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The Honourable Wayne Easter

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● (1540)

[*English*]

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

Further to our statutory review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, we'll be holding a hearing with several witnesses this afternoon.

I first want to apologize to the witnesses. We had tributes in the House for the Humboldt Broncos, and that took us a little over our start time.

With that, we'll start with the witnesses and then go to questions. We'll start with you, Mr. Binns, from ATM Industry Association Canada.

Mr. Curt Binns (Executive Director, Canada Region, ATM Industry Association): Thank you, Mr. Chairman.

On behalf of ATM Industry Association of Canada, I would like to thank you for the invitation to participate in the review of the proceeds of crime and terrorist financing act.

My name is Curt Binns. I'm the executive director for ATMIA Canada. We are an independent, not-for-profit industry association engaged in non-competitive promotion of our industry. Our mission is to promote ATM convenience, growth, and usage worldwide to protect the ATM industry's assets, interests, good name, and public trust, and to provide education, best practices, political voice, and networking opportunities for members of our organization.

With over 830 members in Canada, ATMIA is proud to be the voice of the Canadian community. We support over 30,000 Canadian merchants and small business owners who operate ATMs in Canada. Millions of Canadians use safe, high-quality ATMs to obtain convenient access to their cash anywhere, any time, including remote areas and areas considered undeserving by our banks.

As a voice with regard to cash-dispensing ATMs, the ATMIA would like to use this opportunity to address the actual and perceived risks surrounding white label ATMs being used for the purposes of money laundering.

Since 1996, there has been only one criminal case involving white label ATM crimes in Canada. White label ATMs in Canada are regulated. Since 2009, white label ATMs have been subject to specific anti-money laundering regulations that require every ATM owner to provide a significant amount of information, including information about themselves, the source of cash used in the ATM, the location of the ATM, and details about the Canadian bank account to which the ATM will deposit funds to be withdrawn.

If a business owner has multiple ATMs or high-volume ATMs, he or she is also required to provide criminal background checks. The owner must file all of these documents with the regulators for an ATM to be operational. Regulations require annual audits and documentation.

In conclusion, the ATMIA takes the risk of money laundering seriously, and works with regulators and government agencies to help ensure that appropriate procedures and safeguards are in place to mitigate risk.

Thank you. I look forward to any questions.

The Chair: Thank you very much. Mr. Binns.

Turning to the Canadian Automobile Dealers Association, Mr. Hatch, chief economist, and Mr. MacDonald, chairman of the board.

It's always nice to have another Islander here.

Go ahead.

Mr. Peter MacDonald (Chairman of the Board, Canadian Automobile Dealers Association): Thank you, Mr. Chairman. Good afternoon, and thank you for the opportunity to appear today on a very important subject before your committee.

My name is Peter MacDonald, and I am chairman of the Canadian Automobile Dealers Association, known as CADA. I am also a new car dealer from Prince Edward Island. With me today, as mentioned, is our chief economist Michael Hatch.

CADA is a national association for franchised automobile dealers that sell new cars and trucks. Our over 3,200 dealers represent a vital sector of the Canadian economy. We represent all brands of vehicles available in Canada, and our dealers employ over 150,000 Canadians. Annually, our member stores sell nearly $120 billion worth of goods and services to Canadian consumers. This number is equal to nearly 6% of the GDP. It also represents more than 20% of the retail sales that happen in Canada every year.

So far in 2018, growth in our industry has been consistent after five straight record years in new car sales. The investments the government made in the auto industry, such as the $13 billion credit facility backstop, have worked and have made the taxpayer a profit. I'm also happy to report that our sector continues to make great strides to deliver more fuel-efficient vehicles than ever to the marketplace, using a mix of new technology and light-weight materials.

Turning to the problem of organized crime, this is an issue of great concern to our members. Our retail locations are too often targeted by the concerted efforts of criminal organizations to steal large numbers of vehicles, often with values totalling millions of dollars. As a national association, we have a long history of co-operation with the government when it comes to cracking down on organized crime. Our team has served as part of the federal government's business network in crime prevention, and worked with the Ministry of Justice on the creation of stolen vehicle legislation that also specifically targeted the trafficking of stolen vehicle parts, and the export of stolen vehicles from Canada.

CADA has surveyed and consistently found that large transactions involving large sums of physical cash are very rare in our sector, and are consistently tracked by current banking practices. Our research indicates that hard cash transactions in excess of $10,000 represent less than 1% of sales. Most importantly, when these types of transactions do take place, they are fully documented at the dealership and at the dealer's financial institutions. For new car sales in total, 92% were financed either through loan or lease last year; of the remaining 8%, only a tiny share were physical cash transactions.

Car dealers are a special breed in the retail landscape. We sell very large ticket items. We have a much smaller number of total transactions than other retail stores that sell a greater volume of smaller goods and services. Between the manufacturer and the dealer, and between the dealer and the customer, there is extensive documentation of all new vehicle transactions that take place in Canada, and how these transactions are financed. Because of this, extensive tracking of inventory to purchaser, any cash transaction over the current $10,000 amount is already captured by the bank.

A very straightforward but rare example would be that of a customer who buys a vehicle and pays cash. That vehicle would then be tracked as leaving the inventory, and the bank or the financial institution providing floor plan financing would be alerted to the fact that the car was sold. From there the cash deposit for the car would also be reported and tracked by the bank upon deposit. Dealerships that would avoid this reporting process risk the cancellation of their franchise agreement—a risk greater than a simple fine. That said, as strong corporate citizens, CADA and its members are ready to co-operate with the government with regard to the documentation of these transactions, however rare they may be.

CADA would like to recommend that it is worth pausing and ensuring that any new regulations will actually deliver results before targeting new sectors of the economy. As stated earlier, CADA is ready to co-operate with this committee and the government on any initiative that makes life harder for criminal organizations. Our record on these issues is clear and will not waver.

Thank you for your time. Mr. Hatch and I will be more than happy to respond to any questions later. Thank you.

● (1545)

The Chair: Thank you, Mr. MacDonald.

The Foundation for Defense of Democracies, Ms. Saperia.

Ms. Sheryl Saperia (Director of Policy for Canada, Foundation for Defense of Democracies): I'm honoured. Thank you, Mr. Chair, and all the members of the committee, for inviting me here today to contribute my comments on the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

I'm a lawyer by training and the director of policy for Canada at the Foundation for Defense of Democracies, which is a Washington, D.C, based think tank devoted to national security and foreign policy. I also work closely with the Canadian Coalition Against Terror, a non-profit organization comprising Canadians terror victims, counterterrorism professionals, lawyers, and others dedicated to combatting terrorism and assisting terror victims in rebuilding their lives. I was honoured to be awarded a Queen Elizabeth II Diamond Jubilee Medal for my advancement of sound public policy on terrorism issues in Canada.

I mention these credentials only to give you context for my remarks today, which approach this five-year review of our AML and ATF legislation from a broader strategic and policy perspective. My recommendations in broad outlines are as follows.

First, consider creating a subdivision of terrorist financing that would focus specifically on the financing of radicalization activities. Our government continues to emphasize countering radicalization as a foundational component of combatting terrorism. If targeting terror financing is a tool for preventing terrorism, we should also stem the financing of radicalization in order to help prevent it. As long as the foreign patrons of extremist ideologies have an unfettered ability to invest billions of dollars in educational, religious, and cultural institutions in Canada and the west, the threat of extremism and radicalization and, by extension, the threat of terrorism will only grow.

Just as FINTRAC is able to disclose information to the CRA when it has reasonable grounds to suspect that information would be relevant to money laundering, tax evasion, and the risk of terrorist abuse of the charitable sector, perhaps FINTRAC should also disclose information to the CRA when it suspects that information would be relevant to radicalization financing within the charitable or non-profit sectors.

Second, I noted with interest the testimony of Annette Ryan, who discussed the seized proceeds of crime being used to flow into the central revenue fund of the government, which is then the basis for departmental budgets. May I suggest that some portion, even a small portion, of the the seized funds, especially if they relate to terrorist financing, be directed into a fund that provides support for terror victims.

Subsection 83.14(5.1) of the Criminal Code provides that any proceeds that arise from the disposal of terrorist-related property may be used to compensate victims of terrorist activities in accordance with regulations made by the Governor in Council. To my knowledge, the Governor in Council has never created these regulations and the money has never been directed to terror victims. This compounds a larger problem, which is the dearth of government support for terror victims in Canada, particularly those who suffered their loss or damage from a terrorist attack abroad.

Third, from a larger policy perspective in the context of our AML and ATF efforts, and perhaps in respect of subsection 11.49(1) of the act specifically, Canada should be extremely cautious about allowing Canadian companies and financial institutions to conduct business in and with Iran, as it continues to entail profound risk, which the Financial Action Task Force has acknowledged.

