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Panel: Preserving Financial Integrity and Promoting Compliance

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PANEL: PRESERVING FINANCIAL INTEGRITY AND PROMOTING COMPLIANCE

Moderator: Theodore V. Parran III

Speaker: Diane Francis

Speaker: Richard Gordon

Speaker: Josée Nadeau

ASSOCIATE PROFESSOR PARRAN: Thank you all for persevering through the day. It's a long day, but it has been a great day, and we're going to have one more final great panel. The topic for this is going to be financial integrity and compliance, and we have three people who are very knowledgeable on this subject and who have also a lot to say about it. So we are very excited to hear from you all.

I will give some brief introductions. Carmina Hughes, who is from TD Bank, one of their senior leaders, was not able to make it because of the snow storm that hit around Lake Ontario last evening.

First, we are very happy to have Josee Nadeau, who is, has spent much time with the Government of Canada, was most recently senior chief of Financial Crime International, where she led a delegation for the Financial Action Task Force [(“FATF”)] and to its regional bodies in the Caribbean, South America, and Asia Pacific region. In this capacity she coordinated up to twelve departments and agencies. In 2012, she led the review of the international standards for anti-money laundering, countering finance to terrorism and proliferation. She also led the ongoing assessments of the FATF countries, high-risk countries for compliance with their standards, and led the ongoing policy development in those areas after the assessment. She also worked in support of Canada at the G7/8, the G20, United Nations and the Organization of American States in respect to financial crimes and financial integrity. So somebody with a lot of experience in this field, and now that she is recently moved on from the Government of Canada, is able to share her views without filter, or so I'm told.

Many of you know Diane Francis. She is one of the members of our Executive Committee, a very strong supporter of CUSLI, so we thank her for all of her efforts. She's an award-winning columnist, author, investigative journalist, as well as television commentator on all things Canadian, American, and really across the world. But one of her particular areas of interest is financial compliance integrity, money laundering, and it is something that she has written extensively about, so we are very excited to hear what she has to say on that topic.

Finally, we have one of our own Case Western professors, Richard Gordon, who's the director of our Financial Integrity Institute. He's been a professor here

for quite a while and before that had a long and distinguished career in public service. He's a graduate of Harvard Law School and practiced international tax law in Washington, D.C. in private practice. He joined the staff of the International Monetary Fund, where he was senior counsel and senior financial sector expert, and in particular, he worked on sovereign debt restructuring and financial integrity matters there. After 2001, September 11th, he served on the IMF Task Force on Terrorism, to finance and coordinate the IMF and the World Bank's involvement in anti-money laundering and terrorism financing. So they are three people with breadth and depth of experience on this topic. Since I am not the one with the expertise, I will turn it over to them right now. Thank you.

MS. NADEAU: Thank you very much, Ted. Well, first, I want to say that I feel very privileged for being here today among all of you and with my colleagues here as panelists, but I have a little secret to tell you, a little disclaimer. I'm not a lawyer. Okay? So I have been invited to this Canada-U.S. Law Institute thing, but I'm an economist, just so you know, but I did marry a lawyer. So we will see. We'll come back to that.

The other thing I want to say, like Mr. Weekes said so nicely this morning, is that I'm not speaking on behalf of the Government of Canada. You know, I do say "we" sometimes, and "we as Canada," but also, I'm going to leave without pay from the Department of Finance. So I can say a little bit of what I think among friends, but I'm still a civil servant with the federal government. So I will be a little bit careful, but I am known to usually say what I think, so what you see is what you get.

But, so, I want to say that I really, really enjoyed the day so far, so hopefully, we'll continue to enjoy the rest of the day together, and hopefully, you can learn a little bit, too, about financial integrity in this wonderful world that's quite big.

I will be the moderator, and I will also be a panelist, especially now that Carmina could not make it. There were also thunderstorms in Cleveland that delayed some of the planes, anyway, she had been having a real problem coming here. But what I'm going to do real quickly is go over five slides that I have, and hopefully, that's going to give all of us the same facts and a bit of background on this topic internationally but also from a Canada-U.S. bilateral relations perspective. And then I will let the two panelists say a few words as well, and then we have identified a couple of issues for discussion, we'll take your questions.

So financial integrity, maybe you think, oh, why bother? This is boring. This is a bit technical. You know, it is all about money. Well, it's all about money actually and very importantly, how do we prevent the bad money entering into and circulating in our hard working economy? So it's all about following the money. The key issue, you know, stepping back 30,000 miles, kilometers, whatever system you want to use, the key issue is really, are we really effectively tackling money related to terrorist financing, money laundering, tax evasion, and also fraud, corruption, and you name it? Those crimes have huge costs in our societies, and they can very negatively affect a country's reputation. You know,

we have seen it recently and even before that. The problem with those financial crimes is really global in nature, and the solutions are also global in nature.

But sometimes, you know, we'll have national sovereignty, is how can we maintain that and still be a good corporate citizen in the world of fighting financial crime? It's complex. The expectations are high. The challenges are quite broad, but they're quite important. So I am going to start in giving you some of those little facts and background.

So since the financial crisis of 2008, financial integrity has been more and more on the international agenda, and in the last seven years, systematically, mostly finance ministers and central banks, when they need an issue to communicate, they have been calling on this FATF, on issues related to financial market integrity, transparency, terrorist financing, and so on.

So what is this FATF? The Financial Times actually, in one of its articles, said a couple of years ago the Financial Action Task Force is probably one of the least known international bodies but probably one of the most influential on national policies. So I'll tell you a little bit more about FATF now. It's the standard setter for fighting money laundering and financial terrorist financing, so they officially say "anti-money laundering, countering the financing of terrorism." It's a policy task force. It's not operational in nature. There are no cases being discussed per se. It was created at the end of the '80s under the leadership of the G7 by the French. It was at the French G7 Summit. This is just the same year, I think, or the year after the UN convention, I always forget, Richard . . .

PROFESSOR GORDON: Palermo.

MS. NADEAU: The Palermo, was the first one or the . . .

PROFESSOR GORDON: The Vienna.

MS. NADEAU: The Vienna convention that made—requested countries to criminalize money laundering, so you think that's not that long ago, and at the end of the '80s, money laundering was not even a criminal offense in many of the countries, including Canada. I think it was in the U.S. already. So originally, it was really the leaders of the G7 that tasked their finance ministers to do something about the financial integrity of the financial sectors because they were worried about the huge amount of money from drug trafficking infiltrating our legitimate financial system.

After 9/11, the FATF was given the mandate to deal also with terrorist financing, and in 2012, the FATF also included a couple of standards related to proliferation financing, weapons of mass destruction. So the FATF standards are very comprehensive, and they give you kind of a nice toolbox of how to follow the money. As I said it's very helpful also to fight corruption, tax evasion, organized crime groups, and terrorism. Currently, there are 37 members at the FATF but, globally, through regional bodies, over 190 or 180 something countries are recognizing the FATF standards and are also committed to implement them.

