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Chair

Mr. Kevin Sorenson

Standing Committee on Public Safety and National Security

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• (1535)

[English]

The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)): Good afternoon, everyone. Welcome to our committee.

This is meeting number 28 of the Standing Committee on Public Safety and National Security on Tuesday, March 6, 2012.

Today we are continuing our study of the use of electronic monitoring in both correctional and conditional release settings as well as in the immigration enforcement setting, with a view to determining effectiveness, cost efficiency, and implementation readiness.

In our first hour we have, from the Correctional Service of Canada, Larry Motiuk, special advisor to the infrastructure renewal team. He has worked with the Correctional Service of Canada on conditional release supervision standards, ex-offenders, and high-risk or violent offenders, as well as on assessment processes and treatment programs. Dr. Motiuk is a research professor at Carleton University and holds a Ph.D. in psychology.

Doctor, we welcome you to our committee. We thank you for being here. Certainly we have heard from the Correctional Service of Canada before, but I know in your testimony it's always something new, and we appreciate being able to get comments from someone who may have a little different perspective.

Could we invite you to make your opening statement?

Dr. Larry Motiuk (Special Advisor, Infrastructure Renewal Team, Correctional Service of Canada): Thank you, Chair and members of the committee, for inviting me here today to talk to you about Correctional Service of Canada's efforts on electronic monitoring.

As mentioned, my name is Dr. Larry Motiuk, and I'm currently a special advisor on assignment with others on a transformation and renewal team in Correctional Service of Canada. I have a doctorate degree in psychology and a master's degree in clinical psychology.

Before this assignment, I served as the director general of the offender programs and reintegration from 2006 until 2010 at CSC national headquarters. In this position I provided advice on policies, planning, and legislation related to institutional, community, and operational management of offenders. It was during this time that I became involved with others in our management team in the establishment of the electronic monitoring pilot project.

As an employee of CSC for the past 25 years now, I also served as director general of research for 13 years, supervising and evaluating

operational research projects on a national scale. These included national standards for conditional release supervision, mental health, sex offenders, risk management, and correctional program effectiveness.

Over the years I have published widely, and I have worked directly with various departments of corrections in jurisdictions abroad. Moreover, I served on the board of directors for the International Community Corrections Association from 1999 to 2005.

Similar to the study the standing committee is undertaking, in October 2007 the Correctional Service of Canada review panel examined the use of electronic monitoring in the community. They heard a variety of opinions on the matter, from applying this technology to all released offenders in the community to using it only for selected offenders under extended supervision by CSC.

Also around the same time, CSC was exploring the use of electronic monitoring, and I understand that you heard about the review of the literature on electronic monitoring conducted by the CSC research branch.

In response to the many observations and recommendations made by the panel, a transformation agenda, an ambitious initiative, was launched to improve CSC operations and enhance public safety for Canadians.

While the many initiatives established under the transformation agenda have been integrated into CSC's operations and plans, the work is not over and the transformation agenda continues to be of utmost importance to CSC. CSC continues to make progress on ongoing transformation agenda initiatives, which have better positioned CSC to effectively manage today's offender population and meet new challenges.

The interrelated initiatives fall under the following themes of enhancing offender accountability, eliminating drugs in institutions, enhancing correctional interventions and employment skills of offenders, modernizing the physical infrastructure, and strengthening community corrections.

The electronic monitoring pilot project was seen as supporting CSC's transformation agenda by enhancing community and staff safety while helping to strengthen offender accountability, a key component of the strengthening community corrections theme.

Correctional Service of Canada is now in phase three of its transformation agenda, which focuses on ensuring continued integration of transformation initiatives.

In September 2008, the electronic monitoring pilot project, EMPP, was implemented, and this had been done within a relatively short timeframe. A project proposal, project charter, concept of operations, and privacy impact assessments were completed. Guidelines and response protocols were drafted and developed to support the EMPP and approved. Numerous operational forms and documents were created to support the project and to mitigate risks.

Several working groups who were involved back then, involving internal stakeholders, were established, including the EM working group, the EMIS working group—our technology side for computers—and including access to information and privacy, ATIP. There were weekly referral committee meetings and an evaluation working group was formed.

Training of community parole officers took place in Hamilton, downtown Toronto, Toronto east, Toronto west, London, and Kingston, with 32 staff trained at that time.

Information sessions were completed at various institutions in the Ontario region and with placed partners in the metropolitan Toronto area. All external stakeholders were informed with personal letters and distribution of information pamphlets on the EMPP and all were invited to make any inquiries.

The pilot was initially implemented in the central Ontario district and was later expanded to include most of Ontario and Nunavut district.

Parole officers provided CSC with the capacity to monitor up to 30 offenders at one time. CSC obtained the services through a letter of agreement with the Government of Nova Scotia, which had provided expertise in technology.

The original agreement with the Government of Nova Scotia ended in September 2009, but the service for the pilot provided by Nova Scotia was extended for one year, ending in August 2010.

My direct involvement in the electronic monitoring pilot project ended in March 2009, with, at that time, 22 offenders having participated in the EMPP, all without significant incidents or concerns. Three offender participants had successfully completed the project and the bracelets were removed.

I would like to conclude my opening comments by saying that Canadians have always been able to take pride in being international leaders in corrections research and rehabilitation. From the creation of scientifically derived assessment tools for security classification, program assignment, and release risk to the development and delivery of state-of-the-art rehabilitative programs and supervision methods, Canadian correctional practitioners have always been at the vanguard of best practices.

Canada's advantage is primarily due to the talents and efforts of researchers and practitioners themselves. Building on our correctional technology and research advantage is more important than ever.

I look forward to the discussions here today. It is important that the correctional perspective is represented at these kinds of meetings, and that all the components of criminal justice continue to work together to achieve an effective and positive public safety outcome.

Thank you.

• (1540)

The Chair: Thank you very much, Dr. Motiuk.

Now we will go into the first round of questioning.

We'll go to Ms. Hoepfner, please, for seven minutes.

Ms. Candice Hoepfner (Portage—Lisgar, CPC): Thanks, Mr. Chair.

Thank you, Dr. Motiuk, for being here today.

At our last meeting we heard from one of your colleagues, who I believe also helped on this study, Dr. Brian Grant, and we got a little bit of a sense of what the study from 2007 entailed.

I'm wondering if you could begin by giving us an overview, based on your participation in bringing it all.... I understand the study was bringing literature and other studies together to come up with this report.

Based on that, and also based on your experience in terms of helping offenders to get back into the community and helping them become rehabilitated, can you tell us, in your opinion, what would be the benefits and the strengths of electronic monitoring? And what would be some of the negative aspects and parts that would not be as helpful when it comes to rehabilitating offenders and reducing recidivism?

Dr. Larry Motiuk: In response to the first element of the question about the review of the literature that was done on electronic monitoring back in 2007 and published by the research branch, I'm quite familiar with that because it was actually launched while I was the director general of research.

During that time, we were always engaging in looking at new methods and technologies for the supervision of offenders, and the usual practice is to do a very systematic review of the available literature, explore a variety of questions, and anticipate concerns and whatnot about that. One of the things that was most noteworthy at that time back in 2006-07 was that we were not using electronic monitoring technology, whereas many other jurisdictions were around the world, and also domestically in some of the provincial jurisdictions.

There had been a fair amount of controversy at the time in terms of the technology and its application. Nevertheless, we undertook to do a thorough and systematic review. I understand that probably has been made available to you; it's available on the Internet, on the website for the CSC research branch. I would imagine that Dr. Grant would have summarized some of the highlights and observations.

One of the considerations that came out of the research was on the effectiveness of EM in meeting a lot of its objectives. It was basically equivocal and mixed throughout that literature review. Being equivocal and mixed means that one does not attempt to experiment or demonstrate or try to embrace the technology and see where we need to go. Drivers for implementation in that review of literature were, for the most part, reducing inmate populations in other jurisdictions or finding cost savings. From the review of the literature at that time, it said a lot of it had yet to be realized. It's not that it said it wouldn't be realized, but it was yet to be realized.

Also, which is a classic with a lot of reviews of literature, more methodologically sound research was required because it had to keep pace with a lot of the emerging technology. Rest assured that much of the technology was advancing considerably over recent years. By the time the evaluations come out or the research studies come out, it's extraordinary just how many advancements have been made.

The considerations at the time were the difference between looking at radio frequency technology versus GPS technology, and there was very little experience in that technology but certainly a lot of interest in exploring it. And there was also technology looking at a combination of both at the time. The bottom line was the understanding that we wanted to be as technologically advanced as possible and embrace the GPS technology approach. I thought that might become an interesting way to do a demonstration project or a pilot to test that technology.

To answer the question about what was the research telling us, we needed to do more research notwithstanding to keep abreast of emerging technology at the time and to be clear that we needed to understand what the value-added component of this technology would be associated with when we incorporated it into existing community supervision strategies.

That was the research review at the time. Subsequent to that question of what the review of the literature showed, I'll answer the question about the issues of community supervision and experiences with that.

One of my very first assignments when I joined the Correctional Service of Canada was the conditional release supervision standards project. At that time I had moved from the provincial system, where we were embracing offender risk/needs assessment technology to establish frequency of contact for supervision standards with probationers and parolees in the provincial system in Ontario, and we were looking to incorporate that as a standard of supervision—that we would establish levels of frequency of contact for federal offenders who were being supervised in the community.

