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Hit Them Where it Hurts: State Responses to Biker Gangs in Canada

From civil and criminal forfeiture, to "gangsterism" offences in the Criminal Code, *Canada does not lack for tools to address biker gangs. Yet attempts to stamp out bikers have met with little to no success. State responses to criminal organizations should use those organizations' own structures and symbols of power against them. A gang's reputation may be effectively used against a gang, but this strategy poses significant challenges to prosecution. Attempts to use a gang's internal hierarchy and administrative structure can succeed, but may only produce circumstantial findings if not supported by sufficient and substantial evidence. Attempts to combat gang violence by targeting their clubhouses, whether through forfeiture provisions or through municipal bylaws, may prove the most effective methods of targeting biker gangs. The issue is not a lack of resources; those resources are used inefficiently and ineffectively.*

Qu'il s'agisse de confiscation civile et criminelle ou des infractions de « gangstérisme » prévues dans le Code criminel, *le Canada ne manque pas de moyens pour lutter contre les gangs de motards. Pourtant, les tentatives d'éradiquer les motards n'ont eu que peu ou pas de succès. L'État devrait s'attaquer aux organisations criminelles en utilisant leurs propres structures et symboles de pouvoir. La réputation d'un gang peut être utilisée efficacement contre lui, mais cette stratégie pose également des défis importants pour le poursuivant. Les tentatives d'utiliser la hiérarchie interne et la structure administrative d'un gang peuvent réussir, mais il est possible qu'elles ne produisent que des conclusions circonstancielles si elles ne sont pas étayées par une preuve suffisante et substantielle. Les tentatives de lutte contre la violence des gangs en ciblant leurs repaires, que ce soit par la confiscation de leurs biens ou par l'adoption de règlements municipaux, peuvent s'avérer les méthodes les plus efficaces pour s'attaquer aux gangs de motards. Le problème n'est pas un manque de ressources; ces ressources sont utilisées de manière non efficiente et non efficace.*

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Introduction

From pirates prowling the Atlantic coast in the 18th century to bootleggers running Canadian whiskey into prohibition-era America, organized crime has existed in Canada for centuries.[1] Bill C-95 was passed in 1997 and introduced s. 467.1, the "gangsterism offence," to the *Criminal Code*, which was substantially amended by Bill C-24 in 2001.[2] Canada's anti-gang measures are not limited to strictly offence-based responses, and other avenues of punishing bikers from procedural tools to forfeiture provisions are also effective. This article focuses on the state's responses

1. Stephen Schneider, *Iced: The Story of Organized Crime in Canada* (Mississauga: John Wiley & Sons Canada, 2009) at 8-12 [Schneider, *Iced*].
2. Bill C-95, *An Act to amend the Criminal Code (criminal organizations) and to amend other Acts in consequence*, 2nd Sess, 35th Parl, 1997 [Bill C-95]; Bill C-24, *An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts,* 1st Sess, 37th Parl, 2001 [Bill C-24].

to outlaw motorcycle gangs[3] because Canada's current anti-gang laws were enacted due to public outcry over the violence of the Quebec Biker War of the 1990s and early 2000s.[4]

The state should focus its investigative and prosecutorial resources on the elements of a gang that the state may most effectively use against it. In the past, state efforts to prosecute gang members based on the gang's reputation—the "power of the patch"—have produced mixed results, since it requires the Crown to expend significant resources to prove the accused wielded the gang's reputation in the commission of another offence. Strategies that target or make use of a gang's administrative structures and hierarchies—from the membership process to networking between chapters and members—may be more successful provided the state does not overreach in attempting to lay their charges. Finally, strategies that target gang clubhouses and property may be the most effective methods of combatting biker gangs. Evidence gathered through investigation of the clubhouse and the opportunity to strike directly at bikers' presence in an area can be powerful tools in prosecuting biker gangs. We do not lack for tools to prosecute and investigate biker gangs in Canada, imperfect though these tools may be. Rather than designing new laws, the state ought to determine how to most effectively use a gang's resources against them.

1. *The history of outlaw bikers in Canada*

The outlaw biker identity was born following a disastrous weekend motorcycle rally in the town of Hollister, California in 1947. A few years later, in the working-class San Francisco suburb of Oakland, several outlaw bikers formed a new club. Their logo was a winged skull wearing a motorcycle helmet, and they took their name from a World War Two flying squadron: the Hells Angels.[5] In southern Ontario, the Satan's Choice Motorcycle Club [the Choice] were formed in the early 1960s by an amateur boxer named Bernie Guindon.[6] At the height of their power

3. For the purposes of this article, a motorcycle *gang* is any group that has been found in a court of law to constitute a criminal organization, whereas a motorcycle *club* is any group, outlaw or otherwise, that has not been so found.

4. Schneider, *Iced*, *supra* note 1 at 411-416; Karen Marie Katz, "Law Gone to Politics, Politics Gone to Law: The Evolution of Canada's Organized Crime Legislation" (2011) 57:1 Crim LQ 58 at 82.

5. "The Founding of the Hells Angels Motorcycle Club," *Hells Angels World* (website), online: <https://hells-angels.com/our-club/history/> ["Hells Angels: History"].

6. Mick Lowe, *Conspiracy of Brothers: A True Story of Murder, Bikers and the Law* (Toronto: University of Toronto Press, 1991) at 66-67 [Lowe, *Conspiracy of Brothers*]; Don Norris, *Riding With Attitude: A Journey Through Life on a Motorcycle* (Toronto: Toronto University Press, 2005) at 57. This was actually the second iteration of the Choice, the first having been forcibly shut down by a rival club a few years earlier.

in the late 1960s, the Choice had a dozen chapters from Windsor to Thunder Bay to Ottawa. No other Canadian club could match the Choice for membership, territory, or power, and internationally they were second only to the Hells Angels.[7] Though many of these early outlaw bikers held down steady day jobs, others would supplement their income by collecting debts, acting as hired muscle, or selling drugs.[8] These activities were not club-wide ventures, but instead consisted of individual members engaging in individual crimes.[9] When Guindon was arrested in 1976 for his role in "the largest [PCP manufacturing operation] in North America,"[10] there was no evidence to suggest that he had used his association with the Choice in the commission of the crime. Guindon had relied on his personal reputation and capacity for violence, rather than the reputation or power of the Choice, to commit his criminal activities.[11]

The Hells Angels attempted to assimilate the Choice and establish a Canadian presence in 1968, but the Angels' emissary was rebuffed before he even left the Toronto airport. Guindon, at the time the Choice's national president, was fiercely Canadian, and refused to see the Choice reduced to a branch of an American organization.[12] A little less than a decade later Garnet McEwan, Guindon's replacement as the Choice's national president, was much more willing to work with American clubs. The Choice began to splinter under McEwan, and in the summer of 1977 the Choice split: half the chapters remained Choice and the other half joined the Outlaws, an American outlaw motorcycle club and the Hells Angels' greatest rivals.[13] Both American clubs had been eyeing a Canadian expansion, and the fact that the Outlaws had set up shop in Ontario's lucrative southwest forced the Hells Angels to act. On 5 December 1977, Montreal's fearsome Popeyes motorcycle club were assimilated by the Hells Angels and became the gang's first Canadian chapter.[14] From their beachhead in Montreal, the

7. Lowe, *Conspiracy of Brothers*, *supra* note 6 at 77, 93, 118.

8. *R v Guindon*, [1980] OJ No 494 (QL) at para 4 (ON CA) [*Guindon*]; Lowe, Conspiracy of Brothers, *supra* note 6 at 3, 7, 13; Graeme Melcher, "Rebellion on the Road: Masculinity and Outlaw Motorcycle Clubs in Postwar Ontario," in Peter Gossage & Robert Rutherdale, eds, *Making Men, Making History: Canadian Masculinities across Time and Place* (Toronto: UBC Press, 2018) 364 at 374 [Melcher, "Rebellion on the Road"].

9. Lowe, *Conspiracy of Brothers*, *supra* note 6 at 106; Interview of Stuart Henderson (21 December 2011) on bikers in Toronto's Yorkville Community (unpublished); Reginald G Smart & David Jackson, "Yorkville Subculture" in WE Mann ,ed, *The Underside of Toronto* (Toronto: McClelland and Stewart, 1970) 109 at 117.

10. *Guindon, supra* note 8 at para 3.

11. *Guindon, ibid*; *R v Patterson, Valois, and Guindon*, 31 CCC (2d) 352 (ON District Court).

