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Intimidation of Justice System Participants: General Overview of Literature and Reports



# Intimidation of Justice System Participants: General Overview of Literature and Reports

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## **EXECUTIVE SUMMARY**

The purpose of this study was to develop a better understanding of what has been written on the subject of the intimidation of justice system participants in Canada.

To that end, an analysis of relevant documentation was carried out. The research and reports as well as official positions taken by concerned national and international organizations were considered. The research was undertaken using search engines such as Google, Érudit, EBSCO, and Springer.

In the Canadian context, only three research studies and two official reports had been compiled. In addition, two examples of official responses of legal organizations (namely, the Ontario Bar Association and the Association des substituts du procureur général du Québec) with respect to the issue of intimidation faced by their members were also analyzed. Lastly, on an international level, reports and research produced by the Council of Europe, the UN, the United Kingdom and the United States were also consulted in this study.

Analysis of the documentation on the intimidation of justice system participants allowed us to draw the following conclusions:

- 1- A number of players stress the lack of empirical research on the subject (Brown 2005, Dandurand 2007), given that most of the literature was published in the United States and applied strictly to a U.S. context;
- 2- The literature, with two exceptions, was mostly centred on the various forms of witness intimidation and on improving witness protection;
- 3- Canadian research had focused primarily on one aspect of the subject matter, targeting one justice system actor and one specific area (for instance, Quebec police officers). No Pan-Canadian research was compiled and certain actors in the justice system (such as judges) were not targeted by these studies;
- 4- It is difficult to determine the true scope of intimidation as there is no database specific to the intimidation of justice system participants. In Canada, data pertaining to the intimidation of justice system participants is confused with generalized statements about crime. And even if such data were to exist, it would be difficult to know the exact numbers as the data would only take into account cases reported to the authorities;
- 5- Many research studies appear to take such intimidation for granted and only examine a very small part of the true existence of such a phenomenon. There are also certain players who question the need for the implementation (or strengthening) of measures involving the protection of justice system participants (Campbell, 2006);

- 6- A fair amount of legislation has been adopted within a context of international pressure and has therefore not been the subject of more in-depth analyses or discussions. It often lacks the empirical bases to support it;
- 7- Research published in Canada since 1995 suggests an intimidation problem, which, in the case of the two major research studies conducted, affects 41% and 59% of respondents respectively (Brown 2005, Cusson and Gagnon 2011);
- 8- The research carried out seems to indicate that inappropriate communications and non-verbal threats are the most common forms of intimidation experienced by respondents. Instances of intimidation involving physical violence were therefore less frequent;

The lack of Canadian research on the issue of intimidation of justice system participants is glaring. Pan-Canadian research on intimidation of federal players in Canada's justice system is necessary.

#### 1. INTRODUCTION

The purpose of this study was to develop a better understanding of what has been written on the subject of the intimidation of justice system participants in Canada by offering an overview of various studies conducted in this field. Formally, offences involving the intimidation of justice system participants are governed by section 423.1 of the *Criminal Code*:

- 423.1(1) No person shall, without lawful authority, engage in conduct referred to in subsection (2) with the intent to provoke a state of fear in
- (a) a group of persons or the general public in order to impede the administration of criminal justice;
- (b) a justice system participant in order to impede him or her in the performance of his or her duties; or
- (c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.
- (2) The conduct referred to in subsection (1) consists of
- (a) using violence against a justice system participant or a journalist or anyone known to either of them or destroying or causing damage to the property of any of those persons;
- (b) threatening to engage in conduct described in paragraph (a) in Canada or elsewhere;
- (c) persistently or repeatedly following a justice system participant or a journalist or anyone known to either of them, including following that person in a disorderly manner on a highway;
- (d) repeatedly communicating with, either directly or indirectly, a justice system participant or a journalist or anyone known to either of them; and
- (e) besetting or watching the place where a justice system participant or a journalist or anyone known to either of them resides, works, attends school, carries on business or happens to be.
- (3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

#### Section 2 of the *Criminal Code* defines "justice system participant" to mean:

- (a) a member of the Senate, of the House of Commons, of a legislative assembly or of a municipal council, and
- (b) a person who plays a role in the administration of criminal justice, including
  - (i) the Minister of Public Safety and Emergency Preparedness and a Minister responsible for policing in a province,
  - (ii) a prosecutor, a lawyer, a member of the Chambre des notaires du Québec and an officer of a court,
  - (iii) a judge and a justice,
  - (iv) a juror and a person who is summoned as a juror,
  - (v) an informant, a prospective witness, a witness under subpoena and a witness who has testified,
  - (vi) a peace officer,
  - (vii) a civilian employee of a police force,
  - (viii) a person employed in the administration of a court,
  - (ix) a public officer and a person acting at the direction of such an officer,
  - (x) an employee of the Canada Revenue Agency who is involved in the investigation of an offence under an Act of Parliament.
  - (xi) an employee of a federal or provincial correctional service, a parole supervisor and any other person who is involved in the administration of a sentence under the supervision of such a correctional service and a person who conducts disciplinary hearings under the *Corrections and Conditional Release Act*, and
  - (xii) an employee and a member of the National Parole Board and of a provincial parole board;

Section 423.1 came into force in 2002 (Bill C-24) and is punishable by a maximum of 14 years imprisonment. At the time of Bill C-24's introduction, there was significant concern with respect to the activities of organized crime, particularly in Québec, and the use of violence, threats and other forms of coercion by organized crime to achieve its criminal objectives. These objectives included an attempt to undermine the proper administration of the criminal justice system. Prior to the tabling of Bill C-24, in October, 2000, a Parliamentary Committee recommended that additional measures be put in place to better protect justice system participants.

Some questioned the introduction of the proposed new offence. It was argued that it was unnecessary as a general intimidation offence, as well as offences of criminal harassment, uttering threats, extortion and assault provisions existed and were available to address this behaviour. Nonetheless, it was felt that a specific offence targeting the particular problem of intimidation of justice system participants and the effect this behaviour has on undermining the proper administration of justice was warranted.

Most recently, in 2006, a resolution tabled by British Columbia was passed by the Uniform Law Conference of Canada (ULCC) calling for amendments to section 423.1 to target the public dissemination of the identities, visual representations, addresses of home, business, school, or of any similar information concerning justice system participants, journalists and/or their families when the intent is to provoke a state of fear in order to impede them in carrying out their duties.

In 2009, the ULCC passed a resolution tabled by Québec which recommended amending paragraph 423.1(d) to state that communication with the intent to provoke fear constitutes intimidation even if it occurs only once. In addition, on October 2, 2009 Bill C-14, an Act to amend the Criminal Code (organized crime and protection of justice system participants), S.C. 2009, c. 22 came into force. This Bill amended the Criminal Code to require a court that imposes a sentence for an offence under subsection 423.1(1)(b) to give primary consideration to the sentencing objectives of denunciation and deterrence.

Media clearly depict the presence of intimidation within different groups of justice system participants. For example,

On June 26, 1997, Diane Lavigne, correctional officer, left the Bordeaux prison and was driving along Highway 15 in her pick-up truck when she was approached by two men on a motorcycle. The passenger opened fire twice, killing Ms. Lavigne<sup>1</sup>. In September 1997, the same fate befell Pierre Rondeau, also a correctional officer, while driving an inmate transportation van. His partner was severely injured during that incident<sup>2</sup>.

