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**Tuesday, April 21, 2009**

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**Chair**

**Mr. Garry Breitkreuz**

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Tuesday, April 21, 2009

•(0905)

[English]

**The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)):** I'd like to bring this meeting to order. This is the fifteenth meeting of the Standing Committee on Public Safety and National Security. We are studying the Sex Offender Information Registration Act in a statutory review of the act.

I'd like to welcome all of our witnesses this morning.

We look forward to your testimony. I think you have decided on a speaking order.

Ms. Campbell, you will begin, I presume, according to the information I have. I'd like to welcome you to the committee.

Before you speak, please introduce yourselves and give us a bit of background on yourselves, your positions, and so on.

Mr. Harris, you have a point of order.

**Mr. Jack Harris (St. John's East, NDP):** Yes, Mr. Chairman.

My colleague Don Davies is here today. There are apparently some impending committee changes, and Mr. Davies is likely to be replacing me in a couple of days. He will be asking questions on our behalf for this morning's first meeting between 9 and 11.

**The Chair:** We appreciate your informing us as to what is going on. Thank you.

Ms. Campbell, if you wouldn't mind, please go ahead.

**Ms. Mary Campbell (Director General, Corrections and Criminal Justice Directorate, Department of Public Safety and Emergency Preparedness):** Thank you very much, Mr. Chair. It's a pleasure to be here again. I've had the pleasure of appearing before committee many times. It is a privilege to do so.

I am the director general of the Corrections and Criminal Justice Directorate in the Department of Public Safety, formerly Solicitor General Canada. I have worked in this area for about 25 years. I'm very pleased to see some of my former parliamentary colleagues still here today as well.

Thank you for your hospitality.

Along with my colleague Cliff Yumansky, I have been working on the sex offender registry since its inception. Short and sweet, that's our background.

I would invite the other members to introduce themselves.

**Chief Superintendent Kate Lines (Chief Superintendent, Ontario Provincial Police, Canadian Association of Chiefs of Police):** Good morning. I'm a chief superintendent with the Ontario Provincial Police. I'm in charge of an area within the Ontario Provincial Police called the Investigation Support Bureau. However, today I appear on behalf of the Canadian Association of Chiefs of Police.

Thank you.

**Superintendent David Truax (Superintendent, Ontario Provincial Police, Canadian Association of Chiefs of Police):** I'm a superintendent with the Ontario Provincial Police and the director of behavioural sciences and analysis services, which also incorporates the Ontario sex offender registry.

**Superintendent Leo O'Brien (Officer in Charge, Behavioural Sciences Branch, Royal Canadian Mounted Police):** I'm the officer in charge of behavioural sciences with the Royal Canadian Mounted Police here in Ottawa. I've been in that position now for two and a half years. I have a number of other areas, such as the violent crime linkage analysis system, criminal profiling, and geographic profiling, which are related to or in the same compartment as the sex offender registry.

**Inspector Pierre Nezan (Officer in Charge, national sex offender registry, Royal Canadian Mounted Police):** Good morning. I'm the inspector for the RCMP in charge of the national sex offender registry and the criminal profiling programs. I've been in that position for about 16 months.

**Mr. Douglas Hoover (Counsel, Criminal Law Policy Section, Department of Justice):** I'm from the Department of Justice and am the lead counsel in the criminal law policy section on the sex offender registry file.

**Mr. Clifford Yumansky (Director, Corrections and Community Development, Department of Public Safety and Emergency Preparedness):** I'm the director of corrections programs and community development with Public Safety Canada. I've been working on this file for many years.

**The Chair:** I thank all of you for that.

Some of you have opening remarks. Again, you have an order you wish to do it in. I'll let Ms. Campbell begin, please.

**Ms. Mary Campbell:** Thank you very much, Mr. Chair.

I'll speak very briefly to give a bit of context to the legislation. Mr. Yumansky will speak briefly about the process of registration and reporting. Then, I understand, Inspector Nezan will speak on behalf of the RCMP, after which Chief Superintendent Lines, representing CACP, will speak.

Just to remind members, the sex offender registry came into force in December 2004, so we're now in the fifth year of operation. It was very much a product of federal-provincial-territorial consensus and, occasionally, compromise. It was intended to be a national registry and therefore was designed to, as best as possible, meet the needs of all parts of the country and achieve the overall objective.

The purpose of the registry was to assist police in investigating crimes suspected to be of a sexual nature and, hopefully, to assist police in moving to a rapid resolution of the investigation, either by identifying possible sex offender suspects in the locale or, indeed, by excluding people very quickly from further investigation.

It is one tool of many. The objective of Parliament was to add to the tools that would be available in these cases.

It is not a risk-based registry. Offenders who are convicted of offences are put on the registry. It's not an assessment of whether they are more or less serious in their offending.

The registry was amended by Parliament once, primarily to add National Defence to the registry, because, of course, people there are charged under a separate justice system. The registry now applies fully to those offenders as well.

The registry, from its date of implementation, has been very closely scrutinized by federal, provincial, and territorial officials. There have been amendments made as part of the process of adding National Defence.

Of course, other issues continue to come up, which we meet on regularly, about three or four times a year, I would say. We're also in communication by paper and teleconferencing so we can identify areas in which the registry can still be improved. Sometimes, only operations will reveal what might need to be changed.

Having said that, I'll turn it over to Mr. Yumansky for a brief description of the process.

● (0910)

**Mr. Clifford Yumansky:** As Ms. Campbell has indicated, my remarks will be very brief. They will focus on two key aspects of the legislation, namely, the registration process and the reporting process.

I have copies of my presentation. If anybody needs them, I'd certainly be happy to share them with you afterward.

At the time of sentencing for an offence specified in the legislation, the crown can ask the court for a registration order. If the offence is one where it is not obvious that it was a sex offence—for example, trespassing at night—but the crown is aware that there was a sexual component, it can ask for an order but will have to prove beyond a reasonable doubt that the act was committed with the intent to commit one of the designated sexual offences. The offender has the right to appeal the order.

Once the crown has made the request, the offender either can make no argument or can argue that placing his information on a registry would be grossly disproportionate to the public interest and the protection of society through the investigation of crimes of a sexual nature.

If the court orders registration, notice is provided to the offender requiring him or her to register in person at a designated registration centre within 15 days after the order is made or the person is released from custody. The registration period begins on the day the order is made. Re-registration is required once per year, as well as within 15 days of a change of name or residence. If the offender is absent from his home address for more than 15 continuous days, the registration centre must be notified.

Offenders are required to remain registered for one of three periods tied to the maximum penalty available for the offence: 10 years for summary conviction offences and offences with two- and five-year maximums; 20 years for offences carrying a 10- or 14-year maximum sentence; and a lifetime for offences with a maximum life sentence or when there is a prior conviction for a sex offence.

Offenders can make a special application for early termination of the order, but not before five years for orders lasting 10 years, 10 years for orders lasting 20 years, and 20 years for lifetime orders. As well, both the crown and the offender have full rights of appeal of the original decision to order or not to order registration.

I have just a few remarks about the reporting process under the legislation.

Offenders are required to provide to local police, and to keep them current on, certain information such as addresses, telephone numbers, dates of birth, given names, surnames, aliases, and identifying marks and tattoos. On subsequent occasions when they attend at the registration centre, they are obligated to update any of the information about them that is contained on the registry.

Under the legislation, persons authorized to register information must collect only the information pertaining to the offence and the resulting order. Information is registered in the sex offender database without delay and is treated confidentially. The offender can request correction of information in the case of error or omission.

Information remains in the database indefinitely, except if the conviction or sentence is overturned on appeal, or if a free pardon is granted. A pardon under the Criminal Records Act does not remove the person or the information; the offender must still apply for an early termination order.

Even after a person is relieved of the requirement to report, the information itself stays on the registry, unless as noted. Access to registry data, except by authorized persons for authorized purposes, is prohibited. Police have access to personal information about past sex offenders for at least 10 years and, in many cases, during their natural lives.

Thank you very much.

**The Chair:** Thank you.

• (0915)

[*Translation*]

**Insp Pierre Nezan:** Thank you for this opportunity to answer your questions concerning the National Sex Offender Registry and to discuss this very important program. The RCMP view a proper and robust registry as an enhancement to public safety and look forward not only to the government's continued support of this program, but welcome much needed efforts to strengthen it.

There are currently over 19,000 offenders on the database, and law enforcement agencies across the country administer and enforce the sex offender registry through 14 centres. While the RCMP has welcomed this program, the legislation which governs the Registry has presented us with very significant challenges, some of which are incongruent with the efficient and effective administration and enforcement of the program.

Firstly, the legislation is very specific concerning the information that can be recorded on the database. This means that we cannot include those administrative fields that are necessary for us to ensure the integrity of the data. This conflicts with one of the legislative principles, which calls for this repository to house current and reliable information.

[*English*]

In addition, basic personal data we can collect from convicted sex offenders is restricted. For instance, an offender's vehicle information cannot be collected or registered on this database, despite the fact that the state, through motor vehicle branch systems, already possesses that information. As a result, the registry is of no assistance to law enforcement in those sexual crime investigations where police may only have a suspect vehicle description as a lead. As you can imagine, some sexual crime investigations are highly time sensitive.

Secondly, not all convicted sex offenders are ordered to the registry. In some provinces, applications are diligently made, while in others, orders are not being sought for a variety of reasons. The absence of an automatic inclusion on the registry of all offenders convicted of sexual crimes has led to the inconsistent application of the law across the country. Someone convicted of molesting a child in one province may be ordered to the registry, while in another province they may not. Given the difficulty of determining which sex offender will reoffend and which will not, this means that some of the recidivists are falling through the cracks.

Third, in many cases, strict provisions on disclosure prohibit communication between agencies that share the responsibility for managing sex offenders. The successful management of sex offenders requires collaboration among different justice agencies; yet the national sex offender registry is essentially prohibited from

sharing information that would further this effort or even prevent a crime. This is detrimental not only to the public but to the offender as well.

Finally, the imposed legislated requirement that allows police to access the database only after a sexual crime has occurred runs contrary to our efforts in this country to prevent crime. Law enforcement agencies have a number of databases at their disposal that are accessed routinely by police for law enforcement and public safety purposes. The national sex offender registry database is not among them and is purely a reactive tool. There is no opportunity for this law enforcement tool to prevent what amounts to some of the most serious and devastating crimes.

It is true that offenders who are truly motivated to perpetrate crimes of violence will usually do so. It would be disingenuous on my part to suggest that the national sex offender registry would always or even consistently prevent sexual crimes, but there have been cases with other registries where this very thing has happened. While we do not view the sex offender registry as the panacea for solving sexual crime, it nevertheless has a role to play and can support our efforts in identifying and prosecuting sexual crime offenders. More importantly, crime prevention should always be one of law enforcement's primary goals.

Crimes of a sexual nature can result in what is often irreparable trauma to the victims. The impact can be a life sentence for some. Therefore every effort should be made to reduce the risk of these crimes. The RCMP believes that a sex offender registry has value and can advance sexual crime investigations and, in some instances, potentially prevent crime.

[*Translation*]

The Federal government's introduction of a national sex offender registry in 2004 was a positive move forward. However, there are significant improvements needed in order for this registry to efficiently and effectively fulfil the legislative principles and maximize its contribution to public safety.

Thank you.

[*English*]

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

Are there any more opening remarks?

Ms. Lines.

**C/Supt Kate Lines:** Thank you, Mr. Chair.

As I mentioned in my opening remarks, I am a member of the Ontario Provincial Police and have been an officer for 33 years, but today I represent the CACP and the approximately 1,000 members we have across this country.

In past duties with the OPP, I was actually the officer in charge of researching, developing, and implementing Canada's first sex offender registry, which was legislated in the province of Ontario eight years ago today, on April 21, 2001. Ontario's sex offender registration legislation is known as Christopher's Law, in memory of 11-year-old Christopher Stephenson, who in 1988 was abducted and brutally murdered by a convicted sex offender who was on federal statutory release.

At the 1993 inquest into Christopher's death, the coroner's jury recommended the establishment of a national registry for convicted offenders. In the absence of that occurring, and with the support of victims' groups and law enforcement organizations and, of course, the support of the Stephenson family, Ontario implemented the first registry in the country. It remains today the only provincial registry and has maintained its existence given the limitations and restrictions of the legislation that's before you today and of the current national sex offender registry program.

After consulting with police agencies across Canada, Commissioner Julian Fantino of the Ontario Provincial Police requested in August 2008 that the CACP call upon the Government of Canada, through the Minister of Justice and Attorney General and the Minister of Public Safety, to amend the Criminal Code and to consider the Province of Ontario's sex offender registry legislation and software application as a model for enhancing the national sex offender registry. Commissioner Fantino's resolution to maximize the public safety of all Canadians was subsequently adopted by the CACP.

To ensure the safety and security of all Canadian residents, CACP supports that the national sex offender registry program should be further enhanced by, for example: mandating automatic registration of sex offenders upon conviction rather than pursuant to a judge's order; ensuring the members of all police services in Canada have access to registered sex offender information for crime prevention or other law enforcement purposes; mandating federal and provincial correctional services to notify sex offender registry centres of offenders' release dates; creating an electronic link between all provincial and federal corrections agencies to the national sex offender registry to ensure the identification of offenders being released from institutions and ensuring their compliance with registration; ensuring that police services of a jurisdiction verify registered offenders, reporting their home addresses; and last, allowing data matching, which includes comparisons of other electronic applications with the NSOR, which is currently prohibited by the national legislation.

My colleague with me today, Superintendent Dave Truax, has a document that hopefully all members will be provided with. It outlines those key differences between the provincial and the national sex offender registries. The CACP has further requested that the federal government financially support a program enhancement, including development, implementation, and maintenance.

Commissioner Fantino recently extended an invitation to the Minister of Public Safety, the Honourable Peter Van Loan, to visit the Ontario sex offender registry unit in Orillia and to view its software applications and its capabilities. On behalf of Commissioner Fantino, I extend that invitation to all committee members.

Actually, the database itself can be demonstrated off site as well and does not necessarily require travel to Orillia. Were it not for the usual restriction on using audiovisual equipment for committee members, I would have liked to use my 10 minutes to show you the tremendous capabilities of the Ontario database in protecting the citizens of Ontario and, obviously, potentially our most vulnerable victims, our children.

