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The Honourable Wayne Easter

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● (1530)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): Let's call the meeting to order.

As everyone well knows by now, we're doing a statutory review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

We have a number of witnesses. Thank you all for coming. Please keep your opening remarks brief and then we'll go to questions, back and forth.

We'll start with the Canadian Jewellers Association, and then we'll go to Jewellers Vigilance Canada Incorporated.

Mr. Land.

Mr. Brian Land (General Manager, Canadian Jewellers Association): Thank you, Mr. Chair, for inviting the Canadian Jewellers Association to this meeting regarding your review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

My name is Brian Land, and I'm the general manager of the Canadian Jewellers Association.

For 100 years, the CJA has been the voice of the Canadian jewellery and watch industry, providing leadership in ethics, education, and communication; building trust, awareness, and desirability for Canadian jewellery products. The CJA promotes consumer confidence and assists its members in following best business practices. We have over 1,000 locations in Canada, and our members consist of retailers, manufacturers, wholesalers, and goods-and-services providers.

In 2017, the CJA acquired Jewellers Vigilance Canada. With the acquisition came the JVC crime prevention program. This 18-year-old program has delivered to industry and law enforcement valuable information on crime against jewellers, including organized crime in the form of gangs. This program also trains law enforcement in the specific attributes related to jewellery crime.

Joining me at the table is my colleague Phyllis Richard, representing Jewellers Vigilance Canada.

I would like to take a few minutes to give you a brief overview of the jewellery industry in Canada. For the purposes of the act, we are known as dealers in precious metals and stones, or DPMS, although not all of the industry is covered under the act. A 1997 Ernst & Young study commissioned by the CJA states that 90% of 4,400 jewellry firms in Canada employ less than 20 people, and 65% have fewer than five employees.

The significance of these statistics defines the fabric of the Canadian jewellery and watch industry, 20 years ago. Our industry was, and is even more so today, an industry of mostly small businesses. Many of these small businesses exist in smaller communities across Canada. Often they are second- and third-generation jewellers in that same community. They tend to know the vast majority of their customers.

The jewellery manufacturing industry in Canada thrived in the latter part of the 20th century, but, like so many other industries, the manufacturing sector declined with the advent of offshore and foreign manufacturers who were able to produce jewellery products much more cheaply. The world was opening up with the age of the Internet and the online revolution.

Well over 20 significant jewellery manufacturers closed their doors or went bankrupt between the latter part of the 20th century and today. Importers, wholesalers, and distributors have become more prominent than manufacturers as suppliers to retailers in Canada. Those Canadian manufacturers still producing have sought other markets to sell into such as the U.S., Britain, and Europe.

The retail side of the Canadian jewellery industry has also changed dramatically. Unlike other retail operations, such as clothing and hardware, which are dominated by chain stores, our industry consists of small, independent retailers. Three of the largest chains from the 1960s to the 1990s— Peoples Jewellers, Mappins Jewellers, and Birks—are now owned by foreign companies. In addition, many of the Canadian-owned jewellery chain stores have closed their doors. Retailers like Ben Moss Jewelers, Walters Jewelers, and Ostrander's Jewelers are no longer in business. Big-box stores such as Costco and Walmart also carry fine jewellery and new chain stores such as Michael Hill from New Zealand have arrived from foreign shores.

Statistics about the Canadian jewellery industry are not available, other than those supplied in the Ernst & Young report. However, it has been documented in the U.S. that approximately 60% of jewellery sales are done through multi-line merchants such as Costco and Walmart. In Canada these types of retailers generally are not part of the CJA. This would be also true of department stores like the Bay.

● (1535)

From an international perspective, it is noteworthy that precious metals, stones, and finished jewellery are not a common medium of exchange in Canada. While some items such as gold bars or ingots may be used as a store of value, this is generally not the case for finished jewellery. It is estimated that in the resale of a piece of finished jewellery in the Canadian market, the loss of value would be between 75 and 95 per cent of the retail price on average. This is to say that an item purchased for $100 Canadian would have a resale value of between $5 Canadian and $25 Canadian. That being said, products that lose less value when resold are the most vulnerable—the same items that are targets of thieves in a robbery—brand name watches and high-end larger diamonds.

The CJA is committed to attaining a higher level of AML/ATF compliance within our membership. We strongly believe that a better understanding of the fabric of our industry by the Department of Finance and FINTRAC will lead to more realistic compliance requirements and in turn a much higher rate of compliance.

I look forward to any questions after my colleague gives an overview of the DPMS sector and AML/ATF compliance. Thank you.

The Chair: Thank you, Mr. Land.

We turn to Ms. Richard with the Jewellers Vigilance Canada Inc.

Ms. Phyllis Richard (Former Executive Director, Jewellers Vigilance Canada Inc.): Thank you, Mr. Chair, for this opportunity to comment on your review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

My name is Phyllis Richard. I'm the former executive director of Jewellers Vigilance Canada, and now serve as chair of the Canadian Jewellers Association, government relations committee.

With my colleague's overview of the Canadian jewellery industry in mind, I would like to speak about the dealers in precious metals and stones sector and their requirements under the act.

Unlike other reporting entities, there is no licensing requirement specific to the part of the DPMS sector covered under the act, and very few specific regulations in general that pertain to jewellers. This is in sharp contrast to many other reporting entities, such as financial institutions, which have a very structured and regulated environment. The parts of the DPMS sector captured under the act are entrepreneurial in spirit and business practices, outside of the multi-line retailers such as Costco, Walmart, and The Bay.

As a general rule, the DPMS sector at the independent retail and wholesale levels lacks technological sophistication, with a limited communication channel. This is in contrast to the mining sector, which embraces new technologies and has a significant level of sophistication.

In reviewing the vulnerabilities to money laundering within the captured segment of the DPMS sector, various products present various risks. These risks need to be understood in order to develop measures to mitigate them. As an example, cut, polished, and/or finished gemstones may in some cases be used as a store of value. The available liquidity in is highly dependent on the type of stone, with diamonds generally having more available and stable markets than coloured stones. By “stable”, we are referring to the valuation of an item when assessed by different parties.

In the case of coloured stones, the assessed value of an item can vary significantly. Within the more liquid diamond trade, there are a number of controls in place to ensure the pedigree and authenticity of stones, particularly those of high value. These include processes to ensure that diamonds have points of origin outside of known conflict zones. While such processes are neither universal nor perfect, they are believed to have significantly impacted corruption in the diamond trade.

In addition, there is a trend toward more transparency about diamonds and gemstones. In the case of diamonds, we are seeing some major mining companies looking towards blockchain as a method to bring transparency to the product history.

Finished jewellery purchased at retail rates represents little money laundering or terrorist financing risk in the Canadian context, in particular when these items are bought and sold at retail rates. To the best of our knowledge, there are very few money laundering typologies that involve the actual purchase and/or sale of finished jewellery in a retail setting.

Unlike finished jewellery, precious metals in the form of bars, ingots and/or coins maybe used as a store of value. However, such items have limited liquidity, particularly in large quantities, at the jewellery retail level. The sale of high-value items would often require interaction with either a regulated entity or an auction house.

Many jewellers purchase and/or accept trades of broken, scrap, or resale jewellery. These items are most often melted down to extract the precious metals and either used to create new items or sold for the value of the metals. The risk posed in such cases is that these items themselves may be the proceeds of crime as stolen property. Insofar as we are aware, most jewellers collect identification and KYC information in the case of such transactions, and do not accept such transactions if the property in question is believed to be stolen. Where property is believed to be stolen, local law enforcement may also be contacted. As such, retail jewellers are not likely to be the path of least resistance for criminals who wish to dispose of stolen property. The exception here would be bad actors, who unfortunately exist.

My colleague mentioned the JVC crime prevention program. The many security steps taken by members to this program have inherent AML mitigating properties. These would include video cameras, staff training, and in the case of wholesalers and manufacturers, trade references as a requirement.

● (1540)

Within the DPMS sector there is a segment of industry that is not covered but would seem to be vulnerable to money laundering, and that is auction houses.

We hope this gives the committee some insight into the complexity of the DPMS sector, and I thank you.

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

Turning then to the Federation of Law Societies of Canada, Ms. MacPherson, president, and Ms. Wilson, executive director of policy and public affairs, the floor is yours.

Ms. Sheila MacPherson (President, Federation of Law Societies of Canada): Thank you very much, Mr. Chair.

I would like to thank the committee for the opportunity to provide comments in conjunction with your review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

By way of background, the federation is a coordinating body of the 14 governing bodies of the legal profession of Canada, which together regulate more than 120,000 lawyers, 3,800 notaries in Quebec, and nearly 9,000 licensed paralegals in Ontario, all in the public interest.

