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Tuesday, March 19, 2013

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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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•(0845)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good morning, everyone. This is meeting number 76 of the Standing Committee on Public Safety and National Security, Tuesday, March 19, 2013. Today we are going to continue our study of Bill C-51 and its amendments to Canada's witness protection program.

In our first hour, we're pleased to have with us here today Mr. Yvon Dandurand, a criminologist with the School of Criminology and Criminal Justice at the University of Fraser Valley.

As well, if he is able to be here, we expect to have the president of the Canadian Association of Police Boards, Mr. Alok Mukherjee. He has appeared at this committee before. We have a bit of winter happening outside as all of you know, but we expect him to be here shortly.

Perhaps we would then open with Mr. Dandurand.

Welcome. This is a rude awakening for you coming from Vancouver, but this is Ottawa. We look forward to your comments. If you'd be willing to take some questions at the end your presentation, that would be appreciated.

[Translation]

Professor Yvon Dandurand (Criminologist, School of Criminology and Criminal Justice, University of the Fraser Valley, As an Individual): Thank you very much.

Thank you for the opportunity to appear before your committee this morning. I really appreciate this because I think Bill C-51 will make it possible to increase the effectiveness of the federal witness protection program, as well as of the available provincial programs. I believe there is a consensus right now that the bill will significantly improve the existing legislation.

As some members of the committee may recall, I had the pleasure of making suggestions to the committee in 2008 when the committee was previously dealing with the witness protection issue. At that time, my suggestions were based on my own research, including the research I was doing for the Air India commission. At that time, I pointed to the importance of making some improvements to the existing program. I will go back to those suggestions this morning and compare them to what is included in Bill C-51. I think most of the suggestions that I made at the time are reflected in one way or another in Bill C-51. I say "one way or another" because, in some cases, the solutions proposed in the bill are not necessarily the ones that I had suggested. However, in most cases, they are still dealing with the problems that the committee and I identified at that time.

In 2008, I made a suggestion to the committee about the decision-making process for the admission of candidates to the federal program. I noted then that the Council of Europe considered that it was important to separate witness protection agencies from those responsible for investigations and prosecutions. I also felt it was important to do so in order to improve the decision-making process, to ensure objectivity and to better protect the rights of individuals. That is why, at the time, I suggested the creation of a more or less independent agency to manage the program. This committee also made similar suggestions or recommendations.

I see today that the government and the RCMP are proposing a different approach to address this need. Organizational changes are apparently in progress to ensure the centralized management of the program and more consistent management properly focused on witness protection. We learned that these organizational changes would be implemented fully this May. We also learned that a new admissions protocol has been developed and will be implemented. I am ready to believe that those changes will have the intended effects and address the pitfalls that were identified in 2008. However, I would be more likely to believe it if I was told that an independent evaluation of the changes will be carried out in the near future. For the time being, I will say that I am satisfied with the solution proposed, but we will have to wait and see if it is sufficient.

At the time, I also said that It was important to add an independent oversight mechanism to the witness protection program. Again, the government is proposing a modest solution, but I think it is a solution in the right direction. The plan is to set up an advisory committee for the witness protection program, a committee that would report to the commissioner or to his delegate. In my view, that is also a step in the right direction, but we still have to see in due course how that committee will operate and fulfill its duties.

•(0850)

[English]

I know that the committee has been looking into the costs of the program and whether existing resources are available to meet the growing needs of the program. I'm not in a position to say much about the resources that are available for the program, but I would assume that the amount of resources required is dictated in part by the growing need for the services that the program offers.

Unfortunately, it is very difficult to estimate the total need or demand for this kind of program. We know that slightly over a hundred candidates are considered every year. Potential candidates do not directly apply to the program; they are referred to it by a police organization—and will be by other security organizations if Bill C-51 remains as is.

We are told also that in fact very few people want to join the program. That may very well be true, as the committee can appreciate, because participation in the program for a witness is a hugely disruptive choice that a witness can make. However, there is no way to independently verify this assumption. We don't know, really, what the demand is, and given the secrecy that must accompany this program, it's very hard to know whether there's more of a demand than we currently know.

I have suggested in the past that, in existing protection programs, full protection tends to be extended to witnesses only in cases involving the most serious crimes, and not necessarily always in cases involving the most serious threats. This is because the logic behind such programs, given their cost and the need to establish priorities, is based primarily on the desire to facilitate the cooperation of the witness and not on the premise that the state has an obligation to protect all witnesses and that witnesses have a right to be protected.

I am well aware of the fact that section 7 of the present law identifies the factors that must be considered in determining whether a witness should be admitted to the federal program. However, the nature of the risk to the security of the witness is only one of the factors to be considered together with the costs involved, the value of the information or evidence given by the individual, the likelihood of the witness adjusting to the program, and other factors.

I would draw the attention of the committee to the fact that there is actually no publicly available data on how these criteria have been applied in the past. It is therefore quite difficult to determine how these criteria are being applied in practice and whether they actually serve the purpose they were intended to serve.

I understand that the RCMP is improving its own database on all cases considered for admission in the program. I hope this will lead to some independent analysis and further transparency in the way in which current decisions are made concerning candidates for admission into the program.

I think all of the changes proposed in Bill C-51 are going in the right direction, but I am still not sure how the RCMP proposes to measure the impact of these changes and determine whether they will achieve their goals. In 2008 I was advocating for independent research on the efficiency and effectiveness of the witness protection program and in the related areas of witness intimidation, the use of criminal informants, and accomplice testimony. I am not sure this kind of research will take place, but it definitely should.

In 2008 I suggested it was time to address the need for an effective complaint and redress mechanism for witnesses at risk and for protected witnesses who are endangered or whose rights may be abused as a result of poor witness protection practices.

I know that Bill C-42 will establish a new civilian complaint commission, and that amendments contained in that bill and in Bill

C-51 will allow the commission access to the information it needs to perform its function. I am not aware of other measures that may have been taken to address that issue. I hope this committee will have a chance to look further into this aspect of the question.

There is another potential issue with Bill C-51 that may become problematic. I am referring to the new wording concerning the protection of information found in clause 12 of the bill, relating to section 11 of the law. Protection of information, as the committee can appreciate, is at the very heart of a witness protection program.

On the one hand, I am very pleased that the proposed amendments will enhance the safety of those who provide protection to program beneficiaries. That change was long overdue.

On the other hand, I am worried that the new section may negatively affect the situation and the rights of the beneficiaries themselves and perhaps render them more vulnerable.

● (0855)

The modified version of section 11 of the law contained in clause 12 of the bill provides only a limited exception for protectees from the prohibition against disclosure. I'm not sure how protectees will always be able to determine on their own whether something they may reveal directly or indirectly could result in "substantial harm". I do not know either whether this new wording may prevent protectees from seeking legal advice about a formal complaint they may wish to make or some other decision they need to make concerning their own participation in the program.

It seems to me that the exception for protectees, as worded in clause 12 the bill, is narrower than what currently exists in the law. It should probably be formulated more broadly. However, I will admit that this is a complicated issue, and I sincerely wish that the committee will study it very carefully.

I will conclude my remarks, Mr. Chairman, with a reminder of the need for greater transparency in the management of witness protection activities and programs. I and others have argued that there is a fundamental imbalance between the rights of witnesses who can be compelled to testify and the rights of the state to demand that witnesses respond to summons and subpoenas, testify under oath, and tell the truth. The imbalance is particularly troubling when one considers that most of the decisions made about witnesses—the information or evidence they bring forward and whether or not they are compelled to testify—depends on police and prosecutorial discretion. This is why guidelines concerning these practices are important and why the careful monitoring of this somewhat obscure part of the criminal justice process is required.

It's also important to ensure that witnesses have access to legal advice and representation with respect to these decisions and the process that leads to them. I'm very pleased by the decision of the RCMP to offer the services of legal counsel to all candidates being considered for admission into the program. That is clearly a positive development. However, it would be important to know also what access protected witnesses have to legal advice or representation once they have been admitted into the program. For example, could they obtain legal advice without breaching their obligation to protect information if they are making a formal complaint against the RCMP or against its protection program?

Thank you very much for the opportunity to appear before you today. I look forward to answering any questions you may have.

• (0900)

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

We welcome Mr. Mukherjee back. We're pleased to have you join us here today. My understanding is that you don't have a statement to give but you're here to answer questions. We appreciate that very much.

We will move into our first round of questions. We'll go to Mr. Norlock, please.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair. And through you to the witnesses, thank you for appearing today.

I recall, Mr. Dandurand, your appearance before this committee in 2008, and some of your suggestions. I'm happy that the government has seen fit to incorporate them, although, to use your words, "rather lightly" in some respects, but then we don't get everything we want all the time.

At that time there were, as you may recall, a great many other suggestions, some of them not quite the same as yours. As a matter of fact I wouldn't say they were diametrically opposed, but they didn't necessarily go along the same path yours did. It's good to see that the current legislation goes down that path.

I was making some notes as you were speaking, and I printed the word "trust". You were talking about the availability of counsel for the people in the program who may have some complaints. If I recall correctly, one of the reasons the committee was looking at the witness protection program was that there had been some issues surrounding the way some of the people protected were being treated. I believe, as a matter of fact I know, that this legislation covers some of that or neutralizes some of those problems.

