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—
Chair

Mr. Art Hanger

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• (1530)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call the meeting of the Standing Committee on Justice and Human Rights to order.

The order of reference on this day, April 25, is to review sections 25.1 to 25.4 of the Criminal Code, protection of persons administering and enforcing the law.

I'd like to thank you, gentlemen, for your appearance here.

We have the Royal Canadian Mounted Police, as well as a member from the Department of Public Safety and Emergency Preparedness Canada, Mr. Barry MacKillop.

Mr. MacKillop, I would like you to begin your presentation. You have approximately ten minutes. Whatever the wishes are of the committee, there could be questions following or you may wait until the RCMP make their presentations.

Mr. MacKillop, would you present?

Mr. Barry MacKillop (Senior Director, National Strategies Division, Department of Public Safety and Emergency Preparedness Canada): Thank you, Mr. Chair.

First of all, it's a pleasure to be here this afternoon. I'll take a few minutes, but no more than ten minutes, I promise, to cover the role of the department and the minister with respect to the designation protocol and reporting requirements as they relate to the law enforcement justification provisions.

On our role in terms of the Minister of Public Safety, he is responsible for designating individual peace officers or public officials with peace officer powers who fall under the purview of the Department of Public Safety. This currently applies to the RCMP in terms of the officers and senior officials and also includes CBSA, the Canada Border Services Agency, officers and senior officials in respect to the enforcement of acts for which the Minister of Public Safety has responsibility. Under emergency circumstances as well, there are 48-hour designations that can be issued by designated senior officials.

With respect to the second role of the Minister of Public Safety, it's the publishing of an annual report that details the number and nature of emergency designations issued during the course of the year; the number and nature of acts or omissions requiring prior authorization, and the nature of the conduct being investigated in respect of these; and the number and nature of acts or omissions, and the nature of the conduct being investigated in respect of them,

where, due to exigent circumstances, officers proceeded without authorization from a senior official.

[Translation]

With respect to the designation process, so as to ensure that the law enforcement justification provisions are not subject to abuse or misuse, a strict designation protocol has been established which contains the following elements: eligibility criteria — who can be designated — eligibility conditions, the designation procedure or what steps need to be followed, and finally the required annual reports and the procedures which must be followed to produce them.

Senior officials and public officers are eligible for designation based on the following criteria.

They may be designated based on need. With respect to senior officials it may be based on written advice from the commissioner of the RCMP. As for public officers, they may be designated based on written advice from the assistant commissioner, federal and international operations.

They may also be designated based on their office. For senior officials, at present, the Office of the Assistant Commissioner FIO must be designated. In addition, both the Assistant Commissioner Criminal Intelligence Directorate and Chief Superintendent Drugs and Organized Crime are also designated. Public officers are recommended members of the undercover program pool and other special duty sections, for instance special entry, boat captains, etc.

There are also eligibility criteria in respect of training. Senior officials must have received training on sections 25.1 through 25.4 of the Criminal Code of Canada. Public officers need to have received training on the same sections as well as other training as and when required. This includes public officers with limited designation.

• (1535)

[English]

With respect to the eligibility conditions, designations are good for three years. They expire after three years unless renewed. Under subsection 25.1(10), persons acting at the direction of a designated public officer must be made aware of the provisions under this subsection.

With respect to revocation, senior officials, and public officers, if a designate no longer holds a required office or departs from the RCMP or no longer meets the criteria, the designation may be revoked, and the Minister of Public Safety is to be notified without delay. The minister must also be advised that the potential designate has been previously designated and be made aware of all relevant information that could have an impact upon the approval, as well as of additional conditions that could be applied to the designation.

With respect to the process and the designation procedures themselves, the Assistant Commissioner FIO, or the Assistant Commissioner CID and Chief Superintendent of Drugs and Organized Crime must be the first designation issued.

On recommendation of public officers, it's by the senior official in writing, using a standard designation request template. The requests are sent to the policing policy directorate of the Department of Public Safety. Two copies of these are sent, one with the officer's name and one without. They are then forwarded to the deputy minister and minister's offices respectively for approval.

If it is approved, the minister will sign the designation document. Copies that are retained by the department are copies of the one without the officer's name. The one with the officer's name is returned to the RCMP, and there are locator numbers that allow us to work with the RCMP if we had to join these two documents and make the link between them.

With respect to reporting, the following information must be collected by the Assistant Commissioner FIO and provided to the Department of Public Safety for inclusion in the minister's public annual report: the number and nature of emergency designations issued under subsection 25.1(6), whereby a senior official may designate a public officer under exigent circumstances with the caveat that such designations apply for only 48 hours; the number and nature of the acts or omissions requiring prior authorization, and the nature of the conduct being investigated in respect of them—this would encompass all actions that would likely result in the loss of or serious damage to property or where designates are directing another to commit an otherwise illegal act or omission—and the number and nature of acts or omissions and the nature of the conduct being investigated where in exigent circumstances officers proceeded without authorization from a senior official under subsection 25.1(9).

Concerning the annual reports themselves, there is an overview on page 7. Two annual reports have been tabled and published, one that covers the period February 2002 to January 2003 and one for February 1, 2003 to January 31, 2004. The report for 2004 will be made public in the near future; it's currently being finalized.

On page 7 you have an overview with respect to the number of temporary designations issued in those years. You'll notice in 2002 there were two for investigations into alleged offences, for assault, aggravated assault, assault with a deadly weapon, theft, causing a disturbance. For 2002 as well, for the number of times prior authorization was required and issued, there were eleven, and six in 2003.

[Translation]

Although the Department of Public Safety is not responsible for provincial annual reports, we provided an overview of published

annual reports. Since 2002, provincial use of the law enforcement justification regime under sections 25.1 to 25.4 has varied considerably.

Currently, all provinces except Saskatchewan and Newfoundland have designated officers. Annual reports for all provinces (except for Newfoundland, PEI and Saskatchewan) have been published — some 2004 reports have yet to be published.

Reports for Alberta, BC, Ontario and New Brunswick are available online. You may also note that only Ontario and Quebec have reported incidents when prior authorization was required and issued: on two occasions in 2003 in Ontario, and on ten occasions in 2004 in Quebec.

That concludes our presentation on the designation process and the role of the department and of the Minister for Public Safety.

• (1540)

[English]

The Chair: The way I might proceed here, in dealing with the designation process, is.... I wonder whether there are any questions from the committee that might be pointed toward that particular issue.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, do you not want us to hear from all witnesses? Perhaps if we were to hear both presentations we could... I personally would prefer to hear both presentations.

[English]

The Chair: Technically, yes. The witnesses will all be here when we have general questioning. But I was curious whether the committee may have a question or two about the designation process, and they will be here for general questioning afterwards.

If the committee doesn't have a question, I have one as a point of clarification.

When we talk about these statistics reporting the number of temporary designations or prior authorizations, what are we actually saying? Is it that for certain undercover operations there has to be a broad or a specific designation to allow this to go on? What are we saying with these statistics?

Mr. Barry MacKillop: The ones that are public refer to those that were not designated initially by the minister. There were exigent circumstances requiring a rapid designation. The senior officer—in this case, Assistant Commissioner Souccar—may designate someone for up to 48 hours, so they can proceed with their operations. It would come back to the minister for authorization after that.

The Chair: You haven't listed other operations here—separate from emergency ones or those through prior designation—as a statistic. Or is this the common application, if you will, of the sections?

Mr. Barry MacKillop: It is the common application. The annual reports don't speak to the number of applications or number of designations per se, because there's a need to maintain officer security. As was requested when the act was adopted, we are simply reporting about emergencies or extraordinary circumstances, so that we can ensure that there is no abuse of the provisions.

The Chair: Thank you for clarifying that.

Now, from the Royal Canadian Mounted Police, we have Mr. Raf Souccar and Mr. Thomas Bucher.

Who will be presenting?

[*Translation*]

A/Commr Raf Souccar (Assistant Commissioner, Federal and International Operations, Royal Canadian Mounted Police): I will be presenting.

Thank you very much. Hello, ladies and gentlemen. I am pleased to be here with you this afternoon.