Most of that work fell on the back of a major inquiry in the mid-1980s, the Ruygrok inquest, which made substantive recommendations about community supervision standards for offenders and looking at any ways or means by which we could improve supervision strategies. That has been our ongoing challenge for community corrections, to advance its standards and practices, look at how we can better address public safety concerns and reduce the likelihood of reoffending by offenders under supervision in the community, and promote safer reintegration and the transition from institutions into the community.

● (1545)

There have been numerous other initiatives in Correction Service Canada over time. I recall the community offender management strategies and the correctional strategy back in the early nineties that looked at integration right through the continuum of care for case management, from front-end intake assessment right through to institutional supervision and intervention while incarcerated, case preparation, release preparation, and then community supervision later on.

In each and every one of these areas, there have been major initiatives looking to find efficiencies, effectiveness, and improvements.

I would probably suggest that one of the main areas in which some of the most significant advances have been made is the correctional programming within Correction Service Canada. We have state-of-the-art correctional programs. They're scientifically based, evaluated and researched, internationally accredited, and have been demonstrated to bring about significant reductions in reoffending.

The Chair: Thank you.

Our time is up. Maybe you'll be able to do a supplementary in a little bit here.

We'll now move to Mr. Chicoine.

[*Translation*]

You have seven minutes.

Mr. Sylvain Chicoine (Châteauguay—Saint-Constant, NDP): Thank you very much, Mr. Chair.

Mr. Motiuk, thank you very much for appearing today to share your experiences with us.

I would like you to go back to the benefits and the disadvantages. Most people who have come before the committee have had difficulty showing the benefits of electronic monitoring. It seems to be costly and does not seem to offer many benefits.

From your experience with the pilot projects, can you say that electronic monitoring offers clear benefits, or rather that the benefits are mixed, the way most people who came before the committee seem to think?

[*English*]

Dr. Larry Motiuk: As you know, an evaluation was done of the pilot project, which examined a number of areas in this regard. I understand the committee has made available this document, which in great detail looks at things such as continued relevancy and whether or not the electronic monitoring technology would be consistent with government priorities in our mission document. It was deemed to be relevant to the government priorities of public protection and community safety and also to our mission document in terms of what we were trying to achieve.

In the implementation area, a number of areas were highlighted as technological challenges—everything from the battery and the weightiness of the device itself to drift in signals through to tamper alerts.

One of the main purposes of the pilot was to test the technology, to gather some experience with each one of these models in terms of battery life, signal drift, the awkwardness of carrying the bracelets and devices—everything from that to the tamper alerts and the false alarms that were given.

In gaining experience with this equipment, our operational folks became very experienced in learning to deal with it. This was a huge benefit from the pilot: finding technological solutions and being able to address them. From what I understand, there is better technology and there are better ways of dealing with it. From staff and the reports they gave to me when we were doing the pilot, I understand that most of these problems can be overcome, notwithstanding that there will continue to be certain issues. In dealing with the technological issues that many would highlight in this regard, that was one of them.

Concerning the success of the pilot, it was declared in the evaluation to be inconclusive, which is consistent with other research findings. The cost savings and whatnot have yet to be demonstrated. It was a pilot, and it was limited to a select group of individuals. The full cost savings would not be realized until you went to a national implementation and a broader group of individuals, whereby those benefits could be realized. The potential would still be there. Basically, this is one aspect that has yet to be demonstrated, but cannot be demonstrated unless we go further with the whole exercise.

There are some other unintended benefits that we found. Some of the offenders reported that they got personal benefits, in the sense that it supported their own reintegration potential and aided them in that area. During the evaluation they were interviewed and questioned about some of that. So there were some potential benefits in that area.

If there's one strength I see, it's that it's a real adjunct to the supervision tool. If anything, it modernizes our ability to monitor the whereabouts of individuals who have certain conditions imposed upon them for geographic areas—inclusion or exclusion zones, or where they are supposed to be. It also affects the amount of effort we would devote to looking around to provide any kind of intervention, should an alert go off.

We also know that it enhances what we would consider “offender accountability”. In the case of many offenders, offender accountability involves their attitude, their behaviours, an insight into themselves. Being monitored throughout that period of time, these offenders became very acutely aware that they were supervised as to their whereabouts and became highly accountable for them.

It can also have other potentials in the long run. We know that it may reduce the length of residency conditions. It could be used to strengthen community strategies and be integrated with such other things as parole officer engagement with the offender. We also know that it could be incorporated into a strategy that has community-based programming and other supports and could support that as well. We know too that it can provide an alternative, potentially, to suspension or revocation, depending on the situation of the particular case.

So are there benefits on that side of the house? Certainly. From the technological side, in terms of the cost, we know that costs come down with the expansion and the widening of our ability to address different kinds of offenders.

• (1550)

The pilot was limited to a certain kind of offender, mostly those we would consider to be at the lower-risk end of the continuum for federal offenders under supervision. It has not been applied to the higher-risk clientele, among whom there might be more dividends yielded in the future. Only a future evaluation would yield some sort of clarity on that question.

• (1555)

The Chair: You have about 40 seconds left.

[*Translation*]

Mr. Sylvain Chicoine: As you mentioned, the Correctional Service of Canada is a model for the whole world. Knowing that electronic monitoring has not been used much and that, according to the research, it is still very costly, would it not be preferable, as far as public safety is concerned, to keep investing in rehabilitation programs rather than in a technology that has not really been tested?

[*English*]

Dr. Larry Motiuk: Concerning part of the question of investing in rehabilitation programs, the service and the Government of Canada provide resources and have invested in programming.

One of the major initiatives in the transformation agenda is intended to advance further our technology and develop an integrated correctional program model that is multifaceted, that advances us in the world in terms of how we deliver programs in a more efficient way—earlier starts in sentences, as well as the continuum out into the community for community maintenance. We are investing in that.

At the same time, we also need to invest in supervision tools that allow us, as an adjunct to our overall community strategy, to assist in monitoring offenders and providing feedback on selected cases on what we need to do, which is to comply with conditions.

The Chair: Thank you.

We'll now move back to the government side.

Mr. Norlock, please.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, Mr. Chair. Through you, I thank the witness for appearing.

I'm going to try to keep the question short. You have answered some of it in different ways, but I need some point-blank answers.

When we first decided to study this program, I looked at it as a cost-effective tool. I'm a goal-oriented person, so I think the whole goal is as you described: to have more responsibility on the part of the person who needs correction while looking at cost-effectiveness.

I home in on that and concentrate on it because to me it made a lot of sense that this particular program appeared to save a lot of money. I think we heard some evidence that the per day cost was something like \$20, whereas keeping someone in a prison cell costs between \$100 and \$200 a day. Right then and there, that tells me that we might better be doing some things on the outside.

Having said that, and with the results of your program being non-conclusive, I would imagine that having a national program—give it some time limits, because in this world of governments and opposition, you don't bring in a permanent program, if it doesn't give you the results.... Would a national program encompassing all reasonable types of offenders for a term—and I'll let you decide what term you think that should be, but I would think 18 months to two years should be sufficient—be a good idea for this committee to suggest as one of its recommendations, based on some of the things I've said?

Dr. Larry Motiuk: First and foremost, national implementation of electronic monitoring and an evaluation of that two to three years out would be a very worthwhile exercise. It would allow us to widen the selection criteria beyond individuals who may be deemed to be lower risk and therefore you can't demonstrate much impact in terms of outcomes on conditional release because of that.

Recommendations on a nation-wide basis for Canada are an important aspect because of the geographic locations and the distance we have to provide supervision. It makes very, very good sense, from an operational perspective, and also from a methodological perspective.

With respect to timeframes, you're correct in inferring that we need time for the electronic monitoring initiative and implementation to take place. Usually about two to three years is ideal.

Evaluation cycles to look at what happens over time are pretty standard in our operational environment. They usually operate between three to five years for a program, or anything else. It has to be well designed and managed and incorporate various relevant outcomes. Certain outcomes would be very, very important. We would know to look at individuals who may have faced suspensions or revocations and had been put back into an institution; that might be one outcome that would be looked at.

Also, the issue of residency conditions that are imposed on offenders might be another outcome measure. The length of them might be reduced, which means that even out in the community the costs associated with putting somebody in a halfway house or a community correctional centre could be reduced as well.

So, yes, there are some benefits that could be seen from a national implementation.

From a technological perspective, we need to find devices and equipment, and to provide the resources to acquire that. I think the operational readiness, which was the test of the original pilot to say we can do it...but we also need to expand beyond the one area to truly test its impact. Going beyond one area, which was the Ontario region of our organization, would really provide a true test to see what the results would be.

• (1600)

Mr. Rick Norlock: Thank you.

As you may know, at one of our last meetings we did talk to the folks who actually provide these devices and the technology. In the past five or six years that I've been a member of Parliament, there have been a whole lot of technical devices, which even our chair was playing with—I mean, working with—before the meeting.

I guess my question would be this. We've heard some of the problems concerning a person wearing devices going into a subway and things like that. I wonder if your previous study was able to determine—and I'm glad you mentioned the geographic realities of Canada—if there is a difference between the efficacy of using these devices between urban and rural areas. There are no subways in any of the communities I've lived in. It's mostly outdoors and there are not a lot of high-rise buildings.