When we heard from the RCMP witnesses, I believe some of the testimony indicated that there is an availability of counsel, and I think you mentioned that. So how much more...?

We live in a society where everybody runs around yelling and screaming about rights, rights, rights. But there's a huge responsibility living in a democracy, in a country that has the rule of law. Everyone is responsible, not just the state. The individual citizen is responsible for the function of our justice system and public safety. If you go back to the original function of police, it's that the people should police themselves. But in a modern society you have people who put on uniforms to do these jobs.

All that considered, for these great people who take their responsibilities seriously to give evidence for the state, because of the complexity and because of the danger that puts them in, the state now provides them with an opportunity to... Because they've taken such a big stand, the state assumes a very expensive.... If I remember correctly, the average dollar figure per year is around \$60,000 per witness—some more, some less.

I wonder if you could talk about the trust element, and then the responsibility element of the witness and how the state takes on this

responsibility. And since we're dealing with Bill C-51, does Bill C-51 strike the right balance? So far we have heard that generally it does.

Prof. Yvon Dandurand: Thank you for the question.

There is no doubt that the decision to testify or cooperate with the authorities is an important and difficult decision to make for many witnesses and informants, particularly because we're talking very often talking about crimes that involve very dangerous organizations. Therefore, it's a very difficult decision. It involves not only the witness himself or herself, but also the family, friends, and others. Clearly, when people have the courage to do that, for whatever reason, we have an obligation to protect them. The program does that, to a large extent.

We don't know how well it protects them, because there hasn't really been a whole lot of evaluation of what happens once people are in the program. That's part of the difficulty with this particular program. Out of necessity, it has to protect information, it has to hide what it's done, it has to hide its methods. But as a result, there is so little information available on what's really happening that sometimes it's like writing a blank cheque to the organizations responsible.

From time to time we hear complaints. There were some in 2008, and I'm sure there have been others since. But we don't know about the complaints that do not come forward. You have to imagine that it must be a very difficult thing for witnesses to lodge formal complaints when they perceive that their own security is dependent on their cooperation with the authorities.

I'm not suggesting for one moment that the RCMP or any police force is blackmailing witnesses, or anything of that nature, but psychologically, when you are really dependent on the protection extended to you by one of these programs, it's a very difficult decision to go forward and complain.

• (0905)

Mr. Rick Norlock: You mentioned the psychology of this. We heard from the RCMP that they do provide the services of psychologists to people who are considering going into the program, and not just those people but also their families. I would suggest to you that it is probably harder on their children, let alone their spouse, be it a man or woman, to have to change their life. It's not just the witness, but the family that has to do that. You can imagine if there were teenagers. I know that just moving for your job is hard enough on your family. As the RCMP testified, there is psychological help available. So that covers your concern.

Going back to 2008, the reason that precipitated the study by this committee.... And here I would suggest to you the result is Bill C-51. There probably aren't a lot of complaints because the people administering this, the RCMP, know that if a program is to be of value and attract the kinds of people we need to have as witnesses, they need to make it so there won't be any complaints. In other words they cover most areas. Would you not agree with that?

Prof. Yvon Dandurand: I would definitely agree that the new provision of psychological support is absolutely important. It probably does address a lot of the concerns that have been expressed in the past, so that is a very positive development. It's not the same though, as a psychologist is not there to help someone assert their rights under the law. That was the point I was making. However, I believe this addition of psychological support and professional services is absolutely crucial.

The Chair: Thank you. We've got to stop there. We'll move to Mr. Garrison, please, for seven minutes.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you very much, Mr. Chair, and thank you to both of you for being present this morning. Out of respect for other committee members, Mr. Dandurand, I won't ask you about your recent experience with gardening and cherry blossoms and other things that British Columbians are thinking about this morning.

I would like to go back to something you made a part of your presentation in 2008 and emphasized again today. I find it very interesting when you say that the criteria don't really focus on the right to be protected. Often it's the most serious crimes, rather than the most serious threats, that seem to be the criteria for determining who receives protection.

I know you've studied witness protection around the world. Can you tell us whether there's any difference from the criteria you've seen in other places?

Prof. Yvon Dandurand: There is not a whole lot of difference in terms of the criteria, but there is a growing recognition that witnesses and victims have a right to protection whether or not they're being useful—or very useful—to the system. This is perhaps not totally reflected in the law. I'm not suggesting it isn't reflected in practice, because I do not really know how those decisions are made case by case, but it's not totally reflected in the law.

The purpose of the program as it was first defined and continues to be defined in Bill C-51 is to help those who help the justice system, and not to help those who are in serious trouble because of their cooperation with the justice system.

I'm going to ask you a hypothetical question. What decision would be made under the criteria if someone is no longer required as a witness because the offender has been dealt with otherwise?

• (0910)

Mr. Randall Garrison: We know the witness protection program is very expensive. Did you look at other mechanisms for protecting witnesses other than the specific protection program? Are there lessons we could learn from other jurisdictions in terms of costs?

Prof. Yvon Dandurand: All jurisdictions rely on a witness protection program like this when they have one, but only as a last resort. So it's the tail end, the extreme of the continuum, of protection practices. That's not the one we should rely on all the time. This is one of the reasons I welcome the recent developments about cooperation with provincial programs, where sometimes all that is required is assistance in changing identity.

Mr. Randall Garrison: On March 7, Mr. Mukherjee, we had a very good presentation from Micki Ruth; unfortunately voting cut us off from getting to ask any questions at that point. She made a

number of recommendations on behalf of the Canadian Association of Police Boards. One of those dealt with the question of downloading costs onto the municipalities. I wonder if you would like to add to her statement on the impact of the costs of witness protection on municipal police forces in particular.

Dr. Alok Mukherjee (President, Canadian Association of Police Boards): Certainly. As a principle we have been saying that we shouldn't make laws that add to the costs of municipal policing. If we do, then we should make sure they're properly funded. That principle applies just as well to this legislation.

As my colleague said, we support the principle of the legislation. It's been a while coming and we're glad to see it. Our concern is that without sufficient funding available to municipal police services, we won't be able to take full advantage of the program.

It's an important program. In some jurisdictions the provinces have a bit of funding. Ontario does, for example. When that runs out we look to the federal funding.

Our conclusion has been that there needs to be more funding available than currently is the case. Without the availability of sufficient funding, our ability to take advantage of the program will be limited. In places like Toronto, that's a big problem because, as you know, we're dealing with serious violent crimes and often rely on witnesses from the community, not informants and others but witnesses from the community. Their needs may not be significant, as was mentioned. All they may need is a little bit of protection, but that requires that sufficient funding be available for us to be able to do it. That, for us, is a problem.

Mr. Randall Garrison: Would you say, then, that sometimes decisions are made on whether the program can be used or not based on the availability of funding?

Dr. Alok Mukherjee: That is correct.

Mr. Randall Garrison: At what level are those decisions made?

Dr. Alok Mukherjee: They're being made at the police service level by the chief of police.

Mr. Randall Garrison: How often would you say that happens in Toronto? Do you have any idea? Has this been surveyed by your board?

Dr. Alok Mukherjee: I think it's the same issue that Professor Dandurand mentioned: there has not been a full evaluation. Understanding the extent of the limitation is difficult, but I know it has been brought to the board's attention that this is an issue for us.

Mr. Randall Garrison: I have limited time. I'll go back to one of the other recommendations. Ms. Ruth talked about the independent oversight question, and Mr. Dandurand has raised that this morning. Can you explain the interest of the Canadian Association of Police Boards in this question?

• (0915)

Dr. Alok Mukherjee: I guess what Ms. Ruth was talking about is the fact that the RCMP has a significant role in investigation and that it administers the program as well. The sense is that separating the two functions might benefit the administration of the program and provide a measure of independent decision-making as to who gets the funding support. That is an important consideration for us.

Mr. Randall Garrison: I think there were a total of five recommendations we talked about. Some of those dealt with the designation of provincial programs. Do you feel that this bill actually has adequate measures? Do you know of municipalities that run their own witness protection programs?

Dr. Alok Mukherjee: We don't have numbers, but our association has been advised that there are areas where the municipalities are required to fund programs. We don't do that in Toronto because we have a provincial program. It has been brought to our attention that the ability of municipalities to fund programs is virtually non-existent.

The Chair: Thank you very much.

We'll go back to Mrs. Bergen, please.

Ms. Candice Bergen (Portage—Lisgar, CPC): Ms. Bergen please. Mrs. Bergen is my mom.

Good morning to the witnesses. Thank you both for being here.

I do have a question for you, Mr. Dandurand. I want you to expand a little bit more on the aspect you brought forward on clause 12.

Before you do that, Mr. Mukherjee, I'm just not clear about something. As I read this bill, there are a couple of changes that would affect provinces and municipalities in a very positive way, in that these would streamline the process and make it a lot easier for municipalities.... And these actually would be through the province because the province, if it administers a program, would be getting documentation for changes of identity. That would not cost municipalities one cent; it would in fact save them costs or resources.