The FATF is housed, just a little history, is housed at the [Organisation for Economic Co-operation and Development ("OECD")] premises in Paris, but it's a totally separate body with members. The BRICs are all members of the FATF

officially. You have all the European countries, of course, the NAFTA countries, so just sometimes Europeans are a bit Eurocentric, and they discuss issues that really get to the European Union. So sometimes us and the Mexicans and the Americans like to refer to and discuss an issue that is related to the North American union. So we like to show a bit of counterbalance there with the Eurocentric approach, sometimes with respect to those global issues.

So the FATF, as I said, is a policy body but also does counter-reviews of the enforcement of the implementation of those international standards. There are formal assessment peer reviews, and all the reports of the FATF are public, and they're found on its website. It's easy to find on the website.

Next slide. To bring you back a little bit more to the FATF language, the standard since 1989 has been revised, at least, three times formally in the grander schemes. Right now there are 40 recommendations, which are the 40 in all standards. They are very broad and complex and far reaching. They require elements of doing money laundering, tourists, financing risk assessment—they're elements of national coordination, domestic coordination. There are issues related to criminal justice and control measures. Do you criminalize money laundering properly? Do you criminalize terrorist financing properly? They're a suite of very comprehensive preventive measures that financial institutions, banks, and all other financial institutions—money exchange, money services, business—but also what we call designated non-financial and business professionals, casinos, real estate, lawyers and as gatekeepers there are issues related to transparency, the beneficial owners of corporations and our trust. That's what it means.

There are all sorts of standards and recommendations that deal also with whether countries have the appropriate institutional framework, and do they have the right tools to do international cooperation, which is very important, because the whole issue here is to recognize the crimes are international, and we need to work together. Those recommendations are being assessed through technical compliance assessment. It's really looking at whether the countries have the laws on their books, the appropriate regulations, do they have the right institution, and do they have the right process? Do you have the financial intelligence you need? Do you have law enforcement agencies that have the right powers to do wiretapping and all those issues? Do you have supervisors that can go on site and visit institutions and have free access to all their books and their process, and can they issue fines and all that? Since 2012 the FATF has decided to start pushing its emphasis on technical compliance but really drill down on the effectiveness. So this is a new approach. There [are] very few, if any, international organizations that do that kind of scrutiny on the country's laws and really look at, okay, once you have implemented all these beautiful laws and institutions and processes, are you relieved from producing results concretely? And this estimate is based on the policies, and I will go over them very quickly shortly in the next couple of slides. There's also an emphasis on the risk-based approach because it is recognized that countries should put efforts where the biggest risks are, and we cannot, nobody will ever be able to prevent and disrupt all crimes.

So through this assessment process, countries, as I said, are getting those mutual evaluation reports, so we get a report card and with ratings. Some ratings, the parents are happy, you know, on your report cards, and some ratings, the parents are not very happy. So what you see on the slide, there [are] ratings when mom and dad are not happy, and you're not getting that little amount of money for a good report card. So in short, it's a little bit more than that, but for the purpose of the discussion today is that, if you get more than eight of the 40 recommendations that are PC or NC, which mean partially compliant or non-compliant, you're not seen as having a satisfactory level of compliance with the standards, or of effectiveness if you have seven of your eleven, which is not that many actually. It's more than half if you can have bad ratings, but if you have seven of those, the outcomes have been assessed as being low or moderate, mom and dad are really not happy.

Under the FATF assessment process, you are guilty until proven innocent. Okay? So you have to demonstrate to those assessors that you do have the results, you do the laws, so you are starting with nothing, and the burden of proof's on the country to demonstrate that it's doing okay. What I would like to bring out to—it's not—it's not a science. It's based on judgment, and you can put different people in the same room, and you would have different, probably, judgments on a country's level of effectiveness, but it still gives a good ballpark of where countries are situated. So in this new world of the 2012, I'm sorry, Norway is really not showing. As my husband told me, "who cares about Norway?" (Laughter.)

No, no. We do care about Norway for other foreign things, but maybe not as much in the context of fighting financial crimes. But this is the report card we have so far for countries that had been assessed at the FATF. Eleven countries have been done. Sweden's the next one coming. It was just assessed. The FATF did it in February, and the report should be out in a month or so. Unfortunately, as compared to what we heard this morning from other panelists, it was from the Coast Guard, they were saying the level of compliance was very high with the boats. Here the level of compliance is not very good, and I will walk you through a little bit.

The system, the global, the effectiveness of the global system will be as good as the weakest link. So the minute you have a country that doesn't have very strong rules to prevent or repress financial crimes, this is where the money can enter, and all of us will be contaminated in a way by this approach. Those are the results in an aggregate basis. The FATF global network has done over, about 30 reports so far, and they are also found on the FATF websites, so you can see other countries like Costa Rica, even Cuba and a few others. So what we found so far, if you remember the results of seven and over, not that great, that's why you see it in red. And effectiveness, and in terms of technical compliance, eight plus and over out of 40 is not that great. You can see that only Spain and Italy had good report cards where the parents were happy. So that's only two in the whole FATF family, and this is where you have all the different countries.

We've been dealing with those issues for 20 some years plus. We're still favoring new laws and regulations especially. Okay? Many of us are still failing.

You can see the U.S. The effectiveness has done pretty good, but on technical compliance, there are still 10 of the 40 recommendations where the U.S. has been assessed as not having a satisfactory level of compliance, and to scroll down, you see Canada, the effectiveness it was, you know, just the edge of the non-passing marks. But on technical compliance as well, we have several recommendations that were not dealing at a satisfactory level, and then you see Australia, Malaysia, Singapore, Belgium, Austria, Norway, [it] keeps getting worse and worse and worse. The good news is the FATF is not giving up. Every time there's a report and the results are not what they are supposed to be, there's a follow-up process, so this is why you see on this slide regular follow-up, regular follow-up. This is Italy and Spain. (Indicating.) All the other countries are expected to go back to the FATF almost every year and more frequently if we're not making progress and show we're addressing those issues through laws, regulations, institutions, processes, or even real results.

So that's the beauty of the thing, and I think that's where there is some strength in what the FATF is doing—is [that] we all agreed to those international standards globally. It's a bottom-up approach. We agreed to those standards and then the FATF—but it's still us, the countries—is turning around and assessing those countries and saying you have to live up to your commitment. And we have to, unless maybe the UN process with UN conventions. It has been harder to get some countries to move here. There are challenges in getting countries to change their laws and a way of doing issues that will work, but it's ongoing.

Lastly, on this slide, I'm just giving you a bit of an overview of the effectiveness and compliance results for both Canada and the United States. So for each of the immediate outcomes [“IO”]—and you can see here they deal with risk policy and coordination, international cooperation, supervision, the preventative measures, the transparency issues, the use of financial intelligence, how we're doing with respect to money laundering investigations and prosecutions, the whole issue of confiscation, terrorist financing investigations and prosecutions, some of them more preventative and administrative measures with respect to FATF, but also, lastly, there's one outcome that deals specifically with proliferation, financing, and financial sanctions. So you can see that Canada and the U.S. have some strong shared areas of effectiveness, how we assess risk and deal with policy and national coordination. Also how we are dealing with international cooperation quite [well], how we are dealing with terrorist financing investigation and prosecution and also terrorist financing preventative measures and financial sanctions.