As of 8:15 this morning, there were 11,963 offenders registered in the Ontario registry, with 278 currently non-compliant and under investigation. Our compliance rate, again as of this morning, is 96.84%, which is one of the highest compliance rates of a sex offender registry worldwide.

● (0920)

Officers from across Ontario continue to directly access the registry daily in regard to their ongoing investigations as well as in relation to their crime prevention efforts.

Here are a couple of examples of how agencies are using the registry. In Ontario, a police agency recently disclosed information on three registered sex offenders in their jurisdiction to the employers of those sex offenders, pursuant to the Police Services Act of Ontario. Two of the offenders had been in the Ontario registry for offences against children and were in positions where they currently had access to children through their employment. The other offender had a history of sexual abuse of the elderly and was currently employed in a nursing home. This information was obtained and shared as a result of the offenders' obligation to register.

In another case, a male store clerk was sexually assaulted. The physical description and behaviour of the offender were queried in the registry and provided the police with a suspect. A photo lineup was prepared and the victim positively identified the offender, who was subsequently charged and convicted.

If a child were to go missing outside of where we're sitting this morning, perhaps at the corner of Elgin Street and Wellington, Ontario's registry, given its query capabilities, could do a radius search within minutes to identify registered sex offenders in the area and provide their physical description, occupation, and even the vehicles they drive. Within a short period of time, officers could be knocking on the doors of those sex offenders.

If Christopher Stephenson's case would have occurred in Ontario today, police would have been notified that a registered sex offender was living very close by, could have gone to that residence, and potentially could have found that person who was holding Christopher Stephenson against his will, perhaps preventing his death.

Christopher's parents, Jim and Anna Stephenson, will be appearing before you on Thursday of this week. They were very much involved and continue to be in partnership with us in our efforts with the Ontario registry. More than 20 years later, they have not given up the cause that the CACP shares with them, that is, to maximize public safety across this country with a registry that will protect its citizens.

Thank you.

● (0925)

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

Are there any other opening remarks from anyone?

If not, we will turn it over to the official opposition.

Mr. Kania, please.

**Mr. Andrew Kania (Brampton West, Lib.):** Thank you.

Officer O'Brien, do you have any statistics on the likelihood of these types of offenders repeating their crimes as opposed to other types of ordinary criminals doing so?

**Supt Leo O'Brien:** I think I'll let Inspector Nezan answer that question. He's a trained criminal profiler. In his studies to be a profiler he did a lot of research in that area, so he's probably better equipped to answer the question.

**Insp Pierre Nezan:** Thank you.

A number of research projects have been undertaken by academia on the risks of recidivism by sex offenders. Actually, Canada is recognized as a leader in this field.

The ranges for reoffending really vary. In some cases, it's 13% for all types of sex offenders. For others, the risk of recidivism is up to 52% and 60%. It depends on what type of offender you are evaluating. For instance, certain child molesters have a high risk of recidivism, and so do rapists, but other types of offenders are less likely to reoffend.

The answer is very complicated and there are different reasons for that. I can tell you that most people involved in research will tell you that the rates are underestimated, simply because it's very hard to detect sexual crime. Very often, sexual crime is not reported to the police.

**Mr. Andrew Kania:** From all the presentations, it seems clear there's a general theory that the Ontario system is better than the national system. Are there are statistics showing fewer repeat offences in Ontario as opposed to nationally? Can you show that it's actually working to stop people from committing such crimes again?

**Ms. Mary Campbell:** Again, that's a very good question. There have not been any evaluations to date of the national registry, simply because it is too soon. Now that we're in the fifth year of operation, I think researchers would say this is a point at which they can start looking at the impact of the federal registry. As my colleague has pointed out, it's something we intend to pursue as much as possible.

One of the foremost international experts, Dr. Karl Hanson, works in my area as a sex offender researcher, and as Inspector Nezan has said, for most sex offenders, it's a very mixed group, and you really have to focus on different groups. The highest rate of reoffending tends to be among, for example, men who choose young male strangers as victims. Other groups of sex offenders tend to reoffend at a very low rate. They do tend to offend over a longer period of time; that's one of the features of the category.

As for the impact of various registries on reoffending, obviously it's a difficult research question, because sex offences, in terms of police statistics, have gone down considerably over the past decade. There could be any number of reasons contributing to that decline, of

course, and the challenge is to try to parse out what impact a registry would have had on that. It's not impossible, but it is challenging.

● (0930)

**Mr. Andrew Kania:** Are there any statistics that any of you have in terms of crimes that have actually been solved through the use of either the Ontario or the national system?

**Insp Pierre Nezan:** I can speak to the national system, sir. We have not helped solve any crime where the offender was unknown. There has been a handful of cases where the offender/suspect was already known by the investigating body and we provided updated data, such as an updated photograph or address, which advanced the investigation. But we have not helped in any cases where the crime was unsolved and the offender was unknown.

**Mr. Andrew Kania:** Do you have any statistics, either nationally or in Ontario, in terms of how the systems have prevented any crimes?

**C/Supt Kate Lines:** Perhaps I could respond to that and to your previous question as well. You have to remember that police have a number of tools in their tool box for conducting investigations. To ever say that there was solely one tool over another that would be responsible for solving a crime....

Let's say, for example.... This goes back to your point on preventing crime. In the example that I gave you in relation to the employers of offenders being advised, the difficulty with crime prevention efforts is always how to measure the prevention success. If employees no longer have access to their victims because their employment is terminated, or if for some other reason they don't have access, I think those have to be seen as valuable potential successes of the registry, but unfortunately, I can only say potential.

**Mr. Andrew Kania:** Do you have any statistics in terms of prevention of any crimes using either system?

**Supt Leo O'Brien:** Perhaps I could answer for the national system. We would have none, because the act specifically says under section 16 that we're only allowed to use the act once a sex crime has been committed or if we're investigating a sexual crime. We're forbidden by the act to use it for crime prevention purposes.

**Mr. Andrew Kania:** You'll agree with me that this initial act, the federal act, came into force in 2004. There was supposed to be a two-year review, which didn't happen. There were deficiencies identified. Then, under the Conservative-led government, there were amendments made that were proclaimed in 2008. Is that correct?

**Supt Leo O'Brien:** Yes.

**Mr. Andrew Kania:** Right. What you're all saying is that those amendments were not sufficient for what you need to do. Is that correct?

**Supt Leo O'Brien:** Yes, that would be—

**Mr. Andrew Kania:** Okay, then, that's what I want to discuss. From my particular point of view, I want to know that it's working. If it's not working, I want to know how we should change it to make sure it does work. The way I see this, right now the focus has been more on solving crimes—even though that may or may not have occurred—as opposed to preventing crimes. Is that correct?

**Supt Leo O'Brien:** That's correct.

**Mr. Andrew Kania:** So what you're truly saying today is that you would like additional amendments made to assist with preventing crimes. Is that accurate?

**Supt Leo O'Brien:** Yes. That's correct, sir. We, the RCMP, have been working with a federal-provincial-territorial working group, which consists of representatives from all the provinces and territories of Canada, along with public safety and justice officials. A number of recommendations have been put forward that we believe will improve the registry and make it a more effective tool. I can't speak to where those recommendations are at the present time.

● (0935)

**Mr. Andrew Kania:** A brief supplementary, Mr. Chair?

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

Does anybody have a closing comment on this?

**Supt David Truax:** If I may, on behalf of the Canadian Association of Chiefs of Police, I'll give some highlights of the differences between the provincial legislation in Ontario and the federal legislation.

The purpose is to have an investigative tool to aid police in preventing and solving crimes of a sexual nature; it's for crime prevention and law enforcement purposes. In Ontario, it has automatic registration for any resident for a criteria sex offence. The notification of absence is for 15 days prior to ceasing being a resident, rather than in the federal case, where it is not later than 15 days if the offender is outside of Canada for 15 days.

In Ontario, it also includes vehicle information, whereby offenders are required to report vehicle information for the database, the registry. Then, of course, last but not least, one of the features Ontario has is the geo-mapping capability. The registry includes maps to identify offender residences in relation to offences and incidents, which is very helpful as an investigative tool. In the case of the national legislation, it doesn't have that capability.

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

Mr. O'Brien, you mentioned some recommendations that were made. Would we be able to have access to those? Could you possibly forward that to the committee?

**Supt Leo O'Brien:** I think the public safety officials would probably be the appropriate people to speak to that.

**The Chair:** So they would have access to that?

**Ms. Mary Campbell:** Mr. Chair, I'm the co-chair of the working group, along with my attorney general colleague from Saskatchewan. We have been looking at a number of these recommendations. In terms of sharing them, I do have to be cognizant of some expectations of confidentiality from the provinces, but to the extent that it's possible, we can answer any questions.

**The Chair:** Sure. Thank you.

We'll go to the Bloc Québécois now.

Ms. Lavallée.

[Translation]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** Thank you very much.

First, I would like to know whether the present act has achieved its objectives. The document I have here states that its purpose is to help police investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders. As it is currently drafted, has the act achieved its objectives?

First, I would like to hear the RCMP representative, and then those of the other organizations.

[English]

**Insp Pierre Nezan:** Whether or not the objectives have been met depends on what our measures of success are. Our mission is to first collect and house current and reliable data. To the extent that we can under the legislation, which is very restrictive as to what administrative data elements we can enter on the database, we have done so. We have about a 94% compliance rate nationally.

However, it imposes some very significant challenges for us administratively. We're not allowed to put in some of the fields we need to monitor compliance, basically, so our centres across the country have devised some secondary systems, including Rolodex, spreadsheets, or whatever. Compared to a database, they may be unsophisticated systems to try to make sure we have current reliable data.

So the short answer, if it's not too late to say that, is that we do have current reliable data, but it's very difficult for our centres to do that. As the registry goes, it's going to be increasingly more challenging.

The second aspect of the question is whether it has helped solve crime. I want to say that when you use the database as an investigative tool, you need to have that database populated, and it takes time before you see the results. We saw that with the violent crime linkage analysis system, ViCLAS, or SALVAC, which was created in the early nineties. It took time before there was a sufficient amount of data in there and it took time before we saw the results. You would see the same with the DNA data bank.

So from the RCMP's perspective, we think the results will come, but we need some important modifications, and it just takes more time. We have 19,000 offenders on this database. However, about 10,000 come from Ontario and the Ontario sex offender registry.

Quite frankly, most law enforcement in Ontario doesn't use the NSOR because they have a much better system with the OSOR. So now you have 9,000 offenders in nine other provinces and three territories. It's not very many, really, so it's not surprising to me that we haven't seen those results.

● (0940)

[Translation]

**Mrs. Carole Lavallée:** If you had only one change to make to this act, what would it be?

**Insp Pierre Nezan:** We'd like to see a number of changes. The most important is the option of using the data base to prevent crime.

**Mrs. Carole Lavallée:** To do prevention.

**Insp. Pierre Nezan:** Exactly.

**Mrs. Carole Lavallée:** Has the act achieved its objectives? What change would you like to make to it?



**Supt David Truax:** The changes we suggest in light of our experience in Ontario would be automatic registration for any resident convicted of a sexual offence, notice of absence, information on offenders' vehicles and the introduction of a card. The Ontario sex offender registry contains maps showing offenders' places of residence relative to the scene of the offence. I should also point out that we would like to obtain the necessary funding to improve the national registry.

**Mrs. Carole Lavallée:** With regard to vehicles, what is the argument of people who have refused to allow that information to be included in the information on a sex offender? It's possible in Ontario, but not at the federal level. Why is there this difference?

**Supt David Truax:** Improvements were made to the provincial act in 2008 to add information on vehicles. This is a very important investigative tool. As you know, when an offender approaches a child in the street, there is often a description of the vehicle. We are able to find detailed information in the data base identifying persons of interest or suspects.

**Mrs. Carole Lavallée:** Is your data base in Ontario also used to do prevention?

**Supt David Truax:** Yes.

**Mrs. Carole Lavallée:** Have you been successful in preventing crimes in this way?

**Supt David Truax:** It's hard to cite any cases in which we've achieved the prevention objective. However, in 96% or 97% of cases where we have the information, we think we are able to prevent crimes. We have a few examples in which we are able to find information in the data base to improve or assist in investigation. However, I can't give you any exact details on the number of times that has enabled us to engage in prevention.

**Mrs. Carole Lavallée:** All right.

Ms. Lines, would you like to speak?

[English]

**C/Supt Kate Lines:** I could also add, in relation to success, that perhaps it's not necessarily finding the person responsible. In many investigations, there are multiple suspects. If there are suspects we can go to initially, and we have this information and know that they don't match the physical description, they're immediately no longer on the police list, and police are able to concentrate their investigative efforts and their resources on other areas.

So even from a very practical standpoint, for investigators to be moving in the right direction and discounting suspects has value as well, because it allows us to move the investigation forward to the more likely suspects.

[Translation]

**Mrs. Carole Lavallée:** Ms. Campbell, is it your impression that the act has achieved its objectives?

[English]

**Ms. Mary Campbell:** As the other witnesses have said, I think it depends on what your measures of success are. Obviously, the most important one is the overall objective of being a useful tool for investigating crimes. I defer to my police colleagues on that matter at this point.

Other measures we look at, for example, include whether the legislation has withstood challenges in the courts. So far, the answer is yes. That's an important factor. You want to have a model that is going to be workable and not be out of business the next day.

We look at a measure of success: is it meeting the needs of all parts of the country? Everyone shares the same objective. There's simply no debate about the objective of protecting vulnerable citizens. Some features may perhaps be more appropriate or more useful for a larger province than a smaller province or for one area of the country with a different crime pattern than another area of the country. Those are matters that we, as officials, take into account when developing our advice. You can have a model that may be very good but is not suitable for the north as compared to the south.

Whatever model of registry Parliament chooses, of course, you want it to be the best one possible. There are many different models of sex offender registries, and you can look at the U.S. for that.

• (0945)

**The Chair:** Ms. Lavallée, I'm sorry, but the time has expired.

We're going to have to move on to Mr. Davies, please.

**Mr. Don Davies (Vancouver Kingsway, NDP):** Thank you, Mr. Chairman.

Thank you for appearing before us today. It has been very helpful.

