



**Standing Committee on Justice and Human Rights**

**Comité permanent de la justice et des droits de la personne**

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**Tuesday, December 3, 2013 - Le mardi 3 décembre 2013**

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🕒 (0845)

*[English]*

**The Chair (Mr. Mike Wallace (Burlington, CPC)):** I'll this call this meeting to order, our Standing Committee of Justice and Human Rights. It's meeting number eight, on Tuesday, December 3. We are going to starting discussing orders of the day, the order of reference of Tuesday December 3, Bill C-10 an Act to amend the Criminal Code, trafficking in contraband tobacco. However, as we did at the last meeting, we were talking about estimates. We did get a letter back from the person who we wanted to hear from about the office piece. I would like this....

Yes, Bob?

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** I was going to move that we accept estimates, I think it was 1b—

**The Chair:** —1b, 5b, 35b and 50b.

JUSTICE  
Department  
Vote 1b—Operating expenditures.....\$683,004  
Vote 5b—The grants listed in the Estimates and contributions.....\$9,800,000  
Office of the Director of Public Prosecutions  
Vote 35b—Program expenditures.....\$3,777,349  
Supreme Court of Canada  
Vote 50b—Program expenditures.....\$118,613

(Votes 1b, 5b, 35b and 50b agreed to)

**The Chair:** Shall the chair report the votes 1b, 5b, 35b and 50b under Justice to the House?

**Some hon. members:** Agreed.

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

Thank you, sir, for that short delay.

We have with us from the Department of Justice, Paul Saint-Denis, who is the senior counsel, criminal law policy section. Ms. Saint-Denis, the floor is yours for up to 10 minutes.

**Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice):** Thank you, Mr. Chairman. I don't really have a long statement, really what I just want to say is a few words explaining the legislation.

The bill proposes amendments to the Criminal Code in order to provide for a new offence of trafficking in contraband tobacco. The particular activities that are prohibited include the offer for sale, possession for the purpose selling as well as distributing and transporting. The penalties range. On indictment the maximum penalty is up to five years imprisonment and on summary conviction it's up to six months. However, it does provide for a mandatory minimum terms of imprisonment for individuals who have been convicted of this particular offence for the second or subsequent times. For a second conviction it's up to a minimum of ninety days. For a third conviction it's up to 180 days of minimum imprisonment and then for a fourth or subsequent conviction it's up to two years less a day.

In order to have these penalties imposed on you, there's a requirement for the amount, the quantity, of tobacco involved to be fairly significant. It requires the presence of or the involvement of 10,000 cigarettes or more of contraband tobacco or 10 kilograms of raw leaf tobacco or 10 kilograms of any other tobacco product.

The legislation also creates the possibility for the federal prosecution services to prosecute this offence. It does this by amending the definition of attorney general in the Criminal Code so that

there will a concurrent jurisdiction between federal prosecution services and the provinces in order to prosecute this offence.

That's all I have to say, sir. I'm more than happy to answer any of your questions.

🕒 (0850)

**The Chair:** Thank you for that succinct opening statement.

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

[*Français*]

**Mme Françoise Boivin (Gatineau, NPD):** Merci, monsieur le président.

Merci, monsieur Saint-Denis, d'être ici ce matin.

Je vais commencer par souhaiter « Bonne Fête » à Ève Péclet qui a un ronflant 25 ans ce matin. Cela nous donne un coup de vieux à pas mal tout le monde autour de la table, mais ce n'est pas grave.

Monsieur Saint-Denis, au niveau du projet de loi C-10, pouvez-vous nous parler brièvement du genre de consultations qui ont eu lieu pour conduire au projet de loi C-10 et de le faire en rapport avec la Loi de 2001 sur l'accise, qui a déjà l'infraction comme telle et peut-être nous faire un peu de distinction entre les deux, où c'est semblable et à savoir si on ne risque pas d'avoir des conflits de loi? Consultations avec qui? Avec qui le ministère a discuté à ce niveau-là? Et conflits de loi?

**Me Paul Saint-Denis:** Merci, madame.

Nous avons consulté uniquement à l'intérieur du gouvernement, alors nous avons consulté des gens de Revenu Canada évidemment et de Finances Canada ainsi que le ministère de la Sécurité publique et puis des gens à l'intérieur du ministère de la Justice. Alors nos consultations se sont limitées au gouvernement. Nous avons aussi consulté la GRC.

En ce qui concerne le chevauchement entre l'infraction qu'on retrouve dans la Loi de 2001 sur l'accise et ce projet de loi-ci, il y a évidemment certaines activités qui sont semblables, la vente notamment et, évidemment, les peines minimales que l'on retrouve dans le projet de loi qui ne se retrouvent pas dans la Loi de 2001 sur l'accise. En revanche, par contre, il y a des peines minimales d'amendes dans la Loi de 2001 sur l'accise qui sont prévues pour cette infraction-là. Évidemment, l'infraction qu'on retrouve, d'après moi, sur l'accise, c'est une infraction qui n'est poursuivable que par le fédéral par opposition au projet de loi qui va permettre la poursuite par le fédéral et par les provinces. Ce sont les grandes lignes, si vous voulez.

**Mme Françoise Boivin:** Avez-vous considéré la problématique de la possession aussi parce que c'est strictement ce qui est mentionné, c'est-à-dire en offrir, en vendre, en acheter et en avoir

en sa possession. Le fait d'en avoir en sa possession n'est pas couvert par le projet de loi C-10. Y a-t-il une explication pour cela?

**Me Paul Saint-Denis:** Oui. Nous avons considéré la question de la possession et on nous avait demandé de traiter de la situation du trafic. Alors, on a les activités de possession pour fins de trafic, mais la possession simple comme telle, d'après nous, n'entraîne pas dans la description de ce qui est vraiment un trafic qui implique le mouvement d'une place à l'autre. Donc, nous avons exclu pour cette raison la notion de possession.

**Mme Françoise Boivin:** Maintenant, pour ce qui est des sentences minimales obligatoires, évidemment, elles s'appliquent essentiellement en cas de récidive dans un contexte bien particulier de quantité parce que c'est la Couronne qui devra annoncer qu'elle a l'intention de faire une preuve de récidive. Pouvez-vous nous expliquer un peu le genre de récidive. Devra-t-elle prouver la culpabilité à l'infraction au sens du Code criminel comme tel? Y a-t-il un risque que ce soit traité différemment dépendamment des provinces et d'où les gens se situent?

On le sait bien, en ce qui concerne les infractions, par exemple, en matière d'ivresse au volant, il y a plusieurs cas où on a vu que la Couronne n'a pas fait de preuve de récidive et c'est pour cela qu'on se retrouve, des fois, avec des unes où il fait six fois que la personne est arrêtée et elle conduit encore. Y a-t-il un risque que cela se produise ici aussi? Donc, ma préoccupation est beaucoup quant au deux poids, deux mesures dépendamment d'où on se situera. Cela vous inquiète-t-il?

🕒 (0855)

**Me Paul Saint-Denis:** Premièrement, pour répondre à la question qui concerne la façon qu'on doit annoncer l'imposition d'une peine minimale est que le procureur doit donner un avis. D'ailleurs, il est prévu à l'article 27 du Code criminel qui couvre tous les cas de peines minimales et c'est à ce moment que si un procureur a l'intention d'aller chercher une peine minimale pour l'accusé, il doit donner un préavis et il doit indiquer à la cour que ce préavis a été donné.

En ce qui concerne le genre de condamnation, c'est limité uniquement à une condamnation de sept infractions aussi. Alors, les infractions, par exemple, qui ont peut-être été commises par un individu, dans le contexte de la Loi sur l'accise, elles ne compteront jamais. Donc, on amène cette question à part.

En ce qui a trait à la disparité entre les pratiques de poursuite dans différentes régions du pays, vous savez sans doute que les procureurs ont une assez grande discrétion et ce qui arrive, généralement, c'est qu'on exerce cette discrétion un peu en fonction de la région où nous sommes. Alors, si le problème est particulièrement sérieux dans une région du pays face à une autre, il est possible qu'on aille chercher des peines minimales plus souvent. Cela ne me préoccupe pas. Cela tombe dans le cadre normal de la discrétion des poursuivants.

**Mme Françoise Boivin:** Excellent.

Merci.

[English]

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

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

**Mr. David Wilks (Kootenay—Columbia, CPC):** Thank you, Mr. Chair.

Thanks for being here, Paul. I have a couple of questions for you.

Under proposed subsection 121.1(1), I wonder if consideration was ever given to including the word “trade”, “No person shall sell, offer for sale, transport, deliver...”. The reason for that is under the CDSA, we have buy, barter, trade, or sell. Trade can mean that if you're at a high enough level, you're not even touching it. I wonder if there was a thought to that.

**Mr. Paul Saint-Denis:** No. Actually, to tell you the truth, we did not consider “trade”. We did consider “brokering”, but excluded that. We wanted to primarily focus on the actual movement.

If an individual is trading without having in possession.... If the individual is high enough up in the hierarchy of the organization, it is possible for that individual to ensure or to organize the trade of that product. But in that case, we probably would be using conspiracy, provided we could obtain the necessary elements to prove it.

**Mr. David Wilks:** I'm just thinking that from the perspective of a police investigation it's far easier to prove a trade than it is to prove a conspiracy, way easier.

**Mr. Paul Saint-Denis:** That's probably likely. There is also mind you the offence of instructing in the case of a criminal organization offence. That may be a little easier to prove than the conspiracy offence, but in the end if you can demonstrate, or you can put together sufficient evidence to demonstrate trade it seems to me that's very close to the kind of evidence that you would need to demonstrate conspiracy.

**Mr. David Wilks:** I clearly understand what you're saying. I just look at it from the perspective of a police investigation and that trade is far easier to investigate when you're looking at for argument sake someone who is going to trade 10,000 cigarettes for a car. It's easier for the police to establish that than it is to establish the conspiracy chain.

**Mr. Paul Saint-Denis:** That's correct. If an individual is going to trade 10,000 cigarettes for a car—at first I would say it would be a very cheap car—but it's likely then that the individual would be in possession of the cigarettes. At one point it seems to me that the individual is going to be in possession of that product and if that's the case then we do have possession for the purpose of sale. Ten thousand cigarettes doesn't automatically get you a possession charge.

