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# Standing Committee on Public Safety and National Security

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EVIDENCE

**Tuesday, June 5, 2007**

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**Chair**

**Mr. Garry Breitkreuz**

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## Standing Committee on Public Safety and National Security

Tuesday, June 5, 2007

• (1105)

[English]

**The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)):** I'd like to bring this meeting to order. This is the Standing Committee on Public Safety and National Security. This is meeting number 48. Today we are studying again the witness protection program.

I'd like to welcome our witnesses. We have in front of the committee as an individual Mr. Tom Bulmer, a barrister and solicitor; and also, via video conference from Toronto, Barry Swadron, a senior member with Swadron Associates.

Welcome, gentlemen. It's a pleasure to have you before the committee.

**Mr. Barry Swadron (Senior Member, Swadron Associates):** Thank you.

**The Chair:** The usual practice at this committee is to allow you approximately 10 minutes for introductory comments, and then we begin a round of questions and comments for you. So I'm sure you're familiar with that routine.

We'll begin with Mr. Bulmer, first of all, who is present with us here in the room.

**Mr. Tom Bulmer (Barrister and Solicitor, As an Individual):** Thank you, Mr. Chairman. I'd like to thank this committee for inviting me. I'm very pleased to be here.

Just to give you a little bit of my background, I was called in 1991. My history has been one of being involved with law for quite some time. In fact, at the age of 17, I believe I was the youngest private investigator ever licensed in this country, if not in the free world. Then I went on into business, and business brought me to the House of Commons, where I worked for a number of years as a research assistant primarily in the transportation field, and on evenings and weekends I drove around in police cars. I was a member of the Ontario Provincial Police Auxiliary. I'm a criminal defence lawyer now, and have been so for about 16 years.

None of my comments, I want to say at the outset, should be construed as being in any way anti-police. In fact, defence lawyers don't have anything to do unless somebody gets arrested, so we're hardly anti-police. But I will be having to make some criticisms about how things transpired over the years 2000 to 2002, about which information has now just been partially released to the public, thanks to the tenacity of two young media personnel.

I'm going to give you a bit of a thumbnail sketch of what happened to me—in fact, what happened to you, what happened to the citizens of this country—by the intrusion and the breach of the solicitor-client privilege that the RCMP imposed upon my office. That will bring you to the current review.

I've also got some ideas on how to address the current Witness Protection Program Act to actually make it better. I've reviewed other acts in other jurisdictions. I've reviewed this act. I find it wanting. I find that it really needs to be reviewed, because there are holes in it you can drive a truck through. And I think there are positive ways that you can make this legislation more effective, because it's an important police tool. But we all have to understand that when you have an act like this, which doesn't allow freedom of speech and freedom of the press, it should infringe those rights and freedoms of Canadians as little as possible and in the most effective way on behalf of the program, and I don't believe that the current legislation does that.

I'm going to be calling for an update of the legislation, a review of the legislation, and my second best hope would be that it be given to the Supreme Court on a reference to see if this legislation could even stand up in its current wording. But in my view, there are many positive ways that you can review this legislation, amend this legislation, make it stronger, and yet make Canadians a little bit freer, because it does criminalize natural behaviour, conversation, pillow talk. It doesn't allow me to tell you certain things, so it supposedly says, which is absolutely ridiculous, because I speak on this in other jurisdictions.

One big hole in the Witness Protection Program Act is that it doesn't liaise with other programs in other jurisdictions so that you can cross-fertilize the efforts of the programs, export and import other people from other countries, and have other countries enforce your laws.

I was speaking to a private girls' high school law class in Australia just a few hours ago. I just came from there. And it offends my pride in this institution and in you that I was able to speak more freely to a bunch of grade 12 students than the law allows me to speak to you.

Accountability is a very major problem with this legislation. Who is it accountable to? Only one person.

The other thing the act needs to do is to be updated to reflect the reality of our current society, our current technological advances, and the technological advances of the future. I got dragged into this was because of the Internet. Somebody saw a heinous crime committed in this country and sent me the newspaper article. That's how I got dragged into this. Now, why is it that I can't tell this parliamentary committee which newspapers I read? I don't believe it's against the law to give you some information when an intelligent person, going out of their way, might be able to figure out who this person is. I don't believe that's breaking the law, and if we were in camera I would tell you much more.

• (1110)

The main reason I'm holding my tongue today is that there are live victims who don't know the true story. There are live victims who, if the press were to report much more information, would be able to figure out what happened. Two and two would be put together, and people would be severely injured.

They need and deserve to be told the truth. They need and deserve closure. But equally important, they should be told that they very much have a case of wrongful death against the Canadian government.

The crimes were preventable and predictable, not perhaps in the most heinous way that they unfolded. But I will tell you why any person who did any investigation into this particular rogue police officer, or rogue police agent, would have known that he was a danger to the public.

I don't know how much investigation they did. I don't know what they did to protect the public, if anything. I don't know what supervision there was. These are all important questions for somebody, and in my opinion, they would be important questions for you. But you would have to know certain details to be able to ask the proper questions.

But I can tell you that when I went into the Ontario Provincial Police's auxiliary policing program, following the police investigation on me, they knew all the people I knew. They knew all of my friends, they talked to people I hadn't seen in years, and they went back into my past.

Investigations like this happen when you want a liquor licence, for goodness sakes.

Anybody who scratched the surface after the rogue police agent was revealed in court, after the court ruled that he was a liar, and after he had obstructed justice—anyone who asked any questions in our little town of Victoria—would have found out what the press had found out. They would have found out what kind of person he was and what his phobias and passions were. You couldn't possibly find these out and not come to the conclusion that this man was dangerous. They should have known; they should have protected the public.

Now, it's a difficult task, because often people in the witness protection program are involved with crime. I'm not saying that you have to only bring saints into the program, but you should know the personality that you're bringing into the program. The statute says that you should. But what the statute doesn't say is to what extent Canadians should be protected.

You're taking people who are sometimes dangerous, giving them a clean slate, a new identity, and putting them next door to you. Your family deserves to be safe—because you can't tell who this person is. It's the retired shoe salesman, as far as you're concerned. It's the school teacher. It's somebody who has a completely new identity, completely new birth certificate, and lives next door to you.

I don't approve of it, but sometimes the police, when they release a person from the penitentiary, will make an open statement saying, beware, this person is dangerous, and then communities force them to move from one place to another. I don't condone that behaviour, but this is the opposite. This is taking people who have been involved with organized crime and putting them right in the public.

There was a case reported in the press, called Trudeau. I suppose that technically I'm breaking the law, but I'm just telling you that there was a newspaper article about a guy by the name of Trudeau in the program, and he was sent back to prison for a pedophilia incident. The judge in that case was out of the east—I can send it to you, if you don't already have it—and said that this man had killed more people in his life than all of the Canadian Forces in the Gulf War. He was in the community, and he hurt a child.

This person, who I ran into, hurt many people. You can close your eyes, think of the worst crime imaginable, and if a tear comes to your eye, you're pretty damn close—then multiply it, because there was more than one victim.

In my opinion, this man was told by the court; the RCMP was told by me, and if they had just scratched the surface and done any kind of cursory investigation, there was only one conclusion that you could come to: something bad was going to happen. I told the court that; I warned the court.

• (1115)

Of course I feel bad, because if you're ever involved in something like this, you always think, "I know there's nothing I could have done that I didn't do", but you start to think in those terms.

The statute won't allow me to go to my law society and talk about it. The statute won't allow me to go to a psychologist and talk about it. The statute won't allow me to confide in any good friend or trusted individual. Well, I'm not going to play that game. But what the statute should do is put the *mens rea* of not informing other people of the location or the identity of a person in the program—link it to harm. Link it to trying to bring the security and safety of the individual into trouble, not criminalizing innocent speech.