Iran has not addressed the rampant money laundering issues that pervade all sectors of its economy, a problem worsened by systemic financial corruption throughout Iran's government bodies. The IRGC, which controls as much as one-third of Iran's economy, produces hundreds of millions of dollars in counterfeit money through its Quds Force, which is a listed terrorist entity here in Canada. The U.S. treasury secretary has said that IRGC Quds Force's counterfeiting scheme exposes the serious risks faced by anyone doing business with Iran, as the IRGC continues to obscure its involvement in Iran's economy and hide behind the facade of legitimate businesses to perpetrate its nefarious objectives.

Fourth, and on a more technical note, it should be a criminal offence for an entity or individual to structure transactions, in other words, to conduct a series of transactions to avoid reporting requirements. In the United States it's a crime to structure transactions. I recently spoke at length with Danny Glaser, who serves on the board of advisers of the Center on Sanctions and Illicit Finance at FDD, where I work. He previously served in the U.S. Department of the Treasury as assistant secretary for terrorist financing in the Office of Terrorism and Financial Intelligence. He told me that they get people in the U.S. a lot on the structuring offences, and he referred me specifically to title 31 of U.S. code section 5324.

● (1550)

Mr. Glaser added that the system with the requirement to submit an SAR or suspicious activity report for certain amounts of money is incredibly antiquated. Artificial intelligence and machine learning will ultimately determine if a person is acting consistently with their profile. Banks are already investing hundreds of millions of dollars in technology to monitor their clients' financial activities. So much will change in the financial world based on technology.

Fifth and finally, armoured car companies, which offer services that specialize in the secure transportation of cash and other valuable materials, need to be subject to our AML and ATF regime, as they are in the U.S. Again, according to Danny Glaser, armoured cars are one of the main ways in which drug cartels have gotten money from Mexico to the United States. It's very important, at least there, that they be regulated.

I have several other comments, but I will stop now due to time constraints. Thank you again for inviting me here today.

The Chair: Thank you very much.

From Heffel Gallery Limited, we have Mr. Gibbs.

Mr. Andrew Gibbs (Representative, Ottawa, Heffel Gallery Limited): Thank you, Mr. Chair and members of the committee.

I'd like to thank you for giving me the opportunity to attend this meeting as a witness. I was invited to attend as a representative of Heffel Gallery Limited. I've worked for Heffel for 20 years. I am their representative in Ottawa.

I shall start by giving a brief synopsis of the company and its place in the Canadian art auction market. Heffel was founded in Vancouver in 1978 as an art gallery specializing in high-end art. In 1995 the gallery held its first auction. Over the past 22 years, the company has grown enormously, and now has some 30 employees in locations in Vancouver, Calgary, Toronto, Montreal, and me here in Ottawa. We handle about 70% of all art sold at auction in Canada.

Heffel sells around 2,000 artworks a year, almost all by public auction. Around 300 are sold in live auctions. The remainder are sold in online auctions. A live auction will usually have a sale total of around $15 million to $20 million, while the 11 online auctions have annual sales of around $10 million. Heffel's top auction total was $42 million in 2016. The most expensive artwork sold was a Lawren Harris painting, for $11.2 million. The top annual sales were around $70 million, also in 2016. I believe the reason I was invited here is that our nearest competitors in the Canadian art auction market operate at about a tenth of this level. I hope that has given you an understanding of where Heffel stands.

Now I'll turn to the question of the vulnerability of our business to being used by money launderers. I believe there is a misconception that art auction houses operate in a shadowy world of anonymous buyers and sellers, as though we don't know the identities of the people who are asking us to sell their million-dollar paintings, or the names of the mysterious billionaire buyers who bid at our auctions. The truth is that the high-end art auction business in Canada is notably transparent. Knowing our buyers and sellers is probably the most important part of our business. Many of them are among the biggest names in Canadian business and public life. We don't take an artwork for sale unless we feel 100% confident in both the artwork and the owner's right to sell the work.

As well as the ethical barrier to selling an artwork from an unknown source, there are also huge potential financial risks for us if the work is subsequently found to have been illegitimately procured. We never accept third-party payments for purchases, and always remit the proceeds of sale to the consignor, not to a third party.

Unlike goods from other industries that can be broken down into anonymous components, an artwork is forever recognizable. One of the best tools we have for tracing the provenance of an artwork is our own database of Canadian artwork sold in auction over the past 45 years. The index includes a full description, photograph, and selling price of each work. We also send these details to independent art auction databases around the world. The art loss register is a body that traces stolen artworks, and the National Gallery of Canada keeps records of all our sales. If anyone wanted to trace a painting that had sold through us, it would take a matter of minutes, even seconds, to find when it was sold and for how much. Because this index is publicly accessible, every artwork can be researched not only by the CRA, the Canada Border Services Agency, CSIS, and anyone else, but also by a member of the general public. If you compare that with the sale of almost any other high-value movable asset, or the sale of art by private sale through dealers, you will see that the art auction business has an inherent transparency that separates us from other parts of the industry and other industries.

The due diligence we undertake to establish the identity, creditworthiness, and interests of our buyers is also important. The last thing we need in an auction process is an untraceable buyer. Imagine the loss of reputation that would follow the sale of a million-dollar painting to a buyer we did not know. It's absolutely in our interest to keep very close tabs on all our buyers. One cannot bid in one of our live auctions without having first presented ID. The registration process for our online auctions requires the inputting of significant personal and banking details. All of our offices are connected by a network to our own central database of buyers, sellers, and artworks.

Around 8% of artworks are bought by international buyers, who have to obtain an export licence to send out of the country any painting or sculpture that is over 50 years old and has a value of $15,000 or more. All of our sales are run through our bank, the Royal Bank of Canada. Heffel's accounts, which include the names, addresses, and contact details of all buyers and sellers, are obviously available for inspection by whichever appropriate authority may need access.

● (1600)

Another misconception that we hear about art auctions is the use of cash in purchases and sales. We encourage buyers to make payment by wire transfer. According to our terms and conditions of business, we specifically say that payment should be made by bank wire, certified cheque, bank draft, or cheque, accompanied by a letter of credit from the buyer's bank. We do also accept credit card payments, but as they represent a significant cut to our commission —the transaction fee is based on the overall value of the artwork, while our commission is based on a percentage of the value of the artwork—we try to discourage this.

We hardly ever take cash as payment. In 2016, when we sold around $70 million worth of art, the total cash payment for the whole year amounted to just over $50,000, with the greatest single amount being $7,500. Meanwhile, not a single seller is ever paid in cash. All payments are made by cheque or wire transfer.

I would expect the same extremely low proportion of cash sales to apply to our immediate competitors in the art auction business.

I hope this reassures the committee that the art auction industry in Canada, certainly exemplified by Heffel, is far from a haven for money launderers.

I look forward to any questions.

Thank you.

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

Turning to individuals, we have Mr. Tassé, senior advisor at the Canadian Centre of Excellence for Anti-Corruption, University of Ottawa.

Welcome, Marc.

Mr. Marc Tassé (Senior Advisor, Canadian Centre of Excellence for Anti-Corruption, University of Ottawa, As an Individual): Dear Mr. Chairman and members of the committee, I would like to thank you for the opportunity to contribute to the committee's review.

[*Translation*]

I will make my remarks in English. However, I will be pleased to answer your questions in French or in English.

[*English*]

I have worked for the past 30 years as a forensic accountant, an M. B.A. lecturer, as well as an expert on the subjects of anti-bribery and anti-corruption. I'm also a senior adviser with the Canadian Centre of Excellence for Anti-Corruption at the University of Ottawa. The centre is an academically based platform that promotes ethical practices aimed at countering corruption, bribery, and money laundering.

Mr. Chairman and committee members, corruption and money laundering go together. A report issued by the World Bank clearly showed the link between corruption and money laundering. According to some experts and media reports, the term “snow washing” is now associated with Canada as is the term “Vancouver model” for laundering the proceeds of crime.

Canada's reputation must be protected from reputational risk. Therefore, I would recommend that Canada address the weaknesses identified by amending the act and other acts in the following manner.

First is beneficial ownership.

It is essential that Canada make beneficial ownership more transparent in order to prevent abuse from corporations and trusts held by secretive beneficial owners. To that end, an urgent reform of corporate registries across all 14 Canadian jurisdictions is needed to ensure that beneficial ownership information is not only collected but also made available in a publicly accessible registry.

With public access to the beneficial ownership information, the act should also be amended to require all reporting entities to verify the identity of the beneficial owner; verify if their customers are politically exposed persons or their family members or associates; and identify the beneficial owner and verify their identity with government-approved ID before opening an account or completing a financial transaction.

Second is investigation and prosecution of money-laundering offences.

