



House of Commons
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 036 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, March 29, 2007

—
Chair

Mr. Garry Breitkreuz

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Public Safety and National Security

Thursday, March 29, 2007

• (1100)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I would like to bring this meeting to order. This is the Standing Committee on Public Safety and National Security. We do not have a quorum; however, we have very important issues to deal with, and we can hear witnesses without a quorum.

Today we are having meeting number 36. We're dealing with Standing Order 108(2), a briefing on counterfeit goods.

Hon. Sue Barnes (London West, Lib.): On a point of order, Mr. Chair, I think we do have a quorum to hear witnesses. A reduced quorum to hear witnesses is three.

The Chair: Yes, that's what I said. I said we can hear witnesses with the number of people we have here.

Hon. Sue Barnes: But we have a quorum to hear witnesses; I just want to make sure.

The Chair: We have, from the chamber of commerce, Mr. Michael Murphy, the executive vice-president.

Our usual practice at this committee is to allow you to have a 10-minute opening statement, and we'll have that for each group. You can introduce yourselves and then go into your presentation.

We'll begin with Mr. Murphy.

Mr. Michael Murphy (Executive Vice-President, Policy, Canadian Chamber of Commerce): Thank you very much, Mr. Chairman and honourable members of the committee.

I'm delighted to be here today on behalf of the Canadian Chamber of Commerce. I'm also pleased to introduce my colleague, Lee Webster is a partner at Osler's, and also, importantly for us at the chamber, chair of our intellectual property committee.

[Translation]

As the organization speaking for Canadian business, the Canadian Chamber of Commerce is the most representative organization for business people in Canada.

We are speaking today on behalf of a network of 350 Chambers of Commerce and other business organizations representing more than 170 000 member companies.

[English]

The chamber is pleased to provide its input before this committee on the issue of counterfeiting and piracy. We've been working closely with the Canadian Anti-Counterfeiting Network, the Canadian Recording Industry Association, and other national

organizations, such as the Retail Council of Canada, to offer tangible solutions to the problem.

As you'll hear shortly, the CACN will speak to the release of a comprehensive report that we at the Canadian chamber endorse.

Quite frankly, Canada is losing the war on counterfeit goods—that's our starting point. While counterfeiting used to consist mainly of knock-off T-shirts or watches or other luxury items, the low risk and high profit margin has allowed criminals, including organized crime, to become very active, counterfeiting everything from drugs, brake pads, and other car parts to electrical products and personal care products. Virtually no industry escapes this illegal activity, and the counterfeit activity poses serious health and safety risks due to the poor quality of the products and the potentially hazardous nature of fakes.

According to a report from Criminal Intelligence Service Canada, an organization chaired by the RCMP, no country is immune to counterfeit drugs. In fact, the World Health Organization has estimated that 10% of all medication available is counterfeit. While it is well documented that in developed nations the control and enforcement of drug supplies is far more difficult, we have 50% and over of counterfeit drugs in some regions like Asia in Africa, and Canada is certainly not immune from the problem.

The criminal element, unfortunately, does not care if counterfeit products are unsafe for consumers; they care only about turning a profit. Some counterfeit batteries imported into Canada have been found to contain mercury and have posed a threat to explode because they were not properly vented. Counterfeit shampoo contaminated with bacteria that could cause infection has been found in Canada and imported into the U.S. from here.

Counterfeiting and piracy continues to grow at an exponential rate, and it is relatively unchecked in Canada. The problem is worth, in our estimation, billions of dollars annually, and it's growing. The economic impact of the problem—and this is our real starting point on our discussion, Mr. Chair—is that lost revenue for companies and for the government as well is most significant.

In a knowledge-based economy, intellectual property is an essential element for promoting investments in R and D, innovation, international trade and investment, consumer protection, and overall economic growth. In the rapidly changing global economy, protecting IP is critical to ensuring a competitive Canada—that's our starting point.

Now it's my pleasure to turn it over to Lee Webster to get into some of our more specific recommendations.

Mr. Lee Webster (Chair, Intellectual Property Committee, Canadian Chamber of Commerce): Thank you, Mike.

Good morning, honourable members of the committee. As Mike mentioned, I am a partner with Osler. I practised in IP law for over 25 years. My role with the chamber is to provide them with some guidance on intellectual property issues.

Some may suggest that this is all about the entertainment industry trying to protect its intellectual property from being illegally copied. This is a very real concern; however, the issue is much larger. The entertainment industry's problems are simply one aspect of the broader problem of intellectual property theft.

Stealing the IP of another not only robs the rights holder of the economic benefits of those rights long recognized under our traditional civil laws, such as our patent, trademark, and copyright legislation, but it also lowers our country's reputation abroad, it deceives the consumer, and, frankly, now we're finding that it's putting consumers' health and safety at risk.

By now, we've all read about the unfortunate death this month of a woman in British Columbia who purchased drugs over the Internet. These drugs were found to be laced with filler, including, believe it or not, uranium and lead. I was a bit curious as to why uranium and lead were used as a filler, but I've learned that this is perhaps a means of garbage disposal for people who have lead and uranium to get rid of.

The prevention of the distribution of counterfeit goods is not simply a matter of protecting the legitimate rights of designers of high-end watches and handbags. As the chair of the IP committee of the chamber, I urge the government to take vigorous and meaningful action on this issue immediately. Our coalition has been pressing for action, and we're very encouraged that this committee and the industry committee are giving careful study to the problem of counterfeiting in Canada.

I should note that this issue has not escaped the notice of our principal trading partners. The U.S. Trade Representative has placed Canada on a special 301 watch list, an annual review of countries deemed lacking in their protection of intellectual property, for a twelfth consecutive year. The International Intellectual Property Alliance is now recommending that Canada be elevated on that list, to what is termed the "Priority Watch List", for 2007. I urge you to read those reports.

The International Chamber of Commerce recently released a survey that ranked Canada as the 13th worst country among those surveyed for the protection of intellectual property. Believe it or not, we ranked lower than Nigeria, Bangladesh, Sri Lanka, and Bulgaria. According to the survey, Canada clearly has the weakest intellectual property environment in the G-8. I must say that as a Canadian and as a lawyer who has practised intellectual property law in this country for over 25 years, I am embarrassed to report these statistics.

Law enforcement agencies and prosecutors need better tools to provide them with the ability to effectively combat the importation, manufacture, distribution, and sale of counterfeit goods in this country. Among other matters, customs officials need to have new powers and the associated additional resources to search and seize suspected shipments of counterfeit goods.

Much else needs to be done. Our current IP laws are not up to the task of providing efficient and effective relief against counterfeit goods. We recommend that a thorough review of all our IP-related statutes, such as the Copyright Act and the Trade-marks Act, as well as IP-related provisions of other statutes such as the Criminal Code, be conducted. This is urgently needed so that both rights holders and the authorities have the tools they need to efficiently and effectively stop the flow of counterfeit goods.

Counterfeiters must be stopped. Canada's IP environment must be brought up to the standard of our international trading partners. Here is what the chamber believes needs to be addressed to adequately deal with this problem.

First, make counterfeiting and piracy a government-wide priority and act on appropriate reforms in a timely manner.

Second, provide core funding resources for the necessary reforms and their implementation. Among other things, this would enable authorities to search and seize suspected counterfeit goods at Canada's major ports and gateways. I was asked by a client two days ago to do this, and I had to respond to him that there is no means of doing so. It was very embarrassing.

Third, strengthen existing statutes such as the Criminal Code, Copyright Act, and Trade-marks Act, either individually or through an omnibus, dedicated anti-counterfeiting statute. Initiatives that should be taken in relation to this are amending the Criminal Code to properly define counterfeiting as a special criminal offence; making it a criminal offence to manufacture, reproduce, distribute, and/or import or offer for sale counterfeit products; and amending the Federal Court Act and any associated regulations and policies to provide for expedited civil proceedings for cases involving counterfeit products and IP infringement.

● (1105)

We suggest adding counterfeit and pirated goods to the proceeds of crime regime, making it possible for law enforcement officers to seize the illicit wealth of counterfeiters.

We suggest that Canada ratify the two outstanding WIPO, World Intellectual Property Organization, treaties that specifically deal with the enforcement of intellectual property rights over the Internet.

We also suggest making amendments to the Customs Act to allow for search and seizure of counterfeit and pirated goods and to provide customs and law enforcement agencies with the ability to share information with rights holders and licensees.

Finally, on public education, the word has to get out. The RCMP needs to have some effective material, particularly posters, but more needs to be done.

In conclusion, counterfeit products are being sold and distributed throughout Canada. They can harm us in many different ways—in the most extreme cases, as we've seen in British Columbia. The chamber urges the government to look at this issue with the utmost gravity and act now.

Thank you for the opportunity to present the chamber's views. I'd be very happy to take any questions you might have in the question session.

•(1110)

The Chair: Thank you very much.

You've covered a wide range of issues, and we look forward to being able to ask you some questions.

We'll now go to Mr. Doug Geralde, the chair of the Canadian Anti-Counterfeiting Network.

I believe you're sharing your time with Mr. Brian Isaac.

Mr. Doug Geralde (Chair, Canadian Anti-Counterfeiting Network): That is correct, sir.

The Chair: Okay. Go ahead.

Mr. Doug Geralde: Thank you, Mr. Chair and honourable members.

It's a pleasure to be able to address you this morning, and I appreciate this opportunity.

I am the director of corporate audits and investigations for CSA. It's a body for standards writing and certification testing, and the mark appears on products to indicate compliance to safety requirements for Canadian consumers and industry.

In addition to that role, I am the chair of the Canadian Anti-Counterfeiting Network.

As all of us today are here to tell you this is a growing problem and a concern that we think needs your attention, primarily from a health and safety standpoint, as well as an economic one.

I'd like to point out to you a couple of examples of the growing problem that we see as we do inspections around the world and look at products in the marketplace.

We also do investigations with respect to product failures, and I brought a couple of samples. There is a plethora of samples that we could talk about. I found counterfeiting to be in essentially every area of pharmaceuticals, automotive parts, electrical products, hockey helmets, which is a travesty for Canadians, and things of that nature.

Mr. Chair, if I could pass a couple of these samples around to the committee, they can take a look at them

In the first case, we have a power cord, and it's a three-conductor grounded receptacle providing safety if there's a shock. Unfortunately, to save on the copper, they only have two conductor cords, and it's essentially a sham. In addition, the surge protector switches are not certified or tested, and all pose a hazard. In this case, the hazard is that there's no grounding. I'll pass these around so you can see them.

The next one is an extension cord that has caught fire. These present both fire and shock hazards. If there is a melting of the insulation, then there will be a bare conductor. If you inadvertently grab the cord, you could be electrocuted. If it continues to smoulder under carpets or near combustibles by computers, you have a potential fire hazard.

The reason we're seeing these things is that in the manufacturing of the products, the number one commodity that seems to be in these

developing countries at large for manufacturing is copper, so they save on the copper.

For the black insulation, you'll find the correct size of wire. The white insulation is what they're putting in, so they beef up insulation. The difference is a 26-gauge kind of telephone cable instead of what you need in the wire. The effect is that the resistance is much higher, causing overheating and a potential shock hazard.

