

CHAPTER 2

North American approaches to organised crime

Canada

2.1 The Delegation travelled to Ottawa where it held discussions over two days with senior executive officers from the Royal Canadian Mounted Police, the Criminal Intelligence Service Canada, the Department of Justice Canada, and the Public Prosecution Service of Canada. Discussions covered the range of law enforcement programs and legislative approaches developed in Canada to target serious and organised crime. Details of these meetings and the officers with whom the Delegation met are listed at Appendix C.

2.2 The following section provides a brief description of the agencies and departments with which the Delegation met, the nature of organised crime in Canada, Canadian legislation targeting organised crime, and the key issues and findings from the Delegation's discussions in Canada.

Canadian agencies with which the Delegation met

Royal Canadian Mounted Police¹

2.3 The Royal Canadian Mounted Police (RCMP) is the national policing body in Canada. It is headed by Commissioner William Elliott, and under the *Royal Canadian Mounted Police Act* is responsible for enforcing laws made by the Canadian Parliament. Commissioner Elliott is the first appointed Commissioner of the RCMP who has not previously served as a law enforcement officer.

2.4 Under Canadian law the enforcement of the *Criminal Code 1985* is the responsibility of provincial governments. The RCMP provides policing services to all of the provinces except Ontario and Quebec, plus the Yukon, Northwest Territories and Nunavut, under policing agreements and, under separate agreements, provides policing services to 197 municipalities.

2.5 In 1996, the RCMP began moving towards a more regional management system under the direction of deputy commissioners. Four regions were developed: Pacific, Northwestern, Central, and Atlantic. This change ensures greater regional and local involvement in decision-making and allows for the better targeting of the RCMP resources.

2.6 The total establishment of the RCMP force as of 1 April, 2009 was 27,193.

1 Royal Canadian Mounted Police Force: <http://www.rcmp-grc.gc.ca/about-ausujet/organ-eng.htm> (accessed 29 May 2009).



Delegation Members with senior officers of the Royal Canadian Mounted Police, Commissioner Elliott, Senior Deputy Commissioner Sweeney, Deputy Commissioner Souccar, and Deputy Commissioner Killam

Criminal Intelligence Service Canada²

2.7 The Criminal Intelligence Service Canada (CISC) is a strategically-focused organisation that facilitates the production and exchange of criminal information and intelligence within the Canadian law enforcement community.

2.8 Canada has nearly 380 law enforcement agencies and since its inception in 1970, CISC's fundamental purpose is to facilitate the timely production and exchange of criminal intelligence within the Canadian law enforcement community through the delivery of intelligence products and services. CISC has developed an intelligence-led approach to tackling organised crime in Canada.

2.9 CISC Central Bureau is located in Ottawa and provides leadership, strategic direction and administrative support to the national CISC program. CISC has ten provincial bureaus which operate independently while maintaining national service delivery standards. The provincial bureaus focus on criminal intelligence activities within their respective provinces, and provide leadership and guidance in the collection, analysis and production of strategic intelligence products and services at the provincial level. The intelligence collected and analysed through the provincial bureaus is used in the creation of the national intelligence products and services delivered by Central Bureau.

2 Criminal Intelligence Service Canada, http://www.cisc.gc.ca/index_e.html, (accessed 28 May 2009).



Delegation Members with Federal Agent Gerry Morris, and senior officers of Criminal Intelligence Service Canada, and the Royal Canadian Mounted Police

Department of Justice³

2.10 The Department of Justice works to ensure that Canada's justice system is as fair, accessible, and efficient as possible. The Department assists the federal government to develop policy and to draft and reform laws. At the same time, it acts as the government's legal adviser, providing legal counsel and support, prosecuting cases under federal law, and representing the Government of Canada in court.

2.11 The Department's responsibilities reflect the double role of the Minister of Justice, who is also by law the Attorney-General of Canada. In general terms, the Minister is concerned with the administration of justice and policy in areas including criminal law, family law, human rights law, and Aboriginal justice. The Attorney-General is the chief law officer of the Crown and is responsible for conducting all litigation for the federal government.

The Public Prosecution Service of Canada⁴

2.12 The Public Prosecution Service of Canada (PPSC) is a federal government organization responsible for prosecuting criminal offences under federal law and contributing to strengthening the Canadian criminal justice system.

2.13 The PPSC is responsible for prosecuting offences under more than 50 federal statutes and provides prosecution-related legal advice to law enforcement agencies. The PPSC is not an investigative agency. It prosecutes when a charge has been laid pursuant to an investigation by the Royal Canadian Mounted Police (RCMP), or some

3 Department of Justice, Canada, <http://www.justice.gc.ca/eng/>, (accessed 17 June 2009).

4 Public Prosecution Service of Canada, <http://www.ppsc-sppc.gc.ca/eng/bas/abt-suj.html> (accessed 6 June 2009).

other police force or investigative agency, of a violation of federal law. The PPSC provides advice and assistance to investigators at the investigative stage and works closely with them. Cases prosecuted by the PPSC include those involving drugs, organized crime, terrorism, tax law, money laundering and proceeds of crime, crimes against humanity and war crimes, Criminal Code offences in the territories, and a large number of federal regulatory offences.

2.14 The PPSC is an independent organization which reports to Parliament through the Attorney-General. The PPSC employs approximately 900 full time employees, including 500 prosecutors, and retains more than 810 private-sector lawyers as agents across Canada.

The nature of organised crime in Canada

2.15 The Delegation was provided with a transcript of evidence to the Standing Committee on Justice and Human Rights, in which Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police, gave an overview of organised crime in Canada:

Organized crime has significantly changed over the last five years in Canada. While the drug trade remains a focal point of their activities, they have continued to become more sophisticated and diversified in their criminal activities.

Most are involved in more than one type of criminal activity which can range from drug crimes or financial crimes, such as identity theft, mass-market fraud and money laundering, to crimes such as human smuggling, human trafficking, and counterfeiting consumer products and medications.

While there are many factors at play in the acceleration of organized crime activity in Canada, the end result is that today Canada has been identified as a source country for synthetic drugs and a transit country for cocaine en route from North America to Asia. More worrying, and presenting an immediate threat to public safety, organized crime groups have escalated their use of violence in fighting for territory and shares in what have become very lucrative illicit markets. These groups have also come to rely on the corruption of public officials and using violence towards their rivals, potential witnesses, law enforcement, and the judiciary.

Many organizations have become more sophisticated in that they compartmentalize their operations and expand over a number of countries. They are relying on modern technology to communicate and to further insulate themselves from the reach of the law.⁵

2.16 The nature of serious and organised crime is not unique to Canada – organised crime has developed in a similar manner in Australia.