[*English*]

Good afternoon. My name is Raf Souccar. I am the assistant commissioner in charge of federal and international operations for the Royal Canadian Mounted Police. I'm pleased to be here to discuss subsection 25(1) of the Criminal Code, which is known as the law enforcement justification.

With me is superintendent Tom Bucher, who is the director, organized crime, and who deals with the day-to-day matters of the law enforcement operation. Between us, I'm hopeful that we will be able to answer all your questions. If we can't, we will undertake to get back to you.

I know that you have an understanding as to why this piece of legislation was required after the Supreme Court of Canada decision in Campbell and Shirose. I will get back to the case later in my presentation.

Within the next few minutes, I will attempt to explain how this legislation affects the RCMP and, specifically, how the RCMP proceeds with training, designation, re-certification, applications to approve the use of the legislation within criminal investigations, internal RCMP reporting requirements, the gathering of quarterly reports, the submission of annual reports, and other strict controls that we have placed on this legislation internally.

I will also provide examples of two scenarios, one that is hypothetical and one that is factual, which will demonstrate when the legislation may be utilized.

I will also attempt to familiarize the committee with the process the RCMP has implemented to ensure sound stewardship of this legislation.

Afterwards, I welcome any questions the members of this committee may have. I would only ask for the understanding of the committee in either excusing me from answering any questions that may be operationally sensitive or that I be able to answer those questions in camera.

The competent authority for the RCMP is the Minister of Public Safety. The minister has designated three senior officials within the RCMP. As assistant commissioner, federal and international operations, I am the first senior official; the second is Assistant Commissioner Mike McDonell, who is in charge of the criminal intelligence directorate; and the third is Chief Superintendent Derek Ogden, who is responsible for drugs and organized crime. These members are posted at our national headquarters here in Ottawa. In

order to monitor and maintain the tight controls that we have imposed on ourselves relative to this legislation, the two other senior officials are only used in my absence.

As a senior official, I submit requests for designations of public officers to the competent authority, who, as I indicated, is the Minister of Public Safety. These designations may either be general or limited designations. It should be noted that not all police officers are designated under this legislation. For the most part, the only police officers who qualify under the RCMP internal policies are members of our trained undercover pool of resources.

It's important for me to pause for a second and just make sure that you have a clear understanding. When I talk about undercover, I'm not talking about police officers who are operating in plain clothes; I'm talking about police officers who are actually infiltrating criminal organizations, unbeknownst of course to the criminal targets. When I talk about cover personnel, I'm talking about the police officers who cover the undercover police officers.

General designations are for public officers who are part of the trained undercover pool of resources and who have successfully completed specialized training with respect to the law enforcement justification provisions. Limited designations are for other select public officers who have successfully completed training with respect to the law enforcement justification and have a specific duty, function, or trade skill that may require them to utilize these provisions. Here I'm talking, for example, about a pilot or a marine captain who may be required to either fly or sail with their lights off to avoid detection, thereby violating either the Aeronautics Act or the shipping act. For the purpose of their function, they have a limited designation for that very act or omission only.

The legislation stipulates that a senior official may designate a public officer for a period of not more than 48 hours, in exigent circumstances. Our internal policy directs that the division's criminal operation officer is required to review the circumstances and make a recommendation for approval to the senior official if they are of the opinion that by reason of exigent circumstances it is not feasible for the Minister of Public Safety to designate the member and that the member would be justified in committing an act or a mission that would otherwise constitute an offence.

● (1545)

In my capacity as a senior official, I have also made the request to the competent authority to have designations revoked. No revocations were made as a result of an abuse of the law enforcement justification. The request for revocations have typically been for members who have either retired or who are no longer part of our undercover pool.

The RCMP has implemented an initial two-day training session on the law enforcement justification. The first day of training is an in-depth review of the legislation conducted by the Department of Justice. The second day of the training is a practical component during which officers are given the opportunity to respond to a variety of scenarios that they may encounter in their role as public officers. The appropriate responses are set out by RCMP legal services.

At the end of this training, the public officer must undergo an exam that requires a score of 100%, and upon successful completion of the exam, I will request that the competent authority designate the public officer for a period of three years.

Prior to the expiry of a public officer designation at three years, the public officer must undergo and successfully pass recertification training. Once the exam has been successfully completed, I will request that the competent authority redesignate the public officer for an additional three-year term. It's also important to note that the three-year term is not imposed on us by legislation, but rather this is a policy that we've implemented within the RCMP to ensure that all our officers remain current of that legislation.

Once a member has been designated, he or she may be called upon to commit an act or mission that would otherwise constitute a criminal offence in furtherance of a criminal investigation. Should an investigation require the use of the law enforcement justification provision, the RCMP has implemented strict policy guidelines that direct that an application detailing the circumstances and providing supporting rationale be completed and forwarded for approval.

All acts or omissions proposed to be conducted by a designated member of the RCMP that would otherwise constitute a criminal offence are forwarded for initial review by the province's criminal operations officer, who is a senior officer at the chief superintendent level. The criminal operations officer reviews and confirms that the designated member is justified in using the provision and that the reasonable and proportionality test has been satisfied.

The division criminal operation officer may then approve the act or omission as long as it does not involve loss or serious damage to property or the direction of a civilian agent. If approved, the designated member committing the act or omission must, as per the legislation and training provided, be cognizant of the provisions of section 25.1 of the Criminal Code and be satisfied that all of the conditions and the reasonableness and proportionality test have been met.

I can provide you with a hypothetical scenario. An immigration and passport unit is investigating an organized crime group that is believed to be producing and selling false passports. In order to obtain evidence of these offences, the investigative unit requests the authority be granted for a designated member to sell a box of blank passports to this crime group. The application to use the legislation in this scenario would likely not be approved. Not only is it not reasonable and proportionate, there are also other investigative means available that have not been explored, such as attempting to purchase false passports directly from the criminal group.

It's important here also to understand that I'm not suggesting that the use of this legislation is a last resort, but certainly in evaluating whether or not to approve this operation, I would take into consideration the risk of losing a box of blank passports. Although this would be covered by the legislation, I have to weigh the risks associated with it as well, the reasonableness and proportionality of using this technique in order to put forward the investigation and approve the investigation, and in this instance I would likely be inclined to explore other avenues.

Acts or omissions that involve loss of or serious damage to property or directing a person to commit an act or omission must be forwarded through channels to a senior official for approval. Once I as a senior official receive the application, I will again personally review the circumstances for compliance with the provisions of the law.

● (1550)

If I approve the act or omission, a written authorization will be forwarded to the investigative unit detailing the conditions that I have imposed on the authorization.

Where prior approval is not feasible, a designated member may commit an act or omission that involves the loss of or serious damage to property or direct a person to commit an act or omission when the designated member believes, on reasonable grounds, that the grounds for obtaining the authorization exist but it is not feasible under the circumstances to obtain it and it is necessary to preserve the life or safety of a person, prevent the compromise of the identity of a public officer acting in an undercover capacity or a human source/agent, or prevent the imminent loss or destruction of evidence of an indictable offence. Every act or omission in these cases that would otherwise constitute an offence must be reported in writing to the senior official as soon as possible.

For your knowledge, the RCMP has not used this portion of the legislation to date.

In addition to the legislative requirements of filing reports with the senior official, RCMP policy requires that every member who commits an act or omission or directs the commission of an act or omission must, under the law enforcement justification, as soon as feasible submit a written report to the division undercover coordinator. The undercover coordinator must immediately forward the report to the director of organized crime branch, who prepares the quarterly and annual reports.

The annual reports are submitted to the competent authority. They contain the mandatory information set out in section 25.3 of the Criminal Code and in addition provide evaluation information about the law enforcement justification regime. The annual reports for 2002, 2003, 2004, and 2005 have been completed and submitted as required.

In terms of a common case scenario, I will not be able to comment on specific details of an ongoing investigation where the legislation has been used, but I can set out for you an example of an investigation that is concluded where a senior official has authorized the use of this legislation.