These are only a couple of examples that could be passed around to let you know what we're doing.

We're also seeing that these problems are not isolated incidents. They are in fact orchestrated and organized. Some of the shipments are tied into organized crime, because they're coming in through the same circuitous routes as the drugs and they're often packaged with drugs. The counterfeiters are the same people, with the same networks. They're getting into our supply chains, and we have to put a stop to it.

My goal in investigations is to catch them at these stages and bring them to the appropriate parties so we can take corrective action and act swiftly. My worst fear is that I will have to investigate fatalities, and it's inevitable that we're going to have that with the counterfeits.

It's a huge problem, and I urge you to advance on the recommendations we have proposed here with CACN.

I will be happy to take any questions, give any other details, or expand on any other investigations you'd like in the question period or at any time.

Thank you very much for the opportunity to speak to you.

I'll turn it over to Brian Isaac.

•(1115)

The Chair: Go ahead, Mr. Isaac.

Mr. Brian Isaac (Partner, Smart & Biggar Fetherstonhaugh, Canadian Anti-Counterfeiting Network): Good morning, Mr. Chairman and honourable members.

I'm Brian Isaac. I'm another IP lawyer. I'm a partner with Smart & Biggar. I've been practising in the field for about 20 years. I'm also the chairman of the legislation committee of the Canadian Anti-Counterfeiting Network, CACN, and I'm sitting on a number of other anti-counterfeiting—if I can use that term—committees: the CBA, Intellectual Property Institute of Canada, the International Trademark Association, etc.

There's no question that it's widely accepted and acknowledged, including by Canadian government officials who have been studying the issue, that Canada's IP crime enforcement policies and legislation are outdated and ineffective. The bottom line is that despite recognition of the need to reform and the fact that many of our peers have done so, we have not updated our laws to address the explosion in the variety and volume of counterfeit and pirated products arising from globalization, international outsourcing with the related technology transfer, and advances in digital and other technologies that facilitate people making copies of anything and everything.

Some of the problems have already been identified by Mr. Webster and my friends at the Canadian chamber. There is no effective border enforcement, and I, like Mr. Webster, have had many calls where I have to tell people that we can write to the RCMP, but there's no border system in Canada, unlike the case with most other developed countries. We have no effective trademark offences—including the offences that are in the Criminal Code; they have too many problems.

We have insufficient resources applied to combating the problems. We have insufficient dedicated personnel with experience in prosecution of counterfeiters, including within the ranks of the federal prosecutors. We have insufficient civil procedures and remedies to facilitate enforcement by rights holders.

It's an interesting point that some people seem to think that rights holders should bear the brunt of enforcing against piracy and counterfeiting. But you have to recognize that civil proceedings are not effective against criminals. That's been shown time and again, and I've experienced it time and again. Civil remedies are generally not effective against criminals because they arrange their affairs to avoid any significant civil penalties.

The bottom line is that the rights holders are victims, and they operate on business principles. I don't want to put it too strongly, but I would say it is naive to expect that we're going to have rights holders making an effective sole stand against this problem, when the business doctrines dictate against throwing good money after bad losses by pursuing expensive litigation against counterfeiters and pirates with little hope of any significant award—or of collecting an award, even if you do get an award, because of the way criminals arrange their affairs.

The problems with civil enforcement combined with the RCMP policy of leaving enforcement against retailers to rights holders has resulted in an environment in Canada where there is open sale of counterfeit and pirated products at retail. It is not only in flea markets, but also in bricks-and-mortar stores, including sale of pirated digital products that are manufactured by the retailers in house, and all kinds of other counterfeit consumer goods that are imported from China and elsewhere.

But the criminal side is not doing much better at addressing this problem. The penalties that are imposed in the few cases that are prosecuted are too low to be a real deterrent, as a result of plea bargains and problems in actually obtaining convictions flowing from the inadequacy of the offence provisions, particularly on the trademark side.

The situation is such that there is little risk of being caught, little risk of being charged if you are caught, and even if you are charged, there is little chance of receiving a penalty that is other than a minor cost of doing business.

Removing profitability is further unlikely because of the exclusion of copyright offences from proceeds of crime legislation and the fact that trademark offences are so weak that the RCMP and federal prosecutors prefer to proceed under the Copyright Act, and often refuse to proceed under the Trade-marks Act, even in clear cases of trademark counterfeiting.

I have a number of examples, but I'm going to skip over them and get to the bottom line.

The fact is that Canada has gone from a situation, when I first started in the IP field, of being a leading, sophisticated IP country to a market where effective enforcement is—arguably correctly—viewed as a lost cause by many of our international and national rights owners.

● (1120)

We need to reform our laws, and there's no question except when and how. The answers are straightforward, in my opinion. Now is the time, and we have to take the sophisticated approach, with Public Safety and Industry Canada taking the lead to effect the laws. Public Safety should be looking at the resource side, with Industry Canada looking at the IP legislation, which they are primarily the custodians on.

With that, I'll pass it over to Mr. Lipkus.

Mr. Lorne Lipkus (Chair, Education and Training Committee, Canadian Anti-Counterfeiting Network): Thank you, Mr. Chairman and honourable members.

[*Translation*]

I thank you for having given me the opportunity to speak to the committee about counterfeiting and piracy.

[*English*]

I have been a lawyer since 1981. I'm a partner in a law firm, and since 1999 I have practised exclusively in anti-counterfeiting enforcement across Canada. My life is spent dealing with several hundred counterfeiting cases per year on behalf of over 75 different brand owners, manufacturers. In doing so, it is rare that I am not able to find counterfeit products in a particular area of Canada. That's what I hope to explain here today. On a constant and continual basis I have found, and I'm still finding, counterfeit products at virtually every major shopping centre or mall across Canada.

I have found counterfeits in numerous—I'm talking about hundreds—retail locations per year across Canada. I have been involved in the raids of manufacturing facilities in Canada, manufacturing counterfeit apparel, including counterfeit cellular batteries being manufactured in Canada. I was in a distribution facility that was importing hundreds of thousands of dollars of counterfeit ink-jet cartridges separate and distinct from the packaging, and the distribution facility was putting these together. We've recently seized large quantities of counterfeit Bluetooth headsets, the kinds that many of us are wearing for our cellular phones. The importer was importing the headsets separate from the packaging.

Since the end of November 2006, I have worked on in excess of 50 different files involving counterfeit headsets across Canada. I would not want to put a headset near my brain that hasn't been tested properly. Who knows what's inside? I'm aware that there are a large number of counterfeiters or pirates who are dealing only in cash, and I have every confidence that they are not reporting their income to the Canada Revenue Agency.

Counterfeiters are becoming more clever. There are dozens of businesses I have dealt with in Canada, in Vancouver and surrounding area, in Toronto, and in Montreal in which at the back of what looks like a legitimate store they sell the counterfeit. There is more counterfeit in the back than there is in the front. On many occasions per year the RCMP, through the CBSA, have informed me that they have identified a shipment of counterfeit products, but they're letting it go through into Canada even though they know the goods are counterfeit. No seizure, no charges, no particulars are sent to the rights holder for them to follow up. If we're lucky, we'll find it in the stores before someone gets hurt.

On many occasions per year I've been advised by police or crown prosecutors that even though they've identified the counterfeit product, they are not proceeding with charges. The goods are protected by trademark law and not copyright, and they don't feel they can proceed. Very often shipments are brought into Canada broken down and then exported to other countries, primarily the United States. We've raided a number of websites with physical locations in Canada delivering product around the world.

The RCMP very often refuse to deal with cases because there is no health and safety component. There is no link to organized crime. Sometimes they'll open up an investigation file, but nothing is done. Until there's an investigation, how is the brand owner supposed to know who was involved in organized crime? I can tell you that I've been personally involved in over a dozen cases in which I've worked on the case and someone in local police or the RCMP has said, "Be careful, this involves organized crime"—whatever that means.

I've seen counterfeiters in retail locations with signs that say "cash only". Our investigators try to give them a credit card, try to give them a debit card. They say no. We ask for a receipt and they say no. This happened as recently as last week to me personally.

I conduct training sessions and have done so for law enforcement across Canada for over 11 years. Representatives of the Canada Revenue Agency regularly attend the conferences I host, and they say, give me these cases. They must want the cases because they're successful with them. They won't tell us, but I have to assume that they like these cases because counterfeiters are dealing in cash. Why aren't there more crown prosecutors coming to these conferences?

Legitimate businesses regularly provide me and others with tips saying there are counterfeit products over here. They are frustrated because legitimate businesses that have to pay the proper taxes and abide by Canada's rules cannot compete with counterfeiters. They just cannot do it.

• (1125)

Everyone expects that counterfeits will be in the flea markets. We've come to expect that. And believe you me, they are there, in large quantities.

But the RCMP basically do not want to go to flea markets. Local police, basically, do not want to go to flea markets. What has happened is we have very clever crooks, counterfeiters. They realize that's the case, and there are numerous flea markets across Canada that have more product on display and available for sale than most distribution or warehousing facilities in Canada.

There are even mainstream department stores that I've been involved with that have been caught purchasing counterfeit products. It's not just something that is for flea markets.

Counterfeiters do not specialize in a particular commodity. They mix a shipment of drugs stuffed in luxury purses. They mix it with counterfeit cigarettes, with apparel. A container comes in and it's a mix of things. They specialize only in greed, not in commodities.

When people ask me where to find counterfeits in Canada, I have a very simple answer: everywhere. When they ask me what we are doing about it, I say not enough.

But I do thank you for the opportunity to speak before you, and I welcome the opportunity to answer any questions you may have.

Thank you.

The Chair: Mr. Henderson.

Mr. Graham Henderson (President, Canadian Recording Industry Association): Mr. Chair, honourable members, my name is Graham Henderson. I'm on the steering committee with the Canadian Anti-Counterfeiting Network. I'm also the president of the Canadian Recording Industry Association.

I would like to summarize the documents that the CACN has provided to the clerk for circulation.

You should have in front of you a colour printout that surveys the vast array of counterfeit and pirated products that are available in Canada.

You should also have a case study that involves a DVD pirate film in Vancouver, which exemplifies the enforcement problems we have in Canada.

You'll find a press release that the Canadian Anti-Counterfeiting Network released, announcing the recent Pollara poll, which showed just how pervasive the counterfeit market is in Canada. Together with that are the actual questions that were asked of Canadians.

Finally, you will have the Canadian Anti-Counterfeiting Network's executive summary of the document we are currently preparing. I'll come back to it in a minute. It includes a list of recommendations. I think it's a long-form, colour.... I don't actually have a copy of what was provided, but you are being shown one as I speak.

You've been afforded a very brief glimpse into an enormous problem. It now falls to me to examine the solutions. They are not complicated and they need not be expensive. Other countries have already figured this out; road maps exist. In many respects, we are far behind our trading partners and can look to the intellectual property enforcement policies of Europe, Japan, the United States, and even developing nations. We can also look to the model legislation that is promulgated by the World Customs Organization, of which Canada is a member.

Exactly what do we need to do?

In the limited time that is available to me today, it would be difficult for me to cover all of the recommendations that are provided in that long, colour document, so I'm going to touch on a few.