In 1997, charges were brought against the leader of the Nomads chapter (Hells Angels), Maurice Boucher, who is suspected of ordering the murders. However, to everyone's dismay, the jury acquitted "Mom" Boucher. Rumour has it that the jury was the victim of intimidation. It was not until 2002, when the Court of Appeal ordered a new trial in this case and the murderers became informers that Maurice Boucher was found guilty and sentenced to life in prison with no chance of parole for 25 years.<sup>3</sup>

In 2000, crime reporter Michel Auger of Le Journal de Montréal was gunned down on the street while exiting his car to go to work. He miraculously survived the attempted murder. He, too, associates the intimidation with the Hells Angels criminal street gang. Mr. Auger had been receiving threats for years and in 1994 he became the target of a conspiracy, which was averted thanks to the efforts of police officers.<sup>4</sup>

In 2006, Crown counsel at the Montréal courthouse expressed their concern to the newspaper La Presse. The article states that many lawyers do not feel safe. Some are followed in their car, others are photographed and the victims of suspicious packages and hoax bomb threats.<sup>5</sup>

Despite extensive media coverage of certain cases, little empirical research exists and the Canadian literature on the subject is limited to a few reports. It is therefore important to first empirically determine the breadth of the issue in Canada.

The number of police-reported incidents has clearly been increasing since the introduction of the *Criminal Code* sections; however, it is uncertain whether this trend is due to increased awareness or an actual increase in offences. Figure 1 presents the number of police reported incidents of intimidation of a justice system participant or a journalist for 2002 to 2008.

<sup>&</sup>lt;sup>1</sup> See: Cyberpresse (November 4, 2008) « Le délateur raconte le meurtre de Diane Lavigne » : http://www.cyberpresse.ca/actualites/quebec-canada/justice-et-faits-divers/200811/04/01-35922-le-delateur-raconte-le-meurtre-de-diane-lavigne.php

<sup>&</sup>lt;sup>2</sup> CTV News (2009) «Hells Angels members guilty of prison guard murder»: http://saskatoon.ctv.ca/servlet/an/local/CTVNews/20090201/fontaine\_verdict\_090201?hub=TorontoNewHome

<sup>&</sup>lt;sup>3</sup> See CBC News (May 6, 2002) "Mom Boucher guilty of murder": http://www.cbc.ca/canada/story/2002/05/boucher\_verdict020505.html

<sup>&</sup>lt;sup>4</sup> See TVA (nouvelles LCN, September 14, 2000) "Michel Auger victime d'un attentat:" http://lcn.canoe.ca/infos/faitsdivers/archives/2000/09/20000913-112250.html

<sup>&</sup>lt;sup>5</sup> TOUZIN, C. (December 13, 2006). "Des procureurs de la Couronne menacés," La Presse: http://webcache.googleusercontent.com/search?q=cache:Ld3fVbkedOcJ:www.revenuquebec.ca/portal/fr/ArticleView.php%3Farticle\_id%3D70+http://www.revenuquebec.ca/portal/fr/ArticleView.php%3Farticle\_id%3D70&hl=fr&gl=ca&strip=1

Number of cases 

FIGURE 1: POLICE-REPORTED INCIDENTS OF INTIMIDATION OF A JUSTICE SYSTEM PARTICIPANT OR A JOURNALIST

Source: Uniform Crime Reporting Survey, Statistics Canada, Canadian Centre for Justice Statistics

The Canadian Centre for Justice Statistics (CCJS) has been collecting data on Section 423.1 offences since their introduction to the *Criminal Code*. In addition to police-reported data, the CCJS also provides some information from its Adult Criminal Court Survey. While the trend of increasing cases is similar to police-reported information, this data source shows that fewer cases are processed through the courts. Table 1 presents the frequency of intimidation cases in court from 2002/2003 to 2006/2007.

TABLE 1: TOTAL CASES OF 423.1 (TEN PROVINCES AND TERRITORIES)

Fiscal Year	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007
Offence					
CCC-423.1	0	0	0	6	6
CCC-423.1-1-	0	0	1	0	0
CCC-423.1-1-A	0	0	0	0	0
CCC-423.1-1-B	1	0	1	2	2
CCC-423.1-2-	0	0	0	0	0
CCC-423.1-2-A	0	0	1	0	3
CCC-423.1-2-B	0	0	1	11	6
CCC-423.1-2-C	0	1	0	0	0
CCC-423.1-2-D	0	0	0	0	1
CCC-423.1-2-E	0	0	0	0	0
CCC-423.1-3-	0	0	0	1	6
Total	1	1	4	20	24

Source: Adult Criminal Court Survey, Statistics Canada, Canadian Centre for Justice Statistics

# 1.1 Study Purpose and Method

The purpose of this study is to assess the extent of available information on the subject of intimidation of justice system participants in Canada. To accomplish this research studies as well as the position papers of concerned groups and associations were compiled through internet (e.g., Google) and data base search (e.g., Érudit, EBSCO and Springer). It is intended that this research will make it possible to determine whether more in-depth research on the subject is necessary.

# 1.2 Scope of analysis

The present research was limited to works carried out after 1995 in order to take into account the more recent changes in circumstances (for example, the fact that section 423.1 came into force in 2002).

Particular attention was given to Canadian research/reports, despite the initiatives of other countries (e.g., United Kingdom, United States). This study should not be considered an exhaustive study of the international situation, but rather raises issues that could involve and/or relate to the Canadian context. It should be noted, however; that little Canadian research was found which made describing the Canadian context complicated.

Among the Canadian research compiled, there is fragmented documentation (based on provincial cases). In addition, we note that certain groups belonging to "justice system participants" are more often reported on than others. For example, although we found a fair amount of work on the intimidation and protection of witnesses, very little was found regarding the intimidation of lawyers (defense and/or crown lawyers), public servants<sup>6</sup> or judges. Unfortunately, this lack of information limits the scope of the present research.

#### 2. CANADIAN LITERATURE

Canadian documentation on the intimidation of justice system participants is very limited. Independent research is almost non-existent and official reports have focused primarily on the protection of witnesses and appropriate measures effectively protect witnesses and justice system collaborators.

<sup>&</sup>lt;sup>6</sup> It should be noted that not all public servants are considered justice system participants. Under S.2 of the *Criminal Code*, a justice system participant includes "a person who plays a role in the administration of criminal justice". For example, this would include a civilian employee of a police force, a person employed in the administration of a court, an employee of the Canada Revenue Agency who is involved in the investigation of an offence under an Act of Parliament, an employee of a federal or provincial correctional service, a parole supervisor and any other person who is involved in the administration of a sentence under the supervision of such a correctional service and a person who conducts disciplinary hearings under the Corrections and Conditional Release Act, or an employee and a member of the National Parole Board and of a provincial parole board.

First, we will present the results of two research reports by Canadian graduate students. The first report (Brown and MacAlister, 2006) utilized a sample of 1,152 lawyers from Vancouver and surrounding area to examine the scope and nature of the threats made against lawyers. The second report (Gomez Del Prado, 2004) involved 165 Quebec police officers who were the target of intimidation. That study was based on incidents recorded in the Sûreté du Québec's *Projet Intimidation* database.

Secondly, we will discuss the intimidation of witnesses. To that end, we will present a summary of four Canadian reports (i.e., Boisvert (2005), Dandurand (2007), Standing Committee on Public Safety and National Security (2008) and Public Safety Canada (2009).

Finally, we will look at the different actions and positions taken by some legal associations (e.g., Ontario Bar Association) to the intimidation and threat of their members. This part will be useful in understanding the dynamics of this issue in Canada.

# 2.1 The intimidation of lawyers

In 2006, an exploratory analysis of threats and violence against lawyers was performed (Brown and MacAlister, 2006).