The other part of this act that has changed is that the criteria are expanded, sir. That means that there would be additional venues whereby people could be referred to the program. For example, the Department of Defence could now refer individuals to the program. Again, that would not affect municipalities in any way, shape, or form. That would be the RCMP, which has clearly testified numerous times that it has the resources.

Sir, it's important. When you say that you don't have enough money and that this act is somehow going to stretch you and stretch municipalities, I really need specifics. Can you please tell us exactly what in this bill would incur additional costs for municipalities? Be brief because I do want to go on to clause 12. Thank you.

Dr. Alok Mukherjee: Yes, certainly. As my colleague Ms. Ruth mentioned, we do support the legislation—

Ms. Candice Bergen: Which is great, but explain the costs—

Dr. Alok Mukherjee: —and I was pleased, because way back in 2007 I had spoken to the then minister and the then standing committee about the need for some of the provisions that are in this bill, so that's good. What we are talking about are criminal situations that our local police municipal services—

Ms. Candice Bergen: Specifically on this bill, where will this bill cost you more money? When you look at the changes that are made, you see that they're administrative. They give greater protection to those who are administering it, and then they expand the criteria.

It's important that when you come to a committee, sir, and you say it's going to cost local police and municipalities more, that a specific bill will cost more.... I disagree with you, and I'm asking you to tell me specifically where it will increase costs.

Dr. Alok Mukherjee: Well, it will increase costs because of the related issues. I mentioned that there is not sufficient funding proportionate to the need across the country—

Ms. Candice Bergen: For witness protection?

Dr. Alok Mukherjee: For witness protection—

Ms. Candice Bergen: There—

The Chair: Let him finish.

Ms. Candice Bergen: All right.

Dr. Alok Mukherjee: —because the province or the local municipal police service has to come to the RCMP when, in cases like Ontario's, provincial funding has run out, is exhausted. The RCMP needs to make a decision. As you've seen or heard, there have been complaints made where protection was not provided—

Ms. Candice Bergen: No, sir.

Sir, the RCMP have testified numerous times. It has never been denied because of cost. I'm not sure if you were privy to that testimony.

Dr. Alok Mukherjee: —and our chiefs have said to us that their ability to access fully, proportionate to their need, is not there. I am simply reporting to you what we have been told by our chiefs.

● (0920)

Ms. Candice Bergen: Okay.

A voice: So the RCMP is lying...?

Ms. Candice Bergen: Well, I guess.... Yes, the RCMP have come and testified completely contrary to that.

All right. Thank you very much for your explanation.

Mr. Dandurand, I'm quite interested in what you were talking about. Could you expand a little more on your concerns over some of the wording? I think I have a bit of a handle on what you were talking about. I'd appreciate a little more explanation.

Prof. Yvon Dandurand: Thank you for your question.

Basically, as for the exemption that is created when it comes to communicating information about protectees, or about people offering protection, or about methods used in protecting people, the exception that is created for protectees is very narrow. It covers only one type of information.

I'm saying this for a number of reasons. One is that for the criteria we use, the law currently says “knowingly”. Well, “knowingly” means one thing, but when it says they have “reason to believe” that it will cause “substantial harm”, that is not something that is readily understandable by witnesses, their families, and their relatives. Some of them, as was pointed out earlier, are children. That was one thing.

The other thing is that when we're talking about giving information directly or indirectly, imagine a 14-year-old who isn't a protectee under the program and who's involved in social networking and somehow divulges something that may be conceived to expose someone to harm, maybe his own parents. What would happen in those cases?

Well, common sense, hopefully, would be that nothing happens to that adolescent or that protectee, but if you interpret the law literally, it would seem that people and their families in those situations would always be in a very difficult position and under a lot of stress in terms of what it is that they can or cannot say. I know they will be supported. I know they will have information. I know they will even have psychological assistance. But it's a very difficult criteria for a layperson to understand. It might please people in courts, but in everyday life, protectees may not always understand what that means and what they're allowed to say and not allowed to say.

Ms. Candice Bergen: Okay. Again, just so I'm clear on it, my understanding was that it's replacing what was there previously, where it was the integrity of the program that was being protected, and now it's the substantial harm—

Prof. Yvon Dandurand: Yes.

Ms. Candice Bergen: I'm really interested. We want to make sure that this is the best legislation possible, but to list every possible scenario is pretty difficult—

Prof. Yvon Dandurand: It is.

Ms. Candice Bergen: —in a piece of legislation. I appreciate that and I think it's certainly something that we'll at least take a look at. We want to make sure that we have the best piece of legislation.

How much time do I have, Chair?

The Chair: Your time is just about out: 15 seconds.

Ms. Candice Bergen: Okay.

Is there any—

An hon. member: Done.

Voices: Oh, oh!

Mr. Rick Norlock: Thanks for the countdown.

Ms. Candice Bergen: I'm done, Mr. Chair.

Thank you very much.

The Chair: Mr. Coderre, welcome to the committee.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Thank you, Mr. Chair.

Mr. Dandurand, when we talk about witness protection, we are dealing with a challenging issue. There are two ways to stop the bad guys. To put an end to a system, you either infiltrate it, or you find someone to do it from the inside. I am not here to lecture anyone and I am not a former police officer either. I know there are security issues. We must find a balance between secrecy and protection, not only of society, but of the system itself.

That is what I would like to talk to you about because that is what bothers me the most. We are saying that this bill is a step in the right

direction, but, as you know, it will not be reviewed. So we will have to live with this bill for a number of years.

That is why I would like you to first explain the relevance of setting up an independent organization. The people in the best position to protect witnesses or to bring them into this program are definitely those who talk and negotiate with the witnesses, particularly those at the RCMP.

What would the benefit be of setting up an independent organization to further manage this program?

I am very cynical, but the more people know about it, the more chances there are of leaks. It is a practical question. How can we reconcile this situation and the existence of an independent agency?

Prof. Yvon Dandurand: Thank you for your question.

My recommendation was to establish an independent agency, but today, I would like to let the committee know that I am willing to allow for the benefit of the doubt to see how the proposal in the bill will address certain situations.

You are quite right to say that we are dealing with challenges. The people who participate in the witness protection program are often difficult to handle. They are used to a certain lifestyle and so on, which makes it all very difficult. I also agree with you that the more people get involved, the more difficult it becomes to manage the protection of information.

Internationally, the creation of an independent agency is considered good practice. We don't actually want the decisions about witnesses to be too directly, even solely, influenced by investigation and prosecution needs. The rights of those individuals and their families must also be taken into consideration. In addition, in similar cases, we must make sure that the decisions are not necessarily made based on costs and savings by providing less protection.

Once again, I am not saying that this is what is happening. I am not sure what really goes on when decisions are made. At any rate, that is the reasoning behind this type of recommendation. Based on my understanding of the new administrative provisions proposed to manage the program, I would say that the situation will be improved. Will that be enough? It is hard to say. We will have to see. I agree with you that, once passed, this legislation may well be in effect for a long time.

On the other hand, I think many people, both inside the RCMP, in the government, and outside, have given the issue some thought. For the time being, I think it is an acceptable compromise. However, I would like to remind you that I asked or suggested that everything must be evaluated in one way or another. If an evaluation is conducted and the results are made public, we will be able to determine whether the lawmakers made the right choice or not.

• (0925)

Hon. Denis Coderre: Okay.

[*English*]

I'm a radical centre: we need a balance everywhere.

[Translation]

It is all about the evaluation.

In your view, should we propose that a review mechanism be provided for in the legislation? I am not talking about a structural review, but a legislative review, such as a five-year implementation. We are not talking about numbers, but people. There will be a direct impact on the quality of life of the people around them and their children. Those people might not understand the situation. Obviously, I was struck by the whole social media issue. There are fewer and fewer secrets,

[English]

less and less firewall.

[Translation]

Everything ends up being out in the open.

First, are you ready to recommend that a provision be added asking to review the legislation after five years in order to determine if it works? Second, if it is a question of an independent body, we also have to think about security clearance.

Would it be more appropriate to rethink the system and opt for a committee of members of Parliament who have the security clearance? CSIS would have a problem with the advisory committee. Just think of Mr. Porter's case. We hear all sorts of things. National security is just as important as this file.

In your view, how could we make our work as legislators more fair and appropriate?

Prof. Yvon Dandurand: I think a measure like the one you are suggesting would be very useful, as long as it does not leave a doubt as to the continuity of the program in five or six years. You must understand that the continuity and certainty of a similar program are essential to its integrity. A well-written clause could be useful.

A special committee would likely be useful. I don't really know how a committee like that works. So I don't have a very clear opinion on this. However, I would like to point out that one of the best known programs, the Federal Marshal Program in the United States, has been evaluated. Just because the program meets the needs in terms of the protection of information does not mean that it is impossible to carry out a proper evaluation.

Hon. Denis Coderre: I have one last question for you.

You must know about Quebec's colour code: the red and green versus the blue. Provincial police officers versus municipal or federal police officers. Do you think the fact that provincial or municipal police officers are required to report to the RCMP may create a slight problem?