To remedy the lack of police and prosecutorial resources that are dedicated to counterfeiting and insufficient criminal penalties, we must first provide the RCMP and the Department of Justice with adequate financial and human resources to effectively address counterfeiting; second, we must adequately fund an intellectual property crime task force, composed of police officers, customs officers, and federal prosecutors, to guide and coordinate intellectual property criminal enforcement. These types of task forces exist in diverse places around the globe. Brazil is a good example.

To update outdated and ineffective intellectual property crime legislation, we need to enact legislation that clearly defines trademark counterfeiting as a specific criminal offence under the Trade-marks Act. That's easy.

To empower customs officials, what we need to do is first implement legislation that clearly prohibits the importation of counterfeit goods. Second, we must provide the Canada Border Services Agency with the express authority to detain, target, seize, and destroy counterfeit goods on their own initiative. This power exists, again, in countries around the world.

Finally, to help elevate the status of intellectual property in this country, to make us a more prosperous and competitive nation, we need to follow the lead of other nations and establish federal and provincial intellectual property coordination councils at the ministerial level.

You heard yesterday from a series of officials only about how complex the solutions are. We believe they are not that difficult.

Five months ago, the CACN began preparing a pioneering study that examines, one, the economic impact of counterfeiting; two, the legislative and regulatory weaknesses that give rise to the problem; three, the intimate link between successful, innovative economies and a robust protection of intellectual property; and four, a detailed survey of international best practices.

This 50-page document, which I have with me today, is in the process of being translated. It is only just completed, and unfortunately we're not therefore in a position to table it for you today. We will provide it to you as soon as it is ready.

● (1130)

I raise this because it took not years for us to do this, but months. There is very little disagreement, we believe, about what needs to be done—except, it might appear, among the officials. We do not have to reinvent the wheel; we do not have to invent the wheel; we merely—and some might say dismayingly, because it's an indicator of how sadly we lag behind the rest of the world—need to import it.

In that regard, I'm going to end with something that we, as a group, witnessed at the global congress on combatting counterfeiting and piracy, which took place in Geneva in January of this year. The attorney general for Kenya appeared and spoke passionately, calling for assistance and capacity-building in his nation's fight against piracy. He talked about how it affected local entrepreneurs. He acknowledged the negative effect on foreign investment. He cited the loss of \$85 million in taxes. Looking out among the audience, he noted that for developed nations, this was a drop in the bucket, but for him, he said, it meant education, water, and health services.

He then talked about how Kenya began reforming its laws in 1999, consulting stakeholders, judicial officers, and so forth to ensure that Kenya's laws conformed to a maximum standard. Seven different pieces of legislation were passed. Despite all this, the attorney general noted that there was still a lack of coordination and capacity, so Kenya went further. They decided to have a piece of comprehensive legislation, and Kenya is in the process of passing a comprehensive anti-counterfeiting bill. This is the approach taken by many nations, and it is the approach that the CACN recommends for Canada. Kenya is showing us the way it can be done.

You've been told that it's complicated and difficult; we are here to say that it is not. What is lacking is the political willpower, and we are hoping you will supply us with that willpower.

Thank you.

The Chair: Thank you very much.

The usual practice now is to allow the official opposition seven minutes with questions and comments, and then go around to the Bloc, and then to the government side.

Go ahead, Mr. Cullen, please.

● (1135)

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair, and thank you to all the presenters. I have a particular welcome to Mr. Geralde from the Canadian Standards Association, which is in my riding.

I must say, I wasn't aware of the seriousness of this problem until the Canadian Standards Association briefed me on it and I was introduced to the Canadian Anti-Counterfeiting Network. It is a very serious problem. I'm not able to brief entirely as to where we were under our government, but I can tell you that before the last election we were getting very close to some solutions. I agree with Mr. Henderson that it isn't that complicated. We know what the solutions are; many of them, and perhaps all of them, are outlined here in your summary of recommendations.

I think the challenge is that there are so many departments involved, and it's become a rudderless project. Under our government the Minister of Public Safety took charge of it. We were trying to bring the departments together, but that added to the complexity. I think, too, we often look for the perfect mousetrap when we don't have a mousetrap at all. There were also some interim measures—for example, with respect to the sharing of information to rights holders—that could have been pursued. There were some privacy issues, but they were not insurmountable, and they aren't insurmountable, at least as an interim step. There were also interim solutions with respect to bringing forward quickly some sanctions in the Criminal Code, or to bringing in some law that simply said, as Mr. Henderson pointed out, making counterfeit goods is against the law and illegal, and setting out the sanctions and the fines that are necessary.

I think the government needs to bring forward a package. I think it also has to do with priorities. We know the government asserts that it is committed to fighting crime, and here we have this kind of criminality going on with organized crime very much involved, as you've all pointed out, and the government is proposing to spend close to a billion dollars over a number of years arming our border guards. Think how far a billion dollars would go in dealing with counterfeit goods and pirated goods. We should be ashamed as a G-8 country as to where we are.

I'm going to put the question to Mr. Geralde and maybe to Mr. Murphy. Do you think arming the border guards will help in dealing with the fight against counterfeit goods and pirated goods, recognizing—as Mr. Lipkus pointed out—that counterfeit goods are being manufactured right here in Canada, but that a heck of a lot of counterfeit goods and pirated goods are coming across our border?

Mr. Michael Murphy: Thank you for the question.

I think it's a really important one, for the reasons we've outlined already, when you look at a problem like this that has an economy-wide impact. I think that's what we've been learning, and this has been a learning process for a lot of us in the business community.

We have lots of issues to deal with, but there are clearly three components here to get at, and enforcement is one of them. The legislative gap is clearly something that has to be addressed. On the educational component, quite frankly, I think having hearings like this is part of that educational component and very useful.

Enforcement at the border has a significant shortcoming for us here today. You've heard about some of the kinds of evidence out there today on the practical reality of what's going on and what we can or cannot do. You heard from the agencies earlier this week. It's pretty clear we don't measure up in that regard.

Enforcement has to be one of the key priorities. If enforcement is part of the solution here, and we think it is, it's going to need resources. You're going to need legislative change to allow the CBSA people to do their jobs, and you're going to then need the resource part of it taken care of as well.

I agree with the premise of your question, and I think it's one of a couple of things that are the most important to address.

Mr. Doug Geralde: To piggyback on that perspective, I don't think there's only one area we have to focus on. There are a number of them.

As you alluded to earlier, this is a financial issue for organized crime and counterfeiters. In international law enforcement areas, one of the more effective tools is proceeds of crime, and I think it was one of the things we were working on. If you can go after that and get proceeds of crime, it's an effective tool in drug enforcement, as opposed to a fine. If we have one particular fine, it's the cost of doing business.

These people aren't paying taxes. They're not paying legitimate wages. They're not paying any brand-owner development costs. They are making so much money on this, and you're not trapping them. You really have to go after it at the heart.

Certainly, we need resources to do enforcement at all levels. In these investigations, the faster you can get the information and find the tracing, the better it is. It's the most important information. If law enforcement can't share what they have with us or with the brand holders, the trail will go cold before they can effectively do it.

These are salient points that are needed for all of us to work together.

• (1140)

Hon. Roy Cullen: Thank you, gentlemen.

Mr. Graham Henderson: Mr. Chair, may I add something?

Hon. Roy Cullen: Yes, but I want to get another question in and I'm running out of time.

How much time do I have left, Chair?

Mr. Graham Henderson: Oh, I'm sorry.

Hon. Roy Cullen: I have two minutes.

Maybe I'll throw it back to you, but I wanted to comment that you didn't actually answer my question, and I appreciate it.

I'm not trying to be cute and get you into the mix of the army and the border guards, but I think we have the answer. The RCMP has said it won't really be much of a deterrent for any type of interdiction.

I think you're right about the resources. For the Canada Border Services Agency, there is some reluctance because it's going to take resources to search and seize material. Where do they store them? What resources do they have to do it? The RCMP also has resource issues there. I'm saddened that it's what's slowing down the process.

We're making other priorities more important, such as arming the border guards, when we've been told by the president of the Canada Border Services Agency that officials will be rightly asked not to take out guns.

Mr. Henderson, what kind of deterrent is that going to be for pirated and counterfeit goods at the border?

Mr. Graham Henderson: The issue of deterrence is an important one, obviously, in terms of what we're looking for. The case study we gave you shows how weak the deterrent effect is.

Forgetting about border guards for a minute, you can have a case, and this is entirely typical, where there's a disincentive for the RCMP or the police. When we get a case brought, what happens? There's very often a plea bargain.

In this particular case, if you flip to the back of the case study, you'll find what the judge said. When talking to the defendant, he said:

You, Mr. Lough, were very fortunate that your counsel has been able to secure a joint submission between the Crown and the defence with respect to sentencing on your behalf. Had they not done so, I would have considered a much more serious penalty for you.

He got a slap on the wrist.

The judge then said:

This is a widespread practice. You got caught, but this is exactly the kind of situation that calls out for general deterrence, some kind of message needs to be sent to the community that this is a serious offence, and I would suggest that this message is not being sent to the criminal community in this country.

The Chair: Thank you very much.

Monsieur Ménard, you have seven minutes.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I can tell you that it will not be difficult for you to convince me that counterfeiting is stealing. It is stealing the results of intellectual work. If intellectual work ends up not being rewarded, fewer and fewer people will do intellectual work. Also, I am convinced that copyrights are at the basis of the wealth produced in the 20th century. If I'm not mistaken, copyrights date from the French Revolution. I remember that the French revolutionaries who put an end to the Old Regime had said that these were assets that did not come from birth or from privileges granted by princes but were justified by the good they brought to humankind. It is a fact that the protection granted to copyrights has led to important technological advances. That is why they will be the basis of important advances in the future.

I practiced criminal law for 27 years before getting involved in politics. I have been involved in all sorts of cases, some even related to bestiality, but I must say that I never had the opportunity to plead a case relating to copyrights. However, you are right to say that violating copyrights is stealing. Therefore, if counterfeiting is considered stealing, possessing counterfeit products should be considered possession of stolen goods.

Are you asking that the possession of counterfeit goods, if it is known that they are counterfeit, be considered a criminal act that would be punished as severely as theft and possession of stolen goods?

•(1145)

[English]

Mr. Lee Webster: One suggestion I would have is to remove the word “knowingly” from the Copyright Act so that certainly the manufacturing and offering for sale of counterfeit goods, knowingly or unknowingly, should be a crime. That will give merchants an incentive to pay careful attention to the source of their product.

Obviously, when you get it down to mere possession, should the woman who buys the handbag in the flea market be labelled a criminal? I think that's probably open for debate. But if you stop the source and educate the public, you're going to stop the practice.

One thing that I want to say in response to this, though, is that I do believe it is theft, as I said in my opening statement. But you should consider why organized crime is moving into this. You can make a lot of money selling drugs in this country, but if you get caught for selling heroin to kids in a school, you're going to go before a judge and you're going to go to jail for a long time. Why do that if you can make more money on counterfeit products? So you're—

[Translation]

Mr. Serge Ménard: I am sorry to cut you off. I am absolutely convinced of that but we do not have too much time. I do not know myself, I did not check the Criminal Code.

