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Chair

Mr. James Rajotte

Standing Committee on Finance

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● (0845)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call the 57th meeting of the Standing Committee on Finance to order.

I want to welcome our guests here this morning.

We are continuing our study of tax evasion and offshore bank accounts, pursuant to Standing Order 108(2).

Colleagues, we will have committee business at the end, but for the first hour and a half we have three witnesses here.

First of all, we have Mr. Scott Bartos, senior vice-president and chief compliance officer with HSBC Bank Canada. Secondly, we have Mr. Scott Michel, president, Caplin & Drysdale. And as an individual, we have Mr. Sohmer, a shareholder with Spiegel Sohmer Incorporated.

Gentlemen, thank you all for being with us this morning. You'll have about seven to ten minutes for an opening statement, and then we'll have questions from members of the committee.

We'll start with Mr. Bartos, please.

Mr. Scott Bartos (Senior Vice-President and Chief Compliance Officer, HSBC Bank Canada): Thank you, Mr. Chairman.

Good morning, honourable members. I'm appearing on behalf of HSBC Bank Canada. My comments are based on a written statement that has been provided to the clerk. I'm going to refer to that statement as I make my presentation.

I am the chief compliance officer and a senior vice-president of HSBC Bank Canada. I am the senior executive who is responsible for the oversight of the bank's regulatory compliance program.

We appreciate the opportunity to appear today before the committee and to make a statement—

[*Translation*]

Mr. Thomas Mulcair (Outremont, NDP): Pardon me, Mr. Chair, but I have a point of order. The witness mentioned a document that he apparently submitted, but we do not have it.

[*English*]

The Chair: The presentation is in English only, so we cannot distribute it—unless we have consent.

Mr. Thomas Mulcair: HSBC didn't provide a French version?

The Chair: We don't have a French version of his presentation.

Mr. Thomas Mulcair: Okay. *Merci.*

An hon. member: [*Inaudible—Editor*]

The Chair: Order, please.

Please continue, Mr. Bartos....

Monsieur Paillé.

[*Translation*]

Mr. Daniel Paillé (Hochelaga, BQ): I think it would be important to point out to Mr. Bartos that he cannot refer to a document we do not have. He did not understand this, since it was only mentioned in French.

[*English*]

The Chair: Well, he can refer to a document. I mean....

An hon. member: No, he can't.

[*Translation*]

Mr. Daniel Paillé: No. We do not have the document.

[*English*]

Mr. Paul Szabo (Mississauga South, Lib.): Mr. Chair, it's not relevant. He can just carry on with this.

The Chair: Yes.

I think we should just allow Mr. Bartos to carry on with his presentation.

Mr. Bartos, please.

Mr. Scott Bartos: Thank you, Mr. Chairman.

We appreciate the opportunity to appear today before the committee to make this statement and to answer any questions you may have about HSBC Bank Canada.

I understand that HSBC has been called today to provide some information about the use of offshore accounts by Canadians. Before providing any specific comments about this particular topic, it is important to place the issue into context. In particular, I would like to provide some background information about HSBC Bank Canada, who we are, and what we do. I also think it's important to understand how HSBC Bank Canada fits into what is known as the HSBC Group. I would also like to touch upon something that is very core to HSBC, and that is our values and how we conduct business. Finally, I will touch briefly on the use of offshore accounts by Canadians.

HSBC Bank Canada is a Canadian bank. We are incorporated here in Canada and regulated by the Office of the Superintendent of Financial Institutions. We are the seventh-largest bank overall in Canada. We were established almost 30 years ago, in 1981, and we've grown to a network of more than 140 branches here in Canada. We have over 8,000 employees. We provide a wide array of financial services to over one million Canadians. These include personal financial services, whether it be financing your house or giving you a loan. We also represent or provide financial services to a number of commercial organizations, whether they are small, medium, or large.

We are very proud to support the communities in which we operate. We have donated over $3 million in the last year to not-for-profit organizations. We have been a strong contributor to the Canadian economy over the last 30 years. In the tax year 2009, we paid over $200 million in federal and provincial income taxes.

So how does HSBC Bank Canada fit within the HSBC Group? The HSBC Group is an international network of local banks that has grown to over 8,000 offices in 86 countries. The HSBC Group has approximately 300,000 employees and over 100 million customers. We're known as “the world's local bank”.

The group is named after its founding member, which was the Hongkong and Shanghai Banking Corporation, established in 1865 to finance the growing trade between China and Europe. The HSBC Group's differentiating strategy is that we invest in faster-growing emerging markets, and use international connectivity to join those emerging markets with mature markets. It is for that reason that we have over 8,000 offices in 86 countries.

I'm going to touch briefly on the core values of HSBC. The HSBC Group is committed to complying with both the letter and the spirit of the law in all jurisdictions in which we operate. In order to achieve this high standard, the HSBC Group has established a number of mandatory policies that apply to all members around the world, including HSBC Bank Canada. These policies include standards that are designed to deter the use of our services for illegal purposes.

Let me give you some examples of the key procedures we use to deter the use of illegal services. We do not establish accounts for anonymous clients. We verify the identity of all of our customers. We know our customers and the intended purpose of their banking relationship. We periodically monitor our customers' accounts' activity to identify transactions that may appear unusual. We have escalation and investigation procedures for transactions that appear unusual.

We cooperate with authorities, including tax authorities, as permitted by law. We report suspicious transactions, as required by law, to the financial intelligence unit know as FINTRAC. We adhere to a mandatory training regime for all of our employees so they're aware of such issues as money laundering, bribery, and our code of ethics.

The HSBC Group does not condone tax evasion by its clients, nor do we participate in tax evasion.

Now I will go to the crux of the issue before the committee, which is the use of offshore accounts by Canadians.

I think it's important to first recognize that Canadians are very fortunate, in that we have the right to live, work, travel, and do business around the world. There are many reasons for Canadians to have bank accounts in other countries, whether it is to buy or maintain property in Florida or another country, or whether it is for a Canadian who is employed by a Swiss pharmaceutical company or a mining company in Latin America. It may be to support a family member who is going to school in Europe, or to support a business that operates in Asia or elsewhere. As a global organization, HSBC supports its clients' ability to do business around the globe.

● (0850)

As HSBC has many offices around the globe, from time to time we refer customers to other countries so they may open up accounts. Let me give you an example of how this works at HSBC.

If we had a Canadian customer who came into HSBC Bank Canada and who had been transferred to work for a Swiss pharmaceutical company, HSBC Bank Canada would not directly open up that account. Rather, we would refer the customer to one of our affiliates—in this case, HSBC Private Bank Suisse. That is a separate legal entity that carries on business in Switzerland. They are governed by the laws of Switzerland. We would refer the customer to that bank. The account would be opened up in accordance with local laws in Switzerland.

As HSBC Suisse and HSBC Bank Canada are separate legal entities, each subject to their own privacy laws, we would not share information about the client, whether the account had been opened, or what sort of account activity was ongoing.

Regardless of where the account is opened, HSBC applies high operating standards and is diligent in ensuring that it complies with applicable laws.

In conclusion, I want to stress that HSBC does not condone tax evasion by its clients, nor does it engage in tax evasion. The bank paid over $200 million in taxes last year.

We fully support the government's efforts to ensure appropriate payment of taxes by all Canadians. At the same time, we also recognize the right of Canadians to conduct business around the world.

In operating our business, we comply with both the letter and the spirit of the law. HSBC's strong commitment to its values was instrumental in permitting HSBC to withstand the recent financial turmoil without receiving any financial assistance in any of the 86 countries in which we operate. We try to adhere to a very high standard of business ethics.

Mr. Chairman, I thank you for the opportunity to provide some information about HSBC. I will welcome questions at the appropriate time.

Thank you.

● (0855)

The Chair: Thank you, Mr. Bartos.

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

Mr. Scott D. Michel (President, Caplin & Drysdale): Thank you, Mr. Chairman.

I am honoured to be a guest of your committee to share my thoughts about issues concerning offshore banking, tax enforcement, and voluntary disclosure.

I intend to very briefly shed some light on the American experience in this area over the last three years in the hope that it will assist you in considering what constitutes effective and efficient tax policy regarding this matter.

The requirements for Americans to report their foreign accounts on their tax returns and other filings have been on the books for many years, but in my 30 years of practice or so we may have seen a few cases from time to time, infrequent criminal prosecutions, occasional audits, and every now and then a voluntary disclosure, largely from an elderly American who had a foreign account and wanted to clean up his affairs before he died so his family didn't have to deal with it.

Beginning in 2007 our Internal Revenue Service and our Department of Justice's tax division began to undertake some very high-profile enforcement activity aimed at Swiss banks—for the most part, at the time, UBS—and at American taxpayers who had failed to report their accounts.

During 2008 and 2009, the U.S. government penetrated the long-standing wall of bank secrecy in Switzerland and sought indictments of Swiss bankers, American taxpayers, and others perceived by our government to have wilfully violated the reporting requirements for foreign accounts or to have assisted Americans in doing so. The media in the United States covered these events aggressively.