⊕ (0900)

**Mr. David Wilks:** I just used 10,000 because it's that number where I'm sure it would be higher. I do know from my previous career—especially in the drug section—that trade was used quite often and it was a way that we were able to be able to capture both offences. It's just something to consider, and I thought that it was funny that it was left out.

The second question I had for you was with regards to this becoming an offence under the Criminal Code. It's my understanding for the most part that under the Excise Act the RCMP has jurisdiction because they're the federal component, and that a lot of municipal police forces and or even some provincial police forces do not have authority under the Excise Act.

My question to you, is this why this was created under the Criminal Code so that all police forces across Canada would have the ability to lay charges?

**Mr. Paul Saint-Denis:** Yes it is in part. The other issue was that there was a measure of discomfort in placing minimum penalties of imprisonment in the Excise Act. The Excise Act as you know is a revenue statute and while it's viewed as being okay to have minimum fines in the revenue statute there was as I say some discomfort in having minimum terms of imprisonment there. So it was thought to best put it the Criminal Code.

The other thing is that there was a sense that something of a more noticeably criminal nature needed to be attached to this trafficking and contraband tobacco, and that something like that was better placed in the Criminal Code where it was clearly, and obviously a criminal offence rather than putting it in the Excise Act where people would say “well is it really criminal, is it only fiscal”. So that was another portion of the reason.

**Mr. David Wilks:** One last question for you and that was with regards to the mandatory minimums on hybrid and dual offences. So this will become a hybrid offence, but it states that in order for the prosecution to move forward with a mandatory minimum they must go by indictment, but any previous offence which could have been summary could be used as evidence to move forward with the mandatory minimum. I'm just curious from the perspective that the Crown would have to declare at the beginning of the trial whether they're going by indictment or summary, correct?

**Mr. Paul Saint-Denis:** Correct.

**Mr. David Wilks:** By deeming that they're going by indictment that would send the message, or send an indicator to the accused that there may be a mandatory minimum sentence being contemplated.

**Mr. Paul Saint-Denis:** It may send the message but unless there's a clear notice given—

**Mr. David Wilks:** So there has to be notice given.

**Mr. Paul Saint-Denis:** There has to be notice given.

**Mr. David Wilks:** Thank you very much.

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

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

**Hon. John McKay (Scarborough—Guildwood, Lib.):** Thank you, Chair.

Could an officer, director, or employee of a Canadian manufacturing company, cigarette company, be convicted under this offence?

**Mr. Paul Saint-Denis:** Yes, if he meets the various elements of this offence. If he sells 10,000 unstamped cigarettes, yes.

**Hon. John McKay:** But is that if you will the complete defence or any officer, employee, or director of a Canadian manufacturing company?

**Mr. Paul Saint-Denis:** I don't believe it is, actually. If the cigarette is stamped, this offence would not apply. If the cigarette is stamped, it means that the federal excised tax has been paid, but there are provincial taxes that have to apply as well.

Theoretically it would be possible for an office or an employee of a cigarette company to sell stamped cigarettes but in a manner as to avoid provincial sales tax and so be able to sell cigarettes that are less than the going price. He would be caught by provincial revenue statutes then. I don't think he would get caught by this—

⊕ (0905)

**Hon. John McKay:** We're basically asked to engage in an exercise in suspended belief about how these cigarettes end up in the hands of criminal organizations and aboriginal peoples in particular, that somehow or another, cigarettes get made here, they get stamped, and they get marked for Estonia. Somehow or another, they fall off the truck somewhere around Akwesasne or someplace like that.

It strikes me as the wrong hand. That's the genesis of the question. In order to have a conspiracy, if you will, you actually have to have two people work together. What's curious to me is how what is a clear pattern of criminal activity seems to end, the liability seems to end when the product leaves the country in the otherwise apparently legal transaction.

**Mr. Paul Saint-Denis:** If you're talking about unstamped tobacco here.

**Hon. John McKay:** That's the issue. The stamping is what basically gives it the of legality.

**Mr. Paul Saint-Denis:** Right, but the manufacturing of the unstamped tobacco, which is really the source of the problem that this legislation is trying to get at, is largely being done in Canada, and it's not normally for export outside of Canada. It's for consumption within Canada. You have a situation where you have manufacturers of illicit cigarettes. They're manufactured in places like Akwesasne, for instance. They are then shipped to distributors in Ontario and

Quebec. They're not stamped. They're not meant to be exported, either. They're essentially being sold domestically.

**Hon. John McKay:** So then I go back to my original question. If in fact entity *x*, through their employees, directors, or officers, are manufacturing unstamped cigarettes. Does that mean that they would be caught up in this section?

**Mr. Paul Saint-Denis:** No, because under the Excise Act, there's a licensing regime, which will give authorizations for people to—

**Hon. John McKay:** So the licensing regime exempts them from criminal liability?

**Mr. Paul Saint-Denis:** That's correct because if you look at the legislation, it does point out that subsections 32 and 32.2 of the Excise Act, 2001, which provides a list of exemptions, so licensees, authorizations and so on and so forth, are exempted from the operation of this legislation.

**Hon. John McKay:** Thank you. One minute?

A question on *R v. Hussein Nur* and the slapping down the mandatory minimums. Are you concerned at all that the reasoning in *R v. Hussein Nur* will actually impact on your desire to impose a mandatory minimum?

**Mr. Paul Saint-Denis:** Well, the courts have handed down mixed decisions in the case of mandatorys. It really is something that's almost case by case. You have to look at the minimums being imposed and the activities that risk attracting these kinds of minimums. In *Nur* we're talking about firearms. The imposition of the penalty as far as a court was concerned was unconstitutional, but I think in a parallel case they found that another offence with minimums was constitutional.

So the regime that is set up here provides for a number of factors that need to be present for the minimum to be imposed. We believe that those factors, taken together...and it does mean that it requires at least a previous conviction under this legislation and a minimum quantity of the contraband product to be present for the minimum to be imposed, and then there's a sliding scale of minima. So you start off with the 90 days, and under the normal circumstances, it's quite possible that given the presence of all of these factors that a court would impose something around that penalty.

So I'm fairly confident that we put together a rational structure for minimum penalty.

⊕ (0910)

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

Our next questioner, from the Conservative party, is Mr. Brown.

**Mr. Patrick Brown (Barrie, CPC):** I have a few questions. Thank you for your responses so far.

I'm certainly very interested in this. I know in my riding, north of my riding we've had a few media reports of contraband tobacco, in the Simcoe North area, and so I think it's great that we have some action on this. The bill gives the Attorney General of Canada concurrent jurisdiction with the provincial attorneys-general to prosecute this new offence. Can you elaborate on that and what practical implications that would have?

**Mr. Paul Saint-Denis:** Practically, it means that both...if there had not been a provision allowing for concurrent jurisdictions, only the provinces would be able to prosecute. So you would have either the RCMP or provincial law enforcement laying charges but only the provinces would be prosecuting.

With concurrent jurisdiction, it does mean that the federal prosecution service will be able to prosecute these offences as well. So practically speaking, it's likely that the RCMP will lay charges and the federal prosecution service will prosecute in many cases, and in other cases, either form of law enforcement will lay a charge and then the provincial prosecutors will prosecute. It really will depend on the area.

**Mr. Patrick Brown:** And do you believe, if it was done otherwise, you'd see gaps in enforcement and prosecution?

**Mr. Paul Saint-Denis:** Quite possibly, quite possibly, but we felt that it was as important for the Attorney General of Canada to be able to prosecute as well as allowing for the normal situation of the provinces to prosecute.

**Mr. Patrick Brown:** There have been other cases where it has been done that way?

**Mr. Paul Saint-Denis:** Well, yes, the drug offences, for instance. There's concurrent prosecution there. Our prosecution service prosecutes most of the drug offences but in Quebec and in parts of New Brunswick, the provincial prosecution prosecutes drug offences. With certain criminal code offences, there is concurrent jurisdiction.

You have to remember that all of the offences of the criminal code normally are prosecuted by the provinces. That's the norm. So we've created something of an exception here and there are a few other such exceptions in the code where both the province and the Attorney General of Canada can prosecute. So what we've done is we've added this particular exception to a small list of offences.

**Mr. Patrick Brown:** Can you elaborate on the summary and indictable offences as it relates to this bill?

**Mr. Paul Saint-Denis:** Essentially, it gives the opportunity for the prosecution to determine whether to prosecute using a process whereby a lesser penalty is available if one prosecutes by way of summary conviction. If the circumstances are serious enough then the prosecutor can

choose to go by way of indictment. Practically speaking, the process is more simplified when it's by way of summary conviction. It tends to be a little more complicated by way of an indictment.

**Mr. Patrick Brown:** The other question I wanted to follow up on and we touched a little bit on is Bill C-10. It states:

A person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

If the tobacco product is 10,000 cigarettes or ten kilograms or more of any other tobacco product or the amount of raw leaf tobacco is ten kilograms or more can you elaborate on why these particular amounts were set in terms of these numbers?

**Mr. Paul Saint-Denis:** First, it was important for us to have a fairly significant quantity of product in order to justify a minimum penalty in order to resist a charter challenge. It would have been problematic if someone were selling a single cigarette and was looking at a minimum of 90 days. The courts would have had some serious problems with that. It was important for us to have a certain quantity. We chose those quantities because they represent what the RCMP tends to focus on a a minimum. If an individual has 10 kilograms of cigarette product or 10,000 cigarettes themselves these will be the kind of quantities that attract RCMP attention. The RCMP will get involved in lesser amounts but they prefer to focus their attention on large-scale operations. For them, large-scale operations usually means a master case which is about 10,000 cigarettes. So, 10,000 cigarettes or more is what they'll want to focus on. That was the amount that we thought was best for the quantity.

☎ (0915)

**Mr. Patrick Brown:** I have one last quick question.

Since you're in the policy section I realize there's a lot of funds involved in contraband tobacco. In your research have you found that the funds associated with contraband tobacco contribute to other forms of crime?

**Mr. Paul Saint-Denis:** We assume that it does to the extent that there's organized crime involved. Organized crime usually is not limited exclusively to one very specific activity particularly in the area of contraband. Often the same contraband roots will be used to smuggle not just tobacco but drugs or firearms. The money that's made in one area such as contraband tobacco can be used to finance other illicit activities. Yes, I believe that does happen.

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

Our next questioner is from the New Democratic Party, Madam Péclet.

[*Français*]

**Mme Ève Péclet (La Pointe-de-l'Île, NPD):** Merci, monsieur le président.

Merci aussi à M. Saint-Denis de répondre à nos questions.