#### Methodology and sampling

A brief on-line survey was sent to 5,539 (59.7%) randomly selected practising members of the Law Society of British Columbia. This represented 59.7% of the total members. Of the total sample, 1,200 members responded and 1,152 (20.8%) were used in the analysis<sup>7</sup>. A qualitative phase was also added with 25 in-person or telephone interviews.

The sample included both public sector and private sector lawyers from predominately areas in the "Lower Mainland" of British Columbia (i.e., West Vancouver, North Vancouver, Burnaby, New Westminster, Richmond, Coquitlam, Port Coquitlam, Surrey, Delta, Ladner, Maple Ridge, Langley, White Rock, Mission, Abbotsford and Chiliwack). The majority of respondents were men (67.6%), which was slightly lower that the percentage of men who were practicing in British Columbia at the time of the survey.

Among the 1,152 respondents, the most common areas of practice were as follows:

- (1) General litigation (25.5%);
- (2) Commercial/corporate/Real Estate (18.6%);
- (3) Labour/employment/human rights (7.7%);
- (4) Family/divorce law (7.6%);
- (5) Provincial prosecutors (6.3%); and
- (6) Criminal defence (4.4%).

<sup>7</sup> It should be noted that 48 surveys were withdrawn due to a lack of data.

#### Results

The research revealed that 59.3% of respondents reported being the target of at least one type of threat and 18.3% reported being the target of more than one type of treat. Furthermore, 68% were victims of two or more threats/acts of violence. Table 2 presents the frequency and percentage of threatening behaviour experienced by Vancouver-area lawyers further broken down by the type of threatening behaviour experienced.

TABLE 2: FREQUENCY AND TYPE OF THREATENING BEHAVIOUR EXPERIENCED<sup>8</sup>

	Frequency	Percentage (%)	Cumulative Percentage (%)
No threatening behaviour	469	40.7	40.7
Inappropriate communication	232	20.1	60.8
Threatening communication	133	11.5	72.4
Inappropriate approach	95	8.2	80.6
Physical aggression	12	1.1	81.7
More than one type of threat	211	18.3	100
	1,152	100	

Source: Brown & MacAlister (2006)

The survey question on threats allowed the respondents to provide examples of the threats received in order to obtain more details concerning the nature of the threats. The responses provided ranged from death and physical assault to vandalism of property (lawyer's car, house).

The results also showed the frequency of threat, which made it possible to determine precisely whether it was an isolated or recurrent case of threats. Over four in ten (40.3%) respondents stated receiving two or more threats, whereas 18.9% responded that they were the victim of only one threat.

The survey also inquired as to how the lawyers responded to the threat made against them. Almost one quarter (23.3%) of the respondents sought assistance from police. Some (31%) changed their work habits a little, in order to protect themselves or their family. Interestingly, 15 (1%) lawyers who never experienced threats still reported having changed their work habits to a certain degree.

In addition, the place where the threats/acts of violence occured varied considerably: a little less than half of the 683 respondents who experienced at least one type of threat (44.5%) reported that the incidents took place at their business office, 13.3% in court, 8.2% at another location.

<sup>&</sup>lt;sup>8</sup> It is important to note that some of the conducts discussed in this research are not necessarily or obviously a form of intimidation. However the author considers them as such for the purpose of her own report.

The author also indicated that older lawyers reported fewer cases of threats/acts of violence: a finding that, according to the author, might require a more in-depth analysis in order to obtain a better understanding of this situation.

Finally, the study revealed that defence lawyers, prosecutors and lawyers who practised family/divorce law were more affected by threats/acts of violence than the lawyers practising other fields. Almost 73% of defence lawyers, 81.7% of provincial and federal prosecutors and 86.4% of lawyers practising family/divorce law were victims of at least one threat. The total number of threats by area of legal practice can be found in Table 3.

TABLE 3: NUMBER OF THREATS BASED ON AREA OF PRACTICE (N=1 152)

Number of threats	Criminal defence lawyers	Provincial / federal prosecutors	Family /divorce	Corporate / commercial/ Property	General litigation	Labour / human rights	Total
0	14	18	12	134	104	33	469
	27.5%	18.4%	13.4%	62.4%	35.4%	37.2%	40.7%
1-2	16	47	31	58	126	38	409
	31.4%	48.0%	35.2%	27.1%	42.9%	42.7%	35.5%
3-4	5	10	21	16	37	8	133
	9.8%	10.2%	23.9%	7.5%	12.6%	9.0%	11.5%
5 or more	16	23	24	6	27	10	141
	31.4%	23.5%	27.3%	2.8%	9.2%	11.2%	12.2%
Total	51	98	88	214	294	89	1,152
	100%	100%	100%	100%	100%	100%	100%

Source: Brown & MacAlister (2006)

# 2.2 Intimidation of police officers

Two studies (Gomez Del Prado, 2004; Cusson and Gagnon 2011) have investigated the issue of intimidation of Quebec police officers.

The first study examined intimidation by criminal motorcycle gangs, specifically the forms of intimidation used by organized crime against Quebec police officers and the possible repercussions on the professional and personal lives of these peace officers. The second study was conducted in response to the request of the Quebec Ministry of Public Security (ministère de la Sécurité publique du Québec) as part of the 2007-10 Quebec Street Gang Intervention Plan (Plan d'intervention québécois sur les gangs de rue 2007-2010).

## 2.2.1 Gomez Del Prado, 2004

#### Methodology

The author drew on the "Projet Intimidation" database established by the Sûreté du Québec in 1994 following cases of intimidation of police officers that occurred in the Saguenay-Lac-Saint-Jean region. Although it was a need for police officers to understand the breadth of the problem that inspired them to develop a project capable of capturing all cases of intimidation, the project,

nevertheless remained somewhat abstract until 1997. Only few of the cases of intimidation were reported. It was the murder of two prison guards, attributed to criminal biker gangs, which helped "Projet Intimidation" take shape. That incident, along with other incidents in Montréal police stations (e.g., suspicious packages, cars set on fire), raised concerns and subsequently it was felt necessary to improve the database in order to properly track sucn incidents and inform responses to them. In 1999, a telephone line (1-800-659-GANG) was set up to help police officers report incidents directly, which quickly increased the number of incidents captured by the database.

The author limited data collection to the period from January 1999 to September 2001 inclusive<sup>9</sup>. Also, only cases where the victim was a police officer (or a civilian with direct ties to a police officer such as spouses and children) and the aggressor a member of organized crime were selected. In all, the sample comprised 165 incidents of intimidation.

In addition to the quantitative data obtained through the database, the author also conducted 21 semi-structured interviews with police officers who were victims of intimidation by organized crime in order to gather information regarding the impact on professional and/or personal lives.

## Sampling and results

The frequency of incidents was examined based on the region of the Sûreté du Québec in which they occurred. Thus, the classification of incidents according to region is as follows (n=165):

- Montréal-Laval-Laurentides-Lanaudière: 50 incidents (30.3%)
- Estrie: 49 incidents (29.7%)
- Saguenay-Lac-Saint-Jean: 24 incidents (14.5%)
- Mauricie-Centre du Québec: 21 incidents (12.7%)
- Montérégie: 15 incidents (9.1%)
- Québec: 3 incidents (1.8%)
- Abitibi-Témiscamingue- Nord-du-Québec: 2 incidents (1.2%)
- Côte-Nord: 1 incident (0.6%)

Table 4 illustrates the classification of police officers affected by the incidents according to their function and police service.

<sup>&</sup>lt;sup>9</sup> There dates were chosen as the information collected during this period was most complete. As mentioned, the databank before 1999 was little used by police officers and only few cases were reported. At the time of data collection, quality control measures were completed until September 2001.