Again, both countries got overall good ratings. Canada has been stronger on the preventative side. Our supervisors, especially in the banking and other financial areas, have been dealing with those issues, and the U.S. has been significantly stronger on repression, but I think, in general, but I think we're not surprised by some of those results. This is where you see from IO 6 to 10, you know, this is substantial ratings and high ratings. So at least, that gives you a little bit of a Canada-U.S. comparison within the broader scope.

Lastly, I would like if we can keep that slide there, and the panel can continue. I'm going to come back to this slide, but I just want to point out that, you know, throughout the day we highlighted the importance of this Canada-U.S. relationship, and it is also very important from a monetary point of view. There's a massive amount of money flowing very freely between our two countries. We both have no capital controls. You know, we talked about \$2 billion dollars in trade in goods and services daily between our two countries. This is just trade in goods and services. Imagine if you add bank accounts of our joint citizens and the other country buying up shares, buying foreign debts and all that, so the money is huge. So those are huge opportunities, but they are also opening opportunities for the criminals to move money between the two countries.

Some of the shared challenges that I wanted to point out between the two countries [are] the lack of transparency in our two countries with respect to ownership of corporations and trusts, also the implementation by our respective financial institutions, most on banks, and the MVPs are also weak. Both countries don't cover lawyers as gatekeepers, and this is expected by the FATF standards because the risks have been identified there as being higher, and those should be covered areas.

So I will come back to some of those issues, but I want to stop there and give the floor to my colleagues. Thank you.

MS. FRANCIS: Okay. That's an interesting assessment. I have been a business writer and businessperson actually for quite a few years. I don't want to say exactly how many. That's a woman's prerogative, but for a long time. One of the things that I have schematically zeroed in, quite a bit as a business journalist, and also as an investor, is white-collar crime. I have written ten books about business politics, three of which were about white-collar crime. I have done documentaries on white-collar crime. I have done thousands of articles, and I like to say I put a few people in jail, and helped to close some of the worst stock exchanges in the world, which happened to be in Canada.

I want to go to 32,000 feet now for the view. I think what they are doing is a great start. It's not just about countries wanting to make sure everybody plays by the same rules. I want to give you the actual geopolitical risk that everybody in the world faces, because this hasn't been properly addressed yet at all. It has been noted by, in organizations, but not addressed. What we're talking about is massive, and I'll give you the facts, massive flows of illicit capital. We're talking about the routine and constant looting of the developing nations and distortion of this laundered money and tax evasion money and proceeds of crime funds into the rich countries with the result of distorting real estate markets. We see this in Vancouver and Toronto. It's a theme I've been writing about, talking about, and doing documentaries about for five years and in other cities like New York and London and Hong Kong and Sydney where this money flows very quickly into real estate, has created real estate bubbles, has created risks to the banking system in terms of mortgaging, has created and started to create social issues in terms of affordability of housing and other concerns.

That's really what we're talking about, and the numbers are enormous, and the kleptocracies, the people that live in the kleptocracies where this is permitted

are not the only victims. I'll give you an example. The largest country, the largest amount of foreign direct investment that flows for the last few years into the United States is not from Canada; it's from the British Virgin Islands, with 5,000 people. Billions of dollars a year are flowing from BVI into the United States to buy factories and plants and real estate and politicians, and [flows] into the United States from goodness knows where through a secrecy haven like BVI, and it's one of dozens of secrecy havens. There's a secrecy of dirty money, tax evasion, proceeds of crime industry that is one of the biggest in the world, and the lawyers are linchpins, and the banks railroad as well, and many government officials are, and this is what's going on.

Here's a figure: Global Financial Integrity [(“GFI”)] organization is something that I think everybody should look at their website. They do great work. They're economists, and they've been able to quantify the extent of the illicit capital flows worldwide. Their figure is that more of the illicit capital, through various techniques which I will kind of touch on briefly, leaves the developing economies facilitated by the secrecy industry globally, that these countries get in total foreign direct investment and foreign aid combined. Africa, biggest victim of all—more looting out of Africa [occurs] illegally through capital flows such as this. The looting of Africa is greater than in absolute dollars the GDP growth of all countries in Africa. It's getting absolutely prescribed and looted. So is China. The figure for China [is] just up to, in ten years, is \$1 trillion dollars illegally looted out of that country by officials, by people that run corporations, by individuals through casinos and through secrecy industries that are in Hong Kong, and in Canada, and in the rest of the world and in Britain. Russia, which is a kleptocracy and run by kleptocrats, nonetheless has been looted to the extent of almost a trillion dollars in the same ten-year period.

As I say, the victims are also in the rich countries. We're all paying higher taxes because there are many among us who are cheating thanks to a secrecy industry that also works in the United States, Canada, and the rich countries allowing domestic money-laundering proceeds in crime and capital outflows, very often the same outflows, go out and come back again under another beneficial ownership or secrecy shelter that tax lawyers and other accountants have devised, that are very clever, but are creating a huge problem.

The social costs of high-housing, the social cost of the inflation as a result of this coming into certain areas and regions, in particular, also victimizes people in those countries that are the recipients of the illicit proceeds of crime and tax evasion and money laundering. The study by the GFI was that since 1980 the developing nations of the world have lost \$16 trillion dollars out of their economies. This is, as I stated, this is done through skullduggery, through all kinds of things, cash transfers, wire transfers, done through the secrecy industry as well as misinvoicing. Misinvoicing is a huge problem, and another speaker earlier this morning talked about the GAO's concern that custom duties aren't applied properly, and that the valuation of goods coming and going into the countries, all countries are a real source of leakage and problem. For instance, anecdotally, the customs officials, the interdiction people, discovered that

Mexican cartel drug lords were receiving cattle and horse livestock worth billions of dollars every year and paying pennies for it. It was being exported from the U.S. as payment for the proceeds of crime. And they were actually on record, charged pennies per head for this livestock, so what they do is, or they sign away commodity sales from poor countries to rich accomplices for vastly less than the goods or the commodity is worth. That's another form of looting, which is very difficult.

The OECD has actually led this, and they are doing a very good job on this. So is this new G20 creation. Transparency International ranks countries overall, and in Canada and the United States particularly, in Canada, we've cracked down on the banks.

In terms of the United States, know your client rules, but obviously, a great deal more needs to be done, and it exists everywhere. I think that the legal profession has a lot to answer for in this whole secrecy industry, as does accounting. And I think that it's very important that the same, know your client requirements that banks face, should be imposed on the legal profession and on the other professions and enforced, and hasn't been and should be. There's no justification for this. The privilege that the legal community is given to provide immunity and cover for whoever walks in the door to pay them a fee, it's immoral, and it should be illegal.

Also, the issue of transparency and beneficial ownership, I could show you a hundred buildings, solid built buildings, in Vancouver and Toronto where the ownership changes constantly, where apartments are flipped. Nobody knows anybody who owns anything, and they are essentially, the nickname for them is "conceal estate" instead of "real estate." This is going on in New York, and it's going on in London, it's going on all over the world, and these are basically safety deposit boxes in the sky that hide sometimes criminal proceeds and, certainly, are there by kleptocrats and other folks.