12. Lowe, *Conspiracy of Brothers*, *supra* note 6 at 118.

13. Melcher, "Rebellion on the Road," *supra* note 8 at 72-75; *R v Lindsay,* 2005 CanLII 24240 (ON Sup Ct), [2005] OJ No 2870 (QL) at para 653 [*Lindsay*].

14. Melcher, "Rebellion on the Road," *ibid* at 71-75; *Lindsay*, *ibid* at paras 331, 398, 653.

Hells Angels expanded across the country. This expansion was driven in large part by the Canadian Hells Angels' national president Walter Stadnick, who wanted to see the Hells Angels rule as Canada's largest and most powerful outlaw motorcycle club.[15] Stadnick succeeded: on 29 December 2000, virtually all of Ontario's outlaw bikers were assimilated by the Hells Angels, making the gang the largest and most powerful biker gang in the country.[16] Canada is Hells Angels territory, and from coast to coast and around the world, they all trade on a shared brand and reputation.

2. *The Quebec biker war*

Outlaw motorcycle clubs were largely ignored by the state and the public at large for decades because they tended to confine their crime and violence to the criminal underworld, with little crossover into everyday society.[17] Though Montreal's criminals had traditionally shared the drug trade, by 1994 the Hells Angels controlled 80% of the market thanks to their overwhelming membership numbers and capacity for violence, their national organization, and their control over key shipping ports.[18] As a result, the greatest resistance to the Hells Angels' expansion came not from the state or from concerned residents, but from other criminals. In the late 1980s a group of drug dealers and criminals in Montreal formed a group called the Rock Machine to counter the Hells Angels' dominance over the city's lucrative drug market.[19] Unsurprisingly, the Hells Angels resented the challenge to their monopoly, and in the early 1990s they set about attempting to wipe out the Rock Machine in what became known as the Quebec Biker War.[20]

Public apathy towards the bikers vanished with the death of 11-year old Daniel Desrochers in the summer of 1995. Desrochers was the innocent victim of a Hells Angels hit on a suspected Rock Machine associate.[21] Canadians, and Montreal residents in particular, realized that biker violence was no longer confined to the criminal underworld and that

15. *R v Stadnick*, 2004 CanLII 2116, [2004] QJ No 7163 (QL) at paras 76, 83, 97-98 (CS QC) [*Stadnick*].

16. *Lindsay, supra* note 13 at paras 331, 351, 575, 679, 1060; Adrian Humphreys, "Hells Angels Under Pressure," *National Post* (5 June 2015), online: <http://news.nationalpost.com/hells-angels-in-canada> [Humphreys, "Hells Angels Under Pressure"].

17. Schneider, *Iced*, *supra* note 1 at 434-436.

18. Karen Marie Katz, *Gangsterism: Canada's Law of Criminal Organizations* (Toronto: Thomson Reuters Canada, 2013) at 27-33 [Katz, *Gangsterism*]; Canada, House of Commons, Standing Committee on Justice and Human Rights, *The State of Organized Crime*, (March 2012) (Chair: Dave MacKenzie, MP) at 9-10 [Standing Committee, *The State of Organized Crime*].

19. Schneider, *Iced*, *supra* note 1 at 408-410.

20. Katz, *Gangsterism*, *supra* note 18 at 27-29.

21. Katz, *Gangsterism*, *ibid* at 31-33; Julian Sher & Williams Marsden, *The Road to Hell: How the Biker Gangs are Conquering Canada* (Toronto: Vintage Canada 2004) at 20-22.

everyday citizens had reason to fear for their safety. Quebec politicians and police leaders began petitioning the federal government the day after the bombing, demanding new and harsh criminal law sanctions to put a stop to the biker violence.[22] Faced with mounting anger over gang violence, the Liberal government gave in to public pressure and introduced the first version of the gangsterism offence.[23]

3. *Bill C-95*

On 21 April 1997—seven days before calling a national election—the Liberal government introduced Bill C-95. Despite containing over 50 pages of *Criminal Code* amendments and provisions, it received virtually no comments or opposition.[24] The centrepiece of the legislation was the new gangsterism offence, s. 467.1 of the *Criminal Code*. Section 467.1 made it an offence to participate in, or substantially contribute to, the activities of a criminal organization, or to be party to the commission of an offence for the benefit of, at the direction of, or in association with a criminal organization. Those convicted of gangsterism could be sentenced to a term of up to 14 years' imprisonment.[25] Gangsterism was an enhancement offence: rather than criminalizing a new action, it added further criminal law sanctions for the circumstances surrounding the commission of an initial offence. A criminal organization was defined as any group of five or more individuals that had as one of its primary goals the commission of an indictable offence punishable by at least five years' imprisonment, and the members of the organization must have engaged in a series of such offences within the previous five years.[26] This became known as the 5-5-5 rule: five members, five years' imprisonment, and a series of offences committed within the preceding five years.[27] Bill C-95 also introduced s. 490.1 to the *Criminal Code*, which allowed the state to seize "offence-related property" from an accused following their conviction for a criminal organization offence. Section 490.1 generally mirrored a similar provision included in the *Controlled Drugs and Substances Act* [*CDSA*] that had been introduced a year earlier.[28]

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22. Katz, *Gangsterism*, *ibid* at 34-35.
23. Don Stuart, "Politically Expedient But Potentially Unjust Legislation against Gangs," (1997) 2 Can Crim L Rev 207 at 200.
24. Katz, *Gangsterism*, *supra* note 18 at 42-45; Bill C-95, *supra* note 2.
25. *Ibid* at s 11.
26. Bill C-95, *supra* note 2 at s 1.
27. Katz, *Gangsterism*, *supra* note 18 at 55.
28. Bill C-95, *supra* note 2 at s 15; Bill C-8, *An Act respecting the control of certain drugs, their precursors and other substances and to amend certain other Acts and Repeal the Narcotic Control Act in consequence thereof*, 2nd Sess, 35th Parl, 1997; Bill C-24, *supra* note 2. For simplicity, and because both forfeiture provisions function in largely the same manner, both of these provisions may

Bill C-95 was an example of the criminalization of politics.[29] Discussion of, and attempts to address, overarching issues of social and economic justice were set aside in favour of the creation of new offences and the imposition of more severe punishments for existing offences. such that the state began to rely more heavily on criminal law measures to address societal ills. Bill C-95 was designed and enacted to shore up public support for the Liberal government rather than to pursue legitimate criminal law goals of public safety and order.[30] Unfortunately, as a reactionary measure it lacked the refinement and contemplation necessary to produce an effective long-term response. A more substantial solution to the problem of biker gang violence was required. The ink of Bill C-95 was barely dry before the new gangsterism offence's shortcomings were brought into sharp relief: the Hells Angels murdered two prison guards in June and September of 1997.[31]

4. *Bill C-24*

The continuing violence of the biker war was brought to a head with the attempted murder of journalist Michel Auger on 13 September 2000, the day before his exposé on biker gangs in Montreal was published. A few weeks later, Francois Laforest, a bar owner who refused to allow Hells Angels drug dealers to sell in his bar, was beaten to death in broad daylight.[32] In the face of public outrage not seen since the death of Desrochers a few years earlier, the Liberals quickly redrafted the gangsterism laws, and Bill C-24 was passed on 18 December 2001. Much like C-95, Bill C-24 was fast tracked through Parliament with virtually no opposition or substantial analysis, "in the dying days of Parliament against a back-drop of media-fuelled hysteria over biker related violence in Quebec."[33]

Amendments to the gangsterism offence were at the heart of the new legislation. A criminal organization was now defined as any group, however organized, that consisted of three or more persons within or outside of Canada, and that had as one of its main purposes or activities the facilitation or commission of one or more serious offences likely to result in direct or indirect benefit to the group or to any of the persons

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be referred to as "criminal forfeiture." The *Criminal Code* forfeiture provision was expanded under Bill C-24 in 2001, but it was originally expressly aimed at bikers.

29. Kent Roach, "The Dangers of a Charter-Proof and Crime-Based Response to Terrorism" in Ronald J Daniels, Patrick Macklem & Kent Roach, eds, *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2002) 131 at 138.

30. Katz, *Gangsterism*, *supra* note 18 at 45-48.

31. *Ibid* at 39-41.

32. *Ibid* at 73-74.