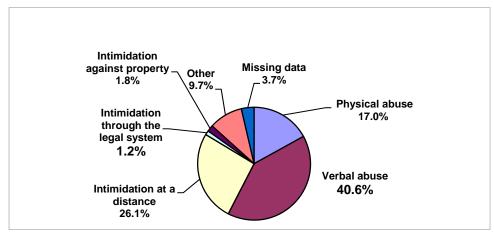
TABLE 4: NUMBER AND PERCENTAGE OF INCIDENTS OF INTIMIDATION AGAINST POLICE

Police Service and Function	Frequency	%
Municipal police, patrol officer	94	57.0
Police d'une Régie inter-municipale, patrol officer	27	16.4
Sûreté du Québec, patrol officer, Municipalité Régionale de Comté	23	13.9
Sûreté du Québec, patrol officer	5	3.0
Royal Canadian Mounted Police	2	1.2
Sûreté du Québec, detective	2	1.2
Sûreté du Québec and Municipal police jointly	2	1.2
Detective, Escouade du crime organisé	1	0.6
Detective, Escouade Régionale Mixte	1	0.6
Municipal police, detective	1	0.6
Missing data	7	4.3
Total	165	100.0

Source: Gomez Del Prado (2004).

Figure 2 illustrates the frequency of incidents by type of intimidation. The forms of intimidation most commonly used were verbal abuse (40.6%), intimidation at a distance (26.1%) and physical abuse (17%).

FIGURE 2: FREQUENCY OF INCIDENTS ACCORDING TO THE TYPE OF INTIMIDATION



Source: Gomez Del Prado (2004)

Some groups were reported to be more frequently the targets of intimidation than others. Patrol officers were more often the target of intimidation (69.1%), especially in municipal police services (94 of the 165 victims of intimidation were municipal police patrol officers). Table 5 illustrates the frequency of incidents according to the officer's rank.

TABLE 5: FREQUENCY OF INCIDENTS ACCORDING TO THE OFFICER'S RANK

Victim's status	Frequency	%
Patrol officer	114	69.1
Investigating officer	18	10.9
Patrol and investigating officer in general	21	12.7
Police officer's family/common-law spouse	3	1.8
Police organization	3	1.8
Retired police officer	1	0.6
Civilian	5	3.0
Total	165	100.0

Source: Gomez Del Prado (2004)

Most incidents took place at the time of the victim's action against the suspect, either involving the suspect's driving or action taken in an institution. Table 6 displays the frequency and percentage of circumstances regarding intimidation of police officers in Quebec.

TABLE 6: CIRCUMSTANCES SURROUNDING ACTS OF INTIMIDATION

Circumstances	Frequency	%
Suspect driving: victim's intervention	41	24.8
Victim action within or in the vicinity of an institution	26	15.8
Suspect action in the institution	19	11.5
Around the suspect's residence or the biker gang's premises	17	10.3
Other disaggregated circumstances	14	8.5
Victim driving: suspect action	13	7.9
Around the police station	11	6.7
Around the victim's or a family member's residence	9	5.5
Around the courthouse	4	2.4
Missing data	11	6.7
Total	165	100.0

Source: Gomez Del Prado (2004)

Regarding police action undertaken following the incident, there were no complaints or police reports filed in 74.5% of the cases. Of the incidents that did result in a complaint or police report (42 cases):

- 20 cases resulted in a guilty verdict;
- 4 cases ended with the suspect's acquittal;
- 14 cases were undergoing legal proceedings at the time data was being gathered; and
- 4 cases did not result in charges.

The data also provided a brief overview of the suspects. Most incidents (89%) were linked to the Hells Angels, either through full patch members of the chapter, or through a member of an affiliated club<sup>10</sup> or through individuals associated with the Hells Angels (or an affiliated group).<sup>11</sup> It is hypothesized that these individuals were essentially persons who have dealings (legal or illegal) with official members and who could use intimidation as a means to gain status within the organization (Gomez Del Prado 2004). This is in contrast to official members would rather be discreet to avoid undermining their activities (Gomez Del Prado 2004).

Finally, the interviews made it possible to shed light on certain details. First, intimidation did not result in a situation where the police officer's life is threatened. No cases of aggravated assault or attempted murder were reported. Most acts of intimidation materialized through explicit or non-explicit verbal threats. A number of verbal threats were directed towards the police officer's property and family.

Although the data indicated few cases of serious physical violence, during the interviews police officers expressed the need to take measures to protect themselves (e.g., moving to another city, carrying a weapon at all times, keeping their residence under police surveillance, taking extreme security measures at the house, taking a different way home). In general, there was a sense of deprivation of personal liberty that followed police officers even outside their working hours.

In addition, some suspects used their lawyers or the law to neutralize police officers by means of complaints (Gomez Del Prado 2004). For example, if charges were brought against a police officer, he or she may be suspended for the duration of the investigation, which in turn may slow down the police investigation.

Police officers were conscious of the fact that focusing their work on criminal biker gangs may mean exposing themselves to intimidation. It was reported that police officers who were the victims of intimidation were not chosen at random but rather were targeted for getting too close to a gang or for attempting to impede the gang's activities (Gomez Del Prado, 2004).

Finally, some solutions were put forward by police officers during their interview. It is necessary, according to them, to increase information concerning the *modus operandi* and organization of criminal biker gangs. In fact, a number of police officers interviewed indicated that some officers have misconceptions of the biker gang world which keep them away from this type of work (Gomez Del Prado, 2004). Police officers should be better informed of the tactics used by gangs and of the power they have as police officers. It is suggested that this would facilitate an officer's fight against the tactics of intimidation used by criminal bikers (Gomez Del Prado, 2004).

<sup>&</sup>lt;sup>10</sup> Affiliated club members as well as future members, strikers and hangarounds, are not patch members of the chapter, but rather wear the colours associated woth the farm club and are considered future members of the chapter. <sup>11</sup> This includes friends and relatives. These individuals do not necessarily wear their colours, but they are affiliated with the bikers, often because they do business with them (e.g., a bar owner, a car dealership that leases vehicles to the bikers).

## 2.2.2 Cusson and Gagnon, 2011

#### Methodology

In its initial stages, the methodology keep focused on the analysis of cases included in the plan to combat intimidation (PLI). Two online surveys of various Quebec police forces then provided further information. Lastly, the authors analyzed another survey of police victims of intimidation to verify the severity of the acts of intimidation as described in the PLI database.

A total of 64 cases taken from the PLI and comprising incidents occurring between September 2006 and April 2008 were analyzed. The nature of the incidents described consisted primarily of veiled threats, vague insinuations and verbal abuse, with only three incidents of assault with a weapon or assault causing bodily harm being reported for the 64 cases. Many of the results are similar to the research findings of Gomez Del Prado (2004). For example, a similar percentage of the acts of intimidation examined took place after an interaction between the police officer and the source of intimidation. In fact, in most cases, this was what is known as "reactive" (or spontaneous) intimidation, since the perpetrator of the intimidation reacted to a given action of the police officer that involved him or her.

The first part of the survey was designed to obtain information on the extent of the phenomenon of intimidation of police officers. The questionnaire consisted of a single question asking respondents whether they had been victims of intimidation over the previous year (late 2008 to early 2009) [sic]. Those who reported being victims of at least one act of intimidation were then asked to complete the second part of the questionnaire.

#### Results

Of the 677 police officers who completed the first part of the questionnaire, 283 stated they had been victims of at least one act of intimidation.