However, is the possession of goods known to be counterfeit considered to be a criminal act? If not, do you think it should be?

[English]

Mr. Lee Webster: The simple possession of counterfeit goods is not a crime, and we're not recommending that it be considered a crime. We think that would just be too sensitive an issue, particularly for the individuals, like the woman who buys the product in the flea market. We think the problem can be stopped by other means, by dealing with the people who sell it.

[Translation]

Mr. Serge Ménard: That may be but if you find that someone in possession of a large quantity of counterfeit goods which are obviously going to be sold, is it a criminal act?

[English]

Mr. Lee Webster: I think you'd have to ask why that person would be in possession of so many products.

[Translation]

Mr. Serge Ménard: It's for resale.

[English]

Mr. Lee Webster: For sale, yes, definitely. That should be a crime.

[Translation]

Mr. Serge Ménard: Is it one now?

[English]

Mr. Lee Webster: No, it's not.

[Translation]

Mr. Serge Ménard: All right but I must say that I don't know if I could convince my wife to resist the temptation of purchasing a Louis Vuitton bag for 200 \$! Ah, ah!

[English]

Mr. Graham Henderson: On that point, may I direct the committee's attention to a very successful French anti-piracy campaign. It shows a series of French consumers about to buy a Louis Vuitton bag, or whatever it is, and it directs their minds to where the money is going; it's going to organized crime. That's what people need to be concerned about.

We hear a lot of people saying, who cares? It's a Louis Vuitton bag. It's a pair of Oakley sunglasses. What's the big issue? The big issue is where the money is going, and it's going—

Mr. Brian Isaac: And following up on the France comment, France is one of the few countries where it is an offence to possess the good itself. They will seize things in the airport and impose fines.

One thing we also handed in, which wasn't mentioned, was an executive summary of a position paper the CACN put out in early 2006. One of the recommendations we included in there was that the products themselves should be unlawful. Whether or not it's a criminal offence for a person who may not know it's counterfeit to have it, the product itself is the result of a crime and should be subject to seizure. That's one of our recommendations.

[Translation]

Mr. Serge Ménard: I do not have too much time left but I think you have started answering the question I was going to ask. Generally speaking, I believe that France, which was the first country to legislate copyrights, is very strict about that. And Quebec pop stars are very aware of that fact. When one of their songs is successful in France, they earn a fortune, and not only because of the difference between a 10 million and a 60 million people market.

I am pleased because I find that, too often, here, we forget to look to France as a model. However, I believe that the French are extremely strict about copyrights because they truly believe that protecting copyrights contributes to creating wealth.

I wonder if that should not be a model for us, especially as far as implementation is concerned.

• (1150)

[English]

Mr. Graham Henderson: I think absolutely. But what you're seeing there is evidence of very powerful partnerships among the stakeholders, the government, the police, and even the community, to focus on the issue and deal with it. France is an excellent example. Brazil has one of these crime task forces, which brings together absolutely everybody.

But I think the answer—and this goes to what my colleagues were saying—is in education, not necessarily in criminalizing simple possession. I think you'll find that we can turn this around. In addition to focusing on supply and cutting off supply, we have to focus on demand and on changing the mindset of a nation.

The Chair: Thank you very much.

Your answers are very interesting. We had the officials before us in a previous session, and they gave us the impression that there were no effective laws around the world that we could look at to pattern what we could do here. So I find this very interesting.

I'm almost sorry we didn't televise this session. I think this would be very educational for the public.

A voice: [Inaudible—Editor]

The Chair: No, those two comments are completely separate. I think it would be good for the public to hear what you have to say, and maybe we can look at this again.

We now have Mr. MacKenzie, please.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Mr. Chair.

Mr. Cullen indicated that the other government had almost got to the point where they were going to solve the problem, but that's true of a lot of things that are almost there.

I sense a lot of frustration on behalf of all the panel here that this has gone on too long. It's been too long a problem. It's put Canadian jobs and Canadian people at some risk with safety issues. Also, when I suggest Canadian jobs, a lot of this counterfeit material is brought into the country, and that means it's not manufactured here. Obviously that's a concern.

I have another concern. If we're repackaging in Canada and shipping to another country, does that create another risk for our industries in Canada in that some countries may be reluctant to receive shipments from here?

Mr. Doug Geralde: If I could, I'll just comment on that.

There are a number of those issues that are happening. That's quite common in the case of batteries, where they bring them into the country, and it's also a way for them to get around the systems and the checks we have. So if you don't finalize the packaging and the markings in the country where we're doing inspections, or where they're shipping out of, they have some problems.

So certainly the tentacles of this problem are now entrenched in all of the other areas and the organized distribution network. We're seeing activities on that front as well. There are domestic issues. There are problems that we have within our own country. That certainly has an impact on the safety for other citizens in other countries, and over a period of time it's going to have an impact on our trade.

In the U.S. they talk about sanctions, and other countries will also talk about sanctions. So if you refer to France and the issues there.... If we don't step up to the plate and if not lead, at least be at the level they are, we're going to have increasingly more difficulties. Even in China—we'll speak next month, or in May—their legitimate manufacturers are now screaming at the Chinese to get a handle on this and try to get a hold on the problem, because it's impacting their sale in the global marketplace. Liability issues are on the way, and I think the number one issue for any manufacturer or anybody in any business is safety.

So all of those impinge on our trade, our reputation. Take a look at the most recent, the dog food issue. We have contaminants at different levels that we wouldn't have in North America getting in there. It can ultimately cause a company its total liability. If we lose confidence in the safety system that we've worked so hard to develop, it all comes crashing down, and it comes crashing down quickly. The impacts are beyond imagination.

Mr. Lorne Lipkus: I would also like not to lose sight of the fact that these repackaging cases—certainly the ones I've been involved in—are under everyone's radar. Canada is not making any money on them. Goods are coming in; no one is paying anything. They're being declared at insignificant dollars. They're being repackaged and sent to the U.S., for insignificant dollars.

One shipment was about 55,000 counterfeit Gucci ties. Where are they going to sell 55,000 Gucci ties in Canada in a short period of time? These were broken down and shipped not only into the U.S. but elsewhere. It's a serious drain in Canada of tax revenue.

• (1155)

Mr. Dave MacKenzie: I have another question.

We talk about these ending up in the legitimate retail stores that all of us would deal with. I think Mr. Webster made mention of some way to inform the public. My understanding from what we've seen and heard is that it would be impossible to educate everyone in the general public to know what there is. I think with some of these items you'd have to take them apart, for instance, to find out. But are there places beyond flea markets that are regularly viewed as the home or the retail outlets for counterfeits?

Mr. Lorne Lipkus: I want to give you an example here.

I'm chair of the education and training committee of the Canadian Anti-Counterfeiting Network, and I've been going to a public school for four years now. An elementary school teacher invited me four years ago to come in and tell her class what I did for a living. She told them I was the "protector of toys".

So I speak to kids who are six, seven, and eight years old, and I must tell you that in the entire practice of law, nothing I've done has given me more satisfaction than speaking to those kids. You know what? They get it.

For instance, I stood up there, showed them a plush toy, which they call a "stuffie", and said, "This one for sure has no pieces of metal inside. It has a tag. According to our law, it must be made of new material."

I asked them—22 children in a circle, four years in a row—"What does it have to have inside?"

"New material only."

"I can't hear you."

"New material only!"

One night, after one 30-minute session, these delicious, delightful children went home and spoke to their parents, and we got a call from one of the parents. Her six-year-old daughter had gone into her room, looked at all of her stuffies—she had dozens of them—and found all the ones that she thought were counterfeit. She put them out in the hallway, closed the door, and called her mother.

The mother called to ask me, first of all, what I could possibly have said. We asked her to describe the toys, and every toy she described did not have a tag. It did not say "new material". Some of them just said "Made in China". We told her they were all counterfeit.

So the child got it, and the mother was incensed: why did she, as the mother who was there to protect her child, not know that it had to have new material only? She didn't know it. But it's the law.

So I think we can educate, and I think we can have the government come up with an education program. People will stop buying when they realize the health and safety issues, the link to organized crime, and the fact that these factories—for example, plants making ink-jet cartridges and purses—have three- and four-year-old children mixing chemicals in foreign countries.

That's child labour, and I'm not talking one year less than what they should be; I'm talking many years less. We can't condone that.

Mr. Dave MacKenzie: But isn't the problem here that they quickly learn to put "new material" tags on? Aren't CSA stickers showing up on counterfeit items?

Mr. Lorne Lipkus: It is a problem that's being addressed by the industry through a large increase—this is another growth industry—in brand protection. A lot of the companies have very sophisticated brand protection techniques.

This is something the government knows about through passports and through currency. At a previous meeting of the CACN, we had someone from the Bank of Canada come in. There's a counterfeiting problem with money, as we all know.

Mr. Brian Isaac: Your basic point is absolutely true. What you're talking about is fraud, essentially, when you get to the perfect copies of different items. There's no way to rule out that there may be counterfeits really anywhere, because they do get into the legitimate supply chains.

Another problem you have is that there are certain centres—including, for instance, the Pacific Mall in Toronto—where counterfeits and pirated goods proliferate. There's really nothing to address it, for the rights holders; we've looked very carefully at whether we can get landlord liability, that sort of thing. The way things are organized, that's another area that could use some serious reform in order to facilitate even what's gone on in China, for instance, where Louis Vuitton has had success in shutting down some flea markets that were constant purveyors of these types of goods.

• (1200)

The Chair: Mr. Geralde, we're over time, but go ahead.

Mr. Doug Geralde: I was just going to say that it's a constant cat-and-mouse game. In the case I showed you of the thin wire, the counterfeiters have already figured out that this is what we're now looking at, that this is what we're educating the public and retailers to look for. What they're now doing is they're putting in the same amount of copper, but then they're mixing in aluminum and steel. Now, that won't give you the characteristics you're expecting, but... And then they're going to tin it to make it look like the proper size. So they're not stupid.

They also capitalize on issues like the floods in Manitoba, or Katrina cases. They know that with just-in-time manufacturing, you're not going to produce enough of that product, since you don't have the ability to do so. They will flood the market with counterfeits. It's also at a time when your infrastructure is down and you're trying to get things up and running. So we're expecting to see fires and problems down the road with those products.

In addition to that, without quality control, as we've seen with toys and other areas, there is the use of heavy metals, and PCBs in the oil for transformers. All the things we thought we had cleaned up with our developed-country requirements, purging them from the system, are now coming back into our marketplace and posing hazards. They can be everything from children's pyjamas that are no longer flame-retardant to the PCBs to the stuffing.

So it impacts on areas that you don't normally have...and I think we can educate consumers, once they start to see it, if we have the teeth in legislation and law enforcement understands it. We have to attack it in many areas, through a number of avenues.

The Chair: Thank you.

Yes, we're over time.

Ms. Barnes, please, we're on the five-minute round now.

Hon. Sue Barnes: Thank you.

First of all, the testimony from all of you was very, very helpful this morning, and I appreciate the time you've given and your expertise over many years.