I want to start by assuring you that the federation and its member law societies support Canada's efforts to fight money laundering and terrorist financing. We recognize the importance of the objectives of the act, and we support those objectives.

As the Supreme Court made clear in its 2015 decision, in meeting those objectives it is imperative that important constitutional principles be respected. You will have heard a number of witnesses describing the situation resulting from the 2015 decision as a major gap in Canada's anti-money laundering and anti-terrorist financing regime. With respect, these comments ignore the fact that the federation and the law societies of Canada have demonstrated their commitment to protecting the public by taking meaningful constitutional action in this area. Our written submission outlines the efforts of the federation and the law societies to ensure there is effective regulation of the legal profession in this area, so in the interests of time, I will only give a few details as to what steps the federation has taken in this regard.

The no-cash rule developed by the federation in 2004, and implemented and enforced in every law society in Canada, prohibits legal counsel from receiving cash in amounts over $7,500 in the aggregate from a single client or for a single client matter. It requires legal counsel to keep a record of cash transactions as part of their accounting record-keeping. It bears noting that the threshold in the federation's rule, $7,500, is stricter than that in the regulations for reporting large cash transactions, that being $10,000.

While we have taken a different approach to that of the government, the rule addresses the risks associated with the handling and placement of large amounts of cash. It has been recognized by government representatives, including the minister of finance in office at the time the rule was implemented, as an effective alternative to the large cash reporting requirements that apply to other reporting entities under the federal anti-money laundering regime.

When the government introduced client verification regulations, rather than simply pursuing a remedy in the courts, the federation and the law societies moved proactively in drafting and adopting a second model rule, this one establishing extensive client identification and verification obligations. This rule, enforced in all jurisdictions since 2008, closely tracks those in the financial regulations. Together, the two rules—the no-cash and the client ID rules—achieve the following objectives.

Firstly, they impose on lawyers and Quebec notaries a rigorous standard with respect to cash transactions, and they limit the ability of legal counsel to accept cash from clients. On this point I would note that these restrictions are unique. Legal counsel elsewhere, including in the United States, are permitted to accept cash in any amount. These two rules also impose extensive due diligence requirements on legal counsel.

Secondly, these rules also address the activity of lawyers and Quebec notaries as financial intermediaries, but they do so through law society regulations rather than through federal legislation.

Thirdly, these rules respect the constitutional principles articulated by the Supreme Court of Canada in its 2015 decision.

It's important to understand that these two rules also exist within a larger legal and regulatory context. Canadian lawyers and legal counsel are bound by the criminal law and, like everyone else in the country, can be subject to prosecution for engaging in money laundering and terrorism financing activities.

● (1545)

In addition, legal counsel are subject to comprehensive rules of professional conduct imposed and enforced by the law societies that prohibit them from engaging in or facilitating unlawful conduct in any way. All members of the legal profession are also subject to comprehensive financial and accounting regulations by virtue of their membership in their various law societies.

We note that in its 2016 mutual evaluation report on Canada, the Financial Action Task Force was critical of law society regulations to combat money laundering and the financing of terrorist activities, suggesting that there was no incentive for the profession to apply these measures or to participate in the detection of potential money laundering and terrorist financing activities.

In the view of the federation, this suggestion ignores the serious regulatory initiatives of Canada's law societies in this area and the ongoing monitoring that law societies engage in, including both periodic and risk-based audits. Measures to ensure that legal counsel comply with law society regulations include annual reporting obligations, practice reviews, and financial audits. Law societies also have extensive investigatory and disciplinary powers, including the ability to impose penalties up to and including disbarment when members fail to abide by the law society rules and regulations. In the submission of the federation, any actual or perceived gap in the legislative scheme as a result of the exclusion of the legal profession from the provision of the act has been filled by the actions that the law societies have taken.

We do recognize, however, that it is important to ensure that the regulations in this area are as robust and as effective as possible. To that end, the federation is currently engaged in a comprehensive review of its model rules and the associated compliance and enforcement measures used by the law societies. We have just completed a consultation on proposed amendments. Comments were due by March 15. We are currently reviewing those comments. This consultation process will clarify some of the provisions and it will also add additional obligations on Canadian legal counsel.

Most notable amongst the proposed additional obligations is a proposed requirement for legal counsel to obtain and verify the identity of beneficiaries of trusts and the beneficial owners of organizations. In addition, requirements for ongoing monitoring of the professional relationship and activities of clients have also been proposed. The special working group that is currently conducting the review has also proposed a new model rule that would tie the use of trust accounts to the provision of legal services, thus ensuring that lawyers' trust accounts cannot be used for purely financial transactions. A comparable rule is already in place in Ontario, Quebec, and a number of Canadian jurisdictions, which together regulate approximately 75% of the lawyers in Canada. Final rule amendments are expected to be approved by the federation's governing board in June of this year and to be implemented by law societies across the country later this year.

We also recognize that effective enforcement of the rules is critical, and for that reason, we are also reviewing law society compliance and enforcement activities, and we are preparing guidance on best practices to assist law societies. Additionally, equally important in our view is that members of the profession should understand their legal and ethical obligations. To this end, we are currently preparing comprehensive guidance and educational materials that will focus on compliance with the various rules but also on understanding the money laundering and terrorism financing risks that lawyers and Quebec notaries may encounter in their professional activities. We anticipate that, in addition to general guidance, these educational materials will provide specific guidance aimed at different practice groups, particularly those practice groups identified at higher risk, for example, real estate and other transactional activities.

● (1550)

Before concluding my remarks, I would like to comment briefly on the issue of beneficial ownership information, and specifically, the current lack of verifiable information. As I've already mentioned, the proposed amendments to the federation's model rules would add a requirement for legal counsel to obtain and verify information on the beneficial owners of organizations and the beneficiaries of trusts.

We are aware of criticisms of Canada in this regard, and we recognize the value of capturing this information. We have to stress, however, that compliance with such a rule, which would mirror the requirements in federal regulation, will be very difficult, and in some cases, likely impossible in the absence of publicly accessible registries of beneficial owners.

It's my understanding that FINTRAC's guidance indicates that obtaining information on beneficial owners only from the client does not constitute verification of that information. That makes complete sense, but at the moment it is the only option available to lawyers.

In the view of the Federation of Law Societies of Canada, a rule that cannot be complied with is neither a reasonable nor effective rule. For that reason we urge the government to move forward quickly with legislative amendments that would not only require organizations and trusts to record beneficial ownership information and to provide it to the government, but also to establish a publicly accessible registry of that information for lawyers across the country to use.

We recognize that federal legislation will only reach a small percentage of corporations, and we hope that the government will push the provinces and territories to follow suit and to do so without delay.

We should also add that consideration should be given to extending rules on the recording and sharing of beneficial ownership to the ownership of real property.

Mr. Chairman, I want to conclude my remarks by saying that in their testimony before this committee, a number of witnesses have indicated an interest in engaging with the legal profession on this issue. On behalf of the federation and on behalf of our members, I can say without reservation that we would welcome the opportunity to engage in that debate.

Thank you very much, Mr. Chairman.

● (1555)

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

I believe you said that your consultations were over on March 15, so if you have anything further you could forward to the committee, that would be helpful. We hope to complete a report by June, but we won't be tabling it until September or October. Anything more that you could forward to us would be helpful.

Ms. Johnson is here as an individual.

Welcome, Ms. Johnson. The floor is yours.

Ms. Mora Johnson (Barrister-Solicitor, As an Individual): Great. Thank you very much. I'm a lawyer working in the field of anti-corruption and anti-money laundering.

[*Translation*]

It is a great pleasure to be invited today. Thank you.

[*English*]

I'm the author of certain reports on beneficial ownership transparency, and I will make sure that these get into the record of the committee.

Given the shortage of time, I'm going to quickly make a number of brief points.

First, I welcome the announcement by the federal and provincial finance ministers in December on making corporations more transparent. I would recommend that Canada follow the example set by European Union jurisdictions in creating public beneficial ownership registries. I will leave with the clerk a copy of this report, which highlights best practices and lessons learned from European Union efforts. They have a couple of years under their belt, and it would be useful to look at that.

I would also highlight one point from this report, which is that beneficial ownership registries must be fit for due diligence purposes. IDs and other information provided by corporations, upon incorporation, for example, must be verified by the registrar, and risk-based due diligence must be performed. The registrar should have an anti-money laundering and counterterrorism mandate, which currently is not the case with the business registries.

If criminals can simply provide fraudulent information to the registry, then repeat the same fraudulent information to a bank or a law office and say, well just check the federal registry, then that registry will be useless. Banks and others will not be able to rely on it for due diligence purposes.

