



The Fight Against Organized Crime in Québec

**Québec Police Commission
Report of the Commission of Inquiry
on Organized Crime
and Recommendations**

In fact, the problem of delays is felt most acutely in the areas where it is most important that justice should act speedily, i.e., in cases related to organized crime. We will return to this point.

It is hardly necessary to emphasize that all delays in the judicial system work in favor of organized crime and to the detriment of witnesses, the public and, in a word, of justice itself.

4 - Immunity from prosecution

All organized criminal elements are engaged in a continuing conspiracy and the best source of evidence is the coconspirator.

Peter D. Andreoli (1)

In the extensive crimes planned and carried out by sophisticated criminals, proof, traces of which have been carefully obliterated as much as possible by the perpetrators, is rare and difficult to obtain. The difficulty is directly in proportion to the astuteness of the

(1) Law Enforcement, Science and Technology, p. 26 - Thomson Book Company 1967, Washington.

criminals. This is why, until recent years, it has been noted that suspected leaders of organized crime were rarely brought to court whereas those who executed the crimes were regularly prosecuted and convicted.

In fact, it must be realized that, as the leading figures in organized crime do not participate directly in the actual criminal operation, it is practically impossible to bring an underworld boss to trial without the evidence of an accomplice. A recent example is the sentencing of Frank Cotroni in New York in a drug case. Without the testimony of his ex-associate Pino Cantania, to whom a certain immunity was promised, the authorities would have had difficulty in convicting Cotroni. The case of Frank Dasti, also found guilty in New York of trafficking in narcotics, is in the same category.

This collaboration on the part of a professional criminal is not the result of sudden repentance. It is essentially based on self-interest and it usually appears when the individual is confronted with an inevitable and lengthy prison sentence. This is the moment when, depending on his age, character, family circumstances and his relationship with the underworld, he will agree to testify against his accomplices in return for a "promise of immunity".

The American judicial system realistically recognizes that in certain important cases, the only means of obtaining a verdict against the leaders of criminal organizations is to enlist the collaboration of a co-conspirator. There is no hesitation in quite openly offering a

conspirator immunity from prosecution. This immunity can be granted in various ways: by law in the case of States which have adopted a Statute of immunity, or by the discretionary decision of the District Attorney to refrain from laying charges or to withdraw a charge already made.

American jurisprudence has even established the principle that such a decision should be respected by his colleagues, his superiors and his successors.

In the United States those experienced in fighting organized crime judge immunity to be the most useful tool in obtaining the collaboration of persons belonging to the underworld.

In Canada, there is no statute granting a person total immunity from prosecution as the result of a crime. It is true that by means of his discretionary powers a Public Prosecutor or his deputies can decide to refrain from laying charges or to withdraw a charge.

However, in our country, unfortunately, the practice of refraining from the prosecution of a co-conspirator in exchange for his collaboration is regarded as a misuse of this discretionary power.

The Commission is of the opinion that the decision not to lay charges against a suspect, when his collaboration is indispensable for the prosecution of other individuals of a higher rank than himself in the organized crime hierarchy, represents a wise use of power which is entirely compatible with the higher interests of justice.

It can be said that the objectivity and degree of credibility of such evidence will be seriously compromised. It is for the judge or the jury to assess the credibility of the witness and to decide whether or not they should have faith in his version.

Therefore, the Commission recommends the public use of the discretionary power of the the Attorney-General to grant official immunity to a conspirator in exchange for veracious testimony, in important cases, in particular those involving members of organized crime groups, when the collaboration of the conspirator appears useful for the prosecution of one or more other persons.