First, I am interested in exploring the registration as it is currently. Under subsection 490.012(4), the court is not required to make an order under the section if it is satisfied that the offender has established that, if the order were made, the impact on him or her would be grossly disproportionate to the public interest in protecting society, through the effect of investigation. This tells me that the onus is quite clearly on the applicant, and probably as it should be.

I'm just wondering if you are aware of any cases where courts have refused to order registration.

**Ms. Mary Campbell:** Yes. The reported case law has indicated that there have been some situations in which the offender has made that argument and has been successful.

I'd invite Mr. Hoover to comment.

**Mr. Douglas Hoover:** When we first designed this, we were borrowing from the template and the case law that came out of the DNA requirements in the Criminal Code, which uses the same language.

My view was that there was going to be some shakeout in the lower courts and that probably, as it was in the DNA experience, the Courts of Appeal would step in to ensure proper interpretation. I believe that's happened. We've had a number of Court of Appeal decisions on "grossly disproportionate" to confirm that the onus has to be on the offender. He has to step up. He has to prove this to the court's satisfaction. This is a very strict test. I think the Court of Appeal in an Ontario case used the term "in the rarest of circumstances", which is similar to the language in a Nova Scotia Court of Appeal decision on the DNA.

So while there were some early and I guess interesting decisions in the lower courts, we're confident that right now it is working fully as intended, whereby probably 90% of applications that are brought before the courts result in an order of the court for the individual to register.

**Mr. Don Davies:** Shifting a little bit to the recommendation for automatic registration as opposed to having the discretionary application process, I take it, then, that your main concern would be the uneven application across the country of the prosecutors seeking such an order. That seems to be the main problem.

**Ms. Mary Campbell:** We have heard from some officials from the working group that crown attorneys, on some occasions, simply through pressure of time or workload, what have you, forget to ask for the order, so it's partly just human frailty, and learning, of course.

A model that uses automatic inclusion is a viable model. Obviously, it's the Ontario model. There are pros and cons for either model. Those arguments are looked at in the working group.

**Mr. Don Davies:** I think it was the Ontario High Court that in 2005 expressed one concern about automatic registration, which is one of these laws of unintended consequences. The concern, as I have it, is about everybody being forced to register, including very low-risk offenders. The quote, which I think is from the court, says there's a risk that it would become "so inclusive as to include so many low risk or no risk offenders as to dilute the resources and attention of the police from those that pose a genuine risk".

I'm curious. Being experts in enforcement, have you any concern that might make the pool so big that it might actually dilute the efficacy of the registration? What is your comment on the court's observation there?

That's directed to anybody who wants to answer.

**Insp Pierre Nezan:** In the RCMP, I think we go back to what the registry's intended to do. Predicting which sex offender will reconvict and which will not is very difficult. We have seen cases of people who have been assessed as high risks and did not offend and cases of people who have been assessed as low risks and did go on to commit serious offences. So in regard to starting from a risk-based assessment, you're already treading some dangerous ground from a law enforcement perspective.

We are able to manage the numbers now. We've looked at the potential numbers in some of the provinces if, say, we had were automatic inclusion. We think it's important to have this populated with sex offenders and it would be of investigative value. It's a mistake, in our experience, and there is research that does bear this out, to assume that someone who has been convicted—and I'm going to use the quotation marks—of a "minor offence" is not at risk to reoffend.

I'm not sure what a "minor" sexual offence is to begin with, but we see through our experience that people are committing what some people call nuisance offences, like voyeurism, and they figure that, really, these are no-harm, no-foul types of offences. But we know from experience and from research that many rapists, and violent rapists, engage in voyeurism. It's part of a wide repertoire of deviant sexual behaviour.

I'm not suggesting that everybody who's convicted of voyeurism or engages in voyeurism is going to take that next step and become a hands-on sexual offender, but the reverse is true. We know that a lot of violent rapists do engage in some of these offences that appear less serious. From our perspective, it's very dangerous to assume that someone who's been convicted of a summary conviction offence or a minor sexual offence should be excluded from the registry.

• (0950)

**Mr. Don Davies:** Thanks.

I want to use my remaining time to look at the international application of this registry system. Do you believe the act should be amended to provide for automatic inclusion of Canadians who have been convicted in foreign jurisdictions of sexual offences that are comparable to those found in Canadian legislation? Has there been any work towards that?

**Ms. Mary Campbell:** That issue has come up a number of times. It's an important issue. When a Canadian has been convicted abroad and, under the International Transfer of Offenders Act, is transferred back to Canada under sentence, then of course we know about the offence. It would be fairly straightforward, I think, to consider a model that could include those people. Obviously, it wouldn't be happening at the time of sentencing. It would have to be a special application, but there the facts are known.

The more challenging situation is one where a Canadian has committed a sex offence abroad, completes the sentence there, and perhaps remains in that country or may travel to other countries. A significant period of time, many years, may pass, and then they may return to Canada. It's a very practical question of having the information. It's then a question of a police sharing of information. I don't think you would find many people who would quarrel in principle with the idea that they should be in a position comparable to that of a person who'd committed that offence in Canada. The question becomes how you get that information, particularly where years may have passed.

**The Chair:** We'll come back to you again, Mr. Davies. You're well over your time.

We'll now go over to the government side.

Mr. MacKenzie, please.

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

Thank you to those who are here.

This is a very important issue. I know that the committee has been seized with a number of other things that are going to fill our agenda.

I listened to you, Superintendent Lines, and you indicated that you have a presentation that could be available. I think you indicated that we could go to your headquarters or that perhaps you could bring it here. I'm just wondering if the committee would be interested in having an evening in which the committee, not as a formal part of the evening, could invite some of these people here, including the RCMP, so we could get an overview of the Ontario program and perhaps how it could or would function in a national program.

I'm wondering if the committee would be interested and if the panel members would be willing to do that. Certainly, my office would be interested in lining up an evening event somewhere. If there's a willingness for that, then certainly we'll carry that forward and contact everybody.

One of the other things we talked about here was trying to prove a negative. I know that it's always, if not impossible, then virtually impossible, to prove how many it prevented. We simply don't know. I think you've done a good job in trying to illustrate the advantages of the system.

I know we talk about it in this context and others, but the other issue is recidivism. Recidivism is always measured by convictions. It doesn't mean that the offender didn't reoffend; it just means that the offender was never apprehended and convicted. We should not lose sight of that, particularly with respect to the crimes we're talking about here. From a practical perspective, there is enough expertise here that perhaps one or two of you would like to talk a bit about that.

My sense is that pedophilia, males on males, might have a rate of recidivism that would be a lot higher if we could measure the offences as opposed to the convictions of the offender. I wonder if you could explain any of that or take a crack at it.

● (0955)

**C/Supt Kate Lines:** Yes, sir. From a police perspective, you're quite right. When we speak of recidivism, especially for an adult male with younger male victims, and when you understand as well that some of those who have a sexual preference for children can offend against hundreds of victims, we really need to keep a perspective on that. I do agree with you—and perhaps it's a cynical police view that we sometimes have—that there not be a plea bargain to a lesser offence in relation to those who do come before the courts, and that we must really and truly understand what the offending is about.

I believe that's where correctional services and those who are involved in the treatment programs give us some of our best literature for those that we feel are self-reporting accurately. That's some of the best research.

But you're quite correct. In relation to the recidivism and risk levels, risk is not static, of course, but dynamic. Over time, there are so many variables, such as alcohol treatment programs and drug treatment programs, that are so dependent on the success of that offender not reoffending. We must always be cognizant of that.

**Ms. Mary Campbell:** I would just add that obviously this is the type of crime that tends to be private, as opposed to being a public event. It's hard to ignore a bank robbery, which is, by definition, a public event.

Dr. Hanson is engaged in some research on trying to devise a reliable way to estimate the hidden amount of sex crime. To the extent that he now has or in the future will have anything that he could share with the committee, I'd be happy to pass that along, because it is a very troubling issue with relation to these offences.

**Insp Pierre Nezan:** I would like to weigh in on this one as well.

There is some research out there on undetected offences. First of all, sexual assault is the most under-reported crime. People report their vehicles stolen and their houses broken into, but for a wide range of reasons, a lot of victims won't come forward when they've been sexually assaulted. It's very under-reported. That's the first thing.

There has been some research on undetected offences by offenders in treatment. There's one research project where they found that 23 offenders had an average of about 175 victims each for whom they had not been apprehended. Another study indicated that 232 child molesters had admitted more than 55,000 incidents of molestation. I have another study here by Gene Abel, who is well known in this area, which found that 561 offenders—a broad range of sex offenders, not just one type—had admitted to 291,000 offences. It's well known, certainly in our law enforcement circles, that often, but not always, you're dealing with the tip of the iceberg, and that more comes out through treatment, because there's perhaps no longer any jeopardy at that stage of the game for the offender.

The other thing that has been commented on in Canada by well-known researchers is that, as you indicated, using official records as a measure of recidivism is weak. Usually the follow-up periods are four to five years, which is a relatively short period. The offender may have been incarcerated for part of that time. The other thing is that you're dealing with a criminal conviction. So, first, a lot of the time, you don't get caught. Then, second, you have to be charged. Third, you have to be convicted. There are several processes before you get to the end of the road. Measuring this solely by using conviction statistics has its limitations.

I asked our research and development section to measure the effectiveness of sex offender registries. In their search around the world, they could not find any research measuring the effectiveness of an SOR, but it's a project that the RCMP will be undertaking. We already have a project to measure recidivism of offenders in the national sex offender registry. About 18% of offenders currently in the national sex offender registry have a prior conviction for sexual assault.

**Supt Leo O'Brien:** If I could just add, sir, by way of an example, during my days on the detachment I once did an investigation where a 48-year-old was apprehended for a number of sexual assaults. It came out during the investigation and from the evidence that this 48-year-old had been offending since the age of 18. He had been offending for 30 years and that was the first time the person had been reported and apprehended.

We interviewed 54 children between the ages of 8 to 18. The person indicated under sentencing that, yes, he'd been at this since the age of 18. This was the first time he had been caught. The medical evidence at the time, I recall, was that the medical experts testified they could treat that person, and could manage him, but they could never cure him.

● (1000)

**Mr. Dave MacKenzie:** I think that's the practical aspect of this. I disagreed with Superintendent Lines when she referred to the "cynical" police perspective, because I think it's the practical police perspective. I think police officers see this every day. Your view is very practical and I think you've expressed that.

Ms. Campbell, are there differences across the country in the perspectives of the provincial and territorial bodies as to whether or not we should expand the registry in a broader sense? Is there some reluctance by some provinces to become more involved? If there is, is it something we need to be cognizant of and work towards strengthening in the registry?

**The Chair:** We'll have to make that your final question.

**Ms. Mary Campbell:** I would reiterate that no one disagrees with the overall objective—that's very clear—of safety and security for everyone. As with any issue, sometimes there are different paths to achieving that objective.

At the officials level, it's fair to say that we look at many different models. As I say, if people have not looked online at the U.S. sex offender registries, it's very instructive to do so. They're all publicly available online. They are somewhat different from state to state, so it's important to know, when you're talking about a registry, exactly what kind of registry you're talking about.

In terms of expanding the Canadian registry, again, it's a bit hard for me to answer broadly speaking, because there are different ways of expanding the current registry. We've heard comments today about more proactive access to the registry, more automatic registration.

I think it's fair to say that across the country, at the officials level, there are different points of view about the efficacy of the different models. That's the kind of debate you want to have, the kind of analysis you want to have. At the end of the day, I think it is something to be aware of. This is a system that is administered by crown attorneys and police across the country. It's not operated out of Ottawa. We want to have a model that is useful for all jurisdictions, that doesn't impose a burden that some jurisdictions won't be able to meet, but that, on the other hand, doesn't sell short the tools that are needed in other jurisdictions.

I don't have a short answer other than, yes, there are different paths to the same goal. Our job certainly is to listen to the different points of view.

I'll go back to the point that, as we've said, the registry is one tool for police. Of course, CPIC continues to be available as, you might say, a registry of all criminal convictions. That's another tool. Parliament has enacted other measures to try to target sex offending. The idea is to have a range of options available to law enforcement, to schools, to employers, etc.

**The Chair:** Thank you, Mr. MacKenzie. We'll have to come back to you.

Mr. Oliphant, please.

**Mr. Robert Oliphant (Don Valley West, Lib.):** Thank you for being here, and thank you for the work you do.

I want to begin by saying that if we spend one minute of our time on this, one dollar of our money, and it saves one child or one youth, one woman or one man, from becoming a victim, then I think it's worth our time and our money.

I also understand the difficulty in answering some of the questions with exactitude, and the fuzziness of social science research, so when I ask the questions, I'm not expecting all of that...but this for me is

such a strong issue of concern that I want to make sure that what we do is actually working. And I know you do as well.

To Ms. Campbell or Mr. Yumansky, are you aware of the work that Jim Coflin did in the department a couple of years ago?

**Ms. Mary Campbell:** Yes. He did that under contract for us.

**Mr. Robert Oliphant:** As I look at that work, it seems the success of the registry is being hinted at, and then eventually—out of a *Maclean's* magazine article—it comes out that probably not one crime has actually been solved, in either Ontario or Canada, exclusively by the use of the registry. And I think we've got that clear: we can't prove that it works.

There is a tool kit that we have—section 810 peace bonds; sentencing tools and all of the other tools; perhaps double judicial discretion should be offered. I mean, there are many things that we should be trying to add into this. But I don't want to spend more time on this sex registry, or rather sex offenders registry—“sex registry” sounds like something you subscribe to—than is merited if it's not going to actually be effective.

So that's the premise I'm working on: what could actually help? I know you have talked about licence plates, and I've talked about that. Is there something we're missing on this?

● (1005)

**C/Supt Kate Lines:** I think from a practical standpoint, and from a CACP perspective and an Ontario law enforcement perspective, it's just having a tool that's available. Time is of the essence in many of these investigations.

With abducted children, the first 24 hours is critical. In most non-parental abductions, the child is deceased within 24 hours. Time is of the essence. Police access to the database is very important, rather than having to have the baseline for, the reason for, accessing the national registry. Certainly it creates a time constraint when it can't happen within the force itself, and there are parameters in which they must stay. Sometimes, in those very early hours, when one doesn't know for sure and perhaps can't state the criteria, there's concern that there's then a delay in these investigations.

So that's significant.