A verified risk-managed registry will cost more, but there will be aggregate savings across the economy and even within government, because right now you have all kinds of people doing the same due diligence on the same companies. You could simplify that. Federal-provincial co-operation would be required to create a one-stop portal to conveniently search all registries.

Second, I would recommend the creation of new legal duties for nominees, agents, trustees, essentially people representing third parties, including nominee shareholders and directors. Those representing others should be required to always disclose their status, as well as the identity of the third parties they represent, to federal and provincial officials, including beneficial ownership registrars as well as financial institutions, designated non-financial businesses, and professions. Currently in the statute, financial institutions and others have an obligation to ask clients if they are representing third parties, but there is no statutory obligation to answer this truthfully.

Third, all designated non-financial businesses and professions should be required to inquire about beneficial ownership of corporations, entities, and arrangements as part of their due diligence obligations, but only when processing large cash transactions. Obviously this would be a huge burden on businesses, but not if there's a public beneficial ownership registry that's convenient and contains all the information. That would make it a very simple task.

Next, I want to briefly address the role of lawyers in the money-laundering scheme. As we heard, there are rules in place by, and enforced by, the law society, not FINTRAC. These rules as such are very useful. In my view, “no cash over $7,500” is an excellent and really important rule. Personally, I would take some of these rules further, but there's a process that's ongoing right now.

There are a lot of questions raised about the efficacy of this regime, and I feel that more empirical data is required to fully answer them. For example, what is the extent of the problem? Do we know? Do we understand? Money laundering is very difficult to detect. There's no dead body. How do we know the extent of the problem? What are possible advantages and disadvantages to restoring the cash due diligence record-keeping obligations of lawyers in the statute, as opposed to leaving them in the rules? Because of solicitor-client confidentiality, detection of these crimes must occur in other parts of the financial system.

As a simple example, imagine a situation where a lawyer were to deposit huge volumes of cash into his or her trust account in presumed violation of the rule. Would a bank be more likely to flag this to FINTRAC as a suspicious transaction if it were a legal breach rather than a rule of the law society? What about judges issuing warrants? What is the impact of there being a legal scheme versus the current scheme?

These are the types of questions that I think we need to answer before we decide whether or not the statute is the right place for due diligence obligations.

● (1600)

In terms of who should supervise the enforcement of these rules, it's pretty clear from the Supreme Court decision that it's unconstitutional for FINTRAC to access lawyers' files in the absence of a warrant and the Lavallee procedures. This will always hamper FINTRAC's ability to be a supervisor of lawyers.

Even if this committee were to conclude that due diligence obligations for lawyers should be restored to the act, could the law society remain a supervisor and enforcer of those obligations? This is currently the case in certain other jurisdictions, such as the English bar, and it might be a possible solution to some of the difficult issues.

Furthermore, I wanted to add that if the government plans to simplify the prosecution of money laundering offences, including facilitating money laundering by reducing the *mens rea* to a reckless or willfully blind or negligent standard, then a defence should be provided to lawyers and others of a reasonable due diligence.

Last, I wanted to mention something about Export Development Canada, which as I understand it, is currently exempt from the proceeds of crime act because it does not accept deposits.

However, recent media reports of its support for corrupt transactions have shown that it is at a high risk for handling the proceeds of crime. For example, if it makes loans of tens or hundreds of millions of dollars to companies that obtained business through bribery, EDC is at risk of being repaid with proceeds of corruption, some of which goes into the government coffers through corporate dividends. While the Proceeds of Crime (Money Laundering) and Terrorist Financing Act is not ideally suited for these types of risks, as it focuses a lot on deposits, and there are currently no statutory due diligence obligations in place for EDC, this might be something worth looking into, as the committee reviews risks of proceeds of crime entering the financial system.

Thank you very much for this opportunity. I'd be pleased to answer any questions.

The Chair: Thank you, Ms. Johnson.

We'll turn to seven-minute rounds. During the rounds, I would assume that everybody has seen the Finance discussion paper. To a certain extent, I think we're using that as background or a guideline, whether we agree or disagree with what's in it. At the end of the day, I'll guess we'll see. If you do have any comments you feel strongly about with regard to that discussion paper, don't be afraid to raise them at any point during the question period, because I think that's what we need to target as well.

We'll turn to Mr. Fergus for seven minutes.

● (1605)

[*Translation*]

Mr. Greg Fergus (Hull—Aylmer, Lib.): Thank you very much, Mr. Chair.

My thanks to all the witnesses today.

I will give you a few moments to adjust your earphones. Mr. Dusseault and I will be asking our questions in French.

Ms. Wilson, Ms. MacPherson and Ms. Johnson, my questions are mostly for you.

There is no doubt that the last two parliamentary reviews of this matter have identified a shortcoming with lawyers and the Canadian justice system. You mentioned that you have capped payments in cash to a total of $7,500 per client. That reflects well on your profession. It is very important, for the reasons you mentioned.

My first question goes to Ms. Johnson.

Your fifth recommendation is to impose due diligence obligations for clients. Can you tell us more about that? How can we strengthen those obligations? How far can we go, given the Supreme Court decision?

Ms. Mora Johnson: Thank you very much for the question.

So you are asking me about the details on the amendments I would make to the current regulations.

[*English*]

I'll answer that question in English.

As somebody who works in the area of anti-corruption, I'm sensitive to some of the issues that come up in that context. Where lawyers are conducting financial transactions on behalf of clients, and they're using negotiable instruments at risk of money laundering, I would impose greater know-your-customer and due diligence obligations as appropriate to verify if clients are politically exposed persons, including family or close associates, and if they're on sanctions lists or are otherwise high risk. I would also require lawyers to make inquiries about the source of funds in these types of cases.

I'll give you a couple of examples. If you are a lawyer and you have someone in your office who has negotiable instruments and would like to purchase a house, it would be really good to know if, for example, they are on a sanctions list, because people on sanctions lists need lawyers for certain purposes. If they're supposed to be subject to an asset freeze and they give you the stocks and bonds and bearer shares, it would be really useful to have that information. Similarly, it would be good to know if they were representing the Mugabe family or someone at high risk of receiving the proceeds of corruption.

These types of obligations are currently on the financial system, but because of the no-cash rule, it would really be when you have a serious risk of money laundering because, obviously, everyone needs a lawyer from time to time for whatever reason. Here I'm talking about high-risk transactions and high-risk situations.

● (1610)

Mr. Greg Fergus: Ms. Wilson, Ms. MacPherson, from the federation's perspective, what is the current standing and how would you react to that proposal to have a higher level of obligation on those potentially risky transactions?

Ms. Frederica Wilson (Executive Director and Deputy Chief Executive Officer, Policy and Public Affairs, Federation of Law Societies of Canada): It may interest you and Ms. Johnson to know that the draft rules, which of course are not finalized yet, are amendments to the client identification verification rule and include requirements to inquire into sources of funds. They include requirements that are not simply for one point in time, but are ongoing in the course of the relationship. From the feedback I have seen so far, I have every reason to believe that those provisions will survive the consultation period and be put forward as amendments to the rules.

I think Ms. Johnson and the Federation of Law Societies are on the same page on that, based on the feedback we received.

The issue of politically exposed persons for us is a slightly more complex one, but I co-chair the working group that's doing this work and we have it on our list to pursue and to look into further. The launch of our consultation predated the release of the Department of Finance's white paper. We want to return to a number of things in the white paper, so you may see that there will be more than one cycle or more than one round of amendments. We would prefer not to wait to move forward with what we think are important amendments that will strengthen the rule until we have everything in it, or have looked at all the other things we may also wish to add.

Mr. Greg Fergus: I have a subsequent question. At what point are your members obliged to report if you suspect that the proceeds of a client are illegally obtained?

Ms. Frederica Wilson: I think, in fairness, it's not so much framed as obligations in the constating legislation, but more as the powers that law societies have to share information. Of course, they are bound by privacy laws and so forth, and because they enter into the sphere of privilege, when they investigate a lawyer, which is say that privilege is not waived or lost when the law society conducts an investigation, they have some obligations. They have an absolute legal obligation to protect solicitor–client privilege.

However, they all also have the power to share information with law enforcement agencies, and they do so. Individual law societies have different policies as to when that is. I would note with some interest, however, that in our inquiries to the law societies, we've discovered that reports of suspicion of criminal activity often may be for something like mortgage fraud. So it's not restricted to money laundering activities and does not necessarily meet with any enthusiasm on the part of law enforcement to investigate. Indeed, sometimes what the regulators are told is, “Well, you acted, you've suspended or disbarred the member; we have compensation funds and insurance funds that compensate the victims of these things”, so it is not unusual for there to be no further law enforcement action even where there is a report.