Ma première question concerne simplement les peines qui ont été imposées jusqu'ici à la suite de la contrebande de tabac. Seriez-vous en mesure de donner des exemples? Y a-t-il une jurisprudence qu'on pourrait voir se dessiner dans les tribunaux?

**Me Paul Saint-Denis:** La jurisprudence varie sensiblement.

Plus récemment, je crois que nous voyons de plus en plus de peines d'emprisonnement imposées aux adeptes de la contrebande. Jusqu'aux toutes dernières années, on avait plutôt tendance à imposer des amendes. Celles-ci étaient souvent imposées mais impayées parce que les individus n'avaient pas l'argent pour ce faire. Avec le temps, je crois que les tribunaux ont reconnu qu'il y avait un problème. D'une part, le phénomène de la contrebande de tabac augmente. On a maintenant tendance à imposer des peines d'incarcération légères.

**Mme Ève Péclet:** Donc, si vous faites la comparaison entre les peines minimales obligatoires imposées dans le projet de loi et celles que les tribunaux avaient l'habitude d'imposer...

**Me Paul Saint-Denis:** Dans ce cas-ci, avec ce qu'on propose dans le projet de loi, c'est un peu terre inconnue dans le sens qu'on ne sait pas si les procureurs fédéraux voudront se servir de la nouvelle infraction ou de l'ancienne infraction.

Alors, si on se sert de la nouvelle infraction, on ne sait pas s'ils voudront se servir de la procédure sommaire ou de l'acte criminel. Donc, c'est un peu tôt pour essayer d'anticiper quels seront les résultats.

Par contre, je pense que si on tient compte des facteurs qui vont permettre l'imposition d'une peine minimale, que normalement les tribunaux auraient imposée quand même une peine d'incarcération quelconque, le terme de cette peine m'est inconnu.

⊕ (0920)

**Mme Ève Péclet:** Vous êtes sûrement familier avec le rapport Gladue.

**Me Paul Saint-Denis:** Oui.

**Mme Ève Péclet:** En fait, il y a deux petites questions par rapport à cela.

Croyez-vous que l'imposition d'une récidive, dont une peine minimale obligatoire, pourrait entrer en conflit avec le rapport et ses recommandations à l'égard de la prise en considération des facteurs par les juges pour l'imposition d'une peine?

**Me Paul Saint-Denis:** En partie, le rapport Gladue et la cause d'Ipeelee sont basés sur l'existence de certaines dispositions dans le code. À l'article 718, on prévoit que les tribunaux doivent tenir en compte la circonstance d'un accusé autochtone.

Par contre, il n'est nulle part dit que le gouvernement ne peut pas modifier de façon législative l'impact de la disposition de l'article 718 visant la population autochtone. Ce n'est pas la première infraction où il a prévu une peine minimale. Je pense que dans ce cas-ci...

**Mme Ève Péclet:** Excusez-moi de vous interrompre, mais vous savez justement que le dernier rapport du Bureau de l'enquêteur correctionnel parle d'un taux disproportionné de la présence des autochtones dans les prisons. Donc, on pourrait se demander quel serait l'impact du projet de loi C-10 sur le taux d'incarcération des autochtones et, par le biais justement, l'imposition d'une peine minimale obligatoire qui viendrait peut-être à l'encontre des dispositions de l'article 718.

**Me Paul Saint-Denis:** Non, parce que l'article 718 c'est une disposition qui a été créée par le Parlement. Le Parlement peut certainement, à sa discrétion, venir modifier l'intention de l'article 718 en imposant dans certains cas, visant certaines activités, des peines minimales.

L'article 718 n'est pas une disposition qui parle en termes d'absolu. L'article 718 doit être interprété en fonction d'autres dispositions qui existent dans le code. Dans certaines de ces dispositions, on trouve des peines minimales, qui auront le même impact autant sur les autochtones que sur les autres contrevenants.

Est-ce que cela risque d'avoir un impact disproportionné sur les autochtones? Je ne le sais pas parce que je ne sais pas jusqu'à quel point les autochtones sont impliqués dans certaines des activités de ce qu'on appelle « le trafic de la contrebande ». On sait que dans certains cas, c'est sûr que les autochtones sont impliqués dans la manufacture. Par contre, est-ce qu'ils sont impliqués dans la distribution de ce produit qui a été manufacturé? Est-ce que ce sont eux qui s'assurent de transférer ou de transporter, de distribuer ces cigarettes? Je ne le sais pas.

[English]

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

The next questioner from the Conservative Party is Mr. Dechert.

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

Thank you, Mr. Saint-Denis, for your appearance here this morning.

In answer to a question from my colleague Mr. Brown you elaborated a bit on the constitutional review process that you go through when you're drafting legislation. I wonder if you could elaborate more on what the department did to examine whether or not this legislation would withstand a constitutional challenge. Perhaps you could tell us a little bit about how that works generally within the department in relation to any new legislation that's coming forward.

**Mr. Paul Saint-Denis:** In this case, we're talking about minimum terms of imprisonment. We're aware that the courts have a certain view of the mandatory terms of imprisonment. I don't want to say we've had conflicting judgments, but we've had decisions that will give constitutional

sanction to certain terms and certain provisions with MMPs provided, and others have been struck down as being disproportionate.

What we attempt to do is when we're looking at creating a range of MMPs for an offence, either a new offence or an existing offence. We want to make sure that it will not be considered cruel and unusual punishment as set out in section 12 of the charter. We try to set up a system whereby perhaps some factors are attached to the imposition of the MMP. For instance, there needs to be a minimum quantity of contraband product. There needs to be a number of previous offences for which there were convictions. It has to be prosecuted by way of indictment. By attaching all of these factors, we try to structure a system that will appear to the courts as a rational link between the prohibited activities, the aggravating factors, and the imposition of the MMP. We think that in that fashion, the courts will be able to examine that and conclude that this is a reasonable and rational approach to this offence.

⊕ (0925)

**Mr. Bob Dechert:** That's very good. We've explained. It helps us to understand how that review is done. Is this done in every case of new criminal legislation?

**Mr. Paul Saint-Denis:** It's done in every case certainly where an MMP is being contemplated. You may recall that Bill C-10 had for instance in the case of drug offences a number of MMPs dealing with schedule 1 and schedule 2 substances for things like trafficking and so on. All of those offences, all of these penalties were available but only in the presence of aggravating factors. That was something that bolsters the argument that this is a reasonable penalty in light of the presence of the aggravating factors and this particular substance.

That particular legislation has only been in force for almost a year now. I'm not aware of any successful charter challenge, but it's still in its early days. There may be a successful charter challenge to those penalties. We think that we put together a regime and a structure that was rational and defensible before the courts.

**Mr. Bob Dechert:** Thank you. That's very helpful.

**The Chair:** Thank you, sir. Thank you for those questions and answers.

The next questioner from the New Democratic Party is Mr. Kellway.

**Mr. Matthew Kellway (Beaches—East York, NDP):** Thank you very much, Mr. Chair. Through you, thank you Mr. Saint-Denis for being with us today.

I was struck by your response to Madam Péclet's question and your response to the question about the differential impact of this law in certain parts of Canadian society.

I'm going to focus on the first nations piece because when I read the legislative summary from the Library of Parliament, the first nations stuff runs throughout the discussion and the analysis and talks about the Cornwall-Valleyfield territory there.

Your response was, as I understand it, that you don't know if there's going to be a differential impact. Is that correct?

**Mr. Paul Saint-Denis:** I don't know. I'm not sure to what extent there is aboriginal involvement in the trafficking of tobacco. We know that there is a lot of manufacturing activity, but manufacturing is not covered by this legislation. Then we're left with some of the prohibited activities such as the transport, for instance. I do not know to what extent—

**Mr. Matthew Kellway:** Here's the follow-up question then. Don't you have an obligation to know? Doesn't the government when making law—even if it's criminal law, you can put it in the code but there's a social context for this law. In the absence of consultation and in the absence of that kind of social knowledge and the absence of knowledge about how this actual criminal activity works—and I know you can't know it in sufficient detail or you probably would have put it out of business already—but it seems to me that you are taking an enormous risk on the effectiveness of the law and an enormous risk on the potential for significant differential impact on certain constituencies in our society. Perhaps it's as obvious as forcing police forces to start enforcing this law. You're putting crowns in provinces into a position where they have to deal with mandatory minimums and how are they going to respond? I'm struck by how you make a law without taking all of that into consideration because I don't know how you can know the effectiveness of that law in the absence of that consideration and knowledge.

⊕ (0930)

**Mr. Paul Saint-Denis:** I think you're right. It would have been useful to be able to consult broadly outside the government but this was not the case. We were asked to do a particular job under particular circumstances and that's what we were left with.

**Mr. Matthew Kellway:** Perhaps in your position you could share with us your thoughts on the potential risks of proceeding in the absence—in general terms. I don't want to put you on the spot—of that kind of consultation and knowledge.

**Mr. Paul Saint-Denis:** Well, I guess the risk is of not getting as much information as one can. In that regard, we do try to anticipate the kinds of reactions, the kinds of problems that may arise and try to tailor our legislation according to what we believe would be problems. That being the case, we put together legislation that we hoped will respond to those concerns. At the same time we're asked to prepare legislation in light of the government's directives. So that's our first and foremost obligation.

**Mr. Matthew Kellway:** I'm just looking at the legislative summary we received from the library. It refers to a Mohawk Council of Akwesasne press release announcing the receipt of a grant from the Government of Ontario to assist in developing a tobacco law and regulatory framework and calling on the federal government to work with them to address tobacco concerns, rather than increasing sentences and the enforcement presence around their community. So, it's in that kind of context where you have a province and first nations working—it would appear from that—in a completely contrary direction. I wonder how this law then gets received, what police forces do with that, what a community does with that, what the

Government of Ontario does with this in the absence of any consultation and discussion about this.

**Mr. Paul Saint-Denis:** I'm not a hundred percent convinced that this is necessarily working in contradiction with what's written in that document. You have to remember that under the Excise Act 2001 there is a regulatory regime that allows for the obtention of permits and authorizations to manufacture, to possess for the purpose of selling and so on and so forth. This is all done through the Excise Act and through Revenue Canada and, I guess, the Department of Finance. But if a groups of individuals wish to get involved in the legitimate manufacture and sale and distribution of a tobacco product they can work it through that regime.

