed.

For example, in Australia the approach is built around the National Anti-Scam Centre operated by the Australian Competition and Consumer Commission. The approach is delivering strong results with an emphasis on coordination across sectors, as well as real-time disruption. It is one jurisdiction that we have seen bend the curve in terms of scams.

We saw reported scam losses peak in 2022 at $3.1 billion, but it has since fallen to $2.2 billion in 2025, so that cross-sector coordination, to us, is key and one that we would like to pursue.

The Chair: Thank you very much.

Monsieur Fortin, go ahead for two and a half minutes, please.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Madam Chair.

Mr. Arshinoff, there's another aspect that I haven't yet explored, but that has been raised, namely the proliferation of agencies involved. We currently have the Royal Canadian Mounted Police, or RCMP, the Canada Revenue Agency and, in Quebec, the Autorité des marchés financiers. A number of organizations, including the Financial Transactions and Reports Analysis Centre of Canada, or FINTRAC, oversee the response to financial crimes. We agree that this is a major problem. Seniors and young people are victims of fraud. Everyone is affected by financial crime. We agree that we have to take action.

Don't you think that having more agencies could cause more problems than it solves?

● (1615)

[*English*]

Noah Arshinoff: The only response I can give to the question, representing the Federation of Law Societies of Canada, is that the law societies are also partners in combatting financial crime. We're happy to work with any of the partners that exist at the government level.

I think the best place to look for evidence of whether there's duplication is the recently released FATF report. I can just point you to that for evidence.

[*Translation*]

Rhéal Éloi Fortin: Thank you. I'll be quick because two minutes go by quickly.

My concern is that this could lead to disengagement. For instance, FINTRAC might assume that the agency handles financial crimes, so it need not deal with that issue and can do something else. The RCMP may also decide not to conduct investigations and just wait for the agency to send it cases. I can't be sure that other agencies will disengage, but it's possible, and that could cause problems. Another issue is conflict over budgets. The agency reports to the Minister of Finance and National Revenue, not the Minister of Public Safety, so the dynamic that will develop among all these players could be a source of conflicts.

Wouldn't it make more sense to merge certain organizations and identify a single lead agency for financial crimes?

[*English*]

Noah Arshinoff: The answer I'll provide may not necessarily be exactly what you're looking for, but for the law societies, again, we're the only AML regulators for the legal profession. Our interest is largely to work with the regulators from the government level and to share information so that we can appropriately do our job in ensuring that financial misconduct doesn't happen from legal professionals.

[*Translation*]

Rhéal Éloi Fortin: Thank you.

[*English*]

The Chair: Thank you very much, Monsieur Fortin. I appreciate that.

We will move on to Mr. Lawton for five minutes.

Please go ahead, sir.

Andrew Lawton (Elgin—St. Thomas—London South, CPC): Thank you very much, Madam Chair.

Thank you to the witnesses for being here.

I'd like to start with you, Mr. Arshinoff.

As you are well aware, the Minister of Justice provides, with every piece of legislation, a charter statement that assesses the constitutional implications of a bill. In this particular one, the Minister of Justice said the following: “In reviewing the bill, the Minister has not identified any potential effects on Charter rights and freedoms.”

Do you agree or disagree with that assessment?

Noah Arshinoff: We haven't done a full constitutional assessment of the bill, but nothing has jumped out at us in terms of the bill as written today. That said, this is also why I provided in my opening statement a caution about ensuring that the agency respects solicitor-client privilege as a bedrock principle of our Constitution.

Andrew Lawton: In your brief, it is very clear that you do think there are potentially some section 8 issues in the legislation. You say, “The Bill should be closely reviewed to ensure it is in line with the Canadian Charter of Rights and Freedoms, specifically its s. 8, and the law of search and seizure in Canada.”

What are your concerns about how this could be breaching the charter rights of Canadians?

Noah Arshinoff: It's not about exactly what's in the bill. The concern is about the potential for operationalization of aspects of the bill. For search and seizure of, for example, a lawyer's office, which might contain privileged communications, we believe there must be a procedure in place in order to respect that constitutional principle of solicitor-client privilege.

Andrew Lawton: When we go to the legislation itself, to specifically clause 25, it dictates some of the regulations that will come from here. It says that the Governor in Council, as in cabinet, will be able to draft regulations concerning “the collection, retention, use, disclosure and disposal of information for the purposes of this Act”.

This goes back to the regulatory problem you were alluding to earlier. We don't actually know how this is going to be used just by reading the bill on its face now. So much is dependent on regulations. Would you rather see a pretty clear limitation on potential abuse of data collection and retention in the statute itself?

Noah Arshinoff: That goes back to my opening statement. The only way we can really comment on that is to see something in writing, whether that's in the legislation or in the regulation. At this stage, it's hard for us to provide a real opinion. Our main thing is to provide a caution that this has the potential to provide an overreach. We need to make sure that the financial crimes agency, once established, does not overreach.

Andrew Lawton: I share your concern. We're in the position of having to vote on something while understanding that what we're voting on will be implemented in a way that we haven't seen now. If there is a proposed amendment that you would like to see in the bill, I would invite you to submit that to the committee. I like having clarity. I like knowing what we're voting on and how it will be used.

In the time I have left, I'd like to turn to you, Mr. Elcock, or perhaps your colleague.