What happened was a substantial uptick in the number of American taxpayers who wanted to come forward and make a voluntary disclosure.

For decades the Internal Revenue Service has had on its books a voluntary disclosure policy aimed at giving non-compliant taxpayers a way to come back into the system and avoid criminal prosecution. The policy did not cover civil money penalties—financial penalties that might be imposed on such a taxpayer—but under American law, these penalties theoretically were so high that American taxpayers were discouraged from coming forward.

So a small group of practitioners—I was part of this group—approached the IRS in 2008 and urged them to adopt a settlement initiative that would provide Americans with a clear path to come back into the system and give them a reasonable degree of certainty over what financial consequences they would face for doing so. The program was announced in March 2009, it was updated with procedural and other guidance, and at its conclusion in October 2009, some 15,000 Americans had come forward to acknowledge their previously undeclared foreign accounts.

The program worked reasonably well, especially in the criminal intake phase, when the person would initiate the voluntary disclosure through the criminal investigation division of the IRS. As the cases have moved to the civil side, the program has broken down, and there have been a number of issues that the IRS has had to grapple with in administering the program and processing the cases.

Included in my material is an article that a colleague of mine and I wrote to catalogue some of these problems. We could be here all day to discuss them.

But from these events, I have developed a few thoughts over what would constitute, at least to me, an effective voluntary disclosure policy.

Number one: the policy should provide a clear path without any degree of trickery or risk for somebody to come back into the system and be reasonably assured that they will not be prosecuted for criminal tax violations. If the program does not provide for this type of risk-free approach, it will fail.

Secondly, obviously a taxpayer coming forward must pay tax, must pay interest. The significant issue is what will the penalty liability be for such a taxpayer. In my judgment, there ought to be a balance between a one-size-fits-all penalty, which is clearly very efficient to administer, and a penalty that recognizes that these cases fall across a panoply of conduct. Not everybody is a real tax cheat. There are some people who inherited accounts, who have managed them very passively, who have not benefited from their funds, and who would like an opportunity to attempt to argue for leniency when it comes to a civil penalty.

● (0900)

Third, there is also, at least in the United States, a class of taxpayers who live outside the country. For these people, tax compliance has not been very high. They're not criminals; they generally don't owe tax, because of applicable foreign tax credits. But in my judgment, a policy ought to take into account that there are “foot faults” in compliance that should not be penalized in the same way as real tax cheating.

Fourth, any policy ought to process these cases efficiently and rapidly. One of the things that broke down in the United States was that the IRS sought to audit every amended tax return that came in at the beginning of the program. The system quickly broke down. There was simply not enough time and not enough resources for this to happen.

In my judgment, a program can simply announce that it will spot-check amended returns. Practitioners and clients will then know that this would not be a good time for them to cheat again by filing false amended returns—this would be a foolish thing to do. The returns can be processed quickly; the cheques cashed; and the agents can move on to the next case.

Finally, and what I think to be most important, any successful voluntary disclosure policy should be accompanied by effective and public tax enforcement. I call it the velvet glove and the iron fist.

The IRS and the justice department in the United States have prosecuted maybe 25 UBS account holders; they've prosecuted people holding accounts at other banks; they have prosecuted bankers, lawyers, and investment advisers. Every time they did so, my telephone and the telephones of many of my colleagues would ring off the hook. People would come forward to make voluntary disclosures in response to this public enforcement action.

People who are considering whether to come forward should sense a real risk of what might happen if they don't. In an era where bank secrecy around the world, in my judgment, is fading away, this effective and public prosecution will continue to encourage people to come forward.

Thank you for your attention. I'm prepared to answer any questions you may have.

The Chair: Thank you, Mr. Michel.

We'll now hear from Mr. Sohmer.

[*Translation*]

Mr. David Sohmer (Shareholder, Spiegel Sohmer Inc., As an Individual): Good morning ladies and gentlemen, committee members. My name is David Sohmer, and I practise tax law in Montreal. This morning, I will discuss a topic of national interest. Since I express myself better in English, I ask you to forgive the fact that I will speak only in that language during my presentation.

[*English*]

Sound tax policy should be based on facts, not on fantasy or fiction, and my presentation attempts to provide the committee with facts, from the perspective of a tax lawyer who has been involved with the voluntary disclosure program since its inception.

The following are some of the more important facts contained in my brief.

Firstly, there has been a dramatic shift in the demographics of Canadians who availed themselves of the voluntary disclosure program in the last five years, from baby boomers to the parents of baby boomers. In 2003-04, the main clients were 49-year-old males. Based on an analysis of 51 clients who have engaged me in the years 2009 and 2010, the average age is 72 and the median age is 75 years; 57% are male and 43% are female; and most of the females are widows who have inherited the accounts.

The increased number of disclosures has had little to do with CRA enforcement activities. The increase is almost exclusively due to events that by happenstance occurred in the same timeframe. The first was a change in registration requirements for investment dealers and advisers by the Canadian Securities Administrators. The change was effective as of September 28, 2009, and provided an exemption for foreign banks whose Canadian clients were restricted to those with net financial assets of more than $5 million.

UBS and Crédit Suisse, as well as other foreign banks, contacted their Canadian clients and requested written certification that the clients met the threshold, failing which they would no longer provide dealer and advisory services.

The second factor was the aging of the parents of baby boomers. They have accumulated substantial wealth, and the older they get, the greater their desire to put their affairs in order before they die.

The third was a highly publicized deferred prosecution by the American IRS of UBS.

The fourth was the highly publicized theft of data from LGT Treuhand, a Liechtenstein bank, and from HSBC. The data contained the names of Canadians who held accounts with the banks.

The next important fact is that the era of banking secrecy is not over. Article 26 of the OECD model tax treaty is the international standard and is reflected in the protocol to the Canada-Swiss tax treaty signed on October 22, 2010. Canada must provide the Swiss with the name of the taxpayer and the name of the bank. Fishing expeditions are expressly prohibited. Most golden agers have not deposited or withdrawn funds for over a decade, so Canada is unlikely to know their identity, and the risk of detection is minimal.

The next important fact is that the voluntary disclosure program is being undermined by CRA policy and by the refusal of Quebec to harmonize its program with that of the CRA.

The current CRA practice provides for a predictable set of acceptable outcomes, a critical aspect of a successful voluntary disclosure program. The CRA, however, does not preach what it practices. Its official policy gives voluntary disclosure officers substantial discretion in determining which years should be included in a disclosure. This raises consistency and predictability issues, which will deter taxpayers from disclosing.

The most serious threat to the program is the refusal of Quebec to harmonize its program with that of the CRA. The Ministry of Revenue of Quebec insists on taxing the balance that was in the account six years ago as income earned in that year. This has no legislative authority, and unlike the CRA policy, Quebec refuses to allow its decision to be attacked by administrative appeals or appeals to the courts, even where there is a lack of due process or where the decision is clearly wrong on its merits.

Pursuant to an agreement between the CRA and the MRQ, the CRA provides the MRQ with information relating to disclosures made to it, so a disclosure to the CRA is effectively a disclosure to the MRQ. Since there is little risk of detection, at least in the next five to ten years, it is expected that many Quebec residents whose children reside out of the province will not disclose. Their children will probably disclose to the CRA after they inherit the accounts. The “revenue rule” is a well-recognized rule that the authorities of one state will not assist in the recovery of taxes due to another state. It is clear that the United States will not assist in the recovery of Quebec tax, and it appears that other provinces will not do so either. It is also arguable that the U.S. will not assist in the recovery of federal tax when the liability of U.S. residents' children arises under Canadian law because of an inheritance.

● (0905)

It is estimated that Canadians have $100 billion in offshore accounts. The stars are aligned now as they have never been and as they may never be again. There is a window of opportunity for Canada and the provinces to have tens of billions of dollars repatriated and to realize a significant increase in short-term tax revenue.

The voluntary disclosure program does not encourage non-compliance. Golden agers have not transferred funds offshore for decades, and younger tax evaders are recidivists who do not evade in contemplation of disclosing.

The U.S. and the U.K. have recognized the merits of a pragmatic approach. The American settlement initiative has been described by my fellow witness Scott Michel, a recognized authority on the U.S. voluntary disclosure program, as ranking “in the upper tier of compliance successes ever implemented”.

For bureaucratic paranoia, Quebec-Ottawa friction, and electoral politics to impede a successful voluntary disclosure program is not in the national interest; nor is it in Quebec’s interest.

I'll be happy to answer questions from the committee.

Thank you.

The Chair: Thank you, Mr. Sohmer.

We'll start members' questions with Mr. Szabo, for a seven-minute round.

Mr. Paul Szabo: Thank you.

Thank you, gentlemen, for your input.

The common thread to all of your presentations seems to centre around primarily the voluntary disclosure program efforts.

