Overview Report: Relevant Hansard

I. Scope of Overview Report

1. This overview report attaches Hansard related to the enactment of and amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (the "***PCMLTFA***") and to ss. 354, 462.3 and 355.1-355.4 of the *Criminal Code*, R.S.C. 1985, c. C-46. The Hansard is attached in six appendices identified as Appendices 'A' – 'F'.

A. Proceeds of Crime (Money Laundering) and Terrorist Financing Act

2. The Hansard relevant to the *PCMLTFA* attached to this overview report includes that associated with the following Bills:

a. *An Act to Facilitate the Combatting the Laundering of the Proceeds of* Crime, S.C. 1991, c. 26 (Bill C-9, 1991) - Appendix A: p. 3.

b. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (Bill C-22, 2000) - Appendix A: p. 122.

c. *An Act Respecting Genocide, Crimes Against Humanity And War Crimes And To Implement The Rome Statute Of The International Criminal Court, And To Make Consequential Amendments To Other Acts*, S.C. 2000, c. 24 (Bill C-19, 2000) – Appendix B: p. 3.

d. *An Act to Amend the Proceeds of Crime (Money Laundering) Act*, S.C. 2001, c. 12 (Bill S-16, 2001) – Appendix B: p. 8.

e. *An Act To Amend The Criminal Code (Organized Crime And Law Enforcement) And To Make Consequential Amendments To Other Acts*, S.C. 2001, c. 32 (Bill C-24, 2001) – Appendix B: p. 102.

f. *An Act To Amend The Criminal Code, The Official Secrets Act, The Canada Evidence Act, The Proceeds Of Crime (Money Laundering) Act And Other Acts, And To Enact Measures Respecting The Registration Of Charities In Order To Combat Terrorism*, S.C. 2001, c. 41 (Bill C-36, 2001) – Appendix B: p. 133.

g. *An Act To Establish A Body That Provides Administrative Services To The Federal Court Of Appeal, The Federal Court, The Court Martial Appeal Court And The Tax Court Of Canada, To Amend The Federal Court Act, The Tax Court Of*

Canada Act And The Judges Act, And To Make Related And Consequential Amendments To Other Acts, S.C. 2002, c. 8 (Bill C-30, 2002) – Appendix B: p. 174.

h. *Public Service Modernization Act*, S.C. 2003, c. 22 (Bill C-25, 2003) – Appendix B: p. 176.

i. *An Act To Establish The Library And Archives Of Canada, To Amend The Copyright Act And To Amend Certain Acts In Consequence*, S.C. 2004, c.11 (Bill C-8, 2004) – Appendix B: pp. 176.

j. *An Act To Amend Certain Acts Of Canada, And To Enact Measures For Implementing The Biological And Toxin Weapons Convention, In Order To Enhance Public Safety*, S.C. 2004, c. 15 (Bill C-7, 2004) – Appendix B: p. 177.

k. *An Act to establish the Canadian Border Services Agency*, S.C. 2005, c. 38 (Bill C-26, 2005) – Appendix B: p. 179.

l. *An Act To Establish The Department Of Public Safety And Emergency Preparedness And To Amend Or Repeal Certain Acts*, S.C. 2005, c. 10 (Bill C-6, 2005) – Appendix B: p. 180.

m. *An Act To Amend The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act And The Income Tax Act And To Make A Consequential Amendment To Another Act*, S.C. 2006, c. 12 (Bill C-25, 2006) – Appendix B: p. 180.

n. *Economic Action Plan 2013 Act No. 2*, S.C. 2013, c. 40 (Bill C-4, 2013) – Appendix B: p. 200.

o. *Economic Action Plan 2014 Act, No. 1*, S.C. 2014, c. 20 (Bill C-31, 2014) – Appendix B: p. 200.

p. *Miscellaneous Statute Law Amendment Act, 2014*, S.C. 2015, c. 3 (Bill C-47, 2014) – Appendix B: p. 225.

q. *Economic Action Plan 2015 Act*, S.C. 2015, c. 36 (Bill C-59, 2015) – Appendix B: p. 226.

r. *Budget Implementation Act 2017, No. 1*, S.C. 2017, c. 20 (Bill C-44, 2017) – Appendix B: p. 228.

s. *An Act to Amend the Controlled Drugs and Substances Act and to make Related Amendments to Other Acts*, S.C. 2017, c. 7 (Bill C-37, 2017) – Appendix B: p. 231.

t. *An Act to Amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to Provide for Certain Other Measures*, S.C. 2017, c. 9 (Bill C-7) – Appendix B: p. 238.

u. *National Security and Intelligence Committee of Parliamentarians Act*, S.C. 2017, c. 15 (Bill C-22, 2017) – Appendix B: p. 241.

v. *An Act To Amend The Criminal Code And The Department Of Justice Act And To Make Consequential Amendments To Another Act*, S.C. 2018, c. 29 (Bill C-51, 2018) – Appendix B: p. 242.

w. *An Act Respecting Cannabis and to Amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, S.C. 2018, c. 16 (Bill C-45, 2018) – Appendix B: p. 243.

x. *Budget Implementation Act, 2018, No. 2*, S.C. 2018, c. 27 (Bill C-86, 2018) – Appendix B: p. 259.

y. *Budget Implementation Act, 2019, No. 1*, S.C. 2019, c. 29 (Bill C-97, 2019) – Appendix B: p. 260.

z. *An Act Respecting National Security Matters*, S.C. 2019, c. 13 (Bill C-59, 2019) – Appendix B: p. 278.

B. Criminal Code Provisions

3. The Hansard relevant to ss. 354, 462.3 and 355.1-355.4 of the *Criminal Code* attached to this overview report includes that associated with the following Bills:

i. Section 354 of the Criminal Code

a. *Act to Amend The Criminal Code And Certain Other Acts (Criminal Law Improvement Act) 1996*, S.C. 1997, c. 18 (Bill C-17, 1997) – Appendix C: p. 2.

b. *An Act to amend the Criminal Code and the Department of Justice Act and to Make Consequential Amendments to Another Act*, S.C. 2018, c. 29 (Bill C-51, 2018) - Appendix C: p. 4.

ii. Section 462.3 of the Criminal Code

a. *A Bill to Amend the Criminal Code, the Food and Drugs Act, and the Narcotic Control Act*, S.C. 1988, c. 51 (Bill C-61, 1988) – Appendix D: p. 3.

b. *An Act to Amend the Customs Tariff, the Excise Act, the Excise Tax Act, the Customs Act, the Criminal Code and a Related Act*, S.C. 1993, c. 25, s. 95 (Bill C-102, 1993) – Appendix E: p. 2.

c. *Seized Property Management Act*, S.C. 1993, c. 37 (Bill C-123, 1993) – Appendix E: p. 20.

d. *An Act to Amend the Criminal Code and Customs Tarif (Child Pornography and Corrupting Morals)*, S.C. 1993, c. 46 (Bill C-128, 1993) – Appendix E: 105.

e. *An Act to Amend the Criminal Code and Other Acts (Miscellaneous Matters)*, S.C. 1994, c. 44 (Bill C-42, 1994) – Appendix E: p. 111.

f. *An Act Respecting Firearms and Other Weapons*, S.C. 1995, c. 39 (Bill C-68, 1995) (Bill C-8, 1996) – Appendix E: p. 111.

g. *Criminal Law Improvement Act, 1996*, S.C. 1997, c. 18 (Bill C-17, 1996) – Appendix E: p. 133.

h. *An Act to Amend the Criminal Code (Criminal Organizations) and to Amend Other Acts in Consequence*, S.C. 1997, c. 23 (Bill C-95, 1997) – Appendix E: p. 142.

i. *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34 (Bill S-21, 1998) – Appendix E: p. 157.

j. *An Act to Amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional Release Act*, S.C. 1999, c. 5 (Bill C-51, 1999) – Appendix E: p. 167.

k. *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Bill C-11, 2001) – Appendix E: p. 209.

l. *An Act To Amend The Criminal Code (Organized Crime And Law Enforcement) And To Make Consequential Amendments To Other Acts*, S.C. 2001, c. 32 (Bill C-24, 2001) – Appendix E: p. 226.

m. *An Act To Amend The Criminal Code, The Official Secrets Act, The Canada Evidence Act, The Proceeds Of Crime (Money Laundering) Act And Other Acts, And To Enact Measures Respecting The Registration Of Charities In Order To Combat Terrorism*, S.C. 2001, c. 41 (Bill C-36, 2001) – Appendix E: p. 364.

n. *An Act To Amend The Criminal Code (Proceeds Of Crime) And The Controlled Drugs And Substances Act And To Make Consequential Amendments To Another Act*, S.C. 2005, c. 44 (Bill C-53, 2005) – Appendix E: p. 367.

o. *An Act To Amend The Criminal Code (Auto Theft And Trafficking In Property Obtained By Crime)*, S.C. 2010, c. 14 (Bill S-9, 2010) – Appendix E: p. 388.

p. *An Act to Amend the Criminal Code, the Youth Criminal Justice Act and Other Acts and to Make Consequential Amendments to Other Acts*, S.C. 2019, c. 25 (Bill C-75, 2019) – Appendix E: p. 401.

q. *Budget Implementation Act, 2019, No. 1*, S.C. 2019, c. 29 (Bill C-97, 2019) - Appendix E: p. 401.

iii. Sections 355.1-355.4 of the Criminal Code

r. *An Act to Amend the Criminal Code (Auto Theft and Trafficking in Property Obtained by Crime)*, S.C. 2010, c. 14 (Bill S-9, 2010) – Appendix F: p. 2.

Appendix A

An Act to Facilitate Combatting the Laundering of the Proceeds of Crime, S.C. 1991, c. 26 (Bill C-9, 1991)

Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 (Bill C-22, 2000)

Table of Contents

I. An Act to Facilitate Combatting the Laundering of the Proceeds of Crime, S.C. 1991, c. 26 (Bill C-9, 1991)

May 27, 1991 [House of Commons]

[*Translation*]

INTERPARLIAMENTARY DELEGATIONS

TABLING OF FIFTEENTH REPORT OF THE CANADIAN SECTION OF THE AIPLF

Mrs. Nicole Roy-Arcelin (Parliamentary Secretary to Minister of Communications): Mr. Speaker, pursuant to Standing Order 34, I have the honour to present to the House, in both official languages, the fifteenth report of the Canadian section of the *Assemblée internationale des parlementaires de langue française*.

* * *

PROCEEDS OF CRIME (MONEY LAUNDERING) ACT

MEASURE TO ENACT

Hon. Gilles Loiselle (President of the Treasury Board and Minister of State (Finance)) moved that Bill C-9, an Act to facilitate combatting the laundering of proceeds of crime, be read the first time and be printed.

Motion agreed to, bill read the first time and ordered to be printed.

* * *

DEPARTMENT OF AGRICULTURE ACT

MEASURE TO AMEND

Mr. Peter Milliken (Kingston and the Islands) moved for leave to introduce Bill C-208, an Act to amend the Department of Agriculture Act.

He said: Mr. Speaker, this bill seeks to amend the Department of Agriculture Act.

[*English*]

The purpose of the bill is to delete the section of the act which permits the Governor in Council to assign powers or duties to the Minister of Agriculture. These powers are currently used to create new agricultural programs. The report of the Auditor General of Canada tabled in this House, I believe in 1989, recommended that this power be deleted from the act. This bill carries out that purpose and will require the minister to come to the House if he seeks to establish a new agricultural program rather than create it on his own without proper authority.

That is the purpose of the amendment to the act. It is a short and very simple act which I hope will commend itself to all hon. members.

[*Translation*]

Motion agreed to, bill read the first time and ordered to be printed.

* * *

• (1510)

[*English*]

PETITIONS

SALARY INCREASES

Mr. Jack Whittaker (Okanagan—Similkameen—Merritt): Mr. Speaker, I rise pursuant to Standing Order 36 to present a petition sent to me recently by a number of Public Service employees of Agriculture Canada, the Summerland Research Station in particular: "Whereas the government has introduced a new budget which outlines the need for fiscal restraint in this time of recession; and whereas the government has imposed a zero per cent wage hike ceiling on federal public employees for 1991; and whereas the recent 10 per cent total pay increase given to members of Parliament should be rolled back in keeping with this policy of restraint, wherefore, the undersigned, your petitioners, humbly pray and call upon Parliament to implement the aforesaid request."

ROYAL CANADIAN MOUNTED POLICE

Mr. Nelson A. Riis (Kamloops): Mr. Speaker, it is my pleasure and honour to present a petition on behalf of a number of citizens from the great city of Logan Lake, British Columbia, who are concerned about the government's decision to cut back on Royal Canadian Mounted Police funding.

They point out in a number of ways how this has affected their community, how this may result in increased levels of lawlessness throughout the region and are asking the Government of Canada to reconsider its funding cuts to the RCMP and provide the police force with a mandate and the ability to continue its role as the only visible police force for many British Columbia communities and a viable symbol of Canadian unity.

June 5, 1991 [House of Commons]

The petitioners point out that if this is permitted to proceed, the effect would be that local telephone rates will escalate and add a lot of additional cost to people who use the telephone.

The petitioners are asking the Minister of Communications to oppose Unitel's bid to compete with Canada's telephone companies in long distance service. They are urging the Minister of Communications to consult with all the affected parties, specifically those citizens living outside Canada's urban areas who will be impacted most severely by this deregulation.

PETRO-CANADA

Mr. Lyle Kristiansen (Kootenay West—Revelstoke): Mr. Speaker, I am pleased, pursuant to Standing Order 36, to present a petition signed by some 58 petitioners who are mostly from my own riding of Kootenay West—Revelstoke, the communities of Slocan, Johnsons Landing, Argenta, the cities of Revelstoke, Castlegar, Trail, and outside from Salmon Arm, Vancouver and Sparwood, British Columbia.

The petitioners ask Parliament to give serious consideration to the matter of Petro-Canada and Bill C-84, to take into consideration matters of price stability and energy security.

For a number of environmental reasons, they call upon Parliament to defeat or repeal Bill C-84, an act respecting the privatization of the National Petroleum Company of Canada and to keep Petro-Canada as a Crown corporation acting in the best interest of all Canadians.

* * *

QUESTION PASSED AS ORDER FOR RETURN

Mr. Albert Cooper (Parliamentary Secretary to Minister of State and Leader of the Government in the House of Commons): Mr. Speaker, if Question No. 42 could be made an Order for Return, the return would be tabled immediately.

The Acting Speaker (Mr. Paproski): Is it the pleasure of the House that Question No. 42 be deemed to have been made an Order for Return.

Some hon. members: Agreed.

[Text]

FEDERAL BUSINESS DEVELOPMENT BANK

Question No. 42—**Ms. Phinney:**

With respect to the Federal Business Development Bank (a) how many staff are employed (b) how many grants and/or loans were given by it last year (c) what is its overall budget?

Return tabled.

* * *

[English]

QUESTIONS ON THE ORDER PAPER

Mr. Albert Cooper (Parliamentary Secretary to Minister of State and Leader of the Government in the House of Commons): Mr. Speaker, I ask that the remaining questions be allowed to stand.

The Acting Speaker (Mr. Paproski): Shall the remaining questions stand?

Some hon. members: Agreed.

* * *

MOTIONS FOR PAPERS

Mrs. Dorothy Dobbie (Parliamentary Secretary to Minister of Consumer and Corporate Affairs and Minister of State (Agriculture)): Mr. Speaker, I ask that all Notices of Motions for the Production of Papers be allowed to stand.

The Acting Speaker (Mr. Paproski): Is that agreed?

Some hon. members: Agreed.

GOVERNMENT ORDERS

[English]

PROCEEDS OF CRIME (MONEY LAUNDERING) ACT

MEASURE TO ENACT

Hon. Gilles Loiselle (President of the Treasury Board and Minister of State (Finance)): moved that Bill C-9, an act to facilitate combating the laundering of proceeds of crime, be read the second time and referred to a legislative committee.

He said: Mr. Speaker, the bill we have before us, Bill C-9, entitled an act to facilitate combating the laundering of proceeds of crime, is part of Canada's national drug strategy. As such, it builds on and complements

other legislation that Canada has introduced in this area, most notably Bill C-58 which was designed to enhance international law enforcement co-operation and Bill C-61 which made money laundering a criminal offence.

Its purpose is to discourage the use of Canada's financial system by criminals and to ensure that there is an adequate paper trail for our law enforcement authorities to carry out money laundering investigations.

The bill is consistent with the recommendations of the G-7 financial action task force on money laundering and consistent with those of the advisory committee on money laundering, a joint, private-public sector group which I chair.

The bill also has the support of Canada's financial community and a cross-section of senior officials from that community are members of the advisory committee.

Before I turn briefly to the specific measures in the bill, I would like to outline the setting in which the bill was developed.

As you know, drug trafficking, unfortunately, is something which plagues all modern societies. Familiarity, however, should not breed complacency. The destruction that drug trafficking renders is a tragedy of gigantic proportion. Individual lives, families and communities can and are being destroyed in Canada and elsewhere.

Drug trafficking generates large volumes of cash and therein lies both its attraction and its vulnerability. The proceeds of crime, particularly from drug trafficking, must be converted in other seemingly legitimate forms. The act of doing so is of course called "money laundering".

Without money laundering, drug trafficking would be less profitable and, therefore, less attractive to the criminal element in society.

[*Translation*]

In July 1989, the leaders of the G-7 countries announced the establishment of a Financial Action Task Force to study and make recommendations on measures to combat money laundering. The Task Force's first report was released in April, 1990. It contains 40 recommendations for action. At the Economic Summit in Houston in July 1990 the Prime Minister and the other G-7 leaders made clear their intention to fully implement the Task Force's recommendations quickly.

I think that we all can feel some measure of satisfaction in that Canada is in substantial compliance with the Task Force's recommendations. One area where we fall short, however, is in ensuring that our financial institutions, other businesses and professionals who handle large volumes of cash maintain adequate records. This brings me back to Bill C-9, which is designed to fill this gap.

• (1550)

[*English*]

The bill, the short title of which is the Proceeds of Crime (Money Laundering) Act, is linked to the criminal offence of money laundering as defined in the Criminal Code, the Narcotics Control Act and the Food and Drug Act.

It is important to note that the provisions of the legislation focus on record keeping, not on reporting. The specific details relating to the keeping of records will be established by regulation. The records in question are limited to those which have been determined to be useful in the prevention, investigation and prosecution of money laundering.

This approach allows us to be flexible so that as the channels by which money is laundered change, the methods used to combat it can be adjusted. The bill is similar in most respects, Mr. Speaker, to Bill C-89, which we introduced in the last Parliament. However, the current bill calls for a consultation period of at least 90 days between the time of publication of regulations issued under the bill and their finalization.

In addition, the wording of certain sections of the bill has been made more precise. The revised bill makes it clear that intent is required before penalties apply. In addition, the regulation-making power of the government, with regard to determining the accuracy of information contained in records, only applies to the identification of clients.

The bill, I can assure you, will not reduce the traditional safeguards with respect to access to these records.

Finally, the bill imposes penalties in accordance with the seriousness of the situation. In closing, I do not need to remind the House that drug trafficking and money laundering pose major challenges to society.

Bill C-9 is an important bill for Canadians. It is designed to strike at these social ills but in a way which is not intrusive. It is in the interests of all of us to ensure that Canada does not become a haven for money launderers. I would welcome your support for this bill.

Mr. George S. Rideout (Moncton): Mr. Speaker, it is a pleasure to rise and speak on this particular bill, Bill C-9, otherwise known as the money laundering bill.

Bill C-9 appeared in the last session as Bill C-89 and it was lost when the House was prorogued. It is probably a good thing that it was because there were some flaws in that particular legislation. We are very pleased to see that the government has responded and made some changes in the legislation that make it a little more workable.

It seems to us that there are still a few things we should take a look at. We understand that everyone is in agreement that this bill be sent off to committee, and that is positive.

The drug war, as we hear it called from time to time, is a major problem in the world. There is absolutely no question about that. Canada has in part been considered a bit of a haven as far as the drug situation is concerned. Because of our close proximity to major drug routes, because we border on the United States and in part because we have lax financial reporting laws, Canada is one of the areas in which we see the drug trade moving. I know I can speak with some knowledge as far as New Brunswick is concerned.

There have been a number of cases where planes containing large amounts of drugs have landed on rural runways. Also, certain people have arrived in the New Brunswick area and deposited guns and everything else to try to free some of the people who have already been incarcerated by our efficient police force.

We know there is a drug problem in New Brunswick. We know there is a drug problem in Canada and this bill will help, in part, to solve the problem. Obviously, the problem has to be attacked on many levels. It has to be attacked where the drugs are being produced. It also has to be attacked at the means of delivery. Third, the criminals who are making a profit on the sale of drugs have to be attacked. I think, in large measure too, consumption also has to be attacked.

There is no question that this particular bill is aimed at one aspect. That is the profits which are associated with drugs and how those get into our community and become legitimate.

The bill builds on the so-called freeze and seize legislation, C-61, which in effect created the offence of money laundering. Money laundering is described as a process by which illegitimate dollars are transformed through the financial markets into legitimate funds. The purpose is to hide the identity of the real owners of the funds and give them the appearance of being legitimate.

[*Translation*]

There is no question that there is a problem and it is a world-wide problem. The question is whether this legislation goes far enough. We support the bill being considered in committee, but we hope that it will be improved upon thereafter.

[*English*]

There is no question that it is an international problem, and that is really what has forced this matter on this House. It is the United States and the G-7 which have said that all of the nations facing this problem have to become involved. This legislation when it was first presented had to be returned to the drawing boards because it did reflect an American slant. Their laws, as they deal with barristers, solicitors and other professionals, are different than ours so it was necessary for some of the legislation to be redrafted.

The other thing we have to look at is the area of regulation. A lot of this particular legislation is aimed at allowing the law to really develop through regulation. In some senses that is good but in others it is bad because the regulations do not have the control that Parliament has over intrusions into peoples' lives. We have to remember that is the effect of this legislation.

Any transaction over $10,000 is going to be subject to an intrusion by government, in effect through the reporting of those transactions in financial institutions. On the face of it that is good. There is no question, that is the only way we are going to track this situation. At the same time, it is an intrusion into peoples' lives and we have to make sure there is a balance and that we are going to benefit.

There is no assurance yet, nor have we seen any of the necessary money placed on the table to ensure it, that the government, the RCMP and the crime enforcement agencies are going to use this information. We have to be assured that when the information is sent from the financial institutions to the law enforcement agencies that they are going to have the resources and people and the money, all of the things that are necessary, to ensure that something good will come from this legislation. It does no one any good for this information to end up on a shelf in some RCMP office without being utilized. Therefore, that becomes a major concern.

As well, with respect to the regulations, there is a concern among many that the regulations will be proclaimed, and that the different professions and different institutions which are affected will not be fully aware and not have the input that they would have if it was an actual bill that came through Parliament.

• (1600)

We are hopeful that in the long run there will be more control over the regulations so that the adverse effects of regulations which slip through will not be felt. We are pleased that the government at least is going to have a three-month consultation process prior to the regulations coming into effect.

There is also protection for lawyers, as far as solicitor-client privilege is concerned, as that is the other problem and is where we differ a little bit from the American system. Lawyers were faced with the conundrum of not being able to divulge information given to them by their client while, at the same time, having to face a penalty for not giving out that information. There is an attempt to clean up that particular problem.

We also see that the government is going to define "cash" and say what that term really means. That is a loose end that certain criminal elements could hide behind.

The other broad aspect of this bill is that we are going to see an attempt to close some of the borders as far as Canada is concerned. One of the mechanisms to be closed is using Canada's financial system to legitimize illegitimate money.

However, the critical aspect and something that will become interesting once the committee meets is how effective the other countries are going to be. If we do not have connections between all of the other countries then it is not going to work. The other thing we have to be aware of is that the information gathered on Canadians will be available to other countries and other law enforcement agencies. That is a good point and a bad point, as it is an intrusion into the privacy of Canadians. We have to do a cost benefit analysis to ensure that there are not adverse effects on Canadians.

The Liberal Party is prepared to support this bill at this particular stage. We are excited that it will go to committee and that we will have before us all the different interest groups involved, such as the bar society and the bankers' society. We do not know which committee, but it will be one of the very important committees of this House I am sure, perhaps the one which the hon. member chairs.

In any event, the fact that it goes to committee and that we can have submissions from those different interest groups is important. In addition to the involvement of the barristers, the chartered accountants and the bankers' associations, a good idea that has been suggested—perhaps by the chairman of that committee—is that the RCMP be involved in advising us as to what the status of things is.

Second, it probably would not hurt for us to have someone from one of the civil liberties organizations appear to talk about the cost benefits of these intrusions. Let it be perfectly clear that the Liberal Party is fully supportive of the efforts to fight the drug situation in our country and on our streets. We are prepared to go to most levels in order to have legislation which will assist law enforcement agencies in achieving that goal. However, we are not prepared to go to the extent of a complete denial of civil liberties and individual Canadians' rights.

That is why this committee is important. That is why we want to see it at committee. I thank you, Mr. Speaker, for the time to give comments on this particular bill.

Mr. Steven W. Langdon (Essex—Windsor): Occasionally there is a piece of legislation which comes before the House and receives the unanimous support of all parties, and which has reached the House through a process of negotiation and discussion, which helps to explain that

unanimous support. In the case of this piece of legislation, that is very much the reality.

This legislation is a result of the decisions of the G-7 countries to, quite rightly, attempt to ensure that what we assume to be tremendous monetary flows taking place as a consequence of the illicit drug trade are made easier to track and easier to police. As my colleagues in the Liberal Party have suggested this is not for purposes of trying, to somehow hurt the privacy of people, but instead of suggesting ways for our financial institutions in this country to help control more effectively this large scale flow of illicit funds.

We are talking about the flow of illicit funds which is especially important to track. If it is not possible to do so then these illicit funds become the basis on which legal activities are established within this country. This in turn permits further profit making on the basis of what was originally an illicit sale of drugs with subsequent flow of illicit money.

From our perspective as a party we strongly share the basic purposes and goals which lie behind this legislation, and that is to try to see to it that the flow of illicit funds does not become possible in our country. It is not a secret that Canada has been seen as a relatively easy country through which money laundering can take place. This is not a reputation that any of us in this House would want this country to have, and I am certain everybody in the House will support tightening up the situation.

Our concerns however with the original bill, which came before us in a previous session of this Parliament, were that in the process of attempting to deal with a serious problem the government had established a number of clauses as part of the legislation, a number of regulations as part of the draft regulations prepared to support the legislation which frankly represented certain dangers. These dangers could conceivably penetrate for instance the relationship between a lawyer and a lawyer's clients. That penetration could begin through the search for a monetary trail based on money exchanges, but it would have the effect of leading from the purely financial considerations involved into a detailed probing, we feared and the Canadian Bar Association feared, of the lawyer-client relationship which existed in a number of situations.

• (1610)

It is for that reason that the original version of this legislation was very strongly condemned by the Canadian Bar Association.

The Canadian Bar Association is not an organization which ordinarily takes strong positions on pieces of federal government legislation. Yet, the Canadian Bar Association did take the highly unusual step of passing a motion at the national level, condemning this piece of legislation as it was originally drafted.

We talked about this piece of legislation with members from the opposite side, the government side. They assured us that at the time the previous legislation was in front of us, there were no problems.

We however checked to see if this were the case with a number of associations such as the Canadian Bar Association. It indicated to us that unfortunately, contrary to what we have been told, there were serious problems which led them to pass this national resolution.

Subsequently, we indicated that we would not be prepared to co-operate with the passage of this legislation. It was after this, as I understand it, that the government finally entered into serious discussion with the Canadian Bar Association and came to conclusions which now resolve the problems that were in the previous piece of legislation.

We have discussed the new piece of legislation with the Canadian Bar Association. We have discussed it with the body that represents the Canadian Chartered Accountants. We are assured by both that they see no problems with the bill as it presently stands.

We have talked with representatives of the chartered banks who have also indicated that there should be no problem from their perspective with the period of time for which financial records are required to be kept under the legislation.

I think, as a consequence of further consultation, we have a much better piece of legislation in front of us now than we had in the previous session of Parliament.

For this reason we are prepared as a party to support the legislation because, as I say, we strongly agree with the principle. Our concern was with some of the details.

Those details have now been worked through with some of the bodies that previously expressed concern.

We would still hope that when this bill goes to committee, whether it is a legislative committee or a specific standing committee, it will call before it some of those organizations which expressed concern in the past so that those concerns will in fact be overcome by the changes which have taken place.

We have heard from such organizations. We take their word, but I think it is important to see that this is explored at committee.

I have had some discussions with the parliamentary secretary to the minister. I think there is widespread agreement with respect to the three or four groups that we would want to see come before the committee.

I hope that speedy passage through the committee will therefore be assured. I am pleased to say that as far as we are concerned, we are very pleased to see speedy passage at second reading of a significant piece of legislation.

It will not in any sense be a comprehensive response, but it will be a significant part of the response to try to deal with the illicit flow of funds associated with the drug trade in our country.

The Acting Speaker (Mr. Paproski): Is the House ready for the question?

Some hon. members: Question.

The Acting Speaker (Mr. Paproski): Is it the pleasure of the House to adopt the motion?

Some hon. members: Agreed.

Motion agreed to, bill read the second time and referred to a legislative committee.

* * *

EXPORT AND IMPORT PERMITS ACT

MEASURE TO ENACT

The House resumed from Thursday, May 30, consideration of the motion of Mr. Wilson (Etobicoke Centre) that Bill C-6, an act respecting the exporting, importing, manufacturing, buying or selling of or other dealing with certain weapons be read the second time and referred to a legislative committee.

Mr. Jim Karpoff (Surrey North): Mr. Speaker, I rise to speak on this legislation with a great deal of mixed feelings. Canada has had a history of being a nation which, on the whole, has worked for peace. It has been in the forefront of attempting to limit the proliferation of nuclear weapons and to provide peacekeeping forces within the United Nations.

Within my own family there is a long and strong tradition of working for peace. My father grew up in Russia belonging to a group called the Molokans, whose members are much like the Quakers; pacifists. He was fortunate enough to be able to leave Russia when he became draft age and he chose to come to Canada because he knew that Canada allowed for religious and political freedom. He was involved in some of the first peace movements in Canada including, I am proud to say, leading some of the first demonstrations and marches against the bomb in 1946 and 1947.

He spoke about many things in the late forties and early fifties and at that time, particularly if you had a Russian name, it was not easy to stand up and advocate peace initiatives. Many years later, when it became more acceptable, many of the things that he suggested, the total community adopted and realized that they only made sense in a modern society.

What we have here is the start of a new government initiative to get Canada farther into the area of arms sales. It is one of these things that becomes a treadmill. The farther you get into it, the more difficult it is to get out.

It is based on a number of very shaky premises. Under the present export control policy, Canada has agreed to a number of things. I think it is worth while looking at what they are. Basically Canada agreed to four things: it would not export military goods to countries that pose a threat to Canada or its allies; it would not export military goods to countries that are involved in or under imminent threat of hostility; it would not export military goods to countries under United Nations Security Council sanctions; it would not export military goods to countries whose governments have a persistent record of serious violation of human rights of their citizens.

• (1620)

Some of the current proposals would fail on two of these grounds. The current proposals are designed to start and dump back military armaments into the mid-east, including Saudi Arabia. If anyone looks at the history of the mid-east in the last four years, or 10 years,

June 10, 1991 [Legislative Committee F on Bill C-9

[*Text*]

EVIDENCE

[*Recorded by Electronic Apparatus*]

Monday, June 10, 1991

• 1532

The Chairman: I call this organization committee to order. The legislation we are dealing with is Bill C-9, an act to facilitate combatting the laundering of proceeds of crime.

First on the agenda is that the quorum is five. There is a quorum in attendance. I am Ralph Ferguson. I was asked to serve as chairman of this committee by the Speaker:

> Pursuant to Standing Order 113, this is to confirm your appointment as Chairman of the Legislative Committee F on Bill C-9, An Act to facilitate combatting the laundering of proceeds of crime.

I will ask Mr. Farrell to read the order of reference.

The Clerk of the Committee: It is ordered that Bill C-9, an act to facilitate combatting the laundering of proceeds of crime, be now read a second time and referred to legislative committee F.

The Chairman: I look forward to working with the members of this committee on this bill that is before us, and I hope everything will proceed smoothly. I am delighted with the members who have taken an interest in this particular issue. Let's hope we will have a good working committee, a committee that will reflect the wishes of the people of this nation.

We have with us, from the Office of the Law Clerk and Parliamentary Counsel, Louis-Phillipe Côté, legislative counsel, and from the Research Branch of the Library of Parliament we have Mollie Dunsmuir and Nis Moller, research officers.

We do have under routine business motions a printing motion. The motion reads that the committee print 750 copies of its *Minutes of Proceedings and Evidence*, as established by the Board of Internal Economy.

Mr. Rideout (Moncton): Mr. Chairman, without in any way tearing down the importance of this committee, do we really need 750? Wouldn't 550 be more appropriate?

• 1535

The Chairman: The clerk informs me the general distribution requires approximately 550 to all members and officials.

Mr. Rideout: So you need that extra cushion.

The Chairman: That would leave us 200 to spare.

Mr. Soetens (Ontario): I so move, Mr. Chairman.

[*Translation*]

TÉMOIGNAGES

[*Enregistrement électronique*]

Le lundi 10 juin 1991

Le président: La séance est ouverte. La loi dont nous avons à traiter est le projet de loi C-9, Loi visant à faciliter la répression du recyclage financier des produits de la criminalité.

Le premier point à l'ordre du jour concerne le quorum. Il est atteint, puisqu'il est fixé à cinq. Mon nom est Ralph Ferguson et j'ai été invité par le Président de la Chambre à assumer la présidence de ce comité:

> Conformément à l'article 113 du Règlement, la présente a pour objet de confirmer votre nomination en tant que président du Comité législatif F sur le projet de loi C-9, Loi visant à faciliter la répression du recyclage financier des produits de la criminalité.

Je demanderai tout d'abord à M. Farrell de lire l'ordre de renvoi.

Le greffier du Comité: Il est ordonné que le projet de loi C-9, Loi visant à faciliter la répression du recyclage financier des produits de la criminalité, soit maintenant lu une deuxième fois et déféré au Comité législatif F.

Le président: C'est avec plaisir que j'envisage de travailler en collaboration avec les membres de ce comité à l'étude de ce projet de loi et j'espère que tout se passera bien. Je suis heureux de constater l'intérêt que les membres ont affiché pour cette question particulière. Espérons que nous saurons être un comité efficace, un comité qui reflète ce que désire la population canadienne.

Nous avons parmi nous M. Louis-Philippe Côté, conseiller législatif, qui appartient au Bureau du légiste et conseiller parlementaire, ainsi que Molly Dunsmuir et Nis Moller, recherchistes au Service de recherche de la Bibliothèque du Parlement.

Au chapitre des motions courantes, nous devons nous pencher sur une motion d'impression des *Procès-verbaux et témoignages*. La motion prévoit l'impression de 750 exemplaires des *Procès-verbaux et témoignages* du comité, ainsi que l'a établi le Bureau de la régie interne.

M. Rideout (Moncton): Monsieur le président, loin de moi l'idée d'atténuer l'importance de ce comité, mais avons-nous vraiment besoin de 750 exemplaires? Est-ce que 550 ne suffiraient pas?

Le président: Le greffier m'avise qu'il nous faut environ 550 exemplaires pour la distribution aux députés et aux hauts fonctionnaires.

M. Rideout: Donc, vous voulez avoir une petite réserve.

Le président: C'est cela, nous aurions une réserve de 200 exemplaires.

M. Soetens (Ontario): Je propose la motion, monsieur le président.

[Texte]

Motion agreed to

The Chairman: Thank you. We will order 750. On to section (b), receiving and printing of evidence when a quorum is not present.

Mr. Soetens: I will move that, Mr. Chairman.

Mr. Rideout: Could I just add that at least one member of the opposition be present?

Mr. Soetens: You have the chairman now.

Mr. Rideout: I know, but he may not be there, and he cannot speak.

Mr. Soetens: I am not opposed to that.

Mr. Rideout: It is normally the case, I think. So I will do it either by an amendment or you can go ahead.

Mr. Soetens: Including at least one member of the opposition. I will add that to the motion.

Motion agreed to

The Chairman: Going on to (c), the questioning of witnesses, it is proposed that during the questioning of witnesses the first spokesperson of each party be allotted ten minutes, and thereafter five minutes for other members of the committee.

Mr. Keyes (Hamilton West): I will move that, Mr. Chairman.

Mr. Soetens: I might comment. I know why the motion is there, but I am one of those guys that is quite willing not to see that motion. If it is flowing along in a constructive fashion so that everybody gets a chance to participate but because five minutes are up and you are in the midst of an important series of questions I would hate to think the person, whoever it is, would be cut off because of that.

Mr. Keyes: Well maybe to ease the member's mind, on committees in the past, and I am sure Mr. Kempling can affirm that, it is usually at the discretion of the chair. Five minutes is a ballpark figure and nothing full fast or stop watch. I have never been in a committee where the answer was not completed or the question was not completed in five minutes.

The Chairman: Are we agreed?

Some hon. members: Agreed.

The Chairman: In terms of support staff, that the clerk of the committee in consultation with the deputy principal clerk of the Public Bills Office and the chairman be authorized to engage the services of temporary secretarial staff as required for a period not to exceed 30 working days after the committee has presented its report to the House.

Mr. Soetens: I so move.

Motion agreed to

The Chairman: Future business. You may have informal discussions with the chairman before another meeting is called by the chairman, and we do have some people who could be called before the committee, RCMP Inspector Bruce Bowie and the Canadian Bar Association, and they are available this week. What is your wish?

[Traduction]

La motion est adoptée

Le président: Je vous remercie. Nous commanderons donc 750 exemplaires. Bien, passons au point b), audition de témoignages et impression de fascicules en l'absence de quorum.

M. Soetens: Je propose la motion, monsieur le président.

M. Rideout: Puis-je ajouter qu'il conviendrait qu'au moins un membre de l'opposition soit présent.

M. Soetens: Mais vous avez déjà le président.

M. Rideout: Certes, mais il pourrait ne pas être présent et il ne peut participer au débat.

M. Soetens: Je n'ai rien contre.

M. Rideout: C'est normalement le cas, du moins je le pense. Alors, dois-je proposer un amendement ou le proposez-vous vous-mêmes?

M. Soetens: Dont au moins un membre de l'opposition. C'est ce que je rajoute dans ma motion.

La motion est adoptée

Le président: Au point c) à présent, l'interrogation des témoins. Il est proposé que, lors de l'interrogation des témoins, dix minutes soient accordées au premier intervenant de chaque parti et cinq minutes par la suite à chaque autre intervenant.

M. Keyes (Hamilton-Ouest): J'en fais la proposition, monsieur le président.

M. Soetens: Puis-je faire une remarque. Je sais que cette motion est déjà prévue, mais je fais partie de ceux qui ne sont pas tout à fait en sa faveur. Si tout se déroule bien et que tout le monde a la chance de participer mais que, la période de cinq minutes prend fin alors qu'on est en plein milieu d'une importante série de questions, je détesterais que l'intervenant, qui qu'il soit, soit interrompu.

M. Keyes: Eh bien, pour rassurer notre collègue, je préciserai que, par le passé, dans d'autres comités—et je suis sûr que M. Kempling pourra le confirmer—cette question a été laissée à la discrétion de la présidence. Cette période de cinq minutes n'est qu'une indication, et il n'est pas question de tenir un chronomètre. Par ailleurs, je n'ai jamais siégé à un comité où la réponse ou la question n'ont pu être formulées en cinq minutes.

Le président: Sommes-nous d'accord?

Des voix: D'accord.

Le président: Pour ce qui est du personnel de soutien, il est proposé que le greffier du comité, en consultation avec le greffier principal adjoint du Bureau des projets de loi d'intérêt public, ainsi qu'avec le président, soit autorisé à retenir, au besoin, les services d'employés additionnels pour la durée du mandat du comité, pour une période ne dépassant pas 30 jours ouvrables après le dépôt de son rapport à la Chambre.

M. Soetens: Je propose la motion.

La motion est adoptée

Le président: Questions futures. Vous pourrez avoir des discussions informelles avec le président, avant qu'il ne convoque la prochaine réunion, de plus, nous devons considérer la question des témoins à convoquer au comité, à savoir l'inspecteur Bruce Bowie, de la GRC, et les représentants de l'Association du Barreau canadien; ils sont disponibles cette semaine. Que souhaitez-vous?

[Text]

Mr. Rideout: What were you thinking of, tomorrow or Wednesday?

The Chairman: I had better have our clerk give the times.

The Clerk: Well I know the RCMP and the Canadian Bar Association are free all week. They are willing any time we want to call them. The minister is available tomorrow between 5 p.m. and 6 p.m. if the committee wishes the minister to appear.

Mr. Rideout: Why do we not proceed with the minister and those two, both the Canadian Bar Association and the RCMP, tomorrow?

■ 1540

Mr. Soetens: Mr. Chairman, I do not have a problem with the minister and his officials. From my role on the other committee, the finance side of the committee, I would think the Canadian Bankers' Association may want to comment on this, since they are the ones that would have to handle all this money.

Mr. Rideout: Yes, I would think they might.

Mr. Soetens: I think it would be appropriate to ask them if they would like to comment on it.

The Clerk: I can update you on the Canadian Bankers' Association. I was talking to Bill Randle. Mr. Ballard, who is a vice-president of securities, is in Toronto this week, but there is a convention this week in Ottawa and they might be available when they are in town this week to appear also.

Mr. Soetens: I do not want them to appear if they do not have anything to say, but it seems to me—

Mr. Rideout: I think the same thing with the Canadian Institute of Chartered Accountants as well.

Mr. Soetens: I am not sure what their role would be in this.

Mr. Rideout: No, but just to invite them and give them an opportunity.

Mr. Soetens: I guess I would question, would the RCMP be in camera or in public? I am not sure what they would have to say but do they necessarily want to say it publicly?

Mr. Rideout: I think that in camera might be better for us as far as getting a better appreciation of what the problems are, rather than an open session, but I will be guided by what everybody else feels.

Mr. Chairman, what I think is that we should offer to the bankers and to the chartered accountants and maybe Alan Borovoy or one of those guys from one of the civil libertarian organizations to see whether they want to appear as well. That would be all that I would think would be necessary.

Mr. Soetens: Yes, a short list.

[Translation]

M. Rideout: À quel jour pensiez-vous, aujourd'hui ou mercredi?

Le président: J'aurais préféré que notre greffier s'en occupe.

Le greffier: Eh bien, je sais que la GRC et les représentants de l'Association du Barreau canadien sont libres cette semaine et qu'ils se tiennent à notre disposition. Quant au ministre, il est disponible demain entre 17 heures et 18 heures, si toutefois le comité désire le rencontrer.

M. Rideout: Pourquoi ne commencerions-nous pas, demain, par le ministre et par ces deux témoins, les représentants de l'Association du Barreau canadien et celui de la GRC?

M. Soetens: Monsieur le président, je n'ai rien contre le fait que nous rencontrions le ministre et ses hauts fonctionnaires. Mais, je siège à l'autre comité, celui qui s'occupe des finances, et je pense que l'Association des banquiers canadiens risque de vouloir intervenir, puisque ce sont ces gens qui devront manipuler tout cet argent.

M. Rideout: Tout à fait, c'est ce que je pense.

M. Soetens: J'estime qu'il serait approprié de leur demander s'ils veulent intervenir.

Le greffier: Je peux vous renseigner sur ce qu'il en est à propos de l'Association des banquiers canadiens, puisque je me suis entretenu avec Bill Randle. M. Ballard, qui est le vice-président chargé des valeurs mobilières, se trouve à Toronto cette semaine, mais, cette semaine également, il y a un congrès à Ottawa, et les membres de l'Association pourraient se rendre disponibles lors de leur passage en ville pour comparaître devant le comité.

M. Soetens: Je ne veux pas qu'ils comparaissent s'ils n'ont rien à nous dire, mais il me semble que...

M. Rideout: Il en va de même de l'Institut canadien des comptables agréés.

M. Soetens: Je ne vois pas quel pourrait être leur rôle à ce propos.

M. Rideout: Pourquoi ne pas les inviter et leur donner la possibilité d'intervenir?

M. Soetens: J'aimerais vous poser une question. L'intervention de la GRC se fera-t-elle à huis clos ou en public? Je ne sais pas exactement ce que son représentant aura à dire, mais il est possible qu'il n'ait pas envie d'intervenir en public?

M. Rideout: Bien sûr, il serait préférable que nous l'entendions à huis clos, ce qui nous permettrait de nous faire une meilleure idée de la nature du problème, plutôt que dans le cadre d'une séance ouverte. Mais je me rangerai derrière le sentiment général.

Monsieur le président, je crois que nous devrions inviter les banquiers et les comptables agréés, et peut-être même Alan Borovoy, ou un autre représentant des organismes de défense des droits civils. C'est là, je crois, tout ce que nous devrions faire.

M. Soetens: Oui, dresser une liste restreinte.

[*Texte*]

The Chairman: Yes. We have this room tomorrow at 3.30 p.m. Being that Inspector Bowie is available at any time, as is the Canadian Bar Association, would it be possible to slot those two in ahead of the minister starting at 3.30 p.m., and follow up with the minister at his convenience at 5 p.m., then try to have the others on Thursday? Wednesday at 3.30 p.m. is another possibility.

Mr. Soetens: If the minister is available first and his officials, I would prefer them first, only to get their views on the overall objectives before we have the RCMP. If that order could be arranged, I would prefer that.

The Chairman: In that case we would have to start at 5 p.m.

Mr. Soetens: The minister is not available for before 5 p.m., is that the situation?

The Chairman: Between 5 p.m. and 6 p.m. tomorrow is the only time he is available to speak.

Mr. Kempling (Burlington): Are his officials available?

The Chairman: We can check and find out.

Mr. Soetens: I do not mind starting earlier. It just seems to me that—

Mr. Keyes: Is there a reason why you want to hear from the minister before you hear from the—

Mr. Soetens: No. It just seems to me that the person who is in favour of this ought to explain what is so good about it before we question all those who have to enforce it. But I am not hardpressed on that.

Mr. Rideout: Maybe we could do it this way, if it is possible. I do not mind sitting and starting at 5 p.m., if everybody else is agreeable, and we could do the minister first. But if there is a problem with the RCMP and the other people and they have to be here at 3.30, then I am just as agreeable to starting at 3.30 and doing those two and tying the minister in afterwards.

Mr. Soetens: Fine, let's start at 3.30 then.

The Chairman: Is it agreed to start at 3.30 p.m.?

Mr. Rideout: If we could go on Wednesday for the next one, that would be—

Mr. Langdon (Essex—Windsor): My apologies for being late.

The Chairman: Perhaps I should have Mr. Farrell, our clerk, bring you up to date.

The Clerk: Mr. Langdon, we were discussing availability of witnesses. The minister is available between 5 p.m. and 6 p.m. tomorrow. The RCMP are available this week. The Canadian Bar Association is also available this week to appear in front of the committee. The Canadian Bankers' Association are having a convention and Mr. Ballard or a representative might be available some time on Wednesday. The other name that came up was the Canadian Institute of

[*Traduction*]

Le président: Parfait. Nous avons cette salle à notre disposition demain à 15h30. Puisque l'inspecteur Bowie est disponible n'importe quand, ainsi que l'Association du Barreau canadien, serait-il possible de glisser ces deux témoins avant l'intervention du ministre, à partir de 15h30, puis d'entendre le ministre à 17 heures, avant d'entendre d'autres témoins jeudi? Il y a une autre possibilité: mercredi à 15h30.

M. Soetens: Si le ministre pouvait d'abord être disponible, en compagnie de ses hauts fonctionnaires, je préférerais commencer par eux afin qu'ils nous exposent les grands objectifs qu'ils auront poursuivis. Nous pourrions ensuite passer à la GRC. Personnellement, je préférerais ce type d'enchaînement.

Le président: Dans ce cas, nous devrions alors commencer à 17 heures.

M. Soetens: Est-ce parce que le ministre n'est pas disponible avant 17 heures?

Le président: Il ne pourra comparaître devant le comité qu'entre 17 heures et 18 heures demain.

M. Kempling (Burlington): Est-ce que ses hauts fonctionnaires sont disponibles?

Le président: Nous pouvons vérifier.

M. Soetens: Je n'ai rien contre le fait que nous débutions plus tôt, mais il me semblait que...

M. Keyes: Y a-t-il une raison pour laquelle vous désirez que le ministre intervienne en premier lieu?

M. Soetens: Non. Il m'apparaît simplement que la personne qui est favorable à un projet de loi devrait d'abord venir nous expliquer ce qu'elle y trouve de bien avant que nous n'interrogions tous ceux qui devront faire respecter la loi. Mais je n'insiste pas plus que cela.

M. Rideout: Peut-être pourrions-nous procéder ainsi, si c'est possible. Cela ne me fait rien de commencer à siéger à 17 heures, si tous les autres sont d'accord, et nous pourrions alors commencer par le ministre. Mais s'il y a un quelconque problème avec le représentant de la GRC et les autres témoins et s'ils doivent se trouver ici à 15h30, alors je suis tout à fait d'accord pour débuter à 15h30 par ces deux témoins avant d'entendre le ministre.

M. Soetens: Parfait, alors commençons à 15h30!

Le président: Sommes-nous d'accord pour commencer à 15h30?

M. Rideout: Si nous pouvions passer au suivant, mercredi, cela serait.

M. Langdon (Essex—Windsor): Excusez-moi d'être en retard.

Le président: Peut-être pourrions-nous demander à M. Farrell, notre greffier, de vous mettre au courant.

Le greffier: Nous étions en train de parler de la disponibilité des témoins, monsieur Langdon. Le ministre, quant à lui, est disponible entre 17 heures et 18 heures demain. Le témoin de la GRC est disponible cette semaine, de même que des représentants de l'Association du Barreau canadien. Quant à l'Association des banquiers canadiens, elle tient actuellement son congrès, et M. Ballard ou un autre représentant pourrait venir nous rencontrer dans la journée

[Text]

Chartered Accountants, and I have not got in touch with them but I will.

• 1545

I think there was a discussion about an in camera meeting to hear the RCMP. I do not know if there—

Mr. Soetens: Just for the RCMP.

The Chairman: Just the RCMP.

Mr. Rideout: Maybe part of the RCMP testimony could be public and part of it could be in camera, if they want. I do not care. We could leave it to their discretion.

Mr. Langdon: There is another question that I wanted to raise. I am not sure if it is an organizational question or a somewhat wider question, but in the briefings that we have had on the legislation previously, we were given draft regulations. I wonder if the new draft regulations, which I understand have been discussed with some of the various organizations, will be before the committee at some...?

The Chairman: All we have in front of this committee at this point is the bill.

Mr. Langdon: Perhaps the parliamentary secretary could tell us why this is the case.

Mr. Kempling: We normally do not discuss the regulations at the time we do the legislation. The regulations are normally published upon proclamation of the bill. But there is no reason why you cannot ask the minister questions about the regulations. It is relatively straightforward.

When you read the bill, it is relatively simple. They are just going to add names and institutions and so forth as they go along, by regulation rather than by amendment to the statutes.

Since I have been here, I do not think we have ever had a bill where we have discussed the statute and the regulations in parallel. Usually they are proclaimed afterwards. If there is something that concerns you, I would suggest that you discuss it with the minister when he is here.

Mr. Langdon: The usual practice with a lot of legislation considered by the finance committee is that the regulations are in front of the committee at the same time. That was the case, for instance, with respect to the GST. That was the case with respect to the pension legislation which went through last year.

As we had already received draft regulations in our previous discussions about this bill with the department and had had a chance to talk about those regulations, it strikes me as very curious why that would not be the case with respect to this stage.

Mr. Keyes: Why do you not move it?

Mr. Langdon: I do not like going into a motion if there is—

Mr. Kempling: Ask the minister when he comes then, Steven. There are no hangups about this. But I have not seen that many regulations put with bills. This bill is changed slightly from the original one that you saw.

[Translation]

de mercredi. Il a également été fait mention de l'Institut canadien des comptables agréés; je n'ai pas encore contacté cette association, mais je ne manquerai pas de le faire.

Il a aussi été question d'une réunion à huis clos pour entendre le témoin de la GRC. Mais je ne sais pas...

M. Soetens: C'était juste pour la GRC.

Le président: Oui, c'est la GRC seulement.

M. Rideout: On pourrait imaginer qu'une partie du témoignage de la GRC pourrait être publique et que l'autre se déroulerait à huis clos, si tel est le désir du témoin. Cela ne me dérange pas. Nous devrions le laisser décider.

M. Langdon: Il y a une autre question que je voudrais poser. Je ne suis d'ailleurs pas certain si elle concerne strictement l'organisation de nos travaux ou si elle est plus vaste... Lors des séances d'information auxquelles nous avons participé au sujet de cette loi, on nous a remis des projets de règlements. Je me demande si l'on nous remettra les nouveaux projets de règlements qui semblent avoir fait l'objet de discussions avec certains des organismes concernés?

Le président: Tout ce dont nous disposons pour l'instant, c'est du projet de loi.

M. Langdon: Alors peut-être que le secrétaire parlementaire pourrait nous donner la raison de cet état de choses.

M. Kempling: Normalement, on ne discute pas des règlements en même temps que du texte de loi. Normalement, les règlements sont publiés au moment de la promulgation de la loi. Mais rien ne vous empêche de poser au ministre des questions concernant ces règlements. Tout cela est fort simple.

À la lecture du projet de loi, tout est relativement limpide. Il s'agira simplement d'ajouter des noms et des institutions par règlement plutôt que de procéder par modification du texte de loi.

Depuis que je siège à la Chambre, je ne crois pas avoir jamais vu que des règlements soient analysés en même temps qu'un texte de loi. En général, les règlements sont adoptés après la loi. Mais si vous avez une quelconque inquiétude, je vous suggère d'en parler avec le ministre lorsqu'il viendra nous rencontrer.

M. Langdon: Pour une grande partie des lois étudiées par le comité des finances, nous avons examiné les règlements en même temps que le projet de loi. Cela a été par exemple, le cas de la TPS et des lois sur les pensions, l'année dernière.

Puisque nous avons déjà eu l'occasion, à propos de ce projet de loi, de nous entretenir à propos des projets de règlements avec les représentants du ministère, je trouve curieux que nous n'ayons plus la possibilité d'examiner ces règlements à ce stade.

M. Keyes: Pourquoi n'en faites-vous pas une proposition?

M. Langdon: Je répugne à faire une proposition si l'on peut...

M. Kempling: Steven, posez donc vous-même la question au ministre lorsqu'il comparaîtra devant le comité. Il n'y a pas de complexe à avoir. Mais je ne me rappelle pas avoir souvent vu que des règlements soient soumis en même temps que les projets de loi. Quant à ce projet de loi, il n'a été que très légèrement modifié depuis que vous avez vu sa version originale.

[*Text*]

Mr. Langdon: I know the regulations have changed and the bill is changed somewhat too, but my understanding is that the regulations have changed even more and that is what leads me to ask the question.

Mr. Rideout: I think clause 5 promotes a lot of regulation, and the impression was left when the earlier bill was brought forward that this committee or some other committee would have an opportunity to take a look at the regulations because those are far-ranging and could have some ramifications.

In addition, my understanding is that when new regulations come forward, it is the minister's intent to give a 90-day period for consultation with all the different groups. So it would seem to be in order that maybe we do take a look at the regulations.

• 1550

Mr. Kempling: When the minister is here, just ask him. I think that is the easiest way. He has them available; he will bring them forward.

Mr. Rideout: Okay. I think we could make the motion afterwards. If the minister will not produce, then we will not . . .

Mr. Langdon: Okay. Maybe that is the best way. Maybe the parliamentary secretary could take the message back to the minister that some of us are interested in—

Mr. Kempling: Send it by telegraph.

M. Langlois (Manicouagan): Monsieur le président, bien que je ne m'oppose pas à ce que les règlements, si possible, soient déposés au Comité, je voudrais m'assurer que les travaux du Comité se limitent à l'étude article par article du projet de loi. Si les membres du Comité ont les règlements entre les mains, il ne faudrait pas que leur discussion glisse vers les règlements, parce que le travail du Comité est de faire l'étude article par article du projet de loi C-9 pour le renvoyer à la Chambre des communes le plus rapidement possible. Je ne vois pas d'objection à ce qu'on ait les règlements, mais il faudra faire attention de ne pas axer les questions et la discussion vers la réglementation alors que notre travail est de faire l'étude du projet de loi.

The Chairman: Yes, you are quite correct in that comment, because we are mandated only to study the bill itself. Unless there is agreement from the minister and perhaps unanimous agreement from this committee, I think we are pretty well stuck by way of the mandate given to us.

Mr. Rideout: The only thing I would add, Mr. Chairman, is that if you really look at section 5 in the bill, the meat that is on the bones is coming from the regulations and not from the legislation itself.

If we do not take a look at the regulations, I think we are going to be really missing the whole point. We might as well have the meeting now and say amen to the idea of money laundering, because that is all the legislation says, and

[*Traduction*]

M. Langdon: Je sais que les règlements ont été changés, ainsi que le projet de loi, mais j'ai cru comprendre que les règlements avaient été encore plus modifiés et c'est pour cela que j'ai posé la question.

M. Rideout: L'article 5 prévoit l'adoption de plusieurs règlements, et nous avons eu l'impression, lors de l'examen de la première version du projet de loi, que ce comité ou un autre comité aurait la possibilité de revenir sur ces règlements, parce qu'ils ont une grande portée et qu'ils pourraient avoir des ramifications.

En outre, j'ai cru comprendre que lorsque de nouveaux règlements étaient adoptés, le ministre avait l'intention d'accorder un période de 90 jours pour la consultation des différents groupes. Il me semblerait donc raisonnable que nous puissions examiner ces règlements.

M. Kempling: Posez donc la question au ministre lorsqu'il sera ici. Je crois que ce serait la meilleure façon de procéder. Comme il a ces règlements, il pourra les déposer.

M. Rideout: Parfait. Je crois que nous pourrions faire la proposition par la suite. Si le ministre ne dépose pas les règlements, alors nous ne. .

M. Langdon: Très bien. Après tout, c'est peut-être le meilleur moyen. Entre-temps, peut-être que le secrétaire parlementaire pourrait faire savoir au ministre que certains d'entre nous désirent. . .

M. Kempling: Envoyez un télégramme.

Mr. Langlois (Manicouagan): Mr. Chairman, even if I do not oppose the tabling of those regulations before the committee, I would like to make sure that the committee work is limited to a section by section study of the bill. If the committee members are given the regulations, I would not like the discussion to drift towards those regulations because the mandate of the committee is to study the bill C-9, section by section, in order to refer it to the House of Commons as quickly as possible. I do not see why anyone would object to us having the regulations but we will have to make sure that we do not concentrate questions and discussions on the regulations while what we have to do is to study the bill itself.

Le président: Vous avez tout à fait raison, parce que nous sommes uniquement mandatés pour étudier le projet de loi lui-même. Ainsi, nous sommes liés au mandat qui nous a été confié, sauf si nous obtenons l'accord du ministre et peut-être si nous obtenons le consentement unanime des membres du comité.

M. Rideout: Il y a une chose que j'aimerais ajouter, monsieur le président, c'est que si vous examinez vraiment de près l'article 5 du projet de loi, vous vous rendrez compte que les règlements sont plus importants que le texte de loi lui-même.

Ainsi, si nous n'examinons pas de près les règlements, je crains que nous ne passions à côté de l'essentiel. Nous pourrions tout aussi bien limiter nos débats à cette réunion et donner notre aval à l'idée de la répression du blanchiment de

[Text]

it is not until you get into regulations that you really find out the full ramifications as to the effects on professions and businesses and how it all works. Until you see that, you really do not know.

I think that is why the minister wanted to have open consultation on regulations. It is the minister's position that there is good consultation with respect to the regulations because he recognizes the weakness in this bill, that it is law by regulation rather than by legislation. So we should see the regulations as they are initially commenced, because he has said there is going to be a 90-day period to consult afterwards.

The Chairman: Thank you very much. We will meet tomorrow at—

Mr. Langdon: Mr. Chairman, I am sorry, but there are some other groups that are affected besides the ones that have been noted. I guess I am particularly struck by the fact that the credit unions and the caisses populaires should be given a chance to comment on the legislation. It may be that they do not wish to take the opportunity, but it seems to me that they in fact may face more difficulty with some of the record-keeping commitments that are part of the legislation, which would be the case with banks, for instance.

Mr. Rideout: Their head office is here too.

The Chairman: Could you leave those with the clerk of the committee to see if they would care to make submissions? Is that the...?

Mr. Kempling: Mr. Chairman, I think you will find that the minister's officials have been in touch with credit unions and caisses populaires. If somebody wants to contact them, fine.

When I last talked to the officials they were meeting with the Certified General Accountants' Association, and they told me at that time that they did not think there was any difficulty, but if there was, they would have them come forward as witnesses.

Mr. Langdon: I wonder if you could find the names, Bill.

Mr. Kempling: I will, sure.

Mr. Langdon: I am sure if they see no need to testify, they will indicate that to us.

■ 1555

The Chairman: We are meeting tomorrow from 3.30 until 6 p.m. On Wednesday afternoon we have this same room. On Thursday morning we will meet at 10 and on Thursday afternoon at 3.30.

An hon. member: I am away on Thursday.

Mr. Langdon: With Wednesday, if there is any possibility—

Mr. Langlois: We are going to sit just the same.

Mr. Langdon: Do you want to get it done that quickly?

[Translation]

l'argent, parce que c'est ce que précise la loi et que ce n'est que dans les règlements que l'on retrouve toutes les ramifications et toutes les incidences de cette loi sur les professions et les entreprises. Ce n'est donc qu'à l'examen des règlements que l'on pourra vraiment savoir.

Je crois que c'est pour cela que le ministre voulait que nous tenions une consultation ouverte sur les règlements. Le ministre est d'avis qu'il faut tenir de véritables consultations à propos de ces règlements parce qu'il reconnaît la faiblesse de ce projet de loi et que nous avons affaire à un cas de législation par voie de règlement plutôt que par voie de texte de loi. Nous devrions donc avoir la possibilité d'examiner les règlements, au stade même de leur préparation, parce que le ministre a prévu une période de consultations de 90 jours par la suite.

Le président: Je vous remercie. Nous nous réunirons demain à...

M. Langdon: Monsieur le président, veuillez m'excuser, mais il y a d'autres groupes qui sont visés par ce projet de loi, outre ceux qui ont été mentionnés. Par exemple, je pense que l'on devrait donner la possibilité aux caisses de crédit et aux caisses populaires de venir commenter ce texte de loi. Il est toujours possible que ces organismes ne désirent pas se prévaloir de notre invitation, mais j'ai l'impression qu'ils risquent d'éprouver beaucoup plus de difficultés à propos des dispositions concernant la tenue de documents que les banques.

M. Rideout: Et puis, ces caisses ont leur siège social ici.

Le président: Pourrait-on demander au greffier du comité de voir si ces caisses veulent nous faire des présentations? Est-ce...?

M. Kempling: Monsieur le président, vous constaterez certainement que les fonctionnaires du ministère ont déjà communiqué avec les caisses de crédit et les caisses populaires. Par contre, si quelqu'un d'autre désire les contacter, d'accord.

Lorsque je me suis entretenu, la dernière fois, avec les fonctionnaires du ministère, ils m'ont fait part de leur réunion avec l'Association des comptables généraux agréés du Canada qui, à l'époque, n'entrevoyait aucune difficulté avec le projet de loi. Par contre, en cas de problème, l'association enverrait des témoins au comité.

M. Langdon: Pourriez-vous obtenir les noms, Bill?

M. Kempling: Bien sûr.

M. Langdon: Je suis sûr que l'association nous le dira si elle ne désire par comparaître devant le comité.

Le président: Alors, nous nous réunirons donc demain de 15h30 à 18 heures. Mercredi après-midi, nous disposons de la même salle. Mardi matin, nous nous réunirons à 10 heures et nous poursuivrons jeudi après-midi à 15h30.

Une voix: Je ne suis pas là jeudi.

M. Langdon: Et mercredi, je n'y suis pas, y a-t-il possibilité que...

M. Langlois: Nous siégerons quand même.

M. Langdon: Est-ce que vous êtes si pressé que cela?

[Text]

The Chairman: I believe the feeling is that they would like to get this bill in place, get it back to report stage as quickly as they can. Perhaps the parliamentary secretary could give us more of a line on that.

Mr. Kempling: Naturally we would like to get the bill through as fast as we can. If we are going to have three or four witnesses, if we can hear them in one day or a day and a half, the better off we will be. We can report it to the House and possibly get it through report stage and third reading before we rise, and send it on to the Senate.

The Chairman: Do you agree with that?

Mr. Kempling: You are away Thursday?

Mr. Langdon: No, I am away Wednesday. Let's talk. We will see what witnesses we can jiggle through that.

The Chairman: This of course is tentative, depending upon the availability of the witnesses.

Mr. Kempling: Yes.

The Chairman: There being no further business before this committee, it stands adjourned to the call of the chair tomorrow afternoon at 3.30 p.m.

[Traduction]

Le président: J'ai cru comprendre que l'on voulait que ce projet de loi soit étudié le plus rapidement possible pour que l'on puisse en faire rapport à la Chambre dans les plus brefs délais. Peut-être que le secrétaire parlementaire pourrait nous en dire plus long à ce sujet.

M. Kempling: Il est évident que nous aimerions que ce projet de loi soit étudié le plus rapidement possible. Si nous ne devons entendre que trois ou quatre témoins, le mieux serait que nous puissions le faire dans un délai de un jour à un jour et demi. Nous pourrions alors faire rapport du projet de loi à la Chambre dans les plus brefs délais, le faire passer en troisième lecture avant l'ajournement et le déférer au Sénat.

Le président: Êtes-vous d'accord?

M. Kempling: Vous êtes absent jeudi?

M. Langdon: Non, mercredi. Mais voyons quels témoins nous pourrions rencontrer dans cet espace de temps.

Le président: Tout cela, bien sûr, est provisoire, et dépend de la disponibilité des témoins.

M. Kempling: Mais oui.

Le président: Eh bien, s'il n'y a pas d'autres questions, la séance est levée jusqu'à demain après-midi à 15h30.

Tuesday, June 11, 1991

• 1621

The Chairman: I see a quorum. I will call the meeting to order at this point. The first witness to appear before the committee today will be Terence Wade, Senior Director, Legal and Government Affairs, of the Canadian Bar Association. He will be followed by officials from the department. We were notified a couple of hours ago that unfortunately the minister is not able to be present with us today.

Mr. Terence Wade (Senior Director, Legal and Governmental Affairs, Canadian Bar Association): I would simply like to say at the outset that the president of the Canadian Bar Association would have liked to be here today to underscore the importance the bar attaches to this legislation. Unfortunately, he is about to leave for Budapest. The Canadian Bar has an aid program designed to better the administration of justice in eastern Europe and he is very much occupied with that.

Despite the fact that the Canadian Bar remains unconvinced that it is necessary for this bill to apply to the legal profession, and that is on the basis of the absence of any solid empirical data that money laundering by lawyers is currently a problem, the bar does accept that the decision has been made that lawyers should be subject to the bill, and our submission, my presentation today, is on the basis that this decision has now been taken.

Le mardi 11 juin 1991

Le président: Je constate qu'il y a quorum, la séance est ouverte. Le premier témoin que nous allons entendre aujourd'hui est M. Terence Wade, directeur général des affaires juridiques et gouvernementales de l'Association du Barreau canadien. Nous entendrons ensuite les fonctionnaires du ministère. Nous avons été informé il y a quelques heures que, malheureusement, le ministre ne pourra être des nôtres aujourd'hui.

M. Terence Wade (directeur général des Affaires juridiques et gouvernementales de l'Association du Barreau canadien): En guise d'entrée en matière, permettez-moi de dire que le président de l'Association du Barreau canadien tenait à témoigner lui-même aujourd'hui étant donné que le Barreau attache la plus haute importance à ce projet de loi. Malheureusement, il doit se rendre à Budapest. Le Barreau canadien a conçu un programme d'assistance qui a pour but de rehausser l'administration de la justice en Europe orientale, et notre président est très pris par ce projet.

En dépit du fait que le Barreau canadien n'est toujours pas convaincu que ce projet de loi doive s'appliquer à la profession juridique, et ce, parce que rien ne prouve que des avocats s'adonnent au blanchiment de l'argent, le Barreau accepte la décision voulant que les avocats soient désormais visés par le projet de loi. Notre intervention, aujourd'hui, procède de cette même décision.

June 11, 1991 [Legislative Committee F on Bill C-9]

[*Texte*]

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[*Text*]

Bill C-9, which this committee is considering, is in the bar's opinion a vast improvement over its predecessor Bill C-89. We must, however, state that we cannot at this stage finally endorse the legislative package of which Bill C-9 is a part because much of the content of this package will be found in the regulations to be made under the bill.

However, we do note and would like to state for the record that the Minister of State for Finance and his officials listened sympathetically to our concerns with Bill C-89 and we have every confidence that the regulations to be made under Bill C-9 will reflect our concerns regarding the draft regulations under the previous bill.

You will find attached to our submission on Bill C-9 a discussion and policy paper on the previous bill, Bill C-89, as an appendix to that submission.

Je voudrais offrir mes excuses aux membres francophones du Comité. Malheureusement, l'étude sur le projet de loi C-89 a été conçue comme document interne du Barreau, et on n'a pas eu le temps de la traduire avant de la présenter aujourd'hui. Cependant, le mémoire sur le projet de loi actuel, le projet de loi C-9, est dans les deux langues.

Our submission on the bill you have before you, Bill C-9, tracks the concerns we had with regard to the previous bill into the current bill. I don't propose to lead committee members through the submission, unless you wish, but simply to highlight certain points.

• 1625

The first that the Canadian Bar would like to highlight is the offence clause, clause 6 of the bill, which you will notice now subjects the offence to intent on the part of the accused; it is everyone who knowingly contravenes or fails to comply with the act or regulations.

Under the previous bill the offence that was created was one of strict liability; that is to say, it was not necessary to establish that anybody prosecuted under the bill had the intent to commit the offence in order to convict that person. The Canadian Bar was very strenuously opposed to the offence created under the previous bill and is indeed pleased to note that the offence is now one subject to *mens rea*, that is to say, on which one must establish criminal intent before conviction.

The Canadian Bar in its discussion paper on the previous bill also expressed considerable concern regarding the fact that this offence was essentially defined not in the bill itself, or in the act, but in the regulations. The reasons for those concerns relate to general matters of public policy, of criminal policy, the fact that offences or provisions creating offences should be subject, in our view, to public debate and parliamentary debate in the normal course of events.

[*Translation*]

De l'avis du Barreau, le projet de loi C-9, que votre comité étudie, est de loin supérieur à son prédécesseur, le projet de loi C-89. Toutefois, nous nous devons d'affirmer que, dans l'état des choses, le Barreau n'est pas disposé à avaliser le train de mesures législatives dont le projet de loi C-9 fait partie, parce qu'une bonne part de son contenu résidera dans la réglementation annexe du projet de loi.

Mais nous tenons tout de même à reconnaître publiquement que le ministre d'État aux Finances et ses hauts fonctionnaires ont écouté attentivement nos objections au projet de loi C-89, et nous sommes certains que la réglementation du projet de loi C-9 prendra en compte les objections que nous avions formulées à l'égard du projet de réglementation du projet de loi antérieur.

En annexe à notre mémoire sur le projet de loi C-9, vous trouverez un énoncé de principe sur le projet de loi antérieur, le projet de loi C-89.

I would like to offer my apologies to the francophone members of the Committee. Unfortunately, our study on Bill C-89 was designed as an internal document of the Bar, and we did not have time to have it translated for today's session. However, our submission on Bill C-9 is in both languages.

Notre mémoire sur le projet de loi C-9 reprend les objections que nous avions faites à l'égard du projet de loi antérieur. Je ne tiens pas à donner lecture du mémoire aux membres du comité, et avec votre permission, je me contenterai d'en souligner les aspects les plus importants.

La première réserve du Barreau canadien a trait à la disposition sur les infractions et les peines, à savoir l'article 6 du projet de loi, lequel, vous l'aurez remarqué, lie désormais l'infraction à l'intention de l'accusé: à savoir, quiconque contrevient sciemment à la loi ou à la réglementation annexé, ou omet de s'y conformer.

Aux termes du projet de loi antérieur, l'infraction qui était créée était essentiellement une infraction de responsabilité: autrement dit, pour obtenir une déclaration de culpabilité, il n'était pas nécessaire d'établir que l'accusé avait eu l'intention de commettre une infraction. Le Barreau canadien s'est opposé vigoureusement à l'infraction que créait le projet de loi antérieur, et est heureux de constater que cette infraction est maintenant tenue pour une infraction de *mens rea* autrement dit, il faut désormais établir qu'il y a eu intention criminelle pour obtenir une déclaration de culpabilité.

Dans son mémoire sur le projet de loi antérieur, l'Association du Barreau canadien s'était également opposée au fait que cette infraction soit définie, non pas dans le projet de loi lui-même ou dans la loi, mais dans la réglementation. Nos objections se fondaient sur des considérations générales d'administration publique, d'administration judiciaire. A notre avis, les dispositions législatives créant des infractions devaient faire l'objet d'un débat public, d'un débat parlementaire, dans le cours normal des choses.

[*Texte*]

A secondary but nonetheless important consideration is that provisions creating offences, particularly where very serious penalties are attached to them, should be readily accessible to members of the public and those subject to the bill. Of course members will recognize, as does the Canadian Bar, that it is often very difficult to obtain copies of regulations, particularly up-to-date regulations.

Our concerns have been addressed in Bill C-9 by a provision found in clause 5 requiring prepublication of proposed regulations. This will obviously address the question of notice to those bound by the bill regarding the elements of the offence created by clause 6, and we are indeed again pleased that the minister and his officials have responded to our concern.

However, we feel bound to draw to your attention some concern with the way this provision in clause 5 is drafted. If I could refer the committee to subclause 5.(3) on page 3 of the printed bill, there is an exception to the 90-day prepublication of regulations in two instances, first where the proposed regulation has previously been published whether or not it has been changed as a result of representations made following the prepublication.

We certainly can understand the concern of the department that were this provision to provide for 90-day prepublication every time there was an amendment to a proposed regulation, the process could be never-ending and it might well be that the regulation could never be made. However, that does overlook the importance of giving notice to those to be bound by the regulation regarding its content, and it is entirely possible that during the 90-day period provided for under subclause 5.(2) there could be extensive amendment of a proposed regulation which would then, under subclause 5.(3), be published in *The Canada Gazette* and come into effect immediately without those being bound by it having a further opportunity to be warned.

The bar therefore recommends, and you will find this recommendation on page 9 of our submission, that paragraph 5.(3)(a) of the bill be amended to provide that no regulation finally made by the Governor in Council—that is to say, following the consultation process—may come into effect until at least 30 days after publication in *The Canada Gazette*. That 30-day period of the final form of the regulation would serve as notice to those to be bound by it. We should remember here again that most of the substance of this legislative package will in fact be found in the regulations.

• 1630

I would also like to draw the committee's attention to paragraph 5.(3)(b), which exempts from the prepublication requirement any regulation or proposed regulation that "makes no substantive change to an existing regulation". In the Canadian Bar's opinion, that exception is very vague—"substantive change"—and given again that most elements of this legislative scheme are to be found in the regulations and not in the statute, we are constrained to

[*Traduction*]

Autre considération, non moins importante, l'accessibilité du public et des principaux intéressés au texte législatif créant des infractions, surtout quand on prévoit des peines très sévères. Bien sûr, le comité admettra, tout comme le Barreau canadien, qu'il est souvent très difficile d'obtenir des copies des règlements, surtout des règlements les plus récents.

Nos objections ont été calmées par l'article 5 du projet de loi C-9 qui prévoit la publication dans la *Gazette du Canada* des projets de règlement. De toute évidence, cette disposition règle le problème du préavis pour les principaux intéressés en ce qui concerne les éléments de l'infraction créés par l'article 6 et encore là, nous sommes heureux de constater que le ministre et ses fonctionnaires ont tenu compte de nos objections.

Toutefois, nous sommes tenus de vous dire l'inquiétude que nous cause la formulation de l'article 5. Je pense ici au paragraphe 5.(3), page 3 du projet de loi, qui prévoit une dispense au délai de 90 jours dans deux cas: je parlerai d'abord du cas où les projets de règlement ont déjà été publiés, qu'ils aient été modifiés ou non à la suite d'observations présentées conformément à ce paragraphe.

Nous comprenons fort bien l'intention du ministère ici, parce que s'il y avait publication dans la Gazette du Canada avec délai de 90 jours chaque fois qu'il y a modification à la réglementation, le processus ne connaîtrait pas de fin et la réglementation ne verrait sans doute jamais le jour. Cependant, nous tenons pour plus important de donner avis à ceux qui sont liés par la réglementation, et il est tout à fait permis d'imaginer que, dans le délai de 90 jours prévu au paragraphe 5.(2), l'on modifie en profondeur le projet de règlement, lequel, serait ensuite publié dans la Gazette du Canada aux termes de l'article 5.(3) et prendrait donc immédiatement effet sans que les principaux intéressés en soient avisés.

Le Barreau recommande donc, et vous trouverez cette recommandation à la page 9 de notre mémoire, qu'on modifie l'alinéa 5.(3)a) du projet de loi, de telle sorte qu'aucun règlement promulgué par le gouverneur en conseil, c'est-à-dire, après le processus de consultation, n'entre en vigueur avant au moins 30 jours après la publication dans la *Gazette du Canada*. Ce délai de 30 jours suivant la publication sous forme définitive du règlement modifié servirait de préavis aux personnes visées. Encore une fois, il faut bien se rappeler que l'essentiel de cette mesure législative se trouvera en fait dans la réglementation.

Je tiens également à attirer l'attention du comité sur l'alinéa 5.(3)b), qui prévoit une exception à l'exigence de publication préalable à l'égard de tout règlement ou projet de règlement qui «n'apporte pas de modification de fond à la réglementation en vigueur». Selon le Barreau canadien, cette exception est très vague—«modification de fond»—et étant donné, comme je l'ai déjà dit, que la plupart des éléments de ce projet de loi seront contenus, non pas dans le texte

[Text]

remark that this vagueness seems to us unacceptable. We therefore make the recommendation that you find on page 10 of our submission that paragraph 5.(3)(b) be deleted from the bill.

In the alternative, our recommendation is that the bill should define substantive change to include as a minimum any change that has the effect of altering the obligations or liability of any person to whom the act or regulations apply. It is our very strong view that given again that the substance of this package is to be found in the regulations, including almost all of the obligations incumbent upon those to whom the bill applies, at the very least a change that affects those obligations or the potential liability of any person to whom the bill applies should be subject to the prepublication requirement.

The third point relates to paragraph 5.(1)(d) of the bill, which is on page 2 of the printed bill. Again, a very short point I would like to make is to compliment the minister and his officials on their response to the concerns that the bar has expressed regarding this provision. The importance of the independence of the legal profession has been acknowledged many times by the Supreme Court of Canada. The court has said that the profession—lawyers—must be free to represent their clients' interests free from any interference by the state. In fact, lawyers stand, to a certain extent, between their clients and the state with regard to many matters.

Under the former bill, paragraph 5.(1)(d) would have turned lawyers into agents of the state by requiring them to investigate their clients on behalf of the state. The former bill required them to investigate and ascertain the accuracy of all information required to be recorded. The bar found that inimical to lawyer-client confidentiality and it would certainly have undermined the ability of the legal profession to properly represent their clients. The bar is therefore very pleased by the limited scope of the new paragraph 5.(1)(d), which requires only that the identity of the client with whom the record-keeper is transacting must be ascertained or must be verified.

The bill before you does not address the Canadian Bar's concerns regarding penalties. Again, we feel constrained to point out to you that the penalties provided for under this bill are, so far as our research has established, considerably higher than in any other jurisdiction.

• 1635

In this regard I should stress the nature of the offence to which these penalties attach. The offence here is a failure to keep the record required by the act or the regulations. The offence is not money laundering itself. It is simply a failure to keep a record.

[Translation]

législatif, mais dans la réglementation, force nous est de dire que ce manque de précision nous paraît inacceptable. Par conséquent, nous formulons la recommandation que vous trouverez à la page 10 de notre mémoire, à savoir que l'alinéa 5.(3)b) soit retranché du projet de loi.

Comme solution de rechange, nous recommandons que le terme «modification de fond» soit défini dans le projet de loi, de manière à inclure au minimum tout changement ayant pour effet de modifier les obligations ou responsabilités de toute personne visée par la loi ou par la réglementation. Nous sommes fermement d'avis, et je le répète, puisque l'essentiel de cette mesure, et plus particulièrement la presque totalité des obligations incombant à ceux qui seront visés par le projet de loi, se trouvera énoncée dans la réglementation, qu'à tout le moins tout changement modifiant ces obligations ou la responsabilité éventuelle de toute personne visée par le projet de loi soit soumis à l'exigence de la publication préalable.

Le troisième point concerne l'alinéa 5.(1)d) du projet de loi, qui se trouve à la page 2 de la version imprimée. Encore une fois, je tiens à dire un mot pour féliciter le ministre et ses collaborateurs de la façon dont ils ont su répondre aux préoccupations exprimées par le Barreau relativement à cette disposition. La Cour suprême du Canada a reconnu à maintes reprises l'importance de maintenir l'indépendance des avocats. Ces derniers, a-t-elle dit, doivent pouvoir représenter les intérêts de leurs clients sans aucune ingérence de l'État. En fait, bien souvent, les avocats sont là, dans une certaine mesure, pour protéger leurs clients contre l'État.

Dans sa version antérieure, l'alinéa 5.(1)d) aurait fait des avocats des agents de l'État, obligés d'enquêter sur leurs clients au nom de l'État. Aux termes de l'ancien projet de loi, ils étaient tenus de faire enquête et de vérifier l'exactitude de tous les renseignements devant être consignés. Le Barreau avait conclu que cette obligation allait à l'encontre du caractère confidentiel des communications entre l'avocat et son client et qu'elle aurait certainement pu empêcher les avocats de bien représenter leurs clients. Le Barreau est donc très heureux de constater qu'on a réduit la portée de l'alinéa 5.(1)d), de manière que la seule obligation qui incombe à la personne qui tient les documents est de s'assurer de l'identité du client avec laquelle elle effectue une opération.

Le projet de loi dont vous êtes saisis ne tient pas compte des préoccupations exprimées par le Barreau canadien relativement aux sanctions à appliquer. Encore une fois, nous nous sentons dans l'obligation de vous faire remarquer que, d'après les recherches que nous avons effectuées, les sanctions prévues aux termes de ce projet de loi sont bien plus sévères qu'elles ne le sont dans n'importe quel autre secteur de compétence.

À cet égard, je voudrais insister sur la nature de l'infraction à laquelle se rattachent ces sanctions. L'infraction en cause est le défaut de tenir les registres requis par la loi ou la réglementation. Il ne s'agit pas d'avoir participé à une opération de blanchissage d'argent, mais simplement de n'avoir pas tenu les dossiers exigés.

[*Texte*]

The penalties that attach to that failure to keep a record are up to a half-million-dollar fine and five years' imprisonment. Again, this is not a punishment for money lending itself. It is failure to keep a record.

We do feel that penalties of this magnitude attached to an offence of this kind could readily prove counter-productive. A point that is made in our submission to you is that nothing undermines public confidence in the justice system more than the perception that sentencing judges do not impose maximum sentences often enough.

It is our view that faced with a potential penalty of a half-million-dollar fine and five years' imprisonment for failure to keep a record, most sentencing judges, especially when they are sentencing individuals, will impose sentences that are way down at the bottom end of that scale. And there will doubtless be comment and perception among the public that judges are not "being tough on money laundering", whereas the offence charged of course is failing to keep a record.

We do acknowledge that penalties of this kind may be desirable to deal with corporate entities that fail to keep records. We do feel that the bill could have distinguished between corporate accused and individual accused.

There are two other points I would like to address very briefly. They are not part of the bill itself, but under the legislative scheme proposed in this bill, in our view, they must be addressed in the regulations to be made under it.

First, we believe it is essential that either the word "cash" or the words "cash transaction" be defined in the regulations. Under the draft regulations, under the previous bill, they were not defined, and there was certainly a fear that without an appropriate definition of cash or cash transaction, the way was open to do what was done in the United States where, under one similar piece of legislation, currency was defined to include all monetary instruments, including cheques, not just cash.

It is our view that the point and very acceptable goal of this legislation is to catch the profits from proceeds of crime, particularly drug trafficking, at the point where they enter the monetary system in cash form.

Second, we are of the view that the regulations should ensure that the record-keeping requirement does not apply to moneys paid to lawyers on account of legal fees or retainers. A record-keeping requirement attaching to the payment of legal fees would, in our view, chill the right to counsel, to independent representation.

The draft regulations under the previous bill required that records be kept of moneys paid "for the benefit of another". This raises a particular concern in the context of the practice of law, because almost all moneys paid to lawyers

[*Traduction*]

Quiconque manque à cette obligation de tenir les registres exigés s'expose à une amende de 500,000$ et à une peine de prison de cinq ans. Je le répète, l'infraction à laquelle se rattachent ces sanctions est, non pas le blanchissage de l'argent, mais le manquement à l'obligation de tenir les dossiers exigés.

Nous considérons même que des peines aussi sévères rattachées à une infraction de ce genre pourraient facilement aller à l'encontre du but recherché. Dans notre mémoire, nous faisons notamment remarquer que rien ne mine autant la confiance du public dans le système judiciaire que la perception selon laquelle les tribunaux n'imposent pas assez souvent les peines maximales prévues.

À notre avis, le juge, voyant que les sanctions prévues pour le manquement à l'obligation de tenir les dossiers exigés peuvent aller jusqu'à 500,000$ et cinq ans d'emprisonnement, aura le plus souvent tendance, lorsqu'il a affaire à un particulier, à imposer des peines qui se trouvent plus près du minimum prévu. Le public y verra sans doute le signe que le blanchissage de l'argent n'est pas puni assez sévèrement par les tribunaux, alors qu'en réalité, l'infraction commise aura bien sûr été celle de ne pas tenir les dossiers exigés.

Nous reconnaissons qu'il est peut-être souhaitable de prévoir des sanctions aussi sévères pour les personnes morales qui manquent à l'obligation de tenir les registres exigés. À notre avis, le législateur aurait dû faire la distinction entre les personnes morales et les personnes physiques.

Je voudrais maintenant vous présenter brièvement deux autres arguments. Ces arguments ne concernent pas le projet de loi comme tel, mais il faudra en tenir compte dans la réglementation qui sera prise en application du projet de loi.

Premièrement, nous considérons qu'il est essentiel de définir dans la réglementation, soit le terme «comptant» soit le terme «transaction au comptant». Ni l'un ni l'autre de ces termes n'ayant été défini dans la réglementation proposée en application du projet de loi précédent, l'on s'inquiétait réellement du fait que ce manque de précision pourrait ouvrir la porte à ce qui s'était produit aux États-Unis, où, en application d'une loi semblable, le terme «monnaie» avait été défini de manière à inclure tous les instruments monétaires, y compris les chèques, et pas seulement l'argent comptant.

Nous soutenons que l'intention et le but fort louable de ce projet de loi est de saisir les produits de la criminalité, notamment du trafic des drogues, au moment où ils font leur apparition dans le système monétaire sous forme d'argent comptant.

Deuxièmement, nous sommes d'avis que la réglementation devrait faire en sorte que l'obligation relative à la tenue de registres ne s'applique pas aux sommes versées aux avocats pour le paiement d'honoraires ou de provisions. L'obligation de tenir des dossiers relatifs aux paiements des honoraires aurait pour effet, à notre avis, de nuire au droit de consulter un avocat et à l'indépendance de celui-ci.

Le projet de réglementation présenté en application du projet de loi précédent exigeait que des registres soient tenus à l'égard des sommes versées au bénéfice d'une tierce personne. Cette obligation soulève une inquiétude

[Text]

are paid in trust. They are received into the lawyer's trust account and are therefore technically received for the benefit of another, although in fact they are paid for the benefit of the client.

Again, we feel that this point must be addressed in the regulations. You will find a recommendation on page 14 of our submission addressed to this question, it being recommended that the regulations make it clear that the obligation to create a record should arise only where a lawyer is involved in a transaction that also involves a third party.

• 1640

In other words, we recommend that the words in the previous draft regulation "for the benefit of another" be reworked to make it clear that they are not intended to apply in the ordinary course of events to moneys received in trust on account of professional fees or retainers. Again, given the sympathetic hearing we had from the minister and his officials, we are confident that those two concerns will be addressed in draft regulations to be made under this bill.

That, Mr. Chairman and members of the committee, concludes the opening presentation, the highlights, and I would be very pleased to respond to any questions members of the committee may have.

The Chairman: Thank you very much, Mr. Wade.

Mr. Rideout (Moncton): Have the members of the Canadian Bar Association established amongst themselves whether they think there is a problem as far as money laundering is concerned with barristers and solicitors?

Mr. Wade: We have certainly not carried out any empirical study. The only study, of which we are aware, of the Canadian legal profession was in a document published in, I believe, October 1990 by the Department of the Solicitor General entitled, "Tracing Illicit Funds". A small number of pages in that document dealt with money laundering, dealing in illicit funds by the legal profession. Essentially it was acknowledged that there were two high-profile cases identified, and other than that any evidence was purely anecdotal. It was suggested, I should add, in the document that the RCMP might have files relating to money laundering by the legal profession, or alleged money laundering, but nothing more than that.

Mr. Rideout: They do seem to indicate as well that the barristers society is really not in a position to police itself with respect to money laundering. Have you any comments with respect to that contained in that report on tracing illicit funds?

Mr. Wade: We suspect that the report may have confused different reporting requirements between jurisdictions which are designed to respond to the realities of practice in a particular jurisdiction, with an inability to police.

[Translation]

particulière pour ce qui est de la pratique du droit, puisque les sommes versées aux avocats le sont presque toujours en fidéicommis. Les sommes étant placées dans le compte en fidéicommis de l'avocat, elles sont, par définition, placées là au bénéfice d'une tierce personne, même si, en réalité, elles sont payées au bénéfice du client.

Nous considérons, encore une fois, qu'il faudra tenir compte de ce fait dans la réglementation. A la page 14 de notre mémoire, une recommandation porte sur cette question, et nous recommandons que les règlements stipulent clairement que c'est uniquement lorsqu'un avocat est impliqué dans une transaction à laquelle une tierce partie est mêlée que l'obligation d'établir un document survient.

Autrement dit, nous recommandons que les termes utilisés dans l'ancien projet de règlement, «pour le bénéfice d'autrui», soient supprimés, afin de bien montrer qu'ils ne sont pas censés s'appliquer normalement à de l'argent reçu en fiducie, à titre d'honoraires, ou de provision. Là encore, étant donné que le ministre et ses fonctionnaires ont semblé comprendre notre point de vue lorsque nous les avons rencontrés, nous avons donc l'espoir que ces deux préoccupations seront prises en compte dans le projet de règlement qui sera élaboré en application de ce projet de loi.

Monsieur le président, membres du comité, je viens de terminer l'exposé des grandes lignes de notre mémoire, et je serais très heureux de répondre à vos questions.

Le président: Merci beaucoup, monsieur Wade.

M. Rideout (Moncton): Les membres de l'Association du Barreau Canadien ont-ils pu établir s'il arrive souvent que des avocats et des notaires soient impliqués dans ce blanchiment des produits de la criminalité?

M. Wade: Nous n'avons fait aucune étude empirique de la question. À notre connaissance, la seule étude faite sur la profession juridique au Canada était un document publié, me semble-t-il, en octobre 1990 par le ministère du solliciteur général, intitulé «Le dépistage de profits générés par le crime». Un petit nombre de pages de ce document traitait du blanchiment de l'argent, et de l'utilisation de profits illicites par des membres de la profession juridique. Essentiellement, à part deux affaires de ce genre qui ont défrayé la chronique, rien d'autre n'a pu être prouvé, bien qu'on ait pu raconter toutes sortes de choses. Je devrais ajouter que d'après cette étude, la GRC pourrait avoir des dossiers concernant le blanchiment, ou des allégations de blanchiment de l'argent par des membres de la profession juridique, mais c'est tout ce que nous savons.

M. Rideout: On semble indiquer aussi que les associations d'avocats ne sont pas en mesure de contrôler leurs membres au sujet du blanchiment de l'argent. Avez-vous des observations à faire sur ce que dit ce rapport du dépistage des profits générés par le crime?

M. Wade: Le manque d'uniformité des critères de divulgation a amené les auteurs de cette étude à dire que cette profession ne pouvait pas contrôler ses membres. Or, les différents barreaux n'ont pas les mêmes critères de

[*Texte*]

In our view it is a simple fact that differences in reporting requirements amongst law societies reflect the different realities of practice in, for example, rural Saskatchewan and downtown Toronto, nothing more than that. There is no indication we are aware of that the law societies are unable to police their members. In fact the alacrity with which law societies respond to complaints and reimburse victims of fraud by lawyers would suggest the opposite.

Mr. Rideout: Right.

Mr. Wade: I would point out to you that there is, in fact, no other profession that takes upon itself the reimbursement of clients of any member of that profession who have been dealt with fraudulently by one of its members.

Mr. Rideout: In the area of regulation, I presume you are same as we are in that you have not seen any regulations relating to the new bill?

Mr. Wade: That is the case.

Mr. Rideout: Have you had any discussions with any departmental officials as to the new regulations and the impact or changes that might be associated with that?

Mr. Wade: Between the death of Bill C-89, if I can put it that way—a lament insofar as we are concerned—and the birth of Bill C-9, which as we indicated we certainly welcome—

Mr. Rideout: We have had a lot of resurrections around here in the last little while.

Mr. Wade: —there were extensive discussions with departmental officials, and we are happy that the matters canvassed are in fact in Bill C-9. There are a couple of small points relating to prepublication which I have addressed. We certainly have confidence that the matters we raised with regard to regulations will be similarly dealt with.

• 1645

Mr. Rideout: Would it be fair to say that in the previous bill the Canadian Bar Association was very upset with what was contained in that legislation? I gather from your comments today that you are less upset. Are you now supportive of this legislation?

Mr. Wade: That we were certainly very upset would be a mild way of describing our reaction to the previous bill, indeed. We acknowledge that there are some matters in Bill C-9 that represent a compromise that is probably inevitable. For example, we would have preferred to see the elements of the offence defined in the act itself rather than in the regulations, but we do find that the bill is an acceptable compromise on all matters that concerned us.

Mr. Rideout: I was intrigued by your comment that record-keeping with respect to legal fees at $10,000 not be required, because I would like to get on the list of anybody who is paying $10,000 for legal fees. Why would you mention that? What is your concern there?

Mr. Wade: In relation to fees or retainers in particular?

[*Traduction*]

divulgation uniquement en raison des réalités concrètes de cette profession, et ce qui vaut pour une ville agricole comme la Saskatchewan ne s'applique pas à une grande agglomération, comme Toronto. Mais d'après ce que nous savons, rien ne semble indiquer que les barreaux ne puissent pas surveiller leurs membres. En fait, la rapidité avec laquelle ils réagissent en cas de plaintes, et remboursent les victimes des fraudes d'avocats semble indiquer le contraire.

M. Rideout: Très bien.

M. Wade: Je vous dirais qu'en fait, aucune autre profession ne se charge délibérément de rembourser les clients qui auraient été escroqués par un de ses membres.

M. Rideout: En ce qui concerne les règlements, je présume que, comme nous, vous n'en avez vu aucun, concernant le projet de loi?

M. Wade: En effet.

M. Rideout: Avez-vous discuté avec des fonctionnaires du ministère au sujet du nouveau Règlement, de son incidence, ou des changements qu'il pourrait entraîner?

M. Wade: Entre la mort du projet de loi C-89, si je peux m'exprimer ainsi, mort qui nous a bien attristés, et la naissance du projet de loi C-9, dont nous sommes certainement très heureux...

M. Rideout: Nous avons eu beaucoup de résurrections par ici ces derniers temps.

M. Wade: ...il y a eu beaucoup de discussions avec les fonctionnaires du ministères, et nous sommes heureux que les questions examinées figurent dans le projet de loi C-9. Je me suis penché sur un certain nombre de détails concernant la pré-publication. Nous avons bon espoir que les questions que nous avons soulevées au sujet des règlements seront traitées de la même façon.

M. Rideout: Serait-il juste de dire que l'Association du Barreau canadien était très mécontente de ce que contenait ce projet de loi. Je crois comprendre d'après ce que vous nous dites aujourd'hui que vous l'êtes moins. Appuyez-vous maintenant ce projet de loi?

M. Wade: C'est un euphémisme que de dire que nous étions très mécontents de l'ancien projet de loi. Il est vrai que certains aspects du projet de loi C-9 représentent un compromis qui est probablement inévitable. Par exemple, nous aurions préféré que les éléments de l'infraction soient définis dans la loi plutôt que dans le règlement, mais nous estimons que le projet de loi constitue un compromis acceptable pour toutes les questions qui nous préoccupaient.

M. Rideout: J'ai été intrigué lorsque vous dites qu'il n'est pas nécessaire de conserver des documents lorsque les honoraires ne dépassent pas 10,000$, car j'aimerais pouvoir mettre la main sur ceux qui paient des honoraires aussi élevés. Pourquoi avez-vous dit cela? Quelle est votre préoccupation ici?

M. Wade: À propos des honoraires ou des provisions en particulier?

[*Text*]

Mr. Rideout: Yes.

Mr. Wade: Simply that the requirement to create a record with regard to fees for representation in particular—and we are distinguishing moneys paid to a lawyer for investment, for example, as part of a commercial transaction—requirement to create a record and to ascertain the accuracy of certain information in regard to those fees places the lawyer in a very difficult situation insofar as independently representing his client is concerned. If he is required to ascertain the source of that money, to make a record, it very easily chills the right to counsel.

The other concern is a lesser concern but nonetheless there, and there have been instances of this kind of behaviour. If a lawyer representing an accused, who is entitled to be represented obviously, is required to create a record, which could be useful to enforcement officers or the prosecution, inevitably the accused's lawyer will get called as a Crown witness, which means he cannot carry on defending that client. That makes it very difficult for an accused to obtain representation of his choice.

Given recent statements as high as the Supreme Court of Canada, we feel this may be regarded as an infringement, in fact, upon the right to counsel. There may in fact be a constitutional danger there insofar as it chills the right to counsel. Certainly that argument is currently being explored before the U.S. courts in relation to their legislation, and while the outcome is not yet clear, there is certainly danger there.

Mr. Rideout: The way it was presented I thought it was okay to get paid with laundered funds but not to report on others, but you have given another explanation. So I will pass over to the other side.

Mr. Langdon (Essex—Windsor): I welcome you to the committee and to further discussion of what was certainly first seen as a fairly simple, straightforward piece of legislation. Certainly the Canadian Bar Association deserves a great deal of credit for probing and for bringing to the attention of Members of Parliament some of the potential problems that existed with the original piece of legislation.

Let me ask a general question to begin. Do you now feel satisfied with the piece of legislation sufficiently that if it goes through the committee without amendment you would recommend that it should be adopted, or do you feel strongly enough about the recommendations for amendment you put to us that you feel that if those are not accepted, the bill represents a continuing problem to the CBA?

Mr. Wade: I thank you for your kind words. I guess the question was directed to a bottom-line assessment of the bill, putting it bluntly.

• 1650

Mr. Langdon: In a sense.

Mr. Wade: I think the most important amendment we brought to your attention would be that relating to prepublication of regulations, the further 30-day notice period if there is an amendment following the 90-day consultation

[*Translation*]

M. Rideout: Oui.

M. Wade: C'est tout simplement que l'obligation de tenir un dossier au sujet des honoraires de représentation en particulier—et nous établissons une distinction entre l'argent versé à un avocat pour des investissements, par exemple, dans le cadre d'une transaction commerciale—et de vérifier la véracité de certains renseignements au sujet de ces honoraires place l'avocat dans une situation très difficile, car il ne peut pas vraiment représenter son client en toute indépendance. S'il doit vérifier l'origine de cet argent, pour établir un dossier, il lui sera très difficile de le défendre.

L'autre préoccupation est moindre, mais elle n'en existe pas moins, car il y a eu des cas de comportement semblable. Si un avocat qui représente un accusé—qui a bien sûr le droit d'être représenté—est dans l'obligation de tenir un dossier, qui pourrait être utile à des agents d'exécution de la loi ou au procureur de la poursuite, l'avocat de l'accusé sera inévitablement convoqué en tant que témoin de la Couronne, ce qui signifie qu'il ne pourra pas continuer à défendre son client. Un accusé aura donc beaucoup de mal à obtenir l'avocat de son choix.

Compte tenu de décisions récentes d'instances aussi élevées que la Cour suprême du Canada, nous estimons que cela pourrait être considéré comme étant effectivement un non-respect du droit à être représenté par un avocat, ce qui risque de présenter un danger sur le plan constitutionnel. Les tribunaux américains examinent actuellement cet argument par rapport à leur législation et, bien qu'ils ne soient pas encore parvenus à une conclusion, ce danger existe certainement.

M. Rideout: Vous nous avez présenté les choses de telle façon que j'ai cru qu'on pouvait se faire payer avec de l'argent blanchi, mais qu'il ne fallait pas déclarer les autres fonds, mais vous nous avez donné une autre explication. Je vais donc céder la parole à l'autre côté.

M. Langdon (Essex—Windsor): Je vous souhaite la bienvenue au comité, et je suis heureux que nous puissions poursuivre la discussion au sujet d'une loi qui semble être à première vue très simple et sans complication. L'Association du Barreau canadien mérite d'être félicitée parce qu'elle approfondit les choses, et qu'elle attire l'attention des députés sur les possibilités de difficultés qui existaient dans le projet de loi initial.

Je voudrais tout d'abord vous poser une question d'ordre général. Vous estimez-vous suffisamment satisfaits de ce projet de loi pour en recommander l'adoption sans amendement, si telle était la préférence du comité, ou est-ce que vous êtes si convaincus de la nécessité des amendements que s'ils n'étaient pas acceptés ce projet de loi continuerait de ne pas convenir à l'ABC?

M. Wade: Je vous remercie de vos aimables propos. Au bout du compte, si je peux m'exprimer ainsi, votre question portait sur notre évaluation du projet de loi.

M. Langdon: Si vous voulez.

M. Wade: Je crois que l'amendement le plus important que nous ayons proposé concerne la publication préalable des règlements, avec la période de préavis de 30 jours, au cas où un amendement serait proposé suite à la période de

[*Texte*]

and prepublication period. I say that because the decision to maintain essentially all of the elements of the very serious offence in this bill in the regulations is a compromise that is balanced by that prepublication provision, which enables those affected by the bill not only to consult on the content of the regulations, which will define the offence, but also to have adequate notice of any change in the nature of the offence. I think given that compromise it is important to follow it through to its conclusion and ensure that there is at least that 30-day notice period, given that the elements of the offence are not in the act itself; they are in the regulations. Again, it is not always easy to obtain up-to-date versions of regulations.

Mr. Langdon: You have taken the occasion to point out to us certainly what the most important of your recommendations is with that answer. But I would still like to come back, if I could, to where you stand if that recommendation is not accepted, because for those of us on the opposition side, of course, it is . . . I can tell you that I agree with you, but I am certainly not able to tell you yet whether the committee as a whole will agree with you. Clearly, it would be useful to us in terms of our future strategy with respect to the proposed legislation to get a sense of how you would feel about it if that recommendation was not accepted, the one you have considered, in a sense, your bottom line.

Mr. Wade: We would be bound, I think, to feel that what started out as a compromise was no longer an acceptable compromise, because it is really an essential part of that compromise defining a very, very serious offence. We are talking about a $500,000 fine and five years in jail by regulation, that there be an appropriate notice period to those affected, those to whom the bill applies.

Mr. Langdon: I thank you for that answer. With respect to the way we are proceeding here, did you have a chance to review the previous set of regulations?

Mr. Wade: Yes, we did.

Mr. Langdon: Were you able to agree with respect to certain changes to those regulations that you felt were crucial?

Mr. Wade: We identified in the discussion on policy paper, which you have as an appendix to the submission on this bill, our concerns with the regulations. They were discussed with department officials. As I say, we remain confident that those concerns will be addressed.

Mr. Langdon: Given that it is a piece of legislation that relies so heavily on regulation and given that you have made that important point in your submission, do you think it is important that this committee should see the draft regulations in the process of consideration of the proposed legislation?

• 1655

Mr. Wade: There is always a trade-off. There are the advantages of working by regulation, which offers speed and efficacy and a good deal more flexibility than being required to come back to Parliament to effect relatively minor

[*Traduction*]

consultation et de publication préalable de 90 jours. La décision de conserver dans les règlements tous les aspects du projet de loi qui font de cette infraction une infraction très grave est équilibrée par l'obligation de publication préalable, qui permettra aux parties concernées non seulement de tenir des consultations sur la teneur des règlements visant à définir l'infraction, mais aussi d'être prévenues de manière adéquate de tout changement quant à la nature de l'infraction. Étant donné ce compromis, j'estime qu'il est important de le mener jusqu'à sa conclusion naturelle en garantissant une période de préavis d'au moins 30 jours, étant donné que les éléments de l'infraction ne seront pas définis dans la loi elle-même mais dans les textes règlementaires. Or, vous savez qu'il n'est pas toujours facile d'obtenir des versions à jour des textes réglementaires.

M. Langdon: Vous avez profité de cette réponse pour nous indiquer ce qui constitue à vos yeux la plus importante de vos recommandations mais je voudrais quand même vous demander quelle serait votre position si cette recommandation n'était pas acceptée. Pour nous, de l'opposition, il est important de le savoir. Je puis vous dire que je suis d'accord avec vous, mais je ne sais pas du tout si l'ensemble du comité partage mon avis. Il nous serait donc très utile, pour formuler notre stratégie future, de savoir quelle serait votre réaction si votre recommandation n'était pas acceptée. En d'autres termes, quelle serait votre position finale?

M. Wade: Je crois que nous serions obligés de considérer que ce qui était au départ un compromis acceptable ne le serait plus du tout, puisque cela constituerait un élément essentiel du compromis concernant la définition d'une infraction extrêmement grave. On parle en effet ici d'une amende de 500,000$ et de cinq années d'emprisonnement, sanctions que nous pouvons accepter à moins que l'on ne prévoie un préavis approprié pour les parties concernées.

M. Langdon: Je vous remercie de votre réponse. Avez-vous eu la possibilité d'examiner les textes règlementaires précédents?

M. Wade: Oui.

M. Langdon: Étiez-vous d'accord avec certains changements apportés à ces règlements qui vous paraissaient cruciaux?

M. Wade: Vous trouverez dans l'annexe à notre mémoire sur ce projet de loi l'exposé de nos préoccupations au sujet des règlements. Nous en avons discuté avec les représentants du ministère et, comme je l'ai déjà dit, nous restons convaincus que nos préoccupations seront prises en compte.

M. Langdon: Étant donné que ce texte de loi est tellement tributaire des règlements, et considérant ce que vous avez dit dans votre mémoire, croyez-vous qu'il est important que le comité puisse examiner l'ébauche des textes réglementaires avant l'adoption du projet de loi lui-même?

M. Wade: Il y a toujours un compromis. Agir par voie réglementaire présente certains avantages, aux chapitres de la rapidité, de l'efficacité et de la souplesse, puisque cela évite de dépendre du Parlement pour mettre en oeuvre des

[*Text*]

changes. It is a difficult call with regard to any particular package, as to where the line should be drawn between what is in the statute and what is in the regulations and how those regulations should be dealt with. We would have to express the view that most of the content of this bill, definition of the obligations upon those who will be subject to the bill, are to be found in the regulations. I guess the only realistic answer I can give is that some assessment has to be made as to whether the language of the statute, the bill itself, is a sufficiently confining framework that one can be satisfied that the regulations will not be untoward.

Mr. Langdon: You have talked about the bill primarily from the point of view of questions of client confidentiality and concerns of that sort, the question of whether the penalties provided for are appropriate for what is set out in this piece of proposed legislation. Let me explore an additional point. From the economic perspective of your membership, people you are representing, is the record-keeping period a problem or is it something you think your profession would be able to cope with?

Mr. Wade: I guess everybody was so overwhelmed by the more basic concerns regarding solicitor-client confidentiality and privilege that we didn't address that specifically. At first blush—and I cannot pretend to speak for the entire membership on this—I don't see a problem with that. First, the circumstances in which a record will be required and the nature of that record are now far less onerous and far more acceptable to the profession. I think the period for which that record is required to be kept would be acceptable to the profession.

Mr. Kempling (Burlington): I have a couple of short questions, Mr. Wade. First of all, with regard to penalties, you made a comment that you felt the $500,000 fine, including five years, is a pretty heavy penalty to put down on, let us say, a lawyer merely for failing to keep records. You said that other legislation you had examined was not quite that onerous. Can you tell us what you found in other countries?

Mr. Wade: Yes. You will find it set out in the discussion paper on Bill C-9, but I could summarize very quickly.

Under the United States Bank Secrecy Act, which does not apply to lawyers, there is a potential penalty for civil liability of $10,000, a potential criminal penalty of $250,000 and five years. I think that is the most substantial of the penalties, if I'm not mistaken. In fact, I will ask our research office, Robin Geller, who has prepared the grid, to respond to that. She will do it perhaps a little more effectively than I.

• 1700

Ms Robin Geller (Research Officer, Legal and Governmental Affairs, Canadian Bar Association): Under the U.S. Bank Secrecy Act, there are both civil and criminal penalties. The civil penalty, as Mr. Wade has just mentioned, is up to a maximum of $10,000. In the event of a negligent offence committed under that act, the penalty is only $500.

[*Translation*]

modifications relativement mineures. Il est cependant difficile de dire précisément ce qui devrait être mis en place par voie réglementaire et ce qui devrait l'être par voie législative. A notre avis, la plupart des dispositions de ce projet de loi, qui définissent les responsabilités de ceux qui y seront assujettis, devraient figurer dans les règlements, mais à condition que la loi soit rédigée de manière suffisamment précise et claire pour nous donner la garantie que les règlements n'auront pas d'effets délétères.

M. Langdon: Dans votre analyse du projet de loi, vous avez abordé les questions de la confidentialité des relations avec vos clients et de la gravité des peines proposées. Je voudrais aborder maintenant un autre aspect, celui de la tenue des registres. Du point de vue économique, pensez-vous que cela risque de causer des difficultés à vos membres ou non?

M. Wade: Je dois dire que nous n'avons pas examiné cette question de manière détaillée, étant donné que les problèmes plus fondamentaux concernant la confidentialité des relations clients-avocats revêtaient pour nous une importance beaucoup plus considérable. De prime abord, et je précise que je ne m'exprime pas ici au nom de tous nos membres, je ne vois pas de problème grave avec cet aspect du projet de loi. En effet, les dispositions concernant la nature des registres et les circonstances dans lesquelles ils seraient nécessaires sont aujourd'hui beaucoup moins lourdes et plus acceptables par la profession. En outre, je crois que nous sommes prêts à accepter la période durant laquelle ces registres devraient être conservés.

M. Kempling (Burlington): J'ai quelques brèves questions à vous proposer, monsieur Wade. Vous avez d'abord dit qu'une peine de 500,000$ et cinq années d'emprisonnement constituent une sanction très lourde pour un avocat dont la seule infraction a été de ne pas tenir de registre. Vous avez indiqué que les autres textes de loi que vous avez examinés dans ce domaine n'étaient pas aussi sévères. Pourriez-vous donc nous dire ce que vous avez constaté dans les lois d'autres pays?

M. Wade: Oui, vous trouverez des détails à ce sujet dans notre document de réflexion sur le projet de loi C-9, mais je vais vous les résumer très rapidement.

La loi américaine sur le secret bancaire, qui ne s'applique pas aux avocats, prévoit une peine civile de 10,000$, une peine pénale de 250,000$ et une peine d'emprisonnement de cinq ans. Si je ne me trompe, ces sanctions sont les plus lourdes que nous ayons identifiées. Comme c'est notre recherchiste, Robin Geller, qui a préparé cette étude, je vais lui demander de vous répondre. Elle connaît mieux la question que moi.

Mme Robin Geller (agent de recherche, Affaires juridiques et gouvernementales, Association du Barreau canadien): La loi américaine sur le secret bancaire prévoit des peines civiles et pénales. Comme l'a dit M. Wade, la peine civile peut atteindre 10,000$. En cas d'infractions non délibérées, la peine n'est que de 500$.

[*Texte*]

The criminal penalties under that act are up to $250,000 or five years. When that offence is combined with another offence, for instance a money laundering offence added to a failure to keep a record, the penalties go up to a maximum of $500,000 or five years.

The penalties under the U.S. Internal Revenue code for failure to make a recording, or in their case a reporting requirement similar to that in our legislation, are up to $25,000 or five years.

The Australian legislation is quite similar to ours and has two types of offences that can be committed, either a strict liability offence that could be committed negligently, for which the penalty for individuals is up to $5,000 or two years imprisonment, or where there is a full *mens rea* requirement, it is up to $10,000 and five years.

There are, in addition to those, different penalties for corporations, which, if I recall, involve monetary penalties of approximately ten times those provided for individuals.

Mr. Kempling: So they have separated the individuals and the corporations.

Ms Geller: Yes, under the Australian legislation they have.

Mr. Speller (Haldimand—Norfolk): I have two very quick questions regarding page 18 under your recommendations.

I want to preface this by saying I am not a lawyer, so I don't understand what you are talking about here. You are saying in recommendation number 3 that the regulations should only require that persons to whom the act applies ascertain the identity of those with whom they are dealing in according with sound business practices. What does that mean?

Mr. Wade: The provision in the bill itself that deals with requirement to ascertain the accuracy of what is being recorded is paragraph 5.(1)(d), which I addressed myself to a while ago. That has now been considerably restricted in scope to deal only with the identity of the person with whom one is dealing—the client, in other words—and not the accuracy of any other information.

This would provide, under the regulations, a standard with which one is to comply in ascertaining the accuracy of the information recorded, namely the identity of the client, and this would simply be in accordance with sound business practice; in other words, whatever a member of the legal profession or in other cases, an accountant, or somebody else to whom this bill applies, would normally do to verify for his business purposes the identity of the person with whom he is dealing.

Mr. Speller: That seems to me a little bit broad.

Mr. Wade: The kind of problem we had in mind here, which is difficult to identify specifically, is, for example, the lawyer dealing with refugee clients, who often have no means of identification. In our view the appropriate standard to

[*Traduction*]

Pour ce qui est des sanctions pénales, elles peuvent atteindre 250,000$ ou cinq années d'emprisonnement. Si l'infraction s'ajoute à une autre, par exemple s'il y a une infraction de blanchiment d'argent ajouté à l'absence de registre, la peine peut atteindre un maximum de 500,000$ ou cinq années d'emprisonnement.

Selon le code des services américains du Revenu, une personne qui ne tient pas de registre ou qui ne fait pas de déclaration selon l'exigence de la loi, comme chez nous, est passible d'une peine de 25,000$ ou cinq années d'emprisonnement.

La loi australienne est tout à fait semblable à la nôtre dans la mesure où elle prévoit deux types d'infraction, soit une infraction de responsabilité stricte pouvant être commise par négligence, pour laquelle la peine peut atteindre 5,000$ ou deux années d'emprisonnement, dans le cas des particuliers, soit une infraction tout à fait délibérée, avec *mens rea* clairement établi, auquel cas la peine peut atteindre 10,000$ et cinq années.

Il faut ajouter à cela les sanctions dont sont passibles les sociétés qui, si je me souviens bien, peuvent représenter des sanctions monétaires dix fois supérieures à celles dont sont passibles les personnes.

M. Kempling: La loi australienne établit donc une distinction entre les particuliers et les sociétés?

Mme Geller: Oui.

M. Speller (Haldimand—Norfolk): Je voudrais vous poser deux brèves questions au sujet de vos recommandations.

Laissez-moi vous dire tout d'abord que je ne suis pas avocat, ce qui signifie que je ne comprends pas l'objet de ces recommandations. Vous dites dans votre troisième recommandation que les règlements devraient exiger seulement que les personnes à qui la loi s'applique établissent l'identité des personnes avec lesquelles elles ont des relations d'affaires, selon de saines pratiques commerciales. Qu'est-ce que cela veut dire?

M. Wade: C'est à l'alinéa 5.(1)d) du projet de loi que l'on trouve l'obligation d'établir l'exactitude de ce qui est enregistré, ce dont j'ai parlé un peu plus tôt. Cette disposition a cependant été considérablement restreinte, dans la mesure où elle ne porte plus que sur l'identité de la personne, c'est-à-dire du client, et non plus sur l'exactitude des renseignements.

Cela signifie que les règlements obligeraient les avocats à vérifier l'exactitude des renseignements enregistrés, c'est-à-dire l'identité du client, et que cela pourrait se faire selon de saines pratiques commerciales. Autrement dit, un avocat, un comptable ou toute autre personne assujettie au projet de loi répondrait à cette exigence en procédant aux vérifications normales qu'il devrait de toute façon faire pour établir l'identité de la personne avec laquelle il établit des relations commerciales.

M. Speller: Cela me paraît très général.

M. Wade: Le problème que nous voulions envisager, et qu'il est difficile d'exposer avec précision, pourrait être celui d'un avocat traitant avec des réfugiés, qui n'ont souvent aucune pièce d'identité. Selon nous, le critère qu'il convient

[Text]

apply to somebody in that situation is that which he would normally do in accepting that person as a client for his practice. Obviously these are not people to whom one can say, where is your passport, where is your driver's licence, where are your credit cards?

Mr. Speller: Moving down to number 4, your recommendation is that the regulations make it clear that only where a lawyer is involved in a transaction also involving a third party does any obligation to create a record arise. I read from this that if someone comes into your office, gives you $1 million and says, put this into a trust account for me, hold onto this for me, that is fine. You don't think there should then be any obligation. But if three weeks later that same person says, we will transfer this money to somebody else, then there should be an obligation to report. Is that what you are saying?

Mr. Wade: We are talking $1 million cash at the outset.

Mr. Speller: You are taking $1 million cash.

Mr. Wade: None of that money is to be applied to legal fees or retainers. In that event, where money is brought to the lawyer for investment, it is cash, it is more than $10,000—and by cash we mean bank notes and coin—I think we accept that as part of dealing with the proceeds of drug trafficking or the proceeds of crime in general there ought to be an obligation to create a record in those circumstances.

• 1705

What this recommendation is addressed to is this somewhat arcane technical problem for lawyers, but nonetheless a very real one, in that essentially all moneys they take in are received in trust and therefore received technically for the benefit of another, which was the term used in the earlier draft regulations. So they would have caught every single cash payment, although that was unclear under the regs as well, made to a lawyer, and it was our concern in particular that the right to counsel, the right to representation, ought not to be chilled by a record-keeping requirement for professional fees and retainers.

We acknowledge that where very large sums of cash are brought to a lawyer for investment there ought to be a record. Otherwise, we accept that if all other avenues of money laundering are closed off but the legal profession is still an open avenue, then at least there will be attempts to use the legal profession for money laundering.

The Chairman: Thank you very much, Ms Speller and Mr. Wade. We appreciate your coming before the committee here today and submitting a brief.

We will move along now to the department officials.

Mr. Wade: Mr. Chairman, members of the committee, we thank you very much on behalf of the bar for a sympathetic, kind hearing, and we are pleased to have been of assistance.

[Translation]

d'appliquer dans ce genre de situation est d'exiger que l'avocat fasse ce qu'il ferait normalement avant d'accepter que cette personne devienne son client. Il est en effet évident que l'on ne peut demander à cette personne de présenter un passeport, un permis de conduire ou une carte de crédit.

M. Speller: Votre recommandation suivante est que l'on indique clairement dans les règlements que c'est seulement au cas où un avocat est impliqué dans une transaction impliquant également une tierce partie qu'il devrait être obligé d'établir un registre. Si je comprends bien, cela signifie que vous n'aurez strictement aucune obligation si quelqu'un entre dans votre bureau et vous remet un million de dollars en vous demandant de les placer dans un compte de fiducie. Par contre, si cette personne vous demande trois semaines plus tard de transférer la somme à quelqu'un d'autre, alors là vous auriez certaines obligations à respecter. Est-ce bien votre position?

M. Wade: Vous voulez parler d'un dépôt de un million de dollars en espèces?

M. Speller: Oui.

M. Wade: Cette somme n'aurait donc strictement rien à voir avec des honoraires juridiques. Si tel est le cas, cela signifie que la somme serait remise à l'avocat pour être investie et, comme il s'agit de plus de 10,000$ en espèces, c'est-à-dire en billets de banque et en pièces, nous sommes prêts à accepter l'obligation d'établir un registre car il pourrait en effet s'agir du produit du trafic de la drogue ou d'activités criminelles.

Cette recommandation vise à résoudre un problème assez mystérieux que connaissent les avocats, mais qui n'en est pas moins très réel, celui résultant du fait que toutes les sommes qui leur sont versées, le sont en fiducie et sont donc techniquement destinées à quelqu'un d'autre, ce qui était précisément le cas qui avait été envisagé dans l'avant-projet des règlements. Autrement dit, l'avant-projet pouvait s'appliquer à tout paiement en espèces, même si cela n'avait pas été explicitement indiqué dans le texte, et notre souci était de veiller à ce que le droit du client à retenir les services d'un avocat et à se faire défendre ne soit aucunement entravé par l'obligation de tenir un registre des honoraires professionnels et des provisions.

Nous reconnaissons parfaitement qu'il est normal d'enregistrer les sommes très importantes versées en espèces à un avocat pour être investies. Si tel n'était pas le cas, et si toutes les autres méthodes de recyclage de l'argent étaient inaccessibles, il est probable que certains s'efforceraient d'utiliser les services des avocats pour blanchir leur argent.

Le président: Merci beaucoup, madame Speller et monsieur Wade. Nous vous remercions d'être venus témoigner aujourd'hui et de nous avoir adressé un mémoire.

Nous allons maintenant entendre les représentants du ministère.

M. Wade: Merci beaucoup, monsieur le président et messieurs les membres du comité de nous avoir écoutés avec attention et intérêt.

[*Texte*]

The Chairman: I want to welcome the officials from the Department of Finance before this committee. For the benefit of the translators, I would ask if each of you would identify yourself before we start.

Mr. Mark Jewett, Q.C. (Assistant Deputy Minister (Justice), Department of Finance): Mr. Chairman, I am the Assistant Deputy Minister of the Law Branch. With me is Ray LaBrosse, Director of Financial Institutions Division; James McCollum; and Yvon Carrière from the Tax Council Division of Finance.

Mr. LaBrosse will have some remarks.

Mr. Ray LaBrosse (Director, Financial Institutions Division, Department of Finance): Mr. Chairman, we have a brief statement relating to Bill C-9 which we would like to read into the record, and then we are prepared to answer questions that you or members of the committee may have.

First of all, the bill is primarily about record keeping. Its purpose is to ensure that adequate records are in place so that the police can carry out—

Mr. Langdon: On a point of order, can we get a copy of this?

The Chairman: Do you have copies of your presentation available?

Mr. LaBrosse: I was going to read from parts of it. I can have a copy made available to the committee from the parts I have if that would please the committee, Mr. Chairman.

The Chairman: Yes, I think we should have it if it is requested.

Mr. LaBrosse: The primary purpose of this bill is to ensure that adequate records are in place so that the police can carry out money laundering investigations in an effective manner. It establishes a separate statute linked to Bill C-61, which made money laundering a criminal offence.

An extensive consultation process has been carried out, and the bill has the support of those who will be required to maintain records. It is designed to be thorough and flexible yet as unobtrusive as possible. It should have little effect on the way ordinary Canadians go about their business. For drug traffickers and others engaged in business crimes, life will be more complicated. It will help ensure that crime does not pay.

• 1710

Money laundering, as I'm sure the members of this committee know, is the process of disguising or concealing illicit funds in order to make them appear legitimate. Laundering illegal proceeds or dirty money into usable, apparently legitimate forms is essential for many criminal enterprises. Laundering is particularly essential for drug trafficking, which generates large volumes of cash. Cash is awkward, it is bulky, and it attracts attention in large quantities. There is a strong incentive to try to integrate these funds into the financial system. It is at the placement stage when cash is first introduced into the financial system that money launderers are most vulnerable. It is for this

[*Traduction*]

Le président: J'accueille maintenant des représentants du ministère des Finances. Dans l'intérêt des traducteurs, je vais demander à chacun d'entre vous de vous présenter.

M. Mark Jewett, c.r. (sous-ministre adjoint (Justice), ministère des Finances): Monsieur le président, je suis le sous-ministre adjoint responsable de la Direction juridique. Je suis accompagné de Ray LaBrosse, directeur de la Division des institutions financières, de James McCollum, et de Yvon Carrière, de la Division du droit fiscal.

M. LaBrosse souhaite faire quelques remarques.

M. Ray LaBrosse (directeur, Division des institutions financières, ministère des Finances): Monsieur le président, nous aimerions lire un bref exposé sur le projet de loi C-9, après quoi nous pourrons répondre à vos questions.

La première chose à dire est que le projet de loi porte essentiellement sur la tenue de registres. L'objectif est d'assurer l'existence de registres adéquats pour permettre à la police...

M. Langdon: Pourrions-nous obtenir un exemplaire de ce texte?

Le président: Avez-vous des copies de votre déclaration?

M. LaBrosse: J'allais vous en lire des extraits. Si vous le souhaitez, je peux en faire une copie et la remettre au greffier du comité.

Le président: Je crois que ce serait une bonne chose.

M. LaBrosse: L'objectif primordial du projet de loi est d'assurer l'existence de registres adéquats pour permettre à la police d'effectuer des enquêtes efficaces sur les activités de blanchiment de l'argent. Ce projet de loi est donc destiné à accompagner le projet de loi C-61, qui dispose que le blanchiment de l'argent est une activité criminelle.

Comme le projet de loi a fait l'objet de vastes consultations, il a recueilli l'appui de tous ceux qu'il obligera à tenir des registres. Il est destiné à être exhaustif et souple, mais en causant le moins de problème possible aux parties concernées. De fait, il ne devrait avoir qu'une incidence minime sur les activités commerciales de la plupart des Canadiens. Par contre, il rendra la vie plus difficile aux trafiquants de drogues et aux autres criminels. Il permettra d'assurer que le crime ne paye pas.

Comme vous le savez, blanchir de l'argent consiste à déguiser ou dissimuler des sommes illicites de façon à les faire paraître légitimes. Le blanchiment de l'argent sale ou obtenu de façon illégale, pour en faire de l'argent utilisable et apparemment légitime, est une activité essentielle pour beaucoup de criminels. C'est notamment le cas des trafiquants de drogues, dont l'activité produit des sommes en espèces considérables. Or, les espèces sont difficiles à manipuler, elles sont visibles et elles attirent l'attention. Les trafiquants sont donc fortement incités à tenter de les recycler dans le système financier normal. Or, c'est au moment où les criminels tentent d'introduire l'argent illégal

[*Text*]

reason there is a special focus on cash in anti-money-laundering programs.

This bill should make it more difficult and riskier to attempt to use Canada's financial system to launder money. It should help ensure that our country does not become a haven for money launderers.

There are three main factors motivating this bill, Mr. Chairman. Of principal importance was the experience of the RCMP in conducting money laundering investigations. Their experience was that while Canadian financial institutions generally maintain reasonable records, there was lack of consistency.

In carrying out investigations, they could not be sure that required records would actually be there. There was considerable variation in retention periods, for example, and as a consequence investigations could be thwarted. As committee members know, the Minister of State for Finance, Mr. Gilles Loiselle, chaired a private sector advisory committee to deal with the issue of money laundering. This group included representatives from a broad cross-section of Canada's financial industry. All the major financial industry associations were represented. This group quickly focused on record keeping as an area of prime attention and recommended that the government introduce legislation.

The work of the G-7 Financial Action Task Force is also a factor. The first report of the task force contained a series of 40 recommendations for action against money laundering. At the Houston summit, the Prime Minister and other G-7 leaders signalled their intention to implement the task force recommendations fully and expeditiously. In general, Canada measures up well to the task force recommendations. The main area where we fall short is record keeping. This bill will change that.

In designing the bill, the government engaged in an extensive consultative process. A key element was the advisory committee which the Minister of State for Finance chaired. At the time, the focus of attention was on financial institutions and the composition of the advisory group reflected this. Representatives of all groups explicitly mentioned in the legislation were included on the advisory committee.

The Financial Action Task Force report and accumulated experience in Canada and elsewhere suggested that professionals who handled large amounts of cash were also a cause for concern. While contact was made with the legal community, the Canadian Bar Association continued to have their concerns. As you are aware, Mr. Chairman, it has been possible to take the Canadian Bar Association concerns into account, and an improved bill has resulted.

[*Translation*]

dans le système financier qu'ils sont le plus vulnérables. Voilà pourquoi les programmes de répression du blanchiment de l'argent sont toujours spécialement axés sur le traitement des espèces.

Avec ce projet de loi, il devrait être plus difficile et dangereux d'utiliser le système financier canadien pour blanchir de l'argent. Cela devrait garantir que notre pays ne deviendra pas un sanctuaire pour ceux qui pratiquent ce type d'activité.

Trois raisons principales justifient l'adoption de ce projet de loi, monsieur le président. La première, qui revêt une importance fondamentale, est reliée à l'expérience enregistrée par la GRC dans le cadre de ses enquêtes sur le blanchiment de l'argent. En effet, la GRC a pu constater que, si les établissments financiers canadiens tiennent généralement des registres raisonnables, ceux-ci manquent de cohérence.

Dans l'exécution de ces enquêtes, la GRC ne peut donc avoir la certitude que les registres dont elle a besoin auront été tenus. Il existe par exemple des variations considérables quant à la période de rétention des dossiers, ce qui peut entraver les enquêtes. Comme le savent les membres du comité, le ministre d'Etat aux Finances, M. Gilles Loiselle, a présidé un comité consultatif du secteur privé saisi du problème du blanchiment de l'argent. Ce comité comprenait des représentants de toutes les branches de l'industrie canadienne des services financiers. Toutes les grandes associations financières y étaient représentées. Or, le comité est rapidement parvenu à la conclusion que les registres constituaient un élément central du système de répression du blanchiment de l'argent, et il a recommandé au gouvernement de légiférer en la matière.

Le deuxième facteur est relié aux travaux du groupe de travail financier mis sur pied par les sept Grands. Le premier rapport de ce groupe de travail comportait 40 recommandations portant sur la répression du blanchiment de l'argent. Lors du sommet de Houston, le premier ministre et les autres chefs de gouvernement des sept Grands ont exprimé l'intention de mettre en oeuvre rapidement et complètement les recommandations du groupe de travail. Dans l'ensemble, les mesures en vigueur au Canada sont assez proches de ce que recommandait le groupe de travail, sauf en matière de registre. Avec ce projet de loi, le problème aura été résolu.

Pour rédiger le projet de loi, le gouvernement a tenu de vastes consultations, notamment par le truchement du comité consultatif présidé par le ministre d'Etat aux Finances. A l'époque, l'attention était focalisée sur les institutions financières, ce que reflétait d'ailleurs la composition du groupe consultatif. Tous les groupes explicitement mentionnés dans le projet de loi ont été représenté au sein du comité consultatif.

Le rapport du groupe de travail sur les finances et l'expérience acquise au Canada et ailleurs ont fait ressortir qu'il fallait également s'intéresser de près aux activités des professionnels qui manipulent de vastes sommes d'argent. Bien que des contacts aient été pris avec les professions juridiques, l'Association du Barreau canadien continuait d'exprimer des doutes au sujet du projet de loi. Comme vous le savez, monsieur le président, nous avons pu tenir compte des préoccupations de l'association, ce qui nous a permis d'améliorer le projet de loi d'origine.

[*Texte*]

The provinces were also consulted in the formulation of this legislation. At the officials level, there were several consultations.

Finally, there has been extensive consultations on the draft regulations. The regulations were designed with the input of the groups affected and draft regulations were released when the previous version of the bill, Bill C-89, was tabled last fall. The draft regulations are being refined on the basis of comments that have been received since that time, with input from the RCMP. Bill C-9 calls for regulations to be prepublished in *The Canada Gazette* at least 90 days before becoming effective.

Thank you, Mr. Chairman. We are prepared to answer any questions the committee may have.

The Chairman: Thank you very much. For the first round of questioners we will go to Mr. Rideout, following by Mr. Langdon. It will be 10 minutes each, then over to Mr. Kempling.

Mr. Rideout: I think we all agree that the largest portion of this bill is going to be dealt with through regulation, and we had a discussion before the committee yesterday. Are those regulations yet available and are they going to be produced to this committee before we report?

Mr. LaBrosse: Mr. Chairman, we have been working on the regulations, but the draft regulations related to Bill C-89 were tabled when the bill was tabled in October. We have been endeavouring to make sure the changes that were necessary as a result of the changes to the bill are then fully reflected in the regulations. We do not yet have them finished to provide them to the committee.

• 1715

Mr. Rideout: When do you anticipate those being available? I think in fairness this committee ought not to report until we have had an opportunity to review the regulations.

Mr. LaBrosse: We are working as quickly as we can to get the regulations out. They are fundamentally based on the October 25 version with the required changes because of the changes to the bill.

Mr. Rideout: Let me put it this way. In the spirit of the non-partisan attitude that has developed since the last Speech from the Throne and in our desire to co-operate with government, we have been going out of our way to expedite this particular legislation, but I think that we, at least in the Liberal party, are not prepared to see this pass until we have had an opportunity to review the regulations. So it will be entirely in your hands as to how soon this becomes effective. Perhaps you could give the committee a rough idea as to when that would be available.

Mr. Jewett: It is difficult to say. We can probably produce regulations within a week to 10 days if we move. We may or may not have them in 10 days. We will do what we can to produce them.

[*Traduction*]

Nous avons également consulté les provinces, à plusieurs reprises, au niveau des hauts fonctionnaires.

Finalement, nous avons tenu de vastes consultations au sujet de l'ébauche des règlements. Ceux-ci ont été formulés avec la participation des groupes concernés, et un avant-projet des textes réglementaires avait été publié lors du dépôt de la version précédente du projet de loi, l'automne dernier, sous le titre C-89. Nous procédons actuellement à l'amélioration du projet de texte réglementaire, en fonction des commentaires recueillis et avec la participation de la GRC. Le projet de loi C-9 exige que le règlement soit publié dans *La Gazette du Canada* au moins 90 jours avant son entrée en vigueur.

Merci, monsieur le président. Nous sommes maintenant prêts à répondre à vos questions.

Le président: Merci beaucoup. Je vais d'abord donner la parole à M. Rideout, puis à M. Langdon. Ils auront 10 minutes chacun, après quoi nous passerons à M. Kempling.

M. Rideout: Nous convenons tous que les éléments les plus importants de ce projet de loi seront mis en oeuvre par voie réglementaire, et notre comité en a discuté hier. Je dois donc vous demander si le règlement est maintenant disponible et si le comité pourra l'examiner avant de préparer son rapport.

M. LaBrosse: L'avant-projet du règlement avait été publié lors du dépôt du projet de loi C-89, en octobre. Nous avons tenté d'y apporter les changements jugés nécessaires par suite des modifications apportées au projet de loi lui-même. Ce travail n'est cependant pas encore achevé et nous ne pouvons donc pas fournir les règlements d'exécution au comité.

M. Rideout: Quand pourrez-vous le faire? Vous conviendrez que le comité ne devrait pas préparer son rapport tant qu'il n'aura pas eu la possibilité d'examiner les règlements.

M. LaBrosse: Nous essayons d'apporter les modifications aux règlements le plus rapidement possible. Les modifications sont destinées à refléter la version du 25 octobre.

M. Rideout: Je vais m'exprimer autrement. Étant donné l'esprit de collaboration qui règne depuis le dernier discours du Trône, et notre volonté de coopérer avec le gouvernement, nous avons fait tout notre possible pour accélérer le débat sur ce texte de loi. Je dois cependant vous dire que le Parti libéral ne veut pas que ce projet de loi puisse être adopté sans que nous ayons eu la possibilité d'en examiner les règlements d'exécution. Autrement dit, la date d'entrée en vigueur du projet de loi dépend complètement de vous. Peut-être pourriez-vous donc nous donner maintenant une idée générale de la date à laquelle les règlements seront disponibles?

M. Jewett: C'est difficile à dire. Si nous nous y mettons sérieusement, nous pourrions probablement avoir le texte d'ici sept à dix jours. Peut-être que non. Nous ferons tout notre possible.

[*Text*]

Mr. Rideout: That would be great, because we would like to see the legislation in effect as soon as possible, but at the same time we don't want to enact it until we see the regulations. That was the beauty of the previous bill; we did have the regulations at the same time.

Mr. Jewett: What we could do that might advance your consideration of it is perhaps indicate to you the areas of the regulations that are going to be changed from the old regulations. Perhaps from that you could then see what we are going to do.

Mr. Rideout: That might be a good suggestion, to look at all the other areas in regulation. By that time, maybe the other will be available.

Mr. Jewett: We can probably do that either later today or tomorrow.

Mr. Rideout: That would be super if that is agreed, if that is the way we are going to proceed. Maybe we can talk about that afterwards.

Obviously the effect of this legislation is that there is an intrusion into people's lives to a degree, with information going to the RCMP or to whoever is going to be responsible for taking this the next step. I get the impression from reading some of the other literature that this information is again going to be shared with other countries, and other countries are going to know... I was looking at the co-ordination of the American national drug policy. They make a comment in this as follows:

> The purposes of the negotiation under this subsection are to reach one or more international agreements to ensure that foreign banks and other financial institutions maintain adequate records of large U.S. currency transactions and to establish a mechanism whereby such records may be made available to the United States law enforcement agencies.

Are there going to be reciprocal agreements as far as Canada is concerned with those same bases in place?

Mr. Jewett: On the subject-matter of this bill, Mr. Chairman, this bill is a record-keeping bill. It does not have any provision for sharing that information or moving it out. It is simply to ensure that when an investigation is undertaken, say, by the RCMP, when they go in to look for the record there will be something there. If there is to be any sharing or moving of the information, that will be under another statute. It is not under this bill.

Mr. Rideout: So the information that is gathered by this bill could be shared in another fashion.

Mr. Jewett: Only if someone, for example, seizes it with a search warrant or something like that. It isn't directly related.

Mr. Rideout: I don't want to belabour it. It is just that when you read some of the.... I gather this flows from the G-7 and all of that intent of having an international drug laundering situation set up so that all of these countries are

[*Translation*]

M. Rideout: Ce serait parfait car nous souhaitons que ce projet de loi entre en vigueur le plus vite possible, mais nous ne pourrons absolument pas donner notre accord tant que nous n'aurons pas vu les règlements. Je vous rappelle que la version précédente du projet de loi était accompagnée des règlements.

M. Jewett: Ce que nous pourrions peut-être faire pour ne pas retarder vos travaux serait de vous indiquer où nos modifications seront apportées dans les règlements. Cela pourrait peut-être vous donner une meilleure idée de nos intentions.

M. Rideout: C'est peut-être une bonne idée. Quand nous aurons fini ce travail, tout le texte sera peut-être disponible.

M. Jewett: Nous pourrions faire cela plus tard aujourd'hui ou demain.

M. Rideout: Ce serait parfait, si tous les membres du comité sont d'accord. Nous pourrions peut-être en parler plus tard.

Il est évident que ce texte de loi constituera dans une certaine mesure une ingérence dans la vie des citoyens, puisque des informations seront communiquées à la GRC ou aux autres organismes de répression concernés. Cependant, j'ai aussi l'impression que ces informations seront communiquées à d'autres pays. Par exemple, j'examinais un document concernant la coordination de la politique nationale américaine de répression du trafic des drogues, où je lisais ceci:

> Le but des négociations prévues par cet alinéa est de signer une ou plusieurs ententes internationales pour garantir que les banques et autres institutions financières étrangères tiennent des registres adéquats des grosses transactions en devises américaines, et d'établir un mécanisme permettant à ces registres d'être mis à la disposition des organismes policiers des États-unis.

Envisagez-vous donc des ententes de réciprocité entre le Canada et d'autres pays?

M. Jewett: En ce qui concerne strictement ce projet de loi, monsieur le président, il porte uniquement sur la tenue de registres. Il ne contient aucune disposition de partage de renseignements. Il vise simplement à veiller à ce que les dossiers existent lorsque la GRC entreprend une enquête, par exemple. Si l'on doit procéder au partage de renseignements, ou à la communication de renseignements à d'autres autorités nationales, cela devra se faire dans le cadre d'un autre texte de loi et pas de celui-ci.

M. Rideout: Donc, les renseignements qui seront rassemblés en vertu de ce projet de loi pourraient être partagés d'une autre manière?

M. Jewett: Seulement si quelqu'un les obtient grâce à un mandat de perquisition, par exemple. Il n'y a pas de lien direct entre le partage et ce texte de loi.

M. Rideout: Je ne veux pas trop insister sur cette question mais cela ne me paraît pas clair. Je suppose que cela découle du groupe de travail des sept Grands et de l'objectif de mettre sur pied une structure internationale de

[Texte]

providing information and exchanging information. All I'm really trying to know is whether Canada is going to be part of it and whether the information that is gathered here is going to be made available to other foreign jurisdictions. I gather that is not the case.

• 1720

Mr. James McCollum (Chief, Industry Analysis and Relations Section, Financial Institutions Division, Department of Finance): I could speak to that.

The way information is shared internationally is through something called an MLAT, a mutual legal assistance treaty. Canada has a number of mutual legal assistance treaties, but the data and records created pursuant to this bill would be no different from any other data or records that are available. They would have to go through the same process that would occur in any case. So there is no particular change in that respect.

Mr. Rideout: What is going to happen with this information?

Mr. McCollum: As Mr. LaBrosse indicated at the beginning, the purpose of this bill is to ensure that there are adequate records in place and that there is consistency in terms of those records so the police can carry out investigations. As he remarked earlier, for the most part these records are available. The problem is lack of consistency, and there were a few gaps in the case of some institutions.

In fact, the first round of draft regulations, which were developed in consultation with the various industries affected, were designed in a way that would minimize any additional record-keeping burden on those institutions.

Mr. Rideout: That is what I was wondering. So this is really more on the basis of proving your case afterwards, rather than having it as a trigger to identify possible criminal activity, then?

Mr. McCollum: Yes, that is absolutely correct.

Mr. Langdon: My first question has to do with the issue of consultation and your suggested statement—and that is why it would have been useful to have the written document. If I wrote it down properly, you said that the legislation has the support of those affected.

I am not certain if you were here for the entire testimony from the Canadian Bar Association, but they indicated to us that if an amendment was not made that would require those regulations that are being changed to be published at least 30 days before they came into effect, then they would certainly feel that we should not support the legislation.

Can I ask you therefore, from the perspective of the department—and I do not know, you may wish the minister to deal with this—whether you feel comfortable with that suggested amendment they have put forward?

Mr. LaBrosse: Bill C-9 does have a provision related to the pre-publication of 90 days, which I guess is not usual in legislation, but I think that would provide a full period of time for comments of all interested parties. I think the

[Traduction]

répression du trafic de drogues, ce qui exige que les pays concernés partagent des renseignements. Tout ce que j'essaie de savoir, c'est si le Canada fera partie de cette structure et si les informations compilées en vertu de ce texte de loi seront communiquées à des organisations étrangères. Si je vous comprends bien, ce ne sera pas le cas.

M. James McCollum (chef, Section de l'analyse de l'industrie et des relations, Division des institutions financières, ministère des Finances): Je vais répondre à cette question.

Le mécanisme permettant les échanges internationaux de renseignements est ce que l'on appelle un TAJM, un traité d'assistance juridique mutuel. Le Canada en a signé plusieurs, mais les données et registres créés en vertu de ce projet de loi ne seront absolument pas traités différemment des autres données ou registres disponibles. Ils devront être traités exactement de la même manière. Il n'y a donc aucun changement particulier à cet égard.

M. Rideout: Que deviendront ces renseignements?

M. McCollum: Comme l'a dit M. LaBrosse au début, le projet de loi vise à garantir l'existence de registres adéquats et cohérents pour permettre à la police d'exécuter ses enquêtes. Comme il l'a dit, dans la plupart des cas, ces registres existent déjà. Le problème provient du fait qu'il n'y a pas vraiment de cohérence à ce chapitre, et qu'il y a parfois certaines carences dans certains établissements financiers.

En fait, le premier avant-projet de règlements, qui avait été rédigé après avoir consulté les diverses branches de l'industrie des services financiers, était destiné à minimiser tout fardeau relié à la tenue de registres supplémentaires.

M. Rideout: Voilà précisément ce que je me demandais. Si je comprends bien, il s'agit essentiellement de faire ce qui est nécessaire pour vous permettre de prouver vos allégations après coup, plutôt que d'avoir un mécanisme destiné à repérer d'éventuelles activités criminelles.

M. McCollum: C'est tout à fait exact.

M. Langdon: Ma première question portera sur les consultations que vous avez tenues et sur ce que vous avez dit dans votre déclaration préliminaire. Voilà d'ailleurs pourquoi il eut été utile que nous ayons ce document. Si j'ai pris de bonnes notes, vous avez dit que le projet de loi recueillait l'appui de toutes les parties concernées.

Je ne sais pas si vous avez entendu les témoins de l'Association du Barreau canadien, mais ils nous ont dit qu'ils ne seraient certainement pas prêts à appuyer le projet de loi si un amendement n'était pas adopté pour exiger la publication préalable des changements réglementaires au moins 30 jours avant leur entrée en vigueur.

Je vous demande donc si vous seriez prêts à accepter un tel amendement? Peut-être voudriez-vous que le ministre réponde lui-même à cette question?

M. LaBrosse: Le projet de loi C-9 comporte une clause de publication préalable de 90 jours, ce qui n'est pas inusité dans ce domaine et qui offrira à toutes les parties la possibilité de faire connaître toutes leurs préoccupations. Je

[*Text*]

importance of the legislation is to ensure that we get broad coverage for it so that we do not open up a channel for money launderers, and that is why we felt that coverage in relation to the legislation should be as extensive as it is.

Mr. Langdon: Yes. It is not that that I am concerned about. I agree with you on that point.

What they are referring to is paragraph 5.(3)(a), which makes it possible for a proposed regulation to come into effect immediately if it has been published pursuant to subsection (2) and consultation has taken place. So if I understand correctly the point they are making, if there is therefore a change as a consequence of the consultation and a new regulation is published, that new regulation according to the legislation as it is presently written would come into effect immediately.

• 1725

Basically, the Canadian Bar Association has suggested that in those circumstances there should be at least a 30-day period before the regulations come into effect. In other words, if somebody makes representations but the regulation is changed, and that runs counter to the interests or concerns of some other group, they should have at least 30 days to be able to contact you and indicate that to you.

Mr. Jewett: I think in practice that is probably done anyway, Mr. Langdon. My principal concern, just thinking out loud on this because I have not had an opportunity either to discuss it with the minister, obviously, or to give it any considered thought, is that I would think a delayed period like that would give officials an incentive not to change the regulation. In effect, one would be more tempted to stand pat and not to make a change as a result of the representations. That is a bias that one would not want to put in.

Mr. Langdon: I cannot believe that bureaucrats in our government would not approach a question with a completely open mind, but instead be concerned with saving themselves work. Surely that would not be the case, would it?

Mr. Jewett: I think it is unlikely to be a question of that. But if one were in the circumstance where time did make a difference, if one wanted to bring the regulations into effect fairly expeditiously and one did not want to extend beyond the 90 days, I just suggest that that would be a disincentive to making any change and one would simply go with the regulations notwithstanding that there might be some defect that had been pointed out. This does not strike me as a major point, though it might be something we would want to consider.

Mr. Langdon: Certainly the Canadian Bar Association saw it as the most major point they wished to put before us. I think they had a total of six recommendations that they put before us and they suggested that that was the really critical one. Now, that suggests that certainly it is significant from their perspective. It is probably unfair to ask you to give an assessment at this stage, but I certainly would appreciate it if you could consider that and come back to the committee with a response.

Mr. Jewett: We will do that.

[*Translation*]

crois qu'il est essentiel que ce projet de loi ait la portée la plus vaste possible pour ne laisser aucune solution à ceux qui voudraient blanchir de l'argent.

M. Langdon: Je vous comprends bien, et ce n'est pas ce qui me préoccupe. Je suis d'accord avec vous là-dessus.

Ce qui inquiète l'ABC, c'est l'alinéa 5.(3)a), qui permet à un projet de règlement d'entrer en vigueur immédiatement s'il a été publié conformément au paragraphe (2) et si des consultations ont été tenues. Donc, si je comprends bien, un nouveau règlement élaboré après consultation et publié conformément au paragraphe (2) pourrait entrer en vigueur immédiatement.

L'Association du Barreau canadien estime qu'il devrait y avoir un délai d'au moins 30 jours avant que ce nouveau règlement n'entre en vigueur. Autrement dit, si quelqu'un obtient qu'un texte réglementaire soit modifié, et si cette modification va à l'encontre des intérêts ou préoccupations d'un autre groupe, ce dernier devrait avoir au moins 30 jours pour pouvoir vous communiquer son opinion.

M. Jewett: C'est probablement ce qui se fait déjà en pratique, monsieur Langdon. Ce qui m'inquiète avec cette proposition, et je dois dire que c'est là une réaction à brûle-pourpoint, car je n'ai manifestement pas eu la possibilité d'y réfléchir attentivement ni d'en discuter avec le ministre, c'est que cela risque d'inciter les hauts fonctionnaires à ne pas changer les textes réglementaires. En effet, ils seront alors plus incités à préserver le statu quo, ce qui n'est manifestement pas souhaitable.

M. Langdon: Je n'arrive pas à croire que nos fonctionnaires ne soient pas prêts à aborder un problème de cette nature avec un esprit complètement ouvert, c'est-à-dire que leur seule préoccupation soit de travailler le moins possible. Ce n'est certainement pas cela que vous vouliez dire?

M. Jewett: Non, pas du tout. Je veux simplement dire que s'il était important qu'un texte réglementaire soit publié très rapidement, sans aller au-delà de la période de 90 jours, cette recommandation aurait pour effet de décourager les fonctionnaires d'apporter des changements et de simplement s'en tenir aux règlements existants, même s'ils s'avéraient inadéquats. Je ne crois pas que ce soit là un problème majeur, mais nous devrons bien sûr y réfléchir plus sérieusement.

M. Langdon: C'était en tout cas un problème majeur pour l'Association du Barreau canadien, puisqu'elle a tenu à nous le signaler. Elle nous a proposé six recommandations, en disant que celle-là était la plus importante. Il n'est probablement pas juste de vous demander une réaction définitive à ce sujet, pour le moment, mais je vous serais très reconnaissant d'examiner le problème et de nous communiquer votre réponse.

M. Jewett: Nous le ferons.

[*Texte*]

Mr. McCollum: Perhaps I could make a couple of comments on that. I think their concern is that they not be surprised. In that regard, I think the whole process of issuing these draft regulations—they have been in the public domain since October 25. . . In fact, prior to that there was a long period of consultation with the industries affected. As a result of any consultations during that 90-day consultation period, if anything, the regulations would be changed in favour of those persons making representations.

Mr. Langdon: That is precisely the problem. If somebody makes representations and succeeds in winning the change in regulations and that causes problems for some other group, it seems to me that it is a fair point to ask that there be at least a 30-day period in which that counter-group has the possibility of responding.

• 1730

As I would see the 90-day period working, if this amendment suggested by the CBA is put into effect, in practice it would probably mean a change in regulations that you accepted. You would want to publish in the *Canada Gazette* within a 60-day period instead of within a 90-day period so that there was still 30 days for people who were surprised by this and wanted to respond. It would not necessarily lengthen the period of time out. It would instead give at least that 30-day period for response.

Mr. Jewett: We will certainly take that under advisement, Mr. Langdon, and perhaps we will come back with something. I must say, I am stretching my imagination to think of a situation in what is effectively a record-keeping bill where a concession to one party would have adverse impacts on others.

Mr. Langdon: In the original briefing we received on this legislation, I was assured that everybody was on-side. It was not until we did some telephoning that we found out that in fact everybody was not on-side. The Bar Association in fact was so far off-side that it had passed a national resolution calling on the government to withdraw Bill C-89. It was not until we learned those sorts of things that we discovered there were people who were off-side.

Let me put it this way. I think that you see this, and frankly I see this, as somebody on the finance committee, as essentially a record-keeping bill too. But obviously there are other groups that see other important implications with respect to the justice system in particular, which we, coming at it from an economics perspective, perhaps do not perceive. I think we have to take those considerations seriously if we really are to be certain that the support of those affected is there, because, at least as I interpret the CBA's testimony, if we do not make amendments in the present legislation, they in fact would be opposed to the bill.

Mr. Jewett: We will get back to you on that.

[*Traduction*]

M. McCollum: Puis-je apporter quelques précisions là-dessus? Je crois que l'objectif principal de l'ABC est d'éviter toute surprise. En ce qui concerne l'avant-projet de règlements, il a été publié le 25 octobre, après de vastes consultations auprès des diverses branches concernées. Si des consultations doivent se tenir durant la période de 90 jours, il est probable que les règlements seront modifiés en faveur des personnes qui auront été consultées.

M. Langdon: Et c'est précisément le problème. Si quelqu'un entreprend des démarches auprès du ministère et réussit à faire changer les règlements alors que cela crée un problème pour un autre groupe, il me paraît tout à fait juste de donner à cet autre groupe au moins 30 jours pour réagir.

Si je comprends bien la proposition de l'ABC, conjuguée à la période de 90 jours, elle signifie qu'il s'agirait probablement d'un changement réglementaire que vous auriez accepté. Avec la proposition, vous devriez publier le changement dans la *Gazette du Canada* dans un délai de 60 jours au lieu de 90 jours, de façon à donner encore 30 jours aux autres parties pour pouvoir réagir. Cela n'aurait pas nécessairement pour effet d'allonger la période totale.

M. Jewett: Nous examinerons sérieusement cette recommandation, monsieur Langdon, et nous vous communiquerons notre réaction. Je dois cependant dire que j'ai beaucoup de mal à concevoir une situation dans laquelle un projet de loi concernant seulement la tenue de registres puisse aboutir à faire une concession à certaines parties qui puisse avoir un effet négatif sur d'autres.

M. Langdon: Lors de la première séance d'information organisée au sujet de ce projet de loi, on m'avait donné l'assurance que tout le monde était d'accord. Quelques coups de téléphone nous ont cependant rapidement permis de constater que tel n'était pas le cas. En fait, l'Association du Barreau canadien était tellement loin d'être d'accord qu'elle avait adopté une résolution nationale demandant au gouvernement de retirer le projet de loi C-89. C'est à l'occasion de telles réactions que nous avons constaté que tout le monde n'était pas d'accord.

Parlons franchement. Comme moi, vous considérez que ce projet de loi concerne fondamentalement la tenue de registres. Il y a cependant d'autres groupes qui y perçoivent d'autres conséquences importantes, notamment du point de vue de la justice, auxquelles nous ne sommes peut-être pas sensibles parce que nous abordons la question d'un point de vue purement économique. Si nous voulons vraiment recueillir l'appui de toutes les parties concernées, nous allons devoir tenir très sérieusement compte de ces préoccupations. Si j'interprète bien le témoignage de l'ABC, elle va en fait s'opposer au projet de loi si celui-ci n'est pas modifié conformément à ses recommandations.

M. Jewett: Nous vous communiquerons notre réaction là-dessus.

[*Text*]

Mr. Langdon: When did provincial consultations take place on the legislation?

Mr. LaBrosse: We have been consulting with officials in the provinces, I guess for almost a year now, with respect to this legislation. As members of the committee would know, we have also been involved in discussing with the provinces the financial sector reform that the government has been bringing forward, and we have been in consultations with those same people, because they are the same officials that would be concerned with the issue of record-keeping. So we have had a number of visits to the provinces where this subject has been raised for about a year.

Mr. Langdon: Can I just confirm with you that where governments have changed in the interim period, consultation has taken place after the change has occurred?

Mr. LaBrosse: We have dealt with the officials. They seem to be pretty much the same.

An hon. member: Bob Rae fired all his.

Mr. Langdon: That is what I am asking, basically.

The last question I have is with respect to penalties. We have heard, again from the CBA, a concern with respect to the level of penalties and the suggestion that the penalty levels given are out of line with those in countries like the United States and Australia. Do you have a response to some of those suggestions?

• 1735

Mr. McCollum: Perhaps I could speak to that. First of all it has to be recalled that the offence has to be committed knowingly. The person has to decide deliberately not to keep records. I think that is an important aspect.

Another aspect of it is that in some ways in this legislation there is an analogy with environmental legislation, basically. If somebody is allowing the financial system to be used in a way that is socially detrimental, the penalty should reflect the seriousness of that situation, because we are dealing, after all, with a very serious underlying crime here.

Mr. Langdon: So I take it that you would feel that these penalties are appropriate, despite the fact that they are much higher than in those other jurisdictions?

Mr. McCollum: It must be recalled too that the penalties are maximums. In fact, somewhat ironically, had we not put the half-million-dollar maximum on the indictable offence there would be no maximum, so it seemingly, in fact, would have been without limit.

Mr. Kempling: Will the regulations define cash as the Canadian Bar Association is recommending?

Mr. McCollum: Yes, that is correct.

Mr. Kempling: They will define cash?

Mr. McCollum: Yes.

Mr. Kempling: Mr. Chairman, I have been through this and read all the briefing material. I have spoken to the officials in my office beforehand, and I do not have any more questions.

[*Translation*]

M. Langdon: Quand y a-t-il des consultations provinciales au sujet du projet de loi?

M. LaBrosse: Nous tenons des consultations avec des fonctionnaires provinciaux depuis près d'un an. Comme vous le savez, nous avons également tenu des discussions avec les provinces au sujet de la réforme des institutions financières, proposée par le gouvernement, et ce sont les mêmes représentants provinciaux qui s'occupent de la question des registres. Nous avons donc eu plusieurs occasions de rencontrer les représentants provinciaux à ce sujet depuis un an.

M. Langdon: Pouvez-vous me confirmer que les nouveaux gouvernements qui ont pu être élus depuis lors ont également été consultés?

M. LaBrosse: Nous n'avons traité qu'avec les fonctionnaires, qui ne changent pas avec chaque gouvernement.

Une voix: Bob Rae a mis tous les siens à la porte.

M. Langdon: J'accepte votre réponse.

Ma dernière question porte sur les peines. L'ABC estime que les peines sont trop lourdes, notamment si on les compare à celles prévues dans des pays comme les États-Unis et l'Australie. Que pouvez-vous répondre à ces suggestions?

M. McCollum: Je dois d'abord rappeler qu'une infraction doit être commise sciemment. Il faut que la personne ait décidé délibérément de ne pas tenir de registre. C'est un aspect important du problème.

Dans une certaine mesure, ce projet de loi est analogue à la loi concernant la protection de l'environnement. Si quelqu'un permet une utilisation socialement néfaste du système financier, il faut lui infliger une peine correspondant à la gravité du problème, et il faut bien comprendre que nous parlons ici d'un crime extrêmement grave.

M. Langdon: Donc, vous pensez que ces peines sont appropriées, mêmes si elles sont beaucoup plus lourdes que dans d'autres pays?

M. McCollum: Laissez-moi vous rappeler aussi qu'il s'agit là de maximums. De fait, si nous n'avions pas établi un maximum de un demi-million de dollars il n'y aurait aucun maximum, ce qui signifie que la peine pourrait être beaucoup plus lourde.

M. Kempling: Y aura-t-il dans les règlements une définition de l'argent comptant comme le recommande l'Association du Barreau canadien?

M. McCollum: Oui.

M. Kempling: Ce sera défini?

M. McCollum: Oui.

M. Kempling: Je n'ai pas d'autres questions à poser, monsieur le président, puisque j'ai lu toute la documentation au préalable et que j'ai obtenu toutes les réponses que je voulais jusqu'à présent.

[Texte]

Mr. Speller: I am trying to get a better sense of this bill and really the reasons for it.

I want to know how serious this problem is in Canada. What sort of records do you have, or information do you have about the seriousness of this problem in Canada? Are we a major player, or are we just sort of as is happening around the G-7 table and we are getting involved because we are sitting at the table? Have you identified a real problem here in Canada and therefore this legislation is coming out now?

Mr. LaBrosse: This is a serious problem. Drug trafficking is very serious, and I understand that the committee will be hearing from the RCMP on this issue perhaps tomorrow.

It has been a concern internationally as well as domestically. The G-7 has certainly been focusing their attention on this issue. That is why they established the task force, and it was not very long before the G-7 task force widened it to include a number of other countries that were not part of the G-7. I think 15 or so countries ended up being represented, plus a number of geographic regions.

It involved a lot of work in order to review the kinds of procedures that could be used to discourage drug money laundering through financial institutions, and there were a number of recommendations. We went through the recommendations and looked at the practice in Canada and we found that this was one area where Canada came up a little short. We felt it was important to recommend to ministers that appropriate records be maintained, and so I think that it is a serious problem.

In terms of the details and the extent of that, I think the RCMP would be better placed to try to respond to that question.

Mr. Speller: So you have not seen any statistics or any studies done on how serious it is?

• 1740

Mr. McCollum: Yes, there are a number of studies in terms of the amount of money laundering, but the problem is that, by its very nature, it is difficult to assemble statistics on this issue. The type of number that the G-7 task force was talking about was in the neighbourhood of $85 billion for North America.

Mr. Speller: Was there anything on Canada specifically in that study?

Mr. McCollum: No. But at the same time, I think it has to be remembered that Canada is equally susceptible to the same type of problems as these other countries.

Mr. Speller: I guess the idea of the bill is to make it easier for the RCMP to obtain information. Instead of having to go through a court system to get a search warrant to go into a person's home to get statistical information or to get money-laundering information, they can go to a bank, which has to provide this information. Is that the general idea of the bill?

[Traduction]

M. Speller: J'aimerais pour ma part mieux comprendre ce qui motive ce projet de loi.

Autrement dit, je voudrais me faire une idée de la gravité du problème au Canada. Disposez-vous de registres ou d'information vous permettant de conclure qu'il s'agit d'un problème très grave? N'essayons-nous pas plutôt d'intervenir tout simplement parce que les sept grands l'ont décidé et que nous étions autour de la table à ce moment-là? Avez-vous pu identifier un problème grave en la matière au Canada, justifiant l'adoption de ce projet de loi?

M. LaBrosse: Le problème est grave. Le trafic de drogue est un problème très grave, et je crois comprendre que vous entendrez bientôt, peut-être demain, des représentants de la GRC à ce sujet.

Le problème est grave aussi bien à l'échelle internationale que nationale. Et les sept grands ont décidé de s'y attaquer très sérieusement. Voilà pourquoi ils ont mis sur pied le groupe de travail, et il n'a pas fallu attendre longtemps pour que d'autres pays souhaitent également en faire partie. Je crois qu'il y a eu en fin de compte une quinzaine de pays représentés au sein du groupe de travail, plus un certain nombre de grandes régions.

Le groupe de travail a étudié beaucoup de procédures pouvant être utilisées pour décourager le blanchiment de l'argent de la drogue par les établissements financiers, et il a formulé diverses recommandations. Nous les avons analysées et nous sommes parvenus à la conclusion qu'il y avait des carences dans la structure de répression canadienne, considérant la nature du problème au Canada. Nous avons donc pensé qu'il était important de recommander aux ministres que des dispositions soient prises pour garantir la tenue de registres appropriés, face à un problème très grave.

En ce qui concerne la nature exacte et détaillée du problème, les représentants de la GRC seront beaucoup plus mieux placés que moi pour vous l'indiquer.

M. Speller: Vous n'avez donc pas vu de statistique ou d'étude concernant la gravité du problème au Canada?

M. McCollum: Oui, bon nombre d'études ont été faites sur les montants impliqués dans le blanchiment de l'argent, mais il est difficile de recueillir des statistiques sur la question à cause de la nature de cette activité. Le groupe de travail des sept estime qu'il s'agit d'environ 85 milliards de dollars pour l'Amérique du Nord.

M. Speller: L'étude avait-elle des données précises pour le Canada?

M. McCollum: Non. Par ailleurs, il ne faut pas oublier que le Canada risque autant de rencontrer ce même genre de difficultés que ces autres pays.

M. Speller: Le but du projet de loi est de faire en sorte que la GRC puisse obtenir des renseignements plus facilement. Au lieu de recourir aux tribunaux pour obtenir un mandat de perquisition soit pour fouiller un domicile, soit pour obtenir des renseignements statistiques ou pour obtenir des renseignements sur le blanchiment de l'argent, la GRC peut se rendre dans une banque, qui sera obligée de leur fournir les renseignements. Est-ce bien l'idée maîtresse de ce projet de loi?

[*Text*]

Mr. McCollum: No, that is not quite correct. In terms of access to information, this bill changes nothing. The traditional safeguards in terms of accessed information continue to apply. All this bill does is to ensure that the appropriate records that are needed will be there if in fact an investigation is carried out. But in terms of access to those records, it is still the traditional search warrants.

Mr. Speller: So I take it that it is really not going to mean much to the grandmother who has $10,000. There is no more access to this information from other people or from other government departments. This information will not be shared with any other country.

Mr. McCollum: To get back to your question, no, there is no change in that regard. As Mr. LaBrosse mentioned at the beginning, for the ordinary Canadian this bill will be invisible. As I mentioned previously, in designing the record-keeping requirements, we took into account existing practices as much as possible and tried to key those so that the institutions would not be faced with excessive extra costs. To the extent we can rely on existing information—

Mr. Speller: Do you have any idea what it will cost?

Mr. McCollum: No. In the case of some institutions, I think possibly that number will be very close to zero. It is really filling in gaps, and because we do not know exactly what those are, it is difficult really to be precise about that question.

M. Couture (Saint-Jean): J'aimerais avoir un renseignement technique. À l'article 8, on dit:

> 8. Les poursuites fondées sur l'alinéa 6a) se prescrivent par un an à compter du fait en cause.

À l'alinéa 6a), naturellement, c'est par procédure sommaire. Pourquoi fait-on une distinction au niveau de

"be instituted within, but not after, one year"

dans les procédures sommaires versus une mise en accusation directe? C'est peut-être une procédure juridique que je ne connais pas, mais. . .

M. Yvon Carrière (conseiller juridique, Division du droit fiscal, ministère des Finances): Les accusations par voie de procédure sommaire sont en général moins graves, ce qui explique que, dans les causes moins importantes, on peut s'attendre à ce qu'une période d'un an après la commission de l'infraction soit une période raisonnable.

M. Côté: Si je fais du *money laundering*, si je suis un *pusher* à seulement 25,000$ alors que mon ami Ricardo est un pusher à plusieurs millions de dollars par année, je peux passer par la procédure sommaire tandis que lui sera mis en accusation parce que les sommes sont plus grosses. Est-ce bien cela?

M. Carrière: Le choix de procéder par procédure sommaire ou par mise en accusation appartient à la Couronne. C'est la Couronne qui décide. Il faut dire que le projet de loi ne traite pas du crime de traffic de stupéfiants.

M. Couture: Non, il s'agit de *money laundering*.

[*Translation*]

M. McCollum: Non, pas tout à fait. Ce projet de loi ne change rien en ce qui concerne l'accès à l'information. Les mesures de protection habituelles seront encore en vigueur. Le but de ce projet de loi est plutôt de s'assurer que l'information essentielle soit disponible dans le cas d'une enquête. Quant à l'accès à ces dossiers, il faudra encore obtenir le mandat de perquisition.

M. Speller: Donc cela ne changera rien pour la grand-mère qui a 10,000$. Les ministères et d'autres personnes n'auront pas davantage accès à cette information. Un autre pays n'y aurait pas accès non plus.

M. McCollum: Pour revenir à votre question, non, il n'y aura pas de changement à cet égard. Comme l'a dit M. LaBrosse au début de la séance, ce projet de loi sera invisible pour le simple Canadien. Je vous ai déjà dit que lorsque nous avons étudié la question concernant la tenue de dossiers, dans la mesure du possible, nous voulions garder les mêmes pratiques et nous assurer que les institutions ne devront pas débourser des sommes importantes. Dans la mesure où on peut compter sur l'information existante. . .

M. Speller: Avez-vous une idée des coûts?

M. McCollum: Non. Pour certaines institutions, le coût sera très minime. Il s'agit vraiment de colmater les brèches, et puisqu'on ignore le nombre de carences, il est difficile de vous donner un chiffre précis.

Mr. Couture (Saint-Jean): I would like some information on a technical matter. Section 8 says:

> 8. Proceedings under paragraph 6(a) may be instituted within, but not after, one year after the time when the subject-matter of the proceedings arose.

Obviously, paragraph 6(a) pertains to a summary conviction. Why is there a distinction between

«se prescrivent par un an à compter du fait en cause»?

summary conviction and indictment? Perhaps I am not familiar with that legal procedure, but. . .

Mr. Yvon Carrière (Legal Counsel, Tax Counsel Division, Department of Finance): Summary convictions are usually less serious, which is why a period of one year after committing the offence seems to be a reasonable length of time.

Mr. Côté: If I were involved in money laundering or pushing $25,000 worth of drugs while my friend Ricardo did several millions of dollars worth of pushing per year, I would be tried on summary convictions while he would be tried on indictment because it involves a more substantial amount of money. Is that correct?

Mr. Carrière: It is up to the Crown to choose between a summary conviction or an indictment. I might point out that the Bill does not deal with drug trafficking crimes.

Mr. Couture: No, it deals with money laundering.

[Texte]

• 1745

M. Carrière: Si on omet de garder des dossiers, la Couronne peut juger que ce n'est pas une cause qui mérite une procédure par voie de mise en accusation, c'est-à-dire un jury de 12 personnes. C'est le choix de la Couronne.

M. Couture: Par procédure sommaire, je limite cela à un an. Tout à l'heure, quand je parlais du volume, je ne parlais pas du volume de drogue. Je parlais du volume d'argent que je voulais blanchir.

M. Carrière: Si l'omission est très importante, la Couronne peut toujours procéder par voie de mise en accusation même après le délai d'un an. C'est simplement la procédure simplifiée par voie sommaire...

M. Couture: Qui, elle, est limitée.

M. Carrière: ... qui se prescrit à compter d'un an.

Mr. Langdon: I wonder if you could give us a sense of key areas in which the draft regulations have been changed?

Mr. McCollum: On the first page there will be a definition of "cash". We have not formulated a definition at this point. What is in mind there insofar as Canada is concerned are bank notes issued by the Bank of Canada. We felt that was implicit in the previous regulations, but we would just make that explicit. In addition to that, it would cover the equivalent concept for the currency of other countries.

Turning to section 3 for deposit-taking institutions, trust companies, banks, and the like, there are two things that we are examining there in conjunction with the RCMP and institutional officials themselves. One is the question of branch ledger statements. These are computer printouts that are produced by each branch each day. They are helpful in conducting money-laundering investigations because they are annotated and they provide a guide to other records. Some institutions claim that there are alternative ways of accessing those records, so it is really a question of determining whether in fact those ways are practical and are suitable as far as the police are concerned.

• 1750

Another item in section 3 that we are looking at is customer files. These contain an ad hoc assortment of records, notes, memos, letters, and what have you. The concern of some institutions is that this could take undue storage space. Many of these records are not particularly germane in any event. But it is really a question of being able to draw a line where you do not inadvertently eliminate records that are useful. But again we are looking at that in a sympathetic way. I think the point is that if they are not needed, they will not be there.

Turning then to paragraph 7, again this is a question of making the language somewhat more precise. We intend to change the language: "receives currency on behalf or the benefit of another". This will address, I feel, some of the concerns expressed by the Canadian Bar Association. What we had in mind there from the very beginning were cases where a professional was really acting as a financial intermediary. They were receiving cash, perhaps some of that

[Traduction]

Mr. Carrière: If records are not kept, the Crown can decide the case does not warrant a trial by indictment, that is a 12-member jury. It is up to the Crown.

Mr. Couture: A summary conviction is limited to one year. When I spoke of amount earlier, I was not talking about drugs. I meant the amount of money being laundered.

Mr. Carrière: If a crucial omission is made, the Crown can still proceed by indictment even after the one-year period. A summary conviction is just a simpler procedure.

Mr. Couture: Which has limits.

Mr. Carrière: Which may be instituted within one year.

M. Langdon: Pourriez-vous nous donner une idée des principaux changements au projet de règlements?

M. McCollum: À la première page il y aura une définition de «argent comptant». Nous n'avons pas encore de définition. Il s'agira de billets de banque émis par la Banque du Canada. C'était implicite dans les règlements antérieurs, mais nous voulons le préciser. En outre, cela englobera les devises étrangères.

L'article 3 fait mention de sociétés de crédit, sociétés de fiducie, banques, entre autres. Nous étudions deux aspects qui y ont trait avec des membres de la GRC et des directeurs d'institutions. Premièrement, il y a la question des grands livres des succursales. Chacune en fait un imprimé chaque jour. Ces documents sont utiles pour les enquêtes sur le blanchiment de l'argent car ils sont accompagnés de remarques et servent de documents de référence. Certaines institutions financières prétendent qu'il y a d'autres façons d'obtenir ces renseignements, alors il s'agit vraiment de voir si les méthodes seraient utiles pour le travail de la police.

Autre aspect du problème, les dossiers des clients, mentionnés à l'article 3. Il s'agit de dossiers contenant une multitude de documents, notes, mémorandums, lettres, etc. Or, certains établissements craignent que la conservation de tous ces dossiers ne prenne trop de place, alors que beaucoup des documents en question ne seront d'ailleurs pas particulièrement pertinents. Le problème consiste donc à éviter d'éliminer par inadvertance des dossiers qui pourraient être utiles. Ici encore, nous examinons le problème d'un point de vue favorable. Si les documents ne sont pas nécessaires, on peut penser qu'ils ne seront pas là.

Passons maintenant au paragraphe 7, encore une fois pour rendre les termes un peu plus précis. Nous avons l'intention de changer le texte: «reçoit des devises au nom ou dans l'intérêt d'une autre partie». Je crois que cela répondra à certaines des préoccupations de l'Association du Barreau canadien. Dès le départ, nous voulions tenir compte ici du cas d'un professionnel qui joue en fait le rôle d'intermédiaire financier. Il s'agirait d'une personne recevant

[*Text*]

cash being illegitimate, commingling that with legitimate sources of sums, depositing it in a financial institution, and then it became impossible to distinguish where it was coming from.

The language we changed so that it reflects the notion that in the case, say, of a professional they are acting as an intermediary or conduit. It would not apply to legal fees, for example. We felt that was implicit, I must say, in the previous language, but we would simply make it explicit.

Turning to paragraph 10, this of course was linked back to the section of the act referring to accuracy of information. In the regulations, of course, that was limited to client identification. Effectively what Bill C-9 did in this area was to bring information from the regulations into the act itself. So it limited the determination of accuracy where there was client identification. So this section would be changed appropriately to reflect that. Again, we do not want to be too explicit about the type of records, because institutional practices vary; but it would be something along the lines of undertaking client identification consistent with normal and sound business practices.

Mr. Langdon: So, in fact, in that case it is very much what the Canadian Bar Association has in its amendment.

Mr. McCollum: That is correct.

Mr. Langdon: That is very helpful. Thank you very much.

I will express an opinion here. If it were possible to see the actual drafts of some of those changes in which you have left things slightly uncertain at this point—exactly where you would be drawing the line with respect to customer files and whether it will be possible to see the change with respect to branch ledger statements, to see how you will actually define cash—that would probably provide more security for those of us who have listened to some of the concerns about the legislation. But it certainly seems to me, on the basis of the changes you have pointed out, that you are responding to most of the points that have been put forward to you.

There is just one other point the CBA suggested as a change to the regulations, and perhaps it is in fact something that you are going to incorporate. They suggest in their brief to us that the regulations make it clear that only where a lawyer is involved in a transaction also involving a third party does any obligation to create a record arise.

• 1755

I take it that could well be the question of whether they are being paid their fees or something like that. That is not something they have to keep a record of for purposes of this legislation, while obviously they do for other legislation.

Mr. McCollum: That is correct.

Mr. Langdon: The other point they suggested in terms of a change to the bill itself was that paragraph 5.(3)(b) be deleted, or if not deleted that "substantive change" be at least defined. Have you considered that amendment and whether it is something you would find difficulties with?

[*Translation*]

des espèces, dont une partie pourrait être illégitime, qu'elle mélangerait avec des sommes d'origine légitime en les déposant dans un établissement financier, ce qui ne permettrait plus ensuite de faire la distinction entre les deux catégories d'espèces.

Le texte a été modifié de façon à bien indiquer qu'il s'agit du cas d'un professionnel jouant le rôle d'intermédiaire. Le texte ne s'appliquerait pas aux honoraires juridiques, par exemple. Nous pensions que cela était implicite dans le texte précédent mais nous avons tenu à l'expliciter.

En ce qui concerne le paragraphe 10, il est évidemment relié à l'article de la loi concernant l'exactitude des renseignements. Dans les règlements, on se limitait à l'identification du client. L'effet du projet de loi C-9 dans ce domaine était de faire passer les renseignements des règlements à la loi elle-même. Donc, on limitait la détermination de l'exactitude des renseignements à l'identification du client. Cet article sera changé de manière à refléter cet objectif. Encore une fois, nous ne voulons pas être trop explicites quant à la nature des documents, étant donné que les pratiques peuvent varier d'un établissement à l'autre. Il convient cependant d'établir un mécanisme permettant de s'assurer que l'identification des clients soit cohérente et conforme à des pratiques commerciales normales et saines.

M. Langdon: Cela correspond pour l'essentiel à la modification demandée par l'Association du Barreau canadien.

M. McCollum: C'est exact.

M. Langdon: Très bien. Merci beaucoup.

Je vais maintenant exprimer un avis. Il serait probablement très utile que nous puissions examiner le texte réel de certaines des modifications dont vous avez parlé et pour lesquelles les choses restent encore assez incertaines. Ainsi, nous pouvons encore nous demander où vous allez fixer la limite au sujet des dossiers des clients et s'il sera possible de voir la modification concernant les grands livres des succursales et la définition concrète de l'argent comptant. Malgré cela, si j'en crois les modifications dont vous venez de parler, j'ai le sentiment que vous répondez à la plupart des objections qui ont pu être soulevées.

Il y avait une autre modification que l'ABC avait recommandée, pour les règlements, et je me demande si vous seriez prêts à l'accepter. L'ABC recommande dans son mémoire que les règlements indiquent clairement que c'est seulement dans le cas où un avocat est impliqué dans une transaction impliquant aussi une autre partie qu'il devrait avoir l'obligation de créer un registre.

Si je comprends bien, il faudrait faire la distinction avec le cas où l'avocat reçoit des espèces au titre de ses honoraires, par exemple. Dans un tel cas, il ne serait évidemment pas obligé de tenir un registre pour respecter les dispositions de cette loi, même s'il est évident qu'il devrait le faire en vertu de l'autre loi.

M. McCollum: C'est exact.

M. Langdon: L'Association recommandait également que l'alinéa 5(3)b) soit supprimé ou que l'on accepte au moins de définir exactement l'expression «modification de fond». Avez-vous envisagé un tel amendement ou s'agit-il là d'une proposition qui vous cause des difficultés?

[*Texte*]

Mr. McCollum: We have not considered that up to this point. My understanding, however, is that this is fairly standard syntax in bills of this kind. What we had in mind there of course is a change that is simply cosmetic or that really does not change the record-keeping requirements in any substantial way at all.

Mr. Kempling: I have a short question—I am sure you have an answer to it—and that is that a gentleman I knew several years ago was involved in a bankruptcy and he wanted to shelter some of his cash so it would not be seized by the courts and the trustee, so he sent the money to the Department of National Revenue to put in against his account in the department's income tax account.

What access do you have to that sort of record, given the confidentiality of income tax records? I happen to know that the trustee in bankruptcy was not able to get the money back from Revenue. It had to go back to the individual, and they were not able to get it back. I am just wondering: $10,000 is not very much money, but if someone could do that, would you be able to recover it?

Mr. Jewett: I think that is an income tax question.

Mr. Kempling: It is outside your jurisdiction.

The Chairman: I thank the witnesses.

The next meeting will be tomorrow afternoon, in room 269, West Block, at 3.30 p.m. The witness will be the RCMP. It will be a meeting that is open to the public.

This meeting stands adjourned to the call of the chair.

[*Traduction*]

M. McCollum: Nous n'avons pas encore examiné ce problème. Je crois cependant comprendre que cette expression est relativement standard dans des projets de loi de cette nature. Nous voulions évidemment parler ici de modifications qui sont simplement superficielles ou qui ne changent pas fondamentalement les exigences relatives à la tenue de registres.

M. Kempling: Je voudrais vous poser une brève question, à laquelle je suis sûr que vous avez une réponse. J'ai connu il y a quelques années quelqu'un qui était en faillite et qui voulait mettre une partie de ses espèces à l'abri pour qu'elles ne puissent être saisies par les tribunaux ou par le syndic de faillite. Sa solution a été d'envoyer l'argent au ministère du Revenu national, pour le porter au crédit de son compte d'impôt sur le revenu.

Etant donné le caractère confidentiel des dossiers de l'impôt, pouvez-vous avoir accès à ce type d'information? Il se trouve que le syndic chargé de régler cette faillite n'avait alors pas réussi à récupérer l'argent de Revenu Canada. Il ne pouvait le faire qu'en s'adressant à la personne concernée qui a évidemment refusé. Certes, 10,000$ ne représentent pas une grosse somme mais, si quelqu'un agissait comme cela, pourriez-vous récupérer l'argent?

M. Jewett: C'est une question qui concerne l'impôt sur le revenu.

M. Kempling: Elle n'est donc pas de votre ressort.

Le président: Je remercie les témoins.

Nous tiendrons notre prochaine réunion demain après-midi, à 15h30, dans la salle 269 de l'édifice de l'Ouest. Nos témoins seront alors des représentants de la GRC. Ce sera une séance publique.

La séance est levée.

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WITNESSES

From 4:15 to 5:00 p.m.:

From the Canadian Bar Association:

Terence Wade, Senior Director, Legal and Governmental Affairs;

Robin Geller, Research Officer.

From 5:00 to 6:00 p.m.:

Officials from the Department of Finance:

Mark Jewett, Q.C., Assistant Deputy Minister (Justice);

James McCollum, Chief, Industry Analysis & Relations Section, Financial Institutions Division;

Yvon Carrière, Legal Counsel, Tax Counsel Division;

Ray LaBrosse, Director, Financial Institutions Division.

TÉMOINS

De 16:15 à 17 heures:

De l'Association du Barreau canadien:

Terence Wade, directeur général, Affaires juridiques et gouvernementales;

Robin Geller, recherchiste.

De 17 heures à 18 heures:

Du ministère des Finances:

Mark Jewett, c.r., sous-ministre adjoint (Justice);

James McCollum, chef, Analyse de l'industrie et Section des relations, Division des institutions financières;

Yvon Carrière, conseiller juridique, Division du droit fiscal;

Ray LaBrosse, directeur, Division des institutions financières.

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June 12, 1991 [Legislative Committee F on Bill C-9]

[*Texte*]

EVIDENCE

[*Recorded by Electronic Apparatus*]

Wednesday, June 12, 1991

• 1535

The Chairman: I call this meeting to order. This is the legislative committee on Bill C-9. We are hearing witnesses. Today we have the deputy commissioner of the Royal Canadian Mounted Police, J.L.G. Favreau. Mr. Favreau, please, you have a presentation.

Deputy Commissioner J.L.G. Favreau (Operations, Royal Canadian Mounted Police): Thank you, Mr. Chairman.

J'aimerais tout d'abord présenter les gens qui m'accompagnent. Voici le commissaire adjoint Marcel Coutu, responsable de notre Programme de la police des drogues; et voilà l'inspecteur Bruce Bowie, responsable de la Section des enquêtes économiques antidrogue. On le considère notre spécialiste dans le domaine. Voici également le commissaire adjoint Normand Doucette, responsable de notre Direction de la police économique.

Je réalise, monsieur le président, que tout le monde a une copie de mon document. Est-ce que vous voulez que j'en fasse quand même la lecture.

The Chairman: There are only three pages, so I would suggest we go ahead.

D/Commr Favreau: Thank you. Mr. Chairman and members of the committee, on behalf of the Royal Canadian Mounted Police I wish to thank you for the opportunity of appearing before you today to discuss this important legislative proposal.

The principal focus of our drug enforcement effort is directed against organized criminal groups which are active in the importation and distribution of large quantities of illicit drugs within Canada. The scope of the drug trade is international. The attack against powerful drug organizations that extend across international boundaries presents a unique challenge to the enforcement agency of any country.

Despite the hundreds of millions of dollars expended on world-wide enforcement effort over the last several decades, the international drug trade has continued to flourish, with crime groups growing more powerful. There are strong indications that the drug problem in our country has not yet reached its peak.

Canadian seizures of illicit drugs have reached unprecedented levels. During the last 20-month period, over 96,000 kilograms of cannabis were seized in Canada, compared to a total of 58,000 kilograms during the previous 15-year period.

The incidence of cocaine seizure is increasing at an even more dramatic rate. Thus far in 1991, we have seized 779 kilograms of cocaine, which is more than the total of any previous year. Additionally, since 1985 nearly 5,000 kilograms of cocaine en route to Canada have been seized by foreign states. Despite seizures of this magnitude, we continue to experience full availability of illicit drugs throughout Canada at lower prices, increased purity and in greater volume.

[*Traduction*]

TÉMOIGNAGES

[*Enregistrement électronique*]

Le mercredi 12 juin 1991

Le président: La séance est ouverte. Nous formons le comité législatif chargé d'étudier le projet de loi C-9. Nous allons entendre des témoins. Aujourd'hui, nous entendrons le sous-commissaire J.L.G. Favreau de la Gendarmerie Royale du Canada. Je crois savoir que vous avez un texte, monsieur Favreau.

Le sous-commissaire J.L.G. Favreau (Police opérationnelle, Gendarmerie Royale du Canada): Merci monsieur le président.

I would like to introduce the officials who are here with me today: Marcel Coutu, the assistant commissioner, who is responsible for our Drug Enforcement Branch; inspector Bruce Bowie, in charge of the Anti-Drug Profiteering Section, our specialist in this field; deputy-commissioner Normand Doucette, in charge of the Economic Crime Directorate.

I realize that you all have a copy of my text, Mr. Chairman. Do you want me to read it nonetheless?

Le président: Je vous en prie, votre texte n'a que trois pages.

S.-comm. Favreau: Merci. Monsieur le président, membres du comité, je voudrais d'abord vous remercier, au nom de la Gendarmerie Royale du Canada, de m'avoir fourni l'occasion de vous adresser la parole aujourd'hui sur cet important projet de loi.

Dans ses efforts visant à réprimer les problèmes de la drogue, la Gendarmerie s'intéresse plus particulièrement aux organisations criminelles qui se livrent à l'importation et à la distribution de grandes quantités de drogues illicites au Canada. Le trafic des stupéfiants est un commerce d'envergure internationale, et la lutte contre les puissantes organisations de trafiquants qui débordent les frontières nationales offre un défi unique aux forces de l'ordre de tous les pays.

Malgré les centaines de millions de dollars qui ont été dépensés pour vaincre ce fléau au cours des dernières décennies, le trafic international des stupéfiants n'a pas cessé de prospérer, et les groupes de criminels sont encore plus puissants qu'auparavant. Ici, au Canada, on pense que le problème de la drogue n'a pas encore touché son point culminant.

Les saisies canadiennes de drogues illicites ont atteint de nouveaux sommets. Dans les 20 derniers mois, plus de 96,000 kilogrammes de cannabis ont été saisis au Canada, contre un total de 58,000 kilos au cours des quinze années précédentes.

La fréquence des saisies de cocaïne augmente à un rythme encore plus alarmant. Ainsi, la Gendarmerie a déjà saisi 779 kilogrammes de cette drogue jusqu'à maintenant en 1991, soit plus que pendant toute autre année. En outre, depuis 1985, près de 5,000 kilos de cocaïne à destination du Canada ont été interceptés par des États étrangers. Malgré ces coups de filet de la police, les drogues continuent d'abonder au pays, et on peut se les procurer à meilleur marché, en plus grande quantité et à des niveaux de pureté plus élevés.

[*Text*]

The profits available from the traffic of illicit drugs represent a double-edged threat to the success of conventional enforcement measures. On the one hand, the potential for profit is a motivating factor which encourages new entrants to the drug trade. On the other hand, a criminal organization with accumulated financial resources is able to finance sophisticated importation and distribution networks, as well as being able to absorb periodic enforcement actions. As a result, since 1981 the RCMP has focused on attacking the profits derived from the drug trade as well as the drug offences.

• 1540

Un aspect essentiel du trafic organisé des stupéfiants est le recyclage de l'argent, un procédé qui consiste à transformer l'argent liquide provenant d'activités illicites de manière à en dissimuler l'origine, la propriété et tout autre facteur potentiel incriminant. Pour ce faire, ces activités recourent bien souvent à des moyens assez subtils dont le transfert de l'argent dans des refuges fiscaux à l'étranger afin de bien brouiller les pistes.

Une enquête menée dernièrement par notre service sur une affaire importante a révélé que des membres désignés de l'organisation visée s'occupaient exclusivement du recyclage de narcodollars. Une chaîne de 47 sociétés établies ici et dans six pays étrangers avait été constituée pour faciliter le déplacement des grosses sommes d'argent. Le groupe avait ainsi blanchi plus de 100 millions de dollars sur une période de quatre ans. Si un stratagème d'une telle envergure est plutôt inhabituel, on découvre en revanche des systèmes de recyclage plus ou moins élaborés à tous les niveaux du commerce de la drogue. En l'absence de preuves documentaires suffisantes établissant l'origine de l'argent, les poursuites intentées dans des cas semblables sont pratiquement vouées à l'échec.

On associe beaucoup le recyclage de l'argent au trafic des stupéfiants, mais je pense qu'il importe de noter que cette activité est aussi courante dans toute forme de criminalité organisée. L'aptitude de retracer les fonds découlant d'activités criminelles, telles que la fraude, permettra éventuellement de restituer aux victimes les biens qui leur ont été subtilisés.

Nos enquêtes sur le recyclage de l'argent ont souffert d'un manque de preuves documentaires suffisantes pour intenter des poursuites. Si nous jouissons d'une excellente collaboration de la part des institutions bancaires et de dépôts, les dossiers des transactions effectuées couramment ne sont pas toujours conservés. La destruction prématurée de ces dossiers peut échapper à l'instruction d'une affaire qui s'annonçait prometteuse. L'inclusion, dans le projet de loi C-9, d'exigences uniformes relativement à la conservation des dossiers financiers constitue une mesure encourageante.

Outre la question de la conservation des dossiers existants, le manque de rigueur en matière de tenue de dossiers dans certains secteurs financiers pose également certains problèmes. On a remarqué notamment que les

[*Translation*]

Les profits tirés du trafic de stupéfiants compromettent doublement le succès des mesures de répression conventionnelles: d'une part, l'appât du gain est un facteur incitatif certain pour les criminels dans l'âme; d'autre part, l'organisation criminelle qui a su accumuler des richesses est en mesure de financer des réseaux d'importation et de distribution élaborés, et aussi d'absorber des pertes périodiques attribuables aux actions policières. La GRC a donc résolu, depuis 1981, de s'attaquer aux profits générés par le trafic des stupéfiants et les autres infractions liées aux drogues.

An essential aspect of the organized drug trade is money laundering. The process whereby cash from illegal activities is converted to an alternate form in a manner that conceals its origins, ownership, or other potentially incriminating factors. Criminal organizations often employ sophisticated techniques to accomplish this, including moving monies through several off-shore financial havens in an effort to conceal the audit trail of the money flow.

A recent major drug case investigated by our force uncovered the fact that specific members of the trafficking organization were delegated solely to the process of laundering the drug monies. An elaborate series of 47 interlocking corporations established here and in six foreign jurisdictions was designed to facilitate the movement of large sums of money. In excess of $100 million was laundered by this group over a four-year period. While the magnitude of this particular case makes it relatively unusual, we frequently encounter money-laundering schemes of varying degrees of sophistication at all levels of the drug trade. Without the availability of sufficient documentary evidence to demonstrate the monetary flow, effective prosecutions of such offences are impossible.

While discussions with respect to the money laundering problem have tended to focus on the drug trade, I think it is important that this activity is also prevalent in relation to enterprise crime offences. The ability to effectively to trace the flow of funds generated from offences such as fraud will ultimately lead to greater opportunities to provide restitution to victims of such crimes.

In our efforts to pursue money laundering investigations, we have encountered difficulties with respect to the availability of sufficient documentary evidence to support an eventual prosecution. While we enjoy an excellent co-operative relationship with banks and other deposit-taking institutions, the records of transactions created during the course of regular business are not retained on a consistent basis. Premature destruction of such records may preclude prosecution of an otherwise promising case. The inclusion within this bill of uniform requirements for the retention of financial records is an encouraging development.

In addition to the issue of the retention of existing records, the lack of any record-keeping requirements within certain sectors of the financial industry has also created problems. We have noticed a significant increase in the

[*Texte*]

criminels faisaient un usage accru de maisons de change plus modestes qui souvent ne gardent aucun dossier sur les transactions effectuées ou sur leurs clients. Ces commerces servent d'intermédiaires entre l'élément criminel et le système bancaire conventionnel. Je suis très heureux de voir que le projet de loi C-9 traite de la constitution de dossiers appropriés dans tous les secteurs pertinents.

L'usage accru des maisons de change et de certaines professions afin de faciliter le blanchissage des produits de la criminalité coïncidait avec l'intensification des efforts déployés par les banques canadiennes afin de relever les transactions douteuses. Cela démontre que les organisations criminelles changeront inévitablement leur méthode de recyclage afin d'échapper au contrôle législatif. Les modifications à la réglementation prévues dans ce projet de loi, afin de réagir rapidement à l'évolution de la criminalité, constitue une initiative importante.

We were pleased to have been afforded the opportunity to participate fully in the discussions that resulted in Bill C-9. We look forward to continuing this process with respect to a number of other important issues concerning the improvement of our ability to address the money laundering problem in Canada. Of significant benefit to law enforcement would be measures providing for increased reporting of suspicious transactions by all sectors of the business and financial communities. I appreciate that this is a complex legislative issue, and we look forward to participating in future discussions toward this end.

This bill appears to be a very worthwhile legislative initiative that should improve our effectiveness in attacking the proceeds generated by organized drug trafficking and other profitable criminal endeavours. By establishing procedures for the creation and retention of records of financial transactions, it will ensure that the appropriate evidence is available to support prosecution.

Merci, monsieur le président.

The Chairman: Thank you, Commissioner. The first questioner will be Mr. Rideout, then Mr. Blackburn.

Mr. Rideout (Moncton): We have not really been presented with a lot of detail to indicate that money laundering is a major problem in Canada. Have you statistics or background data that can give us a clear indication that money laundering is a major problem and a major crime in Canada?

• 1545

D/Commr Favreau: One of the examples we stated briefly in the remarks I just made refers to a very important investigation. We anticipated that you might be interested in those kinds of details and Inspector Bowie has figures he can share with you.

[*Traduction*]

criminal use of small currency exchange houses, many of which maintain no records whatever of individual transactions or customers. In effect, these businesses serve as intermediaries between the criminal and the conventional banking sysem. I am very pleased to see that this bill addresses the issue of the creation of appropriate records in all relevant areas.

The increased use of currency exchanges and certain professions to facilitate laundering of criminal proceeds coincided with the hightened efforts of Canadian banks to indentify suspicious transactions. This exemplifies the fact that criminal organizations will inevitably alter their money laundering methods in order to circumvent legislative controls. Facilitating regulatory changes within this bill to permit relatively rapid responses to a changing criminal environment is an important initiative.

Nous sommes heureux d'avoir pu participer activement aux discussions concernant le projet de loi C-9, et nous espérons faire de même relativement à d'autres questions importantes liées à l'amélioration de notre capacité de solutionner le problème du recyclage de l'argent au Canada. La force publique profiterait grandement de mesures qui obligeraient tous les secteus du milieu des affaires et des finances à dénoncer les transactions douteuses. Je comprends qu'il s'agit là d'une question législative complexe, et j'attends avec intérêt les prochaines discussions sur le sujet.

Ce projet de loi me semble être une mesure législative fort valable, qui devrait relancer, avec plus d'efficacité, la lutte contre les profits générés par le commerce organisé de la drogue et les autres activités criminelles lucratives. En définissant des modalités pour la création et la conservation des dossiers sur les transactions financières, il garantira l'existence de preuves documentaires pertinentes aux fins des poursuites.

Thank you, Mr. Chairman.

Le président: Merci, monsieur le sous-commissaire. La première question sera posée par M. Rideout, suivie de M. Blackburn.

M. Rideout (Moncton): Nous aimerions savoir dans quelle mesure le blanchiment de l'argent constitue un problème grave au Canada: avez-vous des détails à ce sujet? Avez-vous des chiffres quelconques qui peuvent démontrer clairement que le blanchissage de l'argent est un problème important et un crime important au Canada?

S.-comm. Favreau: L'un des exemples que j'ai mentionné brièvement dans mes remarques préliminaires est lié à une enquête très importante. Nous avions prévu que vous seriez intéressé à connaître des détails de ce genre, et l'inspecteur Bowie a apporté quelques chiffres qu'il peut vous donner.

[*Text*]

Inspector Bruce Bowie (Officer-in-charge, Anti-Drug Profiteering Section, Drug Enforcement Directorate, Royal Canadian Mounted Police): It is very difficult to provide any kind of a definitive assessment of the magnitude of money laundering. We observe individual investigations involving many tens of millions of dollars. I do not have empirical data as to the magnitude, but I can give you some anecdotal indications.

For example, in one case two years ago we observed a single small foreign currency exchange with premises not much larger than this room transact over $150 million in an 18-month period. We have seen individual investigations that we are conducting involving the transfer within Canada or through Canada of amounts in the tens of millions of dollars. What we are seeing gives us reason to believe that certainly it involves over a billion dollars per year in Canada.

Mr. Rideout: This is the type of information that is helpful to justify this legislation.

The witnesses for the Justice Department yesterday indicated that the thrust of this legislation is not aimed at identifying people who may be involved in money laundering as much as to aid in the conviction of those individuals by preserving the records. Is this also your view of the legislation?

D/Commr Favreau: Yes, that is correct. We are looking more at having a paper trace. Where infractions are being committed, you are able to go back and investigate using the documents.

Mr. Rideout: Would there be any advantage in using some of the information in actually determining people who should be investigated or you do not see this as going to facilitate that?

D/Commr Favreau: I do not think we would have the time and the resources to use this legislation in such a mode. That would be more looking for new investigations and I do not think we could do that.

Mr. Rideout: We also are given to believe that arising out of the G-7 meetings and the task force on money laundering internationally there is a design or an intent to exchange information with other foreign governments. Will you be involved in this aspect?

If I could, I could read it to you. It came out of the American situation. It says that

> The purposes of negotiations under this subsection are—(A) to reach one or more international agreements to ensure that foreign banks and other financial institutions maintain adequate records of large United States currency transactions, and (B) to establish a mechanism whereby such records may be made available to United States law enforcement officials.

Are you involved in an exchange with the Americans and other foreign governments with this same idea in mind?

[*Translation*]

L'inspecteur Bruce Bowie (officier responsable, Section d'enquête sur les profits des trafiquants, Direction de la police des drogues, Gendarmerie royale du Canada): On peut très difficilement donner une évaluation précise de l'importance du phénomène. Il y a des enquêtes individuelles qui sont menées sur des opérations impliquant des dizaines de millions de dollars. Je ne peux vous donner de chiffres précis quant à l'ampleur de ces opérations, mais je peux vous citer quelques cas qui vous en donneront une idée.

Par exemple, il y a deux ans, nous avons observé qu'une petite maison de change, dont le bureau n'était pas tellement plus grand que la salle où nous nous trouvons, avait transigé pour une valeur de 150 millions de dollars sur une période de 18 mois. Certaines enquêtes individuelles nous ont permis d'observer le transit, à l'intérieur du Canada ou par le Canada, de montants représentant des dizaines de millions de dollars. Tout nous porte à croire que ces opérations s'élèvent sûrement à un milliard de dollars par année au Canada.

M. Rideout: C'est un renseignement utile pour justifier l'adoption de cette loi.

Les témoins du ministère de la Justice, que nous avons reçus hier, ont indiqué que le but de cette loi n'est pas tellement d'identifier les gens qui peuvent être impliqués dans des opérations de blanchissage d'argent, comme de faciliter, surtout, la mise en accusation de ces personnes en prévoyant la préservation des documents pertinents. Etes-vous aussi de cet avis?

S.-comm. Favreau: Oui, c'est juste. Nous tenons davantage à pouvoir utiliser une piste documentaire. Lorsque des infractions sont commises, nous pouvons alors remonter les événements et enquêter à l'aide des documents.

M. Rideout: Ce projet de loi offrirait-il aussi l'avantage, avec l'aide des renseignements qui sont préservés, d'identifier les gens au sujet desquels il faudrait faire enquête, ou ne lui voyez-vous pas cette utilité?

S.-comm. Favreau: Je ne pense pas que nous aurions ni le temps ni les ressources nécessaires pour utiliser cette loi à cette fin. Nous ne ferions que découvrir de nouvelles enquêtes à effectuer, et je ne pense pas que nous pourrions nous le permettre.

M. Rideout: Il semblerait aussi qu'il est ressorti des réunions du Groupe des sept et du groupe d'étude sur le blanchiment international de l'argent qu'il existe une intention d'échanger des renseignements avec d'autres gouvernements étrangers. Contribuerez-vous à ces échanges de renseignements?

Si vous me le permettez, je vais vous lire ceci. Ce sont des recommandations qui ont été faites en raison de la situation qui prévaut aux Etats-Unis. On dit que:

> Le but des négociations qui sont entreprises dans ce groupe sont—(A) de conclure un ou des accords internationaux visant à faire en sorte que les banques étrangères et les autres institutions financières conservent des dossiers adéquats relativement aux opérations de change importantes effectuées aux Etats-Unis, et (B) d'établir un mécanisme qui permettra de mettre ces dossiers à la disponibilité des autorités américaines compétentes.

Echangez-vous des renseignements avec les Américains et d'autres gouvernements étrangers dans ce contexte?

[*Texte*]

D/Commr Favreau: We are indeed involved with several governments, and I think Mr. Coutu, who has been traveling extensively on drug money laundering and drug anti-profiteering matters, might want to elaborate a little bit more on that.

Assistant Commissioner J.J.M. Coutu (Director of Drug Enforcement, Royal Canadian Mounted Police): Indeed, one of the key documents behind the answer to your question is really the United Nations Convention that was signed in 1988 in Vienna by which the signatories agreed to exchange information.

If you wish to discuss some of the details of the convention, we could perhaps do that, but in addition, to be more specific, Canada has concluded a number of mutual legal assistance treaties with other countries, and via this process as well there are undertakings by which we would exchange information.

• 1550

Mr. Rideout: So that information gathered under Bill C-9 could be traded or exchanged with other foreign law enforcement agencies?

A/Commr Coutu: It could. It would also help us fulfil our obligations under the agreements Canada has concluded.

Mr. Rideout: And we in turn might be getting some information from other foreign law enforcement agencies as well?

A/Commr Coutu: That is an ongoing process. We do that all the time.

The Chairman: Thank you, Mr. Rideout. Mr. Blackburn.

Mr. Blackburn (Brant): I welcome our witnesses here today. I think this is a very important piece of legislation. It is not a controversial one, at least not from my point of view.

I have a couple of questions. Are there any countries that even this kind of legislation will not help us improve relations with in terms of co-operation? Are there countries that are simply not co-operating in this paper trail or paper chase we could be embarking on?

D/Commr Favreau: I will give a general answer and maybe some of my colleagues would be more specific.

Through the Interpol we have a lot of exchange with more than 150 countries. The thrust of each country seems to be going after the moneys and exchange of information in that aspect. However, laws vary with different countries and unfortunately, sometimes it is difficult to be able to continue one investigation into another country. But again, I have two very experienced confreres with me, Monsieur Doucette and Monsieur Coutu, and they might want to add to that answer.

Mr. N. Doucette (Director, Economic Crime, Royal Canadian Mounted Police): In some countries, because of the legislation relating to the banking system, the evidence has not been as forthcoming as possible. However, we are

[*Traduction*]

S.-comm. Favreau: Nous travaillons, en effet, de concert avec plusieurs gouvernements, et je pense que M. Coutu, qui a rencontré bien des gens de par le monde pour discuter du blanchissage de l'argent et d'autres questions connexes, pourrait vous en dire un peu plus long là-dessus.

Le commissaire adjoint J.J.M. Coutu (directeur de la police des drogues, Gendarmerie royale du Canada): En effet, l'un des principaux documents à cet égard est la convention des Nations unies signée à Vienne, en 1988, par laquelle les signataires s'engagent à échanger des renseignements.

Si vous voulez discuter de certains des détails de la convention, nous le ferons volontiers, mais en outre, plus précisément, le Canada a conclu de nombreux traités d'assistance mutuelle à caractère juridique avec d'autres pays, et ces traités nous permettent aussi d'échanger des renseignements.

M. Rideout: Donc, ces renseignements que permet de recueillir le Projet de loi C-9, pourraient être échangés avec des autorités de pays étrangers?

Comm. adj. Coutu: Oui. Cela nous aiderait aussi à respecter les obligations que nous avons en vertu des accords que le Canada a conclus.

M. Rideout: Et, nous pourrions aussi obtenir des renseignements de ces autorités étrangères?

Comm. adj. Coutu: C'est un processus continu. Cela fait partie de nos activités courantes.

Le président: Merci, monsieur Rideout. Monsieur Blackburn.

M. Blackburn (Brant): Soyez les bienvenus, messieurs. Cette loi me paraît très importante. Elle n'est pas controversée, en tout cas, pas pour moi, personnellement.

J'ai une couple de questions à vous poser. Y a-t-il des pays avec lesquels une loi de ce genre ne nous permettra pas d'améliorer les relations que nous avons déjà sur le plan de la collaboration? Y a-t-il des pays qui refusent tout simplement de collaborer sur ce plan?

S.-comm. Favreau: Je vais vous donner une réponse plutôt générale, et peut-être que mes collègues pourront être plus précis.

L'Interpol nous permet d'échanger de nombreux renseignements avec plus de 150 pays. Chaque pays semble s'acharner sur l'argent illicite du trafic des stupéfiants, et échange des renseignements à cet égard. Toutefois, les lois sont différentes dans certains pays et, malheureusement, il arrive parfois qu'il soit difficile de poursuivre une enquête dans un autre pays. Mais j'ai avec moi deux confrères très versés en la matière, M. Doucette et M. Coutu, qui ont peut-être des choses à ajouter.

M. N. Doucette (directeur, Direction de la police économique, Gendarmerie Royale du Canada): Dans certains pays, les lois régissant le système bancaire freinent quelque peu la communication des renseignements utiles. Toutefois,

[*Text*]

trying to bypass that with the mutual agreement treaties we are now signing more and more with various countries, even as recently as in Switzerland, where they are now realizing the importance of the exchange of information. We are going through the growing pains, but we are getting there.

Mr. Blackburn: Is it permissible for me to ask, and is it permissible for you to answer, which countries are recalcitrant, which countries are deliberately obstructing? It is my uneducated guess that there are perhaps several countries that will not co-operate at all, and therefore this kind of legislation really will not help in terms of offshore investigations. I will name them: the Cayman Islands, possibly the Bahamas, possibly Bermuda—I am not certain—countries like that, which we hear about at least anecdotally.

D/Commr Favreau: I think it is fair to say that from our perspective this bill is not for other countries; it is really for our record here in Canada. It does not change anything, whether positive or negative, with our relations with other countries. The countries you have named do represent some problems. This will not help us change any of those, no.

Mr. Blackburn: To the best of your knowledge, do countries such as those I mentioned play a leading role or an important role in the laundering of illegal profits made from the illicit drug trade here in Canada?

Insp Bowie: Yes, sir. It varies. Different individual trafficking groups have been observed to favour different jurisdictions. Certainly the country that represents a perception of being the weakest link in the international chain will attract attention. We see a lot of drug moneys being laundered through most of the so-called financial havens, including the countries you have mentioned.

Mr. Blackburn: Are there any Canadian institutions currently, or have there been in the past, suspected of being involved directly or indirectly in the laundering of money here in Canada? Without naming them. . .

Insp Bowie: We have a number of specific industries and specific businesses within those industries that have been identified as significant players. However, I would also mention that in terms of the chartered banks, for example, it is not the case that there is an individual institution in that league—

• 1555

Mr. Blackburn: Trust companies or money-lending institutions, some of the down-scale ones.

Insp Bowie: We are talking about some very low-scale organizations.

Mr. Blackburn: And you feel that Bill C-9 will greatly enhance your capability of charging that kind of institution or individual?

D/Commr Favreau: "Charging" might be a bit too strong, but it will certainly—

Mr. Blackburn: Investigating.

D/Commr Favreau: Yes. It will certainly give us a tool to force them to have records and keep records.

[*Translation*]

nous tentons de contourner cette difficulté à l'aide de traités d'assistance mutuelle que nous arrivons à conclure de plus en plus souvent avec divers pays, et même dernièrement, avec la Suisse, où l'on comprend maintenant l'importance d'échanger des renseignements. Nous ne sommes pas encore au bout de nos peines, mais nous progressons.

M. Blackburn: Puis-je oser vous demander quels pays sont récalcitrants, quels pays refusent délibéremment de collaborer? Sans trop vraiment savoir, je suppose qu'il y a peut-être plusieurs pays qui ne voudront pas collaborer du tout, et une loi de ce genre ne facilitera pas vraiment les enquêtes à l'étranger. Je pense aux Îles Caïmans, aux Bahamas, peut-être aux Bermudes—je ne sais pas trop—des pays comme ceux-là au sujet desquels on entend raconter bien des choses.

S.-comm. Favreau: On peut dire, à juste titre, que ce projet de loi n'aidera pas tellement les choses par rapport aux autres pays; il est vraiment destiné à faciliter nos enquêtes, ici, au Canada. Il n'a aucun effet positif ou négatif pour ce qui est de nos relations avec les autres pays. Les pays que vous avez nommés posent certains problèmes. Ce projet de loi ne nous aidera pas à les changer, non.

M. Blackburn: Selon vous, les pays comme ceux que j'ai mentionnés jouent-ils un rôle important dans le blanchissage des profits illégaux du trafic illicite des stupéfiants au Canada?

Insp. Bowie: Oui, monsieur. A divers degrés, toutefois. Nous avons observé que divers groupes de trafiquants favorisent des pays différents. Il est évident que le pays qu'ils perçoivent comme le lien le plus faible dans la filière internationale les intéressera particulièrement. Il y a beaucoup d'argent provenant du trafic des stupéfiants qui est blanchi dans la plupart des paradis fiscaux, y compris les pays que vous avez mentionnés.

M. Blackburn: Soupçonne-t-on, aujourd'hui, ou a-t-on déjà soupçonné des institutions canadiennes de participer directement ou indirectement au blanchissage de cet argent au Canada? Sans les nommer. . .

Insp. Bowie: Nous avons identifié de nombreuses entreprises qui semblent participer d'une manière importante au blanchissage de cet argent. Toutefois, aucune de nos banques à Charte ne semble être du nombre. . .

M. Blackburn: Il s'agit plutôt de sociétés de fiducie ou d'institutions de prêt, au bas de l'échelle.

Insp. Bowie: Nous parlons ici de très petites institutions.

M. Blackburn: Et vous pensez que le projet de loi C-9 va grandement vous aider à porter des accusations contre ce genre d'institution ou de particulier?

S.-comm. Favreau: «Porter des accusations», c'est beaucoup dire, mais il nous aidera sûrement. . .

M. Blackburn: À enquêter.

S.-comm. Favreau: Oui. Il va certainement nous donner un instrument qui nous permettra de les obliger à tenir et conserver des dossiers.

[*Texte*]

Mr. Blackburn: How did you hit on the figure of $10,000? Is that an international minimum figure that is used?

A witness: It is in the regulations.

Mr. Blackburn: I guess the government did that. Maybe I am asking the wrong people that. The Department of Justice, is it?

Mr. William Kempling (Parliamentary Secretary to President of the Treasury Board and Minister of State (Finance)): The regulations.

What kind of a group do you have within the RCM Police? How are they trained to handle this kind of rather sophisticated commercial crime? Are there chartered accountants? Are there people trained in business, commerce, and banking who are acting as police officers in the RCM Police?

D/Commr Favreau: I think Mr. Doucette will be very pleased to have a chance to answer this, because a great number of members, if not all of them, have a BA in economics, administration, *comptable*, etc. On top of that, we give them proper training. Those who do not have a university degree we send on courses, etc. But Mr. Doucette might want to elaborate a bit more.

Mr. Doucette: Yes, it is true that most of our investigators have degrees either in commerce, law, or business administration. Also, we have a great exchange program with the Americans on courses on money laundering as well as establishing a network where an analysis of the flow of money is made on an international scale. Therefore the in-house training, as well as the exchange with the other agencies, is well established and is quite worth while.

Mr. Blackburn: It seems to me that many of these people you are dealing with are extremely creative in their bookkeeping practices and you really have to... It never ceases to amaze me when I read in the newspaper of an RCM Police inquiry into an extremely complicated commercial, or alleged commercial, crime problem where it takes months, if not years sometimes, to get it all sorted out. So you are confident that you have the expertise. I guess obviously, you have, after you have answered my question.

Mr. Kempling: Any time we hear about money laundering or illegal money, we always hear about Switzerland and numbered accounts, and so forth. Is Switzerland party to the 1988 UN agreement? Are they one of the countries that have agreed to it?

A/Commr Coutu: I could not be 100% positive. I am quite certain they have signed. Whether they have finally ratified the convention I could not confirm just now. I am not sure.

Mr. Kempling: I understand that they are going away from this numbered account and they are becoming a little more open with information than they have been in the past.

A/Commr Coutu: I can say that Switzerland is co-operating very well, as are the other countries. I must add that today, the way money flows from one country to the other, it is very difficult not to work with other countries. Switzerland is working.

[*Traduction*]

M. Blackburn: D'où vient le chiffre de 10,000$? Est-ce le seuil utilisé à l'échelle internationale?

Un témoin: Il est mentionné dans les règlements.

M. Blackburn: Je suppose que c'est le gouvernement qui l'a établi. Je ne m'adresse peut-être pas aux bonnes personnes. C'est au ministère de la Justice qu'il faudrait poser la question, n'est-ce pas?

M. William Kempling (secrétaire parlementaire du président du Conseil du Trésor et ministre d'État (Finances)): Les règlements.

Quel genre de personnes avez-vous pour s'occuper de ces cas à la GRC? Quel genre de formation leur donne-t-on pour enquêter sur ce genre de crime commercial plutôt complexe? Avez-vous des comptables agréés? Avez-vous des gens qui ont une expérience des affaires, une formation dans le domaine du commerce et des opérations bancaires au sein de la GRC?

S.-comm. Favreau: Je pense que M. Doucette répondra très volontiers à cette question, parce qu'un grand nombre de nos agents concernés, si non tous, possèdent un baccalauréat en sciences économiques, en administration, sont comptables, etc. Nous leur donnons, de plus, la formation appropriée. Nous faisons suivre des cours à ceux qui n'ont pas de diplôme universitaire. Mais M. Doucette voudra peut-être vous en dire un peu plus long là-dessus.

M. Doucette: Oui, il est vrai que la plupart de nos enquêteurs possèdent un diplôme en commerce, en droit ou en administration commerciale. Nous avons aussi un important programme d'échange avec les Américains dans le contexte de cours qui sont donnés sur le blanchissage de l'argent ainsi que sur l'établissement d'un réseau, où l'on analyse les déplacements de l'argent à l'échelle internationale. Par conséquent, la formation que nous offrons et les échanges avec les autres organismes sont bien établis et fort valables.

M. Blackburn: J'ai l'impression que bien de ces gens que vous côtoyez sont d'une extrême créativité dans leur tenue de livres, et que vous devez vraiment... Je suis toujours étonné, lorsqu'on relate dans le journal une enquête de la GRC sur un crime commercial extrêmement complexe, qui a pu durer des mois, sinon des années, que l'on ait pu réussir à tout démêler. Vous avez donc la conviction d'avoir tous les gens compétents qu'il vous faut. Je suppose que oui, évidemment, après la réponse que vous m'avez donnée.

M. Kempling: Chaque fois que l'on entend parler de blanchissage d'argent ou d'argent illégal, la Suisse et ses comptes à numéro sont toujours mentionnés. La Suisse a-t-elle signé la convention de l'ONU qui a été conclue en 1988? Est-elle du nombre des pays qui y ont adhéré?

Comm. adj. Coutu: Je n'en suis pas complètement sûr. Mais, je le pense bien. Je ne peux toutefois pas confirmer que la Suisse a signé la convention. Je n'en suis pas certain.

M. Kempling: Je pense qu'elle a tendance à réduire un peu l'utilisation de ses comptes à numéro, et qu'elle devient un peu plus ouverte qu'auparavant pour ce qui est des renseignements.

Comm. adj. Coutu: Je peux dire que la Collaboration de la Suisse est très bonne, à l'instar de celle d'autres pays. Je dois ajouter qu'aujourd'hui, compte tenu de la façon dont l'argent se déplace d'un pays à l'autre, il est très difficile de s'isoler des autres pays. La Suisse collabore donc.

[*Text*]

Mr. Kempling: Is the money laundering in Canada usually in Canadian or American dollars? Is that the usual currency we are dealing with? We are not dealing with D-marks or yen or something like that? Are we usually dealing in our own currency?

D/Commr Favreau: The two most popular currencies are the U.S. and Canadian currencies.

Mr. Kempling: What happened in the Bank of Nova Scotia case? Can you tell us anything about that at all? They had records seized by the Americans. Are you free to. . .? I do not want to ask you to betray any confidences, but I have been sort of fascinated by that. I understand that the Americans, on their side, seized some records from the Bank of Nova Scotia, which were involved in money laundering.

• 1600

D/Commr Favreau: Bruce, can you go a distance with that without difficulty?

Insp Bowie: Are you referring to the case where the Americans wanted documentation from a branch of the Bank of Nova Scotia in the Cayman Islands?

Mr. Kempling: That is right.

Insp Bowie: I am sorry, in Nassau.

Mr. Kempling: Nassau, right.

Insp Bowie: That case was resolved. Of course, the Bank of Nova Scotia was in a dilemma. If they complied to the subpoena that was delivered in the U.S. by the U.S. Department of Justice, they were violating the laws of the country that their branch was in.

It was a case involving Robert Twist, a drug trafficker. Eventually the Bank of Nova Scotia complied and delivered up the documentation. That was the end of it. The Bank of Nova Scotia was fined not for laundering, but for failing to comply with the subpoena. Twist, the drug trafficker, subsequently sued the Bank of Nova Scotia for disclosing his records. I am not aware of any resolution of the civil suit.

Mr. Kempling: He has a lot of nerve, hasn't he? But I see this bill would overcome that, I would think, with the uniformity of records and the transfer of information between Canada and the United States through this UN convention. The Nova Scotia thing should not arise again, I would not think. Or would it?

Insp Bowie: If I can expand a little bit, sir, the biggest problem that the Bank of Nova Scotia had was that they were being delivered a subpoena in one country, which placed them in a situation of violating the law and their charter in the other country, as I understand the circumstances.

From our point of view, we regard this legislation as being a good piece of legislation to ensure that the records within Canada are created and are available through whatever process, presumably most of the time, a search warrant. They are there if an investigation develops sufficient evidence to warrant a judicial process such as a search warrant.

[*Translation*]

M. Kempling: Le blanchissage de l'argent au Canada se fait-il habituellement en dollars canadiens ou en dollars américains? Est-ce la devise qui est habituellement utilisée? Il n'est pas question de marks allemands, de yen, ou de quelque autre devise? Est-ce habituellement en dollars canadiens?

S.-comm. Favreau: Les devises qui sont les plus couramment utilisées sont le dollar américain et le dollar canadien.

M. Kempling: Qu'est-il advenu dans l'affaire de la Banque de Nouvelle-Écosse? Pouvez-vous nous en parler un peu? Les Américains ont saisi certains de ses dossiers. Je ne vous demande pas de trahir des secrets, mais je dois dire que l'affaire m'a plutôt fasciné. Les Américains ont saisi un certain nombre de dossiers de la Banque de Nouvelle-Écosse, qui avaient à voir avec une opération de blanchissage d'argent.

S.-comm. Favreau: Bruce, pouvez-vous en parler un peu?

Insp. Bowie: Vous parlez de la fois où les Américains avaient besoin de certains documents d'une succursale de la Banque de Nouvelle-Écosse aux Îles Caïmans?

M. Kempling: Oui.

Insp. Bowie: Je m'excuse, c'était une succursale de Nassau.

M. Kempling: Oui, de Nassau, c'est juste.

Insp. Bowie: L'affaire a été résolue. Evidemment la Banque de Nouvelle-Écosse se trouvait dans un dilemme. En se conformant à la requête du ministère de la justice américain, elle dérogeait aux lois du pays où est située sa succursale.

L'affaire concernait Robert Twist, un trafiquant. En bout de course, la Banque de Nouvelle-Écosse s'est pliée à la demande des Etats-Unis. L'affaire s'est arrêtée là. La Banque de Nouvelle-Écosse a été mise à l'amende, non pas pour avoir blanchi de l'argent, mais pour ne pas s'être conformée à la requête. Twist, le trafiquant, a par la suite poursuivi la Banque de Nouvelle-Écosse pour avoir divulgué le contenu de son dossier. Je ne sais pas quelle a été l'issue de la poursuite au civil.

M. Kempling: Quel culot! N'est-ce pas? Ce projet de loi permettrait donc d'éviter cela grâce à l'uniformité des dossiers et l'échange de renseignements entre le Canada et les Etats-Unis que prévoit la convention de l'ONU. L'aventure de la Banque de Nouvelle-Écosse ne devrait pas se reproduire, je pense. Cela peut-il encore arriver?

Insp. Bowie: Si vous me permettez de développer un peu plus, monsieur, la grande difficulté, pour la Banque de la Nouvelle-Écosse, était d'avoir reçu une requête qui avait été émise dans un pays, ce qui la plaçait en violation de la loi et de sa charte dans l'autre pays, selon ce que je comprends de l'affaire.

De notre côté, nous pensons que cette loi permettra de faire en sorte que les dossiers pertinents soient établis au Canada et qu'ils soient accessibles par un processus quelconque, dans la plupart des cas je suppose, au moyen d'un mandat de perquisition. Nous pourrons compter sur le fait que des dossiers existeront lorsqu'une enquête justifiera le recours à un instrument judiciaire comme un mandat de perquisition.

[*Texte*]

Mr. Kempling: Would the Bank of Nova Scotia in Nassau be keeping records as required under C-9, or just domestically?

Insp Bowie: I would suggest that a bank with branches in different countries would be bound to conform with the laws in the countries in which they are operating, sir. It is a very complicated question.

Mr. Kempling: I can see that. In your brief you mentioned sophisticated importation. I was kind of struck by the words. What do you mean by "sophisticated methods of importation"? Of course the more money they get, the more sophisticated they become. They are not coming in by hang glider or skateboard, I assume.

D/Commr Favreau: I will give you an example, and I am sure that Mr. Coutu could elaborate on a few more. You will have a mother ship operation whereby a huge quantity of cocaine or other drugs will be transported toward the coast—east coast or west coast—and then one group will be responsible for supplying the mother ship, obviously a crew. Another group will be responsible for finding places where they can land. Another group will see what kind of vehicle they need, what kinds of communications they need, how the payment is going to be done and how they are going to wash the money afterwards.

So you have a lot of people involved. A good example is a recent case where 17 people were arrested. That is one type of complicated operation. You have to be there at the right time, otherwise you might have a ship and a few people on board, but you will not have the people who are responsible for the importation.

When we say they could afford police enforcement, this means that if you do that kind of importation on a regular basis you can afford to lose one shipment and it won't damage your operation too much.

• 1605

Another sophisticated means is using a landing strip and flying directly from South America to Canada. In a recent survey of possible places to land, in New Brunswick alone we found 52 landing strips that could be used. So it is a very difficult task to be there at the right time, when these operations could take months of preparation and a relatively short time to really unfold.

Mr. Speller (Haldimand—Norfolk): I have two very quick questions. As for the proceeds of crime, when Bill C-61 was discussed, the seize-and-freeze aspect, there were those who said the provisions of seize and freeze wouldn't be operative without some sort of money laundering bill to help that. Does this complement that bill? Do you feel satisfied that this bill will help in the seize and freeze?

[*Traduction*]

M. Kempling: La succursale de la Banque de Nouvelle-Ecosse, à Nassau, tiendrait-elle des dossiers comme l'exige le projet de loi C-9, ou la loi voterait-elle uniquement pour les succursales en territoire canadien?

Insp. Bowie: Je dirais que toute banque ayant des succursales dans différents pays devrait se conformer aux lois des pays en cause, monsieur. La question est très complexe.

M. Kempling: Je vois. Dans votre mémoire, vous parlez de réseaux d'importation élaborés. Ces mots m'ont frappé. Que voulez-vous dire par «réseaux d'importation élaborés»? Evidemment, plus les trafiquants font d'argent, plus ils deviennent raffinés. Ils ne servent pas de deltaplanes ou de planches à roulettes, je suppose.

S.-comm. Favreau: Je vais vous donner un exemple, et je suis convaincu que M. Coutu pourrait aussi vous en donner quelques uns. On peut se retrouver devant une opération dans laquelle on utilise un navire central, si vous voulez, d'où partent des navettes qui transportent d'énormes quantités de cocaïne ou d'autres stupéfiants—à destination de la côte est ou de la côte ouest—et un groupe est alors chargé d'approvisionner le navire central, évidemment, une équipe. Un autre groupe est chargé de repérer des endroits où l'on pourra décharger la marchandise. Un autre groupe, encore, détermine le genre de véhicule requis, les moyens de communication nécessaires, comment le paiement s'effectuera et comment on blanchira ensuite l'argent obtenu.

Il y a donc de nombreuses personnes qui participent à l'opération. L'affaire récente, où 17 personnes ont été arrêtées, est un bon exemple. C'était une opération complexe. Il faut intervenir au bon moment, sans quoi, on risque de débarquer sur un navire où il n'y aura presque personne, et l'on ne parviendra pas à mettre la main sur les vrais responsables.

Quand nous disons qu'ils peuvent faire fi des opérations policières, cela signifie que les trafiquants qui importent régulièrement des stupéfiants peuvent se permettre de perdre un chargement sans que cela n'ait tellement de conséquences pour l'opération dans l'ensemble.

Un autre moyen élaboré consiste à utiliser une piste d'atterrissage et à transporter directement par avion les stupéfiants d'Amérique du Sud au Canada. Au cours d'une enquête récente sur les endroits où il était possible d'atterrir, au Nouveau-Brunswick seulement, nous avons découvert 52 pistes qui pourraient être utilisées. Il est donc très difficile d'être là au bon moment, quand on sait que de telles opérations pourraient prendre des mois à préparer et se dérouler relativement rapidement.

M. Speller (Haldimand—Norfolk): J'ai deux questions très brèves à vous poser. Au sujet des produits de la criminalité, au moment où l'on a discuté du projet de loi C-61, de l'aspect de la saisie et du gel de ces biens, certains ont exprimé l'avis que ces dispositions seraient sans effet sans une loi quelconque sur le blanchissage de l'argent. Le projet de loi C-9 complète-t-il le projet de loi C-61? Pensez-vous qu'il facilitera les choses en ce sens?

[*Text*]

D/Commr Favreau: I would like Mr. Coutu to elaborate, because he did have a lot of participation in it.

A/Commr Coutu: Clearly this would complement Bill C-61 and allow the law enforcement agencies to put their case together in less time and with supportive evidence that is not always available today. In addition, I would suggest that the bill as proposed would also discourage foreigners from landing their money in Canada, and to me that by itself is an important step forward.

Mr. Speller: The second question deals with page 3 of your brief, the second paragraph. You say:

> this exemplifies the fact that criminal organizations will inevitably alter their money laundering methods in order to circumvent legislative controls.

Is there any forward thinking? Is there anything we should be putting in the bill now to anticipate how they are going to get around it?

D/Commr Favreau: What we anticipate there is that through the regulation we hope the government and the law will be adjustable and flexible enough to change with new methods. That's why we mention that the responsibility—maybe not responsibility, it would be too strong a word—the process whereby commercial establishments and bank establishments would have to report suspicious transactions might be something we want to look at in the future.

Mr. Speller: Yesterday we recognized the importance of the regulations. I take it, then, that we are going to see the regulations before we go any further.

The Chairman: I understand there are officials here. I'm not sure if they have any regulations or not. But perhaps we could continue on if there are other questions. Mr. Langlois, do you have any questions? Mr. Blackburn?

Mr. Blackburn: Could I ask one supplementary that flows from the line of questioning of Mr. Kempling. This is probably not a question for the RCMP, but I want to put it on the table anyway. Maybe they can answer it, maybe they cannot. Is it possible to write legislation governing, for example, Canadian banks that would be applicable in their operations in the Caribbean? We have a lot of banks in the Caribbean.

Mr. Kempling: And in the United States.

Mr. Blackburn: And in the United States. These are two areas in the world where there is a heck of a lot of drug activity, transportation and illicit trade. I'm not suggesting it's a loophole. It may be something that could be added to this legislation, or maybe not. I don't know. I agree that when any company opens a branch in a foreign country it has to abide by the laws and regulations of that country. Is it possible to work in such a way as to get an international agreement among the Caribbean countries and the United States so that when we pass anti-money-laundering legislation here it would apply to our branches in the Caribbean, just as it would American banks in Canada and in

[*Translation*]

S.-comm. Favreau: Je voudrais que M. Coutu réponde à votre question, parce qu'il a beaucoup participé aux discussions à ce sujet.

Comm. adj. Coutu: Il est évident que le projet de loi C-9 complète le projet de loi C-61 et permettra aux organismes chargés d'appliquer la loi de mener à bien leurs enquêtes plus rapidement et d'obtenir les preuves à l'appui qui ne sont pas toujours disponibles aujourd'hui. J'ajouterai, en outre, que le projet de loi dissuadera aussi les étrangers de venir blanchir leur argent au Canada, et personnellement, je trouve que c'est un progrès important.

M. Speller: Ma deuxième question porte sur le deuxième paragraphe de la troisième page de votre mémoire. Vous dAites:

> cela démontre que les organisations criminelles changeront inévitablement leurs méthodes de recyclage afin d'échapper aux contrôles législatifs.

Y a-t-il moyen de contrer cela? Pourrions-nous ajouter quelque chose dans le projet de loi pour anticiper la façon dont ils vont tenter d'échapper aux contrôles législatifs?

S.-comm. Favreau: Nous espérons que les règlements et la loi demeureront suffisamment souples pour être ajustés aux nouvelles méthodes qui seront utilisées. C'est pourquoi nous disons que la responsabilité—peut-être pas responsabilité, le mot serait peut-être un peu fort—mais le processus selon lequel les établissements commerciaux et bancaires devraient rapporter les opérations douteuses pourrait être un aspect à examiner.

M. Speller: Hier, nous avons reconnu l'importance des règlements. Je suppose, alors, que nous aurons l'occasion de voir les règlements en question avant d'aller plus loin.

Le président: Je pense qu'il y a des hauts fonctionnaires, ici, aujourd'hui. Je ne sais pas s'ils ont déjà des règlements à nous présenter ou non. Mais, nous pourrions peut-être poursuivre s'il y a d'autres questions. Monsieur Langlois, avez-vous des questions à poser? Monsieur Blackburn?

M. Blackburn: Puis-je poser une question additionnelle dans la même veine que celle de M. Kempling. Ce n'est probablement pas une question à poser aux représentants de la GRC, mais je veux l'inscrire au procès-verbal, de toute façon. Ils peuvent peut-être y répondre, et peut-être pas. Pourrions-nous rédiger une loi qui régirait, par exemple, les banques canadiennes, et qui s'appliquerait à leurs activités dans les Caraïbes? Plusieurs de nos banques y sont installées.

M. Kempling: Et aux États-Unis.

M. Blackburn: Oui, aux États-Unis aussi. Ce sont deux parties du monde où le trafic, le transport et le commerce illicite des stupéfiants sont extrêmement développés. Je ne dis pas qu'il s'agit d'une lacune. Ce serait peut-être quelque chose que nous pourrions ajouter à cette loi, ou peut-être pas. Je ne sais trop. Une société qui ouvre une succursale dans un pays étranger doit se conformer aux lois et règlements de l'endroit. J'en conviens. Ne pourrions-nous pas chercher à conclure un accord international avec les pays des Caraïbes et les États-Unis, qui permettrait de faire en sorte qu'une loi canadienne contre le blanchissage de l'argent s'appliquerait à nos succursales dans les Caraïbes, tout

[*Texte*]

the Caribbean and that kind of thing. There could be some very big loopholes here through which you could drive the proverbial Sherman tank. I don't know whether there is an answer to that situation.

• 1610

D/Commr Favreau: I think your question raises a lot more questions. It seems that the Department of Justice would be better able to answer than the RCMP, obviously. Mr. Coutu might have some interesting comments to make on that point.

A/Commr Coutu: There is no doubt that legislation passed in Canada will not cover all the loopholes in other countries or the weaknesses of systems in other areas, but at least it will provide the Canadian system with the means to fulfil its role in a more efficient manner.

I would not want to imply that all the Caribbean countries are at fault in this particular money laundering problem. For one thing, as we go on, more and more countries are ratifying the United Nations convention, meaning they are slowly passing legislation by which they will comply with the conditions of the convention, including money laundering, other investigative methods, support and mutual assistance between countries via the United Nations convention.

As we pass legislation in Canada to help us those countries are coming under increasing pressure to do the same, because, not unlike drugs, if they allow crime money to flow into their country, they are also asking criminals to establish themselves in that country, and that soon becomes obvious. Therefore it is an incentive to come along and pass legislation there as well. But I can say that more and more countries are moving, not quickly, but slowly in the same direction. I suggest that would include many Caribbean countries as well.

The Chairman: Thank you, gentlemen; that appears to be the end of our questions. We appreciate your candid remarks, your answers, and certainly the brief you presented. It was excellent, and gave us a real insight into the magnitude of the problem we have to deal with.

D/Commr Favreau: Thank you, Mr. Chairman.

The Chairman: We have a letter dated June 12 from The Canadian Bankers Association, which reads as follows:

> Dear Mr. Farrell: You recently called the CBA to invite us to appear this week as witnesses before the House of Commons Legislative Committee on Bill C-9.
>
> The CBA is grateful that the committee has extended this invitation, but, given the format of the bill, we do not believe we could productively assist the deliberations of the committee. If, however, the members of the committee wish testimony from the association, Mr. Ballard will be able to appear on Thursday, June 13, 1991, and he can be contacted through the CBA's Ottawa office.

However, they say they have nothing to add to what is already in the bill. So what is your pleasure, gentlemen?

[*Traduction*]

comme ce serait le cas pour les banques américaines au Canada et dans les Caraïbes? Il se pourrait fort bien qu'il y ait quelques trous béants dans cette loi, où l'on pourrait faire passer un éléphant. Je ne sais pas s'il y a une solution à cela.

S.-comm. Favreau: Votre question en soulève de nombreuses autres. Le ministère de la Justice serait évidemment mieux placé que la GRC pour y répondre. Mais, M. Coutu pourrait avoir quelques observations intéressantes à faire sur ce point.

Comm. adj. Coutu: Il ne fait aucun doute que la loi adoptée au Canada n'éliminera pas toutes les échappatoires qui existent dans les autres pays ni les faiblesses de leur système, mais elle fournira au moins au système canadien le moyen d'être plus efficace.

Je ne veux pas donner l'impression que tous les pays des Caraïbes contribuent au problème du blanchissage de l'argent. Un aspect encourageant, c'est qu'il y a de plus en plus de pays qui adhèrent à la convention des Nations Unies, ce qui signifie qu'ils adoptent lentement des lois en conséquence, notamment sur le blanchissage de l'argent, d'autres méthodes d'enquête et des réseaux d'appui et d'aide mutuelle entre les pays par le biais de cette convention.

En adoptant des lois au Canada, ces pays se sentent de plus en plus obligés à en faire autant, parce que comme dans le cas des stupéfiants, s'ils donnent libre accès aux produits de la criminalité dans leur pays, ils incitent en même temps les criminels à venir s'établir chez eux, et cela à tôt fait de devenir évident. C'est donc un encouragement à en faire autant pour ces pays. Mais je dois dire qu'il y a de plus en plus de pays où les choses bougent, pas rapidement, mais lentement dans la même direction. Cela vaut aussi pour plusieurs pays des Caraïbes.

Le président: Merci, messieurs; cela semble mettre un terme aux questions que nous avions à vous poser. Nous vous remercions pour les observations et les réponses franches que vous nous avez faites, ainsi que pour le mémoire que vous nous avez présenté. Il est excellent, il nous a donné une bonne idée de l'ampleur du problème auquel nous devons faire face.

S.-comm. Favreau: Merci, monsieur le Président.

Le président: Nous avons reçu une lettre de l'Association des banquiers canadiens, qui est datée du 12 juin, dans laquelle on dit:

> Monsieur Farrell: Vous avez dernièrement invité l'ABC à comparaître cette semaine, devant le Comité législatif de la Chambre des communes, chargé de l'examen du projet de loi C-9.
>
> L'ABC est reconnaissante de l'invitation du comité, mais, compte tenu de la formulation du projet de loi, nous ne pensons pas pouvoir être utile aux délibérations du comité. Toutefois, si les membres du comité tiennent à recevoir le témoignage de l'Association, M. Ballard pourra comparaître le jeudi, 13 juin 1991, et vous pouvez le rejoindre au bureau de l'ABC à Ottawa.

Ils disent, toutefois, ne rien avoir à ajouter au projet de loi. Qu'en pensez-vous, messieurs?

[*Text*]

Mr. Kempling: I have no questions for them. They have been through the legislation, have seen it, and are obviously happy with it, which means they have no difficulty with complying with the record requirement. That has been the view of the chartered accountants, the credit union people, and so forth. So unless there is some compelling reason to get them here, I would say let them go.

Mr. Speller: We have no problem.

The Chairman: Are there any other witnesses the committee would like to call on this bill?

Mr. Speller: Perhaps we should call a couple of drug lords.

Mr. Blackburn: You go get them.

• 1615

Mr. Kempling: The reason the bill is drafted the way it is, where it is mainly record keeping and the rest of it is in the regulations, is that the regulations are changed by Order in Council. If it was in the statute we would have to bring it in for an amendment each time, which becomes a problem, as you know. So it is much easier to control it that way. If there is a change in the system of laundering money it might take six months or a year for us to catch it up in the House in legislation, but they can do it by Order in Council on pretty short order. That is why it is drafted that way.

If I may make one other comment, Mr. Chairman, I tried to get the minister to be here today or tomorrow, but he will be in Quebec City. He left for Quebec City right after Question Period. So unfortunately he cannot be here, but perhaps we could proceed with the officials, if the committee is in agreement.

The Chairman: In clause-by-clause, you mean?

Mr. Kempling: Yes.

The Chairman: Is the committee ready for clause-by-clause?

Mr. Blackburn: I may have a problem. I am just filling in for Mr. Langdon, and I am wondering whether. . . I don't know what to say; I have to ask you. Is he generally in agreement with the bill, or has he expressed serious concern about it?

Mr. Kempling: I spoke with him before we started this process, before we went into our second reading debate. He had no difficulties with the bill at all, because we have already been through it once, as you know. When he was here yesterday he was asking questions about regulations. We produced the regulations that we had on the bill previous to this one. The officials explained that there were two or three changes. That seemed to satisfy him. I think we said we would have the changes as soon as we could get them and that would be it. I don't think there is any difficulty, but if you want to make some reservation we could go clause by clause, stand clause 1, and go through the rest of it—if you feel that is necessary, but I don't think it is.

[*Translation*]

M. Kempling: Je n'ai pas de questions à leur poser. Ils ont examiné le projet de loi, l'ont vu, et en sont évidemment satisfaits, ce qui signifie qu'ils se conformeront sans difficulté aux exigences concernant les dossiers. C'est aussi l'avis des comptables agréés, des représentants des caisses de crédit, etc. À moins qu'il y ait une très bonne raison de les faire venir, je propose de laisser tomber.

M. Speller: Cela nous convient tout à fait.

Le président: Y a-t-il d'autres témoins que le comité voudrait convoquer afin de discuter de ce projet de loi?

M. Speller: Nous pourrions peut-être inviter quelques seigneurs de la drogue.

M. Blackburn: Allez les chercher, vous.

M. Kempling: Si le projet de loi est rédigé de cette façon, à savoir qu'il porte surtout sur les dossiers, et le reste figurera dans les règlements, c'est que les règlements sont modifiés par décret. Si tout était dans la loi, il faudrait proposer une modification chaque fois, ce qui devient un problème, comme vous le savez. C'est donc beaucoup plus facile de cette manière. S'il advient un changement dans les méthodes utilisées pour blanchir l'argent, il pourrait s'écouler six mois à un an avant que nous puissions le rattraper à la Chambre en modifiant la loi, mais ainsi, on peut apporter la modification nécessaire assez rapidement par décret du conseil. C'est pourquoi la loi est rédigée de cette façon.

Si vous me permettez d'apporter une autre observation, monsieur le président. J'ai tenté d'inviter le ministre pour aujourd'hui ou demain, mais il sera à Québec. Il est parti pour Québec tout de suite après la période de questions. Il ne pourra donc malheureusement pas venir nous rencontrer, mais nous pourrions peut-être aller de l'avant avec les hauts fonctionnaires, si le comité est d'accord.

Le président: Et procéder à l'examen article par article, vous voulez dire?

M. Kempling: Oui.

Le président: Le comité est-il prêt à procéder à l'étude article par article du projet de loi?

M. Blackburn: Il y a peut-être une difficulté. Je remplace M. Langdon, et je me demande si. . . Je ne sais trop quoi dire; je dois m'en remettre à vous. Comment voit-il ce projet de loi? Est-il d'accord, ou a-t-il exprimé de fortes réticences à son égard?

M. Kempling: J'ai discuté avec lui avant d'entreprendre cet examen, avant d'entreprendre le débat en deuxième lecture. Il n'y avait absolument rien qui l'embêtait; nous avons déjà examiné le projet de loi, comme vous le savez. Hier, il a posé des questions au sujet des règlements. Nous avons montré les règlements que nous avions sur le projet de loi antérieur à celui-ci. Les hauts fonctionnaires nous ont expliqué que deux ou trois modifications avaient été apportées. Il en a semblé satisfait. Je pense que nous avons dit que nous ferions apporter les modifications dès que possible, et l'affaire serait conclue. Je ne pense pas qu'il y ait quelque difficulté que ce soit, mais si vous voulez réserver votre jugement, nous pourrions entreprendre l'étude article par article du projet de loi, en reporter l'article 1, et régler le reste—si vous pensez que cela est nécessaire, mais je ne le pense pas.

[*Texte*]

Mr. Blackburn: I don't think it is either. I am guessing here, but I appreciate your information. I was given no instructions, just simply to come over and fill in. I don't know whether his office knew we would be getting into clause-by-clause today. I'm prepared to go ahead.

The Chairman: Okay.

Mr. Speller: Perhaps when the officials are brought forward they can give us an update as to how long it will be before the regulations are produced. Yesterday I think they mentioned somewhere around ten days. Is it the intention to pass this through the House before we see the regulations, or...?

Mr. Kempling: Mr. Speller, this is an unusual bill. In the normal course of a bill going through the process in the House, we do not see the regulations at all. This being an unusual bill, we leave the bulk of the control to the regulations. The minister brought the regulations... As far as I am concerned, I have been through the regulations...yesterday they gave us a copy of the old bill. I see nothing there, other than the few minor changes they are talking about. Mr. Chairman, why don't we bring the officials forward and ask them if they can update us as to where they are in the process?

The Chairman: Thank you, Mr. Kempling. Mr. James McCollum and Yvon Carrière are here from the Department of Finance. If they would come forward, please, to answer any questions the members may have as we proceed...

Members can seek the floor after each question is put, either to debate or to ask the parliamentary secretary questions or to propose amendments. Amendments within a clause should always go in the order of where they start to amend the text.

• 1620

Do the officials have any comments in terms of the regulations before we start through clause by clause? Is there any update since yesterday?

Mr. James F. McCollum (Chief, Industry Analysis Relations, Financial Sector Policy Branch, Department of Finance): In terms of the regulations, we would expect to have a draft by Monday of next week.

Mr. Kempling: Could I ask the other members if there is any objection to proceeding to and completing clause-by-clause, on the understanding that on Monday, if we report to the House on Monday, you would have the full copy of the regulations before we proceed to report stage and third reading? Is that a reasonable request?

Mr. McCollum: Yes.

Mr. Kempling: Would you be sure that we would have them by the Monday?

Mr. McCollum: Certainly.

Mr. Kempling: Fine. Then why do we not proceed with clause-by-clause and report the bill?

[*Traduction*]

M. Blackburn: C'est aussi mon avis. Je vous remercie de ces renseignements. On ne m'a donné aucune directive. On m'a tout simplement dit de venir le remplacer. Je ne sais pas si les gens de son bureau savaient que nous allions entreprendre l'étude article par article du projet de loi aujourd'hui. Je suis disposé à aller de l'avant.

Le président: D'accord.

M. Speller: Lorsque nous rencontrerons les hauts fonctionnaires, ils pourront peut-être nous dire combien de temps il faudra encore pour que les règlements soient prêts. Hier, je pense qu'ils ont mentionné environ 10 jours. A-t-on l'intention d'adopter ce projet de loi à la Chambre avant que nous ayons pu voir les règlements, ou...?

M. Kempling: Monsieur Speller, ce projet de loi déroge un peu à la règle. Habituellement, avant qu'un projet de loi ne soit adopté par la Chambre, nous ne voyons absolument pas les règlements. Ceci dit, dans le cas de ce projet de loi, le plus gros du contrôle s'exercera par les règlements. Le ministre a présenté les règlements... Je les ai personnellement examinés... hier, on nous a remis un exemplaire de l'ancien projet de loi. Je n'y vois rien d'autre que les quelques modifications sans conséquence dont on nous a parlé. Monsieur le président, pourquoi ne demandons-nous pas aux hauts fonctionnaires de nous dire un peu où ils en sont maintenant dans le processus?

Le président: Merci, monsieur Kempling. M. James McCollum et M. Yvon Carrière, du ministère des Finances, sont ici. Je les prierais de venir nous rejoindre afin de répondre aux questions que les membres du comité auront à leur poser...

Les membres du comité peuvent prendre la parole après chacune des questions, soit pour en débattre, ou pour poser des questions au secrétaire parlementaire, ou proposer des modifications. Les modifications à un article devraient toujours apparaître là où elles commencent à modifier le texte.

Les hauts fonctionnaires ont-ils des observations à faire au sujet des règlements avant que nous n'entreprenions l'étude article par article du projet de loi? Y a-t-il du nouveau depuis hier?

M. James F. McCollum (chef, analyse de l'industrie, direction de la politique du secteur financier, ministère des Finances): Nous devrions avoir terminé l'ébauche des règlements lundi prochain.

M. Kempling: Y a-t-il objection à ce que nous entreprenions et complétions l'étude article par article du projet de loi, étant entendu que lundi, si nous faisons rapport à la Chambre lundi, vous recevrez un exemplaire complet des règlements avant de passer à l'étape du rapport et à la troisième lecture? Cela vous paraît-il raisonnable?

M. McCollum: Oui.

M. Kempling: Aurons-nous, à coup sûr, cet exemplaire des règlements lundi?

M. McCollum: Sûrement.

M. Kempling: Très bien. Alors, pourquoi ne pas procéder à l'étude article par article du projet de loi et en faire rapport?

[*Text*]

Mr. Blackburn: That would be Monday morning then, would it not?

Mr. Kempling: Yes, I would think so.

The Chairman: We might have a technical problem here. Perhaps the clerk should explain this.

Mr. Kempling: Is it Beauchesne's or Erskine May?

The Clerk of the Committee: No. I am just saying that if we go clause by clause and we report back on Monday, we cannot direct the House not to take up the bill.

Mr. Kempling: No, I didn't mean it that way.

The Clerk: The government decides what their timetable is. The bill cannot be taken up for 48 hours, unless by consent.

Mr. Speller: That's something we can discuss later. That's the only thing we are concerned about.

Mr. Kempling: Unofficially, that is the way we will do it. Nothing that much is involved. So if that is agreeable, let's make progress.

Clauses 1 to 11 inclusive agreed to

The Chairman: Shall the title carry?

Some hon. members: Agreed.

The Chairman: Shall the bill carry?

Some hon. members: Agreed.

The Chairman: Shall I report the bill to the House?

Some hon. members: Agreed.

The Chairman: Thank you, gentlemen, for your co-operation. Thank you, staff. Thank you everyone.

This committee stands adjourned.

[*Translation*]

M. Blackburn: Lundi matin, alors, n'est-ce pas?

M. Kempling: Oui, je le pense.

Le président: Il y aura peut-être toutefois une petite difficulté d'ordre technique. Le greffier pourrait peut-être nous expliquer de quoi il s'agit.

M. Kempling: Est-ce dans le Beauchesne ou Erskine May?

Le greffier du Comité: Non. Je dis seulement que si nous terminons l'étude article par article et que nous faisons rapport du projet de loi lundi, nous ne pouvons pas dire à la Chambre de ne pas aller de l'avant avec le projet de loi.

M. Kempling: Non, ce n'est pas ce que j'ai voulu dire.

Le greffier: C'est le gouvernement qui décide du programme. Le projet de loi ne peut pas être examiné avant 48 heures, à moins qu'il n'y ait consentement.

M. Speller: Nous pourrons en discuter plus tard. C'est le seul aspect qui nous inquiète.

M. Kempling: C'est ainsi que nous allons procéder de façon non officielle. Il n'y a pas tellement de difficultés. Si nous sommes tous d'accord, allons-y!

Les articles 1 à 11, inclusivement, sont adoptés

Le président: Le titre est-il adopté?

Des voix: D'accord.

Le président: Le projet de loi est-il adopté?

Des voix: D'accord.

Le président: Dois-je faire rapport du projet de loi à la Chambre?

Des voix: D'accord.

Le président: Merci, messieurs, de votre collaboration. Merci aussi au personnel. Et merci à tous.

Le comité est ajourné.

June 13, 1991 [House of Commons]

Routine Proceedings

NAYS

Anderson	Andre
Attewell	Beatty
Belsher	Bernier
Bertrand	Bird
Blackburn (Jonquière)	Blais
Blenkarn	Bosley
Bouchard (Roberval)	Boyer
Browes	Campbell (Vancouver Centre)
Cardiff	Casey
Chadwick	Champagne (Champlain)
Charest	Clark (Yellowhead)
Clark (Brandon—Souris)	Cole
Collins	Cook
Cooper	Corbeil
Corbett	Côté
Crosby (Halifax West)	Dana
Darling	Deblois
de Cotret	Della Noce
Desjardins	Dobbie
Domm	Dorin
Duplessis	Epp
Feltham	Ferland
Fontaine	Fretz
Friesen	Gray (Bonaventure—Îles-de-la-Madeleine)
Greene	Guilbault
Gustafson	Halliday
Harvey (Chicoutimi)	Hawkes
Hicks	Holtmann
Horner	Horning
Hudon	Jacques
James	Johnson
Joncas	Kempling
Koury	Landry
Langlois	Larrivée
Layton	Littlechild
Loiselle	Lopez
MacDonald (Rosedale)	MacDougall (Timiskaming)
MacKay	Malone
Martin (Lincoln)	Masse
Mayer	Mazankowski
McDermid	McKnight
McLean	Mitges
Monteith	Moore
O'Kurley	Plourde
Porter	Pronovost
Redway	Reimer
Ricard	Richardson
Roy-Arcelin	Saint-Julien
Scott (Victoria—Haliburton)	Scott (Hamilton—Wentworth)
Sobeski	Soetens
Sparrow	Stevenson
Têtreault	Thacker
Thorkelson	Tremblay (Québec-Est)
Tremblay (Lotbinière)	Valcourt
Van de Walle	Vankoughnet
Venne	Vincent
White	Wilbee
Wilson (Swift Current—Maple Creek—Assiniboia)	
Wilson (Etobicoke Centre)	Worthy—117

PAIRED MEMBERS

Arseneault	Atkinson
Dionne	Foster
Hockin	Hughes
Marin	McGuire
Merrithew	Nault
Nicholson	Parent
Rideout	Schneider
Thompson	Wood

The Acting Speaker (Mr. Paproski): I declare the motion lost.

Motion negatived.

ROUTINE PROCEEDINGS

[*Translation*]

PETITIONS

GOVERNMENT RESPONSE

Mr. Charles A. Langlois (Parliamentary Secretary to Minister of Industry, Science and Technology): Mr. Speaker, pursuant to Standing Order 36(8), I have the honour to table, in both official languages, the government's response to four petitions.

[*Editor's note: See today's votes and Proceedings.*]

* * *

• (1040)

[*English*]

BILL C-9

REPORT OF LEGISLATIVE COMMITTEE F

Hon. Ralph Ferguson (Lambton—Middlesex): Mr. Speaker, I have the honour to present in both official languages the report of the Legislative Committee F on Bill C-9, an act to facilitate combatting the laundering of proceeds of crime without amendment.

[*Editor's Note: See today's Votes and Proceedings.*]

* * *

WAGE CLAIM PAYMENT ACT

MEASURE TO ENACT

Hon. Pierre Blais (Minister of Consumer and Corporate Affairs and Minister of State (Agriculture)) moved for leave to introduce Bill C-22, an Act to enact the Wage Claim Payment Act, to amend the Bankruptcy Act and to amend other Acts in consequence thereof.

June 18, 1991 [House of Commons]

forthwith put all questions necessary to dispose of both report stage and third reading of said bill.

Motion agreed to.

BILL C-9

Mr. Albert Cooper (Parliamentary Secretary to Minister of State and Leader of the Government in the House of Commons): Mr. Speaker, I move:

That, when Bill C-9, an act to facilitate combating the laundering of proceeds of crime, is called for debate, the Speaker shall recognize one speaker from each of the three recognized parties to speak for a period not to exceed ten minutes each following which the speaker shall forthwith put all questions necessary to dispose of the report stage and third reading of said bill.

Mr. Riis: Mr. Speaker, on a point of order, I wonder if I could seek clarification from the government House leader. Regarding Bill C-9, one of the amendments proposed by the New Democratic Party has been accepted by the government, which of course would be dealt with at report stage.

Mr. Andre: The parliamentary secretary is not here this evening, but barring any change from this afternoon, it is my understanding that that one amendment would be recognized.

Mr. Riis: Mr. Speaker, we are prepared to certainly give our consent, with the clear understanding that arrangements have been made on that particular critical motion.

Some hon. members: Agreed.

Motion agreed to.

Mr. Dingwall: Mr. Speaker, on a point of order, perhaps when the parliamentary secretary is on his feet with regard to the motions which he is going to present in the next number of minutes, as well as those that have passed, I presume he will indicate that these motions will be called for tomorrow, namely June 19.

• (2250)

Mr. Cooper: Mr. Speaker, I can confirm that it is our intention to move these various bills and motions tomorrow, June 19.

BILL C-19

Mr. Albert Cooper (Parliamentary Secretary to Minister of State and Leader of the Government in the House of Commons): Mr. Speaker, I move:

That the Standing Committee on Finance be authorized to pre-study Bill C-19, an act respecting banks and banking;

That the committee or a subcommittee hear witnesses and take evidence as it sees fit on this reference.

Motion agreed to.

WAYS AND MEANS

Mr. Albert Cooper (Parliamentary Secretary to Minister of State and Leader of the Government in the House of Commons): Mr. Speaker, I move:

That, notwithstanding any Standing Order or usual practice of the House, on Wednesday, June 19, 1991, forthwith upon disposition of the Ways and Means proceeding concerning a bill respecting insurance companies and fraternal benefit societies (notice of which was given on Tuesday, June 18, 1991) the bill based thereon (notice of which was given on Monday, June 17, 1991) shall be introduced and read a first time pursuant to Standing Orders 68 and 69.

Motion agreed to.

INSURANCE COMPANIES AND FRATERNAL BENEFIT SOCIETIES

Mr. Albert Cooper (Parliamentary Secretary to Minister of State and Leader of the Government in the House of Commons): Mr. Speaker, I move:

That the Standing Committee on Finance be authorized to pre-study the government bill on notice dated June 17, 1991, an act respecting insurance companies and fraternal benefit societies; and

That the committee or a subcommittee hear witnesses and take evidence as it sees fit on this reference.

Motion agreed to.

BILL C-22

Mr. Albert Cooper (Parliamentary Secretary to Minister of State and Leader of the Government in the House of Commons): Mr. Speaker, I move:

That the Standing Committee on Consumer and Corporate Affairs be authorized to pre-study the government bill, C-22, an act to enact the Wage Claim Payment Act, to amend the Bankruptcy Act and to amend other acts in consequence thereof, upon the completion of a 10-minute speech from one member of each of the three recognized parties; and

That the committee or a subcommittee hear witnesses and take evidence as it sees fit on this reference.

Motion agreed to.

APPOINTMENT OF COMMISSIONER OF OFFICIAL LANGUAGES

Mr. Albert Cooper (Parliamentary Secretary to Minister of State and Leader of the Government in the House of Commons): Mr. Speaker, I move:

June 19, 1991 [House of Commons]

The bill is not retroactive, particularly for workers. There is no retroactivity. We have come through the worst part of the recession. This bill will not get passed till some time in the fall, so all of the victims of this government's inept economic policies have all gone by the wayside. There is no retroactivity in the bill, so we have a problem with that.

We have a problem with the taxation to small business. This is another tax on small business. No matter how you cut it, no matter how you twist it, it is a taxation on small business.

Then the minister says he is going to tie this into the unemployment insurance program. This one we have to explore because the UI Act says any moneys received from an employer have to be counted as income. We have to see how these two things relate.

Last, but by no means least, we are concerned about the ripple effect. The minister says that at some point maybe the provinces will have also to pay into this fund and probably the municipalities. The municipalities can only get their money from one group of people, and that is from taxpayers, homeowners. We have a problem with that.

While I welcome the fact that you have actually brought in a bill and that it is going to go to study, I want to say to the minister that I hope he is going to be as open-minded in terms of amendments, when we get into the discussion of the bill, as he has been when he wanted us to give support for this matter to go for study.

I hope he will maintain the same generous spirit, brother, when we get down to the short strokes.

[*Translation*]

The Acting Speaker (Mr. DeBlois): Consequently, the Standing Committee on Consumer and Corporate Affairs is authorized to proceed with the preliminary study of Bill C-22. An Act to enact the Wage Claim Payment Act, to amend the Bankruptcy Act and to amend other Acts in consequence thereof.

[*English*]

PROCEEDS OF CRIME ACT

MEASURE TO ENACT

The House proceeded to the consideration of Bill C-9, an act to facilitate combating the laundering of proceeds of crime, as reported without amendment from Legislative Committee F.

Mr. Steven W. Langdon (Essex—Windsor): Mr. Speaker, I rise on a point of order. I think that you will find, if you examine the amendments which have been put forward with respect to report stage of this bill, that they are all in my name. I would like to withdraw all those motions, with the exception of Motion No. 9, which I would like to continue to have stand.

Let me read the motion to you, then, that would continue to stand:

> That Bill C-9 be amended in Clause 5 by striking out lines 6 to 13 at page 3 and substituting the following therefor:
>
> "(3) When a regulation under this Act is changed during the 95-day period referred to in subsection 2 above, such regulation shall be published in the *Canada Gazette* at least 30 days before the proposed effective date thereof".

[*Translation*]

The Acting Speaker (Mr. DeBlois): So, the Chair takes into account the request made by the hon. member for Essex—Windsor.

Pursuant to the order of Tuesday June 18, the Speaker will now recognize one speaker from each the three recognized parties to speak for a period not to exceed 10 minutes each, following which the Speaker shall fortwith put all questions necessary to dispose of the report stage and third reading of said bill.

Mr. Gérin: On a point of order, Mr. Speaker.

The Acting Speaker (Mr. Deblois): The hon. member for Mégantic—Compton—Stanstead on a point of order.

Mr. Gérin: Mr. Speaker, the order of the House, from last night, in the middle of the night, must be taken integrally. Now that you have accepted the motion of the hon. member for Essex—Windsor, you must allow all the other members, including the independent members, to take the floor.

Mr. Speaker, it is undemocratic that the whips of three parties exclude the independent members, including those of the Bloc Quebecois.

The Acting Speaker (Mr. DeBlois): I remind the hon. member for Mégantic—Compton—Stanstead that he should be careful and use a parliamentary language that is in accordance with tradition.

That being said, Motion No. 9, to which the member for Essex—Windsor is referring to, is part of the report of the committee. It is not necessary here to get anybody's approval.

Mr. Rocheleau: On a point of order, Mr. Speaker. To my knowledge, this report belongs to the House and the decision rests with the House and not mutual agreements concluded between the three parties last night, without the knowledge of Canadians.

I request a declaration from the House on that issue.

The Acting Speaker (Mr. DeBlois): The motion proposed by the member for Essex—Windsor is in accordance with the rules, but the debate on this motion must take place according to the order which is binding for the Chair and which is in the proceedings.

Consequently, I recognize, pursuant to the order, one speaker from each of the recognized parties.

Mr. Lapierre: On a point of order, Mr. Speaker. The question put to you and for which we request a ruling does not have to do with those who will take the floor. We know that ourselves; we read the order and we saw the gimmick. That is not what the question is about.

We want to know if a member can withdraw a motion, like that, without unanimous consent. That is what I want to know.

The Acting Speaker (Mr. DeBlois): I apologize, but we are dealing with technicalities and, once again, the member for Essex-Windsor—I may have used the wrong wording—has not moved a new motion. He is simply indicating that, in the series of motions on the Order Paper, he is only keeping motion no 9.

In that regard, we are authorized, at the report stage, to recognize only three speakers on the motion kept.

• (1900)

Mr. Lapierre: Point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): The hon. member for Shefford on a point of order.

Mr. Lapierre: Mr. Speaker, that is not the point. According to the rules of this House, we have to put forthwith every question necessary, to dispose of proceedings not only those indicated by the hon. member for Essex—Windsor. We want to vote on and dispose of every question and motion before the House, Mr. Speaker. That is the question I raise.

The Acting Speaker (Mr. DeBlois): Order, please. We are again dealing with technicalities. The hon. member for Essex—Windsor has only given notice of his motions. He has not introduced them yet. The hon. member just pointed out to Motion No. 9, and I must say about this motion and all other questions that have to be disposed of on this Bill, that I am bound under the rules of this House to recognize one member of each of the three officially recognized parties.

Mr. Steven W. Langton (Essex—Windsor): I move: Motion No. 9

That Bill C-9 be amended in Clause 5 by striking out lines 6 to 13 at page 3 and substituting the following therefor:

"(3) When a regulation under this Act is changed during the ninety-five day period referred to in subsection (2) above, such regulation shall be published in the *Canada Gazette* at least thirty days before the proposed effective date thereof."

Mr. Gérin: I rise on a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): I regret, but, pursuant to Standard Order 30(6), since it is 7 p.m., the House will now proceed to the consideration of Private Members' Business as listed on today's Order Paper.

PRIVATE MEMBERS' BUSINESS

[*English*]

THE ENVIRONMENT

ACCOUNTING OF USE OF RESOURCES

On the Order: Private Members' Business

May 16, 1991—That, in the opinion of this House, the government should require each government department and agency to include in their budget submissions an accounting of the use of resources whose use or disposal has an impact on the environment and annual targets for reduction and to report any associated cost savings.

...

[*Translation*]

Mr. Peter Milliken (Kingston and the Islands): I rise on a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): The hon. member for Kingston and the Islands on a point of order.

Mr. Milliken: Mr. Speaker, the hon. member for Ottawa-West is not available at the moment. I would then ask that the motion—

[*English*]

—be left in its order of precedence, retain its precedence in the Order Paper and accordingly we are unable to proceed with private members' hour at this time.

[*Translation*]

Mr. Lapierre: I rise on a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): The hon. member for Shefford on a point of order.

Mr. Lapierre: Mr. Speaker, the member was here a few minutes ago. I do not know if she had something urgent to attend to, but I myself am prepared for this motion. I was advised of it this morning, and I am now ready to proceed with my speech.

[*English*]

Mr. Hawkes: Mr. Speaker, according to Standing Order 42, I think if the government is willing to accede to the request that comes from the official opposition it can be granted by the Chair. We would suggest that it keep its order of precedence. We make such a request.

[*Translation*]

The Acting Speaker (Mr. DeBlois): I want to refer the hon. members to section 42(1) of the Standing Orders. It is stated that: Questions put by members and notices of motions, not taken up when called may (upon the request of the government) be allowed to stand and retain their precedence.

Since, that is the case of motion 473, the government just called the motion will stand.

Mr. Lapierre: Mr. Speaker, I would like for you to explain the meaning of the expression "not taken up". For myself, I am ready to take it up, I am ready to speak, I am available.

Mr. Allmand: But she is not even here to move the motion!

Mr. Lapierre: Someone could do it for her. She was here just three minutes ago.

Mr. Rocheleau: That is what we call cohabitation!

The Acting Speaker (Mr. DeBlois): Order, please. To open consideration of a motion, the mover must be present in the House to introduce it. The member knows as well as I that it is not the case.

GOVERNMENT ORDERS

[*Translation*]

PROCEEDS OF CRIME (MONEY LAUNDERING) ACT

MEASURE TO ENACT

The House resumed consideration of Bill C-9, an Act to facilitate combatting the laundering of proceeds of crime, as reported without amendment from a legislative committee, and the motion of Mr. Langdon (p. 2111).

The Acting Speaker (Mr. DeBlois): The hon. member for Mégantic—Compton—Stanstead, on a point of order.

Mr. François Gérin (Mégantic—Compton—Stanstead): Mr. Speaker, considering that we gained an hour by not dealing with private members' business because the member was hiding, I move that the House do now adjourn until 8 o'clock, to allow members to see to their business, which could prove more interesting for Quebecers than what is going on now.

I move that the House stands adjourned until 8 o'clock.

The Acting Speaker (Mr. DeBlois): Order, please. As you know, the Chair is bound by the Order of Business as set out in the Order Paper which provides for extended hours to 10.52 tonight. Since there is no other private member's business according to notices on the Order Paper, I have no choice but to pass on to the next order.

Mr. Lapierre: Mr. Speaker, on a point of order, would it be possible for a member, me for instance, to move Mrs. Catterall's motion, given her absence?

An hon. member: No.

Mr. Lapierre: You are not the Speaker!

The Acting Speaker (Mr. Paproski): Is there unanimous consent of the House?

Some hon. members: No.

The Acting Speaker (Mr. Paproski): There is not unanimous consent.

[*English*]

Mr. Steven W. Langdon (Essex—Windsor): Mr. Speaker, it has been an interesting 20 minutes. We now start to look at the question of money laundering which Bill C-9 deals with. Bill C-9 is an important piece of legislation which requires financial institutions to keep the various paper records which will be essential in the tracing of money laundering operations associated with organized crime.

• (1910)

This attempt to deal with money laundering more effectively is certainly something that we in the New Democratic Party support. We were especially pleased to be able to persuade the government in the course of the previous session of Parliament that it was important in a bill such as this, which leaves so much of the details of what will take place to regulation, to see to it that regulations would not be put into effect until there had been a period of at least 90 days after their publication in the *Canada Gazette*, during which time people would be able to make presentations to the government with respect to those regulations.

We feel that is an important precedent for future pieces of legislation which have the same reliance on regulations as Bill C-9 does.

We also feel, and I gather that the government is in agreement with us now on this point, that if during that 90-day period there is a change in those regulations which leads to a different set of regulations being put out within that 90-day period for reflection and representation, it shall then be possible still to have a further 30 days for those people who were prepared to accept and to live with the previous regulation to be able to adjust to the regulation change, and to be able to make representations with respect to the change and so on and so forth.

The recommendations which came first to the government for this extended 90-day period and subsequently, were presented to a legislative committee which reviewed this bill, came from the Canadian Bar Association. They represent an important principle in the view of the Bar Association that you should not have regulations put into effect without some period of possibility for dealing with those regulations and responding to those regulations on the part of those who will be affected by the regulations.

We would have preferred to move this particular amendment at the legislative committee stage, but some mix-ups in communication at that stage made it impossible to do so and so we have moved it at report stage on the basis of the representations made to us during the legislative committee hearings by the Canadian Bar Association. It felt this legislation should not proceed without this further 30-day period if there is a change in regulations as a consequence of representations during the 90-day period allowed with respect to the original regulations set out.

With this change, which I understand the government is prepared to accept, there is the possibility that it will be moving a subamendment which will put this particular amendment into conformity with the original piece of legislation; making it 90 days as opposed to 95 days. We would support and accept this change. We think that this now represents a good piece of legislation.

It is a piece of legislation which will make it easier for our police forces to deal with money laundering associated with drug trafficking and with other forms of money laundering. We think it is an important step for the government to be taking. We are pleased that step is being taken as part of a broad series of moves on the part of various countries throughout the world to try to get better control over money laundering in order to deal with the serious problems which it represents and which drug trafficking represents to our society, to our children, and to the world itself.

Mr. Bill Kempling (Parliamentary Secretary to President of the Treasury Board and Minister of State (Finance)): Mr. Speaker, I do not believe I will be taking 10 minutes.

I want to thank the members on the legislative committee for their co-operation. We had a good hearing and we heard some very interesting witnesses. It was the feeling of the members that we could move along and bring this to the House in report stage, get it through report stage and third reading at this sitting.

I am sincerely thankful to the members of the Official Opposition and the New Democratic Party for their co-operation and assistance. It is an example of how we can work together when we really want to.

As the member for Essex—Windsor has said, this is a very important bill and is part of the drug strategy that we have in Canada. We also have an agreement with the G-7 nations to try and track the money laundering or money that is used or acquired in the sale of illegal drugs. It is also part of a United Nations' initiative which is going to grow into, I believe, a very, very important strategy on the part of various governments to control the funds acquired through the sale of illegal drugs.

The member for Essex—Windsor moved Motion No. 9, and I, as he has indicated, intend to amend Motion No. 9 as follows:

> That the motion be amended by deleting the word "95" and substituting therefor, the word "90".

As the member for Essex—Windsor indicated, this will bring Motion 9, which amends C-9, into conformity with the bill.

I think that is about all I can say on it. It is an interesting bill. We had some good briefings from the Canadian bankers, the RCMP and others. I think the initial co-operation of members to pass the bill with a speaker from each party and with the speed with which it was dealt in committee shows the will of the members to get this bill into law as fast as we can.

• (1920)

Mr. Bob Speller (Haldimand—Norfolk): Mr. Speaker, I rise today to speak on Bill C-9 and the amendments put forward by my colleague from the New Democratic Party.

The bill before us would provide for the tracking of money laundering in Canada by requiring Canadian financial institutions to comply with bookkeeping requirements.

The draft regulations published with the bill indicate that any transaction of $10,000 or more would be recorded. The penalties for a violation of the provisions of this legislation would range from fines of $50,000 to $500,000 and prison terms from six months to five years.

As it has been noted by the government, my party has been supportive of the basic aims and intentions of the government with regard to combating and laundering of proceeds of crime. The bill builds on the so-called freeze and seize legislation, Bill C-61, which in addition to giving new powers to both the courts and the police to seize crime proceeds, created the offensive money laundering.

Money laundering is a process by which illegal profits are transformed through financial markets and to legitimate—

[*Translation*]

Mr. Gilles Rocheleau (Hull—Aylmer): On a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): Order, please. The hon. member for Hull—Aylmer on a point of order.

Mr. Rocheleau: I would like to have quorum in the House so that I can give a speech that the Canadian people appreciate, but not the hon. members it seems. So, I am calling for a quorum count.

And the count having been taken:

The Acting Speaker (Mr. DeBlois): There is quorum. The hon. member for Haldimand—Norfolk has the floor.

[*English*]

Mr. Speller: Mr. Speaker, I thank my hon. friend for his concern.

As I was saying earlier, money laundering is the process by which illegal profits are transformed through financial markets into legitimate funds serving to obscure the real identity of the real owners of the funds and to obscure the nature and the source of these funds.

These activities are being pursued on an international scale and there has been a move afoot in the G-7 and other international forums to develop domestic programs and encourage co-operation to combat this program.

There is little question that a fundamental part of any attempt to control and combat the smuggling of illegal drugs must be the development of effective monitoring and evidence gathering systems in the laundering of drug profits.

There has been general consensus in this country for some time that there are great shortcomings in Canada's financial reporting laws. It has been because of these shortcomings, coupled with our proximity to major drug routes and our large, open border with the United States, that Canada has gained a reputation world-wide as an easy and safe place to launder the profits of illegal activities.

In testimony to the legislative committee studying the bill before us, RCMP officials confirmed that the problem of money laundering in Canada has indeed been a large one. In fact, over $1 billion a year is laundered in Canada through illegal drug practices.

What this has meant is that police agencies, once having identified someone believed to be engaged in criminal activities, were severely hampered in the collection of evidence that might help convict these people. As such, we are very eager on this side of the House for this government to bring down legislation that will correct these matters.

After the disappointment with the government's first attempt in the last session with Bill C-89, we are considerably more satisfied with the bill before us today. We are pleased that the government has given consideration to the shortcomings of the previous bill brought to the attention of this House by members on this side of the House.

The draft regulations accompanying the bill are also an improvement. There are now definitions of cash and of the nature of the records that must be kept. There is still some concern however in our party that too much is left to regulation. As such, the operation of this legislation could change dramatically without being brought before this House, again requiring only an Order in Council.

We do understand the need as was articulated in the committee for flexibility in such a moving area. We recognize that, as many people are engaged in money laundering activities, they are very quick to find and exploit any loophole in the law. We must be just as quick to stop them from doing this.

There also remains a concern that the recording of large transactions will be extended to overseas branches of Canadian banks. We know, for instance, that there is a significant amount of money laundering activity going on in the Caribbean. It is our hope that this will not provide for the significant undermining of our efforts. We are pleased that more countries are joining the effort to curb laundering activities at this time.

I will leave it at that, but I would just like to leave you with a note. We want to send a message to this government and to the people who would do these illegal activities in our country. We as parliamentarians will not stand for this.

[*Translation*]

The Acting Speaker (Mr. DeBlois): Pursuant to the order made on Tuesday, June 18, 1991, it is my duty to interrupt the proceedings and to put forthwith every question necessary to dispose of the report stage and third reading of Bill C-9, An Act to facilitate combatting the laundering of proceeds of crime.

The question is on the amendment to the amendment of Mr. Kempling.

Is it the pleasure of the House to adopt the motion?

Some hon. members: Agreed.

Some hon. members: No.

The Acting Speaker (Mr. DeBlois): All those in favour will please say yea.

Some hon. members: Yea.

The Acting Speaker (Mr. DeBlois): All those opposed will please say nay.

Some hon. members: Nay.

The Acting Speaker (Mr. DeBlois): In my opinion, the yeas have it.

And more than five members having risen:

The Acting Speaker (Mr. DeBlois): Call in the members.

[*English*]

Mr. Hawkes: I would like to defer the vote until 9.45 p.m.

[*Translation*]

The Acting Speaker (Mr. DeBlois): Stop the bells now. Pursuant to Standing Order 40(5)(a), the division stands deferred until 9.45 p.m. tonight.

And the bells having stopped:

Mr. Lapierre: On a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): The hon. member for Shefford on a point of order.

Mr. Lapierre: Mr. Speaker, there are precedents. Once the bells have started ringing—You know full well, ask your old colleague, the hon. member for Yukon, Mr. Neilsen. We have been through that bell ringing before, Mr. Speaker. Members were called in. You cannot stop that, we are not in a lawless place, Mr. Speaker.

Mr. Kindy: On a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): The hon. member for Calgary Northeast on a point of order.

Mr. Kindy: Mr. Speaker, once the bells start ringing, I think we cannot stop them. Maybe you could indicate how you go about having them stopped.

• (1930)

The Acting Speaker (Mr. DeBlois): I am sorry, but the rules are very explicit about that.

An hon. member: Which rule?

The Acting Speaker (Mr. DeBlois): Standing Order 45(5(a), page 27, latest edition.

(5)(a) When the Speaker has put the question on any debatable motion, including any votable Opposition motion on an allotted day— except as provided pursuant to section (3) of this Standing Order, the bells to call in the Members shall be sounded for not more than thirty minutes—

And carefully note this:

—provided that, while the Members are being called in, either the Chief Government Whip or the Chief Opposition Whip may approach the Speaker to request that the division be deferred—

This is what I have just noticed.

Mr. Gérin: On a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): The hon. member for Mégantic—Compton—Stanstead, on a point of order.

Mr. Gérin: Mr. Speaker, you are right. Standing Orders state it clearly. But we are now told the division will take place at 9.45 p.m., if I am not mistaken. Can the Chief Government Whip guarantee that the Prime Minister's party, which is being held at 24 Sussex Drive, while Canadians go hungry, will be finished at—

The Acting Speaker (Mr. DeBlois): Order, please! That was no point of order.

* * *

NATIONAL ENERGY BOARD ACT

MEASURE TO AMEND

The House proceeded to the consideration of report stage of Bill C-2, An Act to amend the National Energy Board Act, on which Legislative Committee C reported without amendment.

[*English*]

The Acting Speaker (Mr. DeBlois): Pursuant to the order made Tuesday, June 18, 1991, the Chair will now recognize one member from the government party, two members from the Official Opposition, and one member from the New Democratic Party to speak for a period of time not to exceed 10 minutes each, following which the Speaker shall put forthwith all questions necessary to dispose of report stage and third reading of Bill C-2, an act to amend the National Energy Board Act.

[*Translation*]

Mr. Rocheleau: On a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): The hon. member for Hull—Aylmer on a point of order.

Mr. Rocheleau: Mr. Speaker, I wish to ask you permission to speak, because Bill C-2 relates to the National Capital—

The Acting Speaker (Mr. DeBlois): Order. I remind the hon. member for Hull—Aylmer that the Chair is bound by an order of the House unanimously agreed to by the members present and that, after having recognized each of the members named in the motion, if the House unanimously agrees, I will be pleased to recognize the hon. member.

Mr. Gérin: On a point of order, Mr. Speaker.

The Acting Speaker (Mr. DeBlois): The hon. member for Mégantic—Compton—Stanstead on a point of order.

Mr. Gérin: Mr. Speaker, the whips can agree for their own party, but they cannot agree for independent members.

The Acting Speaker (Mr. DeBlois): It is not a point of order. The hon. member knows very well that there is an order of this House and that the Chair is bound by it.

Mr. Rocheleau: On a point of order, Mr. Speaker.

June 20, 1991 [Senate]

That the Joint Committee be empowered to sit during sittings and adjournments of the Senate;

That the Joint Committee be empowered to hold joint hearings with committees of legislatures or with individual members of provincial and territorial legislatures;

That the Joint Committee be empowered to send for persons, papers and records, and to examine witnesses and to print such papers and evidence, from day to day, as may be ordered by the Joint Committee;

That the Joint Committee be empowered to authorize television and radio broadcasting, as it deems appropriate, of any or all of its proceedings and of the proceedings of its sub-committees, pursuant to the principles and practices governing the broadcasting of proceedings of the House of Commons;

That the parties represented on the Joint Committee be granted allocations for expert assistance with the work of the Committee in proportion to representation of the said parties in the House of Commons;

That the Joint Committee be empowered to retain the services of professional, clerical, and stenographic staff as deemed advisable by the Joint Chairs; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I have not had a chance to examine this motion in detail, but I do notice that the motion contains the following paragraph:

That the members, to act for the Senate, on the Joint Committee be named at a later time by the Standing Committee on Selection.

I think it would be very wise to proceed to name these members tomorrow, and I would hope that the government would consider amending the motion with respect to the Senate so that the Senate name the members rather than face the difficulty of going to the Standing Committee on Selection. I just ask the Deputy Leader to give that some consideration.

Senator Doody: Thank you. I will, notwithstanding rule 66(1).

Hon. Gildas L. Molgat: Honourable senators, while the Deputy Leader will be considering other matters, I wonder if he might also consider the paragraph that reads as follows:

That the parties represented on the Joint Committee be granted allocations for expert assistance with the work of the Committee in proportion to representation of the said parties in the House of Commons;

Would it not be better to have the motion say the "representation in both houses," in view of the fact that it is a joint committee?

Senator Doody: It is the same as the wording that was used when the last joint committee was set up, and it was acceptable at that time. However, once again, it can be considered.

[Senator Doody.]

Hon. Thomas H. Lefebvre: Honourable senators, I have a further question for Senator Doody. I was distracted momentarily and perhaps someone else has asked this question. However, it is with regard to the third paragraph. From my parliamentary experience, I thought the resolution would say that the quorum of the joint committee would be thirteen members whenever a vote, resolution or other decision is to be taken. It says "so long as both houses are represented." From my own experience in both houses, that means as long as the major parties are present. In this case, both houses could be represented by only one party. Perhaps Senator Doody could look into having this modified as well.

Senator Doody: I do not think that the recognition of the parties in the context that the honourable senator is referring to has been mentioned in previous resolutions of this type, but I will certainly have it researched.

[*Translation*]

PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-9, *An Act to facilitate combatting the laundering of proceeds of crime.*

Bill read the first time.

SECOND READING

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

Hon. Nathan Nurgitz: Honourable senators, with leave of the Senate and notwithstanding rule 44(1)(*f*), I move that the bill now be read the second time now.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

[*English*]

Hon. Nathan Nurgitz: Honourable senators, in moving second reading I wish to make a few brief comments on the subject matter of this bill and on the strategy of dealing with this terrible curse.

