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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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• (0850)

[English]

The Chair (Mr. Mike Wallace (Burlington, CPC)): I call this meeting to order.

This is the Standing Committee on Justice and Human Rights, meeting number 9. Pursuant to the order of reference of Tuesday, November 5, 2013, this morning we will be discussing Bill C-10, an act to amend the Criminal Code (trafficking in contraband tobacco).

We have two panels, two sets of witnesses. Our first set of witnesses are, from the Royal Canadian Mounted Police, Inspector Cormier; and, from the Canada Border Services Agency, Mr. Leckey. Each of them will have a presentation of about 10 minutes.

Since you were here first, Mr. Leckey, you may begin.

Mr. Geoffrey Leckey (Director General, Enforcement and Intelligence Operations, Canada Border Services Agency): Thank you, Mr. Chair and members of the committee, for the opportunity to provide testimony in your consideration of Bill C-10, the tackling contraband tobacco act.

I'd like to begin by noting that the specific amendments to the Criminal Code proposed in Bill C-10 will have only a slight impact on the daily activities of the Canada Border Services Agency. However, we take the issue of contraband tobacco very seriously and we are supportive of the bill's intent to signal the seriousness of trafficking in contraband tobacco.

The illicit cigarette market in Canada has changed markedly since the 1990s. Back then the majority of the contraband market consisted of duty-free and exported Canadian cigarettes. Currently, the market in Canada comprises illicitly manufactured native brand cigarettes that are transported by land, as well as Chinese and other international brands of tobacco products entering Canada through postal, marine, and air modes.

[Translation]

From January 2013 to October 2013, the CBSA made approximately 1,900 tobacco seizures totalling over 21,000 cartons of cigarettes, 192,000 kilos of fine cut tobacco, 29 kilos of cigars and 1,235 kilos of other tobacco products such as chewing tobacco and snuff.

The contraband tobacco trade is a lucrative one, and activities to disrupt and prevent the flow of illicit goods from entering the country require active participation with partners, both at home and abroad.

The CBSA works with other government departments, law enforcement agencies, international organizations and foreign governments on operational and analytical issues related to organized crime and contraband criminal markets. Of our many partners, the agency works daily with the RCMP and the U.S. Customs and Border Protection on enforcement matters. The cooperation and collaboration between our organizations is long-standing and transcends tobacco issues.

[English]

Together with our U.S. partners, the CBSA and the RCMP participate in integrated border enforcement teams. The CBSA and the RCMP also work side by side within a number of other joint forces operations targeting contraband. As a result, we have a common understanding of the capabilities, intentions, vulnerabilities, and limitations of organized criminal networks, and we apply that intelligence to disrupt them and their supply chains.

Disrupting the criminal networks that engage in the cross-border movement of illicit tobacco is dependent on solid information and intelligence.

[Translation]

The CBSA maintains a robust and comprehensive Intelligence Program, which contributes to, and is informed by, the broader intelligence community. This allows for timely, accurate and relevant information to support our enforcement activities.

[English]

Through the U.S.-Canada beyond the border action plan and the CBSA's border modernization initiative, the CBSA is modernizing its operations with the aim of having decisions sequenced and made before people and goods arrive at the border. The Government of Canada's efforts to curb trafficking in contraband tobacco are well served by this initiative, as it aims to promote better intelligence-led enforcement activities. This in turn will facilitate legitimate trade and travel. At the end of the day, modern border management is about meeting our broader responsibilities for Canada's security and prosperity.

[Translation]

Information and intelligence, while necessary, is not in and of itself sufficient for effective border enforcement. The agency also relies on a combination of officer training and technology to interdict illicit goods, including tobacco products attempting to cross the border.

[English]

In conclusion, Mr. Chair, the CBSA recognizes the challenges associated with the cross-border movement of contraband tobacco and the need for a multidisciplinary approach to combat it. We will continue to leverage all resources available to us to identify and interdict contraband tobacco at the border. We will continue working with our partners, particularly the RCMP, to help implement this bill when it becomes law.

I would be pleased to answer any questions you may have.

The Chair: Thank you, sir, for that opening statement.

Now from the Royal Canadian Mounted Police, we have Inspector Cormier.

You have 10 minutes, sir.

Insp Jean Cormier (Director, Federal Coordination Centres, Royal Canadian Mounted Police): Good morning, Mr. Chair, and members of the committee. First, I would like to apologize for my just-in-time arrival.

Thank you for inviting me here today to speak about Bill C-10, the tackling contraband tobacco act. As director of the RCMP federal coordination centre, I oversee the RCMP's enforcement activities with respect to contraband tobacco. Bill C-10 would create a new offence for trafficking in contraband tobacco and increase the associated penalties.

To assist the committee in its study of Bill C-10, I would like to provide you with a general overview of the current scope of the problem from the RCMP's perspective, as well as an overview of our enforcement activities.

[Translation]

Contraband tobacco remains a serious threat to public safety and if left unchecked, criminal organizations will continue to profit at the expense of the safety of Canadians.

[English]

Contraband tobacco has long been a standing enforcement priority for the RCMP. As the level of criminal involvement began to rise, the Minister of Public Safety launched a contraband tobacco enforcement strategy in 2008. Known as CTES, it sets out priorities for the objective of nationally reducing the availability and decreasing demand for contraband tobacco. The RCMP's CTES has had a positive and measurable impact on the contraband tobacco market in Canada. Since its inception in 2008, the RCMP has laid approximately 4,925 charges and has disrupted approximately 66 organized crime groups involved in the contraband tobacco market.

• (0855)

[Translation]

Criminal organizations are involved in the production, distribution, and trafficking of contraband tobacco and are exploiting first nations communities. Violence and intimidation tactics continue to be associated with illegal tobacco in first nations communities.

[English]

In addition to the tobacco smuggling encountered at Canada-U.S. ports of entry, extensive smuggling continues to occur in the

Cornwall-Valleyfield corridor area, with the majority of activities occurring between the ports of entry, presenting unique enforcement challenges for law enforcement. In 2012, tobacco products seized while in transit involved automobiles, snowmobiles, all-terrain vehicles, and boats.

The RCMP has also seen contraband tobacco transported using postal delivery and air services.

[Translation]

Cornwall, Ontario is within the most active region for tobacco smuggling in Canada. Because of this, the RCMP participates in a number of joint investigative units with partner agencies. For example, in Cornwall the RCMP works with the Akwesasne Mohawk Police, the Ontario Ministry of Finance, and CBSA to combat organized crime and its involvement in contraband tobacco and other forms of criminality.

[English]

In April 2010, the RCMP established a combined special enforcement unit contraband tobacco initiative. Based in Cornwall, the unit was specifically mandated to target organized crime involved in the manufacturing and distribution of contraband tobacco, and works with its law enforcement partners.

[Translation]

In 2011 the government committed to addressing contraband tobacco by establishing a new RCMP Anti-Contraband Force (ACF). The RCMP is in the process of implementing the ACF and it is expected to be fully staffed and operational by the spring of 2014. The ACF will increase the RCMP's capacity to investigate organized crime and cross-border smuggling as well as target unscrupulous tobacco growers and illicit manufacturers. The ACF will also establish a dedicated outreach team to engage tobacco growers and suppliers of raw materials used in the tobacco manufacturing process.

[English]

As I have just outlined, the RCMP works with other law enforcement partners on multiple fronts to address the problem of contraband tobacco.

I would like to thank you for this opportunity, and I look forward to answering your questions.

The Chair: Thank you, Inspector.

Our first questioner is Madame Boivin, from the New Democratic Party.

[Translation]

Ms. Françoise Boivin (Gatineau, NDP): Thank you, Mr. Chair.

I would like to thank the two witnesses for being here with us this morning and for arriving on time. You never have to apologize for being on time, but anyway.

Inspector Cormier, my first question is for you. The RCMP already has the power to make arrests. How will Bill C-10 change the work that you are already doing in the area of contraband cigarettes?

Insp Jean Cormier: The work itself will not necessarily change. This is an additional tool that we will have. This is how the bill will be helpful for the RCMP. It will allow us to institute proceedings under the Criminal Code, including for proceeds of crime. In order to prosecute for proceeds of crime, there has to be an offence in the Criminal Code called “primary offence”. The other advantage under this bill is that it gives powers to police services, powers that they do not currently have.

● (0900)

Ms. Françoise Boivin: That will not change anything for the RCMP.

Insp Jean Cormier: No, that will not change anything for us.

Ms. Françoise Boivin: However, it will allow the Quebec provincial police and municipal police services to participate in trafficking investigations.

Insp Jean Cormier: Yes, that is another advantage to this bill, given that we often work as partners in these kinds of investigations.

Ms. Françoise Boivin: This question is for you both, perhaps more so for Mr. Leckey.