**Mr. Robert Oliphant:** Is there a concern, though, that we waste time or have a false sense of security because of the list? If most offenders are actually known by the family or by the person, is there a wasted police effort in spending time on the registry? Is that a danger?

**C/Supt Kate Lines:** Yes.

I can't state the specific case, given confidentiality, but there was a very high-profile case that occurred a number of years ago for which the registry was accessed. Immediately, because of the circumstances of the case, none of the offenders residing in the area were suspects.

That saves a lot of time for investigators, who can now move in another direction. As I said, that was what I was referring to earlier. It's almost like a negative. Taking someone off the list rather than identifying them has great value when investigative time is of the essence.

**Mr. Robert Oliphant:** Mr. O'Brien, in 2006, the government opened up this legislation through a Senate bill. The RCMP ended up drafting a memo to the federal-provincial-territorial high-risk offenders working group suggesting many changes to this act. Did the government act on any one of them?

**Supt Leo O'Brien:** No, not to this point in time.

**Mr. Robert Oliphant:** That was three years ago, and the memo, which I'm not going to be able to get a copy of, apparently listed many deficiencies in the bill, as I've read in news accounts. The only thing added was court-martialled offenders. Have you been in any further contact with the minister or the government on this?

**Supt Leo O'Brien:** Yes. During the past year, we briefed the previous minister. Stockwell Day was the minister at the time. He was briefed twice, once by Deputy Martin, our deputy commissioner, and once by Inspector Nezan. It was about a year ago now, I guess.

**Mr. Robert Oliphant:** Has the new minister asked for any intelligence on this?

**Supt Leo O'Brien:** He hasn't asked our office directly. I don't know, but maybe he did so through Public Safety. I believe that he is working with the Public Safety officials.

**Mr. Robert Oliphant:** Thank you.

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

Just to follow up on a previous question, Ms. Campbell, you told us that in the U.S. this is available to the general public. Could you inform the public in Canada about who has access to this? Is it only the police? Can the general public inform themselves of who is in their neighbourhoods?

**Ms. Mary Campbell:** In Canada, the model that was chosen by Parliament is one that restricts access to police, so it is different from the United States, where every state has a publicly available registry. As part of the research we do, of course, you look into why those decisions were made. I think it's important to look at the various reasons why the registries are public.

One of the reasons is, of course, that making the registries public was tied to some federal funding for some unrelated matters. That's the decision the individual states and the U.S. government have made. Again, I would encourage members, as a matter of interest and research, to have a look at those registries.

But no, in Canada the choice was to not have a publicly accessible registry.

•(1010)

**The Chair:** Thank you.

We'll go to Mr. McColeman.

**Mr. Phil McColeman (Brant, CPC):** Thank you, again, both for being here and for taking the time.

As you know, this committee is charged with the review of this legislation and we're hearing from all sides. Of course, there's representation by people who feel that it's an infringement on human rights.

I'll make a statement and then ask my question.

I've spent a lot of time with special needs individuals during my life, both children and adults, and their innocence concerns me greatly, which applies to all victims, I suppose, but especially in their case. It's gut-wrenching for me to contemplate the situations that some of them may find themselves in. So I definitely am biased towards giving you the tools you need to do the job in law enforcement on the streets and on a timely basis.

It was mentioned earlier, I think by Mr. Nezan, that the current set-up is inefficient, and the integrity of the data is compromised. That's the note I made on your comments. Can you expand on that a bit?

**Insp Pierre Nezan:** Part of our mission is to monitor compliance and ensure that we have up-to-date data in there. I'll give you an example of the challenges.

We have some people who are convicted of designated offences and receive a custodial sentence, perhaps a federal sentence, and they're in the custody of the Correctional Service of Canada. Once they terminate their sentence, they have 15 days to report to the centres located across the country. There is a legal inability for Correctional Service of Canada to communicate to the national sex offender registry to notify us when an offender is being released.

As you know, offender release dates fluctuate. It could be day parole, warrant expiry, work release programs; there may be an intermittent sentence. There can be a number of different reasons why an offender, even though he's sentenced to five years, will come out before five years. Because CSC cannot notify the national sex offender registry of when John Doe is coming out of jail, we don't know when to start that 15-day clock ticking to monitor compliance.

Our centres have had to devise some unsophisticated secondary systems. In this electronic world that we live in, we can't incorporate this at present into the database and be notified automatically from Correctional Service that John Doe is being released in 10 days so we can prepare for the compliance. We have to devise these other systems and try to monitor compliance. It's not very efficient. It's going to become unmanageable eventually, just because of the sheer fact that more offenders are being ordered to the registry every day. At some point, the integrity of the data is going to take a serious downfall.

That's one example.

We also can't record other administrative things. For instance, we may have offenders who are deceased, and because of the specificity of the act, we can't add a little box that says "deceased". If an investigator calls us and is looking for a potential list of suspects or persons of interest, we may inadvertently provide him with a list that has a deceased person on it, and they'll be essentially chasing a ghost or chasing their tails. That's not what we're after, and certainly that was not the intent of the legislation.

I don't want to sound overly critical. It was better than the registry we had before nationally—which was none. It was a positive step forward. Now that we've operationalized this, we're seeing a number of these restrictions on the administrative side that we need to have fixed.

Those are just some examples. I have an a range of them that I could bring up.

**Mr. Phil McColeman:** There is another concern. Obviously, I'm not saying that I'm way out there and that we don't need to respect the rights and the laws as they exist for individuals to have protection. But having said that, I note that there have been some comments that we need to have statistical proof of the negative, that this is effective. But this is so common sense, in my mind, that we would provide the enhancements to be able to get to a situation whereby we do truly protect as many individuals as we can on the street.

Further to that, then, I would ask the question—and any of you are welcome to answer it—are there any international jurisdictions that stick out in your minds as having a system or elements of the system that you would like to see?

•(1015)

**Insp Pierre Nezan:** If I could speak to that, I know a little bit about the U.S. registries. I've met a few colleagues down there. There are certain things that are nice, but they have other things that I think we should stay away from. For instance, from the RCMP's perspective, the public access is a mistake, but they do employ that down there.

I'll give you an example that is indicative of being “hard to measure”. No more than two months ago, I was at a conference in one of the northern states—Minnesota or Connecticut, I'm not sure which one. One of our colleagues told a story about how a man in a red vehicle was in a neighbourhood trying to lure kids into his vehicle with candy. There could have been a number of reasons why he was doing that, but we suspect they were nefarious reasons. In any event, one of the mothers had spotted this. She got a description of the vehicle, which was only the colour, got a partial plate, one or two digits, and phoned it into the registry. They identified a sex offender registered to that vehicle living in the neighbourhood and they intervened. Did they prevent a crime there? I guess we can debate it, but it comes back to your comments about common sense.

Another real-life example here in Canada is that there was a man in an elementary schoolyard taking pictures of children. The staff who worked there didn't recognize him as a parent, staff, reporter, or otherwise, so they were alarmed by his presence. When they tried to approach him and confront him, he fled. They called the police, and the police called the national sex offender registry, but we couldn't access the database because a sexual crime had not occurred.

Those are the types of proactive uses that we would like to see expanded upon. I don't have the research to back up whether that would prevent the crime, but...

**The Chair:** Thank you.

**Ms. Mary Campbell:** I would just say that we do monitor the U. S. research very, very closely. They do extremely good research on their criminal justice programs. It's something we pay very close attention to in order to learn from it.

**The Chair:** Okay.

We'll move to the Bloc Québécois, with Ms. Lavallée.

[*Translation*]

**Mrs. Carole Lavallée:** Ms. Nezan, you say that the registry, as it stands, isn't effective and does not make it possible to do prevention. From what I've heard, in a number of cases, it doesn't clarify crimes.

If there wasn't one, would that amount to the same thing? Would you be just as well off?

[*English*]

**Insp Pierre Nezan:** I can't say we've helped solve a crime; we don't see that impact. As I indicated earlier, I think there's value in this registry, and it's to come as the database is populated and the use is expanded. I think we will see the positive results.

**Supt Leo O'Brien:** The other point, too, that we have to remember, as Chief Superintendent Lines referred to earlier, is that in a lot of cases you may be able to eliminate suspects. In that case, the police can divert their energy and resources to narrow their investigation. It's difficult to measure, of course, but it does happen.

**Ms. Mary Campbell:** One of the reasons that some of the American registries have not been very effective is, of course, this issue of reliability of the data. I think that's why you hear a big emphasis on ensuring that we have comprehensive and reliable data.

So many of the states report that they have lost tens of thousands of sex offenders simply because they have not been able to follow up on addresses or other personal information. They simply don't have current information in the database that would be reliable enough to use. It is important to really focus on ensuring that the registry is up to date, current, and comprehensive. This issue of driver's licences, I think it is fair to say, was simply not foreseen at the time of creation. It has become an issue and seems to make good sense as an item that should be in a database.

[*Translation*]

**Mrs. Carole Lavallée:** Mr. Truax raised his hand.

[*English*]

**Supt David Truax:** Having been a major case manager involved in homicide investigations, I would say that one of the features of having a registry, obviously, especially in Ontario's case, is that in searching for a missing child by querying the registry and utilizing its geo-mapping features, you can identify the first 12 to 15 doors to where you want to dispatch police officers to make a verification, to see whether or not that individual is home, where the individual has been, etc. As alluded to earlier, that eliminates persons of interest in order to advance an investigation with the best possible speed and efficiency.

•(1020)

[*Translation*]

**Mrs. Carole Lavallée:** Mr. O'Brien.

[*English*]

**Supt Leo O'Brien:** I was going to add that in the case of the national sex offender registry we're missing vehicle data at the present time because we're not allowed to record that. Oftentimes in the case of a sexual assault, that's basically all you may have to go on.

I recall a case out west about two years ago in which a seven-year-old and a nine-year-old were abducted and sexually abused. When they were interviewed, they gave a description of the vehicle. We couldn't help them with the sex offender registry, but we were able to help through the violent crime linkage analysis system, because that offender had offended two years previously and was in that database. We were able to identify a suspect and it turned out that he was the person.

Again, all we had to go on, mainly, was a description of the vehicle. Of course, we don't have that information in the national sex offender registry database right now.

**C/Supt Kate Lines:** Perhaps I could go back to what was mentioned earlier by Mr. MacKenzie and the invitation that we would certainly and wholeheartedly accept. By actually seeing the demonstration, obviously with hypothetical locations and hypothetical events, I think you will quickly see, from a very practical standpoint, how a database that has all of the things we're asking to have included in the national registry is so instrumental in the success of an investigation or, more importantly, in the prevention of an incident.

[*Translation*]

**Mrs. Carole Lavallée:** Mr. Hoover, do you have an opinion? If it's considered too ineffective, do you think we could perhaps do without the registry?

[*English*]

**Mr. Douglas Hoover:** From a Justice perspective, in criminal justice our objective is to ensure that the criminal law is effective, efficient, and fair. The courts have upheld the registry so far as being charter compliant and constitutional, so we're pleased with that. We believe that registries have a role to play in assisting in investigations, so in that sense I think we have no policy objections to registries overall.

I think there are concerns if a registry is perhaps too broad. I would point, for example, to a recent U.K. High Court case that eliminated the ability of the United Kingdom registry to register for life because they felt it contravened the European Union's bill of rights. These are the types of issues that we may still confront.

Mr. Davies referred to the Dyck case, in Ontario, where the issue was omnipresent whether a registry that was automatic was constitutional. That matter has still not been settled fully by the Supreme Court of Canada, so if we do go automatic it will be an issue. Hopefully, we can design one, if it's the will of the government, that survives that.

So overall the only answer I can give is that if it's the will of this country and of Parliament to have a registry, then we'll have one. If it's the will to make it automatic, we'll do what we can to make it constitutional. But I think it does have a role to play.

[*Translation*]

**Mrs. Carole Lavallée:** Every time I—

[*English*]

**The Chair:** Briefly, please.

[*Translation*]

**Mrs. Carole Lavallée:** Every time I mention the registry's ineffectiveness to you—because I'm playing the devil's advocate—you answer me by talking about cases of sexual assault on young children. Shouldn't there be just a pedophile registry, rather than a sex offender registry?

[*English*]

**Insp Pierre Nezan:** I can speak to that. Largely, people who molest children don't just molest children; it's a mistake to think that people are one-dimensional when we're talking about sex offenders. We have offenders who will molest children, the elderly, and people who are mentally challenged—anybody who's vulnerable and available. To focus strictly on the people who have been convicted of molesting children would be to miss a whole range of offenders. Most of them have a very wide repertoire of offending.

**The Chair:** Do you have a brief comment, Ms. Lines?

• (1025)

**C/Supt Kate Lines:** Pedophilia, the sexual preference for children, is not a criminal offence. It is the acting out of a sex offence against a child that's a criminal offence and we should not lose our perspective on that. We could compare it to other sexual orientations, but a pedophile does not equate to a sex offender. Sometimes those terms are used interchangeably, and they should not be, because the criminal offence does not occur until they actually offend against a child.

**The Chair:** Thank you.

Mr. Richards, please.

**Mr. Blake Richards (Wild Rose, CPC):** Thank you.

I certainly appreciate all of you being here today to talk about this very important subject. Sexual offences, and particularly those committed against children, are the most despicable crimes we see. We appreciate your sharing with us some very useful and practical ideas on how we might be able to improve the registry.

Ms. Lines, you indicated the compliance rate in terms of offenders. You mentioned that there were 11,000 in your database in Ontario and that the compliance rate was about 96% as far as keeping their information updated and complying with that requirement was concerned.

Mr. Yumansky, you mentioned that this is a requirement of the federal registry as well. I wonder if you have similar statistics on the compliance rate and number of offenders in our federal registry.

**Mr. Clifford Yumansky:** Inspector Nezan quoted a compliance rate of about 94%, if I'm not mistaken.

**Insp Pierre Nezan:** I can say it's 94%, but I have to throw in a caveat here, because Ms. Lines told you the statistic as of 8:15 this morning in Ontario. The national sex offender registry doesn't allow us to do that.

Last week I asked my staff to find out from the national registry the compliance rate in Canada. It came up with 85%, but that's not a true picture. We have to go to each province and territory and ask how many are truly non-compliant: the ones who aren't incarcerated, out of the country, deported, deceased, or in long-term hospitalization. Who is truly playing with the system here and is not compliant?

