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Chair

The Honourable Paul DeVillers

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

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● (0905)

[*Translation*]

The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)): Order, please. Welcome to this meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

Mr. Marceau gave notice of a motion and was kind enough, at our last meeting, to agree to our discussing it today. It's our first item on the agenda.

Mr. Marceau.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): You're very kind, Mr. Chairman.

Following discussion with Liberal members and a review of the Standing Orders of the House of Commons, I have circulated an amended version of the motion, because we cannot summon a minister or a member of Parliament to appear before the committee. You have the new motion before you.

So we invite the minister to appear, but we're still summoning the Commissioner of the RCMP and the Commanding Officer, C Division, to appear before this committee to explain why they disobeyed the committee's recommendation to stay the closure of nine RCMP detachments in Quebec.

The changes have been made. In the English version, English being very much a second language for me, the words "*ils n'ont pas suivi la recommandation*" are translated by:

[*English*]

"why they disobeyed the Committee'srecommendation".

[*Translation*]

However, I'm told that we can't...

[*English*]

We could not disobey the recommendation.

[*Translation*]

So the following wording was suggested to me:

[*English*]

"why they ignored the Committee's recommendation".

[*Translation*]

That's right. This amendment applies only to the English version; the French version remains unchanged. The English version changes in order to be more precise, and that's fine with me. The reason is quite straightforward: this committee recommended against closing the nine RCMP detachments in Quebec; you were all there. However, the RCMP went ahead with the closure, in spite of the clear will expressed by this committee, representing all four parties in the House of Commons. That's why I'd like the minister and the RCMP to come here and explain to us why the committee's recommendation wasn't followed, especially at a time when the government is priding itself on its desire to combat the democratic deficit.

As a committee of elected officials, we made a recommandation. They completely ignored it, they completely disregarded it, they didn't give a damn about it. In my opinion, that's irresponsible and unacceptable. We members of Parliament have to stand up and say it's not acceptable. There has to be some reaction to this, which in my view is quite a clear sign of disregard for the House of Commons.

[*English*]

The Chair: Merci, Monsieur Marceau.

For discussion, we'll hear from Mr. Cullen, and then Mr. Breitkreuz.

[*Translation*]

Hon. Roy Cullen (Etobicoke North, Lib.): Mr. Chairman, could the clerk read the final motion in English, so there's no confusion?

The Chair: Yes.

Madam Clerk.

[*English*]

The Clerk of the Committee: The motion isThat the Committee invite the Minister of Public Safety and Emergency Preparedness and summon the Commissioner of the RCMP and the Commanding Officer, C Division, to appear before it to explain why they ignored the Committee's recommendation to stay the closure of nine RCMP detachments in Quebec.

The Chair: Thank you.

On discussion, then....

[*Translation*]

Hon. Roy Cullen: Thank you very much.

Mr. Chairman, colleagues, the minister recognizes that the RCMP is in the best position to decide how to use police resources to carry out its mandate. The minister supports the approach taken by the RCMP; it is the most effective way for the RCMP to discharge its responsibilities with respect to organized crime and national security. It would not be appropriate for the committee to usurp the legitimate role of the RCMP Commissioner in deciding how to use the organization's federal police resources to carry out its mandate.

If parliamentarians assume the authority to give the RCMP Commissioner instructions on how to deploy his members to better fight crime, they will also have to agree to be held responsible for the results, i.e., for crimes that might have been avoided or dealt with differently had the professional advice of the police force in question been followed.

Mr. Chairman, the Royal Canadian Mounted Police Act, as enacted by Parliament, provides that the Commissioner "has the control and management of the force and all matters connected therewith." A review in Ontario some years ago led to the closure of 15 of the 28 detachments and to the consolidation of employees in larger detachments.

In Quebec, the RCMP plays the role of federal police in relation to organized crime and national security investigations. The RCMP has done a detailed analysis of Quebec, which led to the recommendation to close nine smaller detachments and reassign the employees to other detachments. The review began in September 1998.

In 2002, the Quebec government undertook a major reorganization of police services throughout the province, including the provincial police, the Sûreté du Québec. Changes to municipal police services in Quebec resulted in the merging of 174 municipal forces into 44 and in a harmonization exercise, initiated by the SQ, similar to the current RCMP restructuring.

Mr. Chairman, the redeployment of resources to larger detachments in Quebec will make it possible to achieve the critical mass of members needed for enhanced federal police investigations, which at times require constant surveillance or monitoring. There will be no reduction in the number of RCMP officers in Quebec following this staff reorganization.

Mr. Chairman, I'd like to mention that the Bloc Québécois position on this issue is rather surprising. Mr. Ménard, the Bloc member for the riding of Marc-Aurèle-Fortin, should fully understand the validity of redistributing RCMP staff. Because when he was Quebec's Minister of Public Security, in defence of Bill 19, Loi concernant l'organisation des services policiers, in 2001, he himself made arguments similar to the RCMP's, and I quote:

> This reform of police organization, which the community describes as a redrawing of the police map, is long overdue. Essentially, given the nature of crime and the fact that its effects are now felt in all regions of Quebec, it is increasingly clear that a significant number of our police organizations don't have the capacity to discharge their crime fighting responsibilities. It is very important to contextualize this observation as having no bearing whatsoever on the competence of the police officers in question nor on the volume of police resources in Quebec... but it has much more to do with the fragmentation of organizations, their inadequate distribution across Quebec and deficiencies noted in the division of responsibilities.

He added:

> It is also an attempt to respond to the many requests along those lines from the Association des directeurs de police du Québec and the major police unions, i.e. the people who are actually out there fighting crime.

● (0910)

Those were the words of Mr. Serge Ménard, former Minister of Public Security, in the National Assembly on December 20, 2000.

[*English*]

Mr. Chairman, we have had a number of meetings on this particular topic. With the indulgence of the committee, I would like to go over some of the chronology of this issue.

In 2002 there was an amalgamation of 174 municipal forces into 44, following a provincial government restructuring of municipal and provincial policing in Quebec. This I just mention, and Mr. Ménard mentioned it in his remarks.

On September 22, 2004, the RCMP announced to its employees by internal Infoweb the realignment of C Division resources. This followed consultation with the minister's office and extensive consultation with Quebec stakeholders, including the Sûreté du Québec and other police forces, law enforcement partners, and RCMP employees.

On October 14, 2004, there was a briefing of MPs by senior RCMP officers. On November 7, 2004, the mayors appeared before the committee. On November 24, 2004, the minister and deputy minister appeared before the justice committee on main estimates, and C Division was raised as an issue. On December 9, 2004, the commissioner and C Division commanding officer Pierre-Yves Bourduas appeared before the committee.

On January 24, 2005, Mr. Chairman, the RCMP commissioner furnished a letter and a binder—the binder is here—containing the requested information to the chair of the justice committee; and on February 2, 2005, Minister McLellan, RCMP Deputy Commissioner Pierre Lange, and C Division commanding officer Pierre-Yves Bourduas met with three Bloc MPs on the closures.

So, Mr. Chairman, I don't know what more the RCMP has to do. They have been here. They have indicated very categorically that this is a matter of the safety and security of the people of Quebec and of Canada. In Ontario we went through a very similar restructuring. This is an operational decision of the RCMP. If this committee wants to start getting into the day-to-day decision-making of the RCMP, then—the point I made earlier—this committee had better be prepared to accept the responsibility if there are increases in organized crime and terrorist threats in the province of Quebec, and indeed wherever these restructurings take place.

All I can say, Mr. Chair, is I gather all the ducks are lined up and this motion is probably going to pass, but I would like to ask the members of the committee to show a bit of responsibility. It's easy to get in there and pass motions, and I can understand the emotions in Quebec when these detachments are closed. No one likes to see detachments closed. I'm just asking members to think about this very carefully, that the RCMP are the professionals. They are saying it was an operational requirement to do this.

Monsieur Ménard, when he spoke about the reorganization of the Sûreté du Québec, talked about the fact that these were the professionals. He listened to the professionals. He indicated that this wasn't a matter of resources; it was a matter of bringing together the critical mass to fight organized crime in an effective and cohesive way, rather than having small numbers of people scattered about.

I want to make sure that the government is on the record as.... Of course, you can invite the minister. The minister has been here. The minister has met a number of times with a number of MPs. The mayors have been here. The committee has heard all the arguments.

The RCMP is moving, and this is going to happen. And it will be happening because it is going to make Quebec and Canada a safer place for its citizens.

I would just say that, Mr. Chair, and would urge the members to show a little bit of caution and responsibility. If we're going to manage the affairs of the RCMP, we'd better be prepared to accept the accountabilities for it as well.

● (0915)

The Chair: Thank you, Mr. Cullen.

Mr. Breitkreuz, and then Mr. Toews.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): I only have two brief questions.

I listened when the witnesses were before the committee and they were indicating that this was going to have a very negative presence on nine of the communities. Then I had some informal discussion with some of the law enforcement people after our meetings. They indicated to me at that point that this was already virtually a *fait accompli* when the committee made its recommendation. Is that in fact true?

Also, I need some clarification on whether the province has a contract with the RCMP, as in other provinces. Is this primarily a provincial issue or a federal issue?

● (0920)

Hon. Roy Cullen: Are you asking that of me?

The Chair: Do you have that information, Mr. Cullen?

Hon. Roy Cullen: Yes.

Thank you, Mr. Breitkreuz.

I think it's fair to say, as I indicated, that the RCMP began its reorganization in 2002. There were many discussions, and it was fairly publicly known. When this motion came to the committee, I think it would be unfair to say that the entire closure of detachments had been fully implemented, but it was largely implemented de facto. There was a good part of it, the other part, where decisions had been made on the employees, the real estate, and the moves. It was so far down the path. That was the situation.

Again, I go back to the consultation that occurred many months ago with the Sûreté du Québec, the local authorities, the RCMP, and members of Parliament, at that time.

With respect to your second question, what was it? Sorry. Can you remind me?

Mr. Garry Breitkreuz: Well, most RCMP in the provinces have a contract with the provinces. Is that not the case in Quebec?

Hon. Roy Cullen: No. Quebec does not contract the RCMP. They have the Sûreté du Québec.

That's the other thing. You raise an interesting point. The role of the RCMP in Quebec is to provide federal policing. If there are issues in Quebec on these areas in terms of policing, then really the Sûreté du Québec is the on-the-ground police. The RCMP was never intended to be the on-the-ground police force in the province of Quebec, unlike your province, Mr. Breitkreuz. They're there for federal policing, and the Sûreté du Québec is the police force in the province of Quebec.

The Chair: Thank you.

Mr. Toews.

Mr. Vic Toews (Provencher, CPC): Thank you.

I listened with full attention to Mr. Cullen's remarks. I come at this from a particular point of view, and that was in my former life as an official in the Manitoba government. We had the identical speech made by the RCMP. They were just going to consolidate, nobody was going to be laid off, and this didn't mean a reduction in police. That was not the case. It was simply not the case.

What we're doing here is asking the commissioner to come here and explain why they ignored or he ignored the committee's recommendation. You indicate that there was an in-depth analysis done. I've never seen that in-depth analysis and I don't believe it has been given to the justice committee. If there's an in-depth analysis, we're entitled to see it. If he's making his recommendations on something, he has to come and bring it here.

With respect to extensive consultations, I listened very closely to the mayors. They didn't seem to indicate that there was any significant consultation. If what my colleague says is true, that this was a *fait accompli* when the mayors came, we've just insulted nine mayors who came here, thought they were making significant recommendations, but nobody was listening.

Mr. Chair, I have to support this motion. I think it's reasonable in light of the history and in light of the comments that were made. Let the commissioner come here and explain why he ignored the committee's order.

The Chair: Thank you, Mr. Toews.

Mr. Thompson, then Mr. Comartin, and then Mr. Cullen.

Mr. Myron Thompson (Wild Rose, CPC): Yes, I was thinking along the same lines as Mr. Toews. In Alberta, particularly in my riding, the closing of different detachments was not supposed to affect the overall manpower in that area. I was told that quite explicitly. They are under contract with the province, and that was worked out with them more than anybody else. At the same time, all these same detachments are constantly reminding me of the shortage of people to do their functions and that this realignment did indeed cause a shortage.

It seems like common sense to me that if this committee made a recommendation, we did not get an explanation on why they could not follow that recommendation, and we never received an answer, then we should be entitled to do this.

The Chair: Thank you.

Mr. Comartin, then Mr. Cullen.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I want to start off by rejecting Mr. Cullen's suggestion that the committee is being irresponsible in the actions we're taking in this regard. For him to categorize this as solely an operational decision is a reflection of ignorance of the policy side of this decision. The reality is that the RCMP are making decisions as to how they're going to perform their function not just in the province of Quebec, not just in that region of province of Quebec, but for the whole of this country. Mr. Toews has already indicated the experience he had in his home province of Manitoba. We had a very similar experience in Ontario when they went through this process.

It seems to me that what we're really saying as a committee is that we have a responsibility to be actively involved when that type of policy decision is being taken and implemented over our objections. That's where we are being responsible.

● (0925)

The Chair: Thank you, Mr. Comartin.

Mr. Cullen.

Hon. Roy Cullen: Thank you, Mr. Chair.

I would suggest, Mr. Comartin, that you're displaying your ignorance, because if you actually consulted the RCMP Act that was passed by this Parliament—and I thought I just read the relevant passage, but maybe I'll read it again—it establishes that "the Commissioner of the Royal Canadian Mounted Police…has the control and management of the Force and all matters connected therewith." Are you proposing, then, an amendment to that act? That's another proposition.

Coming back to your point, Mr. Toews, the Commissioner of the RCMP has been here. Perhaps you weren't at the meetings. He has come to this committee, he has met with a number of MPs, and there is no change in head count in the province of Quebec. Do I need to spell that out more clearly? Actually, if you read the binder, you'll discover that.