A national drug strategy was launched by this government in 1987. There have been many initiatives by many governments. I suspect there will be many more initiatives by many more governments because of the evergrowing problem. The objective of the strategy announced in 1987 was to reduce the harmful effects of substance abuse on individuals, families and communities by addressing the supply and demand aspects of the problem in a balanced approach tailored to our own country's needs.

In recent years there has been widespread recognition that to effectively combat drug trafficking and other organized criminal activities, there must be measures in place which will

make these activities less profitable. Drug trafficking generates large amounts of cash which must be converted into seemingly legitimate forms. The act of doing that has acquired the term "money laundering". By taking effective action on money laundering, we make these underlying crimes less attractive from a financial point of view and thereby discourage them.

Bill C-61, which amended the Criminal Code, the Food and Drug Act and the Narcotics Control Act, came into effect on January 1, 1989. It was an important milestone in Canada's efforts to combat money laundering. That act made money laundering a criminal offence and it allowed the police authorities, once they had obtained the necessary judicial authorization, to search for and seize property suspected of being the proceeds of crime.

The fight against money laundering must be made with the cooperation of governments and the private sector. For this reason, an Advisory Committee on Money Laundering was established in January 1990 with membership from financial institutions and associations as well as officials from a large array of government departments, including the Department of Finance, the Royal Canadian Mounted Police, the Office of the Superintendent of Financial Institutions and the Federal Department of Justice.

At the first meeting of this advisory committee in February 1990, there was unanimous support for a law requiring that adequate records be kept in order to support the investigation and prosecution of cases of money laundering.

• (1030)

In April of 1990, the report of the G-7 Financial Action Task Force was released. This report contained 40 recommendations to combat money laundering. Although Canada was in substantial compliance with the recommendations, it fell short on the matter of record-keeping. Following further discussion among our own advisory committee and private sector associations, and also following discussions with provincial officials, the government approved the introduction of Bill C-89, which was entitled, "An Act to Facilitate Combating the Laundering of the Proceeds of Crime." C-89 was tabled in October of 1990 but died on the order paper when that session of Parliament prorogued.

The bill was revised and introduced recently in the House of Commons as Bill C-9. The revisions make it clear that intent is required to commit the infraction created in the bill. Changes to the regulations will be prepublished in the *Canada Gazette* at least three months before they are finalized. Finally, the scope of the regulation-making powers of the government with respect to determining the accuracy of the information contained in records is limited to identification of clients. All of these changes are consistent with the intent of the original bill, but actually, I might say, serve to improve it.

There have been a number of other important initiatives in the fight against the drug problem in our country. Canadian financial institutions such as the chartered banks and the major trust companies have developed internal programs against money laundering. These programs include employee training and the recognition of suspected instances of money laundering, which can then be referred to law enforcement agencies such as the RCMP for further investigation. Similar programs have been or are being developed through the financial services industry.

The office of the Superintendent of Financial Institutions, which is responsible for the supervision of federally chartered financial institutions, has issued a paper entitled *Best Practices for Deterring and Detecting Money Laundering*. This paper contains guidelines for financial institutions covering such matters as how to deal with suspicious transactions. In addition, a review of anti-money laundering procedures and practices forms a part of the regular review of that department of all federally supervised financial institutions.

Honourable senators, on July 5, 1990 Canada ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. That is referred to as the Vienna Convention. The Canadian government has also passed legislation, Bill C-58, enabling the negotiation of Mutual Legal Assistance Treaties. These treaties are designed to facilitate international co-operation among law enforcement authorities in dealing with criminal activities.

In conclusion, I would note the government's belief that the fight against money laundering requires a partnership and co-operation between various sectors in our society—governmental and private sector. For this reason the government will continue the ongoing dialogue with the private sector and with provincial governments in order to ensure that Canada's measures against money laundering, already considered by many to be reasonably advanced in the world, remain up to date and effective.

Honourable senators, it would be my intention, assuming this bill receive second reading, to ask that it be referred to the Committee of the Whole later this day.

Hon. Allan J. MacEachen (Leader of the Opposition): Honourable senators, I want to ask a question with respect to the stage we are at. I understand that the Senate gave consent to give second reading to this bill later this day. We are now on second reading, which would place us under Orders of the Day, but we have not called the other items that would get us to the Orders of the Day. I think we should regularize our procedure so that we get to the Orders of the Day in the proper way and not make a leap over all these other items. If we are to proceed to second reading, we had better go through the Order Paper.

Hon. C. William Doody (Deputy Leader of the Government): Senator MacEachen is perfectly correct; we are on routine proceedings. There is some time for us to continue with routine proceedings and then we continue on with the regular Orders of the Day and government business as called. Perhaps we could suspend debate on this bill until later this day, and Mr. Speaker could continue with the messages under the routine proceedings.

The Hon. the Speaker: Is that agreed?

Hon. Senators: Agreed.

Debate suspended.

NATIONAL ENERGY BOARD ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-2, to amend the National Energy Board Act.

Bill read first time.

The Hon. the Speaker: When shall this bill be read the second time?

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 44(1)(*f*), I move that the bill be placed on the Orders of the Day for second reading later this day, when we get to its appropriate spot under "Government Business".

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

A BILL RESPECTING THE EXPORTING, IMPORTING, MANUFACTURING, BUYING OR SELLING OF OR DEALING WITH CERTAIN WEAPONS

BILL TO AMEND—FIRST READING

The Hon. The Speaker informed the Senate that a message had been received from the House of Commons with Bill C-6, respecting the exporting,importing, manufacturing, buying or selling of or other dealing with certain weapons.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 44(1)(*f*), I move that the bill be placed on the Orders of the Day for second reading later this day, when we reach its proper place on the order paper.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

GOODS AND SERVICES TAX

PRESENTATION OF PETITIONS

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators I have some petitions. We continue to be showered by them. When I say that, I am not complaining.

[The Hon. the Speaker.]

Today I have the usual form of petition against the GST and in favour of an early election to correct its iniquities and others inflicted by this government on the people of Canada.

The people of Canada presenting petitions today are represented, first, from Ontario. One petition comes from Toronto and Don Mills and contains 22 names. Then from Quebec I have two petitions today, honourable senators. They come from St. Damase, St. Clothilde, Arthabaska, St. Albert, St. Valere, St. Eulalie, Victoriaville, Danville and Montreal. The total number of names on those petitions is 40 . All of them are signed, of course. That means that the grand total of petitions is three, one from Ontario and two from Quebec; and the total number of names is 62, 40 from Quebec and 22 from Ontario.

• (1040)

QUESTION PERIOD

THE SENATE

ABSENCE OF GOVERNMENT LEADER FROM CHAMBER

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, Senator Murray is at a cabinet meeting at the present time. He has indicated that he will be present at 2 o'clock and, if honourable senators wish to have a question period at that time, he is quite prepared.

Senator MacEachen: We will carry on in the normal way.

PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion by the Honourable Senator Nurgitz, seconded by the Honourable Senator Macquarrie, for the second reading of Bill C-9, and Act to facilitate combatting the laundering of proceeds of crime.

Hon. Richard J. Stanbury: He said: Honourable senators, the bill before us which Senator Nurgitz has introduced so well, Bill C-9, entitled "An Act to facilitate combatting the laundering of proceeds of crime," is a very strong bill and one which has benefited from all-party agreement in the other place. The intention of the bill is to discourage the use of Canada's financial system by criminals and to ensure there is adequate opportunity for police to carry out the appropriate investigations and subsequent prosecutions that have been allowed for in this and other recent legislation.

Specifically, the bill was designed to inhibit the flow of illicit drug funds. It would establish, for the first time in Canada, record-keeping requirements in the financial field. Honourable senators will recall that the legislation that we passed earlier

did not require this record-keeping; it was left to the financial institutions to police themselves.

Honourable senators may know that Bill C-9 is essentially the same as Bill C-89 which was introduced into the house last year. For those honourable senators who are familiar with Bill C-89, which died on the House of Commons order paper at prorogation and which had some problems, I am pleased to assure you that this current bill represents improvement in those areas that were identified as problematic in the last bill.

Clauses 2, 4 and 5 set out the record-keeping requirements for financial institutions to be installed into the Criminal Code, Food and Drugs Acts and the Narcotics Control Act. Clause 3 broadens the definition of financial institutions subject to record-keeping requirements to include non-banks such as life insurance companies, trust companies, security brokers and other similar institutions.

Portions of clauses 5 and 6 reflect some of the changes made in this bill from Bill C-89. For instance, Bill C-9 has made requirements for identifying customers more specific and workable. As well, the bill adds the term "knowingly" to the definition of the offence. The intention is to ensure that inadvertent violations of the law would not be subject to the serious punishment proposed in the bill.

Draft regulations have not as yet been introduced with Bill C-9. Department of Finance officials have indicated that these will be changed from those that accompanied Bill C-89 which have been subject to some objections. I am sure the joint committee will do the necessary monitoring of these new regulations.

I would recommend that all honourable senators support this bill and that it proceed to discussion in Committee of the Whole.

Motion agreed to and bill read second time.

The Hon. the Speaker: When shall this bill be read the third time?

REFERRED TO COMMITTEE OF THE WHOLE

Hon. Nathan Nurgitz: I move that the bill be referred to Committee of the Whole later this day.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

NATIONAL ENERGY BOARD ACT

BILL TO AMEND—SECOND READING

Hon. Pat Carney moved the second reading of Bill C-2, to amend the National Energy Board Act.

She said: Honourable senators, I should like to make a few clarifying remarks about the intent of this bill. You will recall that on February 26, 1991, the Hon. Michael Wilson announced in the budget speech the Government of Canada's decision to relocate the National Energy Board from Ottawa to Calgary. Bill C-2, a bill to amend the National Energy Board Act, will make it possible for the government to follow through with these plans.

By way of introduction, many honourable senators know that the National Energy Board was created by an act of Parliament in 1959. For the first time, an independent tribunal was created to provide advice to the federal government on certain major energy matters drawing heavily on evidence put before it at public hearings.

The board wields a broad range of regulatory authorities including the licensing of the export of oil, gas and electricity, the issuance of certificates for international interprovincial pipelines and international power lines, and the setting of just and reasonable tolls for pipelines under federal jurisdiction.

In addition to these regulatory responsibilities, the board, at the specific request of the Minister of Energy, Mines and Resources, serves as a provider of expert advice and information to the government on energy issues and energy markets.

These amendments to the National Energy Board Act contained in Bill C-2 will in no way affect the board's regulatory stature or mandate. The purpose of the legislation is to allow the National Energy Board of Canada to relocate from Ottawa to Calgary; nothing more and nothing less.

Why Calgary? Calgary is generally accepted as the centre of Canada's oil and gas industry. The board spends by far the largest portion of its time dealing with oil and gas related issues. For these reasons alone, most Canadians—and this includes members of both opposition parties as reflected in their comments in the House of Commons on second reading—viewed the relocation to Calgary as a relatively straightforward and sensible decision.

It is important, however, to recognize that there is a much broader context for this move. Western Canadians in particular have increasingly felt that their problems were not always well understood in Ottawa and that decisions were sometimes taken without a full appreciation of their views and perspectives. National policy must be seen, particularly at this time, to be responsive to the aspirations of Canada's regions for a fuller participation in our national life and greater proximity to the making of decisions which will shape their economic future.

Some have alleged that moving the NEB will somehow throw into question the integrity and impartiality of its decisions. This argument, however, is totally preposterous and insults the intelligence of the audience, in particular, western Canadians, and of the board's staff.

The board will continue to hold its public hearings in centres right across Canada in close proximity to the major impact of the project and where public concerns are the greatest. The government is managing the relocation in a manner which is fair to the board's employees, the industry and taxpayers who share the financial burden of the move.

• (1050)

The board, its staff and all those it serves, industry as well as consumers, stand, over the long run, to gain handsomely by

...

• (1140)

I am not taking a holier-than-thou attitude, I assure you, because when I was in the government I did issue licences for the sale of arms, under the stringent controls that we had in place and now have in place. But it seems to me that in these circumstances we ought to give some signal to the world that we are not ready and we are not eager to join in the sale of arms, particularly to the Middle East, and to join in the sale of arms to Saudi Arabia, which is in the very centre of this area of tension. We cannot support this bill. We will not support it because of the concerns which I have stated in my short remarks.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I want to add a word about how much I support what Senator MacEachen has said and why I cannot support this bill. The reasons expressed by Senator MacEachen are quite adequate reasons, but I want to piggyback a voice, perhaps in the wilderness, citing this as another example of the continued use of euphemistic terms to describe the arms trade and the defence industry.

I believe that the arms trade is a mean, inhuman business. I think most people engaged in it realize that it is and, therefore, ease their consciences by using euphemistic expressions to describe it. The purpose of the arms trade is to produce arms, and arms are tools to kill and wound people. They do not exist to demolish buildings and replace buildings. They sometimes have the effect of demolishing buildings, but they are there to kill people. However, no one seems to say so any more. They use euphemistic words like anti-personnel devices. Well, the anti-personnel device exists, like all weapons, to kill people or to threaten them.

Senator Doody: Collateral damage.

Senator Frith: Yes, collateral damage is another beautiful euphemism. The word "defence industry" means the manufacture and sale of arms to kill people. When one talks about the defence industry one does not mean building an industry to defend ourselves against some attack that will happen tomorrow or at any time that we can articulate. The word "defence" does not mean defence any more; it is simply another euphemism, another attempt to create some sort of mask for the arms trade and for the manufacture of tools to kill people.

I support entirely the analysis and all of the points made by Senator MacEachen, but I just want to add that in my view it would be useful for us to face the fact that when we use these euphemistic terms, we are not talking about anti-personnel devices and "defence", but about devices to kill and wound people and create all the consequences described by Senator MacEachen which flow from that.

I believe that Canada's legislation in this area should not be making exemptions to a structure that puts us in the forefront of nations with strict policies against the arms trade. It should be legislation toward conversion to peaceful uses of these industries that, if we are honest, are designed and committed to the production and proliferation of weapons destined for the killing or intimidation of other human beings.

Motion agreed to and bill read second time, on division.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Kelleher, bill referred to the Standing Senate Committee on Foreign Affairs.

BUSINESS OF THE SENATE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I intend to move that the Senate go into Committee of the Whole to consider the matters referred to it today, namely, the money laundering bill and the National Energy Board bill.

Hon. Allan J. MacEachen (Leader of the Opposition): When the work of the Committee of the Whole is completed, government orders will have been completed. What is the intention then for today? I know we have business for tomorrow.

Senator Doody: It is the intention, after the business of the Senate is concluded today, to adjourn until nine o'clock tomorrow morning.

Honourable senators, I should like to refer back to the bill which was just under discussion. I am told that the Foreign Affairs Committee has made arrangements to hear the Minister at eight o'clock this evening.

PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

CONSIDERED IN COMMITTEE OF THE WHOLE

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, I move that the Senate resolve itself into a Committee of the Whole to consider Bill C-9, to facilitate combatting the laundering of proceeds of crime.

The Hon. the Speaker: It is agreed, honourable senators?

Some Hon. Senators: Agreed.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on Bill C-9, Senator Rhéal Bélisle in the Chair.

Senator Doody: I would ask that the Honourable Minister Loiselle be invited to participate in the deliberations of the Committee of the Whole. The minister has two officials with him and I would ask leave to admit them as well.

The Chairman: Honourable senators, while the minister is being brought in with his aides, I wish to thank you for giving me the opportunity to chair the Committee of the Whole. Since this is the first time that we are sitting under the new rules, may I bring to your attention rule 65 (1) (a) and (b):

(1) The Rules of the Senate shall apply to Committee of the Whole with the following exceptions:

(a) a Senator may speak any number of times;.

(b) during debate in Committee of the Whole no senator shall speak for more than ten minutes at any one time;

And there are other rules on pages 64 and 65. It is my intention to recognize those who will raise their hands and I will recognize take them as I see their hands up.

Pursuant to rule 18 of the *Rules of the Senate*, the Honourable Gilles Loiselle, President of the Treasury Board and Minister of State (Finance); Mr. Yvon Carrière, Counsel, Text Counsel Division, Department of Finance; and Mr. James F. McCollum, Chief Industry Analyst Senior Sector Policy Branch, Department of Finance, were escorted to seats in the Senate chamber.

• (1150)

Senator Doody: Honourable senators, I am pleased to introduce the Minister, Mr. Loiselle, who will be pleased to answer any questions that honourable senators might have. I understand that he does not have an opening statement but is available for questioning.

I should also like to introduce Mr. James McCollum, Chief Industry Analyst, Senior Sector Policy Branch of the Department of Finance; and Mr. Yvon Carrière, Counsel, Text Counsel Division of the Department of Finance.

Senator Frith: What are we on?

Senator Doody: Bill C-9, the Money Laundering Bill.

The Chairman: Honourable senators, the Senate is in Committee of the Whole on Bill C-9, an act to facilitate combatting the laundering of proceeds of crime.

Shall the title be postponed?

Senator Frith: I think we will have some questions first, before we proceed to a clause-by-clause study.

Senator Stanbury: Mr. Chairman, may I ask the minister some questions?

The Chairman: Yes, you may.

Senator Doody: We will have some questions, Mr. Chairman, before we proceed to the clause-by-clause study.

The Chairman: Does the minister have any opening statement?

Senator Doody: No.

Senator Stanbury: Mr. Minister, all of us appreciate the fact that this bill has finally come to us. We have read clause 2 of the bill, which sets out the object and application of the proposed act. It would be only fair for us to point out that the Standing Senate Committee on Legal and Constitutional Affairs made a strong recommendation, when it was dealing with the Criminal Code amendments which came considerably earlier, that this kind of legislation should have been introduced at that time; so that it does not sit well with us to criticize this act very much, because it is doing what we said should be done some time ago.

[The Hon. the Speaker.]

There are several things that I should like to ask about the wording of the bill and the application of it as I understand it.

Proposed section 3 substantially broadens the definition of financial institutions. The only problem I see with it is that it opens the door substantially to the government to develop its own definition of to whom it is intending to apply the proposed act. For example, clause 3(h) will let businesses or professions be added by regulation. We have no regulations, so they will not know whether or not they are covered. There is no provision for notice to them other than the publication in the *Canada Gazette*. It concerns me that there may well be businesses or professions added to the regulations without their realizing they have been added, and therefore will not begin making their records until some issue arises. Can you give us any satisfaction in terms of this problem?

Mr. Loiselle: Thank you, senator. You said that you should have come forward some time ago with regard to this particular bill. I should like to inform you that we have been consulting extensively with financial institutions, the private sector and the provinces in order to ensure that what we were doing was acceptable, efficient and covered the areas that we wanted to cover.

Referring to the definition of the institutions or people to be eventually targeted by this legislation, at the present time it is clear that we are dealing with the banks, the credit unions, Caisse Populaires, life insurance companies, trust and loan companies, securities firms and foreign exchange houses. Inasmuch as money laundering is an ongoing crime that evolves, we want to retain the capacity to act should the RCMP or other enforcement authorities indicate to us that there is a need to extend it.

At the present time we indicate in the bill that it would cover the professionals who handle large sums of money. We have been in touch with and have consulted and discussed—and I personally have consulted with representatives of the legal profession, who are now satisfied that what we are doing is acceptable. They were worried that the relationship between solicitor and client would be affected by this bill, but it is not; also, the intent had to be there. We covered that. Presently we are there. We want to retain capacity to extend to other professions or other groups should indications arise that they have become used more and more for money laundering purposes.

Senator Stanbury: I can understand your need to have flexibility in the matter, but the problem for me is that you are not obliged to let people know in advance that they are involved. Yet clause 4 goes on to say that they have to keep certain records. How will they know whether they are supposed to keep certain records if you are able to add their professions at a particular time when an issue arises, when they have not realized that they were to be added before that?

Mr. Loiselle: You raise a valid point. In the regulations you will have a prepublication. We will do with the new groups what we have done with the institutions. We started with the institutions because they had already been identified as vehi-

cles for the money laundering; but there would be consultation and then prepublication. We would be sure that these groups are fully aware of their legal responsibility. To us, that is important.

Senator Stanbury: That is an important aspect of it. We will have to depend upon the Joint Committee on the Scrutiny of Regulations to draw to our attention anything that seems to be outlandish.

Senator Frith: May I ask a supplementary question?

Senator Stanbury: Yes.

Mr. Loiselle: Before you do, may I indicate immediately that we do share this concern? It is our intention to address this problem with great care because we realize that we cannot immediately move to a new target group and try to catch them off guard. We will have to give them the time to adjust and make information available.

• (1200)

Senator Frith: However, the effectiveness of the regulation and the imposition of responsibility that flows from it will not be dependent or conditional upon notice having been given and received?

Mr. Loiselle: That is right.

Senator Frith: The imposition of the responsibility to which Senator Stanbury and the minister have been referring will take place even in the absence of such notice, unlike, for example, in any official imposition of responsibility by a court where one has to give notice to the person affected. And as for the imposition of an injunction, one has to prove that the person knew its terms and application, which is not—

Mr. Loiselle: A precondition.

Senator Frith: The imposition of the obligation is not conditional upon notice having been given and received. First, is that correct, Mr. Minister? Second, if it is correct, is that the area in which you will be exploring improvement?

Mr. Loiselle: We will use the ordinary or usual means of doing that, apart from the consultation process. These things move very quickly. Whenever we talk about lawyers, for example, representatives of the profession—and very rightly so—immediately ask to discuss matters with us. They have their own journals, so that the information gets out to their members. I repeat that a notice will be published in the *Canada Gazette* for at least 90 days before the regulation takes effect. That, having been preceded by discussion, consultation and information, should allow us to feel confident that these people will be—

Senator Frith: If anything like that falls between the cracks, the person will be covered and responsible even though he may not have known; is that right?

Mr. Loiselle: Indeed. Once the publication—

Senator Frith: In other words, for the obligation to be imposed, you do not have to prove that notice was given, or that notice was taken?

Mr. Loiselle: The 90-day prepublication will be a legal obligation.

Senator Frith: I understand. You will not go any further than that?

Senator Stanbury: I realize this is not connected, but I thought that perhaps I should draw it to the attention of the minister. Under, Offences and Punishment, clause 6, it states, "Everyone who knowingly contravenes . . .". I assume that that does not refer to knowing that they have such a responsibility, but a question of knowing they were in breach of the act.

Senator Loiselle: You are right, senator.

Senator Stanbury: I keep coming back to the regulations since our main concern is that there are so many open doors and that careful monitoring will be required. For instance, clause 4, which is the essence of the bill, states:

> Everyone to whom this Act applies shall keep and retain records relating to financial activities in accordance with the regulations made under subsection 5(1).

Yet we do not know what those records, the extent or nature of them, will be.

Mr. Loiselle: The regulations will determine what the record-keeping obligations are. They will be established in a similar fashion, I suppose, to those that have already been established in financial institutions, something which was done at their request. I do not see any particular difficulty there. We have to reconcile the full need of the law enforcement agency, in particular the RCMP and other police forces, to have the information they need and, at the same time, the desire not to impose on any institution, group or professional the need to keep useless information that can become very costly. That has not proven to be a difficulty. I would say that most professions keep this information in any case. What is important is the way in which they organize it so that it can be accessed in a more useful and practical way. Again, I do not think that should be too much of a problem. It will be discussed with the groups which will become target groups, and the regulations would provide for that. The draft regulations are presently and publicly available.

Senator Stanbury: I have not had an opportunity to look at the regulations that were developed under Bill C-89, which died at the end of the last session of Parliament. Will the regulations be roughly the same in that particular area?

Mr. Loiselle: I am told that they will be pretty well the same.

Senator Stanbury: Mr. Minister, under clauses 5(1)(a) and 5(1)(*d*)—and I am thinking now about the measures that are to be used to identify customers or clients who should not be dealt with in these circumstances—I find something rather troublesome. Can you give us any indication as to how that will be determined? How are people to identify the customers and clients with whom they should not be dealing ?

Mr. Loiselle: Mr. Chairman, I would ask Mr. McCollum to respond, if he may.

Mr. James McCollum, Chief Industry Analyst, Senior Sector Policy Branch, Department of Finance: Honourable senators, the current draft regulations call for client identification in keeping with sound business practices. In keeping with what is standard currently in the industry, for example, in the case of a bank, we are basically concerned with the bank knowing its client. The same applies to the other industries involved.

Senator Kinsella: May I ask a supplementary question? Under clause 5(1)(d) and the regulatory power that the act is to provide, banks can be required to take steps to ascertain the identity of these persons. Can you give us some practical examples, sir? Will you use ordinary means to impose upon the banks or co-operatives measures to know with whom they are dealing in order to identify these people; or will there be extraordinary means such as the use of surveillance?

Mr. Loiselle: No, senator, not at all. The banks themselves, and all financial institutions, have in place a policy within their branch networks to know their clients. If someone comes in with a large sum of money, the banker should have a normal curiosity about that money, unless he has been dealing with that person and knows that he is a businessman who comes in every Friday with a certain amount of cash from his company. So the banks get to know their clients, and they accept that. It is a general definition of a normal kind of relationship with clients. No one comes into a bank with $2 million and drops it on a desk without the banker asking, "So, where does this come from?" The banker wants to know who these people are. It is the ordinary responsibility of institutions to know their clients. This is accepted in the industry without too much difficulty.

• (1210)

Senator Neiman: Mr. Chairman, I have a couple of questions. I received on my desk this morning the June edition of the National, the publication of the Canadian Bar Association. In it was an insert called "Ottawa Report", which is prepared by the Legal and Governmental Affairs Committee of the Canadian Bar Association. You will be happy to know, Mr. Minister, that it says, "C-89 is dead. Long live C-9." I have read through this report, and the gist of it is that the Canadian Bar Association is extremely happy with the changes that have been made in C-9 as compared to the contents of C-89. One thing the report mentions is that C-89 established recording requirements for transactions of $10,000 or more. I have looked through C-9 quickly and I do not see any figures cited. I assume that they will be established by the regulations. How will this be made clear to everyone who might be affected by the bill?

Mr. Loiselle: The United States has an approach whereby all institutions have to report to the agency and other people who have to look at these reports. The international community has looked at this approach and found that it does not produce the results that were expected when that provision was implemented. With this rule anyone can come in at $9,999, just push it through and they do not have a problem anymore. We want all transactions to be reported. So it will be defined in the regulation, but there will not be a number under which you do not report. All transactions will have to be recorded. So if there is a need for the authority, through the proper process of access—a judge who will give access to the information—it will be easier to find a trace, instead of having to go through a room full of documents from all over the place that you do not know what to do with, and that you may work on for a long time without finding a lead. The regulations will define the transaction but there will be no $10,000 limit.

Senator Neiman: Again, this "Ottawa Report" states on behalf of the Canadian Bar Association that the association is quite satisfied with whatever the definition will be as regards the responsibility of lawyers to report just those matters not defined as lawful client transactions. I wonder how that protection will extend to the other groups that you may define under those sections of the act to which Senator Stanbury and Senator Kinsella referred.

Mr. Loiselle: To be precise, it is not reporting. Institutions or lawyers have to keep records of transactions in their offices. In the case of lawyers, because they do not deal as frequently with this kind of thing, anything above $10,000 has to be recorded. So if a transaction by a certain person becomes suspicious, after accessing the information through the legal process, there will be a trace. So they have to keep a record. It will be the same for other groups, such as car dealers, if we find that they have become targets for money launderers.

Senator Neiman: I have one short question. We were given this morning a copy of a motion introduced by Mr. Langdon in the other place amending clause 5 of the bill. I do not understand it. There is simply written on the bottom "Agreed June 19, 1991" and a signature that I cannot identify. Is this an amendment to the act or is it simply a motion that did not carry?

Mr. Loiselle: It is an amendment that was accepted. Basically, it changes the numbers, but not to a point that would cause any particular problem.

Senator Stanbury: Mr. Chairman, I have one further question. There has been some concern expressed in connection with the act about the definition of the word "person". Clause 7 says:

> Where a corporation commits an offence under section 6, any officer, director or agent of the corporation who directed, authorized, assented to . . . is a party to and guilty of the offense . . .

What about other businesses? For instance, is a junior lawyer, what they now call "an associate", responsible and liable to be convicted of this offence? Generally speaking, what about people in relatively minor roles in other professions or businesses?

Mr. Loiselle: I am told that the law will apply only if they are incorporated.

Senator Stanbury: So, in terms of unincorporated businesses, let us say limited partnerships, associations or profes-

sional firms, each person is individually responsible; is that true?

Mr. Loiselle: Yes.

Senator Stanbury: Regardless of their position in the firm or business?

Mr. Loiselle: Indeed.

Senator Stanbury: I thought it would be useful to have that clarification on record.

Mr. Chairman, those are my questions.

The Chairman: Are there any other questions?

Mr. Loiselle: Mr. Chairman, if I may, I would like to thank you for having received me today. It is always a pleasure to come to this house.

The Chairman: Thank you for coming.

Honourable senators, shall the title be postponed?

Hon. Senators: Agreed.

The Chairman: Shall the short title stand?

Hon. Senators: Agreed.

• (1220)

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 7 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 8 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 9 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 10 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 11 carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Agreed.

The Chairman: Shall clause 1, the short title, carry again?

Hon. Senators: Carried.

The Chairman: Honourable senators, shall I report the bill without amendment?

Hon. Senators: Agreed.

Senator Doody: Mr. Chairman, before the Committee of the Whole reports the bill, I would suggest that the Committee of the Whole remain in session and that we now proceed to Bill C-2. Then both bills can be reported at the same time.

Therefore, with leave of the Senate, I would ask that Mr. Epp and his officials be invited to join us in Committee of the Whole.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

NATIONAL ENERGY BOARD ACT

BILL TO AMEND—CONSIDERED IN COMMITTEE OF THE WHOLE

The Chairman: Honourable senators, the Committee of the Whole will now consider Bill C-2, to amend the National Energy Board Act.

Senator Doody: Honourable senators, I would welcome the Honourable Mr. Jake Epp to our committee. He has agreed to answer questions on Bill C-2. He has with him two officials and I would ask him to introduce them. I believe he has a short opening statement.

Hon. Jake Epp, Minister of Energy, Mines and Resources: Honourable senators, although I have a prepared statement, I will not read it; rather, I will give you the general background to Bill C-2.

As all of you are aware, the National Energy Board was created in 1959. Its purpose was to regulate not only the oil and gas industry but also the export of energy both interprovincially and internationally. The National Energy Board has gone through a number of changes over the last several years, not the least of which is that it received environmental responsibilities in the last mandate of this government.

The location of the National Energy Board has been a matter of debate in the country from many years. About 80 per cent of the National Energy Board's activities are now related to the oil and gas sector and, while that may vary slightly from year to year, depending on the types of applications before the NEB relating to the mix between oil and gas particularly, and electricity and electricity exports, that is about the average percentage.

There have been resolutions before the houses for the moving of the National Energy Board dating back to the early 1970s. In fact, if we go back to the inception of the board, there was debate even then as to what should be the location of the board.

With the changes in administration and in the purpose of the NEB, intervenors and applicants were to pay, on a cost-return basis, the costs of the board, and with 80 per cent of the board's work being in the oil and gas field, it became important to reduce costs to those making application before the board.

June 21, 1991 [House of Commons]

HOUSE OF COMMONS

Friday, June 21, 1991

The House met at 12.10 p.m.

Prayers

[*Translation*]

Mr. Speaker: I wish to inform the House that pursuant to order made on Tuesday, June 18, 1991, I recalled the House today for the sole purpose of granting royal assent to certain bills.

* * *

[*English*]

MESSAGE FROM THE SENATE

Mr Speaker: I have the honour to inform the House that a message has been received from the Senate informing this House that the Senate has passed Bill C-24, an act for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending the March 31, 1992.

[*Translation*]

Furthermore, messages have been received from the Senate informing this House that the Senate has passed the following bills without amendment:

[*English*]

Bill C-2, an act to amend the National Energy Board Act; Bill C-6, an act respecting the exporting, importing, manufacturing, buying or selling of or other dealing with certain weapons, and Bill C-9, an act to facilitate combatting the laundering of proceeds of crime.

* * *

[*Translation*]

ROYAL ASSENT

Mr. Speaker: I have the honour to inform the House that a communication has been received as follows:

Rideau Hall
Ottawa

June 21, 1991

Sir,

I have the honour to inform you that the Hon. Charles D. Gonthier, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 21st day of June, 1991, at 12.10 p.m., for the purpose of giving Royal Assent to certain bills.

Yours sincerely,
Judith A. LaRocque
Secretary to the Governor General

ROYAL ASSENT

[*Translation*]

A message was delivered by the Gentleman Usher of the Black Rod as follows:

Mr. Speaker, the Honourable Deputy to the Governor General desires the immediate attendance of this honourable House in the Chamber of the honourable the Senate.

Accordingly, Mr. Speaker with the House went up to the Senate Chamber.

And being returned:

Mr. Speaker: I have the honour to inform the House that when the House went up to the Senate Chamber the Deputy Governor General was pleased to give, in Her Majesty's name, the Royal Assent to following bills:

Bill C-9, an Act to facilate combatting the laundering of proceeds of crime—Chapter 26, 1991.

Bill C-2, an Act to amend the National Energy Board Act—Chapter 27, 1991.

Bill C-6, an Act respecting the exporting, importing, manufacturing, buying or selling of or other dealing wiht certain weapons—Chapter 28 1991.

Bill C-24, an Act for granting to Her Majesty certain sums of money for the government of Canada for the financial year ending the 31st March, 1992—Chapter 29, 1991.

Mr. Marcel Prud'homme (Saint-Denis): Mr. Speaker, perhaps you would allow members still present in the House to express their appreciation for the excellent job you did this year, in very difficult circumstances, and also the hope that you will get a good rest and come back to us, exhibiting the same good humour and you have shown during the past months.

June 21, 1991 [Senate]

The Senate adjourned during pleasure.

• (1210)

ROYAL ASSENT

The Right Honourable Charles D. Gonthier, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Speaker, the Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

An Act to facilitate combatting the laundering of proceeds of crime (*Bill C-9, Chapter 26, 1991*)

An Act to amend the National Energy Board Act (*Bill C-2, Chapter 27, 1991*)

An Act respecting the exporting, importing, manufacturing, buying or selling of or other dealing with certain weapons (*Bill C-6, Chapter 28, 1991*)

The Honourable John A. Fraser, The Speaker of the House of Commons, then addressed the Honourable the Deputy Governor General as follows:

May it please Your Honour:

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Honour the following bill:

An Act for granting to Her Majesty certain sums of money for the Government of Canada for the financial year ending 31st March, 1992 (*Bill C-24, Chapter 29, 1991*)

To which bill I humbly request Your Honour's assent.

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the said bill.

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

• (1220)

The sitting of the Senate was resumed.

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, on moving the adjournment, may I wish my colleagues on both sides of the house a very pleasant summer and thank the staff for their efforts during the year. I hope that next year will not be quite as strenuous for you as this one has been.

Hon. William J. Petten: If I might echo the thoughts of my colleague on the other side, I hope we all have a pleasant summer and that when we come back it will be to a kinder and gentler place.

The Hon. the Speaker: You might all want to celebrate that in my chambers after this motion passes.

The Senate adjourned until Tuesday, September 17, 1991.

August 20, 1991 [House of Commons Standing Committee on Finance]

[Text]

EVIDENCE

[Recorded by Electronic Apparatus]

Tuesday, August 20, 1991

• 0930

The Acting Chairman (Mr. Sobeski (Cambridge)): Order, please.

There are some motions that we would like to discuss. However, lacking a quorum, we will move the motions when Mr. Soetens arrives.

Pursuant to Standing Order 108.(2), an inquiry into the closure of the Bank of Credit and Commerce Canada and other related matters, our first witnesses this morning are from the Royal Canadian Mounted Police. Inspector Bruce Bowie is the Officer in Charge of the Anti-Drug Profiteering Section, and Superintendent George Kaine is the Officer in Charge of the Criminal Operation Branch.

If you gentlemen have opening statements and would like to make those, you can start when you are ready.

Superintendent George Kaine (Officer in Charge, Criminal Operation Branch, Economic Crime Directorate, Royal Canadian Mounted Police): Thank you, Mr. Chairman. I would first like to say how pleased we are to assist the committee with its work. I would like to ask Inspector Bowie to make a preliminary statement concerning money laundering in general and then, with your permission, Mr. Chairman, I would like to make some comments about the co-operation and some of the tools and the monitoring that goes on in law enforcement in Canada.

Inspector Bruce Bowie, (Officer in Charge, Anti-Drug Profiteering Section, Drug Enforcement Directorate, Royal Canadian Mounted Police): Mr. Chairman, members of the committee, we have been asked to appear today in order to brief the committee on money laundering activities in Canada and abroad as well as the means used to monitor this activity. The profits available from the traffic in illicit drugs represent a double-edged threat to the success of conventional enforcement measures. On the one hand, the potential for profit is a motivating factor that encourages new entrants to the drug trade. On the other hand, the criminal organization with accumulated financial resources is able to finance sophisticated importation and distribution networks as well as being able to absorb periodic enforcement actions.

As a result, since 1981 the RCMP has focused on attacking the profits derived from the drug trade as well as the drug offences. An essential aspect of the organized drug trade is money laundering, the process whereby cash from illegal activities is converted to an alternate form in a manner that conceals its origins, ownerships or other potentially incriminating factors. Criminal organizations often employ sophisticated techniques to accomplish this, including moving moneys through several offshore financial havens in an effort to conceal the audit trail of the money flow. Banks and other financial institutions remain the common carrier of money, including drug moneys. The trafficker is faced with the

[Traduction]

TÉMOIGNAGES

[Enregistrement électronique]

Le mardi 20 août 1991

Le président suppléant (M. Sobeski (Cambridge)): La séance est ouverte.

Nous devons discuter de certaines motions. Cependant, étant donné qu'il n'y a pas quorum, nous allons reporter cette discussion jusqu'à l'arrivée de M. Soetens.

Conformément à l'article 108(2) du Règlement, examen de la fermeture de la Banque de crédit et de commerce Canada et d'autres sujets connexes, nos premiers témoins ce matin représentent la Gendarmerie royale du Canada. L'inspecteur Bruce Bowie est officier responsable de la Section des enquêtes sur les profits des trafiquants et le surintendant George Kaine est sous-directeur des Affaires criminelles.

Si vous avez des remarques préliminaires à faire, je vous prie de bien vouloir commencer dès que vous serez prêt.

Le surintendant George Kaine (sous-directeur des Affaires criminelles, Direction de la police économique, Gendarmerie royale du Canada): Merci, monsieur le président. Je tiens d'abord à dire à quel point nous sommes heureux de pouvoir aider le comité dans ses travaux. Je cède maintenant la parole à l'inspecteur Bowie qui fera quelques remarques préliminaires sur le blanchissage de l'argent en général, puis, si vous le permettez, monsieur le président, je ferai quelques observations sur la collaboration et sur les outils de contrôle dont dispose la police au Canada.

L'inspecteur Bruce Bowie (officier responsable de la Section des enquêtes sur les profits des trafiquants, Direction de la police des drogues, Gendarmerie royale du Canada): Monsieur le président, membres du comité, on nous a demandé de faire aujourd'hui un exposé sur le blanchissage de l'argent, tant au Canada qu'à l'étranger, et sur les méthodes utilisées afin de surveiller ces activités. Les profits tirés du trafic des stupéfiants compromettent doublement le succès des mesures de répression conventionnelles: d'une part, l'appât du gain est un facteur incitatif certain pour les criminels dans l'âme; d'autre part, l'organisation criminelle qui a su accumuler des richesses est en mesure de financer des réseaux d'importation et de distribution complexes, et aussi d'absorber les pertes périodiques attribuables aux interventions de la police.

La GRC a donc résolu, dès 1981, de s'attaquer aux profits générés par le trafic des stupéfiants et comme aux autres infractions liés aux drogues. Un aspect essentiel du trafic organisé des stupéfiants est le recyclage de l'argent, un procédé qui consiste à transformer l'argent liquide provenant d'activités illicites de manière à en dissimuler l'origine, la propriété et tous autres facteurs potentiellement incriminants. Pour ce faire, les criminels recourent bien souvent à des moyens assez subtils, dont le transfert de l'argent dans des refuges fiscaux à l'étranger, afin de bien brouiller les pistes. La banque, avec d'autres institutions financières, demeure le transporteur public de l'argent, y

[*Text*]

problem of placing cash into the banking system without generating speculation as to its origin. Large quantities of cash tend to generate suspicion.

A common device used to deposit moneys into financial institutions involves the employment of "smurfs", money couriers of innocuous appearance who make large numbers of small transactions at various financial institutions. In this manner, large quantities of cash can enter the banking system without attracting undue attention. Once in the banking system, drug moneys can be transferred almost instantaneously to any point on the globe.

• 0935

We have noticed a significant increase in the criminal use of small currency exchange houses, many of which maintain no records whatever of individual transactions or clients. In effect, these businesses serve as intermediaries between the criminal and the conventional banking system. The increased use of currency exchanges and certain professions to facilitate laundering of criminal proceeds coincided with the heightened efforts of the Canadian banks to identify suspicious transactions.

Traffickers will often use domestic business organizations to launder drug moneys. Firms that traditionally involve cash transactions such as vending machines, arcades, and retail stores are popular.

The use of offshore tax haven countries in the laundering process and as repositories for drug moneys has traditionally been a popular device for traffickers of all levels. In choosing an offshore destination for his moneys, the launderer will seek certain attributes. These include bank secrecy laws, little or no tax on certain sources of income, the ease in setting up a foreign-owned corporation, accessibility, and political and monetary stability.

The key to effective use of offshore facilities to launder money is to move the funds in such a manner as to distort or destroy any audit trail that the authorities could track, either forward to the ultimate recipient or backwards to the criminal origin of the funds. To accomplish this the launderer will often utilize dummy corporations and financial institutions in several foreign jurisdictions.

Money laundering investigations tend to be very complex, especially in cases involving foreign jurisdictions. Legislative improvements, both domestic and foreign, have been positive developments in our efforts to attack this problem. We rely heavily on co-operation from the financial sector in initiating investigations. Timely reporting of suspicious transactions to the police is a key consideration. Our co-operative relationships with foreign authorities are also critical elements.

I will endeavour to answer any questions you may have concerning the money laundering situation. Thank you.

[*Translation*]

compris les narco-dollars. Le trafiquant se voit dans l'obligation de confier son argent au système bancaire sans ouvrir la voie aux conjectures, quant à son origine; les sommes importantes éveillent les soupçons.

Pour déposer des capitaux dans les établissements bancaires, on a souvent recours aux «schtroumpfs», c'est-à-dire à des passeurs au-dessus de tout soupçon, pour effectuer un grand nombre de petites opérations bancaires dans divers établissements. Par ce stratagème, d'importantes quantités d'argent liquide sont intégrées au système bancaire sans trop attirer l'attention. Une fois entrés dans le système bancaire, les narco-dollars peuvent être transférés, presque instantanément, en tout point du globe.

On a remarqué que les criminels faisaient un usage accru des maisons de change plus modestes, qui souvent ne gardent pas de dossier ni sur les transactions effectuées, ni sur leurs clients. Ces commerces servent d'intermédiaires entre l'élément criminel et le système bancaire conventionnel. L'usage accru des maisons de change et de certaines professions afin de faciliter le blanchissage des recettes de la criminalité a coïncidé avec une intensification des efforts déployés par les banques canadiennes afin de relever les transactions douteuses.

Les trafiquants ont souvent recours à des entreprises du pays pour blanchir les narco-dollars. Les entreprises appelées à effectuer des opérations au comptant, tels que les commerces de machines distributrices, les salles de jeux électroniques et les commerces au détail sont très prisées.

Le refuge fiscal à l'étranger, en tant qu'étape dans le processus du blanchissage de l'argent et dépôt de narco-dollars, a toujours eu la faveur des trafiquants de tous genres. Avant de choisir un refuge fiscal pour ses liquidités, le blanchisseur recherche certaines garanties, notamment des lois portant sur le secret bancaire, l'absence ou presque d'impôts sur certaines sources de revenu, la possibilité pour un étranger d'y constituer une compagnie, l'accessabilité et la stabilité politique.

L'utilisation efficace des refuges fiscaux repose sur l'aptitude à faire circuler les fonds de façon à brouiller ou à détruire toute piste qui pourrait amener les autorités à découvrir, soit le destinataire ultime, soit l'origine criminelle des fonds. Pour réussir, le blanchisseur utilise souvent des compagnies et des institutions financières fictives dans plusieurs nations étrangères.

Les enquêtes sur le blanchissage d'argent sont de nature très complexe, particulièrement les dossiers impliquant les juridictions étrangères. Les améliorations législatives, tant nationales qu'internationales, ont été des contributions positives à nos efforts pour combattre ce problème. Nous comptons grandement sur la coopération du secteur financier pour qu'il nous prête son assistance lors de l'ouverture des enquêtes. Le signalement opportun de transactions suspectes est capital. Entretenir de bonnes relations avec les autorités étrangères est tout aussi crucial.

Je m'efforcerai maintenant de répondre à vos questions concernant le blanchissage de l'argent. Merci.

[Text]

Supt Kaine: Thank you, Bruce. Mr. Chairman, with your permission I want to make a few brief comments about some of the things that the RCMP and other law enforcement agencies do in a co-operative effort with the Canadian Bankers' Association and the Office of the Superintendent of Financial Institutions.

At the present time Canadian law enforcement has at its availability section 462.3 of the Criminal Code, which is the proceeds of crime portion of the Criminal Code. It is a recent introduction to the Criminal Code in 1989. Basically what it does is that once certain offences designated as drug offences and enterprise crime offences have been identified and charges have been laid, the police can go beyond the penalties that might flow from those particular charges and attack the proceeds of a crime. This is done by way of special warrants and freezing orders, warrants to seize tangible assets, and freezing orders to freeze for future forfeiture of intangible assets, bank accounts.

As well, recently royal assent was given to Bill C-9, which deals with money laundering. Bill C-9 is a record-keeping requirement that will require financial institutions such as banks, loan companies, trust companies, to maintain records of financial transactions so that if the police identify areas of concern, criminal offences, we will be able to go back and retrieve the records that will assist us in establishing the trail.

In terms of co-operation, the RCMP and other law enforcement agencies participate in talks and seminars to banking groups, particularly to sensitize them to money laundering. At the present time the RCMP has an exchange program going on between the force and the Bank of Montreal, where we have exchanged employees. Two of our members are currently working in the international portion in the Bank of Montreal in Toronto to familiarize themselves with international banking. Their employee is working with our commercial crime section in Toronto to familiarize himself with it. He is an auditor and he is familiarizing himself with the requirements and the operations of the RCMP in conducting white-collar crime investigations.

• (0940)

At the present time we are very close to establishing an exchange of information with the Canadian Bankers' Association that will give them access to our criminal records information. The purpose of this is to ensure that employees who will be occupying sensitive positions are properly cleared, and it is with the consent of the employee, of course.

Interpol and the RCMP publish circulars in relation to fraudulent activities and *modus operandi*. At the present moment my boss, Norm Doucette, who is the Director of Economic Crime Enforcement and Assistant Commissioner, is the chairman of the crime in industry committee of the Canadian Association of Chiefs of Police.

A similar co-operative activity goes on between the RCMP and the Office of the Superintendent of Financial Institutions as well. We assist the office in investigating complaints relating to sections 302 and 310 of the Bank Act,

[Traduction]

Sdt Kaine: Merci, Bruce. Monsieur le président, si vous me le permettez, j'aimerais faire quelques brèves remarques sur les initiatives de la GRC et d'autres services de police en collaboration avec l'Association des banquiers canadiens et le Bureau du surintendant des institutions financières.

A l'heure actuelle, la police canadienne dispose de l'article 462.3 du Code criminel portant sur les produits de la criminalité et qui a été ajouté au Code criminel en 1989. Essentiellement, grâce à cette disposition, dès qu'on constate qu'il y a infraction désignée en matière de drogue ou infraction de criminalité organisée et que des accusations sont portées, la police peut aller au-delà des amendes habituellement prévues pour ces infractions et s'attaquer au produit même du crime. Pour ce faire, on a recours à des mandats spéciaux et à des ordonnances de blocage, à des mandats de saisie des actifs corporels et à des ordonnances de blocage pour confiscation future des actifs incorporels, les comptes bancaires.

En outre, le projet de loi C-9 sur le recyclage des produits de la criminalité a récemment reçu la sanction royale. Cette loi établit des obligations de tenue de documents qui s'appliquent aux institutions financières telles que les banques, les sociétés de prêts et les sociétés de fiducie, lesquelles doivent consigner les transactions financières afin de permettre à la police de relever les infractions criminelles et de disposer d'une piste documentaire pour ses enquêtes.

En ce qui concerne la collaboration, la GRC et d'autres services de police participent à des discussions et à des séminaires avec des groupes de banquiers, précisément pour les sensibiliser au blanchissage de l'argent. Il existe aussi un programme d'échange d'employés entre la GRC et la Banque de Montréal. Deux de nos membres travaillent actuellement au sein de la Section internationale de la Banque de Montréal à Toronto afin de se familiariser avec les opérations bancaires internationales. Un employé de la banque est en stage dans notre Section des crimes économiques de Toronto afin de se familiariser avec ce domaine. Il est vérificateur et il s'intéresse particulièrement aux exigences et aux opérations de la GRC reliées aux enquêtes sur les crimes des cols blancs.

Nous sommes également en bonne voie d'établir un réseau d'échange d'informations avec l'Association des banquiers canadiens, laquelle aura alors accès à nos renseignements sur les casiers judiciaires. Ainsi, on pourra vérifier les dossiers des employés de banques occupant des postes névralgiques, avec le consentement de ces employés, évidemment.

Interpol et la GRC publient des circulaires sur les activités frauduleuses et les *modus operandi*. De plus, mon supérieur, le commissaire adjoint Doucette, directeur de la Police économique, préside le Comité sur le crime dans l'industrie de l'Association canadienne des chefs de police.

Une collaboration semblable existe entre la GRC et le Bureau du surintendant des institutions financières. Nous aidons le Bureau dans ses enquêtes sur les plaintes relatives aux articles 302 et 310 de la Loi sur les banques, c'est-à-dire

[*Text*]

and basically that is the unauthorized operations of a bank and the unauthorized use of the word "bank". We exchange information on a case-by-case basis both with the Canadian Bankers' Association and with the Office of the Superintendent of Financial Institutions.

Those are my general comments on that, Mr. Chairman.

The Acting Chairman (Mr. Sobeski): Thank you. Mr. Manley.

Mr. Manley (Ottawa South): Thank you for those comments concerning money laundering in general and in respect of what the RCMP is involved with in communication with the banking association and other police agencies.

However, these hearings primarily concern the Bank of Credit and Commerce Canada and related organizations, and my questions relate to what knowledge the RCMP had concerning the activities of BCCC or BCCI, if I can refer to them that way, when that knowledge was obtained, and to whom it was communicated. I would like to ask you first of all, and perhaps in light of your comments concerning money laundering, whether the Bank of Credit and Commerce Canada was ever investigated by the RCMP in respect of suspected money laundering operations.

Supt Kaine: At the present time the RCMP do not have any active investigations ongoing concerning money laundering involving the BCCC. In the past the bank's name has surfaced in relation to other investigations, much the same as it would surface if another bank had been used as a place of deposit for banks for the transfer of funds.

Mr. Manley: When it has surfaced, have investigations been conducted of the BCCC by the RCMP?

Supt Kaine: Investigations were conducted of specific incidents or fact situations, and as I indicated earlier, the name of the bank came up from time to time, much the same as it would if another bank had been used.

Mr. Manley: Was there an investigation carried out as a result of published stories concerning the link of Manara Travel to the Libyan government in 1988 and allegations in the United States that the BCCC was being used to avoid U.S. Treasury regulations?

Supt Kaine: We assisted the FBI in that regard.

Mr. Manley: Did you conclude that the BCCC was being used as a facilitator for money laundering in respect to that investigation?

Supt Kaine: I have no personal knowledge of that particular investigation, Mr. Manley.

• 0945

Mr. Manley: Do you know whether the results of that investigation were communicated to management of the BCCC?

Supt Kaine: I do not have an answer to that, sir.

Mr. Manley: Were the results of the investigation communicated to the Solicitor General of Canada?

[*Translation*]

essentiellement les activités non autorisées d'une banque et l'emploi non autorisé du titre «banque». Nous échangeons aussi des informations avec l'Association des banquiers canadiens et le Bureau du surintendant des institutions financières sur certains cas particuliers.

Voilà les observations que je désirais faire, monsieur le président.

Le président suppléant (M. Sobeski): Merci. Monsieur Manley, vous avez la parole.

M. Manley (Ottawa–Sud): Je vous remercie de vos remarques sur le blanchissage de l'argent en général et sur la collaboration de la GRC avec les associations de banquiers et les autres services de police.

Cependant, ces audiences portent avant tout sur la Banque de crédit et de commerce Canada et ses organes connexes, et j'aimerais savoir ce que la GRC savait des activités de la BCCC ou de la BCCI, si je peux me permettre d'employer ces acronymes, à quel moment elle a obtenu ces informations et à qui elle les a communiquées. Tout d'abord, à la lumière des observations que vous venez de faire sur le blanchissage de l'argent, j'aimerais savoir si la Banque de crédit et de commerce Canada a déjà fait l'objet d'une enquête de la GRC en ce qui a trait à des opérations possibles de blanchissage d'argent.

Sdt Kaine: À l'heure actuelle, la GRC ne mène activement aucune enquête sur le blanchissage d'argent à la BCCC. Dans le passé, le nom de cette banque a été cité dans le cadre d'autres enquêtes, tout comme on aurait cité celui d'une autre banque qui aurait servi de lieu de dépôt pour un virement de fonds.

M. Manley: Lorsqu'on a fait mention de la BCCC, la GRC a-t-elle ouvert une enquête?

Sdt Kaine: Des enquêtes ont été menées sur des situations ou des incidents particuliers et, comme je le disais plus tôt, on a mentionné cette banque comme on aurait pu en mentionner une autre.

M. Manley: A-t-on entrepris une enquête par suite des articles qui ont été publiés sur les liens qui existaient entre Manara Travel et le gouvernement libyen en 1988 et par suite des allégations qui ont été faites aux États-Unis voulant qu'on ait utilisé la BCCC pour se soustraire aux règlements du Trésor américain?

Sdt Kaine: Nous avons prêté main-forte au FBI à cet égard.

M. Manley: Dans le cadre de cette enquête, en avez-vous conclu que la BCCC avait facilité le blanchissage d'argent?

Sdt Kaine: Personnellement, monsieur Manley, je ne suis pas au courant de cette enquête-là.

M. Manley: Savez-vous si les résultats de cette enquête ont été communiqués à la direction de la BCCC?

Sdt Kaine: Je ne peux vous répondre, monsieur.

M. Manley: Les résultats de cette enquête ont-ils été communiqués au Solliciteur général du Canada?

...

[*Texte*]

Mr. Michael Mackenzie (Superintendent, Office of the Superintendent of Financial Institutions): Thank you very much. As you know, we have prepared a fairly short opening statement, which we distributed on Friday last. I hope the members of the committee have had a chance to read it.

An hon. member: I don't have it.

Mr. Mackenzie: I can't explain that. I will read it, but I am sorry if there are no copies available because—

Mr. Langdon: We have copies.

Mr. Mackenzie: Okay.

The Acting Chairman (Mr. Sobeski): Maybe I could ask Mr. Mackenzie to highlight some of the key points in the presentation and we will put it as read into the minutes.

Mr. Mackenzie: If I could, sir, I would like to take the committee through the presentation in terms of setting the stage for—

The Acting Chairman (Mr. Sobeski): You had better get started with the presentation. Carry on.

Mr. Mackenzie: Mr. Chairman, in this presentation, what I would like to do is take the committee through the history of our involvement as regulators with the Bank of Credit and Commerce Canada from the date of its application and incorporation as a bank through the years leading up to 1988, very briefly, then from 1988 to the time that we took possession of the assets on July 5, with a few remarks on events subsequent to that.

• 1310

As I start, there is an attachment, which is a partial organization chart, that might be helpful to the committee to look at in order to understand the corporate structure in its bare bones.

The Bank of Credit and Commerce Canada was a continuation of a company that had been incorporated before they were allowed to come into Canada as a bank. It was a company called BCCI Canada Inc., incorporated in 1970 to carry on as an investment or finance company, not as a bank. It was that entity that was, with the introduction of the new Bank Act, converted into a bank under the provisions of the Bank Act providing for the entry of foreign banks into Canada as bank subsidiaries.

If you look at this partial organization chart, the bank we are concerned with this afternoon at the bottom left-hand corner is a wholly owned subsidiary of BCCI S.A. incorporated in Luxembourg. You might also find it helpful to note that that bank in Luxembourg carried on a number of banking activities, the principal one of which was the operation of branches in the United Kingdom.

At the time of its application, we applied the same basic criteria to judge whether it should be permitted to come into the country as we applied to all other banks at the time. That procedure involved us in doing the following, amongst other things.

[*Traduction*]

M. Michael Mackenzie (surintendant, Bureau du surintendant des institutions financières): Merci beaucoup. Comme vous le savez, nous avons préparé une déclaration assez brève qui a été distribuée vendredi dernier. J'espère que les membres du comité ont déjà pu la lire.

Une voix: Je ne l'ai pas reçue.

M. Mackenzie: Je ne sais pas pourquoi. Je vais lire le texte, et je suis désolé s'il n'y a pas d'exemplaire disponible, car. . .

M. Langdon: Nous avons le texte.

M. Mackenzie: Parfait.

Le président suppléant (M. Sobeski): Monsieur Mackenzie, vous pourrez peut-être tout simplement présenter les éléments essentiels de vos remarques qui seront considérées comme ayant été lues et versées au procès-verbal.

M. Mackenzie: Si possible, monsieur le président, j'aimerais indiquer la teneur de cette présentation au comité de façon à dresser un tableau. . .

Le président suppléant (M. Sobeski): Je crois que vous pouvez commencer. Vous avez la parole.

M. Mackenzie: Je voudrais donc, monsieur le président, présenter, très rapidement, l'historique de nos rapports en tant qu'organisme de réglementation avec la Banque de crédit et de commerce Canada à partir de la date où elle a déposé une demande et a été constituée en société bancaire jusqu'à 1988, et examiner ensuite les événements survenus de 1988 au 5 juillet de l'année en cours, quand nous avons pris possession des actifs de cette banque. J'ajouterai quelques remarques sur les événements qui ont suivi.

Je vous signale dès à présent que nous avons porté en annexe au texte de notre exposé un organigramme partiel et les membres du comité jugeront peut-être utile d'y jeter un coup d'oeil pour comprendre la structure fondamentale de ce groupe.

La Banque de crédit et de commerce Canada a repris les activités d'une société constituée en personne morale avant que ce groupe ne soit autorisé à travailler au Canada comme institution bancaire. Cette société s'appelait la BCCI Canada Inc., constituée en 1970 comme société de placement; ce n'était pas une banque. Après l'adoption de la nouvelle Loi sur les banques, cette entité est devenue une institution bancaire aux termes de la Loi sur les banques qui autorisait des banques étrangères à établir une filiale au Canada.

La banque qui nous intéresse apparaît en bas et à gauche sur l'organigramme que j'ai mentionné. Elle est la filiale, en propriété exclusive, de la BCCI S.A., société constituée au Luxembourg. Vous voudrez également noter que la banque luxembourgeoise avait de nombreuses activités bancaires dont la principale était la gestion de succursales au Royaume-Uni.

La demande qui fut déposée à ce moment-là fut jugée selon les mêmes critères que les demandes provenant d'autres banques étrangères qui voulaient venir travailler au Canada à l'époque. La procédure établie prévoyait un certain nombre de mesures dont je vais mentionner quelques-unes.

[*Text*]

We contacted both the authorities in Luxembourg, which was the regulatory body charged with the regulation of the parent bank to the bank in Canada. We also contacted the Bank of England, both then and later, and at the time we received assurances from the Luxembourg authorities that the bank was in good standing, had the legal power to make this investment in Canada and so forth. As we always do, we also received that confirmed in writing. We received a letter of undertaking from that bank—that is to say, BCCI S.A. in Luxembourg—the standard letter of comfort, a letter of undertaking and support to the Canadian bank.

As in all cases with the incorporation of a new bank, there was a provision of the Bank Act that permits someone to call for an investigation or make some inquiries, and to that purpose, the intention to form the bank was published over, I think, four consecutive weeks in *The Canada Gazette*. Nothing turned up at that time—this was before my time as Superintendent, back in 1981 or 1982—that indicated that there were any particular problems with this bank or that it had been associated with any untoward banking or near-banking activities, and the process seemed to be in order.

It should be noted that both the Luxembourg authorities and the Bank of England as well as ourselves are all members of the BIS Banking Committee on Supervision, and that organization and that committee had at that time in existence, which is still in existence, a concordat that provides for an orderly flow of communications between a home regulator—in this case, effectively the authority is in Luxembourg, but to a degree also, although not legally so, I suppose, the Bank of England with respect to the U.K. operations—and a host regulator, being ourselves, in this case, in Canada.

No information was given to us by those regulators or any other source. No formal protests were lodged against the formation of the bank. There was no evidence we could see that was brought to our attention of wrongdoing or improper practices at that time. It was, therefore, licensed as a bank in 1982, with a head office in Montreal, and from that time until December of last year the licence of the bank was renewed each year.

• 1315

We examined the bank in each of those years, focusing on the things we normally focus on, which were, of course, the condition of the credits, the internal controls, the management control practices and so forth and so on, and although we had a lot to say about some of the documentation problems and some of the administration problems, nothing was brought to our attention until 1988 that would indicate that there was anything more to the story than that.

[*Translation*]

Nous nous sommes mis en rapport avec les autorités de surveillance au Luxembourg responsables de l'administration des règles qui devaient être respectées par la société bancaire mère de la banque canadienne. Nous nous sommes également mis en rapport avec la Banque d'Angleterre—que nous avons également approchée ensuite. Les autorités luxembourgeoises nous ont donné l'assurance que la banque était en règle, possédait les pouvoirs requis pour procéder à cet investissement au Canada, etc. Comme toujours, ceci nous a été confirmé par écrit. La banque, c'est-à-dire la BCCI S.A. au Luxembourg, nous a également adressé une lettre d'engagement, la lettre de confort type, indiquant qu'elle s'engageait à appuyer et soutenir la banque canadienne.

Lors de la création d'une nouvelle banque, la Loi sur les banques prévoit que toute personne peut demander qu'il y ait enquête ou poser un certain nombre de questions; pour respecter cette disposition, un avis fut publié pendant, je crois, quatre semaines consécutives dans *La Gazette du Canada* annonçant l'intention de créer cette banque. Rien ne fut signalé—ceci s'est produit avant que je n'occupe mon poste de surintendant, vers 1981 ou 1982—pouvant indiquer la présence de difficultés ou l'association de cette banque à des activités bancaires ou quasi-bancaires suspectes. Tout semblait être dans les règles.

Il convient de noter que les autorités luxembourgeoises et la Banque d'Angleterre, comme nous-mêmes, font partie du Comité des règles et pratiques de contrôle des opérations bancaires constitué par la Banque des règlements internationaux. Ce comité et cette banque étaient parties à un concordat, qui existe toujours, qui assure le bon ordre des échanges de renseignements entre un organisme de réglementation national—dans ce cas particulier celui du Luxembourg mais également dans une certaine mesure, sans qu'il y ait sans doute d'obligation légale, la Banque d'Angleterre en ce qui concerne les activités se déroulant au Royaume-Uni—d'une part, et, d'autre part, un organisme de réglementation dans le pays d'accueil, dans le cas présent, le Canada.

Nous n'avons reçu aucun renseignement de ces organismes ou de toute autre source. Personne ne s'est opposé formellement à la création de cette banque. Parmi les renseignements reçus nous ne pouvions rien trouver qui pourrait nous signaler inconduite ou méthode malhonnête. Cette société a donc reçu en 1982 un permis l'autorisant à exercer des activités bancaires, permis qui a été renouvelé annuellement jusqu'en décembre dernier.

Pendant cette période, nous avons procédé à un examen annuel des activités de la banque en mettant plus particulièrement l'accent sur les sujets qui retiennent normalement notre attention, c'est-à-dire, bien sûr, le statut des crédits, les contrôles internes, les méthodes de contrôle de gestion, etc. Nous avons constaté qu'il y avait beaucoup à dire au sujet des questions de documentation et, dans certains cas, d'administration, mais rien n'a été porté à notre attention avant 1988, qui aurait pu indiquer qu'il y avait anguille sous roche.

[*Texte*]

In 1988, as I think you know, charges were brought in the state of Florida against BCCI Overseas operating in that state. These were charges related to an accusation of money laundering. Accordingly, in that year we did expand our review and analysis of the bank's activities to see if there was evidence of unusual cash transactions or other transactions that might be evidence of money laundering, or similar kinds or other kinds of illicit or improper activity.

In 1988 we received an anonymous phone call and documentary evidence, some of which was reprinted in the newspaper a week or two ago, identifying a number of large cash transactions. We investigated these transactions. We brought them to the attention of the RCMP, and we brought them to the attention of the bank auditors. Our further investigations did not indicate—while those transactions were unusual—that there was anything criminal or untoward about them. But I can't judge that wholly because this evidence was given over to the police and it is the police who have the power to make criminal investigations—

Mr. Langdon: Which police force?

Mr. Mackenzie: The RCMP. We did, however, at the time examine the banks's own processes for detection of suspicious transactions and for the reporting of suspicious transactions. We thought they were not up to scratch and we worked with them to improve those processes and, on subsequent examinations, did part of our examination to ensure that the bank was complying with these new procedures.

Early in 1990, after there had been a good deal of publicity and interest in the whole subject of money laundering in banks, and the passage of Bill C-9, we issued a "Best Practices for Deterring and Detecting Money Laundering" paper, which of course went to this bank and all other banks in the system.

During 1990 there were other allegations, both domestically and in foreign jurisdictions, the U.S., with respect to money laundering and fraud, related to this bank or its affiliates. But I can assure the committee that our investigations and the investigations done by the auditors, with whom we had more than casual contact during this period, did not reveal anything that we considered to be fraudulent or illegal, and any transactions of any kind that seemed to be suspicious again were referred by us to the RCMP.

There was then, I guess at an escalating volume, a lot of talk and discussion about this bank on an international basis and the activities it carried on in these areas, but up to this point we ourselves had not seen any evidence that would put us in a position of identifying criminal money laundering or related transactions as such.

[*Traduction*]

Vous savez déjà sans doute que des plaintes ont été déposées en 1988 contre la BCCI Overseas, en Floride, où cette banque était installée. Ces plaintes résultaient d'une accusation de blanchiment de fonds. En conséquence, nous avons alors étendu la portée de notre examen et de notre analyse des activités de la banque afin de voir s'il existait des preuves de transactions au comptant inhabituelles ou de toute autre transaction établissant l'existence d'un blanchiment de fonds ou d'autres activités similaires ou encore d'autres activités illicites ou malhonnêtes.

En 1988, nous avons reçu un appel téléphonique anonyme et des documents, dont certains ont paru dans la presse il y a une semaine ou deux, qui signalaient un certain nombre de transactions au comptant portant sur des sommes considérables. Nous avons procédé à une enquête et avons signalé ces cas à la GRC ainsi qu'aux vérificateurs bancaires. Même si ces transactions présentaient un caractère exceptionnel, nos enquêtes complémentaires n'ont rien trouvé d'illégal ou de malhonnête à leur sujet. Je ne peux pas toutefois formuler un jugement définitif car les éléments de preuve ont été remis à la police et c'est elle qui a les pouvoirs requis pour procéder à une enquête criminelle. . .

M. Langdon: Quelle police?

M. Mackenzie: La GRC. À l'époque, toutefois, nous avons examiné les procédures auxquelles la banque a recours pour déceler et signaler les transactions suspectes. Nous avons estimé que ces procédures n'étaient pas satisfaisantes et nous avons travaillé avec la banque pour les améliorer. Lors des examens ultérieurs, nous nous sommes assurés que la banque respectait ces nouvelles procédures.

Au début de 1990, à la suite de la publicité donnée à la question du rôle des banques dans le blanchiment des fonds et de l'intérêt soulevé par cette question, et après également l'adoption du projet de loi C-9, nous avons diffusé un document intitulé «Mécanismes efficaces de repérage et d'élimination des opérations de blanchiment de fonds». La banque qui nous intéresse, ainsi que toutes les autres banques, a reçu ce document.

Au cours de 1990, tant au Canada qu'à l'étranger, essentiellement aux États-Unis, on a encore laissé entendre que cette banque ou ses banques associées s'adonnaient à des activités de blanchiment de fonds. Je peux toutefois vous donner l'assurance que nos examens et ceux effectués par les vérificateurs, avec lesquels nous étions en rapport assez étroit pendant cette période, n'ont rien révélé qui nous paraisse frauduleux ou illicite, et toute transaction de quelque nature que ce soit qui semblait suspecte a été référée à la GRC par nos soins.

On parlait alors beaucoup, et je crois de plus en plus, du réseau international de cette banque et de ses activités dans divers domaines mais, jusqu'à présent, nous n'avons pas nous-mêmes constaté la présence d'indications qui nous permettraient de repérer des activités de blanchiment de fonds ou des transactions de ce type.

[Text]

• 1320

It is interesting that in our ongoing contacts with the Federal Reserve in the United States, with the Bank of England, with the Luxembourg authorities, with Cayman Island authorities, with the auditors, and repeatedly with the police, no evidence has been brought to my attention that would indicate that this bank was contaminated with a lot of the transactions that have been alleged with respect to either money laundering or arms activities or other kinds of payments. We are not police investigators, but nothing has come to our attention that would indicate that this bank is contaminated with this stuff, whatever this stuff is. I have read the famous Price Waterhouse report that the Bank of England commissioned, with, I am afraid, all the names blanked out so it is an incomplete reading, but they would not give us the report without those names blanked out. There is nothing in that report that touches Canada.

As I say, we made repeated attempts to find out if anybody had any evidence of this nature. As of yesterday the Bank of England not only reassured me that nothing had come to their attention and nothing had come to the attention of the Touche Ross people, who are engaged internationally to liquidate or to manage out this situation, that would indicate there are problems in Canada of this order. In fact, he told me that they had not found any evidence in England either. It is astonishing, but that is what I am told.

Moving on to the financial affairs of the bank, I would like to refer you to a summary sheet entitled "Balance Sheet Data", which has been attached. We worked with the bank starting in 1988-89, and through the early part of 1990, partly in the light of these allegations and concerns. We were in frequent contact with them, and partially as a result of that—and I may say the bank has co-operated—the number of branches in Canada was reduced from eight to four.

As you can see from this table, the total assets of the bank were reduced from $448-odd million to $198 million at the time we took possession of the assets. The deposit liabilities, the CDIC-insured deposit base, was reduced to a third, from $66 million to about $22 million. The uninsured domestic deposit base was reduced from $289 million to $91 million, that is, to about a third in each of these categories.

At the same time the parent bank, mainly through its branches in the United Kingdom and in part through its affiliate in the Cayman Islands, increased its deposits with the bank from $3.6 million to $42.4 million or thereabouts.

In other words, over this period, one way or another, the exposure of the Canadian depositors was reduced to about a third of what it had been a year or a year and a half earlier.

[Translation]

Il est intéressant de noter que lors de nos rapports normaux avec la Banque fédérale de réserve aux États-Unis, avec la Banque d'Angleterre, avec les autorités de réglementation, tant au Luxembourg que dans les îles Caïmans, avec les vérificateurs et, fréquemment, avec la police, rien ne m'a été signalé, qui pourrait indiquer que cette banque a été contaminée par ces transactions qui, a-t-on dit, porteraient sur le blanchiment de fonds, le trafic d'armes, ou des paiements de nature douteuse. Nous ne sommes pas des policiers, mais rien ne nous a été signalé, qui indiquerait que cette banque a été contaminée par un trafic, quelle que soit sa nature. J'ai lu le fameux rapport préparé par Price Waterhouse à la demande de la Banque d'Angleterre. Tous les noms y étaient biffés, ce qui fait que ma lecture a été incomplète. Mais c'est à cette seule condition que le rapport m'a été remis. Rien dans ce rapport ne touche le Canada.

Comme je l'ai déjà dit, nous nous sommes efforcés à plusieurs reprises de voir si des preuves de cette nature existaient. Pas plus tard qu'hier, la Banque d'Angleterre m'a assuré que rien n'avait été porté à leur attention ou à celle du personnel de Touche Ross, cabinet qui a été retenu pour liquider ou gérer la situation sur le plan international, qui pourrait indiquer que des problèmes de cet ordre existent au Canada. En fait, on m'a dit qu'aucune preuve n'avait été trouvée en Angleterre également. C'est plus que surprenant, mais c'est ce qu'on m'a dit.

Pour passer aux activités financières de cette banque, je vous réfère au bilan qui est joint au texte de notre allocution d'ouverture. À partir de l'exercice 1988-1989 et jusqu'au début de 1990, nous avons travaillé en liaison étroite avec cette banque, en partie du fait de ces allégations et de ces préoccupations. En partie tout au moins du fait de ces rapports fréquents—et je dois dire que la banque a fait preuve de coopération—le nombre de succursales au Canada a été ramené de huit à quatre.

Comme vous pouvez le voir sur ce tableau, le total de l'actif de la banque a été ramené de 448 millions de dollars environ à 198 millions quand nous avons pris possession de l'actif. Dans le passif-dépôts, les dépôts assurés par la Société d'assurance-dépôts du Canada ont été réduits d'un tiers, passant de 66 millions à 22 millions de dollars environ. Le montant des dépôts non assurés est passé de 289 millions de dollars à 91 millions de dollars; autrement dit dans chacune de ces catégories, le montant n'était plus que le tiers du montant antérieur.

Parallèlement, la banque mère, essentiellement par l'entremise de ses succursales au Royaume-Uni et, en partie par le biais de sa banque affiliée dans les îles Caïmans, a augmenté ses dépôts à la banque en les portant de 3,6 millions de dollars à 42,4 millions de dollars, approximativement.

En d'autres termes, au cours de cette période, d'une façon ou d'une autre, le risque pour les déposants canadiens a été réduit d'environ un tiers de ce qu'il avait été un an ou un an et demi auparavant.

[*Texte*]

During our examination toward the end of 1990, and again on our ongoing monitoring through 1991, at our insistence and with co-operation of the bank and its auditors, very substantial loan loss provisions were put up, and you can see the retained earnings account went from $7 million or thereabouts in April 1990 to a deficit of $26 million a year later and at the time of taking possession.

In addition to increasing the interbank deposit to finance the bank, the shareholders put up an additional $25 million in 1991, under pressure from us. At this point in time you have a very substantial increase in the financial commitments of the shareholders to this bank, and a very substantial reduction of the exposure of the Canadian depositors to loss or risk in this bank.

• 1325

We had a lot of concerns about the bank, and these concerns were clearly intensified through the years 1988-89-90 into the first six months of this year. We were in frequent communication with the Bank of England authorities, and with the bank itself and others, who told us that with the assistance of Price Waterhouse and some other people they were arranging and working on a major international restructuring of BCCI's operations. There were commitments, or were to have been commitments, related to that restructuring that would have massively increased the investment of the shareholders. The majority shareholder at this point was, I guess his title is the Sheikh of Abu Dhabi, but we are talking here about hundreds of millions of pounds, if not more.

It thus appeared to us that despite the fact that the bank was in an unsatisfactory financial condition, although it was still solvent because of these injections of deposit money and additional capital, and it was losing money, because of the—I guess now it would have to be described as possibility, but we thought at that time probability—based on what we were told, of a major refinancing of the bank to put it into a proper and orderly financial structure in Canada, we saw no reason to close it down or do anything very drastic.

At the same time, as you know, we had at the end of last year renewed the licence for a three-month period only. The reason we did that was that we wanted to ensure that we would get the bank to put up loan loss provisions to the degree that our examiners found necessary at the time, and secondly, that they would make the improvements in internal controls and internal audit that we were demanding. Thirdly, and perhaps most importantly, we wanted to see the audited international balance sheets of the parent bank, which would be as of December 31, 1990. Of course we wanted to put the pressure on, which I think was successful, to inject capital, which the bank did in April-May of this year. Of course, as

[*Traduction*]

Lors de notre examen vers la fin de 1990 et aussi au cours de notre surveillance continue en 1991, à notre insistance et avec la coopération de la banque et de ses vérificateurs, des provisions importantes pour pertes sur prêts ont été constituées, et vous pouvez constater que le compte des bénéfices non distribués est passé de 7 millions environ en avril 1990 à un solde négatif de 26 millions un an plus tard quand nous avons pris possession des actifs.

Les actionnaires avaient donc augmenté le dépôt interbancaire pour financer la banque et ils ont, de plus, augmenté leur contribution de 25 millions de dollars en 1991 à la suite des pressions que nous avons exercées. On constate donc qu'à ce moment-là, les actionnaires ont considérablement augmenté leurs engagements financiers vis-à-vis de la banque et que le risque pour les déposants canadiens a été considérablement réduit.

Cette banque nous a causé beaucoup de soucis et ces soucis n'ont fait qu'augmenter au cours de 1988-1989-1990 et au cours des six premiers mois de cette année. Nous nous sommes mis fréquemment en rapport avec les responsables de la Banque d'Angleterre, avec la banque elle-même et avec d'autres parties intéressées, qui nous ont dit qu'avec l'aide de Price Waterhouse et de quelques autres personnes, on travaillait à une restructuration internationale importante des activités de la BCCI. Des engagements avaient été pris, ou il devait y avoir des engagements, concernant cette restructuration, qui allaient entraîner une augmentation massive de l'investissement des actionnaires. L'actionnaire majoritaire était alors, je crois que son titre est Cheik d'Abu Dhabi, mais ici nous parlons de centaines de millions de livres sterling, sinon plus.

La banque se trouvait donc dans une situation financière assez mauvaise, mais elle demeurait solvable du fait de ces injections de fonds sous forme de dépôts et de capitaux additionnels, et elle enregistrait des pertes; toutefois, du fait de—je crois qu'il faut parler de la possibilité mais à l'époque nous pensions qu'il s'agissait de la probabilité—d'après ce qui nous avait été dit, d'un refinancement important de la banque qui la placerait dans une situation financière convenable au Canada, nous n'avons vu aucune raison de la fermer ou de prendre des mesures très drastiques.

D'autre part, comme vous le savez, nous avions décidé à la fin de l'année dernière de ne renouveler le permis que pour une période de trois mois. Nous voulions en effet nous assurer que la banque porterait les provisions pour pertes sur prêts au niveau jugé nécessaire par nos examinateurs à l'époque et, deuxièmement, nous voulions que la banque apporte les améliorations requises au contrôle interne et à la vérification interne, comme nous l'avions demandé. Troisièmement, et c'est peut-être la chose la plus importante, nous voulions voir les bilans internationaux vérifiés de la banque mère, datés du 31 décembre 1990. Naturellement, nous voulions exercer une certaine pression, et je crois que

[Text]

you know, in the spring we reduced the renewal period from three months down to one month to maintain this pressure.

Three weeks before the July 5 date, I was in London at the Bank of England talking to the head of banking supervision at the Bank of England, and he described the situation in this way. He said: what we know is that we think we have a basket of apples, and in that basket there are a lot of good apples and there are a lot of bad apples, and our job through this restructuring is to pick out the bad apples and throw them out, reduce the bank's operations internationally to a basket of good apples, and hope to stabilize the situation on that basis.

When, three weeks later, that same person phoned me to tell me about the closing they had put in, he said: we have now discovered with this Price Waterhouse report that it isn't a basket of apples, a mixture of good and bad, as described; it's one lousy, bad apple all the way through, to use his words. That is why they had decided to close down the banks and the bank operations in Luxembourg, the U.K., Cayman Islands, and most other jurisdictions in which this bank internationally does its business.

At that point in time, even though as far as we could see this bank was solvent at that point in time because of the injections of more capital, we felt that in order to protect the interests of Canadian depositors we had to take possession of the assets, and we had to do it and decide this because we had just discovered this at 9 a.m. and we had to exercise that possession by mid-day that day. Our concern was that if we didn't put a ring fence around this bank, money could move out to the detriment of Canadian depositors.

• 1330

Until that time we didn't feel it was likely that this would create, or that we had a situation which could lead to, a loss for CDIC or a loss to Canadian depositors. But that judgment was based on the understanding—as I say, repeated to us as recently as mid-June—that the Bank of England and other authorities felt that the bank could be restructured to put it on a more orderly basis.

Taking possession of assets in this way and the use of a liquidator—in this case, Arthur Andersen—to act on our behalf has led to the series of steps, as you know, which is involving application for the winding up of the bank, because once these events play out, it is as clear as a bell now that this bank, in the absence of any other addition or relatively massive injection of new money, is not viable in the Canadian market. We have to take our steps, of course, essentially and always to protect the interests of depositors and minimize or mitigate the potential for losses. But obviously we have to do things in an order where the rights of shareholders are not unduly abridged, and they don't have an opportunity to make

[Translation]

nous avons réussi, pour qu'il y ait injection de capitaux, ce qui a été fait en avril-mai 1991. Enfin, comme vous le savez, nous avons ramené, ce printemps, la période de renouvellement du permis de trois mois à un mois, et ce, afin de continuer à exercer une pression.

Trois semaines avant le 5 juillet, je me suis rendu en Angleterre pour rencontrer le responsable de la surveillance des opérations bancaires à la Banque d'Angleterre. Pour me décrire la situation, il m'a dit: «Nous croyons avoir devant nous un panier de pommes; certaines de ces pommes sont saines et d'autres sont pourries. La restructuration vise à trouver les mauvaises pommes et à les rejeter pour que les activités internationales de la banque ressemblent à un panier de pommes qui sont toutes saines, et nous espérons stabiliser la situation sur cette base.»

Trois semaines plus tard, ce responsable m'a téléphoné pour me dire qu'ils avaient pris des mesures pour fermer les banques. Il m'a dit essentiellement: le rapport préparé par Price Waterhouse nous apprend qu'il ne s'agit pas d'un panier de pommes, d'un mélange de pommes saines et de pommes pourries comme je vous l'avais dit. Il s'agit d'une seule pomme complètement pourrie. Et je reprends ses termes. C'est pour cela qu'ils avaient décidé de fermer les banques ainsi que les activités bancaires au Luxembourg, au Royaume-Uni, dans les îles Caïmans et dans la plupart des autres endroits où cette banque effectue des transactions internationales.

Alors, et bien qu'autant que nous puissions en juger, la banque était solvable du fait de l'injection de capitaux, nous avons décidé que pour protéger les intérêts des déposants canadiens, nous devions prendre possession des actifs; nous devions prendre cette mesure car nous avions reçu ces nouveaux renseignements à 9 heures, et la prise de possession devait se faire avant midi le même jour. Ce que nous craignions, c'est que les fonds sortent du pays au détriment des déposants canadiens si nous n'imposions pas de restrictions très sévères à la banque.

Jusqu'à ce moment-là, nous ne pensions pas que la situation puisse entraîner des pertes pour la SADC ou pour les déposants canadiens. Mais ce jugement était fondé sur le fait que la Banque d'Angleterre et divers autres spécialistes nous avaient dit—et, comme je l'ai dit, nous l'avaient répété encore à la mi-juin—que la banque pourrait être restructurée et que ses affaires pourraient être remises en ordre.

La prise de possession de l'actif de la banque et la nomination d'un liquidateur—Arthur Andersen en l'occurrence—chargé d'agir en notre nom ont entraîné une série de mesures, comme vous le savez, portant sur la demande de fermeture de la banque parce que, avec le temps, il est maintenant tout à fait clair que cette banque n'est pas viable sur le marché canadien en l'absence de nouvelles additions ou d'une injection relativement massive de fonds. Bien sûr, nous devons toujours tenter de protéger les intérêts des déposants et de limiter les risques de perte. Mais nous devons évidemment veiller aussi à ne pas empiéter inutilement sur les droits des actionnaires, et empêcher ces

[*Texte*]

representations and to deal with the situation. To that degree, all the way through this we were in constant contact with the Bank of England authorities, the Touche Ross people representing the shareholders both internationally and domestically, and anyone else we thought was relevant to the situation.

You have heard from CDIC as to their involvement in making sure that, through compassionate payments programs and others, people are not too badly hurt in the process. There is no doubt that small though this is, and it is a bank that operated in a certain fairly narrowly defined market in terms of many of its clientele, in this process people get hurt. I have great sympathy for people who get hurt in their pocketbooks, with the anxiety this creates for them as families or as individuals or as owners and proprietors of businesses and so forth. I realize that you can sometimes get into situations where you are damned if you do and damned if you don't, but I honestly believe, sir, that we worked as carefully as we could throughout this to both safeguard their interests and reduce to a minimum whatever losses there may be.

There are some aspects of this that lead me to be quite optimistic about how all that may work out in the end, but I can't go further than to say that I am cautiously optimistic. It hinges on a number of things, and some of them are legal, that have to do with the extent to which that undertaking, the letter of comfort from the parent, can be invoked.

• 1335

That really amounts to making sure those deposits from the parent bank are effectively subordinated, and second, that it is . . There is a whole host of reasons for this, but if you are in a declining market—and some of these are, I am afraid, real estate exposures in terms of the loan book of the bank—once it is clear that you have a liquidator, or an agent, or a possession of this kind, there is no doubt that we get into liquidation scenarios one way and another on a loan-by-loan basis, and you get into situations where values tend to dissolve. For one, the customer is no longer dealing with a viable, ongoing, energetic bank. You have some demoralization of people in terms of their administration of the loan book. You have the fact that you can't go on advancing more money in order to keep the situations alive, and we are very conscious of not pouring good money after bad or even half bad.

So we have concluded that in addition to the very substantial loan loss provisions that were put up at the end of the last fiscal year and that we were identifying going on into early 1991, on any kind of basis that we can be realistic about, there are more losses on that loan book as of today.

That concludes my end of the story. I hope you have enough time for some questions.

The Acting Chairman (Mr. Sobeski): I am sure there will be some. We will make time for questions. I will be going to Mr. Soetens, Mr. Langdon, Mr. Gray, Mr. Tremblay—.

[*Traduction*]

derniers de faire les représentations qui s'imposent et de tenter de régler le problème. En ce sens, nous avons été en contact constant avec les autorités de la Banque d'Angleterre dans toute cette affaire, ainsi qu'avec les gens de Touche Ross qui représentent les actionnaires, tant au Canada qu'au niveau international, et avec toutes les autres parties en cause.

Les représentants de la SADC vous ont dit qu'ils allaient s'assurer, par exemple en faisant des paiements de commisération, que toute cette affaire ne causerait pas trop de tort à la population. Il est bien évident que, même s'il s'agissait d'une banque assez petite, dont la clientèle était relativement restreinte, il y a des gens qui vont en souffrir. J'ai beaucoup de sympathie pour les gens dont le portefeuille s'en ressentira, et je comprends bien les inquiétudes que cause ce genre de situation pour ces familles, ces particuliers, ces propriétaires d'entreprises, etc. Je me rends bien compte qu'il y a des situations dont on ne peut pas sortir gagnant, quoi qu'on fasse, mais je crois honnêtement, monsieur, que nous avons été aussi prudents que possible dans toute cette affaire pour sauvegarder les intérêts des déposants et réduire le plus possible les pertes éventuelles.

Il y a toutefois certains éléments qui me portent à un certain optimisme au sujet de la façon dont le problème finira pas se résoudre, mais je ne peux être que prudemment optimiste. Tout dépendra d'un certain nombre de choses, et notamment de certains aspects juridiques, c'est-à-dire de la mesure dans laquelle il sera possible d'invoquer la lettre de confort de la banque mère.

Il s'agit en réalité de s'assurer que les dépôts de la banque mère sont effectivement subordonnés et, deuxièmement, que . . Il y a toutes sortes de raisons à cela, mais si le marché est à la baisse—et j'ai bien peur que certains prêts consentis dans le domaine immobilier aient été plutôt risqués—une fois qu'il est clair qu'il y a un liquidateur en place, ou un agent, ou une tutelle quelconque, il ne fait aucun doute qu'il y a liquidation sous une forme ou sous une autre pour chaque prêt, et il y a des cas où la valeur baisse. Notamment, les consommateurs n'ont plus affaire à une banque viable, dynamique et pleine d'avenir. Et les gens qui s'occupent des prêts sont parfois démoralisés. Il faut bien se rendre compte qu'il est impossible d'avancer de nouveaux fonds pour maintenir une institution en vie; nous sommes très conscients du fait qu'il ne faut pas gaspiller de l'argent pour régler un problème insoluble, ou même à peu près insoluble.

Nous en avons donc conclu qu'en plus des très importantes provisions pour pertes sur prêts qui ont été établies à la fin de la dernière année financière et maintenues après le début de 1991, il y a aujourd'hui davantage de pertes sur ces prêts, si l'on veut être réaliste.

Voilà qui termine mon exposé de la situation. J'espère que vous aurez assez de temps pour poser des questions.

Le président suppléant (M. Sobeski): Je suis sûr que oui. Nous allons prendre le temps nécessaire. Je vais d'abord donner la parole à M. Soetens, puis à M. Langdon, M. Gray, M. Tremblay.

October 3, 1991 [House of Commons Standing Committee on Finance]

[*Text*]

EVIDENCE

[*Recorded by Electronic Apparatus*]

Thursday, October 3, 1991

• 0937

The Acting Chairman (Mr. Sobeski): Order, please.

Pursuant to Standing Order 108.(2) this is an inquiry into the closure of the Bank of Credit and Commerce Canada and other related matters.

Our witnesses today are from the Royal Canadian Mounted Police, led by Deputy Commissioner Favreau.

Deputy Commissioner J.L.G. Favreau (Operations, Royal Canadian Mounted Police): *Merci, monsieur le président.*

I have no opening remarks because I thought I would give my time to the committee to ask all the questions they want. However, I have with me other members of the force, including Assistant Commissioner Norman Doucette. He is responsible for the Economic Crime Program within the RCMP. For the benefit of everyone, that means that economic crime investigations across Canada are monitored by Mr. Doucette and he is responsible for the policy and the program itself.

Also with me is Assistant Commissioner Marcel Coutu. Mr. Coutu is responsible for the drug program across Canada. All policies and the way we should and are doing police work concerning the drug program is under his responsibilty.

With him is Inspector Bruce Bowie. Bruce is looking after the Anti-Drug Profiteering Program. We consider him a specialist in the field of drug anti-profiteering and money laundering.

• 0940

I am responsible for all the the operational programs of the force, and Mr. Coutu and Mr. Doucette report directly to me. When I say responsible for all programs of the force on the operational side of the house, I mean from traffic to drug enforcement to economic crime, and all aspects of investigations. Therefore, with the assistance of these directors I am responsible for the policies and for monitoring major operations across Canada. I report directly to the Commissioner of the RCMP.

The reason I brought these people with me, besides the fact that they are experts in their field, is that the last time we were invited to this committee we had the impression—a false impression—that we were invited to give advice to this committee on what is money-laundering, how it works, etc., and that is why we had Mr. Bowie here and Mr. George Kaine.

[*Translation*]

TÉMOIGNAGES

[*Enregistrement électronique*]

Le jeudi 3 octobre 1991

Le président suppléant (M. Sobeski): Je déclare la séance ouverte.

Conformément à l'article 108(2) du Règlement, nous étudions la fermeture de la Banque de crédit et de commerce Canada et autres sujets connexes.

Nous accueillons aujourd'hui des représentants de la Gendarmerie royale du Canada; la délégation est dirigée par le sous-commissaire Favreau.

Le sous-commissaire J.L.G. Favreau (Police opérationnelle, Gendarmerie royale du Canada): Thank you, Mr. Chairman.

Je n'ai pas de déclaration liminaire, car j'ai cru bon de m'en remettre aux membres du comité et de me mettre à leur disposition pour répondre à toutes leurs questions. Je signale cependant que je suis accompagné d'autres membres de la GRC, notamment du commissaire adjoint Norman Doucette. Il est chargé du programme de la police économique à la GRC. Cela veut dire que toutes les enquêtes sur les crimes économiques, d'un bout à l'autre du Canada, sont placées sous la direction de M. Doucette, qui est responsable de l'application des politiques et programmes dans ce domaine.

Je suis également accompagné du commissaire adjoint Marcel Coutu. M. Coutu est chargé de la police des drogues dans tout le Canada. Tous les programmes et politiques concernant la lutte contre la drogue relèvent de son autorité.

Il est lui-même accompagné de l'inspecteur Bruce Bowie. Bruce s'occupe des enquêtes économiques antidrogue. Nous le tenons pour un spécialiste dans le domaine des enquêtes économiques antidrogue et du blanchiment de l'argent.

Pour ma part, je suis chargé de la mise en oeuvre de tous les programmes opérationnels de la Gendarmerie et MM. Coutu et Doucette relèvent directement de moi. Quand je dis que je suis chargé de tous les programmes opérationnels, cela va de la lutte contre le trafic de drogue à l'application des lois sur les drogues, en passant par les crimes de nature économique, et cela comprend tous les aspects des enquêtes. Par conséquent, avec l'aide de ces divers directeurs, je suis responsable de l'application de nos politiques dans ces domaines et de la surveillance des principales opérations d'un bout à l'autre du Canada. Je relève directement du commissaire de la GRC.

Si je me suis fait accompagner de ces collaborateurs, outre le fait qu'ils sont experts dans leurs domaines respectifs, c'est que la dernière fois que nous avons été invités à témoigner devant votre comité, nous avons eu l'impression, à tort, que nous avions été invités pour conseiller le comité au sujet du blanchiment de l'argent, pour vous expliquer en quoi cela consiste, comment cela fonctionne, etc., et c'est pourquoi nous avions fait venir M. Bowie et M. George Kaine.

[*Texte*]

However, when they came here—and it was obviously the right of members of the committee—the orientation was quite different. They were asked about specific cases and they did not have the required knowledge about those cases. Therefore, I hope, by having the four of us here, we will be able to help the committee and be able to answer all the questions here and now, saving time for the committee and saving time for everybody and being very straightforward with what we can say.

This is it, Mr. Chairman, for my opening remarks.

The Acting Chairman (Mr. Sobeski): Thank you for your remarks. Indeed, you were quite correct. I had invited the RCMP at the opening to discuss money laundering. However, the questions went in a different direction. Inspector Bowie said he would come back, and since you are here today we will open the meeting to questions.

D/Commr Favreau: With your permission, Mr. Chairman, I would like to add just one thing in order not to create confusion.

Mr. Coutu and Bruce Bowie are responsible, as I say, for the drug anti-profiteering aspect, and that is all under section 462.3 of the Criminal Code. They look after investigations that, as a rule, start as ordinary drug investigations and bring you into the facet of money laundering or of assets acquired via drug-related crime.

Mr. Doucette—this is where I want to make sure that nobody is confused—also looks after offences under section 462.3 of the Criminal Code but on the enterprise crime offence side, and there is a great list of offences under the enterprise crime offence portion of the section.

Mr. Manley (Ottawa South): Thank you for coming before us this morning.

You are quite right, Deputy Commissioner, that the information that many of us were interested in at the time of the last appearance was not available. I do not think any of us felt that Inspector Bowie or his colleague were responsible for that. We quite understood that they were asked to come to give a certain kind of information. However, several of us felt it was important to put the questions on the record that we wanted to have answered, so thank you for coming this morning.

I presume you have not only had a chance to review the transcript following your last visit here but I hope you might have also had an opportunity to see the transcript from Monday evening of this week. Is that the case?

D/Commr Favreau: Not the transcript, but we had good reports about the meeting.

Mr. Manley: So you are aware of some of the information discussed with Mr. Sargent and some of the investigations that he referred to that involved information concerning the Bank of Credit and Commerce International and Bank of Credit and Commerce Canada.

[*Traduction*]

Nous avons toutefois constaté à notre arrivée ici que l'on s'est orienté dans une tout autre direction, ce qui est évidemment le droit légitime des membres du comité. On les a interrogés au sujet d'affaires précises qu'ils ne connaissaient pas de première main. J'espère donc qu'à nous quatre, nous serons en mesure d'aider le comité et de répondre aux questions sur-le-champ, ce qui évitera au comité et à tout le monde de perdre du temps. Nous essaierons de répondre directement et franchement.

Voilà tout ce que j'ai à dire pour l'instant, monsieur le président.

Le président suppléant (M. Sobeski): Merci. Vous avez absolument raison. J'avais invité des représentants de la GRC pour discuter du blanchiment de l'argent. Les questions ont toutefois porté sur autre chose. L'inspecteur Bowie a dit qu'il reviendrait et, puisque vous êtes ici aujourd'hui, nous allons passer directement aux questions.

S.-comm. Favreau: Avec votre permission, monsieur le président, je voudrais ajouter quelque chose afin de dissiper toute confusion.

M. Coutu et Bruce Bowie sont responsables, comme je l'ai dit, des enquêtes économiques antidrogue, ce qui relève du paragraphe 462.3 du Code criminel. Ils s'occupent d'enquêtes qui, en règle générale, commencent sous forme d'enquêtes ordinaires portant sur la drogue et mettent ensuite en cause le blanchiment d'argent ou d'autres produits de la criminalité dans le domaine des drogues.

M. Doucette—et ici, je tiens à m'assurer qu'il n'y a aucun malentendu—s'occupe également des infractions visées au paragraphe 462.3 du Code criminel, mais il s'occupe plus précisément des infractions de criminalité organisée; on trouve dans ce paragraphe toute une liste d'infractions de criminalité organisée.

M. Manley (Ottawa-Sud): Je vous remercie d'être venus nous rencontrer ce matin.

Vous avez tout à fait raison, monsieur le sous-commissaire; les renseignements que beaucoup d'entre nous cherchions à obtenir lors de votre dernière comparution n'étaient pas disponibles. Aucun d'entre nous n'en imputait la faute à l'inspecteur Bowie ou à son collègue. Nous savions bien que l'on vous avait demandé de venir pour nous renseigner dans un domaine précis. Cependant, plusieurs députés ont jugé important de poser les questions auxquelles, nous semblait-il, il fallait répondre, et nous vous remercions donc d'être revenus ce matin.

Je suppose que vous avez eu l'occasion de lire le compte rendu de votre dernière visite et j'espère que vous avez également pu prendre connaissance du compte rendu de notre réunion de lundi soir. L'avez-vous fait?

S.-comm. Favreau: Pas le compte rendu, mais on nous a bien renseignés au sujet de cette réunion.

M. Manley: Vous êtes donc au courant de la discussion que nous avons eue avec M. Sargent et de certaines enquêtes auxquelles il a fait allusion et qui mettaient en cause la Banque de crédit et de commerce international et la Banque de crédit et de commerce Canada.

[Text]

• 0945

I would like to begin by simply asking if you would tell us about those investigations in which the Bank of Credit and Commerce, either International or of Canada, or both, were involved, and what knowledge the force had of activities of the bank arising from those investigations.

D/Commr Favreau: I will start, and I will invite my colleagues who might be more familiar with some of the details to jump in after I have finished my opening remarks on it.

The first correction I would like to make, just to be a little bit more precise, is that, from our point of view anyway, the fact that a bank or a financial institution, or a person for this matter, is mentioned in an investigation does not mean that it is an investigation on him or on that financial institution. So I will talk about the Manara Travel Agency investigation.

This investigation was under the Security Offences Act group, so I might have to limit some of the details, as you will understand. It started in 1987 when we were asked by the FBI to verify some information about the travel agency in question. We did that. This travel agency was having an account with the BCCC.

We had co-operation during the investigation. We transmitted information back and forth with the FBI, and the end result was that several people in the States were charged, were arrested for diverting funds in violation of the U.S. International Emergency Economic Powers Act, and several of them received sentences. One person was subsequently released. It is obviously on the public record in the States that he was released from the court. Mr. Mousa Hawamda was released on bail and did not return, so the RCMP does not know the whereabouts of this person at the present time, and there is a warrant for his arrest, which remains in effect in the U.S.

This Mr. Hawamda was a client of the BCCC, and that is the only relation to this financial institution. And, as I said, the investigation was for violation of the U.S. International Emergency Economic Powers Act.

Mr. Manley: May I ask you, arising from that, whether you are aware that the manager of BCCC in Ottawa, Anwar Khan, apparently was in touch with Mr. Hawamda as late as October 1988 when he was a fugitive from the FBI?

D/Commr Favreau: No, I do not know that.

Mr. Manley: I believe we had this information previously as well from Mr. Bowie, that the force had assisted the FBI in this investigation. Did you endeavour to determine whether any officials from BCCC had knowledge of the fact that the money was being used to attempt to avoid the effect of U.S. law?

• 0950

D/Commr Favreau: I will leave Mr. Bowie to answer that one.

[Translation]

Je voudrais, pour commencer, vous demander simplement si vous pouvez nous parler des enquêtes qui mettaient en cause la Banque de crédit et de commerce international ou sa filiale canadienne ou les deux et nous dire ce que la Gendarmerie savait au sujet des activités de la banque à la suite de ces enquêtes.

S.-comm. Favreau: Je vais donner un début de réponse, après quoi j'inviterai mes collègues, qui connaissent peut-être le dossier plus en détail, à prendre le relais.

Je voudrais d'abord apporter une petite précision. De notre point de vue, en tout cas, le fait qu'une banque ou une institution financière ou même un simple particulier soit mentionné dans le cours d'une enquête ne signifie pas que l'enquête porte sur l'institution financière ou la personne en question. Je vais donc vous parler de l'enquête sur l'agence de voyage Manara.

Cette enquête avait été lancée aux termes de la Loi sur les infractions en matière de sécurité; vous comprendrez donc que je devrai omettre certains détails. Tout a commencé en 1987 quand le FBI nous a demandé de vérifier certains renseignements sur l'agence de voyage en question. Nous l'avons fait. Cette agence de voyage avait un compte à la BCCC.

Nous avons collaboré pendant l'enquête. Nous avons échangé des renseignements avec le FBI et, au bout du compte, des accusations ont été portées aux États-Unis contre plusieurs personnes qui ont été arrêtées pour avoir détourné des fonds en infraction de la loi américaine intitulée *International Emergency Economic Powers Act*, et plusieurs de ces personnes ont été condamnées. L'une d'entre elles a été libérée par la suite. C'est évidemment du domaine public aux États-Unis que cette personne a été libérée par le tribunal. M. Mousa Hawamda a été libéré sous caution et est disparu, de sorte que la GRC ne connaît pas les coordonnées de cette personne à l'heure actuelle. Il y a un mandat d'arrestation à son nom qui demeure en vigueur aux États-Unis.

Ce M. Hawamda était un client de la BCCC; c'est le seul lien que l'on a établi avec cette institution financière. Je le répète, l'enquête portait sur une infraction à la loi américaine intitulée *International Emergency Economic Powers Act*.

M. Manley: Puis-je vous demander, compte tenu de ce que vous venez de dire, si vous savez que le directeur de la BCCC à Ottawa, Anwar Khan, a apparemment communiqué avec M. Hawamda jusqu'en octobre 1988, quand ce dernier était un fugitif recherché par le FBI?

S.-comm. Favreau: Non, je ne le savais pas.

M. Manley: Je crois que c'est M. Bowie qui nous a fourni ce renseignement; il a dit que la GRC avait aidé le FBI dans cette enquête. Avez-vous cherché à savoir si des dirigeants de la BCCC étaient au courant du fait que l'argent était utilisé de manière à chercher à échapper à l'emprise d'une loi américaine?

S.-comm. Favreau: Je laisserai à M. Bowie le soin de répondre à cette question.

[*Texte*]

Inspector B.W. Bowie (Officer in Charge, Anti-Drug Profiteering Section, Drug Enforcement Directorate, Royal Canadian Mounted Police): I am sorry, I think it was Mr. Kaine who was referring to it last. I do not know anything about that particular case at all.

D/Commr Favreau: Maybe in order to help a bit I will—

Mr. Manley: The essence of the question is this: did anyone in the RCMP endeavour to investigate whether the BCCC connection in this case was with the knowledge that illegal activities were going to occur? Did anyone ask those questions or attempt to investigate that?

D/Commr Favreau: Yes. To my knowledge, there was no illegality in Canada to start with. It was a question of the Libyans rerouting money to the States because of United States laws at that time.

Mr. Manley: In other words, you would not regard it as offensive for a Canadian financial institution to be a co-conspirator in contravention of U.S. laws.

D/Commr Favreau: No, that is not what I said at all. What I am saying is—

Mr. Manley: I know that is not what you said, but—

D/Commr Favreau: Yes, but you said, "In other words" that is what I said. So I say, no, that is not what I am saying.

Mr. Manley: Then clarify, because really that is the essence of this question, that if the bank's officers knew what was going on and knowingly helped to do it, they were conspiring with, in this case, Hawamda, to breach the U.S. Treasury Department order.

D/Commr Favreau: No, this is not correct. My recollection of the case is that there was a bank account. Some people would deposit some money in that bank account and somebody else would make some *retraits*, withdrawals. As for what the bank knew about it, it is going a bit too far to assume they knew that. This kind of business could be done through other financial institutions, and nothing would permit us to assume under this investigation that the bank—or the manager of the bank, or any person from the bank—was aware of what was going on.

Mr. Manley: Except that there is nothing to cause you to assume that. The purport of the question—and this is in the context of what you may or may not have known about BCCI from other sources—was whether you made any further investigation that would have led you either to believe or not to believe that conspiracy was occurring here.

D/Commr Favreau: There was nothing that made us believe that there was conspiracy, and if my memory serves me right, we received co-operation from the financial institution in question.

Mr. Manley: You did receive co-operation?

D/Commr Favreau: Yes, we did.

Mr. Manley: Do you have anything more that you want to say about Manara Travel before we move on?

[*Traduction*]

Inspecteur B.W. Bowie (officier responsable, Section des enquêtes économiques antidrogue, Direction de la police des drogues, Gendarmerie royale du Canada): Je vous demande pardon, mais je crois que c'est M. Kaine qui en a parlé la dernière fois. Je ne sais rien de ce cas-là.

S.-comm. Favreau: Je pourrais peut-être vous aider en disant. . .

M. Manley: Voici ma question: Y a-t-il quelqu'un à la GRC qui a tenté de déterminer si le contact à la BCCC savait qu'allaient se produire des activités illégales? Quelqu'un a-t-il posé ces questions ou tenté de pousser l'enquête?

S.-comm. Favreau: Oui. À ma connaissance, il n'était pas question au départ d'illégalité au Canada. Les Libyens acheminaient des fonds vers les États-Unis en raison des lois en vigueur à cette époque aux États-Unis.

M. Manley: Autrement dit, vous ne jugeriez pas répréhensible qu'une institution financière canadienne conspire avec d'autres pour enfreindre les lois américaines.

S.-comm. Favreau: Non, ce n'est pas du tout ce que j'ai dit. J'essaie plutôt de dire. . .

M. Manley: Je sais que ce n'est pas ce que vous avez dit, mais. . .

S.-comm. Favreau: Oui, mais vous avez dit: «Autrement dit», c'est ce que vous avez dit. Alors je réponds, non, ce n'est pas ce que je dis.

M. Manley: Alors s'il vous plaît expliquez-vous, parce que c'est le coeur même de cette question. Si les dirigeants de la banque savaient ce qui se passait et en ont été sciemment complices, ils conspiraient alors en réalité avec Hawamda, pour enfreindre une ordonnance du Département du trésor américain.

S.-comm. Favreau: Non, ce n'est pas exact. Si ma mémoire de l'affaire est bonne, il y avait un compte à la banque. Certaines personnes y déposaient des fonds et quelqu'un d'autre effectuait les retraits. C'est aller un peu trop loin que de présumer que la banque savait ce qui se passait. Le même genre de transaction aurait pu se faire par le biais d'autres institutions financières, et rien ne nous permettait de supposer dans le cadre de cette enquête que la banque, ou le directeur de la banque, ou l'un de ses employés, savait ce qui se passait.

M. Manley: Sauf qu'il n'y a rien qui vous permette de supposer que ce n'était pas le cas. Le but de cette question—il s'agit de déterminer ce que vous pouviez avoir appris au sujet de la BCCI d'autres sources—c'est de déterminer si vous avez fait d'autres enquêtes qui vous auraient amenés à croire, ou à ne pas croire, qu'il y avait complot.

S.-comm. Favreau: Rien ne nous a fait croire qu'il y avait complot et, si ma mémoire est fidèle, l'institution financière en question a collaboré avec nous.

M. Manley: Vous avez pu compter sur leur collaboration?

S.-comm. Favreau: Oui.

M. Manley: Avez-vous autre chose à ajouter au sujet de l'agence de voyage Manara avant que nous ne passions à autre chose?

[*Texte*]

D/Commr Favreau: To my knowledge, at that period of time, no, we did not know about what you are saying—to my knowledge.

Mr. Langdon (Essex—Windsor): To your knowledge or the force's knowledge?

D/Commr Favreau: To my knowledge.

Mr. Manley: Would anyone else on the force have had knowledge of that?

D/Commr Favreau: I suppose I would have to have some analysts review files and try to find out about it, but the reason I say that is because we were in direct relations with the FBI at the time of the travel agency investigation. Had they had suspicions about BCCI—there was obviously an exchange of communication all the time—they would have mentioned that to us. And that is not the case. That is why I say, to my knowledge, I do not recall anything of that nature.

Mr. Manley: The piece that does not add up for me on this is why you were not suspicious, "you" being the force, of BCCC.

This is quite remarkable that a small travel agency is being implicated in this kind of activity in northern Virginia and Washington, and to do so without the knowledge of the local manager, if not of his assistants, strikes me as being something that I would want to investigate if I were in your shoes. That is why I am asking you, did it not raise any flags at all? Did it not make you curious about whether or not there might be some reason for this connection?

D/Commr Favreau: It did not raise any flag, to use your expression, because we received co-operation. The information from the FBI did not raise that kind of implication, and we received assistance from the bank. That kind of transaction is possible within all other systems of the *système bancaire*.

• 1000

To go from a gut feeling and start investigating a bank is not permissible in Canada, and thank God for that.

Mr. Manley: Well, it is not a matter of just going from a gut feeling. Of course, hindsight is always perfect, but now we are looking at a situation where we have been told by our chief financial regulator that this was one big bad apple and Canadian depositors have lost a lot of money because nobody asked this kind of question in a timely fashion.

What I am asking you is why you would simply rely on the fact that the FBI did not make that connection for you. They have successfully prosecuted seven people in the United States. Some were deported at this timeframe, and you have a clear connection in this case—and we have not yet got to any of the other cases Sargent talked about, which are perhaps more suspicious than Manara Travel. Why would you not investigate whether the bank, through its local

[*Traduction*]

S.-comm. Favreau: À ma connaissance, non, nous n'étions pas au courant de ce que vous venez de nous dire—pas à ma connaissance.

M. Langdon (Essex—Windsor): À votre connaissance ou à la connaissance de la Gendarmerie?

S.-comm. Favreau: À ma connaissance.

M. Manley: Est-ce que quelqu'un d'autre au sein de la Gendarmerie en avait connaissance?

S.-comm. Favreau: Il faudrait, j'imagine, que je demande à mes analystes de revoir les dossiers pour m'en assurer, mais je le dis parce que nous étions directement en relations avec le FBI à l'époque de l'enquête menée au sujet de l'agence de voyage. Si le FBI avait eu des soupçons au sujet de la BCCI—car bien sûr nous échangions constamment des informations—il nous l'aurait dit. Il ne l'a pas fait. C'est pourquoi je dis qu'à ma connaissance, je ne pense pas qu'il y ait eu quelque chose de cette nature.

M. Manley: Ce qui m'apparaît étrange dans cette affaire, c'est que vous n'ayez eu aucun soupçon au sujet de la BCCC. Quand je dis «vous», je veux parler de la Gendarmerie.

Il est assez étrange qu'une petite agence de voyage se lance dans ce genre d'activités dans le nord de la Virginie et à Washington et qu'elle puisse le faire à l'insu du directeur de la succursale locale ou de ses assistants, me paraît quelque chose qui mérite que l'on s'y intéresse si j'étais à votre place. C'est pourquoi je vous demande pour quelle raison cela ne vous a pas fait dresser l'oreille. N'avez-vous pas cherché à savoir s'il pouvait y avoir une explication quelconque à l'existence d'une telle relation?

S.-comm. Favreau: Cela ne nous a pas fait dresser l'oreille, pour reprendre votre expression, parce que nous agissions en collaboration. Les informations fournies par le FBI ne permettaient pas de tirer ce genre de conclusion et nous recevions l'aide de la banque. Ce genre de transaction est possible dans tous les autres secteurs du «banking system».

Il n'est pas possible d'entreprendre une enquête sur une banque en se fiant uniquement à ses convictions intimes, et c'est très bien comme ça.

M. Manley: Il ne s'agit pas simplement de se fier à ses convictions intimes. On peut toujours argumenter, bien sûr, après coup, mais nous nous retrouvons aujourd'hui dans une situation qui fait que notre principal contrôleur financier nous déclare que l'affaire était d'importance et que les déposants canadiens ont perdu beaucoup d'argent parce que personne n'a posé les questions qu'il fallait en temps utile.

Je vous demande pour quelle raison vous vous êtes contentés du fait que le FBI n'avait pas fait le rapprochement pour vous. Il avait poursuivi avec succès sept personnes aux États-Unis. Certaines d'entre elles avaient déjà été déportées à l'époque et il y avait un lien évident dans cette affaire—et je n'ai pas encore parlé des autres affaires que nous a mentionnées Sargent, qui éveillent peut-être encore davantage de soupçons que celle de l'agence de

[*Text*]

manager, was encouraging or in some way facilitating this kind of banking practice?

D/Commr Favreau: Simply put, we did not have any grounds to believe that.

Mr. Langdon: I, too, welcome the representatives from the RCMP here today. Certainly the testimony of the two people who were here before was very helpful, despite the fact that they were here in a sense with some direction that they were not to be answering those sorts of questions. So now that you are here actually to answer those questions, I look forward to even more co-operation and more helpfulness.

There has been a reference to Monday's testimony by Mr. Sargent. What position did Mr. Sargent have?

D/Commr Favreau: Do you mean when he was in the force? He was a constable and he was working for Economic Crime.

Mr. Langdon: And he was with the force for 13 years, as he testified?

D/Commr Favreau: That is right.

Mr. Langdon: He testified Monday night, and I quote from the transcript:

> I was aware of the Bank of Credit and Commerce's reputation at the international level and so was everybody else.

I then asked him what that reputation was. His answer was

> I think the recent *Maclean's* article summed it up. They called it the Bank of Crooks and Criminals, or whatever. That seemed to be a reputation that was widely held, particularly in the United States.

He went on to refer to the investigation in Tampa, Florida as some evidence of this.

Given that we are talking about a fair number of cases, as Mr. Bowie indicated at the last hearing where he testified, in which BCCC was involved as one of the transmitting agents in money-laundering situations, but given especially that reputation and the fact that it was known to and accepted by members of the force, why was there not an investigation of the bank itself as early as 1988, when the information from the Tampa case had been communicated? Mr. Sargent indicated that he had read a memo with respect to that case as a member of the force. So we are talking 1988, and I have to ask why an investigation was not initiated at that stage.

[*Translation*]

voyage Maniara. Pourquoi n'avez-vous pas fait enquête pour savoir si la banque, par l'intermédiaire du directeur de sa succursale locale, encourageait ou facilitait d'une manière ou d'une autre ce genre de pratique bancaire?

S.-comm. Favreau: Tout simplement, parce que nous n'avions aucune raison de le penser.

M. Langdon: Je souhaite moi aussi la bienvenue aux représentants de la GRC qui comparaissent devant nous aujourd'hui. Le témoignage des deux personnes qui vous ont précédés s'est révélé particulièrement utile, en dépit du fait qu'elles se sont en quelque sorte présentées devant nous en ayant plus ou moins la directive de ne pas répondre à ce genre de questions. Vous êtes maintenant ici pour répondre effectivement à ces questions et je m'attends à encore davantage de collaboration de votre part et à des témoignages encore plus utiles.

Nous avons fait allusion au témoignage fourni lundi par M. Sargent. Quel était le poste de M. Sargent?

S.-comm. Favreau: Vous voulez dire, lorsqu'il faisait partie de la Gendarmerie? C'était un gendarme qui travaillait à la Section de la police économique.

M. Langdon: Et, d'après son témoignage, il était au service du corps de police depuis 13 ans?

S.-comm. Favreau: C'est exact.

M. Langdon: Il a témoigné lundi soir et je cite la transcription:

> Comme tout le monde, je connaissais la réputation de la Banque de crédit et de commerce au niveau international.

Je lui ai alors demandé quelle était cette réputation et il m'a répondu.

> Je pense que l'article publié récemment par *Maclean's* la résume bien. On y parle d'une bande d'escrocs et de criminels ou de quelque chose comme ça. Il semble que cette réputation était largement répandue, surtout aux États-Unis.

Il a cité ensuite en exemple l'enquête menée à Tampa, en Floride.

Étant donné que nous parlons ici d'un assez grand nombre d'affaires, comme M. Bowie l'a mentionné dans son dernier témoignage, qui impliquaient la BCCC en tant qu'agent intermédiaire dans des opérations consistant à blanchir de l'argent, mais étant donné surtout la réputation de la Banque et le fait que les membres de la Gendarmerie en avaient parfaitement connaissance, pour quelle raison n'a-t-on pas procédé à une enquête sur la Banque elle-même dès 1988, lorsque les renseignements au sujet de l'affaire de Tampa ont été communiqués? M. Sargent nous a indiqué que lorsqu'il était membre de la Gendarmerie il avait lu une note de service au sujet de cette affaire. Ça remonte à 1988 et il me faut vous demander pour quelle raison une enquête n'a pas été entreprise à ce moment-là.

[Texte]

• 1005

D/Commr Favreau: I think I have a few comments before I pass the floor to Mr. Doucette. I think it is always extremely risky in anybody's testimony to use words like "everybody knows something" and to use articles of the media as reference to imply that somebody or everybody is crooked, etc.

Constable Sargent went into the force. If he had all that criminal intelligence and knowledge, he should have done something at that time and brought it to the attention of his superior. I think he is talking in retrospect. At the time, in all the cases we have mentioned so far, and a few more I am sure we will be touching, you have a bank, among other banks most of the time, that is named. To this day we do not have grounds in Canada to investigate the BCCC—I am not talking about the BCCI—and this is after communication with our counterparts in the States and the U.K.

I think in previous testimony Mr. Bowie made it very clear that you do not have any more privileges toward a financial institution than you have toward any citizen of Canada. You just do not start an investigation when you do not have grounds. I think maybe Mr. Doucette will want to continue on that. Did I answer?

Mr. Langdon: I think you have answered the question, but let me pursue it, because you suggest that Mr. Sargent should have taken this further. Well, of course, he did. He testified to us on Monday that in 1989 he had discussions with the Superintendent of Financial Institutions' office and that these discussions specifically involved the activities of the bank, specifically their request to be able to transfer cash amounts each morning and each afternoon in the city of Ottawa of $250,000. He also suggested that he took this further by suggesting that this entire subject of investigation, which he was following, required more staff and more resources to be put into it. He put a request to his superiors, and according to his testimony on Monday night that request was turned down.

I have two questions that come out of that. Did Mr. Sargent carry on discussions with the Office of the Superindendent of Financial Institutions simply on his own initiative or was this part of an investigation process that was understood and approved by the RCMP?

• 1010

Secondly, why was Mr. Sargent's request for more help turned down in this case?

A/Commr Doucette: Well I think the investigation that he was relating to was the one that he was involved in personally. This particular. . .maybe in retrospect I should like to give it—

Mr. Langdon: I am sorry. "Personally" means what?

[Traduction]

S.-comm. Favreau: J'aimerais faire quelques observations avant de passer la parole à M. Doucette. Je considère qu'il est toujours très risqué de dire dans un témoignage des choses comme «Je connaissais comme tout le monde» et de se servir d'articles de presse pour laisser entendre que quelqu'un est un escroc, que tout le monde est pourri, etc.

M. Sargent était un agent appartenant au corps de police. S'il avait obtenu tous ces renseignements sur des activités criminelles, il aurait dû faire quelque chose et les signaler à l'attention de son supérieur. Et je pense qu'il raisonne à posteriori. A l'époque, dans toutes les affaires que nous avons mentionnées jusqu'à présent et dans un certain nombre d'autres que nous ne manquerons pas d'évoquer, il y a la plupart du temps une banque qui est nommée parmi d'autres. Aujourd'hui encore, nous n'avons aucun motif au Canada pour enquêter au sujet de la BCCC—je ne parle pas de la BCCI—et cela après les communications qui ont eu lieu avec nos collègues des États-Unis et du Royaume-Uni.

Je considère que le témoignage antérieur de M. Bowie a bien montré que l'on n'a pas plus de prérogatives vis-à-vis d'un établissement financier que l'on en a vis-à-vis d'un quelconque citoyen au Canada. On ne peut tout simplement pas faire enquête lorsqu'on n'a pas de motifs de le faire. Je vais maintenant laisser la parole à M. Doucette. Est-ce que j'ai bien répondu à la question?

M. Langdon: Je pense que vous avez répondu à la question, mais j'aimerais poursuivre dans cette voie parce que vous laissez entendre que M. Sargent aurait dû poursuivre davantage l'affaire. C'est bien ce qu'il a fait. Il nous a déclaré lundi dans son témoignage qu'il avait eu en 1989 des entretiens avec les responsables du Bureau du surintendant des institutions financières et que ces entretiens avaient porté précisément sur les activités de la banque, et notamment le fait qu'elle voulait pouvoir transférer tous les matins et tous les après-midi des montants de 250,000$ en liquide à Ottawa. Il a aussi indiqué qu'il était allé plus loin en mentionnant que toute l'affaire qu'il était en train de suivre exigeait davantage de personnel et davantage de ressources. Il a fait une demande en ce sens à ses supérieurs et, d'après le témoignage qu'il nous a donné lundi soir, il a essuyé un refus.

J'ai deux questions à vous poser à ce sujet. Est-ce de sa propre initiative que M. Sargent s'est entretenu avec les responsables du Bureau du surintendant des institutions financières ou est-ce que cela faisait partie d'une enquête reconnue et approuvée par la GRC?

En second lieu, pour quelle raison la demande de M. Sargent, qui voulait avoir davantage d'aide dans cette affaire, a-t-elle été refusée?

Comm. adj. Doucette: En fait, je pense que l'enquête qu'il a mentionnée était celle dans laquelle il était personnellement impliqué. Cette affaire. . .il faudrait peut-être avec le recul que je. . .

M. Langdon: Excusez-moi, mais qu'entendez-vous par «personnellement»?

[*Text*]

A/Commr Doucette: No, I mean the force. As a member of the force we had, in 1988, an investigation related to sophisticated money transfer systems that involved a number of chartered banks—a number of chartered banks. We investigated this particular group for over a year and a half, and we were unable to trace. As you know, the law states that to prove an offence under the Criminal Code as stipulated in section 462.3, you must link those funds to an enterprise crime offence or to a drug-related offence. In other words, it must be proceeds of crime.

We investigated these large transfers of money, again through many chartered banks, and after a year and a half we were unable to trace the money to a specific criminal offence. Therefore, after a year and a half we concluded the file.

Mr. Langdon: Well, I am sorry that—

A/Commr Doucette: And the second part of your question is if he asked for additional personnel. That was his own personal view. It was submitted through channels and his supervisor turned it down. That's the way the process goes. That was only his personal view—he was a constable—and at the time it was decided after a year and a half of investigation, not being able to link this money to proceeds of crime, the investigation was concluded. Again, I would like to stress we were never able to link where the source of that money came from. Secondly, never, never were any officials or any directors or any employees of any chartered banks even suspected.

Mr. Langdon: Let me go back to the two questions that I asked and, with respect, that you have not answered. Did discussions take place, as Mr. Sargent testified, with OSFI, the Office of the Superintendent of Financial Institutions, with respect to the specific BCCC request to be able to transfer in cash, both morning and afternoon, $250,000 to a branch that Mr. Sargent suggested might have cash needs of just $20,000 in a day? First, did that take place, and was it part of an RCMP official investigation?

Second, I understand, of course, the lines of authority by which a request for additional resources is either approved or not approved, but what I am asking you as people responsible is what reason was. . . Given the significant amount of money that was being moved here—something like $60 million a year in the one case that was related to us by Mr. Sargent—why was that request refused?

A/Commr Doucette: Again, to be specific, it was close to $53 million, which is again very significant. I did mention that it was a sophisticated money transfer system. That we agree. The financial institution, OSFI, was advised. There were general discussions with them.

[*Translation*]

Comm. adj. Doucette: Non, je veux parler du corps de police. En tant que membre de la Gendarmerie, menait en 1988 une enquête portant sur des mécanismes de transfert d'argent très complexes impliquant un grand nombre de banques à charte—un certain nombre de banques à charte. Nous avons fait enquête sur ce groupe en particulier pendant plus d'un an et demi et nous n'avons pas pu retracer les fonds. Vous n'ignorez pas que la loi nous oblige, pour qu'on puisse prouver l'existence d'une infraction en vertu des dispositions de l'article 462.3 du Code criminel, à relier ces fonds à une entreprise criminelle ou à une infraction liée à la drogue. Autrement dit, il faut que l'argent soit le produit du crime.

Nous avons fait enquête sur ces gros transferts de fonds, qui passaient là encore par l'entremise de nombreuses banques à charte, et au bout d'un an et demi nous n'avons pas pu relier l'argent à une infraction criminelle précise. En conséquence, au bout d'un an et demi, nous avons clos le dossier.

M. Langdon: Eh bien, je regrette que. . .

Comm. adj. Doucette: Dans la deuxième partie de votre question, vous me demandez s'il avait requis du personnel supplémentaire. Il s'agissait de son opinion personnelle. Il l'a transmise par la voie hiérarchique normale et son supérieur a rejeté sa demande. C'est la façon dont fonctionne le système. C'était uniquement son opinion personnelle—il n'était que gendarme à l'époque—et il a été décidé au bout d'un an et demi d'enquête, alors qu'on ne parvenait pas à rattacher cet argent au produit du crime, de clore l'enquête. J'insiste à nouveau sur le fait que nous n'avons jamais pu remonter à la source de cet argent. En second lieu, jamais aucun responsable, aucun administrateur et aucun employé d'une banque à charte n'a été soupçonné.

M. Langdon: Laissez-moi vous reposer mes deux questions car je vous fais remarquer respectueusement que vous n'y avez pas répondu. Est-ce qu'il y a eu des entretiens, comme l'a déclaré M. Sargent dans son témoignage, avec le BSIF, le Bureau du surintendant des institutions financières, au sujet d'une demande bien précise de la BCCC, qui voulait pouvoir transférer tous les matins et tous les après-midi 250,000$ en liquide dans une succursale qui, selon M. Sargent, n'avait vraisemblablement que de 20,000$ en liquide par jour? Est-ce que ces entretiens ont tout d'abord eu lieu et ensuite est-ce qu'ils faisaient partie d'une enquête officielle de la GRC?

Deuxièmement, je comprends bien entendu qu'il y a une voie hiérarchique à suivre lorsqu'on demande des ressources supplémentaires et que cette demande est ensuite acceptée ou refusée, mais ce que je veux que vous me disiez en tant que responsable c'est pour quelle raison. . . étant donné les sommes importantes qui étaient transférées en espèces quelque chose comme 60 millions de dollars par an dans l'affaire qui nous a été signalée par M. Sargent—pour quelle raison a-t-on refusé cette demande?

Comm. adj. Doucette: Là encore, pour être précis, il s'agissait de près de 53 millions de dollars, ce qui est évidemment très important. J'ai indiqué qu'il s'agissait d'un mécanisme de transfert d'argent très complexe. Nous sommes bien d'accord avec ça. Le service responsable des institutions financières, le BSIF, a été informé. Nous avons eu avec lui des entretiens de nature générale.

[Texte]

Mr. Langdon: Were there specific discussions with respect to the point regarding BCCC that Mr. Sargent related to us?

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A/Commr Doucette: I can check in the file. I know there was continuous communication because of the large amount of money that was transferred. The bottom line was that at the end of a year and a half, we could never link it to a criminal activity. It is legal to transfer money—the amount does not matter—to banks. That is the nature of their business.

The problem is that we have to link it to a criminal activity. If you do not have a criminal activity, you have no offence. After a year and a half, we could never link it to a criminal activity; therefore, we concluded the file.

Mr. Langdon: I recognize that you concluded the file, but that is still not the question.

A/Commr Doucette: Again, you asked—

Mr. Langdon: I understand that you are going to check your files for that, and I appreciate that, but my other question is specifically why the request for assistance was turned down. I am not an expert on police investigations, but if we are talking about $53 million, you indicate, in flows, and you are talking about a very sophisticated system... I understand from Mr. Sargent's testimony that there were simply two people investigating it. You say, well, nothing was found. Surely if more resources had been put into it, you would feel more confident about your conclusion that no criminal activity was involved.

A/Commr Doucette: That is a presumption and an opinion from Mr. Sargent. We had very capable supervisors at the time, and with the priorities of other investigations it was decided by the supervisor at the time that the resources put at their disposal were sufficient.

Mr. Langdon: What was the name of this project or this investigation from the RCMP's perspective? What label did you attach to it?

A/Commr Doucette: Project Albus.

Mr. Langdon: Project Albus is the investigation that led to an investigation of the force's activities with respect to Senator Cogger. Is that correct?

A/Commr Doucette: Yes, it is.

Mr. Langdon: One of the clear issues that emerged in Mr. Sargent's testimony was the role of Paul Vidosa, who was one of the people who drew direct connections with BCCC according to Mr. Sargent's testimony.

I have two questions. This is a question that has been asked in other contexts, but I wanted to ask first why Mr. Vidosa was hired or commissioned, or whatever the correct phrase would be, to play a role in Project Albus given the prohibition against contact with him that had been established by the RCMP Commissioner in the early part of the 1980s.

[Traduction]

M. Langdon: Y a-t-il eu des entretiens portant précisément sur la question que nous a mentionnée M. Sargent de la BCCC?

Comm. adj. Doucette: Je peux vérifier dans les dossiers. Je sais qu'il y a eu une communication constante parce qu'une grande quantité d'argent était transférée. Il n'en reste pas moins qu'au bout d'un an et demi, nous étions dans l'incapacité de rattacher ces transferts à une activité criminelle. Il est légal de transférer de l'argent—le montant importe peu—dans les banques. C'est pour cela qu'elles existent.

Il nous fallait pouvoir rattacher ces transferts à une activité criminelle. Sans activité criminelle, il n'y a pas d'infraction. Au bout d'un an et demi, étant dans l'incapacité de constater la présence d'une activité criminelle, nous avons clos le dossier.

M. Langdon: Je sais bien que vous avez clos le dossier, mais je vous répète que ce n'est pas la question.

Comm. adj. Doucette: Une fois de plus vous m'avez demandé...

M. Langdon: Je sais que vous allez vérifier dans vos dossiers, et j'en prends bonne note, mais mon autre question porte précisément sur la raison pour laquelle cette demande d'aide a été refusée. Je ne suis pas un spécialiste des enquêtes de police, mais lorsqu'on parle de transferts de fonds du montant que vous mentionnez, soit environ 53 millions de dollars, lorsqu'on parle d'un système très complexe... J'ai cru comprendre d'après le témoignage de M. Sargent qu'il n'y avait que deux personnes qui faisaient enquête. Vous nous dites qu'on n'a rien trouvé. J'imagine que si l'on avait accordé davantage de ressources à cette enquête, il vous aurait été possible de conclure plus sûrement qu'aucune activité criminelle n'était en cause.

Comm. adj. Doucette: Ce ne sont que des suppositions et qu'un jugement personnel de la part de M. Sargent. Nous avions des responsables très compétents à l'époque et, compte tenu des priorités devant être accordées à d'autres enquêtes, son supérieur hiérarchique a décidé à l'époque que les ressources qui étaient mises à sa disposition étaient suffisantes.

M. Langdon: Quel était le nom de ce projet ou de cette enquête pour les besoins de la GRC? Quel était le nom de code que vous lui aviez donné?

Comm. adj. Doucette: C'était le projet Albus.

M. Langdon: Le projet Albus est le nom de l'enquête qui a amené la Gendarmerie à enquêter sur les activités du sénateur Cogger. C'est exact?

Comm. adj. Doucette: Oui, en effet.

M. Langdon: L'un des éléments clés du témoignage de M. Sargent est le rôle joué par Paul Vidosa, l'une des personnes en relations directes avec la BCCC d'après le témoignage de M. Sargent.

J'ai deux questions à vous poser à ce sujet. L'une a déjà été posée dans d'autres circonstances, mais j'aimerais vous demander tout d'abord pour quelle raison M. Vidosa a été engagé ou recruté, si vous préférez, pour jouer un rôle dans le projet Albus étant donné que le commissaire de la GRC avait interdit tout contact avec lui au début des années 80.

[*Text*]

Second, I want to ask specifically why Mr. Vidosa was asked to approach the manager of BCCC here in Ottawa as part of this investigation.

D/Commr Favreau: I will answer the first part for you, sir.

Why was Mr. Vidosa, in our terms, reactivated? It was definitely, first of all, a mistake to reactivate him. There was instruction by the commissioner at the time across Canada that this source was not to be used again. It is now public knowledge through the Cogger investigation and through Mr. Marin's report that the Deputy Commissioner, Operations, at the time—

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Mr. Langdon: That was Mr. Jensen.

D/Commr Favreau: Yes. In the absence of the commissioner of the time, he decided, probably because of numbers like we have in front of us, to reactivate this person under the recommendation of Constable Sargent and Sergeant Elrick.

Mr. Langdon: I am sorry. May I just ask you to explain "numbers such as those we have in front of us"?

D/Commr Favreau: When you are talking about huge transfers of funds, the objective—

Mr. Langdon: Oh, those were the numbers to which you were referring.

D/Commr Favreau: That is right, the objective of the force of attacking proceeds of crime, etc.

Then there was a recommendation made to him, supported by a director, and Mr. Jensen decided to reverse that decision. That is the first part of the answer, I believe.

The other part—Norm could address it better than I can.

A/Commr Doucette: As you know, Mr. Langdon, in investigations we have certain police techniques at our disposal. I must say that we tried everything because of the amounts of money that were being transferred, all polytechnics. In fact, it brings back to memory, we were using our surveillance teams. We were using whatever investigative abilities we had at our disposal, including sources—and Mr. Vidosa was that source—in order to try to obtain some kind of information, some background information. Where is this money coming from? What is the criminal link here? It just did not work out.

Coming back again to the aspect of resources, here in headquarters, as a co-ordinator and directing this investigation, we used our resources in the field as well, so therefore there were not just two investigators doing the whole thing across Canada. We had our surveillance teams, we had our investigators in the field assisting these members, and that is on record as well.

Therefore, just to mention your question, why Vidosa? Again, the deputy answered that particular question. It is a normal technique of policing using sources and we used. . . He was the one.

[*Translation*]

En second lieu, j'aimerais que vous me disiez précisément pour quelle raison il a été demandé à M. Vidosa de contacter le directeur de la BCCC, ici à Ottawa, dans le cadre de cette enquête.

S.-comm. Favreau: Je vais répondre à la première partie de votre question.

Pourquoi a-t-on réactivé M. Vidosa, c'est le terme que nous employons? Tout d'abord, ce fut de toute évidence une erreur. Le commissaire avait donné instruction à l'époque, dans tout le Canada, de ne plus utiliser cette source. Il est désormais de notoriété publique, grâce à l'enquête concernant M. Cogger et au rapport de M. Marin que le sous-commissaire à la police opérationnelle, à l'époque. . .

M. Langdon: C'était M. Jensen.

S.-comm. Favreau: Oui. En l'absence du commissaire à l'époque, il a décidé, probablement en raison des sommes en jeu, de réactiver cette personne sur la recommandation du gendarme Sargent et du sergent Elrick.

M. Langdon: Excusez-moi, mais pouvez-vous me dire exactement ce que vous entendez par «les sommes en jeu»?

S.-comm. Favreau: Lorsqu'on parle de transferts de fonds aussi importants, l'objectif. . .

M. Langdon: Ah, ce sont là les sommes dont vous parlez.

S.-comm. Favreau: L'objectif du corps de police qui était de s'en prendre aux produits du crime, etc..

Il y a eu une recommandation en ce sens, appuyée par un directeur, et M. Jansen a décidé d'annuler cette décision. C'est la première partie de la réponse, je crois.

Quant à la deuxième partie—Norm pourra vous en parler mieux que moi.

Comm. adj. Doucette: Comme vous le savez, monsieur Langdon, lors des enquêtes, nous avons un certain nombre de techniques de police à notre disposition. Je dois vous dire que nous avons tout essayé en raison de l'importance des sommes qui étaient transférées, tout un éventail de techniques. Ça me rappelle d'ailleurs que nous faisions usage de nos équipes de surveillance. Nous avons fait appel à toutes les techniques d'enquête que nous avions à notre disposition, y compris à l'utilisation d'informateurs—et M. Vidosa était l'informateur—pour essayer d'obtenir des renseignements, des renseignements de base. D'où venait cet argent? Quel était le lien avec la criminalité en l'espèce? Ça n'a tout simplement rien donné.

Pour en revenir une fois de plus aux ressources, nous coordonnions et nous dirigeons l'enquête ici au quartier général, mais nous avions aussi des ressources sur le terrain et il n'est donc pas juste de dire que nous n'avions que deux enquêteurs sur l'ensemble de l'affaire au Canada. Il y avait nos équipes de surveillance, nos enquêteurs sur le terrain qui aidaient les membres du corps de police, et ça figure là aussi au dossier.

Donc, je reviens à votre question, pourquoi Vidosa? Là encore, le sous-commissaire a répondu à cette question. C'est une technique normale de police que de recourir à des informateurs et nous avons employé. . . C'est lui qu'on a choisi.

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[Text]

Mr. Langdon: If I may go back again to the specific question I asked, which was why, as part of this investigation—there were two questions I asked—Vidosa was hired, and secondly, why Vidosa was . . I do not know whether he was instructed or whether it was suggested or what was the mechanism of communication, but why, in any event, did he make the approach that he did to the manager of BCCC here in Ottawa? That approach certainly was a source of considerable suspicion for Mr. Sargent as a member of your force.

A/Commr Doucette: I will answer that as well.

I mentioned in the beginning that various chartered banks were used by this particular group. In order to establish a line of credit and a bank account, we opened a bank account, and we just happened to use BCCI. He was asked to go there in order to have some kind of credibility.

I checked that particular point, even as far as yesterday. Again, we just happened to use that particular bank because someone knew that manager, and he opened a line of credit there in order to establish some kind of credibility to further his—

D/Commr Favreau: Infiltration.

A/Commr Doucette: —infiltration of the group.

Mr. Langdon: Excuse me, but what we have here is a bank about which a member of your force has had direct personal discussions with OSFI, because of concern about the methods of transferring money that they are using, which leads him to think there is something involving money laundering here, and an agent under his authority just happens to choose that bank to open an account. Are you seriously asking us to believe that this is all sheer happenstance?

• 1025

A/Commr Doucette: No. It is clearly indicated—

Mr. Langdon: Surely there was some kind of logic that directed Mr. Vidosa to go to the BCCC, the same bank that was being discussed by a member of your force with OSFI at the very moment this was taking place.

A/Commr Doucette: I totally agree. As I said, there were many banks involved on this particular occasion. We have documented on file that Mr. Vidosa was asked to go by his brother-in-law because he knew Mr. Khan at the BCCC, and that is exactly what he did. He met with him for 15 minutes to open a line of credit, and that was it and that is all. There was no follow-up even by the investigators and that was the end of it.

Mr. Langdon: Why was there no follow-up by the investigators if in fact they indicated considerable suspicion—

[Traduction]

M. Langdon: Si je puis me permettre de revenir une fois de plus à la question précise que je vous ai posée, c'est-à-dire pourquoi, dans le cadre de cette enquête—je vous ai posé deux questions—pourquoi a-t-on engagé Vidosa et, deuxièmement, pourquoi a-t-on. . Je ne sais pas si on l'a suggéré à Vidosa, si on lui en a donné l'instruction ou quel a été le mécanisme de communication employé, mais quoi qu'il en soit, pour quelle raison a-t-il choisi de s'adresser comme il l'a fait au directeur de la BCCC ici à Ottawa? Cette façon de faire a dû éveiller bien des soupçons chez M. Sargent en tant que membre de votre corps de police.

Comm. adj. Doucette: Je peux aussi vous répondre sur ce point.

Je vous ai indiqué au début que le groupe en question avait fait appel à différentes banques à charte. Afin d'obtenir une marge de crédit et un compte bancaire, nous avons ouvert un compte bancaire et il se trouve que nous l'avons fait à la BCCI. On lui a demandé de s'adresser là pour qu'il puisse avoir une certaine crédibilité.

Pas plus tard qu'hier, j'ai vérifié ce point en particulier. Si là encore nous avons eu recours à cette banque, c'est parce que quelqu'un en connaissait le directeur et y a ouvert une marge de crédit pour pouvoir acquérir une certaine crédibilité et entreprendre. . .

S.-comm. Favreau: Son infiltration.

Comm. adj. Doucette: . . son infiltration du groupe.

M. Langdon: Excusez-moi, mais nous avons là une banque au sujet de laquelle un membre de votre corps de police a eu des entretiens directs avec le personnel du BSIF parce que l'on s'inquiétait des méthodes de transfert de fonds qui y étaient employées, ce qui l'amenait à penser que l'on y blanchissait de l'argent, et il se trouve qu'un agent placé sous son autorité ouvre justement un compte dans cette banque. Est-ce que vous pensez sérieusement qu'on va vous croire quand vous dites que c'est un simple concours de circonstances?

Comm. adj. Doucette: Non. Il est clairement indiqué. . .

M. Langdon: Il y a certainement une certaine logique qui veut que M. Vidosa se soit adressé à la BCCC, la banque qui faisait justement l'objet d'entretiens entre un membre de votre corps de police et le BSIF au moment où l'opération a eu lieu?

Comm. adj. Doucette: Je suis tout à fait d'accord. Comme je vous l'ai dit, de nombreuses banques étaient impliquées dans cette affaire. Il est consigné au dossier que M. Vidosa s'est adressé à cette banque sur la recommandation de son beau-frère, qui connaissait M. Khan à la BCCC, et c'est exactement ce qu'il a fait. Il s'est entretenu avec lui pendant 15 minutes pour ouvrir une marge de crédit et ça s'arrête là. Les enquêteurs n'ont pas suivi l'affaire et on n'en a plus parlé.

M. Langdon: Pourquoi les enquêteurs n'ont-ils pas suivi l'affaire puisqu'ils avaient de forts soupçons. . .

[*Text*]

A/Commr Doucette: It was used afterwards for other things, but all he did was open an account, as he would have done with any other bank account, but we are not targeting the bank here. We are talking about the group. We have no reason to believe that at the time that the bank, the employees or officials . . . We were just opening a bank account, and that is documented on the file.

Mr. Langdon: This despite the fact that the investigation that was taking place in Dallas, which Mr. Sargent talked to us about, indicated that there were phone calls by the people who were subsequently charged and convicted under U.S. law to the BCCC head office in Toronto and to the BCCC office in Vancouver. Again, the fact that this was taking place had nothing to do with the discussions with OSFI about BCCC and had nothing to do with the fact that Mr. Vidosa approached this specific bank.

D/Commr Favreau: Just a second, just to make sure, I want to try to give as clear an answer as possible, and correct me if I am wrong. My understanding of this case is that it is Mr. Vidosa who chose the bank and the handler went along.

Mr. Langdon: Could you check that for us.

D/Commr Favreau: That was one of the problems we had in all cases with Mr. Vidosa. He would run his own thing and the handler would have very much difficulty to control him. That is one of the reasons why we did not want to do business with Mr. Vidosa anymore, and that is another example—that he, through his brother-in-law, chose that bank and we went along in the persons of the two investigators.

We were discussing the possibility of bringing in another piece of information for the benefit of the committee, but I am not able to do that because of ongoing process.

Mr. Manley: In the discussion with Mr. Langdon, you talked about opening a bank account and a line of credit, which very often are opened simultaneously. But to get a line of credit you usually have to produce financial statements or give some kind of security. They are not 15-minute sign-up-at-the-counter operations. What did Vidosa have there, and if it was a line of credit, do you have any knowledge of how he was able to provide security for that?

• 1030

A/Commr Doucette: Mr. Manley, to answer that question, there was a mention of his mortgage and also some kind of business relationship with his brother-in-law. Therefore, it was a normal line of credit.

Mr. Manley: Was it limited?

A/Commr Doucette: I have no idea.

Mr. Manley: Did the force do anything to assure payment of that line of credit if it was used?

A/Commr Doucette: It was never used.

Mr. Manley: No, but banks do not give lines of credit with Christmas cards. You have to be able to establish that you can repay.

[*Translation*]

Comm. adj. Doucette: On s'en est servi plus tard pour d'autres choses, mais tout ce qu'a fait notre informateur, c'est ouvrir un compte, comme il aurait pu le faire dans n'importe quelle banque, la banque n'était pas visée dans l'affaire. Nous n'avions aucune raison de croire qu'à l'époque, la banque, les employés ou les responsables. . . Nous n'avons fait qu'ouvrir un compte bancaire, et c'est consigné dans le dossier.

M. Langdon: Cela en dépit du fait que l'enquête menée à Dallas, M. Sargent nous en a parlé, avait révélé que des appels téléphoniques avaient été faits au siège social de la BCCC à Toronto ainsi qu'au bureau de la BCCC à Vancouver par des gens qui par la suite ont été inculpés et reconnus coupables en vertu de la législation des États-Unis. Vous nous dites là encore que tous ces événements n'avaient rien à voir avec les entretiens qui ont eu lieu avec le BSIF au sujet de la BCCC et rien à voir avec le fait que M. Vidosa s'est adressé à cette banque en particulier.

S.-comm. Favreau: Un instant; pour être sûr que nous nous comprenons bien, j'aimerais donner une précision, vous me reprendrez si j'ai tort. D'après ce que je comprends de cette affaire, c'est M. Vidosa qui a choisi cette banque et son contact a accepté son choix.

M. Langdon: Pourriez-vous vous en assurer?

S.-comm. Favreau: C'est l'une des difficultés que nous a posées M. Vidosa chaque fois que nous avons eu affaire à lui. Il en faisait à sa tête et son contact avait bien de la difficulté à le contrôler. C'est pourquoi nous ne voulons plus avoir affaire à M. Vidosa et nous en avons ici un autre exemple—c'est lui qui, par l'entremise de son beau-frère, a choisi la banque et les deux enquêteurs ont entériné son choix.

Nous avons envisagé la possibilité de fournir une autre information à l'intention des membres du comité, mais ça m'est impossible parce que l'affaire reste en cours.

M. Manley: En répondant à M. Langdon, vous avez parlé de l'ouverture d'un compte bancaire et d'une marge de crédit, deux opérations qui se font souvent simultanément. Toutefois, pour obtenir une marge de crédit, il faut généralement fournir des états financiers ou donner une certaine forme de garantie. Ce ne sont pas des opérations qui peuvent se faire en 15 minutes au guichet de la banque. De quoi disposait M. Vidosa, et, s'il s'agissait d'une marge de crédit, savez-vous s'il a pu donner quelque chose en garantie?

Comm. adj. Doucette: Je puis vous répondre, monsieur Manley, en vous disant qu'il était question de son hypothèque et aussi de certaines relations d'affaires qu'il avait avec son beau-frère. C'était donc une marge de crédit normale.

M. Manley: Y avait-il une limite?

Comm. adj. Doucette: Je n'en ai aucune idée.

M. Manley: Est-ce que le corps de police a fait quelque chose pour garantir le paiement de cette marge de crédit au cas où elle serait utilisée?

Comm. adj. Doucette: Elle n'a jamais été utilisée.

M. Manley: Très bien, mais les banques ne donnent pas des marges de crédit dans des pochettes-surprises. Il vous faut prouver que vous êtes en mesure de rembourser.

[Text]

Mr. Soetens (Ontario): Standard Trust do.

The Acting Chairman (Mr. Sobeski): Your question is really if the force—

Mr. Manley: Mr. Sargent told us that the line of credit he had was unlimited, which makes me more curious, if this was a normal banking relationship, about how payment was assured.

D/Commr Favreau: I do not believe that is so. We will have to check on that specific question.

Mr. Langdon: Mr. Chairman, I would like to ask a procedural question. A number of people from the RCMP who are here were introduced at the start. Somebody seems to be providing a good deal of information on this, and I wondered if he might be introduced to the committee as well.

The Acting Chairman (Mr. Sobeski): That is fine, but it seems a lot of people on all sides of the table are getting a lot of other people, too.

I will ask the inspector if he wants to clarify.

D/Commr Favreau: The person who came to us is Sergeant Goulet. He is a review analyst for the director in the Economic Crime group.

Mr. Thompson (Carleton—Charlotte): Gentlemen, I have not been as involved as some of the committee members on this. I think this is only the second day I have been here as you have appeared before us.

I will back up a little. What sorts of flags, bells, and whistles have to go off to initiate an investigation by the RCMP on any bank, whether it is a Schedule A or Schedule B bank? What precipitates an investigation by you people, particularly, of course, as it relates to money laundering, which of course is the question here today?

D/Commr Favreau: I think the answer Mr. Bowie gave the last time is still valid. I might ask him to elaborate a bit more.

To start an investigation by the RCMP, whether you are talking about laundering of money or you are talking about something else, you need grounds. You need complaints, you need people coming forward and telling you that this thing is going on, or you need to learn through another investigation that something worth investigating is going on. There is always that ground that if you want to go further in any grounds other than allegations, you are going to have to go to a court and convince the judge that you have reasonable doubt to believe that an offence is being committed here. You cannot just go into a bank because in one investigation the account happened to be at that bank, because somebody opened a credit line in a bank, or because somebody else made some telephone call to that bank. These are things that are being done every day, hundreds of times across this country, in other financial institutions.

I think Mr. Bowie explained that very properly the last time.

[Translation]

M. Soetens (Ontario): C'est ce que fait la Standard Trust.

Le président suppléant (M. Sobeski): Vous voulez en fait savoir si le corps de police...

M. Manley: Monsieur Sargent nous a dit que la marge de crédit dont il disposait était illimitée, ce qui m'amène à me poser des questions, s'il s'agissait d'une relation bancaire normale, sur la façon dont le paiement était garanti.

S.-comm. Favreau: Je ne crois pas que cela se soit passé comme cela. Il nous faudra faire des vérifications sur ce point en particulier.

M. Langdon: Monsieur le président, j'aimerais poser une question de procédure. Un certain nombre de représentants de la GRC qui sont ici parmi nous ont été présentés au départ. Il semble que quelqu'un se charge de donner de nombreux renseignements sur cette question et j'aimerais qu'il soit présenté lui aussi au comité.

Le président suppléant (M. Sobeski): C'est très bien, mais il semble aussi que des deux côtés de la table on fasse appel aussi à de nombreuses personnes.

L'inspecteur peut-il nous donner les précisions demandées?

S.-comm. Favreau: La personne qui est venue vers nous est le sergent Goulet. C'est un analyste attaché au directeur de la Police économique.

M. Thompson (Carleton—Charlotte): Messieurs, je ne suis pas aussi assidu que certains des autres membres de ce comité. Je pense que c'est la deuxième fois seulement que j'assiste aux travaux du comité alors que vous comparaissez parmi nous.

Je vais revenir un peu en arrière. Quelle sorte de sonnettes, de cloches et d'alarmes doivent retentir pour que la GRC déclenche une enquête sur une banque, que cette dernière relève de l'annexe A ou de l'annexe B? Qu'est-ce qui vous amène à déclencher une enquête, notamment lorsqu'il s'agit d'opération consistant à blanchir de l'argent, ce qui est évidemment la question qui nous occupe ici?

S.-comm. Favreau: Je pense que la dernière réponse que vous a donnée M. Bowie reste toujours valable. Je peux lui demander de préciser davantage sa pensée.

Pour que la GRC déclenche une enquête, qu'il s'agisse d'argent blanchi ou d'autre chose, il faut des motifs. Il faut des plaintes, il faut que des gens s'adressent à nous pour nous dire que telle ou telle chose ne va pas ou il faut apprendre au cours d'une autre enquête qu'il se passe quelque chose qui mérite que l'on s'y attarde. On en revient toujours au fait que lorsqu'on veut agir parce que l'on a des motifs et non pas sur de simples allégations, il faut pouvoir aller devant un juge et le convaincre que l'on a des doutes raisonnables de croire que l'on est en train de commettre une infraction. On ne peut pas s'en prendre à une banque simplement parce qu'on s'est aperçu au cours d'une enquête qu'un compte a été ouvert dans cette banque, que quelqu'un a obtenu une marge de crédit ou que quelqu'un d'autre a fait un appel téléphonique à cette banque. Ce sont des choses qui se font tous les jours, des centaines de fois au pays, dans d'autres établissements financiers.

Il me semble que M. Bowie vous l'a très bien expliqué la dernière fois.

[*Text*]

Bruce, would you like to add a bit to that?

• 1035

Insp Bowie: Essentially, to initiate an investigation. . . We are always looking through various files and trying to determine what institutions might be weak links and what might be a promising avenue of investigation. It just does not halt with the initial scenario. If there is a possibility of expanding an investigation, then it is done.

Specifically in the BCCC, in 1988, and the times that were alluded to by Mr. Sargent, as far as I am concerned there was no indication that would substantiate the opening up of an investigation into the entire institution. The grounds legally and the grounds that would motivate someone to initiate an investigation were not there.

Mr. Thompson: Would the $53 million that has been mentioned as moving in and out of BCCC not be suspect in and of itself? Is that a normal transfer of dollars from one country to another, from one banking institution to another?

Insp Bowie: In terms of the money-laundering activity that we see continually, $50 million is a significant amount, but it is not by any stretch the largest type of case we have seen.

The Acting Chairman (Mr. Sobeski): Just on a point of clarification—I saw some nods—Mr. Doucette.

A/Commr Doucette: I would like to clarify for the committee. The statement made was that $53 million was to BCCC, which is incorrect. There were many chartered banks involved in Canada.

Mr. Thompson: Mr. Bowie mentioned in his initial remarks that you are always looking for a weak link. Is a Schedule B bank, for example, one of those weak links, if you are comparing a Schedule B bank to a Schedule A bank? To clarify this, could you point out some of the weak links or some of the things that constitute a Schedule B bank versus a Schedule A bank that might indicate that it is a weak link?

Insp Bowie: I do not think it is fair to characterize Schedule B or Schedule II banks as being weak links in comparison to Schedule A or Schedule I banks. Again, I cannot recall whether it is I and II or A and B.

Some Canadian chartered banks engage in very little, if any, retail banking at all. So that criterion cuts out an awful lot of the Schedule B banks for money laundering at all. They simply do not engage in retail banking as we know it.

A number of banks engage in specialized types of activities.

When I said "weak link", I was referring to if an institution, whether it is a branch of a bank, whether it is a bank itself, comes up continually in files, then that is a trigger for investigative agencies such as ours to pursue it a bit further, if it is possible, to keep open the possibility that there might be a way of expanding the investigation. We are always looking, and we always ask our investigators, to ensure, in the course of investigations, that they satisfy themselves that the investigation has gone as far as it is going to go.

[*Translation*]

Bruce, avez-vous quelque chose à ajouter?

Insp. Bowie: Grosso modo, pour entreprendre une enquête. . . On examine toujours différents dossiers pour essayer de déterminer quels sont les établissements qui sont susceptibles d'être les maillons faibles de la chaîne et d'offrir les meilleures possibilités d'enquête. On ne s'en tient pas simplement au scénario original. S'il y a la possibilité d'étendre l'enquête, on le fait.

En ce qui concerne plus précisément la BCCC, en 1988, et à l'époque mentionnée par M. Sargent, rien ne justifiait à mon avis que l'on déclenche une enquête sur l'ensemble de l'établissement. Il n'y avait pas de motifs juridiques et de raisons susceptibles d'amener quelqu'un à entreprendre une enquête.

M. Thompson: Les 53 millions de dollars dont vous avez parlé qui entraient à la BCCC et en ressortaient n'étaient-ils pas suspects en soi? S'agit-il d'un transfert normal de fonds d'un pays à un autre ou d'un établissement bancaire à un autre?

Insp. Bowie: Par rapport à l'argent qui est blanchi en permanence, 50 millions de dollars, c'est une somme importante, mais c'est loin d'être la plus grosse affaire que nous ayons vue.

Le président suppléant (M. Sobeski): Si vous voulez apporter une précision—j'ai vu quelques hochements de tête—monsieur Doucette, vous avez la parole.

Comm. adj. Doucette: J'aimerais apporter une précision à l'intention du comité. On a déclaré que les 53 millions de dollars concernaient la BCCC, ce qui est inexact. Il y avait de nombreuses banques à charte impliquées au Canada.

M. Thompson: M. Bowie a dit au début de son intervention que vous recherchiez toujours le maillon faible de la chaîne. Est-ce qu'une banque figurant à l'annexe B, par exemple, est l'un de ces maillons faibles lorsqu'on la compare à une banque figurant à l'annexe A? Pour plus de précisions, pourriez-vous nous donner des exemples de ces maillons faibles ou dire ce qui peut faire qu'une banque de l'annexe B constitue un maillon faible par rapport à une banque de l'annexe A?

Insp. Bowie: Je ne crois pas qu'il soit juste de qualifier de maillons faibles les banques de l'annexe B ou de l'annexe II par rapport à celles de l'annexe A ou de l'annexe I. Là encore, je ne me rappelle plus si l'on parle de I et II ou de A et B.

Certaines banques à charte canadiennes ne font pas, ou pratiquement pas, d'opérations bancaires au détail. Ce critère fait qu'une grande quantité de banques figurant à l'annexe B ne peuvent absolument pas blanchir de l'argent. Elles ne font tout simplement pas d'opérations bancaires au détail, si vous voulez.

Un certain nombre de banques exercent des activités spécialisées.

Lorsque j'ai parlé de «maillon faible», je voulais parler d'un établissement, que ce soit une succursale bancaire ou la banque elle-même, qui revient constamment dans les dossiers, ce qui amène des services d'enquête tels que le nôtre à pousser les recherches un peu plus loin, si c'est possible, pour élargir éventuellement l'enquête. Nous nous efforçons toujours, et nous demandons à nos enquêteurs, de faire en sorte, au cours de nos enquêtes, d'être certains que l'on est allé aussi loin dans l'enquête qu'il était possible d'aller.

[*Texte*]

Mr. Thompson: Getting back to Schedule A, Schedule B, is there anything in the make-up of the ownership of the Schedule B bank—that is, foreign investment or foreign ownership—that could be a weak link versus a Schedule A bank, which is virtually Canadian ownership? In other words, offshore interests could have and would have the controlling interest in a Schedule B bank. Would that in itself present a problem or difficulty, or make or create that weak link to which you have referred?

Insp Bowie: That is very difficult to say, because I do not think the criterion for having a Schedule B implies foreign ownership. I think Schedule I banks are restricted because they are widely held. I think the criterion is that no more than 10% of a Schedule I bank—or 5%—can be held by one individual, regardless of whether they are foreign or domestic.

• 1040

Mr. Thompson: Maybe someone on the committee could clarify, either on this side of the table, the other side or maybe the chairman himself, whether it is true that a Schedule II bank could be entirely foreign owned.

Mr. Basil Zafiriou (Committee Researcher): In fact, most Schedule II banks are subsidiaries of foreign banks. You can have a domestically owned Schedule II bank, but only as a start-up. For the first 10 years you are allowed to have a closely held, domestically owned bank, but then you have to divest, and the criterion is that you have to go down to 10%. So Schedule II banks, essentially, are all foreign owned.

Mr. Thompson: I guess the point I am trying to make, Mr. Chairman, through you to Mr. Bowie, is that the make-up, the composition of that Schedule II bank would tend to indicate to me that if there is going to be a case of money laundering, they may be more suspect, or the potential for suspect, than a Schedule I bank.

Insp Bowie: I do not subscribe to that criterion, sir, with respect. I do not think the ownership of the bank necessarily implies that it is going to be susceptible to money laundering.

Mr. Thompson: How do Schedule II banks take possession of money? Can you walk in with cash in a Schedule II bank and deposit cash in a Schedule II bank? Is it possible? Do they take cash deposits?

Insp Bowie: Yes, there are a number that take cash deposits, that deal in retail banking.

Mr. Thompson: Of course, we understand the nature of a Schedule I bank and the retail aspect of a Schedule I bank, but again, because of the make-up and the ownership of a Schedule II bank, there is a possibility in my mind that this type of thing, this money laundering, could occur there a little bit easier than it could in a Schedule I bank.

[*Traduction*]

M. Thompson: Pour en revenir aux banques figurant à l'annexe A ou à l'annexe B, y a-t-il quelque chose dans la composition des banques figurant à l'annexe B—investissement étranger ou propriété étrangère—qui constituerait un maillon faible par rapport à une banque de l'annexe A, dont la propriété est pratiquement canadienne? En d'autres termes, des intérêts étrangers sont susceptibles de contrôler une banque figurant à l'annexe B. Est-ce que c'est pour vous un problème ou une source de difficulté ou est-ce que cela vous amène à y voir le maillon faible dont vous avez parlé?

Insp. Bowie: C'est très difficile à dire parce que je ne crois pas que le critère qui fait qu'une banque figure à l'annexe B soit celui de la propriété étrangère. Il me semble qu'on est limité dans le cas des banques figurant à l'annexe I parce que leurs actions sont largement réparties dans le public. Je pense que le critère, c'est qu'une seule et même personne ne peut pas détenir plus de 10 p. 100—ou 5 p. 100—des actions d'une banque figurant à l'annexe I, qu'elle soit étrangère ou canadienne.

M. Thompson: Quelqu'un ici pourrait-il nous dire, que ce soit de ce côté de la table, de l'autre côté ou peut-être même le président lui-même, s'il est vrai qu'une banque figurant à l'annexe II peut être intégralement possédée par des étrangers.

M. Basil Zafiriou (recherchiste du Comité): En effet, la plupart des banques figurant à l'annexe II sont les filiales de banques étrangères. On peut avoir une banque de l'annexe II à propriété nationale, mais seulement pour démarrer. Pendant les 10 premières années, on est autorisé à posséder une banque nationale en limitant le nombre des propriétaires, mais il faut ensuite répartir plus largement les actions et le critère, c'est qu'on ne peut plus en avoir plus de 10 p. 100. Donc, pour l'essentiel, les banques inscrites à l'annexe II sont toutes à propriété étrangère.

M. Thompson: Monsieur le président, ce que je m'efforce de faire comprendre par votre intermédiaire à M. Bowie, c'est que la nature, la composition d'une banque figurant à l'annexe II me donne à penser que si l'on constate que de l'argent est blanchi, il est possible qu'elle soit davantage suspecte, ou risque d'être plus suspecte, qu'une banque figurant à l'annexe I.

Insp. Bowie: Excusez-moi, mais je ne suis pas d'accord avec ce critère. Je ne crois pas que le type de propriété de la banque implique nécessairement qu'elle sera davantage susceptible de blanchir de l'argent.

M. Thompson: Comment les banques qui figurent à l'annexe II se procurent-elles l'argent? Peut-on entrer avec de l'argent liquide dans une banque figurant à l'annexe II et le déposer? Est-ce possible? Est-ce qu'elles acceptent des dépôts en liquide?

Insp. Bowie: Oui, il y en a un certain nombre qui acceptent des dépôts en liquide, qui font des opérations bancaires au détail.

M. Thompson: Évidemment, nous comprenons bien quelle est la nature d'une banque figurant à l'annexe I et les opérations qu'elle fait au détail, mais je vous répète qu'en raison de la composition et du type de propriété d'une banque figurant à l'annexe II, il est possible à mon avis que ce genre d'opération, le fait de blanchir de l'argent, soit un peu plus facile que dans une banque figurant à l'annexe I.

[*Text*]

D/Commr Favreau: With all due respect, and also with all good intention to give as much information as we can, I am not sure it is up to us, the RCMP, to start giving an opinion about one kind of bank being a little bit better than the other one, and it translates. . .

Mr. Thompson: We are not talking about that, sir.

D/Commr Favreau: No, but whether we like it or not, it translates into this, exactly this.

Mr. Thompson: The only point I am attempting to make. . . Something flags a problem. As I say, the bells and whistles go off. I am just attempting to point out that because of the make-up of that bank, there seem to be more bells and whistles, and there seems to be more potential for wrongdoing in a Schedule II bank than there would be a in Schedule I bank.

Mr. Gray (Windsor West): Did you tell Mr. Wilson that?

Mr. Thompson: You are not going to change the Bank Act; that is to change the Bank Act.

The Acting Chairman (Mr. Sobeski): The ownership issue gets into a whole bunch of other things that I think Mr. Gray is talking about.

Mr. Thompson: Is there anything inherent in the structure of a Schedule II bank that would make you watch that institution a little more closely?

D/Commr Favreau: In the case that we are talking about—a large sum of money, almost $53 million being moved to banks—we are talking about other very reputable, *bonne réputation* banks, and we are talking about five of them. I appreciate what you are trying to get at, about waving flags and being more careful about some institutions than others, but the other institutions involved are very reputable. That is why I find the question. . .

• 1045

Mr. Thompson: Very reputable institutions.

D/Commr Favreau: I do not think it is fair to ask Mr. Bowie to go that deep into your question.

Mr. Thompson: Again, I am just giving out the structure of that. I guess the chairman is indicating he does not want me to pursue that line of questioning.

The Acting Chairman (Mr. Sobeski): Before I go over to Mr. Gray, I would like to ask a question. What is the working relationship between the Office of the Superintendent and the RCMP? The RCMP are obviously interested in regulating banks. At some point in time—I will pick up a Mr. Thompson point—maybe a red flag is raised and then it moves over to be economic crime or money laundering. Can you enlighten us on the relationship between the RCMP and OSFI?

[*Translation*]

S.-comm. Favreau: Avec tout le respect que je vous dois et en même temps dans l'intention de vous informer le mieux possible, je ne suis pas sûr que ce soit à nous, qu'il appartienne à la GRC de donner son avis concernant telle banque qui serait mieux à même que telle autre, et voilà à quoi se ramène. . .

M. Thompson: Il ne s'agit pas de ça.

S.-comm. Favreau: Bien sûr, mais que nous le voulions ou non, ça se ramène à ça, exactement à ça.

M. Thompson: Tout ce que je veux dire. . . Il y a à un moment donné un signal qui révèle l'existence d'un problème. Comme je vous l'ai dit, les sonnettes et les cloches se mettent à retentir. Je veux tout simplement faire remarquer qu'en raison de la composition de ce type de banque, il semble qu'il y ait davantage de cloches et de sonnettes et que les possibilités d'agissements irréguliers dans une banque figurant à l'annexe II soient plus grandes que dans celles qui relèvent de l'annexe I.

M. Gray (Windsor-Ouest): L'avez-vous dit à M. Wilson?

M. Thompson: Vous n'allez pas changer la Loi sur les banques; ça revient à changer la Loi sur les banques.

Le président suppléant (M. Sobeski): La question de la propriété renvoie à une quantité de choses et c'est à mon avis ce à quoi fait allusion M. Gray.

M. Thompson: Y a-t-il quelque chose d'inhérent à la structure des banques figurant à l'annexe II qui vous fait surveiller d'un peu plus près ce type d'établissement?

S.-comm. Favreau: Dans l'affaire dont nous parlons—des sommes considérables, près de 53 millions de dollars, étant passées par les banques—il est question d'autres banques de «bonne réputation», jouissant d'une excellente renommée, cinq en tout. Je comprends bien où vous voulez en venir lorsque vous nous dites qu'il y a des signaux qui doivent mettre la puce à l'oreille et qu'il faut prendre davantage de précautions avec certains établissements qu'avec d'autres, mais les autres établissements en cause jouissent d'une excellente réputation. C'est pourquoi je trouve la question. . .

M. Thompson: Des institutions qui ont très bonne réputation.

S.-comm. Favreau: Je ne pense pas qu'il soit juste de demander à M. Bowie d'aller tellement plus loin pour répondre à votre question.

M. Thompson: Je ne fais qu'en décrire la structure. Le président semble préférer que je change de sujet.

Le président suppléant (M. Sobeski): Avant de passer la parole à M. Gray, j'ai une question à poser. Quel lien la GRC entretient-elle avec le Bureau du surintendant? La GRC s'intéresse évidemment à la réglementation des banques. Il arrive parfois—pour reprendre un point qu'a soulevé M. Thompson—qu'une sonnette d'alarme retentisse, et il peut arriver que l'on ait affaire à un crime à caractère économique ou à une activité de blanchiment d'argent. Pouvez-vous nous parler un peu des rapports qui existent entre la GRC et le BSIF?

[*Texte*]

A/Commr Doucette: As far as my directorate is concerned we have a very close relationship on any offences relating to the Bank Act. I have a unit within my directorate that regularly, on a weekly basis, either through screening of employees or whatever, conducts investigations on behalf of OSFI for any aspects relating to the Bank Act. That is as far as my directorate is concerned.

Insp Bowie: In terms of the drug money-laundering field and relations with OSFI, we have a fairly close relationship. There is a continual, informal flow of information. If we uncover a case where a bank, a particular institution, may have been somewhat lax in taking an individual deposit, that information would be communicated.

Conversely, I have had discussions with officials of OSFI with respect to how this bank is being viewed, or have we had problems in terms of unacceptable or lax behaviour on behalf of individual banks? There is that exchange of information.

The Acting Chairman (Mr. Sobeski): I believe that during your first visit here you made a comment that Canada was a good place to do business from a money laundering point of view. Could you expand on what you meant, and maybe that might help Mr. Thompson on how money laundering works? Why is Canada such a good place for money launderers?

Insp Bowie: In my estimation Canada is no different from many of the other industrialized countries of the world. We have a relatively stable currency. We have a stable political system. We are in fairly close proximity to established trafficking routes, and we have a highly developed financial infrastructure. All of those attributes are things that a money launderer or an individual seeking to find a haven for their funds will seek out.

They are not necessarily going to want to invest their moneys in an undeveloped Third World country. Those are the criteria that cause Canada to be an attractive target, as well as other countries, the U.K., France, the United States and so on.

Mr. Gray: I think it was Mr. Favreau who said that in fact you have to have something to go on in starting an investigation, and one of the things Mr. Favreau mentioned was what people tell you.

I presume you are aware of the successful prosecution by the FBI of certain Libyans in Washington in a case that was linked with Manara Travel in Ottawa, and I presume you are aware of the prosecution of a group of people in Dallas. In both cases the common link that I note is a connection with the Ottawa branch of the Bank of Credit and Commerce International.

[*Traduction*]

Comm. adj. Doucette: Ma direction s'intéresse de très près à toute infraction à la Loi sur les banques. Au sein de ma direction, j'ai un service qui, régulièrement, de façon hebdomadaire, soit à partir de renseignements obtenus par les employés ou autrement, mène des enquêtes au nom du BSIF sur tout ce qui a trait à la Loi sur les banques. Cela vaut pour ma direction.

Insp. Bowie: Pour ce qui est du blanchiment de l'argent tiré du trafic de la drogue, nous entretenons des rapports assez suivis avec le BSIF. Nous échangeons continuellement des renseignements d'une manière informelle. Lorsque nous découvrons qu'une banque, ou une institution en particulier, peut avoir accepté un peu trop facilement un dépôt de la part d'une certaine personne, nous en faisons part au BSIF.

J'ai aussi déjà eu des entretiens avec des employés du BSIF au sujet de certaines banques, à savoir si une institution ou une autre a déjà semblé agir d'une manière inacceptable ou un peu trop laxiste. Nous échangeons ainsi des renseignements.

Le président suppléant (M. Sobeski): Je me souviens vous avoir entendu dire, la première fois que vous êtes venu témoigner au comité, que le Canada est un endroit de prédilection pour le blanchiment de l'argent. Pouvez-vous développer un peu votre pensée là-dessus? Cela aidera peut-être M. Thompson à mieux comprendre le processus du blanchiment de l'argent. Pourquoi dites-vous cela au sujet du Canada?

Insp. Bowie: La situation au Canada n'est pas différente de celle qui prévaut dans les autres pays industrialisés. Notre devise est relativement stable, on peut en dire autant de notre système politique. Nous sommes assez près des voies établies qui servent au trafic des stupéfiants, et nous sommes dotés d'une infrastructure financière très développée. Tous ces attributs sont des conditions qui intéressent un individu à la recherche d'un refuge pour ses fonds.

Cela ne l'intéresse pas tellement d'investir son argent dans un pays du Tiers monde. Ce sont là les critères qui font du Canada une cible attrayante, comme d'autres pays, comme le Royaume-Uni, la France, les États-Unis, etc.

M. Gray: Je pense que c'est M. Favreau qui a dit qu'il faut pouvoir s'appuyer sur quelque chose pour pouvoir ouvrir une enquête, et l'une des choses qu'il a mentionnées, ce sont des renseignements donnés par certaines personnes.

Je suppose que vous êtes au courant de la réussite de l'enquête qu'a menée le FBI au sujet des activités d'un certain nombre de Libyens à Washington, dans un cas qui était lié à l'agence de voyage Manara d'Ottawa, tout comme, je suppose, des poursuites qui ont été entamées contre un groupe de personnes à Dallas. Dans les deux cas, le trait commun que je retiens est un lien avec la succursale d'Ottawa de la Banque de crédit et de commerce international.

[*Text*]

• 1050

There is also the prosecution of people by the American authorities in Tampa. These people were officials of the Bank of Credit and Commerce International, I believe, in that country. If, as you or one of your colleagues said, analysts keep looking for a name to pop up in files, why was that not a basis for you to take a special interest in the Bank of Credit and Commerce in Canada?

D/Commr Favreau: One of the cases you have referred to is obviously the travelling agency, where several people were charged under violation of the U.S. International Emergency Economic Powers Act, not under laundering money. Because the account was in Canada, we obviously asked questions.

I do not want to go by what was in the media, but a member of the committee has asked this question to the Americans, if there was any implication of the BCCC. The answer is still no, according to the Americans, and the answer is still no, according to the British. So it does not matter how many times you repeat a name or a number, in one investigation or two investigations, you need grounds to start something and those grounds are not there.

Mr. Gray: Perhaps you could explain why in this matter you relied so fully on the views of the American and British authorities as to whether there are grounds for an investigation in Canada.

D/Commr Favreau: You rely on them because they are already inside the system investigating, which we're not. Obviously, if you do not have the grounds, you do not go to the bank and start asking questions and asking for documents. They were already asking questions and asking for documents. We expected that if something had come to light there, it would certainly help us in our grounds to start something here in Canada.

Mr. Gray: Did you have a member of your force go to the United States to look through the files of evidence or potential evidence in these cases, to see whether or not there were grounds for a specific Canadian investigation of BCCC?

Insp Bowie: It might be helpful, Mr. Gray, if something was clarified about the nature of some of these investigations in the States. I am speaking about the Tampa investigation, for example.

We are not talking about an all-encompassing sweep of the BCCI. We are talking about a relatively minor, narrowly focused, sting operation involving some of the employees of the bank. The essence of the charge was that an undercover operator gave them government money, told them it was drug money, and had them move the money out of the country, into Nassau and back. My directorate was fully aware of the nature of the investigation.

[*Translation*]

Il y a aussi les poursuites qui ont été intentées contre certaines personnes par les autorités américaines à Tampa. Ces gens sont des administrateurs de la Banque de crédit et de commerce aux États-Unis. Si, comme vous ou l'un de vos collègues l'avez dit, vos analystes n'ont besoin que d'un nom, pourquoi ces indications n'ont-elles pas suffi pour que vous vous intéressiez de plus près à la Banque de crédit et de commerce Canada?

S.-comm. Favreau: Vous avez évidemment fait allusion au cas lié à l'agence de voyage, dans le contexte duquel plusieurs personnes ont été mises en accusation en vertu de l'International Emergency Economic Powers Act des États-Unis, et non pas pour avoir participé à une opération de blanchiment d'argent. Parce que le compte était au Canada, nous avons évidemment posé des questions.

Sans vouloir reprendre ce que l'on a dit dans les médias, un membre du comité a demandé aux Américains si la BCCC avait trempé dans l'affaire. La réponse est encore non, selon les Américains, et encore non, selon les Britanniques. Donc, peu importe le nombre de fois que l'on entend répéter un nom ou un numéro, pour entreprendre une enquête ou deux enquêtes, il faut des motifs, et il n'y en a pas.

M. Gray: Vous pourriez peut-être nous expliquer pourquoi, dans cette affaire, vous vous êtes tellement fiés aux autorités américaines et britanniques pour déterminer s'il y avait des motifs justifiant une enquête au Canada.

S.-comm. Favreau: Parce qu'ils sont déjà en train d'enquêter, mais pas nous. Évidemment, sans motif, il n'est pas question de se présenter dans une banque et de commencer à poser des questions et à demander de voir des documents. Les autorités américaines et britanniques le faisaient déjà. Si elles découvraient quelque chose là-bas, nous pensions que cela nous aiderait sûrement à obtenir des motifs suffisants pour entreprendre une enquête au Canada.

M. Gray: Avez-vous envoyé quelqu'un de la GRC aux États-Unis pour examiner les dossiers afin d'y relever quelques indices qui auraient pu permettre d'établir des motifs suffisants pour entreprendre une enquête auprès de la BCCC au Canada?

Insp. Bowie: Il pourrait être utile, monsieur Gray, d'apporter quelques précisions au sujet de la nature de certaines de ces enquêtes qui sont menées aux États-Unis. Je pense précisément à l'enquête à Tampa, par exemple.

Il faut préciser qu'il ne s'agissait pas d'une descente complète sur toutes les activités de la BCCI. Nous parlons plutôt d'une petite arnaque portant sur une activité très limitée et impliquant un certain nombre d'employés de la banque. Un agent d'infiltration des autorités américaines a remis à la banque de l'argent appartenant au gouvernement en lui disant qu'il s'agissait d'argent provenant du trafic de stupéfiants, et lui a demandé de sortir cet argent du pays, à destination de Nassau, et de le ramener aux États-Unis. Ma direction était parfaitement au courant du caractère de l'enquête.

[*Text*]

It is simply something that is relatively minor, and it is not particularly relevant to any Canadian operations. It is akin to a corrupt manager of the Bank of Nova Scotia in Nassau. If that occurs, it has no relevance to us triggering an investigation into Nova Scotia as an institution in Canada.

• 1055

Mr. Langdon: The bank itself paid a fine of $15 million.

Insp Bowie: Yes, they did.

Mr. Langdon: So this was not just individuals within the bank; it was the bank itself that was indicted. In fact, in the end it pleaded guilty and paid $15 million.

Insp Bowie: Yes, and that is common practice under that particular U.S. statute. The Bank of America in 1985 paid a fine of $7 million under similar circumstances.

Mr. Gray: Can you explain what the statute is? Do you have any knowledge of the nature of the offence that we are talking about in this Tampa case?

Insp Bowie: Yes. They were charged under the Money Laundering Control Act and also, if my information is correct, under a provision of the Bank Secrecy Act. One involves conducting the movement of moneys in such a way as it would constitute money laundering under U.S. law, even though the moneys were not criminal proceeds.

The second is failing to keep adequate records concerning the financial transactions.

Mr. Gray: Obviously, I presume at some point the committee will want to make recommendations based on what is learned about this total situation, recommendations for changes in our legislation or methods of administration and so on. Do I take it that there is a difference between the American law on money laundering and the Canadian one? Would you like to put that on the record so...?

Insp Bowie: Yes, there are differences between U.S. legislation and Canadian legislation. I am not suggesting for an instant that the U.S. legislation is better. It is just that there are differences.

For example, in our legislation we have a very comprehensive description of money laundering. But to proceed with a charge of money laundering against someone, it is incumbent that the funds being laundered are from a criminal activity. If there is simply the associated movements of money, regardless of the suspicious nature of the movement, if they are not criminal proceeds it is not money laundering.

Mr. Gray: I would like to suggest that our research officer provide us with a paper showing the distinctions.

I have before me a report in *The Globe and Mail* by Canadian Press that cash deposits of more than $65 million by a single customer at the Bank of Credit and Commerce in Toronto took place over a period of seven years. Was this something that came to the attention of your force? Are you aware of this?

[*Traduction*]

Il s'agit tout simplement d'une opération d'une importance relative, qui n'est pas particulièrement liée à des activités quelconques au Canada. C'est un peu comme s'il s'agissait du cas d'un directeur corrompu de la succursale de la Banque de Nouvelle-Écosse à Nassau. Cela ne justifierait pas que nous entreprenions une enquête sur l'ensemble de la Banque de Nouvelle-Écosse au Canada.

M. Langdon: La banque a payé une amende de 15 millions de dollars.

Insp. Bowie: Oui.

M. Langdon: Ce n'était donc pas uniquement des employés de la banque; la banque elle-même a été reconnue coupable. En bout de course, elle a plaidé coupable et versé 15 millions de dollars.

Insp. Bowie: Oui, et c'est pratique commune dans le contexte de cette loi américaine. La *Bank of America*, en 1985, a versé une amende de 7 millions de dollars dans des circonstances analogues.

M. Gray: Pouvez-vous nous indiquer un peu ce que dit cette loi? Savez-vous de quel genre d'infraction il s'agit dans le cas de Tampa?

Insp. Bowie: Oui. Dans le cas de Tampa, on invoque la *Money Laundering Control Act* et aussi, si mes renseignements sont justes, une disposition de la *Bank Secrecy Act*. Dans le premier cas, l'accusation est d'avoir déplacé des sommes d'argent d'une manière que la loi américaine reconnaît comme une opération de blanchiment d'argent, même si les fonds en question ne provenaient pas du crime.

Dans le deuxième cas, on a manqué à l'exigence de tenir des dossiers appropriés sur les opérations financières.

M. Gray: Évidemment, je suppose qu'à un certain moment, le comité voudra faire des recommandations partant de ce qu'il aura appris et qu'il voudra recommander d'apporter des modifications à nos lois ou à nos méthodes administratives, etc. Dois-je conclure qu'il y a une différence entre la loi américaine sur le blanchiment de l'argent et la loi canadienne? Voudriez-vous consigner cela au procès-verbal, afin que...?

Insp. Bowie: Oui, il y a des différences entre les lois américaines et les lois canadiennes en la matière. Je ne prétends absolument pas que les lois américaines sont meilleures. Je dis seulement qu'il y a des différences.

Par exemple, dans notre loi, nous avons une description très complète de ce qui constitue une activité de blanchiment d'argent. Mais pour porter des accusations contre quelqu'un pour avoir blanchi de l'argent, il faut que les fonds proviennent d'activités criminelles. S'il ne s'agit que de déplacements d'argent, quels que soient les doutes qu'ils soulèvent, si l'argent n'est pas le fruit d'activités criminelles, ce n'est pas considéré comme une activité de blanchiment d'argent.

M. Gray: Je souhaiterais que notre attaché de recherche nous prépare un document sur les différences qui existent.

J'ai ici un rapport de la Presse canadienne dans *The Globe and Mail*, dans lequel on relate que des dépôts en argent de plus de 65 millions de dollars ont été faits par un seul client à la Banque de crédit et de commerce à Toronto sur une période de sept ans. Êtes-vous au courant de cela?

[*Text*]

Insp Bowie: I am aware of the nature of the disclosure, yes.

Mr. Gray: *The Globe and Mail* reported that the deposits were carried out by a mysterious stranger, a mysterious customer carrying a briefcase full of cash, made over seven years until mid-1988 when they suddenly stopped.

Are you saying that this situation was brought to your attention?

Insp Bowie: Yes. That situation was brought to the attention of the RCMP.

Mr. Gray: And what happened?

Insp Bowie: There were no charges pursued because, again, the source of the moneys was not and could not be attributed to any criminal activity. There was no criminal source of the funds.

Mr. Gray: Did you maintain surveillance on the individual?

Insp Bowie: There was a small investigation at the outset of that particular activity; then it was folded into a larger investigation that was conducted by Economic Crime.

Mr. Gray: Are you talking about the case that you previously referred as Project Albus?

Insp Bowie: Yes, there are links in that situation.

Mr. Gray: Did I hear one of the witnesses in the force say that the investigation into Project Albus is concluded? Is this investigation concluded or is it still open?

Insp Bowie: I believe Assistant Commissioner Doucette would be—

A/Commr Doucette: As far as the RCMP is concerned, the criminal activity on money laundering is concluded, yes.

• 1100

Mr. Gray: We have just been informed in the course of this hearing that the media, when they ask about this matter, have always been told by your force that the investigation is still ongoing.

A/Commr Doucette: Not by the RCMP.

D/Commr Favreau: The problem we find ourselves in here, Mr. Gray, is that we do not want to damage things that are ongoing, not by the force, but we do not want to damage this, so we have to be very prudent. And we are in an open context here, so you will understand that we have difficulty answering this.

Mr. Gray: All right. If I can just move along with some other questions I have on Project Albus, that was the investigation in which Mr. Sargent was involved. Am I right in that?

A/Commr Doucette: Yes, that is correct.

Mr. Gray: That is what he was telling us about the other night.

In response to a question as to why, even though Mr. Sargent thought that there was enough for the investigation to be given more resources, a member of the force, one of the witnesses here, said that Mr. Sargent should have brought his information to the attention of his superiors. My recollection of Mr. Sargent's evidence was that he did that.

[*Translation*]

Insp. Bowie: Je suis au courant de cette divulgation, oui.

M. Gray: Dans *The Globe and Mail*, on dit que les dépôts étaient faits par un mystérieux étranger, un mystérieux client qui se présentait à la banque avec un porte-documents bourré d'argent. Ce petit manège a duré sept ans, jusqu'au milieu de 1988, où il a pris fin soudainement.

Vous dites que la chose a été portée à votre attention?

Insp. Bowie: Oui. Cet événement a été signalé à la GRC.

M. Gray: Et qu'est-il arrivé ensuite?

Insp. Bowie: Aucune accusation n'a été portée parce que, je le répète, on ne pouvait attribuer la provenance de l'argent à une quelconque activité criminelle. On n'a identifié aucune source à caractère criminel.

M. Gray: Avez-vous exercé une surveillance de l'individu en question?

Insp. Bowie: Nous avons fait une petite enquête, au début, relativement à cette activité particulière; puis, cette enquête en est venue à faire partie d'une enquête plus vaste que menait la Direction de la police économique.

M. Gray: Dans le cadre du projet Albus auquel vous avez déjà fait allusion?

Insp. Bowie: Oui, c'est cela. Cette enquête est liée à ce projet.

M. Gray: L'un des témoins, aujourd'hui, nous a-t-il dit que l'enquête menée dans le cadre du projet Albus est terminée? Pouvez-vous nous confirmer la chose?

Insp. Bowie: Je pense que le commissaire adjoint Doucette serait. . .

Comm. adj. Doucette: Pour la GRC, l'enquête sur le blanchiment de l'argent est terminée, oui.

M. Gray: Nous venons tout juste d'apprendre, au cours de cette audience, que les médias se sont toujours fait dire par des représentants de la GRC que l'enquête était encore en cours.

Comm. adj. Doucette: Pas par la GRC.

S.-comm. Favreau: Notre problème ici, monsieur Gray, c'est que nous ne voulons pas risquer de nuire à des enquêtes qui sont en cours, pas par la GRC, mais nous ne voulons pas courir ce risque. Nous devons donc être très prudents. Et, la séance d'aujourd'hui est publique. Vous comprendrez donc qu'il nous est difficile de répondre à cette question.

M. Gray: Très bien. J'ai quelques autres questions à poser au sujet du projet Albus. C'est l'enquête à laquelle participait M. Sargent, n'est-ce pas?

Comm. adj. Doucette: Oui, c'est juste.

M. Gray: C'est ce qu'il nous disait l'autre soir.

En réponse à une question sur les raisons pour lesquelles on a mis un terme à l'enquête malgré le fait que M. Sargent pensait qu'il était justifié de lui accorder des ressources additionnelles, un membre de la GRC, l'un des témoins, a dit que M. Sargent aurait dû transmettre ses renseignements à ses supérieurs. Si je me souviens bien, M. Sargent a dit l'avoir fait.

[Text]

D/Commr Favreau: I think Mr. Doucette did correct that, that it was, and stated that the investigation lasted a certain time, and after that it was an operational decision not to go any further.

Mr. Gray: Who made that decision?

D/Commr Favreau: It would be in Mr. Doucette's directorate.

A/Commr Doucette: At the time it would have been that supervisor.

Mr. Gray: Did that have to be reviewed at a higher level?

A/Commr Doucette: I will have to check the file, Mr. Gray, who actually made... I can find out who actually made the decision, if you want that.

Mr. Gray: Okay.

D/Commr Favreau: Maybe in order to help the committee a bit, and I know you are all familiar, at least partially, with the chain of command of the RCMP, but every manager along the road, Sargent being a constable, obviously reported to a sergeant, who reported to an inspector, who reports in headquarters to a director, who is usually an assistant commissioner. If Sargent at that time made a proposal to continue or to start an investigation, and after discussion, his boss, his immediate supervisor, decided, "No, we can't go any further on this one", unless he sees, really, a reason to push it further, this will not go to the attention of upper authorities, as the matter has been decided, and properly so, at a lower level of management. That is why your question is very, very detailed as to who at that time decided that the investigation had been lasting long enough.

Again, we already have a question that we want to come back to in writing, so we will be pleased to include that at the same time in our response.

Mr. Gray: I draw your attention to my recollection of Mr. Sargent's evidence the other night when he said that he reported to Mr. Stammler, who reported to Mr. Jensen. Could you comment on that at this point?

• 1105

D/Commr Favreau: My recollection is that Sargent was working with Elrick and it is quite possible, yes, that in the special circumstances where Constable Sargent and Sergeant Elrick were working that they had access directly to the director, which is normal in our organization, following the Cogger and the Marin inquiry after that. But that has been corrected.

Sargent might be right in the sense that he had access to the director.

Mr. Gray: I would like to ask another question about this matter and then turn to one of the other cases mentioned.

I believe that Mr. Sargent told us the other night that there were only two members of the force involved in the Project Albus investigation, but I understood Assistant Commissioner Doucette to have said a little while ago that there were more than two people involved in Project Albus. Could Mr. Doucette clarify this for the committee?

[Traduction]

S.-comm. Favreau: Je pense que M. Doucette a précisé la chose, que c'est ce que l'on a fait, et a déclaré que l'enquête avait duré un certain temps, et que c'était une décision administrative qui y avait mis fin.

M. Gray: Qui a pris cette décision?

S.-comm. Favreau: Quelqu'un de la direction de M. Doucette.

Comm. adj. Doucette: À ce moment-là, c'est ce superviseur qui en aurait pris la décision.

M. Gray: Était-elle censée être examinée à un palier supérieur?

Comm. adj. Doucette: Je vais devoir vérifier dans le dossier, monsieur Gray, pour déterminer qui a vraiment... je peux trouver qui a pris la décision finale, si vous y tenez.

M. Gray: D'accord.

S.-comm. Favreau: Pour aider un peu le comité, et je sais que vous connaissez tous, au moins partiellement, la hiérarchie de commandement de la GRC, mais chacun des gestionnaires, M. Sargent étant un constable, relève évidemment d'un sergent, qui relève d'un inspecteur, qui lui, relève d'un directeur à l'Administration centrale qui est habituellement un commissaire adjoint. Si M. Sargent, à ce moment-là, a proposé de poursuivre ou d'entreprendre une enquête, et qu'après discussion, son patron, son supérieur immédiat, l'a décidé du contraire, à moins d'avoir trouvé, en réalité, une raison d'aller plus loin, la décision ne sera pas portée à l'attention des échelons supérieurs étant donné qu'elle a déjà été prise, et à juste titre, à un niveau administratif inférieur. C'est pourquoi votre question demande une réponse très précise, à savoir qui, à ce moment-là, a décidé que l'enquête avait assez duré.

Il y a déjà une question à laquelle nous sommes censés répondre par écrit. Nous vous donnerons aussi la réponse à celle-là en même temps.

M. Gray: J'attire votre attention sur le témoignage de M. Sargent, qui nous a dit l'autre soir avoir fait rapport à M. Stammler, qui a à son tour fait rapport à M. Jensen. Avez-vous des choses à nous dire là-dessus?

S.-comm. Favreau: Je me souviens que M. Sargent travaillait avec M. Elrick, et il est tout à fait possible, oui, que dans les circonstances particulières où le constable Sargent et le sergent Elrick travaillaient ensemble, ils aient eu accès directement au directeur, ce qui est normal chez-nous, après l'enquête Cogger et Marin. Mais, cette situation est maintenant redressée.

M. Sargent peut avoir raison de dire qu'il avait accès directement au directeur.

M. Gray: J'ai une autre question à poser à ce sujet, et je passerai ensuite à un autre cas qui a été mentionné.

Je pense que M. Sargent nous a dit, l'autre soir, qu'il n'y avait eu que deux membres de la GRC qui avaient travaillé à l'enquête dans le cadre du projet Albus, mais je pense que M. Doucette a dit, il y a quelque temps, que plus de deux personnes avaient travaillé à ce projet. M. Doucette pourrait-il nous donner quelques éclaircissements à ce sujet?

[*Text*]

A/Commr Doucette: I certainly will. As far as headquarters was concerned, that is correct. There were two members here.

However, with the span of the investigation, which actually went to other provinces, we also utilized the resources of other divisions, which were in support of the investigation, as well as our surveillance, etc. Therefore, there were other resources utilized across Canada.

Mr. Gray: All right. I want to ask you, if you do not mind—

D/Commr Favreau: Again, Mr. Gray, in order to give you a little bit more insight as to how an investigation would work, you might have only one person doing an investigation, but because he is doing this investigation he has access to all other services from within the organization. At one time he might have as many as 30 or 40 people a day working for him on a specific surveillance. He might have specialists with electronic devices and so on. So when you say this guy is alone doing this investigation, he has all the support of the organization, depending on what he has to do.

Mr. Gray: Can you assist the committee by telling us why Mr. Sargent the other night said specifically that he asked the superiors for more resources to work on this Project Albus?

D/Commr Favreau: Why do you ask that? I do not know why he asked that. If the question is, do we have enough resources, we could use more.

Mr. Manley: You will have to tell that to another committee.

D/Commr Favreau: I will be happy if you would like to transmit that.

The Acting Chairman (Mr. Sobeski): I believe Mr. Langdon asked that question.

Mr. Gray: Now if I can just turn back to the Manara Travel case. Do we not, through our Export and Import Permits Act or other legislation, have sanctions against dealing with Libya, or did we not at that relevant time?

D/Commr Favreau: If my recollection is right, sir, at that time, no. That is why Libya was using Canada to transfer funds to the States.

Mr. Gray: I am informed that in January of 1986, sanctions under our law were applied to dealing with Libya. When were the incidents involving the use of Manara Travel and the Bank of Credit and Commerce International?

D/Commr Favreau: I think what you are referring to is a different law under the import and export bank. I stand to be corrected, but I do not believe at that time—and I am talking November 1987—that funds that were channelled from Libya via Canada represented any illegality in Canada. I stand to be corrected on that.

[*Translation*]

Le comm. adj. Doucette: Bien sûr, oui. En ce qui concerne la Direction générale de la GRC, c'est juste. Il y a eu deux membres de la GRC qui ont travaillé à l'affaire.

Toutefois, avec l'envergure de l'enquête qui s'est étendue à d'autres provinces, nous avons aussi utilisé les ressources d'autres divisions, qui sont venues appuyer l'enquête, ainsi que notre personnel de surveillance, etc. D'autres ressources ont donc été mises à contribution dans l'ensemble du Canada.

M. Gray: Très bien. Si vous n'avez pas d'objection, je veux vous demander. . .

S.-comm. Favreau: Encore une fois, monsieur Gray, pour que vous sachiez un peu mieux comment fonctionne une enquête, il peut n'y avoir qu'une seule personne qui travaille à une enquête, mais se faisant, elle a accès à tous les autres services de l'organisation. Il peut parfois arriver qu'il y ait de 30 à 40 personnes chaque jour qui travaillent pour elle dans le contexte d'une opération de surveillance particulière. Elle peut aussi avoir recours aux services de spécialistes en électronique, etc. Donc, quand on dit qu'une personne travaille seule à une enquête, il ne faut pas oublier qu'elle a l'appui de l'ensemble de l'organisation, selon la tâche à accomplir.

M. Gray: Pouvez-vous nous dire pourquoi M. Sargent nous a dit, l'autre soir, avoir demandé des ressources additionnelles à ses supérieurs dans le cadre du projet Albus?

S.-comm. Favreau: Pourquoi me posez-vous cette question? Je ne sais pas pourquoi il l'a demandé. Si vous me demandez si nous avons suffisamment de ressources, je vous répondrai que nous voudrions bien en avoir davantage.

M. Manley: Vous allez devoir aller dire cela à un autre comité.

S.-comm. Favreau: Je vous serais reconnaissant de transmettre le message.

Le président suppléant (M. Sobeski): Je pense que c'est M. Langdon qui a posé cette question.

M. Gray: Permettez-moi maintenant de revenir à l'affaire de Manara Travel. Notre Loi sur les licences d'exportation et d'importation ne comporte-elle pas des sanctions contre le commerce avec la Lybie? Était-ce le cas à ce moment-là?

S.-comm. Favreau: Si je me souviens bien, monsieur, ce n'était pas le cas à ce moment-là. C'est pourquoi la Lybie utilisait le Canada pour transférer des fonds aux États-Unis.

M. Gray: On me dit qu'en janvier 1986, des sanctions ont été appliquées en vertu de notre Loi à l'égard du commerce avec la Lybie. Quand les incidents impliquant Manara Travel et la Banque de crédit et de commerce internationale se sont-ils produits?

S.-comm. Favreau: Je pense que vous faites allusion à une disposition différente régissant la Banque d'importation et d'exportation. On me corrigera là-dessus, si je fais erreur, mais je ne pense pas qu'à ce moment-là—en novembre 1987—il était illégal de faire transiter des fonds de la Lybie par le Canada selon nos lois canadiennes. On pourra me corriger là-dessus.

[Texte]

• 1110

Mr. Gray: It is my impression that one of the uses of our Export and Import Permits Act is that Canada should not be used as a pass-through for money or goods originating from the United States in a way that is contrary to their economic or financial sanctions.

You're suggesting that at the relevant time in 1987 there was no Canadian law breached in the Manara Travel case. We are not talking about money laundering of proceeds of a drug committee, but simply the dealing with Libya.

D/Commr Favreau: At that time, sir, in 1987, the RCMP investigation failed to reveal any evidence of breach of Canadian laws either by the BCCC or this person who is now wanted, Mr. Hawamda.

Mr. Gray: I would like to turn now to something that I recall coming up in the hearing some weeks ago. I do not have the exact reference in the transcript in front of me, but I recall Mr. Bowie or one of his colleagues saying that the force did not have the resources to carry out an investigation of a bank—I think I am fairly summarizing the language in question—therefore, the matter had to be left to the Office of the Superintendent of Financial Institutions.

My recollection also is that we asked the Superintendent of Financial Institutions about who should be looking into the possible offences that the officers became aware of in the course of their work. He said it had to be turned over to the RCMP.

In view of what has been said, it seems to me that there is some type of gap in the enforcement of Canadian law with respect to banks, and there is a risk that some serious situation could fall between the cracks.

I would like to know how you respond to what seems to be some conflict in evidence, as to responsibilities put on the record at the last hearing of this committee—not the last one, but the one before—on the one hand, by representatives of your force and, on the other hand, by representatives of the Office of the Superintendent of Financial Institutions.

D/Commr Favreau: I welcome coming back to the minutes, because I must say that when Mr. Bowie and Mr. Kaine came back . . The way the answer came out was a little bit of a surprise to me. I will welcome Mr. Bowie to explain what he was talking about.

There is one thing I would like to explain to this committee, if I could. If we were able for a minute to put the legal side of the issue aside and say that we will go into a functioning bank and look at their transactions—as an example, let us say all the transactions over $10,000—we would need a multitude of people to do that.

The reason is that every transaction is going somewhere, coming from somewhere, who had it from somewhere else, etc. I asked Inspector Bowie to give a little bit of an insight—I think it will be useful to the committee—into what one investigation, one clarification of a file, might need.

Mr. Bowie has a chart. He will mention the number of documents and the number of hours spent on that, and the number of dollars.

[Traduction]

M. Gray: Il me semble que l'une des utilités de notre Loi sur les licences d'exportation et d'importation est de faire en sorte que le Canada ne serve pas de lieu de transit pour de l'argent ou des marchandises en provenance des États-Unis d'une manière qui est contraire à leurs sanctions économiques ou financières.

Vous laissez entendre qu'à cette époque-là, en 1987, on n'a enfreint aucune loi canadienne dans l'affaire de Manara Travel. Il n'est pas question de blanchissage d'argent, mais tout simplement de commerce avec la Libye.

S.-comm. Favreau: À ce moment-là, en 1987, l'enquête de la GRC n'a permis de recueillir aucune preuve que la BCCC ou cette personne, qui est maintenant recherchée, M. Hawamda, avait enfreint une loi canadienne quelconque.

M. Gray: Je voudrais maintenant passer un sujet qui a été abordé à l'occasion d'une audience, il y a quelques semaines. Je n'ai pas la référence exacte, mais je me souviens avoir entendu M. Bowie ou l'un de ses collègues dire que la GRC ne disposait pas de ressources suffisantes pour mener une enquête sur une banque—je pense que je résume passablement ce qui a été dit—et que par conséquent, l'affaire avait dû être confiée au Bureau du Surintendant des institutions financières.

Je me souviens aussi que nous avons demandé au Surintendant des institutions financières qui devrait enquêter sur les infractions possibles que les agents ont découvertes au cours de leur travail. Il a dit que cela relevait de la GRC.

Compte tenu de ce qui a été dit, j'ai l'impression qu'il y a une lacune dans l'application de la loi canadienne en ce qui a trait aux banques, et que l'on risque de voir certaines situations graves passe inaperçues.

Je voudrais avoir votre réaction à ce qui semble être des témoignages divergents quant aux responsabilités, témoignages que nous avons entendus à la dernière réunion de notre comité—non, pas la dernière, plutôt l'avant-dernière—d'une part, par des représentants de la GRC et, d'autre part, par des représentants du Bureau du Surintendant des institutions financières.

S.-comm. Favreau: Je suis bien content que nous revenions sur ce procès-verbal, parce que je dois dire que lorsque M. Bowie et M. Kaine sont revenus . . La réponse m'a un peu étonné. J'aimerais que M. Bowie explique ce qu'il a dit.

Il y a un éclaircissement que je voudrais donner au comité, si vous le permettez. Si nous pouvions, pour un instant, mettre de côté l'aspect juridique de la question et parler des inspections sur les opérations effectuées dans une banque—par exemple, toutes les opérations bancaires dépassant 10,000$—nous aurions besoin d'une multitude de gens pour le faire.

Cela s'explique par le fait que l'objet de chaque opération a une destination et une provenance, et était parti d'ailleurs avant cela, etc. J'ai demandé à l'inspecteur Bowie de préparer quelque chose—qui sera utile au comité, je pense—sur ce que requiert une enquête, l'éclaircissement d'un dossier.

M. Bowie a préparé un tableau. Il va vous mentionner le nombre de documents et le nombre d'heures qui ont été requises, et le coût de l'opération.

[*Text*]

When the question was raised, do you have enough—I do not think the question was raised—the answer was, we would not have enough resources to do this. That is what the RCMP is talking about. I will leave Mr. Bowie to explain what he meant.

• 1115

The Acting Chairman (Mr. Sobeski): Perhaps I could then ask Mr. Bowie to give us a précis and to table with the committee the document he is discussing from.

Insp Bowie: Actually, I am just looking at the transcript, sir, and my quote of the transcript. Essentially, the reports that came out about the transcript, I respectfully suggest, do not reflect what was said, what I recall saying and what the transcript reflects that I said.

In answer to the question "Why did you not institute an investigation of the whole bank?" I said, "I draw the attention of the committee to the distinction between regulatory action and criminal investigation". We rely on a search warrant to go in and collect the documentation to support an investigation. We have no right whatever to go into a bank and simply cull through your account, and your account, to determine what is good and what is bad. We must go in with a search warrant. To get a search warrant we must establish reasonable grounds that an offence has occurred and there are reasonable grounds to believe that the items are in the institution and will support the investigation. That is the distinction, and that, I suggest, is what was said. We depend on the criminal process to conduct our investigation. For somebody to simply walk into an institution and cull through the records, that is within regulatory powers but not within the powers of the police.

If you are interested in seeing what a criminal investigation entails, I have a very brief description of money laundering, and we are quite capable, I suggest, of conducting money laundering investigations and have done so.

Mr. Gray: I assume you have a very big chart.

Insp Bowie: This, sir, is the corporate structure of an actual criminal group that was recently terminated. These are 47 corporations that they set up in 7 different countries to launder about $100 million worth of drug money. We have just finished the prosecution. This is not the Columbian Medellin cartel; this is a homegrown marijuana trafficking organization.

To prosecute this case, our investigators were forced to accumulate just over one million individual documents to prove the monetary flow. This, sir, is a money-laundering investigation. If you look at investigating an entire bank—and remember that there are 40 million bank accounts in Canada and that they process two billion cheques every year in the Canadian clearing system—we are looking at factors of significance compared to what this entails.

Mr. Gray: That, sir, is very helpful. I just wanted to make sure, in the light of your evidence at the initial meeting, that there was not some type of enforcement gap that might involve criminal sanctions that you were leaving to

[*Translation*]

Quand on a demandé si nous avions suffisamment de ressources—je ne pense pas que la question ait été soulevée—la réponse a été que nous n'aurions pas suffisamment de ressources pour mener une telle enquête. C'est ce que l'on dit à la GRC. Je vais laisser M. Bowie vous expliquer ce qu'il a voulu dire.

Le président suppléant (M. Sobeski): M. Bowie pourra peut-être nous faire un résumé et déposer le document qu'il a préparé auprès du comité.

Insp. Bowie: Je suis en train de lire la transcription de ce que j'ai dit au cours de cette réunion. Sauf tout le respect que je vous dois, le rapport ne reflète pas ce que j'ai dit, ce que je me souviens d'avoir dit.

En réponse à la question: «Pourquoi n'avez-vous pas instituer une enquête sur l'ensemble de la banque?» j'ai dit: «J'attire l'attention du comité sur la distinction à faire entre une action réglementaire et une enquête criminelle». Il nous faut un mandat de perquisition pour obtenir les documents nécessaires à une enquête. Nous n'avons aucunement le droit de nous présenter dans une banque et de tout simplement examiner les opérations qui ont été faites dans un compte ou un autre pour déterminer celles qui sont douteuses et celles qui ne le sont pas. Nous avons besoin d'un mandat de perquisition pour le faire. Et, pour obtenir un mandat, nous devons prouver que nous avons des motifs raisonnables de croire qu'une infraction a été commise et que les pièces justificatives qui seront utiles à l'enquête se trouvent dans l'institution en cause. C'est là la distinction, et c'est ce que j'ai dit. Nous devons suivre le processus criminel dans le cadre d'une enquête. Les pouvoirs réglementaires permettent à quelqu'un de se présenter dans une institution et de parcourir les dossiers, mais pas la police.

S'il vous intéresse de savoir ce qu'exige une enquête criminelle, j'ai ici une très brève description d'un cas de blanchissage d'argent, et nous avons la capacité de mener des enquêtes dans ce domaine, et nous l'avons d'ailleurs déjà fait.

M. Gray: Je suppose que votre tableau est très imposant.

Insp. Bowie: Ceci, monsieur, est la structure d'un véritable réseau criminel qui a été démantelé dernièrement. Vous avez là 47 sociétés qui ont été créées dans sept pays différents pour blanchir environ 100 millions de dollars tirés du trafic des stupéfiants. La poursuite vient tout juste de prendre fin. Ce n'est pas le cartel de Medellin; il s'agit seulement d'un réseau de trafic de marijuana cultivée ici.

Avant d'entamer des poursuites, nos enquêteurs ont dû accumuler un peu plus d'un million de documents afin d'illustrer les déplacements de l'argent. Ceci, monsieur, est une enquête sur un cas de blanchissage d'argent. Enquêter sur toute une banque—et n'oubliez pas qu'il y a 40 millions de comptes bancaires au Canada et que l'on traite 2 milliards de chèques par an dans le système de compensation canadien—est une entreprise colossale comparativement à cette enquête.

M. Gray: Ces renseignements sont très utiles, monsieur. Je voulais seulement m'assurer, à la lumière du témoignage que vous avez donné à la première réunion, qu'il n'y avait pas de lacune dans l'application de la loi, qu'il n'y avait pas

[Text]

the Office of the Superintendent of Financial Institutions and that they, in turn, thought should be in your hands, so that matters were not looked into where there was a proper basis for doing so. I am not talking about a fishing expedition that is not consistent with our laws or traditions of investigation, but certainly what was said at the hearing in August could have given rise to some doubt as to whether all the ground was covered between the force and the Office of the Superintendent of Financial Institutions.

Insp Bowie: If I could just again clarify, I do not believe there was any doubt, or any confusion, in either the minds of the witnesses who were attending there or the members of OSFI as to their responsibilities. The issue at hand was how do you initiate a criminal procedure? The only point I was trying to make at the earlier testimony was that if we have evidence or indications that some type of criminal activity is present in any institution or done by any person, we will undertake the investigation to the best of our ability. There is no question of that. But the answer that was so widely quoted was based on how we get in to look at the documents to initiate any type of criminal proceeding, and there is the difference. We do not have that power.

• 1120

Mr. Gray: One final question. Am I right in saying that in the United States there is a federal law that all cash deposits or transfers above $10,000 have to be reported by the bank in question that handles that transaction, to a U.S. regulatory authority? It is the responsibility of the bank, or is it the responsibility of the depositor? There is that law in the United States at the national level, which I gather does not exist here.

Assistant Commissioner J.J.M. Coutu (Director, Drug Enforcement, Royal Canadian Mounted Police): That is correct. There are provisions in the U.S. legislation that require this reporting for most transactions of $10,000 and up. There are exceptions where some transactions of $10,000 or more are ongoing, government transactions and so on. There are exceptions, but there are provisions for reporting those indeed.

Mr. Langdon: There are just a few points I would like to clear up. First, we have had the Canadian Bankers' Association suggest to us that they recommended Mr. Jensen to the BCCC as someone who should be hired as a consultant. I checked through the transcript on that, Mr. Sobeski, and the actual statement in the preliminary transcript anyway was that the president of the CBA, Ms Sinclair, had checked and their last notation in the file was December 1988, so they felt that it must have taken place before December 1988.

Our understanding from Mr. Sargent, and of course from other information, was that Mr. Jensen did not leave the force as Deputy Superintendent until well after that time. Do you have some information with respect to this?

D/Commr Favreau: Mr. Jensen left the force on December 31, 1989. That is the date of his departure. As to exactly how Mr. Jensen was approached, I am afraid this question will have to go to Mr. Jensen if the committee

[Traduction]

de choses que vous pensiez être de la responsabilité du Bureau du Surintendant des institutions financières, lui pensait à son tour qu'elles relevaient de la GRC, empêchant ainsi une enquête justifiée. Je ne parle pas ici d'une expédition de pêche qui dérogerait à nos lois ou traditions en matière d'enquête, mais il ne fait aucun doute que ce qui a été dit en août aurait pu soulever certains doutes sur la coordination entre les activités de la GRC et celles du Bureau du Surintendant des institutions financières.

Insp. Bowie: Si je peux apporter une précision, je ne pense pas qu'il existait un doute ou une confusion quelconque dans l'esprit des témoins qui étaient là ou des membres du BSIF au sujet de leurs responsabilités. La discussion portait sur la façon d'entreprendre une poursuite criminelle. Tout ce que j'ai dit, la dernière fois que je suis venu témoigner devant le comité, c'est que si nous avons des preuves ou des indications qu'une institution se livre à une activité criminelle quelconque, nous entreprendrons l'enquête du mieux que nous pouvons. Cela ne fait aucun doute. Mais, la réponse qui a été tellement citée partait de la façon dont nous parvenons à examiner les documents nécessaires pour entreprendre une poursuite criminelle, et c'est là la différence. Nous n'avons pas ce pouvoir.

M. Gray: Une dernière question. Est-il vrai qu'aux États-Unis, il existe a une loi fédérale qui exige que la banque signale tous les virements ou dépôts d'argent comptant de plus de 10,000$ à une autorité réglementaire américaine? Est-ce la responsabilité de la banque, ou celle du déposant? Cette loi existe aux États-Unis, au niveau fédéral, et nous n'avons rien de tel au Canada, je suppose.

Le commissaire adjoint J.J.M. Coutu (directeur, Police des drogues, Gendarmerie royale du Canada): C'est juste. Il y a des dispositions dans la loi américaine qui exigent que la plupart des opérations de 10,000$ et plus soient signalées. Il y a certaines exceptions lorsque ces opérations sont continues, des opérations du gouvernement, etc. Il y a des exceptions, mais il y a, en effet, des dispositions qui prévoient que ces opérations soient signalées.

M. Langdon: Il y a quelques points que je voudrais éclaircir. Premièrement, l'Association des banquiers canadiens nous a dit qu'elle a recommandé M. Jensen à la BCCC comme expert-conseil. J'ai vérifié dans la transcription à ce sujet, Monsieur Sobeski, et la déclaration dans la transcription préliminaire était que la présidente de l'ABC, M^me^ Sinclair, avait vérifié, et la dernière note à ce sujet dans le dossier remontait à décembre 1988. Elle pensait donc que cette recommandation avait dû être faite avant décembre 1988.

Selon ce que M. Sargent nous a dit, et selon d'autres sources d'information, évidemment, M. Jensen n'a pas quitté son poste de sous-commissaire avant 1988. Avez-vous des renseignements à nous fournir à ce sujet?

S.-comm. Favreau: M. Jensen est parti le 31 décembre 1989. C'est la date de son départ. À savoir précisément comment on a approché M. Jensen, je crains bien que c'est une question que vous allez devoir lui poser vous-même si

[*Text*]

wants to hear from his point of view of what happened. However, I know that in meetings having to do with other matters, maybe Mr. Coutu could be helpful to the committee, and Mr. Bowie, having had personal discussions, but I think I cannot go any further than that as to what exactly transpired.

Mr. Langdon: Let me be more precise in the question that flows from that. Was there, therefore, as far as any of you are aware, a contractual relationship or a consulting relationship between Mr. Jensen and BCCC during 1989, as suggested by the Canadian Bankers' Association?

D/Commr Favreau: To my knowledge not in 1989. In 1989 Mr. Jensen was still Deputy Commissioner of Operations, and again to my knowledge—and I stand to be corrected by my two confrères—it was in the month of May, or five months after, that Mr. Jensen worked for BCCC.

• 1125

Mr. Langdon: I understand that it is the case, because it would not have been proper, it would not have been legal, under RCMP regulations, for such a relationship to have existed, if it did exist in 1989, as the CBA is suggesting.

D/Commr Favreau: In 1989 it would have been improper, in the sense that Mr. Jensen would still have been a deputy commissioner in the force.

Mr. Langdon: That clears that point up.

The second point that—

Mr. Manley: If I could just interject—and I do not want to interrupt the questioning, but it is a very sensitive matter, of course—I want to put into the record that information we received this morning from Mr. Randle of the Canadian Bankers' Association suggests that in fact Ms Sinclair was incorrect the other night, in that the referral occurred in March 1990.

The Acting Chairman (Mr. Sobeski): Thank you, Mr. Manley.

Mr. Langdon: That certainly helps to clear it up.

There is a second point that I wanted to clarify. I have here the report of the board of inquiry on activities of the RCMP by Judge Marin. This is related to allegations made in the Senate of Canada. This is just the summary in which he discusses Project Albus. In the context of discussing Project Albus, he indicates that it is in the context of that project that, I take it, Mr. Vidosa was to ask Senator Cogger for his assistance to release moneys that had been seized by Canada Customs on the west coast.

Mr. Sargeant suggested, in his testimony the other night, that this was money that had been seized as part of this investigation of money laundering which had involved various direct connections to BCCC.

I want to confirm with you that it was to try to get this money back—the specific money that had been seized as part of that investigation dealing with BCCC—that the approach to Mr. Cogger was. . .at least, that is how it was framed.

[*Translation*]

vous voulez savoir ce qui s'est passé. Je sais toutefois qu'à l'occasion d'autres réunions portant sur autre chose, M. Coutu pourra peut-être être utile au comité, ainsi que M. Bowie, car ils ont eu des discussions personnelles avec lui, mais je ne pense pas pouvoir vous en dire tellement plus long à ce sujet.

M. Langdon: Permettez-moi donc d'être un peu plus précis dans la question suivante. Selon les renseignements que vous possédez, y a-t-il eu une entente contractuelle ou une entente de consultation entre M. Jensen et la BCCC qui a été conclue en 1989, comme le laissait entendre l'Association des banquiers canadiens?

S.-comm. Favreau: À ma connaissance, pas en 1989. Cette année-là, M. Jensen était encore sous-commissaire à la police opérationnelle, et je répète qu'à ma connaissance—et mes deux confrères pourront peut-être me corriger là-dessus—ce n'est qu'en mai, soit cinq mois plus tard, que M. Jensen a commencé à travailler pour la BCCC.

M. Langdon: Je comprends bien cela, parce que s'il en avait été autrement, si une telle entente avait existé en 1989, comme le laissait entendre l'ABC, cela n'aurait pas été acceptable ni légal en vertu du règlement régissant la GRC.

S.-comm. Favreau: En 1989, la chose aurait été inacceptable, parce que M. Jensen était encore sous-commissaire à la GRC.

M. Langdon: Voilà une question de réglée.

Le deuxième point qui. . .

M. Manley: Si je peux me permettre de vous interrompre—et ce n'est pas pour vous empêcher de poser des questions, mais la question est très importante, évidemment—je veux consigner au procès-verbal que des renseignements que nous avons reçus ce matin, de la part de M. Randle, de l'Association des banquiers canadiens, laisse entendre que M^me^ Sinclair s'est trompée, l'autre soir, et que la recommandation a été faite en mars 1990.

Le président suppléant (M. Sobeski): Merci, monsieur Manley.

M. Langdon: Cela contribue sûrement à régler la question.

Il y a un deuxième point que je veux tirer au clair. J'ai ici le rapport de la commission d'enquête sur les activités de la GRC, dirigée par le juge Marin. Cela a trait à des allégations qui ont été faites au Sénat du Canada. Ce n'est que le résumé dans lequel il discute du projet Albus. Dans ce résumé, il indique que c'est dans le contexte du projet Albus, je suppose, que M. Vidosa devait demander au sénateur Cogger de l'aider à faire libérer des sommes d'argent qui avaient été saisies par les douaniers sur la côte ouest.

Au cours de son témoignage, l'autre soir, M. Sargent a laissé entendre que cet argent avait été saisi dans le contexte de l'enquête sur le blanchissage d'argent, qui s'impliquaient des liens directs avec la BCCC.

Je veux confirmer auprès de vous que c'était dans le but de récupérer cet argent—celui que l'on avait saisi dans le cadre de l'enquête impliquant la BCCC—que l'on a approché M. Cogger. . . en tout cas, c'est la façon dont ce fut organisé.

[*Texte*]

D/Commr Favreau: No, I do not think it is in the proper context.

Mr. Langdon: Perhaps you could correct the context then.

D/Commr Favreau: I will not go into whether it was right or wrong because it has already been beaten to death, but the context of doing this about the $1 million was more or less to get Senator Cogger to activate and use his influence to do that. Again, I do not want to debate the question of whether it was right or wrong; somebody else did that. But the context was not to get this $1.8 million, I believe, back into the investigation. It was, according to Mr. Vidosa, to implicate the senator.

Mr. Langdon: Right, I understand that. I just wanted to clarify that the $1.8 million that we are talking about, in the context of the money-laundering investigations that Mr. Sargent described to us the other night, was the money that was involved in Mr. Vidosa's approach.

D/Commr Favreau: The $1.8 million, yes.

Mr. Langdon: I have two broader questions. The first is—

D/Commr Favreau: Just a minute, there might be a clarification by Mr. Bowie.

• 1130

Insp Bowie: Yes. That was $1,080,000, but also it was our directorate that handled the seizure of the money. There was absolutely no connection whatever to BCCC, which is what you indicated in your question, sir. Just to clarify it, it was strictly a cash transport across the border. There is no bank connection at all.

Mr. Langdon: I am sorry, but that contradicts the testimony. Mr. Sargent suggested that in fact there were various direct connections in the context of Project Albus involved with respect to these transfers of money back and forth across the border and ongoing transfers of that money to Switzerland.

Mr. Soetens: Mr. Langdon, if I might comment. If my recollection is correct, the money was being followed but it was not seized at the border. Specifically, if I recall Mr. Sargent saying, it was seized at the border by some very thorough customs agents, period.

Mr. Langdon: Right. He testified to that.

Mr. Soetens: It was seized accidentally, you might say.

Mr. Langdon: Could I continue with the question to Mr. Bowie, because it may deal with the same issue?

You have suggested—and I take it that it is a suggestion on the part of the force as a whole—that grounds were simply not there for any investigation of the bank's operations in Canada despite what we now know of its operations in Britain and in the United States. I want to ask you why you would say that, given that the phone number on the safety deposit box used in the Royal Bank in Toronto went directly to the head office of BCCC. Why were there

[*Traduction*]

S.-comm. Favreau: Non, je ne pense pas que c'était dans ce contexte.

M. Langdon: Vous pourriez peut-être alors nous dire ce qu'il en est vraiment.

S.-comm. Favreau: Je ne discuterai pas de la légitimité du geste, parce qu'on en a déjà parlé à satiété, mais ce que l'on voulait vraiment, c'était plus ou moins d'inciter le sénateur Cogger à faire jouer ses influences pour débloquer 1 million de dollars. Je répète que je n'ai pas l'intention de discuter du bien-fondé de ce geste; quelqu'un l'a déjà fait. Mais, ce n'était pas pour ramener cette somme de 1.8 million de dollars, je pense, dans le contexte de l'enquête. Selon M. Vidosa, c'était pour piéger le sénateur.

M. Langdon: Oui, je comprends cela. Je voulais seulement vous entendre préciser que les 1.8 million de dollars en question, dans le contexte de l'enquête sur le blanchissage de l'argent dont M. Sargent nous a parlé l'autre soir, était bien la somme d'argent dont avait parlé M. Vidosa.

S.-comm. Favreau: La somme de 1.8 million de dollars, oui.

M. Langdon: J'ai deux autres questions plus générales. La première. . .

S.-comm. Favreau: Un instant, M. Bowie a peut-être une précision à apporter.

Insp. Bowie: Oui. La somme s'élevait effectivement à 1,080,000 dollars mais c'est également notre direction qui a effectué la saisie. Il n'existait pas le moindre lien avec la BCCC, comme le laissait entendre votre question. Donc, pour bien préciser les choses, il ne s'agissait que de traverser la frontière avec des fonds. Il n'existait aucun lien avec la banque.

M. Langdon: Excusez-moi, mais cela contredit le témoignage. Il semblerait, selon M. Sargent, qu'il existait un certain nombre de liens directs, dans le cadre du projet Albus touchant ces fonds qui traversaient la frontière, dans un sens comme dans l'autre et le transfert de cet argent en Suisse.

M. Soetens: Monsieur Langdon, me permettez-vous une observation? Si j'ai bonne mémoire, les fonds ont été suivis mais n'ont pas été saisis à la frontière. Je pense notamment me rappeler que M. Sargent a dit que l'argent a été saisi à la frontière par des agents des douanes particulièrement consciencieux. Cela me semble régler la question.

M. Langdon: Il a effectivement dit cela.

M. Soetens: Dans une certaine mesure, on pourrait dire que l'argent a été saisi un peu par hasard.

M. Langdon: Puis-je poursuivre dans le cadre de la question que je posais à M. Bowie, car peut-être a-t-elle trait au même point?

Selon vous—et je suppose que cela représente l'avis de la GRC—il n'existait pas de motifs suffisants pour justifier une enquête sur les activités de la banque au Canada, malgré ce que nous avons depuis appris sur ses activités en Grande-Bretagne et aux États-Unis. J'aimerais savoir ce qui vous fait dire cela, étant donné que le numéro de téléphone inscrit sur le coffre loué à la Banque Royale à Toronto était celui du siège social de la BCCC. Pourquoi des contacts directs avec

[*Text*]

direct contacts from the people in Dallas who were charged and convicted under U.S. law dealing with money laundering? Why did they make direct calls to the BCCC office in Toronto and in Vancouver?

I would like you to take into account as well the report of cash transfers within the Ottawa branch of BCCC, which were so large as to lead to direct discussions with OSFI and an expression of concern on the part of OSFI that these could not be justified as in any sense normal and were therefore something that needed to be examined and investigated. Finally, of course, there are Mr. Vidosa's own reports of his rather remarkable reception that he received from the BCCC branch in Ottawa with respect to the line of credit, which certainly Mr. Sargent suggested was connected with money laundering in his testimony on Monday night. Given all of these very specific connections to BCC Canada, why no decision? Why do you come to a conclusion that there were absolutely no grounds for suspicion with respect to this bank?

Insp Bowie: Sir, I could duplicate your question with the majority of financial institutions in Canada. Again, I can bring up an instance of $7 million going into this bank on this date and $5 million going into another branch of this bank on this date. I can construct exactly the same scenario dealing with far larger amounts of money and far greater numbers of individual instances.

Mr. Langdon: It is not the amounts of money that we are talking about; it is the connections in terms of phone numbers and communication and so forth.

Insp Bowie: Again—and I hate to answer you indirectly—let me give you a case scenario. Just two months ago a drug trafficker was arrested in the United States, a large quantity of drugs seized, indications of large money transfers in the States and suspected into Canada.

• 1135

In his possession at the time was the business card of an employee of one of the large banks in Canada. That happens all of the time. Banking references are used in the drug trade. It is something that we see literally every day. It is not unusual, in my estimation—this type of scenario. We are witnessing enormous transfers of money under circumstances that an individual might not necessarily be accustomed to, but it is not enough to start opening up an investigation into an entire financial institution. I call that chasing a rainbow. It is just not there, sir.

Mr. Langdon: With respect to this question of resources of the force to undertake such an investigation, I want to go back to your answer, which, as you say, was widely quoted:

> ...for us to undertake an investigation into the money laundering dealings of a bank, which would involve obtaining the necessary criminal process to scrutinize the records of that bank in a fairly comprehensive fashion,

[*Translation*]

les personnes qui, à Dallas, ont été inculpées et déclarées coupables aux termes de la législation américaine sur le blanchiment d'argent? Pourquoi ont-ils téléphoné au bureau de la BCCC à Toronto et à Vancouver?

J'aimerais également que vous teniez compte de ce que l'on sait sur les transferts d'argent comptant au sein de la succursale de la BCCC à Ottawa, transferts d'une telle importance qu'ils ont attiré l'attention du BSIF, qui a fait savoir qu'en aucun cas ces transferts ne sauraient être considérés comme normaux et que, cela étant, il convenait de se pencher sur la question et d'entreprendre une enquête. Et puis, enfin, il y a tout de même les déclarations de M. Vidosa qui font état de l'accueil plutôt remarquable que lui a accordé la succursale de la BCCC à Ottawa et de cette marge de crédit qu'on lui a consentie et qui, selon M. Sargent du moins, dans ce qu'il nous a dit lundi soir, n'était pas sans rapport avec des activités de blanchiment d'argent. Ainsi, étant donné l'existence de ces liens très précis avec la BCCC Canada, pourquoi n'a-t-on pris aucune décision? Comment pouvez-vous conclure à l'absence de motifs de soupçon à l'égard de la banque?

Insp. Bowie: Monsieur, votre question pourrait aussi bien s'appliquer à la plupart des établissements financiers du Canada. Je peux citer l'exemple de 7 millions de dollars versés à cette banque à une date donnée, et de 5 millions de dollars versés dans une autre succursale de cette même banque à telle ou telle date. Je peux établir le même scénario avec des sommes beaucoup plus importantes et des exemples encore plus nombreux.

M. Langdon: Mais ce ne sont pas les montants qui sont en cause ici; il s'agit plutôt des contacts et des liens, des numéros de téléphone et des communications qui ont pu être notés.

Insp. Bowie: Encore une fois—et je regrette d'avoir à vous donner une réponse indirecte—permettez-moi de vous citer un autre cas. Il y a à peine deux mois, un trafiquant de drogues a été arrêté aux États-Unis. Une grande quantité de stupéfiants a été saisie et on a relevé des indications de fortes sommes d'argent transférées d'un point à l'autre des États-Unis et aboutissant, pense-t-on, au Canada.

Il avait alors en sa possession la carte d'affaire d'un employé d'une des grandes banques du Canada. Cela se produit constamment. Dans le trafic des stupéfiants, les références bancaires sont monnaie courante. On voit cela tous les jours. Pour moi, ce scénario n'a rien de curieux. Il y a des transferts portant sur des sommes énormes et qui se produisent dans des circonstances qui peuvent paraître inhabituelles, mais cela ne suffit pas, je vous assure, à lancer une enquête sur un établissement financier. C'est courir après la lune. Il y a pas assez de preuves.

M. Langdon: Mais, au sujet des ressources dont dispose la GRC pour entreprendre de telles enquêtes, j'aimerais revenir à votre réponse qui, comme vous l'avez dit vous-même, a été largement reprise:

> ...entreprendre une enquête sur les activités de blanchissage de l'argent d'une banque, ce qui exigerait que nous obtenions d'un juge l'autorisation d'examiner à fond les dossiers de cette banque, dépasserait les

[*Texte*]

would be beyond the resources of many or most, if not all, police organizations, certainly in Canada and most in North America, if a bank is the target of the investigation in terms of the manner in which they conduct business.

We later heard testimony from OSFI that suggested they did not see this as something that they could do either because it was a criminal matter, not a regulatory matter.

We just passed a bill in the House of Commons with respect to record keeping by banks in order to permit investigations of money laundering—Bill C-9. It was passed in June of this year, I believe. It was a bill with which I had some involvement. I have to wonder why we should have passed a bill like that if the RCMP does not feel it has the resources to be able to investigate a bank with respect to money laundering—systematic money laundering—because of an absence of people or an absence of sophisticated techniques.

Why are we asking the banks to keep all of these records for years if there is not at least the potential for banks to engage in systematically trying to expand their business through money-laundering activity, as clearly this bank tried to do in the United States and other parts of the world? If there is not the possibility of doing that, what use is a bill like that?

D/Commr Favreau: Could I start the answering of this, sir, please?

The bill in question does not change the Criminal Code. In order to get access to these documents that you ask the banks to keep, you first have to have reasonable grounds, go see a judge, go there and ask to see these documents. The bill does not give you the right to go in a bank and start checking their documents. That is the difference.

Mr. Gray mentioned the United States system whereby they have to supply all these transactions over $10,000. What is happening there, in our estimation, is huge, bulk documents after documents after documents, and then only a thin part will be used for investigation. The bill in Canada—like you say, you are well aware of it—was more appropriate for Canada, from a police point of view anyway. If I have an investigation, I could go in and the documents have to be there; otherwise there is an offence. Do not send all these documents to me—where I am going to pack them, I do not know—in case of. I thought the bill was very good, but the bill does not change the *première approche*, which is to start an investigation with the proper grounds. Maybe Bruce will want to comment a bit more on it.

[*Traduction*]

ressources de la plupart, sinon de toutes les organisations policières. Cela est vrai au Canada mais aussi presque partout en Amérique du Nord, chaque fois qu'il s'agit d'enquêter sur la manière dont une banque exerce ses activités.

Nous avons ensuite recueilli le témoignage du BSIF laissant entendre que cela ne relevait pas vraiment de lui, étant donné qu'il s'agissait d'une affaire criminelle et non d'une affaire de règlementation.

La Chambre des communes vient d'adopter un projet de loi touchant la comptabilité et les registres bancaires afin de faciliter les enquêtes sur le blanchiment de l'argent. Il s'agit du projet de loi C-9. Je crois qu'il a été adopté en juin dernier. J'ai participé aux travaux qui ont donné naissance à ce projet de loi et je me demande pourquoi nous avons adopté un texte pareil dans la mesure où la GRC n'estime pas avoir les moyens nécessaires pour enquêter sur les établissements bancaires susceptibles de se livrer au blanchissage de l'argent—c'est-à-dire de manière systématique—à cause d'un manque de ressources humaines ou de moyens techniques.

Pourquoi, dans ce cas-là, demander aux banques de conserver pendant des années la preuve documentée de leurs opérations s'il n'existe pas au moins une possibilité de voir les banques se lancer de manière systématique dans le blanchissage de l'argent pour accroître leur rentabilité comme a essayé de le faire cette banque aussi bien aux États-Unis que dans d'autres pays. Si cette possibilité n'existe pas, pourquoi avoir adopté un tel projet de loi?

S.-comm. Favreau: Me permettez-vous de donner un premier élément de réponse?

Le premier projet de loi que vous venez de citer ne modifie pas le Code criminel. Pour avoir accès à la documentation que les banques sont maintenant tenues de conserver, il faut avoir des motifs raisonnables. Il faut obtenir l'autorisation d'un juge et demander ensuite le cas échéant à la banque de produire les documents. En effet, ce projet de loi ne confère pas aux services policiers le droit d'aller, de leur propre initiative, dans une banque pour faire une vérification. Voilà toute la différence.

M. Gray a dit qu'aux États-Unis les établissements bancaires doivent transmettre les documents relatifs à toutes les transactions portant sur une somme dépassant 10,000$. Selon nous, cette obligation a engendré d'énormes quantités de documents dont seulement une très faible partie va être utilisée dans le cadre d'une enquête. Le projet de loi adopté au Canada convenait mieux à la situation canadienne, du moins du point de vue de la police. En cas d'enquête, je peux me présenter et je suis censé trouver les documents nécessaires, sinon la banque est en contravention. Nous ne tenons pas à ce que les établissements nous envoient systématiquement tous leurs documents—où allons-nous les mettre? D'après moi, le projet de loi est un bon texte, mais il ne modifie pas le principe de base qui est que l'enquête doit être fondée sur des motifs suffisants. Bruce va peut-être vouloir vous en dire un peu plus là-dessus.

[Text]

• 1140

Mr. Langdon: If I can, Mr. Deputy Commissioner, I think perhaps the question is best directed at you with respect to the resource constraints issue, which, with respect, Mr. Bowie did raise in his answer. He certainly raised the other question, too, and I think everybody on the committee understood that you could not decide to launch an investigation of BCCI and go into the bank and seize documents and so forth simply on your own say-so. It would take a court order. But the question is whether an investigation can take place. Do you have the resources for that and, if not, are we not simply saying to banks: go ahead and systematically try to promote money laundering as a source of growth in the future.

D/Commr Favreau: It is a very delicate question for a *fonctionnaire* to answer because I would tell you that I could use more resources, as I said before. The thing is that in our work, just as in any other work in the public domain or the business domain, you have to priorize. There is no doubt that you have to priorize. We cannot do all the investigations that might look good at the beginning. We have to look at those that have the greatest chances of success, more importance, etc. To answer that, if we had more, we could do more, but I guess that you better than anybody else know that we are all limited in what we can afford.

Mr. Langdon: The only problem is that we have $60 million in deposits that are lost as a consequence.

The Acting Chairman (Mr. Sobeski): Steven, come on now, we have pursued this. Again, the CDIC will look into that.

D/Commr Favreau: Assistant Commissioner Coutu wanted to add something.

A/Commr Coutu: Thank you. I wanted to say that I am not aware of any major investigation, as the one that you are alluding to, that would not have been pursued for lack of resources within the RCMP. In fact, we would place priority on the large investigations if we found there were grounds to investigate a systematic organization that would launder money, and I can assure you that if this financial institution was not investigated, assuming that there had been grounds to investigate it, it would not have been for lack of resources. We would have mobilized resources to do that.

We have undertaken large operations before and it is not the size that will stop us. In fact, it would be our priority to go after the big guy, if you want. In this case, I think that it has been established that the bank did not justify the

[Translation]

M. Langdon: Si vous me permettez, monsieur le commissaire adjoint, j'aimerais vous poser à vous la question de l'insuffisance des ressources bien que cette question ait été évoquée par M. Bowie dans sa réponse. Il a également évoqué l'autre question et je crois que tous les membres du comités ont fort bien compris qu'il ne vous était pas possible de lancer une enquête sur la BCCI, de vous présenter à la banque et, de votre propre initiative, saisir ses documents. Il vous aurait fallu, pour cela, une ordonnance judiciaire. Mais la question est de savoir s'il es possible de mener une telle enquête. Avez-vous les moyens nécessaires et, sinon, la situation n'équivaut-elle pas simplement à encourager les banques à se lancer systématiquement dans le blanchissage de l'argent pour assurer leur croissance.

S.-comm. Favreau: C'est pour un fonctionnaire une question un peu délicate car, comme je le disais tout à l'heure, j'ai besoin de ressources supplémentires. Dans notre domaine, et cela est vrai dans tous les domaines de l'action publique et dans le monde des affaires, il faut établir des priorités. Cela ne fait aucun doute. Il est impossible de mener des enquêtes dans tous les cas où il semblerait indiqué de le faire au premier abord. Il faut examiner les cas et voir les situations qui sont les plus importantes ou les plus prometteuses. Il est certain que si nous avions davantage de moyens, nous pourrions entreprendre davantage d'enquêtes, mais vous êtes particulièrement bien placés pour savoir que l'on ne peut pas s'offir tout ce que l'on voudrait.

M. Langdon: Le hic c'est que 60 millions de dollars de dépôts ont été perdus.

Le président suppléant (M. Sobeski): Steven, je vous en prie, vous avons déjà examiné cette question. Encore une fois, la Société d'assurance-dépôts du Canada va se charger de cette question-là.

S.-comm. Favreau: Le commissaire adjoint Coutu aurait aimé ajouter une observation.

Comm. adj. Coutu: Je vous remercie. Je tiens simplement à préciser que, selon moi, à la GRC, l'insuffisance des moyens n'a jamais fait obstacle à la tenue d'une enquête importante telle que celle que vous venez d'évoquer. Au contraire, nous accordons la priorité aux grandes enquêtes dans la mesure où elles sont fondées sur des motifs suffisants comme, par exemple, le blanchissage systématique de l'argent par un établissement financier. Je suis en mesure de vous dire que si nous n'avons pas enquêté sur cet établissement financier, à supposer qu'il y ait eu des motifs de le faire, ce n'était pas à cause de l'insuffisance des moyens. Dans un pareil cas, nous aurions trouvé les moyens nécessaires.

Nous avons déjà, dans le passé, mené des opérations de grande envergure et ce n'est pas l'importance des moyens à mettre en oeuvre qui nous empêche d'agir. Au contraire, nous ciblons en priorité les gros poissons. Dans le cas dont

[*Texte*]

investigation because of its activities. The activities that took place through the bank were investigated, the bank itself, as the other financial institutions did not justify an investigation, and I can assure you it is not for lack of resources.

Mr. Manly: I would like to wrap up three items, one of which is new and the other two we have been over partly before. The new one is this. In the Price Waterhouse report that led ultimately to the undoing of the BCCI, a name that keeps reoccuring is the international shipping concern, the Gulf Group, which was owned, I gather, by a family named Gokal. It seems that they were big debtors in relation to BCCI and certainly their accounts figure prominently in the Price Waterhouse study. The Gulf Group does operate in Canada. Its headquarters are in Toronto.

• 1145

I would like to know whether the RCMP had knowledge directly or whether you had knowledge indirectly through the Office of the Superintendent of Financial Institutions, and either on your own initiative or on behalf of other national police forces, investigated the relationship between the Gokals or the Gulf Group and BCCI or BCCC.

D/Commr Favreau: No, I cannot.

Mr. Manley: Not to your knowledge?

The second item I would like to wrap up has to do with the former Deputy Commissioner Jensen. I would like to know, first of all, do there exist within the force any kind of guidelines with respect to either conflict of interest or post-retirement employment and so on?

D/Commr Favreau: At the present time the policy—and I am far from being an expert in that field—refers you to the *Conflict of Interest Post-Employment for Public Office Holders*. It refers you directly to this book. We are working at the present time on more specific policies for the force, but as I am speaking to you that is the reference. You go to this book and it applies to you, mostly in part 3 on page 21, up to around section 59, in the present case.

Mr. Manley: Can you clarify this for me. I have been trying to listen closely, but I am not sure I yet know whether you have confirmed or not confirmed that Mr. Jensen did play a role, at least in part, as a supervisory function with respect to the investigations that included BCCC?

D/Commr Favreau: I do not know if, for one, I could try to clarify this. I think you are going to have to ask Mr. Jensen that question.

Maybe in order to help the committee as to what the job of a deputy of operations is, the job I am in now, I would be aware of major investigations. I would be aware of investigations that have to be brought to the attention of the

[*Traduction*]

nous parlons, je pense qu'il a été démontré que les activités de la banque ne semblaient pas motiver la tenue de l'enquête. Il y a eu enquête sur les activités menées par l'intermédiaire de la banque, mais il n'y avait pas de motifs suffisants pour mener une enquête sur la banque ni sur les autres établissements financiers. Je suis en mesure de vous dire que ce n'est pas par insuffisance des moyens.

M. Manly: J'aimerais maintenant finir d'examiner trois questions, une qui est nouvelle mais aussi deux que nous avons déjà évoquées. D'abord, la nouvelle question. Dans le rapport rédigé par Price Waterhouse, rapport qui a fini par entraîner la chute de la BCCI, on retrouve à maintes reprises le nom d'une compagnie internationale de transport maritime, le Gulf Group qui, si je comprends bien, appartient à la famille Gokal. Il semblerait que cette famille doive beaucoup d'argent à la BCCI et que ses comptes à la banque occupent une grande place dans l'étude rédigée par Price Waterhouse. Le Gulf Group fait affaire au Canada. Son siège est à Toronto.

J'aimerais savoir si la GRC, que ce soit directement ou par l'intermédiaire du Bureau du Surintendant des institutions financières, connaissait le lien existant entre les Gokal ou le Gulf Group et la BCCI ou la BCCC. Vos services ont-ils enquêté sur ce lien, soit de leur propre chef, soit à la demande des services de police d'autres pays?

S.-comm. Favreau: Non.

M. Manley: Vous n'êtes donc au courant d'aucune démarche en ce sens?

La seconde question que j'aimerais voir réglée touche l'ancien sous-commissaire Jensen. En premier lieu, j'aimerais savoir s'il existe, à la GRC, des directives touchant les conflits d'intérêts ou le genre d'emploi que peuvent, après leur retraite, occuper d'anciens cadres de la GRC?

S.-comm. Favreau: Bien que je ne connaisse pas très bien la question, la politique actuelle renvoit à l'ouvrage «Code régissant la conduite des titulaires de charges publiques en ce qui concerne les conflits d'intérêts et l'après-mandat». La politique applicable en ce domaine renvoit explicitement à cet ouvrage. À l'heure actuelle, nous sommes en train d'élaborer dans ce domaine des politiques plus précises applicables aux membres de la GRC mais pour l'instant c'est cet ouvrage qui fixe les règles applicables. En ce qui concerne le cas que vous venez d'évoquer, les règles applicables vont se trouver à la partie III, page 21, jusqu'à l'article 59 environ.

M. Manley: Pourriez-vous m'expliquer ceci. Je vous écoute avec attention, mais je ne sais pas encore si vous avez confirmé ou non le fait que M. Jensen aurait joué un rôle, même restreint, dans la surveillance des enquêtes portant notamment sur la BCCC?

S.-comm. Favreau: Je ne sais pas, à vrai dire, si je suis en mesure de vous éclairer sur ce point. Il vous faudrait plutôt, je pense, poser la question à M. Jensen.

Mais pour expliquer aux membres du comité en quoi consistent les fonctions d'un sous-commissaire à la Police opérationnelle, c'est le poste que j'occupe actuellement, je dois dire que je serais effectivement au courant des grandes

II. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (Bill C-22, 2000)

December 15, 1999 [House of Commons]

Hon. Jim Peterson (for the Minister of Finance) moved for leave to introduce Bill C-22, an act to facilitate combating the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain acts in consequence. (Motions deemed adopted, bill read the first time and printed).

April 5, 2000 [House of Commons]

Hon. Jim Peterson (for the Minister of Finance, Lib.) moved that Bill C-22, an act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain acts in consequence, be read the second time and referred to a committee.

Mr. Speaker, I would ask before I start that instead of taking the 40 minutes of speaking time and 10 minutes for questions and comments, that I be allowed to split the time. The parliamentary secretary and I would take no more than 20 minutes of speaking time with 10 minutes for questions and comments, but I would need consent for that.

The Acting Speaker (Mr. McClelland):

I would remind members that the first three speakers do not have the opportunity for questions and comments. Therefore, we will just be splitting the time.

Does the hon. Secretary of State for International Financial Institutions have the consent of the House to split his time?

Some hon. Members: Agreed.

Hon. Jim Peterson:

Mr. Speaker, I appreciate the co-operation of hon. members. This bill on money laundering deals with an emerging crime, and one that is getting worse. Dirty money is that money earned from criminal activities, mainly drug dealing, but also such activities as smuggling cigarettes and theft, and is often the product of organized crime. Money laundering is the process by which that dirty money is cleaned in such a way that it cannot be readily or easily traced back to its illegal activities, therefore allowing crime to profit.

The financial action task force, of which Canada is a member, consists of 26 countries. It consists of the OECD countries, plus Singapore. It estimated that the global amount of money laundering is in the area of $300 billion to $500 billion U.S. every year.

…

Hon. Jim Peterson:

Mr. Speaker, I will try to be brief so that hon. members from other parties have as much time as they would want to debate this important measure.

The financial action task force also indicated that the extent of money laundering going on in Canada—and we will never know for certain what it is—is somewhere between $5 billion and $17 billion a year.

This bill is aimed at doing one thing, and that is to help take the profit out of crime.

What do we currently have in place in terms of law? We have the *Proceeds of Crime (Money Laundering) Act*, 1991, which does three things. It requires that records be kept of cash transactions over $10,000. It requires that client identification procedures be followed, that is, financial institutions are required to know the client. Third, it provides for the voluntary reporting of suspicious transactions by the financial institution directly to the police.

Why do we need this new bill in light of the existing law? This new bill retains the record keeping and client identification provisions of the old law. However, it has extended beyond the current institutions which must report, such as financial institutions, casinos, intermediaries, lawyers and accountants, to other types of financial institutions.

Money laundering is not just a phenomenon which takes place through financial institutions. There are expanded means, including the Internet. This new legislation will apply to cheque cashing businesses, crown owned institutions and crown owned casinos.

The old law, as I said, provided for the voluntary reporting of these suspicious transactions. We are moving beyond this to mandatory reporting. Where there is a suspicious transaction, it must be reported.

We will have three types of reporting. First, it will be mandatory for financial institutions and others who have reasonable grounds to suspect that a transaction is linked to money laundering to report that transaction.

Second, there will be mandatory reporting of prescribed transactions. We are proposing that they be cash transactions, or the equivalent, of $10,000 or more.

Third, we want to deal with the importation and exportation in and out of Canada of large amounts of cash or negotiable instruments. We are proposing that one has to report any sum exported or brought into Canada in the order of $15,000 or more.

Those are the guts of the new law. We have struggled. It is not an easy task to balance the requirement to have an updated, modern, crime fighting legal system in Canada with protecting the privacy of individuals.

Having reviewed many international situations and examples and after extensive consultations, we have proposed that in order to safeguard individual privacy but at the same time ensure that crime is stopped we would institute a financial transactions and reports analysis centre of Canada, or the FTRACC.

The centre would be an agency reporting to the Minister of Finance, who would be responsible for it. It would be run by a director. It would have approximately 60 employees and cost approximately $10 million a year. The centre will receive reports from financial institutions or others required to report. In other words, they will not report directly to the police or to the government. They will report to the centre.

The centre will gather, collect and analyze all the information. It will then refer the information to the appropriate policing authorities, only when it is satisfied there are reasonable grounds to suspect that the information would be relevant to the crime of money laundering. The centre must satisfy itself first.

What does the centre pass on? It passes on only tombstone or bare bones information: the name of the account, the date of the transaction, the account number and the value of the transaction. If the police authorities want to get more information from the centre they would have to do so by virtue of a warrant issued by a judge.

This information can also be passed on by the centre to CSIS, to Revenue Canada and to immigration authorities. It cannot be passed on willy-nilly. It can be passed on only in the event the centre has determined there are reasonable grounds to suspect money laundering and has determined that there may be, for example, tax fraud involved as well.

Any individual who feels that privacy rights have been hampered would be entitled to go to the privacy commissioner to have the case looked at. The centre will not be exempt from examination by the privacy commissioner.

Let us look at why it is important that we pass the bill quickly. The financial action task force on money laundering has pointed out that Canada, one of its members, is the only member that does not have mandatory reporting. We have the commitment of our Prime Minister at the G-8 summit in Birmingham in 1998 to this type of law. This was reconfirmed again last year at the Cologne summit.

We have had extensive consultations starting in May 1998 when the solicitor general issued a consultation paper. We in finance issued a consultation paper in December. We have considered wide consultations with all interested parties.

In conclusion, I believe that we have found a way to expand the reporting requirements, to make them mandatory and at the same time to balance the rights of individuals to privacy and freedom from unjust or unreasonable search and seizure.

This is through using this unique concept of the centre. The centre will be able to analyze trends in money laundering. It will be able to work with international law enforcement agencies. I think it will be a great addition to our war against crime.

By enacting the bill, Canada will be a much less attractive target for money laundering. We will be sending a clear message to the world that organized crime and criminals should not try to do business in Canada. We will appreciate the support of all parties.

Mr. Roy Cullen (Parliamentary Secretary to Minister of Finance, Lib.):

Mr. Speaker, I want to thank the members of this House for allowing me to take part in the debate on this very important bill.

There is a lot we do not know about organized crime and money laundering, but we do know, from informed sources, that it involves a constant battle always in a state of flux. It is a substantial problem.

According to independent estimates for the Department of the Solicitor General of Canada, up to $17 billion is laundered in Canada each year.

There are a number of other estimates that reveal the scope of the problem. No one knows exactly how much is involved, but everyone knows that there is a real and serious problem, in Canada and throughout the world.

According to a recent study by the financial action task force, established at the G-7 summit in Paris in 1989, the way money is laundered in Canada and in the other member countries has changed in recent years.

Money launderers no longer limit their activities to banks and other deposit institutions.

Other kinds of businesses are being used for money laundering such as securities dealers, insurance companies, casinos, currency exchange houses, money transmitters and non-financial professionals including lawyers and accountants.

We know that proceeds of crime are often laundered through legitimate businesses. Criminal Intelligence Service Canada backed this up in its annual report on organized crime just last year. The physical movement of proceeds of crime across our borders is also part of this problem.

The new system proposed in Bill C-22 will be an important step in helping to prevent cross-border money laundering through airports and other border points. More than that, Bill C-22 builds on the excellent work that we continue to do in partnership with the provinces,

territories and law enforcement agencies as part of a larger global network of countries fighting this problem together.

Despite vigorous efforts the current government and its partners continue to apply in Canada and abroad, we can still do much more. Bill C-22 represents a major step forward in the fight against organized crime.

I should remind hon. members that in the budget the government devoted significant new resources to increase federal policing activities, particularly in the area of organized crime. Over the next three years the RCMP will receive $584 million in extra funding. In the next fiscal year alone the RCMP will receive $59 million extra for federal policing services. This means more resources to fight organized crime activities such as drug trafficking, smuggling of commodities and people, telemarketing and commercial fraud.

The bill is further proof of our commitment to giving our law enforcement agencies the tools they need to do the job. By implementing the bill not only will Canada be living up to its international commitments to the G-8 and its financial action task force, but we will also be making good on commitments here at home.

The RCMP and police forces across the country will benefit from the system proposed in the bill as information from the new agency will go directly to the police to support investigations. Other federal agencies will also receive information from the agency to help investigate certain national security, revenue and immigration offences, but only when they are also related to suspicions of money laundering.

Allowing the new agency with suitable protections to share information with similar agencies in other countries will allow us to play our full role against money laundering on an international scale. It will also allow us to benefit from information that foreign agencies may have about money laundering going on in our country.

When dealing with global organized crime sharing information is vital, but we are also aware of the need to respect privacy in the process of investigating these crimes. We take these concerns very seriously.

We must bring our investigative methods up to date to fight against today's money laundering techniques. We need centralized and automated systems to discover the links between dubious financial operations and the movement of illicit funds, and to ensure their follow-up. This is exactly what Bill C-22 does.

Our consultations have shown strong support for a new and tighter anti-money laundering system. Officials continue to work closely with financial institutions and other stakeholders to make sure that the new requirements are clear and reasonable. We are also consulting provincial governments, the police and others to ensure that the new arrangements will address the needs that have been identified.

Bill C-22 strikes a sound and effective balance between the legitimate needs of law enforcement and respect for individual privacy. It will also make Canada a less attractive target for money laundering and send a clear message around the world that this is a country where organized criminals should not try to do business.

Mr. Gurmant Grewal (Surrey Central, Canadian Alliance):

Mr. Speaker, I rise on behalf of the people of Surrey Central to participate in the debate on Bill C-22, an act to facilitate combatting the laundering of proceeds of crime, to establish the financial transactions and reports analysis centre of Canada and to amend and repeal certain acts in consequence.

Canada is a party to international agreements asking us to report transactions that may involve money laundering. The official opposition believes that the vast majority of law-abiding Canadians want legislation that will fight crime and that will prevent crime.

The weak Liberal government introduced this bill as Bill C-81 on May 31, 1999, and let it die on the order paper. Now we are only at second reading of the bill and still it will have to be sent to the committee for much study and amendment.

I listened very carefully to the comments of the Secretary of State for International Financial Institutions. I am convinced that the government did not evaluate, did not look into the pros and cons of the bill in depth. I would like to give an overview whereby we will look into the gravity of the situation first and then look into the problems and concerns. I would also like to provide some suggestions and amendments.

Organized criminals, particularly in the drug trade, generate and launder billions of dollars annually. They have to do that to continue their illegal operations. They move from jurisdictions with strong controls to jurisdictions with weak or no controls. This criminal activity undermines Canada's financial and social systems and increases the power and influence of illegal businesses.

Experts estimate that from $300 billion to $500 billion of criminally driven funds enter the international market annually. In Canada alone the ballpark estimate is around $20 billion.

The Financial Action Task Force estimates that about 70% of the money laundered through Canada is derived from drug trafficking.

There are many ways to launder money, including through financial institutions, foreign exchange dealers, significant cash purchases, brokerage houses, foreign tax havens, real estate, the operation of shell companies, travel agencies, insurance agencies or companies, and dealing in gold and other precious metals. Even some professionals such as lawyers and accountants help in money laundering. Criminals launder money through gambling and cross-border transfers. It is a wide open area.

Some other methods are more sophisticated, for example smurfing, human mules, over-invoicing for import-export purposes. I will not mention the details for security reasons.

Canadian banks are reportedly favoured for the transfer of funds because of their wide international presence, stability, efficiency, strong tradition of banker-client confidentiality and facilities of transfer such as wire transfers, currency exchange, denomination exchange, savings deposit boxes, and please do not laugh, even government savings bonds.

The foreign currency exchange houses being less regulated than the chartered banks provide the second most common vehicle for money laundering, at least in Canada. There is a potential for concealing the identity of the launderers because the negotiable instruments or the wire transfers are deposited in the banks and the client is perceived as the currency exchange house, not those people who are laundering the money. The perception is created that the financial negotiable instrument comes from the currency exchange house and is then deposited in the bank and the laundering of the money continues.

Other illicit funds are also laundered through the purchase of stocks and bonds in the securities market through a shell company located in a tax haven somewhere where the laws protect the anonymity of the owners. Therefore money is laundered through the stock exchange.

Investing in a private company also is a way of laundering. The private company will go public and then the earnings from the sale of shares create an illusion that the profits generated are legitimate.

These side issues of money laundering or its byproducts have serious consequences. Street gangs channel criminal profits to fund terrorism or military operations abroad. Money laundering feeds armed conflicts and illegal activities that threaten everything from our families to our society to our national and international security and economy and perhaps even world peace.

A staggering variety of activities such as extortion, home invasion, murder, theft, drugs and arms trafficking, counterfeit currency and passports, migrant smuggling, prostitution, mafia, casino and lottery frauds are additional costs to society at the expense of the taxpayer and at the expense of our future. These activities make our streets unsafe. It is not only money laundering which affects our economy and undermines society, but other criminal activities piggyback on it and affect our children, our future and undermine our security.

These activities are escalating. It will likely become more difficult for police to deal with them if the weak Liberal government does not wake up. The Liberals can have a deep sleep if they want to, if they are tired and cannot remain awake. Someone else can sit in the driver's seat. We now have a licence to do that and we could do that for them.

The House will remember that in 1997 one of the six key platforms of the former Reform Party was to make our streets safer. A Canadian Alliance government would do that.

Canadians are fed up and have had enough. We do not want Canada to be a haven for money laundering. I urge the government to look at this bill very diligently and look through lens of the importance of the issue and not through the lens of politics, selfishness or arrogance as it usually does.

The broad purpose of Bill C-22 is to remedy shortcomings in Canada's anti-money laundering legislation. It was identified by the G-7 Financial Action Task Force on Money Laundering in its 1997-98 report.

The financial task force recommended that reporting requirements in Canada be made mandatory rather than voluntary as is currently the case. Why has the reporting been voluntary in the first place? That means every honest person was supposed to report whereas the criminals escaped reporting. This does not make sense. The other recommendation made by the task force was that a financial intelligence unit be established to deal with the collection, management, analysis and dissemination of suspicious transaction reports and other relevant intelligence data.

Bill C-22 proposes to bolster Canada's anti-laundering efforts by making it mandatory for financial agencies to report information relating to certain types of transactions. The information is to be sent to a central data gathering and analysis body called the financial transactions and reports analysis centre of Canada. This analysis centre would authorize the release of information to domestic and foreign law enforcement agencies.

Bill C-22 will also establish in association with Canada Customs and Revenue Agency a system of reporting large cross-border transactions.

The Liberal government not only lacks vision but it is also very weak. It does not have the political will nor is it capable of fixing the ailing departments. It thinks that the status quo is the only option.

Even when international organizations tell it to fix something serious it does it half-heartedly. It has a mentality and culture of only doing a patchwork job. The patchwork does not work, particularly when dealing with organized crime. The criminals are light years ahead of our government. We need to overhaul the whole system. Corruption and abuse in the system is enormous.

Canadians suffer as a consequence of abuse and fraud in many areas. These include the GST refund, welfare, employment insurance, social insurance numbers, insurance, workers compensation board, immigration, and so on.

Criminals are buying mansions, boats and luxury cars with the proceeds from organized crime. They have hefty bank accounts. What is the reason? The loopholes in the system and the law are not plugged. There are so many loopholes and the criminals are exploiting them. Tax evasion and the underground economy are putting pressure on small businesses and legitimate taxpayers who cannot bear the huge Canadian tax burden.

The tax burden is responsible for a poor quality of life, the brain drain and so many other things. Due to the illegal activities of some individuals, the legitimate taxpayers suffer. The whole nation suffers.

There are criminals who do not pay taxes but they pay bribes or political donations, and they continue to enjoy the government's most favoured status. Many organizations enjoy charitable tax free status only to rake in money to finance organized crime or even wars in other countries.

A Canadian multinational trading company, which I will not name, whose stock was valued at about $600 million, was found to have very close ties to the eastern European mafia. It was laundering the money through the stock exchange and sending the money to its counterparts in other countries.

Canada is a candy store for these criminals. It is a shame that the government cannot come up with legislation that would be effective and would do the job.

The blurred vision of the Liberal government has caused the dismantling of the Vancouver port police. This makes the port a gateway for the importation of drugs and narcotics. It opens up the way for the criminals and makes their jobs easier rather than tougher. It is a shame the Liberal government gives international organized criminals VIP treatment while those same criminals according to the Immigration Act are supposed to be inadmissible into Canada.

The human smugglers and criminals who live on organized crime should be given the toughest penalties. That is what Canadians are telling us. That is the only way to discourage them. Otherwise unfortunately, they have the motivation to come to Canada and commit crimes because they consider Canada to be a crime haven.

How about stopping the federal government when it launders the money?

It appears that CIDA contracts and EDC loans have been given to businesses which donated huge sums of money to the Liberal campaign before the elections. We all know those figures. When we ask a question, the government does not reply.

I am sure that everyone in Canada knows about the billion dollar boondoggle. Do we need a bill to fix all that is wrong with the government? No, I do not think so. Rather, we need to replace the federal Liberal government, which we can and which we are prepared to do with the Canadian Alliance.

Let us look at some other aspect of the bill. When Bill C-22 comes into force, it will replace the existing Proceeds of Crime Act. However, the existing proceeds of crime regulations would remain in effect until the mandate regulations are promulgated.

There are four key principles of the bill.

The first would provide tools for law enforcement agencies, giving them the information to identify charges to be laid.

The second would strike a balance between privacy rights and law enforcement needs. We need to place strict controls on the collection, use and disclosure of personal financial information.

The third would minimize compliance costs for financial institutions and other stakeholders. We have to minimize compliance costs. We need to establish a workable regime with the full co-operation of all stakeholders, without unnecessary red tape.

The fourth would provide for contributions toward international efforts to combat money laundering.

We need to see the government's definition for these efforts. These definitions are not given in this bill. We do not know what they mean. They are too vague. I will come to that later.

The principles are ones that any law abiding citizen would support, but as always, we know we cannot trust the government because it does not keep its promises.

Let me dwell on the concern we in the official opposition have about the cautions we should take. One of the problems with Bill C-22, other than what I have mentioned, is that while the policy objective is laudable and Canada should not be a haven for laundering the proceeds of crime, the bill raises many concerns. The bill is too vague in many areas.

The official opposition is concerned that the bill is too vague concerning who is affected by the act. The Liberals have to show us clarity in this bill.

There is a lack of precision in this bill. There are no definitions of many terms, for example, the definition of “suspicious transaction”. What is a suspicious transaction? There is no definition.

The United States of America opposed this legislation because it presented problems of probable invasions of privacy. We in Canada are also concerned that the privacy of Canadian citizens could be unreasonably invaded inadvertently through overly restrictive regulations defining transactions that must be reported. There should be sufficient protection and freedom of law abiding citizens should be preserved.

Another issue is that customs officers are being given broad powers to search anyone they want when they have reasonable grounds to suspect that the person has hidden currency or monetary instruments which are of greater value than the amount prescribed or declared.

Also, we are concerned that the powers to search should have safeguards to ensure that customs officers do not hassle persons lawfully crossing the border. They should not be hassled. It may grant customs officers the power to strip travellers of undeclared cash. The

financial transactions and reports analysis centre of Canada could end up with a licence to harass innocent and legitimate people.

If passed, Bill C-22 would give bureaucrats fresh authority to trap the innocent, infringe on privacy, gather information on citizens and put routine money transactions under suspicion.

There are broad delegations of authority to the cabinet, including making regulations to define what transactions must be reported and who must report them. The government has overall authority to make those regulations.

Also, it will conscript lawyers, banks, accountants and others into a national subculture of informants and snitches. Routine legitimate business transactions could be disrupted as a result of the bill. The bill will restructure the relationship of trust between lawyers and clients.

There has to be a reasonable balance between entrapment of innocent citizens and effective tools of law to help our law enforcement agencies to do their jobs effectively and efficiently.

Let us talk about securing a conviction of money laundering. Securing a conviction of money laundering requires the crown to prove four elements of the offence beyond a reasonable doubt. It must be proven that the accused dealt with the laundered property with intent to convert or conceal it. The property must have been derived from the commission of a predicated offence. The accused must have had knowledge of this fact.

The enactment could now allow the police to arrange sting operations even though the above may not be proven by the crown. It could also help the police to get someone convicted of a companion crime, the crime which is attached to the money laundering crime, even if the laundering cannot be proved. That is dangerous. The legislation should be driven by need and not by police hype, political or international pressure. It should be needs based.

The Department of Finance issued a consultation paper on January 17. The paper promises that after Bill C-22 becomes law, proposed regulations will be published in the Canada Gazette for 90 days to allow further public input. This addresses some of the concerns about the broad discretion. But the proposed regulations include cheque cashers, money order vendors, crown owned or controlled deposit-taking institutions, which are banks, credit unions, trust companies and so on, and even Canada Post money order businesses.

Generally, transactions involving $10,000 would have to be reported, as would any transaction involving five or more $1,000 bills. Cheque cashers, money vendors and money transmitters would be required to retain a record of every transaction of $1,000 or more.

Everything is hidden in these regulations. Nothing has been clearly defined in the bill.

Let us talk about regulations. As the House knows, I am co-chair of the Joint Standing Committee on Scrutiny of Regulations, so I can talk about regulations. I can say that this government governs by regulations only. The House will recognize that 10% to 15% of the laws are made in this Chamber and 80% to 90% of the laws are brought in through the back

door. Only 20% come through the front door and 90% are hidden in the regulations. The regulations will hold the real story which no one will know because they will be buried under tonnes of paperwork.

My committee is responsible for examining and scrutinizing regulations that accompany a bill which is passed by both houses, this House and the other house, the Senate. This weak Liberal government that lacks vision, like the Tories before it, crippled our committee's work by not giving it the resources it needs to scrutinize hundreds and thousands of regulations. The bill will have so many regulations attached that only the courts will be able to tell us about the mayhem and the damage done to our economy by this bill's regulations. Every small business will sue the government.

In the Joint Standing Committee on Scrutiny of Regulations, there are about 800 regulations in the pipeline. Those 800 regulations are on questionable files that have been backlogged for years and years.

The House will be surprised to know that some of the regulations have been operating for as long as 25 years against the wishes of the committee which is supposed to be scrutinizing those regulations. For 25 years those regulations have clogged the pipeline and thus the work of the committee. Successive ministers have kept the stonewalling going. The regulations that the committee objects to are kept in place and are fully operable. That is shameful.

I have criticized this bill enough. Let me now discuss some of the suggestions for the government if it is listening. There are only three members here in the House who are listening.

I will call them proposed amendments. Broad delegation to cabinet to make regulations to define what transactions must be reported or who must report should be restricted. There should be precision in the legislation. The term, for example, “suspicious transaction” should be clearly defined, otherwise properties will be seized, like in the case of the flawed gun control legislation under Bill C-68. Broad powers of customs officers to search anyone or open mail should be limited and carefully crafted so that legitimate citizens do not suffer. Privacy and freedom of citizens should be respected. There should be safeguards in place to curtail hassling of persons by customs officers while lawfully crossing the border.

Witnesses before the committees must be representative of a cross-section. Regional and provincial police authorities, businessmen, federal and provincial government officials, all should be invited so that the committee can hear their concerns and ensure that the bill is crafted very carefully.

Law enforcement agencies should be prepared and equipped to deal with sophisticated activities of organized crime. The government does not put its money where its mouth is. We need to invest in the facilities and the tools given to law enforcement agencies so that they can effectively control crime in this country.

Hard positions, intransigence and thoughtlessness have no place in our deliberations when talking about this bill.

We must arrive at the best possible solution to this complex problem. Therefore, all parties must co-operate in the committee work. The committee work should not be like other committee work, which is a sham and so partisan that everyone looks through the lens of politics rather than the lens of issues. Sometimes the actual issue is lost.

I remember once, when I was on the immigration and citizenship committee, we introduced a motion to study fraud and criminal activities under the Immigration Act for illegitimate immigrants coming to this country, but the Liberal members refused the motion. Even when we want to discuss the future business of the committee, the discussion is based on partisan lines. In committees, when we need a minister to appear to answer some of the opposition members' questions, the motions are often declined.

I urge government members and all members of the House to work seriously at the committee on this serious legislation and come up with a constructive solution that will be the best solution to deal with this issue.

Another suggestion I have is to keep regulations to a minimum because businesses and financial institutions have to deal with so many regulations that they can cause serious problems.

In conclusion, we want to support the bill in principle but the contents and details need to be worked out at committee. We agree with the spirit of the bill but it should be workable. It should offer effective tools to our law enforcement agencies.

The Liberals should take fair warning that we want to see specifics during the committee hearings. The official opposition wants to know exactly what is being done with the bill and what the specifics are in the bill. As it is written, it is very vague. The terms are unclear and will not help to contain the serious money laundering situation. They will also not help the undermining of our economy. The black market, which is another byproduct of money laundering, affects our economy very seriously and puts extra onus on law-abiding citizens who pay taxes.

If we do not define the bill very clearly, we will have the same old story, the catch-22. If we look at the courts, lawsuits will follow, businesses will be hurt and small businesses, which create jobs in the country, will suffer. Jobs are not created by contributions and grants. Jobs are created by small businesses and we should support them by making sure we have clear legislation that will work.

The Liberals have not done that so far with this bill and they should have done that. Hopefully they will listen to the witnesses who came before the committee and accept the amendments that I just put forward which Canadians want us to make in the bill.

In a nutshell, I ask the government and all members of the House to support the intent of the bill. However, we need to look at the substance of the bill, which is not clear at the moment. I am sure at committee, with the hard work and diligence of all party members, we will be able to produce effective legislation.

The Acting Speaker (Mr. McClelland):

It is my duty, pursuant to Standing Order 38, to inform the House that the questions to be raised tonight at the time of adjournment are as follows: the hon. member for York North, The Environment; the hon. member for Dauphin—Swan River, Human Resources Development; the hon. member for Lévis-et-Chutes-de-la-Chaudière, Shipbuilding.

Mr. Yvan Loubier (Saint-Hyacinthe—Bagot, BQ)

Mr. Speaker, I am pleased to have the opportunity to speak at second reading of Bill C-22, which is, as hon. members are aware, intended to remedy the flaws in the present legislation as far as money laundering is concerned, which is the common term for laundering the proceeds of crime.

It is estimated that, every year, up to $17 billion from the proceeds of crime are laundered in Canada alone, most of that amount coming from the drug trade, heroin, cocaine, cannabis and hashish in particular.

It is estimated that, out of that $17 billion from the proceeds of crime that are laundered in Canada alone, the bulk of it, some $10 billion, is connected to the traffic in illegal drugs.

This is a major problem. Internationally, according to federal government figures, the total proceeds of crime that are laundered are in the order of $500 billion U.S., a considerable sum.

Since our arrival in the House of Commons, we in the Bloc Quebecois have been calling for money laundering to be considered a violent crime and to be treated as such by judges hearing money laundering cases.

I must say that the government listened to us—a first really for the Bloc Quebecois since we got here—because, when the Criminal Code was recently amended, the government paid heed and decided that money laundering would now be considered a violent crime.

The word “violent” is not used lightly. As I mentioned, in Canada, the laundering of proceeds of crime is a $17 billion business, including $10 billion from drug trafficking. There are human tragedies behind these figures.

For example, every year, thousands of children in Canada become addicted to so-called hard drugs. Perhaps we should stop making a distinction between hard and soft drugs. For example, while, 100 years ago, cannabis was considered a soft drug, it now has an hallucinogenic content 7 to 30 times greater than the cannabis that was being sold in the 1970s. Therefore, we can no longer talk about a soft drug. All drugs are becoming hard drugs.

Associated with the laundering of proceeds of crime are human tragedies, particularly in the case of illicit drugs. Thousands of children become addicted to these hard drugs, with all the social costs that this situation might generate.

Every week there are tragedies, such as killings between biker gangs for control over criminal activities, including the drug market. In the end, the laundered money is the product of these tragedies, these wars between biker gangs, which often claim innocent lives.

We must never forget or lose sight of the fact that, in addition to the thousands of children who become addicted to hard drugs every year, there was also an 11-year old boy who died in Montreal in 1995 because a bomb exploded right beside him as a result of this war between biker gangs to control the drug trade.

Associated with money laundering are also murders. In 1994 alone, no fewer than 79 murders were committed in Quebec alone to gain control over the drug trade. Ultimately, the proceeds of such crime turn up as laundered money.

There were 89 attempted murders, 129 cases of arson, and 82 attempted bombings. In 1998, there were 450 acts of violence related to control of the drug trade. Such are the social and economic ramifications of this laundered money. Just to help children who have turned to hard drugs because of criminals get off them is costing Canada a minimum of between $4 billion and $7 billion annually. This is quite a sum of money.

Considering money laundering a violent crime and improving the existing legislation concerning the laundering of proceeds of crime is a step in the right direction.

As I mentioned earlier, without blushing, the fact that money laundering is now considered a violent crime is the product of the work of several members of the various political parties in the House, but particularly those of the Bloc Quebecois, who worked relentlessly to have this included in the Criminal Code, with everything that resulted from that in terms of toughening our laws.

Before getting into the provisions of this bill, I would like to make an important comment. Justice in this country has always been one of the Bloc Quebecois' main concerns. Our party has always wanted to see justice done. It has always wanted justice to be effective and to stop the real criminals.

Apart from money laundering, we have devoted our attention to at least six other issues. That has allowed us to progress in this parliament, with the measures that were announced both recently and earlier. They are the product of the work members of the Bloc Quebecois have done in the area of justice.

Take for example the removal of the $1,000 bill from circulation. Our colleague from Charlesbourg went on a crusade to have those Canadian bills taken out of circulation. Why was that so important?

First of all, Canada is the only country to have such high denominations. When one looks at the United States or Europe—and it has been demonstrated around the world—that having $1,000 bills in Canada facilitates criminal transactions. It also facilitates money laundering.

In order to better illustrate the crucial need for the elimination of the $1,000 bill, something the Bloc Quebecois has worked to convince the government on, let me give the following example.

A street sale of 20 kilos of cocaine generates profits of between $2 million and $4 million, depending on its purity. How much does a mix of bills of $10, $20, $50 or $100 denominations weigh? The small denominations weigh 120 kilos. Imagine the handling involved for the criminals doing the laundering, who collect the proceeds of crime, of the sale of the 20 kilos of cocaine, how much easier it would be for them to carry higher denominations such as $1,000 bills and to launder them. It would be a lot easier.

If they just use $1,000 bills, if they have them to convert $5, $10 or $100 bills, they have to handle only two kilos worth of bills. They start off with 120 kilos of bills of small denominations and, with $1,000 bills, they cut the weight of the proceeds of crime to two kilos. It is a lot easier to go around with a two kilo bag of money from the sale of cocaine, heroin or some other illicit drug than to have to handle $5, $10, $20 or $100 bills.

We worked very hard with law enforcement authorities to convince this government that the $1,000 denomination needed to be withdrawn. The Secretary of State for International Financial Institutions recently announced that he would soon be withdrawing the $1,000 bill from circulation. That is good news, and I would again like to congratulate my colleague from Charlesbourg for his considerable efforts in this connection, along with my leader, the hon. member for Laurier—Sainte-Marie, and all of the Bloc Quebecois. They have fought long and hard to get this measure implemented, in order to have the $1,000 bill taken out of circulation.

Any measure—and we can never say this too often—that can hinder organized crime is a welcome one. Any improvement to the Criminal Code, like the other measures created to make the police forces' work easier, is a welcome one, if the objective is to fight more effectively against organized crime and to make it harder and harder for them to operate in Canada and internationally.

We in the Bloc Quebecois have addressed one other important matter, on which we have also taken action: pawnbroking. My colleague from Hochelaga—Maisonneuve has done an admirable job in this connection to ensure compliance with municipal bylaws concerning record keeping by pawnshops. Such compliance prevents these businesses from becoming a means of laundering money, the proceeds of crime, or other crime related property. This represents a considerable victory for the Bloc Quebecois, and this action again arose out of a concern for greater justice and for making it easier for law enforcement officers to collar real criminals.

The efforts by the Bloc Quebecois member for Hochelaga—Maisonneuve have led to tighter controls on pawnbroking establishments. Following these efforts, 70 pawnshops closed in Montreal. These businesses did not comply with municipal bylaws and they bordered on being illegal. These 70 pawnshops were probably used to launder money.

The fourth issue that we in the Bloc Quebecois tackled because we care about justice, which is also reflected in Bill C-22—and we will get back to this a little later—is the fight against organized crime. A few months ago, the hon. member for Berthier—Montcalm, who is here today, tabled a motion in the House to establish a justice subcommittee to find ways to fight organized crime more effectively.

I was very pleased to see that, through the work of the hon. member for Berthier—Montcalm and all members of the Bloc Quebecois, we were able to convince not only the government but all the parties in this House of the need to set up such a committee. Incidentally, the subcommittee will begin its work next week to report back in the fall, with a series of recommendations on how to increase the effectiveness of our fight against organized crime. These measures will not only allow us to catch petty criminals, but also the leaders, for crimes that they commit or that they ask others to commit.

I hope the work of that committee will be successful, because it is in everyone's interest. I do hope that the consensus achieved by the hon. member for Berthier—Montcalm and the Bloc Quebecois is a guarantee that we will get recommendations that will take us one step further in the fight against crime.

The fifth issue concerns the increase in the RCMP budgets, particularly as regards the fight against drug traffickers.

It is something that we have often talked about here. Recently, under special circumstances which you know, I had the opportunity to express to you the terror experienced by farm families not only in my riding, but throughout Quebec and Canada, particularly in southeastern Ontario.

That feeling of terror sets in every year as criminals confiscate certain plots of farmland in May, at the beginning of the farming season, to prick out cannabis seedlings and let them grow until late fall. During that period, not only thousands of farm families throughout Canada live in terror, but they can no longer enjoy their property. These farmers receive death threats. They are told their children could be harmed. They are told they themselves could be physically harmed should they venture too close to the cannabis planted by these criminals.

We had the opportunity to discuss that. From the example we saw in the Montérégie region, particularly in Saint-Hyacinthe, we, in the Bloc Quebecois, had the opportunity to demand that the government increase the budgets of police forces and give them the tools they need to do their job.

It was ridiculous. Since 1994, the Minister of Finance, who prides himself on being a good manager, had reduced the RCMP budget to fight money laundering and drug trafficking by 12% or 15%, depending on the item.

While we were witnessing exponential growth in organized crime activity, the Minister of Finance, with his usual wisdom—when something does not concern him or his shipping companies and his profits, I think he is less interested in the common good—had cut budgets to fight criminals.

I want to make the point again that Bloc Quebecois members, who are concerned about justice and brought pressure to bear, have managed to get the RCMP budget increased this year and additional resources allocated to the various RCMP detachments in order to wage a more effective battle against drug traffickers.

In addition, Bloc Quebecois representations resulted in the maintenance of all RCMP detachments in Quebec threatened with closure, in many cases because of bureaucratic decisions that ignored the fact that an effective fight against organized crime must be like a chess game. If there are gangs of organized criminals in one location, there must be a strong police presence nearby.

There has been such a presence for several years now. Trust must be established between these police forces, which include the RCMP, the Sûreté du Québec and municipal forces, and the public, particularly in a case where the law of silence reigns, where there is a regime of terror surrounding the activities of drug traffickers. It take time to build up this trust.

And yet the federal government threatened to close down many detachments in Quebec when what should be done is to increase the resources in order to wage a more effective anti-crime campaign. It should not be forgotten that it is Ottawa that has the means to increase budgets to wage a more effective battle against organized crime.

Once again, because of the Bloc Quebecois' efforts, budgets were increased and RCMP detachments kept open in order to wage the battle against organized crime more effectively.

One more step remains—increasing resources in the short term—and I will have an opportunity to get into this a little later on. If there is to be another year this year of "agricultural" activity by drug pushers in the fields of Quebec and Ontario, and it takes two or three years before any action occurs, this means two or three years more of a reign of terror threatening whole families, with the billions these criminals pocket from their illicit activities.

Another productive effort by the Bloc Quebecois in its concern for improving justice and the means available to the government and to justice to fight organized crime involved the requirement to disclose any dubious transaction involving $10,000 or more and increasing the number of institutions obliged to report such transactions or any other dubious transaction.

In its 1997 election platform, the Bloc Quebecois expressed its concern at identifying all dubious transactions and ensuring that all institutions and individuals suspected of handling

dirty money be obliged, in case of doubt about the amount of a transaction, to report such a transaction.

The law was distinctly lacking in this regard. Under it, an impressive number of financial institutions were and still are not obliged to report dubious transactions of $10,000 or more or any other transaction. They do so on a voluntary basis.

As far back as 1997, we were calling for this declaration to be made mandatory, for there to be a ceiling above which all dubious transactions of sizeable amounts, say $10,000, would have to be reported, along with any other suspicious transactions or transactions by suspicious individuals. We called for the scope of this legislation to be expanded to other institutions, bodies or individuals liable to be dealing with such suspicious amounts or transactions.

We are pleased to see that, with Bill C-22, the government has finally grasped what the Bloc Quebecois has been calling for since 1997, out of concern for justice and effectiveness of police and customs operations to nab criminals. The government has finally understood that it was in the common interest, the national interest and the interest of Quebecers and Canadians, to implement these recommendations by the Bloc Quebecois.

Essentially, Bill C-22 does what the Bloc Quebecois had proposed. This was essentially what had to be done, for the present at least. There are some questions, but we are only at second reading. Other steps are yet to come, including consideration by a committee and report stage. We will have some questions to ask, but overall what we find in this bill is satisfactory to us in principle. It is also satisfactory in its application, with a few minor reservations I shall go into later.

First of all, the bill makes it mandatory to report suspicious transactions, at a level that has been set at $10,000 or more, but also any other transaction where there are grounds for suspicion about the origin of the funds, in other words transactions which might involve the proceeds of crime, whether drug trafficking or any other criminal activity.

The bill also broadens the scope of existing legal provisions. Again, this responds to our repeated representations, since 1997, regarding certain flaws in the provisions dealing with money laundering. The bill specifies that this reporting, which is now compulsory in the case of suspicious transactions, has been broadened to include all regulated financial institutions, casinos, businesses involved in foreign exchange dealings, persons engaged in the business of dealing in securities, insurance companies and persons acting as financial intermediaries, such as lawyers and accountants.

We feel this is an improvement. As I said, we will have questions for the government, officials and numerous witnesses who will soon appear before the Standing Committee on Finance, but, on the face of it, the Bloc Quebecois is pleased with this measure.

The bill also increases the penalties for illicit or criminal activities, namely the laundering of proceeds of crime.