Thank you.

**The Chair:** Thank you, sir.

We'll now go to Toronto. Mr. Barry Swadron, if you are ready, sir.

**Mr. Barry Swadron:** I am, indeed.

I might start off by saying that I'm honoured to have been invited here today. I will note that I testified before the Standing Committee on Justice and Legal Affairs on the Witness Protection Program Act on the eve of its passage, and I'm grateful that some of my concerns were respected.

Of great interest to me is the fact that Mr. Bulmer gave you some indication of his background. I have a much longer background, not necessarily better or worse. I have been acting for vulnerable people for close to half a decade. It started off many years ago when I wrote mental health legislation for Ontario and for a number of other provinces, and served as a consultant for all the other provinces. So I'm very used to acting for vulnerable people.

Over the last two or three decades I've acted for witnesses who have been protected; witnesses who wanted to be protected but weren't; and witnesses who didn't want to be protected, but because of some negligence or error on the part of the police or administration, ended up being protected.

I would like to make one thing clear. Mr. Bulmer said—or I got the sense that he said—that protected witnesses were sometimes involved with crime. I have many cases of protected witnesses who are innocent. They were taken by the RCMP or by provincial or municipal police forces and protected, placed in the program, and they had nothing to do with crime. I've had abused women or persons who were extorted who went to the police, told on those people, and had to end up in the witness protection program. And let me tell you, in certain circumstances it's the innocent people who think they're dealt with like criminals.

Now, the first area I want to cover is that I think the Witness Protection Program Act should embrace all witness protection programs. Right now it embraces only the RCMP program, and I know there are some provincial programs and some municipal programs.

I agree with Mr. Bulmer that the existing act needs an overhaul. It could stand a lot of improvement. But I think the major thing now is that Parliament should address the concern of other witness protection programs. Apart from the Witness Protection Program Act of Parliament, there is no other legislation anywhere in Canada. I'm of the view that where there is no legislation, there are no minimum standards. I'm sure there are standards, but these standards might be substandard. Moreover, they could be changed at will.

There's no reason that Parliament cannot legislate across the board. It legislates the Criminal Code, and the Criminal Code is dealt with by the provinces and municipal police forces. It's my submission that there would be no problem legislating witness protection for all of Canada.

● (1120)

Now, I don't mean to say that those provinces or municipalities that don't have programs would be required to have programs. What I'm saying is that wherever there is a witness protection program, the province or municipality should have to subscribe and live up to minimum standards.

An example of that is that the Criminal Code embraces persons who are not convicted, who are found not criminally responsible, and each province has decided to have a review board dealing with those individuals who are found not criminally responsible, but the federal government legislates the standards.

Now, leaving that, I want to talk about legal advice to the person who would be protected. That is one of the most important areas, I think, that your committee should be discussing. There are many

cases—and I'm thinking of several handfuls—in which I've been involved or my firm has been involved where the individual who enters the program does not have independent legal advice. That independent legal advice should be given as soon as possible, as soon as it's known that the person is a potential protectee. It sometimes happens that the police officer tells the potential protectee that the verbal promises that he or she is making to the potential protectee cannot be put in writing. He or she is saying, trust me, we can't put that in writing, and the potential protectee might be told, the reason we're not putting it in writing is that we don't want to compromise your ability to testify, so that defence counsel don't ask how much you were paid for testifying.

So there is a built-in problem. Sometimes the police officer tells the potential protectee that there's little or no time to consult a lawyer, and representations are made, and the individual who becomes protected is expecting a lot more than he or she is getting. That's very, very unfortunate, because if a lawyer were there and looked at what was being promised and what was put in writing, because generally there is a writing, the lawyer would advise the potential protectee that he or she was not getting what was promised. There would be fewer lawsuits if the legal advice was given right at the outset. And the law has, in its wisdom, said in the case of a husband who is mortgaging his property that he must get independent legal advice for his wife so she knows what she's signing. So these things aren't unknown to Anglo-American law. I think that if there were mandatory legal advice, then there would be much less litigation, and the people would know what they're bargaining for and what they might get.

Another problem is that the police officer who's making the representations or the promises is overzealous. He or she wants to get a conviction and will promise the sun, the moon, and the stars to the individual; but especially if there's a relocation across the country, the handler—the person who is expected to support the protectee at the new location—didn't make any promises; and there's a lot of friction that could be caused there.

● (1125)

So I think the legislation should be amended to make it mandatory for the police to ensure that the potential protectee gets independent legal advice. It could well be that the person can't afford it. I've had one or more situations where the police services come to me and ask me to advise a potential protectee, and they paid me. I think the legislation could certainly be improved in that way.

Am I getting out of time?

**The Chair:** If you could, wrap it up soon.

**Mr. Barry Swadron:** I will wrap it up.

I'll just touch on the two categories. The first one is conflict of interest. According to the legislation, the Witness Protection Program Act, there is a contract or an agreement in every case, one between the commissioner or his designate and the individual protectee. There's a conflict of interest there, because the commissioner or his designate can decide that there's been a breach by the individual and say, look, you're out of the program, and that becomes very unfair.

We had a case in our office where we went to the Federal Court and brought an application for a judicial review. I'll just read what the judge said. It will be very quick. This is Mr. Justice Phalen in the Federal Court:

Regard must be had for the potential consequences to the protectee of termination of protection. The protectee is in the most vulnerable state - his utility to the authorities is terminated, he is a burden to his protectors, yet he is dependent on that protection for his security. He has honoured his bargain and is now totally dependent on the protectors to fulfil their end of the bargain. Termination of protection potentially exposes him to physical harm. His life and security could be at risk. Therefore, the expectation and requirements of procedural fairness are high.

A protectee should not have to go to court to establish that. It should be built in.

Finally—and I'm skipping a couple of things—I want to say that I don't know how your committee can fairly assess the program, because enough information is not coming to you. I read the transcript of the police officers who gave testimony to you, and in many cases they wouldn't answer the question because they couldn't or they didn't know the answer, etc. Unless there is an independent study of the program with the RCMP, and the other programs, to see actually where the money is going and how it's spent, how can your committee fairly seize on what should be done?

I think I'll leave it there.

I have one final note. I'm going to say that in dealing with the case of the protectee who apparently committed murder and the RCMP's not being able to give the information, my reading of the act is that the RCMP is dead wrong; this comes within an exception, and they should be able to discuss the individual's identity.

• (1130)

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

If you have other information, you can maybe share it with us during the questions and comments. That's what the rest of this time is for. If you feel at the end of our session together that you still have more to share, you can always submit something in writing to the committee.

**Mr. Barry Swadron:** Thank you.

**The Chair:** That applies to all of us.

We'll go to the official opposition. Ms. Barnes, please.

**Hon. Sue Barnes (London West, Lib.):** Thank you very much.

And thank you, both.

What both of you have said is that there could be changes and should be changes to the act as it now stands, and both of you have different ideas.

For the record, I would like you to state what would be the circumstances or situations that you think, in your opinion, would have a protectee's identity revealed? Is it just in a murder-homicide situation? Is it just in a serious personal injury situation? And is that something you would see as a potential change in legislation?

Mr. Bulmer, first.

**Mr. Tom Bulmer:** Thank you.

I don't think the identity of the person is the issue. For instance, I care not who this man is. Now, they may have changed his name again. Certainly he's in no need of the witness protection program now, and never will be, so I don't care about who he is. I don't care where he is. I think what he did is information that you should know. It's information that the alive victims should know.

