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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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• (1400)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call this meeting to order. This is meeting 41 of the Standing Committee on Justice and Human Rights. Today is Thursday, October 22, 2009. We're continuing our study on organized crime in Canada.

I want to thank all of the witnesses for attending. You may know that we undertook the study some time ago. We heard witnesses in Ottawa. We've already travelled to Vancouver, where we heard a lot about street gangs. I think we on the west coast have a lot to learn from you because you've had your own challenges in Quebec and you have had some successes, so we're anxious to hear some of the solutions you're proposing.

In any event, I just want to go through the list of witnesses. Representing the Barreau du Québec, we have Giuseppe Battista as well as Nicole Dufour. Welcome.

Representing the Canada Border Services Agency, we have Angelo De Riggi. Representing Criminal Intelligence Service Canada, we have Pierre-Paul Pichette. Representing the Royal Canadian Mounted Police, we have Inspector Sylvain Joyal as well as Inspector Martine Fontaine. And representing the Sûreté du Québec, we have Inspector Denis Morin as well as Francis Brabant.

Welcome to all of you.

What we'll do is go in the order that I've mentioned. We're starting, actually, with Angelo De Riggi. Then we'll move up to the Barreau du Québec.

Please proceed.

Mr. Angelo De Riggi (Manager, Regional Intelligence Division of Quebec, Canada Border Services Agency): Do I start in English or French?

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Your choice.

[Translation]

Mr. Angelo De Riggi: Mr. Chair, honourable members of the committee, thank you very much for inviting me to participate in today's hearing.

I represent the Canada Border Services Agency, Regional Intelligence Division of Quebec. My name is Angelo De Riggi.

For the Border Services Agency, the Quebec region is the second largest in terms of size and has an 813-kilometre border with the U.S., the longest shared border in Canada.

The Canada Border Services Agency is responsible for securing Canada's borders at our ports of entry, which consist of 32 land border crossings, 25 airports—including three international airports—nine marine ports, six railroad stations and five inland customs offices.

Currently, there are approximately 2,400 employees working for the CBSA in the region.

Each year, we process more than four million air passengers, six million road travellers and around two million commercial releases. Of these, we conduct nearly 600,000 examinations each year. Last year, CBSA and the Quebec region took nearly 16,000 enforcement actions in the travellers' field section resulting in 2,451 narcotic seizures.

• (1405)

[English]

The Chair: Mr. De Riggi, could you just slow down a bit? The interpreter is having trouble. Thank you.

[Translation]

Mr. Angelo De Riggi: The result was 2,451 narcotic seizures and 378 currency seizures at entry points alone.

The Intelligence Division of the CBSA has the mandate to identify the threats and to communicate, in due time, strategic operational and tactical intelligence in order to support the activities of CBSA and Citizenship and Immigration Canada. We apply these principles with our law enforcement partners, that is to say the Sûreté du Québec, the RCMP, and all of the other law enforcement agencies in Quebec.

Our national priorities are terrorism, illegal immigration, narcotics, money laundering, and strategic exports. These are the targets that we have.

The Intelligence Division is divided by mode of transportation, that is land, marine and airport. Within these teams we assign intelligence officers to different joint projects and task forces.

The different joint forces operations dedicated to fight organized crime which we contribute to are: the Integrated Border Enforcement Team at Valleyfield, Lacolle and Stanstead; the National Port Enforcement Team—Port of Montreal; a Combined Forces Special Investigation Unit, the UMECO; the Integrated Proceeds of Crime Unit, the IPOC; the Federal Airport Investigation Unit, the SEFA—Pierre-Elliott-Trudeau; the Armed Munitions and Explosives Joint Task Force with the Sûreté du Québec and other police forces—we are part of this team; liaison with different law enforcement partners; and liaison with the RCMP drug section.

During the course of 2008-2009, the Intelligence Division has also assisted operations dealing with narcotics and money laundering by collecting, analyzing and disseminating intelligence to the front-line officers. Our primary mandate is to give front-line officers information so that they can intercept goods at the ports of entry.

We assign intelligence officers to different projects who have the knowledge of international transportation, port and airport operations and border operations. The experience and knowledge of the intelligence officers have contributed to furthering the investigations and the fight against organized crime.

[English]

The Chair: Thank you. I think you understand the process. Each organization has 10 minutes to present, and then we'll open the floor to questions from our members.

Mr. Battista.

[Translation]

Mr. Giuseppe Battista (President of the Committee on Criminal Law, Barreau du Québec): Thank you, Mr. Chair.

Thank you, members of the committee, for having invited us. I am speaking today as Chair of the Advisory Committee on Criminal Law of the Barreau du Québec.

We would like to take this important opportunity to reiterate a few messages and concerns that we have been expressing for some years now in relation to the reform of criminal law.

First, the toughening up of criminal laws, through stiffer sentences and the elimination of prosecutors and the courts' judicial discretion, in our opinion, undermines the effectiveness of the criminal justice system.

Second, in order to improve the efficiency of the criminal justice system, whose ultimate goal is to do justice and not to punish, two things seem obvious to us.

First of all, we must ensure above all that police and prosecutors working on organized crime investigations receive the financial resources they require. Investigators must have the technical and legal support they need during investigations whereas prosecutors must have the opportunity to set up teams to study the cases and to adequately prepare them in order to see them through to their conclusion.

Secondly, the modernization and simplification of criminal procedure are also desirable. On this issue, we refer you to the Report of the Minister's Roundtable on Criminal Law, which followed a meeting held in Toronto on November 1, 2002. We could

also refer you to the deliberations of the symposium on criminal justice organized by the Canadian Association of Chiefs of Police, which all the other stakeholders in the justice system participate in.

I would like to refer you to some of the elements in the Report of the Minister's Roundtable on criminal law.

First, this meeting brought together 26 criminal lawyers and academics from across Canada. They were invited by the Department of Justice to discuss criminal law reform in November 2002. While the report on these discussions is not a transcript of the points of discussion upon which there was consensus, it is a first step in a continuing process of public consultation by the Department of Justice to help identify criminal justice priorities.

The document indicates that Criminal Code reform should reflect appropriate social and economic values as well as the enhancement of local resources. The minister at the time supported the idea of the need for a pre-determined set of values to guide the reform.

As for values in criminal law, if we rely on a public policy document published by the Department of Justice in 1982 entitled "The Criminal Law in Canadian Society" there are two major objectives in criminal law: preservation of the peace, crime prevention and protection of the public—the objective of security; and fairness, impartiality and the protection of the rights and freedoms of the individual against the powers of the state and the provision of a fitting response by society to wrongdoing—the goal of justice.

There is an inevitable tension between these two goals. A free and democratic society has the challenge of finding a balance between these two objectives. We would like to emphasize some of the values drawn from the report on the roundtable in Toronto in 2002, to which criminal law should be tied.

The fundamental purpose of criminal law is security—to preserve the peace. The criminal law must provide a fitting response to wrongdoing while respecting the principles of justice and fairness and the rights and liberties of the individual.

The sentencing of an offender must seek his rehabilitation and to repair the harm this offender has done to individuals and to society, to the extent possible.

● (1410)

The punishment for an offence must reflect the gravity of the offence as well as the degree of responsibility of the offender. There must be discretion in the criminal justice system, and I emphasize the word "discretion", to ensure that the goal of rehabilitation is not lost and that the least restrictive yet still adequate punishment is given.

Similar offences committed in similar circumstances should result in similar punishments.

Offenders may be separated from society when necessary but, reintegration of the offender into society should be the goal.

The criminal justice system must recognize that teenagers are less mature and must keep young people separate from adult accused and offenders, except when allowed by law.

The criminal justice system must treat victims of offences and witnesses to offences with courtesy, compassion and respect. Victims and witnesses should not suffer harm as a result of their involvement in the criminal justice system.

The criminal law must describe in clear and accessible language the actions that society has determined are criminal and penalties for those offences.

I remind you that these are the basic principles...

[English]

The Chair: One moment. Could you go back a couple of sentences? The interpreter missed one sentence.

Mr. Giuseppe Battista: Yes. I'm sorry.

[Translation]

The criminal justice system must treat victims of offences and witnesses to offences with courtesy, compassion and respect. Victims and witnesses should not suffer harm as a result of their involvement in the criminal justice system.

The criminal law must describe in clear and accessible language the actions that society has determined are criminal and penalties for those offences.

We have several traditional suggestions to make. First of all, we must have confidence in judges and provide legislation that will facilitate proper trial management. This should be done within the framework of consultations that would involve, most importantly, lawyers for the defence and the Crown working our judicial system.

