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# Legislative Committee on Bill C-27

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**EVIDENCE**

## Wednesday, June 13, 2007

## Chair

**Mr. Bernard Patry**

# Legislative Committee on Bill C-27

**Wednesday, June 13, 2007**

● (1535)

[*Translation*]

**The Chair (Mr. Bernard Patry (Pierrefonds—Dollard, Lib.)):** Good morning everyone.

Welcome to the Legislative Committee on Bill C-27. This is meeting 6. Pursuant to the Order of Reference of Thursday, April 5, 2007, we are studying Bill C-27, An Act to amend the Criminal Code (dangerous offenders and recognizance to keep the peace).

[*English*]

We have the pleasure of having Mr. John Muise, the director of public safety for the Canadian Centre for Abuse Awareness, as a witness this afternoon.

Welcome, Mr. Muise. We're awaiting your introductory remarks. Go ahead for ten minutes, please.

**Mr. John Muise (Director, Public Safety, Canadian Centre for Abuse Awareness):** Thank you very much, Mr. Patry, Mr. Dupuis, and members of the committee, for this opportunity to testify on this important public safety matter.

My name is John Muise. I'm the director of public safety at the Canadian Centre for Abuse Awareness. For those of you I haven't met before, I'm a retired police officer, having just last year wrapped up 30 years as a police officer in the Toronto Police Service.

During the last six or seven of those years, I was a seconded member of Ontario's Office for Victims of Crime, an arm's-length advisory agency to the provincial government. We provide advice on public safety, criminal justice reform, and support for crime victims to a number of attorneys general and other members of cabinet.

The CCAA is a non-governmental charitable organization that has been in place since 1993. It has tried to raise awareness about the true cost of neglect through its support of the victims of child abuse. Based in Newmarket, Ontario, north of Toronto, the CCAA is powered by a committed group of staff and volunteers, providing support to 70 partner agencies. Whether it's fulfilling a child's dream wish, assisting crime victims, developing abuse prevention programs and resources, or advocating publicly for legislative change—that's what I do—CCAA is committed to ending abuse.

A few years ago, the CCAA received a government grant to go around the province of Ontario—where I first met them, actually—to conduct a review of round tables to get a sense of how we could better improve the criminal justice system in order to enhance public safety and protect children. When they went around the province, they spoke to 150 front-line criminal justice professionals, crime victims, abuse survivors, and other stakeholders.

From this, a report was completed. It was named the *Martin's Hope* report in memory of Martin Kruze, an adult survivor. He was an innocent child victim of the Maple Leaf Gardens sexual abuse scandal. In a courageous move, Martin publically disclosed the abuse he had suffered at the hands of his perpetrator. Convictions were subsequently registered for numerous child sex abuse offences, but just four days after one of the accused was sentenced to just two years less a day in a reformatory, Martin tragically took his own life. Although it was too late for Martin, the sentence of the offender was later increased to five years on appeal.

This proved to be the turning point for the CCAA. They did their review, and out of it came the *Martin's Hope* report, with 60 recommendations for change—39 directed at the federal government, and 21 at the Ontario provincial government. The report was released in November 2004 at Toronto police headquarters.

We welcome the opportunity to provide these submissions. As indicated in the preface, CCAA's *Martin's Hope* report makes 60 recommendations. Included in the report are recommendations with respect to dangerous offenders, long-term offenders, and section 810 orders, or recognizance to keep the peace.

Seven of the recommendations in our report have relevance, and we have reprinted them in a brief that I provided to the clerk, Mr. Dupuis, electronically last night. I suspect once it is translated, it will be made available to you. I'm relying on that brief today.

Three recommendations in particular have specific applicability to the amendment proposed in this bill; several others are ancillary, and we have included them in the brief.

Our recommendation 8-5 was that the federal government amend sections 810.2 and 810.1 of the Criminal Code to extend the duration of the order for up to five years, also providing for a process whereby the person required to enter into the recognizance can seek a court review of the need for continuing or varying the order on an annual basis.

We also made a recommendation 8-6 to include specific conditions in the recognizance orders, including residing at an approved location; where necessary, residing in a community facility; and complying with electronic monitoring.

One other recommendation that is specific to this bill is 8-9, and our recommendation was that the federal government amend section 753.1, the dangerous offender provisions of the Criminal Code, to ensure that the court takes special notice of any pattern of repetitive behaviour by the offender of violating conditions of a court order, including any kind of conditional release, including long-term offender releases, and for the court to take special notice where those violations resulted in direct victimization.

As you can see in that recommendation, the CCAA's proposed amendment would require judges to take special notice of any repetitive behaviour. We are heartened that an amendment of this kind with respect to violations of long-term orders is being proposed by certain parliamentarians, including members of this committee, and we would encourage this committee and its members to pursue an amendment of this nature either now, as part of this bill, or in the future.

We note that some provincial Attorneys General have called for an amendment of this nature, and additionally that the Honourable Rob Nicholson, Minister of Justice, in his testimony before this committee, indicated that his department is actively exploring this possibility.