The RCMP are at least telling me—they flew from Ottawa to Victoria to tell me—that this person was in the witness protection program; thereby they broke the law telling me that, but they did so to warn me that I faced potential charges if I gave away too much information. Well, I don't believe that's the case either, and I agree with my friend in Toronto. That's not my reading of the act either. But who wants to flirt with an overzealous police force with blinders on? And who wants to bring attention to the unnecessary harm and grief caused to the victims?

I think the program, as it is in some of the jurisdictions, should be overseen by a board. Even that board doesn't need to know the names and locations of people, but they need to know who they are, what they've done, how they're doing in the community, what protections there are in the community. When something goes sideways, the public has a right to know. I agree, the program specifically states that if somebody acts in the community in a way that brings attention to themselves, the commissioner can disclose who that person is. If they contravene an act of Parliament—and murder certainly is one of them—then the commissioner can tell you who it is.

So they're really not looking at what power they already have in not answering your questions, because it exists. In my submission, from what happened, he shouldn't have been allowed in the program in the first place, because the criteria are things like the value of his evidence. Well, his evidence was all made up. He had committed obstruction of justice in the severest way before he went into the program. He was found to be unreliable by the Supreme Court, so he shouldn't have even got in. I think they're not reading their own statute. It should be reviewed.

I was asking today whether the reports in the press were true. The minister responsible asked to be briefed on my case, and I read in the press that the RCMP said he couldn't know the details of the case. Well, that's nonsense. It's absolute nonsense that he mustn't be able to be told at least the facts of the case. Where this person is, who cares? Call him Number One, but he's got to know.

I think the board should be the minister or his designate, perhaps somebody from the bench, perhaps somebody from the bar, and a couple of lay people. Again, they don't have to know all the details, but they need to know that things are being properly done.

In Australia the program has to report to the minister. The minister must table an annual report. In Canada the commissioner makes an annual report and the minister tables it. Well, the tail's wagging the dog.

• (1135)

**The Chair:** Mr. Swadron, do you have a comment as well?

**Mr. Barry Swadron:** Thank you.

I agree with Mr. Bulmer. The police, particularly the RCMP, are not running this country; this country is run by Parliament. The RCMP answers to Parliament. I find it disgusting that the RCMP could hide under a veil.

The legislation as it is okay, but I think it should not be the commissioner who is deciding what is in the public interest. Here is the exception to the disclosure: “if the disclosure is essential in the public interest”, and then it goes on. I don't think the commissioner should be deciding what's in the public interest; I think it should be elected members of Parliament or ministers in the cabinet. The commissioner will not necessarily decide what is in the public interest; he will decide what is in the police interest, because he has to be true to himself.

As Mr. Bulmer said, if there were an independent board that made some of these decisions, then we wouldn't have the police against the protectee; we would have the police and the protectee on an even keel. If someone else, some tribunal, is making those decisions, the innocent protectees wouldn't think of themselves as criminals and have the police against them. It's very nice for the police to get the help from informants and get the convictions, but they can't throw out the protectees afterwards.

In some cases where they were terminated, the court said, you shouldn't have done that; you should have used fairness. Hopefully the RCMP will get the message. If they don't, then I think Parliament has to take it out of the RCMP's hands. The police are not above the law. They can't decide the law. Parliament will.

**The Chair:** Thank you. We're over the seven minutes already.

**Mr. Barry Swadron:** That's probably my fault. I'm sorry.

**The Chair:** No. That's fine.

We'll now go to the Bloc Québécois. Mr. Ménard.

[*Translation*]

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** Obviously you are raising some of our concerns. However, I am having trouble understanding the solutions you are proposing and what they mean.

I know that the law is imperfect. I believe that an independent committee would certainly be an improvement. It seems to me, however, Mr. Bulmer, that you were saying at the beginning that the neighbours of these protected witnesses should be informed that the person now living in their neighbourhood is dangerous and thus informed of what the person has done. But if we do that, it seems to me that we are disclosing the identity, and the purpose of the program is precisely to give witnesses a new identity, because if we do not do that, in the most serious cases, they could be killed.

Do you really think that we should find a home for a protected witness and then inform the neighbours that he is dangerous, because he has killed several people in the past? First, there are not that many people in Canada who have killed several people. Very often, the kind of crime they committed—in a province like Quebec, I think that people would easily recognize the identity of an individual as soon as they were told what kind of crime the person had committed.

I do not understand this part of your suggestions. However, I know that you have studied the matter extensively, that you have looked at what is done elsewhere and you have specific suggestions

to offer us for improving the law. I assure you, Mr. Bulmer, that I would be very happy to receive them in writing.

● (1140)

[*English*]

**Mr. Tom Bulmer:** I don't think I've made myself clear. The reason I said that these people are in your community and they live next door to you is not so that the RCMP will go banging on a door saying there is somebody in your neighbourhood you should know about. I made that point only to emphasize the huge responsibility they have to protect you, to protect your families, when they put somebody next door to you who is a dangerous person. It's not that you're ever going to be told, but how much supervision do they have on these people? If this person has known character traits that make him a dangerous individual, do they just put him next door to you and walk away and say, “Enjoy your new life”?

If they recommit, I would really like to see that the sentencing judges know that this person isn't a first-time offender, that the sentencing judge knows this person has a criminal past.

To better answer your question, I can't help you with the French analysis, and maybe it is clearer, but everyone should be able to know what the law is. That ignorance of the law is no excuse is a bit of a catch phrase, but you should be able to find out what the law is.

Subsection 11(1) in English says: “Subject to this section, no person shall knowingly disclose, directly or indirectly, information about the location or a change of identity of a protectee or former protectee.” That's not very good English. What does “location” mean? If I say he's in Ontario, am I giving away his location? If he's outside this building, have I given away his location? If he's moved down the street, have I given away his location? When do I give away his location?

If I wander down the streets of Toronto and I go home and tell a family member, “You won't believe who I passed on the street. Remember that big case you saw in the newspaper?”, have I committed an offence?

I don't like this wording much better, but at least in the Witness Protection Act of the State of Queensland—I can tell you that there is a federal act and each state has its own state act, and they almost conflict, so I can't really help you on how the regime works down there. But these statutes do a lot of other things. They allow for disclosure for the purposes of the administration of the act. Your act doesn't.

When the RCMP man told me that my guy was in the witness protection program, I don't see the enabling legislation that he was allowed to tell me that. I don't see in your legislation one cop being able to tell another cop. In other legislation, disclosure for certain purposes of the administration of the act is allowed, but it doesn't seem to be in this statute. In Australia, under the Queensland one but not some of the others, it is an offence where a person must not knowingly, directly or indirectly, disclose or record information about a relevant person as to the witness protection program that may threaten the security of a relevant person or the integrity of the program or other witness protection activities of the commission.

• (1145)

[Translation]

**Mr. Serge Ménard:** I am sorry to interrupt you, Mr. Bulmer, but you have spoken for a long time, and I would like to ask you at least one other question.

You raise a point that I find very intriguing. If one of those witnesses commits a crime, his or her fingerprints will be taken when the charge is laid. From what I know, none of those witnesses have their fingerprints changed, is that right?

So we will know who has committed other crimes in the past. You seem to be saying that if this person commits another crime, the judge will not know what other crimes the person has committed in the past. It seems to me that with the fingerprint system we have, the judge will know. The judge will know that the person has committed other crimes under a different name.

Is that not how things work?