We must show restraint when dealing with rules of disclosure of evidence. The disclosure of evidence is a fundamental right which is tied to the right to make full answer and defence. To unduly limit the rules of disclosure may result in miscarriages of justice. We can confidently state that cases reported in various jurisdictions of miscarriages of justice and rules of disclosure are often connected. Failure to disclose evidence is often the source of a miscarriage of justice.

We must take into account the work of various committees dealing particularly with the rules of disclosure of evidence, of judicial discretion and of the determination of evidence. In particular, there will be Mr. Justice Major's report, which will be published following the Air India Commission of Inquiry. I believe that important lessons will be drawn from this report, and with all due respect, I suggest that you use that as a basis for your work. It would be best to wait for the conclusions of such commissions on these issues.

The simplification of the rules in terms of criminal justice does not and should not signify a limitation of judicial discretion. In this regard—I was talking earlier about trial management—we must consider that if there is a problem in terms of disclosure and particularly in the case of major criminal organization investigations, we are often dealing with investigations that last for years. In the course of their investigations, police often collect hundreds of thousands of documents. And this must be properly managed by the police forces who are investigating, by the prosecutors who must manage this documentation and information in order to use it adequately before the courts and present it intelligibly and

intelligently, and who must ensure they respect their obligations and their duty to disclose so that the accused may know what evidence there is against them, in order to properly prepare their defence as the case may be.

In conclusion, I will say that the fight against crime is not simply a matter of stiffer sentences. We must also look for solutions that promote prevention, and not only react to crimes that have already been committed. Thank you.

• (1415)

[English]

The Chair: Merci.

We'll move now to the Criminal Intelligence Service Canada.

Mr. Pichette.

[Translation]

Mr. Pierre-Paul Pichette (Chief Executive Officer, Criminal Intelligence Service Quebec, Criminal Intelligence Service Canada): Thank you, Mr. Chairman.

I thank the committee members for their invitation.

My name is Pierre-Paul Pichette and I have been working for the City of Montreal Police Services for almost 33 years. I have been the Director General of the Criminal Intelligence Service of Quebec since the 15th of September, 2008.

The SRCQ's mandate is to promote the secure sharing of intelligence between the stakeholders involved and to ensure the gathering of information from public organizations. It is primarily intended to coordinate criminal intelligence between Quebec partners.

The SRCQ team is made up of civilian personnel, police officials from various police forces and interns who come from various areas of study such as criminology, communications, and who participate in the drafting of analyses.

I am also responsible for the coordination of meetings between the different committees in the service in order to follow the development of its mandate and the unfolding of its three-year plan. The goal of creating an independent and transparent organization is to promote the exchange, the sharing, the accessibility and the development of intelligence for the various police services.

The SRCQ was created by an order in council of the Quebec government on February 14, 2001, and its budget comes primarily from Quebec with the exception for the moment of one person who is seconded to us by the RCMP. I would just like to specify, Mr. Chairman, that the SRCQ is part of the Criminal Intelligence Service of Canada, the CISC. However, it truly is independent because we report to the Quebec government.

As for our three-year plan, the activities and initiatives of the SRCQ fall into four main areas. The first is to ensure the integration and pooling of all criminal intelligence gathered and held by the police forces of Quebec, and to put this intelligence at their disposal securely. The second is to promote the exchange of criminal intelligence between police forces and information between public organizations and the gathering of data from internal and external agencies in order to fight against criminality and organized crime. The third is to ensure best practices in criminal intelligence as well as their development through the establishment of standards and working methods and by promoting training. The fourth is the production of strategic analyses to support the decision-making in the fight against organized crime.

In Quebec, recognizing the impact that organized crime has on Quebec society as well as the constraints imposed on public agencies, criminal intelligence officials from the main police organizations agreed in 2003 to exchange information on the nine main branches of organized crime active in Quebec. This distribution of responsibilities allowed each organization to concentrate on three of the major branches, allowing for the best value for money in terms of the investment of resources while ensuring full access to information held by each of the services concerned.

The subsequent exchanges of provincial status reports allowed us to follow the evolution of these nine branches, thereby contributing to a comprehensive overview of the common trends. The ensuing reports underwent impact analyses and were the subject of discussions between the parties after which it was agreed that certain adjustments would be made and a new version of the protocol was extended in 2008.

The protocol also provides for the participation of all Quebec police services. This contribution is a result of the obvious fact that organized crime activities are felt in all communities and that vigilance and awareness are the best weapons with which to fight against this phenomenon.

In this way, taking into account the obligations set out in the Police Act concerning criminal analysis and contributions to intelligence, the Quebec police forces at every level are invited to participate in the exchange process in order to take advantage of the common documents generated by their contribution.

• (1420)

In short, the implementation of the protocol resulted in several significant advantages. For example, it allows us to optimize the gathering and distribution of intelligence among the participants; to maximize the use of human, material and financial resources of the police organizations involved; to contribute to the awareness of the new *modus operandi* and the new kinds of crime associated with the branches of organized crime. I must point out that the advantages of this strategic monitoring are however strictly limited to the nine targeted branches. It also allows for a sharing of criminal intelligence on an on-going basis, and for us to improve trust between stakeholders.

We should point out that no provision of the protocol should be interpreted as limiting the ability of the services involved to investigate any aspect of criminal behaviour, including the branches

that other services are responsible for. This is a protocol on the exchange of intelligence.

The objectives of the Minerva protocol are: to improve common knowledge of the identified organized crime branches in order to support decision-making and to ensure the cohesion of police strategies; to improve cooperation between intelligence professionals by promoting targeted exchanges on strategic themes; to improve the methodology of intelligence exchanges by establishing a framework; and to share the responsibilities of the stakeholders under the current protocol and define the limits of their responsibilities.

In conclusion, the organized crime branches were divided according to the following chart. The Sûreté du Québec assumes provincial responsibility for what we call organized crime—motorcycle gangs from Quebec and from Eastern Europe. The City of Montreal Police Services, for its part, assumes provincial responsibility for all organized crime involving "Asian", street gangs, and Middle and Near East gangs, whereas the RCMP assumes strategic monitoring for aboriginal, Italian and Latino-American organized crime.

Mr. Chairman, I have finished my presentation and I am now available to answer any questions the committee members may have.

• (1425)

[English]

The Chair: Thank you.

We'll move on to the Royal Canadian Mounted Police, Monsieur Joyal.

[Translation]

Inspector Sylvain Joyal (Officer in Charge, Drugs Section, Montreal, Royal Canadian Mounted Police): Mr. Chair, members of the committee, allow me to introduce myself. I am Inspector Sylvain Joyal. I am the officer in charge of the RCMP Montreal Drug Section. It is a privilege for me and a unique opportunity for the Royal Canadian Mounted Police to be here today. I would also like to mention that I am with Inspector Martine Fontaine. Inspector Fontaine is the officer in charge of the Montreal Integrated Proceeds of Crime Section.

I want to thank you, Mr. Chair, for allowing me to address the committee for the next few minutes on the issue of organized crime in Quebec. I will take this opportunity to discuss with you some of the differences between today's organized crime compared with the situation in the 1970s. I will also highlight the contemporary challenges we must face to fulfil our mission to ensure safe home and safe communities. It will be a pleasure for both of us to answer your questions following the presentation.

First, as you know, Mr. Chair, the RCMP in Quebec does not have a primary public safety role as it does elsewhere in Canada. Under the Quebec Police Act, calls from the public requiring emergency assistance regarding such offences as individual cases of theft, fraud or drug trafficking fall under the jurisdiction of municipal or provincial police departments. Our mandate consists in providing federal police services and investigating national and international organized crime.

[English]

The Chair: Monsieur Joyal, perhaps I could have you slow down a little, please.

[Translation]

Insp Sylvain Joyal: Given this fact, our level of response must be part of an integrated approach.

We have realized, over time, that we could not work in isolation. We had to work in partnership and promote a coordinated and integrated approach. What I'm referring to here, is what is at the very foundation of projects Borax, SharQc, Machine and Colorie. These major investigations were on the front pages of every newspaper of Quebec last spring. This integration of police forces is also at the foundation of the success of two very active multidisciplinary units in Quebec. These are the Combined Forces of Special Enforcement Unit and the Aboriginal Combined Forces of Special Enforcement Unit, which, through their success and impact on crime, have demonstrated that they play a significant role in ensuring the well-being of Canadians and Quebecers.

This being said, it's not all roses in the law enforcement world. In the same manner as police organizations have created partnerships, organized crime is also relying on alliances between various groups to carry out their actions.

Organized crime is present wherever there is money to be made. Organized crime is diversified. It is infiltrated in many areas of society. It is involved in many profit-generating crimes. Project Colisée which was conducted in 2006 by our Combined Forces Special Enforcement Unit, revealed the widely diverse nature of organized crime activity. Recently, one of our investigations revealed direct links between an outlaw motorcycle gang and tobacco smuggling (Project Château).