• (0930)

[English]

The Chair: Be very quick.

[Translation]

Prof. Yvon Dandurand: Probably, but I don't know what to tell you.

[English]

The Chair: Thank you.

We'll now move back to Madame Doré Lefebvre.

[Translation]

You have five minutes.

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Thank you, Mr. Chair.

Thank you for being here, Mr. Dandurand and Mr. Mukherjee.

Mr. Dandurand, you briefly told my colleague about this issue and you mentioned it in a number of appearances, including the one in 2007. You talked about minors who are witnesses. My understanding is that currently no minors are really benefiting from the program as witnesses, but rather as the family members of an adult beneficiary. I don't think I am mistaken.

Prof. Yvon Dandurand: I don't think so either.

Ms. Rosane Doré Lefebvre: That is what I thought.

You raised a number of concerns with minor witnesses. I am specifically thinking about anti-terrorism prosecutions. I read the testimony of a child against his parents. That had not crossed my mind. How would that work with the current system where there are legal guardians for minors who are witnesses? Would it be possible to do that?

Prof. Yvon Dandurand: It would be complicated, but it would definitely be possible.

As a general rule, in those types of prosecutions, children are rarely called upon as witnesses. They may sometimes be called as informants. Children can give us information, but it is still quite rare for children to act as witnesses.

The issue of children is more a problem in terms of protected children rather than child witnesses. There are probably exceptions, such as 16- or 17-year-olds who may be associated with street gangs, for instance.

Ms. Rosane Doré Lefebvre: That's exactly what I was thinking.

Prof. Yvon Dandurand: With that exception, in most cases, I think it is more a matter of protected children rather than child witnesses or children related to witnesses. All sorts of complications can come up.

For instance, the accused can be the father of the child whose mother is a witness. You can see the types of complications that may ensue. That has actually happened before. Those are almost always isolated cases. I don't think that is a serious problem.

However, in terms of the disclosure of information, we have to remember that 12-, 15- or 16-year-olds can put people in danger, most likely unintentionally, because they don't understand the scope of their actions. However, that can still happen. So we have to pay attention to all that.

I wouldn't make the assumption that the people managing the program do so foolishly, without paying attention to the needs of the children. However, we know so little about the children in protection programs that it is hard to say.

For instance, I had an opportunity to ask in person whether this type of situation occurred in international courts, such as the International Criminal Court. I was told that, to the knowledge of prosecutors, children have never been witnesses. However, we are often dealing with children of witnesses who, as a result, need protection.

Ms. Rosane Doré Lefebvre: Is there a way to improve the protection of children as part of the witness protection program? Will Bill C-51 be of help or is there something we could add to make the protection of minors more effective?

Prof. Yvon Dandurand: I have thought about that and I have not come up with a suggestion that might be useful. I think those issues have to do with the management of programs in particular. I am not sure what more we can add to the bill, with one exception. My recommendation to the committee was to especially focus on the issue of disclosure of information by people who are protected. I particularly thought of young people, children who are in protection programs and who are also covered under measures dealing with the protection of information. They can also suffer consequences if they disclose information to their friends, parents, grandparents and so on.

• (0935)

Ms. Rosane Doré Lefebvre: Great.

Mr. Mukherjee, do you have...

[English]

The Chair: Be very quick.

[Translation]

Ms. Rosane Doré Lefebvre: ...anything to add on the protection of witnesses who are minors or on the street gangs in the City of Toronto?

[English]

Dr. Alok Mukherjee: Not really. I think Mr. Dandurand has covered the points.

I would add one thing, though.

The Chair: Be very quick. The time is up.

Dr. Alok Mukherjee: Very quickly, in places like Toronto we have a significant number of people who do not have documented status, who are not here legally, and our board created a policy called “don't ask”. Our concern is that there are young people and women in that community who are witnesses to crime or victims of violence, etc., and they are very reluctant to come forward for fear they will be deported.

This is something I talked about with Minister Day when he was in the office. We need to pay attention to what can be done in that area.

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

We'll go to Ms. Bergen very shortly, and then to Mr. Hawn, please, for five minutes.

Ms. Candice Bergen: Thanks, Mr. Chair.

I want to clarify something for all of us. Substantial harm is defined in this act as meaning “any injury, whether physical or psychological, that interferes in a substantial way with a person's health or well-being”. My understanding is that definition is based

on jurisprudence. There are precedents within other acts, including the Criminal Code.

My point is that maybe the best solution, rather than trying to place something in the act to deal with this issue, as you very well articulated, is to have better education and processes within the program itself to help prepare young people...and obviously ongoing support and education. The solution, as I'm looking at it now, would not be to change that definition because of the precedent that we already have with it, but to see the program run with a greater amount of information and education.

That's my point.

The Chair: Thank you, Ms. Bergen.

Mr. Hawn, please.

Hon. Laurie Hawn (Edmonton Centre, CPC): Thank you, Mr. Chair.

Thanks to the witnesses for being here.

That was essentially to be my line of questioning.

Mr. Dandurand, you didn't get a chance to respond to that, but would what Ms. Bergen was just suggesting make sense to you?

Prof. Yvon Dandurand: It would make sense. No matter what the law becomes, these measures need to be taken to support protected people and to help them understand their obligations.

However, I would say that while “substantial harm” is defined in the legislation, the criterion is not substantial harm. The criterion is potential substantial harm. It could result in substantial harm. You're asking a 15-year old to think in advance, “What I'm doing now, sending a tweet, might result in substantial harm”.

The text is “could result in substantial harm”.

Hon. Laurie Hawn: Does that not then go to the suggestion of Ms. Bergen that it is about education? It is about pre-briefing these younger folks who may not pre-think about that before they actually do it.

Prof. Yvon Dandurand: I would agree with that and the suggestion that was made. But I'm worried about what the consequence would be for a protected person who in spite of all the support and the information, and all this, is divulging information, particularly when you're talking about a young person, a child, or some person who is not particularly good at making life choices.

Hon. Laurie Hawn: Well, I guess at some point we need to rely on the judgment of grown-ups to deal with those kinds of cases.

Earlier on in your comments you talked about the RCMP and their ability to measure results. Do you have any specific suggestions on how they might measure results?

Prof. Yvon Dandurand: I understand that the RCMP is changing its database, changing the way it collects data on the cases that are considered and what happens afterwards. That is a huge step. If that database exists, it becomes possible, without too much difficulty, to begin to measure whether those criteria are working.

So I applaud that change. I'm just hoping that this data will actually be used to measure the impact of the criteria and that this information will become public at some point.

Hon. Laurie Hawn: So the review process that Mr. Coderre alluded to, about how we review this, the act, the RCMP, their policies, procedures, and so on, obviously needs to be done in some form, at some period. I think you said that it's obviously important to review it, but the critical thing is to make sure that it is continued with best practices in a cost-effective way.

The RCMP of course have said a number of times that it is costed properly. They don't have a problem with costing. The important thing is the continuity of the program.

• (0940)

Prof. Yvon Dandurand: Yes, because the credibility of the program is absolutely essential. If anything is done that would affect the credibility of the program when people make the decision to go into the program, then you defeat the whole purpose of the program.

So continuity is absolutely essential.

Hon. Laurie Hawn: Okay.

Mr. Mukherjee, at the association obviously one of your concerns is the protection of the people in uniform on the front lines. Do you agree with the changes made to extend the protections, or the changes of protections, for those who are providing the protection?

Dr. Alok Mukherjee: Yes, we do.

Hon. Laurie Hawn: Do you have any suggestions to make that stronger?

Dr. Alok Mukherjee: We didn't really pay a great deal of attention to the question you're asking because we felt that the protections provided were adequate.

Hon. Laurie Hawn: What about the spectrum of witnesses to be accepted? Again, you've expressed some concern, which the RCMP have said—to our satisfaction, at least—should not be a concern with respect to extending the maximum period and expanding the spectrum of witnesses to be accepted.

Is that something that your board agrees with?

Dr. Alok Mukherjee: We generally do. As I said, there are some making the distinction that has been made between the two types of witnesses who require protection. I think we are interested in making sure that witnesses who come from the community, as opposed to informants, etc., have access to protection.

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

We'll now move to Mr. Rafferty, please, for five minutes.

Mr. John Rafferty (Thunder Bay—Rainy River, NDP): Thank you very much, Chair.

Thank you to both of you for being here today.

I have a question for Mr. Mukherjee, but I would also like Mr. Dandurand to answer the same question.

We've heard today, and we've heard in previous testimony from the RCMP—in particular, the deputy commissioner, who I think was here, and I did ask a question about funding—very clearly that they would have enough money not only to run this program but also to

expand program, that they would be able to find the money for that. The chiefs in your jurisdictions, in the boards—some have told you otherwise.

I don't want to talk about that in particular. I'd like to talk about a third area and ask you a question concerning first nations.

First nations police boards are part of your organization, I assume?

Dr. Alok Mukherjee: Yes, they are.

Mr. John Rafferty: Yes. Okay.