As I mentioned earlier, since money laundering is now recognized as a violent crime, these penalties are harsher than they used to be.

A second improvement found in Bill C-22 is the series of provisions dealing with transborder operations, such as imports or exports of currencies or instruments, such as travellers cheques, and any illegal trafficking of these currencies or instruments. The provisions have been strengthened precisely to catch the real criminals who engage in this type of illicit trafficking.

First of all, the bill increases the powers of customs officers to search people and vehicles. In this regard, we have certain reservations but, overall, we agree with the principle that when there is serious and reasonable suspicion—and customs officers are well trained—with respect to the trafficking of such currency or the failure to report such currency or monetary instruments—it would be normal—let us be honest—to check whether or not such instruments should be seized, the traffickers pursued and the real criminals required to pay.

There are also provisions for co-operation with foreign countries. Too often, discussions about globalization ignore the fact that it is not just about trade and legal matters in the noblest sense. One example given is international tribunals trying war criminals. Globalization also has to do with very close co-operation between governments to catch criminals. We must never forget this.

Recently, there was a conference in Russia on the evolution of organized crime. We must remember that organized crime is becoming increasingly international. I repeat what I said earlier: every year, world wide, approximately $500 billion U.S. is laundered—and money launderers do not file tax returns. This is the amount laundered internationally. Part of this money falls into the hands of organized crime in Quebec and in Canada.

This is a lot of money and it leads to some tragedies, as I mentioned earlier. Co-operation between governments is essential. Such co-operation, which was also called for in a recent international conference on the subject, is made possible by Bill C-22.

Finally, Bill C-22 provides another innovation. Following consideration in committee and questioning of officials and witnesses appearing before the committee, we will be more certain of our final analysis. At first glance, though, the third major clause of this bill, which provides for the creation of a financial transactions and reports analysis centre of Canada, is a step in the right direction in that, at the moment, information on criminals, money laundering and interprovincial transactions is spread here and there.

All efforts to centralize this information or to obtain the co-operation of other police forces or between the investigators of the financial transactions and reports analysis centre of Canada, the various police forces and even Revenue Canada are welcome.

In the future, with this centre, all information on suspicious transactions and those that may lend themselves to money laundering will be centralized. There will also be information on individuals or institutions found guilty of failing to make the mandatory disclosure in the case of a suspicious transaction or of having been accused of money laundering themselves.

I am pleased to note the bill provides that information disclosed by the centre—very confidential information will pass through it—will be carefully controlled and governed by the Privacy Act. This is good news, but we would like to question the government and the officials who worked on the bill, and hear them as witnesses before the Standing Committee on Finance to be sure this information will not be used and cast to the four winds or, more importantly, sold for financial gain.

Very sensitive information will pass through the centre. We want to make sure the requirements of the Privacy Act are met.

As I have said, we do have certain reservations about the bill nevertheless. The first of these relates to increasing the powers of customs officers. This may be beneficial. Often, customs officers may have their hands tied by various constraints that make it impossible, even if they are suspicious, to carry out the necessary search in order to collar real criminals.

We are concerned, at the same time, about people's rights and freedoms. This will be one of our concerns during the next stages of examination of this bill. We would like tight controls over the work of the customs officers, with strict regulations, so that there will not be any abuse relating to searches of individuals or their vehicles. Customs officers must have a framework of operation.

Second, a question arises, particularly in the light of clause 73 of Bill C-22: the extraordinary power assigned to the Governor in Council, and the minister responsible, for making any regulations relating to the legal provisions of Bill C-22.

We have misgivings about this. To give so much power to a group of individuals, to the Governor in Council or the minister responsible, on matters that might become criminal in nature, without involving parliament, has always meant to us that the powers of the departmental employees and the minister are extraordinary. This has also come up in other bills.

We want to know if it would be possible to ensure that the House has a say in the process, to make sure that the powers are not concentrated in the hands of a few individuals when it comes to such important issues, particularly as regards the regulations that have yet to be drafted to implement Bill C-22.

This is another concern we will raise when a more in-depth review of the bill is conducted by the Standing Committee on Finance and at the various legislative stages.

We have a third concern regarding this bill, but also the whole issue of organized crime. Next week, the justice subcommittee will be meeting. It enjoys the unanimous support of the House of Commons, with regard to what still needs to be done to give adequate tools to police forces and what changes must be made to the Criminal Code to fight organized crime more effectively.

Last year, I went through a harrowing experience, not just me, but several other people too. Some people have been going through that experience for years. I am referring to the reign of terror, the law of silence imposed by organized crime on people whose lands they invade. These people cannot say anything, otherwise they are beaten or receive death threats.

I would like to send a message to the government. Will this subcommittee get the government's co-operation so that, by early fall, we can have measures that will truly help us fight organized crime effectively?

Second, was the government's support for the establishment of that subcommittee just a smoke and mirrors operation, or will it truly help the subcommittee to propose a series of recommendations with, of course, the input of opposition members, including Bloc Quebecois members, to fight organized crime more effectively? The hopes of several thousand people rest on that subcommittee.

I do not say that as a figure of speech. I have met people who have been living in terror for the last three, four or five years because of threats from organized crime. They place a lot of hope on the work of the justice subcommittee, on measures to fight organized crime more effectively and to protect them.

They also place a lot of hope on short term measures. I will put particular emphasis on the illegal production of cannabis on Quebec and Ontario farms, for obvious reasons.

I remind the government that, in the short term, before the justice subcommittee can make its recommendations in the fall, it is imperative that we take a series of measures immediately, this year, to fight the illegal production of cannabis, with the farming season that will start at the beginning of May and with the pricking out of cannabis seedlings in our farmers' fields.

If we do not take action this year, we are giving one more farming season, one more year of illegal profits to criminal organizations in Quebec, Ontario, British Columbia and throughout Canada, but particularly in eastern Canada and in the westernmost part of Canada. It is one more year of extraordinary profits, or proceeds of crime, that we are giving them.

It is also one more year to convince even more school children—and the Standing Committee on Finance will have an opportunity to hear from people involved in the schools who see what is happening—to sell them not just cannabis or hashish, but also heroin and cocaine. They will have another year in which to damage the future of thousands of children in Quebec and in Canada.

If action is not taken immediately in April or May to let organized crime know that things will no longer be the same and that, this year, measures will be implemented on the strength of increased budgets, for the RCMP among others, I think that a good opportunity will have been missed to show that we are really serious about fighting organized crime.

As I said, starting with my riding of Saint-Hyacinthe—Bagot, there are thousands of farm families and owners of woodlots who are waiting for short term action from the government and who are probably glad that money laundering provisions are being tightened.

The more we cut the ground out from under organized crime and money laundering, which is the key to the long term profitability of criminal activity, the less it will tend to increase its annual production or squatting on land in order to grow cannabis, exchange it for cocaine or heroin on the American market and so forth, and profit from the proceeds.

People are also happy that the continued pressure brought to bear by the Bloc Quebecois has meant an increase in budgets to fight organized crime. That is undeniable. But they are waiting for short term action.

I bring this message to the government. We must see improvements before the start of the next criminal cannabis production season. We must see improvements. After breaking the law of silence, and I am not the only one to have done so, there were others after me in my riding and throughout Canada, we have to improve the situation. Organized terrorism in the fields of Quebec and Canada must stop this year or at least there must be a marked improvement, because it cannot continue. I have met farm families who are victims of organized crime, and this has to stop.

If the government hears us as members, and I think that opposition members are very aware of this issue, it must announce, this year, in the coming weeks, that it is taking steps to reduce criminal activities, beginning with those of the drug dealers.

We will continue to analyze this bill considering it a step in the right direction but recognizing that there are many things yet to be done so that the freedom we were proud of in Quebec and in Canada is not a false freedom, but rather true freedom because we will deprive organized crime of the power to threaten the freedom of the majority of the people.

Hon. Jim Peterson:

Mr. Speaker, I rise on a point of order. I neglected to acknowledge the great battle against criminals and crime that has been waged by the hon. member who has just spoken, and I must congratulate him on behalf of the Liberal Party and all members of this House.

The Acting Speaker (Mr. McClelland): That is not a point of order, but never mind.

Mr. John Solomon (Regina—Lumsden—Lake Centre, NDP):

Mr. Speaker, on behalf of the New Democratic Party caucus I am pleased to stand in this assembly and join with all of my colleagues to trash money laundering and to say to Canadians that we unanimously support eliminating criminal activity in this country. Otherwise, it would be a very different debate, if some of us defended the criminal activity that exists in our economy.

Bill C-22, which deals with the proceeds of crime from money laundering, is a very important piece of legislation in many ways, but it could be better. We have heard some of the speeches from the minister and others who talked about the wonderful and positive things it might do, and I believe that it will have a positive effect on our economy. However, I am concerned about a number of issues with respect to the bill.

The NDP supports this bill in principle. It is obviously important to support the introduction of legislation that curbs illegal activity.

However, there is a problem because of the wariness concerning the lack of certainty and clarity in some parts of the bill. Before I address that, Mr. Speaker, I would like to share with you some of the concerns I have with this bill.

First, I am concerned that this is going to be a piece of feel good legislation. The Liberals in the past have introduced legislation which I classify as feel good legislation. I hope this bill will not fall under same definition. What I mean by that is that the Liberal government tends to address very serious criminal activity in this country with a piece of legislation that makes Canadians feel good that something is happening to protect them, but in fact nothing ever happens to protect them. There is a law on the books, but there are never any resources to back up the legislation.

I would use two examples. There was cigarette smuggling in Quebec and Ontario a few years ago when the Liberals were cutting everything, including customs agents, police and security forces. A certain group of individuals started smuggling cigarettes into Canada, selling them in Quebec and Ontario. Rather than pass legislation which supported the customs and duty officers and our police forces in nabbing the people who were smuggling, they introduced a piece of feel good legislation. They made people feel good because they were doing something by passing a law which took federal tax off cigarettes in Quebec and Ontario, but that cost taxpayers $2 billion a year. Guess what. The smugglers went from smuggling tobacco to smuggling guns.

Rather than dealing with legislation like the Firearms Act, they should have committed resources to nab the gun smugglers. What did the government do? It passed a gun registration law, which has nothing to do with protecting Canadians, but it made them feel good that the Liberal government was actually doing something to protect Canadians. In fact, it was not doing a darned thing. It was encouraging smugglers to continue to smuggle.

We have these two pieces of feel good legislation which the Liberals passed. One was on tobacco taxes, which cost us $2 billion a year, and which will probably add tens of thousands to the debt because more people will be smoking in Ontario and Quebec because of the low price of tobacco. Then they passed the Firearms Act, which forces criminals to register their guns. As we know, criminals do not register their guns. Nothing has changed.

We now have Bill C-22, which is supposed to stop money laundering in Canada. If anybody believes this is going to be the epitome of legislation, they are dreaming in technicolour. I hope it has some effect, but if the bill is not backed up with some cash and resources to

provide our country with more security, more police officers and more customs agents to look into these issues, then the law will be useless. It is a feel good piece of legislation. The government is trying to make Canadians feel good about it, but nothing will ever happen. The same old story continues, the money laundering, smuggling and all the criminal activities committed by people who want to use handguns and other kinds of illegal weapons.

The potential in this bill is very great, but I want to raise a couple of issues which I feel have to be addressed.

First, I am hoping the Liberals will put some money where their mouths are for a change when it comes to a piece of legislation which is in principle very good, but will not work unless there are some resources put behind it.

Another problem we see with the legislation is the potential for charter violations. The guarantees of reasonable search and seizure in the charter are at risk in our view with this bill.

The Criminal Lawyers' Association argues that the standard of suspicion outlined “fails to meet even the first and fundamental requirements of reasonable grounds”.

The legislation may create an irreconcilable conflict for professionals, such as lawyers, who remain subject to certain codes of conduct that prohibit them from disclosing information. It must also provide a mechanism to absolve an individual from the potential liability that may result from disclosing this particular confidential information.

The third issue in terms of our concerns is a possible pressure on consumers. As the consumer affairs critic, I am very concerned about every piece of legislation that comes before the House which would cost consumers more money than it would benefit them. We feel that the reporting regime set up to track and communicate suspicious transactions from criminal activity have at least two financial repercussions for consumers.

First, there is a cost to be borne by the taxpayers for the establishment and maintenance of the financial tracking system that will be set up. Second, in having to establish compliance mechanisms, there is a concern that the cost for setting up reporting mechanisms for financial institutions will be borne by these institutions' customers. That means that the consumer stands to pay the fare one more time.

The fourth issue of concern for us is the question about the system's effectiveness. There remains a series of concerns about the planned reporting scheme's effectiveness. There is a warning that the new regime has the potential to create a bureaucratic behemoth and the chance that organized crime could short-circuit such a system through a series of shadowy sophisticated transactions. Money might be better spent by granting law enforcement investigative bodies additional resources to detect and prosecute money laundering offences.

The fifth concern we have is that the bill does not address technology based crimes. Technology based crimes include credit card and debit card fraud, telephone fraud, stock market manipulation, computer break-ins and so on. These are very important because they are

on the rise. More and more people are using the Internet. There is a huge growth in the debit card business. More and more consumers are using cards for instant transactions. A lot of personal information is on the Internet and is in the hands of tens of thousands of businesses in the country.

Increasingly organized crime syndicates are using technological and digital means of communication, such as encryption and scanning devices, potentially circumventing the provisions of the bill. People can buy a scanner for $200. Things can be scanned quickly, and then that information is put into a computer, which puts it all at risk.

What is more important is that money laundering is taking place in many cash businesses, not just with card transactions. I will not mention any particulars, but take for example a cash business such as a fast food franchise.

I happen to know someone from New Jersey who owns a fast food franchise. I asked him why he had it, because he was a very wealthy person. He said he had a couple of other businesses, but when his five-year-old daughter was asked what her father did he did not want her to have to answer something that was really not important or perhaps on the verge of not being legal. So he bought a fast food franchise and his daughter can now say that her dad owns a fast food franchise that sells ice cream. It is actually quite nice.

Of course, a cash business like that opens all kinds of opportunities for people to launder money. I am not suggesting that person is doing that, but it is one way to do it.

Another way to launder money would be for a family to buy five or six business class airline tickets to Europe, decide not to use them, cash them in and the money goes to the money launderer who gave them the money to buy the tickets in the first place, and then they split. I am not sure if that situation would be covered by the bill, but there are thousands of ways to launder money, more ways than I could recall.

We feel that we have to toughen up the bill and put some resources behind it to assist the lawkeepers and the peacekeepers in ensuring that the laundering issue is addressed in a tighter way.

A clearer and more precise definition of what constitutes a suspicious transaction is needed. The subjective nature of the definition could provide an excuse for compliance failure and, as a result, many suspicious transactions may not be reported.

In addition, the use of a vague definition could result in institutions over-reporting for fear of involuntary non-compliance, thus creating unnecessary and unwarranted scrutiny of innocent individuals.

The proposed legislation must clearly address the issue of the threat to the privacy of Canadians, specifically the possible disclosure of information to Revenue Canada, should it involve a taxation matter. Strict guidelines must be established.

It must also address the possible violation of the guarantees of reasonable search and seizure under the charter or rights and freedoms.

In addition, the issue of tax related offences should be addressed. Tax offences occur when money is transferred to offshore tax havens through offshore companies, trusts and bank accounts when the purpose is to conceal assets from Revenue Canada.

Money laundering, on the other hand, involves the intent to conceal criminal profits to make them appear legitimate. We have seen the Royal Bank, the Bank of Montreal, the Bank of Nova Scotia and the Canadian Imperial Bank of Commerce account for 80% of local banking in the Bahamas. Both the Royal Bank and the Bank of Nova Scotia have been implicated in money laundering cases in the Caribbean on more than one occasion. In one case the court ordered the Bank of Nova Scotia to pay $2,500,000 in fines, noting that laws should not be used as a blanket device to encourage or foster criminal activity.

What I am really worried about is that small aircraft and boats can land in our country and in the U.S. at tiny airports or marinas and they rely on the honour system when it comes to customs declarations.

The federal government also has plans to implement signing accords with major shippers that will allow them to cross into the U.S. without stopping. Companies would provide computerized updates to Revenue Canada of their shipments and custom agents would make spot checks at company locations rather than at the border.

The Liberal government has cut in half the customs enforcement budget, and it is still cutting. I am concerned that if this is not stopped and reversed, then this feel good legislation will be just that; it will not solve the problem, but through the public relations offices of the Liberal Party of Canada and the federal government they will try to persuade people that they should feel good because the legislation is there.

We heard that money laundering is the world's third largest industry by value. Between $5 billion U.S. and $17 billion U.S. is laundered in Canada each year. Money laundering extends far beyond hiding profits from narcotics. It includes trade fraud, tax evasion, organized crime in arms smuggling, and bank and medical insurance fraud. I would hope the government would provide the appropriate resources to address and look into these issues further.

American tax collectors estimate that they lose about $9 billion yearly to tax evasion. This comes from a book by Diane Francis entitled Contrepreneurs . At a rate of 1:10, because Canada's population is about 10% of the population of the United States, we stand to lose at least $1 billion. That sounds like a lot of money over a period of a year. When we look at it in terms of how the Liberals have helped their friends evade taxes, it is a drop in the bucket. Some members may be wondering what I mean by that.

If members will recall, the Liberals allowed the Bronfmans to transfer billions of dollars in trust accounts to the U.S. without paying taxes on the accounts. This created a loss to the Canadian taxpayers of almost a billion dollars. I think it was $750 million but we would not

know because we were not told the value of the tax evasion, which was supported by the Liberals and the member for Wascana who also supported it front and centre. The Liberals allowed the Bronfmans to take this trust fund, which was set up in trust for the Bronfman family to use in Canada, and move it outside the country, thereby avoiding taxes.

I think Canadians view this kind of legal money laundering or legal tax evasion, which the Liberals support, as something that is a very big concern.

If the hon. member for Wascana has some suggestions we would appreciate his participation in the debate. I am sure he would be able to provide more information on that than I can.

The other concern I and the NDP have is that we have a money laundering bill that will be tough and that will addresses the issue of criminal activity and proceeds from criminal activity. Obviously if the government had the wherewithal it would try to shut down all the criminal activity in this country. That would be an honourable objective but I am not sure how the government views that. It has not really undertaken, in my view, a comprehensive attempt to do that.

In particular, the RCMP, which has really been choked for funds, has been strangled in terms of trying to hire and train enough officers in the country to handle just the bare, basic bones of police provisioning. The Liberals have choked back funding to the RCMP over the years to the point where in Saskatchewan alone we are 200 RCMP officers short. Over the last three years the Liberals have not provided enough funding to the Regina RCMP training depot.

I am happy to say that in this budget the Liberals did provide more money to the RCMP training academy, and I thank the member for Wascana for that effort. I think it is a very important initiative but it is too little too late. We are still waiting for the weather station that the Liberals promised in the last election.

Hon. Ralph E. Goodale: It is there. It is up and running in Bethune.

Mr. John Solomon: It is up and running in Bethune?

Hon. Ralph E. Goodale: It has been there for two years now.

Mr. John Solomon:

It was in my riding and he never invited me. He should have invited me to the opening. He has to be more co-operative.

I am glad to see that is happening. One of his promises has been completed.

I want to get back to the RCMP because it is a very important institution in my riding. I know the RCMP were very concerned about the lack of funding and the lack of money involved in recruiting and training new officers. Hopefully the government opposite will provide sufficient funding for these individuals.

While I am at it, I want to say that I am very concerned about the privatization of the RCMP depot. Many of the workers there have worked hard to support the RCMP and to make sure that it is one of the best policing institutions in the world, but they are not treated as fairly as we think they should be treated.

My final point is that if the bill can provide some sort of controls on laundering money from criminal activity, why can the government not introduce a bill that will provide a Tobin tax on financial transactions that are legal?

By unanimous consent, the House of Commons passed a motion, which was introduced by my colleague, the NDP member of parliament for Regina—Qu'Appelle, that would undertake to institute a Tobin tax for Canada and the rest of the world but I have not seen any kind of initiative by the government.

The member for Wascana is here today and he has done a couple of good things in the last while. He has not done as much as we would have liked but he is progressing. We are training him well and we are happy he is finally taking some of our ideas to heart. I was wondering why he will not undertake with his colleagues, the Minister of Finance and the Secretary of State for International Financial Institutions, to initiate the promise in the motion that was passed in the House to support a Tobin tax which is a financial transaction tax on all the stock market transactions. There are no taxes on those particular transactions. Most members of parliament in Canada believe there should be a tax. Most elected officials in the world believe there should be a tax. The people who do not believe there should be a tax are the people in wealthy corporations and in very wealthy families.

The Liberals continue to support that kind of approach, that of the very wealthy corporations and very wealthy families in this country.

I am very concerned whether they will allow more tax evasion by wealthy families like the Bronfmans, whether they will allow more tax evasion by wealthy individuals and companies on the stock market or whether they will undertake to do what Canadians want them to do, which is to institute a Tobin tax, a fair tax on financial transactions on the stock market and throughout exchanges in the world so we can have a very controlled, steady and stable system that would not encourage people who get money through illegal means, such as money laundering, to use the stock market for their particular advantage.

In summary, we support the bill in principle. It has many more positive things to address. The government needs to put in some resources to support the bill to make sure that the law it is passing can actually be carried out by our law enforcement agencies.

Hon. Lorne Nystrom (Regina—Qu'Appelle, NDP):

Madam Speaker, I want to ask the member a question because, unknown to the House, he is an expert on laws around the world concerning money laundering and has a great deal of background in this area.

In the member's opinion, why did the government leave out the whole question of tax evasion? I see the member from Saskatchewan across the way. The minister is in the cabinet and I would ask him this question but I cannot because this is not question period. Tax evasion is not addressed in this bill.

The Internal Revenue Service in the United States estimated that the tax collector loses about $9 billion a year in the U.S. because of tax evasion. Nine billion dollars a year is a lot of cash. If one were to extrapolate that into Canadian dollars, where we have one-tenth the population, it would mean, if we were similar to the United States in terms of our loss of money through tax evasion, that we would lose about $1 billion a year. That is a lot of cash. It could pay for a lot of health care and a lot of educational systems that we all need. It could also address some of the farm crisis. It could address all kinds of major problems that we have in the country.

In his very studied and learned opinion, why does the member for Regina—Lumsden—Lake Centre think this is not part of the bill. Is it too complicated or just not a high enough priority? Why would this not be part of the bill?

I also appreciated his comments on the Tobin tax. If we can follow the flow of money in terms of criminal activity—and I remind the House again that the third largest industry in the world is criminal activity in terms of the flow of illegal money, dirty money—by setting up rules and regulations in the OECD and the G-8, then it puzzles me as to why we cannot do the same thing on currency speculation in terms of what is called the Tobin tax. I maintain that if there is a will, there is a way as well.

Anyway, I will go back to the tax evasion issue and ask why it is not included in the bill.

Mr. John Solomon:

Madam Speaker, I thank my colleague, the member for Regina—Qu'Appelle, for that very important question because I actually never addressed that in my remarks. I ran out of time but I had many more things to say.

Tax evasion is not addressed in this legislation because it is a possibility that many Canadians have a lot of flexibility in terms of accessing sophisticated offshore companies. Trusts and bank accounts can be set up in places like the Bahamas, which I mentioned earlier. Canada's chartered banks all offer banking services and tax savings, with most services offered in the Caribbean and Switzerland. Money that is in an offshore tax haven is not only out of reach of Revenue Canada, it is also safe from creditors.

In my remarks earlier I said that the reason it is not in the bill, I suspect, is because the government's very wealthy friends do not want it to be in the legislation. One example of why I say that is the Bronfmans. They had a trust account in this country which was set up under legislation created by the Liberals in the 1970s on a 20 year term. It was extended by the Conservative government for a number of extra years. When the term was coming to an end and they had to actually pay taxes on the trust account, the Liberals encouraged and gave

permission for the Bronfmans to transfer this multibillion dollar trust account outside of the country, thereby avoiding taxes in Canada.

It is estimated that we lose about $1 billion a year on tax evasion. That one transaction that the Liberals undertook, encouraged and allowed the Bronfmans to undertake, cost us about $750 million in lost taxes on one transaction. I think the estimate of $1 billion is really out to lunch.

The bottom line is that the reason tax evasion is not in the bill is because the wealthy friends of the Liberals, the wealthy powerful corporations who support the Liberals, do not want it in here. Guess who pays the piper?

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC):

Madam Speaker, I congratulate the previous speaker on his recent designation as world expert in the area of money laundering.

Bill C-22 is of course a very important bill before us today and it is long overdue. In the final analysis it will bring about some very necessary and important changes in the country.

Put quite simply, Bill C-22 will make it mandatory for financial institutions to report suspicious transactions and will create a new federal centre to receive and manage reported information with respect to potential criminal activity, both inside and outside our borders.

It is quite obvious that this should and is a priority for many in the country. Sadly, the government has waited a significant period of time before introducing the legislation, although there was an outcry from around the country, particularly within the policing sector, asking that something be done to assist them and to give them the tools to address this growing problem.

We all know that this is but part of a larger problem. That larger problem obviously being organized crime, again here in Canada.

To reflect upon the government's addressing of that, it took a motion from the Bloc Quebecois to bring this matter to the forefront, based on the fact that one of their own members was under threat of violence as a result of his addressing the issue.

This particular legislation focuses the efforts of the law enforcement community and the entire system on addressing the problem. The money that is often shifted between countries and financial institutions, investments of that sort without a paper trace, is something that opens the door to a significant ability to launder money, which is highly criminal and obviously highly attractive to criminal organizations.

We have to be more aggressive and more vigilant in addressing this problem. I commend the solicitor general for the legislation at this time because it does empower law enforcement agents to address this. This centre I do hope will become a focal point and will receive the funding necessary to do that good work.

Giving law enforcement agents the tools is the belief of the Progressive Conservative Party. I know the member for St. John's East, as do all members of our party, do support the idea that law enforcement agencies throughout the country, sadly, have not been given the resources and the support from the government to achieve the very important task that they have before them. This legislation does move in the right direction in that regard.

Canada has been under heavy criticism in recent years with respect to the fact that the United States is feeling more vulnerable as a result of our lax internal security measures.

When I am talking about trafficking, it is not only in money that we see this occurring. It is often very much the illicit drug trade, firearms, pornography and all those things which Canadians want to feel a significant degree of protection from and where we should be focusing our efforts to close down our borders with respect to that type of material.

Money laundering, in and of itself, poses to law enforcement personnel one of the greatest challenges in the ongoing battle of organized crime. To fight organized crime effectively, law enforcement agencies and we as legislators must address those challenges posed specifically by current trends in money laundering, and adapt strategies to respond to those challenges.

The Acting Speaker (Ms. Thibeault):

We must stop at this time, but the hon. member will have approximately 15 minutes left when the bill is again brought back before the House.

It being 5.30 p.m., the House will now proceed to the consideration of Private Members' Business as listed on today's order paper.

April 6, 2000 [House of Commons]

The House resumed from April 5 consideration of the motion that Bill C-22, an act to facilitate combatting the laundering of proceeds of crime, to establish the financial transactions and reports analysis centre of Canada and to amend and repeal certain acts in consequence, be read the second time and referred to a committee.

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC):

Mr. Speaker, I am very pleased to continue debate with respect to this very important piece of legislation, Bill C-22, which deals with money laundering.

Money laundering poses a great challenge these days to law enforcement agents in their battle against organized crime. For example, a few months ago in the United States, American officials discovered the biggest money laundering operation ever in the history of the United States. Federal investigators believe that Russian gangsters had channelled up to $10 billion

through the Bank of New York, the 15th largest bank in the United States. This news sent extreme shock waves throughout the entire financial services sector and proved that money laundering can certainly affect even the big banks.

It is vital that we get more aggressive in the fight against money laundering and give law enforcement agencies better tools to do their job. For Canadians to feel a sense of security and faith, we must arm our police agencies with all the necessary resources to make sure they can take up their fight against organized crime.

Canada has continued to come under heavy criticism in recent years as a result of being identified as an easy place for criminal organizations to launder money. Criminals have found Canada as an attractive place to hide large financial transactions because of our proximity to the United States, our stable political system, the high volume of cross-border transactions and because the odds of being caught in this country are lower than in other jurisdictions.

The Liberal government has been talking about tougher reporting rules for at least three years. As far back as May 1996 federal officials said that they were considering a mandatory reporting system. This was reported in the Financial Post on May 3, 1996.

Globally, approximately $3 billion to $5 billion American in criminally diverted funds enter the international capital markets annually. The federal government estimates between $5 billion and $17 billion in criminal proceeds are laundered in Canada each year.

Bill C-22 was first introduced in May 1999 as Bill C-81 which died on the order paper when parliament prorogued. It was one of the many pieces of legislation that were victims of partisan proceedings and manoeuvres by the government. Currently Canada has money laundering legislation, the Proceeds of Crime (Money Laundering) Act which was passed in 1991 as a Progressive Conservative initiative.

As a backward glance, the G-7 Financial Action Task Force established in 1989 drafted 40 recommendations aimed at enhancing and co-ordinating the international effort against money laundering.

According to that task force, the major weakness of Canada's current legislation which was passed in 1991 is the inability to effectively and efficiently respond to requests for assistance in relation to restraint and forfeiture. The use of domestic money laundering proceedings to seize, restrain and forfeit the proceeds of offences committed in other countries is recognized as sometimes ineffective. Legislation to allow Canada to enforce its responsibilities in foreign forfeiture requests is needed.

The task force also recommended that mandatory reporting requirements be legislated. Currently the reporting transactions in Canada are voluntary. A financial intelligence unit should be established to deal with the collection, management, analysis and dissemination of suspicious reports and other relevant intelligence data.

Many of these recommendations are embodied in Bill C-22 which proposes to bolster Canada's anti-money laundering efforts by requiring mandatory reporting by financial agencies of information relating to certain types of transactions. This information would then be sent to a central data gathering and analysis body, the financial transactions reporting and analysis centre of Canada. This would be an independent government body which would be separate from the RCMP but presumably would work closely with all law enforcement agencies.

The disclosure of information by the centre would then be strictly controlled. The centre would be authorized to provide key identifying information of suspicious transactions, for example, the name, date, account number and value of transaction, to the appropriate police force as it has the reasonable grounds to suspect that the information would be relevant to investigate and prosecute if money laundering offences have occurred.

This is also subject to restrictions set out in other legislation, for example the Privacy Act and the Access to Information Act. This same information may be provided to Revenue Canada, the Canadian Security Intelligence Service, Citizenship and Immigration Canada or other relevant agencies. It would also be relevant, for example, to tax evasion offences or threats to national security. For the police to have access to additional information from the centre, they would first have to obtain a court order for disclosure and meet with the standard of reasonable and probable grounds that applies to all offences.

This mandatory reporting is a step certainly in the right direction. The new law would require individuals or entities importing, exporting or transporting currency or monetary instruments in excess of $10,000 across the border to report all activities to Canada Customs. Failure to do so would result in the seizure of the cash or monetary instruments being transported.

The bill does not however define what is and what is not a suspicious transaction, nor has the government yet published its draft regulations. These will certainly flesh out the substance of the bill.

The current system of voluntary reporting of suspicious transactions would be replaced with mandatory procedures. Reporting requirements would apply to regulated financial institutions, casinos, currency exchange businesses, as well as any individuals acting as financial intermediaries, such as lawyers or accountants. These individuals would therefore be required to file reports for certain categories of financial transactions, as well as any transaction where there is reasonable grounds to suspect that the transaction is related to the commission of a money laundering offence. Making ill-gotten gains essentially appear legitimate is what is at the root cause of money laundering and it is an attempt to wash or cleanse this dirty money.

There has been great concern in legal circles over the issue of solicitor-client privilege and confidentiality. Lawyers and accountants acting as intermediaries would have to report suspicious financial transactions carried out by their clients or face stiff fines and possible prison sentences. The Criminal Lawyers' Association in particular said that this kind of reporting violates guarantees of reasonable search and seizure under the Canadian Charter of Rights and Freedoms. Alan Gold of that association states that the bill ignores these concerns.

Certainly ethical considerations already apply for all lawyers and accountants. I would suggest that the reasonable person test would be applied and that there is a greater good at issue here. That greater good is to ensure that we do everything we can to dissuade individuals who would be trying to embark on this type of criminal activity so that we can eradicate it. Certainly there can be a common ground and a middle ground that would satisfy the constitutional requirements of freedom of expression and freedom from unreasonable search.

Penalties for failing to report suspicious transactions are quite heavy. They can be up to $2 million and imprisonment for five years. This certainly expresses the seriousness and the punitive sanctions reflect this.

The Americans have already moved in this direction with their own tough new law on money laundering. They are very concerned about Canada's approach to crime prevention, particularly since the government changed in 1993. There must be some attempt to at least have a degree of co-operation and parity with the steps the United States has taken.

The Liberal government has given the Americans much evidence to validate their concerns. In December 1999 a U.S. customs officer discovered an Algerian Canadian with Algerian terrorist connections attempting to enter the United States through Seattle with a carload of explosives. In February 2000 the American government suspended firearms and ammunition sales to Canada, which was done at the request of our government. Legal import licences were being used to import large quantities of handguns, rifles and ammunition. The firearms were then being smuggled into other countries and often back into the United States.

It is an embarrassment for our country. We cannot have the reputation of being soft on crime. It is another blow to the relationship that we have, in particular with respect to the open border relationship with the United States.

Since 1993 the Liberal government has talked about increasing penalties for money laundering as a matter of increasing public safety. Yet the RCMP still very much lacks a proper budget to deal with today's sophisticated criminal. For example, the budget this year saw $810 million spread over three years, much of it being earmarked to fight organized crime, including activities such as money laundering.

Let us put this into perspective. Some 62% of this new money will not be available until 2001-02. This will be added to the RCMP base budget of approximately $2.1 million. We suggest this is still not enough.

Mounties already have to curtail their undercover operations which target organized crime, along with a reduction in training. The inability to conduct proper fraud investigations in British Columbia has been highlighted, as has the important issue of inadequate resources.

To correct these problems the Progressive Conservative Party is proposing that over 5,000 RCMP officers are needed. As well, there is a lack of staff at forensic laboratories needed to analyze DNA data and other data that has to be placed on the CPIC system. The police forces need to know that this quickly advancing technology will be incorporated into their services,

yet the government will not commit enough money to even upgrade the new CPIC system. It gave $115 million when it was clearly indicated by the RCMP that $283 million was needed to bring it up to snuff.

The British Columbia mounties may shift away from organized crime to deal with more pressing needs such as filling police vacancies and simply paying their officers to show up for work.

In rural areas this is of extreme concern. There is a problem with RCMP detachments being closed, or losing municipal police forces in small communities. Granby, in the riding of Shefford, is facing this threat. At the same time, we know that biker gangs are terrorizing farmers, forcing them to grow marijuana in their fields, and even threatening members of the House of Commons.

This is part of a larger problem. The financial transactions and reports analysis centre is certainly a welcome relief to one aspect of the ongoing struggle that the RCMP faces in trying to protect Canadians, but the RCMP is being stretched to the limit.

We must guard against the beginning of a rivalry between agencies, such as we have seen taking place between the RCMP and CSIS. The breakdown in communications and not sharing information is certainly counterproductive.

The Department of Finance has set an approximate cost for the centre at $10 million per annum to staff and operate. I suggest this is a small price to pay for public safety, especially when compared with the over $300 million that the Liberal government has already spent on a very inefficient, ineffective and discriminatory gun regulation scheme, which is certainly not a priority when faced with the ongoing problems of simply staffing RCMP detachments.

In August 1999 the solicitor general told a meeting of police chiefs that this bill was a top priority for the federal government. However, we saw that this bill languished on the order paper for some time and it has taken a full seven months for it to be presented to the House for debate.

Reaction from various organizations concerned and affected by the legislation has been positive thus far. The RCMP calls it long overdue. Superintendent Ben Soave, head of the RCMP's combined forces and special enforcement unit, said that this legislation will make a significant difference.

Gene McLean, director of security for the Canadian Bankers Association, has also referred to this legislation as having been long awaited by the banking industry. Organized criminals will be less likely to consider bringing their money to Canada as a result.

Even as we debate this legislation today, criminals are finding more and more sophisticated ways to launder money in this country. There are many concerns that the Conservative Party of Canada has. Although we support Bill C-22, there are examples by which the legislation could be improved.

Smurfing, which is the practice of breaking down transactions into smaller amounts so that they will not be reported, is still a way that money launderers have to undermine and come in behind this legislation.

There are all kinds of new tricks, including dummy corporations or avoiding banks by using money transmitters such as Western Union and storefront businesses that cash cheques, sell money orders or travellers cheques and then exchange them for foreign currency.

The Progressive Conservative Party of Canada believes very strongly that it is time for the government to do more and to be more proactive in fighting organized crime. Instead of simply being reactive and following the lead of other countries, it is time for Canada once again to be a pioneer, to step forward and to set an example.

Why is Canada the last G-7 country in the world to implement money laundering legislation? Surely the Minister of Finance, while attending meetings around the world, must have been embarrassed that we are the last G-7 country to implement such anti-money laundering legislation.

Enforcement issues and the burden of investigation continue to be top priorities. Draft regulations are not set out in terms of the precise information which will be required with respect to disclosure.

There are all kinds of other ways to improve this legislation. What about the exemption for retailers? The bill aims at detecting large cash transactions as an indication of suspicious activity. Why are retailers not required to report purchases made with large amounts of cash?

Money laundering frequently takes place in the form of big ticket purchases, for example, real estate, boats, cars, jewellery, et cetera. Disclosure issues as well will have to be addressed and the centre is only authorized to share information with police forces, Canadian Customs, revenue agencies, CSIS and Citizenship and Immigration. There may be others with whom this information will need to be shared.

While we certainly acknowledge that this is a step in the right direction, we are going to have to try to improve this legislation at the committee, and we will endeavour to do so.

Mr. Scott Brison (Kings—Hants, PC):

Mr. Speaker, I thank my colleague for his worthwhile intervention this morning on Bill C-22.

My question for him is, does the legislation and this new agency, and in fact does the government have plans to investigate some of the more advanced types of money laundering? I am speaking specifically of e-laundering, the ability to transmit large amounts of money via technology, the Internet in this case. These transactions are almost impossible to track today, and with sophisticated financial instruments such as derivatives it will become increasingly difficult for governments or regulatory agencies to oversee this type of thing.

I would be concerned if the government did not have a strategy to address this in the future because, clearly, with the increased sophistication of organized crime in this area, this will be a problem; not just for tomorrow, it is probably already a problem today.

I hope this legislation does not simply address yesterday's problem because of the hesitancy of the government to address the issue earlier. I hope that we are well on the way to addressing today's and tomorrow's problem, that is, electronic commerce being used as a vehicle to launder money.

Mr. Peter MacKay

Mr. Speaker, I want to thank my colleague from Kings—Hants. I know he is greatly concerned with this issue. Coming from Nova Scotia, which is bounded by a large body of water, we often face a great deal of importation, not only of money, obviously, but potentially drugs and other contraband material.

The question was very probing. The legislation itself is not crafted in such a way to address the specific question with respect to e-commerce.

The hon. member quite rightly points out that this is very much the wave of the future with respect to financial transactions and potential criminal activity on the Internet.
The new centre which is being set up, because it will be in its infancy, will be very early on faced with the task of trying to craft a response, a way to police the Internet in an attempt to prevent this.

I would suggest that establishing the centre is a step in the right direction. Having personnel will be the crucial response to the hon. member's question, ensuring that we have individuals who are trained, intelligent and up to speed on the latest technological advances. Hopefully the centre, with shared resources and with the ability to hear from agencies such as those in the United States, will be able to address this serious problem in the future.

Mr. Lynn Myers (Waterloo—Wellington, Lib.)

Mr. Speaker, I have a long history in this kind of issue. I sat for 10 years on the Waterloo Regional Police Commission. As chairman, I can tell members that this was an area of primary concern.

We went across Canada and, in fact, went to international conferences where we looked at these issues because they were very, very important, not only to Canada, but to nations around the world.

I was quite heartened by the fact that the hon. member opposite deemed it appropriate to make his comments. I know that he has a very strong interest in this area. I congratulate him for some of the recognition that he gave to the government with respect to the kind of initiative we are taking.

This initiative will require not only physical resources but human resources to accomplish the desired result. I applaud the government and members on this side of the House for the kind of measures we are taking. It is always a question of whether we should go further or faster, more money, and those kinds of issues. It is often a question of priorities. However, I think at the end of the day Canadians will applaud what the government is doing in this very important area.

In light of the globalization that is taking place and in light of the interconnectedness of the world, does the hon. member see that this is a problem which will escalate over time? I am sure he will say yes. I would like to know his views with respect to how best to try to curtail this very severe problem in a globalized world. After all, it is a very severe problem. People, no matter where they live in the world, find themselves caught in the trap with these kinds of criminal activities.

When I was chairman of the Waterloo Region Police Commission, with 700 police officers and civilians, we went to great lengths to look at this issue. We had symposia and went to places across Canada and internationally to see what could be done. I would be very interested in his views because of his background and his very strong interest in this area.

Mr. Peter MacKay:

Mr. Speaker, I thank the hon. member opposite for his question and his intervention. I certainly acknowledge his similar interest in matters of justice and policing around the country. As a former police officer I am sure he appreciates the incredible pressures that frontline police officers and those who specialize in areas such as organized crime are faced with on a daily basis.

I also want to acknowledge his commentary with respect to the usefulness of the bill. We in the Progressive Conservative Party applaud this government initiative. In fact, it is a continuation of a bill that we put in place when we were in government in 1991. I do not want to get into a partisan rant, but we have seen similar instances where the current government was not so complimentary of the Progressive Conservative government of the day and absolutely castigated the government for things such as free trade and the GST, but then, similarly, when in office, enhanced, expanded, embraced and took credit for bills and legislation put in place by the Progressive Conservative government. We will not follow that path. We will acknowledge that the Liberal government has done the right thing by continuing to move in the right direction, which was started by a Progressive Conservative government.

To address his specific question, this legislation and the setting up of this centre will very much put in place a process that will allow us to embark on the further information sharing that the hon. member referred to, the ability to see what other countries are doing, in particular the United States, and to draw on the best minds, the best personnel and the best intelligence that is available to see that we address this very serious global problem to which he referred quite correctly.

That and recruiting individuals from the country, keeping our very best and brightest here, and offering them opportunities in this area is another suggestion that I have as to how we can continue to fight this problem and enhance our ability to guard against this type of criminal activity that is becoming very much a global problem.

I would suggest, and he alluded to it in his question, that it has a great deal to do with the personnel and the intellectual property that we have to preserve and enhance in the country in our attempt to address what is a wonderful opportunity when it comes to technology and the Internet and the use of global communication, but it is also something that can leave us very vulnerable if we are not prepared to put in place the safeguards.

The centre can be a centre of excellence. It can be a great opportunity for those trained in this capacity, and hopefully we will, and I have every confidence that we will, continue to produce very bright, intelligent people who will be able to help us in this task.

Mr. Roy Bailey (Souris—Moose Mountain, Canadian Alliance):

Mr. Speaker, I want to congratulate the hon. member for the message that he gave us this morning. It is a given that in order to attack the problems in organized crime or any crime we need the manpower.

Speaking from a personal basis, in my constituency I believe I have more ports of entry than any other constituency in Canada. Every detachment along the border with Montana in the United States has been cut in half. When I attended a banquet of a rural municipality government, the sergeant in control of that area reported that because of cutbacks they were not able to investigate all reported crimes.

Knowing that the staff is not available, people are failing to report crimes such as break and enter. The statistics show that the crime rate is going down, simply because they are not being reported. I would like the member to comment.

Mr. Peter MacKay:

Mr. Speaker, I could not agree more with the hon. member. He has made a very useful and very straightforward commentary on the task before our law enforcement agents, not only police and RCMP but very much with respect to our ports and our border police.

This country, if I can make the analogy, is like a big, beautiful racehorse and these criminals are like horseflies buzzing around it. We are very much in danger of the parasites taking over the host if we do not allow our police agents the ability and give them the necessary resources to do something about it.

We must be prepared to take the necessary steps, put the money into resources, and when we are made aware of situations like the Sidewinder file outside the country we better be ready to lay the money down and give police the backup they need.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance):

Mr. Speaker, we are debating today Bill C-22, an act to facilitate combatting the laundering of proceeds of crime, to establish the financial transactions and report analysis centre of Canada and to amend and repeal certain acts in consequence.

On December 3, 1998, the solicitor general said that early in the new year of 1999 the government would introduce legislation to curb money laundering. It did not happen in early 1999. In fact it happened in May 1999, but due to the agenda of the government the legislation ended up dying on the order paper. This vital legislation, which was supposed to have been introduced according to the words of the solicitor general in early 1999, was finally reintroduced for passage by the House on December 15, 1999, not exactly early 1999.

Yesterday the solicitor general came to the standing committee on justice and told us that when he had last appeared before the committee he said they would do it and now they have done it. Yesterday was the first day, one full year after he had been there in the first place, that he could sit there and boast about the fact that they had done it. What is involved? It strikes me that if the Liberals were given a hamburger franchise they would do away with the term fast food. I do not understand.

Let us take a look at an article from the Globe and Mail of April 4. It is important that the government get on with it. The article reads:

"The effect of organized crime can be traced in the smallest, most remote communities and in areas as diverse as insurance premiums and ice cream retailing", law enforcement officers told a conference that ended yesterday in Montreal. "For the first time, organized crime, serious criminal organizations, are actually threatening the democratic institutions of this country and the values that we hold dear. It is a real threat to the way of life we have in this country. It is that serious".

That was a quote by an RCMP deputy commissioner. The article continues:

—said former Crown prosecutor Louis Dionne, now head of the organized crime directorate for the Surete du Quebec, "You can't see it. You can't smell it. But if you have the misfortune of putting your wet fingers in the socket, it'll hurt you".

That is where we are. I have actually been questioned by reporters on its significance, on what money laundering is all about. Although Canada is a member of the Paris based international task force against money laundering, it does not get good grades from world experts on this problem. They also say that it would be a good idea, perhaps, to set up money laundering in Canada because the charges are less and the risks are lower.

Why has the government delayed and delayed the introduction of the bill? We will be supporting the bill, but the point is that we would have supported similar legislation if it had been brought in, in a timely manner, two years ago. The bill will leave the House after second

reading, go through the committee process, come back to the House, go through report and third reading stages, and then to the other place for senators to do their thing. Why has there been this delay on legislation which I dare say all members of the House would support?

There are members of the House of Commons who are threatened by organized crime directly and personally. They and their families are directly and personally threatened by organized crime. How close can we get to the bone when even members of the House are threatened? I say shame on government members for taking so long to bring in the legislation.

Bill C-22 received first reading in the House of Commons on the December 15, 1999. The purpose of the bill is to remedy the shortcomings in Canada's anti-money laundering legislation as defined in the G-7's financial action task force on money laundering in its 1997-98 report which said:

The only major weakness is the inability to effectively and efficiently respond to requests for assistance in relation to restraint and forfeiture. The use of domestic money laundering proceedings to seize, restrain, and forfeit the proceeds of offences committed in other countries is recognized as sometimes ineffective, and legislation to allow Canada to enforce foreign forfeiture requests directly should be introduced.

In addition, the FATF recommended that reporting requirements in Canada be made mandatory rather than voluntary, as is currently the case, and that a financial intelligence unit be established to deal with the collection, management, analysis and dissemination of suspicious transaction reports and other relevant intelligence data.

Organized criminals, particularly in the drug trade, generate and launder billions of dollars annually. They launder money in order to continue their illegal operations. They move to jurisdictions with strong controls to jurisdictions with weak or no controls, and I have just unfortunately described where the government has allowed Canada to fall. Financial transactions conceal criminal profits to make them appear legitimate.

Yesterday my colleague from Surrey Central gave some examples of the criminal use of money laundering, but it is more than just the criminal use of money laundering. There is also the whole issue of terrorist organizations being involved.

On January 5, 1999, a television report reported on criminal organizations that want to launder money through Canadian business. A multinational company trading in the stock market was found to have ties to the Russian mob. While investigating the company, YBM Magnex, this market investigator traced the company's corporate history back to one of the world's top criminals and head of the eastern European Mafia. The company, now delisted, had stocks valued at $600 million and its principal business was laundering money for organized crime.

The story went on to say there are an estimated $400 billion in profits from the sale of state assets that are now looking to be laundered. It is more than just ordinary criminal activity that we associate with drugs. Now we are talking about the use of money laundering to move state assets from Russia.

As one investigator puts it, Canada and the U.S. are like candy stores for criminals. The unanswered question is how many investors were hurt with the evaporation of the $600 million equity in YBM Magnex.

We have just seen in the last couple of days billions of dollars removed from the stock exchange. Probably hundreds of thousands of retail investors in Canada have been seriously hurt with their speculation in the stock market, but this was a situation where $600 million evaporated in value from the stock market. What about those investors?

Even the former premier of the province of Ontario and very high profile Canadians in the public eye were sucked into the YBM Magnex vortex. The Ontario Stock Exchange and Securities Commission got a deserved black eye for not adequately protecting investors. This followed on the heels of the $6 billion Bre-X debacle. It is little wonder Canada has a less than stellar reputation in the global investment market.

Capital investment is what builds an economy. It is well past time for the federal government to take its responsibilities more seriously and to do things in a more timely manner.

As I mentioned, the member for Surrey Central yesterday gave some good examples of how money is laundered, but what about the issue I have raised of terrorism? According to an RCMP report, Toronto and Montreal groups support the Tamils and Hamas. According to the Ottawa Citizen of Monday, March 27, 2000:

Violent street gangs in Toronto and Montreal are channelling criminal profits to Tamil terrorists waging a bloody fight for an independent homeland in Sri Lanka, says an RCMP intelligence report. An extensive probe by the Mounties found “strong connections” between the outlaw gangs and the Liberation Tigers of Tamil Eelam, one of the world's most dangerous guerrilla groups. “There is clear evidence to support the relationship and that the money involved is being funnelled to the LTTE for extremist purposes in Sri Lanka,” says the newly declassified report, obtained through the Access to Information Act. The RCMP implicate the Tamil criminal groups in a staggering variety of activities, including extortion, home invasion, attempted murder, theft, importation and sale of brown heroin, arms trafficking, production and sale of counterfeit passports, migrant smuggling, bank and casino fraud, and money laundering. The activity is escalating and likely will become more difficult for police, adds the report.

This is an exceptionally serious issue. I say one last time, shame on the government for the unnecessary delay in bringing the legislation to the House.

Some concerns have been raised about the legislation. Criminal defence lawyers and the federal privacy commissioner warned the reporting scheme could turn Canada into a nation of snitches. The Canadian Security Intelligence Service said the transaction reporting regime could become “a bureaucratic monster”. CSIS proposed more selective measures that would target parties known to engage in dubious activities. A writer in the Financial Post , Terence Corcoran, indicated:

If passed, Bill C-22 would give Ottawa fresh authority to trap the innocent, infringe on privacy, collect mountains of information on citizens and put routine money transactions under suspicion. It would also conscript lawyers, banks, accountants and others into a national subculture of informants and snitches.

In a letter to the justice minister last December, the Canadian Bar Association listed some of the threats posed by Ottawa's plan to increase its surveillance over money transactions greater than $10,000. It said routine legitimate business transactions could be disrupted and solicitor-client relationships undermined. “The mandatory reporting of information which may be confidential is a drastic measure and a gross intrusion into a previously protected sphere”. The bill, it said, amounted to “restructuring the relationship of trust between lawyers and clients”.

There are protections under criminal law. I have read that:

At common law, securing a conviction for money laundering requires the Crown to prove four elements of the offence beyond a reasonable doubt. Specifically, it must be proven that the accused (i) dealt with the laundered property (ii) with intent to convert or conceal it. Moreover, the property must have been (iii) derived from the commission of a predicate offence, and (iv) the accused must have had knowledge of that fact. As a result of legislative enactments, however, the Crown is now required to prove only the accused's subjective belief that the proceeds were derived from the commission of the predicate offence, even if this is not the case. This allows the police to arrange “sting” operations.

This is another tool in the ability of the police to be able to go after that.

In addition, all the money laundering offences include a companion offence relating to possession of proceeds, which may result in a conviction even where the Crown is unable to prove the laundering offence. The “possession of proceeds of crime” provision is broader in the Criminal Code than in other statutes; it applies to the possession of proceeds of any indictable offence, not only to predicate offences. While these are not money-laundering provisions themselves, they have proven useful to police in securing convictions in the absence of sufficient evidence to secure a conviction for a laundering offence.

I suggest that this is exactly the fine tuning the committee will have to get into.

There will always be exceptions in criminal law, but on balance the criminal law, as it is presently constituted, works as far as it has gone. Late though the government may be, it is now adding another tool to the tool kit so the police will be able to enact enforcement. This gives us an idea of the balance between entrapment of the innocent and effective tools of law to help our enforcement agencies do their job.

In another article from the Montreal Gazette on December 4 1999, Tom Naylor, an economics professor at McGill University in Montreal, wrote:

Yet money laundering is a contrived offence that has no business in the Criminal Code. And perfectly satisfactory instruments for stripping criminals of their ill-gotten gains already exist.

That is not the point. The point is not to strip the criminals of their ill-gotten gains. It is a byproduct of this and other legislation. The point is to interdict the flow of ill-gotten gains and determine its source. By determining its source, the police can then proceed with proper criminal investigations and proper criminal prosecutions against people who are involved in these illegal activities, which are not only dangerous to our families and our society in the broader context but perhaps even dangerous to the very sovereignty of our nation as we understand it.

Therefore, inflammatory comments about the effect of this legislation are not helpful in this dialogue. Sincere concerns about ensuring that our individual rights and freedoms are protected and sincere concerns about drawing out what the trade-off will be are valuable contributions to this. However, with every law there is a degree of trade-off for the person who is involved in the illegal activity against the freedoms that we as law-abiding citizens have a right to enjoy in our society.

Let us deal with the funding issues of this legislation. Previous attempts to curb money laundering have been hampered at every step by budget problems. Curbing money laundering is a very effective weapon against the drug trade and frontline RCMP officers risk their lives every day in the fight against organized crime. I am not only thinking of frontline RCMP officers who risk their lives, but I am also thinking of the people who co-operate with the RCMP and funnel information to them. Those people also put their lives on the line. We have read and are aware of many situations where people have put their lives on the line and then, due to lack of adequate legislation, the perpetrators of the offence have been able to either walk away or get off with a reduced charge.

The benefits of crime control far outweigh the cost of implementing the programs to curb money laundering. We must ensure resources are available to get the job done.

I have been advised that a separate agency is required to create protection for our freedoms. With the agency standing alone and enforcement regimes like the police and CSIS having to substantiate further requests through courts of law, it is expected there will be sufficient protection for law-abiding citizens. Again, this is something that all members of parliament will be examining very closely when the legislation is before a committee.

We have to make sure that we have proper laws for Canada so that we are not a haven for the proceeds of crime. However, at the end of the day, what we also have to be very clear about is that when we give these tools to the enforcement officers in our community, we also have to be sure that there are proper safeguards built in so that law-abiding citizens are not drawn in.

I will reflect back for a second on the YBM Magnex International Inc. example. We also need this legislation to ensure that law-abiding citizens are not also drawn into the vortex of the money laundering that is currently going on within the boundaries of our sovereign nation.

We will be supporting this legislation but not blindly. We will be ensuring that the rights of all Canadians are protected as this comes back to this legislature.

Mr. Lynn Myers (Waterloo—Wellington, Lib.):

Mr. Speaker, I was somewhat heartened to hear the member opposite talk in terms of the benefits of the bill. Of course, we on the government side take these kinds of issues very seriously, as well we should, because Canadians, no matter where they live in our great country, take it seriously.

As we have done historically and specifically with regard to this bill, we have proceeded in a timely fashion, unlike the member opposite who thinks we should have taken more time. We have taken the required time to review the circumstances and talk with partners around the world, not only in terms of policing agencies but to get the kind of bilateral and multilateral arrangements in place that are part and parcel of the Canadian way of doing business.

I am heartened to hear that some members opposite are indicating that this is a good bill. It certainly underscores the commitment of the Government of Canada to do the kinds of things that are appropriate when it comes to this all important issue of money laundering and the exchanges of cash that take place, et cetera, and in trying to secure our banking and monetary systems in a way consistent with the values of Canadians and the international community.

As we move into more globalization in the future, would the hon. member agree that we should bring in more partners to be a part of this process? Should other countries in the world be assisting in this area?

Could he also outline not only his position but especially the Canadian Alliance's position vis-à-vis this criminal activity? Could he perhaps, in point form fashion, outline his party's position on the steps that would be appropriate to curtail, in a globalized economy, these kinds of things, especially as it relates to bringing in other partners from around the world? I will be interested in his response.

Mr. Jim Abbott:

Mr. Speaker, I appreciate the question from the member. From time to time he has been quite vocal in his criticism of the Canadian Alliance, and I do not take his intervention today as being that. I take it as being a very responsible intervention. I cannot resist the temptation to say, for a change.

I would suggest very gently that his statement that the government takes these issues seriously is a catch-all phrase for the government. I will be answering his question, but I do want to make this statement. My criticism is that the government has not acted in a timely fashion.

The government had a clear understanding in 1997-98, fully two years ago, about what the expectations were of the G-7. I seriously question the member's intervention when he says that the government has acted in a timely fashion taken the time required. How much time is

required? The legislation in its basic form, as it presently sits, was brought before the House and due to the legislative calendar set up by the House leader on behalf of the Prime Minister, who is the leader of this government, it ended up falling off the legislative agenda for a full 12 months. I do not think that is taking the issue seriously and I do not think it is working in a timely fashion.

To answer the member's question, I am stating this as the solicitor general critic for Her Majesty's Official Opposition, the Canadian Alliance. I believe that the government, if it is going to do the things necessary in terms of, as he puts it, bringing on more partners and working in co-operation with other international agencies, the government will have to step up with more resources, more resources in legislation and more resources in dollars and cents.

The government has squeezed the heck out of the RCMP to the point where it did not even have wheels to be able to turn to go down the highway. The RCMP has reached a point of rust-out. The RCMP is a very dispirited organization at this point in terms of its manpower because of the constant squeeze on the salaries of the RCMP.

If the government is going to do what is necessary there has to be full global co-operation between the Canadian government, the other governments of the G-7, the OECD and indeed all governments. The government cannot be seen to be what it is presently, which is kind of treating this whole issue almost like a poor orphan son.

The government needs to step up the resources required in order to get the job done. I do note that the government did come forward with some $500 million plus for the RCMP. It is a start but it is late. The point I am trying to make is that the RCMP requires more resources in terms of dollars and cents and CSIS requires more resources in terms of dollars and cents, but they also require a heavier attention by the government to this very important issue because it permeates every part of our society.

The government is on the right track. I prod it once again though because I do not think it is working nearly quickly enough on this and other very important issues that relate to organized crime and terrorism and the sharing of criminal intelligence around the world.

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ):

Mr. Speaker, it is a rare thing for me to agree with the Canadian Alliance, but I agree 100% with the comments by the hon. member on the job the Liberals are doing.

We have always had to force the government to act, whether in connection with crime, with legislative amendments, or other things that had to be done.

Take, for example, the $1,000 bill. A while ago, they announced their intention of taking it out of circulation. The Bloc Quebecois has been calling for this famous $1000 bill to be withdrawn ever since 1994, because this was one of only a few countries with such a high denomination.

We are well aware that these notes were used by organized crime. I realize that the member opposite does not like to hear the truth, that he is running away to avoid hearing it, but the Bloc Quebecois had to introduce private members' bills in this House to convince the government to take the $1,000 notes out of circulation.

The issue of money laundering and the introduction of a measure similar to Bill C-22 were discussed as early as during the Bloc Quebecois' first mandate. The issue was also part of our platform in 1997. Everyone knew that there was a major money laundering problem in Canada. It was only after the Americans ridiculed it that the government opposite finally decided to do something about this problem.

The Liberals had better not tell us that they have been diligent in this area. I fully agree with the Canadian Alliance member about the government's negligence. Since the Liberals took office, and while they were not taking any action, between $80 billion and $100 billion were laundered in the Canadian economy. This is unacceptable.

Mr. Jim Abbott:

Mr. Speaker, of course we are in agreement. It is unusual for the Canadian Alliance to agree with the Bloc on many things. Clearly, when one of the members of the Bloc Quebecois has been threatened by organized crime in his constituency, we must pull together. This brings the importance of this to the attention of the House.

On another up note, as a result of a Bloc Quebecois motion which I believe was supported 100% by the House, a subcommittee has been struck to examine the whole issue of organized crime in Canada. I commend the Bloc Quebecois for that. The subcommittee was struck just two days ago. The committee chair has been named and we will start to work on this issue.

Again, I agree with the Bloc it is unfortunate that the opposition has had to push the Liberal government so hard to get it to do the things necessary to get on with the very important job of protecting Canadian society.

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ):

Mr. Speaker, I am pleased to rise to speak to Bill C-22.

We should make it clear right off that the bill was introduced by the Minister of Finance. It is surprising from its title, because it could have been introduced by the Minister of Justice or even the Solicitor General of Canada. This bill is entitled an act to facilitate combatting the laundering of proceeds of crime, to establish the financial transactions and reports analysis centre of Canada and to amend and repeal certain acts in consequence.

From the contents of the bill, we can see that the Minister of National Revenue is the minister primarily concerned, since the bill concerns a number of matters relating to income.

The fact that this bill could have been introduced by a variety of ministers is not insignificant. It means that Bill C-22 involves of matter of some scope affecting various facets of our society.

Bill C-22 is in fact a tool to help us fight a scourge, whose impact can be felt on the streets, in the schools, in the vaults of our financial institutions and in our penitentiaries. It is even felt by our farmers, as we saw last fall, and in a number of economic, social and even cultural sectors of our community.

This scourge has a name. It is called organized crime. It comprises many aspects: the bikers, the Italian mafia, the Russian mafia, the Asian triads, street gangs and so on. Each aspect operates in its own way and has its own varied and effective methods of intimidation.

Thus, members will understand that organized crime is an evil poisoning our lives in many ways. And it is precisely because it is organized that this type of crime is so hard to fight.

There is only one way this can be done: we must get organized ourselves. This means that, like crime, justice must be organized. We must also provide adequate funding—I am happy to hear members of other parties in the House say so—to the police to help it organize its efforts. Stiff measures are needed and they must be organized. In a nutshell, it would be better if we started calling the shots or others will keep calling them for us.

But all this is not easy—far from it. Organized crime is not just the occupation of a few influential masterminds. It is no longer the playground of people like Al Capone and the mobsters of the early 1900s.

Organized crime involves many kinds of individuals, some of whom may often bear a strong resemblance to you or me. Most of them are anonymous members of the public who appear to lead their lives in an entirely above-board and ordinary manner. All the players in organized crime do not bear some easily identifiable mark. On the contrary, the people involved in organized crime are often anonymous.

Obviously, there is a more visible type of crime that often makes the news and appears in the headlines. There was the biker war that was splashed all over the media a while back, and which makes a return appearance from time to time. But the whole biker war phenomenon is only the tip of the iceberg.

Members will therefore understand that the phenomenon we are now seeing is extremely complex. It was time that the government suggested some effective responses to one of the most harmful aspects of organized crime, money laundering.

On more than one occasion, the Bloc Quebecois has been critical of the failure of Canadian legislation to prevent money laundering. Even so, the government waited until Canada found itself in the unenviable position of money laundering centre of the world before it decided to take action. It was high time that Canada did something because it has become, in the opinion of many international experts, a real sieve.

What exactly is “money laundering”? It is the process by which revenue from criminal activities is converted into assets that are difficult to trace to their criminal origins. What is involved here is the concealment of the proceeds of crime by making them appear legitimate. The bulk of these assets are related to drug trafficking, and most of the rest to criminal activities such as robbery or cigarette smuggling.

Since, by their very nature, money laundering and the criminal activities it attempts to camouflage are clandestine activities, it is hard to have any clear idea of the scope of money laundering activities. According to experts, however, the annual figure for the laundering of the proceeds of organized crime is about $17 billion.

What weapons did we have, then, against such a huge problem? Far from enough. A brief overview of Canadian legislation would be appropriate here. Hon. members will recall that the federal government passed legislation in 1988 amending the Criminal Code, the Food and Drugs Act, and the Narcotics Act, creating a distinct criminal offence of money laundering and providing for the seizure and forfeiture of the proceeds and property derived from various criminal and drug offences.

Section 462.31(1) of the Criminal Code provides that everyone is guilty of an offence who deals in any way with property or proceeds of property with the intent of concealing or converting them, while knowing or believing that all or part are derived, directly or indirectly, from the commission of either an enterprise crime offence or a designated substance offence.

The Criminal Code includes a list of 35 crimes coming under the definition of enterprise crime offence. We can see that something has been around since 1988, but we have to look at the decisions, the jurisprudence directly concerned with this section to realize it is inadequate, that it is insufficient to effectively fight crime. There is no need to be a great expert in criminal law to recognize this. It is enough to visit the courts to see how easy it is for a defence lawyer to get around these sections.

In 1991, there were other amendments to the Proceeds of Crime (Money Laundering) Act. Legislation was enacted in an extremely important area—financial institutions, real estate brokers, portfolio managers, and so on. It provided that, for any transaction of over $10,000 of a suspicious nature, information was to be taken and kept for five years. However, this was left to the discretion of the institution.

When a client of a financial institution has several million thousand dollars, and his portfolio is managed there, members will understand the reticence of the financial institution to report these sums. There is a problem.

In the last election campaign, the Bloc Quebecois included an approach in its platform to tighten things up, to provide major legislation to fight money laundering. Finally, the government seems to have understood with Bill C-22.

In introducing this bill, the government significantly remedies the situation by establishing three mechanisms to control suspicious transactions. The first is the mechanism of mandatory reporting of suspicious operations, as provided in clauses 5 to 11 of the bill. The second is a mechanism for the reporting of major cross border movements of currency, as provided in clauses 12 to 39. The third is the establishment of the financial transactions and report analysis centre of Canada, as defined in clauses 40 to 72.

Let us examine these mechanisms and the centre. With Bill C-22, the reporting of suspicious operations relating to money laundering, currently voluntary under existing provisions of the law, would become mandatory.

In addition, the obligation to report would extend to non banking financial institutions and certain other companies. Therefore, the reporting requirements would apply to regulated financial institutions, casinos, foreign exchange traders, stock brokers, insurance companies and persons acting as financial intermediaries, such as lawyers and accountants.

These people and institutions would be required to report certain categories of financial transactions and any other transaction regarding which there are reasonable grounds to believe that they are connected with the laundering of money.

Second, when it comes to transborder operations, people who import or export considerable amounts of currency or instruments, such as travellers cheques, will be required to report these sums of money to Canadian customs officers.

If a Canadian travels to the United States and takes $35,000 in travellers cheques for a three day trip or, conversely, if an American comes to Canada with $35,000 in travellers cheques or in cash, we are justified in asking questioning that person if he is only going to be in Canada for two or three days, or even just a few hours.

Failure to comply with this requirement could lead to the seizure of the currency or instruments carried by the individual, unless he gives up the idea of importing or exporting these sums of money. He can decide to go back to his country of origin.

Third, the financial transactions and reports analysis centre of Canada is an independent government agency that will collect and analyse the information provided on financial transactions and transborder movements involving currency.

The centre will also be a central repository for information on money laundering activities. It will analyse and assess the reports submitted and, if necessary, give leads to law enforcement agencies.

As I said earlier, the government opposite should have acted sooner. It should not have waited until Canada had a reputation as a major centre of organized crime before taking action. The government should have been much more proactive. It should have listened to the Bloc Quebecois.

It is odd that Bill C-22 has finally made it to the House a few weeks before a parliamentary committee begins looking at the issue of organized crime. Members will recall that I introduced a motion in the House a while back calling for the creation of a committee to examine this issue and to propose amendments to the legislation, if necessary, or other approaches. The parliamentary committee will study the issue and report to the House on the whole question of organized crime.

A few weeks before they start their deliberations, the government introduces Bill C-22 on money laundering. The government probably did not want to be criticized for having taken no action in this regard, but the usual drill is that every time the government opposite takes action, it is because the Bloc Quebecois has pushed it right to the wall.

It was the Bloc Quebecois that initiated the anti-gang legislation passed just before the last federal election. The Bloc Quebecois had questioned the government, which decided to do something about the problem just before heading into a general election.

It was the Bloc Quebecois that took the initiative with respect to getting the $1,000 bill withdrawn from circulation, and the government listened to us. With respect to Bill C-22 now before us, again it was the Bloc Quebecois, in its first term of office, specifically in its 1997 election platform, which said that the federal parliament should bring in legislation to do something about money laundering.

Finally, the government over there had no other choice, since the Americans have even told it Canada was an all-round champion as far as money laundering is concerned, but to decide to comply with the Bloc Quebecois' demands by introducing the bill we now have before us.

I have already mentioned the $1,000 note. It is extremely important for the government to heed us on this, and withdraw it from circulation as soon as possible. It is used mainly by organized crime, and must therefore be pulled, so that only denominations of $10, $20, $50 and $100 are available. It takes a whole lot fewer $1,000 notes to make $1 million, and is far less unwieldy, than $1 million in $10s, $20s or $50s.

Care must be taken, however, not to see Bill C-22 as a solution to all our problems. We must point out that this bill does give the government considerable regulatory power. Clause 73 of the bill in fact authorizes the Governor in Council, on the recommendation of the Minister, to "make any regulations that the Governor in Council considers necessary for carrying out the purposes and provisions of this Act".

At first glance, the regulatory power assigned to the minister may seem extremely broad, even too broad, one might say. Although such power could eventually bring about changes in the law without the need to amend it, still, a number of important issues, which should be debated by parliamentarians, will be handed over to officials. That is a bit risky.

Here is an example. The government will set, by regulation, the amount requiring reporting. Under subclause 12(2) as well, regulatory conditions will determine whether individuals may be exempt from the requirement of producing such a report.

Knowing that the required report is the backbone of the mechanisms put in place by Bill C-22, we can see that the government is giving itself vast regulatory powers. With its history, I fear that the government is not too eager to tighten the screw, to require reports, which are difficult to prepare, from offenders, and to be too demanding about the reports people or groups are to do. The public may rest assured, however, that we on this side of the House will be very demanding.

I would be derelict in my duties if I did not mention that Bill C-22 raises significant questions about the protection of certain basic rights covered by the charter.

In a free and democratic society, the legislator may limit certain individual rights, as dictated by the larger interests of the community. However, this limitation must not be exercised outside certain rules. Bill C-22 must comply with certain basic procedural rules. In fact, in the case of seizures and searches, great care must be exercised in the drafting of the bill to prevent effective contest before the courts.

Work in committee will ensure us that these standards are met, before the bill is passed. If parliamentarians fail to examine in minute detail the impact of this bill, lawyers who are well paid by organized crime will review it and arrange to have this law declared illegal and unconstitutional. It is up to us to work properly and effectively on this bill.

Mr. Scott Brison (Kings—Hants, PC):

Mr. Speaker, it is with pleasure that I rise to speak to Bill C-22, which will create a new agency to oversee and try to prevent money laundering in Canada, the financial transactions and reports analysis centre of Canada.

Bill C-22 would bring Canada up to date with the standards of our G-7 trading partners. It does not take us beyond the minimum standard, but it takes us up to that standard. It covers professionals, lawyers and chartered accountants, and even stock brokers and investment bankers would have responsibility to report under this legislation. It does not include, as in some other countries, a “know your client” rule, which would go much further in policing money laundering.

The responsibility to report suspicious transactions is described in this legislation, but it is not really spelled out in terms of what would define a suspicious transaction. I have some concerns about that. I would hope that as the legislation progresses we would define in a more comprehensive way what criteria would be required for an agency, an individual or a professional to define a transaction as being suspicious.

It would also expand the reporting by financial agencies of any transactions over $10,000 beyond banks. Currently banks report voluntarily. This would expand to include money marts and casinos. It does not delve into the retail side of commerce, which perhaps should be considered.

I have some concerns about that. Earlier I heard some members refer to the potential of the legislation being expanded at some point to include retail operations, for instance, jewellers or car dealers, where allegedly this type of money laundering exists quite a bit in terms of large sum purchases.

I would caution against expanding the scope too much, thereby creating a regulatory nightmare that would be extremely difficult to administer and could potentially have a negative impact in terms of the abilities of Canada's retailers to actually keep up with the paperwork and other requirements.

The legislation addresses cash transactions but does not address what is really the greater current and future issue of e-commerce or e-laundering.

It is very difficult to track financial transactions today that occur over the Internet or electronic financial transactions, particularly with sophisticated financial vehicles or instruments, for instance, derivatives. It is possible to hide transactions through derivatives and other financial instruments. In fact, cross-border electronic transactions, from a tax perspective, are becoming increasingly difficult to tax.

I would suggest to the government that the legislation is definitely long overdue, but that it addresses a problem which is really yesterday's problem, as opposed to addressing a problem which is clearly a problem of today and the future, that of electronically based money laundering.

The whole issue of smurfing, breaking large transactions into smaller units to get them below the $10,000 threshold which would trigger some level of activity by the new agency, is a real issue. For instance, in terms of deposits, several people could use various bank machines to deposit cash into the same account. Something as simple as a bank machine could play a role in money laundering, simply by breaking down transactions into smaller amounts to bring the transactions below the threshold that would trigger some level of investigation.

I am also concerned about the budget of the agency. I understand that the budget would be anywhere between $7.5 million and $10 million. Some suggestion has been made that there would be about a hundred people doing this.

I would suggest that it may be a very, very difficult job to police this type of activity with that size of budget. It sounds to some as a large budget, but I would suggest it is not really a very large budget at all.

I would also suggest to the government, as this agency and the government investigates ways to police the electronic money laundering side of it, that the government look toward some of the private sector solutions.

What I am speaking of are some of the companies that have developed technologies to deal with these issues—security issues on the Internet, et cetera—which may in fact be outpacing the technological advances capable of being developed by government. I think there will have

to be some private-public sector engagement on some of these issues, particularly as we delve into the new world of electronic commerce.

I have some concerns about Bill C-22. The legislation would create a new agency that is at arm's length from the government. That is positive from the perspective of preventing political interference in an investigation, but it is negative from the perspective that this new, all powerful agency could conceivably overstep its boundaries on an investigation of an individual case.

A Canadian citizen being persecuted by this agency on a given case would not have the protection offered by ministerial intervention to potentially defend that citizen. Only if systemic abuse is suspected would the minister be able to intervene. Whenever I see these new agencies, whether it is the new Revenue Canada agency or this new agency to police money laundering, I have some concerns about the lack of direct ministerial accountability and potential intervention on behalf of an individual Canadian who may be treated unfairly by one of these agencies.

Another concern I have is that this new agency would have the power to release information to Revenue Canada in accordance with the act. If reasonable grounds existed for the agency to believe that money laundering had occurred, there would be potential for abuse.

We have to be very clear that if the agency has some reasonable grounds to pursue an individual case of money laundering, that is one thing. However, if the agency does not have enough evidence to pursue a case of money laundering and determines that while the evidence does not exist it may be able to get the person on tax evasion, conceivably the agency could release the information to Revenue Canada. This would help Revenue Canada or the new Revenue Canada agency pursue the individual. Therefore, while there may not be a case against an individual for money laundering, this agency could potentially help the new Revenue Canada agency in pursuing someone on a tax evasion charge.

That is absolutely, fundamentally wrong. The two agencies have to be separate. Unless there are very clear grounds for a case of money laundering, it would be wrong for this agency to work with Revenue Canada on individual cases or to share information. We have to ensure on behalf of Canadian taxpayers that this does not become some souped up Revenue Canada annex or addendum.

If the new agency had reasonable grounds to suspect money laundering, that is one thing. However, if it was simply a case where it did not have enough grounds to pursue someone on that basis and determined that there was some level of evidence for tax evasion, it would be clearly wrong for the sharing of information to exist.

It is still nebulous as to whether or not this agency would have the ability to do spot or random audits on banks, money marts or casinos. I would assume that would be the case but it has to be spelled out. Again, we have to ensure in our pursuit of doing something that is valuable and important, which is policing and reducing the incidents of money laundering, that we do not create some new godzilla agency that would have an immense amount of power to hurt

legitimate Canadian enterprise, impede legitimate Canadian transactions, and effectively pursue some of the negative and oppressive activities we have seen from Revenue Canada in the past.

Those are my cautions. We are supporting this legislation with some concerns. We hope as this evolves, the government's policies on some of these issues will become more proactive in terms of addressing the real issues of today and in the future, and in particular embrace the notion of the electronic issues facing Canadians and law enforcement agencies.

Again these border on questions of resources. I have significant concerns with the extent to which the government has starved Canada's law enforcement agencies. It has prevented the RCMP from having the ability to enforce some of Canada's laws. As we expand these types of oversight agencies we have to ensure they are properly funded and that we give them the tools to do the job.

In that regard it may be very important for the government to consider some level of private participation. At least it should dialogue with the private sector on the electronic commerce side to ensure that the government is using the most up to date technologies to address these issues. A lot of these technologies exist in the private sector. The government should be more responsive to those forces and more amenable to work with private sector entities within Canada and elsewhere to develop solutions to these very real problems.

Mr. John Williams (St. Albert, Canadian Alliance):

Mr. Speaker, I appreciate the opportunity to speak to Bill C-22 which deals with money laundering. As my colleagues on this side of the House have pointed out, this has been a long time coming from the government. We are the last of the G-7 countries to get around to doing something about money laundering.

One of the great scourges of our modern society is the illegal movement of products such as drugs. That has an effect on our society. It affects the minds of our young kids. They get themselves bent out of shape by using drugs. It ruins their careers. It ruins their futures, ruins their minds and ruins their potential. It also leads them into crime to generate the cash required to pay for the drugs and to keep the cartels supplied with billions of dollars in profits.

The proceeds of these drugs move through many countries in many ways in order to get into this country. People stand there with their hands out. They know it is illegal and illicit and therefore they are capable of demanding some kind of payment, a form of bribery, for them to turn their eyes in another direction as the drugs pass by. We in the House have talked about crime and how young kids feel the need to commit crimes such as shoplifting and a lot worse than that in many cases, in order to feed and pay for their habit.

I am glad the government is doing something about money laundering. Most of us have no real concept of how big the movement of drugs is and the amount of money, the billions of dollars that are moving around because of it. I understand that the largest cash based industry in British Columbia today is the growth of marijuana. The export of marijuana across the country

and to other parts of the world is perhaps one of the largest industries in British Columbia today. That is shocking.

I have met with parliamentarians in other parts of the world. I am thinking of parliamentarians in South America. I recently attended a speech by our ambassador for Colombia who was here in Ottawa telling us about the situation there. We were told of the insurrection, the track that the government is losing control of its own country. In essence there is a civil war going on, not between two factions over who should rule the country, but the drug cartels do not want government anywhere near the growth of the drugs or the plants that produce the drugs. The cartels have their own air forces. They are able to fly the drugs out of South America through the Caribbean and up to the United States and Canada. This is a scourge on our society.

Money laundering is only one part of it. I want to broaden the debate. Money laundering deals with the movement of cash by illicit and illegal means but it is not just drugs we are talking about. We see bribery and corruption in all parts of the world. Believe it or not, Canada is not exempt; it happens here too. There are horrendous problems in South America. A year ago the commissioners of the European Union had to resign because of corruption. Members may have read about it in the paper. In Canada in the Prime Minister's riding, police investigations are going on because of potential misappropriation of government funds. If this is proven to be so, this would also be corruption. It is everywhere.

We read about it in the papers in the United States. Numerous elected officials in senior positions have been bought. I read one article just the other day regarding a governor who insisted on a $400,000 payment before he would vote in a certain way. It goes on. China has acknowledged that corruption is a major problem.

I would hope that we would start to do something about it. Transparency and openness is how to deal with bribery and corruption. It has to be brought out into the open so everybody can see what is going on. If a transaction cannot stand up to the light of day, it is likely illegal. If it is automatically going to be exposed in the light of day, it likely will not happen in the first place.

Look at what has happened with the HRDC scandal. Numerous audits were done and none of them were brought out into the open. On January 20 the last HRDC audit became part of the public debate. What has happened since then? The minister has told us that there has been a major review of all processes that go on in the department to ensure that the administration of the programs will now be done properly. Why were they not done properly before? Because there was no openness, no accountability and no transparency. We were not privy to the fact that previous audits had slammed that department and the administration of the files. It gets sloppy.

People with power and influence start using their influence and now numerous police investigations are going on. If these result in convictions, then that will show there has been corruption right here.

I am glad the world is finally waking up to the fact that bribery and corruption are perhaps the greatest scourge to economic development around the world. People with power and influence skim 10% and 20% right off the top and the money is going straight into Swiss bank accounts. There are also the people at the bottom end of the economic scale who, because they do not get paid enough money, have no choice but to insist on bribes for the work that they do or do not do.

In some cases we have people in positions of influence and power, such as policemen writing tickets or others granting permits, insisting on bribes to feed a large group of people or an extended family that depends on them for support because there is no cash in the economy.

We need economic development. We want to help the poor not only in this country but around the world. We can help the poor by attacking this cancer on society, the scourge of bribery and corruption. The OECD passed a protocol that was endorsed by a number of countries including Canada which says that bribery in a foreign country is no longer a tax deduction but a crime to be prosecuted in the home state. These are small beginnings.

I compare the current attitude on bribery and corruption to the position of society on the environment and human rights back in the 1960s. When we talked about the environment and our concern for the degradation of the environment in those days, people said that it was awful and asked why somebody did not do something about it. Then they would continue their daily routines.

It is 30 years later and the environment is now a core issue not only of this government and this country but of every developed country around the world. It is a core part of policy making. When they make policy the environment is a major consideration.

Human rights is the same. Back in the 1960s when people's human rights were being violated around the world, they would say it was awful and that somebody should do something about it, and they would continue their daily routines. Today we have war crimes tribunals. We have agreements and protocols. We insist on human rights when we enter into other agreements. Human rights is now a core principle of democracy.

I hope in a number of years, and hopefully not too many years from now, that the battle against bribery and corruption will also be at the core of civilized society in order for us to ensure that economic benefits accrue to all in society and that the cream or the profit is not ripped off illegally by those who happen to have power and influence.

It is everywhere. I have heard numerous examples, small and large. I will not bore the House with the details, but I would like to see the government and Canadians recognizing that bribery and corruption can and should be fought at every turn.

Bill C-22 on money laundering is a small start. I hope we will continue on from here and join forces with parliamentarians in other parts of the world to ensure that we carry the momentum forward so that in a number of years from now not only will we say that the environment and

human rights are at the core of our policy making but that the fight against bribery and corruption is also at the core of our policy making.

The Deputy Speaker: Is the House ready for the question? The House has heard the terms of the motion. Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

An hon. Member: On division.

The Deputy Speaker: I declare the motion carried. Accordingly, the bill stands referred to the Standing Committee on Finance.

(Motion agreed to, bill read the second time and referred to a committee)

April 11, 2000 [House of Commons Standing Committee on Finance]

The Chair (Mr. Maurizio Bevilacqua (Vaughan—King—Aurora, Lib.)): I'd like to call the meeting to order and welcome everyone here this morning.

Let me, first of all, apologize to the officials for the room. Unfortunately, due to lack of meeting rooms because of the Auditor General's report and lock-ups and what have you, we have to use these close quarters. This is yet another example of where perhaps some renovations should take place in this place. Of course this is a great idea by the Reform Party.

First of all, the order of reference today is Bill C-22, an act to facilitate combating the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada, and to amend and repeal certain acts in consequence. This is the order of reference we received from the House of Commons. This is what we'll be doing today. We will hear from the parliamentary secretary and a member of this committee, Mr. Roy Cullen. Welcome.

Later on other officials will also participate in the question and answer session. As you may know, we usually give 10 to 15 minutes for opening remarks, and thereafter we engage in a question and answer session.

Mr. Cullen, welcome.

Mr. Roy Cullen (Parliamentary Secretary to the Minister of Finance): Thank you very much, Mr. Chairman. Merci beaucoup, monsieur le président.

Let me first introduce the people at this table here, the officials who will be prepared to take questions later. With me are Mr. Horst Intscher, who is the executive director of the transition team, Financial Transactions and Reports Analysis Centre of Canada; Mr. Richard Lalonde,

who is the acting chief, financial crimes section, financial sector policy branch; Yvon Carrière, senior counsel; and Charles Seeto, director, financial sector division, financial sector policy branch, and other officials who we can introduce more fully later.

Mr. Chairman, I appreciate the opportunity to speak to the committee today about Bill C-22, the proceeds of crime or money laundering bill. I'll keep my remarks brief so that we can have plenty of time for questions. This bill, Mr. Chairman, updates and strengthens the existing act by the same name that has been in force since 1991. The legislation improves the detection, prevention and deterrence of money laundering here in Canada.

[Translation]

Before going further, I should define the expression "laundering of proceeds of crime". It is a process by which money illegally gained from criminal activities is converted into assets which cannot be easily tracked back to their origins.

[English]

In other words, Mr. Chairman, this is money that is laundered to hide its origin. While open borders encourage competitive international markets and greatly benefit trading nations like Canada, they also have a potential downside in that criminals can use them to infiltrate financial markets for the purposes of money laundering. Today's globalized financial markets make it very easy for criminals to launder millions of dollars every day in illegal profits from drugs and proceeds from other crimes such as burglaries and cigarette smuggling.

It is estimated that between $5 billion and $17 billion are illegally moved in and through Canada every year. Mr. Chairman, this is a serious problem, one that requires that adequate measures be put in place to deter and detect money laundering and ensure that financial intermediaries exercise due diligence in the conduct of their business.

In addition, the reputations of financial intermediaries that are victims of money laundering could be adversely affected.

[Translation]

Here in Canada, we are committed to combat money laundering as efficiently as possible. If traditional investigation methods are no longer as effective as they should be, new measures must be adopted for that purpose.

[English]

Bill C-22 provides these new measures. It does so by responding to calls by Canadian law enforcement agencies for legislation requiring the mandatory reporting of suspicious transactions and cross-border movements of currency. This legislation was designed with the goals of giving law enforcement agencies the tools they need while at the same time protecting individual privacy. Bill C-22 meets both these goals.

• 0910

Bill C-22 also addresses concerns raised by the Financial Action Task Force on money laundering, a group established by the G-7 in 1989, that Canada was not meeting international standards on mandatory reporting of suspicious transactions and in centralized collection and management of reports. Indeed, Canada is the only country not to require mandatory reporting. With the passage of this legislation, our reporting regime will be in compliance with Financial Action Task Force standards and in line with most industrialized countries around the world.

Before I outline the specifics of the bill, it is important to note that this legislation was not developed in isolation but is the result of extensive consultations with many interested parties, including the provinces and territories, stakeholders from the financial and law enforcement communities, consumer groups, and organizations with an interest in privacy issues.

[Translation]

Mr. Chairman, I would like to take some time to explain the main elements of this bill.

First, Bill C-22 maintains the requirements about record keeping and client's identification already provided by the Laundering of proceeds of crime (money laundering) Act.

[English]

Second, the new measures being introduced include the requirement for financial intermediaries to report where there are reasonable grounds to suspect that there are financial transactions that are related to money laundering. In addition, regulations are being developed that will describe specific transactions, such as the receipt of $10,000 or more in cash, which must be reported. Regulated financial institutions, casinos, money service businesses, and currency exchange businesses, as well as lawyers and accountants, will all be subject to these reporting requirements. Failure to report suspicious transactions can result in jail terms of up to five years or fines of up to $2 million.

Third, large cross-border movements of currency must also be reported. The importation or exportation of large amounts of cash or monetary instruments like traveller's cheques will have to be declared to Canada Customs. Failure to comply may result in the cash being seized. Review and appeal mechanisms will be in place to deal with cross-border seizures and penalties. Seized currency will be returned once a fine has been paid, unless Customs suspects it represents proceeds of crime.

Fourth, this bill establishes the new Financial Transactions and Reports Analysis Centre of Canada.

[Translation]

The Centre, which will be independent from law enforcement agencies, will receive the reports that are required by the law, analyze and assess those reports and disclose to law enforcement agencies from everywhere in Canada information regarding any activities suspected of being related to the laundering of proceeds of crime.

[English]

The centre will be authorized to provide information to the appropriate police force if, on the basis of its analysis, the centre has reasonable grounds to suspect that the information would be relevant to a money-laundering offence. The bill also allows the centre to disclose information to the Canada Customs and Revenue Agency, the Canadian Security Intelligence Service, and Citizenship and Immigration Canada if, in addition to being relevant to money laundering, the information is also relevant to their activities.

As a central point for the collection, analysis, and disclosure of information, the centre will cooperate internationally in the exchange of information with similar agencies, enhancing Canada's role in the global fight against money laundering. Further, the centre will be responsible for monitoring compliance with record keeping, client identification, and financial transaction reporting requirements, and where appropriate, it will seek partnerships—for example, with provincial regulatory bodies—to assist with carrying out this function.

I can assure this committee that the collection, use, and disclosure of information by the centre will be strictly controlled. Only a specified, limited amount of information reported to the centre will be passed to the police and other designated agencies, and only under specified conditions. The information that can be disclosed is limited to key identifying information, such as the name of the client, the account number involved, the amount and location of the transaction, and other similar information. Law enforcement authorities will be required to build a case for prosecution purposes and obtain a court order for disclosure before any further information could be passed on. The centre and its employees will also be immune from subpoena, search warrants, and other compulsory processes, except with respect to money-laundering investigations and prosecutions.

• 0915

[Translation]

Finally, the Centre will be subject to the Access to Information Act and to the Privacy Act, and legal penalties will be imposed for the unauthorized use or disclosure of personal information held by the Centre.

[English]

Bill C-22 provides regulation-making authority with respect to the coverage of entities, client identification, record keeping, and reporting requirements. Mr. Chairman, such regulation-making authority provides the needed flexibility to respond quickly to the ever-changing nature of money laundering, and to adapt the regime to changes in the way financial

intermediaries conduct their business. It also allows greater flexibility to respond to issues raised by stakeholders in complying with the legislation.

Extensive consultations have already begun on proposed regulations, with the release of the Department of Finance's consultation paper last December. Submissions were received and departmental officials have met with many stakeholders to hear their views. Further consultations will be required over the coming months to further refine the current regulatory proposals and to develop additional proposals regarding the form and manner of reporting.

It should be noted, Mr. Chairman, that Bill C-22 provides a statutory minimum 90-day pre-publication requirement for any regulation proposed under the act, and a minimum 30-day notice period if further changes are made to the proposed regulation. This requirement goes well beyond what is provided in many federal statutes, reflecting the importance that the government attaches to public consultations in this particular area.

Mr. Chairman, the benefits of this new reporting system are numerous. The new system will rely on the individuals—for example, financial intermediaries—who are in the best position to detect money laundering as it is occurring. It will also provide more reliable and consistent reporting in a more timely manner.

[Translation]

The reports, being centralized at the new Centre, will provide essential analyses which will allow police forces to follow reliable tracks and to use law enforcement resources more efficiently.

[English]

Successful investigations and prosecutions can ultimately lead to court-ordered forfeiture of the proceeds of criminal activities. This will also allow Canada to better shoulder its international responsibilities and anti-money-laundering efforts by enhancing its ability to cooperate with other countries.

In conclusion, Mr. Chairman, Bill C-22 targets the financial rewards of criminal activity, and protects the integrity of our financial system in Canada. It creates a balanced and effective reporting scheme to uncover criminal activity while protecting individual privacy. It also complements other federal initiatives against organized crime, along with helping Canada to meet its international commitments in this area.

[Translation]

Mr. Chairman, those are the main provisions in bill C-22. Myself and the officials here will now be happy to answer your questions.

Thank you.

[English]

The Chair: Thank you very much, Mr. Cullen.

We'll now proceed to the question and answer session, and we'll begin with Mr. Abbott.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance): Thank you. Could you tell me what the format is, just before we start?

An hon. member: We can have as much time as we want.

The Chair: You have a ten-minute round, so make the questions nice and brief so that we can get as many in as possible.

Mr. Jim Abbott: Okay, thank you.

Mr. Cullen, thank you for your presentation. To the officials and everyone else squeezed into this room, welcome. This is what it must feel like to be in a sardine can, but I'm not really sure.

First, let me just quickly restate what I said in the House. If the Liberals were given a hamburger franchise, I think they'd do away with the concept of fast food. This legislation has been an awfully long time coming, and certainly the Canadian Alliance is in favour of this legislation in principle. There are some questions that I have, though.

In a private briefing that I had with some of the officials, they explained something to me that I would like to get on the record. Whoever feels they can most appropriately respond to this question can do so: Why do we need a separate transaction centre? Why can we not use the existing bureaucracy and perhaps do some fine-tuning within the existing system, rather than adding a new level of bureaucracy and more people? I'd like to get that on the record, please.

Mr. Roy Cullen: Thank you. Maybe I can start and then refer it to perhaps Mr. Lalonde.

The reason for an agency is to ensure and safeguard the privacy provisions of citizens so that there is a vetting of information and so that only high-level information will be submitted to the police if there's a suspicion of money laundering. What we're doing is consistent with all G-7 countries, as I understand it, and it's mostly geared to making sure only serious concerns about alleged money-laundering activities are reported to the police and the privacy of citizens is maintained.

Perhaps Richard or Charles can add to that.

Mr. Richard Lalonde (Chief, Financial Sector Division, Department of Finance): Thank you, Mr. Chairman.

That's right. The need for an independent agency here is underscored. Other countries of the Financial Action Task Force have this particular model. Independence from government bureaucracy and from law enforcement agencies is critical, because this agency will be collecting and analysing sensitive information, personal information, about Canadians' financial transactions. It will need to safeguard the information it does gather, and it needs independent judgment from government to determine whether or not to disclose certain information to law enforcement agencies and other appropriate organizations.

Mr. Jim Abbott: I'm a little concerned with some specific phrasing used there. Would it be at the discretion of the government to release the information? Is that what you said?

Mr. Richard Lalonde: No, quite the contrary. I meant to say it's at the discretion of the agency itself, and that's why it needs this independence to carry out its mandate.

Mr. Jim Abbott: Okay.

Why would a libertarian not be concerned about further intrusion into the affairs of Canadians with this legislation and with this transaction organization?

Mr. Roy Cullen: I suppose, Mr. Abbott, you can't have your cake and eat it too. On the one hand, the creation of a centre is designed to make sure the privacy concerns of Canadians are respected. In designing the legislation and in designing the agency in the consultations to date, we've taken great care and great pains to make sure the privacy of Canadians is respected. I'm sure some individuals, organizations, and stakeholder groups will make representations to this committee that there is a concern about privacy issues, but we feel we've dealt with them in a very comprehensive way.

Richard, would you like to add anything?

Mr. Richard Lalonde: That's fairly comprehensive. A number of safeguards have been set in the legislation to protect the information that is collected from Canadians by this proposed agency, and we can certainly go into more detail about that if you wish.

Mr. Jim Abbott: Should there be any concern on the part of Canadians, either individuals or businesses, about part 4, subclause 73(2) of the legislation? It reads:

A copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published...
etc. I realize that's fairly standard in this kind of legislation, but I put that up against a letter I think a lot of us received, dated February 8, from H&R Block. The individual here makes a point about the $1,000 record-keeping threshold. He says:

Our principal concern is section IV... which requires that we retain a record for five years or more of every transaction of $1,000 or more.
and so on and so forth.

I haven't had an opportunity to inquire of the writer, Mr. Irving, from H&R Block. I haven't interviewed him at all. But I found this letter kind of confusing when I took time to refer to the legislation, where I don't see anything about $1,000. But then that raises the question: should Canadians and should business be concerned about the fact that this is, with due respect, a form of blank cheque, and an onerous amount of regulations and record keeping might end up being piled onto individuals and businesses in Canada under this open-ended subclause, 73(2)?

• 0925

Mr. Roy Cullen: To start off, we tried in the legislation to strike the right balance in the number of organizations or sectors included in the reporting requirements. At this point it's limited to financial intermediaries. Once you go beyond that, you can put some compliance costs onto other businesses that may not be necessary.

In the whole process, because we're breaking new turf, we'll be guided by the idea of developing regulations in consultation with stakeholders, and we'll also be guided by the experience as we implement the act and the agency.

Clearly the intent is not to put an excessive burden on businesses, but we feel it will be the responsibility of those who are involved at the front end of receiving cash or receiving that kind of information to report.

With respect to H&R Block, perhaps Richard or Horst would like to comment.

Mr. Richard Lalonde: Sure. H&R Block provided us with comments on the consultation paper on the proposed regulations. My understanding and my recollection is that their concerns were about some of the thresholds being proposed. These thresholds are provided for, or at least the regulation-making authority is provided for, in clause 73 of the bill. We are in ongoing dialogue with stakeholders now to refine those proposals.

It's clear we have no intention of unduly burdening anyone. In fact in advancing the consultation paper, we stated quite clearly that our objective here is to minimize the compliance burden, and we're very sensitive to that. That is why we will be discussing these issues directly with stakeholders over the coming months to get it right.

Mr. Jim Abbott: I have the greatest respect, in all sincerity, for everyone sitting at this table and indeed everyone in this room, and I don't question the intent of any individual in this room. What I'm concerned about is the growing encroachment of bureaucracy and the reporting functions required for business that are absolutely strangling business around Canada.

As I said, the Canadian Alliance supports this legislation in principle. We understand why it is required, and indeed it should have been here a couple of years ago. That being said, we're still very concerned about the fact that although every good intent in the world is going into this thing, it has the potential to become a real paperwork nightmare if it is not very, very tightly regulated.

Mr. Roy Cullen: Mr. Abbott, you're right that we need to be very careful about the reporting requirements we've put in place. Because the act also calls for a 90-day period for gazetting any additions or changes to the regulations, it gives Canadians a lot of time to respond and express their concern if they feel the government is going too far. It's something that has to be monitored very carefully.

Our coming forward now at this time with this legislation means we've taken the time to consult extensively and we want to ensure we have it right. We think we're getting close, but the consultations with this committee and with other stakeholder groups on the regulations will be very beneficial in setting the right course.

The Chair: Thank you, Mr. Abbott.

[Translation]

Mr. Marceau.

Mr. Richard Marceau (Charlesbourg, BQ): First, thank you Mr. Cullen for your presentation. I also want to thank all those who dared to come here with you in this closed room.

Mr. Cullen, I would just like to understand somewhat better the link between FATF and bill C-22. As I understand it, bill C-22 was proposed after some recommendations from FATF, which brings together countries not only from Europe but also from the Gulf and North America.

• 0930

Are we heading towards systems that would be quite similar in all countries of the world by following FATF's recommendations?

Mr. Roy Cullen: I think we must coordinate our efforts with those of other countries. Member countries of G-7 have established that Action group with a view to improve the situation and to coordinate activities aimed at minimizing money laundering in all countries.

[English]

Perhaps the officials could...

[Translation]

The Chairman: Mr. Lalonde.

Mr. Richard Lalonde: Sure. Money laundering is a global problem which, therefore, requires world-wide solutions or combatting measures, hence the need for international cooperation.

FATF was created in 1989 to establish international standards in order to allow member countries to cooperate more efficiently in combatting money laundering.

Bill C-22 of course draws its inspiration from the standards that were established by FATF as well as from FATF's reviews about the situation in Canada.

Mr. Richard Marceau: All right. Therefore, the Centre which is going to be created has its equivalents in other countries in the world; that's what you are telling me. It has or will have equivalents in other countries of the world.

Will the canadian centre be able or have to disclose certain information to other centres throughout the world in order to combat precisely what you call that world-wide problem? I assume that it will.

I am getting at my question. In Canada, we have established certain standards after which such a centre will have to operate. You mentioned the Access to Information Act and the Privacy Act. Now, some countries in the world do not necessarily have such protections. I'm asking you that question, but let me tell you at once that we support that bill. Is there not a danger that some protected information the disclosure of which is forbidden here in Canada could then be diverted, communicated to another country and ultimately reappear somewhere in Canada through another channel? In one word, could we be brought to do through the back door what we are not allowed to do through the front door? Via agreements with other countries, will it be possible for us to avoid the exportation of our protected information and ensure that the safeguards which you have very rightly provided in the bill are not bypassed?

Mr. Roy Cullen: I'm sorry, but I'm going to answer you in English.

[English]

First of all, the kind of information that would be shared would be subject to the same kind of rigour. Only high-level information would be shared, but it would be governed by a protocol with every individual country. It's really only in the area of the police investigation, where there's obviously cooperation through INTERPOL and other agencies, that the law and the standards of subpoena of information, etc., would apply.

In terms of sharing information with other countries, there would be protocols established and the privacy and confidentiality of information would be respected. It would only be at the first blush, at the agency level... the high-level information that would mark the types of activities in a very general sense.

Is that fair enough?

[Translation]

Mr. Richard Lalonde: I would simply add that any exchange of information with other entities similar to our Centre would be governed by protocols as provided in the bill. These

would concern not only the exchange of information, but they would also restrict the use of that information by the other country.

Mr. Richard Marceau: In what section can the provisions regarding the protocols be found? Is it section 56?

• 0935

My question is: Do you think the bill would be improved, if we want to have an additional safeguard, by adding to that section a provision to the effect that any such protocol should by all means respect the Canadian legislation regarding privacy or access to information?

I had a quick look at those three subclauses and I have seen no mention that such agreements must be governed by the same rules or conditions which have been provided in Canada with regards to protections.

The Chairman: Mr. Carrière.

Mr. Yvon Carrière (Counsel, Transition Team, Financial Transactions and Reports Analysis Centre of Canada, Department of Finance): Every country has its own legal system. In the United States, for example, police have direct access to the database which contains information about suspicious transactions. Of course, if we were to impose Canadian standards, just no information could be transmitted from Canada to the United States.

In some other countries, like Belgium, it is for judges to decide what can be made public or not. Again, in the Canadian context, magistrates are not allowed to decide whether information should be disclosed or not. Therefore, I believe that it would be like trying to impose our own standards to completely different judicial systems.

Mr. Richard Marceau: I agree with you. I understand your views, but it brings me back to my first point. You are saying that in the United States—and that frightens me a bit—, any policemen can access that database. If, for example, the House ruled that for a certain transaction, Richard Marceau is suspected of having committed a money laundering offence—and we will come back later on the nature of such suspicion—and if such a protocol had been concluded between Canada and the United States, it seems to me that, given the tremendous number of policemen in the United States, many people could then access information which is extremely personal to me.

So, there is a danger that we be brought to do through the back door what we are not allowed to do through the front door, that is to give access to very personal information, to things that should only be known by very few people. With such a bill, we are already intruding the private life of individuals, and we accept it because the problem we want to combat is serious. On the other hand, if you are telling me that police forces in the United States are also going to be allowed to intrude into our private life, that means a lot of people. There might be more policemen in the United States than there are citizens in many countries.

Mr. Yvon Carrière: I would like to make it clear that the Centre would be entitled to disclose information to another country only where there are reasonable grounds to suspect that such information would be useful for investigation or prosecution purposes regarding offences related to money laundering. So it comes to saying that there is in all cases a basic condition which has to be met: there must be suspicions.

Second, it will apply only to information which is designated or defined in the law, that is the client's name, the amount of the transaction and the site where the operation took place. Even then, protocols might include conditions which would limit the use of such information. Each protocol might have its own proceedings. I am sure that we will show a great deal of discrimination in deciding which countries we are going to conclude agreements with.

Mr. Richard Marceau: I would have some additional questions, Mr. Chairman, though I know that time goes by.

You mentioned which criteria should be used in order to determine what can be considered as reasonable grounds to suspect money laundering. Now, nowhere in the law those criteria are defined. Furthermore, there is no provision in the law concerning the making of regulations which would establish which criteria are going to be applied to determine what constitutes a reasonable ground. It seems to me that the Centre will hold an extensive discretionary power. I believe it should rather fall to the legislative power if not to the governments to define what are the reasonable grounds, rather than to an agency which is not accountable to the government. I would like to know your opinion on that.

[English]

Mr. Roy Cullen: Mr. Marceau, don't forget, what we're talking about here is a different... The comparable agencies in other countries, who, only on the basis that there are grounds for suspicion that there is a money-laundering activity being undertaken...

That is defined right now to some extent in the guidelines already being used, and it perhaps will be expanded upon with the regulations that go with this bill.

• 0940

So only certain high-level information would be shared if there's a suspicion of a money-laundering activity. There will be protocols. Also, these agencies have to work with each other in order to make our mutual efforts more effective. There has to be a certain community of effort here that respects the individual laws and privacy concerns of each individual country. Those would be incorporated into the protocols that are developed.

[Translation]

Mr. Richard Marceau: I was rather talking about the criteria which are going to be used to determine the reasonable grounds to suspect that there is money laundering activity. That is not defined in the bill. Nowhere in the law it is said that it will be incumbent upon the

government to define such criteria by virtue of its regulatory power. So I assume that it is left to the discretion of the Centre itself. We are going to give the Centre the discretionary power to decide what are going to be those reasonable grounds. Does it not seem to you somewhat extensive as a power?

[English]

Mr. Horst Intscher (Executive Director, Transition Team, Financial Transactions and Reports Analysis Centre of Canada, Financial Sector Policy Branch, Department of Finance): If I may, I will perhaps offer a bit of explanation. First of all, the initial determination as to a suspicion will be made by the reporting entity when a suspicious transaction is reported. They will judge that, really, in the context of their own business: transactions that are sufficiently out of the ordinary that they cause the reporting entity—for example, a bank or a trust company—to believe that the transaction might be suspicious in regard to money laundering.

In terms of the centre making its determination, it will to some extent depend on the individual case. Again, depending on the information that has been reported by reporting entities and information received from other entities, it will make a judgment to assist reporting entities in making a judgment as to whether or not a transaction is suspicious.

The centre will be issuing guidelines from time to time that describe types of transactions that are specific to the banking industry or specific to credit unions, to casinos, or to other kinds of money service businesses, transactions that have been found to be related to money laundering in other cases or in other jurisdictions. So it is done as a means of helping reporting entities form a view as to whether a particular transaction gives rise to suspicion and should be reported to the centre.

Mr. Roy Cullen: If I could add something to Mr. Marceau's points, right now there are guidelines that are in play on a voluntary basis. These to some extent define or give examples of suspicious transactions and provide some guidelines. One of the challenges, of course, is that in financial intermediaries the activities or the way they go about things are changing all the time, so we need some flexibility. But it's not as though this is a blank page. There are already guidelines and these are going to be modified and expanded with this current bill.

Mr. Stan Cohen (Senior Counsel, Human Rights Law Section, Department of Justice): If I could just add a word on the matter of the meaning to be attributed to the phrase “reasonable suspicion”, there is a Charter of Rights overlay on the whole of this exercise. These grounds that have been identified—“reasonable grounds to suspect”—are grounds that have a meaning within decided case law.

It admittedly is not as high a standard as “reasonable and probable grounds”, but the Supreme Court of Canada has endorsed a meaning that basically requires that in order for a reasonable suspicion to exist there must be—and I'm quoting here—“a constellation of objectively discernible facts which give the detaining officer reasonable cause to suspect that”, in this case, “the detainee is criminally implicated in the activity under investigation”. It goes on to

say that importantly, “a hunch based on intuition gained by experience cannot suffice”, no matter how accurate that hunch may prove to be.

So what we're looking for, and what the case law insists upon—and ultimately this might shake down in any litigation ever brought involving this—is something that is based upon objective criteria that will have to be established. They would look to criteria that are developed through regulations, guidelines, etc. So it's not a totally arbitrary standard that has been established here, nor is it a standard that is without any meaning within jurisprudence.

• 0945

Mr. Roy Cullen: While the agency is quite independent of the minister, if the centre is getting out of line with what he or she views as the best interest of the public, then the minister does have the power under the bill to step in and review it from a policy point of view and to chart a new course.

The Chair: Thank you, Mr. Marceau.

Mr. Nystrom.

Mr. Lorne Nystrom (Regina—Qu'Appelle, NDP): Thank you very much, Mr. Chair.

I'd like to welcome everybody here this morning.

As we said in the House, the New Democratic Party is in support of the legislation. This brings us up to par with other countries around the world in the OECD.

I want to ask a couple of questions along the same lines as those of my colleagues here. First, perhaps you could give us a bit more information as to how suspicious transactions would be defined in regulations. These are very tough questions. I don't expect you to have the precise answer for that, but perhaps you could give a bit more information as to how this definition will be made in terms of regulations. It's not of course part of the bill, but it will be part of the law. If you could shed a bit more information on that, it might be helpful.

Mr. Richard Lalonde: As we indicated a little earlier, there is no definition in the legislation of what constitutes a suspicious transaction.

Of course, the legislation does provide for two kinds of reporting of financial transactions. One is the reporting of prescribed transactions, and it can be those above a certain threshold or certain kinds of very objective transactions. The second kind is the reporting of suspicious transactions. As we've indicated, the approach taken by many other jurisdictions, including the United Kingdom, is simply to provide guidance through guidelines to financial intermediaries on things they should consider in coming to a determination of what is or is not suspicious, and that is the approach we intend to take.

Mr. Roy Cullen: Mr. Nystrom, I have a list here of maybe 12 examples of suspicious transactions under the guidelines that are currently in use, examples where cash is involved or bank or trust company accounts are involved, unusual large cash deposits made by an individual company that would normally not generate that kind of cash, customers whose deposits contain counterfeit notes or forged instruments, etc. There are about a dozen of those, which we could go over if you'd like. They will evolve and change as money launderers and financial intermediaries become more creative and more inventive.

Mr. Lorne Nystrom: I assume the guidelines will be similar to those of the other OECD countries.

Mr. Roy Cullen: Yes.

Mr. Lorne Nystrom: In terms of privacy, this bill would permit the centre to turn over relevant information on tax offences to Revenue Canada, and again there could be a threat to privacy in certain circumstances. Can you add anything to what you've already said in terms of what the guidelines might be with regard to turning over tax information to Revenue Canada?

Mr. Roy Cullen: I'll just make a general point. The focus of the bill is money laundering. If money laundering is involved, probably tax evasion is involved. But the reverse is not necessarily true. If there's a suspicion of money laundering and at the same time a suspicion of tax evasion, that information could be passed simultaneously through the revenue agency and the police, if there was a joint suspicion. At that point there would be a coordinated effort between the police agencies and the revenue agency.

It seems to me that the first priority would be to look at the money-laundering activities, and it would be a coordinated effort between the police and the revenue agency. But the primary focus—I need to emphasize that point—is on money laundering and money-laundering activities.

• 0950

Richard, would you like to expand on that?

Mr. Richard Lalonde: I think you've been quite complete on that one. The initial thing is that there has to be a reasonable suspicion by the centre that money laundering is occurring before any information can flow to any authority other than the law enforcement body. The other thing to remember is that in including these additional organizations as possible recipients of information, it's in recognition that they do of course play a role in combating organized crime in Canada, and that is the focus here.

Mr. Lorne Nystrom: I have another question, Mr. Chair. Maybe I'm wrong on this or a bit naive, but I don't think the bill addresses things such as credit card or debit card fraud. If I'm right on that, why doesn't it address those areas? Is this not an area where money could be laundered?

Mr. Richard Lalonde: You're absolutely right, these are areas where money can be laundered. This bill does target the laundering of the proceeds of credit card fraud, along with the proceeds of other enterprise crimes that are defined in the Criminal Code, as well as designated drug offences. So it does target these particular crimes.

Mr. Lorne Nystrom: I have one last question. Going back to Mr. Abbott's question about why a centre instead of an existing agency, do all the other countries that have similar legislation have centres that administer it independently, or do some use their national police, such as the RCMP in this country? We're not unique in that, I assume.

Mr. Richard Lalonde: There are different models around the world. Some do indeed have their law enforcement agencies involved, but more often than not these are newly created independent agencies. They can be an arm of an existing financial services regulator, or they can be a stand-alone. Their powers will differ from country to country, and so will their mandates. But they all have a responsibility to channel, if you want, information to law enforcement.

Mr. Roy Cullen: The idea behind that, Mr. Nystrom, is to make sure there's not an overzealous pursuit of suspicions, that there's a first vetting at the deposit-taking or money-receiving level in terms of suspicious transactions or transactions that by regulation will be required to be reported. Then there's a further vetting at the agency level where they're using other information and other patterns. At that point, if there's another suspicion of money laundering, only then would it be referred to the police. If the police then aggregate that with their information and want more information, they'd actually have to go to a court and get a subpoena to get some detailed information.

Mr. Lorne Nystrom: Thank you.

The Chair: Maybe to go a little bit outside of the bill itself, whenever a piece of legislation like this is placed in front of the Canadian people, of course there are resources that are required to implement the bill itself, the law. Based on our prebudget consultation hearings, the RCMP and all the other law enforcement agencies require much more money.

I think this bill is long overdue, and it's great that we're moving on this and at least getting to the same level as some of our counterparts. But while in theory this is a great bill, what type of commitment has the government made to make sure this can actually become reality?

Mr. Roy Cullen: Thank you, Mr. Chairman.

In budget 2000 additional resources were committed to the RCMP, and about $5 million of that is to complement their existing anti-money-laundering activities. With regard to the centre itself, estimates are being pulled together on the cost of supporting such a centre. It's early days, but it looks as if it's in the vicinity of $10 million to $15 million a year, something in that order of magnitude.

Again, if one wants to deal with this very serious issue of drug money increasingly being laundered through our country and if we want to respect the privacy concerns of Canadians, sometimes you don't have many options. But you're point is well taken. Resources are scarce. But in budget 2000 there were additional resources allocated to the RCMP for activities related to this.

• 0955

The Chair: Yes, but let's be frank with one another here. From the background notes that I have here, it says that money laundering is a serious criminal offence entailing the illegal movement of funds estimated between $5 billion to $17 billion in and through Canada each year. Now we're going to combat that with an additional $5 million. I'm just wondering—and perhaps this is the wrong place to ask the question, I'm not sure—if we really want to implement this, shouldn't we be giving the law enforcement agencies or the centre real money to address the issue?

Mr. Roy Cullen: First of all, the additional money for the RCMP is complementing some of their existing resources. As to whether that's enough, whether $10 million to $15 million is sufficient for the new centre, how much is enough? Your point is taken. As we get into this and the patterns are identified, we may find there is more money laundering than we're happy with, and it may mean that more resources need to be applied to it. I would think that at this point the government's probably reasonably confident that we've initially assigned or will assign the required resources to get it launched, but it will be constantly and continuously monitored.

We have Mr. Deacon up from the RCMP.

Mr. Jamie Deacon (Director, Anti-Organized Crime Division, Ministry of the Solicitor General of Canada): Mr. Chairman, I would just add on the point of resources that in 1997 the government approved resources to establish 13 integrated proceeds-of-crime units in the RCMP. They're located in major centres across the country. They're managed by the RCMP, but they include provincial and local police, CCRA personnel, and crown counsel and forensic accountants to deal with complex money-laundering cases. So there have been, as well as the more recent investments that Mr. Cullen mentioned, earlier investments in money-laundering enforcement, and the arrangements in Bill C-22 will very much support the activities of those units and make them more efficient.

The Chair: So you're happy with the amount of money?

Mr. Jamie Deacon: I wouldn't want to comment on that specifically. I simply note that there have been investments to date.

Mr. Roy Cullen: Have you a better number?

The Chair: I'm not saying I have a better number, but if it's in fact organized crime, and it's $5 billion to $17 billion, yes, I have a question. I don't think $10 million is a lot of money to

seriously look at this particular issue. I may be proven wrong, but I think if you're in fact dealing with $17 billion, you'll need a lot more resources than that.

Mr. Szabo.

Mr. Paul Szabo (Mississauga South, Lib.): I have a couple of general questions.

The Canadian Institute of Chartered Accountants, for instance, are going to be in a position where their members will have to go out and look at the books and records of companies, and they're going to find themselves having to ask these questions or look at what obligations they have. Have they had any problems with the proposed approach to dealing with this, in terms of what additional burdens or requirements it may place on their profession?

Mr. Roy Cullen: I think, Mr. Szabo, we have had some representation. Maybe Mr. Lalonde would comment on that, or Charles.

Mr. Richard Lalonde: Sure.

We've had occasion to speak with both the Canadian Institute of Chartered Accountants and the Certified General Accountants' Association of Canada regarding the bill, the proposed regulations, and I think we were able to reassure them in part that we are looking to cover them insofar as they are acting as financial intermediaries—in other words, insofar as they are involved in financial transactions on behalf of their clients.

The accountants did raise the issue of their auditing function and the possibility that they might be put in conflict with their clients if they had to report information to the centre that they have gathered as a result of the auditing function. What we have indicated to them is that the regulations will indicate very clearly that the reporting obligations will not apply to the auditing functions of the accounting profession.

• 1000

Mr. Paul Szabo: That's a good point, because I think even with regard to charities, for some of their activities they can't possibly give full assurance, and I was wondering whether something like this would lead to an automatic qualification of statements simply on the basis that they would have no basis for making that acclaimed opinion without... There's just no way to do it.

It's estimated that about 70% of laundered money is related to drug trafficking. I'm wondering how much collaboration or coordination has to occur with offshore jurisdictions if this is really going to work.

Mr. Roy Cullen: First of all, the primary focus is money laundering. As we've said before, there is cooperation internationally, and any suspicious transactions will be covered by the act.

Horst, did you have anything to add?

Mr. Paul Szabo: Have we had discussions with our counterparts in other countries about the approach to this problem, and is what we are proposing to do compatible with the facilities or the cooperation that might be available abroad?

Mr. Richard Lalonde: Absolutely. There have been ongoing discussions for over a decade on the issue of international cooperation to combat money laundering. They originated with the G-7 countries, and in fact discussions among G-7 countries continue today on precisely those issues and how to improve cooperation. The FATF, the Financial Action Task Force, was set up to collaborate and develop international standards, and part of those standards deal with international cooperation.

There is another international body that has been formed since the Financial Action Task Force. This is a body that brings in all of the agencies responsible for money laundering, such as our centre here, and they discuss issues of cooperation as well. So this issue is at the forefront of the international agenda.

Mr. Paul Szabo: I have one last question. The estimates of the size of lost revenue resulting from trafficking and laundering money seem to be small relative to the estimates people use with regard to the underground economy in general. While I can understand that there would be a smaller number of incidents of money laundering than there would be generally in terms of underground economic activity, is the plan over the longer term in fact to broaden, let's say, the function of this new agency to deal with the broader question of the underground economy?

Mr. Roy Cullen: Maybe I could start with that one.

First of all, as I said earlier, the intent of this bill is to deal with money laundering, and tax evasion is a secondary issue. If you have money laundering, you undoubtedly have tax evasion, but the reverse is not necessarily true. So the focus of this is money laundering. Only to the extent that money laundering is related to underground activities, it would be a subsidiary kind of effort.

But I'd like to come back to your earlier point about offshore havens, for example. In fact, we had a discussion on this issue in which Mr. Intscher told me the story about how money going out of the country, for example, will be very cloaked and guarded, and clearly there will be a lot of tax evasion attached to it. But let's say it goes to a low-tax or no-tax haven. When it comes back in, they'll want to make sure all the rules are complied with, so all the tax rules will be complied with in the form of a dividend or whatever it is.

As you can understand, Mr. Szabo, with the way these deals are constructed through intermediaries, nominees, and shell companies, it is a challenge. But many of the transactions are in the millions and multi-millions of dollars as well, which makes it simpler in one sense but more complicated in another.

Mr. Paul Szabo: Thank you.

The Chair: Are there any further questions? Mr. Abbott.

Mr. Jim Abbott: I'd like to follow up on what Mr. Bevilacqua was asking. Perhaps I have a slightly different angle compared to where he was coming from.

• 1005

On exactly the same issue, I find it troublesome that the figure of $5 billion to $17 billion is used. That isn't exactly precise. Then, in response to the questioning of the chairman, we hear you may have to add more resources. Again, that's kind of a blank cheque.

With respect, Mr. Cullen, you've said the government has done a lot of consultation, and that this is the reason it has taken two years to get to this point, and all the rest of that kind of thing. When there are agencies in the world that are comparable to what we're setting up right now, and ones that have a track record, help me to understand why the government can't give a straight answer.

I'm sorry. Let me rephrase that.

Help me to understand why the government is incapable of giving an accurate answer to the finance committee about where we are going in terms of dollars and cents in order to be able to fund this. Why should we not believe that in fact the government doesn't know where it's going as far as the funding is concerned?

Mr. Roy Cullen: First of all, I think we do know where we're going. I said money in budget 2000 was allocated to the RCMP in addition to earlier money, as Mr. Deacon pointed out. The budget for the centre will be in the vicinity of $10 million to $15 million. The estimate for the extent of money laundering in Canada is not terribly accurate because we don't really know how much money laundering is in fact going on in Canada. We have our own suspicions that there is a lot more than we're comfortable with.

The Chair: Is that based on a hunch?

Mr. Roy Cullen: It's based on a hunch, yes. As the centre is developed and put in place and we get better at it, we'll be making assessments as we go. But to launch the centre, I think we're in pretty good shape.

Maybe Richard or Mr. Intscher could expand on that.

Mr. Horst Intscher: In terms of the appropriate size and resource level for the centre, we've looked at a number of other agencies that have a similar mandate. It's difficult to compare them, because all of the agencies have differing mandates and different ways of performing their functions. In some cases, many of the analytic functions that this centre will be performing are located outside or are conducted partially outside. In some cases, the disclosure regime is very light because there are lower privacy concerns than we have.

Given the nature of our mandate and the relationship that we are required to have under this bill with other agencies that would receive our information, we are fairly confident that we can establish an appropriate analytic capacity in the range of somewhere between $10 million or $15 million per year. The transition team is working on this as a matter of considerable priority. It is trying to work out what the systems requirements are to process this kind of data, and what kind of analytic capacity needs to be put in place. Within a few months, we hope to be able to give considerably more precision than we are able to now.

Mr. Jim Abbott: But let's take off a bunch of zeros from the $10 million to $15 million—and I don't find a lot of comfort in those figures, even with that range. You have a basement and you've just finished working in the basement of your home. Somebody comes along and says they'll do the flooring and they'll put down a rug for you for somewhere between $1,000 and $1,500, more or less, and they hope they're right. How comfortable would you feel in signing a work order like that? This is effectively what you're asking.

If you're not asking the government, you're certainly asking the opposition to say everything's fine, and that you think it's going to be here but it might be there. Shouldn't Parliament be apprised of something with more precision and accuracy than what you think, hope and like, or something that's going to be in a range suffering a 50% variance and “Oh, by the way, it might be more”? This really isn't all that terrific, is it?

Mr. Roy Cullen: Well, Mr. Abbott, the department right now is consulting with all the stakeholder groups to develop the guidelines more fully and to set in place the reporting mechanisms and reporting requirements. Over the next few months, as Mr. Intscher said, we'll have a more precise figure in terms of the budget levels that will be required for the new centre. I apologize, but we don't have that precision right now.

• 1010

Mr. Jim Abbott: Can we hope that prior to this going back to the House for third reading, when we are going to be asked to vote on this, we will have far more precise numbers that we can hold the government accountable for? Right now the government is not being held accountable with this very broad range of numbers you're providing to us.

Mr. Roy Cullen: Depending on the timing and when we come back, I will provide whatever information I can in terms of a clear definition of costs. We'll probably have the operating costs nailed down, but in terms of the information technology infrastructure, I'm not sure if we'll have it at that time. It depends on when it comes back. I'll certainly be willing to share whatever information we have at that time.

Mr. Jim Abbott: Thank you.

The Chair: Isn't the real answer that we have to start somewhere? You need to have a base of resources to start, and then they will either go up or down, depending on the requirements placed upon the agency or others.

I guess this is an amount of money you think is more or less reasonable to start with, but it may actually go up, or if there isn't much business, it'll go down.

Mr. Jim Abbott: May I suggest it'll take about a month to get a renovation project done on your basement?

Mr. Roy Cullen: Your point is well taken. We don't have a mandatory reporting regime now. This is a whole new ball game, so we'll be developing the accuracy in more detail in the next few months. This committee will also have more consultations. It might provide some advice that could change their resourcing requirements.

With respect to that process, we don't want to come out with a finite budget and then go through the charade of a process. Some policy issues may be raised that need some attention. The budget of the centre will obviously come back to Parliament and this committee.

The Chair: Fair enough.

Mr. Marceau, followed by Ms. Leung. They will be the two final questioners.

[Translation]

Mr. Richard Marceau: Mr. Cullen, could you or could one of your colleagues tell me whether the transaction reporting requirements provided in bill C-22 are going to result into additional costs for individuals and entities which are going to be subject to them? Would there be some way of ensuring that the costs, actual or alleged, which the banking system will have to meet won't be passed on to each one of us as clients?

In other words, since banking fees are already quite high, could we make sure that the costs which are going to result from those new requirements will not be passed on by the banks to their customers, so that, at the end of the day, everyone of us will not have to pay higher fees because of the implementation of those new measures?

[English]

Mr. Roy Cullen: Right now the banks and most financial institutions are doing this on a voluntary basis. The costs of their training, the internal collection of information, and internal reporting are already being borne by the banks. There'll probably be an additional burden. We don't see it as being that significant, but it will be the banks' cost burden. With their massive profits, I'm sure they'll have no difficulty absorbing that. We can't really deal with that through this act.

Does anyone else wish to expand on that?

Ms. Sophia Leung (Vancouver Kingsway, Lib.): Assuming you confiscate laundered money, will the proceeds go to general revenue or to the centre? That's assuming you have some income.

• 1015

Mr. Yvon Carrière: The act provides that any money that's confiscated constitutes proceeds of crime and is therefore treated as proceeds of crime. There's the Seized Property Management Act, which provides for possible sharing between levels of government or foreign governments, if they have participated in the actual confiscation. Of course, none of that money goes to the centre directly or indirectly, except through the general revenue and the budget process.

Mr. Roy Cullen: It goes to the parliamentary secretary.

Ms. Sophia Leung: I thought it went to Parliament.

Voices: Oh, oh!

The Chair: Mr. Saint-Denis.

Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice): I have an additional point. The Seized Property Management Act to which my colleague referred contains a provision that created a proceeds-of-crime account as part of the general consolidated revenue. So all of the proceeds that are confiscated eventually end up in that proceeds-of-crime account. After that, there is a partitioning. Some of the money is shared with people who have contributed to the investigation or the prosecution and some of that money is then returned to the government, to the general account.

Ms. Sophia Leung: Thank you.

The Chair: Mr. Pillitteri.

Mr. Gary Pillitteri (Niagara Falls, Lib.): Thank you very much, Mr. Chairman.

I had a question on confiscation of property that was answered. I represent Niagara Falls and I think I'm not immune to knowing what laundering is. Of course, nowadays it's money laundering and we're looking at many ways. The number one principle is with the narcotics. Are we going to be confiscating laundered money that comes from narcotics? Do we appraise that as being the property of the government in using that? Are we condoning in any way that the agency will have the power to use some of this money, knowing where it comes from?

Mr. Roy Cullen: I want to answer that just before I turn to Mr. Carrière on the question of the proceeds of crime.

In terms of the money coming across the border through Canada Customs, let's say, there will be a mandatory reporting requirement. If you're coming across with $15,000 in cash or some monetary instruments, you'll be required to declare that. If you don't and it's discovered in your luggage or in your car or something, if it's over the reported amount, as I understand it that will be seized.

A person could make a case later that the money was not from the proceeds of crime or was not laundered money. If they're successful in making that case, I believe the money is returned. Otherwise it's confiscated. I suspect the same rules that apply to the proceeds of crime that Mr. Carrière described would apply.

Mr. Gary Pillitteri: I'd like to follow up on that. Living in a cross-border community, we're crossing back and forth. We're not asking the people crossing and coming over to Canada or vice versa how much money they have with them. People are not asked whether they are carrying any cash, any money. I don't think we're looking to more open borders. As a matter of fact, I'm going to a conference tonight called “More Open Borders: A New Smart Way to do Customs and Immigration”.

Do we intend to make it more mandatory to ask certain questions? Here we are; we're trying to get the Americans to remove section 110 from the Immigration Act so that we don't have the lineups across the borders. Now I'm being told that one of the questions that could be asked is how much they're bringing across. If we're trying to have more of an open border, a more open community with the Americans...

Mr. Roy Cullen: Mr. Pillitteri, as I mentioned at the outset, one of the great advantages with Canada and the United States is this open border. By the same token, it creates other challenges. At this moment, for example, I understand that in the United States you have to declare if you're bringing in any cash or monetary instruments.

The bottom line is that this act, this law and the regulations that accompany it, will make it mandatory to report if you are carrying with you on your person around $15,000—the level hasn't been firmly established yet, but let's say around $15,000—because people could be moving laundered money into Canada and we want to stop that.

• 1020

Mr. Gary Pillitteri: As I understand it, I think it's anything above $10,000 right now that one has to report, and this becomes recorded after $10,000.

Mr. Roy Cullen: That's U.S. dollars.

Mr. Gary Pillitteri: U.S. dollars, that is.

But I'm kind of worried, because I have Niagara Falls and casinos, one casino and now a larger one coming on, and today some business people travel with much more than that. I wonder if,

instead of expanding and opening up the borders and making it more feasible for people to travel across the country, something like this is not really hindering that.

I've just come back from Europe, and this has gone by the wayside in Europe in crossing borders within the European Common Market. What are we coming up with? Is this archaic legislation going backwards rather than going forwards?

Mr. Roy Cullen: I'm not sure it's archaic; I think we're coming into conformity with other countries. But regarding the EU, it has become one big area.

Mr. Lalonde, do you want to expand or comment on that?

Mr. Richard Lalonde: Sure.

The justification, of course, is that in strengthening our domestic regime with mandatory reporting, having plugged that hole, we simply do not want to push the problem to the border and have money laundered down in the United States. So it becomes incumbent upon us to introduce a cross-border declaration regime.

It is very much like in the United States as well. It's not designed to impede the free flow of capital, and certainly we don't want to do that. This regime has been designed not to do that. It's very much like the regime we now have for the crossing of goods across the Canadian border, whereby Canadians and others must declare goods entering into Canada.

It may be as simple as ticking an additional box as to whether or not you are carrying currency and monetary instruments above a certain threshold. The threshold we have in mind, as Mr. Cullen has indicated or is proposing, is $15,000 Canadian, which is roughly equivalent to the American threshold.

Down the road, there may be some cost savings we can achieve by cooperating at the land border crossings with the United States. As they're already collecting this information, perhaps there are some synergies here that we can obtain, ergo the reason we're proposing this kind of threshold.

Mr. Roy Cullen: But I think too, Mr. Pillitteri, the threshold is fairly high. I know there are some wheeling-and-dealing gamblers, but let's say it's $15,000. And maybe the officials could clarify this. If it's over $15,000, if $15,000 is the number that's settled on, they will be required to report it. If they report it—maybe the officials could answer this—if it is someone who's bringing money across to go to a casino, what circumstances would apply then if they were able to convince a customs officer that they were going across to the casino to gamble with $15,000?

Mr. Yvon Carrière: I just want to state that there's no prohibition against carrying more than $15,000. All there is, is a form on which you report the fact that you are crossing the border with $15,000. Once that's done, there's absolutely no further requirement or limit.

Mr. Roy Cullen: The problem develops if a person is carrying more than $15,000 and they don't tick a box on the form. If they say they're carrying more than $15,000—correct me if I'm wrong—that's all that happens. That transaction is then reported to the centre, is it not? But as far as—

Mr. Gary Pillitteri: Mr. Cullen, with all due respect, I would like to get rid of those papers with the boxes on them. That's what I'm intending. That's where the rest of the world's going, and that's what my intent is, to see it go that route.

Any time one carries money from one country to another, as soon as he has to enter an amount and check off a box, all of a sudden he becomes a suspect, he becomes someone you have to look at. You become a number of an investigative block—

Mr. Roy Cullen: Yes, but not really, because it would be mandatory reporting, but if it comes to the centre and there's no suspicion of money laundering, that would be where it dies.

Mr. Carrière, would you like to expand on that?

• 1025

Mr. Yvon Carrière: Yes, on perhaps two things.

First, the centre will favour electronic reporting as much as possible. There might be a way to work in some type of electronic reporting in certain cases and certain circumstances.

I also would point out that the act does provide for authority to enter into agreements with governments of foreign countries for the exchange of information in certain cases, which might avoid having to make two reports—one when you're leaving Canada and one when you're entering the U.S., for example. That way we would reduce the paper burden we're alluding to.

The Chair: Thank you, Mr. Pillitteri.

Mr. Cullen and officials, on behalf of the committee, I'd like to thank you very much. Of course, if we need further help you may be called back to clarify some points. We'll be needing your help during clause-by-clause, so we look forward to seeing you again.

Again, I apologize for the room, but there isn't much we can do about that.

Have a good day.

The meeting is adjourned.

The Chair (Mr. Maurizio Bevilacqua (Vaughan—King—Aurora, Lib.)): I'd like to call the meeting to order and welcome everyone here this morning.

As everyone knows, the order of the day is Bill C-22, an act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada, and to amend and repeal certain acts in consequence.

For those of you whose first time it is appearing in front of the committee, we usually give our witnesses anywhere between five and seven minutes to make their introductory remarks, and thereafter we engage in a question-and-answer session. Today we'll have a ten-minute round, which means each individual asking questions will have ten minutes.

• 1110 

We have representatives from the following organizations: The Credit Union Central of Canada; Certified General Accountants' Association of Canada; Canadian Life and Health Insurance Association Inc.; and the Public Interest Advocacy Centre.

We will begin with the Credit Union Central of Canada, Mr. Brian Topp, vice-president, government affairs. Welcome.

Mr. Brian Topp (Vice-President, Government Affairs, Credit Union Central of Canada): Thank you very much, Mr. Chairman. It's a pleasure to be here. Thank you for inviting us.

I'll give a brief introduction. Credit Union Central of Canada represents credit unions across Canada, except in the province of Quebec. Our system manages $56 billion in assets, Mr. Chairman, and we have 4.3 million members. Our sister organization in Quebec, the caisses populaires, manage another $76 billion in assets and have 6 million-plus members. It might interest you, Mr. Chairman, to know that per capita the largest co-op banking sector in the western world is in Canada. One out of every three Canadians is in a credit union or caisse populaire.

Pertinent to some of the comments I want to make today, the credit union system, Mr. Chairman, is the lead or one of the top three business lenders in every province in western Canada, and our sister organization in Quebec is the top business lender in Quebec.

Mr. Chairman, credit unions have no interest whatsoever in being party to money laundering crimes. We support the thrust of the legislation. We have a compliance agreement with the RCMP signed long ago. Credit unions have worked to comply with Bill C-61, which was passed in 1989, and we've worked to comply with Bill C-9, which was passed in 1991, and we're going to try to comply as best we can with Bill C-22.

My purpose in talking to the committee today is to raise a few operational issues to make sure that this new approach works for the government, for the justice system, and for us.

The first point I want to make, Mr. Chairman, is that clauses 7 and 9 establish in very broad strokes—the bill overall is written in very broad strokes, as I'm sure the committee is aware—some definitions of what's required to be reported. It's necessary to read the consultation paper on what that means to understand what the government is getting at with these clauses. It seems pretty clear from the consultation document on the regulations that what the government has in mind is receiving a report from institutions taking deposits on every cash transaction of $10,000 and more or any wire transfer of $25,000 or more. Mr. Chairman, this

is a very wide net that is being cast on transactions that are going to be required to be reported under this act. It's a pretty significant change from the status quo.

It is possible, based on the plain meaning of the words that we have before us so far, that this is going to include a number of transactions that on the face of it are clearly not in any way associated with money laundering crimes. For example, cash deposits from big-box retailers, the local Wal-Mart, cash deposits from high-volume restaurants, a cash deposit from a farmer who has done a bunch of harvest sales, a restaurant or a bar or a retailer who is having a great Christmas or a great season, maybe a big church fundraiser—a whole bunch of potential cash transactions would appear in the plain meaning of the words before us to be captured in the regulations in the bill here.

Mr. Chairman, some would have it that this doesn't pose a problem for the federal government because the federal government is going to invest a significant amount of money in FTRAC, the office that's going to manage these transactions. I'm told that they could handle up to 100 million transaction reports in a year, and that's reassuring. It tells us that the government would be able to handle all of these reports. But unfortunately nobody's buying the credit union in Sturgis, Saskatchewan, a new computer. As a result, we are concerned that credit unions are going to be required to report an awful lot of transactions that clearly cannot have anything to do with money laundering transactions.

The first point I want to make is that it might be helpful if the committee recommended that the government consider exempting obvious exemptions from the reporting requirements set out in the bill and in the consultation regulations that are before us. In the alternate, perhaps the government could consider a regime in which members who are going to make regular or predictable deposits could report once, saying, “We are planning to make *x* number of deposits in the future.” As a result, this would reduce the number of reports we have to make.

Mr. Chairman, the second point I want to draw your eye to is that clause 97 of the bill is a consequential amendment to Bill C-6, which expands privacy regulations and is currently before Parliament. It's a necessary amendment, because otherwise there's a fairly glaring conflict between the tough privacy approach in Bill C-6 and the very wide disclosure requirements in Bill C-22 that I've just spoken about. Because that amendment is there, federally chartered financial institutions are protected. Bill C-6, as it applies to our friends, the banks... they are going to be whole because of this amendment. But I draw your eye to the fact that credit unions and caisse populaires are provincially regulated. Bill C-6 is basically going to drive all provinces to adopt comparable legislation within the next three years. In the event that a similar exemption or amendment is not included in the provincial legislation, there's a potential conflict between privacy legislation and Bill C-22.

• 1115 

In order to avoid having this stuff litigated in the courts, I think it would be helpful if the committee urged the government to coordinate carefully with provinces to make sure that existing provincial privacy legislation... As an example, there is very strong provincial privacy legislation in the province of Quebec right now, and there's mandatorily going to be provincial legislation in every province within three years. There's no contradiction between that regime

and Bill C-22, with the result that we don't end up in a conflict between our provincial regulators and this bill.

The third point I want to make is that Bill C-22 casts a pretty wide net here, and it's not the only project coming out of Parliament to cast a wide net. As a case in point—and I'm not critical of the initiative but just drawing your eye to the operational consequences—Industry Canada is consulting about a pretty major increase in the amount of detail they want to see reported from financial institutions about small business lending.

When we add it all up and look at the potential paper burden that's going to be imposed by this bill, and the record-keeping, plus some of the other potential consequences of financial institution reform that's coming, the result would seem to be that we're going to come out of this session with a pretty significant increase in the reporting requirements to the federal government. In our system, which is very decentralized, the reporting requirement is going to fall directly on credit unions, some of which are quite small.

I think it would be helpful for the committee, because we're focusing on this bill today, to recommend that a good deal of attention be invested in making reporting as simple and inexpensive as possible, and preferably that reporting is possible through our existing computer systems without requirement for major new investments or re-engineering. The optimal solution would be a nice, simple, clean Internet interface, and it wouldn't be bad if the committee urged other federal departments overall to converge on that simple approach to limit the compliance burden, which is becoming fairly significant.

In the interests of time, I'll just allude to a few operational issues that I think are interesting and that are going to merit talking carefully to the department about as the regulations are developed.

For example, I draw your eye to clause 6, which prescribes in very general terms the kind of record keeping that financial institutions would be required to undertake, and we learn a little bit more about what the government has in mind.

In the consultation booklet, we see, for example, on page 10, a requirement that whenever somebody deposits $10,000 or more in cash, a statement be signed by the individual. Mr. Chairman, that will be impossible if the deposit is made at an ATM. So there are some operational issues, and they're going to need to work on the details of how this is going to be implemented.

To summarize, the bill casts a very wide net indeed, and perhaps unnecessarily so, on the kinds of transactions that will have to be reported. I think this can be managed reasonably well by coming up with a good exemptions list or by looking at that one-time report I alluded to.

There are some potential conflicts with existing and future provincial privacy legislation, and we would urge the government to head those off in advance. This is a piece of the puzzle in significant new reporting requirements, which I think need to be carefully studied operationally to make sure they're not overwhelming, especially for a small credit union. Do think about the good folks in Sturgis, Saskatchewan, and try to keep the reporting burden down.

Finally, there are clearly some operational issues, like this ATM issue I'm flagging, that we're going to need to work through with the government once this is in place.

Other than that, it's a good bill.

The Chair: That's encouraging. Thank you, Mr. Topp.

We'll now hear from the Certified General Accountants Association of Canada, with Everett Colby, Dawn McGeachy, and Mark Boudreau. Welcome.

Mr. Boudreau.

Mr. Mark Boudreau (Vice-President, Public and Government Relations, Certified General Accountants Association of Canada): Thank you, Mr. Chairman.

First, I would like to thank you for having us appear before the committee today. With me is Dawn McGeachy, from our professional affairs department, who is a certified general accountant and a fellow associate from the Credit Union Institute of Canada; and Everett Colby of Colby and Associates. He is also an accredited litigation accountant and a certified fraud examiner.

• 1120

Just briefly, the Certified General Accountants Association of Canada is a prominent, respected, self-regulated, Canadian professional body responsible for the education, certification, and professional development of over 60,000 certified general accountants and CGA students in every constituency in our country.

We're going to keep our remarks brief, Mr. Chairman, to about five minutes. I know members of the committee have a copy of our presentation, and I have brought extras if people require or would like them.

I'll turn it over to Mr. Colby.

Mr. Everett Colby (CFE, North American Forensics Accountants; Owner, Colby & Associates): Thank you, Mr. Chairman.

We're pleased to advise that in principle CGA Canada supports the initiatives contained in the proceeds of crime money laundering act, Bill C-22. However, I wish to cover three specific concerns our association has with the bill.

We recognize that money laundering and the cross-border movement of proceeds of crime is becoming increasingly difficult to deter and detect and that traditional means of investigating these activities are proving less effective. The proposals will provide Canada's law enforcement agencies with the tools they need and access to valuable data that they may not otherwise be able to obtain.

First, we recommend that the ambiguous wording contained in part 1, clause 7, relating to the requirement to report suspicious transactions be revised to more properly reflect the true intention, which came out at preliminary discussions we had, that it would apply to a professional who is involved in the business of transacting the moneys—actually involved in the transaction.

Our analysis of the backgrounder to this legislation as well as the consultation paper has identified the potential misunderstanding that entities and individuals acting as financial intermediaries, such as lawyers and accountants, will be required to report any financial transactions that they have reasonable grounds to suspect are related to a money laundering offence merely by becoming associated with the information.

The current reading in the consultation paper is as follows: Section 7 requires every person or entity subject to part 1 to report to the centre every financial transaction where there are reasonable grounds to suspect that the transaction is related to money laundering.

Thus, the current wording would seem to indicate that a professional, during the course of their activities—such as when preparing financial statements—might be responsible for making a report, rather than, as was explained to us during our consultation with the working group, those who are involved in the actual movement of the money. It is not just simply by virtue of being associated with the information.

Secondly, we're concerned with the receipt and management of information being provided to the centre. The bill does not provide for the establishment of regulations regarding criteria for determining what are reasonable grounds to suspect money laundering. Rather, the consultative paper states that the centre will develop guidelines to assist reporting entities to identify characteristics and circumstances that might lead to a determination of reasonable suspicion. The paper further states that the information to be contained in these reports and the means by which the reports are to be transmitted to the centre will also be prescribed by regulation.

As this leaves much to the unknown, we are left with the impression that something will now be designed, it will then be imposed, and we will have to trust that the reporting system will be an efficient and cost-effective process. We would like to see the role of the centre be more clearly defined and that comprehensible information be provided to the Canadian public regarding the accountability of the centre.

Although clause 55 addresses where disclosure by the centre is prohibited, we do not believe the centre should be immune from prosecution in the event the information it provides to law enforcement agencies or others proves to be in error or slanderous.

Additionally, while we agree that the centre should be authorized to provide information to law enforcement agencies, we are alarmed that they are also permitted to disclose this information to the Canada Customs and Revenue Agency, the Canadian Security Intelligence Service, and the Department of Citizenship and Immigration.

• 1125 

Subclause 55(3) states that the centre must first determine whether it has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence before disclosure can be made to these other authorities. However, the bill does not state what constitutes reasonable grounds to suspect that the information would be relevant.

What springs to mind is data mining, and the safeguards proposed for the release of information appear at this point to be weak. There are no provisions for third-party review of

decisions prior to the release of information. Again, we are in a position of trusting that once the regulations are developed, they will be palatable to the public.

To our association, the most distressing aspect of the proposed legislation is contained in clause 62. This provides the power for representatives of the centre to enter and seize documents from a professional's office without the need of due process. We find this highly intrusive. It also raises the question of whether the legislation is contrary to the provisions of section 8 of the Canadian Charter of Rights and Freedoms, which provides that everyone has the right to be secure against unreasonable search and seizure.

While the creators of the centre seem to have gone to certain lengths to ensure that the perception of protection of individual privacy is maintained, a warrantless search of a professional's office seems to violate the same principle of privacy. There is an expectation by the public that an accountant enjoys privilege, much as exists in a lawyer-client relationship. While such is not the case, it is reasonable to expect that a client's file should not be freely available, thus making receipt of a warrant prior to entry a mandatory part of the process, a natural conclusion.

On behalf of CGA-Canada, I would like to thank you for your time here today. For further details on our association's viewpoint, please refer to our written submissions. Thank you.

The Chair: We'll now hear from the Canadian Life and Health Insurance Association Inc., with Mr. Frank Zinatelli, associate general counsel, and David McKee, associate general counsel, Clarica Life Insurance.

Mr. Frank Zinatelli (Associate General Counsel, Canadian Life and Health Insurance Association Inc.): Thank you, Mr. Chairman.

The CLHIA is the national association of life and health insurance companies, representing over 80 member companies that account for over 90% of the life and health insurance business in Canada.

With me today is Dave McKee, associate general counsel of Clarica Life Insurance Company, who is also chairman of the CLHIA working group on money laundering regulations.

The life and health insurance industry has appeared before this committee several times over recent years, and we welcome these important opportunities to discuss significant issues in the financial services sector. It is in a spirit of constructive cooperation that we offer today our thoughts and observations on Bill C-22 and the proposed amendments to money laundering rules it contains.

I would like to note that as the review of these proposals proceeds, my industry colleagues and I are at your disposal to make further contributions to your committee's work on these matters in whatever way you might find most useful.

Very briefly, let me indicate that the industry generally supports the proposals contained in Bill C-22, and we support the need for a strong regime to allow law enforcement agencies to combat money laundering. I would like to point out, however, that we do have some recommendations regarding the application of the act.

Specifically, we would note that, as written, the act does not cover independent insurance agents or brokers, otherwise known as financial services intermediaries. The result of that is that while life insurers and their employees have express duties and obligations under the act—for example, to obtain client records, to verify the identity of a client, to make suspicious transaction reports—the independent intermediaries do not. In fact, it is these intermediaries who will have the most direct knowledge, perhaps the only knowledge, of facts giving rise to reasonable grounds to suspect money laundering. We have raised this issue with the officials working on the legislation, and we urged them to consult with the independent intermediaries in this regard.

At this time I would ask my colleague Dave McKee to outline some of the steps the industry has taken to fight money laundering and to comment on some of the issues raised in the December 1999 consultation paper on proposed revisions to the money laundering rules.

Mr. David McKee (Associate General Counsel, Clarica Life Insurance; Canadian Life and Health Insurance Association Inc.): Thank you, Frank.

• 1130 

To begin, Mr. Chairman, I'd like to point out that life insurance companies look at compliance with money laundering rules as an essential part of a company-wide compliance framework. Let me first describe two examples of industry-wide steps taken to combat money laundering.

First, in order to increase awareness of life and health insurers regarding money laundering rules, a few years ago the CLHIA issued a guideline manual in plain language. It discusses the identification of suspicious transactions and, more generally, how insurers should comply with anti-money-laundering rules. The guide also contains practical information for life and health insurers. This book of guidelines was most recently updated in January 1999. For your information, we've distributed copies, in both French and English, through the clerk of the committee.

Secondly, the life and health insurance industry developed and in 1998 formally adopted guidelines on screening life agents for suitability and reporting on suitability. These national guidelines require, among other things, that life insurance agents and other life insurance intermediaries must be reported to the relevant provincial insurance regulators by an insurer if the insurer, following a company investigation, has evidence to support an allegation of money laundering. Again, we have provided the committee with copies of those guidelines in both French and English.

With respect to the proposals for new regulations described in the consultation paper, which is designed to implement the new reporting requirements in the bill, the life and health insurance industry has been working with government officials to ensure that those proposals are both workable and appropriate.

We have raised some technical issues in relation to those proposed regulations. Our key concern is to ensure that the new rules, as much as possible, do not disrupt normal business practices of life companies. For example, the new regulations should not apply to life and health insurance products where there is only minimal risk of money laundering activity—for example, group insurance and health insurance.

As another example, the new rules around verification of identity of an account holder, especially with respect to corporations, should not be unduly burdensome for small business people, who don't have ready access to their formal corporate records.

We look forward to continued consultation with the officials on these issues.

Thank you, Mr. Chairman. That concludes our opening remarks. We look forward to your questions.

The Chair: Thank you very much.

For the final presentation, from the Public Interest Advocacy Centre, we have Philippa Lawson, counsel. Welcome.

Ms. Philippa Lawson (Counsel, Public Interest Advocacy Centre): Thanks.

I am with the Public Interest Advocacy Centre. First, I'll just give you a bit of background on PIAC. It's a national non-profit organization that has been around for 24 years, representing the consumer interest primarily in the areas of public utility regulation and essential services, including the financial sector. We've been increasingly involved in consumer privacy issues over the past decade, and that's what brings us here today.

I'd like to begin by congratulating you and other members of Parliament on the passage of Bill C-6, which we see as a long overdue set of rules to give consumers some control over their personal information in the private sector.

I won't go into the importance of privacy. Suffice it to say that the right to privacy has been recognized by the Supreme Court of Canada as essential to individual dignity, autonomy, and freedom, and to the meaningful exercise of democratic rights.

Before you today is a bill that will significantly erode consumer privacy, individual privacy, in order to achieve its goal of better detection, deterrence, and prosecution of organized crime. This is a classic example of a clash between effective law enforcement on the one hand and individual privacy on the other hand. Both are compelling societal interests: your job is to ensure that any sacrifices of individual privacy made by Bill C-22 are fully justified.

Let me just highlight some of the ways in which ordinary Canadians will be affected by this bill.

Because reporting is mandatory and failure to report results in significant penalties, organizations can be expected to err on the side of overreporting. This likelihood is enhanced, reinforced, by the provision of the bill that removes the individual's right to legal redress in the event of unnecessary and damaging reporting as long as that reporting was done in good faith.

• 1135 

Large amounts of confidential financial information about Canadians, much of it unnecessary, will be collected by this new agency. Because organizations are required to make subjective judgments about the suspicious nature of transactions, there is a disconcerting amount of room for unnecessary and damaging investigation of individuals. Because so much of the collection, use, and disclosure of personal information by the new centre is covert, innocent individuals

will simply not be aware of investigations of them, which may be based on false or misleading information, until it's too late and the damage is done.

In brief, this bill will establish a regime of systemic privacy invasion in the name of improved law enforcement.

The first question you must ask, then, is whether the sacrifice of privacy is justified in a free and democratic society. Is money laundering that big a problem? Are the existing tools we have really inadequate? What's in this for Canadians?

Should you decide, based on the evidence, that we do indeed need a mandatory reporting regime along the lines of Bill C-22, then you must ensure that this particular regime impairs the right to privacy as little as possible.

On this point, I'd like to acknowledge the many protections included in Bill C-22 that serve to limit the privacy invasions authorized under the new regime. These are things we like and we support if you decide the bill is necessary: the establishment of an independent, arm's-length centre to collect and analyse information; the requirement for judicial warrants in order for police to access all but the most general information about suspicious transactions; limits on the use and disclosure of information by the new agency to purposes under the act; making the improper disclosure of information by the new agency a punishable offence; and, of course, making the new agency subject to oversight by the privacy commissioner. These are all good things.

We remain concerned, however, about the potential use of regulations to expand the scope of privacy invasions under the bill. Much still has to be decided and determined by way of regulation, and, as is so often the case, I think the devil here may be in the details.

We remain concerned about accountability within FTRAC, the new centre for data protection. We remain concerned about whether FTRAC officials will be sensitive to privacy issues, and we remain concerned about the lack of public awareness of this new regime. Will Canadians be aware of what's happening, particularly behind the scenes, with their personal information?

We therefore recommend—and I have seven brief points here—that the bill require FTRAC to designate an individual official within the centre, such as a privacy officer, who is responsible for ensuring that the collection, use, and disclosure of personal information by the centre is appropriately minimized.

We recommend that one of the qualities sought when hiring personnel for FTRAC is sensitivity to privacy issues.

We recommend that a process be established to ensure that FTRAC officials, as well as those in the private sector who are responsible for reporting—the clause 5 entities—are properly educated as to the importance of minimizing the collection, use, and disclosure of personal information to what is necessary under the act.

We recommend that measures be taken and resources be allocated by the government to ensure public awareness of this regime, through preparation and distribution to clause 5 entities, for example, of brochures and informational materials for public consumption.

We recommend that clause 5 entities be encouraged, if not required, for example, to place stickers on their windows identifying themselves as reporting entities under the act, something similar to the Canada Deposit Insurance Corporation model of public information.

We recommend that the five-year parliamentary review required under clause 72 of the bill be made perpetual, that there be a continual five-year review, the same as exists under Bill C-6 right now.

• 1140 

Finally, we recommend a continuation of the open public process followed to date with respect to the drafting of this bill and the regulations under it.

Thank you very much.

The Chair: Thank you very much, Ms. Lawson.

We'll now proceed to the question-and-answer session. It will be a ten-minute round, and we'll begin with Mr. Abbott, followed by Monsieur Loubier.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance): Thank you very much.

Welcome to all of you. We do appreciate the time that you've taken to share your ideas and your expertise with us. I don't have a lot of questions. I think your presentations are very self-explanatory.

I just have one very gentle challenge to Mr. Topp—and I mean in all seriousness that it's a gentle challenge. I'm wondering about the example you used of the $10,000 limit vis-à-vis ATMs. Perhaps we're unaware, but it strikes me that it would be highly unusual to be dropping $10,000-plus cash into an ATM. In fact, if a person was regularly doing so, because it is unusual, that would be a flag in and of itself. I wonder if you could comment on that.

Mr. Brian Topp: Well, you're quite correct. If somebody's dropping $10,000 through an ATM, especially if it's in nice, crisp, old, and now withdrawn $1,000 bills, it would raise an eyebrow somewhere in the system and would probably be reported as a suspicious transaction. With respect, though, that's not what I was flagging. What I was mentioning is simply that under the regulation about security required in the record-keeping requirements under the act, such a deposit would be accompanied by a signature from the individual. I was simply pointing out that as a technical proposition, a signature is not obtainable. When we get into the going-forward detail of the regulations, then we need to be alert to those kinds of issues, particularly given the penalties prescribed in the bill. We want them to be all executable.

Mr. Jim Abbott: The reason I gave you that opportunity to clarify is that some of the representations that have been made to me—along with other editorial comment—have said this is too far-reaching and that too many innocent people will be sucked into this vortex. As a result, I appreciate your clarification.

Ms. Lawson, on the question of whether money laundering is that big a problem, as the Solicitor General critic for Her Majesty's official opposition, I would suggest that I would concur with the government, and that the opposition would concur with the government, that

indeed it is that big a problem. This is therefore a very clear way of tracking illegal, illicit, dangerous activity that is occurring within our community, and it is quite essential.

That having been said, I rather like your idea of, number one, the perpetual five-year review of clause 72. I would be inclined to agree with that, as I think it would be very useful. It could be either a perpetual five-year review, a sunset clause, or something that would cause future parliamentarians to review this legislation in order to make sure we are keeping abreast of whatever the new elements are that organized crime and other people are using.

I also would like to pursue the idea, as I understood it, of a kind of privacy commissioner within the legislation. I wonder if you could expand on that a little bit.

Ms. Philippa Lawson: The idea actually came from Bill C-6, which sets out ten principles of fair information practice, the first of which is accountability. That requires all private sector organizations subject to the bill to designate an individual within their corporation or company as responsible for the protection of consumer data, of the personal information they collect, use, and disclose. The idea is just to apply the same principle to FTRAC, the new centre, and therefore to require that there be an official within FTRAC who has responsibility for ensuring that the collection, use, and disclosure of personal information in the course of the activities of the centre is appropriately minimized.

• 1145 

Mr. Jim Abbott: Would that satisfy your concern? In other words, if we are really suspicious of this legislation and have serious reservations about this legislation, would the inclusion of a capacity like what we just vaguely described as a privacy commissioner really satisfy the deepest skeptic in regard to this legislation?

Ms. Philippa Lawson: Not at all, and I will admit that in the private sector scheme, one of the main purposes of having that designated individual is that it's someone the consumer can go to, can make complaints to, and can ask for access from.

In this scheme, of course, much of what's going on is covert; the consumer doesn't know what's going on. So the advantages are more limited in this respect. It's also much more important that the existing privacy commissioner have oversight over the regime, as he or she does under this legislation. It's just one little step that highlights the importance of privacy. I think it's more important that the individuals working within FTRAC are sensitive to the issues.

Mr. Jim Abbott: But you can't legislate that.

Ms. Philippa Lawson: Exactly—and that's why we suggested what we did.

Mr. Jim Abbott: Your answer would seem to indicate, perhaps, that rather than inserting a privacy commissioner, there should be more access for existing privacy commissioners—access to the centre and to the information—so that there is an external overview. Wouldn't that be more of an answer than just having an extra body there?

Ms. Philippa Lawson: That's already there. The privacy commissioner already has supervisory powers. So we support that. To ensure that the centre has privacy in mind when

it's doing its daily operations, we just thought it might help to have someone in charge, someone responsible within the centre.

Mr. Jim Abbott: I'm just wondering about redundancy.

Ms. Philippa Lawson: The issue we're thinking of here is internal, not external, because the existing privacy commissioner is external. He has investigatory powers and so forth, but he's not necessarily going to know what's going on in the day-to-day operational basis. I think it is important that internally there be some accountability.

Mr. Jim Abbott: Thank you very much, Mr. Chair.

The Chair: Thank you, Mr. Abbott.

[*Translation*]

Mr. Loubier.

Mr. Yvan Loubier (Saint-Hyacinthe—Bagot, BQ): Thank you, Mr. Chairman.

I agree with Mr. Abbott, but I would like to address the issue from a slightly different angle. Ms. Lawson, you mentioned the importance of privacy and suggested that there be someone responsible within the Centre. In money laundering, you are dealing with organized criminals. In the drug market alone, $10 billion is laundered each year, in addition to 7 or 8 billion dollars for other illicit activities. Criminals have a lot of means at their disposal to influence the outcome of a situation.

If the Act is a bit too permissive, these people will be able to get involved in the normal process. If there is an internal commissioner who acts as a privacy watchdog, you can imagine that this person will be under significant pressure from organized crime. They have the means, the tools. We call them the scorpions. These are people who wear white shirts and ties to work and they influence many senior officials, police officers, lawyers and accountants.

Do you not think that not spreading this responsibility among all officials at the Centre, but instead placing it all in the hands of one person, the privacy commissioner, could be dangerous and that it would be a huge responsibility for this person, who would single-handedly take on all privacy-related responsibilities?

[*English*]

Ms. Philippa Lawson: That's an interesting idea. First of all, the bill does make every individual within the centre responsible by making it an offence to improperly disclose information, so I think we have that there. We are simply proposing that there be one person designated, for the reasons I've already explained, not to remove responsibility from any other officials but just to have someone who is more responsible than anyone else, I guess, for that issue, and who can maybe give seminars internally to their colleagues.

• 1150 

I would also expect that if the nature of organized crime is as you described, probably the identity of individuals working for FTRAC may need to be confidential or not public and not

easily determined as to who is who and who is responsible for what within FTRAC. I don't know if that addresses the concern you've raised.

[*Translation*]

Mr. Yvan Loubier: It would be difficult, because the individual you appoint as senior complaints commissioner, for example, would receive complaints from citizens. So the individual would necessarily be identified as the privacy watchdog. I'm just making this comment off the cuff, because people who launder money are not choir-boys. They launder the money primarily for criminal biker gangs. They have enormous means at their disposal. I think it is rather delicate to place such a huge responsibility in the hands of your senior commissioner without his being known. At some point, if he receives complaints, he will necessarily be known, since he will play an official role and hold an official position.

I just wanted to make a comment on that. If I have understood the bill correctly, spreading the responsibility out is very important: responsibilities are to be spread among all people, all commissioners at the new Centre.

I have another question, this time for the chartered accountant. You talk about the services of insurance intermediaries. Can you give us some examples that could complement the bill, that could identify these intermediary services and that could make the bill more efficient in the fight against organized crime?

[*English*]

Mr. David McKee: Yes, I believe that question is properly for me. The concern was that the bill doesn't directly apply at this point to insurance agents, to insurance brokers, and I guess potentially to other financial intermediaries and other aspects of the financial services, in that in the absence of that... They're the ones on the front lines who would be most likely to have suspicious transactions come to their attention. Thus, if they aren't obligated to report, there are going to be suspicious events going on in the marketplace that don't get reported and should be reported.

Having the obligation just on the financial institution itself isn't going to get the job done, because those issues aren't going to necessarily surface to the attention of the head office of the financial organization.

[*Translation*]

Mr. Yvan Loubier: Thank you, Mr. Chairman.

The Chairman: Thank you, Mr. Loubier.

Mr. Cullen.

[*English*]

Mr. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chairman.

Thank you to all the presenters. I have one question for each of you, if I may.

Mr. Topp, you're probably aware that the bill provides for the exemption of certain reporting transactions. The centre would make a determination and, through regulation, certain routine transactions would be exempted. That's the process of consultation that's going on now.

I'm wondering if you have any advice on the types of transactions or the types of entities that should be exempt. You mentioned, for example, churches: if a church would come to a credit union and deposit an amount over the regulated amount, you were suggesting, I think, that we should exempt churches. Could you expand on that or maybe give us the flavour of the kinds of exemptions you would see as appropriate?

Mr. Brian Topp: You are quite correct that the bill opens the potential for an exemptions list, but the regulations heretofore and in some of our discussions with the department would suggest that there's some thought being put into not doing an exemptions list, that they're first going to see what comes in and then work on an exemptions list in the future.

We would prefer an approach whereby we would anticipate some of the obvious and egregious exemptions that are there. Probably the biggest volume is regular retail deposits in the retail sector. I gave the example of a big-box retailer or a restaurant. I throw out the church example. I don't know how many churches raise $10,000 in cash every fundraiser. Some of them do. A big cathedral would. That's captured in the act. It's obviously not the volume issue; the volume issue is in the business sector.

• 1155 

It would seem clear that somewhere along the line pretty soon, unless the FTRAC is proposing to accumulate an extraordinary amount of utterly useless information and keep it forever, and keep the credit unions and other financial institutions generating enormous volumes of reporting that will never be used, we're going to need an exemption list that exempts regular deposits from retailers.

I threw out four examples that I think are good places to start: high cash volume retailers, high cash volume restaurants that are making regular deposits, farmers at harvest time who are engaged in routine transactions, and seasonal deposits from restaurants and bars, etc., that are foreseeable. That's a good place to start.

Mr. Roy Cullen: I take your point and I'm glad you raised it. Every time you do that, of course, it creates an opportunity to exploit openings in the system, but I take your point.

I'd like to refer a question now to Mr. Colby. You mentioned that the intent of the act is that it's only if accountants are involved in a money laundering activity. I think you make a good point that maybe we need to clarify that in the act. If an accountant in the conduct of a normal accounting engagement or audit engagement comes across something that looks suspicious, it would need to be reported. It would be an interesting idea, but I don't think it's workable. It would put accountants in a pretty tenuous position. I appreciate that comment.

You mentioned search and seizure. The section I'm familiar with is clause 62, with respect to accountants and professionals, which would be germane to accountants. It's only in relation to a part. If there's a suspicion that some entity that is meant to be reporting under part 1 isn't reporting, someone from the centre could go to that accountant's office, for example, and ask

to see various records. My understanding is that they couldn't seize records, but they could make copies of information.

I suppose, being the devil's advocate, that if the bill says certain entities must report, there needs to be some way of establishing a way of acting on a suspicion that they aren't reporting. You mentioned seizure, and seizure does not apply to that section. That's the way I understand it. How would you suggest then that government ensure that there is compliance with part 1 of the act if you don't do that?

Mr. Everett Colby: Well, we actually gave this some thought, because there was an understanding that there does need to be some compliance measures. A suggestion is that, similar to the Income Tax Act, which most accountants in public practice are certainly accustomed to dealing with, a request be made in writing to provide whatever relevant information was used. That would provide a report or, if they had suspicion from some other source, they would be able to clearly identify to us what records they were seeking and could in a sense make a written request for that information.

This is so broadly defined that if they suspect I'm not reporting, they can just come and look at all of my records. It doesn't say it limits it just to those records that they have reasonable grounds to believe, due to information they're getting from some other source, I might not be reporting on. They could just decide to do spot audits to make sure that accountants are reporting in general, without necessarily looking at any specific company.

Mr. Roy Cullen: I'm not sure that's how it reads there or that's the intent, but I hear what you're saying.

Finally, Ms. Lawson, you mentioned that a five-year review of the act would be a beneficial thing. A colleague opposite, Mr. Abbott, talked about that as well.

In clause 72 of the bill it says:

> 72. Within five years after this section comes into force, the administration... [of it will] be reviewed by the committee of Parliament that may be designated

etc. Were you contemplating something else? Does this not do it for you?

Ms. Philippa Lawson: We were contemplating a perpetual five-year review. The similar clause in Bill C-6 states that the act shall be reviewed every five years after it comes into force.

Mr. Roy Cullen: I see. Thank you.

The Chair: Mr. Topp, did I hear you correctly? You wanted farmers exempted from the provision?

• 1200 

Mr. Brian Topp: I'm not proposing a general exemption for all farmers in all their transactions. What I'm suggesting is that particularly larger, commercial farms, ones that are engaged in direct marketing, would be an example of a business that could have a regular cash

business in excess of the franchise. For such a member, if they're making regular deposits of $10,000, $12,000, and $15,000 a month—

The Chair: Regardless of what they're growing?

Mr. Brian Topp: I'm just a simple banker, Mr. Chairman. Could you explain to me what you're alluding to?

The Chair: I was just trying to make a point.

Mr. Pillitteri.

Mr. Gary Pillitteri (Niagara Falls, Lib.): Thank you very much, Mr. Chairman. I thought you were going to lead right into me. I thought that was very appropriate.

Mr. Topp, maybe I can relate to what you said more than anyone else around this table, being a businessman. I do know the problems we have to go through sometimes. As it stands right now, anytime you make a deposit of over $10,000 in cash, you have to have that signature. I think that is ludicrous, to say the least, because all you have to do is make a deposit of $9,900 and you don't require a signature; you don't report it. The only thing it does for me is make me make two or three deposit slips. And sometimes for those people who only deposit, which they do—they deal with a lot of cash—it creates more paperwork more than anything else. I don't think that is really... because all of a sudden you are bunching together what you call a money laundering element with regular business people.

I think as we have evolved and moved on as a society, those numbers are not really that hard to come upon for some businesses, some restaurants, in just a day. Every day they do that type of business. Actually, instead of getting out of the businessman's hair, I think we're getting more into it.

When you talk about creating a list, and when we think that we have some 78,000 charitable organizations, I wonder how many different churches we have in there and if there might be a run on people trying to buy churches as an exemption so they will not be checked.

I'd rather not look into that. I'd rather look into finding some way in this bill, through people like yourself, through lending institutions and chartered accountants, to come up with methods and ideas so that instead of creating more work for that business person, and it's “all of a sudden I hear that maybe we should have an individual who has that signing authority”...

Let me put it this way, business people are coming to a point where we have to scale down in order to stay afloat. We don't have to create more jobs and more positions. We're trying to scale down in order to stay afloat because of the expenses we incur. I wonder how we could at this late stage make some amendments or corrections in this bill in order to accommodate legitimate business.

I think we should be looking toward prevention, rather than trying to look at boxes of individuals, what they do, and putting them into categories. I think we should be looking, maybe within our regular system, to see who could be laundering, rather than taking a look at individuals making deposits.

Let's be serious here. Anyone who is laundering money is not going to go and make a deposit of $10,000. That's stupidity to say the least. In laundering money there are many more ways...

If I can say, heck, I'll make two deposits instead of one, surely that individual has many ways of getting around the banking system and legitimizing that money.

We have a world today that is open. Ladies and gentlemen, we're not looking at Canada by itself. When you buy through the Internet, when you're buying and selling in smaller amounts, you could be circling the globe and you could actually launder $10 million in 10 minutes.

• 1205 

So I think what we've done here is just created a jungle of paperwork for legitimate business people. I don't know if you have any answer to it.

Mr. Brian Topp: Mr. Chairman, it's an interesting "is it not true" question, which gives me an opportunity to speak to a common theme in both that comment and the two questions I received earlier. Remember, Mr. Chairman, that the reporting requirement is governed not only by clause 9 of the bill but also by clause 7. According to the regulations, we are required by clause 9 to report every transaction over $10,000, unless we achieve an exemptions list, and we're also required by clause 7 to report any transaction that is in some way suspicious. So, Mr. Chairman, in your example, if a farmer is growing products that are unorthodox and are not approved by Her Majesty the Queen by right of Parliament, that's basically captured by clause 7. So a lot of the potential leakage you're concerned about in an exemptions list is still captured by clause 7 and the current practices of identifying suspicious transactions.

The point I'm making is that as we study how to go forward with the legislation—and this is essentially your point—we should study how we can get rid of egregiously and obviously inappropriate reporting that is simply going to generate a paper burden and unnecessary data, which is a tough proposition in the credit union system, some of which are quite small.

I offered two ways to do that. One is an exemptions list, which I think is the way that seems contemplated by the bill at the moment, although it's not clear there's going to be one. That raises some of the definitional issues I think you're getting at and what happens if we create loopholes here, although I'd argue they're captured by clause 7. As an alternative, I suggested a regime in which perhaps you could get a one-time registration for someone who's reporting regularly.

For an excellent wine grower in the south of Ontario who is doing $10,000 of business every two weeks and is depositing that in registered accounts, his credit union could register that transaction once, until it deviates in some way or until there's something else in the carefully crafted guidelines, which I'm sure we're going to see from FTRAC soon, that would raise a flag saying this is a suspicious transaction. Then on a going-forward basis we're not required to report every cash deposit by every restaurant and every retailer that's before us, but you're still capturing, hopefully, through the due diligence the bill so aggressively imposes on financial institutions most of the transactions you're really interested in.

The Chair: Doesn't it make sense that since financial institutions are the ones receiving a lot of money all the time, they should be doing that, or is it—

Mr. Brian Topp: I'm sorry, Mr. Chairman, I didn't hear you.

The Chair: It's not far-fetched that because you're the recipient of a lot of money and various types of deposits, the government would perhaps ask you to help with this...

Mr. Brian Topp: Mr. Chairman, we are happy to comply with this business. We are already cooperating with the RCMP and with the existing federal legislation. In no way am I saying that we don't want to assist in this issue.

What I'm drawing your eye to is that there may be an unintended consequence in the way the bill and the regulations are currently shaped. You're going to be forcing us to report to you a ton of information that is completely useless to the mission of the bill. That's the basic point. I believe it could be easily managed in such a way that we don't incur a totally unnecessary reporting burden while the government still gets all the data it needs.

The Chair: Your major point is that through exemptions we can achieve that.

Mr. Gary Pillitteri: He doesn't mean only that. What he means also is to have a list and in effect to register once a year, Mr. Chairman. That way, as a legitimate businessman, he doesn't have to report.

Mr. Brian Topp: There would be an exemption or a one-time report that was appropriately framed so that unusual deviations or other suspicious circumstances would raise the flag.

The Chair: Are there any further comments?

Mr. Gary Pillitteri: No, Mr. Chairman. I think it's much more complex, and I don't think we have the time. But I think a bit more work needs to be done on this.

The Chair: Mr. Boudreau.

Mr. Mark Boudreau: I think part of the problem is consistent with what we've seen with government legislation over the last little while when we're asked to respond to something. At no point did the department come to us and say, we have a problem. We've seen this in a number of issues, and it's concerning us in the sense of what the accountants are asked to do or not to do. They put something before us as opposed to saying, we have a money laundering problem. What do you propose? How could we deal with the issue? They were well on the drawing board when the legislation was coming down before we were even consulted on the issue, as opposed to starting from the basic premise: Is there a problem in Canada? Yes. If so, what do you want to do about it? How can the banks, ourselves, or anybody else who's interested in this issue...

• 1210 

We all agree that we want to help the government fight the problem at the end of the day. One of the criticisms we have of the department is that they should come to us much sooner. As it is, they say, “Here it is, folks” at the end of the day; “Is this going to work or not work?”

Mr. Gary Pillitteri: Thank you.

The Chair: Point well taken, Mr. Boudreau.

Likewise when industries do have challenges or feel perhaps that money laundering is a problem in Canada, they could also approach the government and raise that particular issue.

[*Translation*]

Mr. Loubier.

Mr. Yvan Loubier: Mr. Topp, your Credit Union Central of Canada is required, or rather it can, at its discretion, provide reports on suspicious transactions. It is done on a voluntary basis. Have you taken into account the number of voluntary declarations you have made? If yes, I would like some numbers on that.

Mr. Brian Topp: By way of an example, Mr. Loubier—I am not here to represent the Caisses Desjardins, but we can compare notes—I have seen that in the Desjardins system, which is much bigger than ours, the number of declarations is about 358 for the last two years: 141 in 1998 and 217 in 1999. So there are about 200 to 300 cases per year, under the current system where we are looking for truly suspicious transactions. But there is no doubt that the system towards which we are currently moving will benefit transactions that did not come out. There will be a substantial increase in the number of transactions reported.

Mr. Yvan Loubier: Do you have any idea what that represents in terms of an amount?

Mr. Brian Topp: No, but I could look that information up, Mr. Loubier.

Mr. Yvan Loubier: I think that would be important, because if there are no more declarations than that on a voluntary basis, when calculations show that 17 billion dollars in dirty money is laundered annually in Canada, there is a problem. I don't know your figures. You talked about an average of 140 transactions by Desjardins each year, and there were probably some by the other credit unions and banks.

Mr. Brian Topp: Something like that.

Mr. Yvan Loubier: That's it. It would be interesting to know how many there were in total each year and what amounts were involved. If there were a couple of hundred, that totalled one or two billion dollars, and 17 billion dollars in dirty money is laundered each year, we need measures that are much more...

Mr. Brian Topp: With that question, you are assuming that the billions of dollars are being laundered by the banking system. It is not at all clear that that is the case. There is already a voluntary reporting system for all banks, caisses populaires and credit unions. There are already two acts that govern these transactions and it is not at all clear that the billions of dollars are being laundered by the banking system.

Mr. Yvan Loubier: I am not just talking about the banking system; I am also talking about insurance institutions, financial intermediaries, etc. These declarations must be centralized somewhere. I would be curious to know how many there were and how much they represented. It would be interesting to be able to compare that to the estimates with respect to dirty money that is laundered each year.

I do not think that Mr. Pillitteri's reference to the $10,000 limit is a problem. If the same person makes four or forty $9,900 deposits each week, as you pointed out earlier, they become suspicious transactions that must be identified under clause 7 of the bill. The $10,000 amount is a limit. I imagine that there has to be one somewhere. If I remember correctly, $10,000 is

the average amount for drug dealers in the markets in Montreal and Toronto. It is the average weekly amount. Maybe that is why $10,000 was chosen, but I have no idea.

Mr. Brian Topp: What is interesting in his remarks is that he reminds us how easy it could be to play with the rules. The very rules of the game that are in clause 9...

• 1215

Mr. Yvan Loubier: It's a question of judgment. As I said earlier, if the same person deposits $9,900 every day in the same account, it is suspicious. I will give you the example of a criminal biker gang leader who has a huge 20-room mansion, no known employment and a huge bank account. In that case, it's a question of logic, of judgment.

Mr. Brian Topp: It's a question of judgment.

Mr. Yvan Loubier: Yes.

Mr. Brian Topp: You should not be putting in place new rules that are too strict if you cannot come up with a way to manage them, because in the end it always boils down to a question of judgment. In the end, claws 7 and 9 contain the true meaning of the Act. We cannot make a huge investment in clause 9, which would provide us with a huge amount of data that is not useful. In the end, what is at the heart of the bill is always having well-trained staff who understand their obligations under the Act and who use their judgment.

Mr. Yvan Loubier: That would mean that for you clause 7, using judgment and reasonable grounds to suspect would be enough, without the $10,000 limit.

Mr. Brian Topp: Look, it is...

Mr. Yvan Loubier: It holds accountable any person who chooses to let a transaction go through even if he had reasonable doubts as to the origin of the funds.

Mr. Brian Topp: I think we understand the serious nature of the legislation and know that the adoption of this bill will require considerable training for staff in the banking system and in the credit unions throughout Canada to ensure compliance with the Act. We understand why the government is introducing this legislation. The consequences are serious, but at the very least we want to avoid wasting our time. That is more or less our position.

Mr. Yvan Loubier: Thank you.

[*English*]

The Chair: Mr. Gallaway.

Mr. Roger Gallaway (Sarnia—Lambton, Lib.): I just have one question. I know our witnesses here have already studied this.

To Mr. Topp—and maybe someone else would like to respond—this bill creates a new agency that purports to do a lot of things. In your opinion, will it work?

Mr. Brian Topp: I don't consider myself qualified to judge.

Mr. Roger Gallaway: You should be in politics.

Would anyone else care to comment?

The Chair: He means run in Sarnia.

Mr. Roger Gallaway: We welcome all newcomers.

The Chair: Are there any further comments?

Mr. McKee.

Mr. David McKee: I'd likely give the same comment as Mr. Topp. I think that's an issue for both the officials and the international forces that are at play around this legislation. They're driving some of the obligations that are being imposed on Canadians under this legislation.

Ms. Philippa Lawson: If I might just add, that's the point of the five-year review—to see if it's working.

The Chair: I have a very general question. There's no question there are challenges. Any bill of this nature will create some challenges for government or for individual Canadians, but on the whole, do you think it strikes the right balance between privacy, the administration of business, and individual liberty and freedom on the one side, and combatting the laundering of the proceeds of crime? Do you think it strikes a right balance, in general terms?

Mr. Topp.

Mr. Brian Topp: My first comment, Mr. Chair, is that in a way it's a little hard to judge. As one of my colleagues at the table here has said, it's an unusually vague bill that leaves an awful lot of its substance to regulation.

In a previous life I was involved in doing some of the legislative drafting in a provincial legislature. Our law clerk at that time would have had a hard time with this bill because it delegates so much of its substance to regulation. But maybe this is the new fashion in legislative drafting. I won't comment on that.

If the regulations are carefully crafted and, as my colleague, Ms. Lawson, says, crafted in a transparent manner, and if that is the way they're always going to be done, then potentially it could work fine, bearing in mind the smallest detail, like the one I flagged about ATMs, to the biggest picture of exactly what it is we're collecting here, how it's dealt with, and who uses it. If that's all appropriately tuned as the thing comes into force, potentially it could be fine.

• 1220 

Mr. Loubier mentioned some of the pressures folks are potentially put under by criminals. A mandatory reporting regime, if it's carefully tuned and properly crafted, can be helpful in that way, in the sense that it can remove some element of discretion from the system and thus make the folks in financial industries a little less vulnerable to blackmail and pressure from criminals. In that sense, you could argue it's a step forward.

There are many potential troubles. There are some disturbing elements to the search and seizure provisions that were underlined by a colleague at the table. I return one last time to my obsession that it's an enormously wide net, as currently drafted.

I think, especially because the regulations are apparently being drafted concurrently and will be tabled concurrently, the coming into force will be very quick. I'd urge the committee, at a minimum, to flag some of the issues you've heard about today and you'll hear about in coming days from the department, and take a careful look at those regulations, because they will answer your question.

The Chair: Is there any further comment?

Mr. Colby.

Mr. Everett Colby: I have attended seminars given by police forces around the province of Ontario dealing with this issue, and from law enforcement's point of view, they are extremely happy about this because they do not perceive there being any great difficulty in obtaining information from this centre, which is supposedly going to be accumulated there. Understanding that it is one of the intents of the bill and there have been some safeguards provided within the bill for the release of that information, those limitations do not appear to be well communicated to law enforcement in general.

Additionally, the type of individual needed to staff this centre will have to be well trained in the art and science of detecting and coming up with reasonable grounds of what constitutes a criminal offence, such as money laundering. I hazard to guess that many of these individuals will likely come from law enforcement backgrounds.

From the point of view of privacy and balancing, one would question the propriety. We've seen other issues of tax departments releasing information inappropriately, and there may not be a balance in favour of the individual consumer in terms of privacy, considering who's going to be staffing the centre.

I have just two additional comments, slightly off topic.

Mr. Cullen, you spoke about seizure, and in clause 64, where it talks about privileged documents and how they seem to be limited from the search, it stipulates that only applies to privileged documents in a legal counsel's profession. In both my fraud investigations and certain tax matters I work with, I often have files in my premises that are subject to privilege because I'm acting on behalf of legal counsel.

There doesn't appear to be anything under these search provisions to protect privileged documents that may be in my possession. It only addresses those in the possession of legal counsel themselves.

We're certified general accountants, so as well as chartered accountants, we represent much of the accounting body in Canada, and we would be a good source to consult when trying to determine effective ways for reporting the activity that goes on through business.

Thank you.

The Chair: Do you also cooperate with the RCMP and other bodies in referring what you would consider to be...

Mr. Everett Colby: Are you asking if I'm in favour of cooperation?

The Chair: Yes.

Mr. Everett Colby: I'm in favour of fighting money laundering. My concerns stem more from when we may be on opposite sides. I have worked in conjunction with law enforcement agencies, and there has been no problem in sharing of information in that respect. It just depends on whether or not I'm defending somebody who has been accused of money laundering. I've faced potentially having to report information that came to my attention, in the defence of this client, to a centre that was then free to disclose it to law enforcement that was prosecuting him on the other side. So in that respect, I don't agree with the sharing that would come as a result of this.

The Chair: Okay.

Mr. Cullen.

Mr. Roy Cullen: This has been a good discussion.

With respect to the earlier point, Mr. Colby, about search, certainly the intent—and maybe it needs to be clearer—is that before an authorized person would come to an office to examine documents, there would be dialogue. The agency would try to get the information in a most cooperative way. It would be used as a last resort. Nonetheless, I hear what you're saying.

• 1225 

Coming back to the other comment about the regulated amount, let's say it's $10,000. If someone were continually coming under that amount—you know, $9,900 repeatedly—that would under normal circumstances raise a flag of suspicious transactions. So the regulated amount is not the end of it. It's a guide. It's a mandatory reporting, but the agency would be required to look at suspicious transactions of any kind.

Mr. Brian Topp: That is precisely right: you can smurf. You can chop your money laundering amount into pieces, which is the point you were making, and get under the $10,000. Therefore it's a blunt instrument for capturing criminal transactions, but it will sure suck in a lot of legitimate ones. That's the basic problem.

The Chair: Mr. Cullen?

Mr. Roy Cullen: No, I'm here to listen.

Ms. Philippa Lawson: Can I just make one comment in response to your question, Mr. Chairman?

The new centre in this bill will be subject to the Privacy Act, which is a good thing, but we have real problems with the Privacy Act in its current form. It badly needs to be updated and strengthened. For example, if a consumer, an individual, is unnecessarily investigated and suffers some kind of harm or damage, there's no recourse, no redress. There's recourse to the

privacy commissioner to investigate and make a report on it, but he has no binding powers. There's no consumer redress for privacy invasions.

The Chair: Are there any further questions? Seeing none, on behalf of the committee, I'd really like to express to you our sincerest gratitude. As I said earlier, you always try to strike the right balance. You've certainly given us a lot of food for thought, and we will certainly take into consideration everything you've raised, with the view of always trying to improve the bill.

Once again, thank you very much for your contribution.

The meeting is adjourned.

The Chair (Mr. Maurizio Bevilacqua (Vaughan—King—Aurora, Lib.)): I'd like to call the meeting to order and to welcome everyone here this afternoon.

As you know, the order of the day is Bill C-22, an act to facilitate combating the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada, and to amend and repeal certain acts in consequence.

We have the pleasure to have with us representatives from the following organizations: the Canadian Institute of Chartered Accounts, the Canadian Bar Association, the National Criminal Intelligence Service from the U.K., and as an individual we have Dr. Mark Zoccolillo.

As you probably know, you have approximately five to seven minutes to make your introductory remarks, and thereafter we'll engage in a question and answer session. This afternoon's session will have a 10-minute round.

We will begin with the Canadian Institute of Chartered Accountants: Mr. Ian Murray, chairman, advisory group on anti-money-laundering legislation; and R. Simon G. Chester, legal counsel. Welcome.

Mr. Ian Murray (Chairman, Advisory Group on Anti-Money-Laundering Legislation, Canadian Institute of Chartered Accountants): Thank you and good afternoon.

Mr. Chairman, members of the committee, on behalf of the Canadian Institute of Chartered Accountants we would like to thank you for allowing us to appear and provide input to the government's proposed legislation to combat money laundering.

My name is Ian Murray, and I am a partner in the firm of KPMG. I chair an advisory group established by the CICA to examine this legislation. With me today is Simon Chester, who is legal counsel to the CICA.

As I think you know, we submitted a brief to the Department of Finance in February that comments on the government's consultation paper on Bill C-22. As the basis for that submission, the CICA drew on the work of the advisory group, which reviewed the consultation paper along with the draft legislation and regulations. Our brief broadly supported the legislation, but we believe it would benefit from some changes.

Our submission dealt with five areas that we want to focus on today: narrowing the scope of the proposed legislation, defining suspicious transaction, addressing the duplication of

reporting requirements, restricting powers of access to records, and broadening available defences and protections.

The scope of legislation: I would like to repeat at the outset that the CICA is supportive of the government's proposed legislation and its focus on financial intermediaries. We recognize the importance of having an effective international regime to outlaw money laundering. We believe that financial intermediaries who have direct involvement in financial transactions should have primary responsibility for reporting suspicious transactions. We accept that when a chartered accountant acts as a financial intermediary, he or she should have the same reporting responsibilities as other financial intermediaries.

We understand that the legislation is intended to apply to professionals such as CAs only when they are directly involved in a financial transaction, such as CAs who handle cash for clients or who are in a general management position in a company. This focus is appropriate. Such CAs should know exactly where they stand.

• 1535 

We also understand that the reporting requirements of the legislation are not intended to apply to those who are directly involved in financial transactions within their companies, for example, internal auditors, strategic planners, tax accountants, and system managers. Nor are they intended to apply to CAs acting in an advisory capacity only, essentially those who act in a third-party role providing services to clients, such as auditors, forensic accountants, management consultants, business evaluators, and tax advisers. Notwithstanding the intention, we are concerned that the wording of the proposed legislation and regulations could be interpreted to suggest that the profession as a whole could be subject to these provisions.

Paragraph 5(i) provides for part 1 of the act to apply to persons engaged in a business, profession, or activity described in the regulations. An existing regulation, which we understand will be retained in the new legislation, indicates that the act applies to every person who is engaged in a business, profession, or activity in the course of which cash is received for payment or transfer to a third party. We are concerned that this wording can be read too broadly. It's not clear that the act would apply solely to these individuals who are directly involved in such transactions. It could be interpreted to apply also to all individuals who belong to a profession in which some individuals may engage in such transactions.

This concern is exacerbated by wording contained in clause 7 of the bill, which requires reporting by persons or entities of suspicious transactions that occur in the course of their activities. We believe this wording is so open-ended that it does not limit the reporting requirement to professional accountants who are directly involved in financial transactions.

We are therefore concerned that the broad wording of the existing regulation, taken together with clause 7, could be interpreted as applying the reporting requirements much more broadly to the accounting profession as a whole.

One simple example of the types of problems that would arise under this broad interpretation would be when forensic accountants are asked to assist a client to investigate a potential irregularity. Any forensic accountant would be placed in a position of conflict between assisting his client and reporting to the centre and may have to decline the engagement. The

client would be deprived of any needed assistance. There are many other situations where, in the absence of clarification, CAs could be drawn into the scope of the reporting requirements.

However, the proposed legislation includes a provision, under paragraph 5(j), allowing for regulations to be made that will limit the application of part l to defined activities of businesses and professions. We recommend that a regulation be introduced to clarify that the scope of the legislation will apply only to those professional accountants who act as financial intermediaries.

We therefore propose that the regulation in paragraph 73(1)(b) that relates to paragraph 5(j) of the bill contain the following wording: part l of the act applies to every professional accountant who, in the course of engaging in a business or profession, receives cash for payment or transfer to a third party.

We believe that the intended subjects of the new law should be determined by activity, not status; not by the nature of our profession but by the activities we are involved in. This change would make it clear that the legislation will apply only to those directly involved in financial transactions.

We welcome the assurance provided this morning by senior officials regarding the intention to ensure that the legislation will only apply to professionals acting as financial intermediaries.

We were also pleased that officials this morning confirmed that the regulations will indicate very clearly that the reporting obligations will not apply to the auditing function of the accounting profession.

The second issue is the definition of suspicious transaction. Another significant concern is that neither the proposed legislation nor the regulations contain a definition of suspicious transaction. The success of the mandatory reporting regime will depend on the extent to which clear and unambiguous criteria can be developed. In their absence there will be unnecessary, unwarranted, and inconsistent reporting because all professionals will have to make a significant judgment call on what they believe to be suspicious.

• 1540 

Although the reporting centre will develop guidelines that help identify appropriate characteristics and circumstances, these guidelines would not have the force of law. We think clarity belongs in the law and not in the guidelines.

We therefore recommend that the regulations contain a prescribed definition of suspicious transaction, one that sets out clear criteria. A clear and unambiguous definition of suspicious transaction is a tall order. It should be supported by examples, situations, and case studies to illustrate when reporting is required and when it's not.

Should interim guidelines be put in place for any reason, they should ultimately be included in the regulations so that they are subject to public scrutiny and input and have the force of law.

Furthermore, we recommend that the effective date for commencement of reporting of suspicious transactions be deferred until criteria have been established, and examples, and so on.

Third, on duplication of reporting requirements, we are also concerned that there is a lack of clarity with respect to professionals such as CAs who may be working for entities specifically covered under clause 5 and who are directly involved in financial transactions.

On the one hand, such CAs have a reporting role as an employee working in an entity covered by the legislation. On the other hand, they have a responsibility to report suspicious transactions as a professional accountant. This is confusing and would appear to be a duplication of the reporting requirement that applies only to individuals who happen to be both employees of such entities and professional accountants.

Should such an individual report to their supervisor, they are protected by subclause 75(2) from punishment as an employee. However, they could still be open to punishment for failing to report to the centre as a professional accountant. We believe the protections afforded the employee should clearly apply to protect the CA, who is the same person in such situations.

Fourth, on restricting powers of access, the compliance measures in clauses 62 to 65 allow an authorized person from the reporting centre to examine the records and inquire into the business affairs of any person or entity referred to in clause 5 for the purpose of ensuring compliance. We are concerned that these appear to be very broad powers, allowing access to all records, not just those relating to financial intermediation activities, and without a warrant. If the applicability of part 1 of the legislation is not clarified as indicated earlier, we are concerned that these powers could be interpreted to apply broadly to all members of the profession, not merely those involved in relevant activities.

We therefore recommend that the proposed legislation be clarified to restrict the powers of access to only those records that relate to financial intermediation activities. We also think such access should be allowed only under authorization of a warrant.

Last, on defences and protections, we would like to make some comments about the defences and protections available under part 5 of the legislation.

Other jurisdictions include a defence for reasonable excuse—for example, where the fear of physical violence or other menaces makes it unreasonable for someone to report or to refuse to act for a client. There may be circumstances when third parties are able to deduce the source that gave rise to an investigation. While there may be certain defences under common law similar to reasonable excuse, this defence is not available under the proposed legislation. We are also concerned that the legislation does not provide protectional remedies to those who lose their job as a result of making a report in good faith.

Furthermore, the legislation is not clear as to how to deal with situations where the legislation conflicts with other legislation requiring confidentiality, such as the Quebec charter of rights and freedoms.

Therefore, we recommend a reasonable excuse defence be included in the proposed legislation, along with additional protection for reporters.

Finally, we recommend that it be amended to deal with situations where the legislation conflicts with other statutes requiring confidentiality.

In closing, let me stress again that we support the intent of this proposed legislation, that it's applied to those who are directly involved in financial intermediary transactions. However, we

believe the wording of the legislation lacks clarity in prescribing who within the CA profession must report. We believe this is a significant issue and strongly encourage you to use clause 73 to clarify the activities to which the legislation would apply for the CA profession.

• 1545

We also strongly urge you to include a clear, unambiguous definition of suspicious transaction in the legislation so that those with the obligation to report will do so under consistent criteria.

We appreciate the opportunity to discuss the bill with you, and we would be happy to answer any questions you have.

Thank you.

The Chair: Thank you, Mr. Murray and Mr. Chester.

We'll now hear from the Canadian Bar Association: Mr. Eugene Meehan, president; Greg DelBigio, member, national criminal justice section; and Ms. Joan Bercovitch, senior director, legal and governmental affairs. Welcome.

[*Translation*]

Ms. Joan Bercovitch (Senior Director and Lawyer, Legal and Governmental Affairs, Canadian Bar Association): Thank you. On behalf of the Canadian Bar Association, I would like to thank you for the opportunity to appear before you today.

The Canadian Bar Association represents 36,000 lawyers across Canada. The Association's objectives include improvement in the law and in the administration of justice. Our presentation today reflects these objectives.

Our proposals will be presented today by our president, Mr. Eugene Meehan, from Ottawa and by Mr. Greg DelBigio, from Vancouver. Mr. Meehan will start and Mr. DelBigio will present the last section. Both will be available to answer questions.

Mr. Eugene Meehan (President, Canadian Bar Association): As President of the Canadian Bar Association, I appreciate the opportunity to appear before you today.

[*English*]

We would like to make three preliminary but crucial points on this legislation.

First, cabinet security and confidentiality is important to you. It is important to how government works, it is important to how government should work, and it is in the ultimate interest of the public and their protection. I do not have to tell you the reasons that is important. For all of those same reasons, solicitor-client confidentiality is as important to lawyers and to clients, and likewise, it is in the ultimate interest of the public and their protection. If government and cabinet confidentiality is important to you, then treat solicitor-client confidentiality as important, as sacred, as sacrosanct, and also as protected.

Secondly, just as the state has no place in the confidentiality of the bedroom, the state has no place in the confidentiality of the solicitor-client privilege—no place. Both are sacrosanct, both are sacred, and both must be protected.

[*Translation*]

Third, the reason why all this is so important is that without an independent bar and without and independent judiciary, there is no democracy. It's that important, and also that simple.

[*English*]

If you look at any country in the world and ask, are they a democracy, you have to ask only two questions: do they have a completely independent bar, and do they have a completely independent judiciary? Everything else follows.

Canada is special. We have a bill of rights; we have an entrenched, written Charter of Rights and Freedoms. That means something to clients, to our democracy.

We therefore urge you not to pass Bill C-22. This is a dangerous and misguided effort. It is dangerous to Canadian society; it is dangerous to Canadian democracy.

[*Translation*]

Thank you.

[*English*]

Mr. Greg DelBigio (Member, National Criminal Justice Section, Canadian Bar Association): I also would like to thank you for the opportunity to be present to make submissions. Our summary of recommendations is set out in the brief.

Underlying that summary is the fundamental concern about protection of the solicitor-client relationship. That relationship is of course premised upon privilege, confidentiality, and the protection of privacy. We are of the view that the bill, as it stands, would seriously undermine those foundations of the relationship.

• 1550 

The bill as it stands has all of the earmarks of criminal law—that is, it has to do with criminal law enforcement, as evidenced in the objectives—but it offers none of the protections of criminal law. So we are of the view that within that context of criminal law enforcement, lawyers will be compelled to act in a manner that is directly contrary to the solicitor-client relationship. It will compel lawyers to act in a manner that is contrary to the law that recognizes the importance of that relationship. The law will undermine the right of Canadians to receive legal advice knowing that those communications are fully protected by privilege and confidentiality.

The Canadian Bar Association acknowledges international obligations in respect of money laundering, and that it is important to respond to money laundering within Canada and globally. However, effective law already exists in part XII.2 of the Criminal Code. Provisions within that part govern lawyers, govern others, and prohibit money laundering. So the conduct that is of concern is captured by already existing law.

We are concerned about the large cost that would be associated with the administration of the centre, and there's an associated cost that would attach to a legitimate business that is carried out on a day-to-day basis within Canada. The added cost can only serve to undermine the

effort of Canadian business to effectively participate in a competitive international environment.

In summary of the introductory remarks, the Canadian Bar Association is very firmly and strongly of the view that lawyers must be exempt from the bill. Anything else will undermine the relationship that has been long recognized in law.

Thank you.

The Chair: Thank you very much, Mr. DelBigio.

Dr. Mark Zoccolillo.

Mr. Mark Zoccolillo (Individual Presentation): Thank you for inviting me here today. I'm going to talk about the results of a recent study we did on how common a problem drug use is among Quebec adolescents, which I suppose is one of the main reasons you would be considering a bill such as Bill C-22.

I would like to acknowledge my co-authors Frank Vitaro and Richard Tremblay from the University of Montreal. You have a copy of the study. I'm going to give you just a portion of it.

This is a sample of adolescents who are representative of the province of Quebec. They come from throughout the province. They were studied from 1995 to 1997. As you can see, they were mostly 15 to 16 years of age. Most of them were in secondary three or secondary four, which would be ninth or tenth grade. I want to emphasize that. We're not talking about college students, we're taking about adolescents.

As I said, they are representative of the province, they're not a particularly selected sample other than to be representative. It's around 900 boys and 900 girls.

What we did was ask them about their drug use, along with many other different things. The drug use was through a self-administered questionnaire. They filled out the questionnaire in the home, but away from their parents, and they were promised confidentiality. What I'm going to emphasize most are the drugs rather than the alcohol, except for comparison to alcohol.

I'd like you to notice that with regard to drug use, about half the adolescents have tried illegal drugs by this age in Quebec. Much more importantly, about one-third of the boys and girls have used illegal drugs more than five times. The more than five times was the cutoff that we used to ask the more important question, which was, how often and under what circumstances did you use these drugs?

• 1555 

I would also like you to notice, of course, the most commonly used drug of all is marijuana, and it's the drug I'm going to focus on. The second most common drug used by one in five adolescents was hallucinogens, which also includes phencyclidine, or PCP, a particularly dangerous drug.

Now I'm just briefly going to show this overhead on alcohol, because I'm going to compare it to drugs. These are adolescents who had drunk alcohol more than five times, which is about 60% of the sample by this time. I'd like you to notice two things.

The first is the third line, about ever being drunk while at school. Most adolescents have not gone to school drunk, even though they have drunk alcohol.

The second thing is the bottom set, which is the number of problems, the sum of the other things that we had above. These include playing sports and drinking alcohol, being drunk at school, getting into fights, driving a motor vehicle while drunk, having arguments with parents, having trouble with the police, having arguments with friends, and seeking help.

As you can see, most adolescents had either zero or one of those, and for those who had one, it was usually “while playing sports”. Very few had four or more. The importance of this is the comparison to drugs.

This is the pattern for drug use, which as you see is considerably different from the pattern for alcohol use. This is a third of all adolescents. I want to emphasize it's not a third of those who use drugs, but one in three adolescents in Quebec. The drug in question that we're largely talking about is marijuana, and you can see a very different pattern.

The most common thing they do is go to school high, go to school stoned. They play sports under the influence, and this includes riding bicycles, skateboarding, and swimming, and they use it in the morning. Now, this is quite important, because it means if you start off in the morning high, you're high all day.

Somewhat less common, but still worrisome, was driving a motor vehicle while stoned.

Now I want to also take you to the bottom, the number of drug problems. Remember, for alcohol most adolescents reported zero or one, and very few four or more. The pattern is very different for drug use. Here, the common way that adolescents use drugs, and again it's mostly marijuana, is to engage in a number of these behaviours, with almost half the boys having four or more, and about a third of the girls having four or more. So there's a big difference in how it's used compared to alcohol, and it's quite worrisome.

The next thing we asked was how often they were using it. Again, we can compare drugs to alcohol, and you can look just at the boys' column, because it's very similar for girls. We asked the question, at the time you used the most, how often were you using? Many of these adolescents, even though they were 15 or 16, had started using when they were 13 or 14, so there was a one- or two-year history of drug use. We asked about the peak, when they were using most frequently.

If you look at the alcohol column, you can see that most boys and girls reported that even at the time they were using the most, it was less than once a week or once a week—that is, weekend use. That is not the case, though, for drugs, for marijuana. In this particular case, very few reported that at the time of maximum use they were using less than once a week. The majority of boys and close to the majority of girls had progressed at some point or another to using three times a week or more.

This is particularly worrisome, because this means they are using it frequently, several times a week, and to repeat, they were going to school stoned, using it while involved with sports, and using it in the morning.

• 1600

To conclude, the problem of the use of alcohol and drugs is relatively common in Quebec adolescents, and particularly worrisome with regard to injury at relatively higher rates when driving a motor vehicle while under the influence, and playing sports, including bicycling or rollerblading, while under the influence.

Attending school while high from drugs is common, with one in four students having been to school high at any time, and one in six in the past six months. The pattern of drug use, particularly cannabis, marijuana, is quite different from that of alcohol use. Alcohol use is more common but appears limited to weekend use, and most alcohol users report no or one problem.

The normal pattern of marijuana use is to use it several times a week to go to school high, to play sports high, to spend much of the day high. The most commonly used drug is marijuana, and it's a myth that most drug use by teenagers nowadays is experimental and limited to occasional marijuana use at parties.

I'd also like to add that there have been a number of monitoring studies here in Canada and in the United States where they look every year at the prevalence of use. There's been essentially a doubling of prevalence of use of marijuana over the past decade. Ten years ago, these figures, in terms of having ever used marijuana, were about half; instead of being about half of the population, it's about 25%. So there seems to have been a considerable increase over the last decade.

It's a serious problem. We see it at the Montreal Children's Hospital. Adolescents are using drugs quite commonly. They are cheaply available and easily available. Their possession is infrequently prosecuted by the police, and the adolescents know this. It seems to be quite tolerated.

I would just end by saying we certainly have a considerable problem. There are probably a number of different ways this can be addressed. You have a copy of the paper there, and I'll be glad to answer other questions later.

Thank you.

The Chair: Thank you very much, Dr. Zoccolillo.

We will now hear from the National Criminal Intelligence Service, the deputy head of the economic crime unit, Martin Comley, welcome.

Mr. Martin Comley (Deputy Head, Economic Crime Unit, National Criminal Intelligence Service (U.K.)): Thank you. I think I'm distinctly privileged, Mr. Chairman and members of the committee, to be invited here. It's a long way from my home, and I hope I have something very useful to contribute to you.

I will first give you some terminology changes, because I will refer to an FIU, a financial intelligence unit, as your centre is often referred to around the world. So if you can indulge me on that, it will be helpful.

I have prepared a copy of my presentation. I hope it's been made available to you. I apologize, there is only a copy in English. You may find it useful because there are some statistics in there I will refer to as I go through it.

I'd first like to put the U.K.'s FIU into context. Ours is not a stand-alone organization, it forms part of the National Criminal Intelligence Service. This service has been functioning for some eight years and was reconstituted two years ago. We've moved away from government; we're an independent body now, not a police service.

We have approximately 650 staff to look at serious crime intelligence as it affects the United Kingdom. Of that, we're drawn from 17 different agencies. We're truly a multi-agency functionality. We also house the United Kingdom's response to INTERPOL, and for our European parts, Europol as well. We're split into different functions. We have an international division, intelligence development, and the United Kingdom division.

I'm going to focus primarily on the United Kingdom division, of which we're a part. We've split the country up into geographical regions, where our serious crime is looked at on a criminal basis. In the strategic and specialists intelligence branch, we look at things the other way round. We look at it from the crime back toward the criminal. So we link two functions of intelligence together to focus on serious crime.

The strategic and specialist intelligence branch has many specialist functions. We look at organized crime, immigration crime, vehicle crime, West African crime, drugs, counterfeit currency, serious sex offenders, and kidnap and extortion. We have a football section, which unfortunately deals with our football hooligans, Turkish intelligence, and cocaine intelligence.

• 1605 

I only mention all of these departments because the main basis or the underlying cause of this is money, so there's a great overlap with what my unit, the economic crime unit, does—the FIU for the United Kingdom. We are the central receiving point for suspicious transactions within the United Kingdom. We research these and disseminate them. We disseminate them to designated investigators around the country, a point I'll come back to.

Looking at our legislative approach, we criminalized money laundering through various acts over many years, acts that we've had to redraft and amend as the years go on. We're still undertaking those amendments today.

Out of the criminalization of money laundering come the disclosure provisions. Those disclosure provisions affect everybody. There are no exemptions in relation to the disclosure provisions. We have a suspicion-based reporting regime through which we do not define suspicion itself; we rely on guidance notes for the particular industries to identify what may be suspicious.

Having heard from your colleagues in the law society here, I'd say there is one exemption: we do have a specific exemption in relation to legal privilege, and that is clearly defined within

the act. We have a secondary law that goes on and looks at the systems, the anti-money-laundering systems that financial institutions should invoke within their premises as a secondary way of policing this.

I'll come back to staffing with our unit now. The economic crime unit itself is multi-agency, like the organization. We draw staff from primarily six separate agencies: the police; the customs service; the benefits agency, or welfare; the Financial Services Authority, or the regulators; the gaming board; and Inland Revenue. We also have a support staff, an analytical staff, within that. The current staffing of the unit is 27, but is being reviewed at the moment and is likely to increase in the near future.

The need for multi-agency has been highlighted over the years. That's a recent innovation for us. To evaluate suspicion-based reporting, you need a broad experience. I have a broad policing experience, but that doesn't give me customs experience and it doesn't give me revenue experience, etc. To combine those tools helps us to evaluate that intelligence and place it with its correct investigative body.

I'll very briefly, then, go on to say that there is a need to interface at the domestic level among the various government departments, that being the Treasury, the Ministry of the Interior, and the like, not only for bringing forward legislation but for seeing that legislation goes forward and goes forward properly. Currently we are subject to a review by a cabinet office in order to see that we are correctly on course and are still proceeding in the direction our government sees fit.

Financial services authorities themselves must play an important role in this, because they're involved daily in the financial sector and the policing of that sector.

Last but not least, there is the financial sector itself. I think the only point I stress out of this is that it's not a policing function alone. The police cannot tackle this by themselves.

I'll now trouble you with some statistics, I'm afraid. At the bottom of page 4, you see the bar chart that shows the disclosures as they've been made in the United Kingdom. In our early years, we started with about 600. Then, we spoke directly to the directors of the four main High Street banks. That was the limit of our knowledge of money laundering and financial crime as it involved this sector at the time. Our experience grew and so did the experience of the financial sector.

In 1990 we formed something called the Joint Money Laundering Steering Group. This was as a result of pressure from the financial sector, which was asking questions like, “What is suspicion?” and “Can you help define suspicion?”, in order to make the appropriate reports.

This round-table body got together and formed the first guidance notes in 1990. I must say in hindsight that they were somewhat naive, but they were naive based on the experience we had at that time. Those guidance notes now fill an A-4 ring binder about one inch or two and a half centimetres thick. Again, they're continually evolving as we gain more experience in this.

• 1610 

You'll see two significant changes in the bar charts: 1990 to 1991, where we went from 2,000 disclosures to 4,500 disclosures; and then a significant rise from 1991 to 1992, from 4,500 to

approximately 12,000. These rises were caused by proper training taking place within the financial sector. They were directed properly toward the staff who have an interface with the customers, either directly or through a backroom function. You can see a significant rise that really hasn't tailed off ever since, and we've averaged about 14,000 disclosures since then. We break them down by sector on the following charts.

Another function the FIU really undertakes is not just to see who's disclosing, but, most importantly, who's not disclosing. Here we have a close interface with the financial service regulator.

There is room for improvement in most jurisdictions—and I include mine in that. It's only with correct analysis of statistics that you can see where there is the room for improvement. And by "improvement", I don't necessarily mean the prosecution of particular offenders. If they're criminal in their intent, yes, of course they should. It may be by way of education training, and that needs a joint dialogue.

As I said, the economic crime unit itself receives, researches, and disseminates intelligence from all parties, including regulators and others, including the lawyers, accountants, and insurance agents. We disseminate that information to designated bodies within the police customs crime squad, which is a national function in the United Kingdom. Each of the staff has been specially trained to undertake that function. It's very different from the normal policing function. A report of suspicion is not an allegation of crime, so it needs to be handled differently, and the staff need to be aware of that to handle those disclosures.

We have special arrangements with other bodies that have an interest in crime. In particular, I've listed here the Benefits Agency, or the welfare system, and the Inland Revenue. This is not an open, direct dialogue. We have to assess whether or not there is a criminal intent within this and that these are criminal proceeds before we have a dialogue with these agencies.

Last but not least, I include on there our foreign counterparts, a growing part of our work.

If you'll allow me, I'd like to make reference to the Egmont Group, a non-political group that set about in 1995 to see where the FIUs were going. Are we functioning properly? Can we communicate? Many of us, as we've gone into these laws, have looked quite domestically—and rightfully domestically—at our own problems. But the problem we're dealing with in crime is international, so we have to look at the legislation and make sure we have adequate and proper gateways where necessary in order to communicate with our counterparts.

I think it's important for my point here to stress the difference between the sharing of intelligence, defining what intelligence is, and proper judicial process. What I'm talking about here is not to usurp proper judicial process that will go before a court. This is to make the centres or the FIUs able to do their job properly in evaluating suspicion and making that available to the proper law enforcement agencies in order that they can gather the evidence correctly.

The first meeting in 1995 looked to 24 jurisdictions and 7 international organizations. At the time, 14 could have been defined as FIUs.

The Egmont Group splits itself really primarily into three areas, and now maybe four: legal, technology and training, and the last is outreach, or who's next and who else we should be

communicating with. The U.K. chairs the training subgroup. For that, we have meetings with our counterparts at which we're not swapping the detail of legislation but are sharing with each other how we can share intelligence, what our confines are, what our powers are, and how we can make the best of financial intelligence on a world scale.

I include at the bottom of this page a little overview of how the Egmont Group has seen it. We want an exchange of information, increased effectiveness, and greater coordination. We don't make any distinction as to who oversees the FIU. For me, arguably we are a policing FIU. Others come under ministries. Others come under central banks. Others come under a ministry of the interior or ministry of justice. The importance is what function they fulfil. Are they specialized in anti-money-laundering? Are they the central receiving point for suspicious transactions or unusual transactions? Do they process and evaluate, and do they disseminate or investigate that intelligence?

• 1615 

That's the loose definition of what an FIU is and how we look at it.

When you're looking at your own, it's very important to remember the national context. I say that because it's very easy for countries to visit other countries and to say this is the way you should do it because it works for them. That doesn't mean it will necessarily work for you. You have to adapt it to your local circumstances. The importance is that all agencies must work together, and there is no right location for this.

In 1995, 14 units met the definition. In 1999, 48 units met the definition of a required FIU. There are 17 still currently under consideration.

Thank you for listening to me. That was a very quick talk round on the U.K.'s and the internationals' approach.

Thank you very much.

The Chair: Thank you very much for that, Mr. Comley, and for taking the time to give us your perspective on this particular issue.

We will now proceed to the question and answer session, and I believe we'll start with Mr. Abbott, for a ten-minute round.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance): I found the data presented by Dr. Zoccolillo to be very compelling. I think it perhaps answers one of the questions that was raised on page 3 of the Canadian Bar Association's submission. Reading from the second paragraph on that page, the Canadian Bar Association says:

> The large and intrusive state apparatus being proposed and the cost to taxpayers for the establishment of the Financial Transactions and Reports Analysis Centre to address a problem that we believe reflects a relatively minor portion of business activity in Canada lead us to conclude that the possible salutary results of Bill C-22 are outweighed by its predictable deleterious effects.

I would like to suggest to the people making the presentation on behalf of the Canadian Bar Association that, indeed, what we saw on this screen is just a very small part, and an

exceptionally important part: the young people of our nation. I'm not saying it's not important, but this is just a small part of what we're attempting to get at here.

While I find myself having some feeling of sympathy for the position of the Canadian Bar Association, particularly in dealing with the principles involved, I don't want to cut you off and not give you an opportunity to respond to me, but I think Mr. Comley might be able to give us some help—or at least give me some help—in understanding. If we go to page 5 of his presentation, he shows that there is disclosure and feedback between accountants and lawyers and the economic crime unit. I think he did refer to the fact that there is some kind of organization or some kind of arrangement between his organization and the legal profession.

I certainly would like to have a response from the Canadian Bar Association, but I'm also very interested in what Mr. Comley might be able to add to this dialogue in terms of how the problems that are seen by the bar association have been overcome in a practical way in the U.K.

Mr. Eugene Meehan: I also found Dr. Zoccolillo's remarks very interesting, and I found them interesting in this particular context. The questionnaire that was put out by Dr. Zoccolillo and his colleagues was filled out by the individuals away from home, and complete confidentiality was promised to those individuals. This bill is now, like Dr. Zoccolillo, going back to those teenagers and saying “Yes, I know we promised you confidentiality, and I know you only gave us those answers, at some personal risk, on the basis of guaranteed confidentiality by me and my colleagues. But I am now going to tell your parents and I am now going to fill out a form and give it to the police, and you will be charged with a criminal offence.” That's exactly what this bill does. It breaches the confidence that clients, Canadians, have in their lawyers.

• 1620 

Take yourself back to your own childhood or to the childhood of your colleagues. There are youth who have experience with marijuana. There are also youth that have experience with sexual intimacy. When a young woman decides to have intimate sexual relations with a young man, she trusts that physically that is between them. Imagine her horror to find out that he has videotaped their escapades and played them back later to his friends. It's like a nuclear bomb going off in her head. That's exactly what this bill does. It blows away solicitor-client privilege and confidentiality. Canadians cannot have confidence where they should have confidence.

I pass now to my colleague, Mr. DelBigio.

Mr. Greg DelBigio: If I may, just briefly, with regard to the recognized importance of the solicitor-client relationship, the question is, should it be displaced? Is there good and compelling reason to displace it in favour of a better objective? While those statistics are of interest, the question then becomes, will those statistics be in fact affected by including lawyers within this bill? Conversely stated, I say there's certainly no basis to think that those statistics will be affected by exempting lawyers. Indeed, there's no empirical data to suggest that those statistics will be affected if lawyers are specifically excluded. Having regard to very recent law, a bill, such as it is structured, runs the very great risk of being struck down, at least in part, to the extent that it runs afoul of the solicitor-client relationship.

So having regard to that, the question is, is it necessary to include lawyers? I say no.

Mr. Jim Abbott: How does Mr. Comley and his organization get around this thorny problem?

Mr. Martin Comley: First, the law's already there. I have to be blunt about that.

Mr. Jim Abbott: Yes.

Mr. Martin Comley: We went through similar problems in the early nineties and started a dialogue in about 1993 with the Law Society for England and Wales. Having had the law introduced, we agreed that the only way to take this forward was to act jointly.

The law society produced guidance notes of its own for its own profession. Guidance notes in themselves are actually quite dry and quite meaningless unless you follow them up with some intent. What we did after that was engage in a series of road shows with regional law society associations within the country, making joint presentations in relation to this. These are usually staffed by a member of my office, a member of the law society, and a practising lawyer. So you have a balanced view across the spectrum of where this should stand.

This equally applies to the accountancy profession. We engaged in the same way.

This has been a continuing dialogue. In fact, last month we finished a series of three presentations with the Law Society for Scotland, and we will be engaging in another series of those later in the year for England and Wales. So it's by dialogue and acceptance.

There is a need to protect legal privilege. I would never disagree with that. I say that what privilege is is clearly defined in the legislation. However, confidentiality is overridden with our legislation.

Mr. Jim Abbott: Would the law society see that there might be some advantage in working with the drafters of this legislation to arrive at a position not too dissimilar to that?

With respect, I'm not crazy about the examples you've used. I find them a little inflammatory. I think that if the client is apprised of your reporting responsibility, unlike the example you were using of the videotaping, it is the “Here's the camera, so now let's get on with it” kind of approach. Surely to goodness there's a way to work around this problem.

The reason I refer to the statistics is to say that the whole issue of money laundering directly relates to international organized crime and the scourge it is becoming in even the smallest centres in Canada. We have to get serious about this, and we have to give our law enforcement officers the ability to strain out the necessary information in order to be able to get the job done.

• 1625 

I would feel a whole lot more charitable toward the Canadian Bar Association if you were sitting here saying, this is the principle, and we want to get as close as we can. Here are some ways in which we can do it. What I'm hearing you say is, forget it. I'm not sure that's really helpful to this process.

Mr. Eugene Meehan: Let me respond in two ways. First, the examples I gave are not inflammatory. They are real. They have occurred. There is a breach of confidentiality.

Second, your question to Mr. Comley was, can we go along with the U.K. position? The answer is no. The reason is this. From my accent you may accurately take it that I am originally from there. I'm a graduate in law from the University of Edinburgh. The U.K. does not have a bill of rights. The U.K. does not have a charter of rights and freedoms. The U.K. has no entrenched guarantee of charter democracy. Canada is special. Canada has a Charter of Rights and Freedoms. If you want, there's a mirror image to that. Not only is there a charter of rights and responsibilities, but also there's a charter of obligations and responsibilities behind the freedoms. Canada is different. We are the envy of the world in terms of our democracy.

Third, the criminal court deals with this appropriately. We have heard no indication that the criminal court is not sufficient, not proper, and not sufficiently far-reaching. We believe the criminal court provisions do work—we are not told otherwise by anybody here—and that the criminal court provisions as presently drafted sufficiently protect clients.

This isn't about lawyers. I am in the public service. I serve Canadians. It's about them. If, as you suggest, Mr. Abbott, clients are advised, “You understand I'm under some reporting provisions here”, let's be realistic, they are out the door. They're not going to come to my office or anybody else's office. They will go elsewhere outside of Canada.

I would ask you to consider that Canada is special and has a Charter of Rights and Freedoms. Let's protect that, let's protect democracy, and let's still maintain the Criminal Code and let the Criminal Code do its work.

The Chair: Thank you, Mr. Abbott.

Mr. Marceau.

[*Translation*]

Mr. Richard Marceau (Charlesbourg, BQ): I'd like to thank all our witnesses for appearing today. Welcome to the Finance Committee. I am particularly pleased to welcome Mr. Chester with whom I had the opportunity to work in Toronto. Mr. Chester, welcome.

Mr. Meehan, I found your presentation quite interesting. As I understand, if you had a choice, first, you would eliminate Bill C- 22. Second, you would perhaps agree with Bill C-22, if it didn't apply to lawyers. Third, you would perhaps agree with Bill C-22, if it included the twelve amendments you mentioned. Is that correct?

Mr. Eugene Meehan: That's correct.

Mr. Richard Marceau: You want lawyers to be exempted from the application of this legislation?

Mr. Eugene Meehan: It's not so much for lawyers as for their clients. It's the clients who are important, not the lawyers themselves.

Mr. Richard Marceau: Okay. I often say jokingly that, as professionals, lawyers are a bit like Quebeckers in Canada: they always want to be distinct.

I would be interested to know why you come before us to tell us that this legislation should not apply to lawyers. Tomorrow, chartered accountants could very well come and tell us that, according to the same principle, the bill should not apply to their clients.

Mr. Eugene Meehan: It's completely different because accountants don't have the same responsibilities. In fact, accountants are bound by a disclosure requirement. We are not. We are bound by a confidentiality requirement.

Mr. Richard Marceau: Yes.

• 1630 

Mr. Eugene Meehan: Whatever happens is between us and our client. It's completely different. It's not that, as lawyers, we are special. It's just that when a client decides to consult a lawyer, not an accountant, he or she expects the confidentiality of such a relationship to be preserved.

Mr. Richard Marceau: Fine. But if the client is forewarned about doing something foul, about laundering money, wouldn't it be appropriate for him to know that the door would be closed and that, if he does consult a lawyer, such a transaction will be reported to the Center or the government—whatever we might call it?

Mr. Eugene Meehan: Every bar in Canada, be it in Ontario, in Manitoba, in Saskatchewan or elsewhere, has regulations to that very end.

Mr. Richard Marceau: Okay.

Mr. Eugene Meehan: It's covered either by the bar regulations, or by the Criminal Code.

Mr. Richard Marceau: Yes. In fact, as an aside, between you and me, this is a very boring course, especially in Ontario. Indeed, if the requirement is already there, if the requirement is already in the lawyers' code of conduct, what is the... As I understand, what you are saying is that if the requirement is already in the code of conduct, its inclusion in the bill can be questioned. Is that what you are saying?

Mr. Eugene Meehan: That's it.

Mr. Richard Marceau: Okay. So, conversely, if it does not add much, if the requirement is already there, what risk is there to include it in the bill?

Mr. Eugene Meehan: There is a difference. According to the code of conduct, we are required to disclose such things to the Bar Association. We are not required to go to the police.

Mr. Richard Marceau: Fine, but the Bar Association is a large bureaucracy. God knows it's slow and there is a lot of wasted time there. Papers are lost. The last time I registered as a member of the Law Society of Upper Canada, I had to call three times before getting my bill. I'd say this is not the most dynamic bureaucracy. Once the bar is advised, what happens? Who is informed?

Mr. Eugene Meehan: A lawyer is under two obligations, one vis- à-vis the bar and the other vis-à-vis the Criminal Code. Our position is that the Criminal Code and the bar's code of conduct are enough. We don't need the government in the office when we meet our clients. A lawyer-client relationship, be it professional or sexual, is their business. It's not the government's business. We see this as an intrusion of the federal government in that relationship.

Mr. Richard Marceau: I find it rather difficult, like my colleague, Mr. Abbott, to associate a professional and a sexual relationship for several reasons, particularly because in the second case, it can be more pleasant.

I'd like to come back to another subject you have raised, the issue of confidentiality. You said that one the problems with Bill C-22 is the issue of confidentiality, not only the lawyer-client privilege, but also in a general way. It would send a few shivers down your spine. Are you telling me that as far as you are concerned, it's not enough that the bill stipulates that the Protection of Privacy Act applies?

Mr. Eugene Meehan: It's not enough because it's indicated that it applies only to this section. Now, that applies also to the remainder of the legislation.

Mr. Richard Marceau: Very well.

This morning, we heard officials from the Finance Department who came to make a presentation. I asked them a question which I'm going to ask again to Mr. Comley. I said that the protection granted to Canadians would be guaranteed, through the Protection of Privacy Act and because of the fact that the Access to Information Act would apply to the proposed Center. However, inasmuch some information given to the Center could be passed on to a similar entity in another country, isn't there a risk that what can't be done through the front door would be done through the back door? Indeed, some protections which exist in Canada do not necessarily apply or exist in other countries.

• 1635 

[*English*]

Mr. Martin Comley: I have a brief reading of your law, and you make specific reference to cooperation with outside agencies and with others by way of memoranda of understanding.

I have to say that's a preferred method of communication for us, because the memorandum of understanding stipulates who, how, what, and what will be done as a result of the communication of this data. It's important that is done, because the laws of each country differ widely. I look particularly within Europe at that, where we're supposed to have a common standard—far from it, I'm afraid.

Explicit MOUs do help in guaranteeing that the information that's provided by one jurisdiction will be honoured by the second jurisdiction. In order to turn this suspicious transaction into something operational, you don't necessarily have to transmit the full detail of the information. That's something that can be discussed at an operational level in order that you guarantee as best you can the protection of individuals in each jurisdiction and respect the confidentiality within that jurisdiction.

[*Translation*]

Mr. Richard Marceau: Do I still have time?

The Chairman: One minute.

Mr. Richard Marceau: Mr. Murray or Mr. Chester, in your brief, you raised the possibility that Bill C-22 may contravene article 8 of the Canadian Charter of Rights and Freedoms. Why

do you raise this possibility? Knowing the way you work, Mr. Chester, I also know that you rarely ask a question if you don't have a ready answer. So what's your answer? If the bill contravenes article 8, how would you rewrite it so that the requirements of the Charter are met?

[*English*]

Mr. R. Simon G. Chester (Legal Counsel, Canadian Institute of Chartered Accountants): Mr. Marceau, I have two answers. One of them is slightly flippant, which is that the brief you were quoting from is the brief of the Certified General Accountants Association of Canada. My second comment is that I'm more than happy to answer the question.

[*Translation*]

Mr. Richard Marceau: It's because your name was here along with...

[*English*]

Mr. Simon Chester: We are the Canadian Institute of Chartered Accountants.

[*Translation*]

Mr. Richard Marceau: I'm sorry.

[*English*]

Mr. Simon Chester: To give you a serious answer, we think the bill should probably distinguish between two types of circumstances in which the centre is seeking information. For instances where there is specific inquiry into a breach of the legislation, where specific financial information is going to be carted away, we believe the same safeguards should exist as exist in the rest of the criminal justice system—that is, you would go before an independent authority and seek a warrant.

That warrant constitutes an objective assessment of whether there are reasonable grounds to believe the circumstances exist for the legislation to be triggered. That objective assessment does provide a check on the centre.

If you look at clause 62, it provides that an authorized person may from time to time enter into any premises at any reasonable time. That authorized person is simply anyone the director of the centre stipulates under subclause 45(2). There are none of the safeguards that would exist if the police were doing this, or that would exist in the rest of the criminal law. We believe this legislation should respect the same sorts of safeguards that exist in the rest of the legal system.

That's my facetious answer. I'm more than happy to ask the Certified General Accountants whether they would agree with that assessment.

[*Translation*]

Mr. Richard Marceau: Thank you.

[*English*]

The Chair: Ms. Bulte.

Ms. Sarmite Bulte (Parkdale—High Park, Lib.): Thank you very much, Mr. Chair.

I thank you all for coming here today.

• 1640

I'd like to address my questions, Mr. Chairman, through you to the members of the Canadian Bar Association. I do so as a member of the Canadian Bar Association—Ontario and as a member of the Law Society of Upper Canada. I practised law for 18 years. So the people who are sitting around this table are quite aware of solicitor-client privileges. Mr. Marceau is also a lawyer.

I have to start by saying that as a lawyer I agree with my colleagues Mr. Marceau and Mr. Abbott in that I found your sexual analogy, Mr. Meehan, regarding solicitor-client privilege quite offensive. So let me state that for the record.

Let me go on further to state that I also believe, and I will challenge you on this, that there is no absolute client-solicitor privilege whatsoever. There are exemptions to the common law privilege.

You have also, gentlemen, not spoken about clause 11 in the bill, which clearly states—and I will read it into the record: “Nothing in this Part requires a legal counsel to disclose any communication that is subject to solicitor-client privilege.”

Fourth, the regulations do not address those that deal with the fact that sums of money received on account of fees or on account of bail are exempt from the regulations. That was not mentioned at all here today.

Fifth, right now we have before the courts the Murray-Bernardo case. We are determining the extent of solicitor-client privilege. Again, I find you're saying there is absolute solicitor-client privilege, and to compare that to a sexual analogy is quite offensive.

So I'd like you to comment specifically on clause 11 and also on the regulations.

Before I finish, if you'll indulge me, Mr. Chairman, I did not practise criminal law. That was something I chose not to do during my practice. But I did practise real estate law and I was very wary of solicitor-client privilege. But there were times when I received cash payments on real estate transactions, which was not unusual in the late 1980s when there was a lot of influx of Hong Kong money. At that time money appeared, U.S. dollars in paper bags, from young people from their relatives from Hong Kong.

I had no problem at that time reporting to those clients that when I deposit that into my local branch of the Royal Bank, because it is a cash transaction, I will have to fill out a sheet of paper that tells the bank where it came from and what I will use it for. I don't believe I did anything wrong or that I breached any solicitor-client privilege, but this was something that was inevitably going to happen to us. I would think that all lawyers have had to deal with this, even on a voluntary basis.

So again, please comment on clause 11, the exemptions under the regulations.

Mr. Eugene Meehan: I would like to unreservedly apologize to my colleague in the profession. Unreservedly, I apologize for what was taken as an offensive remark. I apologize.

It was not meant to be offensive. It is a true occurrence that occurred. Fortunately, solicitor-client privilege forbids me from saying anything about it other than that it occurred, because it did, and it is a serious and continuing trauma to that young woman.

However, I do apologize, colleague in the profession, for the offence taken. I accept that it shouldn't have been put forward in that way. I apologize; it was made to make a point. And the point was that solicitor-client privilege, including matters of intimacy, is important and should be protected. But I apologize for the offence taken. None was intended, I assure you.

I pass to my colleague, Mr. DelBigio, in regard to clause 11.

Mr. Greg DelBigio: In attending today, we have assumed familiarity with the bill, so a specific reference to clause 11 or any omission was not intended to be deceptive. We assumed that you're all familiar with that. It is there of course. It refers to privilege.

But the Canadian Bar Association takes the position that the inclusion of this provision is not good enough. Privilege and confidentiality must both be recognized. Confidentiality of course is broader than privilege.

The second concern is that even with clause 11 there is going to be, as of necessity, uncertainty at times as to how privilege operates. Those of us who have ever had to deal with an issue of privilege will be well aware that it can be complicated and it's rarely straightforward.

There are penal provisions within the bill. There is a possibility of overreporting. In other words, if a lawyer is uncertain as to whether or not something is privileged in the face of possible penalty for failure to comply, there's a risk that the lawyer will err on the side of reporting rather than not reporting. It would be very useful if there was a mechanism by which a lawyer who is uncertain with respect to a privilege claim could attend before a judge or some other forum in advance to have that privilege issue determined. In that way the outcome is determined through a proper hearing and independent authority, and it eliminates uncertainty. It lets a lawyer know that he or she is truly authorized in making the disclosure that is being requested.

• 1645 

The final point I would like to make is that the recommendations of the CBA do not undermine the objectives of the bill save for one point. Because lawyers are presently captured by both their codes of professional conduct and the Criminal Code, lawyers are already not permitted to engage in money laundering. The only objective of the bill that would not be furthered if lawyers were excluded is the collection of information. It only means that one piece of information, that being the information from lawyers, will not come forward. The bill would otherwise operate in its normal way and the objectives of the bill would not be undermined or threatened in any way whatsoever. So our proposals do not do damage to the objects of the bill.

The Chair: I have three names: Cullen, Szabo, and Gallaway.

Mr. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chairman.

Thank you for all the witnesses and to Mr. Comley for coming all this way.

I have a few questions for Mr. Comley, and then I'd like to come back to the privilege issue. I'm not a lawyer, but I would like to come back to that.

Mr. Comley, this bill defines certain transactions as being de facto reportable over a certain amount, and then other transactions will be a judgment call in terms of whether they're of a suspicious nature. Do you have such an arrangement in the United Kingdom, where certain transactions are de facto reportable and then there are others that would be seen as suspicious and would need to be reported as well? How do you actually define that in the U.K.?

Mr. Martin Comley: There is no de facto reporting. The closest you get to it is out of the European Union directive that is reflecting our money-laundering regulations, which talks of ECU limits, which means certain actions should then be taken. It doesn't then mandate that it's particularly suspicious and necessary for reporting to us. Ours is purely a suspicion-based reporting regime.

Mr. Roy Cullen: So your criterion, then, is solely that if a transaction appears suspicious, then it would be reported as defined or as best one can judge?

Mr. Martin Comley: Correct.

Mr. Roy Cullen: The other question has to do with how this bill focuses on financial intermediaries. There's been some discussion that perhaps it should be expanded to retailers, for example, and to make it broader than financial intermediaries. I'm wondering what your experience has been in that particular domain and what your advice would be.

Mr. Martin Comley: I have a two-part answer. First, our primary legislation covers all people, whether you're a retailer, a lawyer, or whatever else. In answer to that they're already covered.

The second part of the answer is that the regulations stipulate that there should be systems in place in certain institutions, so having systems heightens the level of awareness inside that institution. And that's primarily directed toward the financial sector. There is debate within the European Union at the moment on the second money-laundering directive that looks at these similar issues, as to whether you should enlarge this to these greater sets. That it is a very interesting concept is my honest answer to it. However, I'm not sure how you enforce it. The debate has been, is it a jeweller you're directing this toward? If it is, who will regulate the jeweller? Should it be reflected in the reporting regime, i.e., that they should report, or is it that you're asking them to have systems? We already ask them to report, we just don't ask them to have systems.

• 1650 

I don't know if there's a direct answer for your second question. I'm not sure that by taking this too far away from the main financial sector you can actually have an infinite amount of success in it, because if you can't police it, what is your objective when you set out to do it? I'm not saying that you can't do it in all sectors.

For me, money transmission is an unpoliced sector at the moment. But it is of high concern to us, so we would devote a lot of resources to policing that sector in a different way.

Mr. Roy Cullen: Okay. Thank you.

The agencies and centres are different, and you described yours. One of the issues the committee was asking about this morning was the kinds of resources needed to adequately install a centre and the magnitude of that effort. Can you give us any advice on that at this point?

Mr. Martin Comley: I could bluntly say to resource it properly. It is the greatest criticism that has been levelled against us in how we've gone about this. When I started in the unit, there were five staff members. Some years later, we now have 27. As this year goes on, that is likely to double in strength. That's bearing in mind that I have the resources of the rest of the National Criminal Intelligence Service to draw on, from within its tentacles. So there's quite a vast organization. With that you also need correct IT resources to do the job properly, because you don't envisage your centre or mine to be a post box. They should be doing something more toward it.

Mr. Roy Cullen: Okay. Thank you.

I said I would come back to the privilege issue. Mr. Comley, in the United Kingdom, if someone comes into a lawyer's office or an accountant's office with, let's say, an amount or a transaction that appears to be suspicious, is the lawyer or accountant required under your law to report that to the centre?

Mr. Martin Comley: Yes.

Mr. Roy Cullen: I'd like to come back, if I may, to the Canadian Bar Association. First of all, as my colleague pointed out, the act does respect solicitor-client privilege. But isn't it acknowledged that for activities around trust accounts the question of privilege is not the same as for other types of activities?

I'm reading a 1985 report of the Ontario Canadian Bar Association, which says:

> Some lawyers mistakenly believe that whatever they do, and whatever they are told, is privileged merely by the fact that they are lawyers. This is simply not the case.

They go on to talk about trust accounts being part of the activities that are not covered necessarily by privilege. I'd like you to comment on that.

Mr. Greg DelBigio: First, the report you have referred to is a 1985 report from the Ontario CBA. It does not reflect the official position, then or now, of national... Our position is as set out in the recommendations we made today.

Second, while it might be that certain aspects of a trust account are not privileged, it's important to take a broader perspective. In order to determine suspicion, it might well be that sometimes questions have to be asked. It might be that without an inquiry there is not going to be suspicion, but a lawyer might nonetheless feel inclined toward making an inquiry in order to determine whether or not the suspicion exists. It's the questions and answers of that inquiry

in order to determine whether or not there's suspicion that might well be and would be privileged.

So it is not the simple matter of a deposit into a trust account that we can limit ourselves to in considering the issue. It's much broader. Who is the person? What is his or her occupation? What is his or her source of income outside of the occupation? How long has he or she participated in that occupation? It's questions such as those that will give rise to or eliminate suspicion.

• 1655 

The Chair: Thank you, Mr. Cullen. Do you have another question?

Mr. Roy Cullen: I have a lot of questions, but I'll defer to my colleagues, and if we have a chance, I'll come back.

The Chair: Okay.

Mr. Szabo.

Mr. Paul Szabo (Mississauga South, Lib.): Thank you, Mr. Chairman. Mr. Cullen is a CA, and so am I, and we have a lawyer over there and another lawyer there, so now we're balanced.

The Chair: Good. Thank you, Mr. Szabo.

Mr. Abbott.

Voices: Oh, oh!

Mr. Paul Szabo: The brief from the CICA was interesting to me because it did raise probably the one aspect that really is a theme in a lot of the testimony, and that has to do with what constitutes a suspicious transaction, the definition. I suspect that around the table we could find all kinds of frustrations to a definition. It's almost like trying to nail Jell-O to the wall. It just isn't going to happen.

But I'm intrigued by the debate about the role or the positioning of lawyers and accountants. It seems to me that in the over 30 years I've spent in either public practice or corporate life, lawyers and accountants can occupy almost any position at any time. It's not just auditors and people in court. They can be agents, advisers, or consultants. They can be involved directly in financial transactions. They can hold absolutely any position possible and still be part of a firm or acting in the capacity as a professional.

Given that that's the case, and given that both professions have codes of conduct in which reports would have to be made to their bar or to their institute, is there a parallel there that has to be taken into account, that there is a reporting requirement in place professionally? Should it not also apply with regard to at least some of the activities of both professions as it relates to this legislation?

Mr. Ian Murray: From the accounting profession's point of view in the legislation, you're exactly right. As accountants, we get involved in numerous ways in business, not just in a professional way. A very large percentage of our members are involved outside the profession in business. It's for this reason that we are concerned with the scope of the legislation and see a

need to have the legislation make it very clear that the scope is in fact only aimed at those who are involved in specific financial transactions, and not those who are peripherally involved, either in the profession advising or outside the profession.

So that's our main concern as accountants responding to this proposed legislation, to narrow the scope so it's very clear that it relates only to those who are directly involved in financial and intermediary activities. Beyond that, our responsibility under a professional code of conduct is that we are required to respect confidentiality. However, if there's legislation that overrides, that does require us to report, then we are required to comply with that legislation.

Mr. Paul Szabo: With regard to one of your principal recommendations, about a definition of suspicious transactions, maybe we'd better find out whether or not there's any consensus here. You haven't suggested one. You certainly made it clear that there should be a definition. Are you aware of a definition in another jurisdiction, or are you prepared to suggest a criterion or two that would be included in such a definition?

Mr. Ian Murray: We are not aware of a definition we could just pick up and use for purposes of this legislation. In our discussions throughout this process and in our discussion paper submission, we've suggested that we would be pleased to be involved in consultations on this issue.

As Mr. Comley has indicated in his presentation, this is a very difficult issue to articulate clearly and on which to establish criteria that will result in consistent reporting. It's going to take a lot of time and experience, I believe, to get to a definition that will be workable.

• 1700 

Mr. Paul Szabo: I have one last question, and maybe Mr. DelBigio can help me. I appreciate what he believes to be the position of the legal profession. What would happen if a lawyer, in discharging his or her responsibilities as a lawyer, does in fact become aware of a clearly suspicious transaction under any definition? In terms of reporting either to the bar or to the authorities, is there anything...

Mr. Greg DelBigio: Right now?

Mr. Paul Szabo: Right now.

Mr. Greg DelBigio: There is a prohibition upon any reporting except if the information a lawyer comes to be in possession of indicates that there is going to be imminent bodily harm.

Mr. Paul Szabo: Just to follow that, if you had personal knowledge of a colleague, another lawyer, who had been involved in an action you believed to be... Maybe you didn't have absolute proof or it wasn't established in law, but you suspected or believed it to be... Is there obligation on your behalf, under your professional rules of conduct, to report that lawyer to the bar for follow-up on the allegation?

Mr. Greg DelBigio: I stand to be corrected, but I am not aware of such an obligation in British Columbia.

Mr. Eugene Meehan: In Ontario there is. If one is of the belief that a colleague in the profession has committed professional misconduct, there's an obligation to report that

individual to the bar. The bar will deal with it appropriately, including taking that matter to the authorities.

Mr. Paul Szabo: And the CICA?

Mr. Ian Murray: Within the provincial institutes, certainly those in Ontario and I believe most of them throughout Canada, we do have a similar requirement to that of the lawyers in Ontario. You'd be required to report it to the institute.

Mr. Paul Szabo: Thank you.

The Chair: Thank you, Mr. Szabo.

We'll now go to Mr. Abbott.

Mr. Jim Abbott: I'll try to be very quick here.

First, the witnesses should realize that it's not normal... It happens from time to time, but it's not a normal practice that a piece of legislation will come to the House of Commons and be passed from the House of Commons on second reading, which is agreement in principle, on division—in other words, without a vote. To my mind—and I think my colleagues might agree—that basically says that the persons elected by the people of Canada have said we want to see this kind of legislation in place. So there is a very strong mandate for this legislation to be going forward.

If it were to go forward, therefore, with the exception for the bar, please explain this to me why, if I were a person of nefarious means, would I ever choose CGAs or CAs to conduct my professional activities. I might have something sufficiently hidden that it wouldn't contravene the bar rules and so on and so forth. Why would you guys not be the agents of choice of people of nefarious means? It's a loophole big enough to drive a Kenworth through.

Mr. Greg DelBigio: I don't think my faith in the integrity of the profession is improperly founded. I don't believe there would be a vacuum such that people would go to lawyers and have lawyers then facilitate criminal transactions on their behalf.

First of all, it presumes a body of knowledge that would be disseminated amongst a suspect community. Even if that dissemination of knowledge does occur and people do flow to lawyers, the presumption is that lawyers might then engage in these transactions. There's no evidence to suggest they will or they have. The transactions, if suspicious, would be stopped at the doorway of the lawyer's office.

• 1705 

Mr. Jim Abbott: Then why shouldn't we also exempt the accountants, the CAs and the CGAs? They're a professional body.

Mr. Greg DelBigio: Well, it's not just the codes of professional conduct. While the codes of professional conduct overlap, the law has very clearly and for many years, not just in Canada, recognized the relationship between lawyers and clients as being different from the relationship between accountants and clients, doctors and clients, or many other professions and clients. It is recognized as a privilege in law, which is different from the relationship that

exists for other professions, and that's an inescapable legal factor that needs to be taken into account.

Mr. Jim Abbott: I'll go on the record as having listened to your answer and remained skeptical.

Mr. Greg DelBigio: I'm sorry to hear that.

Mr. Jim Abbott: Thank you.

The Chair: Is that your final question?

Mr. Jim Abbott: That's it.

Mr. Richard Marceau: Is that your final answer?

[*Translation*]

I'll be very quick, since the briefs were only given to us when you arrived. At least, that's when I got them. Do you believe, Mr. Comley, Mr. Murray and Mr. Meehan, that there should be in the bill a description of the reasonable grounds to suspect that some transactions are related to the commission of an offense? Do you think that should be defined, either in the legislation, or in the regulations?

Mr. Eugene Meehan: I'll answer first. We need to have a universal exemption in the legislation and also to add that the confidentiality is secured to protect our clients, to protect Canadians.

Mr. Richard Marceau: I understand that, but what are reasonable grounds? It's rather vague. Do you think we should say that reasonable grounds could be *a*, *b*, *c* or *d*, to at least give...

Mr. Eugene Meehan: We have a problem with the terms "reasonable grounds" because it's a standard expression used in criminal law.

Mr. Richard Marceau: I see.

Mr. Murray, it's up to you.

[*English*]

Mr. Ian Murray: We strongly believe the criteria and guidance established for suspicious transactions should be embraced and documented in the legislation.

Mr. Richard Marceau: Okay.

Monsieur Comley.

Mr. Martin Comley: I have to go with the U.K. model for my answer, and that's in the guidance notes. If you seek to put it in the legislation, I'm not sure how long your legislation would be and how you'd have to amend it. That's the dilemma we've always come up against.

Mr. Richard Marceau: Merci.

The Chair: We'll go back to you, Mr. Cullen.

Mr. Roy Cullen: Thank you, Mr. Chairman. I'll be brief.

First of all, I understand the issue around CAs or CGAs involved normal accounting or audit work and that they might come across a transaction that looks suspicious, but the intent of this bill is only to capture those situations where accountants, CAs or CGAs, would be involved in a transaction. I know the department has been indicating that to you, and if it's not clear from the legislation, maybe we need to deal with that in the legislation or quickly provide the regulation.

Coming back to the Canadian Bar Association for a moment, Mr. DelBigio, you talked about, let's say, an initial encounter with a client or a potential client who has brought in a lot of cash. If this law is enacted, there will be certain prescribed amounts over which it will be obligatory to report. So what would stop a lawyer at that point from saying “Do you realize that if you give me this money to put in a trust account, I'll be obliged to report it, and I may not even have to tell you when or how or whatever?”

By the same token, if someone comes in with $100,000 in cash, and there are some suspicions in your mind, what would prevent a lawyer from saying “Do you realize there is this act in place whereby, if I ask you some questions and after that I have suspicions, by law I'm obliged to report it?” What would be the great hurdle in doing something like that?

• 1710 

Mr. Greg DelBigio: I don't think there's a great hurdle. Indeed, if this passes, I think it would be a lawyer's obligation to advise a client or a potential client in that way.

Having advised the client or potential client of that fact, it is nonetheless inconsistent with the relationship as it presently exists to report upon a client in a manner that might well have penal consequences for the client. That is simply inconsistent with the lawyer's obligations to his or her client as they presently exist. So advising the client of the first step does not erase the damage that would potentially flow from the subsequent reporting.

Mr. Roy Cullen: I'm sure we could pursue this question at some length, but I—

The Chair: Please do. I'm kind of interested.

Mr. Roy Cullen: I must say I don't quite follow that. Given that, the client at that point has some decisions to make and the lawyer has made it pretty clear what's required. If they're not guilty of a money-laundering offence or will not be, then presumably they'd say “I have nothing to hide, so let's go to it.” If they are concerned about the act they will commit or are about to commit, then presumably they'd be more guarded and they'd enter into an arrangement where they absolutely know the rules.

Mr. Greg DelBigio: A client might walk out the door, and that—

The Chair: You'd report him then as well, right? If somebody walked out the door after you said you might have to report them, an alarm bell should go off, shouldn't it?

Mr. Greg DelBigio: One of the questions in the interpretation of clause 7 is that if consultation of that sort constitutes financial transactions... It seems to be limited to the

financial transactions. I don't know if clause 7 would capture that sort of initial consultation or not.

Again, it is that uncertainty of interpretation that might well cause a lawyer to decide to err on the side of saving their own skin and make the report. It causes a lawyer to be, on one hand, trying to serve the interests of a client or a potential client, or determine whether or not interest can be addressed within law, and also protecting his or her own interests.

The Chair: In fairness, I wasn't trying to be humorous there. If that were to happen to you, if Mr. Y were to approach you with $50,000, $100,000 or whatever, you would probably say "Look, I may have to report you, because I'm kind of suspicious about this." What would you do, responsibly? Would you in fact report this person or not?

Mr. Greg DelBigio: Well, I think the fact of a large amount of cash, coupled with more information, might well give rise to a suspicion. It might even give rise to something stronger than a suspicion. But as I read it, mandatory reporting of suspicion is to occur for every financial transaction.

I don't mean to answer your question with a question, but one of the questions is how clause 7 is to be interpreted. It is certainly the case that the lawyer should tell the individual that he or she cannot handle their case. The lawyer cannot accept that money as a retainer or as part of a business transaction.

Ms. Sarmite Bulte: I think you can accept it as a retainer, can you not? Cash on account of fees is exempt under the regulations. One of the ways around it would be for someone to come and say "Here's $100,000 on account of fees", and it's a non-reporting requirement.

Mr. Greg DelBigio: It is true that fees are exempt, but that kind of transaction might well be captured by the existing provisions of the Criminal Code. That might well constitute money laundering, and indeed I would argue that it would.

• 1715 

Ms. Sarmite Bulte: But isn't the bank going to catch it anyway, whether you report it or not, when you put that $100,000 into the bank or if you, let's say, put $9,000 in one trust account, $9,000 in another trust account, and you have 10 trust accounts all with whatever? At some point, some other financial institution is going to catch that, whether you report it or not.

Mr. Greg DelBigio: Maybe, and hopefully. And if that is so, if the information is otherwise going to be gathered, then there is no reason to require that lawyers be gatherers and disseminators of information.

Ms. Sarmite Bulte: Okay.

The Chair: Mr. Szabo.

Mr. Paul Szabo: Just to get this straight, and maybe Mr. DelBigio could advise lay people, when does a client become a client with regard to lawyer-client privilege?

Mr. Greg DelBigio: The privilege and confidentiality is triggered as soon as the communication occurs, as soon as a person is seeking legal advice and that communication

occurs for the purpose of attaining advice and within the structure of their relationship. Your talking to a lawyer in passing about baseball scores is neither privileged nor confidential. Your going to a lawyer's office and seeking advice with respect to a business transaction—and you're going to that lawyer because he or she has expertise within that area of business—is very clearly both privileged and confidential.

Mr. Paul Szabo: So it doesn't have anything to do with fees. It could be pro bono as long as it's legitimate legal business.

Mr. Greg DelBigio: Yes.

Mr. Paul Szabo: Then on that basis it means that in your view, or at least in the position of the bar, everything lawyers do is subject to lawyer-client privilege and therefore should not be covered or captured in any way by this bill.

Mr. Greg DelBigio: No, it is not every communication. It might be that every communication is confidential, but not every communication is privileged.

Mr. Paul Szabo: I have a last question. With regard to the question I asked earlier, is there any event you could see occurring related to a financial transaction whereby you could imagine that a lawyer would be in a position... and the legal profession would agree that it should be reported where it was suspicious or in fact appeared to be illegal?

Mr. Greg DelBigio: No, I think the considerations of privilege and confidentiality demand that there be no report, but also that the lawyer not participate in the transaction. Once again, all the CBA is asking is that the lawyers not be required to pass the information along. Lawyers are not going to participate in the transactions, and they cannot.

The Chair: Mr. Cullen.

Mr. Roy Cullen: Thank you, Mr. Chairman.

Not to belabour this, but to come back to Mr. Comley, if I may, switching gears from client-solicitor privilege, the way this bill is struck, first of all, there's a reporting requirement to the centre. If the centre, by collaborating with other information... was of the view that there was a suspicion of money laundering, they would pass certain high-level aggregated information to the police. If the police then, using a lot of tools at their disposal, came to the conclusion that, yes, they concurred and in fact they had a strong suspicion but they'd like more information, under our law they actually have to go to a judge and get a court order to require the centre to give additional information. And this is designed that way to deal with privacy concerns.

How does it work in the U.K.? I know you are independent, and yet you're aligned or attached to the police forces in the U.K. How would that work in the U.K.?

Mr. Martin Comley: There are similar provisions, except they wouldn't be coming to me for the information, because the information on which the suspicion is based is held by an institution, whether it be the bank, lawyer, or anybody else. And then they would equally have to go in front of a judge and satisfy the judge that an order or warrant was necessary in order to bring that material available, so that institution would be compelled to bring forward that material.

• 1720

Mr. Roy Cullen: So in practice in the U.K., then, what has happened, what's happening, or what does happen is that the police go directly to the financial institution and not necessarily to your unit for a court order.

Mr. Martin Comley: Correct. They go directly to the judge. It must be a circuit judge, not a lower court.

The Chair: I have a final question for you, Mr. Comley. Looking at page 4 of your handout, you have "suspicious disclosure made to NCIS". You went from 600 to 14,500, with an all-time record in 1996 of 16,125. Are economies of scale kicked in with these cases in the sense that... I mean, you've only doubled your staff since 1967, is that correct?

Mr. Martin Comley: Yes, roughly.

The Chair: That's quite a caseload, isn't it?

Mr. Martin Comley: Absolutely, and the office is currently suffering a backlog at the moment. We're devoting what could be considered a huge amount of resources too, compared to the size of our organization. That's why I can accurately predict that in our next budget for the organization we will be looking to increase our staff. That has already been discussed at directorate level. We're not adequately staffed to undertake the function for which we are set aside.

The Chair: That's good. When you look at the staff you started with, it's phenomenal that you can deal with all these cases.

Mr. Martin Comley: We're not doing the investigation. We'll be somewhat like the centre. We're only doing an assessment of those, and passing them on to the correct investigative body.

The Chair: But still... okay. That's the question again.

Ms. Albina Guarnieri (Mississauga East, Lib.): Mr. Chairman, just to piggy-back on your point, this is for the criminal lawyers' association.

In your brief, you mentioned that you're trying "to address a problem that we believe reflects a relatively minor portion of business activity in Canada". How would you substantiate this observation?

Mr. Greg DelBigio: Nothing that I have seen demonstrates or suggests that lawyers are, in any widespread way, either as a profession or individually, engaged in money laundering.

Ms. Albina Guarnieri: So you're simply offering a personal observation rather than a—

Mr. Greg DelBigio: No, I have looked at reports, I have looked at the data, and nothing I have seen proves it.

Ms. Albina Guarnieri: You have solicitor-client privilege, so lawyers wouldn't be sharing or pooling their information.

Mr. Greg DelBigio: Lawyers would not be pooling their information, but as I think Mr. Comley would be able to indicate, the police have very effective ways of watching and listening to and determining who is doing what. One source of data is simply arrests or charges or convictions. Precious few lawyers have become ensnared in prosecutions, and that is a very effective data source.

Ms. Albina Guarnieri: But that's essentially an assumption on your part.

Mr. Greg DelBigio: No, it's not an assumption. That's based upon data for all of us to see.

Ms. Albina Guarnieri: So then it wouldn't be a big problem if this bill were to become... It wouldn't put lawyers in an awkward position, then, if it's a relatively minor problem.

Mr. Greg DelBigio: No, it would put lawyers in a very awkward position. Although there is no evidence to support any contention that lawyers are engaged in money laundering, on a day-to-day basis lawyers receive information that is privileged and confidential, and this would compromise that. It would be very awkward.

Ms. Albina Guarnieri: Thank you.

The Chair: Thank you, Ms. Guarnieri.

On behalf of the committee, I'd like to thank you very much.

Mr. Comley, once again, thank you very much for making the flight to Ottawa. We certainly appreciate your input.

You've all given us something to think about, lawyers and all. We'll have decisions to make in the very near future, and we want to thank you.

Mr. Greg DelBigio: Mr. Chair, if I might make a final comment, the Canadian Bar Association would like to thank you for the opportunity to be present today. To the extent that further input might be useful, we would invite that opportunity.

The Chair: We'll take you up on that. Thank you.

The meeting is adjourned.

April 12, 2000 [House of Common Standing Committee on Finance]

The Acting Chair (Mr. Paul Szabo (Mississauga South, Lib.)): We are resuming consideration of Bill C-22, an act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada, and to amend and repeal certain acts in consequence.

This afternoon we have representatives from the Canadian Bankers Association; H and R Block Canada, Inc.; the Canadian Police Association; and the Royal Canadian Mounted Police. Welcome to you all. I'd like to begin with the Canadian Bankers Association.

Our normal practice is to receive your presentations for about five to seven minutes, and then the members will have an opportunity to ask questions of the witnesses after all the presenters have given their statements.

We'll begin with the Canadian Bankers Association, Mr. Warren Law. Maybe you'd like to introduce your colleagues.

Mr. Warren Law (Vice-President, Corporate Affairs and Legal Counsel, Canadian Bankers Association): Yes, thank you, Mr. Chairman.

Mr. Chairman, committee members, good afternoon. My name is Warren Law and I'm the vice-president, corporate affairs and legal counsel of the Canadian Bankers Association. On behalf of the banking industry, I thank you for the opportunity to discuss our industry's experience with the deterrence of money-laundering activity.

Specifically, we welcome the opportunity to provide you with our views on the current legislation before the House, as well as the related consultation paper issued by the Department of Finance in December 1999.

With me today is Frank Craddock, chief security officer of the TD Bank Financial Group, who is also the current chair of the CBA corporate security committee; and Mr. Gene McLean, who is the director of security of the Canadian Bankers Association.

Mr. Craddock was with the Toronto police service for 26 years, with responsibility for the investigation of various major crimes. He has been with the TD Bank Financial Group since 1993, where he currently serves as the head of corporate security and is responsible for his bank's money-laundering deterrence programs.

Mr. McLean was with the Royal Canadian Mounted Police for over 25 years, with responsibility for the investigation of organized crime, and occupied the role of liaison officer in England and Switzerland for many years. He is at present responsible for the development and execution of industry-level strategies, including the deterrence of money-laundering activity.

As key intermediaries in the financial system, we recognize the very negative impact of money-laundering activity and we understand its damaging effects upon our society.

I will now turn to Mr. Craddock to review the industry's position with respect to the deterrence of money-laundering activity.

Mr. Frank Craddock (Chair, Corporate Security Committee, Canadian Bankers Association; Chief Security Officer, TD Bank Financial Group): Thank you, Mr. Law, and thank you, Mr. Chairman and committee members, for inviting us here to participate in this important process.

I believe it may be helpful to understand a bank security officer's role within the Canadian financial institutions. The position I occupy is normally recruited from law enforcement. There are two distinct areas within security that require our supervision.

The first is protective service, which includes guards, physical security, security equipment, and technology.

The second area, the one I will be focusing on today, is investigations, which includes our activity related to the deterrence of money-laundering activity. In order to protect against this criminal activity, we have established sound policies and programs that detect and prevent money laundering.

Just a few of the preventative measures taken by Canadian banks include: the right to refuse financial transactions suspected of being proceeds of crime as defined by the Criminal Code; a requirement that a declaration of source of funds be signed by customers for financial transactions involving $10,000 or more; a requirement for bank employees to report any financial transactions that are judged to be suspicious, regardless of the amount; the placement of a senior bank officer in every branch, known as the designated officer, to whom suspicious transactions are reported; a strong emphasis on the know-your-customer rule, whereby employees must obtain appropriate identification and documentation from clients, as well as understand the client's usual pattern of financial transactions; an audit of branch compliance with anti-money-laundering policies; and various staff awareness and education programs, including the distribution of related videos produced by the CBA corporate security committees.

• 1545

We all work within the scope of the existing legislation, together with the guidelines issued by the Office of the Superintendent of Financial Institutions, known as OSFI, and we believe we have developed a very effective measure to identify money-laundering activities while avoiding high volumes of irrelevant reports.

Most important to our success is our relationship with the law enforcement agencies, the RCMP in particular. The banks have consistently supported the principle of mandatory reporting of suspicious transactions, and for several years there has been a voluntary arrangement between the RCMP and the banks to facilitate the disclosure of those suspicious transactions. We all work together, share appropriate security intelligence, and currently refer many suspicious transactions to the RCMP for investigation.

I will now turn to Mr. McLean to review the industry's position with respect to our specific comments regarding the legislation and regulations.

Mr. Gene McLean (Director, Security, Canadian Bankers Association): Thank you, Mr. Craddock. Thank you, Mr. Chairman and committee members, for the opportunity to participate in this important process.

The Canadian Bankers Association and all of its members are fully committed to the deterrence of money-laundering activity and fully support, in principle, the current proposed legislative changes. We have made some preliminary comments about the proposals in a letter we have sent to the Department of Finance. We have provided a copy of this letter to the committee; therefore, I will now simply highlight some of the matters raised in that letter.

Our main concern is that implementing legislation for a mandatory system of reporting should not be overly prescriptive or complicated in terms of the types of transactions that must be reported. Otherwise, many legitimate transactions will be reported and the resulting huge volume of information may prove ineffective as a means of identifying money-laundering activity.

Bill C-22 requires every person or entity to report to the Financial Transactions and Reports Analysis Centre of Canada every financial transaction where there are reasonable grounds to suspect the transaction is related to money laundering. However, there is no definition or criteria for making this determination, which may lead to inconsistent reporting by the entities covered by the legislation.

While it is anticipated that FTRAC will develop reporting guidelines, we urge the federal government to begin consultations as soon as possible to develop practical measures that ensure consistent reporting.

Bill C-22 provides for the creation of a reporting exemption scheme through regulations. It is our understanding that the intent of these provisions is to reduce reporting of customer transactions that are obviously above suspicion. Some good examples would be deposits from government departments and agencies, or routine transactions by customers that regularly deposit large cash amounts, such as large grocery chains and fast food restaurants.

This concept marries exceptionally well with the current practice of our members, whereby carefully controlled exemptions for such clients currently exist. Unfortunately, the consultation paper states that no specific exemptions are proposed at this time. We believe the use of exemption lists would substantially improve the effectiveness of the mandatory transaction reporting system and specifically prevent the FTRAC from receiving large volumes of irrelevant reports.

Similarly, while Bill C-22 will require the reporting of cross-border flows of currency and monetary instruments, it provides for exemptions from the reporting requirements. Again, and unfortunately, the consultation paper states that no exemptions are contemplated at this time for such transfers.

We believe that the failure to allow exemptions would lead to the unnecessary reporting of cross-border cash transfers, such as those between financial institutions and those made by the federal government or its agencies.

Finally, Bill C-22 sets out relatively severe penalties for failure to comply knowingly with the record-keeping and reporting provisions of the legislation. Although there is provision for a due diligence defence, it must be demonstrated that all due diligence has been exercised.

It is our view that while Bill C-22 uses extremely broad language to describe the scope of the offences, it then provides a defence that is potentially very narrow and difficult to satisfy. Criminal liability should only arise in cases where the employee and/or the institution knowingly and deliberately fail to file a report or keep a record, or act in gross negligence or wilful blindness to the facts.

The use of the word "all" to qualify the due diligence defence means that it becomes very subjective and establishes a test that may be difficult, if not impossible, to meet. We recommend, therefore, that the word "all" be removed from subclause 77(2).

• 1550

Thank you for your time. I now invite Mr. Law to conclude our presentation.

Mr. Warren Law: Mr. Chairman, the Canadian Bankers Association, together with all of its members, is deeply committed to the fight against money-laundering activity, and we look forward to working closely with the government, law enforcement agencies, and FTRAC to ensure that the measures in Bill C-22 are effectively and efficiently implemented.

On behalf of Mr. Craddock, Mr. McLean, and myself, I would like to thank you all for your attention, and we would be pleased to answer questions later on in these proceedings.

The Acting Chair (Mr. Paul Szabo): Thank you very much, gentlemen. The CBA has always been very thoughtful in its comments to the committee over the past years, and we appreciate it very much.

I'd now like to call on the representatives of H&R Block Canada, Inc.: Mr. Bonar Irving, senior vice-president and general manager, and Mr. Todd McCallum, vice-president. Welcome, gentlemen.

Mr. J. Bonar Irving (Senior Vice-President and General Manager, H&R Block Canada Inc.): Thank you, Mr. Chairman, committee members.

We have prepared bilingual opening statements, which I understand have been circulated to the committee, and we have additional copies, if anybody needs them. Since you already have the document, I'll restrict my comments to our key concerns.

H&R Block has 537 offices and 470 franchise offices across the country. Three years ago we established Financial Stop as a no-frills financial services platform to cater to the underserviced segment of the population that earns less than $25,000 per year. We now have 45 corporate and 32 franchise Financial Stop locations. In addition to cashing cheques, we

provide money orders, bill payments, moneygrams, currency exchange, phone cards, mail box rental, business services, and of course income tax preparation.

Cheque-cashing retail outlets exist because a segment of consumers seeks immediate use of their money and is unwilling to wait until a cheque clears through the banking system. A significant percentage of our clients do not use the mainstream banking system. Our service provides easy access to their money and a variety of user-pay services at a one-stop neighbourhood location.

We know that money laundering is a serious problem and that any institution that handles cash has to accept ongoing responsibility to combat that problem. We comply with existing money-laundering regulations, and we support the new legislation. We are prepared to make the necessary investments and to ensure that our staff is properly trained.

We do have three specific concerns: first, our main concern is section IV, record-keeping requirements for the new entities, which requires that we retain a record for five or more years of every transaction of $1,000 or more. This threshold level captures a significant volume of our business. Overwhelmingly, these are ordinary, everyday transactions. People are cashing their bi-weekly pay cheques. They're obtaining money orders to pay their and their roommate's rent or to pay a bill, or they are using money orders to send money to their families in or outside of Canada.

It is simply not clear to us why this arbitrary level was picked and why Canada feels the need to be out of step with other countries. We are told that the United Kingdom established the equivalent recording threshold at £2,000, and the U.S. has established $3,000 as the appropriate level. We would like to see the Canadian threshold for our industry established at $4,500 to $5,000 Canadian.

We have done some rough calculations, and the $1,000 threshold would have captured almost 100,000 of our transactions in the last year in just our corporate offices alone and over 30% of all cheques we cashed. Bringing the threshold to the $4,500 to $5,000 range would remove the pay cheque and rent transactions and have us archiving from 5,000 to 10,000 transactions a year. We believe this is a more realistic and more manageable number.

Our second point relates to the type of information to be gathered. There are common forms of identification that most of us take for granted: driver's licence, social insurance cards, credit cards, medical cards, etc. A significant number of our Financial Stop clients do not have these forms of ID. That does not mean we don't verify our customers' identities. We just do it in ways that would not occur to deposit-based financial institutions.

• 1555

The regulatory consultation paper refers to corporate and individual account information. Officials are applying the deposit-taking institution mindset to our business, which is totally inappropriate. Deposit-taking institutions are in the relationship business. That is why they have the account information. We don't have this type of relationship with our customers. We

do transactions. Every transaction is a separate event, accepted or rejected on its own merits. The way we collect information from our customers reflects the reality of our business. If we are pigeonholed in the same box used for the department's regular bank clients, we'll be forced to collect types of information that many of our customers simply cannot supply. This could drive them away from us toward fringe and underground operators. This would not serve the legislation's overall objectives.

Third, we are concerned about the privacy rights of our customers. We note that the government is about to pass important privacy legislation, Bill C-6, and the privacy concerns have been highlighted in the consultation paper. We expect to fully comply with Bill C-6, and we simply want to know that our obligations under federal or provincial legislation will not be in conflict with our obligations to this upcoming agency.

In summary, irrespective of their income, people need access to basic financial services. We want to ensure that our services are accessible and easy to use.

We support this legislation, but we are worried that its application will lead to a denial of services that pushes some of our clients underground. We want to avoid having our staff standing at their counters gathering unnecessary information from people paying their rent or cashing their paycheque. The bottom line is that this is good legislation, but let's not have the net so tightly structured that we are inundated with information about working people's ordinary, day-to-day transactions. Thank you.

The Acting Chair (Mr. Paul Szabo): Thank you very much, Mr. Irving. We appreciate your input.

I'd now like to turn to the Canadian Police Association, and today we have with us Mr. David Griffin, who is the executive director. Welcome, Mr. Griffin.

Mr. David Griffin (Executive Director, Canadian Police Association): Thank you very much, Mr. Chairman. It's a pleasure to be here today.

The Canadian Police Association welcomes the opportunity to appear before the committee today in support of Bill C-22.

The Canadian Police Association represents approximately 30,000 front-line police personnel across Canada. In addition to nearly 300 member associations from all 10 provinces, the CPA has members from the Royal Canadian Mounted Police, the CN Railway police, the CP Railway police, and first nations police officers.

As professionals who dedicate their lives to community safety and the reduction of crime, our members are acutely aware of the impact of the thriving multibillion-dollar industry known as organized crime. Organized crime affects all Canadians, undermines our economy, reduces our security, and threatens the integrity of our political institutions. Organized criminals are most often associated with the illegal drug trade, as the primary suppliers of illegal drugs to our communities and children, including cocaine and heroin. Their activities also include, but are

not limited to, the illegal movement of firearms; illegal gaming; prostitution and the sexual exploitation of our children; and trafficking in stolen commodities, such as alcohol, vehicles, and jewellery. The organized criminal is also the distributor of human commodities through the smuggling of illegal migrants, prostitution, and the sexual exploitation of third world children.

The explosive growth of technology in our increasingly global society has presented new opportunities for organized criminals through technological crime, distribution of child pornography, international telemarketing fraud, and offshore gambling.

Organized crime is far from victimless. In addition to the traditional forms of violence associated with the organized criminal, their illegal activities damage and often destroy the lives of our children and vulnerable persons who fall prey to their illicit trade. The child prostitute, the drug addict, the addicted gambler, and the senior defrauded of their life savings are familiar examples. There is a tremendous economic drain on our economy as businesses and insurance companies pass on to consumers the tremendous costs of fraud and theft.

• 1600

The Canadian Police Association has for several years now adopted resolutions at each of our annual general meetings calling for increased resources for the Royal Canadian Mounted Police and national police services to bolster our federal policing responsibilities.

We have also highlighted the need to strengthen our borders to combat these growing concerns. We were pleased that the Solicitor General of Canada, the Minister of Finance, and this government responded to these concerns in the recent budget announcements. We will be watching closely in the months ahead to measure the impact of these changes on front-line services.

Funding is an increasingly important issue in the battle against the sophisticated, wealthy, and unencumbered organized criminal, but money is only one element of an appropriate national strategy to combat organized crime.

We were pleased when the federal government recently decided to remove the $1,000 bill from circulation, as suggested by Mr. Marceau in his private member's bill. We were also pleased that Parliament supported the resolution brought forward by the Bloc Québécois in December of last year to convene parliamentary committee hearings on organized crime.

The Canadian Police Association welcomes this opportunity to raise awareness of the increased threats to community safety and national security and, more importantly, to identify strong and effective measures to combat the scourge of organized crime in our communities.

When experts discuss money laundering, Canada has been described as “Maytag of the north”. Bill C-22 is a positive step in addressing this concern.

Most Canadians do not understand the concept of money laundering or its impact on our communities. Simply put, money laundering refers to the methods used by the organized criminal to transfer the proceeds of their dirty criminal activities into legitimate financial instruments. The ultimate goal is to insulate or cleanse the money from any trace back to its criminal origins.

A variety of methods are employed by the laundrymen to accomplish their objectives. These innovative methods include, but are not limited to, the following: "smurfing", where large sums are broken down into smaller parcels to be transacted by a large team of individuals; "flying" money, the process of engaging in cross-border transactions involving the transfer of legitimate goods for cash through jurisdictions with lax or permissive regulatory schemes; smuggling cash to jurisdictions that provide a haven for criminals through banking secrecy, such as the one-quarter of 200 United Nations countries that provide secret banking regulations, including one jurisdiction that has one bank for every 48 people; and the creation of shell companies or legitimate enterprises to process proceeds of crime. For instance, in some jurisdictions criminals are able to establish their own banks for these purposes.

The laundrymen work separately from the drug dealer. Their paths do not cross. This is the first step in separating the proceeds from the crime. The money launderers employ professionals such as money managers, lawyers, and accountants who accept high fees in exchange for their sophisticated services. These professionals pacify themselves with plausible deniability and wilful blindness in accepting that the money they are transacting is anything but drug money.

Technology provides increased opportunity for the laundrymen and increased complexity for criminal investigations. Bill C-22 provides a foundation to build upon as technology continues to change the way criminals exploit emerging opportunities. The ultimate goal for law enforcement is to interrupt the flow of ill-gotten gains and identify its criminal source.

In considering the provisions of the bill, we would offer the following observations.

First, the $10,000 mandatory reporting level is appropriate and should not be softened. Incremental changes in this level increase exponentially the opportunities to the organized criminal who launders money by transacting smaller parcels.

Professionals involved in the movement of illegal money should not be insulated from reporting transactions or suspicious occurrences by professional codes of conduct or standards. There is a corresponding public interest in ensuring that professional ethics, wilful blindness, or plausible deniability do not immunize those who provide services to the organized criminal. We support the direction of the legislation with respect to these individuals.

Third, we consider this bill to be a work-in-progress. There is a need for flexibility to adapt to new technologies and trends, such as e-commerce. We support the reliance on a regulatory scheme to ensure that sufficient flexibility exists in the future to respond to emerging issues.

Consideration should also be given in the foreseeable future to including retail transactions involving large sums of cash. The underlying rationale is the same for police when it comes to tracing the proceeds of crime and the accumulation of assets.

We understand the delicate balance that is needed to ensure that individual privacy rights are not unreasonably compromised. While investigations could be expedited by increased access to information gathered by the proposed agency, FTRAC, we understand the need to safeguard personal information. We believe this bill strikes the right balance.

• 1605

This committee has already heard evidence suggesting that limits need to be increased and exemptions provided for specific institutions. We would strongly caution against such changes, as any exemptions or changes provide corresponding opportunities or loopholes to be exploited by the sophisticated criminal or his agents. We believe uniformity is a compelling and required feature of this legislation.

Ultimately, the success of this legislation will rely heavily on the successful implementation of this agency and timely re-evaluation of the scope and mandate of the legislation and processes.

We have had the opportunity to meet with officials from the departments of finance, justice, and the Solicitor General to discuss this bill and the proposed agency. We appreciate their cooperation and I'm impressed by their commitment to the success of this legislation. We look forward to continuing these discussions in the future as this vision becomes a reality.

The Canadian Police Association endorses this proposal, and we would encourage this committee and all members of Parliament to facilitate swift passage of this bill. This bill is an essential tool that is required to bolster existing law enforcement efforts. It is not, however, a panacea, and additional measures will be required to effectively combat organized crime. We look forward to working with you and your colleagues in the months ahead as Parliament considers these important issues.

Thank you once again for the opportunity to appear before the committee today. We sincerely appreciate the opportunity and would welcome the opportunity to address any questions.

Thank you.

The Acting Chair (Mr. Paul Szabo): Thank you very much, Mr. Griffin.

Our final witnesses are from the Royal Canadian Mounted Police. We welcome Tim Killam, assistant commissioner, technical operations, and Lou Goulet, staff sergeant.

Welcome, gentlemen.

Assistant Commissioner Tim Killam (Technical Operations, Royal Canadian Mounted Police): Good afternoon, Mr. Chairman, and committee members.

As you said, Mr. Chairman, I have Mr. Goulet with me from our policy centre. As well, for any subsequent questions, I have three officers in charge of our integrated proceeds of crime units across Canada, from Montreal, Regina, and here in Ottawa.

My presentation today is intended to give you the view of the Royal Canadian Mounted Police on Bill C-22 as it pertains to money laundering, the effects on the legitimate economy, and what we see as the way ahead in the attempt to stem the tide against organized crime money laundering.

As the former officer in charge of the proceeds of crime program in Canada, I diligently worked with my colleagues in attempting to ensure that Canada was protected by a broad range of measures aimed at strengthening organized crime enforcement by preventing the laundering of the profits of illegal activities.

It became clear to me early on that Canada's financial systems were being exploited by criminal organizations to conceal, legitimize, and transport their illicit profits, thereby financing their future activities. It was felt that Canada required a systematic, coordinated, and cooperative approach to ensure that our financial systems were sound as well as free of criminal taint.

We've heard some definitions of money laundering, but for me, money laundering is the economic engine that runs all criminal organizations around the world. Preventing dirty money from entering Canada's financial system would mean not allowing those predisposed to this activity from ultimately strengthening criminal organizations. The fight against organized crime is one that the Government of Canada has taken very seriously. By extension, the RCMP, as the federal police force, is on the front line of this fight.

Estimates of the amount of illicit drug money laundered annually, worldwide, range from between $300 billion and $500 billion U.S. The UN estimates that in excess of $1 trillion U.S. in illegal profits are generated by organized crime annually. The inclusion of laundered illicit funds from economic and other non-drug crimes could potentially double these figures. The magnitude of these figures is obviously staggering.

The flight of capital and the chaos spilling over the borders of the former Soviet Union and other east bloc countries and into jurisdictions in Europe, the U.S., and elsewhere are examples of just how complicated these matters can be.

A portion of these illicit funds ends up in Canada, which is seen internationally as a haven. The RCMP is unable to quantify the exact amount of money laundering in Canada annually but have ample empirical data to show that it is in fact happening at an alarming rate.

There are a number of reasons why money launderers are attracted to Canada and consider it a haven.

First, Canada has a stable economy with a relatively strong currency and a banking system whose efficiency, stability, and security is second to none.

• 1610

Second, there is a long, undefended border between Canada and the United States, over which a huge volume of financial trade occurs.

Third, Canada is located next to one of the world's largest illicit drug markets, the United States.

And finally, and likely most important, is the lack of controls in Canada over cross-border movements of currency and the lack of a mandatory unusual transaction reporting system.

What this means for Canada is there exists an ever more challenging regulatory and law enforcement environment, particularly in a time of reduced barriers to trade and finance.

It is the opinion of the RCMP that in order to effectively combat organized crime, Canada must institute a legally defensible, mandatory unusual reporting system to assist in the investigation of the laundering of proceeds of crime. As far back as 1993, during the Commission on Crime Prevention and Criminal Justice held in Vienna, the Secretary-General of the United Nations put forward an unsettling portrait of the control organized crime has on a worldwide scale. He said:

As revenues generated by organized crime increase, the necessity to control banks becomes a priority for criminals. (...) Businesses controlled by organized crime generate a seventy (70) percent profit margin on their investments. This is achieved at the detriment of law-abiding competitors who must worry about profit margins, overhead, repayment of bank loans. All in all the infiltration by organized crime tends to introduce distortions in the interplay of market forces. In the long run it is the taxpayer and consumer who are affected. The profits of organized crime are so huge that no economy is immune to the impact of this underground economy. (...) We must improve investigative techniques and limit secrecy to appropriate dimensions.
The situation described by the Secretary-General seven years ago is identical to the situation being observed in Canada today.

All financial institutions—banks, trust companies, near-banks, insurance companies—and intermediaries such as solicitors, accountants, casinos, and others who deal with client funds on a daily basis have a front-line role to play in reporting unusual and suspicious transactions. Under voluntary disclosure, as we have today in Canada, there is no systematic and reliable way of detecting money-laundering activity.

A permissive system grants wide discretion to individual financial institutions to determine their commitment to the battle against money laundering and ultimately organized crime. The anecdotal evidence the RCMP has seen underscores the varying commitments in Canada.

At this time there is no overall coordination or control of reports, which are fragmented at best, and thus there is no way of ensuring the available information is being used to its full potential by way of a central agency, as proposed under Bill C-22. It is accepted that it is a struggle to reach an appropriate balance between privacy and enforcement considerations, and it seems clear the balance can never be struck once and for all time. Rather the balance requires constant examination, as ways of doing business, record-keeping and retrieval systems, and the methods of fraudulent transfers all evolve.

But from the enforcement viewpoint, the benefits of the creation of the Financial Transactions and Reports Analysis Centre of Canada, as envisioned in Bill C-22, are many. The centre would, among other things, provide a deterrent by making it more difficult to use traditional financial institutions to hide the profits from illegal activities, therefore reducing Canada's reputation as a haven for money laundering. The centre would fulfil our international obligations. We heard that even yesterday. It would provide a mechanism for enlisting the support and cooperation of banks and other financial institutions in identifying possible currency violations. This centre would identify investigatory targets for possible laundering of the proceeds of crime. And finally but not least, it would provide corroborating evidence against individuals identified through other sources, such as informants and other agency referrals.

At the end of the day, countries are only as strong as their weakest link. Of the 26 member countries of the Financial Action Task Force, only Canada, Singapore, and Germany have not yet implemented mandatory systems of reporting suspicious or unusual transactions. In addition, Canada does not meet the standard required for the Egmont Group, a collection of financial intelligence units, of which there are 48 member countries around the world, that set standards and share financial intelligence data in order to combat money laundering.

The bottom line is money laundering ultimately entails the use of the lawful commercial system for unlawful means. The addition of a mandatory suspicious transaction and cross-border reporting regime will serve notice to Canada's criminal organizations, and indeed to the world's organizations, that Canada has an effective transaction reporting system and that their money is not welcome here.

• 1615

Problems caused by organized crime are not the sole responsibility of the police. Bill C-22 allows for a partnership with police, government, and the private sector. It will discourage the continued use of Canadian financial institutions for depositing large amounts of illicit cash and concealing them in accounts around the world. A word of caution, though. A mandatory reporting regime is by no means a panacea. Rather, it is just an integral part of a broad range of measures aimed at strengthening organized crime enforcement.

It seems logical that we should be obligated to cooperate amongst our national institutions and across international boundaries with at least the same effectiveness as those who launder the proceeds of crime.

Thank you, Mr. Chairman, and we're open for questions.

The Chair: Thank you very much, Mr. McCallum.

I think that's all the testimony, so we're going to move now to questions from the members. We're going to commence with Mr. Abbott from the Canadian Alliance.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance): Thank you, Mr. Chairman.

Just before I go to questions, I want to go on record, Mr. Chairman, as having something of a concern about the process. I'm concerned about the process that we've embarked on here, where we are finishing up with the last of the witnesses at 5:30 tonight. At 9 o'clock tomorrow morning, we're going to be starting on clause-by-clause.

I don't feel I would be doing my job as a representative of Her Majesty's official opposition in permitting that to happen. I haven't had any time from 5:30 p.m. to 9 a.m. to consult with any of my staff, any of my advisers, in any way, as to the testimony of these people or for that matter to have digested the testimony of the other people we've had over the last couple of weeks.

I've made the Canadian Alliance position very clear. We want to see this legislation go forward. We are in fact, as you know, on record as having been critical of the government for having taken two years to get us to this point.

Notwithstanding, the committee process is one that is very important in the development of legislation, where there are legitimate questions and concerns brought forward by these witnesses and prior witnesses that have to be taken into account. And prior to getting into clause-by-clause, if I'm going to be doing my job in the parliamentary system, I must be given some time to be able to consult with my advisers.

Unfortunately, we're seized with the fact that we are now going into a two-week break, which is not of our doing. That's just the way the parliamentary calendar works. I can tell you in all truth that if we were back next week and we were having a committee meeting on Monday or Tuesday, that would be fine. That would at least give me one day to consult with my advisers.

So I want to go on record right now. I certainly want to see the legislation go forward. I'm in support of the legislation in principle. I want to make sure that we do a proper job. I think this haste is not working to the benefit of Canadians who are going to be faced with this legislation and having to work this legislation through.

The Acting Chair (Mr. Paul Szabo): Thank you very much.

Mr. Gallaway.

Mr. Roger Gallaway (Sarnia—Lambton, Lib.): I don't want to subtract from Mr. Abbott's time, but in terms of the basic fairness of this committee in terms of operation, there are

probably a number of people who want to propose amendments or perhaps would like to bring back department officials. I would like to have department officials come back. Perhaps we would like to have the minister responsible appear before the committee.

This rush to the finish line because of the break I don't think is a very good idea. The idea that we're going to clause-by-clause tomorrow is unacceptable. I've been at other committee meetings recently discussing legislative counsel. I can tell you we're putting an additional burden on the legal draftspeople here.

I don't know if it's in order or if we have a sufficient quorum here today, but I would like to suggest that the committee not meet tomorrow morning, or if the clerk has other witnesses who could be brought tomorrow morning, that would be fine. I would like to suggest we not go to clause-by-clause tomorrow.