33. *Ibid* at 79-82. Bill C-24 came into force on 7 January 2002.

constituting the group.[34] The single gangsterism offence was replaced with three separate offences. Section 467.11, the "facilitation" offence, made it an indictable offence to knowingly participate in or contribute to any activity of a criminal organization to enhance the organization's ability to facilitate or commit an indictable offence. Individuals convicted under s. 467.11 may be sentenced to a maximum of five years' imprisonment.[35] Section 467.12, the "association" offence, made it an indictable offence to commit an indictable offence for the benefit of, at the direction of, or in association with a criminal organization. An individual convicted under s. 467.12 may be sentenced to a maximum term of 14 years' imprisonment.[36] Section 467.13, the "instruction" offence, made it an indictable offence to knowingly instruct, directly or indirectly, any person to commit an offence for the benefit of, at the direction of, or in association with the organization. An individual convicted under s. 467.13 may be sentenced to a maximum term of life imprisonment.[37]

I. *The power of the patch*

In the words of anthropologist Daniel Wolf, a biker's reputation for violence, and the fear and intimidation he wields, "is a marketable commodity."[38] Bikers are unusual as criminal organizations: rather than hide their affiliation from public eye, they proudly display their gang or club's name, identity, and territorial affiliation, as well as their own membership in that group, in their "colours." A biker's colours consist of three main parts: a top "rocker" patch with the group's name, a lower "rocker" patch with the wearer's territorial affiliation, and the club's logo in the center. Only full members of an organization may wear the complete three-piece set of patches, leading to these members being known as "full patch members."[39] When a biker wears his colours, the power and reputation of the club or gang become part of the biker's "personal force," augmenting his individual reputation and capacities with that of the gang.[40]

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34. Bill C-24, *supra* note 2 at s 27; Canadian Bar Association, *Submission on Bill C-24: Criminal Code Amendments (Organized Crime and Law Enforcement)* (Ottawa: Canadian Bar Association, 2001) at 2.
35. Katz, *Gangsterism*, *supra* note 18 at 111-113; *Criminal Code*, RSC 1985, c C-46, s 467.11 [*Criminal Code*].
36. Katz, *Gangsterism*, *ibid* at 116-119; *Criminal Code*, *ibid* at s 467.12.
37. Katz, *Gangsterism*, *ibid* at 124-128; *Criminal Code*, *ibid* at s 467.13.
38. Daniel Wolf, *The Rebels: A Brotherhood of Outlaw Bikers* (Toronto: University of Toronto Press, 1991) at 266 [Wolf, *The Rebels*].
39. *Lindsay*, *supra* note 13 at paras 235, 267, 541. Prospective members, known as prospects or strikers, wear variations of these colours demonstrating that they are associated with, but not yet full members of, the group.
40. *Lindsay*, *ibid* at para 241.

The power of the patch is the ability to create "fear and insecurity without saying a word."[41]

The Hells Angels are extremely protective of their name and logo, and both are officially registered to the Hells Angels Motorcycle Corporation [HAMC], a corporation incorporated under the laws of the State of California.[42] In order to protect their recognizable brand power, they do not sell any items to the general public that bear the gang's name or logo. Full members may use or possess items with the Hells Angels name and/or logo, but are required to sign agreements stating that any item bearing the name or logo of the gang is owned by the HAMC.[43] The Hells Angels and the HAMC have brought several cases for trademark infringement against such diverse parties as Toys "R" Us, fashion house Alexander McQueen, and Walt Disney Studios.[44] They also protect their intellectual property through more direct measures: with regard to the Hells Angels name and logo, the Hells Angels New York City chapter's website warns "should we find you using any of these we will hunt you down and hurt you."[45] All of this results in one assumption that may be relied upon as entirely accurate: if you see an individual wearing Hells Angels colours, or wearing something with the Hells Angels' name or bearing their distinctive logo, that individual is a full member of the Hells Angels. The power of the patch is a tremendous asset to the Hells Angels, as it conveys a degree of criminality and a willingness to resort to violence without requiring the member to actually commit a criminal act or utter any threat.[46] However, it is possible to turn this strength back on the gang, and to use the power of the patch in the prosecution of gang members charged with the association offence under s. 467.12.

1. *Using the power of the patch in furtherance of a crime*

Section 467.12 is unique among the current gangsterism offences: unlike the other offences, it does not "create or expand liability" for otherwise non-criminal conduct, but instead acts to aggravate or enhance an accused's liability for an indictable offence committed for a criminal organization. The Crown must first prove that the accused committed

41. *Ibid* at para 1021.
42. *R v Hells Angels Motorcycle Corporation*, 2009 CanLII 53152 at para 3, 246 CCC (3d) 559 (ON SC) [*Hells Angels Motorcycle Corporation*].
43. *Ibid* at paras 21-22.
44. Serge F Kovaleski, "Despite Outlaw Image, Hells Angels Sue Often," *The New York Times* (28 November 2013), online: <http://www.nytimes.com/2013/11/29/us/despite-outlaw-image-hells-angels-sue-often.html>.
45. Hells Angels New York City Chapter, "Hells Angels Presents New York City," *Big Red Machine*, online: <http://bigredmachine.com/>.
46. *Lindsay*, *supra* note 13 at paras 241, 1021; *R v Myles*, 2012 ONSC 6772 at para 27 [*Myles*].

an "initial offence." Then, the Crown must prove some connection between the offence itself and the criminal organization such that it was committed at the direction of, for the benefit of, or in association with the organization.[47] The association offence functions as an additional, "tacked on" offence, like a simplified version of the original gangsterism offence. It cannot be charged on its own, and its successful prosecution depends not only on proving the essential elements of the association offence, but also of proving the initial underlying offence. If the accused is acquitted of the underlying offence, they must be acquitted of the association offence regardless of the evidence that they may have acted for the benefit of, at the direction of, or in association with a criminal organization.

The first and most substantial case to use the association offence against the Hells Angels was *R. v. Lindsay*, a 2005 case against Steven Lindsay and Raymond Bonner, two members of the Hells Angels' Woodbridge, Ontario chapter. Both men were charged with extortion, and with committing extortion in association with a criminal organization, the Hells Angels. The Crown alleged that Lindsay and Bonner had threatened Mr. M., and ordered him to pay them a sum of $75,000. They visited Mr. M. at his home where they threatened to send "people" to "pound the hell" out of him, and told him that the $75,000 was owed to Lindsay and to five other men "that are fucking the same kind of mother fuck as I am." Crucially, Lindsay and Bonner wore clothing and paraphernalia, including jackets, t-shirts, boots, and belt buckles, that bore the Hells Angels name and logo while threatening Mr. M.[48]

The initial offence of extortion was made out relatively easily against both defendants.[49] In contrast, the gangsterism offence proved significantly more complex, both in terms of the amount of evidence required to make out the offence and the amount of time and resources expended in pursuit of the conviction.[50] Justice Fuerst ultimately found that the Hells Angels constituted a criminal organization: they were a group composed of three or more individuals, and that they had as one of their primary goals the facilitation or commission of one or more serious offences that, if successful, would likely result in direct or indirect benefit to its members.[51] Both men "deliberately invoked their membership" in the Hells Angels to

47. Katz, *Gangsterism*, *supra* note 18 at 116-119.
48. *Lindsay, supra* note 13 at paras 1-7, 28-43, 86-87, 89-91.
49. *Ibid* at para 185.
50. The length and content allocation of Justice Fuerst's judgement reflects this difference: of her 1,091-paragraph judgement, approximately 880 paragraphs are dedicated to the gangsterism offence, whereas the extortion offence is dealt with in 70 paragraphs. Standing Committee, *The State of Organized Crime*, *supra* note 18 at 36; *Lindsay*, *supra* note 13.
51. *Criminal Code*, *supra* note 35, ss 467.1, 467.12(1); *Lindsay*, *ibid* at paras 945, 1090.

intimidate Mr. M. in committing their extortion, and therefore intended to commit the extortion in association with the Hells Angels as a criminal organization.[52] The Crown succeeded in *Lindsay* because they were able to connect the accused's actions and knowledge directly to their intention to use the Hells Angels' reputation to extort Mr. M.[53] Lindsay's threats to send men to M.'s home to "pound the hell" out of him, or the warning that the money belonged to Lindsay and five other men "that are fucking the same kind of mother fuck as I am" were intimidating enough on their own. However, these statements were made even more intimidating, thereby enhancing the extortion, because Lindsay uttered them while wearing the Hells Angels name and logo. By adding the Hells Angels' power to his own personal force, Lindsay's threats of harm and punishment took on graver and more serious meaning, but they also implicated the Hells Angels as an organization in the extortion of Mr. M.