I have one simple question, and I hope to get a very succinct answer from all of you.

If we simply relied on the voluntary disclosure program to address tax evasion and offshore accounts, what would happen to the total of tax not being collected by the home-based country?

● (0910)

Mr. David Sohmer: From my personal experience, there would be a dramatic short-term increase, with no significant effect on tax compliance.

People who cheat, younger cheaters, will continue to cheat. They don't cheat because they think they're going to clean up the money in the future through a voluntary disclosure program. We're dealing with the elderly who want to clean their affairs up. They're willing to pay a price for it.

Mr. Paul Szabo: So the tax evasion would continue to increase?

Mr. David Sohmer: It would continue. The international efforts that are taking place will eventually become effective, but not in the short term.

Mr. Scott D. Michel: I would say that relying on voluntary disclosure without some fairly strong enforcement at the same time would only give you half a loaf; that if voluntary disclosure is accompanied by aggressive enforcement, if the CRA has resources such as were given to the IRS to go after UBS and other bankers....

The enforcement, coupled with the policy, resulted in a dramatic increase in assets coming back into the system. If the IRS had simply announced a policy on its own to encourage people to come forward, it would not have been effective. In fact, that is what happened in the early part of the last decade. The IRS announced two initiatives that didn't work.

Mr. Paul Szabo: Mr. Bartos.

Mr. Scott Bartos: Mr. Chairman, as the representative of a financial institution, I'm really not in the position to provide any expertise on that particular topic.

Mr. Paul Szabo: Okay.

Mr. Michel, are you talking about the enforcement procedures and efforts vis-à-vis the voluntary disclosure program?

Mr. Scott D. Michel: In part I am, but also those outside the VDP.

Mr. Paul Szabo: The point I wanted to make is that we still seem to be talking about the voluntary disclosure program, which is basically saying, let's deal with the problem after it has happened; let's not prevent it. Where are the deterrents?

We're doing a study on tax evasion. If we do nothing, or if we more rigorously do a better job on the voluntary disclosure program, the problem gets bigger. So let's move away from the voluntary disclosure program.

From your experience or expertise, if you have anything to offer, what deterrents, what factors are in play that we have to deal with to permit people to in fact take those steps? They don't do it as individuals. There are lawyers, accountants, consultants, banking officials, offshore officials, etc., who are all involved and who have knowledge of what's going on.

Are there any significant effective deterrents to the problem before it occurs, rather than after?

Mr. Scott D. Michel: In the United States you have 300 million people who probably file, altogether, half a billion tax returns a year —corporate, individual, and so forth. The government prosecutes only a thousand people criminally.

Now, in my judgment, if you wanted to have an increased deterrent effect, I think white-collar crime is such that if people feel a greater risk of detection, that would have an increasing deterrent effect. I think a lot of people play the lottery and assume they won't get caught.

Mr. Paul Szabo: Okay.

Canadians who are looking at possibilities for tax havens offshore and maybe want to make a decision to do the wrong thing are looking to what countries are out there. We've had representation from the OECD and others that there are certain countries where conditions exist that are a problem—the secrecy provisions and basically the mask that's put on the system.

Countries like Canada and the United States have significant bilateral agreements or multilateral agreements on trade and other matters. Why don't these jurisdictions incorporate into that, along with, say, double taxation agreements, etc., some tax information sharing agreements? Why isn't that part of the culture in which our banking system and governments operate? What is the problem?

● (0915)

Mr. Scott D. Michel: I think that trend is being reversed slightly. Within the last three or four years, I think countries have been afraid of being put on the OECD grey list and black list. For example, you saw Switzerland adopt, at least with the United States, a new protocol on information exchange that dramatically widened the scope of the types of cases in which information would be disclosed.

But as Mr. Sohmer points out, correctly, these treaties still prevent what are called “fishing expeditions”, which puts a significant crimp on the ability of a requesting state to ask for information. If you can't name the client or the bank, you're in trouble.

Mr. Paul Szabo: I have one last thing. I understand that the U.K. put in 4 billion euros, or something like that, into a program of fishing, and it got 100 billion euros back.

Mr. David Sohmer: I think that may have been to purchase data that was stolen from Crédit Suisse.

Mr. Paul Szabo: We were told it was four and seven.... In other words, it simply was a small amount of money that yielded a significant amount, which showed the dimension of the problem.

Why aren't more countries investing in an aggressive approach, contrary to your approach of let's be nice to the people who have evaded taxes so we get something in the future, while foregoing what we had—

The Chair: A brief response.

Mr. Scott D. Michel: I would say that being nice to people in a voluntary disclosure is only part of an effective enforcement system. You've got to be aggressive in enforcing the law against tax cheats. That's what brings people in to make voluntary disclosures.

Mr. David Sohmer: I might add that Canada doesn't have the muscle of the United States to have as effective a deterrent. We're a small country. They're a large country; they have much greater resources.

UBS, for example, had 28,000 employees—more employees in the United States than they had in Switzerland. In the rest of the Americas, there were about 1,100 employees. UBS assets here, in terms of its branch operation and its subsidiary, were in the nature of about $2 billion, which is a grain of sand.

Even in the United States, it was not possible for the IRS to bring UBS down after Lehman Brothers collapsed, because the world financial system would have collapsed.

This problem is international in scope. Canada has limited resources to deal with it.

The Chair: Thank you.

Thank you, Mr. Szabo.

Monsieur Paillé, s'il vous plaît.

[*Translation*]

Mr. Daniel Paillé: My comments and questions are for the HSBC representatives.

I do not want to go back to the comments Mr. Mulcair and I made at the very beginning. However, you say that you are committed to following the letter and the spirit of the laws and that you represent HSBC Canada. So you should know that you have to submit bilingual documents here. I would like to thank Mr. Michel, who is an American, for respecting Canada's laws.

That being said, just as we do not choose our parents or our siblings, you seem to want to distance yourself greatly from your HSBC colleagues abroad. After boasting about the fact that you are present in 86 countries, you seem to be telling us that those 86 countries are responsible for what happens over there. In a way, you are absolving yourself of all responsibility.

Your bank is this seventh largest chartered bank in Canada. You say that you must establish and verify your customers' identity and, at the same, even though you do not participate in evasion, you say that HSBC does not open bank accounts in Switzerland and that it does not open bank accounts for the father of the family that sends his child to Paris or London. However, that is not what we were talking about. What we would like to know concerns Canadians who want to open a bank account in Panama, Belize, or the Cayman Islands.

You seem to have built up something of Chinese wall, to use a financial expression, among HSBC Canada and its branches abroad. A list came to light of almost 2,000 Canadians with an HSBC bank account in a tax haven. That must have resulted in bad publicity for you. Here's my first question: Has HSBC group conducted an investigation to determine how this information was leaked?

● (0920)

[*English*]

Mr. Scott Bartos: Mr. Chairman, in response to the question, I am a representative of HSBC Bank Canada, and so I am limited in what I can speak for the HSBC group.

I'm advised that there has been an investigation into what caused the leak and appropriate actions have been taken to ensure that data thefts do not occur in the future.

[*Translation*]

Mr. Daniel Paillé: This basically means that HSBC is taking measures to avoid this kind of leak in the future. From our perspective, this information was useful because that's why the committee decided to hold meetings on the topic. You hope that it won't happen again and that we will not get all the information we need to do our work. I am not very surprised at that.

You say that you only refer clients to branches in other countries. For instance, you may refer Canadian clients to an HSBC bank in Panama. HSBC Canada knows who the clients involved are, and it sends to Panama a letter saying that they are good clients and that they should be allowed to open an account. In turn, Panama processes the information according to its laws. Basically, you do not want to know anything about what those people are doing in Panama. You wash your hands of the whole thing.

Is there a broker or a nominee between the two countries who can blow the whistle if the clients you referred to Panama are doing something deemed illegal in Canada? Is there a third party, a broker, who can relay this kind information?

[*English*]

Mr. Scott Bartos: Mr. Chairman, in the hypothetical example, no, there is not an intermediary, and there is no sharing of information as between the two entities.

I mean, it's important to recognize that most countries, I think, have instituted privacy laws, as we have here in Canada, that are very strong over the protection of individuals' information—personal information, banking information, things of that nature.

So no, there's not a sharing between the two countries, through an intermediary or otherwise. That's in compliance with the laws that have been established in many countries.

[*Translation*]

Mr. Daniel Paillé: So, your being here is not very useful, since you say that you cannot disclose information regarding Canadian clients who do business in Panama. In addition, I don't think that this is a hypothetical example. The truth is, you say that you will disclose information to Canada, but you have little information and you hide behind the law by saying that you cannot disclose information that you do not have.

Mr. Michel, I want to take advantage of your experience, since you talked about U.S. disclosure laws and measures. Do you feel that Canada should resort to much more aggressive enforcement in dealing with this situation or set penalties similar to those in the United States that apply to tax evaders?

