



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **THE STATE OF ORGANIZED CRIME**

## **Report of the Standing Committee on Justice and Human Rights**

**Dave MacKenzie, M.P.  
Chair**

**MARCH 2012**

**41st PARLIAMENT, 1st SESSION**

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# **THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS**

has the honour to present its

## **SEVENTH REPORT**

Pursuant to its mandate under Standing Order 108(2), the Committee has studied the State of Organized Crime and has agreed to report the following:



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# THE STATE OF ORGANIZED CRIME IN CANADA

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## INTRODUCTION

On February 9, 2009, the House of Commons Standing Committee on Justice and Human Rights (the Committee) adopted the following motion:

Pursuant to Standing Order 108(2), it is moved that the Standing Committee on Justice and Human Rights devote four sittings to the study of the state of organized crime in Canada and the consequential legislative amendments that should be made and that the Chair report its conclusions and recommendations to the House.

The Committee quickly realized that many more meetings than those discussed in the motion would be required in order for it to acquire some understanding of the state of organized crime for three main reasons. One was that the witnesses who testified before the Committee made it clear that the term “organized crime” covered a wide array of criminal activities that affected many facets of Canadian society. Its effects can be felt not only in the criminal justice system, but also in the areas of education and social services, to name but a few. To explore properly the effects of organized crime and the legislative means of tackling it would take many more meetings than originally scheduled.

The second main reason to have more meetings on organized crime was that the issues raised were not only large in number, but complex in nature. One example of this was the issue of crime prevention versus crime deterrence. Different witnesses had different perspectives on this topic, depending upon their background. The Committee chose to hear from a diverse range of witnesses, including law enforcement officials, victims of crime, workers with social service agencies, academics, journalists, business people, government officials, and members of the public. Out of this diverse group of witnesses, the Committee was presented with a wide range of opinions on the many issues addressed in this report.

The third main reason that more meetings would be required to carry out this study was that no single definition of “organized crime” can be applied across Canada. In such a diverse country of regions, it is perhaps not surprising that organized crime takes on many and different forms in different parts of Canada. As a result, a legislative solution that may work in one area may prove to be less effective in another. The Committee, therefore, felt it was important to explore as many different parts of Canada as budgets and time allowed in order to investigate the nature of organized crime at the local level.

The Committee was left with difficult decisions as to where to travel as part of its study. In the end, it has heard witnesses in Ottawa, travelled to Vancouver, Montréal, Halifax, Toronto, Edmonton, and Winnipeg for public hearings, and received briefs from various individuals and organizations.<sup>1</sup> While it was not possible to visit every community that members of the Committee wished to, it was felt that the cities chosen provided some

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1 A list of witnesses and briefs can be found in the Appendices.

representation of the diversity of organized crime activities in Canada. In addition to its organized crime study, the Committee has also heard related testimony on Bill C-14, an Act to amend the *Criminal Code* (organized crime and protection of justice system participants)<sup>2</sup> and as part of a study on declaring certain groups to be criminal organizations.<sup>3</sup> The Committee also benefited from testimony on the issue of “gangsterism” heard during the 1st Session of the 39th Parliament.<sup>4</sup>

## THE NATURE OF THE PROBLEM

Organized crime poses a serious long-term threat to Canada’s institutions, society, economy, and to our individual quality of life. Many organized crime groups use or exploit the legitimate economy to some degree by insulating their activities, laundering proceeds of crime and committing financial crimes via a legitimate front. Organized crime groups exploit opportunities around the country and create a sophisticated trans-national network to facilitate criminal activities and challenge law enforcement efforts.

The Committee was informed that gangs and organized crime have been with us for at least 150 years. Alienated and disenfranchised young men long ago forged a common bond of lawlessness, using crime as a means of generating wealth. New opportunities for organized crime arrived when illicit drugs became more widely available, due to the increasing ease of international travel and commerce.<sup>5</sup>

Organized crime involves white collar criminal activity, gang activity and both domestic and foreign participants. Organized crime is of concern not only for its direct impacts, such as the selling of illicit drugs, but also for the indirect impacts, such as the violence that spills into the larger community when rival organized crime groups try to gain control over areas in which to sell drugs.

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2 Bill C-14 was given Royal Assent on June 23, 2009 and became S.C. 2009, c. 22. It came into force on October 2, 2009.

3 Testimony on this issue was heard on May 12, 2009, May 26, 2009, and June 15, 2009.

4 Testimony on this issue was heard on January 30, 2007 and February 1, 2007. The Committee had adopted a motion on December 13, 2006 in the following terms:

Whereas various important witnesses have indicated to the Committee that there is a significant link between armed offences, street gangs and organized crime;

Whereas parliamentarians have an obligation to legislate on the basis of meaningful and conclusive information;

It is proposed that the Standing Committee on Justice and Human Rights not begin the clause-by-clause review of Bill C-10 until it has devoted two more meetings to the issue of street gangs, and two more meetings to examine the overall effect on gangsterism of Bills C-95 and C-24, adopted in 1997 and 2001;

It is also proposed, with respect to gangsterism, that the research assistants produce a summary of the case law and provide Committee members with a file comprising the court judgments in full.

5 Testimony of Professor Neil Boyd, Professor of Criminology, Simon Fraser University, before the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3853912&Language=E&Mode=1&Parl=40&Ses=2>.

There are immediate and direct costs to the victims of organized crime. These costs can be financial but, more importantly, they can be physical in nature as well as mentally and emotionally traumatic. The losses suffered by victims through such things as the violation of their sense of personal safety and security are long-lasting and difficult to measure. Victims of organized crime can be found everywhere as this type of crime knows no boundaries and carries out its activities in communities of all sizes. Such activities can occur everywhere through such things as fraud over the Internet, the sale of counterfeit goods, and breach of intellectual property laws. The cost of crime is not only a personal one, however, as it is passed on from victims to their insurance companies to businesses and then to consumers. In this way, the personal toll of organized crime becomes a burden on society as a whole. Furthermore, there is also a high price for taxpayers in the form of increased costs for law enforcement and the justice and correctional systems.

Domestic policing efforts across Canada increasingly require the development of strategies and programs that address the international components of organized crime. Currently, the Royal Canadian Mounted Police (RCMP) and local law enforcement units are focused on reducing the threat and impact of organized crime. In countering the growth of organized crime groups and dismantling their structures and sub-groups, a critical component is the improved coordination, sharing and use of criminal intelligence and resources. This sharing of information and resources is used in support of integrated policing, law enforcement plans and strategies, and assists the police in communicating the impact and scope of organized crime.

The impact of organized crime on the lives of Canadians was certainly communicated clearly to the Committee throughout its hearings. The Committee also heard a level of frustration with how the justice system functions in this regard. There was often an expressed perception that this system operates with a bias in favour of the accused rather than the victim.<sup>6</sup>

## **LAWS IN RELATION TO ORGANIZED CRIME**

The offence of participation in a criminal organization was enacted in 1997 as part of Bill C-95.<sup>7</sup> At that time, a “criminal organization” meant any group, association or other body consisting of five or more persons, whether formally or informally organized, that met two requirements: (1) have as one of its primary activities the commission of an indictable offence under this or any other Act of Parliament for which the maximum punishment is imprisonment for five years or more; and (2) any or all of its members engage in, or have, within the preceding five years, engaged in the commission of a series of such offences. That offence was punishable by a term of imprisonment not exceeding 14 years, and required that the accused have participated in the activities of a gang and been a party to the commission of an indictable offence committed in relation to a criminal group.

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6 Brief of Ray Hudson, Manager of Policy Development and Communications, Surrey Board of Trade, to the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009.

7 S.C. 1997, c. 23.

Coming into force in 2000, Bill C-22 created the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).<sup>8</sup> FINTRAC is an independent agency responsible for the collection, analysis, assessment and disclosure of information in order to assist in the detection, prevention and deterrence of money laundering and financing of terrorist activities in Canada and abroad. FINTRAC receives reports from financial institutions and intermediaries, analyzes and assesses the reported information, and discloses suspicions of money laundering or of terrorist financing activities to police authorities and others as permitted by its governing legislation. FINTRAC also discloses to the Canadian Security Intelligence Service (CSIS) information that is relevant to threats to the security of Canada.

Concerns were expressed by police and prosecutors that the definition of a “criminal organization” was too complex and too narrow in scope. As a result, in 2002, Bill C-24<sup>9</sup> amended the definition of a “criminal organization” in three main ways by:

- 1) reducing the number of people required to constitute a criminal organization from five to three;
- 2) removing the requirement that at least one of the members be involved in committing crimes for the organization within the past five years; and
- 3) broadening the scope of the offences which define a criminal organization, previously limited to indictable offences punishable by five years or more, to all serious offences.<sup>10</sup>

Therefore, the definition of “criminal organization” now requires that a group, however organized, meet two requirements: (1) be composed of three or more persons in or outside Canada; and (2) have, as one of its main purposes or main activities, the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group. The *Criminal Code*<sup>11</sup> expressly provides, however, that the term “criminal organization” does not mean a group of persons that forms randomly for the immediate commission of a single offence. A “serious offence” is defined as an indictable offence for which the maximum punishment is imprisonment for five years or more, or another offence that is prescribed by regulation. Facilitation of an offence does not require actual knowledge of a particular offence or that

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8 S.C. 2000, c. 17.

9 S.C. 2001, c. 32.

10 A “serious offence” is defined in section 467.1 of the *Criminal Code* to mean an indictable offence under any Act of Parliament for which the maximum punishment is at least five years’ imprisonment or another offence that is prescribed by regulation. The *Regulations Prescribing Certain Offences to be Serious Offences* make a number of criminal offences “serious offences” for the purposes of the organized crime provisions. Some of the criminal acts carried out by organized crime do not always meet the definition of serious offence because they are not punishable by five years or more. This may prevent these groups from being labelled as “criminal organizations” in the *Criminal Code*. The Regulations designate 11 specific offences in the areas of gambling, prostitution, and drug activity as “serious offences”. The Regulations can be found at: <http://canadagazette.gc.ca/rp-pr/p2/2010/2010-08-04/html/sor-dors161-eng.html>.

11 R.S.C. 1985, c. C-46.

an offence actually has been committed. Committing an offence means being a party to it or counselling any person to be a party to it.<sup>12</sup>

The finding by a court that a group is a criminal organization is done on a case-by-case basis and is only applicable to the individuals in that case. For example, the Hells Angels<sup>13</sup> has been found by the courts to be a criminal organization but there is no official directory of such a finding nor will there be continuous labelling. In other words, the existence of a particular group as a criminal organization must be proven anew in every case.

There are three specific *Criminal Code* offences in relation to criminal organizations. One is participation in the activities of a criminal organization (s. 467.11 of the *Criminal Code*; punishable by a term of imprisonment not exceeding five years). This enables police to investigate and charge persons who fulfill a role that furthers the ability of the criminal organization to commit criminal acts. This may include, for example, individuals who launder money for a criminal organization, facilitating the concealment of the illegal proceeds of criminal organizations. In 2010, Statistics Canada reports there were 10 violations of section 467.11, with 26 persons accused of this offence.<sup>14</sup>

A second offence is commission of an offence for a criminal organization (s. 467.12 of the *Criminal Code*; punishable by a term of imprisonment not exceeding 14 years). It provides for those who commit various criminal offences such as drug importation, drug exportation, extortion, arson, kidnapping, violence, gaming, and money-laundering from which the organization derives a benefit. Statistics Canada reports there were 39 violations of section 467.12 in 2010, with 85 persons accused of this offence.<sup>15</sup>

Instructing the commission of an offence for a criminal organization is the third offence and is punishable by imprisonment for life (s. 467.13 of the *Criminal Code*). Statistics Canada reports there were 50 violations of section 467.13 in 2010, with 39 persons accused of this offence.<sup>16</sup> Sentences for all three types of offences must be served consecutively with any other sentence.<sup>17</sup> At the same time as these offences were added to the *Criminal Code*, new investigative tools to be directed against criminal organizations were also created. These included special peace bonds,<sup>18</sup> new powers to seize proceeds of crime by broadening the definition of a “designated offence” from which

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12 *Criminal Code*, s. 467.1.

13 *R. v. Lindsay*; 2005 CarswellOnt 2911; [2005] O.T.C. 583; *R. v. Myles* (2007) 48 C.R. (6th) 108 (Ont. S.C.).

14 Statistics Canada, Canadian Centre for Justice Statistics, Incident-based Uniform Crime Reporting (UCR2) Survey.

15 *Ibid.*

16 *Ibid.*

17 Section 467.14 of the *Criminal Code*.

18 *Criminal Code*, s. 810.01(1).

proceeds could be seized,<sup>19</sup> greater powers to resort to electronic surveillance,<sup>20</sup> and a new reverse onus bail provision for those charged with the new offences.<sup>21</sup>

It should be noted that membership in a criminal organization is not an offence. Sections 467.11 and 467.12 do not require that the accused be part of the group that constitutes the criminal organization, but this is a requirement under section 467.13. It should also be kept in mind that other *Criminal Code* provisions may be applied in organized crime situations. These other provisions include: conspiracy (section 465), forming an intention in common to carry out an unlawful purpose (section 21), aiding and abetting (section 21) and counselling (section 22) a person to commit a crime. These *Criminal Code* provisions should be read in combination with the provisions that define the three criminal organization offences.

The law concerning organized crime found in the *Criminal Code* is still relatively new. In Ontario, the *R. v. Lindsay*<sup>22</sup> case in 2005 determined that the Hells Angels were a “criminal organization” as that term is defined in the *Criminal Code*. More specifically, the court was satisfied beyond a reasonable doubt that the Hells Angels has as one of its main purposes the facilitation of one or more serious offences that would likely result in the receipt of a financial benefit by its members, in particular drug trafficking. This was the first time in Canada that a judge declared a group, as opposed to individuals, to be a “criminal organization” as that term is defined in the *Criminal Code*.

In *R. c. Aurélius*, a street gang was declared to be a “criminal organization” and some offenders in that gang received enhanced sentences as a result.<sup>23</sup> In that case, members of a street gang trafficked in cocaine for the benefit of a criminal organization in the terms encompassed by section 467.12 of the *Criminal Code*. As a result, some members of this particular street gang were found guilty of “gangstérisme” (gangsterism).

In a brief to the Committee looking at trends in organized crime prosecutions,<sup>24</sup> it was suggested that it is often difficult to justify laying *Criminal Code* criminal organization charges (rather than simply proceeding with the underlying charges) due to the increased complexity that such charges bring to the prosecution. The opportunity to seek consecutive sentences mandated by section 467.14 of the *Criminal Code* is often offset by the added time and effort involved in proving criminal organization offences. In addition, charging additional, peripheral figures involved in a criminal organization might unduly complicate the prosecution.

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19 *Criminal Code*, s. 462.3(1).

20 *Criminal Code*, Part VI.

21 *Criminal Code*, s. 515(6)(a)(ii).

22 *R. v. Lindsay*; 2005 CarswellOnt 2911; [2005] O.T.C. 583 ; *R. v. Myles* (2007) 48 C.R. (6th) 108 (Ont. S.C.).

23 *R. c. Aurélius* (2007), QCCQ 227.

24 Bullerwell, Dane, Student-at-Law, Memorandum “Trends in Organized Crime Prosecutions” to Justice Wachowich, March 26, 2010.

The complexity and dedication of resources required to prosecute criminal organization offences was brought home to this Committee by a prosecutor with the Quebec Organized Crime Prosecutions Bureau.<sup>25</sup> The successful prosecutions of members of the Hells Angels in Quebec and the break-up of the Bandidos biker gang in Quebec were attributed to the combined effect of the above-noted legislative changes along with other measures. These additional measures included:

- the creation of specialized police task forces;
- the participation of different police agencies;
- lengthy police investigations that targeted whole criminal organizations;
- the use of civil infiltration agents;
- the creation of specialized teams of prosecutors, such as the Proceeds of Crime Bureau in 1996 and the Organized Crime Bureau in 2000;
- the construction of the Grouin Judicial Services Centre; and
- the renovation of several courtrooms around Quebec, which allowed for the holding of several mega-trials in different places at the same time.

In addition to the laws concerning criminal organizations specifically, laws of general application can be used to prosecute and disrupt organized crime. The Halifax Regional Police, for example, has put in place Operation Breach.<sup>26</sup> In response to the fact that the majority of crimes are committed by a limited number of offenders, Operation Breach strictly monitors offenders released into the community to ensure compliance with release conditions and prevent further criminal behaviour. The goal of Operation Breach is to make certain that persons believed to be actively involved in further offences comply with their release conditions. Non-compliance results in new charges, which in turn results in more restrictive conditions or the offender being returned to custody. The Halifax Regional Police believe that Operation Breach has shown that the enforcement of release conditions has a deterrent effect and can reduce crime. A related effort is to ensure that arrest warrants are executed. This enhances community safety by reducing criminal opportunities for those illegally at large who will now be arrested and, therefore, will not be able to engage in further criminal activity.

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25 Testimony of Randall Richmond before the House of Commons Standing Committee on Justice and Human Rights, January 30, 2007, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2645085&Language=E&Mode=1&Parl=39&Ses=1>.

26 Halifax Regional Police, Community Response Model of Policing.

## CRIMINAL ORGANIZATIONS IN CANADA

In 2008, over 900 organized crime groups were identified in Canada, including approximately 300 street gangs.<sup>27</sup> In 2011, Criminal Intelligence Service Canada (CISC) identified 729 crime groups.<sup>28</sup> The change in the numbers of criminal groups is said to reflect a number of factors including fluidity in the criminal marketplace, disruptions by law enforcement, and changes in intelligence collection practices. In its *2010 Report on Organized Crime*, CISC focused on street gangs, stating that, since 2006, there has been an increase in the number of such gangs identified by law enforcement agencies across Canada. The factors that may account for this increase include higher-level organized crime groups being identified as street gangs, cells from larger gangs being identified as new entities, street gangs splintering into smaller criminal groups, or gangs changing names.<sup>29</sup>

CISC's main purpose has been to facilitate the timely production and exchange of criminal intelligence information within the Canadian law enforcement community. CISC supports the effort to reduce the harm caused by organized crime through the delivery of strategic intelligence products and services and by providing leadership and expertise to its member agencies. CISC is an umbrella organization of all Canadian law enforcement agencies and as such, is encouraged by all stakeholders and member agencies to actively pursue an impartial autonomous role within the complex network of relationships it manages.

In its testimony before the Committee, CISC categorized organized crime groups in Canada into four levels of threat. Category one groups pose the most significant level of threat and operate inter-provincially or internationally. Twenty-four criminal organizations currently belong to this category.<sup>30</sup> Category two groups operate with international or inter-provincial scope as well, but have been determined to be at a lower threat level than the category one groups. There are 262 such groups in Canada today. Category three groups are confined to a single province, but can encompass more than one city or region; 121 category three groups operate in Canada. Finally, category four groups are confined to a single area, such as a town or a city; 210 criminal organizations belong to this category. The number of groups in each category remains fluid. CISC did not rate

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27 Criminal Intelligence Service Canada testimony before the House of Commons Standing Committee on Justice and Human Rights, March 11, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3742931&Language=E&Mode=1&Parl=40&Ses=2>.

28 Ibid, February 16, 2012, <http://prismweb.parl.gc.ca/IntranetDocuments/CommitteeBusiness/41/1/JUST/Meetings/Evidence/JUSTEVBLUES21.HTM>.

29 Criminal Intelligence Service Canada, *2010 Report on Organized Crime*, p. 18, [http://www.cisc.gc.ca/annual\\_reports/annual\\_report\\_2010/document/report\\_oc\\_2010\\_e.pdf](http://www.cisc.gc.ca/annual_reports/annual_report_2010/document/report_oc_2010_e.pdf).

30 The Hells Angels, which belong to this upper category, are Canada's largest biker gang. However, on April 15, 2009, 156 arrest warrants were issued for full-patch members and associates of the Hells Angels in the SHARQC (Stratégie Hells Angels Région Québec) police operation. Charges laid included gangsterism, trafficking in a controlled substance, conspiracy to commit murder, and murder.

30 groups for various reasons and 82 groups came to CISC's attention after its national threat assessment was compiled.<sup>31</sup>

Nationally, the Lower Mainland of British Columbia, Southern Ontario and Greater Montréal are considered to be the primary criminal hubs, with both the largest concentration of criminal organizations as well as the most active and dynamic criminal markets. In 2010, of the 56 gang-related homicides committed in Canada's ten largest cities, 82% were committed in Toronto, Montréal, and Vancouver.<sup>32</sup>

The RCMP in Toronto informed the Committee that adaptability is the cornerstone of the survival and success of organized crime.<sup>33</sup> CISC reports that, traditionally, organized crime was thought to be composed of hierarchically structured groups that were ethnically, racially, or culturally homogeneous and that tended to operate within a strict culture of rules and codes. Today, however, CISC reports that law enforcement is detecting more multi-ethnic criminal groups. There has also been an evolution in the way organized crime groups operate away from an authoritarian, rule-bound structure towards one that is more loosely structured. These groups now have fluid linkages between members and associates, with a diverse range of leadership structures.<sup>34</sup> The different organized crime groups forge alliances which are fluid in both duration and scope. The purpose behind these alliances is the acquisition and legitimization of wealth.