I'm assuming that you are aware that in the United Kingdom, banks have a pretty significant statutory obligation to make whole the victims of fraud. Building off the comments made by Mr. Baber earlier, in my office I have heard horror stories from constituents. In some cases, they have been drained of their life savings. The runaround they get from banks, from your members, is insane. In a lot of cases, the only time the banks actually step in to help is when there's media attention. Not everyone can go to CBC's *Marketplace* every time.

In the United Kingdom, banks have actually taken a far more active role in going after perpetrators of fraud. They want to recoup their losses. Would you welcome something like that in Canada?

● (1620)

Hartland Elcock: Thank you very much for the question.

I will turn to my colleague, Mr. Mizzen.

Brent Mizzen: Thank you.

Different approaches are being taken across the world, such as Australia, as we've noted, and the U.K., as you have noted. Our preference is, and we support, the approach being pursued in Australia, the cross-sector coordinated effort. I mentioned the statistics about bending the curve and actually decreasing the fraud being perpetrated on citizens of Australia. That's something that is beneficial overall, not just from a financial perspective but also in terms of the other harmful effects of financial crime and financial fraud.

You referenced the U.K.—

Andrew Lawton: Their approach puts skin in the game for banks. That seems to be the only way to actually get the banks to take action.

Would you be open to that in Canada?

Brent Mizzen: We favour a cross-sector approach. I will point out that banks are leaders in protecting their clients and the citizens of Canada—long-standing relationships—and invest significantly in fraud detection with a multi-layered approach.

We have to keep in mind that fraud is a complex issue. It typically starts in the digital platforms and telecommunications and may proceed to the financial sector. We have to get to the root cause, which is where it starts. If we can start to disrupt and prevent that, then we benefit Canadians, because they actually don't get to the end point of the fraud in the first place.

The Chair: Thank you very much for that.

Lastly, we go to Ms. Begum for five minutes.

Please go ahead.

Doly Begum (Scarborough Southwest, Lib.): Thank you very much, Chair.

Thank you to all of you for being here this afternoon.

This is very interesting for me. I sit on two committees, industry and justice. We just finished a study in industry, to which your association, Mr. Elcock and Mr. Mizzen, provided a submission talking about digital fraud, scams, social media frauds and some of the ways we can address the gap between banks and law enforcement agencies.

Do you believe this agency, the FCA, would be able to help address some of those gaps? If so, how?

Hartland Elcock: I'll turn to my colleague in a moment, but I will note that having stronger investigative and prosecutorial capacity is critical for deterring financial crime. We need to bring criminals to justice. Our hope is that a financial crimes agency can achieve that.

Mr. Mizzen will have some additional insights.

Brent Mizzen: I'll address this question in terms of the context of how law enforcement and other sectors within the economy can work together.

The ability of those who have been affected by fraud to report is an important element. We've seen, through the Canadian anti-fraud centre, that under-reporting is an issue. We'd like to make sure that this gets addressed and that fraud is reported as it occurs. That allows information to flow through to law enforcement and prosecutors to ensure that those who are perpetrating fraud are held accountable.

Another area where the industry has been active is in creating what we refer to as a common taxonomy or a definition language, if you will, that allows a common language when reporting is being done, so that as that reporting increases, it's clear that everybody is using the same terminology and definitions. That allows for better tracking of what the real issues are at the current time, which then can allow for those resources that are available to be deployed where there are the most significant issues.

Lastly, I'll comment on the importance of ensuring that law enforcement and other resources, such as the Canadian anti-fraud centre, are appropriately resourced to deal with the issue at hand.

● (1625)

Doly Begum: Thank you. I want to follow up on that.

One of the biggest issues we face is that when something like that happens, it's a done deal. Not everyone is as lucky as Mr. Baber was to recoup that amount. A lot of people end up not being able to recover the assets they have lost.

Would you comment on the fact that this is not a duplication, but rather something that will complement what we already have in terms of addressing financial crimes? How can we add something to this legislation that will help recover lost assets?

Hartland Elcock: I certainly don't see the FCA as a duplication, and we hope that it does not, in practice, become one. We encourage the government to not duplicate efforts and to ensure that all parties are sufficiently invested. In terms of it not being a duplication, I think that, again, it's a practical issue. We've seen, as I outlined, I think, in an earlier example, investigators do great work at the RCMP or other entities and then move on to different areas, different priorities.

The ability to actually build a career in financial crimes we think will be critical to success and to driving that complementary nature. All the pieces are there. We encourage the government to bring them under one roof with the appropriate investment in capacity and powers to amplify what we already have available. It will be critical that we do have information sharing, though, to support the FCA. It will be critical that the FCA provides those statistics we need to see on success and provides a coordinating role.

I've already heard that mentioned today, and we would like to see that coordinating role come to fruition. We believe it's critical. Long story short, I think we really do view it as a great opportunity to complement the existing powers as long as it continues to evolve appropriately.

Doly Begum: Thank you very much.

I believe I'm limited in time. I just want to ask Mr. Arshinoff—

The Chair: I'm sorry, Ms. Begum. That does conclude your time.

Doly Begum: Can I just ask him to submit the three recommendations he made at the end of his submission? He had three recommendations. If we could have those in written form, I think that would be really helpful as well.

Thank you very much.

Noah Arshinoff: Sure.

The Chair: I extend that to all of our witnesses. If there are additional written submissions that you'd like to make, please do send them over to us.

With that, I'm going to thank our witnesses for their presentations today.

We will suspend briefly as we bring in our next panel.