[*English*]

Mr. Scott D. Michel: I think aggressive enforcement will lead people to come in and make disclosures and will deter tax evasion.

In the context of voluntary disclosure, I think it's a difficult balance to strike as to where and how people are penalized, because you want to set a penalty at a level high enough to recognize that the people coming forward have violated the laws and need to bear some pain as a result, but also, the penalty can't be so high that people are discouraged from coming forward.

So if the question is on being more aggressive, on the enforcement front I would say yes; I've always believed that tax enforcement should be aggressive to deter tax evasion. On the voluntary disclosure front, I think the aggressiveness needs to be tempered with a degree of leniency to encourage people to come in.

● (0925)

The Chair: Thank you.

Merci.

Madam Glover, please.

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you, Mr. Chair.

I have to say that my juices got flowing as I was listening to some of these testimonies. My background is that I'm a police officer on a leave of absence, so as I was listening to you, Mr. Michel, make your statements about how we might provide more leniency to those who frankly are cheating their countries out of taxes that are owed, I thought I was going to have the big one.

Voices: Oh, oh!

Mrs. Shelly Glover: But now you're saying that you do believe in aggressive enforcement, so I'm a little confused.

I thank Mr. Szabo for asking about deterrence, because essentially we believe that deterrence is an essential part of making sure that criminal behaviour, illegal behaviour, is addressed. So with the statement that you've made to begin with and the comments you're making now, it seems like you're not entirely on one side or the other. You're kind of sitting on the fence.

I'm going to provide you with some quotes from some things you've said in the past, and I want your new observations on those quotes, if you wouldn't mind.

In May 2008 you wrote an article in the *International Tax Review* entitled "Voluntary disclosure becomes a necessity". In the article, you cited countries "making greater use of tax treaties and tax information exchange agreements, and engaging in more spontaneous disclosures of data from one taxing authority to another".

Then you went on to write:

> Exemplifying this trend, the US, Canada, the UK, Japan and Australia have established the Joint International Tax Shelter Information Centre (JITSIC), aimed at sharing information on tax shelters and on the professionals and financial institutions that plan and promote them.

Then again, you write:

> Meanwhile, bank secrecy in tax haven jurisdictions is becoming an increasingly flimsy reed of protection. Even such formerly secret locales as Switzerland, the Isle of Man and the Jersey Isles are responding to properly-framed requests from other countries under applicable information exchange provisions, unimpeded by legal challenges from the businesses and individuals affected.

Mr. Michel, I want to ask you if you still hold this view that the ability of tax avoiders to hide money offshore is becoming more and more difficult due to steps taken by countries like Canada and its partners in the JITSIC.

Mr. Scott D. Michel: Absolutely. I disagree a bit with my colleague Mr. Sohmer. I do think that bank secrecy—at least for Americans—is becoming a thing of the past. In addition to these efforts by the joint task force, you now have a whistle-blower office in the Internal Revenue Service that encourages people—bankers—to come forward anonymously and provide data in exchange for a reward. So you have the international cooperation, you have whistle-blowers, and you have increasingly aggressive enforcement.

In the United States, a new piece of legislation called the Foreign Account Tax Compliance Act, or FATCA, as it's known, was just adopted. That, in my view, will eliminate bank secrecy for Americans around the world. So I think the trend—at least for American account holders—is that bank secrecy is waning, and that's why an effective voluntary disclosure policy is at least necessary to encourage people to come in and clean up their affairs.

Mrs. Shelly Glover: I don't know if I agree with you, sir, and here's why. I have to side with Monsieur Paillé on this; when I hear that the interest of some of our banks is to prevent the theft of information that actually helps us, that this is their priority, that bothers me. That would say to me that bank secrecy is not going to change.

I'm open to hearing your expertise on it, and I'm going to take it into consideration; however, I have a real problem hearing all of the evidence today and trusting that this is, in fact, the track that we're on. I don't know if bank secrecy is something that is going to decrease.

Nevertheless, the CRA is a member of a number of international organizations and forums, and they work together to counter aggressive international tax planning. I just want to give you the names of some of these forums: the OECD working party on exchange of information and tax compliance; the Global Forum on Transparency and Exchange of Information for Tax Purposes; the Forum on Tax Administration; the Joint International Tax Shelter Information Centre, which we've already spoken about; and the Seven Country Working Group on Tax Havens. So the CRA is very much involved in the exchange of information and of course in the enforcement to ensure that we do target these tax havens. I believe that is a good step forward to ensuring that this is addressed. I believe some significant things have been done through the OECD, etc., to make sure that this is a priority.

I have to say, we had a witness just last week—I don't know if you saw any of the testimony—who claimed that in the last several years there's been remarkable progress here in Canada. I'd like your opinion on the progress that's been made in Canada. I know you're from the States, but surely you have some insight into the progress made here in Canada in the last five years. I'd like to hear from you on what you think are the significant actions that have been taken by Canada, the right steps in the right direction.

● (0930)

Mr. Scott D. Michel: I'm obviously not an expert on Canadian tax policy, but I can measure the impact of tax policy based on the somewhat anecdotal evidence of who calls us for legal advice and what problems they have. We have seen a significant uptick in the number of cross-border family issues, for example where one spouse would be a Canadian citizen and one would be an American citizen. There are tax compliance problems on both sides of the border. I think there is a much heightened sensitivity in the professional community in Canada and among the taxpaying public that the risk of getting caught from having not complied with the tax laws has increased.

Mrs. Shelly Glover: What is it that happened that led to that sensitivity here in Canada?

Mr. Scott D. Michel: I think in Canada—I'm siding a little bit with Mr. Sohmer—there were enforcement developments. You had very public data theft that occurred; that was big news. I think there's been some publicity in Canada about the voluntary disclosure program itself.

Let me say that professionals like the two of us are to some extent gatekeepers. The clients come to see us and they want to know what's going to happen to them if they get caught and how they can come in and make things right.

Mrs. Shelly Glover: But they also want you to mitigate that so that they suffer the least penalty possible. So you do have an interest —

Mr. Scott D. Michel: Absolutely.

Mrs. Shelly Glover: —in making sure that there's leniency, which I, as a police officer.... You know, we conflict a little bit on that.

Nevertheless, I just wanted to put that on the record. I know my time is up and I'll pass it on, but thank you for your interventions.

The Chair: Thank you.

We'll go to Ms. Hughes, please, for a seven-minute round.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): Thank you.

Mr. Michel, you've mentioned the UBS file. Could you please provide this committee with information concerning the stratagem put in place by UBS to help Americans move their money offshore?

Mr. Scott D. Michel: Yes. Based on the publicly available charging documents and stories that we've heard from our clients, what appears to have happened was this. American law changed in approximately 2000-01, and Americans who had accounts at UBS were approached—in Switzerland, by the way, in the Swiss private banking group—by bankers who essentially told them that the law has changed, and if they, in their accounts, would like to still own stocks in American companies, such to buy Microsoft or Apple, they could not do that individually in an undeclared account. But if they formed a corporation, say a Panama corporation or BVI corporation, or if they created a Liechtenstein foundation, known as a *stiftung* in some instances, and we made that entity the nominal owner of the assets, then they could purchase whatever assets they want.

So there was, at least as has been reported in the press, a concerted effort made by bankers from UBS to approach their American clients and help them structure their accounts in a way to maintain their undeclared status and give them maximum investment flexibility.

Mrs. Carol Hughes: There were comments made that young people are basically the repeat offenders. I'm wondering what techniques you would suggest be put in place to remedy this.

● (0935)

Mr. Scott D. Michel: That particular strategy, at least in the U.S., has been trumped by this Foreign Account Tax Compliance Act. And believe me, I'm not a proponent of this legislation. I think it's incredibly burdensome in many respects. But the U.S. Congress came up with a way that they hope will prevent Americans from being able to hide their accounts.

Basically, the legislation says that any bank anywhere in the world that wants to invest in the United States for any purpose on behalf of any client must enter into an agreement with the Internal Revenue Service. In effect, they must promise to disclose the names of all of their American account holders on an annual basis, and they must implement procedures to make sure that they are identifying all their American account holders.

That is one step. I think to some extent it's an excessive step, but that's a step that the U.S. Congress has decided to take.

[*Translation*]

Mrs. Carol Hughes: I have another question.

You said that we should absolutely try to process quickly and efficiently the cases of tax payers who voluntarily disclose tax evasion. I was wondering how much time this process could take and what you mean by "quick."

[*English*]

Mr. Scott D. Michel: When a taxpayer comes to us to initiate a voluntary disclosure, it's important that we quickly gather their banking information so we know exactly how much previously unreported income they now need to report. And we need to identify them to the Internal Revenue Service as quickly as possible to lay down our marker that they want to come in and make a voluntary disclosure.

The system that ultimately developed in the U.S. special program, which provided an expedited way back into the system for these people, was quite effective. Basically, there was a pre-clearance process where we would provide the name of a client to the Internal Revenue Service. We would ask if a disclosure would be considered timely, and then they would check their files over a period of a week or two and get back to us and say, "Yes, it will be considered timely."