The growth of criminal organizations from diverse cultural backgrounds was also reflected in a report the Committee received on organized crime in Quebec.<sup>35</sup> The 2009 Situation Report breaks down organized crime in Quebec into the following categories: Asian-origin organized crime; Aboriginal-origin organized crime; Italian-origin traditional organized crime; Quebec-origin traditional organized crime; street gangs; Latin-American-origin organized crime; East European-origin organized crime; Near- and Middle-East-origin organized crime; and criminal bikers. The police have observed a number of alliances or associations forming within the criminal community of that province. When these prove necessary to the success of their criminal enterprises, organized crime members do not hesitate to employ the expertise of other criminals. One example of such cooperation is the agreement between Italian-origin traditional organized crime and the criminal bikers to allocate territory for drug distribution purposes. Violence can erupt, however, during struggles to control crime groups and during struggles between these groups to control criminal markets.

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31 Criminal Intelligence Service Canada testimony before the House of Commons Standing Committee on Justice and Human Rights, February 16, 2012, <http://prismweb.parl.gc.ca/IntranetDocuments/CommitteeBusiness/41/1/JUST/Meetings/Evidence/JUSTEVBLUES21.HTM>.

32 Statistics Canada, Canadian Centre for Justice Statistics, *Homicide in Canada, 2010*, Minister of Industry, October 2011, Table 4, <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11561/tbl/tbl04-eng.htm>.

33 Brief of Superintendent Robert Davis, Greater Toronto Area District Commander, Royal Canadian Mounted Police — "O" Division, to the House of Commons Standing Committee on Justice and Human Rights, March 25, 2010.

34 Criminal Intelligence Service Canada, *2010 Report on Organized Crime*, p. 12, [http://www.cisc.gc.ca/annual\\_reports/annual\\_report\\_2010/document/report\\_oc\\_2010\\_e.pdf](http://www.cisc.gc.ca/annual_reports/annual_report_2010/document/report_oc_2010_e.pdf).

35 Organized Crime in Québec, 2009 Situation Report.

The Committee was also informed that emerging organized crime groups are less inclined than their predecessors to display outwardly and blatantly the signs or “brands” of more traditional groups (e.g. the Hells Angels symbol on jackets). These newer groups tend not to use a particular name, tattoo, clothing, or jewellery as identifiers. This tends to make prosecutions under organized crime laws more difficult.<sup>36</sup> Another trend in organized crime has been that of globalization. Just as in the legitimate business world, there has been an increase in organized crime’s scope of operations with national and international connections now being the norm.<sup>37</sup>

## **CRIMINAL ORGANIZATION ACTIVITIES**

One fact about the activities of organized crime that was emphasized many times before the Committee is that they are all centred upon the profit motive. This has many implications, one of which is that organized crime does not restrict itself to one market or one geographical area. It will go where there is money to be made. Cross-jurisdictional crime, in turn, makes it necessary for different law enforcement agencies to work together and share information.

Illicit drugs continue to be the largest criminal market in Canada with 57% of the criminal marketplace being taken up by the trade in drugs. The majority (83%) of organized crime groups are involved in the illicit drug trade. The predominant drug is cocaine, followed by cannabis, and then followed by synthetic drugs.<sup>38</sup> One indication of the size of the drugs trade is that, in the Atlantic region, since 2008, the Canada Border Services Agency (CBSA) has seized more than \$176 million in drugs arriving at Atlantic ports in sea containers. The majority of these drug seizures consist of hashish coming from Asia and Africa and cocaine arriving from South America.<sup>39</sup> One of the challenges in identifying suspect containers is the use of legitimate companies by organized crime to conceal drug shipments. Of the 109 organized crime groups profiled for the Atlantic provinces, 99 are involved in the illicit drug trade and in Nova Scotia, organized crime accounts for 90% of the drug trade.<sup>40</sup> Canada has also become a source country for synthetic drugs (like ecstasy and crystal meth). Organized crime groups smuggle in the precursor chemicals from source countries such as China and India. Canada continues to

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36 Brief of Assistant Commissioner Alistair D. Macintyre, Officer in Charge of Criminal Operations, RCMP British Columbia to the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009.

37 Brief of Inspector Clemens Imgrund, Officer in Charge, Division Intelligence, “K” Division, RCMP, to the House of Commons Standing Committee on Justice and Human Rights, March 29, 2010.

38 Criminal Intelligence Service Canada testimony before the House of Commons Standing Committee on Justice and Human Rights, February 16, 2012, <http://prismweb.parl.gc.ca/IntranetDocuments/CommitteeBusiness/41/1/JUST/Meetings/Evidence/JUSTEVBLUES21.HTM>.

39 Brief of David Aggett, Director, Enforcement and Intelligence Division, Canada Border Services Agency — Atlantic Region, to the House of Commons Standing Committee on Justice and Human Rights, October 23, 2009.

40 Brief of Superintendent Brian Brennan, RCMP “H” Division — Nova Scotia, to the House of Commons Standing Committee on Justice and Human Rights, October 23, 2009.

export significant quantities of ecstasy and methamphetamine to meet expanding international market demands.<sup>41</sup>

One of the features of organized crime is its determination to establish a monopoly on the production, distribution, and sale of illicit goods in any given market.<sup>42</sup> This is one aspect of organized crime operating as a business. Learning about the limitations and effectiveness of law enforcement investigative techniques through the disclosure required by law, organized crime figures no longer have assets in their names, they lease vehicles, they use nominee companies, and they own assets abroad. Moreover, organized crime specializes in certain areas and changes the sectors in which it operates to those with less risk and greater profits.

Where law enforcement successes have disrupted or dismantled specific crime groups, this impact tends to be short-term. It creates a temporary void into which market expansion occurs, or creates opportunities for well-situated organized criminal groups to exploit. In general, criminal markets are highly resistant to long-term disruption, as consumer demand in Canada is large enough for criminal networks to continue their activities and for other criminal groups to take the place of those broken up by police.<sup>43</sup>

In 2011, CISC reported that financial crime accounts for approximately 11% of criminal market activity. Payment card fraud is by far the largest part of this market and it continues to expand.<sup>44</sup> Payment card fraud involves card thefts, fraudulent card applications, fake deposits, and skimming or counterfeiting. Securities and mortgage fraud is another area of the financial crime market in which organized crime has an interest.

The remaining 32% of criminal market activity is taken up with other illicit goods and services. These criminal activities include theft, contraband such as alcohol and tobacco, the sex trade, and human trafficking.

The Committee was informed that the largest amount of human trafficking taking place in Canada is domestic, that is, Canadian girls are being trafficked within Canada. This trafficking is done through organized crime networks.<sup>45</sup> CISC has reported that street gangs facilitate the recruitment, control, movement and exploitation of Canadian-born

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41 Criminal Intelligence Service Canada, *2010 Report on Organized Crime*, p. 26, [http://www.cisc.gc.ca/annual\\_reports/annual\\_report\\_2010/table\\_of\\_contents\\_2010\\_e.html](http://www.cisc.gc.ca/annual_reports/annual_report_2010/table_of_contents_2010_e.html).

42 Brief of Inspector Sylvain Joyal, Officer-in-Charge Montréal Drug Section, Royal Canadian Mounted Police — “C” Division, October 22, 2009.

43 Testimony of Donald R. Dixon, Director General, Criminal Intelligence Service Canada, before the House of Commons Standing Committee on Justice and Human Rights, March 11, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3742931&Language=E&Mode=1&Parl=40&Ses=2>.

44 Criminal Intelligence Service Canada testimony before the House of Commons Standing Committee on Justice and Human Rights, February 16, 2012, <http://prismweb.parl.gc.ca/IntranetDocuments/CommitteeBusiness/41/1/JUST/Meetings/Evidence/JUSTEVBLUES21.HTM>.

45 Testimony of Julian Sher, October 22, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167421&Language=E&Mode=1&Parl=40&Ses=2>.

females in the domestic sex trade, primarily in strip bars in several cities across the country.<sup>46</sup>

In its meetings held in six cities across Canada in addition to hearings in Ottawa, the Committee learned of the wide array of organized crime groups and activities. In some areas, the traditional “Mafia-style” organized crime groups held considerable sway while in others, Aboriginal or other ethnically-based gangs were the local criminal power. Trafficking in illicit drugs seemed to be a common component of organized crime activities, with other areas being human trafficking, counterfeit products, illegal gambling, money laundering, and vehicle theft. Another aspect of organized crime that was frequently discussed during the Committee’s hearings was the violence that has been experienced when organized crime groups come into conflict with each other over control of lucrative markets, such as supplying illicit drugs. This violence is exacerbated and can involve innocent bystanders when firearms are used. Finally, witnesses in a number of cities discussed the expansion of organized crime into “legitimate” business sectors, such as construction. This mixing of legitimate and illegitimate can make singling out and prosecuting organized crime groups more problematic.

The activities listed above can all generate wealth and there is a reduced risk to the criminal organization when that activity is not trafficking in illicit drugs. In cases of tobacco smuggling, for example, the profits can be as high as they are for drug smuggling, but the risk of prosecution and the punishment following conviction is much lower.<sup>47</sup>

Criminal organization activities are also being abetted by a new kind of accomplice, usually called a “facilitator”. These are experts in a certain field, often members of a professional order, such as lawyers and accountants. They are not forced to work with a criminal organization but rather, choose to do so due to the generous compensation they receive. These professionals are sought out because of their expertise, and, also, the rules of confidentiality to which they are bound. However, it is often difficult to prove that the facilitator knew that the organization for which he or she performed some work was engaged in illegal activities. Rules such as solicitor-client confidentiality can also make the work of the police in this area more difficult.<sup>48</sup>

Criminal organizations have escalated their use of violence in taking over and defending territory. Street gangs have become more violent and unpredictable. In 2010, police reported 94 homicides as being gang-related, compared to 72 in 2000.<sup>49</sup> These include homicides linked to organized crime groups or street gangs, as well as the death of any innocent bystanders during the incident. Furthermore, the victims of gang-

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46 Criminal Intelligence Service Canada, *2008 Report on Organized Crime*, [http://www.cisc.gc.ca/annual\\_reports/annual\\_report\\_2008/human\\_smuggling\\_2008\\_e.html](http://www.cisc.gc.ca/annual_reports/annual_report_2008/human_smuggling_2008_e.html).

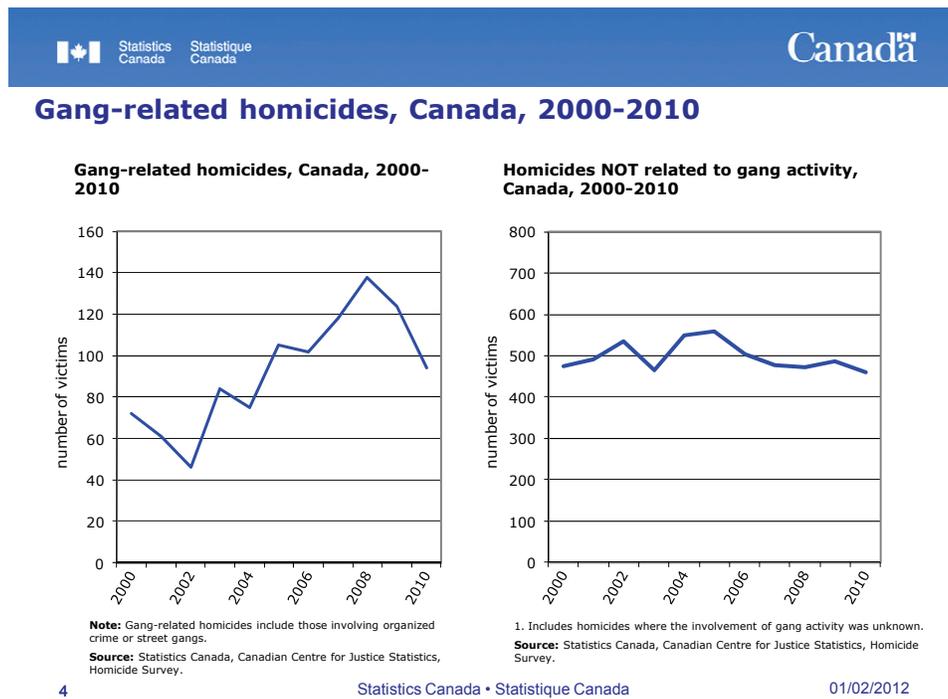
47 See Davis, Note 33.

48 Testimony of Inspector Denis Morin, Sûreté du Québec, before the House of Commons Standing Committee on Justice and Human Rights, October 22, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167422&Language=E&Mode=1&Parl=40&Ses=2>.

49 Statistics Canada, Canadian Centre for Justice Statistics, *Homicide in Canada, 2010*, Minister of Industry, October 2011, Table 6, <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11561/tbl/tbl04-eng.htm>.

related homicides as a percentage of all homicides rose from 13.2 % in 2000 to 17 % in 2010. Most gang-related homicides (56) occurred within Canada's largest census metropolitan areas (CMAs). The 10 largest CMAs accounted for just under half of all homicides in the nation in 2010 (269 out of 554), but 60% of all gang-related homicides (56 out of 94). Police in the metropolitan area of Toronto reported 20 gang-related homicides, the most of any CMA. However, accounting for population, Winnipeg's four gang-related homicides in 2010 gave it the highest rate among the 10 largest metropolitan areas.<sup>50</sup>

The increase in gang-related homicides, in comparison to the number of homicides not related to gang activity, can be seen in the following two charts:



Firearms were used more often in gang-related homicides than in other types of homicide. In 2010, 76% of gang-related homicides in Canada were committed with a firearm, compared to 18% of homicides unrelated to gangs. Among all gang-related homicides that were committed between 2000 and 2010, handguns were used in almost 60% of incidents.<sup>51</sup> By comparison, in homicides not related to gang activity between 2000 and 2010, a handgun was used in approximately 12% of incidents. Knives were the most common weapon used in non-gang-related homicides.<sup>52</sup> Gang members have, therefore, started wearing bullet-proof vests and modifying their vehicles to be armoured. The number of homicides attributable to gangs has generally increased since information

50 Ibid.

51 Julie McAuley, Director, Canadian Centre for Justice Statistics, Organized Crime, Written Submission to the Standing Committee on Justice and Human Rights, February 1, 2012.

52 Ibid.

gathering on this topic began in 1991 (though it has declined recently), despite the fact that the overall rate of homicides in Canada has generally decreased since the mid-1970s.

Moreover, the number of young persons charged with homicides attributable to gangs has generally increased since 2002. The number of youths accused of gang-related homicides peaked in 2007 when 35 youths were accused of this offence, which declined to 10 accused in 2008 and increased to 14 youth accused of committing a gang-related homicide in 2010. Compared to adults, more incidents of homicide involving youth were gang-related. In 2010, among incidents with a youth accused, 25% involved gangs, compared to 12% of incidents with an adult accused.<sup>53</sup>

Given the clandestine nature of criminal activities, it is difficult to evaluate the total impact of organized crime in this country, but, given the diversity of criminal markets in Canada, we know it is significant. The overall impact of organized crime is significant due to the spectrum of criminal markets operating in Canada. Some forms of criminal activity are highly visible and affect individuals and communities on a daily basis, such as street-level drug-trafficking, assaults, violence, and intimidation. Conversely, more covert operations, such as mortgage fraud, vehicle theft, and identity fraud, pose long-term threats to Canadian institutions and consumers.<sup>54</sup>

Another difficulty in evaluating the impact of organized crime in this country is that the Committee has been told that only about one-third of crimes committed in Canada are reported to the police, but police statistics are widely used as representing the actual crime rate. As a result, policy makers, the media, the legal system and the public can be misled.<sup>55</sup> The Committee was urged to look at the Statistics Canada report, *Criminal Victimization in Canada*,<sup>56</sup> as a more accurate measure of the amount of criminal activity in Canada. The General Social Survey from 2009, which was the genesis of the victimization survey, indicated that about 7.4 million Canadians – just over one-quarter of the population aged 15 years and older – reported being victimized one or more times in the 12 months preceding the survey, but only 31% of criminal incidents came to the attention of police in 2009.<sup>57</sup>

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53 Statistics Canada, Canadian Centre for Justice Statistics, *Homicide in Canada, 2010*, Minister of Industry, October 2011, <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11561/tbl/tbl04-eng.htm>.

54 Testimony of Donald R. Dixon, Director General, Criminal Intelligence Service Canada, before the House of Commons Standing Committee on Justice and Human Rights, March 11, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3742931&Language=E&Mode=1&Parl=40&Ses=2#Int-2652816>.

55 Canadian Chamber of Commerce Resolution, adopted at the Annual General Meeting, September 18, 2007, <http://www.chamber.ca/images/uploads/Resolutions/2009/PolicyBook07-09.pdf>.

56 Samuel Perreault and Shannon Brennan, Statistics Canada, *Criminal Victimization in Canada, 2009*, Summer 2010, <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11340-eng.htm>.

57 The most common reasons cited for not reporting victimization incidents to the police were because the victim felt that the incident was not important enough (68%), they thought there was nothing the police could do to help (59%), they dealt with the situation in another way (42%), or they felt the incident was a personal matter (36%).

The Committee was informed that a problem with respect to accurately portraying current crime statistics is that the *Criminal Victimization Survey* is only carried out by Statistics Canada once every five years. As a result, the media tend to pay more attention to annual reports of crimes reported to police. We were told that the current widely used approach of equating crime reported to police as an indicator of the total extent of crime was wrong, misleading and in need of change.<sup>58</sup>

A number of caveats need to be raised when trying to compare the results of victimization surveys with the amount of crime reported to the police. In Canada, there are two primary sources of data on the prevalence of crime: victimization surveys such as the General Social Survey (GSS), and police-reported surveys such as the Uniform Crime Reporting (UCR) Survey. These two surveys are very different in survey type, coverage, scope, and source of information. The GSS is a sample survey, which in 2009 sampled about 19,500 individuals aged 15 years and older. In contrast, the UCR survey is a census of all incidents reported by police services across Canada. While the GSS captures information on eight offences, the UCR survey collects data on over 100 categories of criminal offences.

Another key difference between the two surveys is that the UCR survey records criminal incidents that are reported to the police and the GSS records respondents' personal accounts of criminal victimization incidents. Many factors can influence the UCR police-reported crime rate, including the willingness of the public to report crimes to the police, reporting by police to the UCR survey, and changes in legislation, policies or enforcement practices. One way to estimate the extent of crime that is not reported to police is through the GSS victimization survey. Because the GSS asks a sample of the population about their personal victimization experiences, it captures information on crimes, whether or not they have been reported to police. The amount of unreported victimization can be substantial. For example, the 2009 GSS estimated that 88% of sexual assaults and 77% of household property thefts were not reported to the police. As a result, victimization surveys usually produce much higher rates of victimization than police-reported crime statistics.

Despite this, the 2009 GSS also reported that 93% of Canadians felt either very or somewhat satisfied with their personal safety, indicating they felt as safe as they had in the 2004 GSS; 90% of respondents reported that they felt safe when walking alone in their neighbourhood at night. The GSS also asked Canadians about their perception of crime in their communities; 62% of respondents said they believed crime rates in their community had not changed over the past five years.<sup>59</sup>

Despite the benefits of victimization surveys, they do have limitations. For one, they rely on respondents to report events accurately. They are also only able to address certain

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58 Testimony of Darcy Rezac, Managing Director, Vancouver Board of Trade, before the House of Commons Standing Committee on Justice and Human Rights, March 25, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3775476&Language=E&Mode=1&Parl=40&Ses=2>.

59 Samuel Perreault and Shannon Brennan, Statistics Canada, *Criminal Victimization in Canada, 2009*, Summer 2010, <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11340-eng.htm>.

types of victimization. They do not capture information on crimes that have no obvious victim (e.g. prostitution or impaired driving), where the victim is a business or school, where the victim is dead (as in homicides), or when the victim is a child (anyone under the age of 15 in the case of the GSS).

## **RECOMMENDATION**

**The Committee recommends that Statistics Canada carry out the *Criminal Victimization Survey* annually, and that the Government of Canada provide Statistics Canada with the appropriate funds to do so, in order to give policy makers, police, the justice system and the public a better measure of criminal activity in Canada.**

## **ORGANIZED CRIME IN PRISONS**

The introduction of anti-gang legislation, coupled with integrated and aggressive police investigations, has reportedly led to an increase in the number of gang members and their associates under the jurisdiction of the Correctional Service of Canada (CSC). The Committee was informed that, as of November 30, 2011, 2,293 offenders under CSC's jurisdiction were identified as members or associates of a criminal organization. Of these offenders, 70% (or 1,605) were incarcerated and 30% (or 688) were under some type of community supervision. The overall offender population under CSC supervision was 23,021, meaning that the gang population comprised 9.96% of the overall offender population.<sup>60</sup>

The most common type of criminal organization is street gangs with 39% of the national prison gang population. The street gang population within CSC has grown rapidly in the past 10 years and CSC predicts a continuation of this trend in the future. The second largest criminal organization type under CSC jurisdiction is Aboriginal gangs with 26% of the population, followed by motorcycle gangs (17%), traditional organized crime (8%), other gangs (7%), and Asian gangs (3%).<sup>61</sup> The street and Aboriginal gangs, which combine to account for 76% of the organized crime affiliations within CSC, are predominantly weighted in the Prairies region, which manages 83% of the Aboriginal gang members and 38% of the street gang population.