5 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

Key Canadian legislation targeting organised crime

Criminal laws

In 1997, together with New Zealand, Canada became the first common law jurisdiction in the region to introduce specific offences against criminal organisations. These offences were introduced in response to the activities of outlaw motorcycle gangs... Throughout the 1990s the province of Québec saw particularly violent clashes, including bombings and killings, between rival biker gangs, frequently involving the Hell's Angels and the Rock Machine gangs that were fighting for control of Montréal's illicit drug trade.⁶

2.17 The *Act to amend the Criminal Code (criminal organizations) and to amend other Act in consequence (Bill C-95)*, which was enacted in 1997, amended the Criminal Code by adding a new offence for participating in and contributing to the activities of criminal organisations,⁷ proceeds of crime forfeiture provisions based on the civil standard of proof,⁸ orders to 'keep the peace',⁹ consecutive sentencing provisions¹⁰ and police surveillance powers.¹¹ The provisions were amended in 2002 to extend the application of the offences beyond Outlaw Motorcycle Gangs (OMCGs, referred to as 'bikers' in Canada) to other organised criminal groups.

2.18 The Criminal Code defines 'criminal organisation' as a group comprised of three or more persons that has as one of its main purposes or activities the commission of one or more serious offences that, if committed, would likely result in material benefit to the group or its members.

2.19 There are three offences under the Canadian Criminal Code of:

- (a) Participation in the activities of a criminal organisation
- (b) Commission of a criminal offence for a criminal organisation, and
- (c) Instructing the commission of an offence for a criminal organisation.

2.20 Each of the offences carries a different maximum penalty of five years, 14 years and life imprisonment respectively. The offences act as both distinct crimes and as sentence enhancers.

2.21 The offence of participation in or contribution to the activities of a criminal organisation is designed to capture people whose contribution to a group indirectly

6 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 1, p. 18.

7 *Criminal Code (Canada)*, section 467.1.

8 *Criminal Code (Canada)*, subsection 490.1(2).

9 *Criminal Code (Canada)*, section 810.01.

10 *Criminal Code (Canada)*, section 718.2.

11 *Criminal Code (Canada)*, sections 183 and 186.

assists the commission of crimes.¹² Section 467.11(1)(3) sets out indicia to assist the court in establishing a person's contribution to a group, which include the use of a name, word or symbol associated with the group, the fact of association and the receipt of a benefit from the group. These indicia are specifically formulated to target OMCGs. Therefore, it is not necessary for the prosecution to prove that an accused took part in a criminal offence in order for a person to be found guilty of the offence.

2.22 Similarly, the offence of instructing the commission of an offence, which is intended to capture the leaders of organised crime groups, does not require evidence that an offence has been committed.¹³

2.23 However, the offence in section 467.12(1) – commission of an offence for an organisation – requires that the elements of an initial indictable offence be proven.¹⁴ If such an offence is proven, each of the three offences may operate as sentence enhancers, depending on the individual's level of involvement, as the legislation requires that the sentences for the organised crime offences be served consecutively with any other substantive crime.¹⁵

2.24 The legislation also alters the ordinary evidentiary burdens in favour of the prosecution, recognising the difficulties that prosecutors often have in obtaining evidence from an accused person's associates. For example, the prosecution does not need to prove that the organisation facilitated or committed an indictable offence or that the accused knew the identity of any of the persons who constituted the organisation.

2.25 Membership of an organisation itself is not an offence under Canadian law.

Proposed amendments

2.26 On 26 February 2009, the Minister for Justice and Attorney-General, the Hon Rob Nicholson, introduced *An Act to amend the Criminal Code (organised crime and protection of justice system participants)*. The Bill proposes the following amendments to the Criminal Code:

- Murders connected to organised crime activity will automatically be first-degree. First degree murder is subject to a mandatory life sentence with a 25 year non-parole period.
- The creation of a new offence to target drive-by shootings. The Bill makes it an offence to intentionally discharge a firearm while being reckless as to whether it will endanger the life or safety of a third party.

12 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 1, p. 29.

13 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 1, p. 33.

14 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 1, p. 31.

15 *Criminal Code (Canada)*, s467.14.

The offence carries a mandatory penalty of four years imprisonment, with a maximum of 14 years. The minimum sentence is increased to five years for a first offence and seven years for a subsequent offence if the offence is committed for a criminal organisation.

- The creation of two new offences of aggravated assault against a peace or public officer that causes bodily harm, and aggravated assault with a weapon on a peace or public officer (any public official employed to maintain public peace or for the service or execution of civil process).
- Clarifying that when imposing sentences for certain offences against justice system participants (including police), courts must give primary consideration to the objectives of denunciation and deterrence.
- Lengthening 'gang peace bonds' – which are preventative court orders requiring individual gang members to agree to specific conditions governing their behaviour – from a maximum of 12 months to 24 months, for defendants with previous convictions for certain organised crime offences. The amendments would also make it clear that courts may impose any bond condition they deem necessary to protect the public.

Proceeds of crime laws

2.27 Part XII.2 of the Criminal Code provides for the seizure, restraint and confiscation of assets proven on the balance of probabilities to be the proceeds of crime for which the person was convicted. A person must have been convicted of an indictable offence under Canadian federal legislation prior to the Crown applying for confiscation of the proceeds of crime.

2.28 If the Crown is unable to prove a link between the assets and the crime for which the person was convicted, a court may still order that assets be forfeited if the Crown proves beyond reasonable doubt that the assets are the proceeds of crime.

2.29 The onus is lower for persons convicted of organised crime offences and drug offences, with a court being able to make a confiscation order in regard to any property identified by the Attorney-General if satisfied on the balance of probabilities that the offender has engaged in a pattern of criminal activity for material benefit in the decade preceding the conviction, or that the income cannot be reasonably accounted for.

Key issues and findings

Outlaw Motorcycle Gangs

2.30 Canada has historically had a significant problem with OMCGs. The largest club is the Hells Angels, who according to 2009 estimates by the Criminal Intelligence

Service Canada, are reported to have 460 full-fledged members and 34 chapters.¹⁶ The Bandidos and Outlaws also have a significant Canadian presence.

2.31 During the late 1990s a turf war between the Hells Angels and Rock Machine is reported to have claimed more than 150 lives, including that of 11-year-old Daniel Desrochers, who died when a car bomb exploded outside a biker clubhouse. This incident was the catalyst for the 1997 amendments to the Criminal Code, which increased the penalties for convicted offenders who were shown to be members of established criminal organisations.