Several of the participants, during our round table, had originally called for a “three strikes and you're in” amendment, whereby three serious crimes that resulted in serious time would result in an automatic dangerous offender designation. To be frank, we hadn't thought of a reverse onus provision as set out in Bill C-27, so the recommendation that I just read to you, as set out in 8-9, was what we felt was an appropriate fallback, consistent with section 1 of the charter. We hadn't considered the reverse onus provision as contemplated in this bill, so our compliments for the creativity displayed by this government and the Department of Justice in crafting this particular suggested amendment.

For the CCAA, amending the dangerous offender legislation is simple. We hope to expand the reach of the legislation to capture more dangerous offenders than are currently designated as such and, of course, to do it in a way that would pass constitutional muster.

It is our position that the section 1 charter justification for the amendment proposed in Bill C-27 could come from the Oakes case, Supreme Court of Canada, 1986—I don't think it's a case that's been referenced yet before this committee, I'm not sure—wherein the court stipulated that the measures used must be fair and not arbitrary, proportionate to the objective, and ultimately the least intrusive to accomplish the objective.

Let's look at those words in the context of Bill C-27.

Is it fair? Bill C-27 defines a narrow set of serious offences, primary designated offences, where the offender has been convicted twice already, sentenced to federal time on both occasions, and is now being sentenced for a third time for another primary designated offence. This is serious enough. Most, if not all, of these offenders will have long records that often include many more convictions. The CCAA believes that Bill C-27 in this regard passes the fairness test.

Is it proportionate? The goal of the legislation is to incarcerate indefinitely offenders who pose a danger to society. The bill, according to the justice department, would put approximately 25 more offenders per year into this process, possibly doubling the current 25 offenders estimated, more or less. Out of a population of approximately 30 million people, half of whom are men—and men are the people who are declared dangerous offenders—this is but a tiny sliver of the population. It is also a tiny sliver of the criminal population, and indeed, the inmate population. The primary designated offence list ensures that no pizza slice thief will get caught up in this measure.

Is it arbitrary, and does it serve the principle of least restrictive intrusive measure? If the reverse onus provision led to automatic dangerous offender status, much like a “three strikes and you're in” law, then one might be able to make that case. In our opinion, the safeguard in Bill C-27 is the fact that subclause 3(2) treats this proposed amendment the same way as the existing dangerous offender legislation, wherein the onus is placed on the judge to decide if the offender could be managed in, for instance, a long-term offender setting. Therefore, I believe the principle as set out in the Johnson case, that the judge must consider less restrictive measures if appropriate, applies to this amendment.

In addition, the Mack case confirms that proof beyond a reasonable doubt only applies with respect to the issue of guilt or innocence of the accused, and in the Lyons case, the right to be presumed innocent doesn't apply with regard to dangerous offender hearings. These men are, after all, already guilty.

● (1540)

Who are these offenders who might be captured? For the most part, these offenders will have numerous and varied convictions, likely over a long number of years, with the large majority of them being sex offenders.

A recent case that has been in the news, and for which much of his criminal history is a matter of public record, is the Paul Douglas Callow case. Mr. Callow is known also as the balcony rapist.

Mr. Callow has a record dating back to the early 1970s that includes a number of convictions for property and violent crimes, including break and enter and assault. Mr. Callow also has a conviction for loitering by night, or peeping.

He has a rape conviction, which as most of you know is a historic conviction for sexual assault involving penetration. It would be included as a primary designated offence—so that's number one—for which he was sentenced to four years in prison. It is an offence for which he was subsequently recommitted as a mandatory supervision parole violator, now known as statutory release.

Finally, he was sentenced in 1987 for five counts of sexual assault with a weapon, which is primary designated offence applicable, and he received a total of 20 years in prison for those five convictions. In light of the danger posed, he was held until he had served every last day of his sentence, with release when he reached warrant expiry in February of this year. Since his release, he has been on a section 810.2 order, and very much in the news.

There are more than just a few people wondering why this offender has not already been declared a dangerous offender, but he hasn't been. The next time he commits another sexual assault, which would be an applicable primary designated offence, the reverse onus provision of Bill C-27 in his particular case would kick in.

I think that's a good thing. The CCAA believes this would be entirely appropriate. We believe Mr. Callow is fairly typical of the kind of offender who would be captured by this legislation.

What about the provision regarding recognizance to keep the peace of Bill C-27? As was detailed earlier in my presentation, CCAA has called for both an extension of the time period and for Parliament to identify in statute the kinds of conditions that are appropriate for use in crafting these orders. Our experience with the kinds of offenders placed on these orders, particularly sex offenders and child sex abuse offenders, led us originally to recommend in our *Martin's Hope* report a period of five years, rather than the two years that was proposed, with the opportunity for the subject of the order to return and have the order shortened or changed if he no longer posed a danger to the community or if the danger lessened. In addition, we suggested a number of specific conditions to include in the statute, with electronic monitoring as one of those.

We are very satisfied with the specificity of the list of conditions as proposed and see no requirement for change. When one considers that these orders are for the most part reserved for offenders like Paul Callow—and wouldn't it be nice if he had an electronic monitoring bracelet on—including a broader range of conditions, particularly electronic monitoring, could, like the dangerous offender portion of this bill, have a positive impact on public safety.

It is our understanding that significant support exists for this section of Bill C-27 at this committee and amongst parliamentarians. For that reason, we will not dwell on its legislative or constitutional validity.