Is cigarette trafficking a plague that is increasing or decreasing? On Tuesday, a woman who testified before us said, if my memory serves me well, that the extent of cigarette trafficking was not high as one would believe. Cigarette manufacturers are those who tend to imply that there is considerable cigarette trafficking because they want to prevent the government from increasing taxes. You get the idea.

I would like to hear your opinion because you work on the ground. From the perspective of border services and the RCMP, has trafficking stabilized? Is it increasing or decreasing?

Mr. Geoffrey Leckey: Thank you for the question.

We feel that it is a plague that is increasing. I can give you numbers to that effect. With your permission, I will continue my answer in English.

Ms. Françoise Boivin: Fine. That is not at all a problem for me.
[English]

Mr. Geoffrey Leckey: In the calendar year 2011, CBSA seized just short of 35,000 kilograms of fine-cut tobacco. That more than quadrupled in calendar year 2012 to 148,000. In the first 10 months of this year, it's 33% higher than that; it's 192,000 so far this year, so it's on track to be about 250,000, which would be about seven times higher than it was two years ago.

[Translation]

Ms. Françoise Boivin: The numbers are quite telling.

Mr. Leckey, in your opening remarks, you spoke about collaboration. I think that is necessary given the number of stakeholders involved. I did not hear you refer to first nations. In his opening remarks, Inspector Cormier said that a large quantity of contraband tobacco is produced on first nations reserves. Is there an effort to collaborate?

Mr. Leckey, you did not refer to this in your opening remarks. Would the first nations not be ideal participants, given that criminal

groups are apparently trying to establish themselves within reserves and exploit certain individuals?

Mr. Geoffrey Leckey: You are absolutely right, they are ideal participants.

[English]

We do cooperate with native police. In Cornwall alone, we are involved in a number of—I think it's three or four—joint forces operations that involve the Akwesasne Mohawk Police Service.

The integrated criminal intelligence section in Cornwall, for example, involves both Canadian and U.S. law enforcement agencies, ourselves, the RCMP, the Ontario Provincial Police, the Ontario Ministry of Revenue, and the Akwesasne Mohawk Police Service.

[Translation]

Ms. Françoise Boivin: Mr. Cormier, there is talk of collaboration and police services joining forces, but do you have the necessary resources? We know there have been significant cuts to border services. Do you have the necessary resources required to act under Bill C-10 when it is passed, with respect to increased penalties, repeat offences and so on?

Insp Jean Cormier: Yes. When we have to comply with new laws, we have to set priorities. Tobacco legislation enforcement has always been a priority but we may have to readjust our resources.

I am certain that the RCMP will be able to respond.

● (0905)

The Chair: Thank you.

[English]

Our next questioner is Mr. Wilks from the Conservative Party.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you very much, Mr. Chair, and thank you to the witnesses for coming here today.

Inspector Cormier, you mentioned criminal organizations that have been involved on first nations communities and have exploited those first nations communities. I wonder if you could explain a little further on how that exploitation has happened and what you see from the front line as to what some of the opportunities are for police and for us to slow that down or potentially even stop it.

Insp Jean Cormier: Definitely. There would be a benefit coming with the implementation of the new law for one thing. As I spoke about in my opening remarks, over 66 groups were identified through the course of investigations that have already taken place. Some of those groups are present on first nations communities, and some of those groups are from outside the first nations communities.

Criminal organizations will exploit any contraband market that will bring them a profit essentially. I think, yes, there are groups that are not from the reserves that do take advantage of the tobacco industry and the illicit tobacco industry that is taking place on the native reserves.

The laws being proposed here would help us because it would also help us establish charges and build charges up to lay charges of participating in criminal organizations for the groups that are involved. Adding additional criminal charges is certainly an asset in that regard.

Mr. David Wilks: You also mentioned that in 2011 this government created an anti-contraband task force, which you said will be fully staffed by 2014. Could you elaborate a little more on that? Is this going to be a centralized task force? Will it be across Canada? What are you focusing on that?

Insp Jean Cormier: I would probably refrain from describing how the teams are going to be created or dispersed.

Mr. David Wilks: I understand: from an operational standpoint.

Insp Jean Cormier: What I will say in regard to that question is the teams and the personnel assigned to those teams will be in strategic locations where there is a concentrated concern or issues.

Mr. David Wilks: The reason I ask that is we tend to focus on two provinces, those being Ontario and Quebec, which predominantly have been in the news more than others, but this doesn't mean there isn't a problem across the rest of Canada. That's all I was getting to. There is the opportunity strategically to place team members across Canada. That's the only question I was asking, and I take from that, your answer is yes.

I wonder if you could also elaborate on first nations from the perspective of the communities, not necessarily chiefs and councillors but also including them. Are they generally helpful with investigations, or are they intimidated sometimes and coerced by organized crime?

Insp Jean Cormier: Generally speaking, it's like when we investigate any crime or organized crime type of activity. Obviously, we will get a mix of citizens who are concerned and cooperative, and then again we will get some people who feel intimidated. As we know, organized crime uses scare tactics or intimidation tactics and do get to the citizens unfortunately. It would be a mix. It's not a clear definition, I guess, of cooperation or non-cooperation.

Mr. David Wilks: Thank you.

Mr. Leckey, you talked about training and technology becoming very important in this and yet you also alluded to the sevenfold increase in two years with regard to illicit tobacco coming into our country. What is the technology showing you? From the perspective of training, is there an opportunity at some point in time for us to be able to, for lack of a better term, nip this in the bud and hopefully see a decrease? Technology should be able to tell us that we should be able to find forms of working on this.

Mr. Geoffrey Leckey: The types of technology that we use include VACIS machines, which are large scanning machines. You can put an entire tractor trailer through them, and they'll show up any anomalies in the consistency within the container. We also, of course, use detector dogs.

As equally important as the technology is the training of the officers. We continually issue intelligence alerts as to new indicators to look for, whether they be the particularities of the shipment or the behaviour of the individual.

● (0910)

Mr. David Wilks: At the beginning of your statement you mentioned that this will have a slight impact on CBSA because you work under different acts as opposed to the Criminal Code. You work under the Excise Act and a lot of other federal components. Is that correct?

Mr. Geoffrey Leckey: Yes, that's correct. Until now and indeed in the future CBSA will approach individuals from whom contraband tobacco is being seized under the Customs Act and the Excise Act. We'll continue to do that.

However, now that we're aware there's a new law that makes trafficking in contraband tobacco a criminal act, we'll make sure that our border services officers are aware of that. It will have a slight impact on their training. We'll have to update the training of officers already in service.

There will be more contact with local police who, of course, in many parts of the country, are the RCMP. There'll be more opportunities to pass referrals to the police, and then whether police proceed with charges and whether prosecution is used will be up to the police and the public prosecution service.

Mr. David Wilks: Thank you.

The Chair: Thank you very much.

Our next questioner is Mr. Scarpaleggia from the Liberal Party.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): It's a pleasure; thank you, Chair.

To follow up on that, Mr. Leckey, you said there will be new opportunities to cooperate and to pass on information to the police. Could you elaborate on that and how that flows from this particular piece of legislation?

Mr. Geoffrey Leckey: Yes. As I said, the CBSA will continue to lay charges under the Customs Act and the Excise Act, but now that there's this new tool that has been made available to us and our police partners, there's a potential for laying a criminal charge. I think that's the main deterrent of this law.

Mr. Francis Scarpaleggia: Right. I see. I know that minimum sentences kick in after the third or fourth offence.

Mr. Geoffrey Leckey: After the first offence, I believe.

Mr. Francis Scarpaleggia: After the first. What are the maximum sentences for first offence, second offence, and third offence?

Mr. Geoffrey Leckey: I have that here.

Mr. Francis Scarpaleggia: Yes, more or less.

Mr. Geoffrey Leckey: Well, the mandatory minimums would be 90 days on a second conviction; 180 days on a third conviction; and two years less a day on subsequent convictions.

Mr. Francis Scarpaleggia: Okay.

Do the maximums go up with the number of offences? That's okay, it's not a major point that I wanted to make.

Do you feel that these new criminal offences will have an impact on the activity, that these will discourage the traffickers from trafficking?

Mr. Geoffrey Leckey: Well, the threat of criminal charges and of having a criminal record will have a deterrent effect. I have no doubt about that.

I just looked at the actual act and the maximum prison term is five years.

Mr. Francis Scarpaleggia: That's the maximum. Okay.

I suppose we're dealing with criminal gangs in most cases and sometimes they would conscript the help of someone who maybe is not yet part of a gang. Basically we're dealing with hard-core criminal gangs who are subject to the Criminal Code in other respects as well, maybe not with respect to contraband tobacco, but in their other activities. There is already a deterrent to some extent, but you feel this additional deterrent would have a measurable impact.

One issue has been raised with me, which is the border station on the U.S. side at the moment, at Cornwall and Massena.

• (0915)

Mr. Geoffrey Leckey: At the moment it's on the Canadian side.