2.32 A CBN News article outlined the major biker organizations that operate in Canada:

Hells Angels: Criminal Intelligence Service Canada describes the Hells Angels as the largest "outlaw motorcycle gang" in the country, with active chapters concentrated mostly in Quebec, Ontario and British Columbia.

The gang moved into Ontario in 2000. Before that, its only presence in the province was with a chapter of the Nomads, the club's elite branch. The Nomads doesn't tie itself to geographical locations and doesn't have formal clubhouses, like other chapters.

Within a year, the Angels had absorbed members of the Para Dice Riders, Satan's Choice and Last Chance, giving them at least 100 members in the Toronto area — the highest concentration of Hells Angels in the world.

In mid-April 2009, police targeted more than 150 people linked with the Hells Angels in early-morning raids mostly in Quebec, but also in New Brunswick, France and the Dominican Republic. They also seized four suspected Hells Angels bunkers.

Bandidos: It's considered the world's second-most powerful criminal biker gang, with more than 2,000 members in 14 countries, according to NGIC's 2009 report, which describes the Bandidos as a "growing criminal threat."

The Bandidos was founded in the 1960s in Texas. The club's old guard was said to be against its absorption of the Rock Machine's Ontario branches for fear of igniting the same kind of war with the Hells Angels that gripped Quebec for much of the 1990s.

In April 2006, eight people — all Bandidos members or associates — were found dead in a farmer's field near the small town of Shedden, Ontario. Police said the killings virtually wiped out the Toronto chapter of the Bandidos.

Outlaws: First established in the United States in 1935, the gang came to Canada in 1978 when several chapters of Satan's Choice in Montreal changed allegiance and set up shop as the Outlaws Motorcycle Club of Canada. The group is known to detest members of the Hells Angels.

16 Biker Gangs in Canada, CBN News: <http://www.cbc.ca/canada/story/2009/04/01/f-biker-gangs.html> (accessed 6 June 2009).

Rock Machine: Second only to Hells Angels in Quebec. A long-running turf war with the Angels left more than 150 people dead as the two fought over the lucrative trade in illegal drugs. The war also led to the passage of anti-gang legislation by the federal government.

As the Hells Angels expanded into Ontario, so did the Rock Machine. The organization established three chapters. In 2001, it aligned itself with the Bandidos.

Satan's Choice: Once one of Ontario's strongest motorcycle gangs, Satan's Choice became part of the Hells Angels' 2000-2001 expansion into Ontario. Satan's Choice had branches in Keswick, Kitchener, Oshawa, Sudbury, Simcoe County, Thunder Bay and Toronto — but nothing outside the province.¹⁷

2.33 The Delegation was told that the structure of these groups varies. Some are structured like a franchised business while others operate under a pyramidal structure. OMCG chapters hold weekly 'church' meetings and some members are required to pay monthly 'church fees' of approximately CAN\$250 (AU\$278). Within chapters individual members can operate their own businesses, and like legitimate businesses, these are increasingly sophisticated. A Criminal Intelligence Service Canada report noted in 2003 that

OM[C]G activity within Canada remains widespread; these groups are continually attempting to widen their influence. OM[C]Gs, particularly the HELLS ANGELS derive their financial income from various criminal activities across the country such as prostitution and fraud. However, drug trafficking, most notably cocaine and marihuana, remains their primary source of income.¹⁸

2.34 Like other serious and organised crime groups, OMCGs are seeking to operate in geographic locations with weak law enforcement capabilities. While the Delegation was in Canada the RCMP was involved in an operation which targeted high-ranking Hells Angels members in Quebec and New Brunswick. One hundred and twenty-three people were arrested, including 111 full-patch members. Significantly, suspected Hells Angels members were also arrested in the Dominican Republic.

2.35 Largely due to their overt public violence and considerable involvement in the manufacture and distribution of illegal drugs, OMCGs remain a key target for Canadian law enforcement. Over the past ten years law enforcement agencies have taken a disciplined and targeted approach to OMCGs. Senior Deputy Commissioner Bill Sweeney talked about the need to maintain a focus on these groups to ensure that they did not grow in strength. The Delegation was told about the successful OMCG

17 Biker Gangs in Canada, CBN News: <http://www.cbc.ca/canada/story/2009/04/01/f-biker-gangs.html> (accessed 1 June 2009).

18 Criminal Intelligence Service Canada, Annual Report 2003: http://www.cisc.gc.ca/annual_reports/annual_report_2003/outlaw_2003_e.html (accessed 1 June 2009).

strategy in which these gangs were targeted in a persistent and strategic way, to identify and target the 'weakest link' in the organisational chain.

Information and intelligence sharing

2.36 Canada has 380 law enforcement agencies and this presents a significant challenge for information and intelligence sharing. Deputy Commissioner Tim Killian noted that traditionally there has not been a culture of information sharing between various law enforcement agencies. Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police also highlighted legislative barriers to the sharing of information and intelligence:

I was talking about the multi-faceted approach, is to deal with the importance for us of ensuring the enforcement community's ability to share information and intelligence between agencies, both domestically and internationally—there is an issue domestically as well. We need to realize that good intelligence will allow us to have early warning of what is coming down the road and will put us in a position to prevent some of the actions of criminal organizations.

In the legislative reviews, aside from lawful access there's also a need to look at some of the legislation put in place, sometimes several decades ago, governing the exchange of information—including the Privacy Act—to make sure that federal agencies can share the intelligence, among themselves and with the provincial and municipal agencies and vice versa. A gap exists now that is actually putting Canadians at risk.¹⁹

2.37 However, as Canadian law enforcement moves from a reactive approach to organised crime, to a more proactive approach, and investigations are increasingly intelligence-led, there is now a greater requirement for information and intelligence sharing across agencies.

2.38 Lieutenant-Colonel Bud Garrick, the Deputy Director General of the Criminal Intelligence Service Canada (CISC) told the Delegation that a key role of CISC was to bring together the 380 law enforcement agencies through the production of national intelligence products. These products include the 'Report on Organised Crime' and the 'National Threat Assessment'. CISC also administers the Automated Criminal Intelligence Information System (ACIIS), which is a national database for criminal intelligence and information on organised crime. The Delegation was informed that 245 agencies actively use ACIIS with approximately 2.5 million transactions per year.

2.39 Ms Debbie Counsel, also from CISC, noted the tension between the political pressures to increase the number of operational law enforcement officers, and the need for more intelligence-led approaches to law enforcement. It was suggested that in

19 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

future, as white-collar crime increases, there will be a requirement for a greater intelligence capacity and services for law enforcement.