One of the features of organized crime is in fact its determination to establish a monopoly based on risk, for the production, distribution and sale of illicit goods in a given market. Today's criminals think like business people. They have a list of goods for sale and seek to maximize their profits. It is these huge profits that enable organized crime to maintain its influence and increase its lead on police forces. Ironically, it's not rare to see at the conclusion of our investigations that the accused are much more concerned with the loss of their assets than with the length of their sentences.

Despite the fact that profits and the power gained from money are what motivates crimes, the maximum sentence for possession and laundering of proceeds of crime is only 10 years. Dirty money, the globalization of our economies, the opening of our borders and the development of business technologies have facilitated the expansion of organized crime within democratic nations.

One of the major strengths of organized crime lies in its ability to identify and exploit the weak links in our legislation. Over the years, organized crime groups have become more sophisticated in their activities and have polished their image. They have taken advantage of the gaps and weaknesses of our system with surgical precision, using leading-edge technologies.

The Internet has become increasingly accessible, and the number of users now exceeds the billion mark. Software applications allow safe data transmission around the world in less than one second.

Money changes hands in a binary form in a virtual space through computers, credit cards, debit cards and even smart cards. At the same time there are virtually no resources to help law enforcement agencies adapt to emerging technologies. The time spent looking for appropriate approaches means that we have to delay our actions, and that is allowing criminals to go about their business undisturbed.

In addition, in the 1970s, electronic surveillance worked very well in major conspiracy investigations. In the 21st century, this technique has become a real nightmare. Technology makes it increasingly difficult to intercept telephone conversations. And while the interception of conversations is sometimes possible, the burden of proof placed on investigators keeps increasing.

• (1430)

It is not uncommon for a police agency to have to produce in evidence thousands of conversations to prove a conspiracy case and meet the standards established in current case law. As a result, this shows criminals the innovative techniques used to investigate organized crime. In some cases, to comply with the rules of disclosure we have to give back the money seized to avoid compromising an ongoing investigation or to protect the identity of a witness.

Money being legal in itself, lawyers defending criminals will do everything to recover the money seized. More importantly, interception and disclosure costs have escalated, forcing law enforcement agencies to drastically limit their actions.

Many criminals make it an actual career to engage in criminal activity. This is a fact! Therefore we often find that subjects under investigation are also involved in other major cases. To perform our duties diligently, we must look into the past of our subjects under investigation to establish both the commission of previous substantive offences and total assets. Unfortunately, we are limited by the period of document retention. This is a major hurdle in the pursuit of our investigations.

As for financial institutions, they retain documents for a maximum period of five years. This interferes with efforts to obtain valuable evidence regarding the origin of funds and financial transactions. The use of forensic accountants is now required in most cases, especially in economic crime investigations. This illustrates how difficult it can be to track financial transactions and money.

The limitations on income tax information that can be obtained in the course of an investigation are also a major issue. I am referring in particular to section 462.48 which limits access to income tax information that is significant for our investigations.

In addition, when offence-related property is seized, the proportionality test can result in joint possession between the government and the criminal (R. v. Ouellette) or partial forfeiture of the equity.

Mr. Chair, while technologies are rapidly developing and transportation is getting increasingly available and efficient, we are still working within a legal framework that could be reviewed to better suit our reality. I am referring here to the notion of evidence gathering in those cases extending beyond Canada's legal jurisdiction as is the case for most major investigations conducted by the Royal Canadian Mounted Police. It becomes more difficult for us to do our jobs when criminals travel, call or send electronic messages abroad. Mutual legal assistance processes make it difficult to obtain evidence in a timely manner.

The most difficult criminal organizations to investigate are the ones that show discipline and have learned from past mistakes. Using the massive disclosure of evidence made available to them, they have been able to better understand the limitations and effectiveness of law enforcement investigative techniques in Canada and abroad. The subjects we investigate no longer have assets in their names and if they do own assets they have no equity. They lease vehicles. They use nominees that cannot easily be dismantled. They own assets and bank accounts abroad. They use trust accounts and change their approaches with respect to income tax reporting to avoid reflecting their lifestyles, etc.

While we are dealing with high-level organized crime, which can easily be identified (outlaw motorcycle gangs, mafia, street gangs) or with organized crime on a lower scale, one fact remains: criminal organizations are skilled in the areas of planning and structure! The use of professionals to facilitate the commission of offences has now become standard procedure in the underworld. If you allow me, I will leave it to the Sûreté du Québec to address this issue with you.

Mr. Chair, I would like to bring your attention to a matter that is dear to my heart, and I am talking about promoting public awareness of the harm caused by organized crime. There is no doubt in my mind that we must take a more aggressive and strategically oriented approach in the area of communication. People must know about the facts. Let's take money laundering for instance, which is a crime that affects society in general, but for which we receive few complaints from the public. Several presentations and training sessions are available to business owners, financial institutions and professionals to educate them on how to detect money laundering. However, such communication and education efforts should not be the sole responsibility of law enforcement agencies.

● (1435)

With respect to juvenile crime, we also recognize young people to be key players in the prevention of crime in their communities. Consequently, we must look for stakeholders from various backgrounds to give more credibility to our awareness initiatives. Our Drug and Organized Crime Awareness Service promotes this approach.

Mr. Chair, my intent with this presentation is not to induce fear, but to share our reality with you. In my years as a police officer, I have been in a position to observe that the gap between the resources available to organized crime and those allocated to law enforcement to fight organized crime is widening, but unfortunately at our expense.

Our legal system is now a step behind the current situation that has emerged from globalization and technological advances. Its

components, namely prevention, enforcement, the judicial and post-judicial process should be more closely aligned.

In this context, I share the opinion of a colleague from British Columbia who appeared before you last April, and who stressed the importance of providing police officers with the best possible tools to help them bring major case files to a successful conclusion. One way to achieve this is to amend certain laws, for instance the Canada Evidence Act.

Let me say once again that the only way we can wage a successful fight against organized crime is through global action. To efficiently disrupt criminal organizations, we must continue to address the very motivation behind organized crime, which is profit-driven. I firmly believe that solutions already exist in this regard.

The fact that you are taking the time to listen to field people like my colleague and myself shows that you are concerned by the situation. Incidentally, let me say that we are very grateful to you for this opportunity today.

Thank you.

● (1440)

[*English*]

The Chair: Thank you.

We'll move on to the Sûreté du Québec, Inspector Denis Morin.

[*Translation*]

Inspector Denis Morin (Sûreté du Québec): Mr. Chairman and honorable members of the committee, my name is Denis Morin and I am an inspector and chief of the organized financial crime unit. With me today is Mr. Francis Brabant, legal counsel for the deputy director general for criminal investigations of the Sécurité du Québec, Mr. Steven Chabot.

I would like to begin by thanking the committee for allowing the police community to speak to an issue which we are all concerned about, namely organized crime.

Please allow me to begin, as did my colleague from the Royal Canadian Mounted Police who spoke previously, by clarifying several issues regarding the way police forces are organized in Quebec, and the role of each force in the fight against organized crime.

Police services are organized into six levels of service by order of increasing complexity. Policing is carried out by various municipal police forces, and each force provides a certain level of service, depending on the population it serves or its geographical location, as well as by the Sûreté du Québec. In accordance with the law, the Sécurité du Québec also provides services of a higher level than those provided by municipal police forces.

Although every level of police force fights organized crime, coordination at the provincial level is the responsibility of the Sûreté du Québec. The SQ encourages cooperation between the different police forces, which is an indispensable strategic aspect to effectively fight organized crime. Further, there is an increasing number of partnership agreements in this area which include more and more varied partners. The Minerva protocol is a good example of such a partnership created to fight organized crime.

The excellent description provided by Inspector Joyal a little earlier revealed that profit is the main, if not the only, motive of members of criminal organizations. Since there is more and more money to be made from criminal activities, criminals are increasingly turning to facilitators and front men, and this is the issue I would like to talk about today.

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act imposes obligations with regard to record-keeping and mandatory statements made to providers of financial services and other persons who operate a business or who work in a profession which is likely to be used to launder the proceeds of crime. With this law, Parliament was addressing the concern raised by the increasing use of legitimate activities by organized crime to launder money.

However, our investigations have revealed the emergence of a new kind of accomplice working with criminal organizations. Usually called « facilitators », this is what characterizes this new type of criminal. They are experts in their field, they are members of a professional order or they work in a liberal profession. They do not work exclusively for a criminal organization. They may also have legitimate clients. They are not forced to work with a criminal organization. They generally do so voluntarily. They are compensated for their involvement.

Professionals are sought out in particular because of their specific field of expertise, their status and the rules of confidentiality to which they are bound. The following examples simply illustrate the facts and do not intend to single out an order or profession in particular. So here are a couple of examples.