Is there any difference experienced there? Could you expand on that?

Dr. Larry Motiuk: I recognize some of those limitations from the early days when I was involved with the pilot. We would look at monitoring offenders in downtown Toronto, and all of a sudden they would disappear into a subway. But they have to reappear at some point. What you learn over time are patterns of behaviour. Our parole officers become very astute, and so does the monitoring centre, at learning patterns, and expectations from that.

From an operational sense, there are some ways of dealing with that in terms of getting experience with monitoring, particularly with some of the dead zones you experience in high-rises or various areas.

In terms of the rural aspects, we were more particularly concerned in the early pilot days with the greater Toronto area. I think at this point in time the technology is improving. I expect there are ways of overcoming some of these obstacles. That's the purpose of why we do pilots and demonstration projects, to get that experience so we can recognize some of the limitations.

Also, with regard to tamper alerts and not necessarily responding to every one of them but having collateral backups to check, sometimes it could simply be a phone call. Or it could be having a collateral source of information to verify the actual locale of that individual, rather than having to send a response protocol to the police to apprehend.

There are other kinds of checks and balances, other kinds of alternative ways of dealing with these sorts of things. That requires experience with the technology, understanding its limitations, and seeking improvements and workarounds, as we say, to those kinds of device limitations.

The Chair: Thank you very much.

We'll now move to Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Chair.

You've done a study, you've done a literature survey, and you did a pilot project. I think there were other studies done elsewhere in the world, if I'm not mistaken.

What is the value to you and your department of the study we're doing? What does it bring to you? We're listening to you and others tell us about the research that they've done. So in the other direction, how might this study help you?

• (1605)

Dr. Larry Motiuk: You've been in a unique position to hear testimony from a variety of experts and to become familiar with the state-of-the-art technology. I understand you've had suppliers come in to speak to you about where the technology is today. You've had an opportunity to hear various perspectives on the application of electronic monitoring technology.

I look forward to seeing your recommendations of where you think we might improve our correctional practice in Canada and provide the ultimate deliverable—better public safety and community reintegration.

Mr. Francis Scarpaleggia: But what I'm saying is that we're not hearing anything that you don't already know, and that people within your department don't already know. In fact, you're educating us. So what can we do for you? Is it just a question of recommending—and I think you touched on this in response to another question—that we allocate more funds to a bigger and broader study? Is that what would help you in your department?

Dr. Larry Motiuk: I think that would help us. Any time we try to improve our correctional practices and we get funding, or even if we are able to apply legislative recommendations or changes to law and practice and policy, that's helpful.

Mr. Francis Scarpaleggia: Has your department already made an ask to the higher-ups for funding for a study? Has there been an impetus within your department to seek the funding that you'd like us to recommend?

Dr. Larry Motiuk: I have to say that I have not been involved in the last year or so in this topic, but I understand that requests for proposals will be formulated. They're done for system improvements across a continuum of care in corrections. I would estimate that this would be under way. We have an electronic monitoring team waiting for legislation that's now before the House on Bill C-10, and we have some support for that. Consultations are ongoing with service providers and other research groups to advance our technology.

Mr. Francis Scarpaleggia: If the expanded use of EM is already included in Bill C-10, that means there was already a vision for expanding EM's use. I imagine it was based on some kind of evidence that it works. I just think we're in some kind of vicious circle here, where the government's going ahead with EM; it's even inserted provisions in its legislation. You seem to be making progress in terms of putting in an ask for funding for more research, and then somehow we're entering the picture to recommend that you just keep going in this direction. I just don't quite understand.

There are mixed results. You mentioned the mixed results or equivocal results. But there's one area where, quite frankly, it's not a

complicated application—it doesn't put anyone directly at risk, really, if the system doesn't work perfectly—and that would just be tracking people's movements. If you took a population that was very low risk, you just wanted to know where they were at a given time, this would be excellent technology, one would think. And there wouldn't be any downside risk because the people you'd be tracking would not necessarily be dangerous offenders or even really offenders at all.

For example, would you see this technology being more applicable to the area of immigration? You might want to keep track of asylum seekers whose requests were denied and therefore the government is expecting them to leave the country, and maybe even the government has put out a deportation order. Would that not be the lowest risk and perhaps the most effective use, since in the other areas the results are mixed and you could run into the problem where, if you do have problems with the technology and you're dealing with high-risk offenders, there could be a risk to public safety if things don't work out?

Would you not agree that its best use is just for tracking movements and keeping track of people?

• (1610)

Dr. Larry Motiuk: Well, it is one use, tracking movements of people, but its more important use is being able to monitor conditions. Whether there are geographic restrictions or curfew violations, that is an important byproduct, where the offender, who is under community supervision on some form of conditional release, is actually compliant with those conditions, whether they're special conditions imposed by the Parole Board of Canada or—

Mr. Francis Scarpaleggia: Could I interrupt just for one more question, because I don't have much time?

The Chair: You don't. You have three seconds. Thank you, Mr. Scarpaleggia.

We'll now move back to Madam Morin.

[*Translation*]

You have five minutes.

Ms. Marie-Claude Morin (Saint-Hyacinthe—Bagot, NDP): Thank you.

I would like to thank Mr. Motiuk for being here today.

Here is my first question. You spoke a while ago about the accountability of offenders in your pilot project. We must not forget that all the offenders who participated in this pilot project were volunteers. Suppose we put electronic monitoring bracelets on every parolee, do you think those offenders would show as much accountability and as much cooperation as those who participated in the pilot project?

[English]

Dr. Larry Motiuk: I'll respond to that question in two parts. First is the notion that all offenders would be required, on conditional release, to be monitored this way. I do not believe so. I think specific criteria would be established for the selection of those who would benefit from augmented supervision in this regard, to ensure compliance with geographic restrictions, curfews, whereabouts, and whatnot. In that regard, I would answer the question that no, you wouldn't want to incorporate it for everybody.

[Translation]

Ms. Marie-Claude Morin: Thank you.

You also said that this method had been adopted in other countries. I understood from your remarks that it had been done in other countries before being done in Canada. It has also been said that governments have stated they did not save any money. So we know that it may not be the ideal way to save money. Nevertheless, are there other comparative studies involving Canada and other similar countries that have used electronic monitoring?

[English]

Dr. Larry Motiuk: My answer to that question is that it's always difficult to draw perfect comparisons between our jurisdiction and perhaps another jurisdiction in another country, in terms of what they're trying to achieve using various technologies.

Some jurisdictions have seen its utility for certain kinds of cases on which we have not yet tested it out. A classic example would be people under supervision who are convicted for sex offences, for example, who may be deemed to be a somewhat higher risk than others are for compliance with geographic restrictions or exclusion zones regarding their whereabouts.

We have not had experience with that, even in terms of our pilot. Nevertheless, for the most part, other jurisdictions have tested out the technology, because they're seeking solutions to some very common problems, such as rising costs associated with incarceration, finding alternatives to providing supervision, and preventing individuals from returning so soon. Maybe there are other options and they're exploring those.

If we look at where most jurisdictions are going, they're faced with the same challenges. These include increased costs, increased populations to manage, as well as complex offender populations to manage.

We add in features of geographic limitations. Some places do not have the same kinds of challenges, because they're fairly small, geographically. For us, it's a different matter.

There are some views regarding how we could probably provide better public protection to society by embracing all technologies and trying them out and seeing how they could improve our results.

• (1615)

The Chair: You have 30 seconds.

[Translation]

Ms. Marie-Claude Morin: I will be brief.

The results of the pilot project are not conclusive, so why go further? Will they be more conclusive if we go further?

[English]

Dr. Larry Motiuk: The pilot project had a number of objectives that provided us with some important information. The primary purpose of the electronic monitoring pilot project was to test the capacity to use that technology, first and foremost.

We needed to test whether or not we could have the capacity to receive information from these devices and to utilize that information to have a better understanding of the offender, in terms of how they were doing under supervision.

That objective was fully met by the piloting of that. Prior to that pilot, the only experience we had was in our area. In our first phase, we asked 15 staff to wear the bracelets in our national headquarters and out in the field. We tested them out that way. That was our experience in our first phase.

In our second phase, we did it with offenders who voluntarily participated and were already out under community supervision. Then we expanded that to those who were about to be released but had conditions of residency or curfew restrictions, and they did so voluntarily.

The Chair: Thank you very much.

We'll now move back to the government side.

Mr. Aspin, go ahead, please.

Mr. Jay Aspin (Nipissing—Timiskaming, CPC): Thanks, Mr. Chair.

Thank you, Dr. Motiuk, for appearing before the committee and sharing your expertise.

I'm interested in the broader perspective, and I'm just wondering if you think there are technologies that are more effective worldwide than those that are used in Canada.

Dr. Larry Motiuk: In terms of more effective technologies for monitoring compliance to conditions while under supervision in the community, I'm not aware of any more effective or better ones.

What I am aware of is that the field is evolving. There are better technologies that are looking at better battery life, dealing with signal drift, dealing with reducing tampering and removal and the alerts around that.

Whatever is out there, in terms of the best technology, I'm sure those who would look at moving forward with another pilot would use the best that's available out there.

I'm not acutely aware of anything that's better, but I think adding to our supervision tool kit is a worthwhile pursuit.