2.40 Deputy Commissioner Vince Hawkes from the Ontario Provincial Police told the Delegation about the success of the recently established Canadian Integrated Response to Organized Crime (CIROC). CIROC is a committee, established under an agreement between all levels of Canadian law enforcement, which shares information and works in a targeted and coordinated manner against organised crime. Under CIROC intelligence is managed, analysed and shared through a common database which is used by the committee to make operational decisions.

2.41 In addition to highlighting the need for information sharing amongst Canadian law enforcement agencies, Canadian law enforcement also stressed the importance of information sharing between agencies at regional and international levels:

I would like to address ... the need for an increased ability to share information between government agencies, domestically and internationally, to eliminate havens where criminal organizations can flourish. The current environment is one of fear of sharing information, due to either legislative restrictions or human rights concerns. While it is essential to be careful in determining the appropriate information to share and the context within which it is shared or used, this can seriously impede the ability of law enforcement to investigate organized crime.

Organized crime operates from an international perspective. In fact, it can be demonstrated that organized crime is taking advantage of the infrastructure and legislation of certain countries. They are organizing to better insulate themselves. As an example, some criminal organizations have based themselves in India and China to forward precursor chemicals. Other organizations have sought refuge in Caribbean countries, while others are now infiltrating countries of the African continent to use as trans-shipment points.²⁰

Technology and telecommunications access

2.42 In a number of the Delegation's discussions the importance of technology, such as telephone intercepts, was raised, as were the challenges that technology and its rapid development present to law enforcement.

2.43 Commissioner Elliott highlighted issues around access to telecommunications data. The Delegation was told that developments in telecommunications often occur without the provision of 'backdoor access' for law enforcement, so that law enforcement agencies are unable to intercept some of the newer telecommunications technologies. Companies developing these technologies in Canada are no longer under

20 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

a legal obligation to create an ability for law enforcement agencies to intercept new telecommunications.²¹

2.44 Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police told the Standing Committee on Justice and Human Rights, that:

...we need to progress is the area of lawful access. While communications technology has evolved considerably and criminals are embracing and taking advantage of it, Canadian law has not kept pace with the rapid changes. Increasingly, complex technologies are challenging conventional lawful access methods. Communication carriers are not required to provide access technology. Law enforcement agencies are simply asking that telecommunication carriers build interception capability into existing or new networks and provide access to important customer name and address information.²²

2.45 Consequently, law enforcement agencies are required to develop their own post-implementation solutions, which can be both complex and costly.

Confiscation of the proceeds of crime

2.46 Law enforcement strategies which target the business model and financial and material assets of organised crime were consistently raised during the Delegation's meetings. Mr Robert Fahlman, Director General of Criminal Intelligence, RCMP and Chief Superintendent Pierre Perron, RCMP, both highlighted the importance of asset confiscation as an effective strategy to disrupt organised criminal activity. In particular, the Delegation was told that by depriving individuals of illegally obtained assets, law enforcement is able to remove the major incentive for illegal and criminal activity.

2.47 A number of the officials with whom the Delegation met raised the merits of Ontario's civil forfeiture regime over the Criminal Code's assets forfeiture provisions.²³ Mr Fahlman noted that the federal proceeds of crime legislation requires a higher burden of proof and therefore presents greater challenges for law enforcement than the Ontario laws.

2.48 As noted above, the Criminal Code provides that assets can be seized if the prosecution proves on the balance of probabilities that the assets are the proceeds of a crime for which the person was convicted. Alternatively, if the prosecution can prove beyond reasonable doubt that assets are the proceeds of crime, no conviction is required to confiscate the assets. Mr Bill Bartlett, Senior Counsel from the Department

21 Part 6 of the Criminal Code previously allowed lawful access to this type of data.

22 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

23 Ministry of the Attorney General, *Civil Forfeiture in Ontario 2007, An Update On the Civil Remedies Act, 2001*, Ontario, August 2007.

of Justice, told the Delegation that as a result of the higher requirements of Federal Criminal Code, law enforcement was increasingly and successfully using provincial civil confiscation legislation.

2.49 Ontario's *Civil Remedies Act 2001* permits a court, at the request of the Attorney-General of Ontario, to make an order freezing or forfeiting to the Crown, property acquired through, or likely to be used for, unlawful activity. Property includes all types of assets, such as real estate, cars and cash.

2.50 There are three types of cases that the Attorney-General of Ontario can bring under the Civil Remedies Act: a proceeds case, an instruments case and a conspiracy case.

2.51 In a proceeds case, the Crown must establish that property was acquired as the result of unlawful activity. If proven, this property may be forfeited to the Crown by an order of the Ontario Superior Court of Justice.

2.52 In an instruments case, the Attorney-General must establish that the property in question is likely to be used to engage in unlawful activity that could result in the acquisition of other property, including money, or in serious bodily harm to any person. Where the Attorney-General establishes that the property is an instrument, often from past use of the property in an unlawful activity, the Ontario Superior Court of Justice may order that the property be forfeited to the Crown.

2.53 In a conspiracy case, the Crown must establish that two or more people conspired to engage in unlawful activity where they knew or ought to have known that the activity would likely result in injury to the public. The Ontario Superior Court of Justice may award damages for that injury or issue preventive orders.

2.54 The Superior Court of Justice must approve all steps in a civil confiscation proceeding under the act. The Civil Remedies Act authorizes the court to order the preservation of money or property to prevent it from being sold or mortgaged. If the government then proves its case, the court can order the money or property to be forfeited to the Crown. The onus of proof lies with the Crown.

2.55 Deputy Commissioner Vince Hawkes, Ontario Provincial Police informed the Delegation that the Civil Remedies Act has been highly successful and that over a twelve-month period CAN\$41million (AU\$46 million) of assets and funds had been restrained. The legislation has also been effective in that it allows clubhouses and vehicles to be forfeited thereby undermining the ability of organised crime groups to use these assets to undertake further illegal activities.

Disclosure burdens

2.56 The prosecution of serious and organised criminal activity is becoming increasingly complex as a result of the sophistication and complexity of modern criminal enterprises. The Delegation was told that current developments in disclosure requirements impose an enormous financial and resource burden on law enforcement

agencies. In the 1991 Supreme Court of Canada decision *R v Stinchcombe*,²⁴ the issue of 'relevance' vis-a-vis information collected and disclosure by the police and the Crown was tested.