On the comment about the mayors, the mayors asked to come. I thought I had made the point that the implementation was well along its way, but it wasn't totally implemented. So on the suggestion that it was an affront to the mayors to have them come to a meeting, first of all, the committee can invite and speak to anyone it wants, apart from summoning a minister.

So I think all the issues are out on the table. I think the minister can be invited. Whether she'll present herself or not, I don't know. That's her decision. She has been here a number of times on this topic, and the commissioner will have to decide what he's going to do on that particular point.

That's really all I have to say.

The Chair: Thank you.

I had Mr. Warawa, then Monsieur Marceau

[*Translation*]

to conclude, because our witnesses are here and we have to get on with our work.

Mr. Warawa.

[*English*]

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman.

I think the motion is reasonable. I appreciate the comments made by Mr. Cullen, but I don't think he needs to answer for the commissioner. The recommendations that were democratically passed at this committee appear to have been ignored, and I think we need to hear not from a member of this committee, but from the commissioner himself on why those recommendations were ignored. I support the motion.

[*Translation*]

The Chair: Last, Mr. Marceau.

Mr. Richard Marceau: Thank you very much, Mr. Chairman. Thank you to everyone who has spoken.

Some of the things that were said surprised me a bit. If it is true that there was ample opportunity to explain this, after Mr. Cullen's presentation of the list, this is the first time that I have heard anything about an in-depth analysis. This analysis has never been sent or shown or explained to us. Never, never, never. It shows a degree of bad faith when he says that we have all had an opportunity to talk about this. We talked about it but we were not given all the necessary information. The least that the government could have done, in my opinion, if it wanted to explain and really focus the discussion, would be to provide the members of the committee with this in-depth analysis. If the motion is adopted, as we think it will be, we will have an opportunity to hear the commissioner explain this in-depth analysis to us. I hope that he will be asked to send it to us in advance so that we can study it properly.

Second, I want to come back to what Mr. Toews said about the consultations, which Mr. Cullen said were very broadly based. Nine mayors came before the committee and none of them had been consulted. None of them told us that the government had explained the reasons behind this decision.

Mr. Chairman, when we talk about closing nine detachments, we are not talking about small operational details. Nine detachments are being closed, and there is a policy behind that. In French, the word policy is "politique" which also means "political". That means that elected men and women have a say. I am sorry to see confirmation of what I always thought was the reality.

We hear members of Parliament say—we have mainly government members here and I will not hesitate to say it—that we need to eliminate the democratic deficit, that we have no power, that the situation is bad, that no one listens to us. They are the ones who are primarily responsible for that. When they see that Parliament has spoken, they are the first ones to back off and bow to pressure from the bureaucracy or their minister. They are the main ones responsible for the fact that the role of parliamentarians is not respected in this country. When Parliament has made a recommendation, they are incapable of saying that more needs to be done to push the issue. They bow to their government.

I hope that people will support this motion to have Anne McLellan, the RCMP Commissioner and the Commander of Division C come before the committee to explain this supposedly extensive policy.

● (0930)

The Chair: Thank you, Mr. Marceau.

[*English*]

Mr. Cullen, do you have a point of clarification? I think we've had all the argument we need on this issue.

Hon. Roy Cullen: Okay, but then I'd like to propose an amendment to the motion.

The Chair: Okay.

Hon. Roy Cullen: I think the wording now says “the committee invite”, not “summon”. My proposed amendment would be to invite the Commissioner of the RCMP and drop the minister.

I think we need to de-politicize it. The minister has been here. I think it's valid for the committee to request the commissioner. I think that's what everyone seems to be interested in. Why don't we request the Commissioner of the RCMP and the commanding officer and drop the Minister of Public Safety and Emergency Preparedness?

The Chair: Okay, we've heard the amendment.

[*Translation*]

Would you please ask the clerk to read the amendment.

[*English*]

The Clerk: Now the amendment would be that the committee request the Commissioner of the RCMP and the commanding officer, C-Division, to appear before it to explain why they ignored the committee's recommendation to stay the closure of nine RCMP detachments in Quebec.

(Amendment negatived)

The Chair: I go now to the question on the motion. I think we've read it several times. I find that it is receivable.

[*Translation*]

The motion is in order, with the changes, that is, that we are inviting the minister and summoning the commissioner.

[*English*]

(Motion agreed to) [See *Minutes of Proceedings*]

[*Translation*]

The Chair: Madam Clerk, please go ahead and make the arrangements.

I would point out to the committee that we have a very busy schedule. However, we will do our best to organize these meetings with the minister, if she decides to appear with the commissioner.

[*English*]

I have just one other point. In the course of debate, I encourage members to try to be respectful and judicious in their choice of language. When there is a question of being ill-informed, or not informed, as opposed to being ignorant, it would help relationships here in the committee.

Thank you.

We'll now invite our witnesses to come forward, please.

[*Translation*]

I will suspend the meeting so that the witnesses can take their places at the table. Thank you.

● (0935)

[*English*]

The Chair: I will reconvene the meeting and call it to order.

We have now our witnesses: from the Canadian Association of Chiefs of Police, Mr. Bruce Brown, barrister and solicitor,director of legal services, London Police Service, and Mr. Vince Westwick, co-chair of the law amendments committee; from the Canadian Association of Police Boards, Mr. Herb Kreling, past president and board member, and Ms. Wendy Fedec, executive director; from the B.C. Ministry of Attorney General, Mr. Derrill Prevett, crown counsel.

We would ask each of the associations to give us an opening statement of approximately ten minutes and then we will go to questions from the members.

On that issue, we're experiencing some difficulties with questioning in the time periods. The suggestion has been made that we go to five-minute rounds instead of the seven-minute and three-minute rounds that has been our practice. There will be just straight seven-minute rounds on questioning. Do we have consent for that?

Some hon. members: Agreed.

The Chair: There's the further issue of all members getting an opportunity, but we should deal with that at a separate meeting. For today's meeting all rounds will be straight five minutes from the questioning.

Thank you.

From the Canadian Association of Chiefs of Police, who will be starting? Will it be Mr. Brown or Mr. Westwick?

Mr. Westwick will begin. Thank you.

[*Translation*]

Mr. Vincent Westwick (Co-Chair, Law Amendments Committee, Canadian Association of Chiefs of Police): Mr. Chairman, members of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness the Canadian Association of Chiefs of Police represents over 900 police chiefs, deputy chiefs and other senior police officers, as well as over 130 police forces in Canada.

[*English*]

It is always a pleasure to appear before Parliament to make representations on new legislation. It is an important aspect of the work of our association to listen to our communities and to our members, consult with government, and make representations. While it is always an honour to appear here, and we're grateful for the opportunity, we believe also it is a duty to make available to Parliament the experience of CACP members in policing and investigation.

At this time I'd ask Mr. Brown to present our position.

Mr. Bruce Brown (Barrister and Solicitor, Director, Legal Services, London Police Service, Canadian Association of Chiefs of Police): Good morning, and thank you.

The CACP has long been a component of the effective use of DNA as a means of identifying viable criminal suspects and eliminating innocent parties. It's a double-edged sword in that sense, and it's important to realize that it serves both functions.

At our 95th annual conference in Saint John, New Brunswick, in August 2000, CACP adopted resolution 2000-04, DNA Identification Act, which at that time expressed concerns that a convicted person must be escorted to a proper facility where DNA samples can be obtained, and that if no peace officer was available to escort the convicted person and the individual simply chose to leave, there was at that time no ability to compel the person to re-attend. The resolution asked the Minister of Justice to amend the act to allow the judiciary the authority to order the detention of individuals for a period of not more than eight hours to enable police to obtain the required samples and to allow samples to be taken at any facility, including the courthouse.

In light of that, we are very pleased to see the government has recognized the difficulty that was posed by this omission in the legislation. The government does propose to provide for the court to make an order for a DNA sample to be taken at the place, day, and time set out in an order, which will allow for the taking of a sample at any time and not simply in connection with the sentencing of the offender immediately thereafter.

Subsequently, in October 2002, the CACP was again invited to make written submissions pursuant to the DNA data bank legislation consultation paper 2002. We did so. We took the position that the current list of designated offences in section 487.04 of Criminal Code at that time should be expanded to include offences that are known to be precursors to more serious crimes that are included on the list.

For example, it is well documented that serial sex offenders and serial murderers do not start their criminal careers by committing the most serious offences. They escalate their crimes. They start with less serious offences, such as trespassing at night or stalking, and commence to sexual assault and murder.

We suggested the offence of criminal harassment should be added to the list of primary offences and the offences of trespassing at night, uttering threats, especially in domestic situations, drug trafficking, possession for the purpose of trafficking—these offences are quite often accompanied by violence—and possession of a prohibited or restricted weapon should be included as secondary offences.

We also took the position that the Criminal Code should be amended to allow DNA samples to be taken from individuals found not criminally responsible by reason of mental disorder, as a ruling of NCR, not criminally responsible, is a conclusion that the accused did commit the offence, but at the time was suffering from a mental disorder that rendered him or her incapable of appreciating the nature or quality of the act or omission. The possibility exists that the accused may have committed previous offences prior to his or her arrest and without the inclusion in the DNA data bank those offences could remain unsolved. There's also a possibility that the accused may reoffend once he or she is deemed not to be a danger to society and is subsequently released.

Accordingly, the CACP fully supports the proposition in Bill C-13 that offenders found NCR, not criminally responsible, should be caught by the provisions of this legislation. We support the expansion of the list of designated offences, and in particular support the inclusion of criminal harassment and uttering threats as secondary designated offences. We believe the government should give consideration to include such precursor offences as prowling or trespassing at night as secondary designated offences as well. Those are not on the list at this time.

The CACP took the position that the scheme should allow investigators to apply for a retroactive DNA order for offenders convicted of a single murder. Murder is one of the most heinous crimes in the Criminal Code, arguably the most heinous crime in the Criminal Code, and the safety of the public should outweigh the individual's right to privacy. In addition, the possibility exists that an offender, although only charged and convicted of one offence, may have committed additional historical offences and may reoffend upon his or her release.

I appreciate that this proposed legislation does allow for DNA samples from someone convicted of one murder and a separate sexual assault. We're suggesting that the single murder could stand by itself. We would urge the government to consider adding this provision to the proposed legislation.

Finally, CACP identified a need to provide for re-sampling in some cases where access for the offender's DNA profile has, by operation of law, been permanently removed from the national DNA data bank.

● (0940)

We have suggested an application should be made to the court that would have heard the application upon conviction of the accused. In all cases, whether it's a primary or a secondary offence, the offender should receive notice of the application. We're concerned that due process be followed, of course. However, the hearing should proceed *ex parte* if the offender has been properly served and fails to attend the application hearing. This area has not been addressed in Bill C-13 and we would urge the government to consider doing so.

The CACP was consulted back in 2002 and it made submissions. We do support the expansion of the DNA legislation. Some of our submissions were directly addressed by this legislation, but we would ask the government to give consideration to expanding it further, as we have suggested.

I thank you for your time.

The Chair: Thank you very much, Mr. Brown.

Now for the Canadian Association of Police Boards, and Mr. Kreling will be starting off.

Mr. Herb Kreling (Past President and Board Member, Canadian Association of Police Boards): Thank you, Chair.

Chair, members of Parliament, and members of the standing committee, the Canadian Association of Police Boards welcomes the opportunity to be here this morning to comment on the government's Bill C-13. The growth and development of DNA testing and its impact on both recording convictions and exonerating the innocent are a compelling enough reason for Canadian lawmakers to turn their attention to this important subject, and we congratulate you for doing so.

The Canadian Association of Police Boards represents close to sixty municipal police boards and commissions across the country. These governing bodies employ in excess of 30,000 personnel and represent approximately three-quarters of the municipal police personnel in Canada, excluding RCMP and provincial police. Its role is to provide a forum through which its members can exchange vital information on policing issues, to provide opportunities for education and training, and to represent the views of its members on issues affecting municipal policing.

The CAPB welcomed the DNA data bank that came into effect in June 2000, but we expressed concerns at the time that it was not retroactive and applied only to the most serious criminal offences. The CAPB took the opportunity to reiterate these concerns when in the fall of 2002 it responded to the government's consultation paper on possible amendments to the DNA data bank legislation. The results of our consultations with CAPB members at that time indicated that they unanimously favoured a more comprehensive and widespread use of DNA testing and collection and supported an expanded use of the DNA similar to the current use of fingerprints.

I want to stress this point with you, that from the perspective of the CAPB, the expanded use of DNA, similar in nature to the collection of fingerprints, is strongly advocated for enforcement agencies, and we believe that such a change would be of great benefit to society at large. It would assist in quickly identifying the guilty, as in the case of Larry Fisher, the convicted serial rapist who is also guilty of the rape and murder of Gail Miller in 1969, and equally quickly exonerating the innocent, as in the cases of David Milgaard and Guy Paul Morin. It would bring closure to families who have suffered grievous loss and would provide for identification when more traditional investigative tools simply do not work.

With respect to the additions to the list of primary designated offences, specifically those indicated in the amendments in Bill C-13, the CAPB supports the proposed additions to the list of primary designated offences and would also like to see added to the list the offence of attempt murder in situations where a court has determined that the convicted offender had the specific intention to commit murder.

We are particularly pleased to see the offences of break and enter and robbery included in the list of primary designated offences. As noted in the CAPB's response to the 2002 consultation paper, sexual assault is sometimes the driving factor behind the commission of break and enter offences. As well, an offender is likely to leave a sample of bodily substance at the crime scene during the commission of such offences. Research in Great Britain has shown that a great number of sexual assaults have been solved through the use of forensic DNA analysis, with approximately 30,000 sexual offences linked by DNA to break and enter offences.