[English]

**Mr. Tom Bulmer:** You'll have to ask the RCMP that.

[Translation]

**Mr. Serge Ménard:** I practised criminal law for 30 years and I saw that quite often.

[English]

**Mr. Tom Bulmer:** That's beyond my experience. If it's within your experience—

[Translation]

**Mr. Serge Ménard:** This is one of the problems that came to my mind as I was listening to you, Mr. Bulmer. You see the considerable dangers in applying this law. There are things about which you are perfectly correct. This law could and should be better drafted. There should be a provision that lets us disclose the person's location, or name, for the purposes of the administration of justice. I think that this is an obvious improvement that could be made. I am trying to understand your solutions and your fears.

Have the fears you are telling us about and the extreme cases you are afraid of happened in the past?

Do you know of actual cases that illustrate the dangers you are telling us about?

[English]

**The Chair:** Your time is up.

Do you have a brief response—a few seconds?

**Mr. Tom Bulmer:** You'd have to ask the RCMP how, but whether the sentencing judge in my case, for instance, knew of this person's past, I don't know.

My understanding is that the criminal record of the protectee is sealed and there's no way of getting hold of it. If a court is allowed to know that, it's beyond my experience.

**The Chair:** Thank you.

Mr. Comartin is next.

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

Thank you, Mr. Bulmer and Mr. Swadron, for being with us.

As a result of the testimony the RCMP gave earlier in these hearings, we've had circulated a memo to, I assume, senior people in the RCMP, speaking specifically about the Young case. On the second page, the back page of the document, this statement is made: "Rules of admission to the WPP are clearly stipulated in the WPP Act and no exceptions are ever made. Processes are always followed to the letter of the Act."

I'd ask both of you if that's been your experience. Mr. Swadron, perhaps you could start, since you've had more experiences with a number of cases.

I'll repeat: "Processes are always followed to the letter of the Act."

**Mr. Barry Swadron:** Oh no, I don't think that's true. In respect of the interpretation of the act, I disagree with that memo. I think the RCMP is advised by the Department of Justice, but the Department of Justice isn't always right. It hasn't been my experience. I think that the RCMP has used flexibility.

Mind you, I've had some very bizarre cases. I've had cases in which the handler is alleged to have sexually assaulted the wife of a protectee, and the protectee ends up in psychological treatment, and that psychologist is arranged by the handler, and the handler is reading the psychological treatment notes of the protectee—so I don't find that at all.

• (1150)

**Mr. Joe Comartin:** Mr. Bulmer, do you have any comment?

**Mr. Tom Bulmer:** My friend was talking about innocent people earlier. I don't want to waste time, but I'll draw your attention to a case that supports what he had to say. It was a case called *Franc v. Webb*. That's a civil case out of the Supreme Court of British Columbia of 1998, a decision of Madam Justice Boyd.

Mr. Franc was a completely innocent protectee who sued the RCMP and won on breach of contract for representations they made in writing and verbally. He wanted to go to Australia, but they said that there was no method to get him to Australia. The statute seems to allow people to come here, but it doesn't look as though it is for export.

My case is a perfect example. I really concern myself when the RCMP have contacted me to warn me about the statute but have not really come to investigate or to ask me questions about what happened. This man infiltrated my office. This man hired people to follow RCMP police officers, and then came up with a conspiracy theory to murder a judge, a crown prosecutor, a defence lawyer, and one other individual. The police believed that. They made him a police agent. They made a sting operation to have my client arrested.

All of that was found to be bogus. He hired people to follow the police around. He completely made it up.

I defend people on a regular basis for obstruction when they tell the police officer an improper name when they're required to identify themselves in a proper fashion—



**Mr. Joe Comartin:** Mr. Bulmer, let me stop you, because I want to ask you a specific question along these lines.

They say in this report, and again I'm quoting, "It is important to note that at the time that this subject"—and they're referring to Young—"was entered into the Witness Protection program he did not have a criminal record". I don't know if that's accurate, but they go on to say, "—nor was there any indication of any criminal wrongdoing."

Do you agree with that finding?

**Mr. Tom Bulmer:** The Crown had to drop fairly serious charges because the RCMP had not told a judge that they had an internal memo from a polygraph expert saying that Mr. Young was incredible. They didn't give that to the judge who had issued the first warrant. Therefore, they had to stay some very serious charges.

The Vancouver detachment seemed to be telling the Victoria detachment to watch itself. There seemed to be a political struggle between the two at one point.

But I was never told when he was in the witness protection program. I don't know the date he entered. I have some knowledge of the date he became a police agent, which might be contemporaneous. But at that time, I was already, as a defence lawyer admittedly, raising concerns. After it was found out that he was an agent, and all the information came in, and then finally the judge—

Even if he was in the program, why didn't they kick him out? Maybe they did, but obviously not. They have to consider the risk of security to the witness—I don't know the level of threat they thought they had—the danger to the community if the witness is admitted to the program—they should have investigated; they would have learned something—the importance of the witness in the matter—doubtful—and the value of the information or evidence given—well, it turned out to be of no value whatsoever.

**Mr. Joe Comartin:** Mr. Swadron, I know you've handled a number of cases of individuals who were in the program and were dissatisfied with the way they were treated. Have any of those actually gone to court, and are there court decisions in terms of individuals not being properly taken care of under the act?

**Mr. Barry Swadron:** Let me say that of the number of cases I've had, I have been determined to take them to court. I have gone beyond the discovery stage, but it seems that at that point the RCMP or the provincial program gets really cold feet.

I've brought motions to get, for example, the RCMP witness protection handbook. They do have a handbook, and it's very extensive. And when I've asked for it, they've given me, say, sections A, B, and F, and I know there are other sections, so I've brought motions.

On one particular occasion, I remember, I brought a motion against the RCMP. The court said that they were required to produce other sections of the handbook, and lo and behold, there was a settlement about a week later so they didn't have to disclose everything.

We have some that are at the discovery stage now, and we're determined to go ahead. But for some reason, they fold at the last

minute and there's a settlement, because they don't want to disclose their secrets.

• (1155)

**The Chair:** We'll have to come back to this.

**Mr. Joe Comartin:** It's important.

**The Chair:** Okay, but do it quickly.

**Mr. Joe Comartin:** On those settlements, has the RCMP required that you have non-disclosure clauses in them?

**Mr. Barry Swadron:** Yes, they have, in all cases.

**The Chair:** Thank you.

We'll now go over to the government side. We'll have Mr. MacKenzie, please.

**Mr. Dave MacKenzie (Oxford, CPC):** Thank you, Chair, and thank you to both our witnesses for appearing before the committee today.

Mr. Swadron, I'll just follow up on Mr. Comartin's comment. That's not an unusual situation, having non-disclosure in those kinds of cases, aside from this. Would that be a fair assessment?

**Mr. Barry Swadron:** [*Inaudible—Editor*]*—*usual that there is a gag order. When it doesn't involve witness protection, often it's on the question of there being no admission of liability on the part of the defendant, and there's a moratorium on talking about the quantum of the settlement. But I've never signed a settlement that said you can't speak about the case.

**Mr. Dave MacKenzie:** Okay, thank you.

Mr. Bulmer, I think you indicated this, and I think Mr. Ménard asked about the situation with the criminal record. My understanding, from the witnesses who have appeared before us who we've talked with, is that the criminal record follows the individual, but not necessarily the name. Are you familiar with that?

**Mr. Tom Bulmer:** I'm not familiar with that. It's certainly a concern of mine. I'd really want to know if that's the case. I think that should be a reassurance. That should be something in the statute.

**Mr. Dave MacKenzie:** Okay. I think, Mr. Swadron, you had a comment.

**Mr. Barry Swadron:** Yes, in all cases that I know of, the criminal record has followed the person. It would be terrible if a person built up a long criminal record and could get rid of it other than by pardons, and this is the usual thing.