In view of the difficulty prosecutors encounter in proceeding with money-laundering charges because of the complexity of linking money laundering to predicate offences, we recommend that the government bring forward Criminal Code amendments to make money laundering easier to investigate and prove, and that more resources be available to law enforcement and prosecutors to enforce the money-laundering provisions of the Criminal Code.

Last is the role of legal professionals in the money-laundering scheme.

Legal professionals are inherently highly vulnerable to money laundering. Journalists have mentioned that “Company owners who don't wish to be identified in Canadian corporate registries can pay a lawyer or a stand-in to appear on all public filings.”

Where lawyers are conducting financial transactions on behalf of clients, and the clients are using negotiable instruments at risk for money laundering, lawyers should be required to know who their clients are and to be accountable for conducting due diligence, meeting their obligations, and inquiring about their clients' sources of funds and wealth.

In order to do so, it is recommended that the government bring legal professionals into the AML/ATF regime in a constitutionally compliant way; and that the act designate as high-risk all financial transactions by legal professionals, especially those using trust accounts, and require reporting entities to take enhanced due diligence measures on those transactions, including identifying the beneficial owner and the source of funds.

In closing, I want to emphasize that Canada must immediately take action in order to change the perception that it welcomes, or even encourages, corrupt behaviour.

I would like to thank you for your time. I sincerely hope that my comments will be helpful in combatting the laundering of proceeds of crime and the financing of terrorist activities in Canada.

I will be happy to answer any of the questions you may have.

● (1605)

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

I'll turn, now, to the counsel for Cassels Brock & Blackwell Limited Liability Partnership, Mr. Jason.

Welcome.

Mr. John Jason (Counsel, Cassels Brock and Blackwell Limited Liability Partnership, As an Individual): Thank you, Mr. Chair.

It's important given the comments Mr. Tassé made that I immediately distance myself from being a lawyer.

In addition to my role at Cassels Brock, I also lead a company called the Canadian Compliance Group. Together with our software partner, Resolver Inc., we provide compliance risk management software to just over 20 Canadian financial institutions. About 15 of those are small-to-mid-sized Canadian banks.

In 2012, I, along with Warren Law from ICICI Bank, formed an ad hoc group of compliance officers of the small and medium bank community in Canada. We have met consistently since 2012 as a forum for compliance officers to share information and issues about compliance with one another. As that has evolved over time, because of my roles working with the small bank community, people have now come to associate me with having some insight and knowledge about the issues and concerns of that community, so it's under that side of what I do that I'm here today.

In terms of the small bank community, if I were to say anything about what their concerns and issues are, I would first say that I'm a little distinct from the rest of the witnesses here today, because I represent a group that is actually a currently regulated group as opposed to an unregulated group. For us it's an issue of balancing. Since the late 1990s, successive governments have had a policy of supporting new entrants into the banking industry, and we find that with the advancements particularly in technology, what's been labelled as FINTRAC of late, the small bank community is actually starting to develop, be strong, and be successful. They're finding new and innovative ways to deliver their services to Canadians, and now we have in excess of 20 or 25 small Canadian banks that are serving the country in addition to the large six that we all know so well.

When it comes to AML or to any regulatory matters, the issue is balancing that need to support new entrants, and new competition into the industry without unduly stifling that competition through excessive regulation.

The group that I work with was surveyed by OSFI a couple of years ago. OSFI asked the group two questions: if you look at the regulation that applies to your institution, please tell us about both those regulations that create the highest burden for your organization, and those regulations that provide you the most value. By value, I'll give you an example. While complying with their current capital requirements is a large burden for a small bank, the banks themselves would acknowledge that it creates a huge benefit for them as well, because it really gets them focused on strong risk management practices, ensuring that they have sufficient capital to support their business models, so there's a real benefit that comes with that burden.

The single area that the banks identified as having the largest mismatch was anti-money laundering compliance. They view it as having the highest burden of any regulatory requirements imposed on the sector, and providing the least value to the institutions themselves. That is not to say that the institutions don't recognize the greater value of anti-money laundering compliance, and doing their bit to assist that good cause, but in terms of balancing the two priorities, balancing the priority of wanting to encourage the sector to ensure that the sector can be successful, we have to understand what the burden is doing in terms of those competing objectives.

If there were anything that the industry might suggest to you it is to have more principles-based regulations, which would allow the institutions to look at the objectives of the regulations and how they can best meet those objectives without unduly shackling their business with expense.

● (1610)

The only concern the industry would also share is that the regulators have to meet that burden as well, so any principles-based regulation requires sophisticated supervisors who can understand and accept that the small institutions are different from the large institutions. I'm sure you will have heard the expression “one size fits all”. The regulators cut their teeth, if you will, learning what the large institutions do with the vast resources those institutions can put against the issue, and they then try to bring that learning and apply it exactly in the same way to a small institution, which would have a very different risk profile. If we're going to move to principles-based regulation, it becomes very important that we also ensure that the regulators are up to the task.

Those are my comments. As with everyone else on the panel, I'm pleased to take your questions.

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

When we're starting our questions, probably a good place to start is your point on finding the balance. I think that's what our task is: to try to find the balance here.

Ms. O'Connell, you have seven minutes.

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

I'm going to start with the Canadian Automobile Dealers Association.

Mr. MacDonald, you spoke about how small the transactions in cash were. Do you have any sense of the percentages, and, specifically, is this number going up? We recently had representatives from the jewellery industry here. Jewellery was a particular form of money laundering, but I think in this day and age luxury vehicles might be a hot target. Even though you've said that the number of cash transactions was low, have you seen any sort of increase in those requests?

Mr. Peter MacDonald: If anything, I think we're actually seeing a decrease in those requests. I think that over the last number of years, we're seeing an increase in the number of vehicles that are either purchased through loan or lease through our banks. Now we're down to about 8%, and of that 8%, they may be coming in with a money order or a cheque, and very little of that is cash. It's probably less than 1%.

Ms. Jennifer O'Connell: Okay, thank you.

Does your organization represent the large international luxury dealers as well? Actually, maybe the better question is, what group of automobile dealers does your organization represent?

Mr. Peter MacDonald: Yes, we represent all makes. Any dealer of a vehicle sold in this country is pretty well a member of our association.

Ms. Jennifer O'Connell: Okay, perfect.

Thank you.

Mr. Michael Hatch (Chief Economist, Canadian Automobile Dealers Association): If I may, I can interject with some numbers.

Just in the last eight years, for example, between 2010 and 2017, the share of new vehicle sales that were fully cash purchases decreased from 17% of the market to 8% last year. That means, again, that more than 92 cent of new car buyers are either leasing or purchasing via a loan, as opposed to doing a total cash transaction.

Now, that's just a proxy for what we're trying to say, because, of course, you could have a large cash down payment and still take out a loan on a half of the vehicle, for example. But whenever there is a large cash portion of the transaction, it's essentially never physical cash anymore, which goes to Peter's point. It might be a fraction of 1%, but it's an insignificant level. Maybe a generation ago in certain parts of the country it would have been more common to have large physical cash transactions, but in today's economy, today's reality, in this day and age, it just doesn't happen. That share of cash transactions has gone down, and the portion of that share that's physical cash has also gone down, in our view.

● (1615)

Ms. Jennifer O'Connell: My questions were around the actual cash, because that's what we're talking about in terms of the laundering. Thank you for that.

I want to turn to Ms. Saperia. Your testimony was really interesting. You came forward with really specific recommendations, and I think we all appreciate that, so thank you. If you had additional comment, could you send it to the clerk so the committee could read that at a later date?

Ms. Sheryl Saperia: Sure.

Ms. Jennifer O'Connell: Thank you.

I was really interested in your comments around the crime of structured transactions.

I don't know, Mr. Tassé, if this is an area of interest to you as well, but I find that interesting because in Canada obviously we have a court ruling dealing with lawyers acting on behalf of their clients. I'm wondering if the crime to structure a transaction would, in your view, or in the way it was established, actually then capture from the client-solicitor privilege because it's really not client-solicitor privilege, but the crime of structuring. Is that generally where this is looked at, or is that the U.S.'s experience, or is it something different altogether?

Ms. Sheryl Saperia: My understanding is that they actually are two distinct issues because, in the United States, as I said to my colleague Danny, the lawyer-client privilege is sacrosanct there as well. I think, a while back, there had been some controversy about trying to find a way to bring lawyers under the regime. There was too much push-back within the country and it never happened.

At the same time, they do have these structuring offences. They get people on them very frequently, so clearly the two are distinct.

Ms. Jennifer O'Connell: Is that how they see how to include the legal community, who are acting on behalf of the criminals and money launderers? Obviously this is certainly not every lawyer in every industry. Is the crime to structure the way they went at certain lawyers' roles in the money laundering activities or the structuring of corporations, and things like that?