The Acting Chair (Mr. Paul Szabo): Okay. Thank you.

Mr. Marceau.

[Translation]

Mr. Richard Marceau (Charlesbourg, BQ): Mr. Chairman, I simply want to say on this rare occasion that I agree with my Liberal colleague and with my colleague from the Canadian Alliance.

• 1620

[English]

Mr. Jim Abbott: Mr. Chairman, I wonder if you can advise me if we have a quorum.

The Acting Chair (Mr. Paul Szabo): We have a quorum for the purposes of receiving testimony. We do not have a quorum for the purposes of transacting business of the committee.

Mr. Jim Abbott: Okay, thank you.

The Acting Chair (Mr. Paul Szabo): Having said that, all members' input is certainly valuable. It's obviously in our best interest to ensure that we address fully all of the issues and all of the concerns that all members raise with regard to this legislation.

Tomorrow morning at 9 o'clock the committee has a scheduled meeting, and I think we've made available most of the day to address this. Although clause-by-clause is part of that, since it was the whole committee that approved this schedule of addressing Bill C-22, we'll have an opportunity tomorrow morning to raise this issue with the committee. If it's the view of the committee that more work, additional witnesses, more time, etc., is necessary, we'll be able to address that as a full committee tomorrow morning.

Mr. Jim Abbott: Thank you very much, I appreciate that.

The Acting Chair (Mr. Paul Szabo): Now come again.

Mr. Jim Abbott: Thank you.

As I indicated, the Canadian Alliance is definitely in favour of this legislation and principle. Clearly, the tools required by our enforcement agencies in some places are deficient. This is such an important area in Canada, where organized crime is making further and further inroads... and bringing our legislation up to world standards.

Having said that, I was very interested in the H&R Block presentation. On page 3 of the presentation, under the title of "No Undue Paper Burden", and in light of the presentation of Mr. Griffin, in particular, I'm trying to reconcile those things. In other words, I'm really asking H&R Block, in light of his presentation, where he's saying by creating exemptions we create more loopholes, we create holes in the sieve... then, as a business person, I have a tremendous amount of sympathy for H&R Block.

What suggestions could H&R Block offer to us on their behalf and perhaps on behalf of the CBA and others who are involved in the paperwork?

What constructive suggestions, I wonder, could you offer that would be able to satisfy the concerns of the police and what this legislation is about and yet ease your burden so that it becomes more workable?

Mr. Bonar Irving: Mr. Chairman, we have no information from the government that says what amounts of money laundering occur at what financial levels or at what dollar levels. Acting from a lack of information, we certainly have no problem with the $10,000 level. We would have no problem with the burden or the duty to see that our staff was properly trained, but we think we're not asking for any exemption. We're just saying establish a more reasonable level. We don't think $1,000 is a reasonable level. We think $4,500 to $5,000 will avoid the gathering of information from people that just relates to their everyday living activities.

Mr. Jim Abbott: In light of that, we have Mr. Griffin here from the Canadian Police Association, and also the RCMP. I wonder, could you as enforcement officers... in your judgment, is that a workable number, or if not, why not?

I'm not trying to broker a deal here; I'm trying to get something that's going to work.

A/Commr Tim Killam: This is an amendment to the Proceeds of Crime (Money Laundering) Act, Bill C-22. It's adding it, making the Proceeds of Crime (Money Laundering) Act something more than just a recording act; it's a reporting act now. In the previous Proceeds of Crime (Money Laundering) Act, the levels were $1,000 for money exchanges, so I imagine that's where it came from.

From a policing perspective, as mentioned by Mr. Griffin, smurfing is probably one of the most effective. It's time consuming, but money-laundering organizations or cells of criminal organizations will pay a certain percentage of that. Their full-time job is to go around to different institutions. They'll pay 10%, and up to 30% in some cases, to get into the system through these kinds of institutions. So your guess is as good as mine.

• 1625

Other countries have $1,000. As Mr. Irving said, there are varying levels in different countries. That's probably where the $1,000 came from in this legislation. I'm only guessing.

Mr. Jim Abbott: I think your statement that “your guess is as good as mine”, which is a common one, probably isn't applicable in this case. I would suggest that you or Mr. Griffin would have a far better guess, a more qualified guess, than I would.

A/Commr Tim Killam: I would say to you that yes, you see money laundering at that level.

Mr. Jim Abbott: At $1,000?

A/Commr Tim Killam: Yes, you do, absolutely. That's an unequivocal answer to that.

Mr. David Griffin: Just to go one step further, aren't other institutions already bound by that requirement?

A/Commr Tim Killam: That's what I was trying to say. Other institutions are covered by the law today, presently. Currency exchanges have that same requirement. The requirement of this legislation is to record it only. This new legislation, if and when it comes through, would require them to report it as well.

Mr. Jim Abbott: But this is one extra piece of paper that H&R Block and other people who are in that kind of enterprise would have to handle on an ongoing basis and store for a five-year period.

A/Commr Tim Killam: It's a paper investigation, and once the paper is gone there's nothing you can prove. You cannot prove anything. All other countries in the world have a similar kind of requirement. What we're talking about is the difference between $1,000, as Mr. Irving is saying, and $4,500 to $5,000. I don't think there's any disagreement that there has to be some level. We've seen it go to $1,000 many times.

Mr. Jim Abbott: Didn't I read somewhere in the H&R Block... Where did I read that the U.K. has a significantly higher... Here we are. It's $2,000 and in the U.S. it's $3,000. Both of those are in the neighbourhood of $4,500. If we were to go along with your suggestion, the comparable legislation traps at a level of approximately $4,500, which I believe is what H&R Block is recommending.

I'm not an advocate for H&R Block. I'm simply trying to come up with something that is going to be workable. As a business person, we want to be responsible and ensure that this activity is trapped and that our streets are made safer as a result. Everybody in this room wants that, but at what level? It's a very good question on the part of the business. At what level does this actually start to happen in some substance? If $4,500 will trap it and it does away with 90% of their paper, it's probably worth looking at.

A/Commr Tim Killam: In answer to what you're saying, Mr. Abbott, this would be something that would be addressed in the regulations. The level can be adjusted in the regulations, and that's why the majority, the meat of the act, is in the regulations. Certainly $1,000 would catch all of them.

Of course, we in law enforcement can't do all of the investigations and everything that comes through our door, because we have limited resources too, but we do have major cases that go to that level. There is the regulation process or the discussion process. We'll be looking at an appropriate level there. You have to have a balance.

We in law enforcement—I can speak for the RCMP—don't want to burden every citizen, particularly when the majority of citizens and businesses are law abiding. The appropriate thing to remember is that from our view, we've seen legitimate businesses, such as H&R Block and the banks, all have good intentions to make sure they don't do this. They're involved in it, but they're unwittingly involved.

So the appropriate level is open to discussion, obviously.

Mr. Bonar Irving: I would only say that as long as the regulations would be used to set the limits or to adjust the limits, I think it would be fairer, it would probably serve the purpose, and it would certainly remove a large burden from business if we were to say it's $4,500 but they can be adjusted down to $1,000. My concern is that we would start at $1,000, and that while law enforcement only uses transactions over $4,500, we are still caught recording and maintaining records.

• 1630

Mr. David Griffin: I certainly would rely on the expertise of the gentleman to my left, but I think the question as lawmakers is how impervious you want us to be to organized crime. What thresholds do you want to place for this type of activity? Certainly the $1,000 may prove to be cumbersome, but it's a question of how big a net you want to provide. How much information can the police subsequently access to trace that money back to its roots? Certainly our association believes quite strongly that, yes, there are going to be some obligations put back on financial institutions, and we recognize that ultimately that will be reflected back on the consumer.

We do live in a technological era where record-keeping can be accommodated. If the experience bears out that this is not a manageable amount of information for the agency, the

regulations can be adjusted down the road. Certainly the commentary we've heard from all the parties is that we want to send a strong message to the organized criminals.

The Acting Chair (Mr. Paul Szabo): Mr. Abbott, since we're talking about the threshold, maybe we ought to make sure everybody's had their input here.

There seems to be some evidence that the $1,000 threshold does occur at a level where money laundering does take place. It's a fact. If the thresholds were to change, even if you made them lower, chances are that money laundering would occur at a lower level and try to disperse itself even further simply to carry on the activity. It will try, but obviously as you get into lower denominations, the incidence or the frequency of these transactions starts to go up and it creates patterns.

No matter how you do it, if you get sufficient patterns at other levels, maybe that's okay, but I suspect the experiences... Mr. Killam, maybe our inspectors...

I was interested in the examples H&R Block was giving with regard to the kinds of transactions... Maybe it would be of interest or appropriate to suggest what kinds of activities are going on with regard to items that would be in the range of $1,000.

Officer Goulet.

Staff Sergeant Lou Goulet (Royal Canadian Mounted Police): Thank you, Mr. Chairman.

If I could make reference to a common analogy, there are four factors that are common to all laundering operations: the true ownership and the real source of the money must be concealed; the form is, for the most part, changed—in other words, you reduce the bulk; the trail left must be obscured; and there's a constant control amongst these individuals, i.e. theft.

Under the old regulations, under section 11, where this number started years ago, it had to do with foreign exchange dealing where there was a requirement for a verification of identity for any transaction in excess of $1,000. Shortly thereafter, we decided to test the water. In the mid-1990s, we went through approximately 85 exchanges. That was held in the provinces of Quebec, Ontario, Alberta, and British Columbia. Of those 85 exchanges, to make a long story short, we found non-compliance in anywhere from 40% to 70%, in that there was not a request for that simple identification at the $1,000 mark.

In the second step of the process, we introduced moneys over $10,000. The third step of our intelligence phase was to go to the next step: we'll give you $25,000 and we'll tell you it's drug money. There was non-compliance in there.

All that is to say that there are also distinct stages in the money-laundering process. They're called placement, levering, integration, and repatriation. The placement stage is the weakest link. As you're well aware, once it's in the system and the wire transfers go across the globe, what they can do in two hours requires two years of reactive police work, more often than not.

I don't know if that answers your question directly, but on those thresholds, I agree with Assistant Commissioner Killam. As a police agency, we are open to furthering this discussion in terms of what's best for everyone and making it work. It's a complex issue, and I think, with the discussions and the fact that it is covered off in regulations, we can probably come to a reasonable threshold after hearing all the arguments related to it, if there are new things we are not aware of. I say that because our colleagues in intelligence units—I believe you heard from NCIS yesterday—had to go through the learning curve at the outset as well, and the listening on both sides could achieve this.

• 1635

The Acting Chair (Mr. Paul Szabo): Are there further comments on the $1,000 issue? Have we added that to everybody's satisfaction?

Thank you.

[Translation]

Mr. Marceau.

Mr. Richard Marceau: Mr. Chairman, first of all, four people want to leave. You do not have to stay. You can leave if you want to.

[English]

All your friends are gone, so if you want to go, go now.

[Translation]

First of all, I am happy to welcome our witnesses. When I asked to be transferred from the Justice Committee to the Finance Committee it was to avoid seeing some of you again. Unfortunately, we are meeting again. So welcome. Jokes aside, I'm pleased to see you again. I am going to start with a question for Mr. Law.

Are you receiving the translation?

[English]

Mr. Warren Law: Yes, but barely—I'm fine.

[Translation]

Mr. Richard Marceau: Mr. Law, I would like to know, in your opinion, how many transactions over $10,000 per day or per year the banks will have to report to the Centre.

[English]

Mr. Warren Law: I think it would be useful to get the industry experience from Mr. McLean.

Mr. Gene McLean: Certainly, if we talk wire transfers alone, you would have in excess of maybe 100,000 a day or more over $25,000.

The Acting Chair (Mr. Paul Szabo): That's for the banking industry?

Mr. Gene McLean: That's for the banking industry.

[Translation]

Mr. Richard Marceau: I'm going to play a little bit of ping- pong. Mr. Killam or Mr. Goulet, do you think that a centre would be able to manage 100,000 transactions per day and analyze them?

[English]

A/Commr Tom Killam: I would say yes. I'll defer to my colleagues, but I would say other countries have the same problem dealing with that many transactions a day. There are three diagrams on the wall; they're not just for target practice. It gives you an indication of how technology is used to try to connect all these transactions together.

The veil that money launderers use is that they try to have their transactions spread over a lot of different areas at different times. The idea, of course, with the centre is that while they come in at a very low level of suspicion, because they're just over a certain figure, if you put them into a large database, you try to collate it together and you get trends. And maybe there's a good side to Canada being one of the last countries to have a centre. We've learned what the others have done. There are many databases out there that do exactly that. They collate it, get the information together, and they say...

I was trying to explain this earlier on. Before, if we got one little transaction, say a suspicious $25,000 transaction from a bank... If anybody has done a 1,000-piece puzzle, you'll know you get one little piece of that puzzle—that's the suspicious transaction from the bank. That alone can't tell you what the picture looks like. That piece of the puzzle now will go to a centre, and hopefully with other pieces of transactions coming from other banks... put together you'll get a larger piece of that picture so that you can then do the investigation.

I want to try to educate the committee as well that this tells you only that there's been money laundering or there appears to be money laundering, and it's at a very low level. Then, as an investigative agency, we have to prove the substantive offence that it was money from criminal activity, one of the criminal activities listed in the Criminal Code—a designated drug offence or an economic crime offence.

• 1640

So there's a lot that has to be done, but at least it gives you a better picture. And yes, you're right. It seems that it's very difficult to do, but perhaps Mr. Goulet can explain how that works at other financial intelligence units.

S/Sgt Lou Goulet: Well, if I could add, sir, what this is right here is what they call a wagon wheel, and it's from our colleagues, FinCEN. Each one of those yellow lines there is a transaction. The green lines stand for location, the brown lines stand for accounts, the yellow lines are transactions, the pink are business names, and the blue are people. All that is to give you a pictorial view. It is all sorted and collated by artificial intelligence. So if I pick this spot right here, this is probably what it looks like over here. After it's massaged and worked upon, you have an actual link and trend of the organization.

Now, I bring this forth to demonstrate that in fact there is a capability by organizations to do this. This is an actual case from FinCEN in the United States, but it's sanitized for presentation purposes. Now, are there 100,000 transactions there? I don't know. There certainly looks to be a lot. So the short answer is yes, it can be done. Would every one of these transactions that are spoken about be all reported in any event, of the 100,000 per day?

But the technology, artificial intelligence, will bring you from here to here. Hopefully, the centre, as we see it at the end of the day, would have that capability to not only... it should not merely be seen as a system of informing the police. This whole bill represents the commitment of the financial sector of Canada against the development of organized crime. As A/Commr Killam has stated, this is not the panacea. It's another tool in the box for law enforcement.

[Translation]

Mr. Richard Marceau: Thank you for explaining the pictures. They look like some of the drawings my two-year-old twins have done for me, which I've put in my office. So that makes sense. Thank you.

Mr. Law, I have a question for you. On page 3 of your document, you say that the legislation should not be overly prescriptive. In the following paragraph, based on my reading of it, and I might be mistaken, you seem to be saying that you deplore the absence of a definition for "reasonable grounds to suspect".

That seems a bit contradictory to me. Would you like there to be a definition for reasonable grounds or, at least, a partial definition? And if that is what you want, do you have a definition to suggest?

[English]

Mr. Warren Law: Well, what we're aiming for is a workable system. To the extent that you have uncertainty in the regime you're creating, that detracts from the workability of the system. When you look at certain sections of Bill C-22, I think there's some work to be done. The expression is “the devil is in the details”.

For example, clause 7 deals with suspicious transactions. What is a suspicious transaction? When do you have reasonable grounds for believing that the transaction should be reported? The consultation paper that the Department of Finance came out with said guidelines would be developed to assist us in knowing when we have reasonable grounds. All we're saying is we urge the government to develop these guidelines to help us, so that we know when we have to report under clause 7.

[Translation]

Mr. Richard Marceau: I have one last question for you and then I will have some questions for the others. A cost will be associated with these new obligations. Normally, where there are new obligations, there are costs. As you are aware—and I am speaking on my own behalf, but also on behalf of the witnesses, who, I believe, think the same thing—bank charges are already very high.

Can you guarantee that the costs of these new obligations will not be passed on to bank clients, because to some extent it is your responsibility, as a corporate citizen and a citizen of society in general?

• 1645

[English]

Mr. Warren Law: As an association we represent many members, and of course it would be a business decision on how they would handle the costs associated with the new legislation themselves. But it's also worth noting that to the extent you have certainty in the legislation, it creates efficiencies and will have an impact on lowering costs. From that standpoint as well, I urge the government to make sure the legislation as passed, including the regulations and guidelines, is as certain and as clear as possible.

[Translation]

Mr. Richard Marceau: Do I have time for another question?

I have one last question. Mr. Griffin, I could not forget about you.

On page 7 of your notes you say:

[English]

“The $10,000 mandatory reporting level is appropriate and should not be softened.”

[Translation]

I am asking the question because I want an answer, and not because I want to play the devil's advocate. Isn't the requirement to report any suspicious transaction sufficient? Do we really

need this cut-off point? Can't we trust the banks, H&R Block or others to say: whether it is more or less than $10,000, when it is suspicious, we will declare it? Is it really necessary to declare all $10,000-transactions?

[English]

Mr. David Griffin: As I understand the legislation and the proposed regulatory scheme, there will be exemptions for the types of transactions the bankers raised with respect to inter-institutional exchange of funds and government-type transactions, where paper trails exists. But we certainly believe, on the cash transactions, the type of mandatory reporting, and the wiring on behalf of individuals, that there has to be sufficient information reported to the FTRAC agency to ensure that information forms part of their analysis to determine whether or not there is reasonable suspicion of money laundering.

So from our perspective, throw the net out as wide as you can, and as the agency comes together and begins to look at this information, if there are things that are not relevant to this purpose, then start separating them, as opposed to confining the type of information that can be collected by legislation and then having to go through a similar process in the future with respect to changing those limits to where they should be.

The other point I'd like to respond to is the suggestion made yesterday that some types of institutions, such as churches, should be exempt from reporting. There are traditional types of institutions, such as churches, and there are other organizations that may try to fall under the umbrella of being churches, but you have to be very careful when you start throwing those exemptions out there.

[Translation]

Mr. Richard Marceau: Thank you.

[English]

The Acting Chair (Mr. Paul Szabo): Thank you, Mr. Marceau.

[Translation]

Mr. Gallaway, please.

[English]

Mr. Roger Gallaway: I'm speechless at the moment, but I'll get over it.

A voice: That's unusual.

Mr. Roger Gallaway: It is.

I want to ask Mr. Irving a question first. We've heard the question posed by Mr. Marceau regarding costs. Has your organization carried out any study or some sort of plan on what you foresee the cost to your company will be in terms of complying with this legislation?

Mr. Bonar Irving: No, we haven't. We only received an invitation to give input about a week ago. We have not done any study that says at a certain volume the cost will be a given amount of dollars. All we know is that with this our costs will have to go up.

Mr. Roger Gallaway: In your brief you referred to a $1,000 threshold at one point where you have to keep records—or was it $3,000? Where did you get that number? You referred to part IV of the bill. I looked at part IV and maybe I missed it, but I couldn't find it anywhere. Maybe one of our researchers can tell us where it appears. I'm just wondering where you got that number.

• 1650

A/Commr Tim Killam: It's from your regulations, I would assume.

Mr. Roger Gallaway: It's from the regulations. All right.

That leads to the next question I would pose to the Bankers Association and our friends from H&R. This is a very open-ended act, and I think it's very disturbing from a parliamentarian's point of view that we are passing off great authority to a stand-alone agency, which will be created by this act if it passes as is, that will create a lot of rules that no one in Parliament will ever see. In fact, this agency won't even report to Parliament. For a business person such as you who represents a corporation, that must be a concern. That's why I asked you the question about costs.

I would ask the Canadian Bankers Association, have you done any studies on costs, as you know them? You and I know that any regulations at this point are simply a mirage.

Mr. Gene McLean: No. I guess we could say that the additional costs would certainly include electronics, a new reporting system, and the training of staff.

Mr. Roger Gallaway: So you and your members have in no way quantified what this will all mean.

Mr. Gene McLean: No.

Mr. Roger Gallaway: Mr. Marceau has asked you to give an undertaking, as I understand it, about cost to customers—of course, that's of a sensitive nature—trying to balance that with the reason to combat criminal activity, and we are all in favour of combating criminal activity.

You point out in your brief that there's no definition of reasonable grounds to report a transaction. I think it's a valid point.

I'd like to ask you, Mr. Killam, if you think this is a reasonable way of going about it. Let me put it another way. Is there an alternative whereby institutions and groups... We don't even know who's included in the required reporting provisions of this bill, because that's going to be prescribed by regulation if this bill proceeds as is. This great net of people, businesses, and institutions that are going to be caught, if we follow what Mr. Griffin has said, will even include churches. Under this great umbrella, a bunch of people are going to have to report, if they have reasonable grounds, but we don't know what that means.

At the same time, we have a defence system in this country called Canada Customs. Canada Customs does not require everybody who comes into the country to fill out a form. Section 110 of the American Immigration Act, coming into effect April 1, 2001, says that everybody must fill out a form. The Government of Canada is fighting against that law in the United States because they say it's unreasonable.

Perhaps it's not a fair analogy, but do you think this regime—we don't know what the regime is going to be today; it's going to be laid down by regulation—is being laid down in a reasonable way, or is there an alternative? That alternative would be to rely upon those people who deal in the marketplace to recognize that some transactions are usual—maybe exceptional at times but nonetheless usual—as opposed to laying down this hailstorm of what won't be ice, but will be paper.

A/Commr Tim Killam: That's a lot of information you've given me, but I guess at the end of it I think—and please correct me if I'm going the wrong way—

Mr. Roger Gallaway: All right.

A/Commr Tim Killam: —obviously the voluntary way of doing business is what we had. We had a reporting scheme, people reported it... Pardon me, they recorded it; they didn't have to report it. But I can honestly say we had a very good relationship with the CBA and the chartered banks. The difficulty was there was no way of collating it the way you have here.

• 1655

Yes, unusual is the way. These transactions come into this centre—and Mr. Griffin wasn't trying to say the church would have to report; it would be the bank or the financial institution that would see it and it would report it. That information would come into this centre and then it would be collated. Because it came in at such a low level, a low threshold of suspicion or unusualness, if there's such a word, then it would be built up by the centre and then passed off to the police once it got to a certain level of reasonableness. After that, of course, for the police, if that's not enough to lay charges or do a whole lot of things, then there has to be an investigation to see if there are reasonable grounds to go get court orders and to do their thing.

So it doesn't ever get to the police out of the centre until it's been built up by the centre. We would never see it. When we do see it, the first thing we see from the centre is very much like tombstone data. It's very basic data saying “Mr. Gallaway did such and such at such and such a

place". The reason they sent it to the police was it was built from a very unusual level up to another threshold—not at a criminal level, but approaching that, in-between that.

So that's the framework, which is based upon what's happened in all the other countries of the Financial Action Task Force as well. In my former position I was very much involved in the discussions around it with departments.

Mr. Roger Gallaway: This is your primary task, I assume, this file, in the sense of money laundering. That's one of your primary preoccupations.

A/Commr Tim Killam: It was, yes.

Mr. Roger Gallaway: Could you tell me of another country that has an agency that is designed along the lines of this one?

A/**Commr Tim Killam:** Yes, there's the Netherlands, Belgium. FinCEN is very similar.

Mr. Roger Gallaway: Let's pick one, then. How does the Netherlands differ from the Canadian model proposed here?

A/Commr Tim Killam: My colleague here is more familiar, but each country has differences depending on their charter and their domestic laws. But the basic premise is exactly the same.

Mr. Roger Gallaway: I understand the premise is the same. You've read the bill. You see how the centre is going to be designed and how the director will be appointed. Is there another jurisdiction, another country, that we have copied? I'm talking now about specifics, as opposed to general principles.

A/Commr Tim Killam: Yes, we have the acts for all the different countries.

Mr. Roger Gallaway: What I'm asking is whether there is one that we're taking as a template. Or is this a made-in-Canada solution?

A/Commr Tim Killam: No, it's not a made-in-Canada solution. It's a made-in-Canada solution considering our laws and our charter.

Mr. Roger Gallaway: All right.

A/Commr Tim Killam: As a matter of fact, in Canada, because of our charter and our privacy protections, it's much more difficult. It's much harder. We have to be very careful with it.

The question was asked, I think it was yesterday, by Mr. Abbott about why it wasn't in the police... The reason why it's not going to the police is because anything that comes in unusual to the police would be contrary to the charter, period. We can't use it. It would make it a lot easier if we had our own intelligence, and we'd put it all together and do something. Of course, that would be much easier. That's not the way it is in Canada. That's because of the framework

we have with our charter and our privacy protections, which, obviously, is what we all want in this country. But this is a made-in-Canada solution because of that framework, but basically using the same principles.

As a matter of fact, when it comes to the regulations and the things that the bankers and H&R Block were talking about, we'll be looking at those to say there's a place to start on discussions.

Mr. Roger Gallaway: That's an idea, but our job here is to satisfy ourselves that the legal framework is not left to people who are not accountable to the public. When you set up a framework that is premised on regulation—and I'm accountable to the public and perhaps somebody working at the centre isn't, in the same sense. So we have a set of rules laid down by regulation that are going to govern such things as laid out in clause 6, amongst other clauses of this bill.

Having regard to that, can you tell me another jurisdiction, then, you having studied this, where the rules are laid down by regulation as opposed to defined in the legislative framework setting up the operations?

• 1700

A/Commr Tim Killam: I don't have other laws in front of me.

Mr. Roger Gallaway: Thank you.

The Acting Chair (Mr. Paul Szabo): Thank you.

On one of your points, Mr. Gallaway, clause 72 of the bill does call for the five-year review by Parliament or by a committee.

Mr. Roger Gallaway: I understand that, but it's still a five-year hiatus where it's—

The Acting Chair (Mr. Paul Szabo): A five-year hiatus is your concern, not that there isn't a parliamentary review. It's a one-time review, not an ongoing five-year review, which has been a subject of discussion with other bills, such as the revenue collection agency and others. That's important.

I think members probably have exhausted their list. Maybe the witnesses would like to comment on the concept of what constitutes a suspicious transaction. We've had others suggest to us that it's not a defined concept and that we should define it. Interestingly enough, we've had some difficulty having someone come forward with a definition. I think the frustration is that suspicion is in the eyes of the beholder in that setting and in that environment. Is there a consensus among the group that although it would be desirable to have some way to get out of this, it may not be pragmatic to try to define such a concept?

Mr. Warren Law: I think there are certain patterns of conduct that law enforcement agencies have identified, which would certainly lead you to suspicions about a transaction.

A/Commr Tim Killam: Yes, that's exactly it, and my colleague here has mentioned that what's suspicious in one part of the country, for instance, what's suspicious in Metcalfe, is not the same as what's suspicious in Ottawa versus Montreal. Not to trivialize it, but as well a number of the other financial intelligence units, in cooperation with the banks, have developed software that spits out things that are unusual. There are little blips that are pulled out. Those are the kinds of things...

S/Sgt Lou Goulet: Mr. Szabo, if I could add something, clearly it requires constant examination, as ways of doing business, record-keeping, retrieval systems, and methods of fraudulent transfers actually evolve.

One of the areas we looked at, for example, was the Netherlands, where they use objective and subjective indicators to come to a conclusion. By way of example, for cash transactions below a threshold amount, they will look at a series of identifiers, which include—and they are not in isolation, but say someone comes in below the threshold, along with identification problems, unusual conditions offered, it's an atypical transaction for the client, the transaction has unusual packaging, there are frequent deposits by other account holders, no explicable legal objective, outstanding turnovers, etc. Then they have a series of indicators that are collectively used to view that particular transaction.

This is, again, a work-in-progress, but there are examples out there that are in fact being utilized today by other units, in this case the Netherlands.

Mr. Jim Abbott: I have a quick point. It's unfortunate, but I think Mr. Gallaway has left. I'm looking through the bill as drafted, and clause 71 states:

71. The Director shall, on or before September 30 of each year following the Centre's first full year of operations, submit an annual report on the operations of the Centre for the preceding year to the Minister, and the Minister shall table a copy of the report in each House of Parliament on any of the first 30 days on which that House is sitting after the Minister receives the report.
It's unfortunate that Mr. Gallaway isn't here, but I find myself a little confused. I think this clause covers his concern.

The Acting Chair (Mr. Paul Szabo): Yes. The subtlety is that there's no undertaking on behalf of the minister to refer to the committee for study. It's there for their information, but whether clause 72 actually requires Parliament to conduct a review of the administration of the agency... In any event, I have a feeling that this will be discussed again tomorrow.

• 1705

Gentlemen, thank you very much for your input. It was helpful to the committee. I think you've touched on some important issues. There was a suggestion, a recommendation, about

the word “all” in the due diligence, and in fact I'm advised that this amendment is going to be put forward. So thank you for picking it up, and we are certainly going to be responding to that.

I appreciate all of your input on this important act, and thank you for your time.

The meeting is adjourned.

April 13, 2000 [House of Commons Standing Committee on Finance]

The Chair (Mr. Maurizio Bevilacqua (Vaughan—King—Aurora, Lib.)): I'd like to call the meeting to order. As you know, the order of the day is the clause-by-clause of Bill C-22.

Before we begin, there were some concerns raised by Mr. Abbott and, I believe, by Mr. Marceau as well. We'll give them some time to express their points of view on whatever issue it is.

Mr. Abbott.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance): Thank you, Mr. Chairman.

We raised the issue in the committee yesterday afternoon and I raise it again today: the issue of process. Understand that the Canadian Alliance...and I state this for, what, the fifteenth time? Understand that the Canadian Alliance is fully in favour of this legislation in principle. That is an unqualified statement. As always, the devil is in the details.

I have a tremendous amount of respect for the parliamentary process, and part of the parliamentary process is what we're doing here right now in committee. In committee, an opportunity is given not only for witnesses but for the minister and for the department officials to be able to explain legislation to the legislators who are responsible for it, to inform us of their perspectives. We have heard some very interesting perspectives from people.

You can appreciate that unlike the government, which has literally hundreds of lawyers in at least three departments, I have one lawyer who is responsible for helping me with this legislation along with legislation on other issues that come from at least three other departments. This is, like, 500 to 1, quite literally.

To take the process whereby, as the official opposition, we concluded hearing witnesses at 5:30 p.m. yesterday and at 9 a.m. this morning we're supposed to be starting on clause-by-clause.... I suggest it is not a good process. It is not a fair process in terms of the official opposition being able to do its job. I have a responsibility on behalf of 62% of the people of Canada.

• 0910

I don't want to get into the political rhetoric here, but there is the whole issue of balance in the parliamentary process. I have difficulty with the process—again, to be precise—in that we have reached a point, as I understand it in private discussion between myself and Mr. Cullen, the parliamentary secretary, where this committee has a lot of work that it has to get through.

We are all in agreement, and I am in full agreement, that we want this legislation through as quickly as possible, but within this process we are involved in, it is impossible for me to do my job properly or adequately. It is an impossible process.

So I have decided, as an accommodation in good faith to the committee, that what I would prefer to do is to monitor this session, as opposed to participating in this session.

Let me just make one more explanation. We all know that legislation, when we're going through clause-by-clause.... We all know that each clause does not live and die by itself. In fact, each clause either supplements other clauses or refines the thought in other clauses. In other words, it is a seamless document—or should be a seamless document.

Therefore, for me to be involved in the process of commenting on clause 22 when in fact my counsel has an opportunity to take a look at it and says, well, clause 22 didn't do whatever needed to happen, and clause 17...and so on and so forth. I am unarmed at this particular point. I require expertise, and I have not had the opportunity, because of the process, to get that expertise.

So as an accommodation—because we do want to see this through—and in good faith, what I'm proposing is for me, as the official opposition, to monitor the proceedings today. I would hope that the government would then provide me with the legislation as amended and with any other pertinent data. I will submit that to my counsel. Over the two-week break of Parliament, my counsel will have an opportunity to look at it. Then I will reinsert the official opposition at report stage.

The only accommodation I would ask for, of course.... I have no idea whether we will be recommending amendments or not; that is absolutely impossible to forecast. Also, will our amendments, if they do come forward, be acceptable to the government or not? Again, who's to know?

In the same good faith that I am exhibiting to the government and within this process, I'm simply asking that very serious consideration be given to any amendments that we do bring forward and that the amendments not be seen as political and certainly not as hostile, that they be seen as amendments that, in our judgment, would enhance the legislation.

I think this is probably the best way. It's unfortunate, I do have to say—politically now for just a second—that the government has taken two years. We've been after the government throughout this entire process in our debate and in committee. It's unfortunate that the government has taken two years to bring this forward. It's doubly unfortunate that, having had it brought forward finally at the end of two years, we're now in a fire drill to see the end of it.

I don't think this process is a good way to do important legislation like this, legislation that has the far-reaching impact this legislation has. So I chastise the government for that. I think the process is just a bad process.

Thank you, Mr. Chairman.

• 0915

The Chair: Thank you, Mr. Abbott. Just so we understand, for the record here, Bill C-22 was first introduced March 31, 1999. These clauses have existed for quite a while, and it also received first reading in the House of Commons on December 15, 1999. So in reference to the content of the bill, we've had ample opportunity to at least review it. That's my point of view on that. I do take your point of view, and I think it's an important statement you make.

Just so everybody here understands what happened, we agreed to a work schedule. Unfortunately, I don't think you were the member who agreed to that work schedule, and I gather the other person didn't speak to you, hence there is that kind of challenge you are now facing. But the points you've made are good points.

Mr. Jim Abbott: If I may, I just want to point out that your statement is correct, and indeed the official opposition has some responsibility for what you just mentioned. I'm fully aware of that and I accept that responsibility, on behalf of the official opposition. We have been aware of these clauses, but we have not been aware of the testimony that has been brought forward, and that is my concern. I want to take a look at the legislation, in light of the testimony, and receive counsel.

[Translation]

The Chair: Mr. Marceau.

Mr. Richard Marceau (Charlesbourg, BQ): Mr. Chairman, continuing somewhat in the same vein as my colleague Mr. Abbott, I would have to say that you have raised a very valid argument. However, I find it somewhat simplistic. If, after reviewing Bill C- 22, formerly known as Bill C-81, we had already formed a clear, definitive opinion before even hearing from all of the witnesses who appeared before us, why then would we have bothered to hear from witnesses in the first place? Do we not invite witnesses to give testimony - and some of this testimony is rather remarkable - precisely because we want to form some opinions?

Before arriving here, we the members of the Bloc Québécois had some idea of what we expected to find in the bill. It was part of our 1997 election platform. Therefore, we support the bill in principle.

Having said this, some of the testimony we have heard has raised a number of questions. As my colleague Mr. Abbott pointed out, after adjourning yesterday at 5 p.m., here we are resuming our proceedings at 9 a.m. this morning. This doesn't leave us much time to thoroughly analyse all of the testimony presented. I also understand that the committee feels

somewhat pressed for time. We are running a little behind schedule and we don't need anything more on our plate.

I have a question, or rather more of a suggestion to make. Since we are going to break for two weeks, would it be possible, instead of holding a regular Finance Committee meeting, to convene at 4 p.m. on a Monday or Tuesday and to take the time we need to consider this matter? Today, we're sitting from 9 a.m. to 1 p.m., or a total of four hours. We could sit from 4 p.m. to 8 p.m. one evening, or from 4 p.m. to midnight, to consider this bill, without taking up time set aside for another issue.

We could accomplish quite a bit during these two weeks. Several privacy issues have been raised. Is the protection afforded by the Privacy Act sufficient to alleviate the concerns that have been raised? During these two weeks, the committee could perhaps ask the Privacy Commissioner to share his views on the proposed legislation with us, because frankly we don't know where he stands on this bill. Furthermore, all of the witnesses, whether they support the bill or not, spoke of the balance that needs to be maintained between preventing crime and protecting privacy.

Perhaps we could take advantage of this two-week period to sound out the Privacy Commissioner, seek his opinion, get down to work, roll up our sleeves and stay a little later. We could order in sandwiches or a pizza and get the job done.

The Bloc supports the principle underlying this bill, but in light of the testimony presented, I don't think we would be doing our job if we didn't take the time to review this testimony properly.

• 0920

Once again, I don't think it's a question of not being willing to act in good faith. It's simply that my opinion of the bill has been influenced by the testimony of certain witnesses. If there was no chance whatsoever of being influenced by the testimony heard, then why would we even bother to call in witnesses at all? Thank you.

[English]

The Chair: Mr. Cullen.

Mr. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chairman.

First of all, when this bill went to the House it was sent to the committee on division. For the opposition parties and all members who were there, the government appreciated that. This is a bill Canadians want. As the opposition parties have pointed out, sometimes at length, it's been long in coming. It was in the last session and it's now back again.

I understand the anxiety about the pace of what we're looking at here, but I can tell you there are three other pieces of legislation: the Budget Implementation Act, 1999, the Budget

Implementation Act, 2000, and another bill dealing with the excise tax and the harmonized sales tax that are in the House, or will be in the House this week. This committee, in its wisdom, has decided to look at a number of projects that have been proposed by the opposition parties.

So I suppose the government side would express some empathy about the pace. The fact is there is a lot of legislation in the pipeline.

Canadians want this bill. The police agencies in Canada, as we heard yesterday, want the bill and want us to get on with it. Having said that, I've undertaken with the official opposition that once Mr. Abbott has had a chance to review it, if he has some issues of substance, I'll certainly review those conjointly with the department. We'll make every effort to satisfy him, one way or the other, about his concerns. I would certainly offer the same thing to the other opposition parties.

With that, Mr. Chairman, I think the problem we have is we will lose two weeks, when the department is developing regulations and will have to essentially put things on hold, and that will cause another delay. I respectfully ask the committee to deal with this today. If any amendments are proposed later that come out of the in-depth review by the opposition parties, I will certainly undertake to review them very carefully with the parties to see if there's anything that should or could be done.

The Chair: Thank you, Mr. Cullen. As always, I'm in the hands of the members of the committee when it comes to the workings of this committee. What I'm really bound to right now is the work schedule everybody has approved. It was unanimously approved by all members of the Canadian Alliance, the Bloc, the NDP, the Conservatives, and the Liberals, so I will have to operate on that premise.

However, Mr. Marceau and Mr. Abbott, you raise very good points that will be duly noted. Mr. Cullen, I think you have provided us with a compromise position that will suit the committee—that is, until Mr. Gallaway speaks.

Mr. Gallaway, you have the floor. I understand you have some amendments as well.

Mr. Roger Gallaway (Sarnia—Lambton, Lib.): I've already tabled them.

I think we should have some consideration for what the opposition has said. It's fine to talk about the convenience of the department and say the department is developing regulations, but I think the process works the other way. The laws have to be made and the regulations flow from that, so I find that somewhat of a specious argument.

It's also a question of fairness. Just because a work schedule has been adopted and other events intervene, if we wait to do this immediately after the break, I can't imagine why that isn't fair. I'm not concerned about the department creating regulations in a two-week period. If indeed this bill has been languishing or has been talked about since 1997, I think it was said, another two weeks won't mean anything.

I want to suggest we adjourn consideration of this bill until the Tuesday when we return. I don't know the date.

An hon. member: May 2.

Mr. Roger Gallaway: May 2.

• 0925

The Chair: Mr. Gallaway, I must point out that the fact that you came here today prepared with these amendments would lead me to believe you were probably ready to deal with clause-by-clause today.

Mr. Roger Gallaway: No, I wasn't.

The Chair: So you just forwarded these for...?

Mr. Roger Gallaway: Well, there are more yet.

The Chair: So at report stage, I guess.

Mr. Roger Gallaway: You will know that in terms of the resources of the House, there's very little one can do. These were cobbled together yesterday, but these are very rudimentary little changes. If one were going to do anything of any substance, it's impossible.

You would know, Mr. Chairman, that there are only five legislative counsel in the employ of the House, three of whom have just begun, and it's a learning curve for them, so you're really dealing with two people with experience. This is not a criticism of the other three, but they're new on the scene and they're learning the operations here. So it's fine to talk about taking into consideration the viewpoints of the opposition, but that's to ignore the process that is laid down in this place.

The process is that members of all parties, regardless of political stripe, be given the opportunity to propose amendments at committee stage. Moving this to some other stage is being patently unfair. It's not a question of one party versus another; it's a question of members' rights.

The Chair: Thank you, Mr. Gallaway. I do want to note the point you made about counsel, which is a bigger issue vis-à-vis resources of committees. We'll note that one as well.

Are we ready to proceed to clause-by-clause?

[Translation]

Mr. Richard Marceau: Can we put this to a vote?

[English]

The Chair: This is the order of reference. The order of the day is that we're doing clause-by-clause. That's the reason we're here.

Mr. Roger Gallaway: Then I'll make a motion that we adjourn until May 2 consideration of Bill C-22.

The Chair: Okay.

Apparently if you add a date, it becomes a debatable motion, but if it's without a date, we simply vote on it.

Mr. Roger Gallaway: Well, I think you have to put a date on it. I'm not moving that we just adjourn. I'm moving that clause-by-clause consideration of Bill C-22 be adjourned until May 2.

The Chair: That's fair enough. Is there any debate on this issue?

Mr. Marceau.

[Translation]

Mr. Richard Marceau: Mr. Chairman, if I really wanted to be a pain in the neck, I would say that we're going to debate the issues and that I'm prepared to speak for three hours. As a lawyer, I know that a person can say just about anything, or nothing at all, and go on for quite a long time. I could do that, but I don't intend to. We can set a date and I'll not debate the issue. However, if we agree to vote...

I'd like to be able to count on the members opposite acting in good faith. I don't want to turn this into a political debate, because we do support the bill. Could we possibly agree among ourselves that we don't really have the time for this and that it's preferable to adjourn for two weeks? We've been waiting two years for this bill. Two weeks more won't make any difference. It won't keep anyone awake at night.

Mr. Gallaway's motion has opened the door to a possible min- filibuster. We could undertake a clause by clause study of the bill and not get through everything, but we would be no further ahead for it. This would be of no benefit to anyone seated here at this table or to the department. I think we should recognize this fact and agree not to wage a procedural battle over this.

[English]

The Chair: Is there any further comment?

Mr. Abbott.

Mr. Jim Abbott: Well, I will not be entering into anything to do with the filibuster.

I agree with my colleague from the Bloc. I have had prior conversation with Mr. Cullen, and I've outlined the position of the Canadian Alliance. However, the suggestion of Mr. Marceau of doing this even on the Monday that we come back, from 4 to 8 o'clock or from 4 to 12 o'clock or whatever the case may be, would accommodate the concerns that have been raised about the process.

• 0930

The only possible argument I can think of or that I've heard to this point, from Mr. Cullen or anyone else, relates to the production of regulations within the department. It seems to me that is probably not a gigantic problem.

Again, maybe Mr. Cullen can convince us that the two-week delay in the department being able to go ahead with the regulations, particularly in light of the fact that we do have word processing equipment on which they could be producing the regulations in view of what they think the legislation is going to be.... I can't see that really is a problem with the delay.

I'm inclined to agree with this motion. As I say, it seems to me it works us out of this procedural problem without any undue delay.

The Chair: Okay.

Mr. Cullen.

Mr. Roy Cullen: I think we probably want to get on with this, but I just want to clarify something.

I take extreme exception to the suggestion from the member from Sarnia—Lambton that moving this forward now has anything to do with the departmental schedule or priorities. It has to do with moving forward with a piece of legislation that Canadians want, that law enforcement agencies want, and that we want to get on with.

The Chair: Is the debate exhausted at this point? Have all the points been made?

Some hon. members: Yes.

The Chair: Okay. We'll move to the vote. Do you want a recorded vote?

Mr. Jim Abbott: Sure.

(Motion negatived: nays 7; yeas 3)

The Chair: Thank you.

We're now moving to clause-by-clause. We have some government amendments, and we also have some amendments filed with us, I believe this morning, by Mr. Gallaway; we'll be dealing with those as well. Does everybody have the amendments tabled by the government and Mr. Gallaway?

Mr. Roy Cullen: I don't have Mr. Gallaway's.

The Chair: We will wait for everybody to get Mr. Gallaway's amendments before we proceed.

The Chair: Order.

Mr. Cullen.

(On clause 2—Definitions]

Mr. Roy Cullen: Mr. Chairman, what the member from Sarnia—Lambton has proposed would put the centre on the same basis as the Auditor General or the Privacy Commissioner, and the centre is an agency, an arm of the government, fulfilling a mandate of the government. The centre reports to the minister annually. The minister tables the report to Parliament. There's also a five-year review.

So on that basis, I think in concept what the member is proposing is not really appropriate, and I was wondering, given that all his amendments deal with that main theme, whether it would be possible to vote on all his amendments in a group.

The Chair: Yes. They're consequential, so we can.

Mr. Roy Cullen: Okay.

The Chair: So that's where we're moving—to the vote on the first amendment.

Mr. Roger Gallaway: Let's vote on them now then.

The Chair: Okay. Mr. Gallaway, would you like a recorded vote on this?

Mr. Roger Gallaway: No, I think it's quite fine.

The Chair: Okay.

(Amendment negatived)

The Chair: So all the other amendments...and I have here L1 to L13. They're all defeated.

(Clauses 2 to 4 inclusive agreed to)

(On clause 5—Application of Part)

The Chair: We have two amendments on clause 5.

Mr. Roy Cullen: Yes, Mr. Chairman. I propose that clause 5 be amended by replacing line 19 on page 3 with the following:

(b) cooperative credit societies, savings and credit
Mr. Chairman, this amendment is to make the description of credit unions in this paragraph consistent with that in Quebec legislation. I think the members have the explanatory note, but if they don't...the amendment would include the term “savings union” in English and “caisses d'épargne” in French. So it's more a housekeeping amendment.

The Chair: Thank you.

(Amendment agreed to)

The Chair: Now we have amendment 2.

Mr. Roy Cullen: Yes, Mr. Chairman. I'd propose that clause 5 be amended by replacing, in the French version, line 22 on page 4 with the following:

[Translation]

province qui se livrent à l'acceptation de dépôt ou ven-
[English]

Is that correct?

It's a potential ambiguity in the French version of the paragraph, Mr. Chairman, and that's a housekeeping amendment.

The Chair: Thank you very much, Mr. Cullen.

(Amendment agreed to)

(Clause 5 as amended agreed to)

The Chair: Do I have unanimous consent to deal with clauses 6 through 48 in a block?

Some hon. members: Yes.

(Clauses 6 to 48 inclusive agreed to)

(On clause 49—Personnel)

The Chair: We have amendment G3.

Mr. Cullen.

• 0955

Mr. Roy Cullen: Yes, Mr. Chairman. I propose that we replace line 3 with the following:

notwithstanding section 56 of the Public Service Staff Relations Act, in accordance with the mandate approved by the Treasury

What this does, Mr. Chairman, is it allows the director of the centre to fix the remuneration of centre employees with the approval of Treasury Board.

The amendment would specify that once a mandate has been approved by the Treasury Board, the director would fix remuneration of employees in accordance with the mandate, without having to obtain further Treasury Board approval as required by section 56 of the Public Service Staff Relations Act.

(Amendment agreed to)

(Clause 49 as amended agreed to)

(Clauses 50 to 54 inclusive agreed to)

(On clause 55—Disclosure by Centre prohibited)

The Chair: We're on amendment G4.

Mr. Cullen.

Mr. Roy Cullen: Yes, Mr. Chairman, thank you.

I propose that clause 55 be amended by replacing line 13 on page 26 with the following:

spect of a financial transaction or
This subclause defines the designated information that the centre is required to disclose to the police and other government bodies listed in subclause 55(3). Without this, it would be limited to the prescribed information. This makes sure it also includes suspicious financial transactions.

(Amendment agreed to)

(Clause 55 as amended agreed to)

(Clauses 56 to 64 inclusive agreed to)

(On clause 65—Disclosure to law enforcement agencies)

The Chair: Clause 65 has an amendment by the government—G5.

Mr. Roy Cullen: Thank you, Mr. Chairman.

[Translation]

I move that Bill C-22, in clause 65, be amended by replacing, in the French version, lines 25 and 26, page 36, with the following:

organismes compétents chargés de l'application de la loi tout renseignement dont il prend
[English]

Mr. Chairman, this amendment would correct an error in the French version of the clause.

The Chair: Thank you, Mr. Cullen.

(Amendment agreed to)

(Clause 65 as amended agreed to)

(Clauses 66 to 69 inclusive agreed to)

(On clause 70—Audit)

The Chair: There's an amendment by the government.

Mr. Cullen.

Mr. Roy Cullen: Thank you, Mr. Chairman.

I propose that we amend clause 70 by replacing lines 29 to 31 on page 37 with the following:

70.(1) All receipts and expenditures of the Centre are subject to examination and audit by the Auditor General of Canada.
Then under “Use and disclosure”:

(2) The Auditor General of Canada and every person acting on behalf of or under the direction of the Auditor General of Canada shall not use or disclose any information referred to in subsection 55(1) that they have obtained, or to which they have had access, in the course of exercising powers or performing duties and functions under this Act or the Auditor General

Act, except for the purposes of exercising those powers or performing those duties and functions.
Mr. Chairman, colleagues, this has the okay of the Auditor General. Basically, it means that if there's a staff person or a contractor of the Auditor General doing an audit of the centre and they come across, for example, someone they know who has been investigated for a suspicious transaction, they would be obliged never to reveal that information and would suffer the consequences if they did.

The Chair: Thank you.

Yes, Mr. Szabo.

Mr. Paul Szabo (Mississauga South, Lib.): I wonder if the officials could advise us whether or not the rules of the Canadian Institute of Chartered Accountants would cause some difficulty with regard to chartered accountants who are in the employ of the Auditor General's office to the extent that they have professional rules of conduct that may require them to make reports to their association in the event that they become directly aware of information.

Mr. Roy Cullen: Could I just comment on that?

The Chair: Sure, Mr. Cullen.

Mr. Roy Cullen: Colleague, the comments that we heard from...this clause deals with something more specific than that, and I'll ask the officials to comment after I make a brief intervention.

With respect to the representation made by the CICA and the CGAs, the bill calls for...the types of activity will be defined by regulation. I will guarantee to you that the regulations will stipulate, with respect to accountants and lawyers, that in the normal course of their duty, let's say it's an audit, a test function, or preparing financial statements, they would be exempted. The only time they would be obliged to report would be if they were engaged as a financial intermediary in a transaction. And you have my undertaking; that is the way it will be expressed in the regulation.

• 1000

Is that okay?

The Chair: Thank you.

(Amendment agreed to)

(Clause 70 as amended agreed to)

(Clauses 71 and 72 agreed to)

(On clause 73—Regulations)

The Chair: Shall we hear amendment G-7 from Mr. Cullen?

Mr. Roy Cullen: Thank you, Mr. Chairman. I'm proposing that we amend clause 73 by adding after line 28 on page 38 the following:

(e.1) specifying the information to be contained in a report under section 7 or subsection 9(1)
Mr. Chairman, this is amended to provide explicit regulation-making authority to prescribe the information to be contained in a report under section 7 and subsection 9(1). Right now the act talks about the form and the manner, so conceivably we could have a situation where someone has a nice form and they're reporting it every month, or whatever is prescribed, but they include their favourite recipes in the form. This says not only the form and the manner but the content.

(Amendment agreed to)

(Clause 73 as amended agreed to)

(Clauses 74 to 76 inclusive agreed to)

(On clause 77—Reporting—section 9)

The Chair: Clause 77 has an amendment by the government, amendment G-8.

Mr. Roy Cullen: Thank you, Mr. Chairman. I would propose that clause 77 be amended by replacing line 20 on page 40 with the following:

cised due diligence to prevent its commis-
Basically, the concept of due diligence is well recognized. This act had the concept of all due diligence. The amendment removes the word “all” so that everyone understands what the obligations are and it's clear for all stakeholders.

(Amendment agreed to)

(Clause 77 as amended agreed to)

(Clause 78 agreed to)

(On clause 79—Offence by employee or agent)

The Chair: Mr. Cullen.

Mr. Roy Cullen: Mr. Chairman, I propose that clause 79 be amended by replacing line 40 on page 40 with the following:

due diligence to prevent its commission.
This clause, Mr. Chairman, provides a due diligence defence for persons charged with an offence under section 75 or 77. The motion removes the word “all” from the phrase “all due diligence” in English and replaces the words “a pris les mesures nécessaires”, etc.

(Amendment agreed to)

(Clause 79 as amended agreed to)

(Clauses 80 to 96 inclusive agreed to)

(On clause 97—Bill C-6)

The Chair: Now we have government amendment G-10 on clause 97. Mr. Cullen.

Mr. Roy Cullen: This amendment responds to a representation by the Public Interest Advocacy Centre, who appeared yesterday. They followed up with the facts to the chair.

Basically what this amendment does is bring Bill C-22 in line with Bill C-6. In a nutshell, any non-disclosures by the centre or by a financial intermediary—in other words, anything that would be prejudicial to the detection of money laundering activities in Canada.... So for any information that was withheld for that purpose, as defined in the act, there would be a report to the Privacy Commissioner saying this information had been withheld. It responds to the Public Interest Advocacy Group.

Have the officials had a chance to talk to the privacy office on that point? Would you like to expand on that?

Mr. Charles Seeto (Director, Financial Sector Division, Department of Finance): We have called the privacy office. We called early this morning. We left a message with them and we hadn't gotten a response back from them.

Mr. Roy Cullen: Essentially, in a nutshell, Mr. Chairman, this gives a heightened level of comfort to the Privacy Commissioner. As the act reads now, the non-disclosure report would not be forthcoming to the Privacy Commissioner. This allows that so that the Privacy Commissioner has an understanding of the volume and the extent of non-disclosures. It actually adds to his or her mandate. We don't expect any difficulty there.

The Chair: Thank you, Mr. Cullen.

(Amendment agreed to)

• 1005

(Clause 97 as amended agreed to)

(Clauses 98 and 99 agreed to)

(Clause 1 agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill with amendments to the House?

Some hon. members: Agreed.

The Chair: Thank you very much.

Before you leave, first of all, I want to thank all those of you who are here to vote and exercise your democratic right as responsible members of Parliament to be present at these hearings.

Secondly, I'd like to express to the officials my sincerest gratitude for all the work you have done, not only on this bill but on many bills that come to this committee. Your work is absolutely excellent and exceptional. From time to time we will come up with amendments to make improvements, but that's our duty and obligation to the people we represent. You can rest assured that this committee and the members of the House certainly appreciate the excellent quality of work and consultation that does take place throughout our country. You make a very serious contribution. I can sincerely tell you these comments are heartfelt.

Mr. Cullen.

Mr. Roy Cullen: Mr. Chairman, if I might, I'd just like to thank the members and the department as well. I'd also like to note for the record that we placed a call to Mr. Jim Abbott of the official opposition to see if he'd come back, because we were lacking quorum. He indicated he was prepared to do that. I'd like to thank him for that gesture of goodwill.

I'll certainly be working with the members of the opposition over the next couple of weeks. If there's anything substantive, we'll certainly be looking at it very carefully.

The Chair: Of course, to all the staff of the members of Parliament and also to our staff, clerk, researchers, and everybody involved in any way with the workings of the committee, as always, your work is greatly appreciated.

Thank you very much. The meeting is adjourned.

April 14, 2000 [House of Commons]

Mr. Maurizio Bevilacqua (Vaughan—King—Aurora, Lib.):

Mr. Speaker, I have the honour to present, in both official languages, the second report of the Standing Committee on Finance regarding its order of reference of Thursday, April 6, 2000 in relation to Bill C-22, an act to facilitate combatting the laundering of the proceeds of crime, to establish a financial transactions or reports analysis centre of Canada and to amend and repeal certain acts in consequence.

The Committee has considered Bill C-22 and reports the bill with amendment.

I want to quickly take the opportunity to thank the clerk, the researchers, the members of the committee, the witnesses and departmental officials for their excellent work.

May 3, 2000 [House of Commons]

The Acting Speaker (Mr. McClelland): There are 11 motions in amendment on the notice paper for the report stage of Bill C-22.

The motions will be grouped for debate as follows:

Group No. 1: Motion No. 1.

Group No. 2: Motions Nos. 2 to 7.

Group No. 3, Motions Nos. 8 to 11.

The voting pattern is available at the table. The Chair will inform the House of the details with each vote.

I will now put Motion No. 1 to the House.

Mr. Richard Marceau (Charlesbourg, BQ):

Motion No. 1

That Bill C-22 be amended by adding after line 10 on page 3 the following new clause:

"3.1 The persons and entities to which this Act applies shall not transfer to their clients, either directly or indirectly, any costs incurred by them in carrying out their obligations under this Act."

Mr. Speaker, I am pleased to speak to Bill C-22 which seeks to deter money laundering.

Most people agree with the objective of this bill. Indeed, who could support regulations and laws that are too lax in the area of money laundering?

That being said, we think some amendments are required not to change the bill's thrust but rather to improve the bill. It is in that spirit of co-operation and with a view to improving the legislation that we participated in all the various stages.

I want to mention that the time allocated to us between the end of the testimonies at the Standing Committee on Finance and the beginning of the review, particularly the clause by clause review, was much too short.

I ask that this House and all its committees ensure that, next time, more time be provided between the end of the testimonies and the beginning of the clause by clause review of a bill. Otherwise, what is the use of these testimonies, of all the efforts, money and time expended by witnesses to come and express their views, if we do not have time afterwards to digest this new information?

I want to explain what Motion No. 1 is all about. Bill C-22 imposes new obligations to various organizations and entities, such as banks, casinos and caisses populaires. We know that bank charges for most Quebec and Canadian consumers are already very high.

The bill imposes new obligations to these entities to help fight money laundering. The purpose of Motion No. 1 is to ensure that the costs resulting from the new obligations imposed by Bill C-22 on these various institutions are not passed on to clients.

In the fight against money laundering, this amendment obliges these institutions to be good corporate citizens. In the battle that all elements of society must wage against money laundering, we want to ensure that financial institutions become good corporate citizens and do not transfer to their clients the costs incurred in carrying out these new obligations. Finally, they must do their part so that everyone helps carry the load in the fight against money laundering; these institutions will have to absorb these costs, which are minor for them.

We know that the banks make profits in the billions. The idea is to prevent them from passing on the costs of these obligations to their clients. In my view, this would be a big improvement to the bill.

People say “Another obligation for the banks. They will pass on the bill to us. Our fees will go up again. This is crazy, we are already paying plenty”. The purpose of this amendment is to avoid all this and ensure that clients do not suffer because of these obligations.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance):

Mr. Speaker, I will be the third speaker to mention the whole issue of the compression of time. As I pointed out at second reading, the bill is long overdue. The government has been dragging its feet on it, and all of a sudden we are going at warp speed to try to get it through the procedure of the House of Commons.

I resent that very deeply on behalf of Canadian people because it is a vitally important bill. It has the potential to impact many hundreds of thousands if not millions of people in their financial transactions not only with respect to costs but also with respect to privacy issues and with respect to enforcement issues.

For that reason I have to concur with the hon. member from the Bloc Quebecois, although I do acknowledge on the part of the Liberal speaker before me that there had been an all party agreement to a work schedule When the work schedule became unworkable it was incumbent in my judgment on the government to revisit that work schedule.

I will be raising this issue in some depth when we get to third reading. Even as we speak there are ongoing negotiations on a bill and on clauses to a bill that have international ramifications, if not individual and national ramifications. I find the process to be completely unacceptable. It is a bill that is vital. Because of the urgency to get the bill through, in part because of the delay of the Liberals in bringing it to the House of Commons, we will support it. However I want the people of Canada to know that this is a seriously flawed process.

With respect to Motion No. 1, as has been noted by the government there is a problem which very simply is how in the world would we ever get institutions, individuals, professionals or casinos to comply with the particular bill. I believe it is in Never-Never Land. It is kind of a fairy tale, something like the tooth fairy, that the costs to institutions or individuals providing services to people will not somehow find their way into the service charges. Of course they will.

To try to regulate something that is totally unregulatable is pie in the sky. As a consequence, although I have the greatest respect for the mover of the motion, I could never recommend to my colleagues that we support it.

Mrs. Pierrette Venne (Saint-Bruno—Saint-Hubert, BQ):

Mr. Speaker, as we mentioned earlier and as the other members have said, money laundering is a worldwide problem and, because of its nature, is difficult to quantify.

According to the federal government, some $7 billion to $10 billion is laundered in Canada. John Walker, an Australian criminologist and mathematician, has developed a global model at the request of the Australian government to determine the scope of money laundering worldwide. The United States and the UN are interested in his model.

This Australian estimates the money laundering worldwide to be worth about $3 trillion annually. He does not paint a glowing picture of Canada. According to his model, Canada ranks ninth worldwide as a country generating illicit money and eighth worldwide as a

favoured destination for money laundering. According to this study, $64 billion in illicit funds from outside the country are laundered in Canada and $21 billion in criminal profits are generated.

Canada is a clearing house for the laundering of money and this news is not good. Canada is the only G-7 country that does not have legislation to fight money laundering. This is why Bill C-22 is welcomed favourably by the Bloc Quebecois. It is another step in the fight against organized crime. The fight against this international scourge must begin at home first. For this reason, the Bloc Quebecois supports this bill.

There are in Canada measures against money laundering. For example, there are provisions in the criminal code that make it a criminal offence to launder money and provide for the confiscation—

The Acting Speaker (Mr. McClelland): I am sorry to interrupt the hon. member.

Mr. John Cummins: Mr. Speaker, I rise on a point of order. I ask for unanimous consent to concur in private member's Motion No. 308.

The Acting Speaker (Mr. McClelland): Is there unanimous consent?

Some hon. Members: Agreed.

An hon. Member: No.

Mrs. Pierrette Venne:

Mr. Speaker, since I was interrupted right in the middle of a sentence, I will repeat it so that all those who are listening to us can understand it.

As I was saying, there are in Canada measures against money laundering. For example, there are provisions in the criminal code that make it a criminal offence to launder money and provide for the confiscation of the proceeds and property derived from various organized crime drug trafficking activities. Under these provisions, the burden of proof is heavy for crown attorneys. They must prove beyond any reasonable doubt that a crime was committed and then that the seized goods were bought with dirty money. These investigations are extremely lengthy and few lead to prosecution.

In 1991 Canada passed the Proceeds of Crime (Monetary Laundering) Act, which requires several institutions to keep records. Indeed, financial institutions, foreign exchange offices, stockbrokers, life insurance companies and casinos are required to keep a record of transactions over $10,000. However, there is no accountability requirement. This reduces the possibility of investigating and laying charges, since the information collected is not in the hands of the police. If it is passed, Bill C-22 will replace the Proceeds of Crime (Money Laundering) Act.

These measures are clearly inadequate and do not seem to be effective enough. That is why the Bloc Quebecois views Bill C-22 as an improvement on the existing money laundering legislation. However, Bill C-22 provides for the gathering of information about the movement of money. This will now be obligatory. A number of institutions and individuals will be required to make certain reports on the movement of money, as we mentioned. In addition, this information will be collected and analyzed in order to determine whether investigations or charges are warranted.

Financial institutions, exchange offices, casinos, life insurance companies and stockbrokers, among others, will now be required to report financial transactions that they suspect may be linked to an offence having to do with the laundering of the proceeds of crime. In addition, these institutions will be required to report certain categories of financial transactions described in the regulations and valued at more than C$10,000.

Persons importing or exporting cash or goods valued at more than $10,000 and those crossing the Canadian border with such items will be required to report these amounts to a Canada Customs official.

That concludes my remarks on Bill C-22 for now. We will certainly have an opportunity to continue the debate with the amendments that will be introduced in the course of the afternoon.

Mr. Jim Pankiw: Mr. Speaker, I believe we do not have a quorum.

The Acting Speaker (Mr. McClelland): The hon. member for Saskatoon—Humboldt has called for a quorum count. Call in the members.

And the bells having rung:

The Acting Speaker (Mr. McClelland): We now have a quorum.

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC):

Mr. Speaker, I want to congratulate my colleague, the member for Saint-Bruno—Saint-Hubert, on her speech.

I also want to congratulate my colleague, the member for Charlesbourg. He worked very hard during consideration of this bill. I am very proud to have worked with him.

It is with great pleasure that I rise to speak to Bill C-22, the proceeds of crime bill. This legislation will, for all intents and purposes, create a new agency that will oversee and very much attach itself to the effort to prevent money laundering, a very serious problem in our country.

Again, I congratulate my colleague from Charlesbourg who has worked very hard on this bill and is very conscientious as a member, a previous member of the Standing Committee on

Justice and Human Rights, and in his current capacity as he works equally hard for his constituents.

This amendment would add to a new clause to the bill. It would read:

3.1 The persons and entities to which this Act applies shall not transfer to their clients, either directly or indirectly, any costs incurred by them in carrying out their obligations under this Act.

This is a very positive, common sense amendment and one that the Progressive Conservative Party of Canada will be supporting wholeheartedly. The main purpose of the amendment is obvious. It would protect the average citizen from the various organizations concerned effectively passing the buck on to them, that is, using citizens very much as a dupe for some organized crime unit.

For example, in the banking sector consumers are already faced with relatively high service charges and further increases would not be desirable. As we all know, money laundering is a process by which revenues derived from criminal activity are converted into assets that cannot easily be traced back to their origins. It is something that is happening at an alarming rate in Canada.

Bill C-22 would bring Canada up to date with the standards of our G-7 trading partners. It does not take us beyond the minimum standard, but it does take us at least to the standard that G-7 countries have set.

In the United States I had the pleasure recently of visiting with an organized crime unit in the state of Massachusetts where they are doing a great deal to address this problem, and they are putting resources into it. That is the number one problem facing this government and this country. We are not arming our policing agencies, our internal security agencies, with sufficient resources to combat what is a very sophisticated and very well armed organized crime syndicate operating in Canada.

The saying that crime does not pay could not be further from the truth with regard to money laundering. It is estimated that between $5 billion and $17 billion in criminal proceeds are laundered in Canada each year. It has become a very lucrative and profitable business.

Canada has long had a reputation of being one of the easiest jurisdictions in which to legitimize the proceeds of illegal pursuits.

The latest report of the Crime Intelligence Service of Canada indicates that money laundering has allowed, for example, the Sicilian mafia to continue to infiltrate legitimate business. Asian based groups are heavily involved in Canadian heroin and drug trafficking. We also know that the Russian mafia has become very prevalent inside Canada.

There has been discussion in the Chamber recently about the situation, particularly on the west coast, of the smuggling of humans. We know that the sidewinder project has received a great

deal of attention in the media of late. This again demonstrates, sadly, our lack of resources when it comes to law enforcement, our internal security services, and their ability to combat organized crime.

Money laundering is but one aspect of this growing concern we have about protecting the integrity of our citizens and our money system. Money laundering poses to law enforcement personnel one of their greatest challenges in the battle against organized crime. To fight organized crime effectively, law enforcement agencies and we, as legislators, must address the challenges posed by current trends in money laundering and adopt a strategy to respond to those challenges. This bill moves in that direction.

For example, several months ago United States officials uncovered the biggest money laundering operation ever inside their country. Federal investigators believe that Russian gangsters had channelled up to $10 billion through the Bank of New York, the 15th largest bank in the United States. This news sent shock waves throughout the entire financial services sector and proved that money laundering can affect even the biggest banks, those big commercial banks who would have us believe they are impenetrable.

The United States has moved ahead very quickly with its own tough, new money laundering legislation. It is very concerned, and we have seen it time and again, because the American economy and law enforcement agencies are very much tied, and therefore vulnerable, to our weaker internal security services. The U.S. has expressed concern repeatedly about the situation.

Since the Liberals took power in 1993 our internal security has diminished and has continued to be weakened. The Liberal government has given the United States much evidence to validate its concerns. In December 1999 U.S. customs officers discovered an Algerian Canadian, with Algerian terrorist connections, attempting to enter the United States through Seattle with a carload of explosives. This touched off a very serious concern within the United States and it continues to this day.

On February 25, 2000 the U.S. government suspended firearm and ammunition sales to Canada, which was done at the request of the Canadian government, and legal import licences were being used to import large quantities of handguns, rifles and ammunition. Firearms were then smuggled back into other countries. Many of them went back to the United States. This was very much an embarrassment for Canada. The soft approach on crime is highlighted by these inadequacies. It was another blow to our good relationship with the United States, because of our open, undefended border.

Since 1993 the Liberals have talked repeatedly about increasing penalties for money laundering in a manner that would be consistent with public safety, yet the RCMP still lacks the proper budget to deal with today's very sophisticated crime. For example, we saw that only $810 million had been set aside over the next three years. Much of that has been earmarked to fight organized crime.

Unfortunately, the usual sleight of hand has to be uncovered, and that is that 62% of this new money will not be available until the year 2001-02. This will be added to the RCMP base budget of about $2.1 million. That is still not enough, given the level of the problem and the years that the RCMP, CSIS and other services have been underfunded.

The mounties have already had to curtail their activities with respect to undercover operations which targeted organized crime. Reduction in training and the inability to conduct fraud investigations in British Columbia and undercover operations seriously jeopardizes the RCMP's ability to effectively do its job.

To correct these problems it is proposed that 5,000 new RCMP officers would be needed. Also lacking is staff at the forensic laboratory, the need for DNA databanks and the need to update the CPIC system. Police forces need this type of technology, and yet the government cannot even afford and will not commit the money that is needed to deal with these very serious inadequacies.

The government gave $115 million to the CPIC program when it was stated quite clearly that what was needed was $283 million. Once again, a pittance. It is an insult to our brave men and women who are in the mounties and in the secret service to have to work under these conditions.

British Columbia mounties alone may shift away from organized crime to deal with more pressing needs of fulfilling police vacancies and paying their officers. Basic policing needs have to be attended to and, therefore, organized crime needs are being neglected. In rural areas there is a very serious problem of losing RCMP documents and losing municipal police forces in small communities.

The riding of Shefford, represented by the Progressive Conservative member from Granby, is dealing with the very serious threat of losing its detachment. Biker gangs are terrorizing farmers and forcing them to grow marijuana in their fields.

There is a Bloc member who is currently being threatened by members of biker gangs and organized crime.

The Progressive Conservative Party of Canada supports the broad purpose and principles of this bill, that is, to remedy the shortcomings in Canada's anti-money laundering legislation as identified by the G-7 financial action task force on money laundering. We support this amendment and we will be very supportive of this bill as it proceeds through the House and the various committee stages.

The Acting Speaker (Mr. McClelland): Is the House ready for the question?

Some hon. Members: Question.

The Acting Speaker (Mr. McClelland): Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

Some hon. Members: No.

The Acting Speaker (Mr. McClelland): All those in favour of the motion will please say yea.

Some hon. Members: Yea.

The Acting Speaker (Mr. McClelland): All those opposed will please say nay.

Some hon. Members: Nay.

The Acting Speaker (Mr. McClelland): In my opinion the nays have it.

And more than five members having risen:

The Acting Speaker (Mr. McClelland): The recorded division on the proposed motion stands deferred.

The motions in Group No. 2, at the request of the hon. member for Charlesbourg, the mover of the motions, will be withdrawn.

Mr. Richard Marceau: Mr. Speaker, following ongoing negotiations with the Parliamentary Secretary to the Minister of Finance, I have decided not to withdraw these amendments. I will ask to speak in order to introduce them.

Some will be amended by the parliamentary secretary. As they are my motions, I cannot amend them myself, if I am not mistaken.

The Acting Speaker (Mr. McClelland): I understand that the motions in Group No. 2, standing in the name of the hon. member for Charlesbourg, will be introduced at this time.

Mr. Richard Marceau (Charlesbourg, BQ) moved:

Motion No. 2

That Bill C-22 be amended by adding after line 47 on page 10 the following new clause:

"19.1 If an officer decides, on grounds that the officer believes to be reasonable, to exercise any of the powers or perform any of the duties or functions under subsections 15(1) and (3), 16(1) and (2), 17(1) and 18(1), the officer shall record in writing the reasons for the decision."

Motion No. 3

That Bill C-22, in Clause 36, be amended by adding after line 22 on page 17 the following:

"(3.1) If an officer decides, on grounds that the officer believes to be reasonable, to disclose information under subsection (2) or (3), the officer shall record in writing the reasons for the decision."

Motion No. 4

That Bill C-22, in Clause 55, be amended by adding after line 5 on page 26 the following:

"(5.1) The Centre shall record in writing the reasons for all decisions to disclose information made under subsection (3) or paragraph (4)(a) or (5)(a)."

Motion No. 5

That Bill C-22, in Clause 56, be amended by adding after line 18 on page 27 the following:

"(4) In every agreement or arrangement entered into under subsection (1) or (2), there shall be inserted an express condition that each party shall comply with the provisions of this Act dealing with the confidentiality and the collection and use of information."

Motion No. 6

That Bill C-22, in Clause 62, be amended by adding after line 3 on page 33 the following:

"(1.1) If an authorized person decides, on grounds that the person believes to be reasonable, to enter premises under paragraph (1)(a), the person shall record in writing the reasons for the decision."

Motion No. 7

That Bill C-22, in Clause 63, be amended by replacing line 41 on page 33 with the following:

"business, profession or activity, and shall record in writing the reasons for the person's belief."

Mr. Speaker, before I go any further, I seek unanimous consent to withdraw Motion No. 5.

The Acting Speaker (Mr. McClelland): The hon. member for Charlesbourg has asked for the unanimous consent of the House to remove Motion No. 5 standing in his name. Is there unanimous consent?

Some hon. Members: Agreed. (Motion No. 5 withdrawn)

Mr. Richard Marceau: Mr. Speaker, again, I am pleased to address this bill, even though I am a little out of breath.

The purpose of Motions Nos. 2, 3 and 4 is very simple. If we want the privacy commissioner and the information access commissioner to be able to get all the information they need, the reasons for which the officer of the centre wanted to investigate further must be recorded in writing, otherwise it will be difficult to know what happened and why the decision to investigate further and to disclose the information was made.

This is the reason why I proposed these motions. I know that these provisions will be amended by the parliamentary secretary and I will be waiting for his amendments.

In that same spirit of continued co-operation to speed up the process, I ask that Motions Nos. 6 and 7 also be withdrawn, with the unanimous consent of the House.

The Acting Speaker (Mr. McClelland): Just to be clear, is it the intention of the member for Charlesbourg to ask that Motions Nos. 6 and 7 standing in his name be withdrawn?

Mr. Richard Marceau: Yes, Mr. Speaker.

The Acting Speaker (Mr. McClelland): Does the House give unanimous consent to withdraw Motions Nos. 6 and 7 standing in the name of the hon. member for Charlesbourg?

Some hon. Members: Agreed. (Motions Nos. 6 and 7 withdrawn)

Mr. Roy Cullen (Parliamentary Secretary to Minister of Finance, Lib.):

Mr. Speaker, I thank the various members for their co-operation in trying to reach some conclusion to these amendments.

Motion No. 2 would impose a legal requirement on customs officers to do what in certain circumstances is done as a matter of good administrative practice. My concern with the motion is that it would create a procedural burden for routine actions, such as a request of a customs officer to look inside the trunk of a car which is crossing the border.

The procedures proposed in Bill C-22 to deal with cross-border movements of large amounts of currency and monetary instruments are intended to dovetail with similar procedures dealing with the movement of goods. Introducing a requirement to create a written record for routine actions by customs officers at the border would add bureaucracy and cause unnecessary delays for the travelling public.

I therefore would like to propose the suggestion that officers be required to record in writing their reasons for decisions under this bill not apply to routine actions but be limited instead to the exercise of the powers under subsection 18(1) which deal with the seizure of currency or monetary instruments. Therefore the amended motion would read as follows:

That Bill C-22 be amended by adding after line 47 on page 10 the following new clause:

"19.1 If an officer decides to exercise powers under subsection 18(1), the officer shall record in writing reasons for the decision".

The Acting Speaker (Mr. McClelland): The debate is on the amendment.

Mr. Roy Cullen: Mr. Speaker, could I now proceed to Motion No. 3?

The Acting Speaker (Mr. McClelland): We are on Group No. 2. We have to stay on Group No. 2 but you can speak to any of the motions in that group.

Mr. Roy Cullen: Mr. Speaker, with respect to Motion No. 3, we have no objection to the intent of the motion but we would suggest that it be redrafted to make it clear that the decision would be made by the officer on the basis of the criteria set out in the appropriate subsections rather than "on grounds that the officer believes to be reasonable". The amended motion would read:

That Bill C-22, in clause 36, be amended by adding after line 22 on page 17 the following new clause:

"(3.1) If an officer decides to disclose information under subsection (2) or (3), the officer shall record in writing the reasons for the decision."

The Acting Speaker (Mr. McClelland): The debate is on the amendment. The hon. Parliamentary Secretary to the Minister of Finance.

Mr. Roy Cullen: Mr. Speaker, moving now to Motion No. 4, the centre's decision to disclose information in accordance with section 55 of the bill is an extremely important one. It will be necessary for the centre to fully document the reasons for doing so in each and every case. It was always intended that the centre would do this and therefore I am prepared to support the amendment proposed by my colleague.

Mr. Darrel Stinson: Mr. Speaker, I rise on a point of order. Normally in a speech an amendment is moved just once. There were several amendments created during the speech. I would like to know what the protocol is.

The Acting Speaker (Mr. McClelland):

The protocol is when it is a report stage motion it is the responsibility of the Chair, where there is a recognition between parties that they are working toward resolving a bill, not to stand in the way of that. The Chair's responsibility is to make sure that what is being done is being done in a parliamentary sound fashion. That is why we are taking the time now to make sure that what is being done is being done appropriately.

I think behind the hon. member's question is the fact that generally if an amendment to a motion is moved, it is done at the end of an intervention and that terminates the intervention. In this case I recognized the hon. parliamentary secretary on a different motion within the

context of that group recognizing that there had been negotiations between opposition and government members on this particular bill.

Again it was not my intention to involve the Chair in the debate, but it is the responsibility of the Chair to ensure that if opposition and government are working toward resolution of differences on a bill, to facilitate the ability of members to work together in common cause.

As members know, they cannot through amendment change a bill. All they can do is amend something that is already there; they cannot change the format or the intent. This is what is being considered by the clerks.

As this is the first time this has come before me, I will need the attention of all members present to make sure that it is done correctly.

The amendments as presented by the hon. parliamentary secretary are not in order because they are amendments to change the bill. What is before the House now are the amendments. For an amendment to be in order it must amend a motion. Therefore, the amendments as presented by the parliamentary secretary are not in order. This leaves the Chair in the position of saying that if there is the will for the motion to be amended it is not up to the Chair to negotiate this. It must be done by the parties.

The way we could do this is to continue with the debate on the motions that are before the House. If there is no further debate on motions before the House, with the indulgence and with the unanimous consent of the House, we could move to Group No. 3 and then come back again to Group No. 2. However, that would require the unanimous consent of the House. Other than that, we will stay on the motions in Group No. 2 as they are presented.

Mr. Richard Marceau (Charlesbourg, BQ):

Mr. Speaker, I would like to begin by saying that if the government had listened to the Canadian Alliance member who was sitting on the parliamentary committee at the time, if it had agreed to allow more time between the end of evidence and the beginning of the clause by clause review in committee, we would not find ourselves in this situation.

I can only deplore it. I think the Canadian Alliance member will agree with me. This is deplorable, because normally this exercise should be done in committee.

That being said, I want to make sure I clearly understood what you said. I proposed Motions Nos. 2 and 3, which were amended by the Parliamentary Secretary to the Minister of Finance. These are amendments to my motions with which I can live. I wonder if we could go the unanimous consent route.

The Acting Speaker (Mr. McClelland): The third option would be to ask for the unanimous consent of the House to receive the amendments as presented by the parliamentary secretary.

If a member would like to make that motion, we will get on with it. That is a good way to do it.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance):

Mr. Speaker, the process that we are currently involved in is egregiously flawed. We are talking about a bill that will interdict hundreds of millions, if not billions, of dollars of currency. It is an international agreement with vast ranging, international implications for not only G-7 nations but indeed nations throughout the entire world.

As has been pointed out by my colleague from the Progressive Conservative Party and also my colleague from the Bloc Quebecois in debate this afternoon, we are talking about the core of international crime and the way in which we can track it. The member for Charlevoix, another member and myself have all pointed out that the haste with which this is going through the House is to treat the House with disrespect and as a rubber stamp.

The debacle we are currently involved in was as a result of discussion in good faith between the Liberals and the Bloc Quebecois. As the representative of Her Majesty's Official Opposition, I was not involved in any of the discussion about the motions that you, Mr. Speaker, have ruled out of order. I find it completely unacceptable that Her Majesty's Official Opposition would not have been involved in the discussion.

Therefore, I move:

That the debate be now adjourned.

The Acting Speaker (Mr. McClelland): The House has heard the terms of the motion. Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

Some hon. Members: No.

…

The Acting Speaker (Mr. McClelland): In my opinion the nays have it.

And more than five members have risen:

The Acting Speaker (Mr. McClelland):

Call in the members.

(The House divided on the motion, which was negatived on the following division:)

Speaker: I declare the motion lost.

It is my duty pursuant to Standing Order 38 to inform the House that the questions to be raised tonight at the time of adjournment are as follows: the hon. for Bras d'Or—Cape Breton, Human Resources Development; the hon. member for Halifax West, National Defence; the hon. member for Kamouraska—Rivière-du-Loup—Témiscouata—Les Basques, Human Resources Development.

Mr. Joe McGuire (Parliamentary Secretary to Minister of Agriculture and Agri-Food, Lib.):
Madam Speaker, I move:

That Motion No. 2 be amended by deleting all of the words after the words "19.1 If an officer decides," with the following:

"to exercise powers under subsection 18(1), the officer shall record in writing reasons for the decision".

I also move:

That Motion No. 3 be amended by deleting the following words:

", on grounds that the officer believes to be reasonable,"

The Acting Speaker (Ms. Thibeault): The amendments are in order.

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC):

Madam Speaker, I am pleased to take part in this debate. I thank again and recognize the efforts of the hon. member for Charlesbourg who moved Motions Nos. 2 to 7. These motions highlight a concern which I think we all have. Certainly we in the Progressive Conservative Party of Canada share the concerns with respect to this new agency passing on unrelated information that it might have about Revenue Canada.

For example, if the agency had reasonable grounds to pursue an individual case of money laundering, that much is fine, but money laundering has become a very serious issue and one that should be considered a threat to national security.

Globally experts estimate that between $300 billion and $500 billion in United States currency is criminally derived from international capital markets or funds that are derived from outside our borders. In Canada the federal government estimates that between $5 billion and $17 billion in criminal proceeds are laundered in this country each year. If this new agency does not have enough power and enough evidence to pursue the case of money laundering, it could determine that there is not enough evidence to get the person on tax evasion and could conceivably release information to Revenue Canada. It is crucial that we ensure on behalf of

Canadian taxpayers that this new agency is not swallowed up by the Godzilla tax collector out there, also known as the department of revenue.

What we saw happen in the House just a short time ago epitomizes how the government is flying by the seat of its pants. We saw a member on the government side try to amend an amendment. What was intended was to amend the act itself, which the Chair quite properly ruled out of order. The member rose and we had to delay the debate because of the fact that the government did not know what it was doing.

This shows there is no plan. The Liberals have lost the plot again with respect to a very important piece of legislation on which they should have taken the time to do their homework and prepare what they wanted to do instead of simply trying to hoodwink everybody that was in the House.

The Progressive Conservative Party supports the broad principles of the bill before us on debate. It is one of the most important efforts that we can all make with respect to law enforcement, with respect to the integrity of our country and with respect to the efforts of our law enforcement agencies to curtail and control a growing money laundering problem and criminal activity within our borders. The Conservative Party supports the broad principles.

When members of the RCMP call this legislation long overdue and say that it will make a significant difference, we have to take them at their word. The Canadian Bankers Association has spoken very favourably about the legislation. It similarly says that the legislation is long overdue and that organized crime will be much deterred by it.

International money capital markets annually are very much affected. We know that the bill is aimed at addressing fiscal problems that occur when money is funnelled through legitimate organizations like banks. We know as well that the amendments which have been introduced very much ameliorate and prop up some of the intended passages.

We feel the legislation will be an improvement upon the current situation in the country, but we have to hearken back to where some of the real problems lie. Where do the real problems stem from in terms of the ability of our law enforcement agencies to somehow control the situation?

We see a bill that is aimed at tightening up some of the legislative framework, but what we really need to do to improve the situation is to prop up the RCMP and CSIS by giving these law enforcement agencies the backup and resources they need to combat a very sophisticated organized crime syndicate in this country.

We know the government has a reputation for being laid back and very non-supportive of our law enforcement agencies when it comes to their ongoing uphill battle with existing crime syndicates, not only motorcycle gangs but the increasing presence of Asian gangs, Russian gangs and the traditional Mafia within Canada.

Compared to countries like the United States we pale in comparison in terms of the support that we give law enforcement agencies. The other message that should be coming out in this debate is that it is not enough simply to put a legislative framework in place. We have to pony up to the bar and put dollars on the table so that the men and women who are very much dedicated to our law enforcement services are not only seen to be given support but are given actual support. We need to do this right away.

The Progressive Party of Canada has always been very much supportive of agencies in the country that are tasked with this very important task. They are the thin blue line between the Canadian public and those who choose a life of crime.

The bill is one of which our party is supportive. The amendments as well are supported by our party. The reaction from the community, from the banking community and from agencies across the land, seems to be one that has embraced the intention of the bill. One would hope that there will be rapid passage of the legislation when it reaches the committee and when it comes back to the House.

Money laundering is but one part of the equation when it comes to organized crime. We know that drug enforcement has been a huge problem from our law enforcement perspective. We know that guns and other contraband material are coming across our undefended borders.

We know as well that child pornography and people smuggling are very much a problem. We do not have impenetrable borders, and that will never happen. The dismantling of the ports police which the government orchestrated by having weak border patrols was highlighted recently by the fact that we had an international terrorist cross into Seattle from Canada. This alarmed American law enforcement officials. They have called upon Canada to tighten up, to try to pick up the slack, because they are feeling very vulnerable as a result of Canada letting down the side.

All the indicators are there. All the signs are speaking out to Canada to do something about it. The legislation at least indicates that we are moving in the right direction, but sadly as we have come to expect from the government it is a baby step as opposed to a giant step or even a significant step in doing the right thing by propping up the men and women who are tasked with protecting the country's integrity, not only with respect to illegal funds but with respect to the whole gamut of illegal activity that is taking place.

We know that gangs are very much rearing their ugly heads not only in cities like Montreal, Toronto and Calgary. They are now making their presence known in rural communities across the country.

Because of the huge boundaries of water we have and because of the lack of resources that we have for the coast guard and the lack of resources that we have for the RCMP to actually partake in patrols on docks and in major ports, once again we are being very much left open to contraband materials entering the country. Money laundering is very much the focus of the bill, but we know that there are other very significant tasks, other very significant problems that are faced by law enforcement agents.

The government is letting down the side. It has not lived up to the billing. It has not responded to requests from the RCMP. It has not responded to requests to renew and bring back the ports police in this country. It is not listening, and we know it is not listening.

More and more we are getting the indicators that this is a tired, arrogant government. When the Prime Minister goes abroad and sticks his foot firmly in his mouth, it proves that time and time again. We knew that long before he went to the Middle East. He was doing the same thing in this country, but now he has demonstrated it to the whole world.

What we want to hear is that the government is listening. Canadians want to hear that the government is actually listening to them. This is an opportunity for the government to do so, but I do not think it is listening.

I hear hon. members opposite becoming a little alarmed by the fact that we are pointing this out, but Canadians know what is happening and those members can say what they want. The indicators are there. The ears are closed. The message is going out but they are not listening.

We will see a byelection in Newfoundland which will indicate that Canadians have had it with the Liberal government. When that happens, maybe that message will start to penetrate those ears. The Liberals have big earmuffs on when it comes to listening to what Canadians have to say.

With money laundering legislation that is aimed at a specific problem perhaps finally we will be able to get the attention of the government. We hear about things like this happening in the country. Unfortunately the national media are not always the most responsible in reporting exactly how it is, but we know that the particular problem has been broadcast across the country. It has been broadcast clearly as an issue that has to be addressed and addressed now.

We hope that side of the House will continue to support initiatives like this one. Unfortunately more and more the initiatives that matter most to Canadians, whether it be tax reduction, health care, something to do with student debt or initiatives to help our law enforcement agents, are coming from the opposition side because the Liberals are bankrupt on ideas. We know that when it comes to principle there is another party in here that can be very bankrupt.

I thank the House for its indulgence and for the time to speak to the legislation. I look forward to seeing it passed through the various stages and becoming law.

The Acting Speaker (Ms. Thibeault): It being 5.30 p.m., the House will now proceed to the consideration of Private Members' Business as listed on today's order paper.

May 4, 2000 [House of Commons]

The House resumed from May 3 consideration of Bill C-22, an act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain acts in consequence, as reported (with amendment) from the committee, and of the motions in Group No. 2.

The Acting Speaker (Ms. Thibeault): The question is on the amendment to Motion No. 2. Is it the pleasure of the House to adopt the amendment?

…

The Acting Speaker (Ms. Thibeault): In my opinion the yeas have it.

An hon. Member: On division.

(Amendment agreed to)

The Acting Speaker (Ms. Thibeault): The next question is on Motion No. 2 as amended. Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

The Acting Speaker (Ms. Thibeault): I declare Motion No. 2, as amended, carried.

(Motion No.2, as amended, agreed to)

The Acting Speaker (Ms. Thibeault): The next question is on the amendment to Motion No. 3. Is it the pleasure of the House to adopt the amendment?

Some hon. Members: Agreed.

The Acting Speaker (Ms. Thibeault): I declare the amendment carried.

(Amendment agreed to)

The Acting Speaker (Ms. Thibeault): The next question is on Motion No. 3 as amended. Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

The Acting Speaker (Ms. Thibeault): I declare Motion No. 3, as amended, carried.

(Motion No. 3, as amended, agreed to)

Mr. Jim Abbott: Madam Speaker, I rise on a point of order. If I am not mistaken, the vote on Motion No. 3 will apply to Motion No. 4. I need clarification of that.

The Acting Speaker (Ms. Thibeault): The vote was on Motion No. 3, as amended, and therefore Motion No. 4 is adopted.

I will now put the motions in Group No. 3 to the House.

Mr. Richard Marceau (Charlesbourg, BQ) moved:

Motion No. 8

That Bill C-22, in Clause 71, be amended a) by replacing line 32 on page 37 with the following:

"71. (1) The Director shall, on or before Septem-" b) by adding after line 40 on page 37 the following:

"(2) The report referred to in subsection (1) shall include a copy of the instructions and regulations governing the exercise of powers and the performance of duties and functions under this Act which could affect human rights and freedoms."

Mr. Bob Kilger: Madam Speaker, I rise on a point of order. I think you would find, if you recognized the Parliamentary Secretary to the Minister of Finance, that we are ready to move an amendment to the motion put forward by the member from the Bloc Quebecois.

The Acting Speaker (Ms. Thibeault): I propose that I read all the motions in this group and then I will recognize the parliamentary secretary.

Mr. Roger Gallaway (Sarnia—Lambton, Lib.) moved:

Motion No. 9

That Bill C-22, in Clause 71, be amended a) by replacing line 32 on page 37 with the following:

"71. (1) The Director shall, on or before Septem-" b) by adding after line 40 on page 37 the following:

"(2) The annual report stands referred to the committee of Parliament that is designated or established for that purpose. The committee shall review the report and the operations of the Centre and report to Parliament within 90 days after the tabling of the annual report by the Minister or any further time that Parliament may authorize."

Mr. Richard Marceau (Charlesbourg, BQ) moved:

Motion No. 10

That Bill C-22 be amended by adding after line 40 on page 37 the following new clause:

"71.1 (1) The Director shall, on or before September 30 of each year following the Centre's first full year of operations, submit a report to the Privacy Commissioner on the measures taken by the Centre to ensure the confidentiality of any personal information obtained in the course of its operations.

(2) The Commissioner shall, within three months after receiving the report, submit to Parliament the Commissioner's opinion on the report."

Mr. Roger Gallaway (Sarnia—Lambton, Lib.) moved:

Motion No. 11

That Bill C-22, in Clause 72, be amended by replacing lines 1 to 9 on page 38 with the following:

"72. (1) This Act and the regulations made thereunder shall cease to have effect five years after the day on which section 98 comes into force.

(2) Within four years after the day on which section 98 comes into force, this Act and the regulations made thereunder shall stand referred to the committee of Parliament that may be designated or established for that purpose. The committee shall, within one year, undertake a comprehensive review of the Act, the regulations and their administration and submit a report to Parliament including any recommendations pertaining to the continuation of, or changes to, the Act, the regulations or their administration that the committee wishes to make."

Mr. Roy Cullen (Parliamentary Secretary to Minister of Finance, Lib.) moved:

That Motion No. 8 be amended by replacing all of the words after the words "(2) The report referred to in subsection (1) shall include" with the following: "a description of the management guidelines and policies of the Centre for the protection of human rights and freedoms".

The Acting Speaker (Ms. Thibeault): The amendment is receivable.

Mr. Richard Marceau (Charlesbourg, BQ): Madam Speaker, the purpose of the amendment that was moved, which was then amended by the Parliamentary Secretary to the Minister of Finance, is to ensure that parliament has a good idea of the rules and policies adopted by the centre so that it can better play its role as guardian of human rights and freedoms.

The Acting Speaker (Ms. Thibeault): If we were to vote now, we would be voting on Motions Nos. 8 to 11 inclusive, without the possibility of a new motion.

Mr. Richard Marceau:

Madam Speaker, I rise on a point of order. I am perhaps mistaken but I thought we were debating only Motion No. 8. If that is not the case, I wish to move amendments to Motions Nos. 9 and 11 moved by the Liberal Party member. If the question is not just on Motion No. 8, I wish to continue to avail myself of my right to speak.

The Acting Speaker (Ms. Thibeault): Yes, I think that is an entirely understandable error. We are now debating Group No. 3. It includes Motions Nos. 8 to 11 inclusive. If the hon. member wishes to continue speaking, he has seven minutes and 48 seconds left.

Mr. Richard Marceau: Madam Speaker, we agree with the spirit of Motions Nos. 9 and 11 moved by the member for Sarnia—Lambton, but we wish to make a slight amendment so that it is not parliament as a whole but the House of Commons which has authority over such matters.

I therefore move:

That Motion No. 9, in paragraph b), be amended by replacing the word “Parliament” with the following:

“the House of Commons”

In addition, I move:

That Motion No. 11, in paragraph b), be amended by replacing the word “Parliament” with the following:

“the House of Commons”

I believe these amendments improve the bill by stipulating that elected representatives, members of the House of Commons—we all know the esteem in which the member for Sarnia—Lambton holds the other House, and I am sure he will agree—oversee the process and not people appointed to the Senate.

The Acting Speaker (Ms. Thibeault): The amendments moved by the hon. member are in order.

Mr. Roger Gallaway (Sarnia—Lambton, Lib.):

Madam Speaker, I am rising today to speak to the third grouping of amendments to Bill C-22, in particular Motions Nos. 9 and 11.

I want to say first that I support the bill. We all know there is a need that has been agreed upon both nationally and internationally to combat money laundering. It is a global phenomenon.

Enabling and co-ordinating the efforts of different law enforcement agencies through a centralized body such as would be established by this bill certainly is not in question.

I should also say that the amendments I have proposed do alter the bill. I would ask my friends opposite who have proposed a subamendment to think about what my amendments in fact say because I do not believe that we are saying anything differently. I would ask them to consider the following points.

The reason I have proposed these amendments is that I have very specific concerns about the lack of a role for parliament, in particular the House of Commons, in the oversight of the centre established pursuant to the bill, and the limited accountability to parliament, in particular the House of Commons, on the part of the Minister of Finance for the centre's practices. However that certainly is not a criticism of the minister.

My amendments attempt to redress what I would characterize as an undermining of what some would call backbenchers' rights by a bill that allows for too little accounting of actions undertaken in the name of Canadian citizens by the centre. My amendments do not attempt to micromanage or second guess the daily activities of the centre. They attempt to provide a role for members of parliament to monitor the means used by the centre to fulfil its mandate and also to enable members to scrutinize periodically the effectiveness of the policy that underlies Bill C-22.

My first amendment modifies the reporting obligations of the centre's director. As it now stands the director must submit an annual report to the Minister of Finance on the centre's operations for the preceding year. The minister would then table the report to both houses of parliament within 30 days.

Merely tabling the report in parliament does not provide members the opportunity to seriously consider the effectiveness of the centre's activities. It does not enable them to question officials from the centre. It does not permit members to monitor the centre for potentially abusive practices. This is particularly troubling to me, given that some of the witnesses before the committee described the bill's breadth as excessive and the powers reserved for it as potentially sweeping. Legal experts testified that the danger of abuse of power is real and that the safeguards they foresaw in the bill might not be adequate to forestall such abuses.

My amendment proposes an additional step to the formal report made under the current legislation to the Minister of Finance, that it be reviewed by an appropriate parliamentary committee. I understand the desire of my friends opposite to have the bill say it is the House of Commons, but if we look at this, the amendment in fact says that it be reviewed by an appropriate parliamentary committee. It could be designated as a committee of the House of Common. It is very rare that a committee of the Senate would take upon itself such an activity. It could be referred to a committee of parliament that has been established for that purpose.

I would also point out to my friends opposite that the traditional role is for the finance committee to carry out those sorts of things. In some respects I can understand the fear they have that the Senate will come into this but our tradition shows that will not happen.

Requiring a committee to make a report of its own would obligate, I would suggest to my friends opposite, members of parliament to study the effectiveness of the centre. It also would permit concerns to be addressed to the director of the centre and his officials as well as raise any problems that may not have been seen when the bill was created. That is not a very radical idea. I am not in any way suggesting that members could ask who they are investigating, how they are investigating or anything of that nature. It would simply be about where the money is going, how it is being spent and whether it is working.

I have also proposed changes that would add a sunset clause to the provisions that would give effect to the bill limiting those provisions to a period of five years, just like the Bank Act. To quote from the proposed amendment, the sunset clause would require a parliamentary committee to "undertake a comprehensive review of the act, the regulations and their administration and submit a report to parliament including any recommendations pertaining to the continuation of, or changes to, the act, the regulations or their administration that the committee wishes to make". This process already exists in the Bank Act. It would have to be completed so that new re-enabling legislation could be introduced to parliament. It is very simple. It would have to be considered, voted and acted upon within five calendar years of the time that this act is given royal assent.

Such a provision would allow members of this place to further scrutinize all the aspects of the money laundering act. The sunset provision would also allow changes to be made as new law enforcement techniques are discovered and more important, as different ways of money laundering emerge. There will certainly be techniques and ways we cannot even foresee or imagine today especially with the emergence of electronic technology. In short, I would call it a guard against statutory rust-out. It is a Ziebart provision, if I can call it that.

I said at the beginning of my remarks that this bill undermines backbenchers' rights because we are creating it, giving it regulatory powers, and there is a reporting provision. We know this is not the only piece of legislation that has short-circuited the rights of members in this place. Over the past number of decades, we the backbenchers have witnessed a decline in means of participation in and influence on the great public policy debates. We have little ability to influence new legislation as it is being drafted in the faraway reaches of this place. Nor do we have a parliamentary committee structure that enables members to adequately influence the course of action taken or even to hold ministers to account.

It has become a common practice here to time allocate legislation so that it does not get bogged down in the House. While it is important to ensure against parliamentary gridlock, not having adequate time to debate legislation in some ways invalidates our roles as legislators.

These impediments do not only have implications for our jobs as lawmakers or legislators. Most important, it dangerously weakens the link between those who govern and those who are governed. Important questions about the true nature of democracy arise. In a parliamentary democracy like ours, we as well as our leaders must be aware that the elected members of the House of Commons are the repositories of democracy in this country. We must at all times be

aware of the fact that our obligations must remain to our constituents, to national objectives and the ability for us to ask the kinds of questions that are expected.

In recent times these obligations have become misplaced. Increasingly as a body we are giving up our ability to question, to debate and to propose changes to legislation. By having the sunset clause we will bring that back to this place. The idea of depositing a report with the minister is fine and that minister's depositing it in this place is fine, but we need that other connection for us. That is the ability to bring the person responsible before a committee of parliament and allow us from this place to ask those questions. A committee report on the table here does not allow debate, does not allow questions.

I am simply saying that these amendments are not revolutionary. They just allow for the centre and its operations to be subject to the scrutiny of us in this place. The way it stands, that is not the case. For the department to resist such an amendment is not the correct thing to do. It enables us, the backbench members and those who will come here in the future to have some scrutiny of that operation.

Mr. Scott Brison (Kings—Hants, PC):

Madam Speaker, it is a pleasure to speak to Bill C-22, the money laundering act.

The report stage amendments have been very constructive and helpful in addressing some of the issues I raised when speaking to this legislation earlier. The legislation without these types of constructive amendments would provide a carte blanche, a blank cheque to the new agency which has the ability to effectively pursue activities without any checks and balances and potentially persecute innocent Canadians in the course of its activities.

It is in the interests of accountability and ensuring that the rights of all Canadians are respected and protected against all powerful institutions, particularly these new agencies, whether it is the Revenue Canada agency or this new money laundering agency. We need to ensure that we in the House are vigilant in protecting the rights of each and every Canadian.

My greatest concern, and I raised this when speaking to this legislation earlier, is that ultimately the money laundering agency would have the power to refer information on questionable cases to Revenue Canada. If that is done only in cases where there are reasonable grounds to suspect money laundering is one thing. However, if in a case where there may not be enough evidence to suggest money laundering activities but some evidence of tax evasion exists and the money laundering agency refers the matter to the Revenue Canada agency, that is a very different matter. We need to ensure that with the combination of these two agencies we are not creating a turbocharged Revenue Canada agency that has a greater level of power to pursue and persecute Canadians.

My concern on the Revenue Canada agency as brought forth earlier was that it has the capacity to become an IRS style agency, Godzilla the tax collector. The new money laundering agency could augment the powers of an unaccountable agency and make it even more frightening to the average Canadian taxpayer.

The accountability and transparency that would result from the amendments would go a long way to help address a fundamental flaw with the original legislation. I would hope that members in the House will support these amendments and will continue to monitor the activities of these agencies on an ongoing basis.

We do not want to create a system of fear in Canada for the average taxpaying citizen that at the other end of the tax enforcement side we are actually creating a turbocharged Revenue Canada agency. We do not want to tilt the balance against the average Canadian taxpayer who in the past has had to deal with Revenue Canada, now the new Revenue Canada agency, without a lot of defences.

Again, with the new money laundering agency, anything we can do to ensure that its activities are held accountable by some means, in this case by reporting and by some independent analysis and parliamentary reporting and so on, that will all help take the necessary steps in the right direction.

The Progressive Conservative Party would be supportive of the direction of these amendments and hope that other members of parliament would see these amendments as being constructive.

Mr. Roy Cullen (Parliamentary Secretary to Minister of Finance, Lib.):

Madam Speaker, when I made the amendment on Motion No. 8 I did not realize we were speaking on all the motions. With the indulgence of the House, I wonder if I could speak to Motion No. 8, the motion by the member for Charlesbourg. With some compromise on the government side, we were able to accommodate his amendment which has been dealt with.

The Acting Speaker (Ms. Thibeault): The parliamentary secretary has already spoken to this group, I believe. We can seek the consent of the House for you to proceed. Does the hon. member have the unanimous consent of the House to speak at this point?

Some hon. Members: Agreed.
Mr. Roy Cullen:

Madam Speaker, the bill already requires that the director of the anti-money laundering centre submit an annual report to the minister and that the minister table a copy of the report in each House of parliament. This is a fundamentally important accountability measure in the bill.

In our view there was no need to add a provision that would require the centre's annual report to be reviewed by a committee of parliament. Parliamentary committees have the right to conduct such a review as they see fit. The motion would merely create a rigid procedure and timetable for parliamentary review without doing anything to strengthen the accountability of the centre.

With respect to Motion No. 9, we were prepared to accommodate the member for Sarnia—Lambton with an amendment that would strike out the words “and the operations of the

centre". Unfortunately we cannot support the subamendment by the member for Charlesbourg to replace the word "parliament" with "House of Commons". Unfortunately, we also cannot support the motion by the member for Sarnia—Lambton because we cannot support the subamendment.

With respect to Motion No. 10, the Privacy Act authorizes the privacy commissioner to investigate the centre to ensure that the confidentiality of personal information is being properly protected. The proposed amendment would not therefore provide any additional safeguards. For this reason, I do not support the proposed amendments.

However, we do believe there is merit in having the director report in some fashion on the very important matter of confidentiality. That is why we accepted some revised language to Motion No. 8 which would call for the centre to describe its policies and practices as it relates to the privacy of information of Canadians.

Finally, with respect to Motion No. 11, I believe that the bill as currently drafted strikes the right balance by requiring that within five years of coming into force a committee of parliament review "the administration and operation of this act" and report to parliament. Clause 72 also explicitly requires that the committee's report to parliament include a statement of any changes to the act or its administration that the committee recommends.

The existing provision in the bill will ensure that parliament will re-examine this legislation carefully within five years with a view to considering possible changes to improve Canada's anti-money laundering regime. This is appropriate given the importance of this legislation.

I do not believe that anything would be gained by the amendment proposed by the member for Sarnia—Lambton to the five year review clause in this bill because the bill is already going to be reviewed by parliament within five years. I also cannot support the subamendment by the member for Charlesbourg to strike out the word "parliament".

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance):

Madam Speaker, we continue with the saga of pulling the bill together with amendments, subamendments, everything happening at the last minute and negotiations happening even at 11 hours and 59 minutes.

I continue to feel a sense of distress over this bill. We all want the bill to go through so I am begrudgingly recommending to my colleagues that we support these motions. However, there has been so much chewing gum, baling wire and paper clips put to this bill at this particular point I do not have a lot of confidence that we will not see a big problem in three or four years after this bill comes into effect. I am very concerned about that.

I will speak to Group No. 3 specifically. I will also comment on Motion No. 9 by my esteemed colleague from Sarnia, and I say that in all seriousness. I take him to be a very serious and competent gentleman. He has certainly put some very legitimate concerns in front of the House and has a deep concern about this bill. He is a very serious and worthy member of

parliament but the problem with his motion is the phrase “and the operations of the centre” contained in that motion.

Why I prefaced my remarks yet again with this business of negotiating at the last second is that if in the procedure the government had seen fit to remove that or to propose an amendment to move that, then my colleague from the Bloc Quebecois could then have entered the motion that he has before the Chamber. The point is that we have to deal with his motion and we could have dealt with the motion against this wording and the operations of the centre. It could have happened and we could have had a clause in this bill that would have in its own small way gone to strengthening the bill. Unfortunately that did not happen. As a consequence, because the member's motion includes those six words “and the operations of the centre”, I will have to recommend to my colleagues that we turn down an otherwise worthy amendment.

With respect to the member for Charlesbourg, for whom I also have a great deal of respect, I understand what he is trying to do in terms of talking about parliament as opposed to the government and the whole attitude that there is vis-à-vis the Senate. The Canadian Alliance is certainly in favour of a total revision of the Senate before we afford it perhaps the kind of respect that a chamber like that should have. However, because we want to get this bill through quickly and come up to speed, in spite of the three year delay on the part of the government, I would have to vote against revising the Senate for the very simple reason that we will not have any constitutional change. We will certainly not have this Prime Minister do anything about the Senate. This would have to be included in the motion which we will have to defeat. This is terribly confusing.

On Motion No. 11 the Canadian Alliance generally would be in favour of sunset clauses. As a matter of fact, we have proposed them for bills like Bill C-68 and other very contentious bills that have no proven value. Just to parenthesize that particular bill is completely off track. It is costing hundreds of millions of dollars and going nowhere. There is no sunset clause. Under normal circumstances our party would be in favour of a sunset clause.

However, the fact that this bill, as written by the government, does call for a review in five years, and the fact that money laundering will not go away in the next five years, I do not think this particular motion would be at all helpful.

Those are the comments of the official opposition. I hope we can get through this without more chewing gum and baling wire because we are getting a little bit low. The confectionery is getting concerned.

The Acting Speaker (Ms. Thibeault): Is the House ready for the question?

Some hon. Members: Question.

The Acting Speaker (Ms. Thibeault): The question is on the amendment to Motion No. 8. Is it the pleasure of the House to adopt the amendment?

Some hon. Members: Agreed.

(Amendment agreed to)

The question is on Motion No. 8, as amended.

Mr. Bob Kilger:

Madam Speaker, could I verify something with the Chair? In the first instance, we dealt with Motion No. 8. Are we still dealing with Motion No. 8?

The Acting Speaker (Ms. Thibeault): First, we adopted the amendment to Motion No. 8. We are now voting on Motion No. 8 as amended. Is it the pleasure of the House to adopt the motion as amended?

Some hon. Members: Agreed.

(Motion No. 8, as amended, agreed to)

The Acting Speaker (Ms. Thibeault): I declare Motion No. 8, as amended, carried.

The next question is on the amendment to Motion No. 9. Is it the pleasure of the House to adopt this amendment?

Some hon. Members: Agreed.

Some hon. Members: No.

The Acting Speaker (Ms. Thibeault):

All those in favour of the amendment will please say yea.
…
All those opposed will please say nay.
…
In my opinion the nays have it.

Some hon. Members: On division.

The Acting Speaker (Ms. Thibeault): I declare the amendment lost.

The next question is on Motion No. 9. Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

Some hon. Members: No.

The Acting Speaker (Ms. Thibeault): I declare Motion No. 9 lost.

(Motion No. 9 negatived)

The next question is on Motion No. 10. Is it the pleasure of the House to adopt the motion?
…

All those in favour of the motion will please say yea.
…

All those opposed will please say nay.
…

In my opinion the nays have it.

Some hon. Members: On division.

The Acting Speaker (Ms. Thibeault): I declare Motion No. 10 lost.

(Motion No. 10 negatived)

The next question is on the amendment to Motion No. 11. Is it the pleasure of the House to adopt the amendment?

Some hon. Members: Agreed.

Some hon. Members: No.

The Acting Speaker (Ms. Thibeault): All those in favour of the amendment will please say yea.

Some hon. Members: Yea.

The Acting Speaker (Ms. Thibeault): All those opposed will please say nay.

Some hon. Members: Nay.

The Acting Speaker (Ms. Thibeault): In my opinion the nays have it.

Some hon. Members: On division.

The Acting Speaker (Ms. Thibeault): I declare the amendment lost.

(Amendment negatived)

The next question is on Motion No. 11. Is it the pleasure of the House to adopt the motion?

Some hon. Members: No.

The Acting Speaker (Ms. Thibeault): I declare Motion No. 11 lost.

(Motion No. 11 negatived)

Mr. Bob Kilger: Madam Speaker, I rise on a point of order. I believe earlier in the debate on this important subject matter there was a recorded division requested on Group No. 1. I think you would find unanimous consent to deal with the matter at this time.

The Acting Speaker (Ms. Thibeault): Does the hon. government whip have the unanimous consent of the House to proceed in such a fashion?

Some hon. Members: Agreed.

The Acting Speaker (Ms. Thibeault): The House will now proceed to the taking of the deferred recorded division at the report stage of the bill.

The question is on Motion No. 1. Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

Some hon. Members: No.

The Acting Speaker (Ms. Thibeault): All those in favour of the motion will please say yea.

Some hon. Members: Yea.

The Acting Speaker (Ms. Thibeault): All those opposed will please say nay.

Some hon. Members: Nay.

The Acting Speaker (Ms. Thibeault): In my opinion the nays have it.

Some hon. Members: On division.

The Acting Speaker (Ms. Thibeault): I declare the motion lost.

(Motion No. 1 negatived)

Hon. Allan Rock (for the Minister of Finance, Lib.): moved that the bill be concurred in.

The Acting Speaker (Ms. Thibeault): Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

(Motion agreed to)

Mr. Bob Kilger: Madam Speaker, if you would seek unanimous consent, I believe the House would agree to proceed to third reading of this bill.

Mr. Ken Epp: Madam Speaker, I rise on a point of order, which is one of clarification. It seems to me that the request for a recorded division was made yesterday. Therefore, we should now be ringing the bells to proceed with the vote, unless the whip would specifically ask for the vote to be further deferred.

Mr. Bob Kilger:

Madam Speaker, if it would help the House, particularly in addressing the issue raised by my colleague from Elk Island, earlier I asked for the unanimous consent of the House to dispose of the deferred vote that was requested on Group No. 1. I want to assure the member that we dealt with the matter in the best traditions of the House.

The Acting Speaker (Ms. Thibeault):

The hon. government whip asked for consent and the Chair did not hear any disagreement to the request, so we proceeded as if consent had been given.

The hon. government whip has asked for consent to proceed immediately to third reading. Does the House give unanimous consent to proceed in such a fashion?

Some hon. Members: Agreed.

Hon. Stéphane Dion (for the Minister of Finance, Lib.) moved that the bill be read the third time and passed.

Mr. Roy Cullen (Parliamentary Secretary to Minister of Finance, Lib.): Madam Speaker, I am pleased to rise at the third reading of Bill C-22.

I would like to thank members for their co-operation and their indulgence. We have dealt with a number of amendments that were presented just days ago, or in some cases hours, and I think we have accommodated a number of the concerns of the members who proposed amendments.

In fairness to Canadians who are watching this debate, the substance of the bill is sound and the amendments will add further clarity to the reporting mechanisms. The amendments will certainly add value to the bill.

In my view it is important that the bill be sent to the Senate and promulgated so that law enforcement agencies and financial institutions can finalize the development of the regulations and the guidelines that will set this initiative into motion as quickly as possible. We know that

money laundering will not go away. What we are trying to do with this legislation is curtail the growth and decrease the levels of activity that are prevalent in Canada and internationally.

There have been extensive consultations, not only at committee, but with a number of stakeholder groups. Bill C-22 provides a statutory minimum 90 day pre-publication requirement for any regulation proposed under the legislation and a minimum 30 day notice period if further changes are to be made. This goes well beyond what is provided in many federal statutes and reflects the importance that the government attaches to public consultations in this area.

In the same vein, the House should know about the guidelines that will be given the institutions and the people, who, in order to meet the reporting requirements of this bill, must establish the existence of reasonable grounds to suspect that the transaction is related to the commission of a money laundering offence.

As we explained at committee, the guidelines will be issued by the proposed anti-money laundering agency to assist with that determination.

Flexibility will be the key word in developing the guidelines and regulations. The money launderers of this world are constantly changing their modus operandi. They are constantly moving into new areas of activity. Therefore, we need to have some flexibility within the regulations and guidelines.

As an example, there will need to be some clear rules around the professions. If an accountant or an auditor is doing a regular attest audit and he or she comes across what might be a suspicious transaction, the legislation does not put the burden on that person to report it. That would create an unnecessary burden. However, if that person becomes party to a financial transaction which involves a suspicious activity or an amount of money defined by regulation, that person is obliged to comply with the legislation. In the normal conduct of professional activities that would not be required. This will be spelled out in the regulations.

Our other G-7 partners are devoting considerable resources and energies to combatting money laundering activities. With this law we will do the same.

At committee we heard very strong representations from lawyers in terms of solicitor-client privilege. The bill specifically calls for respecting solicitor-client privilege. However, we cannot allow the opportunity for lawyers who might be involved in transactions involving money laundering operations to be exempt on the grounds of solicitor-client privilege. That aspect of this law will be very similar to the law in other jurisdictions.

Bill C-22 targets the financial rewards of criminal activity by creating a balanced and effective reporting regime. It protects the integrity of our financial systems and enables Canada to meet its international obligations while protecting individual privacy. We will have an effective money laundering system in place to ensure that Canada fulfils its responsibility both as the founding member of the financial action task force on money laundering and as a member of the G-8 to co-operate in the international fight against money laundering.

Not only are we joining with other members of the financial action task force on money laundering in order to make the reporting of dubious operations mandatory, but our system of reporting will now be equal to that of most of the industrialized countries, including the other members of the G-7, most European countries and many of our Commonwealth partners, such as Australia and New Zealand.

Let us waste no time in passing this legislation. I urge all hon. members to accord this bill speedy passage, as we have done to date. Let us pass this legislation so that Canadians can be protected from money laundering activities.

Mr. Richard Marceau (Charlesbourg, BQ):

Madam Speaker, it is with great pleasure that I rise today to take part in this debate on the third reading of Bill C-22. I can see that all my colleagues and the pages are eager to hear my remarks and are deeply interested in this debate, which has a major impact on Canadians and Quebecers.

First of all, I cannot help but deplore, once again, the fact that the committee had to rush its examination of the bill.

We heard the last witnesses on Wednesday night at 5 p.m. or 5.30 p.m., and we had to sit the next morning at 9 a.m. to begin the clause by clause review of the bill. It is easy to understand that, after hearing interesting evidence, very intelligent and well documented evidence, members should have been given a little time to weigh this evidence and come up with amendments.

Unfortunately, this was just before our two week recess. We had some time to digest all of this, and we came up with amendments that passed. I hope this will serve us a lesson to ensure that, if we really want to give witnesses who appeared the credit, I would say, that they deserve, the least the hon. members could do is take the time to assimilate and to re-read their testimonies. The quality of witnesses who appeared before the Standing Committee on Finance concerning Bill C-22 was particularly impressive.

I would be remiss if I did not tell members of the House that the Bloc Quebecois has probably the most intelligent, balanced, concrete and imaginative anti-crime agenda of all political parties represented in the House. It is an anti-crime agenda that does not fall into populism, into demagogy, and I think we can see the result with Bill C-22.

I would remind hon. members that the 1997 election platform of the Bloc Quebecois—I know this is almost bedtime reading to you, Madam Speaker—provided for and clearly asked for such a measure to fight money laundering.

Indeed, as early as 1997, even before the federal government introduced Bill C-22 and its doomed predecessor, Bill C-81, the Bloc Quebecois was already working on this issue,

holding numerous intensive meetings with different crime fighting agencies. This is only one example. We could give others.

For instance, I introduced a bill to take $1,000 bills out of circulation. The federal government decided to listen to the Bloc Quebecois and to take them out of circulation to fight money laundering.

We spent a full opposition day trying to get all the parliamentarians in this House to agree to have the Standing Committee on Justice look into the problem of organized crime in Canada. It is a third victory for the Bloc Quebecois.

These three victories are quite impressive. I would be remiss—and I am pretty sure that all the members would hold it against me—if I overlooked the relentless campaign against organized crime that the member for Bagot is engaged in, despite all the risks involved, particularly in his region where farmers live in fear, terrorized by criminal groups who grow marijuana in their corn fields and other fields. It deserves the support of all members of the House.

Those were four specific actions taken by the Bloc, and we claimed victory on three of them. Of course, when we hear the clever and convincing arguments brought forward by the Bloc Quebecois, it is hard to imagine that the House would decide not to follow the lead of the Bloc on this matter.

Coming back to Bill C-22 per se, and I repeat that it was an original idea of the Bloc, it is important to mention that it is indeed an obligation, as the parliamentary secretary for the minister of Finance said, an international obligation for Canada to fight this worldwide phenomenon known as money laundering. Canada meets its obligations in this regard.

On the whole, this is a good bill. The amendments proposed, again, by the Bloc Quebecois bring some pretty major improvements to the bill. I see a number of people agreeing with that. The regulative jurisdiction is one of the main problems of this bill. It was extremely broad, and one can understand the logic of all that.

The centre that will be created under this bill will have to be flexible. Indeed, considering the ever changing new technology, it will have to be able to adjust very quickly. This is why the regulatory power is very broad.

We wanted to ensure that not only would the Access to Information Act and the Privacy Act apply, but also that parliamentarians would be properly informed about the centre's operations. This is why I moved Motion No. 8, which was carried with an amendment, but which still ensures that the policies and benchmarks set by the centre are known by members of the House, who are ultimately accountable to the public.

This bill deals, among other things, with the issue of privacy. Given today's technology, that issue can raise some concerns and this is understandable. It is therefore important to give elected members of the House, who are the only ones accountable to the public, at least an

opportunity to understand and the authority to ask what is going on in a centre that could potentially have excessive powers.

I congratulate the House, and particularly the Bloc Quebecois, which promoted the idea of fighting money laundering and of reporting suspicious transactions over $10,000. This great victory for the Bloc Quebecois is made even sweeter by the fact that several of our amendments were accepted by the House, and for good reason.

Again, the House showed great wisdom in supporting the amendments proposed by the Bloc Quebecois. I congratulate the House, and particularly the Bloc Quebecois for its excellent work in the fight against crime.

Mr. Jim Abbott (Kootenay—Columbia, Canadian Alliance): Madam Speaker, this is possibly the strangest bill I have ever had anything to do with in the eight years I have had the privilege of serving the people of Kootenay—Columbia.

As the solicitor general critic I am fully aware of the consequences of the bill. It will be used basically as a highly sophisticated sieve to be able to look at countless billions of dollars of transactions literally on a daily basis. The bill is a highly sophisticated response to a highly sophisticated problem.

In one presentation during the course of our committee work the law enforcement people showed us a graph with three different pictures. When we first looked at it, it appeared as though there was a yellow sun approximately 30 inches in diameter and there were some notations around its perimeter.

When we looked very closely at it, we realized they were all simply lines. It was much like taking the wrapping off a golf ball and looking at how the elastic band was wound on it. Another section showed a bit closer that indeed they were lines, but they were so complex that it was difficult to perceive any kind of pattern.

A smaller section was blown up to the same size as the original sun and we could see the number of transactions by organized crime they had traced in this one instance to take a look at the money coming in from illegal activities that are dragging down society such as drugs, prostitution and so on. Those activities were detailed in the study by this law enforcement organization. Of everything I saw, the graph was the most graphic illustration of what we are discussing today.

We now have the ability because of the power of computers to enact all sorts of transactions and exceptionally sophisticated transactions on the part of organized crime.

I have been exceptionally critical, and I think rightfully so, of the solicitor general, the finance minister, the Prime Minister and the government for the fact that they have strangled the ability of law enforcement agencies in Canada to come even close to the level of sophistication of which even the most rudimentary organized crime units are capable.

It is not only organized crime. We are also talking about the laundering of money, much of which ends up sticking to the fingers of people involved in terrorism. The new immigrants to Canada, the people who come here to help us build our great nation, the people who see the opportunity and seize it, are most disadvantaged by the fact that the Liberal government consistently strangles the ability of law enforcement to get to the bottom of terrible terrorist organizations that not only plague the world but indeed individuals in Canada.

The speed by which the legislation is going through the House today and over the last couple of days is well warranted. It is something we desperately need to do, but we put that against the fact that over the last three years the government has dillied and dallied. It has dragged its feet and has not got around to giving us the necessary legislation. In just a second I will describe the process that led up to the point where the government finally brought the legislation to the House of Commons.

Unfortunately the legislation has been subjected to crass opportunism on the part of the Liberal government which sees this Chamber and the work of the people here as being worthy of nothing more than being treated as though it were a rubber stamp, as though we do not have a function in the process.

I was elected in my constituency not just to represent the people there. Along with the other 300 members in the House of Commons, we were collectively elected to come here to work on behalf of the people of Canada. I find it absolutely appalling that the government continuously treats the opposition and this Chamber as though it was a matter of yet another rubber stamp.

I can give an example. I am deeply concerned that the bill will be so egregiously flawed that we will run into the problems in two, three or four years after the bill is enacted and the centre gets going. We will find all sorts of flaws because of the terribly bad process it has gone through.

We have spoken during report stage about the number of things that were going on in the background. First, we ended up with negotiations between all parties on a work schedule. The government will say that the work schedule for the committee was on the basis that we would be hearing witnesses up to a particular point. The hearing of witnesses was to close at 5.30 p.m. one day and at 9 a.m. the next day we would start clause by clause consideration.

For those who are not familiar with how bills go through the House of Commons, clause by clause is exactly that. Every law is made up of any number of clauses to a bill. The number of clauses can be as few as two or three. In most instances there are 100 or more clauses to a bill. Those describe in great detail so that judges, law enforcement officials and interested Canadians can see what the intent was of the people in this Chamber with respect to any kind of legislation.

When we go through clause by clause on any bill there is the government side and, depending on how contentious the bill may be, there is the opposition that will then debate each word, each parse, each phrase and each piece of punctuation to make sure that it is indeed the way

the government wants it. Of course at the end of the day the government will prevail. That is the parliamentary process.

What happened in this instance was we had a number of very interesting witnesses who gave all of us pause for concern. They made us stop and realize that we have to make sure that our Canadian legislation reflects the values within the Canadian Charter of Rights and Freedoms.

A witness, a law enforcement official from the U.K., gave us illustrations. I asked him some questions about his illustrations on what was being done in the U.K. We very clearly discovered that if we are going to have the Canadian Charter of Rights and Freedoms, every piece of legislation has to match it. Therefore the bill was working around the restrictions of the Canadian Charter of Rights and Freedoms that many of our ancestors or relatives of our ancestors currently living in the U.K. do not have to work around. We realize in every jurisdiction in all of the G-7 countries and any of the signatories to any of the agreements with respect to money laundering that there will be different platforms that legislation will be working from.

We listened to different professional agencies. We listened to businesses that were going to be affected by the legislation. We had some very thoughtful presentations from most of the presenters. One or two of the presenters we collectively found were a bit over the top but that is fine. That is their right and their privilege to come before us in committee.

Against the 2,000 or 3,000 lawyers the government has in the justice department, the solicitor general's department, the finance department, every government department, against the 2,000 lawyers the government has on its side who could be taking apart this testimony, the official opposition has one lawyer. Count him. There is one lawyer who is basically responsible for three different ministries, that is 2,000 to one in terms of strength.

I acknowledge that the work schedule was agreed to by all parties, my party included, but when we came to the conclusion of this process it was very evident that the work schedule was no longer workable. That we were going to be hearing witnesses at 5.30 p.m. on Wednesday and at nine o'clock in the morning on Thursday we were supposed to be prepared to do clause by clause study was clearly and specifically unworkable. I drew that to the attention of the parliamentary secretary.

In good faith I went to that committee session. My colleague from Charlesbourg went to that meeting. We both basically said that we needed more time. The member from Sarnia who was at the meeting actually put forward a motion that we needed to have time over the two week parliamentary break when members are at home working with their constituents. That period of time would give our lawyer an opportunity to take a look at the testimony and to parse it to see how it related to all of the clauses.

The government saw fit to vote down the motion put forward by the member from Sarnia over the objections of three members of the opposition. Therefore we did not take part in the clause by clause study. The reason I did not take part in the clause by clause study was that quite candidly I was not prepared. I have not received counsel. This is an exceptionally complex

bill. I say again it is going to screen countless billions and billions of currency in and out of Canada. I wanted to be prepared. There was no way I could be prepared.

Let us fast forward to bringing this matter to the Chamber yesterday. What a disgraceful display that was. This was brought into the Chamber yesterday while we were still in the process of discussions. As a matter of fact I recall the clerk at the table stood to introduce Group No. 1 and the Speaker at the time began to read the motions. We were all running back to our seats halfway through negotiations as to how we were going to be handling the various amendments.

We got into the process and then the Liberals ended up discussing things with the Bloc Quebecois, which is entirely their privilege. I do not think much of that myself but I do think very much of the fact that I represent Her Majesty's Official Opposition. We were left out of any discussions of that type. All of a sudden the government was presenting motions to the Chair which the Chair could not receive.

I say for the third or fourth time this bill is basically responsible for acting like a highly sophisticated sieve involving countless billions of dollars on a daily basis and we are running around giving motions from the Government of Canada that the Chair cannot receive. It is no wonder I asked that the debate be adjourned. It was only logical. It gave the government an opportunity to get a breather.

What a disgraceful display for a government of a G-7 nation to come forward with this kind of vital legislation and to do it in such a slipshod way. It has been the height of folly. It has been absolutely frustrating to try to perform my duties on behalf of Her Majesty's Official Opposition when we have seen this type of chewing gum and baling wire.

As I pointed out on Group No. 3 that was just passed, again the government member from Sarnia presented a motion to amend the bill as written. That is what can happen at report stage, just so the people who are not familiar with the parliamentary process understand. That motion actually had some merit. I think it would have strengthened the bill not in a large way but certainly in a small way, and for something as sophisticated as this bill every little small part helps.

What happened? The member included a phrase that unfortunately was unworkable. The phrase would have caused a situation where the centre that will be doing the work would have to reveal far too much detail in public, and I understand that. My understanding in conversation with the member from Sarnia is that there had been agreement that he would agree to the removal of that phrase.

My colleague from Charlesbourg for his own very good reasons brought forward an amendment. He wanted to remove the word “government” and insert the word “parliament” thereby freezing the Senate out of the ability of being involved in the five year review of this. This is important.

Had the government been on the ball, and I drew it to the attention of certain government members at the time, and had it inserted the amendment to the motion by the member from Sarnia and then my colleague had put his subamendment, we could have had that improvement to the legislation in the bill. This just happened within the last hour.

Instead the government was remiss and did not do that. As a consequence, as we voted down the amendment by the member for Charlesbourg, we closed off the ability to make the necessary amendment for that improvement to the bill. I just despair for this process.

I have not been involved in a lot of the legislation that has gone through the House in terms of shepherding it through the House for Her Majesty's Official Opposition. I have not been as involved in the detail. Heaven forbid that the the process on every piece of legislation is as messed up as the process that was involved in this piece of legislation has been.

I recognize we are reaching the time when the Speaker will tell us it is time for members' statements. I will want to complete my speech following question period. I will conclude this portion without talking about the substance of the bill, which I will happily do following question period.

I state again that I have the greatest feeling of despair for this piece of legislation because of the fatally flawed process through which it has rumbled through this Chamber. This is where the Senate does come in. God bless their souls over there. They do have the ability to take a look at this legislation. Hopefully they will not go through as badly flawed a process.

The government now wants to get this bill through like greased lightning and wants to get this bill enacted finally after three years. I would hope that if the Senate comes forward with meaningful amendments the government will not take those as hostile and that we will not be involved in another seriously flawed process in the event that the bill ends up coming back from the Senate.

The Speaker: My colleague, of course you are absolutely correct that you still have close to 22 minutes. I am sure it will fit in with your plan to give us the second half of your talk today.

As it is almost two o'clock, we will go to Statements by Members.

May 9, 2000 [Senate]

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time? On motion of Senator Hays, bill be placed on the Orders of the Day for second reading, Thursday next, May 11, 2000.

May 11, 2000 [Senate]

On the Order:

Second reading of Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

That, notwithstanding rule 63(1), the proceedings on Bill C-22, which took place on Tuesday, May 9, 2000, be declared null and void.

We have before us an unprecedented situation, on my inquiry, which is that the text of Bill C-22 that was sent to this place by the other place does not in fact reflect a series of amendments that were made to Bill C-22 in the other place. My information is that they are the amendments that were set out in the second report of the Standing Committee of Finance of the other place. There are several of them. Accordingly, what we have referred to in Item No. 4 is not correct. The error appears to be of a clerical nature, but it is a substantial error. It must be remedied because we are not talking about the same piece of paper in the two Houses in terms of what is described therein, namely, the parchment.

The House of Commons has responded to this by sending to us what I believe is the correct parchment. However, we must dispose of this matter here, in the absence of any other way of dealing with this unprecedented problem.

Honourable senators, this is a matter that I have had an opportunity to discuss with the Deputy Leader of the Opposition. I would propose that we deal with this through unanimous consent. Senator Prud'homme is not listening; nevertheless, we will deal with it by passing the motion that I have put.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Marcel Prud'homme: Honourable senators, as a word of explanation, what does this imply? I will cooperate on this issue.

Senator Hays: I appreciate your agreement to cooperate, Senator Prud'homme.

Senator Prud'homme: The difficulty, senator, is that you must realize that senators talk to each other. Some say that I am shy. I do not know exactly what is going on, so I do not like to get up. Sometimes I do know; however, I am concerned about the new senators. When I became a senator seven years ago, I did not dare get up for fear of embarrassing myself.

Will the Deputy Leader of the Government please tell us what this implies so that we are all on an equal footing in understanding the mistake that took place?

Senator Hays: Thank you, Senator Prud'homme. Before I say anything, though, I wish to point out to honourable senators that I did try to be as precise and as clear as I could in explaining. Nevertheless, let me explain again.

On Monday of this week, we received Bill C-22, which is Order No. 4 on the Orders of the Day. It was given first reading on Monday.

The parchment did not contain amendments that were made in the Standing Committee on Finance of the other place. They are referred to in the second report of that committee. There are several of them, and they are substantive. The error — and it is a clerical error but it is a substantive clerical error — was discovered. We have now received from the other place another parchment, which is the same bill, Bill C-22, with the corrections made in it.

Honourable senators, we cannot have two Bill C-22s, so after discussion with the Deputy Leader of the Opposition and the Table, we have proposed a solution to this unprecedented situation. The solution is that we give unanimous consent to the motion that I read and that His Honour put. Perhaps His Honour could put it again to ensure that everyone has heard it and understands exactly what we propose.

The Hon. the Speaker: Honourable senators, since that order has not yet been called, I do not think as Speaker that I should deal with it. We are still on the previous order, which is the second reading of Bill C-20. I will deal with Bill C-22 when that item is called.

Motion agree to and order withdrawn.

…

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, under Government Business, I should like to call Bill C-22, next.

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with the reprinted Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading Monday next, May 15, 2000.

May 16, 2000 [Senate]

Hon. Richard H. Kroft moved the second reading of Bill C-22, to facilitate combating the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

He said: Honourable senators, it is my privilege to speak to you today at second reading of Bill C-22, the proceeds of crime, or money laundering, bill.

Money laundering is the process whereby the proceeds from criminal activities are converted into assets that cannot easily be traced back to their illegal origins. The process typically begins with the placement of cash into financial channels. It may also involve a series of complex financial transactions in which the dirty money is layered to further disguise its origins and then integrated or invested in seemingly bona fide assets.

Open borders and globalized financial markets provide today's criminals with the opportunity to launder millions of dollars every day in illegal profits. No country, including Canada, is immune from these activities.

Given the clandestine nature of money laundering and of the crimes that generate the funds that need to be laundered, it is difficult to put a precise figure on the size of the problem. However, studies have estimated that between $5 billion and $17 billion in criminal proceeds are laundered in and through Canada each year. These sums, which are very large by any standard, are linked primarily to proceeds from drug trafficking.

What has Canada been doing to address this problem? In 1989, the government took important steps to address money laundering through amendments to the Criminal Code, the Food and Drugs Act, and the Narcotics Act. Thus, the building blocks of anti-money laundering have been in place for some time. That legislation made money laundering a criminal offence and established procedures for seizing, restraining and forfeiting proceeds of crime.

The current Proceeds of Crime (money laundering) Act came into force in June 1991. It provides Canada with its current system of record keeping and client identification for financial transactions conducted through financial institutions, as well as professionals that act as financial intermediaries.

In addition, certain deposit-taking institutions entered into cooperative arrangements with the RCMP in 1993 to provide for the voluntary reporting of suspected money laundering activities to the police.

Further, in partnership with the provinces, territories and law enforcement agencies, the federal government has taken several steps against organized crime, including initiatives to fight smuggling and seize proceeds of crime.

In spite of having taken these actions, it is clear that Canada now needs to do more.

(1930)

As money laundering techniques become more sophisticated, detection and deterrence have become increasingly difficult. Traditional methods used by law enforcement, such as storefront sting operations, have generally only been effective in dealing with money launderers who use smaller money service businesses, such as street level foreign exchange houses. At the same time, the current anti-money laundering measures of record keeping and limited voluntary reporting by deposit-taking institutions tends to focus only on the initial placement of cash into financial channels.

The effectiveness of the current reporting scheme is limited by its voluntary nature and by the fact that illicit funds can enter the system other than through deposit-taking institutions. This is borne out by international anti-money laundering organizations. They have noted the tendency for illicit funds to enter the financial system through such diverse points as insurance companies, security dealers, casinos, currency exchange businesses and professionals, including lawyers and accountants.

The call for stronger legislation in Canada has come from various sources. Law enforcement agencies in Canada and abroad need help to deal with the new realities of international organized crime. They have made the case to the federal government for legislation that requires the reporting of suspicious and prescribed transactions such as large cash transactions above a certain amount and of cross-border movements of currency.

At the international level, Canada has come under increasing scrutiny for gaps in our anti-money laundering arrangements. A 1997 review by the Financial Action Task Force on Money Laundering found Canada's arrangements to be lacking in certain key areas. The FATF strongly encouraged Canada to meet international standards that required the mandatory reporting of suspicious transactions.

In recent years, the other 25 members of the task force have made great strides in strengthening their anti-money laundering laws. Except for Canada, all other FATF members currently have suspicious transaction reporting requirements in place similar to those contained in this bill. The measures taken in these other countries have facilitated international cooperation among them, in fighting money laundering.

Honourable senators, the bill we are debating today is the government's response to the need for stronger legislation. It updates and strengthens the existing act and will improve the detection, prevention and deterrence of money laundering in Canada. I must emphasize, however, that this legislation was designed with the goals of giving law enforcement agencies

the tools they need while at the same time protecting individual privacy. This bill meets both goals.

I should also point out that the bill was developed in consultation with many other stakeholders, including the provinces and territories, the financial community, consumer groups and organizations concerned about privacy issues.

Honourable senators, I should now like to discuss briefly the measures in the bill. Bill C-22 continues the record keeping and client identification features of the existing Proceeds of Crime Act. In addition, it provides for the mandatory reporting of suspicious transactions and prescribed transactions, the reporting of large cross-border movements of currency and the establishment of the new Financial Transactions and Reform Analysis Centre.

I should like to take a moment to describe these new measures because each is important in its own right. Taken together, they constitute a coherent package that will strengthen Canada's anti-money laundering capabilities. These measures will also bring Canada into line with accepted international standards in the fight against money laundering.

I shall begin by discussing the mandatory reporting provisions of suspicious transactions. One of the cornerstones of anti-money laundering systems around the world is the legal obligation to report transactions where money laundering is suspected. By implementing this measure, Canada now joins the other member countries of the Financial Action Task Force on Money Laundering that already have some form of mandatory, suspicious transaction reporting in place.

Regulated financial institutions, casinos, currency exchange businesses and certain other financial intermediaries, such as lawyers and accountants who act in this capacity, will now be required to report any financial transaction in respect of which there are reasonable grounds to suspect that it is related to the commission of a money laundering offence. In addition, specific types of transactions, like the receipt of cash above a prescribed amount, such as $10,000, and large electronic transfers, will be outlined in regulations and must also be reported.

Honourable senators, Bill C-22 also requires that the movement of large amounts of cash money or monetary instruments like travellers' cheques across the Canadian border be declared to Canada Customs. This measure complements the other reporting requirements of the bill by discouraging a shift in money laundering activity across the border.

If individuals or businesses fail to comply, a customs officer can seize the currency. However, any cash or monetary instruments that are seized will be returned once the fine has been paid unless Customs has reasonable grounds to suspect that the money represents proceeds of crime, in which case the money may be forfeited to Her Majesty. Naturally, there will be mechanisms in place for the review and appeal of cross-border seizures and penalties.

The third major element of Bill C-22 involves the establishment of the new Financial Transactions and Reports Analysis Centre of Canada which will be tasked with receiving and

analysing all of the reports mandated by this bill and determining whether limited information should be passed on to the relevant authorities. The centre does not have investigative powers.

Honourable senators, it is important to emphasize that there will be safeguards in place to ensure that the collection, use and disclosure of information by the centre will be strictly controlled. The centre will be an independent body acting at arm's length from law enforcement agencies and other agencies entitled to receive information from the centre.

In addition, where the centre has reasonable grounds to suspect that information would be relevant to the investigation or prosecution of a money-laundering offence, the centre will only pass on a specified limited amount of information to the police and other designated agencies.

The information that the centre can disclose will be limited to key identifying information relating to reported transactions such as the name of the client, the numbering of the account involved, the amount of the transaction and other similar information.

Given the limited nature of this information, law enforcement authorities will be required to build a case for prosecution purposes and obtain a court order for disclosure to obtain further information from the centre. The centre will not be subject to subpoenas except in respect to money-laundering investigations and prosecutions. I should note, too, that these safeguards are backed by criminal penalties for any unauthorized use or disclosure of personal information under the centre's control.

Further, the centre will be subject to the Privacy Act and its protections. In addition, each House of Parliament will receive an annual report on the operations of the centre. There will also be a parliamentary review following five years of the committee's operation.

Honourable senators, it is clear from this description, and certainly from a close reading of Bill C-22, that careful consideration has been given to ensuring that this legislation will create a balanced and effective anti-money laundering scheme while protecting individual privacy.

Before closing, I wish to touch on the bill's regulation-making authority concerning the coverage of entities, client information, record keeping and reporting requirements. This authority will provide much needed flexibility to respond quickly to the ever-changing nature of money laundering and to adapt the regime to changes in the way financial intermediaries conduct their business.

This bill also allows greater flexibility to respond to issues raised by stakeholders in complying with the legislation. Extensive consultations have already started on regulations and these will continue in the next few months to further refine the current proposals and develop additional ones regarding the form and manner of reporting. The government's aim is to develop regulations that are consistent with the principles underlying the bill. This means striking an appropriate balance among the objectives of law enforcement, protection of personal information, minimum compliance cost and support for Canada's contribution to international efforts to combat money laundering.

This bill requires a 90-day pre-publication period for regulations and a 30-day notice period for further changes. These requirements go well beyond what is provided in many federal statutes and reflects the importance the government attaches to public consultations in this area.

I have noted institutions and professions covered by this legislation will be required to report suspicious transactions to a new anti-money laundering agency. The government recognizes that guidance will be needed in determining whether there are reasonable grounds to suspect that a particular transaction is related to the commission of a money-laundering offence.

This guidance will be in the form of official guidelines issued by the new agency. This is the approach that is being taken in many other member countries of the Financial Action Task Force, including Australia, the United Kingdom and the United States. The proposed guidelines will be developed in full consultation with stakeholder groups and will reflect the circumstances of the businesses and professions that have a reporting obligation under the bill.

(1940)

Anti-money laundering guidelines that can serve as models for this purpose already exist. For example, the Superintendent of Financial Institutions issued his guidelines for deterring and detecting money laundering in 1996. In addition, the guidelines and experience of other countries that require suspicious transactions to be reported can be drawn upon in the development of appropriate guidelines for our legislation.

Honourable senators, Bill C-22 is specifically aimed at helping to defeat the vicious cycle of crime by going after criminals where it hurts most, in their wallets. This legislation achieves several things. First, it targets the financial rewards of criminal activity and protects the integrity of our financial system in Canada. Second, it creates a balanced and effective reporting scheme to uncover criminal activity while protecting individual privacy. Third, it complements other federal initiatives against organized crime by helping Canada to meet its international commitments in this area.

It is essential, as we all know, that Canada fulfils its responsibilities, both as a founding member of the Financial Action Task Force on Money Laundering and as a member of the G-8, to cooperate in the international fight against money laundering. Bill C-22 ensures that Canada meets these responsibilities. I urge all senators to move this bill forward to committee and to final stage without undue delay. It is a matter of serious importance to Canadians and to our international obligations.

On motion of Senator Kinsella, for Senator Kelleher, debate adjourned.

May 17, 2000 [Senate]

Senator Hays: I wonder, honourable senators, if I might ask and hopefully receive leave to not see the clock for approximately five minutes on the following basis.

First, I propose that we not proceed with the order of the Senate so that Senator Murray can complete his answer and deal with any other questions in the balance of his half-hour time frame. Second, I propose that we then call Order No. 4 under Government Business, namely, resuming second reading debate on Bill C-22, so that we might hear a speech by Senator Kelleher, which is very short and which may be the last speech at the second reading stage of this bill.

The Hon. the Speaker: Is leave granted, honourable senators, that I do not proceed with the order of the Senate and that we resume debate on Bill C-22?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, it is understood that committees will hold in abeyance the commencement of their meetings until the Senate rises.

Debate suspended.

Proceeds of Crime (Money Laundering) Bill, Second Reading

On the Order:

Resuming debate on the motion of the Honourable Senator Kroft, seconded by the Honourable Senator Bacon, for the second reading of Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

Hon. James F. Kelleher: Honourable senators, I am pleased to rise today to speak on second reading of Bill C-22, a bill which, when passed, will create a new Proceeds of Crime Act.

As Senator Kroft mentioned yesterday, money laundering is a serious issue in Canada and has been for some time. It is estimated that between $5 and $17 billion pass in and through this country illegally every year.

Bill C-22 builds upon the existing Proceeds of Crime Act and attempts to address recommendations made by the Financial Action Task Force on Money Laundering, a task force created by G-7 leaders in 1989. Unfortunately, Canada is one of the last countries in the industrialized world to take the necessary steps to meet the minimum standards set by the Financial Action Task Force.

Bill C-22 proposes to bolster Canada's anti-money laundering efforts by requiring banks, trust companies and a host of other financial intermediaries to report information about the financial transactions of their clients and customers. Bill C-22 will also establish, in association with the Canada Customs and Review Agency, a system of reporting large cross-border transactions.

The details about these financial transactions are to be collected by a new central data gathering and analysis body known as the Financial Transactions and Reports Analysis Centre

of Canada. This new centre will analyze and assess reports, together with other information available to it, and provide leads to law enforcement agencies.

As a former solicitor general of Canada, I find it odd that the new centre will report to the Minister of Finance. It seems more appropriate that an agency that will be involved with law enforcement would report to a minister with some expertise in the area such as the Office of the Solicitor General. Nonetheless, I am pleased to report that the Progressive Conservative Party of Canada supports the broad purposes and aims of this bill; that is, the prevention and reduction of money laundering in Canada.

I must also tell honourable senators, however, that several aspects of this proposed legislation give us cause for concern. We note, for example, that, at a time when there is an ongoing need for government to show fiscal restraint, this government is proposing to create yet another new agency. Moreover, the government has not made clear exactly what its new centre will cost. We understand that our colleagues in the other place were told that the centre would cost approximately $10 million to operate annually. We in this chamber are hearing that the real cost is, in fact, closer to $15 million. Quite frankly, this is unacceptable. We cannot, as parliamentarians, give our stamp of approval to this or to any other piece of legislation without knowing exactly how much taxpayers' money the government proposes to spend.

We are also concerned that the bill does not clearly define the types of financial transactions it will require banks and other financial intermediaries to report. The definitions provided are unclear and much of the necessary clarification is being left to the regulations. Without clear definitions, the dangers exist that financial intermediaries may neglect to report transactions that should be reported. Conversely — and I am not sure which is worse — they will over-report and thereby provide the new centre with an overflow of data about the financial transactions of innocent Canadians. This leads me to our next concern.

Perhaps the most troubling aspect of this bill is whether it adequately protects the privacy rights of Canadians. Canadians are legitimately concerned by the government's continuous collection and sharing of their personal information. Just yesterday, the Privacy Commissioner released his annual report and indicated that the government now has a file on almost every single Canadian, with files containing as many as 2,000 pieces of information. The power this new centre will have to collect and disseminate personal information, information it can store for up to eight years, will only exacerbate Canadians' concerns.

The Privacy Commissioner's report also states that the new centre could, in addition to information pertaining to an individual's criminal history, amass information relating to an individual's employment, financial transactions and travel history, as well as information relating to an individual's income status, business or professional relations, and possibly even personal relations.

While Bill C-22 stipulates that information collected by the centre can only be disclosed under limited circumstances, in reality we may never be certain if the information gathered about our financial transactions is being improperly disclosed. We do know that the new centre will be monitoring our transactions. What we do not know is who will be monitoring the monitor. The

Office of the Privacy Commissioner simply does not have the necessary resources to conduct an annual audit of this and every other government department and agency.

Our party wishes to ensure that the provisions of this bill do not result in the personal information of Canadians being indiscriminately disclosed. Given our concerns, we will also be giving careful consideration to the need for a strict review of the new legislation every five years.

Finally, honourable senators, let me repeat that we support the government's attempts, albeit tardy, to bring Canada's money-laundering legislation into line with the rest of the industrialized world. However, we also look forward to an opportunity to conduct a detailed examination of this bill when it is referred to committee.
…

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I believe that, to complete Order No. 4, we should deal with the question.

The Hon. the Speaker: Are there other honourable senators who wish to speak to Bill C-22?
…
The Hon. the Speaker: If no other honourable senator wishes to speak, I will proceed with the question.

It was moved by the Honourable Senator Kroft, seconded by the Honourable Senator Bacon, that Bill C-22 be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

Referred to Committee

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The Hon. the Speaker: Honourable senators, the item for which leave was granted has now been completed.

The Senate adjourned until Thursday, May 18, 2000, at 1:30 p.m.

May 18, 2000 [Senate]

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, with leave of the Senate, notwithstanding rule 58(1)(f), I move:

That Bill C-22, An Act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence, which was referred to the Standing Senate Committee on Legal and Constitutional Affairs, be withdrawn from the said Committee and referred to the Standing Senate Committee on Banking, Trade and Commerce.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

June 1, 2000 [Standing Senate Committee on Banking, Trade and Commerce]

Senator E. Leo Kolber (Chairman) in the Chair.

[English]

The Chairman: Good morning, honourable senators. This morning we are meeting to discuss Bill C-22.

We have from the Department of Finance, Mr. Charlie Seeto, who will make an opening statement to fully brief us on all aspects of the bill.

Welcome, Mr. Seeto.

Mr. Charlie Seeto, Director, Financial Sector Policy Branch, Department of Finance: **Mr**. Chairman, we appreciate the opportunity to speak to your committee today on Bill C-22, the proceeds of crime, or money laundering, act.

Honourable senators, no country, Canada included, is immune to organized crime or money laundering activities. Money laundering is the process whereby the proceeds from criminal activities are converted into assets that cannot be easily traced back to their illegal origins.

The process typically begins with the placement of cash into financial channels. It may also involve a series of complex financial transactions in which the "dirty money" is "layered" to further disguise its origins and then "integrated" or "invested" in seemingly bona fide assets.

Estimating the magnitude of any illicit activity, including money laundering, is always difficult. However, studies using methodologies that have been adopted by recognized

international organizations have estimated that between $5 billion and $17 billion in criminal proceeds are laundered in and through Canada every year. Consistent with the experience in other countries, most of the funds laundered in Canada are linked to drug trafficking.

The social costs of money laundering take many forms. Once laundered, the proceeds of crime can be used to finance further criminal activity, perpetuating a vicious cycle of crime.

In this same vein, because criminals must generally launder the proceeds of crime in order to enjoy their illicit profits, money laundering helps provide the financial incentive for criminal activity.

In addition, the large profits available to those involved in the money laundering process can be used to corrupt otherwise law-abiding citizens. This can result in the distortion of business and financial activity by the criminal element. Honest businesses can face unfair competition from those that derive part of their income from money laundering. When money is laundered through financial institutions, the reputations, and even the integrity, of the individual institutions can potentially be undermined.

Canada has had the building blocks of an anti-money- laundering program in place since 1989, when amendments to the Criminal Code, the Food and Drugs Act, and the Narcotics Control Act made money laundering a criminal offence and put in place procedures for seizing, restraining, and forfeiting proceeds of crime.

The 1991 Proceeds of Crime (money laundering) Act established our current system of record keeping and client identification for transactions conducted through financial institutions, as well as for professions acting as financial intermediaries, including lawyers and accountants.

Complementing these measures, certain deposit-taking institutions entered into cooperative arrangements with the RCMP in 1993 that provide for the voluntary reporting of suspected money laundering activities to police.

These and other measures taken to date have produced some positive results. The problem is that money laundering techniques are becoming more sophisticated and detection and deterrence increasingly difficult. It is clear that Canada now needs stronger and more effective legislation than that currently on our books. The effectiveness of our current suspicious transaction reporting scheme is limited by its voluntary nature and its very uneven coverage of the different points at which illicit funds can enter the system.

While the scheme is supported by voluntary agreements between the RCMP and certain deposit-taking institutions, no such agreements cover other points at which the placement of illicit funds can occur, such as insurance companies, securities dealers, casinos, currency exchange businesses, and professionals, including lawyers and accountants.

Extending existing arrangements for the voluntary reporting of suspicious transactions to other institutions and professions is not the answer. Unfortunately, even where such agreements exist, reporting has been extremely uneven. Experience shows that institutions have

information about suspicious transactions that would be useful to the investigation of a money laundering offence, but that is not being reported. Given these limitations, law enforcement agencies have also relied on traditional methods such as conducting "sting" operations through storefront money exchange businesses. However, these methods are only effective in uncovering relatively small-scale money laundering activity and can only ever address a fraction of the money laundering that is occurring.

In addition, the current measures have tended to focus only on the initial placement of cash into financial channels. Though this will continue to be an important part of anti-money-laundering efforts, broader coverage and mandatory reporting would also provide police with valuable information to address the "layering" stage of money laundering, where complex financial transactions are used to further disguise the proceeds of crime.

Law enforcement agencies both here and abroad, and the Financial Action Task Force on Money Laundering, or FATF, to which Canada belongs, have called on Canada to make the reporting of suspicious transactions mandatory.

As the honourable members of this committee may know, the FATF was created in 1989 by G-7 leaders to set standards for combating money laundering at the national and international levels. To this end, the FATF established 40 recommendations that all of its 28 members, including Canada, have agreed to follow.

I am pleased to table with this committee three FATF documents that provide background on the problem of money laundering, the international efforts to combat it, and the importance of the kind of measures contained in Bill C-22. These documents are: the most recent annual report of the FATF, its reports on money laundering typologies for 1999-2000, and the 40 recommendations. I understand that we have provided a copy to the Clerk.

One recommendation is that each country require its financial institutions to report to competent authorities when they suspect that funds stem from a criminal activity. Canada is the only country in the FATF that has not yet implemented some form of mandatory reporting of suspicious transactions. The experience of other countries has demonstrated the benefits of financial transaction reporting to law enforcement efforts. It has also provided a variety of models that the government was able to consider in preparing this bill and in designing Canada's anti-money-laundering centre.

With respect to the benefits, the effectiveness of reporting schemes in other countries can be illustrated by the latest annual report of Australia's anti-money-laundering agency. The report includes brief notes on a sample of some 200 cases in which information provided in financial transaction reports either initiated or contributed to criminal investigations. As well, the U.K. has estimated that, over the last four years, an average of about one-third of all suspicious transaction reports provided added criminal intelligence value. On a smaller scale, statistics from Belgium reveal that, of the approximately 24,000 suspicious transaction reports received by Belgium's anti-money-laundering agency between December 1993 and 1998, approximately 1,400 were sent to judicial authorities, and 117 resulted in convictions against more than 200 people.

In addition to reports of suspicious and "prescribed" transactions, law enforcement agencies have also called for the reporting of cross-border movements of currency. Again, this type of reporting requirement is consistent with the FATF's recommendations to all its members. This measure is important in ensuring that the introduction of tougher anti-money-laundering measures here in Canada does not simply shift the problem across our borders.

Mr. Chairman, Bill C-22 is the government's response to this need for stronger legislation. While it continues the record-keeping and client identification features of the existing Proceeds of Crime Act, this bill will provide for the mandatory reporting of suspicious and other prescribed transactions, the reporting of large cross-border movement of currency, and the establishment of the new Financial Transactions and Reports Analysis Centre of Canada.

Before describing these elements, I would like to emphasize that each, as well as the proposed scheme as a whole, has been designed not only to meet the needs of law enforcement, but also to protect the privacy of Canadians to the greatest extent possible. I will outline some of the key protections contained in the bill in a moment when I describe the features of the proposed centre.

With respect to mandatory reporting, regulated financial institutions, casinos, currency exchange businesses, and other financial intermediaries will be required to report any financial transaction where there are reasonable grounds to suspect that it is related to the commission of a money laundering offence. Specific types of transactions such as the receipt of cash above a prescribed amount, for example, must also be reported.

The bill's second provision requires that persons or entities that import or export large amounts of cash or monetary instruments like travellers' cheques across the Canadian border must report that to Canada Customs. Canada Customs will then forward the reports to the anti-money-laundering centre.

Currency can be seized if it is not declared and will be returned upon payment of a fine, unless Canada Customs has reasonable grounds to suspect that it represents proceeds of crime. There will be mechanisms in place for the review and appeal of cross-border seizures and penalties.

The third element in the bill involves the establishment of the new Financial Transactions and Reports Analysis Centre of Canada. The centre's primary function will be to receive and analyze the reports mandated by this bill. The centre's analysis will determine whether limited information from the reports will be passed on to the appropriate authorities. Great care has been taken to ensure that the centre's design and the legislative framework under which it operates serve to protect the privacy of Canadians.

I would like to review some of the safeguards in the bill that ensure that the collection, use, and disclosure of information by the centre will be strictly controlled.

A key feature of the proposed regime is that the reports mandated by the bill will not be provided directly to law enforcement agencies. Rather, as I have mentioned, the reports will be

sent to the anti-money-laundering centre. The centre will be an independent body, acting at arm's-length from law enforcement and other agencies that are entitled to receive information from the centre. This means that information reported to the centre about suspicious and prescribed transactions, as well as cross-border movements of currency, will be subject to independent review and analysis.

The information received by the centre will be subject to strict confidentiality provisions to prevent its unauthorized disclosure. Any unauthorized use or disclosure of personal information under the centre's control will be subject to criminal penalties, including fines of up to $500,000 or imprisonment for up to five years.

In addition, the situations under which the centre will be authorized to disclose information will be limited and clearly set out in the act. Only if the centre, on the basis of its analysis, determines that designated information would be relevant to investigating or prosecuting a money laundering offence, will it be disclosed to the police.

"Designated information" is defined in the bill and is limited to key identifying information about the transaction or the cross-border currency movement concerned. For example, in the case of a reported transaction, the information that can be passed on to the police would be limited to such facts as the name of the client, the name and address of the business where the transaction occurred, the account number, and the value of the transaction.

The centre will only be able to release additional information if law enforcement authorities build a case for prosecution purposes and obtain a court order for disclosure of information related to a money laundering offence. The centre will not be subject to search warrants.

The centre will also be authorized to disclose designated information to certain other domestic government agencies, but only under specific conditions. For example, the centre will disclose designated information to CSIS if it has reasonable grounds to believe that the information would be relevant to a money laundering offence and also that it would be relevant to a threat to national security.

The suspected link to money laundering is a test that must be met for any disclosure by the centre. The centre's independence from law enforcement is an important element of this bill's protection of privacy. Privacy considerations contributed to the choice of this model over those of a number of other countries, where similar anti-money-laundering agencies are located within law enforcement agencies or financial regulators.

The centre's independence and autonomy in determining what information shall be disclosed to the police is balanced by its overall accountability to Parliament.

The Minister of Finance will be responsible for the centre. The centre shall report annually to the minister, and the minister shall table a copy of the report in each House of Parliament.

While the day-to-day operation of the centre is clearly the responsibility of its director, the minister will have the authority to direct the centre on matters of public policy and strategic

direction. As well, the centre will be subject to the protections of the Privacy Act. For example, the Privacy Commissioner will have the authority to obtain information from the centre in order to investigate a complaint under that act. As is the case with other government institutions, the Privacy Commissioner's office can use its authority to investigate complaints by individuals against the centre, or to both initiate and investigate a complaint. As well, the individual will have recourse under the Privacy Act to the Federal Court.

I would now like to discuss the bill's regulation-making authority with respect to entities, client identification, record keeping, and reporting requirements. It is important that the government be able to respond quickly to the ever-changing nature of money laundering and adopt changes to how financial intermediaries conduct their business. This authority provides that flexibility. The aim is to develop regulations that are consistent with the principles underlying the bill. This means striking an appropriate balance among the objectives of law enforcement, protection of personal information, minimum compliance costs, and support for Canada's contribution to international efforts to combat money laundering. Extensive consultations have already begun on developing these regulations with these goals in mind.

In addition, this bill requires a 90-day pre-publication period for proposed regulations, as well as an additional 30-day notice period for any further changes to proposed regulations before they become effective. These requirements go well beyond what is set out in many federal statutes and give ample opportunity for parties to provide input.

The Chairman: Where are the regulations published?

Mr. Seeto: In The Canada Gazette.

The Chairman: There is no oversight there. What can you do about that?

Mr. Seeto: We would invite comments.

The Chairman: The only reason I bring it up is we are having this problem with every bill that is coming to us. We receive the bill and then the bureaucracy has the right to put in any regulations it likes with virtually no oversight. When there is oversight, it is by a parliamentary committee that knows nothing about the bill.

I am having trouble with the whole notion of unchallenged regulatory authority. Maybe someone will ask a question on that and perhaps you will respond. I did not mean to interrupt, but I want you to know that it is a sore point.

Mr. Seeto: A closely related matter concerns the guidance that will be provided to institutions and persons who, in fulfilling the reporting requirements under this bill, must determine whether there are reasonable grounds to suspect that a particular transaction is related to the commission of a money laundering offence. Guidelines will be issued by the proposed anti-money-laundering agency to assist with this determination. This approach has been taken in many other member countries of the FATF, including Australia, the U.K., and the U.S.

These proposed guidelines will be developed in full consultation with stakeholder groups, and will reflect the circumstances of the businesses and professions that have a reporting obligation under Bill C-22. It should also be noted that there are existing anti-money-laundering guidelines that could serve as useful models. For example, the Superintendent of Financial Institutions issued guidelines for deterring and detecting money laundering in 1996. In addition, the experience of other countries that require suspicious transactions to be reported will be drawn upon in the development of appropriate guidelines for the purposes of our proposed legislation.

In closing, honourable senators, I want to point out that Bill C-22 was developed in consultation with many key stakeholders, including the provinces, the territories, the financial community, consumer groups, and organizations concerned about privacy issues. This bill updates and strengthens the existing act and improves the detection, prevention, and deterrence of money laundering in Canada. In addition, it gives law enforcement agencies the tools they need, and at the same time protects individual privacy. Further, these measures will also bring Canada into line with accepted international standards in the fight against money laundering.

Mr. Chairman, we will be pleased to answer any questions.

The Chairman: Clause 72 of the bill provides for a five-year review of the act by:

...the committee of Parliament that may be designated or established by Parliament for that purpose...

This form of wording leaves open the idea that a Senate committee may be excluded from such a review. Could you elaborate on that, please?

Senator Furey: The previous clause on the annual report clearly spells out reporting to both houses.

The Chairman: Clause 72 does not.

Mr. Seeto: Clause 72 states that within five years of the coming into force of this clause, the administration and operation of the act is to be reviewed by committee of Parliament. That clause leaves it to Parliament to establish the committee that will undertake the review. Parliament, that is to say, both the House of Commons and the Senate, will decide on its own procedure for establishing the committee.

We also looked at other statutes and found that there was no standard wording for this type of clause. The wording of the provision in Bill C-22 does leave it up to Parliament to determine the make-up of the committee. The effect is the same as provisions in other legislation, such as the Privacy Act, that refer to a committee of the House of Commons, of the Senate, or committees of both houses, as may be designated or established by Parliament.

The Chairman: One of the problems in saying "Parliament" is that it really means the upper chamber and the lower chamber.

Mr. Seeto: Right. That is the intent.

The Chairman: I think it lacks a certain amount of -- excuse the expression -- clarity. Is there any way we can get a letter from the minister saying that "Parliament" is intended to mean both houses?

Mr. Seeto: Mr. Chairman, we will raise your suggestion with the minister.

Senator Furey: If you look at the previous clause, which requires an annual report, it clearly spells out both houses. Why would it not be that clear in the following clause?

Mr. Seeto: The intent is to allow both houses to decide.

Senator Furey: You spell it out in clause 71 but not in clause 72.

The Chairman: If that is your intent, send us a letter that says so.

Mr. Seeto: We will recommend that to the minister.

Senator Tkachuk: Could we have an answer to the question that Senator Furey posed?

Mr. Seeto: I believe it was a drafting issue. It was meant to refer to the procedure by Parliament, and "Parliament" means both Houses. That is the interpretation we have from the Department of Justice on this issue.

Senator Kroft: I do not feel that because I am the sponsor and have already spoken on this bill, that gives me the right to be over on your side of the table. Every Canadian must begin by being troubled by this bill, and then we must see if we can find a level of comfort.

Conceptually, any bill that turns Canadians individually, and institutions, into whistleblowers, or words less flattering, is troubling by its very nature. We must look at whether or not the problem is sufficiently large and difficult that it needs an extraordinary response, and then whether or not that response is balanced and appropriate. It is important to go through this exercise because I do not think any of us like the fundamental concept.

I want to try to find my comfort level in a number of areas, so that we can be satisfied that it is an appropriate response to a serious challenge. I have three specific issues to raise. There could be many more, but I have three tests, or questions to ask.

First, can you give me some comparison of this bill with what is being done elsewhere? You say that we are the last guys at the party in terms of bringing in some legislation. Can you give us some sense of whether we are being less stringent than other jurisdictions, or more zealous? Have there been particularly contentious issues? It is fine to say that we are developing legislation, but how does ours fit with Charter-related concerns? How do we compare with others in that regard?

Second, what level of agreement has been reached with other recognized guardians of our civil liberties? I am not sure who will be speaking to that point, but I understand from my briefing that there have been consultations with the Canadian Bar Association and so on. I should like to know the status of those consultations. Have comfort levels been reached? That would apply equally to the accountants. In particular, as a lawyer, I wish to know about your discussions with lawyers, because it is an incredibly sensitive area. I see in the wording that "privilege" is protected, but you are talking about lawyers in a different role. It is a particularly interesting issue.

Third, what has been the nature of your discussion, and to what extent have you reached a comfort level, with the Privacy Commissioner?

Mr. Seeto: I will ask Mr. Richard Lalonde to respond to your first two questions.

Mr. Richard Lalonde, Chief, Financial Crimes Section, Financial Sector Policy Branch, Department of Finance: Regarding comparable regimes in other jurisdictions, we were privy to how other countries had attempted to do this when we were developing the proposal. Our guiding light has been the international standards of the Financial Action Task Force on anti-money-laundering measures. Our proposal is based on those international standards. It just so happens that, over the last decade, other countries have also put in place similar regimes that apply the same standards, recognizing that there will be some differences from one country to another, depending upon their privacy legislation, constitutions, charters, and internal government organizations. In some countries, the proposed agencies are adjuncts of their law enforcement agencies. In others they are completely separate and independent, which is the case with the proposal before you today. It is difficult to say whether our regime is more or less stringent than those of other countries. However, we have benefited from their experience in designing the proposed regime. It has all of the positive features of other regimes. It certainly respects our Canadian Constitution, our Charter, and builds in features appropriate to that context.

Senator Meighen: Is it possible to develop some sort of table indicating which of the 28 members have a mandatory reporting regime, and which ones require reporting to an independent agency as opposed to a law enforcement agency?

Mr. Lalonde: We can certainly come up with such a table, but everyone except Canada has mandatory reporting at this point. Your focus, senator, would be on which jurisdictions have which kind of models?

Senator Meighen: Yes. I had not realized we were the last of the 28 members.

Mr. Lalonde: We can provide the committee with that information.

Senator Kroft: Have your discussions with the Canadian Bar Association and the Privacy Commissioner reached a peaceful conclusion?

Mr. Lalonde: We have had a number of discussions in the past few months with representatives of the Canadian Bar Association. While they will support the objectives of the bill, they have expressed a number of concerns about the role that it would have lawyers play in terms of reporting, in particular in the reporting of suspicious transactions. We have indicated to them that the bill states clearly that nothing in the bill requires them to breach privilege, or to report anything that falls within the category of that privilege. I gather you will be speaking with them soon. Their concerns remain, nevertheless.

We have indicated to them, and would indicate to you as well, that our interest in providing that lawyers are covered by this bill is to ensure that there are no gaps in the financial sector. We know that lawyers perform many roles, one of which is as financial intermediaries. In that role, they are not very different from other players within the financial sector who are covered by the scope of this bill.

We are prepared to make it clear that the scope and application of this proposed legislation applies to lawyers insofar as they are acting as financial intermediaries. We will have to find the appropriate wording, but that is the concept, and certainly one that we intend to carry out.

Senator Kroft: And the Privacy Commissioner?

Mr. Lalonde: Again, we have had discussions with the Privacy Commissioner's office over the past few months. Notwithstanding those discussions, they do not have specific issues on the way the bill was drafted. Their fundamental concern remains that the proposed regime is a choice for Parliament to make, in that it does impose a requirement for individuals to report on their clients, and therefore raises significant privacy issues.

I do not know whether the provisions of the bill that protect individual privacy would raise any particular concerns with the Privacy Commissioner.

Mr. Seeto: I want to add that we had a number of discussions with the Privacy Commissioner as we went through the bill. These were the words of his staff: "Given the objective, it looks like the `plumbing' is in a good state." We have tried to address their concerns, given the objectives of the bill.

Senator Kelleher: Some of my questions have already been partially addressed. Given that we were the last to come forward with a proposal, we have had an opportunity to observe and examine what other countries have done. I am concerned about whether we really needed an independent government agency for this purpose, with its inherent costs and added layer of bureaucracy.

Perhaps, Mr. Chairman, it would be wise to wait and review what other countries have done, in light of Senator Meighen's sensible request for some sort of chart. We can leave that discussion for now, but it is certainly an open question in my mind as to whether we should be adding another layer of bureaucracy by creating a new agency. I gather that not all countries are doing it this way?

Mr. Lalonde: Not all, but many countries have done it in the same way that we are proposing. The United States, Australia, and France are three examples. Germany may be the exception. Japan has a separate agency as well. I could go on.

The fundamental difference here is that, in the context of our Canadian Charter and our Constitution, the independence of law enforcement from government is necessary in order to balance both the rights of individuals and the needs of law enforcement overall. To house the proposed agency within law enforcement would tilt that balance. That is why we so carefully structured the provisions in Part 3 of the bill.

Senator Kroft: We have now another expert here in the person of Senator Kelleher, who has raised the economic issue. I am curious to know, in light of his past ministerial responsibilities for other agencies that may well have been possible alternatives, whether Senator Kelleher has any thoughts on whether any of those might serve well in this context?

Senator Kelleher: Perhaps that can be a joint question from you and me, Senator Kroft. Ancillary to this is not only the added layer of another agency and the inherent costs, but second, I am wondering why -- and I guess I am showing my former partiality for the Solicitor General's office -- the reporting is to the Minister of Finance rather than to the Solicitor General. I do not disagree with the principle of keeping it as arm's-length, but since this is primarily a law enforcement measure, why not have the agency report through Parliament to the Solicitor General rather than to the Minister of Finance?

With the greatest of respect, the Ministry of Finance is doing quite a lot of work here in Ottawa, and it would not hurt to share some duties with other ministries. How is that for being diplomatic?

Mr. Seeto: The existing Proceeds of Crime Act is the responsibility of the Minister of Finance because it deals with financial intermediaries.

Much of the discussion on the development of this bill and its framework centred on how to set up the centre to meet the Charter issues. How do we deal with a successful Charter challenge on invasion of privacy? We had long and difficult discussions on that issue.

We looked at having the agency report to the Solicitor General. At the end of the day, the experts advised that the agency should report to someone who is not responsible for law enforcement. It was decided that the agency would report to the Minister of Finance. It was not something that the Department of Finance advocated.

Senator Kelleher: Perhaps, Mr. Chairman, it would be useful to have a separate witness from the Ministry of the Solicitor General to discuss this issue, because with the greatest respect, I am not totally convinced by Mr. Seeto's answer. People who report to Parliament on basically a law enforcement issue should have experience and knowledge in the law enforcement area. With the greatest respect, that is the Solicitor General's office, and not the Ministry of Finance.

I know there is someone here this morning from the Solicitor General's office, but that does not really satisfy me. That puts this official between a rock and a hard place.

Mr. Seeto: I would like to ask Stan Cohen from the Department of Justice to answer this question.

Senator Kelleher: I was just saying that I do not think he is the appropriate witness. I would like to have the opinion of a senior official from the Solicitor General's office.

The Chairman: Senator, we will arrange to do that. In the meantime, let's hear from this gentleman. Perhaps he can shed some light on the subject.

Mr. Stanley Cohen, Senior Legal Counsel, Human Rights Law Section, Department of Justice: Perhaps I can explain some of the thinking that went into this caution. My job is to give advice on the Charter issues affecting the criminal justice system, and in this case, issues affecting the phenomenon of money laundering.

As to the caution of placing this agency under the aegis of the Minister of Finance as opposed to some other minister, it is true that in terms of pure efficiency, it might have been preferable to have placed it within the realm of law enforcement. However, the dynamic at work in this context is pretty well new to Canada, and certainly precedent-setting in terms of the Charter.

This agency essentially receives personal information without benefit of a warrant, the obtaining of judicial authorization, or oversight before information is collected. That information is collected at a standard in the bill of "reasonable suspicion," which is not the "reasonable and probable grounds" that affects the appropriation of information pursuant to a search warrant.

There is a massing of information within a central agency that essentially has not yet reached the standard of reasonable and probable grounds for believing that an offence of any kind has been committed. Thus there is a need -- and I think I could point you in the direction of case law -- to protect privacy, which is evident just from the very design and the very orientation of the entire system.

One starts with the view that before this information, which is gathered at a low level of suspicion, a low standard, is passed on to law enforcement, there must be some vetting and some assessment.

Essentially, there was a need for some independence from law enforcement; otherwise, you might just as well have a straight flow-through to law enforcement, which would make it purely a surveillance and information-gathering device of really quite substantial proportions.

Once you accept that there should be some body interposed between the initial gathering and the furnishing of the information to law enforcement, it becomes necessary to address the kind of model.

You could set up a model within law enforcement, but you would have to create substantial bureaucratic means of separating the initial intake from the final disposition of the information to police investigators if you really wanted to protect privacy. You must remember that other models, like CSIS, have quite an extensive, sophisticated, and costly bureaucratic structure as well. There you have an Inspector General and the agency itself, and then you have the minister, in some sense removed from CSIS, and also elaborate reporting requirements.

Placing this body outside of law enforcement is seen as a means of ensuring that the whole enterprise can "lift off"; that you will not have expended a huge amount of public funds, only to see it flounder in the first substantial constitutional challenge that there has been a warrantless appropriation of private information belonging to Canadians.

The thinking was that the proposed structure better protects privacy and still accomplishes the law enforcement need in an efficient manner.

Senator Kelleher: With the greatest respect, I do not think you have totally answered my concerns.

Assume for the moment that we agree with you that the best way to do this is through an independent agency at arm's-length. I am suggesting that the reporting minister be the Solicitor General as opposed to the Minister of Finance, who frankly is not as learned in the areas of law enforcement as the Solicitor General, for example.

Mr. Cohen: If you placed the reporting relationship under the Solicitor General, you would have a minister who is responsible for policing -- in other words, the oversight of the RCMP -- and for national security surveillance through CSIS, also running an agency that is supposed to be operating at arm's-length from law enforcement. Given the public impression that that might give rise to, it would be a difficult sell. It is possible to do it, but you would create an impression that there is a much closer relationship than the public or the courts might like.

Senator Kelleher: We can leave that for another day.

Senator Furey: It seems to me that the bigger concern is not so much the public perception, but whether or not it would survive a Charter argument. Is that correct?

Mr. Cohen: That is correct.

Senator Furey: That is really more where you are coming from.

Mr. Cohen: We certainly start with that, but it takes you back to the whole notion of what is involved here and the initial appropriation of the information. The Charter argument will centre around invasion of privacy. How do we protect privacy? That takes you then into the architecture of the entire enterprise.

Senator Furey: I hope nobody is talking about notwithstanding clauses.

Senator Kelleher: Following along, if I may, with the potential impact of the Charter of Rights -- and I think we have the appropriate witness "in the stand," if you will -- are you confident that the search and seizure provisions in the bill and the mandatory reporting provisions would survive a challenge under section 8 of the Charter, which is, as you know better than I, a protection against unreasonable search and seizure?

Mr. Cohen: The best way to answer that question is to say that the scheme has been designed with a number of substantial safeguards that would affect the way any court would assess the constitutional validity of the enterprise.

You have an independent agency at arm's-length from law enforcement as one of the guarantors of privacy, privacy lying at the heart of section 8.

Secondly, you have an impartial agency that stands between the initial intake of information and its disclosure to law enforcement. That is the FTRAC, the Financial Transactions and Reports Analysis Centre. That is a safeguard for a limited initial disclosure of information. Rather than just turning over the whole file or everything that this agency has gathered, you have a limited disclosure of information -- "tombstone data" is the way it is described -- to law enforcement. Law enforcement still has to build a case before it can get access to further information.

There is also the safeguard of what I can call the "unamenability" of the agency itself to compulsory disclosure beyond money laundering investigations. A sort of wall has been erected, in the sense that information can pass to law enforcement, to police agencies, but it does not automatically flow to Revenue Canada, Citizenship and Immigration, or CSIS, unless there is a link from the money laundering to the specific mandates of those particular agencies.

Before any additional information can be disclosed by the agency, a special warrant or order has to be obtained. Again, this is a safeguard built into the scheme.

Other safeguards include the annual report that has already been referred to, a five-year review, and criminal sanctions for unlawful disclosure.

We think that we are striking a balance that can be seen as protective of individual privacy rights while not frustrating the aims of law enforcement efficiency.

Senator Kelleher: There appears to be a certain lack of definition in the proposed legislation, if I can put it that way, of the types of transactions that must be reported to the centre. I think this could lead to Charter problems, as well as the reporting of a lot of extraneous information. Perhaps, looking at it from the other side, not enough of the kind of information for which they are really looking will be reported. Do you feel that there is some way we can tighten up or particularize the definition of the types of transactions that must be reported?

Mr. Cohen: I think the difficulty on which you have put your finger, senator, is how you define a "suspicious transaction." Of course, the regulations themselves will have to partly address that.

Senator Kelleher: That is the kind of thing that concerns not only the chairman but many members of the committee. Too much will be left to regulation.

Mr. Cohen: Part of the answer to that, I think, comes back to the review. Five years may be a long period of time, but we will certainly have experience with how the system is operating and how well it is serving the Canadian public. I think another part of the answer may lie in how both Houses of Parliament choose to oversee those regulations.

The annual report could conceivably be a device for further enlightening the public as to what exactly has occurred in regulations. Reasonable suspicion, or what constitutes a suspicious transaction, is always going to elude precise definition to a certain extent. Certainly Charter case law on just this standard of reasonable ground to suspect, or reasonable suspicion, is itself constantly in need of clarification. The best definition of reasonable suspicion -- and this comes from a case endorsed by the Supreme Court of Canada -- is that it is "a constellation of objectively discernible facts which give the detaining officer reasonable cause to suspect that the detainee is criminally implicated in the activity under investigation." A hunch based entirely on intuition gained by experience cannot suffice, no matter how accurate that hunch might prove to be.

That does not give us a great deal of precision, but the courts actually deal with that standard and apply it to particular factual situations in the criminal context to determine whether officers did or did not have reasonable grounds to suspect that a crime was being committed.

To a certain extent, it will have to emerge from experience and from the refinement of guidelines. Guidelines themselves can contain examples or hypothetical situations that might be more precise than just the standard itself. That may serve to clarify the way in which information is initially gathered.

Senator Tkachuk: In this case, however, it is not people at the centre but people doing the reporting who are deciding what is suspicious. This could be a bank, an institution, a casino. It is these people who will be making a decision regarding "suspicious nature." These are not law enforcement officers, but civilians in the business community. How will amateurs make that decision?

Mr. Seeto: The bill provides for two classes of suspicious transactions. We will prescribe that certain transactions be reported to the centre. For example, we would want the bank to report if someone comes in with $10,000 in cash, which is unusual. They would have to report that to the centre.

Senator Tkachuk: What about $9,999?

Mr. Seeto: They would not have to report that.

The second class is, they would report a transaction that they believe to be suspicious. If someone came in with $9,999 and asked at what level does the bank report a transaction to the

centre, you might consider reporting it. However, you would have to be certain of the grounds on which you think it is a suspicious transaction. There are two classes provided for in the bill.

Senator Tkachuk: It is the use of the cash that leads to the suspicion, so whether it is $10,000 or $9,999 or $7,950, you are still asking an amateur to make a decision. At $10,000 and up, bells automatically ring, but with anything under that, there is a subjective decision to be made here.

Mr. Seeto: To assist these institutions, we propose to have the centre develop guidelines to help determine whether a transaction is suspicious or not. As I pointed out, the Superintendent of Financial Institutions has a set of guidelines for federally regulated institutions to help them decide whether a transaction is suspicious or not. Other countries have similar regimes, and have developed guidelines on suspicious transactions based on experience. We will review those, and the centre will come up with a set of guidelines to help the different types of financial intermediaries decide what is a suspicious transaction.

Senator Oliver: My concern is that this will perpetuate ethnic stereotyping. If I were to walk into one of the institutions after arriving from Nigeria or Jamaica or places in India, as a visible minority person, certainly I will be more suspect than if I were a white person coming in with $9,000 in cash from Bay Street. It seems to me that you are really setting up yet another instance where bureaucrats and lawyers can perpetuate negative stereotypes of minorities, and I think it is totally wrong. I think that it is just perpetuating systemic racism. That is how bad it is.

Mr. Cohen: I do not know quite how to answer the suggestion that bank tellers and others will participate in a way that fosters systemic racism. There are two levels of intake for the information before it gets anywhere where any significant damage can be caused. There has to be an intake level. If a person comes into a bank, the teller will prepare a report, depending on whether it falls into the prescribed or suspicious transaction category. It is true that that information goes to the Financial Transactions and Reports Analysis Centre, but it does not go further until it has been assessed in a more detached and expert fashion, having regard to a lot more information than simply the one report itself. Thus there is a second, professional vetting of the information before it can make its way over to law enforcement.

That is another safeguard and another reason for the interposing of this agency between the institution and law enforcement.

I think that that at least is something that addresses the issue of whether significant consequences will flow to individuals as a result of the initial gathering of information. There is no disclosure to law enforcement until a second set of eyes has appraised the information and decided to pass it along.

Senator Oliver: Can you give us the citation for the Supreme Court of Canada case from which you quoted the definition of "reasonable suspicion"?

Mr. Cohen: That case initially was a decision of the Ontario Court of Appeal. However, it was endorsed in a Supreme Court decision by the name of Regina v. Jacques. The citation I have is 1996, 110 Canadian Criminal Cases, 3rd, page 11.

Senator Angus: This is a very interesting piece of proposed legislation. Obviously, it is complicated, and I am delighted that you could come to brief us on it this morning.

Some of my questions might appear to be a bit naive. However, please realize that they are sincerely directed. The words "money laundering" have taken on a "folkloric" kind of definition, if you will. A few of us were discussing just what is money laundering the other night. You talk about money that is derived from an illegal act. We started to ask ourselves, to what kinds of illegal acts is this really directed? Some believe that it is tax evasion, for example, and that this bill is a concentrated effort among the majority of those 28 countries you mentioned to crack down on tax evasion and this flow of money that is outside the system. Others say that it is drugs and other things.

Could you give me a short primer on the kinds of crimes that you are talking about, and perhaps a couple of examples of how the money gets laundered and becomes the fruit of crime? We all watch TV programs that bandy these words about; but we are now at the legislative stage and we are trying to be as precise as we can. We need to understand it.

Mr. Lalonde: Mr. Chairman, I can give a brief explanation of what laundering is all about. However, we also have here witnesses from the RCMP who are prepared to provide you with more detailed examples than I can.

In its simplest form, money laundering concerns the proceeds of a criminal activity. Our Criminal Code defines the predicate offences for which you can be convicted of money laundering. It is taking those proceeds of criminal activity and putting them into the financial system by trying to disguise their illicit origins through a series of transactions. That is in its simplest form.

Senator Angus: Can you give me a simple example, other than a drug dealer?

Mr. Lalonde: For example, a securities dealer attempting to defraud some of his clients will perhaps take some of his monies, in cash form or otherwise, and try to enter that into the banking system. Not having elicited any particular suspicions, he will continue with a succession of other transactions to further blur the trail from the original criminal activity.

Senator Angus: I did not quite understand that. Are you talking about a securities dealer getting money from a client?

The Chairman: Might I make a suggestion, senator? Dave Beer, who is Superintendent, Proceeds of Crime Branch, RCMP, is here today. Perhaps he could give us an example.

What you are talking about, with respect, senator, is a totally different kind of problem. You are talking about straight fraud, that is, stealing, as opposed to drug activities, which is all in

cash. You are giving us an example of something that would rarely happen in the securities business, I assume.

Senator Angus: Apparently, it happens a lot.

The Chairman: Could someone from the RCMP try to elucidate?

Mr. Dave Beer, Superintendent, Proceeds of Crime Branch, Royal Canadian Mounted Police: Mr. Chairman, in order to perhaps put this into perspective, I will call in a moment on my colleague, Inspector Garry Clement, the officer in charge of the Proceeds of Crime Branch office, which is the operational unit here in Ottawa.

Money laundering is the movement of ill-gotten gains by criminal organizations and the failure of law enforcement to dismantle or disrupt organized criminal activity by conventional means. Essentially, it is taking the lid off organized criminal groups. We have struggled for years with the middle or lower levels of criminal groups through substantive investigations. Money laundering investigations allow us to reach the top levels of organized criminal groups, which is ultimately where the assets travel. That being said, it is a very complex and, now, a transnational problem of the movement of the money and the manner in which it is layered and distributed once it is obtained through an illegal activity, in order to launder it and move it into the "legitimate business world," if you will.

I will now call on Inspector Clement to give you a couple of examples, other than drugs, of the sort of criminal activity about which we are talking. Essentially, any criminal activity where there is cash to be made has a potential for that money to be laundered and moved to legitimate areas in order to hide it.

Senator Angus: I welcome this additional information. However, inherent in my question was the issue of the underlying reason for this and the companion legislation in the other 27 countries, which is to get at organized crime and its international network, as opposed to tax evasion in Canada. Is that right?

Mr. Beer: Organized crime is the objective.

Senator Angus: I realize that the proceeds of crime are taxable, so it involves evasion too. However, it is not civilian tax evasion that you are particularly after here, although it will get swept in I suppose?

Mr. Lalonde: Let us be clear. In Canada, you can be convicted of laundering the proceeds from a number of different crimes. These could be anything from prostitution or a designated drug offence to child pornography -- a number of crimes are listed in the Criminal Code. Tax evasion is not listed as a predicate offence for laundering in Canada. In other jurisdictions, for example, the U.K., tax evasion is a predicate offence for money laundering. In this sense, while our and their main objective is to combat organized crime, this bill is clearly designed to go after the laundering of the proceeds of a number of predicate offences.

Mr. Beer: I will ask Inspector Clement to describe a couple of issues that do not deal specifically with drugs.

Mr. Garry Clement, Inspector, Officer in Charge, Integrated Proceeds of Crime Section, "A" Division, Royal Canadian Mounted Police: Mr. Chairman, let's take as an example something that we read about all the time. Let's consider the motorcycle gangs that are very prevalent. We read about it and we know what is going on in Quebec with some of the biker wars. I have been involved in enforcement in this area since the early 1970s, and we have watched them grow from what I like to describe as "street thugs" to multinational corporations as far as criminal activity is concerned. The reason for that is we have targeted groups for narcotics. We targeted one cell and watched them grow. We were successful in seizing some narcotics, but we were never able to seize the proceeds. Organized crime moves to wherever it can make money. If that happens to shift to some other offence tomorrow, and most of them fall into the enterprise crime offences that are prescribed in the Criminal Code, then there are a number of offences that can be deal with. One is prostitution. Today, the "female slave trade," as I refer to it, is very large throughout the world. These gangs are making large amounts of money from that. Today we are able to go after that using the proceeds of crime legislation.

We all thought that we were doing a good job in law enforcement. However, we took a look at two ingredients, that is, whatever the criminal activity was and what the individuals were doing. We then tried to take the individuals out, but we missed one of the most fundamental things -- the profit. All these criminal activities generate a high degree of profit. Arms smuggling is another area that is growing and generates a lot of profit. The issue of immigration smuggling is before the House now, but it is not an enterprise crime offence. However, it is something that will have to be looked at.

Those types of activities are generating large amounts of money. The only way that we can target organized crime is to treat it as a continuing enterprise crime conglomerate and attack them at their financial thresholds, because that is where the money is and the power is held. We will never be successful as long as we continue looking only at that criminal offence.

Senator Angus: That is helpful. In terms of the predicate crimes, folklore generates comments such as, "See that restaurant? -- it is owned by the Hell's Angels." You kind of shrug it off as somebody who has a vivid imagination and has watched too much T.V. However, could you give us a couple of examples of how this laundering takes place in that context?

Could that be the type of thing -- that a legitimate business is founded with money from the Hell's Angels?

Inspector Clement: The whole idea behind money laundering is that individuals are trying to make themselves appear legitimate; thus they use the financial infrastructure that the world has to offer. A very successful organization, something like an outlaw motorcycle gang, is using offshore countries for their banking secrecy and setting up trusts, holding companies, and numbered companies. They get into schemes where they will buy the "mom and pop" restaurant down the street with money borrowed from a corporation out of Liechtenstein, which happens to be their corporation. It is called a "loan-back" technique. When the bill

before you today finally becomes law, we will be able to capture some of that movement of funds. The information will go to the centre once the suspicion is raised. They have criteria to analyze and determine that that has all the hallmarks of money laundering. As a result, that will be given to us with "tombstone data."

With our intelligence banks, we will be able to factor into that very nicely. We have been receiving notice of suspicious transactions from banks on an ad hoc basis for the last six years, and that has proved very beneficial to us. However, they are not always consistent, and that is exactly what I think everybody is grappling with. It is very sporadic and there really is no mechanism to ensure that that takes place.

I think that will shore up what is lacking in Canada and will help us in this money laundering area. We will be able to get behind the companies in these offshore havens. We will find out more about our organized crime groups. This is not a panacea by any stretch of the imagination, but it will definitely help.

Senator Angus: Mr. Seeto, I have just one other question. It still troubles me, especially in a society like Canada where we take these privacy issues seriously, that we are the last of 28 countries to be "coming to the party." Why is that? It seems embarrassing for Canada to be the last of 28 nations to do so.

Mr. Seeto: As I understand it as a latecomer to this file, one of the biggest concerns was designing a structure that could be defended from the Constitutional perspective. It took a lot of time to review the different possible structures before we came up with an appropriate one that we think is defensible -- a structure that will provide more tools to law enforcement, and a balance, while still protecting privacy as much as possible. I think that is the reason. We were presented with a uniquely Canadian situation with regard to the Constitution and laws.

Mr. Lalonde: I would like to add something and correct one perception. Canada has had a regime in place with its record-keeping, the identification of clients, and other legislation. It is not as if we are starting from base zero. We have many of the pieces of the architecture in place. The voluntary reporting system, albeit with some shortcomings, has yielded some positive results as well. That is probably the reason why, given all these circumstances, it has taken Canada a little longer to put into place the additional "plumbing" that other countries now have.

Senator Angus: Am I correct that Bill C-22 will consolidate these earlier provisions of legislation into one bill?

Mr. Lalonde: That is correct.

Senator Angus: I guess then that it flows for the law enforcement side of the panel. Are you comfortable with the architecture that has been arrived at? Is it adequate, and will our bill, if passed as drafted, have the teeth to work in co-operation with our partner nations in trying to address this problem?

Mr. Beer: I think that Mr. Lalonde adequately addressed this subject. We had the opportunity to examine systems within the G-7 and we are satisfied that we will uphold Canadian democratic principles at the same time as we will meet some of the goals of law enforcement that we really feel are necessary in terms of mandatory reporting.

Senator Angus: Do you mean "some" of the goals?

Mr. Beer: Yes. Clearly we will not meet them all. The arguments and concerns about privacy in a democratic system must be and have been addressed. I believe we found an adequate balance.

Senator Furey: My question is related to the establishment of this new agency, and most of the questions that I had pertaining to it have been covered. However, there are a couple of questions remaining. What is the estimated cost? Has any cost analysis been done, bearing in mind some of Mr. Cohen's comments about separation within that agency?

Mr. Horst Intscher, Executive Director, Transition Team -- Financial Transactions and Reports Analysis Centre of Canada, Department of Finance: Mr. Chairman, the Department of Finance has set up a small transition team to make some preparations for the establishment of such an agency once the bill is passed. We have given careful thought to how other agencies of this type have been set up in other jurisdictions. We have looked at the mandate that is prescribed in Bill C-22 and we have come up with some, albeit still rough, estimates as to the probable ongoing cost of such an agency. We estimate that it would be approximately $15 million per year and that it would employ approximately 90 persons. This would include the technical support for the receipt of such reports; the analysis of the reports; the verification of compliance by reporting entities; and the management of disclosures to the law enforcement agencies.

This is roughly comparable to a similar agency established in Australia. The amount is considerably less than what we believe the United States is expending for this purpose. We are still grappling with the magnitude of the start-up costs to put the information technology systems in place that will process this kind of information.

Those would be one-time costs spread out over a year or two of the operation of the centre. We think that on an ongoing basis, it will be somewhere in the neighbourhood of $15 million per year.

Senator Furey: Do you have any idea at all how that would compare to setting up a system within an existing agency, bearing in mind Mr. Cohen's comments?

Mr. Intscher: Given the requirement to be arms-length from law enforcement agencies, I think the costs would be very similar. There might be some small savings in administrative support, but the systems requirement, which is probably the major component of this type of agency, would still have to be separate from the other systems. Therefore, I do not think there would be major savings if it were located within an existing agency.

Senator Furey: Is your estimate $15 million annually?

Mr. Intscher: Yes, although I would emphasize that is a fairly rough estimate at this time.

The Chairman: I will ask one question of the RCMP, and if you can, answer yes or no, please. Would you have been happier if this had been given to you?

Mr. Beer: With my policeman's hat on or as a citizen of a democratic country? No, senator, I think that it is properly placed where it is. I truly believe that, in the interests of privacy and the democratic principles that we uphold, that it is not a bad idea to have it once-removed from policing.

The Chairman: We are the diplomats here, not you.

Mr. Beer: To be absolutely frank, if the information were coming directly into the hands of the police, the operation would clearly be more efficient and more effective. At the same time, it would be open to all sorts of abuse. That is one of the reasons that it will go, we hope, where it is proposed it go.

The Chairman: Questions have been asked about tax evasion. Is this not the opposite of tax evasion? When you legitimize money, you start paying taxes on it, do you not?

Mr. Seeto: In that case, yes.

The Chairman: It should pay for itself. We will go on to the next questioner.

Senator Tkachuk: I have a number of questions, some resulting from the comments that Senator Kroft made earlier, that the plumbing of the bill was fine. I am not sure what that means. In the Privacy Commissioner's annual report for 1999-2000, they express a number of concerns. One is around notification, collection and disclosure of clients' information. In other words, Senator Kroft, Senator Kelleher, or I have gone to a bank, where they decide that there is a suspicious nature to the transaction and it is reported. Are we told, even though in the end people say, "Well, you know, that is okay"? Is Senator Kroft notified that his information is being sent to the agency?

Mr. Seeto: The obligation of the financial institution to report to the centre can be communicated to the client. The institution could, for example, post signs, or make brochures available to clients describing what the reporting requirements are. In addition, the institute could choose to notify a client that it is reporting a prescribed transaction to the centre. Such a transaction could involve, for example, cash of the amount prescribed in regulations. However, the bill does prohibit anyone who makes a suspicious transaction report from disclosing that, or the contents of that report, with the intent to prejudice a criminal investigation.

Senator Tkachuk: Therefore the bank, or any financial institution, can simply say, "This is suspicious." Remember, there is a clause that gives more leeway than just a dollar amount, because maybe it looks funny or "smells" funny. In any case, the transaction looks suspicious

and is reported. However, the agency decides that this is a straight shooter and there is no problem with this transaction because they have investigated the individual's life -- sex life, banking records, employment history and everything else -- and have found nothing suspicious. What happens then? Is that person notified that he has been under this investigation, even though it has not been reported to the police?

Mr. Lalonde: Let us clarify for a moment.

This proposed agency has no investigative powers. Indeed, that was one of the criteria in developing the proposal.

Senator Tkachuk: We will get to that later, but answer the question first, please.

Is the citizen notified?

Mr. Lalonde: No. The citizen has all of his rights protected under the Privacy Act. Our bill does recognize that, but we should not expect, in the case of a suspicious transaction report made under clause 7, that the fact that a report has been made will be disclosed to the individual or to the client. The reasons are twofold. First, the effectiveness or the enforcement of the proposed legislation might be compromised were the fact of the report having been made divulged to the client. If the client happened to be involved in organized crime and had easy access to the fact that a report had been made, he would be able to determine under what circumstances future reports might be made. That would frustrate and undermine the enforcement of this proposed legislation.

Second, suspicious transaction reports are obviously made at the discretion, or "at the call," if you want, of a financial institution, a teller, or a compliance officer.

If an individual on whom a report is made had access to the fact that a teller, a compliance officer, or other particular individual had made that report, that might also undermine, frustrate, or compromise the enforcement of the bill. One might ask whether a compliance officer in a bank would feel comfortable making a report if he knew that knowledge of the fact could go back to the individual. He may fear for his personal safety in those situations.

When we are talking about other transactions that are reported under the bill, for example, the prescribed transactions, everyone knows that it is set out in the regulations that banks shall report these kinds of transactions. There is no secret to that and the individual will know that.

Similarly, when someone makes a declaration that he is crossing the border with $10,000 or more in cash or monetary instruments, he knows that a report will go to the centre. We are talking about reports on suspicious transactions made pursuant to clause 7. As I tried to explain, it would compromise the effectiveness of the legislation and undermine its purpose, were the fact of a report having been made disclosed to that individual.

Senator Tkachuk: There are two issues. If a citizen deposits $11,000 in a bank account, for example, he or she knows full well that that will be reported, even though the circumstance of the deposit is that the person owns a restaurant and has had a good day.

The person making the deposit knows that the transaction will be reported. However, he does not realize that it is being reported as suspicious. My question was not whether the person would gain some legitimacy from the fact that he is notified.

I imagine when the centre receives the report, they would do a criminal record check. According to this document, the Privacy Commissioner seems to believe that the centre could, in addition to the information pertaining to the individual's criminal history, amass information relating to employment, financial transactions, travel history, income status, and possibly even personal relations. Can the centre do that before it even reports to the police?

Mr. Lalonde: There are several issues here.

Senator Tkachuk: I would say so.

Mr. Lalonde: Aside from the reports, does the centre have access to other information? The legislation spells out that the centre could only enter into agreements in order to obtain access to police databases if it is relevant to money laundering. In other words, the information obtained from police databases must be relevant to the purpose of the bill, which is to deter and detect money laundering.

I think that the bill is clear as to whether or not the centre would have access to databases with completely extraneous information. The information must be relevant to the deterrence and detection of money laundering.

Senator Tkachuk: The fact that it is reported is automatic, right?

Mr. Lalonde: The report, yes.

Senator Tkachuk: The institution reports, the agency then investigates, right?

Mr. Lalonde: Yes.

Senator Tkachuk: Will it collect this kind of information? Are you giving me assurances that it will not collect this information, or are you saying it will?

Mr. Lalonde: It will collect reports.

Senator Tkachuk: From whom?

Mr. Seeto: The centre will be a passive recipient of these reports that are made in compliance with the proposed legislation. It cannot go back. For example, if a suspicious report comes from a bank and the centre believes that it is interesting, it cannot get more information about

the particular client from the institution. That would be exceeding its mandate under the proposed legislation.

Senator Tkachuk: What does it do?

The Chairman: If I may jump in for one second. You are getting me really confused.

Senator Tkachuk: Yes, I am confused.

The Chairman: Either you, or someone before you, said that the centre has no investigative powers. Now you are telling us that it does.

Mr. Seeto: They do not have investigative powers.

The Chairman: If you are amassing information, what are you doing?

Mr. Seeto: It could be to do data analysis. Perhaps it is terminology.

Mr. Beer: I think the word you are looking for is "analysis" as opposed to "investigation."

The Chairman: Come on.

Senator Tkachuk: How do you determine whether the police should investigate that transaction? Do you just get the piece of paper from the bank? Do you just decide you do not like his name, or do you do some investigation on that file of the kind the Privacy Commissioner is concerned about -- employment, financial transactions, travel history, income status, business or professional relations, and even personal relations?

The Chairman: Maybe you ought to do an investigation. I do not know.

Senator Tkachuk: I do not know that either.

The Chairman: Otherwise, what is the purpose of the centre? Are you just a numbers-gathering group? I hope that you are not, because to be efficacious you must do something.

Are you saying that the enforcement of your investigation, which you say you do not do, should be left to police agencies?

Mr. Beer: Could we jump in here?

Mr. Clement: Mr. Chairman, I think I can possibly help you out. I have probably read in the last five years, as has my colleague in the back, somewhere in the neighbourhood of several thousand suspicious transaction reports that were given to us.

I think that there is a misunderstanding of the term "suspicious transactions." They are suspicious because there is a bank manager in a small town who knows his clientele. Bank

managers are no different from us. We know our constituents very well. If an individual walks into that bank and does something totally out of the ordinary, after being a client for years, that raises suspicions. Therefore, they report a suspicious transaction.

I have dealt with many managers over the years at the local level, and in larger banks. They put these reports in because something is out of the ordinary. Most of the time it can be explained. It is not of a criminal nature. We are getting those kinds of reports today.

The other side of the coin is that there are quite a few cases of money laundering. For example, it was stated in the House of Commons in about 1992 that over $800 million flowed through one of the big six banks here in Ottawa that came from the contraband smuggling trade. Had it been a requirement to go through the reporting centre, those types of transactions would have been identified far sooner. We would have been able to take enforcement actions.

The Chairman: I do not want to interrupt Senator Tkachuk; nobody is taking issue with that part. All we want is some clarification. First we were told there was no investigation. Now you are saying there is a difference between analysis and investigation. Actually, I thought investigation was analysis.

Perhaps the centre should be able to investigate. I am simply saying that the bill is not very clear.

Mr. Intscher: Perhaps I could try to offer some explanation of what the centre will do with the information that it receives.

First, it will receive information from a wide range of reporting entities -- banks, trust companies, credit unions, cheque cashiers, currency exchange places, casinos, and so on. The centre will examine all of the data it has received from all of these different reporting entities to see whether there has been a similar report from another entity. The centre will determine if the individual about whom this report has been made is also the client of several other institutions where he or she may also be making transactions that are somewhat out of the ordinary. We would then also check the data with respect to reports on cross-border currency movement. For example, Mr. Blodgins, who is the subject of a suspicious transaction report at the bank, has also been the subject of a recent report on moving large amounts of currency across the border. In that case, we would look at all the data that we have received to see whether there is a pattern that suggests that there may be laundering activity going on, or whether the pattern is simply that of normal business activity.

In addition, the centre will be able to negotiate arrangements for access to certain databases maintained for law enforcement purposes. Thus, if we have received these reports and a number of them relate to an individual about whose transactions we are not clear, we may try to find out whether the CPIC database has information about this. If it turns out that this individual has been convicted of smuggling in the recent past, for example, that might raise our suspicions.

If we also have information from a foreign financial intelligence unit that this individual, or his bank account, has been associated with some activities that have come to their attention, we would add that to the picture. We would then make an assessment. Is it reasonable to suspect that there may be money laundering going on here? In which case, we would disclose the minimal amount of information, the "tombstone" information, to the appropriate law enforcement agency. We would inform them that Mr. Blodgins made this transaction at such and such an institution on such a date, and we suspect that it may involve money laundering. At that point, the analyzed information that we have collected would be filed, and the police would conduct the investigation. If the police develop a case that gives them reasonable grounds to believe that money laundering is occurring, or has occurred, they can then seek a court order to obtain the rest of our analysis.

Senator Tkachuk: On page 25 of the bill, paragraph 55(3)(b) is spelling out the relevance to investigating or prosecuting a money laundering offence by referring it to the appropriate police force, which is good, or:

(b) the Canada Customs and Revenue Agency, if the Centre also determines that the information is relevant to an offence of evading or attempting to evade paying taxes or duties imposed under an Act of Parliament administered by the Minister of National Revenue.

Returning to the concern that Senator Angus raised on this matter, you have definitely a tax role to play here, as well as a money laundering role.

Mr. Intscher: The trigger for any disclosure to Revenue, CSIS, or Immigration would be the determination that a particular transaction or series of transactions gives rise to a suspicion of money laundering. If, in addition to a suspicion of money laundering, we also suspect that there may be tax evasion, then we could make a disclosure to the Revenue agency.

However, if we have information about Mr. Smith and we think that he is not paying his taxes, but there is no indication of money laundering, we would not be able to disclose that information.

Senator Tkachuk: Maybe a lawyer could help me with this, but it states in subclause 55(3):

...has reasonable grounds to suspect that the designated information would be relevant to investigating or prosecuting a money laundering offence...

It seems to mean even if money laundering was not found to be a problem, you could say, "Maybe we should report this to the taxman." You can do that without money laundering being the problem.

The Chairman: Is it a fact that when you launder money, or try to launder money, it starts as illegitimate money? Otherwise, you would not be laundering it. If you have illegitimate money, does it not follow that you are evading taxes? Unless I have something wrong here.

Mr. Seeto: The two are often associated.

The Chairman: What do you mean "often"? Should they not always be associated?

Mr. Lalonde: I cannot say for sure. I would leave that to law enforcement to answer. Perhaps criminals want to maintain some air of legitimacy, and paying taxes may be part of that.

The Chairman: Are you telling me that drug runners who are paid in cash tell the government that they will pay tax on it?

Mr. Yvon Carrière, Senior Counsel, General Legal Services, Department of Finance: If you do not mind, I will start with the chairman's question and then come back to yours. You mentioned illegitimate money. The bill defines where illegitimate money comes from, and it talks about proceeds of crime. That is defined in the Criminal Code.

Proceeds of crime is defined as proceeds of drug trafficking, but also proceeds from other infractions, such as weapons trafficking, making an automatic firearm, and child pornography. However, tax evasion is not one of those infractions.

If your bank suspects you of depositing money from tax evasion, they do not have to report you under the bill. That is not laundering the proceeds of crime. However, if the centre, having received and analyzed the report, suspects you of money laundering, they will report you to the police. If they also suspect you of tax evasion, they can report you to CCRA. However, there must be both circumstances.

The bill is clear that there must be both reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of money laundering, and an additional determination that it is relevant to tax evasion. Thus, tax evasion alone is not sufficient grounds for the centre to report it to the CCRA.

Senator Tkachuk: For the centre to report it to the income tax agency?

Mr. Carrière: That is right.

Senator Tkachuk: That is not what it says in the proposed legislation, so I may be interpreting it wrongly. It says "or prosecuting a money laundering offence."

It seems to me that once you receive the information from a financial institution and you decide that there is no money laundering problem, but possibly an income tax opportunity, you can refer it to Revenue.

Mr. Carrière: When the bill says "would be relevant to investigating or prosecuting a money laundering offence," it must be "prosecuting a money laundering offence." Tax evasion is not a money laundering offence. It must be a money laundering offence, which I described as a drug offence, child pornography, arms trafficking, slavery, or along those lines. Tax evasion would definitely not be one of them.

The key subclause is 55(3)b), the provision from which you were reading, "if the centre also determines." "Also" means that there must be both money laundering and tax evasion.

Senator Tkachuk: You mentioned in your address that unauthorized use of personal information under the centre's control will be subject to penalties, including fines up to $50,000 and imprisonment of up to five years. To whom does that apply?

Mr. Carrière: That applies to centre employees, to people who have contracts for goods and services with the centre. In other words, it applies to everyone who has access to the information that the centre possesses.

Senator Tkachuk: They will be personally responsible for the $50,000 fine, and the government will not be paying for it?

Mr. Carrière: That is correct, yes.

Senator Tkachuk: Once the information goes to the police, does the same thing apply to them?

Mr. Carrière: No, the police are subject to confidentiality under their own legislation.

Senator Tkachuk: To get it out in the paper as soon as possible.

Mr. Carrière: They are also subject to the Privacy Act. Therefore, they could not reveal personal information about someone whom they are investigating unless, of course, it comes to a charge. That is dealt with in the act that governs the police.

Senator Tkachuk: Mr. Chairman, I still have many concerns about the bill. I have one more question, and then I will continue this line of questioning with other witnesses.

Does the government anticipate that social insurance numbers will be used to analyse and link data that you are pursuing in the centre?

Mr. Intscher: The short answer is no.

Senator Tkachuk: You can give an assurance of that. Thank you.

The Chairman: We will wind up with a short question from Senator Kroft, but I would just like to hear from you, Mr. Seeto, about this regulation item that was brought up previously. I want a letter telling me how it will be handled, because our committee is beginning to feel inundated by the entire question of regulations.

Frankly, we are not sure how to handle it, short of asking for an amendment that once a year your regulations must be tabled with this committee. I am not suggesting that that is what will happen. However, the only way around it that I can see is that regulations from the various

bills we get are tabled once a year. We do not have to have hearings on them, but if something sticks out like a sore thumb, we would certainly like to know about it.

Senator Angus: We would have the right to have hearings.

The Chairman: Yes, of course.

I would like to know what your department thinks about that idea. How would you handle it? Are we going to have a fight or find a compromise?

Senator Kroft: My question is very brief. Can you give us any estimates of the number of reports that you think would come to the centre in the course of a year? Would it be a hundred, or would it be 100,000, or would it be 10 million? Provide me with some sort of order of magnitude.

Mr. Intscher: That is an issue with which we have been grappling for some time. It has important implications for the kind of systems that we need to receive and analyse this information, and it is difficult to estimate.

We have looked at the experience of other jurisdictions, notably the Australians, the Americans, and the British. Those agencies report that initially there is a spike of suspicious transaction reports until the financial institutions get some indication of what the receiving centre would regard as suspicious. They then drop off and becomes a fairly stable number.

In the case of Australia, I think that in their first year of operation, they received 15,000 suspicious transaction reports. That then dropped to about 8,000 reports per year, and it has been pretty steady at that level. Those are suspicious transaction reports.

We have been trying to estimate, through consultation with the financial industry, what volume of cash transaction reports we would receive if we had a threshold of $10,000. Our guesstimate is that it would be in the neighbourhood of 2 million to 3 million per year. However, we are looking at ways of focusing that reporting requirement in order to get the number down a little.

We really can only guess with respect to cross-border currency reports. My intuitive feeling is that initially, we will get a large number of reports. People will then become aware of a reporting threshold for cross-border currency movements, perhaps $15,000. Many travellers will simply arrange their affairs in such a way that they are carrying that amount or less.

That has certainly been the experience in the United States, which has had a US $10,000 reporting requirement for quite some time. Most Americans travelling abroad will be carrying cash, money orders, or traveller's cheques under that amount. U.S. officials receive relatively few cross-border currency reports. I think it is quite modest for the United States. I think it is in the neighbourhood of several thousand reports per year.

Senator Meighen: I have a question of clarification for Mr. Lalonde. When you provide us with this chart that you kindly agreed to put together, could you indicate to whom an independent agency reports?

I have another question that I do not think has been answered. Is there a geographical preference as to where the centre should be located? Is it important that it be in Ottawa, for example?

Mr. Beer: I do not think it is important, given today's communications capability. Emerging trends will have an impact on where we deploy our resources to respond to information that comes to our attention. It is likely that we will focus, in the initial stages, on the major financial centres of Toronto, Montreal, and Vancouver. We will have to take a reading on the trends as they emerge.

The committee adjourned.

June 7, 2000 [Standing Senate Committee on Banking, Trade and Commerce]

Senator E. Leo Kolber (Chairman) in the Chair.

[English]

The Chairman: Ladies and gentlemen, we are here to continue hearings on Bill C-22. We are privileged today to have as our first witness Mr. Jean Spreutels, who is the president of the Belgian Money Laundering Centre.

Please bear in mind that one of the objectives of this bill -- I say only one of the objectives -- is to harmonize with the rest of the world, which apparently we have not yet done.

Welcome to Canada, sir. I understand that you have some remarks to make and that you will make them in French. Please proceed.

[Translation]

Mr. Jean Spreutels, Chair of the Belgium Centre on Money Laundering: It is a great honour for me to appear before your committee. I prepared the written text of my brief, but since I was unable to prepare an English version, because of a lack of time, the Canadian Department of Finance has very kindly proposed to provide the English version.

I am Deputy Attorney General of the Supreme Court of Belgium, but it is mostly in my position as Chair of the Financial Information Group that I appear before you today. This Group is the equivalent of the Centre for Analysis which the bill you are studying would like to create.

I was the president of the FATF (Financial Action Task Force) in 1997-98. Currently I chair an ad hoc group of the FATF dealing with countries and territories which are non co-operative and our responsibility is to put together a list of these non-co-operative countries in our continuing struggle against money laundering. This list must be created within the next two weeks.

I would like to deal with several points. First of all, I would like to speak of the scope of the phenomenon of money laundering and the need to combat it. Then, I will tell you about how the anti-money-laundering system in Belgium succeeded and the international context in which this system fits. I will perhaps spend more time, within the international context, on the importance of creating the obligation to declare suspect transactions and that such declarations should be made to a central independent unit. And I would also perhaps add a few words regarding the organizations and professions who have preventive mechanisms in place. And lastly, I would like to give you a brief description of the Belgian system which meets these two essential conditions, namely a system where a statement is compulsory where there is suspicion and the creation of an independent central authority or central service.

As to the size of the phenomenon and the need to combat it, all I can do is quote Mr. Michel Camdessus, then Director General of the IMF. In February 1998, he stated:

Money laundering has a negative impact on how markets work and therefore is a detriment to economic growth.

While of course keeping in mind:

... the social and political consequences of organized crime and of money laundering which result, the suffering of the victims and the general weakening of the social fabric and the collective ethic. It is therefore important to combat money laundering, by attacking criminal activities where they are the most vulnerable, in other words where these illegally obtained funds come into the financial circuit.

This illegally acquired money represents a vast amount which is difficult to evaluate with any precision, but which various experts set at between 500 and 1000 billion dollars U.S. per year. There has also been made mention of 2.5 per cent of the global gross domestic product.

The main sources for this money come from organized crime in all its forms, and not only drug trafficking, but also, since of course crime has diversified over time, from economic and financial crimes which have a tie to more traditional forms of organized crime. It is therefore an enormous mass which may well destabilize the world economy, have a negative effect on the redistribution of the money supply, infiltrate legitimate economic structures, and even -- because these sums are also source of corruption -- put certain political systems at risk.

Therefore, the dangers of this phenomenon of course attracted the attention of the international community, who intervened by adopting legislation which on the one hand, deals with the repressive aspect of incrimination, of the criminal offence of money laundering, of seizures, confiscations and, on the other hand, develops what we call a preventative aspect, because the

repressive side does encounter certain limits given the sophisticated nature of the money-laundering operations and their naturally clandestine aspects. Therefore, the preventative system quickly appeared to be the best way to preserve financial structures and to put an end to the exponential multiplication of money-laundering operations by early detection, at the outset, of these operations where they are principally using the financial sector and currently also other professions. We are seeing a movement of the money-laundering activities from the financial system towards non-financial professions.

My second point deals with the very real results of a system which has put in place the compulsory declaration of suspicion of money laundering, and created a central administrative unit which has an independent status and full autonomy, which would receive and then analyze the suspicious operations.

This is the Belgian system. Of course, one has to realize that we are dealing with a system in a small country whose means are limited. The system was implemented in 1993. It has been around for about seven years. Over this time, we have received 38,000 statements of suspicions from financial organizations and other people specified under the Act. These are not automatic declarations, but only statements of suspicion. A preliminary analysis must be carried out by authorities within the financial institutions or other professions concerned.

These 38,000 statements allowed us to open within our office, a little over 7,000 separate files. After analysis and discovery of serious indications of money laundering, the Group transferred 2,200 of these files to the prosecuting attorney, namely 31 per cent of all the files created. In terms of statements of suspicion, that represents some 62 per cent of all the statements. This demonstrates that there is good co-operation from the financial sector first, and now with the other professions concerned, and that these professionals and organizations are quite intelligent since 62 per cent of the statements which were sent to us were then tied to serious crimes as set forth in our legislation. The amounts involved in these cases which were then forwarded to legal authorities totalled 214 billion BF, which is a little over $7 billion Canadian.

The underlying forms of criminal activity in these files which were then conveyed to the authorities include 60 per cent of drug trafficking, which would appear to confirm the estimates made by other countries. It is not only a matter of drug trafficking; there are also other forms of organized crime, such as a variety of illicit traffic of goods or merchandise.

Of course, the legal system must then absorb this new caseload. I have the numbers for June 30 of last year. The courts and the tribunals, based on the files which were sent over by the Group to the prosecutor, brought down guilty verdicts in 184 cases. Therefore prison sentences were handed down, fines were handed down, and an amount equivalent to over 8 billion BF, approximately $240 million Canadian has been confiscated.

I can safely say that without this compulsory declaration mechanism to a central and independent authority, the vast majority of these crimes would have gone unpunished. Police statistics show that 90 per cent of money-laundering files in Belgium, which are dealt with by

police services, come from statements of suspicion which financial institutions and other people concerned by the legislation forward to us.

This system has not led to any useless supplementary costs or any disproportionate costs for financial organizations. On the contrary, it has allowed them to reenforce their internal audit system and thus to improve the detection and prevention of fraud, both internally as well as externally, of which they may be victims. No sector is currently complaining about any costs which would have stemmed from the implementation of the money-laundering system in Belgium, to the contrary.

From an international perspective, I must indicate that the first initiatives were carried out back in the 1980s when, for the first time, we requested active cooperation amongst financial organizations with authorities in charge of enforcing the law. The first text along these lines stem from the Committee in Basle, the committee dealing with the rules and practices of banking operations of which Canada is a member. And on this occasion, I would like to mention Canada's very active role in various international organizations which have led to a more systematic policing of the fight against money laundering. The main organization in the fight against money laundering, namely the FATF, as you know, stems from the G-7 which put together 40 recommendations. On the international scene I could also mention a European directive of 1991 which basically repeated for a European Union context the 40 recommendations of the FATF.

The FATF is actually comprised of 26 States and independent territories and two international organizations. Three new members will belong to it as of the end of the month: Argentina, Brazil and Mexico. Of course, all these countries have to subscribe to the principles of the FATF, but they are not the only ones. I can mention, without giving a complete list, the member States of the Commonwealth. I believe that there are 52 of them, even if there is an overlap at times. There are 10 States within the Extraterritorial Banking Authority Group, 11 member States of the Black Sea Economic Cooperative, 11 members of the Caribbean Financial Action Group, 22 members of the Council of Europe Select Committee on the Evaluation of Anti-Money-Laundering Measures, and 17 countries of the Asia-Pacific Group dealing with money laundering. The list is incomplete because we would also have to mention the initiatives adopted by the CICAD, the Inter-American Drug Abuse Control Commission, stemming from recommendations of the FATF, within the OAS which has 33 members.

Therefore it goes much further than simply the United Nations -- it has a truly global scope -- and we are preparing a convention against organized international crime which will contain a certain number of measures in the fight against money laundering which will be drawn directly from FATF recommendations and which include the obligation to identify clients and economic areas, the registration of financial operations, the creation of a central service for the collection, analysis and information dissemination, the compulsory declaration of suspect declarations to this service as well as co-operation and exchange of information between the various services working in this area in all member States of the UN. This convention is being negotiated in Vienna for the time being, and it seems to be moving along well and will soon apply throughout the world.

This all goes to show that there is currently a large number of countries who have subscribed to the rules considered to be a minimum when trying to fight money laundering. The FATF took the initiative with regard to the cooperative States, and that is the ad hoc group that I chair for the time being. Amongst the criteria that have been established whereby we considered a State as non-cooperative, and again it is not an exhaustive list, you have to take into account how all the systems work. Amongst these criteria, there is the lack of the compulsory nature of declaring suspect transactions and the lack of centralization of these statements within a central body. These criteria also apply if one wants to become a new member of the FATF and for the time being, three countries are being evaluated.

I would like to underline the crucial importance of a declaration of suspicion. It is at the very heart of the international instrument that I have just mentioned, not only for the FATF. I could also have added the United Nations Commission on Narcotic Drugs and Interpol, as those organizations also insist on that criteria. The FATF has evolved since 1996, because what was once an option has now become compulsory.

It is also the case in a new model of legislation on money laundering and the proceeds of crime established in 1998 by the United Nations Program to eradicate the international drug trade. Obviously, the system does bend the principles of discretion or of professional secrecy of financial organizations, or even where it exists, banking secrecy.

I think -- and I am not the only person who says so since I have given you a list of all the States and international organizations who have also made statements along the same lines -- that it is one of the principal models, if not one of the only ones currently available, which can expeditiously counteract these increasingly complex operations. You have to have as much of an overall view as possible of the phenomenon. The fact that this mechanism has now become compulsory is without a doubt the best way to ensure that there is equity among the clients of the organizations, who can no longer make arbitrary decisions as to whether such and such a file should be sent on.

Any suspicious operation must be reported, an obligation whose effectiveness is guaranteed through a sanction mechanism which, according to the country, can be either criminal or administrative. Finally, this mechanism for the mandatory reporting of suspicious operations requires the creation of a body to process the information. In order to be effective as well as legitimate, and by that I mean in order to offer the greatest protection for the privacy of the various organizations' clients as well as fundamental freedoms, this agency must be independent in its management and especially in the decision-making process.

These are the conditions that are required so that trust may be established among the organizations, the people operating under the law, and the body that collects and analyzes the declarations of suspicion which act as a filter, so that only the serious cases of money laundering arising out of serious criminal activities will be reported to police and the justice system.

I might add that the Canadian bill seems to offer the greatest protection in terms of freedoms and privacy, and is also quite strong in the autonomy and independence to be granted to the

centre that will be created. The one example I will quote is the fact that it prohibits the search of the analysis centre and will allow police access to the information held by the centre, with a warrant, only under the conditions set out in the Act. The same applies to the guarantees of solicitor-client privilege for legal advisors and lawyers. This is also becoming more and more common among the related international instruments which affect not only financial institutions but also the non-financial professions, particularly the legal and accounting professions.

The FATF made a statement to this effect in 1996. The European guideline is being renegotiated at present. Its jurisdiction will be deliberately extended to professions such as securities brokers, real estate professionals, casinos, as well as those in the accounting and legal professions, including lawyers. Of course, we must not single out the lawyers, but they must be included when they act on behalf of clients in financial dealings. We have no intention of affecting the fundamental role of the lawyer in exercising the right to a defence. I am now ready for your questions.

[English]

Senator Kroft: We appreciate your coming so far to help us with this bill.

I have two or three unrelated questions. When you spoke of the amounts of money involved globally in these transactions that lead to the need for this response, I think you used figures of $500 billion to $1,000 billion U.S. per year. Forgetting whether or not we are internationally using the zeros in the same way, it is a lot of money.

You talk about the ability of that amount of money to destabilize economies or governments. It is a very frightening prospect. Would you have any comment on how coordinated or organized that money is? It is one thing if all that money is under the direction of one person, one board of directors or one family, but is there not some overstatement of the threat? Is it not a statistic that is drawn from such a vast, diverse number of transactions that the threat sounds worse than it is? In other words, how organized are the bad guys? I will leave it at that and go to another question when I have a response.

[Translation]

Mr. Spreutels: I fear that the criminal groups are well organized and perhaps the increase that we are detecting is only the tip of the iceberg. The figures that I gave you come from the International Monetary Fund, but they have been corroborated through other studies. For drug trafficking alone, the annual amount that is laundered is estimated at between 300 and 500 billion American dollars. According to a recent United Nations report on the offshore accounts, of the $5,000 billion deposited in tax havens, it is estimated that 500 to 800 billion dollars come from organized crime. This is from a recent 1999 United Nations report. That is what they call the black hole of the world economy.

[English]

Senator Kroft: Thank you. The other question I have is rooted in my overwhelming concern, a concern that I think most of us share, granted there is a problem, regarding the appropriateness of the response in terms of the question of civil rights and privacy, the collective issues of individual rights. You have pointed out that this seems to be a protected statute.

Take Belgium as an example for a sort of comparative law question. We have our Charter of Rights and Freedoms, which protects these rights. To the best of your knowledge -- and this is perhaps an unfair question -- would you say that the legal environment in which you work is more sensitive or less sensitive to these issues? I am trying to judge whether, if your experience is good and non-problematic, it is because your threshold of concern in Belgium may not be as high as ours is in this country on matters of individual rights. I appreciate that it is an awkward question and I hope you have been able to discern what I am getting at.

[Translation]

Mr. Spreutels: Yes, and I might also tell you that I am also, incidentally, a professor in comparative criminal law at the Université de Bruxelles. In that capacity I compare the various legal systems, whether they be common law or continental. I think I can say that if the legal mechanism is different, the practical result is quite similar. What I mean is that in Belgium, fundamental rights, including the respect for privacy, are part of our Constitution.

Moreover, we are signatories to the European Convention on Human Rights, the Convention of the Council of Europe, which, in clause 8, also provides for the protection of privacy. This protection is guaranteed through the remedies that can apply, not only with respect to domestic law, but also international law, involving courts and tribunals, in particular the Cour de cassation of which I am a member.

And that is not all, because we also have laws that are much more specific, for example, those that protect personal information. We also have wiretap legislation, but with respect to personal data, or data bases, we have a law which created a privacy commission which, I believe, is very close to your Privacy Commissioner here, and which also exercises control. It is a control which is indirect.

I believe the same thing applies here also. If the citizen does not have direct access to our data, he is entitled to file a complaint with the Privacy Commissioner who can determine whether or not our system complies with the protective legislation.

I will admit that the system we now have is born of compromise, but also of balance. Moreover, in Belgium, we have managed to strike such a balance by setting only two conditions for imposing the active co-operation of individuals or private undertakings such as banks and other professionals, which, consequently, affects the privacy of their clients.

First of all, we can only fight against serious criminal activities, and not simple tax fraud. The second guarantee is that we created the group for processing financial information, with its independent status. It acts as a filter that only releases those cases where a clear link with

serious forms of crime covered by the law have been established. This information is sent only to the prosecuting authorities -- not administrative or taxation services. I think that is the only condition that will give us a well-balanced system.

[English]

Senator Kelleher: Thank you for coming this long distance. I am somewhat interested in money, other than money laundering. Could you tell us if you have any idea what it cost to set up this commission and what are the annual operating expenses of this commission?

[Translation]

Mr. Spreutels: Yes, it varies according to the country. However, in Belgium, the total administrative cost for the unit is 60 million BF. That is not very much.

[English]

Senator Kelleher: What type of transactions must be reported by the various financial institutions and financial intermediaries?

[Translation]

Mr. Spreutels: On the one hand, in cases where financial organizations or brokers are certain that the transactions involve money laundering, but that is very rare, and second, transactions that are suspected of involving money laundering.

The operation must be suspicious. It results from an analysis made by the designated money-laundering specialist in each financial organization. The analysis is based on whether or not the operation appears normal, as well as on the organization's client profile or on certain characteristics of the operation. We have managed to determine a profile of operations related to drug trafficking with the Netherlands or with Russian organized crime, for example, which is active to a certain extent in Belgium. We therefore have criteria allowing us to determine whether or not an operation is suspicious.

For the casinos, we have a system for automatic reporting. A list of indicators has been established -- which can evolve and be revised -- through which the casinos must report all operations that meet these criteria. Other organizations and individuals are themselves responsible for reporting.

[English]

Senator Kelleher: Does your legislation set out criteria and examples of what would constitute a transaction that should be reported?

[Translation]

Mr. Spreutels: For casinos, yes. For other financial institutions and financial intermediaries, no. Of course, we work closely with the professional associations involved and representatives of the various sectors to develop guidelines, lists of suspicious transactions and classification systems that vary from one sector to another, and are constantly changing, in keeping with the ever increasing knowledge that we are acquiring of the phenomenon.

We therefore take into account the classification work done by the FATF and by other international organizations. We have our own files, we conduct discussions with representatives from the sectors involved, and they are the ones who are responsible for communicating to their members the criteria that may be used to determine whether or not a transaction is suspicious.

[English]

Senator Kelleher: If I were a lawyer practising in Belgium and entered the role of a financial intermediary and felt it was necessary under your legislation for me to make a report, is my client informed, or do I have the right to inform my client, or does he remain uninformed about my making a report?

[Translation]

Mr. Spreutels: It is a very widely accepted rule, in all the international instruments developed to combat money laundering, including the FATF recommendations, that intermediaries may never inform their clients that they have reported a suspicious transaction. This is a rule that is found universally in all systems that suppress money laundering, and I think that it is an easy one to understand.

Currently, in Belgium, the system does not yet cover lawyers. We are waiting until completion of the amendments to the European directive that applies expressly to lawyers when they are acting as financial intermediaries. When this is the case, lawyers who discover a laundering transaction and are not retained to defend their client in court, will, like other financial intermediaries, have an obligation to report the transaction to the analysis centre and will not be able to inform the client that it has been reported.

[English]

Senator Kelleher: I have one further question. Under our proposed legislation here in Canada, once a report is made, let us say by a lawyer fulfilling the function of a financial intermediary, and the government agency or the commission or whatever you want to call it determines that they need more information and they want to pursue it, they would have the power here to enter, inspect and make copies of the records of the financial intermediaries without a warrant. Of course, that is causing a great deal of concern for lawyers because they feel it infringes upon the solicitor-client relationship. Have you any comments with respect to that? Are you going to produce similar legislation in Belgium?

[Translation]

Mr. Spreutels: In the current Belgian system, people who enjoy a legally approved professional privilege must report transactions to the centres spontaneously. This includes, for example, the public notaries mentioned in the Act or the "réviseurs d'entreprise," that is, the statutory auditors or external accountants, as well as other people to whom professional privilege applies. However, they have no obligation to answer complementary questions that are asked by the centre.

Those who are entitled to exercise professional privilege may remain silent when asked to testify in court if they believe that the information is legitimately covered by professional privilege. Therefore, they make a judgment. However, the law says that they are not infringing on professional privilege by conveying this information, by reporting to the analysis centre. Consequently, reporting is mandatory, but responding to a question put by the analysis centre is optional and left to their judgment. On the condition, of course, that professional privilege is not abused.

[English]

Senator Kelleher: Would that apply to records of the lawyers as well as talking to them? Would they have access to the lawyers' papers and records?

[Translation]

Mr. Spreutels: They have access only to the documents related to the transaction which they themselves spontaneously reported as suspicious.

[English]

The Chairman: I think there is a little confusion with regard to what the centre would have the right to do. We will try to get that clarified later. It does not appear that it would have the right to go in without a warrant. It would have the right to determine whether the institution was in compliance. I cannot explain the difference, but that is a question we should ask of someone else later on.

Senator Kelleher: It is my understanding that this would apply to a lawyer in the role of a financial intermediary.

The Chairman: I do not want to debate it now. We will get someone to elucidate that matter later.

Senator Furey: I also wish to thank you for being with us today. I want to return to the line of questioning begun by Senator Kelleher. Could you explain further the setup of the agency? Is it a stand-alone agency? Is it affiliated with existing enforcement organizations? How many people and of what type are employed there?

[Translation]

Mr. Spreutels: It is an independent administrative body that is under the external control of the Ministers of Justice and Finance, so that there is dual oversight. It is an external control in the sense that the ministers or departments cannot interfere with the agency's decision-making process. The agency's executive, which makes its decisions as a group, is made up of six people. Three members come from the judiciary -- these are public prosecutors who are seconded to the agency -- and the other three are financial specialists who usually come from organizations that oversee the financial sector, for example, the commission that oversees the banks or the agency that monitors the insurance sector. We have a staff of 20 officers, including nine analysts. We have three permanent liaison officers who are seconded from the major police forces, who are subject to professional privilege, and we have agency members and staff who work as contacts with police forces.

[English]

Senator Furey: My next question pertains to what you do with the information you receive. For example, when a bank reports suspicious activity to your agency, what do you do with that report? I am wondering whether it is analyzed internally or whether you use external people to assist in analyzing the information you receive.

[Translation]

Mr. Spreutels: No, it is all analyzed internally by our staff and by ourselves. We have powers that are not the investigative powers of a police force, but powers that allow us to obtain information. We have the authority to ask any financial organization composed of people mentioned in the law for any additional information in their possession. As far as professional privilege is concerned, there is the exception that I mentioned earlier.

We can also request any information we think would be useful from the Belgian police forces, from any government administration, including the Finance Department, and, therefore, tax authorities. However, we cannot provide any information to either police forces or tax authorities. We can also have access to certain information that is provided for the agencies that oversee the financial sector.

Finally, we have developed bilateral co-operation mechanisms with similar foreign agencies, including a whole series of guarantees. To date, I have signed 25 co-operation agreements with similar foreign bodies. From all of this financial, administrative and police information that we process ourselves, without conducting field investigations or questioning the people involved, we determine whether or not a connection exists between the financial transactions and the serious crimes covered by the legislation. If we have serious reasons to believe so, we must then transmit the file to the authorities responsible for prosecution.

[English]

Senator Furey: You initially do an internal investigation or analysis, but you have the legislative authority to go beyond that and speak to outside agencies.

I am not sure whether you said there were 38,000 declarations of suspicious transactions since 1993 or in 1993. In any event, I am more interested in the breakdown.I believe you said that 31 per cent of those files went nowhere and 62 per cent of those declarations determined criminal activity. Did I hear that correctly?

[Translation]

Mr. Spreutels: Yes, there have been 37,000 reports since the agency was created, in just under seven years. We do not have an automatic reporting system. These were there for all the transactions that were deemed to be suspicious by the financial organizations themselves. So 62 per cent of the reported transactions were handed over to the prosecuting authorities, and the others were filed away at the agency. This means that we closed our files. Of course, we can always reopen them if ever we receive additional elements. Among our sources, we now have a huge internal database that allows us to cross-check information within the agency, without having to use databases from other institutions.

[English]

Senator Furey: If you make within the agency a determination that 31 per cent of these files are going to be closed, are the clients notified they have been investigated?

[Translation]

Mr. Spreutels: No, but we do advise the financial organizations. We notify the people who reported the transaction that we have closed the file, but that this may only be temporary and they should therefore remain vigilant in case they ever discover more suspicious transactions connected to the same client. We do not clear the names of these clients ourselves, but we nevertheless provide some feedback to the people who reported them to us.

[English]

Senator Furey: Surely, you would find information that would indicate that at least some of them, let us say a very small number, were innocent transactions and had innocent explanations so that they would in fact be closed.

When you send it back to the reporting institution, it would be highly unlikely, I would suggest, that the reporting institution would notify the client. Therefore, an innocent client who has been investigated has no way of knowing that they have been investigated. Is that what you are saying?

[Translation]

Mr. Spreutels: I do not see what such a client would gain by knowing, because nothing has happened and everything stays within the agency, which is an intermediary. That is precisely one of the safeguards given to clients of financial institutions, thanks to the creation of a

sealed-off agency that acts as a filter, because if the transaction was reported immediately to a conventional agency, similar to a police force, an innocent client would have a police file and traces would always remain. Whereas now, the information remains solely within this agency and does not go farther.

[English]

Senator Oliver: Are you familiar with Canada's Charter of Rights and Freedoms? If you are, are you aware that lawyers in Canada have a responsibility when a client comes in to see them, say on a commercial transaction or a securities transaction, to keep much of that information confidential so securities information does not leak out and offend securities rules, like the stock exchange?

Are you aware that, in addition to the obligation for confidential information, lawyers also have obligations regarding privileged communications? When a client tells the lawyer or the financial advisor certain information, he or she has a right to know that that information will remain confidential and privileged. Are you aware of that rule applying to the professions in Canada?

[Translation]

Mr. Spreutels: This rule is exactly the same in Belgium.

[English]

Senator Oliver: You have referred to the Canadian statute. Clause 11 of Bill C-22 says that nothing in Part 1 requires a legal counsel to disclose any communication -- the word is "communication" -- that is subject to solicitor-client privilege. Communication does not include an activity; it does not include a transaction, as in "every prescribed financial transaction" from clause 9; nor does it refer to confidentiality. That being the case, my question to you as an expert and as a lawyer is this: Do you think that the language in clause 11, dealing only with communication, is broad enough to protect accountants, lawyers and other financial intermediaries who are dealing with something like a securities transaction?

[Translation]

Mr. Spreutels: You are referring to clause 11, which says that "Nothing in this Part requires a legal counsel to disclose any communication that is subject to solicitor-client privilege"?

[English]

Senator Oliver: Yes. I am talking specifically about the word "communication."

[Translation]

Mr. Spreutels: I see that this word is not contained in the French version of the text.

[English]

The Chairman: Could someone tell us what the French version says? Senator Oliver, do you have that there?

Senator Oliver: Yes, I have. The French translation is on the right and it talks about a secret professional, a judicial counsellor.

My submission to you is that the language in the English version is not substantial or broad enough to protect lawyers, accountants and other financial intermediaries from the burden of confidentiality and privilege they have by virtue of their professions.

[Translation]

Mr. Spreutels: I greatly fear that I am not competent to undertake such a detailed analysis of the proposed system, which is very complex, very balanced also, and which contains a whole series of safeguards. However, when I first read the clause in French, I had the impression that this notion of solicitor-client privilege seemed sufficiently clear.

[English]

Senator Oliver: It does not refer at all to confidentiality.

To go to a separate area, a different kind of question, in the Canadian statute the threshold for accountability is $10,000. What are your comments as to the appropriateness of that threshold, whether it is high enough, too high, or too low?

[Translation]

Mr. Spreutels: I believe that this is the threshold over which a client must be reported, in the case of an occasional client. This figure is perfectly in keeping with the provisions of the laws of the European Union member states.

[English]

Senator Oliver: How much is it there?

[Translation]

Mr. Spreutels: It is 10,000 euros.

[English]

Senator Oliver: When you made your opening remarks, and before Senator Kelleher asked you questions, you said that lawyers should not be covered comprehensively. Then when

Senator Kelleher started asking you questions about the client-solicitor privilege, you did indicate that when they function as financial intermediaries, lawyers should be covered comprehensively. I find that a contradiction. Perhaps you can assist me by explaining what you meant.

[Translation]

Mr. Spreutels: The profession of a lawyer and the social role of the lawyer are very complex things. I think that everyone realizes that it will not always be a simple matter to distinguish between the lawyer who is acting as a financial intermediary and the lawyer acting as counsel in defending the client before the law.

In this regard, a key role must be played by the disciplinary authorities for lawyers, and therefore the lawyers' associations that should participate in them. This will be the case in Belgium, where they will cooperate very closely in formulating this legislation and, above all, in applying it, so as to ensure that such a provision does not lead to breaches. The solicitor-client relationship is one of the pillars of our democratic system; on the other hand, however, a democratic society cannot permit a profession that acts as a financial intermediary to be the missing link in a system to protect against laundering the proceeds of crime. It is not easy. We have to achieve a balance and I believe that the good will of all the parties will be essential.

[English]

Senator Kroft: My supplementary is directly on this point. I would ask your opinion in summing up Senator Oliver's and Senator Kelleher's inquiries. Since your centre was established, have you generally satisfied the public and the profession that a line has been drawn successfully between lawyers as financial intermediaries and lawyers as counsel, lawyers as lawyers? Is that a contentious matter? Would you say it is an ongoing problem? How would you characterize your success in this area?

[Translation]

Mr. Spreutels: I believe that this balance has been achieved with respect to the professions that are currently covered by the law, the professions which exercise professional privilege like public notaries or some accounting professions, which in the beginning had also set out some obligations in principle with regard to their inclusion in the system. In fact, it was thanks to the cooperation of the professional associations and the close contacts that we maintained with them that we achieved a balance. Now I no longer hear any complaints about the system. As for lawyers, I cannot tell you anything because they are not yet part of the system in Belgium.

[English]

Senator Wiebe: This question could be a supplementary to the questions of Senator Kroft and Senator Oliver. It could be based in part on my understanding of the translation. In your opening remarks, you mentioned that Bill C-22 is the most highly protective of privacy and

civil rights. Did you mean that in comparison to legislation that you are aware of in other countries?

[Translation]

Mr. Spreutels: Yes, absolutely. I was very impressed in particular by the provision that states that no search warrant may be issued for the centre, thereby providing special protection for the confidentiality of the very sensitive data that the centre must maintain. Moreover, as part of an upcoming review of the Belgian law, as a result of the amendment of the directive, I will be urging my government to introduce a provision of this type into our system, so as to strengthen the protection and the privacy of the information available to the centre. Actually, it was after a comparative study of the other laws.

[English]

Senator Wiebe: From your experience, do you feel that the bill's highly protective nature regarding privacy and civil rights will hinder or complement the effectiveness of the legislation?

[Translation]

Mr. Spreutels: No, I think that this would rather contribute to its effectiveness inasmuch as, thanks to this enhanced protection, there will be a relationship of trust between the financial institutions, the other people covered by the legislation and the analysis centre. In my view, it is a way of ensuring its effectiveness.

[English]

Senator Tkachuk: You mentioned earlier the budget of 60 million Belgian francs to operate the centre. You also talked about the number of employees who were seconded. When an employee is seconded from the police or from other departments is their salary paid by the department from which they were seconded or is it included in the 60 million Belgian francs?

[Translation]

Mr. Spreutels: Yes, I believe that each national system has its own institutional arrangements. It is hard to transpose one system to another with regard to such practical considerations. Since we are highly autonomous, we recruit our staff members ourselves and we pay them ourselves, out of our budget. However, the salaries of the agency's board members, including myself, a member of the judiciary, are paid by the government and do not come out of the agency's budget. Similarly, the police officers who are seconded to the agency remain on the payroll of their original police force.

[English]

Senator Tkachuk: So the police officers and the people who work directly for the board are paid from outside of that budget. What is that expense? If all were paid out of the same budget, would the budget need to be twice as big or three times as big or 50 per cent bigger?

[Translation]

Mr. Spreutels: No, it is quite insignificant because, apart from the three prosecutors who are seconded to the agency and work full time -- although I personally do not work full time, although my colleagues do -- the other staff members are part-time employees and only attend meetings. There is one meeting per week, during which we make decisions as to closing files, transmitting files or collecting additional information. It would be unreasonable to charge the total salaries of these people to the agency's budget because they also have other duties. As for the three police officers, I believe that it is very insignificant in relation to the total budget.

[English]

Senator Tkachuk: You have been in operation for seven years. You said that 38,000 of those pieces of paper have rolled into your office. What percentage would have been referred to the police? What percentage of that amount would have been prosecuted successfully?

[Translation]

Mr. Spreutels: The 38,000 reports of transactions were grouped together in 7,000 files because many reports may deal with the same person, the same company, the same case. We therefore processed 7,000 files. Of this number, 1,800 were referred for possible prosecution. I do not yet have the most recent figures for the past year, which will not be available until the end of the month, but the judicial outcome was 180 convictions. However, there are still at least 100 cases that were sent to court but have not yet been tried.

Occasionally legal proceedings are dropped. But, in the majority of cases, the investigations are still under way because they are generally of a complex nature. As you are well aware, these are never very simple cases, justice is slow and investigations are slow too. There are often international connections in these investigations, which also slows them down. For the time being, I am pressing the government to take more effective legal action on the files transmitted by the agency. This is also part of the new security plan that the government adopted only last week.

[English]

Senator Tkachuk: I believe that that would amount to about 26 successful prosecutions per year, on average, from your department alone. That does not take into account people that police outside of your agency may have caught using the banking system to launder money. How many would have been caught without your agency?I am wondering whether the agency is necessary. The agency is catching only 26 per year and only looking at 1,800 files. Surely many of those files would have exceeded 10,000 euros, which means that they would have

been sent to the police in any event and the police would have investigated them without your agency. I am wondering how many could have been handled otherwise.

[Translation]

Mr. Spreutels: No. I would like to remind you that we do not have an automatic reporting system for suspicious transactions. A transaction does not have to be reported to the agency just because it exceeds 10,000 euros. The 10,000-euro threshold applies only to identifying clients. What we receive are only the transactions that financial organizations, after conducting their own analysis, consider as suspicious, regardless of the amount. There are a number of systems existing in the world. We have one which is not an automatic reporting system.

The figures that I cited refer only to files that were opened by the agency in response to a report of a suspicious transaction. Of course, the police opens other money-laundering files, because the police may have knowledge of offences from other sources. The police unit that specializes in fighting money laundering indicated in its last annual report that 90 per cent of the investigations carried out by the specialized police unit were initiated by files transmitted by the agency.

Let me also add that the advantage of a central agency is that it is able to specialize in one particularly difficult area and thus acquire expertise that a regular police force would not necessarily be able to acquire. When we send a matter to prosecution, all of the financial information in the file has already been analyzed. That greatly facilitates the work of the police.

[English]

Senator Tkachuk: How many successful prosecutions for money laundering did you have per year before your agency was set up?

[Translation]

Mr. Spreutels: Money laundering became a criminal offence in Belgium in 1990. The preventive system of reporting suspicious transactions was put in place in 1993. I think it would be fair to say that over this period, no one was found guilty of money laundering in Belgium.

[English]

The Chairman: Thank you, Mr. Spreutels, it was very kind of you to be with us.

Our next witnesses are from the Certified General Accountants Association of Canada.

Mr. Everett Colby, Colby & Associates and North American Forensic Accountants, Certified General Accountants Association of Canada: I am a certified fraud examiner as well as a certified general accountant. I own both Colby & Associates and North American

Forensic Accountants. With me today is Dawn McGeachy, GCA, who is the manager of the public sector with CGA-Canada. I should like to thank you for having us appear before the committee today.

The Certified General Accountants Association of Canada is a prominent, respected, self-regulating professional body responsible for the education, certification and professional development of over 60,000 certified general accountants and CGA students in every constituency in our country. Many of our members provide accounting, taxation and related services to individuals and businesses of all sizes, especially small and medium-sized businesses. Others occupy financial, administrative and policy positions in governments, financial institutions and not-for-profit organizations.

CGA-Canada is charged with ensuring that our members adhere to the highest standards of professional conduct. As you know, we also regularly appear before parliamentary committees to address public policy issues of concern to our membership and to provide our expertise to policy-makers such as yourselves whenever appropriate.

We are pleased to advise that, in principle, CGA-Canada supports the initiatives contained within the proceeds of crime bill, Bill C-22. We recognize that money laundering and the cross-border movement of proceeds of crime are becoming increasingly difficult to deter and detect and that traditional means of investigating those activities are proving less effective. The proposals in the bill will provide Canada's law enforcement agencies with the tools they need and access to valuable data that they may not otherwise be able to obtain. However, our association has four specific concerns with this bill.

First, we suggest that some of the ambiguous wording contained in Part 1 of the bill could lead to broad interpretation beyond what is intended. For example, clause 5 of the bill states that the legislation will apply to 12 different kinds of organizations as well as their employees. It also provides that it will apply to persons engaged in a business or profession described in the regulations. While we understand that this is meant to include accountants, it does not specifically state so, as the regulations are also ambiguous and do not specify what professions are included.

Further, clause 7 addresses the requirement to report suspicious transactions. We would like to suggest, as we have in other committees, that the clause be revised to more properly reflect the true intent: namely, its application to a professional who is involved in the business of transacting monies or acting as a financial intermediary.

Our analysis of the backgrounder to the legislation and of the consultation paper has identified the potential misunderstanding that entities and individuals acting as financial intermediaries, such as lawyers and accountants, will be required to report any financial transactions that they have reasonable grounds to suspect are related to a money laundering offence merely by becoming associated with the information and not necessarily being involved in the transaction. The consultation paper says that clause 7 requires every person or entity subject to Part 1 to report to the centre every financial transaction where there are reasonable grounds to suspect that the transaction is related to money laundering. We understand the intent. That has

been brought to our intention before. However, this wording is broad enough that it could apply to those situations where we are merely associated with the information and not necessarily involved in the transaction.

The Chairman: Please explain to us what "associated with the information" means.

Mr. Colby: For example, if I prepare financial statements for a company, I am associated with that information even though I may not have acted as a financial intermediary in any way with that company on a financial transaction. Accountants in general are typically viewed as being associated with the information if they audit it or prepare tax returns.

A more precise presentation would ensure that the wording limits the reporting requirement to professional accountants like CGAs who are directly involved in the actual transaction, which is what we understand the intent of that section to be.

Second, we are concerned with the receipt and management of information being provided to the centre. The bill does not provide for the establishment of regulations regarding criteria for determining what are reasonable grounds to suspect money laundering. Rather, the consultative paper states that the centre will develop guidelines to assist reporting entities to identify characteristics and circumstances that might lead to a determination of reasonable suspicion. The paper further states that the information to be contained in these reports and the means by which the reports are to be transmitted to the centre will also be prescribed by regulation.

As this leaves much to the unknown, we are left with the impression that something will now be designed and then imposed, and we will just have to trust that the reporting system will be an efficient and cost-effective process. The bill implies that it is the responsibility of the professional to determine whether a particular transaction is suspicious. Accountants will be called upon to exercise considerable judgment in recognizing whether a transaction is in fact a money laundering transaction as contemplated by the bill.

We recommend that the legislation include actual regulations rather than simply provide guidelines regarding specific criteria for determining those characteristics and circumstances that might lead a professional to conclude that there is a reasonable suspicion. In circumstances where we are leaving it up to the judgment of hundreds of thousands of individuals, how can the provisions for failing to report be enforced against someone who has exercised their judgment if their judgment differs from that of the centre?

Part 5 of the bill addresses defences and protections available under the legislation.

The Chairman: As a forensic accountant, what would your criteria be for a suspicious transaction?

Mr. Colby: Due to my expertise and work experience, I have worked on cases involving money laundering. I also have a banking and investigation background in the United States. Therefore, I am quite familiar with those situations. The average accountant who typically

prepares financial statements, tax returns and the like will not have the specific training and background to enable them to recognize suspicious activities such as repeated transactions or multiple people presenting cheques payable to one company that is unknown to them. Those of us who are familiar with what constitutes suspicious activity would not have a problem with that.

Our organization alone has a membership of 60,000. There are, in addition, the Institute of Chartered Accountants and the Certified Management Accountants Association. All those professionals will not have the same level of expertise. Therefore, there will be several hundred thousand people exercising different judgments than would you or I. This bill leaves matters to their judgment. It seems to me that it would be difficult to enforce the provisions against failing to report if it is left up to their judgment and the judgment of the centre is different from theirs. It becomes a difference of opinion. If the criteria were specifically regulated, that would provide to the professionals untrained in that area a measuring stick by which to judge whether those transactions constitute suspicious activity.

Senator Kolber: Are you willing to suggest some measuring stick?

Mr. Colby: I would suggest that the Certified General Accountants Association of Canada is more than happy to assist the Department of Finance, the Department of Justice and whoever else may be involved in establishing those regulations. We would absolutely want to be part of that as we are one of the main professions affected by this legislation.

I will continue in regards to the defences and protections available under the legislation. While we recognize that clause 10 provides a general immunity provision, we are apprehensive that this may prove ineffective within the context of a civil or professional disciplinary proceeding. The Certified General Accountants Association has already had to propose amendments to our own code of ethics and rules of professional conduct to allow us to comply with this act.

There are various elements of the required reporting. We believe there needs to be a "safe harbour" provision for those professionals who, in good faith, do submit a report, as required by the act, regarding a conclusion of a suspicious activity that later proves to be unfounded. Although we are obligated not to report to the client that we have reported, and the centre theoretically would never say to them that a report has been made, we have all seen many examples of information leaking from various agencies and departments. The likelihood of something getting out at some point is highly probable. In other words, we would like assurances that this legislation will include protection, legal and otherwise, for employees in this situation: A report is made in good faith but later turns out to be unfounded. For whatever reason, the client finds out about it and tries to bring action against us as professionals under our own codes of ethics and rules of professional conduct.

Further, it is our belief that the bill should address incidents where an employee makes a report to the centre and subsequently loses employment as a result. As well, it should address the possibility of legitimate circumstances under which no report should be made. That should be covered by the proviso of a "reasonable excuse" defence.

Third, we would like to see the role of the centre more clearly defined. Comprehensive information must be provided to the Canadian public regarding the accountability of the centre. Although clause 55 addresses prohibited disclosures by the centre, we do not believe the centre should be immune from prosecution in the event that information it provides to law enforcement agencies or others proves to be in error or slanderous. There is literally no accountability.

While we agree that the centre should be authorized to provide information to law enforcement agencies, we are alarmed that they are also permitted to disclose this information to the Canada Customs and Revenue Agency, CSIS and the Department of Citizenship and Immigration.

Although this is not specifically worded in the backgrounder papers, the same people who will staff the centre and be taught to recognize and analyze the criminal offence of money laundering will now also be expected to look for tax evasion. Those are two widely divergent criteria to judge.

The Chairman: Why should we ignore tax evasion? I do not want to get into it now but I am having trouble with your point of view. That is all.

Mr. Colby: Subclause 55(3) states that the centre must first determine whether it has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money-laundering offence before disclosure can be made to those other authorities. However, the bill does not state what constitutes reasonable grounds to suspect that the information would be relevant.

What springs to mind in all of this is data mining. The safeguards proposed for the release of information appear at this point to be weak. There are no provisions for third-party reviews of decisions prior to the release of information. Again, we are in a position of trusting that, once the regulations are developed, they will be palatable to the public.

The most distressing aspect of the proposed legislation to our association is contained in clauses 62 to 65, which provide the power for representatives of the centre to enter a professional's office and copy documents from the office without the need for due process. We find this to be highly intrusive. It also raises the question of whether the legislation is contrary to the provisions of section 8 of the Charter of Rights and Freedoms, which provides that everyone has the right to be secure against unreasonable search and seizure.

While the creation of the centre seems to have gone to certain lengths to maintain the perception of protection of individual privacy, a warrantless search of a professional's office seems to violate the same principle of privacy. There is an expectation by the public that an accountant enjoys privilege much as there exists in a lawyer-client relationship. While such is not the case, it is reasonable to expect that a client's files should not be freely available, thus making receipt of a warrant prior to entry a mandatory part of the process a natural conclusion.

We also wish to recommend that the legislation be clarified to restrict the powers of access to only those records that relate to financial intermediation activities.

To come back to an earlier point, clause 11 relates only to legal counsel, meaning a barrister and solicitor or lawyer. It does not extend to accountants or other professionals who may have a pseudo-client relationship that is intended to be kept confidential.

In addition, in clause 64(2), under the enforcement and compliance procedures, when staff go in supposedly to search for these documents and to copy them, if they are in the possession of legal counsel, then that privilege may be claimed. I am an accountant, not legal counsel, but in my activities as a forensic accountant or perhaps on certain tax consulting engagements, I may be in the possession of privileged documents. I may be performing the engagement on behalf of legal counsel. These clauses do not extend to me or to those privileged documents in that capacity. We would like to see that wording modified in the sense that any documents to which solicitor-client privilege may be maintained, not just those in the possession of the legal counsel, should be afforded the same rights under the legislation.

Mr. Chairman, for further details on our association's viewpoint, please refer to our written submissions.

Senator Furey: My question is brief. I do not understand why you feel you need a "safe harbour" when the only requirement for you to have immunity, in clause 10, is that you act in good faith. Then it gives you immunity from all criminal or civil proceedings. What more do you want?

Mr. Colby: The codes of ethics and rules of professional conduct that various professions fall under would not be covered under the civil or criminal proceedings. They would be administrative tribunals governed by the associations themselves since we are self-regulating bodies.

Senator Furey: Are you saying that there are clauses in this bill that would require you to violate your various codes of ethics?

Mr. Colby: Potentially, yes. We have already seen some modification. We adjusted our code just to allow us to comply with the reporting on the suspicious activity section. We still have not been able to resolve, for example, the reporting of a monetary transaction in excess of $10,000. Our code says we are not allowed to disclose that. This act requires me to disclose it. I am in a quandary. Do I do what the act says --

The Chairman: This is the law.

Senator Furey: It is not a quandary. The legislation takes priority over your code.

Mr. Colby: We would like to know that when we act in good faith --

The Chairman: You cannot supersede the government.

Mr. Colby: That is not our intent, but we would like to know that we have protection for ourselves in our professional capacities, because a client can bring action against us under our own regulations.

Senator Tkachuk: The government is supposed to protect the people. That is the job of the government.

The Chairman: If they are doing something illegal, you do not protect crooks.

Senator Tkachuk: You do not know. That is his point.

Mr. Colby: My understanding is that the government in general has tried to stay away from dictating policy to the various professions and has allowed them to become self-regulating. Most of our associations, whether the bar association or the accountants' association, have adopted fairly similar codes. They express the underlying principles and values that we all hold. However, we are having to modify and change our codes to be in compliance with the law. We will have to do whatever it takes to allow us to comply.

Senator Furey: That is what happens, it is not? When new legislation is passed, if a professional body finds that it is operating with a code of conduct that is not in compliance with that legislation, then it is the code of conduct that will have to change.

Mr. Colby: Yes.

Senator Furey: There is no need to change the immunity section in this act. It gives incredible immunity, and the only requirement for anyone asking for it is that they act in good faith.

Mr. Colby: Okay.

Senator Tkachuk: On page 7 of your brief, you talk about a safe harbour and the difficulty of amateurs, really, submitting information to the centre. Would you be of the view that because they are amateurs, to err on the side of safety, they would be making a whole bunch reports that were not necessary? In other words, if I do not know for sure, I will err on the side of safety and send it in, because I do not want to get into trouble.

Mr. Colby: That is a possibility. There are many different people whose judgment will be put to the test in that regard.

Senator Tkachuk: As an association, would you not ask your people to do that?

Mr. Colby: We would undertake as an association to try to inform them of what the actual criteria might be, but we do not necessarily think that it should be our job to do it if that might conflict with the intent of the legislation. Other than in guidelines that are proposed, why not set down in regulations what those criteria are? Then you would have the measuring stick by which anyone in the various professions could judge.

Senator Tkachuk: You mentioned that the distressing aspect of the proposed legislation is the power that allows representatives of the centre to enter a professional's office and copy documents without the need of due process or warrant. Why would they be doing that?

Mr. Colby: It comes under the section for compliance with the act. I guess the theoretical approach here is that in order to ensure that there is compliance with the act, they will have the ability to enter my office and copy, and presently it says there is no limit on what they can look at. They can just review and copy documents at my expense to ensure that I am in compliance with Part 1 of the act.

Senator Tkachuk: Do you think that perhaps the person from the centre would in reality be doing an investigation?

Mr. Colby: That would be the logical conclusion.

Senator Tkachuk: That would be the only reason they would come down.

Mr. Colby: I would hope so, other than a fishing expedition.

Senator Tkachuk: That is interesting. I will have to check back as to what they said they would do, exactly. Somehow I thought they would not be doing investigations at the centre but simply reviewing the information they had.

Right now, the way the act reads, if they walk into your office and ask for a document, is it a document that you would have filed or that someone else would have filed? In other words, would it be something about someone that had been filed by a third party? Could it be?

Mr. Colby: Subclause 62(1) states:

An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1...

I am not a lawyer, so this may be a matter of interpretation, but this tells me that, at any given time, without prior knowledge of them coming, and for whatever reason it may be, they can come and knock on my door, examine all of my files, without limit, and ask me questions about my own business and affairs to see if I am in compliance with this act. I find that intrusive.

Senator Tkachuk: I do too.

Senator Fitzpatrick: I want to go back to your comment on client confidentiality. You said that legal counsel is protected but that you would not be if you were performing on behalf of legal counsel. I thought the arrangement would be that you would be engaged by legal counsel to do whatever work it is. Under that situation, the protection that is extended to legal counsel

would follow you as engaged by legal counsel. You are protected because it is an engagement that legal counsel has arranged. Are you trying to tell me that, if you are engaged by legal counsel and the legal counsel is protected, you think that you are exposed as an accountant?

Mr. Colby: Subclause 64(2) is the compliance and search and seizure section. It says:

If an authorized person acting under section 62 or 63 is about to examine or copy a document in the possession of a legal counsel who claims that a named client or former client of the legal counsel has a solicitor-client privilege in respect of the document, the authorized person shall not examine or make copies of the document.

Again, I am not a lawyer, but I relate this back to the exclusion in clause 11, which says that, if it is a document over which a lawyer claims privilege, it is not to be examined. This says "in his possession." Not being a lawyer, I am concerned. If I have a lawyer's document but it is not in his possession, can I claim that? The way the bill is presently worded, I do not think so, but, again, I could be wrong in my interpretation.

Senator Fitzpatrick: You are saying that the client-lawyer privilege arrangement would be subverted.

Mr. Colby: I think it is highly probable that it would, and perhaps there should be a change to the wording to allow for any document that may have solicitor-client privilege attached to it to be covered by that exclusionary provision, regardless of whose possession the document is in.

Senator Kroft: I presume that in the course of your work you are familiar with the similar provisions that would apply under the Income Tax Act?

Mr. Colby: I am aware that under the Income Tax Act, section 231, they have the power to come in and examine my books and records, but when it involves client books and records, if they were my working papers, those are not covered by that supposed search and seizure section. They would have to get a search warrant to take my records. Case law, as far as I understand it, shows that the papers that an accountant prepares are his property and not the client's property. To come to my office to search my files, they need a search warrant. If I have the actual client's books, they have access under the act to examine those books and records.

Senator Kroft: Going back to the general provisions, are you saying that there is no symmetry between the provisions of the Income Tax Act on the rights of the agency to obtain evidence and the provisions of this bill?

Mr. Colby: I understand what you are trying to say.

Senator Kroft: I am wondering what the differences are between what you are saying and what is proposed here.

Mr. Colby: The Income Tax Act applies directly to the individual who is required to report, regardless of what third parties may have assisted that person to report. This act applies to

third parties rather than to the specific individual who is conducting the suspicious activity or the financial transaction.

Under the Income Tax Act, the books and records of the taxpayer can be examined, but there is no right to examine my books and records simply because I was associated with or assisted the taxpayer.

Senator Kroft: There is a different purpose. We should not expect it to be exactly the same because the purpose of the legislation is different.

Mr. Colby: Let us say that the bill provided for examining the records of Joe's Money Order Shop, because reports were received about Joe. The centre wants to inspect Joe's books and records. I understand that is different than inspecting Joe's files found in the office of Joe's lawyer or accountant or whatever other professional.

The provisions in this bill that allow for that access are so broad, as written, that the staff are not limited only to looking at the files or documents relating to the subject of the report. They can look at anything they want. There is no limit.

Senator Kroft: That seems to be the idea.

The Chairman: What about subclause 64(2)? You wanted to be included. Legal counsel can have a solicitor-client privilege in respect of a document. The authorized person from the agency shall not examine or make copies of the document.

Mr. Colby: I understand the reason for the clause. I should like it to be modified.

The Chairman: You want accountants included in that general description?

Mr. Colby: I should like to see any professionals or others covered regarding any document that can have solicitor-client privilege attached. That document could be held by a doctor, a lawyer, an accountant or a government official.

Senator Furey: Presumably, if you were engaged by a solicitor to review such a document, that document is deemed to be in the possession of the solicitor and solicitor-client privilege would apply, would it not?

Mr. Colby: I do not know the legal interpretation of that, nor the intent behind the wording in this clause. What does it mean, to be in the possession of legal counsel?

In a fraud examination, for example, I may be retained by counsel to actually conduct the investigation. I am conducting an engagement. I am retained by that counsel and all my work is subject to their solicitor-client privilege. I may be accumulating documents and evidence that the lawyer does not even have a copy of yet because I have not yet submitted my report. We would need a legal interpretation of whether those documents are deemed to be in the lawyer's possession.

Senator Furey: I think it is clear.

Senator Fitzpatrick: You are concerned because you do not want the chain of solicitor-client privilege broken when it comes to you or any other professional?

Mr. Colby: That is correct.

Senator Fitzpatrick: My colleague says he thinks it is clear that it would not be, but, Mr. Chairman, that is something we should examine.

The Chairman: Thank you, witnesses.

The next group of witnesses will be from the Royal Canadian Mounted Police. Please proceed.

Mr. Tim Killam, Assistant Commissioner, Technical Operations Directorate, Royal Canadian Mounted Police: Honourable senators, we welcome this opportunity to raise awareness of the need to identify strong and effective measures to combat criminal organizations predisposed to the laundering of criminal assets. We also welcome the opportunity to appear before the committee today in support of Bill C-22 as it pertains to money laundering and to discuss the effects of money laundering on the legitimate economy and what we see as a way ahead in an attempt to stem the tide against organized crime money laundering.

I have made available a short document prepared April 3 entitled "Royal Canadian Mounted Police -- Proceeds of Crime Enforcement in Canada." This document outlines the evolution of our proceeds of crime program, the legislative changes and the structure of the program for reference purposes only. I will summarize that reference material so you can better understand the context.

Money laundering is defined as a process by which one conceals the existence of an illegal source or an illegal application of income and then disguises or converts that income to make it appear legitimate. In other words, money laundering is a conversion of illegal proceeds from a cash-based system into the business-based system.

The objectives of criminal organizations are to place illegally obtained proceeds beyond the reach of law enforcement by moving the bulk cash through the financial system, thereby cycling it into the economy. The attempt is to make it as difficult as possible to identify and trace. Once the funds are moved through the money-laundering stages, the income appears legitimate, which makes it more difficult to detect and prosecute. The profits can then be used to provide working capital for future activities. It allows these organizations to expand and open new markets, thereby becoming more powerful. Criminal organizations derive earnings not only from illegal activities but also from investments in legitimate enterprises. Proceeds allow them to penetrate into legal economic areas.

The RCMP Proceeds of Crime Program is directed at restraining and forfeiting illicit and/or unreported wealth accumulated through criminal activities. Presently, 22 Proceeds of Crime units are scattered throughout Canada and they vigorously pursue criminal organizations both nationally and internationally by attacking their illegally obtained assets.

The objectives of the Proceeds of Crime Program may be described as follows: identifying, assessing, restraining and forfeiting illicit and unreported wealth accumulated through criminal activities; prosecuting offenders; restraining and seizing assets pending judicial forfeiture; and identifying to the courts assets that could not be seized to justify judicial penalties. The program's primary focus is to remove the incentive for committing crime.

Our objectives are met by performing the following tasks: We conduct investigations relative to the laundering of proceeds derived from designated substance offences, designated customs and excise offences and enterprise crime offences. As well, we respond to requests for investigative assistance from foreign and domestic police agencies, and we foster international cooperation in the area of money laundering investigations.

The second focus of the Proceeds of Crime Program is prevention. Our field units carry out community policing and crime prevention initiatives by making presentations to the financial and business communities, government departments and agencies and the general public; by distributing pamphlets and related material; by promoting strategies developed locally or by the Proceeds of Crime Branch; and by liaising with other police departments and agencies to identify criminal trends and activities relating to the Proceeds of Crime Program.

The third focus is on training. Investigators coming into the Proceeds of Crime Program receive appropriate training, and we actively provide international training as well.

The fourth focus of the Proceeds of Crime Program is policy development and implementation. We identify areas of legislative weakness and seek statute amendments through the Department of Justice. We develop and publish RCMP policy, and we do program evaluation of each unit.

As the former officer in charge of the Proceeds of Crime Program for Canada, I diligently worked with my colleagues in attempting to ensure that Canada was protected by a broad range of measures aimed at strengthening organized crime enforcement by preventing the laundering of profits of illegal activity. Early on, it became clear to me that Canada's financial systems were being exploited by criminal organizations to conceal, legitimize and transport their illicit profits, thereby financing their future activities. It was felt that Canada required a systematic, coordinated and cooperative approach to ensure that our financial systems were sound as well as free of criminal taint.

Money laundering is the economic engine that runs all criminal organizations around the world. Preventing dirty money from entering Canada's financial system would mean not allowing those predisposed to this activity from ultimately strengthening criminal organization. The Canadian government has taken the fight against organized crime very seriously; by extension, the RCMP, as the federal police force, is on the front line of this fight.

We heard from Mr. Spreutels that estimates of the amount of illicit drug money laundered annually worldwide range between $300 billion and $500 billion U.S. The UN estimates that in excess of U.S. $1 trillion in illegal profits is generated by organized crime annually. The inclusion of laundered illicit funds from economic and other non-drug crime could potentially double those figures. The magnitude is staggering. The flight of capital and the chaos spilling over the borders of the former Soviet Union and into jurisdictions in Europe, the U.S. and elsewhere are examples of just how complicated these matters can be. A portion of these funds ends up in Canada, which is seen internationally as a haven. The RCMP is unable to quantify the exact amount of money laundering in Canada annually but has empirical data to show that it is in fact happening at an alarming rate.

Money launderers are attracted to Canada and consider it a haven for a number of reasons. First, Canada has a stable economy with a relatively strong currency and a banking system whose efficiency, stability and security is second to none. Second, there is a long, undefended border between Canada and the United States with a huge volume of commercial and financial trade occurring. Third, Canada is located next to one of the world's largest illicit drug markets, the United States. Last, and likely most important, is the lack of controls in Canada over cross-border movements of currency and the lack of a mandatory unusual transaction reporting system.

What this means for Canada essentially is that there exists an ever more challenging regulatory and law enforcement environment, particularly in a time of reduced barriers to trade and finance. It is the opinion of the RCMP that, in order to effectively combat organized crime, Canada must institute a legally defensible mandatory unusual reporting system to assist in the investigation of the laundering of proceeds of crime.

As far back as 1993, during the Commission on Crime Prevention and Criminal Justice held in Vienna, the Secretary General of the United Nations put forward an unsettling portrait of the control organized crime has on a worldwide scale. He said:

As revenues generated by organized crime increase, the necessity to control banks becomes a priority for criminals...businesses controlled by organized crime generate a seventy (70) percent profit margin on their investments. This is achieved at the detriment of law abiding competitors who must worry about profit margins, overhead, repayment of bank loans. All in all the infiltration by organized crime tends to introduce distortions in the interplay of market forces. In the long run it is the taxpayer and consumer who are affected. The profits of organized crime are so huge that no economy is immune to the impact of this underground economy...we must improve investigative techniques and limit secrecy to appropriate dimensions.

The situation described by the U.N. Secretary General seven years ago is identical to the situation being observed in Canada today.

All financial institutions such as banks, trust companies, "near banks, insurance companies and intermediaries, such as solicitors and accountants, as well as casinos, who deal with client

funds on a daily basis, have a front line role to play in reporting unusual and suspicious transactions. Under voluntary disclosure, as we have today in Canada, there is no systematic and reliable way of detecting money laundering activity. A permissive system grants wide discretion to individual financial institutions to determine their commitment to the battle against money laundering and ultimately organized crime. The anecdotal evidence that the RCMP has seen underscores the varying commitments in Canada.

At this time, there is no overall coordination or control of reports, which is fragmented at best, and thus there is no way of ensuring that the available information is being used to its full potential via a central agency as proposed under Bill C-22.

It is accepted that it is a struggle to reach an appropriate balance between privacy and enforcement considerations, and it seems clear that the balance can never be struck once and for all time. Rather, the balance requires constant examination as ways of doing business, record keeping and retrieval systems and methods of fraudulent transfers all evolve.

From the enforcement viewpoint, the benefits of the creation of a financial transaction and report analysis centre of Canada as envisioned in Bill C-22 are many. The centre, according to us, would, among other things, provide a deterrent by making it more difficult to use traditional financial institutions to hide the profits from illegal activities, therefore reducing Canada's reputation as a haven for money laundering. The centre would fulfil our international obligations. It would provide a mechanism for enlisting the support and cooperation of banks and other financial institutions in identifying possible currency violations. The centre would identify investigatory targets for possible laundering of proceeds of crime, and the centre would provide corroborating evidence against individuals identified through other sources such as informants and other agency referrals.

At the end of the day, senators, countries are only as strong as their weakest link. Of the 26 member countries of the Financial Action Task Force, only Canada, Singapore and Germany have not yet implemented mandatory systems of reporting suspicious or unusual transactions. In addition, Canada does not meet the standard required for the Egmont Group, a collection of financial intelligence units of which there are 53 member countries around the world, who set the standards and share financial intelligence data in order to combat money laundering.

The bottom line is that money laundering ultimately entails the use of the lawful commercial system for unlawful means. The addition of a mandatory suspicious transaction and cross-border reporting regime will serve notice to Canada's criminal organizations, and indeed the world's criminals, that Canada has an effective transaction reporting system and that their money is not welcome here.

The problems caused by organized crime are not the sole responsibility of the police. Bill C-22 allows for a partnership with police, government and the private sector, and it will discourage the continued use of Canadian financial institutions for depositing large amounts of illicit cash and concealing it in accounts around the world. In reality, money laundering is a national and international cross-border phenomenon. In order for law enforcement to reach over the fence and join hands, it seems logical that we should be obligated to cooperate amongst our national

institutions and across international borders with at least the same effectiveness as those who launder the proceeds of crime.

Whether it is a known motorcycle gang that specializes in violence or intimidation or the Mafia who use corruption, we are faced with organizations that are structured to maximize their profit at the expense of the state and its citizens. I humbly submit, honourable senators, that it is therefore the state's responsibility to contribute and place an additional tool into the law enforcement toolbox to assist in impacting on the perverse reflection of society predisposed to laundering the proceeds of crime. Individually, these problems are formidable. Collectively, they may seem overwhelming. A mandatory reporting regime should not be viewed as a panacea. Rather, it is an integral part of a broad range of measures aimed at strengthening organized crime enforcement.

Senator Tkachuk: We are all in favour of your efforts. In a democratic society it is a difficult thing, as you said earlier, to balance the need to capture this illegal cash with the need to protect the rights of innocent citizens who may be caught in the crossfire of an investigation. While this may not be as violent as being caught in the crossfire of bullets, which often happens in a shootout between bad guys and the police, we have here the possibility of people being caught in the crossfire by this huge organization being set up throughout the country using lawyers and accountants -- all major professionals, it would seem, who handle a dollar -- as part of this solution.

We have estimates for the amount of money laundered annually worldwide, but what do you estimate as being laundered annually here in Canada?

Mr. Killam: Because of the nature of this kind of activity, we cannot estimate it. As a matter of fact, the Financial Action Task Force has been trying for the last number of years to figure out what it is internationally. Those figures are just guestimates at best. They are extrapolations of the kinds of crimes that go on and the kinds of money involved. Because money laundering is trying to make the money legitimate, it is very difficult to quantify.

The best way to understand it is that there are many organizations -- and we see them in the paper -- prosecuted for regular traditional offences and they do not have to go through processes to get their money. They use criminal activity to get their money. They are huge organizations and have lots of profits. We can see that. That is the empirical evidence. Through the cases we now investigate, we know that there is a lot of money in those organizations, but all we can see is one part of the picture. We see one piece of the puzzle. Right now, when we start an investigation, we see one piece of the puzzle. If you have ever done a puzzle, you can understand what I am saying. We see one little piece. Perhaps we get that piece from a bank on a voluntary basis right now.

The Chairman: Senator Tkachuk, the Library of Parliament has an answer for you. It says the federal government estimates that between $5 billion and $17 billion in criminal proceeds are laundered in this country each year.

Senator Tkachuk: Between $5 billion and $17 billion?

Mr. Killam: It is so wide that it is very difficult, but it is a huge figure.

Senator Tkachuk: You successfully prosecute money laundering activities now under the present legislation?

Mr. Killam: Yes.

Senator Tkachuk: How many successful prosecutions would we have reported in a year in Canada?

Mr. Killam: I do not know.

Senator Tkachuk: Maybe you could use one province, such as Ontario or Quebec.

Mr. Killam: I cannot tell you exactly what the figures are.

Senator Tkachuk: Hundreds?

Mr. L. R. J. (Lou) Goulet, Staff Sergeant, Proceeds of Crime Branch, Federal Services Directorate, Royal Canadian Mounted Police: In terms of the number of people actually charged or convicted, I do not have that figure here with me. The best I can give you is in terms of recoveries, revenue, fines and referrals over the past four years, by one method of measuring. I will round out the figures from 1996 to 1999. The recovery rate was $142 million, of which the revenue amounted to $50 million that accrued in actual forfeitures. Referrals to other agencies, we identified $90 million. In terms of fines, it came out to about $7 million. Those are the actual dollar figures.

Senator Tkachuk: To be sure I understand the first number, the $50 million is the amount of illegal cash you actually captured; is that correct?

Mr. Goulet: That is correct; the $150 million is the amount that was restrained.

Senator Tkachuk: Is that per year?

Mr. Goulet: No, that is for the last three years, 1996 to 1999, based on our limited resources of the 22 units, which is approximately 287 regular members of the RCMP who are predisposed to investigations in this area. Our integrated units are made up of a team concept that includes forensic accountants, lawyers from the Department of Justice, and police. Those are the end results of our unit to this point in time.

Senator Tkachuk: I assume there will be a lot more investigations going on once this agency gets up and running.

Mr. Goulet: We are expecting quality leads, of course. The information that will be received will be acted upon as best we can. We may already have investigations ongoing where the

information will complement, or it may be something brand spanking new that we were not familiar with regarding that particular individual and the details provided with that disclosure.

Yes, we expect an increased workload. By way of example, over the same time frame, in the Netherlands there were approximately 16,000 disclosures and there appeared to be a trend where approximately 20 per cent to 24 per cent of those filtered down to their police agencies after being raised from the unusual to the suspicious level in the methodologies that they use there.

Regardless of the total number of suspicious transactions that the agency receives eventually, we could expect 20 per cent of the volume. That is law enforcement, not just the RCMP.

Senator Tkachuk: Will you have money in your budget to increase the number of people you will need from 297?

Mr. Killam: There will not be any more money for the investigation itself. There is a provision for some money to augment the investigation once we receive a report from the agency. The report or information will come to us at way below any kind of level of legal threshold where we can go back. It will just be tombstone data. That is what will come to the police from the agency. It could say my colleague here and his name and the fact that he did some kind of activity at certain banks. There is much more that was done at the agency, but we will not get that. It comes to us at a certain legal threshold, then we have to conduct a preliminary investigation to allow us to get the production order from the agency in order to get the rest of the file. There is much work we have to do after we get a report. Some money will come to help us with the investigation at each unit so that we are able to do that part of the investigation, which is new. We did not get these leads from there before.

The Chairman: To follow up on that, are you telling me that when the agency does its analysis, whatever else it does, they will not give that to you?

Mr. Killam: They will not give us the analysis.

The Chairman: Does that not seem to be a very cost-inefficient way of carrying on? We are going to have two government agencies doing the same thing twice.

Mr. Killam: It is coming that way for the privacy considerations and the Charter considerations. You have heard Mr. Spreutels' comment that this legislation is very protective, and it is for exactly those reasons.

The Royal Canadian Mounted Police was involved in the discussions with regard to the buildup of this piece of legislation. I was at the table for most of those discussions in my prior job.

For those reasons, we feel it is a legally defensible system that protects the privacy of people. It requires a lot of us, yes, but that is the society we live in.

Senator Fitzpatrick: Commissioner, I know this is a difficult question to answer, too, but do you have any idea what business activities or companies this laundering process takes advantage of? For example, how much goes into publicly traded companies through the stock exchange? In turn, where does that lead with respect to regulatory requirements and policing stock exchange activities?

Mr. Killam: This goes back to the answer I began earlier. By the very nature of this activity, you do not know it. By the very fact that we do not have this centre in operation, we will never know it. The centre will be able to get some kind of information from the leads that may come in later on.

At the end of the day, the centre may be doing those kinds of investigations. There is no requirement right now. We have heard our colleagues from the CGAA. There are concerns about being part of the solution. It is not a police problem. It is society's problem. I happen to be paid full time to do this, but we all should be looking out for this.

This bill would provide a standard expectation that people put that information into the centre. That information will come in. In the report to Parliament that is required, you will see more information, probably in a closed setting.

Senator Fitzpatrick: My next question is unrelated. What is your opinion with respect to phasing out $1,000 bills? Will that have a real impact on money laundering activity?

Mr. Killam: That would have an impact. Very few countries have denominations of that size. I am in favour of stopping that production. Such bills can be concealed more easily and be carried internationally. The largest denomination in the United States is $100. Even though our dollar is worth less, we still experience many smuggling cases where $1,000 bills are used.

Senator Fitzpatrick: These $1,000 bills can be smuggled out of the country. Then they come back into publicly traded companies through the stock exchange and can penetrate industry in that way?

Mr. Killam: Absolutely.

Senator Kroft: I will ask a general question that, I warn you in advance, calls for an opinion. We all understand that, to achieve a sound piece of legislation, a balancing act is required between solving the problem and protecting citizens' rights. Let me put this on a scale of "toughness." I am asking your opinion as amongst yourselves and I would be surprised if you do not have a sense of this from your own conversations. As an overall observation, would you say that the drafters of this legislation, in terms of toughness, have it too tough, too easy or just about right?

Mr. Killam: I was involved in the drafting and I happen to be a legally trained police officer. I can understand the legal issues and I think this is a good balance.

In Canada we do have requirements that are tough. We do have stringent privacy requirements. We have a charter to protect citizens, rightfully so. I think this bill works. It makes our work harder but that is the price of living in Canada and I am proud to be here. I do not mind being required to be involved in these activities. Sure, it will be tough and it would be easier if no agency were involved, but this is the way things should be.

Senator Kelleher: I see this as essentially criminal legislation. The object of the bill is to deal with criminal matters and the proceeds of crime. Therefore, I am a little surprised that the reporting mechanism is through the Minister of Finance. I am somewhat prejudiced, of course. I would have thought a better reporting mechanism would have been through the Solicitor General. What is your feeling on the reporting mechanism?

Mr. Killam: This was the subject of many discussions. It boiled down to the fact that the centre should not be in the police, even though its administration would be much easier.

Senator Kelleher: I am not asking that.

Mr. Killam: I know, but by the same reason, the RCMP reports to the Solicitor General and has a close relationship with that ministry. In our view, the same charter concerns that arise with the police would arise with the Solicitor General. Quite frankly, it is an amendment to the old Proceeds of Crime (money laundering) Act, which was the responsibility of the Department of Finance. This is just an extension of or an amendment to that act. It stays with the same department. We did have that discussion.

Senator Tkachuk: I have a question on a clause that has bothered us a lot and it deals with your relationship with the actual agency. If a file comes in and an investigation is begun, would you be involved from the beginning? Not at all? The centre will speak to no police officer until the file is actually referred to the police?

Mr. Killam: The act prohibits the agency from such disclosure to anyone. That is because of the charter protection. Eventually, if a case comes to the threshold where it should be reported, we will deal with that, but it will have been sifted and filtered by then.

To better understand it, we have put these charts on the wall to show what this agency will do for us.

Mr. Goulet: Under the existing act, provisions are made to allow access to government databases. Depending on how that works out, we could have access to the actual CPIC system, the Canadian Police Information Centre system.