In contrast, the proceedings in *R. v. Giles* demonstrate an ineffective application of the association offence and the risks of overreaching when prosecuting gangsterism offences. *Giles* saw three accused—David Giles, David Revell and Richard Rempel—charged with possession of cocaine for the purposes of trafficking, and having committed that offence for the benefit of, at the direction of, or in association with a criminal organization. Giles was a full-patch member of the Hells Angels' Vancouver East End chapter, and the Crown alleged that the association charges against all three were made out by Giles' involvement in a cocaine trafficking operation operated by Revell and Rempel, neither of whom had any Hells Angels status.[54] As there was no evidence directly linking Giles to the cocaine, the Crown instead argued that he had knowledge of the cocaine and exercised control over it by directing and authorizing Revell's drug trafficking in his capacity as a member of the Hells Angels.[55] Justice Mackenzie acquitted Giles of the trafficking offence, stating that there was no evidence of his direct possession, knowledge, or control of the cocaine, and little evidence as to joint or constructive possession.[56] The Crown was only able to produce circumstantial evidence linking Giles' status as a Hells Angels member to the commission of the offence.[57] Justice Mackenzie found that the Crown failed to link Giles to the trafficking, and had failed to link Giles and his

52. *Lindsay, ibid* at paras 1090-1091.
53. *Ibid* at para 1088.
54. *R v Giles*, 2008 BCSC 367 at paras 1-3, 10, [2007] BCJ No 2918 (QL) [*Giles*].
55. *Ibid* at paras 133-141.
56. *Ibid* at paras 143, 159-194, 200-208.
57. *Ibid* at paras 233-238.

status as a Hells Angels member to the trafficking operation.[58] Unlike the proceedings in *Lindsay*, there was little evidence linking Giles and his membership in the Hells Angels to the cocaine trafficking.

Lindsay and *Giles* demonstrate different attempts to prove that individuals wielded or used their status as members of the Hells Angels in the commission of offences. *Lindsay* succeeded because it was a comparatively straightforward matter: simple extortion, augmented by Lindsay and Bonner's decision to invoke their membership in the Hells Angels to further intimidate Mr. M. Lindsay and Bonner proudly announced their status as members of the Hells Angels through their clothing and other accessories; in doing so, they invoked fear and promised that they would make good on their threats by displaying and referencing their membership in the Hells Angels in the commission of their offence. In contrast, the Crown in *Giles* failed to prove a gangsterism offence because there was insufficient direct evidence linking Giles to either the cocaine trafficking or invoking the Hells Angels in his dealings with Revell and Rempel, and only circumstantial evidence as to Giles' attempts to invoke his gang membership in the trafficking. Prosecution based on the power of the patch cannot be applied to all Hells Angels members and their alleged offences, but must instead be used only when there is sufficient specific evidence to support the charge.

2. *Active vs. passive association with a criminal organization*

On appeal, Lindsay and Bonner argued that they had not worn their Hells Angels clothing with the intention of using it to intimidate Mr. M. or in any other way further their extortion. Instead, they argued that they simply wore their "ordinary attire," which just happened to bear the Hells Angels' name and logo, when they extorted Mr. M. The Ontario Court of Appeal soundly rejected this argument: "Put bluntly, [Justice Fuerst's] reasoning on this issue was impeccable and her conclusion is the antithesis of unreasonableness."[59] Despite this finding, *Lindsay* still raises the questions of how and to what extent an individual may associate their crime with a criminal organization. *Lindsay* suggests that a more "passive" association is possible. Justice Fuerst found that the Hells Angels' notoriety meant that this passive invocation sufficiently associated the gang with the act of extortion, as Lindsay and Bonner chose to portray themselves to Mr. M. "not as individuals, but as members of a group with a reputation for violence and intimidation… [they] were each well aware of the implications of their

58. *Giles*, *supra* note 54 at paras 196-197, 212-216.
59. *R v Lindsay*, 2009 ONCA 532 at paras 34-37, 245 CCC (3d) 301.

choice of attire."[60] Lindsay and Bonner didn't have to say they were Hells Angels; the fact that they were wearing the gang's highly-protected name and logo spoke volumes on its own. This also seems to be in keeping with the language of the law itself, as the Crown does not have to prove that an individual charged under section 467.12(1) intended to commit their crime in association with a criminal organization, merely that they did commit an offence in association with a criminal organization.

The Hells Angels' notoriety meant that it was easier for Lindsay and Bonner to passively invoke the gang's reputation, but such a passive invocation would not be possible if the accused had been members of a smaller, less well-known gang. An accused's intention to invoke gang membership in the commission of a crime takes place on a continuum, influenced by the gang's notoriety and the lengths to which an individual may have gone to invoke the gang in the commission of an offence. It seems likely that the more notorious and well-known a gang is, the easier it may be to invoke their name and reputation in the commission of an offence, allowing the court to consider a wider range of actions and factors that might lead to invocation, either actively or passively, of the gang's name and reputation. This suggests that the issue of active or passive invocation, like many other elements of a gangsterism offence, must be assessed contextually in relation to the elements of a specific offence, and that broad rigid rules are not conducive to the effective and responsible prosecution of gangsterism offences.

The issue of active or passive association with a criminal organization is far from settled, and subsequent proceedings have raised further questions as to the nature of association. In *R. v. Hells Angels Motorcycle Corporation*, Justice Pardu found that property or items bearing the Hells Angels' name or logo were inherently intended to be used in the commission of serious offences:[61]

> The use of these items is intended to further the organizational purposes. It is to be used to intimidate and extort, and to serve as a badge of trustworthiness in the conduct of drug deals. *It matters not, that at the precise moment of the extortion, the trademark is not displayed*, or that the person actually handling drugs does not wear the item [emphasis added].

Given Justice Fuerst's emphasis in *Lindsay* on the accused wielding the reputation of the Hells Angels as a tool in the commission of their offence,

60. *Lindsay*, *supra* note 13 at paras 1084-1085.
61. *Hells Angels Motorcycle Corporation*, *supra* note 42 at paras 23-24.

Justice Pardu's comments suggest that a gang member may benefit from their gang's reputation without intending to do so. Justice Pardu's use of the emphasized phrase suggests that, all other factors being equal, the accused in *Lindsay* would have been equally guilty of their gangsterism offence had they not worn any Hells Angels clothing when interacting with Mr. M. The mere fact of their membership would be sufficient on its own to support a gangsterism charge.

3. *Contextual factors*

In some instances, an accused may be unable to use the power of the patch in the commission of their offence(s), regardless of their intention to do so. Such an instance occurred in the proceedings of *R. v. Myles*, a criminal forfeiture case brought following the convictions of several members of the Hells Angels' Downtown Toronto chapter for various drug trafficking offences, but the acquittal on all gangsterism offences.[62] The Crown sought to seize personal property owned by the accused that bore the Hells Angels' name or logo on the basis that the articles symbolized the accused's membership in the Hells Angels, and that membership in the Hells Angels was beneficial to drug dealers.[63] The forfeiture application was brought under s. 16 of the *CDSA*, which allows the Crown to seize an accused's property through one of two mechanisms:[64]

> 1. If a person is convicted, and the Court is satisfied, on a balance of probabilities, that any property is offence-related property, *and that the offence* was committed in relation to that property, the Court shall order forfeiture of the property; and
>
> 2. If the evidence does not establish that the offence of which the person has been convicted was committed in relation to the property, but the Court is satisfied beyond a reasonable doubt that the property is "offence-related property" the Court may make an order for forfeiture of the property [emphasis in original text, citations omitted].

Offence-related property is defined as any property:[65]

> (a) by means or in respect of which a designated substance offence is committed;
> (b) that is used in any manner in connection with the commission of a designated substance offence; or

62. *Myles*, *supra* note 46 at paras 7-9; Peter Edwards, "Hells Angels beat organized crime charges after marathon trial," *The Toronto Star* (23 May 2011), online: <https://www.thestar.com/news/crime/2011/05/23/hells_angels_beat_organized_crime_charges_after_marathon_trial.html> [Edwards, "Hells Angels beat organized crime charges after marathon trial"].

63. *Myles*, *ibid* at para 20.

64. *Hells Angels Motorcycle Corporation*, *supra* note 42 at paras 4-5.

65. *Controlled Drugs and Substances Act*, SC 1996, c 19, s 2.

(c) that is intended to be used for committing a designated substance offence.