● (1625)

_____(Pause)_____

● (1630)

The Chair: Welcome back to our committee meeting number 43.

In this second hour, we have with us the Public Prosecution Service of Canada, represented by George Dolhai, director of public prosecutions; and Marke Kilkie, general counsel.

Thank you very much for being here today.

I will, without further ado, give you five minutes to make your opening remarks, and then we'll get right into questions.

Thank you.

[*Translation*]

George Dolhai (Director of Public Prosecutions and Deputy Attorney General of Canada, Public Prosecution Service of Canada): Thank you very much for the opportunity to answer questions from committee members.

I don't have an opening statement. I've already submitted comments, so I'm ready to answer questions.

[*English*]

We filed our preliminary statement, and I know your time is very precious. You've been sitting a lot today. You've heard from a lot of witnesses. We're ready to answer your questions right off.

Thank you.

● (1635)

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

We'll go right into questions. I believe it's Mr. Lawton for the first six minutes.

Go ahead.

Andrew Lawton: Thank you very much, Madam Chair.

Thank you to the witnesses for your brevity. It's very much appreciated. I know that we all have lots that we'd like to ask both of you.

I want to begin by discussing the fiat power in the legislation. Clause 22 of the bill says that the “Attorney General of Canada may issue a fiat” and “serve the fiat on the Attorney General of [a] province.”

In simple terms, they effectively could seize control of a prosecution under this new legislation.

When we had the Minister of Justice here, he said that authority is entirely delegated to the director of public prosecutions, and that he personally would no longer have the potential to weigh in on that. Is that your understanding of the relationship between the Attorney General and the DPP?

George Dolhai: Certainly what the Attorney General indicated is the way that the practice actually proceeds.

Since the creation of the director of public prosecutions, no attorney general has issued any directives to my predecessors as DPP and deputy attorney general of Canada, nor to me. The legislation contemplates that possibility, certainly—a direction or taking over a prosecution, but in 20 years—we'll celebrate our 20th anniversary on December 12 and, unfortunately or fortunately, depending on your point of view, I've been there for 20 years—no attorney general has ever issued such a fiat or such a direction. In that sense, the Attorney General is entirely correct.

Andrew Lawton: I don't know if I agree with that last line, though, sir, because you're speaking to precedent. I'm speaking to authority. The authority does exist under this legislation for the attorney general personally to effectively bigfoot a prosecution that may be under way by a provincial attorney general. Regardless of whether it's happened in the last 20 years, this legislation allows for that. Is that correct?

George Dolhai: This legislation provides for the appropriate accountability to occur through the DPP Act. That occurs in every prosecution, because every prosecution is an important prosecution. In that respect, the Attorney General can use that extraordinary authority and, in that sense, does it publicly, publishes and is accountable to Parliament, ultimately, for that exercise. In that sense, absolutely, that authority exists, as with any prosecution.

Andrew Lawton: Thank you very much.

I appreciate your sharing that, because if I can read into the record the minister's comments before this committee, he said, “The authorities invested in the Attorney General for the purpose of a criminal prosecution is a delegated authority that falls to prosecution services.” He was actually—I don't know if “snippy” is the right word—quite patronizing in the accusation he was making there when I pointed out that the bill very clearly says that the Attorney General has the power.

We know from the Liberal government's track record with the SNC-Lavalin case that there has been very serious talk by political leaders about inserting themselves into what are supposed to be—and what you've capably done—independent investigations.

I think that when we're looking at legislation we can't just rely on people exercising good judgment. We can't rely on politicians making the right decisions. We have to be very clear about what powers we are giving to the government of the day. I appreciate your candour that, despite how it would be unprecedented, there is spelled out in this the opportunity for the Attorney General to make very significant direct incursions into provincial territory.

Just on that note, let me ask you, sir, how you would envision the interplay between your role as the DPP and a provincial prosecution that was under way already. How would you navigate that. There isn't a tremendous amount of clarity in the bill on what would go on to try to reconcile any issues without the federal prosecution just seizing it from the province.

George Dolhai: Thank you for the question. It's important.

I didn't take my five minutes, but I'm going to take a minute now, if I could, because it's important to clarify one thing.

We have in this country an independent prosecution service. We have in this country tremendous accountability and transparency. I was just at a conference at Yale, where the whole discussion was about independence, and that's critical.

Andrew Lawton: Sir—

George Dolhai: If I could just continue—

● (1640)

Andrew Lawton: This is important, but I would like you to answer the question specifically. Perhaps the committee would allow you time at the end to deal with the independence of the prosecution, but I do want to hear about that interaction between the federal and the provincial....

George Dolhai: Absolutely. The only thing I will add is that every reference to the Attorney General in the Criminal Code, and there are many, does not envision the person of the Attorney General doing anything. It is all delegated authority. We have a wonderful relationship with the provincial attorneys general.

How would the fiat work? It would work on the basis of consultation with my colleagues. We meet twice a year. We have regular consultations about matters. I would be guided by the legislation. Unlike the Security Offences Act or the Canada Evidence Act, the legislation provides some parameters and guidelines as to what I should be looking at, such as interprovincial matters, international matters and matters of national significance.

Again, I would be looking at the fiat powers, something occurring within a context of mutual respect among prosecution services, in terms of the expertise, knowledge and principled decision-making they all make and that our service makes. First and foremost, I would be guided by what Parliament says with respect to the legislation.

Andrew Lawton: Thank you.