Could you imagine working all your life, reaching age 60 and building up all your pension credits and changing your name, and all of a sudden you've lost your pension? Your SIN number is changed. All your CPP credits follow you, your child tax credits. The things that should follow you do follow you. That's what the RCMP is supposed to do. And they should, and they do, transfer the criminal record. It's essential.

**Mr. Dave MacKenzie:** Even with a pardon, your record follows you if—

**Mr. Barry Swadron:** That's right. As a matter of fact, a person who gets a pardon has a longer criminal record because he's got everything that was there before and then another entry saying he was pardoned.

**Mr. Dave MacKenzie:** I appreciate that.

Mr. Bulmer, I think you indicated that this individual—Mr. Comartin talked about him—had infiltrated your office, but if I read the press article correctly, he was already a client of yours before he became involved with the RCMP. Is that right?

**Mr. Tom Bulmer:** No, he was an informant for the RCMP at all times, but he became an employee of the RCMP after he actually introduced me to my client. This individual hired me to do a small company bit, then he said he had a friend who was in hot water. They came in. I decided to act for them. My client instructed me that I could use this individual as if he was himself.

He went and took some parts of the file home, was able to read names of some individuals, including a judge and a crown prosecutor, then came up with this scheme that my client was going to have them all murdered, and convinced the RCMP by hiring young people to do counter surveillance. They testified.

• (1200)

**Mr. Dave MacKenzie:** Wouldn't you agree, though, that he also convinced you that he was legitimate enough to take those files home?

**Mr. Tom Bulmer:** Absolutely.

**Mr. Dave MacKenzie:** Okay. Fair enough.

**Mr. Tom Bulmer:** Then he was a live bug. He became a live bug for the RCMP.

I don't think I finished on your question about the case. *Franc v. Webb* is 1998 B.C. Supreme Court's C965011 and is a case that talks about the RCMP renegeing on contracts.

**Mr. Dave MacKenzie:** Mr. Swadron, back a little while ago I think you indicated that the act, in paragraph 11(3)(c), says, "if the disclosure is essential in the public interest", but it does go on to list "for purposes such as". Would you be suggesting that those items in paragraph 11(3)(c), the subparagraphs (i), (ii) and (iii), are not broad enough, too broad, or should be better defined?

**Mr. Barry Swadron:** They could always be better defined. I haven't put my mind to it, because in the one particular case, the Young case that you're discussing, it clearly is covered by subparagraph (i):

if the disclosure is essential in the public interest for purposes such as

(i) the investigation of a serious offence where—[the person]—has been involved in the commission of, the offence.

What more do you want?

The person allegedly has committed murder. It's being investigated by the police, and certainly the RCMP, if it's using him as an informant, would be investigating along with other police forces, and in that particular case it clearly is covered.

How the RCMP has said that anyone is wrong when they say that the RCMP should be able to disclose that, is beyond me. I think it's disclosure 101.

**Mr. Tom Bulmer:** If I might comment, I agree, but this is all at the discretion of the commissioner. It also says that the protectee or former protectee "has previously disclosed the information or acted in a manner that results in the disclosure". Well, he was in the

newspaper, charged with murder, so he has acted in the community in a manner that results in disclosure, in my opinion.

**Mr. Dave MacKenzie:** I guess I'm a bit like Mr. Ménard; I'm a little confused. If Young is the current name, and he's charged with murder—

**Mr. Tom Bulmer:** No, it wasn't.

**Mr. Dave MacKenzie:** Okay, but if it is and he's charged with murder, are you suggesting that his name wouldn't be released?

**Mr. Tom Bulmer:** No, I'm just saying that the statute says under the exceptions—and you've already covered some of them—that under paragraph 11(3)(b) the exception is that the commissioner may disclose "if the protectee or former protectee has previously disclosed the information or acted in a manner that results in the disclosure".

What I'm saying is, if you act in the community in a way that draws attention to yourself and such that I can recognize the man's face on the front page of a newspaper, I believe that this, if not the public interest, which you've already discussed, would be yet another method by which the commissioner should disclose at least what the person did, not necessarily who he is now.

**Mr. Barry Swadron:** Yes, but the thing is, I don't know whether it's for the commissioner to decide. Obviously the commissioner has decided, but he has every right to decide wrongly too, and perhaps it should be reversed.

**Mr. Dave MacKenzie:** Thank you.

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

We'll now go back to the Liberal side, to Mr. Cullen, for five minutes, please.

**Hon. Roy Cullen (Ettobicoke North, Lib.):** Thank you, Mr. Chair.

Thank you, Mr. Bulmer and Mr. Swadron.

I think your idea that the commissioner may not be the appropriate person in all cases to be deciding what the public interest is offers a very useful observation; the idea that elected people perhaps should be involved in that decision as well is a good point.

I'd like to come back to consider the witnesses from the United States and the United Kingdom whom we had last week at our last meeting. My recollection is that they indicated that most people involved in the witness protection programs were people themselves involved in criminality. In fact, I think the gentleman from the United States said that in the U.S., something in the order of 95% or more of the people in the witness protection programs had criminal records themselves or were involved in criminality.

Mr. Swadron, you seemed to indicate that there were many people in Canada under the witness protection program who were honest, law-abiding citizens. Is that just your particular experience, or do you have any stats on it?

●(1205)

**Mr. Barry Swadron:** Well, it's been my experience, and I have my individual stats. I can tell you that from the get-go there are people in the witness protection program who are members of a family, who have had absolutely no involvement with crime, even if the main player did. We have a lot of wives who are placed in the program, a lot of children who are placed in the program, and they have had nothing to do with crime and nothing to do with informing.

There have been cases of abused women who were taken into the program. Both the RCMP and provincial or municipal police forces are—Some people are involved in crime. I would say the majority of those with whom I've dealt have had no involvement in crime—or petty involvement, which is insignificant.

**Hon. Roy Cullen:** Thank you. I'd like to move to another point now.

Mr. Bulmer, Mr. Swadron, I think one or both of you have indicated that the RCMP is wrongfully hiding information about this particular case, which we've all been following, and that actually the RCMP, under the act, could divulge more information. Is there an express provision in the act that would allow it, or is it an implicit provision that you think would allow it—in other words, if we wanted more information about this particular situation?

**Mr. Tom Bulmer:** Sir, we're repeating ourselves, but it's under section 11, under exceptions, which is paragraphs (3)(a), (b), and (c). This all allows the disclosure by the commissioner, with first of all the consent of the protectee, which you're probably not going to get, although he might; and if the protectee has previously disclosed information or acted in a manner that results in disclosure—I've already addressed that point—and then Mr. Swadron discussed paragraph (c), which is that the disclosure is essential in the public interest for purposes such as the investigation of a serious offence, the prevention of the commission of a serious offence, or national security, or national defence.

Now, as a committee that's concerned with national security, and I think this is a national security issue, you could go to the commissioner and urge the commissioner to reveal more information to you on pretty much any of those points. But my point is that I referred to the Australian method, or at least one of the Australian methods, because my belief is that this non-disclosure shouldn't be about a location or disclosure of an identity; it should be linked to bringing harm to that individual or harm to the program, as opposed to that, because the individual himself is not all that important. In this case, it's your knowing enough of the facts to be able to ask the right questions. He as a person is tucked away and he is fine.

**The Chair:** Do you want Mr. Swadron to reply?

Mr. Swadron.

**Mr. Barry Swadron:** If I go a little further than that, I would say that I would be happy to bring an application against the commissioner under section 7 of the Canadian Charter of Rights and Freedoms, because I think that right to know relates to life, liberty, and security of the person. I think that the act of the commissioner in refusing to disclose might be overturned in a charter application.