We come back with 94%, but that was the figure I had to cobble together from the provinces and territories, so it's not a very accurate picture. It's pretty close, but it's not up to date. It's not a snapshot in time, because I may have had B.C.'s results from three days ago and Saskatchewan's from today. It's a moving target, but it's roughly 94%.

**C/Supt Kate Lines:** That's one of the abilities of Ontario's model, that capacity to monitor what we would describe as inactive offenders, for a variety of reasons, and to ensure, again, that they're not considered non-compliant because, as the inspector says, they could be non-compliant in principle with the registry but currently incarcerated or that type of thing. It's important to consider this when you're measuring compliance, which some might say is also a monitor of success.

**Mr. Blake Richards:** You mentioned "inactive". I've heard a couple of examples, "deceased" being one that you mentioned earlier, and "currently incarcerated" is another. What other reasons would cause an offender to be currently inactive in terms of needing to comply with the registry, especially in terms of those things we need to allow for so the registry can be updated in a better manner, as the Ontario one is?

**Supt David Truax:** One of the most common examples we have is that of a registered sex offender relocating elsewhere in Canada outside of Ontario. Obviously, some of these people have a transient nature as well. If they relocate to another province or territory in Canada, they need to make notification to the Ontario sex offender registry no less than 15 days in advance of ceasing to be a resident of Ontario. They need to provide specific information, such as the city, etc., about where they will be relocating so that we will be able to communicate with the national sex offender registry to ensure the process is followed in that other province or territory. Relocating is the most common example.

**Mr. Blake Richards:** In order to educate myself on this same point, what are the penalties in the federal registry for failing to comply with updating the information? What are the penalties an offender faces for that?

• (1030)

**Ms. Mary Campbell:** The first offence is a summary conviction matter. In a moment, someone will turn to the reference of what the potential monetary and carceral penalty is. On a second or subsequent offence, it's a hybrid. It could be prosecuted either summarily or on indictment and the maximum penalties are higher for those subsequent offences.

**Mr. Blake Richards:** Inspector Nezan, I've already referenced your comments in terms of the life-altering effect that some sexual crimes will have on the victims, particularly when we talk about children. In fact, sometimes it can be a life sentence for a young individual who has been sexually assaulted or molested.

Could you share with me some of the impacts these kinds of crimes have on victims? There was some mention about the differences in offences in terms of minor offences or whatnot. Really, I would say that on this kind of crime a victim probably would be quite offended to hear it being called a minor offence. We know that these so-called minor offences often graduate to worse types of crimes, and certainly in terms of prevention we need to know all the different ranges of crimes.

I want to get some quick comments on those points.

**Insp Pierre Nezan:** On your first question in terms of impact, mental health professionals will tell you that people in general have positive illusions or outlooks on life. When you see a violent crime happen to someone, you have a tendency to rationalize and say, "It can't happen to me because I don't engage in high-risk behaviour."

People who are victimized sometimes have what they call "shattered illusions". The impact on their trust in people and the emotional impact are far-reaching. I'm speaking from a policeman's point of view, so I'm no expert in this—it's above my pay grid—but I've seen it many times. Most of my service has been in major crime investigations in the major crime world. So anecdotally, from experience, I can say that it impacts some of them throughout their lives.

**The Chair:** Mr. Kania, please.

**Mr. Andrew Kania:** Officer O'Brien, I understand you made representations to Minister Stockwell Day when he was the public safety minister. Is that accurate?

**Supt Leo O'Brien:** It was Inspector Nezan, actually, who did the presentation. Prior to that, it was Deputy Commissioner Martin, our deputy commissioner at the time.

**Mr. Andrew Kania:** This is for all the panellists. Did any of you make representations to Minister Day in terms of what you wanted to fix and the changes you wanted to see before Bill S-3 was actually passed?

**Ms. Mary Campbell:** As a public servant, I'm not able to reveal advice that I provide to any minister on an ongoing basis, but it's fair comment to say that this is a very serious matter, and, of course, ministers take it very seriously and advice is provided.

If you look at the sequence of amendments to the bill, you will see that Bill S-3 was an endeavour to get the military incorporated and to make a number of other what we might call "technical amendments", but also some of the amendments along the lines of what we've been talking about today.

There was quite a time gap between Parliament passing that bill and it being proclaimed in force, partly because there were some important regulations on the military side that had to be created. During that time, no one was inactive. Discussions continued at the federal-provincial level, and certainly at the federal level. These issues have been discussed and analyzed and advice provided.

**Mr. Andrew Kania:** Would any of you disagree with the following statement, which is that prior to the passage of Bill S-3, on March 29, 2007, the Conservatives were aware of all of the problems that you've gone through today and they left them unanswered?



**Ms. Mary Campbell:** This has been an evolutionary process. I think all witnesses have indicated that it's something so highly operational that it's only through the passage of time and experience that some issues come forward. As a public servant, I can tell you that our job is to look at the implementation, monitor the implementation, and provide advice as issues come up.

**Mr. Andrew Kania:** Let me ask the RCMP officers something. Prior to the passage of this recent bill, you were aware that vehicle licence plates could not be registered and that it was a problem, correct?

**Supt Leo O'Brien:** Yes, that's correct.

**Mr. Andrew Kania:** And that was not fixed, right?

• (1035)

**Supt Leo O'Brien:** Right.

**Mr. Andrew Kania:** You were aware that there was no mandatory registration and that a number of these criminals were not in the system and you couldn't do anything about them. That was not fixed, correct?

**Supt Leo O'Brien:** That's correct.

**Mr. Andrew Kania:** You were aware that the orders expire after a period of time and then you will have no access to these people. That continues to be a problem, correct?

**Supt Leo O'Brien:** By the orders, do you mean the order at the time they're on the registry?

**Mr. Andrew Kania:** Right.

**Supt Leo O'Brien:** Yes.

**Mr. Andrew Kania:** So which of these problems that have been mentioned today were not in the minds of the Conservatives at the time? What's new and what's not new? Essentially, what's come up since that time as opposed to what they just decided not to fix?

**Supt Leo O'Brien:** There's nothing new, really.

**Mr. Andrew Kania:** Is there any link between the DNA database and this registry?

**Supt Leo O'Brien:** No.

**Mr. Andrew Kania:** Do you think there should be some form of link or cooperation? Would that assist with this overall process?

**Supt Leo O'Brien:** That's a difficult one to answer. I think it's one that would need more study. It hasn't been looked at really, so—

**Mr. Andrew Kania:** Okay.

My perspective is the same as that of Mr. McColeman and Mr. Richards, which is that we need something that works, that protects the populace. I'd like to hear from you—and it doesn't have to be today—in terms of any other changes you would like to see. Also, I'd like to hear it from Ms. Lines in terms of any problems with the Ontario system.

It seems clear that the Ontario system is better than the federal system. I don't know that it's perfect, but I'd like to hear how you'd like to see the Ontario system changed—and we're not going to do that here—so that at least we know that if we're attempting to change the federal system we're getting the best overall possible solution. I'm not asking you to say that right now because we have very

limited time, but if you wouldn't mind presenting something to us or giving us a document after, I'd appreciate that.

As well, if any of you have provided any written submissions or input to either Mr. Day or Mr. Van Loan at any point in time about any of these problems, I'm asking for the production of those records so this committee can see exactly what was suggested to the Conservative government and what they did or did not do.

**Ms. Mary Campbell:** Could I ask for a clarification on your question about a link with the DNA data bank? I'm not entirely sure what kind of link you're thinking about. Some of our offenders, of course, are subject to both a DNA order and a sex offender registration order.

**Mr. Andrew Kania:** I'm not suggesting anything. I'm raising it as an issue for you, as the experts, to think about and comment upon. I do not want it to go unnoticed. Maybe there shouldn't be one, or maybe there should be, but I'd like to hear your opinions.

Once again, my goal is to make this as strong and fair as possible and have it deal both with prevention and with enforcement in terms of solving crimes.

**Ms. Mary Campbell:** Thank you.

**Mr. Andrew Kania:** The other one that hasn't been touched is whether—

**The Chair:** Your time is up. Can you do this briefly?

**Mr. Andrew Kania:** Sure.

When you're doing that, could you also provide us with comments about what we should be doing to protect foreign countries? Right now, I believe, the national system does nothing in terms of what we're supposed to do to protect and advise. You would assume that we would have some form of obligation to protect others as well.

**The Chair:** Okay. I think that was a statement.

Mr. Rathgeber, please.

**Mr. Brent Rathgeber (Edmonton—St. Albert, CPC):** Thank you, Mr. Chair.

Thank you to all the witnesses for your appearance here this morning and for your dedication in providing public safety and security.

Ms. Campbell, for clarification, I appreciate that there's no formal link between the sex offender registry and the DNA registry, but I think in a subsequent answer to my friend, Mr. Kania, you indicated that sexual offences are, in fact, also included in the DNA registry. Did I understand that correctly?

**Ms. Mary Campbell:** Yes. Without having the two lists of offences before me, I can't swear that they're identical lists. There may be some things that relate to DNA collection that aren't necessarily sexual offences, but it is not uncommon, I would suggest, to have an offender who's subject to both of those orders at the same time.

Of course, in drafting the legislation, as Mr. Hoover has indicated, DNA legislation was already in existence and provided some guidance to Parliament.

**Mr. Brent Rathgeber:** We've heard some evidence regarding some meetings between the former Minister of Public Safety and officials from the sex offender registry.

Ms. Campbell, I understand that you or officials under your auspices have recently met with the current minister to bring him up to speed with respect to the operation of the sex offender registry.

• (1040)

**Ms. Mary Campbell:** Of course, in departments, we're always in contact with the minister on important issues.

**Mr. Brent Rathgeber:** Thank you.

Officer Nezan, you indicated in your opening comments that for a variety of reasons crown prosecutors will not seek an order to have convicted individuals submit to the sex offender registry. Could you tell us what some of those reasons might be?

**Insp Pierre Nezan:** Those are some of the comments reported to us from the centres. I think it's been getting better over the past four or five years. The national sex offender registry and the legislation are new, so there is the education component, not only for law enforcement but also for prosecutors, judges, and offenders.

Initially, some of the comments we were getting were about human error. Because it was new legislation, prosecutors would simply forget to request the order. Sometimes it's part of a plea bargain agreement. At other times, the police may not have provided the information.

There are a number of reasons why it hasn't been done. These reasons are some that have more commonly been referred to us.

**Mr. Brent Rathgeber:** For the lawyers present, when a judge is examining an application for an order, is the test "beyond a reasonable doubt" or a "preponderance of evidence", or is there some other test to determine whether an order ought to be granted? Is it reviewable by an appellate court?

**Mr. Douglas Hoover:** Certainly, it's reviewable by appeal. The test is that the court must be satisfied, on balance, that the offender has demonstrated that it's grossly disproportionate. The onus is on the offender. According to the various courts of appeal decisions, he must do something specific, in that he must bring forward evidence.

**Mr. Brent Rathgeber:** In Ontario, do the crowns seek an order, since under the Ontario registry the conviction will be automatically registered?

**Ms. Mary Campbell:** Under the Ontario registry, the registration order simply issues as a matter of administration. No one asks for it. Upon conviction for a specified offence, it simply happens. That's usually the process that automatic inclusion refers to.

**Mr. Brent Rathgeber:** But that registration is with the Ontario registry, not the national registry.

**Ms. Mary Campbell:** That's correct. The national registry has a different approach.

**Mr. Brent Rathgeber:** Right. So I take it that there are very few, if any, Ontario offenders registered in the national registry as a result.

**Supt David Truax:** Our experience has been that Ontario courts order offenders registered on the national registry in 50% to 60% of the cases.

**Mr. Brent Rathgeber:** Thank you.

**The Chair:** Mr. Oliphant.

**Mr. Robert Oliphant:** I'm wondering whether there is any research on the relationship between non-compliance with the registry and repeat offending. Do people who are non-compliant have any greater instance of reoffending?

**Insp Pierre Nezan:** There is a number of risk assessment tools, not specifically tied to sex reoffending, for different types of violent offenders. General non-compliance with court orders or regulations is usually a risk enhancer. It just flows that if you have no respect for the law or an order that you have to follow, you're at higher risk than others to commit other offences. But we do not have statistics on non-compliance and repeat offending.

**Mr. Robert Oliphant:** In New Brunswick, the RCMP requested some 150 door-knocks, but only about 40 were actually accomplished because the local police didn't have the ability, the time, the resources, or the will to do the door-knocking to see if the people were there. It seems that even when the registry is working, there is an implementation part that isn't working. Is that true?

**Insp Pierre Nezan:** The National Policy Centre for the RCMP recommends one door-knock per year in all our jurisdictions, just to confirm the data provided through the offender and computer checks. There is a number of reasons why some places are successful at doing it and others are not. It's important to remember that we're trying to balance the privacy interests of the offender and enforce the law as well.

Because the RCMP police a lot of small areas, the police know pretty much everyone in town. In those places, they may not be doing the door-knocks. It's not recorded, but the compliance check is done because they know John Doe. They see him every day at Tim Hortons or whatever it may be. So saying it's 40% is not necessarily an accurate picture of the compliance.

• (1045)

**Mr. Robert Oliphant:** It's just that I'm finding some odd statistics. Actually, I'm following up on what Mr. Rathgeber said. As of 2007, Ontario actually had 8,229 people in the national registry, and 4% were non-compliant, which is one of the lowest non-compliance rates. Quebec, with one-quarter of the registered offenders, 2,500, has 19% non-compliant, so there are more non-compliant people, objectively, at 480 versus 317, with one-quarter of the population on the registry.

There seems to be something very odd in this. It may be that the judges in Quebec are less prone to issue the orders or.... I'm not sure that there's a difference in the actual number of convictions in those provinces.

**Insp Pierre Nezan:** Each province and territory is responsible for administering and enforcing the act. In Quebec, the Sûreté du Québec is responsible. I think those compliance rates you're quoting are dated.

**Mr. Robert Oliphant:** They're from July 2007.

**Insp Pierre Nezan:** Right. There's been a dramatic increase. In Quebec, the Sûreté du Québec reported to me just last year that their non-compliance rate is down to about 8%, so there's been some improvement.

**Mr. Robert Oliphant:** It seems that as we're poking away at this we have to look beyond just the actual registry to how it lives out further down the chain, and that may not be your fault. That's somewhere else. We're trying to—

**Mr. Clifford Yumansky:** If I can add to that, though, the point I think you're raising is that the administration of the initiative is in fact the responsibility of the provinces and territories. The resources come from these jurisdictions. That's why you may see a difference in terms of application across the country.