The other thing that I think needs to be said is that law societies are looking at compliance with their rules. Of course when they, for example, audit a law firm, they look at the accounting records and they are looking for breaches of the no-cash rules. They are looking for things that don't look right to them, but they are also looking in a broader context, so it's not always about crimes. It's often about failure to obey the regulations of the law societies.

The Chair: Sorry, Greg, you're well over the time. You may get a second round.

We'll go to Mr. Albas.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): I certainly will continue on some of this, so hopefully I'll catch some of the same ideas.

In regard to it, I do understand that the process is such that many might say in law enforcement that they have to get a judicial order, that in fact some of the processes you may have are more immediate and can be more far-reaching because of multiple different complaints across different files, and that you may ask for demand documents on a whole host of fronts. So, I certainly appreciate that there is a system in place and that for the most part it works.

Ms. Johnson said not a lot of data is shared. Now, is that something that the committee is going to be making recommendations on?

● (1615)

Ms. Frederica Wilson: Yes, in fact, we've begun our work on best practices, and we have identified the lack of consistent data as a weakness and something we would like to see changed. I mentioned that law societies are enforcing their rules and they keep pretty good data on the breaches of this obligation for trust accounting or breaches of this provision of the rules of professional conduct. However, they have not been necessarily separating out from that breaches of the rules that, although they also have other purposes, are aligned with or intended to address the same objectives as the federal anti-money laundering and terrorism financing regime. A couple of law societies have begun to do that, and it will be our recommendation that we move to standardized and consistent data collection in this area.

Mr. Dan Albas: That's important because for many people the data would say that the system is performing or not. They can ask about trends and whatnot. But if you don't have that kind of forthcoming and there's anecdotal evidence, people may lose faith in that system and then we would have to rejig the system, I guess, to make sure, because we can't have any light between these kinds of cases. I do understand there is a solicitor–client privilege that needs to be maintained.

Now, just switching gears slightly, have either of you, or maybe even Ms. Johnson, heard of cases where courts—I'm thinking at the provincial level, so they are civil claims—and certain lawyers may unwittingly be involved in money laundering? Some countries have capital requirements, so that if they are going to bring money into another country like Canada they have certain stipulations for bringing in that capital. One strategy I have heard of anecdotally in a particular conversation—because members of Parliament speak to all sorts of different people, and I think that's a good thing—is that a subsidiary of a particular company doing business in Canada will make a private arrangement with another corporation or entity. That will create a contract and then break the contract. Then one of the parties will sue for damages. Obviously the subsidiary would then take it to court, and then the court may find that that subsidiary broke contract and demand payment, which then goes to the host country, which, of course, requires a court order to have those monies. Then those monies are brought into Canada and then distributed for other purposes than what they were intended for. Have you heard of this kind of strategy, and if so, is it being addressed by your committee?

Ms. Frederica Wilson: We talked about and worried about that kind of strategy in the committee that I co-chair. The people I'm working with are people working directly in investigations, enforcement, and similar activities at the law society. They're not the politicians; they are the people who are doing that work. I have not heard of any specific examples, but I will say that, while this only deals with cash, our no-cash rule picked up some exceptions that come out of the federal regulations—although, of course, that's about suspicious transactions and large-cash reporting. I can't recall whether this is right out of the regulations or whether it simply seemed like a good idea back in 2004, but the no-cash rule includes an exception for money that is paid as a result of a court order, which could include exactly what you're talking about.

We've said that we don't think it's an exception that we should maintain. We think it should come out of the rule. Again, that's only dealing with cash, but we looked at it and said it's a clunky way to launder money, but if you're a major corporation with a major contract with very high stakes, for example, it could nonetheless be an effective way to deal with large quantities of money, and we've taken that out.

Beyond that, I can't say that I have anything more specific to offer.

Mr. Dan Albas: A court order is issued awarding damages, and then money is transferred from a foreign jurisdiction into Canada. Is FINTRAC aware of that and of the rationale for that? If someone was to have multiple payments over a period of time, perhaps that may show up.

I'm not privy to whether or not this is something that's done in one big shot at a time or if it's done over a series of different contracts being brokered with different entities.

To me the question is, are we creating a structural ability where we're allowing our courts...? To be fair, when I talk to people, many people feel that they're not able to see their case as quickly as they'd like. I'd like to know if this is a small problem, or even if it is a problem, and whether or not there should be some oversight of some of these court orders to make sure that FINTRAC or the law societies are able to account for them and to flag them if there's an issue.

● (1620)

Ms. Frederica Wilson: I'll say one thing and then defer to Ms. Johnson, because I think she may have more insight to offer than I do on this.

Your question really demonstrates to me the important point to keep in mind, that in many cases and many transactions, there are a number of players, some of whom have reporting obligations and some of whom may not. The courts don't and, of course, lawyers don't, but banks do. It's always important, I think—and we've talked about this a lot in our work—to think about that web.

On a tangentially related point, we are concerned about the fact that it is possible for somebody to deposit money into somebody else's account. If you are a lawyer with a trust account, it is possible for someone to go to the bank and deposit cash into your trust account or in another form, and you can't stop it. We've talked to banks. There's some possibility of flagging the account—they're supposed to phone—but it's very porous. We are unable in many cases to get that information from the banks as to who made the deposit.

I mention that only because it's a tangled web with many players, each of whom may present a risk and may have a role to play in the monitoring activities.

I imagine Ms. Johnson has more.

The Chair: Ms. Johnson, go ahead.

Ms. Mora Johnson: Thanks very much.

I think you raise a fascinating question, and I don't know the answer, but it raises a much larger issue, which I think I touched upon when I talked about EDC. The statute that you're reviewing and all this work that you're doing is really focused on deposits and flow through, which is where the major risk of money laundering is. When a trust account is used for flow through, like a real estate transaction, that's where there were really huge risks—in the old days they took cash—and it's the same with financial institutions.

However, that's not the extent of all the risks. They are just the ones the statute focuses on. I know that the law society rules include things like client fees and bail. There are other exceptions as well—again, where it's not a flow through. It's the same with some of the rules for financial institutions, which is why EDC is not covered at all.

This might be a larger theme that the committee might consider looking at: money laundering risks or risks of receiving the proceeds of crime in cases where you're not looking at a flow through, if that makes sense.

The Chair: Thank you, all.

Mr. Dusseault, you have seven minutes.

[*Translation*]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Mr. Chair.

First of all, I would like to thank all the witnesses for being here and for the sage advice they are giving us.

Ms. Johnson, you talked about a

[*English*]

verified and risk-managed registry.

[*Translation*]

Of course, that is intended to make sure that the information is exact, realistic and, let us hope, regularly updated.

Can you give the committee an example that shows that such a public registry is trustworthy, meaning that the authorities can verify whether the information that people give is accurate? Are there places where the authorities have strong enough powers to make sure that the regulations are complied with?

Ms. Mora Johnson: Thank you very much. That is a very good question.

When I researched that question in preparing my report, I saw no examples, but everywhere in Europe, people have been wondering whether the registry can really be trusted.

[*English*]

To go one step further, currently the federal government registry for corporations is completely passive. People send the information, you create a new corporation, and the information simply gets transferred into the registry. There are no verifications right now, not even ID checks, not even to show a driver's licence to confirm that the person even exists. Of course, it was never created for anti-money-laundering purposes. However, this could be changed with a registrar who is able to do those kinds of verifications.

Obviously the more verifications they do beyond ID checks, the more expensive, cumbersome, and complicated the process is. A risk-based process might also work, which means that the person is someone with compliance skills, someone who understands how corporations are formed, and so on, and who is able to flag suspicious things, maybe send reports to FINTRAC, maybe contact the corporation for more information and ask for more documents. This is what we have in mind, someone who is able to really uphold the rigour of the registry.

● (1625)

[*Translation*]

Mr. Pierre-Luc Dusseault: I would like to talk about one aspect that you perhaps did not get into, but I feel could present a danger. If I am mistaken, you can correct me.

Often, company structures are very complex. The structure may extend into a number of countries. A number of companies do business with foreign firms, in fact. They may share part of the structure of those companies, but they may be located in countries where there is no obligation to keep a registry of beneficial ownership. Could that be a danger? Is it something that the committee should look into?

[*English*]

Ms. Mora Johnson: One of the recommendations I made in this report is that in any complex corporate structure where a company is a 100% shareholder of a subsidiary and 100% shareholder of another, or even more complex, the whole chain be included and all related companies be part of the disclosure.