In the statement that you read out, the suggestion was that the government develop a regulatory approach for dealing with this, but there already exists a regulatory approach. It's in the Excise Act.

⊕ (0935)

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

We have now exhausted the speakers' list that we have now. My suggestion is, because our next panel is three groups, if we suspend now and they're all here and we get settled in, ready to go, before 9:45, we can get the meeting started and then we'll give them their full time for their presentations and it will give us more chance to ask questions because we only had one panellist today in this first panel, and go to three.

So with that, monsieur Saint-Denis, *merci beaucoup* for your presentation this morning, and with that we will suspend for a couple of minutes.

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⊕ (0940)

**The Chair:** I'm going to call to order the second half of today's meeting. This is meeting number eight.

Just so committee members know, the clerk has done a fantastic job of lining up witnesses for us from everyone's lists. There was a lot of crossover, to be frank.

We have full panels for Thursday. We have two full panels for Thursday, two on each side, two in the first half and two in the second.

We have full panels for Tuesday. We're waiting to hear from one more group.

It looks as though we will be meeting on Thursday morning. Just so members are aware, there hasn't been any decision about what Thursday will look like in terms of schedule. But we will be meeting and we will be doing clause-by-clause. If you have any amendments that you're interested in, please give them to the clerk as soon as possible, hopefully by Friday. I know that we have another panel to see, so you can do some things after that. But the sooner, the better, so that we are prepared.

With that, we will go to our next panel. We have, from the National Coalition Against Contraband Tobacco, Gary Grant, spokesperson. From the Ontario Korean Businessmen's Association, we have Cha Dong. And from the Coalition québécoise pour le contrôle du tabac is Flory Doucas, co-director and spokesperson.

We're going to start with the Coalition québécoise pour le contrôle du tabac. You have up to 10 minutes.

Thank you very much.

[*Français*]

**Mme Flory Doucas (co-directrice et porte-parole, Coalition québécoise pour le contrôle du tabac):** Merci, monsieur le président.

Mesdames et messieurs les députés, je m'appelle Flory Doucas. Comme l'a mentionné M. le président, je suis co-directrice et porte-parole de la Coalition québécoise pour le contrôle du tabac. Au nom de plus de 460 organismes que regroupe la coalition, je suis reconnaissante de l'occasion qui m'est offerte aujourd'hui de présenter nos commentaires sur le projet de loi C-10.

Malgré ce que vous avez pu entendre dans les médias et ailleurs, dans les faits la baisse de la contrebande nous est confirmée par plusieurs sources, notamment les multinationales de tabac elles-mêmes qui année après année relatent la baisse de la contrebande au Canada dans leur présentation aux investisseurs. J'attire votre attention à la page 3 du mémoire. Il s'agit d'une présentation de 2012 de Philip Morris International qui est propriétaire de RBH au Canada. Dans le document *Power Point* qui a été présenté aux investisseurs — gardez en tête que ce sont des documents qui se trouvent sur Internet, qui sont publics mais qui ne sont pas largement diffusés — on remarque ceci. Philip Morris concède qu'il y a eu une baisse de la contrebande quand même dramatique entre 2007 et 2011 au Canada, baissant de moitié soit de 14 % à 8 % et notamment en documentant les baisses qui ont été réalisées au Québec et en Ontario, passant de plus de 40 % à 15 % au Québec et un peu plus en Ontario.

Dans une présentation encore plus récente de 2013, British American Tobacco, la compagnie mère d'Imperial Tobacco, précise que le niveau de contrebande est demeuré stable ou *flat* comme elle dit, entre l'hiver 2012 et 2013. Ce n'est donc pas surprenant. Sachez qu'au Québec seulement, le gouvernement du Québec investit près de 18 millions de dollars par année dans la lutte à la contrebande ayant mis sur pied plusieurs programmes et différentes mesures.

Malgré ces constants et les déclarations des fabricants de tabac, les groupes prétendant représenter les détaillants, comme l'Association canadienne des détaillants en alimentation et la Coalition nationale contre le tabac de contrebande manquent presque systématiquement de mentionner les baisses importantes de contrebande en Ontario et au Québec réalisées ces dernières années. Par exemple, page 6 du mémoire, M. Grand, pas plus tard qu'en août dernier, est cité dans l'*Edmonton Sun*, en présentant le problème de la contrebande au Québec et en Ontario d'« énorme » et comme « une épidémie ».

⊕ (0945)

[*English*]

With contraband tobacco sales already a huge problem in Ontario and Quebec, more and more of it is being seen in western Canada.

It's an epidemic back east.

[*Français*]

Rien sur la baisse de la contrebande.

Ce genre de déclaration n'est pas surprenant. Étant donné que ce qui plane vraisemblablement derrière les réponses évasives du représentant de la CNCTC offertes aux membres du comité sénatorial en mai dernier, — il s'agissait de M. Rouillard, le porte-parole francophone de la coalition — en réponse à une question demandant quelle était la proportion du budget de la CNCTC provenant des fabricants de tabac.

D'après une vérification récente faite par l'AQCP, le mois dernier, les membres du comité sénatorial n'avaient toujours pas reçu de réponse qui leur avait pourtant été promise. J'attire votre attention aux échanges retrouvés à la page 7 de notre mémoire, entre les honorables sénatrices Cordy et Fraser et le représentant de la CNCTC, qui ont permis de révéler que c'était une firme de relations publiques qui embauche le porte-parole et qui développe les campagnes de ladite coalition.

Au milieu de l'intervention, suite à la question de Mme Cordy, M. Rouillard a répondu ceci:

[*English*]

The members of the coalition contribute to a kitty. They created a coalition and they appointed me, through a public affairs company. To be their spokesperson and to stand up for the coalition's interests. That is my role. I do not meet directly with these people. We propose public awareness campaigns and we appeal to parliamentarians and governments to help fight contraband and make the public aware of the negative impacts of contraband.

[*Français*]

La sénatrice lui demande:

[*English*]

“I have a question for you.”

...what is your total budget and what portion of this budget comes from the tobacco industry?

I do not have the information.

Would you be able to get us that information?

Yes.

[*Français*]

Je me demande pourquoi vous n'avez pas la firme de relations publiques ici aujourd'hui ou les bailleurs de fonds de cette coalition.

Pourtant, les groupes ne cessent de sonner l'alarme au sujet de la contrebande, notamment en parlant de la fermeture des dépanneurs. Je vous présente, à la page 8, un extrait d'un rapport de l'ACDA dans ses propres chiffres qui montrent que le nombre de dépanneurs et des C-stores est resté plutôt stable ces dernières années.

Enfin, la coalition appuie le projet de loi C-10. C'est un outil supplémentaire dans la gamme d'outils disponibles à la police, qui devrait être réservé pour lutter contre les plus grands trafiquants de tabac. Par ailleurs, notons que ce même gouvernement n'a arrêté aucun dirigeant des compagnies de tabac impliquées dans la crise de contrebande des années 1990. Aucun dirigeant de la grande crise de la contrebande n'est allé en prison. Rappelons aussi que la vente de tabac à un mineur est punie par une amende et non par l'ouverture d'un dossier criminel ou une peine de prison. Bon an mal an, 15 % des détaillants au Canada vendent du tabac aux mineurs.

Enfin, rappelez-vous qu'au plus haut niveau de la contrebande, c'est-à-dire environ vers 2008-2009 c'était les produits légaux qui avaient la cote de popularité auprès des jeunes. En fait, les jeunes préfèrent les marques légales. Se promener avec un sac Ziploc ou une marque inconnue, ça ne fait pas très *cool*. Donc, le projet de loi C-10 est un bon pas, un bon début. Cependant, il importe de souligner que de nombreuses autres mesures prometteuses restent sur les tablettes.

Le gouvernement fédéral devrait davantage miser sur l'introduction de mesures d'envergure, structurantes qui affectent l'approvisionnement à la source. Par exemple, en contrôlant les matières premières, comme les feuilles de tabac, comme le fait le Québec. Par contre, le fédéral ne le fait pas et n'oblige pas les autres provinces à suivre le pas. Le papier des cigarettes et les filtres, pour qu'ils ne se rendent pas facilement dans les usines sans permis fédéral ou provincial.

Nous sommes préoccupés par l'annonce d'un nouveau déplacement du poste frontalier aux États-Unis, à Massena, en l'occurrence. Le déplacement du poste frontalier de Cornwall aux États-Unis n'est pas une avenue judicieuse. Advenant ce regrettable changement, les autorités canadiennes devraient envisager l'établissement d'un second poste frontalier à l'emplacement actuellement occupé par le poste temporaire à Cornwall.

Ainsi, tout comme les passagers à destination d'un vol américain, dans la grande majorité des aéroports canadiens, ont souvent l'obligation de se présenter à des douaniers canadiens et, par la suite, américains. Les gens venant au Canada en passant par le poste frontalier de Massena aurait, lui aussi, l'obligation de se présenter à un deuxième contrôle, soit à Cornwall.

Des critères pourraient être établis de sorte à cibler des cargaisons susceptibles de contenir du tabac de contrebande afin d'alléger le passage pour d'autres cargaisons. En conclusion, le tabac tue 37 000 Canadiens par année. Plus de 50 % des jeunes de la 9<sup>e</sup> année à la 12<sup>e</sup> année, qui ont fumé du tabac au cours du dernier mois l'ont fait avec un produit de tabac aromatisé. On attend les réactions, les réponses du gouvernement fédéral à la vraie épidémie du tabac au Canada, ce qui entraîne des centaines, des milliers de jeunes dans le piège du tabagisme à chaque semaine.

Merci.

☎ (0950)

[*English*]

Thank you very much.

Our next presenter is from the other coalition, the National Coalition Against Contraband Tobacco, Mr. Grant.

**Mr. Gary Grant (Spokesperson, National Coalition Against Contraband Tobacco):** Good morning, Mr. Chair. Good morning, everybody.

I am Gary Grant, and I'm the national spokesperson for the National Coalition Against Contraband Tobacco, or as we'll refer to it, the NCACT.

I'm a thirty-nine-year veteran of the Toronto Police Service, and I'm also the founder and chair of Toronto Crime Stoppers. My involvement with Crime Stoppers also means I'm one of the coalitions's members.