So pretty hard hitting, and is something I'm very passionate about. I've been writing about it forever. Money laundering's a scourge, and it's a threat to civilization and capitalism. Nothing less than that, nothing less than that. So I applaud what the G20 is doing and I would applaud anybody in the legal profession who wants to raise this issue because I think it is the biggest single issue that the world faces now. Countries that are looted become destabilized, become failed, and become terrorist nations. It's all linked. So on that kind of preaching note, I turn it over to my friend here.

PROFESSOR GORDON: I have to start out by sticking up a little bit for the British Virgin Islands, because I led the anti-money laundering [(“AML”)] assessment there, and they no longer had been a secrecy jurisdiction for ages, and we concluded that they had a far better AML system, particularly with respect to preventative measures, than the U.S. or Canada. So let's hear it for the British Virgin Islands. But I think there is one—it is an issue that particularly, I will bring the legal perspective to this for a second, of a little bit of confusion as to what it means when money flows from Country A to the British Virgin Islands or some other offshore center to the United States. Money doesn't flow any more. It's not like there are, I don't know culverts or something, where they dump the

cash and floats. What it really means is that another jurisdiction's law is applied to the transfer of ownership rights to bank accounts. So money doesn't actually flow into the BVI or any place else. And one of the reasons that there is a gazillion dollars that, at least temporarily, is under the jurisdiction of the British Virgin Islands is that English law applies, and you can trust the judges there because the laws and judges are there.

So, [as] I have described, the BVI, and the offshore Isle of Man, Jersey, and Guernsey, for example, is exporting rule of law to parts of the world that don't have it. However, it's certainly true that looted money might be looted and sent through offshore jurisdictions, meaning offshore with respect to, say, I don't know, just to pick one country, Nigeria. They have a lot of trouble with looting—both the criminal element and the honest element are afraid to have their financial resources, meaning their claims against banks. If you have a bank account, all you are is an unsecured creditor of the bank. Everybody knows that. So they would rather have that creditor claim not being enforced by Nigerian courts but, rather, being enforced by Hong Kong courts or BVI courts. I think in the fight against money laundering that's something that is essential to understand; that really the jurisdictions that are the places where the money is flowing through, they are the ones who are enforcing the rules, such as, and to go back here and also the previous slide, to preventative measures.

So I always thought it was interesting that in the new methodology for assessing outcomes, effectiveness, to out of the eleven apply, it is really only one. Preventative measures [are] really only one. I think, isn't it four?

MS. NADEAU: It's the implementation.

PROFESSOR GORDON: Implementation of preventative measures.

MS. NADEAU: Yeah.

PROFESSOR GORDON: Number three, I think, is supervision, so, and I think those are extraordinarily important because the anti-money laundering framework as brought into being has been proved through the so-called preventive measures system. Now, the preventative measure system, they said okay, there is a lot of money flowing through banks, illegal, criminal, so what we're going to do is, we're going to turn banks into snitches. We're going to turn them into unpaid law enforcement agents, in effect. We're going to require them to identify their customers and monitor those transactions, to see if they suggest that they might involve criminal proceeds, might involve money laundering, and it's an extensive thing for banks to do. They have to identify their customer, build a profile, have some sort of system for monitoring that profile, monitoring transactions to see if it fits within the profile. If it doesn't, then it goes to the financial intelligence unit within the bank. There are investigators there. They decide whether they should be a snitch. Used to be "drop a dime," but I don't know what it is in Canada. Can you imagine there used to be pay phones? But essentially send a little note to law enforcement and say we think our client here might be involved in something bad, and then that goes to law enforcement. That was really the basis for all the anti-money laundering, all of the measures, but, principally, the so-called preventative measures.

Public domain now, the reason, the other reason we had banks do that and not everybody, not, say, lawyers we're not required to do this, designate a non-financial businessperson, real estate agents, et cetera, was not just that money tended to, illegal proceeds tended to, flow eventually into banks because if you wanted to be part of the formal payment system, in other words, not pay [for] things with cash or diamonds or something, you have to have a bank account. So banks would be involved. Also, if you're hauling big satchels of money around, somebody might notice, and then they would report you, or they might notice and steal it from you. So it's much better to have a bank account; but also, because banks are subject to supervision, annual supervision where people actually show up in your bank, and if it's a big enough bank, there are 365 days a year and I mean Saturdays and Sundays as well, but they actually show up, and they do a detailed examination. It was originally just for credential purposes, and then eventually anti-money laundering was tacked on. So they were doing an anti-money laundering examination. So they were actually physically there. Also for banks, a typical bank, and there are four really big ones in Canada and 400 in the United States, has more customers than just bad guys. They take money from both criminal elements and from the honest elements.

And so they didn't want to get in trouble for bringing in criminals because the supervisors, the folks who were doing the examinations could then penalize them for that, and that would affect their legal business. So it's a very good way of ensuring that financial institutions actually comply with these preventative measures, which then allows them to be snitches on their customers, and their customers, at least some of them, are likely to be money launderers because money launderers are criminals [who], in general, want to get their money into the formal financial system. So that's kind of the way it's set up.

So I think Canada does a much better job of this than showed up in the evaluation. There's a good reason. Among the good reasons for that—you know, I am half-Canadian, but that's not why—is that supervision in Canada, in general provincial supervision, is much more effective. It's much better than the U.S. Now, could it be because it's just the federal government that does it in Canada and in the U.S.—oh, my Lord. Just the federal, one agency, the number of federal agencies, one, two, three, four, five, and then we also have 50 states that also get involved. So there's a greater diversity in the supervisory community.

It's also, we have many more banks in the U.S. than Canada. Canada's not as large [of] a country. I think it's also attitude. If you look at what happened in 2008, Canada avoided the financial crisis. I think clearly as a general consensus, that part of the reason for that was much more provincial supervision. If you add anti-money laundering within the supervision to that, it's a natural, although it's not the same people who do it, but it's within the same system. So you have expert examiners who look for, to assess the quality of preventative measures in Canada, which you don't have in the U.S., but you just have a more effective system of bank examinations in general.

Now, legalities turn to lawyers, designated financial businesses and persons. How many lawyers are there in the U.S. and Canada? The technical term, I think, is a gazillion, so how many, let's see, how many jewelry dealers are there? How

many real estate agents are there in these places? How many money services businesses, check cashing? You add those altogether you get a lot. So when you turn and say, well, essential to our immediate outcomes here, looking at the effectiveness of implementation if we extend preventative measures to all the lawyers and all the jewelers and all the real estate agents, do you think that there are going to be folks out there who are going to be able to supervise the implementation just like you do for banks in money services business? In the U.S., the money service business is supervised, and compliance is assessed by the Internal Revenue Service. Guess how many agents they have assigned today? I won't even tell you: tiny. There's no conceivable way they can do that. If you were adding lawyers into the mix, how would you, do you think, I don't want to say anything that might sound, what's the word?

MR. WEEKES: Don't impugn the integrity of lawyers.