In this case, an organized crime group was believed to be involved in making and selling Canadian counterfeit currency. The investigative unit in Montreal acquired the services of a civilian agent and made application to utilize the agent, accompanied by a designated member, to attempt to purchase counterfeit currency from the crime group.

In this instance, the civilian agent is entrenched in the criminal organization. As such, we use that agent in an undercover capacity, if you will, directed by one of our designated members to infiltrate that criminal organization.

A senior official granted the authorization to permit the agent and designated member to purchase the counterfeit currency. The designated member, who was also an undercover operator, and the agent purchased a large quantity of Canadian counterfeit currency shortly thereafter.

During the course of this investigation the senior officials granted a total of four authorizations. In this same case the criminal operations officer for the division authorized the designated member on five other occasions to purchase items offered for sale by the crime group. Of these five authorizations, two were not acted upon.

These authorizations permitted designated members to purchase and possess counterfeit currency, false passports, false social insurance cards, and false driver's licences from members of this criminal organization.

The RCMP purchased, as evidence, approximately \$250,000 of counterfeit currency, false passports, false social insurance cards, and false driver's licences from subjects in Montreal and Toronto. Searches conducted at residential addresses resulted in the seizure of equipment used to falsify documents, enabling investigators to lay criminal charges against those responsible for the operation.

As this scenario has illustrated, by utilizing the law enforcement justification in circumstances such as this, investigators are better able to identify and attempt to infiltrate the organized crime groups involved in the actual production of the counterfeit currency and counterfeit identification cards, thereby dismantling the criminal organization.

The law enforcement justification has allowed the RCMP to combat organized crime and terrorism in a way that would not have been possible prior to the enactment of this legislation.

The 1999 decision of the Supreme Court of Canada in Campbell and Shirose held that police were not immune from prosecution or liability for unlawful conduct committed in good faith during the course of an investigation. The court ruled that if immunity were necessary, it was for Parliament to provide for it in statute.

•(1555)

The ruling affected the efforts of law enforcement agencies, as common investigative practices previously used for many years were no longer possible. We were able to go out and buy counterfeit money, for example, and that was one of the things that we used to do. Section 450 of the Criminal Code indicates that it is an offence to possess or purchase counterfeit money. That decision brought that type of operation to a halt, although we were buying it with the intention of seizing the money and taking the money out of circulation and the person distributing it. Although it was our position that we were living within the intent and spirit of the legislation, the Supreme Court of Canada was very clear that if it is an offence for a member of the public to do it, it's an offence for the police to do it unless there is an exemption in place for us. They actually said that if Parliament wants you to do this type of thing then it should provide for it in statute; hence the law enforcement justification.

In many types of criminal organizations and terrorist-related investigations, it is sometimes vital for undercover police officers to pose as those engaged in criminal activity. If no immunity were in

place to commit acts or omissions that otherwise constitute criminal offences, police officers would be severely restricted in their investigative capabilities. This legislation has not been abused. Strict controls have been implemented within the legislation itself, and even more within RCMP internal policies. The legislation does not provide a means for police officers to be above the law. Rather, the legislation allows law enforcement agencies to conduct further criminal investigations within a very clearly set out legislative framework. This legislation has provided us with the tools to get back to work.

I'd like to thank the committee for allowing me to participate and provide an overview on how this legislation is presently being used and how this legislation has greatly assisted law enforcement in effectively carrying out its duties.

Along with my colleague, Tom Bucher, I would be pleased to provide any further clarification or answer any of your questions. Thank you.

•(1600)

The Chair: Thank you very much, Assistant Commissioner; it was an interesting presentation. Now we have a chance to question the effectiveness of this legislation.

Mr. Myron Thompson (Wild Rose, CPC): I have a point of order, Mr. Chairman. I would like to get a feeling from the people present here today. I was running through my mind a list of questions I would like to ask, and I'm not sure this would be the proper place to ask them. Are we going to be able to know the difference, or will the people making the presentation be able to refuse to answer if it's not for the good of the...whatever? I see some pretty sensitive stuff here.

The Chair: I take note of your comment and concern and I know that if we cross over any line, the assistant commissioner will point that out and not answer the question unless it's in camera, I believe. At least, if it's going to jeopardize any particular point in an investigation, he won't go there.

Is that correct, Assistant Commissioner?

A/Commr Raf Souccar: Yes, it is, Mr. Chair. If we get into sensitive territory, given that the testimony here will be made public, I would prefer to either refrain from answering it or go in camera.

The Chair: Does that answer your question, Mr. Thompson?

Mr. Myron Thompson: Will we be able to go in camera if it would be for the good of what we're trying to accomplish? That's not difficult to do, is it?

The Chair: I would suggest, yes.

Mr. Myron Thompson: Okay, that's all I need to know.

The Chair: Okay, the questioners. First on the list is from the Liberals, Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): As the chairman has said, our purpose now is to try to make the act better. From the purpose of a review, it was great to hear how it works, but I'm wondering if any of the witnesses actually have any suggestions as to how we could improve the act. If you want to do this in camera, that's fine. But especially from people at the operational level, if they want to do something, are there are some ways or minor adjustments or any adjustments we could do to make it work better?

A/Commr Raf Souccar: I'm very pleased with the legislation. I think it has controls on it that I believe need to be in place. From an RCMP perspective, we've even tightened our policies to a greater extent than the legislation sets out. We've reduced and kept the number of senior officials to three, with myself being the main senior official and the other two only to approve authorization requiring senior official approvals in my absence.

We've wanted it and we're very pleased that it has actually some controls on it. It's worked very well for us. You may hear from, and I have spoken to, other law enforcement agencies that have a concern over the amount of time it takes to designate public officers. In the RCMP case, from our competent authority, we get a very quick turnaround, so that doesn't cause us a problem. With some agencies, I understand it's taken as much as a month and a half to get an undercover operator designated, and of course that causes operational problems.

Hon. Larry Bagnell: So if a situation requiring one of your undercover officers were to come up tomorrow, and the particular officer wasn't designated, how long would it take to designate him?

A/Commr Raf Souccar: If there's an urgent matter, as a senior official, I can designate him for 48 hours, but even so, I have not had to use this provision to any extent. We like our operations to be planned well in advance in order to have good control of them. But to answer your question, we've had a turnaround of as little as 24 hours.

•(1605)

Hon. Larry Bagnell: So you have no suggestions as to how we might improve the act?

A/Commr Raf Souccar: Unless Tom wants to jump in, at this point we're very satisfied with the legislation as it stands.

Superintendent Thomas Bucher (Director, Organized Crime, Federal and International Operations, Royal Canadian Mounted Police): I can only reiterate the same. I'm seeing this more in an operational context, in the daily operational plans that come in right across the country from various units. As Assistant Commissioner Souccar stated, we really haven't seen that there's been any type of bureaucratic process. It's not burdensome. It's serving its purpose very well, and to date, from an operational perspective, it's working very well.

Hon. Larry Bagnell: When you designate someone for three years, my understanding is that, over and above that, there has to be authorization for the specific event that's occurring.

A/Commr Raf Souccar: That's correct. Again, the three-year designation is self-imposed. From that point on, the law says that if it's a designated police officer, the police officer can then commit any act or omission without any approval, really, other than an act that causes bodily harm, violates sexual integrity, or perverts the course of justice. Directing an agent or doing something that causes loss or serious damage requires the approval of a senior official. But to do such things as purchasing counterfeit money, passports, tobacco, or alcohol, the law allows police officers to go ahead because they have been designated.

Our policy has tightened that and requires police officers to seek approval from the criminal operations officer—who's a chief

superintendent, a senior executive within the organization—and the criminal operations officer in the division.

Hon. Larry Bagnell: So if you've tightened it, does this mean that in maybe another police force a person could be designated for three years—and I know it's self-imposed—and be involved in some operation, and then be walking down the street and come upon something that wasn't part of their assigned undercover work, and still use that designation in that instance?

A/Commr Raf Souccar: That's correct. That would be a violation of our policy, but not a violation of the law. We appeared in court before, on one occasion that I recall, because there had been a violation of policy but not a violation of the law, and that did not cause us a problem. Again, the policy has been tightened in order to reflect the seriousness that we attribute to undercover operations as a whole.