Mr. Jay Aspin: I wondered if you felt it would be beneficial to look at this technology in terms of a further corrective setting.

Dr. Larry Motiuk: Are you implying within correctional environments themselves, like institutions?

Mr. Jay Aspin: Yes.

Dr. Larry Motiuk: That has been explored in other areas, like open settings, custodial settings. We haven't looked at that as yet. If there's a potential for it, perhaps that will be examined in future.

I know technology is always looking at whether or not somebody is present where they are. Other jurisdictions are probably exploring that as well.

As yet I'm not aware of any better technology or the experiences with doing that inside institutional custodial settings.

• (1620)

Mr. Jay Aspin: Has that type of thing been suggested?

Dr. Larry Motiuk: Not necessarily. I haven't heard of it having been suggested. It's been envisioned or entertained or thought about as a potential to be explored in the future, but in terms of any operational consideration to do it at the moment, no.

The primary focus was in the area of greatest risk to the organization. Those are the people on conditional release who may pose a risk to society and are non-compliant with their conditions. That's what we wanted to be very clear about.

Those who are incapacitated behind our security settings, we know where they are.

Mr. Jay Aspin: I wondered as well if you are aware of any other pilot projects anywhere that may be taking place with regard to electronic monitoring.

Dr. Larry Motiuk: I don't have the full details on the only one I am somewhat aware of, but I understand the Federal Bureau of Prisons in the United States is looking into this technology, or using it and testing it as well. That's the only one I can say to the committee that I'm aware of at the moment.

Mr. Jay Aspin: Thank you.

Thank you, Chair.

The Chair: Thank you very much. We'll go to Mr. Sandhu, please, for five minutes.

Mr. Jasbir Sandhu (Surrey North, NDP): Thank you for being here today.

We've heard testimony that the pilot project had a lot of difficulties, a lot of issues with technology. Many things were going wrong with regard to wrong signals, disappearances, drifting. There were quite a few issues. One of the experts we had here was quoted in the paper as saying it was a disaster.

You've pointed this out already, and I would like to think that any savings from this pilot project are yet to be realized. We haven't done any sort of cost-benefit analysis on the benefits in pure dollars.

I'm a little troubled, and maybe you can answer this. As you pointed out, it appears that Correctional Service Canada wants to move forward to implement this Canada-wide, yet we don't know what it is going to cost and we don't know of any benefits. Being a member of Parliament, I think one of my primary responsibilities is to look after the tax dollars of Canadians, yet I haven't seen any evidence that indicates we are going to be saving money. You're asking us to throw money...yet that technology hasn't been proven or there hasn't been any clear benefit.

Could you comment?

Dr. Larry Motiuk: Again, I think the cost savings from using EM technology have yet to be realized. That won't be realized until you go beyond one pilot in terms of a broader application of the technology to the offender population and then conduct such an examination.

You had mentioned a number of technical challenges with the EM experience for us in the early days. That was part of the pilot, to test that capacity. We looked at that technology and learned much during our pilot experience.

If you look at whether or not the goal was to have a direct impact on recidivism, it was not intended to. We don't see EM as having a direct impact on recidivism per se, but more as a supervisory tool, in addition to our ability to integrate this with other things we do that we know work well for those who require it.

Again, it will be an issue of selection, matching the appropriate strategy for managing that offender in the community and providing what we are ultimately looking for, the reintegration or the public safety dividend, shall we say.

Mr. Jasbir Sandhu: A colleague asked this question earlier. I want you to be direct about this.

Government has a limited amount of money. I think it's a limited amount of money. We've seen studies that show that if you spend a dollar, there's x amount of return. If we spend a dollar on rehabilitation, there's x amount of money that benefits the government or benefits society. Can you quantify electronic monitoring and how much it would benefit us?

• (1625)

Dr. Larry Motiuk: We're not seeing electronic monitoring, per se, as an intervention or a rehabilitation program. We're seeing it as a supervision tool. How do we equip our parole officers or community supervision practitioners to monitor compliance with conditions, geographic restrictions, curfews, or a person's whereabouts? If we're investing in the ability to monitor compliance with the conditions imposed on offenders in a better way than we could before, then we are expecting to enhance our ability to transform the organization into one in which community and staff safety are by-products as well.

The Chair: Thank you very much.

Did you have a question, Ms. Hoepfner?

Ms. Candice Hoepfner: I have a comment and then a question.

In the testimony we've heard, we have certainly heard from people who have been pro electronic monitoring, but none of them have suggested that it's some magic bullet that will reduce recidivism or crime or help offenders be rehabilitated, unless it is coupled with good, strong programs. I think we've heard that overwhelmingly. Among those who have been critical of electronic monitoring, most of their emphasis has been on their belief that personal programming is vitally important when it comes to rehabilitation.

We have heard, even from those who have been critical, that electronic monitoring has been positive in the context you talked about, which is its use as a supervision tool to monitor individuals and actually see if they are compliant. If we step back and look at that testimony as a whole, it has actually been very consistent. I think what we're hearing over and over again is that this is not a magic bullet. It's not a one-size-fits-all solution. It's part of a package and part of something government can help with to do a better job in corrections.

This is my quick question, if I have one more moment. We heard that in Manitoba, electronic monitoring was used for young offenders who were involved in car thefts. I don't even know if it was an official pilot project. The challenge there was that they just ripped them off. They actually took off the monitors, and there appeared to be no consequence. I'm not sure if conditional release for young offenders is different than it is for adult offenders.

In the literature you looked at, was there any problem with adult offenders actually taking off their bracelets? Or did they not do it because of the consequence?

Dr. Larry Motiuk: All I would respond to in terms of offender management is that consequential learning is important, and if somebody chooses not to comply with an instruction—during the pilot they were called local instructions—to wear the bracelet, and they removed it, they would face the consequence of perhaps returning to custody. That's a very powerful tool in itself. Having meaningful consequences is important.

I'm not aware of the experience in Manitoba with the young offenders. I can imagine that if there were no consequences, it would be no small surprise that they would do so. If there is no consequence, they would continue to not comply.

We basically frame this around four basic risk management principles. The first one is good assessment analysis. Second is good communication. A really important risk management principle is monitoring of activities. Should something go awry, an intervention is required. It's the monitoring aspect we need to improve in our technology, across the board, within corrections.

The Chair: Mr. Moore, did you have a quick question as a visitor to our committee?

Hon. Rob Moore (Fundy Royal, CPC): Oh, no, I'm fine, Mr. Chair. Thank you. It's been interesting.

• (1630)

The Chair: All right. I think that pretty well takes up our time for today. We want to thank you for coming, and thanks to Correctional Services for being here pretty well every time we've requested them. Thank you very much.

We will suspend for one moment, and we'll get prepared for our next two guests, who will both be via teleconference. Thank you.

• (1630)

(Pause)

• (1635)

The Chair: Good afternoon. For our second hour today we are continuing our study of electronic monitoring. Our first witness in this hour, appearing by video conference from Toronto, is Ms. Barbara Jackman, an immigration refugee lawyer.

Are we coming in loud and clear for you there, Ms. Jackman?

Ms. Barbara Jackman (Immigration and Refugee Lawyer, As an Individual): Yes, you are, thank you. Can you hear me?

The Chair: You're very clear.

Ms. Jackman is an active contributor to continuing legal education programs for the Canadian Bar Association, the Law Society of Upper Canada, and academic and community conferences. She is well known to Canadians as a spokesperson on topics including the practice of immigration and refugee law, racial profiling, the role and practices of the Federal Court and Supreme Court of Canada, issues related to migration and Canadian national security, and domestic and international human rights norms and practices.

Hopefully this afternoon, we will also be joined by Mr. Lorne Waldman. I'll introduce him now, although my understanding is that he's not there yet. He is a Canadian immigration and human rights lawyer. Mr. Waldman has appeared frequently in Canadian courts at all levels, and he has argued many leading cases in immigration and refugee law. Canadians will recognize him as a frequent commentator on immigration and refugee issues in the media. In August 2007, Mr. Waldman was awarded the Louis St. Laurent Award by the Canadian Bar Association for his contribution to the legal profession.

Our committee looks forward to his testimony and also to Ms. Jackman's.

We will welcome your comments first, Ms. Jackman.

We know, just for the committee's benefit, that Mr. Waldman was going to be making his way from court. Hopefully, he will still be able to appear here.

Ms. Jackman, the floor is yours.

Ms. Barbara Jackman: I was told to make some opening statements, and then the committee members might have questions.

I'll first explain my experience with electronic monitoring. I have represented three clients who have been subjected to electronic monitoring in the immigration context. Two were cases involving national security, and in one the person was alleged to have been involved with a street gang a number of years previously and not at the current time. The men were put on electronic monitoring, along with other conditions.

In the two national security cases I was involved in with electronic monitoring, it has continued from the spring of 2007 to the present time, so they've been on GPS bracelets for about five years. The man who was subject to it in the immigration removal context for criminality was on it for two-plus years.

My experience has been such that I would never recommend it, except on a short-term, fixed basis for individuals where it was the only alternative to continue detention in the immigration context. I think it can be a useful tool in some instances, but there has to be a limited time for it. When people are on it indefinitely, it becomes a cruel measure, particularly when it's in conjunction with other measures, such as house arrest. In some ways I think it's more cruel than keeping people in detention, because they're out, and if they're under house arrest along with the GPS bracelet, they are detained within their own homes. Their jailers become their family and this faceless person who's watching them on a GPS screen somewhere.