Senator Tkachuk: Does that show criminal records?

Mr. Goulet: That is right. We would not be involved in the actual investigation.

We have a chart that shows a "wagon circle." This concept was borrowed from my friends at the Financial Crimes Center in the United States. A sanitized case is shown with colour

coding. Yellow is used for actual transactions. Pink denotes business names. Brown denotes account numbers.

The data would be considered and a link analysis would be done. Based on the disclosure, we would investigate and build up our evidence, hoping for sufficient grounds to obtain a court order, a production order, and then we would attend to the agency. In our view of the world, the agency can produce this kind of report at the end of the day.

As you can see, if you look at the number of transactions, it is an onerous task. We have been asked in the past whether there is an ability to handle this volume of information. Our answer to that is yes. There is artificial intelligence, which is what produced these particular charts for the sake of demonstration.

Mr. Killam: That is what we expect to come out of this agency. In other words, now we make it a piece of information that goes all across the country. It comes in on a voluntary basis, with no real standard, just what may come through our relationships with the financial industry. As some of the earlier witnesses said, there are varying degrees of commitment to that and varying degrees of understanding and ethics and so on.

There is a picture out there, and we just get that one little piece of the puzzle. That is what I was trying to talk about before. This agency should be able to pull those pieces of the puzzle together to get a better picture. You might not get the whole puzzle, but when that piece comes to us, it may be a good part, and we may be able to do something with it. The best way I can visualize it is that they are bringing a lot of the pieces of the puzzle together at that agency.

Senator Tkachuk: It would not normally be the practice of the police, of course, to release names of people who are simply being investigated but who have not been accused of anything.

Mr. Killam: No.

Senator Tkachuk: Yet it happens.

Mr. Killam: It has happened in the past. It is not normal practice.

Senator Tkachuk: It does happen quite a bit, actually.

Mr. Killam: We attempt not to. It is certainly not our policy to do that.

Senator Tkachuk: I understand that, but it does happen.

Mr. Killam: Absolutely.

Senator Tkachuk: It happens on a fairly regular basis that people are being investigated and somehow it gets in the paper. Some reporter finds out. Why do you think that will not happen at the agency? Are they better people?

Mr. Killam: I just do not believe the same kinds of investigation will take place. My understanding of the way the agency will work is that it will be in an office; it will be done in more of a closed way, with privacy protections.

Senator Tkachuk: We live in Ottawa, where reporters and bureaucrats hang around together at cocktail parties, go out for dinner, talk. Let us say a nice, juicy name comes across the desk; the reporter might be interested in that, right? Some teller at a bank sends to the agency a piece of information with a name attached and it happens to be the name of a prominent person -- someone people are interested in reading about -- and even though that person has not been doing anything, it is possible that it would just happen to leak to a reporter. That could happen, and it will happen.

Mr. Killam: Absolutely, it is possible.

The Chairman: It is a pleasure to welcome, from the Office of the Privacy Commissioner of Canada, Mr. Bruce Phillips, the Privacy Commissioner. Mr. Phillips informs me that he does have an opening statement, and then senators may ask questions.

Mr. Bruce Phillips, Privacy Commissioner, Office of the Privacy Commissioner of Canada: Senators, attending with me today are Julien Delisle, who is the executive director in my office, and two of our legal staff, Stuart Bloomfield and Martine Nantel.

The first thing I want to say is that this is quite a piece of legislation. It does seem to me to be breaking new ground in the sense of the amount of personal information that the state is prepared to demand of its citizens.

The Chairman: When you say it is "quite a piece of legislation," do you mean it quite good or quite bad?

Mr. Phillips: That is a judgment for you to make, although I do have some observations about specific problems with it.

The Chairman: I am just kidding.

Mr. Phillips: You might catch me a little bit later on.

It has the potential and the likelihood of placing a very substantial proportion of the population under what amounts to a more or less constant form of surveillance. Given the possibilities, and owing to the very broad information-gathering authorities of having essentially detailed life profiles constructed of a great many Canadian citizens, I think it is worthwhile to bring to this committee's attention the very obvious concern that Canadians at large have with this kind of activity, especially given our recent experience with a comprehensive database at the Department of Human Resources, which, so far, has generated no fewer than 50,000 demands by Canadians for access to those records. It is a matter of some public concern, as well as having importance as a piece of legislation.

It is for this committee to decide whether the problem defined by the sponsors of this bill is sufficiently severe to warrant the kind of information gathering that is made possible by the bill. I appreciate that money laundering is an important issue, but I must be concerned about the impact on the privacy of Canadians.

We have here a proposal to collect information on uncountable numbers of Canadians, largely without their consent when you get beyond the prescribed reporting requirements, largely without their knowledge and, so far as we are concerned after examining the bill in its present state, with no real right of access to those records. Essentially, therefore, it vitiates the rights that are contained in the existing Privacy Act.

I will sum up our first objections regarding what we consider to be vagueness, ambiguity and lack of precision. Banks, trust companies, insurance companies, credit unions, investment counsellors, other organizations providing financial services and even casinos are being required to report "every financial transaction" where there are, according to the bill, "reasonable grounds to suspect that the transaction is related to the commission of a money laundering offence." What are these reasonable grounds? We do not know. They are not part of the proposed legislation. The bill requires businesses and individuals to make subjective and possibly speculative assessments of the character and activities of their clients without providing the statutory or regulatory guidance about what constitutes reasonable grounds.

In fact, you could argue that this legislation encourages excessive reporting of personal information. Given that organizations and individuals required to report suspicious transactions can be fined as much as $500,000 and imprisoned for up to six months, it seems to me that reporting organizations will be very likely to err on the side of submitting too much rather than too little. Further, the lack of clear definitions of "reasonable grounds" and "suspicious transactions" invites excessive reporting and increases the likelihood that innocent citizens will have their privacy invaded. The point must to be made again and again that the vast majority of persons who will be captured in this immense collection of information will be innocent people.

The observations of Mr. Seeto of the Department of Finance were very interesting. In trying to weigh the value of the information from an investigative or evidentiary point of view with the amount being collected, he tells us that, in Belgium, which apparently is one of the few places where there are any comprehensive statistics, 24,000 suspicious transactions were reported in the six-year period from 1993 to 1999. Of those 24,000 reports, 1,400 went to judicial authorities and 117 convictions were registered. I think the argument that must be posed and that the Senate must consider is whether the cure here is not a little worse than the disease.

Where the objective criteria do exist that trigger mandatory reporting, such as two or more transactions on the same day totalling $10,000 or more in cash, although I am no expert, I would respectfully suggest that this will result in the collection of information about a very large number of people. There are discussions about the thresholds here, and although that gets a bit beyond my brief, it does seem to me they are very low.

The organizations required to collect and report this information will send it to the Financial Transactions and Reports Analysis Centre without the client's knowledge or consent on the basis of these yet undefined suspicions. In some cases, this information will never be used for criminal purposes. It is our belief that without convincing evidence that notification of purpose -- that is, telling the client why the information is being collected -- would seriously undermine the criminal investigation process, people's rights to be informed should not be abrogated in this way.

Paragraph 54(b) of the bill provides that the centre may collect personal information "relevant to money laundering activities." Again, as in the case of "reasonable grounds," the legislation does not attempt to define "relevant." Given that they have access to almost any database in the possession of the federal government, no matter where it is located, and access to databases of provincial governments and other sources as well, it would seem that the centre could amass information relating to such things as employment history, income, professional relationships and travel patterns, all of which could be considered relevant, in addition to the information provided by financial institutions and other organizations covered by the legislation.

This seems to me to be giving a licence to the centre to collect information for the compilation of comprehensive profiles of individual life and behaviour. Because of the lack of definitions and guidance in the legislation, we do not know whether the centre will collect this information. We think we need to specify the type of information that can be collected, as well as the possible sources of information, with a good deal more precision. We object to the breadth of the information the centre is mandated to collect and use. We believe that the types of information considered relevant to the proper assessment of whether a given transaction is suspicious, as well as the sources of those data elements, should be specified, preferably in the statute.

One of the fundamental principles underlying both the Privacy Act and the new Personal Information Protection and Electronic Documents Act is that organizations should collect only as much information as they need. The legislation needs limits placed around it.

The establishment of the centre as an agency at arm's length from the police, subject to the Privacy Act, or so we are told, is, I suppose, preferable to having the reporting organizations disclosing information directly to the police. However, the protection afforded by the Privacy Act, in my opinion, is largely illusory. The public's ability to lodge complaints and the commissioner's power to investigate complaints will be meaningless given the secrecy surrounding the collection of information by the centre. As a result of this secrecy, members of the public will not know what information is being collected about them, short of what is prescribed in the bill or that they may be being investigated. Citizens will not be able to use the Privacy Act or the Personal Information Protection and Electronic Documents Act to determine if information has been collected about them. Although in one part of the bill the centre is said to be expressly subject to the federal Privacy Act, we have been informed by officials connected with this operation that the centre will routinely deny access requests pursuant to section 16 or paragraph 22(1)(b) of the Privacy Act.

Bill C-22 also amends the Personal Information Protection and Electronic Documents Act to include reporting organizations as organizations that can disclose information to the centre without consent and authorizes the centre to inform an organization that it cannot disclose the fact that it has sent information to the centre.

Without evidence of harm, access to personal information should not be denied to an individual as a matter of routine or a matter of course. At a minimum, individuals should have access to the information collected by the centre as a matter of statutory right if they have not been subject to a criminal investigation as a result of that collection.

Clause 55 of this bill authorizes the centre to disclose designated information to law enforcement organizations, the Canada Customs and Revenue Agency and other bodies without warrant. However, subclause 55(7) of the same bill gives the minister the authority to add to this any other similar information that may be prescribed. That poses the risk that the centre could simply become a conduit through which other information could be channelled to law enforcement bodies, circumventing the controls normally applied to the collection of evidence in criminal investigations.

In summary, therefore, our problems boil down to four. There is the lack of statutory or regulatory guidance about what constitutes reasonable grounds and suspicious transactions. These terms should be defined in the legislation or regulations, not in guidelines developed on an ad hoc basis between the centre and interested parties. If these terms are defined in regulations, the committee should have an opportunity to review them.

There is the scope and the quantity of the information the centre is authorized to collect and the potentially very large number of citizens that will be under surveillance. Terms such as "relevant information" and "law enforcement" must be defined in the legislation or in regulations, and the number of individuals about whom information is collected should be kept to a bare minimum.

Above all, citizens should be able to use their access rights under the Privacy Act or under the Personal Information Protection and Electronic Documents Act, unless it can be clearly demonstrated that informing them that information may be sent to the centre or that giving them a right of access would jeopardize the intent of the legislation.

Finally, we are concerned about the possibility that the information provided to law enforcement bodies will be expanded. That must be kept to a minimum.

In a Supreme Court majority decision respecting privacy and law enforcement, Mr. Justice La Forest stated:

The restraints imposed on government to pry into the lives of the citizen go to the essence of a democratic state....where privacy is outweighed by other societal claims, there must be clear rules setting forth the conditions in which it can be violated. This is especially true of law enforcement, which involves the freedom of the subject.

I am asking you today to take this under advisement to ensure that Bill C-22 does contain clear rules. If you feel that this legislation is needed, then I urge you to ensure that it contains definitions and rules that will minimize the intrusiveness of the legislation.

I should like to add one footnote to that. One of the basic principles under the Privacy Act is that we have, as individual Canadians, the right of access to information the government holds about us. The Office of the Privacy Commissioner of Canada is established to investigate complaints in cases of denial of access. The normal process for us is to look at the documents concerned, make a judgment and offer recommendation to the relevant department. If the recommendation is not accepted, if it happens to be a failure of disclosure, we do have the right to go to court on behalf of the complainant. As we see this bill, we do not have that right. We can look at the information, but the bill, as nearly as we have observed, stipulates that there will be no disclosure by a court of any document contained in the centre unless it meets certain conditions that are contained in the bill. They certainly do not include a recommendation from the Privacy Act. We get a sense from this bill that the judge would be required to say, "I am sorry, because this bill overrides the Privacy Act I cannot entertain an application to the court for disclosure of the document."

The Chairman: This committee obviously has a dilemma, because we are informed that there is a great deal of criminal activity going on and something should be done about that. On the other hand, do you give law officers licence to do whatever they want? I do not pretend to know the answer. I do know, however, that the trend seems to be changing a little. Do you remember the famous Miranda rules, where even if a guy had a smoking gun you would not touch him until you had read him his rights? Apparently that procedure is now under fire and it looks like it will be changed. You pose a difficult dilemma, I think.

Senator Kelleher: Prior to your presentation to us, would the Department of Finance and the drafters of this bill have been aware of the views that you just recited to us?

Mr. Phillips: Indeed they are, yes. We have conveyed these views to the department.

Senator Kelleher: Obviously it has not had too much effect upon them.

Mr. Phillips: I would not say it has had no effect, but it has had very little. Originally, this bill would have denied the Privacy Commissioner the right even to see any of these documents. They have amended it to that extent. However, the ability of the commissioner to function as an ombudsperson and to make recommendations to the centre is really vitiated by our inability to bring any relief to a complainant we feel has a just complaint.

Senator Kelleher: Were you made an interested party to the drafting process? Were you asked for your views on this legislation?

Mr. Phillips: Yes, senator. A consultation document issued early on in this process was sent to us, among many interested parties, and we conveyed our views back to the department in response to that consultation document. We have had meetings with the Department of Finance. We have put our views on record.

Senator Kelleher: Have you offered any specific drafting to alleviate some of your concerns?

Mr. Phillips: No, not specific. I do not feel it is the proper business of my office to be writing regulations or writing statute law. We are not qualified to do that. However, we think we know what it should not be doing.

Senator Kelleher: If this committee wanted further and more detailed assistance from you with respect to possible amendments, would you be able to provide that for us?

Mr. Phillips: We would certainly try to help, yes. You are far better equipped in that respect. You have legislative counsel and experts of that nature available to you. We would certainly be happy to look at any amendment proposed and give you our opinion of its effect on the totality of the legislation.

Senator Furey: Most of my concerns were addressed in your presentation, but I want to recap two of those. Commissioner, you indicated that in the first instance you would prefer to see clients notified that they were being investigated at the investigative stage, unless there was compelling evidence to show that it would interfere with the investigation. Is that correct?

Mr. Phillips: That is correct.

Senator Furey: The second part of my question is that once an investigation has been conducted and a client is deemed to be innocent, that party should be notified. Is that correct?

Mr. Phillips: I did not specifically say that, but it is not a bad idea. What I am arguing for here is a bit more transparency in this process. If it is deemed necessary for them to collect all this information, you know as well as I do that the vast majority of transactions will be found completely innocent and lawful. One analogy is the police R.I.D.E. program. It operates on a statistical assumption that, if you stop 100 cars on Christmas Eve, a certain percentage of those people will be found to be violating the law. This, equally, is law enforcement by statistics. You assume that in 1 million transactions a certain percentage will raise suspicion.

I think we all have views about that approach, because it involves fishing expeditions and collecting information about many people without probable cause. Those concepts are not consistent with our general view of the proper role of law enforcement in a society such as this.

You are being asked, in the first place, to set aside the normal considerations here because of what the law enforcement authorities say is such an urgent problem and of such enormity that normal rights must be set aside. My argument is that, if that is so -- and it is for other people to make that argument and to convince this body that it is so -- I do not think they need to go as far as they are going here with respect to the great majority of the people whose information will be collected here, in terms of violating their existing rights under the federal Privacy Act and under the Personal Information Protection and Electronic Documents Act applicable to the private sector.

If you, senator, make a couple of $5,000 deposits in the bank that get reported to the centre, it is difficult for me to see any reason why the information should remain in a file for five years -- or longer, if you do it again a year later, because they essentially are in a position of maintaining a rolling, perpetual file about you, with no reason whatsoever to keep it based on the information at hand. I do not think that is right. Furthermore, there is no reason why you should not know it is there. Second, if they are keeping information for the statutory five-year term, there is no reason, if it has not generated a suspicion -- and on what terms a suspicion is generated I do not know -- why you should not have access to that information, unless it can be demonstrated by the holders of the information that to disclose it to you, the individual concerned, would somehow or other impair a criminal investigation.

That is the principle now embodied in the Privacy Act. In most cases, investigative bodies working under the Privacy Act must demonstrate an injury if they deny access to the information. That this group should be exempted from that or that they should routinely deny any access requests to this, as they have told us they intend to do, strikes me as an arbitrary and unjustified position. They may say, as Mr. Seeto of the Finance Department has said, that the Privacy Act covers this. However, if you look carefully at this bill, you see that the coverage is a bit of a chimera because they have written in clauses that essentially make the ability of the Privacy Commissioner to act on behalf of any complaint meaningless.

Senator Furey: I agree with an earlier comment you made that reporting agencies no doubt will err on the side of protecting their own interests. As a result, I can see a whole host of transactions being reported that end up being purely innocent transactions. If the individuals or clients who are reported are not told about this, they have no opportunity to go back the next time to ensure that the transaction is more transparent so that it does not get caught in this web. One of my concerns is that the failure to notify people will mean that they do not have the opportunity to ensure that they do not continuously get snagged up or caught up in it.

Mr. Phillips: Senator, I could not put it better myself.

Senator Oliver: Mr. Phillips, every time you appear before one of our committees you leave us with a big challenge and you have done it again today, with comments on clause 55 of this bill and section 16 and subsection 22(1). Clause 55 is the one that authorizes the centre to disclose designated information about a Canadian citizen to law enforcement organizations and the Canada Customs and Revenue Agency.

From reading the bill, I have the impression that this bill gives a lot more powers than are necessary to do the job of combatting money laundering in Canada. Some of the powers given are intrusive. I think you would agree with that.

Because section 55 gives this extraordinary power to give information to other agencies, such as the Canada Customs and Revenue Agency, I also have the impression that this is a backdoor way for the federal government to say, under the guise of controlling money laundering, "Let's go a couple of steps farther and try to find out if we cannot combat the whole underground economy." If they find someone has given $5,000 cash to someone and

then another $5,000 cash, they have the power under clause 55 to give that information to the Canada Customs and Revenue Agency. In my opinion, that could be used for purposes of trying to combat the underground economy. I should like to hear your comments on that.

Mr. Phillips: We did look at that section. The purpose for the reverse direction of the information flow, if you want to put it that way, did seem a little obscure to us. I do not think we ever did question any of the officials about that particular section. In the end, we came to somewhat the same view, that this certainly would permit the use of information given by a financial institution, for example, to the centre for purposes of money laundering investigations also to be transmitted to the revenue authorities for the disclosure of unreported income. Whether that is right or wrong is something you might want to consider, but it did seem to me to be getting a bit beyond the stated purposes of this bill, which they repeatedly say in various places is only for the purpose of money laundering investigation.

There is a broader issue there, senator, which is the question of whether, when people have at hand what they think may be evidence of criminal activity, they should disclose it to another authority. What does merely reporting a sum prove to the financial centre about a person's relationship with the Canada Customs and Revenue Agency? It is well worth looking at, absolutely.

Senator Oliver: You also make the amazing revelation that your department has gone to the Department of Finance and said, "Tell us about the Privacy Act and its position vis-à-vis this act," and you have said that you have been reliably informed that the centre will routinely deny access requests by you. In other words, in Canada, we have a right of privacy. One of the powers you have now to enforce that right of privacy is to go to agencies and seek to get information. Now you have been told, before this act gets Royal Assent, "There is no point in your coming because we are routinely going to turn you down."

Mr. Phillips: Yes.

Senator Oliver: Do you think that language such as "such consent shall not be arbitrarily or unreasonably withheld" might strengthen your position under the Privacy Act?

Mr. Phillips: I suggested some language in my brief opening remarks, to the effect that, where the information collected about financial transactions has not precipitated and is unlikely to lead to a criminal investigation, the person concerned with that information should have a right of access to it. The only conceivable explanation for refusing such a request for access would be if that access were injurious to a lawful investigation of money laundering.

Senator Oliver: What reasons did they give for telling you that they were routinely going to refuse to give you this information?

Mr. Phillips: I will refer you to Mr. Delisle, who attended the meeting at which those statements were made.

Mr. Julien Delisle, Executive Director, Office of the Privacy Commissioner of Canada: I should like to clarify a point, senator. Section 16 and paragraph 22(1)(b) are Privacy Act sections that deal with an individual's right of access. What the Department of Finance is saying is that individual Canadians making an access request under the Privacy Act may be routinely denied under section 16 and paragraph 22(1)(b) of the Privacy Act. That has nothing to do with the authority of the commissioner to investigate complaints on their behalf. He will be permitted to do that.

Mr. Phillips: The point I am making is that even though we can go and investigate the complaint and come to a conclusion about the merits of the complaint, pro or con, if we should in the case of a denial of access decide that the complaint is justified, we cannot force the centre to grant access. As you know, as ombudsmen we do not issue orders, we issue recommendations to the departments holding the information. If they do not accept our recommendation, we then have the option of applying to the Federal Court for a hearing of the complaint and our recommendation.

The way this bill is structured, I can make a recommendation, and they can look at it. However, since they have decided in advance, as evidenced by their statements to us, to deny access, what is the point of the investigation? They have already told us in advance, "We do not care what you recommend."

Senator Oliver: You can still go to the Federal Court.

Mr. Phillips: No, we cannot. Clause 60 is worthy of your attention. We can go to the Federal Court, but this bill says that this information can be disclosed only under the circumstances that are set forth in clause 60. That does not include the Privacy Act, which is overridden specifically by clause 60. That clause states that, despite any other act of Parliament, the information may be disclosed only under these very narrowly defined circumstances.

In other words, we are shut out of the court process unless a Federal Court judge is prepared to say that, in his view, this is a denial of natural justice or that it offends administrative law in some other way. On the face of it, though, as we see it, the commissioner is effectively blocked from ever providing relief, even when he may feel that the complainant has a fully justified complaint.

Senator Oliver: Has your department looked at the charter and at this particular statute to see whether provisions of the charter have likewise been infringed?

Mr. Phillips: I do not think we have come to any conclusion about the charter argument. It has been raised elsewhere. The Canadian Bar Association made some comments that struck us as reasonable observations.

Mr. Stuart Bloomfield, Policy Branch, Office of the Privacy Commissioner: The Canadian Bar Association is concerned about section 8 of the Charter but also about the vagueness of several provisions within the bill, such as the uncertainty surrounding what may constitute a "suspicious transaction."

One rationale for establishing the reporting centre at arm's length from the law enforcement body is to insulate the authority from a Charter challenge. This is because the centre is not an investigative body, even though it ostensibly performs an investigative kind of function.

Yes, we did consider the charter issues. There may still be some outstanding concerns in that regard that need to be resolved.

Mr. Phillips: Senators, you have just heard a very good lawyer being very careful. I will tell you what the commissioner thinks.

True, the centre is not an investigative body as defined in the regulations, but, when it talks like a duck -- et cetera. The sole purpose of the centre is to facilitate law enforcement investigations into money laundering. You have just heard a good deal of evidence from police witnesses about how useful and essential this centre will be. Law enforcement is its raison d'être. It is difficult for me to accept the notion that it is not involved in investigations.

Senator Kroft: I do not think Canadians like this legislation in the sense that we do not like the kind of society that calls up this kind of legislation. It is part of a bigger feeling. I did not like putting in my first burglar alarm system because it said something about the community where I lived.

Our job is to find the best way of doing things, often amongst alternatives. Today, in the absence of this legislation, where are we? Investigations are certainly going on now for money laundering. In your official office, do you have any access to police investigation reports? If this bill is not passed, obviously police activity will fill the gap. Is that system not even more protected, even more impenetrable, by any kind of process?

Mr. Phillips: The Office of the Privacy Commissioner does have access to police investigation records if a complaint on an investigation is filed with our office. We also have authority under section 27 of our act to audit the manner in which government agencies and departments are managing the personal information that they collect.

Yes, we do have an insight. If you are asking my view on how they do their work, I hesitate to go very far along that track. We are not there to tell people how to do their jobs, only to look at the way they manage personal information.

Senator Kroft: I am just trying to confine the question to accessibility. For example, do people who were investigated ever know that they were investigated? My colleague raised that question.

Mr. Phillips: Sometimes yes and sometimes no. For example, the Privacy Act does provide a process by which a government department can refuse to confirm or deny the existence of personal information if it qualifies for exemption under some of the exempting clauses of the bill. For example, the Canadian Security Intelligence Service routinely refuses to confirm or deny the existence of personal information when people write in to ask for any personal file

that involves them. CSIS's justification for doing that has been tested in the courts and upheld. CSIS argues that, if they confirm or deny the existence of personal information, it could be a very valuable tool for terrorists, for example. A terrorist would want to know if Canada was not watching. It is the so-called mosaic effect.

Senator Kroft: Judging from the reactions you have heard, do you think that this proposal is roughly equivalent to the way CSIS operates?

Mr. Phillips: There was an attitudinal view demonstrated to us by their statements about refusing to grant access to any information.

We are dealing with a somewhat different issue here. This is not capturing information on people who are suspected of anything. It is capturing the information on thousands of people on the statistical assumptions that people have made. If you collect enough information, you will find a crook. If you go through enough houses in the city of Ottawa without warrant and without telling people, doing it while they are away on vacation, you eventually will find some stolen property.

Those are the analogies. CSIS is an entirely different matter. It is conceded, and the statistics so far prove, that the vast majority of this information will concern the innocent, entirely lawful business of Canadians. Some limited proportion will be helpful to law enforcement authorities.

The normal reasons police collect information, which lead to probable cause to feel that someone is committing an offence, are set aside here. This is essentially based upon the proposition that, if you get enough information about enough people, somewhere in that enormous body of information you will find reasons to suspect a criminal act. That sets aside the normal rights of people dealing with probable cause as a principle of law.

The Chairman: You are defining "probable cause" in your way. Their "probable cause" may be different. A bank customer who makes deposits at a bank three times a week may be totally innocent, but that may be probable cause for a police officer.

Mr. Phillips: Granted.

The Chairman: It is hard for us to discern what is suspicious and what is not. I do not think you can define it. I am not arguing with you, but I am saying that I do not know how to deal with it.

Mr. Phillips: I would be the last person to argue that this is an easy question. This is one of the many cases where we must strike some kind of a reasonable balance in the face of a national problem.

It is my contention that the centre will collect all this information but that most of the information will clearly not involve criminal activity. I see no compelling argument why those innocent people whose information is in that database should not have access to it, or, for that

matter, that they should not be notified that the information has been collected and that no fault has been found with it. Why can they not put that in the bill and make that a statutory requirement?

It is very disturbing, senator, to have officials of a department in this country telling us, before the thing is even law, "Well, they can ask for it if they want to, and even though the Privacy Act says that an injury has to be demonstrated, we are going to deny access automatically and routinely."

The Chairman: It sounds stupid.

Mr. Phillips: It is offensive to me. At any rate, it constitutes a very strong argument for putting right in the legislation that, if no criminal investigation has resulted from the accumulation of this information, people should have access to it, at least.

The Chairman: Which means they have to be informed.

Senator Furey: Did you not also say, Commissioner, that you did not have standing before the court to take it that further step?

Mr. Phillips: We do in normal cases, yes.

Senator Furey: Not here?

Mr. Phillips: Clause 60 of this bill seems to override the normal process of our right to apply to the court.

Mr. Delisle: I wish to apologize, senator. I misled you and, I think, the commissioner. He was, in fact, referring to section 37 of the Privacy Act, which deals with audit, not section 27.

The Chairman: The commissioner's omission.

Senator Tkachuk: This bill troubles me greatly because of its enlisting of the Canadian citizenry to send paper to the government on their friends and neighbours and the people they do business with, which is much like stopping crime in a neighbourhood by putting cameras in everyone's house. The term "suspicious transaction" bothers me because, just a while ago, a black man in New York who was thought to be suspicious had 42 bullets put in him by well-trained people. Of course, he was an innocent bystander. Here, we are going to have amateurs doing this, bank tellers, who do not know the law itself.

I asked the bureaucrats when they were here why people could not get information on their own file, and they did not really have any answer except "No." In all this discussion, did they give you the reason they would not release a file on a person who just happened to have his paper cross the desk of the commission? Were you told why they want to keep it?

Mr. Delisle: Sorry, I missed the last part of your question.

Senator Tkachuk: Why do they want to keep the file? A person's file comes in, they investigate, there is nothing there. Why do they want to keep the file for five years and why would they not allow a person access to his file if he wanted it?

Mr. Delisle: They want to have the information for a set period of time in order to decide if there is some kind of pattern or if there is any information that should be passed on to the police for criminal investigation purposes. I think there is also a requirement in the bill that the information be purged after five years, if nothing has happened.

From our perspective, in order to bring more transparency to the process it is important to develop the statutory right of access so that individuals could see what is in their files, if that information is not subject to a criminal investigation. If it is subject to a criminal investigation, then one could understand why they should not get access to it. It seems to us to be the quid pro quo for denying a person his fundamental right of privacy.

The Chairman: Thank you very much, gentlemen. I do not know that we got any further, but we know more.

The committee adjourned.

June 8, 2000 [Standing Senate Committee on Banking, Trade and Commerce]

The Chairman: Honourable senators, I call the meeting to order. We are here to continue our hearings on Bill C-22.

This morning, I am pleased to welcome the Information Commissioner of Canada, the Honourable John Reid.

Hon. John Reid, P.C., Information Commissioner of Canada: Mr. Chairman, I want to say at the beginning that I appreciate the opportunity to come before you to talk about this bill. This is also not the first time that a commissioner has come before this Senate committee to ask that legislation be changed. My predecessor, John Grace, came here a number of years ago to ask for amendments to a labour bill that also had the effect of removing information available to Canadians from a piece of legislation.

Senator Angus: Mr. Chairman, I have a point of order. We have had no documentation on this presentation.

The Chairman: We received it last night.

Senator Angus: It was not circulated to the senators, and everything Mr. Reid is about to say seems to have been available on the Internet this morning, while we did not have it yet. Do you think that is a good thing?

The Chairman: No.

Senator Angus: I think you should register your disapproval and ensure it does not happen again.

The Chairman: You have done so.

Mr. Reid: On that point, Mr. Chairman, I gave similar testimony earlier this week to the Justice Committee of the other place. Any information that came out of that testimony is, of course, in the public domain.

The point I want to make, however, is that Bill C-22, which seeks to create a new government institution, is a direct attack on the access to information legislation and the principles behind it.

Clause 85 of Bill C-22 provides that all required reports of financial transactions in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a money laundering offence, all voluntary reports about suspicions of money laundering, and any information prepared by the centre from information received concerning suspicious transactions or transactions involving sums of money of a value equal to or greater than a specified amount to be set by regulation, will be exempt from the Access to Information Act.

The Department of Finance was kind enough to invite us over for a brief discussion of these matters. We asked them what, if any, of these aspects of the activities of the new agency would not be protected under the existing provisions of the Access to Information Act and whether they could give us examples. They could not give us any examples and they could not be specific.

I have been unable to find any justification for this provision. If this provision goes through the House of Commons and the Senate and becomes law, how can we justify having CSIS, the RCMP, the Department of National Defence, or a number of other departments that hold information that, in many ways, is far more important, far more confidential, and far more dangerous to the health of the country than this, included in the act and this minor piece of information outside? If this is allowed to take place, it will create a "black hole" in the governmental system. Black holes, as you know, have a tendency to draw in a whole range of other information.

This is not an unusual attack on the Access to Information Act. In doing some research for this meeting, we discovered that the number of exemptions to the act has been growing very rapidly. When the act was passed, there were 33 statutes listed in Schedule II, which is where exemption from the operations of the act are found. Three years later, there were 38. In 2000, some 50 statutes are listed in Schedule II. Therefore, this is a continuing process by government and the bureaucracy to ensure that more and more information is kept away from Parliament and the citizens of Canada. This means a lessening of accountability. It means that,

in effect, we must put more trust in the bureaucracy and the government to ensure that proper scrutiny of these activities takes place.

When the act was reviewed by the parliamentary committee in 1986, it recommended that, as a result of three years experience, Schedule II be done away with because it was not possible to justify intellectually the exemptions already in place under the Access to Information Act.

Senator Kelleher: Mr. Reid, did you have discussions with the Department of Finance regarding your concerns prior to the bill being tabled and passed by the House of Commons?

Mr. Reid: Yes.

Senator Kelleher: Did you have any success as a result of voicing your concerns to Finance?

Mr. Reid: I will ask Mr. Leadbeater, who organized the discussions, to reply to that.

Mr. Alan Leadbeater, Deputy Information Commissioner: Senator, it is fair to say that the department gave us a very fair hearing. We had a full opportunity to discuss our concerns with the experts in the department.

As to whether we had success in changing their minds, the answer is no. We agreed to disagree. We were of the view that all of the sensitive information that deserves protection could be protected under existing provisions of the legislation. The department felt they needed an "abundance of caution" approach. Although they could not come up with specific examples, they believed that this information was so sensitive that they would like the assurance of a "blanket of secrecy." That is where we agreed to disagree.

Senator Kelleher: Specifically dealing with clause 85, to which you have just objected, did they give any specific raison d'être for wanting this exemption?

Mr. Leadbeater: As you know, senator, the act requires all individuals to report suspicious transactions. That is fairly sensitive information. The centre is independent of the law enforcement agencies and it will examine it carefully and decide what to pass on. In that circumstance, they felt that for the public to have confidence in their integrity and independence, they wanted to be able to assure them there was absolutely no chance this information would ever get into the public domain.

I think that was the rationale for taking the "abundance of caution" approach.

Senator Kelleher: Did you have specific discussions with them about the lack of a definition of "suspicious transaction"?

Mr. Leadbeater: No. We felt that however "suspicious" was defined -- and that certainly becomes a privacy issue with regard to how intrusive this legislation should be -- the existing provisions in the Access to Information Act protected what was sensitive but also permitted the public to have access to accountability information. This organization will, after all, have a

fairly intrusive role in Canadian society and Canadians will want access, for example, to any internal audits that may be done on its administration and effectiveness. This provision could prevent them from having access to that type of information.

Senator Kelleher: Did you raise any concerns with them over the fact that the citizen would never know he was being investigated, and if it was decided that there was nothing wrong with the transaction, he would not even then be notified that there had been an investigation and that he had been cleared?

Mr. Leadbeater: We did express concern about that in the sense that if the institution were to be covered by the existing provisions, section 19, which protects the privacy of individuals, would be available to them. However, there is a public interest override to that section. In certain cases, the public interest in disclosure might outweigh the privacy rights of individuals. That weighing, which we think should go on, and Parliament says should go on, under the Access to Information Act, would no longer be possible because of the changes to Schedule II.

Mr. Reid: As you see, senator, it becomes a black hole into which a great deal of normal information about a department can fall and be protected.

Senator Kroft: Good morning, Mr. Reid. My question goes to the root of the bill. I think we would all agree that it would be preferable if we did not need such legislation. However, the governments of the world, in the face of modern realities, have concluded that we need to protect ourselves in this area. The question then becomes, what is the least socially damaging thing we can do while still achieving the purpose? That is the way I approach it.

Is there a distinction between information that the analysis centre would have, which is collected by agencies of the state, be it police, CSIS, or others, and information that a broad range of Canadian citizens and institutions have the obligation to provide to try to capture illicit funds?

Does the fact that that information comes from ordinary citizens, rather than as a result of professional state agency work, change the nature or quality of the material? It seems to me you have some obligation to the people on whom the duty to provide the information is being imposed. It is of a fundamentally different quality when it comes from you, me, or someone else who has to make this report. Does the source of the information change anything about the situation?

Mr. Reid: No. If you look at the activities of the RCMP, CSIS, as well as other regulatory agencies that have powers similar to this projected agency, you will find that information that needs to be protected is well protected under the Access to Information Act. There are exceptions that provide for the protection of that information.

I should say that about one-third of our work -- perhaps more -- goes into the enforcement of various provisions of the Privacy Act to ensure that information that ought not to come out does not become public. If you were to take a look at the kinds of information that will be gathered by this new agency, and examine the exemptions as listed in the Access to

Information Act, you would be hard pressed to find any piece of information considered secret that would come out. That is because the provisions of the act would protect it for the necessary period of time.

We have no problems at all working with CSIS. We have no problems at all working with the RCMP, who after all, in their day-to-day activities have information that is much broader, much deeper, and much more significant in a whole range of other areas than what this agency will be collecting and collating.

Mr. Leadbeater: The question you asked, senator, has another aspect to it that is worth mentioning. By placing this provision in Schedule II, Canadians will get the idea that they can come anonymously to this centre and say whatever they want and give whatever information. However, Canadians should remember that once the centre analyzes this information, if they feel there is a reasonable basis for the involvement of law enforcement, it will be passed on. There are no guarantees of anonymity once things gets into the criminal investigation and subsequent prosecution system.

I do not think it is fair to Canadians to give the impression at the very outset that this is an anonymous "snitch line," if you will, that they can phone in tips and never be involved subsequently. They may become involved, and they may as well know that right at the outset.

Senator Furey: Are you saying then that you would want access to the information for which they used the euphemism "for investigation analysis" at the analysis stage?

Mr. Leadbeater: We are saying that there would be an adequate exemption for the information at the analysis stage, subject to a public interest override, if the protection were to be for personal information under section 19 of the act. The information that is not related to the actual suspicion of money laundering, such as the administrative and personnel information of the institution, would also be accessible, subject to the ordinary exemptions to which all government institutions are subject.

Senator Oliver: Mr. Reid, because something is inconvenient, that should not be a justification for the denial of a fundamental right, such as the right of access to information or privacy. The document that we saw on the Internet contains remarks that you made earlier. I will quote two paragraphs and ask you to comment on them and explain them to this committee. It states the following:

We already know the Chrétien government does everything possible to block improvements to Canada's freedom of information laws. Now it wants to exclude even more government-held material from public scrutiny. The federal Information Commissioner, rightly, wants it to stop.

Farther down in the story it states that 17 years ago, some 33 agencies and departments were exempted. Now with Bill C-22 there will be 51. The article goes on to state:

Even worse, it seems the main reason for wanting the centre excluded is not to protect confidential financial records -- sufficient safeguards already exist in the access act and its

corollary, the Privacy Act -- but because it would be "inconvenient" for the centre to have to respond to requests for documentation.

What do you say to that?

Mr. Reid: I say that the government has attempted to take other legislation out of the ambit of the Access to Information Act a number of times. An example I gave in my presentation was the labour legislation. My predecessor, John Grace, came to the Senate to seek to have that removed.

I also gave the example of the way in which the number of exemptions in Schedule II of the act has increased steadily at a very rapid rate. There has been an increase of almost 100 per cent in the 17 years since the act came into effect. The parliamentary committee that reviewed this said section 24 is not necessary because the exclusions in the act protect all of this information. Not only is there the abundance-of-caution argument, which Mr. Leadbeater mentioned, there is also the desire to hamstring the act in a variety of ways by removing a significant amount of information from the purview of the Information Commissioner. This is a continuing, and normal, I suppose, bureaucratic battle. I feel that it should stop. I feel that section 24 should be removed from the act and that clause 85 should be removed from this bill.

The Department of Finance has advanced no substantive argument as to why it is required. It can be "macho" reasons in saying, "I'm out and you're in." It can be an abundance-of-caution reason. It can be because I do not want to have to go through the agony that the access legislation provides for. There is no substantive reason, which is to say that there is no information that this agency will receive that is not already protected where necessary.

Senator Oliver: Your main submission, which is succinct, brief and clear, is that you would like to have clause 85 removed from Bill C-22. Do you have a proposed draft amendment or wording? Second, have you and your staff looked at any other ways in which the problem could be solved other than by complete removal?

Mr. Reid: In the first case, I have not been convinced that there is a problem. The Department of Finance has been unable to advance any substantive argument that this information and this agency will have a status higher than that of other secret and police agencies like the RCMP and CSIS. They have been unable to do that. Therefore, a simple amendment such as, "I move that clause 85 of the bill be deleted," would be satisfactory; and to report back to the other place that this clause has been deleted and to ask for their concurrence. That was the process used the last time an information commissioner came before a Senate committee.

[Translation]

Senator Poulin: Since the implementation of the Access to Information Act, there have been major changes in the communication field in Canada. What we consider as being private is far from being really private. This is what we see more and more of in every area. Have the new communication technologies influenced your legislation?

[English]

Mr. Reid: The new forms of communication, such as the World Wide Web, e-mail, and other forms of electronic communication are covered under our act -- not as clearly as we would like them to be, but they are covered. We take into account e-mails, for example. We take into account electronic documents created by government. Voice messages are also covered under the act, but no one has yet found a way of recording them. Decisions are often communicated using voice mail and no record of them is kept. We find a considerable amount of useful information on the Web, and that departments are increasingly using it as a means of information publication.

We have a problem with that because our act clearly refers to publications being in the Gazette or in the library depository system. However, publication on the Web is a greater source of information than the other more traditional means in many cases.

We are very conscious of the problems with electronic documentation. You know that I have complained vociferously about the collapse of the government's filing system, and we still do not have an electronic filing system in place. It is no wonder that records within the Government of Canada tend to be in a chaotic state. It makes it difficult for people to get the information that they want. It makes it difficult for departments to find that information.

[Translation]

Senator Poulin: Considering that explosion of communication technologies, is it not a real challenge for our government to balance ensuring access to information and accountability on the one hand, and the management and follow-up of information on the other hand?

Do you not think that in the spirit of Bill C-22, as Senator Kroft so well said, this balance is particularly important during the transition period? Sometimes it may be better to be overly cautious than to have a system overly accessible and open.

[English]

Mr. Reid: I agree that the question of balance is very important. However, Parliament has decided that the balance shall be met through the Privacy Act and the Access to Information Act. To further ensure that that balance is available to members of Parliament, there are two commissioners with separate mandates. In my case, I spend about 30 per cent to 35 per cent of my time enforcing the Privacy Act. Thus there is considerable balance.

Second, in terms of the activities of CSIS, the RCMP, and other enforcement and regulatory agencies, that balance has been demonstrated beyond a doubt after 17 years of experience with these two acts. I do not believe that there has ever been a case on either the privacy side or the access to information side, where the rights and needs of Canadians to have that balance has been found to be invalid. It is a wonderful record that I think goes back to the designers of the original legislation.

[Translation]

Senator Poulin: What is the main source of requests made under the Access to Information Act, to public agencies that comes under that legislation? Are those requests coming from the general public, Members of Parliament or journalists? What is the proportion of each source?

[English]

Mr. Reid: The greatest source of requests is from the business community. They make up about 40 per cent of the volume. Increasingly, however, we see requests from members of Parliament and senators climbing very rapidly. I have been told there is a study going on into where members of Parliament get their information. After the first six interviews with back-bench Liberal MPs from the House of Commons, the people conducting the study were amazed to find that they all said that the Access to Information Act was their number one method of obtaining information about government activities. Therefore, the Access to Information Act has now superseded the techniques for which I had some responsibility when I was in the House of Commons. They are seldom used now because the Access to Information Act gives citizens rights against the government. The government has an obligation to provide that information within 30 days. If they are dissatisfied with the information they have requested, and they are dissatisfied with the exclusions that the department has made, they can appeal to the Information Commissioner, who will conduct a thorough investigation. The Information Commissioner has very adequate powers to do that. It is a very good balance, in my judgment.

Senator Angus: We were told by the officials who came to brief us about the reasons for this bill, et cetera, that the principal underlying one was the need to combat organized crime. We were told it was to do our bit as a member of a group of 28 nations working together to deal with so-called "money laundering," which I refer to as sort of a folkloric term that television has created. These television definitions far exceed the definition set out in the bill.

At any rate, do you agree that the main and only purpose of this bill is to help combat organized crime on an international scale?

Mr. Reid: Yes.

Senator Angus: I was told before this briefing that there were other reasons, such as the fact that they are after tax dodgers, tax evaders, and not necessarily organized crime.

Senator Oliver: As well as the underground economy.

Mr. Reid: I am not capable of making that kind of judgment. We focused on how the act impacts on the Access to Information Act. That is my mandate. I dare not go beyond it.

Senator Angus: From what I can see, sir, you do your job very assiduously. I am happy as a citizen that you are doing it with the zeal and competence that you and your colleagues bring to it. Let us say it is a given that the principal and underlying reason for this somewhat

Draconian bill is to help Canada do its bit in combating organized crime on a large scale. Do you know of other legislation or other databases that result from legislation designed to combat crime on this scale where that information would be available to the public?

Mr. Leadbeater: All the policing agencies of the federal government -- the security service, the RCMP, the policing agencies associated with the Correctional Service of Canada, the Immigration service, the Customs agencies and so forth -- all play a very vital role in the security of the nation. They all came before Parliament at the time the Access to Information Act was being proposed to say, "Don't, whatever you do, make us subject to this act because it will be the end of law enforcement." Parliament said, "No, sorry. We think we have given sufficient exemptions." They were all made subject to the act. Three years later, Parliament reviewed the act and not one law enforcement agency came before it to say that it had been crippled.

I think the experience in the law enforcement and related fields has been clear -- and this is not strictly law enforcement, it is a related field -- that this legislation does not interfere with them accomplishing their programs. At the same time, it gives the public a window into what they do.

Senator Angus: It is but an opaque window.

Mr. Reid: Yes, because the information that is important to the ongoing business of a regulatory department, the police, or CSIS is protected under the act. That is why we find it very difficult to understand why this agency is superior to all of the other agencies of government that handle confidential and important information such that it should have a special exemption.

Senator Angus: That was going to be my next question. It seems to flow from your written material and from your statement that you believe that the powers that be could carry out their intentions under this bill without clause 85.

Mr. Reid: Yes. As I say, they have been unable to advance a substantive argument as to why clause 85 is vital to the functioning of this agency.

Senator Angus: Is there any other element in this bill that offends you in terms of your mandate?

Mr. Reid: No, this is the only clause. I look upon this as part of a continuing attack.

Senator Angus: That is what worries me. I would rather hear you say that this specific bill is highly offensive. As my colleague, Senator Oliver, indicated, it appears that the present government is running roughshod over these main precepts of the privacy laws of the country. I think, therefore, that my staff and I will look more deeply into that.

However, I refer specifically to this bill, which is receiving a fair amount of international attention. We are told that it is urgent, that Canada is the last of 28 countries to do it, and that

we had better hurry up and get this on the books. Now we find that that it is not quite accurate, that Canada already has quite good teeth in its criminals laws, et cetera. If we enact this bill, not only will we be one of 28 countries that have done something, but we will probably have gone beyond what those other countries have done. We are waiting for a chart from officials that will set out a comparison of all these elements, to see whether our government is asking us to go way beyond what the other 27 countries have done.

Mr. Reid: I can assure you that I believe that all the other information that is collected under other acts of Parliament is subject to the Access to Information Act.

Senator Angus: You have made that clear, and I was not fully aware of that. That includes the CSIS legislation and our main criminal statutes, but conditionally, of course.

Mr. Reid: Yes, because there are exemptions.

Senator Angus: Yes, and you folks bring the balance to it.

In preparing for today and examining Bill C-22, have you had occasion to look at laws of this nature in other countries to see whether they go beyond what you think is reasonable?

Mr. Reid: No, we have not.

Senator Angus: You cannot tell us that Canada will be more Draconian than other countries if we enact this bill?

Mr. Reid: We cannot make that judgment.

Senator Kroft: Perhaps Mr. Reid's answer obviates the need for my question. However, I am also interested in how we are doing compared with other countries.

Yesterday, we heard from a senior official from Belgium who had broad experience in the organization of this kind of legislation internationally. He also said that he was a professor of comparative law and would speak wearing that hat too.

When we asked him how this bill compared with laws internationally, he said that it was more "protective," I believe was the word he used, and that it went further than other legislation he had seen toward protecting the interests of citizens.

Senator Oliver: He did not say that. That is not accurate.

Senator Kroft: I think that if you check the transcript, you will find that he did.

Senator Oliver: He did not say that.

Senator Tkachuk: That is a nice spin.

The Chairman: I think he did say that, but I will have to check the transcript.

Senator Kroft: I invite you to look at the transcript and see what your reaction is to see what he said.

Senator Tkachuk: Belgium has always been a great example for us to follow and we should get right on it.

Since it was our government that passed both the Privacy Act and the Access to Information Act, we on our side feel a strong responsibility to protect that legislation. A number of issues were raised by the Privacy Commissioner yesterday that caused us great concern. Of course, you raise others today.

On page 3 of your brief you mention the black hole of secrecy that will be created if clause 85 is allowed to stand. You said that it could, for example, be a basis for refusal to disclose audits of the effectiveness of the centre's operation.

Could you expand on that? To what audits do you refer?

Mr. Reid: Generally speaking, one of the management tools we have seen develop over the last few years is an audit of programs to ensure that delivery is proper, that you have the right resources, and that the administration is up to scratch. These audits are, according Treasury Board, to be posted on a Web site, and the draft audits have been accessible for some time under Access to Information legislation. With the kind of exemption contained in this bill, it could be legitimately argued that those audits will no longer available, only a report on the administration of the program.

Senator Tkachuk: I believe this bill provides for one parliamentary review in five years, and then Parliament never reviews it again unless the government passes another bill or amends the act. Are you saying that audits will not necessarily be done, or that they will not be revealed?

Mr. Reid: I cannot say whether they would be done, but if they were, they would not have to be revealed according to this clause.

Senator Tkachuk: If someone asks for information about an issue in a department that is being dealt with in this centre, can that be used as an excuse not to give access to the information? They will be getting information from tens of thousands of people across Canada.

Mr. Reid: If the department controls the information, under this bill, it cannot come out. Also, if that information is in the hands of someone else because it is owned by this department, it will not come out. It would probably also be protected under the Access to Information Act, but in this case, because it is taken out of the act, it is an absolute prohibition.

Senator Poulin: Do you not believe, Mr. Reid, that there is a fundamental difference between this centre, CSIS, and the RCMP in terms of the fragility of information that could be accessed through the bill?

Mr. Reid: In a hierarchy, I would say that CSIS has by far the most sensitive and wide-ranging information, with the RCMP ranking second and this agency third. It does have significant privacy implications. However, the Privacy Act protects much of that information.

I do not see a particular conflict between the Access to Information Act and this agency, because we have had plenty of opportunity over the last 17 years to work out these differences, difficulties, and problems with the agencies that have sensitive and important information. This is the new boy on the block, and it would fit into the already existing practices.

Senator Angus: Did you say that CSIS was first on the spectrum of sensitivity?

Mr. Reid: Yes.

The Chairman: Thank you very much, gentlemen. We appreciate your being here.

I call the next group of witnesses from the Canadian Bar Association. I would like to welcome Ms Tamra L. Thomson and Mr. Greg DelBigio.

Ms Tamra L. Thomson, Director, Legislation and Law Reform, Canadian Bar Association: Mr. Chairman, the Canadian Bar Association is pleased to be able to present its commentary on Bill C-22 today. The Canadian Bar Association is a national association, representing over 36,000 lawyers in all aspects of practice in all areas of the country.

Amongst our primary objectives are improvement in the law, and improvement in the administration of justice. It is from that optic that we make our views known today.

You have received a copy of our submission, as well as a covering letter that addresses some amendments that were made in the other place after we had made our submissions to that committee.

I will ask Mr. DelBigio to address the substance of our concerns with this bill. Mr. DelBigio is a member of the criminal justice section and past Chair of the Vancouver group in that section of the CBA.

Mr. Greg DelBigio, Canadian Bar Association: The Canadian Bar Association expresses two general concerns in its final submission on this bill.

We are concerned about the way in which this bill might interfere with legitimate business activity. I will not dwell upon that today, as it is set out in our submission.

More important, the CBA is concerned about the way in which this bill will interfere with the lawyer-client relationship, in particular, with respect to privilege and confidentiality, which are both essential to that relationship.

As some of you may know, privilege and confidentiality are related but distinct concepts. Both protect information that lawyers receive from clients.

Confidentiality is of course an ethical duty. It is a duty that prohibits lawyers from disclosing information received in their professional capacity to others.

Privilege is a narrower concept. Privilege belongs to the client. Once again, however, the lawyer is prohibited from disclosing that kind of information.

It is the position of the Canadian Bar Association that this bill undermines and erodes the lawyer-client relationship, which is different from any other existing professional relationship. That difference is recognized in law. It is a difference that must be maintained, and that is threatened by this bill.

It is the position of the CBA that there is little doubt that the objectives of this bill are the deterrence of crime and the enforcement of criminal law, and perhaps in particular, the deterrence of organized crime as it relates to money laundering. When considering the bill, it is important to bear in mind existing law, in particular, Part XII.2 of the Criminal Code. That is the existing money laundering legislation, which provides a very comprehensive scheme, including offence-, search-, and forfeiture-related provisions. There are also special provisions within the Criminal Code dealing with organized crime -- for example, the wire tap and penalty provisions.

I say this to illustrate that the topics that are covered by the bill already exist within the Criminal Code in many respects. Is Bill C-20 as it pertains specifically to lawyers necessary? Is there a current void within the Criminal Code that needs to be filled? It is the position of the Canadian Bar Association that the answer to those questions is a simply stated no.

The existing laws deal effectively with money laundering and organized crime. Even if it is necessary for the bill to become law, it is not necessary for lawyers to be included as they now are.

The bill will require that lawyers fundamentally alter their relationship with their clients. In some instances, it will require that information be passed from the lawyer to the agency, and that that passage of information be kept secret from the client.

Uncertainty about the meaning of the term "suspicious" might lead to over-reporting. In other words, in the face of that uncertainty, it might well be that lawyers will err on the side of reporting rather than not reporting. More information may be collected than is absolutely necessary.

I am fully aware of the privilege protection contained in the bill, but again, it is different from confidentiality. That does not protect confidentiality in any way.

We have very specific concerns about the compliance measures and the ability to enter to law offices to search for and collect information. There is a similar provision in section 488.1 of the Criminal Code, which deals with the search of law offices. That has come under constitutional attack in Alberta, British Columbia, and Ontario. In all but one case, section 488.1 has been found to be unconstitutional.

That is because it does not adequately protect the privilege, which belongs to the client. In many respects, the provisions within the bill match, or mirror, section 488.1. The Canadian Bar Association is concerned that, for reasons very similar those already found by the courts, privilege is not protected. Privilege can be lost through inaction on the part of a lawyer and that then destroys the client's interest.

Senator Kelleher: I am not sure that I have everything completely straight and I want to confirm a few things with you. As I understand it, after the initial information has been given to the centre and they decide that further research is required, the centre can, under clause 62 of this bill, go to the lawyer's office and demand to see records and information that are stored on computers, et cetera. Then, as I understand it, under clause 64(2), the lawyer has the right to claim solicitor-client privilege with respect to those documents. That does not help much because it gives that lawyer the right to have the documents sealed. Then, under clause 64(4), the lawyer has the right, within 14 days I believe, to go to court at his client's expense to try to prove solicitor-client privilege. In other words, I sense that the onus has been shifted. If I want to claim solicitor-client privilege, then I have to go to court and bear the expense of proving it. Is that correct?

Mr. DelBigio: That is correct, and that is the precise concern -- inaction on the part of the lawyer will result in the loss of privilege. Once again, the privilege belongs to the client, not the lawyer. Inaction, either by failing to claim privilege at the outset, or through failure to act within the 14 days, will result in the loss of privilege. That is precisely why the courts found section 488 of the Criminal Code, in relation to the search of law offices, to be a failure.

Senator Kelleher: What have common law jurisdictions similar to Canada's, such as Britain and the United States, done about this problem? Have their lawyers, under similar legislation -- and we are the last to enact such legislation -- had the same problem of losing solicitor-client privilege?

Mr. DelBigio: I am afraid I cannot give you a comprehensive answer to that question, senator. I can only give you a partial one. First, it is important to keep in mind the demands of Canada's Constitution. That distinguishes Canada from Britain and from the United States. My understanding, and I stand to be corrected, is that in the United States, different states have different protections against the search of law offices.

Senator Kelleher: I think it is fair to say, from what I understand, that the government is somewhat anxious to have this legislation passed before we adjourn for the summer, if at all possible. The senate regularly encounters that at this time of year.

Would it be possible for the Canadian Bar Association to do a little research on this and get back to us around the first of next week? Let us know how Britain and the United States have handled this question. Obviously, their legislation has been in effect for a number of years. Why should we "reinvent the wheel," so to speak? This must have been a problem for them, and somehow they have dealt with it. They are quite law-abiding countries and it might be helpful to see what they have done.

Mr. DelBigio: We will attempt to put together some information for you, although a comprehensive legal brief of comparative law might not be possible within a week.

Senator Kroft: This is a direct follow-up to Senator Kelleher's question on the issue of where the burden of responsibility to establish the privilege lies. Can you tell us how the current proposal compares with what exists now under our Income Tax Act?

Mr. DelBigio: I am afraid that I cannot give you an immediate answer on that.

Senator Kroft: I should tell you that my understanding is that the proposal is the same as what is currently the practice under the Income Tax Act. I would like to know if I am correct.

Senator Kelleher: From my knowledge, you are probably correct. However, I think the difference, if I may suggest, is that under the Income Tax Act, a person supplies the information himself when filing his tax return. Therefore, he must bear some responsibility for his own acts. In this particular case, we have third parties.

Senator Kroft: I am talking about the narrow issue of privilege.

Senator Kelleher: I think you are correct, Senator Kroft.

Mr. DelBigio: It is important to recognize that there is a distinction drawn within the Income Tax Act between audits and special investigations. Special investigations are more akin to a criminal prosecution. The objectives of the bill are very much criminal rather than regulatory. The special investigation is to deter and detect criminal activity, in particular, organized crime. In considering the safeguards that are necessary, it is important to have regard for that background and those objectives.

Senator Furey: My question concerns the mass of information that will be gathered on private citizens who will ultimately be found innocent of any criminal behaviour. The way that the bill is set up now, there is no mechanism for notifying any of those people that they were ever under investigation. Has the Canadian Bar Association taken a position on this?

Mr. DelBigio: We have not addressed that specifically. There is a concern about the collection of information and about its subsequent use. There is a concern about information that is

collected in private, although the Canadian Bar Association has not specifically addressed that in the submission.

Senator Furey: Do you feel that ordinary Canadian citizens who have done no wrong, and have been investigated, have a right to know that?

Mr. DelBigio: We are sensitive to the needs of the police to sometimes conduct investigations without the target of the investigation being aware of it. However, the greater concern of the Canadian Bar Association is, again, the risk of reporting much too much information to the agency because lawyers are protecting themselves in the face of uncertainty. The lawyer could potentially wash his or her hands by saying, "I have done my job, now let the agency treat the information as they see fit."

Senator Furey: At what point do you think that the poor citizens who do not know that they are under investigation should be informed in order that they can seek legal counsel?

No matter what this called, whatever euphemisms are used, a criminal investigation is being conducted.

Mr. DelBigio: Yes, as it now exists, and certainly with the section on exception of obstructing a criminal investigation. Currently, if a lawyer becomes aware that a client is the target of a criminal investigation, there is nothing that would prohibit that information regarding obstruction of justice laws from being disclosed.

Senator Furey: We are hearing a lot on that topic these days. T

Senator Oliver: Is it the position of the Canadian Bar Association that some provisions of this bill are ultra vires? To refresh your memory, you state in your brief:

Bill C-22 imposes significantly intrusive regulation upon businesses, financial institutions and professionals, including the legal profession, to the extent that we believe it may be ultra vires of Parliament.

Is that your position today?

Mr. DelBigio: Yes, it is.

Senator Oliver: What, if anything, are you recommending be done about the ultra vires nature of this bill?

Mr. DelBigio: It is our position that a bill like this inextricably combines business interests with criminal investigations. That separation needs to be made. The bill cannot purport to both regulate business and business interests and conduct criminal investigations at the same time.

Senator Oliver: You referred to clause 11 of the bill. I have asked a number of witnesses about the language of that clause regarding solicitor-client privilege. It states:

Nothing in this Part requires a legal counsel to disclose any communication that is subject to solicitor-client privilege.

The word "communication" is key. To me that word does not mean activity; it does not mean transaction, such as in subclause 9(1), nor does it mean confidentiality, as you have stated.

What could we do to strengthen clause 11 to afford the protections that the Canadian Bar Association feels need to be extended? I am thinking about what language we could use to strengthen clause 11 of this bill to overcome the weaknesses of the word "communication".

Mr. DelBigio: We would prefer not to have such a limited remedy. Our first position is that lawyers should be exempt from the bill. Second, if that is not done, privileged information should extend beyond mere communication and should include transactions. Third, recognition should be given to the importance of the ethical duty of confidentiality. Fourth, intrusion into law offices should take place only with a warrant, and only in a way that properly protects privilege and confidentiality. That might be done through mandatory provisions that give notice to third parties, the clients.

Part XII.2 of the Criminal Code provides for third-party notice. That concept is not foreign to existing criminal law.

Senator Oliver: Do you have wording or draft amendments to give effect to the suggestions that you have just made to assist us in our deliberations?

Mr. DelBigio: We do not have them now, but we would be happy to provide them.

Senator Oliver: My final question relates to what some people have referred to as the low thresholds for disclosure, the $10,000 figure. You are a criminal lawyer. There is certainly much confidentiality involved in routine commercial transactions conducted by corporate lawyers, for example, in a new public issue. Many things have to be kept confidential for a time before they become public.

Are you concerned about the low threshold in this bill? Do you think that that will inhibit activities that come to lawyers' offices on a routine and regular basis?

Mr. DelBigio: We are very much concerned with the low threshold. The threshold could best be determined through consultation with people who are engaged in commercial transactions. Ten thousand dollars would seem to capture far too many transactions.

Senator Angus: On the issue of constitutionality, Mr. DelBigio, you indicated that section 488.1 of the Criminal Code is essentially identical to the provisions in this draft legislation?

Mr. DelBigio: It is not identical, but it is very similar.

Senator Angus: I believe you quoted some jurisprudence to the effect that section 488.1 has already been held by certain courts in Canada to be ultra vires, as breaching the fundamental rights of solicitor-client privilege and the ethical standards of confidentiality. Is that correct?

Mr. DelBigio: That is correct.

Senator Angus: In your knowledge as a practitioner, have there been any further attempts by enforcement agencies to rely on section 488.1 since those decisions were rendered by the courts?

Mr. DelBigio: I cannot answer that question with certainty, senator. To my knowledge, limited as it might be, no law office searches have been conducted since it was struck down.

Senator Angus: Since some courts have effectively struck it down, it is a very fine precedent upon which to rely. Despite your excellent testimony, if the government decides to go forward with this bill as drafted, in your view, one could raise the court decision as a defence. A lawyer who was searched, or was asked to comply with the provisions of this proposed legislation, could say, "Sorry, it is unconstitutional and to heck with you," right? Is that your position?

Mr. DelBigio: Yes, that is our position. This would fail for the same reasons that section 488.1 of the Criminal Code failed. It is my understanding that in the Alberta case, which is called Lavallee, leave is being sought to go to the Supreme Court of Canada. Leave applications have been filed.

Senator Angus: When you supply us with this other information for which we asked, in particular the proposed amendments that you feel would do the trick, can you give us these citations? The citation on the case where they are seeking leave to go to the Supreme Court would be helpful.

I understand that whereas there may be other elements of the bill that would be of interest, and maybe not pleasing elements, to the Canadian Bar Association, you are here today only on the point of privilege?

Mr. DelBigio: Our main concern is that of privilege.

Senator Oliver: Does that include confidentiality?

Mr. DelBigio: That is correct.

Senator Angus: Do they go together?

Mr. DelBigio: We have broader concerns. We are very much concerned with the easy flow of information to the agency and then to law enforcement. Although there is a provision that states that the agency operates at arm's-length from law enforcement agencies, in fact the wording permits a very large and easy flow of information. As it applies to lawyers, it means

that it is potentially very quickly out of the law office into the agency, and into the hands of the RCMP or other appropriate law enforcement.

Senator Angus: Perhaps the information would reach law enforcement agencies in Switzerland, or somewhere else?

Mr. DelBigio: Yes, that is exactly it.

Senator Angus: In any event, I think that you have made your point well, and certainly the Canadian Bar Association does an excellent job of monitoring the bill and bringing these potentially unconstitutional provisions to the attention of Parliament before they become law. I think that is great, and I am sure we will take what you have said into account.

May I ask you another question? I detected a sensitivity in your evidence to the need of the "state" to have certain special powers to combat the evils of organized crime, both domestically and internationally. From that, I gathered that perhaps the general spirit of the bill is not anathema to the CBA. Is that right?

Mr. DelBigio: There is no doubt that money laundering and organized crime exist. There is also no doubt that law enforcement would be more effective with a police officer on every corner, with powers that would permit every police officer to search every person's automobile without warrant or reasonable grounds. That is going to make for more effective law enforcement. Additionally, compelling law offices to disclose information will make for potentially more effective law enforcement.

The first question is, is it necessary? The second question is, is it constitutionally acceptable? The Canadian Bar Association says that the intent and objectives of the bill will not be undermined if lawyers are exempt, and in any event, it is not permissible to include lawyers.

Senator Angus: You have presaged the second question. The first question was, is it legal and is it constitutional? You say no. I was going to ask you if it is it necessary to have this illegal provision to make the bill effective. You said no to that as well.

Mr. DelBigio: Yes.

Senator Angus: That seems to cover the waterfront. Thank you very much.

Mr. DelBigio: In the litigation that has occurred, the law societies of Alberta, British Columbia, and Ontario in a Court of Appeal case that will be proceeding, have intervened and have agreed that section 488.1 is unconstitutional.

Ms Thomson: Just to note, please, that the citations for all of the cases that we have mentioned in our oral presentation today are found in our submission. For the Lavallee decision, in particular, the citation is at page 5 of the English brief and page 6 of the French brief.

Senator Tkachuk: When the department officials came before us, they left the impression that we were far behind the rest of the world in attending to the problems of money laundering, but in reality we have had laws to that effect for quite some time, actually even before Belgium had them. I was shocked. They said yesterday that laws against money laundering were passed in 1990, and before that there were none, but in reality we have had quite effective laws, as you stated.

To help me understand the philosophy behind this bill, I will be more specific. Presently, if a lawyer has a client who is participating in an illegal act, he has the responsibility to report that, does he not?

Mr. DelBigio: There is certainly a responsibility to not participate in that act. I would say there is disagreement as to when it becomes mandatory to report an illegal act. Some say that the mandatory reporting of an illegal act occurs when there is an imminent threat of bodily harm. Smith v. Jones in the Supreme Court of Canada discussed these issues. It might not be necessary to report the theft of a chocolate bar, but it would certainly be necessary to report a contemplated murder.

Senator Tkachuk: If a financial institution believes that someone is acting illegally, do they not presently have an obligation to report it? In other words, I believe the law now provides that if someone brings in over $10,000 in cash, financial institutions must report that for government records, but I am not sure to whom it should be reported.

Mr. DelBigio: Yes. There is a record-keeping scheme now in place. Indeed, I understand financial institutions are vigilant in knowing their customers and not participating in financial transactions that they regard as not in keeping with the standards of their institution.

The Chairman: Could you clarify that, please? Is that not a voluntary reporting system?

Mr. DelBigio: Is it voluntary?

The Chairman: Yes.

Mr. DelBigio: There is a scheme in place such that transactions in excess of $10,000 must be reported. That is my understanding.

The Chairman: I do not think so, but please proceed.

Senator Tkachuk: If a bank, financial institution, law office, or accounting office is caught participating in money laundering, they are also liable to prosecution under the present legislation?

Mr. DelBigio: Absolutely. The current definition of money laundering in the Criminal Code is very broad and will capture all kinds of transactions in which lawyers, accountants and banks might engage. There is already a scheme under which certain persons engaged in certain financial transactions can be prosecuted.

Senator Tkachuk: Therefore, this bill is not so much to make laws for the prosecution of criminals who are taking part in money laundering, because we already have laws that encompass everyone -- if you get involved in such an activity, you run the risk of being arrested and charged. Actually, the bill is for the purpose of allowing them to know all of your business so that they can make a decision, rather than you making the decision. Is that not really what they seem to be doing in this bill?

Mr. DelBigio: It is a much easier means of collecting a great deal of data upon which a prosecution might follow.

The Chairman: Our last witnesses today are from the Canadian Institute of Chartered Accountants. Welcome, gentlemen.

Mr. Ian Murray, Chairman, Advisory Group on Anti-Money Laundering Legislation, Canadian Institute of Chartered Accountants: Mr. Chairman, on behalf of the Canadian Institute of Chartered Accountants, we would like to thank you for allowing us to be here today to provide comments on the government's bill to combat money laundering.

I am a partner in the firm of KPMG and I chair the advisory group established by the CICA to examine this bill. With me today is Simon Chester, who is legal counsel to the CICA.

The CICA submitted a brief to the Department of Finance in February that commented on the government's consultation paper that preceded Bill C-22. As the basis for that submission, the CICA drew on the work of an advisory group that reviewed the consultation paper along with the draft legislation and regulations. Our brief broadly supported the bill, but we believed, and still believe, that it would benefit from some changes.

Our submission dealt with five areas that we want to focus on today -- narrowing the scope of the bill; defining "suspicious transaction"; avoiding the duplication of reporting requirements; restricting powers of access to records; and broadening available defences and safeguards.

I will speak first to the scope of bill. I would like to repeat at the outset that the CICA supports the government's bill and its focus on financial intermediaries. We recognize the importance of having an effective international regime to outlaw money laundering. We believe that financial intermediaries who have direct involvement in financial transactions should take primary responsibility for reporting suspicious transactions.

We accept that when a chartered accountant acts as a financial intermediary, he or she should have the same reporting responsibilities as other financial intermediaries. We understand that the bill is only intended to apply to professionals such as CAs when they are directly involved in a financial transaction -- for example, CAs who handle cash for clients or are in a general management position in a company.

That focus is appropriate. Such CAs should know where they stand. However, focus also means clarity, and clarity implies limits.

We understand that the reporting requirements of the bill are not intended to apply to those who are not directly involved in financial transactions within their companies -- for example, internal auditors, strategic planners, tax accountants, and assistant managers. The reporting requirements are not intended to apply to CAs acting in an advisory capacity -- essentially those who act in a third party role providing services to clients -- such as auditors, forensic accountants, management consultants, business evaluators, and tax advisers.

Notwithstanding this intention, we are concerned that the wording of the bill and the government's agreed-upon regulations could be interpreted to suggest that the profession as a whole could be subject to these provisions. Paragraph 5(i) provides for Part 1 of the bill to apply to persons engaged in a business profession or activity described in the regulations.

An existing regulation, which we understand will be retained, indicates that the act applies to "every person who is engaged in a business, profession or activity in the course of which cash is received for payment or transfer to a third party." We are concerned that this wording is too broad. It is not clear that the bill would apply just to those individuals who are directly involved in such transactions. It could be interpreted to apply also to all individuals who belong to a business or profession in which some individuals may engage in such transactions.

Our concern is exacerbated by wording contained in clause 7 of the bill that requires the reporting by persons or entities of suspicious transactions that occur in the course of their activities. We believe that this wording is so open-ended that it does not limit the reporting requirement to professional accountants who are directly involved in financial transactions.

The net would extend far beyond that.

We are concerned that the broad wording of the existing regulation, taken together with clause 7, could be interpreted as applying the reporting requirements much more broadly to the accounting profession as a whole.

Let me give a simple example. A forensic accountant is asked to assist a client in investigating their involvement in potentially suspicious circumstances. Any forensic accountant would be placed in a position of conflict between assisting the client and reporting to the centre, and may have to decline the engagement. The client would be deprived of needed assistance. There are many other situations where, in the absence of clarification, CAs could be drawn into the web of reporting requirements.

We think that the needed clarification should fall within the bill itself. However, we recognize the realities of the legislative timetable. If amendments are not possible, clarification should be made by regulation.

In that regard, we note that the bill includes a provision under paragraph 5(j) allowing for regulations to be made that limit the application of Part 1 to defined activities of businesses and professions. We think that a regulation under that clause should contain the following wording:

Part 1 of the Act applies to every professional accountant, who, in the course of engaging in a business or profession, receives cash for payment or transfer to a third party.

We believe that the focus, the intended subjects of the bill, should be determined by activity, not status, and not by the nature or title of our profession, but by the activities in which we are involved.

This change would make it clear that the bill will apply only to those directly involved in financial transactions. In this regard, we note the assurance provided by senior officials of the Department of Finance during the Finance Committee hearings on Bill C-22. Officials clarified that it is the government's intention to ensure that the bill only applies to professionals acting as financial intermediaries.

Officials also confirmed during those hearings that, "The regulations will indicate very clearly that the reporting obligations will not apply to the auditing function of the accounting profession."

We understand that officials are working on amendments in response to commitments made during the hearings, and that further consultation with stakeholders is planned. However, we do not know whether clarifications to the bill will be made.

We have not seen the amendments to date. We strongly reiterate the need to make changes that clarify how our profession will fit within the requirements of this bill.

The definition of "suspicious transaction" is my next topic. Of significant concern is that neither the bill nor the regulations contains a definition. The success of the mandatory reporting regime will depend on the extent to which clear and unambiguous criteria can be developed.

In the absence of this criteria, there will be overreaching and inconsistent reporting, because all professionals will have to make an important judgment call on what they believe to be suspicious. Although the reporting centre will develop guidelines to help identify appropriate characteristics and circumstances, they will not have the force of law. We think clarity belongs in the law, not in guidelines.

We recommend that the regulations contain a prescribed definition of suspicious transaction, one that sets out clear criteria. As a clear, unambiguous definition of a suspicious transaction is a tall order, it should be supported by examples and case studies to illustrate when reporting something required and when it is not.

The Chairman: Excuse me, have you taken a crack at the definition?

Mr. Murray: We have not attempted to do that. However, we have indicated our willingness to work with members of the department to assist in that process.

The Chairman: I think all of us probably have some trouble with actually zeroing in on a clear definition. I have tried to do it, but it is a little bit like beauty -- it is in the eye of the beholder, which is, I guess, what "suspicious" means. Please let us know if you come up with some bright ideas.

Mr. Murray: We will certainly be pleased to do that.

The Chairman: Thank you.

Mr. Murray: Should interim guidelines be put in place for any reason, they should ultimately be included in the regulations so that they are subject to public scrutiny and input and have the force of law.

Furthermore, we recommend that the effective date for commencement of reporting of suspicious transactions be deferred until criteria have been established and examples developed.

The third issue is duplication of reporting requirements. We are also concerned that the bill is unclear about professionals such as CAs who may be working for entities specifically covered under clause 5, and who are directly involved in financial transactions. On the one hand, such CAs have a reporting role as an employee working in an entity covered by the proposed legislation. On the other hand, they have a responsibility as professional accountants to report suspicious transactions.

This is confusing, and would appear to be a duplication of the reporting requirement that applies only to individuals who happen to be both employees of such entities and professional accountants.

Should such an individual report to their supervisor, they are protected by subclause 75(2) from punishment as an employee. However, they could still be open to punishment for failing to report to the centre as a professional accountant. We believe that the protections afforded the employee should clearly apply to protect the CA -- the same person -- in such situations.

The fourth issue is restricting the powers of access. The compliance measures in clauses 62 to 65 allow an authorized official from the reporting centre to examine the records and inquire into the business and affairs of any person or entity referred to in clause 5 for the purpose of ensuring compliance. We are concerned that even if Part 1 is amended to restrict its scope to financial intermediaries, these provisions appear to be very broad powers allowing access to all records -- not just those relating to financial intermediation activities -- without a warrant.

We therefore recommend that the bill be clarified to restrict the powers of access to only those records that relate to financial intermediation activities. We also think that such access should be allowed only under authorization of a warrant.

Our last point is on defences and safeguards. We would like to make some comments about the defences and protections available under Part 5 of the bill.

Other jurisdictions include a defence for "reasonable excuse," for example, where the fear of physical violence or other menaces make it unreasonable for someone to report or to refuse to act for a client. There may be circumstances where third parties may be able to deduce the source that gave rise to an investigation. While there may be certain defences under common law similar to reasonable excuse, this defence is not available under the bill.

We are also concerned that the bill does not provide protection or remedies to those who lose their jobs as a result of making a report in good faith. Furthermore, the bill is not clear as to how to deal with situations where the bill conflicts with other legislation requiring confidentiality, such as the Quebec Charter of Rights and Freedoms.

We recommend that a reasonable excuse defence be included in the bill, along with additional protections for those who report.

Last, we recommend that the bill be amended to deal with situations where the bill conflicts with other statutes requiring confidentiality.

In closing, let me stress again that we support the intent of this bill when applied to those who are directly involved in financial intermediary transactions. However, we believe that the wording of the bill lacks clarity in prescribing who within the CA profession must report. We believe this is a significant problem, and strongly encourage you to clarify the activities to which the bill would apply for the CA profession.

We also strongly urge to you include a clear, unambiguous definition of suspicious transaction in the bill so that those with the obligation to report apply consistent criteria.

We would be pleased to answer any questions.

Senator Fitzpatrick: I want to follow up on the chairman's remarks regarding the definition of suspicious transaction. The CICA indicated that they would be happy to advise or consult with the department. If I may, Mr. Chairman, it might be helpful if you could provide a list of guidelines. Presumably, with your experience, you would have some idea of cases or situations that would be of a suspicious nature.

I believe, Mr. Chairman, that prior to the drafting of the regulations, it would be helpful to have a submission, should they be prepared to do that.

Mr. Murray: We are pleased to try to do that. I think the department has clearly gathered some examples of what other jurisdictions are doing and so have developed some best practices, which is not easy to do. Nevertheless, they have started that process. The best process, I suggest, would be to collaborate with them in that regard so as not to duplicate efforts.

Senator Fitzpatrick: Well, we are a bit like you, I guess. We have not seen any of that so far. We either get a list from you or a list from the department. In that way, we know what we are looking at.

Mr. Murray: If we could get something from the department to start the ball rolling, we would be happy to look at that and provide guidance on it.

Senator Angus: The words, "We are sensitive to the legislative timetable" seem to me to have no place in your submission. I would rather that you tell us what, in your opinion, is the best thing to do to fix this bill. In other words, are you saying, "Could you do some regulations, " for the lack of anything better?

At the beginning of these hearings, our chairman was heard to say that there are too many regulations and it is very difficult to supervise them. These regulations arrive and then they are a fait accompli. There is almost a lack of accountability in the process. I wonder how much of a compromise that is. Do you feel strongly enough about the excellent points that you have made that you would like to see this bill amended in substance?

Mr. Murray: I think that we would like to see -- and I will let Mr. Chester comment as well -- the narrowness of the scope addressed. We understand that it is being addressed, although we have not seen the wording. The definition of "suspicious transaction" is the other major issue, and we would have a concern if the proposed legislation and regulations went forward without attempting to provide some clarity on that issue. That could result in widespread confusion. If the bill is to be successful, it must come up with some clarity on the definition of suspicious transaction. We acknowledge that it is very difficult, but we think there should be some guidance on this issue in the proposed legislation or regulations.

Mr. Simon Chester, Legal Counsel, Canadian Institute of Chartered Accountants: Could we have participated willingly and openly with the department in discussing these matters over some months? It was a couple of months ago that we were testifying before the House of Commons Finance Committee, and there seemed to be agreement from the officials who were testifying at that time that it was not their intention that the bill be applied so broadly and that there would be amendments. When we stated that we were sensitive to the realities of the legislative timetable, we were simply reflecting statements made by ministerial officials and others that Canada has an obligation, under the international regime, to come forward. Essentially, we would redefine the policy, and if that was not possible within the bill itself, then it would necessarily be done in the regulations. We would have been comforted if we had seen some wording at this point.

Obviously, we have the commitments made in testimony before the House Finance Committee and we are comfortable in relying on those. At the end of the day, could this bill be improved? Yes, we believe it could. Could it be clearer? Yes. If we are given a choice between clarification, and regulations with no clarification at all, we will go for that, but our preference would clearly be for the bill itself to be clarified.

Senator Angus: Mr. Murray, we understand you to be with KPMG, which is a large, international accounting firm. My question is in the context of Mr. Chester's interpretation of what the officials said, that Canada has a commitment to 27 other countries, with which it is working cooperatively to fight organized crime, to do something along the lines of this bill. As a professional CA at KPMG, have you checked back through your network to see which other countries in fact have brought in such provisions that would so impact on your profession?

Mr. Murray: Yes, we helped on that. For example, the U.K. does have similar legislation, although it is our understanding that it is not quite as broad as what is proposed here. That legislation has been in place for a couple of years now. One of the challenges in the U.K. is the definition of suspicious transaction. It is an evolving situation and they are trying to come up with a better definition as they go along, based on experience. That is one example of a jurisdiction with similar legislation in place.

Senator Angus: However, it is not as far-reaching.

Mr. Murray: I do not think that it is. I am not sure that I can quote specifically, but it is more restricted to certain illegal activities such as drug trafficking, et cetera. It is not quite as broad, but it does have a similar reporting requirement.

Senator Angus: What about in the U.S.?

Mr. Murray: My understanding is that they do not have similar legislation in place at this time.

Mr. Chester: They have other comprehensive legislation dealing with money laundering that gives their federal authorities some of the tools that this agency would have under this bill. However, there is nothing exactly comparable.

Senator Angus: We have all been coming at it from different angles to try to find out just how far behind Canada really is -- how late we are coming to the party -- in a cooperative effort to combat this kind of organized crime, particularly drug dealing. You are here today as representatives of the CICA, so I would like you to take my question in the context of how the bill impacts your profession. Based on your own knowledge and research, to what extent does this seem to represent the most onerous provisions that you have seen, or does it?

Mr. Chester: We have not done an exhaustive comparative review. I can say that the circumstances under which chartered accountants act as financial intermediaries is relatively small. There will be situations, for example, when an accountant is acting as a trustee in bankruptcy or in a management capacity within a corporation, when they would be actively involved in financial transactions -- I am not qualifying them as suspicious or otherwise. The vast majority of the activities of the CA profession, whether that be auditing, providing tax or strategic advice, forensic accounting, or consulting, are nowhere near suspicious circumstances involving reportable transactions. We felt that it was important to clarify that this bill properly impacts upon the CA profession when people are acting as financial intermediaries.

Senator Angus: Those are financial intermediaries who actually handle the money?

Mr. Chester: If those people are playing an active role, absolutely they should be reporting.

Senator Angus: Could you give me examples of some circumstances where they would be handling the cash?

Mr. Murray: Yes. Our insolvency practitioners, for example, would be handling trust funds. They would be authorizing the release of funds, receiving and disbursing funds. That is one example within the profession.

Senator Angus: I believe I saw you at the back of the room when the people from the Canadian Bar Association were here. They were commenting earlier. One of the concerns that they expressed was about a sizeable law firm. You folks are now getting into this multi-disciplinary world, I am told. I read that in The Globe and Mail.

Mr. Chester: I am a partner in the firm of McMillan Binch. I am in that situation.

Senator Angus: You know what I am talking about then.

Mr. Chester: Yes.

Senator Angus: Let us take the example of Ernst & Young, which is a major member of the CICA. They have some 2,900 lawyers worldwide at the present time. I think some of the things that our friends from the Canadian Bar Association said would apply to an accounting firm involved in multi-disciplinary activities.

You could be wearing the two hats. Do you folks feel the same way as the lawyers? If the authorities knocked on the door and demanded all the documents, would you feel constrained at that point to say that it is unconstitutional and buzz off?

Mr. Chester: Let me make two comments. If a lawyer is practising within the framework of a multi-disciplinary partnership, that lawyer will be subject to the professional and legal obligations attached to that profession. There will be other people working within the organization who have other professional and legal obligations. I think it is clear that the Canadian Bar Association represents those lawyers and would have some of the same concerns.

From an accounting perspective, it is clear that the accounting rules, generally accepted accounting principles, our code of professional conduct, and the laws involving accountants would apply to those accountants within the firms.

Senator Angus: It becomes known as "the firm." All of these firms have administrative staff, a switchboard operator, and a reception area. Those people are not equipped to know which

section should be involved. If one were faced with the men in the black hats with the bag, coming for the papers, it would be hard to direct them.

Mr. Chester: One of the points that we made in our belief was that when the men or women in the black hats arrive, they should be looking through the records related to those particular suspicious transactions. They do not have carte blanche to look through the entire records of a particular KPMG office, or even broader than that.

Senator Tkachuk: Are you saying that they will have that power under this bill?

Mr. Chester: They could have that power. The bill does not define what the records are. Clause 60 talks about records. It does not talk about appropriate or relevant records. It simply talks about records of the firm. We think that sort of clarity would be important to bring to the bill, so that if the people in black hats arrive, they do not have a warrant to conduct a fishing expedition.

Indeed, one of the problems we have is that they do have a warrant. They should be looking specifically for the information that is relevant to their particular inquiry and respecting the professional confidentiality that attaches to all other records within the organization or entity.

Senator Angus: The lawyers said, "Here is our shopping list. The bill is unconstitutional, so take out these provisions, and furthermore, just to have clarity, exempt lawyers from its application." I heard you say at some point that the accountants are properly included. You are not seeking the same exemption as the lawyers. That is why I have this impression that with both accountants and lawyers in the same firm, it could be confusing when deciding who must report.

You can see my point. It serves to highlight the very difficult elements and almost frightening aspects of this bill. It points to the complex position that professionals -- lawyers, accountants, or other professionals -- could be in.

Mr. Murray: There is a difference between the lawyers and us in the sense that their rules of professional conduct do emphasize confidentiality of information with their clients. However, in the event that there is a legal requirement to do something, then that requirement prevails.

We have that embodied in our rules of professional conduct already. We do not have any choice. The lawyers do have a different issue, of course.

Senator Poulin: I believe I heard you say that you are definitely supporting this bill because it is important that Canada not only be perceived as not facilitating money laundering, but also have the tools to prevent any such activities.

I am coming at it from the point of view of a non-lawyer and a non-accountant. I am coming at it from the viewpoint of a former deputy minister who had the responsibility at one time to implement a new agency. I am looking at this bill as enabling a new agency.

I find that I am looking for, and seeing, opportunities for review, and also for ensuring that the proper regulations are developed as the new agency is set up.

Legislative drafters in this country have a tradition of using language that is more open than closed. Therefore, time is taken after the agency is set up to define different terms, powers and responsibilities through regulation.

Mr. Chester, you said changes could be made either through amendments or through regulation, and you made suggestions. Am I correct in saying that your concerns could be met through appropriate regulation?

Mr. Chester: We have said that we regard the regulations as very important because they provide the context within which the agency will work. They also provide guidance to all professionals, and all those who are subject to the bill, to give them a sense of what falls within the rules and what does not.

We think that it is important that that guidance should be embodied not merely in regulations, but in handbooks and examples. All those things should be presented in an unambiguous way.

One problem that I have with the open texture of this bill is that I am not sure how I am supposed to interpret it. As prudent professionals, we would give it the benefit of the doubt. However, I refer you to clause 7, which states: "reasonable grounds to suspect that the transaction is related to the commission of a money laundering offence." Those are almost words that would be addressed to a peace officer, not to a working accountant or a working lawyer, or any other sort of working professional who is going to have to make very tough judgment calls, if that is all they have to go by.

We believe that those professionals will do their jobs better, and that the regime will be better, if we are all working from a common understanding of what is inside and what is outside the bill.

The CICA would be happy to work with the department at any time in the development of such an exercise, because we believe that it does require that sort of collaboration between the policymakers and the people who are facing the problems on a day-to-day basis.

Senator Poulin: In other words, you are recommending that once the agency is set up, enabled by this bill, the agency and the department make sure that they include your association, as well as the bar association, in ensuring that the regulations cover all of these concerns.

Mr. Chester: Any other relevant bodies should be included also.

Senator Tkachuk: Not being a lawyer, an accountant, or a bureaucrat, but a parliamentarian, my job is to protect people from the intrusions of government and to ensure that their civil liberties are not trampled on. I need clarification with respect to the scope on page 3. The second paragraph states:

An existing regulation -- which we understand will be retained in the new legislation -- indicates the Act applies to...every person who is engaged in a business, profession or activity in the course of which cash is received for payment or transfer to a third party.

To what act does that regulation apply now?

Mr. Murray: I believe that is the existing legislation relating to money laundering.

Senator Tkachuk: What is this regulation referring to exactly, a reporting mechanism?

Mr. Murray: There is a reporting mechanism and voluntary reporting of suspicious transactions under the existing legislation. I assume it relates to both of those.

Senator Tkachuk: Presently, the suspicious part applies to every person who is engaged in business. It is voluntary now, but this bill would make it mandatory to recognize and report the suspicious transaction -- in other words, you would be legislating a person who knows of a suspicious transaction?

Mr. Murray: Yes, you are mandating the reporting of a suspicious transaction.

Senator Tkachuk: Whereas before it was voluntary.

Mr. Murray: Right.

Mr. Chester: I am reading from Finance Canada's, "Proceeds of Crime Money Laundering Regulations" consultation paper. On page 3, it indicates that that wording was taken from the existing PCMLA and PCML regulations, so it is the current act and the regulations.

Senator Tkachuk: Obviously then, you have been involved in this previously. Is that right?

Mr. Chester: Yes.

Senator Tkachuk: Does "third party" refer to a company? Is a company a third party?

Mr. Chester: I think that a third party is any entity outside the express relationship between the professional and the client.

Senator Tkachuk: It says, "engaged in a business, profession or activity." If a person gets cash and deposits it in a company, is that considered a third party transaction? For example, if I receive cash and I deposit it in a company, is that company a third party?

Mr. Murray: No. However, if a person is an employee of the company and deposits it in the account of the company, that would also not be a third party transaction.

Mr. Chester: If you give the money to your legal adviser or to your accountant for deposit with another entity, then that would be a third party transaction.

Senator Furey: I was not certain of your comments on defences and safeguards. Are you saying that clause 10 is not broad enough?

Mr. Murray: No.

Senator Furey: Is there something else you were getting at?

Mr. Murray: Simply that there is no defence for "reasonable excuse." If a person believes that they might be physically threatened, there is no protection in the bill for such circumstances.

Senator Furey: There is no out for not reporting. Is that what you mean?

Mr. Murray: Yes.

Mr. Chester: The United Kingdom has such a reasonable excuse defence in its legislation.

Senator Kroft: I was interested when Senator Angus was taking you through a reference to comparative legislation. I am not looking to you as experts in legislation, but I am curious about your response when it came to the U.S. Do I understand that there is no comparable American legislation? I may have misunderstood.

Mr. Murray: My understanding is that there is no comparable reporting mechanism in the U.S.

Mr. Chester: I think I said that there are, scattered throughout the United States, code specific obligations that relate to money laundering and reporting on money laundering, but there is nothing that looks like this Canadian bill. There are individual elements for banks that are parallel. Law enforcement authorities have individual tools, but there is nothing identical to this. Therefore, it would not be possible to do a clause-by-clause comparison between U.S. law and this bill, because the U.S. law comes from so many different places to the same destination.

Senator Kroft: This is perhaps an unfair question. Can you comment on whether or not the collective impact of those various pieces of legislation would have the same, greater, or less affect than the proposed bill?

Mr. Chester: I think we would be happy to take that under advisement and get back to you. One concern that I have is that I regard this as a work in progress -- legislation in embryo. There will clearly have to be further developments to see how the agency will work, what sort of guidelines are developed, and how the relationships between this entity and the existing law enforcement authorities will work. At the end of the day, I believe it would be possible to do such a comparison. However, at the present, there is an awful lot of open texture in this bill and many elements that require further development. We understand that the Finance

Department is working on those and that there will be further announcements as the agency comes fully into being.

Senator Kroft: To your knowledge, is there an agency in the American system where this collection is carried out?

Mr. Chester: I have no such knowledge, but I will be happy to look into that.

Senator Kroft: We can look into that. I was wondering what information you have at hand as you approach this. If you are comparing it to something, I was wondering what that something is.

Mr. Murray: For example, there is no requirement for colleagues in my firm in the U.S. to report suspicious transactions. There is no such comparable reporting requirement for colleagues in my firm in the U.S. as what is being proposed here.

Senator Kroft: Do you have any comment, Mr. Chester, from the legal profession? Is there a comparable reporting obligation?

Mr. Chester: I do not believe so, but I would be happy to make inquiries. I have not, in my travels in the United States, heard about lawyers having to make reports to the FBI or to any other federal agency. In the United States, the attorney-client privilege is taken extremely seriously, as it should be.

Senator Tkachuk: Do we have any departmental officials here who may be able to help us on this question?

Senator Kroft: They would have to volunteer themselves if they had any such information.

Senator Tkachuk: They would not be hiding, would they?

Mr. Yvon Carriere, Senior Counsel, Transition Team, Financial Transactions and Reports Analysis Centre of Canada, Department of Finance: I am senior counsel with the transition team. I understand that there is an organization in the U.S. that is comparable in many ways to the new agency that will be set up here. I understand that there is a requirement to report a suspicious transaction in the U.S. This requirement applies to financial institutions, banks, trust companies, and such. This requirement does not yet apply to lawyers in the U.S.

Senator Tkachuk: Does it apply to accountants and accounting firms?

Mr Carriere: I believe it does apply to accounting firms, but I am not absolutely certain of that.

Senator Tkachuk: We were told at the beginning that we were so far behind the rest of the world that we must catch up. Some information has questioned that.

Senators, correct me if I am wrong, but were we not supposed to receive some kind of a chart from the department explaining the process in other countries? Were we not told that we are going to get that tomorrow? Good.

The Chairman: Thank you, gentlemen.

The committee adjourned.

June 14, 2000 [Standing Senate Committee on Banking, Trade and Commerce]

Senator E. Leo Kolber (Chairman) in the Chair.

[English]

The Chairman: Honourable senators, we are here to continue our hearings on Bill C-22. Appearing before us today is Mr. Roy Cullen, Parliamentary Secretary to the Minister of Finance, and a host of witnesses from the Department of Finance, the Canada Customs and Revenue Agency, the Department of Justice, and the Office of the Solicitor General of Canada.

Welcome, please proceed.

Mr. Roy Cullen, Parliamentary Secretary to the Minister of Finance: Mr. Chairman, I appreciate the opportunity to speak to your committee today on Bill C-22, the proceeds of crime or money laundering bill. I should like to use this opportunity, if I may, to highlight why this bill is needed, the safeguards that are built into the bill to protect individual privacy, and the importance of early passage of the bill. I should also like to respond to a number of concerns that have been raised by witnesses before this committee and by members of this committee.

Honourable senators, while there are different ways of estimating the magnitude of money laundering, and it is difficult to do so with great precision, there is no doubt that it constitutes a problem of staggering proportions. In Canada alone, it is estimated that between $5 billion and $17 billion in criminal proceeds are laundered in and through Canada each and every year. The IMF has estimated that it represents some 2 per cent to 5 per cent of global GDP.

Money laundering imposes significant social costs, fuelling further activity and perpetuating a vicious cycle of crime. It can lead to the corruption of otherwise law-abiding citizens. It can result in the distortion of business and financial activity by criminals.

When money is laundered through financial institutions, the reputation and even the integrity of individual institutions can potentially be undermined. The current tools at our disposal no longer suffice to detect and deter money laundering. It is clear that Canada now needs stronger and more effective legislation than what we currently have on our books. This committee was

informed of the limitations of the current voluntary reporting arrangements, the existing statutes, and the traditional law enforcement methods of uncovering money laundering activity.

Law enforcement agencies here and abroad and the Financial Action Task Force on Money Laundering, the international body to which Canada belongs that sets standards for combating money laundering and that monitors compliance, have called on Canada to make the reporting of suspicious transactions and large cross-border movements of currency mandatory. Those organizations have also called on Canada to establish a central anti-money laundering agency. Our own law enforcement agencies here in Canada need and want this legislation to combat money laundering.

While the details of various regimes differ, Canada is the only country in the Financial Action Task Force that has not yet implemented some form of mandatory reporting of suspicious transactions. The experience of other countries has demonstrated the benefits of financial transaction reports to law enforcement efforts. It has also provided a variety of models that the government was able to consider in preparing this legislation and in designing Canada's anti-money laundering centre.

[Translation]

As committee members have requested, I am pleased to present a table comparing the models put in place by the G-7 and other countries. It shows that the model proposed in Bill C-22 contains several characteristics that are similar to models in other countries.

[English]

With respect to the benefits, officials and other witnesses have cited statistics demonstrating the effectiveness of reporting schemes in other countries. Money laundering is a global problem. International cooperation is essential to combat increasingly complex forms of laundering. The prerequisite for cooperation is the implementation of common and effective anti-money laundering controls. Failure to do so allows criminals to exploit the weak links in the chain.

Honourable senators, Bill C-22 is the government's response to this need for stronger legislation, but it does so while ensuring the protection of individual privacy. It is significant, in my view, that the expert witness, Mr. Jean Spreutels from Belgium, noted before this committee that, compared with legislation in other jurisdictions, Bill C-22 is most protective of individual privacy.

[Translation]

We have been careful to ensure that the centre's structure as well as the legal framework in which it operates will protect Canadians' privacy. Allow me to point out the following protection measures.

[English]

First, the reports required by this bill will be sent to an independent agency and not directly to the police. Second, only if the centre has reasonable grounds to suspect that the information would be relevant to an investigation or prosecution of a money laundering offence will certain information be disclosed to the police. Third, the centre cannot disclose all its information to the police, only designated information. Only key identifying information as defined in the bill and regulations can be disclosed by the centre. Fourth, if the police want additional information from the centre, they must request that the Attorney General obtain a court order for disclosure, specifying the type of information or documents sought from the centre. Fifth, there are severe penalties for unauthorized disclosure of information by the centre's employees. Sixth, the centre is subject to the Privacy Act. That means that its operations will, in effect, be subject to the oversight of the Privacy Commissioner. It also means that individuals have rights under the Privacy Act in relation to the information that the centre has about them.

With respect to the importance of early passage of the bill, police across Canada and provincial and territorial governments have been asking for this legislation for several years. Police see this initiative as a litmus test of the government's commitment to fighting organized crime.

Promoting the implementation of international anti-money laundering standards and cooperation is a high priority for G-7 countries and the Financial Action Task Force. The Financial Action Task Force will be deciding next week whether to publish a list of countries that failed to implement key anti-money laundering controls. Without this legislation before you here today, senators, Canada clearly does not meet the standards that these countries are being measured against. This is the single most important initiative undertaken by the Financial Action Task Force of the G-7 in recent memory. Canada must shoulder its international responsibilities and lend as much credibility to this initiative as it can.

I should also like to remind the honourable senators that Canada remains a non-compliant member of the FATF, the Financial Action Task Force, having been publicly criticized in 1998. Canada will be reporting to the FATF next week on its progress in correcting the deficiencies in its system. For these reasons, Mr. Chairman, there is a pressing need to have this legislation passed before the Senate rises for the summer.

A number of witnesses and committee members have raised some legitimate concerns. We do not believe that these concerns strike at the foundation of the bill, but we believe that they must be addressed. Therefore, I should like to make a commitment to this committee that, following passage of Bill C-22, legislation will be introduced, as soon as possible after Parliament returns in the fall, to amend the bill to deal with the following four issues. These issues and the government's commitment to address them by bringing forward amendments are described in detail in a letter from the Secretary of State for International Financial Institutions to the Chair of the committee, dated today. It is my understanding that that letter may be tabled later. I will not go into the details of what is proposed in the letter. It is my understanding that one of the senators will describe that in more detail later. I will describe the

headings or the subject matters that the letter addresses: first, the ability of non-lawyers to ensure that solicitor-client privilege is protected; second, the Privacy Commissioner's recourse to the Federal Court; third, the scope of the designated information that can be released by the centre; and fourth, the destruction of records by the centre.

Mr. Chairman, this committee has asked us to respond to three other issues, one of which is the five-year review. Clause 72 of the bill states:

Within five years after this section comes into force, the administration and operation of this Act shall be reviewed by the committee of Parliament...

I wish to confirm to you that the section leaves it to the Parliament, that is both the Senate and the House of Commons, to establish the committee that will undertake the review of the administration and operation of the act. Moreover, the clause further requires that:

...the committee shall submit a report to Parliament that includes a statement of any changes to this Act...

With respect to regulations, the committee expressed concerns regarding the regulation-making authority in this bill. I should like to remind honourable senators that clause 73 of the bill requires a 90-day pre-publication period for regulations and an additional 30-day notice period for any further changes to proposed regulations. These requirements go well beyond what is set out in many federal statutes and they provide interested persons with ample opportunity to be informed of the proposed regulations and to provide comments and critique to the government on their content.

The committee believes that there would be added value in establishing a further mechanism by which the committee would be informed on a yearly basis of regulations made pursuant to the proposed legislation. We have given this matter careful consideration and believe that the most effective means of providing this information to the committee would be to include it in the annual report of the Financial Transactions and Reports Analysis Centre of Canada, which is to be tabled by the Minister of Finance in each House of Parliament. That would ensure that updates of the regulations would be available to Parliament on a yearly basis, coinciding with the tabling of the centre's annual report. It would also mean that a regulation report would be communicated not only to the committee, but also to all interested parties.

Therefore, I undertake to this committee that we shall ensure that the Financial Transactions and Reports Analysis Centre of Canada will include, in each of its annual reports, a report on the regulations made pursuant to the proceeds of crime (money laundering) bill during the period covered by the report.

Before we move on to questions, Mr. Chairman, allow me to address the issue of the independence and accountability of the centre. The table on international comparisons that you have before you shows that, more often than not, the central repositories of financial information are independent agencies set up at arm's length from the police and accountable to ministers of finance or other ministers.

It demonstrates a preference for separating the financial intelligence gathering function from the police investigative function. The model proposed under Bill C-22 is justified, not just for purposes of structural efficiency but, more important, as a means of safeguarding individual privacy. The safeguards required for protecting individual privacy are such that merging the financial intelligence gathering function with an existing agency would provide minimal savings overall.

[Translation]

In conclusion, Mr. Chairman, I would like to clarify that Bill C-22 was developed in cooperation with several interested stakeholders including the provinces and territories, the financial sector, consumers' groups and privacy organizations.

[English]

This bill will update and strengthen the existing act and improve the prevention, detection and occurrence of money laundering in Canada. Together with the undertakings that we are providing to the committee, Bill C-22 will give law enforcement agencies the tools they need, but in a way that maximizes the protection of individual privacy. Furthermore, these measures will also bring Canada into line with accepted international standards in the fight against money laundering and allow Canada to fulfil its responsibilities in the international fight against money laundering.

Senator Tkachuk: Mr. Chairman, we have the letter that was sent. Is there a French copy?

Senator Meighen: No, there is not.

The Chairman: I was told that it was faxed to your offices about two hours ago.

Senator Tkachuk: It was, but there was no French.

Senator Hervieux-Payette: I was not there, so I do not know if I received one.

The Chairman: Is there a French copy?

Senator Tkachuk: I thought you might be concerned.

Senator Hervieux-Payette: I was in Montreal this morning.

Senator Tkachuk: I am certain that your office has a French copy.

The Chairman: I do not think there is a French copy, because it is being translated.

Mr. Cullen: It is on its way, as we speak. We may have it in the next few minutes.

The Chairman: Continuing, there are two parts to the meeting.

Senator Tkachuk: Should we address the issue of the letter?

The Chairman: After we have questions we will do a clause-by-clause review, on which we will have to agree or not agree. The purpose now is to ask any questions of the minister and all of the other experts.

Senator Tkachuk: On the question of regulation, you mentioned the parliamentary review at the end of the fifth year. The concerns were not the fact that it was being reviewed but whether it would be reviewed on a regular basis, because it seems that that is sunsetted -- that is, the review is after a five-year period and then it never happens again.

Mr. Cullen: I will have a first stab at that question and then perhaps Mr. Lalonde could respond as well. The reality is that the Parliament of Canada is able to review any piece of legislation or matter, at its discretion.

Mr. Richard Lalonde, Chief, Financial Crimes Section, Financial Sector Policy Branch, Department of Finance: Honourable senators, I would add that, as part of the five-year review, it is open to parliamentarians to propose extending that five-year review for a further period. It could be proposed to amend the legislation.

Senator Tkachuk: It would require amendments to the legislation to have that happen?

Mr. Lalonde: That is correct.

Senator Tkachuk: On the subject of the regulations, I do not know if I understood what you were saying. I know you are having them posted. However, this has been a concern from both sides in committee. Were you saying that the bill will be laid before Parliament and that the regulations would be sent to the appropriate members of the committee, which is what most parliamentarians would be seeking?

Mr. Cullen: I will address the general question of why so much is left to regulation. "So much" is a subjective term, I suppose. In this legislative package, with the new centre we are starting something relatively new. As we all know, money launderers, like any criminal, will look for loopholes the whole time. As we proceed with this, the intent is to be as flexible as we can so that if money launderers begin to change their patterns of operation, the centre will have the flexibility to alter its approach. The centre is basically leading with this for the first time in this particular context.

With respect to the actual tabling of regulations, they will be under this statute. There is a minimum 90-day pre-publication requirement for any regulation proposed under the bill, and I presume that would be gazetted in the normal way. There is a minimum 30-day notice if further changes are made to the proposed regulation.

We are sensitive to the fact that there is some volume left in terms of regulation for this bill. This gives any stakeholder groups, including parliamentarians, a full opportunity to comment, critique and provide input into those regulations or changes in regulations. The 90-day requirement exceeds by far what is available in any other statute.

Senator Tkachuk: We understand that there seems to be more and more regulations because the executive and the bureaucracy want to have more flexibility to change, rather than having to deal with that nuisance called Parliament where it would be necessary to make amendments for certain things. Our concern is that, as the regulatory framework builds, there is no parliamentary responsibility.

I understand that it is posted. Let us say that I object. So what? What can I do about it? Nothing really. I can write you a letter. I can complain, but in the end there are no witnesses, no discussion with the people affected, no anything. Unless it is formalized, it is difficult for parliamentarians to deal with this. You could post it on July 1, when Parliament is not in session. Things like that.

Mr. Cullen: I understand what you are saying. This bill and the regulations that will follow the bill have already been developing the guidelines, for example, that are already used for the voluntary reporting. Other regulatory matters will be completed while consulting broadly with comprehensive stakeholder groups.

Money launderers will change their shape and form. If we had to go back to Parliament every time to change what would more optimally be a regulatory issue, we would lose as Canadians.

Senator Tkachuk: I want to get back to the letter. By the way, Chair, we did receive the letter before, and some of us were actually in our offices when it arrived. It was very much appreciated as well, Mr. Cullen. I think you addressed many of the issues that we have. We have other issues that I am sure other senators will discuss with you. I want to point out that we appreciated this.

Senator Kelleher: There is an issue that I should like to discuss that we raised in great detail the other day. It is not dealt with at all in your letter. The issue is that of the diminishment of the solicitor-client privilege. That concept is fundamental to people's privacy. It is not dealt with at all. I should like to go through it with you and get your comments, please, if I may.

As I understand the bill, under clause 62, someone from the new commission could deem it necessary to continue. In other words, someone has looked at the report that came in from a financial institution and that person says, "I think this bears further investigation." Then, under clause 62, they could, without a warrant, come into my office as a lawyer, and demand to see the various and assorted documents relating to the matter of the investigation. Under clause 64(2), if I say to that person, "Hold on here, I want to claim a solicitor-client privilege," the person who wandered into my office could determine to put everything under lock and seal. That person could tell me that my client and I could go to court within 14 days, at our expense, to try to prove to the court that there is a solicitor-client privilege.

Not even the tax department today can wander into my office on a tax matter, except under a warrant. You people are giving yourselves this rather, to say the least, extraordinary privilege of wandering in without a warrant. To the best of our knowledge, the existing U.S. legislation does not even deal with the solicitor- client privilege. There is no authority under the U.S. legislation to do this.

It is our understanding that no other country permits the authority that has been established to wander into a lawyer's office without a warrant. I should like to know why you are asking for this extraordinary privilege. I would love to hear your explanation. We feel that if you want someone to wander into the lawyer's office, they at the very least should have a warrant.

Mr. Cullen: Let us assume that the centre has information. Only if the centre had other corroborative evidence that would lead the centre to believe that there was adequate suspicion would the centre then report some tombstone information, if you like, to the RCMP. In other words, information arriving at the centre on its own does not start anything. It is only if that information is corroborated with other information that the centre would then report to the RCMP. If the RCMP corroborated that with other information or data that they had, they would then go to the Attorney General to request more information if they wanted it.

In terms of someone from the centre arriving at a lawyer's office, there must be some confusion regarding when that might happen. The only time the centre would do that would be to do with a compliance issue with respect to reporting. In other words, if the centre had reason to believe that a financial intermediary should be reporting, they would make contact with that financial intermediary and begin a dialogue to ascertain whether or not that financial intermediary realized what the responsibilities were. The centre would attempt to determine if there was any notion of any transactions that they were involved in.

In any case, if at some point the centre felt that there was still a suspicion that the reports should have been provided to the centre but were not, then they could go to the office of the lawyer or the accountant or any financial intermediary and do a very targeted review of information. The issue of solicitor-client privilege may crop up in such a situation.

I wanted to make it clear that the centre itself will not send someone to the office of a financial intermediary to investigate further potentially suspicious transactions. That only happens through reporting to the police. If there are other reasonable grounds, and the police themselves then feel there are additional reasonable grounds, they could ask for a warrant. We could come back to that in a moment.

As I understand it, in the United States, accountants and lawyers are required to report certain defined transactions to the IRS. The U.S. money laundering centre can in fact obtain that information from the IRS.

In our legislation, we are sensitive to the issue of tax evasion. Our objective through this bill is to attack money laundering and, only as an incidental, perhaps an important incidental, tax evasion. Our procedure goes the other way. Clearly, one could be laundering money with a

high probability of evading tax. However, the first priority is money laundering. There would be coordinated efforts by law enforcement agencies.

I am a chartered accountant myself, and I do not mean to disparage lawyers. If you weave a hole in the system, there is a potential for the launderers to go to that hole. We are trying to ensure that this bill covers the major financial intermediaries.

I should like Mr. Carrière to expand on the topic of solicitor-client privilege.

Senator Kelleher: Before we go to Mr. Carrière, I wish to point out that our concern is not about you trying to plug the loophole of the accountants and lawyers. When I was solicitor general, I was the one responsible for the money laundering legislation that is presently in place. I know a bit about this area. I am concerned only about the issue of solicitor-client privilege and access to my office or the office of any lawyer you suspect is a financial intermediary, and access without a warrant. It really is as simple as that.

Senator Oliver: You have not dealt with the warrant part of it as yet. That is the essence of our concerns.

Mr. Yvon Carrière, Legislative Senior Counsel, General Legal Services, Department of Finance: An official of the centre could not enter into a lawyer's office. He is authorized only to enter to determine if the lawyer filed the reports that he is required to file.

Senator Kelleher: Where does it say that?

Mr. Carrière: Subclause 62(1) says:

An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part I...

Part I does not talk about detecting money laundering or not being involved in money laundering. It says that one shall file a report when required to file a report. Therefore, when the centre is doing a compliance check, it is verifying that the lawyer has reported the large cash transaction in which they were involved. It is not checking whether the lawyer's clients were involved in money laundering. We would not be authorized to do so. That is a fundamental point I want to bring to you.

Senator Kelleher: I do not understand that explanation. As far as I am concerned, under the bill you may come to my office and under paragraphs 62(1)(a), (b), (c), and (d), you could request all kinds of access to my records. I am saying that if you want access to my records, you should have a warrant.

Under the Income Tax Act, as I am sure you are probably aware, you used to be able to go into offices without a warrant. The lawyers in question challenged that. As a legal person, you would know that there are numerous cases that hold that you cannot do it. It is

unconstitutional, and you need a warrant. I do not understand why, for this bill, we are suddenly going against the grain. No other country permits this kind of access without a warrant. I do not understand why you feel you are entitled to get this under this bill. It is quite a departure.

Mr. Stanley Cohen, Senior Legal Counsel, Human Rights Law Section, Department of Justice: I believe that what is perhaps engendering some difficulty is the distinction that exists between a search and seizure and a regulatory inspection. In terms of the constitutional law, that distinction carries a great amount of significance. As has been explained by Mr. Carrière up to this point, these inspectors -- not police officers -- who carry out searches are looking for compliance with the statute. The case law tends to hold that a lower standard applies with respect to regulatory inspections. This is an administrative matter and there is Supreme Court of Canada jurisprudence. I can give you two cases, although not the citations: one is Comité paritaire, and the other is Potash or Tabah. Both of those cases uphold the rights of inspectors to inspect on a lower standard than would otherwise be the case in a criminal investigative setting.

I believe that, if one were to examine the nature of the statute that is under consideration and the powers that are being exercised in this instance, those cases would basically support the ability of the inspectors carrying out a regulatory purpose to ensure compliance with the legislative scheme. If one examines the types of powers that were accorded in the particular statutes that were involved in those cases, one would find very wide-ranging powers to enter in order to inspect books and records and to copy documents and take away files, et cetera. Those cases would tend to support the approach that has been advanced in this context.

Senator Kelleher: My concern is that an inspector might say that they are only wandering in to see if there is regulatory compliance. In order to look around to see whether or not there has been regulatory compliance, the inspector might go through all of the individual's client records and documents. Therefore, you do through the back door that which I do not think you should do through the front door. I do not know how a confirmation of regulatory compliance could be done without going through all of the client documents and records.

Mr. Cohen: In response to that, the Supreme Court of Canada is leery about anything that constitutes a pretext search. There is abundant case law on this subject. There are cases that demonstrate that when police officers carry out functions under the Highway Traffic Act -- stopping vehicles, et cetera -- where they try to transform that particular kind of activity into a wider ranging search for criminal wrongdoing, they have lost the fruits of their investigation and the evidence has been inadmissible. The leading case on that, for example, is R. v. Mellenthin.

I would suggest that any inspector who enters a lawyer's office with the intention of trying to gain access to files in a holus-bolus manner and who is not focused in terms of what they request to see or into what areas they might enter would be running the grave risk of compromising their ability to carry out that type of investigation. You cannot look for a television in a desk drawer.

Senator Kelleher: They are getting pretty small these days.

Mr. Cohen: They cannot do that which is inappropriate to the function that they are entrusted with under the legislation.

Senator Kelleher: I am not disagreeing with that fundamental principle that you have just enunciated. However, the clause, as presently worded, leaves it open to abuse. If I think that the gentleman who has come into my office is abusing his position, I am the one who has to go to court, at my client's expense, to prove the solicitor-client privilege. Under any normal circumstance, you would have had to go through a preliminary procedure to obtain a search warrant. I am concerned about the lack of that preliminary safeguard. Under this clause, you have shifted the onus to the lawyer and the client, at their expense, to go to court on such an issue. I do not see why it should be that way.

I think that it is commendable to talk about privacy and trying to shield the person, but I am very concerned that inspectors would be able to skip the necessary procedure of having first obtained a warrant. What other legislation do we have that permits someone from government to wander into my law office and demand to see my client records without the assistance of a warrant? Is there any other legislation that exists?

Mr. Cohen: I have an initial observation relative to the question that you asked. Basically, any lawyer who is involved in any type of activity that would bring the lawyer within a field of regulation would be subject to the rules and regulations that apply. Hence, a lawyer would be subject to having his or her trust accounts examined by the Law Society. Lawyers are regulated by the Law Society of the province in which they practice. Similarly, I am certain that there are other statutes under which lawyers become subject to inspection, depending upon the nature of their involvement. However, I cannot give you rhyme and verse on that.

Senator Kelleher: I do not think there are. How do you respond to the fact that our examination of the other countries that have this legislation presently on their books shows that they do not authorize this type of entry without a warrant?

Mr. Cohen: Again, I would not want to present myself as an expert in comparative law, but I understand that in the United States there is a much broader umbrella that is cast over the area of organized crime, in terms of their RICO statutes, the federal and state racketeer-influenced and corrupt organization legislation. Lawyers are certainly highly implicated in the nature of that scheme and are subject to a great deal of potentially invasive investigation under those statutes.

Senator Kelleher: In the U.S, at present, there is no invasion of the solicitor-client privilege. Our examination of the other countries showed that they do not have this on their books. Everyone suggests that Canada has been late on this, but we have taken the opportunity to review other countries' legislation. Why are we proceeding with giving something to this commission that no other country has given to theirs?

Mr. Cohen: I am here to offer advice as to whether the kinds of questions that you are raising enter the field of constitutional prohibition or are illegal in a constitutional sense. I can advise, without offering legal advice on the matter, per se, that we have had regard to constitutional norms and standards as well as to the kinds of considerations that the Supreme Court has said are applicable in the context of inspections, searches and regulation. Basically, we have attempted to provide advice to policy-makers who have constructed this particular legislation in that regard.

Senator Kelleher: Mr. Cullen, I should like you to reconsider, if you would, this particular clause with respect to the fact that this might perhaps be done after obtaining a warrant, as it is for all other types of government investigations. It is not that big a thing to obtain a warrant. I am not arguing, nor are we arguing about the necessity for stronger money laundering legislation. I would be the last person to argue against that. I simply wish to ensure that there are sufficient safeguards in place.

Mr. Cullen: I will certainly take that under advisement. The graph that you have in front of you does not deal specifically with the point you raise in terms of how other jurisdictions deal with this particular question. It deals with whether accountants and lawyers are covered, and you are not debating that. In terms of the privilege aspects, we will certainly take your comments under advisement.

Senator Kelleher: I am relying on research done by the researcher that Senator Meighen and I have. This is the report that we received saying that no one else has that privilege at this time.

Senator Oliver: Before coming here, Mr. Cullen, did you read the testimony given before this committee by the Canadian Bar?

Mr. Cullen: I have not read their testimony before this committee, but they did appear before the House of Commons Standing Committee on Finance.

Senator Oliver: Senator Kelleher has asked you a series of questions regarding the concept of solicitor-client privilege. The Canadian Bar dealt with that here and in the other place. They also dealt with the concept of confidentiality. You have not addressed that.

Senator Kelleher asked you about a hypothetical circumstance of someone coming in the office, looking for papers, finding papers and, therefore, breaching the confidentiality that is so important to the client-solicitor relationship. In its brief, the Canadian Bar said that it is a fundamental protection of both privilege and confidentiality. They said:

The importance of privilege and confidentiality has long been recognized in the law and it is central to the rules of professional conduct governing lawyers. Clients must be able to seek the assistance of a lawyer knowing that the information they communicate will remain with the lawyer and go no further.

What can you say about that longstanding, several- hundred-year-old concept of client-solicitor confidentiality that now seems to be breached in this bill?

Mr. Cullen: Bill C-22 does recognize solicitor-client privilege.

Senator Oliver: In Clause 11. I asked them about that, and it is way too narrow in its definition.

Mr. Cullen: The issue of confidentiality, as I understand it, is a much broader issue. Mr. Carrière, could you expand on that?

Mr. Carrière: I am not an expert on confidentiality, but I understand that confidentiality is of a different nature than solicitor-client privilege.

Senator Oliver: Exactly.

Mr. Carrière: Because of the necessity to ensure that everyone is filing the reports that they have to file, the protection guaranteed by clause 11 deals only with solicitor-client privilege.

Senator Oliver: What does that say about confidentiality?

Mr. Carrière: All I can say is that it is not covered by clause 11.

Senator Oliver: That traditional right is being blown away by this legislation.

Mr. Cohen: I wonder if I could ask a question back.

Senator Oliver: No.

Mr. Cohen: I am trying to understand the nature of the question as it relates to the legislation. If there is a situation in which an inspector comes into a lawyer's office and asks to see books or records in order to determine compliance, the issue would simply be about whether or not anything that is being asked for is shielded by solicitor-client privilege. The issue of confidentiality does not arise in that particular context and the procedures that are created under the legislation offer full protection.

Senator Oliver: No, they do not.

Mr. Cohen: One must consider a lawyer confronting an inspector and saying, "I am not going to answer that question because it involves a matter of solicitor-client privilege and I will have these documents sealed up." He is then asked a further question about whether or not there is anything further of a confidential nature that can actually be disclosed in that context. A lawyer should certainly be adept enough to protect his client's interests in that kind of a setting.

Senator Oliver: Not if they are being taken away by language like this. Since Mr. Cohen is back again, I should like to ask a question I asked the Canadian Bar about clause 11. Clause 11 states: "Nothing in this Part requires a legal counsel to disclose any communication..." -- the

key words here are "any communication" -- "...that is subject to solicitor-client privilege." Does the word "communication," to you, include things like any activity, any transaction?

Mr. Cohen: Under the case law, including the case law to which you were referred at the last meeting when the Canadian Bar was present, the understanding of the term "communication" is that it is a broad notion that can embrace, depending upon circumstance and context, transaction, the name of a client or a great range of information. One could, even on as basic a matter as a name, assert solicitor-client privilege. Thus, confidentiality as regards that kind of information is safeguarded through the assertion of privilege. Communication should not be read as a narrow thing in terms of the case law.

Honourable senators, you have been concerned with these issues with respect to how this legislation might fare in the courts and how it might be affected by some of the challenges going on in the courts with respect to section 488.1 of the Criminal Code. That is the Lavallee case out of Alberta. That case has gone to the highest level. You will find support for what I am suggesting in that particular case. The notion of what is embraced by privilege and what is embraced by the notion of a communication is broad enough to capture a transaction or a name in a given circumstance.

Senator Oliver: An activity, perhaps, as well.

Mr. Cohen: Potentially; it would depend on context.

Mr. Lalonde: Mr. Carrière is quite right that Bill C-22 does not address confidentiality, which is a much broader issue than privilege. Many professionals, including accountants and other businesses such as financial institutions, banks, owe a duty of confidentiality to their clients. The bill provides other provisions to ensure that the information that is provided to the centre is protected. That is the way the bill deals with the broader issue of confidentiality between the client and the professional.

Senator Angus: Mr. Cohen, I noted that you were present last week when the Canadian Bar witnesses were telling us some of their concerns. In particular, I was struck as a lawyer by their bald statement that they consider it very likely that this bill is ultra vires of Parliament. I have been ruminating on that since, and I saw you scratching your head when the evidence was given. I am asking myself why the legislators and you people behind this act would take the chance of having it struck down when it is so easily remedied, or at least so I believe. I refer to page 3 of the CBA brief where they say:

...we believe it may be ultra vires of Parliament. We recognize that the Federal Government may rely on the Criminal Law power... However, we believe the Bill could be interpreted as intruding upon the legislative jurisdiction of the provinces as to "property and civil rights" and "administration of justice within the province."..

Are you very comfortable that the bill is intra vires?

Mr. Cohen: That particular issue is an issue of division of powers, not a Charter issue.

Senator Angus: They talk about the Charter as well -- section 8.

Mr. Cohen: Under section 8, I do not think the Canadian Bar Association necessarily has as much support as the statements that were made would tend to indicate. Even on a challenge to section 488.1 of the Criminal Code, the case law is divided. There are decisions in Ontario that uphold the constitutionality of that provision. It is not this provision, but it is similar to it.

On the question of whether this falls within the scope of the criminal law power -- and I hesitate to use words of advice here -- it is difficult to see how a bill that addresses money laundering as its subject matter does not fall within the federal criminal law power. I would say that at the very least there must be a strong and persuasive case to be made for the vires of this legislation and the constitutionality of the legislation.

Senator Angus: That is an elegant way of telling me that you totally disagree with what the lawyer from the bar has said. I have a great deal of respect for you and your colleagues, and I know you have put a lot of time into this. Candidly, do you see a risk that this could be held by the courts to be ultra vires? If there is a risk, is it not quite easily remedied by an amendment that would render it clearer?

Mr. Cohen: If the concern is with ultra vires, that it falls within provincial jurisdiction rather than federal jurisdiction, I have not personally seen case law that supports that point of view. With respect to the Charter, the jurisprudence is mixed on this subject at the lower courts in relation to a similar statute, not this particular statute. The undertaking that has been given with regard to solicitor-client privilege and subsequent amendment probably fortifies this particular measure.

Senator Angus: You are comfortable with the bill as drafted.

Mr. Cohen: You would be justified in drawing that conclusion.

Senator Angus: My colleagues and I were discussing this unilingual letter before the session began. We were wondering, from a legal point of view, whether it is worth more than the paper it is written on in terms of enforceability. Can we bind Parliament to come back here in September and introduce all these amendments? I want it on the record, if that is your legal opinion.

Mr. Cohen: I am not here to offer a legal opinion on a subject of that nature. That is a political question.

Senator Oliver: No, it is not. It is a legal question.

Mr. Cohen: I can tell you that I was involved in the recent passage of Bill S-10, which originated here. It was a follow-up to Bill C-3 on DNA data banking and involved a similar process of undertakings and then the introduction of subsequent legislation.

Senator Angus: There is no question that there are precedents. I think you are perhaps using one of your lifelines here. The precedents have been based on the goodwill of the committee and the willingness of senators to not unnecessarily retard the process.

We have concerns about fundamental matters such as the ones that Senator Kelleher has raised and those that other professions, such as the accountants, have raised about the intrusive elements. I believe it could be remedied and would not take anything away from what we are trying to do. As I said the other day, I heartily support the initiative, and I think Canada should be doing its piece within the group of the task force. I am troubled that we would say, "Well, we will satisfy you in these various ways, and we will come with an amending piece of legislation in the fall." We are also informed that we might be in the middle of an election and this parliament will have been dissolved. Mr. Peterson, who uses the first person singular in introducing a bill, might not even be a member of Parliament at that time.

I am not asking you to give me a legal opinion, but I think it is fairly reasonable for me to ask one of Her Majesty's law officers whether or not he feels this has legal weight.

Mr. Cullen: Not dealing at the moment with the question of legality, I can tell you that this letter is a firm undertaking of our government. In the meantime, it helps to clarify the intention of the bill. I know that the intent in terms of the government is absolutely cast in stone that we will deal with these issues.

Senator Angus: The problem that I have is that it is then rather than now. These amendments make sense to the government, without taking this other risk to which I alluded and which I believe is real. Notwithstanding good faith and everything else on the part of the minister, he just might not be here. I feel there are ways to amend this bill and to address them.

Senator Meighen: Senator Angus has been exploring the area that interested me. As Senator Kelleher pointed out, Canada was in the forefront of anti-money laundering legislation in the early 1990s, thanks in major part to his personal efforts. All of a sudden we seem to have woken up. Now there is an incredible rush to produce legislation, which is clearly challenging to draft so that it protects individuals as well as deals efficiently with the admitted problem of money laundering. We rush into it, and by Minister Peterson's own admission, he is prepared to propose, and I do not doubt his good faith and his good intentions, four or five amendments in the fall.

I find it difficult to convince myself that the difference between the middle-to-end of June and the middle-to-end of September is crucial to Canada's standing in the world with respect to anti-money laundering legislation. I can easily convince myself that, by rushing, we can make a serious mistake that it is not necessary to make with respect to people's fundamental liberties and the basic question of solicitor-client privilege that Senator Kelleher explored. What concerns me even more is that, similar to an act such as the EDC, we are suggesting that we should not review this. Yes, we will review it, but only after five years.

With great respect, Mr. Cullen, I do not think this is good enough. If you are going to make these amendments in the fall, I should like to see it reviewed by the end of the year. If that is

not acceptable to you, and I would be surprised if it were, at the very least there should be a three-year period, as opposed to a five-year period, to see how it is working.

The minister cannot control the Order Paper of Parliament. He cannot control whether Parliament is sitting or not sitting. What he can control is to work with us in the Senate to get the amendments through in an expeditious fashion so that when the bill is passed in a short period of time, it does not run the risk of offending basic civil liberties. Why can we not, as Senator Angus and others have suggested, work on these amendments, get them in, and then change the review period from five down to three years? Why do we have to rush to pass what may be a very imperfect and dangerous bill by the end of June?

Mr. Cullen: I understand there are some concerns. In the view of the government, with what has been proposed and the response of the government, we do not believe the bill is fatally flawed at this point.

The longer we wait, the easier it will be for money laundering activity to expand and grow. We have a unique opportunity here to put in place some legislation that will give some teeth to the law enforcement agencies.

Senator Meighen: Agreed. Let us do it in September.

Mr. Cullen: It will not be any easier in September.

Senator Meighen: Explain the danger of waiting until September. Are you telling me, Mr. Cullen, that three months will imperil Canada's ability to deal fundamentally with the problem of money laundering?

Mr. Cullen: As I said in my remarks, this must be dealt with on a coordinated international basis. Right now we are in danger of falling behind. There are initiatives moving now that need a coordinated response. Any further delay will simply mean that the money launderers will be able to advance their activities and we will still be the open link for money laundering activities to expand.

I am sure you, as a senator and a citizen of Canada, are not happy with the idea that Canada would be labelled as a safe haven for money laundering activities. This is something I find offensive and I am sure you do.

Senator Meighen: You know that is not what I said. What I said was that I am having trouble convincing myself that three months makes a fundamental difference. You are suggesting that it will place us in the category of a safe haven for money launderers. I do not accept that and that is not what I said.

Mr. Cullen: I did not mean to imply that you were saying that there was that kind of tradeoff. What I am saying is that, in our view, we have responded to some of the critique and we believe we have improved the bill. At this point we do not think the bill is fatally flawed. We

should get on with setting up the centre, putting things in motion, and being a responsible part of the international community.

The police law enforcement agencies are waiting for this. You may find this hard to believe, but one of the reasons for the delay has been the fact that we have been paying a lot of attention to privacy issues, maybe not in as comprehensive a way as some senators would like, but privacy is one of the areas we have focused much attention on. In fact, the expert from Belgium confirmed that our structure, framework and legislative package pays more attention to privacy issues than does any other jurisdiction in the world.

Senator Oliver: Yet two of the amendments you want to bring in the fall deal with that very issue.

Mr. Cullen: Perhaps, senator, perfection is something that you can claim. I would not sit here and say that this bill is perfect. What I am saying is that, in our view, the bill is in darn good shape, particularly with the comments that we have received and the changes that we are prepared to deal with. To delay these very important initiatives to counteract money laundering would, in our view, not be in Canada's best interests.

I should just like to comment, because it may be germane in terms of the comments made earlier by Senator Kelleher and Senator Oliver with respect to other jurisdictions or acts that provide for access without warrants, I am advised that the Ontario Securities Act, section 11(4), provides for warrantless search powers similar to those contained in this bill. With respect, I do not think that what is being proposed here is setting new precedents in that context. I just wanted to put that on the record.

Senator Meighen: Is that with respect to third parties or with respect to individuals with their own records?

Mr. Cullen: I believe this just deals with the issue of warrantless search powers, which Senator Oliver raised.

Senator Meighen: I make a distinction between the Securities Commission coming in and looking at my personal records, and coming into my office and looking at Senator Tkachuk's records that I have by reason of the fact that I am his lawyer.

Mr. Cullen: This particular provision relates to registrants under the Ontario Securities Act.

Senator Meighen: That is very different. With respect, I do not think it is an apple-to-apple comparison, but I could well be wrong.

In any event, I must weigh the decision as to whether a warrantless breach of solicitor-client privilege is necessary in order to have this legislation in place before the summer recess rather than in the fall, and knowing that, with the best goodwill in the world, there is no guarantee that Minister Peterson can introduce much less see to the passage of these amendments.

Mr. Cullen: I know that Minister Peterson is committed and the government is committed at the highest levels to make these changes. Beyond that, I cannot give you the shirt off my back at this particular meeting.

Senator Angus: I should like to address this document that has been placed before us today. I believe I can refer to it as the chart or the table that some senators asked for in earlier sessions on Bill C-22.

Mr. Cullen: Excuse me, this is the comparative chart.

Senator Angus: First of all, I should like it to be formally in the record. Who prepared it, sir?

Mr. Cullen: The Department of Finance.

Senator Angus: Are you familiar with it?

Mr. Cullen: Yes, I am.

Senator Angus: You have said this document was prepared by the Department of Finance and that you are familiar with it, and you have colleagues with you who, I am sure, are equally familiar. It is entitled "International Comparisons of Anti-Money Laundering Regimes." We have page 2 of 2, but I understand that page 1 was simply a fax cover sheet. Is there a page 1?

Mr. Cullen: I just have this.

Senator Angus: Does yours say page 2 of 2?

Mr. Cullen: Apparently the footnotes were previously on page 2. Did we not need the footnotes?

Senator Angus: I think it is reasonable: it does say page 2 of 2. Page 1 was the main table, and the footnotes were at page 2.

Mr. Cullen: The footnotes have been incorporated onto page 1.

Senator Angus: I should like to have this document formally in the record. People under your supervision dispatched that to the committee?

Mr. Cullen: That is correct.

Senator Angus: Could we let it form part of the formal record?

This document refers across the top to anti-money laundering authority. It lists Canada, Australia, the U.S., the U.K., Belgium, the Netherlands, France and Japan. In the footnotes, I notice Italy got a mention. That is nine countries, including Canada. What happened to the others that are in the group?

Let me elaborate by saying that, at the first hearing, when you gentlemen briefed us on this bill, we were told that Canada was one of 28 nations involved in this cooperative effort. We were further told that the bill was important because Canada was the last of 28 countries to get up to speed and introduce legislation. It became apparent during the hearings that, in fact, Canada might well be ahead of many of the other countries, having already passed the money laundering legislation of the Senator Kelleher regime. Indeed, we heard that we were covering the topic through provisions in the Criminal Code and so forth.

We asked for the comparative table so that we could see where we are at and where we are not at vis-à-vis the other countries. I am having trouble understanding this document for a number of reasons. I have mentioned one: Where are the other 19 countries mentioned? Furthermore, one footnote says that this is to be done in regulation.

Without me asking questions and confusing the issue, could you address this document? Tell us what it means and how it came to pass. Fill in some of my blanks for me.

Mr. Cullen: Perhaps, it would be helpful if Mr. Lalonde took the group through the chart. I should preface that by saying that we are the last G-7 country to implement mandatory reporting of suspicious financial transactions.

Mr. Lalonde: Just to amplify that, not only are we the last G-7 country, according to the 1998-99 annual report of the Financial Action Task Force, but that report also states quite clearly that the reporting of suspicious transactions by banks is mandatory in all members except Canada. We know that Canada is the only country within the 26 member FATF that does not have some form of mandatory suspicious transaction reporting. We were trying to be as comprehensive as possible in the table. Certainly, if we were to put all 26 countries down in terms of whether or not they have suspicious activity reporting, the answer would be yes for all 25 members of the Financial Action Task Force, with a blank for Canada.

In terms of our ability to obtain additional information, which may or may not have been requested by this committee, we did our best to obtain as comprehensive a picture as we could, in the time allotted, for the countries that are presented in this chart.

Senator Angus: In the time allowed by whom?

Mr. Lalonde: Well, since the time that we appeared before the committee on June 1, and the present.

Senator Angus: Are those your comments?

Mr. Lalonde: I am happy to respond to any additional questions.

Mr. Cullen: Would it be helpful to take the senators through the various categories?

Senator Angus: It would be.

Mr. Lalonde: I would be glad to. If we could take a look at the first line, "Accountability Structure," we see that in most cases the financial information agencies are structured as independent agencies and are for the most part at arm's length from the police. We notice, as well, that in some cases the centres -- agencies -- are accountable to, or they report to, ministers of finance, attorneys general or other ministers, as the case may be. There is no particular pattern, but they are accountable to ministers of finance in a number of cases, notably in France, Belgium and the United States.

I would just mention that in the United States, FINCEN is a branch of the Treasury Department, much like the Bureau of Alcohol, Firearms and Tobacco or the IRS. They are separate entities -- branches -- but they are within the Treasury Department.

As for the scope of legislation of entities that are covered, we notice that there is a fair bit of uniformity in terms of the regulated financial institutions.

Senator Angus: Excuse me. To make it clear and for the record, this chart, insofar as Canada is concerned, reflects what will be the case if this legislation passes. Is that correct?

Mr. Lalonde: That is correct.

Senator Angus: It does not show us where Canada is already, at least up to speed. Do you realize what we are getting at here? We are saying, "Okay, this is good stuff, and we basically support the initiative, but what is the big rush? We are not that far out of step with other countries, and you are infringing on some rights. So let's get it right and go ahead in September or whenever."

Mr. Lalonde: To clarify, it is perspective if we are talking about reporting requirements in analysis and disclosure since Canada does not have mandatory reporting and these are the criteria that we have. Certainly, if we are talking about record keeping or client identification requirements, those are embodied within the current Proceeds of Crime (money laundering) Act.

These businesses are covered presently by the record keeping and client identification requirements. In that sense, we are acceptable in terms of record keeping.

As I indicated earlier, the scope and coverage looks pretty uniform when we are talking about regulated financial institutions. It looks less so when we are talking about unregulated institutions or financial businesses, such as credit card companies, for example. In the area of lawyers and accountants, not in every country, but certainly four, in particular, address accountants and lawyers directly. And in Belgium and France, notaries are covered by the reporting scheme.

As indicated by Mr. Cullen earlier, the IRS requires accountants and lawyers to report the receipt of cash transactions of $10,000 or more to the IRS. The information contained in these records is accessible to FINCEN for purposes of enforcing its acts.

The next category indicates the range of different kinds of reporting requirements, be they cash transaction reporting requirements that are suspicious or cross-border reporting requirements.

Finally, the last box is for information about some of our concerns, which involves the performance of the amount of disclosures that are made to the police or reports received, whether or not reporting entities can report electronically or otherwise.

Senator Angus: Mr. Lalonde, your comments and they are very helpful. May I ask you whether, in your view, those boxes -- the mandatory reporting, the accountability, and so forth -- cover the main elements of either Bill C-22's money laundering provisions or those that are already in our law, or are there other key things that are needed and are in Bill C-22 that are not referred to there?

Mr. Lalonde: Certainly, if we wanted to put down all of the safeguards to protect personal privacy, we could have listed all the ones that we have and researched whether or not every other jurisdiction has those protections as well. That would have required exhaustive research. Perhaps that would have been helpful, but we were told by Mr. Spreutels in his testimony that in his opinion our regime was fairly comprehensive. I do not know whether that would have added too much to the chart itself.

We could certainly have found other criteria within the bill to add. We were trying to address the main issues. The main issue raised with us when this chart was requested was essentially what is addressed in the first line. There were some issues relating to accountants and lawyers, so we thought that it might be useful as well to include a line on that. Also, we thought it would be useful to include the different kinds of reporting requirements in the different jurisdictions.

Senator Angus: It is very useful. I believe you mentioned the individual who came from Belgium. My sense from him was that he thought that this bill was terrific. It goes beyond anything they have seen in Belgium and they wish they had something like it there. Again, that made me feel this is going beyond what other countries have, and it may end up serving as a model in terms of being a terrific tool for combatting organized crime and money laundering. It is just the urgency aspect, as I say, that bothers me.

Mr. Lalonde: Mr. Spreutels was referring to the safeguards to protect privacy, not so much whether or not the regime that we have in place would be far and above anyone else's regime in terms of combatting money laundering. Certainly, in the European context the protection of privacy is a high priority and there is stringent legislation in member countries, so I do not think that Mr. Spreutels would want to say that the basic protections that are afforded under Canadian statutes to personal privacy are far and above those that are available in Europe as well.

Senator Angus: You may have covered this on the earlier occasion but let me just ensure that I understand your position. There has been an issue raised as to why this special agency should

be set up to receive all this data, this suspicious information, as opposed to the RCMP. The RCMP has a great amount of information, as we have found out over the years, and there are exceptions, but, by and large, the citizenry tends to feel not so nervous about all this sensitive information being in the hands of the RCMP, whereas there is more concern and fear that these fundamental rights will be violated and breached in the hands of this new agency.

I should like to know once and for all what your position is. I know you do not want to change it and I know you feel it is the right position, and that is fine. I just wish to hear the reasons.

The Chairman: We have gone over this ground at least five times, senator. Representatives of the RCMP were here when you were here and said they did not want to take the responsibility because it would end up being abused.

Senator Angus: Is that going to be the official answer, senator? I have always liked your answers, we think alike on so many things, but it would not take long. It is my last question.

Mr. Cullen: I will start off by saying that there are tradeoffs in everything we do, but one of the clear advantages of having the centre is that it acts as somewhat of a filter. It really addresses some concerns that have been raised by you and others that information by itself that is reported should not necessarily trigger a ground for suspicion. It triggers recording of the information, against which other corroborative information is matched, and only in the case where there are further grounds for suspicion would that information be forwarded to the RCMP.

In a sense, I believe it protects citizens from having information go directly to the RCMP. Even though I have confidence in the RCMP, I personally would feel that if frivolous information were being reported to the centre and there was no other corroborative information, then that is where it would end. It would not go further. In any regime, there are pluses and minuses. I feel that is a pretty compelling advantage.

Mr. Lalonde: Mr. Cohen has given a very good explanation as to why it was advantageous to have this function set up in a separate agency and at arm's length from law enforcement. I will not go over that territory but will say simply that there are very good Charter reasons why that is so.

We have also indicated to the committee that, even if you set aside Charter concerns and personal privacy concerns, the cost savings of merging that activity within another agency would be minimal.

Senator Tkachuk: The letter was sent to the chairman from Mr. Peterson; do you know whether he would be willing to make changes in the letter?

We have some additional concerns. We appreciate the fact that he is willing to make amendments so quickly. I, along with those on this side, do not understand why the changes cannot be made now, but let us put that aside for a moment.

Senator Kelleher has concerns under clauses 63 and 64 on client-solicitor privilege, under clause 85 under access to information, and also about the review process of the bill. We have tried to raise these points with the witnesses during our meetings. Do you know if Mr. Peterson would be willing to add that as part of the process, or is this it?

Mr. Cullen: Minister Peterson has attempted to respond in a positive, concrete and constructive way to the concerns raised by senators and other witnesses who came to this body. At this point, I do not think he would be in a position to expand further on this letter.

Senator Tkachuk: Did this letter come about because the minister and his officials were listening to the witnesses and they said, "Oh, these are the items"? Or was there a whole list of items from which he decided?

These were not the only concerns raised. Many concerns were raised, some of which I have indicated and some of which we explored previously during these meetings. Those were larger matters than the ones addressed here by the minister.

The Chairman: I hear where you are going and obviously you are free to go wherever you like, but my understanding was that you folks would not accept a letter of any kind. That is why we worked out a letter that was acceptable to us to show to you. You had told me that nothing less than regular amendments would do and that letters were not acceptable. You are catching me unaware here.

Senator Tkachuk: There are two issues here. You had asked whether we would accept a letter. Of course, over the last seven years while I have been here, there have been many letters and nothing has ever happened.

The Chairman: I am not disagreeing with you. I am not suggesting you should accept it.

Senator Tkachuk: I am just saying that this letter caught us by surprise because it is unique. This letter promised, at the earliest possible time, to entertain and pass amendments in the other place. We do not get those kinds of letters. That is the letter I was talking about.

The Chairman: Would you reconsider your position? Would you accept a letter?

Senator Tkachuk: We would like to caucus for a minute, but our view would likely be that we would entertain the acceptance of this letter. That is why I am asking whether it is possible to have a couple of extra items included to cover the concerns that arose on this side. Some of the concerns on your side have been addressed here.

The Chairman: I wish you had told me that a couple of days ago, because we could have tried to work things out.

Senator Oliver: This is not the minister's letter? It is your letter that you wrote up?

The Chairman: Senator Oliver, I find that a very inappropriate and silly remark. It is not the letter that we wrote. It is the letter we ended up accepting.

Senator Oliver: That is not what you said earlier. The transcript will show what you said, senator, with all due respect. You do not have to shout at me.

Senator Tkachuk: While they talk, may we speak, Mr. Cullen?

Mr. Cullen: I should like to say that Minister Peterson is aware. He has been following, through staff and personally, the deliberations of this committee and the House of Commons committee. He is aware of the range of issues and concerns. At this point in time, these are the four issues that he is prepared to address in a letter. That is basically his position. He is aware of other concerns but, at this point, this is the extent to which he is prepared to respond.

Senator Tkachuk: I want to make it clear and it is on record that when I was asked about a letter, what came to mind immediately was the usual letter received from a minister saying that certain things will be done, but nothing ever gets done. I have an example here regarding Bill C-78. Meetings were supposed to take place. A new minister came in and refused to hold the meetings. Nothing ever happened.

When this letter hit our desks, it was quite interesting because of the undertaking here to introduce amendments. We were quite pleasantly surprised. We want to know whether there is any chance that Minister Peterson could appear so that we could request the inclusion of a couple of items also.

We support the substance and the principle of the bill. We have some serious concerns that we want to see addressed, but we will be cooperative in dealing with this matter.

The Chairman: We should excuse the witness and discuss it. As far as I know, we must deal with it today.

Senator Tkachuk: We can do what we want, Chair.

The Chairman: Of course, you can.

Senator Tkachuk: You can, too.

The Chairman: I understand.

Senator Oliver: Some of the proposed amendments in the letter that was sent to Chairman Kolber are fundamental in nature. My question is this: If this bill were passed, is the minister prepared to hold up proclamation until such time as these amendments can be made?

Mr. Cullen: Honourable senators, I can say that we certainly could discuss delaying proclamation of certain clauses over the next little while.

Senator Tkachuk: Is that up to and including the time of the amendments, say December 31 of this year? That would give you time, if the amendments were done. Does that seem reasonable?

Mr. Cullen: Yes.

Senator Tkachuk: Which particular clauses?

Mr. Cullen: It depends. This is something new for me and I do not have the mandate to commit the minister to any particular clauses.

The Chairman: You cannot make that kind of an undertaking?

Mr. Cullen: No.

Senator Tkachuk: He just did.

The Chairman: Frankly, I do not know how he could do that.

Senator Meighen: He is a member of Parliament.

Mr. Cullen: Just for the record, Mr. Chairman, we would be prepared to consider delaying proclamation of certain clauses. That is all I can say. I am not the minister.

Senator Tkachuk: Could we have that answer by, say, Wednesday of next week?

Senator Meighen: That would be quite a good compromise when you think of it. We have done that with the bankruptcy bill and with some other money bills.

Senator Tkachuk: Mr. Cullen seems to be open to that discussion. It is good that we knew this before our discussion took place.

Mr. Cullen: To elaborate, it is something that could be discussed.

Senator Tkachuk: We understand.

Mr. Cullen: We would like to see the legislation.

Senator Tkachuk: We understand that, too.

The Chairman: I thank the witnesses for their time today.

Senator Tkachuk: Mr. Chairman, could we have five minutes to caucus by ourselves on this letter?

The Chairman: We can take a recess, of course. However, we will proceed to clause-by-clause consideration when we return.

Senator Tkachuk: If we do that, then there is no use talking about anything -- no letter, no nothing.

The Chairman: The letter will be appended to the report.

Senator Tkachuk: With no possibility that some of our concerns would be included in the letter?

Mr. Cullen: Mr. Chairman, I think I said clearly that Minister Peterson is not prepared to go beyond the letter at this point.

Senator Tkachuk: You made that commitment for him. At the same time you said other things.

Mr. Cullen: I happen to know, because I have discussed that particular matter with him.

Senator Tkachuk: Would you be willing to take up the matter with him about holding up particular clauses?

Mr. Cullen: If the bill is passed, we could consider delaying proclamation of certain clauses. We could have a look at it. That is what I committed to.

Senator Tkachuk: Would it be possible that you could have that decision to us by next Tuesday or Wednesday and then we could do clause-by-clause consideration knowing that that was going to happen?

Mr. Cullen: I do not think that is possible. It is a matter that could be considered in discussions over the summer, but not before then.

Senator Tkachuk: It seems very strange that concerns of the government members were met, but when our concerns come up, short shrift is given.

Senator Kroft: That is not fair at all.

Senator Tkachuk: Senator Kroft, tell me what is fair.

Senator Kroft: That is not accurate.

Senator Tkachuk: Tell me what is accurate, then.

Senator Kroft: The amendment about the Privacy Commissioner was an amendment expressed from all sides of this table. Those issues were expressed as concerns generally around the table. They are not identified one way or the other.

Senator Tkachuk: We have a number of amendments.

Senator Kroft: Was that issue not a concern of yours?

Senator Tkachuk: Of course.

Senator Kroft: How can you say your interests are not expressed in the letter?

Senator Meighen: Other concerns are not.

Senator Tkachuk: I said concerns that we had, Senator Kroft.

Is it possible to have a recess?

Senator Grafstein: Mr. Chairman, could I have one or two minutes to comment on this? I did not mean to speak, but Mr. Cullen is gone and one of the reasons I am interested in this bill is that I am vice-chairman of the economic committee of the OSCE. To deal with international money laundering was a major initiative by the OSCE, which Canada supported. Mr. Cullen led in making sure that that was an issue. Quite frankly, the evidence we heard at the international meetings is that this is an epidemic issue and the sooner we can close whatever doors we can, the better.

I have come here to satisfy myself on the privacy questions and I received good satisfaction. The key is to get things going as quickly as possible, not to delay. The fastest it can be proclaimed, even the three quarters of bill that is satisfactory, the better it is for the interests of Canada. We have an international reputation that can be enhanced by this bill. I say that not as a member of the committee but as a representative of the OSCE and a vice- chairman of the economic committee, which puts this at a key international priority.

The Chairman: We will recess for five minutes.

The committee recessed.

Upon resuming.

The Chairman: Honourable senators, we appear to have reached a compromise. We will report the bill as drawn with the letter attached. We will also put wording in the report indicating that both sides are suggesting that three more amendments are necessary. We are suggesting them. We cannot bind anyone. The amendments are things that you guys have drawn up. We will go along with them, and they will be in the report.

Senator Kroft: We will say "generally as expressed." We are not trying to tie it down to specific wording.

Senator Meighen: The three areas are solicitor-client privilege, regulations, and the review in three years instead of five.

The Chairman: Now that it is on the record, does everyone agree?

Senator Tkachuk: I have copies of those. You will have to draw them in the proper form.

The Chairman: We are making the request that these be considered seriously.

Senator Kroft: We want to make it clear that the committee collectively recommends those items.

The Chairman: We recommend that these changes be added.

Senator Meighen: Generally as expressed.

Senator Tkachuk: We have our amendments, and you can draw the wording.

The Chairman: Do the witnesses have a problem with this?

Senator Tkachuk: We understand it is not exactly the wording of the amendment, but all we have is the amendment, so those observations must be drawn.

The Chairman: Would you make the motion?

Senator Kroft: I move that the committee complete clause-by-clause consideration of Bill C-22. Must the reference to the letter be included? I would include in the motion that the bill stands unamended but accompanied by the letter from the minister, together with observations agreed upon by the committee.

The Chairman: By the entire committee.

Senator Kroft: By the entire committee on an additional three subjects.

Senator Meighen: As generally set forth.

Senator Kroft: As generally set forth. The report that we have agreed on is that the act goes unamended accompanied by the letter. The letter is a commitment by the government, so it is the bill plus the letter.

The Chairman: There are three recommendations.

Senator Meighen: The committee recommends, in addition to the minister's letter, three further recommended amendments to the act.

Senator Oliver: What about proclamation?

The Chairman: We cannot get into that.

Senator Kroft: The question has been raised, but with the letter plus these additional amendments, we know we are trying to strike a balance here. We could go through a great deal looking for perfection, but in fact we have a bill with which we are all comfortable.

Senator Meighen: He is committed to considering it. If he does not want to do it, he will not.

Senator Fitzpatrick: He said he would take the proclamation back for consideration and advice.

The Chairman: All those in favour of the motion?

Hon. Senators: Agreed.

The Chairman: Carried. Thank you, senators.

The committee adjourned.

June 15, 2000 [Senate]

Hon. E. Leo Kolber, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:
Thursday, June 15, 2000

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

SIXTH REPORT

Your Committee, to which was referred the Bill C-22, An Act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence, has examined the said Bill in obedience to its Order of Reference dated Thursday, May 18, 2000, and now reports the same without amendment, but with a letter and observations, which are appended to this report.

Respectfully submitted,

E. LEO KOLBER, Chairman

(For text of documents, see today's Journals of the Senate, Appendix , p. 724.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

June 19, 2000 [Sentate]

Hon. Richard H. Kroft moved the third reading of Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.
He said: Honourable senators, I spoke at some length on second reading of this bill and will, therefore, keep my remarks this evening as brief as possible.

This bill strengthens the existing Proceeds of Crime (money laundering) Act by adding new measures to improve the detection and deterrence of money laundering in Canada. Passage of this bill will not only assist Canadian law enforcement in its fight against organized crime and money laundering, but will allow Canada to be an equal participant in international efforts to combat these serious problems.

While Canada has had the building blocks of its anti-money laundering program in place for some time, the measures contained in Bill C-22 will bring Canada into line with international anti-money laundering standards around the world.

In summary, Bill C-22 provides for mandatory reporting of suspicious and prescribed transactions, reporting of large cross-border movements of currency, and the establishment of an independent anti-money laundering agency that will receive these reports and other information.

In implementing mandatory reporting of suspicious transactions, which I point out is a cornerstone of anti-money laundering systems around the world, Canada will, with the passage of this bill, join the other 26 members of the Financial Action Task Force that have put this measure into place. When international comparisons are made, however, the legislation being debated today is distinguished by the strength and extent of the privacy protections it contains.

I have referred briefly to the fact that this legislation will address the needs of law enforcement while at the same time providing considerable privacy protections. I am pleased to add that the committee devoted considerable time and energy during the course of its study of Bill C-22 to ensuring that a proper balance was struck in the legislation between these two important objectives. Honourable senators, I believe that such a balance has, indeed, been achieved.

I should like to take a moment to outline some of the privacy protections contained in Bill C-22. In the first place, reports mandated by the bill will be sent to the new centre for analysis and not directly to the police. The centre will be an independent body operating at arm's length from law enforcement and other agencies entitled to receive information under the bill. I wish to make it clear that the centre cannot disclose just any information to authorities. The centre can disclose only limited key identifying information, such as the name of the client, the

account number, the amount involved and other details of the transaction. Information as to why a particular transaction is suspected of being linked to money laundering cannot be released. Only if the centre, on the basis of its own analysis, has reasonable grounds to suspect that certain information would be relevant to both a money laundering investigation or prosecution and a tax evasion offence can it disclose the information to revenue authorities.

If the police want additional information, they will have to obtain a court order specifying what information or documents they want. I should point out that the centre will not be subject to subpoenas except for money laundering investigations and prosecutions.

Honourable senators, it is important to understand that these safeguards are backed up by criminal penalties for any unauthorized use or disclosure of personal information under the centre's control. In addition, the centre will be subject to the federal Privacy Act and its protections, which means that its operations will come under the watchful eye of the Privacy Commissioner. It also means that individuals have rights under the Privacy Act with respect to the information the centre has about them.

(2210)

Honourable senators, I have said that the committee devoted much attention and effort to assuring that a balance was struck in the bill between the necessary and legitimate law enforcement requirements of the bill and the need to protect the personal rights of Canadians. This was a preoccupation of every member of our committee, and I wish to thank all honourable senators for their cooperation.

As a result of our efforts, we gained the agreement of the Secretary of State for International Financial Institutions, the Honourable Jim Peterson, that certain changes should be made to enhance individual protection in some areas. We received from the minister a detailed letter dealing with four specific areas that set out the actual language for amendments the government agreed should be made. This letter, which contains an undertaking to introduce those amendments as soon as possible in the fall, forms part of our report.

In addition, the report contains three other amendments that the committee unanimously recommends the government consider while making the agreed-to changes.

With today's globalized financial markets and open borders, criminals have the opportunity to launder billions of dollars in illegal profits. The bill before us targets the financial rewards of this criminal activity by creating a balanced and effective reporting regime. It also protects the integrity of our financial system and enables Canada to meet its international obligations while at the same time protecting individual privacy.

With the passage of Bill C-22, we will now have an effective anti-money laundering scheme in place to help ensure that Canada is an equal participant in the international fight against money laundering.

Honourable senators, I strongly believe that the Senate, drawing on the commitment of all sides, has done excellent work on this bill and has served Canadians well. I urge you to join me in supporting it.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I should like to ask the honourable senator a question. I am intrigued by the report of the committee, as it recommends three specific amendments, which, I gather, were supported unanimously by the committee. The minister, in his letter, seems to concur. Why did the committee not attach the amendments to the bill in order that we might pass them here and have them ready for the House when it returns in September?

It is all very well for the minister to say, "I will do my best in the fall," but he is at the mercy of the House leader and this matter may not be the priority of his House leader when the House returns.

Senator Kroft: The unanimous acceptance and judgment of the committee was that the international urgency for the completion of this legislation was such that the procedure we followed was acceptable. That was the unanimous concurrence of the committee**.**

Senator Lynch-Staunton: My question is not whether the procedure was acceptable. Why were these amendments not included in your report to this chamber so that we could improve the bill ourselves and then send it to the House for them to ratify in the fall?

These improvements, from my reading, will take much longer to achieve, since the House will have to entertain them in the fall when they return, alongside other legislation, and I fear this may not be one of their priorities. The amendments will take much longer to become law than if you had included the amendments with the bill when you reported to this chamber.

Senator Kroft: As I pointed out, Canada was the last country to have joined into this legislation. The judgment of the government, with which the committee members concurred, was that any further delay would be unreasonable. Thus, the passage of the bill now, in view of completing our obligations and having them fall into place over the coming months was seen as, on balance, the appropriate way to deal with this. That was especially so when coupled with the commitment not to review the bill but to have the specifically worded commitments that have been included in the report.

Senator Lynch-Staunton: I will not prolong this, except to say that honourable senators are being asked to pass legislation that committee members know is incomplete.

On motion of Senator Kinsella, for Senator Tkachuk, debate adjourned.

June 22, 2000 [Senate]

On the Order:

Resuming debate on the motion of the Honourable Senator Kroft, seconded by the Honourable Senator Wiebe, for the third reading of Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

Hon. James F. Kelleher: Honourable senators, I should like to speak briefly to Bill C-22. As my honourable colleagues have mentioned, we on this side of the chamber support the intent of this bill. Money laundering is a serious problem, both here and around the world. Canada must take all reasonable steps to address this issue.

However, while we support the intent of this legislation, we are not as supportive of some of its provisions. My colleagues have already spoken about some of the issues that concern those of us on this side of the chamber and that concerned all members of the committee that studied the bill.

As my colleagues have already mentioned, we have received a written commitment by the minister to introduce amending legislation at the first available opportunity in the fall of this year. Rest assured that we have every intention of holding him to this commitment.

We trust that he and his officials at the Department of Finance will also give very serious consideration to the unanimous recommendations made by the committee. It is to these recommendations that I should now like to turn my attention.

Honourable senators, we on the committee are very concerned by the powers given in this bill to allow representatives of the new money laundering centre to enter into and search the files in a lawyer's office without first obtaining a warrant. I believe that all of us here in this chamber, lawyers and non-lawyers alike, recognize and appreciate the sanctity of the relationship between a lawyer and his client.

When clients retains a lawyer, they have an expectation that they can share all manner of personal and private information with their lawyer, without fear that strangers will have access to this information. We are not aware of any similar legislation in other countries, legislation that allows this type of intrusion, nor are we aware of other legislation in this country that permits access to the files of lawyers without a warrant. We can think of no good reason, nor were we provided with one, why an exception should be made in this case.

The second issue that I should like to address is the inadequacy of the review provisions in the bill. Senator Tkachuk will touch upon that issue in his remarks. Senator Meighen discussed it at length in the committee.

As written, the bill provides for a one-time review after five years. The committee has recommended to the minister that it would be much more appropriate to have an initial review after three years and subsequent reviews every five years thereafter. For example, this bill will create a new money laundering centre that will have sweeping powers to collect vast amounts of personal and private information about mostly innocent Canadians. In order to ensure that the new centre is operating efficiently and that the private information of Canadians is being

managed effectively, it was the unanimous view of the committee that the legislation be subjected to a more rigorous review schedule than that which is required of less intrusive pieces of legislation.

This, by the government's own admission, is an imperfect piece of legislation. Rather than amend the bill now and wait a few short months to have it sent back to the other place, the government has made it clear that it will pass the bill now without amendment. We do not support this approach. We believe we should get this bill right the first time, especially since there is agreement on both sides of this chamber that the bill needs to be amended. We should not be leaving to chance and the vagaries of the fall schedule that which should be fixed now.

Therefore, on behalf of most of the senators on this side of the chamber, I repeat my earlier assertion: We will be vigilant in ensuring that the government keep its word and introduce legislation to amend the proposed legislation as soon as possible after the House of Commons and Senate resume sitting in the fall.

Hon. David Tkachuk: Honourable senators, it was a pleasure having Senator Kelleher on the committee during our study of Bill C-22. He was, of course, the minister in the government of Brian Mulroney responsible for introducing legislation to counter money laundering in this country.

As honourable senators may be aware, Bill C-22 received little attention in the other place. In fact, a mere two committee meetings were held, a number of minor amendments were raised and defeated, and the bill was speedily sent to our chamber. We gave it serious scrutiny. We held four quite lengthy meetings, hearing a number of witnesses, culminating with the testimony of Mr. Roy Cullen, the Parliamentary Secretary to the Minister of Finance.

Honourable senators, we on the Conservative side support the public intent of this legislation and have gone on record at second reading saying so. We do, however, have some concerns that could have been rectified with amendments to improve this legislation.

Immediately before our last committee meeting on June 14, we received a letter from Minister Peterson, Secretary of State for International Financial Institutions, that outlined the amendments he intended to bring to Bill C-22 this fall.

I reiterate that this bill passed the House in two committee meetings, with no amendments. The letter that we received is quite unprecedented. It actually outlines how specific clauses would be amended, and was in direct response to concerns expressed during our committee meetings. I might add that the amendments spoken of in the minister's letter were ones wanted by members on both sides. We were quite surprised that the minister sent this letter.

(1530)

I understand my colleague across the way, Senator Kroft, had a response to why these amendments could not be passed now — he mentioned that in his speech — rather than waiting for the government to table an entirely new bill that would amend this bill.

We also had other concerns that we wished to bring forth to the minister. We figured that while he is making these amendments in the fall — which he has promised to do — that he might as well include a number of amendments that we wish to have included in the bill as well.

Our problem was initially, when we were asked about the letter, a general mistrust. We have received from ministers a number of letters attached to reports and, frankly, nothing happens. I remember a letter from Minister Massé on Bill C-78 last June where he promised to take whatever measures were necessary to ensure that discussions with employee and pensioner representatives were re-established. We remember that letter. Of course, the government shuffled ministers. Minister Robillard is there now and she says, "We shall not meet with anyone."

We do not have a lot of faith in these letters, but this was an interesting one because it outlined in specific terms the actual amendments that they wished to place in the bill. This is strange considering they have a new bill and they have amendments, but they do not want to make them right now.

We had tried to have amendments made during the committee. We asked and were told in explicit terms that there would be no amendments considered. Mr. Cullen told us that there would be no changes to the letter. We agreed to disagree, but we did, at least, unanimously agree to place three of our concerns into the report and recommend that they be placed together with the other amendments that the minister was promising in the fall. We expect to follow the minister's intent.

I will not read the letter of June 14, 2000, but I will place on the record that the minister wished to bring forth amendments. One would add a new subparagraph to subclause 64(9) in regard to some of the concerns we had and Senator Kelleher had, but it did not adequately address them. As well, there were a number of amendments to clause 61 and subclause 54(d). Senators should refer to the letter attached to the report so that we ensure that we keep the minister in place in the fall session.

We had a number of opportunities to do something important for the Senate. We had the minister of the Crown saying that we needed to make amendments to his bill. Concerns were expressed by both sides of the chamber with which the minister agreed. Concerns were expressed by us with which government members agreed.

What is the rush, honourable senators? Senator Kroft mentioned in his speech that this bill is necessary. How many times have we heard that comment about a bill?

I remember a bill in which I was involved, the CPP bill. It had to be passed by Christmas because the administration and the board of directors had to be set up. The people of Canada were waiting. As it happened, the board of directors was not appointed for two years.

I know what will happen with this particular bill. Nothing will be done in the summer. There will not be a bureaucrat working in Ottawa this summer. We all know that.

Senator Fairbairn: Nonsense!

Senator Robichaud (Saint-Louis-de-Kent): Senators will not be here either.

Senator Tkachuk: Senators will not be here; that is correct.

Senator Cools: That is not so. Some of us will be here.

Senator Finestone: Have a little respect for the people who work around here.

Senator Tkachuk: I do have respect for the people who work here. I am telling honourable senators that nothing will happen with this bill until September or October of this year. We all know that. There is no reason we could not have had these amendments made now, sent back to the House, reported back to Parliament in the fall, and dealt with in an appropriate manner.

We did work well together, despite the criticisms that I am making here today. We do have some frustration due to our numbers. I am expressing that frustration and I will continue to express that frustration until we believe that we have full agreement. The executive branch of government is telling us that we do not have the right to do this. This is something that we all wanted to do as a chamber and we all wanted to do as a Parliament.

Here we are complaining about the fact that in the financial services legislation, and in Bill C-20, the Senate is excluded. I wonder why. When we have an opportunity to make a difference, we do not.

Senator Oliver: Just like the clarity bill!

Senator Tkachuk: Why should we not be excluded? The clarity bill is here. We all want to make amendments to it. We will see how many senators on the other side get up to make them and then complain that they are excluded. We are either a chamber of Parliament or not a chamber of Parliament. If we continue to behave in a way unlike a full chamber of Parliament, then we have no one to blame but ourselves for what the other place is doing to us.

Honourable senators, Bill C-22 is a good example of a situation where we could have made a difference. We could have moved amendments. We could have sent it back to the House, but we did not make any amendments. We only got promises from the minister. We know what shall happen in the fall.

Senator Robichaud (Saint-Louis-de-Kent): You have a commitment from the minister that there will be amendments.

Senator Tkachuk: I have a letter here and others in my office indicating that nothing has happened. Honourable senators know that we will have to hold their feet to the fire. We had the opportunity and we did not act upon it.

Honourable senators, even though we have unanimous consent to some amendments, we shall probably report this bill on division.

Hon. Donald H. Oliver: Honourable senators, I wish to add a few remarks to those already made by Senators Kelleher and Tkachuk on Bill C-22.

I am concerned about the process that we have been forced to follow in relation to the exercise of our duties as a body of sober second thought. We studied a bill and it was found to be wanting. It urgently needed amendments, but we have been urged not to use our powers to do what is right.

I am reminded that when amendments to the Canada Elections Act were before us, on two occasions I rose in this chamber to express concern about the constitutionality of the third-party provisions of that bill. I stated it was my opinion that the provisions as listed would not withstand the constitutional challenge.

Less than two weeks after the Canada Elections Act received Royal Assent and was proclaimed, I read in the newspapers that a constitutional challenge had been launched in the courts. It is, regretfully, my opinion that the challenge will likely succeed.

Honourable senators, we rushed through a bill and we did not get it right. If the Chief Electoral Officer has to suspend provisions relating to third parties for the next election, as he has in the past, this will mean havoc for candidates and parties.

Honourable senators, I have exactly the same concerns with Bill C-22. As you have heard from Senators Tkachuk, Kroft and others, the Standing Senate Committee on Banking, Trade and Commerce conducted a detailed examination of this bill, heard several witnesses and, as a result of what they said and what we heard, we were moved to make several amendments. The government did not want any amendments but said in a letter that it will bring in amendments in the fall if we agree to pass the bill now.

Honourable senators, why do we not get it right now?

Throughout the hearings on Bill C-22, I raised several concerns with many of the witnesses, the chief of which was whether the money laundering bill as drafted was constitutional. I had substantial support for my concerns from the Canadian Bar submission, in which they said:

Bill C-22 imposes significantly intrusive regulations upon businesses, financial institutions and professionals, including the legal profession, to the extent that we believe it may be ultra vires of Parliament.

(1540)

The Canadian Bar Association recognized that the federal government may rely on the criminal law power for constitutional jurisdiction for Bill C-22. However, they believe, and I concur, that the bill could be interpreted as intruding upon the legislative jurisdiction of the provinces as property and civil rights and administration of justice within the provisions of section 92 of the Constitution Act, 1867.

As Senator Kelleher has aptly pointed out, there may also be major faults that could give rise to a successful Charter challenge. For instance, the provisions in the bill would mandate record keeping by lawyers and other professionals, and then authorize what can easily be construed as unreasonable search and seizure, offending clients under section 8 of the Charter of Rights and Freedoms.

The final concern that I canvassed with the Canadian Bar Association and other witnesses, including senior bureaucrats, was that the bill eroded the basic rights of Canadian citizens not to provide private information to the state and the right to independent and confidential legal representation under the Canadian Bill of Rights and under sections 7 and 11(d) of the Charter of Rights and Freedoms.

As a practising lawyer, the entire issue about confidentiality of clients' information is, of course, a major concern. The requirement of Bill C-22 would fundamentally alter the foundation of the solicitor-client relationship, which is premised upon the protection of both privilege and confidentiality. Confidentiality is an ethical concern that lawyers must address. As the Canadian Bar Association said, the importance of privilege and confidentiality has long been recognized in law and is central to the rules of professional conduct governing lawyers. Clients must be able to seek the assistance of a lawyer knowing that the information they communicate will remain with the lawyer and go no further. Uncertainty in the integrity of the privilege or confidentiality will create uncertainty in and undermine the solicitor-client relationship.

Honourable senators, these principles are so fundamental that they should be corrected now before the bill receives Royal Assent and certainly before the bill is proclaimed. I am concerned that there should be no proclamation of the offending clauses of this bill until such time as the government can bring forward the amendments it has promised us in writing.

I raised this matter with Mr. Cullen, the Parliamentary Secretary to the minister, when I said:

...if this bill were passed, is the minister prepared to hold up proclamation until such time as these amendments can be made?

Mr. Cullen responded as follows:

Honourable senators, I can say that we certainly could discuss delaying proclamation of certain clauses over the next little while.

Honourable senators, I call upon the Leader of the Government in the Senate, the Honourable Bernard Boudreau, to ensure that Mr. Cullen's undertaking is met and that these offending sections be delayed until the amendments recommended in the Banking Committee report to this chamber have passed both Houses and receive Royal Assent.

A final comment I should like to make about Bill C-22 that causes me grave personal concern is the fact of the low threshold of $10,000 and the discretion given to bureaucrats in determining what is a suspicious circumstance. I raised with the departmental lawyer, Mr. Cohen, who appeared before the committee, the issue of whether this could be yet another way of perpetuating ethnic stereotyping. If, for instance, a person were to walk into a financial institution covered by Bill C-22 with, say, $9,000 in cash, having just come back from Nigeria, Jamaica or a place in India, being a person of a visible minority, certainly that to many bureaucrats would be a "suspicious circumstance." Mr. Cohen said in response to my question, inter alia:

I do not know how to answer the question about whether bank tellers or others will participate in a way that is fostering a system based on systemic racism. There are two levels of intake for the information before it gets anywhere where any significant damage can be caused...It goes...to the Financial Transactions and Reports Analysis Centre. Thus, there is a second, professional vetting of the information before it can make its way over to law enforcement.

I raise this issue, honourable senators, as something that we should all be watching for to ensure that there is no further denigration in the principle of diversity that is so important to us in Canada as a nation. This legislation as presently drafted opens the door to all kinds of potential abuse and damage to individuals. I make these remarks as a caution to all senators to be on the look out.

With these brief remarks, honourable senators, it is my hope that, at an appropriate time, we will have another look at our role as a body of sober second thought. If legislation is wanting and in need of amendments, why do we not have the courage to amend it and do the right thing? Is this not what is meant by the oath we took when we arrived here?

The Hon. the Speaker pro tempore: Honourable senators, is it your pleasure to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

Motion agreed to and bill read third time and passed, on division.

June 29, 2000 [House of Commons]

I have the honour to inform the House that when the House did attend the Deputy to Her Excellency the Governor General in the Senate chamber, His Honour was pleased to give, in Her Majesty's name, the royal assent to the following bills:

…

Bill C-22, an act to facilitate combating the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain acts in consequence—Chapter No. 17.

…

Appendix B

Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17

Table of Contents

An Act Respecting Genocide, Crimes Against Humanity And War Crimes And To Implement The Rome Statute Of The International Criminal Court, And To Make Consequential Amendments To Other Acts, S.C. 2000, c. 24 (Bill C-19)

Citation 2000, c. 24

Royal Assent June 29, 2001

Provisions Amended 2

Hansard

April 6, 2000 [House of Commons]
Hon. Lloyd Axworthy (Minister of Foreign Affairs, Lib.)

...The act will enable Canada to surrender persons sought by the International Criminal Court for genocide or war crimes. The person who is the subject of a request for surrender by the court would not be able to claim immunity from arrest or surrender.

The act will also ensure that those who possess or launder the proceeds from war crimes can be prosecuted. Money obtained from forfeited assets and the enforcement of fines will be paid into a crimes against humanity fund for the benefit of all victims of these serious war crimes.

I hope the bill we are debating today can very quickly be put into the standing committee so we can invite the full participation of all Canadians. Let us have a serious debate, because this is one of the historic steps forward this country is taking in implementing a new legal order. We must move forward so that we can affirm very clearly Canada's commitment to ensuring that the world's worst criminals do not escape justice.

…

April 14, 2000 [House of Commons]
Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC)

Madam Speaker, I am pleased today to be able to speak to Bill C-19, an act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other acts.

The Progressive Conservative Party supports and applauds this excellent initiative by the Minister of Foreign Affairs. The purpose of Bill C-19 is to implement Canada's obligations under the Rome Statute, which was adopted on July 17, 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

As has been previously mentioned, this piece of legislation forces us to examine some very disturbing matters throughout the world and oftentimes within our own borders.

Once the ICC has been set up it will be the first permanent international court empowered to investigate the most serious of crimes under international law. These include genocide, crimes against humanity and war crimes. We can all be assured that although Canada is showing great leadership by making sure that war criminals will be prosecuted and punished for their awful crimes against humanity during a war, there is more that we can and must do. The legislation lays the groundwork to empower those officials within our borders to do just that.

Too many lives have been taken. It is time for the international community to work together to ensure that something is done to provoke positive change in this area to bring about greater accountability and to bring to justice those individuals who have performed and partaken in these atrocities.

Canada's leadership throughout the century has been one for which we can all be proud. With Bill C-19 we have an opportunity to do more. Canada is one of many countries taking steps to implement statutes within a framework of national and international systems of law.

Although six states have already ratified the statute, Fiji, Italy, San Marino, Senegal, Trinidad and Tobago, in light of the legislative initiatives brought forward by the federal government last December 10, the Conservative Party is glad to say that Canada is one of the first countries to take overall comprehensive legislative steps to implement the Statute of Rome.

I again congratulate the minister for his efforts and his leadership in pursuit of justice for war criminals, and certainly on behalf of victims.

According to justice department statistics, there are presently 400 people living within the boundaries of Canada who have allegedly been involved in the commission of war crimes, crimes against humanity or genocide. It is simply unacceptable that many war criminals are able to live out their quiet lives here as if nothing had happened, as if nothing they had done was wrong and escape prosecution for terrible atrocities.

Most of these individuals in question hail from the Balkans, Africa and Central or South America. Canada must not ever become or be seen to be a safe haven for war criminals. In response to this problem, Bill C-19 is a great achievement.

Sadly Canadians and the world will have to wait until the international community gets together to implement a permanent institution that can have genuine and necessary judicial capacity to fulfill the mission to address the problem.

In the meantime we have witnessed the carnage in Kosovo, in Rwanda and in other countries around the world, which makes this legislation all the more important and all the more timely.

Basically Bill C-19 would implement the Rome Statute and replace the current provisions in the criminal code with respect to war crimes. It creates two kinds of offences: offences within Canada and offences outside our borders. Offences within Canada are encompassed in clause 4 of the bill. Pursuant to clause 4, every person is guilty of an indictable offence who commits, in Canada, genocide, a crime against humanity or war crimes.

These definitions provided for the three offences are based on those found in sections 6, 7 and 8 of the Rome Statute. This is in addition to the criminal code where a person, if convicted of one of these offences, shall be sentenced to life imprisonment if the crime was committed intentionally. Obviously there is the burden of proof on the crown. In any other case, a person is liable to life imprisonment, a very serious and appropriate response.

These provisions would apply to conduct committed in Canada and permit Canada to either prosecute these offences or extradite individuals to the country where the atrocities occurred and face prosecution in those lands.

This is a great addition since it was extremely difficult for the justice department in the past to prosecute war criminals who had taken refuge here as a result of the supreme court ruling, the now very infamous and famous ruling of R v Finta. In that decision, many will recall that Imre Finta, who was legally trained as a captain in the Royal Hungarian Gendarmerie was in command of an investigative unit at Szeged during the second world war.

It is documented that during that time over 8,000 Jewish people were detained in a brickyard, forcibly stripped of their valuables and deported to horrendous, dreadful conditions in a concentration camp as part of the Nazi final solution. This order for execution, the final solution, was on the gendarmerie and certain police forces to carry out.

After the war Mr. Finta fled to Canada. In the early 1990s the Canadian courts challenged the respondent under the Canadian Criminal Code war crime provisions with unlawful confinement, robbery, kidnapping and manslaughter of the victims at that horrible death camp.

In his client's defence, Mr. Finta's lawyer argued correctly that the defence of obedience to superior orders and the peace officer's defence were available under the criminal code, which was the case for members of the military or police forces in prosecutions for war crimes and crimes against humanity.

These defences are weighed by the courts, subject to the manifest illegality test. This test basically refers to defences that are not available when the orders in question are manifestly unlawful. The burden of proof here relies very much on the qualification of the unlawful act.

May 4, 2000 [House of Commons]
Mr. Daniel Turp (Beauharnois—Salaberry, BQ)

Mr. Speaker, I am pleased to rise on behalf of the Bloc Quebecois to speak to Bill C-19, an act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts.

This is a bill of vital importance, not just for this House, but also for the international community as a whole. The purpose of this bill is to implement the Rome statute of the international criminal court, adopted on July 17, 1998 in Rome, after decades of debate and deliberation on the appropriateness of creating an international criminal jurisdiction with the authority to bring to justice those who have committed international crime.

The efforts of the international community finally came together in Rome in the summer of 1998, after repeated attempts had been made to agree upon an instrument to fight international crime, be it war crimes, crimes against humanity or the crime of crimes, genocide.

...

As for Bill C-19, which I have examined closely, the short title is the Crimes Against Humanity Act, a title which could be made much more rigorous by including a reference to war crimes. This bill focuses on prosecuting war crimes, which are not included in the definition of crimes against humanity, unlike the crime of genocide, which these crimes can be considered to include…

...

The purpose of many of the bill's provisions is to ensure that certain obligations under the Rome Statute for an International Criminal Court be given effect in Canadian domestic law.

There is, for example, the part concerning the proceeds of crime, clauses 27 to 29 of the bill. There is also the part concerning the Crimes Against Humanity Fund. This fund, if my memory serves me right, was established under the Rome Statute for an International Criminal Court. It is designed to help the victims of crimes against humanity. It would give the Minister of Public Works and Government Services in particular a chance to pay into this fund the net proceeds from the disposition of any property and fines collected in relation to proceedings for an offence under the Criminal Code.

By and large, this bill is a clear reflection of the obligations that will flow from Canada's agreement to be bound to the Rome Statute and the Statute of the International Criminal Court.

…

June 13, 2000 [House of Commons]
Mr. Gurmant Grewal (Surrey Central, Canadian Alliance)

Mr. Speaker, I listened to the statement by the secretary of state with interest. Now I rise on behalf of the Canadian Alliance as the official opposition chief critic for foreign affairs to deliver our final answer to the government's proposed Bill C-19 that will fulfil Canada's obligations in the establishment of the international criminal court. In my 40 minute speech in

early April I highlighted our position. This bill and the code will deal with cases of genocide, crimes against humanity and war crimes.

Canadians support this effort. We want the perpetrators of these heinous crimes to be brought to justice. We support the codification of the crimes that this legislation formally creates. We understand that no nation stands alone in the global arena. We must work with other countries in assisting and ensuring that criminals, those monsters who have blood on their hands, are held responsible and accountable for their crimes and that justice is served. This is a very important justice issue. Criminals must be brought to account.

...

This bill is full of holes and may threaten our national security. The United States of America is adopting strong legislation to deal with suspected war criminals and perpetrators of these crimes. This may cause suspected criminals to use Canada as their hideout.

We are concerned that these suspects will try to join with organized crime and people smuggler brethren already in Canada. Those undesirables are already here because of the Liberal government's lax money laundering and illicit drug laws, and its flawed and broken immigration and refugee system.

By the time the international community has completed work on the ICC, the Liberals will have long forgotten about it. The Liberals will think they have washed their hands of it.

...

The Canadian Alliance will hold the Liberals responsible by voting against Bill C-19. It is too bad. I hope there will be an election soon.

June 20, 2000 [Senate]
Hon. Peter A. Stollery

Honourable senators, I shall speak to second reading of Bill C-19, the Crimes Against Humanity and War Crimes Act. It is a great privilege for me to speak about the merits of this bill, for it is one that has import not only to Canadians but also to every individual of the global community.

Bill C-19 has two purposes. First, it will strengthen the legislative foundation for criminal prosecutions in Canada of genocide, crimes against humanity and war crimes; and, second, it will implement in Canada the Rome Statute of the International Criminal Court. This will allow Canada to join the other nations of the world that have already ratified the Rome Statute, which was adopted by delegates of the Rome Diplomatic Conference on July 17, 1998. Once 60 countries have ratified the Rome Statute, a permanent international criminal court will be created in the Hague that will hold individuals who commit the most offensive crimes accountable for their acts.

...

The ICC will, I trust, prosecute the individuals who not only commit atrocities but those who profit from the commission of these heinous acts as well. This will be accomplished through

provisions in the article that provide that individuals who profit from or are in any way complicit in the commission of genocide, war crimes or crimes against humanity would also be subject to prosecution for their contribution to the commission of atrocities.
...
New offences would also be created to protect the administration of justice of the International Criminal Court as well as the safety of judges, officials and witnesses. New proceeds of crime offences and mechanisms to enforce the orders of the ICC for the restraint and forfeiture of assets are created. Money obtained would be paid into the Crimes Against Humanity Fund, established by the proposed legislation, and may be distributed to victims of offences under the proposed legislation or to the ICC.

Bill C-19 includes offences to protect the integrity of the processes of the court and to protect judges and officials of the ICC as well as witnesses. In particular, it includes offences of obstructing justice, obstructing officials, bribery of judges and officials, perjury, fabricating or giving contradictory evidence, and intimidation. Witnesses who have testified before the ICC would be protected under the Criminal Code from retaliation against them or their families.

Bill C-19 would also ensure that the possession and laundering of proceeds from these new offences would also be offences. This would ensure that proceeds for the worst criminal offences, like genocide, crimes against humanity or war crimes located in Canada could be restrained, seized or forfeited in much the same way as proceeds from other criminal offences in Canada. The proposed legislation and the creation of the ICC demonstrate that Canadians and human kind are hopefully progressing.
...

An Act to Amend the Proceeds of Crime (Money Laundering) Act (Bill S-16)

Citation 2001 c. 12

Royal Assent June 14, 2001

Provisions Amended 54, 55, 60, 64

Hansard

February 22, 2001 [Senate]

Hon. George J. Furey moved the second reading of Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

He said: Honourable senators, I rise today to speak at second reading of Bill S-16. Honourable senators will recall that this proposed legislation was introduced in the last Parliament but died on the Order Paper when an election was called.

By way of background, this proposed legislation will be welcomed by honourable senators irrespective of party. Honourable senators will recall that Bill C-22, the Proceeds of Crime (Money Laundering) Act, received Royal Assent last June. Honourable senators will also recall that, when Bill C-22 was before the Standing Senate Committee on Banking, Trade and Commerce, the Secretary of State for International Financial Institutions made a commitment to clarify the legislation by including several amendments requested by the committee.

These amendments were introduced last fall as Bill S-20. The bill before us today has a new number, but its proposed legislation is the same as that of its predecessor, Bill S-20.

[*Translation*]

Before addressing the merits of this bill, I should like to take time to refresh our memories and to place these measures in their proper perspective.

[*English*]

Bill C-22 was necessary for several reasons. Money laundering, the process by which "dirty money" from criminal activities is converted into assets that cannot be easily traced back to their illegal origins, did not become a crime in Canada until 1988.

Canada has had many of the building blocks of an anti-money laundering program in place, within the Criminal Code and the previous Proceeds of Crime Act, since then, but much more was required to combat a growing problem.

Money laundering and the cross-border movement of proceeds of crime are worldwide problems and have become increasingly difficult to detect and deter. Open borders now provide criminals with a daily opportunity to launder millions of dollars in illegal profits, the intent always being to make the profits look legitimate. Without adequate measures in place to deter and detect money laundering, these activities can undermine the reputation and integrity of financial institutions and can distort the operation of financial markets.

Here at home, between $5 billion and $17 billion in criminal proceeds are laundered through Canada each year, a significant portion of which is linked to profits from drug trafficking and, to a lesser degree, other crimes such as burglaries and cigarette smuggling.

[*Translation*]

Standard methods of detecting these activities are gradually losing their effectiveness.

[*English*]

Canada has also been subject to scrutiny internationally because of perceived gaps in our anti-money laundering arrangements. In 1997, the 26-member financial action task force on money laundering, of which Canada is a founding member, indicated that Canada was lacking in certain key areas and strongly encouraged us to make improvements to our anti- money laundering regime, in line with international standards.

[*Translation*]

That is precisely why Bill C-22 was passed by Parliament.

[*English*]

That legislation strengthened the previous statute by adding measures to improve the detection, prevention and deterrence of money laundering in Canada. It promises to give law enforcement agencies much needed enforcement tools. It provided for mandatory reporting requirements for suspicious transactions and the cross-border movement of currency and it established a national financial information agency, all of which enables Canada to live up to its international commitments.

As required by law, the proposed regulations for reporting financial transactions, client identification, record keeping and compliance were published for public comments on February 17, 2001, in the Canada Gazette, bringing us one step closer to fully implementing the act.

Another measure requires the reporting to the Canada Customs and Revenue Agency of large cross-border movements of cash or monetary instruments such as travellers' cheques. Failure to comply may result in cash being seized if Customs suspects it represents the proceeds of crime.

Consultations are underway aimed at developing regulations to implement this additional reporting requirement.

[*Translation*]

The Financial Transactions and Reports Analysis Centre of Canada was created on July 5, 2000.

[*English*]

This centre is referred to by the English acronym FINTRAC. This new independent body receives and analyzes reports, and, where it determines that there are reasonable grounds to suspect that information would be relevant to a money laundering investigation or prosecution, it passes on information to the appropriate law enforcement agencies. However, FINTRAC is restricted to disclosing only key identifying information related to reported transactions, such as the name of the client, the number and location of the account involved and the actual amount of the transaction.

I can assure honourable senators that safeguards are in place to ensure that the collection, use and disclosure of information by FINTRAC are strictly controlled. These safeguards are supported by criminal penalties for any unauthorized use or disclosure of personal information under FINTRAC's control. In addition, FINTRAC is subject to the federal Privacy Act and the many protections therein.

I would also point out to honourable senators that the government is cognizant of the fact that the implementation of the act and regulations will impose additional responsibilities on financial institutions and financial intermediaries. As a result, FINTRAC is currently developing guidelines to help them comply with these new requirements.

The new legislation responds in a balanced manner to the need for more effective tools to combat money laundering and organized crime, the need to protect individual privacy and the need to minimize compliance costs for reporting entities.

This new act has been welcomed for several reasons. It responded to the domestic law enforcement communities' need for additional means of fighting organized crime by more effectively targeting the proceeds of crime.

[*Translation*]

It enables Canada to meet its international responsibilities relating to money laundering.

[*English*]

It did so while providing safeguards to protect individual privacy.

Honourable senators, I have provided some background to the bill before us today. This bill implements some technical measures that clarify the current act. I will now focus my remarks on these measures.

As stated earlier, Bill S-16 fulfills the commitment made by the Secretary of State for International Financial Institutions last spring on behalf of the government to the Standing Senate Committee on Banking, Trade and Commerce to introduce specific amendments to the Proceeds of Crime (Money Laundering) Act.

While senators on the committee supported Bill C-22, they indicated that the legislation would benefit from amendments to certain provisions and, indeed, the government agreed.

[*Translation*]

The proposed amendments relate to four specific points.

[*English*]

The first deals with the process of claiming solicitor-client privilege during a FINTRAC audit. FINTRAC is authorized to conduct audits to ensure compliance with the act. The legislation currently contains provisions that apply when FINTRAC conducts a compliance audit of a law

office. FINTRAC must provide a reasonable opportunity for legal counsel to claim solicitor-client privilege on any document it possesses at the time of an audit.

(1510)

The amendment in Bill S-16 pertains to documents in the possession of someone other than a lawyer. It requires that person to be given a reasonable opportunity to contact his solicitor in order to make a claim of solicitor-client privilege. This amendment responds to a concern raised at committee during consideration of Bill C-22.

Another change ensures that there is nothing in the act that would prevent the Federal Court from ordering the director of FINTRAC to disclose certain information as required under the Access to Information or Privacy Acts.

[*Translation*]

This amendment specifies that an individual's recourse to the Federal Court will be respected. This measure has always been part of the spirit of the original law and the amendment will provide guarantees of this.

[*English*]

The third amendment more precisely defines the kinds of information that may be disclosed to the police and other authorities specified in the legislation. It clarifies that the regulations setting out this information may only cover similar identifying information regarding the client, the institution and the transactions involved.

Finally, the act is amended to ensure that all reports and information in FINTRAC's possession will be destroyed after a certain period. Information that has not been disclosed to police or other authorities must be destroyed by FINTRAC after five years; information that has been disclosed must be destroyed after eight years.

I am confident that all honourable senators will conclude that these new provisions serve to strengthen the existing act.

[*Translation*]

In the committee report, the senators also called upon the government to give thought to three additional recommendations.

[*English*]

After serious consideration, the government has decided not to proceed with these three additional recommendations.

First, the Senate committee report recommended that FINTRAC be required to obtain either consent or a warrant before entering a law office to verify compliance with the act, similar to what is required before entering a private home. The government believes that it would be inappropriate to require a warrant to conduct a compliance audit of any place of business,

including a law office. The provisions in the current act parallel those in the Income Tax Act, which do not require a warrant except for access to a dwelling house. That remains the same.

Second, senators requested that a parliamentary committee review the administration and operation of the act within three years and every five years thereafter. At present, the act requires a review after five years. The government feels that a five-year review is better for a number of reasons. Most importantly, there will not be enough experience or data available in the three start- up years to provide an accurate assessment of the effectiveness of the legislation or the operations of FINTRAC.

As honourable senators know, parliamentary committees can undertake a review of legislation at any time and can opt to do so any time in this case.

[*Translation*]

Last, the senators recommended that the regulations should also be tabled before a committee in each House of Parliament, as required by law.

[*English*]

This act currently stipulates a 90-day public consultation period following pre-publication of the regulations in the Canada Gazette. This is already on the way with respect to the reporting requirements for financial institutions and transactions and an additional 30-day notice period if significant changes are made as a result of those consultations is provided for as well.

We believe that this provides ample opportunity for parliamentary committees — if they wish to do so — to review the regulations proposed by government.

Honourable senators, will know that in the normal course, regulations are posted for 30 days. In the case of this particular bill, posting is extended to 90 days.

Honourable senators, the benefits of the current act are numerous. The new reporting requirements will result in more reliable, timely and consistent reporting. Centralized reporting to FINTRAC will allow much-needed and much more sophisticated analysis. Successful prosecutions that benefit from analysis by FINTRAC can lead to court-ordered forfeiture of the proceeds of criminal activities. Above all, these benefits will be achieved in a way that respects the privacy of individuals.

Honourable senators, I am confident that the additional amendments contained in Bill S-16 will only serve to further strengthen and improve this important statute. The government is most appreciative of the members of the Standing Senate Committee on Banking, Trade and Commerce for their contribution to making the act an even better and stronger piece of legislation.

[*Translation*]

I invite all honourable senators to vote in favour of this bill.

[*English*]

Hon. Lowell Murray: Honourable senators, does my honourable friend know whether, in view of the pitiable and unprecedented low value to which our currency has sunk, a more favourable exchange rate is available for hot Canadian dollars?

Senator Furey: I think that is an important question, honourable senators. I will take it under advisement.

On motion of Senator Kinsella, debate adjourned.

March 1, 2001 [Senate]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I will speak at second reading, although this item was adjourned by Senator Kelleher. I am advising the house that he has yielded to me and that I shall speak as critic for the opposition on this bill.

The act to amend the Proceeds of Crime Act was known in the last Parliament and is currently known as the money laundering bill. Our colleague Senator Furey explained to the house that the amendments are based upon an undertaking by the government last June to our Standing Senate Committee on Banking, Trade and Commerce. At that time, the government was particularly anxious to have the money laundering bill passed into law. Rather than agreeing to make the necessary amendments to the bill before it passed, the Secretary of State for financial institutions instead undertook to make the changes at a later date.

Our Banking Committee also made three unanimous recommendations for the minister to consider and, it was hoped, to implement. We note with considerable dismay that the government has chosen to ignore these recommendations. We were particularly disappointed that the government chose not to require FinTRAC, the new agency charged with enforcing the money laundering act, to obtain a warrant before inspecting records and files held in lawyers' offices. Not only does the act force lawyers to breach their oath of confidentiality, but it also fails to afford the information sought the same protection it would have if it were held in a private dwelling.

Honourable senators, confidentiality is one of the basic tenets of our legal system. Lawyers have sworn to uphold this tenet, and clients depend upon it. A visit to a lawyer's office often involves the client divulging sensitive, perhaps valuable and often personal information. Canadians need to be assured that this information is provided all reasonable protection.

The release of this information should only happen after careful consideration and under highly prescribed circumstances. At the very least, the onus should rest clearly on the shoulders of the government to satisfy a judge and obtain a warrant before its release. If the government is required to obtain a warrant to enter and obtain documentation from a private citizen in a dwelling house, then, by logical extension, the government should also be required

to obtain a warrant to enter and obtain information and documentation a private citizen has relayed to a lawyer.

Surely, citizens deserve the same legal protection regardless of where their personal or private information is stored. The money laundering act provides that a lawyer may claim solicitor-client privilege for information sought by FinTRAC. This is all well and good, but the burden is on the lawyer and the client to make application to the court to have this privilege upheld.

Honourable senators, I think it is unreasonable that lawyers and their clients are forced to pay the costs of a court application to enforce a basic right that has a long tradition in this country — the basic right of solicitor-client privilege. Surely, innocent taxpayers should not have to pay to protect against an invasion of their privacy.

Honourable senators, as I indicated, the minister has lived up to his undertaking to the Standing Senate Committee on Banking, Trade and Commerce to introduce amendments to the money laundering act. However, he must now be open to those other reasonable amendments that were unanimously recommended by our Banking Committee. Thus, I ask that the Banking Committee, to which this bill will be referred, revisit these issues once the bill is before it.

(1620)

The Hon. the Speaker *pro tempore***:** Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to bill read second time.

Referred to Committee

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read a third time?

On motion of Senator Robichaud, bill referred to Standing Senate Committee on Banking, Trade and Commerce.

March 21, 2001 [Standing Senate Committee on Banking, Trade and Commerce]

The Chairman: Thank you very much for being with us.

Before we proceed to clause-by-clause study on Bill S-16, to amend the proceeds of crime (money laundering), the sponsor of the bill, Senator Furey, wants to explain one matter to you, and then you can do what makes you happy.

Senator Furey: At the end of our last session, at which we heard from the archivist, there was a question about whether we would amend the clause where we asked for a notwithstanding clause

pertaining to the destruction of records - notwithstanding his act. Steve Campbell, from Senator Kolber's office, and myself met with the officials who had discussed with the archivist what particular amendment he wanted. I did not meet with the archivist myself.

The clause pertaining to records now reads:

Notwithstanding the National Archives of Canada Act, shall destroy each report received and all information received or collected on the expiry of the applicable period referred to in paragraph (*d*).

That is, the fire-year and eight-year periods.

The archivist has asked that we amend that clause by stating:

shall destroy each report received, and all information received or collected, *after* the applicable period referred to in paragraph *(d*), *in accordance with Records Disposition Authority No. 2001/003 issued on January 22, 2001 under section 5 of the National Archives of Canada Act, without taking into account any subsequent amendments to or repeal of that Authority.*

My concern at the time was whether or not this particular directive, which was given by the archivist, would be repealable either by him or by his successors. When I discussed it with officials from the department, I was told that if we used harsher wording than "without taking into account any subsequent amendments to or repeal of that authority" and if we were to say, for example, "the archivist will issue the authority and that will be non-repealable," we would be dangerously close to attempting to amend the National Archives Act. Of course, we cannot do that with this particular bill.

My concern is that while the proposed amendment leaves the archivist free to do his job, that is, to make or to issue directives to destroy or to save, the officials are telling us that we can ignore that directive. That directive would be ineffectual.

My concern with that is, if that is the reality, if that is the practical effect of it, then we are just trying do through the back door what we cannot do through the front door, which is amend his act. I am saying, for greater certainty, even though it may not be what the national archivist wants, we should stay with the notwithstanding clause in the proposed amendment.

The Chairman: Is that clear, gentlemen?

Senator Tkachuk: I have no problem with that.

Senator Furey: The notwithstanding provision is certain. Even though officials are telling us that this one would stand the test, I have some concerns that it would not. My recommendation would be to go with certainty.

Senator Tkachuk: As it is now, we want them destroyed, right?

Senator Furey: Yes.

The Chairman: Yes. Is it agreed, gentlemen, that we consider the bill clause-by-clause? Is it the intention of any honourable senator to propose an amendment?

Senator Tkachuk: First, I wish to make a statement on the money laundering bill. It will become clear when I finish why it is important that I make a statement.

We studied Bill C-22 last June. At that time, our committee felt strongly about a number of issues. Since the House had already recessed for the summer break, the government asked that the bill be passed unamended. The minister promised that certain amendments of concern would be brought back in the form of a new bill at his earliest opportunity. The minister stated this is a letter, a copy of which you all have.

My understanding is that this letter was drafted and, due to a misunderstanding on the part of the Chair of our committee, which may have been caused my me, him, or both of us, he believed that the Conservatives refused to negotiate. As a result, our specific concerns were not relayed to the minister. Once that misunderstanding was cleared up in committee, we were still left in the predicament of passing the bill unamended until these concerns could be addressed at a later date, which was the next session of Parliament.

Liberal members felt generally that their concerns were met by the letter, but were willing to attach to the committee report a list of observations, which we all agreed to, which were really our observations on Bill C-22.

While we support being tough on crime and giving much- needed tools to government to track down money launderers in this country, we also believe strongly in providing a check on that same government.

That being said, with the establishment of a new agency, FINTRAC, or Financial Transactions and Reports Analysis Centre of Canada, we remain unsatisfied with the clause in Bill C-22 that instituted a five-year review.

I realize that this point could be considered out of order, which is why I asked, and the Chairman so kindly let me go ahead with this, as it does not fall within the scope of Bill S-16. However, I am asking honourable senators to hear me out. I believe our Chair and our members are reasonable people. In all my dealings with the Chairman he has been so.

Our discussion of the letter is reported in the transcripts of the committee hearing. I am quoting myself here when I say that the letter was sent to the Chairman from Mr. Peterson. I asked:

Do you know whether he would be willing to make changes in the letter? Does this letter come about because the minister and his officials were listening to the witnesses and they said, "Oh, these are the items," or was there a whole list of items from which he decided?

The Chairman: I hear where are you going and you are obviously free to go wherever you like, but my understand ing was that you folks would not accept a letter of any kind. That is why we worked out a letter which was acceptable to us to show to you. You told me that nothing less than regular amendments would do and that letters were not acceptable. You are catching me unaware here.

Which I did say. That did not mean that I did not want to negotiate. That is simply what I said. There are two issues here. You had asked whether we would accept the letter. Of course, over the last

seven years that I have been here there have been many letters, but nothing has ever happened. That is why we had many concerns over the letter.

If it was not for that misunderstanding, I believe there would have been a very good chance that our review clause would have made this bill. In fact, I have reason to believe that the drafters of this bill in concept are in this room right now.

I am not sure, but I think so. That being said, I humbly ask all senators on this committee to consider unanimously supporting the adoption of my amendment to institute a period of review of three years rather than five years. We all agreed to this in our observations.

It will still be up to the Senate to decide ultimately whether this amendment shall pass. I will have to make my case again before a point of order is called in the Senate. I understand that, according to Beauchesne's and Montpetit and Marleau, scope is a convention of Parliament. In fairness, a committee can choose to overlook a potential point of order if the feeling is unanimous. If it is not unanimous, I understand.

I would like to change the review clause to three years because I think five years is too long to wait to see how well the new agency is operating and all our members feel that way. In fact, last week in committee there was testimony suggesting that a review would even take place within one year, and the chairman asked Minister Cullen whether he would come back in a year and he said that he would. I do not think anybody disagreed in principle with limiting it, and I have amendments here for one year or three years, whatever the wishes of senators are.

I think five years is too long and so I have my amendment.

The Chairman: Would you care to make it formal, please?

Senator Tkachuk: I would, or you could wait until we get to that part of the bill. I think I handed it to the Clerk.

Is it possible to have some discussion as to how members feel before the amendment is proposed?

Let us put it this way: If there is no consideration whatsoever by the government to passing any amendment, to giving any truck to one, we would prefer to have the amendment on division, so at least our point of view is stated in the record rather than through a point of order. That is what I am asking honourable senators to do here today.

The Chairman: My impression is that members on the Liberal side want to go ahead with it as is, which is five years.

Senator Tkachuk: Right.

The Chairman: Do honourable senators agree with that?

Senator Furey, you are the sponsor. Why do you not get into this?

Senator Furey: Just a comment on Senator Tkachuk's issue. I have really no problem with a three-year period, except in this instance, where it is the first three-year period. There is really nothing going on there yet. It is not staffed. Therefore, one of those three years will probably be wasted in terms of

collecting information and being able to do a proper assessment. With respect to three rather five, I really have no problem with it at all. It is just that, for start-up reasons, I do not think three is long enough. That is probably the message we were getting from officials.

Senator Tkachuk: You mean one year is too short, three years is not long enough, and five years is about right?

Senator Furey: Yes, that is basically the assessment.

Senator Tkachuk: Are you saying five years, and three years thereafter, or every one year thereafter? Would you be agreeable to that?

Senator Furey: I certainly would be agreeable to five and then every three years. I have no problem with that. I am not speaking for everyone else, obviously.

The Chairman: The only reasonable thing to do would be to recess for three minutes and discuss it.

Senator Tkachuk: That would be fine.

The Chairman: Is that all right with you?

Senator Tkachuk: That would be great.

The Chairman: Is that your only amendment?

Senator Tkachuk: That is the only amendment we have.

The Chairman: Let us recess for three minutes and we will decide.

(The committee suspended)

(Upon resuming)

The Chairman: After much consultation and hearing advice, by Senator Tkachuk's own admission, the proposed amendment is out of order, and I so rule. Shall we continue?

Shall the title stand postponed? Shall clause 1 carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division. All on division.

The Chairman: In other words, you are against each one of them.

Senator Tkachuk: You can do it anyway you like.

The Chairman: It is a question of how we report it.

Senator Di Nino: On division.

Senator Tkachuk: Report it all on division.

The Chairman: Shall clause 2 carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division.

The Chairman: Shall clause 3 carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division.

The Chairman: Shall clause 4 carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division.

The Chairman: Shall the title carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division.

The Chairman: Shall I report the bill?

Some Hon. Senators: Agreed.

Senator Di Nino: On division.

The Chairman: The Clerk tells me that when we report a bill, it cannot show on division, but the minutes can.

March 15, 2001 [Standng Senate Committee on Banking, Trade and Commerce]

Mr. Roy Cullen, Parliamentary Secretary to the Minister of Finance: I am pleased to be here to speak to Bill S-16. Last June, I appeared before this committee to discuss Bill C-22, the bill that put in place the legislation that we are now proposing to amend.

I would like to take this opportunity to thank the committee for its very careful study of Bill C-22 back then. The enactment of Bill C-22 was an important milestone in Canada's legislative framework for fighting organized crime and money laundering.

[*Translation*]

Its timely passage also brought Canada's anti-money laundering regime into line with international standards and allows Canada to participate fully in the international efforts against money laundering.

[*English*]

As a member of the G-7 and the Financial Action Task Force, Canada had committed to improving our anti-money laundering regime. It was important that Canada be seen by our international partners to be making progress on this front, particularly in that the Financial Action Task Force was engaged in a process of publicly listing countries as having deficient anti-money laundering controls about the time the legislation was passed.

At meetings of the OECD and OSCE in Europe that I attended last summer, I was pleased and proud to report that Canada had passed this important piece of legislation and, again, I thank you.

Honourable senators, you will recall that the Proceeds of Crime (Money Laundering) Act provides for a system of mandatory reporting of certain financial transactions and cross-border movements of large amounts of currency and monetary instruments. The legislation also established the Financial Transactions and Reports Analysis Centre of Canada, FinTRAC, which will analyze these reports in a prescribed way and provide information to police for prescribed reasons and in a prescribed way to assist them in the prosecution of money laundering offences.

The establishment of FinTRAC as an independent agency at arm's length from law enforcement is one of the many privacy safeguards contained in the act. FinTRAC was formally established on July 5, 2000. It is now building the technical and analytical capacity needed to perform its mandate. It will begin to receive financial transaction reports after the necessary regulations have been implemented.

The proposed regulations for record keeping and financial transaction reporting requirements were published on February 17, 2001, in the Canada Gazette for a 90-day public comment period. Consultations are now underway to develop regulations to implement the reporting requirements for large cross-border movements of currency and monetary instruments. In addition, FinTRAC has developed draft guidelines to help financial institutions and intermediaries comply with the act and has initiated consultations with stakeholders.

[*Translation*]

Now, I would like to turn to the bill before us today -- Bill S-16. The four amendments that make up this bill respond directly to issues raised by honourable senators when they studied Bill C-22 in this committee last June.

[*English*]

The proposed amendments will be familiar to the senators on this committee as they were outlined in a letter dated June 14, 2000, from Secretary of State Jim Peterson to the committee chairman. That letter was included in the committee's report on Bill C-22.

Briefly, the proposed amendments relate to four specific issues. The first deals with the process for claiming solicitor-client privilege during an audit conducted by FinTRAC. As you know, FinTRAC is authorized to conduct audits to ensure compliance with the requirements under Part I of the act, namely the requirements to keep records and to report certain types of financial transactions.

The legislation currently contains provisions that apply when FinTRAC conducts a compliance audit of a law office. FinTRAC must provide legal counsel with a reasonable opportunity to make a claim of solicitor-client privilege with respect to any document in their possession at the time of the audit. The proposed amendment contained in Bill S-16 deals with situations where documents are in the possession of a person who is not a legal counsel. It would require that such a person be given a reasonable opportunity to contact legal counsel in order to make a claim of solicitor-client privilege.

Honourable senators will recall that this issue was raised by representatives of the accounting profession when they appeared before this committee last June 2000.

Another change ensures that nothing in the Proceeds of Crime (Money Laundering) Act prevents the Federal Court from exercising its authority under the Access to Information Act or the Privacy Act to order the director of FinTRAC to disclose certain information by either of those acts. This proposed amendment makes it clear that the recourse of individuals to the Federal Court is fully protected. This was the intent of the original bill and the proposed amendment will ensure that this will be the result.

The third proposed amendment more precisely defines the kind of information that may be disclosed to the police and other authorities.

[*Translation*]

The amendment clarifies that the regulations setting out this information may only cover similar identifying information regarding the client, the institution and the transactions involved. This deals with a concern of the committee that the existing wording may have provided for greater latitude for using regulations to add to the list of information set out in the act itself.

[*English*]

Bill S-16 would amend the act to ensure that all reports and information in FinTRAC's possession will be destroyed after specific periods: information that has not been disclosed to police or other authorities must be destroyed after five years; information that has been disclosed must be destroyed after eight years. The archivist presented a proposal that, on the face of it, seems to meet our requirements. However, if there are any difficulties, we will talk to you before the clause-by-clause occurs. We believe that it meets our requirements and we are happy, in that case.

The Chairman: Could you clarify that, please? My understanding, after meeting with the officials this morning, is that if we are satisfied then you are satisfied. Is that correct?

Mr. Cullen: The officials are satisfied, and I am satisfied on the face of it. However, I want to make sure that the government is satisfied, as I am sure they will be. We will contact you immediately if there is any problem.

I hope that honourable senators will find that these four provisions respond in a meaningful and concise way to the concerns raised by this committee.

Before I conclude, I will mention that the government considered very carefully this committee's report on Bill C-22, including the suggestions for three additional amendments to the act.

In response, the government has moved quickly to introduce the amendments that the Secretary of State committed to make, and that I have just described. However, the government has decided not to proceed with any further amendments to the act at this time, and if I you will allow me, I will briefly explain why.

First, the committee report recommended that FinTRAC be required to obtain either consent or a warrant before entering a law office to verify compliance with the act, similar to what is required before entering a private home.

Such an amendment, in our view, would treat a law office like a private home, rather than like other places of business. The government believes that it would be inappropriate to require a warrant to conduct a compliance audit -- I repeat, a compliance audit -- of any place of business, including the law office. The provisions in the act parallel those in the Income Tax Act, which do not require a warrant except for access to a private house.

Second, Parliament requested that a parliamentary committee review the act within three years and every five years after that. At present, the act requires a review after five years.

With respect, senators, I submit that a five-year review is more appropriate, for a number of reasons. More important, there will not be enough experience or data available within three years to provide an accurate assessment of the effectiveness of the legislation or the operations of FinTRAC. In any event, committees of Parliament can undertake to review any legislation at any time and could opt to do so in this case.

[*Translation*]

Finally, the committee report recommended that the act require regulations to be tabled before a committee in each House of Parliament.

[*English*]

The act currently stipulates a 90-day public consultation period, following prepublication of the regulations in the Canada Gazette, and an additional 30-day notice period if significant changes are made as a result of those consultations. We believe that this process provides ample opportunity for parliamentary committees, if they wish to do so, to review the regulations proposed by the government.

The Secretary of State has sent to the chair of this committee a copy of the proposed regulations, which were prepublished in the Canada Gazette on February 17, 2001, and they are also available on the Finance Canada Web site.

[*Translation*]

In closing, honourable senators, I would like to thank you once again for your close study of Bill C-22 and for raising the issues that the government has addressed through the bill before us today -- Bill S-16.

[*English*]

The government has devoted considerable time and energy to crafting its anti-money laundering legislation in such a way as to meet the needs of law enforcement while protecting individual privacy. The amendments contained in the bill considered today result from this committee's invaluable input to this matter. The officials that are here today and I are pleased to answer any questions.

The Chairman: Could you clarify the difference between a "compliance" and a "search"? That information is integral to the whole question of the warrant.

Mr. Cullen: In general terms, if there is a reporting requirement under the act we are talking about a compliance issue.

Mr. Yvon Carrière, Senior Counsel, Tax Counsel Division, Law Branch, Department of Finance: When FinTRAC conducts a compliance audit, they verify whether, in fact, the required reports were prepared. They are not investigating to know whether money laundering has occurred, or some other criminal activity. In fact, they would not be authorized to gather such evidence to prove that a crime had occurred. In the case of a criminal search, a warrant is obtained, and the people who perform the search in a criminal matter will look for specific evidence related to that criminal infraction.

A compliance audit is simply performed to verify whether the reports and records required to be kept under the Proceeds of Crime (Money Laundering) Act have been kept and that the reports have been made.

Mr. Cullen: Any information obtained by FinTRAC during the course of a compliance examination cannot be disclosed to law enforcement under section 55 of this act for the purposes of a proceeds of crime (money laundering) investigation. If it were disclosed, it would render the information inadmissible in a court of law.

Senator Tkachuk: I have a question about the "dwelling house." It bothers me as it bothered Mr. Kelleher. Mr. Cullen, you implied that it was different from a business, but that would be news to me.

I received an article by Mr. Peter Hogg, Dean of Osgoode Law School, that states that the common law rule is that a police officer or government official has no authority to enter private property for the purpose of searching for evidence and no authority to seize private property for use as evidence, unless authorized by law. However, we do that from time to time, in that common law continues to apply and that we can sometimes, by statute, make an exemption to that. However, it was just the way in which you were talking about "house " that bothered me. The home is special, and my interpretation of it would be that which we have to protect. It is my right, as a citizen, not to have law enforcement officials come to my home or my place of business without a warrant, or anywhere else that I consider my property -- those

places should be protected. This is an exemption that only applies to the Income Tax Act. As far as we could find, there is no other exemption like this.

Why do you need this special power? Frankly, it scares the hell out of me. Once you make this exemption, there will be others. If there is no evidence, why is it necessary to search a dwelling?

Mr. Peter Sankoff, Counsel, Human Rights Law Section, Public Law and Central Agencies Portfolio, Legal Operations Section, Department of Justice: You have raised a complicated question. I will try my best to deal with that and all other aspects.

My understanding of the case law generally, and especially in respect of the Charter of Rights and Freedoms, is that there is a fair distinction made between the dwelling house as the place most deserving of protection. In particular with relation to this act, I would draw a number of distinctions. This act is not normally designed to cover a dwelling house. It is not a place that would generally have activities that would generate suspicious transaction reports.

As a precaution, a section has been included to deal with dwelling houses in case there is activity that would generate these kinds of reports. Because it is unlikely that this will occur, a special warrant provision has been put in to deal with that. It is not uncommon for that to be the case. A number of pieces of legislation have distinctions about what can be done in a dwelling house and what can be done in any other type of place.

I do not disagree with your proposition, that, as a rule, we wish to have preauthorized judicial authority to go into any place.

Nonetheless, the case law once again has made a rather serious distinction between what we would call regulated activity and what we would call a search for criminal purposes. In this case, it is very clear that the particular matter that we are discussing relates to regulated activity. The centre is only allowed to go into these types of premises where they are regulating compliance.

As Mr. Cullen pointed out earlier, none of the information can be used. It is clear from the way the act is currently worded that any information obtained in the course of a compliance audit cannot be used in a criminal investigation and cannot be used by the centre to determine whether money laundering has taken place. The sole purpose is for compliance. The manner in which this has been drafted goes a long way to ensuring that the distinction between regulatory compliance and a search for criminal purposes that has been made so clear in the case law is upheld. Therefore, I would see those two distinctions as making this situation special.

Senator Tkachuk: You mentioned the Charter of Rights and Freedoms. First, you are telling me that the Charter of Rights and Freedoms gives less rights than common law, which talks about property, not just dwelling place. Second, it is not the fact that you may find evidence of other wrongdoing that concerns me; it is the very act of government officials coming into my property. It is not the fact that you may find something but the fact that you have no right to be there in the first place, unless you have a reason to be there, and the reason should be supported by enough evidence to obtain a search warrant. I do not like you walking in. It is not because I am a criminal but because I do not like you walking in. You can have all these other

exemptions, but as governments and legislators we have to prevent governments and police from walking in. We have a responsibility to do that, and that is what I am trying to do here.

Mr. Sankoff: I understand that. All I can say in response is that the number of situations where the government has the right to intrude on a business -- I hate to use the word "intrude," but let us say to assess a business or a property without a warrant for regulatory purposes -- are beyond my ability to number at this time. There are a number of areas where there is a purpose that is pressing. As I understand it, the justifications put forth for this initiative are pressing. I do not think this would be an everyday thing or that they would be going in at any time. It would be something undertaken from time to time for the purpose of ensuring compliance only. That, in my opinion, is not uncommon. In countless industries, government officials have the ability to go in solely to monitor compliance or to ensure that the very important process that is underway is actually taking place in the manner in which it was designed.

I understand the concerns about privacy here; nonetheless, the courts have generally accepted that for these purposes only. That is why the distinction about what is going on is so critical. They have generally accepted that the government needs to monitor compliance with various regimes, and the purpose that is being put forward for this one is seen as very important. That is where the distinction comes from.

Senator Meighen: Could someone refresh my memory as to what triggers the audit compliance initiative. What makes FinTRAC decide that they are going to undertake an audit compliance?

Ms Patricia M. Smith, Deputy Director, Policy, Liaison and Compliance, Financial Transactions and Reports Analysis Centre of Canada: Senator, a number of factors determine that we come in.

First off, we will have liaison officers in the field. They will be in contact with the reporting entities, finding out if they are comfortable with the legislation and with the regulations. I should point out that, as part of the regulations, there is a requirement to put in place an anti-money laundering compliance regime. The liaison officers will be going out and seeing if more information is needed to put such regimes in place.

Part of the job that we are doing now in terms of trying to become operational is to assess the training needs of the reporting entries. Hence, another factor that comes into place is this: What will be the training requirements of all these reporting entries?

Eventually, when we do become fully operational and start to receive transaction reports, we will have some statistics on the general nature of reporting and compliance. If 95 per cent of all entries from a particular sector are reporting, then we will know that there are some anomalies, and we will go back to the reporting entries and see if they understand the regulations and the law. Is there something they are not doing? Is the problem something to do with timeliness? Is the problem we are looking at something to do with their inability to connect with our reporting mechanism? They will be reporting largely through the Web or through a secure socket network.

There will be a number of methods by which we will be able to determine lapses in compliance. If, after looking at this and talking to the reporting entry, we determine there may be something more serious, then we would inform them that we are coming in to do a compliance examination, and we will give them feedback on the results of that compliance examination.

Senator Meighen: The reporting entity is any body that is required to report under the act?

Ms Smith: Yes.

Senator Meighen: It could be a law office.

Ms Smith: It could be.

Mr. Cullen: As I understand it, there could be situations where information would indicate that some intermediary, on the face of it, should be reporting, or there are sufficient grounds to believe that they should be reporting and the reports are not coming in. That would be cause for someone to ask the question.

Mr. Richard Lalonde, Chief, Financial Crimes, Financial Sector Division, Financial Sector Policy Branch, Department of Finance: I can give an example just to clarify that it is not just any business that will be reporting. The bill sets out very clearly that we are dealing largely with regulated financial institutions, and those are spelled out in clause 5 of the bill.

The bill also provides the ability to prescribe under regulation additional reporting entities, which we have done in the regulations that were prepublished in the Canada Gazette just recently.

As Mr. Cullen and Ms Smith have indicated, there may be instances where there may be gaps in reporting from certain sectors. I can give an example of the currency exchange business. There may be instances where, in one part of the country, FinTRAC may be receiving lots of reports from currency exchange businesses. Perhaps in another region of Canada there are very few. That may trigger a question as to why that is occurring and therefore prompt FinTRAC to inquire with those reporting entries in that region.

Senator Kroft: I am curious about this idea of reports that should be coming in. That suggests to me that you would take classes of institutions or offices or businesses and develop almost a statistical base saying that, given a certain volume in a certain industry, you should be getting a certain number of reports a month. Perhaps you are not meeting your quota. Is it that kind of analysis, or does there need to be some sort of a more specific fact-based trigger to prompt it?

The example you gave kind of fell in the middle. It was not exactly clear to me. Do you need a specific situation in order to trigger this, or will it be done on a statistical basis?

Mr. Lalonde: FinTRAC has the authority to do compliance audits on all reporting entries. As a matter of practice, it will not necessarily have the resources to visit all reporting entries on a routine basis and as such will have to decide and prioritize which entities will be conducting compliance audits. In the example I gave would be perhaps one criterion that they might use.

The legislation also provides, and I mention this in passing, the authority for FinTRAC to enter into collaborative arrangements with other regulators and other self-regulatory organizations for the purpose of carrying out this particular function of compliance audit as well.

Senator Meighen: Although you have answered the question, I am still not clear how you get this wonderful status of reporting entity. What do you have to do to get that? Do you have to be RBC Dominion Securities? Do you have to be Senator Kelleher's law office? How do you get this exalted status?

Mr. Lalonde: We use the term "reporting entity" to describe all those businesses covered under section 5 of the Act. Under this section, we talk about banks under the Bank Act.

Senator Meighen: There must be a catch-all clause.

Mr. Lalonde: There is an additional clause that allows us to respond to situations where, for example, internationally there may be new industries or new ways that money is being laundered. It allows us to add to the list of entities covered by the requirements by regulation.

As I indicated earlier, in the draft regulations that were prepublished on February 17, we have included, for example, the wire transfer business -- the Western Unions of this world -- as a business that ought to be covered by the requirements of the act. They may not be specified in the act, but they are prescribed in the regulations. We will be receiving views from that particular industry concerning that issue.

Senator Meighen: Let me turn, if I may, to the specific example of a law firm. How does a law firm fall into that status?

Mr. Lalonde: It would be in precisely the same manner as the Western Union or the wire transfer business would be included, by regulation.

The Chairman: That does not make sense.

Senator Meighen: Is my law firm obliged under this legislation now, or do I wait for a letter from you?

Mr. Lalonde: We have had extensive consultations over the last year or two with the Canadian Bar Association, the Barreau du Québec and others concerning the Proceeds of Crime Act, as well as the proposed regulations. At the association level, certainly, they are well aware of the government's intent.

The government has also prepublished these regulations and has announced this fact publicly.

Senator Meighen: With respect, I do not understand your answer to my question.

The Chairman: Is every Canadian presumed to read all regulations? Senator Meighen has an interesting tact here. Is a letter going to go out from FinTRAC to every conceivable suspect? Of course, I am using that word in quotation marks. Really, how does it start?

Ms Smith: There are a number of things. It is an iterative process on which we are just embarking. There have been consultations on the regulations that were prepublished; we are also commencing consultations on the guidelines that enumerate some of the requirements of the act.

As Mr. Lalonde has said, the regulation that pertains to lawyers is very specific. There are certain actions that a lawyer has to take before he or she becomes a reporting entity. He or she must be engaged in financial transactions. A lawyer giving out legal or criminal advice is not covered. It is only when he or she is engaged in very specific financial transactions. The regulation states that every legal counsel is subject to Part 1 of the act when he or she engages in any of the following activities on behalf of a third party, including the giving of instructions on behalf of a third party in respect to those activities. Then it lists the receipt or payment of funds other than those received or paid in respect of professional fees.

Senator Meighen: Let me pose a hypothetical situation. I am a client. I am interested in investing in a property in Ottawa. I send $500,000 cash to my lawyer in Ottawa, or $20,000.

Ms Smith: Are you the lawyer or the client?

Senator Meighen: I am the client. I am interested in buying properties in Ottawa. I have not sent the funds for the purpose of paying a fee.

Ms Smith: Your lawyer would probably then be a reporting entity.

Senator Meighen: That is my point. You will have many lawyers who are reporting entities because often, heretofore, at least, clients have given money to lawyers to hold for a future specific purpose.

The Chairman: Is that cash or cheque?

Ms Smith: It is only if it is cash for large cash transaction reporting requirments.

Senator Meighen: My colleague Senator Tkachuk just asked, if it is an electronic transfer, is it cash or cheque?

Ms Smith: If it is cash, your lawyer, as a reporting entity, must report the large cash transaction, which is any amount over $10,000. However, if you come in with a suitcase and you make a number of smaller transactions, it might be considered suspicious and would also be covered as a reporting requirment.

Senator Meighen: What is the situation if it is an electronic transfer?

Ms Smith: I am not aware that lawyers have that capacity. It is covered, yes.

Senator Meighen: That qualifies as cash?

Ms Smith: It is a transaction that needs to be reported.

Going back to how to inform everybody, we have been dealing with the Canadian Bar Association.

The Chairman: Excuse me, but there is something really wrong here. Are you telling me every electronic transfer is subject to some kind of something-or-other? There must be thousands of these transfers every day.

Ms Smith: It is international.

The Chairman: Yes, international.

Ms Smith: The amount must be over $10,000.

The Chairman: That is nuts. That is how business is transacted every day. As an example, I just transferred money electronically to one of my children. Is that a suspicious transfer?

Ms Smith: No, sir.

The Chairman: Why not? It comes under your definition.

Ms Smith: It is under the definition of a prescribed transaction.

The Chairman: Someone has to report that?

Ms Smith: That will be reported.

The Chairman: It is idiotic.

Senator Tkachuk: That is what we were trying to say the first time.

Senator Meighen: To go to the other tack, the thrust of all this seems to be an assurance that the proper reporting procedure is being followed. Once we know that it is being followed, then everybody is happy.

Ms Smith: Yes.

Senator Meighen: I do not know where that takes us. I will now come at it from the other side. Now you are saying that anything that is discovered by action in the course of investigation cannot be used as evidence in a criminal prosecution. Therefore, we are going through all this sound and fury merely to ensure that we have a nice, tidy, complete reporting function that goes nowhere except to allow someone to tick off and say, "Yes, the report was received in due and proper form."

Mr. Cullen: The first step is to get the reporting on track. Once the reporting is on track, the normal provisions would apply, I would suspect.

Senator Meighen: Let us say in the course of a totally normal compliance audit that you do come across something that is suspicious. I understood you to say that you can do absolutely nothing with it, under any circumstances. Is that correct?

Mr. Sankoff: The way it is drafted right now, that is the way it is.

Senator Meighen: What is the point of doing it?

Mr. Sankoff: The idea is that the persons who do not go further with these will be subject to prosecution for non-compliance. The idea, as we understand it, is not that persons captured by the act are going to regularly disobey the law. There are penalties for non-compliance. There are obligations in this act, and non-compliance is a problem, so the idea is that, over time, people will comply.

Senator Meighen: If I were a big, nasty money launderer, first, I would not be worried about an administrative slap on the wrist for not filling in some form; and, second, I would be sure to fill it out very accurately because I would be certain that you would be on my tail immediately if it were not filled out accurately, even though you might have told me that you would not do so. This is confusing.

Mr. Sankoff: It will not actually be the money launderer filling out the forms. It will be the other entities.

Senator Meighen: The money launderer's lawyer?

Mr. Sankoff: Theoretically, money launderers could engage in massive fraud, but in each case they will be subject to other penalties. There are other ways of deterring these sorts of activities.

Non-compliance is designed solely to deal with non-compliance. It is a regulatory function. Senators have expressed difficulty with the procedures that allow us to go in without a warrant to check for non-compliance. There is good reason why you are only allowed to go in for the purpose of non-compliance. It is quite reasonable that, in these circumstances, you cannot use that information for a prosecution.

The only reason that the centre is allowed in without the protection that has been expressed by senators is that it is strictly for non-compliance. If you were allowed to use that information, we might have a problem.

Senator Furey: Senator Meighen basically reiterated what has been said already in terms of any documentation that is found to be suspicious during a compliance. You are satisfied that section 55 prevents the use of that, is that correct?

Mr. Sankoff: The way it is worded, that is correct.

Senator Furey: Would you also say that you would be satisfied that it would include the use of it to ground an application for a warrant?

Mr. Sankoff: First, the centre is caught by various non-disclosure provisions. It is more than section 55. There is also the proposed amendment to section 54, which precludes the centre from using it in their analysis. The centre has very broad non-disclosure provisions. They cannot give it to anyone to get a warrant. The centre has no ability to get warrants on its own.

Since they are precluded from disclosing it to the police -- or anyone else for that matter -- there is no way you could ground a warrant with that information. I would say you are correct.

Senator Furey: If that is case, you are back to the normal rules. If an investigating officer wanted to go into a business, he or she would have to satisfy a justice of the peace that there are reasonable grounds to believe, say, in this case, relevant records exist. That information would come outside of anything to do with a compliance audit. Is that correct?

Mr. Sankoff: That is correct, except what might be obtained during the prosecution for non-compliance, but it would not include the specifics of the records. Once there was a prosecution for non-compliance, it would be on public record.

Senator Furey: Presumably, that would follow an application for a warrant that was grounded in information not obtained through a compliance audit?

Mr. Sankoff: That is is not entirely correct. The person could be prosecuted for non-compliance. The centre has the ability to turn over material to the police strictly on non-compliance -- that is, where it is shown that there is non-compliance.

Senator Furey: A document that was found during compliance and could disclose criminal activity -- and I will not call non-compliance criminal activity; we will call it quasi criminal for now, just to differentiate -- could be used in a non-compliance prosecution. Is that what you are saying?

Mr. Sankoff: It would not be relevant to compliance, so it would not be used in that compliance prosecution.

Senator Furey: But it could be?

Mr. Sankoff: I have difficulty seeing how that could occur. If it did not relate to non-compliance, it could not be used in a non-compliance prosecution.

Senator Furey: But it could relate to non-compliance.

Mr. Sankoff: If it related strictly to non-compliance, it could be used in a non-compliance prosecution; that is correct.

The Chairman: Does anyone in your department have the vaguest idea how many wire transfers of over $10,000 are done in a year? It must be tens of thousands. Every time you buy stock in excess of $10,000, you wire the money to the stockbroker or to the person buying the stock for you. That must represent many tens of thousands of dollars.

Ms Smith: We are engaged in those discussions with the industry. We are in the consultation phase and are attempting to establish whether reporting entities will be able to use batch file transfers for reporting. That is one of the key elements we are working on, namely, estimating how many electronic transfers FinTRAC will receive.

The Chairman: You will need an credible army of people to police this.

Senator Meighen: That is another reason to review this after three years.

Mr. Cullen: This is new territory for Canada and for us. We want to make sure that the net is cast widely enough. Once you make exceptions, that is where the money launderers will go. We have also said at this committee that, given the regulatory regime we have, we can adapt and change and meet new requirements as they arise while being more flexible in terms of changing the guidelines regarding what comes into the net and what does not. At the first instance, we want to be sure that we do not create openings so that would be easy for people to come through.

We will grow and learn with our experience. I am not here to tell you that we have every single answer on every single type of transaction. We will be developing that through regulation and guidelines as this progresses.

Senator Setlakwe: In the case of compliance, you said there was a preclusion. If that occurs, what do you do? Do you not report it to the police? In the case of compliance, do you find something that is disturbing and that should be reported to the police but you are prohibited from doing so?

Mr. Sankoff: On material that is discovered, if you discover that the person has not complied, that means the regulator entity is subject to prosecution for non-compliance. The rest of the material -- that is, the material that may reveal other crime -- is not reported to the police unless it is for the purpose of the non-compliance prosecution solely.

Senator Tkachuk: If you find cocaine, there is no problem?

Mr. Sankoff: There is a general exception at common law, namely, the plain view exception. If, for example, you walked in on a murder, you are not precluded from calling the police and telling them that a murder is taking place.

Senator Tkachuk: If the cocaine is on top of a desk versus being locked up in a safe, is there a difference?

Mr. Sankoff: The limits of the doctrine have not been explored, so I cannot give a comprehensive answer. Generally, the courts hold that compliance inspections are designed to ensure compliance. If the centre went beyond its powers, I have no hesitation from saying the courts would stop them from doing so. While your situation may provide some border line examples of cocaine on a desk, the power here is toward compliance. If the centre abuses its powers, the court still retains control to censor that.

Senator Setlakwe: If you come upon an indictable offence, you would not report it?

Mr. Sankoff: If compliance is being done, it is not the centre's purpose to report on other activities. The centre is a non-investigative agency.

Senator Tkachuk: When we met last spring, we did not really get a good definition from you of "suspicious transaction." We had problems with that term, if you remember. Has there been anything further regarding that? What is a "suspicious transaction"?

Ms Smith: That is not an easy question to answer. We have written a draft guideline that is out for consultation now. A "suspicious transaction" will differ in the context in which it is found. There are few examples of an individual suspicious transaction but, rather, in a context where the transaction itself is suspicious. Let me try to simplify this.

If you are the Toronto-Dominion doing private banking, you will be looking for very different indicators of suspicion than if you are the credit union in Lower Stewiacke.

It will, in part, relate to how well you know your client and what is normal for that client's activity. If your client is a business and normally they have cash deposits of $10,000 four times a week, then that is normal. If a $10,000 deposit is made, there is no suspicion. If, on another day, $1 million is suddenly deposited, that may or may not be suspicious depending on what the bank or the entity knows about that client.

Senator Tkachuk: Last June we were under a tremendous rush to pass Bill C-22 because the government needed to get the centre up and running. How many employees do you have at the centre and what do you think its projected annual cost will be for the year?

Ms Smith: Right now, we have approximately 70 per cent of our total employment in the centre. We have approximately 70 employees. I believe our budget for this year is $20 million.

Senator Tkachuk: Last year, I believe you said it would be $15 million.

Ms Smith: I do not have the exact numbers.

Senator Tkachuk: Do you expect to have 100 employees?

Ms Smith: Right now we are resourced for around 100, yes, and we have approximately 70 in place.

Senator Tkachuk: Would you send me a letter with a more precise answer on that?

I am not sure if what I experienced was a mistake on the part of Nesbitt Burns, but I had what they call a locked-in retirement plan from a previous employment. At the age of 55, I wanted to convert that locked-in plan into what they call a RRIF. The broker requested that I produce a picture ID. I have known this broker for 15 years and therefore asked him why picture ID was necessary. He told me that it was to conform with either this act or the act passed previously, and that it had to do with money laundering. I refused to produce the ID and he informed me that I would then need to sign a waiver. I signed a waiver and sent it away. I do not recall what the waiver stated. It was small print.

I thought that odd, and that is why I worry about bills like this. Why would such a request be made? Would any of the department officials here today know the reason for that request? Why would a picture ID be required? What was the waiver all about?

Mr. Lalonde: The "know-your-customer" principle is one of the cornerstones of the international anti-money laundering standards. As well, being able to ascertain the identity of your client is key. In the current regulations, which have been in force since 1993, there is a requirement that those financial institutions covered by the previous act ascertain the identify

of their clients by reference to a number of pieces of identity. For example, it could be a driver's licence or another similar document.

It is required of the security's broker or the financial institution, when opening up new business relations with a client, to ascertain the identity of the client by reference to a driver's licence, for example. There is also a requirement to record that fact and take note of the reference number. That is the current requirement.

Senator Tkachuk: In order to open an account an individual must basically put his or her whole life on paper, just to open the account, right? The paperwork to be filled out is quite thick. The situation I described referred to the RRIF account. I had already filled one in for the other account to get the locked-in plan.

What happens with the picture ID? Would it be put on a wall in the broker's office so that they can throw darts at it because I am a senator? If I had sent it in, what would have happened to my ID? Would it have been sent to the government or would it be kept in a file in the broker's office?

Mr. Lalonde: There are several ways in which securities brokers are allowed to ascertain the identity of their clients. If we are talking about picture ID, typically what must occur is that the institutions would need to ascertain your identity face to face. There is no requirement for them to maintain a photocopy of whatever picture ID you gave them' they simply must record the reference number. It is due diligence for them. It records the fact that they have actually done this.

Senator Tkachuk: I just thought it was odd.

Senator Furey: I should like to go back to this issue of documentation disclosed during a compliance audit.

It was my understanding that any information obtained during a compliance audit could not be disclosed, in accordance with section 55, among other sections, as you pointed out; that in fact if information were disclosed it would render the evidence inadmissible. I hear you saying today that if documentation were discovered it could be used in a non-compliance prosecution, which would put it in open court. Is that correct?

Mr. Sankoff: That is correct. It could be used solely for the purposes of non-compliance. It is highly arguable that material could not be subsequently used in a prosecution for a different purpose because of the manner by which it was obtained. The act makes clear, first, that the purpose in obtaining that information is for non-compliance. There are also constitutional guarantees that back up that basic premise.

Senator Meighen: I appreciate, understand and support the idea of the necessity of protecting privacy. On the other hand, Mr. Cullen, you have said that this put us right up there with our international allies in the fight against organized crime in money laundering, et cetera. If, as you say, the bill - which is entitled "An Act to Amend the Proceeds of Crime (Money Laundering) Act" -- is designed solely to ensure that people are complying with an

administrative requirement and that any evidence gathered in that process can only be used for a non-compliance prosecution, how will we advance the war against money laundering?

Mr. Cullen: Senator, maybe we are not communicating well. First, if people are not complying with the act in terms of reporting then FinTRAC and the whole legislative package cannot click into operation, obviously. If people are not reporting when they should be, then how can we ever get at money laundering? Therefore, you must have a mechanism to get people who should be complying to comply with the reporting requirements of the act. Once people are reporting, then the normal provisions of the act and the legislative package click into place in FinTRAC.

The senator has raised an interesting point. If someone keeps non-complying, then that is probably a challenge and that is one of the balances that we needed to bring to the table -- balancing privacy with the need to deal with money laundering. If someone refuses to comply continually then that would be a challenge.

We are looking at a small percentage. Many organizations will want to comply, or they will comply. They may not know that they should be complying or they may not be complying in the appropriate way, and we want to ensure that they will be complying with the act and reporting.

For those players who do not comply because of the balance of privacy issue, we will be challenged. I am sure it will be challenging.

Senator Meighen: Presumably the proposed legislation applies only to people in Canada. I see a nod from behind. I would suspect that 99.99 per cent of those people are not money launderers. They may be used by money launderers unknowingly; is that correct?

Mr. Cullen: I think there may be more than you would think.

Senator Meighen: There might be. That is fine. I am still having trouble understanding how the reporting will do more than perhaps establish a pattern of carelessness or innocence, or a pattern of continuing non-compliance, which then leads you to say that there is something more here.

Mr. Cullen: Let me give you an example. If, under the Income Tax Act, someone is not filing an income tax return, in a sense they are participating in tax evasion. However, there are various forms of tax evasion. If they are not filling in a tax return, how will you ascertain whether they are evading tax? You must first of all have people reporting and complying with the reporting provisions of the legislation. Once they are doing that, then the provision kicks in. That means that transactions are analyzed. If there is other corroborating evidence that would suggest that the transactions are suspicious, that information would then be forwarded in a tombstone way to the RCMP, and so forth. Without any reports, there is nothing much that one can do with anything, I would suggest.

Senator Meighen: Fair enough.

Senator Furey: Let's go back to the question on the evidence. You are still satisfied, I presume, that there is the safeguard of the claim on solicitor-client privilege there, even during a compliance audit on any documentation.

Mr. Sankoff: Absolutely. No matter what, the solicitor-client privilege exists. To be honest, whether it in here or not, solicitor-client privilege is a claim at common law. The express protections are set out here. The solicitor-client privilege will always take precedence in this matter. If there is a valid claim of solicitor-client privilege, it will go before a judge to be tried.

Senator Furey: We all need diligent solicitors, Mr. Chairman.

Senator Wiebe: My question may be a little comical. I am not a lawyer, and I cannot always understand some of their concerns.

Let us assume that this proposed legislation is passed and that I am in the drug trade and have had a successful week. As such, I have a pile of money that I do not know what to do with it. I cannot process it through the regular system because it will be detected by your people, who are doing a great job. If I hire a backhoe operator and have him bury the money for me, will he be under the law of compliance?

The Chairman: The backhoe operator may not know what is in the container.

Mr. Lalonde: The short answer is "no."

[*Translation*]

Senator Poulin: I would like to thank Mr. Cullen and Mr. Peterson for their speedy reply to the questions we raised during our discussions on Bill C-22. The four changes that have been tabled deal directly with the centre framework legislation. I would like to ask a similar question to the one asked by Senator Tkachuk. If I understand correctly, the centre is developing. It has a staff of 70 and an annual budget of $20 million, approximately. Under Bill C-22, what is the status of the centre as a government agency?

[*English*]

Ms Smith: We are set up in the law as an independent agency at arm's length from law enforcement agencies.

Senator Poulin: What is your relationship with the RCMP?

Ms Smith: We are at arm's length. It is very clear in the legislation that we are at arm's length from all law enforcement agencies. I could give some specifics as to what that means.

Senator Poulin: No, I understand. What is the relationship, therefore, between the agency and the Department of Finance?

Ms Smith: That is a bit more complicated.

Mr. Lalonde: The agency reports to Parliament through the Minister of Finance. Hence, the Minister of Finance has oversight responsibilities. The legislation spells out the kind of

oversight responsibilities the Minister of Finance has and the kinds of information the minister is entitled, to exercise that responsibility. It is very clear in the legislation that the minister does not have access to any personal identifying information.

[*Translation*]

Senator Poulin: Will the agency table an annual report to the House?

Mr. Lalonde: Yes.

Senator Poulin: On the issue of privacy, you said that any transaction of more than $10,000 must be reported, even if, for example, I am giving money to my daughter who lives abroad. Is that right?

Mr. Lalonde: The payment bill stipulates that all transactions must be reported. Any cash deposit of $10,000 or more must be automatically reported by the bank to the new agency.

Senator Poulin: If I ask my Canadian bank to transfer $15,000 to an American bank for my daughter who lives in a different city, is the Canadian bank required to report this transaction?

Mr. Lalonde: As things stand now, the payment bill requires any transfers of $10,000 to be reported.

[*English*]

Senator Tkachuk: To follow up on that, just so I understand this electronic transfer, because we are talking about cash here when talking about illegal transactions, right? You do not usually pay by credit card if you are doing something illegal; the transaction is usually done in cash. I could understand perhaps an international transfer of money, from here to Bermuda or the United States, or vice versa.

However, to clarify this, say that there is a transaction between two Canadian bank accounts. Let us say that Senator Kolber transfers $12,000 to my account in Saskatoon.

The Chairman: That is highly unlikely.

Senator Tkachuk: Would there be a requirement to report on that?

Ms Smith: No, there is no requirement in the regulations.

Senator Tkachuk: Therefore, domestically there is no requirement.

Ms Smith: No, internationally the requirement is over $10,000.

Senator Setlakwe: I wanted to ask if it were international or domestic.

The Chairman: My initial understanding was that it applied to any wire transfer, but Ms Smith has just said that it is only international.

Mr. Lalonde: The current draft regulations only concern international wire transfers.

The Chairman: That was not expressed clearly before.

The committee fully understands that we are out to get the "bad guys" and not out to abuse the "good guys" -- not to be simplistic about it. Almost all of the questions had to do with compliance. We have not heard much, if anything, about what should be done when we have those voluminous reports. We all appreciate that these are early times and that the waters are being tested as we proceed.

The challenge is huge and it is not patently clear how this is to be resolved. One of the suggestions that I would make to this committee is that we make a reference to the Senate to have a review one year from now. That way, the appropriate officials will be able to outline their experience on this issue to that date. I urge the committee to consider inviting the witnesses back in one year or so for an update. Perhaps by that time there will be some anecdotal evidence, if nothings else, about who has been abused in such cases and who has not. The witnesses could also tell us whether any "bad guys" have been caught and whether the system has worked.

With that in mind, I thank all the witnesses for their participation today. We, as a committee, will do our best to see this matter through.

March 28, 2001 [Senate]

The Hon. the Speaker: Honourable senators, on Thursday, March 22, 2001, Senator Wiebe, on behalf of Senator Kolber, presented the second report of the Standing Senate Committee on Banking, Trade and Commerce dealing with Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

[*Translation*]

Since the bill was reported without amendment, the report stood adopted without motion under rule 97(4). When I, as Speaker, asked when the bill would be read the third time, the Deputy Leader of the Government in the Senate, Senator Robichaud, moved that it be placed on the Orders of the Day for consideration at the next sitting.

[*English*]

At the appropriate time, Senator Kinsella raised a point of order based on two principles. First, he questioned whether the bill was properly reported. Second, he sought clarification as to whether Senator Robichaud had acted correctly in moving the motion to set the date for third reading.

On the first point, Senator Kinsella expressed the view that the practice has been that when a chair is not available to perform his or her functions, it falls upon the deputy chair to do so. He asked whether the Banking Committee had authorized Senator Wiebe to present the report.

Senator Knisella's fundamental concern was whether any member of a committee may present a committee report.

[*Translation*]

Senator Kinsella's second concern was whether Senator Robichaud acted properly in moving the motion to set the date for third reading. He noted that rule 97(4) provides that it is the senator in charge of the bill who should move such a motion, and suggested that, since Senator Robichaud was not the sponsor, he should not have moved that motion.

[*English*]

A number of senators then spoke to the issue. Senator Robichaud quoted rule 97(1), which deals with the presentation of committee reports. That rule states:

A report from a select committee shall be presented by the chairman of the committee or by a Senator designated by the chairman.

Senator Robichaud felt that Senator Wiebe had acted properly, since Senator Kolber had asked him to act on his behalf. As to the second matter raised by Senator Kinsella, Senator Robichaud noted that the bill in question was government legislation. He suggested that, as Deputy Leader of the Government, he could move the motion to set the date for third reading.

Senator Wiebe then intervened to confirm that Senator Kolber had asked him to present the report. Subsequently, Senators Tkachuk, Carstairs, Lynch-Staunton and Taylor also participated in the debate, which can be found on pages 422 to 424 of the Debates of the Senate. I wish to thank all honourable senators for their contribution to the consideration of this issue.

Senator Kinsella's point of order touches directly on section 1 of rule 97, as quoted above, and section 4 of the same rule, which states:

[*Translation*]

When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

[*English*]

With regard to the first element of the point of order, which relates to the propriety of Senator Wiebe presenting the report, similar issues have been raised in the past.

On February 24, 1998, Senator Callbeck presented reports of the Banking Committee on behalf of Senator Kirby, the committee's chair. Senator Kinsella asked why the chair or deputy chair had not presented the report. Senator Callbeck replied that she had been asked by Senator Kirby to present the report. Senator Kinsella accepted this response, although he indicated that he did not view it as a precedent.

On December 8, 1999, Speaker Molgat dealt with a point of order raised the previous day by Senator Kinsella. In his point of order, Senator Kinsella questioned, among other things, whether the Banking Committee had adopted a motion to report Bill S-3, an income tax convention bill, and whether the committee had authorized Senator Hervieux-Payette to report the bill.

At that time, Senator Kolber, the chair of the committee, noted that he had authorized Senator Hervieux-Payette to act on his behalf. Speaker Molgat made a point of noting that, as Speaker, he had no authority to question whether the senator presenting the report had been designated and that he must depend upon the committee chair to have done so. In light of rule 97(1), Speaker Molgat did not find that Senator Kinsella's point of order had been established.

As noted previously, in the present case, Senator Wiebe also confirmed to the house that Senator Kolber had asked him to present the report as rule 97(1) allows. I should like to confirm my support for Speaker Molgat's position. In my opinion, the statement by Senator Wiebe was not strictly necessary. If an honourable senator declares that he or she is doing something on behalf of another, this declaration should be taken in good faith and should only become an issue if the designator were to indicate that there had been a misunderstanding.

(1430)

Pursuant to rule 97(1), I therefore find that the report to the Senate was properly presented.

I will now turn to the second element of the point of order, as to whether Senator Robichaud acted properly by moving the motion to set the date for third reading of Bill S-16. In relation to rule 97(4), I would note that our rules do not provide a clear definition of "the Senator in charge of the bill." In the case of a government bill such as S-16, the Leader of the Government in the Senate is ultimately responsible for it — indeed, that position appears on the cover of the bill. In keeping with rule 4(d), the deputy leaders on both sides often act on behalf of their respective leaders in this chamber.

[*Translation*]

In addition, the senator serving as sponsor of a bill — who begins debate at second reading — has a high degree of involvement throughout the process, often including moving the motion to set the date for third reading. Finally, in matters resulting directly from a committee's work, as in this case, the committee chair may also be involved.

[*English*]

Senate practice with respect to moving the motion to set the date for third reading reflects the variety of senators who may be involved in the process. For government bills, there have been many cases in which a senator other than the Leader of the Government has moved this motion. The Deputy Leader of the Government has often moved this motion.

To take a few examples, during the Second Session of the Thirty-sixth Parliament, the Deputy Leader of the Government moved this motion for Bills C-10, C-22 and C-26. During that same

session, chairs of committees reporting government bills sometimes moved the motion in question. This was the case, for example, with Bills S-18, C-2 and C-7.

Therefore, while the rules do not define the phrase "Senator in charge of the bill," Senate practice would suggest that, at least for legislation, the Leader of the Government, the Deputy Leader of the Government, the sponsor of the bill or the designate can move the motion to set the date for third reading.

Honourable senators, in light of the Rules of the Senate and Senate practice, I find that the second element of this point of order has also not been established. Bill S-16 was properly reported and the motion to set the date for consideration at third reading was properly moved.

We will now proceed to the order.

[*Translation*]

Bill to Amend—Third Reading—Debate Adjourned

Hon. George J. Furey moved the third reading of Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

He said: Honourable senators, I am delighted to have the opportunity to speak today at third reading of Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

[*English*]

Honourable senators, the predecessor to Bill S-16 was Bill C-22, which became law last June. The enactment of that bill was an important milestone in Canada's legislative framework for fighting organized crime and money laundering. It strengthened the previous statute by adding measures to improve the detection, prevention and deterrence of money laundering in Canada.

As a member of both the G7 and the Financial Action Task Force, FATF, Canada had committed to improving its anti- money laundering regime. It was important, then, that we be seen by our international partners to be making progress on this front, particularly since the FATF was publicly listing countries with deficient anti-money laundering controls right around the time that our legislation was being passed.

The timely passage of Bill C-22 brought our anti-money laundering legislation into line with international standards. At the same time, our domestic law enforcement agencies were in need of better enforcement tools here at home, and Bill C-22 also responded to their needs. As a result, Canada now has a system that provides for the mandatory reporting of suspicious transactions and the reporting of large cross-border movements of cash or monetary instruments, such as travellers' cheques, to the Canada Customs and Revenue Agency.

Bill C-22 also established the new Financial Transactions and Reports Analysis Centre of Canada, FinTRAC, which officially came into being on July 5, 2000. FinTRAC will analyze reports and provide information to police to assist them in the investigation and prosecution of money laundering offences.

FinTRAC is subject to the many privacy safeguards contained in the act. These safeguards are supported by criminal penalties for any unauthorized use or disclosure of personal information under FinTRAC's control. In addition, FinTRAC is subject to the federal Privacy Act and the protections therein.

In summary, honourable senators, the new act responded to the domestic law enforcement community's need for additional means of fighting organized crime by more effectively targeting the proceeds of crime. It responded to Canada's need to meet its international responsibilities in the fight against money laundering, and it did so while providing safeguards to protect individuals' privacy.

When the Standing Senate Committee on Banking, Trade and Commerce considered Bill C-22, committee members believed that the act would be further strengthened and they suggested amendments to certain provisions. The Secretary of State for International Financial Institutions made a commitment to the committee to introduce legislation to address a number of these concerns. Bill S-30 was subsequently introduced, but it died on the Order Paper when the election was called last fall.

This is the same bill that we considered last fall, and because of this, I urge honourable senators to pass it quickly so that we may proceed to other business.

The amendments contained in Bill S-16 relate to four specific issues. The first deals with the process for claiming solicitor-client privilege during a FinTRAC audit. I should mention that FinTRAC is authorized to conduct audits to ensure compliance with the act. At present, when conducting a compliance audit of a law office, FinTRAC must provide legal counsel with reasonable opportunity to claim solicitor-client privilege on any document it possesses at the time of the audit.

The amendment in this bill pertains to documents in the possession of someone other than a lawyer, and it requires that this person be given a reasonable opportunity to consult a lawyer in order to make a claim of solicitor-client privilege.

The second amendment ensures that nothing in the act will prevent the Federal Court of Canada from ordering the Director of FinTRAC from disclosing certain information as required under the Access to Information Act or the Privacy Act. It was the intent of the original Bill C-22 that the recourse of individuals to the Federal Court of Canada be fully respected. This amendment ensures that this will be done.

The third amendment more precisely defines the kinds of information that may be disclosed to the police and other authorities specified in the act. It clarifies that the regulations setting out this information may only cover similar identifying information regarding the client, the institution and the transactions involved.

[*Translation*]

Finally, the last amendment guarantees that all reports and information in the possession of the Financial Transactions and Reports Analysis Centres of Canada will be destroyed after a prescribed period.

[*English*]

Information that has not been disclosed to the police or other authorities must be destroyed by FinTRAC after five years. Information that has been disclosed to the police or other authorities must be destroyed after eight years.

(1440)

In conclusion, honourable senators, these four amendments complement the existing legislation and, indeed, improve it. Bill C-22 addresses this need for more effective tools to combat money laundering and organized crime. Together with these four amendments it does so in a manner that protects individual privacy. The legislation will go a long way to help deter and detect money laundering and allow Canada to more effectively cooperate internationally in combating this global problem.

Honourable senators, I encourage you to give your support to this bill.

On motion of Senator Kelleher, debate adjourned.

April 4, 2001 [Senate]

Hon. James F. Kelleher: Honourable senators, I rise today to speak on third reading of Bill S-16, to amend the Proceeds of Crime Act or, as it is more widely known, the Money Laundering Act. The amendments contained in this bill are based upon an undertaking made by the government to the Senate Banking Committee last June.

As honourable senators will know, every June the Liberals are anxious to pass every bill that they can before the summer recess. Last June was no exception.

In the case of the money laundering bill, rather than agreeing to make the amendments that all agreed were necessary, the Secretary of State responsible for Financial Institutions instead undertook to make the changes at a later date. I suppose anything can be fixed later, but I question the point of conducting a thorough study of any bill when needed amendments are simply put off until a later date.

Honourable senators, in addition to the undertakings made by the minister last June, the Standing Senate Committee on Banking, Trade and Commerce also unanimously made three other recommendations for the minister to consider and, hopefully, implement. When this bill was introduced, we were dismayed to discover that the Liberal government had chosen to ignore our recommendations.

Nonetheless, the Progressive Conservative members of the committee were intent on again pursuing the proposed amendments when the bill was referred to the committee for its consideration. After hearing more testimony on the issues, we decided that we would reintroduce only one amendment, that of reducing the time periods for the ongoing review of the act itself and the new money laundering agency in particular.

I should note that this new agency is called the Financial Transactions and Reports Analysis Centre, or FINTRAC for short.

Our members of the committee believed that we had heard enough testimony from various witnesses, including FINTRAC, to justify our concerns about exactly what information was to be collected from whom, and what was to be done with it. We were surprised, therefore, when Liberal members of the committee questioned whether our amendment was in order. After some debate, the decision was made to rule it out of order. The end result is that the committee rejected an amendment that was almost identical to the one that was supported by the committee just nine months ago.

Our colleagues in the House will now have an opportunity to study this bill further. We hope that they will get somewhat more consideration for their efforts than we received.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

An Hon. Senator: On division.

Motion agreed to and bill read third time and passed, on division.

May 10, 2001 [House of Commons][Entire Exchange]

Hon. David Collenette (for the Minister of Finance) moved that Bill S-16, an act to amend the Proceeds of Crime (Money Laundering) Act, be read the second time and referred to a committee.

Mr. Roy Cullen (Parliamentary Secretary to Minister of Finance, Lib.): Mr. Speaker, I welcome the opportunity to speak today at second reading of Bill S-16, an act to amend the Proceeds of Crime (Money Laundering) Act. This bill would improve upon its predecessor, Bill C-22, which received royal assent last June. That bill was needed for several reasons.

Allow me to take a moment to review some of the background to that bill.

[*Translation*]

As hon. members know, money laundering in recent years has become more and more of a problem in Canada. By definition, money laundering is the process by which dirty money from criminal activities is converted into assets that cannot be easily traced back to their illegal origins.

[*English*]

Today's open borders provide criminals with a daily opportunity to launder millions of dollars in illegal profits with the intention of making the profits look legitimate. These activities can undermine the reputation and integrity of financial institutions and distort the operation of financial markets if adequate measures are not in place to deter money laundering.

To illustrate the magnitude of the problem, it is estimated that between $5 billion and $17 billion in criminal proceeds are laundered through Canada each year. A significant portion of this laundered money is linked to profits from drug trafficking.

Money laundering became a crime in Canada back in 1989. Prior to Bill C-22 Canada had many of the building blocks of an anti money laundering program in place within the criminal code and the previous Proceeds of Crime (money laundering) Act. However the government realized that much more needed to be done to combat the problem.

[*Translation*]

On one hand, the government was being pressured by law enforcement agencies for better enforcement tools. At the same time, on the international front, Canada was subject to scrutiny because of perceived gaps in our anti money laundering arrangements.

[*English*]

In 1997 the 26 member financial action task force on money laundering, the FATF of which Canada is a founding member, found Canada to be lacking in certain key areas and strongly encouraged us to bring our anti money laundering regime in line with international standards.

As a result of pressure here and internationally, the government brought in Bill C-22 in the last parliament. That legislation strengthened the previous statute by adding measures to improve the detection, prevention and deterrence of money laundering in Canada. Bill C-22 contained three distinct components which enabled Canada to live up to its international commitments.

First, the bill provided for the mandatory reporting of suspicious financial transactions.

Second, the legislation required that large cross-border movements of cash or monetary instruments like travellers' cheques be reported to the Canada Customs and Revenue Agency.

Third, Bill C-22 provided for the establishment of the Financial Transactions and Reports Analysis Centre of Canada, FINTRAC, which came into being on July 5, 2000. An independent agency, FINTRAC is set out to receive and analyze reports and to pass on information to law enforcement authorities if it has reasonable grounds to suspect that information would be relevant to a money laundering investigation or prosecution.

[*Translation*]

I should also mention that there are safeguards in place to ensure that the collection, use and disclosure of information by FINTRAC are strictly controlled. These safeguards are supported by criminal penalties for any unauthorized use or disclosure of personal information under FINTRAC's control.

[*English*]

FINTRAC is also subject to the federal Privacy Act and its protections.

Bill C-22 was welcomed last year by members on all sides of the House for several reasons.

First, it responded to domestic law enforcement communities needs for additional means of fighting organized crime by more effectively targeting the proceeds of crime.

Second, it responded to Canada's need to meet its international responsibilities in the fight against money laundering. It did so while providing safeguards to protect individual privacy.

In spite of these accomplishments, several of our hon. colleagues in the other place believed the act could be strengthened even further and could benefit from additional amendments. The government agreed and the result is Bill S-16, the legislation before us today.

Let me take a moment and provide some background.

[*Translation*]

When Bill C-22 was studied by the standing Senate committee on banking, trade and commerce last spring, members of the committee indicated that while they supported the bill the legislation would benefit from amendments to certain provisions.

[*English*]

The Secretary of State for International Financial Institutions made a commitment at that time to clarify the act by including several of the changes requested by the committee. The result was Bill S-30 which was introduced last fall and subsequently died on the order paper when the election was called. It was reintroduced in this parliament as Bill S-16.

The amendments in this bill relate to four specific issues. The first deals with the process for claiming solicitor-client privilege during an audit by FINTRAC. The agency is authorized to conduct audits to ensure compliance with the act.

The current legislation contains provisions that apply when FINTRAC conducts a compliance audit of a law office. FINTRAC must provide a reasonable opportunity for a legal counsel to claim solicitor-client privilege on any document it possesses at the time of the audit.

[*Translation*]

The proposed measure in Bill S-16 pertains to documents in the possession of someone other than a lawyer. It requires that that person be given a reasonable opportunity to contact a lawyer so that the lawyer could make a claim of solicitor-client privilege.

[*English*]

Another measure would ensure that nothing in the act would prevent the federal court from ordering the director of FINTRAC to disclose certain information as required under the Access to Information Act or the Privacy Act.

The amendment would ensure that the recourse of individuals to the federal court would be fully respected. Indeed this was the intent of the original bill, Bill C-22.

The third amendment more precisely would define the kinds of information that could be disclosed to police and other authorities specified in the legislation. It would clarify that the regulations setting out this information could only cover similar identifying information regarding the client, the institution and the transactions involved.

Finally, Bill S-16 would ensure that all reports and information in FINTRAC's possession would be destroyed after specific periods. Information that has not been disclosed to police or

other authorities must be destroyed by FINTRAC after five years. Information that has been disclosed must be destroyed after eight years.

Bill C-22 introduced sweeping changes to Canada's anti money laundering regime. First, it introduced new reporting requirements which would result in more reliable, timely and consistent reporting. Second, it introduced centralized reporting through FINTRAC which allowed much needed and much more sophisticated analysis.

[*Translation*]

Third, successful prosecutions that benefit from analysis by FINTRAC can lead to court ordered forfeiture of the proceeds of criminal activities.

[*English*]

Above all, these benefits would be achieved in a way that respects the privacy of individuals. The additional amendments contained in Bill S-16 would only serve to further strengthen and improve this statute.

Irrespective of party affiliation, I am confident that all hon. members will fully support the bill. I urge members to give the legislation quick and speedy passage so that we may proceed to other items on the government's legislative agenda.

Mr. Maurizio Bevilacqua: Mr. Speaker, I rise on a point of order to seek unanimous consent to revert to routine proceedings for the purpose of tabling a committee report.

The Speaker: Is there unanimous consent of the House to revert to tabling of reports by committees?

Some hon. members: Agreed.

Some hon. members: No.

Mr. Keith Martin (Esquimalt—Juan de Fuca, Canadian Alliance): Mr. Speaker, it is a pleasure to speak to Bill S-16. It is long overdue, and deals with one of the most important aspects of crime in the country today.

It is estimated that a majority of crime today relates to organized crime. Bill S-16, an act to amend the Proceeds of Crime (Money Laundering) Act is one we support.

For a long time the Canadian Alliance has worked hard to influence the government to address in a very reasonable way the large problem that affects every single riding in our country. The extent and depth of the problem of organized crime is extensive.

Organized criminals not only take advantage of the existing laws and working above the law, but also working beneath society and below the law. They hide behind the law when it is advantageous and flaunt it when it serves their benefit.

Historically many people may consider organized crime as the biker on a Harley Davidson, engaging in prostitution, drug abuse and in the buying and selling of drugs. Organized crime is much more than that. It is a national and transnational problem which will require a co-ordinated effort not only within our country but also among nations. Organized crime gangs

have formed transnational groups that are capitalizing on the globalized markets in our country.

Organized crime gangs deal not only with the traditional forms of money laundering, drugs, prostitution and the violence that goes with that, they also deal with a considerable amount of white collar crime. That white collar crime involves setting up businesses and engaging in illegal activities.

Organized crime groups set up shell companies that profess to deal with the cleanup of environmentally toxic areas. They offer their services to businesses. They tell them that they will take their waste products and dispose of them sensibly. What they do is take those waste products, charge the company and then dump them illegally, polluting our land, our air and our water.

They also take the moneys from things like prostitution, drugs and weapons. They also take money from trafficking endangered species, which is second in the entire world in the trafficking of illegal products. That money is put it into illegal businesses.

The problem is how do we deal with these organized crime groups? Police officers have told us that we have to go after the money. If we can take away the money underpinnings of international groups then we will crush them.

Here is a case in point. In the United States a crime gang took those moneys and bought a casino. That was followed up and the casino was apprehended. The moneys from the sale of that property went into fighting crime.

The same thing happens in countries like Ireland, South Africa and south of the border. However, to understand why this is so important, we have to look at the impact of organized crime in our society today.

In Canada it is estimated that it costs us $5 billion to $9 billion a year, which includes insurance, cellular phone, credit card and telemarketing fraud, and much more. Between $5 billion and $17 billion a year is laundered in Canada. That is why we are known as a haven for organized crime.

Imagine $5 billion to $17 billion being laundered in our country. That is a huge amount of money. It impacts our civil society in ways of which we are unaware. The cost of this impacts upon all of us. It impacts our insurance costs, because of motor theft. There is also securities fraud. This is not to mention the violence generating effects of the illicit drug trade which has had such a profound and negative impact upon our society. That is why we support this bill.

I came back from Colombia in February. There are enormous effects as a direct result of the illicit drug trade in that part of South America.

Canada is poised for a flood of pure, cheap heroin that will undercut the price of cocaine. This will mean that on the streets there will be a higher number of addicts, a greater number of overdoses and deaths, not to mention the increasing incidence of the transmission of hepatitis B, C and HIV among the drug users. That is why many of us have asked the government to deal with drug use in a more pragmatic and less punitive way by looking at models in Europe which can be employed here. In fact I had put forth a private member's bill to that effect.

Another thing the government could do is employ RICO-like amendments which have been in the United States since 1970. These amendments would allow the government better opportunities to go after and apprehend civil property, civil forfeiture, as well as criminal forfeiture upon conviction of the properties that are used or acquired through illegal uses.

I also want to take a moment to look at the international aspects of organized crime. In many of the hot spots around the world, from Nigeria to Somalia, Central Africa, Sierra Leone, Colombia, Brazil, Paraguay, Bolivia and Venezuela, we can see the impact and the integration of organized crime in society, particularly in societies that are in a very tenuous place.

When the price of oil went down in Nigeria, organized crime insinuated itself into the country. It has become a haven for the trafficking of cocaine, heroin and diamonds.

I have had a chance to visit South Africa some 12 times since 1986. That country made some good changes, but unfortunately has suffered from a breakdown in law and order. Organized crime gangs saw an opportunity to insinuate themselves into a country which was trying to get on its feet. As a result, South Africa has become a haven for organized crime and for the trafficking of contraband, particularly drugs.

This is a very serious problem because it destabilizes these countries. Look in the heart of darkness of Africa where the blood of tens and hundreds of thousands of people has been spilled. We can see how mercenary groups, in conjunction with organized crime groups functioning in a transnational way, have used diamonds to further their ends of making money. However it has also contributed to the deaths of hundreds of thousands of innocent people and the furthering of conflict in these areas.

The point I am making is that while the actions of organized crime are known, they are not only a domestic problem, they are a transnational and international problem. These actions also contribute to the furthering of conflicts in some of the worst parts of the world. Hundreds of thousands of innocent people are killed in areas where democratic rules and the rule of law with respect to human rights are simply absent.

Organized crime groups have no compunction whatsoever in insinuating themselves into conflict that occurs in these areas. They grasp and capitalize on these problems. In many cases we think some of these battles are mostly over religion. We see the issue of Sudan being one of them. However it has more to do with money.

In Somalia it was looked at as a fight between rival clans. In effect, a larger part of it had to do with the trafficking of something called khat, which is a drug. The trafficking, the influence and involvement of organized crime gangs has a profound impact upon these conflicts.

This is a great opportunity for the Minister of Finance, who is the head of G-20 at this point, to try to work with the Bretton Woods institutions and use them as a lever to address the issue of organized crime. The IMF should have built in opportunities to analyze where moneys are going to make sure that organized crime is not benefiting from it. Similarly, the World Bank and the other IFIs need to look at where the money is spent to make sure it is not being channelled into illegal operations.

Russia is a prime case. Billions of dollars of western money has gone into Russia in good faith to try to stabilize the economic situation. Unfortunately, a lot of that money has fallen into the

hands of the oligarchs that have ruled a large chunk of that country for far too long. I know Mr. Putin is working hard to deal with that.

I can only encourage the Minister of Finance to work with the international community to implement levers which will ensure that moneys being spent are used for proper monetary and fiscal stability in these countries and are not being siphoned away by individuals who are thugs in business suits.

In closing, I again emphasize that organized crime takes a big bite out of our economy and has many seen and unseen negative effects upon Canada. We support the bill and encourage the government to strengthen it as time goes on, by implementing methods to have criminal and civil forfeiture for individuals who are engaging in crime and by implementing RICO-like amendments in this country. We should work with the international community to ensure that similar laws are implemented so we can have a transnational, multifactorial approach to this scourge among us.

Mr. Ken Epp: Mr. Speaker, I rise on a point of order. We have our communications straightened out now between the parties and if you would seek it, I think you would now find unanimous consent to revert to daily routine of business, presenting reports from committees, so that the finance committee report could be presented by the member for Vaughan—King—Aurora.

The Speaker: Is there unanimous consent to revert to presentation of committee reports?

Some hon. members: Agreed.

Mr. Paul Crête (Kamouraska—Rivière-du-Loup—Témiscouata—Les Basques, BQ): Mr. Speaker, it is a pleasure to rise today to speak to Bill S-16, an act to amend the Proceeds of Crime (Money Laundering) Act.

First, let me remind the House that proceeds of crime covers anything seized that was, in the court's opinion, used to commit an offence or gained as a result of the offence.

This is just one piece of legislation among many others that were passed. Our society is now facing a major problem that has grown in scope in the last few years, with organized crime becoming a complex, international and ever changing industry that goes beyond traditional crime.

We now have technology based crime and international crime. For instance, drug traffic is run just like any other business, except for the fact that what is being traded is illegal, and of course new technologies are also used to commit crime.

As citizens, we often feel helpless. On the news, we hear about events, about people who are accused and about crimes, and we are not quite sure about the cause. The whole community wants governments to address this problem.

We in the Bloc Quebecois can be proud of the courage shown by our leader and our team, particularly during the last election campaign. We have made proposals and prodded the government into finally taking action. I think the leader of the Bloc Quebecois deserves credit for that, as well as those members who work on justice issues, including the member for

Berthier—Montcalm, the member for Saint-Bruno—Saint-Hubert and the member for Hochelaga—Maisonneuve. They lead initiatives aimed at fighting organized crime, directly or indirectly, and its consequences.

Organized crime has an impact on poverty. People who are most vulnerable make easier targets. They are more easily used. We must be aware of the fact that the related social and economic costs for our society are considerable.

The bill before us amends the Proceeds of Crime (Money Laundering) Act. The act it is based on needs certain adjustments, which are contained in this bill. We hope they will enable us to fight organized crime more effectively.

Clause 1 of the bill says that reports and all information will be retained for five years, which is what the current act says, but then it sets out the circumstances under which three years will be added to that period.

The retention period will thus be eight years, when the Financial Transactions and Reports Analysis Centre of Canada passes information either to law enforcement authorities or to the Canada Customs and Revenue Agency, the Canadian Security and Intelligence Service, the Department of Citizenship and Immigration, an agency in a foreign state or an international organization with a mandate similar to the centre's.

In other words, adding three more years will make documents available for a longer period of time. They will be retained longer.

In the case of crimes requiring time consuming investigations or the retrieval of evidence that might have been seized in the course of a previous investigation, this gives an added opportunity to do so.

Moreover, the addition to section 54(1) of the Proceeds of Crime (Money Laundering) Act provides that each report received and all information received or collected shall be destroyed on the expiry of the applicable period.

This clause clarifies certain provisions regarding the retention and destruction of information. This does not raise any particular issue, but it is important to note that such is the intent of the lawmakers that we are, and that this type of amendment was necessary to make the act more efficient in the fight against organized crime.

Clause 3 came about as the result of the realization that under the current act the federal court had no jurisdiction in this matter. With this amendment, no provision of the act will prevent the federal court from ordering the head of the centre to disclose information in accordance with the Access to Information Act and the Privacy Act, thus making the act easier to enforce.

This clause is yet another one to make enforcement of the act easier and more effective. We are also told that the spirit of the act already allowed the federal court to play its role in that regard.

Now, by amending the text, we are making sure that not only the spirit but also the letter of the act allows that. This may prove very useful when dealing with organized crime, since those who are charged often have very good defence lawyers. Of course, it is the role of these lawyers to make sure that their clients are properly defended, but we must make sure that it is

not possible, through some flaw, to miss the main issue when taking someone to court or preparing evidence. This is also the purpose of that clause.

Then there is a clause dealing with the whole issue of solicitor-client privilege. We have a problem with that clause because any interpretation of the said clause, in its current wording, would be pure speculation. This provision is very vague. It does not specify its objective. We were told that it was included because of the concerns expressed by accountants, who wanted a privilege similar to the solicitor-client privilege granted to lawyers.

This clause will have to be reworded to make it easier to understand. Some work will have to be done in that regard, probably in committee, to come up with useful amendments.

In conclusion, the first three clauses of the bill include amendments designed to clarify the intent of the provisions they amend, and these amendments do not change the substance of the Proceeds of Crime (Money Laundering) Act.

However, as I just mentioned, there is a problem with clause 4. We simply cannot figure out this provision. It is very vague. I think we would be better off with no provision than one that is worded like this one.

Still, the best option might be to rewrite the clause so that we can see if it is an amendment that can be used in the fight against money laundering.

Obviously, we in the Bloc Quebecois were in favour of the Proceeds of Crime (Money Laundering) Act, and in particular we were behind the elimination of the $1,000 bill. This was called for, supported, debated and in the end successfully defended by the hon. member for Charlesbourg—Jacques-Cartier. The government finally moved on this.

In my opinion, the Bloc Quebecois record is impeccable. We have proposed several concrete measures to improve the situation, to ensure that the state is properly equipped to fight organized crime. We hope there are still other tools to be laid on the table in order to ensure that we end up with everything required to do away with this scourge, to eliminate this situation, and to ensure that within this society there is less and less of a parallel universe and a parallel economy, which penalizes our entire society by the way it operates.

For all these reasons, we are going to vote in favour of Bill S-16, on condition that clause 4 is clarified for the reasons I have already given.

I therefore invite the House to support this bill which will, as soon as possible, enable the departmental staff concerned to do their job more diligently and with more appropriate tools, so that results can be attained. This is but one of the tools necessary to fight organized crime, but it is a useful one.

[*English*]

Ms. Libby Davies (Vancouver East, NDP): Mr. Speaker, I am pleased to rise today to contribute to the debate on Bill S-16. The New Democratic Party supported Bill C-22 in the previous parliament, which was approved and received royal assent. We voiced a number of concerns as it went through committee stage and amendments. We are glad to see that some of those concerns are being addressed in Bill S-16.

Members of the NDP like other members of the House are extremely concerned about the impact of organized crime on our local communities and across the country. There is no question that it is something that is very sophisticated. It is very pervasive and has a huge impact on many people's lives.

Personally, as well as in terms of financial institutions and various businesses, we are all very familiar with cases that do come to public light. They give us a glimpse of the kind of operation that exists outside the law in terms of money laundering, the profits from organized crime and how they are dealt with.

For most people it is a fairly frightening glimpse when we look at a system that is so complex. As in previous legislation the attempts in this legislation to deal with that sophistication and to find the appropriate mechanisms to track where money is flowing, where the proceeds of organized crime are coming from, is very important.

The NDP put forward some concerns about the original bill. In any legislation there has to be a balance between a reasonable right and invasion of privacy. There must be an understanding that the power of the state is not absolute. When a new agency is created with far reaching powers we have to be very careful about how it is set up.

For example, before Bill C-22 was approved we and a number of witnesses who came forward to debate the bill expressed concerns about whether or not there was potential for charter of rights violations, that the guarantees of reasonable search and seizure appeared to be at risk.

We were also very concerned about the possible pressures there would be on consumers. Needless to say, there would probably be a significant cost in setting up any sort of regime to track and communicate suspicious transactions. I do not know if that has been spelled out, but it seems to me that it would be enormous in terms of what the responsibilities would be for financial institutions and how that would get passed on to law abiding consumers.

Members of the NDP were also very concerned about the fact that the bill did not address what is often referred to as white collar crimes or technology based crimes. Unfortunately this is a huge area that is booming. We are all very familiar that the growth of the Internet and computers in general, credit card fraud, telephone fraud, stock market manipulation and computer break-ins are all things that can be characterized as technology based crimes or white collar crimes. There is no question that there is a very serious element within that which is perpetrated by organized crime. It seems to us that the original bill did not and the legislation before us today does not adequately address the concerns that surely must be addressed in terms of technology based crimes.

In the debate today I heard a number of members talk about different elements of organized crime and the impact they have. The member for Esquimalt—Juan de Fuca spoke about the drug trade and its human impact. I will spend a couple of minutes speaking about that as well because it strikes me that there is a contradiction.

On the one hand, as we should, we go to great lengths to deal with a legal apparatus and the setting up of a new agency, FINTRAC, the Financial Transactions and Reports Analysis Centre of Canada, as it is called, and what a mouthful that is. We go to great lengths to set up a very elaborate system for tracking suspicious transactions, trying to trace what has happened and making sure that there is adequate reporting.

On the other side of that coin in terms of organized crime and the billions of dollars that are generated illegally through drug trafficking and drug use and the profits that are made, we do not pay enough attention to the human costs that are very clearly evident on our streets, in urban centres and even in smaller communities across Canada. I have only to look at my own riding of Vancouver East to see the devastation that happens in an environment where illegal drug activity is a huge underground economy.

I believe, and I certainly would echo the comments from the member for Esquimalt—Juan de Fuca, that we have to pay attention to that human side. We have to recognize that in some respects it is the illegality of those substances, heroin or crack cocaine or other substances, that drives this underground market and in effect criminalizes addicts when they are on the street with very few resources. We end up with a community where people are literally dying on the streets from overdoses.

It strikes me as a horrible irony that while on the one hand we can somehow relate to this issue from a legislative point of view by setting up this centre, on the other we cannot relate to this issue from a human point of view and take the actions that are necessary to actually reduce the harm of what is happening on our streets because of these illegal substances.

I would also add that we need a saner, more humane approach to drug use in Canada and we need to be seriously willing to reform Canada's drug laws, which have not been reformed for decades. We have had Senate hearings. We have had debates in the past where some of these issues have been debated very seriously, but not in recent times. If we took the time to do that I believe we would go a long way toward dealing with some of the causes of the devastation we see on our streets. We could in fact look at the issue of how organized crime is being driven by this very lucrative business of drug use.

We could look to the experience of what is happening in Europe, where the approach has been to medicalize drug use and addiction instead of criminalizing people. The approach has been to try to remove the harm from buying drugs on the street. Not only has there been a huge financial saving in health care costs and judicial costs, but lives have been saved as well.

I wanted to make that point because it seems to me that we are missing the boat unless we look at the total picture. We cannot just say that all this money is coming from organized crime and a lot of it is coming from drugs unless we are willing to examine Canada's drug policies and recognize that they need to be seriously reformed.

For example, even with marijuana we see the stories about grow operations in the papers all the time. In east Vancouver there are media reports of various grow busts taking place. We are talking about multimillion dollar operations. It seems to me that if we had the courage to examine our drug policy laws and to seriously look at reform of those laws we would be going a long way in terms of removing the incentive and the huge opening that exists for organized crime to become a part of the underground economy. That is a very important aspect of the debate.

In regard to the bill before us today, I did want to say that the NDP certainly supports the amendments that are contained in the bill as a result of the previous bill, Bill C-22. We support them in principle. Important questions were raised as a result of Bill C-22. It is notable that there has been a sort of second look based on the issues raised previously, for example, knowing how long this new centre would be able to retain the information it collects and

whether there are issues in terms of the balance between the right to retain information or dispose of it.

Another question was about when and how that information would be disposed of. If an agency is created, for how long does it have a right to have that information and in which manner can it be disposed of? If information is to be disclosed to law enforcement authorities, how should that be done? Those issues needed to be more clearly spelled out and we certainly feel that the present legislation goes some distance to addressing those concerns put forward by witnesses and by different parties in the House.

In conclusion, at this time we in the NDP are pleased to continue our support in principle. We think it is an important bill. It has obviously had strong support within the House. It is always good to have a second look based on evidence from witnesses to make sure that the bill is fine tuned to address concerns put forward.

I hope as the debate continues that the government will pay attention to the concerns that are still being expressed. It seems to me that there is strong general support but some areas still need to be looked at.

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC): Mr. Speaker, I appreciate the opportunity to speak to the bill. This is a very important piece of legislation and I commend the previous speakers, including my colleague from the New Democratic Party. It is interesting to note that many members have picked up on the fact that those in the other place have served a very useful purpose in reviewing the legislation and improving upon the legislation, as is often their wont.

I should indicate at the outset that I will be splitting my time with the hon. member for Kings—Hants.

Bill S-16 essentially deals with a response to concerns that were raised by the Senate banking committee. Bill S-16 amends the Proceeds of Crime (Money Laundering) Act and particularly focuses on areas of solicitor-client privilege, the disclosure of information and records retention. This is, of course, information that is critical in tracing the origins and whereabouts of potential assets linked to criminal activity. The money laundering that takes place in Canada is of great concern to our citizenry and certainly to our law enforcement community.

Money laundering, as the Speaker would know, is a process by which criminals attempt to conceal profits earned from crime so that the money appears as if it comes from legitimate sources. When all traces of the money's criminal origins are erased, the money can safely be used to buy goods and services.

It is shocking to think that between $5 billion and $17 billion is laundered in Canada. Of course it is difficult to accurately assess just how much because the proper authorities are not able to determine this amount, but it is estimated to be in that range.

There were shortcomings in the original legislation which Bill S-16 attempts to correct. Money that is laundered is often shifted among countries, financial institutions and investments without a paper trail so that it cannot be traced back to its origins. With the advancing sophistication of technology, competent and sophisticated criminals are able to access and

utilize these now boundless abilities to transfer money through cyberspace, leaving no tangible evidence as to its origins.

Obviously much of this money is obtained by very nefarious means such as fraud or intimidation. This is the type of money that is very often directly linked to criminal organizations in Canada and has been the focus of a number of pieces of legislation and the focus of considerable debate in recent months and years. Canada has come under heavy criticism in recent years for being a nation where criminal organizations are able quite easily to launder their proceeds of crime. For that reason and that reason alone, it is incumbent upon us as elected officials and as part of the federal legislative branch to respond. That is what this legislation is intended to do, to enhance the existing proceeds of crime legislation.

The response last spring came in the form of government Bill C-22, the Proceeds of Crime (Money Laundering) Act, which was passed. Bill C-22 imposed new reporting and record keeping requirements and created the Financial Transactions and Reports Analysis Centre of Canada to receive and analyze information so there would be a focal point, a centre in Canada where those working in this location would be specifically tasked to assist law enforcement communities in locating and tracing proceeds of crime.

Concerns were expressed at that time about the bill by the privacy commissioner, the Canadian Bar Association and other groups that appeared before a parliamentary committee. The Senate banking committee looked into the bill in June 2000 and, to be quite blunt, was not impressed. The committee felt that the legislation was considerably flawed and had a number of shortcomings which it had hoped to remedy. The government indicated at that time that it was unwilling to entertain amendments to the legislation because it was too late in June and the House of Commons had to deal with other bills and indicated that therefore the Senate might make changes in the future.

Coming forward from that point in June 2000, we know that the Secretary of State for International Financial Institutions did give a written undertaking to the committee that certain changes would be contemplated and would occur in a new bill to be introduced in the fall. Those changes formed the substance of Bill S-30 which was introduced in October. Bill S-30 is identical to Bill S-16 which is currently before us.

As the Speaker and Canadians well know, the entire process in October was pre-empted by the legacy lust of the Prime Minister in his decision to put this piece of legislation and other very useful pieces of legislation aside and toss them in the dustbin in order to seize his political advantage and call an election.

Beyond the changes that were agreed to in the letter from the secretary of state to the Senate banking committee, the bill was then reported with the observation that the government should consider other amendments. Those amendments would include, first, further insurance that solicitor-client privilege would be protected by adding the phrase law office in any place in clause 63 where the term dwelling house appears. This simply expanded the physical premises that would attach under the legislation.

Second, the government would hold the first review of the act after three years, not five years, with a five year review to be held after that. This is essentially an opportunity in the first

instance to look at the fallout from this legislation at an earlier date and assess the implications after three years.

Finally, the government would require regulations under the act to be tabled before the committee in the House each year. The Progressive Conservative Party is very supportive of all attempts to bring about transparency, both for the public and for parliament, and to access information that is rightfully to be placed before Canadians.