The NCACT is a non-profit, non-partisan organization that works to make the public more aware of the problem of illegal cigarettes and contraband tobacco. The coalition is made up of 16 organizations from across Canada representing industry, business, and law enforcement. Beyond Toronto Crime Stoppers, these organizations include retail organizations such as the Canadian Convenient Stores Association and the Retail Council of Canada, Chambers of Commerce at the federal and provincial levels, and the Customs and Immigration Union. A full list is available on our Website at [www.stopcontrabandtobacco.ca](http://www.stopcontrabandtobacco.ca).

I became involved in the coalition because the growing accessibility of illegal cigarettes is a serious problem in all communities across Canada, big and small, whether it's along the St. Lawrence River, in southwestern Ontario, the rural areas of northern New Brunswick or the Gaspé, illegal cigarettes are flowing freely from the hands of criminals directly into the hands of Canadians. In fact it may surprise some members of the committee where we have seen busts in recent months.

In Charlottetown in January of this year police seized more than 100,000 contraband cigarettes. In February a Moncton man was arrested near Edmunston, New Brunswick with 200,000 illegal cigarettes and pills believed to be Methamphetamines. In October two men from Magog, Quebec were fined more than \$100,000 for smuggling tens of thousands of illegal cigarettes, and in western Canada, particularly Alberta and Manitoba, millions of cigarettes have been seized in raids over the past several years.

Just a few weeks ago Quebec newspaper *La Presse* highlighted the involvement of Hells Angels in the illegal cigarette trade in Montreal. It outlines the elaborate criminal distribution network these gangsters use to move, and distribute, and sell cigarettes in Quebec. It also makes clear how the Hells Angels were being supplied by an illegal cigarette factory.

The Hells Angels still have a major presence in Canada. This was reinforced through police raids in Gatineau last week, and they are being funded in part by illegal cigarettes. I brought copies of this *La Presse* article in English and French for members of the committee.

I think it's worthwhile to outline what we mean when we refer to contraband. It's any tobacco product that has not followed proper government regulations or properly paid federal and provincial tobacco taxes.

Illegal cigarettes are often sold in transparent plastic baggies where 200 cigarettes can cost less than \$15. These are smuggled through criminal distribution networks across the country. They are all sold via hundreds of smoke shacks that are located near major Canadian cities.

These smoke shacks have become more elaborate in recent years demonstrating just how profitable they are. However the product they sell still does not pay both federal and provincial taxes so it's still contraband tobacco.

Why should we be concerned about contraband tobacco? Well as I've already suggested, it is a cash cow for organized crime. The RCMP has estimated there are about 175 criminal gangs that use the trade in illegal cigarettes to finance their other activities including guns, drugs, and

human smuggling. We cannot tolerate some of the worst elements of Canadian society being allowed to effortlessly profit from this criminal activity.

Contraband tobacco is also a prime source for youth smoking. Criminals who sell illegal cigarettes don't care how old their customers are, and they certainly don't check for I.D. Given the ridiculously cheap price of contraband cigarettes, these are readily accessible to our teenagers. Remember a baggy of 200 illegal cigarettes can cost less than the price of a movie ticket.

Tobacco smuggling also has a negative impact on good government. It makes a mockery of tobacco control efforts. If bags of cigarettes can be bought from dealers on street corners easily, all of our efforts to restrict youth access are undermined.

Similarly, governments in Canada lose an estimated \$2.1 billion a year in tax revenue as a result of tobacco smuggling. That's a lot of money that could be better spent in the government treasuries such as roads, police, and health. It's money that belongs to the Canadian taxpayers.

The National Coalition was very happy to see this legislation reintroduced as quickly as it was. It is an important step in the fight against contraband tobacco, and a reminder this issue remains a significant and growing problem in Canada.

☎ (0955)

There is still 50 illegal cigarette factories operating in this country. There are more than 300 smoke shacks. In Ontario some are even now operating off-reserve. Meanwhile, organized crime benefits from the proceeds of contraband tobacco. Government tobacco-control regulations, especially those focused on youth, are undermined. The bill shows that the government is listening to the appeals of the public, law enforcement, the provinces, and retailers, with regard to illegal cigarettes. The government's announcement earlier this year that a special task force of 50 RCMP officers will be deployed to deal with tobacco smuggling is most welcome. More remains to be done. Government action can't stop here. Remember, contraband arrest represents only the tip of the iceberg of the larger problem. The RCMP estimates that they capture as little as 5% of the total trade.

There are a number of things that the government can do. One example, contraband tobacco is an issue that reaches across political and jurisdictional boundaries. The organized crime brutes that benefit from contraband cigarettes operate without any regard for political, departmental, or territorial boundaries. We should work together. Smugglers do not stop at provincial borders. They benefit every time the different levels of government fail to work together to stop tobacco smuggling. All levels of government will also need to remain diligent and continue to monitor and act on this problem. With so much money involved criminals are bound to innovate and we must be ready to respond.

To conclude, the NCACT is very pleased to see that the government is taking this issue seriously. We are confident that this legislation will make a difference.

Thank you for your time.

**The Chair:** Thank you very much, sir, for that presentation.

Our next and final presentation for this panel is from the Ontario Korean Businessmen's Association, Mr. Dong.

The floor is yours. You have ten minutes, sir.

**Mr. Cha Dong (General Manager, Ontario Korean Businessmen's Association):** Good morning, Mr. Chair, and members of the committee.

My name is Dong Cha. I am the general manager for the Ontario Korean Businessmen's Association, also known as OKBA.

On behalf of our entire 1,500-plus membership, I would like to thank you for the opportunity to speak to you today on Bill C-10, and more specifically on how the problem of contraband tobacco impacts our members' businesses and livelihood. It is a very important issue to our membership.

The OKBA was originally established in 1973 as a not-for-profit association for independent convenience store owners throughout the province of Ontario. Our typical member operates a store that is a family-run business. It employs three or four people and the store is usually open seven days a week, 14 hours a day.

In many cases our store owners, most of whom are immigrants to Canada, choose to invest their life savings in order to operate their own businesses and provide a better future for themselves and for their families. Undoubtedly, you all have independent convenience stores operating in your ridings, and for those of you representing ridings in Ontario, many of those stores are owned and operated by members of the Korean community.

Our members work hard. We play by the rules and we respect and appreciate the law that Canada has in place to protect society from criminals and the crimes they commit.

Contraband tobacco has been an ongoing problem that has critically impacted the livelihood of many of our store owners over the last several years. Since 2006 we have seen approximately 700 of our members' stores close down probably due to the easy access and cheap price of unregulated and illegal contraband tobacco.

We know that contraband tobacco exists and it is available in just every community across the province and increasingly across Canada. Where contraband is present and readily available, our members have experienced up to a 50% drop in gross sales for their stores.

In addition to lost tobacco sales, less food traffic results, and less purchases overall as those lost customers are no longer entering our stores to pick up their bags of milk, loaves of bread, or chocolate bars for their families.

While the smoking level has been steadily and slowly declining over the years, our members have diversified the range of products and services they sell to stay afloat. However, when our members play by the rules, collect and remit all necessary taxes, and ensure that minors are not purchasing tobacco, we lose hope when we see contraband being sold in our communities, openly, right in front of our stores, seemingly without impunity. Something must change.

We applaud the government's decision to introduce Bill C-10 and its proposed amendments to the Criminal Code as it relates to trafficking contraband tobacco. We believe that up until now there has not been enough public deterrence against the many criminal groups that participate in the illegal trade.

In addition, smokers need to realize that purchasing and consuming even small quantities of unregulated and unlicensed tobacco is illegal. Contraband tobacco is not a victimless crime.

Contraband trafficking presents a serious threat to our businesses, results in a sizeable loss of tax revenue to government, and provides minors with easy access to unregulated and illegal tobacco products.

We realize that dealing with the problem of contraband tobacco is not easy and that it requires cooperation between the various levels of government and law enforcement.

🕒 (1000)

However, we hope that with the passing of this legislation and, more importantly, the increase of additional resources to law enforcement, the fight against contraband tobacco can be won.

The OKBA and its membership have become increasingly critically active on the issue of the contraband tobacco. We look to support the good government policy, but first and foremost recognize the threat contraband tobacco has on our society, and secondly enhance the tools and resources our law enforcement and our courts have to fight the problem and do what is right for Canada.

Thank you for your time and interest.

**The Chair:** Thank you, sir, for that presentation.

That concludes our presentations.

Our first questioner for the first round is madame Boivin from the New Democratic Party. If you could make sure, because we have three...identify who you're asking the question to.

🕒 (1005)

[*Français*]

**Mme Françoise Boivin:** Je remercie le panel de s'être présenté devant nous ce matin.

Ce n'est définitivement pas un dossier facile pour ce qui est de la contrebande de tabac. Le projet de loi est une chose, mais toute la problématique concernant la contrebande de tabac... Ce qui me fascine dans vos présentations, entre autres, surtout Mme Doucas et M. Grant, est que tout en ayant le mot coalition, je comprends que vous n'avez pas tout à fait les mêmes intérêts à ce sujet. Disons que je ne vous inviterais pas tous les deux à souper en même temps à moins que je veuille avoir un peu d'excitation.

J'essaie de comprendre, monsieur Grant, dans les gens qui font partie de votre coalition,

[*English*]

Am I correct in assuming that you have a lot of the industry that produced the tobacco and sells the legal tobacco in your coalition?

**Mr. Gary Grant:** Madam, the 16 members are a pretty broad spectrum. We do have the Canadian Tobacco Manufacturers' Council—

**Ms. Françoise Boivin:** Okay, that's just...because I'm trying to reconcile both—

**Mr. Gary Grant:** —and the Canadian association, but it's also the border guards—

**Ms. Françoise Boivin:** It's not a reproach.

[*Français*]

Ce n'est pas un reproche.

[*English*]

**Mr. Gary Grant:** I realize it. It is part and parcel of our coalition, and it's a broad-based coalition.

[*Français*]

**Mme Françoise Boivin:** Tout à fait.

En fait, l'intérêt premier, pour votre coalition, essentiellement, si je comprends bien, est d'éviter la contrebande de tabac pour permettre à ceux qui font la vente du produit légalement de le faire correctement alors que pour vous, j'ai l'impression que vous préféreriez personnellement plutôt que l'industrie du tabac n'existe pas, si je peux m'exprimer ainsi.

**Mme Flory Doucas:** Oui, c'est ma préférence personnelle, mais je pense aussi qu'on est gagnant sur le plan éthique et économique.