The increase in gang members under CSC jurisdiction has created a number of challenges:

- Power and control issues through intimidation, extortion and violence;
- Incompatibilities and rivalries among different criminalized groups;
- Drug distribution within institutions;

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60 Correctional Service Canada, Gang Statistics and Strategy Brief Prepared for the Justice Committee, December 15, 2011.

61 Ibid. It should be noted that an offender can have more than one gang affiliation.

- Continued criminal links with outside criminal organizations;
- Recruitment of new gang members; and
- Potential for intimidation, manipulation, and corruption of staff.

Gang rivalries sometimes mean that CSC cannot integrate offenders but, rather, must segregate and separate certain types of gangs. Separation, however, is not always a realistic approach to dealing with gangs. Intelligence-led risk management is employed to examine issues of gang dynamics and try to prevent conflict among gangs. In addition, CSC aims to provide all gang members with an opportunity to no longer affiliate themselves with a gang.<sup>62</sup>

The Committee also heard that jail can sometimes fail to serve as a deterrent for certain youth; in fact, it can sometimes be a step up from their previous life.<sup>63</sup> For first-time offenders, jail becomes a place to form negative associations. The jail system provides a place where gangs can recruit and crime can become more organized. Once released, the supports that are needed for any meaningful change are not always available, and so the gang associations made in jail become the support system for these former prisoners.

One of the difficulties related to organized crime in prisons is that the vast majority of prisoners are, at some point, released into the community. At first glance, the scope of the issue would not seem to be that large. The Committee was informed that, in 2010-2011, the Parole Board of Canada made 308 conditional release decisions for 139 offenders who had a criminal organization conviction. This was out of a total of 23,054 conditional release decisions, accounting for 1.3% of all decisions in that year. Since 1998-99, the Board has made 1,917 conditional release decisions for offenders convicted of criminal organization offences.<sup>64</sup>

The Board has clarified that it has full discretion to use information on violence and organized crime and gang activity in making its decisions. Reports of criminal conduct by an offender for which there has not been a conviction can be taken into account.<sup>65</sup> The Parole Board has the authority under section 133 of the *Corrections and Conditional Release Act*<sup>66</sup> to impose whatever conditions it feels are necessary to protect society and assist the offender in reintegrating into society. One of the considerations in this regard is

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62 Ibid.

63 Brief of Resource Assistance for Youth (Winnipeg) to the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010.

64 Letter from Harvey Cenaiko, Chairperson of the Parole Board of Canada, to the House of Commons Standing Committee on Justice and Human Rights, January 19, 2012.

65 In *Fernandez v. Canada (Attorney General)*, 2011 FC 275 (2011), the Federal Court held that the Parole Board may question an offender about past conduct that could have supported a prosecution for a criminal organization offence, for which he was not charged. As a result of this consideration, the Board ordered the offender to be detained past his statutory release date until the expiry of the committal warrant.

66 S.C. 1992, c. 20, s. 133(3) “(3) The releasing authority may impose any conditions on the parole, statutory release or unescorted temporary absence of an offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender.”

any involvement of the offender with criminal organizations. Another consideration in any release plan is whether the placement of the offender in a community may result in associations with members or associates of criminal organizations.<sup>67</sup>

The duty to act fairly requires that information the Parole Board considers in its decisions be shared with the offender. The Board has assured the Committee that it is taking steps to safeguard sensitive information so that the Board may receive what it needs, offenders see what they are entitled to under the law, and sources or ongoing investigations remain protected.

The Parole Board has recently collaborated with the Halifax Regional Police to create a new-style police report designed to give the Board relevant and detailed intelligence about offenders without jeopardizing sources or investigations. The Board reports that five RCMP detachments have adopted this model and it is reaching out to other police partners.<sup>68</sup>

Another issue with respect to those released into the community from prison is that there are no longer bars and physical restraints to keep gang members away from each other or even away from members of their own gang. CSC tries to work with offenders from the time they are incarcerated to their time of release and beyond to, for example, see that they acquire relevant employment skills. A multidisciplinary team of parole officers, community employment coordinators, psychologists, and mental health workers follows up on the progress of offenders, going so far as to verify with employers that offenders are doing what they claim to be doing.<sup>69</sup>

## **RECOMMENDATION**

**The Committee recommends that the Correctional Service of Canada develop stronger rehabilitation programs, including mental health assessments, for offenders involved in organized crime. These support programs must also be continued in the post-release community situation to help ex-prisoners reintegrate into society.**

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67 Letter from Harvey Cenaiko, Chairperson of the Parole Board of Canada, to the House of Commons Standing Committee on Justice and Human Rights, January 19, 2012.

68 Ibid.

69 Testimony of Jan Fox, District Director, Alberta/Northwest Territories District Office, Correctional Service Canada, before the House of Commons Standing Committee on Justice and Human Rights, March 29, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4391311&Language=E&Mode=1&Parl=40&Ses=3>.

## RECOMMENDATION

**The Committee recommends that the Parole Board of Canada continue in its efforts to work with its police partners to create police reports designed to give the Board relevant and detailed intelligence about offenders without jeopardizing sources or investigations.**

## A LIST OF CRIMINAL ORGANIZATIONS

The simplest means of providing evidence of the existence of a criminal organization is to have one of its members testify. In many cases, however, prosecutors are not able to have access to this type of witness. They must, therefore, use other types of evidence such as wiretaps, visual surveillance, and dealings with undercover police. This manner of proceeding can be dangerous, complex, and involve a number of delays. The most laborious step in the prosecution of a criminal organization is proving that the group is, in fact, a “criminal organization” in the *Criminal Code* sense of the term.

The Committee was told that, while the police do not necessarily take issue with the criteria established for designating a group as a criminal organization, they do take issue with the fact that once designated, it carries no weight in subsequent court cases. The specific example given was that of the Manitoba Chapter of the Hells Angels Motorcycle Club, which has already been found by the Manitoba Court of Queen’s Bench to be a criminal organization, and yet in upcoming trials of Hells Angels members, this fact will have to be proved once again.<sup>70</sup> Proving that a group is a criminal organization is a costly and time-consuming endeavour. Arguably, the financial and human resources required to furnish this proof would be better spent targeting other criminal organizations.

A means of drawing up a list of criminal organizations similar to the mechanism used for terrorist groups does not currently exist in Canadian law. While important court decisions have recognized that certain criminal groups, such as the Hells Angels, are “criminal organizations” in the *Criminal Code* sense of the term, in Canada, the Crown must, in every case involving such groups, offer proof that the case concerns a criminal organization according to the legal definition. Courts in British Columbia, Ontario, and Manitoba have ruled that in the current state of the law, the determination that a group is a criminal organization only applies to the accused before the court.

The Committee has been informed that providing this proof often means that there are long delays in matters which are already very demanding. In order to lighten the load of the Crown, some have suggested establishing an official list of criminal organizations already recognized by the jurisprudence as being criminal organizations under the *Criminal Code*.<sup>71</sup> One of the potential advantages of establishing such a list would be to

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70 Brief of Inspector John Ferguson, Officer in Charge, Drugs and Integrated Organized Crime, “D” Division, RCMP, to the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010.

71 Testimony of Jocelyn Latulippe, Chief Inspector, Director of Criminal Inquiries, Sûreté du Québec, before the House of Commons Standing Committee on Justice and Human Rights, May 12, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3890919&Language=E&Mode=1&Parl=40&Ses=2>.

lessen the time required for the Crown to prove that a group before the court is, in fact, a “criminal organization”. The Crown could, as well, concentrate its energy on demonstrating the other elements of the offence before the court. A further advantage of a list of criminal organizations would be that it would prevent criminal organizations from advertising themselves and thereby intimidating the public.

The organizations that would appear on the list, such as the Hells Angels, have been designated as criminal organizations in numerous court decisions. In the case of other groups who carry a distinctive name and who have already been declared to be criminal organizations by the courts, the representative of the Ministry of Justice of Quebec mentioned the Bandidos and the Cosa Nostra. As for other organizations, it was emphasized that we should, perhaps, wait until there are a sufficient number of findings from the courts and until the evidence is clear before proceeding to put their names on a list.

The Committee was informed, however, that there are a number of problems with maintaining a list of criminal organizations. One is that the law on criminal organizations is still relatively young. Changing the rules at this point may provoke constitutional challenges (such as the right to freely associate) and further complicate an already complex area of the law. Another constitutional issue that might be raised is that a list would impose sanctions on the basis of an executive decision rather than a judicial finding. This raises questions about the transparency of the process that results in a listing decision. However, it also raises questions about the presumption of innocence in section 11(d) of the *Charter* as it substitutes a Cabinet decision for proof of an essential element of a crime.

The listing process would also be difficult to maintain. It would be difficult to designate less structured groups, such as street gangs, whose name and membership are always changing and whose actions are unpredictable. As the membership of some gangs is highly fluid, it would be difficult to prove that the group on trial is the same entity as the group on the list. Therefore, a list of criminal organizations would always be incomplete and outdated.

The main objection to establishing a list of criminal organizations, though, is that it may not reduce the burden on the police or Crown prosecutors. The police must still continue to collect intelligence proving the existence of a criminal organization, as well as evidence of the link between the accused and that organization. This will involve the same delays as those that were to be avoided by the establishment of a list. Expert witnesses must still be called to explain the context and workings of the criminal organization in order for the judge or jury to understand the case put before them. In addition, it is not always necessary to prove that a criminal organization exists. A prosecutor need only prove that three or more individuals formed a group for criminal purposes. To impose the enhanced penalties applicable to a criminal organization, it is not necessary to prove that the group before the court can be labelled as “Hells Angels”, for example.

A list of criminal organizations may also prove to be a double-edged sword. It may work with some of the more structured and long-lasting criminal organizations, such as the Hells Angels. The fact that other groups are not on the list could be used by the defence

as a fact casting doubt on whether there was proof beyond a reasonable doubt that they were, in fact, criminal organizations.<sup>72</sup>

As has been seen with no-fly lists, the creation of such a list can also create significant problems for those who may find themselves wrongly included on the list. Wrongly included persons can have difficulty getting their names removed from such a list and suffer great interference with their personal liberty until they are able to do so.<sup>73</sup> The potential problems in this area were highlighted in a report by the United States Department of Justice Office of the Inspector General which found that the Federal Bureau of Investigation (FBI) had submitted incomplete and inaccurate information to be added to the United States government's consolidated terrorist watchlist. The FBI failed to include known terrorism suspects and to remove records of people that have been cleared.<sup>74</sup>

The Committee was also informed that a range of options, other than the creation of a list of criminal organizations, was being examined by the Department of Justice, such as allowing a judge to take judicial notice of earlier decisions. This approach would take one judicial decision and apply it in another case, as opposed to a government designation process falling outside of a courtroom entirely. There would be a rebuttable presumption that a judge could take judicial notice of a similar set of facts presented in an earlier case, subject to the defence having a right to challenge that notice.

Another option being considered is the introduction of legislation that would clarify what sort of evidence could be introduced to prove the existence of a criminal organization.<sup>75</sup> A third option is that Parliament could declare the issue of whether a group is a criminal organization to be a question of law so that this matter could be decided by a judge prior to trial under section 645(5) of the *Criminal Code*.<sup>76</sup> A fourth option is to have a gang expert prepare an affidavit under section 657.3 of the *Criminal Code* and attach as an exhibit the testimony of a previous case that had proven the existence of a certain

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72 Testimony of William Bartlett, Senior Counsel, Criminal Law Policy Section, Department of Justice, before the House of Commons Standing Committee on Justice and Human Rights, May 12, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3890919&Language=E&Mode=1&Parl=40&Ses=2>.

73 Canadian Civil Liberties Association, Brief to the Standing Committee on Justice and Human Rights, March 25, 2010.

74 "The Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices", U.S. Department of Justice Office of the Inspector General Audit Division, Audit Report 09-25, May 2009, <http://www.justice.gov/oig/reports/FBI/a0925/final.pdf>.

75 See Bartlett, Note 72.

76 Testimony of Christopher Mainella, Senior Counsel, Public Prosecution Service of Canada, before the House of Commons Standing Committee on Justice and Human Rights, May 26, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3920857&Language=E&Mode=1&Parl=40&Ses=2>.

criminal organization. Unless the defence challenges this evidence in some way, the finding of the previous court should apply in the subsequent court.<sup>77</sup>

On the basis of all of the above-noted concerns, the Committee does not believe that the time is right for the creation of a list of criminal organizations that can be used in the prosecution of these groups. Instead, the Committee urges the Department of Justice to consider, rather than the creation of such a list, other options which may make prosecutions of criminal organizations more efficient and therefore quicker.

## **RECOMMENDATION**

**The Committee recommends that the Department of Justice fully explore and implement as soon as possible other options than the creation of a list of criminal organizations which may make prosecutions of criminal organizations more efficient and, therefore, quicker.**

## **INFORMATION SHARING AMONG LAW ENFORCEMENT ORGANIZATIONS**

The policing approach to organized crime must itself be organized. The Committee was informed, however, that one of the problems in British Columbia is that there is no single organization in place that operates on a region-wide basis to address organized crime issues.<sup>78</sup> Different police services operate in different “silos” without there being a single organization, under provincial control, that operates on a regional basis.

One attempt to coordinate police services on a larger level was the creation of the CISC, which began in 1970 and today comprises nearly 400 law enforcement agencies from across Canada. CISC’s goal is to be a leader in the development of an integrated and intelligence-led approach to tackling organized crime. Its purpose is to facilitate the timely production and exchange of criminal intelligence within the Canadian law enforcement community. It is complemented by 10 provincial bureaus that operate independently. CISC produces a criminal intelligence service report on organized crime. This publication highlights some of the ways criminal groups can victimize Canadians. The report also includes information regarding the dynamics of criminal intelligence groups, or criminal groups, their methods of operation, and the criminal markets in which they operate.

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77 Testimony of Paul Burstein, Barrister and Solicitor, Burstein & Unger, As an Individual, before the House of Commons Standing Committee on Justice and Human Rights, June 15, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3993315&Language=E&Mode=1&Parl=40&Ses=2>.

78 Testimony of Professor Robert Gordon, Professor and Director, School of Criminology, Simon Fraser University, before the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3853912&Language=E&Mode=1&Parl=40&Ses=2>.

The Strategic Intelligence Analysis Section of CISC is responsible for the production of various strategic intelligence products, including the annual release of the National Threat Assessment on Organized and Serious Crime, the National Criminal Intelligence Estimate on Organized and Serious Crime, and the Annual Report on Organized Crime. This section also designed, developed and implemented a “strategic early warning” methodology and system to enhance current law enforcement practices with a proactive approach to crime control and prevention.

Currently, joint units of law enforcement organizations at all levels conduct integrated investigations to target specific criminal organizations. Certain bi-national teams with United States authorities target in particular trans-border crime by exchanging information and collaborating on a daily basis. Links with foreign police services have also been established to combat the global aspect of organized crime.

The Canadian Integrated Response to Organized Crime (CIROC), which represents the totality of police services in Canada, was recently created with a mandate to coordinate a strategic plan for fighting organized or serious crime through the integration of Canadian police efforts at the municipal, provincial/territorial, regional, and national levels. As part of the CIROC, information is shared nation-wide, and operational decisions are made by a committee of representatives from various law enforcement organizations in Canada. The goal is to operationalize intelligence produced by CISC in partnership with the CIS provincial bureaux. A key objective of the CIROC program is to increase inter-provincial cooperation as it relates to intelligence sharing and operational coordination in Canada. According to CISC, the CIROC is building the foundation that will enable law enforcement agencies across the country to share information in a more timely, reliable, and efficient manner. It is expected that this improved communication will translate into enhanced operational success.

The Automated Criminal Intelligence Information System (ACIIS) is the Canadian law enforcement community’s national database for criminal information and intelligence on organized and serious crime. Through ACIIS, law enforcement agencies at all levels collaborate in the collection, analysis and sharing of criminal intelligence across the country. ACIIS was built in 1976 with an intended group of users numbering 50 across Canada. Today, there are over 1,400 users. Aside from capacity issues, there is lacking an ability to take advantage of technological innovations so that law enforcement can share and access real-time information across jurisdictions. Criminal activity is not constrained by geography and the information to combat should be free-flowing as well. CISC told the Committee that there is a need to replace ACIIS; as organized crime changes and grows more complex, the value of information and intelligence to law enforcement arises from how fast it can be gathered, understood, and transferred.<sup>79</sup>

The Criminal Intelligence Service Ontario (CISO) welcomed the introduction by the CISC of a model that explains how organized crime operates as fluid, entrepreneurial

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79 Criminal Intelligence Service Canada testimony before the House of Commons Standing Committee on Justice and Human Rights, February 16, 2012, <http://prismweb.parl.gc.ca/IntranetDocuments/CommitteeBusiness/41/1/JUST/Meetings/Evidence/JUSTEVBLUES21.HTM>.

networks that operate within both illicit and licit marketplaces. This is part of a shift from threat to risk analysis in the assessment of organized crime in Canada.<sup>80</sup>

Under the old model, CISC focused on the criminal actors. Under the hybrid model, the focus will be on both the criminal actors and their operating environment. This environment encompasses both the licit and illicit economic sectors. Organized crime will now be thought of as small, loosely structured networks that react to fluctuations in the economic, political and legal environments. It also emphasizes the inter-connectivity and inter-dependency of licit and illicit markets and depicts criminal networks as rational and profit-maximizing.

There are still-valid arguments that suggest that the institutional model under which police services operate is too compartmentalized and has proven to significantly hamper the flow of information from federal police agencies such as the RCMP to other federal, provincial, and municipal partners. Specifically, matters of federal security clearances, national security databases, and restrictive reporting structures inhibit true integration and effective information sharing. This needs to be remedied to ensure that full intelligence sharing takes place. One police officer said that what was needed was a provincial law enforcement view as opposed to an agency view.<sup>81</sup> We believe that this can be expanded to the taking of a national and even an international law enforcement view.

The Committee has heard that certain legislative restrictions have a negative impact on the ability of the police to share information with both domestic and international law enforcement partners. What is required is a legislative scheme that is clear with respect to the sharing of criminal intelligence in order to facilitate more effective and efficient investigations of organized crime. The legislative restrictions should be removed in cases where they are not necessary for privacy or other reasons.<sup>82</sup>

A practice that has proved beneficial in the prosecution of organized crime in Vancouver is the use of a Regional Gang Prosecutor. The investigative and prosecutorial efficiencies realized by the assignment of a dedicated prosecutor cannot be overstated. Investigations tend to remain focused, warrants are executed in a timely manner, and appropriate charges are laid. The employment of a dedicated prosecutor familiar with a particular file can also facilitate detention orders at bail hearings and encourage guilty pleas. As part of the Vancouver Police Department's Chronic Offender Program and Identity Theft Task Force, provincial Crown attorneys become part of the investigation early in the process. The Regional Gang Prosecutor consolidates charges and presents

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80 See the Criminal Intelligence Service Canada website at: [http://www.cisc.gc.ca/products\\_services/model\\_poster/poster\\_mod\\_e.html](http://www.cisc.gc.ca/products_services/model_poster/poster_mod_e.html).

81 Brief of Inspector John Ferguson, Officer in Charge, Drugs and Integrated Organized Crime, "D" Division, RCMP, to the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010.

82 Testimony of Inspector Robert Bazin, Officer in Charge, Border Integrity, "D" Division, Royal Canadian Mounted Police, March 30, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4399041&Language=E&Mode=1&Parl=40&Ses=3>.

the evidence at the bail hearing, trial, and sentencing. The result has been detention orders and guilty pleas in over 90% of these cases.<sup>83</sup>

## **RECOMMENDATION**

**The Committee recommends that legislative restrictions on the sharing of criminal intelligence concerning organized crime be examined. The object of this examination will be to determine whether these restrictions have a valid purpose and, if not, whether they should be removed to facilitate the efforts of law enforcement to tackle organized crime.**

## **RECOMMENDATION**

**The Committee recommends that the Automated Criminal Intelligence Information System (ACIIS) be upgraded so that it has the technological capability of managing the increasing amount of information that is collected about organized criminal activity in Canada. A new technological platform for ACIIS can, with appropriate security provisions, significantly increase the efficiency and effectiveness of analysts, investigators, and intelligence officers.**

## **DISCLOSURE OF EVIDENCE**

The 1991 Supreme Court of Canada decision *R. v. Stinchcombe*<sup>84</sup> and subsequent case law require prosecutors to disclose relevant information to the accused. Information is considered relevant if there is a reasonable likelihood that it could be used to support the Crown's case, argue a defence, or make a decision likely to influence the actions of the defence. In addition, the burden upon the Crown is always present, meaning that evidence must be disclosed as soon as additional information is received. The obligation to disclose continues even after conviction, including after appeals have been decided or the time of the appeal has elapsed. The obligation to disclose evidence is one component of the right afforded the accused to make full answer and defence. This right is guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms*.<sup>85</sup>

The existence of the right to make full answer and defence means that the threshold of relevance of information is quite low. The Supreme Court has called for the production of information that can reasonably be used by the accused either in meeting the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of the defence such as, for example, whether to call evidence.<sup>86</sup>

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83 Brief of Inspector Bob Stewart, Vancouver Police Department, to the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009.