In conclusion, the CCAA supports Bill C-27 as written. We believe it is reasonable and proportionate and will enhance public safety. As we have previously recommended, a breach of a judicial order, including long-term offender orders, should be a factor for which a judge should take special notice in determining whether to declare someone a dangerous offender.

We certainly welcome the conversation that has been had at this committee and elsewhere about making that a potential trigger to bring somebody back before a judge to be declared a dangerous offender. We are heartened that you share that view. Again, we would encourage you, either as a complementary addition to this bill, or in a future bill, to consider this sort of amendment, but not as a replacement for the section as written.

● (1545)

As for the length of the so-called section 810 orders, we would urge you to consider a five-year term, up from the two currently proposed.

Either way, it is the position of the CCAA that Bill C-27 should pass, and although we welcome amendments that strengthen the bill, they shouldn't slow its passage or compromise its integrity by inserting the discussed triggering amendment to replace the current reverse onus amendment.

Thank you very much for the opportunity to testify. I look forward to your questions.

**The Chair:** Thank you very much, Mr. Muise.

We'll start

[*Translation*]

with Mr. Bélanger.

Mr. Bélanger, you have seven minutes.

**Hon. Mauril Bélanger (Ottawa—Vanier, Lib.):** Thank you, Mr. Chair.

Incidentally, I'd like to point out that my colleagues in the House are debating a bill that was introduced by the government. They will be joining us later.

Welcome, Mr. Muise, and thank you for your presentation. I'm anxious to read the brief you filed. It was hard for me to follow you: you referred to many numbers and figures. I'm going to limit myself to questions of a slightly more general nature, but first I'd like to have a little more background.

You said you received a grant a few years ago to conduct a study. Could you be more specific: when did you receive it and from which government? Was it the government of Ontario or the government of Canada?

● (1550)

[*English*]

**Mr. John Muise:** It was the Government of Ontario that provided the grant to the Canadian Centre for Abuse Awareness. It was a grant from their victims' justice fund. They give out money on a yearly basis, usually for one-off projects. This was project money to conduct this review around the province of Ontario, because it was an Ontario grant; to speak to people on the front lines of the criminal justice system, crime victims and survivors; and then to prepare a report and submit it. And that's what the Canadian Centre for Abuse Awareness did.

[*Translation*]

**Hon. Mauril Bélanger:** When was this grant awarded to you?

[*English*]

**Mr. John Muise:** I didn't get the grant; it was given to the CCAA. I'm just guessing now that they received it around 2002 or 2003. I think it was in 2003, because they went around the province in 2003-04, released the report—

[*Translation*]

**Hon. Mauril Bélanger:** What I am trying to find out, Mr. Muise, is whether the grant was made to you by the present or previous government of Ontario.

[*English*]

**Mr. John Muise:** The grant was initially provided by the previous government; the report was released by the current government.

[*Translation*]

**Hon. Mauril Bélanger:** Thank you.

Do you know whether the government of Ontario acted on that report?

[*English*]

**Mr. John Muise:** The Canadian Centre for Abuse Awareness wrote a letter on November 20, 2004, the day after the report was released, and the CCAA received a response in March 2006 responding to the provincial recommendations.

[*Translation*]

**Hon. Mauril Bélanger:** What did that response say?

[*English*]

**Mr. John Muise:** I'll paraphrase, but.... I'll give an example so you can better understand.

One of the recommendations was to fix how victims were served by the Criminal Injuries Compensation Board in the province of Ontario. The response that the Canadian Centre for Abuse Awareness received was that they're conducting a review and that they are trying to fix the system. Subsequent to that, and independent from it, the ombudsman of Ontario announced—

[*Translation*]

**Hon. Mauril Bélanger:** Would you be able to send us a copy of the letter and of the response?

[*English*]

**Mr. John Muise:** That's something I could speak to the executive director at the Canadian Centre for Abuse Awareness about and see if it was appropriate.

[*Translation*]

**Hon. Mauril Bélanger:** You said a number of interesting things in your report, but what struck me is that you said you had not thought of the reverse onus as an option. Could you tell us exactly why? It was a notion that was around at the time, perhaps not in Canada, but elsewhere in the world. Why is the reverse onus an option that you did not select?

[*English*]

**Mr. John Muise:** Well, I have to tell you that there are always people on the front lines coming up with recommendations for change.

Certainly, I'm a person who is involved in those issues. Whether right or wrong about the right way to go about it, I certainly keep my nose to the ground in terms of looking at all these things and trying to determine the best way to change the criminal justice system to better enhance public safety.

I first heard of the provision in Bill C-27 when the bill was released. I can tell you that when the round tables were done, the people at the round tables were saying that they thought a "three strikes and you're in" law was a good way to do it, but the CCAA couldn't write that recommendation because it understood that there would be problems in terms of section 1 of the charter.

What the CCAA did was suggest a recommendation—and it's included in the report—that a judge take special notice of repetitive violations of judicial orders, including long-term offender orders. We felt that would withstand the scrutiny of the charter.

But I have to say that I had never heard about reverse onus in terms of dangerous offender legislation until the legislation was introduced. I was quite impressed.

● (1555)

[*Translation*]

**Hon. Mauril Bélanger:** If I understood correctly, your organization did not select that option because it did not expect it would pass the Charter test.