That was essentially the protection that a client needed, to know that he wouldn't be prosecuted. Once they make a timely disclosure, the rest of the disclosure is simply ensuring that it is truthful and complete, and that they pay their liability.

As an immediate step, I would suggest you give people a risk-free path into the system.

Mrs. Carol Hughes: I also want to know whether, when people are investing, there is a statement provided to them that basically indicates their responsibility, as taxpayers, to disclose their investments. I wonder if anybody signs on the dotted line on that aspect. I ask that only because last week we also heard from CRA... and I'm just wondering, maybe there needs to be some changes in CRA such that the application for tax cannot move unless they absolutely tick "yes" or "no". In today's technology, there is stuff that can be done on that.

Mr. David Sohmer: Canada has a form called a T1135, which requires disclosure of all foreign assets over $100,000.

Mr. Scott D. Michel: Banks are now providing clients with documents that instruct them on their reporting responsibilities. I had not seen this until the last year or two, but I have now seen American clients who receive forms from banks. These forms specifically direct them that they must report their foreign accounts. They must declare all of their income. They must file all their appropriate forms.

And the banks are saying that if they don't do that, they're not going to have them as a customer anymore.

Mrs. Carol Hughes: I'm wondering if HSBC has a comment on that.

Mr. Scott Bartos: In Canada, that is not something that we currently do.

Mrs. Carol Hughes: So you don't currently advise them that they have a responsibility to declare their investments? You don't have any documentation that they have to sign when they are investing or anything?

Mr. Scott Bartos: I'm trying to think back. I mean, we do have a number of terms and conditions that all customers sign when they open up an account, whether it be an investing account or a banking account. I cannot recollect, off the top of my head, whether or not we have a specific term that says, "It is your responsibility in order to pay your tax."

● (0940)

Mrs. Carol Hughes: Do I still have more time?

The Chair: You can ask a last question, just very briefly.

Mrs. Carol Hughes: I'm just wondering if you would see this as a positive step in having something like that provided to the client when they're investing—only because some people will say, "Oh, I didn't really realize that."

Mr. Scott Bartos: Certainly it's something that we wouldn't object to.

The Chair: Thank you.

Thank you, Ms. Hughes.

Very briefly, Mr. Sohmer, would you change that form? Would you recommend that CRA amend that form?

Mr. David Sohmer: I don't think it's the problem of changing the form. I think it's the problem of compliance with the form.

The Chair: Okay.

Thank you.

We'll go to Mr. Tonks for a five-minute round, please.

Mr. Alan Tonks (York South—Weston, Lib.): Thank you very much.

Thank you to our witnesses for being here.

I don't sit on this committee, so I'm just trying to pick up the thrust and intent of the legislation, and the effectiveness of its application.

Mr. Michel, you talked about a congressional initiative. The acronym was FATCA. It's sort of trying to characterize fat cats, but it gets a little short there.

What does that acronym stand for again?

Mr. Scott D. Michel: The Foreign Account Tax Compliance Act.

Mr. Alan Tonks: Okay.

How effective has that been in the American experience?

Mr. Scott D. Michel: It has not yet taken effect. Significant portions of it don't come into effect until 2013. And financial institutions like HSBC and others are struggling with a fairly significant compliance burden to implement it. The IRS has issued one set of guidance on implementation, but there's a lot more to come.

So it's too early to judge how effective it may or may not be.

Mr. Alan Tonks: But you've heard the characterization of what is an attempt to strike a balance between prosecuting those who deliberately attempt to circumvent existing tax regime law and those who may do so naively, or at a lesser degree, with a regime in balance that would encourage them to come forward.

In your estimation, is that sort of congressional initiative the kind of balance that you think will be effective in doing that?

Mr. Scott D. Michel: Yes, I think any effective tax policy has got to have a mechanism for people who have cheated to come in and make things right.

We may not like the fact that people cheat, and we may do our best to try to deter them from doing so. But there's an expression that the only two certain things in life are death and taxes. I believe you can add that there will be people who try to cheat on both; that's another certainty.

Enforcement, accompanied by a path for people to come back into the system, would constitute a broad-based tax enforcement policy.

Mr. Alan Tonks: Against that, then, how effective have the voluntary tax disclosure mechanisms been?

Mr. Scott D. Michel: There's a debate in the United States over just how successful this IRS program was. I happen to be of the view that, notwithstanding some of the procedural and bureaucratic difficulties, from a macro perspective it was enormously successful.

Over 30 years of practice, before the program, I may have advised 100 to 150 clients to make voluntary disclosures. Our law firm had 400 cases within the course of about seven months: 15,000 people came forward. I think the average size of the accounts that were disclosed in our office was probably somewhere in the $3 million to $5 million range. These are assets that are coming back into the system. They'll be taxed every year in the United States. Now they're taxed again when you die.

So I think the system—for some of its flaws—that the IRS implemented in 2009 was an extraordinary success.

Mr. Alan Tonks: Thank you for that.

I think the committee would be interested in the example that you used with respect to a Swiss bank that has assets that.... If an asset holder wanted to invest in an American company, there would have to be full disclosure under American law. You continue that analogy, and you said that it might leave the door open to that same person saying that then they'll invest through a Panamanian tax shelter.

Now, the United States has signed a free trade agreement with Panama. Surely they would be aware that this could circumvent American law.

Is that why the Congress has taken the initiative under FATCA, to try to close that door?

● (0945)

Mr. Scott D. Michel: In part, that's right. I think FATCA is perceived as an overarching legislative fix to a lot of perceived loopholes that people might be able to use to skirt the information reporting requirements.

Mr. Alan Tonks: Mr. Chairman, I think that's important for the committee to take into consideration. Essentially, you have a very wide spectrum of deliberation on this criminal side and the civil side. That is where Canadian policy needs to be firmed up. Perhaps there's some indicator through that of how we could approach it.

The Chair: Thank you.

Monsieur Carrier, s'il vous plaît.

[*Translation*]

Mr. Robert Carrier (Alfred-Pellan, BQ): Good morning gentlemen. I will direct my comments first to Mr. Bartos.

To get back to what my colleague was saying earlier, you started your presentation by showing how important your company is. There is no doubt about that. Some news articles mention HSBC as an international banking giant. That's what you said as well. However, I dislike the fact that you represent your company in Canada and that, when submitting documents, you failed to recognize the fact that this country has two official languages. I am part of the French-speaking nation in Canada. That being said, I will move on to something else.

You said that, when a client wants to open a foreign account, the bank itself does not transfer the money. As someone said earlier, you sort of wash your hands of the whole thing. You refer the client to your representative in the other country. Given the fact that it is nevertheless your company which is then targeted in case of a potential tax evasion, I was wondering if you take into consideration the grey list established by the OECD. This is a list of countries with lax policies respecting the disclosure of declared income sources and paid taxes. These are countries where tax evasion is likely to occur.

In our discussions related to a bill on a free trade agreement with Panama, the Liberal members said that tax havens are legal, that it's okay and we should accept them. Perhaps tax havens are legal, but the tax evasion that could take place there is illegal and even immoral.

I would like to know whether or not you refer clients to banks in countries that are on the OECD grey list.

[*English*]

Mr. Scott Bartos: Mr. Chairman, HSBC does operate in a number of countries. I can't tell you off the top of my head how many of those countries may or may not be on the grey list.

But when we refer customers to another country, it is always under the framework that HSBC has a global set of policies and procedures in which we apply the highest compliance standards. We comply with all the applicable laws, whether they be in Canada or in Panama. And we apply our own internal high set of standards and policies so we know and understand our customer. When we refer a customer, whether it be to the United States or to Panama, it is done under the terms that the group entity in that country will apply very high standards of values when dealing with that customer.

● (0950)

[*Translation*]

Mr. Robert Carrier: So you rely on your branches in those countries to conduct the necessary analysis for preventing tax evasion, correct?

[*English*]

Mr. Scott Bartos: Yes, that is correct. They would be customers of the other country. We have group policies that specifically provide that we do not condone or support tax evasion. So yes, we would rely on our counterparts to ensure appropriate compliance with applicable laws.

You have to remember, they are our clients and they are also the clients of the entity carrying on business in whatever country it may be, whether it's Panama or some other country.

[*Translation*]

Mr. Robert Carrier: I think that its reputation and the proper management of its branches are important to your bank. Canadian clients of your bank, whose names were revealed a few months ago, were referred to Switzerland. If I am not mistaken, almost 1,800 Canadians had bank accounts in Switzerland.

[*English*]

The Chair: *Avez-vous une question?*

[*Translation*]

Mr. Robert Carrier: How were those clients dealt with? How many of them were subjected to an investigation and were perhaps accused?

[*English*]

The Chair: Be very brief, Mr. Bartos.