The other thing is that when we're talking about beneficial owner, we're really talking about the ultimate beneficial owner. That cuts through all the chains to the ultimate owners. However, you're certainly right that in some cases, even for one simple corporation, it's not always clear and obvious who the beneficial owners are. There's a control definition, which would typically include directors; and then there's a benefit or ownership, which is who owns the shares, for example. Sometimes in a family-owned business there might be a patriarch who actually has the powers, pursuant to a unanimous shareholder agreement, to dismiss all the directors, to hire and fire everyone. That person would clearly be a beneficial owner in the control arm, even if they're not listed as a shareholder, for example, or a director.

It's a really complicated issue, which again requires a sophisticated, knowledgeable registrar. Some are basic, but others would require the registrar to go back and ask more questions, follow up, seek more documents, and go deeper.

[*Translation*]

Mr. Pierre-Luc Dusseault: We have mentioned diligence in verification. I think that it was Ms. Johnson who mentioned *mens rea*, but my question perhaps goes more to the Federation of Law Societies of Canada. As I am not a lawyer, I will not get into legal terminology too much, but I would like to ask about the difference between the two paradigms. The current approach is based on *mens rea*, meaning that there has to be proof of criminal intent. With diligence in verification, all that is needed is to make sure that the lawyer or notary has not turned a blind eye to a situation that, to any even marginally intelligent person, could appear suspect.

Can you explain the difference between the two approaches? What is the current situation? Should we move to a system based more on diligence in verification instead?

Ms. Mora Johnson: Are you asking me?

Mr. Pierre-Luc Dusseault: Actually, perhaps Ms. MacPherson can answer first.

[*English*]

Ms. Sheila MacPherson: Thank you, Mr. Dusseault. That's an excellent question.

In the regulatory world, a lawyer can commit an infraction of the rules intentionally, and that would be something that would be not only professional misconduct but likely also criminal misconduct. If somebody were knowingly engaged in money laundering, for example, they should be caught by law society enforcement, but they would also be caught by the larger criminal systems that we have.

Lawyers can also be targeted for breaching rules because they're acting negligently or without oversight. They don't necessarily have to intentionally mean to participate in money laundering if their practices and structures are sloppy or careless. If it's an oversight, that can be a breach, and lawyers can be disciplined for breaching the law society code. A good example is client identification. Sometimes lawyers get busy. They may not properly identify their clients. They don't intend to break that rule, but those types of failures should be caught through a law society auditing process, and the lawyer can be disciplined for that even though they didn't intend to breach it. The negligent performance or the lack of attention to detail doesn't need to be intentional.

That is the strength of having a number of different layers. The law society can act not only on intentional wrongdoing but also on negligent wrongdoing, and even on wrongdoing that occurs simply because you believe you're doing the right thing but you don't comply with the rules for whatever reason. That could still be a breach. It may be a defence, in terms of how you deal with a complaint or prosecution, that you've tried to do your very best, but it can certainly be a breach.

I don't know, Ms. Wilson, if you want to add anything.

● (1630)

Ms. Frederica Wilson: I do very briefly. I'm respectful of everybody's time. I started my career as a criminal lawyer. It's been a long time since I was practising so I don't want to misspeak, but there is very well-developed law on *mens rea*, and strict and absolute liability offences. They are tied, in part, to the consequences that may prevail. If there's a risk of imprisonment and so forth, there are higher standards required when we're talking about the criminal law, and of course quasi-criminal, which can be regulatory offences.

My only comment on this would be that while, of course, it may be interesting to explore a lower standard of proof, which is what we're talking about, you need to proceed cautiously in that area so as not to run up against what is, as I said, very well-established law on what is permissible. This has to do with the charter. It has to do with your charter rights and your ability to make full answer in defence in the face of serious potential sanctions.

The Chair: Okay. Thank you all.

I'm turning to Ms. O'Connell for seven minutes.

Ms. Jennifer O'Connell (Pickering—Uxbridge, Lib.): Thank you all for being here.

I'm going to start with Ms. Richard and Mr. Land. I'll get you in this a little bit. Are there any requirements—and forgive me if you said this at the beginning and I didn't catch it—to report to FINTRAC or other bodies large sales of jewellery?

Ms. Phyllis Richard: Yes, there are. Are you referring to large cash transactions?

Ms. Jennifer O'Connell: Not just cash, but I could see this being a very neat way to launder some money. What's the requirement then?

Ms. Phyllis Richard: Large cash transactions, over $10,000, must be reported to FINTRAC. If there is a large transaction, but it is not cash, the only reporting requirement there would be if, in some way, it were suspicious or you knew that criminal activity was involved.

Ms. Jennifer O'Connell: You mentioned at the very end of your intervention that an area of concern is auction houses. Can you elaborate? That's kind of where your delegation then ended.

Ms. Phyllis Richard: The thing with auction houses is that at the moment, one can go into a jewellery auction.... There are many, many of them across the country. Some move, some are permanent houses, and some of them are absolutely legitimately good businesses. You can go in there and literally have $200,000 in cash and there is no requirement to report to FINTRAC that kind of transaction. There's no requirement for a suspicious report either, other than if there's a good corporate citizen, they would hopefully alert law enforcement. It is a gap within the sector that could be tightened up.

Ms. Jennifer O'Connell: What about on the other side of it with auction houses, if individuals have under the $10,000 cash limit? Let's say they're right have $8,000 or $9,000, so the jeweller where they're purchasing the items doesn't necessarily immediately flag that. However, if you acquire several pieces of that value and then walk into an auction house to sell them, basically, in an estate sale or in estate type situation, what are the requirements for auction houses to know their clients, for the sale of this merchandise? Are you aware of any?

● (1635)

Ms. Phyllis Richard: I'm not aware of any, other than, obviously, if a stranger is walking into any kind of sales environment, the seller wants to know who they are or at least know that they're verified, and that if they write a cheque, the cheque won't bounce, and that sort of thing. There's no actual requirement.

Ms. Jennifer O'Connell: I'm going to turn back to the law society. Can you tell me how many audits have occurred specifically as a result of the money laundering, anti-terrorism financing regulations over, let's say, the last five years?

Ms. Frederica Wilson: The simple answer is no, because of the point I made earlier about how the data is collected. What I can tell you is that law societies—all but our tiniest law societies.... And as you'll appreciate, we have three northern law societies that are required to do all of the same things as the larger law societies, but they are very, very under-resourced, so they face more challenges with some of these activities and need to turn to some of their other fellow law societies to help them with this. It may be a little more ad hoc, but all other law societies have regular audit programs that are random. I can tell you that the frequency ranges. For example, in Prince Edward Island, they audit every law firm every year. In Ontario it would be roughly every law firm every five years. In Manitoba, I believe it's something like every law firm every three years. That just gives you a sample.

I mention that because when they go in and audit, in addition to looking at good accounting practices and compliance with the trust regulations of the law society, they are looking specifically at no cash, and client identification and verification. The way these audits are done, as you can appreciate, is much the same as when have your books audited in your company. Your sample files are pulled, and if they have any concerns about what they see, they pull more and look at them, as well as looking at all of the actual ledgers and transactions, of course.

Ms. Jennifer O'Connell: I don't mean to cut you off, but my time is limited and I have several questions.

I recognize those audits. However, there's much more that the legal community could be doing to address money laundering than just identification and cash. Oftentimes it's a lawyer setting up a corporation, setting up articles of incorporation, setting up all of the parameters around things that may actually be the tools for money laundering and financing of terrorism. So my questions about audits are important not just in terms of the cash and identification points.

If law societies are essentially self-regulating this based on the Supreme Court decision around money laundering and anti-terrorism legislation, how can they demonstrate to governments and the public, that the legal community is adhering not just the idea of no cash, but to preventing any suspicious behaviour that could be in the realm of money laundering and terrorism financing? How can we, as legislators, feel comfortable—and I read the Canadian Bar Association brief, and I recognize that's not in your submission—in saying that the majority of lawyers are following these regulations? How do we know that, if there's no data to suggest that the audits are being done as specifically targeted by this legislation? How can we know this, and why have other common law jurisdictions been able to have more of a microscope and focus on the follow-up in regulations to ensure that this is actually being done, and not just in those two areas of identification and cash?

● (1640)

Ms. Sheila MacPherson: The law societies are looking at enforcement of the rules that actually replicate or mirror what is contained federally. Rather than having enforcement occur through that vehicle, law societies are charged with enforcement, and those are things like cash and money laundering.