[*English*]

**Mr. John Muise:** It was that an automatic "three strikes and you're in" would not be charter-proof. For instance, if you committed one robbery, two robberies, three robberies, that would be three strikes, and you'd be in as a dangerous offender. Our organization realized that might not withstand section 1 charter scrutiny.

The position we took in the *Martin's Hope* report, our fallback, was the one we felt could be included in the dangerous offender legislation to allow for more dangerous offenders ultimately to be declared.

[*Translation*]

**Hon. Mauril Bélanger:** At our fourth meeting, the representative of the Canadian Police Association said this: Currently, applications for Dangerous Offender Designation are infrequent, as Crown Attorneys perceive the thresholds and onus to be high.

Do you share that opinion?

[*English*]

**Mr. John Muise:** Do I share the opinion that the threshold to declare a dangerous offender is high? Yes.

[*Translation*]

**Hon. Mauril Bélanger:** Thank you.

Thank you, Mr. Chairman.

**The Chair:** Thank you very much.

Ms. Freeman.

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** I'm going to share my time with my colleague.

Good morning, Mr. Muise.

You said you had made three recommendations. In the first, the purpose of which is to ensure that the peace is kept, you recommend that orders be extended for up to five years. However, we were already extending from 12 months to two years. Can you give us more of an explanation of the reasons for your recommendation?

[*English*]

**Mr. John Muise:** Thank you. It's a good question.

There are two reasons. The first reason is that the section 810.2 orders are given to very dangerous offenders, generally. They go to warrant expiry date, and there is nothing else to control them. Most of those who get these orders are men like Paul Callow. He's a good example because we all know about him. They are often just like him. We know, based on their records, that their past behaviour is a very good indicator of potential future criminal or bad behaviour. They don't suddenly, after a year, stop being potential sex offenders.

This is only part of it. It should always be hard work to put these kinds of orders on offenders, because after all, you are limiting their rights, but in light of the effort that goes into crafting these orders by the police and the crown attorney's office, coupled with the fact that we know they don't suddenly stop being sex offenders or potential sex offenders after a year, we felt that five years was an appropriate length of time.

Are we satisfied that it's been increased from one year to two years? Yes. Would we be more satisfied if the committee recommended to Parliament that it be changed from two years to five years? Of course we would.

[*Translation*]

**Mr. Marcel Lussier (Brossard—La Prairie, BQ):** Mr. Muise, do you know the occupancy rate of Ontario prisons?

[*English*]

**Mr. John Muise:** No, I'm not. I'm sorry.

[*Translation*]

**Mr. Marcel Lussier:** So you haven't conducted any studies to determine what impact increasing terms from two to five years would have on the overpopulation of Ontario prisons?

[*English*]

**Mr. John Muise:** I'm sorry, I might be confused, but I thought we were talking about increasing section 810 orders from two to five years. Those are post-sentence orders where these people are out in the community. So I'm not sure how that's going to impact the incarceration rate in provincial institutions.

[*Translation*]

**Mr. Marcel Lussier:** That's not related to overpopulation in prisons?

[*English*]

**Mr. John Muise:** No.

[*Translation*]

**Mr. Marcel Lussier:** So you also haven't studied the budgetary impact that increasing the period of incarceration of dangerous offenders from two to five years would have? You don't have any figures on the subject?

● (1600)

[*English*]

**Mr. John Muise:** The financial impact, if section 810 orders were increased from two years to five years, would decrease on the people who have to get these orders, because you'd be doing one every five years instead of two. The cost would go down for the administration of justice.

[*Translation*]

**The Chair:** Ms. Freeman.

**Mrs. Carole Freeman:** Mr. Muise, first, we talked about dangerous offenders in the context of evidence that we recently heard—it was Dr. Bonta, I believe—and of documents we received. We were told that 30% of reoffences could be prevented if it were possible to treat dangerous offenders. So it was thought that, in cases where offenders could be treated, improvements could follow.

Second, the Library of Parliament sent us documents stating that it was possible to determine that 88% of dangerous offenders had committed offences under the Young Offenders Act and that, in 96.6% of cases, the youths concerned had been charged with violent sex offences. It is therefore possible to determine that some dangerous offenders are youths who might perhaps be rehabilitated through treatment.

What do you think of the idea of using a more rehabilitating, less coercive approach?

[*English*]

**Mr. John Muise:** I support rehabilitation, clearly, because the vast majority of offenders end up out in our communities. Any support we can give to somebody who is a potential sex offender or a child sex abuse offender.... I'm certainly not a clinician, and all of you know that. I do know from reading about this—and I suspect you folks have read the same thing as I have—that there are no guarantees.

You're right that it would be a good thing to spend money on that, but that said, at the end of the day, I think it's important from a public safety perspective to target the most dangerous. I think Bill C-27 helps us target the most dangerous.

[*Translation*]

**Mrs. Carole Freeman:** May I ask another question?

**The Chair:** You have 30 seconds.

**Mrs. Carole Freeman:** I can ask you a practical question.

Individuals who have committed robbery, break and enter or sexual assault could automatically be declared dangerous offenders and be held for an indeterminate period.

Don't you think that's a bit...? This bill doesn't just concern extremely serious offences.