Mr. Scott Bartos: As I had mentioned earlier, HSBC Private Bank Suisse is a separate legal entity that is governed by Swiss laws. They are unable to share any information with HSBC Bank Canada, so I am not aware of the contents of the list, what names are on that list, or whether people have evaded taxes. I just do not have that information.

The Chair: Thank you. *Merci.*

We'll go to Mrs. McLeod, please, for five minutes.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Chair.

I think I want to follow up on the point Madam Hughes was travelling down. I'll direct the first comments to Mr. Bartos.

Certainly I think all of us recognize that Canadians do business throughout the world and have many reasons for perhaps wanting to have accounts in other countries. I'll use a personal example. My husband someday wants to perhaps be in the sun of the United States in the winter, and thought that having a U.S. account would be very helpful. I actually participated in that process as he set up that account. It was very interesting, because we sat in an environment in British Columbia and set up both a Canadian account and an American account, which I guess are separate entities. But it really felt very much part of the same thing we were doing as we set up these two accounts. Certainly we intend, of course, to be very up front in terms of what we do and how we do it.

It's a prime opportunity for an education for any client who is sitting in that room on understanding the tax implications or for having some handouts. And there is no focus on that area right now in terms of your focus with clients as they go through this process. Could you talk about that?

Then I'd ask you, Mr. Michel and Mr. Sohmer, if you think that would have any benefit or value if that happened as part of the process.

Mr. Scott Bartos: Mr. Chairman, I haven't walked through the actual account-opening process for some time now. My understanding is that, no, there is not a specific focus on bringing to the attention of somebody hoping to open up an account that the person needs to comply with the law, whether it be tax compliance or any other law. It's not currently something we draw to the customer's attention.

To the question of whether that might help ensure tax compliance by taxpayers, it may very well. I think we work in a system in which most taxpayers already know that it is their obligation to declare taxes and pay taxes. So another reminder may or may not be beneficial.

Mrs. Cathy McLeod: Again, how that applies in foreign environments might not be general knowledge to everyone.

Mr. Michel and Mr. Sohmer, do you have any thoughts on that particular area?

Mr. Scott D. Michel: The primary reporting requirement in the United States is both on the tax return and on a separate form called an FBAR, a Foreign Bank Account Report. It's a special treasury department form. Until three or four years ago, very few people knew that this form existed. It had been on the books since the 1970s. There were penalties in place for not filing it, but nobody knew about it. Most accountants didn't even know about it so that they could advise their clients.

I think anything that educates the tax-paying public on what their obligations are, in terms of reporting, can only be a good thing. The question, to me, would be how that requirement can be imposed on a foreign bank, because that's where the compliance failure occurs.

A U.S. bank can tell U.S. clients, for example, that they have to pay taxes on their interest and dividends, and they have to pay taxes on their capital gains. The U.S. bank will give the client a 1099 every year, a form that says that this is how much money you have to put on your tax return. That's reported independently to the IRS. A bank in Panama or Switzerland or Hong Kong is not going to automatically, I think, say that they need to notify Americans who come in that they need to report this account on their tax returns.

● (0955)

Mrs. Cathy McLeod: I'd like to get Mr. Sohmer's comments, but in this particular example, it was sort of a one-stop that allowed us into a couple of countries in terms of banking. I don't know what the paperwork was after we left, but it was generated in British Columbia, Canada.

Mr. Sohmer, could you comment?

Mr. David Sohmer: Generally, there is no problem between Canada and the U.S. It's virtually an automatic exchange of information between the two. The problem is with other countries. The automatic exchange of information was suggested by the OECD in G-20, and turned down by the G-20.

There's another treaty, called the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters, with respect to collection, which Canada has signed but not yet ratified. Canada has to operate in the international context. The United States has the power to do it unilaterally. Canada can only act effectively internationally.

The Chair: Thank you, Mrs. McLeod.

Mr. Rota, please, for five minutes.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): Thank you, Mr. Chair.

Thank you to all our witnesses. I don't normally sit on this committee; I'm filling in, and it has been very interesting.

Just from listening, one issue that has come up quite often—and I heard this from Mr. Michel—concerns providing a mechanism to allow people who have cheated to come back into the system. These are people who have left. We've lost this income; it's not coming back. It almost seems that we have a demographic both in the U.S. and in Canada whereby people are getting to a point where...well, the baby boomers aging. I guess that's where it is. And their parents are.... There seems to be a new-found conscience, I guess, or their scruples are coming back to haunt them. They almost want to come clean before they die, or they want to make sure that the next generation doesn't get caught into some kind a problem that they've caused for them.

Have any countries out there, or has anything that you know of, caused or put something forward that would allow them to maybe disclose...? I'm not going to say a tax holiday, or a penalty-free time, but has there been anything where we say, okay, for two years they can come forward, and their past indiscretions will be recognized, but they won't get the heavy stick right away that Ms. Glover was talking about? I mean, after that, if they still try to avoid that, they will get hit hard. There's no question. There has to be a penalty. But for a year, maybe two, maybe three...I don't know how long it would take.

Are there any examples out there where this has been implemented? And what were the results?

Mr. Scott D. Michel: In addition to the U.S. initiative in 2009, a lot of other countries have adopted amnesty or quasi-amnesty programs relating to foreign accounts. The U.K. has done so. Italy has done so. I believe France has done so.

Some of these programs have been wildly successful. I cannot recall the exact numbers in the Italian experience, but I remember being shocked at how large a pool of assets had been brought back into the system as a result of the Italian amnesty.

I think a lot of countries are looking at this. People are going about it in different ways, because people have different tax systems, but the notion of a settlement initiative for this program, for this type of problem, I would say, I think is a good idea.

Mr. Anthony Rota: That sounds good, because that's exactly the answer I was looking for and was hoping for. It almost seems as if the penalty is important, but what we're really looking to do is to bring people back into the system.

You mentioned the amounts. Do you have any estimate of what it might be in the States or in Canada if something like that were put out there? And what would the cost be of putting something like that out there?

● (1000)

Mr. Scott D. Michel: I can speak to the United States, and Mr. Sohmer can speak to Canada.

The U.S. approach was to require a taxpayer to pay six years' worth of tax and interest and a surcharge penalty on the tax on the income earned in the foreign accounts, plus 20% of the highest balance in the accounts over the previous six years.

The demographics and the amounts varied. I would say that our clients who have been put into this program have paid anywhere from 30% to the high 40%s, or maybe even 50%, of their foreign account back to the IRS for global peace. I think it's one of the situations where if the penalty is set too high, people will balk. But it needs to be set high enough to recognize the fair point that most people do in fact pay their taxes, so people coming in must feel some pain for having done what they did.

Mr. David Sohmer: In terms of the amounts out there, I think I might be the source of the $100-billion figure that.... The IRS announced that there was $1.7 trillion of U.S. money offshore. I said Canada's got 10% of the U.S. population, which is $170 billion. We're about two-thirds, or a third, more conservative in our approach than the Americans. We don't steal as much—

Voices: Oh, oh!

Mr. David Sohmer: —so I brought it down to $100 billion, and I compared that against the yardstick of the $5.6 billion that apparently Canadians have with UBS, which made it sound reasonable.

So I figure there's $100 billion, and I would guess, based on my experience, that there is $20 billion or $30 billion that could be repatriated very, very quickly.

The Chair: Thank you, Mr. Rota.

Mr. Hiebert, please.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you.

Mr. Sohmer, in your opening remarks, you talked about the demographics and some information about your typical client. As you've looked at them, you mentioned that they had an average age of 72, with an average offshore account of $3.7 million, or a median account of $1.2 million. The difference between male and female was pretty much the same.

One thing you didn't mention in your opening remarks, which is in your document, is that 51% of them were immigrants.

It seems, based on that number alone, that I guess a lot of new Canadians, people who have come to this country, could have perhaps opened their offshore accounts prior to coming to Canada in an effort to protect their wealth, maybe coming from a country that didn't have the same kind of assurances that we have here in Canada.

Would that be an accurate statement?

Mr. David Sohmer: I think it's important, and there are some very delicate aspects to it. There are people who came here to escape from dangers to their lives and regarded money in Switzerland as being a source of security in case they had to escape again. It was something that was almost hard-wired into their brains.

The other thing that's critically important about it is that the children of immigrants are more prone to move. They'll move to the United States. People from the United States don't move to Canada; people from Canada move to the United States and to other places. That deals in a very critical manner with our ability to enforce.

There are no international norms for collection of tax. The kids of immigrants who come to Canada will go to school in the United States. One of my kids was in Columbus. One of my kids was in Cleveland. They did come back. They were doctors, by the way, and they happened to like the Canadian system.

But the fact that the demographics include a large number of immigrants is very important, and a lot of it comes from the immigrant mentality that they might have to run again. It's something that does not resonate well with functionaries, but it happens to be a fact.

Where I think Scott and I live, we're in the trenches; we smell the burning flesh. We understand the family dynamics; we're dealing with the stories. These people say they don't know when they'll have to go; that's their security.