**Mr. Robert Oliphant:** Ms. Lines, I'm wondering about the cost of the Ontario registry versus the cost of maintaining the national registry on a pro-rated basis. Do we have any figures on that?

**C/Supt Kate Lines:** On the funding for our registry, following up on the comments that have just been made, you're quite right that the administration, the maintenance, and the verification exercises always require resources for those purposes. Ontario has many larger municipalities and jurisdictions where, when driving by somebody's house, you're not going to recognize that person, so there are resourcing issues, which is why the resolution passed by the CACP does request financial assistance in this area.

In Ontario, we do have a central unit that Superintendent Truax is responsible for and that provides all of the training and all of the liaison with the national registry. That is a funded unit and it does give some support.

In the past and in the early days of implementation, it provided some support in relation to equipment and cameras for taking pictures and that type of thing, but there's not a significant amount of resourcing provided. It is obviously an issue for police across the country to have the resources to properly implement this registry, to not just have it exist and not be able to do the things you need to do because you don't have the resources to do them.

**The Chair:** Thank you.

Ms. Lavallée, for about four minutes.

[Translation]

**Mrs. Carole Lavallée:** I'm going to do a kind of summary.

Mr. Nezan, you said earlier that the changes that you would like to see made to the act—that's what we're talking about today—are automatic registration, a notice of absence before the absence, information on vehicles, a map showing residences and, lastly, you mentioned new funding, new money.

Does that accurately summarize the changes you would like us to make to the act?

[English]

**Insp Pierre Nezan:** Those are some of them. I don't think I mentioned funds in my comments, but now that you bring it up....

[Translation]

**Mrs. Carole Lavallée:** You seem—

[English]

**Insp Pierre Nezan:** The program is national, not federal, so the cost of deploying the program belongs to the provinces and territories. For the RCMP, for us, the National Policy Centre here in Ottawa, my job and my staff, our budget historically has been about \$400,000. Last year, it was about \$600,000. But when we received this responsibility to manage this program we didn't get the commensurate funds, so it is an internal pressure for the RCMP. We have to identify those budget needs from existing budgets.

On the other point you mentioned, yes, I agree with everything you said. Those are some of the things we'd like to see, but it doesn't capture all of them.

• (1050)

**Supt David Truax:** If I may add to that, Madam Lavallée, in Ontario, the annual operating budget for the Ontario sex offender registry is approximately \$4 million. That allows us to provide support and training to law enforcement agencies across Ontario. The other piece, as well, is the emerging technology we have, which of course comes at a cost but provides great efficiencies. In relation to funding, those are pieces that are being expanded upon and reviewed as well.

[Translation]

**Mrs. Carole Lavallée:** All right. Do you have any statistics on use of that data base in Ontario?

**Supt David Truax:** Yes.

**Ms. Carole Lavallée:** For example, how many police officers consult it? How often?

[English]

**Supt David Truax:** Our average for Ontario law enforcement agencies accessing the Ontario registry is approximately 475 times per day.

[Translation]

**Mrs. Carole Lavallée:** Earlier you mentioned fines or the possibility of a prison sentence for people who don't comply with the act. Do you have any statistics on fines that people have paid or prison sentences that they have received because they did not comply with the requirements of the act? I'm putting the question to the RCMP and to you, Ms. Campbell.

[English]

**Ms. Mary Campbell:** I'm not familiar with any convictions for non-compliance with either the Ontario or the federal registry.

I can tell you the penalty structure for the federal registry: a first offence is a summary conviction offence, which carries a maximum of up to six months' incarceration or a \$10,000 fine; and second or subsequent offences are hybrid offences, punishable by up to two years' incarceration, or again up to \$10,000 as a fine.

But I'm not aware of convictions for non-compliance. Perhaps Mr. Hoover is.

**Mr. Douglas Hoover:** It's still relatively new, as these things come online, but there have been successful prosecutions in Alberta and Saskatchewan. I believe there was a fine and two months of imprisonment in the Alberta case—the name escapes me—and I believe it was one month in Saskatchewan for a first offence.

**Supt Leo O'Brien:** I'd like to go back to the funding aspect again. As Inspector Nezan said, when we were mandated by the Sex Offender Information Registration Act to maintain the database, no funding came with it. As of today, we have to maintain the policy centre, which costs us approximately \$400,000 a year, but in addition to that, we have our informatics people, who are the people responsible for building and maintaining the database. Their cost is approximately \$200,000 a year.

But it fluctuates from time to time as well. Right now, we are working on a link with the Ontario sex offender registry and trying to build an interface, so we have architects and consultants employed. Those are additional costs. We continuously have to go looking for money somewhere else. For this fiscal year, 2009-10, I have been advised that we will have to find the money from within to fund the policy centre. It's always a pressure.

**The Chair:** We'll have to move to Mr. Davies now, please.

**Mr. Don Davies:** Thank you, Mr. Chairman.

I'm curious about whether the list of offences for which automatic registration occurs in Ontario is the same as the list of offences under the federal legislation.

**Supt David Truax:** There is one difference that I'm aware of. The offence of voyeurism has been added in Ontario.

**Mr. Don Davies:** So to the best of your knowledge, there may be one extra offence in the Ontario registry compared to the federal registry.

**Supt David Truax:** To the best of my knowledge, that is so. I would defer to Ms. Campbell.

**Ms. Mary Campbell:** There's another substantial difference, which is that the federal registry has, as Mr. Yumansky has referred to, 13 offences that are not sex offences on the face of it, such as, for example, break and enter with intent.

My understanding is that those 13 offences are not on the Ontario registry, but it is very clear, as previous witnesses have indicated, that there are offenders who are committing sex offences with these other offences. It's been a plea bargain or it's break and enter with intent to commit a sexual offence, for example. There's a very notorious Canadian offender who started his sex-offending career as a break-and-enter offender. So that's one difference in the list of offences: the federal one is longer.

● (1055)

**Mr. Don Davies:** I want to move on a bit now to the question of access. Madam Lavallée asked a question about how often the database is accessed. If I heard correctly, the number given for Ontario was that it was accessed 475 times a day. Do we know how many times a day the national database is accessed?

**Insp Pierre Nezan:** In a year, the national sex offender registry is accessed about 165 times. It's strictly in support of sexual crime investigations. It's where we build the tactical query, which is the process by which we input parameters into the database and try to

generate a pool of persons of interest. Those 165 times would not include the queries from Ontario, because law enforcement in Ontario will turn to the Ontario sex offender registry for support.

That is a 32% increase over the previous year. The education efforts of the provincial centres have been paying off. Law enforcement are using it a little more than they were initially, but we still have a long way to go because there is a general lack of confidence in the system.

**Mr. Don Davies:** I want to come back to funding as well. I want to make sure I understand this. Ontario has provided funding of \$4 million per year to maintain the Ontario system.

**Supt David Truax:** That's correct.

**Mr. Don Davies:** If I heard you correctly, there's no federal money that comes outside of your general allocation to maintain this national registry?

**Supt Leo O'Brien:** That's correct. No new money came with the burden when we were mandated to maintain it.

**Mr. Don Davies:** Can I ask if money has ever been requested of the government for the purpose of helping to fund this?

**Supt Leo O'Brien:** I wasn't around, unfortunately, when the legislation was brought in, so I'm not sure about that.

**Mr. Don Davies:** For any of the witnesses present, have you made specific funding requests of the current government to increase funding so that you could maintain this database?

**C/Supt Kate Lines:** The request for funding is included in the CACP resolution that I mentioned earlier today. It's not for a particular dollar figure but for financial support for the development and implementation of the enhancement we're discussing this morning.

**The Chair:** Do you have a brief supplementary or are you done, Mr. Davies?

**Mr. Don Davies:** I think I'm done.

Thank you very much for appearing before us. It's a great help.

**The Chair:** I want to thank the witnesses. Thank you. We appreciate your testimony.

We're going to suspend this committee for a brief time to allow our witnesses to excuse themselves and then we'll begin the next hour of our session.

● (1055)

(Pause)

● (1100)

**The Chair:** I'd like to reconvene this meeting.

I'd like to welcome, from the Royal Canadian Mounted Police, Commissioner William Elliott.

We are conducting this study in this extra hour as a result of the motion that was brought forward. The study concerns the issue of tasers.

Again, we'd like to welcome you, sir. As per our usual practice, we'll allow you an opening statement of approximately 10 minutes and then we'll go to questions and comments.

Thank you very much.

• (1105)

[*Translation*]

**Commissioner William Elliott (Commissioner, Royal Canadian Mounted Police):** Thank you, Mr. Chairman.

Today I am accompanied by my colleague, Deputy Commissioner Darrell Madill, who appeared before you last time. I am happy to be here. I welcome the opportunity to appear again before this committee to talk about the work of the RCMP, and to expand on the information I provided during my last appearance.

[*English*]

The RCMP's use of force, including the use of conducted energy weapons, or CEWs, is an important and complex matter that understandably is of concern to members of this committee and to the public, whom we are all sworn to serve.

We recognize that in a democratic society public scrutiny is a fundamental aspect of maintaining the accountability of public institutions. This certainly applies to the police, who should be and are in fact held to a very high standard, given our extraordinary powers and obligations to enforce the law and protect the peace. The RCMP fully expects—and indeed welcomes—scrutiny by parliamentarians and others.

The RCMP's ability to provide effective policing services depends on the support of the communities we serve. We believe that the more the public knows about the work we do and the challenges we face, the more likely they are to support us, despite our shortcomings and despite the fact that, try as we might, sometimes we make mistakes.

The RCMP and I, as commissioner, are dedicated to working as hard as we can to ensure that we provide quality police services to Canadians in ways that respect and reflect the values that Canadians and the force hold dear. The RCMP's values include honesty, integrity, professionalism, compassion, respect, and accountability. An important aspect of our accountability is our interaction with Parliament and with parliamentarians, so as I said, I am happy to be here.

[*Translation*]

The RCMP is also committed to continuous learning and continuous improvement, including in relation to our policies.

I told you that the RCMP's revised policy restricts the use of CEWs and specifically warns of the hazards of multiple deployment or continuous cycling of the CEW.

[*English*]

As I outlined during my previous appearance, the RCMP has taken significant steps to improve our policies relating to CEWs, as well as associated training and reporting requirements. An important factor in this work has been this committee's recommendations in its June 2008 report.

The last time I was before you, I talked about the improvements we have made to our incident management intervention model, policy amendments that further restrict the use of CEWs, and enhanced reporting and more frequent re-certification requirements for those trained to use CEWs.

As a learning organization, the RCMP monitors its policies, procedures, and training on an ongoing basis to identify areas for improvement. Since its inception in 2001, the RCMP's CEW policy has undergone a number of updates and amendments. In June 2008, we directed that the CEW must only be used where there is a threat to public or officer safety. This and other restrictions and enhancements to the policy were subsequently incorporated in the RCMP's current CEW policy, which was published on February 23 of this year.

I'd like to take a few minutes to highlight a few of the significant changes in the policy that restrict the use of the CEW beyond what was provided in the previous policy. These changes and the policy itself do not stand alone, but rather are linked with and relate to our training, including our certification and re-certification of RCMP officers authorized to use a CEW.

Let me start with section 3.1.1, which provides that, "The CEW must only be used in accordance with CEW training, the principles of the incident management intervention model"—or IMIM, as we call it—"and in response to a threat to public or officer safety as determined by a member's assessment of the totality of the circumstances being encountered".

This is a fundamental provision that underpins all elements of the policy. It directs that the CEW may only be used where a member has assessed all the factors of the situation and has concluded that there is a threat to public or officer safety. The section goes on to set out specific reporting requirements when a CEW is deployed.

• (1110)

[*Translation*]

The section goes on to set out specific reporting requirements when a CEW is deployed. The measures taken by RCMP members must be reasonable and any force used must be necessary in the circumstances.

[*English*]

I repeat: the policy provides that "a member's actions must be reasonable and the force used must be necessary in the circumstances".

Language was added to enhance accountability, both for the officer deploying the CEW and for the supervisor. It places responsibility on members to properly report and articulate their actions following CEW deployments. It also makes supervisors accountable for reviewing each deployment and ensuring compliance with policy.

Section 3.1.2 of the new policy adds to this, directing that "all members must recognize that any use of force entails risk".

This is followed by section 3.1.3, which clearly warns that “multiple deployment or continuous cycling of the CEW may be hazardous to a subject”. With any prolonged struggle, the potential for injury increases. The objective is to reduce the potential of injury by reducing the exposure to the CEW either through multiple deployments or continuous cycling.

This provision is fortified by the addition of section 3.1.5, which directs members to take control of a suspect as soon as possible during a CEW deployment and clearly indicates that the CEW is not intended as a restraint device.

Finally, section 3.1.4 cautions that:

Acutely agitated or delirious persons may be at high risk of death. If an individual is in an acutely agitated or delirious state, and whenever possible when responding to reports of violent individuals, request the assistance of emergency medical services. If possible, bring medical assistance to the scene.

The section was changed due to a lack of consensus within the medical community regarding the term “excited delirium”. With the revised wording, the policy is now more encompassing and also eliminates any perception that members are being asked to make a medical diagnosis.

[*Translation*]

In considering all of this, it is important to note that only appropriately trained RCMP members are authorized to use the CEW, and RCMP policy has been changed to require yearly mandatory re-certification of these officers. Previously, the requirement was re-certification every three years.

[*English*]

The RCMP's training standard for CEWs is comprehensive, includes theoretical and practical components, and makes use of scenario-based training. It is important to note that before being trained to use a CEW, all RCMP members are taught the incident management intervention model, which guides them in their decision-making process. The IMIM helps police officers choose appropriate intervention options.

We have also developed a new subject behaviour officer response, or SBOR, reporting tool for reporting the use-of-force incidents, which is currently being piloted. SBOR will be used to report on all use-of-force incidents, not just those involving a CEW. This new reporting process will help members record relevant details following incidents, and will provide useful data for future analysis. It will also aid the articulation of the circumstances that led officers to decide to resort to the use of force.

I'd like to stress again that the RCMP believes that when properly used in appropriate situations by officers who are well trained, the CEW contributes overall to the safety and security of the public and police. It has been used in situations where, in its absence, police officers might have had to resort to greater force.