84 [1991] 3 S.C.R. 326.

85 *R. v. O'Connor*, [1995] 4 S.C.R. 411 at para. 74.

86 *R. v. Egger*, [1993] 2 S.C.R. 451 at 467.

Disclosure may also encourage the resolution of facts in issue, including the possible entering of guilty pleas at an early stage in the proceedings.

There are some exceptions to the obligation to disclose. Disclosure concerning the identity or location of a witness may be delayed to prevent intimidation or harassment of witnesses or their families, danger to their lives or safety, or other interference with the administration of justice. In this instance, Crown counsel must disclose the information as soon as the justification for the delay in disclosure no longer exists. The fact that some disclosure is being delayed should be communicated to the defence without jeopardizing the reason for the delay.<sup>87</sup> In the organized crime context, another claim of privilege against disclosure is if it would tend to identify a confidential police informer. The one exception to the police informer privilege is where the information is needed to establish the innocence of the accused. Disclosure is also not required if it would reveal secret investigative techniques, methods, and tactics that may compromise future investigations using the same techniques, methods, and tactics.

While the principles underlying disclosure obligations may be accepted, the obligation can present practical challenges. Organized crime investigations often involve disclosing a large number of documents to the defence, resulting in considerable costs and delays in proceedings. *Stinchcombe* requirements place a heavy demand on police and judicial resources. In addition, disputes can arise concerning which information is relevant and what fits within the categories of privileged information. These disputes and delays in providing disclosure can impede speedy trials and even cause prosecutions to be dismissed for delay.<sup>88</sup> Another area of concern is that disclosed information can be misused. While respecting the right of the accused to full answer and defence, a number of witnesses before the Committee suggested that consideration should be given to accelerating the disclosure process and clearly and consistently defining the level of relevance.

Due to the large volume of material to be disclosed in organized crime prosecutions, electronic disclosure is now the preferred method. This form of disclosure reduces costs, takes up less space than paper copies, and lends itself well to disclosing the originals of electronic, audio, and video surveillance. To meet the goal of making timely disclosure, prosecutors and police must act with foresight, meaning that disclosure must be planned when an investigation is launched. There must be a focus to the investigation to avoid complicating it unnecessarily, and the disclosure must be comprehensible and intelligible.<sup>89</sup>

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87 Federal Prosecution Service Deskbook, Chapter 18, Disclosure, <http://www.justice.gc.ca/eng/dept-min/pub/fps-sfp/fpd/ch18.html>.

88 The decision of *R. v. Askov*, [1990] 2 S.C.R. 1199 held that a delay of almost two years following the preliminary inquiry was excessive and unreasonable. By the terms of section 11(b) of the *Canadian Charter of Rights and Freedoms*, any person charged with an offence has the right to be tried within a reasonable time. The determination of what is “reasonable” will depend upon the length of the delay, the explanation for the delay, waiver of the delay by the accused, and prejudice to the accused.

89 Brief of the Public Prosecution Service of Canada, April 15, 2010.

A concern that was brought to the Committee's attention was that disclosure packages are being used by organized crime to uncover the investigative tactics of police. This means that counter-surveillance is becoming a big issue. Furthermore, traditional police investigative tactics are no longer as effective as they once were. The Calgary Chief of Police suggested that the *Stinchcombe* decision be reviewed for the purposes of simplifying disclosure for police and, where appropriate, masking police techniques so that organized crime groups cannot study them and develop counter-investigative techniques. The Chief also suggested increasing the use of technology to address issues around the volume of disclosure. Finally, he suggested increasing the federal prosecutorial capacity by increasing positions and funding.<sup>90</sup>

Another disclosure issue is the lack of clear understanding of what is relevant disclosure on the part of the police. In the absence of a clearly defined threshold, the police feel that they end up providing material that has no evidentiary value. In determining whether certain material is relevant, opinion comes to the fore and consistency becomes an issue. This raises questions as to why material is relevant in one trial but not in another. Clearly defined parameters need to be developed with respect to what is relevant disclosure.

The Committee heard testimony from the Public Prosecution Service of Canada. Witnesses from this organization noted the difficulties inherent in disclosing large amounts of information when prosecuting organized crime groups. The Committee was informed, however, that three principles were followed to ensure that the disclosure process was carried out as efficiently as possible. The first was called "foresight" and it meant that disclosure needed to be planned from the beginning of the investigation. Prosecutors should be assigned at a very early stage in the process to assist investigators with disclosure as evidence is received. The second principle was termed "focus". This referred to restricting the extent of an inquiry and to avoid a scatter-shot approach. The third principle is termed "management". This refers to the fact that disclosure must be understandable and readable. This means that evidence must be classified according to its usefulness from the very beginning of the investigation.<sup>91</sup>

The issue of disclosure was also addressed by former Ontario Chief Justice Patrick Lesage and Professor Michael Code in their *Report of the Review of Large and Complex Criminal Case Procedures*.<sup>92</sup> Patrick Lesage was a witness before the Committee and he acknowledged the difficulty in attempting to legislate a concept such as "relevance". Mr. Lesage did point to one codification of disclosure in the case of the so-called "rape shield laws", but pointed out how complicated the rules are in this area.<sup>93</sup>

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90 Brief of Rick Hanson, Calgary Chief of Police, March 29, 2010.

91 Testimony of Yvan Poulin, General Counsel, Quebec Regional Office, Public Prosecution Service of Canada, April 15, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4423055&Language=E&Mode=1&Parl=40&Ses=3#Int-3094404>.

92 Submitted to the Attorney General of Ontario, November 2008, [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage\\_code/lesage\\_code\\_report\\_en.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/lesage_code_report_en.pdf).

93 Testimony of Patrick Lesage, Former Chief Justice of the Ontario Superior Court, As an Individual, April 15, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4423055&Language=E&Mode=1&Parl=40&Ses=3#Int-3094404>.

Nevertheless, some of the recommendations in the report echoed those made before the Committee by the Public Prosecution Service. For example, the report recommends much closer collaboration between the police and the Crown in large, complex cases (such as those involving organized crime) at the pre-charge stage. This collaboration will include assistance with the preparation of disclosure. Another recommendation in the Lesage-Code report is that defence requests for the disclosure of materials outside the investigative file should be subject to a number of requirements, one of which is that they must be particularized in order to identify the materials in question and to explain how they could assist the defence.

### **RECOMMENDATION**

**The Committee recommends that the Government of Canada work with provincial and territorial counterparts to encourage a close collaboration between the police and prosecutors in organized crime prosecutions in order to plan disclosure at the earliest stages of an investigation. Such disclosure should be guided by parameters of relevance which, to the greatest extent possible, are codified. The model for such codification could be the process that led to the legislation of the so-called “rape shield laws”. Any defence request for additional disclosure materials should be particularized in order to identify the materials in question and to explain how they could assist the defence.**

### **RECOMMENDATION**

**The Committee recommends that the Government of Canada work with provincial and territorial counterparts to establish a model of electronic disclosure that can serve as a standard Crown brief in all long, complex organized crime cases. Such a brief should be the product of police and Crown co-operation and should, amongst other exclusions, not include disclosure that could identify a confidential informant or reveal a secret police investigative technique.**

### **SENTENCING**

On a number of occasions, the Committee was told that the Canadian justice system is plagued with repeat offenders who take up an inordinate amount of enforcement and legal resources. The burden that is being placed upon police and the justice system would be lessened if there were a reduction in the number of court appearances by repeat offenders. The argument here is the “revolving door” nature of the justice system whereby certain offenders are arrested over and over again, yet do not seem to receive sentences that are commensurate with their repeated criminal behaviour. It is believed that the

community then suffers the harms caused by repeat offenders while the offenders themselves are relatively unaffected.<sup>94</sup>

Previous convictions are currently taken into account by judges when passing sentence as a judicially recognized aggravating factor. They relate to character, in that they disentitle an offender to consideration as a first-time offender who is inexperienced or who has behaved out of character. The consideration of previous convictions can be used in an effort at individual deterrence, particularly where there is an indication of escalating offences. Such convictions, however, may not be particularly relevant if they took place a long time ago or were for very different conduct. The testimony before the Committee, though, was to the effect that insufficient emphasis is placed on repeated offences when sentence is imposed. The clearest means of rectifying this lack of emphasis was thought to be to place this sentencing factor in the *Criminal Code* as one of the principles of sentencing.

The Committee heard testimony that, unlike other crimes in Canada where addictions or stupidity may be the primary motivator, organized crime is motivated by greed and profit; it relies on the victimization of the naive and innocent. The Committee was, therefore, urged to recognize that serious crime requires serious sentencing.<sup>95</sup> The Committee also heard that prisoners convicted of criminal organization offences were unlike other prisoners in that they were more likely to have been married, employed and healthy, with fewer addiction problems. Once again, their motivation for criminal activity would seem to be profit, rather than as a response to their socioeconomic circumstances. These organized crime prisoners tend to spend longer terms in prison but, once they achieve parole, they are more successful as parolees.<sup>96</sup>

The Committee was also informed that money laundering is an important source of income for organized crime; it is almost impossible to run a criminal organization if there is no avenue to launder money. This can lead to corruption and infiltration of legitimate business.<sup>97</sup> The Committee was also informed that enhanced sentences speak to the denunciation of crime and a sense of justice to the community — some of the objectives of sentencing. In Canada, however, the Committee was told that the average sentence is 30 days for criminal offences and we are accomplishing nothing with the status quo.

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94 Brief of the Greater Victoria Chamber of Commerce, to the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009.

95 Testimony of Chief Rick Hanson, Chief of Police, Calgary Police Service, March 29, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4391311&Language=E&Mode=1&Parl=40&Ses=3>.

96 Testimony of Dr. Larry Motiuk, Special Advisor, Infrastructure Renewal Team, Correctional Service Canada, April 29, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4481483&Language=E&Mode=1&Parl=40&Ses=3>.

97 Testimony of Antonio Nicaso, Author and Journalist, As an Individual, March 25, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4382472&Language=E&Mode=1&Parl=40&Ses=3>.

If sentences were increased in length, we should expect to see a reduction in the level of criminal activity.<sup>98</sup>

### RECOMMENDATION

**The Committee recommends that the *Criminal Code* be amended to impose mandatory minimum sentences for the criminal organization offences, particularly for the offence set out in section 467.13 of the *Criminal Code* — Instructing Commission of Offence for Criminal Organization.**

### RECOMMENDATION

**The Committee recommends that the *Criminal Code* be amended to increase penalties for money laundering offences.**

## ORGANIZED CRIME AND YOUTH

The Committee was told on a number of occasions that we need to address the issue of organized crime early in the lives of those susceptible to joining gangs. One witness told the Committee that we could start at the age of four because the diagnosis of conduct disorder and oppositional defiance disorder can be made at that age. It was also stated that by the third grade, it can be determined which children will be life-course persistent offenders and which are going to be adolescent-limited offenders.<sup>99</sup> While 5% to 6% of criminals fall into the former category, they have a great deal of influence over other young people. It was suggested that early intervention is necessary to bring out the strengths of the child and lead them away from the antisocial path.

The danger posed by gangs is their attractiveness in furnishing a ready-made social network. Gangs provide a social opportunity and an economic opportunity, much like any other business, although in this case a business carrying on illegal activities. No particular talent is required to join a gang — all that is required is a need for money or belonging, as well as social pressures to join.<sup>100</sup>

One of the witnesses heard by the Committee who runs a gang prevention-intervention program for youth between the ages of 16 and 24 pointed to the utter lack of

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98 Testimony of Professor John Martin, Professor, University of the Fraser Valley, As an Individual, April 20, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4447605&Language=E&Mode=1&Parl=40&Ses=3>.

99 Testimony of Dr. Matt Logan, Retired Royal Canadian Mounted Police Operational Psychologist, Behavioural Science Group in Major Crime, before the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3854946&Language=E&Mode=1&Parl=40&Ses=2>.

100 Testimony of Marshall Williams, Member, In My Own Voice (Halifax), before the House of Commons Standing Committee on Justice and Human Rights, October 28, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4184077&Language=E&Mode=1&Parl=40&Ses=2>.

connection the participants had to other activities in the community. The goal of her program was to foster in its participants a sense of belonging to something greater than themselves, which is known to reduce the likelihood of gang participation.<sup>101</sup> To effectively prevent youth from joining gangs, it is necessary to understand how youth become so disconnected. In other words, it is critical to know the risk factors that tend to lead young people to become involved in gangs.

To answer the question of risks, we were pointed to a study conducted by the National Crime Prevention Centre, which concluded that the most important risk factors for gang involvement include negative influences in the youth's life, limited attachment to the community, over-reliance on anti-social peers, poor parental supervision, alcohol and drug abuse, poor educational or employment potential, and a need for recognition and belonging.<sup>102</sup> A number of studies indicate that risk factors associated with gang involvement are present long before a youth joins a gang. Unless the risk factors are addressed early on, early negative life experiences and subsequent involvement in crime will reinforce the path towards continued delinquency.<sup>103</sup>

The Committee heard from a number of witnesses who work with youth who may be attracted to the gang life. These witnesses stated that we need to address the issue of why young people are attracted to gangs and how they may be diverted from them. By the time young people are in a gang, it is often too late to try to turn them away from a life of crime.

The young people who are most likely to be drawn into criminal activity are often from low-income families, experience social isolation, are not generally successful in school, and do not have great hopes for success in the future. The Committee was told that much youth crime is born out of a lack of adult supervision or simply for survival purposes. Without the proper intervention, petty criminal activities like trespassing, joy riding, underage drinking, and disturbing the peace will likely progress, with or without gang involvement.<sup>104</sup> Violent youth crime is most often gang-related and gangs have a great appeal to youth in these circumstances — offering status, financial gain, protection, mentoring, affiliation, and excitement.<sup>105</sup>

The Committee was informed that a commitment to crime prevention programs that focuses on creating positive opportunities for youth, particularly those most at risk, is not only a more effective way of reducing crime, but it requires far less funding. After-school

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101 Brief of Laura Johnson, Project Coordinator — Just TV (Winnipeg) to the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010.

102 National Crime Prevention Centre, *Youth Gang Involvement: What Are the Risk Factors?*, 2007, [http://www.publicsafety.gc.ca/prg/cp/bldngcevd/fl/2007-YG-2\\_e.pdf](http://www.publicsafety.gc.ca/prg/cp/bldngcevd/fl/2007-YG-2_e.pdf).

103 Ibid.

104 Brief of Resource Assistance for Youth (Winnipeg) to the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010.

105 Michael Owen, Brief for the Study on the State of Organized Crime in Canada, submitted by the Boys and Girls Clubs of Winnipeg, March 30, 2010.

activities targeted at the “prime time for juvenile crime” all have payoffs far greater than the investment.<sup>106</sup>

A number of witnesses who work with young people emphasized that the key to effective interventions is that they be long-term and reliable. Effective programs are undermined when they are time-limited or funding is removed after a pilot program is completed. A challenge for programs for youth is that much time and energy goes into applying for funding and developing contacts. The uncertainty over the renewal of funding can make staffing difficult. The turnover of staff entails a loss of expertise and the relationships those staff have built up with youth.<sup>107</sup> Youth need programs that are welcoming and consistently available.

We heard that certain crime prevention initiatives have demonstrated their value. There are many reputable organizations that work with young people and respond to their needs. These needs include programs that provide youth with opportunities to gain skills and confidence. These can only be acquired over time. By providing adequate long-term funding, bolstering the ability to enhance successful programs, and putting in place evaluations of long-term impacts, governments would ensure that their funds produce the greatest benefit. Every young person diverted from the criminal lifestyle reduces the costs to the criminal justice system in responding to crime.

One of the witnesses before the Committee made reference to the cost-effectiveness of funding after-school programs and other support systems, as opposed to funding incarceration.<sup>108</sup> There was also a reference to a 1993 report of this Committee, which is referred to by the Institute for the Prevention of Crime in its report entitled *Building a Safer Canada*.<sup>109</sup> The Institute cites the 1993 report of the Standing Committee on Justice and the Solicitor General, also known as the “Horner Report”, as calling for the allocation of the equivalent of 5% of the federal criminal justice budget towards crime prevention. The Horner Report referred to a cost-benefit analysis of the Perry Preschool Project, which was implemented in Michigan in 1962. In this program, children aged 3 and 4 from backgrounds of poverty received daily preschool programs for 2.5 hours per day and a home visit once a week for 1.5 hours. Compared to a control group of children who did not participate in the program, more project children completed high school, attended post-secondary schools, and were employed; fewer were on welfare or had an arrest record. The cost-benefit analysis showed that for every \$1 invested in a one-year program, there was a return of \$5. This was determined as the cost of the preschool participants absorbing fewer public resources since they were more likely to be

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106 Ibid.

107 Brief of Macdonald Youth Services (Winnipeg) to the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010.

108 See Owen, Note 105.

109 Institute for the Prevention of Crime, *Building a Safer Canada: First Report of the National Working Group on Crime Prevention*, University of Ottawa, September 2007, <https://www.cacp.ca/media/coalitiongroups/efiles/5/BuildingaSaferCanada.pdf>.

well-educated and employed, and the reduced cost of their lower level of criminal offences.<sup>110</sup>

Risk factors do not cause crime nor do they guarantee that someone will become involved in crime. The effects of socio-economic disadvantage can be overcome by the presence of a supportive family life, adequate levels of social support (such as community recreation programs), and a socially cohesive neighbourhood. Yet some groups in Canada suffer disproportionately from risk factors and, as a result, have higher rates of crime and victimization. One such group is First Nations children, youth, and families. Aboriginal peoples experience lower incomes, lower educational levels, higher unemployment, higher rates of substance abuse, more family breakdowns, and poorer housing conditions than the Canadian averages.<sup>111</sup>

One approach to crime and victimization in Canada is reactive. In this approach, we wait for victimization to occur, count on the victim or a witness to call the police, and then count on the police to investigate the offence and arrest the suspect(s). The matter then proceeds to the courts and the offender may be punished. One problem with this approach is that a large proportion of Canadians do not report criminal incidents to the police. In its 2009 General Social Survey, Statistics Canada reports that, in all, 31% of criminal incidents came to the attention of police.<sup>112</sup> The second problem with the reactive approach is that, of the cases that do come to the attention of the police, only some of those result in a formal charge, so the offenders are not identified and brought to justice. Only about 58% of adult cases that do come to court result in a conviction while the figure is 60% for youth court cases.<sup>113</sup> Some types of crimes, such as child, spousal, and sexual abuse are especially underreported so the problems remain hidden from the criminal justice system. A third difficulty with the reactive approach is that offenders who serve custodial sentences are not necessarily rehabilitated when they return to society. Furthermore, the prison population does not encompass all offenders. Finally, the reactive approach often fails to address the underlying factors associated with criminal behaviour.

The Committee was told by the Chief of Police of Saskatoon that “Until we can tackle the social problems that are the contributors to crime — poverty, poor housing, racism, addiction, and abuse — gang activity will flourish and gangs will remain a viable option for those who are marginalized. We can lock gang members away, but if, when they are released, they return to the same environment they came from, it's very probable that they will once again re-enter their former lifestyle.”<sup>114</sup>

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110 Standing Committee on Justice and the Solicitor General (“Horner Commission”). (1993) *Crime Prevention in Canada: Towards a National Strategy*. Ottawa: House of Commons.

111 Building a Safer Canada, p. 13.

112 Statistics Canada, Canadian Centre for Justice Statistics, *Criminal Victimization in Canada, 2009*, Ministry of Industry, Summer 2010, <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11340-eng.htm>.

113 Building a Safer Canada, p. 8.

114 Testimony of Clive Weighill, Chief of Police, Saskatoon Police Service, before the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4399041&Language=E&Mode=1&Parl=40&Ses=3#Int-3071310>.

One sign of hope in the effort to combat organized crime is that almost 80% of offenders belonging to gangs report that they are dissatisfied with their lives and would rather live a life outside of the dictates of the gang sub-culture.<sup>115</sup> This provides an opportunity for intervention to get gang members to no longer affiliate with gangs. This intervention, however, will be arduous and painstaking in terms of its duration with the potential for violence and hostility needing to be assessed and managed while offenders are incarcerated and then re-integrated into the community.

## **RECOMMENDATION**

**The Committee recommends that the Government of Canada, in partnership with its provincial and territorial counterparts, allocate more resources in a stable, long-term manner for youth at risk of entering into a criminal lifestyle. This funding should ensure that youth at risk have access to programs to divert them from gangs and to promote alternatives to gangs.**

## **DRUGS AND ORGANIZED CRIME**

The Committee was told, on a number of occasions, that a common feature of urban gangs is that the primary focus of activity involves illicit drugs. Crimes committed for drug-related reasons include property offences, robbery, assault, and homicide. Another aspect of drugs and organized crime is the exploitation of drug-addicted youth. The Committee was informed that the typical wait in Manitoba for a drug treatment bed is anywhere between 7 and 90 days.<sup>116</sup> Most often, the stay in the treatment centre is between 21 and 28 days, which has no relevance to how long a drug remains within an addict's body.