According to the survey, police officers were often repeatedly victimized, as the 249 officers who answered this question responded that they had faced a total of 976 acts of intimidation. In terms of the most significant acts of intimidation, 92% of police officers reported being the target of at least one veiled threat, vague insinuation or verbal abuse; 78.3% were threatened with legal proceedings or ethics complaints, while 67.5% reported being photographed, watched or shadowed. Incidents of assault were also reported by 37.7% of police officers. In addition, the study highlighted the emergence of less traditional methods, such as surrounding (being surrounded was mentioned in 28.9% of cases).

In general, the authors pointed out that the least "severe" forms of intimidation (or those involving less of a threat) were also the most common. For example, aggravated assault was mentioned only in 1.6% of the cases. Lastly, they underlined the diversity of the means of intimidation, as over 60% of police officers (N=249) reported being victims of 3 to 5 types of intimidation.

In 53.1% of cases (N=241) the intimidation was primarily targeted at police officers and rarely at friends or family members (12%). Also, 67.6% of the 225 police officers who responded to this question stated they had not experienced any consequences. However, 75.3% of the 73 police

officers who reported that the intimidation had led to consequences indicated that these were primarily psychological, with 15.1% also sustaining physical harm.

Certain protective measures were taken as a result of the intimidation incidents (50 police officers stated they had taken some measures). The most common protective measures reported included changing routines (66%), requesting a transfer (10%), setting up surveillance cameras (8%), applying to carry a weapon (8%) and other protective measures (26%).

The results also shed light on the types of action taken against suspects. Of the 148 police respondents, 46.6% stated that the suspect had been apprehended, 41.9% laid charges against the suspect, 24.3% filed a complaint and 23.6% met the suspect to issue a warning.

It is also important to note that only 37.8% of suspects were members of a criminal group. As the authors point out, this information [TRANSLATION] "belies the belief that criminal groups are the most common perpetrators of intimation" (p. 37). In addition, the results also show that the acts perpetrated by criminal group members are very similar to the other acts of intimidation committed.

#### Recommendations

In conclusion, the report issues five recommendations based on the various findings of the study that are important to note here, namely that:

- 1. police colleges and police forces in general provide training on ways to respond appropriately to intimidation;
- 2. the city of Montreal and other major Quebec cities adopt municipal by-laws to fine anyone engaging in acts of intimidation or intimidating behaviour against police officers;
- 3. Quebec police forces establish guidelines on intimidation and integrate them in their operating procedures;
- 4. the Police Ethics Commissioner establish procedures to address complaints in a timely manner in order to retain those who are actually well-founded and reject unfounded and frivolous complaints as quickly as possible; and
- 5. the plan to combat intimidation (PLI) be maintained and that it continue receiving the resources required for its ongoing operation.

## 2.3 Intimidation of witnesses

During this study, some reports, both at the provincial and national level, were identified. It should be noted that most of the documentation focused on only one group of justice system participants: witnesses. In all, three reports were identified. All make recommendations regarding the protection of witnesses. There are also annual reports produced which provide information concerning the federal witness protection program<sup>12</sup>.

<sup>&</sup>lt;sup>12</sup> To access to the reports please see: <a href="http://www.publicsafety.gc.ca/abt/dpr/le/wppa2008-9-eng.aspx">http://www.publicsafety.gc.ca/abt/dpr/le/wppa2008-9-eng.aspx</a>

#### **Boisvert Report**

The first report (Boisvert, 2005) was submitted to the Quebec Minister of Public Security. This report's mandate was first and foremost to study various models of protection for collaborators of justice at the international level. It was intended that this would focus on conditions of detention, identity change and other protective measures and inform a model adapted to the Quebec context. The recommendations were provided to identify gaps in existing policy and to make necessary change to improve case management; thus increasing the degree of protection afforded to collaborators of justice.

The term "collaborator of justice" could have a different scope and meaning in the language of the police and the legal system. In the report, the term mainly refers to individuals involved in serious cases that require specific protective measures. Such measures are usually implemented for witnesses likely to be victimized by intimidation and/or retaliation. Hence, the expression refers here to the following terms:

- police informants whose identity is revealed in the case;
- undercover police;<sup>13</sup>
- offenders providing evidence;<sup>14</sup>
- special witnesses;<sup>15</sup>
- friends and family members of the above, whose life or safety may be endangered following their collaboration with the justice system.

The report presented recommendations to the Quebec government with respect to the following:

- The implementation of a collaborator protection policy (management and administration of this policy and the role of the various representatives in the program);
- The legislative amendments that could ensure the harmonization of protection programs and the separation between police investigations and the protection of collaborators;
- The steps to take when using undercover agents;
- The legislative amendments and measures to be adopted in cases of identity change;
- The measures to take to avoid misunderstandings led by "informer contracts" as well as the steps to take with respect to the collaboration contract and the compliance protocol;
- The legislative amendments and measures to take in matters of detention (special unit, adapted programs) and parole.

<sup>&</sup>lt;sup>13</sup> Although there is no explicit definition of the term "undercover police" in legal instruments, some sections of Canada's *Criminal Code* recognize their existence as a "person acting covertly under the direction and control of a public officer" (as cited in Boisvert, 2005:4).

<sup>&</sup>lt;sup>14</sup>[Translation] "Offenders providing testimony: A person who has committed, participated in the commission of an offence, or belonged to an organization engaging in unlawful activities, and who, subject to certain benefits, agrees to testify for the prosecutor about the commission of an offence against a criminal organization to which he or she belongs or belonged" (cited in Boisvert, 2005:5).

<sup>&</sup>lt;sup>15</sup> This expression refers to those whose life or safety may be endangered as a result of their testimony in a criminal case. Unlike offenders providing testimony, special witnesses generally neither participated in the commission of a criminal act nor belonged to a criminal organization.

## Dandurand Report

The second report (Dandurand, 2007) examined the protection of witnesses and collaborators of justice involved in terrorism cases. It was prepared for the Commission of Inquiry in the Investigation of the Bombing of Air India Flight 182 (1985).

The acquittal of the two prime suspects in the case was related to, among other things, a lack of collaboration on the part of the Indo-Canadian community. The fear of reprisal extended to the entire community. One aspect of the mandate of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 was to verify the existence and effectiveness of a Canadian statute involving the protection of witnesses in terrorist cases. The purpose of the Dandurand Report was to provide the Commission of Inquiry with information on this subject.

Th Dandurand Report underscored the need for databases and empirical research in a number of areas pertaining to the intimidation of witnesses: intimidation in less "serious" cases, the effectiveness of protection programs, and the nature, scope and consequences of witness intimidation.

Report of the Standing Committee on Public Safety and National Security

The third report was produced by the Standing Committee on Public Safety and National Security (2008). It is further to the case of Richard Young, an informant who allegedly committed a murder while a participant in the RCMP's national witness protection program. The media attention over the incident led the Committee to review the federal witness protection program.

The report of the Committee proposes a number of amendments to the program and the *Witness Protection Program Act* (WPPA):

- The implementation of an independent office within the Department of Justice that would be in charge of managing the program;
- The introduction of a psychological assessment of witnesses over the age of 18 before admission to the program;
- The automatic offer of legal assistance to candidates during the negotiation of the candidate's admission to the Witness Protection Program and the signing of the protection contract;
- The proper handling of complaints from candidates for, and protectees of, the Witness Protection Program by the Commission for Public Complaints Against the RCMP;
- The development of a funding agreement between the federal, provincial and territorial ministers that would reflect shared responsibility for justice;
- The addition of a clause allowing the RCMP (or the independent Department of Justice office) to enter into agreements directly with provincial and territorial governments in order to accelerate the processing of witness protection files;

<sup>&</sup>lt;sup>16</sup> The report includes the following as "serious crimes:" kidnapping, possession of explosives, assault, murder, money laundering and acts related to terrorism and organized crime.