Break and enter is the predicate offence of all home-invasion-style robberies, which are normally accompanied by an act of extreme violence or sexual assault against a resident. The same can be said of robbery offences, which often involve violence or the threat of violence as well as the use of weapons.

With respect to the proposed addition to the list of secondary designated offences, the CAPB supports the addition of all of the proposed offences to the list of secondary designated offences. The CAPB's response to the government consultation paper also identified the offences of injuring or endangering animals and causing unnecessary suffering as ones that should also be included on that list of secondary designated offences. These offences are strong indicators of abnormal behaviour, of the possibility of present or future sexual deviance, and of the potential for violence toward mankind.

● (0945)

CAPB members also identified trespass by night and indecent telephone calls as offences that should be considered secondary designated offences. These offences are often related to the behaviour of sexual predators and sexual offenders. A link has been demonstrated that shows that serious sexual offenders work through a variety of offences in a circular fashion. For example, Paul Bernardo was constantly circulating through a variety of offences ranging from trespass by night to sexual assault causing bodily harm and ultimately murder.

The CAPB also strongly supports judges being allowed to order DNA sampling prospectively as well as retroactively, including for historical sexual offences such as indecent assault-male, indecent assault-female, and gross indecency. Many of the offenders found guilty of these historical offences are a present-day danger in our communities. It is the CAPB's belief that taking DNA samples from these offenders would not be an infringement upon their rights and that including these offences in the retroactive scope of the legislation would further the objectives of the National DNA Data Bank. The CAPB supports the proposal to permit samples from an offender who has been convicted of one murder and one sexual offence committed at different times before the DNA data bank legislation came into effect on June 30, 2000.

The CAPB members unanimously agree that persons found not criminally responsible for a designated offence should be subject to the provisions of the DNA legislation. Previous offences may have been committed by an offender at a time when samples of bodily fluids were obtained but the perpetrator not identified, resulting in the crime's remaining unsolved. The distinct possibility also exists that the offender may reoffend once they have been deemed not to be a danger to society and are released.

Further, the CAPB strongly believes judges should be allowed to order DNA sampling in these instances progressively and retroactively. As noted by the Peel Police Services Board, the identification of an offender is vital in allowing victims and their families to come to terms with the criminal acts perpetrated against them. There should be no difference between the finding of guilt and the ruling of not criminally responsible as it applies to the use of DNA for forensic analysis.

Regarding resampling, the members of the CAPB unanimously believe that when a court has made an order for a DNA sample to be taken, it has concluded that the order is in the best interests of the community and the administration of justice. Therefore, the CAPB supports the proposed amendments to allow for resampling.

The CAPB supports the amendments proposed in Bill C-13 and we applaud the federal government for introducing them.

In conclusion, I wish to just make the following points. As noted earlier, the CAPB members believe the collection of DNA samples is similar in nature to the collection of fingerprints. Our members question why the use of such an effective identification tool for law enforcement would be hindered in any way when we would not accept similar restrictions to the collection of fingerprints. Those opposed to an expansion of DNA provisions view it as an unacceptable intrusion into an individual's right to privacy. The CAPB would urge those critics to recognize the enormous value of DNA in exonerating the innocent, quickly identifying the guilty, and bringing closure to families who have suffered. Expanded use of DNA sampling will ease the suffering of victims and those wrongly accused. It is only the guilty who would argue against this legislation.

For all of the reasons outlined, I and my members in the CAPB urge you to pass rapidly into law those provisions of Bill C-13.

Thank you, Mr. Chair.

● (0950)

The Chair: Thank you very much.

Now we're going to Mr. Prevett, from the British Columbia Ministry of the Attorney General.

Mr. Derrill Prevett (Crown Counsel, DNA Information Coordinator, B.C. Ministry of the Attorney General): Thank you.

Good morning, everybody. I was very pleased to be here, back in the province of my birth, but I must tell you I'm equally proud to be here from British Columbia.

I appreciate that you probably wanted to hear from me as a practising lawyer about the nitty-gritty of what goes on. I anticipated some of the remarks from my associates here, particularly the last one about the collection of DNA at the time of the taking of fingerprints.

I would like, for those of you who aren't lawyers and aren't keeping your finger on the pulse of the progress of Canadian criminal law, to give you a bit of background. This background is based on the charter. Of course we've had DNA warrants now for almost ten years, so we've built up some jurisprudence.

I began in my brief to tell you that it's a longstanding principle of Canadian jurisprudence that an individual's privacy not be intruded upon without objective judicial authority; that it's reasonable to do so in the interests of the investigation or prevention of crime. We've had conventional search warrants now for a long time. The basic principle of a man's home being his castle has extended, obviously, to a person's own bodily integrity.

It follows a sliding scale. This right to privacy was with us long before the Canadian Charter of Rights and Freedoms came our way. I practised then too. It has amplified greatly the protection of these rights.

The degree of expectation of privacy follows, as I say, a sliding scale. An individual holds a high expectation of privacy in his or her own home. This expectation is reduced if, for example, the individual is in someone else's home, or in his car, in custody in a jail cell, whether the person is convicted or still awaiting trial or is serving a sentence.

I've given you a case where the court discussed this in detail. It basically was discussing the expectation of privacy in items found in a car by a passenger in the car who did not own the car. They found, as you might imagine, the expectation of privacy to be relatively low.

Our law also for many years has recognized a high degree of privacy in communications. We all know that when a communication is between a person who is detained—or deemed detained, as our law now holds it, in other words not expressly under arrest but nevertheless feeling compelled to comply with the request of a person in authority, either by direct gesture or by psychological compulsion—then there are common-law rules that swing into play. You've all heard them: the voluntary nature of statements; that they be given without promise or fear.

The charter has extended that, of course. It offers to those who are deemed detained—not simply expressly detained, as is the case with our American cousins, but deemed detained—the right to know what they're detained for, the right to consult counsel, and the right to be given an opportunity to effect the right to consult counsel. The name of the case is Prosper.

The wiretap legislation has been with us a long time. Obviously, the degree of expectation of privacy in private communications is extremely high. It's only available to specially appointed agents, acting on behalf of the Attorney General through a police affidavit to Supreme Court judges. There are many safeguards surrounding it, such as the sealing of the informations and so on, from everyone really except the eventual accused, if there is one, who obtains that information almost as of right.

It's another example, though, in our Criminal Code where designated offences are used to trigger some course of conduct, whether it be sentencing, or whether it be to trigger an investigative tool. As you know, the designated offences for a wiretap are contained in section 183 of the Criminal Code.

There are other examples of this same approach—for example, the new Sex Offender Information Registration Act, which is going to go, I understand, by the acronym SOIRA, where a conviction for certain offences creates an eligibility for that data bank.

● (0955)

Similarly, on a lesser scale, you'll notice that firearm prohibitions are also designated offences. Whether you have a firearms prohibition period and, if you do, the length of that prohibition depend on the nature of the offence you have been found to have committed.

So it was within this context that the DNA warrant legislation came into force on July 13, 1995.

It is a form of search warrant, but our jurisprudence determined that unlike fingerprints it was going to be treated differently, because although our jurisprudence has now said, as I've indicated in my paper, that the degree of bodily intrusion is minimal, nevertheless, unlike all other forms of search warrants it does involve an intrusion into bodily integrity. I don't think that can be denied. It's minimal, but it cannot be denied, and for that reason our jurisprudence has treated it differently.

There's a recent English case I was advised of, in which the English came to a different conclusion. I may say that since I began my practice of law the criminal jurisprudence of England, which began as almost identical to ours, has diverged from ours, and we are on separate paths. They do not have the same history of jurisprudence concerning a charter of rights, nor for that matter the same charter of rights that we have. This is our homegrown result over the last decade. This affidavit in support is different again from any other, in that not only is it simply for designated offences, but one of the requirements, you'll notice, is that the affiant proposed reasonable grounds while he feels the target is a party to the offence. This is another elevation you may not have considered. There's no other kind of investigative tool that requires that.

In each of the circumstances I have described, aside from many technical requirements that vary, the issuing court is essentially asking itself two questions: Does this legislation strike a balance between the rights of the subject and the interests of the state and law enforcement? Is it reasonable to be doing that?

Consequently, when the framers of the present legislation came along, they determined they were going to split the designated offences, insofar as the data bank was concerned, into primary and secondary offences. To cut to the chase, the distinction is, who is the onus on to make the application? Who bears the onus of arguing that a data bank order should or should not go?

As you know from reading the present legislation, the onus is on the defence, in the case of primary convictions, to convince the court that the data bank order should not go. But the language used makes it mandatory for the court to consider giving such an order. And in most instances, an order for a conviction on a primary designated offence is, for all intents and purposes, automatic. For secondary offences and those in other categories like retrospective offences and retroactive offences, the onus is on the crown to show that it would not impact greatly upon the target's privacy interests to make the order. These are all set out in the Criminal Code. You can read them, and they mean pretty much what they say.

These proposed amendments that we're dealing with now are not the five-year review of the DNA data bank. These amendments are simply fine-tuning. That argument about fundamental principles of where we should be going with DNA awaits, I think, the five-year review.

I want to talk briefly about some of the amendments here. First of all, as already mentioned, are the changes to the designated offences list. I set out there that some of these amendments support the view that the primary designated offences are, generally speaking, more serious than those in the secondary offence list.

● (1000)

This bill sets out, as has been summarized by our courts, six important principles it seeks to secure for us all: to deter potential repeat offenders, as has been mentioned; to promote the safety of the community—the sigh of relief that comes from a cold hit in a community is unbelievable; to detect when a serial offender is at work; to assist in the solving of cold crimes—having worked on murders that were over twenty years old and that were not prosecutable before without DNA, I can't begin to tell you how happy I am to be involved in the criminal justice system at a time when DNA identification has come along; to streamline investigations, as my associates from the police have indicated; and lastly and most importantly—and I repeat this because it has already been said to you once—to assist the innocent by early exclusion from investigative suspicion or, for that matter, in exonerating those who have been wrongfully convicted. This data bank is of paramount importance.

I was a homicide prosecutor for many years before DNA came along. Many of my associates have wondered about some of their cases. Whether I'm more single-minded, I don't know, but I've never had that concern. However, I will tell you that it's very comforting to have objective DNA evidence available to you, as opposed to simply relying on eyewitness identification, which, as you know, our courts have treated as fallible because of the human condition.

● (1005)

The Chair: Mr. Prevett, perhaps you could bring your comments to a conclusion. We're well beyond the ten minutes at this point.

Mr. Derrill Prevett: I will, Mr. Chairman.

The rest you can read for yourselves.

I want to skip to the procedural amendments, which are extremely important. I want to make sure you know some of the practical consequences of not being able to delay the making of one of these orders; that is, the consideration of it or the actual execution of it. With the way the law is presently written, especially if you're dealing with a secondary offence, if the prosecutor or somebody else doesn't wake up and ask for one of these orders at the appropriate time, then you are probably forever euchred, which is a good term to use. You're not going to have the chance to get it again.

When primary offences are not considered, the weight of the law is that it is an error of law on the part of the judge. Why that's important is that can be appealed, and then you'll get your order, hopefully.

The other important amendment here is that the court not be *functus officio,* which is a term we lawyers throw around. It means legally spent. Once a judge is legally spent, you can't go back to the judge and ask her or him for this order.

Another thing, which also has been mentioned by my associates, is the general impression that if one of these orders is given, somehow out of the ceiling swings a fully prepared police officer to execute it. That's not the case. We have been having great difficulty in even tracking people once the order becomes known in order to execute the order. At least it's possible when you have a person in custody. It's not possible when they're at large.

The rest of these amendments you have heard about and can read for yourselves.

I make only a few suggestions by way of fine-tuning, such as on page 4 of my brief under number 5 on procedural amendments, that there should be a streamlining of the wording used between the two clauses and that the phrase "not possible" should not be used, because I think that's an invitation to argument. I make some recommendations about the extension of the designated offence list.

In closing, another point I'd like to mention is that when these orders can be postponed so that you can get them later, another thing that might be considered, as was mentioned to me this morning and I've had a brief time to think about, is that the person not appearing be subject to an offence, rather than simply subject to a warrant; in other words, just another form of failure to appear, which is well entrenched in our law. That will have important ramifications later on if this person is a recidivist because it will play heavily in decisions concerning not only sentencing for some subsequent offence, where a court might be disinclined to consider conditions when it sees a person doesn't obey court orders, but also bail conditions.

Thank you.

The Chair: Thank you, Mr. Prevett.

We'll now go to Mr. Toews, for five minutes.

Mr. Vic Toews: Thank you very much. I appreciate your time here today.

Let me start out by saying that my position is that the police are unduly hindered in the collection of DNA by the present legislation. I don't see the amendments going far enough to really assist the police or prosecutors.

I have a few positions I'd like to point out to see if you agree with them. First of all, I think that all indictable offences should be automatic upon convictions. What possible charter reason or any other reason could there be for denying DNA upon conviction of an indictable offence?

Secondly, in respect to secondary offences, and it would be all the summary conviction offences, the accused must demonstrate that his privacy interests are compromised. I agree that a single murder on the retroactive and a single serious sexual assault should be sufficient to get the DNA.

I have two more points. As the second-to-last point, it's my position that anyone convicted of a very serious offence, perhaps those punishable on conviction to a penalty of ten years, must provide DNA as a condition of parole. If you want to get out on parole, provide the DNA. I don't see any issue with the charter there. Parole is discretionary. Give the DNA. Then we get around most of this retroactive situation.

Lastly, I'm not quite sure what the provisions are in respect to bail and DNA as a discretionary condition of a release, but I think we should see something like that, giving the appropriate judicial officer the authority.