Hon. Larry Bagnell: But it may not have been tightened—just for our own consideration—in other organizations.

I think this will be my last question. There are other circumstances and laws—the Criminal Code, etc.—that allow police officers to break the law, in self-defence, or, I think, under the drug law. Could you make any comments on the categories and maybe on recent incidents, if you're aware of any?

A/Commr Raf Souccar: The first one that comes to mind is the Controlled Drugs and Substances Act. In fact, that's the very act that was put in place after the Campbell and Shirose decision. It allows us to traffic in drugs, to import drugs, to export drugs, and so on. The CDSA is excluded from the law enforcement justification, in that the CDSA has its own exemption scheme.

Hon. Larry Bagnell: Are there any other instances?

A/Commr Raf Souccar: The Proceeds of Crime Act, for example; exemption from liability for the arrest of the wrong person; arrest for breach of the peace; use of force to suppress a riot; possession of automobile master key; possession of property obtained by crime; money laundering; proceeds of crime—those types of offences that have an exemption scheme within them for law enforcement. There are several. I can provide you a copy of this.

Hon. Larry Bagnell: Thank you. Maybe you could table that with our clerk.

The Chair: Thank you, Mr. Bagnell

Mr. Ménard.

[Translation]

Mr. Réal Ménard: Thank you very much for your appearance here today.

As legislators it is our duty to understand how Criminal Code provisions brought in several years ago — at a time when we were trying to fight organized crime as effectively as possible — have helped us reach our goals.

You cited an example of a police investigation in which you had to make use of these provisions. I have three questions to ask you so as to get a basic understanding of the issue.

Can you tell us whether in all cases when officers or other persons are authorized to act pursuant to justification provisions, it would invariably be for undercover operations, or can it be for other types of operations?

• (1610)

A/Commr Raf Souccar: Thank you for your question.

To my knowledge, as I explained, the justification has been used for pilots, for example, to permit them to...

Mr. Réal Ménard: Have their lights off.

A/Commr Raf Souccar: That is correct, so that they can fly with the lights off. However, we use these provisions mainly for infiltration operations.

Mr. Réal Ménard: Let us take the example of organized crime. Every year, the Canadian Security Intelligence Service tables its annual report. Various bills have been passed to increase our effectiveness. Sometimes we fail in this attempt, and other times we were closer to giving you certain tools.

Would you say that without provisions of this type, some police investigations could not be carried out? In other words, we are no longer asking whether this is a good or a bad thing. May all the committee members assume that without these provisions in the Criminal Code, some police investigations could not be carried out and it would be impossible to bring some people involved in organized crime to court? Is that correct?

A/Commr Raf Souccar: Yes. If you do not mind, I will continue in English to ensure I'm properly understood.

[English]

This piece of legislation is actually essential for us to be able to carry out our efforts against organized crime. Members of criminal organizations talk very little on the phone. When they do talk, they talk in code and it leaves us guessing. So part 6, interception of private communication, although it is a tool and one that we do use, is not always very effective. Surveillance is another technique. Again, we follow people around; we see them going from point A to point B, again leaving us guessing as to what's being discussed, and what the purpose of the meeting may be, and what actually they've picked up from one location to take to another location.

So we find ourselves having to try to infiltrate these criminal organizations, most of the time with a civilian agent because a lot of these criminal organizations will not trust anybody they haven't known since childhood. So we end up using agents and directing these agents to act under our direction.

The Campbell and Shirose decision brought our undercover operations to a halt. Other than the Controlled Drugs and Substances Act, which came into being in 1997, we didn't require very many

exemptions to our undercover operations to do our work. With that piece of legislation, we saw our undercover operations almost come to a standstill after the Supreme Court of Canada decision. Once this legislation was passed, we were able to pursue it.

[Translation]

Mr. Réal Ménard: I do not want to get into details about criminal investigations, because I certainly understand that they're confidential. The Supreme Court even ruled that you are not required to reveal your sources or the name of informers. However, if we use generic terms—that was useful to you — can we talk about money laundering, counterfeiting, and people operating within criminal biker gangs? If we had to explain how these provisions were mainly used, could we use these three generic terms, or could you give us some other indications along these lines?

• (1615)

A/Commr Raf Souccar: Thank you for your question.

We used this legislation in the case of biker gangs. Our investigation showed that these individuals are involved in drug trafficking most of the time, and the Controlled Drugs and Substances Act allows us to infiltrate these groups without using section 25.1.

[English]

I find we've used it the most in the areas of immigration and immigration law, passports, satellite cards for intercepting signals, tobacco, alcohol. It's the regular operations, ones that we had been doing for years and years, that came to a halt. I recall seeing lately, if memory serves me right—Tom may correct me—a lot of immigration-type operations, with false passports and identities.

[Translation]

Mr. Réal Ménard: I have a final question about the disclosure of evidence. A genuine justice system must ensure that investigations are effective but that the evidence is disclosed. I know that police officers are not very fond of the Stinchcombe decision, however, since this is part of our jurisprudence, we have to deal with this reality.

Can you assure us as regards the disclosure of evidence that the principles of natural justice and procedural equity will be followed and that the way in which the investigation is conducted will have no impact on the access to information to which the parties involved in the trial are entitled?

[English]

A/Commr Raf Souccar: Absolutely not; you're absolutely correct.

The disclosure is legislated. Stinchcombe has been very clear. We follow it. The no-go areas, the three things very clearly set out in this piece of legislation that the police cannot do under any circumstance, are: pervert the course of justice, of course, and this would fall under it; violate the sexual integrity of an individual; and cause bodily harm.

To be honest with you, I didn't like to have it in the legislation, and not because it shouldn't be there or because it's something we would want to do; we just didn't want to have a line drawn in the sand where it could create a loyalty test of some sort.

The Chair: Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I'll pass, Mr. Chair.

The Chair: Mr. Thompson.

Mr. Myron Thompson: Thanks for coming today.

I want to make sure I have this right. According to the statements in your presentation, practices previously used for many years were no longer possible. The practices that you did for many years are now back, intact, and you're doing what you used to do many years ago. They stopped because of the Supreme Court decision in that case. The legislation came in during 1999.

Exactly how much of a lapse was there between the enactment of the legislation that put you back in business, so to speak, and the time you had to stop those actions?

A/Commr Raf Souccar: I now have the second date clear in my mind. The first one was around May of 1999, when the Campbell and Shirose decision was rendered by the Supreme Court of Canada. The second was February 1, 2002, when the law enforcement justification came into force.

Mr. Myron Thompson: So for approximately three years you laid off doing the things you normally do to fight crime.

A/Commr Raf Souccar: Correct.

Mr. Myron Thompson: Did it have any impact on the increase in crime, by any chance? Do you have any idea? Do you suspect it might have?

A/Commr Raf Souccar: I don't have any statistics that I can rely on to answer your question, but I can tell you that the number of operations we conducted in that area came to a halt.

Mr. Myron Thompson: Obviously things progressed on the wrong end of the stick. It pretty well stands to reason that if you're not going to fight it, then it's going to continue, and it's going to get worse.

A/Commr Raf Souccar: That would be a very reasonable conclusion to reach.

Mr. Myron Thompson: Yes.

After this decision was made.... To me this is like the old vice squad scenario. When you work in a vice squad you do all kinds of things to trap people and to catch them breaking the law. I remember people complaining about unmarked police cars, about everything from that to you name it.

Were all of these things part of this court decision? Did all of these kinds of activities come under jeopardy because of that court decision? I know that drugs are the exception here, with the drug control act, but what about the rest of the things?

•(1620)

A/Commr Raf Souccar: In very simple terms, basically the Supreme Court of Canada said that unless Parliament has specifically exempted you from a particular piece of legislation, if it's an offence for you, then it's an offence for me, unless I had been specifically exempted from it in legislation. They continued on to say that if Parliament wants you to go and commit a certain act or

omission that would otherwise be an offence, they should then provide you with that exemption.

Mr. Myron Thompson: Okay. I understand that.