In the case of a recent investigation, which aimed to dismantle a criminal organization involved in fraudulent activities, tobacco smuggling and money laundering, investigators discovered that a lawyer specialized in securing credit had been contacted and recruited by the leaders of the organization to take part in a scheme involving loans to small businesses. The investigation revealed that the facilitator had produced false documents to secure a \$250,000 loan from a financial institution.

●(1445)

In another case involving the GST and the PST in the area of precious metals, many companies which do not engage in legitimate activities, called "shell companies", were used to facilitate the issuing of false invoices to support false claims. To make it easier for the organization and to make it harder for the police, accountants and bankruptcy trustees looked after the successive incorporations and bankruptcies of these "shell companies".

As well, in the course of an investigation into fraud against the government, we established the participation of several lawyers acting as facilitators in a scheme involving false GST and PST claims. Their role was to recruit front men, to incorporate "shell companies" and open bank accounts.

Lastly, a recent fraud investigation led to the arrest of two certified accountants who were members of their professional order, as well as the arrest of a notary. The notary was using his own personal trust account to cash cheques relating to false invoices and to make it easier for the organization to conduct its activities.

So these professionals add value to criminal organizations in their capacity as facilitators. Despite the fact that they generally play a supporting role, their involvement remains nevertheless essential in helping the organizations reach their objectives.

However, it is hard to sanction their involvement. The hardest part is proving that the facilitator knew that these organizations were engaged in criminal activities. Incorporating a company, opening a bank account or handling an individual's bankruptcy are not criminal activities in and of themselves.

Indeed, several companies or corporations belong to criminal organizations which are listed under the address of a professional.

Further, in cases involving facilitators who are notaries or lawyers, enforcement of the Criminal Code or legal precedents which uphold the rules of client confidentiality, particularly as regards electronic surveillance or searches, makes the job of the police very complicated. These problems are due to the fact that those professionals have a certain standing in society and client confidentiality is considered to be extremely important.

Under current criminal law, there is no provision for specifically deterring professionals who have a certain status in society and who take advantage of their position to launder the proceeds of crime or to engage in other fraudulent schemes.

In our investigations into organized crime, particularly those involving drugs, there is a frequent use of strawmen. By this I mean a person who claims to be the owner of a property, or who registers an asset in his name, when in fact he is not the true owner of the asset in question. In the jargon, he is called a "dummy" or a "strawman".

In the course of our investigations, we have found two types of front men. They are used, first, to conduct their affairs with greater secrecy and therefore under the radar of police investigations; and, second, to amass personal goods and to minimize the risk of confiscation. In the first case, that might involve an accomplice who is often a lower-ranked member of the criminal organization, and in whose name there is a property where the organization could operate, for instance, a growop. In the second case, it might be people, who are usually the family members of the subject under investigation, who will agree to register several assets in their names, such as properties, luxury vehicles, boats or any other type of vehicle operated by the suspect under investigation. This method allows him to acquire goods.

This technique of camouflage surely seems simplistic, but it is very effective in making police investigations longer and more complicated. As with situations involving facilitators, the main problem is due to the fact that it is hard to prove that the strawman realizes he is being used as a front to hide criminal activities.

●(1450)

The phenomenon whereby public servants use their work privileges to launder the proceeds of crime or to commit fraud against the government is also a matter of concern. Better known as embezzlement or corruption, these offences normally fall under sections 121 to 125 of the Criminal Code.

It is well known that criminal organizations launder the proceeds of their crimes by way of legitimate activities. To this end, they sometimes use companies which receive contracts from the government. They approach public servants and sometimes convince them to act as facilitators.

To conclude, all of these types of facilitation contribute not only to the enrichment of criminal organizations, but also, and more generally, to money laundering and illegal activities. From a social standpoint, the legal status of these people is what attracts criminal organizations, and this creates problems for the police, since they have to use extraordinary procedures when dealing with such situations.

We recommend that, when drafting your legislation, you take the full measure of the seriousness of these situations into account.

I would like to thank the committee for its attention.

[English]

The Chair: Thank you all. Your testimony has been very helpful.

We'll open the floor to questions, beginning with Ms. Jennings.

[Translation]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I thought we would also be hearing from Mr. Brabant, but if we instead go directly to questions, that's just fine.

I would like to begin by thanking the witnesses.

Mr. Battista, you said that in 2002, a round table had studied the criminal justice system. I imagine that it produced a report containing recommendations. What became of these recommendations?

Indeed, we have not had a criminal law reform commission for many decades. I will not say for how many decades, since that would be revealing my age, but I think, given the points raised by the police representatives, that new technologies, globalization and other factors have made it urgent that the government seriously consider the creation of such a commission. In my view, it is high time that we modernized our justice system while retaining its fundamental values. I don't think these have changed. I would like to hear what the Barreau du Québec thinks about that.

Inspector Joyal, you say at page 3 of your brief: « There are practically no resources to help police forces to adapt. »

Are you referring to the bill on the modernization of investigation techniques, which already existed at the time of the previous Liberal government, and which was finally reintroduced by the Conservative government last June? The bill should help modernize the Criminal Code with regard to electronic surveillance, new means of communication, the Internet and so on. When you refer to resources, is that what you mean?

●(1455)

Insp Sylvain Joyal: Indeed.

Hon. Marlene Jennings: You talked about restrictions to obtaining tax information during an investigation. You referred to section 462.48 of the Criminal Code. I would like to hear more from you on this matter. However, I will first ask Mr. Battista to respond.

Mr. Giuseppe Battista: Thank you, Madam Jennings.

With respect to your first question, I alluded to important aspects that were addressed, but the report did not include any recommendations. Rather, it identified what the individuals had said. To my knowledge, there has been no follow-up.

With respect to updating the Criminal Code, I think it's a laudable idea and that many people, police officers, lawyers and judges, would not object. We do have to be realistic though. I personally say jokingly that the Criminal Code is regularly amended. There is a poll that is carried out to check that all lawyers, judges and police officers know the Criminal Code sections, and then they are changed. Except that there are only additions. For some sections, we are at subsection .72, and the list goes on. It is burdensome and sometimes useless.

The Bar Association has often spoken not so much to object, but to note that bills are sometimes passed to condemn a particular event and amend the Criminal Code, but that the code in some cases already covers the given offence. It may not be necessary to weigh it down.

The following approach would consider both the fundamental offences overall and issues of procedure. It would be an updating of what I was referring to earlier on regarding the disclosure of evidence, for instance. Today, the situation is difficult both for the Crown and for the defence and judges because the trial judge has jurisdiction over the process. Yet, it is between the time when the charge is brought and the trial date that the disclosure of evidence takes place. That is when problems occur. Judges do not necessarily have the tools they need. Indeed, trial judges must be designated. For instance, we could provide authority for a judge to act. Parties would then be bound by these types of judgments.

That's an example of a procedural reform that will be very useful. Obviously, that would be ideal. I think we have a duty to be realistic. I don't know if it's in the cards, but it's certainly an objective. In Quebec we have rewritten the Civil Code. So, it is possible to do this. In fact, it would be advisable.

Hon. Marlene Jennings: Thank you.

Inspector Joyal.

Insp Sylvain Joyal: I will defer to my colleague Ms. Fontaine.

Inspector Martine Fontaine (Officer in Charge, Integrated Proceeds of Crime, Montreal, Royal Canadian Mounted Police):

As you know, section 462.48 of the Criminal Code allows us to obtain tax information on individuals. However, these are very limited exceptions, relating to drug offences, terrorism, criminal organizations or the laundering of drug money. Also there is corruption, fraud, and all other profit-generating crimes we would like to investigate, in particular to establish a person's lifestyle in relation to the acquisition of goods resulting from other offences. During an investigation, we do not have the tools we need to obtain this federal tax information.

Furthermore, it is an *ex parte* application made by the Crown. Our burden is therefore far heavier. Pursuant to the Income Tax Act, individuals must declare their income and, in that sense, it is monitored. However, it is far more complex to obtain this tax information. We cannot try to obtain it at the beginning of the investigation. We have to have done a lot of work before we can gain authorization to find this information. This information is now essential in any investigation on money laundering, corruption, fraud, narcotics and criminal organizations.

• (1500)

Hon. Marlene Jennings: Thank you very much.

Do I have any time left, Mr. Chairman?

[English]

The Chair: No.

[Translation]

Hon. Marlene Jennings: It will be for the second round.

[English]

The Chair: We'll move on to Mr. Ménard.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you.

I would like to spend a week with you. I feel that we would obtain all the information we need to draft a comprehensive and useful report. Unfortunately, we have very little time. I commend you for being so specific in your presentations and not duplicating what the others were saying. Because there is so little time, I will ask you questions that beg for answers and that could seriously help us prepare our report.