That's my position, in summary. I think you agree with some of it. You haven't spoken to others. Comments?

● (1010)

Mr. Bruce Brown: Thank you. I'd be pleased to respond.

We took the view that our submissions were limited to the narrow scope of Bill C-13. Philosophically, the CACP would have no difficulty in agreeing with everything that you have said, sir.

It looks like we're being given an opportunity for a preview of our views, which will be aired at the overview of the legislation later on this year. Those are areas that I think we will be addressing.

I would just say in a preliminary fashion that, certainly speaking for myself and I think speaking for the CACP, I have no difficulty agreeing with your suggestions.

We like the DNA legislation as far as it goes. It just doesn't go far enough.

Mr. Vic Toews: Exactly. I don't want to interrupt for too long. If you have specific things that you would like to see beyond what you have suggested, please send them to me. I don't consider ourselves bound to the narrow scope that you have addressed.

I had that impression, that you were limiting what you had to say rather than what you really wanted to say.

Mr. Bruce Brown: Okay, thank you.

Mr. Derrill Prevett: I don't think it's a question of what we really wanted to say so much. I will tell you that as a prosecutor, I can't say that my heart is not with you. On the other hand, I think I know how it is and can explain why it is we are where we are today, and that is, our history of minimization, whereby we attempted in this legislation to look reasonable—the key word—so that we could assure its passage and so that it would be upheld by the courts vis-à-vis the charter. That's why we're where we are.

If we want to move on from that, fine, that will be Parliament's decision. With it, you should know that is the attendant risk.

Mr. Vic Toews: Do you have any disagreement in policy with the suggestions that I made?

Mr. Derrill Prevett: I must say no. I commend you for your suggestion about the condition of parole. I hadn't considered that. I must say, speaking personally, of course I like it.

The Chair: Any further comments from anyone on the panel?

Mr. Herb Kreling: Certainly I'll concur with my colleagues here, sir. Based on the unanimity of embracing these proposals by the Canadian Association of Police Boards, I would think that the association I'm representing would equally embrace those proposals you have enunciated this morning. I can't see my association differing from the views of my colleagues here.

Mr. Vic Toews: Thank you.

The Chair: Thank you, Mr. Toews.

Mr. Vic Toews: Was I under five minutes?

The Chair: Yes, you were. Congratulations—the first for the CPC.

[*Translation*]

We will go now to Mr. Marceau of the Bloc Québécois.

Mr. Richard Marceau: Thank you very much, Mr. Chairman. I would like to thank the witnesses: their presentations are very much appreciated.

One issue that comes up repeatedly is the actual taking of DNA samples. Another is the storage of DNA samples once the generic profile has been established.

People come at these questions from a privacy standpoint. The committee has regularly been told that there are two ways in which this process intrudes on people's privacy. The first is when DNA is taken through a blood or saliva sample or the taking of a hair. The second is when the DNA sample is stored. Do you see this as an unreasonable invasion of...?

I will put the question another way: Do you agree with this? If not, how do you answer people who say that storing DNA samples is too intrusive and violates people's privacy, and therefore contravenes Section 1 of the Charter?

● (1015)

[*English*]

Mr. Derrill Prevett: I'll go first, if you don't mind.

Mr. Chairman, first of all let's deal with the storage of the sample, as that seems to be the main concern. It must be remembered that these highly polymorphic areas—that's what they're called—these areas of interest that are examined by the data bank are areas that code for nothing. That means that if you have a fingerprint and you know what finger it came from, you actually know more about the person than a DNA profile will tell you.

Secondly, of course it's an offence to misuse the samples that are being stored. They're used for one purpose only: they're used for DNA analysis. Well, why have them at all? It would be a lot less money and bother if we didn't have to keep them.

In my time there have been four different methods of DNA analysis, and they are not complementary one to the other in the sense that one will cover another area. It's sort of like saying we had 78 rpm records, and then we had cassettes. You can't play one from the other. They are different kinds of testing. If you didn't have the sample there, you would have to go back and retest if the occasion arose—even to exclude the person, which is very common, more common than I think most of us realize.

So I think there is not only a technological reason—which is the primary reason, as far as I'm concerned—for keeping it, but also a convenience, if you will, a reason to the system in the sense that you won't have to go back and try to get an order to re-sample.

The Chair: Mr. Kreling.

Mr. Herb Kreling: Our association's position on this, our view, is that the public safety and public interest outweigh the individual's perceived intrusion in this type of situation. We certainly support, as I indicated, the progressive as well as retroactive taking of samples. We would certainly come down on the side of the public good and not consider those examples to be an intrusion on the individual's privacy.

The Chair: Mr. Westwick.

Mr. Vincent Westwick: Your question, Mr. Marceau, deals with timing and privacy, which of course are also linked to retroactivity. The difficulty we find ourselves in is that the public policy debate, when the legislation was originally passed, was framed within the individual's rights versus the public good. The resolution of the debate, via the panel of judges and so on that advised the government, was that the charter would exercise in favour of the private interest, the protection of privacy.

I suspect—and it's what we hope will become the debate in the review of the legislation—that the public policy debate will be reframed. Yes, it will include social good, but it will also include the increasing pressure my friend has referred to dealing with exonerating the innocent. If you look at the whole area of miscarriage of justice in the recent paper that was released by the FPT ministers in late January, you'll see that there's another public policy issue at play. And when it's framed that way, it very much changes the debate. We think we will certainly be encouraging Parliament to review that at that time.

If you look at it that way, then the timing does not operate against the accused; it actually operates in their favour.

[*Translation*]

Mr. Richard Marceau: The privacy commissioner requested the committee this week not to pass Bill C-13. The reason given—I am speaking here to police officers and even Crown prosecutors—was that there were delays, that the bank was not able to provide the information quickly.

Since you work in the field, have you found this to be a problem, or do the services in this area generally work well?

On the one hand, we have the privacy commissioner telling us that there are delays, that the service is not working very well and that we should wait before passing Bill C-13. On the other hand, when we talked to the bank, we were told that everything was fine, that everything was going well and that the information was provided in a timely manner. I would like to hear the opinion of those who work with this process on the ground.

The Chair: Thank you, Mr. Marceau.

[*English*]

Response, please.

Mr. Bruce Brown: I can only speak, sir, for the London Police Service. We have not experienced the kinds of delays and difficulties the Privacy Commissioner was referring you to. The service has been good and certainly has been effective.

● (1020)

Mr. Vincent Westwick: I would echo that for Ottawa. It may be a question that you may want to put to the RCMP, the people responsible for the data storage. They may be in a better position.

The Chair: Mr. Prevett.

Mr. Derrill Prevett: The only backlog I've experienced is of my own doing as one of the prosecutors in the Picton matter, and that has nothing to do with the data bank. Your question is whether the data bank is overwhelmed. My experience is, it is not. Operationally, when a case like Picton comes along, with hundreds of thousands of samples, it can swamp a system.

[*Translation*]

Le président: Thank you, Mr. Marceau.

[*English*]

Mr. Comartin, for five minutes.

Mr. Joe Comartin: Let me just follow up with that issue of delay, and I think Mr. Breitkreuz is going to be doing some comments on this as well because of the work he's done on it.

I'm sitting here with a newspaper clipping from the *Ottawa Citizen* saying there's a 102-day delay in getting DNA results. We've heard of other cases, in the same article I believe, that the response from the lab was obtained the day the trial started, and those kinds of things.

I just want to put this into context, because we will be asking this of the RCMP when they come. Last week when we were at the lab we were assured that in fact there was no problem. Mr. Prevett specifically mentioned Picton and of course the attendant problems that go with what. Do we have here a consensus across the country that in fact there isn't a delay and the newspaper articles are inaccurate?

Mr. Derrill Prevett: I think we're talking of two different things, if I may.

There isn't a delay that we in the field are experiencing with the DNA data bank.

Mr. Joe Comartin: Is that true of all the regional labs as well?

Mr. Derrill Prevett: You see the regional labs aren't the DNA data bank. If we're dealing operationally—we are at this crime scene and we found this DNA and we want it analyzed—that's different. Yes, there have been delays because of cases like the one I mentioned that overwhelm the system from time to time. There's no doubt about that. There can be operational delays.

Let's talk about those for a minute. I know it's off topic, it's not the data bank, but the RCMP have a policy concerning those too. They prioritize cases so that if you have a serial criminal at large out there, you can bet your bottom dollar it's going to gain priority, it's going to queue-jump, and it's going to be dealt with in a timely way. You're not going to be waiting for 102 days, or whatever it is the article says. On the other hand, I suppose if it's a run-of-the-mill break and enter, and unfortunately we have many of them, there may be a delay. As I say, it's these big cases that can swamp a lab that will do it.

Mr. Joe Comartin: Mr. Prevett, to cut through that, you're all recommending that we expand, and of course the bill does as well, and a number of you are going even beyond that. If we're having those kinds of delays, why would we be adding more charges—a lot more charges? Percentage-wise this is going to more than double. If you're going to add some of the charges you're talking about, you're going to be doubling the number of samples that will be taken.

Mr. Derrill Prevett: It's been our experience, unfortunately, in the west that we haven't received the number of orders and executed orders to send to the lab for that matter.

Mr. Joe Comartin: That was to be my next question.

Mr. Derrill Prevett: I anticipated that.

The bottom line is presumably we're all going to be able to gear up for this. It's not going to suddenly happen overnight.

Mr. Joe Comartin: Let's go to the 2002-2003 report of the data bank. It said that roughly 50% of all the cases that should have gotten samples did in fact not. I'm asking you directly, Mr. Prevett, because I would think on the prosecution side it's at your level and the judicial level that this is happening, as opposed to the police level. Why is it happening?

Mr. Derrill Prevett: That's what I thought too. I made some inquiries, and there's no doubt about it that those are factors. There's an educational process that's ongoing, and it seems to be taking time with certain people. Certain jurisdictions in British Columbia, for example, are right on top of it, and other jurisdictions are not.

As I also mentioned to you, I've been involved in cases where the person was sent to jail for life, but it's not until several months later that the actual order is executed. You ask yourself why that is. It's because of communication difficulties between the court and the police agency that is primarily responsible for executing the order. That's a factor too.

Mr. Joe Comartin: But the statistics are that for 50% of the cases there is no order, the order is not even made. It's the responsibility of the prosecution to ask and for the judge to grant it. These are the mandatory cases, not the secondary ones.

● (1025)

Mr. Derrill Prevett: There are even instances where orders are being granted and executed for non-designated offences. That's the opposite end of the realm of enthusiasm. This kind of thing is going to happen. But your concern—

Mr. Joe Comartin: Who is responsible here? Where is it falling down? Is it on the prosecution side for not asking, or is it on the judicial side for not ordering?

Mr. Derrill Prevett: I don't know for sure. I can only tell you what I suspect, and I think it's a bit of both.

The Chair: Thank you, Mr. Comartin.

Mr. Maloney, five minutes.

Mr. John Maloney (Welland, Lib.): We did visit the DNA facility, the laboratory here in Ottawa. We saw what happens when a sample arrives on their desk. Could anyone here explain to me—I'm sure you all could—what the process is up to that stage? Is there a designated police officer on a force who takes the sample? Is it a health care worker? How are the samples stored until they're sent off to a lab for analysis? What is the time factor?

Mr. Bruce Brown: Sir, I can perhaps answer your question in part. Again, drawing from my own experience with the London Police Service, we do have individuals who are trained in the taking of samples, either police officers or, in our case, my recollection is that we have police cadets who have specialized training in taking DNA samples. They are the ones who are responsible for procuring the samples.

As to what happens beyond that, I'm not sure. Perhaps my friend Mr. Prevett could address that part of the question.

Mr. Derrill Prevett: Yes. I think police training has been very good across the country. It certainly has been in British Columbia. Let's face it, when taking a buccal swab or pulling some hair, you have to pull some hair that brings tissue with it, because the DNA we're looking at is in the nuclei of cells or of course in taking blood. You don't need a rocket scientist to do it, but you do need somebody to do it properly to maintain all of the safeguards that the legislation says must occur.

That being so, as I mentioned in my paper, often I found myself in court trying to get a second order because there had been some kind of problem. The people who are executing these orders are human and they make errors. Sometimes the error is using the wrong kit. As I mentioned in my brief outline, there are three different kits floating around out there.

The DNA data bank works from the point of view of anonymity. What finally brings the knowledge of whose DNA is whose is the bar code that you probably saw and the conjoining of the fingerprints that are on the sample card with the fingerprints on the normal fingerprint form, which are kept in another building under other auspices. If that kind of document doesn't accompany the sample, then it's not ready for admission to the data bank and will be rejected.

Mr. John Maloney: Mr. Kreling, my next question is perhaps for you. Everyone here has suggested more additions to the primary and secondary offences. Police boards are always mindful of the costs of policing. Do you have the resources or do the police boards across the country have the resources that may be required if we add some, many, or all of these offences to the designated offences?

Mr. Herb Kreling: I need to respond to that question based on my experience with the Ottawa Police Services Board and on the experience of other colleagues from across the country in various provinces.

Municipal police services budgets are under the same pressure as every other department within the jurisdiction of municipalities. The police services are having more and more difficulty in achieving the budgetary targets they are shooting for. In fact, in some of our jurisdictions, especially in the maritime provinces, city councils and town councils have cut back police funding and police budget requests that have come before them. We are not dealing with a bottomless pit when it comes to police budgets anywhere. My response to you must also include lobbying of the federal as well as our provincial governments to help municipalities with the cost of policing.

That being said, at the same time, we appreciate and understand that the expansion of DNA and the use of DNA as a tool for police officers can actually be a cost benefit to us in the medium and longer term. Traditional forms of policing and traditional investigative tools, if DNA is not permitted to be used, can be more expensive. As a measure or a method of making policing more affordable, our association and police officers across the country are looking to technology to help us to be more efficient and more effective in the delivery of policing in our respective communities. The use of DNA and the expanded use of DNA can actually be a cost benefit, a cost saver, when you compare it to the cost of traditional investigative tools.