Mr. Francis Scarpaleggia: It's on the Canadian side, but there is rumour of a desire to move it to the U.S. side.

Mr. Geoffrey Leckey: Negotiations are under way with U.S. authorities to set up a pre-clearance on the U.S. side.

Mr. Francis Scarpaleggia: Would the station on the Canadian side be dismantled or would it continue to operate as it does?

I've heard from stakeholders that they're very concerned. They feel that this move would make it easier to.... I can't tell you the specifics as to why, but they feel it's not a good move in fighting contraband tobacco, and that it will make it easier to bring contraband tobacco into Canada.

I'd like your opinion as to why it won't be easier, and maybe from you, Inspector Cormier, because it's been brought to me quite clearly that this is not a good idea.

Mr. Geoffrey Leckey: If the Canadian port of entry is on the U.S. side in Massena, then everyone seeking to enter Canada through that passageway is going to have to be cleared at that point. At the moment, vehicles can enter the Akwesasne reserve and a lot of illicit activity is undertaken on the reserve—

Mr. Francis Scarpaleggia: —before the CBSA?

Mr. Geoffrey Leckey: —before the CBSA border point.

In our opinion, this will tighten up the inspection of goods, vehicles, and people before they enter Canada.

Mr. Francis Scarpaleggia: What proportion of contraband would come in by road through the border crossing versus through other means like cigarette boats, and so on?

Mr. Geoffrey Leckey: A very large volume comes in by road. I can provide you with some statistics on that.

In terms of the fine-cut tobacco—that's the type of contraband tobacco that's increased sevenfold in the last two years—98% of it was seized in the highway commercial stream.

Mr. Francis Scarpaleggia: What percentage of contraband would you be capturing? In other words, what percentage of what comes in are you catching at, let's say, Cornwall?

Mr. Geoffrey Leckey: What percentage of all the contraband that's brought into Canada do we capture?

Mr. Francis Scarpaleggia: No, through that particular gateway, more or less. Obviously you can't say because we don't know.

Mr. Geoffrey Leckey: It's very difficult to say.

Mr. Francis Scarpaleggia: Is it 5%, 10%, 50%?

Mr. Geoffrey Leckey: I'd rather not—

Mr. Francis Scarpaleggia: Okay, that's fine; fair enough.

Mr. Geoffrey Leckey: We do believe the sevenfold increase that I referred to is having an impact on the criminal organizations.

Mr. Francis Scarpaleggia: Okay, thank you.

The Chair: Thank you.

Our next questioner is Mr. Calkins from the Conservative Party.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Chair.

I appreciate the difficulty you had in answering that last question. It's hard to know how much you're not getting when you're not getting it. But we can safely say that you're getting 100% of what you are finding.

Voices: Oh, oh!

Mr. Blaine Calkins: I appreciate the difficulty in that line of questioning.

Mr. Leckey and Inspector Cormier, I just want to say thank you. Could you pass along my appreciation, on behalf of my constituents, for the work you do? I represent a large rural riding in central Alberta, and we've had some issues with some seizures of a lot of contraband cigarettes that were taken from a first nations band that was storing the cigarettes in a band-owned facility on reserve. Due to some provincial excise tax issues, it resulted in a large seizure and forfeiture. I know it's difficult work.

Mr. Leckey, you said there were a lot of seizures in 2012, about 2,300 worth over \$3 million. How are things going in 2013? The information that I have from the library shows that in late 2007-08, the amount of contraband coming in was on the rise. We had the announcement of the RCMP task force and the strategy that's been talked about, and it seems to be on the decrease, yet it is still a fairly significant issue.

Where are we in 2013? Do you have any updates for us?

• (0920)

Mr. Geoffrey Leckey: Yes. If we compare January to October 2013 to the same period in 2012, the total number of seizures is up 5%. The number of cigarettes seized is up 46%. The volume of cigars seized is up 16%. The volume of fine-cut tobacco is up 66%, and other types of tobacco products are up 6%.

Mr. Blaine Calkins: Okay, so it's still an ongoing problem that seems to be coming back. We have some manufacturing and distribution that happens domestically. We have some happening in the United States. We have some happening outside of the North American jurisdiction.

How much are we seeing as a change in where this contraband tobacco was sourced? Are we seeing a lot more coming from across the pond, so to speak? How's it getting here? What's the most common method it's coming in by? Do you have the detection equipment and resources necessary to make sure that you're capturing as much as you can?

Mr. Geoffrey Leckey: With respect to contraband cigarettes that we seize, the first and second countries that those cigarettes originate from are China and South Korea. The U.S. is only third. For the most part, those cigarettes are coming into Canada in the postal and courier mode in large numbers of shipments, but in relatively small volumes.

Mr. Blaine Calkins: That's very interesting. The information I have shows that the production in Ontario and Quebec is ramped up for the legal cash crop that's grown in Canada. The reason this market is growing is our export markets in places like China and Korea. We have more contraband coming in and more legal production going out. It seems like an odd situation.

When this law is passed, the CBSA will have jurisdiction under the Excise Act. Without these provisions that we're talking about today, when you found someone, you would hand the investigation over to the RCMP. Yet the reality is, without the Criminal Code and the amendments being proposed right now, the only way you could pursue an investigation and a charge would be through the Excise Act.

Now we have Criminal Code provisions that we hope are going to be adopted unanimously by Parliament. I would be interested in seeing anybody who would vote against this. The reality is you would have to hand this over specifically to the RCMP. I don't think any other police force in Canada has jurisdiction when it comes to the Excise Act. Now, however, at any port of entry, whether it's the RCMP or some other local police force, any police officer can investigate and pursue Criminal Code offences.

Can you describe how that's going to change the nature of the relationship that you have? I know you have a close relationship with the RCMP right now, but you'll have to expand those relationships with other police forces, where other police forces would be the closest jurisdiction to help you with this.

Mr. Geoffrey Leckey: Yes, this will expand and increase the number of contacts that we have with local police and jurisdictions. We've made a total of 1,996 seizures so far this year of tobacco that would meet the definition of contraband tobacco under this act. However, a lot of those seizures are very small in volume and probably would not be pursued as a criminal charge.

Nevertheless, in each case, some thought would be given to making a referral to the local police.

The Chair: Thank you very much for those questions and answers, Mr. Calkins.

Next, from the New Democratic Party, we have Madame Péclet.

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you, Mr. Chair.

Thank you to the witnesses for their opening remarks. They were very interesting. My first question is about resources on the ground.

Mr. Cormier, but also Mr. Leckey, you referred to joint operations that involve the RCMP, the Border Services Agency, the Americans and provincial ministries.

I would like to know exactly what kind of resources you will need in order to implement this new bill.

• (0925)

Insp Jean Cormier: It is a difficult question to answer because we will have to use the existing resources. As I said earlier, we already have working partnerships. We are already carrying out efficient investigations. From various standpoints, the new legislation will allow us to prosecute the major organized crime groups.

Mr. Geoffrey Leckey: The Canada Border Services Agency is not requesting additional resources to implement this legislation.

[*English*]

This will become part of our regular duties. We've had a look at the potential volumes and we've assessed that we can absorb it within existing resources.

[*Translation*]

Ms. Ève Péclet: You spoke about a number of your projects as well as the strategy that you launched in 2008, allowing you to lay almost 5,000 charges and disrupt 66 criminal groups. However those are prevention strategies, and not pressure strategies. What I am getting at, as you mentioned Mr. Leckey, is that this bill will not address the core problem, in other words it won't completely eliminate contraband tobacco. We can talk about contraband nevertheless, and in particular, this crucial problem that is the focus of this legislation.

Do you think that this bill will really change something, that there will be a decrease in contraband, or that it will simply give you tools to combat contraband?

Insp Jean Cormier: I would like to think that the tools given to us will help reduce contraband activities, which affects a number of regions in this country. However it would be difficult to attach a number to that. Be that as it may, the new legislation will not replace existing initiatives, including those in prevention and education. The RCMP has a role to play in this regard, and so do the other partners.

Ms. Ève Péclet: I would like to speak about first nations.

You are probably familiar with the Gladue report. Under section 718.2 (e) of the Criminal Code, judges must take into account certain factors. Last week a report revealed that aboriginals are overrepresented in prison.

Do you think that this bill could lead to an increase in this overrepresentation?

Insp Jean Cormier: No, I don't think so. As I explained earlier, aboriginal groups are not the only ones involved in trafficking contraband tobacco. There are also groups that live off-reserves and others that are made up of non-aboriginals.

•(0930)

Ms. Ève Pécelet: Do you think that enforcing the Aboriginal Justice Strategy will require more funding if there is an increase? My question is for both witnesses.

Insp Jean Cormier: I can give a brief answer.

An initiative is under way to call for additional resources for aboriginal policing. In this case that would be an asset.

[English]

Mr. Geoffrey Leckey: As I mentioned, we're not seeking additional resources for the implementation of this act.

The Chair: Thank you for those questions and those answers.