Previously, in the years before when you did all these practices, what caused...? The court decision said that you could no longer do it. Was that based on anything, other than you can no longer do it? What was the reason?

A/Commr Raf Souccar: It was challenged. We were relying on common law, precedents, crown immunity, and so on and so forth, and the court said no.

Mr. Myron Thompson: The things you were relying on were in existence for many years, but those things disappeared after that decision.

A/Commr Raf Souccar: They were accepted, but it wasn't written law. It was accepted by the courts and by all levels of court, until it was challenged in the Campbell and Shirose case.

Mr. Myron Thompson: Like me, you're probably wondering what went through the minds of the people who said you can no longer do that. What was it based on? Was it not working?

You normally stop practices when they don't work, but I think you guys were doing a pretty good job over the years. I'm trying to get it straight in my mind. Why did we stop something like that? What caused that?

It had been going on for a period of three years. We had to go through this to present legislation in order to enable you to go back to doing it. I'm glad it was presented, I'm glad we have the legislation, and I'm extremely glad that you like what you've got in terms of this legislation to enable you to do your job of fighting crime.

I'd like to ask you another question, but I don't know how much time I have left.

The Chair: You have time.

Mr. Myron Thompson: I have time.

I have recently been going into penitentiaries to check things out. This may be an area on which you may not be able to answer, but I've seen people and I've talked to individuals in solitary confinement, for example:

"Why are you in solitary confinement?"

"For my own safety."

"But you're in prison, aren't you safe?"

"No, I'm not."

"Why are you in this cell?"

"I didn't pay my rent."

"I beg your pardon, you're in jail; you don't have to pay rent."

"Oh yes, you do, if you live in a certain ward, because it's run by a gang, this gang and that gang."

This was true in every penitentiary that I visited. They said that the gangs are getting out of control. Is this not the kind of law that would enable undercover enforcement to go into the prisons to clean this up? Somebody has to stop it; it's on a rampage.

I asked about this at the committee in the last term, two years ago. There's a signal out there that there is a very serious gang problem within our penitentiaries. Shouldn't we have a subcommittee to look into this and see how serious it is? Maybe some action needs to be taken, legislation or something.

My question to you is this. Are you able to infiltrate penitentiaries and get into undercover work in that kind of an area, where crime is being committed by gangs that exist? They're being run from the inside, coached by the outside, sponsored by the outside, funded by the outside, and decisions are made by leaders from the inside.

All that doesn't make sense to this old boy. I find it really strange that a person in a penitentiary would have to go to solitary confinement for protection because he didn't pay his rent. I'm not angry at anybody, but what in the world is going on? Are you able to do something about it, and can you with this kind of legislation? Will that enable you to do something about it?

Sir, something has to be done.

• (1625)

A/Commr Raf Souccar: This question, sir, may best be addressed to Correctional Service Canada, but I'll say this. The legislation itself is not intended to allow us to operate in certain places, but it is intended for certain acts or omissions.

To answer your questions, if we were asked or if we had a reason to be in a penitentiary to conduct an operation, yes, we can and have.

Mr. Myron Thompson: Under this legislation?

A/Commr Raf Souccar: Not necessarily under this legislation.

Mr. Myron Thompson: So my question really is, do we have to do something with this legislation to enable you to do some operation under different circumstances?

A/Commr Raf Souccar: No. This legislation would allow us to commit certain acts or omissions in any place. It's not restricted to outside or inside a prison, or in a certain environment. It's not aimed at an environment, but rather, at the acts or omissions.

The Chair: Thank you, Mr. Thompson.

Mr. Lee. This is a five-minute round.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

Does the data you've given us here today just pertain to O Division, or across Canada? Does it include provincial services that the force does, does it include the municipal services that the force does, or do we have to go and check with them as well?

A/Commr Raf Souccar: Which data, specifically?

Mr. Derek Lee: I'm talking about the data you provided on the number of designations during 2002-03 and the fact that there have been no emergency designations.

I think we have data here. There's a report.

A/Commr Raf Souccar: The report that you received from the RCMP is just our statistics. We only provide statistics for ourselves.

Mr. Derek Lee: Does that include, for example, the provincial operations in British Columbia, Alberta, and Saskatchewan?

A/Commr Raf Souccar: If it's the Royal Canadian Mounted Police, it would be included. If it's the Ontario Provincial Police, it would not be included.

Mr. Derek Lee: Right.

Does it include Surrey, British Columbia, the municipal force there?

A/Commr Raf Souccar: Yes.

Mr. Derek Lee: Okay, and it includes the territories.

A/Commr Raf Souccar: Yes.

Mr. Derek Lee: As we design a template, then, to record, to try to find out how many times this legislation has been used, you have the RCMP covered totally across the country, but we would have to look at provinces for provincial jurisdictions involving provincial police and municipal police in each of the provinces. Is that correct?

A/Commr Raf Souccar: That's correct, and they're required to then submit their report to their competent authority, which is the minister responsible for policing in the province.

Mr. Derek Lee: Do you have any connection with any other federal agencies that might make use of these powers?

A/Commr Raf Souccar: They would have to submit their report to their minister.

Mr. Derek Lee: Their own report to their minister?

A/Commr Raf Souccar: Yes.

Mr. Derek Lee: Has the RCMP ever been approached by other agencies with respect to the use of these designations or training of officials in the use of designations?

A/Commr Raf Souccar: When the designation was first implemented, we provided some other agencies with the template that we were planning on using in terms of how we collect the data to ensure that when this day comes we would be able to answer your questions in terms of what we've done over the last number of years. So we shared that template, or those templates, with them.

Mr. Derek Lee: Do you have any advice to us on how we might locate all these different agencies? I don't think we know exactly how many agencies would or might take advantage of this particular provision—Parks Canada, Fisheries Canada, Immigration, Canada Border Services Agency, who knows?

A/Commr Raf Souccar: In terms of law enforcement, we'd suggest the Canadian Association of Chiefs of Police may be the best avenue to follow. Otherwise, we may be able to help you with the federal agencies that we know are using it and we could undertake to get back to you with a list—unless you have it, Barry.

Mr. Barry MacKillop: To my knowledge, at this point, the Department of Fisheries and Oceans has used it and Environment Canada is currently examining the possibility of following suit, but I personally haven't seen any annual reports from them. I'm not sure where the report is on that.

Mr. Derek Lee: Okay.

I notice that the data from 2004 hasn't hit Parliament yet, hasn't hit the public. We're almost halfway through 2006. Is this just a normal time-consuming business, adding up a half a dozen designations? What do you think is holding up the 2004 data?

• (1630)

Mr. Barry MacKillop: At this point, it is almost complete. Certainly the change in government, the transition in the department, and so forth has had an impact on the timing of it and getting it out, but it is coming forward soon.

Mr. Derek Lee: Oh, so the Conservative government is dragging its feet.

I know new government is a challenge. I was just making light of the circumstance. I wasn't being serious.

Concerning the power that exists here to exempt officers, did you ever have an experience with the use of the writs of assistance, in your career?

A/Commr Raf Souccar: Yes. When I first jointed the RCMP in 1977, one of my first postings was in the drug squad in Toronto. At that time, there were certain members that had access to writs of assistance. I never had one, but I had participated in searches where writs of assistance were used.

Mr. Derek Lee: The objective of those writs—and the designations here are conceptually similar—or their public purpose was to allow police with the writs to avoid the strict application of the law for purposes of law enforcement.

If you had any experience with it and you look at the current system, do you prefer the current system or the old system?

A/Commr Raf Souccar: I see them as very, very different. Clearly the law enforcement justification would not allow the intrusion of a search for court purposes in order to try to uncover evidence and then justify it later in terms of reasonableness and proportionality. For search warrants, we still submit information to obtain them from a judge and then carry on from there; so they're not used in any way, shape, or form for searches of dwellings, houses, or other places. They're used in the course of an investigation for acts or omissions that would otherwise be an offence.

So I see them as being very different.

Mr. Derek Lee: So there's no need to compare them. Anyway, you appear to be reasonably satisfied with the applicability of the current system to your circumstances in the RCMP, and you don't have any particular recommendations for a statutory change?