Justice Forestell found that membership in the Hells Angels generally provided individual members with access to a criminal network of "trustworthy" drug vendors who were less likely to cooperate with the police or to cheat on a drug deal. Membership in the Hells Angels acted as a guarantor of quality and "trustworthiness" to potential clients, as the Hells Angels have a rule against "ripping off" drug buyers and a reputation for refusing to cooperate with police investigations.[66] However, she also found that the accused's personal property did not constitute offence-related property. Though membership in the Hells Angels generally helped drug dealers, it played no part in the trafficking that was the subject matter of the criminal offences in *Myles*, and therefore the trafficking offences had not been committed in relation to the property. Membership in the Hells Angels was used to commit offences, but symbols of that membership were not. Because all of the accused had been acquitted of the gangsterism offences, evidence as to the Hells Angels' criminality in general did directly benefit the state's application to seize the property, as it failed to conclusively link the accused and their symbols of membership to the trafficking offences.[67] There was no evidence that a symbol of gang membership was used or intended to be used in the commission of an offence, although the property in question could have been used to that effect.[68] Because the accused in *Myles* all knew each other to be members of a criminal organization, symbols of their membership in that gang were irrelevant; there was no power in the patch. Each individual knew the others to be members of the Hells Angels, and they relied on this firsthand knowledge to deal comfortably with one another, secure in the criminal "trustworthiness" of their fellow Hells Angels.

The outcome of *Myles* may be contrasted with the outcome of *Hells Angels Motorcycle Corporation*. Whereas the accused in *Myles* were convicted of trafficking offences and acquitted of their gangsterism offences, the accused in *Hells Angels Motorcycle Corporation* were convicted of both trafficking and gangsterism offences.[69] *Hells Angels Motorcycle Corporation* involved the state's application to seize personal property similar to that sought under *Myles*: jewelry, clothing, and

66. *Myles*, *supra* note 46 at paras 13, 24-27.
67. *Ibid* at paras 34-35. The fact that the property in question (shirts, calendars, and jewelry) also had legitimate non-criminal purposes further weakened the state's arguments that it was offence-related.
68. *Ibid* at paras 42-43.
69. *R v Ward*, 81 WCB (2d) 767 (ON SC) at para 98 [*Ward*]; *Hells Angels Motorcycle Corporation*, *supra* note 42 at paras 1-2.

accessories, all bearing the Hells Angels' name or logo. Because of the successful conviction for gangsterism in the preceding trials, Justice Pardu was able to rely on evidence as to the Hells Angels' general criminality in granting the state's forfeiture application in *Hells Angels Motorcycle Corporation*.[70] The articles and symbols of membership were intended to be used to commit indictable offences in furtherance of the gang's purposes, and were therefore offence-related property in connection to the gangsterism offences.[71] As the accused had all been convicted of gangsterism, symbols of gang membership constituted elements of the indictable offence of gangsterism.[72] By securing gangsterism convictions against the accused, the state could rely on evidence of the Hells Angels' general criminality, rather than having to link the symbols of membership directly to the commission of trafficking offences to justify their forfeiture.

4. *Conclusion on the power of the patch*

As Justice Fuerst observed in *Lindsay*, "the definition of 'criminal organization' does not require…that facilitation of a serious offence be the group's only 'main' purpose or activity. *It must simply be 'one of' its main purposes or activities* [emphasis added]."[73] *Lindsay* demonstrated how gangsterism proceedings may secure convictions against individual members, but the need to base each proceeding in the circumstances particular to that matter poses a significant challenge to their prosecution. Establishing a group's criminality may be simple enough, but linking the accused and the commission of offences to their membership in that organization may be challenging.

II. *Administrative structures and gang hierarchy*

Despite their renegade reputation, the Hells Angels all share a recognizable and consistent administrative structure. The gang is composed of chapters which control or operate within specific territories or regions. These regions may be small or large: the city of Toronto hosts at least two Hells Angels chapters, whereas there appears to be only one chapter in the entire province of Manitoba.[74] The gang may expand their territory either by establishing

70. *Hells Angels Motorcycle Corporation*, *supra* note 42 at para 20.
71. *Ibid* at paras 23-24.
72. *Ibid* at para 24.
73. *Lindsay*, *supra* note 13 at para 950.
74. Humphreys, "Hells Angels Under Pressure," *supra* note 16; "Hells Angels East Toronto Canada," *Hells Angels East Toronto*, online: <http://hweb.archive.org/web/20171016071806/http://hellsangelseasttoronto.com/> [Hells Angels East Toronto website]; Peter Edwards, "'Huge trend toward renting' for GTA outlaw bikers, says cop," *The Toronto Star* (4 January 2016), online: <https://www.thestar.com/news/crime/2016/01/04/huge-trend-toward-renting-for-gta-outlaw-bikers-says-cop.html> [Edwards, "Huge trend toward renting"].

a new chapter in a region, or by assimilating an existing club, a decision which must be unanimously supported by the rest of the Hells Angels in the area.[75] Individuals may join the Hells Angels by graduating through their membership process: from friend of the gang, to "hangaround," to prospect, and then to full member. Prospects are extensively investigated by their home chapter, and must visit other chapters provincially and be unanimously approved by their home chapter before they can become full members. New members may not transfer chapters within their first year of membership, and after that may only transfer by agreement of their home and new chapter. All of these procedures are designed to weed out potential undercover police officers and ensure the individual is criminally "trustworthy."[76]

Each chapter must maintain several executive positions—such as president and treasurer—who are responsible for overseeing the chapter's operations, and participating in provincial and national meetings.[77] Some chapters may maintain one or more support clubs, also called puppet clubs, which are made up of individuals who wish to become Hells Angels. These puppet clubs serve at the direction of the Hells Angels chapter or individual members, and may be used for anything from providing security at events to establishing a Hells Angels-related presence in new territory to committing offences at the direction of chapter members.[78] There is also evidence of communication, collaboration, and cooperation between chapters provincially and nationally.[79] This strict and shared organizational structure and communication is a tremendous asset to the Hells Angels. The lengthy membership process and high level of communication between chapters allows the gang to weed out potential undercover operatives or individuals who may have previously crossed the gang in another region. Similarly, the use of executive positions within chapters creates an internal hierarchy and allows senior members to control subordinates. The shared administrative order gives the gang a formalized structure and a high degree of conformity, allows the gang to operate together effectively, and reinforces the above-stated power of the patch by ensuring that the gang presents a single unified public image.

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75. *Lindsay*, *supra* note 13 at paras 331, 953-963.
76. *Ward*, *supra* note 69 at para 59; *Lindsay*, *ibid* at paras 964-972.
77. *Lindsay*, *ibid* at paras 973-976.
78. *Ibid* at paras 990-997.
79. This involvement runs from simple communication to sophisticated collaboration: Quebec Hells Angels helped run drug trafficking operations in Ontario and Manitoba, phone and contact information for all Canadian Hells Angels was shared among all national chapters, members will often visit and party with other chapters, and every Canadian Hells Angels chapter contributes to a national fund used to offset legal costs; *Ibid* at paras 998-1009.

1. *Officers and shared structures*

Stadnick took aim at the Canadian Hells Angels' chief architect Walter Stadnick. Stadnick was charged with a host of offences including conspiracy to commit multiple murders, drug trafficking, and one count of gangsterism in respect of each of those offences.[80] The Crown conceded at trial that there was no evidence directly linking Stadnick to the majority of the murders, but argued that Stadnick was a party to the offences because he aided and/or abetted the commission of the offences, or that the offences were a continuation of the common purpose: that Stadnick and his fellow Nomads instructed their subordinates to secure territory and shore up the gang's power by killing the competition, and that this supported a finding of murder against Stadnick.[81] In essence, the Crown argued that Stadnick must have been involved in these murders strictly because he was the national president of the Hells Angels and a prominent member of the notorious Quebec Nomads chapter. Though Stadnick was ultimately convicted of several offences, he was acquitted of many of the offences due to insufficient direct evidence linking the Nomads *en masse*, and membership therein, to the murders.[82]

The Crown successfully demonstrated that Stadnick had used his position as the national president to influence and control other Canadian Hells Angels in the commission of a trafficking offence, and that he had been party to a conspiracy to commit murders. However, the Crown's arguments that he was liable for subsequent murders purely because of his status failed because of a lack of evidence specifically connecting him to those particular offences. The Hells Angels' administrative structure is undoubtedly a powerful tool for the gang, and it may be effectively commandeered by the Crown in prosecuting Hells Angels members. This structure on its own, no matter how well supported by expert testimony, is not a substitute for direct evidence of involvement in criminal activities, and will only support the Crown's claims as far as may be corroborated by independent evidence of criminality. Such claims may be possible in the future if there was sufficient evidence linking membership in a criminal organization's elite or executive directly to that gang's criminality, even if the individual accused did not direct or facilitate the commission of criminal offences.

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80. *Stadnick, supra* note 15 at paras 1-3, 194-196. The proceedings were simplified somewhat by his admission that the Canadian Hells Angels, including Stadnick's Quebec Nomads chapter, constituted a criminal organization; the only matter to be decided at trial in relation to the gangsterism offences was Stadnick's involvement in crimes committed by his fellow Hells Angels.

81. *Stadnick, ibid* at paras 331-333, 340; *Criminal Code, supra* note 35 at ss 21(1)-(2).