[*English*]

**Mr. John Muise:** My last job at the Toronto Police Service was at the homicide squad in charge of the retroactive DNA team. I looked at thousands of criminal records. I saw records that, quite frankly, dropped to the floor and the people had never been declared dangerous offenders. So my experience is that we have a whole lot of people who are dangerous, who haven't been declared dangerous offenders.

I understand and I agree that it should be a difficult proposition. It should be difficult to have somebody declared a dangerous offender and incarcerated indefinitely with opportunities for parole at seven years and four years. You don't do that lightly. But equally, I don't think we've captured in that legislation all the people who are dangerous in this country.

**The Chair:** *Merci.*

Mr. Comartin, please.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair.

Thank you, Mr. Muise, for being here again.

Just to pick up on this point, on the Callow case, when I started studying it, my initial reaction was that they didn't have enough evidence, that he hadn't committed enough crimes. But then when I explored his history, combined with the five convictions, it seemed to me that he was a classic case for it.

Do you have any knowledge as to why the prosecutors in Toronto did not move for dangerous offender? They certainly didn't need this legislation to do it. They didn't need the third time around. They didn't need to give him a third time. Do you have any idea why they did not?

● (1605)

**Mr. John Muise:** Sir, I wish I did. I agree with you. I think a lot of people are wondering. I do know, for instance, that he was sentenced in 1986, so the current statutory regimen around dangerous offenders, as I know you know, was effective in 1977, and similar legislation back to 1947 and 1892. I don't know. I'm guessing, the same way as you might guess, that they negotiated some sort of arrangement. I just don't know.

He is someone who, if I was a crown attorney or if I was the lead cop, I'd be saying, Mr. or Madam Crown, what are we doing about making this guy a DO? I just don't know why they didn't go down that road.

Having said that, we do know that the next time he commits a serious crime, this proposed legislation would capture him.

**Mr. Joe Comartin:** Well, the existing legislation would too.

**Mr. John Muise:** As it did last time, yes.

**Mr. Joe Comartin:** Yes. Do you have any information as to whether there's any type of inquiry going on, even internally, in Ontario as to why there wasn't an application at that period of time, back in 1986?

**Mr. John Muise:** No, I don't, and I highly doubt that anything's going on. I want to be fair. I think there's an ongoing process that takes place in provincial attorney general offices across the country. I think there's a general recognition that there has to be a very onerous, hard look at all cases likes this. I think that goes on, on a regular basis, and that you'd have to be out of touch with what's happening in the real world in a provincial attorneys general office not to realize that this was important not only politically but, more importantly, in terms of public safety. So I think people in those offices are having a lot harder look at the cases as they roll through.

I'm not aware of anything formal being done, at least publicly, to review why. I heard the provincial attorney general say the legislation was different then, but I don't understand that. I heard it in a news release. I think that must be some sort of misunderstanding, probably, of the question, though.

**Mr. Joe Comartin:** In your career as a police officer, were you involved in any applications for dangerous offenders?

**Mr. John Muise:** No, I was not.

**Mr. Joe Comartin:** Do you have any indirect knowledge as to whether financial considerations, resource considerations, enter into the equation when a prosecutor is determining whether they're going to move for dangerous offender status or designation?

**Mr. John Muise:** I can't speak to the kinds of conversations that happen behind closed doors, because I've never been part of one of those conversations. What I can tell you—

**Mr. Joe Comartin:** Mr. Muise, I don't want to limit you to direct evidence. I'll take hearsay if you have any.

**Some hon. members:** Oh, oh!

**Mr. John Muise:** I want to be fair. Cost is always an issue. For instance, a police officer, particularly in a small jurisdiction.... I think it becomes an issue because it's just looked at in the context that we can't do this because the person taking care of sexual assaults is the one and only person taking care of sexual assaults and criminal offences in that small, small jurisdiction.

At the end of the day, the person who is given the job—because it goes beyond the Crown's office—of putting that brief together is usually the police officer on the particular case that he has charged, as you know. So probably the main conversations are about whether there's a reasonable likelihood that somebody is going to be declared a dangerous offender and, of course, since 1997, whether they might be declared a long-term offender.

● (1610)

**Mr. Joe Comartin:** Just to pursue the cost issue for one more question, have you seen any analysis by anyone as to what, on average, it costs for a dangerous offender application currently in the country?

**Mr. John Muise:** No, I haven't and I don't know whether the information exists. But I can tell you that when people came to speak to the CCAA during the round tables for the *Martin's Hope* report, one of the recommendations was that the province pick up the tab for the cost of the police investigation.

The Toronto Police Service will grab somebody from the sex crimes unit and say, this is what you're doing, and the other 50 people can manage the other cases. But in a smaller town service or smaller city service, you're doing it. Particularly in those smaller places, it becomes very significant.

[*Translation*]

**The Chair:** Thank you.

[*English*]

Mr. Moore, please.

**Mr. Rob Moore (Fundy Royal, CPC):** Thank you, Chair.

Thank you, Mr. Muise, for being here.

I think this is one of the cases—and I'd like to know whether you agree—for which, if ever there was a time when cost shouldn't be a factor, it's in these cases of dangerous offenders. You'd be best placed to talk about this, but with your organization working on abuse awareness and victims' issues, I look at the associated cost to society when these guys are victimizing.