● (1030)

The Chair: Thank you.

Thank you, Mr. Maloney.

Mr. Breitkreuz, for five minutes.

Mr. Garry Breitkreuz: Thank you, Mr. Chair.

Again, thank you to all the witnesses for coming. I appreciate what you had to say.

I only want to briefly follow up on the DNA labs and your experience with them. Some of you may use various labs. Through our procedures in the House of Commons, we applied something called an order paper question. The Department of Public Safety told us that there was a 61% backlog increase in the processing of DNA samples from 2003 to 2004.

I would like to know this. What labs are you using? What is your experience with those labs? Are you using RCMP labs or provincial facilities? I only want you to wrap up how you feel about this.

There was a case recently where a delay in processing actually caused the evidence to be thrown out of court. Do you find this is a problem? Could you tell me what labs you're using?

The Chair: Does anyone have that information?

Mr. Vincent Westwick: I'm certainly not able to provide that information on a national basis. In Ottawa, we use the RCMP lab, and I'm not aware of any delay issues, at least not having arrived in my world. Typically when there are problems, they arrive in my world. I'm not aware of that, but I'm really not the person to speak to it. The best I can say is that perhaps we can send you something as a follow-up.

Mr. Garry Breitkreuz: Any other witnesses?

The Chair: Mr. Brown, then Mr. Prevett.

Mr. Bruce Brown: Thank you.

Again, I don't have that information at my fingertips. I apologize. I can certainly follow up on it, and I'd be pleased to send something in writing to the committee.

The Chair: Send it to the clerk, Mr. Brown.

Mr. Bruce Brown: Certainly.

Mr. Garry Breitkreuz: We'd appreciate that very much.

Mr. Derrill Prevett: In British Columbia, of course, we use the RCMP laboratory. The RCMP laboratory in Vancouver is probably the biggest in the country. It and Ottawa will be the two operational labs, if they're not that now. That's where they're going.

When we have overflow, the RCMP can send them to other laboratories. One in particular is Maxxam Analytics in Guelph, and I believe there's another one. From time to time we have used American laboratories. Of course, the cost is higher. There are other laboratories.

Wherever we send it, we take the advice of the RCMP because they are right on top of it. Several of them are members of SWGDAM, the Scientific Working Group on DNA Analysis Methods, and have the highest standards in place. Then we're assured that if they recommend someone, we can go to that person with confidence.

Mr. Garry Breitkreuz: Thank you.

I want to follow up on a comment that was made just at the end of the last witness's comments about how not using DNA can actually increase the costs of policing investigations and so on. I find that to be a very interesting comment.

Chief Fantino, in Toronto, has urged Canada to follow the lead of England, where DNA samples can be taken when an individual is charged with an offence, not just following conviction. I'm wondering if any of you share his views, whether this would help to solve cases in a more timely fashion and keep down police costs, and if you feel that's a direction in which we should be going. I think you know how I feel on that.

● (1035)

The Chair: Mr. Brown.

Mr. Bruce Brown: Thank you, Mr. Chair.

Again, philosophically, the CACP agrees with that suggestion. In fact, we had put that suggestion forward prior to 2000. That suggestion was of course rejected by the government of the day in the legislation as it then was.

Again, this is an area we would want to address during the review of the legislation later on this year. I didn't specifically raise it in the CACP position paper at this time. Again, philosophically, I have no trouble speaking on behalf of the CACP by saying that would be a reasonable approach.

Mr. Garry Breitkreuz: You'd find it helpful, in other words.

Mr. Bruce Brown: Indeed.

Mr. Vincent Westwick: Absolutely.

If I can just add to that, that's the point I was trying to make about reframing the public debate. The public debate about that particular point has to be framed in the context of not just catching crooks and the state invading privacy in order to do so, but also in the context of the whole aspect of innocence, exonerating people, and protection against miscarriages of justice.

The Chair: Mr. Kreling, and then Mr. Prevett, on that issue.

Mr. Herb Kreling: I'll concur with the previous comments of my colleagues here. Certainly the CAPB would be very happy to participate in that more fulsome discussion and debate surrounding it. We're certainly open to that suggestion, sir.

We encourage the use of technologies and various aspects of policing to help improve it and in the response to our community. So we're open to it, and we would certainly be a part of that engaged discussion.

Mr. Derrill Prevett: You would have to be careful, sir, of inconsistency across the country. In British Columbia, we're one of three provinces where no charge is laid without approval of crown counsel. Our charging standard is substantial likelihood of conviction, which many interpret as reasonable likelihood of conviction—though I'd rather have a substantial raise than a reasonable one—followed by a trial in the public interest. If we had enough evidence to charge already, we wouldn't need the DNA to identify the perpetrator.

Mr. Garry Breitkreuz: One of the things previous witnesses earlier this week or last week told us is that they can often link the crimes committed here to other crimes by the person being charged. It would help them solve a lot of crimes and cross-reference them. They would find that very helpful.

Mr. Derrill Prevett: That does occur, there's no doubt about it. That's the reason for one of the indices, the crime scene index. But the difference between getting that upon conviction, like we have now, or getting that upon charge would be that period of time within which you could start making your comparisons.

I say also that if DNA played a factor in the identification of the perpetrator so that charges could be laid, you'd already have at least the DNA on file for that case.

The Chair: Thank you, Mr. Breitkreuz.

[*Translation*]

Ms. Bourgeois, you have five minutes.

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Mr. Chairman.

I would like to welcome the witnesses.

We had representatives from the Schizophrenia Society of Canada appear before this committee. They told us that people with mental illnesses need special treatment under the law. Their views is that violence is not a symptom of schizophrenia and that a history of violence applies to everyone, like illegal drug use. The problem is that these people sometimes forget to take their medications.

My question is for the representatives of the Canadian Association of Police Boards. Your brief states that “a finding of not criminally responsible indicates that the offender did in fact commit the offence”—we agree with that—but “that there should be no difference in the process for those found not criminally responsible and offenders convicted of a designated offence.” You even go so far as to say that these people may have committed previous offences and that “the distinct possibility also exists that the offender may reoffend.”

I find this sentence quite important. Does it stand from some kind of prejudice? I hope not. On what basis do you make that statement? Is it based on research, on your experience? You even say that there should be “DNA sampling in these instances prospectively and retroactively.”

My second question is for you as well. You want to add the killing or wounding of animals to the list of designated secondary offences. That brings us to another bill that we passed here in Parliament, which dealt with animal cruelty. I would like you to explain that to me as well.

● (1040)

[*English*]

The Chair: Mr. Kreling.

Mr. Herb Kreling: Thank you for the question. Please permit me to clarify.

We certainly and I certainly do not mean to imply any form of prejudice against persons in our community who suffer from incapacities. The comments that I made, the comments of the Canadian Association of Police Boards, really go more to the intent that if a person who is found not criminally responsible is treated differently for DNA sampling, then we have lost the opportunity to perhaps connect that person to other criminal acts. Really, that's the intent of my comments. It's not that we would want to be seen to be treating them or that we intend to treat them differently or prejudice them. Simply, it is a tool that would be lost if we did treat them differently under that circumstance.

On my comments with respect to the addition in secondary offences for crimes that involve.... I'm just trying to find my place, Mr. Chair; sorry about that.

[*Translation*]

Ms. Diane Bourgeois: These secondary offences are on page 7 in the French text. I do not know what the page number is in English.

[*English*]

Mr. Herb Kreling: The reason why we have included in the suggestion of secondary offences those crimes against animals is because of the sense in the communities that we represent that sometimes there's a double standard for people who commit crimes against animals. People are very connected to their pets and to their animals and use them for companionship. They are a very important part of their lives. Yet from time to time, when people are accused or convicted of crimes against animals, the type of penalty, the type of reaction in the community, is that it is not very serious. It is swept under the carpet. We're trying in our comment here to place an importance on respect for animals and have it be taken a little bit more seriously in society than we think it's being treated today.

[*Translation*]

Ms. Diane Bourgeois: I would like to clarify one thing. You are not making any connection between someone who mistreats animals and someone who might become a criminal or mistreat a human being. There is no correlation. You feel that mistreating an animal is serious in itself.

● (1045)

[*English*]

Mr. Herb Kreling: Again the connection that the member is making is correct. Certainly there can be a correlation between a person's cruel actions against an animal as well as that person. Could they ultimately do a cruel act against a human? There are possibilities that there certainly could be a connection made there.

[*Translation*]

The Chair: Thank you, sir. Thank you, Ms. Bourgeois.

[*English*]

Mr. Warawa, for five minutes.

Mr. Mark Warawa: Thank you, Mr. Chairman. Thank you again to the witnesses for being here today.

We've heard recently—I believe it was last Tuesday—from the Privacy Commissioner that there was in her opinion no scientific evidence to support the success of DNA and keeping it. She looked for scientific evidence and papers written on the successes of DNA. One of my questions was going to be to ask if you could report your perspective, within five minutes. I don't know if you've necessarily written a scientific paper, but to me I think the successes of DNA are obvious. I wonder if each of you could comment on that.

The second question I have regards a comment made by you, Mr. Prevett. We've also heard concerns expressed of the intrusiveness of taking the DNA sample. It relates primarily to the storage being intrusive, not the taking of it. I think there's a consensus that the taking is not intrusive. It's similar to a diabetic taking a blood sample. It's virtually painless. There are the three samples: the blood, the hair, and the swab. That was not the intrusive part we've been hearing about. It's the keeping of it.

Mr. Prevett, you made a comment, and I'm looking for clarification. I think you said that the storing of fingerprints provide more information that could be of an intrusive nature than the DNA markers. Could you expand on that—first, the scientific evidence to support the successes of the DNA data bank, and then a comment on that.

Mr. Derrill Prevett: I will address that first.

It's not that it's more intrusive, it's just that I think it tells you more about the person. A fingerprint expert would know immediately not only that whoever he was examining had fingers—it's silly—but which finger. You realize that when you look at a DNA profile all you'll know is that the person you're examining is human. What I'm telling you is that the information that's used in DNA analysis, and for that matter in preparing the data bank profile, examines DNA that codes for nothing. In other words, it won't tell these scientists how many fingers you have, the colour of your eyes, what race you are, or anything like that.

If there's a concern about intrusiveness over the storage of samples, then I can only think it's not based on a concern about anything that the law provides for now or that the DNA data bank people do with the DNA. It must be a concern that perhaps is born out of a look to the future that if someone, somehow, were to break in and get all of this information—first of all, you must know that it's stored without any identifiers attached to it—they would be able even then to somehow go and have their own scientific laboratory somewhere where they could examine this and determine whether or not the person was prone to some genetic disease or something like that. I consider that to be pretty far out there in present circumstances. I want to make that clear and hope that answers it.

Dealing with no evidence to support the success of DNA, which is a pretty broad way of putting it, I think you'll admit, we're talking about forensic DNA analysis. Well, I consider empirical research to be scientific, that is to say, tried and true methods that are seen to work. As a prosecutor of horrible murders that have gone unsolved through the normal investigative measures that were taken for many, many years, to have DNA come along, whether it's as a result of a blooding type situation—you'll remember the book where several people contribute their DNA and then the one perpetrator is found—I'm telling you that's a wonderful feeling to go into court with that kind of evidence. No evidence to support the success of forensic DNA evidence? Ask that question of those who have been wrongfully convicted. I think that's a very sweeping statement that's not borne out by facts that are obvious to all of us in the system in our everyday experience.

● (1050)

The Chair: Thank you.

Is there any other comment on the existence of a specific study? I think that was the issue.

Mr. Brown.

Mr. Bruce Brown: Mr. Chair, I can't point you to a specific study, but just to echo Mr. Prevett's comments, I think that the Milgaard and Morin cases speak for themselves in terms of success.

The Chair: Okay.

Mr. Herb Kreling: I don't have the supporting documentation here, Mr. Chair, but our brief specifically references a British study with 30,000 cases. We will undertake to give the clerk the support documentation on that, so you will see where we came to that comment in our presentation.

The Chair: Mr. Westwick.

Mr. Vincent Westwick: I think the question itself is a bit difficult. Perhaps part of the answer is to also look at the success factors of other traditional investigative techniques and how they would measure up. Again, I'd commend the miscarriages of justice report that was recently released, which comments in some way, especially the background papers in a very critical way, about traditional investigative techniques and their fallibility and how they contribute to miscarriages.

On the point that my friend has made about the reliability of this evidence, if success corresponds to reliability, then that reliability is there for everyone in the community. It's not just something for the accused or the victim. It's reliable.

The Chair: Thank you.

Thank you, Mr. Warawa.

Ms. Neville, for five minutes.

Ms. Anita Neville (Winnipeg South Centre, Lib.): I don't know that I need five minutes, Mr. Chair, but thank you, and my apologies for leaving and coming back. I had another commitment.

I'm looking through the Canadian Association of Police Board's brief and was struck by a comment in here, and I don't think it's been addressed to date. You say in fact there's a contingency within the CAPB that believes any offender currently serving time for primary or secondary designated offences should be required to provide a forensic DNA sample. I wonder if you would expand on that and on what the discussion has been.

Mr. Herb Kreling: Thank you.

The discussion surrounding that has been in response to what we hear in our communities, what residents in our communities are saying: that people who have been found guilty of offences are linked to other offences that go unsolved. In an effort to try to assist in the solving of those cases that remain unsolved by traditional policing methods, the use of this technology as a tool for our police services will provide the opportunity to solve those crimes in our respective jurisdictions.

Ms. Anita Neville: That's fine. Thank you.