It can be useful in some instances, but you really have to think about why it would be needed. For instance, with kids who are alleged to be involved with street gangs, where they're bailed out, or even in the immigration context, where they're facing removal, putting a GPS on them for a while rather than detaining them, and subjecting them to a curfew would be useful. You would know if they were home by 11 o'clock because of the GPS, if you have an 11 o'clock curfew on them. In that case there's a concern that they may consort with their colleagues and other kids in the evening and engage in crime. There's a reason for it to be used in a specific limited sense—not with house arrest, but with a curfew.

It can also be useful, not even in the criminal justice context but for people who are suffering from mental problems, where you want to make sure they are safe and secure. It's a way of knowing where they are. It can be useful if you don't want people like pedophiles to go to certain areas. You want to keep them out of parks and school areas. In that sense you can track by GPS whether they're staying away from those areas. If they go into an area, you would be able to tell.

For most cases I don't think it's needed, and there's a real danger that you lose its purpose by imposing it. That's what has happened in our cases. I didn't get to read all of the transcripts of people who have testified here, but I read something John Hutton said before this committee about the technical breaches becoming the issue. That's what has happened in our cases.

If you look at the history of reviews in the Federal Court on security certificate cases where they've been subjected to GPS, it's the breach of conditions that becomes more of an issue than whether or not there's a concern for national security having been infringed.

We have spent days in court wasting government money by arguing. In one case he wasn't supposed to go on a boat. He went on a paddle boat. Was that a breach or not? He may go into a building where the GPS doesn't work. You need to know that the GPS doesn't work in the subway or in malls. It really is not useful for many kinds of daily activities. But in those instances, are those breaches or not? You don't want to waste three or four days in court calling experts and talking about what a breach is instead of national security, which is the real reason why the GPS was imposed in the first place.

• (1640)

None of us thought it through. It started in the Harkat case. Then other lawyers and the court jumped on board and decided that, rather than have such men detained at great length, they might as well give the GPS and house arrest a try. Looking back on it now, I would never, ever, suggest this for those kinds of cases.

In one of my cases, the guy tried to commit suicide two times. It wasn't just the GPS; it was also the house arrest. If there's anything dysfunctional in the family, it exacerbates it. The person can't leave the house without a supervisor, and if he's not getting along with his supervisor, the person's stuck in the home. There are a lot of problems with it over a long period of time.

I also think it doesn't afford the protection it's supposed to. For instance, in our cases the concern was that they didn't want them communicating with bad people. Well, you don't know if they are or not on a GPS; you can't see that. All you know is where they are or where they're going, not who they're talking to. So it defeats the whole purpose of having it. It's expensive, and it's not worth it.

I think what has happened in our cases is that it has become a crutch. Because it's there and can be used, it's used whether or not it's needed. So we have clients with five years on a GPS. According to most of the things I've heard about GPS, it's generally been used in a very fixed period of time. But that's not true in our cases. So I wouldn't support its use except in very rare cases.

In the immigration context, there are other ways of controlling, like voice reporting. They can have people call daily if they want to make sure where they are. Personal reporting, that's used quite often. You could link people up with a bail program—although the bail program in Toronto, which works very effectively, is not allowed to take on certain kinds of cases. Unfortunately, those are the cases they should be taking on, like the gang cases and the security cases, because they are effective in supervising and ensuring with human contact that people comply.

I guess those are my comments.

• (1645)

The Chair: Thank you very much, Ms. Jackman.

Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair, and thank you, Ms. Jackman, for your testimony on this matter.

You said that you had three clients who had some experience with electronic monitoring. I'm curious about whether they voluntarily participated in some sort of pilot project or if this was mandated by either a court or Corrections Canada. This technology is not widely used, and I'm surprised that you have had three clients who were subject to it.

Ms. Barbara Jackman: In all three cases, when the GPS was originally imposed on them, they consented to it. In the two security cases, it was a Federal Court judge who imposed it. In the criminality immigration case, it was an immigration division member who imposed it, along with house arrest and other conditions.

The problem came up two years later. They wanted to get off the GPS and the court wouldn't let them. It's become a crutch that the courts use unnecessarily. I say this in light of the record of compliance during the past five years.

Mr. Brent Rathgeber: It was not part of a pilot project? This was an actual condition of their release?

Ms. Barbara Jackman: Yes. It would be good if someone did study them. They all suffered from serious psychiatric issues as a result of long-term use of the GPS.

Mr. Brent Rathgeber: Right. But you would agree with me that if the only way they're going to be released from detention, whether it's a remand centre or some sort of immigration detention centre, is to be subject to conditions and one of those conditions is an electronic monitoring device, their mental health is advanced by releasing them from that detention centre, in keeping with the conditions that either the Immigration Appeal Board or the court deems appropriate.

Ms. Barbara Jackman: No, I don't think so. My experience has been that...

Sorry, go ahead.

Mr. Brent Rathgeber: Are you suggesting that their mental health would have been advanced if they had been detained?

Ms. Barbara Jackman: I think it would be the same. They were clearly depressed in jail. But it didn't get better when they got out, because of all the problems that went along with the conditions of release. You can't make your wife and your kids your jailer. You need to go pick up something at Home Hardware or Home Depot and you can't go out without your wife. Their conditions are not on their own; they're part of a package, and that package is very harmful to a person's mental health. Usually, they don't just put the GPS on; they put it on with house arrest.

Mr. Brent Rathgeber: Assuming that is true, that you can't make your family and your spouse your jailer—and I guess we'll have to have that debate some other time—why would anybody consent to be released if one of the conditions was the GPS? It appears to me that the GPS wasn't the problem. The problem was they didn't want to be jailed with their spouse and their family. That's what made their release problematic. It wasn't the device that made it problematic; it was who was jailing them.

Ms. Barbara Jackman: It wasn't the device itself, but along with it you had to call every time you went out, every time you came back. You had to tell them what your itinerary was, exactly where you were going. They have a monitoring unit that follows them around. So it's not just the GPS; it's the intrusion into their personal lives. The thing is that they did agree to those conditions. What I'm saying now is if I had known how harmful the package was over the long term—six months, fine, not five years—I would have recommended to my clients to never agree to it.

Mr. Brent Rathgeber: I've never done immigration law, so you'll have to help me out here.

Are these cases not periodically reviewed? I know it takes a long time for a refugee appeal to be finally determined, but are the conditions of release not periodically reviewed? If the release is, for whatever reason, unconscionable or uncompliant, can't the individual consent to be retained?

• (1650)

Ms. Barbara Jackman: Detention, once you're out, is not an answer either. I'm not saying that release on conditions is better than detention—it's worse than detention. They're both bad in the long term when you're not alleged to have engaged in criminality. There may be concerns about these people, but in the criminal sense, they've served their sentence. In the immigration sense, they're facing potential deportation; that's the issue, and that's why they're subject to controls. But I don't think the answer is to go back to jail.

Yes, we do have reviews. We go back to court and we try to get rid of the GPS. So far we haven't been successful. The court has maintained it because it was imposed in the first instance.

Mr. Brent Rathgeber: Do you know on a national basis, because I don't, how many removal orders are issued in Canada every year by the Federal Court or by the Immigration Appeal Board?

Ms. Barbara Jackman: No, but I do know that GPS is used for five or six people in total across the country. It's not been used. It's only recently started being used.

Mr. Brent Rathgeber: I understand that. My question is, do you have any sense—and I guess I could find this—of what percentage of removal orders are voluntarily complied with?

Ms. Barbara Jackman: I have no idea, sorry. I don't know the statistics. You'd have to find out.

I do know that they've gone to voice reporting, where they take the person's voice. I think if you were to investigate that, that's worked out quite successfully in terms of keeping track of people.

Mr. Brent Rathgeber: That would only keep track of them up until the day of their removal order. Presumably, if they were not going to comply with the removal order, they wouldn't phone in the next day, and therein lies the problem. It's under that situation—

Ms. Barbara Jackman: Except what they've been doing lately is actually detaining people for removal before removal is arranged.

Mr. Brent Rathgeber: I understand that, but the problem here, or at least my suggestion is, that if a person's only choices are detention or being subject to conditional release and part of that release is monitoring, I think most people would choose liberty and therefore would choose a monitoring device—an infringement of liberty, I'll grant you, but less so than detention. I certainly am suggesting that is more effective if the person is likely to disobey a removal order.

I suspect that's my time, Mr. Chair.

The Chair: Yes, your time is up.

Mr. Brent Rathgeber: Thank you.

Thank you, witness.

The Chair: We will now go back to the opposition. We'll go to Mr. Garrison, for seven minutes.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you, Ms. Jackman, for being here today.

I think your testimony is quite valuable in that you're the first person I've heard who's had this very direct experience with clients under these kinds of conditions.

I'd like to go back to what you said about there being no study of the experience of your clients. You just mentioned that in passing. Was there no study done by anyone, the courts or anyone in government, about the impacts of these conditions?