This is important in the broader context of trying to rebuild lost confidence in the process and in this institution. It is clear that the bill does not include all the changes recommended by the committee, but it goes a long way to improving the legislation.

The bill will focus on the following legal issues. The first is solicitor-client privilege, which is an attempt by individuals to prevent private information they share with a solicitor from being made public or in any way disclosed. Bill C-22 only dealt with instances of solicitor-client privilege involving legal counsel.

Bill S-16 clarifies that officials of the Financial Transactions and Reports Analysis Centre of Canada may not examine or copy documents subject to solicitor-client privilege where the documents are, and this is the important part, in the hands of someone else until a reasonable opportunity has been made for the person to contact legal counsel. The bill would put in place a safeguard to allow an individual to speak to a lawyer before documents are seized.

This responds to concerns raised by the Certified General Accountants Association of Canada. Privacy is something we can never take lightly. We must always strive to ensure individuals are protected in their privacy rights and in their business transactions. However all that must be balanced with the recognition that there are those who rely upon nefarious means and complicated schemes to steal from others, rip people off and engage in blatant activities to take away a person's wealth.

To that end a balance is struck in the legislation. It contains safeguards and methods for review that allow for a weighing of evidence to determine whose interests are best being served.

Bill S-16 would allow individuals or the privacy commissioner to take the Financial Transactions and Reports Analysis Centre of Canada to court if they are denied access to their files. There is therefore a chance for judicial review if there is denial of access.

Next is disclosure of information. Bill S-16 narrows the range of information that may be disclosed by the Financial Transactions and Reports Analysis Centre of Canada to the Canada Customs and Revenue Agency, the police, and citizenship and immigration officials.

After listing the types of documents that could be disclosed Bill C-22 gave the centre broad power to disclose any information so designated. The amendment would replace that power with the power to disclose similar information relating to identification.

Finally, there is record retention. Records not disclosed by the centre are to be destroyed five years after they are received or collected. Those which have been disclosed are to be destroyed eight years after they are received or collected. These are further safeguards. It may be called

fine tuning but it is important fine tuning nonetheless. The sober second thought of the Senate has been usefully exercised here.

Mr. Scott Brison (Kings—Hants, PC): Mr. Speaker, I credit my colleague from Pictou—Antigonish—Guysborough for the comprehensive nature of his discourse. There simply could be no questions after such a detailed and articulate speech.

It is with pleasure today that I rise to speak to Bill S-16. The money laundering issue is of huge importance to Canada. Earlier today I spoke in the House on corporate governance issues. It is extraordinarily important to put in place procedures, agencies and structures to deal with corporate governance and money laundering issues, issues which are increasingly global and are forcing governments to be vigilant if they wish to maintain international credibility.

The estimates of money laundering are difficult to get a handle on. In Canada some estimates are as low as $5 billion per year and some are as high as $20 billion per year. That variance alone speaks to the nature of the problem. We do not know the full depth and breadth of the issue in Canada but we know we had better get a handle on it soon. We hope this initiative will help us do that.

I have spoken of previous incarnations of the legislation and of my concerns with them. I still have not seen a commitment by the government to provide the resources to enable the agency to do its work. I am very concerned about that.

The member for Pictou—Antigonish—Guysborough, our justice critic, has spoken about the urgent situation of underfunding and the resource starved RCMP. With the money laundering agency we could see the same types of issues.

Organized crime networks today use sophisticated technologies and have almost unlimited global resources. We must provide the new agency the resources to be successful in the fight against money laundering. I have significant concerns in that regard, particularly given the sophistication of financial instruments today. There was a time when derivatives were considered sophisticated financial instruments but we have gone far beyond that.

The House resumed consideration of the motion that Bill S-16, an act to amend the Proceeds of Crime (Money Laundering) Act, be read the second time and referred to a committee.

Mr. Scott Brison (Kings—Hants, PC): Mr. Speaker, I have caused a stir with a couple of my remarks but I have never had that level of dramatic response. It has been another great day for democracy and a moment in which I take great pleasure in having participated. My time in the Senate was all too brief, I may add.

The issues in Bill S-16 of critical importance to me and to our party pertain to whether the new agency has the resources necessary to deal with the increasing challenges and the great level of complexity in the nature of money laundering, the sophistication of financial instruments, and the almost unlimited resources of international organized crime. We have to ensure that we do not simply create an agency with a tremendous level of responsibility but with very little resources to do what has to be done.

A bad job is one with lots of responsibility and no authority. I would suggest that to ask the agency to take on such a mammoth task and not provide it with the appropriate level of

resources would be typical of what the government has done in a number of areas, but it would not be an appropriate way to proceed.

A concern that I have had in the past and still have is the accountability of the agency, particularly in terms of the criteria required to meet the conditions that the agency share information with other agencies, for example, the Canada Customs and Revenue Agency.

It would be appropriate that any information attained by the Canada Customs and Revenue Agency indicating money laundering activity would be shared with the money laundering agency.

That type of sharing of information back and forth could be constructive. However I would be very concerned if, for instance, the individuals involved in the new money laundering agency were to identify no evidence of money laundering but some evidence of potential money laundering which could indicate some tax evasion or something similar. I would be concerned if the agency were to share that information with Revenue Canada.

While I agree that we need a much stronger approach to money laundering, Canadians would not feel comfortable with a resulting beefed up Revenue Canada agency. We have to be careful there are clear criteria and conditions that have to be met before it is deemed appropriate for the money laundering agency to share information with Canada Customs and Revenue Agency.

I have another concern that the arm's length nature of these agencies tends in an institutional way to reduce the amount of accountability to parliament. I understand some of the arguments, particularly from the government, in favour of achieving greater levels of flexibility for compensatory arrangements with the workers and offering a more flexible approach to provide these public services to arm's length agencies.

However much of this could be achieved within the context of more direct departmental agencies as opposed to these arm's length agencies. I have a significant concern about what seems to be a secular decline in the level of accountability to parliament that the government seems to be very comfortable with. Again, these arm's length agencies are all part of that greater reduction in accountability to parliament.

The Progressive Conservative Party supports the legislation and the amendment which would improve accountability of the new agency. The agency in the legislation is a step in the right direction. Canada needs to do less following of what is happening in other countries and what our trading partners in the G-8 and OECD are doing. We should try to be more proactive in leading on some of these issues whether it be on money laundering or in corporate governance issues.

It always seems that we are just a step slower than a lot of our international partners. I would hope the government of a country like Canada, which in the past under the previous government was an international leader in many ways, would try to copy some of the initiatives of that previous government. It has on other issues. The government should provide some level of international leadership on some of these issues as opposed to being followers. That is my wish in closing my remarks today.

The Deputy Speaker: Before I call for the resumption of debate I address myself to the member for Kings—Hants who probably thinks that all this activity took place to assist him in marking his very special day, his birthday.

I would never make mention of a member's age, but I understand the member was what we might commonly refer to as a centennial year baby.

March 15, 2001 [Standing Senate Committee on Banking, Trade and Commerce]

The Chairman: Honourable senators, we are hearing evidence today on Bill S-16. Our first witnesses are from the National Archives of Canada.

Mr. Ian E. Wilson, National Archivist, National Archives of Canada: Honourable senators, I appreciate this opportunity to speak to the committee. The issue to which I wish to speak is clause 54(e) of Bill S-16. The intent of this clause is to require the destruction of records prepared or gathered under the investigative powers of this bill. This runs directly against the Archives Act which requires, under section 5, my consent to the destruction of records.

Originally, the amendment in clause 54(e) was to read "despite the Archives Act." We have now had time to review the legislation and to try to come up with a legislative solution that meets the requirements of the committee and Canadians in terms of requiring the destruction of records that are gathered under investigation while at the same time respecting the requirements and the review processes established in the Archives Act to ensure that records to be destroyed do not have permanent historical significance to the country.

My staff and I have had an opportunity to review the records that have been created or will be created under these forms of investigation. We have determined that those records are not of permanent significance for the historical record of Canada. I have therefore, under section 5 of the Archives Act, issued records disposition authority 2001/003, which authorizes the destruction of those records pursuant to section 5 of the Archives Act after the applicable periods built into Bill S-16.

We are therefore proposing alternate wording, which I think, and our advisers suggest, meets the requirements that require the destruction of the record at the same time. Rather than overruling the Archives Act, as the original amendment would have, we are proposing the following alternate wording: "in accordance with the Archives Act under a records disposition authority that we have now issued."

That is our proposed amendment. I believe it has been distributed to you in both languages. It is a cleaner, simpler way of doing this, rather than saying "despite" or "not withstanding the requirements of the Archives Act."

Mr. Chairman, I will be pleased to respond to any questions.

Senator Furey: Mr. Wilson, is the directive you issued with respect to the destruction of records revocable?

Mr. Wilson: The wording in that last clause makes it clear that it is not revocable. The archives very seldom revokes; we do so only in certain specific instances, but it is discretionary. With that last phrase, discounting any subsequent amendments or repeal of that authority, we are trying to ensure that it is embedded in the legislation and cannot be revoked by my successors or me. That is the intent and our legal advisers say that that will cover it.

The Chairman: As we are seeing this proposed amendment for the first time, I do not know that anyone here can say whether it deals with our original objections. Perhaps it does; perhaps it does not.

However, this session of the committee is only to hear testimony and ask questions. We will conduct clause-by-clause study on Wednesday. I suggest that our legal advisers, under the guidance of Senator Furey who is sponsoring the bill, study this in order to satisfy us prior to clause-by-clause study that it deals with our objections. I do not know whether it does.

If that is agreeable to the committee, I suggest that Senator Furey advise us as to whether it deals with our objections, and that, if it does not, we authorize him to act on our behalf, subject to our final approval of course, to work with Mr. Wilson to produce wording that does deal with our objections.

Senator Meighen: What is the objection?

Senator Furey: It is simply that we wanted the records expunged and destroyed after a period of time. Mr. Wilson is saying this encroaches on his authority as the archivist.

The Chairman: Someone cited as an example this morning a person winning $10,001 at bingo and a file being established on that particular subject. Why should that file exist forever? Put in a purely simplistic form, that is the kind of thing we want to avoid. Some of us believe that the era of "big brotherism" in government may have gone a little too far. I think it is up to this committee to put some kind of a stopper on it.

Senator Meighen: I agree with what you have said, Mr. Chairman, and I think that is the consensus of the committee.

Mr. Wilson, you said that your blanket consent cannot be revoked. Did I understand you to say that that is premised on the supposition that the material collected pursuant to this legislation would not be of material importance to Canada?

Mr. Wilson: I said that it would not be of permanent historical value to Canada.

Senator Meighen: What if it were determined at one point that something was of permanent historical value?

Mr. Wilson: Our review would suggest that these investigations could affect many individual Canadians because the threshold is set very low. We suspect that, if things are important or if there is an issue, records will then appear in prosecution files or in court records that will become part of the permanent record. This would simply authorize the disposal of a file created on an individual who won at bingo, once privacy and other concerns are satisfied.

This is a routine action of the archives. Given the volume of modern government records, we only keep 1 to 2 per cent of the administrative record created by government day by day. Under the authority of section 5 of the Archives Act, we have the authority to review and identify which administrative records we want transferred to the archives for permanent retention and which will be disposed of routinely after the their legal, financial or audit purposes are fulfilled.

We are trying to find a way that meets the requirements and objectives of the committee while at the same time respecting the Archives Act and avoiding legislation that says "notwithstanding" or "despite the Archives Act." However, we do it in accordance with the Archives Act and to meet your intent, as I understand it, which is the disposal of the record.

The Chairman: You are worried that if you do this everyone else will do it, that it may be the thin edge of the wedge.

Mr. Wilson: We are worried about the precedent. Given the nature of the record, we concur with you that it should be disposed. It is a tidier approach to legislation to have it done, rather than suggesting that some other legislation may be in some way deficient, that we do it in conjunction with other legislation. We are trying to find the right wording. Whether we have it or not, we are open to discussion.

The Chairman: We appreciate your cooperation. We hope you will work with Senator Furey.

Mr. Wilson: Absolutely.

The Chairman: He will advise us whether he agrees, and then we will decide whether we agree.

Senator Finestone: I was listening with great interest to something I do not know anything about but I do know something about privacy and the National Archives of Canada Act. I do not know where this fits in.

Under the Privacy Act, no personal information can be collected by any institution, and you are a government institution, unless it relates directly to the operating program of the institution. I do not know where it fits into the right of your institution to have this information. If I win $10,000, it is bad enough that everybody who wants money, charitable or otherwise, will know that I have won. Why should you keep that information in your records?

Under the Privacy Act and the National Archives of Canada Act, why would you have that material in the first place, or want it?

Mr. Wilson: We are saying that we do not want it. It has no place in our records. We would not have enough room to preserve everything.

The Chairman: You will meet, or not meet, with Senator Furey, as he determines;, okay?

Mr. Wilson: Yes.

The Chairman: We will now hear from Mr. Cullen.

Mr. Roy Cullen, Parliamentary Secretary to the Minister of Finance: I am pleased to be here to speak to Bill S-16. Last June, I appeared before this committee to discuss Bill C-22, the bill that put in place the legislation that we are now proposing to amend.

I would like to take this opportunity to thank the committee for its very careful study of Bill C-22 back then. The enactment of Bill C-22 was an important milestone in Canada's legislative framework for fighting organized crime and money laundering.

[*Translation*]

Its timely passage also brought Canada's anti-money laundering regime into line with international standards and allows Canada to participate fully in the international efforts against money laundering.

[*English*]

As a member of the G-7 and the Financial Action Task Force, Canada had committed to improving our anti-money laundering regime. It was important that Canada be seen by our international partners to be making progress on this front, particularly in that the Financial Action Task Force was engaged in a process of publicly listing countries as having deficient anti-money laundering controls about the time the legislation was passed.

At meetings of the OECD and OSCE in Europe that I attended last summer, I was pleased and proud to report that Canada had passed this important piece of legislation and, again, I thank you.

Honourable senators, you will recall that the Proceeds of Crime (Money Laundering) Act provides for a system of mandatory reporting of certain financial transactions and cross-border movements of large amounts of currency and monetary instruments. The legislation also established the Financial Transactions and Reports Analysis Centre of Canada, FinTRAC, which will analyze these reports in a prescribed way and provide information to police for prescribed reasons and in a prescribed way to assist them in the prosecution of money laundering offences.

The establishment of FinTRAC as an independent agency at arm's length from law enforcement is one of the many privacy safeguards contained in the act. FinTRAC was formally established on July 5, 2000. It is now building the technical and analytical capacity needed to perform its mandate. It will begin to receive financial transaction reports after the necessary regulations have been implemented.

The proposed regulations for record keeping and financial transaction reporting requirements were published on February 17, 2001, in the Canada Gazette for a 90-day public comment period. Consultations are now underway to develop regulations to implement the reporting requirements for large cross-border movements of currency and monetary instruments. In addition, FinTRAC has developed draft guidelines to help financial institutions and intermediaries comply with the act and has initiated consultations with stakeholders.

[*Translation*]

Now, I would like to turn to the bill before us today -- Bill S-16. The four amendments that make up this bill respond directly to issues raised by honourable senators when they studied Bill C-22 in this committee last June.

[*English*]

The proposed amendments will be familiar to the senators on this committee as they were outlined in a letter dated June 14, 2000, from Secretary of State Jim Peterson to the committee chairman. That letter was included in the committee's report on Bill C-22.

Briefly, the proposed amendments relate to four specific issues. The first deals with the process for claiming solicitor-client privilege during an audit conducted by FinTRAC. As you know, FinTRAC is authorized to conduct audits to ensure compliance with the requirements under Part I of the act, namely the requirements to keep records and to report certain types of financial transactions.

The legislation currently contains provisions that apply when FinTRAC conducts a compliance audit of a law office. FinTRAC must provide legal counsel with a reasonable opportunity to make a claim of solicitor-client privilege with respect to any document in their possession at the time of the audit. The proposed amendment contained in Bill S-16 deals with situations where documents are in the possession of a person who is not a legal counsel. It would require that such a person be given a reasonable opportunity to contact legal counsel in order to make a claim of solicitor-client privilege.

Honourable senators will recall that this issue was raised by representatives of the accounting profession when they appeared before this committee last June 2000.

Another change ensures that nothing in the Proceeds of Crime (Money Laundering) Act prevents the Federal Court from exercising its authority under the Access to Information Act or the Privacy Act to order the director of FinTRAC to disclose certain information by either of those acts. This proposed amendment makes it clear that the recourse of individuals to the Federal Court is fully protected. This was the intent of the original bill and the proposed amendment will ensure that this will be the result.

The third proposed amendment more precisely defines the kind of information that may be disclosed to the police and other authorities.

[*Translation*]

The amendment clarifies that the regulations setting out this information may only cover similar identifying information regarding the client, the institution and the transactions involved. This deals with a concern of the committee that the existing wording may have provided for greater latitude for using regulations to add to the list of information set out in the act itself.

[*English*]

Bill S-16 would amend the act to ensure that all reports and information in FinTRAC's possession will be destroyed after specific periods: information that has not been disclosed to

police or other authorities must be destroyed after five years; information that has been disclosed must be destroyed after eight years. The archivist presented a proposal that, on the face of it, seems to meet our requirements. However, if there are any difficulties, we will talk to you before the clause-by-clause occurs. We believe that it meets our requirements and we are happy, in that case.

The Chairman: Could you clarify that, please? My understanding, after meeting with the officials this morning, is that if we are satisfied then you are satisfied. Is that correct?

Mr. Cullen: The officials are satisfied, and I am satisfied on the face of it. However, I want to make sure that the government is satisfied, as I am sure they will be. We will contact you immediately if there is any problem.

I hope that honourable senators will find that these four provisions respond in a meaningful and concise way to the concerns raised by this committee.

Before I conclude, I will mention that the government considered very carefully this committee's report on Bill C-22, including the suggestions for three additional amendments to the act.

In response, the government has moved quickly to introduce the amendments that the Secretary of State committed to make, and that I have just described. However, the government has decided not to proceed with any further amendments to the act at this time, and if I you will allow me, I will briefly explain why.

First, the committee report recommended that FinTRAC be required to obtain either consent or a warrant before entering a law office to verify compliance with the act, similar to what is required before entering a private home.

Such an amendment, in our view, would treat a law office like a private home, rather than like other places of business. The government believes that it would be inappropriate to require a warrant to conduct a compliance audit -- I repeat, a compliance audit -- of any place of business, including the law office. The provisions in the act parallel those in the Income Tax Act, which do not require a warrant except for access to a private house.

Second, Parliament requested that a parliamentary committee review the act within three years and every five years after that. At present, the act requires a review after five years.

With respect, senators, I submit that a five-year review is more appropriate, for a number of reasons. More important, there will not be enough experience or data available within three years to provide an accurate assessment of the effectiveness of the legislation or the operations of FinTRAC. In any event, committees of Parliament can undertake to review any legislation at any time and could opt to do so in this case.

[*Translation*]

Finally, the committee report recommended that the act require regulations to be tabled before a committee in each House of Parliament.

[*English*]

The act currently stipulates a 90-day public consultation period, following prepublication of the regulations in the Canada Gazette, and an additional 30-day notice period if significant changes are made as a result of those consultations. We believe that this process provides ample opportunity for parliamentary committees, if they wish to do so, to review the regulations proposed by the government.

The Secretary of State has sent to the chair of this committee a copy of the proposed regulations, which were prepublished in the Canada Gazette on February 17, 2001, and they are also available on the Finance Canada Web site.

[*Translation*]

In closing, honourable senators, I would like to thank you once again for your close study of Bill C-22 and for raising the issues that the government has addressed through the bill before us today -- Bill S-16.

[*English*]

The government has devoted considerable time and energy to crafting its anti-money laundering legislation in such a way as to meet the needs of law enforcement while protecting individual privacy. The amendments contained in the bill considered today result from this committee's invaluable input to this matter. The officials that are here today and I are pleased to answer any questions.

The Chairman: Could you clarify the difference between a "compliance" and a "search"? That information is integral to the whole question of the warrant.

Mr. Cullen: In general terms, if there is a reporting requirement under the act we are talking about a compliance issue.

Mr. Yvon Carrière, Senior Counsel, Tax Counsel Division, Law Branch, Department of Finance: When FinTRAC conducts a compliance audit, they verify whether, in fact, the required reports were prepared. They are not investigating to know whether money laundering has occurred, or some other criminal activity. In fact, they would not be authorized to gather such evidence to prove that a crime had occurred. In the case of a criminal search, a warrant is obtained, and the people who perform the search in a criminal matter will look for specific evidence related to that criminal infraction.

A compliance audit is simply performed to verify whether the reports and records required to be kept under the Proceeds of Crime (Money Laundering) Act have been kept and that the reports have been made.

Mr. Cullen: Any information obtained by FinTRAC during the course of a compliance examination cannot be disclosed to law enforcement under section 55 of this act for the purposes of a proceeds of crime (money laundering) investigation. If it were disclosed, it would render the information inadmissible in a court of law.

Senator Tkachuk: I have a question about the "dwelling house." It bothers me as it bothered Mr. Kelleher. Mr. Cullen, you implied that it was different from a business, but that would be news to me.

I received an article by Mr. Peter Hogg, Dean of Osgoode Law School, that states that the common law rule is that a police officer or government official has no authority to enter private property for the purpose of searching for evidence and no authority to seize private property for use as evidence, unless authorized by law. However, we do that from time to time, in that common law continues to apply and that we can sometimes, by statute, make an exemption to that. However, it was just the way in which you were talking about "house " that bothered me. The home is special, and my interpretation of it would be that which we have to protect. It is my right, as a citizen, not to have law enforcement officials come to my home or my place of business without a warrant, or anywhere else that I consider my property -- those places should be protected. This is an exemption that only applies to the Income Tax Act. As far as we could find, there is no other exemption like this.

Why do you need this special power? Frankly, it scares the hell out of me. Once you make this exemption, there will be others. If there is no evidence, why is it necessary to search a dwelling?

Mr. Peter Sankoff, Counsel, Human Rights Law Section, Public Law and Central Agencies Portfolio, Legal Operations Section, Department of Justice: You have raised a complicated question. I will try my best to deal with that and all other aspects.

My understanding of the case law generally, and especially in respect of the Charter of Rights and Freedoms, is that there is a fair distinction made between the dwelling house as the place most deserving of protection. In particular with relation to this act, I would draw a number of distinctions. This act is not normally designed to cover a dwelling house. It is not a place that would generally have activities that would generate suspicious transaction reports.

As a precaution, a section has been included to deal with dwelling houses in case there is activity that would generate these kinds of reports. Because it is unlikely that this will occur, a special warrant provision has been put in to deal with that. It is not uncommon for that to be the case. A number of pieces of legislation have distinctions about what can be done in a dwelling house and what can be done in any other type of place.

I do not disagree with your proposition, that, as a rule, we wish to have preauthorized judicial authority to go into any place.

Nonetheless, the case law once again has made a rather serious distinction between what we would call regulated activity and what we would call a search for criminal purposes. In this case, it is very clear that the particular matter that we are discussing relates to regulated activity. The centre is only allowed to go into these types of premises where they are regulating compliance.

As Mr. Cullen pointed out earlier, none of the information can be used. It is clear from the way the act is currently worded that any information obtained in the course of a compliance audit cannot be used in a criminal investigation and cannot be used by the centre to determine

whether money laundering has taken place. The sole purpose is for compliance. The manner in which this has been drafted goes a long way to ensuring that the distinction between regulatory compliance and a search for criminal purposes that has been made so clear in the case law is upheld. Therefore, I would see those two distinctions as making this situation special.

Senator Tkachuk: You mentioned the Charter of Rights and Freedoms. First, you are telling me that the Charter of Rights and Freedoms gives less rights than common law, which talks about property, not just dwelling place. Second, it is not the fact that you may find evidence of other wrongdoing that concerns me; it is the very act of government officials coming into my property. It is not the fact that you may find something but the fact that you have no right to be there in the first place, unless you have a reason to be there, and the reason should be supported by enough evidence to obtain a search warrant. I do not like you walking in. It is not because I am a criminal but because I do not like you walking in. You can have all these other exemptions, but as governments and legislators we have to prevent governments and police from walking in. We have a responsibility to do that, and that is what I am trying to do here.

Mr. Sankoff: I understand that. All I can say in response is that the number of situations where the government has the right to intrude on a business -- I hate to use the word "intrude," but let us say to assess a business or a property without a warrant for regulatory purposes -- are beyond my ability to number at this time. There are a number of areas where there is a purpose that is pressing. As I understand it, the justifications put forth for this initiative are pressing. I do not think this would be an everyday thing or that they would be going in at any time. It would be something undertaken from time to time for the purpose of ensuring compliance only. That, in my opinion, is not uncommon. In countless industries, government officials have the ability to go in solely to monitor compliance or to ensure that the very important process that is underway is actually taking place in the manner in which it was designed.

I understand the concerns about privacy here; nonetheless, the courts have generally accepted that for these purposes only. That is why the distinction about what is going on is so critical. They have generally accepted that the government needs to monitor compliance with various regimes, and the purpose that is being put forward for this one is seen as very important. That is where the distinction comes from.

Senator Meighen: Could someone refresh my memory as to what triggers the audit compliance initiative. What makes FinTRAC decide that they are going to undertake an audit compliance?

Ms Patricia M. Smith, Deputy Director, Policy, Liaison and Compliance, Financial Transactions and Reports Analysis Centre of Canada: Senator, a number of factors determine that we come in.

First off, we will have liaison officers in the field. They will be in contact with the reporting entities, finding out if they are comfortable with the legislation and with the regulations. I should point out that, as part of the regulations, there is a requirement to put in place an anti-money laundering compliance regime. The liaison officers will be going out and seeing if more information is needed to put such regimes in place.

Part of the job that we are doing now in terms of trying to become operational is to assess the training needs of the reporting entries. Hence, another factor that comes into place is this: What will be the training requirements of all these reporting entries?

Eventually, when we do become fully operational and start to receive transaction reports, we will have some statistics on the general nature of reporting and compliance. If 95 per cent of all entries from a particular sector are reporting, then we will know that there are some anomalies, and we will go back to the reporting entries and see if they understand the regulations and the law. Is there something they are not doing? Is the problem something to do with timeliness? Is the problem we are looking at something to do with their inability to connect with our reporting mechanism? They will be reporting largely through the Web or through a secure socket network.

There will be a number of methods by which we will be able to determine lapses in compliance. If, after looking at this and talking to the reporting entry, we determine there may be something more serious, then we would inform them that we are coming in to do a compliance examination, and we will give them feedback on the results of that compliance examination.

Senator Meighen: The reporting entity is any body that is required to report under the act?

Ms Smith: Yes.

Senator Meighen: It could be a law office.

Ms Smith: It could be.

Mr. Cullen: As I understand it, there could be situations where information would indicate that some intermediary, on the face of it, should be reporting, or there are sufficient grounds to believe that they should be reporting and the reports are not coming in. That would be cause for someone to ask the question.

Mr. Richard Lalonde, Chief, Financial Crimes, Financial Sector Division, Financial Sector Policy Branch, Department of Finance: I can give an example just to clarify that it is not just any business that will be reporting. The bill sets out very clearly that we are dealing largely with regulated financial institutions, and those are spelled out in clause 5 of the bill.

The bill also provides the ability to prescribe under regulation additional reporting entities, which we have done in the regulations that were prepublished in the Canada Gazette just recently.

As Mr. Cullen and Ms Smith have indicated, there may be instances where there may be gaps in reporting from certain sectors. I can give an example of the currency exchange business. There may be instances where, in one part of the country, FinTRAC may be receiving lots of reports from currency exchange businesses. Perhaps in another region of Canada there are very few. That may trigger a question as to why that is occurring and therefore prompt FinTRAC to inquire with those reporting entries in that region.

Senator Kroft: I am curious about this idea of reports that should be coming in. That suggests to me that you would take classes of institutions or offices or businesses and develop almost a statistical base saying that, given a certain volume in a certain industry, you should be getting a certain number of reports a month. Perhaps you are not meeting your quota. Is it that kind of analysis, or does there need to be some sort of a more specific fact-based trigger to prompt it?

The example you gave kind of fell in the middle. It was not exactly clear to me. Do you need a specific situation in order to trigger this, or will it be done on a statistical basis?

Mr. Lalonde: FinTRAC has the authority to do compliance audits on all reporting entries. As a matter of practice, it will not necessarily have the resources to visit all reporting entries on a routine basis and as such will have to decide and prioritize which entities will be conducting compliance audits. In the example I gave would be perhaps one criterion that they might use.

The legislation also provides, and I mention this in passing, the authority for FinTRAC to enter into collaborative arrangements with other regulators and other self-regulatory organizations for the purpose of carrying out this particular function of compliance audit as well.

Senator Meighen: Although you have answered the question, I am still not clear how you get this wonderful status of reporting entity. What do you have to do to get that? Do you have to be RBC Dominion Securities? Do you have to be Senator Kelleher's law office? How do you get this exalted status?

Mr. Lalonde: We use the term "reporting entity" to describe all those businesses covered under section 5 of the Act. Under this section, we talk about banks under the Bank Act.

Senator Meighen: There must be a catch-all clause.

Mr. Lalonde: There is an additional clause that allows us to respond to situations where, for example, internationally there may be new industries or new ways that money is being laundered. It allows us to add to the list of entities covered by the requirements by regulation.

As I indicated earlier, in the draft regulations that were prepublished on February 17, we have included, for example, the wire transfer business -- the Western Unions of this world -- as a business that ought to be covered by the requirements of the act. They may not be specified in the act, but they are prescribed in the regulations. We will be receiving views from that particular industry concerning that issue.

Senator Meighen: Let me turn, if I may, to the specific example of a law firm. How does a law firm fall into that status?

Mr. Lalonde: It would be in precisely the same manner as the Western Union or the wire transfer business would be included, by regulation.

The Chairman: That does not make sense.

Senator Meighen: Is my law firm obliged under this legislation now, or do I wait for a letter from you?

Mr. Lalonde: We have had extensive consultations over the last year or two with the Canadian Bar Association, the Barreau du Québec and others concerning the Proceeds of Crime Act, as well as the proposed regulations. At the association level, certainly, they are well aware of the government's intent.

The government has also prepublished these regulations and has announced this fact publicly.

Senator Meighen: With respect, I do not understand your answer to my question.

The Chairman: Is every Canadian presumed to read all regulations? Senator Meighen has an interesting tact here. Is a letter going to go out from FinTRAC to every conceivable suspect? Of course, I am using that word in quotation marks. Really, how does it start?

Ms Smith: There are a number of things. It is an iterative process on which we are just embarking. There have been consultations on the regulations that were prepublished; we are also commencing consultations on the guidelines that enumerate some of the requirements of the act.

As Mr. Lalonde has said, the regulation that pertains to lawyers is very specific. There are certain actions that a lawyer has to take before he or she becomes a reporting entity. He or she must be engaged in financial transactions. A lawyer giving out legal or criminal advice is not covered. It is only when he or she is engaged in very specific financial transactions. The regulation states that every legal counsel is subject to Part 1 of the act when he or she engages in any of the following activities on behalf of a third party, including the giving of instructions on behalf of a third party in respect to those activities. Then it lists the receipt or payment of funds other than those received or paid in respect of professional fees.

Senator Meighen: Let me pose a hypothetical situation. I am a client. I am interested in investing in a property in Ottawa. I send $500,000 cash to my lawyer in Ottawa, or $20,000.

Ms Smith: Are you the lawyer or the client?

Senator Meighen: I am the client. I am interested in buying properties in Ottawa. I have not sent the funds for the purpose of paying a fee.

Ms Smith: Your lawyer would probably then be a reporting entity.

Senator Meighen: That is my point. You will have many lawyers who are reporting entities because often, heretofore, at least, clients have given money to lawyers to hold for a future specific purpose.

The Chairman: Is that cash or cheque?

Ms Smith: It is only if it is cash for large cash transaction reporting requirments.

Senator Meighen: My colleague Senator Tkachuk just asked, if it is an electronic transfer, is it cash or cheque?

Ms Smith: If it is cash, your lawyer, as a reporting entity, must report the large cash transaction, which is any amount over $10,000. However, if you come in with a suitcase and

you make a number of smaller transactions, it might be considered suspicious and would also be covered as a reporting requirment.

Senator Meighen: What is the situation if it is an electronic transfer?

Ms Smith: I am not aware that lawyers have that capacity. It is covered, yes.

Senator Meighen: That qualifies as cash?

Ms Smith: It is a transaction that needs to be reported.

Going back to how to inform everybody, we have been dealing with the Canadian Bar Association.

The Chairman: Excuse me, but there is something really wrong here. Are you telling me every electronic transfer is subject to some kind of something-or-other? There must be thousands of these transfers every day.

Ms Smith: It is international.

The Chairman: Yes, international.

Ms Smith: The amount must be over $10,000.

The Chairman: That is nuts. That is how business is transacted every day. As an example, I just transferred money electronically to one of my children. Is that a suspicious transfer?

Ms Smith: No, sir.

The Chairman: Why not? It comes under your definition.

Ms Smith: It is under the definition of a prescribed transaction.

The Chairman: Someone has to report that?

Ms Smith: That will be reported.

The Chairman: It is idiotic.

Senator Tkachuk: That is what we were trying to say the first time.

Senator Meighen: To go to the other tack, the thrust of all this seems to be an assurance that the proper reporting procedure is being followed. Once we know that it is being followed, then everybody is happy.

Ms Smith: Yes.

Senator Meighen: I do not know where that takes us. I will now come at it from the other side. Now you are saying that anything that is discovered by action in the course of investigation cannot be used as evidence in a criminal prosecution. Therefore, we are going through all this sound and fury merely to ensure that we have a nice, tidy, complete reporting

function that goes nowhere except to allow someone to tick off and say, "Yes, the report was received in due and proper form."

Mr. Cullen: The first step is to get the reporting on track. Once the reporting is on track, the normal provisions would apply, I would suspect.

Senator Meighen: Let us say in the course of a totally normal compliance audit that you do come across something that is suspicious. I understood you to say that you can do absolutely nothing with it, under any circumstances. Is that correct?

Mr. Sankoff: The way it is drafted right now, that is the way it is.

Senator Meighen: What is the point of doing it?

Mr. Sankoff: The idea is that the persons who do not go further with these will be subject to prosecution for non-compliance. The idea, as we understand it, is not that persons captured by the act are going to regularly disobey the law. There are penalties for non-compliance. There are obligations in this act, and non-compliance is a problem, so the idea is that, over time, people will comply.

Senator Meighen: If I were a big, nasty money launderer, first, I would not be worried about an administrative slap on the wrist for not filling in some form; and, second, I would be sure to fill it out very accurately because I would be certain that you would be on my tail immediately if it were not filled out accurately, even though you might have told me that you would not do so. This is confusing.

Mr. Sankoff: It will not actually be the money launderer filling out the forms. It will be the other entities.

Senator Meighen: The money launderer's lawyer?

Mr. Sankoff: Theoretically, money launderers could engage in massive fraud, but in each case they will be subject to other penalties. There are other ways of deterring these sorts of activities.

Non-compliance is designed solely to deal with non-compliance. It is a regulatory function. Senators have expressed difficulty with the procedures that allow us to go in without a warrant to check for non-compliance. There is good reason why you are only allowed to go in for the purpose of non-compliance. It is quite reasonable that, in these circumstances, you cannot use that information for a prosecution.

The only reason that the centre is allowed in without the protection that has been expressed by senators is that it is strictly for non-compliance. If you were allowed to use that information, we might have a problem.

Senator Furey: Senator Meighen basically reiterated what has been said already in terms of any documentation that is found to be suspicious during a compliance. You are satisfied that section 55 prevents the use of that, is that correct?

Mr. Sankoff: The way it is worded, that is correct.

Senator Furey: Would you also say that you would be satisfied that it would include the use of it to ground an application for a warrant?

Mr. Sankoff: First, the centre is caught by various non-disclosure provisions. It is more than section 55. There is also the proposed amendment to section 54, which precludes the centre from using it in their analysis. The centre has very broad non-disclosure provisions. They cannot give it to anyone to get a warrant. The centre has no ability to get warrants on its own. Since they are precluded from disclosing it to the police -- or anyone else for that matter -- there is no way you could ground a warrant with that information. I would say you are correct.

Senator Furey: If that is case, you are back to the normal rules. If an investigating officer wanted to go into a business, he or she would have to satisfy a justice of the peace that there are reasonable grounds to believe, say, in this case, relevant records exist. That information would come outside of anything to do with a compliance audit. Is that correct?

Mr. Sankoff: That is correct, except what might be obtained during the prosecution for non-compliance, but it would not include the specifics of the records. Once there was a prosecution for non-compliance, it would be on public record.

Senator Furey: Presumably, that would follow an application for a warrant that was grounded in information not obtained through a compliance audit?

Mr. Sankoff: That is is not entirely correct. The person could be prosecuted for non-compliance. The centre has the ability to turn over material to the police strictly on non-compliance -- that is, where it is shown that there is non-compliance.

Senator Furey: A document that was found during compliance and could disclose criminal activity -- and I will not call non-compliance criminal activity; we will call it quasi criminal for now, just to differentiate -- could be used in a non-compliance prosecution. Is that what you are saying?

Mr. Sankoff: It would not be relevant to compliance, so it would not be used in that compliance prosecution.

Senator Furey: But it could be?

Mr. Sankoff: I have difficulty seeing how that could occur. If it did not relate to non-compliance, it could not be used in a non-compliance prosecution.

Senator Furey: But it could relate to non-compliance.

Mr. Sankoff: If it related strictly to non-compliance, it could be used in a non-compliance prosecution; that is correct.

The Chairman: Does anyone in your department have the vaguest idea how many wire transfers of over $10,000 are done in a year? It must be tens of thousands. Every time you buy

stock in excess of $10,000, you wire the money to the stockbroker or to the person buying the stock for you. That must represent many tens of thousands of dollars.

Ms Smith: We are engaged in those discussions with the industry. We are in the consultation phase and are attempting to establish whether reporting entities will be able to use batch file transfers for reporting. That is one of the key elements we are working on, namely, estimating how many electronic transfers FinTRAC will receive.

The Chairman: You will need an credible army of people to police this.

Senator Meighen: That is another reason to review this after three years.

Mr. Cullen: This is new territory for Canada and for us. We want to make sure that the net is cast widely enough. Once you make exceptions, that is where the money launderers will go. We have also said at this committee that, given the regulatory regime we have, we can adapt and change and meet new requirements as they arise while being more flexible in terms of changing the guidelines regarding what comes into the net and what does not. At the first instance, we want to be sure that we do not create openings so that would be easy for people to come through.

We will grow and learn with our experience. I am not here to tell you that we have every single answer on every single type of transaction. We will be developing that through regulation and guidelines as this progresses.

Senator Setlakwe: In the case of compliance, you said there was a preclusion. If that occurs, what do you do? Do you not report it to the police? In the case of compliance, do you find something that is disturbing and that should be reported to the police but you are prohibited from doing so?

Mr. Sankoff: On material that is discovered, if you discover that the person has not complied, that means the regulator entity is subject to prosecution for non-compliance. The rest of the material -- that is, the material that may reveal other crime -- is not reported to the police unless it is for the purpose of the non-compliance prosecution solely.

Senator Tkachuk: If you find cocaine, there is no problem?

Mr. Sankoff: There is a general exception at common law, namely, the plain view exception. If, for example, you walked in on a murder, you are not precluded from calling the police and telling them that a murder is taking place.

Senator Tkachuk: If the cocaine is on top of a desk versus being locked up in a safe, is there a difference?

Mr. Sankoff: The limits of the doctrine have not been explored, so I cannot give a comprehensive answer. Generally, the courts hold that compliance inspections are designed to ensure compliance. If the centre went beyond its powers, I have no hesitation from saying the courts would stop them from doing so. While your situation may provide some border line

examples of cocaine on a desk, the power here is toward compliance. If the centre abuses its powers, the court still retains control to censor that.

Senator Setlakwe: If you come upon an indictable offence, you would not report it?

Mr. Sankoff: If compliance is being done, it is not the centre's purpose to report on other activities. The centre is a non-investigative agency.

Senator Tkachuk: When we met last spring, we did not really get a good definition from you of "suspicious transaction." We had problems with that term, if you remember. Has there been anything further regarding that? What is a "suspicious transaction"?

Ms Smith: That is not an easy question to answer. We have written a draft guideline that is out for consultation now. A "suspicious transaction" will differ in the context in which it is found. There are few examples of an individual suspicious transaction but, rather, in a context where the transaction itself is suspicious. Let me try to simplify this.

If you are the Toronto-Dominion doing private banking, you will be looking for very different indicators of suspicion than if you are the credit union in Lower Stewiacke.

It will, in part, relate to how well you know your client and what is normal for that client's activity. If your client is a business and normally they have cash deposits of $10,000 four times a week, then that is normal. If a $10,000 deposit is made, there is no suspicion. If, on another day, $1 million is suddenly deposited, that may or may not be suspicious depending on what the bank or the entity knows about that client.

Senator Tkachuk: Last June we were under a tremendous rush to pass Bill C-22 because the government needed to get the centre up and running. How many employees do you have at the centre and what do you think its projected annual cost will be for the year?

Ms Smith: Right now, we have approximately 70 per cent of our total employment in the centre. We have approximately 70 employees. I believe our budget for this year is $20 million.

Senator Tkachuk: Last year, I believe you said it would be $15 million.

Ms Smith: I do not have the exact numbers.

Senator Tkachuk: Do you expect to have 100 employees?

Ms Smith: Right now we are resourced for around 100, yes, and we have approximately 70 in place.

Senator Tkachuk: Would you send me a letter with a more precise answer on that?

I am not sure if what I experienced was a mistake on the part of Nesbitt Burns, but I had what they call a locked-in retirement plan from a previous employment. At the age of 55, I wanted to convert that locked-in plan into what they call a RRIF. The broker requested that I produce a picture ID. I have known this broker for 15 years and therefore asked him why picture ID was necessary. He told me that it was to conform with either this act or the act passed previously, and that it had to do with money laundering. I refused to produce the ID and he

informed me that I would then need to sign a waiver. I signed a waiver and sent it away. I do not recall what the waiver stated. It was small print.

I thought that odd, and that is why I worry about bills like this. Why would such a request be made? Would any of the department officials here today know the reason for that request? Why would a picture ID be required? What was the waiver all about?

Mr. Lalonde: The "know-your-customer" principle is one of the cornerstones of the international anti-money laundering standards. As well, being able to ascertain the identity of your client is key. In the current regulations, which have been in force since 1993, there is a requirement that those financial institutions covered by the previous act ascertain the identify of their clients by reference to a number of pieces of identity. For example, it could be a driver's licence or another similar document.

It is required of the security's broker or the financial institution, when opening up new business relations with a client, to ascertain the identity of the client by reference to a driver's licence, for example. There is also a requirement to record that fact and take note of the reference number. That is the current requirement.

Senator Tkachuk: In order to open an account an individual must basically put his or her whole life on paper, just to open the account, right? The paperwork to be filled out is quite thick. The situation I described referred to the RRIF account. I had already filled one in for the other account to get the locked-in plan.

What happens with the picture ID? Would it be put on a wall in the broker's office so that they can throw darts at it because I am a senator? If I had sent it in, what would have happened to my ID? Would it have been sent to the government or would it be kept in a file in the broker's office?

Mr. Lalonde: There are several ways in which securities brokers are allowed to ascertain the identity of their clients. If we are talking about picture ID, typically what must occur is that the institutions would need to ascertain your identity face to face. There is no requirement for them to maintain a photocopy of whatever picture ID you gave them' they simply must record the reference number. It is due diligence for them. It records the fact that they have actually done this.

Senator Tkachuk: I just thought it was odd.

Senator Furey: I should like to go back to this issue of documentation disclosed during a compliance audit.

It was my understanding that any information obtained during a compliance audit could not be disclosed, in accordance with section 55, among other sections, as you pointed out; that in fact if information were disclosed it would render the evidence inadmissible. I hear you saying today that if documentation were discovered it could be used in a non-compliance prosecution, which would put it in open court. Is that correct?

Mr. Sankoff: That is correct. It could be used solely for the purposes of non-compliance. It is highly arguable that material could not be subsequently used in a prosecution for a different

purpose because of the manner by which it was obtained. The act makes clear, first, that the purpose in obtaining that information is for non-compliance. There are also constitutional guarantees that back up that basic premise.

Senator Meighen: I appreciate, understand and support the idea of the necessity of protecting privacy. On the other hand, Mr. Cullen, you have said that this put us right up there with our international allies in the fight against organized crime in money laundering, et cetera. If, as you say, the bill - which is entitled "An Act to Amend the Proceeds of Crime (Money Laundering) Act" -- is designed solely to ensure that people are complying with an administrative requirement and that any evidence gathered in that process can only be used for a non-compliance prosecution, how will we advance the war against money laundering?

Mr. Cullen: Senator, maybe we are not communicating well. First, if people are not complying with the act in terms of reporting then FinTRAC and the whole legislative package cannot click into operation, obviously. If people are not reporting when they should be, then how can we ever get at money laundering? Therefore, you must have a mechanism to get people who should be complying to comply with the reporting requirements of the act. Once people are reporting, then the normal provisions of the act and the legislative package click into place in FinTRAC.

The senator has raised an interesting point. If someone keeps non-complying, then that is probably a challenge and that is one of the balances that we needed to bring to the table -- balancing privacy with the need to deal with money laundering. If someone refuses to comply continually then that would be a challenge.

We are looking at a small percentage. Many organizations will want to comply, or they will comply. They may not know that they should be complying or they may not be complying in the appropriate way, and we want to ensure that they will be complying with the act and reporting.

For those players who do not comply because of the balance of privacy issue, we will be challenged. I am sure it will be challenging.

Senator Meighen: Presumably the proposed legislation applies only to people in Canada. I see a nod from behind. I would suspect that 99.99 per cent of those people are not money launderers. They may be used by money launderers unknowingly; is that correct?

Mr. Cullen: I think there may be more than you would think.

Senator Meighen: There might be. That is fine. I am still having trouble understanding how the reporting will do more than perhaps establish a pattern of carelessness or innocence, or a pattern of continuing non-compliance, which then leads you to say that there is something more here.

Mr. Cullen: Let me give you an example. If, under the Income Tax Act, someone is not filing an income tax return, in a sense they are participating in tax evasion. However, there are various forms of tax evasion. If they are not filling in a tax return, how will you ascertain whether they are evading tax? You must first of all have people reporting and complying with the reporting provisions of the legislation. Once they are doing that, then the provision kicks

in. That means that transactions are analyzed. If there is other corroborating evidence that would suggest that the transactions are suspicious, that information would then be forwarded in a tombstone way to the RCMP, and so forth. Without any reports, there is nothing much that one can do with anything, I would suggest.

Senator Meighen: Fair enough.

Senator Furey: Let's go back to the question on the evidence. You are still satisfied, I presume, that there is the safeguard of the claim on solicitor-client privilege there, even during a compliance audit on any documentation.

Mr. Sankoff: Absolutely. No matter what, the solicitor-client privilege exists. To be honest, whether it in here or not, solicitor-client privilege is a claim at common law. The express protections are set out here. The solicitor-client privilege will always take precedence in this matter. If there is a valid claim of solicitor-client privilege, it will go before a judge to be tried.

Senator Furey: We all need diligent solicitors, Mr. Chairman.

Senator Wiebe: My question may be a little comical. I am not a lawyer, and I cannot always understand some of their concerns.

Let us assume that this proposed legislation is passed and that I am in the drug trade and have had a successful week. As such, I have a pile of money that I do not know what to do with it. I cannot process it through the regular system because it will be detected by your people, who are doing a great job. If I hire a backhoe operator and have him bury the money for me, will he be under the law of compliance?

The Chairman: The backhoe operator may not know what is in the container.

Mr. Lalonde: The short answer is "no."

[*Translation*]

Senator Poulin: I would like to thank Mr. Cullen and Mr. Peterson for their speedy reply to the questions we raised during our discussions on Bill C-22. The four changes that have been tabled deal directly with the centre framework legislation. I would like to ask a similar question to the one asked by Senator Tkachuk. If I understand correctly, the centre is developing. It has a staff of 70 and an annual budget of $20 million, approximately. Under Bill C-22, what is the status of the centre as a government agency?

[*English*]

Ms Smith: We are set up in the law as an independent agency at arm's length from law enforcement agencies.

Senator Poulin: What is your relationship with the RCMP?

Ms Smith: We are at arm's length. It is very clear in the legislation that we are at arm's length from all law enforcement agencies. I could give some specifics as to what that means.

Senator Poulin: No, I understand. What is the relationship, therefore, between the agency and the Department of Finance?

Ms Smith: That is a bit more complicated.

Mr. Lalonde: The agency reports to Parliament through the Minister of Finance. Hence, the Minister of Finance has oversight responsibilities. The legislation spells out the kind of oversight responsibilities the Minister of Finance has and the kinds of information the minister is entitled, to exercise that responsibility. It is very clear in the legislation that the minister does not have access to any personal identifying information.

[*Translation*]

Senator Poulin: Will the agency table an annual report to the House?

Mr. Lalonde: Yes.

Senator Poulin: On the issue of privacy, you said that any transaction of more than $10,000 must be reported, even if, for example, I am giving money to my daughter who lives abroad. Is that right?

Mr. Lalonde: The payment bill stipulates that all transactions must be reported. Any cash deposit of $10,000 or more must be automatically reported by the bank to the new agency.

Senator Poulin: If I ask my Canadian bank to transfer $15,000 to an American bank for my daughter who lives in a different city, is the Canadian bank required to report this transaction?

Mr. Lalonde: As things stand now, the payment bill requires any transfers of $10,000 to be reported.

[*English*]

Senator Tkachuk: To follow up on that, just so I understand this electronic transfer, because we are talking about cash here when talking about illegal transactions, right? You do not usually pay by credit card if you are doing something illegal; the transaction is usually done in cash. I could understand perhaps an international transfer of money, from here to Bermuda or the United States, or vice versa.

However, to clarify this, say that there is a transaction between two Canadian bank accounts. Let us say that Senator Kolber transfers $12,000 to my account in Saskatoon.

The Chairman: That is highly unlikely.

Senator Tkachuk: Would there be a requirement to report on that?

Ms Smith: No, there is no requirement in the regulations.

Senator Tkachuk: Therefore, domestically there is no requirement.

Ms Smith: No, internationally the requirement is over $10,000.

Senator Setlakwe: I wanted to ask if it were international or domestic.

The Chairman: My initial understanding was that it applied to any wire transfer, but Ms Smith has just said that it is only international.

Mr. Lalonde: The current draft regulations only concern international wire transfers.

The Chairman: That was not expressed clearly before.

The committee fully understands that we are out to get the "bad guys" and not out to abuse the "good guys" -- not to be simplistic about it. Almost all of the questions had to do with compliance. We have not heard much, if anything, about what should be done when we have those voluminous reports. We all appreciate that these are early times and that the waters are being tested as we proceed.

The challenge is huge and it is not patently clear how this is to be resolved. One of the suggestions that I would make to this committee is that we make a reference to the Senate to have a review one year from now. That way, the appropriate officials will be able to outline their experience on this issue to that date. I urge the committee to consider inviting the witnesses back in one year or so for an update. Perhaps by that time there will be some anecdotal evidence, if nothings else, about who has been abused in such cases and who has not. The witnesses could also tell us whether any "bad guys" have been caught and whether the system has worked.

With that in mind, I thank all the witnesses for their participation today. We, as a committee, will do our best to see this matter through.

March 21, 2001 [Standing Senate Committee on Banking, Trade and Commerce]

Senator Furey: At the end of our last session, at which we heard from the archivist, there was a question about whether we would amend the clause where we asked for a notwithstanding clause pertaining to the destruction of records - notwithstanding his act. Steve Campbell, from Senator Kolber's office, and myself met with the officials who had discussed with the archivist what particular amendment he wanted. I did not meet with the archivist myself.

The clause pertaining to records now reads:

Notwithstanding the National Archives of Canada Act, shall destroy each report received and all information received or collected on the expiry of the applicable period referred to in paragraph (*d*).

That is, the fire-year and eight-year periods.

The archivist has asked that we amend that clause by stating:

shall destroy each report received, and all information received or collected, *after* the applicable period referred to in paragraph *(d*), *in accordance with Records Disposition Authority No. 2001/003 issued on January 22, 2001 under section 5 of the National Archives of Canada Act, without taking into account any subsequent amendments to or repeal of that Authority.*

My concern at the time was whether or not this particular directive, which was given by the archivist, would be repealable either by him or by his successors. When I discussed it with officials from the department, I was told that if we used harsher wording than "without taking into account any subsequent amendments to or repeal of that authority" and if we were to say, for example, "the archivist will issue the authority and that will be non-repealable," we would be dangerously close to attempting to amend the National Archives Act. Of course, we cannot do that with this particular bill.

My concern is that while the proposed amendment leaves the archivist free to do his job, that is, to make or to issue directives to destroy or to save, the officials are telling us that we can ignore that directive. That directive would be ineffectual.

My concern with that is, if that is the reality, if that is the practical effect of it, then we are just trying do through the back door what we cannot do through the front door, which is amend his act. I am saying, for greater certainty, even though it may not be what the national archivist wants, we should stay with the notwithstanding clause in the proposed amendment.

The Chairman: Is that clear, gentlemen?

Senator Tkachuk: I have no problem with that.

Senator Furey: The notwithstanding provision is certain. Even though officials are telling us that this one would stand the test, I have some concerns that it would not. My recommendation would be to go with certainty.

Senator Tkachuk: As it is now, we want them destroyed, right?

Senator Furey: Yes.

The Chairman: Yes. Is it agreed, gentlemen, that we consider the bill clause-by-clause? Is it the intention of any honourable senator to propose an amendment?

Senator Tkachuk: First, I wish to make a statement on the money laundering bill. It will become clear when I finish why it is important that I make a statement.

We studied Bill C-22 last June. At that time, our committee felt strongly about a number of issues. Since the House had already recessed for the summer break, the government asked that the bill be passed unamended. The minister promised that certain amendments of concern would be brought back in the form of a new bill at his earliest opportunity. The minister stated this is a letter, a copy of which you all have.

My understanding is that this letter was drafted and, due to a misunderstanding on the part of the Chair of our committee, which may have been caused my me, him, or both of us, he believed that the Conservatives refused to negotiate. As a result, our specific concerns were not relayed to the minister. Once that misunderstanding was cleared up in committee, we were still left in the predicament of passing the bill unamended until these concerns could be addressed at a later date, which was the next session of Parliament.

Liberal members felt generally that their concerns were met by the letter, but were willing to attach to the committee report a list of observations, which we all agreed to, which were really our observations on Bill C-22.

While we support being tough on crime and giving much- needed tools to government to track down money launderers in this country, we also believe strongly in providing a check on that same government.

That being said, with the establishment of a new agency, FINTRAC, or Financial Transactions and Reports Analysis Centre of Canada, we remain unsatisfied with the clause in Bill C-22 that instituted a five-year review.

I realize that this point could be considered out of order, which is why I asked, and the Chairman so kindly let me go ahead with this, as it does not fall within the scope of Bill S-16. However, I am asking honourable senators to hear me out. I believe our Chair and our members are reasonable people. In all my dealings with the Chairman he has been so.

Our discussion of the letter is reported in the transcripts of the committee hearing. I am quoting myself here when I say that the letter was sent to the Chairman from Mr. Peterson. I asked:

Do you know whether he would be willing to make changes in the letter? Does this letter come about because the minister and his officials were listening to the witnesses and they said, "Oh, these are the items," or was there a whole list of items from which he decided?

The Chairman: I hear where are you going and you are obviously free to go wherever you like, but my understand ing was that you folks would not accept a letter of any kind. That is why we worked out a letter which was acceptable to us to show to you. You told me that nothing less than regular amendments would do and that letters were not acceptable. You are catching me unaware here.

Which I did say. That did not mean that I did not want to negotiate. That is simply what I said. There are two issues here. You had asked whether we would accept the letter. Of course, over the last seven years that I have been here there have been many letters, but nothing has ever happened. That is why we had many concerns over the letter.

If it was not for that misunderstanding, I believe there would have been a very good chance that our review clause would have made this bill. In fact, I have reason to believe that the drafters of this bill in concept are in this room right now.

I am not sure, but I think so. That being said, I humbly ask all senators on this committee to consider unanimously supporting the adoption of my amendment to institute a period of review of three years rather than five years. We all agreed to this in our observations.

It will still be up to the Senate to decide ultimately whether this amendment shall pass. I will have to make my case again before a point of order is called in the Senate. I understand that, according to Beauchesne's and Montpetit and Marleau, scope is a convention of Parliament. In fairness, a committee can choose to overlook a potential point of order if the feeling is unanimous. If it is not unanimous, I understand.

I would like to change the review clause to three years because I think five years is too long to wait to see how well the new agency is operating and all our members feel that way. In fact, last week in committee there was testimony suggesting that a review would even take place within one year, and the chairman asked Minister Cullen whether he would come back in a year and he said that he would. I do not think anybody disagreed in principle with limiting it, and I have amendments here for one year or three years, whatever the wishes of senators are.

I think five years is too long and so I have my amendment.

The Chairman: Would you care to make it formal, please?

Senator Tkachuk: I would, or you could wait until we get to that part of the bill. I think I handed it to the Clerk.

Is it possible to have some discussion as to how members feel before the amendment is proposed?

Let us put it this way: If there is no consideration whatsoever by the government to passing any amendment, to giving any truck to one, we would prefer to have the amendment on division, so at least our point of view is stated in the record rather than through a point of order. That is what I am asking honourable senators to do here today.

The Chairman: My impression is that members on the Liberal side want to go ahead with it as is, which is five years.

Senator Tkachuk: Right.

The Chairman: Do honourable senators agree with that?

Senator Furey, you are the sponsor. Why do you not get into this?

Senator Furey: Just a comment on Senator Tkachuk's issue. I have really no problem with a three-year period, except in this instance, where it is the first three-year period. There is really nothing going on there yet. It is not staffed. Therefore, one of those three years will probably be wasted in terms of collecting information and being able to do a proper assessment. With respect to three rather five, I really have no problem with it at all. It is just that, for start-up reasons, I do not think three is long enough. That is probably the message we were getting from officials.

Senator Tkachuk: You mean one year is too short, three years is not long enough, and five years is about right?

Senator Furey: Yes, that is basically the assessment.

Senator Tkachuk: Are you saying five years, and three years thereafter, or every one year thereafter? Would you be agreeable to that?

Senator Furey: I certainly would be agreeable to five and then every three years. I have no problem with that. I am not speaking for everyone else, obviously.

The Chairman: The only reasonable thing to do would be to recess for three minutes and discuss it.

Senator Tkachuk: That would be fine.

The Chairman: Is that all right with you?

Senator Tkachuk: That would be great.

The Chairman: Is that your only amendment?

Senator Tkachuk: That is the only amendment we have.

The Chairman: Let us recess for three minutes and we will decide.

(The committee suspended)

(Upon resuming)

The Chairman: After much consultation and hearing advice, by Senator Tkachuk's own admission, the proposed amendment is out of order, and I so rule. Shall we continue?

Shall the title stand postponed? Shall clause 1 carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division. All on division.

The Chairman: In other words, you are against each one of them.

Senator Tkachuk: You can do it anyway you like.

The Chairman: It is a question of how we report it.

Senator Di Nino: On division.

Senator Tkachuk: Report it all on division.

The Chairman: Shall clause 2 carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division.

The Chairman: Shall clause 3 carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division.

The Chairman: Shall clause 4 carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division.

The Chairman: Shall the title carry?

Some Hon. Senators: Agreed.

Senator Tkachuk: On division.

The Chairman: Shall I report the bill?

Some Hon. Senators: Agreed.

Senator Di Nino: On division.

The Chairman: The Clerk tells me that when we report a bill, it cannot show on division, but the minutes can.

June 11, 2001 [House of Commons]

Hon. Jim Peterson (for the Minister of Finance) moved that Bill S-16, an act to amend the Proceeds of Crime (Money Laundering) Act, be read the third time and passed.

He said: Mr. Speaker, what we are dealing with here is an amendment to the anti-money laundering legislation that was passed by the House a year ago. These amendments spring from a review of the legislation in great detail by the Senate.

I would like to commend hon. senators for the way in which they gave the bill a great deal of scrutiny but did not hold up the passage. They said they would come back and revisit it but would allow the bill to pass in its original form. I would like to thank them for the scrutiny they have given it and for the way that they have expedited the passage, at the same time achieving a bill that fulfils the purposes and needs.

Money laundering in Canada is anywhere between $5 billion and $17 billion a year. The bill would fight organized crime and the proceeds of crime through a mandatory reporting of suspicious transactions and the reporting of large transfers of money across borders, which would be carried out by the Financial Transactions and Reports Analysis Centre. The institutions would report to it and it will be able to analyze the data. What I think we have achieved, which may be unique in the world, is that we are respecting the privacy of individuals and at the same time fighting crime. That is the balance we have struck and I believe it is a very good balance.

I would like to thank all members of the House for their consideration of the bill and for its speedy passage in the same manner that they gave speedy passage to the main bill itself one year ago.

Mr. Ken Epp (Elk Island, Canadian Alliance): Mr. Speaker, I know that the Liberals are always delighted when I rise in debate as one of the first three speakers who, according to the rules, has 40 minutes available.

I did that in debate on Bill S-3, the transportation bill. I hope that my intervention there will actually result in a ball starting to roll that will change the laws of the country. I am hoping for changes to the laws right across the North American continent so that there will be uniformity, so that there will be understanding on what the rules are and so that in obeying them we will save lives. That is the objective.

Now we are speaking about money laundering and the role government has to play in order to prevent criminal activity on the part of members of our society who choose to engage in crime.

The motivation of criminal activity is almost always that of earning money in an illicit fashion, so this money somehow has to be brought into the system without it being identifiable.

I know that a lot of people in the country have some concerns about the potential for some day having a cashless society. Actually I am one of them. It has one interesting feature if we stop to think about it. If instead of actually having cash in our wallets, all of us had computer cards that represented cash, it would of course be easy for people to transact business. It would really be equivalent. Instead of withdrawing four $20 bills from a bank machine in order to have $80 in cash, I could simply put my cash card into the machine and ask the machine to transfer $80 from my chequing account or whatever it is to the card. When I wanted to purchase something, instead of tendering $12.38 and then getting change I could simply give my card. The machine would subtract that from the balance on the card and I would walk away.

That could be done anonymously. It would be great. However, it could also be tracked and that in fact is one of the great objections that many Canadians have to that kind of scheme. There is genuine concern that if we ever get to that then the term big brother is watching would take on real meaning. It would mean that even if we stopped to buy a pop and chocolate bar there would be evidence that could be hauled out later. Most Canadians reject that kind of monitoring of our activities, so there are some problems with it. However, it could be legislated that such data could be used only in an investigation of criminal activity.

If we had such a scheme, just look at how difficult it would make it for people who engage in crime. They would somehow, either through a bank account or through a cash card, have to force other people to put money into their account in one form or another. It would be traceable and therefore it would be a lot easier to put a brake on a lot of criminal activity. I sometimes think it would be quite hilarious if someone walked into a bank with a gun, pointed it at the teller and demanded that $30,000 be transferred to an account. It would hardly be an anonymous transaction. A person would not get very far before officials were able to catch up with him and charge him with the appropriate crime.

That is not what we are talking about today. We are talking about some other means of tracking financial transactions that are related to the criminal industry. I have never heard of a criminal who demands payment by cheque when he or she does something illegal, because cheques are in fact traceable. It is called a paper trail.

About 10 years ago when the GST was brought in there was an awful lot of illegal activity, because in order to avoid the GST people said they would do renovations to houses or fix cars for a certain amount provided that they were paid cash and there was no paper trail. Then there was no GST and they did not have to declare it on their income tax. Basically, it was tax free money which meant they could do it for half the price.

I understand that sometimes they charged three-quarters of the price, so they basically split the earnings so to speak, but it was illegal. If Revenue Canada, as it was called at that time, found out about it, then appropriate actions were taken. However this was the lack of the paper trail.

How do we get a paper trail on criminal activity? Obviously these criminals will avoid the paper trail. Bill S-16 is actually the completion of Bill C-22, which was given assent in the previous parliament, if I am not mistaken. I do not know if hon. members will recall, but I believe that was the bill that eliminated the $1,000 bill. It is much more difficult for large

amounts of money to be transacted if people literally have to have truckloads of $20 or at the most $100 bills to do the transaction.

That was also the bill that included some of the measures which we are talking about today. As the parliamentary secretary said now there are some refinements being made. I would like to say a few things about them.

First, how long can this information be retained? The bill is amending the new organization called the Financial Transactions and Reports Analysis Centre of Canada, commonly called FINTRAC. If financial organizations transact a large amount of money in cash they are required to report it. Those financial institutions, like banks or credit unions, will report their transactions to FINTRAC.

This raised a number of questions. As I said, how long can the centre retain this information? For example, if I went to my bank and deposit $50,000 in cash, and maybe $50,000 is not very much money to some members but it sure is to me and my friends, people might wonder how I got it. They might wonder if I got it through some illicit operation. However, that would never happen. In case someone else did something like that, the financial institution would report the cash deposit. If I reported it, FINTRAC would then have the obligation to look at it. If it was suspicious it would turn it over to the law enforcement agencies for investigation.

Let us say that I am investigated and there was nothing wrong. The institution would have his information. How long would the centre retain the information it collects? Bill S-16 deals with that. It says that the information reported to them cannot be kept more than five years. If it is transmitted onward to the law enforcement agencies, then the information can be keep for eight years but no longer, in which case that information must be deleted from all computer files and all paper files must be destroyed.

When and how will it dispose of that information? That is also in this particular bill, as I have just indicated. What information may the centre disclose to law enforcement authorities? That is another very important question because the original bill just said similar information and it was left undefined. Similar to what? One thing this bill does is to insert only one word in one of the clauses. It inserts the word identifying information. In other words, a certain amount of information such as name and address can be included. The information which it is entitled to keep and transmit must be identifying information in terms of the suspicion, or the details of the transaction itself or the identification of the individual. It cannot go on a wild goose chase.

Clause 3 of the bill deals with the jurisdiction of the courts. There is always a problem with this. If a government agency has the right to do something and I disagree with it, can I appeal? That was not clear in the original act. This clause in the bill will clarify this and allow courts to have jurisdiction over any disputes.

What happens if an agent from the centre feels that it is information which could lead to a criminal charge? Does he or she give it to the law enforcement agency without any accountability? The fact of the matter is we are dealing with people who may be innocent.

We want to do as much as we can to find evidence against those kinds of individuals, convict those who are guilty and bring them to justice. At the same time, however, we do know if many people are charged with certain activities of which they are not guilty. They should be able to defend themselves.

The issue of the courts is one thing. Another is that any information which is deemed eligible to be reported, cannot be reported without the person first being given the opportunity to contact a lawyer. One may wonder why, if it involves an accountant for example.

At the present time accountants do not have the solicitor-client privilege that pertains to the legal profession. That person could refuse to give information and decide to withhold it as being client privilege. The person now would not be required to give that information without first having the opportunity to contact a lawyer who could look at it, then on behalf of the client say it was client-professional privilege, and he could take it. This is a safeguard which should be included in order to protect those people who are innocent and, to a degree, protect the process so the person who is guilty cannot get off on the technicality that his or her rights were abused. That is a very important clause.

I thought it would be useful for members of the House and for anyone else who happens to be observing the debate today to know a little more detail about Bill S-16. It is a bill which strengthens the money laundering legislation in Canada so those people who are involved in criminal activity can be correctly identified and brought to justice. I support this bill.

[*Translation*]

Ms. Pierrette Venne (Saint-Bruno—Saint-Hubert, BQ): Mr. Speaker, I am pleased to have this opportunity to speak today on the third reading of Bill S-16, an act to amend the Proceeds of Crime (Money Laundering) Act.

On June 29, 2000, Bill C-22, or the Proceeds of Crime (Money Laundering) Act received royal assent. The purpose of this statute is to make it easier to prevent money laundering of the proceeds of crime by creating a financial transactions and reports analysis centre responsible for gathering, managing, analyzing and distributing reports of suspicious operations and any other pertinent information.

In fact, the inauguration of a mechanism for the reporting of suspicious transactions and major transborder capital transfers, as provided for in Bill C-22, was in response to the problems raised by the financial action group against money-laundering.

This would be a good opportunity to point out that the Bloc Quebecois had supported this government initiative, out of a concern to protect the Quebec population from the calamity represented by organized crime. Moreover, in order to make money laundering more inconvenient, the Bloc Quebecois were the ones behind the withdrawal of $1,000 bills and the requirement for banks and other financial institutions to report any suspicious financial transaction involving $10,000 or more in cash.

Before I go further, money laundering may be defined as follows. It is the process by which the proceeds of crime are converted into assets whose origins are difficult to trace. Despite all, we know that 70% of the money laundered in Canada is drug money. The remaining 30% comes from activities as varied as under the table gaming, tobacco and alcohol smuggling, fraud, counterfeiting and petty computer and telecommunications crime.

As we know, money is the sinews of war, and the one waged by the authorities against organized crime is no exception. Internationally, proceeds from crime entering the financial market represents hundreds of billions of dollars. So, considering that the prime motivator behind organized crime is lucre, and here I am speaking of huge sums quickly pocketed, the

confiscation of such laundered proceeds hurts a lot more than the usual sanctions of fines and prison terms.

Legitimate or not, every business aims at making a net profit. By way of example, let us look at a business whose activities are on the up and up. Suppose that for some reason or other the business is taken to court and for purposes of discussion, let us imagine that at the end of the trial it is sentenced to pay a fine or to pay damages. Of course, the business will feel it but this comes with the territory.

The same holds true for organized crime. A jail sentence or a fine is among the inherent risks associated with criminal activities. However, by depriving an organization of its most profound motivation, we destroy the directly proportional relation that exists between the risks and the benefits. So, getting our hands on that organization's assets will weaken it from an economical and moral point of view. In other words, we must show that, indeed, crime does not pay.

Even though it does not at all change the substance of the Proceeds of Crime (Money Laundering) Act, Bill S-16 does address some issues raised during the hearings held on Bill C-22 by the Standing Senate Committee on Banking, Trade and Commerce. The four changes included in the bill should address the following issues.

How long will the Financial Transactions and Reports Analysis Centre of Canada keep the information that it collects? When and how will it dispose of the information that it will have gathered? What information can the centre transmit to law enforcement bodies? Will the federal court have the power to order the centre to transmit the file of an individual under the Privacy Act and the Access to Information Act? Finally, who is authorized to make a claim of solicitor-client privilege?

We must ask ourselves if Bill S-16 adequately addresses these concerns, and this is what we are going to do.

First, we can say that clause 1 responds satisfactorily to the first two questions raised before the standing Senate committee. This amendment sets out the circumstances justifying the maximum retention period of eight years for reports and all information.

This retention period shall be enforced when the centre forwards information either to law enforcement authorities or to the Canada Customs and Revenue Agency, the Canadian Security and Intelligence Service, the Department of Citizenship and Immigration, an agency in a foreign state or an international organization with a mandate similar to the centre's.

Moreover, the addition of paragraph (*e*) to section 54 of the Proceeds of Crime (Money Laundering) Act provides that each report received and all information received or collected shall be destroyed on the expiry of the applicable period. This paragraph therefore adds certain necessary clarifications regarding the duration of retention and the destruction of information.

Similarly, with the addition of the term identifying information in paragraph 55(7)(*e*), the purpose of which is to clarify to what the information is similar, the second clause of Bill S-16 thus responds to the third question. The purpose of this amendment is to clarify that the identifying information in question is that found in paragraphs (*a*) to (*d*).

In our view, this clarification was not needed since paragraph 2(e) is interrelated to the previous ones. But since this is a catch-all paragraph, I guess someone felt the need to make this clarification which does not change anything to the original provision. If this amendment can clarify things for some people, great.

With respect to the fourth question, clause 3 of Bill S-16 was drafted because initially the federal court was not allowed to make an order for disclosure. In fact, such an order could only be made pursuant to subsection 60(4) of the Proceeds of Crime (Money Laundering) Act.

The amendment ensures that no provision in this legislation can prevent the federal court from ordering the director of the centre to disclose information under the Access to Information Act and the Privacy Act. It seems that it was always intended for the federal court to enjoy this authority, which will now be clearly stipulated in clause 3 of Bill S-16.

With this amendment, the Proceeds of Crime (Money Laundering) Act will now give the federal court some judicial control over the disclosure of information.

As for the fourth clause, as we mentioned at second reading, it certainly would have been possible to word it to make it easier to understand. Unfortunately, it was not, and we have to live with it.

In addition, following the explanations we were provided with at the Standing Committee on Finance, we believe that, even if this amendment answers our fifth question about who could invoke the solicitor-client privilege, it seems that it does not deal with the concerns that led to its drafting.

Before the Senate committee, accountants maintained that they have very high standards of confidentiality to meet, just like any lawyer. Consequently, they say that they should also be allowed to claim solicitor-client privilege. However, clause 4 of the bill responds only partially to this demand. An accountant or any other person, other than a lawyer, cannot personally claim solicitor-client privilege.

Indeed, the protection of documents in the possession of a person who is not a lawyer depends on the involvement of such a legal counsel in the matter under investigation. Therefore, the possibility of claiming solicitor-client privilege remains restricted to the lawyer.

How does this work in practical terms? First, the client gives a legal mandate to a lawyer. I must insist on the fact that the nature of the mandate is crucial because a lawyer who would act as business adviser could not claim solicitor-client privilege.

In fulfilling his or her mandate, the lawyer may work jointly with other professionals, such as an accountant for example. Having doubts regarding the legality of the activities conducted by the client, the authorities decide to investigate. The person authorized to conduct the search will not be able to examine the documents handed over to the accountant by the lawyer. Therefore, it is through the lawyer, the only person who can claim solicitor-client privilege, that the documents in the possession of the accountant will remain confidential.

In this context, it would be fair to think that, in order to enjoy absolute protection, money launderers will systematically go to a lawyer first, who will hand the documents over to the appropriate professionals.

Yet the situation is not as simple as it may appear. Even if the solicitor-client confidentiality required of the lawyer at this time provides considerable guarantees of confidentiality, this is not an absolute concept but one subject to a number of conditions and restrictions, which I will not list in the context of today's debate.

When an individual or organization involved in money laundering requires the services of any professional with a view to facilitating the perpetration of a crime, regardless of whether or not a lawyer was involved, the seized documents cannot be protected by solicitor-client privilege.

In short, this amendment adds nothing new to the present situation, in that it merely codifies existing principles which have long been in place under common law. The concept of solicitor-client privilege therefore remains exclusive to the performance of the duties of a lawyer.

This notion can, moreover, be extended to other persons when their services have been retained by a lawyer, in order to enable him or her to meet the obligations of his or her mandate as a lawyer.

Under these circumstances, one might say that the solicitor-client privilege is not a right transmittable to a third party. It is instead a real right involving transmitted documents which, as the bottom line, are the purview of the lawyer.

We believe that the law will meet the objective of this provision, that is to ensure that specialized professionals such as lawyers and accountants cannot act as accomplices to the money laundering mechanism.

As we have already stated, Bill S-16 ought to respond to five very specific questions raised before the Senate committee. Despite the fact that accountants do not really enjoy the same privileges of client confidentiality as lawyers, we still consider that Bill S-16 effectively addresses all these issues.

Obviously, as we supported the Proceeds of Crime (Money Laundering) Act and as the four clauses the present debate addresses are intended simply to clarify the intent of the provisions they amend, we will also vote in favour of Bill S-16.

However, we wish to point out to this House that we are supporting the government today for the same reasons we became involved in the introduction of new coercive measures.

We are satisfied these measures will enable the authorities to more effectively fight organized crime and therefore to ensure the safety of Quebecers.

In addition, it is unfortunate that the people of Quebec must once again put their faith in the goodwill of a federal government, which, more often than not, does what it likes when it comes to resolving problems that, despite their application to Quebec society specifically, fall under the jurisdiction of the federal government because of the distribution of jurisdictions, which gives it exclusive jurisdiction in matters of criminal law.

It is therefore appropriate to mention that this dependency will be eliminated with a sovereign Quebec.

[*English*]

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC): Mr. Speaker, I commend the hon. member on her remarks. She obviously grasps the importance and the relevance of this issue at this time in Canada.

In response to concerns raised by the Senate banking committee and the important efforts and work it did in that regard, we see Bill S-16, an act to amend the Proceeds of Crime Act, coming forward to legislate in the areas of solicitor-client privilege, the disclosure of information and records retention.

I should indicate at the outset that I had intended to split my time with the hon. member for Kings—Hants. Subject to his arrival I may just carry on.

Money laundering, as we all know and are very aware, is the process by which criminals attempt to conceal profits earned from crime so that the money looks as if it came from very legitimate sources. It is literally an attempt to clean dirty cash. It is also an attempt to hide or cover up the illegal means and sources from which the money originated. Typically it involves vices such as extortion, prostitution, illegal gambling, drugs and other contraband. The particular legislation is aimed at attempting to track the origins of the money and to get at the source itself.

The legislation speaks of abilities to trace the origins of money because the origins themselves are those which are most often concealed and erased. If the money is successfully covered up, it can then be used to buy goods and services the way any other type of cash or exchange takes place.

It is estimated that somewhere between $5 billion and $17 billion in money from nefarious sources is laundered in Canada each year. I do not mean to put too fine a point on it but that sort of vague estimate indicates the size of the black market out there. It is very disturbing. Exact figures are very difficult to come by in that regard.

Obviously the black market is thriving in Canada. It is straight profit that is hidden from Revenue Canada and from government generally. The money is very often shifted between countries, financial institutions and investment brokerages without a paper trace that would allow law enforcement to get to the source or to get to the origins. The more complex and convoluted the trail, the more difficult to trace, eventually prosecute and bring to justice those involved in money laundering.

It is fair to say it is a world problem against which even the world's most powerful nations struggle. For example, Vladimir Putin, the Russian president, just last week held a conference on money laundering in St. Petersburg. He outlined efforts to crack down on the global illegal industry and the expansion of this industry in Russia. Russia is currently a member of the FATF's blacklist of nations because of its money laundering legislation, or lack thereof, which does not meet international standards.

We do not want this to happen in our country. That is why it is encouraging to all that the legislation is before us now. We must ensure our global partners and neighbours, not to mention our citizenry, that we are doing everything in our power to address and confront this problem.

Corruption is a growing problem in Canada and most countries recognize this point. They recognize the fact that it is very diverse and takes many forms just like legitimate industries.

Any effort aimed at curtailing this type of underground economy and outsourcing of money from illegal means is where we should be focusing our attention. The magnitude and the reach of this problem are staggering.

Canada has come under heavy criticism in recent years as being an easy place for criminal organizations to launder their money. Our biggest ally, the United States, has sent signals which clearly indicate that we are leaving our neighbours to the south open and more vulnerable to criminal activity respecting money laundering because of a failing security system in our country. The lack of resources contributes to that. The lack of government support whether it be through funding or innovation indicates to members of our law enforcement community that in many instances their government is not behind them.

The response has been legislation such as Bill S-16, albeit late. Bill C-22 originally imposed new reporting and record keeping requirements and created financial transactions in the reports analysis centre of Canada to receive and analyse information. Bill C-22 was the predecessor for the legislation before us. It died on the order paper when the pre-emptive and very opportunistic election was called.

The banks would be required by law to adhere to a new reporting regime that would be put in place over the next year. It would help reorganize and report dubious transactions. It would present banks with the obligation to act upon information of which they might be in possession and report where there is a suspicion of organized crime activity. It is clearly there to try to unveil and unmask efforts by organized crime to use financial institutions such as our major banks and other financial institutions for illegal purposes. A failure to report would result in certain sanctions. Those sanctions include fines of up to $2 million and five years incarceration. Therefore, this reporting scheme does have some teeth.

Concerns have been expressed however about the privacy and the disclosure of certain information. Those were voiced by the privacy commissioner, the Canadian Bar Association and other groups.

The Senate banking committee looked at the bill in June of 2000 and felt that there were numerous flaws and areas where it could have been improved. The government at that time was unwilling to entertain amendments to the legislation because it was late in June and the House of Commons was going to recess. We know that at this time of year ironically we are facing a similar attitude on the part of government.

However, the Secretary of State for International Financial Institutions gave a written undertaking to the committee that certain changes would be made in a new bill to be introduced in the fall. Those changes formed the substance of Bill S-30, introduced in October of 2000. This bill was identical to the bill we see before us and it went beyond those changes agreed to in the letter from the secretary of state.

The Senate banking committee reported the bill with the observation that the government should have given consideration to other amendments that would further ensure that solicitor-client privilege was protected by adding the phrase law office in any clause where the term dwelling house appeared.

Second, the first annual review should be held after three years not after five years as was indicated in the original legislation. We find far too often that we are becoming very slack in

our review process that was initially intended to ensure that the bill was living up to the breadth, width and intention.

Third and finally, it would require regulations under the act to be tabled before a committee of each House of parliament. Sadly, this bill does not include those further changes that were recommended by the committee.

The Law Society of Upper Canada has asked for the deference of the worst sections of this legislation. In many legal circles around the country court action against the federal government is not only being discussed but is being planned. This has happened time and time again. It is a given that with legislation such as this, and Bill C-24 is another bill, the lawyers are already writing the briefs, and the games will begin as soon as this law comes into being.

This bill will focus on the following legal aspects of this particular legislation. Solicitor-client privilege is one, which I mentioned previously. Where as Bill C-22 only dealt with instances where there was solicitor-client privilege involving legal counsel, Bill S-16 now clarifies that the officials of the Financial Transactions and Reports Analysis Centre may not examine or copy documents that might be subject to a claim of solicitor-client privilege where the document is in the hands of someone else until a reasonable opportunity has been made for that person to contact legal counsel. This responds to concerns raised by the Certified General Accountants Association of Canada.

It is very much akin to the situation we see with the information commissioner in Canada who would like to examine the Prime Minister's agenda books. He would hold that information in privacy and counsel and determine its relevance to the individuals who have requested disclosure. It follows a longstanding tradition that allows judges to determine relevance and admissibility of certain information. So we support that particular initiative.

Privacy under Bill S-16 will also allow individuals or the privacy commissioner to take the Financial Transactions and Reports Analysis Centre to court if they are denied access by the centre.

This legislation has come under some criticism in the banking committee because the bill creates onerous and very involved new responsibilities. In fact, Margaret Beare, one of Canada's leading experts on organized crime, recently stated that the new legislation requiring banks to report suspicious transactions was contradictory to some of the banks' principles, mainly that they would be making a profit and reacting to customers' wishes.

The Acting Speaker (Mr. Bélair): I am sorry to interrupt the hon. member. It was understood that you would split your time with your colleague. Before going to your colleague, there are five minutes for questions or comments.

Mr. Ken Epp (Elk Island, Canadian Alliance): Mr. Speaker, I was listening to the hon. member speak and quite clearly he is not finished his notes. My question is very simple. What else does he have to say?

Mr. Peter MacKay: Mr. Speaker, I would like to thank my hon. colleague for his intervention. It does allow me to continue just momentarily with my remarks.

There were concerns with respect to the discrepancies over what would constitute a suspicious transaction, which again led to concerns that were expressed by Ms. Beare. There was also

indication that certain levels of the banking sector had problems within their computer system or their system of reporting that would also leave them vulnerable by not being able to live up to the expectation of reporting. They would have an inability to monitor the type of monetary transactions that may be taking place on an ongoing basis, that was they could do so perhaps over a sustained period of time. However, as we all know, these transactions often occur in a very short time span.

Ms. Beare expressed a concern that lack of follow-up from police in some instances posed a considerable obstacle.

As is often the case with catching criminals, it is the slip-ups and lack of sophistication on their part that very often leads to the arrest. However the legislation I would suggest moves in the right direction in terms of arming those in the financial sector to combat the very sophisticated and often very complicated and nefarious means by which those who are trying to launder their money will engage. Otherwise those who play the game very well continue to thrive despite our best efforts. We have to obviously strive regardless.

On that note, I will turn over the floor to my colleague from Kings—Hants. I know that as a member of the finance committee he has made significant contributions to this and other bills. I know that all members will be riveted to their seats when the hon. member for Kings—Hants assumes the floor.

Mr. Scott Brison (Kings—Hants, PC): Mr. Speaker, I would like to thank my colleague from Pictou—Antigonish—Guysborough for his erudite comments.

The issue of money laundering is one that no Canadian should underestimate. The fact that the estimates range between a $5 billion problem to as high as a $20 billion problem speaks volumes about the degree to which we really do not have a very good handle on the scale of the problem. What we do realize is its impact on facilitating and enabling organized crime in any range of applications, whether it is in particular on the side of the narcotics trade, is significant.

We should also not underestimate the degree to which significant resources are needed to fighting money laundering. In recent years we have seen an exponential increase in the range and complexity of financial vehicles available to criminals.

When we talk about organized crime, we are not talking about underfunded agencies. We are talking about some of the most sophisticated, well funded groups in the world with international linkages and the economies of scale to attract and to invest in the very best technologies. That is why, whatever we do in terms of new agencies and new approaches to money laundering, we have to ensure that the funds are committed to our RCMP and our enforcement capabilities. Otherwise all that will occur is the government will take baby steps in the right direction but really not achieve the goals of reducing the incidents of organized crime and money laundering, which should of course be the goal of the legislation. The government has had a terrible record of underfunding, the RCMP for instance. Clearly while new agencies and new approaches might be helpful, if they are underfunded, it will not achieve the goals that the government has attached to this legislation.

We have some concerns relative to issues of privacy and the member for Pictou—Antigonish—Guysborough articulated some of those concerns. It is important as well to

ensure that the new agency's mandate and efforts are separated assiduously from those of the Canada Customs and Revenue Canada Agency. If the customs and revenue agency sees evidence of money laundering, it may be appropriate to refer some cases to this new agency to deal with money laundering.

That being the case, what we want to avoid in those cases where this agency has not found sufficient evidence of money laundering but may find some evidence relative to inappropriate behaviours relative to one's taxes, is the agency to result in a souped-up Revenue Canada to sink its teeth a little deeper into the ankles of Canadian taxpayer.

The issues of enforcement, and particularly the onus being placed on financial institutions, will be one that will be very difficult from an enforcement perspective and from a privacy perspective. We have to be awfully careful in this regard that a significant level of education occurs at the outset and that our financial institutions are prepared on a consistent basis throughout various financial institutions and throughout a branch of networks to carry out the mandate of this legislation. I suggest to the government that this will be a significant challenge and that the government has to be prepared.

The government has to be prepared to invest significantly in technologically driven approaches to deal with money laundering. Again, we are not dealing with amateurs. These are not underfunded agencies and local yokels who are doing a bit of criminal activities and do not really have the resources to carry on their activities. The government is fighting some of the best funded organizations in the world.

I would argue that we need to engage other countries more actively than we are right now in a co-operative effort. Clearly, money laundering and electronic transfers of money do not recognize borders, particularly if one were to consider just for a moment the impact of even the Interac system and its impact on the ability to launder money, to hide transactions and to break really large transactions into a multitude of smaller ones.

I am sure many of us in the House use online banking sometimes and I would suggest all of us probably use our bank cards. However, consider in the wrong hands and with nefarious motives what extraordinarily powerful tools the Interac system and online banking are. These are the simplest consumer available technologies of which we are aware. We are not even considering some of the extraordinarily powerful technologies being used in the mysterious world of arbitrage and currency trading.

If we are not very careful to ensure the necessary resources are committed to this fight, then we are sending this new agency, our RCMP and others into battle with pellet guns which will not be in the long term interest of the effort to reduce the incidence of money laundering and organized crime.

Accountability is of real importance. There is concern about the growing trend toward agencies which the government has pushed in recent years. The Canada Customs and Revenue Agency and the new money laundering agencies are not very accountable.

We must ensure, particularly in areas of privacy, that we do not create agencies that are able to run roughshod over the rights of Canadians. At the same time, however, agencies must have the resources and ability to do their jobs. It is a balancing act. I hope the government has a good understanding of what it will be up against with the new agency.

We must invest properly and make sure the accountability is there to protect ordinary, law-abiding Canadians. However resources must also be committed to ensuring Canadians who do not take the law seriously, who participate in money laundering and globally powerful organized crime networks, are caught and dealt with.

Those are some of our concerns. The legislation, like so much of the government's legislation, represents a baby step in the right direction. However given the power of organized crime globally and the resources available to it, we are taking baby steps in the right direction while the forces we battle are taking gigantic leaps. We are not making the progress we should be making in this place to ensure that money laundering and organized crime are dealt with effectively in Canada.

Mr. Ken Epp (Elk Island, Canadian Alliance): Mr. Speaker, today is a special day in the House. We are debating three bills that were introduced in the Senate. Bill S-16 is the third of the Senate originated bills we are debating today. It is also a special debate in the sense that the government side seems not to be participating. It made a token one or two minute speech and said we should get on with it.

Issues like this should be dealt with by giving considerably more attention to detail. I commend the member who just spoke. He was talking, particularly toward the end of his speech, about the government taking timid steps in the right direction but perhaps not doing enough. Would he like to enlarge on some of his ideas with respect to money laundering and the curtailing of criminal activity in Canada?

As precisely as possible, what further and stronger measures would he propose to prevent Canada from becoming a haven for money laundering activities by criminal organizations?

Mr. Scott Brison: Mr. Speaker, I thank the hon. member for Elk Island, a colleague of mine on the House of Commons finance committee, for his intervention.

First, we should not underestimate the importance of resources. We must make an adequate commitment of resources to our law enforcement agencies in this regard. The task at hand has grown exponentially more complicated and difficult. Yet there has been no commensurate increase in resources to deal with it. In a general sense the resources must be committed. They have not been to date.

Second, in a more specific sense we must work with the very best technologies available to deal with the problem. Clearly these are technologically driven problems. The challenge is to ensure we have the tools to effectively deal with them.

Third, we need greater interaction and engagement with the private sector agencies that will ultimately be acting on the enforcement side. There should be engagement with the Canadian financial services sector. Such engagement should take place while the measures are being put together and not after the fact. It should ensure the sector's commitment is a realistic one, not one imposed by a government with little understanding of the logistics of enforcement at the grassroots financial services sector level.

Mr. Larry Bagnell (Yukon, Lib.): Mr. Speaker, I thank my colleague opposite for his comments but point out that this is the second time I have been up in less than half an hour. It is not true that we are not participating in the debate.

I thank him for raising the good point that three bills have started in the Senate. In a bicameral system every bill must go through both houses. If all bills started in the Senate the House of Commons would sit around for a week with nothing to do until something was passed, and vice versa if they all started here.

I thank the hon. member for congratulating those who brought forward the improvement of splitting bills so that both houses could work on them. If the Senate could remove some of the fine details in its extensive committee consultations we would not have to worry about them and would have an even better bill when we got it.

Mr. Scott Brison: Mr. Speaker, I have never heard a more eloquent plea from a member on the Liberal side for a seat in the Senate. I suggest he make that plea on an individual basis to the Prime Minister. I wish him luck in his quest for a senatorial appointment.

I agree with the member that a significant amount of valuable work is done in the other place on legislation like this one. This House, the lower House, benefits from the work of many of our senators, particularly at the committee level where there is a significant level of expertise and talent.

Mr. Jason Kenney (Calgary Southeast, Canadian Alliance): Mr. Speaker, I am especially grateful to have the full attention of the government House leader. The Canadian Alliance, as my colleague has indicated, will support Bill S-16 which comes to us essentially as legislative amendments the Senate has sought to Bill S-22. I echo the concern of my colleague from Elk Island about the growing practice under the current government of initiating legislation in the other place.

However I would also highlight that Senate committees, in particular the Senate banking committee in this instance, do good work. Frankly they pay more attention to the details of legislation of this nature than do some of our own committees.

The bill deals with the proceeds of crime, otherwise known as money laundering. I rise to make the point as finance critic for the opposition that Canada's laws with respect to proceeds of crime are unfortunately not as robust as they ought to be. Other jurisdictions have taken far more significant legislative steps to plug loopholes which allow those who benefit from proceeds of crime to secrete assets in Canada.

I also second the remarks of my colleague from Kings—Hants who pointed out that although we have a legislative framework to deal with the proceeds of crime, we do not provide nearly sufficient resources to law enforcement agencies to enforce the laws.

In particular, the proceeds of crimes division or white collar crime division of the Royal Canadian Mounted Police is constrained by quite finite resources. This means major fraudsters have pretty significant resources at their disposal.

These people benefit from tens, sometimes hundreds of millions of dollars of defrauded moneys and assets. They can afford the very best legal advice, lawyers, financial advice and accountants to hide their illegally gained assets and launder them so they become ostensibly legal funds. This is because police simply do not have sufficient resources to combat the problem on a large scale in Canada.

Consequently, victims of commercial crime increasingly are turning to lawyers to pursue civil remedies. That is a concern. I want to raise in the debate the need to consider giving, through our laws, greater latitude to victims of fraud to pursue civil remedies in court. In many Canadian jurisdictions it is difficult, if not impossible, for victims of fraud to collectively pursue so-called class action cases against fraudsters.

The legal framework in the United States allows for fairly robust civil remedies. For instance, when a telemarketing scam defrauds thousands of American seniors, they can put together a class action suit. They can find and hire skilled lawyers to investigate, track laundered assets, seek and in many instances obtain judgments against fraudsters, and restore defrauded moneys to the people to whom they rightfully belong.

In many Canadian jurisdictions similar remedies are not available. Individual victims of fraud are not able to collectively pool their resources and pursue legal remedies. In Canada police do not have the resources or advanced legal expertise to pursue money laundering cases, and affected individuals cannot collectively join together to finance the expensive investigatory and legal work required to pursue these cases. I raise this as an important point.

We need to join growing international efforts to stamp out money laundering. Literally billions of dollars are laundered in and through the Canadian economy every year. Multiple billions of dollars of assets in Canada belong to criminals indirectly and are controlled by criminals. Our police forces do not have the resources or expertise to fully trace the laundering process and restore justice to victims of fraudulent activity. Our legal framework limits the remedies available to those people.

I raise this as a matter of concern. I invite the government to revisit the issue in a broader perspective to find out how we can amend laws to be more clearly in compliance with the growing international intolerance of money laundering. I invite the government to find out how we can give more powerful civil remedies to victims of fraud. Finally, I invite the government to find out how we can better equip the RCMP and other police services across the country to plug loopholes, track down fraudulent and laundered assets and enforce the law to protect the tens of thousands of Canadians who are the unwitting victims of fraudulent scams.

I invite the government to consider all these things. However we in the Canadian Alliance Party will be supporting the bill.

[*Translation*]

The Acting Speaker (Mr. Bélair): Is the House ready for the question?

Some hon. members: Question.

The Acting Speaker (Mr. Bélair): The question is on the motion. Is it the pleasure of the House to adopt the motion?

Some hon. members: Agreed.

The Acting Speaker (Mr. Bélair): I declare the motion carried.

(Motion agreed to, bill read the third time and passed)

[*English*]

The Acting Speaker (Mr. Bélair): It is my duty pursuant to Standing Order 38 to inform the House that the question to be raised tonight at the time of adjournment is as follows: the hon. member for St. John's West, Canada Mortgage and Housing Corporation.

An Act To Amend The Criminal Code (Organized Crime And Law Enforcement) And To Make Consequential Amendments To Other Acts (Bill C-24)

Citation	2001 c. 32
Royal Assent	December 18, 2001
Provisions Amended	2, 18

Hansard

April 23, 2001[House of Commons]

Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.)

Mr. Speaker, I am pleased today to lead off the debate on an issue of major concern to all Canadians: the problem of organized crime and the legislative tools available to our police, prosecutors and courts to address that problem.

[Translation]

In the Speech from the Throne, our government promised to take aggressive steps to combat organized crime, including the creation of stronger anti-gang laws.

[English]

Building upon the foundation that the government put in place over the past several years, including the 1997 anti-gang amendments to the criminal code, the proposed legislation would enable law enforcement to respond to the threat of organized crime in the country.

Bill C-24, an act to amend the criminal code regarding organized crime and law enforcement, responds to our commitment to law enforcement officials and to my provincial counterparts to provide additional legislative tools to assist them in the fight against the many manifestations of organized crime. The legislative measures set out in Bill C-24 seek to assist Canadian law enforcement officials in the fight against organized crime.

These proposals fall into four categories: first, measures to improve the protection of people who play a role in the justice system from intimidation; second, the creation of an accountable process to protect law enforcement officers from criminal liability for certain otherwise illegal acts committed in the course of an investigation; third, legislation to broaden the powers of law enforcement to forfeit the proceeds of crime, and in particular the profits of criminal organizations, and to seize property that was used in a crime; and, fourth, the creation of a number of new offences targeting involvement with criminal organizations.

...

These efforts resulted in the adoption last September of the national agenda to combat organized crime. In Iqaluit, the solicitor general and I agreed with our provincial and territorial colleagues on an action plan. That plan has several key elements, but expanded and strengthened legislative tools were at the forefront of this national response.

...

I turn my attention now to the aspect of Bill C-24 that seeks to protect law enforcement officers from criminal liability when for legitimate law enforcement purposes they commit acts that would otherwise be illegal.

The Supreme Court of Canada in its unanimous 1999 judgment in Regina v Campbell and Shirose stated that the police was not immune from criminal liability for criminal activities committed in the course of a bona fide criminal investigation. However, while observing that “everybody is subject to the ordinary law of the land”, the supreme court explicitly recognized that “if some form of public interest immunity is to be extended to the police..., it should be left to parliament to delineate the nature and scope of the immunity and the circumstances in which it is available”. Through Bill C-24 the government takes up the challenge offered to it by the Supreme Court of Canada and properly assumes its responsibility to provide guidance.

After issuing a consultation paper last year and engaging in much consultation the government has put the proposals before the House. The proposed scheme contemplates several means of ensuring

accountability. These involve a combination of new legislative measures contained in Bill C-24, police training, as well as reliance on existing judicial and disciplinary means to ensure compliance with rules governing their use of powers given under the law.

The legislation does not propose the granting of blanket immunity to all law enforcement officers for unlawful acts committed in the course of carrying out lawful law enforcement responsibilities. However, the legislation does provide a form of very limited immunity. Colleagues need to understand that for many years law enforcement authorities were working on the basis that they had common law immunity. All the supreme court did was make it plain that there was not common law immunity but called upon parliament to put in place a legislative scheme if it saw fit.

Here is how the scheme would work. When a public officer is engaged in the enforcement of any act of the Parliament of Canada, doing that which would otherwise constitute an offence may be permissible if the following elements exist.

First, before the person can act he or she must be designated a competent authority. The individual must also believe on reasonable grounds that committing the act or failing to act is the reasonable course of action and proportional in the circumstances and including whether there is any other available means of carrying out their duty.

Nothing in the proposed scheme would provide immunity for the intentional or criminally negligent causing of death or bodily harm; the wilful attempt to obstruct, pervert or defeat the course of justice; or conduct that would violate the sexual integrity of an individual.

Another feature of the legislative package before us today is a new approach to addressing participation in the activities of criminal organizations. The bill contains a new definition of criminal organization and three new offences that effectively criminalize the full range of involvement with organized crime.

At its core, the danger of organized crime flows from the enhanced threat posed to society when people combine for the commission of serious crimes. Historically criminal law has responded to this elevated harm by punishing individuals for engaging in conspiracy and for aiding or abetting the commission of specific offences.

In 1997 in Bill C-95 parliament went further and directly targeted organizations of such individuals for the very first time by providing a definition of criminal organization, increased investigative powers and increased penalties for those committing crimes in conjunction with criminal organizations.

Law enforcement officials and provincial attorneys general have called for a simplified definition of criminal organization and for offences that respond to all harmful forms of involvement in criminal organizations. That is precisely what we have done in the legislation before the House today.

The current definition only covers criminal organizations that have at least five members, at least two of whom have committed serious offences within the preceding five years. As well, the organizations themselves must be shown to have been committing crimes punishable by a maximum sentence of five years or more in prison.

Canada is a signatory to the United Nations convention against organized crime which affirms that a group of three persons having the aim of committing serious crimes constitutes a sufficient threat to society to warrant special scrutiny from the criminal justice system.

I believe that Canadians want our law enforcement officials to be able to target criminal groups of three or more individuals, one of whose main purposes or activities is either committing serious crimes or making it easier for others to commit serious crimes. In conjunction with a more streamlined definition, the full range of involvement with criminal organizations is targeted in Bill C-24 by three new offences.

The first offence targets participation in or contribution to the activities of criminal organizations. Taking part in the activities of a criminal organization, even if such participation does not itself constitute an offence, will now be a crime where such actions are done for the purpose of enhancing the ability of the criminal organization to facilitate or commit indictable offences.

The bill also addresses the concern expressed by law enforcement officials and provincial attorneys general that the current requirement of proving beyond reasonable doubt that the accused was a party to a specific crime shields from prosecution those in the upper echelons of criminal organizations who isolate themselves from its day to day activities.

We know that successful recruitment enhances the threat posed to society by criminal organizations. It allows them to grow and to more effectively achieve their harmful criminal objectives. Those who act as recruiters for criminal organizations contribute to these ends both when they recruit for

specific crimes and when they recruit simply to expand the organization's human capital. Thus the expressed provisions of the proposed participation offence make it clear that the crown does not in making its case need to link the impugned participation, in this case recruitment, to any particular offence.

Some have called for mere membership in a criminal organization to be an offence. In my view such a proposal would be extremely difficult to apply and would be vulnerable to charter challenges.

The second new offence retains the core of section 467.1 of the criminal code which is the criminal organization offence introduced in Bill C-95. The new offence targets those who aid, abet, counsel or commit any indictable offence in conjunction with a criminal organization.

Unlike the existing provision, it would not require the crown to prove both that the accused has participated in or substantially contributed to the activities of a criminal organization and that he or she has been a party to the commission of an indictable offence punishable by five or more years of imprisonment. The participation-contribution requirement has been removed entirely and the range of offences targeted has been broadened to include all indictable offences.

The third new offence deals specifically with leaders in criminal organizations. Like the participation offence, it does so not by criminalizing status but by proscribing the harmful behaviour itself.

Leaders of criminal organizations pose a unique threat to society. Operationally they threaten us through their enhanced experience and skills. Motivationally they threaten us through their constant encouragement of potential and existing criminal organization members. Accordingly in the bill we have moved aggressively to identify, target and punish those within criminal organizations, whether or not formally designated as leaders, who knowingly instruct others to commit any offence, indictable or otherwise, under any act of parliament for the benefit of, at the direction of, or in association with a criminal organization.

The penalty provisions for the three offences I have outlined confirm the government's resolve to provide a proportionate and graduated means of addressing all forms of involvement with criminal organizations and to ultimately break the back of organized crime in Canada. The participation offence I previously described is punishable by a maximum of five years of imprisonment, the party liability offence by a maximum of 14 years of imprisonment, and the leadership related offence is punishable by a maximum of life imprisonment.

Furthermore each of these punishments has been fortified by an appropriately aggressive sentencing regime. Its two critical components are mandatory imposition of consecutive sentences for the offences and a presumptive parole ineligibility period of one-half the imposed sentence. When these measures are combined with our newly expanded and improved criminal forfeiture scheme our message to organized crime is clear: crime does not, will not and must not pay in Canada, and we will take all necessary measures to ensure the continued safety of our homes, streets and communities.

Not all provisions of the bill specifically target organized crime groups. Several elements in the proposed legislation are meant to improve criminal law generally. These improvements to the law will nonetheless be extremely useful in combating organized crime.

The offences initially listed as enterprise crimes were those considered most likely to be committed by organized crime groups. Over the years, as organized crime evolved and moved into new areas of criminal activity, new offences were added to the list of enterprise crimes. Today the list of such crimes stands at over 40 with no indication that we will stop adding new offences to the list.

At the same time, by limiting the proceeds of crime provisions to certain listed offences, we have created two types of criminal: the criminal whose proceeds are subject to the proceeds of crime provisions of the code and whose illicit profits can be ordered forfeited by the courts, and the criminal whose profits fall outside the reach of the proceeds provisions of the code.

Furthermore, there is a proposal to eliminate the enterprise crime list approach and expand the application of the proceeds of crime provisions to designated offences, that is, to most indictable federal offences. In this manner the profits from the commission of most serious crimes would be subject to forfeiture. All existing protections, such as notice provisions, applications to revoke or vary orders, appeals and remedies, will of course continue to be available to the accused and to third parties.

Canada must be in a position to offer the necessary assistance to foreign countries that have successfully investigated and prosecuted members of organized crime groups and whose courts have ordered the confiscation of tainted property located in Canada. I would like to ensure that Canada is not singled out for its inability to provide the necessary assistance to help such jurisdictions obtain the confiscated property.

Accordingly, the bill proposes a number of amendments to the Mutual Legal Assistance in Criminal Matters Act that would allow Canada to enforce foreign confiscation orders. That is important. The provisions contained in the proposed legislation would allow Canada to respond on the basis of a treaty to requests from a foreign jurisdiction for assistance in enforcing a confiscation order issued by a court in that jurisdiction in relation to proceeds of crime derived from the commission of a criminal

offence for which the accused was convicted. In anticipation of a confiscation request, Canada would also be able to provide assistance in respect of a request to seize or restrain the targeted proceeds located in Canada.

The proposed amendments would also facilitate requests from Canada regarding the enforcement of restraint or forfeiture orders for proceeds of crime located in foreign jurisdictions.

The last element that I want to stress deals with offence related property. The bill contains amendments to make the offence related property forfeiture regime in the code apply to all indictable offences. As well, the present exemption from forfeiture for most real property would be eliminated.

I believe the measures I have outlined today would ensure that we have the tools necessary to combat the increased threat of organized crime. Let there be no mistake that the proposals before us would provide more effective laws and aggressive prosecution strategies to target organized crime at all levels.

...

April 23, 2001 [House of Commons]

Mr. Vic Toews (Provencher, Canadian Alliance)

Mr. Speaker, I am pleased to participate in the debate on the new organized crime legislation, Bill C-24.

...

During the election they realized that organized crime was an issue. Suddenly the government said that it better do something because there was a danger to our country and to our institutions. It said that police officers were having a difficult time coping and the courts were overwhelmed by the issue of organized crime. I therefore note, with a bit of bewilderment, that the Liberals finally woke up.

...

I am relieved that the government is finally acknowledging that organized crime is a serious problem. The rest of the country has been saying this for many years. It is no secret, although to the Liberal caucus it was a bit of a secret, that the level of activity of criminal organizations has increased substantially in recent years, posing a severe risk to public safety and security. Not only has there been an increase in the level of activity. There has also been an increase in the intensity of violence including bombing, threats and intimidation.

The extent of collaboration within and among criminal groups has broadened greatly. The available technology has improved their ability to conduct organized crime by leaps and bounds. Over the years Canada has become a very attractive place for these types of criminals. According to the Criminal

Intelligence Service of Canada, CISC, “virtually every major criminal group in the world is active in Canada”.

Antonio Nicaso, a well known organized crime specialist and author, has said that Canada has become one of the world's most important centres for global crime syndicates in part because of federal regulations and laws. He has stated that prior to Bill C-22 it was harder to import cheese into Canada due to the restriction of the minister of agriculture than it was to import a suitcase full of money.

The RCMP commissioner has said recently that for the first time there are signs of criminal organizations which are so sophisticated they are actually focusing on destabilizing certain aspects of our society.

...

Another equally disturbing fact about the bill is the serious lack of funding and resources that has plagued and continues to plague the administrators of our justice system. Frontline officers fighting to get these criminals prosecuted have been effectively handcuffed with a serious lack of resources.

Criminal organizations have the best possible tools. They have state of the art technology. They have access to millions of dollars derived from illegal activities to fund their activities. Meanwhile our frontline police officers struggle to maintain existing technology. They are unable to adapt to new and emerging technologies because of insufficient funding.

Funding has become a vital issue in our continuing fight against the sophisticated and wealthy organized crime syndicates. Organized crime investigations are themselves resource intensive, costly, highly technical, lengthy and complex.

When the bill was first introduced over two weeks ago the justice minister announced a mere $200 million of funding. To me and the average citizen $200 million is a lot of money. The government continually includes an amount of money in a package announcement as though the money is immediately available. That is not correct.

The amount is spread over five years. It does not come close to the amount that is needed for frontline law enforcement officials to do their jobs effectively. When one looks at the $200 million over five years and where the money will go, it will not be to local police forces in Winnipeg, Calgary or Vancouver that actually do the investigations. Some of it will go to the RCMP, and we applaud that. What concerns me about the $200 million is that it will not go to the places it needs to go in terms of frontline investigation and help for the police.

I speak from experience and knowledge having dealt with that matter when I was minister of justice for a provincial government. The need to fight organized crime in whatever form we find it is a constant concern.

...

We need to financially support our front line police officers. If we are not prepared to do that then all our speeches, our legislation and the studies and the years that have gone into the legislation were all for naught.

When one considers the annual RCMP expenditures alone in one year, the $200 million extra to fight organized crime is a drop in the bucket. If this was all going to front line RCMP officers it would be a good start, but everyone here in the House realizes that is not where it is going.

We are not even talking about the municipal police forces that carry out the mandate of parliament when we pass legislation. Who will help the Toronto police force or the maritime municipal police forces that have a very real interest in protecting their citizens against this pernicious criminal activity?

Even though the introduction of additional funding by the government gives the appearance of a substantive and immediate injection of funds, the funds allocated on a yearly basis will not significantly enhance police or prosecution resources when we consider that a relatively simply prosecution under this legislation can cost $10 million.

...

The bill also addresses the issue of police immunity. I think all right thinking people understand the need for police to have these powers. We also understand the need for clear criteria governing those activities. It was always the case that police had those clear criteria in place as policies that governed their activities. The Supreme Court of Canada has come along and said that we need to put that in legislation. I agree because I do not think it is necessary to fight on that issue. Let us put clear criteria in place but let us not hamstring and handcuff our police officers at an undue cost to our security and the security of our citizens to enjoy democracy and their democratic rights.

The minister needs to bear in mind that when we create immunity for police, we also have to address the possible adverse impacts on law-abiding citizens and the damage that might be done to their property by a police officer carrying out his or her duties under this protection.

...

April 23, 2001 [House of Commons]

Mr. Gurmant Grewal (Surrey Central, Canadian Alliance)

Mr. Speaker, on behalf of the constituents of Surrey Central I am pleased to participate in the debate on Bill C-24, an act to amend the criminal code respecting organized crime and law enforcement and to make consequential amendments to other acts.

The bill has two main purposes: first, to provide new tools in the fight against organized crime; and, second, to respond to the 1999 supreme court decision in R. v Campbell and Shirose, which put in doubt the ability of police and police informants to break the law as part of undercover operations aimed at penetrating criminal organizations.

...

The penetration of organized crime into Canadian society is a very serious matter. Criminals move from jurisdictions with strong controls to jurisdictions with weak or no controls. This criminal activity undermines Canada's financial and social systems and increases the power and influence of illegal businesses.

A staggering variety of activities such as extortion, home invasion, murder, theft, drugs and arms trafficking, counterfeit currency and passports, migrant smuggling, prostitution, Mafia, casino and lottery frauds are additional costs to society at the expense of the taxpayer and at the expense of our future. These activities make our streets unsafe.

...

Canada has now become a global centre and a haven for organized crime because of its laws.

Whatever the government does now it is too late and too little. The criminals are lightyears ahead of the law enforcement agencies. They have more resources, more money and better state of the art technology while the agencies on the other side even lack the law with tooth and are struggling to maintain yesterday's technology.

...

I will now talk about the main features of the bill. There will be longer consecutive sentences for gang activity: up to five years for participating in a criminal organization; 14 years for carrying out indictable offences for the benefit of a criminal organization; and life for being the leader of a criminal organization.

A new definition of a criminal organization would be: only three members required instead of the current five; there is no need to prove that members participated in indictable offences in the five years preceding prosecution and providing that, in addition to indictable offences punishable by five years or more, offences can be prescribed as serious offences.

It is stated that the intention is to cover offences, such as prostitution and gambling, that are controlled by organized crime.

Another point is the protection of justice system participants. Threatening a judge, prosecutor, juror, et cetera, or a member of their family would be punishable by up to 14 years and murdering a justice system participant would be first degree murder.

The next point concerns police immunity. The solicitor general responsible for the RCMP or provincial ministers responsible for the police will be able to designate officers who may, in the course of an investigation, commit offences other than offences causing bodily harm, obstructing justice or sexual offences.

Forfeiture of property would apply to all property used in committing a crime rather than just property especially built to carry out the crime. Judges will have to determine whether the forfeiture is appropriate given the nature of the crime. Presumably a house may not be forfeited if five marijuana plants are found in it but it could be if 500 or 5,000 plants are found in it.

There are still many significant deficiencies in the bill that require further address or amendments. Even many recommendations of the subcommittee have not been addressed in the legislation. I was a member of that committee and it was a Liberal dominated committee.

...

The criminal code should have been amended so that all its provisions related to organized crime activities could have been brought together in a specific part to be entitled enterprise crime, designated drug offences, criminal organizations and money laundering. This recommendation was not followed.

The criminal code should have been amended to allow for the designation of criminal organization offenders in a manner similar to that applicable of dangerous offenders and long term offenders provided for at section 752. This would allow, at the sentencing stage, after a conviction has been obtained, for the imposition of imprisonment for an intermediate period or for long term supervision in the community after a sentence of up to 10 years. The recommendation was not followed.

...

The criminal code should have been amended so that there was a reverse onus placed on a person convicted of an enterprise crime, a designated substance offence, a criminal organization offence or money laundering whose assets have been seized, to prove that these assets have not been acquired or increased in value as the result of criminal activity. There should be a reverse onus on the criminal rather than on law enforcement agencies to prove that. This is a very important recommendation.

If the convicted person were unable to discharge the burden of proof, as I mentioned, to the satisfaction of the court, these assets should be declared to be forfeited. This recommendation was not followed through.

...

The human resources expertise and technology levels should be sufficient to effectively combat organized crime. Unfortunately the funding announced by the justice minister today providing only $200 million over five years does not appear adequate and does not come close to the amount needed for frontline law enforcement officials to do their job effectively.

The funds allocated on a yearly basis would not significantly enhance police or prosecution resources when we consider that a relatively simple prosecution could cost as much as $10 million. Those resources are inadequate.

A national tactical co-ordinating committee should have been established to promote the exchange of information and sharing of experiences among field operators in order to fight organized crime. This recommendation made by the subcommittee on organized crime was not followed through again.

...

In particular, the recommendations of the subcommittee, regarding forfeitures, wire tapping and serving full sentences, have not been addressed or have only been partially met. Therefore, I hope the justice minister will be open to considering amendments that would further streamline the Canadian justice system and would offer Canadians a greater measure of security through the legislation.

April 23, 2001 [House of Commons]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ)

Mr. Speaker, it is a pleasure to rise to speak to Bill C-24, since the Bloc Quebecois has argued for such a bill.

....

Looking at the government's own documents, we can see that organized crime is not a new phenomenon. It is not something that caught the government off guard because it was not aware of it. The government is well aware of what is going on.

In fact, the RCMP did a study on organized crime and on the ins and outs of the war that has developed in Quebec in recent years. According to the documents I had this morning, the RCMP figured that, for the 1994-98 period alone, 79 murders were related to the bikers' war. This number does not apply to the whole of organized crime.

During that period, 79 murders and 89 attempted murders were related to the drug trade and to the wars between Quebec biker gangs, in addition to 129 instances of arson and over 80 bombings. These are figures that the minister knew or should have known. Both the Solicitor General of Canada and the Minister of Justice must have known about the situation, just as they must know that the drug trade is exceedingly lucrative for those who are involved in it.

The Quebec provincial police estimates that the Hell's Angels alone made profits of $100 million last year. The drug trade, from coast to coast in Canada, represents some $5 billion. The government opposite has known or should have known this for a very long time. I was elected in October 1993 and have known about this since 1994.

...

As for whether or not this is really an anti-gang law, that will depend on how it is enforced. However, I think we are actually starting to have something more closely resembling such a law. With such

legislation, we are starting to have tools which will make it possible to mount an effective campaign against organized crime.

People probably remember all the seizures made in Quebec under the existing provincial legislation, not the bill being debated today, but the existing Quebec legislation behind Opération Printemps 2001, which resulted in more than 160 arrests in 74 municipalities in Quebec. Millions of dollars were seized in the form of luxury vehicles, drugs and cash. It was a very successful operation.

With respect to the operation per se, we can congratulate the police on a job well done. I would like to take this opportunity to commend them for their professionalism. However, we have to wait and see how many of the some 160 people arrested and charged with murder, attempted murder, corruption and other offences under the Food and Drugs Act will be found guilty.

This is why I think that, if the minister had acted sooner, Opération Printemps 2001 would have been conducted under new and much clearer and stricter provisions providing for harsher sentences, something we in the Bloc, as well as the police and the public have been asking for some time now. Once again, the minister turned a deaf ear.

What provisions of this bill should we be thankful for? In 1997, when the then justice minister amended the criminal code to show that the government was doing something to fight organized crime, a definition of a criminal organization was provided and a criminal organization offence was created.

...

Under the bill, gang membership has been reduced to three people from five. We now have the whole business of contribution to activities that assist a criminal organization to attain its criminal objectives.

I am pleased with this definition, which is far more complex in the bill than the way I am stating it, and hon. members will agree with me. I am just giving the main thrust for purposes of understanding. It will be easier for us to be able to collar various people whom we are not able to touch at the present time.

...

The whole definition of criminal organization has been simplified. In addition, there will be a special way to calculate sentences for persons found guilty of gangsterism. This is a step forward. It is no longer a requirement to prove that the individuals knew they had been committing indictable offences over the previous five years. This whole notion of the number of years has been completely eliminated, and so has the number of years in prison. This applies not only to crimes punishable by five years in prison but to all other crimes.

...

Then there is the whole issue of the seizure and forfeiture of the proceeds of crime. However, in this respect we believe the department could have introduced much more relevant and daring amendments. We believe the department did not go far enough in terms of the legislative tools it is giving the courts, the police and the penal system as a whole. There is still work to be done in this respect even though progress has been made.

We are so far behind and we have so few tools to successfully fight organized crime that any change, no matter how small, must be welcomed and applauded. But while we are at it with the help of experts to draft something that is defendable and enforceable and is what the people want, we might as well do it right. We really have to look at the whole issue.

There is one matter that scares several people, namely the amendments aimed at protecting the officers in charge of enforcing the anti-gang law. Now, a police officer investigating very specific crimes such as the trafficking of human beings, alcohol, tobacco or firearms smuggling, heinous crimes, international terrorism, crimes against the environment and everything related to drug offences, will at last be able to commit acts otherwise illegal were it not for that protection.

So that members can really understand what I am talking about, I will give an example. Criminal groups, be it biker gangs, the Italian network, Chinese triads or the Russian mafia, which is also present in Canada, are well organized. They have made it very difficult for the police to infiltrate them. Very often, in those biker gangs whose methods we are more familiar with, to determine if a new member going up every step in the organization is trustworthy and is one of them, the leader will ask him to commit certain illegal acts.

The bill says that an investigating officer could commit certain acts without fear of prosecution. This is not protection at large; murder, rape, acts of violence and so on are excluded. This is for very specific offences. For example, in a biker gang operating a large drug market, an undercover officer could be asked to sell drugs. That is an illegal act. Without protection, the police officer could be liable to prosecution for that. Yet he must do so to be accepted as a member of the biker gang, get to know more and possibly gather enough information to prosecute the guilty parties.

This is very much a societal issue. It is a complex matter and it could lead to abuse. We must be very careful in implementing the law. However, if we want to fight organized crime effectively, we must have such tools.

Some countries go much further than that, but we should begin by looking at their experience and see how this is done, see how things work and what the results will be over time. This is a step in the right direction, albeit a very small one in terms of both the offences and the people.

...

I will conclude by saying that one thing is certain and that is that those enforcing the legislation must also be given the necessary money. It is all very fine and well to have a well-drafted bill, but the necessary money must be there for them to enforce it.

In Quebec, we have shown that when the police were given adequate financial support, they were able to do an effective job of combating organized crime, as they did in the Opération Printemps 2001, a major cleanup operation. We should continue in this vein by passing this bill.

April 23, 2001 [House of Commons]

Mr. Bill Blaikie (Winnipeg—Transcona, NDP)

Mr. Speaker, I am pleased to rise and say a few words on behalf of the NDP on this particular debate.

...

Broadening the powers of law enforcement to forfeit the proceeds of crime, and in particular the profits of criminal organizations, and to seize property used in a crime are things we may well need to put into legislation so that governments have the tools at their disposal to deal more forcefully with organized crime.

An accountable process must be established to protect law enforcement officers from criminal liability when they commit what would otherwise be considered illegal actions while investigating and infiltrating criminal organizations. That is something I understand from my meetings with the Canadian Police Association earlier this year. I certainly understand the concern of police officers who work undercover in difficult situations and need more freedom to act without worrying about

criminal liability. We cannot grant them absolute freedom, of course, so it is a fine line. The minister has attempted in the legislation to define what that line is.

This is something I look forward to discussing in committee because people have expressed concern about where the line is drawn. I understand and appreciate those concerns and yet I am sympathetic to what police officers have requested. We certainly accept the principle of protecting, to some degree, police officers who are engaged in this kind of activity and we look forward to hearing from people on both sides of the issue as to where the line should be drawn.

April 23, 2001 [House of Commons]

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC)

…

I do applaud her. I applaud the minister's initiative in bringing forward this legislation now. It has finally received priority and would allow those administering it, mainly the provinces and the law enforcement community, to attack the issue and to attack the underbelly of these gangs. In particular, this legislation allows for greater use of attacking the proceeds of crime, that is, going after the actual resources of organized crime and taking away the flow of money and the benefits received from illegal acts.

It also very clearly and specifically simplifies the definition and the composition of criminal organizations for purposes in a court. The bill targets various degrees of involvement within organizations, that is, it attaches the type of activity that is deemed to be participation in a criminal organization. Sometimes that is just watching. Sometimes it could be the person working on a dock in Halifax who turns a blind eye to an importation or to a boxcar coming in with illicit contraband material.

The legislation also would make it easier for police and prosecutors to arrest and jail those involved in organized crime and keep them in prison for longer periods of time. There is a greater element of deterrence, both specific and general, at work in the bill for those who choose this path.

The bill would allow law enforcement officials to declare forfeit the proceeds of crime from organizations, to seize the property and to perhaps put that resource back into the community that has been harmed. It allows law enforcement officers to seize things like houses, boats, cars and money and to allow the resource that has been pillaged and raped from a community to go back into it and perhaps benefit it and try to rehabilitate some of the harm that has been done.

The legislation would also strengthen rules protecting against intimidation of witnesses, jurors and their families at organized crime trials. It would strengthen the protection for federal ministers and members of parliament. It would improve protection for law enforcement officers from criminal liability when they commit certain illicit acts while engaging in undercover operations.

One thing missing from the legislation and which has been pointed out by several members today is that it does not include provincial ministers. I believe that was perhaps a legislative oversight. I am certain it is something that can be corrected at committee. In particular, the provisions in this bill send a very important signal that the Parliament of Canada is not going to sit back and rest on the laurels of the fine men and women who are currently working in our justice system, but that it is actually going to bolster support for them and enhance their ability to do their job and their ability to protect us, because it is that thin blue line, as it is sometimes called, that the police provide to the citizens of Canada.

We are supportive of the amendments that deal with taking away the proceeds of the crime, taking away the lifeblood. There are very positive amendments to this bill that could be tightened up. Again, hopefully we will have an opportunity to do that in the process.

…

April 23, 2001 [House of Commons]

Mr. Stephen Owen (Vancouver Quadra, Lib.)

Mr. Speaker, I am very pleased to stand today to speak in favour of Bill C-24.

...

The expanded definitions and increased ability to seize the proceeds of crime are important in the bill. There must be an ability to seize and forfeit property in a fashion that is efficient, quick and hits at the heart of the enterprise nature of organized crime.

The mandatory reporting provisions for suspicious financial transactions are important. Fifteen billion dollars was estimated as the amount of laundered funds from illegal activities in Canada last year.

…

April 23, 2001 [House of Commons]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ)

Mr. Speaker, the bill introduced by the minister this morning contains almost 80% of what the Bloc Quebecois has been asking for over the last five or so years. One point, however, is missing from the bill on organized crime now before us and that is the whole issue of reversing the burden of proof and the proceeds of crime.

My question for the member is a very simple one. Everyone knows that money is the sinews of war, whether politics or organized crime are involved. The comparison may be slightly imperfect, but it boils down to the same thing; there is organized crime because there is money to be made. The more money they make, the stronger and more organized they will be.

There is really nothing in the bill to facilitate the work of the police and crown prosecutors, to reverse even somewhat the burden of proof, so that it is not up to the crown to prove the illegality of an acquired asset, but rather up to organized crime to prove the legality of its origin.

My question for the member is as follows. Will he be able to support this, when he talks of amending the bill? Is it in this sense of giving additional tools to the police and crown prosecutors to facilitate proof with respect to such things as money which is, as we know, the sinews of war?

[English]

April 23, 2001 [House of Commons]

Mr. Greg Thompson

Mr. Speaker, this goes back to previous comments and to questions answered by my colleagues in the House. There is always that balance between charter rights and the willingness or the desire to crack down on criminals. There is a balance to be struck. Certainly that reverse onus is something worth looking at.

However, the truth is that organized crime has the resources. The government brags about the money it is putting in, but there are some prosecutions that have been going on in the country against organized crime by the Government of Canada where the cost is in excess of $10 million. The money being put in is a drop in the bucket. Not to discount the fact that $200 million over five years is a lot of money, but in comparison to the proceeds of crime, which are reaching into the billions, the point has to be made that we have to fight back with the resources we have and often that means money to fight crime. Bringing in legislation that is tough yet honours the charter is the challenge for the

government. We are hoping the bill will do that given some of the amendments we will put forward from this side of the House.

...

September 19, 2001 [Senate]

Hon. Wilfred P. Moore

Honourable senators, I am pleased today to begin debate at second reading of Bill C-24

…

Honourable senators, law enforcement officers do need a limited justification for acts or omissions that would otherwise be illegal when they undertake these acts and omissions for the purpose of good-faith investigations. In the absence of sufficient protections in the current law of Canada, the Supreme Court's judgment has had a significant negative impact on law enforcement in Canada. The impact has been especially great on undercover operations targeting organized crime.

As noted in the white paper entitled "Law Enforcement and Criminal Liability," tabled in the Senate in June 2000, long- accepted and valuable law enforcement techniques have been called into question by that ruling. For example, the judgment has called into question the legality of routine purchases by law enforcement officers of contraband to gather evidence for prosecutions. Similarly, the judgment has affected the ability of law enforcement officers to pose as criminals by participating, temporarily and in a controlled manner, in the activities of their targets…

Bill C-24 responds to this situation. Under the bill, a public officer engaged in the enforcement of an act of the Parliament of Canada would be able to engage in conduct that would otherwise constitute an offence, provided certain important limiting conditions are satisfied.

...

I now move to Bill C-24's improvements to the law on proceeds of crime. Currently, the proceeds-of-crime provisions are directly related to the designated drug offences and a list of other offences referred to as "enterprise crimes." Over the years, as organized crime evolved and moved into new areas of criminal activity, new offences were added to the list of enterprise crimes. Today, the list of such crimes stands at over 40, with no indication that we will stop adding new offences to the list.

Bill C-24 eliminates the list approach and expands the application of the proceeds of crime to all federal indictable offences. This should be subject to the exception of indictable offences that are excluded by regulation. In this manner, the profits from the commission of most serious crimes would be subject to forfeiture. This will simplify and expand our approach with respect to proceeds of crime. However, existing protections to ensure that seizures are appropriate and subject to defined procedural requirements will remain in place.

Other provisions of Bill C-24 will give criminal justice officials new powers with respect to foreign confiscation orders. The ease with which financial resources can be transferred around the world presents a challenge for all countries in the attempt to fight crime by seizing its proceeds. Canada must be in a position to play its part in addressing this challenge and offering necessary assistance to countries that have successfully investigated organized crime within their jurisdiction and ordered their assets to be confiscated.

Accordingly, the bill proposes a number of amendments to the Mutual Legal Assistance in Criminal Matters Act that would allow Canada to enforce foreign confiscation orders.

An additional element of Bill C-24 that I will highlight for consideration of the Senate deals with offence-related property. The bill contains amendments to make the offence-related property forfeiture regime in the Criminal Code apply to all indictable offences under the code and expands the application of the regime to all real property, subject to a proportionality test.

As I stated, three new criminal organizational offences have also been created. These replace and substantially improve upon the criminal organization offence that was created at section 467.1 of the Criminal Code by Bill C-95.

...

Senator Andreychuk: Honourable senators, we must look at trafficking in migrants and an international convention, as well as some national enabling legislation. We should then look at drug strategies and gangs and criminal activity strategies and money laundering. More and more, the international community is saying that these activities are all interrelated. Perhaps we have not been so successful because we have been looking at the nature of the activities in a segmented way. Surely it is time to see how we can draw them all together in a more coherent way so that we might be more successful.

September 25, 2001[Senate]

Hon. James F. Kelleher

Honourable senators, it gives me great pleasure to rise today to give second reading to Bill C-24, to amend the Criminal Code, specifically addressing the issues of organized crime and law enforcement.

…

The last matter I wish to touch upon today is one which, as a former Solicitor General, greatly concerns me. When this bill was first introduced, the Minister of Justice announced an additional $200 million to fight organized crime. If this government can waste hundreds of millions of dollars attempting to register the guns of innocent Canadians and still not get it right, then I have a hard time believing that $200 million is nearly enough to combat organized crime.

As senators, we must determine how much is really needed to effectively implement this legislation. If the financial resources are not forthcoming, then I question the point of even dealing with this bill.

While on the subject of money and resources, honourable senators, I should mention that I am pleased to see the expanded provisions allowing for greater seizure of assets tied to organized crime. It is time that we went after the rewards of organized crime and reclaimed these resources for the benefit of us all. Ideally, we could use the proceeds of these seizures to add to the resources necessary to effectively fight organized crime.

November 21, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

The Honourable Anne McLellan, Minister of Justice and Attorney General of Canada

…

We know that both terrorism and organized crime have existed for a long time. They have both taken on new guises because of globalization and technology, and the ability to move billions of dollars around the world quickly and easily. They have existed for a long time and they will both continue to exist.

...

Third, the bill broadens the powers of law enforcement to forfeit the proceeds of crime and, in particular, the profits of criminal organizations, and to seize and forfeit property that was used in the crime.

Fourth, the bill creates an accountable process to protect law enforcement officers from criminal liability for certain otherwise illegal acts committed in the course of investigations.

…

November 21, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Hon. Lawrence MacAulay, Solicitor General of Canada

…

I would like to focus specifically on how Bill C-24 will make it easier to take the profit out of crime. This is crucial because organized crime is a business. When we take away the profits, illegal business cannot operate.

The bill would expand our ability to seize and forfeit the proceeds of crime. As it stands, the court can take away the proceeds of crime by drug traffic, murder and fraud. Bill C-24 will expand on that list, so we will be able to take away the proceeds of almost all indictable offences. These changes will make the 13 Proceeds of Crime Units we have established across the country even more effective. These units, combining the resources of the RCMP and those of other police and government agencies, were created to target organized crime groups and seize their criminal proceeds. To date, assets valued at well over $200 million have been seized, and over $130 million in fines and forfeiture have been realized. That is significant progress, and the measures in Bill C-24 will build on that success.

In the aftermath of September 11, the bill will allow for, among other things, the enforcement of foreign seizure and forfeitures. This will serve as an effective tool in removing profit generated by criminal organizations outside of Canada. I know many countries have been waiting eagerly for us to introduce this change.

These proposals will allow designated officers, under strict limitations, to perform acts and omissions that would otherwise be offensive, so they can carry out their investigation and even infiltrate criminal gangs. The Supreme Court of Canada recognized that officers operating in good faith might need to have such powers. It also recognized that it is up to Parliament to provide them. That is what we are doing in Bill C-24.

…

November 21, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Ms Anne McLellan

You raise a good point, senator [Rivest]. When I meet with some police organizations, they make the point that, in terms of sharing in relation to the proceeds of crime, they would like to see some of those proceeds be put back more directly into enhanced law enforcement efforts. However, as the Solicitor General has outlined, the sharing arrangements are government-to-government, federal government to provincial government. What the province chooses to do with those resources from proceeds of crime is left up to the province in whatever proportionate share they receive. It does vary.

It would not be for us to say how those dollars are used. However, let me assure that you that both police and victims' organizations have made the case in the provinces that they should have some recoupment or some call upon the funds that are provided to the province under these sharing agreements. Once the province receives the funds, it is up to them to decide how those funds are used in their province.

Under the Criminal Code, we have something called a victim fines surcharge. That requires a court, in almost all circumstances, to impose a surcharge on the convicted individual in addition to any other sentence. That surcharge goes to the provinces for victims' programs. It does not come to the federal government. That was an arrangement we made some years ago with the provinces.

Where a surcharge is imposed, and a surcharge could certainly be imposed on any convicted person charged with an organized crime offence, those surcharges go to help fund victims' services in every province in the country.

November 21, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Michel Auger, Journalist, Legal and Criminal Affairs Expert, Journal de Montréal

...

In addition to this list of victims, 20 innocent people have been injured or assassinated in this war. I am one of those innocent victims. A woman working in a restaurant was taken hostage, and used to shield an individual linked to the Hells Angels who was trying to protect himself from his assailants. He was a loan shark. When the police arrested him a little later, they seized in his personal effects $5 million in proceeds of crime. Here, it was possible to make the case.

The proceeds of crime in Operation Spring 2001 were not just from the Hells Angels. The Hells Angels are not even the largest organized group working in Quebec and Canada. However, revenues for the Hells Angels alone are one billion dollars annually. The police seized roughly $10 million. The police followed them and counted money every day. Our legal system is 30 or 40 years behind the American

legal system. Canadian criminals avoid the United States like the plague. In Canada, however, they share the vision of a prime minister who said that Canada was the best country in the world.

The courts, in Bill C-24, have limited police authority to infiltrate organized crime. Only in Canada is one criminal organization after all of the profits. A criminal is not just involved in drug trafficking, theft or possession of stolen goods, he is an individual who keeps his options open. There is no such thing as small profits for a criminal.

Our courts, in the Campbell and Shirose case, limited the powers of the police. A secret agent who infiltrates a criminal network is only authorized to buy drugs. If someone offers him a stolen vehicle, he cannot buy it, nor can he buy a carton of contraband cigarettes. So it is absolutely unthinkable for the police to be able to infiltrate criminal networks because of the highly restrictive interpretation from our courts.

…

They say that society in general benefits somewhat from organized crime and the proceeds of crime. It is true that criminals are big spenders. They buy works of art, expensive vehicles, they travel a lot, they like to live in luxury and they have big houses. They are heavy consumers. That is where some of their profit goes. Another part is used for loan sharking. That is one of the biggest problems in Canada's larger cities.

…

November 21, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Yves Prud'homme, President, Fédération des policiers et policières municipaux du Québec

…

We therefore believe that Bill C-24 does not go far enough to send a clear, unequivocal message to those who operate in the world of organized crime. We feel that the government should consider a greater disincentive such as reversing the onus of proof so that the accused would have to demonstrate that they are not guilty of the charges that are brought against them. The prosecution will have to prove to the court that the offences have indeed been committed and are obviously related to organized crime. The same reversed onus should apply to the proceeds of crime and, in particular, to the profit of criminal organizations and the assets that are confiscated. It would then be up to the individuals who are charged to prove that the assets are not the proceeds of crime.

...

No new money has been included in the budget of municipal police services who are part of joint units along with our fellow provincial and federal police officers. You must realize that without additional funding, it is impossible for law enforcement agencies to increase staffing.

…

You are right, and I am going to give you a concrete example of what I have experienced. The Sherbrooke Hells Angels based a biker in Iqaluit to sell hashish from Sherbrooke. Similar examples are to be found around the world.

A police money-laundering operation in Montreal from 1990 to 1994 revealed that the Sherbrooke Hells Angels' cocaine came through the Hells Angels international group and that the work was being done in co-operation with the Montreal mafia. The Colombians were in cahoots with the Hells Angels for the sake of exporting the cocaine. This is a problem that has to be dealt with on a worldwide basis. This is a difficult problem to deal with in the big cities; imagine what it is like for small towns in remote areas.

In greater Granby, with a population of about 60,000 people, the police are under surveillance. Files are kept on them. Officers are even visited at home. Organized crime is taking action against officers. No longer is the police officer investigating the criminal; the criminal is investigating the officer. In a municipality of 200 or 300 residents, there are surely members of organized crime.

…

November 21, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Antonio Nicaso, Journalist, Author

...

In the Unites States, they use RICO to attack criminal enterprise because the only way to fight organized crime is to hit them in their pocket. Unfortunately, when I said that Canada is an easy spot, there is a reason for that. We have to consider that, before 1989, we did not have money-laundering legislation. It was harder to import cheese into this country than a piece of luggage full of cash, dirty money.

During that time, many criminal organizations moved into Canada. That is because Canada is still an easy place in which to invest money. We should not underestimate the fact that we allow people to

invest $300,000 in this country as a landed immigrant. In Quebec, we recently had a case involving the wife of a wanted criminal from Italy. She invested $300,000 in Canada. No one asked her where the money came from.

In 1994, all the leaders of the world signed an agreement at the United Nations summit in Naples. For the first time, they defined organized crime. It was a correct definition of organized crime.

In Bill C-95 there is a definition of organized crime that does not exist. I say that for one simple reason. That is because it refers to five or more people, and formally or informally organized crime. The characteristic of organized crime is the formality of their structure. It is the fact that there is a hierarchical structure. Bill C-24 is a better approach.

It is important to create a national strategy and to deal with organized crime in a different way. In Canada, there is still a much lower risk of prosecution and detention than in other countries, for example, in Europe and in the United States. In the United States, they have mandatory prison terms. Here, we have a Club Med instead of a penitentiary. We do not consider drug traffickers as dangerous offenders. That is a mentality that we should change. We should be thinking about organized crime in a large way. Police officers need a piece of legislation that deals exclusively with the definition of organized crime. They need to do other things to attack organized crime in different ways.

…

November 21, 2001 [Standing Senate Committee on Legal and Constitutional Affairs] [Entire Exchange]

Senator Kelleher: Is the commission of the offences that the police will be given the authority to commit limited to investigations of a criminal organization, or can these powers be used in any and all criminal investigations, including the investigations of terrorist activities?

Mr. MacAulay: The person or individuals that are designated are under supervision of an officer and they can only perform these duties involved in an investigation.

Senator Kelleher: I understand that, but with respect, that is what you always say to a judge even though you do not mean it. Can this include the investigation of "terrorist activity?"

Mr. MacAulay: Yes, indeed.

Ms McLellan: Yes.

Senator Kelleher: Therefore, the police could be involved in committing terrorist acts in the course of their investigations if they were so permitted; is that correct?

Mr. MacAulay: Falling under this legislation, if a terrorist organization is involved, it could also be involved in organized crime, which would tie the two together under this legislation. One could be investigating a terrorist organization for organized crime activity. That could very well take place.

Ms McLellan: Senator, your question is a good one. One might have authorization for law enforcement officials to participate in a money-laundering scheme, the money of which is used to finance terrorist activities.

Senator Kelleher: The question is timely, in light of Bill C-36, to let the people of Canada know that this can also involve terrorist activities.

Ms McLellan: Indeed. Money laundering is probably a good example where we know that terrorist organizations raise money here and around the world, and we might want to authorize our law enforcement authorities to go undercover and participate, for example, in a money-laundering operation, in order to reveal the full extent of the operation, to lay charges and to blow it apart.

Mr. MacAulay: I had the privilege of meeting an undercover officer who was involved in this type of activity and who explained the need for this kind of legislation.

Mr. Paul Kennedy, Senior Assistant Deputy Solicitor General: There are many serious criminal offences that the police are not authorized to do, for example, murder, sexual offences, assault causing bodily harm and obstruction justice. The definition of terrorist activity is at the high end, and includes offences that put lives in jeopardy. The officers are not authorized to do that under this scheme.As part of the normal investigation done of such organizations, there are support or ancillary activities that they have to be involved in. The Minister of Justice referred to money laundering. Another example is the preparation of false documents. These are all tools that people have to commit terrorist activities. The officers will be working with these people to find out who is doing what and to infiltrate the groups. You can take from there that the officers will be doing things such as bombings. That would defeat the purpose. However, they have to go in at the entry-level and investigate to be able to take action. There are thresholds that are off the table and are not done.

November 22, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Ms Heather Perkins-McVey, Chair, National Criminal Justice Section, Canadian Bar Association

...

One of the significant questions to think about is, will this bill solve the problem? We suggest it will not. Yesterday you heard the Minister of Justice McLellan talk about the fact that this bill is different from Bill C-36 because it is meant to deal with the profit motive. Our position is that this bill does not focus sufficiently on taking away the profit motive of crime. If we were to look at decriminalizing soft drugs and prostitution, that takes some of the profit motive away from some of these persons involved in organized criminal activities. We believe that focussing laws such as the money-laundering legislation that has already been passed, which takes away the profit motive, will have a far better

effect on combating organized crime than some of these overbroad offences that are contemplated in Bill C-24.

…

Ms. Anne-Marie Boisvert, Chair of the Barreau du Québec Criminal Law Committee: There has been a great deal of discussion of the Campbell and Shirose Supreme Court judgment. I would like to place it in perspective. Campbell and Shirose were charged with serious drug offences and requested a stay of proceedings because of police wrongdoing. It was alleged that the police committed an offence by selling drugs. The Supreme Court denied the stay of proceedings and Campbell and Shirose were convicted.

However, in pronouncing judgment, the Supreme Court justice said that the police had committed unlawful acts. It is now being alleged that it will be impossible to convict anyone because unlawful acts are disallowed. I repeat, Campbell and Shirose were convicted. In response to the claim that investigations will become impossible because it would amount to leaving oneself open to legal action by attorneys because of offences committed, I would like to see a long list of police officers against whom legal action has been taken.

In Quebec, the RCMP unlawfully laundered millions of dollars through an exchange office that they had set up. To my knowledge, no legal action was taken against any of these RCMP officers. Furthermore, the major criminals who were sent to prison as a result of the operation are still there.

When it is said that in the Campbell and Shirose case, the Supreme Court decision created an emergency situation which meant that there could be no further investigation, then it is important to ask what precisely is being requested. The bill assigns the power to decide whether and under what circumstances it is reasonable to commit offences. It is clear upon reading the bill that the things reviewed by the MacDonald Commission of Inquiry in connection with the incidents that occurred in the 1970s in Quebec would not have happened. It would be considered acceptable for the RCMP to have stolen lists of members of political parties, burned barns or whatever else it may have done that gave rise to the many years of investigation by the commission of inquiry. It is important to realize this.

November 22, 2001 [Standing Senate Committee on Legal and Constitutional Affairs] [Entire Exchange]

Mr. William M. Trudell, Chair, Canadian Council of Criminal Defence Lawyers: I agree with you, senator. You would get a statistical report. We had 59 infiltration cases where we had to break the law. Proposed section 25.3 (2) takes out any specific information because, as has been said earlier, there are too many escape ramps. You are correct. There would be no meaningful report. Therefore,

there would be no accountability in relation to the use of these provisions. Previously, some police officers may have said to you that they have experience; they know how to infiltrate the police; and they have training. That argument has been made previously. There is no standard training for infiltration and what they can do across the country. Quebec may have some experience because of the bikers, but Manitoba, Saskatchewan and New Brunswick may not. There is no standard accountability. There are no standard provisions for accountability throughout this bill. That must happen if this cookie goes beyond this committee.

Senator Lorna Milne (Chairman): It rather surprises me that with a group of legal people in front of me that no one has said that the courts are the ultimate civilian control.

Mr. Michael Lomer, Counsel, Criminal Lawyers' Association: You do not like the control.

Chairman Milne: The judicial control is the ultimate forum. They throw the case out.

Ms Perkins-McVey: What if this is never revealed? What if there is not a charge laid? What if the police break the law, do all these things in the course of an investigation that goes nowhere? Should we be allowing this kind of activity?

Ms. Boisvert: There is a difference in degree. In Quebec, the RCMP has not been charged with money laundering. They did it for years.

November 28, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Marc St-Laurent, Deputy Chief, Investigations Division, Montreal Urban Community Police Department

…

Our disappointment with Bill C-95 is matched by our delight with Bill C-24. We are therefore enthusiastic and confident about the future, because this bill to fight organized crime at last meets our expectations. We support the amendments proposed in the bill, in particular the new definitions of "criminal organization" and "criminal organization offence." We also support, needless to say, the measures designed to protect justice system participants and provide immunity for peace officers. We believe that the new rules governing the seizure and forfeiture of offence-related property and proceeds of crime are better than the current rules.

…

The other element we feel is important is the reversal of the burden of proof where applications for the forfeiture of proceeds of crime are made. We all know how difficult and costly it is to prove that something is the proceed of a crime, particularly because organized crime members often use dummy corporations in transactions involving real estate and goods. Would it not make sense to require organized crime members to reveal the source of their goods, if they have been found guilty of being

an organized crime member? Those are the two recommendations we would like a future bill to incorporate.

...

November 28, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Mike Ryan, Inspector, Organized Crime Agency of B.C.:

…

The broadening of the definition of enterprise crime to include all indictable offences under the Criminal Code and any act of the federal Parliament provides a significant opportunity for law enforcement to seize the proceeds of crime from the broadest range of profit-motivated offences engaged in by organized crime groups. Without the expansion of this definition, the proceeds of crime from offences such as forging or falsifying a credit card cannot be seized.

Earlier this year, my agency seized an illegal credit card factory that held at risk a total of $330 million in credit potential. The proceeds of crime from this offence could not be seized due to the current restricted definition.

…

It should be pointed out as well that the 1997 amendments contained several provisions that allowed police officers to traffic and purchase illegal drugs to counter drug dealing. Other provisions in the Criminal Code allow police to launder money, to be in possession of proceeds of crime and to possess restricted or prohibited weapons for the purposes of an investigation. These exemptions are already in Canadian law and have existed for some time. They permit law enforcement officers to do certain things that are technically illegal. These exemptions have proven their worth in the battle against organized crime and without incident or suggestion of abuse.

…

November 28, 2001 [Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Asselin

If I may, I believe that you all agree that what has allowed organized crime to take on the importance that it now has, is due not only to the intimidation factor but also due to wealth. They line their pockets in two ways: through drug trafficking and through the proceeds of crime.

At this time, because of the laws regulating certain types of drugs and other substances, peace officers can also engage in drug trafficking, importing, and production, in order to infiltrate these groups and dismantle their organization. Under the Criminal Code, they are allowed to launder the proceeds of crime, and in so doing, commit the same offence, with less supervision and fewer restrictions than are included in the Criminal Code with Bill C-24. The use of such means has not yet led to any abuse.

For example, as Mr. St-Laurent told you, since the regulation allowing us to engage in trafficking and possession of drugs came into effect in 1997, we have undertaken a dozen operations. Those who are assigned to such activities are hand picked. We have 12 such officers. Bill C-24 stipulates that the Quebec Minister of Public Security will designate which law enforcement agencies have the qualification or expertise to undertake such activities.

With respect to drugs, on the 150 police agencies in Quebec - at least until recently - only the Sûreté du Québec and the Montreal Urban Community Police Service were involved in laundering the proceeds of crime and in drug trafficking operations. Of those two agencies, only our ultra-specialized and properly trained units are involved.

I believe that the supervision is even greater than what is stipulated in the Criminal Code at this time.

November 28, 2001 [Standing Senate Committee on Legal and Constitutional Affairs] [Entire Exchange]

Senator Moore: In your remarks, you mentioned that the police should be targeting the businesses that these organized criminals are in. We have heard from witnesses before you of the millions, if not billions, of dollars that have been generated and are out there. In the course of your research, where is this money deposited, and does Bill C-24 not give the police the tools they need to chase down and seize those monies?

Mr. Yves Lavigne (journalist): I have always been of the opinion that Revenue Canada investigators should be the people tasked with dealing with money laundering and proceeds of crime. The untouchables who finally nailed Al Capone and who fought organized crime in the U.S. in the 1920s and 1930s were not police officers. They were Revenuers who worked for the Department of Treasury. Al Capone got nailed on tax evasion. There needs to be more cooperation. There has always been a reluctance to bring the tax people in. It is a power struggle, but I think these agencies should cooperate more. Money laundering is, in one sense, well understood and, in another sense, truly improperly understood. The Hells Angels do not put this money into foreign bank accounts. They put it in a plastic pipe and bury it in their backyard. I carry a shovel in the trunk of my car, hoping one day I will luck out. Five million dollars was found in California in a Hells Angels' front yard in a plastic pipe. Most criminals, the smart ones, will not flash the cash, because if they do, they will get hit on for money. They look grubby. Look at the Volpe brothers in Toronto, who were the organized crime in

Ontario - the only organized crime as far as the media was concerned. One of them ran a parking lot, wore a little windbreaker and pants, and read books every day. You would not make him for an organized crime figure. They bury their money. The Colombians are the guys with the accountants who run the money through the system. The others are pretty smart.

Senator Moore: Where is the bikers' money in Canada? Is it in banks or buried?

Mr. Lavigne: In British Columbia, they nearly spent $250,000 of it buying a seat on the Vancouver Stock Change and running a member for public office in White Rock. They own a lot of businesses. A police officer has to prove a crime was committed. Revenue Canada just walks in and says, "Prove to me these assets are legal." This is where the police and Revenue Canada can work together. The police identify the Hells Angels, their wives, their associates, their friends, their network. Revenue Canada hits all those people: Mr. Big, his wife, his girlfriends, his family, his parents, her parents, their associates, and audits all of them. Four apartment buildings will be in his second girlfriend's name. A fleet of limousines that work the airport will be in the name of an associate. If all these people eventually get audited, the noose gets really tight. Even if no one is ever charged, they will have to forfeit all this money, which is very damaging to organized crime. Money is their power. It corrupts. It buys stuff.

I would love to see Revenue Canada do that. It is such an easy thing to do, because they know who all the bad guys are. Bikers are so obvious. Audit them. The corner stores get audited every day. Legitimate business people get audited every day. It frightens them. I think that would probably be the best way at this moment in time to hurt organized crime.

An Act To Amend The Criminal Code, The Official Secrets Act, The Canada Evidence Act, The Proceeds Of Crime (Money Laundering) Act And Other Acts, And To Enact Measures Respecting The Registration Of Charities In Order To Combat Terrorism (Bill C-36)

Citation	2001, c. 41
Royal Assent	December 18, 2001
Provisions Amended	Long title; 1, 2, 3, 5, 7, 9.1, 10, 12, 15, 16, 17, 21, 22, 25, 27, 30, 32, 36, 40, 55.1, 56, 58, 59, 73, 75, 80, 96

Hansard

October 16, 2001 [House of Commons]
Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.)

...
We are all aware that the lifeblood of terrorist organizations is money. Bill C-36 proposes new measures under the criminal code to combat the financing of terrorism. It includes measures related to the seizure, restraint and forfeiture of terrorist property. The new measures related to financing would allow us to effectively go after the heart of terrorist financing networks.

For example, it would be an offence to collect or provide cash knowing that it would be used to facilitate or carry out an offence that constitutes terrorist activity. It would be an offence to provide financial services knowing that they would be used to facilitate or carry out terrorist activity or to benefit a terrorist group. Persons in the financial services industry who knowingly engage in transactions related to terrorism could find themselves charged criminally.

These measures are also subject to safeguards including substantive and procedural requirements governing seizure, restraint and forfeiture. Third party interests including those of the innocent families of those involved would be protected.
…

The bill also amends the proceeds of crime or money laundering legislation. Fintrac's mandate would be expanded to gather, analyze and disclose information on terrorist money laundering. The safeguards built into the Fintrac process would be maintained.
…

October 16, 2001 [House of Commons]
Mr. Michel Bellehumeur (Berthier--Montcalm, BQ)

…
As far as money laundering is concerned, for at least five or six years now the Bloc Quebecois has been saying over and over that the borders between Canada and the United States are as full of holes as a sieve and that Canada enjoys the wonderful international reputation of being a country where money laundering is easy and where there may be the least monitoring of this.
…

October 16, 2001 [House of Commons][Entire Exchange]

Mr. James Rajotte (Edmonton Southwest, Canadian Alliance): Mr. Speaker, an expert on money laundering has been quoted in news reports today as calling Canada the Maytag of the north, well known to terrorists and other criminals as a good place to launder money. The

justice minister and the finance minister both assured us that the government had the legal power to seize and freeze the financial assets of bin Laden and other terrorists. If that was the case, will the Prime Minister explain why this new bill changes the very law that his government said had the powers already?
Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, as I have indicated before in the House, under section 3(2) of the United Nations Act we do have the power to commence civil forfeiture proceedings, but what we are doing in the anti-terrorism legislation is putting in place a strengthened and more formal process by which we have the power to seize, to restrain and to seek civil forfeiture. Let me make it absolutely plain that under section 3(2) of the United Nations Act that presently exists we do have the power to seek civil forfeiture of frozen assets
Mr. James Rajotte (Edmonton Southwest, Canadian Alliance): Mr. Speaker, section 3(2) of the United Nations Act is the act that the government is changing under this law. Two senior ministers weeks ago asserted that the government had the legal power to seize and freeze bank accounts, and yet at the first opportunity they have changed the law. Why did two senior ministers state in the House that the government had these powers?
Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, we do have that power and in the legislation what we are doing is streamlining and formalizing that process.

October 17, 2001 [House of Commons]
Mr. Irwin Cotler (Mount Royal, Lib.): Mr. Speaker, the government's anti-terrorism law is not only intended to mobilize the domestic legal arsenal against international terrorism but to help build and strengthen the international mechanisms to confront the new supernational terrorism. Accordingly the Canadian government is hosting this week an international conference on money laundering involving participants from 43 countries to address and redress an evil that threatens the security and lives of people.
In particular, terrorists and transnational criminal syndicates have enormous resources at their disposal with the capacity to infiltrate, undermine and circumvent legitimate socioeconomic infrastructures and transactions.

By targeting money laundering, the soft underbelly of terrorist and criminal organizations, the conference aims to stem the illicit flow of funds that sustain these organizations, which exemplifies our international leadership role in protecting human security in mobilizing the legal arsenal to put people, their safety and their lives first.
…

October 17, 2001 [House of Commons] [Entire Exchange]
Mr. Michel Bellehumeur (Berthier--Montcalm, BQ): Mr. Speaker, the world money laundering conference concludes today in Montreal. At least $30 billion left Canada last year for three tax havens recognized by the OECD. Can the Minister of Finance guarantee that not one cent of this $30 billion was used to finance terrorism?
Hon. Paul Martin (Minister of Finance, Lib.): Mr. Speaker, it is fairly clear that the Minister of Finance, in his capacity as Minister of Finance, certainly does not have this information. If it does exist, it is a matter for the police.

Mr. Michel Bellehumeur (Berthier--Montcalm, BQ): Mr. Speaker, does the Minister of Finance realize that his lack of willingness continues to make it impossible to know whether the $30 billion invested in these tax havens, which his government encourages, have been or are being used to finance terrorism?
Hon. Paul Martin (Minister of Finance, Lib.): Mr. Speaker, as far as financing terrorism is concerned, the Government of Canada, with the Minister of Justice's omnibus bill and by freezing terrorists assets from the start, as the United Nations required, led the way and will continue to do so. When we look at the OECD initiative on tax havens and the Government of Canada's ability to act in the area, we see very clearly that, of all the G-7 countries, Canada is the one providing leadership, and we will continue to do so.

October 17, 2001 [House of Commons]
Ms. Anita Neville (Winnipeg South Centre, Lib.)

… We will also have the ability to cripple these terrorist organizations financially with the amendment to the Proceeds of Crime (Money Laundering) Act and the enactment of the charities registrations act. Preventing terrorists from accessing funds prevents them from committing acts of terror.
…

October 17, 2001 [House of Commons]
Hon. Stephen Owen (Vancouver Quadra, Lib.)

… Bill C-36 would build on the money laundering and proceeds of crime legislation we have in place to deal with criminal organizations. This legislation deals mainly with enterprise crime but could clearly be focused on terrorist organizations.

October 18, 2001 [House of Commons] [Entire Exchange]
Mr. Stéphane Bergeron (Verchères—Les-Patriotes, BQ): Yesterday, in response to a question, the Minister of Finance stated that Canada was a leader in the battle against money laundering. However, the exact opposite of this was said by John Mair of the RCMP at a conference on this subject held in Montreal this week. Does the Minister of Finance agree that Canada has some catching up to do in this area, and will he promote an international agency against money laundering such as the international experts are calling for?
Hon. Paul Martin (Minister of Finance, Lib.): Mr. Speaker, Canada has already called for this. Moreover, it is in part because of Canada that the Financial Action Task Force on Money Laundering, an international body created by the G-7, has been created. I can assure you that its work will continue. Moreover, Canada has already said that staff must be increased so that this can be done as effectively as possible.
Mr. Stéphane Bergeron (Verchères—Les-Patriotes, BQ): Mr. Speaker, the Minister of Finance has been boasting for several years about playing a lead role on the international level to do away with tax havens. The reality, however, is that since he took over in 1993, no action has been taken and more than $140 billion have been transferred from Canada to tax havens in the West Indies. Could the minister stop giving us these fine speeches about his claimed role on the international scene, and instead play his role as the Minister of Finance for Canada and put an end to bilateral agreements with countries that are considered tax havens?

Hon. Paul Martin (Minister of Finance, Lib.): Mr. Speaker, once again, as the hon. member must be aware, the OECD has put in place a process for examination of all tax havens. Canada has given full support to this entire initiative. Moreover, Canada has given $13 million to countries of the West Indies to ensure that they are able to control money laundering and to examine just how all the problems involved can be solved.

...

October 24, 2001 [Standing Committee on Justice and Human Rights]
Mr.Paul Wilkinson (Individual Presentation - Professor St. Andrews University)

…
And as I said, the listing of designated organizations is a similar measure. I know that has been controversial in Canada. I read some of your press reports only this morning, which seem to indicate that people are unhappy with that. My feeling is that the listing should not be misunderstood. It is not that the legislation only applies to those designated organizations. Any organization, as I understand your proposed terrorism legislation, that engages in terrorist activity or supports terrorist activity could fall foul of this act, whether it's listed or not. It may be added to the list at some later date.

There is a great advantage to having a list. When you're trying to suppress the financing of terrorism, which is, after all, the lifeblood of buying weapons and purchasing the sorts of services the al-Qaeda network has been able to buy all over the world, it is important that one can actually stop the flow into the terrorist organization. If you don't have a listing, the danger is that you have to try to prove in a court of law that a specific sum of money that passed from a bank in, say, Ottawa to a bank in India or in Pakistan actually was used by a person in that particular country to purchase *x* number of weapons and explosives. That is an exceedingly difficult thing to prove, whereas if you can show that a designated terrorist organization was involved in both the support network that procured this money and the channelling of the money to a terrorist organization that is a designated organization, you can actually apply the financial measures the UN convention asks us to apply. It streamlines the effectiveness.

I know some organizations will be clever enough to change their names. They've already done that in America. Some of them, as I said, moved across the border. Some moved their activities mainly to Europe. We have seen, as a result of Terrorism Act 2000, some organizations shutting down their major funding activity in London and moving it to places where the legal framework is more lax. I'm sure that will happen, but insofar as we're making it more difficult for them to use our havens of democratic freedom in that way, abusing our freedoms in order to help terrorism, I think we're making a constructive contribution, and therefore I welcome that element in your proposed legislation. The similarities seem to me to far outweigh the differences.
….

October 24, 2001 [Standing Committee on Justice and Human Rights]
Professor Wesley Wark (International Relations Programme, University of Toronto)

On terrorist financing, again this measure has been called for over a number of years by people who have watched over terrorist problems in Canada. I think it's long overdue. The one issue I would raise, with regard to the monitoring and interdiction of terrorist financing, is that as the bill currently stands, it raises the possibility of creating overlapping jurisdictions, or overlapping areas of operations, between the existing centre to monitor financial transactions that was created to pursue money-laundering issues—and now will have a function in terms of pursuing terrorist financing—and the mandate of the Canadian Security Intelligence Service, to concern itself with terrorist financing and fundraising in Canada.

Overlapping jurisdictions in the security and intelligence business is the bane of that business. We have to be careful any time we seem to be creating the circumstances to provide such overlap. I wonder whether this needs to be looked at again.
...

October 25, 2001 [Standing Committee on Justice and Human Rights]
Hon. Jim Peterson (Secretary of State (International Financial Institutions))

Thank you dear colleagues. I appreciate the opportunity to appear before your committee today to discuss those aspects of Bill C-36, the Anti-terrorism Act, which deal with terrorist financing.

I will focus on how the Bill expands the scope of the Proceeds of Crime (Money Laundering) Act (PCMLA) and the mandate of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). I will comment on new measures that affect charities and will mention our international efforts.
[*English*]

At the outset, let me assure honourable members that the government is committed to depriving terrorists of the ability to finance their activities. We believe that cutting off their funding is a key step in reining in the capacity of terrorists to function. Achieving this objective, however, will not be easy. It requires both strong domestic measures and a unified international effort.

As you know, the government has been working with its international partners to develop a coordinated global response to dealing with terrorist funding. Canada and its G-7 partners have moved quickly to develop and implement action plans to combat the financing of terrorism, doing so by blocking the assets of terrorists and their associates.

We're also an active member of the Financial Action Task Force on Money Laundering. We support the organization's efforts to develop and implement international standards to prevent the use of the global financial system for terrorist financing. The Honourable Paul Martin, chair of the G-20 group of finance ministers and central bank governors, has begun the task of broadening the base of support for effective and coordinated international action through that group.

Our goal is that all jurisdictions will join with us in adopting strong domestic regimes against terrorist financing and will cooperate with us internationally to track down and deny a safe haven anywhere for terrorist funds.
[*Translation*]

Canada's participation in international efforts has already translated into domestic action, primarily through the implementation of United Nations Security Council Resolutions. Regulations in force since February 2001 freeze property owned or controlled by the Taliban, and Osama ben Laden or his associates.
New regulations, in force since October 2nd, go further by giving the government the authority to freeze assets of other terrorists and terrorist organizations that are listed either by the U.N. or by the Governor in Council.

The government listed individual terrorists and terrorist organizations under these regulations on October 2nd, and added to that list on October 12th. These new regulations have allowed the government to work closely with the international community to ensure that any terrorist assets are subject to sanctions.
[*English*]

The federal regulator, OSFI, has on several occasions since September 11 reminded financial institutions of their obligations under these regulations and urged them to cooperate fully with law enforcement in their investigation. OSFI has also used its website to provide financial institutions with the most up-to-date information about listed terrorists.

The new regulations require financial institutions to report monthly to their regulator on whether or not they have terrorist assets in their possession and, if so, to aggregate the information about those assets. The Minister of Finance has committed to making regular reports on the terrorist assets that are identified by our financial institutions.

These regulations were an important step in our efforts to thwart the financing of terrorist activities through our Canadian FIs. They establish key terrorist financing countermeasures and provide a bridge to the anti-terrorism plan that will be accomplished, we believe, through the passage of the bill before you.
[*Translation*]

Among other things, this Bill introduces changes to the Criminal Code that put into law various measures set out in the United Nations Regulations of October 2nd. Most importantly, the changes make it a criminal offence to finance terrorist activities. In addition to criminalizing terrorist financing, it is important that effective means be found to deter and detect these illicit activities. To this end, changes to the Criminal Code require all persons to report to the RCMP and CSIS if they have property in their possession or control that they know belongs to a listed terrorist. In addition, the Criminal Code amendments include monthly reporting requirements for financial institutions modeled on those established in the U.N. Regulations of October 2nd.
[*English*]

This bill also strengthens Canada's existing anti-money laundering regime both to guard against abuse of the financial system by terrorist groups and to provide law enforcement and intelligence authorities with information about terrorist financing activities. Under the current Proceeds of Crime (Money Laundering) Act, financial intermediaries must meet consumer identification and record-keeping standards and report transactions related to the identification of money laundering. At present FINTRAC is mandated to receive and analyze reports that may be relevant to money laundering activity and to disclose key information to law enforcement authorities. The scope of FINTRAC and this bill are both expanded to encompass terrorist financing. Let me provide a brief overview of the key measures.
[*Translation*]

FINTRAC's role will now extend beyond money laundering to include terrorist financing. Financial intermediaries will have to report to FINTRAC any financial transactions they suspect are related to terrorist financing offences. They will also be required to report if they are in possession of terrorist assets or have knowledge about a transaction, or proposed transaction, involving such assets. At the same time, FINTRAC will be responsible for disclosing identifying information to law enforcement agencies if the Centre suspects the information is relevant to the investigation of terrorist financing activities.
[*English*]

As well FINTRAC must report to CSIS if this information is relevant to threats to the security of Canada.

To further combat terrorist financing, FINTRAC will be allowed to share key identifying information with its international counterparts. However, new safeguards will be built into the law to ensure that the information is treated confidentially and also to limit disclosure of this information by foreign law enforcement agencies.

I would also like to assure members that the PCMLA was designed in a way that respects the privacy of individuals by ensuring that reported information is treated with the utmost care. The fundamental safeguards that were written into the law with regard to money laundering are also maintained with regard to terrorist financing. For example, the operation of FINTRAC remains at arm's length from law enforcement and is subject to the Privacy Act.

The final issue I want to mention concerns the registration and tax treatment of charities. Your bill includes income tax provisions that prevent terrorists from exploiting the tax privileges associated with charities. The bill enacts the new Charities Registration (Security Information) Act and amends the Income Tax Act to prevent organizations that support terrorist activities from enjoying the tax privileges granted to registered charities.

The Solicitor General and the Minister of National Revenue will now be empowered to issue a certificate denying charitable status to an organization. The Federal Court will be mandated to review that certificate to ensure that it is reasonable.
[*Translation*]

Beyond the measures in the charities legislation to deny tax privileges, other elements of Bill C-36 relating to the criminalization of terrorist financing would support additional steps by the government. If an organization willfully provides financing for terrorist activity, then there would be grounds for proceeding with criminal sanctions and the forfeiture of assets.

These new measures will protect the integrity of the registration system for charities under the Income Tax Act, and maintain the confidence of Canadian taxpayers that the benefits of charitable status are available only to organizations that operate exclusively for charitable purposes.
[*English*]

Terrorism, honourable colleagues, must and will be fought on many fronts. Canada will continue to work with its international partners in the G-7, the G-20, and the Financial Action Task Force on Money Laundering to develop and promote global standards to fight terrorist financing. Canada will see that tough laws are put in place, see that they are enforced, and see that there is a seamless web of international cooperation to deny funding to terrorists.
I mentioned earlier that strong domestic measures are needed if we are to deprive terrorists of funding and fulfill our international responsibilities. With the key elements of Canada's new money laundering regime already in place, the measures in Bill C-36 will help us achieve this objective by further strengthening and expanding the new regime. The amendments to the PCMLA in this bill will assist law enforcement agencies and CSIS by providing them with additional information to detect, investigate, and prosecute terrorist activities and to deprive them of their finances.

October 25, 2001 [Standing Committee on Justice and Human Rights] [Entire Exchange]
Mr. Vic Toews (Provencher, Canadian Alliance) Thank you, Mr. Chair. I want to commend the government for finally moving ahead on this file. Prior to September 11, it was clear that the federal government simply didn't have any interest in complying with international UN conventions. I refer not only to the suppression of terrorist bombing but to the suppression of terrorist financing, where Canada was not complying with its UN obligations. That, frankly, was a disgrace, and I'm very pleased that the government is moving ahead in this direction. We all know that money is the lifeblood of terrorist organizations, much as it is for organized crime. Unless we make concerted efforts to stop the flow of money, we will not stop the flow of arms, nor will we stop other terrorist activities throughout the world. Now, I listened with interest to your comments. I appreciate the briefing and your appearance here. It's clear now that FINTRAC has additional responsibilities, and I'm concerned about the financial institutions that are providing the information to FINTRAC in terms of tracking the relevant information. Are our resources, that is, the federal government resources furnished, sufficient to expeditiously analyze the information our financial institutions are providing us? Clearly, with the added responsibilities, there's going to be more information. What we don't want to see is the business of our country, particularly that of the financial institutions, bogged down because of too much paperwork. I think we have a concomitant obligation to provide appropriate resources and personnel for our agency. Has the administration by the federal government of this program received additional resources, Mr. Peterson?
Mr. Jim Peterson: Thank you very much, Mr. Toews.

It's a very important point, and the answer is, in short, yes. Let me just say that, yes, Bill C-36 does expand our capacity to freeze and also to seize the funds of terrorists. Prior to it, we did have in place regulations here in Canada that allowed us to freeze assets of the Taliban and assets of those associated with bin Laden. Even before this bill was in place, we were able, again by regulation, to pass another one that allowed us to expand the web beyond the Taliban and bin Laden to other terrorist assets—

Mr. Vic Toews: Thank you, Mr. Peterson.

I appreciate the fact that you're moving ahead on that, and certainly Bill C-36 is very important. What I want to know, if I could get an undertaking from you, is specifically the needed increase in resources and personnel. If you can't provide me with that today, at least undertake to provide it. That's all I require, for you to produce that in a timely fashion.

Mr. Jim Peterson: I will ask Mr. Horst Intscher, the head of FINTRAC, to outline what he's done in terms of expanding his personnel.

Mr. Horst Intscher (Director, Financial Transactions and Reports Analysis Centre of Canada, Department of Finance): Thank you, Mr. Chair. We have begun work on creating the capacity to undertake this additional work by identifying the resources we would require. This is in terms of both analytic capacity and of information technology resources and infrastructure for the protection of the sensitive information that would be flowing to us. I understand that we expect we will require some additional resources, and I'm fairly confident that we will be able to obtain those resources through the Treasury Board.

Mr. Vic Toews: If you could then undertake to provide this committee with that information, I would certainly appreciate it. Also, is there a liaison that goes on with the bank in determining exactly how much additional resources in terms of personnel or otherwise we require? We don't want the government going off in some direction without proper input from the financial institutions.

Mr. Jim Peterson: I think you have raised a very important point—and I'm glad you have—about the obligation imposed on our financial institutions to increase their surveillance and their reporting. Yes, the onus on our private sector institutions has increased considerably because of this. I also want to say to you that I am very proud of and grateful for the way they have responded, particularly the speed. It's not an easy task for them. I expect that in the future it'll be made slightly easier because of new computer technologies, the new IT they will bring in. We will certainly be coordinating matters with them on this front. You're quite right, there is an added onus there, and certainly an added onus on government.

Let me assure you, Mr. Toews, and the other honourable members that we will make these resources available to FINTRAC.

October 25, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ): Thank you very much. Mr. Peterson, the Bloc Québécois has been concerned about the whole issue of money laundering for a long time. I remember asking the government about it in 1994. They were the first questions I asked during my first term and I remember very well that in 1994 the government's answer was that there were no money laundering problems. I also remember having talked about international agreements. I was told there were no problems and that everything was fine in Canada. Today, you are singing a different tune; I'm very happy to hear you do it. But even though we have whatever law we want, we need the political will to enforce it and the financial resources to

apply it correctly. Speaking of political will, before even looking at Bill C-36, we know very well that since the 11th of September many countries have frozen assets. Many countries have followed some money movements step by step.

We also know that in Canada during the last two years more than $100 billion, it seems, have left the country for certain tax havens recognized by the OECD and the Canadian government. You know all that.

We also know that it seems that Canada has now frozen about $125,000 that was being used by terrorists or terrorist groups. Before even looking at Bill C-36, I want to know the extent of the political will within the government to act in the case of money laundering. Have you done some audits to see if the hundreds of billions of dollars that have left Canada towards tax havens are going to terrorist groups?

M. Jim Peterson: Mr. Bellehumeur, you have had a number of good initiatives in this area over the last few years. We have accepted some of your suggestions, including the one on the $1,000 bank note, which was canceled. It was a good idea, we thank you for it, and we have accepted it.

The issue of money laundering and tax havens is a difficult one. We cannot solve it alone. To do so, we need the cooperation of other countries all over the world. That is why we are now working with the international community at this tie, including G-7. Certain discussions have already started with the Finance ministers of G-7. We have also, through Mr. Martin, used our relationships within G-20 to promote the adoption of standards by each of these countries and the creation of international cooperative links.

It should also be noted that we are in a good position with other countries, for example in the Carribean because we represent...[*Editor's note: Inaudible*] ...the International Monetary Fund and the World Bank. We have worked with them already to establish information exchange systems and to fight money laundering. But it will need more work.We will continue. We have already supplied technical assistance to Carribean countries to help them improve their systems. Our objective is that after cooperating with all the other countries in the world there will be no more tax havens that terrorists could benefit from.

Mr. Michel Bellehumeur: Mr. Peterson, thank you for your answer but we see that at this time, when Bill C-36 has not yet been adopted, billions of dollars are leaving the country and we seem to have no control over this. It is true that it is a complex issue. However, if we really want to fight terrorism, we have to invest a lot because money is the fuel of war for them also. At this time, Canada has not invested enough in this area.Bill C-36 is before us. My question is as follows: how will Bill C-36, and especially its clauses on money laundering, and the implementation of international agreements, guarantee us as parliamentarians, Canadians and Quebeckers that you will be able to trace the money that will leave Canada for those tax havens and that you will be able to ensure that this money will not be used by terrorist groups? That was my first question. Here is my second question. To work effectively, you need technology, experts, training and people to work on the issue. I imagine that if the government is serious and has the political will to act on this, it has already foreseen how much money it will need to fight effectively against crime, money laundering and terrorist groups.

Currently, we are in limbo. In virtually all departments, we don't know how much it will cost. You, who are used to working with numbers in the Department of Finance, do you have, within your department, evaluated the price of an effective fight, and especially the implementation of Bill C-36?

M. Jim Peterson: Thank you. We have not yet announced the exact costs but we will do so shortly. If in the beginning we do not allocate enough resources to fight terrorist financing, we will make adjustments. We will increase these resources and take your committee's suggestions into account if you have any ideas to improve our work in fighting terrorism.
[*English*]
The Chair: Mr. Blaikie.
[*Translation*]
Mr. Michel Bellehumeur: But I don't have any guarantee.
[*English*]
The Chair: You only get your seven minutes. You don't get Bill's.
[*Translation*]
M. Jim Peterson: There are never any guarantees, but we will do everything possible and I know you will help us.
[*English*]

October 25, 2001 [Standing Committee on Justice and Human Rights] [Entire Exchange]
Mr. Bill Blaikie (Winnipeg—Transcona, NDP): Thank you, Mr. Chairman.
I don't have so much a question as a comment. There seems to be an interesting theme developing here with respect to Bill C-36, and that is the need for international or transnational uniformity when it comes to dealing with unethical behaviour. We don't want to create havens for various kinds of activity, in this case terrorist activity, through a lack of uniformity.
We heard the argument yesterday that when certain laws were toughened up in the United States, terrorists moved to Canada in order to use Canada as a base for their activity. At least, that was the claim of one of the witnesses yesterday. We have heard that argument today, that it's very important to have the same or relatively the same laws in all jurisdictions so that unethical behaviour cannot move itself around, so to speak, looking for the most favourable circumstances.
I agree, Mr. Chairman, but to take another example, some argue that there needs to be some kind of uniformity with respect to poor labour standards around the world and that this needs to be enforced so that unethical business activity can't go around the world looking for the most favourable circumstances. Now, I find it passing strange, Mr. Chairman, that when this argument is made with respect to labour standards, it is regarded as a heinous notion, unrealistic—I could name a host of adjectives that have been used over the years to describe calls that have been made by the NDP and others for this kind of international uniformity when it comes to restricting unethical activity.
I hope this might be a conceptual breakthrough. I will certainly try to ensure that it is, Mr. Chairman. If we can act internationally to constrain unethical behaviour, in this case the unethical behaviour we call terrorist activity, then surely we don't want to have havens for other kinds of unethical activity, whether it be the exploitation of working people through lack of labour standards or whether it be the exploitation of the public purse through tax havens. It's not just havens for terrorists' money we might want to address. Perhaps we should be looking at some kind of international harmonization or international regimes so that corporate interests can't shelter their money from legitimate tax imposition, period. It doesn't have to relate to terrorist activity. I just make this point, Mr. Chairman, because I find it odd to sit and listen to all these arguments that I agree with but that fall on deaf ears when I make them myself in respect of other issues.

I have one question related to your submission, Mr. Minister, and that has to do with... You talk about banks or financial institutions having to report with respect to terrorist assets they may have. Now, I'm presuming these are already frozen assets. If they aren't, they should be, and if they are frozen, how can people add to them if they're frozen?

Mr. Jim Peterson: You're quite right. Any funds of listed terrorists that have been identified are in fact frozen and cannot be touched by the owner of that account or the institution itself.

Mr. Bill Blaikie: What would they be reporting?

Mr. Jim Peterson: They would be reporting on where they've found accounts and assets, which would in effect be frozen under the regulations now in place. Bill C-36 will give us additional rights with respect to those assets and funds, such as the ability to seize them.

You make a very interesting point on the harmonization of standards, not just those for money laundering and terrorist funding. One of the quintessential problems that has always plagued us as Canadians is the overlap, the duplication, and the contradiction of laws we have among provinces and between the federal government and the provinces.

We know that interprovincial barriers to trade in goods and services cost us an enormous amount, anywhere from $4 billion to $7 billion a year in lost growth, so I take your point about the need for good laws and perhaps for fewer laws in many cases.

The Chair: Mr. Blaikie.

Mr. Bill Blaikie: I'm not sure the minister did take my point; in fact, I'm not sure he got my point at all. Nice try. That was a nice little diversion into federal-provincial stuff, but I was talking about the international situation, core labour standards, and the WTO. Then the minister wants to rap on about interprovincial trade and the need for...sorry, but that's not what I was talking about.

Mr. Jim Peterson: You also mentioned the taxation of funds that are outside a country's border or jurisdiction. We have worked very closely with the international community to develop common laws with respect to that, and we have done so by following the OECD model draft convention for the prevention of international double taxation and tax escape or avoidance. This has been a good model to work from. It is in place with many different jurisdictions. There will have to be a lot more work done with the so-called tax haven countries, which have traditionally been involved in a lot of offshore banking, to make sure they're not laundering money—

Mr. Bill Blaikie: And ship flagging.

Mr. Jim Peterson: —and not...you're missing my point, Mr. Blaikie. I was talking about international tax avoidance.

The Chair: Thank you very much, Mr. Blaikie and Mr. Peterson.

Mr. MacKay.

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC/DR): There's a real breakdown in communications on the entire spectrum here.

Speaking of information sharing, I'm interested, Minister, if you could give us perhaps some concrete examples of what it means, in the grand scheme of things, to ensure the seamless web of international cooperation. That's very powerful language, but I'm interested to know what pragmatic, concrete steps are in place to ensure that the information sharing is taking place not only between ourselves and our G-7, G-20 allies, but also within departments here in Canada. It's a question that's been asked of every minister who's appeared before us. How is the Solicitor General of Canada, CSIS, and the RCMP working closer, as a result of this legislation, to ensure that information is passed on?

Further to that, I would like to know, in, again, a very practical way, if you foresee difficulties in proving this element of terrorist fundraising as part of the criteria that the crown will bear the burden of proving. Is this ideological, religious, or political purpose behind the fundraising activity? I believe this is going to be a very difficult and tough threshold to meet in many instances. I wonder how the Department of Finance has contemplated, in real terms, how you prove this element, this purpose, this *mens rea* behind the actual fundraising activity.

Mr. Jim Peterson: With your permission, Mr. MacKay, I would like to have Yvan Roy answer the question about the religious belief, and then call on Inspector Beer to talk to you about the efforts at international cooperation.

[*Translation*]

Mr. Peter MacKay: There is no problem. Mr. Roy, you can answer in French.

Mr. Yvan Roy (Assistant Deputy Minister and Counsel to the Department of Finance): With pleasure.

The clauses in this Bill that are related to terrorist financing are of a criminal nature. You have worked in this area since you are a former solicitor. You know that the standards are high in such circumstances and that the proof must be beyond a reasonable doubt.

As for any infraction that requires a specific intent or motivation, the motivation and the specific intent will be deduced from the proof offered. In such circumstances, the proof will most often be of a circumstantial nature. It is possible that in such cases we may have direct proof, because, as you know, such infractions may be subject to electronic surveillance. You also know that we often learn a lot about people's intentions in this area.

The Bill tries to provide the state with all the tools available in this regard, but at the same time it must balance the various interests. I have read the transcripts of the Minister of Justice before this committee and of the public servants that have appeared before you and I know that the government does not intend to attack groups that have nothing to do with terrorism. That is why you have a definition of "terrorist activity" that is in some way limited and requires a high level of proof. It is the government's wish, and it believes that it would be possible to find sufficient proof to make the appropriate deductions or, through surveillance or informers, determine the reasons for which this money is collected.

We are therefore talking about a balance of interests, of not attacking the wrong groups and of having a high standard while having the means to take the appropriate legal action.

The minister of Finance obviously has a secondary interest in this matter since the application of criminal law does not come under that department's jurisdiction, but it does have an interest as it wants those clauses to work. We believe that it will be possible to see that the right people are brought before the courts *in due course*, as you say in English.

[*English*]

Mr. Peter MacKay: I have a question about proposed section 83.02, specifically under the heading of “Financing of Terrorism”. It talks about:

directly or indirectly, wilfully and without lawful justification or excuse,

It's absent the word “knowingly”. It says “wilfully”. Certainly banks in particular and other financial institutions could willingly be in possession of funds that came from a nefarious group.

I'm wondering if the addition of “knowingly” is something your department has contemplated here. I can foresee instances where money could be held, assets could be held, wilfully, and yet the excuse of knowingly...it might add clarity to that proposed section.

Mr. Yvan Roy: Mr. MacKay, if an institution, a bank, actually anyone in this country, is knowingly in possession or control of assets related in some fashion to terrorist activities, they are under obligation, by law, to freeze those assets, that is, to refuse to deal in any way, shape, or form with those assets. I would refer you back to proposed section 83.03 to that effect. Those who knowingly continue to deal with those assets are guilty of an offence that is itself very significant in that it is punishable on summary conviction with respect to an institution by a fine of $100,000. If the state were to prosecute that case by indictment, the fine is open-ended. There is no limit that can be imposed. So the sense is that those who are dealing with money that they know is owned or controlled by terrorists are very well captured by that provision. When you're talking about the financing, which is now doing wilfully what you should not be doing, that is, giving money to these people for that purpose, this is a different offence.

The landscape is well-covered with those two provisions, with all due respect.

Mr. Peter MacKay: What's the length of time you can freeze and hold these? I haven't found any provisions that refer directly to where those assets would go upon seizure. Is there any provision that would funnel those assets to law enforcement, for example?

Mr. Yvan Roy: Here is how the scheme is supposed to be working. You have the provision in here that says you freeze those assets, that is, you are not moving them. You have to sit on them, basically. You cannot deal with the property in any way, shape, or form. There is then an obligation in law to advise the RCMP and CSIS—the law says forthwith, immediately—about what it is you have done. These people are then tasked under the law to conduct an investigation. Once you are advised of something like this you conduct an investigation and they will then be, in due course, in a position to seize, refrain, and eventually forfeit that property.

If at the end of the day the investigation shows that actually we have been wrong, it should be the duty of the institutions—and I know they will do it—to basically stop the freezing that has taken place. The investigation having been conducted, they will be then in the position to say, we do not have suspicions any more about that property and therefore we will, from now on, continue to deal with that property.

To answer your question directly, there is not a limit on how long that property will be frozen, because of the nature of what it is we're talking about, which is an investigation. The process is you freeze, you investigate, you seize, refrain, and confiscate.

The Chair: Thank you very much, Mr. Roy.

John McKay.

Mr. John McKay (Scarborough East, Lib.): The thesis of your presentation, Minister, is that you are standardizing reporting requirements around the world.

Last night on CBC Carol Off did a piece on Saudi banks. To telescope the presentation, it is essentially that the Saudi banks are highly cooperative in covering for Mr. bin Laden and his colleagues. There's reasonable likelihood that most of the money that finances these operations is in Saudi Arabia.

I'm not putting that forward as evidence; I'm putting that forward as a media statement.

Not to put too fine a point on it, my recollection of moneys collected so far, essentially, is that it's chump change. So the real question is what the reach of this bill is.

I see in proposed section 83.11 that there is a requirement that authorizes foreign banks within the meaning of section 2 to report their activities.

This is my first question. If there is a Saudi bank that is listed or operating in Canada or in any of our other allies' jurisdictions, and presumably our legislation is harmonized with those other jurisdictions, are those Saudi banks, either through this proposed section or parallel sections in other legislation, required to report as would Canadian banks? I'm using Saudi Arabia as an example. Similarly, if a Canadian bank is operating in Saudi Arabia, is there a reporting requirement that would obligate our bank to report back?

Secondly, what happens when you get it wrong? Inevitably, the crown will seize and freeze assets, which it shouldn't have done. I'm interested in knowing what will be the extent of claims for a crown immunity. What will be the access to recourse for those citizens who are aggrieved by wrongful seizures and freezings? Will there be an exposure on the part of the crown to damages?

Mr. Jim Peterson: Foreign banks operating in Canada will be subject to the disclosure provisions. Canadian banks operating abroad, through a branch in that foreign jurisdiction, will be subject to the disclosure provisions. Canadian banks operating abroad through a foreign subsidiary will not be.

On the issue of crown immunity and wrongful seizure and damages, I turn again to an expert.

Mr. Yvan Roy: Thank you, Mr. Minister.

The government has taken and will continue to take great care in making determinations on who is going to be subjected to some of these provisions. There are a number of ways where the government is going to be involved; the listing of people is certainly one of them. Another one is how these different provisions will continue to apply.

Basically, the regime you have with respect to money laundering found in the Criminal Code finds application here, and that is, if the government is going to be making some mistakes, the same regime that applies now will continue to apply in the future. Therefore, in cases where the government, for instance, has been negligent, there is a way of getting relief before the courts. The courts will always be there to stop this from happening and to obtain the appropriate damages in appropriate circumstances.

The law, as it existed before, continues to apply here, and there is no special immunity that the government will try to seek in cases involving this. This is not the goal of this new legislation. And we continue to be governed by the same laws with respect to negligence and other things of that nature.

Mr. Jim Peterson: Very simply, if you feel you're wrongly listed, you can apply to the Solicitor General, and if that doesn't work, you can apply to the court. Also, the Solicitor General is required to review the list of listed persons every two years.

But do you know what, Mr. McKay? There are going to be mistakes. The difficulty when there may be so many people having the same name or just a slightly different name, and things like that... It is not possible to run this system without making mistakes.

Mr. John McKay: Going back to a Canadian bank operating in a jurisdiction where we think there are terrorist assets, and in the course of normal business a transaction occurs that the Canadian subsidiary reports, what will be the follow-up on that?

Mr. Jim Peterson: If it is a foreign branch of a Canadian bank, those assets would be reported to FINTRAC; they would be reported to OSFI. Then, if the appropriate standards were met at FINTRAC, they would be reported to the RCMP and/or CSIS, if there was a threat to the security of Canada.

I'd like to call on Inspector Dave Beer to talk more about it.

Superintendent Dave Beer (Proceeds of Crime Branch, Royal Canadian Mounted Police): Thank you, Mr. Chair.

I think it's important to understand that the essence of the terrorist funding portion of this legislation is essentially to add the act of fundraising and providing funds for terrorist activity into the existing Proceeds of Crime (Money Laundering) Act.

From that perspective, and from an investigative perspective, which I think is the essence of your question, what agencies like FINTRAC and the investigative agencies are being asked to do is to recognize proceeds for crime, utilizing the legislative and investigative tools and investigative branches that were created for proceeds for crime. It's actually simply a reversal of the process.

In your particular example, where a suspicious transaction or a transaction attributed to a listed person would be reported through FINTRAC, FINTRAC would make a determination of the nature of the activity, whether or not it was suspicious, and if so, according to the Proceeds of Crime (Money Laundering) Act, for which amendments are being considered here, it would be reported to the appropriate police agency and would be investigated accordingly.

The Chair: We'll now go to Mr. Cadman.

Mr. Chuck Cadman (Surrey North, Canadian Alliance): Thank you, Mr. Chair.

To follow up on a question that I believe my colleague Mr. Peter MacKay brought up, regarding the final destination of any asset seized or forfeited, will it be returned to law enforcement? Out of the proceeds, are there going to be moneys available to law enforcement to continue the fight, and more importantly, is there any indication or any provision in this bill for restitution to victims?

I cite the Air India bombing, where we had 329 victims. I have a large Indo-Canadian community in my constituency, and many Canadian families were impacted by that. I'm sure they'd be very interested in your answer.

Are some of the proceeds and the forfeitures from terrorist funding going to be directed back towards the victims?

Mr. Yvan Roy: The legislation, as crafted, is simply an add-on to what is already in place. What I mean by that, with respect to the two areas you're referring to particularly, is the fact that the money or the assets, once they have been forfeited, are not forfeited to anyone in particular. It is the crown, whether the provincial crown in cases that will be handled by provincial attorneys general or the crown in right of Canada in cases involving the Attorney General of Canada, that will be the beneficiary of the money or the assets that have been forfeited. In other words, that goes into the federal treasury.

A voice: The general revenue.

Mr. Yvan Roy: Yes.

Regarding victims, the provisions that exist in the code—you are very familiar with them—continue to apply with respect to those offences, because these are offences that are found in the Criminal Code. So if there is to be restitution or compensation that fits within the parameters of what is already in the code, that will apply to them too. But there is nothing special, specific to the situation that is created in this legislation.

Mr. Chuck Cadman: Thank you.

The Chair: Mr. Paradis.

[*Translation*]

Mr. Denis Paradis (Brome—Missisquoi, Lib.): Thank you very much for you presentation, Minister.

The comments that spring to mind are related to... Minister, you mentioned in your presentation that the amendments to the Criminal Code will make it necessary for financial institutions to present monthly reports. But when we think of financial institutions, we think of certain categories of professionals who will also have to make reports I would imagine. These categories must include accountants, notaries, brokers and lawyers.
My comment is not necessarily related to legal professional privilege because I think it is important that privilege not be absolute in cases of terrorist crimes, among others, that are committed or being committed.
The first part of my question is about the necessary balance between divulging information on money held in areas where privilege applies and its disclosure to implement the law.
Here is the second part of my question. In certain parts there is mention of monthly reports. A large chartered bank can easily make monthly reports, but for a small broker or notary in Saint-Hyacinthe, it is a duty that can be a fairly onerous obligation. Have you considered dealing with the professional associations in each province to find disclosure methods that would impose less on small professionals.
M. Jim Peterson: I think that is a good suggestion. We will always be open to ideas that lessen the burden of disclosure. It is true that it would be more difficult for small businesses because they do not have the resources of major institutions. If there were to be suggestions to alleviate that burden, I would like to hear them. You may have other suggestions for us. Richard.
Mr. Richard Lalonde (Chief, Financial Crimes, Financial Sector Policy Branch, Department of Finance): I would simply like to add that the Proceeds of Crime (Money Laundering) Act affects many financial institutions and that the scope of this Act is not quite the same in cases of reporting transactions and frozen accounts.
In the latter case, yes the financial institutions must report certain information to law enforcement authorities and to their regulatory agency, but if we look at the list of financial institutions that are subject to this, we see that it does not cover, for example, accountants, lawyers and other small businesses.
That being said, it is true that in some cases, small life insurance companies would be subject to this but most companies subject to this provision are major ones.
I do not know if I have to also answer the question regarding privilege. In this case, about the proceeds of crime the Act provides, in section 11, I believe, that nothing related to the reporting of transactions or doubtful operations removes anything from professional privilege. Therefore the common law privilege that protects certain communications between a lawyer and client is well recognized in this Act. That being said, it is important that all financial intermediaries be subject to this law, otherwise there would be a...
[*Editor's note: Inaudible*]
The Chair: Thank you, Mr. Paradis and Mr. Lalonde.
Mr. Bellehumeur, three minutes.
Mr. Michel Bellehumeur: I will not ask the question I wanted to ask. Instead I will comment on your answer to Mr. Paradis' question.
I know small law firms that make big transactions. If we look at very recent history, even if it only at gangsterism in Quebec, we see that there is a lawyer whose name I will not mention because I am not sure of it, who was convicted of money laundering. There were large sums involved, millions of dollars. Are you telling us that such people are not covered?

M. Jim Peterson: We know very well that there have been cases where a few lawyers committed an infraction. I will not...
[*Editor's note: Inaudible*]
...to the bar for what we do here. It is absolutely necessary that all financial intermediaries respect the provisions of the act on money laundering and supplying terrorists with money. As lawyers, they can respect the lawyer-client privilege. They have a right to do that. But when they are not acting as lawyers, but as financial intermediaries, that is another matter. In such cases, they would be obligated to report.
Mr. Michel Bellehumeur: I mentioned a number a while ago. Currently, since September 11th, how much money has Canada seized?
[*English*]
Mr. Jim Peterson: The latest figure is $150,000. There will be further reports coming in to us, and they will have to be refined. As I've said, it's very difficult often to find out for sure whether an account that's been seized is the one that was intended to be frozen. The minister will be giving a report in the not-too-distant future. OSFI is working on refining some of those numbers for us right now.
[*Translation*]
Mr. Michel Bellehumeur: Would an amount of $150,000 justify that? Do you think you will get more than that?
M. Jim Peterson: Certainly. Even if there wasn't a penny frozen in Canada, we would still have to be in the forefront of the nations to protect people, including Canadians, from terrorism.
Mr. Michel Bellehumeur: But not only on paper; in reality also.
[*English*]
The Chair: Thank you, Mr. Peterson.
Mr. Owen, for three minutes.
Mr. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Mr. Minister and officials, for appearing before us and giving us your thoughtful comments.
Perhaps I could just ask further questions with respect to the impact this has on lawyers. I think it's true—I think we've mentioned—a lawyer's trust account would be caught under clause 49, under the definition of entity. Under clause 51, lawyers would be caught under the professional category. I heard the answer that professional confidences would remain.
I'm just having a little difficulty understanding how you could retain professional confidence at the same time as reporting on a financial transaction. I think there was a suggestion that if you were acting as a conduit for a funding transaction, it would be something different from your solicitor-client privilege. Is that what is being suggested? I'd like to have a bit of a better explanation of why that is so, if that is the intent.
Mr. Jim Peterson: I guess the one possibility would be to say that anything a lawyer does is beyond the reach of the law, with respect to money laundering, helping to fund terrorists, or moving terrorist funds around the world. We don't believe that should be the case.
If a client comes in to a lawyer and says, “I want you to take this $1 million in ten-dollar bills, put it in your trust account and issue me a cheque,” should the lawyer be exempt from that or not, simply because of the privilege we've always accorded to lawyers in dealings with their clients? In that case, the lawyer could say, “Yes, I will deposit this, but I have to report it.” At that point, the client could walk out of his office and the solicitor-client privilege would be respected.

If this committee is telling us that type of transaction should not be caught by this bill, I would like a very clear signal from you.

Mr. Stephen Owen: Okay. Thank you.

I think it is very important to clarify, on the record, that this act already creates, and this amendment bill will create, an exception to the solicitor privilege or confidence with respect to the flow-through of funds that are suspicious by their nature, exceed a certain amount, or are clearly directed toward the financing of crime.

Mr. Jim Peterson: That is not denying anyone the right to get important legal advice from a lawyer. The privilege is still maintained when they do that. But when the lawyer steps beyond the bounds of giving that advice and serves as the financial intermediary, they must report it, as anybody else would have to.

The Chair: Mr. Roy,

[*Translation*]

a brief answer.

[*English*]

Mr. Yvan Roy: I'll be very brief, Mr. Chairman. I thank you very much.

The view that is taken by the government is that the solicitor-client privilege is perfectly protected by these provisions. Indeed, section 11, as referred to by Mr. Lalonde, states that clearly, in the Proceeds of Crime (Money Laundering) Act.

What you have, however—and you can refer if you want to the regulations—are the parameters that are given to the transactions a counsel should be able to conduct, without being subjected to the legislation. Let me read very briefly what that is.

The PCMLA includes, according to the regulations, the receiving or paying of funds other than—these would be covered by the privilege—those received or paid in respect of professional fees. So you don't have to disclose professional fees. You don't have to disclose either disbursements, expenses, or bail.

In other words, as the minister is stating, once you're acting as a financial intermediary you're covered; when you're acting as a lawyer, you're protected. That is the view that has been taken by the government. We think that is the state of the law, at least as we understand it.

Thank you, Mr. Chairman.

The Chair: Peter Mackay, for three minutes.

Mr. Peter MacKay: I have just a very brief follow-up question, Mr. Roy, on that point.

I guess it becomes blurry when you're acting as a financial intermediary if you, for example, engage in the setting up of an account for a client. That, to me, falls somewhere in-between the definitions you've just described. I suppose, particularly then, it comes down to the knowledge the lawyer had of the reasons for the account and the source of the funds.

I want to thank all of you for being here and for your expertise in this area. I think it is absolutely critical in the war against terrorism to get at the lifeblood and the source of this activity, although I think, sadly, we've all learned that the cost of terrorism is not as high as we thought it might be when it comes to the types of activities they can engage in. Weapons of mass destruction are not necessarily the same as we thought they were before September 11.

More generally, to the minister, does your department envisage the necessity of greater technology in terms of surveillance? What accounting is there for that in your plans? What new powers do you foresee in this information gathering? On the use of electronic eavesdropping through satellites and wiretaps, is that something you can foresee FINTRAC engaging in directly, or will it be entirely left in the hands of the RCMP, CSIS, and Defence?

Mr. Horst Intscher: Thank you, Mr. Chairman.
We have no authority, and seek no authority, to conduct investigations. We are entitled to receive and analyze certain information that financial institutions are obligated to report to the government. We can also access, under arrangements, databases maintained for law enforcement purposes. We are also free to receive voluntarily provided information by law enforcement, or by citizens for that matter. But we are not entitled to go out and seek information through overt or covert investigation. We were created as an analytic body. That's our mandate, and we certainly are not seeking to expand that aspect of our mandate.
The provisions of this bill make it possible for us to look at this same data, not only through the optic of the search for money laundering, but also through the optic of the search for terrorist financing. The provisions in the bill that relate to FINTRAC are simply intended to provide us with the authority to look for a different type of activity in the same data that's already being reported to us.
The Chair: Thank you very much.
Mr. Grose, three minutes.
Mr. Ivan Grose (Oshawa, Lib.): Thank you.
My question may only serve to prove how difficult this is going to be. We talk about confiscation and lifting exemptions for charities. At the moment, the United States and Britain are bombing Afghanistan, in the hope of hitting a few terrorists, I understand. But the United States is also dropping food. The United Nations is supplying food, and half a dozen well-recognized charitable organizations are supplying food.
Inasmuch as we don't know what the terrorists look like, with a couple of exceptions, they are probably benefiting from this food. Food is often used as a weapon of war. How in the world do you separate the wheat from the chaff?
Mr. Jim Peterson: Mr. Grose, you raise one of the very difficult questions we're called upon to face. These are tough calls. The law deals with financing terrorists; it does not proscribe humanitarian efforts to help other people. So one would have to look very closely at every transaction, to make sure that line is drawn.
Mr. Ivan Grose: But it's going to be a very difficult line to draw.
Mr. Jim Peterson: I'm sure the person you should talk to on this is the CCRA minister, Mr. Cauchon. We have about 76,000 to 77,000 registered charities in Canada today, and a lot of these involve those very difficult types of distinctions.
Our effort here is to make sure a charity that funds terrorists, or directs money to terrorist activities, is de-certified, has its tax status removed, and has its funds forfeited to other charities or to the crown. Our effort here is to deny tax status to it and the capacity to exist.
In the case where a charity is supplying food to refugees in Afghanistan, I have no doubt the CCRA would tell you that is not financing a terrorist activity.
The Chair: Thank you, Mr. Grose and Mr. Peterson.
At your suggestion, we'll see if we can arrange to have Minister Cauchon here at 11:30.
Some hon. members: Oh, oh!
The Chair: Mr. Fitzpatrick.
Mr. Jim Peterson: I didn't realize I had such power. I've never had that before.
Mr. Brian Fitzpatrick (Prince Albert, Canadian Alliance): Thank you, Mr. Chair, and thank you, gentlemen, for taking the time to come here.
I have some difficulties with the reporting requirements under this legislation. I think Mr. Blaikie raised the point already. Under proposed section 83.1 it's mandatory that you report to

the Commissioner of the RCMP and the Director of CSIS if you have funds or assets. I'm sure there are provisions where they have to be frozen as well. Then we have the money laundering requirements, which I'm not totally familiar with, but I imagine they impose burdens and obligations on third parties that are holding assets, and so on.

The question that comes to mind is if we have those two requirements, why do we have proposed section 83.11, where on a monthly basis these institutions have to report to their regulatory agencies with these monthly reports?

I'm going to try to put this in perspective. In Ontario there are probably thousands of financial planners, insurance agents, and small independent operators. They're going to be filing monthly reports, I presume, with the Ontario Securities Commission. I doubt whether the Securities Commission has anybody who's going to monitor and go through these reports. They have lots of obligations already.

What are they supposed to do with these things? By that stage the assets are frozen, this has been reported to the RCMP and CSIS, and the money laundering thing has already kicked in. Now they must also have somebody in business continuously monitoring these accounts and sending these reports to the Securities Commissioner, or, if you're in the insurance business, the Superintendent of Insurance.

So they are getting thousands of pieces of paper every month, and I'm sure they're not going to look through these things. What are they supposed to do—box them up and ship them to the Commissioner of the RCMP, CSIS, or the intelligence community? What's the purpose of this mountain of paperwork that I think you're really creating under proposed section 83.11?

Just as another point, two experts on terrorism were here yesterday. I think they basically said the cattle were out of the barn. This legislation should have been in place a long time ago. The al-Qaeda network is probably underground, and they're three steps ahead of us on this sort of thing.

What's the purpose of the mountain of paperwork under proposed section 83.11?

Mr. Jim Peterson: Look, if this committee today, or after the law is enacted, as you may amend it, has better and less onerous ways to do this, then we welcome those suggestions. We will, I can assure you, be working with financial institutions to try to alleviate that burden as much as possible.

It's obvious why FINTRAC would want this information. We don't want to duplicate its activities. Our financial intermediaries are already reporting to FINTRAC on money laundering, so we think it just makes sense to add one more report, i.e. on terrorist financing. We think that helps the institutions that have to report, as opposed to reporting to a different institution.

You may ask why we want them to report on a monthly basis as well to the Superintendent of Financial Institutions—

Mr. Brian Fitzpatrick: The Securities Commission also.

Mr. Jim Peterson: OSFI, which is where we will be getting the reports federally.

Part of the role of OSFI is not to act as a cop but to ensure that these institutions are safe and sound. Part of that investigation into whether an institution is safe and sound, protecting depositors and policyholders, is their system of governance. That goes into OSFI's calculation. If they get information on the types of activities that are coming through, and can monitor the information that comes in, then that is again one of the aspects of the governance of a particular institution. So that is part of the reason we think it's important that they report to the regulator as well.

I'm not particularly as worried about the big institutions, because they have the capacity to do this, but I think it will be a factor in a lot of smaller institutions being told, “We want you to be very prudent and we want you to adhere to the law as well.”

The Chair: Your time is up, Mr. Fitzpatrick.

Mr. Lee, three minutes.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

Mr. Peterson, as you know, Parliament has a constitution based in unfettered power to send for a person's papers and records, and although that can only be changed explicitly by statute by Parliament, in clause 70, which deals with proposed subsection 59(1) of the proceeds of crime act, the PCMLA, there is wording that refers to the case of an order for production of documents. On the face of it, it might be interpreted to actually impinge on Parliament's constitutional right to send for a person's papers and records.

So my question is, is this why the change in wording to insert conditions on responding to orders for production of documents? Why the change in wording?

Secondly, was it intended to bushwhack Parliament's constitutional right? The answer to that question is either a simple yes or no. If it is yes, we have another set of issues. If it is no, then could we have that confirmation today, or later in writing in due course, so it can be confirmed on the record that it is not the intention of the statute to impinge on Parliament's PPR authority?

Mr. Jim Peterson: I can't imagine, Mr. Lee, that it would be, but I shall ask Mr. Roy to respond to your very precise question.

Mr. Yvan Roy: I would like to give you a precise answer to your precise question, but I'm not sure I would be in a position to do so, because I'm not sure I got the question as clearly as I should.

Section 59, as it is to be amended, simply, by my way of reading it at least, refers to an addition with respect to the financing of terrorist activities. In the production orders, it is with respect to judicial orders that can be issued for the purpose of getting information. I do not see anything in it that would touch in any way, shape, or form the privilege of Parliament to seek information and documents. But I should hear you more.

Mr. Derek Lee: To clarify this, if I may, the wording says that an official at the centre shall reply to an order for production of documents only if there if there is a CSIS act or a certificate referred under section 60.1. There must be a certificate.

If the order for production of documents includes orders that Parliament would make under PPR, then it is arguable that Parliament would have to ensure some kind of a section 60.1 certificate. Of course, that is not the case now, and in my view never should be.

I'm asking for clarification. Why the change in wording to require the certificate? I'm going to assume that no one ever thought of this. The government was not thinking of this—and that's good, ignorance is bliss—but if they were, if someone in government was thinking of parliamentary orders for production when they wrote this, then they're trying to bushwhack Parliament and I want a confirmation of the intention—not just for now but in case this issue comes up later. I want it very clear on the record that it is no one's intention, around this table, in the House, or in government, to impinge on Parliament's PPR. If you read the wording of the section, and consider my words now, I think you'll understand what I'm getting at.

Mr. Jim Peterson: Mr. Lee, I can assure you that as we poured through the minutiae of these very detailed amendments, the thought never crossed our minds. But I think it's a very good

point you've brought out. I think we owe you a response, and we'll get it to you as soon as possible. Thank you very much for your stellar sweeping.
The Chair: Thank you very much, Mr. Peterson and Mr. Lee.
Mr. Bellehumeur, three minutes.
[*Translation*]
Mr. Michel Bellehumeur: The current provisions of the Criminal Code have allowed the seizure of $150,000 related to terrorism. We know that in Canada billions of dollars are laundered annually. Even if we increase the infractions, the applicable penalties, and if you get the power to freeze these sums for longer, if there is no political will to conduct inquiries and go the distance, you won't necessarily seize more money. That's what I want you to understand. I'm not saying that it is not necessary. I understand that it is necessary to do so and in fact we are asking that it be done, but we need more than information and powers that are on paper. Political will is needed, and I don't feel that the federal government has it. That was not a question but a comment.
I will now ask my question. It touches on something else that concerns me. Does the proposed section 83.28 apply to lawyers? Can you tell me if subsection 83.28(8) applies to lawyers? If that is not the case, we have a problem.
Mr. Jim Peterson: Thank you Mr. Chairman.
You are right. When we started working on the money laundering bill, we believed that between $5 and $17 billion were being laundered annually. So we have succeeded.
I will let Mr. Roy answer the specific questions you have asked.
Mr. Yvan Roy: Thank you Minister.
Your questions, Mr. Bellehumeur, bring me to a clause in the bill that allows for a specific kind of inquiry.
Mr. Michel Bellehumeur: You are forcing someone to testify.
Mr. Yvan Roy: We are forcing someone to testify. I believe that the Minister of Justice said to you that this means of inquiry is already allowed under other acts. In fact, because here it can be used in cases of mutual assistance.
You are asking if a lawyer could be called to testify before this committee. The answer is yes since there are no limitations in this area.
A lawyer can be called upon to testify before any court of law but there are limits as to what he can say during his testimony and the court will recognize those limits. What are they? The lawyer-client privilege.
If you are a lawyer, that does not mean that you can't testify or be forced to do so, but there are impassable limits, in other words that privilege we all know.
The Vice-Chair (Mr. Denis Paradis): Thank you very much Mr. Roy and Mr. Bellehumeur. We will move on to Mr. McKay.
[*English*]
Mr. McKay.
Mr. John McKay: The way in which money is traditionally transferred from jurisdiction to jurisdiction in certain countries is a fairly informal network. Literally, somebody will walk into a shop on the Danforth, write a cheque for $1,000, the individual will charge a fee and phone somebody in another country, Afghanistan, Pakistan, you name the country, and the transaction is completed.
The British bill I think—and I'm not absolutely certain, having gone through it—provides for seizure of cash really in any form, and there's no $10,000 threshold or anything like that.

I don't really know whether this is a large item or a small item. I do know it is a traditional way of doing transactions in certain kinds of cultures. I would expect that at least criminal activity takes place in these kinds of transactions. Certainly it's not all criminal activity by any means—there may not even be large percentages of criminal activity—but I should imagine it would be a way of doing transactions that defeats the intention.

Can you give to this committee any assurances, either within this bill or outside of this bill, that those kinds of transactions, if you will the nickel and dime transactions, are being monitored, and whether in fact... I'll put it dramatically: this bill seems to cover the big ones, but there's a whole bunch of fish swimming through the net because the net is not tight enough.

Mr. Jim Peterson: Thank you, Mr. McKay.

I have no terribly satisfactory answer for you on this. A Hawala-type operation is an alternative remittance system. It is, we believe, caught by the current money laundering law and will also be caught under the terrorist provisions that are brought in to the bill.

Having said that, we then go from a question of what can you do to stop these things to recognizing that they may be highly movable and portable, that they may not have a big infrastructure, and certainly are not registered.

One of the discussions we're undertaking with our international counterparts, and it will be a big part of the discussions of the Financial Action Task Force on Money Laundering on this is how can we deal with this type of informal, non-registered, highly mobile type of remittance system?

Dave, maybe you'd like to say something about this. Maybe, Horst, you have some thoughts on it.

Mr. Horst Intscher: I would note that, in our view, these types of remittance systems are caught under the definition of money services businesses, and therefore are subject to the record keeping and reporting requirements of the Proceeds of Crime (Money Laundering) Act. They will be subject to compliance audits by FINTRAC, as are other money services businesses.

In addition, to the extent that they do not reveal themselves to us as reporting entities, when their remittances in any way come in contact with the regular, the formal financial system, there will be an additional means of ascertaining what their activities are and taking steps to bring them into compliance with the act.

If they fail to comply with the record keeping and reporting requirements, they are opening themselves up to serious sanction under the provisions of the act that relate to failing to report.

Perhaps Mr. Beer might have something to add.

The Chair: Mr. Beer.

Supt Dave Beer: The question is a very astute one, and there's no question that informal systems such as you described will pose quite a challenge.

Let me revert to the question raised earlier by Mr. Peter MacKay about the importance of international communication and understanding. The extent to which these informal systems exist, and taking the opportunities to learn more about them; the extent to which they will be more difficult to trap, inasmuch as they're outside of the traditional banking sector or the traditional financial sector; the extent to which we can use other investigative techniques and powers, dealing with them more in terms of a substantive offence than purely a money laundering offence or a terrorist funding activity—these will be important to gaining some success. But you're absolutely right; it would be very challenging.

The Chair: Thank you very much, Mr. Beer.
Mr. Peter MacKay.
Mr. Peter MacKay: Thank you, Mr. Chair. To all of you again, I'm very heartened to hear the minister say, in a very frank way, that this is going to take some time. We're not always going to get it right. We're going to learn from the experience of other countries. I think that's a very healthy approach to take, Minister. This is something we're all going to be going through collectively, both here in this country and across the world.
I have two very quick questions, specifically to follow up my colleague, Mr. Bellehumeur. The first deals with the investigative hearings described at proposed subsection 83.28(8), in clause 4. I believe that is the specific subsection that talks about exemptions from disclosure of things that might otherwise be considered privileged, both as to demands for testimony and the production of documents, which might crop up in the case of a lawyer representing a client.
The other question I had relates specifically to instances where there has been a seizure, for whatever period of time. I think we can all foresee instances where, because of the complexity of cases involving financial transactions—and I've been involved in ones that dealt with vehicles or with incredible volumes of documents because of the attempts to avoid leaving a money trail... I'm wondering what safeguards there are for those whose assets have been seized.
Mr. Roy, you referred to the fact that cases may come to light—sometimes months or years down the road—where considerable sums of money have been frozen. Is there a compensatory scheme? Is there recourse for an individual to say, "Look, I've lost a great deal of money in interest while my assets have been tied up through this procedure"? Is there a fallback for them? God forbid that this happen, but it could, and it has in the past.
The Chair: Mr. Roy.
Mr. Yvan Roy: Thank you, Mr. Chairman.
As I indicated when I tried to answer a question from the other Mr. McKay, the law as it stands continues to apply in those circumstances. If there were, on the part of the state, negligence that could be ascribed to the behaviour, the law will continue to apply. Therefore redress would be available before the appropriate courts in those circumstances.
I also expressed, when I answered the question coming from Mr. McKay, the thought, and certainly the wish, that the guidelines given to government officials are to use provisions like this only in appropriate cases. We are not supposed to use provisions like this to go on a wild goose chase.
That is certainly not what is expected and not what has happened with respect to money laundering, for which we've had such provisions. We've had experience for the past 13 or 14 years, and it has not happened. It is not expected that it will happen with the provisions proposed to Parliament for adoption here. They are targeted to terrorism, but sit within the general context of the law. The protections that exist in that context continue to apply here. There is nothing removing governmental actions here from the general application of the law.
Mr. Peter MacKay: No, I appreciate that.
The Chair: Thank you very much. I have to go to Madam Allard.
Madam Allard.
[*Translation*]
Ms. Carole-Marie Allard (Laval East, Lib.): I have a question for Mr. Roy. Mr. Roy, you have often testified before our committee regarding the study of another bill that was very important for my constituents of Laval-East.

In fact, you know that once again last weekend a young teenager was shot by a biker. That is very tragic.
Previously we studied an antigang bill and now we are looking at an antiterrorist bill. Can you tell us if the concept of participation in the antigang bill is related to the one in the antiterrorist bill? I know that this is not about finances, but I would like to benefit from Mr. Roy's knowledge.
Mr. Yvan Roy: Thank you madam.
I worked closely on the development of the bill to which you refer, C-24. My involvement in the preparation of Bill C-36 was not as great since I had changed jobs in the meantime. However I am happy to say that the concepts in Bill C-24 were used by the writers of Bill C-36. Incidentally, the participation and facilitation concepts that were studied by this committee in the context of Bill C-24 are in Bill C-36. If they were relevant for C- 24, they should also be for C-36.
Ms. Carole-Marie Allard: I would like to ask you another question Mr. Roy. We have the impression that the antiterrorist bill broadens the powers of the Federal Court, gives certain powers to the judges of the Superior Court and also to the judges of Court of Quebec to decide on releases. In the end, are we not diluting the powers of the judicial system by giving multiple jurisdictions to multiple courts? Have we considered the creation of a special tribunal for terrorists acts so that it could rule on a case from beginning to end?
Mr. Yvan Roy: As far as I know, there has been no question of creating a specific special court for this. It has been established—and you yourself have remarked that it is in the Bill—that there must be judicial supervision of many powers given to the State. That is why the judges of different jurisdictions have supervisory responsibilities.
The basic principle adopted is that when federal government measures are at issue, we use the Federal Court to decide and supervise the judicial powers, and when the case is more provincial in nature we use the provincial and superior courts to supervise everything.
We have created special tribunals in very special cases. I do not believe that this is something that we should favour. I prefer to have judges with an extensive knowledge of the law look at these questions and consider the numerous elements and interests that have to be taken into account in such difficult circumstances.
The Chair: Thank you Ms. Allard and Mr. Roy.
[*English*]
A last question goes to Mr. Sorenson.
Mr. Kevin Sorenson (Crowfoot, Canadian Alliance): Thank you, Mr. Chairman.
I want to thank you for coming. I found this very fascinating. When we talk about the war on terrorism, obviously travel and dollars—being able to limit their financing—are two of the key roles in fighting terrorism.
Part of what we're concerned with here is there are no institutions, I would imagine, here in Canada with “Al-Qaeda Inc.” bank accounts. We realize from witnesses there are many small cell groups active in Canada. CSIS has said there have been 50 organizations raising money for terrorist organizations in the past. So we know there are large organizations, but there are also these little cell groups. In the past week, in Fort McMurray, three terrorists were arrested with 15 different aliases and all these different credit cards.
What I'm driving at is this. Various financial institutions are going to be required to determine if these larger organizations are active in their territory and using their banks as an institution.

But how effective are little banks in Fort McMurray, with three individuals—and maybe another four individuals in a small little cell group—going to be?
And what is the cost to them going to be? Have we anticipated any administrative costs we can expect these administrations to have to come up with ?
We talk about summary convictions, and you also mentioned that larger institutions may be able to handle or absorb these. Summary convictions of $100,000 may be a fairly small conviction for a very large group, but these little cell groups... My concern is—though I never really thought I'd ever hear myself say this—for some of the institutions. Are they going to put someone in charge of that?
My other question, very quickly, involves the example where $150,000 has been seized. How many different groups are represented within this dollar amount, and how did it come about? Did it come about as a result of banking institutions coming to CSIS or RCMP, or did it come about through the RCMP saying: “These are individuals; let's seize their personal accounts”?
The Chair: Thank you, Mr. Sorenson.
Mr. Peterson.
Mr. Jim Peterson: Thank you very much, Mr. Sorenson.
On your second point, the $150,000 that was announced previously was the result of financial institutions coming forward, having recognized some of the terrorists who were listed.
On your issue concerning small financial institutions, maybe in smaller communities, not having the resources, to the extent they're linked into one of the major financial institutions I suspect it will not be long before they are online with certain types of communications systems that will hopefully alleviate this burden.
I know part of the work of FINTRAC and Horst Intscher is not to act as cops, but to work with all types of institutions on implementation. Maybe he could say a few words about that.
Mr. Horst Intscher: The approach we are going to take with all reporting entities, really, is to work with them in partnership to help them understand their compliance responsibilities and achieve compliance in as easy and unburdensome a way as possible.
To assist them in making some of the determinations they have to make, we have issued some guidelines. We will be continually revising the guidelines, to flag for them things they should keep in mind when they conduct transactions. Also, to help them report to us in a simple manner, we're establishing very simple electronic reporting means that they'll be able to use. We will be calling on them periodically to ask if they have any problems and whether we can help them or help provide training materials.
Mr. Kevin Sorenson: Some of these are very small credit unions—
The Chair: Mr. Peterson wants to make another point, Mr. Sorenson, and this will be the final point.
Mr. Jim Peterson: Having been so graciously cut off, thanks, Mr. Chairman.
The Chair: Not at all.
[*Translation*]
M. Jim Peterson: I would like to answer Mr. Bellehumeur's question. Do we have the will to go after the money launderers and the terrorists?
I can assure all of you that there is a great will to do so within the government. We will do everything in our power, everything possible, which should be the duty of every one of us.
[*English*]

I want to thank you all very much, Mr. Chairman, and especially you, for this opportunity to appear before you. If you have other questions arising out of your deliberations that involve us, we'll be pleased to work with you. Good luck.

…

Mr. Martin Cauchon (Minister of National Revenue): Thank you very much, Mr. Chair. As you said, I'll be starting with some opening remarks.

[*Translation*]

Mr. Chairman, thank you for having invited me here today to talk about this very important bill whose aim is to discourage and eliminate terrorist organizations and protect Canada, the Canadian way of life and the fundamental values that are dear to us.

Charities in Canada play an essential role in the care and support of the disadvantaged. Terrorist organizations seek to exploit the values we believe in as a compassionate society and abuse the benefits of our way of registering charities.

[*English*]

By making it difficult for such organizations to use charitable resources to support their causes, this legislation will help to eliminate the threats they pose to our nation and the world. Countries around the world recognize terrorist fundraising as a global problem and a complex issue.

[*Translation*]

No strategy or measure will put a stop to it, but through consensus building and cooperation, both here and at the international level, we can set up a broad range of practical, unified and effective measures to beat this problem, Mr. Chairman. That is why we need a comprehensive legislative framework that includes both penal and administrative measures.

[*English*]

The Charities Registration (Security Information) Act provides an important new tool to fight terrorism. It puts in place a fair and open administrative legal process to help prevent groups with terrorist affiliations from supporting their deadly acts by obtaining or keeping charitable registrations.

Under the current registration process administered by the Canada Customs and Revenue Agency, information that is classified for national security reasons is not used to deny or revoke charitable status. Because such information is not protected during the current appeal process, important information that could potentially connect a charitable organization with terrorist interests simply cannot be used. In the absence of a special legislative regime to protect such information, the information would be at risk of being disclosed if there is an appeal of the decision to revoke or deny charitable status.

The inability to use this key and critical information makes the integrity of the charity system vulnerable. A mechanism needs to be put in place that is specifically designed to allow the government to use and protect relevant classified information in its decisions to deny or revoke charitable status.

[*Translation*]

Mr. Chairman, these are necessary measures in addition to the amendments we foresee to the Criminal Code to make the financing of terrorist organizations and all other forms of terrorist support in Canada illegal.

The September 11th attacks have demonstrated very well that we cannot afford to close our eyes to any means used by terrorist organizations to get financing.

The measures proposed under the Charities Registration (Security Information) Act focus on a particular aspect of the problem. Like other measures adopted under Bill C-36, this special procedure will be applied only in exceptional circumstances.

Mr. Chairman, I would like to underline that the objective and the relevance of the Charities Registration Act have not changed since the tragic events of September 11. I remain convinced that the judicial review process that we are proposing meets the standards of equity and fair application of the law guaranteed by the Canadian Charter of Rights and Freedoms.

[*English*]

That is why the measures we are proposing under Bill C-36 are substantially the same as those proposed under Bill C-16, with the significant exception that they are now tied to the new provisions of the Criminal Code defining terrorist groups and activities.

The approach we are proposing mirrors provisions embodied in the Immigration Act, a model that has withstood the test of time and court challenges, respects the principle of fundamental justice, and conforms to the Canadian Charter of Rights and Freedoms.

The outlined process is one that reflects our commitment to maintaining a transparent and fair system while safeguarding public safety and national security. It also assures charities the protection of procedural fairness and due process in our legal system through a process of automatic and independent judicial review.

The judicial process obliges the Federal Court to provide the organization with a summary of the information available to the judge so the organization is reasonably informed of the case against it. It also provides the opportunity for the organization to challenge the case in open court.

The organization as well, Mr. Chairman, has the right to legal counsel to introduce evidence, call witnesses, and cross-examine. This would not be the case under the normal appeal rules, under which an appeal on a decision to refuse or revoke charitable registration is heard by the Federal Court of Appeal.

[*Translation*]

The proposed process also allows an organization to ask for a no-publication order. If the court agrees to the request, no information, such as the fact that the no-publication order has been requested, will be communicated to a third party. The no- publication order will be lifted only if a Federal Court judge determines that the security clearance is reasonable. It is only after a decision by two ministers, approved by a Federal Court judge, that the Canada Customs and Revenue Agency can take steps to refuse or revoke the registration of a charitable organization.

Such a structure creates strict accountability. The clearance will be valid for a period of seven years, but could be reviewed earlier if an involved organization can demonstrate a significant change in the circumstances that lead to the revocation. This is a balanced and objective process based on facts.

[*English*]

In conclusion, Mr. Chair, I would like to reiterate that Canada is not immune from terrorism. Terrorist-support activities, including fundraising, lead directly to deadly terrorist attacks. This is an issue of concern to all Canadians, an issue on which the government must take action.

[*Translation*]

Canadians want and deserve an efficient system of charitable organization registration that does not give rise to exploitation. To maintain public confidence in charities, we must ensure that terrorist organizations receive no support and that our system is protected from abuse.

Thank you for your attention.
[*English*]
Thank you very much.

October31, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

...
Ms. Pierrette Venne: I have one final question to ask.
Since the coming into force of the Proceeds of Crime Act, many lawyers have come to complain about the new provisions being imposed upon them. They are required to declare suspicious operations. They have told the media and everyone who would listen that this is an infringement on solicitor-client privilege and that it will turn lawyers into informants working for the State. We know that in the future, under Bill C-36, the Money Laundering Act will also cover the funding of terrorist activities. This is what will be in force.
Given that lawyers are not supposed to facilitate crime, why are these lawyers coming to tell us that they feel constrained by this Money Laundering Act which will heretofore also apply to the funding of terrorist activities? Do you have an explanation to give us in this regard?
The Chair: Mr. Potter.
Mr. Simon Potter: Madam, thank you for giving me the opportunity to speak to you about this matter, because it is often misunderstood.
Lawyer associations have never come to ask that lawyers be allowed to commit crimes. That is not it. What we want to do is to protect the confidentiality of what a client may tell his or her lawyer. This confidentiality is absolutely essential to the proper administration of justice and to the protection of individuals vis-à-vis the State, vis-à-vis their adversaries, vis-à-vis their competitors. Without this confidentiality, clients will not be open with their lawyers. This confidentiality must be protected.
With regard to the proceeds of crime and, now, terrorist activities, clients must be able to speak openly to their lawyer without the latter suddenly feeling the need to right away run to the police to report some suspicious thing that his or her client may have revealed. We must protect the confidentiality of the solicitor-client relationship. This does not mean that lawyers must be allowed to participate in these crimes, not at all, but the lawyer who is told something by his or her client must be allowed to keep this information confidential.
[*English*]
The Chair: Mr. Lomer.
Mr. Michael Lomer: In the course of my function as a defence lawyer, I may have clients confess all sorts of things to me. If it were the law that I had to then tell the crown what that confession was—and then turn myself into a witness, I might add—our administration of justice would cease to function. It just would not work, because defence lawyers would then be perceived, quite accurately, as being Trojan horses for the prosecution. That's not the way we work it in an adversarial system.
On that point, I point to proposed subsection 83.1(1), where it says a person in Canada has to tell both the RCMP commissioner and the director of CSIS. Is there some sort of jurisdictional thing that you have to tell both of them? I don't get that. Is it to keep the left and the right hands knowing what's going on at the same time?

Leaving aside that curious “and”, the part I draw your attention to is information about a transaction—
[*Translation*]
Ms. Pierrette Venne: What provision are you speaking about?
Mr. Simon Potter: It is proposed section 83.1, Madam.
[*English*]
Mr. Michael Lomer: If you look at proposed paragraph 83.1(1)(b), where it talks about “information about a transaction”, that clearly would be a transaction in the past. If I were defending somebody, that would mean if my client came to me and told me about that transaction, under this law I would be required to turn around and tell the commissioner of the RCMP and the director of CSIS. That's a clear violation of solicitor-client privilege. The section has to be changed. It has to at least acknowledge that defence lawyers defending people charged with these offences can actually receive information without the obligation to turn it over to the police.
The Chair: Thank you.
I think Mr. Ouimet wants to speak to this, and then I'm going to go to Madam Carroll and Mr. MacKay. We're over time here.
[*Translation*]
Mr. Ouimet.
Mr. Gilles Ouimet: With regard to the solicitor-client relationship in particular, there is also a provision according to which a lawyer may not divulge the fact that he or she has made a report or has communicated the information required under the law.
This provision will undermine the very basis of the trust relationship between a lawyer and his or her client, to the extent that the client will have no way of knowing if his or her lawyer has made such a declaration or not. This is a provision that may cause problems in certain situations.
...

November 1, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]
Mr. Leo Knight (Individual Presentation): Good morning, Mr. Chairman and members of the committee. Thank you for inviting me to address you today.
I appear here as a former police officer. I'm currently a senior executive in private sector security. I'm also a frequent commentator on justice issues in the media.
Bill C-36 has been crafted as a response to the well-planned and executed attacks on September 11. What is significant about this bill is that it does not address many of the realities of life today.
On December 13, 2000, the assistant director of Interpol appeared at a hearing, not unlike this one, before the Judiciary Subcommittee on Crime in Washington, D.C. The statement he made was on the threat posed by the convergence of organized crime, drug trafficking, and terrorism. The assistant director, Ralf Mutschke, drew specific attention to the Groupe islamique armé, the GIA. This is the group directly linked to Ahmed Ressam. Mutschke said: Ahmed Ressam is known to have shared a Montreal apartment with Said Atmani, a known document forger for the GIA. It has been established that before Ressam attempted to enter the U.S., he was in the company of Abdelmajid Dahoumane in Vancouver for a 3 to 4 week

period. An Interpol Red notice was issued regarding the latter. The investigation has revealed links between terrorists of Algerian origin and a criminal network established in Montreal and specializing in the theft of portable computers and mobile telephones. The group in Montreal was in contact with individuals involved in terrorist support activity in France and with several Moudjahidin groups.

He went on to say:

The proceeds of these criminal activities were sent to an international network with links to France, Belgium, Italy, Turkey, Australia and Bosnia.

Mutschke also detailed a meeting in Albania between several Algerian terrorists, also believed to have been attended by Osama bin Laden.

He went on to say:

The GIA support networks are involved in extortion, currency counterfeiting, fraud and money laundering.

He could well be speaking of organized crime, the Rizutto family in Montreal, or the Hell's Angels right here in Ottawa.

In his recommendations he said:

Another key element concerns the manner in which law enforcement itself operates. All too often, drugs, organized crime and terrorism are treated as separate issues by police authorities. This prevents authorities from receiving a valid, overall view of the threat.

I won't deal with any more of the specifics of the assistant director's report, save to point out it was delivered 10 months before September 11 and should be required reading for all members of this committee and this Parliament.

The problem lies more in the lack of an integrated intelligence approach than in a lack of international cooperation. This, in my view, is crucial in all these discussions. Bill C-36 is crafted in such a manner as to exclude the fact that drugs, organized crime, and terrorism are as enjoined as husband and wife.

When the current commissioner of the RCMP took office, he said that organized crime is the greatest threat we as a nation face today. You can modify that statement now to add the word “terrorism” to it, to understand how serious this is.

…

Mr. Michel Sarrazin: For some time now here, people have been linking organized crime and terrorism. I think that we have to be very careful and that there is a great difference between the two. Normally, organized crime engages in criminal activities for the purpose of making money or increasing its power, whereas terrorist groups use criminal activities for the purpose of gathering money for other activities, to destabilize governments, to further their ideologies or religions. Therein lies the difference, and I think that the powers to be granted by this new law aim to allow us to attack this type of individual.

…

Mr. James Aldridge: I appreciate that, Mr. Chairman. I do appreciate it, and let me end with this. It's in the conclusion of my paper, but I would like to say it.

There is a kind of pattern that has emerged in the last year or so in the way we as a country are reacting to a number of evils that confront us. In order to combat evil, money laundering for example, Parliament has enacted a law that has been challenged by law societies for overreaching itself and affecting solicitor-client privilege. I understand that this matter will be

proceeding into the courts on the alleged overreach of the money-laundering bill: a recognized evil and an overreach.

Last spring the House passed Bill C-24 on organized crime, which is now before the Senate. It recognized the evil of organized crime and the necessity to pass laws about organized crime, but that included provisions enabling designated police officers to commit acts and/or omissions that would otherwise constitute crimes. In my view and the view of many other people, that is overreaching the power needed to combat the evil. In order to pursue the legitimate fight against evils of terrorism, the government has now presented a bill that, despite the best intentions of the drafters, may result in overreaching, with draconian measures being taken against legitimate political dissent and potentially subjecting Canadians to dire consequences without basic procedural standards.

I suppose the general point I would make to parliamentarians is try to focus—if I may say this with the greatest of respect—on the precise evil you are trying to address and restrict the laws to those evils. I think that will result in a healthier evolution of our legal system.

November 6, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

…

Mr. Stephen Owen: Thank you to Professor Schwartz in particular, because you referred to the CBA brief.

One of the deep and enduring difficulties the CBA has is with the effect on solicitor-client privilege or relationship. Of course this isn't new in this legislation; it was in the money-laundering legislation previously and has now been extended to cover terrorism and proceeds of crime.

It occurs to me—and I'd value your comment on this—that the problem we're getting here is that the historical relationship between solicitor and client, or barrister and client, grew out of a judicial process, but the practice of law has broadened to such an extent that many solicitors are simply performing functions that some other financial officer might perform. Therefore, the bar is caught in the breadth of its practice, which is good, but the threat to a privilege that was meant to apply to a much narrower practice traditionally.

Of course, the difficulty with having this breadth of practice and having solicitor-client privilege apply to the whole thing is that it leaves a large hole in an attempt to stop money laundering or financing of terrorist activity. I wonder if you have an observation on this.

Prof. Bryan Schwartz: Yes. I don't claim to be fast enough or wise enough to have all the answers on this issue right now, but it does seem to me that some more creative thinking could be done along the lines you suggest of not just looking at practice comprehensively, but saying that when you are defending an alleged terrorist there should be much more protection for the relationship than when you are acting as a conveyance or a financial officer.

To reiterate an earlier suggestion I made, I'm not saying it's a traditional solicitor-client relationship when your lawyer can look at information without conveying it to you. But is that better than saying nobody on your team can look at it at all, only the judge? This isn't something we've done before, but as you're suggesting, extraordinary times may call for extraordinarily creative thinking. It may be there's a way we can have this balance between public security and the continuing role of lawyers that is a little bit better than the one we have in the proposed bill.

November 8, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

Dr. Anu Bose (Executive Director, National Organization of Immigrant and Visible Minority Women of Canada): I move, Mr. Chairperson, to speak on money laundering because that is what I did my doctorate in, money laundering in the informal economy and the institution of *Hawala* as practised in India. Unfortunately, an arrest here and an arrest there will not address this problem, since a great deal of money is transferred around the world through an informal underground clearing-house system that swaps money to move funds from place to place. It has been described in some detail in Hilary Mackenzie's article in *The Ottawa Citizen of October 20, and I would refer your researchers to that.*
It is a situation based entirely on trust, contrary to Fukuyama's characterization of developing countries as low-trust societies. There are no rules, no regulations, and no direct communication between the parties. All the transactions are done through the broker, who gets a percentage as a commission. It's cheap, efficient, and a welcome change from nationalized banks with extortionate rates, bureaucratic procedures, and surly clerks. FINTRAC would be well advised to keep this on their research agenda.
....
Mr. Ziyaad Mia: That's the other thing—solicitor-client privilege. You're obliged, under the FINTRAC and others, to disclose money transfers and financial transactions. You're also caught by one of the participation offences. Participation offence 83.17(3) says you participate, contribute to, or facilitate an act where you provide a benefit or skill. So if someone in the community is charged and we represent them, I'm giving them a benefit. If they flip around and pay me, that's a benefit to me, so I could be caught by that.
...

November 20, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]
Mr. Irwin Cotler (Mount Royal, Lib.): I have one basic question.
A number of witnesses have come before this committee whose core position has been that this legislation is simply unnecessary, that the problem is not the absence of a legislative base, but has been the absence of resources or a failure of intelligence. What, then, is the necessity for this legislation?
Ms. Anne McLellan: Keep in mind, Mr. Cotler, that you yourself have written fairly eloquently and persuasively on this very point, and I'm not going to repeat what you have said. I have made it absolutely clear from the outset that what we have to do is reorient the way we go about dealing with these kinds of horrific acts. As we know, and as you've written yourself very recently, our criminal justice system is generally premised on the fact that a crime is committed, an investigation takes place, charges may be laid, the courts do what they do, and so on. What we learned on September 11 is that this simply is not the kind of approach that is going to work in and of itself. Of course, it will continue to play some role, nobody's suggesting otherwise, but we must for the sake of innocent civilians in our country—and I think of those in other countries who are our allies—understand the modern face of terrorism. It is globalized, it uses technology, it is sophisticated, it does not care how many people it

kills, how many innocent people's lives are destroyed in the pursuit of its objective. We know they raise money worldwide. They launder billions of dollars daily throughout the world. In fact, it calls upon us to take a new approach as part and parcel of our criminal law. We are called upon to do this as members of a civilized community, as members of a global community who understand the invidious nature of terrorism and how it strikes at the right of every one of us to human security and safety.

This legislation acknowledges the fact that in instrumental ways, be it through information gathering, be it through law enforcement, we need new tools to help provide the human security and safety that all Canadians have a right to and, quite truthfully, all members of the civilized world have a right to.

…

Mr. Brian Fitzpatrick: Can I just raise a matter for clarification?

The Chair: On a matter of clarification, Mr. Fitzpatrick.

Mr. Brian Fitzpatrick: Then when we get to the point I won't be holding it up, if I get a satisfactory answer to it.

It's proposed section 83.11 on page 21. My reading of this bill is that once an entity is listed and anyone finds they have assets that are on that list, it's incumbent upon them to contact the Commissioner of the RCMP and the Solicitor General's office and notify them of that fact and those assets will be frozen. There are also provisions dealing with money laundering, which are fairly onerous and tough too.

I've been looking at that section. Somebody said we've raised $150,000 so far with seizures and so on. I'm going to estimate there are 20,000 businesses and entities in this country that are going to have to start filing monthly audits. If that runs $100 a crack, my math tells me it's going to cost those businesses something in the order of $25 million a year to do this sort of thing.

I haven't found anybody who has explained to me what these regulatory agencies are supposed to be doing with all these monthly audits, but it seems to me if you find one of these people in your records, you're going to report that to the RCMP and the Solicitor General's office, and bingo, these people should be dealt with.

I'm not exactly sure what this whole provision does, except try to defeat terrorism with a whole lot of government bureaucracy, without much purpose to it. I would just like some preliminary explanation of why this section is in there. The economy is suffering under this thing as it is. I don't think businesses need more bureaucracy.

The Chair: Mr. Fitzpatrick, I assume you're considering an amendment; therefore you're looking for clarification.

Mr. Brian Fitzpatrick: I want an explanation of why that provision is in there.

The Chair: But I would remind members that we're going to get to that particular provision in the course of clause-by-clause.

Mr. Stephen Owen: We do have, Mr. Chair, an official from the Ministry of Finance who would like to address this topic.

The Chair: Thank you.

Would you introduce yourself, please?

Mr. Richard Lalonde (Chief, Financial Crimes Section, Department of Finance): My name is Richard Lalonde. I'm from the Department of Finance.

I apologize if I did not hear the question completely, but what I did understand was a particular concern regarding the provision requiring the reporting of frozen assets and the duty to determine whether or not a financial institution has frozen assets.
Mr. Brian Fitzpatrick: The monthly reporting requirement.
Mr. Richard Lalonde: As far as I understand, we will be seeking an amendment to provide flexibility, that is, regulation-making authority, that would allow us to adjust the reporting frequency from time to time so that we could, on the basis of experience of the reporting of different financial institutions, subsequently adjust whether or not they have to do so on a monthly basis, or perhaps maybe a semi-annual basis, to the respective financial sector regulators. I think in that sense we can address that particular concern.

December 4, 2001 [The Special Senate Committee on Bill C-36][Entire Exchange]

Senator Bryden: The Federation of Law Societies will be presenting their brief to us tomorrow. Their position appears to be that they wish to be excluded from the operation of many of the processes that might be brought to bear on any other business as a result of the provisions of this bill and other acts.
For example, there is concern about barriers to counsel that may be there, whether the implementation and use of the bill will interfere with the confidentiality relationship. I will not go through the whole list, but they would exempt their fees from any freezing that would occur. They also recommend that they be exempted from the application of part one of the money laundering bill where they are required to gather and report information about their clients and to state that information without their client's knowledge. Are you familiar with this
Honourable Anne McLellan, P.C., M.P., Minister of Justice and Attorney General of Canada: We are well aware of the brief of the Federation of Law Societies. We need to be careful because there is litigation ongoing in the Province of British Columbia, in relation to assertions made by certain lawyers in the Province of British Columbia pertaining to our money laundering legislation, and whether lawyers should have a special exemption not granted to anyone else in relation to the provisions of our money laundering legislation.
This issue has been hotly debated. We are in court now in relation to that issue. We presume that it will go to the Supreme Court of Canada for ultimate resolution. I have gone on record as strongly opposing the views of the Federation of Law Societies and other lawyers in relation to this issue. Our factum makes that point. As this matter proceeds through the courts in British Columbia, we will continue to make that point.
We go out of our way in our money laundering legislation. There is a specific section that states that nothing in this bill interferes with solicitor-client privilege. We understand that what comes within that is a matter of interpretation. We look forward to further clarification by the Supreme Court of Canada in relation to that, but we believe very strongly that no group, including lawyers, can be exempted from legislation such as money laundering. In fact, they are included in most other jurisdictions to which we want to compare ourselves. It would provide what I view as an unacceptable gap or loophole in our legislation.
The late and great Chief Justice of Canada, Brian Dickson, had some useful things to say about the nature of solicitor-client privilege and when it applies and when it does not. All that will be dealt with ultimately in the Supreme Court of Canada.

No one, including lawyers, is above the law, and we expect everyone to obey the law. I find it difficult to accept the assertion that is being made by the Federation of Law Societies namely, that, by providing legal counsel to someone charged with a terrorist activity, they could be charged with something like facilitation. This is simply an argument that cannot be sustained and is one that I cannot speak strongly enough against.

This bill has been carefully drafted to ensure that it criminalizes only those who knowingly deal in profit or provide financial or other related services with the intention or knowledge that it be used to benefit or facilitate a terrorist group. I do not understand how the Federation of Law Societies can make some of the arguments they make in relation to that. I want to put that on the record.

Having said that, I am limited, as are my officials, in talking more generally about some of the assertions and the exemptions sought because those are matters before the courts.

Senator Bryden: Do we need to do anything to this bill that is not already there in order to protect the solicitor-client relationship?

Mr. Mosley: With the greatest of respect, I would suggest no, honourable senators. I had the benefit of reading the brief today. It is largely based on a brief written earlier by counsel to the Law Society of Upper Canada.

It does not talk about the reality that lawyers, like any other citizens within Canadian society, as the minister has indicated, are subject to the same basic principles with regard to dealing in contraband. There is no special exception for lawyers in dealing with property that is prohibited in some way by the state. For example, drugs. Lawyers cannot deal in drugs any more than any other citizen can. Since about 1974, it has been an offence to be in the possession of property that has been obtained either directly or indirectly by the commission of an offence. Since 1988, it has been an offence under the Criminal Code to be in possession of the proceeds of crime. The analogy is very much with regard to the general offence relating to dealing in property with that kind of other form of property that is prohibited by the state.

With respect to the specific question of whether it will prevent someone from having access to legal representation, the bill cross-references the existing provisions of the Criminal Code, which allow a judge, where property has been frozen or seized, to permit a variation of the freezing or seizure order to allow for reasonable living or legal expenses. That has been part of our criminal law since 1988 and has been used routinely in relation to the seizure of proceeds of crime to allow for the payment of counsel. That would apply equally in this context because of the cross-reference to those existing provisions.

...

December 6, 2001 [The Special Senate Committee on Bill C-36]
Mr. Peter Royal, Q.C., Board Member for Alberta and Northwest Territories, Federation of Law Societies of Canada

...Other features of this bill that will adversely affect the right to counsel, include the amendments to the code, making it an offence to knowingly deal, directly or indirectly, in any property owned by, controlled by, or on behalf of, a terrorist group. Entering into or facilitating any transaction in respect of such property and providing financial or other related services in respect of such property, will also be an offence. This provision will make it an offence for lawyers acting for people or groups subject to the bill to accept retainers from their

clients for professional services. This is the so-called "freezing of property" provision found in the legislation.

Furthermore, the bill provides for forfeiture orders of property owned or controlled by a terrorist group. Lawyers' retainers held in their trust accounts could well be ordered forfeited, pursuant to these provisions. Unlike the general forfeiture provisions that we find in the Criminal Code, no substantive offence need first be proven beyond a reasonable doubt. Indeed, there may be no charge ever brought for the respondent, owner or possessor to answer. The requisite onus is the civil standard - proof on a balance of probabilities. Unlike the new Proceeds of Crime (Money Laundering) Act, money received by lawyers for professional fees, for disbursements, or for the posting of bail has not been exempted from these provisions of Bill C-36.

The combined effects of this legislation will make it difficult, if not impossible, for someone subject to the provisions of the bill to retain legal counsel, rendering their right to the counsel of their choice to losery, I suggest.

However, it is not only barriers to the retention of counsel that this legislation creates that are of concern for us, for, even if counsel is retained, that counsel will necessarily lack the independence necessary to the maintenance of a proper solicitor-client relationship. A number of provisions in the bill violate the requirement that solicitors hold in confidence information received from their clients. Bill C-36 will routinely require lawyers to disclose confidential solicitor-client information to the state, thereby conscripting them against their clients and making it impossible for them to act as independent legal advisers with undivided loyalty.

The proposed section 83.1 in Bill C-36 will require everyone to disclose forthwith to both the RCMP and CSIS, the existence of property in their possession or control that they know is owned, or controlled by, or on behalf of a terrorist group, information about a transaction or a proposed transaction, in respect of such property. Lawyers who hold money in their trust accounts on behalf of entities listed by the government as terrorist groups, for example, will be forced to become witnesses against their clients and immediately disclose the existence of such trust funds to both RCMP and to CSIS. Failure to do so will subject lawyers to fines of up to $100,000 or 10 years in prison.

Furthermore, amendments to the Proceeds of Crime (Money Laundering) Act will expand the nature of transactions that lawyers will be required to report to FINTRAC, including financial transactions that lawyers have reasonable grounds to suspect are related to a terrorist activity financing offence. The act will prohibit lawyers from telling their own clients, with the intent to prejudice a criminal investigation, that they have made such a report, whether or not such an investigation has begun. In essence, the act will compel lawyers, on pain of imprisonment, to breach the fundamental principles underlying the solicitor-clientrelationship and to not inform their clients that the relationship has been breached. The FLSC, the Law Society of British Columbia and, laterally, the Law Society of Alberta, have recently challenged the constitutionality of section 5 of the regulations of the Proceeds of Crime (Money Laundering) Act. This section requires that lawyers make reports about their clients, without advising those clients, principally on the basis that it compels lawyers to gather and provide evidence against their clients on behalf of the state. I noticed that Minister McLellan alluded to this when she appeared before your committee a day or two ago.

On November 20, 2001, the British Columbia Supreme Court issued an interlocutory order exempting lawyers from the application of section 5 of the regulations pending a full hearing of the case. In making the order, the Honourable Madam Justice Allan described section 5 of

the regulations as the authorization of, and I quote: "... an unprecedented intrusion into the traditional solicitor-client relationship." Bill C-36, honourable senators, will expand this intrusion.

This proposed legislation, as noted by Professor Irwin Cotler, M.P., McGill University, is not so much Charter proof, as Minister McLellan asserts, as it is Charter bound.

I will speak to the point about conscripting lawyers against their clients in investigative hearings. Much has been said about that. Bill C-36 will compel individuals who police believe have information about terrorism offences that have been committed, or will be committed, or information about the whereabouts of a suspected terrorist to appear before a judge to answer questions and/or to produce anything in their possession or control to the presiding judge. Witnesses will find themselves impaled on what the late Professor Wigmore referred to so eloquently as the "three horns of the triceratops." What should I do here? Should I disclose and cause harm to others or myself? Should I commit perjury? Should I refuse to answer questions, thereby resulting in my detention?

These hearings not only represent a disturbing departure from the fundamental right of a citizen to remain silent during the investigation of a suspected offence, a right recognized by the Supreme Court as a principle of fundamental justice enshrined within section 7 of the Charter, but they also amount to judicially supervised interrogations of witnesses or suspects, positioning the judiciary much closer to the investigatory process than ever before.

The bill is silent with respect to sanctions that may be imposed for a witness who refuses to appear, refuses to answer questions or to produce things in their possession and/or control. Presumably, broad contempt powers would be available to the court for the offending witness. Will lawyers be required to appear before a judge to answer questions about their clients? Information covered by solicitor-client privilege is protected from disclosure during an investigative hearing, but confidential solicitor-client communications are not. Again, lawyers could be conscripted against their clients.

Our colleagues from Ontario, from the Law Society of Upper Canada, feel so strongly about investigative hearings and the entire topic of preventative arrest - a topic that we have not touched upon in our submission because it is outside the ambit of our concern as regulators - that they urge that these proposed sections in the bill ought to be removed from the bill in its entirety.

Two final provisions on the question of solicitor-client confidentiality ought to be mentioned. The bill will permit the search of a lawyer's office, pursuant to a warrant per the proposed section 83.3. This is not extraordinary. However, the bill is altogether silent on the process for determining a claim of solicitor-client privilege. Criminal Code provisions setting out procedures for determining the issue of solicitor-client privilege have been struck down recently by superior courts of appeal in several provinces. The issue is scheduled to be heard in the next week or two by the Supreme Court of Canada in a number of companion cases such as *R. v. Lavallee*, *R. v. Fink*, a case from Ontario which is rather aptly named, and *White et al v. the Attorney General of Canada*. The absence of any mention of the confidential nature of information that may be seized in lawyers' offices or the topic of solicitor-client privilege, sends the wrong message to law enforcement officials. There is reason to be concerned that material seized from a law office during such a search may not be sufficiently protected from disclosure to the state pending a judicial determination on the issue of privilege.

Finally, amendments to the National Defence Act, contained within Bill C-36 will allow the Minister of National Defence to authorize the interception of private communications between

a foreign person and a Canadian citizen. This is a significant change, we suggest. No judicial authorization is required at all. The power is vested solely in the minister. Until now, the Communications Security Establishment, the body that actually conducts the surveillance, was only permitted to target foreign communications. This power could well be used to intercept or could result in interception of confidential solicitor-client communications on the authority of the Minister of National Defence alone.

Bill C-36, honourable senators, expands state powers in significant and disturbing ways. Many of them will deny Canadians the right to independent counsel, and they will intrude on the confidentiality of the lawyer-client relationship. The bill weaves these extraordinary powers into the fabric of our criminal and other laws making them part of our legal landscape.

The added danger in this is that these exceptional measures and powers will become the norm. What will the government do the next time the country faces a terrorist crisis? It will ratchet up the already extraordinary measures in place. Powers, once granted law enforcement agencies, are rarely withdrawn.

…

December 6, 2001 [The Special Senate Committee on Bill C-36]
Mr. Eric Rice, Q.C., President, Canadian Bar Association

Similarly, proposed section 83.08 prohibits a person from dealing in property controlled by a terrorist group. This proposed section would seem to apply to lawyers' legitimate and necessary financial transactions with clients, including the payment of fees or the posting of bail. The federal government has exempted such transactions under the Proceeds of Crime (Money Laundering) Act. It should also be exempted here.

On the question of confidentiality, it is important to stress three things: First, the traditional protection of solicitor-client confidence is not for the benefit of lawyers. It is for the benefit of the client. Second, this right to solicitor-client confidentiality does not provide a cloak for lawyers to commit offences. There is no loophole here. The lawyers are as liable as everyone else to criminal charges if they engage in money laundering, and they will not be lawyers very long if they do. Third, there is a growing amount of case law that suggests that solicitor-client confidentiality is protected under the Constitution. Honourable senators have already heard about the injunction recently granted in British Columbia that exempts lawyers from having to disclose confidential information under the Proceeds of Crime (Money Laundering) Act, pending trial.

[*Translation*]

Solicitor-client confidentiality is a foundation of our legal system. Clients can only receive adequate legal advice if they know the information that they communicate will remain confidential.

…

An Act To Establish A Body That Provides Administrative Services To The Federal Court Of Appeal, The Federal Court, The Court Martial Appeal Court And The Tax Court Of Canada, To Amend The Federal Court Act, The Tax Court Of Canada Act And The Judges Act, And To Make Related And Consequential Amendments To Other Acts (Bill C-30)

Citation 2002, c. 8

Royal Assent March 27, 2002

Provisions Amended 30

Hansard

March 7, 2002 [Senate][Entire Exchange]
Hon. W. David Angus

Honourable senators, my question concerns a U.S. State Department report, released earlier this month, that once again puts Canada in an embarrassing and very negative light as a "major money laundering country" appearing on a list of nations of primary concern for money laundering.
Yesterday's *Ottawa Citizen* ran a lead story on page 1, under the headline "Illicit cash pours over border: U.S. names Canada `major money laundering country'." It went on to say:

> In its latest annual report on the international drug trade and suspicious money, the State Department says the U.S. is worried about the movement of large sums of cash across the border."Canada remains vulnerable to money laundering because of its advanced financial services sector and heavy cross-border flow of currency and monetary instruments," says the department's International Narcotics Control Strategy Report.

In spite of the legislation we passed in 2000, our nation remains on this list, a list that includes countries like Switzerland, with its secret banking system, and the Cayman Islands and other similar tax havens. Of particular concern is laundering of monies earned through the drug trade that allegedly are being used to finance terrorist activities at an international level.

Honourable senators, I am asking the Leader of the Government to please indicate whether the government has looked at the U.S. State Department's report, and if so, could she advise as to

how, in spite of the legislative initiatives of the past few years, Canada is still being regarded as a country of primary concern for money laundering.

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. As he well knows, there are statistical gathering measures, most particularly in the United States. Sometimes their data is based on a period of time — between the reporting and the actual publication of that data — in which legislative changes have taken place.

I should like to think this is an example, that since the gathering of the data and the issuance of the report, we have made significant changes, not only with the money laundering bill itself but also with the changes to the anti-terrorism bill.

I will, however, make sure that the United States, through the Department of Foreign Affairs, is made aware of these changes in legislation, and hopefully the department can deal with any concerns that they have in the United States. It is all too true, unfortunately, that sometimes our American brothers and sisters like to find problems outside of their country without examining whether they have the same problems within.
Hon. Edward M. Lawson: One of the other countries that the United States has designated as a country of concern for money laundering is the United States itself.
…

There, you have it.
Honourable senators, I am sure we are all reassured by the response of the Leader of the Government. I am sure that she, as well as all of us, is still very offended when we see headlines stating that Canada is one of the leading money laundering countries.

If the honourable leader is saying that the U.S. State Department report is wrong and it is out of date — and I hope she is right — that is one thing, but the report notes that the Canadian government has not yet implemented the regulations that define cross-border currency movements, nor is FINTRAC a member of the Egmont Group, which would allow it to exchange information with its foreign counterparts. Why is this, if indeed it is so? Why is Canada dragging its feet? When will the government implement these regulations, and when will FINTRAC join the Egmont group?

Senator Carstairs: The honourable senator has put very specific and detailed questions before the chamber. Obviously, I do not have that kind of information available. However, I will obtain it, and we will file it as a delayed answer as soon as possible.

Public Service Modernization Act (Bill C-25)

Citation	2003, c. 22
Royal Assent	November 7, 2003
Provisions Amended	67, 44, 49, 50, 51

Hansard

N/A

An Act To Establish The Library And Archives Of Canada, To Amend The Copyright Act And To Amend Certain Acts In Consequence (Bill C-8)

Citation	2004, c. 11
Royal Assent	April 01, 2004
Provisions Amended	54

Hansard

N/A

An Act To Amend Certain Acts Of Canada, And To Enact Measures For Implementing The Biological And Toxin Weapons Convention, In Order To Enhance Public Safety (Bill C-7)

Citation 2004, c. 15

Royal Assent May 06, 2004

Provisions Amended 54, 65

Hansard

March 18, 2004 [Senate Committee][Entire Exchange]

Senator Andreychuk: When this bill came in, it was part of a three-pronged approach that you were involved in, and it was terrorists, terrorists, terrorists. We were going after terrorists, no one else. However, as you have described it today, you have this sort of "hit bank." Our names go against it, as do those of drug dealers, criminals, and those who commit terrorist activities. We have spent more than a century putting together the checks and balances of our criminal system and now you are blending terrorism, criminals, et cetera. If we are worried about terrorists, the integrity of your data bank, and balancing it with the effect on people, do we really need proposed subsection 4.82(11)? Can you not do all your terrorist work and have all the hits against any terrorists without expanding it into a delicate criminal balance?
Mr. Zaccardelli, Commissioner, Royal Canadian Mounted Police: That is a very good point. The fact is that no one works in silos any more. Terrorists are involved in organized crime; organized crime people are involved in certain potential terrorist activity; terrorist activity is financed out of petty crime, as we sadly learned from the *Ressam* case out of Montreal. They were below the radar screen. We never actually picked him up. Perhaps we should have picked him up earlier.
There is a crossover. The reason for looking at people involved in serious criminal activity is that they are a potential threat to the safety of the airlines and the passengers. That is why we limit it to those people involved in very serious activity. There are people, organizations, involved in serious organized crime that do, in our view, pose a threat to the passengers on those planes. That is why we have extended this but put very clear limits on it.

April 20, 2004 [Senate]
Hon. Joseph A. Day

The proposal in Part 19 of Bill C-7 would assist the federal government's Financial Transactions and Report Analysis Centre of Canada, sometimes referred to as FINTRAC — which I will refer to, with your permission, as the centre. In the fulfillment of its mandate to uncover money laundering activities or financing for terrorist activities, these amendments would allow the centre, where an agreement has been entered into, to access information from government national security databases that the centre considers relevant to carry out its mandate, and only for that purpose. That would allow the centre to share compliance-related information with financial sector regulators and supervisors.

This past March, in an *Ottawa Citizen* article on the operation of FINTRAC, it was reported that information on 25 separate cases of terrorist financing involving $22 million had been disclosed to law enforcement agencies in fiscal 2002-03. The information on 29 suspected cases of terrorist financing involving in excess of $35 million had been disclosed in the first nine months of fiscal 2003-04. I am sure that we want this very good work to be assisted in every way, which is the goal of the amendments to Part 19 of Bill C-7.

April 27, 2004 [Senate]
Hon. A. Raynell Andreychuk:

In other words, as Minister McLellan said, if the police, while tracking, were to come across an outstanding warrant for a serious offence, the public would want that person arrested. As Ms. Stoddart said, this further indicates that there would be an inevitable drift to use this mechanism for criminal law purposes while veering away from the essential data scanning for terrorism, which is more difficult. We would have another tool, not contemplated by criminal law, to deal with criminals. I certainly do not accept Commissioner Zaccardelli's point of view that any and all criminals could be tomorrow's terrorists; that brush is too broad. Think about who is being imprisoned today in our system: We know that Aboriginals are oversubscribed and we know that minorities are tapped. I can appreciate that law enforcement officers do not overlook any link, but, to be quite frank, when our criminal law system is overrepresented by minorities, I do not want to draw the equation that these people could be next year's terrorists. While it is legitimate to look at organized crime, gangs and money laundering, such an unwarranted sweep by the government should not be tolerated, as it would be under Bill C-7. There is a natural tendency and pressure between those who advocate rights and those who are given the responsibility to protect. That is where our fine balance of criminal law has gone. To now move the marker without data and research would be unwarranted and unnecessary to the extent that the government has proposed.

April 27, 2004 [Senate]
Senator Andreychuk

Honourable senators, I do not have up-to- date statistics. As Senator Cools well knows, in the Standing Senate Committee on Legal and Constitutional Affairs, we continually struggle to get Statistics Canada to come forward with such information.
The point I clearly wanted to make is that not everyone who commits a crime in Canada is a terrorist. I used a couple of examples. I could have mentioned blue-collar workers or anyone else. The threshold is imprisonment for five years or more. There is public mischief in there. There are all kinds of things unrelated to terrorism.
I tried to draw the line that the police are absolutely correct to say that crimes involving gangs or money laundering can be components of terrorism. However, surely, our entire criminal system is not geared to saying that everyone who enters the criminal system comes out a terrorist. That was the point I was trying to make.
I appreciate that I may have stated this concept too narrowly. If I did, I should not have done so.

An Act to establish the Canadian Border Services Agency (Bill C-26)

Citation 2005, c. 38

Royal Assent November 3, 2005

Provisions Amended 2, 20, 26, 31, 32, 35, 38, 39, 55

Hansard

December 13, 2004 [House of Commons]
Mr. Mark Warawa (Langley, CPC)

...I would like to speak regarding illegal border drugs. Interstate 5 in Washington state, just to the south, is the west coast pipeline not only for trade but also for illegal drugs. The issue of illegal drugs crossing the border is a hot topic in Washington state.

Washington and B.C. share the third busiest border crossing in the country. Prosecutors and sheriffs in Whatcom County are currently seeking a $1 million U.S. grant to help deal with crime spawned by their border crossing with British Columbia. This money is needed to deal with a large range of offences, including drug prosecutions, money laundering and auto theft.

According to Dave McEachran, the prosecuting attorney with Whatcom County:

> we have a huge flow of B.C. bud coming down and we've got cocaine going up to B.C., along with laundered money and guns.

While law enforcement is involved in intercepting criminals on both sides of the border, U.S. authorities are lamenting Ottawa's approach toward decriminalizing marijuana and its link to organized crime in Canada.
...

An Act To Establish The Department Of Public Safety And Emergency Preparedness And To Amend Or Repeal Certain Acts Or; Department Of Public Safety And Emergency Preparedness Act (Bill C-6)

Citation 2005, c. 10

Royal Assent March 23, 2005

Provisions Amended 60.1

Hansard

N/A

An Act To Amend The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act And The Income Tax Act And To Make A Consequential Amendment To Another Act (Bill C-25)

Citation 2006, c. 12

Royal Assent December 14, 2006

Provisions Amended 2, 5, 6, 6.1, 7, 7.1, 9, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 10.1, 11.1, 11, 11.12, 11.13, 11.14, 11.15, 11.16, 11.17,11.18, 11.19, 11.2, 11.3, 11.4, 12, 16, 24, 24.1, 29, 30, 32, 33, 34, 35, 36, 38.1, 54, 54.1, 55, 55.1, 56.1, 56.2, 59, s. 60, 60.1, 60.3,, 63.1, 64, 72, 73, Part 4.1, 73.1, 73.11, 73.12, 73.13, 73.14, 73.15, 73.16, 73.17, 73.18, 73.19, 73.2, 73.21, 73.22, 73.23, 73.24, 73.25, 73.26, 73.27, 73.28, 73.29, 73.3, 73.4, 73.5, 74, 77.1, 79, 81

Hansard

October 20, 2006 [House of Commons]

Ms. Diane Ablonczy (Parliamentary Secretary to the Minister of Finance, CPC)

How does money laundering work? How does it take place? Money laundering occurs in three stages. The first is the placement stage. In this stage the launderer introduces the illegal profits into the financial system. This is done in a number of ways. One is breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account. Another is using cash to purchase a series of monetary instruments, cheques, money orders, et cetera, from financial institutions that are then collected and deposited into accounts at other locations.

The second stage is called layering. In this stage the launderer engages in a series of conversions or movements of the funds to distance them from the first place they were deposited. For example, this could be through the purchase or sale of investment instruments such as shares or a series of wire transfers to various bank accounts globally.

Having successfully moved the criminal profits through the first two stages of the money laundering process, the launderer then enters the third stage which is integration. It is at the integration stage that the funds re-enter the legitimate economy. The funds can now be invested or used to purchase luxury assets, real estate, securities or other investments.

Money launderers tend to seek out jurisdictions with weak or ineffective anti-money laundering programs. Canada does not want to be on that list. However, because the objective of money laundering is to get the illegal funds back to the individual who first collected them through criminal activity, launderers usually prefer to move funds through areas of highly developed, stable and sophisticated financial systems, and where the large volume of transactions may diminish the risk of suspicious transactions being detected. That is a country like Canada with a sophisticated and stable financial system.

The other element, terrorist financing, how does that fit into this picture? Terrorist organizations require financial support in order to carry out their evil and destructive activities. A successful terrorist group, like a criminal organization, must be able to build and maintain a steady flow of funds. It must develop sources of money, a means to covertly move that money around, and a way to ensure that the money can be used to obtain the materials needed to commit terrorist acts.

Terrorist financing comes from two primary sources. First, there is state sponsored terrorism, sadly. Financial support is provided for these terrorist activities by states or organizations large enough to collect and then make funds available to the terrorist organization. A variation of this is where a wealthy individual provides funding. For example, Osama bin Laden is thought to have contributed significant amounts of his personal fortune to the establishment and support of the al-Qaeda network.

The second source of terrorist financing is money derived directly from various revenue generating activities. As with organized criminals, a terrorist group's income often comes from crime or other unlawful activities. For example, a terrorist group may engage in large scale smuggling, various types of fraud, robbery and narcotics trafficking.

However, unlike organized crime, terrorism can be financed using legitimate funds such as those collected in the name of charitable causes. These loopholes, often exploited by terrorist groups, need special attention in order for Canada to move effectively to deny terrorists the funds they use for their destructive deeds.

It is this second source of terrorist funds that the measures in the bill are designed to detect.

It is important to remember that this activity has an effect on all Canadians because money laundering, major criminal fraud, and financial crimes have the potential to undermine the Canadian economy by impacting the reputation and integrity of individual financial institutions, not to mention the financial sector as a whole.

Members of the House will appreciate that the integrity of Canada's banking and financial services depends on citizens and investors being able to trust that institutions are well regulated and protected from criminal elements.

By extension, a healthy financial system is absolutely critical to Canada's ability to attract investment, and therefore increase and sustain overall economic growth and productivity.

If funds from criminal activity can be easily processed through a particular institution because proper anti-money laundering controls are not in place, institutions could be drawn into unwitting complicity with criminals. As well, evidence of such abuse will have a damaging effect on the perception of other financial intermediaries, regulatory authorities and Canadians themselves.

The potential costs of money laundering are of course serious. If not addressed, organized crime can infiltrate financial institutions, acquire control of large sectors of the economy

through investment, create competitive disadvantages for local businesses, and continue to fund harmful criminal activity such as drug trafficking, human smuggling and prostitution which preys on women.

What has Canada done to prevent and deter money laundering and terrorist financing. Since 2001 Canada has had an anti-money laundering and anti-terrorist financing regime that is in the top tier of our international partners. This legislation has helped ensure that Canada is not a haven for money laundering and terrorist financing activities.

Indeed, Canada has made significant progress in detecting suspected cases of money laundering and terrorist financing. We continue to work closely with our domestic and international partners to improve the regime.

In 2005-06, reporting entities filed upwards of 30,000 suspicious transaction reports with the Financial Transactions and Reports Analysis Centre of Canada, FINTRAC. In turn, FINTRAC made 168 case disclosures to law enforcement agencies. In addition, 10 new domestic information-sharing agreements were signed with financial sector regulators.

FINTRAC now has 30 information-sharing agreements with foreign counterparts internationally.

Canada's new government has committed to a strong and comprehensive anti-money laundering and anti-terrorism regime that is consistent with international standards. That is what this bill, Bill C-25, is all about. It amends the existing legislation in order to update and enhance the legislation to better combat money laundering and terrorist financing activities.

To begin with, the measures proposed in the bill will update Canada's anti-money laundering and anti-terrorist financing regime to be consistent with international standards set out by the Financial Action Task Force, which is the international standard-setting body on this issue. These standards were revised in 2003 and all task force members have had to update their regimes. Canada is now doing so with this bill.

The proposed amendments will require financial intermediaries to undertake a number of actions such as enhanced client identification and record-keeping measures. They will also be required to undertake enhanced measures with respect to certain clients and activities, for example with respect to foreign politically exposed persons and their banking relationships.

The reporting of suspicious attempted transactions will also be required.

Bill C-25 also establishes a new registration regime for money services businesses that remit funds in and out of Canada and for foreign exchange dealers, within FINTRAC. This new regime will provide FINTRAC with a tool to increase compliance with the requirements under this act for money services businesses and foreign exchange dealers. Coupled with the registration requirement, a new offence will be created for operating an unregistered money services business.

The exclusion of legal counsel from the regime has been identified as a gap by both the Auditor General and law enforcement. Over the last number of years, the government has been negotiating with the legal profession on how best to include it in the regime. Through regulations made under Bill C-25 and consistent with the Financial Action Task Force requirements, legal counsel will now be required to undertake client identification and record-keeping measures when acting as financial intermediaries.

These measures complement the prohibition on the receipt of cash over $7,500 by legal counsel that is currently in place and enforced through provincial law society rules of professional conduct. These measures also respect the Supreme Court of Canada's Lavallee decision.

Bill C-25 also establishes monetary penalties in addition to existing criminal sanctions. This will allow FINTRAC to impose graduated penalties that adequately reflect the nature of the violation. The monetary penalties, for example, will be particularly useful for offences that are less advertent or egregious.

An important part of Bill C-25 relates to information sharing. Specifically, the bill proposes to allow the exchange of information between FINTRAC here in Canada and the Canada Revenue Agency, and with Canadian law enforcement agencies, to better prevent and detect the use of registered charities for financing of terrorism.

Moreover, to increase the usefulness of FINTRAC's disclosures, the range of information disclosed will be expanded, as well as the list of disclosure recipients. This list will now include the Communications Security Establishment and the Canada Border Services Agency. Also, the agency will be allowed to share cross-border currency reporting information internally for the administration of immigration legislation.

Amendments are also proposed in Bill C-25 to allow information sharing of compliance-related information between FINTRAC and its foreign counterparts. As well, information sharing provisions are proposed between the Canada Border Services Agency and its foreign counterparts on the enforcement of the cross-border currency enforcing regime.

It is important to emphasize that Canada's government recognizes how essential it is to protect the privacy rights of Canadians. That is why Bill C-25 includes a number of safeguards to protect those rights. The bill strikes the right balance in meeting the needs of law enforcement while respecting the privacy rights of Canadians.

I want to outline for the House these safeguards. First, there is an arm's length relationship between FINTRAC and law enforcement and other agencies entitled to receive information. Second, there is disclosure of only key information regarding financial institutions and publicly available information to police and other designated entities. Third, there are criminal penalties for any unauthorized use of disclosure of personal information under FINTRAC's control. Fourth, there is a requirement for a court order by law enforcement agencies to obtain any other than very minimal information from FINTRAC.

With the proposals contained in the bill, the anti-money laundering and anti-terrorist financing regime will continue to strike an appropriate balance, on the one hand providing law enforcement and intelligence agencies with the tools they need to effectively fight money laundering and terrorist financing, while on the other hand taking appropriate and strong steps to respect and protect the privacy of Canadians.

The bill is consistent with the Charter of Rights and Freedoms as well as the Privacy Act.

November 02, 2006 [Standing Committee on Finance]

Mr. Peter Bulatovic (Assistant Director, Tactical Financial Intelligence, Financial Transactions and Reports Analysis Centre of Canada):
...We start with financial transactions, including deposits and fund transfers, when they are made by entities included in the list on the right, such as banks, savings and credit unions, foreign exchange brokers and casinos.

These entities must file reports with FINTRAC when they make electronic transfers to Canada or outside Canada, or deposits in the country of CDN $10,000 or more. They must also report dubious transactions, regardless of the amounts involved.

In the lower left corner, you see that we also receive reports of cross-border currency and monetary instruments of $10,000 or more, as well as reports of currency seizures.

Virtually all this information is forwarded electronically and entered in our data base. Our act also enables us to access information retained for law enforcement and national security purposes, as well as commercial and public access data bases.

We are also able to request information from foreign financial information units.

Lastly, any person may willingly provide us with information. Our partners at law enforcement agencies can also forward information to us on a voluntary basis.

How do we analyze that information? We very much rely on our staff and technology.

As regards technology, electronic reception of financial information enables us to use IT systems to sort reports and link financial transactions.

In the initial examination of these related transactions, we target trends in dubious financial activities and ask one of our analysts to pay special attention to them.

In developing a case, analysts look at partnership transactions. They then check the identities of individuals and businesses concerned by the transactions and the trends in dubious financial activities.

When an analysis shows reasonable grounds to suspect that the financial activity could be relevant to a money laundering investigation or the financing of terrorist activities, a report is prepared explaining the reasons for the communication.
[*English*]

I would now like to refer to the second graphic. It is what we call a link chart. It depicts a money laundering case.

This chart demonstrates our analysis of financial transactions and other sources of information that enabled us to link three separate clusters of suspect financial transactions into a larger financial network for investigators. These separate clusters are identified as boxes A, B, and C.

Let me begin by describing the activity in box A. A foreign financial intelligence unit advised FINTRAC of a money laundering investigation of four individuals and a business involved in wiring funds between a number of accounts within a bank in that foreign country. The individuals involved provided Canadian addresses and identification and were described as Canadian. The business would wire funds through several foreign countries, to and between accounts over which the Canadians held power of attorney. The FIU found this activity suspicious but had very little further information.

Upon receipt of this information, FINTRAC tasked an analyst to search our database for financial transactions to determine if there was any financial activity involving the individuals and the business identified. According to the financial transactions database, the company wired several millions of dollars to multiple companies in Canada, as can be seen on the chart between boxes A and B.

Searches of open sources conducted to obtain additional contextual information on the Canadian companies identified in box B yielded very little or no information. We found little or no information for the companies in the way of advertising, telephone directory information, or company websites. We were able to confirm that one of the companies was incorporated in Canada. However, the nature of the business was not identified and did not appear to justify the level of financial activity between the companies identified in boxes A and B.

Further analysis revealed a suspicious transaction report filed by a Canadian reporting entity on one of these companies. The reporting entity stated that the accounts were opened several years ago and were relatively dormant. The dollar value of the wire transfers received into the two Canadian business accounts suddenly began to increase. It further stated that over a short period of time, millions of dollars were wired to the accounts held by this business with no rationale as to why the increase occurred. Wires received from various foreign companies originated in a country with weak anti-money-laundering controls. In addition, the reporting entity indicated that the cheques were being issued from a foreign currency exchange and being deposited to the company's account, which was inconsistent with the company's business identified.

Several other companies were also found to be operating at the same address. Further, what is important, when the address changed for one of the companies, which occurred several times in the year, all the other companies followed suit with a change of address. Two of the companies shared the same directors and received wire transfers from the same country.

Our analysis then led us to another company, which enabled us to link the financial activity found in box C. It is this company, company 7 in the centre in the chart, that is key in our analysis of this case, and I will discuss it now.

A suspicious transaction report was filed on the company in box C involving the two Canadians originally identified by the foreign financial intelligence unit. The report stated that over a period of five months, two individuals received fourteen wire transfers from four different companies. Efforts had been made to contact the individuals, but the mail was returned unopened and the phone number provided was incorrect.

The reporting entity refused the receipt of several wire transfers. As a result, a male appeared at the reporting entity and claimed that funds were owed to him from his business overseas. When asked about the wires from the various foreign companies, he did not know the companies or why they were sending the payments.

It is unusual, indeed, that a customer would receive funds from multiple businesses and not know who these businesses were or why the funds were being sent.

We also received voluntary information from a Canadian law enforcement agency on the same two individuals. It was suspected that the individuals were using their personal accounts to launder proceeds of crime. As a result of our analysis, and all the information available to us, we suspected that the financial transactions identified in the chart would be relevant to investigation or prosecution of a money laundering offence.

The internationally recognized indicators of money laundering that follow were identified as applicable in this case.

In this particular case we had large and/or rapid movement of funds. We had large incoming wires on behalf of foreign customers with little or no explanation. We had unexplained disbursal of funds to multiple businesses. We had use of multiple accounts at a single financial institution for no apparent legitimate purpose. We had two ongoing investigations, one by the foreign financial intelligence unit, the other one by local law enforcement. We had reactivation of a dormant account where there was atypical business account behaviour.

If you look at the top right-hand side of the chart, you see that what was interesting in this case is that we were provided little information by the FIU when the information came in. In the bottom right-hand side of the chart is voluntary information from the law enforcement agency. Through analysis and looking at our records, we were able to identify the key company, which is company 7, in the centre of your chart, linking the three boxes.

Overall in this case, we received from eight different reporting entities in excess of 400 electronic transfer reports, several large cash transaction reports, as well as suspicious transaction reports. The case identified suspect financial transactions in excess of $21 million U.S. and $2 million Canadian.
…

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ):

... I wanted to know what measures have been put in place, or will be put in place, to ensure that no non-relevant information is disclosed, or to ensure no offences are committed under the act.

In fact, the entire operation of your organization is designed to ensure compliance with the money laundering act and with legislation related to that offence. We're not content to say that money laundering is prohibited, hoping that people will obey the act. Ways have to be found to detect offences.

The phenomenon is the same as regards the provisions of the original bill and those added in this bill. That's not at all saying that it's prohibited to violate privacy and that harsh penalties are provided for. You still have to put mechanisms in place to determine whether offences are being committed.

Are there any mechanisms? Will there be any? Have any cases of prohibited disclosure already been discovered? Has anyone been convicted for that offence?

[*English*]

Mr. Horst Intscher:

The short answer is no, there have not been any convictions and there have not been any allegations of improper disclosure, and to the best of our knowledge--and our knowledge is very good on this point in our organization--there has been no improper disclosure of information from FINTRAC. We have put in place extensive and exhaustive measures to satisfy ourselves that casual disclosures or informal disclosures or nudge-nudge, wink-wink disclosures cannot take place.

A disclosure from FINTRAC can only occur formally and in written form. It can only be made after it is vetted by a disclosure committee, which consists of the senior executives in the organization and is chaired by me, and in this process it is challenged and tested and passed through our legal services to satisfy them as well as us that the information to be disclosed is being disclosed properly and that there are sufficient reasons to disclose it.

I won't go into all the details and technical measures we have put in place, because that would make it easier for someone to circumvent them, but we have a very comprehensive and stringent access control system. It includes biometrics, and we have logging systems that show who accesses what information so that we can monitor and review.

We log the comings and goings in the centre. All the analytic information--in other words, the sensitive personal information--is contained in a vaulted, high-security area of our premises. Not all employees have access to it; only the people who work there have access to the analytic unit, and a few other senior executives like myself. Even I don't have access to their analytic computer system. There's no need for me to have access to it, so I don't have it.

...

Mr. Warren Law (Senior Vice-President, Corporate Operations, and General Counsel, Canadian Bankers Association):

... The Canadian banking industry recognizes its key role in combating money laundering and terrorist financing. It has consistently supported the efforts of the Government of Canada in developing an effective regime for these purposes. Indeed, we believe that the enactment of the proposed Proceeds of Crime (Money Laundering) and Terrorist Financing Act provides a solid platform for constructing an effective AML/ATF system.

The banks have invested tens of millions of dollars in the development and implementation of automated systems to meet the regulatory standards placed upon them. The banking industry has been proactive in meeting its obligations. We will continue to take these obligations very seriously, but there is always room for improvement. We recognize that with Bill C-25, the government is planning to implement measures that will address flaws in the current system.

Clearly, one of the most fundamental and vital objectives of AML/ATF measures must be to protect the financial system from criminal activity. We believe this must be done in a balanced way. An AML/ATF regime is unique in that in order to function well, it must interact with a wide range of stakeholders, such as law enforcement agencies, government departments, and financial institutions. We feel that no useful purpose is served, and in fact the effectiveness of the regime itself is diminished, by overburdening any of these entities with too many restrictions, rules, or requirements.

We strongly believe that an AML/ATF measure should be implemented with a risk-based approach. Once amendments are enacted, reporting entities and FINTRAC should be given enough lead time to implement the necessary changes to their systems and to employee training programs. In our view, the efforts to combat money laundering and terrorist financing will be significantly assisted if it is easier for reporting entities to receive more feedback from FINTRAC about their reports and FINTRAC is provided with more latitude to release information. We therefore welcome the enhanced disclosure provisions in Bill C-25.

For several of the measures set out in Bill C-25, we will need to consider the related regulations before we can make a comprehensive response. I would like to make some initial observations about a couple of provisions in the bill. In a short letter to the committee, which we believe has been provided to you, we provide more details about our views on these matters.

We have made recommendations for changes to the bill that will address those matters. For example, there is the issue of the impact on foreign subsidiaries and foreign branches of Canadian banks. Bill C-25 will add a number of new measures to the act, including new requirements on the foreign subsidiaries and foreign branches of Canadian banks. These proposals, particularly the requirement to impose Canadian client identification requirements, could impose extraterritorial legal requirements on Canadian banks. We believe this could cause significant problems for the banking industry.

To the extent permitted by local laws, Canadian banks already apply their internal AML/ATF policies and procedures on their operations in foreign countries. However, imposing specific Canadian regulatory requirements in foreign jurisdictions has the potential to have adverse consequences on the banks. It may place the banks in a disadvantageous competitive position, from a global standpoint. Rather than imposing extraterritorial legal requirements, we believe that a more effective approach would be to make it clear that the requirement to have compliance and risk assessment programs must cover all subsidiaries and branches, regardless of location, to the extent permitted by the local jurisdiction.

We recommend that these measures be enacted.

It's important to note that we are not asking to apply a lower standard to the operations of a foreign branch or subsidiary, only to have it recognized that there are other equally effective ways of achieving what I think we all want to do, and that is to create a balanced, effective deterrence regime.

There is also the issue of correspondent banking. We understand and support the need to enhance requirements relating to the provision of services to foreign correspondent banks. Bill C-25 includes an amendment to the act that sets out a number of specific measures to be followed by Canadian banks before entering into a correspondent banking relationship.

While the banking industry in Canada has already implemented most of these requirements, we do have a concern that the proposed definition of “correspondent banking relationship” in the bill is too broad and could lead to almost all interaction between Canadian banks and a foreign bank being captured by the definition.

…

Mr. Douglas Timmins (Assistant Auditor General, Office of the Auditor General of Canada):

...

During our audit we concluded that Canada's anti-money-laundering regime is comprehensive and generally consistent with international standards; however, we also identified a number of factors that impeded the regime's performance. Some factors could be addressed with the existing legal framework; for example, better coordination among the federal agencies responsible for implementing Canada's anti-money-laundering and terrorist policy, and better feedback to reporting agencies on the use of information they supply to FINTRAC.

Other factors involve issues that will likely require changes to legislation.

[*Translation*]

Foremost among these are restrictions on information sharing. To safeguard privacy rights, the existing legislation limits the information that FINTRAC may disclose to so-called "tombstone" data: when and where the transactions took place, the value of the transactions, the account numbers, and the names of the parties involved.

We found that these restrictions limit the value of FINTRAC disclosures to law enforcement and security agencies.

Law enforcement agencies told us that the "tombstone" information they receive is too limited to justify launching investigations. The exception is when a disclosure is related to an on-going investigation in those cases, the information disclosed can help corroborate findings or provide new leads.

An additional limitation on the effectiveness of the National Initiative is the exemption from reporting requirements that lawyers obtained as a result of successful legal challenges to the legislation.
[*English*]

Finally, we found that unregulated reporting entities, including money service businesses and foreign exchange dealers that are not licensed and do not have a formal body overseeing their activities, posed a significant compliance challenge. Indeed, there are no reliable figures on how many such firms are out there, so ensuring compliance with reporting requirements is obviously a difficult task.