I see in the press release from the Canadian Anti-Counterfeiting Network the link between intellectual property and innovation, productivity, and the economic sustainability of our country. I think it's a crime that we're not addressing this as much as some of the other crime issues. This current government seems to have put this one on the back burner to do other things.

This is about the future of our country. And I want somebody to talk about that.

I have a very short question here. In France, were those effective ads paid for by the Government of France or were they paid for by industry, or jointly?

Mr. Graham Henderson: I believe it was the government. I know it was a government campaign. If you look at it, there were posters that went with it.

It's something the committee should probably source and look at because there was a list of all of the different partners that were involved, and it was a very wide range of stakeholders.

You'll find the same thing in other countries as well.

Hon. Sue Barnes: I think the point taken is that there is an ethical culture that has to be turned around here. I think that message would connect with Canadians today.

Mr. Graham Henderson: Well, a key component of the report we've prepared has been an effort—as I indicated in my brief notes at the beginning—to connect the intellectual property rights and counterfeiting issues with the innovation agenda.

I'm like you, I don't quite get it. But it hasn't just been for the last year or two years; it's been for a long, long time.

It's something that, when you talk to people about it and you start mentioning it, “Why isn't it connected?”, it's as if a light bulb goes off. So this is one of the easiest things to be an evangelist for, for some of the reasons you, sir, were talking about earlier. People get this very quickly: knowledge economy, intellectual property rights—important.

Mr. Lee Webster: I'm more of a traditional intellectual property lawyer. These IP statutes exist for a reason, and they've been on the books for a long time for a reason. People have debated this. We're not here asking for the passage of intellectual property rights legislation. It's there.

And there are good reasons for the Patent Act and the Trade-marks Act and the Copyright Act: to reward inventive ingenuity, to protect consumer deception. It's all there. All we have to do is just fine-tune it.

It's well established that IP and the information economy are directly linked. You can't have a strong information economy without intellectual property rights. It's almost self-evident. Maybe the Canadian consumer doesn't get it. Maybe the Canadian public doesn't get it. Maybe we're not getting the message out. But these issues have all been addressed long ago in the past.

It's just a question of making these things work. It's fundamental to the future of Canada.

● (1205)

Hon. Sue Barnes: Michael, go ahead. First of all, I commend you. The chamber's 2006 policy resolution on this issue I think is bang on. And I've had the pleasure of working with you many times in the past.

Go ahead.

Mr. Michael Murphy: I appreciate that. Thank you.

I'm just going to add one quick comment to what Mr. Webster just added. That's the context of economic growth and how much and how important the international trade side is for us in terms of trade and investment globally.

One of the things you want to do when you're speaking as a country is speak from a position of strength. And we have some challenges with other economies in terms of IP, and some of those are very significant.

It's a heck of a lot better to be dealing with some of those issues externally when we know we're doing it from a position of strength domestically. So that's part of our rationale here, because it fits. I agree with you, there is a cultural component to this that's absolutely fundamental, and that's why the educational component is so high. But I think from a trade and investment standpoint it's a big part of the issue as well.

Hon. Sue Barnes: Many of you would have seen the Industry Canada report. I know that at least one witness has seen it because I saw your press release on it.

Are you in agreement, or do you think their recommendations have missing elements in it? And if you had your druthers, would you have added something?

Before I run out of time, recommendation 3.1 states: “Remove the Copyright Act from the list of indictable offences excluded from Proceeds of Crime legislation.”

Maybe one of the lawyers would like to address that for me.

Mr. Graham Henderson: That's easy. That could be done by regulation. It could be done tomorrow. That's a key thing.

But the first question was...oh, yes. We issued a press release.

That was a very interesting recommendation because it was organic. The Industry committee went out on cross-country hearings into the manufacturing sector and this issue kept coming up, so it was something that was completely organic.

Do we support what they said? Absolutely.

Mr. Brian Isaac: But it's almost indicative in a sense of the lack of education on the issue. They talk about copyright, but they didn't drill down. One of the problems we certainly have to address is our problem with the trademark regime—the fraud side of things, which wasn't specifically mentioned. But the language was very broad, so it's in the right direction.

Mr. Graham Henderson: I guess we're looking to this. We've tabled a series of recommendations here. I think that's what we need now. We need a report with very specific, detailed recommendations. I think the industry committee was a *cri de coeur* that emerged rather organically, as I say.

Hon. Sue Barnes: Can somebody address that recommendation 3.1 for me, about the proceeds of crime legislation, so that it gets on the record? What do you mean by it, so that people who read this committee evidence understand?

Mr. Lorne Lipkus: Right now, for some reason, the government has left it to the rights holders to go after the proceeds of the crime. If someone is charged criminally with these offences, the government can't attack some of the assets. The rights holders are saying, we want you to take the assets, because civilly we're never going to get to them anyway; it's not possible civilly. When someone is a criminal and is making their affairs such that you can't attach their assets, we want the government to grab them.

Mr. Graham Henderson: And fund anti-piracy and anti-counterfeiting. It's a self-generating....

Mr. Doug Geralde: I'm not a lawyer, so I can't speak on that behalf. I just know that if we're capturing as small a portion as we are, even on our best days, then anything that's been caught, confiscated, and fined for is just the cost of doing business. I think the true mechanism for getting at this is going after proceeds of crime. At that point, you can broaden the sweep, and it's up to them to prove that any of this money, now or in the past, has not been used illicitly to purchase these. I think that is a very big deterrent.

Mr. Lorne Lipkus: One example is one case I was involved in where somebody was caught by the police with the help of the brand owners. He was manufacturing counterfeit products. He had a \$100,000 computerized embroidery machine in his possession. The fine was \$25,000, but that person made a lot more than \$25,000. Our informant—whether it's true or not, we don't know—said he was bringing in \$5,000 to \$7,000 cash sales per weekend at one flea market, the St. Jacobs flea market in Ontario.

Hon. Sue Barnes: How do you target flea markets? Obviously there's a public issue here.

•(1210)

Mr. Lorne Lipkus: His machine was in a manufacturing facility in a bricks-and-mortar building in Brampton.

Mr. Doug Geralde: To the point whether there are rights holders, CSA has gone out with the RCMP. We go through first to identify the counterfeit products they have. They're usually out in the open; then they move them under the table. The RCMP often will follow suit and then charge. It's a small way, but that's one way of doing it. There's a whole arsenal of activities that we can do if we allocate the resources to it.

The Chair: Before we go to Monsieur Ménard, are there legitimate manufacturers involved in some of this?

Mr. Doug Geralde: My experience is that the legitimate manufacturers also, as they've gone offshore.... They come from the paradigm of the factories they're used to dealing with, and they produce from this factory. When you get over into places like China and developing countries, often they farm out work, because they can't meet the capacity issues. There's a lack of intellectual property enforcement in those countries as well. So, yes, they run into problems like that.

If you talk to the car companies, the aviation industry, or pharmaceuticals, within their distribution network they're always checking and re-checking the system. Once you get through a little onto the factory or push this in from these global sourcing areas, it's very hard even for them to discern it. It's impregnated into the system.

So, yes, it's legitimate manufacturers, it's legitimate retailers, it's the distribution network they use for illicit drugs and things of that nature in organized crime. It has permeated so much. That's why the numbers are so large and it's so pervasive.

The Chair: Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I understand the issue that you have raised but you are probably aware that, at the next election, the most important request from Canadians will be that their taxes be reduced. However, you are now asking us to spend more.

I agree that we should spend more. I believe that seizure of the proceeds of crime, as it is done in drug cases, could be some sort of compensation. However, governments are so organized that the money would go to Finance and the Treasury Board and not necessarily to the department having the responsibility to deal it with counterfeiting.

Furthermore, in this kind of activity, the profits from intellectual work can vary considerably. You represent people who probably did a lot of work to obtain a patent and who are therefore entitled to the benefits flowing from that but you also represent other people who earn fortunes, literally, from the patents they obtain.

Do you not believe that responsibility should be shared? I agree that the implementation of the Aact is the responsibility of the government, like legal action and the seizure of goods. However, I also believe that industry should share an important part of the costs of awareness campaigns because it is in its interest to change people's attitudes.

I would like to know how you are organized. Why do you not start huge advertising campaigns to explain that purchasing counterfeit goods is a crime and that counterfeiting is stealing? Similar campaigns have been launched to tell people that drinking and driving is a crime and they have produced results.

What are you ready to do to change attitudes? How much money are you ready to invest? Are you so organized that the cost of such campaigns could be shared between the people in industry who earn enormous profits with their patents?

[English]

The Chair: Who would like to take that?

Mr. Geralde, and then Mr. Isaac.

Mr. Doug Geralde: First off, I agree, and I'm as compassionate when I'm talking to the public as I am when I'm talking to you, as I am to manufacturers and rights holders. So I agree that everybody has a contribution.

We are trying to educate, as Mr. Lipkus says. CACN is a consortium of all interested parties, everything from legal firms to manufacturers to testing agencies. Individually, I think they are trying to educate within the system, with retailers, to the public, and we've gone into that area. I think legitimate industries have also done that. It's not cohesive, but everybody is trying to educate.

There is a problem with individual companies trying to educate, because the tendency for the public is that if they say there's a problem with a Gucci bag, then people just stay away from Gucci bags totally. It might be a bad example, but it could be that this power bar is a problem and they'll just stay away from the whole manufacturer. So most of the effective education comes when you are associations and you talk about them in general areas.

But there is a lot of activity that CACN has done in educating law enforcement and doing public safety. We've worked with government and at CSA to educate on counterfeiting. A majority of the time I'm spending now in the day-to-day work in the investigations has to do with education and training, at all parts, and everybody needs it. Although you think you've been doing it effectively, every time you bump into people they're not aware that it's an issue.

So I agree with you totally. Everybody has to be part of it. Actually, a lot of people are. We're not linked together properly in a cohesive manner, just as we're not linked together cohesively in our efforts and bringing all these things together. So it's certainly an area that needs it.

•(1215)

Mr. Brian Isaac: Speaking of examples, we talked about France already, which put on a big campaign, and that was government-funded. But I actually had a chance to speak to one of the people who had been instrumental in it, and they never really asked the rights holders—

[Translation]

Mr. Serge Ménard: I am sorry, I will cut you off because we do not have too much time. France also has the reputation of having the highest taxes.

[English]

Mr. Brian Isaac: Fair enough.

Mexico is another example. Mexico came out with some commercials that they put into their movie theatres, etc., and that was a joint effort between industry and government. One of the recommendations that CACN has in the road map and that Graham was talking about is that you need to coordinate. If we have a central coordination, the rights holders should be part of that. If you try to coordinate some central education, you're going to get a lot more done than if you have individual companies doing what they're doing in their small markets.

The Chair: Your time is up. Did you have a brief comment?

[Translation]

Mr. Serge Ménard: We are obviously not doing enough to educate Canadians, even though you say that you are doing some education work.

Would you be able to do more? How much money would that cost, generally speaking? Are you willing to do more since we are obviously not being effective at this time?

People do not always think they are committing a crime when they purchase counterfeit goods.

Ms. France Bonsant (Compton—Stanstead, BQ): You are right.

Mr. Serge Ménard: We can make people aware that it is dangerous to purchase counterfeit goods.