Ms. Barbara Jackman: In individual cases, we had psychiatric assessments done on the clients at various stages, both when they were detained and when they were out of detention. What I'm saying is not that jail is better than release; I'm just saying that when you get the package of restrictive conditions, one of which is GPS, the psychiatric issues don't go away.

I want to say one other thing. I think one reason why it's so profound is that whether or not your family is your jailer, they're impacted by what's happening. When officers show up to check your GPS, your children see them coming into the house with guns. And they come quite often. So those are the kinds of things.... It's not just you anymore in jail; it's you, your wife, and your children who are affected by these kinds of conditions. Maybe that's one of the reasons it's so hard on them, because of their concern about what it's doing to their children.

Mr. Randall Garrison: So would that be the basis for your comment that you felt this was even more cruel than detention?

Ms. Barbara Jackman: In a different way I do think it is cruel on a long-term basis. I'm not saying if you put it on someone for six months and you don't have it coupled with house arrest, but you want to just make sure they keep a curfew or something. It wouldn't be the same thing. It's when it's coupled with house arrest and it affects the family. I think it can be cruel if it extends over a long period of time.

Mr. Randall Garrison: As part of your testimony, you said it becomes like a crutch or a default, where the court has simply continued that condition without any real relationship to what it's accomplishing. Is that a fair summation of what you're saying?

Ms. Barbara Jackman: I think that's exactly what's happened in our cases. Once it's on, they're afraid to let it go because of the optics of it. So whether or not it's needed is something different. I have only one of those security clients in the criminality cases. He left Canada and is being sponsored back.

● (1655)

Mr. Randall Garrison: I know we have limited time. I just want to turn to the broader use of electronic monitoring for refugee claimants, which seems to be being considered here. Could you make any comment about Canada's international obligations under the refugee conventions and whether the use of this kind of monitoring of refugee claimants would be consistent with our international obligations?

Ms. Barbara Jackman: Until a refugee is recognized as a refugee, they're a refugee presumptively. Someone has to make a decision. But we're supposed to comply with the convention on the status of refugees, and that means you don't penalize people for having sought protection in Canada. Maybe you cannot call the GPS a sanction against people, but in practical terms it is a sanction, and I think it's in breach of our international obligations.

I can understand it if you're concerned about criminality or security, if it's on a fixed-time basis to see that the person is going to comply. Someone raised the concern about removal. Put it on when you're waiting for the PRRA answer so that they're on it for a very short time, before removal, not for the whole 5, 6, 7, 8, 10 years that they're in Canada. That's not fair, and not only that, it's costly; it's a waste of money.

Mr. Randall Garrison: Again, I will just pick up on the costly part. Do you see the use of this electronic monitoring as a misallocation of resources?

Ms. Barbara Jackman: I completely see this.

Do you know what we have with the security certificate cases? You should ask the CBSA about how many staff they have to do the GPS monitoring. They had two officers at a time, on rotation, on duty all the time to monitor three cases—three cases. I don't know how many people they hired to work in that unit. That unit is still going on, and the unit's whole purpose is the GPS monitoring and making sure that conditions are complied with. They not only have the GPS; the person had to call and say where they were going in order for the officers to follow them around, when they could watch them on the GPS map. It becomes an industry in and of itself within the government. They're making work for each other in that context.

I bet you if you asked for a costing, it would be millions. They have spent millions on the GPS monitoring. For what effect? These guys aren't running around at night with gangs breaking into buildings. These guys are older men with families.

Mr. Randall Garrison: In the study we're doing at this committee we've combined the two: the use in criminal cases with immigration and refugee cases. What you're saying to us now is that you see some arguments where it might be useful on the criminal side, but you do not see any arguments for the immigration and refugee side, except if it also involves criminality?

Ms. Barbara Jackman: I can accept that when you're talking especially about young people—it's the same in the criminal concern—who are going around robbing buildings and you want them to stay at home, it might be useful if there's a curfew on them, to have a GPS, but again, for a very fixed period of time, not long. If it's over a long period of time, it becomes oppressive.

Mr. Randall Garrison: I have 40 seconds left.

Can I ask you to go back to some of the problems that were created for family members and talk a bit more about the effect on families?

Ms. Barbara Jackman: As I said, it was coupled with the rest of it. The GPS is on; officers are showing up at the house.

In one case, the officers came to the house. They found a toy gun that one of the young boys had, and that became a whole issue in the hearing. The kid was feeling guilty that he got his dad in trouble because he had a toy gun. It's that kind of thing. The reason they were in the house was because of the means of control over the dad, to check things. And then they find the toy gun.

There are problems.

Mr. Randall Garrison: Thank you very much, Ms. Jackman.

The Chair: That is a problem.

Thank you very much, Ms. Jackman.

We'll now move to Mr. Moore, please.

Hon. Rob Moore: Thank you, Mr. Chair.

Thank you, Ms. Jackman, for your testimony.

With the three individuals you were representing, other than the technical breaches that you mentioned can occur with the monitoring, were there any other serious breaches of their conditions—breaches you would consider serious—over the term of their monitoring?

• (1700)

Ms. Barbara Jackman: None whatsoever.

In fact in the case I'm still involved in, the security certificate case, the government has conceded that.

Hon. Rob Moore: I'm trying to reconcile something. You mentioned that in some cases this can be crueler than detention, yet our previous witness from Correctional Service Canada said the only way the electronic monitoring works in some conditions is that the consequence of a breach of one or more of the conditions of the electronic monitoring is a return to detention. The threat of a return to detention is what these individuals are fearing and why they are

maintaining the conditions of their electronic monitoring. Can you reconcile that for me? It seems as if certainly for your clients and the individuals that Correctional Service Canada was following in its pilot project, the threat of detention was there and they chose electronic monitoring over detention. Can you reconcile that?

Ms. Barbara Jackman: I think most people would choose it over detention, but it depends on what's with it. If you put a GPS on a kid and say we'll let you out as long as you're home by 11 o'clock, and there's a non-association clause or something, the GPS is going to tell you that the person is home by 11 o'clock, not who they're communicating with. So it has limited value, but in that case it may not be oppressive. However, even then, I think it should be on a short period of time, and in that case the people don't call every time they go in or out of their house to let someone know where they're going.

In our cases it was coupled with other conditions, so they were under house arrest, they could only go out with a supervisor, they had to call CBSA every time they were going, and initially they had to get approval from CBSA to go out. So there was constant contact with government officials, and that interfered with family life. For example, they wanted to go grocery shopping and CBSA said not now; they wouldn't tell them this, but it was because someone reported sick or something so they couldn't go shopping. The kids saw it as penalization of them.

So it's more than one thing.

Hon. Rob Moore: Those sound like a lot of other conditions that are extraneous perhaps to the discussion we're having on electronic monitoring. No one said being subject to a removal order or being someone who is out on conditional release would be a lot of fun. Obviously it's pretty serious consequences. Detention is one of the options, but it seems pretty clear to me that this allows people to be in society with their family, yet closely monitored. In the cases the previous witness cited, as well as the case of your three clients, there were no major breaches. So I would look at those as successes.

Now you mentioned there are instances where you see the use of the electronic monitoring as being quite useful, and you used as an example to keep pedophiles from parks or places where they're not supposed to be. Can you elaborate on why you see that as a useful use of this tool?

Ms. Barbara Jackman: It's because in those cases there are specific geographic areas that you can mark on a map, and then you can track the person. If they go near those areas, you know they're in breach. In that kind of instance, there's a purpose to it. I think with kids who are hanging around with gang members at night, curfews can be useful, and that's a way of ensuring the curfew is met.

I'll give you an example. The CBSA started voice reporting. So instead of people having to report weekly or monthly to the CBSA office in person, they will do voice reporting. What the CBSA has done, because voice reporting is simple, is they're doing it to everybody. Everybody is getting called in, even though no immigration judge has imposed that as a condition on them, because they can do it. What will happen with GPS—because this has happened every other time—is that they will end up using it for people where it's not needed. I think you may make a case for needing it with kids who are involved in crime, or with people who are mentally ill, or with pedophiles, but you can't make a case for it's being needed with most people. Most of them are law abiding, they'll comply with conditions, and they have no criminal record, so why are you putting it on them? I don't understand.

• (1705)

Hon. Rob Moore: Thanks, Ms. Jackman.

I don't think the argument is to make it apply to everyone, but we are looking at instances where this would be appropriate.

If someone doesn't call in and they decide to avoid their next mandatory appointment, how do we know where they are without electronic monitoring?

Ms. Barbara Jackman: Officers tend to find people quite quickly—a lot of them.

You'd have to look at the stats. For sure there are people who have gone underground, and that may be a problem. In those kinds of cases, if you think this might be the kind of person to go underground, then a GPS might be useful in that instance, but not across the board. As I said, it should be for a fixed time.

Say someone comes in and makes a refugee claim. It's a family. You know the country they're coming from has really bad conditions. You're concerned at the end of the day that they might be afraid to go back, even if they are found not to be refugees. If you think a GPS would be useful, put it on them at the end of the process when they have to make the pre-removal risk assessment application, not for the whole five years they're in Canada. Limit it to the time that you think it's needed.

Again, it should be justified. It should be before an immigration judge, not a CBSA officer arbitrarily deciding to impose it. It's too intrusive.

The Chair: Thank you very much, Ms. Jackman.

We'll now swing back to the opposition. Mr. Scarpaleggia, please, for seven minutes.