- The elaboration of minimum Canadian standards to ensure uniformity in the treatment of all witnesses admitted to the various witness protection programs;
- The facilitation (by the independent Department of Justice office) of independent research in the field as well as the compilation of data while respecting the confidentiality of protectees;
- The enhancement of the information contained in the annual report<sup>17</sup> on the Witness Protection Program so as to give a clearer picture of the program, the reason for its existence and protectees' obligations to the WPP.

## Summary of Reports

The reports discussed above have all touched on the importance for governments to equip themselves with collaborator protection programs, as the foundations of justice and the public's confidence in the justice system depend on them. Furthermore, they emphasize the need for research and data in the field of witness protection, specifically on the scope of the problem, nature of the intimidation and effectiveness of the protective measures in place.

# 2.4 Positions of professional associations

Growing concern related to certain events has led professional associations to speak to the situation of intimidation. For instance, in 2003, Toronto defense lawyer Rocco Galati was seriously threatened, to the point where he decided to resign from all national security cases, including the case of alleged terrorist Abdul Rahman Khadr. A message threatening his life left on his answering machine was linked to his defence of Khadr<sup>18</sup>. Also, in October 2006, the Montreal courthouse was the target of a bomb threat. That incident involved a specific Crown prosecutor and resulted in the partial closing of the courthouse.

#### Bar associations

In 2003, in the wake of the events involving lawyer Rocco Galati, the Ontario Bar Association issued a press release in which it expressed its fear of threat and intimidation. The press release stated that access to justice in a democratic society requires lawyers to represent individuals without fear of harm and therefore requested that the government adopt a resolution to protect lawyers adequately (Ontario Bar Association, 2003).

The Ontario Bar Association also became deeply engaged in implementing a tool to inform lawyers about preventive measures used to minimize risk to personal safety. It prepared the documentation that led to the *Personal Security Handbook* adopted in 2006 by the Canadian Bar Association. The guide draws on various documents from the Department of Justice Canada and the Department of Justice of the United States.

<sup>&</sup>lt;sup>17</sup> See section titled *Report of the Royal Canadian Mounted Police*, later in this report.

<sup>&</sup>lt;sup>18</sup> The exact words found on Mr.Galati's answering machine were, "Well, Mr. Galati. What's this I hear about you working with the terrorist now, helping to get that (expletive) punk terrorist Khadr off. You are dead wop." (source see: CTV (December 5, 2003): "Terror suspect lawyer quits cases over threat:" <a href="http://toronto.ctv.ca/servlet/an/local/CTVNews/20031205/galati">http://toronto.ctv.ca/servlet/an/local/CTVNews/20031205/galati</a> khadr031205?hub=Toronto)

The guide identifies three levels of seriousness of risk:

- (1) Low risk: A threat that appears to pose a minimal risk to the victim and public safety (vague and indirect threat);
- (2) Medium threat: A threat which could be carried out, although it may not appear entirely realistic (threat is more direct and more concrete than a low level threat);
- (3) High threat: A threat that appears to pose an imminent danger (threat is direct, specific and plausible and suggests concrete steps have been taken toward carrying it out, such as when, where and how it will be carried out).

The guide also proposes some actions to take when presented with various threatening situations (e.g., disruptive behaviour, criminal harassment and intimidation, E-mail or mail threats, being followed by another car, armed threats, inside and outside attacks). The guide then ends with a series of precautions that may be taken to prevent becoming a victim of threats and intimidation.

## Association des substituts du procureur général du Québec

In 2004, the Association des substituts du procureur général du Québec (ASPGQ) underscored the pressing need to increase security measures in the courthouse, namely that of Montréal, which has been the target of a number of incidents<sup>19</sup> since 2004. In 2006, a bomb threat that partially paralyzed the Montréal courthouse (Sheppard, 2006) caused the ASPGQ to issue a press release denouncing the lack of leadership on the part of the Ministère de la Justice. The association states that the measures put in place during the bomb threat were [Translation] "improvised and clearly insufficient." Finally, the ASPGQ stated the need for the Ministère de la Justice to ensure the protection of its prosecutors as part of its responsibilities so that they are able to carry out their duties without fear of intimidation and threat (Association des substituts du procureur général du Québec, 2006).

Finally, in 2008, other incidents, including threats made in open court (Nadeau, 2008) against a lawyer by an individual armed with a knife, led to the tabling of Bill 15 by the provincial government. The Bill received Royal Assent in November 2009. It noted, among other things, the role of the Quebec Minister of Justice and the Minister of Public Safety in the security of various Quebec courts. It also makes it possible to put in place security checkpoints (or metal detectors) and prohibits the carrying of a firearm or any other "object that could be used to cause bodily harm to or threaten or intimidate a person" (National Assembly, 2009:3).

In December 2009, the Montréal courthouse was equipped with two metal detectors (security checkpoints). Similar measures will also be put in place in other Québec courthouses. It is one of the first measures implemented to increase security and prevent problems of intimidation in Québec (Association des substituts du procureur général du Québec, 2006).

 $\frac{http://webcache.googleusercontent.com/search?q=cache:Ld3fVbkedOcJ:www.revenuquebec.ca/portal/fr/ArticleView.php%3Farticle_id%3D70+http://www.revenuquebec.ca/portal/fr/ArticleView.php%3Farticle_id%3D70&hl=fr&gl=ca&strip=1$ 

<sup>&</sup>lt;sup>19</sup> Lawyers complained about being the victim of a number of incidents of intimidation (e,g,, being photographed by individuals in court, being followed in their car, receiving gestural threats in court). In some trials involving street gang members, the courtroom is full of members. This is perceived by many as an attempt at intimidation: see Touzin (December 13, 2006) "Des procureurs de la Couronne menacés:"

# EXAMPLES FROM OTHER COUNTRIES OR INTERNATIONAL ORGANIZATIONS

Official documents on measures adopted by countries in the area of witness protection and international organizations reports on the matter were compiled.

First, it is important to note the work undertaken by the United Nations (UN) in the field of witness protection. The UN *Convention against Transnational Organized Crime* (2000) obligates States Parties to take appropriate measures to provide effective protection to witnesses from retaliation or intimidation. Article 23 of the *Convention* also requires States Parties to criminalize obstruction of justice. In 2008, the United Nations Office on Drugs and Crime released: *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime*.

The Council of Europe has also made recommendations to its member states to identify principles to be taken into account when developing witness protection programs. Additionally, the Council proposes elements a protection program should minimally contain in order to achieve some level of effectiveness.

It is also worth highlighting a few studies conducted in the United States concerning the intimidation of justice system participants and relevant American legislation concerning measures to protect the courts (*Court Security Improvement Act 2007*) and the federal witness protection program.

#### 3.1 The United Nations

As noted above, Article 23 of the *Convention against Transnational Organized Crime* (2000) obligates States Parties to criminalize the obstruction of justice:

#### Article 23. Criminalization of Obstruction of Justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- The use of physical force, threats or intimidation or the promise, offering or giving as an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24, for its part, refers to measures that shall be taken by States Parties to protect witnesses:

## Article 24. Protection of Witnesses

- 1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.
- 2. The measure envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
- (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosurepf information concerning the identity and whereabouts of such persons;
- (b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communication technology such as video links or other adequate means.
- 3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
- 4. The provisions of this article shall also apply to victims insofar as they are witnesses.

In 2009, the UNODC released *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime* (UNODC, 2009). This work offers an overview of the various measures put in place in 45 countries, 8 international organizations and 3 legal institutions that agreed to collaborate on implementing this manual.