A/Commr Raf Souccar: Not at this point; we're very satisfied with how it operates.

Mr. Derek Lee: Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Lee.

Ms. Freeman.

[Translation]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): I have one or two brief questions for you.

You provide training for two days only. The first day deals with the legislation and the second presents probable scenarios. Earlier, you were asked in which situations you had used these provisions in your exercises.

I would like to know what your probable scenarios are, because you have only two days of training, which is very little in light of all the things that are permitted under these provisions. Could you tell us more about this, particularly about the second day of training, please?

A/Commr Raf Souccar: Thank you for your question.

[English]

The law itself is not a very complicated piece of legislation. There are just a very, very few subsections to it. As I said, it's really straightforward. On the first day, we simply try to familiarize the police officers with this piece of legislation and run them through it step by step to make sure they have a good thorough understanding. And that's a full day.

On the second day, we try to get them to apply scenarios to what they learned on the first day. For example, if I were to say to you, you're now a designated police officer and you are required to buy counterfeit currency, can you do it? The answer is, yes, I'm designated, I can do it. And if the question were changed a bit and said, now you're going to direct a civilian agent to purchase counterfeit money, can you do it and what authority do you require? Yes, it can be done, but I require authority from a senior official, because now I'm directing a civilian agent. What else? Well, as soon as you finish directing the agent and the act or omission is committed, you need to report back in writing to the senior official; that's by law.

So it's a matter of the application of this not very complex legislation, applying it in scenarios that are very typical, if you will.

• (1635)

[Translation]

Mrs. Carole Freeman: I would have liked to have more examples of practical applications. There have been instances where this has already been applied but, in practice, you have doubtless expanded the scope to include things we are not considering. That was what I was really asking.

[English]

A/Commr Raf Souccar: That's where it gets a little sensitive, because we try not to bring much attention to the types of investigation we get involved in. But as you see, most of them are very routine investigations; they are not very sensational investigations that you would like to do a TV movie about.

Supt Thomas Bucher: Let me add a little bit to your question.

When we're looking at the types of instances where this legislation is applied—and serious organized crime is the major application we use it for—the use of subsection 25.1 in any major investigation is actually a very small component of it. It can come down simply to something like making a one-time purchase, or it could be making a few purchases throughout the course of an investigation. But I think it's important to differentiate between an organized crime investigation and the use of the legislation; it's often a very small part of a much larger operation.

[*Translation*]

Mrs. Carole Freeman: Thank you.

I see there are provisions under which the designation of officers who retire or are no longer part of an undercover operation can be revoked. You are able to revoke three-year designations. How many officers currently have a three-year designation?

[*English*]

A/Commr Raf Souccar: This is another question I would prefer not to—

[*Translation*]

Mrs. Carole Freeman: This question is very—

[*English*]

A/Commr Raf Souccar: I'd be pleased to answer it in camera, but I don't want to make public how many officers we have out there who are capable of—

[*Translation*]

Mrs. Carole Freeman: Okay. I hope my third question will not be as sensitive in nature.

I want to touch on something you raised earlier. You talked about the limitation, which you referred to in your presentation as the “reasonable and proportional test”. You mentioned that you yourself had preferred not to apply it in the passport scenario, because you felt that, to some extent, this exceeded the scope, although I believe that you could do so under the legislation, correct?

I want to know whether there are any precedents whereby recourse to these powers did not work? You have censured yourself this time but, with regard to the application of the statutory provisions, have there been any instances when things went awry?

A/Commr Raf Souccar: In court?

Mrs. Carole Freeman: Yes.

A/Commr Raf Souccar: To date, that has never happened.

Mrs. Carole Freeman: No mistakes have ever been made?

A/Commr Raf Souccar: The only mistake that—

Mrs. Carole Freeman: I am talking about a mistake with unfortunate consequences.

A/Commr Raf Souccar: No, never.

Mrs. Carole Freeman: So you have a perfect record to date, if I understand correctly.

A/Commr Raf Souccar: The only mistake since February 1, 2002, occurred when someone designated a public officer without the senior official's authorization. The police officer who gave the

order realized his mistake and contacted our office by the following day, I believe.

[*English*]

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: On a point of order, Mr. Chair.

I believe that my colleague's question on the number of designated officers is vital to understanding the scope of the bill, and I wonder if we should not sit in camera for the answer. We should at least be informed of the order of magnitude. I would appreciate an answer. Should we do this now or later? I will leave you to decide, but I think that we need to know.

Mrs. Carole Freeman: I think, personally, that it is vital. There are provisions allowing the RCMP to commit acts far beyond what is considered normal, and we are asking how many people on the team have the power to commit an act that would otherwise constitute an offence.

• (1640)

[*English*]

The Chair: We'll hear Mr. Lee on that point.

Mr. Derek Lee: The force and all agencies that make use of these powers are required to report publicly and say how many people have been designated and how many incidents have occurred. So there is a record of how many designations were made.

A voice: *Mais non pas du nombre des gens—*

Mr. Derek Lee: Excuse me, Mr. Chairman, I don't want to get into a debate here. My point is that—

Réal, give me a moment here. If I'm wrong, I'll stand corrected.

The designations show the number of people who've been designated. If the question is how many people have been designated, then the answer is in the report. If the question is how many people are trained to go undercover, that's another story, but it's not part of the section.

The Chair: If you're looking just for numbers, I get the feeling there's some hesitancy to get into all of that as far as numbers are concerned. I don't see what purpose that serves, to get into what size of an operation is running, or how many agents, or how many designated officers there might be. What's the purpose?

[*Translation*]

Mr. Réal Ménard: I do not understand. We are parliamentarians and we are looking at the scope of provisions of the Criminal Code establishing exemptions. I do not want to know whether Mr. Lee thinks it is in the report or not. I have read the previous two annual reports, which the clerk sent to us, and they failed to mention the number of designated officers. The question is whether we may sit in camera to discuss this matter.

As for the scope of the questions, that is up to us. I will abide by your decision if you decide, as chair, that we will not sit in camera. As to whether the question is relevant, I assert that my colleague's question is quite relevant. As for the rest, it is up to us to decide how far we will go to obtain this information.

We will understand if the RCMP prefers not to respond. We are not asking for details about investigation cases. We are asking how many designated officers there are in Canada.

[English]

The Chair: Okay, Mr. Ménard, you made your point.

Mr. Warawa, on the same point.

Mr. Mark Warawa (Langley, CPC): On a point of order, Mr. Chairman, I have no problem going in camera, but I would suggest that we do that after we do our normal business. The point of going in camera was brought up by Mr. Thompson at the beginning, and I'm sure there will be some topics that we could discuss in camera. I would prefer that we deal with in camera at the end of this meeting, the public session. For us to be bouncing back and forth between in camera and public I don't think is practical. So I prefer we do it at the end.

The Chair: Your point is taken, and certainly we can discuss a few points in the last ten minutes of this session, which we will begin at 5:20.

I would like to ask the assistant commissioner, is there going to be any reluctance on your part to share this information in an in camera session?

A/Commr Raf Souccar: No, absolutely not.

The Chair: Okay, it shall be so.

Mr. Warawa, you have five minutes.

Mr. Mark Warawa: Thank you.

The first question, Mr. Chair, is regarding the involvement of the civilian agents. We've heard of the designation for members of the RCMP or other municipal police. How is the civilian agent involved with this? Is there any training for them? You mentioned the one error at the beginning. I think it was in 2002. How is a civilian agent involved, and what training do they receive?

A/Commr Raf Souccar: Civilian agents do not receive training. They would only be able to use this legislation if directed by a designated member of the RCMP, in our case, a designated public officer. So the reasonableness and proportionality test, if you will, is done by the police officer who is designated and directing the agent.

Mr. Mark Warawa: So do they realize that this authorization ends when that circumstance ends? They were directed for a very short period of time.

•(1645)

A/Commr Raf Souccar: This is correct, they are. And in fact this is made clear to them in a letter of acknowledgement that's signed by them and us, explaining the situation, that this is an act, that they are directed to commit an act or an omission for a very specific purpose.