[English]

The Chair: Is anybody prepared to respond?

Mr. Lorne Lipkus: Just briefly, I've been involved in training and educating for 12 years. This is the 12th year I've been doing conferences, primarily for law enforcement, customs, and other people, but I can tell you that as recently as the four-day conference in Toronto last December, there was a large media push, and it was put together by the companies. They paid the money to put together an event. This was something that was topical across Canada. There were over 20 radio stations that carried the story with interviews. It was in most major newspapers in Canada and it was on most national television coverage, and that was put together through funding from the people you're talking about.

So that regularly happens. That's just the most recent example, but that is happening, and happening more and more. And there are ads taken out. The big problem is that if one company comes forth and says, "Here's a product I make that's counterfeit, be careful", no one is going to buy that product. So it has to be something, as they said, that's centralized and coordinated through the government.

The Chair: Mr. Geralde.

Mr. Doug Geralde: I was just going to say that CSA, because of public safety and part of the issues we do...we're advertising, and we've made counterfeiting one of the thrusts. Key components are that counterfeit can kill and no one's immune. So that's part of the campaign we're working on. We believe that to be the case, and that's the message we're trying to get out. So I think individually we're doing it.

I would have no idea how much we spend. I think everybody is trying to work towards that. I know when we do it, we try to provide the expertise, the people, and the background to do that and provide expertise on training. So that's part of the issue as well.

•(1220)

The Chair: Anyone else?

The last person on my list is Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, Mr. Chair.

Mr. Chair, I'll try to refrain from getting into condescending and sanctimonious arguments across the table, except to say this. I think we owe it to the people we serve and we owe it to these gentlemen to keep the politics between ourselves in the House. Let's work on this committee to try to get a report that addresses the very subject matter that you're here today to speak about.

At the last meeting we had on this subject a couple of days ago, I admitted that I was a new parliamentarian and was quite open to hearing from the various government departments on the challenges they have in meeting the need to do something about what I see as a public safety problem that endangers the lives and the well-being of Canadians. It is our responsibility here to listen to you, to take your suggestions, and to try to formulate a report that will get the job done.

That having been said, I would just like a comment from you as to what you think the stages should be, in a reasonable amount of time, perhaps starting with Mr. Webster. If you think this committee would benefit by perhaps a visit to one of these markets just to get a hands-on training session, and perhaps Mr. Lipkus could assist us in that....

Mr. Lee Webster: Thank you.

The first thing I'd like to say is that this is a worldwide issue. Since I've been involved with it, I can tell you in the past two to three years it's been focused on significantly by other countries. A good example of that is the recent conference in Geneva. Last year 300 people were there; this year it was 1,200. It's a big issue everywhere, and we have to address that.

I'm hearing, at least in my view, a little bit of an overemphasis on government support for this. This is not solely an initiative that government has to spend a lot of money on. The individual rights holders are also asking for the tools they can use to efficiently and effectively stop this practice. In our recommendations we've suggested many things that can give the rights holder the ability to go out and effectively stop this practice.

It's not government funding; it's really a team thing that has to be done. Civil rights holders have to work together with the government on this. This is not just getting government money and throwing it against huge ad campaigns; ad campaigns are part of it. We have to work together to make the system work more efficiently and effectively. Although public safety is a very important part, it's not just that. It's the whole innovation and information economy. Public safety is part of it, but it's a bigger issue.

I don't think I'm responding to your question accurately, but....

The Chair: I think you are.

Does anyone else want to comment on this?

Mr. Lipkus seems to be anxious.

Mr. Lorne Lipkus: I was saying I've had the pleasure of having people over the years say, come and show me. I can tell you there are a few things in the works, but certainly any time anybody wants to come and visit a place like the Pacific Mall or take a look at the St-Eustache Drive-In Flea Market or the Richmond Night Market—we could find lots of places to look at in whatever jurisdictions.

Mr. Graham Henderson: Because it's not just flea markets. What you're going to see is what looks to you and me like a mall, and there are 140 stores in there.

Mr. Lorne Lipkus: There are about 450 stores.

Mr. Graham Henderson: Really? There are 450 stores in there, and it's something to behold on a Saturday or a Friday before Christmas, or at any one of the big shopping periods. I know the first time I saw it, I was stunned by what I saw.

Mr. Lorne Lipkus: I was there two weeks ago. There were 27 businesses selling pirated DVDs. There were 15 other businesses selling counterfeit products that represented over 20 clients that I represented. That's what I was able to identify in one mall from being there for an hour and a half.

• (1225)

Mr. Graham Henderson: This affects Canadian businesses. Ubisoft is a major employer, I believe, in Mr. Duceppe's riding, and it's one of the top video game manufacturers in the world. You can take an Xbox up to the Pacific Mall and they'll hot-rod it for you. Right now, you can only play legitimate games on it, but you bring it in, leave it for half an hour, they'll open it up, they'll put in a modification chip that makes it possible to play pirated product and they'll sell all the games you want, all the Ubisoft games, whatever you want, for \$5, whatever.

Mr. Brian Isaac: This is currently going on despite the fact that within the last two years there have been two raids on pirated entertainment software outlets, if you want to call them that, in the mall. The level of the penalties, and the fact that we're not doing enough about it is exemplified by one of those cases where it was one of the highest penalties ever awarded against a company. The charges against the individual were dropped, and the company was penalized, I think it was \$76,000. On the second search warrant, less than a year later, the same individual was implicated. He was continuing to supply the counterfeit products to the stores.

Mr. Lee Webster: I should say you don't have to go to the Pacific Mall either. My fiancée is Iranian Canadian, and I was at her brother's house for Iranian new year last week. He asked if I wanted to take these home and take a look at them. I said I'm probably not the right guy to see this stuff, but he had a collection of DVDs he'd purchased from the local 7-11 type store in Brampton.

So I took them home and looked at them. Several of them didn't work on my machine. Most of them were camcorderd. I guess one was a copy from some Academy of Motion Picture member's private copy he got for the Academy Awards, so somehow that had got out on the Internet.

You don't have to go shopping in Markham; you can find it anywhere, and people are buying this stuff.

Mr. Lorne Lipkus: I served court orders at the Rideau Centre.

Mr. Doug Geralde: To your point, though, there's a lot for the committee to look at. I would invite them down to the Canadian Standards Association, where we look at what the products are. We should also maybe go into a little bit more detail about what we're seeing in China and developing countries, what the factories are doing, and where the shipments are going. Maybe that can be of help to the committee.

We can talk about some of those experiences. They may be anecdotal, but they give you an insight into the breadth and the sophistication of both the distribution and the manufacturing that are going on, and it may assist you in some of the other action items.

The Chair: Your time really is up. Do you have a brief...?

Mr. Rick Norlock: Going to what Mr. Ménard said, dollars and cents make the world go around. In your estimation, would I be correct in saying that if legitimate manufacturers were the only vendors and there was not this proliferation of contraband goods, basically the government would increase the profits of legitimate manufacturers? We're not taxing the bad guys; in the long run, maybe the government would make more money and then could afford to spend some of it on public education. Would that be correct?

Mr. Lorne Lipkus: Absolutely. I've had legitimate businesses call me up and tell me, "Lorne, I'm closing my doors. I cannot compete." I've said, "Call the police and complain. Call the government and complain." The amount of money being made by counterfeiters and pirates is absolutely astronomical. It is huge dollars.

One location in the Vancouver area had a sign saying "cash only". I saw tour buses pulling up, and 50 people would get out and come into this store that said "cash only", which was selling purses. This person was on social assistance. I was there in the middle of the police raid. The person was on social assistance—"cash only". How much money could have been made from that one business alone if the government had had legislation so that when the police went in, they would have been able to grab the assets and the bank accounts of that person?

Mr. Graham Henderson: The tax base absolutely is going to be impacted. I'll give you an excellent example: icewine. Icewine is now being counterfeited, and a great example was the Taiwanese marketplace. They were selling successfully into the Taiwanese marketplace; then, all of a sudden, counterfeit icewine showed up, and the market dropped in half. That directly affects the profitability of Canadian businesses and hence their taxpaying ability. It's jobs—jobs, jobs, jobs.

• (1230)

The Chair: That's very interesting.

There is no one on this side. Then our final—

Hon. Sue Barnes: I'm open to giving up my time if any of you want to put anything else on the record, but I think you've done a great job today.

The Chair: Mr. Brown has indicated he has a comment or question.

Does anybody have a comment or question?

Mr. Doug Geralde: I only want to say that we appreciate the time, and if we can move forward...I think all of us and the associations feel that if there's anything else we can do, we want to help in any way we can.

The Chair: I think we as a committee will consider your invitation to come down and take a look at some of this stuff. I presume we'll at least discuss making a report on this as well. I appreciate that. I think it's a very important issue, and not something we should leave after doing just a couple of studies.

Go ahead, Ms. Barnes.

Hon. Sue Barnes: I think we could learn a lot more, but you've given us enough to do a report that just says we should get moving on this stuff, in my opinion.

The Chair: Yes. If we do go down there, we'd leave our cash here.

Go ahead, Mr. Brown.

Mr. Gord Brown (Leeds—Grenville, CPC): Thank you very much, Mr. Chair, and thank you to our witnesses.

I learned a bit about copyright a few years ago. Testimony in the last couple of days has been a real eye-opener in learning about the public safety side of this, but I think the part that will hit Canadians the most is the economic side.

Maybe, Mr. Henderson, you could lead here. I'd like to know the impact on our economy in jobs, in GDP. There is also the impact on the treasuries of the federal government and the provincial governments. What kind of impact is this having on our economy?

Mr. Graham Henderson: It's hard to give an overarching number. I know the RCMP has reported that this is a billion-dollar business.

As to the effect on Canadians, we have lots and lots of anecdotal examples that we can give you. For example, the software industry estimated that losses from business software piracy exceeded \$730 million in 2005. They felt that it wiped out 32,000 jobs and \$345 million in taxes. One of the things they've experienced is a piracy rate in Canada of business software products that's running between 33% and 35%, whereas in the United States it's 21% or 22%. That's a huge difference.

We have the example of an Ottawa-based software company called Autodesk. He'll tell you that for every software program his company sells, five of them are pirated. This piracy, he says, has directly cut into Autodesk's ability to hire additional developers, and hence software.

Bayly Communications in Ajax, Ontario, has about 30 employees. It's a leading manufacturer of network access and transmission products for telecommunications markets worldwide. In the fall of 2002, it estimated that 25% of its business was lost due to counterfeit Chinese copies.

Art in Motion is a company based in Coquitlam, with about 400 employees. They are a leading fine art publisher. This company has constantly battled the copying of its artwork internationally, taking legal action in North America, Asia, and Europe.

The point is that this is affecting people across the country, in all ridings, and through the Canadian Anti-Counterfeiting Network, everybody is coming together. This economic case can be made. It's demonstrable. It's hard to say exactly what the full extent of it is, but you know it's going to be an enormous amount.

Doug, you wanted to comment.

Mr. Doug Geralde: As we said, it's an underground economy. It's difficult to put a handle on it, but among some of the things that we find, a major car company has said they sell everything from airbags to brake lights to brake linings, and so on, approximately \$6 billion a year. They estimate that one-sixth of that is counterfeit.