In a 1991 case, *Regina v. Stinchcombe*, the Supreme Court of Canada ordered prosecutors to disclose to the defendant before the trial all relevant information. "Relevant disclosure" is defined as the reasonable possibility that information could be used to meet the crown's case, advance a defence, or make a decision that could affect the conduct of the defence. Disclosure in Canada has become a significant exercise in criminal cases, and issues pertaining to relevant disclosures surface in most major cases today. This can have a significant impact on the cost and progress of investigations and prosecutions.

Courts, crown counsel, defence counsel and police officers across the country have varying interpretations of what "relevant disclosure" is. Within our judicial system, the concept of relevant has been interpreted to the point where the threshold test for relevant disclosure is extremely low. As the investigation of criminal organizations has become complex, the management for purposes of disclosure has become more and more of a challenge. Consequently, this affects our capacity to investigate other criminal organizations.

A quick example of how expanding disclosure can affect an investigation. A few years ago, during a police investigation in Canada targeting a major organized crime group, 1.7 million pieces of communication were intercepted. Of those, 27,000 were transcribed. In the end, only 200 were deemed sufficiently relevant to the case to be used in court.

Investigations can produce an extraordinary amount of documentation. Significant policing resources are allotted to this duty, effectively removing them from front-line policing.

Further, the reality of the volume of disclosure has affected the capacity of law enforcement and prosecutors to attack organized crime as an offence in and of itself. In many instances, prosecution for substantive offences is preferred over organized crime charges. The legal framework and practices must evolve and embrace the efficiencies that can be provided by new techniques and methods such as those provided by electronic technology. Most importantly, there is a need to establish a well-defined and consistent threshold for relevant disclosure. This could be accomplished through enacting disclosure requirements and procedures.²⁵

2.57 The Delegation was told that disclosure requirements in the Canadian justice system have developed to a point where they are problematic. However, the Delegation also heard of some positive developments in regard to the management

24 [1991] 3 S.C.R. 326.

25 Standing Committee on Justice and Human Rights, Committee Hearing 25 March 2009, by Assistant Commissioner Mike Cabana, Organized Crime Committee, Federal and International Operations, Royal Canadian Mounted Police.

and presentation of information. Mr Beardall, Senior Counsel, Public Prosecution Service of Canada, noted that there was a move toward streamlining the disclosure process with a greater acceptance by judges, the Crown, the defence and police of the provision of documents digitally. The Delegation heard of a successful initiative where material gathered during the development of an investigation was compiled on a computer hard-drive. The hard-drive was then provided as part of disclosure requirements, saving both resources and time. It is then at the discretion of the defence as to which pieces of information they wish to access in hard-copy.

Integrated justice units

2.58 During discussions with both the RCMP and Senior Counsel from the Department of Justice and the Public Prosecution Service of Canada, the complexity of the Canadian criminal justice system was raised as a significant challenge facing both the judiciary and law enforcement. The increasing sophistication of organised criminal enterprises and their activities requires the judiciary and law enforcement officers to have greater specialised knowledge. Of concern, was the practice of specialised defence counsel who used the complexity of the case to considerably slow pre-trial motions. In particular, the Delegation heard that time served in custody prior to sentencing is counted on a two-for-one basis. This means that every year in custody prior to conviction reduces the final sentence by two-years. It was suggested that this was a mechanism used by individuals at the high-end of serious criminal charges to significantly reduce prison sentences. This practice was also reported as being responsible for overcrowding in pre-trial detention facilities.

2.59 Mr Bartlett, from the Department of Justice, highlighted a range of reforms currently being implemented in Canada to address the challenges that complex criminal cases present to law enforcement and prosecutors. Integrated Justice Units were flagged as a significant new approach. The Units integrate the investigation and prosecution of criminal cases by having both police and prosecutors involved in cases from the outset. This approach moves away from the more traditional silo approach in which police are responsible for the investigation of a case and then hand it over to the Public Prosecution Service of Canada to prosecute. Integrated Justice Units allow prosecutors to be involved with police to ensure that the case and brief of evidence are collected and prepared in a manner which is compatible with the prosecution process. It was noted that while this approach has little public or political appeal, it has significant benefits for law enforcement.

The Charter of Rights

2.60 Canada has a *Charter of Rights and Freedoms* (the Charter). The Delegation was told that the Charter has been in operation for 26 years and that Canadians broadly support it. However, it was acknowledged that for law enforcement the Charter has had a number of unintended consequences.

2.61 The Charter contains a number of provisions that impact on Canada's options for responding to serious and organised crime, including:

- Subsection 2(d), which guarantees freedom of association.
- Section 7 requires that all laws be 'in accordance with fundamental justice' which has been interpreted to include a requirement of proportionality.²⁶ This means that citizens may challenge legislation on the basis that it is not proportional to the end sought to be achieved.
- Section 7 has also been interpreted as requiring that all criminal laws have a *mens rea* (or mental) element. Therefore all criminal offences attracting penalties of imprisonment require the proof of some level of intent.

2.62 Due to Canadian constitutional guarantees of freedom of association, Canadian criminal legislative approaches have centred on legislation which targets participation in – rather than membership of – a criminal enterprise or organisation. The Charter was also argued to add complexity to the work of law enforcement because of the issues surrounding individual privacy and lawful access to private property.

2.63 The Delegation was told that the *Charter of Rights and Freedoms* has become a mechanism used by those facing criminal trial to stall the judicial process.

The social dimension of crime

2.64 Senior officers of the RCMP noted the link between social exclusion, social disadvantage, and crime. Senior Deputy Commissioner Bill Sweeney from the RCMP noted that 80% of all crimes were committed by 20% of people.

2.65 The Delegation was told that while there has previously been an inclination for law enforcement agencies to focus solely on criminal acts, there is now a growing awareness of the need to balance this with consideration of social and economic issues. Commissioner William Elliott highlighted the need to reconsider the structure of police forces in the 21st Century, as modern police forces are required to have skills beyond traditional law enforcement activities. Accordingly, the RCMP are looking to make investments in a range of skilled individuals including forensic accountants and intelligent analysts. The RCMP has also recognised the importance of targeting the causes of crime, particularly low level, street-gang crime, through social intervention, and has developed greater links with agencies which provide social services.