Our next questioner, from the Conservative Party, is Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Thank you, gentlemen, for sharing your expertise here with us this morning.

Inspector Cormier, I was struck by a number of things you said in your opening comments. You mentioned that criminal organizations are “exploiting” first nations communities and that there are “violence and intimidation tactics” associated with illegal tobacco that are also being imposed on or carried out against people in first nations communities.

First of all, can you tell us who the criminal organizations are that you're referring to? Are they the common names that we would understand as being associated with the types of criminal organizations that are involved in these kinds of activities? Can you describe for us some of the violence and intimidation tactics you were referring to?

Insp Jean Cormier: I can answer part of that, I guess.

When I was talking about the different groups that are involved, we're talking about 66 different groups that we have identified through the course of a number of investigations. It would be difficult for me to list them all here.

Mr. Bob Dechert: Can you give us one or two?

Insp Jean Cormier: I may not have to even mention them for you folks to already be aware of who those groups are, such as the Hells Angels or the Outlaws motorcycle gangs. There are some that are also native-based organized crime groups. There is a variety of groups that are involved here.

Also, you have to keep in mind that the definition of “criminal organization” under the Criminal Code is three or more people, so it doesn't take a large group to become a criminal organization or to be recognized as a criminal organization. As long as you have three people or more who are organized and engaging in criminal activity essentially to advance a criminal enterprise, they would fall under that definition.

As a result of that, the numbers can rise. It's difficult, as I say, to list what all the groups are. Those are only two examples.

Mr. Bob Dechert: Thank you.

Let me ask you a question in respect to the Hells Angels, for example. They are somewhat involved in the trade of illegal contraband tobacco, would you say?

A voice: [Inaudible—Editor]

Mr. Bob Dechert: They take this contraband tobacco from first nations reserves and distribute it in other places across the country. Are they the same kinds of organizations that sell other kinds of drugs like marijuana, cocaine, ecstasy, and other things?

Insp Jean Cormier: Yes. Typically, organized crime groups are involved in more than one type of crime. A lot of those criminal organizations are involved in crime that will bring them a profit. It's a for-profit crime.

The contraband tobacco is a very profitable industry. That's why they engage in those types of activities, but yes, those organized crime groups would not necessarily be engaged solely in contraband tobacco trafficking.

Mr. Bob Dechert: Like any good business person in the retail industry, they have a range of products available for their customers, and as you pointed out, the profit from illegal tobacco is helpful to them and probably contributes to their ability to sell other products as well.

Insp Jean Cormier: Unfortunately, that is the reality.

Mr. Bob Dechert: Okay. You also mentioned that in your view, contraband tobacco remains a serious threat to public safety if left unchecked. Can you expand on that a little and tell us what you mean?

Insp Jean Cormier: Yes, and there are different parts to that question.

One part is the way illegal tobacco is produced. A lot of people don't know what all is included in that. Some of that tobacco in production is swept off floors and unbeknownst to the user, may contain mice feces and other substances.

Also, we all know about the effects of tobacco. That has been publicized over the years. There are the effects on the health of an individual, as well as the impact it has on our youth, essentially, who are exposed to that. There are a number of factors that relate to the health and safety of Canadians and also to their well-being and their overall safety.

When we talk about criminal organizations being involved in intimidation tactics and violence, as I described in my previous remarks, those are all things that impact the safety of Canadians.

•(0935)

Mr. Bob Dechert: In your view, does the trade in contraband tobacco bring into first nations communities violence that might not otherwise be there?

Insp Jean Cormier: Yes.

Mr. Bob Dechert: Okay, and then if these outside criminal organizations find that it's a profitable business, they'll go to the first nations reserve and recruit people to work with them in this form of illegal activity, who I suppose might graduate to other forms of illegal activity.

Insp Jean Cormier: Typically, yes. You're right. Being involved in criminal activity is kind of a gradual thing.

Mr. Bob Dechert: I was told a number of years ago that a large percentage of the cigarettes being smoked by young people in high school in my community of Mississauga, which is a very urban area, and part of the Toronto area, are these kinds of contraband cigarettes.

One of my concerns, obviously, is the health of these young people and getting hooked on tobacco products in the first place, but also the fact that they are being sold these contraband tobacco products by the kinds of criminal organizations you're talking about. Once they've established a customer retailer relationship for tobacco, might they actually offer them some other product as well?

Do you see any link between those two things?

Insp Jean Cormier: As I said, it can be a gradual thing, or a graduating thing. You get involved in illegal cigarettes and it doesn't seem so bad, and the next thing, you don't know what may be offered. As I explained as well, the organized crime groups that are typically involved in cigarette trafficking are not only involved in cigarette trafficking, but also are involved in other types of contraband. It could be a possibility.

The Chair: Thank you very much for those questions and answers.

Our final questioner for this panel is Madame Boivin, and I understand she's sharing her time with Mr. Jacob.

[*Translation*]

Ms. Françoise Boivin: I will be brief, Mr. Chair.

I have a quick question for you, Inspector Cormier. Earlier I asked Mr. Leckey a question, and he said the statistics on contraband tobacco show an increase. Does the RCMP agree with this assessment? Have contraband activities increased? Last Tuesday a representative from the Coalition québécoise pour le contrôle du tabac appeared before the committee and told us that the statistics show a decrease in contraband activities.

So I'm trying to figure out what the facts are. You should know since you are investigating on the ground.

Insp Jean Cormier: The statistics presented by Canada Border Services Agency, or CBSA, are different from those of the RCMP. However, they coincide with the numbers we have seen. They presented statistics covering a similar period, in 2012 and 2013. While these numbers show an increase of 66%, the RCMP numbers show a decrease. However, this may be relative. The data collected by CBSA are not the same as those collected by the RCMP. There is therefore a correlation between them.

Moreover, let us look at other statistics we have, for example, for fine tobacco. Seizures increased by 105% between the months of January and June 2013 compared to the previous year. These percentages are calculated in kilograms. During the same period in 2012, 7,800 kilos of fine tobacco were seized. In 2013, during that same period, 16,000 kilograms were seized. From what I can see, based on the available numbers, there is definitely no decrease.

Ms. Françoise Boivin: Thank you.

Mr. Jacob, please go ahead.

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you, Ms. Boivin.

Thank you to the witnesses for being with us today.

My first question is for Mr. Leckey. You are the Director General of Enforcement and Intelligence Operations at the Canada Border Services Agency. You stated that there was an increase in contraband but that you were not requesting additional resources.

In my riding, three border crossings have reduced their hours of operation. These are East Pinnacle near Frelighsburg, Glen Sutton in Sutton and Morses Line in St. Armand. There are repercussions on cyclists, on tourism and on agriculture that go beyond 4:00 p.m., as well as on the relationship between Canadian and American citizens. The regional economy has been severely affected. In addition, there is growing insecurity. I see a contradiction between increased contraband and decreased services. Personally, if I were a criminal, I would use darkness and small border crossings to smuggle contraband.

● (0940)

Mr. Geoffrey Leckey: That is a good question, thank you.

[*English*]

I will speak in my position as the director general of enforcement for the CBSA.

In my job, I'm responsible for intelligence, criminal investigations, and inland enforcement. We work together in a number of ways. One of those ways is to assess where the risk is highest. The information that we derive helps to guide the placement of the resources for all of CBSA, ensuring that those resources are placed in areas where the risk is highest. We consider ourselves to be an intelligence-led and risk-based organization.

I hope that helps to answer the question.

[*Translation*]

Mr. Pierre Jacob: You answered my question in part.

I will give the rest of my time to Mr. Kellway.

[*English*]

Mr. Matthew Kellway (Beaches—East York, NDP): Thank you, gentlemen, for coming today. You've provided us with some sobering statistics on this particular issue. All of us are struck by the seriousness of the problem, and those statistics reinforce that.

Inspector Cormier, I'm looking at a graph showing statistics on cigarette seizures by the RCMP over time. They seem to have peaked around 2008-09, and have been on the decline since then. Meanwhile, on the border side of things, the seizures are going up at an astronomical rate. Inspector Cormier, did I understand your explanation for those declining statistics to be that, perhaps, they're being caught elsewhere, particularly at the border by the CBSA?

Insp Jean Cormier: Correct. That was part of my explanation. That would account for some of the changes.

Mr. Matthew Kellway: That's interesting.

Mr. Leckey, you began your statement by saying that this bill will have a slight impact on the CBSA and what you are able to do to deal with this issue. I was struck, as well, by your assessment of how contraband is coming into the country these days, mainly in small packages from China, and I think I heard you say Korea, too—

Mr. Geoffrey Leckey: Yes.

Mr. Matthew Kellway: —and probably not warranting criminal charges.

I'm looking at all of this and wondering if Bill C-10 is really missing the boat, at least in directly addressing the issue of contraband tobacco: where it's coming from, how best to stop it from hitting the streets, where youth are buying it, and those sorts of things. Could you comment on that, please?