**Mme Françoise Boivin:** Sachez que vous parlez à une ancienne fumeuse et je peux vous dire publiquement comment il a été extrêmement difficile de se départir de cette dépendance. Vous

parlez à quelqu'un qui a consommé, pendant 14 ans, un produit Nicorette et qui vient juste d'arrêter de le prendre. Alors, si, des fois, j'ai un ton agressif, mettez-le sur ce compte.

Donc, tout cela pour dire que je comprends très bien. Par contre, il faut être logique, on est dans un monde où il y a un peu d'hypocrisie en ce sens et tout en reconnaissant tout le monde autre de la table, j'en suis convaincue, que c'est un produit qui tue et qu'en même temps, on en profite sur le plan économique. On ne peut pas faire le reproche à personne d'autre qu'à notre système et nos lois à cet égard. J'en conviens.

Un point m'a frappé dans votre mémoire parce qu'il nous fait regarder les grands titres différemment. La semaine dernière, jeudi passé, il y avait un article dans, je pense, *La Presse*, non, c'était Radio-Canada, qui titrait: — cela intéressera mon ami Robert Goguen — *Une cigarette sur cinq, au Nouveau-Brunswick, proviendrait de la contrebande*. J'ai lu l'article, j'ai sauté et je me suis rappelée qu'on commençait l'étude du projet de loi C-10.

Alors, il sera drôlement intéressant de l'étudier et on prouvera le point que la contrebande est épouvantable. En tout cas, ça va mal au Nouveau-Brunswick. Je le lisais et après, je le mettais en relief avec votre mémoire parce qu'on dit, dans le troisième paragraphe: « En mars dernier, le gouvernement provincial avait augmenté les taxes sur les produits du tabac pour tenter de renflouer ses coffres. »

Si je comprends bien, vous nous dites que la contrebande n'est pas aussi grande que les grands titres nous laissent croire et qu'à chaque fois que les gouvernements pensent à hausser les prix pour aller chercher plus de taxes, — c'est une belle vache à lait pour les gouvernements — dans ce temps, par exemple, la coalition duquel fait partie M. Grant comme porte-parole, les cris d'alarme nous disent de faire attention, que la contrebande est grave, etc. et que, maintenant, toutes les associations profitent de la vente du tabac. Est-ce que j'ai bien compris que c'est l'essentiel? Vous nous dites que ce n'est pas si gros.

**Mme Flory Doucas:** Vous savez, un pourcentage de contrebande, c'est un pourcentage de trop. On en convient. Personne n'est contre la vertu, personne n'est contre la lutte à la contrebande.

Ce qui se passe actuellement, ce sont les cris d'alarme qui s'entendent et deviennent de plus en plus forts chaque fois qu'on parle d'une initiative pour réduire le tabagisme qui touche tout le monde, les jeunes, les gens âgés. Quand on parle de réglementation ou de hausse de taxes, on vient brandir l'argument de la contrebande. Pas plus tard qu'en 2010, le gouvernement actuel a renoncé à bonifier les mises en garde en disant qu'il allait cibler la contrebande. Après le travail des groupes de santé, on a souligné que l'un n'empêchait pas l'autre.

⌚ (1010)

**Mme Françoise Boivin:** D'ailleurs je vais conclure parce que je sais que mon temps s'écoule rapidement.

Je veux simplement souligner

[English]

Mr. Dong Cha, I think you said probably the most important thing, everything was important. But you said we need more policing on the ground because all this law will do might be very interesting but if we don't put the boots on the ground, not much will be happening because nobody will come in front of the courts to be accused of anything on contraband. So I appreciated it that comment tremendously.

**The Chair:** Thank you very much. Thank you for those questions.

Our next questioner is Monsieur Goguen from the Conservative Party.

[Français]

**M. Robert Goguen (Moncton—Riverview—Dieppe, PCC):** Je remercie tous les témoins d'être présents aujourd'hui.

[English]

Thank you very much for appearing here today and providing your perspective.

I want to ask Mr. Grant, I wonder if you could tell us about the positive aspects that this bill would have on the public health issues. There's a lot of concern about substances that are found in legal cigarettes and they don't quite match what the consumer thinks. I guess we had Trevor of Public Safety who stated “that these substances made in cigarettes are even more dangerous than those that are illegally sold”. Do you have any thoughts on that?

**Mr. Gary Grant:** My personal thoughts and the coalition's thoughts, we don't have a position on that. We have seen the RCMP lab results of the contraband cigarettes. They're not pretty. Nobody wants to compare cigarettes to cigarettes because they're all bad. So we don't have a position on that.

**Mr. Robert Goguen:** Any of the other panellists want to comment on that?

**Mr. Gary Grant:** Sorry, I was going to follow up on that. There was a recent study where the Canadian Addiction and Mental Health Centre indicated that while teen smoking rates at one time were on the decline in Ontario, they are no longer on the decline. What they have found through their studies is that if teens are smoking now, they're smoking more contraband. If they're smoking more contraband cigarettes, they're smoking more of them because they're (a) ridiculously cheap and (b) cheaply made, improperly made I guess as far as government regulations are concerned. I'm a non-smoker. I don't know the difference but apparently they burn down faster so they are quickly done and they're sold in amounts of 200's. There is an indicator that could be detrimental to our young people's health.

**Mr. Robert Goguen:** The price point is more important than what they're smoking.

**The Chair:** Anybody else?

Madam Doucas.

**Mrs. Flory Doucas:** Just perhaps to remind everyone ....

[*Français*]

Parfait.

À la page 13 du mémoire, on a rapporté les conclusions de Santé Canada qui examine la toxicité des cigarettes de contrebande et des cigarettes légales et qui convient que les risques y sont comparables. En fait, il y a eu des campagnes des détaillants avec les affiches un peu partout disant qu'on pouvait trouver des crottes de rats, des pesticides ou je ne sais quoi dans les cigarettes de contrebande. Cependant, dans la réalité on peut mettre un peu n'importe quoi dans les cigarettes usinées. Ce n'est pas pour rien qu'elles sont mortelles. Les risques sont tout à fait comparables.

Par rapport à l'angle des jeunes, je vous rappelle qu'un document de British American Tobacco nous dit dans sa campagne sur la contrebande que celle-ci est susceptible de freiner des hausses de taxes et de faire en sorte qu'il n'y ait pas de nouvelle réglementation. On nous dit qu'on va travailler sur quatre angles: la criminalité, les jeunes, les dépanneurs qui ferment et les revenus qui échappent au gouvernement. Quant aux jeunes, certains chiffres ont été galvaudés. L'étude de CAMH, Centre for Addiction and Mental Health qui a été mentionnée en comité dit effectivement que 43 % des jeunes du secondaire en Ontario fumaient des cigarettes de contrebande. Cependant, les auteurs eux-mêmes disent que c'est un petit échantillon qui a servi à l'étude et qu'il y avait à peine 2 000 étudiants sondés. De ce nombre, il y a moins de 200 fumeurs quotidiens rapportés. L'enquête que je vous mentionne, le YSS de Santé Canada a été effectuée auprès de 9 000 étudiants de l'Ontario et démontre que ce sont les cigarettes de grandes marques qui sont les plus populaires.

[*English*]

**Mr. Robert Goguen:** Merci.

Just to take up on what Mr. Grant was saying, we have studies that show that in 2007, 2008, and 2009 about 40% of the cigarettes that were found in Quebec schools were contraband. That certainly substantiates what your point is on that.

Of course, we had Madam Boivin tell us that boots on the ground are a big part of the solution to this dilemma, or certainly a part of it, an important part of it. We've put in an initiative to get 50,000 RCMP designated to the task of the Federal Tobacco Control Strategy.

Do you feel this will help, along with educating youth, as to the massive effects of tobaccos? Will this somehow deal with this dilemma?

🕒 (1015)

**Mr. Gary Grant:** In dealing with the education, I would like to remind members of the government that some time ago the promise was made to undertake a massive public education campaign. We'd like to sort of promote that again.

I think the boots on the ground will be very well utilized. I've been on my tours around Ontario and other places. I know that the RCMP are spread pretty thin in some areas and have always told me that they could certainly use the help. The task force could use the help in the epicentre area of the production of contraband. I think the important thing in the bill, though, to me, really, as a former police officer, is that, rather than being as a tax law, which it has been for so long, and it's just fine after fine after fine, which people are making millions and millions and millions of dollars can afford to pay, the fact that we're zeroing in possibly on organized crime legislation, and at least Criminal Code with minimum sentence, more than welcome.

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

Our next questioner from the Liberal Party, Mr. McKay.

**Hon. John McKay:** Thank you, Chair.

My first question is to Ms. Doucas.

Senators accordingly, and Fraser, seem to be very concerned about the coalition of Mr. Grant's group here. Why's that an important question?

**Mrs. Flory Doucas:** There's two fronts to that.

When a group purports to be caring about kids, and uses that argument, saying that this should be the priority for government—to reduce tobacco—and, indeed, we hear retailers saying that smoking rates are not in decline among youth because of contraband, well, one has to really kind of dig a little deeper and see that flavoured products, which were not counted in the butt studies that come from retailers at some point or another—they weren't found on the contraband market at that point—were more popular than cigarettes when the butt studies were done. So they're sold exclusively on the legal market at that point. They have been playing an important role in initiation among smoking in youth. In terms of also the brand products, we see how popular they are among kids.

Retailer associations and the coalition, that was founded by the Canadian Convenience Stores Association, when they say care about kids, and then they're telling government, “Concentrate on contraband. Make it your priority. That's where you need to go”, what they're really telling and what they're really signalling is, “Don't touch the legal market”. Who benefits from that? Well, it's legal manufacturing.

**Hon. John McKay:** Was there ever an answer to the question about the information about the organization, what the contribution was on the part of the industry?

**Mrs. Flory Doucas:** To our knowledge, no. So we've asked the clerk and we've asked one of the senators, and they didn't receive a question.

**Hon. John McKay:** Okay.

Mr. Grant, what do you say to Ms. Doucas's accusation that your group is somewhat compromised?