2.66 The Delegation was told that the RCMP in partnership with First Nation communities is successfully running the 'Community Cadet Corp Program'. The Hobbema Community Cadet Corp website outlines the reason for, and value of, this program:

Several community consultations confirmed that many youth are susceptible to the gang and drug lifestyle due to their desire for an identity that they can be recognized with--whether positive or negative. The increase in gang and drug activity is an expected phenomenon when

26 R. v. Heywood [1994] 3 S.C.R.761.

culture, language and a sense of pride in the family, school and community begin to erode. This problem, especially in First Nations communities, has taken years to evolve and involves a number of dynamics that are beyond what the police can expect to significantly influence. While this is true, as service provider and leading organization in the community, the Police (Royal Canadian Mounted Police) need to be seen to contribute to the health and safety of the community by providing positive alternatives and safety for the youth at risk.

One alternative the Hobbema RCMP implemented is the development of a First Nations Community Cadet Corps Program that is incentive based and closely associated with the schools, community leaders and the RCMP. The Cadet activities are specifically tailored to the needs and concerns of the native reserve youth with a strong emphasis on native culture, language, education, sports and a healthy lifestyle. The goals and objectives of the Program are to prepare the youth for future leadership positions and challenges by mentoring the youth through positive attitudes and social development skills provided by culturally sensitive role models. The priority of the Program is directed to the development of the youth with the assistance of their families, school, community leaders and the Police.²⁷

2.67 Senior Deputy Commissioner Sweeny told the Delegation that over 1000 youth, across a number of communities, are now involved in this program, which has been so successful that it is now also being run in Jamaica.

Peace Bonds

2.68 The Delegation heard from both Mr Bill Bartlett from the Department of Justice and Mr Don Beardall, from the Public Prosecution Service of Canada, about the successful use of Peace Bonds to break the link of 'lower' level gang members to a criminal gang. Peace Bonds were originally developed to tackle domestic violence, and were extended to criminal gangs in 1997. The bonds may place a range of restrictions on individuals who are suspected on reasonable grounds to be likely to commit a criminal offence.

A Peace Bond is a promise, enforceable under the Criminal Code of Canada, to keep the peace and be of good behaviour and to obey all other terms and conditions ordered by a Judge or Justice of the Peace (“JP”), for period of up to twelve (12) months. Judges and JP’s may impose reasonable conditions on those who are subject to the Peace Bond, for example: restrictions on contact with other persons, restrictions on attending certain places, restrictions on possessing firearms and ammunition.²⁸

27 Hobbema Community Cadet Corps, <http://www.hobbemacadets.net/whoware.htm> (accessed on 28 May 2009).

28 Law Societies of the Northwest Territories, *Peace Bonds and Restraining Order*, <http://www.lawsociety.nt.ca/ForthePublic/LegalInformation/PeaceBondsRestrainingOrders/tabid/123/Default.aspx> (accessed 1 June 2009).

2.69 Mr Beardell indicated that Canada had successfully used peace bonds with 'junior' members of street gangs by placing preventative and rehabilitation components in the orders, such as attendance at educational or diversion programs, or non-contact with senior gang members. However, Mr Beardell cautioned that this approach should not be used if police do not have adequate resources to enforce and monitor the peace bonds once ordered.

United States of America

2.70 The Delegation spent a day in Washington D.C. holding discussions with senior officers and subject matter experts from the Federal Bureau of Investigations and the Department of Justice. Discussions covered both the extent and nature of organised crime, as well as key legislative approaches to combat it. The Delegation was interested to learn that the United States of America (US) has approximately 18,000 law enforcement agencies.

2.71 The following section provides some background on the agencies with which the Delegation met, the nature of organised crime in the US, key US legislation targeting organised crime and discusses the key issues and findings from the Delegation's Washington meetings.

United States Organisations with which the Delegation met

The Federal Bureau of Investigations²⁹

2.72 The Federal Bureau of Investigations (FBI) is the United States' key federal agency responsible for tackling, among other things, serious and organised crime. The FBI's stated mission is:

To protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

2.73 The FBI's priorities are to:

- Protect the United States from terrorist attack
- Protect the United States against foreign intelligence operations and espionage
- Protect the United States against cyber-based attacks and high-technology crimes
- Combat public corruption at all levels
- Protect civil rights
- Combat transnational/national criminal organizations and enterprises
- Combat major white-collar crime
- Combat significant violent crime
- Support federal, state, local and international partners
- Upgrade technology to successfully perform the FBI's mission

29 Federal Bureau of Investigations, <http://www.fbi.gov/hq/cid/orgcrime/lcnindex.htm> (accessed on 2 June 2009).



Delegation Members with senior officer of the Federal Bureau of Investigation, Washington, D.C.

2.74 As of 31 December 2008, the FBI had a total of 31,676 employees. This includes 12,977 special agents and 18,699 support professionals, such as intelligence analysts, language specialists, scientists, information technology specialists, and other professionals.

2.75 In the fiscal year 2008, the FBI's total budget was approximately US\$6.8 billion (AU\$8.6 billion), including US\$410 million (AU\$518 million) in program enhancements for intelligence, counterterrorism, laboratory, information technology, and cyber security.

2.76 The FBI has a dedicated Organized Crime Section which is divided into three units devoted to: La Cosa Nostra, Italian organized crime and racketeering; Eurasian/Middle Eastern organized crime; and Asian and African criminal enterprises.

2.77 The FBI is tasked with the overall coordination and support of all organised crime investigations. Each of its 56 field offices investigates criminal enterprises within its own territory and relies on headquarters for additional support. The FBI also participates in joint task forces with other federal, state, and local law enforcement agencies.

*United States Department of Justice*³⁰

2.78 The United States Department of Justice was established by statute in June 1870, and is headed by the Attorney-General. The Department's mission is:

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behaviour; and to ensure fair and impartial administration of justice for all Americans.

2.79 There are 40 separate components or divisions to the Department. These include the United States Attorneys, who prosecute offenders and represent the United States Government in court; the major investigative agencies which prevent and deter crime and arrest criminal suspects are;

- the Federal Bureau of Investigation,
- the Drug Enforcement Administration,
- the Bureau of Alcohol, Tobacco, Firearms and Explosives,
- the United States Marshals Service, which protects the federal judiciary, apprehends fugitives, and detains persons in federal custody; and
- the Federal Bureau of Prisons, which confines convicted offenders.

2.80 The Department's headquarters are in Washington, D.C., although much of the Department's work occurs in offices located throughout the country and overseas.

The nature of organised crime in the United States

2.81 Mafia type organisations have a significant and historic involvement in organised crime in America. The FBI reported that there are several mafia groups currently active in the US: the Sicilian Mafia; the Camorra or Neapolitan Mafia; the 'Ndrangheta or Calabrian Mafia; and the Sacra Corona Unita or United Sacred Crown.