The Chair: Thank you very much for that.

Roman Baber: I have a point of privilege.

The Chair: Go ahead, sir, on a point of privilege.

Roman Baber: Thank you.

I understood from the witness that he previously provided written submissions to the committee. I don't believe we have seen them, though I stand to be corrected.

Could they be circulated, please?

The Chair: Absolutely. The clerk and I are looking into it right now, and we will circulate that as soon as possible.

As committee members generally know, everything needs to be translated into both official languages before it gets circulated among committee members. I encourage everybody to check their online digital binders to see if the documents are available.

We are looking into it right now, and I will get back to you.

An hon. member: They're not there.

The Chair: Okay. We will get back to you shortly.

I am moving on to our next six-minute round.

Mr. Housefather, please go ahead.

Anthony Housefather (Mount Royal, Lib.): Thank you, Madam Chair. I think you and I were reliving the Shawcross doctrine as we listened to Mr. Lawton's allegations.

Mr. Dolhai, I first want to give you the 45 seconds or minute that you need to talk about what you learned at Yale regarding the independence of prosecutions, what you wanted to say that Mr. Lawton didn't give you a chance to finish saying.

George Dolhai: Thank you very much.

To the extent that I was not directly responding to your question immediately.... That was not my intention.

In 45 seconds, it's not so much what I learned at Yale but rather what I shared at Yale. The reason I was invited to go there was to talk about the independence we have and how we have structural systems in place to deal with it.

However, with independence comes accountability. After sitting around the table listening to counterparts from other jurisdictions, such as Switzerland, Scotland and Singapore, I can say that our legislation stands up very well. They have good systems too. Ours stands up very well to ensure that, at the end of the day, persons accountable to Parliament answer for decisions where they chose to do something like issue a directive. Otherwise, it is delegated to me. I run the organization, and I take full responsibility for that.

Thank you.

Anthony Housefather: Thank you.

Anybody watching some of the prosecutions that the Department of Justice is now doing in the United States would look at our system and be pretty happy about it.

Mr. Dolhai, we just had the Federation of Law Societies of Canada here talking about—forgive me for using more American terminology—attorney-client privilege. I think we all know this type of bill is going to lead to investigations that will have massive data dumps. Embedded within those data dumps will likely be some attorney-client privilege materials.

What would you do to ensure that investigations aren't tainted? For example, would you have a separate team assigned to go through these materials before they reach the trial team? Do you think we need to amend the bill in any way to specify this or any other investigative practice?

● (1645)

George Dolhai: This issue of solicitor-client privilege is an important one. The privilege between clients, including persons who are under investigation or accused persons, is part of our constitutional structure. I take it very seriously. It's important. It's not a nuisance that gets in the way of an investigation; it's a core part of our law and our protections.

When investigations are undertaken, whenever there's a concern about solicitor-client material being in there, special procedures have to be instituted. Those are overseen oftentimes by the court or a law society. Depending on the jurisdiction in the country, because there are slight variations in how it's done and the logistics of it, the bottom line is the prosecutor gets to see nothing unless and until the privilege is sorted out satisfactorily, usually with court or law society supervision.

Is there something that's particularly required in the bill? From an operational perspective, I would say that we know how to deal with solicitor-client. Courts do, as well.

You referred to data dumps. I don't see the bill as a data dump bill. The reason I don't see that is I continue to see the bill as fitting within our normal requirements where, before you have access to information that is private, personal and protected with a reasonable expectation of privacy, you have to meet our constitutional standards. Generally, there's a threshold for a production order or for a search warrant, etc.

Anthony Housefather: Again, I completely agree with you. The Supreme Court has weighed in on this issue and made very clear the importance of attorney-client privilege, or solicitor-client privilege, as we would call it.

If you happen to see anything specific that should be specified in the bill, I'd appreciate it if you could pass that issue on to the committee.

I want to also ask about the issue of pre-charge legal advice. I imagine we're going to have advisers embedded with the investigators here. What operational boundaries do you use to ensure that pre-charge advice doesn't inadvertently cross the line into directing the investigation?

Do you see that as being something that, in this agency, would operationally also follow the lines you habitually use?

George Dolhai: That's interesting.

Embedding may mean different things to different people. To me, embedding does not mean co-location. It does not mean someone who is part of an investigative team, in the normal sense, because we each have distinct roles and responsibilities—police, investigators and prosecutors.

We have been consistently moving away from the model of having co-location, for example. That's not a surprise, because when we were created 20 years ago, one of the first things that happened was moving us out of co-location with the Department of Justice. That was a priority. It would be odd if we were now going to be moving back into a co-location situation here.

There may be circumstances in which that makes sense, but by and large it's not for the reasons that you mentioned. At the end of the day, roles and responsibilities are different. At the end of the day, it does no good for the administration of justice, for addressing financial crime or for all of the resources expended by police investigators to investigate financial crime if they're not getting the best independent guidance on how a prosecution is going to actually proceed. That is the focus in whatever structure we're going to adopt.

Generally, we're moving away from having co-location, as opposed to making sure we have dedicated resources, so that the requirements—and there will be a lot here—are met.

Anthony Housefather: Do I have any time, Madam Chair, or am I done?

The Chair: No. That concludes your time. I appreciate that.

[*Translation*]

Mr. Fortin, you have the floor.

Rhéal Éloi Fortin: Thank you, Madam Chair.