Let me first say that we see an increasing crime rate among first nations, in particular gang activity, not just on first nations land but also among urban aboriginal people. I wonder if you see any particular difficulties, whether it's funding, whether it's cultural, or whether it's any host of reasons why first nations police services might have trouble accessing this program—or how it could be made more accessible, to put it a better way, for first nations.

Dr. Alok Mukherjee: Once of the challenges has to do with relocation. It works differently in different communities and jurisdictions.

We find in large cities, for example, that often relocation doesn't mean removing from the community entirely but giving a new identity, moving to another part of the city. For first nations, that would be one of the challenges. When you take a young person or informant from a first nations community and relocate them, it's a huge challenge.

Mr. John Rafferty: So there are certainly some cultural considerations there—

Dr. Alok Mukherjee: Absolutely, and there are economical ones too.

Mr. John Rafferty: —but would there also be funding considerations, do you think, in terms of the costs perhaps being higher?

Dr. Alok Mukherjee: There are parts of the country from which relocation would be extremely expensive, and first nations services in those communities would not be able to afford it.

Mr. John Rafferty: Thank you.

Mr. Dandurand, would you like to comment?

Prof. Yvon Dandurand: I would emphasize the point that was just made, which is that with any visible minority group, there are greater issues with relocation and change of identity, and there are also personal psychological challenges in terms of being cut off from your own cultural group and your own community. So it makes it more difficult.

I can't answer the question about access, but I do understand that it's much more difficult to offer effective protection, whether it's through the federal program or any other measures, in those particular cases, and I would agree with you that it is absolutely crucial that we find ways to offer that protection throughout the country, because that's the only way we can penetrate those organizations.

•(0945)

Mr. John Rafferty: So let me follow up with this question then, Mr. Dandurand. Could you expand on your thoughts about independent oversight and evaluation and particularly the importance of research? You talked about those briefly in your opening statement, and I think they might be critical, particularly for groups such as first nations. If we were to ask anyone in police services across Canada, including the RCMP, they probably wouldn't have a very good handle on what the needs are there.

So could you expand on your thoughts about independent oversight and in particular, research?

Prof. Yvon Dandurand: Thank you for the question.

There are two types of research. One is on the efficiency and effectiveness of the current program, but there is another type that was alluded to, which looks at the demand for that program. Every time these questions are brought before this committee or other fora, we are basically trading rumours, because we don't really know what the demand is, and it's very hard to put our finger on it. I know that the Air India commission, for instance, tried and did well but had a lot of difficulty getting information on this particular issue.

So research is absolutely important. Of course, you would expect an academic to tell you that, but this is one case in which research has real, practical applications that will support the integrity and efficiency of the program. So that's the kind of research I'm really advocating.

The Chair: Thank you very much. Our time is up for this first hour here.

We want to thank both of you for appearing and for your comments today.

We are going to suspend. The video conferences from Calgary and British Columbia are ready, I believe. So we will suspend long enough to allow our guests to leave, and we'll come back here in about 30 seconds.

I'll call this meeting back to order. This is the Standing Committee on Public Safety and National Security. We're continuing our study of Bill C-51 and its amendments to the Canadian witness protection program.

I want to let the committee know that we are going to take a few moments at the end of the hour to go to committee business. We'll go in camera very briefly, for just a couple of minutes, to deal with a budget.

We are pleased today to have appearing as an individual by video conference from Calgary, Alberta, Mr. John Charles Major, a retired judge of the Supreme Court of Canada.

Also appearing by video conference from Victoria, British Columbia, on behalf of the Government of British Columbia, we have Clayton Pecknold, assistant deputy minister and director of the Ministry of Justice, police services, policing and security programs branch.

I would invite both our guests to make brief opening statements before we proceed to questions from the members of Parliament on our committee. It is my understanding that our time with Justice

Major is limited, and he will have to leave us around 10:20. So we'll begin with his comments.

Please begin, sir.

Mr. John Major (C.C., Q.C, Puisne Judge of the Supreme Court of Canada, Retired, As an Individual): Thank you. It's a little earlier out here than it is down there, so you'll have to pardon me if I'm a little sleepy.

I don't have a great deal to say on the new legislation, because I was unaware until Friday of last week that I had been asked to appear.

I would say that when I conducted the Air India inquiry, we spent considerable time on witness protection. If you refer to volume 3 of that report, chapter 8, you'll see that we dealt with witness protection from pages 178 to 255, and we raised a number of questions. The circumstances there dealt with terrorists. There were conflicts between CSIS and the RCMP, and witness protection showed certain flaws. We had problems with ethnic identification. We had problems with one police force overseeing or undercutting the other—all in good faith but all counterproductive in that each thought it knew best how to solve the bombing.

I'm rushing a little because I know about the time, but I would suggest that the public perception of witness protection is that it protects the witnesses. They seem to forget that the essential ingredient to witness protection is protecting the public: to get vital witnesses to testify is a safeguard that the community deserves.

I would say that something you might consider is that in certain circumstances there are alternatives to witness protection, such as having witnesses testify behind screens for instance, having them testify in private, or, in certain circumstances, excluding the public from the testifying.

You will hear from Professor Dandurand, who has a number of suggestions with respect to witnesses not testifying in public. The only caution I would raise with respect to that is that some of the suggestions, while effective, might run into charter challenges and would not be sustainable.

One of the recommendations we made in the Air India report was that the RCMP should not be in charge of witness protection but rather that a senior official in the justice department should determine the eligibility of witnesses. We thought the RCMP was in a good position to administer the witness protection act, but it should not be the group that decided who would go into protection and who would not.

The one other matter I would raise in passing is that one size, with respect to the witness protection act, does not fit all. The circumstances of our society are such that we have to tailor our witness protection to the witness we are trying to protect. For instance, in the case of a juvenile, who makes a decision with respect to his going into witness protection? Is it the parents or is it the people in charge of witness protection?

There are exceptions, also, to getting witnesses to testify. As you know, ministers have a certain veto over proceedings. Crown prosecutors play a role in who is going to be called. The Supreme Court confirm their role and that of police-informer privilege.

I think you'll be interested in what Professor Dandurand has to say about hearing witnesses in private.

● (0950)

Finally, I would say there should be some mechanism to resolve disputes between witnesses and those in charge of the program. It's a difficult thing for some witnesses to be taken out of a society in which they're comfortable and placed in a witness protection system. For a number of reasons they sometimes don't fit into that particular environment. The RCMP in charge will sometimes be arbitrary in removing people. It would be useful if there were some resolution method whereby the witness and the people in charge of witness protection could resolve disputes rather than terminating the protection. Again, I refer you to what is said in our report on Air India.

I'm open for questions.

● (0955)

The Chair: Thank you very much, sir.

Before we get to the questions we'll go to Mr. Pecknold in British Columbia. If he has an opening statement, then we'll take a round of questioning.

Mr. Pecknold.

Mr. Clayton Pecknold (Assistant Deputy Minister and Director, Police Services, Policing and Security Programs Branch, British Columbia Ministry of Justice): Good morning, and thank you, committee, for the opportunity to speak.

I will be brief. I'm sure you have some questions.

I'll restrict my remarks mostly to policing, which is my sphere of responsibility.

Just for the interest of the committee and to provide background, I hold two roles. I'm Assistant Deputy Minister of policing and security in British Columbia, but I'm also the director of police services for British Columbia. Within those responsibilities under the statute, it's my responsibility to superintend policing in British Columbia and ensure adequate and effective policing across the province, and I do this on behalf of the minister.

As you know, we are policed under contract in British Columbia. Our provincial police force is the RCMP under contract. We are the largest contract division in the country. As a result, approximately one-third of the RCMP are stationed in British Columbia. So we are, by definition, fully integrated with federal policing through the RCMP.

British Columbia does support a robust witness protection program. We see this as an effective tool for the protection of witnesses, and it's paramount for us in the fight against organized crime. You need only refer to events in British Columbia over recent years and some of the challenges we've had with on-street gang violence to see how important that is to British Columbians.

Based on our analysis, the amendments in Bill C-51 appear responsive to the specific needs of law enforcement in British Columbia and to the issues raised by our partners and stakeholders, including the broadening of the disclosure prohibition to include information on the program's methods for providing protection,

extension of the emergency period beyond 90 days, and a process for voluntary termination.

We also support the adjustments to administrative processes under the federal program that will broaden the scope for who may be considered for protection. The proposed processes will better reflect the changing clientele of witnesses we have, including those associated with the increased prevalence of youth gang violence that now poses somewhat of a significant challenge for all of us across the country, I'm sure, but in British Columbia in particular in those agencies under municipal responsibility.

As the committee may know, British Columbia does not have provincial witness protection legislation. However, under an agreement reached in 2003, all police agencies in B.C. have operated under an integrated RCMP witness protection program. It's referred to as the Integrated Witness Protection Unit. This model has been successful in British Columbia. It integrates municipal witness protection programs into the present RCMP witness protection program. It increases the resources available to the program through secondments of municipal officers into the unit managed by the provincial force under the federal legislation and by the RCMP policy.

Like other jurisdictions, British Columbia has seen witnesses threatened, especially when organized crime is involved. Consequently, our view is that it's an effective and necessary tool that needs to be improved in British Columbia and modernized to ensure that it meets the needs of our very dynamic policing environment.