Drug-addicted or drug-dependent youth are particularly vulnerable to be preyed upon by organized crime when they lack stable, permanent housing. This type of housing is the base that is needed to help drug addicts get through treatment. Poor or non-existent housing is one of the "root causes" of crime that the Committee was urged repeatedly to address. Providing housing is not a panacea, but it does provide the platform from which other services can be implemented more effectively.<sup>117</sup>

The Committee has been informed by officials from Statistics Canada, however, that the Uniform Crime Reporting (UCR) Survey, which was introduced in 1962, excludes drug-related crimes. This is a very lucrative area for organized crime.

The Committee was told that, from 1993 to 2007, the number of marijuana plants seized across Canada increased eight-fold from about 238,000 plants to about

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115 Brief of Hugo Foss, Psychologist with the Correctional Service Canada, Prairie Region, to the House of Commons Standing Committee on Justice and Human Rights, March 29, 2010.

116 Brief to the Committee from Resource Assistance for Youth (Winnipeg), March 30, 2010.

117 Brief of the Greater Victoria Chamber of Commerce to the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009.

1.9 million plants per year. The amount of marijuana seized increased almost seven-fold, from 7,314 kilograms to 49,918 kilograms. At an estimated \$6 billion per year in British Columbia alone, this is a very lucrative business for organized crime. British Columbia's Organized Crime Agency has estimated that organized crime groups control 85% of British Columbia's marijuana trade. Much of this trade is with the United States where marijuana is traded for guns, cocaine, MDMA (ecstasy) and illegal tobacco.<sup>118</sup>

Aside from its role in funding organized crime, illegal marijuana grow operations entail a number of public safety risks, including fire, electrocution, structural hazards, and violence. This violence takes the form of homicides, armed confrontations, drive-by shootings, and extortions.

The proceeds of organized crime in Canada are generally taxable.<sup>119</sup> The Canada Revenue Agency (CRA) operates the Special Enforcement Program (SEP) that attempts to collect tax money from individuals suspected of earning income from illegal activities. A large pool of untapped tax revenue is currently being lost because marijuana grow-ops are not being taxed. The opportunity to tax this lucrative illegal activity is being lost because there is no mechanism in place to automatically share information about drug production operations with the CRA. In addition, the risk of being audited would provide a financial deterrent to growing marijuana, which would, in turn, disrupt a major source of funding for organized crime. The suggestion was made to the Committee that police organizations be required to report every file associated with drug production to the CRA.<sup>120</sup> Further discussion and a recommendation on this topic are contained in the section entitled "Proceeds of Crime".<sup>121</sup>

## RECOMMENDATION

**The Committee recommends that the Government of Canada, in partnership with its provincial and territorial counterparts, allocate more resources in the area of addiction services and numbers of treatment beds in order to reduce wait times. The drug-addicted are particularly vulnerable to recruitment into organized crime and any assistance in reducing this vulnerability would be helpful.**

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118 Disrupting Canada's Marijuana Grow Industry: Four deterrents intended to limit a primary funding source for Organized Crime Groups, Submission to the House of Commons Standing Committee on Justice and Human Rights by the City of Surrey, the City of Langley, RCMP "E" Division, and Darryl Plecas, Professor in the School of Criminology and Criminal Justice, University of the Fraser Valley, April 30, 2009.

119 Canada Revenue Agency, Fact Sheet, *Proceeds of Crime Are Taxable*, November 2006, <http://www.cra-arc.gc.ca/nwsrm/fctshts/2006/m11/fs061123-eng.html>.

120 Testimony of Len Garis, Chief, Surrey Fire Services, before the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3854946&Language=E&Mode=1&Parl=40&Ses=2>.

121 See discussion on page 41 and the Recommendation which follows.

## RECOMMENDATION

**The Committee recommends that Statistics Canada be required to include in the Uniform Crime Reporting Survey all drug-related offences under the *Controlled Drugs and Substances Act*.**

## PROCEEDS OF CRIME

Criminal organizations commonly engage in money laundering as it can make their income from criminal activities appear legitimate. It is clearly a widespread problem: according to Statistics Canada, in 2010, the police reported 646 cases of offences under the *Criminal Code* relating to the proceeds of crime, involving 546 alleged offenders.<sup>122</sup>

The first legislation addressing the proceeds of crime came into force in Canada in 1989. The *Criminal Code* was amended in 2005,<sup>123</sup> reversing the burden of proof in requests for the seizure of the proceeds of crime in the case of an accused party found guilty of an organized criminal offence or an offence under certain provisions of the *Controlled Drugs and Substances Act*.<sup>124</sup> Under subsection 462.37(2.01) of the *Criminal Code*, the court must order the seizure of an offender's assets if it is satisfied, on the balance of probabilities, that the person engaged in a pattern of criminal activity, or that the income from sources not related to designated offences cannot reasonably account for the value of all the offender's property. The offender may, however, avoid forfeiture if he or she establishes, on the balance of probabilities, that the property is not the proceeds of crime.

Many witnesses told the Committee that these provisions are not effective — and are therefore used very little or not at all<sup>125</sup> — to confiscate property linked to a criminal organization, since the prosecutor must always prove beyond any reasonable doubt whose property it is. Martine Fontaine, Officer in Charge, Integrated Proceeds of Crime, RCMP in Montréal, noted that “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 (...).”<sup>126</sup>

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122 Julie McAuley, Director, Canadian Centre for Justice Statistics, Organized Crime, Written Submission to the Standing Committee on Justice and Human Rights, February 1, 2012.

123 S.C. 2005, c. 44 (Bill C-53).

124 These offences are trafficking, importing, exporting and producing drugs.

125 The RCMP has used certain provisions of the Act to freeze assets, such as during Operation Colisée, which targeted the Montreal Mafia (Testimony of Inspector Martine Fontaine, Officer in Charge, Integrated Proceeds of Crime, Montréal, Royal Canadian Mounted Police, October 22, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167422&Language=E&Mode=1&Parl=40&Ses=2>).

126 Testimony of Inspector Martine Fontaine, Officer in Charge, Integrated Proceeds of Crime, Montréal, Royal Canadian Mounted Police, October 22, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167422&Language=E&Mode=1&Parl=40&Ses=2>).

Law enforcement agencies and Crown prosecutors accordingly prefer to take action under provincial laws on the confiscation of the proceeds of crime. Police services may invoke these laws independently to settle unresolved cases or cases in which there is insufficient evidence to confiscate assets under the *Criminal Code*.

The confiscation regime under provincial laws is indeed more flexible. For example, Ontario's *Civil Remedies Act, 2001*,<sup>127</sup> — whose constitutionality was upheld by the Supreme Court of Canada<sup>128</sup> — does not require an allegation or proof that a person has committed a specific crime. Moreover, the forfeiture proceedings established by the *Civil Remedies Act, 2001* do not require the identification of the owner of the proceeds of crime. The example given by the Supreme Court pertains to money seized from a gang safe house: “In such a case, the Attorney General may be able to show on a balance of probabilities that money constituted the proceeds of crime *in general* without identifying any particular crime or criminal.”<sup>129</sup>

In order to increase the effectiveness and use of the Part XII.2 provisions of the *Criminal Code* on the forfeiture of the proceeds of organized criminal activity, Francis Brabant, Legal Counsel, Sûreté du Québec, suggested the possibility of changing the burden of proof when establishing the ownership of a criminal organization's proceeds of crime from “beyond any reasonable doubt” to “on the balance of probabilities.”<sup>130</sup> This would make it easier for prosecutors to prove that an asset that appears to belong to a front really belongs to a member of a criminal organization, and is therefore subject to seizure and confiscation. The Committee is of the opinion that the confiscation of the proceeds of crime of criminal organizations is crucial in fighting organized crime and supports the implementation of measures to facilitate it, subject to individuals' rights and freedoms.

## RECOMMENDATION

**The Committee recommends that the Government of Canada consider the possibility of amending Part XII.2 of the *Criminal Code* to allow for the ownership of the proceeds of crime to be established on the balance of probabilities in cases involving organized crime offences.**

Members of criminal organizations often use corporations to conceal their ownership of the proceeds of crime. Corporations are currently required to present documents of incorporation and issue annual reports to federal and provincial authorities. Yet, provincial and federal laws on incorporation often require the name and contact information for a founder and board member only, and not for the shareholders.

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127 S.O. 2001, c. 28.

128 *Chatterjee v. Ontario* (Attorney General), [2009] 1 S. C. R. 624.

129 *Ibid.*, para. 47 (Court's emphasis).

130 Testimony of Francis Brabant, Legal Counsel, Sûreté du Québec, October 22, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167422&Language=E&Mode=1&Parl=40&Ses=2>.

Annual reports provide the company's address, the names of its officers and directors, their home addresses and some other information. However, no information about ownership is provided. This further complicates police investigations into criminal organizations and the confiscation of their assets.

The use of front men, which is commonplace in criminal organizations, also complicates police investigations. According to Yvan Poulin, General Counsel, Public Prosecution Service of Canada, "It is therefore very difficult to link individuals to goods that you attempt to confiscate. Several years ago, it was the major problem and I would say that the problem has remained unchanged. No matter to what extent the burden has been reduced or in some cases transferred to the accused, you still must establish a link between the asset and the individual in order to be able to confiscate it."<sup>131</sup>

While it may be necessary to use front men or nominees for the sake of competition, Ken Froese, forensic accountant and Senior Managing Director, Froese Forensic Partners Ltd., maintains there should be a time limit on their use. This would provide a clearer picture of the involvement of persons under investigation and their finances.<sup>132</sup> He recommends a one-year limit on the use of nominees, from the date of incorporation. After that time, the company would be required to provide information about ownership or request an exemption. This would facilitate investigations into the finances of suspected members of organized crime.

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131 Testimony of Yvan Poulin, General Counsel, Québec Regional Office, Public Prosecution Service of Canada, April 15, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4423055&Language=E&Mode=1&Parl=40&Ses=3>.

132 Testimony of Ken Froese, Senior Managing Director, Froese Forensic Partners Ltd., April 13, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4423056&Language=E&Mode=1&Parl=40&Ses=3>.

## RECOMMENDATION

**The Committee recommends that, at the next meeting of federal, provincial and territorial ministers of justice, they consider the possibility of amending federal and provincial laws governing corporations in Canada so that the by-laws establishing a corporation and its annual reports provide information about its ownership, including the shareholders' names and addresses. The ministers should also consider the possibility of establishing a time limit on the use of nominees in order to make the identity of the owners, officers and directors known.**

Criminal organizations sometimes use over a dozen different financial institutions throughout Canada and the world to conceal their proceeds of crime. A single police force often does not have the resources to track all the movements of illegal funds. This is why FINTRAC was created in 2000. In carrying out its mandate, FINTRAC can disclose information to police services when there are reasonable grounds to suspect that it would be useful in support of investigations and prosecutions relating to money laundering or terrorist financing. FINTRAC is a useful source of information for all police services in Canada due to its ability to track funds from criminal activities in Canada and around the world.

Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, certain persons and entities — such as financial institutions, securities brokers, accountants and casinos — are required to report to FINTRAC information on various types of financial transactions. In particular, they must report information regarding suspicious transactions relating to money laundering or terrorist financing, regardless of the dollar value involved, and cash transactions of \$10,000 or more.

In an investigation of the Hells Angels, it was difficult to follow the money trail because liquid assets and their proceeds were not deposited into financial institutions or recorded. It is very difficult to track cash transactions in order to create a financial profile of those suspected of organized criminal activity. Such persons usually spend large amounts in cash. Ken Froese, who has examined the circumstances under which fairly large amounts of cash were spent, maintains that it would be helpful in police investigations of organized crime to be able to track payments of \$10,000 or more involving automobile dealers, companies that operate private automatic banking machines,<sup>133</sup> construction and home renovation companies, racetracks, law firms and cash payments of \$1,000 or more at hotels. The declaration of such major cash purchases, which can reasonably be believed to be of the kind made by a member of a criminal organization — would help law enforcement agencies create a financial profile of a person or groups of persons subject to an investigation.<sup>134</sup> Yet the companies Mr. Froese suggested are currently not required to

133 That is, operated by companies that are not recognized financial institutions.

134 Testimony of Ken Froese, Senior Managing Director, Froese Forensic Partners Ltd., April 13, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4423056&Language=E&Mode=1&Parl=40&Ses=3>.

report information to FINTRAC. Chantal Jalbert, Assistant Director, Regional Operations and Compliance, FINTRAC, stated however that the current list of reporting bodies is complete and effective.<sup>135</sup>

## RECOMMENDATION

**The Committee recommends amending the regime under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to require automobile dealers, companies operating private automatic banking machines, construction and home renovation companies, racetracks and law firms to report cash transactions of \$7,500 or more to FINTRAC. Guidelines would have to be established, however, to ensure that the reporting requirement imposed on law firms does not violate confidentiality or lawyer-client privilege.**

Under section 462.48 of the *Criminal Code*, the Attorney General may submit a request to a judge to obtain tax information from the CRA regarding a person for whom there are reasonable grounds to believe that they committed an organized crime offence, a terrorism offence, a designated substance offence, such as drug trafficking, importing or exporting, or an offence involving the laundering of proceeds of crime from the commission of a designated substance offence.

While drug trafficking is the most significant market for criminal organizations, they have increasingly diversified their activities to include financial crime, money laundering, identity theft, tobacco smuggling, arms dealing, human trafficking, cybercrime, vehicle theft and counterfeiting of consumer products and medications. The Committee was told that the current application of section 462.48 is too limited. During an investigation, the police said they did not have the tools needed to obtain federal tax information.<sup>136</sup> To effectively fight organized crime, we must be able to identify the proceeds of organized crime from all sources, and not limited to the drug trade. Section 462.48 should therefore be amended to give prosecutors access to tax information about persons for whom there are reasonable grounds to believe that they committed a money laundering offence involving the proceeds of any criminal offence subject to indictment.

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135 Testimony of Chantal Jalbert, Assistant Director, Regional Operations and Compliance, Financial Transactions and Reports Analysis Centre of Canada, April 15, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4423055&Language=E&Mode=1&Parl=40&Ses=3>.

136 Testimony of Inspector Martine Fontaine, Officer in Charge, Integrated Proceeds of Crime, Montréal, Royal Canadian Mounted Police, October 22, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167422&Language=E&Mode=1&Parl=40&Ses=2>.

## RECOMMENDATION

**The Committee recommends that section 462.48 of the *Criminal Code* be amended to include the offence of money laundering involving property, objects or proceeds acquired through an offence designated in section 462.3(1) of the *Criminal Code*.**

The proceeds of crime are taxable in the same way as legitimate income is. The CRA is empowered to use a number of tools to enforce the *Income Tax Act*, including civil measures and criminal proceedings leading to fines, penalties and prison sentences. Under its Special Enforcement Program, the Agency conducts audits of individuals suspected of earning income from organized crime or any other illegal activity. These audits lead to new levies and penalties and interest, if applicable. The CRA also administers the Criminal Investigations Program (CIP). Under this program, the Agency investigates suspected cases of tax evasion, fraud and other serious violations of tax laws.

The CRA works closely with the RCMP, provincial and local police services and other law enforcement agencies to stop the spread of organized crime. Since 2003, it has had a relationship with police organizations for the reporting of illicit drug operations to the Agency. It was pointed out to the Committee, however, that police organizations are not required to report all drug production cases.<sup>137</sup> To enable the CRA to apply the *Income Tax Act* to more frequently target the proceeds of crime of illicit drug operations, police services in Canada should report all illicit drug production to the Agency.

## RECOMMENDATION

**The Committee recommends that the federal, provincial and territorial ministers of justice, revenue and public safety consider the possibility of requiring law enforcement agencies to report illegal drug production in Canada to the Canada Revenue Agency.**

Seized or confiscated property, or money that is not used to compensate victims or that cannot be returned to an innocent third party, is confiscated by the Crown. The proceeds of crime confiscated by the Crown is shared, under grant programs, among the various orders of government and police services, in keeping with a statutory formula and the contribution made by each of them to the confiscation. At the federal level, in drug-related charges for instance, property is shared in accordance with the *Forfeited Property Sharing Regulations* pursuant to the *Seized Property Management Act*. The Seized Property Management Directorate is responsible for the management and disposition of proceeds pursuant to a court order of management.

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137 Testimony of Len Garis, Chief, Surrey Fire Services, April 30, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3854946&Language=E&Mode=1&Parl=40&Ses=2#Int-2733135>.

Once a court has issued an order of management, the Seized Property Management Directorate takes action to that effect. In some cases, however, it can take from one week to six months for such an order to be issued. In the meantime, the police service is responsible for and bears the cost of managing the assets in question. Don Perron, who works with the Organized Crime Enforcement Bureau and is part of the Ontario Provincial Police Asset Forfeiture and Identity Crimes Program, noted that police services do not have the resources they need to carry out this temporary responsibility.<sup>138</sup> The Seized Property Management Directorate should therefore assume responsibility for property management from the time it is seized.

## RECOMMENDATION

**The Committee recommends amending the *Forfeited Property Sharing Regulations* and the *Seized Property Management Act* so that the Seized Property Management Directorate can assume responsibility for managing the property as soon as it is seized.**

While the provinces appear to receive their fair share of the funds seized under the *Seized Property Management Act*, Peter Shadgett, Director, Criminal Intelligence Service Ontario, raised concerns regarding the use of these funds to effectively fight organized crime.<sup>139</sup> The confiscated assets would be sufficient to at least partially fund the work of law enforcement agencies in fighting organized crime.

## RECOMMENDATION

**The Committee recommends that, at the next meeting of federal, provincial and territorial ministers of justice, consideration be given to awarding more of the funds from the confiscation of the proceeds of crime to fighting organized crime.**

## LAWFUL ACCESS

According to a number of witnesses, including law enforcement officials, electronic eavesdropping legislation has not kept pace with recent changes in telecommunications. Despite some amendments, the structure of Part VI of the *Criminal Code*, which pertains to electronic eavesdropping, has remained unchanged since 1974. There is no Canadian law at present that requires all telecommunications service providers, including Internet service providers and telecommunications device manufacturers, to use devices that allow for interception. As a result, it is increasingly difficult, if not impossible in some cases, for law enforcement officials to legally intercept communications. There are lengthy delays

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138 Testimony of Inspector Don Perron, Organized Crime Enforcement Bureau, Asset Forfeiture and Identity Crimes Program, Ontario Provincial Police, April 13, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4423056&Language=E&Mode=1&Parl=40&Ses=3#Int-3085944>.

139 Testimony of Superintendent Peter Shadgett, Director, Criminal Intelligence Service Ontario, March 25, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4382472&Language=E&Mode=1&Parl=40&Ses=3#Int-3062717>.

and the costs are high. Yet this method of investigation is often essential in fighting organized crime. Moreover, when communications can be intercepted, not all telecommunications service providers release standardized information to law enforcement agencies.

Legislation could address this lack of a standard regarding the interception of telecommunications. Bill C-30<sup>140</sup> has recently been introduced to require telecommunications service providers to have the ability to intercept communications on their networks and to provide the intercepted communication in the form specified by law enforcement. This includes decrypted communications if the telecommunications service provider has the technical capacity to provide this. Law enforcement officials suggested that these requirements be extended to manufacturers of telecommunications devices such as the BlackBerry and other smart phones.

### **RECOMMENDATION**

**The Committee recommends that the Government of Canada pursue legislation requiring telecommunications service providers and telecommunications device manufacturers to build the ability to intercept telecommunications into their equipment and networks.**

### **RECOMMENDATION**

**The Committee recommends that the Government of Canada introduce legislation requiring telecommunications service providers and telecommunications device manufacturers to decrypt legally intercepted communications or to provide assistance to law enforcement agencies in this regard.**

According to law enforcement agencies, it is difficult to consistently obtain from telecommunications service providers such basic information as their clients' names and addresses. Without explicit statutory requirements, some service providers voluntarily disclose this information while others require a warrant before releasing the information requested. Furthermore, there have been contradictory court decisions on this matter. While some courts require law enforcement agencies to produce a warrant to force service providers to disclose their clients' names and addresses, others do not consider a warrant necessary.<sup>141</sup>

In some cases, therefore, a police service that has an IP address associated with the commission of an offence must obtain a warrant to require the Internet service provider

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140 An Act to enact the *Investigating and Preventing Criminal Electronic Communications Act* and to amend the *Criminal Code* and other acts, 41st Parliament, 1st Session, ([http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-30/C-30\\_1/C-30\\_1.PDF](http://www.parl.gc.ca/content/hoc/Bills/411/Government/C-30/C-30_1/C-30_1.PDF)).