The Chair: Thank you, Ms. Neville.

Mr. Comartin, Mr. Thompson, and then we'll have to move on.

Mr. Joe Comartin: Mr. Prevett, we did hear, by the way, that you were speculating on this as being something in the future. The reality is that the State of Florida.... We can't get our hands on this; I spoke to the Privacy Commissioner after she gave testimony last week and her office has been trying to track this study down. In fact, we don't know who released the information. The data was released, but we don't know whether we're able to identify the individuals. The purpose of the study was to draw a connection between a person's DNA and their propensity for committing B and E. That was the nature of the study, although it has never been published, I think.

I won't draw any conclusions as to the scientists even coming up with the premise, but that's our fear—and I guess I'm saying that to all of you. It's not what's there today in that data bank, and how it can be used. We understand there are severe limits on how it can be used. It's what could happen with something down the road, with a different government or even a police laboratory releasing data for experimental or research purposes.

You've raised the issue of the wrongfully convicted and how it has helped exonerate them. Of course, I think we all recognize the significance of the DNA data bank for that purpose. However, there's a corresponding problem with it, in that the data is still there. When we were at the lab last week, we were told they have no way of destroying the sample once it's in their data bank, because of the way the sample is collected.

Are there any comments on how we deal with that particular problem? This is someone who was convicted but has now been exonerated, but they have the sample in the data bank.

● (1055)

Mr. Derrill Prevett: I can only tell you what the law says. When a person is finally acquitted—that's how one of the sections reads—or if a person is obviously.... That would be the exoneration you're talking about here. It's not simply an exclusion, although I can tell you there are provisions for that, too, with "exclusion" meaning "not a match". The sample itself and the profile derived from it are to be destroyed.

Mr. Joe Comartin: Except that it can't be done.

Mr. Derrill Prevett: Yes, and I don't know why you were told that. I don't know enough about it to answer that. I think someone like Dr. Fourney would be able to answer that question.

Mr. Joe Comartin: I think he was the one who told us it couldn't be destroyed. You may want to take a look at the lab. Anyway, fine. I just thought you might have some....

The other thing that has come up is the fact that we're sitting with 500-plus samples that are faulty. In the same issue, how do we deal with them? Obviously, if we proceed along the lines of expanding the number of charges that are going to be covered by this, I assume we're going to be ending up.... I'm asking you because it's at your end that this happens. Those are faulty because they weren't prepared properly at the departmental level.

Mr. Derrill Prevett: It underlines why these amendments are so important. When a sample is sent to the data bank and is rejected, it really spells out how we can go back to get an order and compel another sample.

The errors that I know about are primarily those that are clerical in nature, like failing to get the fingerprints, using the wrong kit, or that sort of thing. The only way I think we'll overcome that is through education.

Mr. Joe Comartin: Mr. Prevett, I guess I'm asking you directly, because the attorneys general obviously have a specific responsibility in this regard across the country. What do we do with the existing samples? Nobody has made any decisions. We don't even have any recommendations on what they're supposed to do with these faulty samples. They're just sitting in storage right now. They've not been included in the bank.

Mr. Derrill Prevett: Yes, I think they are in limbo at this point. I think they'll ultimately be simply discarded or destroyed, as you say.

On the other issue, you said before that samples can't be destroyed. I must admit I'm a bit surprised by that, because I don't know how they couldn't be. I bet you I could destroy them.

Mr. Joe Comartin: The problem is they're on a plastic sheet with 96 others.

Mr. Derrill Prevett: Oh, I see, they're intermingled.

Mr. Joe Comartin: There is one after another on that. If they destroy one, I understand they destroy a large number of the rest, if not the whole plate.

The Chair: I see Dr. Fourney anxiously awaiting his turn, so that's something he can deal with.

Mr. Derrill Prevett: I think he's the one to answer that.

The Chair: Thank you, Mr. Comartin.

Mr. Thompson will be our last questioner with this panel.

Mr. Myron Thompson: Thank you.

Thank you, folks, for being here.

In 1995 and 1996 I had the pleasure of serving as the critic for justice and the Solicitor General. I travelled the country visiting penitentiaries for the purpose not only of being critical of how our penitentiaries were being run but also to try to get information that would help in the creation of legislation to prevent more crimes, such as why people were there and what led to that. It was an interesting time.

One of three things that cropped up in my mind over that period of time has stuck with me. I've taken it on as an individual who is adamantly fighting one particular issue, and that's child pornography. I want to compliment the police forces and the board for mentioning in your submissions that you feel possessing, accessing, and distributing child pornography should be a primary offence. A lot of the other submissions we've received have said child pornography should not be part of that.

During my tour of the penitentiaries, I visited inmates and interviewed psychologists. I found out that child pornography was a key instrument in leading the offenders to commit sexual offences against children. So I think it definitely needs to be in the primary category, and I'm going to fight to make sure it stays there. I compliment the government for putting it there. Some in our society say this is an intrusion on certain rights, such as freedom of expression, the public good, and artistic merit. I'd like to hear more comment on that, if you would.

I find it fairly amazing that Correctional Service Canada continually comes out with recidivism rates that are very low compared to what they told me at the penitentiaries, which is that the recidivism rate is very high. There is a discrepancy there. I'm wondering if this DNA collecting in the penitentiaries would also help solve many unsolved crimes within the penitentiaries. I was rather shocked by the number of violent crimes that had taken place where they weren't sure who the perpetrator was. I'm also quite concerned about gangs in our penitentiaries.

I wonder if this method would help address some of the potential dangers. My travels in 1995-96 indicated we're heading down a path that could be very destructive if we don't address these potential problems.

● (1100)

The Chair: Mr. Brown.

Mr. Bruce Brown: Thank you, Mr. Chair.

Thank you, sir, for your comments.

Certainly we see a strong link between child pornography and violence toward children, artistic merit arguments notwithstanding. We believe that the possession, distribution, and creation of child pornography are at least a precursor to offences directly against children, if not an integral part of offences against children. So we certainly would like to see that as a primary offence.

With regard to the penitentiary issue, the more information we have, the better our detection could be. So, indeed, we would echo and support your comments about the collection of DNA in penitentiaries. Frankly, I hadn't turned my mind directly toward that, but it certainly is a persuasive argument as far as I'm concerned.

The Chair: Mr. Kreling.

Mr. Herb Kreling: With regard to child pornography, Mr. Thompson, some of the comments you've made are exactly the types of things we hear from our members across Canada. As an association, we have passed numerous resolutions with regard to the protection of children and our stand on child pornography and how we believe it is directly connected to violence against children in our society. So we certainly would have no opposition at all to the type of suggestion you're making on that issue, and we support it being a primary offence.

The Chair: Mr. Prevett.

Mr. Derrill Prevett: I think we're all of one mind with you on this, except of course that using any measure, including DNA, to profile or predict who is going to be a perpetrator of a crime is difficult, if not impossible.

I can tell you that the courts have clearly stated there are limits to some of the freedoms you discussed, although I appreciate what you're saying, sir, about these forces in our society. I can tell you that where we've had violent crimes in penitentiaries, we have used DNA warrants, the ones we've had since 1995, to identify the perpetrators. It is not as if DNA is not used; it's used in the conventional sense, the now conventional sense.

The Chair: Good. Thank you.

Mr. Myron Thompson: I was just wondering, for clarification, do any of these people or has anyone received any reports in regard to the connection of child pornography to serious violent crimes?

● (1105)

Mr. Bruce Brown: Anecdotal evidence, I suppose, sir, is the way I would put it.

Mr. Myron Thompson: No studies or documents of any kind?

Mr. Bruce Brown: I don't have anything at my fingertips, but if I can locate something I'd be more than happy to forward it to you.

Mr. Myron Thompson: Well, I hope so, because I think it's something that is long overdue. I appreciate your comments and thank you for your stats.

The Chair: Thank you very much, Mr. Thompson, and thank you to our panel.

We'll suspend as briefly as we can to allow the witnesses to retire and Dr. Fourney to come to the table.

● _____ (Pause) _____ ●

● (1110)

The Chair: I call our meeting to order.

We're continuing our study on Bill C-13, an act to amend the Criminal Code, the DNA Identification Act, and the National Defence Act. We have now Dr. Fourney with us, program manager of the National DNA Data Bank, forensic laboratory service. With Dr. Fourney is David Bird, the RCMP legal counsel.

If you'd like, give us an opening comment, and then we'll go to questions.

Dr. Ron Fourney (Program Manager, National DNA Data Bank, Forensic Laboratory Service, Royal Canadian Mounted Police): Thank you.

Actually, my statement will be fairly brief, because you folks have had a tour.

It's my pleasure to have been asked to come before your committee and talk about the success of the national DNA data bank.

As you are quite aware from the tour last week, the data bank has some very dedicated and enthusiastic professionals who make the program work. I remind you that beyond the group in Ottawa you have met, the data bank itself and the administration of the act represent a true partnership across Canada, with the provincial laboratories in Ontario and Quebec and the RCMP regional laboratories contributing the samples that go into our crime scene index. I think credit is also due to the law enforcement and government members who make the process work in the interest of justice.

Now going into our fifth year of operations, we have more than 72,000 samples in our convicted offender index and more than 19,000 samples in the crime scene index.

The data bank is a true investigative tool, helping to focus investigations, sometimes reaching back in time to unsolved cases, and linking investigations across Canada. I would remind the committee that it's equally important to remember how this tool provides tremendous exoneration potential and protects the innocent when the convicted offender DNA profiles do not match the crime scene DNA profiles. One direct measure of the DNA data bank's success is the over 2,748 investigations assisted, which include some of the most serious offences, for example, 178 murders and 454 sexual assaults.

The effectiveness of the automated technology and the process employed by the data bank have been envied by many forensic laboratories in the world. In many ways our protocols are unique in the ability they give us to track each sample but at the same time to ensure the complete privacy and security of all samples and data. It gives me great pleasure to report that the data bank itself is recognized as a quality system, having passed the highest accreditation standard for a laboratory of its kind.

We thank you for visiting the data bank last week, and I hope that my presence here before the committee will help you and that I can answer any questions you may have.

Thank you.

The Chair: Thank you, Dr. Fourney.

We'll go first to Mr. Breitkreuz, for five minutes.

Mr. Garry Breitkreuz: Thank you, Mr. Chair.

Thank you very much for coming before the committee again. I appreciate that very much. The tour was very informative and very helpful, and I found it a real eye-opener. Thank you for allowing us to be there.

Last October Chief Fantino from the Toronto Police Service reported that England's database contains more than 2 million DNA profiles and that each week there are about 1,700 hits linking suspects to crime scenes. Last week we had before this committee David Griffin, the executive officer of the Canadian Professional Police Association. He told the committee our data bank now predicts that 5% of the crime scene profiles entering the data bank will result in a match with a previous offender's profile. In the United Kingdom they have a 40% success rate.

What would it take to achieve that kind of success rate here in Canada? How do you explain the difference? Can you go into some kind of an explanation as to how we could make that more effective?

● (1115)

Dr. Ron Fourney: The national data bank is like any other data bank—or any other bank, for that matter. The more you have in it, the better off you'll be with regard to compounding your interest by making matches or hits. As our data bank grows, we fully expect to have more matches across Canada between crime scenes as well as between convicted offenders.

As you're probably aware—and I believe there is a witness coming before you from the United Kingdom—they have a significantly different legislative framework. Their laws are different with regard to the ability to collect samples, and they also differ with regard to respecting charter issues of privacy and security.

All I can offer you is that we think our data bank is an outstanding success, based on the numbers of samples that come in. If we had more samples, we would definitely have more matches. Our best expectation is truly that about 5% of the crime scene samples entered into the data bank will effect a match.

Mr. Garry Breitkreuz: I appreciate that.

In other words, as some of the previous witnesses said, if we were able to take a sample at the time of charging for some of the crimes that have been committed and we could process them in a timely fashion, it would allow us to probably make a lot more matches to a lot of other, seemingly unrelated incidents.

Would you be supportive of that, or is that beyond what you're here for today?

Dr. Ron Fourney: Basically, we're the custodians. It's a great privilege to be running the national data bank on behalf of police services across Canada, which, I might tell you folks, also include those of Ontario and Quebec. Our data bank is part of the RCMP. I work for the national police services, which includes the forensic lab services, of which the data bank is a branch. Our clients, our customers per se, are folks who are possibly not RCMP members.

I think the question you're asking is, if these samples were available in an easier manner at the front end and more samples were taken, would it permit more samples to come into the data bank? That's true. It sounds more like an operational question about dealing with the actual collection format. We're quite willing to accept the samples permitted us by the law.

Of course, we're here today because of Bill C-13, which reviews and amends the legal structure in place to do so. From a data bank perspective, I can tell you we're quite willing to accept the samples that are permitted to come in.

Mr. Garry Breitkreuz: Could you give us some clarification as to the confusion that seems to exist? I had an order paper question and the Department of Public Safety replied to that question, indicating that from 2003 to 2004 the backlog increased by 61%. When I visited the lab, I was told there is no backlog. What causes this discrepancy between those two statements?

I'd appreciate your view on this, because some of the people on the ground indicate they're not getting results in a timely fashion, yet when we visited the lab, that wasn't the indication. Do you have any comments on that?

Dr. Ron Fourney: Yes, and I welcome the chance to discuss this simply because there does seem to be confusion. I can understand the confusion, because one thinks of DNA as DNA, but there are different components, different operational requirements, and different ways of using the DNA.

My particular position is that I am the officer in charge of and responsible for the national DNA data bank, and that is directly affected by the DNA Identification Act. I can tell you folks today that the data bank is underutilized. We process all the samples that come into us in a very timely fashion, and in fact we have an overcapacity, based on the number of samples that are coming in.