PROFESSOR GORDON: I want to know, I'm a lawyer. I can do that, and I think ethnically there's a traditional *consigliere*, Italian, the lawyer who works with, you know. So I'm guessing there are actually lawyers out there that will agree to work for criminals. Wouldn't that shock you?

And can you imagine if government, can you imagine if the government says "gosh, gee whiz, you are supposed to be knowing your client and sending in suspicious activity reports to the police if you think your client is a criminal." Do you think they might be able to find somebody who won't do that? Yeah. Fill in for everybody else as well.

So to me, it has become such a red herring, and it's actually negative because while we should be focusing on banks that are supervised, does quality of the supervision, particularly with respect to anti-money laundering bank examinations, focusing on that instead of getting distracted into something that is never going to find a bad guy anyway, because they're going to get a criminal to do it, a criminal lawyer, a criminal somebody else.

The focus also on transparency, I think it's always good that financial institutions should be required to ask who actually owns a company or who actually is the beneficiary trust. It's a good thing, put it on record, and part of the banks' duty with respect to its due diligence monitoring transactions becoming a snitch and sending that note to the police saying my client might be a bad guy would be to look at the unidentified beneficial owner. If it's Mickey Mouse or if it's Richard Gordon and \$10 billion dollars is going through it, they can say that doesn't make sense. Why would Mickey Mouse, who doesn't exist, be listed as the attorney, the beneficial owner or controller, or Richard Gordon? We do a little looking, and we say he's not the lawyer to folks down in Silicon Valley where you can make a billion dollars. No, he just teaches at Case where they pay us \$5 an hour. So that's part of the due diligence.

That would make sense, but that's not what this is about. It's, we are going to assume that we have been told the truth. Can you imagine a criminal setting up a company somewhere and lying about who the real owner is? I would be shocked. I would just as soon [assume] everybody tells the truth. I think more likely all the bad guys will lie, and all the honest people will tell the truth. That's

just a guess. But maybe we'll fine them if they don't tell. If I'm an international drug trader who kills ten people a day for the fun of it, you should see how many people I kill for business purposes. But I will be so scared about the \$5 fine if I lie. I don't think so. So it's a good idea that it's taking off and so in concentrating on things that are not going to stop money laundering.

Because of the misallocation here of interest, I think more resources are going down dead ends and not going to the more basic side of anti-money laundering preventative measures, which is the banks that are subject to actual ongoing supervision by experts to see if they are implementing anti-money laundering remarks. I think Canada does a better job of that than the U.S., and I think the U.S. and Canada do a better job of that than lots of other jurisdictions who will be, based on this event perhaps focusing on the wrong thing, but that's just my personal view. I'm not speaking for Case Western Reserve [University School of Law].

MS. FRANCIS: I agree with you, Canada does a better job of supervising, and that's why they took the case about bringing the lawyers in the loop to the Supreme Court of Canada. So the Government of Canada saw this as a real gaping problem, the legal issue. So tell them about that because I found that very interesting. They didn't win the case. The Supreme Court is, of course, lawyers but . . .

MS. NADEAU: For all of them, the world is run by lawyers.

MS. FRANCIS: Because it's the right thing to do. (Laughter.)

MS. NADEAU: Well, you know, I appreciate the perspective that Richard's bringing to the debate on how far this, those AML rules, and international standards have been pushed, and sometimes they are really having an impact. But I think that we will come back to that in a little bit.

But on the issue of just lawyers and lack of coverage as gatekeepers, whether, let's assume, it's the right thing to do for now, you know, that's what the international standards that all the countries around the world have agreed and signed on to, but we can debate that. I think that's very healthy, but let's just assume that for now. The FATF pushed for lawyers to be added to the list of, you know, gatekeepers in the mid 2000s, I forget whether it was 2003 or '4. It was in the last revision, the previous revision of the standards. Canada had identified when we did a major revamp of our AML laws, and Canada's under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, under the regulations, and we created one supervisor for AML, which is [the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC")], which is the only AML supervisor in Canada. OSFI, which is the Office of Superintendent of Financial Institution, which is the credential supervisor of banks and other federally regulated financial institutions. And Canada's supporting FINTRAC on its AML supervision. So they're doing it together now in Canada.

So with banks, they deal with two in the U.S. That's a major difference. But when Canada revamped its system in 1999, 2000 and then 2001 in light of 9/11, they included lawyers as gatekeepers, and immediately the lawyers challenged the federal government. Due to that challenge, the federal government said, "wait a minute, you know, we're going to not implement this; we're going to try to

negotiate something,” and it was tried and failed those negotiations. The rules were changed a little bit. Lawyers were no longer required, under the revised rules, to report suspicious transactions to FINTRAC but just to keep a record and do it through the law societies at the provincial levels.

Despite that, the Law Society of British Columbia took the federal government to Court, and they won in the BC Court. There was a British Columbia, the federal government, then one challenged and one in the Superior Court, and then it went to the Supreme Court. So the Supreme Court decision was rendered in 2015, I think July, and the decision was that the rules, all the rules with respect to lawyers are now inoperative in Canada because they are unconstitutional. The rationale was just the search provisions of FINTRAC, as a supervisor, the access to the records, and the search provisions were seen as infringing some sections of the Canadian Charter of Rights. And it was in relation to the solicitor-client privilege in that area. So the Supreme Court did not say, “no, no, no, federal government, you can never apply such rules to lawyers,” they just said, you can, but you have to redesign them and make them constitutionally compliant. So the federal government since this decision is, you know, they said that they will be working on new provisions for legal professions, that it will be constitutionally compliant, and nothing has been announced so far. I know from the department . . .

MS. FRANCIS: Josee, what do other countries do that have, is it all over the map?

MS. NADEAU: It’s all over the map. The U.S., they didn’t even try, and I don’t think they will. In Japan, they never tried. In the UK, it is operational. It’s working, and it’s a common law country, and that’s interesting. In Australia, it’s operative, and I forget, you know. It’s all over, it’s really all over the place.

So that’s the reality, the reality of the FATF, and I think it goes back to the heart of what Richard was getting at, you have, don’t quote me on that, but you have a couple of people at the table, at the FATF that are all about rules and making better rules, and it sounds better. Too often the reality is continental European countries that have a very important voice, and it’s all about making more rules and for us more practice pragmatic common law. Those are multi-civil law countries. I love them, you know.

PROFESSOR GORDON: And you’re from a civil law jurisdiction?

MS. NADEAU: Well, it’s still within a common law country, but yes, I come from the province,

PROFESSOR GORDON: You say you’re not prejudiced.

MS. NADEAU: Yeah. No, no, no, and again, half of my history comes from France. The other half comes from the UK. So that’s the reality, and I call them Planet Europe sometimes. It’s all about making more rules. They’re a rules-based country. So more rules is better, which we finally won, I think, at the FATF table through the last round of negotiation in 2012, was to limit the number of new rules, and can we make sure the rules are implemented, and this is the focus of effectiveness. So gaining support from all the FATF members on focusing on effectiveness was a huge, huge victory for common law countries, and we’re a

minority in the world, common law countries, and we're a minority at the FATF table as well.