141 See *R. v. McNeice*, 2010 BCSC 1544 (B.C.S.C.); *R. v. Brousseau*, 2010 ONSC 6753 (Ont. S.C.J.), *R. v. Kwok*, [2008] O.J. 2414 (C.J. On.), *R. v. Wilson*, 2009 Carswell Ont 2064 (C.S. On.), *R. v. Cuttell*, 2009 Carswell Ont 5896 (C.J. On.).

to disclose the name of the subscriber of this IP address. The warrant must as a rule include the name of the party suspected of the offence.

To address this problem, a special system could be established enabling law enforcement agencies, without a court order, but under certain conditions, to require a telecommunications service provider to provide basic information identifying their subscribers, such as their name, IP address, e-mail address or telephone number. Bill C-30 includes such a provision.

## **RECOMMENDATION**

**The Committee recommends the establishment of a statutory mechanism enabling law enforcement agencies, without a warrant, to require telecommunication service providers to disclose basic information identifying their subscribers. Privacy measures would have to be created, however, and prior court authorization would always be required to allow these agencies to intercept private communications.**

A number of witnesses appearing before the Committee reported that the frequent replacement of cell phones by members of organized crime (for instance, a device may be used for a few hours only for the commission of an offence) and the use of prepaid cell phone services make it more difficult for law enforcement agencies, since they allow users to remain anonymous. At present, cell phone merchants are not required to verify purchasers' identity.

## **RECOMMENDATION**

**The Committee recommends that the Government of Canada examine the possibility of requiring cell phone merchants to verify the identity of purchasers. It could also determine whether it would be appropriate to impose the same requirement on telecommunications service providers.**

The court may grant permission initially to engage in electronic eavesdropping for a maximum of 60 days (section 186(4)(e) of the *Criminal Code*). This maximum period is extended to a year for the investigation of organized crime offences (section 186.1 of the *Criminal Code*). However, as Claude Bélanger, Former Principal General Counsel, Department of Justice noted, permission to install a GPS on a vehicle (tracking warrant) may only be granted for a maximum of 60 days, regardless of the type of offence (section 492.1(2) of the *Criminal Code*). Further tracking warrants may be issued, but the Committee was told that the more actions that are required to continue an investigation, the greater the chances are of jeopardizing that investigation.<sup>142</sup> The Committee is of the

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142 Testimony of Claude Bélanger, Former Principal General Counsel, Department of Justice, As an Individual, January 30, 2007, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2645085&Language=E&Mode=1&Parl=39&Ses=1#Int-1859525>.

opinion that the standardization of the maximum duration of a tracking warrant with the electronic eavesdropping warrant would be helpful in fighting organized crime.

### **RECOMMENDATION**

**The Committee recommends that section 492.1 of the *Criminal Code* be amended to allow for the use of a tracking warrant for an initial maximum duration of one year for the investigation of an organized crime offence.**

One of the problems mentioned to the Committee was the use of countersurveillance techniques by criminal organizations to detect the use of electronic eavesdropping devices by the police and to create interference fields. According to Calgary Chief of Police, Rick Hanson, many police officers conducting traffic stops have lost the use of their phone and, in some cases their radio, because of jamming devices.<sup>143</sup>

### **RECOMMENDATION**

**The Committee recommends that the Government of Canada examine the possibility of creating an offence in the *Criminal Code* regarding the use, possession, sale, manufacturing and importing of jamming devices.**

### **MEGA-TRIALS**

The “mega-trial” phenomenon is generally characterized by lengthy investigations, usually involving wiretapping and joint enterprises, which usually means a large number of accused and counts, and considerable quantities of evidence. Organized crime cases often deal with sophisticated accused parties who have used sophisticated methods to avoid detection or are engaged in extensive criminal activity. As a result, the proof of the Crown’s case may involve production of many pages of wiretap transcripts, surveillance reports, witness statements and other documentary evidence. These cases present major challenges for all components of the justice system.

On February 25, 2008, the Ontario Ministry of the Attorney General appointed former Chief Justice Patrick Lesage and Professor Michael Code (now Justice Code) to conduct a review of large and complex criminal case procedures. The report was released on November 28, 2008 and contained 41 recommendations.<sup>144</sup> A number of the

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143 Testimony of Chief Rick Hanson, Chief of Police, Calgary Police Service, March 29, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4391311&Language=E&Mode=1&Parl=40&Ses=3>.

144 The Honourable Patrick J. Lesage and Professor Michael Code, *Report of the Review of Large and Complex Criminal Case Procedures*, November 2008, [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage\\_code/lesage\\_code\\_report\\_en.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/lesage_code_report_en.pdf).

recommendations were taken up at the federal level in Bill C-2, An Act to amend the Criminal Code, which received Royal Assent on June 26, 2011.<sup>145</sup>

In the Lesage-Code report, the authors state that the general effect of the criminal organization legislation is to enact an aggravated form of already existing offences, if the accused can be proven to be part of a “criminal organization.” Many of the “mega-trials” in Ontario and elsewhere are gang-related and require a great deal of time to prove the additional aggravating “criminal organization” element. The authors point out that in the leading “criminal organization” case in Ontario, the underlying extortion offence was proven by the Crown in one week, while the “criminal organization” portion of the trial then lasted for approximately six weeks with complex and lengthy evidence about the Hells Angels.<sup>146</sup>

In 2011, another important case relating to the Hells Angels was decided, this time in Québec – *R. v. Auclair*.<sup>147</sup> One hundred and fifty-six people allegedly associated with the Hells Angels were arrested in 2009 and charged with various offences including murder, conspiracy to commit murder, trafficking in illegal substances, conspiracy to traffic in illegal substances and the commission of an indictable offence for the benefit of, at the direction of, or in association with, a criminal organization. The accused sought a stay of proceedings due, in part, to an allegation that it was an abuse of process that a lengthy delay was anticipated before any trial would begin.

The Quebec Superior Court concluded that a single trial of 29 charges against 155 accused (one of the accused was deceased by that time) was not possible. The court found that there was no abuse of process, but divided the accused into a number of groups based on location and the accusations against them.

The main issue for the court was that there were only two appropriate courtrooms where the trials could take place in the entire province of Quebec. The 13 trials that would be required after the court divided the accused into groups would have resulted in some accused waiting until 2021 to start their trial, based on the availability of only two appropriate courtrooms. This was found to be an unreasonable delay and the court ordered that only the trials of the accused charged with murder and conspiracy to commit murder should go ahead. Those accused who were not facing such charges (31 in total) were ordered to be released from custody. The court noted that it is up to police and prosecutors to plan their investigations and prosecutions based on the existing capacity in the justice system. The decision is being appealed to the Quebec Court of Appeal.

Although Bill C-2 does not address the lack of appropriate courtrooms, which is a provincial matter, it does address a number of other issues related to “mega-trials”. The approach taken by Bill C-2 is to add a new Part XVIII.1 to the *Criminal Code* to allow for the appointment of a case management judge. This judge may be different from the

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145 For more information on Bill C-2, see: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5085519>.

146 *R. v. Lindsay*; 2005 CarswellOnt 2911; [2005] O.T.C. 583

147 2011 QCCS 2661.

trial judge but will have extensive pre-trial powers, including the ability to adjudicate issues concerning the disclosure of evidence, the admissibility of evidence, and expert witnesses. Any such decisions would be binding on the trial judge, unless it would not be in the interests of justice.

Bill C-2 also provides for a joint hearing to allow for preliminary decisions to be made that would be binding on separate but related trials in the same province before a court of the same jurisdiction. Similarly, severance of trials for multiple counts or multiple accused may be postponed to allow for one decision to be made regarding disclosure, admissibility of evidence and *Charter of Rights* issues that would be binding in all of the subsequent trials. The bill also provides that, in the case of a mistrial, certain decisions made during the trial are binding on the parties in any new trial. Finally, Bill C-2 would make it easier to correct errors with direct indictments and avoid new bail hearings when a direct indictment is preferred.<sup>148</sup>

In addition, in order to protect jurors, Bill C-2 provides that they will generally be called by a number, rather than their name, and access to juror cards and lists can be restricted where necessary for the proper administration of justice. Bill C-2 also allows for the swearing in of up to 14 jurors for lengthy trials, subject to a random selection process that will determine which jurors will deliberate.<sup>149</sup>

Though not addressed in Bill C-2, the Lesage-Code report also examined ways to avoid lengthy procedural delays in major terrorism prosecutions. A significant feature of terrorism prosecutions that sets them apart from other long, complex criminal trials, is the likelihood that national security evidence will factor into the case. The claim of privilege, pursuant to section 38 of the *Canada Evidence Act*<sup>150</sup>, therefore, will become a common feature of such prosecutions. Section 38 removes the national security issue from the trial court and gives exclusive jurisdiction over the matter to the Federal Court. This section also allows for interlocutory appeals.<sup>151</sup> Both of these features of section 38 tend to delay terrorism trials. Section 38 could be amended to give the Superior Court of Justice jurisdiction to rule on claims of national security privilege and to remove the ability to appeal such rulings before the trial has ended.

A further difficulty that is posed during “mega-trials” is that of unrepresented litigants. An unrepresented accused person who is intent on controlling or disrupting a trial, or who simply does not know how to conduct a trial, can turn a relatively straightforward trial into a lengthy and complex matter. It then becomes a challenge for the trial judge to

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148 Section 577 of the *Criminal Code* permits the Attorney General or Deputy Attorney General to send a case directly to trial without a preliminary inquiry or after an accused has been discharged following a preliminary inquiry.

149 *Criminal Code*, s. 644(2) indicates that a jury is properly constituted so long as the number of jurors does not drop below 10.

150 R.S.C. 1985, c. C-5.

151 Section 38.04 of the *Canada Evidence Act* allows the Attorney General of Canada to apply at any time to the Federal Court for a ruling with respect to the potential disclosure of sensitive or potentially injurious information. Section 38.09 of the Act provides for an appeal of a disclosure order to the Federal Court of Appeal.

ensure in these circumstances that the unrepresented or self-represented accused receives a fair and efficient trial. This can create a conflict between the impartiality of a trial judge and his or her need to intervene to protect the rights of the accused. Yet section 651(2) of the *Criminal Code* sets out the statutory right of an accused to be self-represented, and the Supreme Court of Canada has ruled that an accused person has control over the decision of whether to have counsel.<sup>152</sup>

While an accused person has the right to be present during the whole of his or her trial, section 650(2)(a) of the *Criminal Code* provides that an accused who interrupts the proceedings and interferes with the conduct of the trial may be removed from the courtroom. There is, however, no power vested in the trial judge to appoint counsel for a self-represented accused in these circumstances. An amendment to the *Criminal Code* could be made to provide this power. There is precedent for the appointment of counsel regardless of the wishes of the accused. For example, section 672.24(1) of the Code provides that, where the court has reasonable grounds to believe that an accused is unfit to stand trial, and the accused is not represented by counsel, the court shall order that the accused be represented by counsel.

The Public Prosecution Service of Canada has also addressed the “mega-trial” issue. It endorses the cooperation of Crown counsel with the investigative agency and points out that counsel are required, on an ongoing basis, to assess every case according to the test of whether there is a reasonable prospect of conviction and whether prosecution is in the public interest. A review of the charges should be done before they are laid. Then, the consideration of the public interest factor should take into account what will be strategically feasible. A prosecution that is so large and complex that no reasonable juror will be able to follow the evidence does not serve the public interest.<sup>153</sup>

## RECOMMENDATION

**The Committee recommends that the *Canada Evidence Act* be amended to give the Superior Court of Justice jurisdiction to rule on claims of national security privilege and remove the ability to appeal such rulings before the trial has ended.**

## RECOMMENDATION

**The Committee recommends that the *Criminal Code* be amended to provide a power to appoint counsel for a self-represented accused where the continued presence of the accused makes a fair trial unfeasible.**

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152 *R. v. Swain*, [1991] 1 S.C.R. 933 at 972.

153 Federal Prosecution Service Deskbook, Chapter 54, Megacase Management, <http://www.justice.gc.ca/eng/dept-min/pub/fps-sfp/fpd/ch54.html>.

## WITNESS PROTECTION PROGRAMS

In 1984, the RCMP established a witness protection program (WPP) to protect individuals collaborating with the justice system. In 1996, the *Witness Protection Program Act*<sup>154</sup> came into force, ensuring that WPP applicants had a clear understanding of their rights and obligations, as well as the scope of the protection that could be afforded. The Act also addressed the admission criteria for witnesses, the obligations of those who administer the program, and the requirements of reporting to Parliament.

The federal WPP is one of the resources accessible to law enforcement in Canada which can provide protection and support to witnesses who find themselves at risk as a result of their participation in the justice system. This protection may be particularly useful in organized crime cases due to the extreme violence demonstrated by organized crime, its extensive financial resources, and its willingness to exact revenge against those willing to cooperate with law enforcement. The increasing capacity of organized crime to locate and intimidate or harm witnesses, often through the expanded use of technology, has required witness protection processes to evolve and adapt over time.<sup>155</sup>

The federal WPP is not the only such program in Canada. The provinces of Alberta, Ontario, Quebec, Manitoba, and Saskatchewan all have a WPP in place. The programs in Alberta, Manitoba and Saskatchewan are based on legislation while those in Quebec and Ontario are based on policies adopted by the police. The provincial programs, as well as programs that exist at the municipal level, were generally created to meet the short-term needs of witnesses prior to a trial and not necessarily to accommodate the needs of those requiring life-long protection or a change of identity.

There is no dedicated federal funding for the federal, provincial, or municipal WPPs. This can create impediments when serious crimes are being investigated, but there are not sufficient resources to pay for witness protection. The RCMP currently spends approximately \$7 million to \$8 million to protect 830 witnesses, but these numbers can easily fluctuate.<sup>156</sup> This money can be used to fund relocation, accommodation, change of identity, psychological counselling, and financial support to facilitate the witnesses' re-establishment or ability to become self-sufficient, in addition to officers' wages. On the issue of funding, the Committee heard that, in order to place a witness in the federal WPP, local police forces have to pay the cost, which can make the program unaffordable for smaller jurisdictions.<sup>157</sup> If the program is not used and witnesses do not come forward because of this failure, it may become harder and harder to infiltrate organized crime.

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154 S.C. 1996, c. 15.

155 Testimony of Superintendent Eric Slinn, Director, Drugs and Organized Crime Branches, RCMP, before the House of Commons Standing Committee on Justice and Human Rights, February 16, 2012, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5391481&Language=E&Mode=1&Parl=41&Ses=1>.

156 Ibid.

157 Testimony of Chief Frank A. Beazley, Chief of Police, Halifax Regional Municipality, before the House of Commons Standing Committee on Justice and Human Rights, October 23, 2009,

Once admitted into the WPP, a witness must enter into a protection agreement, which contains the obligations of both parties. Section 11 of the Act states that it is an offence to knowingly disclose, directly or indirectly, information about the location or a change of identity of a protectee or former protectee. Protectees and former protectees can, however, disclose information about themselves so long as this does not compromise the integrity of the WPP or endanger other protectees. The RCMP may terminate protection if the protectee deliberately infringes a condition of the protection agreement or if there is evidence of a material misrepresentation. The statute allows the Minister of Public Safety to enter into an agreement with a foreign government or an international court or tribunal to admit foreign nationals into the WPP.

A current challenge to the WPP is the lack of resources. Increasing demands are being placed upon the WPP as a result of expanding gang activity and the offer of protective services to those associated with gangs who wish to provide testimony but are afraid of reprisals. As such, even when the number of people in the WPP has decreased, the budget has not necessarily decreased as improvements to the program are made and the costs to protect each individual witness increase.

The provinces have also requested that changes to the WPP be made to facilitate their ability to obtain federal identification documentation without having to enter their protectees into the federal WPP, which is the current practice.<sup>158</sup> The RCMP and Public Safety Canada are in agreement with this suggestion and are currently working to develop a secure process to implement it.<sup>159</sup>

While our Committee did not undertake a thorough review of the federal WPP, the House of Commons Standing Committee on Public Safety and National Security did carry out such a study. Its report, entitled *Review of the Witness Protection Program*, was published in March 2008.<sup>160</sup> That Committee made nine recommendations, and in its response the Government of Canada, it stated: “the appropriate time must be devoted to studying best practices and lessons learned by our international partners so that we may develop, along with our federal, provincial and territorial partners, the best possible program for Canada. Consultations with our partners are currently underway and the

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<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167423&Language=E&Mode=1&Parl=40&Ses=2>.

158 Testimony of Chief Superintendent Thomas Bucher (Director General, Drugs and Organized Crime, Royal Canadian Mounted Police) before the House of Commons Standing Committee on Justice and Human Rights, April 13, 2010, <http://prismweb.parl.gc.ca/IntranetDocuments/CommitteeBusiness/40/3/JUST/Meetings/Evidence/JUSTEVLUES11.HTM>.

159 Testimony of Superintendent Eric Slinn, Director, Drugs and Organized Crime Branches, RCMP, before the House of Commons Standing Committee on Justice and Human Rights, February 16, 2012, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5391481&Language=E&Mode=1&Parl=41&Ses=1>.

160 The report can be found here: <http://www2.parl.gc.ca/CommitteeBusiness/StudyActivityHome.aspx?Cmte=SECU&Language=E&Mode=1&Parl=39&Ses=2&Stac=2275593>.

Committee's recommendations will certainly help guide further discussions and inform future enhancements to the Program."<sup>161</sup>

We note that, in its testimony before our Committee, the RCMP stated that it had developed an internal document with a number of recommendations. First, consideration is being given to amending the *Witness Protection Program Act* to better respond to the needs of provincial partners. Second, the RCMP is changing its WPP program to improve the services it offers so that, for example, the WPP will be more "protectee focussed", address more fully the safety of WPP personnel and the public, and provide greater accountability. A Risk Assessment and Management model is being finalized to ensure that national standards are consistently applied prior to entry into the program. Training has been increased and there is greater consideration of the socio-psychological needs of protectees. Finally, new technologies will be used to better monitor cases, identify issues, increase accountability and improve the accuracy of reporting.<sup>162</sup>

## **RECOMMENDATION**

**The Committee recommends that there be dedicated federal funding for the federal Witness Protection Program. This funding should at least provide a base level for the maintenance of the WPP at its current level of need. Funding should be assessed annually and increased, as needed, to aid in the fight against organized crime.**

## **RECOMMENDATION**

**The Committee understands that the RCMP and Public Safety Canada are currently working to amend the current WPP practice to facilitate the ability of provincial witness protection programs to obtain federal identification documentation without having to enter their protectees into the federal WPP and recommends that this change be instituted as soon as possible.**

## **BORDER ISSUES**

In Edmonton, the Committee heard that \$17 million in drugs had been seized by the Canada Border Services Agency (CBSA) Prairie Region in 2009.<sup>163</sup> The majority of the drug seizures have involved cocaine from South America, and marijuana from the United States,

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161 The full Government of Canada response may be found here: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3599123&Language=E&Mode=1&Parl=39&Ses=2>.

162 Testimony of Superintendent Eric Slinn, Director, Drugs and Organized Crime Branches, RCMP, before the House of Commons Standing Committee on Justice and Human Rights, February 16, 2012, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5391481&Language=E&Mode=1&Parl=41&Ses=1>.

163 Testimony of Mike Skappak, Director, Criminal Investigations, Prairie Region, Canada Border Services Agency, March 29, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4391311&Language=E&Mode=1&Parl=40&Ses=3#Int-3064882>.

and khat from Africa. While most drug shipments arriving by air do so outside the Prairie Region, there have been increases in the number of drug shipments at the Calgary and Edmonton International Airports. A challenge for the CBSA is to identify suspect containers and shipments as organized crime uses legitimate companies to conceal their drug shipments.<sup>164</sup>

While in Winnipeg, the Committee heard testimony about the problems created by the 460-kilometre border between Manitoba and the United States. In remote areas along this border, organized criminal groups recognize the advantages of operating there as the risk of detection is minimal. In addition, the ready access to firearms in the U.S., along with the many potential customers for illicit goods, makes the area attractive to organized crime. The Committee also heard that organized criminal groups are diversifying into such areas as the importation and selling of counterfeit goods. The risk of apprehension is low and the investigations, which often cross international boundaries, can be very complex and involve victims in multiple jurisdictions and countries, making prosecution difficult and in some cases impossible.<sup>165</sup> Another potential border threat to Manitoba is the targeting of the port of Churchill by organized crime as a means to gain relatively easy access into North America. This threat will grow as ocean access into Hudson's Bay could become ice-free in the near future.

The scale of the issue of border control was brought home to the Committee during its hearings in Montréal. The CBSA in the Quebec region is responsible for securing 32 land border crossings, 25 airports (including 3 international airports), 9 marine ports, 6 railroad stations, and 5 inland customs offices. Each year, the CBSA in the Quebec region processes more than 4 million air passengers, 6 million road travellers, and approximately 2 million commercial releases. Out of these totals, the CBSA conducts nearly 600,000 examinations each year. In 2008, the CBSA in the Quebec region took nearly 16,000 enforcement actions resulting in 2,451 narcotics seizures and 378 currency seizures.<sup>166</sup>

Another aspect of the work of the CBSA is immigration inland enforcement. Employees in this area work to ensure the successful deportation of people who are deemed inadmissible to Canada. Enforcement related to organized crime in this area is of great importance to the CBSA due to section 37 of the *Immigration and Refugee Protection Act*.<sup>167</sup> This section states that a permanent resident or a foreign national is inadmissible on grounds of organized criminality for (a) being a member of an organized

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164 Brief of the Canada Border Services Agency to the House of Commons Standing Committee on Justice and Human Rights, March 29, 2010.