**The Chair:** Is there a brief follow-up? You're out of time.

**Hon. Roy Cullen:** I'm out of time.

Thank you.

**The Chair:** We'll now go over to the Bloc Québécois. Mr. Ménard, please.

●(1210)

[*Translation*]

**Mr. Serge Ménard:** Obviously in a program like this, except for the cases that Mr. Swadron has often defended, concerning perfectly innocent witnesses—I understand that you are talking about people who, over the course of their lives, were witnesses to major crimes, and their testimony was important, but if they are known, they could be threatened or even eliminated. Is that what you are talking about when you refer to totally innocent witnesses?

In most cases—and in the United States, I believe, it is 95% of cases—they are people who have engaged in criminal activities, whose testimony is needed to convict other people who participated in those criminal activities. Those people are risking their lives by cooperating with the police. That is why a witness protection program was created.

I would mention in passing that I started practising criminal law in 1966. At that time, there were no such programs. It seems to me that in all civilized countries that have legal systems comparable to ours, and as reliable as ours, these programs have been created. I was there when they were created. It was done on a bit of an ad hoc basis at first, before there was a law.

One of the things that concerns us is that these people were offenders and are at risk of offending again. When we sign an agreement with them to protect them, we think that there is no danger of them committing further criminal offences in the immediate future. They are well aware that if they commit another criminal offence they will lose the protection they enjoy.

We are even prepared to give them psychological support. After a certain time, however, if they have not committed any criminal offences, we abandon them completely.

You have a practice in this field. Do you believe, in practice, that it would be wise to do regular supervision or regular psychological evaluations?

Obviously, it is very difficult to do a psychological evaluation of someone's tendency to commit crimes, and I recognize that. On the other hand, we do monitor people on parole, where the officer assesses whether the release is a success or not.

Do you have any opinions about the kind of measures we should take to try to prevent these people from committing serious crimes? What prompted us to study the question were cases in which some of these witnesses had subsequently committed murders.

Do you have an opinion about the psychological support or supervision there should be while they are in protection?

[*English*]

**The Chair:** Mr. Swadron, go ahead, sir.

**Mr. Barry Swadron:** Let me tell you that I believe you're very much on the right track, and let me say as well that the longer the time that goes by after their testimony or their information, the less interest the police have in them. We have some cases now where we've sued the police or whatever agency is involved and they come with affidavits saying they don't need protection anymore, but in the same cases those police are calling us and they say they don't know where the protectee is and they believe there's a real threat by bikers against them. These are the same people who say there's a real threat against them, but when you sue them, there's no threat.

So they should be monitoring. Eventually the people should fade into the woodwork and have new lives, but there's a period where they need support from the police, who are their only real link, because the police know their past and they know where they are—or they should know where they are. They should follow them and give them the support they need.

The trouble is that it costs money, and if there's money available, the police want to use it for the current cases, where they need the information to get convictions in the cases that are coming up, rather than the long-term following of these people.

I agree with you, sir, that the police should have some responsibility in trying to follow these people to make sure they have a soft landing and they don't get involved in crime again.

• (1215)

[Translation]

**Mr. Serge Ménard:** Does Mr. Bulmer wish to state an opinion on this subject?

[English]

**The Chair:** Thank you.

There's an opportunity for a brief response.

**Mr. Tom Bulmer:** I just wish to point out that the commissioner must consider the statutes I've reviewed from Australia. They have psychological review of the individual before entry into the program, psychological support after entry into the program, and ongoing support. That's directly in their statutes.

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

We'll now go back to the government side and Mr. Hawn, please.

**Mr. Laurie Hawn (Edmonton Centre, CPC):** Thank you, Mr. Chair, and thank you both for being here.

I missed the start of your testimony, Mr. Bulmer, but I did read the report. You're not indicting the whole program over one case.

**Mr. Tom Bulmer:** Absolutely not. I'm trying to make suggestions to make it better. But I really worry about the people who say this is an extreme thing. I know of a couple of problems. If you see two cockroaches in your kitchen, how many cockroaches do you have?

**Mr. Laurie Hawn:** So you have personal knowledge of other similar cases.

Mr. Swadron, I guess you do as well.

**Mr. Tom Bulmer:** Yes, because it's such a secretive situation that it's often almost rumour. But I think the press was so anxious to get this to the public—and they spent a lot of time and money doing a

court challenge so they could at least say what they did—because the public has a right to know and be protected. In my situation, I say that a harm was very much predictable. I just want somebody to be overseeing a program that is important but also has a high risk factor.

**Mr. Laurie Hawn:** I'll ask for some suggestions in a second, but obviously there's a fine line here between the right to know, the responsibility to protect, and a person's right to anonymity. We've heard a lot at this committee about requirement for parliamentary oversight of security issues, intelligence issues, and whether it should be a national security committee or something like that.

Mr. Swadron, is that a suggestion you would make, or do you have other specific suggestions for oversight bodies, whether they're by Parliament or some other body above the RCMP in this case?

**Mr. Barry Swadron:** First of all, I'd like to know where the money is being spent and whether it should be reallocated, augmented, or increased. On the best way to do that, you have an Auditor General. She doesn't have to know the identity of the individuals, but apparently \$2.5 million was spent one year and it's been reduced to \$1.9 million. What was that spent on? Did that include the staff, the handlers? Did it include the litigation? I know the Department of Justice is spending thousands of dollars detaining the cases we've brought. Did it cover relocation? As I said before, it's awfully difficult for a committee such as yours to know where to spend the resources to amend the legislation to help when there's a dearth of information.

You tell me you had witnesses here the other day from the United States, and they said that 95% had been involved in criminal paths. Well, that's not my experience at all. I don't know of any lawyer in Canada who has had as many witness protection cases as I have. I've had all sorts, all colours, all sizes, and all shapes, over many years. It's my experience that most of the protected witnesses I've handled have not been personally involved in crime.

Why on earth can't someone from the RCMP come and testify before you that they have had 700 witnesses over a number of years and, say, 350 had been involved in crime, or 500 had been involved in crime, and the balance had not? Why does this Canadian parliamentary committee have to rely on American statistical data? Do the RCMP not have these data? Surely it's very simple. I guess there are ways to get an independent body...and it's very difficult for parliamentarians such as you to gather these statistics. It shouldn't be your job.

• (1220)

**Mr. Laurie Hawn:** I understand.

Would it be fair to say that there are a lot of innocent people in the program? If the head of the family is involved in criminal activity and his whole family is therefore in protection, there may be one guy involved with criminality, but there may be five or six who are innocent.

**Mr. Barry Swadron:** Right, and it's also a possibility that the one guy, out of the five or six, has not been involved with crime. I had a very notorious case that resolved a few years ago. It made headlines. It was the brother of the national president of the international Outlaws bikers association. He could not stand what his brother was doing and he infiltrated the bikers—this is all reported—and in the final analysis many were convicted, including his brother.

Now, sure, there was a big involvement, but he had no criminal past, and his several family members were part of it. It isn't necessarily the case that the head of the family or the main person has been involved with crime.

The thing is that some of these people are treated so shabbily it would be a wonder if they didn't turn to crime because of the way they're treated. I have one now, who's not even in Canada, who can't get welfare because it would disclose his name. How is a person like that going to live?

**The Chair:** One final—

**Mr. Laurie Hawn:** I just wonder whether Mr. Bulmer has any other comments on that, on the specific question of suggestions for an oversight committee and who it might involve, and how much trust you don't have in the RCMP.

**Mr. Tom Bulmer:** I've already said the minister or ministerial designate, perhaps somebody from this committee, somebody from the bench, somebody from the bar, the law society, lay people—pretty well any kind of mix, other than one person overseeing their own job.