Within B.C. our anti-organized gang strategies are the responsibility of the Combined Forces Special Enforcement Unit of B.C. British Columbia funds that unit exclusively, but it's also integrated with federal policing resources. CFSEU-BC is specifically mandated to target, investigate, prosecute, disrupt, and dismantle gangs and individuals who pose a high risk to public safety. CFSEU-BC has informed us that the proposed changes to the act, especially the protections afforded in emergency situations, will be beneficial to their investigations.

Many CFSEU-BC witnesses are extremely difficult to handle, by nature of their violent and criminal behaviour. Providing the commissioner with an additional 90 days in cases of an emergency provides more appropriate timeframes that will tend to improve the management of these key witnesses, often in very dynamic investigations. Often, as you may know, witnesses involved in organized crime, after cooperating with investigators, will go underground as it were and become difficult to locate for further interviews and for the purposes of supporting the prosecution. CFSEU informs us that they believe the proposed amendments will support improvements to the re-engagement of such witnesses.

● (1000)

From the perspective of the Province of British Columbia, providing modern protective measures, while challenging, is especially challenging with gang-affiliated youth, and that will require some different handling with respect to the program. We also think that the changes the RCMP will be implementing around procedures with respect to psychologists and other professional services will support a more integrated program in British Columbia and take into account the needs of the protectee.

We also will be interested to watch the organizational changes that will take place within the RCMP, once, and assuming, the bill is passed. I would add parenthetically that under the new provincial police service agreements that we have with the federal government to provide RCMP contract services, the provinces that contract have a much more involved oversight with respect to RCMP programs. We'll be looking very carefully to make sure not only that the program meets provincial policing priorities but also that it is integrated well with national priorities. We'll be working closely with the RCMP to make sure that works.

Finally, I'd add that we're pleased to see there's a certain amount of flexibility so we can design our program to meet the needs of British Columbians but still leverage the national efficiencies and effectiveness of the national program.

Those are my comments. Thank you.

The Chair: Thank you very much, Mr. Pecknold and Mr. Major.

We'll move into our first round of questioning, and we'll go to Mr. Leef, please, for seven minutes.

Mr. Ryan Leef (Yukon, CPC): Thank you, Mr. Chair.

Thank you to both of our witnesses.

Mr. Pecknold, you mentioned in your opening remarks that you were pleased to see a broadening of the scope of who would be admitted into the witness protection program, and you particularly touched on the folks involved in youth gang violence.

I'm wondering if you can recall a time in your province where anybody has been denied access to the witness protection program based on the type of crime they've been involved in.

Mr. Clayton Pecknold: Unfortunately, I probably couldn't answer that question definitively. I don't have that degree of intimate knowledge of the program's running day to day. It has not been brought to my attention that there have been any specific circumstances or challenges with respect to youth, but that doesn't mean there haven't been cases where persons haven't been admitted to the program for whatever reason.

I'm sorry, but I just don't have that level of specific knowledge of the program.

Mr. Ryan Leef: Okay. Fair enough.

You did mention some of the organizational changes that the RCMP talked about here in committee when they testified not too long ago in respect to their administering of the program. In particular, some of those were around the oversight of admissions and trying to separate the investigative interests from the main objective of protecting witnesses. Of course, as Judge Major accurately pointed out, public safety is obviously a defining concern for this bit of legislation as law.

Could you touch on what you see as the key elements of those organizational changes from B.C.'s perspective? How will those changes serve to enhance the operations of the witness protection program, where you have competing investigative interests in a very close proximity with the vast array of municipal police forces there, particularly in the Lower Mainland? I would see B.C. and the Lower Mainland being fairly unique to Canada in terms of the number

municipal police there in such a compressed area and representing such a large volume of people.

Could you touch on how you see the organizational changes being beneficial to that region and which ones are most significant, in your opinion?

• (1005)

Mr. Clayton Pecknold: Thank you.

You're correct in your assessment of the somewhat complex policing structure that we have in British Columbia, in particular in the Lower Mainland. It's certainly been commented on from a number of perspectives. The rationale for moving the former program into an integrated fashion with the RCMP within the province was to somewhat break down any potential silos and create some synergies between the independent or municipal police forces and the RCMP jurisdictions.

We've had some success with that. Under the prior program, it was administered more or less through this office on a somewhat ad hoc basis, depending on the situations and upon request of the municipal agencies. By moving it into an integrated model with the RCMP under the present legislation, we created what we saw as a more consistent approach to witness protection across the jurisdictions.

I think this legislation allows us to take that model somewhat further. It allows us the potential to standardize somewhat both witness management and witness protection in these files throughout British Columbia.

I'd add that the recent report by Mr. Oppal from the missing women inquiry has added a certain amount of impetus for us to standardize and harmonize our response to major crimes and serious crime. Indeed, the legislature of British Columbia amended the police act to allow the director of police services to create binding standards with respect to complex and major crime to ensure that level of consistency both across municipal police agencies and the provincial police force.

We see this act as complementary to the creation of those standards and a standardized approach to our response to organized crime and complex and major crime.

Mr. Ryan Leef: Thank you for that.

Judge, I went through the bill itself, and it looks as though most of the recommendations in the Air India inquiry are reflected in Bill C-51 in some form or fashion, probably with the exception of having the Department of Justice completely take over the task of determining the independent oversight. It was really, I think, a decision that the RCMP was better positioned to decide whether the witnesses should be admitted to the program and to what extent those protective measures were required.

But at committee, the RCMP testified that they felt they were making those organizational operational changes to really take away or remove the investigative interest from the decision-making aspect of the witness protection program itself. So there is, in their mind, going to be a clear division between what the investigation wants to achieve and what the ultimate program goal is to achieve, which is public safety and witness safety.

Do you think that is a reasonable compromise and that it will be effective in light of the recommendations of the Air India inquiry?

The Chair: Judge Major.

Hon. John Major: I don't think there's any one solution that's perfect. What you suggest is an improvement over what we experienced in reviewing witness protection in the Air India inquiry.

To the extent that some division of the RCMP can remain independent of the enforcement so that they can objectively reach a decision, I can't quarrel with that if that's done effectively. It seemed more likely the independence, not in the operation of the witness protection.... We were quite content to see the RCMP run it. It was a matter of who was going to be eligible for it.

There was some suggestion that on certain occasions the RCMP use the entrance to the witness protection as a threat of some sort, raising doubt as to whether or not the witness was really coerced or as reliable as he could be as a result of that. Some people will do anything, perhaps, to get into witness protection, and we thought that having an independent person passing on eligibility, letting the RCMP run the program, would be the solution.

What you suggest may well serve the same purpose. I have no magic bullet.

• (1010)

The Chair: Thank you very much, Judge.

Now we'll go to Mr. Garrison, please, for seven minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair. I'd like to start with a question for Mr. Justice Major, following up on Mr. Leef's question.

In your Air India inquiry report, one of your major recommendations was that there be a national security witness protection coordinator. Do you feel that the issues of witness protection and national security would still require this independent national security coordinator to make those admissibility decisions?

Hon. John Major: As long as the difficulty we experienced is recognized, I'm not here to say that a suggestion that we made is the only one. What the program lacked in our view was independence in assessing who was eligible for witness protection. In certain cases, it was used by particular officers of the RCMP as a threat: if you cooperate, you get into witness protection, if you don't, you won't. We were somewhat concerned that the investigating officers had that power.

Mr. Randall Garrison: Thank you.

We just had testimony from Professor Dandurand from the University of the Fraser Valley about the criteria. He raised the interesting point that the criteria seemed to focus more on the usefulness of testimony than the right to protection of all the witnesses, and that there was a tendency to offer witness protection only in the most serious cases. Did you find that problem in national security cases?

Hon. John Major: I can't identify that particularly as a problem. I defer to Professor Dandurand, who was a witness at our inquiry and is very knowledgeable on the subject. So I can't quarrel with anything he said. It's just that I come back to the independence

required in certain cases as to who should or should not go into witness protection.

Mr. Randall Garrison: Thank you, Justice Major.

I want to turn to Mr. Pecknold.

We've had a lot of discussions around the table about the impact of this legislation on the question of funding. We definitely heard from the RCMP that they feel they have adequate funding. We've had the question raised about whether provinces and municipalities have costs that are billed back to them that make it problematic for them to use the witness protection program.

So I guess I'm asking on behalf of both the province and the municipalities. Do you see this question of billing back as some kind of a restriction on the ability to make full use of the witness protection program?

Mr. Clayton Pecknold: Thank you.

We've just completed a nine-month consultation and public engagement process where we went to British Columbians and asked them about policing generally. We've also, as I've mentioned, recently had the report of Mr. Oppal from the missing women's inquiry. I can tell you that the question of the sustainability and the cost of policing is foremost on many municipalities' minds.

We've heard very clearly from both the Federation of Canadian Municipalities and the Union of B.C. Municipalities that the cost of policing is a very significant burden on their communities. So I'd have to tell you that the cost of policing more globally is very much on everyone's mind and a challenge, both for municipalities and, indeed, for the Province of British Columbia.