Mr. Geoffrey Leckey: Yes.

The CBSA is responsible for enforcement at the ports of entry and the RCMP is responsible for enforcement between ports of entry. We see a situation where seizures being made by the RCMP between ports of entry are declining, but that's being matched by an increase in seizures at ports of entry.

At this time, when we are seeing a significant increase in seizures at ports of entry, Bill C-10 comes along and provides us with a new tool that enables us to refer those larger numbers of seizures we're seeing to the RCMP so that they can lay criminal charges.

In my opinion, it's good timing and good placement.

The Chair: Thank you very much. That's your time.

• (0945)

Mr. Matthew Kellway: Thank you.

The Chair: Everyone, I want to thank the questioners today. I want to thank our witnesses for being here this morning and answering our questions. We appreciate your input.

Just so you know, we'll be dealing with this in the next hour. We will have another set of meetings with witnesses next Tuesday, and then next Thursday morning we hope to be doing clause-by-clause study on this particular item. Thank you very much.

Before we suspend for the next panel, on the table is a request for a budget of \$512. It's been moved.

(Motion agreed to)

The Chair: Thank you very much.

We'll suspend for a minute or two.

• _____ (Pause) _____

•

The Chair: I call this meeting back to order.

Ladies and gentlemen, members of the committee, we're going to start again with our discussion of Bill C-10.

We're fortunate to have with us for the second hour from the Mohawk Council of Akwesasne, Chief Brian David and Chief Steven Thomas, and from the Mohawk Council of Kahnawake, Chief Gina Deer.

Thank you very much for joining us. You each will have 10 minutes for an opening statement, if you wish. Then we will go to questions and answers.

Chief David, would you like to start?

Chief Brian David (Chief, Mohawk Council of Akwesasne): Certainly.

Thank you very much for inviting us to make comments on this bill.

As you may be aware, we made a similar presentation last spring to the Standing Senate Committee on Legal and Constitutional Affairs.

My name is Brian David Tahononsoka:tha, and I am from the snipe clan. I am an elected chief with the Mohawk Council of Akwesasne, which is the elected government for the northern portion of the Akwesasne community.

The community of Akwesasne is located about 120 kilometres southeast of Ottawa. It is about 120 kilometres in distance away from Montreal. The territory is located along the St. Lawrence River near the city of Cornwall. It's intersected by the international borderline between the United States and Canada.

As most of you are aware, it is a multi-jurisdictional working environment. Part of our community is in the United States, part is in Canada, part is in the province of Quebec, and part is in Ontario. This is mostly not by our making but due more to the way constitutionally Canada evolved with Upper and Lower Canada, which were later defined as Quebec and Ontario. Naturally the international border has created the international line through our community. That gives rise to some of the situations we find ourselves in.

Because of our unique geography and close proximity to urban centres such as Ottawa, Toronto, Syracuse, Boston, and Philadelphia, it provides a prime opportunity for crime families to take advantage of this geographically strategic area in order to move goods back and forth across the line. We saw the bulk of that happen in the early 2000s up until about 2009. I understand from the previous presentation that there was a peak in 2009 and it's slowly declining, probably being picked up by the CBSA enforcement agencies at the border.

Part of the issue that we have, quite frankly—you all have a copy of my speech and I'll leave that for reference, hopefully—is that our community made a huge, large investment in ensuring that the St. Lawrence River is a safe environment to recreate in. That river means a lot to us. It probably defines our identity and who we are. Most of us as young people grew up with that river. We made a living off that river. We fished in the river. We trapped off the river. We used the river for transport.

Periodically throughout history we have these waves. From the 1930s with prohibition there was the movement of liquor into the United States. In the 1960s there was the movement of soft drugs, and the movement of gasoline. Now we find ourselves dealing with the movement of what is considered to be contraband tobacco by the authorities. I say "by the authorities", because in a roundabout way, we don't really consider that as contraband until it leaves the territory.

The investment we made was to clear that river to ensure that we again had some sense of ownership over it so that we can conduct our customary activities over a 24-hour period. There was a period of time when it was absolutely dangerous for community members to go out onto the river at night and conduct any sense of, let's say, fishing or transportation at night because we didn't know who was out there. They could be from Akwesasne; they could be from Montreal; they could be from any of the crime families that were operating in that area. It was just a dangerous place to be. We've cleaned it up.

Where that comes in is there's a thought that this particular bill, Bill C-10, will have the effect of encouraging those people who have a lot to lose from engaging in trafficking activity.

● (0950)

On the contrary, what it will do is identify those who really don't have a lot to lose, the high-risk people. It will encourage the gang families to again come back out onto the river and make it again a dangerous place. That's what we're concerned about. It's a law that Canada is proposing that will have an impact on our community. Whenever there's an adverse impact on the community, it is at that time that we have to step forward and we have to bring that to the attention of the government. This is the government right here.

One of the other issues we have is that it seems to be that the objective of Canada is to, how would you say, directly disengage the crime families in Canada. At least that was the stated objective in the Senate hearings. If that is the stated objective, then why are we looking at a law that goes after traffickers? Why are we not looking at a law that goes after the crime families? Why are we not looking at a law that is a RICO-style law, as they have in the United States? Why is there not a law on the table that talks about going after the crime families in Canada? Why are we looking at a law that is at the lower end of the totem pole, that has low impacts and just goes after the symptomatic issues that are associated with this type of activity?

It would seem to me that we should be looking at a law that is much more dynamic and more direct, but on the other hand, how you intend to approach this is entirely up to Canada. We're here because we're concerned with the impact this will have on our communities.

In terms of policing, this could have an adverse effect on the manner in which we police our communities. Our policing services have not received any significant increase since 2004, and even at that time they were underfunded. The police agencies were established to basically provide road patrol. We are not able to patrol community. You read in the paper all the time that 60% of the activity is on the river. We are not equipped for marine patrol, yet we are being asked to conduct and engage in activities and be responsible for those activities without substantive and equitable funding for it. It's an issue.

The other issue I bring to the table comes from a slightly different area. It was just a while back that we had a Supreme Court decision. I think it was the Gladue decision. In that decision, the Supreme Court basically said that if there is a native person convicted of a crime, then what needs to be considered by the judge in the sentencing exercise are the cultural and socio-economic factors. That was put into practice. We have in place bilateral agreements between Akwesasne and Quebec and between Akwesasne and Ontario for diversion programs, for community sentencing programs.

This bill has no accommodation for that. In fact, it appears that it degrades the intent of the principles of the Supreme Court in that decision. It does that by introducing minimums and maximums. It takes away the discretion of the judge to divert certain cases back to the community. It criminalizes those cases. In a roundabout way it seems that it's counterproductive to what the Supreme Court's explicit intent was at that time.

● (0955)

These are issues that are of grave concern. These are some of the practical issues that I don't see. If Canada is going to proceed with Bill C-10, a very practical question is, what are we talking about in terms of tobacco? How have you defined tobacco? Is tobacco just tobacco? What are we going to do with ceremonial tobacco? What are we going to do in those cases where Akwesasne is planting spiritual tobacco and decides to trade that tobacco with Six Nations or Kahnawake? Somebody said that the police will tell the difference. The police don't know the difference. They don't know the difference. That ceremonial tobacco is an entirely different species and it's not even addressed in this law.

● (1000)

The Chair: Thank you, Chief, for the presentation.

Chief Thomas, did you want to make any comments?

Chief Steven Thomas (Chief, Mohawk Council of Akwesasne): I can allude to some of the recommendations that we would suggest.

We appreciate what Canada is trying to accomplish in response to the trafficking of unregulated tobacco. Akwesasne is also trying to rectify the situation, although we are going about it in a different way. The development of a governance structure and our combined efforts are likely to provide a better path for the future. The following represents our recommendations in response to Bill C-10.

Honour the initiatives that are currently in development between Ontario and Quebec in Akwesasne. The initiative hopefully will answer many questions that are present in such areas as manufacturing, retail, wholesale, and trade with other first nations.

Allow for the development of an Akwesasne tobacco law and the development of governance structures. The cooperative effort to develop such structures is a far more effective answer than increased fines and mandatory jail sentences which will only add to aboriginals who are already overrepresented in the prison system.

Develop a federal protocol with Akwesasne which recognizes Akwesasne's justice programs, such as the Kanikonri:io or good minds program which is in operation as we speak. This protocol could act as a partnership in seeking cooperative resolutions on the issue of tobacco governance.

If moneys are to be spent in enforcement, add moneys to first nations policing. We have 23 miles of islands that border right into Quebec, into Lake Saint Francis. The expectation is that our police department enforce this jurisdictional area, of which we will not give up our jurisdictional rights. You had answers on meeting with CBSA and RCMP. Recently, I was on the police commission for two terms and I explained to the chief of police that the way the RCMP gets their money is through stats. We've been handing over all of the tobacco seizures to the RCMP. This is not right. We are undermanned in our police, and underequipped, and you expect us to be as effective as the outside. We cannot do that under the current operating conditions.