Ms. Sheryl Saperia: Again, when it comes to the structuring, I think in the United States they've got an offence for the client themselves, as well as for the financial institution. Neither is allowed to create a situation whereby the reporting requirements can be undermined.

Ms. Jennifer O'Connell: Okay. Thank you for that clarification. That's interesting.

Mr. Tassé, following a similar point, I think this committee has struggled—at least from the testimony we're hearing—with bringing the legal community under the regime. You suggested in your testimony that we do so. Do you have any opinion, or can you point to any jurisdiction that has done so, given the court ruling?

Mr. Marc Tassé: I think the law societies are aware of that and they're working toward that. I would say that fewer than 1% of lawyers are doing that, but it's just unfortunate. Technically, what they're doing is totally legal; they're not going against the law. It's the same thing in comparison sometimes with tax evasion, when we have other types of tax planning.

Ms. Jennifer O'Connell: Thank you.

Mr. Gibbs, you talked about third-party purchases. I think the selling, from my perspective, is not as much of an issue; it's money launderers trying to take dirty money and purchase something. In terms of the purchasing in the third-party process, do lawyers often purchase on behalf of clients?

Mr. Andrew Gibbs: Not in our experience, no.

Ms. Jennifer O'Connell: Okay, perfect.

Thank you very much.

The Chair: Thank you.

I might mention also that if anybody has a supplementary questions when someone else has already asked a question, just raise your hand and I'll try to catch you. As well, one should never make assumptions, but if you have any real concerns about some of the things that were said in the Department of Finance's paper, certainly lay them on the table before us or make a submission to the Department of Finance. Their deadline is April 30.

Mr. Poilievre, you have seven minutes.

● (1620)

Hon. Pierre Poilievre (Carleton, CPC): Thank you.

Madam Saperia, you were speaking about the dangers of the Iranian regime and separately about the issue of structuring, and then you indicated that your time was short, that you wanted to say more. Are there additional comments you'd like to put on the record?

Ms. Sheryl Saperia: Sure, I'd be delighted to. I'll start talking and you can stop me whenever I run out of time. I can be here all night. I can't actually, as I've got a flight.

The Chair: You have seven minutes, so I'll cut you off.

Hon. Pierre Poilievre: If you talk too much you might end up being a politician, so you have to be careful.

Ms. Sheryl Saperia: Thank you very much for the invitation to share a few additional comments, and I do have some.

I'll start with the fact that the FATF, the Financial Action Task Force, in its report about Canada noted that some of the penalties for violating their AML or ATF laws are not proportionate and are not dissuasive. It recommended that they be changed, which I wholeheartedly agree with.

It also seems to be symptomatic of a larger problem within a number of Canadian laws when it comes to both the enforcement and the penalties. I remember testifying before a committee a few years ago on Canada's export and import compliance issues. There was a case in April 2014 of a company called Lee Specialties Ltd. of Alberta that was fined for the unlawful export of some dual-use goods to Iran. They were charged $90,000, but the company had a revenue of $29 million so it was a very small penalty. This spoke to —and a number of international experts spoke to—Canada's poor rate of prosecution and low penalties for some of these compliance issues.

Another recommendation I had pertained what a previous witness, Mr. Shahin Mirkhan, said. He said, "I'm sure you will direct FINTRAC to check out the Iranian government officials who have dual citizenship in Canada. They are achieving money laundering to Canada from Dubai, Europe, and everywhere else." That was what he said. He's actually quite correct that Iranian government officials and their family members are using Canada to invest money that has been illegally obtained, particularly through corruption. Iran has one of the most corrupt governments. This is not a point for contention; I can provide endless evidence to that point.

I felt that in respect of this, besides using FINTRAC and our law enforcement agencies to better investigate this type of issue, we should also be using our other existing and complementary laws more effectively. I know that Canada recently passed its own Magnitsky law, as did a number of other countries. I know we imposed sanctions on some Russian officials and some Venezuelan officials, but we haven't imposed any sanctions on Iranian officials under the Magnitsky law. What Magnitsky was created for is exactly what these guys are doing. It has to do with gross human rights abuses. It has to do with profound and systemic corruption. I would just argue that as we study our regime here, we should also focus on the other laws that we already have in Canada and on using them more effectively.

Hon. Pierre Poilievre: One of those laws is about the liability of state sponsors of terror for tort actions by the families of terror victims and the victims themselves. You were instrumental in forming a bipartisan coalition to pass that law. Is there anything we could do or recommend as part of this report that would help ensure that victims have more tools to identify state sponsorship and hold those state actors financially liable through that law?

Ms. Sheryl Saperia: I think that's a really interesting idea and I'd have to think through the implications of that, but I do think it would be a marvellous idea to be able to clearly identify those state sponsors who are involved in terrorism and terror financing, as well as what I mentioned in my introductory remarks about radicalization financing as well. What I didn't get to say there was that it's its own version of money laundering too, because it's often money that's obtained through corruption that's then almost legitimized or cleaned through the process of giving a donation to a Canadian institution that is not necessarily up to good. I think that it's really important.

Your point about identifying those funds for victims speaks to another one of my points, which is that terror victims don't have enough support in Canada. They have no support federally, and they have very poor and inconsistent support from the provinces.

● (1625)

Hon. Pierre Poilievre: How much money from the seizure of terrorist assets do you believe we could unlock annually if it were purpose-dedicated to victims of terror as you suggested in your remarks?

Ms. Sheryl Saperia: Under this particular act, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, I'm not sure how much terror financing money there is. My understanding is that it was extremely low. They have been able to seize money under the AML, but not so much the ATF.

What I would be interested in is how much money they have seized under the Criminal Code provisions for terrorist-related financing and from the properties the government is able to seize. As I've noted, there is a provision that allows for those funds to be directed to terror victims and regulations, but that has never been done, so I don't know if the money is just sitting there. I don't know where it's gone.

Hon. Pierre Poilievre: How would we find out?

Ms. Sheryl Saperia: I would say that would be whoever is responsible for seizing those funds under the terrorism section of the Criminal Code.

Hon. Pierre Poilievre: I'm just wondering if the committee chair might consider asking the department if there are dollar figures we could assign to it. If we go forward with a recommendation that those proceeds be made available to terror victims, it would be good for the committee to know how much money is there.

The Chair: We can certainly direct that question to whatever authorities might have an answer. We can chat afterward and see if there is anywhere we can get an answer on that.

With that, we'll have to go to Mr. Dusseault.

[*Translation*]

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

[*English*]

Thank you.

I will ask my question in French.

[*Translation*]

Mr. Tassé, my first question is about beneficial owners.

No, actually, my first question is going to be about you mentioning that it is difficult for the state to lay charges.

Mr. Marc Tassé: Charges?

Mr. Pierre-Luc Dusseault: Yes.

It is difficult for the state to lay money-laundering charges because it is difficult to prove. The burden of proof is quite heavy.

Could you describe the current situation for us and tell us how we can improve it?

Mr. Marc Tassé: At the moment, most authorities have to have a very detailed case for their—

[*English*]

prosecutors.

[*Translation*]

They often decide that the case is not detailed enough. They have to be able to show a link between the person receiving the money and the sources of money, which can become very complicated. The legislation is such that the level of complexity sometimes dissuades authorities from moving forward.

So we have to try to simplify the approaches and also, I feel, give more power to law enforcement.

Mr. Pierre-Luc Dusseault: Right.

Do you know any countries where it is done more easily?

Mr. Marc Tassé: Unfortunately, I do not.

Mr. Pierre-Luc Dusseault: Ms. Saperia, I have some questions about financing terrorism. You mentioned something I had not realized. Money for terrorist groups could be coming into Canada.

When you look into the matter, you often see the opposite, cases when money leaves Canada for foreign terrorist organizations. When it is the other way around, what do the legislation and the regulations say?

Do we have an effective system in place to detect money coming from terrorist organizations to fund—heaven forbid—terrorist acts or radicalization in Canada?

● (1630)

[*English*]

Ms. Sheryl Saperia: Thank you very much for that question. Can I go back for just a second to the question that you asked the previous witness?

Mr. Pierre-Luc Dusseault: Yes.

Ms. Sheryl Saperia: I believe it had to do with the predicate offence and having to prove it.

With the greatest of respect, if I were a member of the committee —I don't have the authority to do this—I would be really interested in inviting a Canadian prosecutor, an American prosecutor, and perhaps a British prosecutor of these types of crimes to speak to the committee. I spoke to some of my American colleagues, and they have the same evidentiary threshold that we have here in Canada. There's no lower threshold, for instance, for "reckless", and I believe in the U.K. they use the word "suspect" as a lower threshold. In the United States, they don't have that, and for every element of the crime, including the knowledge that the proceeds had to have been unlawfully obtained in some way, all those parts of the crime need to be proved beyond a reasonable doubt, yet they don't seem to be having problems getting those convictions in the United States.