Mr. Francis Scarpaleggia: Thank you, Ms. Jackman.

Could you be a little more precise when you say a Canada Border Services Agency officer can arbitrarily slap a GPS on somebody? I was a little surprised to hear that. I thought it would be a higher-up decision.

Ms. Barbara Jackman: I was saying it should be a higher-up decision.

The thing that concerns me right now is that the CBSA officers are imposing voice reporting on people without going before an immigration judge and asking if it's necessary. They're calling

everybody and anybody, without any basis for it. They're just calling everyone.

That's what concerns me. That's one of the concerns about the GPS.

If it's going to be there as a mechanism, it has to be through the immigration division, through a judge making a decision.

Mr. Francis Scarpaleggia: You represent Mr. Harkat. Is that correct?

Ms. Barbara Jackman: No, I represent Mr. Jaballah. I did in the past represent Mr. Mahjoub and Mr. Almrei.

Mr. Francis Scarpaleggia: You have a couple of clients who are on security certificates, and on a GPS as part of their conditions for release from detention. Is that correct?

Ms. Barbara Jackman: Yes. At the moment I have one client who is still on a GPS.

Mr. Francis Scarpaleggia: He's been on it for five years or so?

Ms. Barbara Jackman: Yes, come April he will have been on it for five years. He's married and has six children.

Mr. Francis Scarpaleggia: He's on a security certificate, which means the government authorities feel he is a risky person, someone who needs to be kept track of.

You feel he should have his GPS taken off and replaced with nothing; maybe he would be required to report every now and then. Am I correct? Is that your position?

Ms. Barbara Jackman: No, I'm not saying that. There's a significant amount of money tied up by sureties in his case, both conditional and cash. Sureties are the traditional way of ensuring that people comply with conditions. For instance, if your wife puts up \$10,000 and you know she doesn't have \$10,000 to lose, the premise is the person is going to comply so as to not cause the wife to lose the money.

That's why we have sureties, and there are other means of making sure that people comply.

In my client's case the chief concern was that he could be a communications relay with others who are alleged to be involved with Muslim or Islamic extremists. The key concern is communication. The GPS doesn't address that need. I mean, how do they know who he's communicating with?

What they have is a phone intercept and a mail intercept. That's much more effective than the GPS in terms of knowing who he talks to.

• (1710)

Mr. Francis Scarpaleggia: So they do have a phone intercept and a mail intercept.

Ms. Barbara Jackman: Yes, they do right now.

Mr. Francis Scarpaleggia: Do you keep going back to court every so often to ask that the conditions be changed, that the GPS be taken off for the reasons you've given us?

How does that process work? Are there periodic reviews?

Ms. Barbara Jackman: There are periodic reviews every six months after the last decision, so it's usually about once a year. One of the judges, Justice Dawson, characterized it as a review that, with the person complying, would be cascading towards more fuller liberty than they started out with. It hasn't worked out that way. The conditions have been relaxed over time, but they are extremely restrictive still.

Mr. Francis Scarpaleggia: You're familiar, obviously, with Bill C-4, which has now been incorporated into Bill C-31, the new immigration bill. Under Bill C-4, one could envisage groups of refugees being in detention, perhaps for as much as a year, as I understand it. Would you see that maybe in those cases where, for example, you have a family that's in detention, short-term electronic monitoring would be a way to keep them out of detention? Do you think the government might go in that direction?

It has been raised in the media that instead of keeping people in detention they could maybe be monitored for a while. Would you be in favour of that? Would you see that as cruel or would you see that as better than being in detention for up to a year?

Ms. Barbara Jackman: You're being asked...it's between apples and oranges. They're both bad. As for the year detention, we worked for years, before we went up to the Supreme Court of Canada in Charkaoui, to get rid of the arbitrary detention. We won in front of the Supreme Court of Canada. They said you cannot have a detention without a review. There has to be a review of the need to detain.

So what does the government do? It now proposes a new law that puts people in detention without a review of the need to detain. It's like a slap in the face to the Supreme Court of Canada in terms of its judgment in Charkaoui. You should look at that judgment.

Asking me if it is better to have a GPS than to keep people in jail for a year...if they're not needed in either instance, there's no way I'm going to say yes to that. Unless it's justified that there is a need for a GPS or a need for detention, I don't support either. It's wrong.

Mr. Francis Scarpaleggia: I got it.

This bill, in your opinion, will not meet the charter test. It's just a matter of time before that provision is struck down. Is that correct?

Ms. Barbara Jackman: Based on Charkaoui, I don't think any of this meets the test, no.

The Chair: We'll try to keep it to the study here.

Which bill were you talking about, the immigration bill?

Mr. Francis Scarpaleggia: How much time do I have left?

The Chair: You have 30 seconds.

Mr. Francis Scarpaleggia: I'll give up my 30 seconds as punishment for straying off topic.

The Chair: Twice in one day. All right. Thank you.

We'll go back to Monsieur Chicoine.

[Translation]

You have five minutes.

Mr. Sylvain Chicoine: Thank you, Mr. Chair. I will share my time with Mr. Sandhu. I will only ask one or two questions.

I just want to come back to the family problems caused by electronic monitoring. What would be the maximum duration of the electronic monitoring that could be imposed on someone who was subject to a security certificate? A while ago, you mentioned six months. But this period might not be enough, if we want to start judicial proceedings, to get rid of that person. Do you have another option apart from electronic monitoring?

[English]

Ms. Barbara Jackman: Yes. I think if the person's in compliance for the first six months, there should be an alternative to a GPS and to house arrest, if they're going to put house arrest. I don't think those are appropriate means for most cases. I think you'd look to voice reporting, those kinds of things. Voice reporting is better than personal reporting. I'm not saying you shouldn't have means of control; you should if there's a concern, but it doesn't have to be GPS in all cases.

The problem with a GPS, I guess like any electronic machine, is that they seem to break down a lot, so it does bring CBSA officers into the person's home or other technicians into their home. It's a constant presence. But in our cases I can't just say it's the GPS; it's also the other factors, like the interception of the mail. They show up to bring the mail in person every day. So there's a constant presence, a pretty regular presence, of state officials and border police in their home. That has an impact.

•(1715)

[Translation]

Mr. Sylvain Chicoine: It seems that the GPS is added on for nothing, because individuals subject to a security certificate are under constant surveillance in any case; is that not right?

[English]

Ms. Barbara Jackman: These people are being followed, but they're not. That's the thing that's so silly about it, as in the case of Hassan Almrei. He was on the GPS. He didn't have a family to go out with, so he was stuck at home. He was allowed to go pray if he took a taxi, but otherwise, for the most part, he was really under house arrest with the GPS.

In his case, he won. He was found not to be a security threat, and the next day he was completely free. Go figure. Why is he all of a sudden one day not a threat and the day before he has to have a GPS and house arrest? The conditions were too strict.

[Translation]

Mr. Sylvain Chicoine: Thank you.

[English]

The Chair: Go ahead, Mr. Sandhu. You have two minutes.

Mr. Jasbir Sandhu: You've pointed out that the electronic monitoring may be useful after a removal order is in place. Is that correct?

Ms. Barbara Jackman: I want to be very careful about what I say. I am not advocating it for everybody. Most people comply with removal orders, to my knowledge. I have clients who lose their cases, and they get on the plane and leave Canada voluntarily.

But if there are cases where there's a real concern that the person will go underground, at the end of the process they're called in, they're given a pre-removal risk assessment invitation, and they're invited to make that application. That's towards the end of the process. At that point they don't know if they'll be accepted on the PRRA, so most people—I would think pretty well all of them—go in to get the package in order to make the application.

If there's a concern with a person going underground, that might be a logical time to bring them before someone to see if the need for a GPS is justified, and put it on them then. It would be a lot less expensive for the government than wasting millions of dollars on people who don't need GPSs.

Mr. Jasbir Sandhu: We've heard these GPS devices are very easy to take off. So if somebody wants to go underground, all they have to do is cut that GPS monitor off. Would there be any use for this in that regard?

Ms. Barbara Jackman: My clients have never tried to cut them off. I do know that they're uncomfortable to wear on a long-term basis. One of my clients kept getting a rash from it. He had to wear socks, and they had to change it to the other foot, so there are problems with them. I don't know how easy they are to cut, because no one's ever tried it that I know of.

The Chair: Thank you very much.

We'll go back to the government, to Ms. Hoepfner, and then Ms. Young.

Ms. Candice Hoepfner: Thank you very much, and thank you, Ms. Jackman.

Mr. Francis Scarpaleggia: I believe the witness is trying to finish her thought.

Ms. Barbara Jackman: I was just going to say that if they can cut it off easily, they can leave it in the house, and no one's going to know they left.

Ms. Candice Hoepfner: Thank you, Ms. Jackman.

I'm listening with interest to your testimony. I would say that some of the other witnesses we've heard concerning offenders would contradict and disagree with your testimony that, for example, pedophiles would be good candidates for electronic monitoring—and for a variety of reasons, including that they don't believe it actually helps rehabilitate, going all the way to it being a huge risk for any correctional system to take to let a pedophile out, hoping that they would stay away from places where they could reoffend.