Bill C-25 affirms the lawyer's exemption from reporting requirements. Our understanding is that the government is currently discussing with law societies compliance requirements by lawyers. The bill provides for information sharing and enforcing compliance by unregulated reporting entities. It will increase the type of information that FINTRAC can disclose to law enforcement if it suspects money laundering or terrorist financing.

Specifically, the legislation will now allow FINTRAC to disclose the grounds that led it to suspect money laundering or terrorist financing. The bill will also require registration for money service businesses, a recommendation of the Financial Action Task Force on Money Laundering, which is the international standard-setting body for efforts against money laundering and terrorist financing.

Several countries, including the United States and the United Kingdom, already require these businesses to register.

In short, while we have not studied Bill C-25 in detail, it appears to deal with the key findings reported in our audit of November 2004. We cannot say whether the proposed changes will be sufficient or whether they will effectively resolve all issues.
...

Mr. Lawrence Boyce (Vice-President, Sales Compliance and Registration, Investment Dealers Association of Canada):

Thank you, Mr. Chairman. On behalf of the association, I'd like to thank the committee for the opportunity to comment on Bill C-25. The Investment Dealers Association is the national self-regulatory organization for full-service investment dealers. As part of our function we have commented extensively on Canadian money laundering law and regulations. We also audit and supervise our members in respect of their compliance with the current regulations. We have an information-sharing agreement with FINTRAC, and we share information with them on the results of those audits.

I also represent the association on the International Council of Securities Associations working group on anti-money-laundering procedures. As part of that, we have been involved in a project by FATF called the electronic advisory group on the risk-based method. It started with a meeting in Brussels last year to examine the application of risk-based approaches in the anti-money-laundering regimes.

We support the legislation. We believe that all of the issues it addresses are important and that it will significantly enhance the anti-money-laundering regime in Canada. I'll speak only about our reservations on a couple of issues. These are broader than the legislation itself, and they reflect our long-standing concern with some of the approaches in the current regulations.

I would like to focus first on proposed subsection 9.6(2). This is the beginning of a risk-based approach to anti-money-laundering provisions. Unfortunately, there is some difficulty with it. Proposed subsection 9.6(3) suggests that financial institutions should assess the risk of specific clients. In the event that they find these clients to be high risk, the institutions are required to take certain measures in dealing with them.

A risk-based approach should in fact work up and down the line. A full risk-based approach, which is what the FATF group is working at delineating, suggests not only that additional measures should be directed at high-risk customers and high-risk transactions, but also, on the other side, that there should be the opportunity to use less rigorous approaches toward lower-risk transactions and clients. In our current regime, the prescriptive nature of the measures that must be taken, particularly on the due diligence front, has resulted in a significant amount of resources being devoted to low-risk transactions or customers. They are considered by many in the industry to be largely a waste of time and resources. They bring about a checklist mentality, which deters financial institutions from bringing their expertise to bear and from placing resources where they would be most properly directed, namely, at higher-risk customers and transactions.

We are concerned about the prescriptive nature of this approach, not only in the legislation itself but also, prospectively, in the regulations. They prescribe procedures or activities that are a continuation of this approach. It will not enable Canada to compete with other countries, many of which are establishing a full risk-based approach to preventing money laundering. We already encounter frequent situations in which Canadian financial institutions, particularly those dealing with institutional customers and foreign dealers, are at a considerable

competitive disadvantage. These institutions are required to undertake procedures that are not required in other countries and that in fact prevent them from doing business, simply because the customers in these countries consider procedures of this kind to be unnecessary and frequently intrusive. For example, consider the part of the bill dealing with PEP, politically exposed persons, proposed subsection 9.3(3). It outlines a number of positions that would be required to be approved in dealing with these kinds of clients.

By “senior management” of the financial institution, it's unclear exactly how senior that might be, but for example, if a retired or even a currently functioning family court judge in Buffalo decided they wanted to open an account at a Canadian bank because they have a cottage there and want to pay their utility bills, they would be forced, under these regulations, to meet whatever these prescribed account opening and also monitoring provisions might be, including the specific requirement to have the account approved by some senior management at the bank. One can wonder whether a risk-based look at who the customer was and what they intended to do wouldn't suggest that this was somewhat overboard.

November 07, 2006 [Standing Committee on Finance]

Ms. Diane Lafleur

...Just to clarify for members of the committee, the Canada Revenue Agency right now is permitted under the law to submit a voluntary information report to FINTRAC where it is already investigating a case of potential tax evasion. FINTRAC then would do its own research within its database as to whether it had any information that was relevant, and if it did and if FINTRAC had reason to believe there was a case of money laundering or terrorist financing, they would then be allowed to disclose the information to the Canada Revenue Agency. But that test of money laundering and terrorist financing is a crucial one from a privacy and charter perspective, and I note that it is absent here.

Also, I would add that under the current legislation the Canada Revenue Agency can obtain a court order in order to get additional information for FINTRAC that might be relevant for an investigation.…

November 07, 2006 [Standing Committee on Finance]

Mr. Denis Meunier:

Thank you.

As Ms. Lafleur so clearly stated, in the case of transactions reported to FINTRAC, no threshold applies. Therefore, a FINTRAC official to whom a transaction is disclosed may find himself dealing with either small or large transactions. The information disclosed can vary widely. For example, CRA may receive information about a large number of individuals and several transactions. The threshold is no different for us than it is for a law enforcement agency to whom a disclosure has been made. All disclosures made to CRA are also made to law enforcement agencies because FINTRAC's main concern is money laundering or terrorist financing. CRA does not conduct criminal investigations into money laundering, but rather investigates cases of tax evasion.

There is no mention of a threshold in the amendment, or of money laundering, a key consideration in the drafting of this bill. As you also mentioned, Ms. Lafleur, CRA can also present what is known as a voluntary information report in cases where a criminal investigation has been launched into a particular matter. CRA can pass along this information to FINTRAC. If FINTRAC discovers information in its database about the target of the investigation, it has a duty to share that information—information about money laundering and tax evasion—not only with law enforcement officials, but with CRA as well.

November 23, 2006 **[Senate]**

Hon. W. David Angus
... Bill C-25 contains the necessary updated measures to help in Canada's fight against money laundering and terrorist financing activities and to enable Canada to honour its international commitments. As honourable senators can imagine, criminals today are very much aware of the sophisticated and fast-changing technological devices available to them. As Senator Grafstein has repeated so often in this chamber, the criminal mind is very ingenious and is always at work to undermine our safety and security.

Criminals know how to use these technological advances in their attempts to conceal and launder their so-called dirty money, often through legitimate or apparently legitimate financial systems. That was never more evident to us than yesterday when a whole coalition of law enforcement bodies in this country joined together after a four-year study on the infiltration of these criminal elements to make 92 arrests in Montreal and its environs. They reportedly have reams of evidence that will enable them to break up one of the most powerful criminal organizations in this country, including at the airport, the ports and many other spots.

Honourable senators, to make detection more difficult, these criminals are constantly changing their tactics in an effort to avoid being caught. Therefore, we must keep our legislation, regulations and detection devices up to date.

Honourable senators, it is our challenge today, as legislators, to ensure that Canada's enforcement agencies have the tools to stay at least one step ahead of these criminal elements.

Indeed, the new government has made this fight a priority, and important steps have already been taken in this regard. For example, Budget 2006 announced $64 million of new funding to enhance and back up the work being done by law enforcement agencies. This new funding will also help ensure the safety and security of Canadians at large.

Honourable senators, Bill C-25 complements these actions with important new provisions designed to ensure that Canada's anti-money laundering and anti-terrorist financing regime is able to address properly the areas of risk. More important, given that the fight against money laundering and anti-terrorist financing goes far beyond our borders, we must ensure that Canada's legislation also meets revised international standards and that cooperative efforts be taken in this area.

I believe Bill C-25 goes a long way toward providing these assurances, but we should not underestimate the effects of money laundering and terrorist financing. As we said in our remarks on October 31, whether the amount of illicit money in circulation in Canada today is $10 billion or $30 billion or more, we do know that it is an astounding amount of money, and the figure of $30 billion has been used by some of our law enforcement people when they appeared before our committee. Money laundering and terrorist financing have the real potential to seriously affect Canada's economy in a negative way by impacting the integrity of our financial institutions and undermining the reputation of Canada's heretofore renowned financial sector as a whole. Honourable senators, we must not allow that to happen.

I earnestly believe that Canadians trust their financial institutions — at least up to now they have — and they have every reason to do so. Our banking and financial services are exemplary and are looked up to around the world. However, Canadians must also be able to trust their government to ensure that our financial sector is well regulated on an ongoing basis and protected from these evil criminal elements. A healthy financial system is critical to our country's ability to attract investment so that it can increase and sustain overall economic growth and productivity.

Honourable senators, Canada's anti-money laundering and anti-terrorist financing regime is recognized in the global economic community as robust. Our legislation is helping to ensure that Canada is not a haven for money laundering and terrorist financing activities. At the heart of Canada's anti-money laundering and anti-terrorist financing regime is the Financial Transactions and Reports Analysis Centre for Canada, otherwise known as FINTRAC. This is Canada's financial intelligence unit, a specialized agency created in the first iteration of this particular legislation, the Proceeds of Crime (Money Laundering) Terrorist Financing Act. FINTRAC is designed to collect, analyze and disclose financial information and intelligence of suspected money laundering and the financing of terrorist activities. It was created in July of 2000.

FINTRAC is an integral part of our engagement in the global fight against money laundering and financing of terrorism. The centre was created to detect and deter money laundering by providing critical information to support the investigation and/or prosecution of money laundering offences.

In 2001, FINTRAC's mandate was expanded to include the detection and deterrence of terrorist financing. Canada has subsequently had success in detecting suspected cases of money laundering and terrorist financing in the intervening period. An important part of this success has been our commitment to continue to work cooperatively and closely with our domestic and international partners to improve the regime. That work appears to be paying off.

In 2005-06, reporting entities — that is, entities that are required legally to report to FINTRAC — filed upwards of 30,000 suspicious transaction reports with FINTRAC. FINTRAC, in turn, made 168 case disclosures to law enforcement agencies such as the RCMP and CSIS.

Honourable senators, our new government is committed to helping FINTRAC do its job by maintaining a strong and comprehensive anti-money laundering and anti-terrorism financing

regime consistent with international standards. That is what makes Bill C-25 so important. It is a bill that requires enactment on an urgent basis. The bill updates the current legislation so that it meets the necessary criteria that Canada has already agreed in an international forum to adopt.

Honourable senators, allow me to briefly outline the key components of this bill. The Financial Action Task Force, or FATF, to which Canada belongs and at the moment chairs, is the international standard-setting body on money laundering and anti-terrorist financing.

I will come back to FATF shortly, but let me say for the moment that the measures in Bill C-25 will update our anti-money laundering and anti-terrorist financing regime to be consistent with international standards as set out by and as continually updated by FATF and agreed to by all of its member states.

I would also stress that Bill C-25 will implement many of the recommendations contained in our recent report to which I just referred, *Stemming the Flow of Illicit Money: A Priority for Canada*. Without being too repetitive, as I mentioned on October 31, we were in the midst of doing a statutory review of the predecessor legislation on money laundering when we found out that this updating bill was in the pipeline. We noted that we had all this evidence and all of the recommendations from our report. We believed it would be unfortunate if the government were to proceed with a memorandum to cabinet in this new bill without the benefit of our recommendation. That is why, as I said on another occasion, our report became an interim report. It went forward, and we are assured by the officials and by in fact the Minister of Finance, Mr. Flaherty, that our recommendations were all taken into consideration and indeed incorporated into the bill, I believe without exception. That is encouraging in terms of the work we do in this place.

An important element of the new measures set out in the bill relates to the sharing of information among enforcement agencies. For example, Bill C-25 proposes to allow the exchange of information between FINTRAC, the Canada Revenue Agency and various law enforcement agencies such as the RCMP, to prevent, detect and disband those registered charities that it has been discovered are being used illegally for the financing of terrorism. That is just one example.

I indicated earlier how the fight against money laundering and anti-terrorist financing several years ago moved on to the global stage. In this regard, Bill C-25 also proposes to allow the sharing of information between FINTRAC and its foreign counterparts regarding compliance-related information.

One of the difficulties encountered by FINTRAC in its initial years has been how to identify and supervise compliance within the unregulated money service businesses and foreign exchange boutiques. I also mentioned that I walked along Ste-Catherine Street in Montreal two Sundays ago and counted 13 tiny boutiques, each not much more than 10 square feet in size, and they were carrying on what they call money exchanging services. They are growing up like Topsy all over Canada. They are unregistered and unregulated. No one knows officially what they do, but we are told they are an integral part of this international fraudulent activity.

Bill C-25 addresses this problem by proposing to establish a new registration and oversight regime for these businesses. This new regime will provide FINTRAC with an important tool to better ensure that these businesses are aware of their obligations and allow FINTRAC to more effectively and efficiently supervise compliance. Coupled with the registration requirement, a new offence is being created under the bill for operating an unregistered money services business. Current legislation only allows for criminal penalties if the act is contravened.

Bill C-25 establishes a variety of monetary penalties, and I am not sure why they distinguish monetary from criminal, but in any event it is a different type of sanction in addition to those existing criminal sanctions, imprisonment and so on, that are in the earlier act. These will allow FINTRAC to impose graduated penalties that will adequately reflect the nature of the violations that they uncover.

These new monetary penalties, for example, will be used for lesser contraventions of the legislation.

To help FINTRAC do its work effectively, Bill C-25 places the onus on financial intermediaries to improve their client identification and record-keeping measures. These intermediaries will also be required to undertake enhanced measures with respect to the banking relationships of certain high-profile clients. This would include, for example, foreign politically exposed persons. The reporting of suspicious attempted transactions will also be required. That is "suspicious attempted," as opposed to transactions identified as such.

Honourable senators, both the Auditor General and law enforcement agencies in Canada have identified the exclusion of legal counsel or law firms from the money laundering and terrorist financing regime as a gap in the legislation. Under the previous law, lawyers, like many other financial organizations, were required to report these transactions. We were told in committee that it was suspect; it violated the Charter; it impinged on the solicitor-client privilege; that it would be struck down by the courts and there should be another way to go. The bill was passed as such, with the lawyers' provisions in it. The legal profession challenged it, first in British Columbia, then in Saskatchewan, and ultimately there was a moratorium. The courts put everything into suspense. There was an agreement with the Federation of Law Societies of Canada. This federation has been negotiating with the Department of Finance to come to some way around it. Therefore, the old provisions regarding lawyers have been left out of the bill. This concerned us when we were doing our review because we realized that there was a lacuna or a loophole.

What is in this bill is a proposal that legal counsel be required to undertake client identification and record-keeping measures when acting as financial intermediaries as opposed to lawyers. These measures complement the measures already in place that prohibit the receipt of cash over $7,500 by legal counsel. This provision is enforced through provincial and territorial law society rules of professional conduct.

These measures respect the Supreme Court of Canada's *Lavallée* decision, which sets out clear procedures to allow authorities to access certain documents from the possession of lawyers.

I want to conclude this part of my remarks by saying that I am not that comfortable that we fully understand how the lawyers are being dealt with. We have already taken steps such that if, as and when this chamber sees fit to refer this bill to the Banking Committee, we will have witnesses come and explain and table the agreement that has been made with the legal profession. When the committee went to New York, we met with the district attorney's office of Manhattan. They said, "We are dealing all the time with the Canadian money laundering issue." We said, "What about lawyers? Are they not the biggest source, these small law firms where guys come in with their big schemes and they do not have to report?" They said, "What do you mean? We monitor them all the time. They report to us." We asked, "How do you get around the solicitor-client privilege?" It is sacrosanct in the law profession. They said, "We differentiate between verbal communications between the solicitor and the client and transactions that might end up in the lawyer's office." It was an interesting distinction. We have now asked the Canadian bar and the Federation of Law Societies of Canada to tell us whether we have the same solicitor-client privilege rules in Canada as in the U.K., France and the U.S. The legal communities in those countries are complying. The difference, I think we will be told, is the Charter. It is one of those cases where we are getting caught by the Charter and the legal boys have been saying that that is one of the hooks they are hanging their hat on. There is more to be reported on this subject and it is a concern.

To increase the usefulness of FINTRAC's disclosures, the range of information that can be disclosed will be expanded, as well as the list of disclosure recipients. This list would include the Communications Security Establishment and the Canada Border Services Agency.

In this regard, honourable senators, it is important to emphasize that Canada's new government recognizes how essential it is to protect the privacy rights of Canadians. As this bill came through the other place the other day, our learned colleague Senator Grafstein went to the other place and testified at the committee. He said that there was nothing in the bill about privacy.

We had special meetings with the Minister of Finance. I am happy to report that the government introduced an amendment as a result of these interventions that is satisfactory to us and privacy is now protected. The Standing Senate Committee on Banking, Trade and Commerce highlighted the importance of protecting the privacy of Canadians in the interim report I spoke about earlier.

Accordingly, as I said, Bill C-25 was ultimately amended at the behest of the government in the other place so the Privacy Commissioner now, under the law, will conduct a review every two years of the measures taken by Financial Transactions and Reports Analysis Centre of Canada, FINTRAC. It is a kind of oversight of FINTRAC. Under the original statute, the Minister of Finance was the supervisor, period, but we said no, we need more oversight to preserve the privacy rights.
This Privacy Commissioner will perform the review every two years to make sure FINTRAC protects the private information it receives or collects and that the review be tabled in Parliament on a regular basis. This review will further strengthen existing safeguards already in place in this country to protect the privacy rights of Canadian citizens.

For example, FINTRAC is actually at arm's length with, and independent from, the law enforcement agencies that are entitled to receive the information, so there are provisions there. As well, only limited personal information such as key identifying information and publicly available information may be disclosed to police and other designated enforcement agencies.

In short, honourable senators, I am pleased to assure you that the proposals in this bill appear to strike a balance between the privacy rights of Canadians and the need for the appropriate law enforcement in this critical area. The bill does so in a manner that is consistent with the Charter of Rights and Freedoms and the Privacy Act. I am pleased to note as well, honourable senators, that this bill has benefited greatly from our interim report.

I will now make a few final remarks about the leading role that Canada is taking in the global effort to combat terrorist financing and money laundering. Canada's financial sector enjoys a global reputation for its integrity and stability, and our government wishes to ensure that this fine international reputation remains untarnished.

As I mentioned earlier, as a member of the G7 group of countries we belong to the Financial Action Task Force, FATF. This body was established by the G7 in 1989 to delineate global anti-money laundering and antiterrorist financing standards. The FATF now plays a critical role in deterring terrorist activity and money laundering. It does this by developing standards that will enable governments to cut off the financial resources that fund these illegal organizations and activities.

Canada, as I said, is an active participant in FATF, and Canada is currently the president. We played a significant role in developing the standards that are designed to starve these criminals of the cash they need to operate. Recently the FATF held important meetings in Vancouver. These standards are known as the 40

Recommendations on Money Laundering and 9 Special Recommendations on Terrorist Financing. An important element of Bill C-25 is that it will enable the commitments Canada made at FATF to be implemented so we can comply immediately with these FATF standards.

Moreover, this bill will allow Canada's anti-money laundering and terrorist financing regime to remain consistent with those of the other G7 partners. In other words, honourable senators, with the enactment of this bill, our international partners can continue to count on Canada to do its part.

In summing up, these remarks have illustrated how important the measures in this bill are. I hope honourable senators will agree with me. If an up-to-date anti-money laundering regime is not securely in place, our well-respected financial institutions could unwittingly be involved in criminal activity. Evidence of any such activity would have a damaging effect on how our financial sector is perceived not only by Canadians but by our trading partners. Our financial sector plays a significant role in the success of our economy. Our prosperity and security

depend on Canada's government taking decisive action to ensure that the reputation of these fine financial institutions remain untarnished.

Economic Action Plan 2013 Act No. 2 (Bill C-4)

Citation	2013, c. 40
Royal Assent	December 12, 2013
Provisions Amended	11, 65

Hansard

N/A

Economic Action Plan 2014 Act, No. 1 (Bill C-31)

Citation	2014, c. 20
Royal Assent	June 19, 2014
Provisions Amended	2, 3, 5, 5.1, 9.3, 9.31, 9.4, 9.7, 9.8, 11.1, 11.11, 11.12, 11.13, 11.14, 11.17, 11.41, 11.42, 11.44, 11.45, 11.6, 11.8, 12, 24.1, 25, 25.1, 25.2, 36, 40, 52, 53, 53.1, 53.2, 53.3, 54, 54.1, 55, 55.1, 56.1, 58, 58.1,65, 65.01, 65.02, 66, 68.1, 71, 72.1, 73, 74

Hansard

April 02, 2014 [House of Commons]
Mr. Andrew Saxton (Parliamentary Secretary to the Minister of Finance, CPC)

... Strengthening Canada's anti-money laundering and anti-terrorist financing regime and adding measures to fight tax evasion, ensuring that all Canadians pay their fair share…

April 03, 2014 [House of Commons]
Mrs. Patricia Davidson (Sarnia—Lambton, CPC):

Canada's financial system is widely considered one of the most resilient and best-regulated in the world. For the sixth year in a row, the World Economic Forum has recognized our banking system as the soundest in the world. Moreover, five Canadian financial institutions were among the top 20 in Bloomberg's most recent list of the world's strongest financial institutions, which is more than any other country.

Since the start of the global financial crisis, the government has implemented a number of measures to maintain Canada's financial sector advantage. These measures are designed to reinforce the stability of the sector and to encourage competition. Today's legislation proposes new initiatives that would build on Canada's financial sector advantage.

We have Canada's anti-money-laundering and anti-terrorist-financing regime. This measure, as I have just said, concerns strengthening Canada's anti-money-laundering and anti-terrorist-financing regime. Our government is committed to a strong and comprehensive regime that is at the forefront of the global fight against money laundering and terrorist financing and that safeguards the integrity of Canada's financial system and the safety and security of Canadians. Canada's regime remains strong and effective and is consistent with international standards. However, it is important to continually improve Canada's regime to address emerging risks, including virtual currencies, such as Bitcoin, to strengthen Canada's international leadership in the fight against money laundering and terrorist financing.

Following an extensive multi-year review process, our government is proposing various updates, including enhancing the ability of the Financial Transactions and Reports Analysis Centre of Canada, or FINTRAC, to disclose to federal partners threats to the security of Canada, consistent with the government's response to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. This measure would help keep Canadians safe and would strengthen our financial institutions against white-collar crime.

Next, let us talk about the co-operative capital markets regulator. While Canada's financial system has been rated one of the soundest in the world, we have a capital markets regulatory system that can and must be improved. At a time when talented people and sought-after capital are flowing across borders as never before, competition in financial markets today is fierce. If we want Canadians to succeed in the global marketplace, we need to continually improve our system. Critics of the current system believe that it is overly complex, inefficient, and a barrier to foreign investment in Canada, and they are right. That is why, last September, our government and the Governments of British Columbia and Ontario agreed to establish a co-operative capital markets regulator. In fact, Terry Campbell, president of the Canadian Bankers Association, applauded today's move by the Governments of Canada, British Columbia, and Ontario to establish a co-operative capital markets

regulator, which would offer improved investor protection and greater efficiencies in capital markets in participating provinces.

May 01, 2014 [Standing Committee on Finance][Entire Exchange]

Hon. Scott Brison:

Okay.

I have a question on the offshore tax informant program. This program was launched in January 2014. How much money is this program expected to bring in? Has the government set any targets? Budget 2013, which announced the program, didn't include any estimates.

Mr. Ted Cook:

I think in fact there are no specific targets as yet with respect to the amount of money to be brought in. There is some experience with the U.S. having its own programs. In at least one of their programs they have raised between $93 million and $250 million a year on their program since 2006.

Hon. Scott Brison:

For Canadians following this committee today, there may be some questions about the state supporters of terrorism and which countries this measure would apply to. But also, what is the process of adding a country to the list as a supporter of terrorism?

Mr. Miodrag Jovanovic:

I can't really talk about the process of that act because I'm obviously not an expert in that domain. But what I can tell you is that there is already a robust legal framework for addressing terrorist financing and a very strong legislation regulating charities that protects the sector from potential abuse. Obviously terrorist financing is a complex and multi-faceted issue, and that framework already includes legislation including the Criminal Code, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and the Special Economic Measures Act.

What this measure in the budget does is add another piece of legislation to that tool box, if you will. But I cannot really talk more about the process for listing these countries under that act.

May 01, 2014 [Standing Committee on Finance][Entire Exchange]

The Chair:

Thank you, Mr. Saxton.

I just wanted to pose some very basic questions here. I'm getting a fair amount of correspondence on this, as you can imagine. When I'm phoning people back I'm asking if they are talking about FATCA or the IGA. Many people actually believe FATCA is Canadian legislation that is somehow included in

Bill C-31. So when I explain the difference in that FATCA is U.S. legislation that takes effect whether the Canadian government acts or not and the IGA is in fact a response to that....

You stated very clearly before this committee that we didn't have the choice of doing nothing. But just for argument's sake suppose the Canadian government did not negotiate the IGA and suppose for argument's sake the Canadian financial institutions chose not to comply with FATCA. If they just said they were not going to comply with this U.S. legislation what would be the repercussions to those institutions and thus to Canadians?

Mr. Brian Ernewein:

Thank you.

First of all can I just make a comment?

The Chair:

Yes.

Mr. Brian Ernewein:

I think people do confuse FATCA with IGA, where in fact the IGA displaces FATCA. It says instead of FATCA we'll do this, so that is an important point.

I would also say that as a result of FATCA and the discussion around it and FBAR a couple of years ago I think there are a number of Canadians, accidental Americans, or otherwise, who are kind of becoming aware of the issues of U.S. citizenship taxation. So that's an issue more generally. It doesn't relate to this but it's spurred on by this.

I just wanted to say that quickly.

Now I'll answer your question.

The Chair:

You are correct because many people actually link all of those issues together.

Mr. Brian Ernewein:

I think that's right.

So in the absence of an IGA—and I don't want to sound apocalyptic but there were very serious issues. The U.S. said it was about exchange of information and it's always been about the exchange of information but their penalty, their lever, under FATCA to get information was to impose a 30% withholding tax on payments made from the U.S. to foreign financial institutions. It was a wide range of payments, not just interest and dividends but possible derivative transactions and other things. To be apocalyptic for a moment, it appeared to us and to people and our colleagues in the financial sector area that it essentially would shut out a bank or other financial institution from any interaction with the U.S. markets. I don't think that was the U.S. goal but it could have been the effect.

Also, for those financial institutions that wanted to comply with FATCA and found some way to overcome the privacy conflicts that we think existed with doing it, their clientele would have been subject to not just the same requirements as this legislation but much more onerous requirements. All of their accounts, including registered accounts, would have been subject to examination and the

account closure could have been a consequence of it and withholding tax could have been applied by them. Ostensibly there would have been a debate about this but in fact the Canadian financial institution would have been required to withhold payments made to its own Canadian customers on behalf of the United States.

I don't mean to go overboard but I think there would have been real serious consequences for the financial system generally and it would not be a better world for Canadian financial institutions or for Canadian customers.

The Chair:

I appreciate that clarification.

So for a financial institution, say like TD Bank, which is headquartered here in Canada and has more branches in the United States than it has in Canada, something we should be proud of, let's say they as an institution said they were not going to comply with FATCA. It seems to me that's not even an option for them. What would be the repercussions for that institution if they chose not to comply with the U.S. legislation?

Mr. Brian Ernewein:

I think that any of their U.S. presence would have been separate and apart from this but in relation to their Canadian operations and indeed their third country operations outside of the U.S., it would have been as I described. That is to say, they would have had these issues with either being in some sense shut out of the U.S. market or having to do the same thing as the intergovernmental agreement would require but on a much wider scope and on a much more onerous basis.

Mr. Kevin Shoom:

I'll just add that part of the FATCA withholding that could have potentially applied to a Canadian financial institution, let's say with U.S. subsidiaries, is that any remittances from the U.S. to Canada associated with those subsidiaries could have been subject to the 30% withholding tax. If a Canadian financial institution were attempting to access liquidity through dividends from the foreign affiliate, from the U.S. affiliate, or through loans from that foreign affiliate, those could potentially have been subject to a withholding tax. Potentially also, if the financial institution attempted to divest itself of those U.S. assets, then the withholding tax could have applied to the gross proceeds associated with that divestment.

The Chair:

I only have about a minute left, and the other topic I think is going to take a longer time, but the committee has received a brief from Moodys Gartner Tax Law.

Have you, as department officials, been aware of their concerns? I don't think you'll have time to address them here with respect to the definition of financial institutions, but do you want to provide a short comment now and then perhaps provide something in writing to the committee to address that?

Mr. Brian Ernewein:

We are aware of the comment. I can give you a moment now, and then we can see where that takes us.

Yes, we are aware of their view. It's that we haven't fully complied with, effectively, our commitment and agreement with the United States and what we've done in our implementing legislation. We, in fact, think we have.

To give you a very quick overview of it, the intergovernmental agreement has a definition of financial institution with some subdefinitions. What we have done in our implementing legislation is to say that there's a specific list of regulated financial institutions that are required to report under the intergovernmental agreement, under our implementation of it. They're suggesting that we've left some stuff off the list, that there's something in the intergovernmental agreement in relation to the definition of a financial institution that is not captured in our list.

The difference seems to be based on the fact that the intergovernmental agreement has kind of a functional definition of what a financial institution does, that is, describing it by its operations, and then says it's to be informed by the Financial Action Task Force's definitions of financial institution. We've taken that Financial Action Task Force definition, which is found in our own anti-money laundering legislation—I'm getting to the end shortly—and we think that actually does conform with the agreement and delivers what was intended.

May 06, 2014 [Standing Committee on Finance][Entire Exchange]

Hon. Joe Oliver (Minister of Finance):

Mr. Chairman, I would like to turn to the financial sector. It plays a fundamental role in transforming savings into productive investments in the economy. Bill C-31 proposes new initiatives that will build on Canada's financial sector advantage.

First, our government is at the forefront of the global fight against money laundering and terrorist financing, and implementing measures that safeguard the integrity of Canada's financial system and the safety and security of Canadians. That is why Bill C-31 will enhance the ability of the Financial Transactions and Reports Analysis Centre of Canada, FINTRAC, to disclose to federal partners threats to the security of Canada.

Mr. Chairman, while Canada's financial system has been rated one of the soundest in the world, it has the only capital markets regulatory system in the world that does not have a single national securities regulator. Critics of the current system believe that it is overly complex, inefficient, and a barrier to foreign investment in Canada, and they are right.

That is why, last September, our government and the governments of British Columbia and Ontario, agreed to establish a cooperative capital markets regulatory system. The cooperative system will better protect investors to enhance enforcement, support more efficient capital markets, and more effectively manage systemic risk. Our government invites all provinces and territories to participate in the implementation of the cooperative system.

Bill C-31 includes a measure to make payments to participating jurisdictions that will lose net revenues as a result of the transition to the cooperative system.

Finally, Mr. Chairman, our legislation builds on previous actions by our government to support families and communities, and improve the quality of life for hard-working Canadians. Specifically, Bill

C-31 proposes to increase the maximum amount of the adoption expense tax credit to $15,000 to help make adoption more affordable for Canadian families.

The bill would also introduce a search and rescue volunteers tax credit, for search and rescue volunteers who perform at least 200 hours of service in a year.

It proposes to exempt acupuncturists and naturopath doctors' professional services from the GST/HST.

It would also expand the current GST/HST exemption for training that is especially designed to help individuals cope with a disorder or disability.

And finally, it would enhance access to employment insurance sickness benefits for claimants who receive parents of critically ill children and compassionate care benefits.

In summary, the economic action plan is working. It's creating jobs, keeping the economy growing, and returning to balanced budgets. By staying the course, and sticking to our proven economic action plan, Canada remains on track for a more prosperous future.

Now I invite questions from the committee. Government officials have also joined us today to answer any questions you may have about this bill. Thank you very much.

May 06, 2014 [Standing Committee on Finance][Entire Exchange]

Mr. Gerald Keddy:

Thank you for that.

My next question is on tax non-compliance, in particular money laundering and terrorist financing. Those are issues that governments have struggled with for many years. By the very fact that these activities are hidden and occur, not only under the table but also away from the regulatory bodies, makes it very difficult to combat. However, Minister, can you explain what we've done to address non-compliance in the tax system, and especially to combat money laundering and terrorist financing?

Hon. Joe Oliver:

A well-functioning tax system is essential to keep Canada positioned as an attractive place to work, to invest, and to do business. Since 2006, we've introduced measures, including in this bill—over 85 measures—to improve the integrity of Canada's tax system. They include actions to address aggressive international tax avoidance by multinational enterprises. Also, they include amendments to prevent input tax credit claims that exceed taxes actually paid. In total, these measures to address international tax avoidance, improve integrity, strengthen compliance, and enhance the fairness, now provide savings of $44 million in 2014-2015, rising to $450 million in 2018-2019, for a total of $1.8 billion, this year and in the following five years.

In respect to money laundering and terrorist financing, our government is committed to a strong and comprehensive regime that is at the forefront of the global fight against money laundering and terrorist financing. We're taking concrete steps to ensure the integrity of our financial system, and the

safety and security of Canadians. To strengthen this regime, the bill will improve monitoring compliance and enforcement, it'll close the gaps of the regime—such as online casinos, persons and entities that deal in virtual securities, currencies, and foreign money services—and it'll strengthen information sharing, such as allowing FINTRAC to disclose to federal partners issues related to threats to national security.

Mr. Gerald Keddy:

Thank you, Minister. I know—

The Chair: You have 30 seconds.

Mr. Gerald Keddy: Okay, I'll try to be quick.

On the Foreign Account Tax Compliance Act, or FATCA, we know that Americans have always had to pay income taxes in the United States, even when they've lived abroad. The U.S. has been much more aggressive in tracking down such compliance with the FATCA program, but there's a lot of misinformation out there that somehow this applies to Canadian citizens. Can you explain who is actually targeted by the FATCA legislation?

The Chair:

Minister, a brief response, please. I assume we'll come back to it later.

Hon. Joe Oliver:

The brief response is that it only applies to U.S. citizens.

The Chair:

Okay. Thank you very much, Mr. Keddy.

May 8, 2014 [Standing Committee on Finance][Entire Exchange]

Mr. Dennis Howlett (Executive Director, Canadians for Tax Fairness):

Thank you for this opportunity to comment on the parts of Bill C-31 related to tax havens.

We support the implementation of several measures that aim to go after tax cheats using tax havens that were announced in the 2013 and 2014 federal budgets, which are contained in Bill C-31. But we feel these limited measures do not go far enough in dealing with what is a growing problem. We would like to suggest some additional measures that should be considered if the government is serious about going after tax cheats using tax havens.

First of all, we welcome the improvements to the Canada Revenue Agency's ability to provide feedback to the Financial Transactions and Reports Analysis Centre of Canada and to law enforcement agencies. These are fairly minor changes, but they will help make enforcement more efficient. There may be some reduced privacy aspects here, but we feel they are justified in view of the social benefit as a whole.

Second, in terms of reporting, some of the changes on tightening up provisions and the regulation of electronic transfer of funds are also a welcome step, especially including casinos, which are a preferred method of money laundering. Tax cheaters and organized crime syndicates are always

trying to find ways to circumvent the regulations, so it is logical that the government should be always trying to stay a step ahead and close off any holes in the monitoring system.

Third, on the offshore tax informant program, information from informants is one of the ways in which tax authorities are able to lift the veil of secrecy that is the hallmark of tax havens and identify individuals and companies that are evading paying their fair share of taxes. But we should not expect that this program is going to result in that many convictions.

The IRS Whistleblower Office in the U.S. just published a 2013 report that shows the U.S. collected $367 million as a result of whistle-blower information from just six cases last year. There were 12 cases in 2012, and a slightly larger amount of money was collected. Canada is roughly 10% of the U.S. economy, so we are not likely to see more than a few cases in a year.

The U.S. Whistleblower Office annual report also notes that cases typically take five to seven years from receipt of submission to be settled and claims paid, so it may be a number of years before we will see any tangible benefits to Canada.

Maybe the most important aspect of this measure may be the deterrent effect, which will be hard to quantify. But in order to maximize the deterrent effect of this measure, the government needs to do a more energetic job of public promotion and education. This is one program where spending some public advertising dollars, raising awareness about this program, would be justified.

The other issue that needs to be addressed is the protection of confidentiality of whistle-blowers coming forward. I have personally been contacted by several potential whistle-blowers who were seeking information on how they should go about accessing the offshore tax informant program, but were very worried about their safety. I know there are some provisions to protect tax confidentiality, but the CRA website does not give adequate assurance, and the government needs to do more to reassure potential informants.

The tax haven problem is growing, as we have recently shown in a Statistics Canada report on direct offshore investment abroad. They are up 10% over last year.

On some of the additional measures that we feel are needed, one would be to provide the CRA information needed by the Parliamentary Budget Office to complete a tax gap estimate. Second, increase the capacity of the Canada Revenue Agency to go after tax cheats. Third, make amendments to the general anti-avoidance rule to include a clear statement that economic substance is required in any transactions to be considered. Fourth, Canada needs to support substantive reforms of the international corporate tax rules that are being developed through the OECD base erosion and profit shifting process.

May 13, 2014 [Standing Committee on Finance][Entire Exchange]

Mr. Marc-André Pigeon (Director, Financial Sector Policy, Credit Union Central of Canada):

Thank you Mr. Chair and honourable members of the committee for this opportunity to share with you our thoughts on Part V of Bill C-31.

As you know, Part V implements an intergovernmental agreement on FATCA, or the Foreign Account Tax Compliance Act.

[*English*]

Before addressing our views on this agreement allow me to begin by making a few preliminary remarks regarding the role of my organization, Canadian Central and, more generally, the credit union system in Canada.

Canadian Central is a national trade association for its owners, the provincial credit union centrals. Through them we provide services to about 330 affiliated credit unions across Canada. These credit unions currently operate in more than 1,700 branches, serve 5.3 million members, hold $160 billion in assets and employ about 27,000 people.

Credit unions in Canada come in all shapes and sizes, as you probably know. Our smallest credit unions such as iNova Credit Union in Halifax, Nova Scotia has less than $30 million in assets and only 10 employees. Our biggest credit unions, such as Vancity in British Columbia, has just under $20 billion assets and employs thousands of people.

But even our biggest credit unions are small next to the country's biggest banks which are at least 20 times bigger than Vancity, for example. This disparity means that new regulations like FATCA can pose a real challenge to all credit unions big and small alike. While the government is to be congratulated on signing an agreement that mitigates some of the regulatory burden of FATCA, we have some concerns.

Our major concern at this point is that the unavoidable regulatory burden imposed by FATCA may, in the near future, be compounded by the OECD's efforts to create a single, unified standard for automatic exchange of financial account information. Specifically, we worry that credit unions will end up with two different tax compliance regimes. We'll have an intergovernmental agreement on FATCA that includes some exemptions for smaller financial institutions like credit unions and we'll have the OECD requirements which, to date, do not contemplate any such exemptions and, though modelled on FATCA, appear to require significantly greater reporting. For that reason we're encouraging the federal government to hold strong to the view expressed in a recent declaration which it signed, that the OECD's multilateral approach “not impose undue business and administrative costs”.

For us, that means including small institution exemption thresholds, harmonizing the OECD rules with FATCA, and not having to file the same information—or worse yet, different information—with two different organizations.

The second issue we want to discuss has to do with regulatory burden more generally. Last year we conducted a survey of affiliated credit unions to gauge the impact of regulatory burden on the system. We found that small credit unions, those with fewer than 23 employees, like iNova Credit Union, for example, devoted fully 21% of their staff time to dealing with regulatory matters, whereas bigger credit unions, like Vancity with more than 100 employees or thousands of employees, only averaged about 4% of their full-time staff on compliance issues.

These results show that regulatory burden, like that imposed by FATCA, disproportionately harms smaller financial institutions and hurt their ability to compete, even with some of the exemptions and thresholds embedded in the intergovernmental agreement.

Our survey also found that the number one regulatory burden for credit unions comes from federal rules around anti-money laundering and terrorist financing. To date, the federal government has resisted applying its red tape reduction strategy to these regulations because apparently the rules do not affect small businesses. The fact is, however, that credit unions are the small businesses in the financial service sector and we are affected.

So, we're asking that the federal government revisit these rules to help offset the FATCA regulatory compliance burden faced by credit unions. We believe this request is consistent with the federal government's one-for-one regulatory burden initiative which is designed to offset new regulations which the elimination of older ones.

(1540)

[*Translation*]

To conclude, we wish to thank the committee for the opportunity to participate in its review of Bill C-31, and Part V in particular.

Our general view is that the federal government has made the best of a bad situation in negotiating its intergovernmental agreement on FATCA. We are asking that it continue to be sensitive to the needs of smaller financial institutions in the negotiations with its OECD partners, and that it more diligently apply its red tape reduction approach to the anti-money laundering and terrorist financing rules.

I look forward to your questions.

May 13, 2014 [Standing Committee on Finance][Entire Exchange]

Mr. Ralf Hensel (General Counsel, Corporate Secretary and Director of Policy, Investment Funds Institute of Canada):

Good afternoon.

As you've heard, I am Ralf Hensel, general counsel, corporate secretary, and director of policy at the Investment Funds Institute of Canada. I thank the committee for inviting IFIC to participate in its consideration of Bill C-31 and I'm privileged to be its representative here today.

IFIC is the trade association representing the Canadian mutual funds industry. The fund managers, fund distributors, and service providers to the Canadian industry all contribute to IFIC's work. Canadians currently entrust more than $1 trillion of their assets in mutual funds. The industry takes its responsibilities to these investors very seriously.

IFIC's interest is in Bill C-31's implementing legislation for the intergovernmental agreement between Canada and the United States concerning FATCA. Recognizing that non-compliance with FATCA is not a realistic option, we have advocated for requirements that impose the least possible burden and cost on mutual fund investors specifically and on the industry generally.

As you are aware, the U.S. imposes income tax based on U.S. citizenship regardless of jurisdiction of residence. As such, FATCA applies to U.S. citizens resident in Canada. We support the federal

government's work and negotiations with the U.S. that have led to completion of the IGA on this initiative.

We believe the IGA is essential. It minimizes impact by reducing the number of Canadian investors who will be impacted by FATCA, the number of accounts that will be reported to the Internal Revenue Service, and the amount of administration and re-documentation that will be required.

The IGA will also significantly reduce the costs to implement FATCA, costs that are ultimately borne by investors. In fact, without the IGA, Canadian investors may have their access to U.S. financial assets, held either directly or through mutual funds, significantly curtailed or have the rates of return on such assets significantly reduced.

Let me elaborate.

Under the IGA, all of RRSPs, RRIFs, PRPPs, registered pension plans—you've heard the list—all the way to TFSAs are exempted from any documentation or reporting requirements under FATCA. The benefits to fund investors are clear: millions of mutual fund accounts will be exempt from FATCA reporting. Investors will not be asked to provide any additional information to document or demonstrate their non-U.S. taxpayer status in any such accounts.

Without the IGA, Canadian financial institutions would each need to sign an agreement with the IRS that would prevent them from opening or maintaining accounts for investors who do not provide sufficient information about their U.S. taxpayer status. The IGA eliminates any need to refuse or to open new accounts or to close existing accounts.

FATCA requires tax information on U.S. investors to be sent directly to the IRS. If to do so would breach domestic privacy laws, the regulations require the financial institution to obtain from every impacted investor a waiver or consent allowing the institution to send their tax information to the IRS. We believe this is a virtual impossibility.

Financial institutions would eventually be required to close the account of every investor not willing to provide a waiver. Under the IGA, the information will be sent to the Canada Revenue Agency, which will forward it to the IRS under established intergovernmental protocols.

Canadian financial institutions that cannot comply with FATCA requirements would be subject to a 30% withholding tax on any U.S.-source income. This would significantly reduce the returns of all investors in Canadian funds that hold securities generating such income.

The IGA for practical purposes removes the threat of withholding taxes, since reporting will be taking place. Without the IGA, investor accounts would need to be re-documented every few years at substantial inconvenience and cost. Under the IGA, an investor need only fill in the form once. It remains valid unless the investor's status changes.

Finally, the IGA gives the Canadian government and the CRA authority to set the rules for FATCA implementation in Canada. With industry, rules have been developed consistent with FATCA principles but tailored to reduce the scope of impact for Canadian investors. For example, mirroring well-established industry practices used to comply with anti-money laundering identification—

The Chair:

You have one minute.

Mr. Ralf Hensel:

—and reporting requirements should result in an efficient process, with reduced administrative burden and costs. This benefits both investors and those who must administer FATCA.

I wish to leave no doubt that even with the IGA and the implementation regime established by the legislation, the impact on the industry and its investors remains very significant. However, as I've noted, FATCA compliance without the benefit of the IGA would multiply that impact and cost many times over.

I thank you for your time and look forward to your questions.

May 14, 2014 [Standing Committee on Finance][Entire Exchange]

Ms. Chantal Bernier (Interim Privacy Commissioner, Office of the Privacy Commissioner of Canada)

… First, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act—the PCMLTFA—will be modified in a way that broadens the amount of personal information collected and increases information sharing capabilities and requirements by the Financial Transactions and Reports Analysis Centre of Canada, FINTRAC.

I'm encouraged, however, by the provision of Bill C-31 that requires FINTRAC to destroy the personal information it receives that is not related to the suspicion of criminal or terrorist activity. This corresponds to our recommendations in our audits of FINTRAC.

…

May 27, 2014 [Standing Committee on Finance][Entire Exchange]

Mr. Matthew McGuire (Chair, Anti-Money Laundering Committee, Chartered Professional Accountants of Canada):

Thank you very much.

My name is Matthew McGuire, and I am the chair of the anti-money-laundering committee of the Chartered Professional Accountants of Canada. I'm a CPA, a member of the Department of Finance's public-private advisory committee on AML and ATF, and a partner and the national anti-money-laundering practice leader at MNP LLP.

We appreciate the opportunity to provide input on the amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act proposed by Bill C-31. My comments today focus on the issues relevant to accountants and accounting firms arising from the proposed amendments and certain areas where there are amendments that we hope to see.

The Financial Action Task Force, of which Canada is a member, released its updated recommendations in February 2012. We're concerned that the proposed amendments would not completely align the PCMLTFA with the expectations of accountants and accounting firms articulated in those recommendations. In particular, FATF recommendation 22 sets an expectation that anti-money-laundering obligations for accountants should be triggered when they prepare for or carry out transactions for their clients concerning the following activities that we believe should be covered: the organization of contributions for the creation, operation, or management of companies; and the creation, operation, or management of legal persons or arrangements.

One of the greatest challenges in complying with the anti-money-laundering legislation is the determination of “reasonable grounds to suspect” in the case of a suspicious transaction report for money laundering or terrorist financing. Reporting entities need information to confirm whether their basis for suspicion of money laundering or terrorist financing is valid in order to develop meaningful processes for risk and transaction monitoring following the submission of those reports. The amendment in the bill that provides FINTRAC the ability to make public their involvement in cases where they make disclosures and there was a prosecution is laudable, but we think it could be expanded to make public any details of suspicious transactions and the indicators that supported the disclosure and their characteristics, of course without identifying the person who submitted it. That intelligence would surely help reporting entities, from accountants to banks to credit unions, improve their monitoring and reporting practices.

We are also concerned about proposed section 68.1 of Bill C-31. It would permit FINTRAC to file with the court suspicious transaction reports and other voluntary reports in the case of any action, suit, or legal proceedings brought or taken under the PCMLTFA. We submit that in the case of such filings, the details about the reporting entity—the folks who submitted the report—should be sealed so as to not discourage suspicious transaction reporting volumes and quality for fear of public scrutiny of those reports.

We'd also like clarity on the ministerial countermeasures with regard to the regulations that support those countermeasures. The full range of possible countermeasures is not known; therefore, we're concerned about the practical extent to which our members will be able to design systems and processes quickly to adhere to them, and the agility they require in that respect. We would ask that any regulation supporting these measures would provide sufficient lead time for compliance with the directives.

Common among reporting entity sectors, from banks to real estate brokers to dealers in precious metals and stones, is a frustration with identification standards, particularly in cases where the client does not present themselves physically for identification. Altogether, the program of client identification is not proportionate to risk, is burdensome compared with the regimes in other countries, and doesn't appear to be addressed in this bill. We understand, however, that the Department of Finance is addressing it in the course of regulations. We fully support a move towards a more practical and risk-based approach to knowing who we're dealing with.

In closing, we'd like to outline some of the changes we'd like to see as time moves on. Under the current regulations of the act, an “accountant” means a chartered accountant, a certified general accountant, or a certified management accountant. When the unification of the profession is complete across the provinces, we would like the act to reflect that renaming as well as the change from the CICA handbook to the CPA Canada handbook.

The Chair:

You have one minute left.

Mr. Matthew McGuire:

Additionally, we suggest that there are those in the accounting profession, who practise the accounting profession, who are not provincially regulated, such as those with foreign accreditations. We believe they should be subject to the act to address the money-laundering risks they pose as well.

We appreciate your consideration of the issues we've identified today in the course of your review of Bill C-31. We'd be delighted to answer any questions.

Thank you.

May 27, 2014 [Standing Committee on Finance][Entire Exchange]

Mr. Gerald Keddy: There's a Leaf comment; I'm still hurting on it, okay?

Mr. McGuire, in your role as chair of the anti-money-laundering committee at the Chartered Professional Accountants of Canada, I'm sure you've had a chance to look at what we've done in this budget. The number of changes to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act that are embedded in here are certainly important for the Canadian government to be able to collect taxes that have been delinquent and deliberately not paid and to really look at international crime and terrorist activity.

We've put in a number of amendments here. First of all, we've strengthened the customer due diligence standards, including for politically exposed foreign and domestic persons. We've closed the gaps of the regime, such as online casinos, to persons and entities that deal in virtual currencies and foreign money services businesses. We've improved compliance monitoring and enforcement. We've strengthened information sharing. For instance, we allow FINTRAC to disclose to federal partners on threats to national security. We've repealed the regulation-making authority pertaining to the ministerial directive power, under part 1.1 of the act, in order to bring part 1.1 into force, and other technical amendments there.

Understanding the nature of what we're dealing with, the underground activity that we're dealing with, and the difficulty of dealing with that, in your assessment I would hope you'd think these amendments go some way in the right direction to actually dealing with this type of criminal activity. But is there anything else we could add to that list?

Mr. Matthew McGuire:

Thank you very much for your question.

I do agree that the amendments go a long way in the right direction. One of the important things from my perspective is how far the amendments go to align with the international standards. I would say they get us almost all of the way there.

Where I think we should focus going forward is on effectiveness. In the next evaluation, the FATF will evaluate Canada's measures to control money laundering. By most estimates, about $55 billion is

laundered through Canada every year. They will be evaluating not just whether or not our program conforms to their standards but whether or not we're achieving the things we look to achieve.

There are two things that I think are important in that regard. The first is the ability to track our effectiveness. The second is a greater emphasis on civil forfeiture regimes. I'm not sure I'd comment on budget implementation act measures themselves, but I do think more resources in Canada should be put into the prosecution side of things and the civil forfeiture side of things. At the moment, we have the equivalent of a firehose going into a garden hose. FINTRAC is producing incredible intelligence in thousands of cases. We need to be able to act on them in an appropriate way.

May 29, 2014 [Standing Committee on Finance][Entire Exchange]

The Chair:

Thank you so much.

We are on division 19, Money Laundering and Terrorist Financing, clauses 254 to 298.

Colleagues, I do not have any amendments for this division, so I'm looking for suggestions on how to group these clauses.

Monsieur Caron.

Mr. Guy Caron:

We wish to speak to clause 258.

The Chair:

Okay. Can I group clauses 254 to 257?

Mr. Guy Caron: Yes.

(Clauses 254 to 257 inclusive agreed to)

(On clause 258)

The Chair: Mr. Rankin.

Mr. Murray Rankin:

Thank you, Mr. Chair.

In our view, this clause dramatically expands the monitoring of financial transactions from many Canadians and their family members and close associates. Included in the list, as you'll know, are judges, legislators, heads of government agencies, so this is a significant expansion of the monitoring of Canadians' personal financial information. We object to it being buried in a 359-page omnibus bill.

Twice the Privacy Commissioner of Canada has raised concerns about the potential violation of personal privacy under the FINTRAC system. The government has not addressed these serious

questions. Frankly, it's alarming that they're trying to push this through under cover of a bill that changes more than 60 pieces of legislation.

We cannot and will not support such an initiative.

The Chair:

Thank you, Mr. Rankin.

Is there any more discussion on clause 258?

Do you want a recorded vote?

Mr. Murray Rankin:

Yes, please.

(Clause 258 agreed to: yeas 6; nays 3)

The Chair:

Can I group clauses 259 to 298?

Mr. Guy Caron:

We want to speak on clause 294.

The Chair: Then we will group clauses 259 to 293.

(Clauses 259 to 293 inclusive agreed to)

(On clause 294)

The Chair:

Mr. Rankin.

Mr. Murray Rankin:

In our view, clause 294 would give the minister sweeping powers to designate Canadians as what are termed here as “politically exposed domestic” persons, and as a result make them subject to extensive and invasive financial monitoring and reporting.

We think this is over-breadth writ large, and we would oppose this initiative.

The Chair:

Thank you.

Do you want a recorded vote on this one?

Mr. Murray Rankin:

Yes, please.

(Clause 294 agreed to: yeas 6; nays 3)

The Chair: Can I group clauses 295 to 298?

An hon. member: Yes.

(Clauses 295 to 298 inclusive agreed to)

April 29, 2014 [Standing Senate Committee on National Finance]

Mr. Shoom

… On the agreement, which starts at page 315, broadly speaking the structure of the agreement includes three components. There are the articles of the agreement itself, and there are two annexes. The articles of the agreement essentially represent the agreement and the obligations between the two parties, the governments of Canada and the United States. Annex I to the agreement sets out the due diligence requirements that Canadian financial institutions are expected to follow in order to identify U.S. account holders. Both the articles of the agreement in Annex I are largely based on the model agreements that the U.S. Treasury has put out and would appear quite similar to what most other countries have signed. Annex II to the agreement, as Brian was saying earlier, is tailored to Canada's particular situation and contains Canada-specific exceptions to the types of financial institutions that are covered by the agreement and the types of financial accounts that are covered.

I'll start with the articles of the agreement. Article 1, which starts on page 316, contains definitions. I will not go through all of them but I'll mention a couple of them just to give a sense of how the agreement works. There are definitions starting in g) and following on from there for financial institution. It's obviously important to identify the types of entities that would be considered to be financial institutions and would thus have to undertake due diligence.

The approach taken in the agreement basically has a functional approach to defining financial institutions by describing what it is they do. It includes depository institutions, things like banks and credit unions and caisses populaires. It would include investment dealers, mutual funds, life insurance companies, trust companies. Those kinds of entities are covered by the various definitions.

I did want to pause here a moment because when we were looking at this and figuring out how it could work in Canada, we were concerned that this functional approach to defining who or what is covered could lead to uncertainty about whether particular entities are in or out. Given that one of the basic premises of the FATCA approach and the IGA approach was to look for parallels with anti-money laundering rules wherever possible, we looked to our own anti-money laundering rules set out in the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the associated regulations, and to the way financial institutions are defined in that legislation.

We largely copied provisions from the PCMLTFA into the implementing legislation. Those can be found in the definition of listed financial institution in section 263(1). That way of

identifying financial institutions is institutional. It's based on things like are you a bank under the Bank Act? Are you a trust and loan company under trust and loan company legislation? That's the way that financial institutions are identified for purposes of the agreement.

…

April 30, 2014 [Standing Senate Committee on National Finance]

Darren Hannah, Acting Vice President, Policy and Operations, Canadian Bankers Association: Good evening. My name is Darren Hannah, and I'm the Acting Vice President, Policy and Operations with the Canadian Bankers Association. I'm very pleased to be here today at the committee's invitation to discuss the banking industry's relationship with our prudential regulator, the Office of the Superintendent of Financial Institutions. With me today are representatives from some CBA member banks: Mr. Kent Andrews, Senior Vice President, Regulatory Risk and Risk Capital Assessment of TD Bank Group; and Mr. Chris Elgar, Chief Risk Officer of Manulife Bank and Trust.

Unfortunately, Mr. Sean McGuckin, Executive Vice President and Chief Financial Officer of Scotiabank, who had agreed to appear before the committee, was unable to join us today in Ottawa. In addition, I'm also joined by my colleague from the CBA, Debbie Crossman, Director, Financial Affairs.

The CBA works on behalf of 59 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 275,000 employees.

The strong relationship that exists between the banking industry and OSFI has served Canada well. This was demonstrated during the global financial crisis when Canada's banks fared much better than their counterparts in other jurisdictions. Canada is consistently recognized as having one of the strongest banking systems in the world. In fact, Canada has been ranked by the World Economic Forum as having the soundest banks in the world for six consecutive years.

We largely attribute this strong performance to two factors: first, the prudent manner in which Canadian banks are managed; and, second, the strong regulatory and supervisory framework for banking in Canada. The CBA strongly supports OSFI's work internationally, and in particular their efforts to ensure that banks in other jurisdictions are subject to the same level of high-quality regulation and supervision as Canadian banks.

The Canadian banking industry is one of the most heavily regulated and supervised sectors of the economy. For example, Canadian banks are required to meet stringent OSFI guidelines in a wide range of areas, such as capital, liquidity, leverage, corporate governance, accounting and stress testing.

Some of these guidelines are quite extensive. For example, OSFI's capital adequacy requirements guideline totals several hundred pages. However, while there is a significant cost to ensuring that banks are compliant with OSFI's guidance, the CBA and its member banks recognize the importance of effective and appropriate banking supervision, given the banking

industry's critical role in the economy and our extensive efforts to manage risk throughout the system.

It is important that the banking prudential regulator have adequate resources in place to understand the risks and set out appropriate rules and guidelines. In this regard, OSFI has been very clear with the banking industry about its commitment to continually increase and improve its core competencies. This does not mean, however, that we are unconcerned about the volume of regulation.

As we've stated publicly on numerous occasions, the overall complexity of compliance has increased significantly in recent years as the quantity of regulation has expanded, and we must ensure that the right balance is struck to ensure competition and innovation in banking continues to be encouraged.

In Canada, unlike some other jurisdictions, banks are fortunate that they deal with only one prudential regulator, OSFI, which simplifies the regulatory process. The CBA and its member banks deal with OSFI on a regular basis. Banks' interactions with OSFI are wide-ranging and can include responding to OSFI requests for data and information, performing self-assessments of their compliance with specific legislation or guidance and facilitating OSFI reviews of certain business lines to identify potential deficiencies in the way banks are managing risk.

OSFI consults directly with the banks, as well as publicly, on significant changes it is proposing to make to its guidelines or other requirements. The CBA believes that these consultations contribute to the transparency in the rule-making process and result in better outcomes for all. By maintaining such active dialogue, OSFI and the banking industry are able to cooperate to ensure that the proposals will work in practice and to avoid any unintended consequences.

Consistent with its mandate, OSFI monitors and evaluates system-wide events or issues that could negatively impact the banking sector and stands ready to update its guidance accordingly.

The committee may be interested to know that in the fall of 2012 The Strategic Counsel, an independent research firm, conducted a consultation on OSFI's behalf with deposit-taking institutions to explore OSFI's performance in the discharge of a number of key elements of its mandate. The consultation comprised a series of confidential one-on-one interviews with executives and professionals, representing a cross-section of the deposit-taking institutions regulated by OSFI. The consultation's findings concluded that the overall impressions of OSFI are positive in most areas and that OSFI is perceived as highly effective in monitoring and supervising institutions. The report containing these findings can be found on OSFI's website.

The CBA and its members continue to work hard to maintain and strengthen their relationship with OSFI, which we believe is a key component to ensuring the continued success of the Canadian banking industry.

We would once again like to thank the committee for the opportunity to answer questions regarding the relationship of the CBA with its member banks and OSFI. We look forward to your questions. Thank you.

The Chair: Thank you, Mr. Hannah. Could you very briefly, before I go to my list, explain the other entity that exists called FINTRAC and how it relates to OSFI and you and your clients as bankers, your members?

Mr. Hannah: FINTRAC is the Financial Transactions and Reports Analysis Centre. FINTRAC deals with issues related to money laundering and suspicious transactions. OSFI is the prudential regulator. They look at the prudential health of banks.

The Chair: Does the information that FINTRAC receives and analyzes pass through OSFI or does it go directly from the individual institutions to FINTRAC?

Mr. Hannah: Others can correct me if I'm wrong, but I believe it goes directly.

Kent Andrews, Senior Vice President, Regulatory Risk and Risk Capital Assessment, TD Bank Group: There are two avenues. There is the direct information that goes directly to FINTRAC as it relates to transactions. The role of OSFI and FINTRAC is that OSFI does some supervisory work at the institutions to make sure the anti-money laundering regimes in the institutions are solid regimes. The information about that control environment flows through to FINTRAC.

The Chair: OSFI, in that instance, is doing an audit, in effect, of the banking institution?

Mr. Andrews: In a way. It's doing a control-environment review.

The Chair: Thank you. I think that's helpful.

Senator Hervieux-Payette: Also, CRA is the one initiating some inquiry, and they probably go to the banks to look at some people that have, let's say, 10 accounts where they deposit $9,000 at a time on a regular basis, or in five banks and always in the amount that is not supposed to be reported, which is $10,000.

I don't think OSFI could know that one person has five times and maybe four different accounts in all these banks to do the money laundering. Do you have the knowledge if the Canada Revenue Agency is contacting you?

Mr. Hannah: In that case, if a transaction is viewed as suspicious, then there is an obligation to report to FINTRAC.

Senator Hervieux-Payette: If they know.

Mr. Hannah: Again, "suspicious" is a difficult thing to assess.

Senator Eaton: I guess I didn't explain myself. Do OSFI's regulations encourage or discourage; in other words, is it a come-on, is it a welcome mat or is it a barrier?

Mr. Elgar: An institution has to make its decision as to whether or not it wants to compete in this environment, first and foremost. If they're going to play in this environment, these are the rules.

Senator Eaton: Banks are not backing away because of our rules, are they?

Mr. Elgar: I don't know what other banks are doing through their application process.

Senator L. Smith: Gentlemen, what are the biggest challenges facing your industry right now?

Mr. Hannah: I'll start from a general perspective.

Senator L. Smith: It sounds like there are no challenges there and everything is so good.

Mr. Hannah: No, it's not that there are no challenges here. Your question is a very broad one, senator. Generally, the banking world is full of different challenges and your objective as a risk management institution is to try to assess them, understand them, weigh them and address them. The challenges come from all different angles. They could be market risk, credit risk, operational risk, cyber-risk, who knows what, and the challenge is to try to make sure that you are aware of them, that you're on top of them and that you've put in place processes to assess and deal with them. OSFI's role is to try to ensure that you've done that.

Senator L. Smith: Between OSFI and yourselves, as an association and as members, are there concerted issues on which OSFI is working with you that are public knowledge? Obviously there is FINTRAC and what they do with money laundering, the drug trade, the LIBOR rates in terms of people financing what the States went through and being undercapitalized and the problem with some of their major banks. What's out there that could, from a North American or international perspective, be threats to the success of Canadian banks?

Mr. Andrews: Mr. Hannah talked about cyber-risk. I think that is a huge concern. The banks do a very good job of dealing with that risk, but certainly we are engaged with all government parties in discussing the importance of cyber-risk.

When you look back, some very public examples would be the work that OSFI has done on retail lending. They issued what they called the B-20 guideline in 2012, which is all about retail lending and the standards in retail lending. This is an area where we've worked very closely with them to make sure we had our arms around that issue for the entire country.

May 13, 2014 [Standing Senate Committee on National Finance]

Chantal Bernier, Interim Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada: Thank you, Mr. Chair and members of the committee, for inviting me to discuss the privacy implications of Bill C-31, specifically with respect to FATCA.

….

Beyond this, Bill C-31 introduces some changes to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. Specifically, it broadens the amount of personal information collected, and increases FINTRAC's information-sharing capabilities and requirements. I have detailed my views about this matter in the written submission I provided to the committee.

In my time now, I just wish to note that what we have seen regarding the evolution of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act presents some lessons learned from FATCA-related obligations. When the PCMLTFA was introduced in 2002, it had narrowly — and clearly — defined reporting requirements. As time progressed, its scope of application has broadened and the incentive to overreport has gradually increased; Bill C-31 increases it further still.

We would strongly urge the committee to advise the government to proceed with caution to avoid the potential for further scope creep. In closing, thank you, Mr. Chair and members, for the opportunity to discuss this issue. I welcome your questions.

June 10, 2014 [Standing Senate Committee on National Finance]

Hon. Irving Gerstein, Chair, Standing Senate Committee on Banking, Trade and Commerce, as an individual:

Part 6, Division 19 amends the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. This was very important to members of the Banking Committee. As you may recall, the Banking Committee undertook a major review of Canada's anti-money laundering and anti-terrorist finance regime, tabling its report last year in March. That report resulted in 18 policy recommendations to government.

The amendments contained in Bill C-31 reflect much of our report — if not an exact wording, at least I would use the word "thematically" — by capturing more at-risk sectors within the list of reporting entities, increased information-sharing within the regime, increased accountability of the regime, and more of a focus on risk-based approaches to combat money laundering and terrorist financing.

The amendments extend the list and types of reporting entities to include virtual casinos, foreign money service bureaus and virtual currency exchanges; strengthen customer identification and due diligence using a risk-based approach; streamline compliance and monitoring; strengthen information-sharing amongst regime partners; and strengthen the government's ability to deal with high-risk states and entities.

I would like to particularly draw the committee's attention to the testimony of Mr. David Murchison, Director, Financial Sector, Department of Finance Canada, who said, and I quote, "We have closely taken your report" — he's referring to the Banking Committee report of last

year — "and I have to say it challenged us in a number of areas, and these amendments benefit from the work that you have done."

Officials further added that some of the committee's other recommendations would appear in forthcoming regulation, as opposed to the legislation now before us.

On balance, the Banking Committee was pleased that the efforts being made are at least in part a response to the review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and we look forward to seeing more positive amendments in the future.

...

Hon. Céline Hervieux-Payette, P.C., Deputy Chair, Standing Senate Committee on Banking, Trade and Commerce, as an individual: A number of you are certainly aware of the various speeches given on these controversial topics by members of our committee.

I would still like to add a comment about money laundering in the light of our report. One matter remained pending, the matter of real time, and this concerns one of our members. When an illegal act is suspected, up to 30 days can go by before any action can be taken.

As everything is done electronically, the member in question and I are of the same opinion that there would be more success, right at the very second the money is transferred, if the Canada Revenue Agency had the systems — and computer systems to trace back those suspect transactions can surely be put in place.

Those who have read the report are well aware that, currently, we are talking about an amount of $100 billion to $170 billion that has been laundered and that less than $50 million has been recovered in the last five years. So the system is not working. I am not saying that the proposal in the bill does not work, but, according to the recommendations of the committee, the requirement for real-time operation is absolutely essential. Second, better coordination between the various players is required, and a number of government players are involved. So, yes, we are happy, as my chair says, but happy in moderation, in my view and the view of my colleagues. I feel that we could go further to put controls into place.

As for Senator Bellemare's remarks, where we see eye to eye the most is in the matter of demutualization. I have to point out to you that the way of settling this matter fairly and equitably concerns us because the minister has not equipped himself with any specific powers. Perhaps the scope can be very broad in common law, but I do not believe that, in our hybrid system — a marriage of the civil code and common law — that would be accepted. There will be a court challenge because we are talking about more than $1 billion. So we are getting into millions of dollars in legal fees and several decades of delay. That will hurt all the policy holders.

There is a reason why they have accumulated such a large surplus: the company has been in existence for more than 100 years and has put an enormous amount of time into building up those reserves. Let us make an assumption. The company insures farmers mainly, because normal insurance companies were not available to insure farmers, who therefore equipped themselves with the means to protect themselves against perils. The problem is that, if an incredible drought or devastating floods were to occur and extraordinary amounts of

compensation had to be paid out by the insurance companies — they insured their harvests against those perils — thousands of farmers could be in difficulty and the government would have to intervene. We have received no assurances at all from Economical Mutual, not even any information on the way the surplus is going to be distributed. We have simply been offered words of reassurance, but no actions that reassure us. I believe that we could have been reassured as to the means, but we have received no assurance about whether the 943 people in privileged positions could be sharing the jackpot.

I have personally worked in insurance and I am all the more concerned because this sector might actually need to have more reserves set aside. Private companies that are not cooperatives have not come into the market and it must be because the risk is higher. I think the protection should be kept; right now, I am sure of that and I will not be voting in favour of that division for the simple reason that it is *ultra vires*.

As for the division on trademarks, I have dealt with trademarks in my professional life. Like my colleagues, I have taken the time to read all the correspondence. I would like to point out two things; we heard about consultations, but no consultations were held on the new measures that have been passed. In other words, the entire private sector was informed of these measures, but has never heard discussions about them, has never discussed them with the Department of Finance. They were just dumped on them when the budget was announced.

After we did the research and read the government's documents, we assumed — even though we had no definite confirmation — that this had to do with the Canada-Europe free trade agreement. We know that the U.S. combines all the agreements that it promises to honour, but it has kept the registration measure to make sure, at the same time, that it keeps the use of trademarks. The Americans therefore have a hybrid system when they sign agreements.

One of the most important things that I was able to remember is their wish to enter into international agreements. That does not apply to our Canadian industry. Only large corporations will try to register their trademarks in 130 countries. There are costs associated with doing so and they are very high.

If small and medium-sized businesses develop a Canadian market, for instance, and their product is accessible in France, they will only take one step, so that they are protected in France. They will not sign all those agreements.

I am not at all opposed to signing agreements and although our officials have insisted on assuring us that these are just administrative measures, I do not think that all the representatives from all areas of the private sector have come to tell us stories. They are on the front lines. The costs with which they are threatened concern them a great deal. These are companies operating in all sectors.

As a result, if we impose a measure on all sectors that, at the end of the day, will have a negative impact on them, I do not understand why, based on the budget, the government would continue to ignore the method that was working, which is registering trademarks and commit to using it. For all intents and purposes, I do not think we would have any problems with our

trading partners. We would keep our promise and sign the agreements, but, at the same time, we could keep our method.

In this context, there is also a legal problem for the countries that use common law and those that use civil law. Europe mainly uses civil law, and precisely because of our Canadian legal structure, we can manage to address major issues, in the same way as we deal with provincial-federal jurisdictions.

To sum up, I think Senator Bellemare simply suggested that some clauses be dropped, if I may say so, or that the issue be at least examined. As a result, in this case, I think the government has not done all it could with this amendment, which, for all intents and purposes, will not be in the best interests of Canadian businesses.

June 17, 2014 [Standing Senate Committee on National Finance]

The Chair: Carried, on division. Thank you.

The next one is Money Laundering and Terrorist Financing, and that's found at pages 164 to 197. Shall Part 6, Division 19, which contains clauses 254 to 298, carry?

Hon. Senators: Agreed.

The Chair: Carried.

Miscellaneous Statute Law Amendment Act, 2014 (Bill C-47)

Citation	2015, c. 3
Royal Assent	February 26, 2015
Provisions Amended	32

Hansard

N/A

Economic Action Plan 2015 Act (Bill C-59)

Citation	2015, c. 36
Royal Assent	June 23, 2015
Provisions Amended	55

Hansard

June 4, 2015 [Standing Committee on Finance]

The Chair: Mr. Clare, thank you for being with us here today. We shall move to division 14, Proceeds of Crime (Money Laundering) and Terrorist Financing Act. This has one clause, clause 167. I do not have any amendments for this clause.

We'll greet our officials from Finance.

(Clause 167 agreed to)

(On clause 168)

June 4, 2015 [Standing Senate Committee on National Finance]

The Chair: Colleagues, from the Standing Senate Committee on Banking, Trade and Commerce, we are very pleased to welcome one of our own, Senator Gerstein, who is the chair of that committee. He will be discussing the subject matter of those elements contained in Part 3, Division 14, entitled "Proceeds of Crime (Money Laundering) and Terrorist Financing Act," clause 167, which can be found at page 102. Then we'll go to question and

answer on that if there are any, and then we can move to Division 19 under the same part, and it's entitled "Privileges for Supervisory Information," clauses 232 to 252, found at page 136. That will be interesting.

Senator Gerstein, thank you for being here and please help us out with these two divisions.

Hon. Irving Gerstein, Chair, Standing Senate Committee on Banking, Trade and Commerce: Thank you Mr. Chair. It's a pleasure to be here before my colleagues. As you have mentioned, the Banking Committee was referred two divisions of Part 3, namely Division 14 and Division 19.

Our committee held two hearings, with testimony from government officials and a number of outside witnesses. I propose to give an overview of the intended legislative changes, as well as some of the views expressed by witnesses.

Starting with Division 14, proposed amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, as you may recall the Banking Committee undertook a major review of Canada's anti-money laundering and anti-terrorist financing regime, tabling its report in March 2013.

The proposed legislative amendment in Division 14 would amend subsection 55(3) of this act. The purpose of the amendment is to allow the Financial Transactions and Reports Analysis Centre of Canada, better known as FINTRAC, to disclose designated information directly to provincial and territorial securities regulators if there is reasonable grounds to suspect that the information would be relevant to investigating or prosecuting money laundering or terrorist financing activities as well as offences set out in securities legislation.

According to the Department of Finance, FINTRAC's current inability to disclose information directly to provincial securities regulators is a shortcoming of Canada's anti-money laundering and anti-terrorist financing regime. This amendment would specifically address this shortcoming, thereby increasing the safety and security of Canadians and the financial sector.

FINTRAC told the committee that in a number of cases in which provincial securities regulators and law enforcement agencies conducted joint investigations, the information regulators received by having access to the information FINTRAC had disclosed to law enforcement agencies was very helpful when the regulators processed offences under provincial securities legislation.

The Canadian Securities Administrators, represented by the Autorité des marchés financiers, the AMF, were very much in favour of this amendment. They stated that it would allow provincial securities regulators to ask FINTRAC to provide information in relation to specific cases and would give FINTRAC the ability to disclose information to provincial securities regulators voluntarily. They also expressed that the proposed amendments would improve investigations of violations of provincial securities legislation.

In conclusion, all committee members support Division 14.

Did you wish to stop there and deal with questions before we go to the second matter?

The Chair: Thank you. I will see if there are any questions. It's a very thorough report, which we welcome. On the first one, my recollection is that it deals just with one clause, and that's clause 167.

Senator Gerstein: That's correct.

The Chair: Seeing no questions, then let's proceed to Division 19.

June 19, 2015 [Senate]

Hon. Joseph A. Day:

….Division 14 relates to the proceeds of crime and money laundering, expanding FINTRAC's disclosure authority.

FINTRAC is the financial institutions' tracking agency. All bank transactions go through and are reported. Every commercial bank and every loan company reports every transaction to FINTRAC.

Now FINTRAC is going to be authorized not only under the various anti-terrorist legislation that allows personal information out there to be shared by different departments — 17 different government departments that we saw under Bill C-51 — but this now allows for disclosure to the provinces. Provinces that have regulatory agencies will now be able to receive proceeds of crime information and money laundering information from FINTRAC as well. It's not just for the RCMP and CSIS any longer but also the provinces.

How much private information will be disseminated to the various provinces, and what restrictions and protections are there on the provinces?

A lot of this goes to privacy and protecting individual information. It's all about your bank accounts and banking activities. That is a concern.

....

Budget Implementation Act 2017, No. 1 (Bill C-44)

Citation 2017, c. 20

Royal Assent June 22, 2017

Provisions Amended	2, 6, 6.1, 7, 7.1, 8, 9, 9.1, 9.2, 9.3, 9.31, 9.4, 9.6, 9.61, 9.7, 11.1, 11.11, 11.12, 11.41, 11.42, 11.44, 11.49, 11.6, 30, 53.3, 55, 55.1, 56, 56.1, 65.1, 73, 73.15

Hansard

May 30, 2017 [Standing Committee on Finance][Entire Exchange]

The Chair: Thank you, Ms. Henderson and Ms. Côté, for your appearance.

We'll turn to division 19, clauses 407 to 441. We have witnesses here from Finance on the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. There are no amendments on these sections until we get to clause 442.

Does anybody want to raise anything on clauses 407 to 441, or can we agree to vote on those as a block?

Hearing nothing, shall clauses 407 to 441 carry on division?

(Clauses 407 to 441 inclusive agreed to on division)

(On clause 442)

The Chair: On clause 442, the first is amendment NDP-31.

Mr. Dusseault.

Mr. Pierre-Luc Dusseault:

Thank you, Mr. Chair.

[English]

Thank you to our witnesses who came, but we didn't ask them questions. Now turning to one of our last amendments, my last amendment—

The Chair:

If I could interrupt for a second, Pierre, we have quickly rolled through Proceeds of Crime (Money Laundering) and Terrorist Financing Act, so you folks are off the hook with no questions.

We'll now go to the invest in Canada act under division 20, and amendment NDP-31 is the first amendment under clause 442.

June 20, 2017 [Standing Senate Committee on National Finance]

The Chair: Carried, on division.

Shall Part 4, Division 19, entitled "Proceeds of Crime (Money Laundering) and Terrorist Financing Act,'' which contains clauses 407 to 441, carry?

Hon. Senators: Agreed.

The Chair: Carried.

June 13, 2017 [Senate]

Hon. Yuen Pau Woo

… Moving on now to the National Security and Defence Committee, which examined Division 12 — on the well-being of veterans — and Division 9 — on money laundering and terrorist financing. They, I am pleased to say, recommended the adoption of both without qualification…

June 14, 2017 [Senate]

Hon. David M. Wells

… Colleagues, there is no doubt that Bill C-44 is an omnibus bill. Among its 300 pages and its far-reaching scope, it deals with the Immigration and Refugee Protection Act, the Canada Labour Code, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and the Parliament of Canada Act. You will recall that the Liberal Party promised they would end the practice of introducing omnibus bills, so I won't comment on that aspect…

June 20, 2017 [Standing Senate Committee on National Finance]

The Chair: Carried, on division.

Shall Part 4, Division 19, entitled "Proceeds of Crime (Money Laundering) and Terrorist Financing Act,'' which contains clauses 407 to 441, carry?

Hon. Senators: Agreed.

An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts (Bill C-37)

Citation 2017, c. 7

Royal Assent May 18, 2017

Provisions Amended 17

Hansard

Ms. Julie Dabrusin (Toronto—Danforth, Lib.):

Today I am proud to speak on Bill C-37, which I unreservedly support. This is an essential step in overcoming the opioid crisis that is afflicting our country.

The bill amends the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, but I will actually be addressing its proposed amendments to the Controlled Drugs and Substances Act.

…

February 10, 2017 [House of Commons]

Ms. Filomena Tassi (Hamilton West—Ancaster—Dundas, Lib.)

….Canada supports the important goal of improving corporate transparency globally. The government has agreed to strong rules in both the Financial Action Task Force and the global forum on transparency and exchange of information for tax purposes in support of corporate transparency. Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations

enhance Canada's requirements for financial institutions regarding the collection of information on beneficial owners of corporations.

….

March 30, 2017 [Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs]

Lisa Janes, Director General, Border Operations, Canada Border Services Agency

…Bill C-37 proposes to repeal certain provisions of the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act to allow officers to open mail that weighs 30 grams or less in order to detain or seize illicit substances, such as fentanyl, that may be in those smaller mail packages.

The proposed amendments would result in granting CBSA officers the authority to open all items, regardless of weight, in the international mail stream, when an officer has reasonable grounds to suspect the mail contains goods referred to in the customs tariff or goods whose importation is prohibited, controlled or regulated under an act of Parliament.

[*Translation*]

The Government of Canada is committed to respecting the privacy of mail recipients, which is why officers must have reasonable grounds of suspicion before opening mail.

Bill C-37 also proposes amendments that would require that certain devices, such as pill presses or encapsulators, be registered with Health Canada.

[*English*]

While the CBSA does not regulate these devices, the trafficking and use of pill presses to produce illicit drugs is a growing concern for the public safety and public health community. The proposed amendment would require that proof of registration for these goods be presented upon importation.

In cases where no proof of registration is provided, CBSA would detain the goods to assess compliance and have Health Canada or the Royal Canadian Mounted Police undertake further admissibility measures.

[*Translation*]

In conclusion, the CBSA fully supports the proposed amendments to the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and the regulation and control of pill presses and encapsulators…

March 30, 2017 [Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs][Entire Exchange]

Senator Joyal: Welcome. I want to come back to clause 52 of the bill, the Customs Act amendments, which proposes to remove subsections 99(2) and (3). My concern is that it's now a blanket authorization for opening mail of less than 30 grams, for any reason. The bill doesn't specify to fight drugs, organized crime or the illegal proceeds of organized crime; it is just a blanket authorization. It means that you can now open the mail for whatever reason you believe.

I totally support the idea of fighting drugs imported through mail. I have no problem with that. But what kind of system do we have in place to balance a discretion that can go overboard? We have seen it with the mail. There's a long history of censorship in the mail through the *Little Sisters* case in B.C. That was before you were born, Ms. Janes, but some of us remember it very well, the fight we had with Canada Post and the border agencies. It seems to me that when you say "reasonable grounds to believe," who will review the reasonable grounds to believe of an officer who decides to open the mail? In other words, it's not just a blank cheque to the person who is there and says, "Oh, this envelope is pink. I don't like pink. Let's open it." There has to be real control over the exercise of reasonable grounds to believe.

In practical terms, how does it work in your system to avoid the kind of over-exploitation of that power by an officer who feels he has all the grounds to do that?

Ms. Janes: Thank you very much for your question and your compliment on my age. I appreciate that. It's always nice to have a compliment like that.

Earlier I spoke about the importance of privacy. Our officers do receive training, and there is oversight from superintendents, chiefs and senior management regarding when officers are opening mail or boxes — or whatever items they are — that the reasonable grounds to suspect are present. There is oversight on that as well, and our officers do receive training on the importance of respecting privacy.

As I mentioned in my earlier response, we see hundreds of thousands of pieces of mail that are presented to us on a daily basis. We use non-intrusive technology, like X-ray, to facilitate the movement of the mail. For our job, we don't want to hold things up; we want to be able to specifically look at those items that, as I mentioned, would be of risk to the health and safety of Canadians. That's why we're here. We're not here to open up letter mail to just gather intelligence or, as you say, it's a pink envelope and we want to look at it. We have to follow the fact that we need to have reasonable grounds to suspect that before we move forward on any of those actions. That's why we have the oversight as well, and our officers receive the training.

Senator Joyal: I understand that, from then on, mail that I receive will be opened and the content will be checked, but I will never be notified that in fact they have looked into it.

Ms. Janes: Yes, you will.

Senator Joyal: How will I be notified that the mail I receive has been opened and for what reason it has been opened?

Ms. Janes: When we open up any type of packet or envelope over 30 grams, current procedures are that tape is applied to close up the item, and it says the item was opened by CBSA.

Senator Joyal: In other words, you open the item on the basis of your own criteria. What are those criteria?

Ms. Janes: As I said, the officers have to have reasonable grounds to suspect that the mail and the goods contained therein are related to a customs tariff or that the items are prohibited, controlled or regulated by an act of Parliament.

Senator Joyal: I agree, but —

The Chair: We have to move on, senator; I'm sorry. We'll put you on the second round.

[*Translation*]

Senator Dupuis: My question is for Mr. Zarins. If I understood correctly, you said that, as a federal police force, you're interested in organized crime, which is involved in 89 per cent of illicit drug market activities. I want to fully understand this statistic. The police are interested in organized crime, and not in any other sector that manufactures, produces or prescribes this type of product. Is that what you meant?

[*English*]

Mr. Zarins: No, ma'am. We'd like the entire criminal network, from the point of where it's coming from, who's manufacturing it, how it's brought in and delivered to the Canadian public. The entire network is what we're interested in. Criminal organizations are involved every step of the way, so it's the entire organization that we are trying to dismantle.

[*Translation*]

Senator Dupuis: Your work doesn't consist only of monitoring or taking action when it comes to organized crime. It could also involve taking action in cases of doctors who prescribe or over-prescribe opioids.

[*English*]

Mr. Zarins: Anybody that would be involved in the chain. We don't target the prescribing or over-prescription, but if somehow they're connected to these organized crime networks that are bringing this in and distributing it and it comes to our attention during the course of our investigation, we'll definitely not turn a blind eye to it. But we're not targeting that.

[*Translation*]

Senator Dupuis: I have a quick question. I simply want to understand your statistic. About 89 per cent of organized crime groups are involved in the illicit drug market. The remaining 11

per cent comes from other sources, such as manufacturers or importers. Regarding the 89 per cent, do you have data — I don't know whether this exists — on organized crime's involvement in importing drugs rather than in manufacturing them on site?

[*English*]

Mr. Zarins: For clarification, the Criminal Intelligence Service of Canada, CISC, has estimated that 89 per cent of the Canadian-based organized crime groups it assessed in 2016 are involved in some aspect. It could be any aspect of the illicit drug market. That includes production, import, export and distribution. These groups seek profits anywhere they can. It doesn't matter where the profit is coming from; anywhere along the chain.

So 89 per cent of all of the organized crime groups in Canada are somehow involved in the illicit drug trade. It means that 11 per cent might not have their hands on illicit drugs but they are still organized crime. So it's anywhere in the chain.

[*Translation*]

Senator Dupuis: So we don't have a breakdown of the data, in those 89 per cent of cases, on importation in relation to on-site manufacturing.

[*English*]

March 30, 2017 [Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs]

Daniel Therrien, Privacy Commissioner, Office of the Privacy Commissioner of Canada

Thank you very much, Mr. Chair.

[*Translation*]

Honourable senators, thank you for inviting me here to comment on Bill C-37.

Let me start by acknowledging the importance of addressing drug abuse and addiction in a comprehensive manner. While Bill C-37 touches upon a number of matters, I'll comment only on the clauses that amend the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. These clauses concern the mail inspection powers of different government agencies.

As the law stands now, customs officers are permitted, on suspicion, to examine mail that is being imported or exported and weighs more than 30 grams. However, when mail weighs 30 grams or less, consent must be obtained. If I understand correctly, this longstanding limitation has been in place to protect the privacy of correspondence.

While Bill C-37 would repeal the requirement for consent, I want to say a few things on the matter.

First, prior to any examination of mail, customs officers would need reasonable grounds to suspect the presence of prohibited, controlled or regulated goods. This is in contrast to the general customs examination of goods, which in most circumstances requires no grounds.

Second, assessing the reasonableness of the amendments to the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act requires a balance between privacy and public safety interests. The government says it has evidence demonstrating that the international mail system has been used to import, in small quantities, drugs that have been responsible for the death of a large number of Canadians.

Third, I've also been informed that customs officers don't systematically open all mail. Before examining or opening mail, they use a range of risk assessment techniques to determine whether any contraband is being imported or exported.

In light of these factors, I believe the amendments to the Customs Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act are justified. However, I think these amendments should be accompanied by additional measures to protect Canadians' privacy, more specifically to ensure that correspondence isn't read in cases when no contraband is found. These measures would ideally take the form of additions to the bill. Otherwise, a government policy on the implementation of these amendments could be sufficient. In a free and democratic society, the opening of mail by the government is generally prohibited and must be carried out with the greatest possible restraint.

[*English*]

The recent Supreme Court of Canada decision in *R. v. Fearon* may be helpful to us in finding the right balance between the objectives of Bill C-37 and the protection of privacy. In that case, police searched an individual's cellphone after arrest, without a warrant. The majority of the court held that such warrantless searches serve valid law enforcement purposes, that the search in question did not violate the individual's Charter rights, and that the evidence obtained was admissible.

While the context was different than Bill C-37, which contemplates searches at the border, and those have been referred to in the case law as a unique context, *R. v. Fearon* also addressed the unique context of warrantless searches upon arrest and may therefore prove useful in navigating this issue.

While it upheld the search as constitutional, the majority in *Fearon* clarified that a balance must be struck between the legitimate objectives of enforcing the law and privacy interests. To ensure that searches upon arrest comply with the Charter, the majority outlined four conditions that must be met.

First, the arrest must be lawful. If we apply this to Bill C-37, examination of mail must be conducted with reasonable grounds to suspect, in accordance with the provisions of the Customs Act or the PCMLTFA.

The second condition is that the search must be truly incidental to arrest. In the case of Bill C-37, this would mean that the examining officer must have a valid reason to conduct the search, such as the discovery of prohibited or controlled goods, currency or monetary instruments.

The third condition, and of highest interest in my view, is that the nature and extent of the search must be tailored to its purpose. In the case of Bill C-37, any search of correspondence after an examination and opening of mail should be tailored to the initial purpose of the examination: the discovery of prohibited or controlled goods, currency or monetary instruments for the purpose of enforcing the Customs Act or the PCMLTFA. This condition is useful in that it is a flexible standard that could be applied in the case of all mail in order to balance privacy rights with the examination of mail at the border. For example, reading correspondence would not be permitted if opening the mail was justified by a suspicion that it contained drugs, and no drugs are found in the envelope. However, if the justification for opening the mail is that it contains correspondence, which itself is something the importation or exportation of is prohibited — say, terrorist propaganda — then reading the correspondence would be authorized.

The fourth and final condition of the Supreme Court in *Fearon* is that the police must take detailed notes of what they had examined on the device and how they examined it. Likewise, I would suggest that officers should document the steps they take when examining and opening mail, the reasons for their suspicion, and if correspondence is read, why they believe that the correspondence itself was contraband.

So I hope this is useful and I look forward to your questions.

May 2, 2017 (Senate)
Hon. Bob Runciman

Honourable senators, this bill comes back from committee with three amendments.

Bill C-37 amends the Controlled Drugs and Substances Act, the Criminal Code, the Customs Act, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Seized Property Management Act. Most of the bill deals with the Controlled Drugs and Substances Act, and it has two primary objectives.

The first objective is to deal with the trafficking, importation and manufacture of controlled substances. These measures are intended to provide authorities with the tools to deal effectively with the current overdose crisis that is resulting in the deaths of hundreds of Canadians. For example, it will be much more difficult to import products such as pill presses that are used to manufacture illegal drugs.

The minister will be able to temporarily list products under the act if she has reasonable grounds to believe they pose a significant risk to public health.

Canada Border Services Agency officers will now have the power to open letter mail — mail of less than 30 grams — without asking permission of the sender or recipient.

I'm sure the sponsor and the critic of the bill will describe its contents in more detail. I will take this time to deal with the amendments that were passed in committee.

An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures (Bill C-7)

Citation 2017, c. 9

Royal Assent June 19, 2017

Provisions Amended 49

Hansard

May 30, 2016 [House of Commons]

Mr. François-Philippe Champagne (Parliamentary Secretary to the Minister of Finance, Lib.)

Fairness is extremely important to Canadians. They know that paying legitimate taxes owed to a responsible and transparent government is the basis of our shared prosperity. They do not like it when people bend the rules, and they expect their government to take stringent measures to stop people who try.

The Government of Canada is determined to tackle aggressive tax avoidance and tax evasion that leverage international taxation strategies. We have launched an action plan to strengthen existing efforts in Canada and abroad and to introduce new measures. This work will protect the tax base and boost Canadians' confidence in the fairness of a system that ensures everyone pays their fair share of the tax burden.

Here is what we are doing in Canada. On April 11, the Minister of National Revenue announced a series of measures that the Canada Revenue Agency will take to fight aggressive tax avoidance and tax evasion. Budget 2016 includes $444 million to pay for those measures.

This funding will allow the CRA to hire additional auditors, develop a robust data collection infrastructure, increase audit activities, and improve the quality of investigations. With this additional staff, the CRA will be able to increase the number of audits of high-risk taxpayers by 400%. Furthermore, the government will streamline its efforts by including lawyers on its investigative teams so that cases can be quickly brought before the courts.

New mechanisms will also be put in place. First, there will be a special program to put a stop to the activities of organizations that create and promote tax schemes for the rich.

Second, an independent advisory committee on offshore tax evasion and aggressive tax avoidance will be set up. This committee will provide strategic advice to the CRA on ways to fight tax evasion and tax avoidance. The CRA estimates that the new envelope of $440 million will help the government recover no less than $2.6 billion in revenue over five years.

We are also looking beyond our borders. This is what we are doing abroad. Canada is a very active participant in international efforts to fight tax evasion. We are an active member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which was set up to ensure that high standards for transparency and the exchange of information for tax purposes are in place throughout the world.

Canada has also established a vast network of bilateral tax agreements and bilateral exchange of tax information agreements, which provide for the exchange of information. On April 15, Canada launched consultations on legislative proposals to implement the standard for automatic exchange of financial account information, which was developed by the Organization for Economic Co-operation and Development and is backed by the leaders of the G20.

The common standard introduces a framework whereby a country's taxing authority can automatically and securely share information on financial accounts held by non-residents in those countries with tax authorities in the country of residence of the account holders. Budget 2016 confirmed the Government of Canada's intention to implement the common reporting standard starting on July 1, 2017, adding Canada to a list of over 90 countries that have committed to implementing it.

Canada has been actively engaged in another multilateral initiative aimed at addressing base erosion and profit shifting, commonly known as BEPS. BEPS refers to tax planning arrangements undertaken by multinational enterprises, which, though often legal, exploit the interaction between domestic and international tax rules to minimize taxes. The following measures, announced in budget 2016, are an important part of implementing our commitments regarding BEPS.

First of all, we will introduce new legislation to impose country-by-country reporting on large multinational corporations. Second, we will apply the revised international guidelines on transfer pricing. Third, we will be participating in international work to develop a multilateral instrument to streamline the implementation of treaty-related BEPS recommendations, including addressing treaty abuse. Finally, we are going to undertake the spontaneous exchange of some tax rulings with other tax administrations.

The government will continue to collaborate with the international community to ensure a consistent and standardized response to the BEPS project. Canada supports the important objective of improving the transparency of corporations around the world. In order to do that, the government agreed to strict rules as part of the activities of the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Recent changes to the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations increase the requirements that Canada imposes on financial institutions with regard to the collection of information on beneficial corporation owners.

At a G20 finance ministers' meeting on April 15, Canada and the other members agreed that it was important to make information on beneficial owners more accessible to the appropriate authorities and increase the sharing of such information between those authorities in order to put an end to tax evasion, the funding of terrorist activities, and money laundering.

In closing, we know that Canadians expect their government to ensure that services paid for by their tax dollars are delivered effectively. They also expect their government to reduce government waste and inefficiencies to the extent possible.

National Security and Intelligence Committee of Parliamentarians Act (Bill C-22)

Citation 2017, c. 15

Royal Assent June 22, 2017

Provisions Amended 53.4, 53.5

Hansard

September 28, 2016 [House of Commons]

Mr. Arnold Chan (Scarborough—Agincourt, Lib.)

The second theme I wanted to address that I think has been overplayed by the opposition is with respect to the ability in terms of both access to information and the ability to redact information. Again, I would invite my colleagues on the opposite side to carefully review the actual language in the bill as it relates to those specific limitations.

Let me take, for example, the provisions that are dealt with under the access to information provisions in clauses 13 and 14, particularly as they relate to the exceptions under section 14. My colleagues on the other side have noted that there are seven exceptions, and they refer to them as being problematic. However, if we examine them carefully, they are very narrowly construed. Basically, they are construed with respect to other rights and immunities and privileges of other classes of persons other than parliamentarians.

Again, I think it is a bit of a mis-characterization that the supremacy of Parliament and the role of parliamentarians somehow supersedes the rights, privileges, and immunities of other classes of persons. I do not think that is a fair characterization. I think we have to always constantly engage and make sure that there is a balance.

…

The sixth is information related to the Investment Canada Act, and seventh is information relating to the Financial Transactions and Reports Analysis Centre of Canada under the Proceeds of Crime

(Money Laundering) and Terrorist Financing Act. Again, if we look at these particular sections, they are very narrowly construed.

Therefore, the exceptions that are articulated in the bill are very narrow. Again, I would argue that these are very narrow areas that are carved out, and that the mandate of the committee is in fact very broad.

March 10, 2017 [House of Commons]

Hon. Peter Van Loan (York—Simcoe, CPC)

… The RCMP is a bit of a different body. One of the difficulties is that we ask our police to spread themselves across an incredibly large mandate, everything from local and municipal policing to counterterrorism investigations, to dealing with money laundering, to dealing with very sophisticated financial transactions. It is a mandate that is truly broad, so their work is not always perfect. However, that being said, the work of Ian McPhail and the Civilian Review and Complaints Commission has been excellent. I have not heard any credible complaints. They are providing very high-quality reviews…

An Act To Amend The Criminal Code And The Department Of Justice Act And To Make Consequential Amendments To Another Act (Bill C-51)

Citation 2018, c. 29

Royal Assent December 13, 2018

Provisions Amended 5

Hansard

N/A

An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (Bill C-45)

Citation 2018, c. 16

Royal Assent June 21, 2018

Provisions Amended 11.11

Hansard

May 30, 2017 [House of Commons]
Hon. Jody Wilson-Raybould

Mr. Speaker, I thank my hon. colleague for reiterating why we are introducing this legislation. We are committed to legalizing, strictly regulating, and restricting access to cannabis. The reason, as the member clearly articulated, is to keep it out of the hands of children and the proceeds out of the hands of criminals. By simply decriminalizing right now, we would not be able to achieve those objectives. That is why we are working very diligently, benefiting from the substantive input we received from the task force and Canadians right across the country, to ensure that we put in place, working with the provinces, territories, and municipalities, this complex regime for the legalization and strict regulation of cannabis. That is what we are focused on. We are very hopeful that this legislation will move through the parliamentary process and that we will have a legal regime in this country to achieve the objectives I stated in my remarks: keeping cannabis out of the hands of kids; keeping the proceeds out of the hands of criminals; and ensuring that for minor possession offences, we are not criminalizing young people and adults.
…

May 30, 2017 [House of Commons]

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP)

...There is a fair amount of commentary in Canadian cannabis literature that contains concerns that cannabis trade in Canada is under the control of violent and exploitative criminal elements, causing harm to users and children. The Liberals really love to say that they want to legalize, strictly regulate, and restrict access to cannabis in order to keep it out of the hands of children and the proceeds out of the hands of criminals. New Democrats agree with that approach, but it is more of a fear-based objective in that Liberals do not want to decriminalize because of those reasons.

It should be noted that only a particular share of the illegal cannabis trade occurs within international crime syndicates. There is good cause to doubt that most cannabis users in Canada would ever have contact with violent exploitative criminal organizations or people. Most people buy small amounts from friends, family members, or close acquaintances, yet the Liberals have continued with this fearmongering. They say that every day our kids turn to dealers, gangs, and criminals to buy marijuana, putting them in harm's way. That is simply not true. That is fearmongering at its worst.

Studies have shown that the illegal cannabis trade, as it stands today, resembles more of a disconnected cottage industry in which independent and otherwise law-abiding people attempt to support themselves and their families. They are meeting demands in their communities. Basically, it is something that most Canadians do not believe should be illegal in the first place. Many people in small towns, when the economy gets tough, have turned to growing and selling cannabis. They are not violent criminals, but the Liberal approach treats them as being in that category, even the people who purchase and possess marijuana. It is a failed approach, the politics of fear.

A study by the Canadian Drug Policy Coalition found that links between the cannabis trade and violent organized crime groups have been greatly exaggerated. It describes cannabis operations as independent, small in size, local, non-violent, and modest in realized revenues.
…

June 06, 2017 [House of Commons]
Mr. Kennedy Stewart (Burnaby South, NDP)

…If I can quote the Fraser Institute, which I often do, marijuana is a $7 billion a year industry in British Columbia. It's bigger than any other agricultural product that's produced.

Where does that $7 billion go? That is my question. That money goes to organized crime and we see the effects of it. When I tried to rent my first office in North Burnaby, I could not find a place because most of the buildings were owned by the Hells Angels. A lot of organized crime grows marijuana and sells it illegally. The proceeds are put into real estate or casinos or other types of gambling. The money is laundered and comes back into society and organized crime benefits from that. I have to commend the government again because the legislation, when enforced, will take a lot of money away from organized crime.

Just like we saw with alcohol, the prohibition of something that is widely used in society only benefits organized crime. We also saw that with gambling. Police forces used to break up gambling rings. As soon as the government legalized gambling to some extent, like lotteries and bingo and those types of things, there was less need to waste policing resources on gambling rings. Those saved resources go back to the government and it can then fund things like rehab for gambling addiction and so on.
...

November 24, 2017 [House of Commons]
Mr. Michel Picard (Montarville, Lib.)

… The approach to organized crime is also clear. Organized crime is making significant profits that fuel money laundering and are also used to fund other types of criminal activity.

We need tools to curb this type of activity as much as possible and clean up the culture associated with this product. It is true that we have heard that taking illegal drugs is cool and gives the user a certain status and cachet among peers. We must discourage this kind of misinformed thought process. Changing the culture will require clear and unequivocal government involvement in education, training, and prevention
...

January 30, 2018 [House of Commons]
Hon. André Pratte

...Legalization is being forced upon us by criminals and the control they have over the production and distribution of cannabis. That means that the health of our children is in the hands of these criminals. It also means that consumers, honest citizens, are inadvertently contributing to organized crime to the tune of $5 billion annually, to the great detriment of our society.
...

Some provincial governments and police forces have asked Ottawa to delay the implementation of this policy. Yet, since the government announced the July 2018 deadline, these very objectors have been preparing and making substantial headway for months.

It is now clear that all provinces will be ready. It is also clear that when the bill is passed, Canadians will be able to purchase cannabis without having to worry about poisoning themselves with bacteria or pesticides, without funding organized crime and without running the risk of ending up with a criminal record.

Will everything be perfect? Obviously, no. However, wondering whether every piece of this puzzle will be in place when the government gives the go-ahead is begging the wrong question. The question that needs to be asked is this: On day one of legalization, will the situation be better than it is now, a time when users can only get marijuana from illegal sources, with no guarantee as to the safety and potency of the product? The only possible

answer to this question is yes, a legal and regulated market is preferable to an illicit and uncontrolled market, or if it is controlled, controlled by organized crime.

Those who oppose the passage of this bill obviously have legitimate motives, but, unfortunately, they're supporting the status quo, which is putting the health of hundreds of thousands of Canadians at the mercy of criminal organizations. A century of prohibition has not changed this reality. Six more months, five more years or ten more years of prohibition will not change it either.
...

February 14, 2018 [Senate] [Entire Exchange]
Hon. Larry W. Smith (Leader of the Opposition)
There have been many articles in the Quebec media in the recent weeks regarding the use of offshore tax havens in funding Canadian marijuana companies. The government leader may remember our colleagues Senator Boisvenu and Senator Joyal questioned the ministers on this issue when they appeared before the Committee of the Whole last week.

This morning, *La Presse* reported that a Canadian hedge fund managed from the Cayman Islands has invested over a quarter of a billion dollars — $277 million to be exact — in Canadian medical marijuana companies in just the last few months. Our country does not have a tax treaty with the Cayman Islands, and the identity of the individuals investing these massive sums of money remains a secret.

How can the government continue to claim that the legalization of marijuana will eliminate the involvement of organized crime when the government does not know who is investing in these companies through offshore tax havens?

Hon. Peter Harder (Government Representative in the Senate): I thank the honourable senator for his question. With respect to his preamble, I can say he's not the only one going downhill in the last 50 years. And it's not the only corny one.

The question the honourable senator has raised is an important and serious one. I want to point out that under the proposed regulations, security clearances will be mandatory for individuals who occupy key positions in any organization, as well as background checks on significant investors who hold more than 25 per cent of a cannabis company.

In addition, the Minister of Finance recently reached an agreement with his provincial and territorial counterparts to ensure we know who owns which corporations, which will help to prevent Canadians or international companies from facilitating tax evasion, money laundering or other criminal activities. Ultimately, the government is of the view that this will reduce the risk that organized crime will infiltrate the cannabis industry.

I should add that the experience of the medical cannabis regulations, which were first brought into force in 2013, has led and inspired the decisions the government is taking with respect to recreational cannabis. This, of course, is an issue which we will all have to be vigilant on and

one I hope we can explore in committee to provide the assurances to the Senate that appropriate enforcement is in place.

Senator Smith: Thank you very much for the answer. As a follow-up, we're talking about the advancement of the legalization of marijuana, but organized crime has the ability to anonymously invest in marijuana companies in Canada through these offshore tax havens. The government has been warned repeatedly about this, and I appreciate that you explained what the government will hopefully do.

Even the Acting Commissioner of the Royal Canadian Mounted Police recently told our Standing Senate Committee on Legal and Constitutional Affairs that the legalization of marijuana will not eliminate organized crime's presence in the cannabis market, yet the government stands by its talking points.
What does the government intend to do? Could the leader add a few thoughts to what he said earlier about providing transparency in this area? What will the government do to ensure that the names of those who invest in marijuana companies in Canada are made public to protect public interest?

Senator Harder: Again, I want to thank the honourable senator for his question, but the first point I would make is that what is absolutely clear is that aside from the medical marijuana industry today, the marijuana industry is in the hands of organized crime. By definition, it is illegal. With the bill that is before the Senate, the government is seeking to ensure not only that we have a legal regime of growing and distribution of recreational marijuana, but also that the regulations attendant to it ensure that regime does not become the playground of criminal elements. That is the objective of the regulations as I have described them, but this is going to be a challenge as we pull back the force of organized crime in this sector.

February 15, 2018 [Senate] [Entire Exchange]

Senator Pratte: … Yesterday, the Government Representative stated that the Minister of Finance recently reached an agreement with his provincial and territorial counterparts to ensure we know who owns which corporations, which will help to prevent Canadians or international companies from facilitating tax evasion, money laundering and other criminal activities.

This agreement is not very well known, at least not from us. Would the Government Representative undertake to table this agreement in this house as early as possible so that honourable senators can have the opportunity to examine it?

Senator Harder: Again, as the question suggests, the Minister of Finance, on December 11, reached an agreement in principle with his provincial and territorial counterparts. The details of this agreement are presently available on the Department of Finance's website. I'd be happy to table that specifically. But for the record, today, I thought it would be useful to identify some of the specifics of that agreement. One, ministers agreed in principle to pursue legislative amendments to federal-provincial-territorial corporate statutes or other relevant legislation to

ensure corporations hold accurate and up-to-date information on beneficial owners that will be available to law enforcement, tax and other authorities.

Two, ministers agreed in principle to pursue amendments to federal-provincial-territorial corporate statutes to eliminate the use of bearer shares and bearer share warrants or options and to replace existing ones with registered instruments.

Three, ministers agreed to work with respective ministers responsible for corporate statutes and through their respective cabinet processes to make best efforts to put forward these legislative amendments in order to bring these changes into force by July 1, 2019.

Four, ministers agreed to develop a joint outreach and consultation plan for coordinated engagements with the business community and other stakeholders.

Five, ministers agreed to continue existing work assessing potential mechanisms to enhance timely access by competent authorities of beneficial ownership information.

Six, ministers agreed to establish a federal-provincial-territorial working group to combat aggressive tax planning strategies that erode the integrity of the Canadian tax base.
…

Hon. Jean-Guy Dagenais: …Now I'd like to address the issue of organized crime, the heart of the other argument the Trudeau government players like to recite to try to sell us on Bill C-45. The reality is that recent reports indicate that $297 million invested in Canadian companies authorized to grow marijuana comes from tax havens. Those are the same tax havens that the minister responsible for the Canada Revenue Agency is unable, by her own admission, to combat effectively.

This ministerial incompetence is compounded by the fact that this same government says it has no interest in identifying those who are investing under the cover of offshore companies. Is it worried it will see too many of its friends' names? I trust you are not naive enough to think that money that comes from tax havens is clean money. People who use tax havens are not the most honest of citizens. I would even go so far as to say that, in many cases, they are fully dishonest.

Let us consider the following question: how clean is the $297 million being invested in the companies authorized to grow marijuana? No one can tell us today whether that money represents, for example, profits from the activities of the mafia and biker gangs, being laundered as investments coming from tax havens. No one has the answer, and worse still, it seems to me that the current government does not even want to know the answer. Its attitude is a downright insult to the middle class, who work and pay taxes. It is an insult because the government is prioritizing legalizing marijuana over fighting tax evasion. Indeed, it has already given Bill C-45 priority over many of Canada's other policy priorities.

To come back to that poorly prepared and poorly written bill, you would have to be crazy to keep believing that legalizing marijuana is a way of fighting organized crime. To argue that is

to wholly underrate the criminal intellect, especially in the case of white-collar crime. As the RCMP itself has stated, organized crime is already ready.

In reality, by legalizing marijuana, the current government will be supplying organized crime with a new way of laundering money. Furthermore, the current government will be creating future drug users who will turn to harder drugs, which they will have to get from — guess who — organized crime. Nice going. Everyone here should at least be aware that people who take cocaine and other, more dangerous drugs all started with marijuana. All organized crime has to do is wait.

Make no mistake: biker gangs will not just give up on the pot business. There will still be plenty of money to be made on the tax-free, anytime, anywhere black market. It is also in their interest to ensure client anonymity, which can be important, especially when people are buying insurance.

We know that Crown corporations, which will now be dealing drugs, do not offer consumers those particular benefits.

February 27, 2018 [Senate]
Hon. Lucie Moncion

... Bill C-45 proposes 11 different kinds of licences and permits, including four for production, two for processing, three for testing, research and exportation, and two for the sale of cannabis products for medical or recreational purposes.

The licences and permits have three specific objectives: 1) to enable a diverse, competitive legal industry comprised of both large and small players in regions across the country; 2) to reduce the risk that organized crime will infiltrate the legal industry; and 3) to provide for legal cannabis products that meet high quality standards. Health Canada will be responsible for overseeing the record checks and for issuing, tracking and managing these licences or permits, except those having to do with the retail sale of medical and recreational products, which will fall under provincial and territorial jurisdiction.

Because the process for issuing licences and permits will be complicated and there could be violations, we will need a framework that better defines how the RCMP, the Department of Justice, and Canadian police forces will work together.
[*English*]

On the basis of the information provided by the various police forces, it is proposed that the minister may refuse a security clearance to all persons associated with organized crime or who have had previous convictions for drug trafficking with young people, for corruption, money laundering, fraud or violent offences.
It is also proposed that the names of the directors and officers, not only of the organizations applying for the licence or permit but also of their parent company, be provided. The names of the shareholders holding more than 25 per cent of the shares must be provided to prevent the real owners from evading the transparency requirements.

March 03, 2018 [Senate][Entire Exchange]

Hon. Pierre-Hugues Boisvenu:... With regard to organized crime, the government's second argument for legalizing cannabis, the Journal de Montréal has raised a serious concern: 40 per cent of the cannabis producers operating today are financed with money from tax havens, typically the Cayman Islands. Let's not forget that much of the money that gets sent to tax havens comes from organized crime, which is selling illegal drugs here in Canada.

Nevertheless, the bill will not penalize individuals who have a criminal record for drug-related offences. Fraudsters and members of organized crime will not be covered by this exemption. This grey area that will allow organized crime to come back and gain partial control of the legal cannabis market.

Under subsection 5.1 of the Tobacco Act, a tobacco producer is subject to a $300,000 fine and a maximum prison sentence of two years or either of those penalties if he adds any flavoured additives to the tobacco. However, under Bill C-45, an organization that solicits a young person to sell marijuana, for example, would face maximum fines of $100,000. In other words, it is $300,000 for tobacco and $100,000 for selling marijuana. It is a double standard. That sentence will in no way deter organized crime from returning through the back door.
Under this bill, the minister would allow four marijuana plants per household, and would set up a tracking system to the tune of millions of dollars that will serve no purpose in apprehending individuals going around with trafficked cannabis in their pockets. Worse yet, if you grow an extra plant or two, you will be fined $200 when the harvest from the plant is worth between $1,000 and $2,000.

We strongly believe that this legislation will result in a phenomenon known as the grey market, marijuana sold on the side illegally. The show JE on TVA consulted an investigator who specializes in organized crime. This experienced police officer was involved in dismantling a number of drug networks, mostly marijuana. He highly doubts that organized crime will be affected by the bill. Criminals do not have to pay taxes, and have no collective agreement or minimum wage to abide by. According to him, organized crime has been preparing to adjust quickly to the new legislation by cutting production costs. It will be like contraband cigarettes. I would remind you that in the Eastern Townships alone, where I live, 40 per cent of cigarettes smoked by high school students are purchased illegally. When taxes on the product increase, legal consumers go back to the illegal market.
...

Hon. Larry W. Smith (Leader of the Opposition): … Furthermore, we know that foreign tax havens are being used to finance Canadian marijuana companies. In the past few weeks, several Quebec media outlets have reported that nearly half of the 86 companies that have received Health Canada permits to grow marijuana are financed with money from tax havens, which are often used for money laundering purposes by organized crime.
...

Hon. Claude Carignan:
... The government is telling us that one of the bill's objectives is to stamp out organized crime, which is supposedly behind the production and sale of cannabis. What fact-based evidence does the government have to back its assertion that legalizing the use of cannabis will reduce the activities of organized crime? We do not know.
…

Still on the topic of organized crime, here is another enlightening comment. When he appeared before the Standing Senate Committee on Legal and Constitutional Affairs recently, Kevin Brosseau, Acting Commissioner of the Royal Canadian Mounted Police, called into question the statements of the Prime Minister and the federal ministers responsible for the legalization of cannabis that the drug must be legalized in order to eliminate the presence of organized crime in the illicit cannabis market, where these groups are making a fortune. Mr. Brosseau said, and I quote:

> Given the involvement of organized crime in the illicit cannabis market, we do not expect the legislation will eliminate the presence of organized crime in the cannabis market. It will reduce it but it will not eliminate it.
> . . . illicit markets and organized crime are constantly evolving, frankly one step ahead, seemingly, at times.

The Service de police de la Ville de Montréal or SPVM also expressed doubts concerning the government's claims and indicated that, in order to thwart law enforcement, organized crime has already changed its strategy in anticipation of the legalization of cannabis, which is scheduled for early July. The spokesperson for the SPVM said the following, and I quote:

> Organized crime, as its name states, is organized. It adapts to the reality of the market.

That is what law enforcement is saying. Similarly, it is rather ironic that the government claims to want to get young people out of the hands of organized crime.
…

May 02, 2018 [Standing Senate Committee on Legal and Constitutional Affairs]
Hon. Renée Dupuis, Deputy Chair, Standing Senate Committee on Legal and Constitutional Affairs

...
According to the government, the current situation is untenable, because, first, cannabis has been produced for decades without quality control. Second, illicit annual revenues, estimated at $6 billion at least, are concentrated in the hands of organized crime. Third, the legal market for medical cannabis is vulnerable to organized crime activities. Fourth, the scientific evidence on cannabis, especially the correlation between cannabis use and certain diseases, and also the correlation between cannabis use and the relief of certain diseases or suffering, is not established to date.
...

May 24, 2018 [Standing Senate Committee on Legal and Constitutional Affairs][Entire Exchange]

Senator Manning: Just yesterday I believe people were charged with possession in my home province of Newfoundland and Labrador, and here we are debating this issue.

The government has spoken at length about how the cannabis act will crack down on organized crime. We've heard conflicting evidence on whether or not this will actually be effective. We've heard, from many sides, many different stories.

One of the ones they keep using here over the past is what's happened in Colorado. Last night on CBC National News Briar Stewart did a report on what's happening in Colorado and the fact that the organized crime black market seems to have gone through the roof there's so much of it down there.

I'm just wondering, maybe you could help us understand the different perspectives on the presence of organized crime in the illicit market. Who's currently supplying Canadians with illegal cannabis? Is this criminal gang activity on a large scale, as the government suggests? Is that something we need to be looking at here?

Mr. Tousaw: A huge misapprehension is that people involved in the illicit cannabis economy domestically in this country are connected to organized crime. It was referenced in the earlier panel, and I referenced it in my comments; about 95 per cent of the domestic cannabis industry is not what we normally think of as organized crime, criminal gangs and people that are engaged in the use of violence.

I have represented hundreds if not over a thousand people charged with cannabis offences over the last 15 years. I can tell you that with very, very few exceptions, I would invite them home — and have invited many home — to meet my family and sit at my kitchen table. They're good people. They're people that are otherwise law-abiding.

I think using terms like "crack down" is part of the problem. Bill C-45 is not going to crack down on organized crime. The only way — and I think the entire experience of prohibition is evidence of this — that you eliminate an underground economy on a product is that you make it lawful and you make it easy for people to transition out of the very vibrant, very well-entrenched illegal economy that exists today, out of the shadows and into the light.
…

May 28, 2018 [Standing Senate Committee on Legal and Constitutional Affairs]
Bill Blair, M.P., Parliamentary Secretary to the Minister of Justice and Attorney General of Canada and to the Minister of Health

We also know that 100 per cent of the market, its production and distribution, is a criminal enterprise. They don't follow any law. They don't obey any rule. They're not accountable in

any way. There's no oversight, no governance and no testing. They operate in the dark. And they make money — the easiest money they ever made.

I ran large organized drug crime units in Toronto for many years. The money they make in cannabis is the easiest money organized crime makes. There's no competition for them in the marketplace. Canadian society generally does not see this as a serious criminal activity, and they control 100 per cent of it; there's no competition. So it works out to about $20 million a day, flowing into criminal enterprise in this country.
…

June 04, 2018 [Senate]
Hon. Yonah Martin (Deputy Leader of the Opposition)

...
Bill C-45, as stated by other senators, will violate Canada's obligation under various treaties and conventions. These treaties have played an important role in combatting international drug trafficking, among other criminal activities.

In the Foreign Affairs Committee report, it states:

> Accordingly, signatories to these conventions are committed to prohibiting the production, sale, distribution and possession of psychotropic and narcotic drugs, including cannabis, as well as substances used in their manufacture. They are also obliged to make it a criminal offence to possess, purchase or cultivate narcotic or psychotropic drugs (including cannabis); and to make drug offences punishable by imprisonment or other forms of deprivation of liberty, as well as by pecuniary sanctions and confiscation Exceptions to such prohibitions are made for medical and scientific purposes. At the international level, the conventions also oblige signatories to limit the import and export of cannabis to medical and scientific purposes while also combating illicit drug trafficking. The conventions were also described to your Committee as "a vehicle for facilitating mutual legal assistance and extradition between States and for combating money-laundering. Furthermore, these obligations are undertaken "together with the body of internationally agreed human rights standards and norms."

We are also aware from the Aboriginal Peoples Committee report about the lack of consultation with Indigenous communities, which will be debated further later this week. But what this points to is the violation of the UN Declaration on the Rights of Indigenous People and the government's duty to consult.
Colleagues, this problematic piece of legislation is going to create a significant shift in the international perception of Canada. We will lose our reputation as an advocate for multinational forums and rules-based international systems in order to complete a campaign promise made by this current government.
…

June 05, 2018 [Senate][Entire Exchange]

Hon. Claude Carignan: ... It's clear that organized crime knows how to adapt to changing realities, and the best way to adapt is to enter the legal market by injecting money generated by its illegal activities.
Recent figures from a few months ago have raised eyebrows. We learned that more than half of the cannabis that the Société des alcools du Québec plans to purchase will come from companies funded by tax havens. Quebec has signed contracts with six companies to supply the future Société québécoise du cannabis, a branch of the SAQ, which will have a monopoly over cannabis sales in Quebec.

Three of these companies, which will supply 33,000 of the 62,000 kilograms of marijuana that Quebec is expected to purchase in 2018-19, receive tens of millions of dollars from tax havens, including the Cayman Islands, Barbados and the Bahamas. The companies are MedReleaf, which will supply 8,000 kilograms of cannabis, Aurora Cannabis, which will supply 5,000 kilograms, and Hydropothecary, which will supply 20,000 kilograms.

Anonymous rich investors from tax havens have gambled at least $165 million on authorized Canadian cannabis producers. Whether you are talking about the Cayman Islands, the Bahamas, Belize, Dominica, Aruba, Curaçao, Malta, Barbados, the Isle of Man, the British Virgin Islands, the Marshall Islands, the Seychelles, Panama or Luxembourg, there doesn't seem to be anywhere too sparsely populated or too far away to resist the lure of Canadian cannabis. In total, 35 of the 86 producers authorized by Health Canada — 40 per cent of them — received offshore funding in the past two years.

Honourable senators, I'm sure you will agree that if we want to combat organized crime we must prevent these groups from entering the legal cannabis market anonymously or through tax havens. In order to do that, we must prohibit foreign investment in Canada's cannabis trade, or at the very least ensure that those cannabis producers and their shareholders will be perfectly transparent.

When Marwah Rizqy, Assistant Professor in the Département de fiscalité, École de gestion, at the Université de Sherbrooke, appeared before the Standing Senate Committee on Legal and Constitutional Affairs, she had this to say, and I quote:

> In fact, we do not check who are the true and ultimate beneficiaries of these companies. We don't track them back to the beginning. If we have 10 businesses, the first owns the second, which owns the third, and so on. So there are levels. At the end of the line, we can even find trusts. In the end, we never check who are the actual licence holders. If the regulations on so-called recreational cannabis look like the regulations on therapeutic cannabis, the loopholes are huge.

Consequently, we need to ensure that we identify the beneficiaries, and that includes parent company shareholders.

Hon. Serge Joyal: ... But what we have heard, which is of greater concern, is the fact that the medical or therapeutic cannabis market has already been invaded by organized crime. In other words, the cannabis you can buy in a store, which is essentially the available cannabis the doctor has prescribed — even that cannabis that you buy legally on the street — is infected by

organized crime. It's not me who states that; it's the President of the Canadian Association of Chiefs of Police, Mario Harel, who testified in front of our committee on March 29, 2018. I want to read to you what Chief Harel stated:

> We also ask the Federal Government to enact strict security clearance requirements that would safeguard against criminal organizations becoming licensed growers as has been observed in the medical marijuana regime.

I repeat: ". . . becoming licensed growers as has been observed in the medical marijuana regime."

> The CACP remains concerned with the inclusion of organized criminals as licensed growers/distributors in the new cannabis regime since organized crime has infiltrated the medical marijuana industry. This is a major problem, in our view.

That's what the President of the Canadian Association of Chiefs of Police stated to us two months ago.

I also want to quote from Superintendent Yves Goupil from the RCMP. He is the Director of Federal Policing Criminal Operations. He stated:

> . . . yes, there are organized crime groups that will certainly use tax havens or even so-called beneficial ownership, where they are hiding behind corporate secrecy to invest and get licences to produce cannabis.

In other words, the RCMP and the various police groups in Canada are aware that the legal market of therapeutic cannabis is already infected by organized crime, and there are serious grounds to be concerned that the new market that will be open for the general consumption of cannabis will also be infiltrated by organized crime.

In an article published in January, *Le Journal de Montréal* gave a list of 35 companies out of the 86 producers that have been authorized to produce cannabis. I have the list here, and I'm going to provide it to you so that you have an idea of how much money has been invested by those hidden funds in fiscal paradises in the various Canadian companies: AbCann Global, Cayman Islands, $12.4 million; Aurora Cannabis, Cayman Islands, $32.5 million; CannTrust Holdings, Bahamas, $549,000; Supreme Cannabis Corporation, $130,000, Bahamas. And there are five others invested also in those companies; I'm just naming the major ones. Cannabis Wheaton Income, Cayman Islands, $20.5 million; Hydropothecary — which was mentioned in the Senate yesterday — Cayman Islands, $15 million, and Bahamas, $751,500. DelShen Therapeutics, $3 million; Cronos Group, $225,000; Newstrike Resources, $70,000 from Singapore; Emblem Cannabis, $8.3 million, and more than seven fiscal paradises have invested in that company. Golden Leaf Holdings, Bahamas, $308,000, and $5.7 million from Cayman Islands; Invictus MD, Seychelles, $765,000; Maricann Group, $9.76 million; the Green Organic Dutchman, $100,000 from Barbados, $115,500 from Bermuda, $553,000 from Cayman Islands, and from the United Arab Emirates, Dominican Republic, Luxembourg, Switzerland, Aruba, Panama, Malta, Virgin Islands, Belize, Marshall Islands — if you want the amount of money listed with these names. Harvest One Cannabis, $600,000 from Luxembourg and four other fiscal paradises. WeedMD, Cayman Islands, $2 million; Delta 9 Biotech, $300,000 from Singapore — and so on, honourable senators.

From the Cayman Islands, more than $250 million has been invested in Canadian companies that have received a permit. This is not an imagined or fabricated story; those are the real figures. So when I heard Chief Harel, on behalf of the Canadian Association of Chiefs of Police, asking us what I quoted earlier —

> We also ask the Federal Government to enact strict security clearance requirements that would safeguard against criminal organizations becoming licensed growers as has been observed in the medical marijuana regime.

— I really paid attention, because the facts aren't quite clear. At least half of the companies that received a permit have received hundreds of millions of dollars of fiscal paradise investments from people whose identities we don't know at all. No one knows their identities, unless we accept the amendments proposed by Senator Carignan that their identities will be made public. It will be for any Canadian to look into the registry and know the identity of who is selling the product, who is benefiting from its profits and who is reinvesting or sending the profits outside Canada and avoiding taxes.

Hon. Pierre-Hugues Boisvenu: Senator Woo, I want to join you in thinking out loud, so I hope you haven't made up your mind yet. The issue raised by Senator Carignan and supported by Senator Joyal has already been discussed extensively in committee. Senator Pratte says that other companies are subject to similar rules. I disagree, because we are in the process of decriminalizing an entire industry. This is not the potato industry. This is not an industry where organized crime is entirely under the control of this product. The government wants to decriminalize a sector. According to *La Presse*, organized crime seems to be slipping into this industry through the back door.

Some say we are going to start keeping records on this industry in the future, but the problem is happening right now. We need to start keeping records immediately, because the problem is already here. Of the companies licensed to produce cannabis in Quebec, 40 per cent are financed with money from tax havens. That is nearly half. To make matters worse, when these companies were called up by reporters investigating the issue, they all refused to answer any questions. Doesn't that set off alarm bells? That tells me these people don't care about transparency. We are facing an industry that seems to have been infiltrated by organized crime through illegal investments, or at least illegal cash. Let's not forget that organized crime, which sells this drug in Quebec, stashed the proceeds in tax havens. Are we seeing illegal money, made by selling drugs to young Quebecers, being pumped back into the industry? We have to think about this carefully. The industry we are trying to decriminalize needs to be transparent. In three, four, or five years, Senator Dean, it will be too late. Organized crime will have retaken control of this industry. According to police representatives who testified before our committee, at least 30 per cent of the marijuana sold tomorrow will be handled by organized crime.
If there is no transparency with respect to investments in this industry, we'll never be able get organized crime out. What is worse, organized crime will try to sell this drug to minors. Don't you think there should be more transparency when it comes to investments in this industry?
[*English*]

Hon. Art Eggleton: Colleagues have made some very compelling reasons for this particular amendment. The list of possibilities in terms of tax havens is something we have talked about here and we all want action taken on it. I don't think there's any doubt about that whatsoever. The difficulty with a motion like this is it gets presented at the last minute and, as Senator Woo asked, what are the unintended consequences of it?
I wanted to ask a question of Senator Joyal and Senator Carignan, but they ran through their 10 minutes of time so I didn't get an opportunity to do that.

This isn't done generally with other corporations; that is, the making of it publicly. I can understand the government getting this information. The government should get every bit of this information and should be able to flesh out the tax havens or the illicit operators. There's no doubt about that. But we don't make all of that information on other corporations public, either private corporations or publicly traded corporations. Are there some privacy concerns? What are the unintended consequences of it?

We were obviously interested in this issue when it was at the Social Affairs Committee, so we asked the questions of the government with respect to it. Mr. Blair, the point person on this, said:

> I would like to draw your attention to one thing. This bill will require the organizations that acquire and maintain licences for the production and processing of cannabis submit to enhanced financial transparency. Health Canada can obtain the records of these financial transactions and the investments. It's built right into the bill.

In fact, there is a requirement that the name of the licence holder will in fact be made public. All of this additional information, yes, the government should have it, but should it be made public? What are the consequences of all of that?

I certainly agree with the endeavour to get people using illicit funds out of any kind of licensed position on cannabis production, but I think we need to have a better understanding of the consequences of all of this.
Might I add one other thing? Senator Carignan, of course, because of his position, will paint the bleak picture of what's happening in Colorado and other parts of the United States and will draw on the witnesses that back up the information, but there are other witnesses, on the other side of the coin, who have a very different view.
There's one aspect, for example, in Colorado, where there has been some increase in organized crime, but it's people coming from out of state who are then sending shipments back into the state they're from. There are no border controls between the two states. You can easily do that, whereas in Canada you would be subject to criminal penalties if you tried to export outside of the country. A lot of the other statistics, I think, are refuted by very notable figures in the government and people who have been involved in the academic community in the analysis of what is happening in Colorado and other places. I don't buy all of that.

But certainly tax havens, yes, we want them out. Is this the means to do it? I don't know. We really should be taking more time to consider these things. That's why I wanted these resolutions put at committee. This resolution wasn't put at committee. Instead it's being put

here for the first time, and it puts people in an awkward position in trying to understand the unintended consequences.

Hon. Howard Wetston: Yes, Your Honour. Thank you. I felt it important to rise on this most recent issue, as I will be speaking on the matter of beneficial ownership that has been discussed. I feel like we're in pre-study of my discussion of beneficial ownership, which is forthcoming.

I simply wanted to point out that under Canadian securities laws, as just discussed by Senator Dean, the CSA, Canadian Securities Administrators, has what is known as an early warning requirement so that any security holder that advances their interest in a public corporation — this applies to all 13 securities regulators across Canada; it's a CSA requirement — must disclose publicly the ownership of those particular shares or securities. Many companies or shareholders reach the point of 9.9 per cent and don't go over it because they don't want to have it disclosed publicly. When they hit the 10 per cent mark, it must be disclosed. It applies to all public companies in whatever area of activity they are engaged. If they go above, there are 2 per cent increments. If you reach 20 per cent, then the takeover bid rules apply, which is also further public disclosure to all shareholders in the corporation.

Rather than speaking directly to the amendment, which probably I should, obviously I have some sympathy to any matter of transparency regarding beneficial ownership, whether it be with marijuana companies or other companies, which will obviously address issues of money laundering, organized crime, real estate investment, et cetera.

I simply want to point out to my colleagues here in the Senate that this 10 per cent early warning requirement is for all public companies and must be disclosed publicly.

June 07, 2018 [Senate]|[Entire Exchange]

Hon. Claude Carignan:... The final objective set out in the preamble to Bill C-45 is fighting organized crime. Ironically, the media has already reported that many Canadian cannabis distributors have benefited from investments coming from known tax havens. Millions of dollars are being poured into the industry emerging ahead of legalization, yet we have no clue who is hiding behind the corporate veil. It is no secret that organized crime groups have the resources to reinvest the proceeds of their criminal activities in legal, legitimate businesses.

Deputy Chief Mike Serr, the co-chair of the Drug Advisory Committee at the Canadian Association of Chiefs of Police, made a very concerning and worrisome statement. He said, and I quote:

> We know that there are over 300 organized crime groups involved in cannabis distribution and production. It's a $7 billion a year industry. This is a huge issue. Organized crime will not just walk away from this issue . . . .

Furthermore, CBC/Radio-Canada just revealed some shocking facts about the legalization of recreational cannabis in Colorado, where it has been legal since 2014. I quote:

> Even though there are more than 500 recreational marijuana dispensaries in the state, the black market is booming.

…

Hon. Norman E. Doyle: … One of the government's main selling points on Bill C-45 is that a government-regulated system will be better at keeping cannabis production out of the hands of organized crime, and cannabis and cannabis products out of the hands of children. I watched a documentary — I'm sure you caught it as well — on the Colorado situation only a couple of weeks ago and organized crime is doing just fine in the price wars. Legal growers sell for $10 a gram and organized crime sells for $6 a gram. I'm not sure this bill will keep cannabis out of the hands of children. However, a concerted crackdown on organized crime using the hundreds of millions of dollars we are spending on legalizing this drug could have been a step in the right direction.

...

Budget Implementation Act, 2018, No. 2 (Bill C-86)

Citation 2018, c. 27

Royal Assent December 13, 2018

Provisions Amended 13, 14

Hansard

November 20, 2018 [Standing Committee on Finance]
Hon. Wayne Easter

On division 4, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, in clauses 174 and 175, there are no amendments. (Clauses 174 and 175 agreed to on division)

December 04, 2018 [Senate]

Hon. André Pratte

…Fighting tax evasion, money laundering, and other criminal activities requires authorities are provided with complete information about who ultimately controls each private corporation. This is the aim of amendments proposed in Bill C-86 to the Canada Business Corporations Act. These will demand corporations hold and maintain a register of their beneficial owners, that is, individuals who own or control 25 per cent or more of their shares, or who in fact exercise control of the corporation.

As our colleague Senator Wetston asserted in this chamber on October 2:

> The lack of beneficial ownership transparency impacts all Canadians. Basically, it's bad for business, it's harmful to society and generally facilitates corruption.

The measures contained in Bill C-86 represent a major step towards greater corporate transparency.…

December 07, 2018 [Standing Committee on National Finance][Entire Exchange]

Percy Mockler: Shall Division 4 of Part 4, entitled "Proceeds of Crime (Money Laundering) and Terrorist Financing Act," which contains clauses 174 and 175, on pages 129 to 130, carry?
Hon. Senators: Agreed.
Some Hon. Senators: On division.
The Chair: Carried, on division.

Budget Implementation Act, 2019, No. 1 (Bill C-97)

Citation	2019, c. 29
Royal Assent	June 21, 2019
Provisions Amended	2, 9.3, 9.5, 29, 30, 35, 55, 55.1, 56.1, 73.21, 73.22

Hansard

May 01, 2019 [Standing Committee on National Finance][Entire Exchange]

Hon. Bill Morneau (Minister of Finance): ...Another way we're helping to protect Canadians is by combatting financial crime. I know this committee has done a lot of work in this regard and I know that you've looked at how we can best do that, and I'd like to thank the committee for that work. With this legislation, we know we can help improve Canada's anti-money laundering and anti-terrorist financing framework, strengthening the resources, intelligence and information sharing needed to identify and meet evolving threats, while also continuing to protect the privacy rights of Canadians and manage the regulatory burden on the private sector.

…

Mr. Pierre-Luc Dusseault: I will be brief. Last year, Canadians made investments of $353 billion in the 12 most notorious tax havens. As Minister of Finance, you have a similar budget, that is to say approximately $350 billion for the federal state. What is your reaction to that figure?

Hon. Bill Morneau: I don't know if those figures are accurate.

Mr. Pierre-Luc Dusseault: Those figures on direct foreign investment came from Statistics Canada.

Hon. Bill Morneau: I'm going to ask Mr. Marsland to answer that question. What I can tell you, however, is that we introduced several measures in the budget to ensure that we have a system that will protect our economy and allow us to fight money laundering and the funding of terrorist activities. In our opinion, this is very important for our economy. Over the past few years, we have done several things to improve the system, notably as concerns effective ownership, so as to know who the real beneficiaries are in organizations. Mr. Marsland, what do you think of those figures?

Mr. Andrew Marsland: I'm sorry. I'm not familiar with the actual numbers you're quoting, so I can't comment on them.

Mr. Pierre-Luc Dusseault: Direct foreign investments in 2018…

May 02, 2019 [Standing Committee on National Finance][Entire Exchange]

Mr. Mark Schaan (Director General, Marketplace Framework Policy Branch, Innovation, Science and Economic Development Canada): Thank you, Mr. Chair. [*English*] Today the changes we're discussing are related to the Canada Business Corporations Act. They follow on from changes that were part of budget 2018, related to beneficial ownership transparency. In budget 2018, we introduced changes to the Canada Business Corporations Act to require corporations to hold information related to beneficial

ownership and those who exercised significant control over privately held corporations registered under the Canada Business Corporations Act.

That was part of a broad federal-provincial-territorial agreement that was reached by ministers of finance in 2017 as a commitment from all jurisdictions to be able to proceed with the same agreement arrangements within their own corporate statutes. The change we're introducing here is a further clarification of the rules we set out in those amendments, which is related to who can access that initial information.

In particular, the changes specify that an investigative body would be able to access these records upon request. Notably, those investigative bodies in question are police tax authorities and any investigative body added by regulations, so we've left ourselves some flexibility in the future.

The investigative body can make a request if it has reasonable grounds to suspect that the information would be relevant to an investigation of one of the offences set out in the schedule and at least one of the requested corporation itself, a CBCA corporation sharing, an investor of significant control with the requested corporation, or another entity over which one of the requested corporation's investors of significant control has investor of significant control-like control.

It establishes penalties for non-compliance and it also sets out some safeguards for the usage and request of that register of significant control, notably that an investigative body must file an annual report to the director of Corporations Canada on aggregate use of the request power. It also sets out that investigative bodies must keep records when they use the request power.

The Chair: It's open to discussion. The finance committee did a study on the money laundering and terrorism financing act. Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: That's why I'm asking the following question. Mr. Schaan, is the $5,000 fine enough to encourage private companies to keep their information up to date?

Mr. Mark Schaan: Thank you for the question. There are two aspects of the penalties set out in the bill. First, the $5,000 fine is only for administrative errors made by a company that doesn't comply with the details described in the bill. Moreover, the bill includes an additional fine of $200,000 and a prison term of up to six months for non-compliance with the provisions of the bill.

It's a distinction between the two types of penalties. There are administrative penalties for an organization that simply makes an administrative error in their registry of beneficial owners or for failure to do so in an administrative manner. Then the second type of penalty is for a clear contravention of the spirit of the law, which is when you knew of information related to a beneficial owner that you failed to include. That can be up to $200,000 and up to six months in prison.

We do think that balance is right in terms of administrative burden for the vast majority of these private corporations that are small and medium-sized enterprises, but there's also the significance of a significant fine and prison time for those who are bad actors using corporate shells.

Mr. Greg Fergus: For those bad actors—and thank you for making that distinction—is it up to $200,000 and up to six months in prison per error, or is it in general for being a bad actor? If someone is purposely trying to falsify information, if they're laundering money and the extent of that.... Is that a maximum or is there some discretion involved there for the prosectors?

Mr. Mark Schaan: The courts and the Public Prosecution Service would be those who would interpret the penalty scheme, but it's essentially for intentional non-compliance. If they were able to articulate before the courts that they felt that there were multiple counts of intentional non-compliance, for each entry or other factors, the courts may be in a position to adjudicate that there's warrant for multiple penalties of a similar offence.

Mr. Greg Fergus: Thank you.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair. Thank you for following up on the report of the Standing Committee on Finance on this subject. Although this falls short of the committee's expectations, it's still a step in the right direction. My first question concerns the registry maintained by investigative bodies. It isn't specified how long the investigative bodies must maintain the registry of requests, which records all the details of each request and the follow-ups. First, what's the purpose of this measure?

Mr. Mark Schaan: Investigative bodies must prepare a report each year. The first bill, the 2018 budget bill, stated that the registry spoke for companies. It's necessary to maintain an annual registry containing all the changes made. [*English*] On a going forward basis, corporations will have to maintain their registry of significant control, including any changes that are brought to their attention.

In terms of the investigative bodies, they'll have to file annually as to the number of records they've requested. In terms of how long they would keep them for, that would be subject to the particular laws that they're subject to on information management.
[*Translation*]

In this context, if an investigation continues, it's necessary for investigative bodies to maintain these documents.

Mr. Pierre-Luc Dusseault: You referred to the significant participation in the company. I think that we're talking about 20% or 25% in this case. Is that correct? Why did you choose

this figure for the significant participation? It seems fairly high. People who may have bad intentions could quite easily bypass this 25% rule.

Mr. Mark Schaan: Thank you for the question. Your question has two important points. First, the definition of control rating has two aspects. The first aspect is the percentage of shares that a person holds and that give the person control, which is 25%. The bill also includes a definition of a person who controls a company with less than 25%.

We think we've captured that because we have both aspects. There's also an important linkage to other aspects of our total approach to money laundering, terrorist financing and proceeds of crime, in that enterprises already, under FINTRAC regulations, when they utilize a Canadian financial institution, are required to deposit with their financial institution any beneficial ownership information related to the exact-same percentage. We see this as boots and suspenders in that it also provides ease for the corporation in that the same requirements they're subject to for banking purposes are the same requirements they're subject to for corporations. We think that parallel actually builds a strong system

Mr. Pierre-Luc Dusseault: I have a question about the registry, and not necessarily the registry maintained by the investigative bodies. Is the ultimate purpose of this measure to create a central registry of beneficial ownership of companies registered at the federal, provincial and territorial levels? Will there be a central registry of all this information? My personal idea would be to make it public. I'm not talking about all of it, of course, but some of it. I know that the government doesn't support this position. Will there at least be a central registry?

Mr. Mark Schaan: Thank you for the question. This project is broader than the scope of the bill. The project to improve the system of transparency with regard to corporate profits in Canada involves all the provinces and territories. All the stakeholders agreed to carry out the work in two phases. The first phase, which is described here, requires each company to maintain these records and documents. Investigators must also have access to them. [*English*]

The second piece of this project is to work with the provinces and territories to identify how we want to move forward with further access, recognizing that in the world of money laundering, terrorist financing and tax evasion, you need a coherent system across all of the corporate registries, because if you only do one, then everyone just re-registers in a potential other jurisdiction.

The second phase of this is to work with the provinces and territories to identify how we would like to be able to share this information and what makes the most practical sense in terms of who should have access and how we should store it. For right now, corporations have to hold it and competent authorities can access it when there's a suspicion and a linkage to an investigation. The second phase is who else and where it should be stored.
...

Mr. Greg Fergus: ...Seriously, following up on a comment from Monsieur Dusseault, in regard to the 25% significant ownership threshold that we've established, could you speak to some of the other thresholds that other jurisdictions are doing? I'm speaking in particular of what the U.K. and the EU are offering.

Mr. Mark Schaan: I'm trying to remember. Darryl will look that up. In the world of publicly traded corporations, it's a 10% threshold because the feeling there is that the transparency of ownership when it's a share of a publicly traded corporation is of a different order, in part because the transparency isn't so much about money laundering or crime necessarily, but about who potentially has access to the proxy and who can control decision-making.

In the U.K. and the EU it's.... There we go. Ian knows this.

Mr. Ian Wright (Director, Financial Crimes Governance and Operations, Financial Systems Division, Financial Sector Policy Branch, Department of Finance): Within the general world, and within the Financial Action Task Force discussions, it's generally 25%. That's the number that's tossed around, although there are variances. I think that's seen as an appropriate balance between the burden placed upon reporting entities and individuals who fail to report versus the ability to control a company. The ability to get collusion among five, six, eight or 10 individuals is much less of a risk than when you only have to get two or three or four people joined. That said, I think there will be further discussion on that number. A lot of discussion is going on internationally and with our colleagues in other countries on what thresholds are appropriate as the threats and the risks begin to grow.

Mr. Mark Schaan: We did quite a bit of international scanning as we developed this project. The one piece where I think we made a number of improvements, which relates more to the 2018 changes than these, was around the fact that the registry needs to include the actual person at the end of the chain for the beneficial owners.

From the U.K. model, we learned of their requirement to list only the next entity, which means that you end up having to follow a chain of a series of numbered corporations to finally get to the ultimate owner, whereas we've asked corporations to go as far down the chain as they can.

Mr. Greg Fergus: Mr. Chair, I'd appreciate it if Mr. Wright and Mr. Schaan could perhaps send to the committee the latest scan of the international standards from the U.K. and the EU in particular. It was my understanding that they were going to move to a threshold lower than 25%, if not now, then soon.

Mr. Mark Schaan: I could do so.

The Chair: Okay. If you could get us that....You mentioned, in your opening remarks, that there are safeguards for the usage. Could you outline the key three? There is some fear about access out there. We heard that during our hearings.

Mr. Mark Schaan: One is the types of offences the investigative bodies would potentially be able to secure these records for. The schedule of offences is essentially those that have a tie to

money laundering, proceeds of crime and terrorist financing. The second threshold is that there needs to be a reasonable nexus between the information and the investigative body. It can't be a fishing expedition. The third is the duty to report. The investigative bodies have to file an aggregate to the director of Corporations Canada so that there can be some transparency as to how often a power is being used and who is using it.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: I'll be brief. You said earlier that, to find the identity of the natural person who owns a company, you sometimes need to go through a whole series of companies, which may own each other, until you can find the owner of the company concerned. This company may be the subject of an investigation.

Take the example of a case where the information isn't accurate. In other words, the company has done everything in its power to discover the identity, but it has made a mistake or it hasn't succeeded because the person concerned doesn't co-operate and disclose their identity. To what extent does the legislation enable us to take action? How does the legislation address this issue? Criminals are unlikely to co-operate and identify themselves at the end of this chain of companies.

Mr. Mark Schaan: That's a good question. It generated a great deal of discussion in the team that helped develop the bill. First, we must establish that this issue is the reason for the two types of penalties. It's not the companies' fault if they fail in their efforts to investigate the people who control the shares in the company. The second important aspect is the incorporation of other tools.[*English*] This is just one tool. What we've tried to do, across the overall approach to money laundering and terrorist financing, is to create a set of tools that can collaborate with each other, so among the tax authorities and the investigative bodies and the additional resources that have been placed there. You're right. We can't place too much burden on the corporation, because its full-time job is not to investigate, ultimately, who may be shareholders in their enterprise. Its full-time job is to run the company.

This is one more tool for competent authorities, amongst other things such as tax filing, tax investigations and financial authorities. We hope that it's an additional aspect of the overall effort, recognizing that it has limitations but that these can be made up for in other zones.

The Chair: Okay. Thank you. From subdivision A, we will turn to strengthening the anti-money laundering and anti-terrorism financing regime, subdivision B. We have with us Paul Saint-Denis, senior counsel, criminal law policy; Mr. Trudel, director general, specialized services sector; and Ms. Trotman, director, financial crimes. Okay, Mr. Saint-Denis, the floor is yours.

Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice): Thank you, Mr. Chairman. The proposal contained in the bill is a very simple one. We are proposing to amend the offence of money laundering with an additional mental

element of recklessness. This would mean that this modified offence would have three potential mental elements as alternatives: one of knowing, one of believing and one of being reckless as to the origins of the property that may be proceeds of crime. We believe that, with this amendment, it will be easier for prosecutors to prosecute certain types of the money laundering offences.

The Chair: Okay. Are there any questions on this section? Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: Thank you, Mr. Saint-Denis. I would like to ask you and your team whether other countries use the recklessness test and what results these countries achieve.

Mr. Paul Saint-Denis: In Australia, I think that the federal government uses the recklessness test when it prosecutes money laundering offences. However, I don't know to what extent convictions for this offence are based on the recklessness test or other tests such as knowledge or belief.

Mr. Greg Fergus: Perhaps I should have asked about the differences between Canada and other countries that have been very successful in their fight against money laundering. For example, does their criminal code contain elements that aren't found in our code?

Mr. Paul Saint-Denis: It should be noted that money laundering is a particularly difficult offence to prove. In particular, it must be demonstrated that the individual knew that the amounts they were dealing with were proceeds of crime. I think we could say that no country is very successful when it comes to this offence.

In Canada, we actually have two possible charges when we believe that an individual has committed a money laundering offence. In addition to the money laundering charge, we have a related charge of possession of property obtained by crime. We'll charge the individual with both offences, but the crown will drop the money laundering charge, which is much more complex, and keep only the possession charge. This charge is easier to prove, and the penalty is the same as the penalty for money laundering, namely, a maximum penalty of 10 years in prison.

However, to answer your question more directly, I can't think of any specific country that has been very successful in its money laundering prosecutions.

Mr. Greg Fergus: I asked this question because, during the study that we conducted last year, we learned that Canada didn't score well in the report of the financial action task force, or the FATF. I wouldn't say that we were the worst, but we weren't the best. I imagine that there are examples in other countries that we could learn from. This was the basis for our recommendations.

Mr. Paul Saint-Denis: It's important to remember that common law applies in Canada. A number of FATF member countries have a civil law regime, where the approach to prosecutions is completely different.

Mr. Greg Fergus: I completely agree. That's why we focused on the United States and the United Kingdom.

Mr. Paul Saint-Denis: When the FATF came to assess Canada's measures to fight money laundering and terrorist financing, we held several discussions on the distinction between the prosecution of a possession offence and a prosecution of a money laundering offence. The FATF is particularly interested in money laundering and terrorist financing. When we explained to its representatives that we institute proceedings for the related offence of possession, they were less interested because the offence wasn't money laundering. Yet these two offences are very similar. In Canada, the crown will opt for the least difficult method to achieve the same result. In other words, the crown will institute proceedings for possession. However, for the FATF, this method isn't ideal. I think that we were penalized because we don't choose the ideal solution, which would be to prosecute for money laundering.

That said, we must nevertheless recognize that money laundering offences are extremely complex. The investigators must have extensive financial analysis expertise, which is very costly. As your committee likely learned during its study, not only was the RCMP reorganized, it also reassigned its staff to focus more on national security issues. Since fewer investigators were available, fewer money laundering investigations were conducted.

As a result, the FATF has described Canada as less than stellar in the investigation and prosecution of money laundering.

[*English*]

The Chair: Mr. Wright, I believe you wanted in. Go ahead.

Mr. Ian Wright: Yes, maybe I'll add a little bit to that. This change to the Criminal Code is, we feel, necessary, but it's not necessarily sufficient for us to address the broader issues that we have with prosecuting and trying to enforce money laundering and terrorist financing. Budget 2019 has quite an extensive suite of other activities and other funding that we're bringing forward. There's the ACE team. There's this trade-based money laundering centre that's being created. There's funding provided to the RCMP to support the federal policing and funding for FINTRAC.

I think we should look at this as one part of a broader effort by the government to strengthen overall, and hopefully that will then lead to stronger enforcement, prosecutions, investigations and such.

….

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair. Obviously, this is a step in the right direction. However, I'm not convinced that it will help catch people who are involved in professional money laundering. It's often a chain of people, as we said earlier. The person at the end of the chain, a money laundering professional, is well protected. They've set up barriers and walls everywhere to protect themselves and to avoid knowing everything that goes on with the offence until the money or proceeds reach them.

Will this really resolve the issue? The person can still protect themselves fairly easily from charges, even with the addition of the recklessness test.

Mr. Paul Saint-Denis: Your observation is fair. Of course, people who engage in professional money laundering are three, four or five degrees removed from the offence that generates the proceeds of crime. We know that. The addition of the recklessness test may help in some cases, even in the case of money laundering professionals.

However, you're right to believe that this tool won't resolve the issue. That goes without saying. However, we believe that this tool will help us in cases where the current tools wouldn't give us the means to successfully institute proceedings.

We hope that this will be a useful additional tool. That said, no single response or legislative amendment will resolve the issue of professional money laundering. The things that we have here will help, but I think that professional money laundering will remain an issue.

Mr. Pierre-Luc Dusseault: We need to find one, however. That's the challenge.

Mr. Paul Saint-Denis: If there were a solution, I'm fairly certain that we would have found it by now.

…

The Chair: Thank you, both. Thank you, all. We'll turn to subdivision C, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. Ms. Trotman, go ahead.

Ms. Tamara Trotman (Director, Financial Crimes Governance and Operations, Financial Systems Division, Financial Sector Policy Branch, Department of Finance): I will be dealing with amendments relating to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, or the PCMLTFA. The first set of proposed amendments would add the Competition Bureau and Revenu Québec as disclosure recipients of the Financial Transactions and Reports Analysis Centre of Canada, or FINTRAC, intelligence. This is intended to support the investigation of tax evasion and mass marketing fraud.

The second set of amendments modifies the timing and the discretion of the director of FINTRAC to make public certain information related to an administrative monetary policy. These amendments will also clarify the information for which confidentiality orders could be issued in an administrative monetary penalty litigation, which would exclude the identity of the reporting entity, the nature of the violations and the amount of the penalty imposed.

Finally, there are technical amendments that clarify terminology and improve readability of the text.

Thank you.

The Chair: Does anyone have any questions? Just to start, can you expand on what mass marketing fraud is?

Ms. Tamara Trotman: Sure. The Competition Bureau has a central role in the fight against deceptive marketing practices and mass marketing fraud, which can include communication via traditional mail, telephone or email. The Competition Bureau included them as disclosure recipients in these proposed amendments to the legislation because they do have a large intelligence-gathering function.

The Chair: Is that also via the Internet, via phone calls?
…

Ms. Tamara Trotman: That's correct.

Mr. Pierre-Luc Dusseault: My question has to do with the administrative monetary penalties and the issue that was flagged by a court, I believe. The court deemed the process to be overly vague and subjective, saying it lacked clear criteria. Does this remedy the problem?

Ms. Tamara Trotman: Thank you for the question. I'm going to switch languages to answer. [*English*] Yes, this is intended to remove the discretion of the director of FINTRAC, so it would make the naming automatic when an administrative penalty has been either issued or following an appeal process. The entity would be named automatically.

[*Translation*]

Mr. Pierre-Luc Dusseault: It concerns only the naming of the entity. However, does it remedy the underlying issue, in other words, the overly vague and broad nature of the director's discretion? Entities being penalized didn't really know how the director had arrived at the specified amount, finding it excessive.

[*English*]

Ms. Tamara Trotman: Exactly. The second piece of the proposed amendments would allow for an ongoing court proceeding, and if the courts had issued a confidentiality order, FINTRAC would still be able to name the entity, the amount of the penalty and what it was for.

Mr. Ian Wright: I would also add that outside of this FINTRAC is revamping the process, and they are working on issues around ensuring greater visibility and transparency within how fines are determined and how the process works. That's separate from this. This is just a

procedure talking about the naming process, but FINTRAC is working quite actively to address the issues raised by the court in the proceedings you're referring to.

[*Translation*]

Mr. Pierre-Luc Dusseault: Therefore, the problem still stands. Only part of it has been addressed.

[*English*]

The Chair: Is there anyone else on this section? Thank you on subdivision C. We'll move to subdivision D, the Seized Property Management Act.

[*Translation*]

Mr. Nicholas Trudel (Director General, Specialized Services Sector, Receiver General and Pensions Branch, Department of Public Works and Government Services): Thank you, Mr. Chair.

I am going to briefly describe the status quo in relation to the Seized Property Management Act and, then, explain how it will work after the amendments are made.
[*English*]

Currently, my organization is responsible for administering seized property that's being seized pursuant to federal criminal charges only. There are specific charges for which the act is eligible. These are specific charges under the Criminal Code, the Controlled Drugs and Substances Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. These are very specific charges for which we are able to serve, and this would be upon issuance of a management order by a judge.

The current legislation and the limits that it has prohibit serving cases such as the fraud case that was described pursuant to your question, Mr. Chair.

Also, these criminal cases I think are not static. Although they may start out as a federal criminal charge, as a prosecution proceeds and investigations proceed, what began as an expected federal criminal charge may conclude ultimately in some other outcome: acquittal, a lesser charge, a plea bargain, etc.

The inability to provide services beyond the current scope of the act has some challenges associated with it. Firstly, if we're unable to serve law enforcement as a service provider for the management of these assets, that law enforcement is required to manage the assets themselves. If they are laying charges beyond or haven't laid charges yet, these assets remain with law enforcement to do. That means they spend law enforcement resources managing assets.

Certainly, the uncertainty of outcome from the outset of an investigation through to the end can prohibit the confiscation or seizure of assets or suspect assets. Lastly, as a challenge, it

could spell inefficiency, in that we have multiple levels of organizations—provincial, municipal, federal—all maintaining the capacity to deal with seized assets.

The changes to the act would allow my organization to serve any federal public official, provincial public official or municipal public official. We would be able to serve any offence: a specific violation of any provincial or federal law for assets that are connected to an offence, or when assets are believed to be intended for the commission of an offence. It's a much broader ability to support and we'll be authorized to manage and dispose of those assets and provide advice to client organizations.

It would require consent. Provinces, territories and municipalities would choose to use those services. This is not imposed. It's available to them if they so choose. Our minister or his representatives would be required to agree to provide the service, with a mutual agreement between the two of us. They would also need to agree to share the net proceeds, so if the outcome is that a seized asset is forfeited to the Crown and sold or liquidated and costs are recovered—that's how the program is paid for under the current act and how it will continue to be paid for after the proposed amendments—then the net proceeds of sale are shared with the jurisdictions that participated in the law enforcement action. That's also part of the existing regime.

Really, it represents a broadening of who we can offer services to and in what context, but the core function remains as it is today.

The Chair: In terms of proceeds from the sale of assets, is that shared now?

Mr. Nicholas Trudel: Yes.

The Chair: It is shared now and based on an agreement with the provinces or whatever.

Mr. Nicholas Trudel: That's correct. The current regulations, which aren't affected by these amendments, specify the sharing methods, both within Canada and abroad with foreign jurisdictions that participate in a prosecution.

The Chair: Could you give me an example of an asset that would need management? Would it be a yacht or whatever?

Mr. Nicholas Trudel: It's pretty much anything you can imagine. There are two general categories of assets. These are assets that are used in the commission of an offence. These are offence-related properties such as a vehicle used to smuggle, a property used for a clandestine lab, etc., and then there are the proceeds of crime themselves: the cash, the fancy cars, the luxury properties that folks would buy. They also include things such as businesses that can be used to launder money.

Prior to conviction, these assets, although seized, remain the property of the accused, so they need to be maintained. A business may need to continue to be run or a luxury vehicle may need to be preserved in the state in which it was seized. Even a residence may continue to be occupied by the accused while the process unfolds, and that can take years.

The Chair: Okay. Are there any other questions? To the witnesses, if you have anything you want to add, just put up your hand and we'll catch you.
Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: I have a simple question, Mr. Trudel. Was the amendment added at the request of the provinces and territories so that the government would help them with the disposal of assets?

Mr. Nicholas Trudel: My program staff are very engaged with their provincial and municipal counterparts.

In some cases, we already have mutual aid agreements in place. A number of provinces have signed memoranda of understanding regarding either the management of a particular case or the rules and procedures for co-operation. It's important to understand that a criminal case involving an asset is ever-changing. The process can be initiated with the expectation that it will take place at the federal criminal level, but the outcome can be completely unexpected. The asset may indeed be seized, but by another authority.

Therefore, we need to make sure we dovetail our approaches. The support being proposed is very much in line with the active co-operation that already happens between municipal, provincial and federal police authorities. They, too, work together very closely to determine how best to pursue the investigation.

Mr. Greg Fergus: Thank you, Mr. Trudel.

[*English*]

The Chair: Are there no other questions?
...

Mr. Greg Fergus: I guess I would try to figure out how we are taking into account, of course, the advent of Bitcoins, or cryptocurrencies, the abstracted term for it. How are we dealing with that, with crypto-wallets and the like?

Ms. Tamara Trotman: We're currently following the previous parliamentary review of the PCMLTFA at the regulatory stage. We're currently developing—

Mr. Greg Fergus: That's the 2013...?

Ms. Tamara Trotman: It was 2012, but yes, that's correct. We're currently in the process of the second phase of regulatory amendments. We're developing regulations related to virtual currencies, which include things like Bitcoin, etc. I guess it was in June of last year, in 2018, that we went out with the prepublication version, and are trying to finalize, before the end of this session, the regulations in that respect.

Mr. Greg Fergus: I have other colleagues around the table who are more adept than I am at understanding cryptocurrencies and that whole aspect. Forgive me if I'm out of my league on this one. It just seems like we're catching up to the last report, of 2012, in 2018. My sense from a lot of the testimony....

Sorry, Kim, you weren't there, but Pierre-Luc and Tom were there, or Dan was there, and Francesco.

I'm just trying to figure this out. There were a lot of demands for us to really try to get ahead of the game, because the market has evolved enormously since six years ago.

Ms. Tamara Trotman: Currently the Financial Action Task Force, which is the international standard-setting body in the space of financial crimes—money laundering, counter-proliferation and terrorist financing—is in the process of developing guidance around what they call virtual "assets", what we call virtual "currencies". Our legislation is largely compliant with the direction they are moving in. However, we're coming out in advance of the agreement on that standard internationally. We are slightly ahead of other jurisdictions in that respect.

Mr. Greg Fergus: Very good. Thank you.

The Chair: I believe Mr. Trudel wanted in.

Mr. Nicholas Trudel: To carry on with regard to the question, we've already seen some confiscation of virtual currency. We're dealing with our first case. Part of the benefits of the amendments we're proposing is that we will be able to lend that expertise to other jurisdictions within Canada. You can imagine a small municipality or provincial detachment that comes across a virtual currency confiscation. They may not have the capacity to know exactly how to handle it technically.

That's something we've worked on with the RCMP, in contact with colleagues internationally, in terms of figuring out how best to do this. We know that in some instances the real owner is invisible and not necessarily in Canada, so you can't necessarily lay a criminal charge within Canada. The amendments that we propose here and the expertise that we have, with the other changes that are proposed, would help us to get after these kinds of more complex assets that are used by more sophisticated operators.

May 27, 2019 [Standing Committee on National Finance]
Mr. Francesco Sorbara

Mr. Chair. I'd just like to comment that in the media recently, there has been much talk about the reports recently issued by the Government of British Columbia with regard to money laundering. As a committee, we were tasked to do a five-year review of anti-money laundering and terrorist financing. It was an exhaustive study that we did for a number of months. We travelled here in Canada and abroad. The review is something that the committee was tasked

to do and did quite judiciously, and it is something that our government has obviously dedicated resources to in budget 2019.

It concerns all Canadians from coast to coast to coast that Canada has become or is a centre point for money laundering. It's very fitting to see that in budget 2019 we are continuing to undertake a number of measures, which I think all parties would applaud, in terms of fighting money laundering whether with regard to its impact on house prices in Vancouver or Toronto, or with regard to the impact in general of lost tax revenues for our government to fund the services we need.

The proposed amendment would add a reference to compliance agreements in the provision that makes public naming automatic in certain circumstances with respect to violations related to the proceeds of crime, money laundering and terrorist financing.

It's also being proposed that a level playing field be ensured so that all regulated entities that commit a violation will be named, including when a compliance that remains in place between the reporting entity and Financial Transactions and Reports Analysis Centre of Canada, otherwise known as FINTRAC, would also ensure that there is no advantage for regulated entities to enter into a compliance agreement with FINTRAC to avoid naming.

June 10, 2019 [Senate]
Hon. Elizabeth Marshall

...
Honourable senators, I want to say a few words now about money laundering. This issue was referred to the Standing Senate Committee on Legal and Constitutional Affairs, but I was interested in this topic. I was doing a bit of research before that section of the bill was referred to another committee. I want to talk about it and then, later on, I can refer to what the Legal and Constitutional Affairs Committee had to say about the issue.

Honourable senators, in Budget 2019, the government lays out its concerns regarding money laundering. For the past few years, the issue of money laundering has played out in the media in British Columbia. Last year, the B.C. government retained retired RCMP Deputy Commissioner Peter German to conduct an independent review of money laundering in Lower Mainland casinos. His report was released in March 2018.

More recently, two other reports have been released on money laundering in real estate, luxury cars and horse racing. These reports were commissioned in September 2018, following a widespread concern about the province’s reputation as a haven for money laundering.

The first report was from an expert panel on money laundering, which was appointed by the B.C. government to review money laundering in the real estate sector. The second report was

from Peter German's second review into money laundering, focusing on the construction industry, real estate, luxury cars and horse racing.

The C.D. Howe Institute also released a report entitled, *Why We Fail to Catch Money Launderers 99.9 percent of the Time*. In this report, author Kevin Comeau says that Canada's anti-money laundering protections, especially as they pertain to real estate, are among the weakest of those of Western liberal democracies and billions are being laundered in Canada annually.

In addition, the House of Commons Finance Committee issued a report in November of last year on their review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

The Standing Senate Committee on Banking, Trade and Commerce also issued a report in 2013 titled as follows: *Follow the Money: Is Canada Making Progress In Combatting Money Laundering and Terrorist Financing? Not Really.*

The federal government has been criticized for not taking enough action to counter money laundering.

Budget 2019 commits $11 million this year and $141 million over five years to the RCMP, Public Safety Canada, Canada Border Services Agency and FINTRAC to strengthen Canada's anti-money laundering and anti-terrorist financing regime.

In addition to the funding, Bill C-97 proposes amendments to the Criminal Code and Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

As I mentioned earlier, this section of the budget implementation act on money laundering was referred to the Standing Senate Committee on Legal and Constitutional Affairs, and I will comment further on this item later in my speech.

June 17, 2019 [Senate]
Hon. Peter M. Boehm

...Our colleague, Senator Marshall, referenced money laundering in her speech. We all know of the report from May out of British Columbia about the staggering amount of laundered money that seeped into the economy of that province last year — more than $7 billion, in fact. Worse still, that places British Columbia fourth, behind Alberta, Ontario, and the Prairie provinces. The report that uncovered the depth of the problem was prepared by British Columbia's Expert Panel on Money Laundering, which was chaired by Professor Maureen Maloney. Evidently, money laundering is a national concern.

The report estimated that, in 2018, $40 billion worth of proceeds of crime seeped into the Canadian economy.

Colleagues, we can surely all agree that, so far, Canada's laws haven't gone far enough in tackling what is a critical issue.
[*English*]

Senator Wetston and Senator Downe have been especially strong in this chamber on the subject and on the corresponding matter of beneficial ownership. In recognition of the very real impact dirty money has on Canadians — for example, increased house prices — Bill C-97 seeks to strengthen Canada's anti-money-laundering rules. The suite of amendments includes changes to the Canada Business Corporations Act, the Criminal Code, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and the Seized Property Management Act.

These amendments, once Bill C-97 passes, will improve timely access to beneficial ownership information; add "recklessness" to the offence of money laundering, which would have the effect of criminally punishing people who, knowing the money might be illegal, moved money on others' behalf despite the potential criminal nature of doing so; add the Competition Bureau and Revenu Québec to the list of entities entitled to financial intelligence information from the Financial Transactions and Reports Analysis Centre of Canada, FINTRAC; broaden access to specialized asset-management services and increase transparency in administrative monetary penalty procedures and clarify confidentiality of proceedings. That last point, covered by clause 111 of Bill C-97, will ensure that any regulated entity found to have committed an infraction under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act will be named publicly, as will their financial penalty, by FINTRAC.

This is an especially important change. We cannot underestimate the power of "naming and shaming" when it comes to ensuring companies follow the rules. In that spirit, just last week, the Financial Services Committee of the United States House of Representatives passed the Corporate Transparency Act. While it still must make its way through the rest of the legislative process, the Corporate Transparency Act is intended to require companies to publicly disclose their true beneficial owners to FinCEN, the United States Treasury Department's Financial Crimes Enforcement Network. Corporations would need to disclose those names as soon as the company is established and would also need to provide FinCEN annually with updated lists of beneficial owners to ensure the public registry is accurate. The intention is to make it much more difficult for criminals and other bad actors to launder their ill-gotten gains through anonymous shell companies.

It is my hope that Parliament will soon look at implementing similar legislation in Canada.

To further combat the far-reaching problem of money laundering here at home, the government very recently committed new funding for the RCMP. Minister of Finance Bill Morneau and Minister of Border Security and Organized Crime Bill Blair announced on Thursday that the RCMP will receive $10 million for improved technology that will help the RCMP with its investigations.

British Columbia's own Finance Minister, Carole James, welcomed the announcement but stressed that there needs to be more of a focus on enforcement.

An Act Respecting National Security Matters (Bill C-59)

Citation 2019, c. 13

Royal Assent June 21, 2019

Provisions Amended 53.4, 53.5, 55

Hansard

February 13, 2018 [Standing Committee on Public Safety and National Security][Entire Exchange]

Mr. Michel Picard: My question is for CSIS and the RCMP. Throughout the bill, we note the absence of FINTRAC. That is not an oversight. There is no denying that terrorist financing is a reality. That said, the current trend is to keep reducing the cost of terrorist attacks. For example, a truck may be stolen and crashed into a crowd. The financial aspect has changed.

In the current modern circumstances, would it be a good idea to reconsider the link with FINTRAC? Are our legal methods for working with the organization enough to keep us from having to establish a link with FINTRAC in Bill C-59?

[Expand]

D/Commr Gilles Michaud: I think that our current relationship with FINTRAC and the existing legislation help us do our work. That actually gives us some flexibility. The threat can increase and be expressed in a certain way over a period of time, and then the method can change. We can always share information with FINTRAC. The legislation makes those exchanges possible under any circumstances.

[Expand]

Mr. Malcolm Brown: I would like to add that there is now a five-year review of the terrorism legislation....

[*English*] John what's the full title of the act?

[Expand]

Mr. John Davies (Director General, National Security Policy, Department of Public Safety and Emergency Preparedness): The Proceeds of Crime (Money Laundering) and Terrorist Financing Act is now in its five-year review. The Department of Finance has put out a discussion paper asking for feedback on how to improve the act.

[Expand]

Ms. Tricia Geddes: I would concur with my colleague. We work very closely with FINTRAC. I don't believe there are any changes required there. We invest in counterterrorism investigations, and terror financing is one aspect of that.

June 7, 2018 [House of Commons

Mr. Tom Kmiec

Mr. Speaker, the member is right. There were 29 amendments proposed. Many of them dealt with assuring ourselves that our security agencies would have the information they needed to be able to conduct their investigations and to disrupt terrorist networks.

One thing I will mention is that there are provisions in the legislation where the intelligence commissioner, I think is the title, would not be able to look at things such as FINTRAC. Having sat on the Standing Committee on Finance, I know that FINTRAC collects a large volume of financial information on the activities of Canadians to try to deter and detect fraud and money laundering operations, much of which is done by those who would support, promote, and advocate terrorism and who finance these types of activities. Those are some of the failings I see here, where the Liberals did not accept a single one of our amendments that would have assured us there would be more information-sharing between our agencies.

Appendix C

Amendments to s. 354 of the *Criminal Code*

Table of Contents

An Act To Amend The Criminal Code And Certain Other Acts (Criminal Law Improvement Act, 1996), S.C. 1997, c. 18 (Bill C-17)

Citation 1997, c. 18, s. 23

Royal Assent April 25, 1997

Hansard

June 10, 1996 [House of Commons]

Mr. Michel Bellehumeur (Berthier-Montcalm, BQ)

…Another amendment in this bill is aimed at making it easier to prove that someone helped launder the proceeds from crime. I must say right away that this is a step forward. We in the opposition have sought and continue to seek a major change, or at least a tougher attitude, in this regard, given that several countries consider Canada as an ideal place to launder money. I think this amendment is a step forward, but we will still need to look very seriously into this issue at some point in time, to ensure that Canada does not keep this unenviable title of crime money laundering paradise.

For the time being however, as far as the bill before us, Bill C-17, is concerned, we suggest adding to the list of ways of participating in the laundering of proceeds of crime the fact that a person accepts that money be deposited in an account under his or her name, while knowing or believing this money was derived from a designated offence.

Recently, several people have received letters requesting permission to deposit certain amounts in their banks accounts. Again, this is a current concern. There was a piece on this in L'Actualité a few months ago. Those who accepted later found their bank accounts to have been emptied out. Certainly, there is an element of voluntary blindness in accepting money from some unknown source abroad, under the mere promise of an eventual profit. But it did not pay off in the end, as the defrauder, who had deposited money in their bank accounts, then took it out, along with all their savings. This may be one of the means used to hide and launder proceeds from crime and, as I said, I think it should be provided for and included in Bill C-17.

June 10, 1996 [House of Commons]

Mr. Jack Ramsay (Crowfoot, Ref.)

…We also support the portion of the bill which strengthens the proceeds of crime legislation by ensuring that criminals do not retain the profits of their crimes, but we cannot support Bill C-17…

November 28, 1996 [House of Commons]

Shaughnessy Cohen (Liberal)

Bill C-17 contains Criminal Code improvements and they are opposed to that. Every attorney general in this country wants Bill C-17. It modernizes the Criminal Code. They need it to help them in law enforcement, but the Reform Party thinks it is important for us not to take advice from attorneys general and instead to cram unworkable and ridiculous procedures down their throats.

…

If that is not enough, there were a few things that we did which were not even in the red book or that were not promised. We launched a national flagging system as part of the Canadian Police Information Centre to help crown attorneys deal more effectively with high risk offenders at the time of prosecution. We established an anti-smuggling strategy to combat illegal trade in tobacco, firearms and alcohol. We continue to implement the war crimes strategy announced in January 1995. We expanded efforts to fight organized crime by seizure and forfeiture of assets and provisions against money laundering, and on and on and on.

April 15, 1997 [Senate]

Hon. Lorna Milne

….This bill makes several significant changes to the part of the Criminal Code that deals with search and seizure. This area of the law has become increasingly tricky since the advent of the Charter. The Charter guarantees every one the right to be secure against unreasonable search and seizure. In recent years, the courts have been engaged in detailed scrutiny of the actions of law enforcement officers in the investigation of offences. Often, a conviction or acquittal will depend on whether or not the police obtained the evidence in accordance with Charter requirements. A number of amendments will clarify the law and codify what the courts have said about search and seizure.

Some other amendments will add to the kinds of warrants that can be obtained. Finally, several amendments will reduce the administrative burden on law enforcement authorities in relation to property that was seized under a warrant or other statutory or legal authority. A justice will also have the authority to permit the sale or destruction of perishables or other things that can depreciate rapidly. All of these changes will eliminate procedural and technical complications in the law and permit law enforcement to act with greater efficiency and fairness…

An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act, S.C. 2018, c. 29 (Bill C-51)

Citation 2018, c. 29, s. 39

Royal Assent December 13, 2018

Hansard

N/A

Appendix D

An Act to Amend the Criminal Code, the Food and Drugs Act, and the Narcotic Control Act, S.C. 1988, c. 51 (Bill C-61, 1988)

Originating Enactment – *Criminal Code*, s. 462.3

Table of Contents

August 13, 1987 [House of Commons]

for society that our legislation provide for the confiscation of the proceeds of organized crime.

A number of criminal activities—illegal drug trafficking, to name one—are often organized and carried out much like major corporation business operations. Those activities generate tremendous profits that are then used to finance other criminal activities and to infiltrate legitimate businesses.

It is estimated that organized crime includes all types of criminal activities that come under the general heading of continuing agreements between people for gainful purposes. It is believed that one of the most effective ways of reducing that kind of crime is to eliminate the profit motive by getting at the gains produced by it.

Although organized crime can derive tremendous profits from illegal activities, Canadian law as it now stands has no provisions for freezing, seizing or confiscating monies gained from crime. In 1976, for the first time in Canada, legislative measures were passed to deal with the possession of illicit gains. Section 312 of the Criminal Code makes it an offence to have in one's possession property unlawfully obtained by whatever means.

Investigations and prosecution of offences under Section 312 unfortunately proved ineffective because investigation powers and procedures capable of identifying, freezing and seizing criminal proceeds are not adequately developed, either in law or in practice. For instance, money deposited into a bank account and real property cannot be seized.

In cases where gains from criminal transactions cannot be identified, there is often no way to prevent the divestiture of property before judicial proceedings are completed.

The confiscation of proceeds cannot be ordered under Section 312 where the prosecution of an offence under that section leads to a guilty verdict.

The efficacy of confiscation procedures depends on the possibility of seizing property to ensure that it can be preserved until proceedings are completed.

The Acting Speaker (Mr. Paproski): Order, please. The Hon. Member for Quebec East (Mr. Tremblay) has the floor.

Mr. Tremblay: Thank you, Mr. Speaker, for allowing to reinstate a degree of silence in this dignified Chamber.

As I said, the efficacy of confiscation procedures depends on the possibility of seizing property so that it can be preserved until proceedings are completed. That kind of procedure already exists in civil law where there is a danger that the property in dispute disappear before the court makes a determination as to how it should be disposed of.

The system of search warrants under the Criminal Code provides for the seizure and retention of all things that can be classified as evidence of an offence, instruments used to commit an offence, or the subject of the offence itself.

Those provisions do not apply to the proceeds of criminal acts unless they are indeed property or monies derived from the committing of an offence.

When it is impossible to seize the holdings physically, for instance when the proceeds have been put into real estates, shares or maybe bank deposits, the provisions of the Criminal Code are not far-reaching enough to allow for the seizure and freezing of these proceeds and no provision of the current penal code can prevent the accused from disposing of them.

I should like to remind my hon. colleagues that the Minister of Justice and Attorney General of Canada (Mr. Hnatyshyn) recently introduced in the House a Bill to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act to deal specifically with the proceeds of crime. Bill C-61 provides our courts with new powers to seize the proceeds of crime and the police with new judicially-controlled investigative powers allowing for the search of people and premises and the seizure of assets. Finally, the Bill would provide third parties having an interest on a seizable assets with protective and redress mechanisms.

The Bill will create new offences in order to fight against the laundering of the proceeds of organized crime, illegal drug trafficking as well as the possession of property obtained through drug offences. If the Bill is adopted, it will provide an efficient tool for the fight against organized crime.

I recognize that the motion moved by my colleague the Hon. Member for Trinity (Miss Nicholson) is well-founded, but in view of the Bill introduced recently by the Government to fight against organized crime and especially against the accumulated proceeds of crime, I must oppose motion M-44.

Mr. Jean-Robert Gauthier (Ottawa—Vanier): Mr. Speaker, I welcome this opportunity to take part in the debate this afternoon on motion M-44, moved by the Hon. Member for Trinity (Miss Nicholson), and to speak to the amendment proposed by the Hon. Member for York Centre (Mr. Kaplan), that the Royal Commission report to the House within six months of its appointment.

Mr. Speaker, this motion deals with one of the important issues of the day. It is worded as follows:

> That, in the opinion of this House, the government should consider the advisability of appointing a Royal Commission to investigate organized crime in Canada and to include in its report observations and recommendations on:
>
> 1. the extent to which organized crime is present and active in Canada;
>
> 2. the extent to which organized crime is connected to the institutions of Canadian society;
>
> 3. actions taken by the governments of other countries to investigate and curtail organized crime activity;
>
> 4. legislation to enable the government to identify and appropriate the proceeds of organized crime;
>
> 5. effective and appropriate punishment;
>
> 6. possible guidelines.

Mr. Speaker, we have had some very striking examples in this country of illegal activities, and we have been able to deal

with these in very effective ways. I am thinking of the tainted meat scandal in Quebec and the colourful saga of the Dubois clan. There was an inquiry which at the time made it possible to put a stop to these activities and at the same time inform the public of their existence.

I believe that in 1987, a similar approach, and I am thinking of a Royal Commission of Inquiry, might prove beneficial. I know opponents of this procedure argue that the cost is too high, the process takes too long, and so forth. The amendment proposed by the Hon. Member for York Centre (Mr. Kaplan) to have the report submitted within six months of the Royal Commission's appointment would seem to deal with these concerns, at least with the concerns raised at the time. As for the financial side of the matter, I would like to deal with this briefly later on in my speech.

Mr. Speaker, in June the House spent a lot of time debating capital punishment, and so far hardly anything has been done to reduce the crime rate. We were promised a number of measures and studies, but we have yet to see anything tangible from the Government or the Committee on Justice and Solicitor General. I know that the Hon. Member for Ottawa West (Mr. Daubney), for instance, who chairs the Committee on Justice, has proposed to review the whole prison system and the whole problem of criminality.

Mr. Speaker, this issue is important, and the Hon. Member for Trinity (Miss Nicholson) should be congratulated on her initiative, which could be more effective, progressive and useful in the long term in attacking organized crime than the Government initiative of launching a debate on capital punishment, which, as we all know, was resolved by the decision of the House not to reinstate capital punishment in Canada. However, we are still waiting for this Government to take some practical action to reduce the crime rate and provide a feeling of security for Canadians in their own country.

As for the monetary aspect, Mr. Speaker, the cost of criminal activities has been estimated at $2.2 billion in Ontario, and at $10 billion in Canada as a whole. This is to reply to the economic argument that a Royal Commission is costly. We have to realize that the hidden costs of criminality, since criminals operate out of the public eye, amount to $10 billion a year. I imagine that a Royal Commission could cost us a few million dollars and that such an investment would surely yield a lot in return.

What we have to ask, obviously, is this: Would the economic advantages of attacking this problem and preventing abuses not benefit all Canadians? The answer is obviously yes. Naturally, if we can stop the rise of crime by keeping Canadians better informed about criminal activities, we could save substantial amounts and put a stop to these criminal activities.

I have not heard as yet the exact figure of what a Royal Commission would cost. I do not know whether it is available but at any rate, I think that those costs can easily be determined on the basis of other Royal Commissions. But I suggest, Mr. Speaker, that ultimately, there will be spinoffs and we will save money.

The Canadian people and the general public often do in a naive way, if you want, things that they consider quite trivial and that take place every day. For instance, in a tavern, they will bet on a hockey or a football game without being concerned with the consequences, even though that is in fact illegal. Because you are dealing with people who make a buck through bets on football or baseball games, or any other sport event, and those dealings take place in taverns or elsewhere and are organized by groups of people who are benefiting from those investments, I think that Canadians should know that illicit groups grab an enormous amount of money, taking advantage, as I said earlier, of that laxity, that lack of interest that some people have occasionally for common practices, bets in this case, and other events as trivial as a horse race or a baseball game. They think as many other people that they do not harm anybody, when they make a $2 bet on a horse or a football game. But in fact, Mr. Speaker, those two dollars are unlawfully laundered by illegal agencies and groups to their profit. This is how some unlawfully earned amounts of money are gradually embezzeled and used for illegal activities. Those funds will then be invested in other illegal activities which will bring about more money for those involved. That is why in Canada, every year, organized crime rakes in some $10 billion from unlawful activities. Being outside traditional economic systems, all the money does not benefit Canadian society very much. Indeed, it contributes to social degradation. Criminal activities generate human misery and, if I may say so, are the greatest misery inflation factors in Canada. The rich do not play those games and bet those two dollars, Mr. Speaker. More often than not, those with low or average income are attracted by such games, fall victims to and enrich profiteers.

For those reasons, Mr. Speaker, and I could cite many more but I think my time is almost up, I believe the motion brought forward by my colleague, the Hon. Member for Trinity (Miss Nicholson), is highly justified and timely. That is why I will vote for it, and I urge my colleagues in the House, regardless of their political affiliation, to do likewise.

In conclusion, Mr. Speaker, let me congratulate the Hon. Member for Trinity (Miss Nicholson) once again for her initiative, and I hope the Government will act on it in the near future.

■ (1710)

[*English*]

Mr. Geoff Wilson (Swift Current—Maple Creek): Mr. Speaker, I am pleased to rise to speak to the amendment put to the motion of the Hon. Member for Trinity (Miss Nicholson). In doing so, I would like to commend her for bringing the issue of organized crime to the attention of the House. I fear, however, that the proposed Royal Commission to investigate organized crime might have an effect opposite to the one

presumably desired by the Hon. Member who put the motion forward.

Some Canadians, perhaps influenced by the American media, have vastly inflated views and ideas of the extent of organized crime in Canada and of the extent of organized crime involvement in Canadian social, economic and political institutions. I certainly do not want to minimize the threat posed by organized crime in Canada, particularly in relation to drug trafficking, and indeed I cannot help but feel that in this area and some other areas of criminal activity, the matter of capital punishment ought not to be forgotten.

I note that the previous speaker made reference to what he termed the futility of such a debate. I certainly take issue with that statement and suggest that ultimately, society will revisit that area in relation to this very topic which is under discussion today. In any event, I am confident that the combined law-enforcement efforts of all Governments in Canada are becoming increasingly effective in controlling organized crime.

As well, I think it should be noted that there is no evidence of widespread organized criminal involvement in Canadian institutions. In my view, therefore, there is little benefit to be derived from establishing a royal commission to delve into these matters.

Again, contrary to the views of the previous speaker, the Hon. Member for Ottawa—Vanier (Mr. Gauthier), I frankly fail to appreciate the spin-off dollar value about which he spoke relating to the establishment of a royal commission. Obviously, royal commissions are extremely expensive, and because the rules of evidence at such commissions are less rigorous than those in courts of law, the evidence adduced before such commissions cannot be used in court proceedings. Therefore, such proceedings would at best be of little value to law enforcement.

Moreover, I think it is possible that a royal commission could unnecessarily alarm Canadians by creating the impression that organized crime was not being adequately addressed by Canadian authorities and by the courts. In addition, one cannot help but be concerned that a royal commission could tend to deflect both attention and resources from ongoing intelligence and enforcement efforts and possibly retard the investigation and prosecution of these cases.

■ (1750)

Just as important, the proposed royal commission might constrain ongoing federal, national, and international initiatives aimed at organized crime control. As I noted earlier, the federal, provincial and municipal Governments are already deeply involved in and heavily committed to controlling organized crime. National intelligence systems are in place and are being upgraded regularly. Police forces are combining their knowledge, experience and investigative skills in joint forces operations targeting major organized crime figures.

Major institutions, such as the Canadian banking community, are examining ways and means of minimizing the extent to which they can be used to launder money. Both federal and provincial government Departments are increasingly exploring the extent to which statutes other than the Criminal Code can be applied to the prevention or control of organized crime. Police training, both provincially and nationally, is being upgraded to ensure that officers have the knowledge and skills necessary to detect organized crime and to gather evidence required for the successful prosecution of major cases. These efforts are not widely appreciated and reported on in the Canadian media. In Canada we tend to proceed more quietly and with less fanfare than in the U.S.

In my view, the approach of Canadian law enforcement authorities to organized crime has been and is very effective. It focuses efforts and resources and reflects excellent co-operation between all jurisdictions in the prevention, detection, investigation and prosecution of organized crime figures. It is particularly concerned with the rights of persons who become innocent and unwitting participants in organized crime.

Law enforcement policy and activities operate to preserve the confidence of Canadians in the integrity of social, political and economic institutions as the major influences constraining the corruption that organized crime attempts to promote. Key to this is the integrity of Canada's police, courts and other law enforcement institutions as our front line defence against organized crime.

It has been stated that the criminal underworld in a given society is a direct reflection of the integrity and morality of the institutions of government and business. We must sustain policy and programs to ensure that Canada will never become a country in which the underworld can take root. This demands continued vigilance by governments and law enforcement authorities.

I believe this Government recognized the Hon. Member's legitimate concern respecting organized crime. Canada continues to act in concert with the provinces to enhance enforcement efforts. A royal commission would add little to the mechanisms already in place or under development to deal with organized crime. Rather, this House should support and encourage the federal and provincial Governments in their law enforcement activities, including the expeditious handling of legislation designed to make the law more effective in dealing with organized crime.

While I am confident that the motion put forward by the Hon. Member for Trinity reflects serious concern over the extent of organized crime in Canadian society and the availability of measures to facilitate law enforcement efforts, I would like to assure her that members of the Canadian police community, and other dedicated criminal justice professionals, are acting competently in their response to the problem. They have the confidence of this Government and merit the support of all Members of this House, and Canadians generally. It is for those reasons, I believe, it would not be in the best interests

of Canadians and our efforts against organized crime to establish at great expense a royal commission which I believe would be of little use in attacking the problems and perils posed by organized crime to Canadian society.

Hon. Lloyd Axworthy (Winnipeg—Fort Garry): Mr. Speaker, I am disappointed in the speech given by the Hon. Member speaking on behalf of the Minister of Justice (Mr. Hnatyshyn). We have heard the speech before and it did not address the important points brought forward in this debate. There is a sense of complacency, a feeling that everything that needs to be done is being done. I think that assertion has to be challenged on two grounds.

First, this is a legislative Chamber. We pass laws here. That is the prerogative and responsibility of this House, not of the police or the administrative arm of justice, but of legislators. It is clear that legislative change is required. The President's commission in the U.S. came forward with recommendations requiring major statutory change. Why would we abdicate our responsibilities when there is a clear need in that country to make changes? The Hon. Member seems to be assuming that everything that can be done, except in the area of reform legislation, is being done. I for one do not believe that we should have others take on our responsibilities. That is why I believe the proposal of the Hon. Member for Trinity (Miss Nicholson), as amended, is a proper response to the problem by a Member of the national legislative Chamber of this country.

My second ground is that one has to accept almost as a matter of faith that the problem is being handled. Yet what evidence is offered to support that claim? I heard nothing that would give one any sense of confidence that the worldwide problem of the laundering of drug money has somehow bypassed Canada. Yet that assertion has been made. One of the real values of a royal commission would be to tell us what is going on. I think it is particularly appropriate because of the changes instituted in other countries to deal with this problem. If they tighten their control, that will put pressure on the Canadian financial system if we have not made similar reforms. That kind of dirty money will find an outlet. If other countries apply new laws, then it is almost automatic that organized crime will try to find other countries to access. If we have turned a blind eye to the problem, it follows that we would become a target for that kind of penetration by organized crime in its efforts to find a safe haven for its immense financial resources.

I have another comment to make. I do so with some reticence but it has to be said. The Government's defence for not supporting this resolution is that it will cost too much. I read somewhere in the last couple of weeks that the legal fees the Government is paying for the defence of one of its former Ministers in front of a royal commission is now close to $1 million. The defence fund for Mr. Stevens was originally $200,000 and has now gone up substantially, to say nothing of the cost of the commission itself which I think has come close to $3 million. That was to investigate the alleged wrongdoings of one Minister of the Government. The Government is now claiming that it does not want to spend any money to look at the widespread problem of organized crime which affects a wide variety of activities for reasons of economy. I do not think that is a fair and proper balance of responsibilities. I am not necessarily condemning the actions of the Government with respect to the royal commission for Mr. Stevens and his actions.

• (1130)

The Acting Speaker (Mr. Paproski): Order, please. It is the Member for York Peel (Mr. Stevens).

Mr. Axworthy: I am sorry, the Member for York Peel (Mr. Stevens). However, I am pointing out that the Government was prepared to do that but seems to be saying that we cannot afford that with regard to organized crime and its financial implications in Canada.

I also do not agree with the argument that money spent on a royal commission would be taken away from law enforcement. It may well be that a royal commission, finding efficacious ways of dealing with the problem, could save a lot of money in law enforcement by learning where and how to implement effective measures. Rather than sailing blindly into this problem, we would know where to go.

I believe that the amendment which was introduced by the Whip of our Party is a real effort to ensure that there are limitations. The Hon. Member for Trinity is not prescribing a long-term pension plan for a royal commission. This is something which would be quick and to the point, would address the problems, and would pass the results back to the Government.

I wonder why there is this reluctance, this hesitancy to come to grips with the issue. Is it because it would expose things which the Government does not want exposed? I raise this not in an accusatory way but in a questioning way. It may be that there is some anxiety that a royal commission would reveal that we are not taking the proper measures to meet the problem and that a careful examination of the problem would reveal real weaknesses.

This is a Private Member's Motion with no partisanship attached to it. It is a clear reflection of an important interest. I remind Members of the debate which ensued in this House last spring on the issue of capital punishment. I listened to and read most of the speeches on that issue. All Members on both sides of the issue stated that they believed that their constituents were concerned about the possibility of increased crime or violence in society. We differed on the solution to the problem as it applied to capital punishment.

This measure is directed against one part of that problem. It is designed to deal with a part of that issue, to come to grips with a grueling and expanding difficulty, and to allow independent judgment to be made and recommendations to

follow. I hope that the Standing Committee on Justice and Solicitor General will deal with other aspects which were raised in that debate with regard to the judicial and the penal systems.

I think we must confess that we do not know much about organized crime. It is something we see in movies and read exposés about by former members of the gang. However, we have never examined that problem effectively in this country. This is an opportunity to open the lid on a very crucial and important problem which has been examined in the United Kingdom, the United States and other countries. I believe the Member has taken a very important initiative as a private Member. I hope that in the spirit in which it was brought forward and in the interests of this Parliament of protecting its prerogative to look at new legislation and important issues, we will support the Member in her efforts.

Mr. Darryl L. Gray (Bonaventure—Îles-de-la-Madeleine): Mr. Speaker, I rise with very serious thoughts tonight in the House of Commons. Having been elected only in September, 1984, I take very seriously the remarks of my more experienced colleague, the Member for Winnipeg—Fort Garry (Mr. Axworthy). I would like to congratulate my hon. colleague, the Member for Trinity (Miss Nicholson), on the motion she has presented. It is very important for us. I come from Quebec and perhaps I should speak in French.

[Translation]

Sometimes I feel I ought to speak in French. At the same time, Mr. Speaker, I would like all Canadian men and women to understand what such a measure means to us. So I will speak in English from time to time, and perhaps I will say a few words in French as well. But French-speaking men and women of Canada must know how important Bill C-61 is to us.

[English]

Organized crime is usually defined as the activities of a group of persons who seek to operate outside the control of the Canadian people and their governments. It can involve hundreds of criminals working within structures as complex as those of any large corporation, subject to laws which may be more rigidly enforced than those of legitimate governments. Its actions are not those of legitimate governments, but of conspiracies.

The core of organized crime activity is the supplying of illegal goods and services—gambling, loan-sharking, narcotics and other forms of vice—to countless numbers of citizen customers. Organized crime is also extensively and deeply involved in legitimate bususess. This is the danger. Here it applies illegitimate methods—monopolization, terrorism, extortion and tax evasion—to drive out or control lawful ownership and leadership and to exact illegal profits from the public. To carry on its many activities secure from governmental interference organized crime corrupts public officials.

Organized crime wants money and power. It is different from law-abiding organizations and individuals with those same objectives in that the ethical and moral standards the criminals adhere to, the laws and regulations they obey, and the procedures they use are private and secret. They devise them themselves, change them when they see fit, and administer them summarily and invisibly.

Organized crime affects the lives of thousands of Canadians, but because it desperately preserves its invisibility many—perhaps most—Canadians are not aware of how they are affected or even that they are affected at all. The price of a loaf of bread may go up by 1 cent as the result of an organized crime conspiracy, but a consumer has no way of knowing why he is paying more. We cannot allow this to happen, Mr. Speaker.

It is organized crime's accumulation of money, not the individual transactions by which the money is accumulated, that has a great and threatening impact on Canadian society. Organized crime in Canada exists by virtue of the power it purchases with its money. The millions of dollars it can invest in narcotics or use for lay-off money give it power over the lives of thousands of people and over the quality of life in the legitimate economic system that presently exists in Canada.

• (1740)

The millions of dollars it can spend on corrupting public officials may give it power to maim or murder people inside or outside the organization with impunity. It will give it power to extort money from businessmen and to conduct business in many fields without regard to administrative regulations, to avoid payment of income tax.

The purpose of organized crime is not competition with visible, legal government but the nullification of it. When organized crime places an official in public office it nullifies law enforcement.

I am very serious about supporting the motion that has been brought forward by the Hon. Member for Trinity. As everyone in the House is aware, the Minister of Justice (Mr. Hnatyshyn) tabled a Bill to deal with the problem of proceeds of crime. Bill C-61 proposes a number of amendments to the Criminal Code, the Food and Drugs Act, and the Narcotic Control Act, and addresses the problem of illegally obtained proceeds and assets by providing law enforcement agencies with the necessary powers to investigate, *freeze* and *seize* the proceeds of certain crimes and by providing the courts with the powers to confiscate the proceeds of these crimes.

I am sympathetic with the motion that has been brought forward by my hon. colleague, the Member for Trinity.

[Translation]

Mr. Speaker, I would like to stress again that it is not very often that we have the chance, the opportunity, to change and improve our laws.

Mr. Speaker, I believe, as the Hon. Member for Bonaventure—Îles-de-la-Madeleine, that it is important as Quebecers or as Canadians, that we recognize that it is our security

system and our body of laws which provide the means to fight the lawlessness we have in Canada, Mr. Speaker, and that the Government is here to guarantee our security and to protect Canadian men and women.

Mr. Nic Leblanc (Longueuil): Mr. Speaker, I am pleased to address the House tonight and speak about drug trafficking. As the father of two young children, I can tell you, as most fathers and mothers across the country, that the drug problem is one of the worst problems that exist in the world today. To solve that problem in Canada and around the world, it is necessary that Canada co-operate with other countries to guarantee a better control at the international level.

Mr. Speaker, the motion before the House today highlights drug trafficking and its connection with organized crime. I would like to talk about the various measures taken by this Government.

The previous Solicitor General led, in 1985, the Canadian delegation to the seventh United Nations conference on the prevention of crime and the treatment of offenders, held in Milan. Hon. Members and Canadians will be glad to know that Canada played a leadership role in the drafting of measures to fight international drug trafficking. Besides supporting United Nations initiatives, in particular the new convention on illicit drug traffic, we are co-operating with members of the Economic Summit in the fight against drug abuse.

On April 25, 1986, Canada ratified, along with France, the United States and Italy an agreement on drug control. That agreement is the result of efforts made since 1970 by the four-power Conference including representatives from the *Police nationale française*, the U.S. Bureau of Narcotics and Dangerous Drugs and Canada's RCMP. On March 4, 1986, Canada fully endorsed along with Italy the five-year agreement to prevent and eliminate the traffic in narcotics and dangerous drugs. Mr. Speaker, I think Hon. Members will be glad to hear that Canada will host here in Ottawa the coming four-power Conference next month.

I referred earlier to the development of a draft United Nations Convention on the illicit traffic in drugs. Canada co-sponsored, on the occasion of the 39th Session of the United Nations Commission on narcotic drugs held in February, 1985, a resolution on the starting up of the development of a draft convention against the illicit traffic in narcotics and psychotropic substances. That new convention is viewed as a necessary and effective tool for the implementation of the measures against drug trafficking. A Canadian delegation including representatives from the secretariat of the Department of the Solicitor General and the RCMP attended in February 1986 an extraordinary session of the United Nations Narcotics Commission, where significant progress were made as to the identification of matters to be included in the draft convention.

With the exception of certain matters concerning the control of ships and extradition, Canada generally supports the proposed provisions.

Canada views as a top priority the inclusion in the draft convention of a provision to allow each member State to trace, freeze and confiscate profits derived from drug trafficking. Most importantly, it will enact for its part domestic legislative measures making it easier to seize and confiscate those profits, especially those derived from trafficking in illicit drugs.

Another important proposed provision would be an essential tool against the manufacturing of forbidden drugs. It deals with the international control of the major precursors used in the manufacturing of forbidden drugs, for the purpose for instance of extracting heroine from opium and cocaine from coca.

Another still, dealing with controlled deliveries, that is the transportation of forbidden drugs under specified, known and police-approved conditions, is aimed primarily at extending the offence so as to allow the arrest and conviction of the major actors rather than simply seizing the drugs and arresting middlemen.

Controlled deliveries are an effective technique which, where successful, enables to identify the major conspirators and instigators and to go right up to the top of an international connection.

As far as mutual judiciary assistance is concerned, significant progress has been made in the area of international exchange of information aimed at fighting the illicit drug trade. Efforts from now on will be aimed at transmitting evidence and information that can lead to the seizure of profits derived from drug trafficking. Unlawfully acquired property to all practical purposes remains out of reach, by reason of conflicting national and international legal systems. The United Nations Narcotics Division decided to look at measures that could go against banking security rules that encourage the apparently legitimate accumulation of those illicit proceeds in countries recognized as tax havens. Meanwhile, Canada has ratified a treaty of mutual judiciary assistance it had with the United States and is currently negotiating similar agreements with Switzerland, the Bahamas and other Commonwealth countries.

The proposed convention deals with illegal drug trafficking by means of commercial carriers.

In most cases, air carriers and shipping companies are not held responsible for the illegal drugs hidden in luggage or on passengers, but they are held responsible when clearly their employees or crews are directly involved or facilitate the illegal activities through loopholes in their security procedures.

Another provision deals with cross-border co-operation.

Canada recognizes that co-operation between the various intelligence services within the international community is of vital importance and should be intensified in the future,

especially in the area of drug trafficking and the investment of its proceeds in apparently legitimate commercial enterprises. For the Government, encouraging co-operation between producing, transiting and consuming countries is therefore a priority issue.

The United Nations International Conference on the Fight Against Drug Abuse and Drug Trafficking will be held next June in Vienna. Hon. Members are certainly aware that Mr. Tamar Oppenheimer, the Conference's Secretary General, is a Canadian who once headed the United Nations Drug Division. Moreover, Canada will be represented at the conference by a Minister, demonstrating the importance the Government attaches to it. Various problems will be dealt with during this multidisciplinary meeting, including the reduction of the demand, the development of alternative crops, the use of drugs for medical purposes, the seizure of drug-related proceeds, the treatment and rehabilitation of drug addicts, and the increase of law enforcement resources.

Also, Mr. Speaker, I cannot overlook the efforts made by the RCMP and the other provincial and municipal police forces.

Indeed, each year at the Canadian Police College the RCMP offer training to police officers from every corner of the world and they send experts to various countries, those of the Commonwealth included, to teach the skills required to fight against the different types of crimes we are talking about. People responsible for enforcing law in Canada, especially RCMP officers, work in close co-operation with their counterparts in other democratic western nations to fight against every kind of crime, particularly organized crime which knows no boundaries. This fight requires special skills and costs a lot of money, and this creates difficulties in times of financial restraints.

Mr. Speaker, given everything that is being done now I doubt whether a Royal Commission on organized crime would serve a useful purpose.

■ (1750)

[*English*]

Mr. David Kilgour (Edmonton—Strathcona): The motion before us, Sir, calls upon the Government to appoint a royal commission to look into organized crime in Canada and to include in its report observations on six different matters, all important matters, and I would like to salute the Hon. Member for Trinity (Miss Nicholson) for bringing forward this motion, which I wholly support.

Some people will say that as someone who used to prosecute organized crime and drug offenders I would not be very hard to convince, and I admit I have a long-time experience with that sort of thing. I believe this is a matter which the Government of Canada should consider.

Someone made the point earlier that the establishment of a royal commission might alarm Canadians. May I point out, with respect, Mr. Speaker, that we have had a royal commission on the question of alleged illegal activities of the RCMP and on just about every subject from A to Z. I think Canadians believe in royal commissions. Some people believe it is one of our national sports. I do not think that such a commission on this matter would alarm anyone. I think it would turn the white light of public focus on the activities of organized crime in this country.

I would remind you, Mr. Speaker, that Senator Kefauver's committee on crime investigation in the United States Senate in 1950 and 1951, before you were born, Sir, was very useful in focusing attention on the involvement of organized crime in United States politics. That is not one of the items the Hon. Member for Trinity has mentioned, but I think we would all like to know, as democratically elected politicians, whether there is any involvement by organized crime in politics at any level in this country.

One of the subjects the Hon. Member has proposed the Government should look at is the extent to which organized crime is present and active in Canada particularly in such activities as drug trafficking and loan-sharking. As a western Canadian, I have some statistics which might indicate possible answers to this question and it may be something the commission would look at. For the past six years, I am told, British Columbia has reported violent crime rates as high or higher than any of the 50 States in the United States. Vancouver's murder rate, which is low by U.S. standards, is now three times Canada's national average. My Province of Alberta as well as Saskatchewan and Manitoba now consistently post violent crime rates which rival those in Florida, New York and Maryland, the three states which top—am I out of time?

The Acting Speaker (Mr. Paproski): I will allow the Hon. Member extra time the next time this Bill comes up. I think he has at least seven minutes left in his speech.

* * *

MESSAGE FROM THE SENATE

The Acting Speaker (Mr. Paproski): I have the honour to inform the House that a message has been received from the Senate informing this House that the Senate has passed Bill C-22, an Act to amend the Patent Act and to provide for certain matters in relation thereto, with amendments, to which the concurrence of this House is desired.

I also have the honour to inform the House that a message has been received from the Senate informing this House of the recommended amendments, observations and recommendations on general patent law amendments as contained in the seventh report of the special committee of the Senate on Bill C-22, an Act to amend the Patent Act and to provide for certain matters in relation thereto.

September 14, 1987 [House of Commons]

petitioners are asking the Government to consider the recommendations of that special committee which has the support of groups such as the Canadian Bar Association, the Canadian Council of Churches and others.

* * *

QUESTIONS ON THE ORDER PAPER

Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)): Mr. Speaker, I ask that all the questions on the Order Paper be allowed to stand.

[Translation]

Mr. Speaker: Shall all questions stand?

Some Hon. Members: Agreed.

GOVERNMENT ORDERS

[English]

CRIMINAL CODE, FOOD AND DRUGS ACT AND NARCOTIC CONTROL ACT

MEASURE TO AMEND

Hon. Ray Hnatyshyn (Minister of Justice and Attorney General of Canada) moved that Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act be read the second time and referred to a legislative committee.

He said: Mr. Speaker, just for a moment my heart almost stopped because I thought we were going to pass this enlightened legislation without any speeches on second reading. However, I am very pleased and honoured to introduce the debate on second reading of this important legislation.

As you know, Mr. Speaker, the people of Canada understand that our Government has committed itself to a comprehensive approach with respect to the problem of illicit drugs in Canada. One of the initiatives that we are taking in this whole area involves amendments to our Criminal Code to allow forfeiture and seizure of the realization of illicit proceeds of crime. While this Bill is not restricted in the area of drugs, it is a Bill which addresses crime motivated by the desire to accumulate wealth and generate profit from the commission of criminal activity. The Bill uses the term "enterprise crime" to describe this type of activity. What we are dealing with in this legislation are crimes of greed.

Increasingly we are seeing the effects of criminal organizations operating both from within and without this country that are totally dedicated to the commission of crime for profit. These organizations take advantage of modern communications, transportation and corporate structuring to frustrate the reach of national legal systems to amass illicit and illegal wealth.

[Translation]

One of the reasons why this type of criminal activity is spreading is that the various administrations have been slow in adapting their legislation to changing circumstances. But now the western world acknowledges ever more readily that it is becoming imperative to adapt and revise national legislation and to negotiate international agreements to fill the gaps which now favour criminals.

[English]

On an international level, this legislation is in compliance with the draft United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychoactive Substances. Similar legislation has either been passed or has been presented to the legislatures of Britain, Australia and the United States. This uniquely Canadian proposal will strike a balanced middle ground in dealing with the reality of enterprise crime. Except for very limited situations, Canadian courts are powerless to strip an offender of the proceeds of criminal activity.

Lengthy terms of imprisonment and substantial fines may not be sufficient deterrents to criminals who believe that they may acquire and keep their ill-gotten gains. If, on the other hand, the offender knows that, in addition to the punishment he or she would normally receive for the crime, he or she is going to lose those proceeds and profits generated through such activity, he or she may think twice before deciding to become involved in such unlawful conduct.

Accordingly, the main feature of this legislation is to provide the courts with the power to confiscate from an offender those assets that are found to be derived from criminal activity. This would normally be done after an individual has been found guilty of a criminal offence and would be done at the sentencing stage of the proceeding.

All of the protections that have developed over the centuries such as trial by jury, presumption of innocence and the requirement that guilt be established beyond a reasonable doubt would continue to apply to the guilt determination stage of the proceeding. However, once the offender has been found guilty according to all of these time-honoured guarantees, he or she would be subject to a hearing to determine the question of the forfeiture of his or her criminally-derived assets. At that time, the prosecution would have to prove the criminal taint on a balance of probabilities. Normally, this taint would already have been proven beyond a reasonable doubt during the trial itself, as happens on a charge of possession of proceeds from a specified criminal activity.

■ (1420)

There is an additional feature of the legislation that attempts to deal with the covert nature of enterprise crime. If at the forfeiture hearing it turns out that the proceeds of crime are from an offence other than the offence for which the

offender has been convicted, the court will still be empowered to forfeit. This is designed to deal with cases in which the offender is engaged in a wide range of illicit activities and seeks to protect his profits by claiming that they were derived from an illegal source other than that for which he has been convicted. It must be underlined that in this situation, proof beyond a reasonable doubt applies to the prosecution.

The forfeiture power of the courts will also exist in two limited situations when the forfeiture will not have to be preceded by a conviction but where a charge has been laid. When an offender has died or has fled from the jurisdiction of the court, it is obvious that the state has no control over either of these circumstances. However, to be consistent with the principle that an offender should not be entitled to benefit from his or her own wrong, in those limited cases the illegal profits should be confiscated by the court without the finding of personal guilt. Again, I wish to emphasize that the onus of proof on the prosecution will be proof beyond a reasonable doubt.

[*Translation*]

A system of forfeiture of proceeds of crime cannot operate adequately if the court is unable to intervene to seize and freeze them before the trial. Accordingly the Bill empowers the court to authorize police to seize goods which can be the subject of a sworn affidavit, based on reasonable grounds, that they are indeed the proceeds of crime. This procedure is extant in the case of certain elements of proof pursuant to the Criminal Code, Section 443, and has been on the statute books for centuries.

[*English*]

To supplement this seizure power, the legislation has borrowed from the equitable jurisdiction of the civil courts to create a judicially authorized system of restraining orders. Such measures are available to claimants in the civil context and are sometimes referred to as the *Mareva* injunctions. These civil remedies create court-authorized restraints on the disposition of assets in order to make them available for the future trial of a civil action. They recognize the fact of life that unless courts authorize a restraint on disposition, assets which may be subject to forfeiture after a trial that will take place sometime in the future may be disposed of or hidden. The same comment can be made in a criminal context. The argument is even stronger in favour of restraint because of the wider public interest as opposed to the private interest of a civil litigant.

The criminal law has long recognized that in certain circumstances the public interest demands that action be taken prior to the completion of a trial proceedings. The most clear example of this is the pre-trial detention of the accused when it is shown that he or she may not show up for his or her trial if released, or that for other good and sufficient reasons it is not in the public interest to release the accused. The courts have consistently upheld this power as a valid exercise of the criminal law and surely the protection of property can be put on no higher plane than that of the liberty of the individual.

Under the provisions of this Bill, the powers of pre-trial seizure and restraint will be scrutinized and authorized by only the most senior levels of judges. An application can only be made by the Attorney General or his or her representative and must be accompanied by a sworn affidavit. A very important element of the legislation is that the courts can require the Attorney General to give an undertaking relating to the payment of costs and damages in respect of the execution of an inappropriate seizure or restraining order. All of these measures guarantee that these powers will only be exercised in those cases where there is merit to the request.

At this time I would like to deal with those aspects of the legislation that establish a system of protection of the rights of innocent third parties who may be affected by the seizure, restraining or forfeiture orders.

First, before a seizure of restraining order is issued, the judge can require that third parties, owners, persons in possession and the accused be notified of the application to enable them to put their positions before the court and protect their interests.

Second, once such an order is issued, any person affected by it can apply for an immediate review subject to a minimal two-day notice to the Attorney General which can be waived by the Attorney General.

Third, at the forfeiture hearing itself, the court is obligated to consider notifying any person with an interest in the property who has not been given an opportunity to defend that interest.

Fourth, a third party is entitled to apply for relief from forfeiture within a 30-day period after an order is made. In effect, an execution of the order is automatically suspended under the legislation for that purpose.

Fifth, at the time the court is considering its residual power of disposal of property; that is, when there has been no forfeiture or restoration order in relation to the property, any third party that appears to have an interest in the property is entitled to be heard by the court prior to its disposing of the property.

Finally, there is a provision in the legislation for an automatic expiry of the order after six months unless the Attorney General satisfies the judge that the order should continue for the purposes of a forfeiture or other proceeding.

Of course, third parties as well as accused persons and the Attorney General are given full rights to appeal orders of forfeiture if they feel aggrieved by them.

[*Translation*]

Such are the general provisions of the legislative measures which, in my opinion, will be considered as strong but equitable means to come to grips with the ever more urgent problems of organized crime.

And now, Madam Speaker, I should like to review some of the particular aspects of these legislative measures which, I hope, much as the general provisions, will make of this initiative a mechanism to fight against individuals who benefit from criminal activities.

[*English*]

To prevent Canada from becoming a haven for the proceeds of crime, the legislation will forfeit assets on Canadian soil no matter where the criminal conduct has taken place. In order to assist the courts in tracing the assets of such criminal activities, the legislation creates an inference that entitles a court to find that an increase in the net worth of an individual is derived from criminal activity when such activity is established and there is no legitimate explanation for that increase.

■ (1130)

Several new offences are created in this Bill. First, the offence of laundering the proceeds of crime is created to deal with increasingly sophisticated means of hiding the illegitimate sources of assets.

Second, there are new offences in the drug statutes analogous to Section 312 of the Criminal Code relating to the possession of property obtained by crime. There is a provision for obtaining, at the investigative stage of a designated drug offence, a court authorized order of disclosure of income tax information.

Finally, in order to encourage the investigation of enterprise crime, the legislation includes a provision creating a legal defence or shield against a complaint of breach of confidentiality for an individual, such as a banker or a credit union manager, who discloses suspicious transactions by a client who appears to be laundering his money in that institution.

[*Translation*]

I am aware that after the introduction of this Bill some people pointed out that it does not contain any specific requirement pertaining to the identification of cash transactions. Madam Speaker, I can tell you that, having examined American experience in that respect, I still am not convinced that their legislation on identification and tracking down of illegal funds has been effective enough to justify, for the time being, the enormous amount of work such a measure would impose on financial institutions and the expenditures which Canadian taxpayers would face if it were decided to set up a system to analyze this kind of information.

Instead of imposing constraints on the banking system by forcing it to produce reports, I thought it would be better to encourage representatives to co-operate by protecting them against claims which criminal clients might file against them for helping to uncover money laundering activities.

[*English*]

There are questions of cost and very complex regulatory intrusion involved in compulsory reporting of financial transactions. In committee we will have the opportunity of examining this aspect more closely. I would simply say that, after examination, it occurs to me that we are not simply dealing with our banks. This legislation will impact upon credit unions and other financial institutions, lawyers, accountants, and financial advisers involved in individual transactions across the country. The reporting itself would involve us, certainly from initial investigation, in a very costly and complex system. We want to be very careful, before we move into this area, to make sure we can work on a voluntary basis with all those involved, and I have been assured that they are prepared to co-operate on a voluntary basis. If we find after some experience that the system is not as effective as it may be and there is a legitimate reason to involve ourselves in what I would call very substantial compulsory reporting requirements, then we can look at that.

Organized crime attempts to get around the existing rules and, if I may be permitted to dwell on this particular point, it seems to me that whatever the limit is with respect to compulsory reporting, the question is whether or not it is going to be an effective tool to assist us in what we all want to achieve, the seizure of illicit profits. I simply say to Hon. Members that we will have an opportunity of examining this question in committee.

I am inclined to hope that we will give this legislation quick and early passage because it is the culmination of considerable effort by both the federal and provincial Governments. There is a principle which I believe can be traced back to Roman law, which is: *ex turpi causa non oritur actio*. Roughly translated, that means an offender is not entitled to benefit from his or her wrongdoing. No phrase could be more applicable in the context of enterprise crime. This legislation, which is simply an application of that principle, will go a long way toward making this a reality in our country.

Hon. Bob Kaplan (York Centre): Madam Speaker, we in Canada spent a long time, decades in fact, denying that organized crime existed in our country. Provincial attorneys-general would have a stock answer, when asked, which indicated organized crime did not exist. We were able to do this for many decades because in the country to the south, whose news is often read by Canadians more than their own, organized crime was such a visible, palpable phenomena, that whatever the level of that type of criminal activity in Canada it was so much less that it seemed one could say there was none. I think law enforcement suffered in that period, in particular, in relation to enterprise crime.

It is long overdue that we recognize that criminal organizations and organized crime, by which one simply means criminal activities or more than one incident carried on by the

same group and always, as the Minister indicated, with its principal purpose being financial gain, exists in our country. We would have been able to deal with it better had we addressed it sooner with the type of measures now proposed.

However, here we are bringing forward and offering to the police forces of this country what may be a powerful new instrument for dealing with a phenomena which, yes, exists in our country and which has existed for some time, and which the ordinary provisions of the Criminal Code allowed too often to go unprosecuted and unpunished.

The Minister will be aware, although I do not believe he mentioned it, that the legislation he introduced today was the mandate of the task force set up within the Government of Canada by me back in the early 1980s, and by my colleague, the Minister of Justice (Mr. Hnatyshyn). I regret very much that we were unable to complete our work and produce this very important legislation during the period we were in office. I say that only to indicate to the Minister how much we support the spirit of this legislation and how important we think it is that we proceed very carefully.

The Minister in his excellent remarks indicated all of the difficult, complicated considerations involved when you come to deal with an individual's property before that individual has been convicted of a crime.

[*Translation*]

For instance, Madam Speaker, I recall that when the Constitution was patriated and the Charter of Rights and Freedoms proclaimed some people had advocated the acknowledgement of property rights. At the time our task force on this very important project expressed concerns because it feared that, if property rights were included in the Charter of Rights and Freedoms, this might throw everything out of kilter and slow down progress in the fight against criminals.

■ (1140)

[*English*]

Even at the time we were drafting the Charter we wanted to be certain that the weapon which was being shaped by this work would still be produced and still be useful. The Liberal Government concluded that legislation in form similar to that which is now before the House could have been brought forward even if the Charter had included the rights of property and the protection of those rights. That is going a long way.

Many Canadians ought to be interested in this legislation, not because they are criminals or will be the targets of any investigations but because we are going to give the police forces of our country tools which they have never had before. Before the conviction of an individual the police will be permitted to apprehend that individual's property. This is worth while and necessary legislation. It is even overdue.

Whatever the difficulties, I hope that we will be able to come up with a very strong way of dealing with the fact, which no reasonable or knowledgeable Canadian can deny, that crime has produced some very rich people in our country. These rich people have long been in the process of converting the proceeds of crime into innocent businesses and ordinary assets such as homes and boats which have nothing to do with crime other than that they are entirely the proceeds of those crimes. If this legislation is effective it will ensure that no one profits from their illegal acts and that the law is capable of pursuing profits as they are laundered.

[*Translation*]

Laundering of crime proceeds has become a growing trend—and this activity can be seen ever more often in our country—so we urgently need a mechanism to do something about it.

[*English*]

In order to help Members understand the delicate nature of the intrusions into private property which will result from this legislation, I will recount, without identifying the actual cases, a couple of incidents in which the Government was involved over the past few years.

In one case we were informed by representatives of a friendly government that an official of that country had come to Canada and opened a number of bank accounts into which he had deposited corrupt money, proceeds of bribery. That government was preparing all the legal work to lay charges against the individual. They intended to come to Canada to launch legal proceedings to try to recover that money. They asked us to help them by asking the banks to freeze the accounts while this process was ongoing. They knew the individual was well advised and that if he became suspicious that his government was pursuing this money it would be quickly moved to another country.

I received that foreign delegation and talked to my colleagues in Cabinet and then to the banks. I got something of a lecture about how little power the federal Government had to interfere with the business of a bank in relation to one of its clients. We could not get even the information that the bank account existed. We had some information from the government which had been robbed, but did not have confirmation of that from the bank.

In one way and or other during the weeks before that money was shifted from our country to another country I came personally to the realization that some kind of tool is needed in our world, with the complications which exist and the opportunities which are available to rich criminals to get legal advice and move money from one form to another. Crime pays unless we are able to do exactly what this legislation proposes to do.

I do not expect banks to serve government. A bank is there to serve its customers. If we as a society want the banks to do something different from what the law tells them to do now, we have to change the laws. I mean no criticism of banks. However, I think the Minister will agree, and I know the Minister of Finance (Mr. Wilson) would agree as well, that our banks are among the most customer-oriented of any banks

in the world. Even in the United States, where people think free enterprise and respect for the individual goes furthest, banks are obliged by law to turn over certain information about large deposits in cash and movements from one branch to another. Canadian banks have no corresponding reporting obligations.

We should not require this because the Americans require it. They do so because organized crime is a much more serious problem there. However, because it is a serious problem here the time has come for us to do this as well. Today at second reading we are taking the step of asking the banks not only to be responsible to their customers but to assume an element of social responsibility to reporting and disclosure requirements which they have not been expected to assume until now.

Life being what it is, there is no doubt that some innocent people will wrongly fall under the purview of this legislation. For that reason it will be very important for us to be sure that the legislation respects the individual as much as possible, that rights of privacy are compromised only to the minimum extent needed to make sure that the law is effective and that it can actually do its job.

I also want to talk about the problems which can arise when a third party's interests are affected in the assets seized. Even rich criminals may have mortgages on their boats, cars or houses. When that property is seized we have to be certain that the rights of innocent people who have loaned money in the normal course of business are also taken into account and that they get some notice and opportunity to do something to protect their innocent involvement in the establishment of the asset being targeted.

That was one of the toughest problems our administration worked on. We had many meetings to discuss the ways in which to deal with the rights of innocent people involved in these property matters. It was not an easy problem and we were not able to provide a solution prior to the summer of 1984.

I am glad this legislation is before the House. I have been looking forward to it. I am pleased that no hard deadline is being put on it as is so typical of the Government in other matters. We will have all the time we need and will be able to call witnesses. I certainly hope banks and financial institutions will give this the attention it deserves. Some of their customers certainly will want to categorize this legislation as anti-private property and anti-individual privacy. We must be certain that in this place, where we have the power to invade those very important rights, we do it for good reason and only to the limited extent needed to give effect to this very important tool so necessary if we are to have effective law enforcement in the age of the rich established criminal.

• (1150)

I commend the legislation to the House. We will be very interested in seeing it come forward and I look forward to participating in the work of the committee to be established.

Mr. Svend J. Robinson (Burnaby): Madam Speaker, I am pleased to rise to debate this important legislation that will ensure that Canada finally takes the long overdue step to recognize that those who profit from organized crime in many cases are able to use weak and inadequate legislation as a means of laundering the profits of that crime.

The Government has indicated that this particular Bill, Bill C-61, is part of its over-all package in an approach to the abuse of drugs in Canada. Certainly we in this Party welcome a sensitive and thoughtful approach to the abuse of drugs in Canada, but I must say that the Government has failed to recognize that the most serious drug abuse in Canada today relates to alcohol and prescription drugs, and that there must be adequate funding, particularly for treatment facilities, to deal with those who are abusing these drugs. That failure on the part of the Government is a serious shortcoming and makes its so-called drug strategy in many respects very seriously flawed.

I would have hoped as well that in legislation to amend the Narcotic Control Act and the Food and Drugs Act, the Government would have recognized that this is indeed an appropriate time to amend those two important pieces of legislation to respond to the decision of the Supreme Court of Canada in *Oakes*. That decision was one which struck down the provisions of both those Acts, conferring in effect a reverse onus on the accused. In my view, it was recognized quite properly that that heavy reverse onus was in conflict with the Charter of Rights and Freedoms.

Surely when the Government brings forward legislation to amend these two Acts with respect to drugs, that is an appropriate time to respond to that concern and to repeal the reverse onus provisions of the drug legislation. I thought and hoped that the Government would recognize that, instead of simply ignoring the court decision and saying it is bound by it but will not bring in that legislative change before the House at this time, when it is most appropriate.

I also suggest that an important element of a comprehensive drug strategy in Canada must be recognition as well of the serious inadequacies of Canada's legislation with respect to marijuana. Surely we must recognize as a society the enormous toll that is taken by the current provisions of the Narcotic Control Act which impose harsh criminal sanctions and a criminal record on young people that can act as a very serious barrier to future employment as well as in a number of other respects.

Many people believe that an absolute discharge means there are no consequences for the young person involved. That is not the case. Many others believe that the police are not, in fact, busting young people for simple possession of small quantities of marijuana. That is not the case either.

I hope that we as a society recognize that, while we must do everything in our power to discourage the use of marijuana and other illicit drugs, particularly by our young people, we must put far more resources into education and prevention.

The present provisions of the Narcotic Control Act, which impose a heavy criminal sanction and criminal record for these offences, must be re-examined. I would have hoped that as part of a comprehensive drug strategy, the Government would have moved forward on this.

We do not need a lot of evidence. The chief drug policy researcher at the Addiction Research Foundation, Patricia Erikson, points out that at least 20,000 young people in Canada are still convicted of these offences of simple possession each year. She suggested that the harm in saddling them with a criminal record outweighs any deterrent benefits that may exist. As well, she points out that each year in Canada over 2,000 young people are subject to terms of imprisonment as a result of these Draconian laws.

Once again, I would have hoped that the Government, in its review of drug legislation in Canada, would have come to grips with this very serious problem. I regret the silence and inaction of the Government in this important area of law.

Turning to the provisions of Bill C-61 itself, there are essentially two major thrusts of the legislation. The first is to extend significant new search and restraint powers to the police in their attempt to deal with the profits of organized crime. Certainly there is no question that the existing law is inadequate and must be strengthened in order to permit us to deal with the profits of organized crime. We want to be very sure in doing that that the rights of innocent third parties are not unduly impaired. That is the second major area of the legislation.

The first area of concern with respect to the Bill is its effectiveness in dealing with the proceeds of crime and in achieving its stated objective. The second area of concern is the possible implication of this legislation for the rights of accused persons and, most important, of innocent third parties who may have inadvertently and entirely innocently come into the possession of the proceeds of organized crime. We want to make sure that this legislation balances those serious concerns.

There are a number of important questions that should be addressed in committee about the effectiveness of the legislation. Of course, we know that the seizure and restraint order provisions allow for pre-trial and even pre-charge sequestration of property. Even before an information has been laid the property can, in fact, be seized under the provisions of this legislation. Of particular importance in this regard are the restraint orders. For the first time, intangible property will not be beyond the reach of law enforcement officials, which is an important step forward and certainly something we support. The general powers of forfeiture are also an improvement and a significant step forward.

Finally, the new laundering offence attempts to get at a very significant problem in the present law. That is, the impunity with which those who are handling the proceeds of crime can simply carry on their business as usual.

However, questions remain to be answered about the effectiveness of the legislation. For instance, what is the standard of information which will be required for the issuance of a warrant or an order? The provisions of this legislation would allow for a warrant for wiretap. We have seen just recently some of the concerns which have been raised with respect to information that is provided on wiretap applications.

Given the potential for abuse in this area, and the fact that these applications are made on the basis of sworn affidavits, I think it is time that we in Canada look at the suggestion that has been made by a number of civil liberties groups and a number of those active before the Bar that there should be a respected independent third party present in the courtroom to ask the tough questions that should be asked with respect to the affidavits that are filed to obtain warrants for these intrusive powers, including wiretaps. As I say, we saw a recent example in CSIS of the very serious abuse of these powers. I believe we must consider the possibility that there should be a third party in a courtroom, representing the interests of the public, to make sure that these sweeping powers are not abused.

• (1200)

I wonder as well why it is that under the legislation the provisions with respect to the disclosure of tax information are limited to the investigation of offences in relation to drugs? What about some of the other enterprise crimes which are set out in the legislation, some of the fraud related enterprise crimes, for example? I would suggest the committee will want to look at this as one area. If we see the importance of disclosure in certain circumstance of tax information with respect to offences in relation to drugs, why not the other serious enterprise crimes which are included under the umbrella of this legislation?

Another area which we must surely examine in committee is the whole question of the reporting requirements for banks as a result of the provisions of the Bill. It is in this area that the Government, I believe, has been weakest in its response to the importance of dealing with the proceeds of organized crime. The Minister will know the history of this particular question of whether or not banks should be required to report substantial transactions.

Under the Bank Search Act in the United States there is such a requirement. In fact, it has proved to be very effective. The FBI has used the provisions of the Bank Search Act to help it spot money laundering schemes, and in fact, it has been instrumental in a number of major drug arrests in the United States.

Under the provisions of American legislation, records of payments which exceed $10,000 made to U.S. financial institutions from abroad, have to be retained. As well, records which indicate transfers of credit outside the country exceeding $10,000 must be kept for five years. Probably one of the most important provisions is that banks must report deposits,

withdrawals, currency exchanges or transfers involving amounts above $10,000 originating outside the United States to the Treasury Department. These provisions have proved to be very effective in the United States in dealing with the profits of organized crime.

As long ago as 1981, the former Government embarked upon a federal-provincial study to examine enterprise crime or organized crime. That study came up with its report to the Justice Department in 1985. The report stated in part:

> Without clear track and identify the movement of profits earned by sophisticated criminals, it will be hard for police and the courts to effectively use the—"freeze and seize" provisions.
>
> Without clear powers to identify and track the proceeds of crime, it is difficult to connect the proceeds to a particular offence or to a particular criminal.
>
> Given this obstacle, it follows that it would be equally difficult to apply provisions for freezing, seizure and forfeiture of criminal proceeds.

What the report is saying is that we can bring forward legislation empowering the freezing, seizure and tracing of these proceeds of organized crimes, but unless we have a mechanism in place to identify them in the first place, the legislation will be very seriously weakened.

The Deputy Solicitor General less than two years ago in a letter to the then Federal Inspector General of Banks said:

> Criminal legislation that would permit the freezing, seizure and forfeiture of the profits of enterprise crime would have little effect unless there were mechanisms in place whereby these profits could be traced. The profits are used to finance other illegal activities or are laundered through financial institutions in Canada and abroad, and infiltrate legitimate business.

One would have hoped the Government, if it was serious about its commitment to track the profits of organized crime, would have accepted the recommendation of this federal-provincial working group and brought forward provisions requiring Canadian banks to report these kinds of transactions. But the Government did not. The Conservative Government knuckled under to the banks and said, "We are not going to impose a reporting requirement on you as the United States has imposed a reporting requirement on its banking system". I remind you, Madam Speaker, that the United States does not exactly have a wild-eyed socialist as President. Yet even the United States, with its President and with its Attorney General Ed Meese—who is not exactly known as a great leftist or great state intervener—recognized that it was important, if the United States was going to be serious about the profits of organized crime, to take on the banks, to tell them they have to report these transactions.

What does the Conservative Government do? It caves into the Canadian banking system. Some cynics have suggested that it is perhaps because the links between the Conservative Party and the major banks are very close, that it receives substantial financial contributions from each of the banks. That is a rather cynical approach and I certainly would not want to suggest that.

Let us look at what the Government's spokespeople have said about the imposition of a requirement on the banks to report. Ross Christensen, director general of police and law enforcement policy for the Department of the Solicitor General, said:

> To impose that kind of reporting requirement on the banking community would be a major step. We are aware of that and we do not want any confrontation.

We in this Party believe that if we are going to be serious about attacking organized crime, we have to take seriously our responsibilities to identify its profits. That means dealing with the banks of this country and imposing the same reporting requirements on them as the Americans have imposed on American banks. The effect of not doing this is quite clear.

Indeed, some of this laundering of profits from organized crime may indeed be filtered through Canadian banks with their extensive network in Europe and the Caribbean as well. I hope that the Government will recognize that it made a mistake, that it should not have knuckled under to the Canadian banks, and that it will accept the amendment I intend to propose in committee, that is, to impose a reporting requirement on the banks.

It is interesting to see what the banks themselves have to say about this particular question. Richard Marshall, senior international counsel at the Bank of Nova Scotia, said about money laundering:

> It can't be done without a bank ... But usually not just any bank will do. Money launderers prefer banks that have an international network of branches, including some in tax havens, and computers to shuttle money around the world ...

And guess which banking system in the entire world is most suited to do that? You guessed it, Madam Speaker, it is the Canadian banking system. Guess which Government is refusing to impose on that banking system the requirement to report these transactions? It is its friends in the Conservative Government. The Minister responsible for senior citizens shakes his head in disbelief. I can understand that because it is a shocking caving in to the banking system.

Richard Marshall, the senior international counsel at the Bank of Nova Scotia says:

> We're efficient at what we do. As such, we're a good target of money launderers.

The senior international counsel at the Bank of Nova Scotia admits they are a prime target for money launderers. Yet what does this Government do? It does nothing to impose this basic requirement of reporting transactions. We are not talking about reporting nickel and dime transactions. We are talking about taking effective steps to ensure that those banks who do launder large amounts of money as a result of organized crime are required to report these transactions. If the banks are not required to report these transactions, then all of the sweeping powers in this legislation will in fact go for naught.

I want to deal for a moment in the final part of my remarks with some of the concerns which do arise with respect to the legislation and its implications for innocent third parties. The legislation does not just impact on persons who are accused of

crimes—in some cases those who have not even been charged yet—but it may touch on innocent third parties as well. The legislation which was introduced prior to this, in 1984, Bill C-19, required that the sweeping powers of search and seizure could only be exercised after a criminal information had been laid. However, this legislation merely requires a statement of "grounds to believe" that property may be forfeitable. In committee, we will have to ask ourselves whether that standard is in fact high enough or whether there should not be some enquiry at least as to the likelihood of criminal proceedings.

• (1410)

It is also important that, if innocent third parties are subject to seizure, the onus should not be placed on them to challenge it. There should be an early review of such seizures by the courts so that these people do not have to hire lawyers, go to court and complain that they are innocent third parties and that their businesses or their personal affairs are being jeopardized as a result of this seizure.

We all know that going to court can be an expensive proposition. We all know that hiring a lawyer and appearing before the court costs money. Why should an innocent third party be put in the position of having to spend the funds to defend oneself in a situation such as that? I suggest that there should be an early provision for a judicial review to ensure that this onus is not placed on those who in fact are innocent third parties.

We should also look at a provision with respect to renewal of the seizure and restraint orders. Under the Bill as it is worded they can be renewed over and over again for a six-month period. I suggest that the Attorney General should have to meet a more substantial burden of proof after the initial six-month period.

As well, concerns have been raised with respect to the scope of the legislation and, in particular, the extent to which Canada, unlike other jurisdictions which have enacted similar legislation—jurisdictions such as Australia, the United States and Britain—would include within the definition of "enterprise crime" the proceeds from the bawdy-house provisions of the Criminal Code. It is one thing to attack the profits of those who would exploit prostitutes, that is, the pimps. All of us in the House would not disagree that those who exploit individuals in that way should certainly be subject to the provisions of this legislation. However, this legislation goes beyond that. It would lump in with the pimp the prostitute as well. In effect, it would treat the proceeds and the property of the prostitute in exactly the same way as the proceeds and the property of the pimp who is exploiting the prostitute. I suggest that that is an undue extension of the criminal law.

What we are saying with these provisions—these harsh and, I suggest, unconstitutional provisions of earlier legislation adopted by the House to sweep the streets clear of prostitutes and, in effect, to deny any form of communication for the purposes of prostitution—is that we want the streets clear. What the Government is saying is, "We will sweep you off the streets but now if you engage in an act of prostitution in your own home or anywhere else we will subject you to forfeiture of those proceeds as well". Subject to forfeiture, for example, is a car or anything else. I suggest that this is a serious and unwarranted extension of the powers under this legislation. I hope that the Government will reconsider that fact when this matter goes to committee.

The Government has said that it is cracking down on the proceeds of organized crime, that it is coming to grips with white-collar crime. That is a myth. We know that if the Government were serious about coming to grips with white-collar crime, we would be looking at legislation to deal with the proceeds of organized crime. But what about those in the corporate boardrooms who profit from other criminal activity or activity which we have not yet defined as criminal? I refer to those in the corporate boardrooms who are responsible for the pollution and the destruction of the environment, those who in their search for maximizing profits and greed are responsible for the production of substandard and hazardous products which threaten lives, safety or health. I refer to those who are responsible for working conditions which result in injury or death to workers. What about dealing with the proceeds of those particular offences? What about dealing with the profits from those crimes? I suggest that if the Government is serious about tackling white-collar crime and the proceeds of it, it is about time it recognized that these other offences should be dealt with in a tough manner as well.

In conclusion, we in this Party certainly support effective legislation that will deal with the proceeds of organized crime. We welcome the opportunity to give this legislation the careful scrutiny that it clearly warrants in committee. I am pleased that the Minister has indicated, as my colleague from York Centre stated, that he is not holding a gun to the head of the committee, that he will allow the committee to conduct its study with the kind of thoughtful deliberation that is necessary for such important legislation. Thus we in this Party look forward to raising a number of these issues in committee. We look forward to hearing from witnesses with respect to the provisions of the legislation, in particular the friends of the Conservative Government from the Canadian Bankers' Association. We look forward to questioning them. Hopefully, as a result of this type of careful scrutiny we will have a Bill which Members on all sides of the House can support.

The Acting Speaker (Mrs. Champagne): The Hon. Member for Comox—Powell River (Mr. Skelly).

Mr. Skelly: Madam Speaker, I would like to ask my colleague a couple of questions and lay out some terms on which I would have him comment on the Government's legislation. The first matter involves the seizure of assets used in the commission of crime—

The Acting Speaker (Mrs. Champagne): I am sorry to interrupt the Hon. Member. I remind him that he can speak on debate but that there is no question and comment period

following the speech of Hon. Members. If the Hon. Member wishes to have the floor on debate, then I will certainly recognize him.

Mr. Ray Skelly (Comox—Powell River): Madam Speaker, I think that legislation that moves in the direction of removing the assets and profit motivation from crime is positive. It is a move which we can support. Certainly, a number of shortcomings have been pointed out in areas we would like to see some improvements. But I think that those matters will come up in committee where they can be given serious consideration. I see the Minister responsible nodding in the affirmative in that respect.

I would like to ask the Government to reply to the general question about assets used in criminal offences. I cast my mind back to provincial legislation, and in particular to the game legislation of British Columbia. If one happens to be in a car with a firearm and does not have a hunting licence then one's vehicle can be seized, as well as anything within it. This is treated as an extremely serious matter. The Government has talked about its concern for the victims of crime and about restitution. However, in many instances equipment used to perpetrate an offence and the assets related to it are not seized. If in fact those were subject to seizure and the proceeds were made available as an element of restitution to victims then a positive move would be taken.

Having regard to a Bill such as this, we must consider not only the profit motivation in the commission of the crime, but seizure of the assets involved. We should consider an expansion of the penalty to the criminal with the possibility of providing restitution to the victim. This is something which should be carefully examined when the matter goes to committee.

There has been a massive campaign across the country with respect to drunk driving. Under the liquor legislation of British Columbia, if one is roaming around with a case of beer in the back of one's car, that car can be seized. However, at the same time we do not provide a provision in the Criminal Code which states that if one is convicted of drunk driving one loses one's car. Introducing such a provision would provide enormous incentives to people not to drive an automobile under the influence of alcohol. I think there would be an immediate and dramatic impact on such behaviour. When the committee studies this Bill it should look at expanding some of its provisions in this respect since it is a matter of serious concern.

● (1220)

I want to expand upon a concept at which the Government has looked by flagging a very serious issue. Just recently a murder took place in Port Hardy, British Columbia, an area which I represent. An individual had been offended in a local bar. He went down to the fishing vessel on which he worked as a deck-hand, obtained a firearm which was not secured, sawed 14 inches off the barrel, returned to the bar, and killed two people. Property was involved in this offence. We have strict provisions in the Criminal Code about the use of firearms, but unfortunately there is no requirement locally by the RCMP for individuals to secure firearms properly. There is no responsibility on the part of individuals to do it. I presume down the road there can be civil action. Obviously, according to people who are involved, the owners of firearms must have guidelines which are enforceable by sanctions. There must be guidelines for the securing of firearms, locking them up and removing the ammunition and firing mechanism. If that individual in Port Hardy had not been aware that another person had a firearm which could be readily obtained, perhaps these dire circumstances would not have been brought about.

Let us look at several incidents in British Columbia where firearms have been obtained by children and have resulted in fatalities. Again it is a question of control of specific assets which should be the subject of criminal sanctions. There should be clear guidelines enforceable by law and there should be consequences, especially in terms of restitution for victims.

The whole question of white collar crime was raised by the Hon. Member for Burnaby (Mr. Robinson) who did an excellent job in his presentation. He mentioned the serious dilemma of adequate penalties in the case of white collar crime. Quite often millions of dollars are misused, for example, in a breach of trust they are stolen outright from individuals, and the most that happens to the perpetrator is a slap on the wrist. There are serious shortcomings in this area, which the Hon. Member eloquently set forth.

Another consideration is the size of investigatory agencies and the environment which the Government has created in cutting the Public Service, restraining expansion of the Public Service, and restraining the Budget. It is my understanding that there has not been proper expansion of RCMP facilities in the investigation of white collar crime—commercial crime squad groups. Along with Bill C-61 and the crackdown which everyone in the House would like to see, there must be an increase in the resources given to the RCMP to enforce the law and do an effective job.

I should like to reiterate, on the issue of drunken driving, that if the House placed a requirement in the Criminal Code to seize the vehicle involved in an impaired driving situation, there would be a massive disincentive for people to drive while under the influence of alcohol. If a provision were included in the Criminal Code under which the owner of a firearm who failed to properly secure would be guilty of a criminal offence, there would not be the kinds of things we have seen occurring in British Columbia, such as the shooting in Port Hardy. The possibility or probability of that would be diminished. Also there would be a major disincentive for owners in relation to the availability of firearms in tragic situations involving the accidental shooting of children.

I know the committee will examine the Bill diligently. I hope it will look at the prospects of expanding it to cover the areas I have mentioned.

ROUTINE PROCEEDINGS

[English]

CONSTITUTIONAL ACCORD, 1987

EXTENSION OF REPORTING TIME OF SPECIAL JOINT COMMITTEE

Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)): Madam Speaker, I should like to revert to an earlier discussion this morning respecting the motion for the reporting date of the constitutional committee.

There have been further discussions among House Leaders and the Parties with a view to determining a date which would give the committee adequate time to prepare accurate translations and to fixing a date so that the Parties that wish to comment on the report can fix their schedules.

Under the circumstances I think Your Honour would find agreement to the following motion being moved and put at this time:

That the Special Joint Committee on the 1987 Constitutional Accord shall report on Monday, September 21, 1987, notwithstanding any previous order.

The Acting Speaker (Mrs. Champagne): The House has heard the terms of the amendment. Is there unanimous consent to amend the motion?

Some Hon. Members: Agreed.

Motion agreed to.

GOVERNMENT ORDERS

[English]

CRIMINAL CODE, FOOD AND DRUGS ACT AND NARCOTIC CONTROL ACT

MEASURE TO AMEND

The House resumed consideration of the motion of Mr. Hnatyshyn that Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, be read the second time and referred to a legislative committee.

Mr. Howard McCurdy (Windsor—Walkerville): Madam Speaker, we should re-emphasize that the legislation before us today constitutes a part of the national drug strategy announced by the Government quite some time ago. The first overture was a statement by the Prime Minister (Mr. Mulroney) that Canada faced a drug epidemic.

Of course the statement which precipitated the national drug strategy was copied from a similar statement by the President of the United States, once again reflecting a peculiar habit of the Government sensing political advantage in something occurring on the other side of the border, particularly when times are bad, and borrowing from that jurisdiction in order to enhance the political status of a Government severely in need of political status.

As it happened, the Standing Committee on National Health and Welfare had an opportunity over the last year to examine the issue. I think we must direct our attention to the picture or image conjured up by the Prime Minister at that time, that there was massive use of crack and that marijuana, heroin, and cocaine were the chief areas of abuse in this country.

It was indicated that somehow young people were out of control and that by taking vigorous action we could change a situation which was imaged, within the same context, as the situation in the United States, a situation which was further exaggerated by the projection of the image on television in Canada, as if what appears on television from the United States reflects the situation in Canada.

Within that context there was a great deal of quick and automatic support in the population for a government attack on a situation which, quite frankly, it was possible to suggest even at the beginning was not the same in Canada as it was in the United States.

The Standing Committee on National Health and Welfare held a number of hearings and listened to many witnesses across the country. No expert, no one working intimately with those involved in chemical abuse, could agree that Canada was presented with a drug crisis predicated upon the predominant use of cocaine, heroin, or marijuana. However, it was indicated that 95 per cent of the chemical abuse problem in Canada was attributable to alcohol. Secondly, there was not evidence of the stereotyped image of youth gone wild but, rather, that the ordinary housewife, the ordinary middle-class individual had been convinced by the medical community and the drug companies to seek, through the use of agents such as Valium and other tranquilizers, some relief from the pressures of modern day life.

In short, the two most abused classes of chemicals in Canada are alcohol and over the counter/prescription drugs, abused not by young people or teenagers, but by adults considered to be responsible citizens in the country and, indeed, perhaps in the House.

■ (1230)

If one wants to look at where chemical abuse has caused disruption in families, look at alcohol. If one wants to find chemical abuse that has caused death and suffering, look at alcohol. If one wants to look at what has led to 20 per cent of the occupied beds in hospitals, look at alcohol. If one wants to find the source of terrible suffering among the Indian and native peoples, look at alcohol. If one wants to find the chief cause of death and injury due to accident and family abuse, look at alcohol. Perhaps there is not an epidemic but there is a long-standing endemic occurrence of chemical abuse, namely, alcohol.

The problems posed by alcohol are difficult and complex. It is an agent accepted by our society; it is a part of society. Recognizing the serious difficulties and evils with which it is associated, nevertheless, 95 per cent of the population can use alcoholic beverages with impunity and enjoyment without harm. Yet we have been told by the Government, by the Prime Minister, and in a variety of ways, that the serious problem is to be found in the streets and at the parties of our youth. But the key to the problem is to look at the behaviour of adults. I think this needs emphasis, and it will be given emphasis in the committee's report.

To have made this argument and to have pointed out the facts is not to dismiss the problem of illicit drugs and the huge profits made through the suffering of those addicted to narcotics, which is a part of the international criminal profiteering in the world. There are elements of the national drug strategy that we support. Indeed, we can support the vast majority of those elements which constitute the national drug strategy.

Given that we have a government which believes that the use of illicit drugs is a national epidemic, we should put what it is planning to do within reasonable perspective. Two hundred and ten million additional dollars will be spent fighting drug trafficking in Canada. That sounds like an awful lot of money. One would have thought that what this indicates is an urgent response to an epidemic, created in the minds of the Conservative Government, until we recognize that that $210 million will be spent over five years, that $170 million per annum is being spent now, and the first component of the $210 million expenditure will be an additional expenditure of $20 million over the $170 million. Most would agree, I think that that is not a dramatic increase in the devotion of federal resources to combatting drug trafficking.

The committee intimated that if one looks at the reality and the way this money will be distributed over geography, jurisdictions and years, we hardly have a total commitment to a problem to which the Government has found it must respond. Certainly the legislation with which we are dealing today is another example of an inadequate response. It is, I guess, an example of speaking loudly and carrying a very small stick: yes, we will attack money laundering, yes, we will make people forfeit the proceeds of crime, yes, we will freeze what are suspected proceeds from crime.

Anyone who has examined the issue of money laundering from the proceeds of criminal activity will agree that something similar to the bank secrecy act, implemented in the United States, must also be implemented in Canada. It is to the credit of those members of the Standing Committee on National Health and Welfare from all sides of the House that they recognized that the necessity of a reporting system, as has been enacted in United States, is needed in Canada as well. Cash transactions over $10,000, along with all international transactions, should require reporting, recording and maintaining.

Given the tremendous support from those well informed on this issue, given the clear necessity for having a system of reporting financial transactions which would enable us to detect that the laundering of the proceeds of criminal activity is taking place, it is beyond me and beyond Members on this side of the House why the Government should stop short of doing what is evidently necessary to ensure the effective enforcement of anti-money laundering measures. There are those who have suggested collusion between the Government and the banks. I would disavow any such suggestion, because it is a suggestion of unnecessary interaction. The Government is so evidently in tune with the banking community that it knows what is wanted and what is not wanted, as surely as a mother knows the needs of her child and so responds, and would reject what is an inconvenience to the banks. I know the banks say that such a reporting system might be expensive.

If we can make nice, neat tax and accounting arrangements for the banks to handle their international Third World debt in a convenient way, surely it would be trivial by comparison to have the expenditure process that would enable Canada and this Government to attack the issue of money laundering and effectively gain what has been achieved in the United States, namely, a means of detecting criminal activity through the identification of money laundering through a proper reporting and recording system. It is not too much to ask, Madam Speaker.

I join with my colleague in expressing the hope, in contrast to the refugee Bill and the other things with which we have been dealing over the last few weeks, over which the Government has disregarded all positive contributions, that the Government will see that this is not a partisan issue, even for this partisan Government. I hope the Government will engage in a co-operative effort to create an effective attack on the laundering of profits from illicit activities, most particularly those profits gained by trafficking in drugs.

■ (1240)

Mr. Skelly: Madam Speaker, I wish my colleague who made an excellent presentation might pursue an element of extremely serious concern, that is, that the weight placed by the Government on drug abuse and drug trafficking is not necessarily a misapplication of resources, but that it is certainly a failure to recognize the most serious problem in Canada, that of alcohol abuse. Being very knowledgeable about the activities of the Health and Welfare Committee, I would ask the Hon. Member whether or not the Government is co-ordinating its activity. One hand seems to be moving in a direction without the other hand knowing what is going on.

One of the most serious problems in Canada is not teenage drug abuse, but teenage alcohol abuse, and it is not just a problem with teenagers but with children in elementary schools. Many parents have told us that there are all kinds of programs in Canada for the treatment of adults who abuse alcohol. For example, the Armed Forces has an excellent program of rehabilitation. Enlightened industrial leaders are

developing modern programs for adults, but there is nothing for children. The problem is growing by leaps and bounds.

There is one particular group in my own area, the North Island Alcohol and Drug Information Society, that has had to beg for funds. It is doing a magnificent job of informing young people of the problems, but it has had to beg employment development for funds and has been rejected occasionally. It has not been able to get anything out of the Department of Health.

I wonder if my colleague, the Hon. Member for Windsor—Walkerville (Mr. McCurdy) could tell us what the Committee on National Health and Welfare has recommended we do about the question of teenage alcoholism and the treatment of teenage alcohol abusers, a problem which is far more serious at this point than the problem of drug abuse. Does the Hon. Member have any personal opinions, given the experience he has had on that committee, about what we should be doing about funding volunteer groups and other community agencies that are trying to deal with this critical problem?

Mr. McCurdy: Madam Speaker, I would be hesitant to give a complete preview of the recommendations of the Standing Committee on National Health and Welfare on the issue of chemical abuse. However, the committee does recognize the inadequacy of programs intended to provide young people in particular with the kind of education that would enable them to make lifestyle choices which would permit them to deal in moderation with a number of potentially abusable substances and, indeed, experiences faced by youth these days. As my colleague has said, my Party would support these recommendations. I must say that the recommendations of the committee will be found to be constructive and that all sides of the House will be able to support them. I hope the issue will be regarded in a non-partisan way, as I have said before.

One of the things we must recognize is that chemical abuse and the abuse of opportunities in life are parts of the fabric of behaviour. This behaviour does not require that we go to the schools and say, "Don't drink, don't drink and drive, don't use marijuana, don't use heroin or don't use cocaine". What we must do is recognize that excesses of all sorts are at least partially attributable to family experiences, peer pressures and the failure to recognize that there is a new responsibility in the school system to provide young people with the wherewithal to make proper judgments about choices. They must make judgments about which choices will be beneficial to them, and which will be dangerous.

Certainly it is also true that the committee has recognized that there is inadequate funding and inadequate co-ordination. As well, there is an inadequate definition of national priorities, priorities that would allow organizations, such as the one cited by my hon. colleague, to contribute significantly and positively to this very serious problem that plagues so much of our population. We are particularly concerned about youth, but adults as well face problems with respect to the treatment of drug abuse.

I can only tell the Hon. Member that he should wait for the committee's report. I think he will find that the issues he has raised have been identified and addressed and are the subject of positive recommendations.

Mr. Althouse: Madam Speaker, I wonder if my hon. friend could tell the House if the committee spent any time analyzing the effect of television advertising on supplementing the perception young people already seem to get from their parents and from society that one cannot have a good time, a party or a gathering without alcohol. I notice that most of the public advertising on television at least leaves the very clear impression that friends cannot gather for a good time without the introduction of alcohol. Did the committee spend any time looking at that aspect of the problem or did it simply look in general at the societal acceptance or promotion of that particular drug in society?

Mr. McCurdy: Madam Speaker, the answer to the substantive question is yes.

Mr. Nelson A. Riis (Kamloops—Shuswap): Madam Speaker, it is a pleasure to be able to respond to Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act.

This particular Bill received first reading in the House on May 29 of this year and the Government has indicated that this is part of its plan to combat drug abuse in Canada and to take whatever steps necessary to encourage more and more people, particularly young people, to move away from an interest in drugs. On balance, it is a step in that direction. For that reason, my hon. friend for Burnaby has indicated that the principle of this Bill is one we of course support.

However, there are certainly major shortcomings in the Bill. A number of speakers have already outlined in some detail the specific concerns they have about what is lacking in this legislation. Of course, that is the role of an effective and efficient Opposition. Its role is to agree in principle with a Bill while working hard to improve legislation.

I certainly have confidence that Hon. Members, whether of the New Democratic Party, of the Liberal Party or of the Conservative Party, will all be motivated by the need to improve this legislation and to make it the best legislation possible. I believe all parliamentarians can be unified by doing anything possible to enact legislation that will save the people of Canada from falling victim to drugs and drug abuse. That would certainly be an appropriate initiative.

I look forward to seeing real progress made on this Bill. At this stage, of course, we are simply dealing with the Bill in principle and, therefore, I think it is appropriate to discuss not only the principle of the Bill but also to use the opportunity to point out two or three of its major shortcomings. I plan to focus my comments on one area of particular interest to me.

■ (1250)

I remember, and I am sure you will recall, that not many months ago we had brought to our attention, through some incredibly good investigative journalism, the problem of laundering of drug money. Drug traffickers are unscrupulous characters who take advantage of young people, by and large—but not just young people—and encourage them to use drugs, thereby reaping exorbitant profits. There was quite a furor in the House of Commons at that time about whether or not Canadian bank branches in the Bahamas were involved. The investigation pointed the finger at a number of Canadian banks, and I will not name them, who were operating in the Caribbean. You have to look long and hard to find any real economic activity in some of these banks, but of course a considerable amount of money was moving through them. It seemed that the word on the street was that people were walking into bank branches in the Caribbean with suitcases filled with $100 bills, depositing them, and through a number of intricate financial transaction they found their way into more legitimate investments.

The interesting thing is that there was never any real action taken on those allegations. Of course, the banks denied any involvement. Yet the evidence suggested there was something here that needed to be dealt with, and so the banks took the initiative and promised they would implement procedures requiring more scrutiny of deposits exceeding $10,000. That is fine. The banks may have their own internal systems to deal with this, but I think on balance we would agree that this is not an appropriate response.

That is particularly true, given some of the financial skullduggery, and some have referred to it as financial piracy, which has been going on at the senior level of some of our financial institutions, particularly in western Canada, where people were behaving in ways not expected of senior officials of our major financial institutions. In other words, the fact that a bank might have an internal procedure does not bring us much comfort in some areas.

This legislation takes steps to deal with money raised through drug trafficking because the present provisions of the Criminal Code are totally inadequate to deal with that problem, and convicted traffickers may emerge from prison free to enjoy the proceeds of their crime. That is what is really troubling people like our justice critic, the Hon. Member for Burnaby (Mr. Robinson). This is obviously wrong and it must be changed. It is for that reason that we support the principle of this Bill.

Bill C-61 will not require financial institutions to disclose information which could help police detect money laundered by international narcotics traffickers. In other words, it will not oblige our banks, here or elsewhere, or other financial institutions, to record and report to authorities all of their large cash and foreign currency transactions. If the Government is serious about taking steps to uncover the illicit trafficking of drugs, it should seek the assistance of our financial institutions. After all, if a person makes $2 million or $3 million from a major drug transaction, that person is probably not going to put it in the mattress or carry it around in a pocket. He is going to deposit it some place, and some of those deposits are going to be made in Canadian financial institutions. All we are suggesting is that the legislation ought to require financial institutions to report on a regular basis, confidentially in some respects, on these transactions as they occur.

People ask if this is a reasonable expectation. Is this something we can reasonably expect banks to do? It takes place in the U.S. The U.S. has taken steps to work with its financial institutions to help uncover these types of transactions. Reading from the May 29 *Globe and Mail* article by Andrew McIntosh, he says:

> Sources who did not wish to be identified told the Globe this week that strong opposition within the banking community figured largely in the government's decision not to introduce reporting requirements in Canada.

That is a very serious allegation.

It might interest you to know that the U.S. Bank Secrecy Act requires banks to report to federal treasury officials most banking and currency transactions involving amounts that exceed $10,000 and to keep records of many banking transactions for at least five years. That will help facilitate the uncovering of drug trafficking activity.

There have been a number of occasions when that particular provision helped the Federal Bureau of Investigation crack several big drug trafficking rings in the U.S. The record there is well-known and the committee suggested that this be considered here in Canada. It has worked effectively in the U.S.

Obviously the lack of this provision in the legislation is a drafting oversight. While some pressure might have been brought to bear, given that this Bill will be sent to a legislative committee and receive proper scrutiny, I am certain the Government will see the benefit of including the appropriate clauses in this legislation to require banks and other financial institutions to report large cash and foreign currency transactions.

There are another four or five areas I would like to flag. I do not want to go into detail because I do not think this is the appropriate time. However, there are things which need to be brought to the Government's attention in order to improve the legislation.

Before doing that, I simply want to mention that the Bill will create several new offences which would generally prohibit the laundering of proceeds of enterprise crimes and illicit drug activities. In particular, the Bill would create the offence of laundering the proceeds of enterprise crimes to complement the existing offence of possession of proceeds of crime under Section 312 of the Criminal Code. The Bill would also create the new offences of possession of property obtained by trafficking in controlled or restricted drugs under the Food and Drugs Act and the laundering of proceeds of such trafficking.

• (1500)

HEALTH

IRRADIATION OF FOOD

Mr. Vic Althouse (Humboldt—Lake Centre): Mr. Speaker, my question is directed to the Minister of National Health and Welfare. This is the first opportunity we have had to question him on the Government's response to the report of the Standing Committee on Consumer and Corporate Affairs which examined the question of food irradiation and the labelling of irradiated foods.

Given that the government response largely rejected all but a couple of recommendations concerning labelling, will the Minister explain what sort of rationale he used for rejecting the recommendations and, in effect, unilaterally making decisions for himself and his Department which run completely contrary to that four-month study?

Hon. Jake Epp (Minister of National Health and Welfare): Mr. Speaker, it was not a unilateral decision, and the Member knows that.

The report was brought forward by a committee that was chaired by the Member for Capilano. It was a very comprehensive report for which I thank the committee.

There were a number of issues on which there was agreement. I think that the evidence of the studies which have been used by the Department, as well as the number of years that irradiated technology had been studied and used in a very limited manner in some countries, clearly pointed to the decision that was taken.

I also said very clearly in the response that there would not be an extension of any irradiation on any foods subject to a case-by-case study, based again on the regulatory process.

The Hon. Member must keep in mind that I take the regulatory process very seriously and that scientific and health considerations are the overriding considerations. I believe those have been dealt with clearly. I was very straightforward in my response on that issue.

REVIEW OF PROCESSES—COMMITTEE RECOMMENDATION

Mr. Vic Althouse (Humboldt—Lake Centre): Mr. Speaker, will the Minister explain to the House what criteria he used in rejecting the committee's recommendation to strike a public committee to review these processes in favour of an in-department committee that did not have to be responsible to anyone other than himself?

Hon. Jake Epp (Minister of National Health and Welfare): Mr. Speaker, I think the last comment that a committee of experts in the Government are not responsible to anyone but themselves or the Minister is a very poor evaluation of scientists and medical officers within my Department or other organizations within government.

Mr. Hovdebo: What happened to Parliament?

Mr. Epp (Provencher): Calm down and I will give you an answer. The Hon. Member should keep in mind that the Department of Health and Welfare and its officials have not compromised health and have been very keen about that.

I hear the Hon. Member for Prince Albert. He should keep in mind that he gets up in the House every day he can asking for more wheat sales. Yet part of the wheat sales in the international field possibly involves irradiated food. I wish he would be consistent one way or the other, and not try to speak out of both sides of his mouth.

GOVERNMENT ORDERS

[English]

CRIMINAL CODE, FOOD AND DRUGS ACT AND NARCOTIC CONTROL ACT

MEASURE TO AMEND

The House resumed consideration of the motion of Mr. Hnatyshyn that Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, be read the second time and referred to a Legislative Committee.

Mr. Speaker: When the House rose at one o'clock, the Member for Kamloops-Shuswap (Mr. Riis) had the floor.

Mr. Nelson A. Riis (Kamloops—Shuswap): Mr. Speaker, in concluding my remarks on Bill C-61, I was pointing out a major flaw in the Bill that I believe all Parties will want to change. While there are many flaws in Bill C-61, the New Democratic Party supports its principle. It will allow the Government to take serious steps toward eliminating drug abuse and drug trafficking in our country.

Of course, under the present legislation, drug traffickers can easily invest and use the banking system to launder money. While they may serve some time in prison, they can come out to resume their business with substantial amounts of income that they have invested in various ways, not only in Canada but throughout the world.

The major flaw in this legislation is that it does not encompass the banking and financial communities. Serious allegations have been made in the press in the last number of months about money from illicit drug trafficking finding its way into various deposits in Canadian financial institutions. There is no definite proof of this since the books are closed. The RCMP and other law enforcement agencies do not have access to those bank accounts, unlike the United States where financial institutions are required to report their deposits over a certain amount on a regular basis. As a matter of fact, they must report a number of items. This allows the law enforcement authorities in the United States to identify where drug money is being laundered through financial institutions.

We assumed that appropriate legislation reflecting that situation would be introduced. However, such is not the case. Bill C-61 does not include Canadian financial institutions as part of the monitoring system. When this matter goes before the appropriate legislative committee, I urge my honourable colleagues to consider using the experience in the United States, where drug rings have been smashed as a result of the information provided by the reporting systems of the American financial institutions.

While this might require some new responsibilities for banking personnel, as well as some systems for that accounting, I am convinced that if such a request was made of the Canadian Bankers' Association and the organizations of other financial institutions, they would co-operate. It would be in the best interest of Canada, particularly in terms of Canada's young people, if we could put a stop or at least inhibit the running of illicit drugs that presently occurs in our schools, colleges, universities, as well as on the streets of Canada.

If this legislation can be amended in that area, it would certainly have the support of New Democrats on the committee. I am sure it would also have the support of other political parties because stopping the traffic in illicit drugs on the streets of Canada surely is not a partisan issue but something all parliamentarians would endorse.

Mr. Keeper: Mr. Speaker, I have a question which I already asked the Government in regard to its drug reform program and legislative changes. Would it not be a good idea to take into consideration as part of drug abuse the glue sniffing that goes on in many communities across this country?

• (1310)

In Winnipeg, at the City Hall level, we had a by-law for a short time regulating the sale of products which could be abused by youngsters. They were put behind the counter and the age level at which they could be purchased was restricted. This by-law had a positive effect in Winnipeg by reducing the abuse of products on which children could get high by sniffing which, of course, has a detrimental effect on their health and mental capacity.

I wonder if my colleague would not agree that it is a little strange that the Government, which is attacking drug abuse, is not at the same time taking the opportunity to amend federal laws which could reduce the abuse of products that children use to get high, thereby destroying their health?

The by-law which existed in Winnipeg was ruled *ultra vires* by the court in that it fell within federal jurisdiction. Would this not be a good area for initiative by the federal Government at this time?

Mr. Riis: Madam Speaker, my friend, the Hon. Member for Winnipeg North Centre (Mr. Keeper) makes a good suggestion, and it is not the first time he has made it. I recall that he suggested it on numerous occasions, both in public and private. He has put that question in committee and many times on the floor of the House of Commons, trying to encourage the Government to take a variety of steps which would bring to an end that type of activity by young people, not only in Winnipeg but right across the country.

I can only imagine his level of frustration today when once again there is a missed opportunity. Here is an opportunity for the Government to take steps, to indicate in the introductory speeches by government Members how the Government plans to deal with this problem. But once again it has turned its back on something which is very serious. Perhaps we will have an opportunity during debate on this legislation, and more particularly during the work which will be done in the legislative committee, to raise the importance of taking fast action in this critical area.

I also think that when we deal with legislation such as Bill C-61, finding ways and means of legislating the reduction in the amount of illicit drugs sold, drug trafficking and the abuse of drugs, that we do not lose sight of the need to fight the reasons for drug abuse. I think all too often we get too caught up in the mechanics of legislation, in our role as legislators, trying to stem the tide, to fight the symptoms of a much deeper concern. We as responsible parliamentarians should ask the question, what is it that is driving our young people to sniff glue? What is it that drives our young people in high schools and, more unfortunately, in our elementary schools, to pursue drugs and get caught up in the dastardly web of drug abuse? What is it that exists in our society that causes people to require this particular outlet?

Mr. Young: This Government.

Mr. Riis: My friend, the Hon. Member for Beaches (Mr. Young), perhaps not so humourously, says perhaps it is the Government's inaction on a whole number of fronts. You recall, Madam Speaker, the questions raised about illiteracy when the shocking facts recently came out in terms of the incredibly high level of illiteracy among Canadian adults. In some provinces it was in excess of 40 per cent of the adult population. We have tens of thousands, I must say even hundreds of thousands of Canadians in the workforce who are illiterate and, consequently, are the last hired and first fired. This is one of the fundamental problems which results in drug abuse. It provides an incentive for those who would exploit these people and, therefore, the illicit trafficking of drugs increases. That is what we are trying to deal with in this legislation. Of course, it is far down the list of consequences that result from a deeper concern in today's society.

I take with appreciation the suggestion made by the Hon. Member for Winnipeg North Centre. I suspect his wise counsel will be listened to by those who work on this Bill in the legislative committee.

Mr. Skelly: Madam Speaker, I would also like to ask about the question raised this morning with respect to the Government spending $210 million on enforcement in the drug offence area and its failure to address the major problem of

chemical addiction. I would like to ask the Hon. Member for Kamloops—Shuswap (Mr. Riis) for his comments on the failure of the Government to address the major problem of alcohol abuse.

I would like to outline a small area of which I know he is familiar, that is, the community of Bella Coola. An alcohol rehabiltation counsellor in that community is paid $12,000 a year, yet saves both the federal and provincial Governments hundreds of thousands of dollars a year by helping people with an alcohol problem. If it is a parent, the parent can go to work, and the family is assisted.

The Government saves thousands of dollars in health and social services. However, The federal Government will not pay those salaries for people to assist and treat alcoholics. In the community of Bella Coola one of the largest single causes of crime is abuse of alcohol. Everything else stems from it, from child abuse to murder, to assault, to impaired driving. Only $12,000 is the cost of an alcohol abuse counsellor. These alcohol abuse counsellors have a track record of saving hundreds of thousands of dollars.

I ask the opinion of the Hon. Member for Kamloops—Shuswap. Is the Government not being extremely short-sighted in dealing with the small end of the spectrum instead of contributing the resources of the people of Canada to the other problem areas? We are not begrudging the efforts made to curb the serious problem of drug abuse, drug trafficking and drug offences. However, we want money spent in the area of alcohol rehabilitation and treatment so we can realize the savings in human terms, in health terms and in financial terms for the people of Canada.

Mr. Riis: Madam Speaker, once again, I appreciate the most thoughtful interjection of the Hon. Member for Comox—Powell River (Mr. Skelly) on this very critical issue. It is an issue of profound interest to us all. I think too often when it comes to requests for funding of facilities to treat the victims of alcohol and drug abuse we do not have the money to spend—the treasury is bare. Spending in these areas, while it is certainly a concern, is not necessarily a high priority. I think the word "priority" itself betrays a particular attitude. I think we have to see money used to move people away from a dependency on chemicals. Money used to move people away from a reliance on alcohol and drugs is not money spent, but money invested. That money, when it saves a young man or woman, will result in vast savings because they will not spend their time in centres of care later on or cause other problems in terms of death on our highways and so on.

I think we have to see this as an investment in our future in terms of preventive action. It is an non-partisan issue. I will use as an example the non-partisan way in which this ought to be treated. There are communities around the country, as we stand here, taking the initiative to open up treatment centres for those people who are caught up in the web of chemical dependencies. I do not have to refer to any other place than the community of Logan Lake in western Canada. People such as my colleague, the Hon. Member for Cariboo—Chilcotin (Mr. Greenaway), myself and others are working hard to obtain the necessary financial support to assist people in that part of western Canada so that they can be treated for their dependency on chemicals of one kind or other. I am hopeful that as this Bill moves on to the legislative committee stage, we will be taking off our partisan hats and working to obtain the necessary changes and, of course, in the long term, the necessary funding, to bring drug and alcohol abuse in Canada to an end.

[Translation]

The Acting Speaker (Mrs. Champagne): Is the House ready for the question?

Some hon. Members: Agreed.

The Acting Speaker (Mrs. Champagne): The question is as follows. Mr. Hnatyshyn, seconded by Miss MacDonald (Kingston and The Islands), moves that Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, be now read the second time and referred to a legislative committee.

Is it the pleasure of the House to adopt the motion?

Some hon. Members: Agreed.

Motion agreed to, Bill read the second time and referred to a legislative committee.

* * *

• (1320)

[English]

SUPREME COURT ACT

MEASURE TO AMEND

Hon. Ray Hnatyshyn (Minister of Justice and Attorney General of Canada) moved that Bill C-53, an Act to amend the Supreme Court Act and to amend various other Acts in consequence thereof, be read a second time and referred to a legislative committee.

He said: Madam Speaker, I am pleased to rise to speak briefly on this important legislation. Bill C-53 is a Bill to amend the Supreme Court Act and to amend various other Acts in consequence thereof. The aim of the Bill, while simple, is of considerable importance to the administration of justice in Canada. It is to alter the procedure for appeals to the Supreme Court of Canada so as to ensure that the court can continue deciding issues of fundamental national importance in an effective and timely manner.

The considerable increase in recent years in the number of cases heard by the court, particularly appeals based on the Canadian Charter of Rights and Freedoms, has underlined the fact that the court's time is a limited resource. A glance at a

November 5, 1987 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act]

EVIDENCE

[Recorded by Electronic Apparatus]

[Text]

Thursday, November 5, 1987

• 0946

The Chairman: I call the meeting to order. We do have a quorum, I believe. Mr. Kaplan is with us as well, I note.

The order of reference is that Bill C-61, an act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act be now read a second time and referred to legislative committee.

We have a number of routine motions we have to go through before we can hear from the Minister. I am sure he will bear with us. The first has to do with a printing motion, and the usual motion is that, pursuant to the guidelines established by the Board of Internal Economy, the committee print 750 copies of its *Minutes of Proceedings and Evidence*. Moved by Mr. White.

Motion agreed to.

The Chairman: The second motion is for the receiving and printing of evidence when a quorum is not present. The motion is that the chairman be authorized to hold meetings in order to receive evidence and authorize its printing when a quorum is not present, provided that three members are present, including the chairman, and in the absence of the chairman, the person designated to be chairman of the committee. Moved by Mr. Robinson.

Motion agreed to.

The Chairman: The third motion is that the chairman and a certain number of other members of the Progressive Conservative Party—I guess that would be normally... Let us set up one just in case. We may not need it, but it is helpful to have it if necessary. The motion is that the chairman and two others, I guess, of the Progressive Conservative Party and a member of the Liberal Party and a member of the New Democratic Party do compose the Subcommittee on Agenda and Procedure. Would that be agreeable? Moved by Mr. Fontaine.

Motion agreed to.

The Chairman: This is a marvellous committee. I should have joined it long ago.

Next, I need a motion that during the questioning of witnesses, each member be allotted ten minutes for the first round and five minutes for the second round. I notice a puzzled look on Mr. Robinson's face.

• 0950

Mr. Robinson: Mr. Chairman, the only suggestion I would make in terms of questioning the witnesses is to give the Minister perhaps 15 minutes but other witnesses 10.

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le jeudi 5 novembre 1987

Le président: Je déclare la séance ouverte. Il me semble que nous avons le quorum. Je vois que M. Kaplan est parmi nous.

L'ordre de renvoi dit que le projet de loi C-61, Loi modifiant le Code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants passe en deuxième lecture et soit renvoyé à un comité législatif.

Avant de donner la parole au ministre, il faut que nous adoptions quelques motions. Je suis sûr qu'il voudra bien prendre patience. Tout d'abord, nous devons adopter la motion habituelle pour l'impression des fascicules: que conformément aux lignes directrices énoncées par la Commission de la régie interne, le Comité fasse imprimer 750 exemplaires de ses *procès-verbaux et témoignages*. La motion est proposée par M. White.

La motion est adoptée.

Le président: La deuxième motion porte sur l'audition et l'impression des témoignages en l'absence du quorum: que le président soit autorisé à tenir des audiences, à entendre des témoins et à faire imprimer leurs témoignages sans qu'il y ait quorum, à la condition que trois députés au moins soient présents, y compris le président, ou en son absence, la personne désignée pour le remplacer. La motion est présentée par M. Robinson.

Motion adoptée.

Le président: La troisième motion porte que le président et un certain nombre de députés du Parti progressiste-conservateur—je présume qu'habituellement. Prévoyons quelque chose, juste au cas. Nous n'en aurons peut-être pas besoin, mais il vaut mieux ne pas être pris au dépourvu. La motion est celle-ci: que le président et deux autres, je présume, députés du Parti progressiste-conservateur, un député du Parti libéral et un député du Nouveau parti démocratique constituent le Sous-comité du programme et de la procédure. Cela vous convient-il? Proposée par M. Fontaine.

Motion adoptée.

Le président: Ce Comité est extraordinaire. J'aurais dû en devenir membre il y a longtemps.

Il faut maintenant que nous adoptions la motion portant que lorsqu'il y a des témoins, chaque député a droit à 10 minutes pour poser des questions au premier tour, et 5 minutes au deuxième tour. Je vois que M. Robinson a l'air étonné.

M. Robinson: Monsieur le président, pour ce qui est des questions aux témoins, je proposerais simplement que l'on prévoie 15 minutes dans le cas du ministre et 10 minutes dans les autres cas.

[*Texte*]

The Chairman: I am sure that the committee would be happy to leave a certain amount of discretion with the chairman. For the purposes of having something else on the record, subject to the discretion of the chairman, can we go with this motion?

Mr. Robinson: Mr. Chairman, I would suggest that we amend it to have the standard practice of the Standing Committee on Justice and Solicitor General, which is 15 minutes for the first round.

The Chairman: Fifteen minutes for the first round and five minutes thereafter?

Some hon. members: Agreed.

The Chairman: I think this takes care of all our procedural motions. Now we can move on to deal with Bill C-61. We are very pleased this morning to have the Minister with us, the hon. Ramon John Hnatyshyn, Minister of Justice and Attorney General of Canada.

Mr. Minister, I would like to welcome you this morning. Perhaps you would like to introduce your officials once again and we would be pleased to have your opening statement, sir.

Hon. Ramon Hnatyshyn (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chairman and members of the committee. I would like to introduce the officials with me this morning in connection with Bill C-61, which deals with proceeds of crime: Mr. Richard Mosley, Senior General Counsel, Criminal and Family Law Policy Directorate, Department of Justice; and Mr. John R. McIsaac, Counsel, Criminal Law Policy Section of Department of Justice. With your consent and approval, I propose to make an opening statement. I would be glad to entertain questions following my submission.

Mr. Chairman and members of the committee, Bill C-61 is an important step forward in the fight against crime. Its purpose is to send a strong message that crime should not and will not pay—

Mr. Robinson: I am sorry to interrupt you, Mr. Minister, but just on a point of order, Mr. Chairman, the Minister has a prepared statement. Are there copies for the committee?

Mr. Hnatyshyn: I just received it this morning so I am just looking it over. I made changes to it. I do not know if there are extra copies.

Mr. Robinson: It would just be helpful for us to have copies.

Mr. Hnatyshyn: If there is a copy, I am glad to have it distributed. I looked at a draft last night and made some changes and this was produced to me as we walked over here, Mr. Robinson.

[*Traduction*]

Le président: Je suis sûr que le Comité accepterait volontiers de laisser une certaine marge de décision au président. Pouvons-nous adopter cette motion, simplement pour avoir quelque chose par écrit, étant entendu que le président aurait une certaine marge de manoeuvre?

M. Robinson: Monsieur le président, je suggère que la motion soit amendée conformément à la pratique usuelle du Comité permanent de la justice et du solliciteur général, laquelle prévoit 15 minutes au premier tour.

Le président: Quinze minutes au premier tour et cinq minutes au tour suivant?

Des voix: D'accord.

Le président: Voilà pour les motions de procédure. Nous pouvons maintenant passer au projet de loi C-61. Nous avons le plaisir d'accueillir ce matin le ministre de la Justice et procureur général du Canada, l'honorable Ramon John Hnatyshyn.

Monsieur le ministre, soyez le bienvenu. Si vous voulez bien, vous pourriez peut-être nous présenter encore une fois vos collaborateurs et vous pourrez ensuite nous faire votre déclaration liminaire.

L'honorable Ramon Hnatyshyn (ministre de la Justice et procureur général du Canada): Merci, monsieur le président, messieurs les députés. Je vais vous présenter les personnes qui m'accompagnent ce matin pour parler du projet de loi C-61, portant sur les produits de la criminalité: M. Richard Mosley, est avocat général principal à la Section de la politique en matière de droit pénal et familial du ministère de la Justice; M. John R. McIsaac est avocat à la Section de la politique en matière de droit pénal et familial au ministère de la Justice également. Avec votre permission, je vais faire une déclaration liminaire, après quoi je répondrai avec plaisir à vos questions.

Monsieur le président, messieurs les députés, le projet de loi C-61 est une étape importante dans la lutte contre le crime. Il envoie haut et clair le message que le crime ne paiera pas. . .

M. Robinson: Pardonnez-moi de vous interrompre, monsieur le ministre, mais j'invoque le Règlement. Monsieur le président, le ministre a un texte sous les yeux. Les députés pourraient-ils en recevoir copie?

M. Hnatyshyn: Je viens de recevoir le texte ce matin et j'y jette simplement un coup d'oeil. J'y ai apporté quelques changements et je ne sais pas si nous en avons des exemplaires supplémentaires.

M. Robinson: Il nous serait utile d'avoir le texte en main.

M. Hnatyshyn: Si nous en avons des exemplaires, c'est avec plaisir que nous les distribuerons. J'ai lu l'ébauche du texte hier soir et j'y ai apporté quelques changements. Cette version m'a été remise en chemin, ce matin, monsieur Robinson.

[*Text*]

The Chairman: Judging from the looks on the faces of your staff, there may not be such a thing as other copies at the moment, but I am sure you will be happy to supply us.

Mr. Hnatyshyn: I will provide these as soon as I can.

Mr. Chairman and members of the committee, the bill will provide a tough, effective new tool in the investigation and prosecution of drug trafficking offences and other enterprise crimes. The legislation is the result of intensive review and consultation. In this connection I have considered and studied similar legislation in other jurisdictions, including the United States and the United Kingdom. Extensive consultation with my provincial counterparts has also taken place. The result of this process is now before you. I am confident that you will find that it deals strongly but fairly with the problem of enterprise crime.

Enterprise criminals such as drug traffickers in this country are not sufficiently deterred by the traditional methods of sentencing. Canadian law must be given the tools to strip these offenders of the fruits of their crime and to remove the profit incentive. The basic tool required is power of forfeiture by the courts.

Forfeiture is the ability of a court to confiscate from an offender property that has been obtained directly or indirectly as a result of criminal activity. Bill C-61 will add forfeiture to the present sentencing powers of fine, imprisonment and probation open to a court after an individual has been found guilty of a specified offence.

At the same time these measures guarantee the rights of innocent third parties and ensure safeguards for the accused person. The new forfeiture power will not apply to all offences but to those crimes where profit is the motive. There is nothing in the bill to change the guarantees of the presumption of innocence or the requirement that guilt be established beyond a reasonable doubt at the time of trial.

• 0955

To encourage offenders to deliver up their proceeds of crime, courts will be entitled to impose special fines with jail terms in default representing the value of illicit assets intentionally placed beyond the reach of the authorities. In addition, forfeiture without the need of conviction will be available in the limited circumstances of the death or absconding of the offender.

This legislation includes a provision similar to the existing search warrant procedure to allow for the pre-trial seizure of property shown on reasonable grounds to be the proceeds of crime and subject to forfeiture. Not all proceeds of crime such as bank accounts and real property are amenable to physical seizure. Accordingly, the bill would create a pre-trial restraint order which will

[*Translation*]

Le président: À en juger par l'expression de vos collaborateurs, je crois qu'il n'y a pas d'exemplaires à distribuer pour le moment, mais je suis sûr que vous allez y remédier.

M. Hnatyshyn: Je vous les ferai remettre dès que possible.

Monsieur le président, messieurs les députés, le projet de loi sera un instrument utile et efficace dans le cadre des enquêtes et des poursuites à l'égard des infractions en matière de drogues et autres infractions d'association de malfaiteurs. Cette loi est le produit d'une étude et d'une consultation intenses. J'ai étudié les lois qu'avaient adoptées dans ce domaine d'autres pays, notamment les États-Unis et le Royaume-Uni. Des consultations poussées ont eu lieu auprès de mes homologues provinciaux. Vous avez maintenant devant vous le résultat de ce travail. Je ne doute pas que vous jugerez ces mesures fermes mais justes pour lutter contre la criminalité organisée.

Les modes traditionnels de condamnation ne suffisent pas à décourager les criminels organisés, comme les trafiquants de drogues. La loi canadienne doit se donner les moyens d'enlever à ces criminels le produit de leur crime et de retirer ainsi le motif du profit. Pour ce faire, il faut que les tribunaux aient pouvoir de confiscation.

On entend par là le droit du tribunal de confisquer les biens obtenus directement ou indirectement d'une activité criminelle. Lorsque le projet de loi C-61 sera adopté, les tribunaux pourront imposer, outre les amendes, l'emprisonnement et la probation, la confiscation des biens d'une personne jugée coupable de certains infractions.

La loi garantira en même temps les droits des tiers innocents et assurera certaines protections aux accusés. La confiscation ne pourra pas être imposée dans tous les cas, mais seulement pour les crimes motivés par le profit. Ce projet de loi n'entame en rien les garanties de présomption d'innocence ni la nécessité de prouver la culpabilité au-delà de tout doute raisonnable.

Pour encourager les criminels à renoncer aux produits de leur crime, les tribunaux pourront imposer des amendes spéciales et, si elles ne sont pas payées, des peines d'emprisonnement en rapport avec la valeur des biens illicitement obtenus et qui ont été intentionnellement mis hors de la portée des autorités. En outre, il sera possible d'ordonner la confiscation sans avoir prouvé la culpabilité lorsque l'accusé est décédé ou s'est esquivé.

La loi prévoit une procédure semblable à celle du mandat de perquisition pour permettre la saisie, avant le proces, des biens dont on a motif de croire qu'ils sont le produit d'un crime et de ce fait, susceptibles de confiscation. Tous les produits du crime ne se laissent pas physiquement saisir, par exemple les comptes en banque et les biens immobiliers. Par conséquent, le projet de loi

[*Texte*]

be employed to prohibit any dealings with the property or its removal from the jurisdiction of the court.

These freezing powers are similar to those now available to litigants in civil proceedings. These orders can be granted only by the higher courts upon application exclusively by the Attorney General or his or her representative.