The drug trade is an \$80-billion-a-year business. The counterfeiting is \$320 billion to \$350 billion, so you're talking four times the amount. As was alluded to earlier, if you get caught with a pound of cocaine, you're going to go to jail. If you have six containers of cord sets—and six containers sounds like a lot, but it slides through because of what we talked about today—the profitability is identical, with no penalty.

Everybody is trying to get a handle on it, but they believe that right now it represents between 5% and 7% of all global trade, growing at 20% to 25% a year.

• (1235)

Mr. Lee Webster: Last night we tried to get some information from the International Chamber of Commerce. We got an e-mail that threw out some numbers at us, one being that the OECD is going to issue a report that has some members measuring cross-border traffic, and the number they've attached to that is a very big one, \$176 billion U.S. in international counterfeit trade. That's just international, and that number doesn't include Internet trade or counterfeit products manufactured and sold within a country's border. They estimate that there's in the range of \$120 billion in knock-off goods sold on the Internet. There's an organization called MarkMonitor.

Ford Motor Company has indicated that counterfeit auto parts are costing them in the range of about \$1 billion a year in costs.

The final number that this fellow was able to give us was for the City of Los Angeles: they reported that counterfeiting cost the city \$5.2 billion in sales in 2005. Those are big numbers.

Mr. Graham Henderson: There is a very interesting fact about this business. When you ask Canadians, if you were told that it was organized crime that was getting the proceeds, what would you do, fifty percent of them say they'd buy the legitimate product. So there's a direct translation. If you can stifle the flow of counterfeit product, you will encourage legitimate purchases.

Mr. Gord Brown: I'm probably running out of time here—

The Chair: Yes, you are running out of time.

Mr. Gord Brown: —but I remember the other day my friend Mr. Cullen asked a question about a case in Hamilton that involved counterfeit prescription drugs. Does anybody know what happened to that?

Mr. Brian Isaac: Yes. In fact, that was one of the examples I was going to give, but I ran out of time. I'm always too long.

This is the case where a pharmacist was selling what turned out to be counterfeit blood pressure medication that has been linked by a coroner.... I don't think he could prove beyond a reasonable doubt, but he couldn't discount that it actually caused four deaths. There were eleven suspicious deaths that were involved in that scenario.

The matter went to trial, and the decision came down last month, and in fact the pharmacist was acquitted. The judge found that the prosecutor had not proven beyond a reasonable doubt the requisite

mens rea. The bottom line of what the judge said was, "You didn't prove that he knew that it was counterfeit." These were charges brought under the trademark provisions of the Criminal Code, which have almost a double onus on trying to prove the *mens rea*, making it such that you have to prove fraud.

That's an example, I think, of a bad decision, because the evidence put forward established that the story, on which the judge found there was a reasonable doubt, was in essence that the pharmacist had bought the products out the back of a white van from a guy who had identified himself as a distributor. Not only that, but the customers of the pharmacist had come back and said, "These don't look like our regular pills. Is there a problem?" He had assured them there wasn't.

The guy is free right now.

Mr. Graham Henderson: I might add that the chief coroner for Ontario made a number of formal recommendations following that case, one of which was that the current resources allocated to the elimination of counterfeit medication should be reviewed, and number two, that existing statutes and regulations regarding counterfeit medications should be reviewed, taking into account "emerging trends in criminal methodology" and "enforcement strategies that have proven effective in other jurisdictions". This is getting people's attention.

Mr. Gord Brown: Great. Thank you very much.

The Chair: Mr. Isaac, could we get a copy of that decision—the coroner's report and the other?

Mr. Brian Isaac: Yes, I'll try to get it—of the coroner's report, are you saying, or of the court decision?

The Chair: There was a court case you're referring to. Can we get a copy of that?

Mr. Brian Isaac: Yes, we will get you a copy. I'm not sure whether it's available right now. It sometimes takes some time for transcription, but we will get it, and as soon as we do, we will forward it.

The Chair: It'll take us a little time to prepare a report anyway.

Is there anyone else?

I personally feel that I am undereducated. I don't know that I would recognize counterfeit goods. At the last meeting, I talked about the contact glue I bought, and it was as good as cornstarch. I don't know how you would recognize this before making the purchase and going home. That, to me, is a challenge.

• (1240)

Mr. Graham Henderson: [*Inaudible—Editor*]...it's probably too good a bargain. That's one way.

Mr. Doug Geralde: Yes, that's what we tell consumers. Canadians want to do what's right; we know that, and we know how highly motivated they are. Everybody's looking for a bargain, but we're telling them that if the price is too low—and we know fair market value—chances are there has to be something shortchanged in it, so the counterfeit is there.

There are techniques that we teach, as we let the information go out. There are spelling mistakes. There are things we're teaching the media about what consumers should look at.

I think the first area is building your awareness, just the process we're going through here, and then we start to give you tips. And we're trying to get everybody—the retailers, everybody—involved in educating and being aware of it. That will help.

The Chair: Okay. Thank you very much.

I guess we're going to wrap up.

Hon. Sue Barnes: Can I just make...? One thing is, MPs of all parties have tools of communication with their constituents. We can put little things—tips about counterfeit goods—in our householders. Please try to get something to us. I certainly would consider it, and I think my colleagues around this table would. It's a safety issue, and that, as far as I'm concerned, doesn't have a party label on it.

The Chair: Right.

I want to really thank you. We have some other business that we have to get to now, but I want to thank you all very much. I just hope those who receive our report will realize the urgency and seriousness of the counterfeiting problem in Canada.

Your information has been invaluable. Thank you very much.

We are going to suspend for a few moments.

- _____ (Pause) _____
-

The Chair: Let's reconvene here.

We're now going into planning of future business.

Somebody was supposed to tell Mr. Comartin to come.

A voice: He was here a minute ago.

The Chair: I received his motion first. It's the same motion as yours, but as a courtesy, he had it in first, so—

Hon. Sue Barnes: We were going to do it jointly. What happened is there is no technical way to do it jointly, so we just duplicated it.

• (1245)

The Chair: All right. Mr. Comartin, we were just about to deal with the motion you have put before the committee. Are you prepared at this point to put it forward and make comments?

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Yes, I am.

The Chair: We are not in camera, to answer your question, Ms. Barnes.

Mr. Joe Comartin: I just want to be very clear that I got mine in first, but Ms. Barnes has a similar one. We have been discussing this. Our procedure doesn't allow us to do a joint motion, but that was certainly our intent. We both feel strongly that this is a joint effort, and one that we should be pursuing.

Mr. Chair, perhaps for those who have not noticed what has gone on in the last few days, the *Globe and Mail*, in a series of articles, has raised a case in British Columbia affecting the witness protection program, the act, and the conduct really of the RCMP with regard to this specific case, which, in addition to the notoriety, can arguably be said to have put into question the manner in which the witness protection program has been used. The article basically set out a case of an individual who had manipulated the RCMP into believing that

he in fact was an informant. They moved him up from an informant to a paid agent, and then they put him into the witness protection program, in spite of the fact that at the time he went into the witness protection program, or shortly thereafter, it became obvious that he had grossly misled the RCMP.

That alone would have given us a great deal of concern. What subsequently happened is this individual, while in the witness protection program, committed at least one murder and perhaps more. That part of it is not clear at this point. It really does call into question how the program is being used.

There was a second case a year or two ago, or maybe longer, in the province of Quebec. This involved an informant in the biker wars that went on there. It was a similar situation, where the individual, after being placed in the witness protection program, again under a shadow, I'll say, committed some violent crimes.

The motion basically is that as a committee we need to take a look at this, with regard to whether the act is being abused, but also—perhaps in terms of our role, more importantly—whether there are amendments that are required to the act in order to allow for its use more properly than what these two cases would seem to indicate.

I am moving the motion that we conduct a review of the act and the role of the RCMP.

The Chair: Thank you.

With unanimous consent, you can jointly move this motion.

Do you have any additional comments, Ms. Barnes?

Hon. Sue Barnes: Quite frankly, I know time is precious here. I have talked to Mr. MacKenzie, as the parliamentary secretary, and he has advised me that he's on side, and also Mr. Ménard.

There is a legitimate use for and need for a witness protection program, but it is incumbent upon this committee to take a look at it, get some briefings, get some information. I don't think we can leave this without some sort of investigation by this particular body at this point in time.

I will jointly move the motion, if that's okay.

The Chair: Mr. MacKenzie, do you have a comment?

Mr. Dave MacKenzie: Ms. Barnes is absolutely right. We have no objection to this. But what we have to understand is we're going to look at the big, global picture of the witness protection program and not the particular incident. I think there is an ongoing investigation particularly with the one that was reported in the press. These issues do go back a few years, but if I have understood this correctly, we really do want to look at where we're going forward. So it is to look at the global picture of the witness protection program, and if there is need for changes, it's up to us to make those recommendations.

With that understanding, we have no issue.

The Chair: Okay.

Mr. Norlock, you had a comment?

Mr. Rick Norlock: Yes. I believe we need to look at this, and the motion is rather specific in the area we need to look at.

In recent weeks and days we've seen some other issues that are shaking the public's confidence in the most senior police force in our dominion, and we must do everything we can to make sure that we maintain that police force's highest standards and maintain the reliability that the people we serve need to have in that organization.

•(1250)

The Chair: Okay. Good point.

How do we proceed?

Hon. Sue Barnes: All in favour?

The Chair: Okay.

No other comments? Nobody is opposed?

(Motion agreed to)

Hon. Sue Barnes: Can we talk about timing on this? I think that should be there.

Mr. Chair, I just want to raise with you that we have the problem again with another private member's bill that has been addressed to this committee with a very close deadline. I was approached yesterday in the House by the promoter of that private member's bill, who said, "Why don't you just bump it down 30 days?" We still have the same problem procedurally, that the Standing Orders of the House say that it's deemed, so we can't do that.

I would like to hear from Mr. MacKenzie because I would like to rapidly get to this investigation. I would also like to be able to do a very quick report on what we've just heard in the last two days. I think we have sufficient information on a unanimous basis to get that file moving, and there are very good recommendations in the material we saw today. We could have a meeting for that, but, bottom line, if we're going to examine that private member's bill and not have it deemed approved, then we have to figure out how we're going with that, because there's very little time.

The Chair: Okay.

Did you want to make a comment, Mr. MacKenzie?

Mr. Dave MacKenzie: Yes, Mr. Chair.

I did hand a request to the clerk of the committee for a notice of motion that will not come back until the Tuesday after the break, because there has to be 48 hours' notice. In that notice of motion we're asking for an extension of 30 days.

However, I do believe that the author of that particular bill will be here on that date to indicate to the committee where that is going. I don't think the committee needs to spend time on it at that point between now and.... The date due to report back is May 1, and I believe on the Tuesday when we come back he will have a resolution to his bill that won't take this committee any time.

The Chair: Where is that resolution going to be made? In the House or...?

Mr. Dave MacKenzie: No. First he needs—

The Chair: A resolving of it. Yes. Okay.