**Mr. Gary Grant:** Well, I disagree. The coalition is funded by its members. The members are widely spread across the spectrum. In my view, we're talking about a bill that's going to deal with the criminal activity. I'm a non-smoker, and I discourage smoking, and I think smoking should be eliminated, but in my view, as a police officer, I can recognize the difference between a legal and regulated enterprise and a criminal enterprise, and in my—

**Hon. John McKay:** But you'd have to say that “He who pays the piper calls the tune”.

**Mr. Gary Grant:** Yes.

Well, in my view, the founding of the committee, in a sense we're here to talk about the crime. The coalition's mission—and I wouldn't be involved with it if it was to sell legal cigarettes—and my mission, as a former police officer and a father of four, is to raise awareness of the negative impacts of the contraband trade on all Canadians. We're victimizing the Canadian taxpayers, hardworking retailers, as we've heard here, and, most significantly, our young people. They're being victimized by organized crime.

**Hon. John McKay:** ...police officer. You've probably been in court. You know that not all witnesses are treated equally and not all witnesses—how should we say it—come with entirely clean hands. So to Senator Fraser's question, which is what's your budget and what portion of it comes from the tobacco industry, are you able to answer that question?

**Mr. Gary Grant:** I'm not able to answer that. What I can tell you—

**Hon. John McKay:** Do you know when you'll be able to answer that?

**Mr. Gary Grant:** What I will tell you is that our funding, the coalition is funded by its members, as I said, but it's on the public record—

🕒 (1020)

**Hon. John McKay:** I understand that, but do you know when you'll be able to answer that question?

**Mr. Gary Grant:** No, I do not. I'm not involved in the—

**Hon. John McKay:** Don't you think you could do it in a day or two?

**Mr. Gary Grant:** I'm not involved. I'd have to talk to the coalition because I'm a paid spokesperson—

**Hon. John McKay:** Why would that be difficult?

**Mr. Gary Grant:** I don't know.

**Hon. John McKay:** Neither do I. I would have thought that your coalition would know quite easily what their budget is and what this contribution.... So if we could get an undertaking, Chair, from the witness and I'll leave it there. I know you to be an honourable man and I'm sure you could answer that question if that information is—

**Mr. Gary Grant:** I would just, I would add to that that the funding is on the public record and on file with the Ontario lobbyists registry.

**Hon. John McKay:** Then it is a public document and then the disaggregation would be relatively easy.

I'll just take note of that.

Thank you, Chair.

Finally, my question is to Mr. Dong. You are generally supportive of this bill.

**Mr. Cha Dong:** Yes sir.

**Hon. John McKay:** Who knows if it's going to be effective or whether it isn't. How is it that this bill is actually going to impact the folks outside of one of your members' stores selling contraband cigarettes and actually having a real and measurable impact on that? How's that going to work?

**Mr. Cha Dong:** Let me put it this way. Right now the people do not know that buying the contraband tobacco helps the crime, it's illegal. It's illegal, but I don't think they know that as a general public.

So putting it in the Criminal Code, the general people—people who aren't involved in government, people who aren't involved in this—they will know it's a criminal offence. So they will think twice before they get involved in trafficking.

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

Thank you to each of our panellists for being here this morning.

I have to say that when I first heard about the issue of contraband tobacco coming from a place like Mississauga, a very urban city, part of the Greater Toronto area, at least 100 kilometres away from the nearest smoke shack, it didn't seem like an issue that impacted much on my

community, but I had a meeting and was approached by some constituents of mine one day who came to see me and told me they had gone to the area around the Erindale Secondary School , which is a secondary school in my riding, and had picked up hundreds of cigarette butts and had done the analysis and showed that a huge percentage of them were actually contraband tobacco cigarettes.

Of course, we all are very concerned about young people getting started on tobacco and becoming addicted to nicotine and the health effects of that, and we spend a lot of time, as a government and as a society, trying to convince young people not to have that first cigarette, not to start down that path. I have lots of friends who, like Madam Boivin, have struggled with kicking the habit. It is so difficult once you have started, especially when you start young.

A couple of summers ago I was in a convenience store in Mississauga and I just happened to notice that a truck pulled up with a number of young people who were working as some kind of landscaping crew. Some of them went into the sandwich shop next door and one young man came into the convenience store. I didn't know the owner, and he didn't know me. I just happened to be in there as a shopper, and I noticed the young fellow, who could have been 15 or 17. He walked up to the counter and asked to buy some cigarettes. The convenience store owner, to his credit, asked him for identification and the young fellow was obviously surprised that he was being asked for ID and made some excuse about how he didn't have his ID with him. To the credit of the convenience store owner, he didn't sell him the tobacco product.

I'm not saying it happens that way in every circumstance, but that is one line of defence against getting young people started. That's something that the vendors of contraband tobacco are not doing. They already know they're doing something illegal, so they're not asking young people if they are old enough to be taking that first smoke.

I have to say I was impressed by that.

I want to address my questions primarily to Mr. Cha Dong and Mr. Grant about, first of all, the health impact of these illegal cigarettes on young people and the ease of accessibility.

Also, you said something, Mr. Cha Dong, that I thought was very interesting. You talked about your store owner members being the kind of people who work hard, play by the rules, and seeing others doing something obviously illegal and not paying a penalty for that diminishes the faith of your owners in the justice system.

A lot of our justice legislation is trying to restore people's faith in the Canadian justice system. When we see people getting away with offences and not paying a penalty, not being brought to justice, how does that make your store owners feel?

Maybe I could start with you and then we'll go to Mr. Grant.

🕒 (1025)

**Mr. Cha Dong:** Our store owners say—

**Mr. Bob Dechert:** How does it make the store owners feel about the Canadian justice system when they see these illegal cigarettes being sold near their shops?

**Mr. Cha Dong:** All we sell are legal products. We pay the taxes and we do everything by the law, what it permits. We are providing services to the community.

Legal tobacco, especially legal tobacco, because we are doing such a good job, we are trying to be responsible retailers and so we are educating our members to not sell to minors, anybody who looks under 25 asks questions first. That's what we publish and we tell them. So they're doing such a good job.

The minors are turning around and going into the illegal market where nobody asks any questions. What we sell are regulated products, which is they have to go through the scrutiny of a government regulation, health regulations, but illegal tobaccos do not. We do not know, and somebody was mentioning that something is feasible, is it possible, is it right. We do not know. We don't have an answer. It could cause a much bigger health threat and it costs much more money as far as the government goes as well.

That being said, because we are selling legal products we make a profit out of it and that's how we flow our business. It's just like any other business, if you do not have a cash flow the business goes under. That's why we try to diversify and in the summer we sell flowers to make things meet.

When the customer comes in with illegal products in their purse, when we see that we start getting mad. Why are we doing this? We are selling legal products. Why are my regular customers coming into the store and have illegal products in their pockets, I feel sorry because they are not buying the products any more because they are buying cheaper.

We have a newsletter going out twice a month. We send out a pricing comparison in smoke shops. They are starting from \$9 up to \$32 maximum. The government tax is over \$45 right there.

**Mr. Bob Dechert:** Thank you.

May I ask something else?

**The Chair:** Your time is way over, Mr. Dechert. If you can put your questions before the comments it would be helpful, all at the same time.

Our next questioner is from the New Democratic Party. Mr. Jacob.

*[Français]*

**M. Pierre Jacob (Brome—Missisquoi, NPD):** Merci, monsieur le président.

Merci à nos témoins d'être ici parmi nous ce matin.

J'aimerais ça, à tour de rôle, que vous me disiez qui est votre bailleur de fonds, qui vous paie, pour être porte-parole de votre organisme, en commençant par Mme Doucas.

**Mme Flory Doucas:** La Coalition est une initiative de l'Association pour la santé publique du Québec, nous sommes financés à 100 % par eux, et l'ASPQ reçoit du financement du ministère de la Santé, des Directions de santé publique également et de ses membres.

🕒 (1030)

**M. Pierre Jacob:** Merci, madame Doucas.

Monsieur Dong.

[*English*]

**Mr. Cha Dong:** Yes, sir. It's our suppliers and our members. We get the rebate and plus because we do a group buying we have an extra rebate coming through to our office and that's how we operate it.

Did I answer your question, sir?

**Mr. Gary Grant:** In our funding, the coalition is funded by its members of which there are 16. It's on the public record and on file with the Ontario Lobbyists Registry and our list of members is available on our website.

[*Français*]

**M. Pierre Jacob:** Et encore, qui vous paie réellement? Est-ce qu'il y a 300 membres?

**Mme Flory Doucas:** Il y en a 16.

[*English*]

**Mr. Gary Grant:** There are 16 members.

**Mr. Pierre Jacob:** Sixteen members.

[*Français*]

D'accord, parfait.

Comme vous dites, je vais aller chercher ces membres.

Madame Doucas, je vous pose la question. Est-ce que le projet de loi C-10 va faire baisser le tabagisme?

**Mme Flory Doucas:** C'est une très bonne question.

En fait, il est certain que le projet de loi C-10 a le potentiel de réduire la contrebande en outillant les corps policiers avec d'autres outils, notamment pour faire face au crime organisé, surtout dans les cas de récidives et au fait que les policiers sont parfois confrontés à des hommes armés, de la violence etc.

En ce sens, je pense que c'est plutôt clair. Par contre, en ce qui a trait au fait de réduire le taux de tabagisme, c'est incontestable. La littérature existe. Les produits d'initiation, actuellement au Canada, sont des produits du tabac aromatisé, des petits cigares. Ce n'est pas pour rien que les [inaudible] ne comptaient pas les petits cigares en Ontario ou au Québec. On voulait déformer les données des produits légaux par rapport aux produits illégaux.

Donc, dans la mesure où le gouvernement ne s'attaque pas aux produits aromatisés, que ce soit la chicha, la cigarette au menthol, les petits cigares à la fraise ou au chocolat, qui échappent à la définition technique d'un petit cigare, — parce que les fabricants ont déjoué la réglementation — je ne pense pas qu'on va faire de grands gains.

Maintenant, il faut s'attarder aux produits, comme cela se fait ailleurs dans le monde avec l'emballage neutre etc. Il faudra sans doute aller dans ces avenues si on veut vraiment faire baisser le taux de tabagisme au Canada.

**M. Pierre Jacob:** Merci, merci madame Doucas.

Ma prochaine question s'adresse à M. Dong et à M. Grant. Si j'ai bien compris vos allocutions, vous ne touchez pas à la contrebande de cigarettes électroniques. Pourtant, cela est interdit au Canada et c'est en vente sur Internet aux États-Unis.

Dernièrement, j'ai entendu à la radio ou à la télé — je ne m'en souviens plus — des médecins reconnus qui disaient que la cigarette électronique était moins dommageable pour la santé et qu'elle aidait même à faire diminuer ce fléau qu'est le tabagisme.