We would like to see, certainly, the legislation as it now exists affect more samples coming in. We estimate from judicial statistics we have reviewed that probably about 50% are not being collected. We would welcome those samples.

From the perspective of the national data bank, there are absolutely, in my mind, no delays. The samples are going out, the automation is working just fine, and we'd like to see more samples.

I think the true question you are asking is, what are the other components of the DNA system, the operational side? As Mr. Derrill Prevett has indicated, that's the casework operational group. Unfortunately, I run the data bank and I do quite a bit of the research to develop the technologies. With regard to any questions on the operational side, we'd be happy to bring a witness before the committee to answer those questions. I specifically don't have direct information on the operational side, but I am happy to tell you that the data bank seems to be working just fine.

● (1120)

The Chair: Thank you, Dr. Fourney.

[*Translation*]

Mr. Marceau, you have five minutes.

Mr. Richard Marceau: Thank you, Mr. Chairman.

I appreciate your clarification because, as I said to the previous witnesses, the privacy commissioner told the committee, as an argument for not passing Bill C-13, that there were delays and that all was not well. It turns out that a member of her staff is on your board of directors or the advisory committee of your bank.

So how can an organization like the Office of the privacy commissioner, which is officially represented in the organization chart of your organization, come before this committee and say that there are problems with the way samples are handled? I do not understand. Are these people ill-informed? If so, the board of directors on which these people sit needs to be better informed. What is going on?

[*English*]

Dr. Ron Fourney: This is a bit of a mystery to me as well, in that Madame Stoddard, the Privacy Commissioner, visited our lab along with her colleague, Mr. Raymond D'Aoust, who is a member of our advisory committee, and they seemed quite pleased, certainly in terms of the privacy and security component, with how we handle it. I believe they're fairly aware that we have an insufficient number of samples to affect the total efficiency of the data bank. In other words, we could handle many more samples coming in.

Without having read the privacy commissioner's brief, or whatever was submitted, I can only assume that perhaps she was commenting on the operational side, but it certainly is not the data bank side. I'd be happy to clarify that with her. At our next meeting with the national DNA data bank advisory committee, which is a ministerially appointed committee to oversee this program, I'd be happy to bring it up and clarify it with Mr. D'Aoust, who sits on that committee. I'm a little surprised myself.

[*Translation*]

Mr. Richard Marceau: We have already asked a lot of questions. I pestered your colleagues with question after question when we went there.

To take this a little further, you say that you are under-utilized, that you have much more capacity to process samples. There is a review process that should get under way in June in principle. I would be surprised if it does start in June, but I am certain that one of the things that will be raised is the idea of moving to a British-style system where samples are taken when the person is charged and not when he or she is convicted.

If the review resulted in that change, would you be ready immediately to take on the extra workload that would necessarily be created as a result?

[*English*]

Dr. Ron Fourney: That's rather a relative question. If I had millions of samples coming in.... I hope there aren't that many offenders in Canada. We would have to review that.

I can tell you, for instance, that last year we had 19,310 samples entered into the national data bank, and in fact our expectation was for at least 30,000 to 36,000 a year. The data bank, when it was created, was built to handle 60,000 to 80,000 samples. Depending what the increase might be, I think we would have handled many of these samples you refer to, but it would largely depend on the total numbers. If we were completely swamped, it would be difficult to handle those.

[*Translation*]

Mr. Richard Marceau: Am I to understand that the bank has not studied, thought about or evaluated the number of samples that it would get if sampling was done when people were charged rather than when they were convicted? No one has looked at those numbers?

● (1125)

[*English*]

Dr. Ron Fourney: To my knowledge, no. I think there are also aspects of that question that would have to be reviewed carefully. For example, some jurisdictions that I'm aware of may take the samples and hold them but not actually process them until a conviction is assured. Others would process the samples directly. It largely depends on the country and the legislation.

For instance, in the United Kingdom—and you can certainly ask our guest when he arrives here—my understanding is that they process the samples directly even at the time of arrest. In other places that I'm aware of they hold the samples until the court is made aware that the processing should be done because there has been a secured conviction. Those particular cases would be situations of taking samples in storage versus the actual processing. There are different components that would have to be very carefully reviewed with respect to the legislation. I would certainly hope that in some way we would be involved in that consultation process.

[*Translation*]

Mr. Richard Marceau: Very well. Can you explain to me once again, since I dropped physics and chemistry after grade 11 because I knew that I wanted to be a lawyer, how it is that over 30 years ago, we sent a man to the moon but today we cannot get someone completely out of the system? That was what you explained when we visited the bank: this sort of container that does 96 profiles at a time. You talked with pride about the advanced technology used by your system here in Canada. Why could you not remove one sample from the system completely? If it is not possible, is there a technological means to do that? Is it technologically possible to remove it, if necessary?

[*English*]

Dr. Ron Fourney: Once again I'm glad to hear this question, because it gives me an opportunity to try to explain this. It is a difficult concept, but to answer your question directly, the samples are destroyed completely. They're witnessed by two individuals. Once we get a valid order indicating that there's an exoneration or what have you—we are immediately notified—we verify the sample. The sample is pulled out—it's usually a bloodstain sample— it's witnessed in front of someone else, it's destroyed, and we notify that the sample has been destroyed.

I think the confusion that may have arisen here—and it's similar to the confusion, I might add, that came up during our original testimony when we were talking about the processing back in 1989—is that it's the profile itself, the digital series of numbers, that is difficult to destroy.

The reason for that is the technology as it has advanced. It's slightly different today from what it was four years ago; we may be looking at a future where it's one sample processed at one time and just added. But the technology that was used in the past—it was certainly used for the human genome project to map our human genetic sequence—involved a large series of samples processed simultaneously. In order to do that efficiently and cost-effectively, what they essentially did was link every single sample on a file to a digital code.

What happens in our situation is, the way the software is written—the source code to provide this digital signal—they are all intermittently linked. In particular the controls, those red bands that you possibly remember seeing last week—and there's yellow, green, and blue—were always constant. The red are internal lane standard controls for every single sample; they're crucial to getting the right answer and also for the control aspect.

The way the company, Applied Biosystems, developed this technology—the same way they did for the human genome map—is that all the controls and everything are linked in one giant file. To go in and to actually rewrite the source code and kill one sample literally destroys the files beside it and the files in front of it. In discussion with the folks at the time of creating the data bank we came to the conclusion that the best way to handle this at that time was to remove access to the actual information on the file itself. That's why you have a unique bar code linked to a sample.

When we're given an order to take the sample out, the samples themselves are destroyed, and the access—the number that is supposedly linked only to that sample—is destroyed too. Essentially we have no ability to re-code or re-view that sample in the future. In fact, if we were required to do so, we'd have to take a new sample.

● (1130)

The Chair: Thank you.

[*Translation*]

Thank you, Mr. Marceau.

[*English*]

Mr. Comartin.

Mr. Joe Comartin: Let me pursue that question of the profile that's there that can't be destroyed without destroying other ones. If I said to you the federal government passed a law that said we want to have every profile for somebody who has committed a sexual offence of this nature, are you able to pull those profiles out?

Dr. Ron Fourney: I'm not exactly sure of the question. What we can do now, for instance, is.... If the question came in about this unique number, 5784 or whatever we call it, under a valid court order relating to a sexual offence, whether we could go backwards in time to find where that profile is in the particular gel, probably we could. However, at the same time what we would do is use the unique number; we wouldn't use the offence, for instance. In the future, if that had been destroyed and taken out, we wouldn't be able to do it.

It's a little complicated. If I'd known this question was going to appear.... When I went before Parliament I had a whole series of slides that I used indicating how this actually worked. It's a little interesting. It's a system—

Mr. Joe Comartin: I only have five minutes. Let me ask you this.

We heard after we were at the lab, or around the same time, of information being released for medical or scientific research in Florida. We haven't been able to pin it down. The commissioner of privacy has tried to track this and hasn't been able to, but there was a study done—the data was released—that was going to allow for medical research.

First, do you know anything about that? Second, if I understood the nature of the study, they were able from the data they got from that particular lab to make determinations of the makeup of that DNA, if I can put it that way. I know I'm being very unscientific, but the profile was going to tell them everything, if I understood this, about that individual. They could still do that from the data they were getting out of the lab.

Is that possible with the bank we have here?

Dr. Ron Fourney: No, simply because the samples we process are for anonymous marker sets, which are basically different from person to person.

I'm a little surprised at your comment about Florida. Presumably you don't mean the Florida Department of Law Enforcement, because we work with Mr. Coffman routinely, and he has the same rules we do; they're not permitted to use convicted-offender collected samples for any purpose other than law enforcement.

Some states—I believe Alabama is one—have permitted the use of these samples for statistical analysis in the future, but the majority of states that I'm aware of, and certainly the countries using DNA from a forensic point of view, don't do medical research on them.

In our particular case it's forbidden, so the answer for us is no.

Mr. Joe Comartin: We understand that you can't do it now; it's what it could be used for. That's what I'm trying to figure out.

Let's go back to Alabama, then. In the research done there, they were doing some kind of statistical analysis. Was this saying that a person with this type of DNA has a propensity to commit this crime? Was it that far along?

Dr. Ron Fourney: I don't believe so.

Mr. Joe Comartin: What was it?

Dr. Ron Fourney: Basically, as far as I know, I don't think they used it for anything but law enforcement, but the legislation was passed that permitted them to use it for other purposes, if they chose to do so in the future.

To be honest with you, the markers we use don't code for anything else. In the future, if you're concerned about how a sample is used—potentially to do medical analysis or attributes of other dimensions—the possibility is always there, but from our point of view the legislation prescribes what we can and can't do with it.

● (1135)

Mr. Joe Comartin: With regard to the ability to deal with this, I'm becoming concerned.

Last year you entered 19,300 samples into the data bank, and you have a capacity to enter 60,000 a year?

Dr. Ron Fourney: At least 36,000 and up to 60,000 with—I think—no problem.

Mr. Joe Comartin: We've been told you're only getting 50% of them, so if you get the full 100% of the existing charges that we can get them in, aren't you going to be close to capacity at that point?

Dr. Ron Fourney: I don't believe so.

The statistics that I remember reviewing with the original primary offences would be around 18,900 per year. If you recall, secondary offences are based on a judicial decision, and at that point we thought we might get between 10% and 15%. Those particular offences...I think there are around 94,000 secondary offences, so that's how the estimate came up for 30,000 samples.

But the technology is working so well, from an automation point of view, that we could easily handle more.

Mr. Joe Comartin: What's your maximum?

Dr. Ron Fourney: I would say that at 60,000, we'd be cruising; we could probably hit 80,000, based on the financial considerations and the hiring of full staff. I don't have a full staff in the data bank as of yet, because we don't need them, in the sense of running data-bank samples.

Mr. Joe Comartin: Okay. So if you had full staff, you could go to 80,000?

Dr. Ron Fourney: I would suspect so.

Mr. Joe Comartin: Based on the additional charges that are being proposed, both to be moved up from secondary to primary and to introduce new ones into the secondary, has any analysis been done as to how many samples you could be faced with, if the system worked completely efficiently?

Dr. Ron Fourney: I'm not aware of the studies. Perhaps justice.... We expect a 25% increase, I've just been told.

The Chair: You say that with so much conviction.

Mr. Joe Comartin: You might advise the source of that....

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): Am I allowed to—

The Chair: Yes, certainly.

Mr. Greg Yost: My name is Greg Yost. I am with the Criminal Law Policy Section, the ones who developed this legislation.

When we were developing this, we had our research people do a run with the Canadian Centre for Justice Statistics at Statistics Canada on how many convictions there were for the current sets of primaries and secondaries, and how many more there would be.

We took the transfer of some from the secondary to the primary, and we used that; instead of 15%, we would get 90%.

We got a ballpark figure that there would be about a 25% increase in the eligible offences, the likelihood of getting orders. That is how it was done.

That was presented to a federal-provincial-territorial meeting in late 2003, I believe.

Mr. Joe Comartin: Is that available to us?

Mr. Greg Yost: I have no difficulty going back to our research people and asking them to reproduce what they did. The only slight difference is that with this bill we've put child pornography into the primaries, and previously it was secondary, so there would be some slight adjustments of the numbers, I would expect.

Dr. Ron Fourney: If I may be permitted, I'd just like to add a little bit of a comment here too.

The reason I don't want to just say 80,000 or 60,000 samples is because it's based on the actual collection success by the police officer. Currently our rejection rate is around 1.3%. For instance, if that were the case, we could do a maximum number of samples, but if for some reason a whole series of samples were badly taken at the front end, we would have to reduce the actual numbers of samples entered, but we would process those samples again.

In other words, if we'd had 20,000 bad samples, they wouldn't go into the data bank until they were processed. If we had 60,000 samples, and all of a sudden 20,000 came in that were no good and we processed those, I'd have to redo those 20,000. So we would actually be processing 40,000 samples. But based on the success so far, I think we could probably hit around 80,000 samples.

● (1140)

The Chair: Thank you. We have to move on now.

Ms. Neville, you have five minutes.

Ms. Anita Neville: Thank you very much, Mr. Chair; and to the witnesses, thank you again for coming here today.

I want to go back to the line of questioning that Mr. Marceau and Mr. Comartin asked.

When the Privacy Commissioner was here, she spoke about function creep and the potential use of the DNA for other purposes. You provided some clarity. Now, as I understand it—and tell me if I'm wrong—the sample is destroyed, the profile is not destroyed, but the numbers that identify the profile are destroyed. Is that correct?

Dr. Ron Fourney: No. In fact, the only samples that are destroyed are where we get a valid court order, from an acquittal point of view or discharges, and then they come out and are destroyed. But the rest of the samples remain in the laboratory.

Ms. Anita Neville: For those that are destroyed, what happens to the profile?