Consultation prior to this work showed that, of the 43 countries examined at the time, 14 had a witness protection program, 4 were in the process of developing a program, 18 did not have a program but other security measures in place and 7 did not provide any protection. Since witness protection programs (which include relocation and change in identity) remain a solution or last resort, it is important that alternative measures be put in place by countries in cases where it is necessary to ensure protection of a witness when the witness is not admissible to a protection program. Among alternative measures discussed during these consultations are the following:

- Security measures outside the court: routine police patrol in front of the witness's house, temporary relocation to a close relative's house, monitoring of e-mails and telephone calls, etc.;
- Procedural measures: voice and face scrambling, testimony by closed-circuit television, *in camera* proceedings, expulsion of the defendant and/or the public from the courtroom, permission to use statements made as opposed to testifying at the trial, presence of a support person during the testimony, anonymous testimony, etc.;
- Preventive measures in penitentiaries: separation from other inmates, use of another name, special procedures for transportation to the court, isolation in distinct units; and
- Self-protection: financial assistance for witness relocation, development with the police of risk assessment, safety plan and self-protection measures allowing witnesses to have a better sense of security and to better manage their personal life.

Also noted in the guide, and mentioned in Canadian reports on witness protection programs, is the importance of separating investigation and prosecution services from witness assistance. A number of countries (e.g., South Africa, Colombia, the United States, the Netherlands and the Philippines, for example) entrust that task to the equivalent of the Department of Justice, the Department of the Interior or the Office of the Attorney General.

Finally, in some countries (e.g., Australia, Austria, Canada, Latvia, Northern Ireland), participants other than witnesses (e.g., judges, prosecutors, undercover officers) are accepted into and may benefit from protection programs. However, in most countries (e.g., Germany, the United States, Slovakia) the participation of a judge, a prosecutor, an undercover officer, an expert or an interpreter in a protection program is considered exceptional. In fact, intimidation is generally viewed as an inherent part of their job.

Part V of the report goes further to note the importance for the States parties to base the adoption of a new witness protection program on certain essential criteria:

- Level and types of crime present in society;
- Frequency of violence against participants in criminal proceedings;
- The true power/willingness of the State to prosecute organized crime; and
- The existence of actual means of doing so.

However, the protection program must be anchored in a policy framework or legislation in such a way that its value is officially recognized. Although most countries support their protection programs on a legal basis, there are some who have no legislation on the subject (e.g., New Zealand). In such countries, the program is considered part of the regular duties of the police.

Finally, the report notes the key principles for the proper functioning of witness protection programs, which include the following:

- Confidentiality: the program must be separated from investigation and prosecution services and information must not be shared with police services, except in exceptional cases:
- Partnerships: Despite the need for confidentiality, the program must forge close ties with various private sector and public sector services (e.g., housing, social security, registration, dental, psychological services);
- Neutrality: All witnesses meeting the admission criteria must have access to it. The program must not favour collaborators of justice or any other person who is likely to advance an investigation or proceedings (hence the importance of distancing the program from police services); and
- Transparency and accountability: It is important to report estimates and appoint a committee responsible for verifying expenses while maintaining confidentiality.

# 3.2 The Council of Europe

In 2005, the Committee of Ministers of the Council of Europe made recommendations to member states with respect to measures to be undertaken to protect witnesses. The Committee noted the importance of certain witnesses and collaborators in criminal procedure and recognized

the need to protect them, especially in cases of serious offences (e.g., organized crime, terrorism).

It recommended that member states adopt certain principles when developing witness protection measures and programs. It also recommended the following (Council of Europe, 2005):

- Both legislative and practical measures be implemented to protect witnesses before, during and after the trial while respecting the rights of the defence;
- Acts of intimidation must be punished appropriately;
- Processes ensuring the respect for witness anonymity must be created; and
- International collaboration is equally important in the fight against transnational crime and in the protection of witnesses. member states should ensure the exchange of measures and programs used by each of them in witness protection.

# 3.3 The United Kingdom

In January 2010, for the first time in more than 350 years, the United Kingdom allowed a trial in criminal court to be held without a jury (Ryan, 2010). There was concern that jury members would become the victims of intimidation after the first three trials were unsuccessful for that reason. Section 43 and 44 of the United Kingdom,'s *Criminal Justice Act 2003* allow for trials without a jury in complex cases of fraud and in cases where there is evidence of a real danger of jury tampering (Ryan, 2010).

From that same perspective, Ireland has tabled the Criminal Justice (Amendment) bill 2009 that passed on July 23, 2009, which withdraws jury trials in cases of offences related to organized crime. The new law also provides for an increase in penalty from a 10-year to a 15-year sentence in cases of intimidation of witnesses and jury members. This legislation has not been without controversy. Organizations defending human rights have strongly criticized the new law (Centre for Criminal Justice and Human Rights, 2009). Many see it as a means of prejudicing the defendant's right to a fair and impartial trial. The ability to be judged by one's peers is an important concept that forms an integral part of a democratic society. The United Nations Human Rights Committee has also criticized Ireland's legislation (Centre for Criminal Justice and Human Rights, 2009).

The *Home Office Research, Development and Statistics Directorate* has produced a report dealing with the co-operation of witnesses in organized crime cases (Fyfe and Sheptycki, 2005), in which a survey of the literature was conducted. The findings are generally in keeping with the highlights of the present work:

- There is a lack of independent research on topics involving the intimidation of witnesses, particularly with respect to testimonies in cases of organized crime;
- The research that has been produced has emphasized the protection of witnesses, particularly the specification and comparison of the various witness protection programs and policies across the globe; and
- Most of the research conducted is American and deals with the federal witness protection program.

## 3.4 The United States

The United States developed a federal witness protection program in the late 1960s. It is administered by the Department of Justice while the US Marshals Service (USMS) is responsible for implementing protective measures. Each state also has the right to implement other statutes and/or measures within its territory to protect "less serious" cases of intimidation that do not require federal protection.

The federal program is to be used as a last resort, as such measures are serious and entail permanent relocation and change in identity. This is why an assessment is carried out to verify the witness's general mental state and capacity to adapt to various situations.

The federal witness protection program has been perceived by many countries as an exemplar with a number of countries modeling their programs after it (Fyfe and Sheptycki, 2006). It has however since been subject to some criticism that has somewhat undermined its reputation (Fyfe and Sheptycki, 2006). For example, there was no clear definition of the boundaries of protection, Marshals Service was under-staffing and under-training; and, there were important delays in dealing with documentation for new identities, etc (Fyfe and Sheptycki, 2006: 321-322).

Although there is no tool for measuring the effectiveness of such a program, it is considered to be among the most effective as very few participants have been the victims of attacks associated with threats (Fyfe and Sheptycki, 2006). Between 1970 and 2005, the program admitted more than 7,300 witnesses and 9,600 family members or partners (US Department of Justice 2005). In 2003, the Marshals Service invested more than \$59.7 million in the program.

The program is monitored by the US Department of Justice, specifically the US Office of the Inspector General. The most recent report concerning the federal witness protection program dates from 2005 and highlights weaknesses in the measures adopted. Unfortunately, there is no annual report available regarding the federal witness protection program.

In general, American research has focused on attempting to understand the scope and nature of intimidation of justice system participants and has most often used surveys and interviews. Between 1994 and 1997, particular attention was paid to the problem of witness intimidation. A number of surveys were conducted among stakeholders (e.g., police, prosecutors, judges, and workers in victim and witnesses protection) and witnesses.

In 1996, a report by the National Institute of Justice produced a practical guide (Finn and Healey, 1996) aimed at assisting the various stakeholders in improving their witness intimidation prevention techniques. Emphasis was put on the intimidation of witnesses in cases of drug- and gang-related crimes.