I will say that I will be watching carefully to make sure from our perspective that the program is appropriately funded and that we have a voice as to the level of that funding as best we can. It's important from my perspective that the program be adequately funded and effectively and efficiently administered.

The cost of major investigations is a concern to municipalities. As a consequence, whether it's the cost of actually conducting the extraordinary investigative measures that are necessary or managing the file from a witness protection or witness management perspective, it will indeed be a concern for municipalities. As we look to adjust our program to the new bill, we'll be looking carefully as to how that might impact municipalities.

• (1015)

Mr. Randall Garrison: If we were looking to see the cost to British Columbia for the witness protection program, is that cost borne under the RCMP contract or is there a separate line item in your provincial budget that funds the integrated program?

Mr. Clayton Pecknold: No, it's generally under what we call a provincial business line, so under our provincial policing budget.

We do have mechanisms and are working on mechanisms to have a more granular look at how those funds are spent. There are various mechanisms for us to look behind the billing of these files. We're doing some work on that. We're not where we should be, but we'd like to get a better understanding of all the costs associated with these major and complex files.

We do provide, through our provincial funding of the organized crime strategy, significant direct funding that benefits municipalities. We will be doing some work to get a better handle on it.

Without a doubt, I would be remiss if I did not tell you that the downstream costs of any major investigation, including witness protection, is something that municipalities are very aligned to, and indeed the province is aligned to.

Mr. Randall Garrison: The costs to British Columbia might also show up in lines in municipal police budgets, where they would have to bear the costs of the ongoing witness protection. Have you had any look at those kinds of costs for municipalities? Has there been a report on that? We heard from the Canadian Association of Police Boards that there are concerns about those costs.

Mr. Clayton Pecknold: No, we haven't done that analysis, but we would certainly, as we move forward in adjusting our program...I think I heard Professor Dandurand speak a little bit about performance measures, I think they were. I'm sorry, but I couldn't quite hear all of his remarks. We very much want to get a better understanding of how well any program is operating, and how effectively and efficiently it's running, and how economically it's running.

While we haven't done that work so far, we would build that sort of evaluation measure into any changes to the program.

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

We'll go to Ms. Bergen.

It looks like Judge Major is just about ready to depart from us.

Ms. Candice Bergen: Don't go.

The Chair: Just in case, we sure want to thank you for your testimony and for answering questions.

We'll go to Ms. Bergen.

Ms. Candice Bergen: Thank you very much.

Justice Major, I do have a question for you, so I hope you can stay a little bit longer, if possible.

I just want to start with Mr. Pecknold, though, regarding the discussion he just had with Mr. Garrison. I think you would agree with me, Mr. Pecknold, that you are talking about two separate issues.

First of all, the cost of policing is something that is front of mind for all of us. In fact, it was our Minister of Public Safety who initiated a conference and brought together leaders in January to discuss the cost of policing. As well, we realize that more investments are needed. That's why we just passed Bill C-42, with an additional \$15 million to help support the RCMP and bring greater accountability. Unfortunately, it wasn't supported by everyone in the House.

I think what we want to talk about right now and what I think is important is Bill C-51, and the three major changes we are making to the witness protection program. First, it will actually help the provinces because it will create a more streamlined system whereby identity changes can be made. Second, it will expand the criteria, as recommended by Justice Major. Third, there will be greater

protection for those who are under the program and those administering it.

I would think you would agree that there are no actual additional costs. The RCMP has testified to it. There will be no additional costs to municipalities from these changes in Bill C-51.

• (1020)

Mr. Clayton Pecknold: I can neither confirm nor deny for you that there would be any potential costs in a given investigation, in terms of witness management. Certainly, we have no analysis that tells us there will be, as a result of implementing this bill, immediate costs to municipalities—clearly not. What I was talking about, for clarity, was that in a given investigation where the responsibility for that investigation is a municipal responsibility, that latter bears the whole costs of that investigation, subject of course to whatever provincial support we can provide or whatever federal support might be there, either through this program or through other policing services.

Ms. Candice Bergen: Thank you very much. I just wanted to clarify that.

Justice Major, thank you so much for the recommendations you made. As you and previous witnesses noted, many of those recommendations have been complied with and taken up in Bill C-51.

You made that recommendation that we expand the program to take in people, whether via the Department of Defence, Public Safety, or the other applicants who can be brought forward. So can you please tell us why that recommendation was made in relation to Air India as well as other potential attacks?

Hon. John Major: No, I'm sorry. I can't tell you that. I could probably go back and review the report and jog my memory. I have to apologize for that vagueness, but I was only made aware of this invitation on Friday, so I haven't been able to come properly prepared. That's not much of an answer; it's an explanation.

The reason I can't stay much longer is that I have a long-standing medical appointment and I have to keep it. What I can volunteer, if it's of any value, is that I would be quite prepared to supply answers to the committee's written questions, for whatever benefit that might be.

Ms. Candice Bergen: Okay. Thank you very much. We really appreciate that.

Whenever Mr. Justice needs to leave, we will understand, Chair.

The Chair: Yes, I certainly want you to keep that medical appointment.

I would welcome you to follow up on the question that Ms. Bergen asked or others asked about the expansion of the program into other departments, such as the defence department and CSIS. If you would like to supply that answer to our clerk or to our committee, we would circulate it and it would be as if it were given here today. We would appreciate that, Justice Major.

Hon. John Major: Could I ask first that I receive the question in a specific form so that I can give it my attention? I'm not sure that I can remember precisely what it is that you would like me to deal with, but perhaps your clerk could paraphrase the questions I've been asked, and I will respond.

The Chair: We would appreciate that. He will forward that question to you, Justice Major.

Thank you very much.

You have two minutes, Ms. Bergen.

Ms. Candice Bergen: No, I have more than that, sir. I just started to ask questions.

Isn't it a seven-minute round? I didn't—

The Chair: Go ahead, Ms. Bergen.

Ms. Candice Bergen: Mr. Pecknold—

Hon. Denis Coderre: On a point of order, what's not fair is that I don't get a question for Justice Major.

The Chair: Go ahead.

Ms. Candice Bergen: Thank you.

Mr. Pecknold, can you tell us if you were consulted in regard to this legislation?

Mr. Clayton Pecknold: Yes. We were consulted through Public Safety Canada quite extensively...*[Technical difficulty—Editor]*

The Chair: Go ahead, Ms. Bergen.

• (1025)

Ms. Candice Bergen: There you go. That last question took us a minute and a half.

Were you happy with the consultations?

Mr. Clayton Pecknold: We certainly felt that we were appropriately consulted, yes. Do I feel that we were satisfactorily and fully consulted on this bill? Yes, we were.

Ms. Candice Bergen: That's great. Thank you very much.

Those were my seven minutes.

The Chair: All right. You left us a little early. We had a few more seconds.

Go ahead, Mr. Coderre.

Hon. Denis Coderre: Mr. Chair, I have my own clock, so we're okay. I can pass it to Madam Bergen.

The Chair: That's perfect.

[Translation]

Hon. Denis Coderre: Mr. Chair, I feel that it is extremely relevant to have written questions to send to Justice Major. Given that there is a structural reality or a question of independence, I would ask the clerk to ask him the following question: Should the minister have extraordinary powers for extraordinary situations?

As a former Minister of Citizenship and Immigration, and having been one of the last to have had the security file before the agency was created, I think that is important in extraordinary situations for the minister to have certain powers. The minister must not depend on the system any more than the system must depend on him.

Given that we are talking about national security and anti-organized crime situations, and that Justice Major was perhaps thinking of the possibility of a representative from the Department of Justice to be able to make the move, I feel that, in terms of accountability, we should please add that question.

[English]

The Chair: That will be forwarded.

[Translation]

Hon. Denis Coderre: Thank you, Mr. Chair.

Mr. Pecknold, as I said to Mr. Dandurand earlier, we are talking about a very delicate situation here. We have to deal with witnesses, to confront organized crime and street gangs and so on. I represent a constituency that has street gangs, and I can tell you that the situation is not as you see it on TV or in the movies.

In your view, can the fact that Bill C-51 provides for an extension to municipal and provincial levels present a danger to some extent? The more information is being circulated, the greater the risk of leaks. There are moles everywhere, even inside departments and police forces.

How can we protect the information in order to make sure that witnesses are truly protected?

Could you give a practical answer to that question?

[English]

Mr. Clayton Pecknold: I think I would answer that and go back to the comments I made with respect to our increasing hours within the province of British Columbia and the increasing recognition of the need for standardized processes in policing, at least in this province. Whether it is dealing with investigative techniques, such as an undercover operation into major crime, or whether it's dealing with the use of appropriate electronic surveillance in a major crime, we are doing these under integrated systems in British Columbia that include federal, provincial, and local policing responsibilities.

We are in many ways working to raise the standard and the regulatory oversight of these processes, so that we are applying all of the right professional program principles. We would be doing the same thing with respect to implementing this bill and enhancing our existing program.