I would be really interested in comparing what's happening in the system and where we're breaking down here. Then, of course, in the U.K., they do have that different standard of "suspect". I tried to compare some of the words. It would be a really interesting comparison.

Mr. Pierre-Luc Dusseault: Thank you.

Ms. Sheryl Saperia: As for your question about the terrorism coming here as opposed to it going abroad, yes, it's a very real issue. In fact, in the public safety minister's 2016 "Public Report on the Terrorist Threat to Canada", he does talk about the fact that there are issues here, including, for instance, Hezbollah, which is a very active terrorist organization here in Canada.

I do believe that the act does account for that. I don't think they're just thinking about the money leaving Canada. I do believe that they're also considering how the money might be going in. But as I indicated in my remarks, I think that in acknowledgement of this government's large emphasis on radicalization, we might want to be doing more for that, because a lot of funds from a number of foreign states are coming here specifically for the purpose of radicalizing some of our young people.

Mr. Pierre-Luc Dusseault: Thank you.

[*Translation*]

My next question goes to Mr. Gibbs; it deals with works of art. It is a more technical question.

To what extent do companies buy works of art through your auction house? What is the percentage?

[*English*]

Mr. Andrew Gibbs: I'd have to get the figures for you, but off the top of my head, I would say that the percentage of corporate purchases would be less than 5%.

[*Translation*]

Mr. Pierre-Luc Dusseault: Okay. So it is not a lot.

[*English*]

It's not significant.

Mr. Andrew Gibbs: It's definitely not significant. Yes, nearly all the purchases are by individuals rather than companies.

Mr. Pierre-Luc Dusseault: Would you use the beneficial ownership information in your sector to know your client better? If it's a corporate client, would you consider using beneficial ownership information?

Mr. Andrew Gibbs: Would we consider using that even though at the moment we're not legally required to? Is that what you're saying?

[*Translation*]

Mr. Pierre-Luc Dusseault: Yes, at the moment, you are not required to use the information on the beneficial owner. However, I was wondering, in your business, whether it could be useful for that information to be available.

[*English*]

Mr. Andrew Gibbs: Yes, I can see that it is the way that everything is moving. Therefore, perhaps, for a company like ours, in the long run it may be that it is the right thing to do. I guess the difficulty that would arise would not necessarily be with a company like ours, because we're like the Royal Bank of the arts industry in Canada. Would the same regulations therefore have to apply to a two-person auction house working in a small town? Maybe. Certainly, with all of our buyers and all of our sellers we do all of the background checks that we can, even though we're not, as you say, legally bound to do so.

● (1635)

The Chair: We'll have to leave that there. We'll probably have another round, Pierre.

Mr. Sorbara.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Thank you, Mr. Chair.

Welcome, everybody.

I'm going to try to go around the table here, starting with the Automobile Dealers Association.

Would it be fair to say that for most high-priced vehicles across Canada, most of them are actually leased by vehicle drivers? I know from some retailers, say like a BMW or a Mercedes-Benz, which at one time was called DaimlerChrysler, about 80% of them are actually leased by the vehicle drivers.

Mr. Peter MacDonald: I wouldn't have those specific stats broken down that way, but it is certainly a large percentage. I believe industry-wide we're at about 35% leasing, and certainly the percentages for some of our imports are a lot higher than the domestics. That was reversed at one point, but now most of the import stores have very high leasing rates.

Mr. Francesco Sorbara: And that 35% number, that's the overall volume, as you would call it?

Mr. Peter MacDonald: Exactly.

Mr. Francesco Sorbara: Exactly. Not just—

Mr. Peter MacDonald: Not just high-end vehicles. I don't have those stats. I can get them for you and the committee, but I don't have them with me today.

Mr. Francesco Sorbara: If you could provide those, that would be great. It would be good to know, because one of our past witnesses elaborated on the example of Vancouver, where you have many young folks driving, say, Maseratis and other very expensive, high-end vehicles. There is nothing wrong with that in and of itself, but it may indicate where someone else got the income, and there is the issue of the verification of that income, if it came from offshore or something, so I wanted to clarify that.

We now turn to the ATM industry. Mr. Binns, thank you for coming. So the idea that an ATM located at some enterprise could be participating in money laundering, is that just a fallacy?

Mr. Curt Binns: That is a myth, actually. ATMs that are operated in a grocery store, or a restaurant, or a small bar are all regulated in the same way as any other ATMs in Canada.

Mr. Francesco Sorbara: Okay, that is good to know.

We now go to the individuals, first to Mr. Jason. I believe I ran into you several times at the Scotia Tower when I worked there, if I remember correctly.

You do a lot of work for smaller financials, which I would call the schedule II banks, and even smaller ones than that, if I'm not mistaken. Is that correct?

Mr. John Jason: Yes, and sorry, just to correct you: schedule I now refers to any domestically owned bank, so it includes everything from the largest of large to the newest incorporation on the block, as long as it's domestically owned.

Mr. Francesco Sorbara: In your comments on the difference between principles-based regulation and rules-based regulation, are you indicating—and this may be tangential—that the smaller financial institutions are having a hard time with the compliance costs? Is it too labourious? I'm going to use the word “layering”: is there too much bureaucratic layering going with the smaller banks, or fintechs.

Mr. John Jason: Well, it's a couple of things, but I think it's a distinction. The smaller institutions tend to be what I call “momma lines”, so they'll be uniquely mortgage lenders, or uniquely credit card banks. What sometimes happens is that when you drop the entire regime—which was designed for a large, full-service bank—on the small bank, the small bank is forced to put in place a lot of compliance processes that may not be relevant or necessary to their business model. If we had more of a principles-based approach, the individual institution could be a little more flexible in the processes it adopts. In fact, according to the discussion paper that came out, for example, Canada has always adhered to mandatory identification requirements. You must get these types of identification and nothing else will suffice. In other places, it's more of a principles-based approach, which means taking reasonable measures to properly identify your customer. That allows the individual institution to be a little more flexible in the processes they adopt.

Mr. Francesco Sorbara: That's much the same as it was in the years I sat on the CICA board in the accounting profession. The differences between the principles and rules-based approaches are large, because the principles-based approach does offer you that flexibility.

Let's go back to the focus at hand, the money laundering side. You're a lawyer; we've heard a lot of testimony—and obviously with the Supreme Court case—that it's difficult to bring in that profession. Is there a path?

● (1640)

Mr. John Jason: Well, I have to say that I'm a regulatory lawyer, and a lot of that law emanates from litigators who are obviously concerned about solicitor-client privilege, which quite frankly rarely arises in what I do. Typically, I'm not giving people legal advice about potential litigation.

Mr. Francesco Sorbara: Thank you.

I'd like to go to Marc.

Monsieur, please comment. You offered a lot of commentary on beneficial ownership, which our committee has heard a lot about in testimony from witnesses. You do mention Criminal Code amendments that will make it easier to investigate—I think those were some comments you made—if it is a legal profession. Is there a path you can see whereby greater oversight, without impinging on civil liberties—or whatever legalese term you want to use—is afforded the committee?

Mr. Marc Tassé: Yes, in two ways. The first one, I think, would be in terms of the solicitor-client privilege and the fact that if for some of the transactions we can show there's an intent of doing something wrong, then it would not fall under the solicitor-client privilege. That would help.

Also, it would help if the law were to be reviewed or amended in such a way that the letter of the law represents the spirit of the law. There is always a chief loophole officer somewhere, hanging around and making a very healthy and very wealthy living just by finding loopholes. That's the thing: I think that every time there is a review you need to try to identify what are the loopholes and stuff like that.

Mr. Francesco Sorbara: Lawyers are famous for finding loopholes, right?

Am I out of time?

The Chair: You have a little time left.

Mr. Francesco Sorbara: Ms. Saperia, I've read a bit of your bio. You've done a lot of work on victims of terrorist activity and on potentially going after them civilly.

You've spoken a lot about countries in terms of money laundering and corruption. I think there is something there. We can't do an audit on someone buying a house through a corporation, whether in west Vancouver, north Vancouver, or anywhere in the Toronto region—pick any city—where they made their money. Canadians are subject to that because we file income taxes and so forth.

What would you recommend along that vein so that we could tighten up those rules? We did have the attorney general from British Columbia here, who presented very compelling testimony.

Ms. Sheryl Saperia: Yes. I read his testimony, and I agree that it was very compelling.

I think this speaks to this issue of beneficial ownership. I think that's what you're getting at. The reason I didn't mention it was that I didn't want to be repetitive. There is a consensus emerging among some of the witnesses who have come here, I feel, and perhaps among the committee as well, that there is some need for greater transparency when it comes to beneficial ownership.

It seems to me that the question was not "if" but who it was going to be available to, and whether it's going to be publicly available or available just to financial institutions. As a general principle, I think the greater the transparency the better.