**Mr. Barry Swadron:** I support that.

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

We will now begin our third round. Ms. Barnes, please.

**Hon. Sue Barnes:** Thank you very much. You're quite right, getting a two-page report doesn't give you enough information to analyze anything. The one good thing is that the RCMP testified and in their last report said that we're going to get reports this year that have a better cost-out on the program, and with more information to us. We'll see that when it's tabled.

I want to talk a little bit about the cost. Mr. Swadron, you talked about wanting a piece of legislation that would, in essence, envelop

or be an umbrella over municipal or provincial existing programs. Is it your thought that this should be paid at the expense of the federal government, regardless of what jurisdiction is covering it?

**Mr. Barry Swadron:** No, it's just the enacting of the legislation. If they're provincial bodies or municipal bodies, let them pay for their own.

**Hon. Sue Barnes:** Thank you. I just wanted to have that clarified.

When you spoke, you wanted an umbrella, though, as a standard level for the jurisdiction of Canada, no matter what level was in actual fact doing the implementation of a program—

• (1225)

**Mr. Barry Swadron:** Which is done with the criminal law now.

**Hon. Sue Barnes:** Are there standards you think are not there that you would want to see included? Are there any things not covered that you would define as a standard that's missing in the current legislation?

**Mr. Barry Swadron:** Well, I was able to talk about one: that the individual should have a lawyer at the appropriate time, so that he or she knows what he or she is getting into. I think that should be mandatory, and it's not unknown to the law. Here you have the RCMP, or whatever organization, which has been doing this for years, and you have a vulnerable person who's never been involved, and you expect him or her to match them. They have it all over them. At least if that person had a lawyer who could say, watch what you're getting into—

**Hon. Sue Barnes:** I get that.

I'm sorry, but we're in five-minute rounds and it limits my questioning. Thank you.

Last week we heard some testimony that suggested it would be a good idea to have a periodic parliamentary review of the act. Right now, you have the act, and really this is the first time since the implementation of the act that we've had any looking at this.

One of the periods suggested was a parliamentary review every five years. I'd like comments from both of you on whether you think that would be useful, also knowing that there are many things that we don't get to hear because of the secrecy involved in the program.

**Mr. Barry Swadron:** I think that every five years is better than 12, that's for sure, but there has to be meaningful information to you. You have to be able to get a good grasp of what's happening. In a lot of the testimony that I've read so far, I haven't read all of it, you're not given that information, and surely it's available somewhere. And I think the main culprit is the RCMP, because they're the ones who administer the act that you're looking at. They're the ones who are the operational force.

**Hon. Sue Barnes:** We had a professor before us last week who was given special safeguards and was able to do a study of the program in Britain. But part of what you talked about, about having an independent study, is not possible, because in essence the act prevents the sharing of information and the contact among people. Do you think that inside either the justice or the public safety committee, if the government commissioned such a study, that could be a useful thing at this stage?

**Mr. Barry Swadron:** Absolutely. If you say you are going to review it on a five-year period basis, there should be a provision in there—and I'm not going to do it off the top of my head because that wouldn't be meaningful—that the information you require—And it's not catch as catch can, not that the RCMP said that they're going to do better next year and give you more information. I think that maybe this committee, if it decides it should recommend to Parliament that there be a five-year review, could at the same time say what type of statistical data should be available to you in order to do a meaningful review.

**Hon. Sue Barnes:** Thank you very much.

**The Chair:** Ms. Barnes, unless you have a brief question, it's five minutes.

**Hon. Sue Barnes:** I'll make just a brief comment, maybe.

Compared to other jurisdictions...we saw last week that we are ahead of a lot of jurisdictions. I think we're very grateful that we have a witness protection program. But really, there could be improvements here, and quite frankly, I think we need some independent materials that we can base our study on.

**Mr. Barry Swadron:** I would certainly support that.

**The Chair:** Thank you.

We'll go over to the government side now. Mr. MacKenzie.

**Mr. Dave MacKenzie:** Thank you, Chair. I have just a couple of things.

I think our witness last week actually only did a small study and it was only in Scotland. I don't think Britain has a plan, actually, and so it is interesting for us in Canada to know that we're that far ahead, where they haven't got a plan.

I was looking at the information that was provided to us by the professor last week, and he's done a comparison with a number of countries, including Australia, Mr. Bulmer, and it is particularly interesting that in Australia it is the Australian Federal Police that administer it, as it is here in Canada. Most of the countries seem to have a police agency, and there are very few that have an independent body. I'm not debating whether one is better than the other, but most countries have gotten into the same scenario as Canada, and most of the eligibility for protection is similar to Canada's. I think our original drafters deserve a great deal of credit

for what they did a number of years ago, which is not to say we can't improve upon it.

But would this be what you found equally, that in most cases it is a police body that administers the plan?

● (1230)

**Mr. Tom Bulmer:** And I can hear the good arguments that this is the way it should remain.

**Mr. Dave MacKenzie:** I'm not debating that. I'm just saying that is the way it is around the world in most countries.

**Mr. Tom Bulmer:** Yes, it appears to be.

I can tell you that the Australian Federal Police administers the main program, but each state has its own witness protection act, and they add and take away in a manner that confounds me, having read them. I can tell you their statutes are much thicker. They allow ministers of both the state and the federal government to have much more control to designate people who are allowed to know, so the ombudsman has to get secret clearance, but the ombudsman can review certain cases.

There's a far more sophisticated—in each of them—procedure for allowing courts to know that they are dealing with a protected person, to protect both the prosecution and the rights of the defence. They are worth review. They also allow for police officers to have their own separate identities in case they need protection. There are provisions for having temporary protective measures as opposed to entering into the program for a long period of time. There are appeal procedures for people who are expelled from the program. They seem to be fairly sophisticated.

To answer your question, this is from an Australian website. Following this case, I came across an Australian website on secrecy and privacy, and they basically have stated—if it's indeed true—that you're dealing with the Philippines, Australia, New Zealand, the United Kingdom, South Africa, and South America. Those are jurisdictions that all have witness protection programs.

The point I was trying to make earlier is that if you were to get together so that somebody wouldn't have to travel from Windsor to go to Detroit, and then spill the beans free of charge—And if the programs had more cooperation, you might find it useful that a Canadian was sent to Australia, an Australian was sent to Canada, and a Canadian was sent to America. But if there were an international treaty—as there is—or if you extended the legislation, as you've done in terms of child protection for sexual tourism, so that a Canadian commits a crime outside the country—

This is going to become more and more important with the Internet. Soon you'll be able to google pictures, and if you google a picture, you're going to be able to find this information. That's why I think the law should go to harm, as I've quoted, if you're bringing the security of the person or the security of the institution into danger. That should be the *mens rea* of section 11, rather than disclosure of a location that you can't define, or who the person is. It may be irrelevant or it may be innocent. And there must be an ability for enforcement internationally, because a lot of the problems that we have with the witness protection and relocation program are in dealing with international institutions. We're dealing with people who don't do crime just in Canada; they do crime in other countries.

So it's an international solution requiring international cooperation.

**Mr. Dave MacKenzie:** I have just one more very short question for each. Even though there are issues, do you believe that the program is an effective program, even if we understand that you have individual issues with it?

**Mr. Barry Swadron:** I'll answer that.

First of all, I think that it's better to have a program, and it's better to have the legislation than not to have the legislation. I was particularly interested in reading the transcript of when you had three police officers before you, and you asked them about the effectiveness of the program, and two of them said that on a scale of 1 to 10, they would give an 8 or a 9. Well, that's from their perspective. I think that if we're looking at it from the perspective of my clients, they'd be hard pressed to give a 1 or a 2.