The guide is based on four sources:

- (1) Review of related literature and a review of applicable jurisprudence;
- (2) A series of 32 telephone interviews with criminal justice professionals: prosecutors, police officers at the local, state and federal levels and program directors for victim and witness services;
- (3) The discussions of a working group made up of 20 criminal justice professionals during a meeting held in September 1994; and
- (4) Field interviews with 50 professionals conducted in the following cities: Baltimore, Des Moines, New York City, Oakland, San Francisco and Washington, D.C.

The interviews with criminal justice professionals made it possible to establish the following:

- A number of prosecutors reported that the intimidation of witnesses was suspected in 75% to 100% of cases of violent crime in certain neighbourhoods dominated by gangs;
- A survey (1993) of 319 victim/witness assistance programs indicated that more than 60% reported the need to investigate harassing threats against victims/witnesses by suspects;
- In 1994, a survey of 192 prosecutors showed that the intimidation of victims/witnesses was a problem in 51% of cases in larger jurisdictions (population of over 250,000 inhabitants) and 43% of cases in smaller jurisdictions (population between 50,000 and 250,000 inhabitants).

Research in the United States has also been carried out on the intimidation of judges and prosecutors. In 1999, a number of judges from the State of Pennsylvania were informally interviewed during a meeting involving discussions about security in the courts. Given the significant number of judges who reported having been victims of intimidation, the court administrator of Pennsylvania decided to conduct a survey to verify the scope of the problem (Weiner & al., 2000). Thus, the survey was sent to all 1,112 of the state's judges. Of that number, 93% (1,029 judges) filled out the survey. The results indicated that intimidation is a real problem: 52% of the judges who responded reported having been the victim of intimidation at least once. That was enough to raise concerns at the national level.

As the findings indicated that most incidents took place in court, the state availed itself of the *Court Security Improvement Act of 2007*, which amended the clauses of the *United States Code* respecting the protection of judges and federal peace officers. The budget earmarked for the protection of courts by the Marshals Service was scheduled to see an increase of \$20M per fiscal year (from 2007 to 2011) to improve court security (Doyle, 2008).

The Court Security Improvement Act of 2007 also requires the Attorney General to submit a report providing, among other things, the number and nature of threats made against prosecutors, the measures put in place to assist with threats and the response time. The first report pursuant to this legislation was tabled in October 2008 and provided detailed information on the nature and number of cases of threats per year, for the 2005-2008 period, as well as the response process of the USMS and protective measures put in place.

A database of cases reported is also available (US Department of Justice, 2004). This database allows associations of prosecutors and the Marshals Service to identify patterns over time and to act accordingly. After 1996, the program created to enhance the collection of threat information was criticized because the data was rarely updated and the resulting information was not reflective of what was occurring (US Department of Justice, 2004).

The death of two family members of Judge Joan Lefkow (Illinois) in 2005 led the US Department of Justice to look at the effectiveness of the measures put in place to protect judges and prosecutors (Johnson, 2009). The husband and mother of Judge Lefkow were shot dead in the family home. The suspect allegedly killed them out of revenge after a decision rendered by Judge Lefkow in her case (case of medical malpractice).

Since then, improvements have been made to better protect the justice participants (Fyfe & Sheptycki, 2006). For instance, the US Marshals Service opened in September 2007 a new Threat Management Center (TMC). The Center's mission is to collect, analyze and publish information pertaining to threats to justice system participants (US Federal Court, 2007). Justice system participants have 24-hour access to the centre and may contact it when they feel threatened. The Center has the ability to assess the reported situation and then recommend measures to investigators to protect such persons when necessary.

The US Department of justice (Office of the Inspector General) recently produced another report (USDOJ 2009) with the purpose to verify the effectiveness and ability of the US Marshals Service to quickly and adequately respond to reported threats. It revealed that the number of cases of threats and inappropriate communications involving judges, federal attorneys and assistant attorneys is on the rise, increasing from 592 in 2003 to 1,278 in 2008 (See figure 3).

Threats Against Federal Judges, Prosecutors and Court Officials Investigated By U.S. Marshals Service 1400 1.278 1200 Number of Threats 1000 All Threats 953 800 665 Against Federal 600 592 Prosecutors 400 210 116 250 200 199 162 168 0 2003 2004 2005 2006 2007 2008 Fiscal Year

FIGURE 3: THREATS AGAINST FEDERAL JUDGES, PROSECUTORS AND COURT OFFICIALS INVESTIGATED BY U.S. MARSHALS SERVICE

Source: US Department of Justice (2009)

In addition, this report (USDOJ 2009) indicated that some threats are not reported to the US Marshals Service. Although there is no way of knowing the exact number of unreported threats, interviews and surveys suggest that close to 25% of all threats were not reported (USDOJ, 2009: III). It was therefore recommended that the USMS put in place training for justice system participants to raise their awareness and remind them of the importance of reporting incidents of threats as quickly as possible.

Finally, it was noted that reporting threats does not mean that the USMS is able to adequately assess the level of risk and implement the necessary protective measures (USDOJ 2009). The lack of communication between the USMS and police services (and the FBI) makes the situation more difficult and increases response time. Approximately one-quarter of the threats reported in fiscal years 2007/2008 took two days or more to respond to (whereas it is intended that the USMS should submit an action plan after one working day).

#### 4. CONCLUSION

Based on the research conducted it is clear that there is a lack of information on the subject of intimidation of justice system participants, especially in Canada. The dirth of research, and absence of provincial databases or a national database on the intimidation of justice system participants, makes it difficult to fully understand the phenomenon.

It would also appear that witness intimidation has received more attention among researchers than intimidation against other justice participants, an area that has not been explored to any great extent.

Finally, national research on the Canadian situation is rare.

The following conclusions can be drawn from this review of the literature:

- 1- A number of players stress the lack of empirical research on the subject (Brown 2005, Dandurand 2007), given that most of the literature was published in the United States and applied strictly to a U.S. context;
- 2- The literature, with two exceptions, was mostly centred on the various forms of witness intimidation and on improving witness protection;
- 3- Canadian research had focused primarily on one aspect of the subject matter, targeting one justice system actor and one specific area (for instance, Quebec police officers). No Pan-Canadian research was compiled and certain actors in the justice system (such as judges) were not targeted by these studies;

- 4- It is difficult to determine the true scope of intimidation as there is no database specific to the intimidation of justice system participants. In Canada, data pertaining to the intimidation of justice system participants is confused with generalized statements about crime. And even if such data were to exist, it would be difficult to know the exact numbers as the data would only take into account cases reported to the authorities;
- 5- Many research studies appear to take such intimidation for granted and only examine a very small part of the true existence of such a phenomenon. There are also certain players who question the need for the implementation (or strengthening) of measures involving the protection of justice system participants (Campbell, 2006);
- 6- A fair amount of legislation has been adopted within a context of international pressure and has therefore not been the subject of more in-depth analyses or discussions. It often lacks the empirical bases to support it;
- 7- Research published in Canada since 1995 suggests an intimidation problem, which, in the case of the two major research studies conducted, affects 41% and 59% of respondents respectively (Brown 2005, Cusson and Gagnon 2011);
- 8- The research carried out seems to indicate that inappropriate communications and non-verbal threats are the most common forms of intimidation experienced by respondents. Instances of intimidation involving physical violence were therefore less frequent;

Based on the above mentioned conclusions, we believe it is of importance to conduct a national research project on the intimidation of justice system participants. This will make it possible to understand the scope of the situation and verify the relevance of the implementation of regulation mechanisms (databases, annual reports, legislation).

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