I would also say this. I'm sneaking this in, but I'm going to try to keep it as much on your topic as possible. I recently spoke to a friend who is a charities lawyer. He talked about the fact that non-profits have very minimal filing requirements and very minimal oversight compared to charities, which do have more. As a result, there is a greater opportunity for money laundering to take place through non-profits. That speaks to your issue about the lack of transparency.

For instance, let's say we have a foreign state and their funds come in through some illicit means. They give their funds to a non-profit in Canada, let's say, and the non-profit gives them—I'm just using this as an example—to a radicalized mosque here in Canada. That mosque would have to report the donation very minimally as coming from the Canadian non-profit, but it obscures where the funds ultimately came from, which is that foreign state that may have obtained those funds in an illegal way.

The Chair: Thanks, all of you.

Before I turn to Mr. Albas, on Francesco's question to you, Mr. Binns, there's no question in the Department of Finance discussion paper that they are pushing for what they call "a spectrum of regulatory options" on the white-label automated teller machines. They argue that law enforcement continues to express concern with regard to the WLATM industry, including the use of ATMs by organized crime groups in Canada. The paper then goes on to talk about how the Province of Quebec has introduced stronger regulations for that industry.

What's your comment on that? I think you indicated that it's really a false argument, but is there a different regulatory requirement in the province of Quebec than in the rest of the country? I don't know, to be honest. What are your comments on what the discussion paper is arguing here? This is one of the areas that we have to look at pretty closely.

● (1645)

Mr. Curt Binns: Correct. There is a separate regulation in Quebec. It's called the Money-Services Businesses Act. Quebec is the only province in Canada that has a money-services business act that includes ATMs, white label ATMs. Banks are regulated federally, while white labels are provincial and federal, but Quebec is the only province that has that regulation. They are grouped in with money transfer places, payday houses, anyplace where they dispense cash, where you can get cash.

We are working very closely with the Quebec government on an ongoing basis to attempt to have either the act repealed or ISO ATMs taken out of that act since they're regulated at a very high level as it is today.

The Chair: So you wouldn't be in favour of applying what is happening in Quebec across the rest of the country, I take it.

Mr. Curt Binns: What do you mean?

The Chair: If we were to use the Quebec example as the model, that isn't what you would want to be applied across the country.

Mr. Curt Binns: No.

The Chair: Okay, that's what I thought.

Go ahead, Mr. Albas.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Thank you. I certainly appreciate it, Mr. Chair.

Thank you to all of our witnesses for coming here today.

Just following up on Ms. Saperia's response in regard to not-for-profits, I do know that, for example, the B.C. Societies Act is the statute that regulates not-for-profits in British Columbia, of which I'm a member. Under it, a minister can require an investigation if it's thought there is criminal activity going on. To your point that they're often left unregulated, the government, at least the Province of British Columbia, has really stepped back from oversight of these bodies to a large extent. I certainly take your point.

Did you have anything else on not-for-profits in the way of concerns?

Ms. Sheryl Saperia: I think it was my main concern. I tried to understand what the process is for non-profits, what their responsibilities are. Because they don't get to issue tax receipts, the thinking is that they shouldn't have to do very much by way of reporting, but they have to file a tax return and a schedule that lists their assets, and it is my understanding, based on my conversations with some friends, that it's a very awkward form for non-profits.

My understanding is that it looks as if there's going to be an overhaul of non-profits here, and so I'd be very curious about whether this type of issue will be included.

Mr. Dan Albas: Yes. Even in the B.C. Societies Act there is a provision that if someone offers financial assistance—and it's defined in the regulations—to a B.C. not-for-profit, a note should be made of them. But if it's for the purpose of forwarding the society and its main purposes—and again it doesn't say what those purposes would be—they don't even have to keep a note of who made the loan available. At least that's my read of it.

This is an area, perhaps, Mr. Chair, where we might want to invite someone from an association to speak for not-for-profits in this area or perhaps to have CRA come back and maybe discuss the differences between charities that can issue charitable receipts and not-for-profits, because I think there might be an area to go there.

I would like to turn to Mr. Jason.

Mr. Jason, there has been a lot of discussion about administrative compliance and the administrative burden of agents like FINTRAC. The Canadian Credit Union Association spoke a lot on that topic. A very small, single credit union told me they estimate that their compliance costs are about $50,000 just on the FINTRAC measures. I do take the legitimate criticism that you cannot have a one size fits all, because those costs cannot be borne out. Many financial institutions will actually have someone in an area where they all send their FINTRAC reports to, so that's all that one person does, but obviously a small unit can't do that.

One of the things we've been suggesting is that FINTRAC not track administrative burden by industry or at all. When they came, they said they do their job quite effectively and they think this is the right way to go. But you can't really manage what you don't measure. Do you think FINTRAC needs to start measuring, by industries, its compliant costs so that it can start to work on this end?

● (1650)

Mr. John Jason: Yes, I definitely think that doing some benchmarking so that they understand how much effort is involved, by institution, would be helpful because, as I say, it's the one-size-fits-all problem. They look at what the large institutions do, convince themselves that this is the level of effort that's appropriate, and then just apply it blindly to the smaller institutions.

If they had some ability to benchmark and understand what the different institutions do, depending on their business and however you might classify it in a rational way, I think that would be very helpful information. It's information that we try to share among ourselves as compliance officers so that we can get a sense of whether we're doing everything that we should be doing to address whatever the issue is.

Mr. Dan Albas: Great.

I'd like to just go to the ATM Industry Association briefly.

I have seen some news stories about some ATMs offering to exchange cryptocurrencies, such as Bitcoin, into Canadian dollars. I'd like to ask, first of all, is this a growing trend?

We've heard from some people who have here to discuss cryptocurrencies that some banks—financial institutions, for example—are maybe coming a little bit late to the game in offering those types of currencies to Canadians. Is this a growing area for ATM use? How widespread is it? Is there a particular province where you see this happening more? Or am I getting my lines crossed here with American news stories?

Mr. Curt Binns: In the Canadian landscape, that is on the radar screen of ATMIA. In the past several years, several cryptocurrency operators have approached ATM operators in hopes of dovetailing into their infrastructure or making it easy for a customer to buy Bitcoin through an ATM. That hasn't happened yet in Canada.

Mr. Dan Albas: Okay, so it's a non-issue for Canada right now.

Mr. Curt Binns: It is for right now. We are watching it.

Mr. Dan Albas: Okay.

If someone wanted to do that, would they be able to, or are there current regulations to prohibit the use of ATMs to exchange cryptocurrency into Canadian dollars?

Mr. Curt Binns: I think the regulations would be developed further than what they are today.

Is it possible? We don't know yet, only because we haven't had a cryptocurrency operator get to the point where it has a turnkey.

Mr. Dan Albas: I would just imagine that if financial institutions aren't offering it, then other intermediaries will, and whether or not we have regulations that can make sure that we understand that type of activity.

I think that's my time.

The Chair: Your time is well over.

Mr. Fergus.

Mr. Greg Fergus (Hull—Aylmer, Lib.): First of all, let me thank our guests for coming here today.

[*Translation*]

I have a question for Mr. Tassé, but it might actually be for the other witnesses here today.

Thank you all for your testimony.

Thank you very much, Mr. Tassé. If you don't mind me saying so, this is like asking: “apart from that, Mrs. Lincoln, how was the play?” Everyone around you is saying that nothing is wrong and they all know their clients very well.

You have talked about the problems associated with beneficial assets. You have an advantage in that you can look at things with some hindsight, and with your expertise in the area. Do we have to make more effort to know our clients better, so that the money can be traced?

● (1655)

Mr. Marc Tassé: I think so, yes. Clearly.

In all the research and reporting into the matter internationally, everyone agrees that Canada is one of the best places to launder money. It has almost become one of our economic claims to fame. You just have to think of Vancouver and Toronto, where the real estate market has been interesting, to say the least.

It is disgraceful; there is nothing to be proud about. Certainly, in our everyday work, we deal with different companies and we do not always realize that money laundering is going on. Let us not forget that people who launder money are fraudsters and they are very friendly. As we are used to doing business with them, we let our guard down and we do less research because we trust them. Everything is based on trust. We may not want to be bad ourselves, but we do not necessarily do the diligence that is due.

If it was only one report coming out from time to time, the situation would not be so serious. But the World Bank, the United Nations and journalist groups all come to the same conclusion: Canada really is one of the best places to launder money. It will keep people like me employed for a very long time still, but it is unfortunate. We could be working at something more proactive.

Mr. Greg Fergus: As you know, we live in a federation made up of a number of provinces and many jurisdictions. As regards beneficial ownership, each province has its own list, and so do the feds.

From your expertise, could you recommend ways to bring those two systems together so that we can establish a reasonably high standard that will tell us exactly who owns these companies?