Throughout Ontario we belong to all the policing associations, the aboriginal police officers, the Canadian police boards. We have needs that far exceed other areas but they are not being addressed by Canada. We've been asking for Canada's help for many years now. We've asked questions. Assistance has not been forthcoming.

This bill will criminalize a whole generation of Mohawk people. You know that we live on a border and a great many of our people work on both sides of the border. We create America's skylines and Canada's skylines. This is what you see, but you never see the men working on it. This is our people. A great majority of them work in New York City. If you criminalize these people, they will not be able to work there because of the licensing requirements from the port authorities of New York, which controls the bridges and most of the buildings in Manhattan and the surrounding community. There will be no employment. This is not what this bill is intended to do. It will push us back into a Depression era mentality and that will open up a whole new can of illicit worms.

If Canada wants to assist, then fund this program. Fund our needs so that we may combat this illegal activity. You lose millions of dollars in tax revenue. A portion of that which you've lost, which you've identified in your stats, will go a long way to stop that which is a concern to all of us at this table.

Thank you.

• (1005)

The Chair: Thank you, Chief.

Our final presenter is Chief Deer.

You have 10 minutes.

Chief Gina Deer (Council Chief, Mohawk Council of Kahnawake): Thank you for having me here and listening today.

My name is Gina Deer. I'm one of the chiefs. I'm from Kahnawake. My document has been submitted, so I'll just touch on some of the points that we have submitted.

There are many challenges that have been imposed on our first nations that continue to hamper our progress towards full recognition and realization of our rights and interests. These challenges include the legacy of residential schools, traumatic and illegal expropriations of land, and the legacy and continued imposition of the Indian Act and other legislation that fails to take into account our history, our rights, and our grievances. Bill C-10 is one of those.

The Mohawks of Kahnawake have an inherent and aboriginal right pertaining to the production, transportation, trade, sale, and regulation of tobacco products. The Mohawks of Kahnawake assert these as inherent rights, but also as aboriginal rights under Canadian law.

The Mohawks of Kahnawake have historically and continuously engaged in the production, transportation, sale, and regulation of tobacco products for various purposes, including cultural practices, personal use, personal subsistence, trade, and for commercial gain. These practices are and always have been an integral part of our distinctive culture as Mohawk.

Bill C-10 proposes an infringement on our inherent aboriginal and treaty rights pertaining to the production, transportation, sale, and regulation of tobacco products. This application of proposed section 121.1 of the Criminal Code of Canada and corresponding mandatory minimum sentences to Mohawks of Kahnawake would constitute an unjustified infringement of our inherent aboriginal and treaty rights.

This bill is going to put people in jail. We bring up residential schooling because the residential schooling institutionalized people, our children. We had a great breakdown in our community. Simple things like hugging your children didn't happen. The effects were long-lasting, and then the government apologized for what they had done.

Yet, this bill just calls to reinstitutionalize people again, to take the mothers and the fathers and put them in jail. There's another breakdown in the family. Now the children will suffer again, growing up without a father. Does anybody know what it's like to grow up without a parent, a mother, a father? That's the effect this bill is going to have on our community and our people. How long will it take Canada to realize again that this wasn't the answer?

We already have an overpopulation of native inmates in our prison systems here in Canada. The prison systems were given recommendations on how to help rehabilitate inmates, and even that's failed. When we look at this as the answer, I can't comprehend where they come up with that: putting people in jail for what they believe and have known to be their rights.

In Kahnawake a lot of people have understood that as long as they practise within their own jurisdiction their right of the sale and trade of tobacco, they're not committing a crime, because it's not their duty to collect taxes. It's the duty of the people who come to our community to purchase it to remit those taxes. Nobody believed they were committing a crime.

We have a good economy around Kahnawake. We have nine municipalities that benefit from this trade, not just Kahnawake. If you look at all of the economic development, the stores, the growing economy in Châteauguay, Candiac, Ville Sainte-Catherine, it's had a positive effect for everybody there.

•(1010)

They talk about the criminal element and criminal organizations. They haven't just infiltrated the tobacco industry. Look what's happening in Montreal. There's the Charbonneau commission. They've infiltrated everywhere, right next door to us, right across the water, our neighbours, but Kahnawake seems to be highlighted as a spot for organized crime. Kahnawake works very hard to keep that element out.

One of the proposed solutions that Kahnawake has is for Canada to work with Kahnawake, to sit down and recognize the fact that Kahnawake has jurisdiction over our own territory. Let us make the laws that are needed to combat the criminal element, because that's how Kahnawake sees us doing this. We need to regulate and create laws within our community to protect ourselves and an industry that's been created in Kahnawake.

If you look back in history, you'll see that we as the native people are the ones who introduced tobacco. It was taken back to England to the Queen at one point. It was given by the native people. I had an elder say to me, "Gina, can you imagine if our moccasin making was a lucrative business? What would they do then?" This is something we've always had in our entire history and now we're going to be criminalized for practising something we've done throughout time.

We feel it is the responsibility of Canada to work with Kahnawake on a nation-to-nation or government-to-government basis. Canada gave permits to people in Kahnawake, licensed them to be tobacco manufacturers. They came to Kahnawake and they did inspections at these manufacturing places. They collected the taxes, and then they walked away. They didn't fulfill their part, which would have been to sit down with Kahnawake, Canada, and Quebec and discuss the transport of that tobacco. We were allowed to produce it, but we weren't allowed to transport it. It doesn't make any sense. It's not logical. Once they tried to transport it, they were arrested.

We've been here before. It's been discussed before. This bill was Bill S-16 previously.

We would like to take the opportunity to briefly address three common points that were raised by senators during Mohawk Council of Kahnawake's presentation earlier this year.

The first is the link between the tobacco industry on first nations lands and organized crime, which I just spoke about.

The Chair: You have about a minute left.

Chief Gina Deer: Okay.

Another is the sale to minors. That's where the implementation of the laws and the regulations comes in. That's something Kahnawake has been working on and the community has been pushing hard for, especially in light of this bill, I have to say. It's the major concern right now in Kahnawake.

•(1015)

In conclusion, we suggest that the federal government seize the opportunity to work with first nations to resolve this issue, and either stop or delay the passing of this bill or alternatively, suspend the application of these amendments until such time as an agreement is reached on a regulatory regime.

That's it.

The Chair: Thank you.

We'll now go to the rounds of questions.

Our first question is from Mr. Jacob of the New Democratic Party.

[*Translation*]

Mr. Pierre Jacob: Thank you, Mr. Chair.

I would like to thank the three chiefs for being with us this morning.

My first question is for Chiefs Brian David and Steven Thomas, of the Mohawk Council of Akwesasne. The Akwesasne chiefs stated that they were concerned by the possible repercussions of mandatory minimum sentences on their communities, particularly on young people.

Chief David, you said that you are worried that heavy fines and prison sentences will turn young people, who smuggle tobacco because they have few opportunities for legal employment, into hardened criminals, and will force them into a life of crime. I would like both of you to comment on this statement.

[*English*]

Chief Brian David: Thank you for the question.

Let's go back a couple of years. A couple of years ago, we had young people who couldn't find jobs in and around our community, and it wasn't just Akwesasne Mohawks. In that whole area, there's very high unemployment. Because of the unemployment, skilled, educated people who were involved in the transportation of tobacco products across the St. Lawrence and elsewhere were getting caught. These were people who would otherwise have jobs. If they had been provided an opportunity to secure a job that was long term, that had security for their families, they probably would not have been on the river at all. There's a counter-argument that can be made here, that maybe the solution to this is economic development.

Where I was going with the other argument is if Bill C-10 has the impact of increasing the risk of that particular activity, those people who have a lot to lose, in terms of their investment in education, in terms of their position and social structure, the family they have, probably won't get involved in that activity, which is probably good. The flip side of the coin is that it leaves a vacuum. Who will get involved in that kind of activity? It will not be the people who have a lot to lose. It will be the people who don't have anything to lose, and those are the hardened criminals, who are members of these criminal families. Where are we going to find them? We're going to find them back on the St. Lawrence.

At least we had something that was manageable the last time around. This time around we could end up with a war out in the river. What we're concerned about is the safety and security of our community. That's the backlash, the adverse impact with Bill C-10.

Does that answer your question, sir?

[*Translation*]

Mr. Pierre Jacob: Yes, thank you.

My next question is for Chief Deer.

As an alternative to Bill S-16, which is now Bill C-10, Serge Simon, Grand Chief of the Mohawk Council of Kanesatake, would like to see tobacco sales regulated by the band councils. Lloyd Phillips, one of the chiefs on the Kahnawake Band Council, very much agrees, because he believes that regulation would remove organized crime from the industry and guarantee that profits would be reinvested in the community.