Mr. Russ Hiebert: Right. So it's quite possible that if the law did not change in their favour, they might simply choose to move elsewhere and deal with this problem at a later date.

Mr. David Sohmer: Yes, and Canada has been party to that, because Canada has signed an international convention but has not yet ratified it with respect to international assistance in collection. It's a difficult issue.

There's a rule called the revenue rule that says one country won't allow its courts to be used to collect taxes from another country. Canada realized that in a very severe way when it chased after the American tobacco companies on a tobacco tax issue and lost before the U.S. Supreme Court.

It's not difficult for somebody from Montreal to move to Toronto, and Ontario will not collect Quebec taxes. The revenue rule is enshrined in the Quebec civil code.

● (1005)

Mr. Russ Hiebert: So for the benefit of people who either might be listening—or, surprisingly, some might read the transcript—you said a typical client comes in, they're in their seventies, and they probably opened their accounts, according to your information, two decades earlier. What happens? They sit down in front of your desk and say, “Mr. Sohmer, here it is. I'm spilling the beans. What do I do?”

Mr. David Sohmer: I can tell you that if they were west of the Quebec border, or east of the Quebec border, given current CRA policy, I would tell them, without any compunction, “Send in your voluntary disclosure. Let's get this done quickly. The practice of the CRA now is perfectly compatible with a proper voluntary disclosure program.”

If they were in Quebec, I would explain the law to them. We have difficult ethical issues. Where somebody has already committed tax evasion, we're under no obligation to compel them, or encourage them, to confess. We cannot be complicit in future tax evasion, but we do have an ethical duty to explain the law.

So let's say they're in Quebec, and you tell them, “Quebec is going to virtually confiscate everything you have, because your portfolio has gone down in value. You have no recourse to the courts. You have kids in Toronto, and if you do nothing, there's little risk of detection. You make the decision.” It's a difficult.... It ends up being a charade. The ethics become difficult.

But to be perfectly honest, when you lay out the possibilities to them and say, “If you do nothing, nobody will catch you”...because the current protocol under the Canada-Swiss treaty does not allow Canada to obtain the information without having the name of the person and the name of the bank. They're not going to have the name of a 75-year-old using a walker who's just come into our office. So if you say to them, “When you die and your kids inherit, and your kids come clean with the CRA, and the CRA communicates the information to Quebec, Quebec will get its judgment but they can't enforce it in Toronto, so you'll save half the taxes”...and maybe they'll save even 90% of the taxes.

We can't encourage that, but I think we have an ethical duty to explain what the law is. It's something that I've discussed with Scott in terms of ethics. But if you explain the law....

I mean, one of my confreres, Dick Pound, before the Supreme Court in a case called Copthorne, happened to mention that if anybody has an IQ that's above room temperature, they know what to do—not in the context of tax evasion.

The Chair: Thank you.

Thank you, Mr. Hiebert.

We'll go to Mr. Szabo again, please.

Mr. Paul Szabo: Mr. Chairman, it's been an interesting discussion. The underground economy has a little bit of parallel to it, but it goes right across the income spectrum, so the approach to that really has to be a little bit more sensitive.

Now that we've had all this chat, can you, in your own opinion, just give me an idea of what the most significant condition is right now that would facilitate or promote tax evasion in offshore accounts?

Mr. David Sohmer: Is this addressed to me?

Mr. Paul Szabo: Perhaps you could give a quick response; I have only a few minutes.

Mr. David Sohmer: I think you have to make a distinction between hoodlums and the elderly. Hoodlums will always find a way to beat the system. It's becoming more difficult with—

Mr. Paul Szabo: No, maybe you misunderstood the question.

What are the conditions in our world today...or what is the principal reason why people seek offshore accounts for tax evasion purposes?

Mr. David Sohmer: Oh, there are a number of reasons, obviously.

Mr. Paul Szabo: The most significant.

Mr. David Sohmer: Not to pay taxes; security; if you—

Mr. Paul Szabo: Greed.

Mr. Scott D. Michel: Greed.

Mr. Paul Szabo: Thank you.

Mr. David Sohmer: It's greed.

A voice: Greed.

Mr. Paul Szabo: Okay.

And Mr. Bartos...?

Voices: Oh, oh!

Mr. Paul Szabo: No, it's okay. Sorry. I won't put you on the spot.

One of the approaches that has had actually a very significant return, in terms of proactive efforts by governments, has been the route of forensic accounting.

Can you tell me if there are any jurisdictions out there who have promoted forensic accounting that would demonstrate that people seem to be living lifestyles that are way beyond the income levels they report?

● (1010)

Mr. David Sohmer: We have a program in Canada, the CRA has, for doing what's called a net worth audit. You take a look at the net worth at the beginning of a period, the net worth at the end of the period, calculate what living expenses are, and see what you've declared. It's a fairly effective program.

But as long as people can spend cash.... I think the biggest deterrent would be to deter the ability to spend cash.

And transporting cash across borders is becoming difficult. Using ATMs is becoming difficult.

Mr. Paul Szabo: Okay. I'll go on to my last question.

There seems to be reluctance on the panel's part of taking what some would call draconian measures. There's a fear, I think, that if you go after people, there will be less incentive for them to come out. But they already have the voluntary disclosure program anyway. How much more generous could you possibly be?

So if you've already given them the best you can pretty well give them anyway, why wouldn't you try some more draconian measures? The U.S. has a whistle-blower type of arrangement. I don't think Canada really has anything like that.

The public education thing is not to just say, well, everybody should pay their taxes, because that's what we do to pay for our health care, etc. It's to educate them: if you decide to take care of yourself first, there are consequences.

Is that the kind of education we should have?

Mr. David Sohmer: I'm not sure it's a matter of education. I think firstly we have to realize that Canada has limited ability to take unilateral action. If we tell the Swiss that unless they force their banks to disclose information, we're going to prohibit Swiss from investing in Canada or lending to Canada, we're simply shooting ourselves in the foot. The Americans can do it because investing in U.S. securities is a vital component of an investment strategy. Buying shares of Bombardier or BCE is not.

We have limited capabilities. Our voluntary disclosure program would be very effective if it's implemented the way the CRA is currently implementing it. I think we have to realize that you can't have enforcement without information, and getting the information internationally is something that is difficult to get and requires an international—

Mr. Paul Szabo: I'd just like to hear from Mr. Michel as well.

Mr. Scott D. Michel: I've always thought that tax enforcement pays for itself and then some. Obviously, the government has many budgetary needs. What happened in the United States 20 years ago or so is the IRS became a punching bag politically and took some unfair criticism. And the IRS retrenched its enforcement activity, and that encouraged people to cheat. There are some people who believe that the mass-marketed tax shelters of the late nineties and so forth were a result of a perception that the IRS didn't have any enforcement mechanisms and was not going to be aggressive.

Tax enforcement is a pendulum, and when it swings toward more activity, I believe it promotes more compliance.

The Chair: Thank you.

Ms. Block, please.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

I would like to thank each of our witnesses for being here today.

I just want to comment on the information that was provided to us, certainly from you, Mr. Sohmer, and you, Mr. Michel, on the work that you've done, on your expertise, and certainly on the extensive lecturing that you've done in many countries, which I think supports what I've come to understand: that this is a challenging issue and one that is a huge issue around the world, and that there is a will to address this issue.

Mr. Sohmer, earlier you made a reference to Canada's inability or lack of muscle to address the issue to the degree that a country like the United States can. But we know that Canada is one of 95 jurisdictions that have agreed to the international standard for exchange of information, including providing access to bank information, as well as having an extensive network of tax treaties, one of the largest in the world, with 87 tax treaties in force. Also, budget 2007 announced measures that would encourage TIEAs. I'm just wondering if you would be willing to comment on Canada's actions to date in terms of addressing this challenging issue.

I would open that up to any of you.

● (1015)

Mr. David Sohmer: I think Canada has done a marvellous job in the international arena. Again, its powers are limited. It would have liked to have seen an automatic exchange-of-information provision provided for in the treaties, but the G-20 turned that down, and the TIEAs and the protocol to the Canada-Swiss tax treaty and the international standard have limits now. The requesting country must provide the name of the person and the name of the bank, and fishing expeditions are prohibited.

Canada has signed, but not ratified, an international treaty on mutual assistance and collection, but Canada has played a significant role in the studies on high-net-worth individuals. I think what has to be borne in mind is that this is a project that will ultimately bear fruit in five or ten years, but we have an opportunity now, where people are willing to come forward. We have this massive group of elderly who are willing to come forward and to write cheques, provided the amount is not perceived as being confiscatory.

In five or ten years' time, I think on the international forum we will have effective enforcement.

Mr. Scott D. Michel: I agree with Mr. Sohmer. I think from my seat across the border, Canada seems to have been quite active and effective in promoting multilateral efforts on exchange of information and tax enforcement.

Mrs. Kelly Block: Just on that note, you made an observation about the demographics and that we have the opportunity with individuals who are retiring.