Mr. Marc Tassé: I think Ms. Saperia talked about that earlier. We have to work together with other countries. We are not the only ones facing this problem. England, the United States and Australia have much stricter rules than ours. We have to work with others to determine the best practices. There is also ISO 37001:2016, which deals with anticorruption management systems. Given that context, it is becoming worthwhile to look at what the current best practices are.

We must also not forget that some provinces have rules that are perhaps stricter. Quebec was mentioned earlier. Stricter rules are often put in place after a scandal, but it is better not to wait for situations to reach the point of being a problem. That said, there is guidance to be found in the recommendations made by the Charbonneau Commission.

Mr. Greg Fergus: Representatives from the Federation of Law Societies of Canada appeared before us and told us that, in order to maintain lawyer-client privilege, there was scarcely any possibility to require more transparency. However, they indicated that, even in their profession—and I believe they were right to point this out—they had ways of making sure that their members behave appropriately.

What is your opinion about that?

Do you feel that some practices could be improved?

Mr. Marc Tassé: Lawyer-client privilege will always be with us, of course, and there are reasons for that. However, as you mentioned, law societies are considering how they could impose internal regulations on their members, especially by following their code of conduct.

One distinction needs to be made. You can go along with something, but you can also do more than go along with it when you see it in terms of integrity and ethics. We have codes of ethics precisely because the objective is more than simply to comply with the law. We have to see this a little more in ethical terms.

● (1700)

[*English*]

Mr. Greg Fergus: My last question will be for Mr. Jason, Mr. Gibbs, and probably Mr. MacDonald and Mr. Binns.

You've all mentioned that you have taken measures within each of your sectors to know your clients or to make sure that transactions of a certain amount are conducted in a way that allows for some greater transparency. If you feel, therefore, that you have established those norms, even if they were to be principle-based, why would you then perhaps be reluctant to want to be regulated in some way to make sure that you do meet those norms and international standards.

Mr. John Jason: The small bank community is fully regulated. We comply or are subject to the exact same rules the largest of banks are subject to. The only issue for us is really when the law becomes too prescriptive, when it says you must do something, particularly when it's constructed in such a way that the drafter of the legislation had the largest institution in mind. That's what creates the extraordinary burden and what we're most concerned about.

There is one comment I wanted to make because I think it's relevant to what a lot of the other witnesses have said today. To put it in crass commercial terms, the institutions are interested. If we're spending a lot of money, we want to see the bang for the buck, if I can put it that way.

I think a lot of people have pointed out today that it's as if we constructed the front end without paying enough attention to the back end. By the “front end” I mean the institutions, the banks that are charged with collecting the information, with supervising the transactions, identifying the suspicious transactions, and providing that information into the system so that something can be done with it. The frustration that many of the banks feel is that they don't see enough being done with it. The cost burden is there, but we're not getting the results from the money that's being spent. If it's not providing a direct benefit to the institution—which it's not, other than avoiding reputational risk—if we could at least see more of a payoff in terms of the greater social good, then that would balance the equation better for the institutions that have subjected to the burden.

The Chair: Thank you both.

Mr. Poilievre.

Hon. Pierre Poilievre: Thank you.

My question relates to this matter of solicitor-client privilege. While I'm not a lawyer, my understanding is that privilege is not upheld in cases where a person was communicating with a lawyer to orchestrate a crime. If the two were talking or corresponding to commit a crime, then they cannot privilege their conversation on the basis that one of them just happens to be a lawyer and was advising the other on how to carry out a crime and participating in it.

Ms. Saperia, how would you recommend we address that problem when we deal with the issue of structuring that you mentioned earlier?

Ms. Sheryl Saperia: First, I don't have specific recommendations on this area other than to say that this committee should maintain the pressure on the law associations to come up with a solution. They will be able to find a constitutional solution. It really is a question of will. I think in some other countries, the issue has come and gone. It's a dead issue now, and no one will be able to touch it. Right now, because of the fact that there is this review, I think the law societies are seized with the importance of coming up with a solution that will meet the criteria that the Supreme Court of Canada has set out. I would say don't give up on it. Keep the pressure on. That's number one.

Number two, it's true what you say, that lawyers can't be involved in something criminal regardless of the lawyer-client privilege. I think part of the issue may have to do with determining whether there is something criminal going on in the first place. I think there are quite severe limitations about auditing and being able to just take a look at some of the records as a random thing to see if everything is being done properly. Personally, I'm fascinated by this issue. I'd be happy to look into it a little bit more and get back to you.

● (1705)

Hon. Pierre Poilievre: Is this a big problem?

Ms. Sheryl Saperia: My understanding is that it's a gaping loophole. Whether or not that means a ton of lawyers in Canada are doing illicit things, I simply couldn't speak to, but to the extent that we can create legislation and create a framework that tries to be as strong as possible, I think this is an area that does need attention.

Hon. Pierre Poilievre: What more could we be doing to address Iran's role in financing terrorism? You mentioned that it is a leading state sponsor of terror and an extremely corrupt regime. As part of this review, what specific measures in the statute would help combat that?

Ms. Sheryl Saperia: First of all, I would say it's really important that Iran continue to be listed here in Canada as a state sponsor of terror. I think the issue comes forward every two years that it has to be reviewed. It's absolutely imperative that it continue. Even President Obama, who was, we know, extremely keen on reaching an international nuclear deal with Iran, was just as clear about the fact that Iran was continuing to sponsor terrorism. Forget about under President Trump right now, because lots of things seem to be changing, but even under President Obama, when we were looking at removing lots of nuclear-related sanctions, at the same time they were very clear that Iran would continue to be listed as a state sponsor of terror and that there would be sanctions in place for things like human rights abuses and ballistic missiles.

Here in Canada, our only sanctions are under the Special Economic Measures Act. They relate only to Iran's nuclear behaviour. We're kind of outdated. As I mentioned, the Magnitsky law would allow human rights abuses to be sanctioned as well, so I think we should be using that.

I know we're under time constraints, so I'll mention only one more thing. It has to do with the purported deal between Iran and Bombardier. It's a bizarre situation, in my view, because Iran's unfree media is giving us more information about this deal than the Canadian government or Canadian media is. I don't really understand. There's alleged to be a deal worth at least $100 million for Bombardier to sell at least 10 planes to Iran. Iran has a very clear history, which I'd be happy to share with you later, of using its civilian planes to ship weapons to Syria to help Assad continue to murder his civilians, and to boost Hezbollah's arsenal in Lebanon. They're using civilian planes for that purpose, so something is going wrong. We don't know what this deal is. The Canadian government won't acknowledge it one way or another.

I'm concerned that Export Development Canada, EDC, may be involved as well. A previous witness, Ms. Mora Johnson, came to speak to you. She talked about EDC and about how it's actually at risk for handling the proceeds of crime, because it could be “repaid with proceeds of corruption”. I would be concerned about that potentially happening here.

Again, I could be very wrong. EDC may not be involved. I don't know what the deal is, because I'm only reading about it in Iran's media, but that's something that would be really worth exploring.

The Chair: Okay.

Hon. Pierre Poilievre: Can I ask one more question?

The possibility that a taxpayer-funded or taxpayer-owned Canadian government body would be helping to facilitate either the financing or the transaction of assets for the regime in Iran is outrageous, and if you can provide us with any more information to ascertain whether that is the case, it would be very helpful.

Ms. Sheryl Saperia: Sure.

Hon. Pierre Poilievre: As you know, Bombardier received $400 million in taxpayer-funded loans from the federal government alone in the last two years. As you also know and mentioned, EDC facilitates the transactions of Canadian companies abroad. I think this committee has to send the signal that Canadian tax dollars and the economic development bodies they own should not be facilitating transactions with state sponsors of terror under any circumstances.

Ms. Sheryl Saperia: I agree and I am opposed to this deal for the very reason that Iran has a long history of using civilian planes for terrorism purposes.

For me, at the very least, I would just want more transparency. I just want to know if the deal is in fact taking place or not, because right now it's just not clear.

● (1710)

The Chair: Okay, thank you both.

Mr. Sorbara.

Mr. Francesco Sorbara: Thank you, Mr. Chair.

Thank you for that interesting commentary, Ms. Saperia.

I want to go back to Mr. Tassé and Mr. Jason with regard to the verification of owners.

Mr. Tassé, you talked about politically exposed people as related to the legal profession, high-risk folks with respect to the legal profession. How can we ensure, for someone setting up a trust or certain structures through the beneficial ownership, that we can get to who they are and potentially to how they obtained their income, if that is possible? Of course I think we should go through...but I'd love to hear your thoughts.

Mr. Marc Tassé: I would say it's all about whether the transaction makes sense. Does the person who is actually buying have that amount of money? We saw, a couple of months ago in Vancouver, a young student who had a condo worth $27 million. When they asked the student where he got the money, he said it was from people giving money to his dad. When he was asked what kind of business his dad was in, he said he didn't know; he just said he was a businessman.