The other area of enforcement is to ensure that lawyers' trust accounts are not used for purposes other than the provision of actual legal services. As we indicated, the majority of Canadian lawyers are already governed by a rule in that regard, and, indeed, there have been prosecutions of lawyers who have used their trust accounts for purposes other than the delivery of legal services, in other words as repositories of money inappropriately. The proposed new rules would provide that all law societies will adopt a rule that will prohibit lawyers from using their trust accounts for purposes other than connected with the delivery of actual legal services. That, I think, will be an important thing to bear in mind, and the law societies will be looking for enforcement of those issues.

The issue or challenge generally with respect to the role of corporations in money laundering is that if a lawyer sets up a corporation, that corporation is a legitimate way of doing business. The lawyers can be acting completely appropriately. The corporation goes off and does its business. The lawyer has no subsequent involvement necessarily with that corporation in terms of its transaction. So arguably the responsibility for looking at those corporate structures as vehicles of illegal activity rests through the corporate registry structure.

Ms. Jennifer O'Connell: That's the exact point. When the lawyers continue to act via the mechanism of these corporations because there is a protection, because they are exempt, there is a real benefit to keeping the lawyer involved in the corporation moving forward because they're exempt for money laundering purposes.

The Chair: We'll have to end it there, Ms. O'Connell. You're over your time, but Ms. Johnson wants to add to the answer.

Ms. Mora Johnson: I would add just one small supplementary point to what was already said, which is that there are numerous cases where the lawyer will actually act as the nominee shareholder or director. When law enforcement or banks or whoever are seeking information about the beneficial owners, the lawyer will say, that's privileged, solicitor-client information. That has definitely been an issue. Although, again, if the government passes beneficial ownership...changes corporate law, then that would remove any privilege from that information. At that point, it's not privileged; in fact it will be available in a public registry.

Ms. Jennifer O'Connell: Thank you.

The Chair: Thank you, all.

Mr. Albas. We're in five-minute rounds.

Mr. Dan Albas: Thank you to all for our witnesses for attending today.

I'll start with the jewellers. Thank you for coming and talking about your industry.

In regard to compliance cost, would you be able to share any ballpark figure on what the average jeweller has to do as far as their administrative compliance with FINTRAC is concerned? Do you have any tracking or any indication, whether it would be anecdotal or something that has been bandied about in the industry?

Ms. Phyllis Richard: We have nothing concrete where we can say that it costs *x* number of dollars. Going back to what my colleague said, you must remember that so many of the jewellers in Canada that are captured are small independent businesses. Sometimes there are only five employees. To develop and maintain an anti-money-laundering compliance regime can be quite onerous, because they're really not structured in that way.

If you look at a financial institution, for example, it's top-down, it's corporate, and everybody falls into line. Jewellers just aren't like that. I really don't have an answer that I could give you that would be —

Mr. Dan Albas: Do you know whether FINTRAC has done any consultations with your industry to deal with this, to create some type of standards? We had a witness the other day who felt that his understanding of the rules was made only expressly clear after he was taken to court, that he had certain obligations.

Is there any forward guidance to your industry or consultations by FINTRAC?

● (1645)

Ms. Phyllis Richard: We've been talking to FINTRAC for almost a decade now.

Mr. Dan Albas: Do they talk back?

Ms. Phyllis Richard: Yes, they do.

On a very positive side, though, we recently had a meeting with FINTRAC where we really looked at the sector profile. I think we really turned a corner in having them understand the uphill battle for a lot of the small businesses. There is dialogue going on that is beneficial to both.

Mr. Dan Albas: I could put myself in the shoes of a jeweller who would say, “Gee, if I sell these earrings as a pair, I'm going to have to file a report and maybe I don't have time, so I'll just ring them up as $5,000 apiece and then not have to do a submission.”

It's really important that FINTRAC engage with your industry and that there's a better understanding of everyone's obligations, as well as what the costs are, because if there's no measurement and the process is onerous, that might be another issue.

Mr. Land.

Mr. Brian Land: There are two realities out there. There are the chains such as Peoples and Birks, and so on. In that environment, the system is automated. If there is a transaction for cash over $10,000, the system demands the information before the sale can be processed through the point of sale.

For the smaller jeweller initially, that's where the costs are up front, namely in setting up their compliance system and following all the restrictions. On an ongoing basis, the costs are not as significant once they have the compliance in place.

One of the things about our association is that we have a benefit for our members that hooks them up with a tool kit that makes the process easier.

Mr. Dan Albas: Obviously your membership is voluntary, not forced or compelled.

Mr. Brian Land: Correct.

Mr. Dan Albas: I'm sorry, Mr. Land, I don't have enough time. I'd like to go to the Federation of Law Societies again.

In regard to the ability to send cases to law enforcement, you said that sometimes they're just not interested. I'd like to hear a little more about that.

I also want to hear more about the cases where someone decides, "You know what? There's an investigation going on. I'm going to parachute out. I'm going to resign and no longer practice as a lawyer or a notary, or whatever the association is." What mechanisms are there, then, for your system in terms of accountability? If that's the case, does the case just stop or does it get referred to law enforcement?

Ms. Frederica Wilson: I want to clarify one thing. I don't know that law enforcement is not interested. It may be a resource question, or it may be a response to the fact that some action has been taken, so I don't want to smear law enforcement.

When a member is under active investigation or has been cited and is in the middle of a hearing or awaiting a hearing, they are not simply permitted to resign. They must apply for permission to resign or to withdraw their membership. The law society will not necessarily agree to that if they think, for example, that the consequence of a successful prosecution will be disbarment. That's important.

Even if in appropriate circumstances they permit the member to resign, they still have the capacity and do share information with law enforcement.

Mr. Dan Albas: Okay.

Just briefly, on audits, you said that it varies in different jurisdictions. In Manitoba, it's every three years, and five years in Ontario.

Do you feel it is a good thing to have various standards throughout the country, or do you think there should be a uniform auditing process, because FINTRAC does not apply here, though it applies to every other industry. I understand we're a common law country, but with a charter, so we have to do these little workarounds.

Do you believe there should be a uniform standard time for auditing?

Ms. Frederica Wilson: I do think there should be a uniform standard, and we are working on that. However, the reality, of course, is that when you're regulating 50,000 lawyers, as the Law Society of Ontario does, compared to regulating a few hundred as the Law Society of Prince Edward Island does, there are resource challenges.

However, I want to add that in addition to the sort of periodic random audit process, law societies engage in risk-based audits. They will target for re-auditing any law firm that they've gone into and had concerns about. They also engage—again, it tends to be in a targeted way—in practice audits, where they'll have a more comprehensive look at a law firm. The numbers I gave you are really for the random audit process.

● (1650)

Mr. Dan Albas: Thank you.

The Chair: Thank you.

Mr. Sorbara.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Thank you for your comments, everyone. I don't want to repeat what my colleagues have said. I am going to try to keep the questions shorter, if I can.

In terms of the submission that was provided by the Federation of Law Societies of Canada—and everyone can open it up—to your point on beneficial ownership, basically what you've stated is that even if we have rules on beneficial ownership, if we don't have a registry, it won't be effective.

Ms. Sheila MacPherson: That's correct.

Lawyers can verify.... It makes verifying the beneficial ownership very, very challenging, because FINTRAC has said that simply asking your client—verification through your client—is not sufficient.

There's no degree of enforcement. There's no degree of verifying that that information is in fact accurate. That's where a publicly accessible register, with the ability to have some rigour around that, would aid all lawyers.

Mr. Francesco Sorbara: Secondly, Ms. Johnson, you commented on the fact that what we need to be able to discover is whether a lawyer is representing a third party. You made a comment to that effect.

Can you elaborate on that comment you made?

Ms. Mora Johnson: Sure.

One of the challenges with law enforcement and in this whole area is that often, for perfectly legitimate reasons, corporations will create other corporations to run investments, or lawyers will act as nominees, or they'll be trustees acting on behalf of beneficiaries.

There are all kinds of situations where a third party will be acting for someone else. Especially if that person controls the financial levers, it's not at all obvious that they're a third party, not the principal.

In cases where third parties are acting, I think it's critical that they make banks, lawyers, trust companies, and government officials, including the registrar, aware that they're a nominee, and what the names are of the beneficiaries or the persons for whom they're acting.

Mr. Francesco Sorbara: We could, in your opinion—and obviously, the others, please chime in on this—get to a point where you could set up a registry, have the data available for.... I think the comment was "must be fit for due diligence basis" without violating —I am not a lawyer, so if I use language that's inappropriate, excuse me—or protecting the solicitor-client privilege.

Ms. Johnson.

Ms. Mora Johnson: Would you like to take that first?