So anyway, I think making more rules sometimes makes more sense and is needed. It won't be as effectively monitored in terms of supervision, of course. Canada, you have to supervise, I don't know, how many hundreds of thousands of real estate agents, and we're doing it through FINTRAC. It's a more risk-based approach. There are ways you can still do it, but it will never be as supervised as, you know, prudential institutions. It still makes life harder for criminals, and I think that's the idea.

MS. FRANCIS: Yeah. I think teachers and doctors have to report abuse. Some things are in the public interest.

MS. NADEAU: Yeah, yeah. Sorry, maybe we can open, I don't know if you guys want to say more at this point or . . .

MINISTER JIM PETERSON: I listened to this with a great deal of interest because I was the minister who had the great pleasure of bringing this legislation into being back in 1992. The biggest issue we faced was whether the lawyers should be involved and included, and we were fighting like hell to get them in there, and they were fighting like hell to stay out of it. I thought they were going to revoke my license to practice law in Ontario, and they were screaming louder at me than they were at the Premier of Ontario when they took away all of their Queen's Council designations, so I am glad I'm not the only politician who was.

MS. NADEAU: But the fight is not over.

MINISTER JIM PETERSON: Congratulations.

MS. NADEAU: The fight's not over, you know.

PROFESSOR GORDON: I actually, oh, I was,

MS. NADEAU: Sorry. Maybe I missed you. We'll come back to you right after.

MR. ROBINSON: Just a small comment: Richard, I think you were too generous to Canada. In fact, we're in abysmal in terms of disclosure publicly or privately of who owns corporations. That's at the federal level and every province. It's the Brits who are way ahead of us, who have gone and changed the law. I think it's, my understanding, very limited, is that you have two particular states that are very popular for these secret companies, Nevada and . . .

MS. NADEAU: Delaware.

MR. ROBINSON: Delaware, but there may be more, but we're just universal. You can hide your ownership, trusteeship, whatever, in any federal provincial jurisdiction.

MS. NADEAU: I have a two-hander here. Actually, based on facts, though, it's true, as well in the U.S. It's as bad in Canada and the U.S. Where Canada's a little bit better is banks are required right now in Canada to ask who's the beneficial owner. In the U.S., they're not required legally yet. They will be with the new rules in 2018.

PROFESSOR GORDON: Yes.

MS. NADEAU: And it's not covering all of the financial institutions, so in a way, the U.S. is even worse than Canada, because the legal, the legal owners are known. We're talking about the real natural person behind who controls the

company. The U.S. is actually worse. It's not just Nevada and Delaware. It's all the states, like it's all the provinces in Canada. We're very bad in Canada, but the U.S. is quite worse in a way because the system, through banks, and financial institutions, is to [implement] preventative measures and know your customer and to do consumer due diligence is not even there in the U.S. So that's the difference.

PROFESSOR GORDON: It's true the UK even now has a shareholder or public register, and who identifies that someone is the beneficial owner and controller? The person. In other words, you can lie, and I am pretty sure that criminals do lie. (Laughter.)

MR. WEEKES: How could it be? (Laughter.)

PROFESSOR GORDON: I know. But I would actually disagree with the idea that, well, it's okay to have that because it usually doesn't work. So what? I think it's bad because if you start directing resources, and of course, this is the whole issue with doing an assessment before doing FATF assessment, countries are required to do a risk assessment first. You identify the risks, and then you deploy resources to those areas of risks. If you have rules, that basically just fuels errors. I mean, what I suggested, I won't say whether it was from Norway about having a requirement that, having a public register with a self-identified beneficial owner and controllers, I said why do you stop there? Require every person in your country to identify if they are a criminal and put that into a public registry, and if they don't identify themselves as criminal, then they have to pay a big fine.

MS. NADEAU: I think there was a question over here. No, that's good.

AUDIENCE MEMBER: Thank you. I wanted to ask more about the financial task force, and that is, you talked about, for example, countries whose scores are not good enough. You sort of alluded to parents' disapproval. What are the practical consequences of not having a good score either from other governments or markets or anything else?

MS. NADEAU: Well, the first practical consequences from the FATF as an organization, and again, the FATF is a task force, and it's consensus driven, and it's the members, me when I was head of that until last December, it's all of us, the bureaucrats under ministerial guidance or mandate that make those decisions. So the first level is, as I said, this more regular reporting. So as a country, you get the bad report card, you're not off, the FATF is not off your case for two years or longer. You have to report a year later. On the FATF report on the 40 recommendations and eleven outcomes, I spent three years of my life being under the FATF review for the last report of Canada. It's huge. It's touching on everything, so just that's a burden that you have to prepare the report, get it approved, send it. So that's the first level. If you're a good citizen and you report and you show that your lawyers are being improved or your results are better, then it's not that bad.

The second layer's that if you are not making progress, and a few countries were under that process in the previous round, you get a high-level visit from an FATF delegation, from different countries, from other countries, and you meet

ministers and parliamentarians, and you may, you know, put pressure on them to show, well, listen, you are dragging your feet. We have done that to Japan. We have done that to Brazil, you know, and a few others. Turkey was under that. So then, you have to review ministers, you have to, you know, there's nothing public really at that point. At a certain point, if the country's still dragging its feet, it goes through a public listing. So the FATF does a listing of non-compliant countries, so you do get mentioned publicly. So this is when it starts to maybe have a little bit of an effect on your reputation, some investment, you know, could have some negative impact on your investment.

MS. FRANCIS: You get a lot more in the money laundering business.

MS. NADEAU: Yes. (Laughter.)

It's a good publicity for that kind of business.

The next level is, you can be suspended by the FATF, or you can be expelled by the FATF, and again, not good for any country to be in that situation. That's for the FATF members. The FATF also does a review of all of the, sorry, all the countries around the world, not just of its own membership, and it does this high risk assessment of countries that are not compliant. When I was the head of that, we were doing a review of Trinidad and Tobago, and we found them non-compliant, and they were put on that list. I was chairing a regional committee that was doing this assessment. I got a call from the Minister of Finance from Trinidad who said, "Okay. Can you explain to me the process? You know, we're seeing an impact on investment, and we're going to get our laws in order, and we don't want to be going to the next steps and all that." So it has quite real . . .

MS. FRANCIS: Yeah, shaming them into work.

MS. NADEAU: Shaming.

MS. FRANCIS: It leads to interdictions and sanctions very often and real problems. If you look at the trajectory of, you know, the fact that Canada has started to rein in its banks, they were notorious in the Caribbean, and that's where the dirty money was all going until there was some high profile insider trading cases, Dennis Levine in the '80s and the Bank of Nova Scotia. There was a general who had hidden away a lot of money in the Bahamas.

So Canada, its feet were held to the fire, and our banks were by the American governments and other governments over this who were doing the investigations. The British were doing some, and look at all the scandals that involved Switzerland. So it eventually forces better behavior, and it does. Not always, not always. So Switzerland is no longer the capital for dirty money. It's Singapore.

MS. NADEAU: It changed, they changed their laws.

MS. FRANCIS: They switched to Singapore, but anyway, they will get pressure as well, but to the extent that they get pressure—so the shaming does very often lead to improvement.