• (1020)

[English]

Mr. Phil McColeman (Brant, CPC): Mr. Chair, on a point of order. Chief Thomas is not getting translation.

The Chair: We'll stop the clock. Try it now.

[Translation]

Mr. Pierre Jacob: I will repeat my question.

Serge Simon, Grand Chief of the Mohawk Council of Kanesatake, would like to see tobacco sales regulated by the band councils. One of the chiefs on the Kahnawake Band Council, Lloyd Phillips, very much agrees, because he believes that regulation would remove organized crime from the industry and guarantee that profits are reinvested in the community.

I would like Chief Deer to comment on this.

[English]

Chief Gina Deer: We support that. Regulations and laws need to be created by the Mohawk Council of Kahnawake. There have been suggestions from community members and people involved within the industry on how to eliminate the possibility of organized crime being involved. One of the suggestions was a single-source system.

They're looking at different options, and looking at creating, as I said, laws and regulations to exclude the possibility of their getting involved in our community.

The Chair: You have one more minute, Mr. Jacob.

Mr. Pierre Jacob: One minute. Then I have time for another question.

[Translation]

The latest annual report of the Office of the Correctional Investigator highlights the various problems related to the disproportionately high incarceration rates among aboriginal people. Chief Deer, you talked about this. What do you think would be the repercussions of Bill C-10 on incarceration rates among aboriginal people? This question is also for the other chiefs.

[English]

Chief Gina Deer: I can't even imagine how they would house everyone. You're talking about many people. I don't even know the numbers right now. Iroquois Caucus has been involved, and different communities. They're all looking at the same issues.

I think the answer for Canada is to work with first nations. A lot of people have been coming to Kahnawake and asking us to work together.

We can do it. It's possible. That's the answer: regulate the industry.

The Chair: Would the other two chiefs like to answer this question, briefly?

Chief Brian David: I support the idea of regulation. Actually, we're currently involved in the pilot project to do that.

To directly answer the question on representation, yes, there is concern of overrepresentation, but the issue here mainly is that this bill could very well be sending people to prison, or to crime university, which basically the penitentiaries are. Those individuals who don't know too much learn an awful lot in the penitentiaries.

Where are they going after they come out? They're not going to Toronto. They're not going to Ottawa. They're coming back. We're going to get them back in our communities, and then we've got another problem to deal with.

The Chair: Thank you for those questions and those answers.

Our next questioner, from the Conservative Party, is Monsieur Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you, witnesses, for providing your insight. We obviously have lots to learn.

It's pretty clear from your testimony that organized crime is not an accepted or welcome element within your territories. Of course, we recognize your issues with regard to resources, whether it be on the river or within the territory.

I'm wondering what efforts your organizations are taking to identify organizations' links to organized crime and the sale of illegal tobacco. I believe in Kahnawake you've actually entered into some agreements with the Province of Quebec to try to minimize this, if I'm not mistaken.

• (1025)

Chief Gina Deer: Exactly. The Kahnawake Peacekeepers are very active in trying to work with the outside forces. It's currently being addressed.

Mr. Robert Goguen: All right.

Chief David.

Chief Brian David: Currently the Akwesasne Mohawk Police Service works with the RCMP, or the OPP and Sûreté du Québec, the Saint Regis Mohawk Tribe, New York State Police, CBSA, FNOC, which is the first nations organized crime initiative, IBET, the international border enhancement team, the Homeland Security drug enforcement agency. We work with just about every enforcement agency in and around the locale of Akwesasne, basically within five jurisdictions, in order to put together a policing plan that will address the needs and concerns of Akwesasne.

I have to point out that part of the issue here in terms of law enforcement is that Canada and the United States don't have the same priority issues when it comes to policing. You know that. Americans are concerned about drugs going across the river, and naturally the Canadians are worried about cigarettes going across the river.

The enforcement organizations need to be synchronized with the activities that are taking place. There does not seem to be an accord at this point in time. We see that more vividly in our environment because of the international environment that we operate and live in. It's difficult to get a concrete plan together.

Does that answer your question?

Mr. Robert Goguen: I believe so, yes.

Chief Thomas.

Chief Steven Thomas: Our local communities, stakeholders you may say, the communities that abut Akwesasne on both sides of the border, have the same issues that we have. This is not strictly an Akwesasne issue.

You have local towns in St. Lawrence County and Franklin County that are inundated with drugs that are coming back from Mexico into the United States. They come in from Brooklyn, New York City. It's so bad that they sent one of their sheriffs from New York City and a chief of police to come and look at the border in Akwesasne. They're going to do a report that you guys will never see.

This is what I mean. Canada does their investigations. The United States does an investigation. You don't share any of this information. We're stuck here in the middle, asking for help from both sides. You create laws, criminalize the people who are stuck in the middle, which people come through.

In its heyday, and you heard the statistics earlier from the CBSA. We live on a bay in the St. Lawrence River. People came and knocked on every door that had a boat parked on the river. These were your people, Quebec, Ontario, Italians, foreign people, asking, "Can you take this across the river? Can you help me do this? Can you help me do that?" The men are working out of the country and the women have to take this—and there's a psychological effect on our women folk—because the men are gone.

This is the type of industry that's out there. They're mingling right here in this town and every town that's large enough to host these illicit individuals. Yet you want to criminalize the mules and not deal with the issue at hand.

Our people in Akwesasne, on the map you might as well put a black mark right across it because this is what we have to deal with at the public relations level. We're trying to create a legitimate economy through economic development, honest economy, development dollars. Yet we have to fight for this. We're asking Canada for assistance to turn this thing around and let our people go back to work like we used to. Let them have their jobs. They were proud ironworkers. When you're on the iron, 60, 70, 100 floors up, you're that much closer to the Creator than you are down here. You're above the birds that used to carry our messages. Now you're one-on-one with the Creator. This is what we're asking, the return to that life.

• (1030)

The Chair: Thank you very much for those questions and answers.

Our next questioner is Mr. Scarpaleggia from the Liberal Party.

Mr. Francis Scarpaleggia: It's fascinating testimony. What made it compelling for me is that many witnesses read from notes, but you really spoke from the heart and provided some very detailed background on the issue and the communities.

Chief David, you mentioned that through your efforts and the efforts of your council, your police force, you've basically cleared the river of all the illicit traffic that was happening. I guess that's why now most of the contraband comes by road, as our previous witnesses were saying.

Could you give us a brief glimpse of how you did that, how you cleared the river?

Chief Brian David: Maybe I'm taking too much credit for what happened.

Mr. Francis Scarpaleggia: I'm interested in knowing how you achieved that result, or how others in your community achieved that result.

Chief Brian David: It was just a matter of good police work, our policing work in cooperation, collaboration with other police agencies, partnerships. All of the work that went into developing common missions, common visions, putting together operational plans that were sensible to the SQ, the OPP, the RCMP. All policing agencies were looking for that consensus and moving that consensus towards what the community actually needed.

I think there was a realization within the police and community that if that area was going to be effectively policed, it was absolutely necessary that it be done in collaboration and in partnership with our community police force. I think more than anything it was that realization and those partnerships that did it.

Mr. Francis Scarpaleggia: What you're saying, as I understand it, is that because dealing in contraband was not a criminal offence, but an infraction subject to a fine under the Excise Act, faced with the resistance on the river, the "criminal element" said, "Well, you know, we'll take our chances with bringing it in by road, and if we get caught, well, I guess there's a fine, and so on, but we're not going to jail."

If I understand you correctly, you're suggesting that with a minimum sentence, they'll say now, "Well, you know, I'm not taking a chance by road, because obviously the risk of being caught crossing the border with a truck full of contraband is greater than the risk of crossing it over on the river." They're going to come back to the river a little more determined than maybe before, because as you were saying at one point in your presentation, there's a certain element that may be not as hardened an element, for example, skilled people just looking for some extra money. They're going to vacate the whole process, and those who have nothing to lose will now say, "I'm not taking a chance at the road border. I'm going to go back to the river." This is what is going to bring the problem back to the river. Is my understanding correct?

Chief Brian David: Yes.

Mr. Francis Scarpaleggia: In terms of the Gladue decision, which says that the judges should take account of the situation of an aboriginal defendant in sentencing, and so on, the courts will still be able to do that, except when the minimum sentence kicks in. We've seen courts strike down minimum sentences. With respect to arguably more serious crimes such as owning an unregistered firearm, the court has struck down minimum sentences. I'm not a lawyer and I'm not an expert, but I'm just wondering if it's possible that the court will strike down this minimum sentence.

As I understand it also, you obviously want to put an end to this contraband system, but you don't want to penalize young aboriginals who will then go to jail and, as you say, come back and become a problem for the community because of all they've learned in jail.

If there was not a minimum sentence, would you feel comfortable with the bill? The judge could take account of the situation of the aboriginal offenders and not give them a minimum sentence, but steer them in the direction of restorative justice. If we're talking about a hardened Hells Angel, or whatever, the judge could come down a little harder. Would you be comfortable with the legislation if it didn't have the minimum sentence after the first infraction?