Ms. Frederica Wilson: Well it depends on whom you're asking for the information. If you're requiring the corporation to file that information—if that is a requirement of corporate law that you provide—as you now have to file a variety of information for publicly traded corporations, then it would have to go in the filing, so the corporation could not be created and would not exist.

If you're talking about this *ex post facto*, asking lawyers who the beneficial owners of corporations are, that presents potential issues with regard to solicitor-client privilege. That's one of the reasons we are so supportive of the idea of beneficial ownership registries. It becomes a matter of corporate law. It's simply a requirement like many others.

In addition to those situations in which lawyers are creating corporations—and they would have to on behalf of their clients comply with those requirements—there are other situations where lawyers aren't involved in creating the corporations but where we are seeking to impose an obligation on them to know who the beneficial owners are. This will provide a mechanism for them to be able to verify the information they get from their clients.

Mr. Francesco Sorbara: In the European Union, it has been done for a number of years. With regard to their registry, have they been able to do it without what I call "layering", adding costs to entities doing business? Have they been able to do it efficiently and effectively?

● (1655)

Ms. Sheila MacPherson: That's our understanding.

One of the challenges of doing it at the local lawyer level is that every lawyer will have verification differently and the implementation will be uneven across the country. If there is a national registry—and I've read some of articles that you've done on this topic—that is likely the most cost-efficient way of achieving the ultimate objective. Of course, this is also a provincial-territorial issue as well.

Mr. Francesco Sorbara: I was going to comment on that.

In Canada, I would like to have a national securities regulator, if I can say that. Would the same sort of territorial-provincial-federal issues arise in unison in having a national registry for beneficial ownership?

Ms. Sheila MacPherson: Very much so.

The Chair: We'll have to move over to the other side.

However, on this point of the lack of a central registry, do you have any suggestions on how to deal with the provincial aspect? We're talking about federal jurisdiction here. Is the only way to address that issue with meetings and agreements between the provincial and federal ministers, or are there other areas to deal with that problem? You're only dealing with part of the equation when you're looking at the feds.

Do you have any suggestions?

Ms. Mora Johnson: Maybe I can take a first—

The Chair: Or what's the gap that's left when we don't have the ability to deal with the provincial side?

Ms. Mora Johnson: As you're aware, corporations can be incorporated federally or provincially. Provinces are responsible for partnerships of all kinds. There are other business arrangements as well, and trusts. That's also provincial.

My understanding, from the announcement made by the finance ministers in December, is that all the provinces have agreed to make changes to their corporate law statute to require the disclosure of beneficial ownership information. It's an excellent beginning.

In terms of the creation of registries, because of federal-provincial responsibilities, my proposed solution—I mean you can't get away from those responsibilities—would be that there be co-operation to set up a single portal and search engine that could pull information from all of the registries.

By the way, these registries already exist. They're called "business registries" or "corporate registries". They don't currently contain beneficial ownership information, but they could. They could be amended.

Undoubtedly, it will be a bit of a patchwork over time, but presumably with the commitment, which exists right now, we'll get there. It would be most convenient for businesses to have one search engine that can pull all of the data from all of the registries at once.

The Chair: Thank you. That's very helpful.

Mr. Kelly, five minutes.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you.

Going back to a remark that Ms. Wilson made early on in this meeting—and I know that Mr. Albas touched on this as well—you mentioned the lack of enthusiasm for prosecution. You specifically identified mortgage fraud. I know something of the prevention of mortgage fraud from my professional life prior to public life. I was pleased to hear you acknowledge the lack of enthusiasm for prosecution of this, because it's real.

At a previous meeting, we had some discussion of this, and I'm pleased that you were able to get this into the record. There is often a lack of enthusiasm for prosecution of fraud in general, and mortgage fraud is a particular type of fraud that is often done to facilitate money laundering.

What are the solutions around this? How can we get law enforcement to encourage the prosecution of fraud? It's a serious crime, and one it seems that law enforcement agencies throw their hands up over.

Ms. Frederica Wilson: Well, I know from the law society experience that fraud is complex and difficult to investigate, and difficult to prosecute as a result—certainly one that has any sophistication to it. Therefore, these investigations take quite a commitment of resources.

I'm not expert on law enforcement, but if I had to guess, a law enforcement agency would look at an individual who is potentially guilty of mortgage fraud, see that they have been prosecuted by their law society, see that their law society has disbarred them—it would almost certainly be an offence that they would get disbarred for—and see that a potential victim has been compensated through the law society's lawyer-funded compensation funds. I imagine that in the world of scarce resources, which I understand law enforcement labours under, it may seem like quite a lot has been done in that particular case. Therefore, the public interest imperatives of a prosecution may be partially satisfied.

From my perspective, a huge part of the solution is a resource question. Of course, I know you've heard this, as I've read the testimony so far before the committee. I know there are many people saying that there are resource problems, which are part of the challenge for FINTRAC, for example. I suspect it is a problem for law enforcement at every level, one that requires money.

● (1700)

Mr. Pat Kelly: Yet to my way of thinking, your own answer to the response partially debunks that question of resources.

When the law society or another professional regulatory body actually does contribute the resources, professional investigative skill and prosecutorial skill, the law society would have its own lawyers who prepare a fraud case for a disbarment process. It's the same thing, in my experience, with the Real Estate Council of Alberta. It has resources to investigate fraud and to professionally prepare a case. It's almost like the case is then handed with a ribbon on it to public prosecution or to law enforcement to go to that next stage. Is that not the case?

Ms. Frederica Wilson: I think there are two important things to remember. The first is that law societies exist solely for the purpose of regulating the profession in the public's interest. I believe, from what I see, that they take that responsibility very seriously. They would feel that they have no option but to proceed.

They also have a lower burden of proof. The standard of proof in a law society prosecution does not have to meet the threshold of “beyond a reasonable doubt”. It's not a criminal prosecution. I know that when law enforcement and provincial and federal prosecutors are looking at issues, they look at the likelihood of conviction. The fact that there is a higher standard of proof to be met is sometimes a reason not to proceed with a case.

The Chair: Mr. McLeod.

Mr. Michael McLeod (Northwest Territories, Lib.): Thank you to all of you for coming to present here today.

I have a question for the jewellers. I come from the Northwest Territories. We have a number of diamond mines operating there. We have agreements with the diamond mines to provide the rough stones to different polishing companies, different people who are going to cut and polish them. I understand that the industry is fairly well regulated in terms of the finished product and that type of jewellery.

Do either of your organizations provide oversight for the organizations that take in these rough stones, the stones that are discoloured, the stones that are not as desired? Over the years, I've seen companies come into the north from different countries. They're foreign-owned. Once they have the stones in their hands, who's watching? That's my first question.

Ms. Phyllis Richard: It's an interesting question.

First, under the act, miners, cutters, and polishers are not covered, so the act doesn't apply to them. That said, government certainly wants royalties from the resource that comes out of the ground, so I imagine it would be Natural Resources Canada or another government agency that would be monitoring that sort of thing.

The vast majority, in fact to my knowledge all the rough that comes out of any mine anywhere in Canada leaves the country and goes to a sorting facility in Antwerp, London, or somewhere else, and then some of it is returned. I could be wrong on this, but I think even the small amount of rough that is cut and polished in Canada, which is diminishing all the time, has left the country and comes back. In there somewhere would be another government agency, I think, that would have oversight on it.

● (1705)

Mr. Michael McLeod: My next question is also for both of you because it wasn't clear to me and I didn't understand the use of cash. Is it still possible for somebody to buy large amounts of jewellery with cash?

Ms. Phyllis Richard: Absolutely. Yes, certainly. I wouldn't say it's a common occurrence. Of course, FINTRAC can speak to that because of all the cash transactions that we report as a reporting sector, but, certainly, cash can be used at retail, although, again, the most common form would be debit card or credit card in terms of paying for a piece of jewellery.

Mr. Michael McLeod: How about digital currencies? Is that something that your industry is...? Is that a common practice?

Mr. Brian Land: No, to my knowledge digital currencies are not used in Canada.

Mr. Michael McLeod: Okay, thank you.

My next question is for the Law Society of Canada. It was mentioned that there was really no oversight of the transactions that happen in your membership. It's based on trust, and it was mentioned that FINTRAC didn't have a role anywhere in it. Would that be something that could be incorporated so that more people would have faith in the system?

Ms. Sheila MacPherson: I think, Mr. McLeod, if the take-away is that there isn't any oversight, that's not accurate. I think there is oversight in ensuring the enforcement of the no-cash rule and the client identification rule, which mirror the federal rules and, in some cases, are stricter than the federal rules in that we're not allowed to take as much cash. For example, it's $7,500 instead of $10,000 in the federal rules. There is oversight in ensuring the enforcement of those rules, and there's oversight in ensuring that lawyers comply not only with those rules, but also with their professional obligations.