Donc, pourquoi ne vous êtes vous pas attaqués à ce fléau de la contrebande de la cigarette électronique?

[English]

**Mr. Gary Grant:** I certainly do not have a solid enough knowledge base to make a comment on electronic cigarettes, a few newspaper articles, a few website articles. I don't have a position on it. It's certainly something that should be studied. I think there will have to be a position on it eventually if it becomes more widespread.

**Mr. Cha Dong:** The market is getting bigger and your question is that if they smoke e-cigarettes it will reduce the health problems? Is that one of the questions?

[Français]

**M. Pierre Jacob:** Je voulais savoir pourquoi vous n'avez pas défendu la contrebande de la cigarette électronique sur Internet dans vos priorités.

[English]

**Mr. Cha Dong:** I do not think the government has made a clear position on the e-cigarette yet. So I have no comment on that.

**The Chair:** Thank you, Mr. Jacob, that's your time.

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

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

Good morning to our witnesses.

The first thing I would like to do is pursue a line of questioning with Mr. Grant in regard to the links. As a former police officer, a very experienced police officer, you must know very well the links between organized crime and contraband tobacco.

🕒 (1035)

**Mr. Gary Grant:** Yes.

**Mr. Blaine Calkins:** If you could highlight that for this committee and what the effect of adding this legislation to the arsenal of the Criminal Code would do for the ability of police officers and the crown to get convictions.

Then I'll follow up with a supplemental after that if I think I know where you're going with this.

**Mr. Gary Grant:** Thank you, sir.

The fact that organized crime has become so intrinsically involved with this really raises red flags in the policing community and should raise red flags everywhere. By and large, I think it's because they saw that it's a huge profit-maker, and at the time, it was relatively low-risk in the sense that huge shipments could be seized and there would be huge penalties to be paid, for sure, at just a fraction of what they're making.

There was really not much incentive for them to stop doing it because the cash flow was so great. Then we know for a fact by talking to RCMP and from my own experience with policing that they reinvest that money into other criminal activities such as gun-running, drugs, and there have been even some examples of human smuggling.

The fact is that the government is taking a look ahead, looking at things in a more harsh manner, more procedures by indictment, maybe dual offences but at least indictable offences

with real meaningful penalties that may take people seizure of property and whatnot. In particular, looking at it as an organized crime activity would give them pause and may be able to slow them down, and the government would have law enforcement. They would be working with a lot more arsenal to fight the problem as opposed to just a revenue fine.

**Mr. Blaine Calkins:** I wanted to just get your comments on the task force. We've noticed in the research that's provided to us by the Library of Parliament that the amount of contraband appears to be on the decline and the amount of legally grown actually seems to be increasing, particularly in Ontario as export markets open up.

I'm just wondering if you can talk a little bit about that task force. Then I have a question for both of you, Mr. Dong and Mr. Grant. You both talked about punitive penalties and the punitive nature being a deterrent. I've heard that word, deterrent. I'm wondering if you think that the changes that are being proposed here are deterrent enough or if they'll simply be seen as a cost of doing business by organized crime.

**Mr. Gary Grant:** I can answer that first. First of all, there would certainly be a specific deterrent to the actual people that have been arrested, charged, and hopefully convicted and receiving sanctions. Since there are 175 gangs involved, I would suspect that a lot of those gangs are quite small. People who think that this is so lucrative will just put a little organization together, a little network and get in on the cash cow. If they see significant penalties being levied, that will not be just a specific deterrent but it will be a general deterrent for everybody to look at and realize that the cops and the government are getting serious about this now. It won't be a fine. It won't be a slap on the wrist. They could do some serious time here or have a really significant record. Maybe at this point they'll think twice about getting involved. I do believe there would be deterrent effect.

I forgot the first part of your question.

**Mr. Blaine Calkins:** I was going to ask you about the task force and whether or not the effect of that task force of the RCMP . I think this legislation also broadens the amount of police investigators in the country that have jurisdiction to pursue now because it's a Criminal Code offence. It broadens considerably in police officers that can get involved in laying these charges.

**Mr. Gary Grant:** I think the task force would be a most welcome thing, not only because they're boots on the street, but because they can also provide mentoring, if you will, to the other organizations of provincial police forces and municipal police forces, which are now able to get involved in these investigations whereas previously it was just the federal police or provincial revenue officers. The province seems fit to give powers to provincial police officers and municipal police officers to stop, retain, and investigate now. The RCMP task force would certainly be great resource for that.

**Mr. Blaine Calkins:** My last question is for Ms. Doucas and Mr. Grant. You both mentioned in your presentations that this legislation is a good step, which indicates to me that you have other ideas that the government would need to follow subsequent to this bill being passed should it get the support of enough members of Parliament.

Mr. Grant and Ms. Doucas, what respectively would you say would be the subsequent steps needed?

🕒 (1040)

**Mr. Gary Grant:** Very quickly, I would just say that I would like to continue to tension the problem, particularly in regard to inter-governmental and inter-departmental consultations, including first nations people, to try and come to a conclusion and arrest this organized crime problem. Let's face it. There are a lot people living on those first nations who are being intimidated on their own lands.

**Mrs. Flory Doucas:** I'll just add that I think that Quebec has done outstanding work on this front. Contraband went from 35% of the market to 15%, and that's been done through various controls on raw materials and machinery. You need licensing before you even sew your tobacco. There's a manifest that each farmer needs to fill out saying who it will be sold to and who's going to be shipping it.

**Mr. Blaine Calkins:** Do you know why Ontario isn't doing this, because 95% of it is Ontario, 5% is Quebec, why?

**The Chair:** You don't have any more time left.

I'll let you answer that one question and then we'll move on.

**Mrs. Flory Doucas:** There's been controls on the machinery that's used. When Imperial Tobacco actually closed its plant in Montreal the machinery kind of disappeared and one wonders where that went. There's controls and licensing on the importing of machinery parts. That's certainly something that the federal government should be looking into, including all transport and import of raw materials, paper, and filters.

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

Thank you for those questions and answers.

Our final questioner for this panel and for today is, from the New Democratic Party, Mr. Kellway.

And there may be bells in three minutes.

**Mr. Matthew Kellway:** Thank you, Mr. Chair.

Mr. Grant, for you as a former police officer, and with respect to your comments in your opening and in response to subsequent questions, I was surprised to hear from M. Saint-Denis, the senior council for the department, and his testimony earlier about the absence, not even just the lack of, but the absence of consultation with police forces. You made a point, I think quite strenuously, about the necessity for cooperation and collaboration amongst the various parties,

both federal and provincial, but also the management of police forces directly into solving these issues. I'm wondering what recommendations you have, not even necessarily specific to C-10, around processes for cooperation and collaboration and for the introduction of new criminal provision.

**Mr. Gary Grant:** I agree with you.

In my time in policing I was always frustrated at the amount of investigations that, maybe weren't just eliminated, but were compromised and hampered, by the fact that people didn't consult with one another. The RCMP did their thing, Toronto did their thing, the OPP did their thing, and there wasn't any process of information sharing in the beginning.

If that had been undertaken, just like we're suggesting now, I've even spoken to people in the federal government, treasury hasn't really been on the same page as justice, and same as in the provincial. I just think there has to be some sort of a multi-jurisdictional task force put together from the federal, provincial, and municipal levels, including maybe the Canadian Association of Chiefs of Police, and first nations people, to sit down and to try and come up with a coordinated response to this that will be effective and doable.

**Mr. Matthew Kellway:** It strikes me that's not a simple task.

I read for Mr. Saint-Denis the synopsis of a press release from the Mohawk Council of Akwesasne and they would seem to want to—I'm reading between the lines, I don't have the text here in front of me—head in a different direction and they're concerned about increased enforcement presence around their community.

How does one engage communities and their police forces in the introduction of laws like this, when there are clearly differing perspectives on what the appropriate response to this problem is?

**Mr. Gary Grant:** For instance, if you don't want so much enforcement on your property come to the table with us and see what we can talk about, if we can come up with some sort a solution together.

**Mr. Matthew Kellway:** On the enforcement issue specifically, you know that we've run into each other on the lawns of the hunt club and on the patio of the Balmy Beach Club before.

🕒 (1045)

**Hon. John McKay:** You move in fancy circles.

**Some hon. members:** Oh, oh!

**Mr. Matthew Kellway:** I certainly do.

**The Chair:** It's who you know I guess, eh Kellway?

**Some hon. members:** Oh, oh!

**Mr. Matthew Kellway:** This is the life I live now. It's not quite as privileged as the Senate but it's not bad.

I have provided no funds to the coalition, I want that on the record.

**Some hon. members:** Oh, oh!

**Mr. Matthew Kellway:** For Toronto Police Services for example, it seems to me that now that this is enforceable there's a burden on the Toronto police forces to enforce it. What enforcement mechanisms would you have liked to see, or would you like to see, as part of the bill itself?

**Mr. Gary Grant:** The important mechanisms are there.

This bill deals mostly with the penalties I would assume. We would like to be able to enforce the laws where officers would have a reasonable hope of seeing them carried through with a good of a conviction and a good chance of what we would feel as an appropriate sentence. I see this all as good stuff. I spoke to Chief Bill Blair not too long ago and he said he was happy to see the new legislation in the province giving police officers more power to deal with the problem. We know there's a lot of other stuff going on in Toronto at the same time but put it in with their major crime units to make it a point. For the seizures that have taken place they'll seize cigarettes and then they'll find marijuana, cocaine, or weapons. Or vice-versa. They'll execute a search warrant on cocaine and they'll find a bunch of money. Lo and behold they'll find several cartons of cigarettes. It would be joint investigations. The fact that they can now do it you will be able to see a lot more from the policing viewpoint with positive results.

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

Thank you for those questions and answers.

I want to thank our panel for joining us for this second hour. Your presentations will be very helpful in our discussions and deliberations on Bill C-10.

Thank you very much.

Yes, sir.

**Mr. Matthew Kellway:** Very briefly, Mr. Chair.

When we had the minister before us I asked a question of the minister with respect to the coverage of the aboriginal justice strategy. The department's website refers to 600 communities. The testimony provided was 800 communities but the residual they couldn't respond to on the day. They promised to provide a response that day. It was supposed to be forthcoming.

**The Chair:** We have not got a response yet.

We can follow up on that.

Thank you very much.

With that, we'll adjourn until Thursday.

Thanks very much.