• (1035)

Chief Brian David: I think there needs to be an opportunity for the judge to exercise some discretion on whether or not a diversion decision is applicable and may be the best decision under the circumstance. The way the law is currently framed, it doesn't allow him the discretion to do that—

Mr. Francis Scarpaleggia: I'm sorry to interrupt, but I have limited time.

You have no problem with the idea of moving the offence to the Criminal Code, as long as we're not overpopulating our prison system—the provincial prison system, by the way—with young aboriginals or other aboriginals, who, as you say, Chief Thomas, are on their way down to the States and have good work down there.

The Chair: We need your answer, please, Chief.

Chief Brian David: Let me frame this another way. I don't have a problem with the bill, but the message that's coming across the table here is, if you're going to pass a law like this, we think—in fact it's our position—that you need to take into account some of the activities that are occurring at our level. We need to have some accommodation made. There might even be a necessity for a sidebar protocol to deal with particular specific circumstances.

If we're talking about a manufacturing regime in our communities that could lead to trade and commerce, we're going to be involved in transport. We don't want Bill C-10 to strike that initiative down.

The Chair: Thank you very much. We're well over time. Thank you for those questions and answers.

Our next questioner is Mr. McColeman, who is going to share his time with Mr. Dechert, I think.

Mr. Phil McColeman: That is correct, Chair, thank you.

Thank you, witnesses, for being here.

I have one question. On your territories is there unlicensed manufacturing, meaning manufacturers of cigarettes, the kind of

Baggie-style units? Are there manufacturers on your territories who are not licensed?

Chief Gina Deer: On our territory, yes, there are, because people in Kahnawake believe that, as long as they conduct business within the territory, it is Mohawk jurisdiction, so the laws outside do not apply.

Mr. Phil McColeman: Okay.

Chief Brian David: In our jurisdiction the manufacturers are licensed.

Mr. Phil McColeman: Okay. All the manufacturers on your territory are licensed.

Chief Brian David: Within our jurisdiction, certainly.

Mr. Phil McColeman: It's your own jurisdiction. It's not the....

I know in Ontario, the Ontario government sets out standards and licensing for cigarette manufacturing.

Chief Brian David: The Mohawk Council has jurisdiction north of the international line, so we're talking about Ontario and Quebec. If you're asking about the part of Akwesasne that is in the southern portion, it's not at the table. I can't speak for them.

Mr. Phil McColeman: The reason I asked the question is that I represent Six Nations of the Grand River. The largest cigarette manufacturer in Canada is Grand River Enterprises. They are a licensed producer of cigarette products.

There are 11 other unlicensed manufacturers on Six Nations, and I was curious to know the numbers on your territories.

Thank you.

• (1040)

The Chair: Thank you for those questions.

Mr. Dechert, the remaining time is yours.

Mr. Bob Dechert: Thank you, Mr. Chair.

Thanks to each of the chiefs for being here.

Chief Deer, you mentioned that the trade in tobacco is historic in your community. In your estimation, how much revenue is generated from the sale of tobacco within your local community?

Chief Gina Deer: Right now we don't have any definite numbers because the community has just decided that they would like to see the Mohawk Council have a law and regulations. That's what we need in order to have actual numbers.

Mr. Bob Dechert: Would you say it's significant or substantial?

Chief Gina Deer: Definitely. As I stated earlier, it's something that's benefiting the surrounding communities.

Mr. Bob Dechert: In your view, will Bill C-10 have an adverse impact on that revenue that's being generated?

Chief Gina Deer: Absolutely.

Mr. Bob Dechert: Chief David, you mentioned some of the criminal elements that come into your communities from outside. We heard from the RCMP earlier that groups such as the Hells Angels, the Outlaws motorcycle gang, and many other outside groups are exploiting your people, bringing violence and intimidation into your community from outside. That impacts my community because those same outside criminal organizations take the product from your communities, sell it to schoolchildren in Mississauga, and also establish a relationship with them that will allow them to sell other things such as harder drugs once they get them addicted to nicotine.

Why are you not concerned about how the violence and the exploitation these tobacco products...? Why are you not concerned about that element being brought into your community? How would you suggest we work together to prevent those outside criminal organizations from exploiting your people?

Chief Brian David: We didn't include information about our particular concern over the chain of violence because of the time limits.

Mr. Bob Dechert: Do you agree with the RCMP that there's violence and intimidation?

Chief Brian David: I think this is where there's a meeting of the minds. We're in agreement on that. We don't agree with cigarettes being sold to minors. We don't agree with cigarettes being sold in high schools. We don't agree with the transport or the ill effects. In our community we have the same concerns as you do. We don't want that happening in Akwesasne and you don't want that happening in your community. The question is how do we fix it so it doesn't happen?

If the origin is in Akwesasne, then why isn't the investment in Akwesasne? It seems that the investment wants to go over into law enforcement on the perimeter of Akwesasne.

Mr. Bob Dechert: Are you talking about extra funding for the police organization in your community?

Chief Brian David: Well, for the police organization and for the actual man-hours....

Mr. Bob Dechert: Do you agree that if, overall, we reduce the amount of contraband tobacco flowing out of your community to other places like Mississauga, it will benefit your community by keeping those criminal elements from coming into your community and exploiting your people?

Chief Brian David: I don't understand the question.

Mr. Bob Dechert: I'm saying there's obviously an illegal trade that's able to conduct business because of the differential in pricing of tobacco, for one thing, between on the reserve and off the reserve. That brings criminal elements onto your reserve, which you said you don't appreciate.

If we reduce the overall trade in that product off the reserve, isn't that going to benefit your community in the long term by keeping those criminal elements out and away from exploiting your people?

Chief Brian David: The quick answer is no.

What we're looking to do is to replace that activity with legitimate activity, which is our own manufacturing. That's why we're talking about setting up our own regulatory regimes, jumping into our manufacturing, and eventually setting up legal trade routes with

other communities. It basically legalizes the whole activity. It will be done in collaboration and partnership with Canada, if Canada wishes.

The Chair: Thank you for those questions and answers.

Our final questioner, for two minutes, is Mr. Kellway from the NDP.

One question, please.

•(1045)

Mr. Matthew Kellway: Thank you, Chair.

Chief Deer, you got cut off in your testimony earlier. You were about to talk about some important issues raised at the Senate hearings and I'd like to give you the opportunity to finish talking about those points, if you wish.

Chief Gina Deer: It's all in the document that was provided.

It's just that this has taken place before and Kahnawake has asked Canada to sit down and talk. This has been going on and Canada has been addressing it in every other way, except to sit down and talk with our community. We're still waiting from, I believe it was 2008 when Grand Chief Michael Delisle was here and requested that.

Mr. Matthew Kellway: This obviously isn't the forum for having those conversations, but you've made reference to a framework and protocol. With respect to the bill Chief David talked about having a sidebar protocol. Do you have a clear sense of what your territory would like to see in such conversation and framework?

Chief Gina Deer: Yes, we already have draft laws.

Mr. Matthew Kellway: So you're ready to go.

Chief David or Chief Thomas, part of the reason this bill is coming forward, it's being sold as the criminalization component here permits the engagement of other police forces. I understand you're into this apart from the RCMP. I understand from your testimony today that there is cooperation among police forces on the issue of contraband tobacco already in existence on your territories, although your own police forces are underfunded and handcuffed, if I can put it that way, in their ability to do as much as you'd like. Is that the case?

Chief Steven Thomas: Yes, it is, Mr. Kellway.

My nephew is the chief of police on the southern portion of Akwesasne. I was on the police commission for two terms prior to being elected chief.

What I see in this bill is you're going to criminalize the individual. You're going to put officer safety as a priority.... You're going to increase the police pursuits because of this.

As of right now, if you stop a truckload of cigarettes the guy says he can pay the fine. If you're going to criminalize this and the sentence is two years in prison, they're not going to stop and you're going to have police pursuits throughout Akwesasne. We went through this before. A person was involved in this several years ago, and it included our police officers, and two innocent people burned to death in their car after this idiot ran into them.

This is what's going to happen.

The Chair: Thank you very much for those questions.

Thank you, panel, for your testimony today. The presentations were excellent.

Just so you know, your presentations were not circulated because they need to be in both official languages for us to be able to circulate them. I would encourage members of the committee to look at the Senate minutes on the discussion of the bill there. If you want to look at the testimony that was given—

Mr. Bob Dechert: Can we get them translated?

The Chair: Well, we can try. We'll get them translated and to you as soon as possible, but that's why they were not circulated, just so you know.

With that, I remind members that we will be meeting next Tuesday. If you have amendments, it would be appropriate to have them to us for Tuesday, and next Thursday we'll do the clause-by-clause study.

Thank you very much.

This meeting is adjourned.

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