Where there are concerns that a lawyer may be an unwitting dupe, for example, of a money laundering scheme, then there can be reporting, and that lawyer can be investigated and scrutinized through the regulatory process as well as the criminal process, so there are a couple of different layers of oversight. With the new proposed rules, we will be looking at even greater oversight and, hopefully, a greater collection of data that will allow us to come back and talk about that oversight in a way that makes sense.

Mr. Michael McLeod: Does that include FINTRAC?

Ms. Sheila MacPherson: Yes. I'm going to ask Ms. Wilson to answer that.

Ms. Frederica Wilson: Prior to the introduction of the client identification and verification rules, we had extensive discussions/negotiations with the Department of Finance and FINTRAC to explore ways that we might be able to avoid the constitutional battle that we then had. There was, at that time—and I anticipate there would be now—a willingness to try to work with those organizations in a constitutionally compliant way.

What does that mean? It means that the information that lawyers obtain from their clients in the course of the solicitor-client relationship—and that is distinct from something you might do; it's purely business and nothing to do with providing legal advice or representation—is protected by solicitor-client privilege. Lawyers are no more allowed to share that, to breach that, than anybody else is, because that is the law, and the privilege belongs to the client.

There is quite a lot of information that could be provided to FINTRAC, for example, in an aggregate form, or ways that identify potential patterns via typologies and so forth, as Ms. Johnson and I were talking about before. The reaction of FINTRAC at the time was that they were not interested if we were not talking about enforcing the federal regulations. We remain willing to talk.

● (1710)

The Chair: Is that it?

Mr. Michael McLeod: I have one more question.

The Chair: Go ahead, the floor is yours.

Mr. Michael McLeod: I'm just curious because $7,500 is a lot of money—to me, anyway. How common is it in your field, in your law society, to have people walk in with $7,500 worth of cash?

Ms. Sheila MacPherson: It's not common at all. I know that the no-cash rule in the north encountered some challenges in smaller places, because sometimes you go into the community and somebody wants to retain a lawyer to do something and they only have cash because they don't often have ready access to bank accounts or cheques and that sort of thing. That became an important limiting issue for us to try to deal with, to make sure that we were able to allow people in small communities, perhaps without access to checking accounts, to still have access to legal services. I can tell you that it happens very rarely. I can't think of a time in the last 20 years where I've come across that amount of cash in my own practice.

Ms. Frederica Wilson: Just quickly, it may interest you to know that we surveyed that in the work of our committee. We went to criminal lawyers, in particular, thinking that they might be more likely recipients of cash, and it's actually not common. I think what Ms. MacPherson said is absolutely correct. It is very much the exception these days.

The Chair: Okay. Thank you, all.

We'll turn to Mr. Dusseault, and we will have time if somebody else wants to ask one more question, or for another round of five minutes. Let me know.

Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

My question is for the jewellers.

Like a number of us around this table, it really bothered me to learn that you can go and buy pieces in an auction house without anyone checking the identity of the owners of the items or their provenance. Perhaps we should examine those issues in more depth.

As I understand it, jewellers are required to declare transactions of more than $10,000. There are other areas involving luxury items, such as the art market, where pieces may be proceeds of crime. To your knowledge, are you the only dealers in the luxury goods market—I am not sure if I am using the right term here—to have obligations to FINTRAC?

[*English*]

Ms. Phyllis Richard: First, if I may just clarify this, auction houses may have their own requirements for identification, but there is no requirement for them to report it further to FINTRAC.

To your point about other luxury goods outside of a house, no, we are the only ones so far captured under the act. In the U.K., for example, instead of the requirement being for a particular industry, like jewellers, for example, they call them high-value dealers. It is illegal to accept over 10,000 pounds in cash unless you are a registered, high-value dealer. That applies to whether you're buying a diamond ring, a car, a boat, designer clothing, anything. If you are going to engage in that level of cash transaction, you must register as a high-value dealer. Otherwise it's illegal to accept the cash.

[*Translation*]

Mr. Pierre-Luc Dusseault: That is interesting.

I would now like to come back to the issue of companies and registries.

Even if there were a national public registry, how could we prevent people using dummy names?

One person can arrange with another person, perhaps a family member or someone with no family ties at all, to act as a nominee, meaning that they do certain things in someone else's name. Even if there were a registry, it would be impossible to find out whether the person is acting in someone else's name and whether the profits are going to that third person, who could be involved in acts of dubious legitimacy.

Is there a way of detecting the kind of strategy that involves an intermediary? You do not need a lawyer or a notary to make yourself into a legal entity. Anyone can do it at any time. How can we detect that kind of strategy?

● (1715)

[*English*]

Ms. Mora Johnson: That's an excellent question, and certainly in the world of corruption, because politically exposed people are so famous, it's almost universal to use an associate or an agent.

Banks commonly use commercial databases like World-Check. I don't know if you've heard of this. There are other ones as well. When a new client walks in the door, they run the name through this database. This database flags all kinds of fascinating information, including whether they're a relative or known to be an associate of a politically exposed person, whether they're on a sanctions list or they have criminal convictions—anything that's in the public domain. Thomson Reuters and different companies gather vast amounts of data, and it's quite expensive to have a subscription to that, but banks do this. They can certainly flag suspicious or red flags when an innocuous person walks into the bank. My hope would be that a registrar would do the same. You can't be sure, but it would create a red flag for enhanced due diligence, more inquiries and that sort of thing.

The other thing that's useful about a registry, especially if it has really good searchability, is that you can start to see certain patterns. For example, it's not uncommon for an agent working for a corrupt person to work for many corrupt people, and their name will start popping up more frequently, or you might have one address that has a surprising number of shell corporations associated with it. These patterns are almost impossible to detect, but if you get a large amount of data you can start to see suspicious areas.

I hope that's helpful.

The Chair: Okay.

The bells are ringing.

I would like to ask two questions.

Mr. Land, in your statement you said that you strongly believed that a better understanding of the fabric of your industry by the Department of Finance and FINTRAC would lead to more realistic compliance requirements and in turn a much higher rate of compliance from your industry. What do you mean by that? What needs to be done there?

Mr. Brian Land: As you know from our remarks, the jewellery industry in Canada represents somewhere in the range of 1,000 to 1,200 doors. There are probably 5,000 jewellers in Canada. We speak for the jewellery industry, but all jewellers don't belong to our group, so one of our challenges is to get the word out to other jewellers to help them understand the requirements, because we're constantly getting feedback from some of our consultants and partners that compliance among non-members might be lacking.

The Chair: Okay. Thank you.

We hope to avoid making recommendations that will cause any more constitutional wrangles. There's no question that beneficial ownership is one of the key areas we have to include in our recommendations. There have been some good suggestions here.

Is there anything else you want to add about closing these loopholes, and are there any other prime examples we should be looking at from other countries? We understand that the U.K. has a reasonably good system. Do you have anything to add in that area, Ms. Johnson?

Ms. Mora Johnson: My final comment is that many countries have explored different types of registries, including tiered access. There were lots of questions about who should have access to it. Of course, law enforcement, tax authorities, journalists, investigative NGOs, all kinds of people wanted access to it. Many countries ended up deciding it was cheapest and simplest to make the beneficial ownership registry public, even though they had started out thinking that they would not do that. Many jurisdictions have now gone public, including Germany, the Netherlands, and France. It'll be interesting to keep an eye on where that goes.

● (1720)

The Chair: Ms. Wilson or Ms. MacPherson.

Ms. Sheila MacPherson: I would just say that I think that the devil will be in the detail in many respects. I think there appears to be quite a consensus perhaps emerging on the importance of addressing this issue within the legal profession, within the community, and among Canada's ministers of finance.

It will be important to have the legal profession at the table, because we do bring a unique perspective and we would like to be at the table. We haven't been at the table, for reasons relating to the litigation, but that litigation ended three years ago and we would welcome the opportunity to talk through some of the challenges of implementing the objectives of the legislation, because we all want the same thing in the final analysis.

Thank you so much for your time today.

As a last thought, I should indicate that this issue is one of the top three priorities of the federation, so it very much is something we have our eye on and we appreciate the opportunity to make these submissions here today.

Ms. Frederica Wilson: I only want to say with regard to the comment about our failure to have a centralized security regulator, I think Ms. Johnson is absolutely right that the approach on this issue doesn't require there to be a single regulator or a single registry, but more that there be integration so that the information is available across borders.

The Chair: Okay.

With that, thank you all for your information.

Committee members, the bells they are a-ringing.

Thank you all.

The meeting is adjourned.