82. *Stadnick, ibid* at paras 199-206, 318-319, 327-328, 334-342, 348.

One of the challenges in *Lindsay* was to establish that the Ontario Hells Angels constituted a criminal organization. Though there was plenty of evidence as to the criminality of the Hells Angels in other Canadian provinces, the Ontario chapters had been relatively quiet in the few years since they were established. The Crown argued that it should be able to rely on evidence of the criminality of Hells Angels from across Canada because there was substantial evidence of communication and collaboration between chapters and because the chapters shared a common organizational structure. Justice Fuerst agreed: she characterized the Ontario chapters as "an administrative subdivision of the larger entity" of the national Hells Angels, and allowed the Crown to present evidence of the Hells Angels' criminality from across Canada.[83] There was substantial evidence of communication and collaboration between the Hells Angels across Canada. From the presence of Quebec Hells Angels at parties or events hosted by chapters in other provinces, Stadnick's involvement in assimilating clubs all across Canada while he was the national president and a member of the Quebec Nomads chapter, to the Quebec Hells Angels' significant interest in bringing Ontario's bikers into the fold. This evidence was presented, considered, and used to establish the criminality of the Hells Angels in Ontario by way of their shared structure and connections to other national Hells Angels chapters.[84]

The gang's internal hierarchy may also be used effectively through non-criminal law measures. In 2010, the Registrar of the Alcohol and Gaming Commission in Ontario [the Registrar] revoked a liquor licence issued to a London, Ontario strip club called Famous Flesh Gordon's. The establishment was owned by Robert Barletta, a full member and former president of the London Hells Angels chapter.[85] Ontario's *Liquor Licence Act* [*LLA*] allows a licence to be revoked if "the past or present conduct of the [person]...affords reasonable grounds for the belief that the applicant will not carry on business in accordance with the law and with integrity and honesty..."[86] Despite the fact that Barletta had no criminal record, and that there was no evidence of illegal activities occurring at Famous Flesh Gordon's, the Registrar submitted an application to revoke the establishment's licence based on Barletta's status in the Hells Angels.[87] The Registrar argued that Barletta, as the former chapter president, was

83. *Lindsay*, *supra* note 13 at paras 7, 942-943.
84. *Ibid* at paras 89-90, 1078-1079.
85. *751809 Ontario Inc v Ontario (Registrar, Alcohol and Gaming Commission)*, 2014 ONSC 6707, at paras 1-4, 8 [*751809 Ontario Inc.*].
86. *Liquor Licence Act*, RSO 1990 c L.19, s 6(2)(d).
87. *751809 Ontario Inc.*, *supra* note 85 at paras 5-8.

"100% dedicated to the Hells Angels," and that not only would he have been aware of the gang's criminal activities, but that he would have ensured that his chapter received their "cut" of any criminal activities. In their decision to revoke the liquor license, the Licence Appeal Tribunal [the Tribunal] was clear: "the concern is not over the customers of this establishment; it is about the licensee."[88]

On appeal, the Ontario Superior Court upheld the Tribunal's decision. They pointed out that s. 6(2)(d) of the *LLA* requires more from an owner than a clean criminal record: it requires that they actively work to carry on business "in accordance with the law, and with integrity and honesty." Taking aim at Barletta's position as former chapter president, the court found that there was no way to overcome the fact that Barletta was:[89]

> ...a committed member of a notorious criminal organization whose stature within that organization requires him to have a good criminal network, to put the interests of the Hells Angels above all else, and to refrain from cooperating with authorities or sharing information that could harm the club.

The Court's decision to uphold the Tribunal's decision on the basis of Barletta's status as a former chapter president is especially interesting. This suggests that the state may be able to use an individual's status as a gang executive as proof of their involvement with the gang's criminality even if they no longer hold the position. This would allow the state to circumvent the need to show evidence directly linking the accused to criminal activities, and instead use their current or former executive position as proof of their facilitation of, or association with, the commission of criminal offences. Whether or not this decision has implications beyond liquor licencing, it is a strong example of the state effectively using the Hells Angels' executive structure against an individual member's business, if not against the organization itself.

2. *Territoriality*

Territoriality is a non-verbal communication that establishes a gang's use and control of an area.[90] For the Hells Angels, this means setting up and maintaining chapters in a region so as to secure their territory against other rival criminal organizations, and to secure their control over that region's criminal activities. The Hells Angels' expansion across Canada and their conflicts with other gangs can be adduced to their territoriality: they want

88. *Ibid* at paras 16-17.
89. *Ibid* at para 33.
90. Wolf, *The Rebels*, *supra* note 38 at 314.

to be the toughest and most powerful gang around, and they have an economic interest in doing so through their control of criminal activities that occur within their territory.[91] The Hells Angels' territoriality formed the crux of the Crown's gangsterism charge in *Giles*. They argued that Giles was involved in the drug trafficking as part of his efforts to expand the Hells Angels' presence into Kelowna, British Columbia, where Revell and Rempel's drug trafficking operation was based, and that Giles acted as an agent for the Hells Angels by controlling the drug operation to shore up the Hells Angels' presence and power in the area.[92] An intercept from a gang meeting recorded Giles stating that he wanted to set up a chapter in Kelowna that would be under the supervision of the Hells Angels' Vancouver East End chapter. From their beachhead in Kelowna, the gang would expand into the surrounding area under the supervision of the East End chapter.[93]

The Crown also led evidence that showed that part of the Hells Angels' territoriality generally involved using subordinates to do the "dirty work" of criminal activities, thereby insulating higher-ranking members. The Crown argued that Giles' arm's-length control over Revell was standard procedure for the gang, and that Giles didn't have to be directly involved in the trafficking operation: his involvement in the offence was met by directing or supervising Revell's activities.[94] However, the Crown had failed to sufficiently prove that those elements arose in the specific matter, and the gaps in their evidence were too great to be filled by contextual or theoretical factors.[95] Territoriality is a more general element of the gang's structure: it describes how they generally behave all across Canada, and even when it is supported by previous examples of the gang being implicated in criminal activities because of their territoriality, it cannot stand as proof of specific criminality. It is not enough to show how the gang is known to operate, or to show past examples of the gang conforming operational principles. Instead, the Crown must prove that the gang or its members engaged in those actions in a specific instance.

3. *Conclusion on administrative structures and gang hierarchy*

The Hells Angels' power is based not only on their reputation for violence and intimidation, but on their strict code of conduct and administrative systems. All chapters across Canada adhere to the same rules and

91. *Ibid* at 337; *Lindsay*, *supra* note 13 at paras 273-279, 1032-1033.
92. *Giles*, *supra* note 54 at paras 132-135, 142.
93. *Ibid* at paras 215-216.
94. *Ibid* at paras 217-220.
95. *Ibid* at paras 225-230.

regulations, which govern establishing a presence in a region either by setting up a chapter or by supervising subordinates in their activities, and controlling the area's criminal activities. It is possible that the state may effectively use a gang's administrative structures and internal hierarchies against them; unfortunately, the state's efforts have so far been met with mixed results. The state has had some success, evidence of a gang's national communications and collaborations and a shared administrative structure means that the criminality of a specific region's chapters may be established using evidence of the criminality of the Hells Angels across Canada, rather than relying on specific evidence of criminality from that particular region. Efforts to secure convictions based solely on the gang's administrative structures and internal hierarchies, however, have not met with success. Though Stadnick was convicted for several offences, he was acquitted of those offences tied solely to his membership in the Quebec Nomads chapter, despite evidence of that chapter's criminality and his status within the chapter and the national organization. Similarly, Giles was acquitted based on a lack of specific evidence tying him and his membership in the Hells Angels to the criminal activities of Revell, despite lots of evidence to the Hells Angels' territoriality and operational principles.

Non-criminal law measures that utilize the gang's structures against them have had some success: Barletta's liquor licence was successfully revoked because of his membership and position in a criminal organization, which was found to outweigh evidence that he had no criminal record and that no criminal activities had taken place in his establishment. As the procedural realm imposes a lower burden of proof, it may be the most appropriate venue for the state to use a gang's organization and administrative structures against it.

III. *The clubhouse*

A gang's clubhouse is a powerful and imposing public statement; it is the brick and mortar representation of the power of the patch. From the clubhouse's decoration and branding announcing the gang's presence in an area, to serving as the venue for regular meetings, the clubhouse functions in much the same way as a set of colours to establish the gang's control and reputation in an area, and to intimidate others.[96] Each chapter is required to maintain a clubhouse that serves as their base of operations, access to which is carefully monitored and restricted. Many clubhouses include internal fortifications, video cameras, and other security features.