Mr. Dolhai, Mr. Kilkie, thank you for being with us today.

Mr. Dolhai, I would like to discuss an aspect of Bill C-29 that concerns me. If you listened to the earlier discussion, you know where I'm going with this.

The definition of “financial crime” seems vague to me. It's not really defined at all. For example, the bill says, “any conduct that adversely affects, or has the potential to adversely affect, the security or integrity of Canada's economy”. That's obviously quite vague.

I'd like to hear your thoughts on that. Wouldn't it be better, as part of this work, to provide a clearer definition of “financial crime”?

● (1650)

George Dolhai: That's an interesting question. I don't have an opinion on the policy aspect. From an operational perspective, however, it's better to have a definition that avoids jurisdictional issues once a matter under investigation reaches the courts. That can result in an artificial process of trying to determine whether a case belongs in a particular category. When it comes to people who commit financial crimes, it's better to have the necessary flexibility depending on the situation. They use all kinds of different crimes to get the—

Rhéal Éloi Fortin: Excuse me, Mr. Dolhai. I don't mean to be rude, but my time is limited, as you know.

I agree with you. From a prosecutor's perspective, the broader the definition, the better, because that means more room to manoeuvre. You're an experienced, very credible legal practitioner. Do you believe that society needs these issues to be defined more clearly? As I said earlier, it's my understanding that people are aware of this very early on. Clause 17 of the bill states that the commissioner who is eventually appointed will be able to establish criteria respecting these matters. That means the people who drafted the bill recognized the need for greater precision.

I have one main concern. You said that being more precise now might open up defences we would rather not make available. However, our society would have a clearer definition of these offences. That could enable us to focus on the issues of greatest concern, and society as a whole would have a clearer understanding of what these offences are. Do you agree?

George Dolhai: Again, that's a policy question. It's up to the members of this committee to determine the definition that best addresses the problem.

I think that, from an operational standpoint, it's better to have a broad definition that encompasses all forms these crimes can take, knowing that everything has to be in place and in force, with ongoing co-operation on the ground among the police, the commissioner and other actors.

Rhéal Éloi Fortin: Of course.

George Dolhai: It's an ongoing issue.

Rhéal Éloi Fortin: I understand.

There's also the question of the fiat. I'm paraphrasing, but the bill says that, in matters of national interest, a fiat could be issued that would remove jurisdiction from the provinces and give it exclusively to the federal government. I have no doubt that the federal government has excellent lawyers, but so do the provinces. That aspect bothers me a bit.

Shouldn't there be a better definition of what the national interest is? These days, it seems that “national interest” is a pair of magic words that can be used to claim any kind of jurisdiction. Does that bother you as well?

George Dolhai: A definition that helps me apply the law, in practice, is always useful. I wouldn't expect to use this power very often. As you indicated, there are very experienced and competent prosecution services, such as our own, so it will be very rare. Clarity on the definition of national interest really is a policy issue.

● (1655)

Rhéal Éloi Fortin: Yes. We're on the same page.

The Chair: Thank you very much, Mr. Fortin. I'm sorry, but your time is up.

Rhéal Éloi Fortin: Thank you.

[*English*]

The Chair: Mr. Gill, you're up for five minutes in our second round.

Amarjeet Gill (Brampton West, CPC): Thanks to all of the witnesses.

Thank you, Mr. Dolhai, for all the work you're doing for the people of Canada. Thank you so much for your service.

As I'm sure you all are well aware, extortion is an epidemic in communities like mine in Brampton. We all know that extortion has impacts on markets and businesses. What are the main difficulties in prosecuting extortion?

George Dolhai: As with any prosecution, you need evidence. One of the primary sources of evidence.... Extortion is something primarily done by the provinces—I'll begin by indicating that—but we have experience in certain contexts, including some terrorism files and some files in the north where it's an issue.

The dynamic that makes it difficult is that people fear to come forward. People fear to identify themselves and go into court. Whatever tools can be made available to aid in identifying evidence that doesn't require people to put themselves in that position are better. Whatever circumstances can be identified—and there are a number in the code right now—to allow people to testify in ways that prevent them from being intimidated and from being put in situations where, for example, they have to testify multiple times and be concerned about their security and about what might otherwise occur through the process are all things that aid in that process.

Bear in mind that, for anyone involved in a situation like this, it's like being in the midst of a nightmare—like, a nightmare. Anything we can do to reassure our fellow citizens in the process that the court system understands that and will prevent the nightmare from becoming worse is good, whether that's, again, evidentiary tools or tools that allow people to testify in ways that mitigate....

Amarjeet Gill: Yes.

We all know that international criminal organizations are active too. How does the international organized nature of extortion make it hard to prosecute?

George Dolhai: Again, I've seen this primarily not in an extortion context but in more of an organized crime context, where it arises in drug or national security cases. However, the dynamic is the same.

What makes it difficult is that you have people overseas who are not subject to the courts here. We have good co-operation with other countries with respect to those investigations, but ultimately, when you have evidence located overseas, it's always going to be difficult. It's always going to be a complicating factor, and it's going to lead to that dynamic, as well, of frustration for the witnesses who are here, because they're here. They're experiencing it here, and it's cold comfort when a prosecutor says, “We can't get the evidence.” However, that's what happens.

Amarjeet Gill: Do you think the new agency has the mandate and resources to trace and seize the money behind extortion networks hitting businesses in Brampton and elsewhere in Canada?