2.82 It is estimated that, worldwide, these four groups have approximately 25,000 members, with 250,000 affiliates. There are more than 3,000 members and affiliates in the US, scattered mostly throughout the major cities in the Northeast, the Midwest, California, and the South. Their largest presence centres around New York, southern New Jersey, and Philadelphia.³¹ However, as in Australia, the influence of transnational organisations is changing the criminal landscape.

2.83 The FBI reported that the following groups have a significant presence in the US or are targeting American citizens via the Internet and other technologies:

30 United States Department of Justice, <http://www.usdoj.gov/jmd/mps/manual/overview.htm> (accessed 3 June 2009).

31 Federal Bureau of Investigations, About Organized Crime, <http://www.fbi.gov/hq/cid/orgcrime/lcnindex.htm> (accessed on 2 June 2009).

- Russian mobsters who fled to the US in the wake of the Soviet Union's collapse;
- Groups from African countries like Nigeria that engage in drug trafficking and financial scams;
- Chinese tongs, Japanese Boryokudan, and other Asian crime rings; and
- Enterprises based in Eastern European nations like Hungary and Romania.³²

2.84 Mr Matt Desarano, Unit Chief of the Gang Unit, FBI, also identified three types of 'domestic' criminal gangs, each with sizeable membership:

- Streets Gangs – membership: 790, 000 – 842,000
- Prison Gangs – membership 110,000 – 144,000
- OMCG – membership 30,000 – 41,000

2.85 The impact of organised crime in the United States is significant. The economic impact of global organised crime is estimated at around US\$1 trillion per year of illegal profits.

Key United States legislation targeting organised crime

Criminal law

Organised Crime Control Act 1970 (OCCA)

2.86 The OCCA defines organised crime as 'the unlawful activities of...a highly organised, disciplined association...'. The Act creates various offences related to management of a gambling business in an attempt to target the businesses associated with organised crime in the US.

2.87 The purpose of the OCCA is:

...to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with those engaged in organized crime.

2.88 The OCCA has thirteen parts, one of which (section 901A) is commonly called the *Racketeer Influence and Corrupt Organizations Act 1970* (RICO Act), and forms Chapter 96 of Title 18 of the United States Code. In addition to introducing the RICO Act, the OCCA contains provisions which:

- permit courts to order the detention and fining of witnesses who refuse, without good reason, to comply with court or grand jury orders or providing false information

32 Federal Bureau of Investigations, About Organized Crime, <http://www.fbi.gov/hq/cid/orgcrime/aboutocs.htm> (accessed 2 June 2009).

-
- strengthen perjury laws, so that witnesses can be tried for perjury based solely on contradictions in their testimony
 - limit the ability of witnesses to refuse to testify on the basis that their testimony may incriminate them
 - give the Attorney-General the ability to protect witnesses
 - establish crimes related to running illegal gambling businesses, including protecting an illegal gambling business by obstructing state law, and using income from organised criminal activity to run a business engaged in interstate commerce
 - establish certain types of bombing and arson as federal crimes.

Racketeer Influence and Corrupt Organizations Act 1970 (RICO Act)

2.89 RICO provides for extended penalties and a civil cause of action for criminal acts performed as part of an ongoing criminal organisation. The RICO Act created four new offences:

- section 1962(a) criminalises the investment of the proceeds of a pattern of racketeering or collection of an unlawful debt in an enterprise affecting interstate commerce
- section 1962(b) criminalises acquiring or maintaining an interest in an enterprise through a pattern of racketeering activity or collection of an unlawful debt (e.g. using arson to pressure owners into selling out)
- section 1962(c) criminalises conducting the affairs of an enterprise through a pattern of racketeering activity or collection of an unlawful debt (e.g. a car dealer who uses the business to assist a stolen car ring)
- section 1962(d) criminalises conspiring to commit any of the above three offences.

2.90 A 'pattern of racketeering activity' is defined as the commission of two or more predicate offences which includes extortion, theft, drugs and fraud, within a ten year period. The Act enables the Federal Department of Justice to use otherwise state-based crimes as predicate offences in any Federal Court.

2.91 The penalty for racketeering is a maximum of 20 years imprisonment and/or a fine of US\$250 000 (AU\$316 000). In addition, a convicted person must forfeit all ill-gotten gains.

2.92 In addition to proving the predicate offences under whichever legislation criminalises those activities, prosecutors must also prove that:

- the individuals are associated with one another
- the predicate acts are related, and occurred within a ten year period, and
- the criminal acts have some impact on interstate commerce (e.g. withdrawing money from an interstate bank account).

2.93 With regard to the conspiracy offence, there is no requirement of an overt or specific act. So long as they share a common purpose, conspirators are liable for acts of their co-conspirators.

2.94 Therefore RICO aims to disrupt enterprise-oriented criminal activity. 'Enterprises' can be criminal organisations or legitimate businesses, individuals, partnerships, corporations, associations, other legal entities, or people who don't form a legal entity but 'are associated in fact'.

2.95 The RICO laws are unique in that they also allow private parties to sue 'racketeers' for damage to their business property. If successful, the court may award triple damages to the business owner.

Proceeds of crime laws

2.96 Under the RICO Act the Attorney-General may seek a restraining order to temporarily seize the assets of a person who has been charged under the Act.

2.97 The *Civil Asset Forfeiture Reform Act of 2000* also created a civil forfeiture regime under which the assets of persons under investigation for, being tried for or convicted of a large number of offences may be frozen or confiscated by the government.

Key issues and findings

Racketeer Influence and Corrupt Organisations Act 1970

2.98 Much of the Delegation's discussions in the United States focused on the RICO laws.

2.99 The Delegation met with Mr Matt Herron, Section Chief of the Criminal Investigation Division, FBI. In an interview, Mr Herron outlined the value of RICO to tackling criminal organisations:

RICO stands for Racketeering Influence and Corrupt Organization statute. And basically it is legislation that enables us to attack a criminal enterprise as opposed to just individual members of the organization... what we do is we will open up a RICO case on a particular group, and instead of charging maybe one or two or three individuals for committing an assortment of crimes, we can identify the organization itself as a criminal enterprise. And as long as they are engaged in predicate acts that fall within the RICO statutes, we will charge that and basically take out the entire leadership of an organization as opposed to an individual or two.³³

2.100 US Department of Justice officials told the Delegation that the RICO legislation has been highly successful. In part, its success is based on the fact that law

33 Federal Bureau of Investigation, Inside the FBI, <http://www.fbi.gov/inside/archive/inside021309.htm> (accessed 2 June 2009).

enforcement can more readily make a case against a criminal enterprise than the individuals at the top of the structure running the enterprise. Additionally, the Delegation heard that the evidential burden required to establish racketeering activity is so high that members of the criminal enterprise, once identified, would readily give evidence.