We've heard evidence already on the recidivism rates. If someone has had a second offence, a third offence, a fourth offence, especially when they're of a sexual nature, the likelihood goes up of their reoffending. You gave testimony that in many cases that's what we're talking about: dangerous offenders.

Maybe you can talk a bit about that and the cost to society—I think there's agreement, and I'd like your comment on this also—when someone who, after the Johnson decision, because of the threshold that's in place, meets the requirement to be a dangerous offender but does not get the status of becoming a dangerous offender and therefore eventually is out in the community.

**Mr. John Muise:** That's a good question. There is a cost in terms of actually conducting the dangerous offender investigations. I certainly don't deny it. And it's not pennies; it's a lot of money. But I weigh all of these issues: not how much it costs to do that investigation, but rather the cost overall to society—and I think that's where you're going—and to particular individuals who end up victimized.

I can never accept that, for instance, we'd like to do this but provincial attorneys general want more money to conduct dangerous offender investigations. That may be so, but in the meantime we can't afford not to do these kinds of investigations, because we know that it's particularly the serial repeat offenders who are the ones who offend again.

Let's use Mr. Callow again, because it's a matter of public record. There are several people whose lives have been inextricably altered as a result of his actions. To this day, one of them, a Jane Doe, continues to speak from time to time in public. I cannot speak for her, but certainly there's no question that her life and other women's lives have been altered. We have a community that is rising up in fear in British Columbia because of someone, quite frankly, who....

In fairness, part of the reason he's not a dangerous offender is that at the time, probably, the crown attorney's office felt it was too difficult to have him declared under the old legislation. When he does it again.... I hate even saying that; I think about my children, I think about my family, I think about my wife. When he does it again, I think we're going to have a much better chance of locking him up, but it shouldn't happen that way.

If you choose not to identify the small minority of offenders who commit a disproportionately large majority of serious and violent crime, the cost of ignoring them is far greater than coming up with the $10,000 to $40,000 for a provincial attorney general and a local police service to conduct a dangerous offender hearing.

If the hearings happen to double from 25 to 50, that cost in actual dollars per year, over the whole country, is minimal. We cannot afford not to do it.

● (1615)

**Mr. Rob Moore:** Chair, I was going to split my time. How much time do we have left?

**The Chair:** There is three minutes left. Mr. Norlock can go, and you can go, and then there'll be a second round.

**Mr. Rob Moore:** Well, I'll be splitting my time with Mr. Lukiwski.

**The Chair:** We'll have Mr. Norlock, and there'll be a second time for Mr. Lukiwski.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you very much, Chair.

Thank you, Mr. Muise.

I'm new to this committee, but I do want to follow up on some of the comments made by my colleague Mr. Comartin and my colleague from the Bloc on the cost, particularly the cost of incarceration.

I'm assuming that you are aware of Peter Whitmore. Peter Whitmore, of course, is a serial repeat sexual offender. I recall having this debate in the House, when Bill C-27 was first introduced, and responding to a line of questioning—or a line of debate, I suppose—from one of the Bloc members, who was stating in his terms of debate that he was opposing this legislation because of the cost of incarceration.

I pointed out to my colleague the case of Peter Whitmore, who had offended several times before. His MO was to abduct small children, small boys, and sexually abuse them. He was out either on parole or for whatever reason and came to Saskatchewan—he's not a Saskatchewan resident—abducted two small boys, one from Saskatchewan and one from Manitoba, held them captive for three days, inflicted God knows what abuse upon them, before the RCM Police, acting on a tip, finally apprehended him in a small farm house just outside of Broadview.

I asked my colleague from the Bloc if he could please come out to my constituency and to my province and explain to the parents of those young children that the cost of incarceration was more than the security of their children was worth. I do not think—and I'm not trying to embarrass anyone here—that there is any cost too great to protect our children from that type of torture, that type of abuse.

I'd just like to get your comments on that, because there seems to be a prevalent theme here about costs.

**Mr. John Muise:** Well, I agree. I know it's expensive to incarcerate somebody. I think it might be $90,000 or $100,000 a year. I get that. That's a fraction of the overall government budget. That is a lot of money where I come from. I'm a penny-pincher. I buy cheap suits. But in the overall budget of this land, I think the criminal justice budget is reasonably insignificant as a percentage.

If we're going to spend money in the criminal justice system, I would suggest that if indeed this bill identifies more people that are potentially dangerous.... I know all about Peter Whitmore. I don't know his record to the same specifics as I do Mr. Callow's. But if, for instance, the next time he goes wrong, or let's say maybe if these current offences were flashed forward post-passage of this bill—if it indeed does pass—if it captured him, then that would be a good thing.

So if we were spending $90,000 or $100,000 more a year because we were incarcerating the likes of Peter Whitmore, I think that would be an appropriate expense in the context of the overall budget. I think it's an appropriate expense in the context of the overall budget of the criminal justice system. I would go back to what I said before, which is that we can't afford not to lock up dangerous offenders, particularly people like Paul Callow.

Mr. Whitmore's previous record is a matter of public record. The current allegations are just that. But this is the kind of offender that I believe, and the CCAA believes, would be captured underBill C-27. We know Mr. Callow would, but I'm not sure about Mr. Whitmore.

**The Chair:** Thank you, Mr. Muise.

We'll go back to

[*Translation*]

Mr. Bélanger.