To tell you the truth, when handling a civilian agent in any type of operation, even if we don't have to make use of section 25.1, the rules around the handling of civilian agents are very, very tight, to the extent that it's always made clear to them that if they're involved in any criminality they're on their own and they will be arrested if we find out about it, unless it's under our direction. So whether it's Controlled Drugs and Substances Act direction, which is covered under the CDSA, or whether it's something else, such as a section

25.1...it's made very clear that they can only operate under our direction.

Mr. Mark Warawa: The second question refers to identity theft. You had mentioned passports and the hypotheticals—there were driver's licences, social insurance cards. Identity theft is a concern.

My riding of Langley, British Columbia, had the notoriety of having the greatest amount of mail theft per capita in Canada. The issue is focused around crystal meth and people being up for 72 hours. Their job is to steal mail and get it back to organized crime. Then organized crime goes through the mail and makes use of valuable pieces of personal information for identity theft. So it is a problem.

This may be something for in camera—I don't want to press for specific details—but hypothetically, are we involved in dealing with that very important issue of identity theft using section 25.1?

A/Commr Raf Souccar: Potentially, again depending on the offence in question and whether it requires the use of section 25.1 or not. The possession of fraudulent documents such as passports requires the use of section 25.1.

We find with identity theft the best defence against it, if you will, is educating the public—education, awareness, and prevention. We have several initiatives under way to do just that. In fact, in the next three weeks we're doing an awareness campaign at a senior citizens home here in Ottawa whereby they will be exposed to the various ways their identities can be stolen.

Mr. Mark Warawa: I'm sorry, I'm going to interrupt you because I have limited time. I'll have a follow-up question on that when we go in camera.

My final question refers to page 15 of your submission, where you talk about when prior approval is not feasible. At the end of that paragraph, on page 16, you said that the RCMP has not used this portion of the legislation to date.

If the RCMP has not used this portion of the legislation, and we're in a five-year review, would that indicate that part of the legislation isn't usable or it's not likely to be used? Do we need to look at that? Why has it not been used?

A/Commr Raf Souccar: I think the fact that it's not been used is a reflection of how seriously we take this piece of legislation and the honesty and integrity of our members in dealing with this legislation in a very forthright and forthcoming way. It's very clear as to when it should be used, and our members are very clearly educated on the fact that if you do use it, you'd better need to use it. It's not dissuading them from using it, but telling them if you use it, you'd better be able to stand behind what you've done.

The Chair: Thank you, Mr. Warawa.

Mr. St. Amand.

Mr. Lloyd St. Amand (Brant, Lib.): Thank you, Mr. Chair.

Thank you, panel members, for your very cogent, compelling presentations this afternoon.

I just want to ask you about the history of the matter. Correct me if I'm wrong, but as I understand it, prior to 1999 undercover investigations were occurring on an as-needed basis, and no particular harm was befalling police officers or RCMP officers. I practised law for some 25 years, some criminal law, and I don't recall a series of cases in which police officers were being routinely charged for offences or crimes committed as part of an undercover operation.

Is that the case?

•(1650)

A/Commr Raf Souccar: You're correct.

Mr. Lloyd St. Amand: It just wasn't happening.

A/Commr Raf Souccar: That's correct.

Mr. Lloyd St. Amand: I should recall this, but I don't. What triggered the 1999 decision by the Supreme Court of Canada? What were the particular facts in the Campbell case that resulted in that decision about no longer having immunity? Do you recall?

A/Commr Raf Souccar: I do recall. I do recall clearly.

The Campbell and Shirose case occurred at a time when the Narcotic Control Act was in place prior to the Controlled Drugs and Substances Act. In that case, in an undercover operation that we were involved in, we posed as a major drug syndicate, if you will, a criminal organization. The police were posing as a criminal organization capable of supplying a large amount of drugs to high-level executives, if you will, of a criminal organization. When they found out that we were in a position to supply them with the drugs, they expressed interest. We asked for their money, we offered them the drugs, they gave us their money, and they were arrested.

The act of offering falls under the definition of "trafficking"; offering to sell drugs falls under that. As such, the defence at that point made the case and convinced the courts that we had committed an offence by in fact offering to sell drugs.

The ironic part about all this is that when the case made it to court, the Controlled Drugs and Substances Act was in place, allowing us to traffic in drugs. Nevertheless, the case had to be judged on the state of the nation, as it were, at the time the offence took place.

Mr. Lloyd St. Amand: So the accused then were, I presume, acquitted on the basis that their rights had been violated or they had been entrapped or some such thing?

A/Commr Raf Souccar: Initially, yes.

Mr. Lloyd St. Amand: And then what?

A/Commr Raf Souccar: I believe at the end of it there was a new trial ordered, but it wasn't pursued.

Mr. Lloyd St. Amand: All right. And that was a conscious decision made by the crown?

A/Commr Raf Souccar: Correct.

Mr. Lloyd St. Amand: Mr. Thompson was endeavouring to make the point that undercover investigations essentially dried up—my phrase, not his—from 1999 to 2002. But that's an exaggerated statement or comment, is it not?

A/Commr Raf Souccar: Yes, it is, to the extent that the Controlled Drugs and Substances Act was in place, and therefore drug operations, undercover operations, continued.

Mr. Lloyd St. Amand: So undercover operations continued as they had been prior to 1999?

A/Commr Raf Souccar: No, that's not correct. Sorry, did you say drug undercover operations continued?

Mr. Lloyd St. Amand: No, undercover operations.

A/Commr Raf Souccar: Then that's not correct, no.

Drug undercover operations continued, given the Controlled Drugs and Substances Act, but immigration-type operations, customs-and-excise-type operations, counterfeit operations, came to a halt because there was no mechanism by which we could be involved in this type of activity, given that it was an offence.

Mr. Lloyd St. Amand: Are you, collectively, entirely satisfied with the present wording of the legislation, or is there a suggestion you have for the committee to alter it in some fashion?

A/Commr Raf Souccar: As I indicated earlier, I'm satisfied with the legislation as it exists.

Mr. Lloyd St. Amand: Is that a unanimous opinion, if I can ask that?

Supt Thomas Bucher: Yes.

Mr. Lloyd St. Amand: Thank you, Mr. Chair.

The Chair: Thank you, Mr. St. Amand, and good questions.

Mr. Brown.

Mr. Patrick Brown (Barrie, CPC): Thank you, Mr. Chair.

Mr. Souccar, my question relates to the issue of disclosure, and on two fronts. Obviously, since Stinchcombe we have a significant burden on law enforcement agencies for the depth and the breadth of disclosure requirements. How do you feel this affects that? Are there any concerns that you may have in terms of the safety and security of individuals involved in these investigations if their names are released? And is there a way to make an exception to protect against that? And a larger concern on that same front of disclosure for me would be in terms of delays, where some judges choose to give three-for-one dead time or two-for-one dead time. Is this going to enhance potential delays being another potential opportunity to be utilized to delay the actual judicial proceedings?

•(1655)

A/Commr Raf Souccar: In terms of the identity of civilian agents who we use.... And it's not so much the identity of civilian agents. It's well established that the accused has to face his accuser to be able to make full answer in defence. This is something that we expect, something the civilian agent expects: to be able to show up in court and testify. This is why we have the witness protection program.

The question we have more of a concern with is the publication of techniques that we use in the undercover operation; that would be more of a concern for us, and the courts not being as willing to hear that type of information in camera, if you will, or not suppress any publication of the technique that was used.

Mr. Patrick Brown: In terms of the wording of the legislation, can you think of anything that could alleviate that concern? Is there anything that could be crafted to create that exception?

A/Commr Raf Souccar: I don't believe that it falls within the realm of this legislation whatsoever.

Mr. Patrick Brown: And in terms of the issue of delays, do you have any concerns on that front?

A/Commr Raf Souccar: Could you repeat your question regarding delays?

Mr. Patrick Brown: This would be an additional form of disclosure. It's more information that has to be provided. Would this cause increased delays? Is this something that would take significant time to provide, and if so, would it take longer than the substantive disclosure that's required to be provided?