165 Testimony of Inspector Robert Bazin, Officer in Charge, Border Integrity, "D" Division, Royal Canadian Mounted Police, before the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4399041&Language=E&Mode=1&Parl=40&Ses=3#Int-3071250>.

166 Brief of Angelo De Riggi, Regional Programs Manager, Intelligence Division, Canada Border Services Agency, Quebec Region, October 22, 2009.

167 S.C. 2001, c. 27.

criminal group; or (b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

In addition to seizing illegal goods, which includes precursor chemicals used in the manufacture of ecstasy and methamphetamines, and immigration inland enforcement, the Criminal Investigation Division of the CBSA investigates and initiates prosecution for criminal offences against Canada's border legislation. This includes suspected misrepresentations, evasions, or commissions of fraud with respect to the international movement of goods and people.

Finally, the Intelligence Division of the CBSA has a mandate to identify threats to Canada and to communicate this information to its law enforcement partners. Intelligence officers and analysts work on such issues as export control, missing children, fraudulent documents and the smuggling of various types of contraband, including humans, tobacco, illicit drugs, and weapons. The work of the Intelligence Division can lead to the realization that an individual is part of a larger group, such as organized crime.<sup>168</sup> In Toronto, the Committee heard about the activities of the Pearson International Airport Intelligence Unit or the YYZ Intelligence Unit. The work of this unit has resulted in the dismissal of over 50 airport employees.

## **JUDICIAL INTERIM RELEASE**

Section 515 of the *Criminal Code* currently provides for the detention before trial of those persons charged with offences whom it is feared may not appear in court to answer the charges against them, or where there are grounds to believe that the person would commit further offences if they were not detained. A concern expressed by the former Edmonton Chief of Police was not so much with the legislation needed to protect the public as it was that the legislative processes are not being used to the extent that they should be. This is especially the case with prolific, chronic or repeat offenders. As a result, the public is not being properly protected from further victimization.<sup>169</sup>

Former Chief Boyd referred to studies carried out in Edmonton and Halifax in 2006 and 2008 that examined criminal offender backgrounds. These studies revealed that offenders were arrested and released dozens of times, where they breached their conditions of release multiple times, and where they re-offended, harming the public. The background of these chronic offenders suggests that they should be incapacitated through pre-trial detention. While these chronic offenders are often dependent on alcohol or drugs, which is a health issue, it becomes an issue for the criminal justice system when they harm others in their quest for money to buy alcohol or drugs. The Committee was urged to make consideration of the risk assessment carried out for bail hearings mandatory. In other words, reference to this assessment must be made in the decision to release an accused person pending trial. The Committee was also urged to update bail laws to take account of such options as electronic monitoring.

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168 Brief of Bonnie Lou Gancy, Director of Intelligence for the Greater Toronto Area Region, Canada Border Services Agency, Greater Toronto Area Region, March 25, 2010.

169 Brief of former Edmonton Chief of Police Michael J. Boyd, March 29, 2010.

## RECOMMENDATION

**The Committee recommends that section 515 of the *Criminal Code* be amended to specify that one of the conditions of an order granting interim judicial release can be an order to wear an electronic monitoring device.**

## LEGAL AID

The Lesage-Code report noted that Legal Aid Ontario (LAO) may have contributed to the phenomenon of overly-long criminal trials in Ontario by the steady diminution of the legal aid tariff while trials were becoming longer and more complex. This has led to many leading members of the bar not taking on such trials. These senior and experienced counsels could be relied upon to focus on the essential issues in a trial and to conduct it in a responsible and efficient manner. Today, however, such counsels tend to avoid lengthy, complex trials as not being feasible financially. The inexperienced counsels that do take on long trials at the legal aid tariff require advice and supervision as to how they should conduct a defence so that trials are not unduly protracted.

LAO administers a Big Case Management (BCM) program. The BCM program has been created to deal with particularly large cases that are likely to exceed the cost of an average legal aid certificate. The BCM program covers cases that cost LAO between \$20,000 and \$75,000. If the case exceeds this upper limit, there is a further degree of oversight from a panel of experts known as the Exceptions Committee. Approximately 25% of the LAO criminal budget is spent on BCM cases. These cases are increasingly being conducted by junior lawyers, while the Lesage-Code report notes that, between 1999 and 2007, there was a 15% decline in the number of senior lawyers who took on any Legal Aid cases.

The preferred means of dealing with this situation is to pay higher fees and restrict eligibility to ensure that highly qualified lawyers will take on long, complex cases. The enhanced fees will make it economical for senior counsels to take on the defence in such cases. The benefit is that the trials should end up being shorter and less costly, as senior counsels will generally focus on the real issues in the case and will have no reason to unduly prolong the case.

An issue related to that of the role of counsel in complex trials is the problem of recruiting and retaining talented lawyers in the Public Prosecution Service of Canada. The Committee was informed that the salaries of federal prosecutors have fallen behind those of a number of provinces. The result is that, after federal prosecutors have amassed a certain amount of experience, they transfer to the provinces at salaries that could be as much as 40% to 60% higher.<sup>170</sup>

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170 Testimony of Marco Mendicino, Acting President, Association of Justice Counsel, before the House of Commons Standing Committee on Justice and Human Rights, April 30, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3854946&Language=E&Mode=1&Parl=40&Ses=2>.

## RECOMMENDATION

The Committee recommends that the federal contribution to legal aid be reviewed for “mega-trials” with a federal law element (such as prosecutions under the *Controlled Drugs and Substances Act*) in order to attract senior counsel.

## RECOMMENDATION

The Committee recommends that the Government of Canada review the salaries of prosecutors with the Public Prosecution Service of Canada to determine whether they are comparable with the salaries of prosecutors with provincial prosecution services.

## PUBLIC EDUCATION

A key component in the fight against organized crime is public education. This takes many forms. One is educating the public about the dangers of counterfeit goods. One of these dangers is that a counterfeit of, for example, medicine may, in fact, be harmful. A second danger is that a member of the public might think that he or she is getting a “good deal” when purchasing a deeply-discounted counterfeit product. But the labour of many people was exploited in the making of that product and the profit from the sale goes straight into the pocket of organized crime.

To combat payment card fraud, users of these cards need to learn about the scams perpetrated by organized crime and ways to protect themselves. The purchase of contraband tobacco may seem advantageous from a financial standpoint but it is not a “victimless crime”, as it funds large organized crime groups and leads to a significant tax revenue loss.

The Committee was told that organized crime relies for its success upon its ability to prey upon the naive and the vulnerable. The way to combat this is through public education. Such education has to start at a young age so that children get the right messages about drugs and cyber-predatory behaviour. It is these elements that lead to approaches for prostitution and gang involvement. There is no other way to explain the continuing success of Internet frauds other than public ignorance. There must be a national commitment to education to reduce levels of victimization.<sup>171</sup>

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171 Testimony of Chief Rick Hanson, Chief of Police, Calgary Police Service, March 29, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4391311&Language=E&Mode=1&Parl=40&Ses=3>.

## RECOMMENDATION

**The Committee recommends that there be a review of federal public education programs to assess their adequacy and effectiveness in reducing the level of victimization caused by organized crime.**

## CRIME PREVENTION

A continued refrain throughout the Committee's hearings was that expressed by a number of police officers who told the Committee that the key to tackling organized crime is to have a strong enforcement strategy but, equally, to have a strong prevention strategy as well. If the problem of organized crime can be addressed at the front end, it will make the job of the police a lot easier at the back end.<sup>172</sup> Another way of expressing this was that it is all well and good to have diversion programs in the *Youth Criminal Justice Act*, but we need some place to divert youth to. If youth are living in a terrible situation to begin with, and if the only solution we have is to put them in the criminal justice system, then we cannot expect any different outcome other than continued criminal activity.<sup>173</sup>

Another aspect of the prevention of crime policy deals with immigrants. The Committee was informed that the lack of accessible places for immigrants with programming directed at them as children and youth will have consequences later on when and if they become involved with the law.<sup>174</sup>

Finally, the Committee was told that a prevention approach is about working with people in a number of sectors; not just the police, but also the environmental sectors, housing, health, education, youth, and social services. These actors target the areas and the groups most at risk and put facilities and support into education and recreation and other alternatives to young people joining a gang. It is these efforts, in combination with those of law enforcement, that will yield the results we seek.<sup>175</sup> As one witness put it, focused, proactive policing is necessary when dealing with organized crime, but if we

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172 Testimony of Inspector John Ferguson, Officer in Charge, Drugs and Integrated Organized Crime, "D" Division, Royal Canadian Mounted Police, before the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4399041&Language=E&Mode=1&Parl=40&Ses=3#Int-3071310>.

173 Testimony of Clive Weighill, Chief of Police, Saskatoon Police Service, before the House of Commons Standing Committee on Justice and Human Rights, March 30, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4399041&Language=E&Mode=1&Parl=40&Ses=3#Int-3071310>.

174 Testimony of the Reverend Julius Tiangson, Executive Director, Gateway Centre for New Canadians, before the House of Commons Standing Committee on Justice and Human Rights, March 25, 2010, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4382472&Language=E&Mode=1&Parl=40&Ses=3>.

175 Testimony of Dr. Margaret Shaw, Sociology and Criminology, International Centre for the Prevention of Crime (Montréal), before the House of Commons Standing Committee on Justice and Human Rights, October 22, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167421&Language=E&Mode=1&Parl=40&Ses=2>.

concentrate on policing alone and do not address the contributing factors to crime, we will never make any significant inroads to preventing crime in the first place.<sup>176</sup>

## **RECOMMENDATION**

**The Committee recommends that the Government of Canada work with the provinces and territories to put in place a comprehensive crime prevention program.**

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176 Testimony of Chief Frank A. Beazley, Chief of Police, Halifax Regional Police, before the House of Commons Standing Committee on Justice and Human Rights, October 23, 2009, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4167423&Language=E&Mode=1&Parl=40&Ses=2>.



# LIST OF RECOMMENDATIONS

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## RECOMMENDATION

The Committee recommends that Statistics Canada carry out the *Criminal Victimization Survey* annually, and that the Government of Canada provide Statistics Canada with the appropriate funds to do so, in order to give policy makers, police, the justice system and the public a better measure of criminal activity in Canada..... 16

## RECOMMENDATION

The Committee recommends that the Correctional Service of Canada develop stronger rehabilitation programs, including mental health assessments, for offenders involved in organized crime. These support programs must also be continued in the post-release community situation to help ex-prisoners reintegrate into society..... 18

## RECOMMENDATION

The Committee recommends that the Parole Board of Canada continue in its efforts to work with its police partners to create police reports designed to give the Board relevant and detailed intelligence about offenders without jeopardizing sources or investigations..... 19

## RECOMMENDATION

The Committee recommends that the Department of Justice fully explore and implement as soon as possible other options than the creation of a list of criminal organizations which may make prosecutions of criminal organizations more efficient and, therefore, quicker..... 22

## RECOMMENDATION

The Committee recommends that legislative restrictions on the sharing of criminal intelligence concerning organized crime be examined. The object of this examination will be to determine whether these restrictions have a valid purpose and, if not, whether they should be removed to facilitate the efforts of law enforcement to tackle organized crime..... 25

## RECOMMENDATION

The Committee recommends that the Automated Criminal Intelligence Information System (ACIIS) be upgraded so that it has the technological capability of managing the increasing amount of information that is collected about organized

criminal activity in Canada. A new technological platform for ACIIS can, with appropriate security provisions, significantly increase the efficiency and effectiveness of analysts, investigators, and intelligence officers..... 25

**RECOMMENDATION**

The Committee recommends that the Government of Canada work with provincial and territorial counterparts to encourage a close collaboration between the police and prosecutors in organized crime prosecutions in order to plan disclosure at the earliest stages of an investigation. Such disclosure should be guided by parameters of relevance which, to the greatest extent possible, are codified. The model for such codification could be the process that led to the legislation of the so-called “rape shield laws”. Any defence request for additional disclosure materials should be particularized in order to identify the materials in question and to explain how they could assist the defence. .... 28

**RECOMMENDATION**

The Committee recommends that the Government of Canada work with provincial and territorial counterparts to establish a model of electronic disclosure that can serve as a standard Crown brief in all long, complex organized crime cases. Such a brief should be the product of police and Crown co-operation and should, amongst other exclusions, not include disclosure that could identify a confidential informant or reveal a secret police investigative technique. .... 28

**RECOMMENDATION**

The Committee recommends that the *Criminal Code* be amended to impose mandatory minimum sentences for the criminal organization offences, particularly for the offence set out in section 467.13 of the *Criminal Code* — Instructing Commission of Offence for Criminal Organization..... 30

**RECOMMENDATION**

The Committee recommends that the *Criminal Code* be amended to increase penalties for money laundering offences. .... 30

**RECOMMENDATION**

The Committee recommends that the Government of Canada, in partnership with its provincial and territorial counterparts, allocate more resources in a stable, long-term manner for youth at risk of entering into a criminal lifestyle. This funding should ensure that youth at risk have access to programs to divert them from gangs and to promote alternatives to gangs..... 34

## RECOMMENDATION

The Committee recommends that the Government of Canada, in partnership with its provincial and territorial counterparts, allocate more resources in the area of addiction services and numbers of treatment beds in order to reduce wait times. The drug-addicted are particularly vulnerable to recruitment into organized crime and any assistance in reducing this vulnerability would be helpful..... 35

## RECOMMENDATION

The Committee recommends that Statistics Canada be required to include in the Uniform Crime Reporting Survey all drug-related offences under the *Controlled Drugs and Substances Act*..... 36

## RECOMMENDATION

The Committee recommends that the Government of Canada consider the possibility of amending Part XII.2 of the *Criminal Code* to allow for the ownership of the proceeds of crime to be established on the balance of probabilities in cases involving organized crime offences. .... 37

## RECOMMENDATION

The Committee recommends that, at the next meeting of federal, provincial and territorial ministers of justice, they consider the possibility of amending federal and provincial laws governing corporations in Canada so that the by-laws establishing a corporation and its annual reports provide information about its ownership, including the shareholders' names and addresses. The ministers should also consider the possibility of establishing a time limit on the use of nominees in order to make the identity of the owners, officers and directors known..... 39

## RECOMMENDATION

The Committee recommends amending the regime under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to require automobile dealers, companies operating private automatic banking machines, construction and home renovation companies, racetracks and law firms to report cash transactions of \$7,500 or more to FINTRAC. Guidelines would have to be established, however, to ensure that the reporting requirement imposed on law firms does not violate confidentiality or lawyer-client privilege..... 40

## RECOMMENDATION

The Committee recommends that section 462.48 of the *Criminal Code* be amended to include the offence of money laundering involving property, objects

or proceeds acquired through an offence designated in section 462.3(1) of the *Criminal Code*. ..... 41

**RECOMMENDATION**

The Committee recommends that the federal, provincial and territorial ministers of justice, revenue and public safety consider the possibility of requiring law enforcement agencies to report illegal drug production in Canada to the Canada Revenue Agency. .... 41

**RECOMMENDATION**

The Committee recommends amending the *Forfeited Property Sharing Regulations* and the *Seized Property Management Act* so that the Seized Property Management Directorate can assume responsibility for managing the property as soon as it is seized..... 42

**RECOMMENDATION**

The Committee recommends that, at the next meeting of federal, provincial and territorial ministers of justice, consideration be given to awarding more of the funds from the confiscation of the proceeds of crime to fighting organized crime. .... 42

**RECOMMENDATION**

The Committee recommends that the Government of Canada pursue legislation requiring telecommunications service providers and telecommunications device manufacturers to build the ability to intercept telecommunications into their equipment and networks. .... 43

**RECOMMENDATION**

The Committee recommends that the Government of Canada introduce legislation requiring telecommunications service providers and telecommunications device manufacturers to decrypt legally intercepted communications or to provide assistance to law enforcement agencies in this regard. .... 43

**RECOMMENDATION**

The Committee recommends the establishment of a statutory mechanism enabling law enforcement agencies, without a warrant, to require telecommunication service providers to disclose basic information identifying their subscribers. Privacy measures would have to be created, however, and prior court authorization would always be required to allow these agencies to intercept private communications. .... 44

**RECOMMENDATION**

The Committee recommends that the Government of Canada examine the possibility of requiring cell phone merchants to verify the identity of purchasers. It could also determine whether it would be appropriate to impose the same requirement on telecommunications service providers..... 44

**RECOMMENDATION**

The Committee recommends that section 492.1 of the *Criminal Code* be amended to allow for the use of a tracking warrant for an initial maximum duration of one year for the investigation of an organized crime offence..... 45

**RECOMMENDATION**

The Committee recommends that the Government of Canada examine the possibility of creating an offence in the *Criminal Code* regarding the use, possession, sale, manufacturing and importing of jamming devices..... 45

**RECOMMENDATION**

The Committee recommends that the *Canada Evidence Act* be amended to give the Superior Court of Justice jurisdiction to rule on claims of national security privilege and remove the ability to appeal such rulings before the trial has ended. .... 48

**RECOMMENDATION**

The Committee recommends that the *Criminal Code* be amended to provide a power to appoint counsel for a self-represented accused where the continued presence of the accused makes a fair trial unfeasible..... 48

**RECOMMENDATION**

The Committee recommends that there be dedicated federal funding for the federal Witness Protection Program. This funding should at least provide a base level for the maintenance of the WPP at its current level of need. Funding should be assessed annually and increased, as needed, to aid in the fight against organized crime..... 51

**RECOMMENDATION**

The Committee understands that the RCMP and Public Safety Canada are currently working to amend the current WPP practice to facilitate the ability of provincial witness protection programs to obtain federal identification documentation without having to enter their protectees into the federal WPP and recommends that this change be instituted as soon as possible. .... 51

**RECOMMENDATION**

The Committee recommends that section 515 of the *Criminal Code* be amended to specify that one of the conditions of an order granting interim judicial release can be an order to wear an electronic monitoring device. .... 54

**RECOMMENDATION**

The Committee recommends that the federal contribution to legal aid be reviewed for “mega-trials” with a federal law element (such as prosecutions under the *Controlled Drugs and Substances Act*) in order to attract senior counsel..... 55

**RECOMMENDATION**

The Committee recommends that the Government of Canada review the salaries of prosecutors with the Public Prosecution Service of Canada to determine whether they are comparable with the salaries of prosecutors with provincial prosecution services. .... 55

**RECOMMENDATION**

The Committee recommends that there be a review of federal public education programs to assess their adequacy and effectiveness in reducing the level of victimization caused by organized crime..... 56

**RECOMMENDATION**

The Committee recommends that the Government of Canada work with the provinces and territories to put in place a comprehensive crime prevention program..... 57

# APPENDIX A LIST OF WITNESSES

41 <sup>st</sup> Parliament – 1 <sup>st</sup> Session Organizations and Individuals	Date	Meeting
<b>Criminal Intelligence Service Canada</b> Michel Aubin, Director General	2012/02/16	21
<b>Royal Canadian Mounted Police</b> Greg Bowen, Federal and International Operations		
<b>Royal Canadian Mounted Police</b> Ken Lamontagne, Director, Strategic Intelligence Analysis Central Bureau		
<b>Royal Canadian Mounted Police</b> Eric Slinn, Director, Drug Branch		



# APPENDIX B LIST OF WITNESSES

40 <sup>th</sup> Parliament – 3 <sup>rd</sup> Session Organizations and Individuals	Date	Meeting
<p><b>Canadian Civil Liberties Association</b> Graeme Norton, Director, Public Safety Program</p> <p><b>Canadian Council of Criminal Defence Lawyers</b> William M. Trudell, Chair</p> <p><b>Hoodlinc Youth Organization</b> Brian Henry, Executive Director</p>	2010/03/25	4
<p><b>As individuals</b> Margaret Beare, Professor of Law and Sociology, York University James R. Dubro, Writer and Film-Maker Antonio Nicaso, Author and Journalist</p> <p><b>Canada Border Services Agency</b> Bonnie Glancy, Director, Intelligence, Greater Toronto Area Region</p> <p><b>Criminal Intelligence Service Ontario</b> Peter Shadgett, Director</p> <p><b>Gateway Centre for New Canadians</b> Julius Tiangson, Executive Director</p> <p><b>Ontario Provincial Police</b> Bryan Martin, Drug Enforcement Section, Organized Crime Enforcement Bureau</p> <p><b>Royal Canadian Mounted Police</b> Robert W. Davis, District Commander, Greater Toronto Area Region J. Richard Penney, Operations Officer, Greater Toronto Area Drug Section</p> <p><b>Toronto Police Service</b> Randy Franks, Organized Crime Enforcement</p>	2010/03/25	5