PROFESSOR GORDON: There is something even prior to shaming, which is that pretty much every jurisdiction in the world requires its financial institutions to engage in a due diligence process, quote unquote, when they engage in relations with another financial institution from another jurisdiction. And if you are the U.S., in particular, the dollars can still be in an actual trade. If

you want to have a dollar-based account, you have to have a U.S. correspondent bank. So if you're the respondent bank in Country X, it's pretty much if you're involved in national commerce, you have to have a corresponding bank relationship with a U.S. bank. So under U.S. law, then, you have to engage in a heightened level of due diligence. If the bank, the respondent bank is in a jurisdiction that does not comply with the threat of recommendations, and that's taken seriously. And it doesn't mean the jurisdiction has done really poorly or has been sanctioned by the FATF; if it just is even slightly worse, they have to increase to a level of due diligence, which means I have to send a couple of officers who are in my compliance department over to the country, to country "ding-dong", and see what's going on and see if that bank is implementing anti-money laundering policies, even though the country itself is not doing so safe in banking supervision. That's expensive. And there's an entire, I am on one committee, I think you're on one, too, concerned over so-called "de-risking," which is particularly with Caribbean banks and some other banks, which is [those] honest, they are honest banks.

MS. NADEAU: Some African countries.

PROFESSOR GORDON: African, and certainly the Middle East and South Asia, where the amount of money that's being corresponded with is not very big. So if I am a U.S. bank and it turns out it is a small Caribbean bank, they cannot operate because you have to report everything. They cannot operate without a dollar, without access to the U.S. dollar. They can't get a corresponding bank relationship because it would be too expensive for, I don't know, KeyBank, too expensive for KeyBank to do the necessary due diligence required, because the FATF has said Trinidad isn't doing particularly well. I did an assessment of Nigeria, and I was surprised at the amount of resources going into implementing the preventative measures provisions for banks in Nigeria. Nigeria is a very poor country. There's a revolution going on in the north, and terrible trouble with malaria. In fact, it was, I think, a desert country that has malaria. I'm at the airport and asking my cab driver, and I got everything in, and I said "what the hell is that?" And he said "malaria." I said "you have malaria here?" He said "starting tomorrow is the rainy season." You would think more resources would be going in to preventing malaria, dealing with the rebelling in the north with the ISIS. I said, "why so many resources?" He said, if we do not effectively implement our anti-money laundering, particularly the preventative measures, which are expensive, we'll get a bad rank from [the Inter-Governmental Action Group against Money Laundering in West Africa ("GIABA")], which is in Nigeria, an FATF Style Regional Body. If that happens, we are going to lose our franc accounts because France, basically France is not going to agree to have a corresponding relationship with us. So it's that powerful.

MS. NADEAU: Yes. Maybe one or two more questions. We're going to have a whole day on this.

AUDIENCE MEMBER: Practically speaking, how far down does a bank have to dig in due diligence in order to find a beneficial owner because, you know, there can be so many shells? If you have an LLC, the members are all

limited partnerships, and limited partners are all LLCs and on and on and on, and you can go down any number of levels before you ever find a live person.

MS. NADEAU: So the centers are quite specific that you have to find the natural person that controls directly and indirectly. But there's something that kind of says if that cannot be found, then you treat the company as a higher risk, and you apply due diligence, and you find another warm body within the organization that you can make like a senior person or whatever. That's how we have implemented more or less the rules in Canada, but again, it can be implemented in many different ways. We have also put a threshold like ownership of 25 percent or more, directly or indirectly, so you can drill down, but some countries don't have thresholds of share ownerships and all that. It's simply all over the place.

Public registry, just quickly on that, is, you know, it could not really be done in Canada because of privacy issues. Financial information is private, so with the constitution, I don't think we could implement that, but personally, I think garbage in, garbage out. Yeah, people do lie. It's a bit harder to lie to your bank because banks are supposed to check the owner of the account, the owner of the corporation, know the purpose of the account, the business purpose of opening that account for the customer and do ongoing due diligence, like monitored transactions. So based on those things, they are in a much better place to find out whether the money flows are consistent.

With Josee now as a consultant, I am not getting my paycheck every two weeks. I am getting those amounts of money. Is that like what's been happening to our account? No drug money, don't worry, it's all legitimate, but banks are a better place to monitor than any public officials maintaining public account of ownership of corporations. So in Canada what was announced, though, and this is an area of cooperation, that I think, would be great, is that the minister and in his budget last week starts finding out he's going to be working with the provinces, to come up with a national strategy to deal with beneficial ownership issues, including in the context of tax, because it's also a big issue in the context of tax. So they're going to be working on that.

But what will the Trump Administration decide to do? Will they ever want to push forward that issue at the registry level? I don't know. We have no signal so far.

MS. FRANCIS: Recent example of the Canadian situation vis-a-vis the U.S. situation, too, is the Clinton Foundation took money from very unsavory people that wasn't really a good idea. A lot of the money went into a trust in Toronto, a Canadian trust, and the donors will remain secret. So where they can force any foundation, in the United States, the Clinton Foundation, to disclose the donors, the actual donors or lenders, whatever, they just made one step north, set up a trust in a solicitor's office in Toronto and are off the hook. So we don't know where hundreds of millions of dollars into the Clinton Foundation have come from.

MS. NADEAU: Hopefully, they're going to deal with the trust as well.

PROFESSOR GORDON: In the United States, the rule that's going into effect, as Josee said, by the way, Professor Josee, because she is actually an

adjunct professor here, that the rule just requires the bank to ask and then give a form to the person, and they sign and say if 25 percent or more of this entity's controlled by a physical person all the way through the chain as you describe, then you voluntarily disclose that, put that person's name down. There had been proposals floating around in Washington that the banks would have to conduct due diligence with respect to whether that was actually the real person.

MS. FRANCIS: The real person.

PROFESSOR GORDON: Now, the response of the American Bankers Association, the other 'ABA' as I like to call it, the other is the American Bar Association, if we do that, we'll have no money to do anything else. Can you imagine, you have tens of thousands for businesses and trusts here? We would have to, we would hire all the FBI agents in the country and all the RCMPs in Canada just to chase down two or three accounts, and it'll turn out that they're honest.

MS. NADEAU: On the cost quickly, like you all heard about those big fines being issued in the U.S. and the reaction from a lot of the big banks and hiring more and more people in compliance, you know, again stepping back, I think we will collectively, the community will have to reflect on what's the best way to tackle this issue because it's quite costly right now, and that's more and more what we're hearing. But in part, many of the banks, and you saw the results on implementation actually, no country, except one, but that was a mistake by assessment, no country has scored a good decent rating for implementation of the preventative measures. So our position in Canada and my personal position has been, can we find a good way to implement those rules first before we put new rules? If many of us were doing a much better job in the implementation of the rules, we would be far better in fighting financial crimes globally. So that's that.

AUDIENCE MEMBER: Well, hopefully it'll be a bit like, if they do hire all these guys, it'll be a bit like the Mounties in the great musical *Rose-Marie*. Now, it's on the trail like a pack of hungry wolves on the trail, right? Good.

ASSOCIATE PROFESSOR PARRAN: All right. Well, let's give our wonderful panel a big applause. (Applause.)