2.101 Prior to leaving Australia, delegation members were aware that many Australian commentators felt that the legislation was complex and that cases prosecuted under it were lengthy. However, the Delegation was informed that as the legislation has been in operation in the US for a substantial period of time, law enforcement and prosecution services are now familiar with its operation and have little or no difficulty with the statute.

2.102 Under RICO the Attorney-General may seek a restraining order to seize temporarily the assets of a person who has been charged under the Act. Department of Justice officers highlighted the ability under the RICO legislation to successfully obtain, on a conviction, all assets of the criminal enterprise, including those used in the commission of the offence. The RICO laws are also unique in that they allow private parties to sue 'racketeers' for damage to their business property. If successful, the court may award triple damages to the business owner.³⁴

Confiscation of the proceeds of crime³⁵

2.103 As in other jurisdictions, non-conviction-based, civil asset confiscation laws are increasingly viewed in the US as an effective tool for disrupting and dismantling serious and organised crime. The Delegation was informed that the new Attorney-General, Mr Eric Holder, has changed the emphasis of federal justice, prosecution and law enforcement agencies to provide a greater emphasis on civil remedies.

2.104 Non-conviction-based, civil confiscation laws involve *in rem* actions, meaning that the property is the subject of judicial proceedings, as opposed to a person. This means that no conviction is required or recorded, the civil burden of proof is used (the balance of probabilities) as opposed to the criminal burden (beyond reasonable doubt), and a judgment is enforceable against the property not the person so that it remains enforceable even if the property is transferred to another person after the judgement. In the US this approach has already resulted in the confiscation of a number of illegally funded businesses.

2.105 As noted at paragraph 2.97, the *Civil Asset Forfeiture Reform Act of 2000* creates a civil, non-conviction-based forfeiture regime under which the assets of persons under investigation for, being tried for or convicted of a large number of offences may be frozen or confiscated by the government.

34 Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into legislative arrangements to outlaw serious and organised crime groups*, Submission 16, p. 16.

35 United States Department of Justice, Assets Forfeiture and Money Laundering Section, <http://www.usdoj.gov/criminal/afmls/> (accesses 2 June 2009).

2.106 The Delegation was told that approximately US\$1billion (AU\$1.26 billion) are seized under these provisions each year. The *Comprehensive Crime Control Act of 1984* established the Department of Justice Assets Forfeiture Fund to receive the proceeds of forfeiture and to pay the costs associated with such forfeitures, including the costs of managing and disposing of property, satisfying valid liens, mortgages, and other innocent owner claims, and costs associated with accomplishing the legal forfeiture of the property. The Attorney-General is authorised to use the Assets Forfeiture Fund to pay any necessary expenses associated with forfeiture operations such as property seizure, detention, management, forfeiture, and disposal.³⁶

2.107 The Fund can also be used to finance certain general investigative expenses. Department of Justice officials highlighted the value of the Fund to support joint law enforcement operations and enhance cooperation between the various police jurisdictions. Expenses and various costs incurred by state and local law enforcement officers participating in joint law enforcement operations with a federal agency can be covered by the Fund. The Delegation heard that approximately US\$30 million (AU\$38 million) is provided each year to law enforcement to conduct electronic surveillance, and US\$27 million (AU\$34 million) is provided to support the Safe Streets, Gang Unit.³⁷

Technology and telecommunications access

2.108 Officers from the Department of Justice highlighted the importance for law enforcement to be able to intercept telecommunications in order to conduct electronic surveillance. The Delegation heard that before any telecommunications provider can roll-out services they must provide 'backdoor' access for law enforcement.

2.109 *The Communications Assistance for Law Enforcement Act 1994* (CALEA) is a United States statute which provides for this. The purpose of CALEA is:

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for Law Enforcement purposes, and for other purposes.

2.110 CALEA enhances the ability of law enforcement and intelligence agencies to conduct electronic surveillance by requiring that telecommunications carriers and manufacturers of telecommunications equipment, modify and design their equipment, facilities, and services to ensure that they have built-in surveillance capabilities. A paper from the Congress Research Service notes:

The Communications Assistance for Law Enforcement Act (CALEA, P.L. 103-414, 47 U.S.C. 1001-1010), enacted October 25, 1994, is intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently despite the deployment of new digital technologies and wireless services that have altered the character of

36 United States Department of Justice, Assets Forfeiture Program, The Fund, http://www.usdoj.gov/jmd/afp/02fundreport/02_2.html (accessed 3 June 2009).

37 Discussion with the United States Department of Justice, Washington, 16 April 2009.

electronic surveillance. CALEA requires telecommunications carriers to modify their equipment, facilities, and services, wherever reasonably achievable, to ensure that they are able to comply with authorized electronic surveillance actions.³⁸

2.111 In the years since CALEA was passed it has been modified to include all VoIP and broadband internet traffic. However, the Delegation was told that criminal organisations have sought to evade surveillance of their telecommunications by developing their own broadband internet system using wireless servers.

Corruption

2.112 While not canvassed extensively, some discussion covered the issue of public service and political corruption. The Delegation heard that organised crime protects its business through violence, corruption or both. It was suggested that in the US established criminal groups are politically well-connected and that as a business becomes more sophisticated a group will target individuals in high public office.

Conclusions

2.113 The Delegation's discussions with Canadian and US law enforcement agencies were extremely useful. The key issues arising from the discussions that are of relevance to Australia's consideration of legislative arrangements to combat serious and organised crime include:

- (a) The importance of taking a holistic approach to fighting organised crime. This must include:
 - appropriate investigative powers for law enforcement, including the capacity to intercept telecommunications,
 - strong proceeds of crime confiscation laws, with civil burdens of proof, removing the motive for criminal activity and preventing criminal assets from being used to commit further crimes,
 - the development of criminal laws which target high-level individuals within organised crime groups,
 - social intervention to prevent the involvement of young people in, and development of, low-level street gangs; and
- (b) The pressing need for national, regional and international intelligence sharing and coordination amongst law enforcement agencies, with appropriate mutual legal assistance arrangements to accommodate this.

2.114 The Delegation appreciates the frankness of discussions and the hospitality it received from the North American organisations with which it met.

38 Patricia Moloney Figliola, Congressional Research Service, *Digital Surveillance: The Communication Assistance for Law Enforcement Act*, <http://www.fas.org/sgp/crs/intel/RL30677.pdf> (accessed 2 June 2009).