96. *Lindsay*, *supra* note 13 at para 561.

Those who are admitted to the clubhouse are advised to keep quiet about what they see: a sign in a seized Hells Angels clubhouse read "what you hear here, what you see here, what you do here, stays here!"[97]

Clubhouses make gang members feel safe and powerful for several reasons. The enhanced security measures and reinforcements allow bikers to feel physically safe as they can be relatively certain that they are safe from attacks from rival gang members or incursions by the police. Clubhouses provide a highly secure environment away from the prying eyes of the police or rival gang members, and provide a sense of "legal" safety. Clubhouses also pander to bikers' egos, and serve as strong morale boosters: they are testaments to the gang's total domination of a region, to the point that they can (and often do) paint their clubhouses in their gang's colours and adorn them with signs bearing the gang's name and logo, secure in the knowledge that they are all but untouchable inside. The question remains, are clubhouses actually as safe and powerful as gang members would like to believe? Seizing, regulating, or otherwise interfering with a gang's clubhouse could be a tremendous asset for the state in their efforts to combat biker gangs. Gaining access to a clubhouse poses a challenge, but if that hurdle is overcome then the state may be able to use a gang's clubhouse against them, or take it away entirely.

1. *The clubhouse and physical safety*

One look at the Downtown Toronto Hells Angels' former clubhouse on 498 Eastern Avenue speaks volumes as to the structure's security: what it lacked in aesthetic, it made up for in brute strength and utilitarian intimidation. It was precisely the type of place that a group like the Hells Angels would want to call home: undeniably eye-catching and unquestionably intimidating. The sturdy image was much more than skin deep: the clubhouse had a thick metal front door equipped with multiple deadbolts, and there was a second steel door behind this one that could slide across and block access. The front door was sheltered by a cement structure that prevented direct line of sight to the door and blocked direct access from the street to the door. There were cement posts along the front of the structure to stop cars from ramming the front wall, and there were no windows at street level. The building was also equipped with multiple security cameras that covered the front door and the perimeter, and the entire property was gated and surrounded with a fence.[98] It would not be

97. *Ibid* at paras 977-982.
98. *R v Old Navy Property Corp*, 2012 ONSC 6845 at para 69 [*Old Navy Property Corp*].

an exaggeration to call the clubhouse a bunker; in fact, that may be an understatement.

Given these extensive enhancements, gang members undoubtedly felt secure within the building. Attacking this sense of physical safety may prove to be a powerful tool in dismantling criminal organizations and may be enacted at the municipal level. Many municipalities in Ontario have passed by-laws prohibiting the "excessive" fortification of structures, defined as anything more than "protection provided by commercially marketed household security devices"[99] and other reasonable security measures. Examples of excessive fortification include electrified fencing, bullet-proof shutters, and hidden traps. Collectively, these by-laws are referred to as anti-bunker by-laws, for obvious reasons.[100] The Hells Angels challenged the constitutionality of an anti-bunker by-law enacted by the Ontario municipality of Chatham-Kent. They argued that the by-law violated the constitutional division of powers because it was a municipal attempt to enact criminal law by targeting the gang's clubhouses while allowing institutions such as banks to "excessively" fortify their structures. The Court denied their application to quash the by-law on the basis that it was designed to address the safety of emergency response personnel who are overseen by municipalities and the province, such as firefighters and paramedics, who may have to access the building. Following the Court's decision, the Chatham-Kent by-law has become a guide for other municipalities to enact anti-bunker by-laws to promote the safety of residents and emergency services personnel.[101]

Anti-bunker by-laws maintain a legitimate non-criminal law goal—public safety with respect to both the buildings' occupants and emergency response personnel—that has the incidental effect of dismantling or at the very least challenging a gang's symbol of power. There is no violation of the division of powers because the by-law is not an attempt to enact criminal law; there is no risk of unconstitutionality because the laws do not offend individuals' freedom of association. The by-laws do not run the risk of overbreadth or vagueness as they are sufficiently linked to specific instances of fortification and the real risks to public safety that they pose. At the same time, they make allowances for buildings that need to be fortified for legitimate commercial purposes such as banks. If the bikers

99. Katz, *Gangsterism*, *supra* note 18 at 356; The Regional Municipality of York Police Services Board, "Report of the Chief of Police: Municipal Fortification By-law" (23 April 2008), online: <http://archives.york.ca/councilcommitteearchives/pdf/may%2015%20phillip%20fort.pdf> [Regional Municipality, *Municipal Fortification By-law*].

100. Regional Municipality, *Municipal Fortification By-law*, *ibid.*

101. *Ibid*; Katz, *Gangsterism*, *supra* note 18 at 356.

simply did not fortify their clubhouses, or brought their fortifications within reasonable limitations, they would not be subject to the by-laws, but they also may not feel as secure inside the clubhouses as a result. By challenging the construction of a clubhouse, the state may challenge the gang's sense of physical security.

2. *The clubhouse and "legal safety"*

It's not only a sense of physical safety that makes clubhouses appealing to bikers: the advanced security systems, carefully monitored access, steel door, and cinderblock walls ensure the police are kept out of the bikers' dealings. This is what I refer to as "legal safety": a sense of freedom to engage in, or discuss, criminal activities within the clubhouse, safe in the knowledge that their offences cannot be detected by the police or rival gang members. Hells Angels members let their guard down when they are inside their clubhouses, and their relaxed attitude may provide the state with ample opportunities to use the gang's clubhouse against it. Though a rare occurrence, members of the Hells Angels have been known to turn on their fellow gang members. Working as police agents, these individuals have been able to secure incriminating evidence against the Hells Angels while also exposing to the world how the bikers conduct themselves when they think no one outside of the gang is looking. David Atwell was a Canadian Hells Angels member who agreed to provide evidence against the gang. Because he was a gang member and had unrestricted access to the gang's inner workings, Atwell recorded numerous conversations incriminating other Hells Angels. His evidence and testimony were invaluable in convicting dozens of Hells Angels and their associates, and also enabled the state to seize the gang's Downtown Toronto clubhouse.

Several members of the Downtown Toronto chapter were charged with various trafficking offences, and with having committed those offences in association with a criminal organization. At trial, they were all acquitted of the gangsterism offences, but convicted of their drug offences.[102] Each drug offence had some connection to the clubhouse. Three Toronto Hells Angels—the chapter's president John Neal, vice-president Douglas Myles, and chapter member Mehrdad Bahman—were convicted of trafficking approximately 600 litres of gamma-Hydroxybutric acid. Though the trafficking was not discussed at the clubhouse, members had to go to the clubhouse to get directions to a secondary location where a meeting discussing the operation was held. Neal and Bahman subsequently made

102. Edwards, "Hells Angels beat organized crime charges after marathon trial," *supra* note 62; *Old Navy Property Corp*, *supra* note 98 at para 4.

references to the trafficking at "church" meetings, which took place at the clubhouse.[103] Myles was also convicted of cocaine trafficking for his role as a middle-man in a transaction between Atwell and another Downtown Toronto chapter member, David Blackwood. Though the transaction itself took place offsite, the specifics of the transaction were discussed at the clubhouse.[104] Chapter vice-president Larry Pooler was convicted of trafficking oxycodone after selling Atwell 50 Percodan pills at the clubhouse shortly before "church."[105] Chapter member Lorne Campbell was convicted of conspiracy to traffic for giving Atwell permission to buy a kilogram of cocaine from another Hells Angels member; the discussion took place at the clubhouse after "church."[106]

Justice Forestell concluded that the clubhouse constituted offence-related property in relation to these drug offences because the clubhouse served as the hub for the accused's criminal activities:[107]

> The connection between the participants in the relevant criminal transactions was the Downtown Toronto [chapter]. The clubhouse was the physical headquarters for the Downtown Toronto [chapter]. *The clubhouse, as a meeting place for the participants, facilitated the networking and discussions necessary to the trafficking activities.* The extent to which the clubhouse was used varied in each offence but *the clubhouse was "used in connection with the commission" of each of the designated substance offences set out above* [emphasis added].