Mr. Dave MacKenzie: —to come to the committee. So if we could, can we schedule him for five minutes on the Tuesday when we come back to properly inform the committee of where the bill is

going and what's going to happen to it? We're not going to have to deal with it is what I'm saying.

The Chair: Yes.

Mr. Dave MacKenzie: The matter has some issues across jurisdictional boundaries, and the government has been working with it, but they have not resolved them. He will be here to explain, and it will not take him very long, so we don't need to schedule any more than five minutes on the first Tuesday we come back.

The Chair: Is that okay with everyone?

Ms. Barnes.

Hon. Sue Barnes: I'm quite willing to have him come, but I want to warn you that if the motion is for an extension of time, it's not going to help us, and that's not going to be accepted. I also want to say it's getting to be a bit of a habit, because it's not only in this committee but others. It's the will of Parliament to bring a bill here, so even if the proponent of the bill wants to do something about it, the rest of us have a say in that too in all parties around the House.

Mr. Dave MacKenzie: That's why he will be here to tell the committee what's happening with it.

The Chair: Is that okay, Mr. Comartin?

Mr. Joe Comartin: We can deal with that first thing and then move to.... I guess I'm looking for some direction from Mr. Cullen as to whether he would be in a position then that we could move to give directions on the report on the counterfeiting issue and spend the rest of that meeting on that. I'd like to know if he's going to be ready, because we're looking to him for direction as to what frame or form the report would take.

Hon. Roy Cullen: Yes.

Mr. Chairman, coming back to the counterfeiting of goods, we have enough information to draft up a report.

What I can suggest is that we could have the researcher put together a draft table of contents. Certainly I would undertake to submit my recommendations on how to structure the report or what ideas we might want to look at, and if everyone does that, the researcher can come out with different options. I'm quite happy to take the lead on that. I was the one who asked to bring it here, and I've had some exposure to it. I'd be happy to share my thoughts with the researcher and perhaps the government side as well and the other members. But if we wait and have a brainstorming session, that would be clearly another two to three weeks at least, and maybe never. I'd be happy to get on with this, if we can.

•(1255)

The Chair: The suggestion is this. Next Tuesday, can the researchers prepare for us a summary of the evidence or some recommendations? We can then take it from there.

Mr. Dave MacKenzie: Well, I think we need to deal with the researchers on this, but I'm not sure. We're now heading into the two-week break. Are you suggesting that we get those recommendations to the researchers during the two-week period?

Hon. Roy Cullen: Yes, that's what I'd like to see. When we come back, at least we'd have a draft report or a draft report with some options that we can consider, and we can get on with it.

Mr. Dave MacKenzie: I guess I'd like to hear from the researchers. When would they need the material in order to get it back to us?

The Chair: I'm sure some of them are going to be taking a break as well.

Ms. Lyne Casavant (Committee Researcher): Yes. I think we have to also take into account the translation. Every time we get information, if it's not translated, some time is needed to go through the translation process.

Reports also have to be edited, so it would be difficult to come back with something that looks like a report.

It would certainly be easier for us to come back with a fairly short summary of evidence and some recommendations from you, if you can send the recommendations to us before the end of next week.

Mr. Philip Rosen (Committee Researcher): If I could add, Chair, because it's my colleague, Madam Casavant, who will be working on this report, we can easily go through the briefs and the evidence to see what recommendations were made by the witnesses you've heard. There are fairly specific ones, and there are about 10, 12, or 15 of them.

The second item is if you have recommendations that you as members wish to suggest, my proposal is that you send them through your clerk, Louise Hayes, and she'll make sure we get them.

I know Mr. Cullen is familiar with the process because it's what we did on another committee.

The Chair: Okay. What's the deadline for getting your submission in?

Hon. Roy Cullen: It's the end of next week. That was a good suggestion.

The Chair: Okay. It's the end of next week, and that gives you one week to complete it.

Hon. Sue Barnes: Mr. Chair, after we hear from Mr. MacKenzie's colleague, we'll go in camera to start discussing this. Is that the idea?

The Chair: Do you mean we'll discuss the report?

Hon. Sue Barnes: Yes, or the ideas that are put forward.

The Chair: Okay.

Mr. Philip Rosen: Again, Chair, if I may, it won't be a report you're getting. It will be a collection of the recommendations you've heard. Once you've selected them, we could then go to a draft report.

The Chair: It'll be a rough first draft, yes.

Mr. Joe Comartin: Mr. Chair, do we have something else on the agenda or can we move to witness protection?

The Chair: Well, I don't know. Does anybody else have anything else to bring forward?

Mr. Joe Comartin: No. Do we already have something on the agenda?

The Chair: No, we don't. We've had things previously.

Monsieur Ménard has the proposal for travel to Laval, and we always put it off. At some point, are we going to deal with that?

We also wanted to look at auto theft and the exporting of vehicles. We did that a while ago.

Hon. Sue Barnes: This is more urgent.

The Chair: This report is more urgent, yes. But the question was, do we have anything beyond that at this point?

Yes, Joe.

Mr. Joe Comartin: I would suggest that we in fact go to Laval on the Thursday.

When we return, on the Tuesday, we can set some time aside in that meeting of at least 15 to 20 minutes to go through a witness list for the witness protection. It will then give the clerk at least a week.

The Chair: Oh, we can do that on Tuesday. Okay.

Mr. Joe Comartin: Yes, it would be towards the end of the meeting. Hopefully, it will give the clerk sufficient time to line those up for the following Tuesday.

The Chair: Sure. All right.

Hon. Sue Barnes: Can I make a suggestion?

I think we should spend the Thursday getting the basics on the current witness protection program, the people, and the RCMP officials who can tell us about it through a general briefing.

We could line up one witness for the Thursday we're back. It's a starting point, and we could then add more witnesses after that.

• (1300)

The Chair: I don't know. You're putting off the Laval trip again, and it will not happen.

Anyway, it's up to the committee.

Hon. Sue Barnes: Do you want to do the Laval thing?

The Chair: Is there anything we have to do in preparation for the Laval trip? Is there some kind of budget that has to be approved? I don't know that we can just get on a bus and go there.

Okay. I don't know if you heard that, but we would need permission from the House to travel and we'd need approval on a travel budget. I thought it might not be as easy as just doing it next Thursday.

Mr. Serge Ménard: Do you think we can get this in time for the 19th?

The Chair: Louise has suggested that she could prepare a draft budget and that we take a look at it on the Tuesday when we get back. Then we have to just set a date after that. It doesn't look as though we could get it done in time for the 19th.

Is that okay?

An hon. member: [Inaudible—Editor]

The Chair: Well, we'll have to see. First of all, we have to get it approved.

An hon. member: Would it be on the 26th?

The Chair: The 26th is fine with me.

Does anybody else have any—

Hon. Sue Barnes: Can we then get the original briefing on the Thursday, so we're not delaying that?

The Chair: Okay, and who is going to be in on that briefing? The RCMP? Is there anybody else you can think of who would add something?

Hon. Sue Barnes: I think Justice and the RCMP would be a good start.

The Chair: Okay, officials from the Department of Justice.

Hon. Sue Barnes: And the RCMP.

Hon. Roy Cullen: What about the public safety department?

The Chair: Does anybody else have a suggestion here?

Yes, go ahead, Philip.

Mr. Philip Rosen: Mr. Chair, my colleague and I have actually started to develop a witness protection list, so our suggestion is—we read the press—the RCMP, which is obvious, the Department of Justice, and anyone within the Department of Public Safety.

There is an academic at the University of Ottawa, Thomas Gabor, who is a criminologist. He has written a paper that talks about witness protection programs in other countries besides Canada.

Since I have the floor, may I also ask members to submit, again through Louise Hayes, your clerk, any witnesses you think should be heard from? As an example, there is a lawyer, Barry Swadron, who has represented a number of people who have been in the witness protection program and who have been very unhappy with it. He's someone we'll have on our witness list.

Your difficulty, of course, will be if you want to hear from some of those who have been protected. That's a serious problem, and I'm not sure into how much detail the RCMP will be able to go, because of the nature of the program and the protections with which it's surrounded.

Hon. Sue Barnes: I think we have some issues, Mr. Chair, around not wanting anybody to break the law. And while we're in camera looking at the report, maybe we can have a little discussion about this, because we're not in camera right now.

The Chair: Okay.

Hon. Roy Cullen: Mr. Chair, I put some ideas into the hopper a while back. They're not a priority for me now, but they include the idea of the fairness initiative—how we treat people at our border—and cost recovery. I'm going to defer for a while on those.

Hon. Sue Barnes: Mr. Breitkreuz, can I add one more thing?

We had people here before, talking about the no-fly list. There was the next level up, the sort of semi-appeal process, which was a separate entity. I think we'd like to have them back.

Isn't that correct? Do you remember, Joe and Serge?

An hon. member: That's a good idea.

Hon. Sue Barnes: I think we have to hear some information from them, because they were the ones a person would never hear back from as to why they were not removed. I think that's pretty important.

The Chair: What people do you want back? Is it the same people or different people?

Hon. Sue Barnes: They're different people. It's the ones who weren't here at the table at that time. They said they were the decision-makers, if there was an issue that was under....

The Chair: Okay, so we have Tuesday and Thursday, the 17th and 19th, pretty well nailed down. Do we want to go beyond that?

Hon. Roy Cullen: I propose that we leave a little flexibility, because if we come back and go over the counterfeit goods report on Tuesday, we're assuming that everything is going to be resolved on Tuesday. We need to leave a little bit of time. There's going to be some feedback; there are going to be some decisions made to review the next draft—maybe and hopefully a final draft.

The Chair: Tentatively, the 24th might be another day. It gives us a couple of days to look at the draft and decide where we want to go. So tentatively we have the three days following the break done.

I assumed that this professor would not come on the 19th, that we would just have the officials and the RCMP in the preliminary—

• (1305)

Hon. Sue Barnes: And the justice department, I would think: Justice, Public Safety, and the RCMP—

The Chair: All right.

Hon. Sue Barnes: —taking everybody through the current situation. Then we can question from there.

I just draw attention to the time. We're a bit over.

The Chair: Is there anything else that's urgent at this point?

Hon. Sue Barnes: No.

The Chair: Mr. MacKenzie.

Mr. Dave MacKenzie: The only thing, Mr. Chair, is that we don't seem to be able to plan very far on items. I think Mr. Ménard has mentioned the Laval thing, and as a committee, I think we had decided at one point that we need to look at pandemic planning, and that was where that fell in.

We don't have to do it today, but I think we can't lose from the radar screen that we need to look at some items. We have a concern. We think we should be spending some time on stolen vehicles that are shipped out of the country. I think it's a significant issue.

Hon. Sue Barnes: I have no objection, Mr. Chair, that we use the operation of a steering committee, because we—all of us—spend a lot of time doing this; we're doing the steering committee's business.

The Chair: We tried it that way. Then we come back to the main committee and people don't agree with what we're doing. We don't save any time. That's why it happens to be this way.

Hon. Sue Barnes: Can I move to adjourn?

The Chair: Tentatively, we may go to Laval on April 26.

Okay. This committee is expected to do certain things, and we're not doing some of the basic things that we should do at this committee, so....

This meeting stands adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.