**Calgary Police Service**

2010/03/29

6

Rick Hanson, Chief of Police

**Canada Border Services Agency**

Mike Skappak, Director,  
Criminal Investigations, Prairie Region

**Correctional Service of Canada**

Hugo Foss, Psychologist,  
Alberta/Northwest Territories District Office

Jan Fox, District Director,  
Alberta/Northwest Territories District Office

**Criminal Intelligence Service Canada**

Brian Gibson, Chair, Board of Directors,  
Alberta Law Enforcement Response Teams

**Edmonton Police Service**

Michael Boyd, Chief of Police

**National Aboriginal Advisory Council**

Roy Louis, Member,  
Citizen Advisory Committee

**National Parole Board**

Harvey Cenaiko, Chairperson

**Public Prosecution Service of Canada**

Greg Rice, Senior Counsel and Team Leader,  
Edmonton Regional Office

**Royal Canadian Mounted Police**

Clemens Imgrund, Officer in charge,  
National Security and Criminal Intelligence, K Division

Terry Kohlhauser, Non-commissioned Officer in charge and  
Team Commander of Project KARE,  
K Division

**As individuals**

2010/03/29

7

Harpreet Aulakh, Assistant Professor,  
Department of Justice Studies, Mount Royal University

Allan H.J. Wachowich, Former Chief Justice of the Court of  
Queen's Bench of Alberta

**Alberta Somali Community Center**

Mahamad Accord, President

**Prostitution Awareness and Action Foundation of  
Edmonton**

Norma Chamut, Board Member

Kate Quinn, Executive Director

**Boys and Girls Clubs of Winnipeg Inc.**

2010/03/30

8

Michael A. Owen, Executive Director

**Broadway Neighbourhood Centre**

Laura Johnson, Project Coordinator,  
Just TV Project

**Gang Awareness for Parents**

Floyd Wiebe, Executive Director

**Grandmothers Protecting our Children**

Velma Orvis, Member,  
Grandmothers Council

**Ka Ni Kanichihk Inc.**

Leslie Spillett, Executive Director

**Ma Mawi Wi Chi Itata Centre Inc.**

Jackie Anderson, Program Development Coordinator

Diane Redsky, Director of Programs

**Macdonald Youth Services**

Paul Johnston, Director,  
Client Services

**Ndinawemaaganag Endaawaad (Ndinawe)**

Melissa Omelan, Member,  
Turning the Tides, Gang Prevention and Intervention Program

**Resource Assistance for Youth Inc.**

Kelly Holmes, Executive Director

**The Pas Family Resource Centre**

Renee Kastrukoff, Director

**Canada Border Services Agency**

Kimberly Fussey, Director,  
Inland Enforcement, Prairie Region

**Correctional Service of Canada**

2010/03/30

9

Robert Bonnefoy, Warden,  
Stony Mountain Institution

Christer McLauchlan, Security Intelligence Officer,  
Stony Mountain Institution

Tim Van der Hoek, Senior Project Manager,  
Preventive Security and Intelligence, National Headquarters

**Royal Canadian Mounted Police**

Robert Bazin, Officer in charge,  
Border Integrity, D Division

John Ferguson, Officer in Charge,  
Drugs and Integrated Organized Crime, D. Division

<b>Saskatoon Police Service</b>	2010/03/30	9
Clive Weighill, Chief of Police		
<b>Winnipeg Police Service</b>		
Nick Leone		
Jim Poole		
<b>Froese Forensic Partners Ltd.</b>	2010/04/13	11
Ken Froese, Senior Managing Director		
<b>Ontario Provincial Police</b>		
Don Perron, Organized Crime Enforcement Bureau, Asset Forfeiture and Identity Crimes Program		
<b>Royal Canadian Mounted Police</b>		
David Bird, Counsel, RCMP Legal Services		
Greg Bowen, Officer in Charge, National Headquarters, Human Source and Witness Protection		
Thomas Bucher, Director General, Drugs and Organized Crime		
<b>As an individual</b>	2010/04/15	12
Patrick J. LeSage, Former Chief Justice of the Ontario Superior Court		
<b>Financial Transactions and Reports Analysis Centre of Canada</b>		
Paul Dubrulle, General Counsel, Legal Services		
Hélène Goulet, Deputy Director, Strategic Policy and Public Affairs and Chief Review and Appeals Officer		
Chantal Jalbert, Assistant Director, Regional Operations and Compliance		
Denis Meunier, Assistant Director, Financial Analysis and Disclosures		
<b>Public Prosecution Service of Canada</b>		
François Lacasse, Senior General Counsel, Supreme Court Coordination		
Yvan Poulin, General Counsel, Quebec Regional Office		

**As an individual** 2010/04/20 13

John Martin, Professor,  
University of the Fraser Valley

**Statistics Canada**

Mia Dauvergne, Senior Analyst,  
Policing Services Program, Canadian Centre for Justice  
Statistics

Craig Grimes, Chief and Advisor,  
Courts Program, Canadian Centre for Justice Statistics

Julie McAuley, Director,  
Canadian Centre for Justice Statistics

**Correctional Service of Canada** 2010/04/29 15

Larry Motiuk, Special Advisor,  
Infrastructure Renewal Team





**Royal Canadian Mounted Police**

2009/04/30

17

Doug Kiloh, Chief Officer,  
Combined Forces Special Enforcement Unit

Al Macintyre, Officer in Charge of Criminal Operations,  
Province of British Columbia

Fraser MacRae, Officer in Charge,  
Surrey Detachment

Gary Shinkaruk, Officer in Charge,  
Outlaw Motorcycle Gang Enforcement

Roland Wallis, Court Certified Drug Expert and Clandestine Lab  
Instructor,  
General Duty Police Officer and Senior Patrol Non-  
Commissioned Officer

**S.U.C.C.E.S.S.**

Evelyn Humphreys, Project Manager,  
A Chance to Choose

**Unincorporated Deuteronomical Society**

Bud the Oracle, Chief Justice

Robin Wroe, Registrar

**Vancouver Citizens Against Crime**

Wai Young, Coordinator

**Vancouver Police Department**

Brad Desmarais, Inspector in Charge,  
Gangs and Drugs Section

Bob Stewart, Inspector in Charge,  
Criminal Intelligence Section

**As individuals**

2009/04/30

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Mani Amar, Filmmaker

Deen Doung

Tony Helary

Bert Holifield

Elli Holifield

Michèle Holifield

Darryl Plecas, Royal Canadian Mounted Police Research Chair  
and Director of the Centre for Criminal Justice Research,  
School of Criminology and Criminal Justice, University College  
of the Fraser Valley

Ken Rafuse

**Association of Justice Counsel**

Marco Mendicino, President

**BC Civil Liberties Association**

2009/04/30

Kirk Tousaw, Board Member,  
Chair, Drug Policy Committee

**City of Langley**

Peter Fassbender, Mayor

**City of Surrey**

Dianne Watts, Mayor

**City of Vancouver**

Gregor Robertson, Mayor

**Corporation of Delta**

Jim Cessford, Chief Constable

**Greater Victoria Chamber of Commerce**

Shannon Renault, Manager,  
Policy Development and Communications

**Kelowna Chamber of Commerce**

Weldon LeBlanc, Chief Executive Officer

**Law Enforcement Against Prohibition (LEAP)**

John Shavluk

**Metro Vancouver**

Lois E. Jackson, Mayor of the Corporation of Delta,  
Chair of the Board of Directors, Mayors' Committee

**Royal Canadian Mounted Police**

Janice Armstrong,  
City of Langley

**Surrey Board of Trade**

Ray Hudson, Manager,  
Policy Development and Communication

**Surrey Fire Services**

Len Garis, Chief

**As individuals**

2009/10/22

40

Michel Auger, Investigative Journalist (Retired)

Jean-Pierre Lévesque, Royal Canadian Mounted Police (Retired)

André Noël, Journalist

Julian Sher, Investigative Journalist

**International Centre for the Prevention of Crime**

Margaret Shaw,  
Sociology and Criminology

**Barreau du Québec**

2009/10/22

41

Giuseppe Battista, Lawyer and President,  
Committee on Criminal Law

Nicole Dufour, Lawyer and Coordinator,  
Criminal Law Committee

**Canada Border Services Agency**

Angelo De Riggi, Manager,  
Regional Intelligence Division of Quebec

**Criminal Intelligence Service Canada**

Pierre-Paul Pichette, Chief Executive Officer,  
Criminal Intelligence Service Quebec

**Royal Canadian Mounted Police**

Martine Fontaine, Officer in Charge,  
Integrated Proceeds of Crime, Montreal

Sylvain Joyal, Officer in Charge,  
Drugs Section, Montreal

**Sûreté du Québec**

Francis Brabant, Legal Counsel,  
Office of the Assistant Director of Criminal Investigations

Denis Morin,  
Investigative Unit on Financial Integrity

**As an individual**

2009/10/23

42

Stephen Schneider, Associate Professor,  
Saint Mary's University, Department of Sociology and  
Criminology

**Canada Border Services Agency**

David Aggett, Director,  
Enforcement and Intelligence

**Government of Nova Scotia**

Robert Purcell, Executive Director,  
Public Safety Division, Nova Scotia Department of Justice

**Halifax Regional Police Drug Unit**

Frank A. Beazley

Sharon Martin, Coordinator,  
Youth Advocate program

Don Spicer, Public Safety Officer

**Royal Canadian Mounted Police**

Brian Brennan, Officer in Charge,  
Federal Policing Branch, H Division

**In My Own Voice**

2009/10/28

44

Sobaz Benjamin,  
Program Director

Kevin Brooks, Member

Glynn Johnston, Member

Kenny Loy, Member

Rebecca Moore, Member

Marshall Williams, Member



## **APPENDIX D LIST OF BRIEFS**

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**40<sup>th</sup> Parliament – 3<sup>rd</sup> Session**

**Organizations and individuals**

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**Boys and Girls Clubs of Winnipeg Inc.**

**Smith, Beverley**

**Statistics Canada**



## **APPENDIX E LIST OF BRIEFS**

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**40<sup>th</sup> Parliament – 2<sup>nd</sup> Session**

**Organizations and individuals**

---

**Amar, Mani**

**Brown, Steve**

**City of Surrey**

**Gordon, Robert**

**Kelowna Chamber of Commerce**

**Mohan, Eileen**

**Resist Exploitation, Embrace Dignity (REED)**

**Vancouver Board of Trade**



## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 3, 17, 21 and 26](#) from the 41<sup>st</sup> Parliament, 1<sup>st</sup> Session, [Meetings Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 27, 28, 32, 43 and 54](#) from the 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session and [Meetings Nos. 9, 11, 17, 18, 40, 41, 42 and 44](#) from the 40<sup>th</sup> Parliament, 2<sup>nd</sup> Session) is tabled.

Respectfully submitted,

Dave MacKenzie, M.P.

Chair



# **THE STATE OF ORGANIZED CRIME IN CANADA: SUPPLEMENTARY REPORT FROM THE OFFICIAL OPPOSITION**

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Since 2009, New Democrats have worked collaboratively with other parties on the Standing Committee of Justice and Human Rights with the objective of recommending new strategies for the Federal government in its fight against criminal organizations. The resulting Report identifies many of the outstanding issues that require urgent action by the Federal government as we collectively seek to improve the safety and security of communities across the country.

New Democrats have consistently promoted an effective and balanced approach to combating organized crime. This approach involves prevention, policing and prosecution and is founded on the conviction that the fight against organized crime must be taken to its root: the recruitment of youth. New Democrats also believe in providing the judiciary with the necessary tools to effectively and efficiently prosecute members of criminal organizations to the full extent of the law. To this effect, New Democrats worked together with the Government to pass Bill C-2, the mega-trials bill, in June 2011. It is through the lens of a balanced and effective approach that New Democrats support the majority of the recommendations proposed in this Report.

However, this Report cannot be considered in isolation. Instead of tackling organized crime sensibly, the Conservative government has proven to Canadians, through overreaching bills such as C-10 and C-30, that it is willing to put ideology ahead

of levelheaded legislation. The Conservative government has also too readily run roughshod over common law and criminal justice traditions that have been carefully developed over centuries.

New Democrats oppose a number of the recommendations in this Report that reflect provisions contained in Bills C-10 and C-30 and that erode established judicial discretion, by imposing ineffective mandatory minimums, and that unduly intrude on the privacy rights of law-abiding Canadian citizens. Furthermore, New Democrats are concerned that certain recommendations appear in the report without textual backing, while other significant issues, raised by experts during committee hearings, are entirely absent from the Report and Recommendations. The Official Opposition will continue to offer practical, evidence-based solutions that address organized criminal activity at its root in Canada.

### **SENTENCING: MANDATORY MINIMUMS**

New Democrats have grave concerns with the Government's agenda to impose mandatory minimum sentences instead of focusing on appropriate sentencing and rehabilitation. All evidence points to the very expensive result of mandatory minimums, most notably in terms of increased costs associated with higher incarceration rates and increased sentence terms. Instead of spending billions of dollars at both federal and provincial levels, the allocation of scarce financial resources would be better served on inmate rehabilitation services and prevention programs. Victims of crime would benefit much more from this approach than one determined by outdated modes of extreme criminal punishment and deterrence, founded on an ethos of a vindictive sense of righteousness.

As well, mandatory minimum sentences subvert the discretion of the judiciary to impose a just sentence upon hearing all the facts and circumstances of an individual case including the role and contributions of organized criminal activity to the commission of an offense. Judicial independence and discretion have long histories in Canada, and around the world, of reducing costs associated with criminal justice and preserving a more humane and reasoned practice of criminal law. New Democrats believe in these principles and oppose recommendations that weaken judicial independence and discretion.

Consequently, the Official Opposition finds objectionable the first recommendation following paragraph 100 of the Report, which recommends the amendment of the Criminal Code to impose mandatory minimum sentences for criminal organization offences. Members of criminal organizations who instruct individuals to commit an offence are already liable to imprisonment for life under section 467.13 of the *Criminal Code*.

#### **PROPOSED DISCLOSURE MODEL**

The second recommendation following paragraph 96 of the Report, calling for the creation of an electronic disclosure model to serve as a standard Crown brief, also elicits concern from New Democrats. In its application, it is not clear whether this recommendation would force defense lawyers to disclose their defense before the trial. If indeed the case, this recommendation would stand in stark opposition to established criminal justice tradition, and the right to make full answer and defense to any charge could be compromised. New Democrats thus propose the addition of the following words to the recommendation to rectify this ambiguity: "...not include disclosure that

could identify a confidential informant or reveal a secret police investigative technique **and does not require defense counsel to disclose a defense plan to the Crown.”**

## **LEGAL ACCESS**

New Democrats support legislative changes to ensure that police have the powers to address the emerging threats posed by cyber crime, and support efforts to bring policing into the digital age. Paragraph 140 of the Report states that, “electronic eavesdropping legislation has not kept pace with recent changes in telecommunications.” The NDP recognizes that the structure of Part IV of the Criminal code, pertaining to electronic surveillance, has remained largely unchanged since 1974. The rights afforded to the state for the purposes of public safety are indeed dated, given the advent of the digital age.

However, the NDP wishes to highlight the crucial difference between updating the investigative tools available to the law enforcement authorities and deepening the surveillance powers of the state, thus allowing greater access to the private lives of law-abiding Canadians. The necessity of the former should not justify the promulgation of the latter. New Democrats believe that it is important to protect basic rights and freedoms and opposes the erosion of privacy rights and the expansion of unchecked surveillance powers contained within two recommendations emanating out of this Report.

The recommendation following paragraph 144 calls for the establishment of statutory mechanisms to enable law enforcement agencies to acquire basic subscriber identification from telecommunication service providers without a warrant.

The objections of the New Democrats to this recommendation can be summed up in two points:

1. *Defending judicial oversight*: The NDP believes that judicial oversight and discretion are essential to maintaining the balance between the surveillance powers of the State and the privacy rights of Canadians. As such, the NDP cannot support a recommendation that seeks to sidestep judicial oversight by allowing authorities to access personal identifiers without a warrant. The provisions for obtaining warrants to access information not readily available under existing law, could be facilitated by the use of telephone warrants for example, as a means to enable expedited police intervention, where required.
2. *Unnecessary expansion of powers*: The Report states in paragraph 142: “According to law enforcement agencies, it is difficult to consistently obtain from telecommunications service providers such basic information as their clients’ names and addresses.” While the NDP respects the opinion of law enforcement officials who have testified at the Justice Committee in favor of warrantless access to subscriber identifiers, other evidence suggests that these measures are not necessary. According to data obtained from the Ministry of Public Safety and Emergency Preparedness, currently 95% of requests to TSPs for identifier information by law enforcement officials are granted. Therefore, it is not apparent that law enforcement investigations are being systematically undermined by the current statutory status quo.

The first recommendation following paragraph 141 of the Report calls for legislation to require TSPs and telecommunication device manufacturers to build the ability to intercept telecommunications into their networks.

New Democrats are concerned by the financial repercussions of this recommendation on TSPs, ISPs and, ultimately, on Canadians. Building intercept capability into TSP and ISP networks will be costly, particularly for smaller service providers. Indeed, on February 22<sup>nd</sup>, 2012 Public Safety Canada admitted that the implementation of bill C-30 would cost the telecommunication industry at least \$80 million over four years. In a market dominated by a few large companies, small TSPs/ISPs offer consumer choice and ultimately a more competitive marketplace, bringing down prices for consumers. The implementation of this recommendation, treated in isolation, could incur a disproportionate cost on the bottom line of small TSPs and ISPs, either causing them to go out of business or to increase their fees. Ultimately, the internet users could bear the financial burden of deepened surveillance capabilities.

Furthermore, the NDP is concerned about the absence of a concurrent recommendation establishing an enhanced oversight mechanism to ensure the accountability and respect for privacy rights of subscribers, when TSPs/ISPs and law enforcement agencies utilizing these new interception capabilities. Increasing interception capabilities by the State must be balanced by an effective and credible oversight mechanism dedicated to protecting the privacy rights of Canadians.

Finally, the Committee heard testimony suggesting that both the ease of access to and ability to be anonymous when acquiring cell phones were serious hindrances to the efforts of law enforcement in their investigations of criminal organizations. New

Democrats find problematic the recommendation after paragraph 145 of the Report, which calls on the government to examine the possibility of requiring cell phone merchants, and possibly telecommunication service providers, to verify the identity of purchasers and subscribers. It is clear to New Democrats that this recommendation lacks foresight. Evidence suggests that the implementation of this recommendation would impose enormous costs on telecommunication companies, particularly small and medium sized enterprises, and would inevitably be passed on to the consumer.

### **INADEQUATE JUSTIFICATION**

New Democrats find that the recommendation following paragraph 132, as well as the first following paragraph 160 appear in the Report without sufficient justification. New Democrats are concerned that these recommendations do not flow out of testimony heard during committee hearings on this study. Consequently, some of the content in these recommendations emerges without justification. To this effect, New Democrats oppose the recommendation following paragraph 132, which calls for the lowering of the requirement to report, by select firms, all cash transactions of \$7,500 or more, from \$10,000 or more. This is particularly concerning, when extended to law firms, considering the impact this could have on solicitor-client confidentiality requirements. In the same vein, this recommendation flies in the face of the existing agreement between FINTRAC and provincial law societies. New Democrats find this recommendation both unjustified and unrealistic.

In relation to the first recommendation following paragraph 160, New Democrats, quite simply, question the relevance, to a study on organized crime, of a

recommendation to empower the Superior Court of Justice to rule on claims of national security privilege and to remove the ability to appeal such rulings.

Furthermore, in regards to the second recommendation following paragraph 160, to amend the Criminal Code to provide the power to appoint counsel for a self-represented accused, New Democrats don't agree that a sufficient evidentiary basis has been made to overturn the existing Criminal Code and the ruling of the Supreme Court of Canada on this issue.

## **LEGAL AID**

Over the course of two years of testimony, the Standing Committee on Justice and Human Rights heard from many expert witnesses, raising crucial issues that are absent from the Report and recommendations. Among them, witnesses spoke of the growing underfunding of Legal Aid programs across the country. Testimony from committee meetings reveals that accused, with affiliations to criminal organizations, often see their assets seized, leaving them without means to finance a defense. Underfunded Legal Aid can cause shortages in defense lawyers resulting in delays in trials and often longer trials because fewer experienced criminal defense lawyers are available for legal aid on complex matters. New Democrats believe individuals accused of organized criminal activity must be prosecuted to the full extent of the law, however the weakening of the proper administration of justice caused the underfunding of Legal Aid programs, perpetuated by the Conservative government, is undermining the fairness of the system.

New Democrats will continue to push the Government to adopt balanced and effective strategies to combat organized criminal activities that jeopardize the security of

Canadian streets and communities. Our party sees the majority of the recommendations in this report as taking Canada in the right direction. Yet, through bills such as C-10 and C-30, the Conservative government has proven its penchant for expensive, overreaching and ideologically-driven legislation. New Democrats oppose this approach that appears in certain recommendations in this report. An effective fight against organized crime must be evidence-based, practical and respect the rights of law-abiding Canadians. The Official Opposition will continue to hold the Government to account to push for smart legislation that fights against organized crime, while respecting evidence-based research, the rights of law-abiding Canadians and tax-payer dollars.