George Dolhai: In a way, this is related to the previous question I had, so I do—in the sense that that's how you make money and that that's part of where money is. It may not be a substantial amount of money in a particular case, but it's substantial for the person who's being extorted. It could be, then, a financial crime within the definition, for sure.

Amarjeet Gill: In 2019 in Toronto, the court struck down the two-year mandatory minimum penalty for fraud over $1 million when sentencing a man who stole $41 million from 12 companies. Thankfully, the Court of Appeal upheld the mandatory minimum penalty.

Will you go on record today and say that you support the two-year mandatory minimum penalty for million-dollar fraudsters?

George Dolhai: That's a policy question. What I will say is that I support the penalties being as severe as they should be to reflect the severity of the crime, and financial crime is severe.

● (1700)

Amarjeet Gill: Okay.

Would it be acceptable for the federal government to consider foreign relations in a foreign bribery case?

George Dolhai: I'm sorry, I'm not really sure in what context it would be to consider it.

In the context of a prosecution, a prosecution considers the evidence and the public interest, and the public interest is particularly defined. It doesn't include matters generally like that. It doesn't mean that there couldn't be some particular circumstances, but there are mechanisms for communicating that.

The government never makes that decision. The only one who has any authority, as the question at the beginning indicated, is the Attorney General, and even that is a delegated authority generally, but that's where it is. It doesn't flow from a government, per se.

Mr. Housefather referred to the Shawcross principle. We have a mechanism whereby ministers can make known general concerns to the Attorney General. That's how the process works. At the end of the day, the government doesn't decide any of that. The prosecution decides in accordance with the principles, including the general public interest principles.

There can be that communication but, again, we have a whole bunch of checks and balances around that to make sure that none of that becomes a partisan matter, and that always it's a question of principle.

Amarjeet Gill: Thank you.

The Chair: Thank you very much.

Now we'll move on to Ms. Lattanzio for five minutes.

Please go ahead.

Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.): Thank you, Madam Chair

Thank you, Mr. Dolhai, for your services and for your presence, but more importantly for providing your insights regarding this very important bill, Bill C-29.

According to you, what would be the main challenges prosecutors face in financial crime cases? How could prosecutors be better equipped to prosecute complex financial crimes today?

George Dolhai: The main challenges are the challenges we're facing generally across the board, and those are the challenges of the digital age. It's investigating crime in the context of where things are done in the virtual world. They cross borders, as was highlighted, where evidence and information can be secreted in places that are difficult to have access to. Those are all the challenges that are faced in respect of investigations of all crimes.

In respect of financial crime, one of the challenges is ensuring that the appropriate priority is attached to those investigations. By that, I don't mean that people don't see financial crime as important, but rather there are an awful lot of things that need to be investigated. In the course of an investigation, some of those are immediate public safety threats, and some of those are broader public safety threats.

The ability to bring together in a coordinated and focused way the efforts around investigating and then prosecuting—and that includes co-operation with provincial prosecution services, of course—is one of the ways of addressing one of the impediments to financial crime investigations.

Patricia Lattanzio: Just on that, the fact that sometimes these financial crimes typically span across multiple jurisdictions, how is the prosecutorial jurisdiction currently being determined in such cases?

George Dolhai: Currently, we go with the jurisdiction that's in the code. The jurisdiction that we exercise in the provinces, for example, focuses for us heavily on drugs and income tax matters, Customs Act matters, regulatory act matters.

The other crimes, such as violent crimes, are done by the provincial authorities. Then we have concurrent jurisdiction, for example, on frauds, and we share that right now.

Right now the jurisdiction is somewhat divided in respect to financial crimes, so it's a little bit of a patchwork.

● (1705)

Patricia Lattanzio: How could we be more efficient in terms of that issue?

George Dolhai: From an operational perspective, it would be of assistance for decisions to be made around the best way to deal with an investigation and prosecution on the basis of who is in the best place to do it at that particular time, given their other priorities and their mandates. A jurisdiction that recognized that, which didn't take away anyone's jurisdiction but also didn't proceed in a way that suggested a routine preference for one or the other, is one that is operationally flexible and of assistance.

Patricia Lattanzio: Specialized prosecutors are used by the Ontario serious fraud office. The U.K. has the Serious Fraud Office and Quebec has the bureau de la grande criminalité et des affaires spéciales.

What is your view on embedding specialized prosecutors within the agency?

George Dolhai: As I indicated, embedding is not a model we have been using for quite some time as a routine matter. It reflects our general approach to having a relationship that ensures we have dedicated resources to address the requirements of police at investigative stages. It also recognizes that our prosecutors need to be in a circumstance where they continue to get broad experience at the same time and do not fall into a situation, for example, of thinking there's something particular the court will afford them in terms of the evidence required or the prosecution because of the specialized area they are doing day in and day out.

The Chair: Thank you.

George Dolhai: We see a great advantage in having prosecutors who have expertise but continue to be exposed to a number of areas, always with the assurance that we have the resources necessary to assist the investigators and the police in a dedicated and concerted way.

The Chair: Thank you very much.

Patricia Lattanzio: Thank you.

The Chair: That concludes your time.

We're moving on to Monsieur Fortin.

You have two and a half minutes, sir.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Madam Chair.

Mr. Dolhai, I'd like to address another issue with you, the proliferation of jurisdictions.