The clubhouse connected the offenders through their membership in the Hells Angels and played a role in the commission of each of the offences, and it was forfeited to the Crown.[108]

Atwell's testimony and the evidence he provided in relation to the transactions at the clubhouse helped the Crown seize the crown jewel of the Hells Angels' Ontario operations. The fact that the president and other chapter officers were involved in the trafficking offences suggests that the gang's unwritten "rule" prohibiting criminal activities in the clubhouse was really more of a suggestion. Indeed, Justice Forestell found that the principle purpose of the "rule" was to prevent the detection of criminal activities at the clubhouse to frustrate attempts at criminal or civil forfeiture by the state, rather than to prevent the actual commission of

103. *Old Navy Property Corp, supra* note 98 at paras 22-31.
104. *Ibid* at paras 35-38.
105. *Ibid* at paras 32-34. It is unclear how many vice-presidents the chapter had at any given time, or how Pooler and Myles' terms as vice-president may have overlapped.
106. *Ibid* at paras 39-43.
107. *Ibid* at paras 49-52.
108. *Ibid* at paras 53-57, 76.

criminal activities.[109] Gathering information from within the clubhouse may be used to convict individual members, but may also be used to seize the clubhouse itself, removing their physical infrastructure from a region and thereby weakening the gang's position and status.

The forfeiture of the gang's clubhouse in *Old Navy Property Corp* was a significant victory for the Crown, and a substantial blow to the bikers. The loss of their clubhouse was undoubtedly a significant financial hit for the chapter: the property had been appraised at $600,000 to $700,000 and was ultimately sold by the Crown for $885,000.[110] However, the loss of the clubhouse was also a moral blow to the gang as it deprived them of a longstanding home in the city. The Crown's victory in *Old Navy Property Corp* eroded not only the bikers' sense of legal safety, but also their public image and reputation.

3. *The symbolism of the clubhouse*

A clubhouse is a loud, brash, unapologetic statement to a gang's presence in an area. By adorning their clubhouses with symbols of their membership, the Hells Angels use their clubhouses as silent challenges to enemies, be they the state or a rival gang.[111] Clubhouses are valuable to the gang not only because they provide members with spaces to relax and conduct business, but also because they are public spectacles that reinforce the gang's status and power in a region. Efforts to shut down a chapter by prosecuting the members for their criminal offences may be successful, but they will be more effective if they are combined with measures that go after the gang's clubhouses.[112] Clubhouse forfeiture applications suggest that seizing a gang's clubhouse may be an effective way of dismantling a gang's local operations, and successfully uses the gang's reliance upon and faith in their clubhouse against them.

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109. *Ibid* at para 70.

110. *Ibid* at para 3; Brennan Doherty, "Former Hells Angels clubhouse demolished," *The Toronto Star* (21 February 2017), online: <https://www.thestar.com/news/gta/2017/02/21/former-hells-angels-clubhouse-demolished.html>.

111. Because these structures have such a high visual impact, clubhouses can become focal points for public awareness and attention such that they may take on a life of their own: a Hells Angels clubhouse in Coquitlam, British Columbia, was accidentally listed as a meeting spot in the video game "Pokemon GO," and the gang's Manhattan clubhouse has a 5 star rating on Yelp. Kim Bolan, "Hells Angels clubhouse in Coquitlam a surprise Pokemon Go gym location," *The Vancouver Sun* (23 July 2016), online: <http://vancouversun.com/news/local-news/hells-angels-clubhouse-in-coquitlam-a-surprise-pokemon-go-gym-location>; "Hells Angels HQ New York" *Yelp*, online: <https://www.yelp.ca/biz/hells-angels-hq-new-york-new-york>.

112. This is not to say that the combined effect of prosecution and clubhouse forfeiture will ensure that a gang will leave town; despite losing their clubhouse and a significant number of members, the Hells Angels still claim to maintain at least two chapters in Toronto. Hells Angels East Toronto website, *supra* note 74; Edwards, "Huge trend toward renting," *supra* note 74.

4. *Conclusion on the clubhouse*

Rather than risk losing their clubhouses to criminal forfeiture, the Hells Angels may be more inclined to rent properties rather than owning them outright, and they have learned from their losses.[113] This would decrease the state's ability to seize property from the gang, as they would no longer have a financial stake in their properties. While this decreases the state's ability to seize the gang's assets and limits the state's ability to go after gangs directly, even a rented clubhouse may still provide the state with an avenue of targeting biker gangs and using their symbols against them. The degree to which a gang feels physically or legally safe in their rented clubhouses will likely depend on the extent to which they are able to modify and fortify the premises, which would likely be governed by tenancy laws and subsequent legal proceedings. Similarly, landlords may be less willing to rent property to the Hells Angels if they run a higher risk of losing that property through forfeiture proceedings, which could frustrate the gang's ability to occupy property and may even contribute to forcing the gang out of a region. This may mean that the state could pursue biker gangs through the mechanism of tenancy law, such as the expansion of anti-fortification by-laws or new provisions allowing property owners to eject tenants or refuse tenancy to members of criminal organizations, modeled on the success of municipal anti-fortification by-laws.

The state has used the Hells Angels' clubhouses against the gang in several different proceedings, and all have been relatively successful. The clubhouses may be subject to municipal by-laws prohibiting excessive fortification, stripping the bikers of much of their sense of physical safety in relation to the clubhouses. Such efforts have so far been largely successful, although they are insufficient on their own to shut down a chapter. Instead, they serve to augment other proceedings, and to attack the bikers' sense of legal and physical safety in their clubhouses. The convictions of the downtown Toronto chapter members demonstrate the benefit to the state that may result from getting evidence from directly within the clubhouse. It is no small irony that evidence gathered from within the clubhouse by Hells Angels member and police agent David Atwell led to the clubhouse's successful seizure. In doing so, the Crown successfully used the Hells Angels' own faith in the legal safety of their clubhouse in prosecuting Hells Angels members. Targeting clubhouses for criminal forfeiture also strikes both a financial blow against the gang by removing a substantial asset from their control, as well as a reputational blow by removing a physical representation of a gang's presence from the region.

113. Edwards, "Huge trend toward renting," *supra* note 74.

The clubhouse is undoubtedly a powerful tool for biker gangs, and as a result it can also be an equally powerful tool for the state. The clubhouse may be used by the state in support of criminal law proceedings, forfeiture applications, and even municipal bylaw infractions. These elements have their own impact on the gang's regional operations, but taken together they may be sufficient to force a gang to shutter their chapter and leave town. Though securing insider information and evidence is rare and challenging, the quality and quantity of evidence such operations can produce makes them invaluable. Similarly, forfeiture applications used in conjunction with the prosecution of criminal offences require comparatively little effort from the state and may produce substantial benefits. Using the Hells Angels' clubhouses may be the most effective way that the state can use the gang's assets against itself and its members.

Conclusion

Rather than merely penalizing individual members for their crimes committed in association with a criminal organization, Canadian lawmakers ought to target the organizations themselves, and turn their own structures and symbols of power against gangs and their members. The most effective state responses to organized crime will be those that utilize our current laws, imperfect though they may be, in such a way as to make the most effective and efficient use of a gang's own structures and systems against the gang and its members. The degree to which an individual invokes their membership in an organization, and the extent to which that invocation of membership contributes to the commission of an offence, may require extensive evidence and contextual factors. Provincial and non-criminal law efforts to make use of the power of the patch have met with limited success, and have been found in some instances to be entirely unconstitutional. Despite an abundance of evidence as to the Hells Angels' shared organizational structures and territoriality, evidence of their general criminality is insufficient on its own to establish an individual's guilt in a particular offence. This evidence may be used to enhance other evidence or prosecutions, such as the court's decision in *Lindsay* to allow evidence of the Hells Angels' criminality across Canada, rather than just the Ontario chapters, based on the high degree of communication and collaboration between chapters. Provincial liquor licensing regulations have made effective use of the gang's well-documented administrative structure, as the lower evidentiary burden in these proceedings was able to make more effective use of evidence of the Hells Angels' general criminality.

Whereas criminal prosecutions using the power of the patch or the gang's administrative structure may suffer from a lack of direct evidence

tying the accused to the commission of offences, clubhouses may provide the direct evidence needed. Evidence of criminality procured within clubhouses may be of significant value to criminal prosecutions and forfeiture applications because of the sense of legal safety these spaces provide. They are frequently heavily modified and renovated to suit bikers' particular needs, and as a result they are an effective target for municipal by-laws. Because they are such public and visible symbols of a gang's power and presence, losing a clubhouse may prove to be a powerful blow against the gang's continued operations in a region. By seizing a clubhouse, or forcing a gang to dismantle their special protections, the state may strike directly at a gang's infrastructure, reduce a gang's visible presence in a region, and possibly force the gang to shut down their operations in that area altogether. It is no small irony that the clubhouse, a symbol of a gang's power and prestige and the space where gang members may feel safe from the outside world, may be its most vulnerable asset. The state may effectively, efficiently, and successfully exploit the gang's clubhouse against the gang in numerous ways and to numerous ends, and efforts that make use of the clubhouse are the most effective methods of targeting criminal organizations in Canada.