Also, I'm quite surprised by your suggestion that people with mental illness would benefit from having electronic monitoring. One thing that also concerns me—and I understand that when someone

has conditions placed on them, it would be an inconvenience.... But there are reasons for conditions being placed on individuals, whether it's that they have a removal order because they are in Canada illegally or that they're in Canada but have broken the law. Those are consequences certainly that we recognize are important.

We want people who come to Canada illegally and who have a removal order to leave the country. I'm sure you're aware that there are right now 44,000 warrants out for arrest of people who are in Canada illegally and are lost in the system—we don't know where they are.

My challenge with what you're saying—and I'm trying to reconcile it—is that if we have individuals who are in Canada illegally or who have come to Canada as refugees or for other reasons and have been asked to leave again.... They're here illegally; they're not Canadian citizens who have broken the law and are trying to rehabilitate. In fact, what we're trying to do is make sure they leave the country as they have been ordered to.

How else, if they don't have any kinds of conditions—you don't want them to have house arrest, because that's inconvenient for them and is bothersome—and they're not supposed to have electronic monitoring...? We have 44,000 of them in Canada for whom there are warrants. How do you suggest...? And you don't want to incarcerate them. You're upset because there's a suggestion that they possibly be detained, if they come in large groups and the minister deems that we need more time to assess them. That was something you were quite adamant about with Mr. Scarpaleggia.

So they shouldn't be detained; they shouldn't have house arrest; you don't like the voice monitoring, because you mentioned that you were upset that it was used. What do you suggest we do so that we do not have 44,000 people in Canada illegally and lost in the country?

• (1720)

Ms. Barbara Jackman: Let me try to answer your concerns this way.

First of all, we're not a police state, I'm sorry, and I don't want to become one.

Secondly, I'm not saying that you don't have controls on immigrants. You can have controls on persons who have no status in Canada. I'm just saying that they have to be justified. You just don't impose them on everybody because you think there are 44,000 people here and therefore we should put them on 300,000. That's not how the law works. There's supposed to be a determination on a case-by-case basis.

Ms. Candice Hoepfner: We don't "think" there are 44,000; there are 44,000 warrants right now in Canada for people who are here illegally. We didn't make that number up.

Ms. Barbara Jackman: I'm not saying you made that number up. What I'm saying is that because some people have breached, you don't assume that everybody else has to have the same conditions.

Let me just say one thing. I don't know—I'm not an expert—about pedophiles. I just suggested that. I do know that GPS devices are being used with Alzheimer's patients because they wander. It's a way for staff to know that they've left the place they're supposed to be at, and they're useful in that context. So excuse me; it does work in some contexts.

With respect to people who are not without status in Canada, there are sureties. The same as for bail in criminal trials, you have friends and family put up money so that you won't disappear and cause them to lose that money.

There's voice reporting—and please don't distort what I said.... I did not say no voice reporting; I said that it doesn't have to be imposed on everybody just because you have it. You have to tailor whatever conditions there are to the individual person, and the best way to do that is in front of an immigration division member who will assess the need. Voice reporting may very well be an important tool, and it's certainly being used.

You can attach people to the bail program, in which they do active supervision and see them regularly. There are many mechanisms in place.

And GPS is not a mantra to protect Canada from everybody. It's not the kind of thing you have to put on everybody; you have to look at it on a case-by-case basis. I don't like it, because I've seen what it has done to my clients.

The Chair: Thank you very much, Ms. Jackman.

We'll now go back to Mr. Sandhu, please, for five minutes.

Mr. Jasbir Sandhu: I'm going to share my time with Mr. Garrison.

The Chair: All right.

Mr. Jasbir Sandhu: I'm going to go back to my....

Actually, would you like to just finish your...? I know you were interrupted a few times. Would you like to respond to Ms. Hoepfner's questions from earlier on?

Ms. Barbara Jackman: No, it's fine.

Mr. Jasbir Sandhu: Okay. I'm going to go back to my original question, which I asked you last time.

When a removal order is in place, if the person doesn't want to go back, they can simply cut off GPS or electronic monitoring, whatever they have on them. They could still disappear into the wilderness, anywhere in Canada. Is that correct?

• (1725)

Ms. Barbara Jackman: I don't know enough about how you can get out of the GPS. None of my clients has tried to do that, so I don't know how easy it is to cut it. I would assume that if you can cut the bracelet off, you'd just leave it in the house. Nobody would know you have left. The reason they know you have left is that the GPS starts to act when you go away from the docking station. If you take it off and leave it by the docking station, they won't know.

Mr. Jasbir Sandhu: You've mentioned that you've had to go to court a number of times and have wasted court resources because there were breaches of conditions involving your client.

Could you talk about some of the difficulties your clients have had with GPS or electronic monitoring with respect to the technology itself? Have there been breaches concerning which you've had to explain to CBSA officers about a GPS malfunction or in which the technology wasn't working?

Ms. Barbara Jackman: If my client came to see me, the GPS didn't work. CBSA would either have to know that he or she was coming to see me—so they would know it wasn't going to work; otherwise they would be concerned....

The GPS has put my client 30 kilometres away from where he actually was, because it's not always accurate or effective. If he goes into a mall to go shopping with his family, the GPS doesn't work. There have been times when it is sounding an alarm when there's no reason to sound an alarm. So yes, there are ongoing problems with the GPS, such that CBSA officers are engaged with the client on a regular basis about it.

Mr. Jasbir Sandhu: I'm going to pass it on to Mr. Garrison.

The Chair: Mr. Garrison.

Mr. Randall Garrison: Thank you.

We're nearing the end of our time, so I'd like to go back to the statements you've made about these being an additional, unnecessary condition. Would you say that we already have adequate mechanisms without adding GPS to the other conditions?

Ms. Barbara Jackman: Let me get this straight: we don't need to add anything. They can put GPS on people now. My client, the one who was being deported for criminality, was put on a GPS bracelet by an immigration division member. My security certificate cases were put on GPS by a Federal Court judge.

They have a broad power to impose conditions on a person. Conditions can include GPS; they can include house arrest. You don't need to add anything specific; it's already there. And right now, it's used sparingly. They only do it in really serious cases.

Mr. Randall Garrison: Would you say that without the GPS, the other tools we have available would be sufficient?

Ms. Barbara Jackman: The other tools have worked for as long as I've been practising law, and I'm sure before I started practising law more than 30 years ago now. They have been for the most part pretty effective.

In the few cases in which GPS has been imposed.... It's only a few cases; they haven't felt the need to do it in other cases. The CBSA haven't even been asking for it.

Mr. Randall Garrison: So you're saying that in cases longer than six months, you don't see that there's any value added, but that in fact there are some detrimental impacts.

Ms. Barbara Jackman: Yes. I think if you want to try to make sure the person will comply, put it on for six months and then evaluate the case and take it off at that point. You don't leave it on for five years.

Mr. Randall Garrison: Thank you.

The Chair: Thank you very much.

We have just two minutes left. I know Ms. Young has a question that she was trying to get out much earlier.

Ms. Young, if you wouldn't mind, ask your question quickly.

Ms. Wai Young (Vancouver South, CPC): It will be very quickly.

Thank you for appearing before us, Ms. Jackman. You've made a whole slew of very wide-ranging allegations and linkages that I think are interesting but unsubstantiated.

I would like to ask you—given that you're a refugee and immigration lawyer, perhaps we'll focus on your area of expertise—what the difference is between a refugee and a refugee claimant.

Ms. Barbara Jackman: Under the convention, a person who is in need of protection can apply to a state to be recognized as a refugee. Until people are recognized as refugees, they can't be sent back to their home countries. They are treated as refugees until a determination is made. When a determination is made that they are refugees, it's a declaration of a status they already have. That's how it's looked at in international law.

We don't treat refugee claimants as criminals, and we never have.

• (1730)

Ms. Wai Young: Right. However, you did say that you had some people under certificates, etc., and that you had maybe three people who are under electronic monitoring. Is that correct?

Ms. Barbara Jackman: Yes, two are security certificate cases and one is a criminality case.

Ms. Wai Young: In other words, there are claimants here who have some criminal—

The Chair: They aren't refugee claimants. They're high-risk.

Ms. Wai Young: Okay.

Ms. Barbara Jackman: Let me make it clear. These guys were already found to be at risk. These people were refugees. They were not claimants.

Ms. Wai Young: If that's the case, and it came down to a situation of having to choose between detention, as we said earlier, and electronic monitoring, and given that you said that the electronic monitoring is invasive and they have to report to government officials, etc., wouldn't you say that if they were in detention they would also have to be interfacing with government officials?

Ms. Barbara Jackman: Before my clients were put on GPS, I would have said that yes, it's preferable. The Supreme Court of Canada even said that in the Charkaoui case.

Having gone through five years with the problems my clients have experienced because of the conditions—not just GPS, but the other house arrest conditions and things like that. I wouldn't say it's any better. It's not. I'm sorry. You might think it's better, but I don't.

The Chair: Thank you very much.

Ms. Jackman, our hour is up. We appreciate your testimony and your answers to the questions.

We have bells ringing here, which means that our committee must get to the House for a vote.

Thank you very much for your input. If you would like to submit other answers to some of the questions that maybe you feel you could have answered in a different way, or if there is something you could add, please feel free to contact our clerk with those answers, and we'll see that members get them. Thank you very much.

Ladies and gentlemen, the meeting is adjourned.

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