Dr. Ron Fourney: We cut the link between the unique identifier and the actual digital information. So basically we have no way of tracing who they belong to.

Ms. Anita Neville: What portion of your database would be destroyed, what percentage?

Dr. Ron Fourney: To date, we've had 23 convictions quashed on appeal and one authorization quashed. The judge ordered destruction of one, rejected a contaminated sample on three, and rejected an original non-designated offence on two.

Ms. Anita Neville: Not a lot.

Dr. Ron Fourney: No, not a lot.

Ms. Anita Neville: On this function creep that the Privacy Commissioner spoke about, Mr. Comartin referenced Florida, and she talked about DNA of the convicted or DNA that you have possibly being used to make links with other family members along the way. She talked about the possibility of DNA being used as a predictor for potential crimes—or she didn't, but we've heard here.

Are you aware of any studies or are you aware of any opportunities beyond your DNA bank where this is in fact happening? Are you aware of any literature?

Dr. Ron Fourney: I think there have been many instances in the past when people have tried to use clinical diagnostic markers to associate these with certain dysfunctionality, possibly mentally challenged incapacities. But from a forensic point of view, I don't know of any.

Ms. Anita Neville: You don't know of any studies that have—

Dr. Ron Fourney: No.

From what we would call a kinship association or family association, it's pretty hard not to be involved with that, simply because half your DNA comes from mom and half comes from dad, and we also have identical twins, for instance, who have the same identical profile. But as far as I know, there has been no law enforcement agency that I can think of, certainly in North America, that has tried to associate a particular propensity for a disease trait, or for that matter a trait for criminal propensity, to any of these markers.

Ms. Anita Neville: From your perspective, can you anticipate this function creep that she speaks about?

Dr. Ron Fourney: Not based on our Charter of Rights and Freedoms, no.

Ms. Anita Neville: Okay. Thank you.

The Chair: Thank you, Ms. Neville.

Mr. Warawa, for five minutes.

Mr. Mark Warawa: Thank you, Mr. Chairman.

I have a number of questions, so I will try to keep them short, and I would appreciate it if the answers were short, if possible.

I also want to thank you for the tour. It was very informative. Every member of the committee appreciated it.

One of my comments to previous witnesses was a recommendation actually to have a tour, because they were speaking and critiquing the way it's stored but had never had a tour. Is a tour available to groups, the Canadian Bar Association, for example, if some delegates wanted to have a tour? Is that possible?

Dr. Ron Fourney: Absolutely.

● (1145)

Mr. Mark Warawa: Thank you.

One of the Privacy Commissioner's critiques was that there was no scientific paper written to say that the DNA data bank is successful. Are you aware of any scientific papers written?

Dr. Ron Fourney: Very many.

Mr. Mark Warawa: Thank you.

Dr. Ron Fourney: I might clarify that. I haven't read her entire statement, but I'd be surprised, because she's a very knowledgeable woman. And Mr. D'Aoust, who sits on our board, is very good at offering suggestions and recommendations.

I'd have to go back and review her statement, but it's my understanding that what she was perhaps trying to make note of was the link between certain crimes and a propensity for other crimes in the future. I don't believe it was whether or not forensic DNA evidence was going to be important, or that there's no helpful scientific link from it. She is quite aware of the potential for exoneration, and certainly of the numbers of sexual assaults and murders we've used it to assist in solving, and the use of it to identify the victims of Swissair 111, the mass disaster, and the numbers of exonerations in Canada.

I think we should probably go back and review what she said before we think that she actually said that.

Mr. Mark Warawa: I would agree; I wasn't quite understanding the logic there.

On the choice of the sample, the different types, the blood, the buccal or the hair, when police officers take that sample, do they decide what sample type is taken?

Dr. Ron Fourney: Basically, yes.

Mr. Mark Warawa: The rejection rate for blood is the lowest and for hair it's the highest. Do you have those numbers again? I looked in the PowerPoint presentation.

Dr. Ron Fourney: Actually, I think you folks have the PowerPoint presentation.

Mr. Mark Warawa: Right. Is it in here?

Dr. Ron Fourney: It should be, yes.

Mr. Mark Warawa: Okay, I'll look for that again.

Dr. Ron Fourney: I roughly remember that it's around 6.6% for blood and as high as 35% for hair, and maybe 32% for buccal swabs, the swabs inside the mouth. That's pretty constant, actually, from different laboratories across North America.

When I say 6.6%, we actually go back and reprocess those and achieve success; but some samples are more difficult to take than others. Hair, in particular, is difficult because some people, like me, don't have good root sheaths. On the other hand, in taking a good buccal swab, often the transfer of the cells is not complete.

Mr. Mark Warawa: How often do you see an error in the type of sample taken not matching the type of kit? We heard earlier today from another witness that it is a problem. Is it rare that they're taking the wrong type of sample on the card?

Dr. Ron Fourney: There are two types of kits. There is a kit that enables the police to take a sample in pursuit of an investigation, a warrant sample essentially, where the particulars of the individual are put onto that sheet of paper, and then there's the national DNA data bank kit, which holds the privacy and security very tight and the donor information isn't on that.

The bottom line is that I think we've seen a couple of hundred samples come in with the wrong kit. As a result of that, we have a very aggressive training and collection program; we visited over 23 different police groups and colleges dealing with training of policemen in the last six months. Our success rate is great compared with that of many other countries, but we'd like to see those sample numbers come down.

In terms of the wrong kit, the numbers really are minor with the types of samples that are rejected. Usually it's a non-designated offence that is the issue, not the wrong kit.

The Chair: Thank you.

Dr. Fourney, in answer to one of Mr. Warawa's questions you referred to studies on the effectiveness of the DNA bank. Do you have something you could forward to the committee?

Dr. Ron Fourney: There are a number of papers in the U.S. We'd have to go back and do an appropriate literature search.

I think one of your colleagues talked about Florida, for instance. Mr. Coffman has presented a very nice PowerPoint presentation on the effectiveness of the Florida Department of Law Enforcement database. I can certainly make that available to you.

I know that Mr. Chris Maguire is coming next week. I'm sure the United Kingdom is an excellent example of success.

In Canada, I can tell you the links between secondary offences and primary offences, for instance.

● (1150)

The Chair: Anything you can forward to the committee we'd appreciate.

[*Translation*]

Mr. Marceau, I would ask you to be brief, since I already gave you a lot of time in the first round.

Mr. Richard Marceau: I will be very brief, Mr. Chairman.

Dr. Fourney mentioned training for police officers. First of all, who trains them? Second, who pays for the training: is it the police force or the data bank? Finally, how much does it cost to train a police officer on this?

[*English*]

Dr. Ron Fourney: It's a partnership. We have two fully trained instructors. Often we provide training kits to large groups. The concept with our program is to train the trainers. For example, we would prefer to go into the Canadian Police College or the Atlantic Police Academy and train those individuals, who would then train the cadets. In the last three or four months we've trained over 300 police officers. When we opened the bank we trained 1,600 or 1,700, to get people started.

The actually training cost is the police time, which is usually about half a day. They also get a refresher course on the technology advances for collecting of samples at a crime scene, for instance.

I'm not sure what the salary of a police officer would be, but you'd have to take that into account. The kits we use are probably about $7 or $8 for each police officer. I think it's a bargain to train police officers and take the time to do it right, because we know in the end the samples will come in with a very low probability of not being successful. They'll be always successful.

[*Translation*]

Mr. Richard Marceau: Thank you.

[*English*]

The Chair: Thank you.

Mr. Comartin, a brief question.

Mr. Joe Comartin: I have just a factual one. You mentioned there would be someone from the operational side who could answer more questions on that. Who would that person be?

Dr. Ron Fourney: I'd have the committee tell us the nature of the questions, and we would certainly provide the right individual. There are a number of very qualified operational DNA people.

Mr. Joe Comartin: Thank you, Mr. Chairman.

The Chair: Next is Mr. Maloney, then Ms. Neville, and then Mr. Thompson.

Mr. John Maloney: You indicated that less serious crimes appeared to be linked to more serious crimes. You have one example there of breaking and entering with intent.

Do you and your colleagues have empirical evidence that with many other secondary less serious crimes—you talked about Florida and England—a trend is developing?

Dr. Ron Fourney: I'm not an expert on justice statistics, but in Mr. Coffman's statistics in the Florida situation, 52% of those people who were charged with robbery and break-and-enter have committed either sexual assaults or murder. In Canada, for instance, on break-and-enter with intent, which is a secondary offence, the samples that were taken are currently assisting in the investigation of 18 murder investigations and over 40 sexual assaults. On assault, which is another secondary offence, the samples are assisting in over 32 murder investigations and 97 sexual assaults. On robbery, which is a secondary offence, samples are assisting in 29 different murder investigations, and 40 sexual assaults.

There is no predictive value on whether a sample left at a crime scene may or may not solve a primary or secondary offence, but roughly 15% of all our secondary offence samples collected are currently helping to solve primary offences, from our own data bank statistics.

Mr. John Maloney: You're reporting from the Florida experience?

Dr. Ron Fourney: Yes—well, no. The Florida experience is much higher than that, simply because I think they have more samples in their database. But I'm just looking through Mr. Coffman's presentation, which he was kind enough to provide me a few days ago, and he says 52% of the offenders linked to sexual assaults and homicides by DNA data bank matches have had prior burglary charges. If we look at the criminal histories of offenders linked to sexual assaults and homicides, we see that 26% were charged with firearms possession; 26%, drug charges; 26%, grand theft; 30%, robbery; and 52%, burglary.

That is in fact one of the sets of information for which I'm going to get permission from the Florida department so I can provide it to you.

● (1155)

Mr. John Maloney: Thank you.

The Chair: Thank you, Mr. Maloney.

Mr. Thompson.

Mr. Myron Thompson: A lot of my questions have already been discussed.

I want to say that I'm sorry I missed the tour the other day. I have no excuse: I simply missed the bus. But I assume you will provide the opportunity, maybe, for one or two of us to come by and get some information. You can look forward to seeing me one day.

I want to wish you well in your hard work. It appears to me this is going to be one of the most successful things in the history of the justice system in our country, and I encourage you to let us know if there's assistance any of us can provide you to help you continue to do a good job.

I'm going to give my colleague a bit of my time because he's got one question.

The Chair: Mr. Warawa.

Mr. Mark Warawa: Thank you.

I have a couple of questions. Are the DNA costs passed on to local government? When you do a murder investigation and you're doing the crime scene index, is that passed on to the local government?

Dr. Ron Fourney: That's an operational case question, but I'm going to try to answer as well as I can.

Essentially, in the RCMP situation we have a contractual arrangement among eight of the ten provinces, and we provide that service as part of our contract. In the various provincial laboratories they would have a similar contract with law enforcement, for instance, in Ontario and in Quebec.

Mr. Mark Warawa: Thank you.

So it's not for specific cases, and they're not getting bill after bill after bill. It's a contract.

A voice: Is the fee reserved?

Dr. Ron Fourney: No. We've looked at a number of cases and figured out an approximate average cost, but as you can understand, if there was a very large case involving many thousands of samples, that would be an unusual circumstance.

Mr. Mark Warawa: The other question was about keeping the sample cards. It was suggested by one of the witnesses that those cards be destroyed. You'd still have this marker and possibly the bar code, but you'd actually destroy the sample card. The advantage of keeping that card for future reference.... Because when you processed that blood sample you would have this marker on this card, one of 96, for future reference to that card. Why do we need to keep that sample card?

Dr. Ron Fourney: That's a good question. There was a very interesting discussion at the time of the creation of the data bank. You'll note that we're committed to keeping the sample card itself. What we actually destroy is all the DNA and intermediate products of that. So in the end, we have this digital profile that's in our computer, and the final card. If we wanted to re-create that profile we'd actually have to process from the original sample.

I've been involved with nucleic acid and DNA analysis for 22 years, and every year there's something different. There's a faster, quicker, better way of doing something. We would have to be cognizant of the fact that technology can change. I'd hate to think, for instance, when we reach back in time to investigate a series of old serial cases because the technology has become more sensitive, that we wouldn't be able to do it because we've destroyed that particular card, which might in fact exonerate someone who is wrongfully convicted, or for that matter link future crimes together. I'm a strong advocate of maintaining those cards from the perspective of future law enforcement.

There's also a quality assurance issue dealing with the fact that we are an accredited ISO standardized laboratory. If we make a mistake we're compelled to actually reprocess or to attempt to figure out where the mistake was made and go forward to correct that. Although we've never had to do it, the fact that you would have the cards in the future—and possibly the legislation may require us to do quality assurance if required—would provide a comfort level. I'd hate to think that we would somehow solve a case in the future and there would be no possible way that convicted offender could have committed that crime. What did we do with that sample? Did we make one mistake in 96, or did we make 84 mistakes? This is a quality assurance issue as well.

The Chair: Thank you, Mr. Warawa.

Just on the operational side of it, I think part of the confusion comes when we see articles like the *Citizen* article in which they were talking about a 102-day backlog or delay. Have you seen that article? Are you familiar with it?

● (1200)

Dr. Ron Fourney: We see those articles, yes.

The Chair: What's the explanation for that type of article? How do you respond to that?

Dr. Ron Fourney: Sometimes we question where the facts came from, and other times we wonder if there is not a misinterpretation. There are delays in some instances, but I can honestly tell you that with DNA across the country in general and in North America, there has been a tremendous need for the service. In fact, the president's bill last year ascribed $1 billion to support the increase of this service in U.S. laboratories.

But in terms of the particulars that you have, we'd have to bring a representative from our group to explain that directly.

The Chair: We'll be discussing that.

Thank you very much, Dr. Fourney, Mr. Bird, and Mr. Yost.

We'll now adjourn. Thank you.

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