You have three minutes, Mr. Bélanger.

**Hon. Mauril Bélanger:** Thank you, Mr. Chairman.

I want to make sure that my colleagues opposite understand that it's not so much a question of cost. In fact, I haven't even talked about that. I think Parliament must address this because it is a question of principle. I find it hard to accept that the burden of proof is being transferred from the state—with all its resources—to individuals, who, in most cases, won't have sufficient resources. The committee would do well to explore why in the past we haven't used the Criminal Code provisions that enable the state to incarcerate these people for an indeterminate period by declaring them dangerous.

Mr. Muise, in your study, you concluded that the question of the burden of proof might not pass the Charter test. Consequently, you didn't make that recommendation. I'm very glad to hear it. You produced a study, which I haven't seen. There appear to be a number of people who have previously been convicted of crimes, who have served their sentences and who have returned to society. I don't believe there are any limits to the number of times the state can try to have someone declared dangerous. Why, with all these instruments, hasn't the state done it? Why is it that this measure is underutilized? In your opinion, it is. How have we come to that? Before concluding that we must reverse the burden of proof, I would like to know why it's not sufficiently used. Why is that, in your opinion?

● (1620)

[*English*]

**The Chair:** Mr. Muise.

**Mr. John Muise:** First, I'd like to correct the record. I think I made it clear. From where we sit, the reverse onus provisions that are contemplated in Bill C-27 are absolutely appropriate in the context of the charter. As we worked to craft the *Martin's Hope* recommendation, we believed that the “three strikes and you're in”—in other words, one robbery, two robberies, three robberies—would not withstand charter scrutiny. So I just want to clarify that.

I think the number one reason, the overriding reason that attorneys general haven't proceeded with dangerous offender hearings is that when they looked at—particularly pre-1997, before the long-term offender provisions—the standard that was required to meet a determination of dangerous offender, they recognized that in a lot of cases they weren't likely going to meet it. And so they weigh their resources. They don't proceed with cases that have little likelihood of conviction. When they realize they're not likely to have somebody declared a dangerous offender, they don't proceed. I think that has probably been the number one overriding reason, particularly before 1997 when the long-term offender provisions came in.

[*Translation*]

**Hon. Mauril Bélanger:** Do you know how they managed to determine that they probably wouldn't succeed?

[*English*]

**Mr. John Muise:** The test is very high. In law, it is significant. The test you have to meet to have somebody declared a dangerous offender is high.

[*Translation*]

**Hon. Mauril Bélanger:** I have one final question.

**The Chair:** Yes.

**Hon. Mauril Bélanger:** Would the test for demonstrating the contrary—that someone is not dangerous—be as high, in your view?

[*English*]

**Mr. John Muise:** If I understand your question correctly, in the current dangerous offender legislation, the onus is on the Crown to prove that somebody is dangerous.

[*Translation*]

**Hon. Mauril Bélanger:** If the bill were passed and the burden of proof was on the accused, do you think the test would be as tough as it is now?

[*English*]

**Mr. John Muise:** The onus shift is only in relation to Bill C-27 in terms of the reverse onus. What I should also add about that is that at the end of the day the onus shifts, and there are two things that happen.

One, there isn't a legal aid fund in this country that isn't going to fund somebody without means for a dangerous offender hearing. That's something I want to clarify, because I think there was some concern that, well, these people are going to be on their own, hanging. Dangerous offender hearings will always have legal aid.

● (1625)

[*Translation*]

**Hon. Mauril Bélanger:** I didn't talk about cost; I'm not talking about cost. I'm talking about the burden of proof. Would it be as high?

[*English*]

**Mr. John Muise:** I think I said that in terms of the dangerous offender legislation, the existing dangerous offender legislation, the onus isn't on the subject; it isn't on the offender. In this legislation, all that happens is that the onus shifts to the accused. Nothing will change in terms of the onus, save and except that the onus shifts onto the accused.

[*Translation*]

**Hon. Mauril Bélanger:** So it would be as high.

[*English*]

**Mr. John Muise:** I believe so, yes.

[*Translation*]

**The Chair:** Mr. Norlock, go ahead, please.

[*English*]

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** I'd like to pursue, actually, the cost to the alleged disadvantaged accused because of the reverse onus. I'm glad you did mention that legal aid would cover those costs, as it would cover the costs to the person if the reverse onus were not there, and the Crown were attempting to declare the person a dangerous offender.

**Mr. John Muise:** I didn't actually say that.

Absolutely, in any dangerous offender hearing, no matter where the onus is—so before or after this bill—dangerous offenders are going to be supported. Those who don't have the means—and most of them don't—will be supported by legal aid in every single province and territory across this country. That is a given.

**Mr. Rick Norlock:** Were you aware that recently the federal government allocated an additional $30 million towards increased funding towards legal aid?

**Mr. John Muise:** I know there have been some funding announcements. You're reminding me of the specific amount, but certainly I do know there's been money coming in. Additionally, in the provinces, attorneys general are talking about how they have to beef up their legal aid. There's a push. I know that many of the bar associations have pushed for it.

But at the end of the day, the dangerous offender will always be looked after.

**Mr. Rick Norlock:** In your experience, are these dangerous offenders usually people of means who could afford a lawyer on their own?