The RCMP strives to be a learning organization and to improve our services to Canadians on an ongoing basis. In fact, the story of today's RCMP includes a sincere commitment to change, renewal, and growth. While fully recognizing that there is more to do, we are proud that our comprehensive transformation initiative is progressing well, as confirmed by two reports to date by the Reform

Implementation Council, an independent panel appointed to advise and report on renewal in the RCMP.

Perhaps on another occasion, Mr. Chairman, you will invite me to come back before the committee to speak further about our transformation initiative. Today, I know you're interested in learning more about our CEW policy, so I'll end there.

●(1115)

[*Translation*]

My colleague, Deputy Commissioner Madill, and I would be happy to respond to any questions.

Thank you.

[*English*]

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

As is the usual practice, we'll begin with the Liberal Party.

Mr. Holland.

**Mr. Mark Holland (Ajax—Pickering, Lib.):** Thank you, Mr. Chair.

Thank you, Commissioner, for appearing before the committee today.

Commissioner, I'm particularly concerned with a couple of items I'm going to ask for your help on. We know that while there's been a decrease in the use of tasers, certainly one of the things Mr. Kennedy has noted is that it's his belief that the reason for this is more because of all the media coverage—Mr. Dziekanski and the horrible incident that occurred in the Vancouver airport—and less because of policy.

In fact, one of the things that I think particularly concerned the committee was when you said that “the RCMP's revised CEW policy restricts the use of CEWs and specifically warns of the hazards of multiple deployment or continuous cycling of” the conducted energy weapons.

Now, when you said that, the committee was left with the impression that there in fact had been a tightening around multiple deployment of tasers. In fact, it is a very large issue that in 2008, according to the most recent statistics, there were 16 people who were tasered five or more times consecutively.

Yet when we take a look at the actual policy, it has changed. There has been a deletion of this clause: “Unless situational factors dictate otherwise, do not cycle the CEW repeatedly, or more than 15 - 20 seconds at a time against a subject”. That was deleted.

The earlier section, which you referred to as though it were a change, was there previously: “Multiple deployment or continuous cycling of the CEW may be hazardous to a subject”. That was there previously. We've seen reports that have shown that lethality increases the more times a taser is used, but the biggest change when it comes to this critical issue is that the section that specifically warns against that and says that it's not to be done is deleted.

So why did you lead the committee to believe that it had been made tighter when in fact the opposite was true and when one of the more essential provisions restricting that happening was deleted?

**Commr William Elliott:** Thank you very much for the question.

I certainly agree, as I said in my opening remarks, that our policy and our practices are very important, and it's important for us to foster an understanding of them. I'm happy to have the opportunity to come back to provide further information.

I stand by my statement that, overall, our current policy and all of the things associated with our current policy, which, as I said, include the revised IMIM and all of the training associated with CEWs and the reporting requirements, is a more restrictive policy than in the past.

Certainly, the issue with respect to multiple deployments is very important and you asked a straightforward question: why was it removed? I will try to answer that question in a straightforward way, but I will tell you that there are a number of reasons for that. Again, I premised my remarks by suggesting that you need to look at everything in totality.

I will tell you my reaction when I first read the policy and read the previous provision with respect to exposures of 15 or 20 seconds. Having been tasered myself for a very short period of time, I can tell you that I was surprised and concerned to see a provision that, on its face, might suggest that a deployment of 15 or 20 seconds would be a normal or usual deployment. I think we also must look at the policy that talks about risks.

Certainly, I would agree that our members are very much more aware of risks associated with using the CEW, including for long periods of time and multiple deployments, as a result of all that has gone on. I think members of Parliament and this committee have played a role in that. The media, as you suggest, has certainly played a role in that. I think our training and policies certainly have played a role in that as well.

I think it's important to look at the IMIM that is specifically referenced in the policy. There are a number of principles set out in that. Those principles include that the primary objective of any intervention is public safety—

• (1120)

**Mr. Mark Holland:** Commissioner, I'm sorry. I apologize, but we have very limited time. You passed over, I think, the really important part, which is, again, that since Mr. Dziekanski, 16 individuals have been tasered five or more times. The provision that read “do not cycle the CEW repeatedly” has been deleted.

You referenced the 15 to 20 seconds. I want to know specifically why the clause that said “do not cycle the” conducted energy weapon “repeatedly” was deleted.

**Commr William Elliott:** With respect, I wish that all of this were simple, but it is not simple. I am trying to explain what our current policy is and why we changed it the way we changed it. As I said, it relates to our policy, it relates to the IMIM, it relates to our training, and it relates to our desire to have commonality in approaches between the RCMP and other police forces.

**Mr. Mark Holland:** Let me try the issue of training, because one of the things that concerns me when you talk about training is that at depot when RCMP officers get their 16 weeks of training, conducted energy weapons are not part of the training. When they have their training exercises and drills and they look at the continuum of force, they know when to deploy pepper spray and they know when they're

supposed to pull their weapon. They're trained against all of these scenarios.

Tasers, conducted energy weapons, are not part of that training. That training happens independently after the training that's done at depot. How can the officer have that experience contextualized when all their training with respect to conducted energy weapons is done after they've received their training at depot?

**Commr William Elliott:** With respect, Mr. Chairman, my understanding was that the central reason why you asked me to come back before the committee was to explain the change in the policy specifically related to multiple deployments.

**Mr. Mark Holland:** Okay. Let me ask this question, then, because this is an important one.

I'm just on my last question, Mr. Chair.

This was your quote in committee the last time you appeared, on February 12: “The RCMP's revised CEW policy underscores that there are risks associated with the deployment of the device and emphasizes that those risks include the risk of death...”. Immediately afterwards, you were quoted in the paper as stating that conducted energy weapons can be “an effective weapon for controlling situations without causing major injury or harm”.

Can you clarify for the committee whether or not, in your opinion, conducted energy weapons can cause death?

**Commr William Elliott:** As I stated.... And I would counsel the honourable member and others to not necessarily believe everything you see in the paper.

**Mr. Mark Holland:** Okay, just say yes or no, Commissioner.

**Commr William Elliott:** Again, Mr. Holland, I wish the world was as simple as yes or no—

**Mr. Mark Holland:** Do they cause death or don't they?

**Commr William Elliott:** I do not believe that there is any evidence directly linking the deployment of a CEW to a death. I do believe that there are risks associated with the use of force, and I believe that the risks associated with the use of force include death.

That's what I have communicated. That's what we teach our members. This is really a question for medical experts in specific cases. We've reviewed many specific cases and I am not aware of any incident in this country or elsewhere where there has been a direct causal connection between the deployment of a CEW and the death of an individual.

**The Chair:** We'll have to move on to the Bloc Québécois now.

Ms. Lavallée.

[*Translation*]

**Mrs. Carole Lavallée:** Thank you very much for being here this morning, Mr. Elliott. However, I must say that I don't understand much of what you are saying. I understand very well, however, that we have invited you today because you have a former policy that was a kind of warning. I'm going to take the time to read it; it was your section 3.1.3:

(1) 3.1.3 Multiple deployment or continuous cycling of the CEW may be hazardous to a subject.

(2) Unless situational factors dictate otherwise, do not cycle the CEW repeatedly, no more than 15-20 seconds at a time, against a subject.

So it was clear. Now we find ourselves with a new policy, dating back approximately two months, which reads as follows:

(3) Multiple deployment or continuous cycling of the CEW may be hazardous to a subject.

So the warning in your new policy is less precise. In fact, there isn't any warning. It simply states that it may be hazardous. That's not a tightening. On the contrary, it's a broadening of the possibility of multiple deployment. What I understand is that you chose not to explain it to us in your opening statement, whereas you should have explained it to us more precisely. I sense that you're beating about the bush.

Tell me why you changed your mind and why that change was included in your policy.

• (1125)

[English]

**Commr William Elliott:** With respect, there was a warning in the policy and there continues to be a warning in the policy. There was a reference to 15 or 20 seconds. That reference is no longer there. Perhaps I could continue to explain the overall policy, our overall approach, and what it is that members are trained and expected to do.

Again, I refer to the policy. The policy indicates that the force used must be necessary in the circumstances and the force used must be reasonable. I was referring to the principles of the IMIM, which provide that: it must always be applied in the context of a careful risk assessment; the risk assessment must take into account the likelihood and extent of loss of life, injury, and damage; the best strategy is the least intervention necessary to manage risk; and the best intervention causes the least harm or damage.

In the totality of what we have said, what we have written, and what we instruct, we have made our members more aware of the risks associated with the use of CEWs, including being more aware of the risks associated with multiple tasing. I commented as well when I was before you on our desire to not be overly prescriptive in our policy and commented that there were benefits to having similar approaches across law enforcement.

We've looked at other police policies. With respect to specific restrictions, the approach we have used is similar to that used by the Toronto Police Service, the Halifax police service, the Peel police service, the Ontario Provincial Police, and by Edmonton, to name a few examples. Calgary, in its policy, has an approach similar to the previous version of our policy.

Mr. Holland, in his question, actually raised a very important matter, which is how our training and our policies associated with CEWs relate to our training and policies with respect to the use of force overall. We do not prescribe in our policies, for example, how many times at minimum or maximum it is permissible or advisable to strike someone with a baton. As I said, when I read the policy, the provision of 15 or 20 seconds.... In fact, I was concerned that it suggested that such use was normal or to be expected. The truth of the matter is there is no prescription—

[Translation]

**Mrs. Carole Lavallée:** Pardon me for interrupting you, but my time is limited. I want to get back to essentials. Your old policy stated that there should be no multiple deployment of the CEW. However, now nothing is written in your new policy; that sentence has been deleted. Does that mean that you agree to multiple deployments of the CEW by officers?

[English]

**Commr William Elliott:** Yes, officers can use the CEW repeatedly if it is necessary and reasonable in the circumstances to do so.

[Translation]

**Mrs. Carole Lavallée:** Why didn't you write it that way?

[English]

**Commr William Elliott:** With respect, Mr. Chairman, that's exactly what we have attempted to do in the policy.

• (1130)

[Translation]

**Mrs. Carole Lavallée:** Nothing was written.

Is my time up?

[English]

**The Chair:** You have one minute.

[Translation]

**Mrs. Carole Lavallée:** You say you tried to do that, but, no, nothing was written.

**Commr William Elliott:** Honestly, I must say I don't understand. The policy is very clear. The words "reasonable" and "necessary" are in the present policy. They are reinforced in our public communications and within the RCMP.

[English]

In our training and in our now annual re-certification, first of all, there is a whole body of instruction telling our members that if they can avoid the use of force, not to use force at all. There is a common approach with respect to all use of force and doing only what is necessary in the circumstances. There is no prescription with respect to what the right amount of force is, what the number of times of the application of force is. The force to be used should be only what is necessary and, as I said, by de-escalation, by talking things through, by doing a number of things. If we can avoid the use of force or minimize the use of force, that is what we instruct our officers to do.

[Translation]

**Mrs. Carole Lavallée:** In what situation can an officer use his weapon repeatedly?

[English]

**Commr William Elliott:** In circumstances which require that in order to deal with the threat posed to him or to the public. I guess you could pose another question: under what circumstances would it be reasonable for an officer to punch an individual more than once and what is the right number with respect to how many times an officer should punch an individual? Is it once, twice, five times, fifteen times, twenty times? The answer comes back to "it depends upon the circumstances".



What we teach our officers to do is to use only the amount of force that they are compelled to use. That is what we teach with respect to the use of their hands. That is what we teach them with respect to the use of a baton. That is what we teach with respect to the use of a firearm, except that obviously any use of a firearm brings with it a very significant risk of serious injury and death.

There is no simple or universal prescription with respect to once, twice, three times, or five times. We are certainly very concerned about multiple use of the CEW, which is why we stress the risks and why we have in our policy, as we have had, the statement with respect to risks of multiple deployments. That's why we're working with the CPC and others to examine every situation where the CEW is deployed, including multiple deployments.

**The Chair:** Thank you.

Mr. Harris, please.

**Mr. Jack Harris:** Thank you, Mr. Chairman.

Thank you, Commissioner, for your willingness to come back and be part of this accountability session on your force's policy.

I will suggest at the outset, though, that to add the words "necessary" and "reasonable" to constraints on the use of force is not really something new. I don't know if it was ever the policy of the RCMP to have unnecessary or unreasonable force used in the operation of its duties, so that really doesn't help at all. I'll just leave that to one side for a moment.

When you appeared before us on February 18, your explanation of the change in the policy was that you were suggesting, as you did on February 18, that weapons would only be used when it was necessary to do so in the circumstance of threats to what was called "officer or public safety". I had some concerns about the public safety notion because, again, it's all up in the air.

That same day, the minister, Mr. Van Loan, kind of had the same interpretation that we did, I guess, which was that the RCMP has set a new policy, a clear message, that tasers are to be used only in situations where they assess there's a real threat, not simply to deal with someone who is unruly. The device was to mean fewer people are exposed to actually being dealt with by a gun. That was kind of in accordance with my understanding of what you had to say.

When we looked at it, that very same day one of your members was on national television describing an incident where the use of a taser was deemed to be appropriate where someone was intoxicated, in handcuffs, and lying on the ground. The use of the taser was prescribed to get this guy into the car because there might have been a potential threat from some other people who might have been around the area.

I have a real problem with the clarity of the policy, both as you expressed it and also as written. Your new policy, like the old one, says that the taser was approved for RCMP use as an "intervention option to control individuals and avert injury to members and the public". That's number 1.1 of your policy. Some of the other aspects of it later on talk about assessment of the totality of the circumstances, etc. They use the term "public safety", which is very general.

I want to know this specifically: are you prepared to commit to a strict prohibition on the use of tasers for the purposes of restraint? This is not just for active restraint, or combative, but restraint whether it's active or passive. As you say, it's a prohibited weapon. Are you prepared to say that this not a weapon that is to be used for the purpose of restraint, but only to avert, as our committee has said, a threat of death or grievous bodily harm to the police, himself, or the public?

• (1135)

**Commr William Elliott:** Thank you, Mr. Chairman.

First of all, with respect to a commitment to provide in our policy that the CEW is not to be used as a restraint device, that is certainly something I can do because of our current policy. I quote the note under section 3.1.5 that reads, "The CEW is not intended as a restraint device".