I will start with Mr. Pierre-Paul Pichette, because of the position he holds. If you had to inform your minister on criminal gang activity in Montreal and Quebec City your notes and overall analysis would certainly not contain only secrets or information not to be disclosed to the general public. We know that in Montreal there are the Hells Angels, the mafia, street gangs and other groups. You quite rightly added responsibilities regarding Asian gangs and the former East Block gangs.

Can you give us a written summary on the status of organized crime in Quebec City and Montreal specifically?

Mr. Pierre-Paul Pichette: You will understand, Mr. Ménard, that I must refer that question to my superiors. However, rest assured that in Quebec, government authorities are aware of what can be proven in the field of intelligence. It must be clear to everyone. Information

becomes intelligence, but intelligence is not investigation. We can draw up an overall picture for government authorities and police organizations.

With the influx and input from all organizations, we capture the information in the form of a global report. It is done on an annual basis. Depending on the specific problem brought to our attention or that we ourselves discover, theme-based reports are produced, at varying intervals.

Mr. Serge Ménard: Is there anything you could provide to members for our perusal?

Mr. Pierre-Paul Pichette: Yes.

Mr. Serge Ménard: I will let you determine that, but rest assured that it would be much appreciated; in essence, that is what we are seeking here.

Mr. Battista, I fully understand your position on minimum sentences; everyone knows I share that view. However, in looking at the federal Justice Department's documents, I realize that the department had done a study on mandatory sentences in common law countries. I then discovered a type of mandatory sentence I had not been aware of. Again, unfortunately, the terminology is not specific enough.

Regardless, there are two types of mandatory sentences. The types of minimum sentences we have in Canada do not give the judge any discretion, he must impose them upon finding the accused guilty of an offence. In some cases the sentence is mandatory rather than minimum. In that case, the judges may choose not to impose a mandatory sentence in exceptional cases, but they must provide written justification, in some countries. In other countries, the justification must be written into the case file or provided before an open court, as is the case in Scotland.

In our society, there is a wide range of opinions. Do you not think it would be a form of compromise for the Bar to agree to this second type of mandatory sentence?

• (1505)

Mr. Giuseppe Battista: Thank you for the question, Mr. Ménard.

Taking that position is important. The Bar has always held that the discretion of judges and prosecutors is very important, not only the discretion of judges. For justice to be effective and fair, prosecutors, including police officers, must also have discretion. All those involved must have the capacity to use judgment depending upon the circumstances.

What you are saying is certainly an avenue to explore. Especially if we have no choice but to think in terms of automatic sanctions. The problem is that automatic sanctions eliminate discretion for all. For instance, even in the United States, the guidelines that have been drawn up have been strongly criticized by all those in the field, even the legal field. Case law has developed in such a way that when there is a consent of both parties, judges may stray from the imposed sanctions.

If I may get back to one principle, it would be that of discretion, which we have always been in favour of.

Mr. Serge Ménard: I understand the nuance. Please understand I have very little time.

My next question is for Mr. Joyal.

You referred to the role of investigative forensic accountants. Was it you or someone else?

Insp Sylvain Joyal: Yes, it was me.

Mr. Serge Ménard: Do you make use of them? Are some of them permanent? Can they be part of police fraud squads?

I know that there are 50 or so of them in the federal government and that strangely, they are within the Department of Public Works.

Insp Sylvain Joyal: I can answer that question in part, Mr. Ménard.

Indeed, we do have an integrated approach.

As you know, we don't have expertise in all areas. We do seek out access to individuals who have studied in the field. For instance, in my colleague's field, the Integrated Proceeds of Crime Unit, obviously because of the complexity of the area we do have to turn to these people. From an integrated standpoint, they are indeed part of our teams. Even if they are not, we do have access to them.

[English]

The Chair: We'll move to Mr. Comartin.

[Translation]

Insp Martine Fontaine: Can I add to that response?

Since 1994, when IPOCs or Integrated Proceeds of Crime Units were first established, we have had investigative forensic accountants as full members of our team and that is the case for all units throughout Canada. They work with us. They are considered expert investigative forensic accountants. Because they provide expert opinions, they must remain at arm's length from us.

However, they are an integral part of our unit and of our investigations. We work in partnership with them. They come from Public Works, but they are fully here. For instance, in Montreal, there are seven of them.

[English]

The Chair: Thank you.

We'll now move to Mr. Comartin for seven minutes.

[Translation]

Mr. Joe Comartin: Thank you, Mr. Chairman.

Thank you to all witnesses for being here.

I was wondering about something this morning and I'd like to ask you the following question.

Some of you believe it is very important to seize the property of organized crime members. However, we passed legislation in 2005, I believe, which came into force in 2006. It reversed the burden of proof. Yet, this morning we learned it wasn't being used and the only reason for that was that Crown and defence attorneys agreed not to use it.

If it is so important to seize this property, why not make further use of this legislation?

● (1510)

Insp Martine Fontaine: The reverse onus legislation was passed on November 25, 2005. We have used some provisions of the act to get restraint orders in some cases, including under operation *Colisée*. However, it has yet to be challenged, further to the regulations. You have to realize that reverse onus can help, but that it does not actually change much in the day-to-day lives of police officers. Indeed, under the act as it stands, we must prove beyond a reasonable doubt that the individual owns the property. So we must be in a position to prove, that this property belongs to the individual as a result of repeated criminal behaviour or through the acquisition of wealth.

As my colleague Inspector Denis Morin said, and as we've said, these people have learned and get rid of property that is in their name. So, investigations become very complex because we have to prove that the individual owns the property despite the fact that according to the land registry the property actually belongs to his wife, his daughter, his brother, his father or his deceased mother, or that the car is a rental. Bank accounts are hidden by fronts such as companies, trusts, because criminals have learned to hide behind trusts. Yet, it is good legislation, it is just that individuals have managed to circumvent it.

Mr. Joe Comartin: Do you have any recommendations as to how the law could be amended so as to make it more effective? I ask the question because I myself am a lawyer, and in the civil courts, in the case of divorce following marriage, hidden assets can be claimed, even if these assets are held under the names of other people, such as the father of the person involved, as an example. This is possible in the civil court system.

Insp Martine Fontaine: As you know, under the Criminal Code, we cannot force people to talk to us, and individuals are not compelled to tell us if they own assets or property. They have learned to establish a distance between themselves and the assets in question.

Mr. Joe Comartin: I understand that, Ms. Fontaine.

Mr. Brabant, can you help us? You are a lawyer.

Mr. Francis Brabant (Legal Counsel, Sûreté du Québec): Yes.

Mr. Joe Comartin: Did you study this? Do you have any recommendations on how the law can be changed so that it can be more easily enforced?

Mr. Francis Brabant: I know that there have been discussions. It would be worthwhile to review some of the work that was done during discussions on the proposed legislation and on the preparatory work. During that time, there were choices made concerning the burden of proof. I believe that the most liberal version was not chosen.

I agree with Inspector Fontaine, and Inspector Morin will tell you the same thing. We are seeing that the reversal of the burden of proof, in the case of Quebec to say the very least, has simply not been used. Therefore, it is highly likely that there is a problem with the conditions that were pointed out to you. Perhaps this warrants reviewing some of the choices that were made when we sought to reverse the burden of proof.

To my mind, various means that could be used remain constitutional: for example, there could be a focus on the onus of persuasion rather than the burden of establishing a verdict beyond all reasonable doubt. As you know, this is the type of onus that already exists in the Criminal Code, with respect to other things. These are the types of things that could be considered.

The civil burden that you talk about is also another avenue. As I told you, choices were made. Right now, it is not being used.

Mr. Joe Comartin: There is a problem pertaining to disclosure of information between the defence and the Crown. It remains a problem.

Mr. Battista, are we in a transition period? Do we have enough judges to preside over all of the cases on this subject? Sometimes they involve tens of thousands of pages in a case file that judges must rule upon. This is also a problem for the defence, but is there any other way of proceeding?

When I was a lawyer, we used computers—a new technology—to manage documents for large-scale investigations. Would it not be possible to facilitate such procedures?

● (1515)

Mr. Giuseppe Battista: I think there is a relatively new element. In Quebec, in recent years, we have seen the advent of what we started to call mega trials. This is a new way of managing and organizing the work of those involved in criminal prosecutions.

Managing this information and this documentation requires a certain level of expertise that will evolve with time and practice. From a procedural point of view, difficulties and problems arise, and they cannot always be resolved in a simple manner. We simply can't just appear before a judge. We have to go before the judge who is seized of the case file. Today, trials cannot begin overnight, not for the prosecution, nor for the accused. This is impossible and inconceivable. A person learns that they are being charged, and have been the subject of a four-year investigation. This must be factored in, and the system must adjust. There is an element of learning and organization.