A/Commr Raf Souccar: Are you talking about delays as they relate to the use of this legislation?

Mr. Patrick Brown: Yes.

A/Commr Raf Souccar: No, absolutely not. There is no added delay whatsoever in disclosing anything related to this legislation. It's simply another technique that's used. As Tom was explaining earlier, this is a very small portion of an investigation. We could have an investigation that lasts four years or three years, and we may use the law enforcement justification twice to purchase counterfeit money and a passport, but the rest of the investigation may be trying to track down the criminal network, how it operates and so on and with part VI, wiretap interceptions, surveillances, and so on. So the disclosure of the use of this law enforcement justification would be a very minor part of this overall investigation.

The Chair: You still have more time, Mr. Brown.

Mr. Patrick Brown: I think I've covered what I was concerned about.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Thank you for all your testimony. It seems like everything is working very well. It's very hard to find improvements, but I'll keep trying.

Deputy Commissioner, when I originally asked, you said there was nothing you would want to change, but in later testimony you said that you hoped that the exemptions not be in the original act, to draw that line in the sand, just in case, I guess, in a situation that you'd obviously meet in organized crime, that you may be challenged to prove that you're undercover and it would cross the line of one of those three exemptions. Would your preference still be that that not be in the act?

A/Commr Raf Souccar: We've dealt with these challenges for four and a half years almost, and we've dealt with them well. This was a concern of many bodies that had concerns with this piece of legislation. The Criminal Law Association, the defence bar, and so on were very concerned that the police would actually commit crimes such as murder. In fact, I believe they had published a

publication called *Getting away with murder*. That's what it took to put to rest the concerns of some who thought that we would actually go and commit these types of crimes and not be accountable for them. We've dealt with them over the years and we're satisfied that we can continue dealing with them.

• (1700)

Hon. Larry Bagnell: So there hasn't been an instance in the time since the act was put in place when a police officer or an authorized informant's safety has been put in jeopardy by not being able to perform those three things?

A/Commr Raf Souccar: Not to my knowledge.

Hon. Larry Bagnell: Have you had any complaints about the act? I can ask about two sources: first, groups like you just mentioned, civil liberties groups or anyone, since the act has been put in place, or complaints about other organizations—that they shouldn't have this authority?

A/Commr Raf Souccar: I've read several articles in *Lawyers Weekly*, the criminal law reports, that express some concern over this legislation, not because of a particular act or investigation that the police were involved in, but rather the overall idea or concept of the police being described as being above the law. As I explained in my presentation, this is not about the police being above the law. It's about organized crime and it's about providing the police with the tools to carry on with their investigation in a very carefully circumscribed piece of legislation and a tight framework that we in fact have tightened even more than the legislation.

Hon. Larry Bagnell: Turning to the other source of potential complaints, the working level, have you heard any complaints since the law has been enacted from the lowest-level officers who would be working undercover and would be authorized for this, that they think it could be more liberal or freer or give them more protection in any way?

Supt Thomas Bucher: I have not. I think what we've proceeded to do with making the restrictions in our internal policy tighter than the legislation, as Assistant Commissioner Souccar stated, has really made an impact and has proven a point. When we look at what acts and omissions have occurred and with what frequency to date, and at the fact that there are such rigid controls around this, if there were any type of dissatisfaction at the working level, as you indicate, I think it might be that we internally really scrutinize what we do. But there's a very specific reason for that. I think, from what the usage has shown to date, that's only been a good thing.

Hon. Larry Bagnell: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Bagnell.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: I was in the House when Allan Rock introduced Bill C-95. I was there during consideration of Bills C-24 and C-36. I represent eastern Montreal. At one time, organized crime was very active there. The car bomb that killed 13-year-old Daniel Desrochers exploded in my riding.

This attack is behind my interest in fighting organized crime. In my opinion, the role of this committee is to determine whether the provisions we adopted creating exceptions... You have a number of other tools before having recourse to these provisions.

When Bill C-95 was under consideration, there were 33 outlaw motorcycle gangs in Canada. Can you give us any information on how such provisions were used to take down organized crime networks? Has the situation improved significantly? Based on the way things were in 1995, could we say that Canada has succeeded to some extent in curbing this threat?

Perhaps you are not the best person to ask. Other people are perhaps more knowledgeable about how these networks operate but, in my opinion, there is a direct link between these provisions and the effective presence of organized crime in Canada.

• (1705)

[*English*]

A/Commr Raf Souccar: One thing for sure, in your area of Montreal with the outlaw motorcycle gangs, the Nomads, the Hell's Angels, and so on, is that there's been quite an effective job done in Montreal—in Quebec—against outlaw motorcycle gangs.

The legislation you refer to, the criminal organization legislation, has not to my knowledge been used to the extent it should be. I'm not sure exactly why, but it has not been used to the extent it should be. It has several provisions in place that I think can be of great assistance—the extended wiretap authorizations, and so on. They have been used in Ontario, as you know, to declare the Hell's Angels a criminal organization. They've been used in British Columbia, and I know they've been used extensively in Quebec. I'd like to think they've had an effect on our ability to combat organized crime.

The Chair: Mr. Thompson, when you complete your questions, we will go to an in camera session.

Mr. Myron Thompson: I'd just like to know, if sections 25.1 to 25.4 were removed from the code, how you would fight crime.

A/Commr Raf Souccar: Thank you for your question, sir.

We would be back to where we were between May 1999 and 2002, having to find methods other than undercover operations and infiltrating criminal organizations, because our very ability to obtain evidence against these criminal organizations through the undercover technique would be extremely limited.

We would be left again with conventional techniques of surveillance and wiretaps, and as I indicated earlier in my testimony, although they're valuable techniques they very often are not effective, in that criminal organizations don't talk over the phone very much. It becomes very difficult; you start playing a guessing game. They are very effective combined with an undercover operation, in that one can corroborate the other. But on their own, they're not very effective.

So I think it would impact us very negatively.

Mr. Myron Thompson: So if my partner and I were in an undercover operation and made a decision because we thought it would be best to resolve the problem but it wasn't quite covered under the training program.... I'm just trying to get a scenario.

Is the individual protected if he takes that one extra step that would be law-breaking but may not be covered? Who determines that? I don't know if I'm making myself clear. I could almost see two guys saying, "Should we do this? I don't think we're allowed to, but it would solve the problem if we did."

A/Commr Raf Souccar: With the existence of this legislation?

Mr. Myron Thompson: That protection.

A/Commr Raf Souccar: Yes, I think it's fairly clear what can and cannot be done. As I've indicated before, we take our undercover operations very seriously, in that operational plans are in place and a very strict framework is placed around the undercover operation in terms of the acts or omissions. They're approved in advance.

For the rare case where an undercover operator finds himself or herself in a situation where something needs to be done, there are exigent circumstances in place that can cover, for example, not having received authorization from a senior official. So there are provisions in place to cover that. And of course there are the three things you cannot do under any circumstances, and those things are very, very clear.

Mr. Myron Thompson: So the plans that you put in place are like the legislation; it must meet the charter test.

A/Commr Raf Souccar: Absolutely. In everything we do, we take the charter into consideration.

Mr. Myron Thompson: Okay.

If this legislation were allowed because it met the charter test, is there anything that causes you concern that would be questioned under the charter?

A/Commr Raf Souccar: I don't think it has received a constitutional challenge in court. Like any piece of legislation, it goes through a constitutional assessment prior to being enacted, and this was done with this piece of legislation. We're prepared to go to court and defend it.

• (1710)

Mr. Myron Thompson: I'm just asking, because you operated many years doing very good things—fighting crime—and one day it wasn't allowed; it didn't meet the charter test. Is there anything that's going to cause that day to occur again? To be perfectly frank, that worries me.

That's a difficult question, and I don't expect you to answer. It's more of a comment. I won't force an answer out of you.

A/Commr Raf Souccar: Thank you.

The Chair: Thank you, Mr. Thompson.

We will suspend the committee now for one minute.

I would ask that the general public please leave the room.

I might remind the members that what we speak of now will remain in this meeting room. It's a gentle reminder of what "in camera" means.

[Proceedings continue in camera]

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