Currently, FINTRAC, the Financial Transactions and Reports Analysis Centre of Canada, is able to investigate this type of crime. Obviously, the RCMP can also investigate. The Canada Revenue Agency can take action against certain financial crimes in some ways.

Quebec has the Autorité des marchés financiers, and the Sûreté du Québec and various police forces are also in play.

Many different organizations can get involved in this type of issue. I agree that that's probably unavoidable. However, isn't it counterproductive to add yet another one? Wouldn't we be better served by, say, restructuring FINTRAC to make it one agency rather than create another? Do you think this is an alternative that should have been considered or could still be considered?

George Dolhai: It's true that many organizations and investigators are working in this area, but each organization has a specific mandate.

Rhéal Éloi Fortin: Yes, with the fiat, you could repatriate those powers regardless of those mandates.

In any structure with multiple players, there will be conflict over things like budgets. Is the government giving more money to the RCMP, which needs it? Is it giving more to FINTRAC? No, it's giving money to this agency instead. There's bound to be discussion or debate about that, which is normal.

Obviously, there are jurisdictional issues as well. Will one organization be given more authority than another? Could that cause organizations to disengage? For instance, will people at FINTRAC decide that there's no point in conducting investigations because the agency handles that? Aren't we asking for trouble with this approach?

● (1710)

George Dolhai: In my opinion, each organization, like FINTRAC, already has a lot of work to do. FINTRAC, for example, manages financial intelligence and how it's shared. I don't know if it would be preferable to add a mandate to one organization or another. That's a policy question.

However, if a court were to ask me what effect the agency would have under the proposed legislation, I would say that its effect would be to focus the efforts of all the organizations and investigative teams we already have. It's not about sidelining any particular organization or prioritizing one over another. It's about prioritizing the issue of financial crime. In my opinion, that's what the bill proposes. Is this the best way to do it? Is setting up this agency the best course of action? These are questions for Parliament, not for a mere prosecutor like me.

[*English*]

The Chair: Thank you very much, sir.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Dolhai.

[*English*]

The Chair: That was an extra minute for you, Monsieur Fortin. I'll take it away in the future.

Rhéal Éloi Fortin: I hope not.

The Chair: I'm teasing you.

Mr. Khanna, you have five minutes.

Arpan Khanna: Thank you, Madam Chair, and thank you to the witnesses for joining us.

There's some wording in Bill C-29 that is pretty vague and doesn't have a definition. I want to get your understanding of the meaning. It refers to “serious and complex financial crimes”.

What does that mean to you?

George Dolhai: For me, it means the plain language of serious and complex crimes. There's not a gloss that I would put on that. No doubt the courts will, at some point, add and interpret it. With modern statutory interpretation of the plain language of the provision, I would go with its meaning being serious and complex.

Arpan Khanna: What kinds of offences would that include? The government is asking us to give $400 million for a new financial agency. It says it's going to investigate serious and complex financial crimes, but it refuses to give us a definition of what that actually means. That can mean a lot of things. Then there will be a cross-jurisdictional problem with the RCMP because they'll still maintain some parts of financial crimes as well.

If you'll be the prosecuting body, you should at least know what those words mean.

George Dolhai: If I'm assessing, for example, whether or not something is within my jurisdiction, the jurisdiction of the Public Prosecution Service, under this legislation, as a financial crime.... Is that something we should be prosecuting? Does that meet the general purpose, the general interest part of the test I'll be looking at?

Arpan Khanna: I'm sorry. What is that test?

George Dolhai: The test is a very long one in terms of what it enunciates that we can consider and can't consider. If I were going to try to summarize it, I would say that the test says not to consider anything that is inappropriate, partisan or treats people unfairly, and make sure that you are trying to give effect to and promote the law that Parliament has passed.

I would be looking at this to see that a national institution is created, a financial crimes agency, that is given a mandate, according to this legislation, to do serious and complex crime. I would be looking, first and foremost, at whether it is something that would make more sense for a local prosecution service, for example, to be doing because it is not at the level of being serious and complex. It doesn't mean that, even if it's serious and complex, they shouldn't be doing it, but when I'm asking if I should be involved as opposed to them, then I'd be looking at whether it rises to a level where a national organization should be involved.

● (1715)

Arpan Khanna: We've been hearing testimony from experts that there's lots of potential for duplication from other agencies getting involved because the scope isn't clearly defined.

Do you think it would be in the best interests of this financial crimes agency, for its success, to define some of the serious and complex offences that the agency would be investigating?

George Dolhai: That's really something that relates to a question of policy. It's also a question of what works on the investigative side. That's not where I am. I get the product of the investigations.

Arpan Khanna: When it comes to the fiat, it says one of the reasons the minister might intervene is that it's of national interest. Again, it's very broad. In your perspective, what would national interest mean?

George Dolhai: It's something that moves the dial forward on the law. Let me give you an example.

We had a case called Breton, where there was, I think, about $1.5 million in cash involved. It was a cannabis criminal organization in Thunder Bay. There was nothing international or interprovincial about it. We prosecuted. Ultimately we tried it twice, and it went to the Court of Appeal for Ontario twice. All of the counts were dismissed because there was a charter violation and the evidence was excluded.

That case was of significance to us and to the jurisprudence, I would say, nationally. For me, it's the question of significance.

We then wanted to litigate the question. When you have a charter violation and the evidence is excluded on the finding of guilt or innocence, what happens when the person says they want the property back? Can you rely on that evidence to say, “No, you're not entitled to it”? We said, “Yes, we want to litigate that. That is important to us. It's not interprovincial, it's not international. That's important to us.”