With respect to a number of the other things raised, again, you have to take into account the totality of the circumstances. I agree with Mr. Harris that the notions of reasonableness and necessary force are not new. In fact, that is a point I made when I was before the committee the last time. Those are tests the courts have a lot of experience in applying.

I think what is new is the increased emphasis in all of what we have said and done with respect to the assessment of risks. Certainly, there is a heightened awareness, on behalf of the RCMP and our members, of the risks associated with the CEW and the risks associated with multiple deployments of the CEW.

Lastly, with respect to your question, Mr. Harris, about the appropriate threshold, as I said when I was at the committee before, we do not believe that the appropriate threshold with respect to the CEW is exclusively situations involving death or grievous bodily harm. The appropriate response when there is an imminent threat of death or grievous bodily harm is to use firearms, conventional firearms, that is, to shoot people.

**Mr. Jack Harris:** That's not the intention when the taser was brought in.

Your statement in your policy that says "it's not intended as a restraint device" is not the same as "it's not to be used as a restraint device". I think there's a distinction there.

The second point I want to make is in relation to our recommendation 2, this committee's recommendation, that the policy be revised to include clear and strict usage guidelines that would include clear restrictions on multiple discharge. Your policy does not. It may warn of the concerns, but it does not provide clear restrictions on multiple discharges.

Are you prepared to agree that there ought to be restrictions on multiple discharges similar to those proposed by biomedical engineer Pierre Savard, of the École Polytechnique, in that exposure to one or two shocks and not more than 20 seconds in total would be an appropriate restriction on the use of tasers, not just stressing that there are problems if you use them for repeated cycling or multiple uses?

**Commr William Elliott:** I think the short answer is no. I don't think that is an appropriate restriction, because, as I said, you really have to teach officers to make good decisions based on the situation they are actually encountering. As I said, we are paying close attention to the deployment of CEWs, including multiple restrictions, and we have put an increased emphasis on supervisors to review each and every situation in which a deployment was made.

I am not suggesting that the current language of our policy is perfect and I am certainly not suggesting that we're not prepared to look at further changes to the policy. I talked about the comparison of our policy with the policies of other police forces. The United Kingdom has done extensive work with respect to CEWs. They warn specifically in their policy against the notion of being overly prescriptive, but they do have provisions, not specifically time-related or number-related, and they have a longer description of risks associated with the CEW, including multiple deployments.

We'll certainly look at further amendments to our policy in that regard.

• (1140)

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

We'll go now to the government side, with Mr. Rathgeber, please.

**Mr. Brent Rathgeber:** Thank you, Mr. Chair.

Thank you, Commissioner, for your attendance before the committee again.

Unlike my friend, Mr. Holland, I do accept your representation that the new policy regarding CEWs is more restrictive than previously, but I would like a little bit of clarification.

The first issue that I would like clarified is this one. Mr. Holland indicated that RCMP trainees were trained at depot for 16 weeks. I understand that new recruits are actually in Regina for six months. Is my understanding correct?

**Commr William Elliott:** Your understanding is closer to the mark. The current period of training at depot is 24 weeks. That is followed by six months in the field where recruits work with a trainer, a more experienced officer. Certainly, training, including recurrent training—that is, training on the use of force—continues throughout the careers of all our officers. It occurs at least annually with respect to CEWs and the use of force more generally, including firearms, but it also includes specialized training.

Certainly, we would review training and policies whenever a situation arose where there were any concerns raised by us, the public, or the Commission for Public Complaints Against the RCMP with respect to the appropriateness of what our officers may have done in any given situation.

**Mr. Brent Rathgeber:** That training occurs in the field?

**Commr William Elliott:** Yes.

**Mr. Brent Rathgeber:** On indicating that the CEW is not intended to be used as a restraint device—and the memo goes on to indicate that medical assistance ought to be brought in when necessary and other protocols—is that going to require further training?

**Commr William Elliott:** Certainly, our officers are all trained, including licensing, in CEW, but more generally with respect to first aid and the requirements to provide medical assistance or to get medical assistance for members of the public.

**Mr. Brent Rathgeber:** I'm very curious about this training and I'm glad to see it's going to be done annually as opposed to every three years.

In your opening comments, you talked about theoretical and practical components. Could you, or perhaps Deputy Commissioner Madill, walk me through some of the theoretical and practical components that an individual is exposed to before one is qualified to use a CEW?

**Assistant Commissioner Darrell Madill (Deputy Commissioner, Community, Contract and Aboriginal Policing Services, Royal Canadian Mounted Police):** I'm not a trainer myself, so I'll just provide you with what I understand are some of the key functions.

From a theoretical perspective, the members are trained about how the weapon, the CEW, actually functions. They understand some of the electrical issues around it—the battery, the use of batteries, and that kind of thing. That's some of the theoretical training.

When they get into the practical training, they focus on actual deployment, unholstering, and the kinds of circumstances the CEW is intended for. They reinforce the training that's identified in the new policy enhancements. Also, very importantly, they do scenario-based training, wherein information from previous deployments—things we've understood from the CEW reports that we get from every member on deployment—is used to provide scenario-based training.

As the commissioner said, we are continually looking for mechanisms to make our use of the weapon more current, more relevant, and safer for Canadians and for our members.

• (1145)

**Mr. Brent Rathgeber:** Thank you.

Does the medical training of an officer include how to deal with what you defined as acutely agitated or delirious persons and how that person might interact if they're subject to a CEW?

**A/Commr Darrell Madill:** What that's all about is the different types of behaviours the member may deal with.

As the commissioner said, it's not expected that members provide a diagnosis. In fact, the situations our members face are extremely dynamic and sometimes very, very violent. It's not about prescribing what could or should happen; it's all about providing the members the tools, the understanding, and the experience so that they can perform their duties in a safe manner. What we've done at the divisional level is incorporate EMS personnel in some of our training, and we have incorporated some of the responses.

To get right to the point of whether they're trained in identifying acutely agitated people, whatever the definition of the day is for that, no: they train to behaviours.

**Mr. Brent Rathgeber:** Thank you.

Finally, I understand that the new policy restricts the device to the X26E model and discontinues the employment of the M26. I was wondering—technically—why the decision was made to no longer use the M26.

**Commr William Elliott:** That's not completely accurate. What it indicates is that we will buy only the newer model and will phase out the older models. In fact, today and certainly for a while, we will continue to deploy both models in the field. There are a number of reasons why the new model is preferred. Those include that it is smaller and delivers less energy than the previous model.

**Mr. Brent Rathgeber:** Is there a cost differential between the two models?

**A/Commr Darrell Madill:** There is. The X26 is more expensive.

**Mr. Brent Rathgeber:** Thank you.

**The Chair:** Mr. Holland, for one minute.

**Mr. Mark Holland:** Commissioner, in light of the death of Mr. Dziekanski, of the reports that have shown a clear correlation between the increased lethality of the taser when it's used more than once, and of the number of cases we saw in 2008 in which a taser was fired five or more times on an individual, are you saying, going back to your comments, that there's equivalency between a fist, a baton, and a taser?

**Commr William Elliott:** No.

**Mr. Mark Holland:** Why did you make that analogy when you said you don't have rules about punching or hitting people with batons?

**Commr William Elliott:** With respect, Mr. Holland, we certainly have rules about punching people. We certainly have rules with respect to the use of force. Overall, our rules are not to use force unless you have to, and when you use force, to use only the amount of force that is necessary and reasonable in the circumstance. That's true with respect to any use of force, no matter which one of any of the options available to our officers is used.

**Mr. Mark Holland:** Are you saying that, just like you don't have it for a fist or a baton, there's an equivalency in not having a rule for a taser in terms of how many times you fire on somebody?

**Commr William Elliott:** Again, I would stress that we do have rules and we do have clear accountability. What I am saying is that across our use-of-force continuum you cannot really write prescriptive policy or rules that will cover every one of the circumstances that our officers encounter every day.

There are 7,500 people who will call the RCMP today. We responded to over three million such calls last year. We have to write policy and we have to teach people in ways that are simple, straightforward, and appropriate, and that is certainly what we attempt to do.

**The Chair:** Mr. Kania, you have three minutes.

**Mr. Andrew Kania:** Commissioner, because I have three minutes, I'm going to pose three questions to you and ask for your responses to each three individually. If you run out of time, I'm going to ask you to provide a written response at a subsequent date.

On the first question, in the first operation manual, there was a CEW challenge. Everybody acknowledges that these are dangerous instruments. This challenge has been absolutely removed. There was

a challenge that said, "Police, stop or you will be hit with 50,000 volts of electricity!" That is missing from the new procedures. I find that shocking and I'm asking for your commitment to do something to remedy that.

On my second point, under the definitions of when this can be used, it says: "The CEW must only be used in accordance with CEW training, the principles of the Incident Management/Intervention Model (IM/IM) and in response to a threat to officer or public safety as determined by a member's assessment of the totality of the circumstances being encountered". It says, "Members' actions must be reasonable and the force used must be necessary in the circumstances".

That is the test the officers have to use to determine whether or not they're actually going to use a taser. As a lawyer, I find that very open and broad in terms of how it needs to be interpreted. I find it shocking that there is no specific training at depot for this. I am asking you to remedy that and to put training specifically in depot for officers on the use of tasers, on when they should be using it, the whole gamut.

Third, in this operations manual, there's nothing with respect to children. There's no recognition that children should be treated separately. There are no guidelines. I'd like to see training at depot with the respect to that. Once again, I find it shocking.

There is a Convention on the Rights of the Child, which was ratified by Canada. It says in particular, in article 19, that every child is protected from all forms of cruel, inhuman, or degrading treatment, and under which states parties commit to ensure that children are protected "from all forms of physical or mental violence, injury, or abuse". There's nothing in this manual at all with respect to children and there should be. I'm asking that to be changed, as well, taking this convention into account.

● (1150)

**Commr William Elliott:** Thank you very much for those three important questions. I'm very happy to elaborate on each of them and I will be happy, if I don't get through this, to provide further information.

First of all, with respect to a warning, the old policy did contain reference to a so-called CEW challenge, which read, "Police, stop or you will be hit with 50,000 volts of electricity!" We have deleted that, but we have certainly not deleted from our training or requirements the notion of a police challenge. The old policy talked about using the challenge—and I won't quote the exact words, but certainly we can look at that—where it's feasible or appropriate. That's the idea. Sometimes situations dictate that no such warning would be appropriate.

The previous policy, which I actually do have it in front of me, said, "Before using the CEW, when tactically feasible, give the CEW Challenge". The new policy does eliminate this, but again, I would invite honourable members to look at the entire context, and I would underscore the importance of that, including the IMIM and training.

For no other RCMP intervention is there a specific policy requirement to issue a specific challenge. The former challenge was long and complicated, and frankly, it was inaccurate. In fact, the taser does not deliver 50,000 volts.

The IMIM and our training stresses de-escalation, including dialogues and warnings. Our belief is that a shorter, clearer warning is better, and we train our people to use the standard warning, which is, "Stop! Police!" We also train them, where appropriate, to specifically warn of the deployment of a taser, normally by something like, "Taser! Taser! Taser!" It's simple. It's easy to understand. It's easy to remember.

**The Chair:** Maybe you can use your time to finish your answer at another time, but we're way over time. I apologize.

Mr. MacKenzie, please.

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

Mr. Elliott, I have a couple of things here, but I'm not sure we'll have the time for them. Obviously, lawyers sometimes see things differently from police officers in the field. I know that one of the things you consider when you write your policy is that some of your members are 6'4" and some of them are 5'4", so obviously policy has to apply to all of them, and use of force changes given the circumstances.

Having said all of that, I don't know whether you brought them with you, but I understand that statistics from 2008 and from the report from the public complaints commissioner would indicate there's been a tremendous change in the use of the CEWs by members of your organization. If so, I wonder if you could just elaborate a little bit on what some of those significant changes are.

**Commr William Elliott:** Overall, as Mr. Kennedy, the Chair of the Commission for Public Complaints Against the RCMP has reported, our number of deployments of CEWs in 2008 was down approximately 30% from 2007. I would suggest that there are a number of contributing factors to this. As Mr. Holland said, there has been a lot of public and media attention on the use of tasers. A lot of it has underscored the risks associated with tasers.

I would say that the public attention, the attention inside the force following my last appearance, and our discussions of the risks associated with tasers, including the risk of death, have combined to heighten our members' awareness. I think it's a little dangerous to read too much into statistics, because we can't really predict with any accuracy what sorts of calls our officers will respond to today and what an appropriate response will be.

•(1155)

**Mr. Dave MacKenzie:** Mr. Kania pointed out one of the issues with respect to the taser when he talked about children. I appreciate that Mr. Kania wasn't present, and I don't mean that in any derogatory sense, but we did have a medical expert before the panel in the last session, a doctor who dealt with emergency room and trauma. She spoke to us about a 14-year-old boy who was 6'2" and could not be controlled by the medical people. The police people were brought in. Sometimes the only way to protect that child from injuring himself and others is something like a CEW. I would suggest that it may be very difficult to simply say that we won't use it on a child.

The other issue is that I don't know how you define by looking at someone whether the person is a child or not. It's difficult to look at someone by age. When you define it in a policy, it would seem to me that when you say you cannot use something for someone under the age of 16, and it turns out someone was 14 but looked 16, this creates problems. So I would say that your policy of using it only when necessary—and there's also the rule that he who uses force must justify it—applies to the taser as it does to any other weapon.

I'm a little puzzled about how you can eliminate its use in every situation that may or may not come up, simply based on age. I haven't heard that in Canada we have used tasers in schools. I'm wondering if that's not a red herring and if you have any comments.

**Commr William Elliott:** I think that people are and should be concerned about any use of force on vulnerable populations, and that certainly includes children. Age, size, state of mind, and whether there is a weapon present: all these factors would be considered by our officers and by outside entities, including the courts and the Commission for Public Complaints Against the RCMP, in determining the proper response in a particular situation.

We would look very carefully at any incident where the CEW was used against a child. Maybe a better term would be a "minor". Unfortunately, some people who fall under that description can pose serious risks to our officers, to themselves, and to the public.

**The Chair:** Thank you. It's 12 o'clock and our time is up.

Thank you very much for coming here today.

We will resume our meetings here on Thursday.

This meeting stands adjourned.







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