If I'm a lawyer, and I'm representing a person and asking the person about buying a $27 million condo, I have to ask how they're going to finance it, and what the source of the income is, and stuff like that.

Mr. Francesco Sorbara: Just on that comment, if I may interject, you hit the nail with the hammer exactly. That condo would have been purchased through a trust or through a corporation, and we have no idea today who the purchaser is.

Is that correct? We need to know that—

Mr. Marc Tassé: That's right.

Mr. Francesco Sorbara: —because as vibrant and important as our real estate market is, we need to ensure that it is wholesome. I'm going to use the word “wholesome” today, if I can. We need to ensure there are no games going on, because millions of middle-class families across this country work very hard to purchase their home—whether a condo, townhouse, or detached—and we don't need to have people doing things and using ill-gotten gains or whatever to purchase their home here in Canada. They're more than welcome to study, work, or whatever, but the other stuff I don't have time for.

Mr. Jason, you referenced your expertise on the regulatory front. I would love to hear your opinion. We have a number of regulatory agencies that banks have to deal with, one of them being FINTRAC. Can you opine on that relationship and on what you see may be going well and what may not be going well in terms of going back to a principle versus rules-based approach?

Mr. John Jason: Yes. Certainly from the smaller institutions' perspective, I guess the first thing I would say is that FINTRAC is not a very direct regulator. For years and years, FINTRAC deferred to the Office of the Superintendent of Financial Institutions for the supervision of banks and other financial institutions on its behalf. They seem to have come to some better understanding about who is responsible for what, but I think that from the institutions' perspective, it's still very unclear who their primary regulator is. They've ended up in a world where they're really subject to two regulators.

OSFI continues to play a role. They take the position that compliance with anti-money laundering laws is a prudential matter and that institutions are subject to reputational risk and therefore that OSFI should continue to play a role. FINTRAC has begun to do its own examinations, which are separate and distinct from the OSFI examinations, on the basis that they are the actual statutorily empowered regulator.

For the small institution, I think they are left in a confused situation as to which regulator is really responsible for oversight. I think that continues to evolve, but from the small institution's perspective, it's not precisely clear who is responsible for what.

Mr. Francesco Sorbara: If I can just take that point, I'll end off with this. In terms of responsibility, is that less-than-100% clarity hampering in any way the ability of all agencies—and effectively, of any entity of the government—to investigate, enforce, and prosecute folks who are participating in money laundering activity?

● (1715)

Mr. John Jason: I don't know the specific answer to your question.

What I would say is that the institutions usually want to comply. Having a regulator that is helpful and of assistance in providing direction to the institutions is more useful. I think right now the institutions—

Another source of frustration would be that it's very difficult at times to get clear direction from the regulator. First, you're not sure which regulator is in charge, and second, certainly in terms of FINTRAC, they are not that approachable in giving assistance to the industry, particularly the smaller institutions. Undoubtedly, that has some effect on the ultimate strength of the regime if the institutions themselves are uncertain as to what precisely they're being asked to do.

Mr. Francesco Sorbara: Thank you, sir.

Thank you, Chair.

The Chair: Go ahead, Mr. Dusseault.

[*Translation*]

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

I want to continue talking about the financial and banking sectors.

We know that Canada's big banks have the means to have computer systems that can detect all kinds of suspicious operations. In small institutions, it is perhaps more difficult to do so because they have fewer human and financial resources.

Thanks to new technology and computers, it is perhaps easier to do this today. Is there a way to bring all those efforts together so that we can develop IT systems that, while they may not be uniform, they at least allow small institutions to comply with the rules at a reduced cost?

[*English*]

Mr. John Jason: It's a very good question and one that we confront all the time. As I mentioned, we do provide compliance risk management software to some 15 or 20 banks right now. The difficulty we have is that, while the law is sort of common, each bank operates in a distinct way, particularly in the small bank community. At the end of the day, there's not a huge difference between the Royal Bank and the Bank of Montreal. They're both full-service banks that operate substantially in the same way.

In the smaller institutions, the problem we have is that each of them has quite distinct operating models and quite distinct business lines, so it's difficult. While you know what the law is, applying it in every institution is a unique exercise and it's hard. We've put a lot of thought into how to ease that effort for those smaller institutions, and, to some extent, it's why our software is successful. We automate as much as we can, but it's hard to go that much further. Software helps, but at a certain point, human beings have to be involved.

[*Translation*]

Mr. Pierre-Luc Dusseault: Has there been any collaboration with FINTRAC, any discussions or dialogue with a view to finding out what they expect to receive? It could help you in developing that kind of software or other mechanisms to bring about compliance.

[*English*]

Mr. John Jason: Before coming here today I wrote a small list of the things in the discussion paper that would be quite helpful for the small institutions. In fact, two of the things that were proposed on the list would give FINTRAC more authority to deal with the institutions and provide information to the institutions. Rather than leaving each of these banks to their own devices to try to figure out where they're susceptible to money laundering, where they might be able to put more effort and more attention, getting more of that information sharing would most certainly be helpful to the smaller institutions.

One of the other measures that was raised in the paper was the possibility of the institutions themselves sharing information. As we know, every institutions is subject to privacy rules and confidentiality requirements, so they're hampered in their ability to talk to one another and say, “Oh, gee, I saw this transaction that caused me concern. Maybe it would be useful to you to know that transaction is out there and those people...”. Right now there's limited ability to share that information.

Those were a couple of things that were of quite a lot of interest to me to sort of free up this information sharing.

● (1720)

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you.

[*English*]

The Chair: Mr. Fergus.

Mr. Greg Fergus: Mr. Binns, thank you very much.

I was wondering if you could talk a little bit more about white label ATMs and the number of measures that your association members are taking to minimize the risk of money laundering using their products.

Mr. Curt Binns: Our members are subject to several regulations. For example, they have to be a member of Interac to carry on business. They are subject to FINTRAC rules through their financial institution and KYC regulations with their financial institution, and any provincial regulations. We work closely with regulators, with police agencies, and whoever needs our assistance in thwarting any crime.

Mr. Greg Fergus: Precisely. You could walk the committee through this, perhaps, or you can provide it to us in written remarks, but it would be great if you could briefly walk us through where your ATMs find themselves. I'm just trying to think of that bar or that off-track business that doesn't seem to have enough revenues to justify having one of the labelled ATMs. How does it work? What's the business model?

Mr. Curt Binns: If the business operator for an independent machine is so small they can't afford to comply with all of the regulations, they can operate under the umbrella of a larger independent operator or even a bank so they can afford to comply with all of the regulations. There are different business models, depending on the size of the company.

Mr. Greg Fergus: I'm not trying to be disrespectful in any way, but the rumour is, and we might as well just talk it out, that some of these white label machines have been installed in some businesses that do not have a great reputation and for the purposes of laundering money. Can you please talk to that and why those rumours are wrong?

Mr. Curt Binns: I think the record speaks for itself in that there has been only one money laundering conviction in Canada in 20-plus years for the thousands of machines that are out there. The location doesn't really matter. The location doesn't dictate the amount of compliance they have to fulfill, whether you're in a bar or a bank.

Mr. Greg Fergus: Is a conviction just too high a level of threshold to evaluate that to? Are there any other indicators? The number of complaints dwarf the number of convictions that come out of the wash at the end, but is there something else, a different standard, that you could inform the committee of?

Mr. Curt Binns: We find there's a lot of sensationalism in the press when something is reported about an ATM. Often the press will talk about money laundering, when they're reporting a physical crime at an ATM. Whether it's a smash and grab, or even a cybercrime, it gets swirled in with, “Wow, it's an ATM, and they must be laundering money”, which is pretty much impossible to do.

Mr. Greg Fergus: Thank you.

The Chair: Is there anything else any of the witnesses would want to add, or anything we've missed? One final quick question?

Ms. Saperia.

Ms. Sheryl Saperia: I wish to add two things very briefly.

One, to the point about the number of convictions, this is not at all about the ATM machines in particular, but I do think that as a priority there should be more funding for enforcement generally. That is really an issue that needs greater attention here in Canada.

Cryptocurrencies, about which I am not an expert, are clearly becoming more of an emerging issue. I note that the U.S. Department of the Treasury, a few weeks ago, signalled that it is going to start putting digital currency addresses on the sanctions list. This is a really big step, and it's showing that the U.S. sees digital currency as an emerging form of financial payments that nefarious actors may use. With that step, it is looking to address that risk.

There are a number of people with whom I work in the United States who are experts in this area, and you should speak to them, because there's just so much to learn.

● (1725)

The Chair: We did have some witnesses on cryptocurrency, and we hope to look at it further.

Thank you very much.

The meeting is adjourned.