ASSOCIATE PROFESSOR PARRAN: Now, I would invite our Canadian National Director, Chi Carmody.

MS. NADEAU: So sorry, we have to run. Thank you very much.

PROFESSOR CARMODY: I've been asked to say a few words of closure, and thank you to end this conference. For those of you I haven't met, I'm the Canadian National Director, and I teach at University of Western Ontario Faculty of Law, one of the two partner institutions in this institute. I've attended these meetings since 2000, and this conference, in particular, promised to be one of the potentially more controversial ones. In looking at the conference lineup and hearing from several of the panels today, I'm always impressed at how much we have on one side of the ledger, lots of visions of cooperation, but also looming on the horizons constantly much potential for conflict, frequently diffused so skillfully and with such great diplomatic aplomb by many of the attendees who are here regularly and irregularly.

On the cooperation side, we had a wonderful set of panels with people like Julie Gascon, Betty Sutton, and June Ryan as well as Peter Bates just after lunch and David Hults, Chris Zeigler, Gitane De Silva, who stressed the common cause and gave us some very graphic and I think some hopeful signs, examples of people on both sides of the border who are working together. As Congresswoman Sutton noted, the Great Lakes regional economy is the third largest economic entity in the world. It contains 20 percent of the world's fresh water. And it shouldn't be called, as she reminded us, the "Rust Belt" but the "Opportunity Belt."

On a bit of a personal note, I took a little walk yesterday morning in the driving rain along Euclid Avenue here in central Cleveland, and I could see evidence of that opportunity and transformation and all the construction. Much of it related to The Cleveland Clinic throughout the city. This city has changed enormously since I started coming here almost 20 years ago, and it has been dotted since that time with all sorts of snazzy office buildings and eateries and even a high-tech bowling lane if you just walk up a few streets. So it is really quite impressive. It looks like a lovely place to live and a great place to work.

At the same time, I think our conference proceedings today were evidence of the fact the relations between our two countries are not all sweetness and light, at least, all of the time. Our financial integrity panel just noted that both of our countries have some strong areas of performance but also some areas of great lag.

There are also the perennial conflicts out of the relationship. No one can ignore the words spoken by Terrence Stewart this morning when he noted that there have been 40 years of stagnant incomes here in the United States. Very few people have addressed this. The stagnation has now resulted in the election of a president who routinely derides other countries and has taken a very wary approach, and skeptical approach, to internationalism. As he said in his inaugural address: "From this day forward, a new vision will govern our land. From this moment on, it is going to be America first." And one of the planks about [the] America First platform program is going to be to make the trade deficit disappear. Something that I think we heard about in some detail this morning. For Canada, that is going to involve first and foremost the renegotiation of America's preeminent commercial commitment under NAFTA and that possibility, renegotiating NAFTA, might have seemed laughable at a conference like this just a year ago, but I think it's a testament perhaps to some of our own shortsightedness and perhaps some of our own complacency that we're now having to deal with this after the fact rather than before.

It's important not to be complacent, and to his credit, Ross Hornby, I think laid out for us three potential negotiating scenarios that might arise in the renegotiation of NAFTA. Ross pointed out to us that there is a sort of quick and really dirty option that we might face where the United States basically says, you know, take it or leave it and threatens to walk away. There's also the possibility of a broader revamping of the agreement, something that I think the Canadians would favor but something that might also be messier and harder to contain given the election timetable and the possibility that long, long negotiations can

get bogged down and drawn out, and somebody with his eye on the election schedule in the United States may not want that to happen. Then, also the possibility of a complete breakdown, something that we have to be prepared for, and Ross indicated that despite strong economic behavior over the last few months, and a very frothy stock market for those of you who are invested, the reality is that we're entering a time when investment has essentially come to a halt, and he noted in his comments, we're entering a pretty scary time.

We're also reminded by Jim Blanchard this morning that the original NAFTA passed Congress in 1993 by a squeak, and any need to pass similar legislation today probably wouldn't make it. And that's wise to remember, particularly as we look back, especially when we eulogize or attempt to eulogize agreements that have fallen by the wayside like the Trans-Pacific Partnership. There's no guarantee the Governor reminded us, and I think he reminded us very wisely there's no guarantee that something like that would have passed even if somebody like President Hillary [Clinton] would have been in the White House today.

Bruce Heyman's observation is also very useful. It's one to recall, and he said that it's important to realize that going forward we may not be dealing with a rational approach to trade negotiations by this administration. It will most likely pursue a kind of asymmetrical strategy, and we have to be prepared for that. NAFTA's renegotiation comes up against the reality, I think pointed out very presciently by Jim Peterson and others, that Canadians need to diversify their foreign trade very quickly. We're trying to do this, and at the same time, I think we were picked on this morning by Alan Wolff, who said that we're being a little "promiscuous", but maybe that's because we have to be. Remember America First?

Jim Blanchard also cautioned us to be aware of false narratives and the wearing trade in nativism and protectionism, and this idea that international trade is responsible for so much of economic carnage seen in the last few decades when many people, and I think many people in this room, would agree with the fact there are broader forces at work in the economy that are harder to encapsulate in a sound bite or a tweet. As Jim Peterson related this morning, most of the job loss has been caused by changes in the broader economy and, in particular, innovation, and his statistic reminded us that Canada's Steamship Lines used to have 23 workers on the typical laker, whereas today with all the innovations that have taken place, that crew has now been reduced to five people. And this points not necessarily to more protectionism, to the need for more protectionism, but for broader things like job retraining and skills-based enhancement, like measures of income security for those who are job displaced and for the need for pension reform, so that those who are facing an old age don't have to do so with the prospect of poverty.

Alan Wolff has also reminded us in his remarks this morning that there continues to be, and perhaps there will always be, a strong measure of support for Canadian business and for Canada and Congress, and let's hope that will

continue, and let's hope that our relationship will continue to be as strong as it has been in the past.

I would like to thank all of our sponsors but in particular our Platinum Sponsor this year, DLA Piper, and our Gold Sponsor, Dickinson Wright. I would also like to thank my fellow directors, Steve Petras of BakerHostetler, who's with us, and especially to the institute's managing director, Ted Parran, who's down here at the front. Both Ted and Steve have worked very hard over the last few months to put this conference together, and they continue to do so year after year, and I can certainly say in Ted's case he gets most of his energy or certainly some of his energy from his lovely Mexican wife, Adriana, and that's a small little pitch for a trilateral approach to NAFTA, so thank you very much.

We look forward again to seeing you this year. (Departing words in French and Spanish.)

Safe travels home everybody. Thank you. (Applause.)

MINISTER JIM PETERSON: Thanks a lot. Just wrapping up, Chi, that was a wonderful overview. Thank you very much. I want to reiterate the thanks that you have given to people here. Just let me say this: In a very short time that Michael Scharf has been the dean of this law school, all of us have noticed an incredible change for the better in the law school itself, in rankings nationally, but also in the functioning of CUSLI. And it's because of his inspired and inspiring leadership, I think, in the law school that things have become much better. (Conference concluded at 5:10 p.m.)