**Mr. John Muise:** Most of them can't.

**Mr. Rick Norlock:** In your great experience, your many years of experience, percentage-wise, how many people who are charged with these types of offences provide their own defence, at their own cost?

**Mr. John Muise:** I would suspect less than 5%, potentially less than 1%. That's a best guesstimate. It's a very small percentage, I'm sure.

**Mr. Rick Norlock:** And would you agree with me that generally speaking for dangerous offenders, we're talking about people who have committed not just three major offences, but in all probability and in your experience and the experience you've had with other co-workers, significant other offences from—well, there wouldn't be a record for jaywalking—petty theft to minor assaults, etc.?

**Mr. John Muise:** That's a good question. Paul Callow, as an example, had about 15 convictions, along with what would apply as his primary designated offences. I know Peter Whitmore has a fairly extensive criminal record. Gordon Stuckless, who was the offender in Martin Kruze's case at the Maple Leaf Gardens, had a number of offences on his record. John Paul Roby had a long list.

I think it's a great question. I would encourage the committee to speak to the Department of Justice and the RCMP, and maybe just get them to send you a couple of hundred high-risk offender criminal records for those who haven't been declared dangerous offenders yet. Just have them scratch out the name and the FPS number—the identifiers—and have a look at those records. My experience when I was at the retroactive DNA team was that when you pull that record out of the file, along with some serious crimes, the list drops to the floor, because they are the consummate "in and out of the criminal justice system" offenders, with long and extensive criminal records.

**Mr. Rick Norlock:** Would you not agree with me that during their sentencing regime, as they're going through the courts, they're offered, at the first opportunity, pre-sentence reports to look at their socio-economic condition, to see who they are, where they come from, and how the state can best help them? We're talking about rehabilitation—how can the state best help them become a better person? Before they even get anywhere near this stage, they go through probation officers and counselling. If for the first serious sexual offence they go to a prison, they are offered all the assistance, from psychologists to medical professionals. They're also provided an opportunity to upgrade their education, so that they can become skilled workers.

Would you not agree with me that once they're in the prison system, once they've gone through all the pre-sentence reports and all that other assistance, before the state finally says it has to send them to jail, they are still provided with additional assistance? Wouldn't you agree that occurs currently?

● (1630)

**Mr. John Muise:** There's the odd one that suddenly, right off the top, commits a particularly vicious offence or murder, but for the large majority, yes, they often start off with getting a fine or being on probation. Yes, it's precisely like that, and I would agree.

**Mr. Rick Norlock:** With a dangerous offender designation, you're not going to jail forever. After seven years, you're offered an opportunity for a parole hearing. Even if you fail that parole hearing, every two years subsequent to that, you're provided another opportunity, so that if there is a change in attitude, or lifestyle, or if you do show that you can be rehabilitated.... Would you agree with me that those opportunities are there, so that a person doesn't spend the rest of their life in jail and doesn't incur the terrible cost of incarceration on our society?

**Mr. John Muise:** The short answer is yes. I am aware of the fact that, for instance—and certainly the Department of Justice people can verify the exact number—there are approximately 20 declared dangerous offenders, because you get the designation for life, who are currently out in the community. Precisely where they are, I don't know, but they are actually out of incarceration and into communities.

**Mr. Rick Norlock:** Given the very nature of your organization, you have followed the repercussions of serious crime on the victims of crime. Would it be fair of me to assume that women and children who are abused tend to go through a lifelong process of medical professionals, counsellors, etc., to deal with the tremendous trauma that they and many times their families have gone through?

**Mr. John Muise:** Yes, and I would add that when young men are abused, it's the same thing. It was lifelong for Martin Kruze, who was abused. Four days after the provincial court in Ontario sentenced Gordon Stuckless to two years less a day, that was the last straw. He was let down yet again, this time by the criminal justice system. He jumped off the Bloor/Danforth Viaduct.

That's sort of the worst end. I've met a lot of survivors, a lot of crime victims, and the impact is lifelong. This notion that they get closure when somebody goes to jail, if they go to jail—nothing could be further from the truth. The impact is profound and demonstrable. Lots of them end up becoming offenders.

[*Translation*]

**The Chair:** Thank you, Mr. Muise.

We're going to continue and hear one final and brief question from Ms. Freeman.

**Mrs. Carole Freeman:** Mr. Chairman, this isn't a question, but rather a comment that I would like to make to my colleague Mr. Lukiwski, who said earlier that the Bloc québécois did not support this bill because it was too costly. That is not at all the case.

This is a very serious bill. The Bloc québécois takes the issue of dangerous offenders, of people who endanger the lives of other individuals, very seriously. This isn't trivial. We are studying it very seriously, as we do in all the committees. There is a reverse onus. We have heard a number of witnesses, and we will have to see what things we can improve. However, I don't think that we object to this bill because it's costly. Costs cannot be too high for certain dangerous offenders; that's obvious. So I wanted to clarify that point.

**The Chair:** Thank you very much for that comment, Ms. Freeman.

[*English*]

Thank you very much, Mr. Muise.

That's the end of our session for this afternoon.

I want to tell my colleagues that this is the last meeting before the House recesses. We're going to start back some time in September. You will all receive notification form the clerk.

*Merci beaucoup.* This meeting is adjourned.

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