We did, and we were successful before the Court of Appeal, and that moved the dial forward on investigating and forfeiting proceeds of crime. That's something that would be significant.

Arpan Khanna: Thank you.

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

Now we're moving on to Ms. Gladu for five minutes.

Marilyn Gladu: Thank you, Chair.

Thank you to the witnesses for being here.

I want to go back to a discussion on a question that was asked, I think, by my colleague Ms. Lattanzio about how other organizations—the Ontario serious fraud office, the U.K. Serious Fraud Office and Quebec's bureau de la grande criminalité et des affaires spéciales—all embed specialized prosecutors. You have said you are not a fan of co-location.

If we think about how complicated crimes are becoming, they may start and somebody in one province detects a crime, and then all of a sudden, as they follow the thread, it comes up in another province and then potentially in another country. Do you not agree that there would be a need for people to get advice in real time on where are you most likely to get a conviction and what would be required in terms of making the evidence admissible?

Don't you think co-locating a specialized prosecutor within the FCA might not be a bad idea?

George Dolhai: I couldn't agree more that you need to have people who have that expertise. I couldn't agree more that you need to have people who can instantly respond in real time to the question. I couldn't agree more that those people should be spending a lot of time at that office.

Should they be located in an office that's really another organization's office, blurring the lines and having a situation where the reflexes are such that they start thinking of their role as a team role rather than as the role of providing prosecutorial decision-making that's independent? That's where I would stop, but I agree entirely with everything you've indicated about the importance.

Marilyn Gladu: Excellent. Thank you.

With respect to these prosecutors who are advising during the investigation, are they the same ones who would take the case forward for prosecution?

George Dolhai: Generally, we have the same persons involved in the prosecution. We will oftentimes add people at the point of the prosecution, because there are two things that go with that. One, there's going to be more work to do the actual prosecution than there was at the investigative stage. Two, they have fresh eyes. Fresh eyes are always really important.

It's both of those elements, but you also don't want to lose the expertise you had that went along with it. It's trying to get the best of both worlds, and I think we're relatively successful that way.

● (1720)

Marilyn Gladu: I appreciate that efficiency, as an engineer.

Is there anything you would like to see added or more closely specified either in the legislation or in the regulations when they come forward?

George Dolhai: There's nothing I would recommend. That doesn't mean there aren't matters that you, as parliamentarians, may not feel are appropriate, but from my perspective, operationally, there's nothing I would recommend.

Marilyn Gladu: You also talked about making sure that there are dedicated resources. Can you expand on that? What does that mean?

George Dolhai: That means there are sufficient resources to be able to cover the cases that come. There are a number of elements to that.

The first is that we have work that's already coming from provincial prosecution services, municipal prosecution services, the contract RCMP and the RCMP. We have to continue to do that work. If this legislation is not going to move people out of the space but, rather, help them coordinate and have some focalization to the extent possible with some additional communication and some additional oomph to those efforts, the Public Prosecution Service and I need the resources to be able to continue to do that other work and the work that comes here.

The second is that it also means that I need to have prosecutors who are going to be focused on this work and dedicated to this work.

The third is that my independence and the independence of the Public Prosecution Service also have one other element. If there's a case that walks in the door, meets the evidentiary rule and is in the general public's interest to prosecute, even if I don't have the money, I have to make a decision about whether something else won't get done. If it's sufficiently important, I will still make that decision here, even if, for some reason, the money is not given, because my responsibilities mean that I have to make sure that the decision is made independently, and that includes circumstances where I have to prioritize this over something else.

Marilyn Gladu: Thank you.

I think that's my time.

The Chair: Thank you very much.

I have one question for you, Mr. Dolhai.

We've heard throughout the witnesses' answers and members' questioning about how complicated the nature of financial crimes is, how there are multiple jurisdictions and international organizations and how the impact to victims is so massive. We also think about the difference between prosecution versus disruption. Sometimes prosecutions can take years and years. Criminals have moved on, gotten more sophisticated and found different ways of committing their enterprises.

What is the role of the FCA in working together to disrupt as well as to find ways to prosecute?

George Dolhai: As a prosecutor, when I look at the act, I don't see something that says to prosecute at all costs, prosecution is the only solution, the FCA is the only investigator or the federal Public Prosecution Service is the only prosecution service. The regime provided federally in the Criminal Code is the only thing that can be of assistance in addressing financial crime. I see something that is focalizing those efforts.

For example, there are civil forfeiture regimes across this country that provinces have. I don't see in the legislation anything that precludes the financial crime agency providing and playing a role that ultimately doesn't lead to a prosecution by my service and doesn't even lead to a prosecution by a provincial prosecution service, but leads to disruption by seizing the assets through a civil forfeiture.

I see nothing in the legislation that says there's only one way to serve the objective of the act, which is:

[*Translation*]

> (a) investigate serious and complex financial crimes;
>
> (b) contribute to the recovery of proceeds of crime; and
>
> (c) participate in international efforts to counter crimes of a financial nature.

[*English*]

I don't see one way. I see something that is meant to facilitate multiple ways.

The Chair: Thank you very much for that.

Thank you for taking the time to be in front of us today.

As I have indicated to all of the witnesses, if there are additional submissions that you would like to make, please send them in writing. We'll make sure to circulate them among all members.

With that, the meeting is adjourned.

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