In fact, two weeks ago, in Montreal, there was a conference organized by the judges of the first and second instance courts of Quebec to raise awareness among both prosecution and defence lawyers and allow for an exchange on these issues. Indeed, there are difficulties in the major files, and that is what is of concern to us. The more common and frequent cases do not pose problems. Major cases present problems to prosecutors and investigators because important information is provided to them, they have to analyze and organize it, and then disclose this information. Those who receive the information must be able to confront all of that.

This is a double-sided issue. On the one hand, the more consistent and structured disclosure of evidence is, the easier it is to rule on these cases. There are cases that go to trial, even protracted and long trials, but there are also an enormous number of cases that are resolved through guilty pleas because of the police work that—

[*English*]

The Chair: Mr. Battista, I'm going to have to cut you off.

Mr. Giuseppe Battista: I'm sorry.

The Chair: We'll move over to Monsieur Petit. You have seven minutes.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you very much.

Good afternoon, everyone. I have met several of you before, as you have previously appeared before us.

I'm going to give a brief summary because we are trying to synthesize what we are referring to as the problem of organized crime. We have traveled to different places, including Montreal, our main base in the province of Quebec. My question is addressed to Mr. Morin and Mr. Battista.

If you are of a certain age, you are surely aware of the Organized Crime Commission of Quebec, otherwise known as the Cliche Commission. You have experienced gang wars, and the bombs and recent arrest of members of the mafia. Right now, there are approximately 36 street gangs that have been identified in the city of Montreal. There are also newspapers that provide us with information; I'm referring to very well-known newspapers. There's a problem at the Port of Montreal, where drugs enter the area in containers. There are also problems at Pierre-Elliott-Trudeau Airport. All of this involves organized crime. In addition, the UN has just declared that Canada is a distribution hub for ecstasy; there is the greatest demand for ecstasy here in the country. All of this is going on in Quebec. I'm not talking about the other provinces. And that's why my question is addressed to you.

I am a lawyer in Quebec and am a member of the same Bar as Mr. Battista; in fact I am still a member of the Quebec Bar. You emphasized an important point: facilitators. I am both very curious and cautious on this issue. The Bar has already announced its position on that. As you know, there is verbal war between the Quebec Bar and your organization. They are claiming that they are being asked to compromise confidentiality.

We must formulate recommendations. There are groups of federally regulated lawyers, notaries, banks and bankers, accountants, bankruptcy trustees, and even shady government officials. They're all professionals with accreditation.

Our professional order is quite a bit older than the *Sûreté du Québec*, we have powers and privileges. I'd like to know what you are seeking.

● (1520)

Insp Denis Morin: Firstly, we're not talking about client-lawyer confidentiality. We are not targeting professionals. As stated in our opening statement, we are talking about the fact that currently, members of certain professional orders are subject to confidentiality. This makes our job significantly more complicated when carrying out investigations, and when those who are the subject of our investigations are entitled to confidentiality. I'm not saying that this should not exist. What we are saying is that certain standards should be reviewed when pertaining to warrants, search warrants, wiretap affidavits, among other things.

Mr. Daniel Petit: I have a second question. If you are able to do what Mr. Brabant was talking about earlier, and this poses a problem, that is reverse the onus of proof, and convince the trial judge that the professional received funds at a particular point in time, could the judge waive confidentiality in such a case? Are you willing to go to that extent?

Insp Denis Morin: This is already the case in investigations. However, getting to that point is a very arduous and complicated road that takes up a lot of investigative time when we initiate those processes.

Mr. Daniel Petit: Mr. Battista, I'm mostly a lawyer. I have a trust account, and I would like to hear you comment on that.

Mr. Giuseppe Battista: I would like to understand the scope of your question. In fact, if I understand correctly what was said, there is a certain nuance. No one is challenging the very notion of professional privilege, because, in my view, that would affect the entire justice system and everyone's basic rights. What we are saying, in specific terms, is that this can sometimes be difficult and could require more in-depth investigations.

I have to say that there is a rationale behind all this. There must be a presumption that people are acting in good faith and that the majority of professionals are acting in an appropriate and correct manner. If we believe that a professional is acting criminally—because this is what we are talking about here—those are activities where professional privilege does not apply.

However, this can be difficult. At first glance, it could involve a professional with, for example, his own law firm. So, on the surface, everything seems legitimate. As I understand it, from the discussions that have gone on, professionals who are involved in that kind of activity are not exclusively involved in that kind of activity. For us, it is much easier if everything a lawyer does is illegal. When illegal activities are mixed in with legal ones, it becomes trickier. This is when the protections and the safeguards that our system has put in place become important. Protecting the professional privilege is important for the other clients, the other people whom the professional represents. So, when there are reasons to believe that some of a professional's cases involve criminal activity, with or without his knowledge, it is possible to obtain search warrants and investigate those cases, though clearly, there must be reasonable grounds to do so.

I understand that this can be difficult. I am not casting any doubt on that, hence the first point I made in my statement. I do not think that we are in situations like that. I listened carefully to the presentations that were made, and I believe that sometimes it is a matter of resources and means. It is difficult to collect and identify enough evidence to convince a court, and people in general, including myself. It is a matter of resources and means. This cannot be resolved by amendments to the Criminal Code, in my opinion.

• (1525)

[English]

The Chair: Thank you.

We'll move to Ms. Jennings again.

[Translation]

Hon. Marlene Jennings: I will take no more than five minutes.

Inspector Morin, I would like to return to a specific subject and will ask you the same question that I asked Inspector Joyal and Inspector Fontaine. It concerns modernizing investigative techniques and methods through the government's bill.

Have you had the opportunity to become familiar with the bill? It is more or less identical to the bill that the Liberal government tabled in the House in 2005, and to the private member's bill that I myself tabled in 2006-2007, and again in 2008.

Do you think that, if the bill were to be adopted, it would facilitate the investigative work that you have to do, particularly cases of money laundering, the use of front men and of people linked to organized crime? Some people may not necessarily be involved in organized crime, but they could be involved in large-scale fraud. They are able to hide their assets and put them out of reach of the provisions of the Criminal Code, the Proceeds of Crime Act. If this piece of legislation were passed, do you think that it could be useful?

Mr. Francis Brabant: Thank you for the question, Ms. Jennings.

Of course, the Sûreté du Québec and, of course, its senior officers are members of the Canadian Association of Chiefs of Police. This association, for several years now, 10 years, if I am not mistaken, has stressed the importance of modernizing communications interception techniques so that telecommunications providers are willing and able to assist the police in intercepting communication, when they have legal authorization to do so.

To answer your question, I would say that, right now, some types of communication technologies that we have at our disposal must be modernized because communications are very difficult to intercept. Bill C-47, that you mentioned, and its predecessor, Bill C-74, would resolve a longstanding problem which was mentioned in the Council of Europe's Convention on Cybercrime, negotiated in Budapest. We unequivocally support that bill.

Hon. Marlene Jennings: Excellent.

However, is...

Mr. Francis Brabant: The answer is yes. In fact, if there are safe havens, sanctuaries in which communication cannot be intercepted, it is certain that criminal activity cannot be detected, including money laundering.

Hon. Marlene Jennings: Thank you.

I now have a question for Mr. De Riggi.

We established Integrated Border Enforcement Teams, or IBETs, for border enforcement. Do they still exist?

Mr. Angelo De Riggi: They still exist. They are still in effect, and we second the personnel and place them in integrated teams that work jointly with the Royal Canadian Mounted Police and other partners. Officers work together in the areas that I mentioned: Valleyfield, Sherbrooke and Stanstead. Those are the three main areas in Quebec.

Hon. Marlene Jennings: Is FINTRAC, the Financial Transactions and Reports Analysis Centre of Canada involved?

Mr. Angelo De Riggi: No, not to my knowledge.

FINTRAC is more tied into the Integrated Proceeds of Crime program with which it works with closely.

In those areas, the work is more about jointly collecting information in order to assess criminal and contraband activity along the border.

Hon. Marlene Jennings: At some point, there could be cases where FINTRAC could have some...

Mr. Angelo De Riggi: An agreement is already in place with the Integrated Proceeds of Crime Branch for whenever a border officer intercepts money at what we commonly call a customs post or a border post. An investigator from that branch goes to the location with one of our information officers, takes charge of the file and interrogates the people carrying hidden currency, either in their car or on their person. IBETs are not in charge of cases of that kind.

• (1530)

[English]

The Chair: Thank you.

We'll move on to Mr. Ménard.

[Translation]

Mr. Serge Ménard: I would like to ask you another question, Mr. Pichette. I know that your service has been in existence since 2001. Is there an evaluation form for your services, as there is in some organizations? There are questionnaires that are sent to staff and clients. Do you have anything like that?