In your opening remarks, Mr. Michel, you referenced the adoption of a settlement initiative that took place in 2008. You referenced that more than 15,000 Americans came forward. But I noted as well that you said, "The IRS announced such a program on March 23, 2009, made some changes while it was in effect, provided limited guidance on more complex issues, and closed it nearly seven months later."

Why did it not continue if you had the kind of results that you did?

Mr. Scott D. Michel: Well, that's a good question. In fact, a number of practitioners have been talking to the IRS about the possibility of adopting a second settlement initiative.

I actually received an e-mail from a colleague today that there was some rumour that it might even be announced by the IRS commissioner today that there may be a second program. He has already announced that there will be a second program; it's an open question whether it will have a sunset provision or whether it will just be an initiative that will remain in place.

But I think, speaking to the point of your question, that the IRS recognized that the settlement initiative in 2009 was so effective that it ought to do it again. And that's the right decision.

Mrs. Kelly Block: Thank you.

The Chair: Thank you, Ms. Block.

We'll go to Monsieur Mulcair, *s'il vous plaît*.

[*Translation*]

Mr. Thomas Mulcair: My question is for Mr. Sohmer, whom I also want to thank for his presentation.

When you equated $2 billion in UBS assets in Canada to a grain of sand, it made me think of a bible parable in which someone was trying to count all the grains of sand on a beach. I think that, to the average person, $2 billion is a significant sum. Earlier, I believe that Mr. Michel gave an explanation of the strategy used by UBS in the United States.

Was a similar strategy used in Canada?

[*English*]

Mr. David Sohmer: Well, the problem with Canada's going after UBS is the problem of a population of 33 million versus a population of 330 million. UBS operations in Canada are not significant. Between UBS AG—the branch—and UBS, the actual bank carrying on business here, I think total assets are probably in the $2 billion range. UBS U.S. has 28,000 employees; UBS Switzerland has 27,000 employees; UBS in all of the Americas other than the United States but including Canada has about 1,000 employees.

[*Translation*]

Mr. Thomas Mulcair: Was the strategy used by the Bank of Canada similar to the one used in the United States?

In the United States, high-level individuals were recruited to try to attract people and explain to them the possibilities of investing their money elsewhere. That was the UBS strategy. Once the list was provided to the American authorities, charges were brought against those on it.

Was the same model used in Canada?

● (1020)

[*English*]

Mr. David Sohmer: Again, Canada does not have the leverage, the economic muscle, to force UBS to provide a list of clients. In fact, the arrangement that the United States had with Switzerland was within the context of the existing United States-Switzerland tax treaty, which provided for an exchange of information relating to matters characterized as tax fraud rather than tax evasion.

It was one that had to be settled, because UBS could not be allowed to fail. It was one that Canada simply could not work. There's no way that Canada has of compelling the information, and to the best of my knowledge the CRA has stopped its attempts to try to get that information.

Mr. Thomas Mulcair: From UBS?

Mr. David Sohmer: From UBS.

Mr. Thomas Mulcair: I'll go in English with you now.

Could you summarize for us your concern with regard to the lack of harmonization between the Quebec rules and the federal rules? In the context of your presentation at the beginning, you were making it clear that you were concerned that this lack of harmonization was hampering attempts to bring people back into compliance.

Have you spoken with the Quebec minister? Have you tried to make your case there?

Mr. David Sohmer: Well, we have sent in.... Part of the material I have is an extensive brief that we sent to the Quebec authorities. I'll give you one small example.

We have clients who in 1946, after having survived the Holocaust in Hungary, moved to Mexico and in 1993, at age 73, moved to Canada. The immigration papers show “retired”.

We have no idea what he had in 1993, but we do know that in 2000 there was essentially $5 million with UBS. He died. The widow is now relying on the money. She is not necessarily compos mentis. We would like to clean it up.

We've made a deal with the federal government whereby the tax on the income only for the 10 years would be imposed, with some interest. Quebec is insisting on taxing the opening capital. When we say that from 1993 to 1999 it is absolutely impossible for a 73-year-old to have earned that money, their answer is, we don't care; we're going to tax it.

The fact is that she's relying on that money. We have no alternative but to go to court, and we will take Quebec to court. What's going to happen is that not only will we have the litigation, but people are simply going to move to Toronto, move to the United States—they'll leave it. Because of the bureaucratic position, I think the program faces a significant threat of closing down in Montreal, federally and provincially.

I might add that under the CRA—

Mr. Thomas Mulcair: As a suggestion, don't leave it at the administrative and bureaucratic level. You need to bump it up a little.

Mr. David Sohmer: I wish you could tell me how. In Quebec politics, the Liberals are not terribly popular, and the PQ....

Mr. Thomas Mulcair: I agree. That's why some of us went to the NDP.

The Chair: We have a former Quebec minister there who might be willing to help.

Mr. Thomas Mulcair: We have two former Quebec ministers.

● (1025)

The Chair: We have two former Quebec ministers; that's right.

Thank you very much for being with us here this morning, gentlemen. We appreciate your responses to our questions. If you have anything further for the committee, please submit it to us. We will ensure that all our members get it.

Colleagues, we will suspend for about a minute and then we'll go to committee business.

● (1025)

(Pause)

● (1025)

The Chair: I will ask colleagues to please take their seats. Thank you.

For committee business we have one motion from Mr. Mulcair. That is all I have with respect to committee business.

Also, for those who are on the subcommittee, we will be meeting in this room at 9 a.m. on Thursday.

I will ask Mr. Mulcair to move his motion, please.

[*Translation*]

Mr. Thomas Mulcair: Thank you, Mr. Chair. I move the following motion:

> That the Honourable Michael Holcombe Wilson be summoned to appear before the committee on Thursday, February 17, 2011, at 8:45 a.m.

The motion simply aims to follow up on several discussions that have taken place. Before the holidays, we heard from a prominent lawyer from a major law firm specializing in tax law. The firm is very well-known and represents many people with political backgrounds. The lawyer in question wanted to know why we wanted Mr. Wilson to appear. The answer is very simple: we want Mr. Wilson to testify for the same reason we wanted Don Johnston, former Liberal finance minister, to testify. Mr. Johnston did appear before us.

As you can see, the UBS issue is the one we have talked about the most this morning. Mr. Wilson played a key role for UBS in Canada for several years. Mr. Wilson is too modest. He said that he has nothing to say that could help the committee. However, I believe that, on the contrary, Mr. Wilson, with his experience and expertise, could contribute greatly to our study. Nevertheless, he maintains that he does not want to meet with us. So we have to insist on his appearance. All the motion says is that we should summon him to appear. That is the only way to go about this. In light of this morning's testimony, those who vote against this motion would be saying that they may have something to hide from us.

[*English*]

The Chair: *Merci, monsieur Mulcair.*

I have Mr. Wallace and then Monsieur Carrier.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

I will not be supporting this motion to summon. We have received a letter from Mr. Wilson indicating that he understands what the study is about and he has nothing to offer the committee. We've also received that letter.

To compare Mr. Wilson with Mr. Owens is not accurate. Mr. Owens was here in his capacity when he worked, not as the minister in the Trudeau—

Some voices: You mean Mr. Johnston.

Mr. Mike Wallace: I mean Mr. Johnston; I'm sorry.

He was here because of his work with the OECD and the work he did on tax evasion and so on. That was his purpose for being here. Those were the questions we were asking.

If we want to go back and start asking for finance ministers to come, we could go back 30 years and ask Mike Wilson to come. But also, in my view, why aren't we asking the former Liberal finance minister, the Right Honourable Paul Martin, to come back to talk to us about what happened for the 13 years or so—maybe it was 12 years, since he was Prime Minister for a year or so—and ask him what they did while he was there?

I think we appropriately asked Mr. Wilson to attend; he, I think, did the very courteous thing in writing us back saying that he has nothing to offer this committee.

We've had some great testimony today; we've had great testimony before. I think this is a waste of the committee's time. I will not be supporting this motion, and if it passes, I think I'll be putting in an additional motion about other guests to come to see us.

Thank you.

The Chair: Thank you, Mr. Wallace.

Monsieur Carrier, s'il vous plaît....

[*Translation*]

Mr. Robert Carrier: We will support the motion Mr. Mulcair moved. I feel that it is important to have the opinion of politicians who have played a key role in this country's government. Now that they are no longer government employees, I believe that they may have more freedom and that they can testify about their experience. The tax evasion issue did not start with the Conservatives, it was there during previous governments as well. I think it would be useful to shed some light on this issue, to add to the testimony of experts. We have seen that banks have not been very forthcoming and that we are not getting much information from them. Therefore, we will support this motion in order to hear his testimony.

● (1030)

[*English*]

The Chair: Thank you.

Can I go to the question?

An hon. member: Yes.

The Chair: All in favour? We have three in favour.

All opposed?

(Motion negatived)

The Chair: Thank you.

The meeting is adjourned.

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