But let's put it this way. I see a lot of room for improvement. I'm glad we have the legislation. I support the legislation, but I also support a lot of amendments, and I think that it is you people who should be making the amendments based upon evidence you've heard before you. The trouble is, I don't think you've had enough evidence, or enough meaningful evidence.

I don't know how someone goes and studies the system in Scotland and says they're not as good as we are, or they're not as far ahead. How do we know where we stand when we can't get a grasp of exactly or essentially what's happening in Canada? Maybe we should have Canada and the program here studied rather than looking abroad. There is nothing wrong with looking abroad, but at least you need a benchmark of what's going on here.

• (1235)

**The Chair:** Thank you.

Mr. Bulmer, do you have a brief response?

**Mr. Tom Bulmer:** It will be very brief.

I think we hope it is a good system, but how do we know? In fact, if you did have the ability to review, it could very well be that there would be accolades for the system and people would say that it's a wonderful system, it's the best system. But we don't know.

People say to me, "Well, your case is so unusual it could never happen again". Okay, you prove it to me. In fact, Parliament has a responsibility to make sure that my case or a case like it ought not ever happen again.

**The Chair:** Thank you.

We will now go over to Mr. Cullen, please.

**Hon. Roy Cullen:** Thank you.

I just have a follow-up question, and again, it has to do with the testimony we had from the retired director from the U.S. Department of Justice. It's just that he was here last week.

With respect to the proportion of people who have criminal backgrounds, I can't remember, frankly, if the RCMP provided that information—perhaps they did, perhaps they didn't—but I just happen to remember that this retired gentleman from the U.S. Department of Justice talked about the 95%. I think Mr. Hawn, in the discussion, helped clarify that point.

But I'd like to come back again to the testimony of the gentleman from the U.S. Department of Justice where he indicated, it seems to me I recall, that the witness protection program had been very successful in terms of prosecutions. I think he threw out a pretty high success rate. Whether we heard from the RCMP on that score, I can't recall, but I'm sure the researchers will.

**A voice:** Yes, they said eight or nine out of ten.

**Mr. Roy Cullen:** The reason for my question and concern is that if these people generally have criminality in their background—and I acknowledge that some don't, but many of them do—I'm sure the defence lawyers would argue that they lack credibility or they can't be trusted. But obviously some judges in the United States haven't been swayed by that argument if their testimony is used to convict, and it sounds like the percentage of convictions is quite high.

Can you give me some context of that? What's going on there, where people come from backgrounds of high levels of criminality in many cases and their testimony is still relied upon by the courts?

**Mr. Barry Swadron:** I think sometimes their testimony is only part of it. Some don't even have to testify. They might have criminality and go and buy some drugs, etc., and then the authorities or the police get the evidence other ways so that the people plead guilty, in which case the testimony and the credibility of the protected criminal aren't even an issue. Sometimes the testimony is only one part of the case and the prosecution gets the other evidence otherwise.

And maybe it makes sense sometimes to recruit people who have been involved in crime because they're the easiest to recruit. You go to someone who is charged with a serious offence, who might draw 10 years in prison, and say, "Let's make a deal. We'll arrange for you to get one year in prison, and meanwhile you go out and infiltrate these other places." And the other criminals who have known this person, who is a criminal, deal with them, and they are probably the likeliest person.

There are often people in prison who are informants, because their cellmates tell them what they did and they become informants as well.

And often the police don't have to rely on the testimony of the individual, but the information is there in order to get the conviction.

I think I would rely on what the police say, that from the point of view of getting their man or their woman, maybe they are successful. But the problem is that they often leave carnage behind the protected witnesses.

• (1240)

**Mr. Tom Bulmer:** To add, if any defence lawyer is going to challenge—"What did you get for this testimony?"—it goes straight to credibility. But the statutes I've reviewed in Australia actually have another mechanism for disclosure to other courts if a protectee, now having completed his testimony in one case, actually becomes a witness in a civil or criminal matter that's unrelated to his protection. The judge, at least, is told, so that he can advise the counsel that this man is a protectee and there may be issues with his credibility.

**The Chair:** Thank you.

I have a point of information for the committee, or a clarification.

Our research staff wants to make sure the committee understands that the U.S. statistics, the 90%, apply to those who are the main witnesses, not all of the family associated with them. They are the main witnesses, and 90% of them would have a criminal background. If you include all of those people in the witness protection program, it would not be fair to say 90% have criminal backgrounds.

**Mr. Barry Swadron:** No, and my point is still valid. From my point of view, I would say that even 90% of the main people sounds very high to me.

**The Chair:** All right. Does anybody else from the government have a question? No.

I don't have anyone else on my list, other than Mr. Comartin. You had another question.

**Mr. Joe Comartin:** Mr. Swadron, I practised law for a long time, so I know what I'm asking at this point and I don't know if you're prepared to disclose this to the committee.

Given what we heard from Mr. Kennedy, who is the head of the RCMP complaints agency, it would be very helpful if we had actual numbers of the individuals who have come in to complain to you about the program, how many lawsuits you have actually started against the RCMP, and how many of those lawsuits have now been completed successfully.

Again, I don't know if you're prepared to divulge that. I understand you may not want to, but it would be very helpful for this committee.

**Mr. Barry Swadron:** Okay, when you say "completed successfully", I am not sure what that means. Does it mean that there was an award? Sometimes we might resolve it by saying that they get new identities. Say the RCMP was refusing to give a new identity, or refusing to relocate the person; I might broker a deal that the RCMP

will pay for re-education for a year, provide accommodation for six months etc. Is that successful? I might have been asking—

**Mr. Joe Comartin:** I'm quite prepared, Mr. Swadron, to let you judge whether they were successful or not.

**Mr. Barry Swadron:** Being a lawyer, I want to say that all my cases are successful.

Well, they haven't all been against the RCMP. There have been some against the Province of Ontario, and let me tell you that people who are involved with the RCMP have to be involved with the Province of Ontario and vice versa. If the RCMP wants to get a new birth certificate or a driver's licence or a health card, they have to come to the province. And if the province needs to get income tax clearance, or change a SIN number, they have to go to the RCMP. So there is often blended involvement.

I would say that we're very successful in the sense that when we get too close and the RCMP or the province think they are going to get burned, they settle. They resolve the cases because they don't want to wash their linen in public, whether it's dirty or not.

• (1245)

**Mr. Joe Comartin:** You've been very successful up to this point, Mr. Swadron, in not answering whether you're prepared to give us a declaration.

**Mr. Barry Swadron:** It's very difficult to answer that, because there are many people who have consulted me and I didn't take their case. I might get calls from British Columbia or from Nova Scotia, where it's not practical. But they're complaining about the treatment that they've received from the RCMP, for example.

How many have we taken? How many files have we opened up? You could certainly count them on your fingers, if you had four hands. That's a number.

**The Chair:** There are days when I need more hands, Mr. Swadron.

**Mr. Joe Comartin:** Just let me say, though, if you wish to respond further to that, you can do so in writing to the committee.

And to both of you, are you aware of any cases in Canada where an individual who was under the program was sued, along with a police force, for wrongful death?

**Mr. Barry Swadron:** No, I'm not aware of any.

**Mr. Tom Bulmer:** I'm not aware either.

**Mr. Joe Comartin:** Thank you.

Those are all the questions I have, Mr. Chair. Thank you.

**The Chair:** Thank you.

There was no one else on my list.

If there are no further questions, we will thank you, witnesses, very much for coming and giving us the information you have and your perspective on this Witness Protection Program Act. We thank you very, very much.

This meeting stands adjourned.









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