Mr. Pierre-Paul Pichette: Yes, through the Service Inspection Branch of the Department of Public Safety and the Quebec Criminal Information Service, the service carried out an audit in 2005 or 2006. I am not sure exactly which year, please excuse me. For the service's directions for 2009 to 2011, which have just been adopted, an on-going evaluation process was suggested and is already underway.

Mr. Serge Ménard: With what results?

Mr. Pierre-Paul Pichette: In 2005 and 2006—I cannot tell you about the future—the main issue went beyond the systems, Mr. Ménard. The issue was about individuals, an individual's ability to maintain relations with the public, to gather information, and to send it to the right place so that it can be interpreted. This is an area in which we have been working continuously with police organizations. We are trying to instill a culture of information in the organizations. We support organizations as much as we can.

As Mr. Morin explained, you must not lose sight of the fact that, in Quebec, high level services have very sophisticated intelligence structures that work well. The CISQ mainly supports level 1 and 2 organizations.

Mr. Serge Ménard: You will be happy to learn that, this morning, a witness told us that the collaboration between the various police forces in Quebec is a model for the rest of Canada. Personally, I think it is a model for the rest of the world. I am very happy about that.

Right now, during investigations, when you follow someone for months—and I am not sure if you will be able to answer this—is it

standard practice to keep records of the car the person uses, where the person stays, where they eat, what restaurant they go to?

That way, when they are convicted, we would be able to assess a person's lifestyle, and therefore, what assets they have that could be seized. We could ask people who claim to be the owners to prove that they are not. Is this done systematically or do you simply make the observations necessary for that specific investigation?

Mr. Pierre-Paul Pichette: When someone is being followed or is under any kind of surveillance, here is what we do. In order to manage the evidence, all information is both sent to our data bank and placed in our evidence tables. We have evidence tables. So the information is sent to two places, so that we are sure of having an overview when the time comes to lay charges, to put a stop to activities, or to seize assets.

Mr. Serge Ménard: So, for example, if someone drives a car, a fancy SUV, or a 4x4. Do you not think that the fact that they regularly use the vehicle is evidence for the judge that, probably, the real owner is a front man?

Insp Denis Morin: It is certainly recorded in the files, but it is always up to the judge to decide. What often happens, is that when a suspect drives around in a car that belongs to his wife, or to one of his friends, we try to prove in court that the vehicle in fact belongs to the accused. We show, among other things, that he always uses it, that he is the one who takes it in for repair and pays for the maintenance. We do that, but it is not always easy in all cases.

Mr. Serge Ménard: The vehicle could also be rented.

Insp Denis Morin: True.

Mr. Serge Ménard: Mr. Battista, we have to have a lot more discussions amongst ourselves as we try to improve the process. We are wondering if organizations should be designated as criminal. It is actually very complicated to do that in each case. There are all sorts of problems. But I do not have to tell you that.

Does declaring an organization to be criminal before one court and using it in other cases go against any principles that the Bar feels are particularly important or that it believes to be essential for the good of society in general?

• (1535)

Mr. Giuseppe Battista: That is a good question, Mr. Ménard. I will be frank with you. I may have a personal opinion on that subject, but I will not share it. It is something that probably must be discussed within our committee, made up of Crown prosecutors, lawyers like Mr. Brabant and others. Obviously, these committees of the Bar operate by consensus, and we share views. Certainly, it is an issue that can be discussed, but I would not venture to give you an opinion now.

Mr. Serge Ménard: As you know, Mr. Battista, we are happy...

Time is up?

[English]

The Chair: We're out of time. Yes, we're finished.

[Translation]

Mr. Serge Ménard: Okay. Fine.

[English]

The Chair: We are having that very debate in committee right now, the whole issue of designating crime organizations. We haven't issued a report yet, but it's very close.

[Translation]

Mr. Serge Ménard: Mr. Chair, we would be happy to hear his personal opinion; it would certainly be valuable.

[English]

The Chair: It might be risky for him in this venue.

We'll move on to Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Actually, it was Mr. Rathgeber.

The Chair: Is it? All right.

Mr. Rathgeber.

[Translation]

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Good afternoon, ladies and gentlemen. I will be addressing you in English.

[English]

Mr. Brabant, in respect of your opposition to mandatory minimum sentences, I have to take issue with what you said. I hope I heard correctly through the interpreter that your opposition to mandatory minimum sentences results from the attendant reduction in judicial discretion. You favour unfettered judicial discretion. Did I understand that correctly?

Mr. Giuseppe Battista: “Unfettered judicial discretion” is a way of characterizing what I said. But I have always supported, and continue to support, judicial discretion. In other words, sentencing is a process whereby the court sanctions an individual, not some mummy but a person. Judges need to have all the latitude. When the Criminal Code says from zero to life, that's the latitude the judge should have. That is the latitude that judges should have for those types of offences. If the law says zero to ten, that's the latitude the judge should have. The judge may impose ten, and the judge may not impose any sentence at all.

In those cases where it would be appropriate not to jail a person, mandatory minimum sentences force a judge to send people to jail, and that is what we've always opposed.

Mr. Brent Rathgeber: I understand that.

Mr. Giuseppe Battista: We've all opposed it.

Mr. Brent Rathgeber: Do you oppose maximum sentences that fetter the judge's discretion when handing down a sentence? If you believe in unfettered discretion, then there ought to be no range. That is my point, and that is where I believe your logic breaks down.

Hon. Marlene Jennings: Point of order.

The Chair: Point of order by Ms. Jennings.

Hon. Marlene Jennings: I would like to remind you, through the chair, that Maître Battista is here representing the Quebec Bar Association, and therefore the opinions that he is expressing here are opinions that the Quebec Bar Association has endorsed through its committee on criminal law. He has said that he may have personal opinions on a variety of subjects that have been raised here, but that the opinions he is expressing are those of the Quebec Bar. I want that to be clear.

I'm not sure whether Mr. Rathgeber, when he's saying “you”, is referring to the Quebec Bar Association or to Maître Battista.

The Chair: Hold it. There was a point of order around this comment. I don't believe that was a point of order, but I believe that Mr. Battista, being a lawyer, will understand that when he responds he will let Mr. Rathgeber know whether it's a personal response or a response made on the behalf of the bar association.

Mr. Rathgeber, you may continue.

• (1540)

Mr. Brent Rathgeber: I understand that the witness is representing the bar association, but I'm still waiting for an answer from him.

Mr. Giuseppe Battista: The understanding in the criminal law is that where there are maximums, the legislator is saying how serious a particular offence is. That is why there are maximums. They distinguish different offences. They distinguish different crimes. For example, there have been historically set “overs” and set “unders”. When I started practising, the cutoff was \$200, and it went up to \$1,000. Now we're at \$5,000. Society evolves. The legislator has always said that if it's less than \$200, we will treat it this way. If it's more than \$200, we will treat it that way.

If there is an assault causing bodily harm—

Mr. Brent Rathgeber: Then why can't a legislator speak to the appropriate minimum? Why is that any different from when the legislator, as you just stated, speaks to the maximum?

My problem with your logic is that it's not judicial discretion that you're worried about, but it's because you think the sentence is ultimately going to be too harsh. I think it's disingenuous if you frame it in any other terms.

Mr. Giuseppe Battista: You're obviously entitled to your view on that, and I will fight for your right to express it and hold it. But I think there is a very clear distinction that has historically been made between what a maximum is supposed to say about an offence and the idea that a minimum will reduce judicial discretion. That is the purpose of the minimum. The purpose of the minimum is not to allow the judge to do anything other than that.

That is the objection we have on that aspect.

Mr. Brent Rathgeber: I'm assuming that, with Ms. Jennings' intervention, that's probably my five minutes.

The Chair: You have one more minute.

Mr. Brent Rathgeber: With respect to professional organizations that sometimes further organized crime, could you briefly comment, Inspector Morin?

Yesterday the government tabled legislation that would make it an aggravating factor in white collar prosecutions if an individual failed to comply with the licensing rules that were the professional standards of his organization. I don't know if you're aware that that becomes an aggravating matter in sentencing. Do you believe that will be a useful tool in the police person's toolbox?

Mr. Francis Brabant: Obviously, because of what Mr. Morin said, when we address the question of a professional secret or other specialties that professionals have, organized crime resorts to them because they have such capabilities. We felt and still feel that if they have a special responsibility toward society, and this is why they have that professional secret, if they abuse that secret I think there should be some kind of measure. We are not legislators, but there should be some kind of measure in the code to recognize the seriousness of such acts by them.

Mr. Brent Rathgeber: Thank you very much.

The Chair: We'll move on to Ms. Jennings.

Hon. Marlene Jennings: Thank you.