Our existing program is embedded with the RCMP. The appropriate safeguards are there under the existing program. We have a very robust accountability oversight system of policing in British Columbia. I do think, obviously, that when you build any of those, the need to know principle and the security around information is critical to effective investigations, effective management of witnesses, and protection of witnesses. It would be foremost on our mind as we develop the regulatory structure around the implementation program.

[Translation]

Hon. Denis Coderre: We often hear about the problems associated with informants. Getting access to informants is not the only question. There is also the question of how to handle them.

I am not only concerned about the need to find witnesses and have them participate in the program. Above all, I think we have to make sure that there is a way to protect their families subsequently.

We have our responsibilities, including the responsibility to protect the public. But, to the extent that we have decided to play the game until the final whistle, we also have to protect witnesses and their families.

Do you think an independent organization should manage that? The RCMP can handle a witness, but is it really equipped to handle everything else that entails?

• (1030)

[English]

Mr. Clayton Pecknold: I'm probably not qualified to speak to the operational aspects of day-to-day witness management. In fact, I don't have that level of knowledge.

However, I will say that in British Columbia, especially on files involving agents, our prosecution service is very much involved in decisions that affect the prosecution and the course of the prosecution. They work hand in hand with the policing community.

In terms of the oversight and the RCMP's ability to manage this program effectively, it has been our experience in British Columbia that they have done a good job of managing the program effectively through our integrated program. We have no reason to believe that it wouldn't change or be enhanced with this bill.

[Translation]

Hon. Denis Coderre: The problem is that witnesses come from a community: visible minority communities, First Nations communities, and so on. So I am concerned that those people and their families may have to leave their own situation and go and live somewhere else. That becomes a problem. We cannot put people anywhere in the country. There is the matter of religion too.

In practical terms, how do you see those people being moved?

[English]

Mr. Clayton Pecknold: You, and I'm sure other witnesses, have identified an important part. Canada at large, but British Columbia, in particular, is a very diverse society, especially in the Lower Mainland, where we are dealing with some specific gang challenges. We are talking about groups who may come from diverse communities. It's my hope and understanding, based on the conversations we have had with the senior police leadership of this province, that they are very alive to this challenge and that, as they develop this program further, they're going to be both culturally sensitive and culturally aware of the challenges of making sure that their protection programs meet the needs of the protectees and whatever diverse community they come from. In fact, Mr. Oppal's report clearly showed that we need to do a better job of protecting vulnerable persons in British Columbia and recognizing the diverse population we police. I can't tell you there won't be a challenge, but I can tell you that I'm alive to the issue.

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

We'll now move to Mr. Rousseau.

[Translation]

You have five minutes.

Mr. Jean Rousseau (Compton—Stanstead, NDP): Thank you very much, Mr. Chair.

Mr. Pecknold, I would like to continue along the same lines as the colleague who spoke before me.

Is enough training provided to those employees who have to look after the witness protection program?

In terms of the cultural and ethnic diversity that make up your demographic environment in British Columbia, we know that it has undergone more and more change in recent decades. Are there enough training programs and is there enough money to run them? How do you see the future in that regard?

[English]

Mr. Clayton Pecknold: As you know, the program is administered by the RCMP on our behalf in the province. I apologize, but I certainly don't have that level of understanding of what level of training the particular officers in this unit get. However, we have very clearly set as one of the priorities for our provincial police force in British Columbia to ensure that they are constantly assessing their need to be responsive to the diverse communities they police. I can tell you that I am very satisfied that our commanding officer and his senior staff are committed to doing that. It's my expectation that this would trickle down and be set as a standard within whatever program they are administering on our behalf, including the witness protection program. We'll be looking very carefully to move forward on this to make sure that the provincial priorities that we have set are well reflected in the policies and programs the RCMP are providing in British Columbia.

• (1035)

Mr. Jean Rousseau: Thank you very much.

How much time do I have?

The Chair: You have three minutes.

Mr. Jean Rousseau: Okay.

[Translation]

You said previously that almost one third of the RCMP in Canada is in British Columbia and that they have provincial, municipal, federal and even border responsibilities all at the same time. Specifically on the witness protection program, how are things organized on the ground and what effect will this bill have on the way the programs are run?

[English]

Mr. Clayton Pecknold: The integrated witness protection program is situated within our RCMP division. It touches, as I understand it, federal and provincial and municipal policing responsibilities. I believe you had Assistant Commissioner Shean here, who would have more in-depth knowledge of the program.

By way of explanation, our combined forces special enforcement unit performs investigations that touch all three levels of government. They may touch a homicide that happened in a municipality, and they're going after province-wide provincial policing matters, but they're also involved in national tactical priorities, which bring in federal policing. That's the benefit of the integrated model; it touches all of those lines of responsibility.

Mr. Jean Rousseau: Thank you very much.

I'll let Mr. Rafferty have the last question.

Mr. John Rafferty: Thank you very much.

Mr. Pecknold, thank you for being here.

Does the integrated witness protection program include first nations police services?

Mr. Clayton Pecknold: I'm not aware of whether the composition includes anyone from first nations policing, but it would supply support to first nations policing services. We administer first nations police, so it would support that.

Mr. John Rafferty: Right, and the province covers about 48% of first nations policing costs.

I wonder if you could briefly talk about first nations police services' funding and their ability to access the witness protection program, and perhaps comment about how or if they have done so in the past, and whether or not this bill will help them access the witness protection program.

Mr. Clayton Pecknold: Thank you. I can't speak to whether they have accessed it in the past or not, but there is nothing structurally that would prevent a matter arising under our first nations policing responsibility from obtaining the services of the witness protection program. The first nations policing program in British Columbia is delivered mostly through a series of tripartite agreements, as you may know, and there's a funding arrangement with the federal government. That program falls under my oversight and my responsibility to provide adequate and effective policing. If a particular incident occurs in a jurisdiction of first nations policing that needs that level of support, then I would expect this support to be provided.

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

We'll go back to Mr. Leef.

Mr. Ryan Leef: Thank you, Mr. Chair. I'll start my seven-minute round now.

The Chair: You have a five-minute round.

Mr. Ryan Leef: Oh, okay.

The Chair: And you'll have the last few moments, and then we have five minutes of committee business.

Mr. Ryan Leef: Thank you again, Mr. Pecknold.

I have a comment on some of the last questions. I know you weren't able to comment on the level of training, but we did hear from divisional representatives from the RCMP who were certainly proud to comment that both the witness protection program training and the operators in Canada are world renowned in their opinion. That probably dovetails with provincial and municipal agents and operators in witness protection programs, so I think Canada is in a

good position with our protection program when compared to other nations'.

You mentioned the combined forces special enforcement unit and you talked a bit about the complexity of investigations that go on among municipal, provincial, and federal bodies. Sometimes one incident can involve all three. This does tie in to Mr. Rafferty's question about first nation policing programs, their funding and ability to access the witness protection program. You may not be able to comment specifically on an individual case. I'll try to characterize this and see if you feel fit to comment on my characterization of investigations.

When investigations become complex on a municipal, provincial, and federal level, a witness entering a witness protection program by and large is not going to be entering that program because of testimony provided on a break and enter. It's going to be a rather complex case where there is a serious threat to personal and community safety. From that position, it's usually going to be a complex investigation that extends well beyond municipal boundaries.

From that point of view, there could or should at least be an angle of application for witness protection program access via the federal protection program under the jurisdiction and authority of the Royal Canadian Mounted Police, or at least a larger municipal centre or provincial body that has the funds available to do that, to allow a witness to enter the witness protection program. We can think of the smallest municipal jurisdiction in British Columbia. If they had a witness who required protection, they might not be able to afford access to the program, given their small municipal budget. But I would hazard a guess that if the smallest municipality providing its own municipal policing services in British Columbia finds itself with a case in which a witness is testifying and requires the services of the witness protection program, it's not likely that it would be solely a municipal issue. It's not likely that it would involve any less than an integrated unit, the RCMP, or even a federal investigation into the matter on which the witness is testifying.

Would that be an accurate characterization?

● (1040)

Mr. Clayton Pecknold: The reality is that in a situation like that, my responsibilities as director for the province come into play to ensure that there's an effective response. Whether that means we leverage provincial resources or we work with the RCMP to leverage federal resources, the reality is that we find a solution that's in the best interest of British Columbians and protecting public safety.

Mr. Ryan Leef: Great. So we're never going to see an investigation or a witness or a community left out to dry, so to speak, simply because a municipality doesn't have the internal resources in their small budget to bring somebody into that program?

Mr. Clayton Pecknold: I can't speak for the rest of the country. I can tell you that in British Columbia we certainly are going to make sure that the investigation is properly resourced and supported, and we provide funding and support to municipalities through the CFSEU on all sorts of major investigations that happen within their jurisdictions, many of which have made the news recently.

Mr. Ryan Leef: Thank you.

The Chair: Thank you very much, Mr. Pecknold. Unfortunately, our time has concluded. We want to thank you for taking the time to get up early out there in British Columbia and to appear and help our committee with our deliberations. I know that your testimony and answers, along with Justice Major's, have been very valuable for us today.

Thank you very much. We are going to suspend momentarily. We are going to come back in camera to deal with the committee business very quickly.

[Proceedings continue in camera]

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