I'd like to assure all members here that we have an excellent chair, and when there is a point of order, the clock is automatically stopped. I'm prepared to use part of my five minutes to explain this to members, so they don't need to be worried that I'm using a point of order to eat up their time.

I would like to come back to the issue of judges' discretion. I think I understand it, and I certainly do support it. I do, however, know that there are cases and there have been studies that show that in certain very exceptional cases minimum mandatory sentencing can in fact be dissuasive and can have a positive result. It's very few cases and very, very narrow, which is why when my former boss, the former Minister of Public Safety of Quebec, when he talks about the two forums in the Commonwealth countries—

• (1545)

[Translation]

Mr. Serge Ménard: That can be resolved.

[English]

Hon. Marlene Jennings: Yes.

Has your committee looked at that issue at all?

Mr. Giuseppe Battista: Unfortunately, no.

Hon. Marlene Jennings: Is it something that we could ask you to look at and to bring back to this committee? I think it is a subject that's worth looking at. If we could ever convince the government to actually do a real reform of our penal system, which would include a complete overhaul of the Criminal Code, bringing it into the 21st century, hopefully it will serve us well for a couple of decades before it requires major change. That could be something that would be of interest to look at.

Mr. Giuseppe Battista: I'll certainly undertake to do that.

Hon. Marlene Jennings: Thank you.

The Chair: For the record, any witness can submit supplementary information to the clerk and we'll all receive it, translated as well.

Mr. Comartin.

Mr. Joe Comartin: Just on that point, there have been a number of references to that round table report in 2002, and I wonder if we could ask Mr. Battista to give us a copy. I'm not sure how we would find that otherwise.

The Chair: Do we have it? Is it translated? It probably isn't.

We will move on to Mr. Norlock. You have five minutes.

Mr. Rick Norlock: Thank you very much.

Thank you very much, witnesses, for coming today. It's very enlightening.

I think I need to ask this question to Mr. Brabant. I'm just carrying it a little further on the tools you believe investigators need, especially when it comes to the sophistication of organized crime. In particular, I think you were talking about solicitor-client privilege—well, not necessarily solicitor; it could be a chartered accountant or some other professional. When it comes to that particular person—or it could be a corporation or anyone being used to launder the proceeds of crime—I think that's sort of the road we were going down.

I don't think anybody wants to diminish the professionals' ability to be able to protect their client, but I think what you're referring to is tools, especially legislative tools, that would permit the police to access evidence. Yet at the same time, I'm wondering if you're referring to a judicial decision as to whether or not a certain piece of evidence were to infringe on that kind of privilege. Is that what you're referring to? I guess I'm saying you need to expound on that for the purposes of this committee's being able to make a more wholesome and fulsome recommendation with regard to a tool that investigators could use, while at the same time not diminishing or reducing those kinds of privileges that we as a society rely on.

Mr. Francis Brabant: Well, that would need very serious reflection, first of all. I alluded previously to one of the tools, which is to improve our abilities to intercept, further to Mrs. Jennings' question.

Our message here was more to say that we need to send a message, because more often than not, in our major investigations concerning money laundering, we are finding somewhere along the line a professional or a person who specializes or is very skilled, and the criminals look for those persons. We think those persons have a special responsibility towards society. When we establish that they participated in such crimes, I think a special message should be sent to the whole community that says it's more wrong for those persons to engage in such activities.

Now as to the particular tools concerning professional secrets, we'll have to think about it because the rules are quite entrenched at this moment, as you know.

• (1550)

Mr. Rick Norlock: Most of the time it's the professional organization that polices itself. In other words, the doctors, lawyers, and chartered accountants actually create those rules, those ethics—I guess that's the exact word we'd need to use here. So it's very difficult for legislators, I think, and it's a minefield for us to go there.

I guess what I'm saying is that if you come to us, we're reaching out to you for the ideas we can incorporate. It's nice for us to shake our finger at all the professions; we need a little bit more.

One of the pieces of evidence or one of the statements.... I believe it was Mr. De Riggi who mentioned the association between the illicit sale of tobacco and organized crime. Was that the CBSA? Somebody mentioned it. I'm sorry; it was Inspector Joyal. I wonder if you could expound on that just a little bit more, because quite frankly, in much of this country and in particular in my constituency, it's beginning to be a significant problem. I don't think the people who are involved in it really understand and realize that they are being used by organized crime and that their sons and daughters will pay the price down the line.

I wonder if you could just flesh that out a little bit more, if you could draw the trail for us, where the beginning of it is, where organized crime fits into the total picture there.

The Chair: You've got half a minute.

Insp Sylvain Joyal: As I indicated, I made reference to a particular project, Project Machine. The members of motorcycle gangs, like the Hells Angels, are now involved in producing, distributing, and exporting tobacco. It demonstrates that they're not only into drugs. Wherever the money is, they will go and make the money. They will hire the people, and they will pay them salaries to produce massive quantities of tobacco that they know will be distributed, evading and not paying all the proper taxes, just about everywhere.

Part of this money also finances other criminal activities. If we look at the marijuana trafficking or producing, it's not only to traffic and produce marijuana. Most of the time, the money they make on this crime, producing marijuana, is also invested in organizing a massive importation of cocaine or other drugs.

It's all really interlinked. As we've all indicated, wherever the money is, they will go there.

The Chair: We have time for one last question. Mr. Woodworth, five minutes.

[Translation]

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much.

I thank the witnesses for being here this afternoon.

Like Mr. Ménard, I would like this discussion to continue all day, but I only have four and a half minutes.

[English]

I will take another half-minute to comment on Mr. Rathgeber's point, Mr. Chairman, to point out that I think in addition to deterrence it is quite a reasonable proposition that the legislature might distinguish between the gravity of offences by way of minimum sentences for the purpose of instilling confidence in the justice system and for the purpose of recognizing the concerns of victims. I think that those justifications, in addition to deterrence, give the legislature a right to distinguish between the gravity of offences.

However, my questions are for inspectors Joyal and Morin. I note the concerns that both of you have presented regarding front men or facilitators. I'm not sure if I got the expression right, *les hommes de paille*.

You may recall that Bill S-4, which is currently before Parliament, addresses certain items regarding false identification—that is, obtaining and possessing identity information with the intent to use it deceptively, dishonestly, or fraudulently; unlawfully possessing or trafficking in government-issued identity documents; and forgery offences in relation to those things.

I have two questions. First, will those provisions regarding false identity begin to make a little dent in this question of facilitators or front men? Second, apart from facilitation by way of false identities, can you suggest any provisions that might legislatively assist you in dealing with real people or people with real identities who are laundering or otherwise facilitating organized crime?

Perhaps I'll start with Inspector Morin and then ask Inspector Joyal to comment.

•(1555)

Mr. Francis Brabant: Certainly we did welcome Bill S-4, concerning identity theft. I don't think we were alone. I think the Privacy Commissioner...

Again, yes, there's this problem with false identities, but facilitators are normally persons who have true identities.

Mr. Stephen Woodworth: What can we do about that?

Mr. Francis Brabant: It's difficult. As we said before, we were thinking more in terms of sentence, and we welcome also Mr. Battista's idea about providing everybody with more means to achieve our goals.

Insp Martine Fontaine: Can I add something?

Nominees are a major problem because they use their real identity to be able to put assets under their names. I like the solution that Mr. Ménard brought forward earlier. Maybe change the burden of the person to be able to come to court and justify how he acquired his assets. He suggested that, and it's quite interesting, as a matter of fact. The nominees are good people. They're fathers, or like I said, mothers. They're real people. They're not necessarily bad people. They don't have criminal records. But if they have to come and justify how they did acquire that property, maybe that would be a solution. I didn't bring that forward. Mr. Ménard brought it forward, but it's interesting.

Or maybe change the “we have the burden to prove beyond reasonable doubt”—

Insp Sylvain Joyal: Reverse the onus.

Insp Martine Fontaine: Yes, that the onus is on the person, so maybe by *prépondérance de preuve*, maybe to change that burden, not necessarily give the criminal the highest burden at all, because it's known. I've been doing proceeds since 1992, and it's getting worse and worse. They don't own anything any more. It's a rental company. There's nothing under their name, or just about, and if there's something under their name, it's mortgaged to the top.

•(1600)

The Chair: Mr. Joyal, you can answer if you want.

Insp. Martine Fontaine: I'm the proceeds person.

Insp Sylvain Joyal: I'm the civil guy; she's the proceeds person.

Mr. Stephen Woodworth: Well, thank you so much.

The Chair: Thank you to all of you.

This has been a full day for us. It has in some respects given us a different perspective. It's a perspective from Quebec, and you've had

your own unique challenges here, so we're going to take that all back and we'll likely prepare a report, probably not until the early spring, but eventually I'm sure you'll get a copy of it for your own perusal as well.

Again, thank you so much for coming.

We stand adjourned.

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