To ensure that these powers are exercised in appropriate cases only, the court can require that the Attorney General undertake to pay damages or costs suffered by anyone affected adversely by the order. The provisions for seizure or restraint of assets are not dependent upon a charge having been laid for the following reasons:

Firstly, such powers are comparable to the present section 443, Search Warrant Procedure, which does not require the laying of a charge.

Secondly, such powers will only be granted upon affidavit evidence to establish reasonable grounds that an enterprise crime has taken place which is the equivalent to the process and information required to lay a charge. Furthermore the laying of a charge creates a public record notice that would defeat the purpose of a seizure or restraining order by permitting removal of the property.

To supplement the new forfeiture powers in this legislation, courts will be entitled to draw an inference of the existence of proceeds of crime from an unexplained increase in net worth. Courts will have jurisdiction to void property transactions conducted to avoid the forfeiture of the proceeds of crime. As well restraint orders will be registerable according to provincial law to protect claims for forfeiture.

Any person who has an interest in the property seized or restrained will be entitled to apply to the court for the protection of that interest. The court can act under these provisions to allow the use of a seized or restrained property for reasonable living, business and legal expenses and as security where required as a condition of bail for the accused person.

A new offence of laundering the proceeds of crimes has been created which will call for a maximum sentence of 10 years imprisonment. This bill will also create new offences for possession of the proceeds of drug trafficking to enable federal prosecution of these charges as an alternative to provincial prosecution under section 312 of the Criminal Code. The wiretap provisions of the code will also apply to the offences created under this legislation.

This bill also contains a provision to create a protection for the disclosure of confidential information

[*Traduction*]

donnerait au tribunal l'autorité de rendre une ordonnance de blocage avant la tenue du procès afin d'interdire la cession du bien ou toute transaction qui le mettrait hors de la portée du tribunal.

Ce pouvoir de blocage est semblable à celui que peuvent actuellement invoquer les parties à une action civile. Ces ordonnances ne peuvent être rendues que par les tribunaux supérieurs et seulement à la demande du procureur général ou de son représentant.

Pour prévenir le recours abusif à ce pouvoir, le tribunal peut exiger du procureur général qu'il s'engage à payer des dommages-intérêts ou les dépens à toute personne lésée par l'ordonnance. Une ordonnance de saisie ou de blocage peut être rendue sans qu'aucune accusation ait été portée, et ce pour les raisons suivantes:

Premièrement, c'est un pouvoir comparable à celui que prévoit l'article 443 sur les mandats de perquisition, lequel n'exige pas que soit déposée une accusation.

Deuxièmement, les ordonnances ne seront rendues que sur présentation d'un affidavit établissant qu'il y a infraction de criminalité organisée, ce qui équivaut à la procédure de dépôt d'accusation. L'avis de mise en accusation étant public, il risquerait de rendre inutile l'ordonnance de saisie ou de blocage en provoquant la disparition des biens visés.

Le nouveau pouvoir de confiscation que confère la loi sera encore renforcé par l'autorité donnée aux tribunaux de conclure qu'un bien est le produit d'activité criminelle lorsque la valeur d'un patrimoine augmente de façon inexpliquée. Les tribunaux pourront également déclarer nulle toute transaction de biens effectuée dans le but d'éviter la confiscation des produits de la criminalité. Les ordonnances de blocage pourront également être enregistrées à l'égard d'un bien conformément aux lois de la province où il est situé afin de protéger les avis de confiscation.

Le détenteur d'un droit sur un bien saisi ou bloqué pourra demander à un juge la protection de son droit. Sous le régime de ces dispositions, le tribunal pourra permettre que soient prélevées sur les biens saisis ou bloqués les sommes nécessaires aux dépenses courantes, aux frais judiciaires et au dépôt du cautionnement de liberté provisoire.

La loi crée une nouvelle infraction, le recyclage du produit de la criminalité, qui entraîne une peine maximum de 10 ans d'emprisonnement. Ce projet de loi crée également l'infraction de possession de produits du trafic de la drogue, afin de permettre que ces infractions soient jugées par des tribunaux fédéraux plutôt que par les tribunaux provinciaux, sous le régime de l'article 312 du Code criminel. Les dispositions du Code concernant l'écoute électronique s'appliqueront également à ces nouvelles infractions.

Le projet de loi prévoit également la protection de ceux qui révèlent des informations confidentielles portant sur

[*Text*]

related to money laundering activity. For example, if a financial institution such as a bank, credit union or a caisse-populaire is being used to inadvertently launder the proceeds of crime, an official of that institution wishing to notify the authorities would be shielded from what could at common law be judged a breach of confidentiality. This is an important measure designed to encourage disclosure of legitimate suspicion but avoid malicious or vexatious reporting. I expect that the members and employees of the institutions that I have referred to will welcome this protection, and I expect this provision will encourage even more co-operation with law enforcement personnel in the eradication of money-laundering operations.

• 1000

Of course, any financial institution or person that knowingly deals with the proceeds of crime will be liable to prosecution under the new money-laundering offence. In this context, I have considered the currency transaction reporting as an option in this proceeds-of-crime initiative, and for the following reasons I have not included it in this legislation.

First, in the context of drug and other enterprise crimes, the benefits to be obtained from such a regime are not clear, given the cost to the Canadian taxpayer that would be entailed in setting up the bureaucratic machinery to monitor such a system.

Secondly, in the absence of any clear benefit for the criminal justice purposes from such a regime, the privacy cost to the individual would not be tolerated by the Canadian public.

Finally, the United Nations, as well as the British Commonwealth, are now engaged in the development of international agreements intended to encourage states to create appropriate criminal sanctions for the proceeds of crime, especially drug trafficking. This bill is consistent with these initiatives. Recent legislation dealing with the proceeds of crime have been passed in the United Kingdom, the United States, and Australia. It is time that Canada joined this global effort to combat crime with its own distinctive legislation. This is necessary and creative legislation that will enable the courts to deal effectively with enterprise crime. Therefore, I am pleased to present this bill to the committee for your consideration, comments, suggestions, and in due course, approval. Thank you.

Mr. Kaplan: I have had consultation with Mr. Robinson and with the Minister, and we are disposed to present questions to him at another meeting. We might talk now about some of the witnesses we would like to get from the private sector. In that connection, maybe the Minister could tell us what groups have been consulted in the course of preparing the legislation.

The Chairman: Mr. Kaplan, I understood that there were going to be questions of the Minister as a result of his opening statement.

[*Translation*]

le blanchissage d'argent. Par exemple, si une institution financière, comme une banque, une caisse populaire ou une coopérative de crédit servait à son insu au recyclage des produits de la criminalité, un représentant de l'institution qui en informerait les autorités ne pourrait être poursuivi pour manquement au devoir de discrétion, que connaît la *common law*. Cette importante disposition a pour objet d'encourager la communication de soupçons légitimes tout en évitant les dénonciations abusives ou vexatoires. Je pense que les employés des institutions financières dont j'ai parlé en seront heureux et que cela les encouragera à collaborer encore plus étroitement avec la police pour éliminer les opérations de recyclage.

Bien entendu, toute institution financière ou personne qui participe sciemment à ces activités pourra faire l'objet de poursuites à l'égard de cette nouvelle infraction de recyclage. J'avais à ce propos envisagé la possibilité de demander la communication des opérations de change, mais j'y ai renoncé pour les raisons suivantes.

Premièrement, en ce qui concerne les infractions graves en matière de drogues et autres infractions de criminalité organisée, les avantages ne nous ont pas paru suffisamment clairs pour justifier ce que coûterait aux contribuables canadiens la création d'un service de surveillance.

Deuxièmement, en l'absence d'un avantage évident pour la justice criminelle, l'invasion de la vie privée des citoyens que cela entraînerait serait intolérable aux Canadiens.

Enfin, les Nations unies ainsi que le Commonwealth ont entrepris de formuler des accords internationaux pour encourager les États à imposer des sanctions pénales appropriées à l'égard des produits de la criminalité, et particulièrement du trafic de drogues. Ce projet de loi va dans ce sens. Le Royaume-Uni, les États-Unis et l'Australie ont récemment adopté des lois portant sur le produit de la criminalité. Il est temps que le Canada se joigne à l'effort international de lutte contre le crime en adoptant sa propre loi. Cette loi est un instrument nécessaire et inspiré qui permettra aux tribunaux de lutter véritablement contre la criminalité organisée. C'est pourquoi je suis heureux de présenter ce projet de loi au Comité pour qu'il l'examine, le commente, y suggère des modifications et, en temps opportun, l'approuve. Merci.

M. Kaplan: Après nous être entretenus avec le ministre, M. Robinson et moi-même avons accepté d'attendre à une autre réunion pour lui poser des questions. Nous pourrions peut-être parler maintenant des témoins du secteur privé qu'il faudrait inviter à comparaître. A ce propos, le ministre pourrait peut-être nous dire quels groupes ont été consultés dans la formulation du projet de loi.

Le président: Monsieur Kaplan, je croyais que nous allions poser des questions au ministre sur sa déclaration.

[*Texte*]

Mr. Hnatyshyn: I am quite prepared to answer any questions that may be raised. The committee may want to decide at a steering committee meeting what it wants to do about other witnesses.

The Chairman: You are telling us you will be pleased to come back at the next meeting, if we need you. Is that right?

Mr. Hnatyshyn: I did not say that, Mr. Chairman. I said I want you to give this serious and sober consideration.

Mr. Kaplan: I would like to ask the Minister about the legislation. But that kind of a discussion would be much more enlightened if I had the benefit of more information on the subject.

• 1005

The Chairman: I would presume that we will be hearing other evidence and other witnesses, but it is a question of to what extent we question the Minister, at the moment.

Mr. Robinson: Just on a point of order, Mr. Chairman. Since this is basically an organizational and has been described as an organizational meeting—I appreciate the Minister coming with a statement indicating the broad purpose of the legislation—I would suggest that rather than getting into formal questionning on the substance of the legislation at this point, particularly because the Parliamentary Secretary, who will be primarily responsible, if he is ever appointed, for steering the legislation through the committee. . . I understand that. . . no, I will not comment with respect to the announcement made by the Prime Minister's Office.

In any event, Mr. Chairman, I would suggest that for myself a more desirable way to proceed would be to invite the Minister back at a mutually agreeable date. In the meantime, we consider possible witnesses. Even if we do not decide on them today, we can consider the possible witnesses.

Perhaps the officials might also provide us with background information, including the comparable legislation from other jurisdictions—the UN Draft Convention, the Federal-Provincial Study on Enterprise Crime that has apparently been done on that banking question. We might also receive a list of representations which may have been received by the department from academics, lawyers on Bill C-19, the predecessor, as well as on this aspect of Bill C-19. Finally, perhaps we might be provided with any representations received by the provinces and any articles or other background material that has been done.

I think that would enable us to do our work in—again, speaking for myself—a little more informed way.

The Chairman: I am sure all of that would be most helpful. What I propose to do is to allow questioning of the Minister to the extent you want to question him and

[*Traduction*]

M. Hnatyshyn: Je suis tout à fait prêt à répondre à vos questions. Le Comité voudra peut-être décider en comité directeur quels témoins il doit inviter.

Le président: Vous voulez dire, n'est-ce pas, que vous vous ferez un plaisir d'assister à notre prochaine réunion si nous avons besoin de vous?

M. Hnatyshyn: Ce n'est pas ce que j'ai dit, monsieur le président. J'ai dit que ce projet de loi demandait réflexion de votre part.

M. Kaplan: J'aimerais poser des questions au ministre à propos du projet de loi, mais je serais beaucoup mieux à même de le faire si j'étais mieux informé.

Le président: Nous allons sans doute entendre d'autres témoins, mais il s'agit de savoir dans quelle mesure nous allons interroger le ministre pour l'instant.

M. Robinson: Un rappel au Règlement, monsieur le président. Puisqu'il s'agit essentiellement d'une réunion d'organisation, et je suis reconnaissant au ministre d'être venu nous présenter un aperçu du projet de loi, je pense qu'il vaut mieux reporter l'audition officielle sur le fond de cette mesure législative, d'autant plus que le secrétaire parlementaire, à qui reviendra essentiellement la tâche, si jamais il est nommé, de piloter ce projet de loi au Comité. . . Je crois. . . Non, je ne ferai pas de commentaires sur la déclaration publiée par le cabinet du Premier ministre.

Quoi qu'il en soit, monsieur le président, je pense qu'il serait préférable d'inviter le ministre à revenir à une date mutuellement acceptable. D'ici là, nous pouvons discuter des témoins que nous voudrions éventuellement convoquer. Même si nous ne prenons pas la décision aujourd'hui, nous pourrions en discuter.

Les autorités pourraient peut-être aussi nous communiquer des informations de fond, notamment sur les mesures législatives du même ordre dans d'autres pays, le projet de convention des Nations unies, l'étude fédérale-provinciale sur le crime organisé qui semble avoir été réalisée sur l'aspect bancaire. Peut-être pourrions-nous aussi nous procurer les informations communiquées au ministère par des universitaires ou des avocats sur le projet de loi C-19 qui a précédé celui-ci ou sur cet aspect du projet de loi C-19. Enfin, peut-être pourrions-nous nous procurer les informations recueillies par les provinces et les articles ou toute autre documentation disponible sur la question.

Cela nous permettrait, et je parle encore une fois pour moi-même, d'aborder la question un peu plus en connaissance de cause.

Le président: Ce serait certainement très utile. Si vous le voulez, nous allons interroger le ministre dans la mesure où vous le souhaitez, et ensuite, compte tenu en

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after that, bearing in mind his own schedule, up to 10.45 a.m., we will adjourn and consider other witnesses and the manner of proceeding from here.

Mr. Kaplan: I would hate to let an opportunity go by without asking the Minister questions. I suppose the feature of the bill that is the most resourceful is the last remark the Minister made about the reporting requirement.

I know that the preceding Liberal legislation in the last Parliament did not contain a reporting requirement. However, the Minister must also know, if he has followed the way in which the matter proceeded, that for my part I would have liked a reporting requirement and so would have my deputy. I suppose if you have seen the records of discussion and so on, you would have seen our excellent arguments for having a reporting requirement.

I wanted to ask you about that and ask whether in fact you do not think there would be considerable public approval for a requirement on institutions that receive large amounts of cash to make a reporting about them. You indicated also that the costs were high and I wondered if you had quantified it at all, whether requirements above $50,000-a-day deposits would really be that onerous, if there are that many that occur.

Mr. Hnatyshyn: Maybe I can give some background material on this. I understand the question of reporting has been raised as a situation that might improve the situation. I think the jury is very much still out on that.

If you give me a little indulgence, I might just try to give some information on this. Mr. Robinson referred to foreign models. Maybe I should deal with these things seriatim and then try to explain the current state of affairs. We have been looking at this reporting process, but the question and the conclusion I come to, which I hope I can leave with you for consideration, is that I think the question is whether or not the bureaucratic requirements for this purpose would be worth the cost. You can hear other witnesses. The advice we get from the Solicitor General and the RCMP, who are involved in heading up this investigation part, is that there is doubt the reporting requirement would enhance this legislation substantially.

• 1010

In the U.S. they have the Bank Secrecy Act of 1970 and the Money Laundry Control Act which involves currency transaction reporting. In the U.K. reporting was considered, but it was not adopted by the U.K. government in its Drug Trafficking Offences Act of 1987. The criminal justice bill, which was introduced in 1986 and reintroduced this year, is now before the House of Lords. Both these bills deal with the proceeds of crime. The U.K. legislation provides for judicial production orders similar to our tax information disclosure under

[Translation]

particulier de son propre programme, qui ne lui permet de rester que jusqu'à 10h45, nous lèverons la séance et nous discuterons des autres témoins que nous convoquerons et de la démarche que nous suivrons à partir de là.

M. Kaplan: Je voudrais tout de même profiter de l'occasion pour poser quelques questions au ministre. Je pense que l'élément de ce projet de loi qui sera le plus productif, c'est ce qu'a dit le ministre dans sa dernière remarque à propos de la divulgation.

Je sais que le précédent projet de loi libéral du dernier Parlement ne prévoyait pas une obligation de divulgation. Toutefois, le ministre doit aussi savoir, s'il a suivi le déroulement de ces délibérations, que j'étais personnellement, comme mon sous-ministre, en faveur d'un régime imposant cette divulgation. Si vous avez vu les comptes rendus etc., vous connaissez certainement nos excellents arguments en faveur d'une telle disposition.

Je voulais donc vous poser cette question et vous demander si vous ne croyez pas qu'en fait, le public serait fortement favorable à une disposition obligeant les établissements financiers qui reçoivent d'importants montants en espèces à les déclarer. Vous dites que ce serait une opération coûteuse et je me demande si vous avez vraiment fait des calculs pour savoir si ce serait tellement coûteux de faire déclarer les dépôts de plus de 50,000$ par jour, s'il y en a tant que cela.

M. Hnatyshyn: Je pourrais peut-être vous expliquer un peu le contexte. Je sais qu'on a déjà dit que ce régime de déclaration permettrait d'améliorer la situation. Mais la question n'est pas encore tranchée.

Si vous me le permettez, j'aimerais vous donner quelques précisions à ce sujet. M. Robinson a parlé des modèles étrangers. Peut-être devrais-je aborder ces questions une par une et essayer ensuite de vous faire le point de la situation actuelle. Nous avons réfléchi à cette possibilité d'imposer la déclaration, mais la conclusion à laquelle je suis parvenu, et que je vais soumettre à votre réflexion, est qu'il n'est pas évident que le résultat obtenu justifie le coût du dispositif administratif qu'il nécessiterait. Vous pourrez demander leur avis à d'autres témoins. Le Solliciteur général et la GRC, qui s'occupent de cet aspect de l'enquête, doutent qu'une disposition imposant la déclaration apporte grand-chose à ce projet de loi.

Aux États-Unis il y a la *Bank Secrecy Act* de 1970 et la *Money Laundry Control Act*, qui imposent un certain élément de déclaration des transactions de devises. Les Anglais ont envisagé une telle disposition, mais le gouvernement britannique ne l'a pas adoptée dans sa *Drug Trafficking Offences Act* de 1987. Le projet de loi sur la justice criminelle présenté en 1986 et de nouveau cette année est actuellement à l'étude à la Chambre des Lords. Ces deux projets de loi portent sur les produits de la criminalité. La législation britannique prévoit des

[Texte]

subsection 420.28 and the exemption from liability for disclosure is similar to our proposed section 420.27.

Some of you will be aware of the Australian circumstances. They have had quite a controversy with respect to the so-called Australia Card that was involved with the whole question of bank disclosure. The federal government there introduced a bill on cash transaction reporting prior to the recent election, with provisions similar to the Bank Secrecy Act of the U.S. That bill died on the Order Paper, but I understand it will be introduced subject to the continuing controversy over related personal identification proposals.

The principal purpose of the bill is not for confiscation or forfeiture of proceeds of crime, but for tax evasion which is a matter we in Canada might. . . Perhaps the Minister of National Revenue will consider it and, in terms of an overall system on tax evasion and drug enforcement, we might look at it as worthwhile.

The U.S. system was not vigorously enforced according to the information I received from officials. Mr. Mosley and Mr. McIsaac will try to provide all relevant information for the committee so you can have some background and be able to make an assessment on this and other provisions of the bill.

It was not vigorously enforced until the mid-1980s when they had a famous case and the Bank of Boston was fined for non-compliance. There were increased filings after they had a successful prosecution. They had a host of infractions which they tried to pursue and had mixed success in terms of forcing the bank to do this disclosure. It was a question of administration sloppiness and that sort of thing.

There was a real question of policing all these institutions. When the Bank of Boston prosecution took place, they had some increased filings of backlog for 1,300,000 forms in March 1985. They had a blitz campaign to try to get caught up just on the reporting. IRS hired some 250 data processing employees to try to catch up with the backlog. The volume increased from 59,000 in December 1984, to 255,000 in December 1985. That gives you some idea of the experience in the United States.

What effectiveness have these provisions had?

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The President's Commission on Organized Crime in 1984 reported that the amount of information out of this reporting scheme was so great that it posed a challenge to effective use. They compared the whole process of

[Traduction]

ordonnances de communication analogue aux ordonnances de communication de renseignements fiscaux du paragraphe 420.28 et à la disposition prévoyant la nullité des actions contre les informateurs prévue à l'article 420.27

Certains d'entre vous connaissent peut-être la situation australienne. Il y a eu là-bas toute une controverse sur ce qu'on a appelé la *Australia Card*, à propos de toute la question de la communication des informations bancaires. Le gouvernement fédéral a présenté là-bas un projet de loi sur la communication des transactions financières avant les dernières élections, un projet de loi qui prévoyait des dispositions analogues à celles de la *Bank Secrecy Act* américaine. Le projet de loi est mort au feuilleton, mais d'après mes informations il devrait être de nouveau présenté si la controverse qui se poursuit à propos de la divulgation des renseignements personnels le permet.

Le principal objectif de ce projet de loi n'est pas la confiscation des produits de la criminalité, mais la lutte contre la fraude fiscale qui est une question que le Canada. . . Le ministre du Revenu national y réfléchira peut-être, et ce sera peut-être une option intéressante de régime global de lutte contre la fraude fiscale et contre le trafic de drogues.

D'après les informations que m'ont communiquées mes collaborateurs, le régime américain n'a pas été appliqué très rigoureusement. M. Mosley et M. McIsaac vont essayer de vous communiquer toutes les informations pertinentes à ce sujet, pour vous permettre d'avoir la toile de fond et de vous prononcer sur cet aspect du projet de loi et les autres.

Ce régime n'a pas été appliqué rigoureusement jusqu'au milieu des années 1980. A cette époque, il y a eu une célèbre affaire où la Banque de Boston s'est vu infliger une amende pour non-respect des dispositions de la loi. Après ce succès, les poursuites se sont intensifiées. Les autorités ont essayé de réprimer une foule d'infractions et leurs efforts pour obliger la banque à communiquer ces renseignements ont donné des résultats mitigés, à cause d'un manque de rigueur administrative et de ce genre de choses.

On voulait vraiment mettre de l'ordre dans ces institutions. Quand les poursuites ont été intentées contre la Banque de Boston, son arriéré de déclaration est passé à 1,300,000 formules en mars 1985. Il y a eu une campagne-éclair simplement pour essayer de rattraper cet arriéré. Les services du fisc ont engagé 250 spécialistes du traitement de données pour essayer de rattraper ce retard. Le volume est passé de 59,000 en décembre 1984 à 255,000 en décembre 1985. Cela vous donne un aperçu de la situation aux États-Unis.

A quoi ont servi ces dispositions?

La Commission d'enquête sur le crime organisé, nommée en 1984 par le président, a conclu que la masse d'informations obtenues de cette manière était tellement énorme qu'il était difficile d'en tirer quelque chose

[*Text*]

defining criminal proceeds in the filing to finding a needle in the haystack.

At the request of the chairman of the permanent subcommittee on investigation, the U.S. Senate, the U.S. General Accounting Office, otherwise known as the GAO, conducted a review of the implementation of the Bank Secrecy Act and reported in June 1986:

> The extent that the act is being used in criminal investigations and prosecutions is not known by Treasury, the administering department. Without such information, Treasury cannot determine whether agencies are carrying out their delegated duties or whether the act is useful to the law enforcement community.

The General Accounting Office also found that IRS and Customs are the primary users of the act. In other words, it was primarily for Customs and Internal Revenue purposes that this kind of disclosure provision was used, as opposed to law enforcement.

The anecdotal reports from law enforcement agencies from Florida and California indicate, however, that the data generated by the act had been used to support drug and racketeer, influence and corrupt organizations investigations, in addition to tax and currency violations.

The Bank Secrecy Act was, as you point out, Mr. Kaplan, studied in 1983 by the previous administration as part of their Federal-Provincial Study on Enterprise Crime. The context at the time, as I am informed, between the deputy minister of Justice at the time and the senior U.S. Treasury and Justice Department officials, had been undertaken.

At that time, the U.S. had very little experience or success to report. The assessment of the American officials was that the Bank Secrecy Act was ineffective. In 1984 the proposals that came forward in the then Bill C-19, which was introduced at the beginning of 1984, contained a no-currency-transaction reporting provision, as you rightly point out.

This past year, in August, there was a further review undertaken in the context of preparing a national drug strategy and this particular bill for introduction. Officials from my department met with Treasury personnel again to review the situation and to try to get an assessment. These meetings produced no verifiable information to confirm the cost of the scheme or its benefits in terms of effective law enforcement.

American officials identified serious compliance and administrative problems. The enforcement focus appeared to concentrate on violations of reporting. The concentration was not so much on getting the information as on the constant administrative problem in just chasing

[*Translation*]

d'utile. À son avis, il était aussi difficile de retrouver les produits de la criminalité dans cette masse d'informations que de trouver une aiguille dans une botte de foin.

À la demande du président de la sous-commission permanente du Sénat sur les enquêtes, le *General Accounting Office* (Bureau de la comptabilité générale américain), souvent désigné dans ses initiales GAO, a fait une enquête sur la mise en application de la Loi sur le secret bancaire et a déclaré dans son rapport de juin 1986:

> Le Trésor, qui administre la loi, ne sait pas dans quelle mesure elle est utile pour les enquêtes et les poursuites criminelles. En l'absence de ces informations, le Trésor ne peut pas savoir si ces organismes s'acquittent des fonctions qui leur ont été confiées ni si la loi est d'une quelconque utilité aux services de police.

Le *General Accounting Office* a aussi constaté que le fisc et les douanes étaient les principaux utilisateurs de la loi. Autrement dit, ce genre de disposition, au lieu de servir à faire appliquer la loi, servait surtout à alimenter les dossiers des douanes et du fisc.

Toutefois, d'après des rapports isolés de services de police en Floride et en Californie, les informations obtenues grâce à ces dispositions n'ont pas servi seulement à la répression des fraudes fiscales ou douanières, mais ont aussi été utiles pour certaines enquêtes sur des organisations pratiquant le trafic de drogues et d'influences, le racket et la corruption.

Comme vous l'avez signalé, monsieur Kaplan, le gouvernement précédent a étudié la Loi américaine sur le secret bancaire dans le cadre de son étude fédérale-provinciale sur la criminalité organisée. Je crois que le sous-ministre de la Justice de l'époque avait établi des contacts avec les hauts fonctionnaires du ministère de la Justice et du Trésor américains.

À l'époque, l'expérience et les succès des Américains étaient très limités. Les autorités américaines estimaient que la Loi sur le secret bancaire était inefficace. Comme vous l'avez justement fait remarquer, les propositions figurant dans le projet de loi C-19 qui a été présenté au début de 1984 comportaient une disposition excluant la communication des informations sur les transactions en devises.

En août dernier, nous avons repris cette étude pour élaborer une stratégie nationale de lutte contre la drogue et préparer la présentation de ce projet de loi. Les fonctionnaires de mon ministère ont rencontré ceux du Trésor américain pour refaire le point de la situation. Ces rencontres n'ont pas permis de dégager des informations concrètes sur le coût d'un tel dispositif ni sur l'utilité qu'il pourrait présenter pour l'application de la loi.

Les fonctionnaires américains se plaignaient de problèmes administratifs et du non-respect des dispositions. La répression semble surtout viser les organisations qui ne font pas de déclarations. Il ne s'agit pas tellement d'obtenir des renseignements. Le principal

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[*Texte*]

down the institution to make sure they had properly adhered to the requirements of law.

The Chairman: This would all be reflected in the General Accounting Office study, would it? Can we get copies of it?

Mr. Hnatyshyn: I will have my officials provide the committee with the information. All these facts should be brought to your attention, it seems to me, so that we can make a value judgment on what we should do here.

Mr. Robinson: This would include the provincial study as well.

Mr. Hnatyshyn: I do not know whether that is. . . I would have to get the consent of the provinces, I guess. I will look into the thing for you, Mr. Robinson, but I cannot unilaterally do it without the consent of the provinces.

I have to tell you that I have not been informed that there may be some problem with respect to this, but I will certainly make the inquiry.

Mr. Robinson: You will make the request of the provinces?

Mr. Hnatyshyn: Sure, absolutely.

• 1020

There is a follow up to this enterprise crime study. The Ministry of the Solicitor General has undertaken a program of research to examine the reporting requirements currently in place, working with the police community to identify current financial transaction recording practices that impede or facilitate their investigations and issues relating to access by law enforcement officials to the existing transaction information.

Does that sound like Solicitor General talk to you, Mr. Kaplan?

I think it makes sense. This will include the study of activities as diverse as real estate, stock markets, bankruptcy processes, currency exchange houses and customs interdiction efforts.

As I indicated earlier, the officer in charge of the RCMP Drug Law Enforcement branch has advised the Department of Justice that currency transaction reporting is not necessary for effective anti-drug, crime-profiteering investigations.

I believe, and I have recently been informed, that Revenue Canada (Taxation) is currently studying the effectiveness of CTR for tax law enforcement. They are looking at it from a different perspective, but it may be something that will come to fruition in a way as far as a benefit, in a general sense, is concerned.

[*Traduction*]

souci administratif, c'est de traquer les établissements bancaires pour s'assurer qu'elles respectent les conditions imposées par la loi.

Le président: On doit trouver tout cela dans l'étude du Bureau de la comptabilité générale, non? Pourrions-nous l'obtenir?

M. Hnatyshyn: Je vais demander à mes collaborateurs de vous les communiquer. Je crois qu'il est utile que vous disposiez de toutes ces informations pour décider en connaissance de cause de la marche à suivre.

M. Robinson: Cela s'entend aussi de l'étude provinciale.

M. Hnatyshyn: Je ne sais pas si. . . J'imagine qu'il faudra que j'aie l'accord des provinces. Je vais me renseigner, monsieur Robinson, mais je ne peux pas m'engager unilatéralement sans le consentement des provinces.

Je n'ai pas connaissance que cela puisse poser un problème, mais je vais me renseigner.

M. Robinson: Vous allez demander aux provinces?

M. Hnatyshyn: Absolument.

Il y a actuellement un suivi à cette enquête sur la criminalité organisée. Le ministère du Solliciteur général a lancé un programme de recherche sur les dispositions actuelles en matière de déclaration des transactions, et cherche à déterminer avec les services de police dans quelle mesure les procédures de déclaration de transactions financières entravent ou facilitent les enquêtes policières et à cerner les problèmes d'accès de la police aux informations actuellement disponibles sur les transactions.

Vous ne trouvez pas que je parle comme un solliciteur général, monsieur Kaplan?

Cela me paraît logique. Ces recherches vont porter sur des activités aussi diverses que l'immobilier, la bourse, les bureaux de change et les contrôles douaniers.

Encore une fois, le responsable de la police des drogues de la GRC a déclaré au ministère de la Justice qu'il n'était pas nécessaire de disposer de déclarations sur les transactions financières pour mener des enquêtes efficaces contre les organisations criminelles et de trafic de drogues.

D'après ce qu'on m'a dit récemment, le ministère du Revenu Canada (Impôt) cherche actuellement à déterminer l'utilité d'une disposition de déclaration des transactions du point de vue fiscal. C'est évidemment un point de vue différent, mais c'est néanmoins une étude qui donnera peut-être des informations générales utiles sur l'intérêt d'une telle disposition.

[Text]

These are the points I want to leave with you for consideration another day. The currency transaction reporting is, according to our research at this time, primarily effective for tax law enforcement. Certainly, if it were accepted for that purpose, it would have a secondary benefit for other criminal law enforcement, but it has not been conclusively demonstrated to be effective for that purpose or to be the most cost-efficient means to improve the tracing and identification of criminal proceeds.

I think, on the basis of American experience, the implementation of a currency transaction report system would have a profound government operations and resource implications.

I think the existing investigative procedures, such as search warrants, will very likely prove sufficient to access information held by financial institutions.

The study undertaken by the Solicitor General's department on experiences with financial investigations pursuant to the proceeds legislation will identify weaknesses in any of the current recording and reporting procedures of financial institutions. I would be very much interested in seeing what that study turns up.

At present, on the information I have had presented to me and in the absence of verifiable cost and effectiveness data, I cannot say that the CTR system has been necessarily justified to me.

This is the general background, Mr. Kaplan and members of the committee, to give you an idea of some of the concerns and constraints, the experiences in other jurisdictions, and the difficulties that have been faced in terms of public policy and in those countries that have accepted the system.

I concern myself that people who are involved in enterprise crime and the illicit drug trade. . . If you have a system that says all transactions over $10,000, or whatever the threshhold is going to be, are to be reported—if it is lower, it obviously means more transactions. These people have a very clear understanding of these reporting requirements. They have couriers, they have a variety of ways to circumvent these requirements, and we all understand that these are not stupid people; they are people who are very much going to exploit the system as best they can.

We have to balance our considerations here on the questions of privacy, cost effectiveness, etc. As representatives on the federal level, I think we have a responsibility to try to balance these things, to decide if we have the tools in this legislation to really allow us to trace and seek and actually attack effectively the proceeds of crime.

• 1025

I am just trying to present the case to you. I think we should try to move on this legislation by monitoring as it comes into effect. Allow studies to go forward to satisfy

[Translation]

Ce sont donc là les points auxquels vous pourrez réfléchir plus tard. D'après les recherches que nous avons effectuées, les déclarations de transactions monétaires sont surtout utiles au service du fisc. Il est certain que si elles étaient acceptées à cette fin, elles présenteraient une utilité secondaire pour d'autres services de police, mais il n'est pas prouvé jusqu'à présent que ce soit un instrument efficace pour cela ni que ce soit le moyen le plus rentable d'améliorer le dépistage et la découverte des produits de la criminalité.

Étant donné l'expérience des Américains, je pense que la mise en oeuvre d'un régime de divulgation des transactions financières aurait d'importantes répercussions sur les activités et les ressources du gouvernement.

Je crois que les procédures d'enquête actuelles, par exemple les mandats de perquisition, devraient être suffisantes pour nous procurer les informations que détiennent les institutions financières.

L'étude que réalise le ministère du Solliciteur général sur les enquêtes financières réalisées dans le cadre de la législation sur les produits de la criminalité mettra au jour les faiblesses des procédures d'enregistrement et de déclaration des institutions financières. Je suis très curieux de connaître les résultats de cette étude.

Pour l'instant, d'après les informations dont je dispose et en l'absence de données solides sur le coût et l'efficacité d'un dispositif de déclaration des transactions, je demeure sceptique.

Voilà donc la toile de fond, monsieur Kaplan et mesdames et messieurs les membres du comité, qui vous donne un aperçu des problèmes et des limites de la question, de l'expérience d'autres organismes, et des problèmes politiques qui se sont posés dans les pays qui ont opté pour ce régime.

Je m'intéresse au crime organisé et aux trafiquants de drogues. . . Si l'on exige que toutes les transactions de plus de 10,000$, ou d'un montant quelconque, soient déclarées. . . si le montant est inférieur, il y aura manifestement encore plus de transactions. Nous avons affaire à des gens qui connaissent parfaitement les règlements. Ils ont des passeurs, ils ont toutes sortes d'astuces pour tourner les règlements, et nous savons très bien qu'ils ne sont pas idiots; ils sont tout faire pour exploiter au maximum le système.

Il ne faut donc pas oublier ici la question de la protection des renseignements confidentiels, de la rentabilité, etc. En tant que représentant du gouvernement fédéral, je crois que nous devons mettre tous ces éléments dans la balance et voir si ce projet de loi nous permet vraiment de dépister et de saisir les produits de la criminalité.

J'essaie tout simplement de vous présenter la situation. A mon avis, il faut suivre de près la loi lorsqu'elle sera mise en vigueur. Il faut faire faire des études pour

[*Texte*]

ourselves with respect to effectiveness. I do not want to put in a system that may not be effective.

The Chairman: Mr. Fontaine.

M. Fontaine: Merci, monsieur le président. J'aurais quelques questions de clarification.

Premièrement, en ce qui concerne la possible rétroactivité de l'application de la loi. Est-ce qu'il y a des ouvertures vers cette application dans votre projet?

M. Hnatyshyn: Pas du tout, monsieur Fontaine.

M. Fontaine: Maintenant, si un criminel met en place une organisation qui possède des actifs et si ce criminel est reconnu coupable dans les quatre ans après l'application de votre loi, est-ce qu'il y a une période dans le temps qui rend les actifs non saisissables après un certain délai, que les actifs aient été identifiés au moment où la condamnation a lieu, ou sont-ils identifiés cinq ans plus tard? Est-ce qu'à ce moment-là ils sont encore saisissables si on les relie au même criminel qui, lui, aurait été condamné et ce, même si on n'a pas trouvé ces actifs-là?

Mr. Hnatyshyn: I think the rule is that the forfeiture divisions will only follow a conviction, and they will follow a conviction if they are able to identify the assets as being proceeds of a crime for which there has been a conviction.

There are two exceptions to this—where the accused has died, and where the accused has disappeared from the jurisdiction. In such cases it would be incumbent upon the Attorney General to establish guilt beyond a reasonable doubt, and the forfeiture provisions would then apply in those limited circumstances. So the answer is yes. To put it another way, it would not be necessary to have the seize, freeze, or forfeiture provisions come into effect concurrently with the prosecution. We understand that information on the assets may come to light only after the trial. So these two processes are not, as it were, joined at the navel.

M. Fontaine: Est-ce que les biens sont saisissables? S'ils ont acquis, avec les années, une certaine plus-value, est-ce que la plus-value doit être, elle aussi, saisissable?

M. Hnatyshyn: Je pense que la réponse à votre question, monsieur Fontaine, est oui.

M. Fontaine: Vous avez parlé de succession mais, pour moi, ce n'est pas assez clair. Est-ce que les biens qui seraient saisissables dans les mains d'un criminel seront également saisissables s'ils sont distribués, soit par le biais de l'héritage, soit par celui d'une vente plus ou moins fictive et plus ou moins articulée?

Mr. Hnatyshyn: Yes. There are specific provisions that allow the court to reverse fictitious transactions, to look behind the transfer of assets, if it can establish that this was done for the purpose of avoiding seizure. I think it is probably similar to civil procedures available in jurisdictions in Canada.

[*Traduction*]

examiner l'efficacité des mécanismes. Je ne veux pas mettre en place un régime qui risque de ne pas être efficace.

Le président: Monsieur Fontaine.

Mr. Fontaine: Thank you, Mr. Chairman. I have a few clarifications.

The first concerns the possible retroactive implementation of the act. Do you have any such intention?

Mr. Hnatyshyn: Not at all, Mr. Fontaine.

Mr. Fontaine: If a criminal sets up an organization with assets, and if this individual is found guilty within four years after the act comes into effect, will there be a provision whereby the assets are not subject to seizure after a certain length of time, whether the assets were identified at the time of the conviction or five years later? Would the assets still be subject to seizure if they are linked to the same criminal, who has already been convicted, even if the assets were not found?

M. Hnatyshyn: Je crois que les dispositions concernant la confiscation ne s'appliqueront qu'après la condamnation. De plus, il faut pouvoir identifier les biens comme étant les produits de la criminalité qui ont fait l'objet d'une condamnation.

Il y a deux exceptions à cette règle, et ce sont les cas où la personne accusée de l'infraction est décédée ou s'est esquivée. Dans ces cas, il incomberait au procureur général de prouver la culpabilité au-delà du doute raisonnable, et à ce moment-là les dispositions concernant la confiscation seraient applicables. La réponse est donc oui. Autrement dit, il ne serait pas nécessaire de faire intervenir les dispositions concernant la saisie, le blocage ou la confiscation au même moment que l'accusation. Nous savons que les informations concernant l'actif risquent de n'être disponibles qu'après le procès. Donc, les deux processus ne sont pas forcément associés l'un à l'autre.

Mr. Fontaine: If the assets become more valuable, or acquire a certain value added over time, should this also be subject to seizure?

Mr. Hnatyshyn: I believe the answer to your question is yes, Mr. Fontaine.

Mr. Fontaine: You spoke about estates, but I am still not quite clear on the point. Will assets that would be subject to seizure if they were in the possession of a criminal also be subject to seizure if they are distributed either through an inheritance or through a more or less fictitious sale?

M. Hnatyshyn: Oui. Il y a des dispositions qui habilitent expressément le tribunal à annuler les transactions fictives, à examiner les motifs d'un transfert d'actif, s'il peut prouver qu'on a procédé de cette façon afin d'éviter la saisie. Je pense que c'est probablement semblable aux procédures civiles en vigueur dans les provinces et territoires au Canada.

[Text]

• 1030

Legislation provides that where assets have been removed from the jurisdiction and can be identified clearly in the course of proceedings contemplated by these amendments, the court can make an order against assets of the convicted person within Canada. As I understand the legislation, a pecuniary penalty would be imposed by the court equivalent to the value of the assets outside the jurisdiction of the court. It would be a type of fine in which default of payment would create a possibility of imprisonment for a further term than that already imposed by the court for the offense itself.

All these exigencies are contemplated by the bill. You are quite correct that we have to anticipate different situations without in any way intruding on the basic rights of an accused.

Mr. Fontaine and members of the committee, there are many ways to make sure the rights of the accused are always preserved. We would anticipate that in some cases people are interested in getting their proceeds of crime out of the jurisdiction and we have to have some leaverage against assets remaining in the jurisdiction.

To bring this to a total perspective, the court is empowered and directed by the legislation in the appropriate circumstances to give notice to interested third parties who might have a claim against this. They are entitled to have their day in court as well. In any of these decisions they can come forward on their own petition or will receive notice on the basis of information before the court about these assets to make sure legitimate claims will be preserved. The rights of legitimate purchasers for value without notice will be maintained under this legislation.

Mr. Robinson: Has there been any actual assessment by the department for the potential costs of a mechanism for currency reporting?

Mr. Hnatyshyn: I think the assessment has been based on experiences in other jurisdictions. I am trying to tanspose the matter to our own. We have not done a cost analysis within the department for a scheme appropriate in Canada. What might be required here and the question of whether it is worth the administration or is going to assist for purposes of this act have led us at this time to conclude that we do not have enough information.

There are a number of studies. A study of by Solicitor General is going forward and we are continuing to monitor this thing. We will try to bring whatever information we have to you so you can make an analysis of it.

Mr. Robinson: The Minister has said the resource implications are serious and has referred in his opening comments to the bureaucratic class. I take it the Minister is agreeing that there has been no quantification of those costs. Is that correct?

[Translation]

Sous le régime de ce projet de loi, lorsque les biens ont été enlevés du pays et peuvent être clairement identifiés dans le cadre des poursuites prévues par ce projet de loi, le tribunal peut ordonner la confiscation des biens de la personne condamnée, qui se trouvent au Canada. Si je comprends bien la loi, une amende serait imposée par le tribunal, d'un montant équivalent à la valeur des biens qui se trouvent en dehors du ressort du tribunal. Il s'agirait d'une sorte d'amende qui, si elle n'est pas payée, donnerait lieu à une peine de prison en sus de la peine déjà imposée par le tribunal pour l'infraction elle-même.

Toutes ces exigences sont envisagées par le projet de loi. Vous avez parfaitement raison de dire que nous devons prévoir différentes situations sans pour autant porter atteinte aux droits fondamentaux de l'accusé.

Monsieur Fontaine, messieurs les membres du comité, il existe de nombreuses façons de s'assurer que les droits de l'accusé sont protégés. On peut s'attendre à ce que, dans certain cas, les intéressés essaient de faire sortir du pays le produit de leur crime et il nous faut absolument avoir une certaine prise sur les biens qui demeurent dans le pays.

Pour remettre tout cela en perspective, le tribunal est tenu par la loi de donner avis le cas échéant aux tierces parties intéressées qui pourraient justifier d'un certain droit sur les biens en cause. Elles ont le droit également de faire valoir leur point de vue devant le tribunal. Dans toutes ces décisions, elles peuvent se présenter de leur propre chef ou recevoir une convocation à partir des renseignements dont dispose le tribunal au sujet de ces biens, afin de s'assurer que les prétentions légitimes sont protégées. Les droits des acquéreurs légitimes qui ignoraient l'origine criminelle des biens seront protégés dans le cadre de cette loi.

M. Robinson: Le ministère a-t-il procédé à une véritable évaluation du coût éventuel d'un mécanisme de déclaration des opérations en devices étrangères?

M. Hnatyshyn: Je pense que l'évaluation a été fondée sur l'expérience acquise dans d'autres pays. J'essaie de transposer la question à notre pays. Nous n'avons pas encore procédé, au ministère, à une analyse des coûts pour un modèle approprié au Canada. La question de savoir ce qu'il faudrait ici, si l'administration en vaut la peine et si cela contribuera à l'application de cette loi nous a amenés à conclure, pour l'instant, que nous ne disposons pas suffisamment de renseignements.

Un certain nombre d'études ont été entreprises. Le solliciteur général poursuit une étude dans ce domaine et nous continuons à surveiller la chose. Nous essaierons de vous présenter toute l'information que nous aurons de façon à vous permettre d'en faire l'analyse.

M. Robinson: Le ministre a dit que l'incidence budgétaire est considérable et a parlé, dans sa déclaration liminaire, des coûts administratifs. Je suppose que le ministre convient qu'il n'y a eu aucune quantification de ces coûts. Est-ce exact?

[*Texte*]

The Chairman: The study in the States would be some sort of evidence, I think.

Mr. Robinson: Probably not.

The Chairman: I understand that, but I would guess it is what the study would have been all about so far as the Americans are concerned.

• 1035

Mr. Hnatyshyn: That is a good question, Mr. Robinson, but in terms of the experience of other jurisdictions, it is too facile. The Americans themselves, even with their experience, have not been able to quantify this. It depends on the scheme you put in to monitor it. You could have different models.

Mr. Robinson: Just answer the question.

Mr. Hnatyshyn: It cannot be answered yes or no, and a specific quantification can be misleading.

Mr. Robinson: The answer is no.

Mr. Hnatyshyn: I could give you a big number. If we really wanted to crack down on all transactions, we could have a very big bureaucracy here. It is a question of the appropriate level. I do not think we are in a position to know whether we should go ahead with this.

Mr. Robinson: Has the department received any representations on this issue from the Canadian Bankers' Association?

Mr. Hnatyshyn: I am informed that there have been no direct representations made by the Canadian Bankers' Association, though the department has of course consulted with it during the last five years.

Mr. Robinson: Is the Minister suggesting that there have been no representations with respect to the provisions in Bill C-19, either?

Mr. Hnatyshyn: Yes.

Mr. Robinson: Have there been no letters or written submissions to the department from the Canadian Bankers' Association on this bill?

Mr. Hnatyshyn: None.

Mr. Robinson: I am referring to the reporting requirements.

Mr. Hnatyshyn: There have been representations, I am informed, with respect to the confidentiality and disclosure provisions in this present legislation, but not with respect to the reporting of transactions.

Mr. Robinson: Can we as a committee receive copies of those representations?

Mr. Hnatyshyn: This would be subject to their approval, according to the customary rule of courtesy.

Mr. Robinson: Have there been any written representations to the department from any individual banks?

[*Traduction*]

Le président: Je pense que l'étude faite aux États-Unis en fait état en quelque sorte.

M. Robinson: Probablement pas.

Le président: Je comprends cela, mais je suppose que c'est là l'objet que l'étude américaine aurait eu.

M. Hnatyshyn: Voilà une bonne question, monsieur Robinson, mais en ce qui a trait à l'expérience des autres pays, cela est trop facile. Les Américains eux-mêmes, malgré leur expérience, n'ont pas été capables de quantifier cela. Cela dépend de la structure mise en place pour le contrôle. Différents modèles sont possibles.

M. Robinson: Répondez simplement à la question.

M. Hnatyshyn: Je ne peux pas répondre par oui ou par non, et un chiffre précis pourrait induire en erreur.

M. Robinson: La réponse est non.

M. Hnatyshyn: Je pourrais vous donner un chiffre très élevé. Si nous voulons réellement contrôler toutes les opérations, nous pourrions nous retrouver avec une bureaucratie énorme. C'est une question de niveau opportun. Je ne pense pas que nous soyons en position de savoir si nous devons nous y lancer.

M. Robinson: Le ministère a-t-il reçu des observations à ce sujet de la part de l'Association des banquiers canadiens?

M. Hnatyshyn: On m'a dit que nous n'avions reçu aucune communication directe de la part de l'Association des banquiers canadiens, bien que le ministère ait, bien sûr, consulté celle-ci au cours des cinq dernières années.

M. Robinson: Le ministre voudrait-il laisser entendre qu'il n'y a eu aucune communication au sujet des dispositions du projet de loi C-19 non plus?

M. Hnatyshyn: Oui.

M. Robinson: N'y a-t-il eu aucune lettre ou mémoire présenté au ministère par l'Association des banquiers canadiens au sujet ce projet de loi?

M. Hnatyshyn: Aucun.

M. Robinson: Je parle de l'obligation de divulgation.

M. Hnatyshyn: Il y a eu des interventions, m'a-t-on dit, au sujet des dispositions du projet de loi sur la confidentialité et la divulgation, mais non au sujet de la déclaration des opérations effectuées.

M. Robinson: Le comité peut-il recevoir des exemplaires de ces interventions?

M. Hnatyshyn: Si les auteurs en donnent l'autorisation, conformément aux règles courantes de courtoisie.

M. Robinson: Y a-t-il eu des observations faites par écrit au ministère par des banques individuelles?

[*Text*]

Mr. Hnatyshyn: I am informed that neither an association nor any individual bank has made representations with respect to the reporting requirements.

Mr. Robinson: Richard Marshall, the Senior International Counsel at the Bank of Nova Scotia, said this:

> We are efficient at what we do. As such we are a good target of money-launderers.

Yet the government does nothing. The Minister knows my view that the government has caved in to the banking sector in Canada in refusing to bring forward a reporting provision, which has been described by the former Deputy Solicitor General in a letter to the federal Inspector General of Banks as being essential to the efficacy of legislation of this nature. Of course, any link between the response of the government and contributions made to the Conserative Party by the major banks would be purely coincidental.

Mr. Hnatyshyn: Mr. Robinson, I must inform you that nothing could be more ridiculous. There has been no caving in to banks or anyone else. There has been no pressure by the banks as far as I know. Furthermore, it is simply not my style to cave in to anybody. Any suggestion to this effect is totally without foundation and is not in keeping with the usual high level of participation for which you are becoming famous.

• 1040

Secondly, this bill stands on its own merits. I have tried to give you a fairly full and responsible answer about some of the problems we have identified with respect to the whole reporting situation. It is easy for headline purposes to make these kinds of specious allegations. All I can say to you is that I have no hangup on the reporting system if I think it is going to be cost-effective in terms of the process.

If you have made up your mind before looking at the evidence, it is your prerogative. I simply think we should have a look at the evidence and try to make a judgment on it based on the facts.

Mr. Robinson: Mr. Chairman, there was a federal-provincial study on enterprise crime, which suggested very clearly:

> Without clear tracking identification of the movements of profits earned by sophisticated criminals, it will be hard for police and the courts to effectively use the freeze-and-seize provision.

The Minister has referred to a meeting or meetings that took place with The Canadian Bankers' Association. When did that meeting or those meetings take place and who was present?

Mr. Hnatyshyn: Further to what I was saying earlier, Mr. Chairman and Mr. Robinson, I also have to take issue with the contention that the former deputy solicitor general said that currency transaction reporting was

[*Translation*]

M. Hnatyshyn: On m'informe qu'aucune association ni banque individuelle n'a fait d'interventions quant à l'obligation de divulgation.

M. Robinson: Richard Marshall, chef du contentieux international de la Banque de la Nouvelle-Écosse, a dit ceci:

> Nous faisons bien notre travail. Et à ce titre, nous sommes une cible idéale pour les recycleurs d'argent.

Et pourtant le gouvernement ne fait rien. Le ministre connaît mon point de vue, à savoir que le gouvernement a capitulé devant le secteur bancaire au Canada en refusant de prévoir une disposition de déclaration, que l'ancien sous-solliciteur général a qualifié de condition indispensable à l'efficacité d'une loi de ce genre, dans une lettre adressée à l'inspecteur général des banques. Bien sûr, tout lien entre la position du gouvernement et les contributions versées au Parti conservateur par les grandes banques serait pure coïncidence.

M. Hnatyshyn: Monsieur Robinson, je peux vous assurer que rien ne pourrait être plus ridicule. Il n'y a eu aucune capitulation devant les banques ou n'importe qui d'autre. Il n'y a eu aucune pression exercée par les banques, que je sache. Qui plus est, ce n'est tout simplement pas mon style de capituler devant qui que ce soit. Toute insinuation dans ce sens est totalement sans fondement et ne correspond pas à votre degré habituel de participation élevée.

Deuxièmement, ce projet de loi est valable tel quel. J'ai essayé de vous donner une réponse raisonnable au sujet de certains problèmes que nous avons relevés en matière de divulgation. Il est facile de faire ce genre d'allégations spécieuses qui font les manchettes. Tout ce que je peux vous dire, c'est que je ne fais aucun complexe quant au système de déclaration et je pense que celui-ci sera rentable.

Si votre opinion est déjà faite avant même de regarder les preuves, c'est votre prérogative. Je pense seulement que vous devriez regarder les preuves et tenter de passer un jugement raisonnable à partir des faits.

M. Robinson: Monsieur le président, une étude fédérale-provinciale sur le crime organisé dit clairement ce qui suit:

> En l'absence de moyens efficaces de retracer les sommes acquises par les criminels organisés, il sera difficile à la police et aux tribunaux de se servir efficacement des dispositions de blocage et de saisie.

Le ministre a parlé d'une réunion ou de réunions qui ont eu lieu avec l'Association des banquiers canadiens. Quand cette réunion ou ces réunions ont-elles eu lieu et qui était présent?

M. Hnatyshyn: En plus de ce que je disais plus tôt, monsieur le président et monsieur Robinson, je dois également contester l'affirmation selon laquelle l'ancien sous-solliciteur général aurait dit que la déclaration des

[Texte]

essential to effective legislation. He talked about having a mechanism in place whereby profits could be traced.

We have mechanisms in this legislation by which profits can be traced. He was not, I submit to you, holding out a brief for a specific currency transaction reporting.

Secondly, with respect to the question of the nature and timing of this, maybe I could ask Mr. Mosley to give us the particular background. I have had no dealings with any banker except the manager of the Royal Bank of Canada in Saskatoon with respect to my loan within the last two years.

Mr. R. Mosley (Senior General Counsel, Criminal and Family Law Policy Directorate, Department of Justice): Mr. Chairman, throughout the course of the Federal-Provincial Study on Enterprise Crime, which began in 1982, there have been discussions from time to time with the security directors for the major banks who have an Association of Security Directors, the president of which is Mr. Michael Ballard.

They have a committee also on money laundering. They meet periodically with members of the RCMP, specifically the heads of the Drug Enforcement Branch and the Commercial Crime Branch. We have participated in those discussions from time to time.

The discussions have focused on methods to trace and identify proceeds. In addition to this, we have also met with the legal directors of some of the banks through The Canadian Bankers' Association to discuss a proposal, which is reflected in proposed section 420.27 of the bill and which first arose in the English legislation that was introduced in 1986.

We met with them to discuss the question of the confidentiality principle and the use of a provision similar to what is it is in proposed section 420.27 to deal with the problem of the confidentiality principle.

Mr. Robinson: I have one final question, Mr. Chairman, if I may at this stage. I wonder if the Minister might undertake to consult with his colleague the Solicitor General to determine whether any written representations were made to that ministry, either on the current legislation or on the predecessor legislation by the banking community.

Mr. Hnatyshyn: I am happy to do so.

Mr. Robinson: If so, would he make efforts to make it available to the committee?

Mr. Hnatyshyn: I will certainly do so in the same way as I try to make all information available to the committee to make judgments on the basis of facts.

[Traduction]

opérations en devises étrangères était indispensable à l'efficacité de la loi. Il a parlé de la mise sur pied d'un mécanisme par lequel les profits pourraient être retracés.

Nous avons dans cette loi des mécanismes par lesquels les profits pourront être retracés. Il ne présentait pas, je vous le ferai remarquer, un exposé en bonne et due forme pour une modalité spécifique de déclaration des opérations en devises étrangères.

Deuxièmement, en ce qui a trait à la nature et au moment de cette activité, je pourrais peut-être demander à M. Mosley de nous brosser la toile de fond. Je n'ai aucun contact avec des banquiers sauf, au cours des deux dernières années, avec le directeur de la Banque royale du Canada à Saskatoon au sujet d'un prêt.

M. R. Mosley (avocat général principal, Section de la politique en matière de droit pénal et familial, ministère de la Justice): Monsieur le président, tout au long de l'étude fédérale-provinciale sur le crime organisé, qui a débuté en 1982, il y a eu des discussions périodiques avec les directeurs de la sécurité des grandes banques, qui ont une association des directeurs de la sécurité, dont le président est M. Michael Ballard.

Ils ont également un comité sur le recyclage. Ils rencontrent périodiquement des membres de la GRC, plus précisément les chefs du Service divisionnaire de la lutte anti-drogue et du Service divisionnaire des infractions commerciales. Nous avons participé à ces discussions, à l'occasion.

Elles étaient axées sur les méthodes qui pourraient servir à retracer et à identifier les produits de la criminalité. En outre, nous avons rencontré les directeurs du contentieux de certaines banques par l'entremise de l'Association des banquiers canadiens afin de discuter de la proposition incarnée dans l'article 420.27 du projet de loi et qui s'est fait jour initialement dans la loi anglaise adoptée en 1986.

Nous les avons rencontrés pour parler de la question du principe de confidentialité et de l'utilisation d'une disposition semblable à celle qui se trouve dans le projet d'article 420.27 pour faire face au problème du principe de confidentialité.

M. Robinson: J'ai une dernière question, monsieur le président, si vous permettez. Je me demande si le ministre peut consulter son collègue le Solliciteur général afin de déterminer si des observations ont été faites auprès de ce ministère, soit sur la loi actuelle soit sur la loi antérieure, par le secteur bancaire.

M. Hnatyshyn: Je le ferai avec plaisir.

M. Robinson: Dans ce cas, sera-t-il possible de les communiquer au comité?

M. Hnatyshyn: Je le ferai certainement, tout comme je tente de fournir au comité tous les renseignements disponibles afin de lui permettre de tirer des conclusions des faits.

[Text]

• 1045

Mr. Robinson: Mr. Minister, I take it that the request with respect to the other information—the UN Draft Convention, the legislation in place in other jurisdictions, as well as the bills that have been proposed, for example, in Australia and the UK, and the other material that was requested—will be made available to the committee.

Mr. Hnatyshyn: I will make sure we get as full a dossier for members of the committee as possible through the department.

The Chairman: Thank you very much, Mr. Robinson and Mr. Minister. I just wanted to interject one further comment. Much of the discussion relating to this has focused on reporting by the banks. My experience in other areas leads me to believe there are also trust companies, caisse-populaires and credit unions involved in it which have nothing to do with The Canadian Bankers' Association, and operate independently. They do not have the level of the sophistication the banks do. I think we should have some material on that aspect of it as well, if there is any.

Mr. Hnatyshyn: In order to have an effective system, you would have to nail every possible agency, every caisse-populaire, every credit union.

Mr. Kaplan: They do a lot of reporting anyway.

Mr. Hnatyshyn: I know.

Mr. Kaplan: Every week and every month.

Mr. Hnatyshyn: There are also currency exchange houses—and this is not just the banks. This is making a reporting of transactions in a variety of areas and I think we would have to look very carefully at the scope and the extent of the agencies that would be covered by this. We have to be cognizant of that, Mr. Chairman, you make a very good point, as usual, in your impartial way.

Mr. Robinson: On that point, Mr. Chairman, I would just note, however, that Richard Marshall, the senior international counsel with the Bank of Nova Scotia, has pointed out, to use his words, that "not just any bank will do". Money launderers prefer banks that have an international network of branches, including some in tax savings and computers that can shuttle the money back and forth. I think the primary focus is certainly on banks of that nature, but quite clearly other institutions should be looked at as well.

The Chairman: Thank you very much. Thank you, Mr. Minister.

Mr. Hnatyshyn: Thank you very much, colleagues, for your generosity and experience.

[Translation]

M. Robinson: Monsieur le ministre, puis-je conclure que les autres renseignements demandés—la Convention des Nations unies, les lois en vigueur dans d'autres pays, ainsi que les projets de loi envisagés, par exemple, en Australie et au Royaume-Uni, ainsi que tout le reste de la documentation demandée—seront fournis au Comité?

M. Hnatyshyn: Je veillerai à ce que nous fournissions un dossier le plus complet possible aux membres du Comité, par l'entremise du ministère.

Le président: Merci beaucoup, monsieur Robinson et monsieur le ministre. J'aimerais ajouter une dernière remarque. La majeure partie de la discussion à ce sujet tournait autour de la déclaration par les banques. D'après mon expérience dans d'autres domaines, je crois qu'il y a également des sociétés de fiducie, des caisses populaires et des coopératives de crédit touchées par la question, qui n'ont rien à voir avec l'Association des banquiers canadiens et qui fonctionnent de façon indépendante. Ces sociétés n'ont pas le niveau de perfectionnement des banques. Je pense que nous devrions avoir une certaine documentation à ce sujet également, le cas échéant.

M. Hnatyshyn: Pour avoir un système efficace, vous devriez atteindre chaque établissement, chaque caisse populaire et chaque coopérative de crédit possible.

M. Kaplan: Ils font un bon nombre de déclarations de toute façon.

M. Hnatyshyn: Je sais.

M. Kaplan: Toutes les semaines et tous les mois.

M. Hnatyshyn: Il y a également les bureaux de change—et ce n'est pas seulement les banques. Cela représente une déclaration des opérations dans une variété de secteurs et je pense que vous devriez étudier attentivement la portée et l'étendue des établissements qui seraient touchés. Nous devons le savoir, Monsieur le président, votre remarque est très pertinente, comme de coutume, et selon votre impartialité habituelle.

M. Robinson: A ce sujet, monsieur le président, je voudrais faire remarquer, cependant, que Richard Marshall, directeur du contentieux international de la Banque de Nouvelle-Écosse, a signalé, pour reprendre ses termes, que «ce n'est pas n'importe quelle banque qui fait l'affaire». Les «recycleurs» préfèrent les banques qui ont un réseau de succursales internationales, et notamment celles qui ont un service d'abris fiscaux et d'informatique qui permet le va-et-vient de devises. Je pense que l'accent est certainement sur les banques de ce genre, mais manifestement, il faudrait également prendre en considération les autres institutions.

Le président: Merci beaucoup. Merci, monsieur le ministre.

M. Hnatyshyn: Merci, chers collègues, de votre générosité et de votre expérience.

[*Texte*]

Mr. Kaplan: Do we want to have a discussion about witnesses? Let us do that for a moment. If we do it now, we can send out notices. Perhaps the officials could stay.

The Chairman: I was going to suggest that perhaps you two gentlemen could submit a list of those you might feel would be appropriate witnesses and then we can have a meeting right after the break.

Mr. Kaplan: The thing is this is not the kind of a bill where people rush forward wanting the legislation. It adds a workload to certain interests in the society we would like to have appear. Maybe it is obvious that our chairman ought to get in touch with The Canadian Bankers' Association and the Trust Companies Association of Canada and look for a volunteer with the defence bar.

The Chairman: Mr. MacIntosh hopes to come to all sorts of meetings.

Mr. Robinson: I think the Chair's suggstion was a good one, that we try to come up with a list, and then after the break perhaps we can have other meetings to decide whom we are going to hear from.

The Chairman: Is that agreed?

Mr. Kaplan: If we could get that list together this week, then while the House is not sitting we could invite them and we could be in business on this in a couple of weeks.

The Chairman: We will be happy to receive your list, Mr. Kaplan—

Mr. Kaplan: Yes, but you will not—

The Chairman: —and I know Mr. Robinson will try very hard. We will try to get a list together as quickly as we can.

Thank you very much. The meeting stands ajourned.

[*Traduction*]

M. Kaplan: Allons-nous aborder la question des témoins? Faisons-le quelques instants. Si nous le faisons tout de suite, nous pourrons envoyer les convocations. Peut-être que les représentants officiels pourraient rester.

Le président: J'allais proposer que vous deux, messieurs, présentiez une liste de ceux qui, à votre avis, seraient des témoins appropriés, puis nous pourrions avoir une réunion toute suite après la pause.

M. Kaplan: Le fait est qu'il ne s'agit pas ici d'un projet de loi pour lequel les gens se précipitent pour en réclamer l'adoption. Il ajoute une charge de travail à certains secteurs de la société que nous aimerions convoquer. Il est peut-être évident que notre président devrait entrer en contact avec l'Association des banquiers canadiens et l'Association des compagnies de fiducie du Canada afin de trouver un volontaire pour la barre de la défense.

Le président: M. MacIntosh espère assister à de nombreuses réunions.

M. Robinson: Je pense que la proposition du président est bonne et que nous devrions dresser une liste, puis après la pause, nous pourrions peut-être avoir une autre réunion pour décider quels sont les témoins que nous voulons entendre.

Le président: Sommes-nous d'accord?

M. Kaplan: Si nous pouvions dresser cette liste cette semaine, nous pourrions alors les inviter, pendant que la Chambre ne siège pas, ce qui nous mettrait sérieusement sur la voie en une semaine ou deux.

Le président: Je recevrai avec plaisir votre liste, monsieur Kaplan.

M. Kaplan: Oui, mais vous ne, .

Le président: . . . et M. Robinson, je le sais, fera un effort sérieux. Nous essaierons de rassembler cette liste le plus rapidement possible.

Merci à tous. La séance est levée.

April 12, 1988 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drugs Act, and the Narcotic Control Act]

EVIDENCE

[Recorded by Electronic Apparatus]

[Texte]

Tuesday, April 12, 1988

• 0941

The Chairman: Good morning. I would like to welcome this morning Mr. Rocky Pollock, who is the chairman of the National Criminal Justice Committee of the Canadian Bar Association. Welcome to the committee, Mr. Pollock. I believe the woman sitting to your right is Louise Shaughnessy.

I would like to put on the record, colleagues, that I have been appointed by Mr. Malone to act as the chairman for today's meeting. It is my understanding that he will be here later on in the week.

The floor is yours, Mr. Pollock. If you have an opening statement, please feel free to make it. If there is time afterwards, I am sure some of the members may have some questions.

Mr. Rocky Pollock (Chairman, National Criminal Justice Committee, Canadian Bar Association): Thank you, Mr. Chairman. I am delighted to be in my country's capital, talking to the leaders of my country about this very important piece of legislation.

I want to tell you that as I walked down the mall this morning I did not feel much different from the way I feel when I walk up the steps to the Supreme Court of Canada with my robes over my shoulders. I guess in this day and age of judge-made-law it is logical that I, a barrister, feel the same way coming to this committee as I do when I enter the high court.

The Canadian Bar Association, it should be noted, does not say some things in its brief which you have all received. For instance, we do not say the proceeds of crime should be left untouched by the state. We do not say profits of crime should be left for the enjoyment of felons after they serve their penitentiary sentence. We do not say priority ought not to be given to victims of crime when it comes to a redistribution or a return of the proceeds of crime.

So let me make it clear: we are not against legislation that deals with the proceeds of crime. I do not even think it is necessary for us to consult criminologists or police experts to come to the conclusion that taking the profit out of crime is a primary device to be used by police and the courts to deter crime.

With respect to Bill C-61, which we have looked at in isolation—that is, not with the rest of the package dealing with mutual legal assistance—we have some comments about the way in which this bill would appear to operate. We have some concerns about the present state of the bill which we do not think detracts from the laudable goals that I just mentioned. I would like to begin by referring

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le mardi 12 avril 1988

Le président: Bonjour. Nous avons le plaisir d'accueillir aujourd'hui M. Rocky Pollock, président du Comité national de justice pénale de l'Association du barreau canadien. Bienvenue, monsieur Pollock. La dame qui est assise à votre droite est Louise Shaughnessy, n'est-ce pas?

Je tiens à vous informer officiellement, chers collègues, que M. Malone m'a désigné pour présider cette réunion. Il sera là dans le courant de la semaine.

Vous avez la parole, monsieur Pollock. Si vous avez une déclaration liminaire à faire, allez-y. S'il nous reste encore du temps par la suite, je suis sûr que certains membres du Comité voudront vous poser des questions.

M. Rocky Pollock (président, Comité national de justice pénale, Association du barreau canadien): Merci, monsieur le président. Je suis ravi de me trouver dans la capitale nationale, pour m'entretenir avec les dirigeants de mon pays de ce projet de loi très important.

Je dois vous dire que ce matin, en descendant la rue Sparks, j'éprouvais la même sensation que celle que j'éprouve toujours en gravissant le perron de la Cour suprême, affublé de ma robe. Je suppose qu'en cette ère de droit jurisprudentiel, il est normal que l'avocat que je suis éprouve la même impression en me rendant à cette réunion qu'à l'entrée de la Cour suprême.

Il faut noter que notre mémoire n'exprime pas toutes les vues de l'Association du barreau canadien. Par exemple, nous ne disons pas que l'État ne doit pas toucher au produit du crime. Nous ne disons pas que le produit du crime doit être gardé à la disposition du criminel, pour qu'il puisse en jouir à sa sortie de prison. Nous ne disons pas que les victimes ne doivent pas avoir priorité pour ce qui est de la redistribution ou de la restitution du produit du crime.

Nous ne nous opposons donc pas à une loi qui porte sur le produit du crime. Je ne pense même pas qu'il soit nécessaire de consulter des criminologues ou des experts de la police pour conclure que le fait d'empêcher le criminel de profiter du produit de son crime est le moyen premier de prévention à utiliser par la police et la justice pénale.

En ce qui concerne le projet de loi C-61, que nous avons étudié à part—c'est-à-dire indépendamment des autres textes relatifs à la coopération judiciaire—nous avons certaines observations à faire sur la manière dont ce projet de loi devrait s'appliquer. Nous avons quelques réserves au sujet de la formulation actuelle de ce texte, qui ne porte quand même pas préjudice aux objectifs louables

[Texte]

you to some inconsistencies with existing criminal law, and I am referring to part III of our report at page 3.

In this particular bill, we have chequered throughout references to reasonable grounds for the laying of an information which are going to result in some kind of confiscatory order if successful. The term "reasonable grounds" is used, just as it has been for many years in section 443 of the Criminal Code dealing with search warrants. However, in a nutshell, we say that if a peace officer is going to ask a judicial officer for permission to confiscate, temporarily or otherwise, the basis should be upon reasonable and probable grounds. That is the basis for laying a criminal information, an information charging an offence.

• 0945

If you look at any criminal charge in any provincial court in Canada, you will see that the informant, a police officer, has reasonable and probable grounds to believe and does believe that XYZ committed an offence. That test has been approved by the Supreme Court in the Southam newspapers case. I submit to you that it is clear to anyone who understands Canadian criminal jurisprudence that reasonable and probable grounds is the test and it ought to be articulated in Canadian criminal law.

About the mechanism of taking that information, there is no requirement in the bill that there be a record of the proceedings before the judge. It is true that there will be some affidavit evidence and that there will be a record of who appeared before the judge, the informant. It is also true that the judge will issue an order subject to a number of conditions within her or his discretion. However there is a gap in the proceedings as set out in Bill C-61 that is also present in the wiretap legislation and has not yet been corrected. It is that there is no one there to make a record of what has taken place.

In a case in Manitoba, one of the many pieces of litigation involving James Steven Wilson, Mr. Justice Schwartz of our Court of Queen's Bench, in a proceeding in which he opened a wiretap packet, said that it is preferable to have a court reporter present to take down everything said because the affiant may not always remember what took place in the judge's office.

It is exactly what happened in that particular place of the granting of that authorization, the judge's office. The police officer was there deliberately for that purpose and that purpose only. He was not able to recall what, if any, questions the judge asked him. We think there should be a record of what took place.

We are concerned about the substantive test and a procedural gap. We expect that this is a situation where

[Traduction]

que je viens d'énumérer. J'aimerais commencer par porter à votre attention certaines incompatibilités avec la loi pénale en vigueur, qui font l'objet de la Partie III de notre mémoire, à la page 3.

Dans ce projet de loi, nous avons relevé toutes les mentions de motifs raisonnables présidant au dépôt d'une dénonciation qui, si elle est jugée bien fondée, peut aboutir à une ordonnance de confiscation. On y emploie l'expression «motifs raisonnables», comme on l'a fait depuis des années à l'article 443 du Code criminel, relatif aux mandats de perquisition. Nous estimons cependant que lorsqu'un agent de police demande à un juge l'autorisation de confisquer quelque chose, que ce soit temporairement ou non, il faut qu'il se fonde sur des motifs raisonnables et probables. Tel est le fondement de toute dénonciation en matière criminelle.

Si vous examinez n'importe quelle poursuite pénale devant n'importe quelle cour provinciale au Canada, vous remarquerez que le dénonciateur, c'est-à-dire l'agent de police, a toujours des motifs raisonnables et probables de croire, et croit effectivement, qu'Untel a commis une infraction. Ce critère a été consacré par la Cour suprême dans l'affaire des journaux de la chaîne Southam. Il est clair aux yeux de quiconque comprend la jurisprudence pénale canadienne que la norme des motifs raisonnables et probables doit être incorporée dans la loi pénale du pays.

En ce qui concerne le mécanisme du dépôt de la dénonciation, le projet de loi ne prévoit nullement la transcription de la procédure devant le juge. Il est vrai qu'il y aura un certain témoignage par affidavit et que le dossier indiquera le nom du dénonciateur qui comparaît devant le juge. Il est également vrai que le juge décernera un mandat assorti de certaines conditions selon qu'il les juge indiquées. La procédure, telle que la prévoit le projet de loi C-61, présente cependant une lacune tout comme les dispositions relatives à l'écoute téléphonique, à laquelle on n'a pas encore remédié. Il se trouve qu'il n'y a personne pour consigner ce qui se passe.

Par exemple, au Manitoba, dans une de ces nombreuses affaires concernant James Steven Wilson, le juge Schwartz de la Cour du banc de la Reine, en instruisant une demande d'autorisation de table d'écoute, a déclaré qu'il était préférable qu'un sténographe fût présent pour consigner tout ce qui se disait, car le déposant pourrait ne pas se souvenir de tout ce qui se passait dans le cabinet du juge.

Voilà exactement ce qui s'est passé lorsque cette autorisation a été donnée, dans le cabinet du juge. L'agent de police s'y trouvait exprès dans ce but. Il n'a pas été capable de se rapapeler les questions que le juge lui avait posées, si questions il y avait. Nous estimons donc qu'il faut consigner ce qui se passe.

Nos deux préoccupations sont donc la norme de fond et la lacune de procédure. La situation qui nous intéresse

[Text]

orders will be prepared in advance for a judge's signature. Presumably the Attorney General will want to include certain conditions safeguarding property, etc. On occasions where a judge simply signs a prepared order, the administration of justice would look a lot better if there was a transcript available, if need be, which could be sealed and put away the same way documents are now.

When it comes to seized property being detained, the bill says that the order is going to last for six months unless the Attorney General, prior to the expiry of the six months, does something to get it extended. Six months is a long time. Previous legislation not passed, but proposed in Canada, said that trials should happen within six months. As a limitation date, we think of the laying of a summary conviction of offence notice. Recognize six months as being a valid period of time for any other kind of order, such as this, affecting the rights of the individual.

If I want restoration on behalf of a client for something seized in a drug raid under a search warrant under the Narcotic Control Act, I have to be before of the court within a couple of months making the application. Wire-tap orders, detention orders—that is, "bail denied" orders—and so on all are reviewed in 90 days. We simply think six months is too long. It is unprecedented.

• 0950

The bill deals with a number of matters we are concerned with, but I do not want to occupy all of the time this morning with this submission so let me just highlight a few more major concerns we have about the way in which the Department of Justice proposes to deal with the proceeds of crime.

We do not like, in proposed sections 420.14, 420.21, and 420.22, the notion of someone who appears innocent. We found that—and when I say "we" I am including some provincial Crown counsel who were involved in the consultative process—somewhat alien to Canadian criminal jurisprudence. We say that the Charter says everyone appears innocent. Anyone charged with a crime, before the end of his trial, appears innocent—his jury is told that there is that presumption throughout the proceedings—let alone somebody who is not charged with a crime but whose property has been put under the authority of a receiver manager or where the disposition of the property has been restricted in some other way.

We are concerned about any kind of criminal-law legislation that is going to put an onus on a person who is presumed innocent to show that he appears innocent. If you do not think that is what the legislation does, then I

[Translation]

doit être celle où les mandats sont établis à l'avance pour la signature du juge. Il est à présumer que le Procureur général voudrait inclure certaines conditions pour la conservation des biens, etc. Dans les cas où le juge ne fait que signer un mandat établi à l'avance, l'administration de la justice aurait meilleure presse s'il y avait, le cas échéant, une transcription de la procédure, qui pourrait être scellée et conservée dans les archives.

En ce qui concerne la détention des biens saisis, le projet de loi prévoit que l'ordonnance est valide pour six mois, sauf demande de prorogation de la part du Procureur général avant l'expiration du délai. Une période de six mois est trop longue. Il y a eu un projet de loi, qui n'a pas été adopté, et qui prévoyait que les procès devaient avoir lieu dans les six mois. Pour le délai limite, nous songeons à celui qui s'applique à la dénonciation des infractions susceptibles de poursuite sommaire. L'adoption de la période de six mois pour tout autre genre d'ordonnances, comme celle qui nous intéresse en l'occurrence, porte atteinte aux droits de l'individu.

Si je demande, pour le compte d'un client, la restitution de quelque chose qui a été saisi au cours d'une descente de police, opérée en vertu de la Loi sur les stupéfiants, je dois soumettre ma demande en justice dans les deux mois. Les ordonnances d'écoute téléphonique, les ordonnances de détention—c'est-à-dire les ordonnances de «refus de caution»—etc., sont toutes révisées dans les 90 jours. Nous pensons quant à nous que six mois c'est trop long. C'est sans précédent.

Le projet de loi traite d'un certain nombre de questions qui nous préoccupent, mais je ne veux pas prendre tout le temps dont nous disposons ce matin pour présenter mon mémoire. Je vais donc parler brièvement de quelques autres préoccupations graves que nous avons au sujet de la façon dont le ministère de la Justice se propose de traiter des produits de la criminalité.

Nous n'aimons pas cette notion de personne qui semble innocente, dont il est question aux articles 420.14, 420.21 et 420.22 du projet de loi. Nous la trouvons—et quand je dis «nous», j'inclus des avocats de la Couronne provinciaux qui ont participé au processus consultatif—quelque peu étrangère à la jurisprudence canadienne en matière de droit criminel. Ce que nous affirmons, c'est que la Charte dit que tout le monde semble innocent. Toute personne accusée d'un crime semble innocente avant la fin de son procès, et le jury est informé que cette présomption d'innocence vaut pendant tout le déroulement du procès. Cela est d'autant plus vrai pour quelqu'un qui n'est pas accusé d'un crime mais dont les biens ont été placés sous le contrôle d'un administrateur ou qui ne peut en jouir librement du fait de toute autre restriction.

Toute loi pénale qui demande à une personne présumée innocente de prouver qu'elle semble innocente nous cause des soucis. Si vous ne pensez pas que c'est ce que fait le projet de loi, je vous demanderais d'examiner

[*Texte*]

ask you to consider what happens if a presumed-innocent person, whether he is charged or not, does not make any one of the several applications that can be made to get the property back or to get some of the restrictions lifted and so on. It remains under the authority of the court. His powers to deal with that property—and granted, they are not Charter-protected powers, since we do not have property rights under the Charter—are restricted if he does not do anything.

We are concerned that there are no automatic mechanisms to review that. There are no automatic mechanisms to make a determination of whether or not somebody who appears innocent is being affected by this order. Remember that the judge who is issuing the order does not have to give notice to anyone before he makes an order. The judge does not have to give notice after the order is issued, unless someone brings to the court's attention the necessity for a notice. We have a concern about that reverse onus on a deemed-innocent person. In some cases it is going to involve the necessity of his going to the time expenditure and financial expenditure of getting hold of a lawyer or lawyers to argue in a forum, which he has not been summoned to or detained by personally, to argue over whether he should get his property back.

We said at page 7 of our material—and I do not think I can say it any better—that there is no reason why an otherwise unimplicated citizen should be forced to do more than prove lawful ownership or entitlement to property the possession of which is not in itself ordinarily a crime.

If a person appears before a judge in circumstances that appear suspicious but nevertheless proves lawful ownership or entitlement to the property, then we simply say that the Crown should have to show cause why that property ought not to be returned. The notion of showing cause is not alien or foreign to our criminal law; it happens every time an accused comes out of the prisoner's dock into the courtroom and wants to be released. Generally, except in specific crimes, the Crown must show cause.

The bill states that even when it is brought to the attention of the court that parties might have an interest in property seized, the court may give some notice. We are not so certain that discretion is necessary. We think the discretion ought to be vested in the court if, in the words of the statute, there is a danger in the disappearance, dissipation, or reduction in value of the property. Surely there the court is not going to tell someone who might interfere with the evidence and indeed with what might eventually be confiscated that they are about to put them in that jeopardy. But ask yourselves this: why else would the court not give notice? We say the answer is that there is no other reason not to give notice.

[*Traduction*]

ce qui se passe si une personne présumée innocente, qu'elle soit accusée ou non, ne présente pas l'une des demandes possibles pour récupérer ses biens ou faire lever certaines restrictions, etc. Ils restent consignés en justice. Ses pouvoirs en ce qui concerne ces biens—et je conviens qu'il ne s'agit pas de pouvoirs protégés par la Charte, puisque la Charte ne prévoit pas de droits de propriété—sont restreints s'il ne fait rien.

Nous sommes préoccupés par le fait qu'il n'y a pas de mécanismes automatiques de révision. Il n'y a pas de mécanismes automatiques qui permettent de décider si quelqu'un qui semble innocent est affecté par cette ordonnance. N'oubliez pas que le juge qui émet l'ordonnance n'a à donner d'avis à personne avant de le faire. Le juge n'a pas à donner d'avis après avoir émis l'ordonnance, à moins que quelqu'un n'informe le tribunal de la nécessité d'un tel avis. Ce qui nous préoccupe, c'est que le fardeau de la preuve incombe à une personne présumée innocente. Dans certains cas, il va lui falloir consacrer du temps et de l'argent pour s'assurer les services d'un ou plusieurs avocats afin de demander à un tribunal, qui ne l'a ni convoquée ni arrêtée personnellement, de récupérer ses biens.

Nous avons dit à la page 7 de notre document—et je ne pense pas pouvoir le dire mieux—qu'il n'y a aucune raison de forcer un citoyen qui n'aurait pas autrement été mêlé à l'affaire de prouver qu'il est le propriétaire légitime de biens dont la possession n'est pas ordinairement un crime en soi.

Si une personne comparaît devant un juge dans des circonstances qui semblent suspectes, mais prouve néanmoins qu'elle est le propriétaire légitime des biens, nous disons alors que c'est à la Couronne de faire valoir les raisons pour lesquelles les biens ne doivent pas être rendus. Cette notion d'exposer des raisons n'est pas étrangère à notre droit criminel; elle intervient chaque fois qu'un accusé demande à être libéré. En général, sauf pour ce qui est de certains crimes, la Couronne doit exposer ses raisons.

Le projet de loi indique que, même lorsque le tribunal est informé que certaines parties pourraient avoir un droit sur un bien saisi, il peut donner un avis. Nous ne sommes pas certains qu'il doive y avoir discrétion. Nous pensons que la discrétion doit appartenir au tribunal si, comme le dit la loi, l'avis risque d'occasionner la disparition des biens visés, une diminution de leur valeur ou leur dissipation. Dans un tel cas, le tribunal ne va certainement pas informer quelqu'un qui pourrait gêner la présentation de la preuve ou la confiscation éventuelle des biens. Mais demandez-vous ceci: pour quelle autre raison le tribunal ne donnerait pas d'avis? En ce qui nous concerne, nous répondons qu'il n'y a pas d'autres raisons de ne pas donner d'avis.

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Similarly with respect to the Attorney General's undertaking, we do not understand why a court may require the Attorney General to give an undertaking concerning damages or whatever might flow from the seizure. It is law that if I have a finance company and I tell my lawyer I want to repossess a car that somebody has sold to someone else when I had a lien on it and so on, I will have to put up some kind of bond. That is ordinary law.

We think the Attorney General should be deemed to have given all the appropriate undertakings because it may be that an innocent party—not a person accused of a crime, not an unindicted co-conspirator, just an individual who happened to have an interest in something that can be traced to a designated offence—may find herself or himself having to retain a lawyer, take time off work and perhaps go through appeal proceedings before getting the property back. We say that surely in those circumstances the Attorney General of the province or whoever initiated the proceedings should have a deemed obligation to look after that person's losses.

This is a very complex piece of legislation. This piece of legislation is for lawyers and statutory draftspersons. This piece of legislation may be a model for them, it may be a model for me, and it may be a model for my students at the University of Manitoba Law School when we talk about statutory construction and how criminal law interpretation differs from other kinds of law. But really, there are so many complicated schemes in this bill. In a year in which the Canadian Bar Association president has declared a theme of access to justice, we think a bill like this simply cannot stand in its present form with its inherent complexities.

I must say that several members of our group who looked at Bill C-61 were mystified as to just what a person found innocent after a trial would have to do to get back seized and frozen property. There are a number of routes the person can take, but it is certainly not clear from the legislation just what it is they are supposed to do.

I want to say a word, Mr. Chairman, about the sentencing provisions and then remain silent for a few minutes. With respect to sentencing, the scheme set out in the bill makes it appear as if an offender for a designated drug offence or a criminal enterprise crime is going to be sentenced; that is, they will get whatever portion of the 10-year maximum is to be imposed at one end or perhaps even a conditional or absolute discharge at the other. Then there will be this hearing, which is sort of like a lawsuit, where someone has to prove on the balance of probabilities that the proceeds either were or were not from crime.

One can imagine what will have to be set up in the criminal courts here for this to happen. We will need

[Translation]

De même, en ce qui concerne l'engagement du procureur général, nous ne comprenons pas pourquoi un tribunal pourrait lui demander de prendre un engagement relativement aux dommages ou à toutes autres conséquences de la saisie. D'après la loi, si j'ai une société de financement et que je dise à mon avocat que je veux reprendre possession d'une voiture qu'une personne a vendue à une autre personne alors que j'avais un privilège sur ce véhicule, etc., je devrais déposer une caution quelconque. C'est le droit commun.

Nous pensons que le procureur général doit être censé avoir pris tous les engagements appropriés, car il se pourrait qu'un innocent—pas une personne accusée de crime, pas un complice non inculpé, juste quelqu'un qui se trouve avoir un droit dans quelque chose qui peut être relié à une infraction grave—se trouve dans l'obligation de retenir les services d'un avocat, de prendre un congé et peut-être d'interjeter appel avant de pouvoir récupérer ses biens. Nous pensons que, dans ces circonstances, le procureur général de la province, ou quiconque a entamé les poursuites, doit avoir une obligation présumée de prendre en charge les pertes de cette personne.

Nous avons là un texte de lois très complexe. Ce texte est pour les avocats et les rédacteurs de lois. Il pourrait leur servir de modèle; mes étudiants de l'École de droit de l'Université du Manitoba et moi-même pourrions nous en servir comme modèle lorsque nous parlons de l'interprétation des lois et de la façon dont l'interprétation des lois en droit criminel est différente des autres. Mais ce projet de loi est vraiment d'une grande complexité. Dans une année que le président de l'Association du barreau canadien a déclaré être l'année de l'accès à la justice, nous pensons qu'on ne peut tout simplement pas laisser à ce projet de loi sa complexité actuelle.

Je dois dire que plusieurs membres de notre groupe qui ont examiné le projet de loi C-61 sont restés assez perplexes devant ce qu'une personne déclarée innocente après un procès doit faire pour récupérer des biens saisis et bloqués. Il y a un certain nombre de voies que cette personne peut emprunter, mais, chose certaine, le projet de loi ne dit pas clairement ce qu'elle est supposée faire.

Je veux dire un mot, monsieur le président, au sujet des dispositions relatives à la détermination de la peine et ensuite je me tairai pendant quelques minutes. En ce qui concerne la détermination de la peine, le projet de loi donne l'impression qu'un délinquant qui a commis une infraction grave en matière de drogue ou une infraction de criminalité organisée va être condamné, c'est-à-dire qu'il va se voir infliger une peine d'un maximum de 10 ans d'un côté, ou peut-être même une libération conditionnelle ou inconditionnelle de l'autre. Ensuite il y aura cette audience, qui est une sorte de procès, où quelqu'un doit prouver, selon la prépondérance des probabilités, que les produits venaient ou ne venaient pas du crime.

On peut imaginer ce qu'il faudra organiser dans les tribunaux répressifs à cet effet. Nous aurons besoin d'une

[*Texte*]

separate court facilities and more court time and more judges and clerks and court reporters and, indeed, counsel for these determinations. We have civil courts now that have incredibly complex methods of determining rights to private property. That will have to be duplicated in the criminal system.

For instance, if a person who is a first offender with an otherwise good background has been convicted of a designated drug offence in which he or she was a carrier of the drugs only, and if there is very little to link the person with the true felons who organized this drug trafficking scheme from somewhere in South America into the streets of our cities, that person might get the benefit of a lenient sentence at the sentence hearing. However, what if the amount of contraband in question was $1 million because it was a highly purified drug and prices were high at the time? There is going to have to be an evaluation hearing.

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I do not know if we are going to have separate masters, referees, and other judicial officers, or perhaps civil litigation magistrates to determine these things and then report what the drug is worth to the trial judge. How are we then going to factor in the amount attributable to that person? What if the person says they intended to traffic in a tiny, less valuable quantity of drug and not the giant amount you are talking about now? That is the crime they committed. Under the guise of criminal law the civil litigation can go on for years, and we say that is not very productive. It is an unfortunate way to deal with an offender, because if you accept these provisions you are subjecting the person to two kinds of sentencing. While it is not quite double jeopardy, it is pretty close.

The second kind of sentencing has minimum penalties. We noted parenthetically that the Canadian Sentencing Commission does not like minimum penalties and thinks they ought to be done away with. Yet in this statute the minimum could be penitentiary sentences.

We say this piece of legislation needs some work. It is very important and deals with significant social and legal problems. It is interesting to note that this is not the first time this kind of legislation has been talked about in a committee like this. Some of the submissions we have made here and in writing should be considered by this committee. This committee's work, we think, can benefit the bill by making some substantial changes.

Let me just close by saying I know there will be some comments about the problems some criminal lawyers might perceive in protecting themselves through their fees, and we have touched upon this in the report. I do not have anything more to add to what we have said in the submission, although of course I am prepared to answer your questions about it. Thank you, sir.

[*Traduction*]

salle de tribunal distincte, de plus de temps, de plus de juges, de greffiers et de sténographes, et même d'avocats, pour aboutir à une décision. Nous savons qu'à l'heure actuelle les tribunaux civils utilisent des méthodes d'une incroyable complexité pour déterminer les droits de propriété privée. Il faudra reprendre le même processus dans le système de justice pénale.

Par exemple, si une personne qui est un délinquant primaire, et dont les antécédents sont par ailleurs bons, a été condamnée pour une infraction grave en matière de drogue, dans le cadre de laquelle elle n'avait fait que transporter les drogues, et si on ne peut que difficilement lier cette personne avec les vrais criminels qui ont organisé le trafic d'un pays quelconque d'Amérique du Sud jusque dans les rues de nos villes, cette personne pourrait bénéficier d'une peine légère lors du prononcé de la peine. Pourtant, que se passerait-il si la marchandise s'élevait à 1 million de dollars, à supposer que la drogue soit très pure et qu'elle se vende très cher à ce moment-là? Il faudra absolument que ce soit évalué dans le cadre d'une audience.

J'ignore s'il faudra des procureurs, des arbitres ou des magistrats différents, voire des juges au civil pour déterminer cela et communiquer la valeur de la drogue au juge chargé du procès. Mais comment déterminer la part de responsabilité qui revient à la personne? Et si elle prétend qu'ils comptaient vendre une infime quantité de drogue, une quantité bien inférieure à celle dont vous parlez et qui est considérable? Voilà l'infraction qu'ils auront commise. Sous couvert du droit criminel, le litige au civil peut durer des années, ce qui ne nous paraît guère productif. Ce n'est sûrement pas une bonne façon de traiter un délinquant, car ces dispositions entraînent deux types de sentence. C'est comme si on s'exposait à être condamnés deux fois, ou presque.

Dans le deuxième cas, les peines sont minimales. Nous avons noté au passage que la Commission canadienne de détermination de la peine n'aime pas les peines minimales et voudrait s'en débarrasser. Mais d'après cette loi, cela pourrait se traduire par des peines d'emprisonnement.

Nous estimons qu'il faut encore y travailler. C'est très important, car d'importants problèmes sociaux et juridiques sont en cause. Il est intéressant de voir que ce n'est pas la première fois qu'un comité comme celui-ci s'occupe d'une loi de cette nature. Le Comité devrait se pencher sur certaines propositions que nous avons présentées ici et par écrit. Nous estimons que le Comité peut améliorer considérablement ce projet de loi.

Permettez-moi de terminer en disant que les avocats au criminel verront sans doute certains problèmes dans le fait de se retrancher derrière les honoraires pour se protéger. Je n'ai rien à ajouter à cet exposé, mais je répondrai volontiers à vos questions. Merci, monsieur.

[*Text*]

The Chairman: Thank you very much.

Mr. Robinson: I want to welcome Mr. Pollock, appearing today on behalf of the Canadian Bar Association. I am not sure I feel myself in the same august capacity as a Justice of the Supreme Court of Canada in hearing these submissions. The impact of certain members at this table is somewhat less than other members when it comes to the crunch on legislation, but I certainly am pleased with the seriousness with which you approach our task. I might say, I am pleased with the quality of the submission you have presented on behalf of the Canadian Bar Association.

Mr. Pollock: Thank you, sir.

Mr. Robinson: As representatives of the CBA will be well aware—as will our distinguished acting chairperson—that praise does not always flow to their representatives who appear before similar legislative committees and the Standing Committee on Justice and Legal Affairs. I have met with the president, Senator Jean Bazin, and I have certainly voiced my concern in that area. I am pleased that on this important piece of legislation the CBA has apparently really done its homework and is assisting the committee.

The brief submitted deals with a number of areas Mr. Pollock did not have a chance to elaborate on. But before getting into a couple of the specific concerns that were raised, I wonder if Mr. Pollock could just indicate whether he has had an opportunity to examine any of the comparable American legislation in this area. If so, could he perhaps assist the committee by indicating whether a number of the concerns he has quite properly highlighted with this legislation—concerns in fact that were brought to the attention of the House with respect to the predecessor Bill C-19—have been addressed in a manner he feels is satisfactory in the U.S. legislation?

Mr. Pollock: Remember, the U.S. Racketeer Influenced and Corrupt Organizations Act operates under a different kind of constitution from ours. In terms of American jurisprudence, it is also a fairly recent piece of legislation. That legislation obviously has given the Justice Department, particularly the Drug Enforcement Agency, valuable tools to use in getting at the roots of crime, particularly organized crime.

• 1005

What has also happened, and you need look no further than neighbouring states like Minnesota to see this, is that there has been an incredible amount of litigation over the procedural aspects of co-operation. You get the police satisfying a judge in a civil proceeding, in which by the way there are pleadings and so on. It has all the trappings of a lawsuit, except on the back cover instead of a law firm is the U.S. Justice Department. You get three or four years of procedural wrangling perhaps up to the Supreme Court of the United States, on the validity of a particular seizure, and then maybe six or seven years later you get

[*Translation*]

Le président: Merci beaucoup.

M. Robinson: Je tiens à souhaiter la bienvenue à M. Pollock, qui représente aujourd'hui l'Association du barreau canadien. Je ne me sens pas du tout à la hauteur d'un juge de la Cour suprême lorsque j'entends ces dépositions. Certains députés n'ont évidemment pas le même poids que d'autres dans ces débats juridiques. Quoi qu'il en soit, je suis très content de voir que vous prenez votre tâche au sérieux. Je dois dire que je suis content de la qualité de l'exposé que vous venez de présenter au nom de l'Association du barreau canadien.

M. Pollock: Merci, monsieur.

M. Robinson: On ne peut pas toujours en dire autant des représentants de l'ABC qui comparaissent devant de semblables comités législatifs ou devant le Comité permanent de la justice et des affaires juridiques, comme vous le savez bien, et comme le sait bien aussi notre président suppléant. J'ai rencontré le sénateur Jean Bazin, qui préside le Comité de la justice et je n'ai pas manqué de lui faire part de ce problème. Je constate avec plaisir qu'en ce qui concerne cet important projet de loi, l'association a, semble-t-il, bien fait son travail et aide vraiment le Comité.

Le mémoire aborde plusieurs questions que M. Pollock n'a pas eu le temps de développer. Mais avant d'approfondir certains problèmes évoqués, M. Pollock pourrait-il nous dire brièvement s'il a eu l'occasion d'étudier des lois comparables aux États-Unis. Dans l'affirmative, il pourrait peut-être nous aider en nous disant si certains problèmes qu'il a eu raison de souligner, des problèmes déjà portés à l'attention de la chambre dans le cadre du bill C-19 qui précédait celui-ci, ont été pris en charge de manière satisfaisante par la législation américaine?

M. Pollock: N'oubliez pas que la Loi américaine sur la corruption et le racket est encadrée par une constitution tout à fait différente de la nôtre. Du point de vue de la jurisprudence américaine, c'est aussi une loi assez récente. Il est évident qu'elle a donné au département américain de la Justice, et en particulier à l'Agence des narcotiques, des instruments utiles pour s'attaquer au crime, et en particulier au crime organisé.

Ce qui s'est également produit, et il n'y a qu'à regarder du côté des États voisins comme le Minnesota pour s'en apercevoir, c'est que la procédure de coopération donne lieu à d'innombrables litiges. Vous avez la police, qui dépose devant un juge dans un procès au civil durant lequel, soit dit en passant, il y a aussi des plaidoyers, et ainsi de suite. Bref, on a tous les inconvénients d'un procès, si ce n'est que le Département américain de la justice remplace un cabinet d'avocats. Il faut entre trois et quatre ans de bataille juridique avant d'en arriver à la Cour suprême des États-Unis, et cela tout simplement

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back to the nuts and bolts of the trial itself and whether or not there was a continuing criminal enterprise—I think is the phrase they use, Mr. Robinson—going on at the time.

We do not think procedural wrangling like that is good for any system of justice. We think it will tend to bring it into disrepute. Surely in Charter litigation in Canada with respect to search and seizure judges are saying that surely there was a Charter breach here, because a police officer stopped a car for speeding and he was really looking for cocaine, but what happened in this case is that cocaine was found. It would bring the administration of justice into disrepute if we excluded the cocaine.

Now, that kind of litigation has settled down a bit with the recent decision of the Collins case in the Supreme Court of Canada, but we do not think that kind of litigation is good. You get involved in procedural wrangling such as they do in the United States. As I said, our Charter is different. That may not happen here, but among other things, that is what has happened in the United States. The other thing is that because of state sovereignty in a number of areas of course the statutes get enforced differently in different parts of the United States.

Mr. Robinson: Now obviously one of the major concerns in dealing with legislation of this nature is that the overriding presumption of innocence is fundamental in the Canadian criminal justice system. Yet with legislation of this nature we are in effect dealing in some cases in a very massive way with the property of an accused person before that accused person has been found guilty beyond a reasonable doubt in the court. For that reason obviously we have to take care. I wonder whether the bar has in fact examined this legislation against the provisions of the Charter of Rights in a number of areas. You refer for example on page 6 of your brief, I think, to the imposition of reverse onus in section 420.21. You do not explicitly refer to Charter concerns in this criticism, but I take it that in fact you would have concerns about the possibility that a provision of this nature would be in breach of the Charter, would you?

Mr. Pollock: Yes, we certainly would. Once the bill is law in its present form someone is going to test the procedural aspects of the bill, and those test cases are going to take the same number of years as some of the Charter cases took. We think if the Supreme Court is consistent with its decision in the Southam newspapers case, for instance, a lot of the procedural aspects of the bill are going to get reinterpreted and indeed redrafted by courts, and there is going to be a lot of confusion in the ensuing years before the Supreme Court does something definitive.

You are right, we have not articulated our Charter concerns. We think they speak for themselves, because of course in debating a bill like this politicians would want to be concerned with whether or not they are articulating

[*Traduction*]

pour savoir si l'on avait le droit de faire telle ou telle saisie, et peut-être que six ou sept ans plus tard, on se retrouve à l'étape du procès lui-même, dont l'objet est de savoir si l'on était en présence d'une entreprise criminelle durable—je crois que c'est l'expression qu'on emploie, monsieur Robinson.

Nous ne croyons pas qu'une procédure aussi compliquée soit bonne pour la justice. Cela ne peut que jeter le discrédit sur elle. Au Canada, les juges considèrent évidemment que la fouille et la saisie sont une violation de la Charte, à supposer qu'un policier arrête une voiture pour excès de vitesse quand il cherche en réalité de la cocaïne; seulement, dans ce cas-là, il en a trouvé. Ce serait discréditer la justice que de faire comme s'il n'y avait pas de cocaïne.

Il est vrai que ce genre de litige tend à être éliminé depuis que la Cour suprême s'est prononcée dans l'affaire Collins, mais nous ne pensons pas que ce type de litige soit une bonne chose. Cela donne lieu à d'innombrables procédures, comme on le voit aux États-Unis. Je répète que notre Charte est différente. Cela pourrait ne pas se produire ici, c'est ainsi que les choses se passent aux États-Unis. Par ailleurs, la compétence exclusive des États dans certains domaines entraîne une application différente des lois suivant les régions des États-Unis.

M. Robinson: Manifestement, l'un des problèmes les plus importants avec une loi comme celle-ci, c'est la présomption d'innocence, qui est fondamentale dans notre système de justice pénale. Pourtant, une loi comme celle-ci permet de s'en prendre massivement à la propriété d'une personne accusée avant même que les tribunaux l'ait déclarée coupable. Il faut donc évidemment faire très attention. L'Association du Barreau canadien a-t-elle examiné certains aspects de ce projet de loi à la lumière des dispositions de la Charte? C'est à la page 6 de votre mémoire, je crois, que vous parlez de l'inversion du fardeau de la preuve dans le paragraphe 420.21. Votre critique ne fait pas explicitement appel à la Charte, mais ce qui vous inquiète, je suppose, c'est bien la perspective qu'une disposition de cette nature contrevienne à la Charte, n'est-ce pas?

M. Pollock: Effectivement. Dès que le projet de loi entrera en vigueur, du moins sous cette forme, on se mettra à en tester les procédures, et cela durera aussi longtemps que pour certains aspects de la Charte. Étant donné l'arrêt qu'elle a rendu dans l'affaire du groupe de presse Southam, nous pensons que si la Cour suprême est logique avec elle-même, bien des précédures prévues par le projet de loi vont être réinterprétées et même remaniées par les tribunaux, et avant que la Cour suprême tranche une bonne fois pour toutes, on connaîtra bien des années de confusion.

Vous avez raison, nous n'avons pas parlé des problèmes que nous pose la Charte. Ils se passent de commentaire, car il est évident qu'au moment où ils débattent un projet de loi comme celui-ci, les politiciens veilleront à ce que la

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the criminal law with sufficient clarity that there will not be these wranglings.

Mr. Robinson: Just at the tail end of your submission you referred to the concerns the bar has with respect to the question of solicitor-client privilege, and in particular the suggestion that an order might be lifted in order to permit an accused to meet "reasonable business and legal expenses". The concern you have, I assume, and you set it out in your brief, is that by determining what in fact constitutes reasonable legal expenses, the defence strategy of the accused could very well be revealed prior to trial. I take it that once again in this area you would have Charter concerns with respect to this possibly impinging on the right of an individual to retain and instruct counsel, under the provision—

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Mr. Pollock: Without delay, sir.

Mr. Robinson: —without delay, under the provisions of the Charter. Would that be an accurate interpretation?

Mr. Pollock: Yes.

Mr. Robinson: You also suggest that, and I am quoting again from your brief, "We do not see how this aspect of this proposed legislation can be cured by anything short of a massive overhaul of the Bill."

Do you have any specific suggestions for the committee with respect to how to address this question of allowing the accused sufficient funds to continue his or her life, and to meet the defence expenditures in a way that would satisfy the concerns of the bar, and satisfy Charter concerns? Is there anything with which you might be able to assist us in terms of drafting a provision of that nature?

Mr. Pollock: First of all, the situation today is this: I cannot accept a retainer from a client which represents directly or indirectly something obtained by the commission in Canada of an offence. That is against the law. It has been in section 312 of the Criminal Code for many years.

I am bound by a code of professional conduct—recently revamped, I might add, and under consideration by all the law societies in Canada now—which forbids me, of course, from the kind of dealing in the proceeds of crime that accepting this kind of a retainer would be. I simply cannot do it without bringing myself into disrepute by misconduct.

There is a legitimate concern on the part of legislators, however, that criminals who get wealthy from crime will use the money to retain the best lawyers, and so on. I guess this is a problem for parliamentarians who look at the political aspects of the thing, because the lawyers say that you have always been able to trust us not to get our hands dirty from the proceeds of crime; any time that trust has been breached, lawyers have lost their certificates to practice and maybe gone to jail.

[Translation]

législation pénale soit suffisamment claire pour éviter tous ces litiges.

M. Robinson: A la toute fin de votre mémoire, vous parlez des problèmes que pose pour le Barreau la question du secret professionnel entre l'avocat et son client; en particulier, vous êtes inquiet de voir qu'une ordonnance pourrait être levée afin de permettre à un accusé de couvrir, dans les limites raisonnables, les frais juridiques qui s'imposent. Vous craignez, je suppose, et vous le dites dans votre mémoire, qu'en fixant le montant raisonnable des frais juridiques, la stratégie de défense de l'accusé pourrait être révélée avant le procès. Là encore, à mon avis, la Charte des droits entre en ligne de compte, car cette manière de faire empiète probablement sur le droit qu'a un individu de retenir les services d'un avocat et de lui demander, aux termes des dispositions. . .

M. Pollock: Sans délai, s'il vous plaît.

M. Robinson: . . . sans délai, aux termes des dispositions de la Charte. N'est-ce pas là une interprétation exacte?

M. Pollock: Oui.

M. Robinson: Et, dans votre mémoire, vous dites que vous ne voyez pas comment corriger cet aspect du projet de loi sans lui faire subir une révision en profondeur.

Auriez-vous une suggestion à faire au Comité à ce sujet; voyez-vous comment on pourrait laisser à l'accusé assez d'argent pour qu'il puisse vivre et régler les dépenses entraînées par sa défense d'une façon qui apaise les inquiétudes du Barreau et réponde aux exigences de la Charte? Pourriez-vous nous aider dans la rédaction d'une disposition de ce genre?

M. Pollock: Précisons tout d'abord qu'il m'est impossible d'accepter d'un client des arrhes qui soient directement ou indirectement liées à un délit commis au Canada. Cette pratique est illégale et prévue depuis de nombreuses années à l'article 312 du Code criminel.

Je suis personnellement lié par un code d'éthique professionnelle—récemment revu et actuellement examiné par toutes les spécialistes du droit au Canada—qui naturellement m'interdit d'accepter les produits du crime, ce que je ferais en touchant les arrhes dont vous parlez. Ce serait commettre une forfaiture et me déshonorer, il n'en est pas question.

Par ailleurs, le législateur peut légitimement s'inquiéter de voir un criminel, devenu riche grâce au crime, recourir aux services des meilleurs avocats. A mon avis, c'est un problème que les parlementaires doivent examiner avec les aspects politiques de la question. Car les avocats, fidèles à la confiance que l'on met en eux, ne se salissent pas les mains avec les produits du crime; chaque fois qu'un avocat a trahi cette confiance, il a perdu son droit de pratiquer la profession et est allé en prison.

[*Texte*]

It is a very difficult question to answer. I cannot say the bar wants immunity from this piece of legislation entirely. I suppose some presumptions about monies already in a lawyer's trust account might take care of part of the problem. Some kind of assessment by a neutral third party where representations could be made privately—that is, both sides are not before the third party at the same time—might be possible. I am not really sure. I think that while it may appear sanctimonious, a lot of lawyers take offence at that particular aspect of this bill.

Mr. Robinson: I understand that, but on the other hand, of course, you understand the concern that has been raised by the government. I do not usually defend government policy, but this is the point being made, presumably: if there were a pool established that effectively was immune from any scrutiny whatsoever, the argument is that funds that were obtained from organized crime, as it were—and I think we have to look at the definition of this as well, as this is another area that has not been touched on—

Mr. Pollock: Indeed.

Mr. Robinson: —funds that have been obtained from organized crime could simply be put into a lawyer's trust fund. Without in any way imputing ill motives to the lawyer, if the client gives $100,000 or $200,000 to the lawyer and says stick that in my trust fund for future defence, and if those funds are then deemed to be immune from any form of scrutiny, I think you would recognize that there is concern. All I am asking is that perhaps in the future you would address this particular concern by some mechanism that might enable that there be scrutiny of that kind of situation.

• 1015

Mr. Pollock: Let me respond to that last part. It has always been my view that future defence funds should not exist in law offices. That brings you into the conspiratorial net, in my respectful opinion. It makes the lawyer a part of the criminal enterprise. I do not need Bill C-61 to teach me that.

In terms of the mechanism and so on, I do not think I have any satisfactory responses beyond what I have said, sir.

Mr. Robinson: You have not made any recommendations with respect to the somewhat controversial issue of bank reporting requirements. You might very well argue that is not something that you as the bar want to deal with, although you are well aware, having read the debates in the House, that this is one of the more controversial issues. It has been argued, I would certainly consider with some force, that without this kind of reporting requirement much of the legislation will be rendered ineffectual. Have you deliberately avoided commenting on that? Have you considered the issue? Do you have any thoughts on that which might assist the committee?

[*Traduction*]

Il est très difficile de répondre à cette question. Le Barreau ne demande pas à être soustrait aux exigences de cette partie de la loi. On pourrait régler le problème en tenant compte des sommes d'argent déjà versées au compte en fiducie de l'avocat. Ou encore, on pourrait demander une évaluation à une tierce partie neutre, à laquelle les deux côtés pourraient faire des représentations séparément. Je n'ai pas d'idée bien arrêtée sur ce point. Cela peut sembler hypocrite, mais beaucoup d'avocats trouvent à redire à cet aspect du projet de loi.

M. Robinson: Je vois, mais d'un autre côté, vous devez comprendre les préoccupations du gouvernement. Je ne suis pas de ceux qui défendent habituellement sa politique, mais on pourrait fort bien tenir le raisonnement suivant: si on prévoit la création d'un fonds qui échapperait à tout examen, les sommes provenant du crime organisé—et nous devrions évidemment donner une définition de cette expression, ce que nous n'avons pas encore fait...

M. Pollock: Exactement.

M. Robinson: ... les sommes provenant du crime organisé pourraient tout simplement se retrouver dans le fonds de fiducie de l'avocat. Sans vouloir aucunement mettre en doute les motifs de l'avocat, si un client lui donne 100,000$ ou 200,000$ et lui demande de les garder en fiducie pour sa défense, et si ces fonds échappent à toute forme d'examen, il faut bien admettre qu'il y a là matière à s'inquiéter. Je demande simplement que l'on prévoie, pour l'avenir, un mécanisme permettant un examen de ce genre de situation.

M. Pollock: Permettez-moi de répondre à cet aspect de la question. J'ai toujours estimé que les cabinets d'avocats ne devraient pas recevoir de fonds destinés à une défense éventuelle. Le faire, c'est mettre le doigt dans l'engrenage et collaborer au crime. Je n'ai pas besoin du projet de loi C-61 pour m'apprendre cela.

C'est tout ce que je peux dire, je n'ai pas d'autres suggestions.

M. Robinson: Vous n'avez fait aucune recommandation sur la question, quelque peu controversée, des exigences de rapport imposées aux banques. Peut-être ne voulez-vous pas vous en mêler, même si, pour avoir lu les débats de la Chambre, vous savez que cette question est l'une des plus débattues. On a prétendu, non sans raison, à mon avis, que l'absence de ces exigences en matière de rapport rendrait le projet de loi absolument sans effet. Est-ce à dessein que vous n'en parlez pas? Avez-vous examiné cette question? Avez-vous sur ce point une idée qui puisse aider le Comité?

[*Text*]

Mr. Pollock: In our deliberations on Bill C-61, that topic did not come up. Since reading *Hansard*, and realizing some of the concerns that parliamentarians have, I made a quick canvass of some colleagues about that. I guess the first observation I make is there are a lot of things going on in banks that we do not know about.

I must say that everyone to whom I spoke, and it is not a representative population, was amazed that, as was reported I think in the paper last week, you can literally back a truck up to a Canadian bank, unload all those dollar bills in the back of the truck, and get a deposit slip, and so on, and it is all private and secret; nobody knows about it. That is rather amazing. That is my only comment.

Mr. Robinson: And nothing in this legislation changes that rather amazing fact.

Finally, with respect to the question of the overall thrust of the legislation, you have stated, and certainly I agree, that the objective of attacking the proceeds of organized crime and funds which are laundered is an objective that all parties agree on.

You touched on one possible concern, though, which I think is a very troubling one. The American experience would seem to indicate that particularly a wealthy accused, an accused who perhaps has substantial financial backing—the very people we are trying to attack most vigorously with this legislation, organized crimes figures—may in fact see this kind of legislation as a bit of a boon, because instead of the courts being able to deal with the substance of the criminal accusation against him, what I hear you suggesting is the American experience with RICO is quite the opposite: that in fact they are able to tie up the courts with endless delays and to subvert society's concern that the trial come on, that the question of guilt or lack thereof of the accused be determined, that there can be lengthy delays which in fact amount to several years. Is that one of the concerns the bar has with respect to this legislation? It is not articulated explicitly in the bill. I thought I heard you suggesting that was a concern, at least based on the American experience.

Mr. Pollock: That has been the experience in many American states, particularly those where organized crime litigation takes place.

In Canada, we know about years of litigation. I was counsel in the Wilson case that took four or five years after the wire-tap legislation to figure out what you do if you are in a court that does not have jurisdiction over the packet. The bill did not come with an owner's manual, and we had to get the Supreme Court to figure it out for us. So we are no strangers to that kind of litigation. We are not that lily-white when you compare how litigious we are with how litigious the Americans are.

[*Translation*]

M. Pollock: Au cours de nos discussions sur le projet de loi C-61, cette question n'a pas été soulevée. Après avoir lu le Hansard et compris certaines préoccupations des parlementaires, j'ai consulté rapidement mes collègues à ce sujet. La première observation que je ferai, c'est qu'il se passe dans les banques bien des choses que nous ignorons.

Même s'il ne s'agit pas d'un échantillon représentatif de la population, tous ceux à qui j'ai parlé étaient stupéfaits que l'on puisse, comme le rapportait la presse la semaine dernière, aller avec un camion à une banque canadienne, décharger des tas de billets et repartir avec un récépissé, et tout cela, dans le plus grand secret. C'est tout simplement stupéfiant, c'est tout ce que je peux dire.

M. Robinson: Et rien dans le projet de loi ne modifie ce genre de chose.

Finalement, en ce qui concerne la portée générale du projet de loi, vous avez déclaré, et je suis certainement de votre avis, que tout le monde s'accorde sur l'objectif, qui est de s'attaquer aux produits du crime organisé et au blanchissage de l'argent.

Vous avez toutefois émis une préoccupation, tout à fait valable. Si l'on en croit l'expérience des Américains avec RICO, le projet de loi pourrait fort bien constituer une bonne affaire pour les accusés financièrement à l'aise, c'est-à-dire précisément ceux que nous visons le plus. En effet, toujours aux États-Unis, ils ont réussi à tourner à leur avantage le souci de la société de voir le procès se dérouler et la culpabilité de l'accusé établie. Il ont pu empêtrer les tribunaux dans des délais sans fin et les empêcher de s'attaquer au cœur de la question, c'est-à-dire l'accusation criminelle portée contre eux. Le Barreau éprouve-t-il ce genre d'inquiétude au sujet de ce projet de loi? Le texte n'est pas très explicite. J'ai cru vous entendre dire qu'il y avait là une certaine inquiétude, tout au moins si l'on se fonde sur l'expérience des Américains.

M. Pollock: C'est en effet ce qui est arrivé dans de nombreux États américains, particulièrement ceux où ont lieu des procès liés au crime organisé.

Au Canada, nous connaissons des procès qui ont duré des années. J'ai été avocat dans l'affaire Wilson, et il a fallu, après le projet de loi sur l'écoute électronique, 4 ou 5 ans pour savoir ce que l'on fait si l'on se trouve dans un tribunal dépourvu d'une juridiction complète. Le projet de loi n'était pas accompagné d'un guide de l'utilisateur et il a fallu faire appel à la Cour suprême. Ce genre de litige ne nous est donc pas inconnu. Si nous nous comparons aux Américains, nous ne sommes pas absolument innocents.

[*Texte*]

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Mr. Reimer: I thank our witnesses today for their brief and the thorough work they have done in pointing out some of the issues, as you see them, for us. Briefly, what is the intent of this bill? What is the purpose of this bill, as you see it?

Mr. Pollock: I think the purpose of the bill initially is to articulate the Crown's concern about those who commit crimes for profit, and the mere existence of a piece of legislation like this is important in a democratic society.

I think the bill's purpose is to designate certain offences as being those that will be targeted for attacks on their proceeds and to set up a meaningful mechanism for doing that; that is to say, unlike the vagaries of a statute like the Privacy Act, the wire-tap legislation in the past; this one is going to set out all the methodology and all the rights and the obligations and so on. It is a bill that the Minister has said is designed to protect individual rights of those presumed innocent, and we have pointed out some deficiencies there.

It is a bill that I guess is a focusing bill on organized crime, which is what we think of in terms of crime for profit. As well, there is some philosophy in it; after all, it makes all of these offences into possibly 10-year indictables under a special statute. As well, it appears to me to address something very important, and that is the victims of crime and the fact that they are going to get priority, that is, this is not going to be merely a confiscatory statute to fill the government's coffers, and that is good.

The bill itself of course is a bit of an omnibus bill in that it covers pieces of legislation other than the Criminal Code. I guess this is the day and age for this kind of a bill. The swing of the pendulum is such that this kind of legislation is popular. I mean, look, the Canadian Bar Association is not even complaining about it in principle.

Mr. Reimer: You used the words that "this is the day and age for this kind of bill". Can you just elaborate briefly on that?

Mr. Pollock: I think there is a perception that people are now oriented towards law and order. Crime is of sufficient concern when it is rooted in drugs and the many social problems that are affected by drug trafficking. There is a concern that organized crime has it too easy in Canada compared to the United States, or indeed some European communities, and so on. That is just an observation.

Mr. Reimer: If the changes you recommend on pages 3 and 4 of your brief—adding the words "probable grounds" and the point of no court record and also the idea of the timeframe of six months down to two months, which I think is your recommendation with the detention

[*Traduction*]

M. Reimer: Je remercie nos témoins d'aujourd'hui pour leur mémoire et le travail minutieux qu'ils ont accompli en nous donnant leur point de vue sur certaines questions. En bref, quelle est l'intention de ce projet de loi? Quel est l'objet de ce projet de loi, d'après vous?

M. Pollock: Je crois qu'initialement le but du projet de loi est d'énoncer clairement la préoccupation de la Couronne envers ceux qui commettent des crimes vénaux, et la simple existence d'un texte législatif comme celui-ci est importante dans une société démocratique.

Je crois que le but du projet de loi est de désigner certaines infractions comme étant celles pour lesquelles on envisage de saisir le produit du crime et de mettre sur pied un mécanisme significatif à cette fin, c'est-à-dire qu'à la différence d'une loi comme la Loi sur la protection des renseignements personnels, la Loi sur les tables d'écoute du passé, le présent projet de loi va exposer toute la méthodologie, tous les droits, toutes les obligations, et ainsi de suite. C'est un projet de loi dont le ministre a dit qu'il était destiné à protéger les droits individuels des personnes présumées innocentes, et nous en avons signalé certaines lacunes.

Il s'agit d'un projet de loi qui, je l'imagine, se concentre sur le crime organisé, expression qui nous vient à l'esprit quand on pense aux crimes vénaux. De même, on y trouve une certaine philosophie; après tout, aux termes d'une loi spéciale, ce projet de loi fait de toutes ces infractions des actes criminels punissables de 10 ans d'emprisonnement. De même, il me semble s'attarder sur quelque chose de très important, à savoir les victimes d'actes criminels et le fait qu'elles vont obtenir priorité; il ne va pas s'agir simplement d'une loi portant confiscation permettant de remplir les coffres de l'État, et cela est bien.

Bien entendu, le projet de loi est en quelque sorte un bill omnibus étant donné qu'il englobe d'autres textes législatifs que le Code criminel. Je pense que ce projet de loi arrive à point nommé. Le mouvement du pendule est tel que ce genre de loi est populaire. En fait, même l'Association du barreau canadien ne s'en plaint pas en principe.

M. Reimer: Vous avez dit que ce genre de projet de loi arrive à point nommé. Pouvez-vous développer brièvement?

M. Pollock: Je crois qu'on sent que les gens recherchent maintenant la loi et l'ordre. La criminalité préoccupe lorsqu'elle prend racine dans la drogue et dans les nombreux problèmes sociaux qui découlent du trafic de la drogue. On s'inquiète de ce que le crime organisé a la partie trop belle au Canada par comparaison aux États-Unis, ou en fait à certains pays européens, et ainsi de suite. Ce n'était qu'une observation.

M. Reimer: Si les changements que vous recommandez aux pages 3 et 4 de votre mémoire—à savoir ajouter les mots «motifs probables» et la question de la non-transcription des minutes du tribunal ainsi que l'idée d'un délai de six mois ramené à deux mois qui, je pense,

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of seized property—if those three recommendations were accepted, do you see that in any way weakening the intent of the bill?

Mr. Pollock: We see that as something that would strengthen the bill, because we see that as removing some defects that could result in Charter challenges with respect to "probable", that could result in the dangers of having a bad set of facts litigated. There is the old saying about bad facts and bad law. When you have, as we did in the Wilson case, a police officer who explained to a judge why he needed a wire-tap, saying he may have been asked some questions, but he does not remember what they were and there are no notes of it, and so on, let us face it, that is the fodder of defences and not successful prosecutions.

With respect to the time periods, we do not see anything wrong with putting a little more pressure on the prosecution.

Mr. Reimer: So if the police are doing their work well, and the court and so on, all working together, you do not see that in any way limiting the attempt to get at the problem you were talking about earlier?

• 1025

Mr. Pollock: No, sir. For instance, I have yet to see a court, when a reasonable case is demonstrated, not extend the provisions of a search warrant or a seizure under the Income Tax Act. The idea is that the Attorney General is going to be accountable to the court.

Mr. Reimer: The section you talked about where the penalties in this bill may be too severe—what sorts of dollars are we talking about in the crimes this bill is going to get at, in your view? What sums of dollars are we really trying to get at?

Mr. Pollock: Actually, I am not sure. I do not mind telling you this, that one of the concerns I heard when we were conferencing what would go into our paper was this. There may be a case in which a million-dollar fraud is perpetrated with respect to mortgages, the sum is certain, and the prime movers are identifiable. There is no difficulty with that. That is the sort of person you want to put in jail for 5 to 10 years. Indeed, if you look at what the defendant Player got in Toronto, he got 12 years for that apartment block flip scam.

So 5 to 10 years, I guess, is not bad there. But remember, that follows the ordinary sentencing hearing. The harshness certainly comes in because there are minima. The harshness might come in not in downtown Toronto in a prosecution, but where some ambitious and

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constitue votre recommandation en ce qui concerne la détention de la propriété saisie—si ces trois recommandations étaient acceptées donc, croyez-vous qu'elles affaibliraient en quelque sorte l'intention du projet de loi?

M. Pollock: Nous croyons que ces changements renforceraient le projet de loi, car ils supprimeraient certains défauts qui pourraient entraîner des contestations de la Charte en ce qui concerne le mot «probables», défauts qui pourraient faire qu'un procès pourrait se fonder sur des faits douteux. A faits douteux, droit douteux comme on dit. Lorsque vous avez, comme cela a été le cas dans l'affaire Wilson, un agent de police qui explique à un juge qu'il avait besoin de faire une écoute électronique parce qu'on aurait pu lui poser certaines questions, mais qu'il ne se rappelle pas lesquelles et qu'il n'en a pris aucune note, et ainsi de suite, regardons la réalité en face, cela ne fait qu'amener de l'eau au moulin de la défense et ne permet pas de poursuivre avec succès.

En ce qui concerne les délais, nous ne voyons aucun mal à mettre un peu plus de pression sur la poursuite.

M. Reimer: Donc si la police fait bien son travail, le tribunal aussi et ainsi de suite, tous travaillant en collaboration, vous ne voyez pas comment cela empêcherait de régler le problème dont vous avez parlé un peu plus tôt?

M. Pollock: Non, monsieur. Par exemple, je rêve au jour où je verrai un tribunal, saisi d'un dossier plausible, ne pas appliquer les dispositions relatives à un mandat de perquisition ou à une saisie aux termes de la Loi de l'impôt sur le revenu. L'idée, c'est que le procureur général sera responsable devant le tribunal.

M. Reimer: L'article du projet de loi dont vous parlez et dont vous dites que les peines peuvent être trop sévères—à votre avis, de quels montants parlons-nous pour les crimes visés par ce projet de loi? De quelles sommes parlons-nous réellement?

M. Pollock: En fait, je n'en suis pas sûr. Je peux bien vous le dire, l'une des préoccupations que j'ai entendues quand nous nous sommes réunis pour déterminer quoi mettre dans notre mémoire était celle-ci. Il peut se produire un cas où une fraude hypothécaire d'un million de dollars est perpétrée, dont la somme est connue et les principaux responsables identifiables. Cela ne pose aucun problème. Ce genre d'individus seraient mis en prison pour cinq à dix ans. En fait, si vous regardez la peine qu'a obtenue le défendeur Player à Toronto, il a écopé de 12 ans pour la fraude impliquant la revente d'immeubles à appartement.

Donc 5 à 10 ans, j'imagine, ce n'est pas mal. Mais rappelez-vous que cela fait suite à l'audition régulière de la sentence. S'il y a sévérité, assurément c'est parce qu'il y a des peines minimales. Il pourrait y avoir sévérité dans une poursuite se déroulant non pas au centre-ville de

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eager police officer in a small community and a prosecutor with similar ideas get together and decide to be absolutely rigid and firm in adhering to the bill in a prosecution. You could end up with some ridiculous situations. We are against taking the discretion away from judges to deal with ridiculous situations.

Mr. Reimer: We are also through this bill trying to get at huge dollars through the the illicit drug trade. The dollars are huge. Do you think the penalties are severe enough on that side?

Mr. Pollock: There is some consistency here with the report of the Canadian Sentencing Commission. There are some inconsistencies, as well, because of the link between the dollar value of the crime and that additional sentence—and I point out that is additional—to be served.

That type of a sentencing grid, by the way, is not unheard of. The State of Minnesota has it for sexual offences. The sentence goes up according to the gravity of the offence and goes down according to the antecedence of the offender, if he or she has a good background. The fact is in Canada we do not see double-digit sentencing that often, certainly not in Manitoba. It is very hard to say.

Our concern is the format here, this grid idea, and the difficulty there is going to be, because you may not have a fight in court over who is guilty of what enterprise crime. But you may have a fight over how many hundreds of thousands of dollars the particular defendant is responsible for; because that is going to affect his liberty for the next . . it starts at 24 months.

Mr. Reimer: I guess I am trying to combine the intent of the bill—using the fact of drug abuse, illicit drug trade and the huge dollars involved—with your point that the penalties may be too severe. Yet we are talking of millions and millions of dollars within that. We are talking of the effect on people's lives as a result of that. Here is one method of trying to get at that problem. This is not the only one, of course, but here is one method of trying to get at that and to attack the dollars made out of that illicit trade. Given the social costs that go with this and the fact of the huge dollars involved, I am trying to get at why the penalties are too severe. I would have thought maybe you would not attack it that hard.

Mr. Pollock: When an accused thinks the penalties are too severe, he can seek leave to appeal in a court of appeal. There have been times when penalties of ten years have been reduced to five and so on.

• 1030

In this particular case, if you look at the situation of a person who has committed a $250,000 fraud, the minimum sentence there is a penitentiary sentence. A judge has no discretion to keep that person out of the "big house". There is no way a reformatory sentence can be

[*Traduction*]

Toronto, mais dans une petite communaute où un agent de police ambitieux et un poursuivant partageant ses idées décident d'être tout à fait rigides et fermes en s'en tenant aux termes du projet de loi dans une poursuite. On pourrait aboutir à des situations ridicules. Nous sommes contre l'idée d'enlever ce pouvoir discrétionnaire aux juges.

M. Reimer: Nous tentons également par ce projet de loi de mettre la main sur d'énormes sommes d'argent qui découlent du commerce illégal de la drogue. Ces sommes d'argent son énormes. Pensez-vous que les peines soient suffisamment sévères?

M. Pollock: Il y a ici une certaine incohérence avec le rapport de la Commission canadienne sur la détermination de la peine. On trouve également certaines inconsistances en raison du lien entre la valeur en dollar de l'acte criminel et la peine additionnelle—et je signale qu'elle est additionnelle—à subir.

Ce genre de grille sentencielle n'est pas inconnu soit dit en passant. L'État du Minnesota en a une pour les infractions d'ordre sexuel. La peine s'alourdit selon la gravité de l'infraction et diminue selon les antécédents du contrevenant. Il reste qu'au Canada nous ne voyons pas tellement souvent des peines de 10 ans et plus, certainement pas au Manitoba. C'est très difficile à dire.

Ce qui nous préoccupe avec cette idée de grille, c'est qu'il pourrait arriver qu'en cour, les débats portent non pas sur qui est responsable de quel crime organisé, mais sur les centaines de milliers de dollars dont le défendeur particulier est responsable, parce que cela va affecter sa liberté pour les prochaines. . . Cela commence à 24 mois.

M. Reimer: J'essaie d'établir un lien entre l'intention du projet de loi—qui se sert de l'abus des drogues, du commerce illégal de la drogue et des sommes énormes en jeu—et votre argument selon lequel les peines sont peut-être trop sévères. Mais nous parlons de millions et de millions de dollars. Nous parlons de leur effet sur la vie des gens. Voici un moyen d'arriver à régler ce problème. Ce n'est pas le seul bien entendu, mais voici un moyen d'essayer de mettre la main sur les dollars que génère ce commerce illégal. Étant donné les coûts sociaux et l'énormité des sommes d'argent en jeu, j'essaie de déterminer pourquoi les peines sont trop sévères. J'aurais cru que vous ne contesteriez pas ce fait si durement.

M. Pollock: Lorsqu'un accusé pense que les peines sont trop sévères, il peut toujours en appeler à une cour d'appel. On a vu des cas où des peines de 10 ans ont été réduites à 5 ans et ainsi de suite.

Dans ce cas-ci, s'il s'agit d'une personne qui a commis une fraude de 250,000$, la peine minimum est le pénitencier. Aucun juge ne peut lui éviter un séjour dans la «grosse cabane». Il ne peut être question ici de maison de correction. Dans certains cas, c'est peut-être

[Text]

imposed. That may be unfortunate in some cases for the offender, of course, and for society, because the person does not belong in an institution like that.

I would point out as well that there is no fine option here either, that these sentences are going to be served if the person does not pay up, and if they do not have the means to pay they are going to serve the sentences. I am not sure what kind of reparation that represents in terms of the millions of dollars the person may have made from the drug trade. Not everyone is going to agree.

Mr. Reimer: You use the example of the $250,000 fraud. I can see your point when you are talking about that one. But when we are talking about hundreds of millions of dollars in the illicit drug trade, and this is 10 years and $1 million, maybe on that side we are not erring on the side of being too severe; in fact, we could be more severe.

Mr. Pollock: I am sure the committee will consult experts on that too, and Parliament will benefit from your advice on that point as well.

The Chairman: I would like to get back for a moment to page 13 of your brief, the possible erosion of the solicitor-client privilege. Would you not agree with me that this is giving the accused something he would not otherwise have? If property is seized and is being detained by the Crown, that would not normally be available to the accused for legal fees. I think that is a fair statement—

Mr. Pollock: Yes.

The Chairman: —and a correct one as well. I guess I understand where you are coming from, but inasmuch as this gives something to the accused they would not otherwise have, it seems to me this is a reasonable provision.

About your concerns about the erosion of the solicitor-client privilege, as I was reading your brief I thought, well, because this is something for the benefit of the accused, obviously the solicitor for the accused is not going to make any disclosure that would hurt his case. He would only put it in the most general terms: numbers of hours required for legal assistance, or junior counsel, or perhaps even an investigator. I am not quite sure how this would be a breach of the solicitor-client privilege, inasmuch as the lawyer certainly is not going to reveal anything that would hurt his case and the only onus he has to meet is the reasonable test, which—

Mr. Pollock: What if you have to fly in a private detective to wear a body-pack to interview a corrupt police officer, as happened in Toronto several years back? How do you justify in front of a judge who is used to hearing about perhaps $50 an hour, including disbursements for a private investigator, talking about triple that, or even more? How do you deal with the situation, for instance in a fraud, where you want to use forensic experts to look into the authenticity of documents, or indeed to look into the accuracy of a police audit, and so on, and you just do not want the

[Translation]

malheureux pour le contrevenant, bien sûr, et pour la société, car la personne se sent plutôt étrangère à ce genre d'établissement.

J'ajouterais aussi qu'on n'a pas le choix non plus quant à l'amende, que la personne doit purger sa peine si elle ne paie pas, et même si elle n'a pas les moyens de payer. Je ne sais pas au juste quel genre de réparation cela représente si l'on songe aux millions de dollars que la personne peut avoir tirés du trafic de la drogue.

M. Reimer: Quand vous donnez comme exemple une fraude de 250,000$, je comprends ce que vous voulez dire. Mais quand il s'agit d'un trafic illicite de centaines de millions de dollars—et on parle ici de 10 ans et d'un million de dollars—peut-être que nous ne péchons pas alors par excès de sévérité; en fait, nous pourrions être plus sévères.

M. Pollock: Je suis sûr que le Comité va consulter des experts à ce sujet-là aussi, et que le Parlement va également profiter de vos conseils.

Le président: Permettez-moi de revenir un instant à la page 13 de votre mémoire, là où il est question de l'érosion possible de la relation privilégiée avocat-client. Seriez-vous d'accord avec moi pour dire que l'on donne ainsi à l'accusé quelque chose qu'il n'aurait pas autrement? En effet, l'accusé ne devrait pas normalement pouvoir récupérer pour de l'argent des biens saisis et détenus par la Couronne. Je crois avoir dit juste. . .

M. Pollock: Oui.

Le président: Je crois comprendre ce que vous voulez dire, mais vu que cela donne à l'accusé quelque chose qu'il n'aurait pas autrement, il me semble que cette disposition est acceptable.

Quant à vos inquiétudes au sujet de l'érosion de la relation avocat-client, en lisant votre mémoire, je me disais: étant donné que cela est dans l'intérêt de l'accusé, son avocat doit évidemment s'abstenir de faire toute révélation qui pourrait nuire à sa cause. Il s'en tiendra à des généralités: nombre d'heures requises pour l'assistance judiciaire, ou un avocat en second, ou peut-être même un enquêteur. J'ignore comment on pourrait parler d'atteinte à la relation avocat-client, vu que l'avocat va certainement éviter de révéler quoi que ce soit qui pourrait nuire à sa cause, sa seule responsabilité étant de démontrer le bien-fondé. . .

M. Pollock: Et si vous devez engager un détective privé pour recueillir et enregistrer subrepticement les propos d'un policier corrompu, comme cela s'est produit à Toronto il y a plusieurs années? Comment justifier devant un juge habitué à des séances à 50$ l'heure peut-être, y compris le coût d'un détective privé, qu'il faut tripler cette somme, ou même davantage? Dans une affaire de fraude, par exemple, où vous voulez faire appel à des experts en médecine légale pour vérifier l'authenticité de documents, ou encore l'exactitude d'un rapport de police, et cetera, que faire si vous voulez le cacher à la police? Et

[*Texte*]

police to know whom you are using? The Crown questions, how is my learned friend getting these estimates of what it is going to cost him, and so on? It seems to me that is where an accused is in a situation he or she has never heretofore had to be in.

I must say I am concerned about the point you initially raised, sir, because in a way you do give the accused something he or she does not have now. But the situation might likely be this. You have someone accused of a crime involving bookmaking. The items seized might include a computer, several pieces of telephone equipment, perhaps pieces of paper, and so on. The person also happens to be in the real estate business, and he or she has a lot of money. There is no right in that case to inspect the income tax records without the consent of the accused. So it will not be hard to jump to the conclusion that the person's other assets were obtained by crime, and a seizing and freezing order might be sought.

• 1035

In that situation you have a defendant in a position the defendant would not be in before Bill C-61. The items related to bookmaking were seizable and freezable, but not the items that display wealth that was perhaps obtained perfectly legitimately and the defendant has not yet had a chance to explain.

The other concern is this. As I pointed out in Mr. Robinson's questioning, this can affect the timeframe within which one can retain a lawyer, because of the delays inherent in getting money freed up to get a lawyer. It also can affect whom the person chooses to be his or her lawyer. A person realizing the provisions of point 14 may not want to go to their first choice of counsel for any number of reasons, not the least of which is that they do not want to have to justify that expense when perhaps a more modest fee will even get the consent of the Attorney General to releasing some of the funds or releasing an asset, and so on. There are all sorts of potential abuses; and I hope we operate on the presumption there will not be abuses. But the potential is there in that regard.

The Chairman: Would it help that proposed section if the investigation of whether the expenses were reasonable were done in camera and/or without the presence of the Crown attorney, if a change were made?

Mr. Pollock: Yes, that might help. That is the sort of thing that comes to mind. There is going to have to be something. This is very clumsy, because you are treading on the right of a person to have a lawyer and communicate with the lawyer and so on. The person might even have to retain a lawyer for the purpose of a proposed subsection (4) application to get some assets freed up to pay the other lawyer.

The Chairman: Give some thought to the suggestion I have just made to you about the possibility of its being in camera and without the Crown attorney. If you have any

[*Traduction*]

le procureur de la Couronne de demander: comment mon savant collègue peut-il savoir ce qu'il va lui en coûter, et cetera? C'est là, il me semble, une situation où l'accusé n'a jamais eu à se trouver jusqu'ici.

Je dois dire, monsieur, que la question que vous avez soulevée au début m'inquiète, car, en un sens, vous donnez à l'accusé quelque chose qu'il n'a pas à l'heure actuelle. Mais la situation pourrait probablement être la suivante. Quelqu'un est accusé de «bookmaking». On a saisi entre autres un ordinateur, plusieurs pièces d'équipement téléphonique, peut-être des documents, et cetera. Or, la personne en cause travaille aussi dans l'immobilier et a beaucoup d'argent. On n'a pas le droit alors d'inspecter les dossiers fiscaux sans le consentement de l'accusé. De là à conclure que la personne a acquis ces autres biens par des moyens illicites, il n'y a qu'un pas à franchir, et on pourra aboutir à une ordonnance de saisie et de blocage.

Le défendeur se retrouverait ainsi dans une position inconnue avant l'adoption du projet de loi C-61. Les articles reliés au «bookmaking» étaient saisissables et blocables, mais non pas les biens acquis peut-être tout à fait légitimement et dont le défendeur n'avait peut-être pas eu l'occasion d'expliquer l'origine.

Voici l'autre sujet d'inquiétude. Comme je l'ai souligné au sujet des questions de M. Robinson, cela peut influer sur le délai dont vous disposez pour vous dénicher un avocat, à cause du temps qu'il faut pour trouver l'argent nécessaire. Cela peut aussi influencer le choix de l'avocat. Une personne comprenant les dispositions du point 14 peut ne pas vouloir faire un premier choix pour différentes raisons, dont—et ce n'est pas la moindre—le fait qu'elle ne veut pas devoir justifier cette dépense quand des frais moins élevés permettront peut-être même d'obtenir le consentement du procureur général pour libérer certains des fonds ou un actif, et cetera. Il y a toutes sortes d'abus possibles; et j'espère que nous présumons qu'il n'y aura pas d'abus. Mais la possibilité existe.

Le président: Au sujet de cet article, serait-il souhaitable que l'examen des dépenses se fasse à huis clos ou en l'absence du procureur de la Couronne, qu'on le modifie?

M. Pollock: Oui, peut-être. C'est le genre de chose qui me vient à l'esprit. Il faut qu'il y ait quelque chose. C'est très maladroit, parce que vous piétinez le droit de la personne d'avoir un avocat, de communiquer avec lui, et cetera. La personne devra peut-être même retenir les services d'un avocat pour faire appliquer le paragraphe (4) afin de libérer certains actifs en vue de payer l'autre avocat.

Le président: Réfléchissez un peu à ce que je viens de vous dire au sujet du huis clos et de l'absence du procureur de la Couronne. Si vous avez d'autres idées à ce

[*Text*]

further thoughts on it—we will be looking at the bill for a while—please submit them to the committee.

Mr. Robinson: Another of the points you make in your submission to the committee deals with proposed section 420.27, which refers basically to informers. I think you have suggested this proposed section is not necessary, in effect; that the existing jurisprudence already protects informers. I wonder if you could just elaborate on your concerns about proposed section 420.27.

Mr. Pollock: We could not think of any jeopardy a bona fide informant would be in. We have laws concerning libel, defamation, malicious prosecution, and so on. Those are some of the oldest forms of action known to private law, and we just could not see the problem today. Take the typical caller to "Crime Stoppers", or whatever it might be called here. You get the anonymity of a serial number in reporting a crime and you get a little reward at the end. That does not seem to be problematic. If you have the situation of an informant who says to a police officer, I think my next-door neighbour, the one I am always complaining about, with the barking dog, is a cocaine dealer, because he just got a new car, that sort of thing obviously is done with malice, and there are laws that cover it. If you go so far as to accuse a person falsely, you might commit public mischief or any number of offences.

I am not sure what exactly the proposed section gets at. That is the one that commences with "for greater certainty..." Again, I guess that is a message. It is articulating to people the concern that the government has for law and order, and the government's dedication to protecting those who are on its side in preserving law and order. It is almost preamble talk, that kind of a section. We are just curious as to why it is there when we think the bona fide informant does not have any concerns now. If we are wrong, we stand to be corrected.

• 1040

Mr. Robinson: One of the concerns I think comes to mind with respect to a provision of this nature is that it does not just deal with people who are informants suggesting that a certain criminal act has taken place. It also talks about reasonable grounds to suspect that any person is about to commit an enterprise-crime offence, or a designated-drug offence. Do you have any concerns that in fact this may be expanding the existing jurisprudence with respect to immunity for those who are informers? I am not sure whether you have looked in this kind of detail at this, but I would ask that perhaps your committee have a look at this particular section with respect to the possibility that indeed it does go beyond the existing jurisprudence and give expanded immunity to those who are reporting.

Mr. Pollock: I have a note of that. That section, by the way, should be read in conjunction with ordinary police powers to keep the peace and so on. A police officer in

[*Translation*]

sujet—nous n'en avons pas fini avec ce projet de loi—veuillez les communiquer au Comité.

M. Robinson: Vous parlez aussi dans votre mémoire de l'article 420.27, qui vise les informateurs. Vous avez dit, je crois, que cet article n'est pas nécessaire en fait, que notre jurisprudence protège déjà les informateurs. Pourriez-vous nous expliquer vos inquiétudes au sujet de l'article 420.27?

M. Pollock: Nous ne pouvons pas imaginer quels risques pourrait courir un informateur de bonne foi. Nous avons des lois sur le libelle, la diffamation, les poursuites abusives, et cetera. Ce sont là quelques-unes des plus vieilles formes d'action que connaît le droit privé, et nous ne pouvons simplement pas concevoir quel serait le problème aujourd'hui. Pensez à la personne typique qui appelle «Crime Stoppers» ou «Échec au crime», ou peu importe. Un numéro de série lui assure l'anonymat, et à la fin, elle reçoit une petite récompense. Cela ne semble pas poser de problèmes. L'informateur qui dit à la police: je crois que mon voisin—celui dont le chien aboie et dont je me plains tout le temps—vend de la cocaïne, parce qu'il vient tout juste de s'acheter une nouvelle voiture, cet informateur agit évidemment avec malveillance, et il y a des lois pour ces cas-là. Si vous allez jusqu'à accuser une personne à tort, vous commettez peut-être un méfait, ou un autre délit.

Je ne sais pas au juste ce que vise cet article. C'est celui qui commence par les mots: «Il est déclaré pour plus de certitude...» Encore une fois, je suppose qu'il y a un message. Cela exprime clairement le souci qu'a le gouvernement de l'ordre public et sa volonté de protéger ceux qui luttent à ses côtés pour sa sauvegarde. Cette sorte d'article est une manière de préambule. Nous nous demandons seulement ce qu'il fait là, puisque l'informateur de bonne foi ne se pose pas la question actuellement. Ou bien serait-ce que nous nous trompons?

M. Robinson: Ce qui vient à l'esprit devant un tel article, c'est qu'il ne traite pas seulement des gens qui allèguent qu'un délit particulier a été commis. Il parle aussi des motifs raisonnables qu'il y a de suspecter qu'un individu est sur le point de commettre une infraction de criminalité organisée ou une infraction grave en matière de drogue. Ne pensez-vous pas qu'en fait, ceci puisse étendre la jurisprudence existante en ce qui concerne l'immunité des dénonciateurs? Je ne sais pas si vous vous êtes préoccupés de ce détail, mais j'aimerais que votre Comité examine cet article quant à la possibilité qu'il outrepasse la jurisprudence actuelle et accroisse l'immunité offerte aux dénonciateurs.

M. Pollock: J'en prends bonne note. Cet article, à propos, doit être interprété conjointement avec, entre autres, les pouvoirs normaux de maintien de l'ordre de la

[*Texte*]

whose opinion a crime can be stopped can use reasonable force to stop the crime.

Now police officers get their knowledge in all sorts of different ways, and in a typical situation where you have a charge of assaulting a peace officer lawfully engaged in the execution of his duty, the defendant might say this policeman stopped him on the street for no good reason whatsoever, and the police officer might say that a perfectly reliable source, a nun he knows walking down the street, told him she saw that man commit a crime and he was going to do it again, or she saw that man produce a knife and a mask and an empty bag, or whatever.

That police officer is lawfully executing his duty. He is not going to get sued over that one. He is also not going to get a conviction for obstructing a peace officer, but that is neither here nor there. This idea of a policeman stopping a crime before the crime is about to be committed is not unheard of, but we will give it some more thought.

Mr. Robinson: I mentioned earlier the definition of enterprise crime offence and designated drug offence, and of course the focus has been on organized crime's involvement in drug trafficking, but this bill also deals with what it calls enterprise crime offences. Among the offences referred to there is an offence under section 193 of the Criminal Code, keeping a common bawdy house.

Mr. Pollock: Yes.

Mr. Robinson: Now the legislation also refers to section 195, the procuring section, dealing with pimps, and so on, but...

Mr. Pollock: It also deals with 193.

Mr. Robinson: It also deals with 193, and we have received written submissions and will be hearing, I think on Thursday, from witnesses from the National Action Committee on the Status of Women as well as from the Canadian Organization for the Rights of Prostitutes. They argue that to them the implications of this legislation are quite draconian, and that it is not illegal to engage in the act of prostitution in Canada. Obviously it is still illegal to keep a common bawdy house, but did the bar examine in any depth the offences that are included under the definition of "enterprise crime offence"? In particular, do you have any thoughts on the inclusion of that section, which by the way is not included in similar American legislation?

Mr. Pollock: No, we did not scrutinize the calendar of charges. In terms of keeping a common bawdy house, frankly I see that having trouble passing constitutional muster. That is particularly offensive to the groups you have mentioned, I know. I will be interested in reading what they say to this committee.

I might point out something interesting about the calendar of charges, and that is that you will note assault is not included in there. None of the assault, maiming,

[*Traduction*]

police. Si un agent de la paix estime qu'il peut prévenir une infraction, il peut user raisonnablement de ses pouvoirs pour l'empêcher.

Maintenant, les agents de la paix reçoivent leur formation de toutes sortes de façons et, dans un scénario type de voies de fait commises contre un agent de la paix dans l'exercice de ses fonctions, l'accusé peut prétendre que l'agent l'a arrêté, dans la rue, sans raison aucune, et celui-ci peut affirmer qu'une bonne soeur de sa connaissance, source parfaitement fiable, venait de lui dire qu'elle avait vu cet homme commettre un délit et qu'il allait recommencer, ou bien qu'elle l'avait vu sortir un couteau et un masque et un sac vide, que sais-je encore.

L'agent de la paix remplit légalement ses fonctions. Il ne peut pas, dans ce cas, être poursuivi. Il ne peut davantage obtenir une condamnation pour entrave à agent, mais ceci n'apparaît nulle part. La notion d'un agent arrêtant un crime juste avant qu'il soit commis n'est pas nouvelle, mais nous allons y repenser.

M. Robinson: J'ai mentionné, plus tôt, les définitions de l'infraction de criminalité organisée et de l'infraction grave en matière de drogue, et si, bien sûr, l'accent porte sur la part du crime organisé dans le trafic des stupéfiants, ce projet de loi traite aussi de ce qu'il nomme les infractions de criminalité organisée. Parmi les délits envisagés ici, figure, à l'article 193 du Code criminel, la tenue d'une maison close.

M. Pollock: Oui.

M. Robinson: Or, la législation renvoie aussi à l'article 195 sur la prostitution, les souteneurs, etc.

M. Pollock: Elle traite aussi de l'article 193.

M. Robinson: Oui, et nous avons reçu des mémoires et nous entendrons, jeudi, je pense, des témoins du Comité national d'action sur le statut de la femme et aussi de l'Organisation canadienne pour les droits des prostitués. Ils prétendent, quant à eux, que les implications de cette législation sont draconiennes et que le fait de s'adonner à la prostitution n'est pas illégale au Canada. Évidemment, il est encore illégal de tenir une maison de débauche, mais le barreau a-t-il examiné, dans le détail, ce qu'on entend par «infraction de criminalité organisée»? En particulier, pensez-vous qu'il faut inclure cet article, lequel, soit dit en passant, n'apparaît pas dans la législation américaine correspondante?

M. Pollock: Non, nous n'avons pas étudié les chefs d'accusation. Quant à la tenue d'une maison close, honnêtement, j'entrevois des difficultés d'ordre constitutionnel. C'est particulièrement odieux, je le sais, aux groupes que vous avez mentionnés. Je lirai avec intérêt ce qu'ils ont à dire au Comité.

Peut-être pourrais-je signaler un point intéressant à propos des chefs d'accusation: il faut noter que les voies de fait n'y sont pas mentionnées. Agression, mutilation,

[*Text*]

wounding offences are in there. So if a professional hitman is unsuccessful in carrying out his contract, you cannot seize his house, car, and condo in Florida, because the victim did not die; he has to kill his victims before he becomes an enterprise criminal.

• 1045

Mr. Robinson: The final question is about the provisions for disclosure of income tax records in the case of drug offences even, as I understand it, before a charge has been laid. I realize that these are restrictive provisions, and I am not at this point arguing against those provisions, but I find it interesting to note that the same government that is proposing access to what are seen by many as the most confidential records, income tax records, in certain defined circumstances, is refusing to grant access to pension records that might assist in the apprehension of those who are alleged to have been involved in crimes against humanity or alleged Nazi war criminals.

I just raise that as a concern I have. Presumably if the standard applies, if we are concerned about access to confidential government records, I would have hoped that the same concern would have been raised with respect to prosecuting individuals alleged to have committed mass murder. I will be making that argument in another forum, but I just wanted to raise that here while I had the opportunity.

My final question is on the issue of compensation in the case in which an individual who is accused of one of the offences in this clause is ultimately acquitted but their business, for example, may have been adversely affected. Indeed, a third party may have had their business or their livelihoods seriously affected as a result of the provisions of this legislation. In those circumstances in which an individual is acquitted, have you any submissions to the committee about the possibility of compensation, to put them in a situation that may not entirely make up for the suffering they have gone through or the financial loss they have incurred but at least may go some distance towards restoring them to the situation in which they found themselves before they were charged?

Mr. Pollock: First, as we said, we preferred that there be a deemed undertaking by the AG or whoever is the mover in the proceedings under Bill C-61—at least the costs, as we have said in our paper, of making an application under one of the. . . I think there are four possibilities. I am still not sure what the found-innocent accused is supposed to do, to tell you the truth, but that person's costs certainly, we think, should be covered.

There are going to be some problems with that. The case may not always be that the person has been found to be absolutely sanitized when it comes to crime proceeds but it is just that a case cannot be made out against him

[*Translation*]

blessure, rien de cela n'est ici. Alors, si le tueur à gages professionnel rate son coup, pas moyen de saisir sa maison, sa voiture, sa copropriété en Floride, puisque la victime s'en est tirée; il faut qu'il y ait mort d'homme pour que ce soit une infraction de criminalité organisée.

M. Robinson: La dernière question, c'est à propos des dispositions prévoyant la divulgation du dossier de l'impôt sur le revenu dans le cas d'une infraction en matière de drogue; cela vaut, je pense, même avant qu'une accusation soit portée. Il s'agit bien évidemment de dispositions restrictives, contre lesquelles je ne m'élève d'ailleurs pas pour l'instant, mais il n'est pas sans intérêt de constater que le gouvernement, tout en proposant de donner accès aux dossiers les plus confidentiels aux yeux de beaucoup, soit les dossiers de l'impôt sur le revenu, du moins dans certaines circonstances, refuse l'accès aux dossiers de pensions de retraite, lesquels pourraient aider à faire traduire en justice de présumés criminels de guerre nazis ou d'autres personnes soupçonnées de crimes contre l'humanité.

Voilà une de mes préoccupations. Si la norme s'applique dans tous les cas où l'on parle d'accès aux dossiers confidentiels de l'Administration, j'aurais espéré que l'on soulève les mêmes objections s'agissant de la mise en accusation de personnes soupçonnées de s'être livrées à des massacres. J'en reparlerai d'ailleurs dans un autre forum, mais j'ai tenu à soulever ce point devant vous aujourd'hui.

En dernier lieu, j'en viens au dédommagement de la personne qui, ayant été accusée de l'une des infractions visées par cet article, est acquittée, mais dont les intérêts commerciaux ont souffert. Il se peut même que les dispositions de ce texte législatif aient pour effet de nuire aux affaires ou au gagne-pain d'un tiers. Lorsque le prévenu est acquitté, qu'avez-vous à proposer au Comité en fait de dédommagement? Pourra-t-on, je ne dis pas compenser les souffrances de ces gens, leurs pertes pécuniaires, mais au moins les aider à retrouver la situation qui était la leur avant qu'ils soient accusés?

M. Pollock: Eh bien, nous avons bien dit que nous préférions qu'il y ait un engagement réputé du procureur général, ou de celui qui lance l'accusation en vertu du projet de loi C-61—qui couvrirait au moins les dépenses, le coût d'une demande en vertu de l'une des. . . il y a quatre possibilités, je pense; nous en parlons d'ailleurs dans notre mémoire. Que doit faire le prévenu qui est lavé de tout soupçon? J'avoue que je n'en sais rien, mais nous sommes persuadés qu'à tout le moins, il devrait être défrayé de ses dépens.

Ce qui n'ira pas sans entraîner des difficultés. Mettons que la personne soupçonnée d'avoir profité d'un délit n'est pas tout à fait blanchie, mais qu'on manque de preuves contre elle, faute d'avoir pu retracer les fonds ou

[*Texte*]

and it is just impossible to trace the proceeds and so on, and I do not think anyone would want to see any unjust enrichment of a well-organized criminal.

The point you make—and I think I read it in Hansard when Mr. Kaplan was speaking about it—is this. Take that bookmaker I mentioned, whose real estate business goes to the dogs. The bank that has been financing the operation of that business and perhaps the building it is in is going to take a loss because it cannot execute on its usual creditor remedies and so on. In fact, substitute for the bank a private lender whose sole source of income is financing this real estate company. There are real problems there.

Now you are into an area—a whole new area, we say—of civil law. It is as if we are making touching crime proceeds some kind of a tort and once you are contaminated by the crime proceeds you have to show that you appear innocent, in light of some maybe highly suspicious circumstances, in order to get yourself sanitized again. Then and only then can you start talking about costs, and you are going to have to sue for them because the bill does not cover that. We say that is unfortunate.

Le président: Monsieur Grisé.

• 1050

M. Grisé: Je voudrais remercier M. Pollock pour cette présentation, ainsi que son invité. J'espère que l'Association du barreau canadien a le document que vous nous avez également présenté en français. Il serait bon et important que les membres du Comité puissent avoir ce document-là en français, monsieur le président.

The Chairman: I have been informed by the clerk that it is being translated at present.

M. Grisé: J'espère que la prochaine fois tout document sera prêt dans les deux langues officielles lors de sa présentation.

M. Robinson: J'invoque le Règlement, monsieur le président! Je suis tout à fait d'accord avec M. Grisé et je demande quand on a reçu le document et pourquoi doit-on en attendre la traduction. C'est daté de décembre 1987.

The Chairman: The clerk has informed me that he will find that out, Mr. Robinson, and we will report back to the committee.

I think it is a point well taken, Mr. Grisé.

M. Grisé: Merci. Monsieur Pollock, vous mentionniez plus tôt que le projet de loi C-61 est un projet de loi très compliqué et exclusivement réservé aux avocats les plus informés, disiez-vous. Alors, comme je ne suis pas avocat, puisque vous parliez d'entrer à la Cour suprême comme d'entrer ici au Comité, j'aimerais immédiatement faire le point suivant: Vous êtes loin de la Cour suprême, ici, au Comité.

[*Traduction*]

que sais-je encore; consentira-t-on à dédommager indûment ce prévenu plus que douteux? Ouais.

Votre argument est le suivant, je pense—et j'ai dans l'idée que je l'ai lu dans le Hansard pendant l'intervention de M. Kaplan. Prenez mon exemple du bookmaker dont l'agence immobilière périclite. La banque qui a financé cette agence, et qui détient peut-être une hypothèque sur l'immeuble, essuiera fatalement des pertes, car elle ne peut se prévaloir des recours qui s'offrent normalement aux créanciers. Ce serait pareil pour un prêteur privé dont le revenu proviendrait du prêt consenti à l'agence. De gros problèmes se posent.

Là, vous élargissez pas mal le débat, car il s'agit du droit civil. Tout se passe comme si on faisait une manière de tort du fait d'avoir en main les produits de la criminalité, comme si on exigeait que les gens se disculpent malgré des apparences louches. Ce n'est qu'alors qu'on peut commencer à parler de dépens, qui devrait d'ailleurs faire l'objet d'une nouvelle poursuite, puisque le projet de loi est muet à ce sujet. C'est très malheureux, à notre avis.

The Chairman: Mr. Grisé.

Mr. Grisé: I want to thank Mr. Pollock for his presentation, and his guest, too. I hope the Canadian Bar Association has a French version of the brief you presented. I consider it important for the committee to receive it in French, Mr. Chairman.

Le président: Le greffier m'indique que la traduction est en cours.

Mr. Grisé: I hope next time all the documents will be available in both official languages the moment they are presented.

Mr. Robinson: A point of order, Mr. Chairman! I wholly concur with Mr. Grisé. I would like to know when the document was received and why we must wait for the translation. It is dated December 1987.

Le président: Le greffier m'a dit qu'il fera enquête, monsieur Robinson, et qu'il nous fera rapport.

Vous faites bien de soulever ce point, je pense, monsieur Grisé.

Mr. Grisé: Thank you. Mr. Pollock, you were saying that Bill C-61 is very complicated, a real conundrum for anyone but a high-powered attorney. Now, I am not a lawyer, but you did say just now that coming to the committee did not seem to you that much different any more from going to the Supreme Court, so let me just point out that we are very far from being the Supreme Court.

[Text]

Maintenant, quand vous dites que c'est un projet de loi compliqué, est-ce qu'il est compliqué quant à la rédaction du texte ou sur le plan du principe de base qui gouverne ce projet de loi?

Mr. Pollock: I do not want continually to flog the metaphor, but I did the same thing on the airplane last night as I do when I am flying here for court. That is, I went over and over the material. I wrote out part of the scheme for a review; that is, once an order has been made by a judge, what the Attorney General or an affected party can do.

They can ask for a review. If they ask for a review, and they set out certain grounds . . . and we do not know if that has to be by affidavit. We do not know if oral evidence has to be taken. We are not sure what the standard of proof is. But a judge may restore property. The judge may revoke or vary whatever order has been made previously.

If the applicant enters into a reconnaissance, or if the judge is satisfied the warrant or the restraining order should not have been made in the first place—

M. Grisé: J'invoque le Réglement, monsieur le président!

Je crois que le sens de ma question n'a pas été bien perçu. Je demande ceci: Quand vous mentionniez que c'est un projet de loi compliqué, est-ce que vous le considérez compliqué quant au texte ou quant au principe?

Mr. Pollock: I started off on this tirade about the review procedure to show you that the scheme itself is extremely complex. I do not have any problem understanding the principle involved, that if an enterprise crime or a designated drug offence is detected and the proceeds can be identified, there should be a way—and it has to be by way of a judge—to attach those proceeds and hold onto them. You might have to manage them for a while and then decide what to do with them after the issues have been proved.

I do not think we lawyers have to make it sound so complicated. And I got only half-way through.

M. Grisé: Prenons votre exemple du courtier en immeuble et de sa présomption d'innocence. Vous avez dit que le projet de loi va trop loin, que le projet de loi est trop sévère, et ce dans plusieurs aspects. Est-ce que l'Association du barreau canadien croit qu'il est préférable d'accorder une présomption d'innocence à ce même courtier en immeuble qui transige au sein de la criminalité, qu'il est préférable de le protéger, lui, plutôt que de protéger la société en général?

• 1055

Mr. Pollock: We do not see any room for fettering the presumption of innocence. We do not even like the use of the term "appears innocent" in the bill and do not think it has to be articulated in a statute when it is enshrined in

[Translation]

When you say that it is a really complicated bill, do you mean that the language is complex, or are you talking about the underlying principle?

M. Pollock: Excusez-moi si je rabâche, mais je n'ai pas fait autre chose hier soir, dans l'avion, que pour mes comparutions devant la Cour, c'est-à-dire que j'ai tout passé en revue. J'ai rédigé en partie un schéma d'examen, autrement dit un aperçu des possibilités qui s'offrent au procureur général ou à l'intéressé une fois l'ordonnance rendue par le juge.

Une possibilité: demander une révision. On ne sait s'il faut en donner les raisons sous forme de déclaration sous serment. On n'est pas sûr s'il faut entendre des témoignages verbaux. On ne sait trop quelles seront les normes applicables à la preuve. On sait, en revanche, que le juge peut ordonner la restitution, de même qu'il peut casser ou modifier les ordonnances précédentes.

Si le requérant contracte un engagement, ou que le juge soit persuadé que l'ordonnance de blocage n'aurait jamais dû être rendue. . .

Mr. Grisé: A point of order, Mr. Chairman!

I think Mr. Pollock has mistaken the meaning of my question, which is this: When you say it is a complicated bill, are you talking about the wording only, or the principle of the thing?

M. Pollock: Si j'ai commencé ce laïus sur la procédure de révision, c'est pour vous démontrer à quel point le processus lui-même est complexe. Je n'ai aucun mal à comprendre le principe qui est en jeu, à savoir que, si l'on détecte une infraction de criminalité organisée, ou une infraction grave en matière de drogue, infractions dont on connait les produits, il faudrait pouvoir bloquer ces produits à l'aide d'une ordonnance judiciaire. On aurait peut-être à en assurer la gestion pendant un certain temps, quitte à s'en dessaisir d'une façon ou d'une autre une fois la cause entendue.

Je ne pense pas que les avocats soient toujours aussi ergoteurs. Et encore, je n'en ai fait que la moitié.

Mr. Grisé: Let us look at your example of the realtor who should be presumed innocent. You said that the bill goes too far, and that it is too strict in several respects. Does the Canadian Bar Association believe that it is preferable to presume that this real estate broker who came to terms with criminality is innocent, that it is preferable to protect him rather than society in general?

M. Pollock: Nous ne pensons pas qu'il y ait lieu de limiter la présomption d'innocence de quelque façon que ce soit. Qui plus est, nous n'aimons pas non plus l'expression «semble innocent» que l'on retrouve dans le

[*Texte*]

the Charter. We do not see that this particular aspect of the bill is going to treat someone against whom there is some evidence of a crime as if everything they have ever obtained was obtained by crime as being something that is demonstrably justifiable in the words of the Charter.

The Canadian Bar Association does not have any room for that kind of tampering with the presumption of innocence. We think this can be reworked so that it does not.

M. Grisé: Une dernière question, monsieur le président, et c'est une question à deux volets, et d'ailleurs les deux points ont déjà été soulevés par M. Robinson. Il s'agissait dans un premier temps de la communication de renseignements fiscaux, en confidentialité bien sûr, lorsqu'il s'agit d'un produit de la drogue. Mais j'aimerais aussi revenir personnellement sur les commentaires du barreau canadien quand vous avez dit plus tôt que vous n'aviez pas soulevé ce point-ci dans votre analyse du document. Il s'agit de la nécessité de divulguer les transactions monétaires. Est-ce que vous pourriez faire quelques commentaires additionnels? Quelle est la réaction de l'Association du barreau canadien sur ces deux points en particulier?

Mr. Pollock: About the disclosure of income tax records, there is a built-in safeguard that representations can be made privately by the taxpayer. At least that is how I read it. It one of the ways in which you deal with the private interests. There might be a requirement for some editing or a number of safeguards to be invoked. A procedure is contemplated. In terms of the principle of using tax records in the battle against organized crime, it is sort of like motherhood. It is difficult to articulate reasons to be against it if safeguards are built in.

Sir, could you elaborate on the financial disclosure? Were you talking in terms of the lawyer-client relationship?

Mr. Grisé: Yes.

Mr. Pollock: Our concern is about the inquiry into what are reasonable expenses for a legal defence or legal costs involved in the operation of Bill C-61. Two kinds of expenses would be involved. We think that the inquiry will lead to an erosion of privilege because of the client disclosures that have to be revealed to the judge who is going to make the determination.

[*Traduction*]

projet de loi et nous estimons qu'il n'est pas nécessaire de préciser cette notion dans une loi puisqu'elle est déjà enchâssée dans la Charte des droits. S'il existe certaines preuves que quelqu'un a commis un crime, nous ne pensons pas que l'aspect du bill dont nous discutons nous encourage à traiter le suspect comme si tout ce qu'il possède a été obtenu par le biais d'actes criminels; nous ne pensons pas non plus que cet aspect du bill tende à démontrer qu'une telle attitude serait justifiée par le libellé de la Charte.

L'Association du barreau canadien ne pourrait en aucun cas accepter que l'on altère ainsi la présomption d'innocence. À notre avis, le texte devrait être modifié pour éviter cette éventualité.

Mr. Grisé: My last question, Mr. Chairman, has two parts, and both points have, in fact, been raised previously by Mr. Robinson. The first part concerns the confidential release of tax information when the revenues involved are derived from illegal drugs. The representative of the Canadian Bar Association said earlier that they had not raised that point in their analysis of the document. I refer to the mandatory disclosure of financial transactions. Could you make a few additional comments? What is the reaction of the Canadian Bar Association to these two specific points?

M. Pollock: Quant à la divulgation des renseignements que contiennent les dossiers fiscaux, il existe une disposition qui protège de façon automatique la confidentialité, disposition qui stipule que le contribuable peut lui-même, en privé, faire la divulgation. C'est mon interprétation, du moins. C'est une des façons de protéger la confidentialité des renseignements. Peut-être y aurait-il lieu d'exiger que l'on supprime certains renseignements dans ces cas-là, ou peut-être pourrait-on inclure certaines autres mesures pour garantir la confidentialité. Nous envisageons une procédure. Pour ce qui est du principe de l'utilisation des dossiers de l'impôt dans la lutte contre le crime organisé, c'est un peu comme la maternité: en principe, qui peut dire qu'il est contre? Si le projet de loi comprend des dispositions visant la protection de la confidentialité, il est difficile de trouver des arguments qui justifient son opposition.

Par ailleurs, pourriez-vous monsieur, préciser votre question sur la divulgation des renseignements financiers? Songiez-vous aux rapports privilégiés qui existent entre l'avocat et son client?

M. Grisé: Oui.

M. Pollock: Notre préoccupation porte sur la définition de ce qui constitue des dépenses ou des frais juridiques raisonnables, dans l'application du projet de loi C-61. Il y aurait deux types de dépenses. Nous croyons que l'enquête va causer une érosion de la nature privilégiée des rapports entre l'avocat et le client à cause des renseignements qui devront être livrés par l'avocat au juge chargé de rendre une décision.

[*Text*]

At this juncture the Crown has achieved the freezing of assets. The applicant is saying to the court that he does not have sufficient funds to be here in the first place, let alone to defend in the criminal court. It is going to cost so much and we want the funds released. For example, a lawyer advises a client after a preliminary inquiry that a motion should be made now to quash the seizure, to quash the order that the accused stand trial and perhaps even to sue for some damages.

The applicant has to go back to a high court judge, a Queen's Bench judge in Manitoba, and say he has had legal advice, but cannot accept it and to give instructions to his lawyer because all his assets are tied up. We see that kind of intrusion into the lawyer-client relationship as dangerous. We see some unconstitutionality there and an immense disadvantage as well for the person who is the subject of these proceedings.

• 1100

Mr. Grisé: Thank you.

The Chairman: Thank you very much, Mr. Pollock. We are very pleased to have had your comments. I think you are quite correct. It is a very complex piece of legislation, but obviously one that is very interesting for those of us dealing in this particular area. Thank you again for your comments. We will be very pleased to receive any further comments you wish to make in the future when we are looking at this bill.

Mr. Robinson: Just a point of order with respect to future witnesses. I understand there has been a change in the proposed schedule for Thursday's witnesses. I understand also there is agreement that this legislative committee will not sit next week in view of the fact that the Standing Committee on Justice and Legal Affairs is travelling to the Prairies as part of its ongoing review of sentencing. Could I just get clarification on that?

The Chairman: Yes, you can. First of all, at 11 a.m. on Thursday of this week we have Alan Gold of the Criminal Lawyers Association. At 3.30 p.m. we have Jennifer Stephens of the National Action Committee on the Status of Women. Following that, we have three representatives of the Canadian Organization for the Rights of Prostitutes. We have a meeting at 11 a.m. and 3.30 p.m. on Thursday of this week.

Mr. Robinson: Next week's hearings have then been postponed.

The Chairman: You made that comment to me.

[*Translation*]

Supposons que l'avocat de la Couronne a réussi à faire bloquer l'actif d'un requérant. Le requérant dit au tribunal qu'au départ il ne dispose pas de suffisamment d'argent pour pouvoir se permettre d'être là, et que conséquemment il ne pourra certainement pas pourvoir aux dépenses qu'occasionnerait sa défense en cour criminelle. Nous prévoyons certains frais et nous demandons que les fonds soient débloqués. Par exemple, après une enquête préliminaire, un avocat peut très bien conseiller à son client d'accepter que l'étape suivante soit la présentation d'une motion en cassation de saisie, d'une demande de rejeter l'ordonnance de procès contre le prévenu, ou même d'une demande reconventionnelle pour dommages-intérêts.

Le requérant doit retourner devant un juge d'une cour supérieure, devant un juge de la Cour du Banc de la Reine, au Manitoba, et lui dire qu'il a été conseillé par son avocat, mais qu'il ne peut demander à son avocat de procéder parce que tous ses biens ont été saisis. Ce genre d'ingérence dans les rapports entre l'avocat et son client nous semble dangereuse. Nous croyons que de telles dispositions seraient anticonstitutionnelles et léseraient de façon grave le prévenu.

M. Grisé: Je vous remercie.

Le président: Merci beaucoup, monsieur Pollock. Nous avons été très heureux de pouvoir profiter de vos observations. Je crois que vous avez tout à fait raison. Il s'agit d'un projet de loi fort complexe, mais aussi très intéressant pour ceux d'entre nous qui s'intéressent à ce domaine particulier. Merci encore de vos observations. Si vous ressentez le besoin de nous dire autre chose au sujet du projet de loi pendant le cours de nos réunions, nous serons très heureux de vous entendre à nouveau.

M. Robinson: J'aimerais simplement soulever une question qui relève du Règlement et qui porte sur les témoins à venir. Il semble qu'il y ait eu un changement dans l'ordre de comparution des témoins prévus pour jeudi. On m'apprend aussi que vous êtes convenus que ce comité législatif ne siégera pas la semaine prochaine puisque le Comité permanent de la justice et des affaires juridiques sera en déplacement dans l'Ouest dans le cadre de son examen de la détermination de la peine. Pourrait-on me fournir quelques précisions sur ces changements?

Le président: Oui, certainement. Premièrement, jeudi de cette semaine à 11 heures nous entendrons M. Alan Gold de la Criminal Lawyers Association. A 15h30 nous recevrons Jennifer Stephens du Comité canadien d'action sur le statut de la femme. Comparaîtront ensuite trois représentantes de la *Canadian Organization for the Rights of Prostitutes* (organisation canadienne pour les droits des prostituées). Nous nous réunirons donc à 11 heures et à 15h30 jeudi prochain.

M. Robinson: Les réunions de la semaine prochaine ont donc été remises à plus tard.

Le président: Vous m'aviez dit cela.

[*Texte*]

Mr. Grisé: Who agreed to the change from 9.30 a.m. and 10.15 a.m. to 3.30 p.m.?

The Chairman: It was not me, Mr. Grisé. The clerk has just informed me that is the time for which this has been scheduled. He was informed by Mr. Malone's office—the chairman—that these were the times because of conflicts with the justice committee, which would meet Thursday morning, I believe, at 9.30 a.m.

Mr. Robinson: The hearings that were tentatively scheduled for next week then will be postponed until later.

The Chairman: Is that acceptable to the members of the committee?

Mr. Grisé: It is postponed until the following week?

The Chairman: The following week, yes. Is there any other business to be brought before the committee?

I declare the meeting adjourned until Thursday, April 14, at 11 a.m. in this room.

[*Traduction*]

M. Grisé: Qui a convenu de reporter les réunions de 9h30 et de 10h15 à 15h30?

Le président: Ce n'est pas moi, monsieur Grisé. Le greffier vient de me faire part des heures de séances. C'est le bureau de M. Malone, le président, qui l'a prévenu. On l'a informé qu'il y avait conflit avec la réunion du Comité de la justice, qui devait se réunir jeudi matin à 9h30, je crois.

M. Robinson: Les réunions qui avaient été prévues provisoirement pour la semaine prochaine seront donc remises à plus tard.

Le président: Cette proposition convient-elle aux membres du comité?

M. Grisé: La réunion est-elle remise à la semaine suivante?

Le président: À la semaine suivante, oui. Avez-vous d'autres questions à soumettre au comité?

La séance est levée. Nous nous réunirons de nouveau le jeudi, 14 avril, à 11 heures dans la même pièce.

April 14, 1998 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act]

EVIDENCE

[Recorded by Electronic Apparatus]

[Texte]

Thursday, April 14, 1988

• 1113

The Chairman: I call the meeting to order. We will now proceed to our main purpose this morning, to focus on Bill C-61.

Just before I do that, I should indicate that in a letter to the Speaker yesterday, the former chairman of the Legislative Committee on Bill C-61, Mr. Malone, has resigned. I have been appointed in the interim by Marcel Danis, Deputy Speaker of the House, again pursuant to Standing Order 93.(2), to act as temporary chairman of the Legislative Committee on Bill C-61.

This committee has been constituted to focus on that bill, an act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act. It is ordered that it now be read a second time and be referred to this legislative committee.

Just before we hear from our witness this morning, I would like to ask the committee to focus on what I am advised could be the last day of witness hearings on this particular piece of legislation. It is suggested that Tuesday, April 26, be that day, to hear four groups—I assume two in the morning and two in the afternoon. I understand that would then finish off the witnesses on this particular bill. I am hoping that is satisfactory to the committee. There will be no hearings next week, but there will be on Tuesday, April 26. Is that agreed?

• 1115

Some hon. members: Agreed.

Mr. Grisé: Mr. Chairman, the reason there is no sitting next week is the Justice Committee is travelling, so we agreed that we will have all the witnesses on April 26.

The Chairman: We are pleased to welcome Mr. Allan Gold, who is a director of the Criminal Lawyers Association, as our witness this morning. Mr. Gold is going to make a comment, and then we will get into our discussion on the bill. Welcome, Mr. Gold.

Mr. Allan Gold (Director, Criminal Lawyers Association): Thank you, Mr. Chairman. I am a director of the Criminal Lawyers Association. We have a membership of approximately 500 people whose primary vocation is defending persons accused of crime. We do not discriminate; we even occasionally defend guilty people, but most of our clients are innocent.

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le jeudi 14 avril 1988

Le président: La séance est ouverte. Le projet de loi C-61 est ce qui nous réunit ici ce matin.

Avant de passer à son examen, je voudrais signaler qu'une lettre du Président de la Chambre en date d'hier nous signale que l'ancien président du Comité législatif sur le projet de loi C-61, M. Malone, a démissionné. J'ai été désigné par Marcel Danis, le Président adjoint de la Chambre des communes, pour le remplacer temporairement à la présidence du Comité législatif sur le projet de loi C-61, en vertu de l'article 93.(2) du Règlement.

Le Comité a été formé pour examiner le projet de loi, Loi modifiant le Code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants. La loi a été lue une deuxième fois et renvoyée au Comité législatif.

Avant d'entendre le témoin que nous accueillons ce matin, je voudrais faire part aux membres du Comité de la date du dernier jour de séance sur ce projet de loi. Le mardi 26 avril, nous entendrons quatre groupes de témoins et je suppose qu'ils seront répartis également entre le matin et l'après-midi. Après cela, nous aurons terminé l'audition des témoins souhaitant se prononcer sur ce projet de loi. J'espère que cela vous convient à tous. Il n'y aura pas de séance la semaine prochaine, la séance suivante étant prévue pour le mardi 26 avril. Êtes-vous d'accord?

Des voix: D'accord.

M. Grisé: Monsieur le président, s'il n'y a pas de séance la semaine prochaine, c'est parce que le Comité de la justice va voyager. Nous sommes donc convenus d'entendre tous les témoins le 26 avril.

Le président: Nous accueillons M. Allan Gold, directeur de la Criminal Lawyers Association, qui sera notre témoin ce matin. M. Gold fera ses remarques et ensuite nous passerons à l'examen du projet de loi. Bienvenue, monsieur Gold.

M. Allan Gold (directeur, Criminal Lawyers Association): Merci, monsieur le président. Je suis le directeur de la Criminal Lawyers Association qui regroupe quelque 500 membres qui travaillent essentiellement à défendre ceux qui sont accusés d'un crime. Nous ne faisons pas de discrimination et à l'occasion nous acceptons de défendre des gens qui sont coupables. La plupart de nos clients sont innocents toutefois.

[*Texte*]

personally, in the decision-making at various stages of the procedures. It is our experience in the real world, where we unfortunately are forced to function, that this is a theoretical protection only.

• 1120

The Attorney General is only as good as the information he is given and the decision-makers on which he in turn relies. And it has certainly not been our experience in practice, and this is in no way a reflection on the bona fides or good intentions of the individuals who have held that position, I want to make that very clear. It is just that I think it is unrealistic in this day and age to think that there is very much personal decision-making by the Attorney General.

Granted, I suppose the requirement impresses some sense of importance concerning the decision, but we see it as a double-edged sword because there is a certain school of thought that sees this type of formulation as really an attempt to insulate against Charter attack. As you know, decisions that are couched at that level, courts are less inclined to review under the Charter as being arbitrary decision-making or whatever. So there is a certain school of thought among the defence bar that views something like this, requiring the intervention of the Attorney General, as not designed as a protection for the rights of the citizens but really an attempt to head off ultimate Charter attack any attempts to review the decision-making in a particular case.

With regard to the provisions themselves, I propose to go through section by section, but I think ultimately our objections come down to two fundamental matters of principle that are not reflected in this legislation. I want to illustrate how this is lacking through various provisions. The first principle is that criminal guilt and any penalty attendant upon criminal guilt must be determined by proof beyond reasonable doubt of guilt of a specific accusation. And with regard to the burden of proof, that the burden of proof in that regard must always be beyond a reasonable doubt. To us, it is absolutely ludicrous to suggest that whether or not a person gets an absolute discharge should be determined by proof beyond a reasonable doubt but whether or not you strip away a lifetime of assets should only be determined on a balance of probabilities. I would have thought the idea of stripping away a lifetime of assets would be one of the most vicious penalties imaginable and nothing less than proof beyond a reasonable doubt would suffice for that step.

With regard to the search and seizure and detention provisions and with regard to the warrant requirement, I think you intend this but I think it should be made clear that the requirement of reasonable grounds applies not only to the presence of the property, but also to its forfeitable nature.

Lest you think I am quibbling about that, I warn you that in regard to similar legislation, at one time courts

[*Traduction*]

intervenir personnellement, lors de la prise de décisions aux diverses étapes de la procédure. Dans le monde réel, où nous devons malheureusement tous oeuvrer, cette protection demeure toute théorique.

La protection du procureur général ne vaut que dans la mesure où les renseignements qu'on lui a donnés sont valables et que s'il peut compter sur des gens compétents pour l'appuyer. Dans la pratique, nous n'avons rien constaté de tel et je ne veux pas par là mettre en doute la bonne foi et les bonnes intentions de ceux qui ont rempli ces fonctions. Je veux que cela soit bien clair mais je pense qu'il n'est pas réaliste de nos jours de croire que les décisions du procureur général sont toutes personnelles.

Il est vrai que cette exigence confère une certaine importante à la décision, mais c'est une lame à double tranchant car il y a une école de pensée qui prétend qu'une telle formulation des choses vise tout simplement à se protéger des attaques en vertu de la charte. Comme vous le savez, quand les décisions sont prises à ce niveau-là, les tribunaux sont moins enclins à accepter qu'elles soient contestées comme étant arbitraires en vertu de la Charte. Il y a donc une certaine école de pensée chez les avocats de la défense qui estiment que, quand on exige l'intervention du procureur général, ce n'est pas tant pour protéger les droits des citoyens mais au contraire pour décourager toute contestation en vertu de la Charte ou toute tentative d'en appeler de la décision.

Pour ce qui est des dispositions elles-mêmes, je les passerai en revue article par article mais je pense qu'essentiellement nos objections concernent deux questions de principe que l'on ne retrouve pas dans le projet de loi. Je vais faire ressortir ces lacunes dans les diverses dispositions. Le premier principe est que toute culpabilité pénale, et toute peine imposée par la suite, doit reposer sur une preuve au-delà de tout doute raisonnable pour un chef d'accusation précis. Pour ce qui est du fardeau de la preuve, il doit toujours être au-delà de tout doute raisonnable. Selon nous, il est absolument farfelu de prétendre que l'acquittement d'un accusé doit se fonder sur une preuve au-delà de tout doute raisonnable et de prétendre par ailleurs, que l'on pourrait confisquer tout l'actif d'une personne en se fondant uniquement sur des probabilités. Je prétends que, si l'on confisque tout l'avoir d'une personne, cela constitue la sanction la plus sévère que l'on puisse imaginer, et seule une preuve au-delà de tout doute raisonnable devrait être requise à cette fin.

Pour ce qui est des dispositions concernant les perquisitions, les fouilles, les saisies et la détention, et les exigences concernant les mandats, je pense que l'intention est bien claire mais il faudrait préciser également que les motifs raisonnables ne s'appliquent pas seulement à la présence des biens mais également à la question de savoir si la confiscation est bien fondée.

N'allez pas croire que j'ergote là-dessus car je sais très bien que, dans le cas d'une loi semblable, les tribunaux

[*Text*]

held that in the context of obscenity the police just had to be satisfied the books were there. The justice of the British Columbia Court of Appeal rather astonishingly held the justice did not have to make any decision about whether the books were obscene or not. That has since been reversed. But I am not just dredging this up as a theoretical fear.

Please make sure that whatever your requirement is—your burden of proof—it applies to all elements of the conditions precedent to the issuing of the warrant. I think that is what you intend. I hope that is what you intend. However, I would go one step further and say that in this context merely reasonable grounds with regard to the element of forfeitability is not sufficient. Seizure in the real world, where trials can take three or four years to come to court, amounts to forfeiture. And we say that given the unique provision here, the judge must be satisfied on a balance of probabilities that the material is forfeitable. In other words, that there should be a burden of persuasion because this, although it is called search and seizure, is really a form of forfeiture. If you take away a person's property pending trial, if you take it away for two or three years, that is forfeiture. It is not search and seizure. I would respectfully suggest that a burden of persuasion should be required with regard to forfeitability at that stage.

• 1125

Now, we strongly object to the concluding words of proposed section 420.12—the idea that a policeman can then seize on his own other material that he believes could be forfeitable. Surely if there is one lesson the courts have stressed in the context of "search and seizure", it is that you cannot expect your police to be schizophrenic; you cannot tell them to find evidence of crime and at the same time make a decision whether it is evidence of crime or not. That section should end at the words "that property". There should be no additional power for a policeman on his own to seize property.

Mr. Thacker: Sorry, would you repeat those words again, please?

Mr. Gold: In proposed section 420.12 you see the general search and seizure power, which first has its warrant power, and then the concluding four or five sentences, "and any other property in respect of which that person or peace officer believes. . ." So it purports to give an additional seizure power to a policeman acting unilaterally. It is completely unnecessary. If they think there is additional material there that is not in their initial papers, all they have to do is park outside the house and get another forfeiture warrant. It is completely unnecessary, and, I would venture to suggest, probably constitutionally unacceptable. I should say to you, if nothing else—and I was sort of going to say this at the end—this legislation in its present form will provide work

[*Translation*]

ont déjà décrété qu'en matière d'obscénité, l'agent de police devait se borner à constater la présence des livres. Le juge de la Cour d'appel de la Colombie-Britannique, tout étonnant que cela puisse paraître, a décrété que l'agent de police n'avait pas à décider si ces livres étaient obscènes ou non. Depuis, on est revenu sur cette décision mais il ne s'agit pas ici d'une crainte vaine.

Assurez-vous que, quelles que soient les exigences—le fardeau de la preuve—elles s'appliquent à tous les éléments à réunir pour qu'il y ait délivrance du mandat. Je pense que c'était votre intention, du moins je l'espère. Toutefois, j'irais jusqu'à dire que de simples motifs raisonnables ne suffisent pas quand il s'agit de confiscation. Dans la réalité, quand les procès ne sont pas entendus avant trois ou quatre ans, la saisie correspond à la confiscation. Etant donné la caractéristique particulière de ces dispositions, le juge doit constater, en s'appuyant uniquement sur des probabilités, que les biens sont confiscables. En d'autres termes, il faudrait qu'il en soit persuadé car, même si on parle de perquisition et de saisie, il s'agit effectivement de confiscation. Si l'on saisit les biens d'une personne en attendant le procès, et qu'il n'y a pas accès pendant deux ou trois ans, c'est de la confiscation. Il ne s'agit pas de perquisition et de saisie. Je dis très respectueusement qu'il faudrait avoir la conviction qu'il y a infraction si on exige la confiscation à ce moment-là.

Nous nous opposons fermement aux derniers mots du projet de paragraphe 420.12. Il y est prévu qu'un agent de police peut saisir, de son propre chef, tout autre bien qu'il juge être confiscable. Si l'on peut tirer une leçon des décisions des tribunaux, en matière de perquisition et de saisie, c'est qu'on ne peut pas s'attendre au dédoublement de la personnalité du policier. On ne peut pas lui demander de trouver des preuves qu'il y a eu infraction et, en même temps, lui demander de décider que c'est effectivement une preuve d'infraction. Cet article devrait se terminer après les mots «les biens en question». On ne devrait pas donner au policier le pouvoir de saisir des biens de son propre chef.

M. Thacker: Excusez-moi, pouvez-vous répéter cela s'il vous plaît?

M. Gold: Au projet de paragraphe 420.12, on prévoit les pouvoirs généraux de perquisition et de saisie, avec mandat, et la fin de ce paragraphe dit «ainsi que tout autre bien dont cette personne ou l'agent de la paix a des motifs raisonnables de croire. . .» On donne donc pour la saisie des pouvoirs supplémentaires permettant à l'agent de police d'agir unilatéralement. C'est tout à fait inutile. Si les policiers estiment qu'il y a d'autres biens à saisir et qu'ils ne sont pas prévus dans le mandat initial, ils n'ont qu'à retourner à leur véhicule pour obtenir un autre mandat de confiscation. Ces pouvoirs supplémentaires sont tout à fait superflus et j'irais même jusqu'à dire qu'ils sont sans doute inacceptables en vertu de la Constitution. En deux mots, et j'allais dire cela à la fin de mon exposé,

[*Texte*]

for myself, our bar, and my children for decades to come. I really hope you will change it so we can all avoid that, because I have lots of other things to do.

So I would respectfully submit that the power of a policeman to seize on his own should be deleted. You cannot leave it to the police judgment. The police will believe that things are forfeitable much too easily to be acceptable in our society.

Proposed paragraph 420.12(4)(c) says:

> (c) cause a copy of the report to be provided, on request, to the person from whom the property was seized.

Why does it have to be "on request"? Why not just require a copy to be left? Why should the citizen have to ask for a list of his property that the police come in and take away? Frankly, I just do not understand the mind-set that would not have at least a sense of courtesy to require the police to leave a list for a citizen.

You see, what tends to happen in the drafting of legislation such as this is that the drafters are focused on these massive alleged crime lords when they sit there and write down these words; they ignore the fact that in the real world the people who are going to feel this legislation are going to be presumptively innocent citizens who have yet to be convicted of any crime.

Now, with respect to proposed section 420.13, the restraining order, it is our respectful submission that the conditions for a restraining order are too loose—in other words, that greater discrimination in the provisions should exist. As in the Bail Reform Act, there should be a hierarchy of values. For example, if the extent of a restraining order was simply that the named persons not waste or take out of the country their assets, then reasonable grounds is sufficient. That is not an unduly severe interference with the rights of the citizen. But if the extent of the restraining order is to remove an ongoing business from someone's hands or to take away property, then I say that you should require a higher burden, namely the civil burden, of a balance of probabilities. In other words, the degree of proof required, your burden, should be proportional to the gravity of the intrusion that has been made into the citizen's right to keep his property. Reasonable grounds may be sufficient for some intrusions; for more severe intrusions a higher degree of proof should be required.

• 1130

On proposed subsection 420.12(5), the notice requirement, it is respectfully submitted that a fairer requirement would be to make notice mandatory unless the conditions precedent in the section are made out—in other words, that the order would result in the disappearance, dissipation, or reduction in value of the property. If that condition is not true, why should the

[*Traduction*]

je dirai que le projet de loi dans sa forme actuelle nous donnera du travail à nous, membres du barreau, et à mes enfants pendant des années à venir. J'espère qu'il sera amendé afin d'éviter cela, car, pour ma part, j'ai bien d'autres choses à faire.

Je vous demande donc très respectueusement de supprimer le pouvoir de saisir de son propre chef qui est ici conféré à l'agent de police. On ne peut pas s'en tenir au jugement du policier, qui beaucoup trop facilement croira que des biens sont confiscables, et cela notre société ne saurait l'accepter.

Le projet d'alinéa 420.12(4)c) prévoit:

> c) faire remettre, sur demande, un exemplaire du rapport au saisi.

Pourquoi dire «sur demande»? Pourquoi ne pas l'exiger tout simplement? Pourquoi le citoyen doit-il demander la liste des biens que la police vient de saisir? A la vérité, je ne comprends pas comment on peut manquer à tel point de courtoisie qu'on n'exigerait pas que la police laisse à un citoyen au moins une liste des biens qu'elle a saisis?

Voici ce qui se passe en général quand il s'agit d'un projet de loi comme celui-ci. Les rédacteurs sont omnubilés par les grands criminels à l'intention desquels ils écrivent des dispositions. Ils semblent oublier qu'en réalité les gens qu'on accusera en vertu de ces dispositions sont des citoyens présumés innocents qui n'ont pas encore été déclarés coupables.

Pour ce qui est du projet de paragraphe 420.13, l'ordonnance de blocage, nous disons très respectueusement que les conditions en sont trop vagues, et qu'il faudrait en d'autres termes dans ce libellé, une plus grande discrimination. Tout comme dans la Loi sur la réforme du cautionnement, il faudrait établir une hiérarchie des valeurs. Par exemple, si l'ordonnance de blocage se limitait à exiger que l'accusé ne gaspille pas ou ne sorte pas ses biens du pays, les motifs raisonnables suffiraient. Par là, on ne lèse pas de façon trop sévère les droits du citoyen. Mais si l'ordonnance de blocage vise à empêcher quelqu'un de poursuivre l'exploitation d'une entreprise, à confisquer ses biens, je pense qu'il faudrait relever le niveau du fardeau, et ne pas se contenter du fardeau civil, de probabilités. Autrement dit, les exigences de la preuve, devraient refléter le degré de privation de ses droits que l'on impose au citoyen en saisissant ses biens. Il se peut que des motifs raisonnables suffisent dans certains cas mais quand la privation est plus sévère il faudrait que le fardeau de la preuve soit plus lourd.

Le projet d'alinéa 420.12(5) porte sur les avis. Permettez-moi de signaler très respectueusement qu'il serait plus juste que l'avis soit obligatoire à moins que les conditions suspensives précisées dans l'article soient remplies, en d'autres termes, à moins que l'ordonnance n'entraîne la disparition des biens visés, une diminution de leur valeur ou leur dissipation. Dans le cas contraire,

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giving of notice still be discretionary in a judge? If that is not true, then there is no harm in giving notice. Notice is a reflection of our fundamental notions of fairness, and notice, I suggest, should be required and not left to the discretion of a judge if that condition precedent is not made out.

Proposed section 420.14—this exemplifies an omission that occurs several times in the bill, and that again I think is unintentional. You will recall there are actually three categories of property contemplated by the bill to this point: property seized under a warrant; other property seized by the policeman, which I suggest should not exist; and property subject to a restraining order. If you keep those three categories, the rest of the bill contains what I think is just a technical omission. Thereafter, it always refers to property seized under a warrant or subject to a restraining order. It does not expressly refer to the middle category of property outside the warrant seized by a policeman on his own. I think the draftsman intended that this be covered in the first category—i.e., property seized under a warrant; but I can also see a Crown attorney arguing that this is not what the proposed legislation says.

So this bill is fine if you accept our submission that there should not be the middle category. But if you retain a category of police seizures outside the warrant, then make sure your subsequent procedural steps catch that category as well as the property seized under a warrant and subject to a restraining order.

We then come to a fundamental precept of the bill, which is the line it draws between the guilty and the innocent. Of course this is a formula that appears throughout the bill. It draws a line between people charged with an ECO—and I like this bill, because it adds new acronyms to our vocabulary—or a DDO, and that is one category of guilty, or people who got property from them under circumstances giving rise to a reasonable inference that it was done to avoid forfeiture. . . so that is your category of suspect people: people charged with one of your two kinds of offences or people who got property from them under circumstances giving rise to a reasonable inference that it was done to avoid forfeiture. Everybody else is innocent, they are treated differently, and they can regain their property as long as they appear innocent of any complicity in an ECO or a DDO or any collusion in relation to such offence.

We strongly object to where that line is drawn and where it puts the burden. This gets to the fundamental difficulties in the bill. Why should people be handicapped in trying to get their property back, where all the government has to show is that they are either charged with an offence, which under our system should mean nothing, or under circumstances giving rise to an

(Translation)

pourquoi laisser l'avis au bon vouloir du juge? Dans le cas contraire, il n'y a pas de mal à donner cet avis. L'avis témoigne de notre conviction fondamentale de ce qui est juste, et il devrait être obligatoire et non pas laissé au bon vouloir d'un juge, en l'absence des conditions suspensives.

On trouve au projet de paragraphe 420.14, une illustration d'une lacune répétée dans le projet de loi. Je pense que cela n'est qu'une omission. Vous vous souviendrez qu'il y a trois catégories de biens visées par le projet de loi: les biens saisis en vertu d'un mandat, les autres biens saisis par un agent de police, ce à quoi je m'oppose, et les biens assujettis à une ordonnance de blocage. Si l'on maintient ces trois catégories, le reste du projet de loi ne souffre que d'une omission technique. En effet, on cite sans cesse les biens saisis en vertu d'un mandat ou frappés d'une ordonnance de blocage. On ne parle plus de cette catégorie intermédiaire de biens qu'un agent de police aurait saisi de son propre chef. Je pense que le rédacteur a assimilé ces derniers à la première catégorie, c'est-à-dire les biens saisis en vertu d'un mandat. Je peux toutefois concevoir qu'un procureur de la Couronne fasse valoir l'opposé.

Le projet de loi peut rester tel quel si vous retenez notre recommandation de supprimer la catégorie intermédiaire. Mais si vous la maintenez, celle des biens saisis par la police sans mandat, il faudrait que toutes les autres étapes tiennent compte de cette autre catégorie comme des deux autres.

Nous en arrivons maintenant à une notion fondamentale du projet de loi, c'est-à-dire la distinction qu'il fait entre les coupables et les innocents. Cela se retrouve dans toutes les dispositions du projet de loi. On établit la différence entre les personnes accusées d'infraction de criminalité organisée, celles qui sont accusées d'infraction grave en matière de drogue et encore, celles qui ont obtenu des biens dans d'autres conditions, alors que l'on soupçonne fortement que cela s'est fait pour éviter la confiscation. . . Voilà donc les catégories de suspects: les gens accusés de l'une ou l'autre des infractions décrites plus haut et les gens qui ont obtenu des biens dans des conditions qui laissent supposer que c'était pour éviter la confiscation. Tous les autres sont innocents et on les traite différemment si bien qu'ils peuvent récupérer leurs biens dans la mesure où ils paraissent innocents de toute complicité dans une infraction de criminalité organisée ou une infraction grave en matière de drogue, ou dans la mesure où il n'y a pas apparence de collusion relativement à ce genre d'infraction.

Nous nous opposons à cette distinction à cause du fardeau de la preuve. Cela nous amène aux difficultés fondamentales du projet de loi. Pourquoi imposerait-on des entraves aux gens dans la récupération de leurs biens alors que tout ce que le gouvernement a à démontrer, c'est soit qu'ils sont accusés d'une infraction, ce qui ne veut rien dire étant donné notre système, soit qu'il y a

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inference, probably the lowest formulation of burden of proof that we know in criminal law. . .?

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This gets right to the heart of the matter. The suspect category, the black sheep category, should be better defined by people who on a balance of probability are shown to possess the tainted property—not just by appearances or by being charged with an offence. In other words, your definition of the black sheep puts it much too low.

You are handicapping people and getting their property back literally by mere appearances. Some measure of burden of proof should required by the state before a person falls in the black sheep category. The black sheep category goes throughout the legislation, because at each stage it determines what you have to do, or what you can do, to get your property back. The black sheep category is defined much too broadly, and the burden is much too low on the state to put someone in the black sheep category.

Your white sheep category is quite frankly absolutely astonishing: someone who appears innocent of any complicity or collusion. Does the wife who goes to work every day, who loves her husband and knows he does not have a job, but knows he is up to no good, does she appear innocent of any complicity or collusion whatever? I mean, it is hard to imagine two words that throw a stain wider than those two. Is she to be denied access?

I have had a case where childrens' bedroom furniture was seized, and you can imagine the embarrassment. Do I have to argue with the police to get back a seven-year-old's bedroom furniture?

Your definitions of your two categories, the black sheep and the white sheep, are, with the greatest of respect, much too low, much too insufficient—insufficient to recognize the gross intrusion that the government will effect whenever it exercises its power under this legislation. You have not protected people enough, because you have made it much too easy for the government to stain an individual and deprive him of his property, while it goes about its criminal prosecution.

As a matter of general principle, what we are saying is this: reasonable grounds that somebody is guilty of a specified offence, and that the property is related thereto, is sufficient when all you want to do is maintain the status quo until the end of trial and the accused's guilt is proved.

However, when you want to do more than that, when you want to take away his property and hold it, when you

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réunion de conditions dont on tire une conclusion, ce qui représente probablement le fardeau de la preuve le moins lourd jamais vu en droit pénal.

Cela nous amène au coeur de la question. La catégorie des suspects, la catégorie des moutons noirs, devrait être définie comme étant celle des gens qui, selon toute probabilité possèdent les biens suspects, non pas seulement en apparence, ni du fait qu'ils ont été accusés d'une infraction. Autrement dit, votre définition du mouton noir fixe le seuil beaucoup trop bas.

Vous empêchez les gens de récupérer leurs biens en vous appuyant sur des apparences. L'État devrait assumer une partie du fardeau de la preuve avant de pouvoir classer les gens dans la catégorie des moutons noirs. Cette catégorie des moutons noirs, on la retrouve dans tout le projet de loi car, à chaque stade, on précise ce qu'il faut faire, ce qu'on peut faire pour récupérer un bien. La catégorie des moutons noirs est définie d'une façon beaucoup trop vague et le fardeau de la preuve imposé à l'État est beaucoup trop léger. Bref, il est beaucoup trop facile de classer quelqu'un dans la catégorie des moutons noirs.

Franchement, je trouve que cette catégorie des moutons noirs c'est quelque chose de renversant: il peut s'agir de quelqu'un qui paraît innocent de toute complicité ou collusion. Est-ce que l'épouse qui va travailler tous les jours, qui aime son mari et qui sait qu'il n'a pas de travail, qui sait d'autre part qu'il a de mauvais plans, est-ce qu'elle semble innocente de complicité ou de collusion? Il est difficile de trouver deux mots qui noircissent mieux les gens que ces deux-là. Est-ce qu'il faut lui refuser l'accès?

J'ai eu une cause où les meubles des enfants avaient été saisis; vous vous doutez que c'était très embarrassant. Faut-il vraiment que je discute avec la police pour obtenir la restitution des meubles de la chambre d'un enfant de sept ans?

Les définitions que vous avez retenues pour les deux catégories, celle des moutons noirs et celle des moutons blancs sont bien trop faibles, trop insuffisantes, et ne tiennent pas compte de l'ingérence excessive dont le gouvernement peut se rendre coupable en vertu de ce projet de loi. Vous ne protégez pas suffisamment les gens car vous permettez trop facilement au gouvernement de noircir une personne, de lui confisquer son bien pendant les procédures criminelles.

D'une façon générale, notre position est la suivante: des motifs raisonnables de croire que quelqu'un est coupable d'une infraction précise et que le bien en question est impliqué, c'est suffisant lorsqu'il s'agit uniquement de conserver le statu quo jusqu'à la fin du procès et jusqu'à la confirmation de la culpabilité de l'accusé.

Cela dit, si vous voulez faire plus, si vous voulez confisquer son bien, son entreprise ou des articles qui

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want to take away his business, when you want to take away assets that sit in a police warehouse and deteriorate in value and then three years later, when he is acquitted, give them back and say you are sorry but the warehouse was not air conditioned and the assets are moldy and whatever. . . When that is what you want to do, I respectfully submit that the civil burden of a balance of probabilities must be satisfied for that kind of state action against a citizen and that mere appearances are insufficient.

Forfeiture after a conviction is the other main area under this bill. As you might well anticipate, under proposed section 420.17, we of course object to the reduction of the burden of proof in proposed subsection 420.17(1).

It is our submission that the relationship between the property being proceeds of crime and the particular ECO of which the person was committed should be provable on proof beyond a reasonable doubt. The Supreme Court of Canada has generally held that matters of sentencing require proof beyond a reasonable doubt. In my respectful submission there is no reason for lowering the burden in this particular context.

• 1140

In subsection 2, I am sure the draftsmen are patting themselves on the back saying that here they made it proof beyond a reasonable doubt—right—but they did not. You know why. Because what you have to prove beyond a reasonable doubt is so vague and unspecified that it dilutes the burden requirement.

In our respectful submission it should not be sufficient for a court to be satisfied that property is in some general sense the proceeds of crime. Because what you are then trying is the accused as a ne'er-do-well. Well, he never had a job, he must have been up to something. I do not know what he did, but this has to be the proceeds of crime. He will get on the stand and testify that he won it gambling, as invariably is the explanation, and the court will say that it is a crime and they will forfeit it. No.

This gets back to the fundamental point. In principle there is nothing wrong with forfeiting property related not to the particular crime of which he is committed, but other crimes. In principle there is nothing wrong with that, provided, in our submission, that the procedure amounts to the equivalent of trying and proving guilt on those other crimes.

In other words, under subsection 2, if the government is going after forfeiture of property related not to the particular ECO of which he is convicted but some other crimes, they should be required to serve a notice as to what the other crimes are, required to serve a notice in general terms of where and when they were alleged to have been committed, and they should be required to prove those matters beyond a reasonable doubt. So in

[*Translation*]

sont traîner pendant trois ans dans un entrepôt de la police, perdre de leur valeur, et plus tard, quand il sera acquitté, on les lui rendra en disant désolé, mais l'entrepôt n'était pas climatisé et il y a eu de la moisissure. . . Si vous voulez vraiment aller jusque là, je pense que le fardeau civil des probabilités doit peser beaucoup plus lourd pour qu'on soit justifié de prendre des mesures contre un citoyen, et que les apparences sont tout à fait insuffisantes.

Un autre domaine d'intérêt du bill porte sur la confiscation après une déclaration de culpabilité. Comme vous devez vous en douter, nous nous opposons à la réduction du fardeau de la preuve dans le projet de paragraphe 420.17(1).

Nous estimons que le lien qui existe entre des produits de la criminalité et une infraction de criminalité organisée dont une personne est accusée doit être prouvé hors de tout doute raisonnable. Le plus souvent, la Cour suprême du Canada a jugé que les questions relatives aux sentences nécessitaient une preuve hors de tout doute raisonnable. Personnellement, j'estime qu'il n'y a pas de raison d'abaisser le fardeau dans ce contexte.

Dans le cas du paragraphe 2, je suis certain que les auteurs doivent se féliciter mutuellement, convaincus que dans ce cas ils ont exigé une preuve hors de tout doute raisonnable; ce n'est pas le cas. Vous savez pourquoi. Parce que ce qui doit être établi hors de tout doute raisonnable est tellement vague, tellement peu précis, que le fardeau s'en trouve très allégé.

Nous pensons qu'il ne suffit pas pour un tribunal de se convaincre d'une façon générale qu'un bien est un produit de la criminalité. Parce que, dans ce cas, c'est le procès d'un bon à rien que vous faites. Il n'a jamais eu de travail, il doit donc certainement avoir des mauvais plans. Nous ne savons pas ce qu'il a fait, mais ce bien est probablement un produit de la criminalité. Au procès, il va témoigner, prétendre qu'il a gagné au jeu, invariablement c'est l'explication, et le tribunal décidera que c'est un crime et confisquera. Non.

Cela nous ramène au point fondamental. Le principe, c'est qu'on est justifié de confisquer un bien qui est lié non pas au délit dont une personne est accusée, mais à d'autres délits. En principe, c'est effectivement justifié à condition que la procédure serve à établir la culpabilité dans le cas de ces autres délits.

Autrement dit, au paragraphe 2, si le gouvernement cherche à confisquer un bien qui n'a rien à voir avec l'infraction de criminalité organisée en question, mais qui est lié à d'autres délits, il devrait être tenu de déclarer quels sont ces délits, d'expliquer d'une façon générale à quel endroit et à quel moment ils auraient été commis et tenu également de prouver tout cela hors de tout doute raisonnable. Autrement dit, sous une forme un peu

[Texte]

effect, with some dilution, you have the equivalent of a finding of criminal guilt in respect of those other crimes, and then the property could be forfeited.

Under this legislation as it now stands, if Mr. So-and-So comes over from Denmark to Canada and opens a little corner store and sells one book that happens to be obscene under our legislation, and he is convicted of selling an obscene book in Canada, and he happens to own an apartment building in Denmark, which he bought from the proceeds of several stores that he owned in Denmark years earlier, all of that can be forfeited under this legislation. All for selling one dirty book in Canada. He not only forfeits anything in Canada related to that book—which will be, you know, the $80 the policeman paid for it—but under this definition his apartment buildings in Denmark become forfeitable. And of course since they are outside Canada the judge will then impose the $1 million fine and send him to jail for 10 years, because he cannot pay the $1 million fine. That is what this legislation says.

So in our respectful submission subsection 2 is not proper, and subsection 3, in our respectful submission, is simply absolutely cruel. Its intentions are good, but its reach is so broad. The idea of a fine in place of unreachable property, with mandatory sentences of imprisonments, is seductive on its face, but the requirements, the conditions precedent, in our respectful submission are much too broad.

Surely looking at the purpose of this provision the condition precedent should be when the court is satisfied that an accused has the ability to pay and is wilfully refusing to do so. That is the kind of offender for whom this sledgehammer should be reserved, not these kinds of wishy-washy conditions precedent as are now in the legislation.

We also strongly reject that death should somehow invoke the legislation. Absconding? Fine. Death? Do you really think offenders are going to kill themselves by the thousands to avoid forfeiture of their property? Why should the government receive a windfall on death? If the fellow is dead, he has received the ultimate punishment. Why should his natural heirs and next of kin have to start enormous litigation with the government? Is this some sort of taxation on death again that if the guy dies the government automatically wins and receives a huge windfall? We strongly urge that death should be deleted from this provision. We also urge again that proof must be required beyond a reasonable doubt of an identified person committing a specified offence.

• 1145

On proposed section 420.19, the inference from increased assets, in our respectful submission it is too broad. Proof should be required of an identified accused committing a specified offence, and proof beyond a reasonable doubt should be required. As well, the proposed section should clearly put an onus on the state

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[Traduction]

édulcorée, c'est l'équivalent de l'établissement d'une culpabilité criminelle pour ces autres délits dans ce cas, la confiscation est justifiée.

Or, aux termes de ce projet de loi sous sa forme actuelle, si M. Untel qui arrive du Danemark pour ouvrir un petit dépanneur vend un seul livre jugé obscène par notre législation, et s'il possède un immeuble à appartements au Danemark, un immeuble qu'il a acheté avec les bénéfices de plusieurs magasins dont il était propriétaire au Danemark il y a des années, tout cela peut être confisqué en vertu de ce projet de loi. Tout cela, pour avoir vendu un livre cochon au Canada. Non seulement il s'expose à la confiscation de tout ce qui peut avoir un rapport avec ce livre au Canada—et vous savez, cela veut dire les 80$ payés par le policier—mais, avec cette définition, ses immeubles au Danemark peuvent également être confisqués. Et bien sûr, puisqu'ils ne se trouvent pas au Canada, le juge imposera une amende de 1 million de dollars et, comme il ne pourra pas payer, on l'enverra en prison pendant 10 ans. Voilà ce que vous avez dans ce projet de loi.

Par conséquent, nous estimons que le paragraphe 2 est injustifié, quant au paragraphe 3, nous estimons qu'il est absolument cruel. Les intentions sont bonnes, mais cela va beaucoup trop loin. À première vue, l'idée d'une amende lorsqu'un bien est inatteignable, une amende accompagnée de peines d'emprisonnement obligatoires, cela est très séduisant. Mais les exigences, les conditions posées sont beaucoup trop vastes.

Si l'on considère les intentions de cette disposition, il faudrait que le tribunal soit convaincu que l'accusé a la possibilité de payer et refuse délibérément de le faire. Ce type de massue devrait être réservée à ces contrevenants-là, et les conditions fixées actuellement sont beaucoup trop vagues.

D'autre part, nous sommes tout à fait contre la référence au décès. Fuite? Parfait. Décès? Pensez-vous vraiment que les contrevenants vont se suicider par milliers pour éviter la confiscation de leurs biens? Pourquoi le gouvernement devrait-il profiter de leur décès? Si le type est mort, il a reçu la punition suprême. Pourquoi forcer ses héritiers naturels et ses proches à entreprendre des poursuites interminables contre le gouvernement? S'agit-il d'une taxe sur les successions qui fait gagner le gouvernement automatiquement chaque fois qu'il y a un décès? Nous pensons que la mention du décès devrait être supprimée dans cette disposition. Nous pensons également que la culpabilité d'une personne identifiée doit être établie hors de tout doute raisonnable.

Quant au projet d'article 420.19, nous estimons que la déduction pour augmention de valeur est excessive. On devrait être tenu de prouver qu'un accusé identifié a commis une infraction, et de le prouver hors de tout doute raisonnable. De la même façon, le projet d'article devrait obliger l'État à exclure toutes les autres sources de

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to exclude other sources of income. This inference should not be a device to force an accused into the witness box so the state can conduct an examination for discovery of all his sources of income over the last 10 or 15 years.

On proposed section 420.21, I reiterate the objection to the phraseology that he "appears innocent" of any collusion. The onus has to be put on the state, beyond a reasonable doubt, to show that a lawful owner who is not charged is guilty of a crime to deprive him of his property. It should not be enough to ask whether or not he appears innocent of any collusion.

On proposed section 420.22, relief from forfeiture should be available to all uncharged persons; in other words, eliminate proposed paragraph 420.22(1)(b). Again there are two categories of black sheep, those who are charged and those who . . . There is this inference that arises. I have already made my objection to that.

Just as an aside, proposed subsection 420.26, which allows the Attorney General to keep copies of documents that have been returned—we strongly object to that. If the Attorney General has to return items, why should he be allowed to keep copies? It merely provides an incentive to engage in questionable searches and seizures, knowing that even if the court then says you should not have done it, you will still have gained by the exercise.

And one last comment—I hate to end on a weak note—on your appeal provisions in clause 4. In clause 4, on the definition of "sentence", you have added 420.17(1). I do not know if you intended to include orders under 470.17(3). I think the draftsmen intended the reference to be to the entire section, but it does not clearly indicate that.

Mr. Robinson: Where are we at here?

Mr. Gold: In clause 4, at page 25. It specifically identifies proposed subsection 420.17(1), yet very important orders can be made under proposed subsection 420.17(3).

Mr. Chairman, I think that is the diatribe I came here to deliver today.

The Chairman: Thank you, Mr. Gold. I am sure you have stimulated some questions.

Mr. Kaplan: I wanted to begin by expressing appreciation for the type of approach you took to analysing the bill. I think it is going to be helpful to us. I wondered if you had similar critical analysis of other clauses you did not reach because of time. If you would like to send them to us. . . I do not want to ask you to give us another 10 minutes of them now, because I want to come back to some of your points. But I think that type of criticism, which I am not going to respond to or ask you questions about specifically, will be reserved and put

[*Translation*]

revenu. Cette déduction ne devrait pas servir à forcer un accusé à témoigner pour que l'État puisse découvrir toutes ses sources de revenu depuis 10 ou 15 ans.

Pour ce qui est du projet d'article 420.21, je rappelle mon objection à l'expression «semble innocente de toute complicité» C'est à l'État d'établir cela hors de tout doute raisonnable, de démontrer que le propriétaire légal qui n'est pas accusé est coupable d'un crime et qu'il convient de le priver de son bien. Il ne devrait pas suffire de demander s'il semble innocent de toute complicité.

À propos de l'article 420.22, toutes les personnes qui n'ont pas été accusées devraient échapper à la confiscation. Autrement dit, éliminer la référence à la personne qui a obtenu un titre ou un droit sur ce bien d'une personne accusée dans le paragraphe 420.22(1)b). Là encore, deux catégories de moutons noirs, ceux qui sont accusés et ceux qui. . . Cela nous ramène à cette référence à laquelle je me suis déjà opposé.

Soit dit en passant, nous nous opposons fermement au projet d'article 420.26 qui autorise le procureur général à conserver une copie des documents qui doivent être restitués. Si le procureur général doit rendre certains documents, pourquoi l'autoriser à en garder des copies? Cela ne peut que l'encourager à autoriser des perquisitions douteuses, sachant que, si le tribunal n'est pas d'accord, on pourra toujours garder des copies des documents saisis.

Une dernière observation—et je ne voudrais pas terminer sur une note négative—au sujet de vos dispositions d'appel à l'article 4. A l'article 4, dans la définition de «sentence», «peine» ou «condamnation», vous avez ajouté 420.17(1). Je ne sais pas si vous aviez l'intention d'y inclure les ordonnances prévues par le paragraphe 420.17(3). Je crois que les auteurs avaient l'intention de se référer à l'ensemble de l'article, mais ce n'est pas clair.

M. Robinson: Où en sommes-nous?

M. Gold: À l'article 4, page 25. On y cite le projet d'article 420.17(1), et pourtant, des ordonnances très importantes peuvent être émises en vertu du paragraphe 420.17(3).

Monsieur le président, je crois que cela termine la diatribe que je suis venu vous faire aujourd'hui.

Le président: Merci, monsieur Gold. Je suis certain que nous allons avoir des questions à vous poser.

M. Kaplan: Je tiens à vous dire pour commencer à quel point nous apprécions la démarche que vous avez adoptée pour analyser le bill. Je crois que cela va nous être très utile. Si vous avez effectué une analyse critique d'autres articles du bill, une analyse que vous n'avez pas eu le temps de nous communiquer, vous pourriez peut-être nous envoyer cela. . . Je ne vous demande pas de poursuivre pendant dix minutes tout de suite, car je tiens à revenir sur certaines de vos observations. Mais j'ai l'intention de noter certaines de vos critiques sur

[*Texte*]

to the Minister and his officials when they come, because we do not want legislation that is unnecessarily vague. We may want legislation you would consider unfair, but we want it to be tight and we want it to work. I think a lot of the technical points you have made on behalf of the criminal Bar will be helpful to the government in making the proposed legislation more workable than it is.

• 1150

I wanted to ask you, though, where the criminal bar is coming from on this bill. We are doing something new here in Canadian criminal law. Can I take it from the things you did not say that the criminal bar accepts the idea that we are moving into this area of seizing property, or, as you say, in effect, if it is a long period of time and certain kinds of property, forfeiting it without their being convicted?

Mr. Gold: No. I think our essential position is that where criminal guilt has been demonstrated, property related to the commission of the crime or other crimes that are essentially equivalently proved on a sentence hearing is legitimate, and it is also legitimate to ensure that assets are reasonably preserved for that procedure in advance of criminal guilt. But this goes far beyond that, and we may have disagreement about what are legitimate steps to preserve. In other words, it is the old story about nine guilty people having to be acquitted to make sure one innocent person is not convicted.

You can never draft legislation whose implementation in the real world will always fall on those it is supposed to fall on, because in the real world we do not know the answers until we have trials. You have to accept the fact that some cases will slip through, and that is necessary. That is the price to pay. We have to pay to avoid victimizing innocent people. So you have to accept that; you have to live with that. That is a real-world limitation of our laws. So in theory there is a certain area in which we accept in principle. . .

I have not even touched on the matter of legal fees, by the way, which I hope someone will raise. I am not sure what the present provision means. You see, you have "reasonable business" and "legal expenses". Now, if you intended the word "reasonable" to apply to both business and legal, then we can agree to disagree right now, because the Department of Justice's view of whether my legal fees are reasonable or not and my view will not concur. I do not want to have to justify to any state agency the reasonableness of my legal fees, and I do not want to have to send them bills showing whom I have interviewed, what preparation I have done, and what witnesses I have spoken to.

Mr. Kaplan: That is a point we made—

[*Traduction*]

lesquelles je ne reviendrai pas maintenant, pour les soumettre au ministre et à ses collaborateurs lorsqu'ils viendront. En effet, nous ne voulons pas d'une loi inutilement vague. Il est possible que nous voulions une loi que vous jugerez injuste, mais nous voulons qu'elle soit bien construite et qu'elle fonctionne bien. Vous avez fait des observations d'ordre technique au nom du Barreau criminel, des observations qui aideront le gouvernement à améliorer le projet de loi.

Cela dit, je veux que vous me parliez de la position du Barreau criminel face à ce bill. Avec ce projet de loi, nous entrons dans un domaine nouveau pour le droit criminel canadien. D'après ce que vous n'avez pas dit, faut-il déduire que le Barreau criminel accepte cette idée de saisir des biens ou, comme vous l'avez dit, s'il y a de longs délais, et dans certains cas, de les confisquer avant que la culpabilité de leur propriétaire ait été établie?

M. Gold: Non, essentiellement, nous estimons que, lorsque la culpabilité criminelle a été établie, il est légitime de confisquer des biens qui ont un rapport avec le délit ou d'autres délits à peu près équivalents confirmés par une sentence, tout comme il est légitime de s'assurer que certains biens seront conservés en vue d'une déclaration de culpabilité. Mais cette mesure va beaucoup plus loin, et nous ne sommes peut-être pas d'accord sur les mesures légitimes à prendre pour conserver un bien. Autrement dit, ça nous ramène à ce vieux dicton qui veut qu'on doit acquitter neuf coupables pour éviter de condamner un innocent.

Vous ne réussirez jamais à rédiger une loi qui affectera exclusivement les gens qu'elle vise, car dans la réalité, on ne connaît jamais la réponse avant le procès. Il faut se résigner, il y a des cas qui échappent au système, et c'est nécessaire. C'est le prix qu'il faut payer pour éviter d'avoir des victimes innocentes. Il faut se résigner, il faut l'accepter. C'est une réalité à laquelle se heurtent nos lois. Donc en théorie, il y a des domaines où nous acceptons en principe. . .

Je n'ai même pas parlé des honoraires juridiques, soit dit en passant, et j'espère que d'autres vous en parleront. Je ne suis pas certain de bien comprendre ces dispositions. Vous comprenez, il est question d'«entreprise raisonnable» et de «frais juridiques». Maintenant, si vous avez voulu appliquer le terme «raisonnable» à l'aspect entreprise et à l'aspect légal, il faut nous résigner tout de suite à ne pas être d'accord, parce qu'il serait étonnant que le ministère de la Justice soit d'accord avec moi sur le caractère raisonnable de mes honoraires. Je ne veux pas être forcé de justifier mes honoraires devant un organisme de l'État, je ne veux pas être forcé de leur envoyer des listes des gens que j'ai rencontrés, un compte rendu des préparations que j'ai effectuées, une liste des témoins auxquels j'ai parlé.

M. Kaplan: C'est précisément ce que nous. . .

[*Text*]

Mr. Gold: What greater gift could the state possibly ask for than to get a foot inside the door of my law office when I am defending a person? Do I have to wait for the end of the case to be paid? Then forget it. These people will never be represented by competent counsel. Is that the purpose of the legislation?

In the United States, state attorneys openly admitted that one of the purposes of the RICO legislation was to stop people accused of very serious crime from having access to "high-priced lawyers". What does that mean? What a cynical view of the defence bar that represents. I do not think we have the American situation in Canada, and if anybody tells you differently, you ask them to prove it. I think they have been reading too many American periodicals. In any event, the question of legal fees and their exemption is obviously a very, very important issue that touches on right to counsel.

Mr. Reid: Would you object to taxation of bills in the ordinary sense?

Mr. Gold: No, but as long as I can take my retainer in advance so that I am paid as the case goes along, so I do not have to subsidize my client, then of course I will submit to taxation. The client has a right to taxation. It would merely be analogous to that right. I have no problem with that.

Mr. Kaplan: I have two other points, and in light of your answers, I would like to ask them both—they are unrelated—and then you can have the rest of the time to do it. The first one deals with the various burdens of proof that are contained in the bill. I guess there are three: "appears to be a black sheep" is used in some parts; then there is "on the balance of probabilities"; and then, of course, there is the standard criminal burden of proof "beyond a reasonable doubt". You are arguing that they should all be at the same level, and a charter case may push the criminal justice system to that point. Already the burden of proof and reverse burdens of proof have been kicked out and so on, and we may find that a high burden of proof is constitutionalized in all criminal matters.

• 1155

The first question I want to ask you is whether you do not agree, as the bill does, that there is a justification for having various levels of proof for various aspects of the process that is being created here in this bill. I think there is a justification for it, and the high burden of proof associated with finding a person guilty and condemning him or her does not need to be applied at these other levels, where you are dealing, admittedly seriously, with property, or where you are dealing with the police power to take an act provided for in the bill.

The second thing I wanted to challenge is the cynicism you showed about the role proposed in the bill for the Attorney General. You say the purpose of having the Attorney General dragged through this procedure is to

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M. Gold: Est-ce que ce ne serait pas merveilleux pour l'État d'avoir accès à mon bureau quand je défends une personne? Dois-je attendre qu'une cause soit terminée pour être payé? C'est ridicule, ces gens-là ne seront jamais défendus par des gens compétents. Est-ce bien ce que vous voulez?

Aux États-Unis, les procureurs de l'État ont reconnu qu'un des objectifs de la loi RICO était d'empêcher les gens accusés de délits très graves de se faire défendre par des avocats de luxe. Qu'est-ce que cela signifie? Quel jugement cynique sur le Barreau. Je ne pense pas qu'on puisse comparer la situation au Canada à celle des États-Unis, et si quelqu'un prétend le contraire, demandez-lui de le prouver. Je pense qu'ils ont lu trop de revues américaines. Quoi qu'il en soit, la question des honoraires d'avocats, les exemptions possible, c'est un sujet particulièrement important qui nous ramène aux droits de chacun d'être défendu par un avocat.

M. Reid: Est-ce que vous êtes contre l'idée générale d'imposer les factures?

M. Gold: Non, et bien sûr que je paierais des impôts, mais à condition de pouvoir toucher une avance et de me faire payer au fur et à mesure pour ne pas être forcé de subventionner un client. Tant que ce droit est respecté, je n'ai pas d'objection.

M. Kaplan: J'ai deux autres questions à aborder, et comme cela nous ramène à vos réponses, je vais les poser toutes les deux bien qu'elles n'aient aucun rapport; vous pourrez ensuite y répondre. Pour commencer, les différents types de fardeau de la preuve qui existent dans le bill. Il y en a trois: «semble être un mouton noir» est mentionné quelque part; ensuite «compte tenu des probabilités»; et enfin, le fardeau de la preuve criminelle standard: «hors de tout doute raisonnable». Vous dites que, dans les trois cas le même niveau devrait être prévu, et que, si la Charte était invoquée, cela pourrait fort bien finir de cette façon. Il y a déjà des cas de fardeau de la preuve et de fardeau inversé qui ont été supprimés, et on finira peut-être par avoir un fardeau de la preuve constitutionnalisé pour toutes les questions criminelles.

Pour commencer, ne pensez-vous pas, comme c'est le cas dans le bill, que plusieurs niveaux de preuves sont justifiés selon les circonstances. À mon avis, cela est justifié, et il est normal de prévoir que le fardeau sera plus lourd lorsqu'il s'agit d'établir la culpabilité d'une personne, de la condamner, et moins lourd lorsqu'il s'agit uniquement de biens—je reconnais que c'est sérieux tout de même—ou lorsqu'il s'agit de donner à la police des moyens d'action prévus par ce bill.

Deuxièmement, je ne suis pas d'accord avec vous et je trouve que vous faites preuve d'un certain cynisme quand vous parlez du rôle confié au procureur général par ce bill. Vous dites que, si on traîne le procureur général

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avoid a Charter challenge or to make it harder to have a Charter challenge.

Mr. Gold: No, I said some members of the bar suggest that.

Mr. Kaplan: I understand that. What I wanted to tell you was that I think involving the Attorney General is a serious step and is meaningful, and has been. For example, where the Attorney General needs to give a warrant or a mandate to allow a certain kind of criminal procedure to occur, I know from my own personal experience those are dealt with by the Attorney General. He is briefed and there are pros and cons and his officials usually have a point of view. But I think you are being unduly cynical to say that usually means he will not be personally involved or some people think he will not. I wanted to ask you if you have any actual experience, or if the bar does, with an Attorney General prerogative provided for in legislation, or an Attorney General authority, that is abused or not seriously provided—in other words, where the Attorney General is given a role and he does not really play it.

Mr. Gold: No, I would not go so far as to say I could document bad faith on the part of Attorneys General. But what I would point out is that there is an important distinction between this power and all other powers. Other powers carry an upside and a downside. This power does not seem to me to carry very much of a downside to an Attorney General who exercises it. He is going to be given information by his officials, told that Mr. So-and-So, whose name ends in a vowel, is a high-level, serious drug trafficker, and we are going to go in and seize his restaurant. What is going to go into the decision—that is really what I am wondering—other than to accede to the request? That is what to me makes it different from decisions—

Mr. Kaplan: Well, they will ask, how do you know, what makes you think he is?

Mr. Gold: And they will say intelligence and—

Mr. Kaplan: I agree with you—

Mr. Gold: I have seen many cases where the police seriously believe they are dealing with a unified drug ring yet where to my mind no person could think anything other than that they simply stumbled on a haphazard series of characters, and at the end of the day that is what the court finds.

In other words, I just find that the ease with which certain things are accepted by those who are engaged in what has been called the very competitive enterprise of ferreting out crime. It is just that sometimes they do not realize how much their work affects their perceptions. Now, maybe the same thing could be said about me.

It was in that context that I was making the remarks about the Attorney General. My problem is I happen to be a tremendous admirer of our current Attorney

[*Traduction*]

dans toute cette affaire, c'est pour éviter des poursuites en vertu de la Charte, ou pour les rendre plus difficiles.

M. Gold: Non, j'ai dit que certains membres du Barreau étaient de cet avis.

M. Kaplan: Je comprends. Personnellement, je pense que, lorsqu'on implique le procureur général c'est une mesure grave, cela veut dire quelque chose, cela a toujours été le cas. Par exemple, quand le procureur général doit signer un mandat pour autoriser certaines procédures criminelles, je sais d'après mon expérience personnelle que le procureur général s'en occupe personnellement. On lui explique la situation, le pour et le contre, et d'ordinaire ses collaborateurs lui donnent des conseils. Cela dit, vous faites preuve d'un cynisme excessif quand vous dites qu'il ne s'en occupera pas personnellement ou que certains le pensent. Est-ce que vous avez des exemples, est-ce que le Barreau en possède, d'un procureur général qui aurait abusé des prérogatives qui lui sont conférées par la législation ou de son pouvoir, autrement dit, d'un procureur général qui ne joue pas vraiment le rôle qu'il est censé jouer.

M. Gold: Non, je ne chercherai pas à prouver que certains procureurs généraux ont fait preuve de mauvaise foi. Cela dit, il existe une distinction importante entre ce pouvoir et tous les autres. Les autres pouvoirs présentent des avantages et des inconvénients. Ce pouvoir-là, par contre, ne semble pas présenter le moindre inconvénient pour le procureur général qui l'exerce. Ses collaborateurs lui donnent des informations, lui expliquent que M. Untel, dont le nom se termine par «o», est un gros trafiquant de drogue et qu'on va saisir son restaurant. Sur quoi va-t-il fonder sa décision, ne va-t-il pas approuver automatiquement? C'est la grande différence dans ce cas. . .

M. Kaplan: Eh bien, le procureur demandera: qu'est-ce qui vous fait dire cela, qu'est-ce qui vous fait penser que c'est un trafiquant?

M. Gold: Et on lui répondra, nos services de renseignements et. . .

M. Kaplan: Je suis d'accord avec vous. . .

M. Gold: J'ai souvent vu la police croire à un réseau de trafic organisé quand, à mon avis, il ne pouvait s'agir que d'une série de trafiquants sans rapport entre eux. Et à la fin, le tribunal confirmait mon impression.

Autrement dit, la lutte contre la criminalité, c'est un secteur très concurrentiel, où l'on est souvent tenté de croire certaines choses sans preuve. Le plus souvent, ils ne se rendent pas compte à quel point ils sont influencés par la nature de leur travail. Cela vaut d'ailleurs peut-être aussi pour moi.

C'est dans ce contexte que j'ai fait des observations au sujet du procureur général. Personnellement, j'admire énormément le procureur général actuel, et ça me

[*Text*]

General, so I am very hard pressed to... Just personally that happens to be my position. So no, I cannot document any abuses. That was the intention of my remarks.

Mr. Kaplan: And on the burden of proof?

Mr. Gold: On burden of proof, it seems to me the following principle should prevail: where you want to take away somebody's property permanently, proof beyond a reasonable doubt. Where you want just to keep it in place, reasonable grounds is enough. But where you want to seize it prior to criminal guilt being proved and in effect take it out of his hands for two or three years, then a balance of probabilities should be required. That is the hierarchy I see. I see reasonable grounds as being sufficient only to keep the status quo until the criminal trial can be concluded.

• 1200

Mr. Robinson: Mr. Chairman, I will be brief, and I do apologize for arriving late. I will certainly be reviewing the transcript, and will be in further communication with Mr. Gold on a number of the points he has raised. I was at a meeting of the Standing Committee on Justice and Legal Affairs, which went a bit late.

I am not going to pursue a number of the procedural issues you have raised. I think you raise very serious questions that we are going to have to examine as a committee when it comes to the clause-by-clause study of the bill.

I want to deal with a couple of issues that I do not believe have been raised that were discussed during the appearance of the Canadian Bar Association on Tuesday. One is with respect to the scope of the legislation, the definition of ECOs, as you call them, as opposed to the DDOs. This afternoon this committee is going to be hearing from a group of prostitutes: the Canadian Organization for the Rights of Prostitutes. I think it is the second time in the history of Parliament that this body will be appearing before any parliamentary committee. They have very deep concerns about the potential implications of this legislation, because one of the offences that is included is section 193, keeping a common bawdy-house. I am not talking here about procuring, which is another offence.

Have you, as an association, considered this question, the potential ambit of the legislation, both in terms of prostitution and possibly also in terms of the bookie, given the sweeping powers that exist under this bill? I think you very eloquently outlined those powers. Have you considered this particular issue, and do you have any concerns about it? I raised this with the bar, and certainly the representative of the bar indicated concern about this particular area.

Mr. Gold: In general terms, of which you have given one example, I find the breadth of this bill astonishing, and I think I tried to make that point. The acts which it

[*Translation*]

complique beaucoup les choses quand... Il se trouve que c'est une conviction personnelle. Donc, non, je ne peux pas citer d'abus. J'ai fait ces observations dans cet esprit-là.

M. Kaplan: Et le fardeau de la preuve?

M. Gold: Dans ce cas, il me semble que le principe suivant doit l'emporter: quand vous voulez confisquer définitivement un bien, fardeau de la preuve hors de tout doute raisonnable. Si vous voulez seulement le préserver, des motifs raisonnables suffisent. Mais lorsque vous voulez saisir un bien avant confirmation de la culpabilité criminelle, si vous voulez le saisir pour deux ou trois ans, il me semble que des probabilités sont nécessaires. Voilà comment je vois la graduation. Les motifs raisonnables suffisent uniquement lorsqu'il s'agit de conserver le statu quo en attendant la fin d'un procès.

M. Robinson: Monsieur le président, ce ne sera pas long et je vous présente mes excuses pour mon retard. Je relirai certainement le compte rendu des délibérations et je communiquerai avec M. Gold concernant certains des points qu'il a soulevés. J'arrive d'une séance du Comité permanent sur la justice qui a duré un peu plus longtemps que prévu.

Je n'aborderai pas les questions de procédure que vous avez soulevées. Je crois que ces questions sont très graves et nous nous devrons de les étudier de très près, en comité, lorsqu'arrivera l'étude article par article.

Il y a certaines questions qui, me semble-t-il, n'ont pas été soulevées mais qui l'ont été lors de la comparution du Barreau canadien mardi. Il y a tout d'abord la portée de la loi et ensuite la définition des ICO, comme vous les appelez, par opposition aux IGMD. Cet après-midi, notre Comité entendra un groupe représentant des prostituées: The Canadian Organization for the Rights of Prostitutes. Je crois que c'est la deuxième fois dans l'histoire de notre Parlement que cet organisme comparaîtra devant un comité parlementaire. Ce groupe a des craintes sérieuses concernant les implications possibles de ce projet de loi car une des infractions visées se trouve à l'article 193, tenue d'une maison de débauche. Je ne parlerai pas de proxénétisme, une tout autre infraction.

Est-ce que votre association a étudié cette question, c'est-à-dire la portée du projet de loi en ce qui concerne la prostitution et, peut-être aussi, en ce qui concerne le *book making* vu les larges pouvoirs prévus dans le projet de loi? Je crois que vous avez très éloquemment dressé la liste de ces pouvoirs. Avez-vous étudié cette question précise et cela vous inquiète-t-il? J'ai posé cette question au Barreau et le représentant nous a certainement fait savoir qu'il existait des préoccupations dans ce domaine.

M. Gold: En termes généraux, et vous venez de nous en donner un exemple, je trouve que la portée de cette loi est tout à fait étonnante et c'est ce que j'ai essayé de vous

[*Texte*]

seeks to capture. ... Other than copulate, I cannot think of a verb that is not included in the definition of dealing with property: uses, transfers, possesses, sends. It is obviously intended to be as broad as possible. Property anywhere in the world derived directly or indirectly; indirect relationships between property. The mind boggles.

I think that what you have here is legislation formulated with sort of stereotypes in mind that is completely unrestrained by any realization of its impact in the real world and how in the real world this broad language will come down on people which could not have been imagined at the time the legislation is passed. I do very much get that sense from the legislation: that it is much too broad in a variety of ways.

Mr. Robinson: One of the other criticisms of the legislation that has been voiced by a number of people, and certainly that I have voiced on second reading in the House, is with respect to an area that is not even covered by this legislation, and that is the question of the requirement for banks and other financial institutions to report substantial financial transactions. There is a similar requirement in the United States. A federal-provincial task force that studied this question recommended that for legislation of this nature to be effective there should be reporting requirements by banks and financial institutions.

We have a situation now in which an individual, out of breath, with a gun in one hand and a gunshot wound in the shoulder, could presumably back his truck up to a bank and deposit a million-plus dollars in cash and the bank is not required to report anything at all. That may be an extreme example. But nevertheless it does illustrate what I consider to be a glaring weakness in this government's approach.

On the one hand they are prepared to go after the black sheep and the white sheep and every other kind of sheep, but they are not prepared to touch the banks and the financial institutions in this country at all, even in terms of the reporting requirement. I want to ask whether your association—and I appreciate this goes somewhat beyond the traditional scope of a criminal lawyer's concerns—has given any thought to this issue as well.

Mr. Gold: We have given thought to it, mainly as it affects our relationship with our clients. We certainly do not want to be in a position where our banks are giving information to a government agency about the contents of our trust accounts. That would clearly put a solicitor in jeopardy of being a witness against his client.

Insofar as banks generally are concerned, my understanding, and the common understanding of the criminal bar in Toronto, is that banks have an informal arrangement with the police, where they do in fact report large sums of money. I have had the personal experience when I have made a significant deposit to my trust

[*Traduction*]

faire comprendre. Les lois qu'on tente de modifier. . . à part la copulation, il n'y a pas un mot dont on ne se serve concernant les biens: usage, transfert, possession, envoi. De toute évidence, on veut que ce soit aussi large que possible. Il s'agit de biens, partout au monde, acquis directement ou indirectement; relations indirectes entre divers biens. C'est à n'y rien comprendre.

Je crois que nous sommes en présence d'un projet de loi fondé sur divers genres de stéréotypes sans que les auteurs aient fait le moindre lien entre leur généralisation et la réalité. C'est ce que ce projet de loi me laisse entendre; c'est beaucoup trop vaste et de bien des façons.

M. Robinson: Une autre des critiques, dont j'ai moi-même fait état en Chambre en deuxième lecture, porte sur un domaine dont il n'est pas fait état dans le projet de loi, c'est-à-dire exiger des banques et autres institutions financières de faire rapport de toutes transactions financières d'une certaine importance. Cette exigence existe aux Etats-Unis. Un groupe d'études fédéral-provincial qui a étudié la question a recommandé que soit adoptée une telle mesure si l'on voulait qu'un projet de loi comme celui qui nous occupe soit efficace.

À l'heure actuelle, quelqu'un vous arrive tout essoufflé, un fusil à la main, du sang dégoulinant d'un trou de balle à l'épaule et il peut vous reculer son camion jusqu'à la banque pour déposer un million de dollars ou plus en «beaux billets du Dominion» et la banque n'est obligée de rapporter rien de tout cela. J'exagère, je veux bien. Néanmoins, cela illustre quand même une certaine faiblesse dans la façon dont le gouvernement aborde la chose.

D'une part, le gouvernement est prêt à pourchasser les moutons noirs, les moutons blancs et les moutons de toutes les couleurs que vous voudrez, mais il n'est pas prêt à imposer quoi que ce soit aux banques ou aux institutions financières du pays, même pas de dresser un tout petit rapport. Je sais que je m'aventure un peu au-delà des préoccupations habituelles de l'avocat que vous êtes, mais j'aimerais savoir si votre association a abordé cette question.

M. Gold: Nous y avons pensé, mais surtout pour ce qui touche notre relation avec nos clients. Nous ne voudrions surtout pas nous retrouver dans une situation où les banques donneraient des renseignements à un organisme gouvernemental concernant nos comptes détenus en fidéicommis. Cela ferait courir à l'avocat le risque d'être assigné pour témoigner contre son propre client.

En ce qui concerne les banques, je crois, tout comme le Barreau à Toronto, que les banques ont un accord tacite avec les forces de l'ordre, c'est-à-dire que les banques les renseignent lorsqu'il est question de grosses sommes d'argent. J'en ai eu l'expérience toute personnelle le jour où j'ai voulu déposer une somme assez importante

[*Text*]

account. The manager spoke to me to satisfy himself about the source of funds. I do not know what your information is, but in Toronto in our experience banks are very much alive to the concerns you have expressed.

• 1205

Mr. Robinson: Can I just ask for a minute . . ? You are saying that in Toronto banks are reporting these major financial. . .

Mr. Gold: No. Banks are taking steps to make sure they are not used in any improper fashion by any depositor.

Mr. Robinson: But you went beyond that.

The Chairman: Voluntarily.

Mr. Gold: Voluntarily, yes.

Mr. Robinson: Okay, so what you are suggesting is that banks in Toronto are reporting to the police?

Mr. Gold: No. My understanding is that banks in general terms are trying to be good citizens, and if they were not satisfied about the source of a deposit, they would not accept it.

Mr. Robinson: They have a relationship with the police? Is that what you are saying?

Mr. Gold: No, I am. . .

Mr. Robinson: That is what you indicated.

Mr. Gold: My understanding is that they are trying to be good citizens, period. Let me just leave it at that.

Mr. Robinson: Well no, let us not leave it at that, because you did indicate that they have some sort of relationship with the police. What is the nature of that relationship?

Mr. Gold: A desire to be good citizens, I suspect.

Mr. Robinson: Well do they in fact inform the police of any transactions?

Mr. Gold: No, I do not know of that. I just know that they would not accept questionable deposits.

Mr. Robinson: So I take it then your earlier suggestion that there is some sort of a relationship with the police is one that you are now on reflection withdrawing?

Mr. Gold: Yes.

Mr. Robinson: Okay.

Mr. Gold: May I suggest that in proposed subsection 420.(11) you change the word "convert" to "disguise"? I think that is what you meant, to conceal or disguise that it is the proceeds of crime. The problem is that "convert" also has a legal meaning about "take", so that if I as a lawyer take my fees from a client, I do not want

[*Translation*]

à mon compte en fiducie. Le gérant m'a posé certaines questions concernant la provenance des fonds. Je ne sais quels renseignements vous avez, mais à Toronto, d'après notre expérience, les banques sont très au fait de ces préoccupations que vous venez d'exprimer.

M. Robinson: Puis-je vous demander un instant. . .? Vous dites qu'à Toronto, les banques font rapport de ces transactions financières importantes qui. . .

M. Gold: Non. Les banques prennent les mesures nécessaires pour s'assurer que leurs clients n'abusent pas de leur bonne foi.

M. Robinson: Mais vous êtes allés au-delà de cela.

Le président: Et volontairement.

M. Gold: Volontairement, oui.

M. Robinson: Bon, alors vous nous dites que les banques, à Toronto, renseignent la police?

M. Gold: Non. Si j'ai bien compris la chose, les banques, en gros, essaient de se montrer bons citoyens et si la provenance des fonds laisse planer certains doutes dans leur esprit, elles ne les accepteraient pas.

M. Robinson: Elles entretiennent des relations avec la police. C'est ce que vous avez dit?

M. Gold: Non, je. . .

M. Robinson: C'est ce que vous avez laissé comprendre.

M. Gold: Ce que j'essaie de vous faire comprendre c'est que les banques essaient de se montrer bons citoyens, un point c'est tout. Tenons-nous-en à cela.

M. Robinson: Non, ne nous en tenons pas à cela, parce que vous nous avez laissé comprendre qu'elles entretiennent une certaine relation avec les forces de l'ordre. De quelle nature est cette relation?

M. Gold: Le désir de se montrer bons citoyens, je suppose.

M. Robinson: Écoutez, les banques donnent-elles des renseignements à la police concernant certaines transactions?

M. Gold: Non, pas que je sache. Je sais tout simplement qu'elles ne prennent pas les dépôts qui laissent planer le doute.

M. Robinson: Vous nous avez laissé entendre tout à l'heure qu'il y avait une certaine relation avec la police; vous retirez maintenant ces propos, après réflexion?

M. Gold: Oui.

M. Robinson: Parfait.

M. Gold: A mon avis, à l'article proposé 420.(11), vous devriez remplacer le mot «convertir» par «déguiser». Je crois que c'est cela que vous vouliez dire, c'est-à-dire cacher ou déguiser les produits de la criminalité. Or, le problème c'est que «convertir» a aussi le sens, au point de vue juridique, de «prendre»; en ma qualité d'avocat,

[*Texte*]

somebody arguing that I have converted that, that it is now mine and I have converted it and therefore I am guilty of some crime. I presume you are after the person who launders money, who sends it on. So why not just say, "conceal or disguise that property is the proceeds of crime"? The word "convert" worries me a little bit.

Mr. Robinson: My final question is with respect to your association's overall approach to this legislation. I take it that your position would be that in the absence of the kinds of amendments that you have suggested, you would want to see this legislation scrapped.

Mr. Gold: Oh, absolutely. I think if you do not do it, the Supreme Court of Canada will do it. I cannot believe that this legislation in its present form would pass Charter muster. I just cannot believe that.

I realize property is not in the Canadian Charter of Rights and Freedoms, but to say that before someone can be convicted beyond a reasonable doubt and get one day in jail you have to prove it beyond a reasonable doubt, but you can take away everything they have earned in a lifetime because of appearance of collusion. I mean that just stands things on its head.

Mr. Robinson: I suppose, Mr. Chairman, between the court proceedings under the legislation and then the Charter challenges under the legislation, it may very well be a field day for lawyers in this country.

Mr. Gold: Well I am here to try to avoid that field day, quite frankly.

Mr. Thacker: I would also like to thank our distinguished witness for his superb brief and presentation this morning. I can assure him that we will go through it very carefully, clause by clause.

You know, there is no doubt that the drafting instruction and the intention was to draft a very tough bill. That is not just here in Canada, it really flows out of meetings of all civilized countries and in fact a United Nations agreement of some sort to move collectively to try to stop these proceeds of crime from being laundered and really leading to the degradation of many, many thousands of people around the world.

There is no doubt we want to be tough. We want to try to stop that if we can. But I can appreciate that you are always at the edges, drawing examples of where we may appear to have gone too far. It is the role of this committee to try to pull those edges back if that is true.

So I want to thank you very much. You probably realize, because you are an experienced person, that witnesses coming before committees are absolutely

[*Traduction*]

lorsque je prends les honoraires de mon client, je ne veux pas que quelqu'un puisse alors arguer qu'il s'agit là d'une conversion, que ces fonds sont maintenant les miens, que je les ai convertis et que je me trouve donc coupable d'un crime quelconque. Présumément, vous voulez attraper celui qui recycle les fonds pour les expédier ailleurs. Pourquoi ne pas dire tout simplement «de les cacher ou de les déguiser»? Le mot «convertir» m'inquiète un peu.

M. Robinson: Ma dernière question porte sur l'attitude générale de votre association envers ce projet de loi. Si je comprends bien, si nous n'adoptons pas les modifications que vous nous proposez, vous voudriez voir disparaître tout simplement le projet de loi.

M. Gold: Absolument. Si vous n'y apportez pas ces modifications, je crois bien que la Cour suprême du Canada le fera. Ce projet de loi, tel qu'il est libellé, n'est pas conforme à la Charte. En tout cas, je ne peux pas croire qu'il y soit conforme.

Je sais pertinemment que les biens ne sont pas nommément visés dans la Charte canadienne des droits et libertés, mais il m'est impossible de croire qu'on puisse déposséder quelqu'un des biens qu'il a accumulés une vie durant pour simple apparence de collusion étant dit qu'avant d'envoyer quelqu'un en prison, ne fut-ce que pour une journée, il faut prouver sa culpabilité au-delà de tout doute raisonnable. Cela défie le bon sens.

M. Robinson: Monsieur le président, lorsque les causes auront été portées devant les tribunaux en vertu du présent projet de loi et qu'on les contestera ensuite en vertu de la Charte des droits, ce sera l'âge d'or pour tous les avocats du pays.

M. Gold: C'est un âge d'or que je tente d'éviter par ma présence ici, franchement.

M. Thacker: J'aimerais aussi remercier notre distingué témoin et pour son mémoire et pour ses observations de ce matin. Je tiens à lui confirmer que nous étudierons tout cela soigneusement, article par article.

Vous savez, il ne fait aucun doute qu'on avait absolument l'intention de rédiger quelque chose de très dur. Ce n'est d'ailleurs pas seulement au Canada. Ce projet de loi découle d'une série de rencontres réunissant tous les pays civilisés et il y a aussi une volonté commune aux Nations Unies d'agir collectivement pour essayer d'empêcher que ces produits de la criminalité soient recyclés et servent à la dégradation de milliers et de milliers de personnes partout au monde.

Il ne fait aucun doute que nous voulons être durs. Nous voulons mettre le hola à tout cela si c'est possible. Mais je comprends que vous nous présentiez toujours les cas extrêmes pour nous montrer dans quels excès nous aurions pu verser. C'est le rôle de notre Comité de tenir compte de ces extrêmes pour ne pas verser dans l'excès, le cas échéant.

Je tiens donc à vous dire merci. Puisque vous êtes un homme d'expérience, vous vous rendez probablement compte que tous les témoins qui comparaissent devant le

[*Text*]

immensely helpful, because members are very, very busy and these bills flow out of the bureaucracy, who do their very best pursuant to the drafting instructions.

Mr. Gold: I do not view bureaucracy as a dirty word. I think the problem is that when you are drafting a bill with a problem in mind, the words cover what you have in mind. It is just that you do not realize how it is going to impact out there in the real world, which is where I operate. I see what your legislation does in particular cases the draftsman never had in mind.

• 1210

Mr. Thacker: Could you give us your view on the extent of or the amount of the proceeds of crime in that general sense? Is it an increasing problem in Canada, in your view?

Mr. Gold: I do not think I can honestly answer that. I think any intelligent person realizes there is a large criminal economy out there. I reject the suggestion that our problem is comparable to the States. I think they have a much bigger problem, a unique problem. I think we are a little bit of a criminal backwater, if you will pardon the expression.

I will not sit here and tell you that people have not made large amounts of money from crime, and I certainly do not, on behalf of the association, sit here and tell you that you should not be trying to punish those people or remove the profit motive—of course you should. Our concern is that the legislation be as fine-tuned as possible and also that there be an awareness that perfection is not achievable in the real world. To get a couple of more criminals, please do not hurt 10 or 20 innocent people. It is better to skip those two and leave the twenty people to live their lives in peace.

Mr. Thacker: Have you, through your life experience, been exposed to similar laws in other countries and are you able to give us a view as to whether this is tougher or. . .?

Mr. Gold: I have kept up on the RICO law since its inception. There is a lot of communication back and forth between Canada and the United States. I have seen what has been going on in the United States and the general feeling is that the pendulum has swung too far in favour of crime control. I think the sentiment is that there are real injustices being done. In England, on the other hand, until I think two years ago, when they amended the legislation, you could only forfeit property involved in the specified drug offence. Now, I read those case reports from England for 10 to 15 years and there did not seem to be any great sense of outrage.

[*Translation*]

Comité nous sont d'une aide immense parce que les députés sont très occupés et que ces projets de loi sont rédigés par nos fonctionnaires qui font de leur mieux pour suivre les instructions que nous leur avons données.

M. Gold: Le problème ne vient pas du fonctionnaire. Lorsqu'on rédige un projet de loi pour régler un problème précis, les mots sont là pour régler le problème auquel on pensait. Il arrive tout simplement qu'on ne pense pas toujours aux répercussions qu'il aura sur le plan pratique, plan où je travaille, moi. Je perçois certains problèmes en fonction de certains cas auxquels les rédacteurs n'ont jamais songé.

M. Thacker: Dites-nous donc votre avis concernant l'importance ou les sommes d'argent impliquées dans ces produits de la criminalité, en gros. S'agit-il d'un problème croissant au Canada, à votre avis?

M. Gold: Je ne crois franchement pas pouvoir répondre à cette question. Je crois que toute personne intelligente sait qu'il existe une économie fondée sur la criminalité. Je ne crois pas que notre problème soit comparable à celui qui existe aux États-Unis. Je crois qu'il existe un problème énorme là-bas, un problème unique au monde. Je crois que nous faisons figure de provinciaux dans le domaine de la criminalité, si vous me passez l'expression.

Je ne prétends pas que personne ne s'est fait énormément d'argent grâce au crime et, en ma qualité de représentant de l'Association, je ne vous dirai surtout pas que vous ne devriez pas essayer de punir ces gens ou de faire disparaître cette motivation que constitue le profit: au contraire. Notre préoccupation c'est que la loi soit aussi affinée que possible et que l'on sache que la perfection n'existe pas en ce bas monde. N'allez pas faire tort à 10 ou 20 innocents pour tout simplement attraper un ou deux criminels de plus. Mieux vaut ne pas inquiéter ces deux criminels pour laisser vivre en paix une vingtaine de personnes.

M. Thacker: Compte tenu de votre expérience, vous est-il arrivé d'avoir affaire à de telles lois dans d'autres pays et pourriez-vous nous dire si notre projet de loi est plus dur ou. . .?

M. Gold: Je suis la loi RICO depuis sa conception. Il y a beaucoup de communications entre le Canada et les États-Unis. Je vois ce qui se passe aux États-Unis et l'impression générale c'est que le balancier est allé trop loin du côté du contrôle de la criminalité. L'impression générale c'est qu'il y a vraiment des injustices qui se commettent. D'autre part, en Angleterre, jusqu'à il y a deux ans environ, lorsqu'ils ont amendé leur loi, on ne pouvait confisquer que le bien ayant servi à commettre l'infraction en matière de drogues. Aujourd'hui, je lis les rapports concernant ces cas dont a été saisie la justice en Angleterre il y a 10 ou 15 ans et on ne semblait pas s'en offusquer outre mesure.

[*Texte*]

The House of Lords kept ordering the property back because it was related to some other offence and not the one of which he was convicted. The heavens did not really seem to fall. I did not see articles in the law journals criticizing this or anything. Then, as I say, two years ago they changed that, so maybe they did realize there was a problem. I think England would be a good place to look for information. Those are really the two jurisdictions I am most familiar with.

Mr. Thacker: Thank you, Mr. Chairman. I have no further questions. I really need to do some studying on it.

Mr. Wenman: One of the alarms that you raise hit me particularly strongly in what would seem to be an absurdity of law, but in practice is a reality. Under the Income Tax Act, a constituent of mine—an 11-year-old boy—had $35 confiscated from his bank account, which his grandfather had given him for Christmas for a bicycle. That is a real story. It was demonstrated and proved. Eventually we got the money back.

You raised the alarm that a child could come home from school to find his bed gone. I would like to think the law officers and everyone else would never do that kind of thing; however, the fact that it can exist means that we must address the question. It has existed in other forms of law. Although you said this could happen, you did not suggest a specific change which would allow us to confiscate the father's Rolls Royce instead of the child's bed.

Mr. Gold: There was an amendment to the Criminal Code regarding the possession of stolen property offence, and even I did not pick up its importance at the time it went through. First of all it was changed to a possession of property obtained by crime offence, and then it was changed to a possession of property obtained directly or indirectly. That went right over my head. Those two words "or indirectly" I think are the two most invidious words that have been added to the Criminal Code and they are echoed in this legislation.

Mr. Wenman: What words would you put in their place?

Mr. Gold: "Or substantially derived from". There has to be some limit to show that you only want the property obtained by crime or maybe one or two steps removed. Do not allow an endless causal inquiry into the bank proceeds, which were then invested in Dome Petroleum, which he switched to Air Canada stock. He then bought a place here, which he donated to a charity over here. That charity bought a building over here, the government comes and takes the building. I mean—

[*Traduction*]

La Chambre des lords passait son temps à ordonner que soit restitué le bien parce qu'il avait servi à la perpétration d'une autre infraction et non pas à celle dont avait été convaincu l'intéressé. Le ciel n'est tombé sur la tête de personne, selon toutes les apparences. Je ne vois pas d'articles dans les revues juridiques pour critiquer ces mesures ou quoi que ce soit du genre. Ensuite, comme je l'ai dit, il y a deux ans, ils ont tout changé et j'en conclus qu'il existait peut-être un problème. Je crois qu'il serait bon d'aller faire un petit tour du côté de l'Angleterre pour se renseigner. Voilà les deux pays que je connais le mieux.

M. Thacker: Merci, monsieur le président. Je n'ai pas d'autres questions. Il me faut étudier la chose un peu plus à fond.

M. Wenman: Une des pratiques que vous avez décriées et qui peut sembler être une de ces absurdités de la loi existe quand même en pratique. En vertu de la Loi de l'impôt, un de mes commettants, un petit garçon de 11 ans, s'est vu confisquer 35$ qu'il avait en banque et que son grand-père lui avait donné à Noël pour s'acheter une bicyclette. C'est une histoire vraie. Le tout a été prouvé et démontré. Nous avons quand même réussi à récupérer l'argent.

Vous avez donc dit qu'il se pourrait qu'il revienne de l'école et trouve que son lit a disparu. J'aimerais bien croire que les policiers et agents mêlés à une telle histoire ne feraient jamais de telles choses; cependant, la possibilité existe bel et bien et il faut donc nous en occuper. Cela s'est déjà vu ailleurs avec d'autres lois. Même si vous avez sonné l'alarme, vous ne proposez pas de modifications précises qui nous permettraient de confisquer la Rolls Royce du père plutôt que le lit de l'enfant.

M. Gold: Il y avait un amendement au Code criminel concernant une infraction dans le cas de possession d'un bien volé et je dois avouer que je n'ai pas, moi-même, saisi toute l'importance de cette question à l'époque où ce fut adopté. Tout d'abord, on a changé cela en possession de bien obtenu par le biais d'une infraction criminelle et ce fut ensuite modifié de façon à ce qu'il s'agisse de possession d'un bien obtenu directement ou indirectement. Cela m'a complètement échappé. Ces deux mots «ou indirectement», à mon avis, sont les deux mots les plus odieux qu'on ait ajoutés au Code criminel et on les retrouve dans le présent projet de loi.

M. Wenman: Vous les remplaceriez par quoi?

M. Gold: «Ou provenant en grande partie». Il doit quand même y avoir une limite pour qu'on sache que vous ne vous attaquez qu'aux biens obtenus grâce au crime sans vouloir remonter jusqu'à Adam, que vous vous en tenez à un ou deux intermédiaires. Ne permettez pas qu'on puisse enquêter à l'infini sur les fonds bancaires qui ont ensuite été investis en actions de Dome Petroleum qui ensuite ont été échangées pour des actions d'Air Canada dont on s'est ensuite servi pour acheter un chalet ailleurs ou qui ont été remis comme don à une oeuvre de charité

[Text]

• 1215

Mr. Wenman: That would be an innocent third party, would it not?

Mr. Gold: Well, you run into the problem that innocent third party is in the eye of the beholder. Well, you knew the guy did not work. Yes, I knew he did not work. Well what did you think, he won a lottery? I did not really know.

Again, all the issues are interrelated, because to the extent that you make it easier to stain another person, you result in greater seizure. So that is why all the issues are interrelated.

I do not have any faith, by the way, in operational limitations. If the words are there and can be stretched to cover a case, my experience tells me that sooner or later they will be stretched to cover that case. You cannot rely on the self-restraint of the executing authorities. But that causal inquiry into property, that sort of thing . you have to cut it back to get hard-core property.

At least start off that way. It may be that experience never shows difficulties. If the problem can be dealt with by more limited legislation, why go for the wider net as the first step, until you are sure there is a problem that requires the heavier hammer? Surely legislative self-restraint is a reasonable principle, especially when you are entering into a new area.

I know the courts are going to have to deal with the constitutional validity of that, directly or indirectly, sooner or later, because people are just starting to realize the practical implication of those two words in the bill. It means all kinds of property is tainted that no one would have ever conceived of as being tainted.

I am sorry to go off the track a bit, but as you see, I have strong feelings about some of this.

Mr. Kaplan: I want to deal with the first and very interesting point you made about a need you suggested for a double criminality standard. It is something to reflect on. I think you are right about what you have said about the law, that this new procedure can be triggered to deal with the proceeds of an activity criminal in Canada but perfectly legal in another country. I am thinking some standard ought to be added, but I am wondering whether going to the standard of saying it has to be a crime in the other country might not be going too far, and whether there is not some intermediate ground.

Mr. Gold: But sir, if a person makes money by means that are not illegal in another country, just because they

[Translation]

ailleurs. Cette oeuvre de charité achète une bâtisse là-bas, le gouvernement arrive et la saisit. Après tout. . .

M. Wenman: Ce serait alors une tierce partie innocente, non?

M. Gold: Tout dépend de qui juge de son innocence, de cette tierce partie. Vous saviez bien que ce bonhomme n'avait pas de métier, qu'il ne travaillait pas. Oui, je savais qu'il n'avait pas d'emploi. Bon, alors, qu'est-ce que vous êtes allé croire, qu'il a gagné une loterie? Je ne sais pas moi.

Encore une fois, toutes ces questions sont reliées entre elles, parce que dans la mesure où il devient plus facile d'impliquer une autre personne, la confiscation n'en sera que plus importante. Voilà donc pourquoi toutes ces questions sont reliées entre elles.

En passant, je n'ai aucune confiance aux limites opérationnelles. Si les mots sont là et qu'on peut en étirer le sens suffisamment pour faire son affaire, d'après mon expérience, tôt ou tard, cela se fera. Vous ne pouvez pas compter sur la discrétion des exécutants. Mais cette enquête causale sur les biens, ce genre de trucs. . . il vous faut mettre le holà pour en revenir à la définition essentielle du bien.

A tout le moins, commencez ainsi. Peut-être que l'expérience nous apprendra autrement. Si on peut circonscrire le problème grâce à un libellé plus précis, pourquoi jeter tout de go un filet trop grand avant même de savoir qu'il vous faudra recourir à un plus gros marteau pour régler le problème? La sobriété législative est certes un principe raisonnable surtout lorsqu'il s'agit d'un nouveau domaine.

Je sais que les tribunaux devront statuer sur la validité constitutionnelle de tout cela, directement ou indirectement, tôt ou tard, parce que les gens commencent à peine à comprendre quelle sont les implications pratiques de ces deux mots dans ce projet de loi. Toutes sortes de biens dont on aurait jamais douté qu'ils seraient visés le seront.

Je suis désolé, je m'égare un peu, mais comme vous pouvez le voir, cette histoire me prend aux tripes.

M. Kaplan: Tout d'abord, cette question très intéressante, qui fut votre première, concernant cette norme que vous proposez à propos d'une double criminalité. C'est un pensez-y bien. Je crois que vous avez raison, c'est-à-dire qu'on peut se servir de cette nouvelle procédure pour viser les produits de ce qui peut-être une activité criminelle au Canada, mais qui serait tout à fait légale dans tout autre pays. Il faudrait peut-être préciser un peu, mais aller jusqu'à dire qu'il faudrait que ce soit aussi une activité criminelle ailleurs, ce ne serait peut-être pas aller trop loin et je me demande aussi s'il n'existe pas un juste milieu.

M. Gold: Mais monsieur, si quelqu'un fait de l'argent en ayant recours à des moyens qui ne sont pas illégaux

[*Texte*]

did not meet our standards, why should we have any interest in that whatsoever? If brothels are lawful in Bangkok and he made a fortune from brothels and wants to come over here, why should it even come within our legislation? I realize practically it may not have any effects, but why should our definition have to be that broad?

Mr. Kaplan: This is what I am getting at. You are saying he wants to come over here and you are raising what for me is a possible solution, because when you want to come as an immigrant to Canada—I am not talking about sending your fortune, but bringing your person to Canada—it is significant how you made your money. If you made it through legal but reprehensible means, maybe even in Bangkok. . . you say it is not a crime to run a brothel, but it still may not be an honourable way to make money, and it is relevant when you want to come to Canada as an immigrant that you might have made your money legally, but doing something that offends the moral standards of Canadians. I am looking, in other words—

Mr. Gold: How could you draw a line, though?

Mr. Kaplan: We do it in immigration. We say a person not only has to have a crime-free record but he or she has to be of moral character.

Mr. Gold: But in terms of a provision in the Criminal Code, surely there are only two categories: crimes and everything else. Your list of ECOs includes obscenity, bribery, government frauds, breach of trust, secret commissions, which is a sort of reflection of our way of doing things, but I hate to tell you is not necessarily the prevailing world view. To incorporate it into a definition of crime, I would. . . Well, if you understand that is what the bill says, it is up to you—

• 1220

Mr. Kaplan: Listen, it is up to us. This is our country, and if we decide we want to treat activity that is criminal in Canada as if it were criminal in the country we are talking about, that is up to us. You are not suggesting we cannot do it.

Mr. Gold: I can tell you the constitutional argument I will make, and it is in the Criminal Code, which says everyone is presumed innocent of a crime until he is proven guilty. I or some other lawyer will certainly argue that it violates the Charter to create this twilight zone of foreign act in Canadian crime. I agree that physically you can do it. Whether constitutionally you can do it, the Supreme Court will tell us. But I just wanted to make sure you understood this is what the legislation says, because most people think of this as applying to proceeds of crime, and yet it does not necessarily. It can apply to

[*Traduction*]

ailleurs, tout simplement parce que ce pays ne respecte pas nos normes, pourquoi cela devrait-il nous intéresser? Si c'est légal d'avoir un bordel à Bangkok et qu'il a fait fortune grâce au bordel et qu'il veut ensuite venir ici, pourquoi nos lois devraient-il le viser? Je sais bien qu'en pratique tout cela n'aura peut-être aucun effet, mais pourquoi notre définition devrait-elle être aussi large?

M. Kaplan: Voilà justement où je veux en venir. Vous dites qu'il veut venir chez nous et vous me proposez une solution possible, parce que lorsque quelqu'un veut immigrer au Canada, et il ne s'agit pas de quelqu'un qui veut venir y déposer sa fortune, mais bien de quelqu'un qui veut venir vivre ici, il est important de savoir d'où provient l'argent. Si l'immigrant potentiel a gagné son argent légalement, mais de façon répréhensible, peut-être même répréhensible à Bangkok. . . Vous dites que ce n'est pas un crime d'avoir un bordel là-bas, mais ce n'est quand même peut-être pas une façon honorable de gagner sa vie, et c'est important, si vous voulez venir au Canada en qualité d'immigrant, de savoir que vous avez fait votre argent grâce à un commerce légal, mais qui ne respecte quand même pas les normes de moralité de nos Canadiens. En d'autres termes, je cherche. . .

M. Gold: Mais où se trouve la limite, alors?

M. Kaplan: C'est une limite que l'on trace au ministère de l'Immigration. On y dit que non seulement la personne ne doit pas avoir de casier judiciaire, mais qu'elle doit être de bonnes mœurs.

M. Gold: Mais aux termes du Code criminel, il n'y a que deux catégories: les crimes et le reste. Dans votre liste d'ECO, vous avez tout, y compris l'obscénité, la corruption, la fraude envers le gouvernement, abus de confiance, commissions secrètes, qui en passant, est un reflet de la façon dont nous faisons les choses ici, mais je m'empresse d'ajouter qu'il n'en va pas nécessairement de même à travers le vaste monde. Dire de cela qu'il s'agit d'un crime. . . Enfin, si vous comprenez le sens du projet de loi, libres à vous. . .

M. Kaplan: Ecoutez, c'est à nous de décider. C'est notre pays et si nous décidons que ce qui constitue un acte criminel au Canada constitue aussi un acte criminel dans le pays dont il s'agit, c'est à nous de le décider. Vous n'essayez quand même pas de nous dire que nous ne pouvons pas faire cela.

M. Gold: Je puis vous prévenir de l'argument constitutionnel que je présenterai et qui se trouve dans le Code criminel lui-même et c'est que toute personne est présumée innocente jusqu'à preuve du contraire. Que cela vienne de moi ou d'un autre avocat, quelqu'un dira certainement que cela viole la Charte que de créer cette zone grise à propos d'un geste posé à l'étranger qui devient un crime au Canada. Je ne le nie pas, vous pouvez le faire. Que ce soit constitutionnellement acceptable ou non, la Cour suprême nous le dira. Je voulais tout simplement m'assurer que vous compreniez bien que c'est

[*Text*]

proceeds of innocent acts committed halfway around the world, but would have been a crime if committed in Canada. The person did not commit them in Canada, so he did not commit a crime. I just wanted to draw to your attention that this is what the legislation says.

Mr. Kaplan: I want to draw to yours that I am not as offended by it as you are, and I would like to hear if the government has some kind of halfway position or intermediate ground that will make the measure more legitimate.

Mr. Gold: Mr. Kaplan, do you really think the Canadian definition of obscenity should be legislated around the world? Obscenity is one of these offences. Do you really think our definition of obscenity should be the prevailing world view by which all book stores around the world will be judged?

Mr. Kaplan: We have done it in the case of war crimes. We have given our definition and we impose it on the world, but not in the sense that we are out to punish the world. We pose it to run our society when money comes flowing in here in a corrupt way, because there is some Canadian criminality required. Let us not forget that. You are talking about what the consequences are of Canadian criminality to some foreigner who is here, or who has become a landed immigrant or Canadian citizen and brought with him ill-gotten gains, if not by criminal activities, then by something else we find reprehensible.

I have trouble with the gambling thing. You see these bookie places in the States and Great Britain, and it is hard to think the people who run them should be treated as criminals in our country, or that those proceeds should be treated as criminal.

Mr. Gold: But Mr. Kaplan, that is the problem. Once you leave the bright line of crime and everything else, then everybody's view can prevail. You have a thing about one thing, somebody else has a thing about something else. That is why the bright line has to be maintained at criminal activity in that country.

Mr. Kaplan: You have raised a good question outside of the answer.

Mr. Gold: Those are my respectful submissions.

The Chairman: Mr. Gold, you are suggesting we fine-tune the legislation, and that is exactly the purpose of this committee. On behalf of my colleagues, I thank you for your input to help us fine-tune the legislation.

[*Translation*]

bien là ce que dit la loi car la plupart des gens croient que le texte de loi s'applique aux produits de la criminalité tandis que ce n'est pas nécessairement le cas. Cela peut s'appliquer aux produits de gestes innocents posés aux antipodes, mais qui auraient été un crime s'ils avaient été commis au Canada. La personne, n'ayant pas posé ces gestes au Canada, n'a commis aucun crime. Je voulais tout simplement attirer votre attention sur ce fait et sur ce que dit le texte de loi.

M. Kaplan: J'aimerais souligner que ce texte ne m'indispose pas autant que vous et j'aimerais bien savoir si le gouvernement n'a pas quelque juste milieu à nous proposer qui rendrait la chose plus légitime.

M. Gold: Monsieur Kaplan, croyez-vous vraiment que dans tous les textes de loi du monde on devrait retrouver la définition canadienne de l'obscénité? Or, l'obscénité se trouve sur cette liste d'infractions. Croyez-vous vraiment que notre définition de l'obscénité devrait constituer la norme mondiale, l'étalon en vertu duquel toutes les librairies du monde seront jugées?

M. Kaplan: Nous l'avons fait dans le cas des crimes de guerre. Nous avons donné notre définition et nous l'avons imposée au monde entier, mais pas parce que nous voulons punir le monde entier. Nous avons posé cette définition afin de réglementer notre société lorsque l'argent qui nous arrive ici à flots a été gagné ailleurs grâce à la corruption parce qu'il y a une certaine criminalité canadienne impliquée. Ne l'oublions pas. Vous discourez ici des conséquences d'une criminalité canadienne pour un étranger qui se trouve ici ou qui est devenu immigrant reçu ou citoyen canadien en amenant avec lui de l'argent qu'il a gagné, sinon grâce à une activité criminelle, au moins grâce à une activité que nous trouvons par ailleurs répréhensible.

Cette histoire de gageure ou de *book making* me pose un certain problème. Ces maisons de pari ont légalement pignon sur rue aux États-Unis et en Grande-Bretagne et il est difficile de croire que leurs propriétaires seraient traités comme criminels au Canada ou que les produits de ces activités seraient perçus comme étant des produits de la criminalité.

M. Gold: Monsieur Kaplan, voilà exactement le problème. L'acte répréhensible de l'un devient le crime de l'autre et vice versa. La définition est trop générale, chacun l'interprète à sa façon. C'est pour cela qu'il faut jeter un bon éclairage sur ce qui est réputé être activité criminelle dans tel ou tel pays par opposition à un autre.

M. Kaplan: Vous avez posé une bonne question à côté de la réponse.

M. Gold: Voilà ce que je voulais respectueusement vous soumettre.

Le président: Monsieur Gold, vous voudriez que l'on affine le texte de loi et c'est exactement l'objectif de notre Comité. Au nom de mes collègues, je tiens à vous remercier pour vos interventions qui nous aideront justement à le faire.

[*Texte*]

Mr. Gold: I would like to thank you for the opportunity to be here today. Thank you very much.

The Chairman: Colleagues, the committee will recess now, but we will reconvene at 3.30 p.m. in Room 307 in the West Block.

AFTERNOON SITTING

• 1539

The Chairman: Order, please. We have a quorum to hear witnesses. I understand that one opposition member will be here shortly. When we recessed at 12.30 p.m. today our intentions were to continue at 3.30 p.m. I think all members were aware of that, so we will continue.

I would like to welcome, as our witnesses this afternoon, Louise Dulude and her colleague, Jennifer Stephen, from the National Action Committee on the Status of Women.

I assume one of you wishes to make an opening comment and then we will have time for questions and answers. We will probably go until about 4.20 p.m., so we have a good 40 minutes.

• 1540

Ms Louise Dulude (National Action Committee on the Status of Women): As you probably know, the National Action Committee on the Status of Women is the largest women's organization in Canada. We now have 575 member organizations that have more than three million individual members. We are concerned with all aspects of women's life and we represent women from all walks of life. We are demonstrating this today by coming to defend the interests of women who are among the most disadvantaged in our society; that is, prostitutes.

We have with us a member of the NAC Prostitution Committee, Jennifer Stephen, who has participated in the preparation of this brief and will present it.

The Chairman: Ms Stephen, welcome to the committee.

Ms Jennifer Stephen (Prostitution Committee, National Action Committee on the Status of Women): Thank you.

Bill C-61, An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, seeks in particular to introduce a new offence of criminal enterprise. Enterprise crime is defined as encompassing the following: bribery, fraud, breach of trust, gambling, crimes against the person, extortion, forgery, counterfeiting and laundering the proceeds of crime. In effect, enterprise crime is defined within a continuum

[*Traduction*]

M. Gold: Je vous remercie de m'avoir donné l'occasion de venir ici aujourd'hui. Merci beaucoup.

Le président: Chers collègues, le Comité suspend ses travaux mais nous les reprendrons à 15h30 en salle 307 de l'Édifice de l'Ouest.

SÉANCE DE L'APRÈS-MIDI

Le président: La séance est ouverte. Nous avons le quorum pour entendre des témoins. Je crois savoir qu'un député de l'Opposition sera ici bientôt. Lorsque nous avons levé notre séance aujourd'hui à 12h30, nous avions l'intention de poursuivre à 15h30. Je pense que tous les membres du Comité le savent et nous allons donc continuer nos travaux.

Je voudrais souhaiter la bienvenue à nos témoins de cet après-midi, Louise Dulude et sa collègue, Jennifer Stephen, du Comité canadien d'action sur le statut de la femme.

Vous souhaitez sans doute faire quelques observations préliminaires, puis nous aurons du temps pour des questions et réponses. Nous irons probablement jusqu'à 16h20, de sorte que vous disposez d'une quarantaine de minutes.

Mme Louise Dulude (Comité canadien d'action sur le statut de la femme): Comme vous le savez probablement, le Comité canadien d'action sur le statut de la femme est la plus vaste organisation de femmes au Canada. Nous regroupons maintenant 575 organismes membres qui représentent plus de trois millions de participantes. Tous les aspects de la vie des femmes nous préoccupent et nous représentons des femmes aux métiers les plus divers. C'est ce que nous prouvons aujourd'hui en venant défendre les intérêts de celles qui sont parmi les plus désavantagées de notre société, les prostituées.

Nous avons avec nous un membre du Comité du CCA sur la prostitution, Jennifer Stephen, qui a participé à la rédaction de ce mémoire et qui va le présenter.

Le président: Madame Stephen, je vous souhaite la bienvenue au Comité.

Mme Jennifer Stephen (Comité de la prostitution, Comité canadien d'action sur le statut de la femme): Merci.

Le projet de loi C-61, Loi modifiant le Code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants, essaie en particulier de créer une nouvelle infraction de criminalité organisée. Cette dernière est définie comme englobant ce qui suit: la corruption, la fraude, l'abus de confiance, les jeux d'argent, les actes criminels contre la personne, l'extorsion, les faux, la mise en circulation de monnaie contrefaite et le recyclage des produits de la

[*Text*]

extending through crimes that garner profit against the threat to property and/or the person.

There are those who might welcome this amendment to the acts in question as they pertain to crimes against the person and, of course, against property. It is, however, somewhat irregular to find within this framework reference to section 193—keeping a common bawdy-house—and section 195—procuring—of the Criminal Code of Canada.

It is our view that neither of the above-named sections belong within the definition of enterprise crime as that definition applies to a threat to the person or to property. Surely procuring and keeping a common bawdy-house do not belong within the same category as frauds upon the government, uttering forged documents or fraudulent manipulation of stock exchange transactions. Prostitution is not a crime. However, all activities related to the practice of prostitution have been heavily criminalized.

NAC's opposition to Bill C-49, now section 195.1 of the Criminal Code, has been well documented. Perhaps less well known is that NAC also advocates repeal of sections 193 and 195 of the Criminal Code. It is our view that these prostitution-related offences must be removed from the Criminal Code. It is, therefore, entirely consistent with this position that the National Action Committee on the Status of Women believes section 193 and section 195 should also be struck from Bill C-61.

Section 193 defines a common bawdy-house as a place that is (a) kept or occupied, or (b) resorted to by one or more persons for the purposes of prostitution or the practice of acts of indecency. Bawdy house legislation encompasses anyone who keeps, is an inmate of, is found in, or is an owner, landlord, tenant, etc., of such a place. This means that women who work in prostitution and who choose to work independently from their own homes are liable to charge. This also means that virtually any indoor place of business may be caught within the scope of that definition.

As you may be aware, the Fraser Committee Report on Prostitution and Pornography recommended in its report to Parliament that prostitutes be permitted to work in groups of not more than two from their place of residence or:

> a prostitution establishment licensed and operated in accordance with a regulatory scheme established by a provincial or territorial legislature in that jurisdiction.

That is recommendation number 61.(3) in the Fraser report on prostitution.

It is clear that the logic of this recommendation has to date been overlooked. It is also evident that Bill C-61 will further entrench the control exerted by section 193. Women in prostitution are forced into the streets where

[*Translation*]

criminalité. En fait, l'infraction de criminalité organisée est définie comme recouvrant tous les actes criminels qui permettent d'accumuler des profits découlant de menaces contre les biens ou la personne.

Certains pourraient se réjouir des modifications apportées aux lois en question, puisqu'elles concernent des actes criminels contre la personne et, bien sûr, contre la propriété. On peut cependant s'étonner de trouver dans cette disposition la mention des articles 193 et 195 du Code criminel du Canada traitant respectivement de la tenue d'une maison de débauche et du proxénétisme.

Nous estimons qu'aucun des articles susmentionnés ne relève de la définition de «criminalité organisée», cette dernière s'appliquant à une menace à la personne ou aux biens. De toute évidence, le proxénétisme et la tenue d'une maison de débauche ne devraient pas se trouver dans la même catégorie que des fraudes envers le gouvernement, l'emploi d'un document contrefait ou les manipulations frauduleuses d'opérations boursières. La prostitution n'est pas un crime. Cependant, toutes les activités associées à sa pratique ont été fortement criminalisées.

L'opposition du CCA au projet de loi C-49, maintenant article 195.1 du Code criminel, a été bien documentée. On sait peut-être moins bien que le CCA recommande aussi une abrogation des articles 193 et 195 du Code criminel, d'où devraient être retirées, selon nous, ces infractions concernant la prostitution. Il est donc tout à fait logique que le Comité canadien d'action sur le statut de la femme estime qu'il faudrait aussi retirer du projet de loi C-61 les articles 193 et 195.

L'article 193 définit une maison de débauche comme un lieu tenu ou occupé ou utilisé par une ou plus d'une personne, à des fins de prostitution ou pour se livrer à des actes d'indécence. La législation sur les maisons de débauche vise quiconque est tenancier d'un tel endroit, y réside, s'y trouve ou en est le propriétaire ou le locataire, etc. Cela signifie que des femmes qui se livrent à la prostitution et qui décident de travailler ailleurs que chez elles risquent d'être condamnées. Cela signifie aussi que pratiquement tout lieu de travail à l'intérieur peut tomber sous le coup de cette définition.

Comme vous le savez peut-être, dans son Rapport sur la prostitution et la pornographie, le Comité Fraser recommandait au Parlement que des prostituées soient autorisées à travailler en groupe d'au plus deux personnes à leur lieu de résidence, ou:

> dans un établissement de prostitution qui a obtenu un permis et qui est géré conformément à la réglementation fixée par l'Assemblée législative de la province ou du territoire.

Il s'agit de la recommandation 61.(3) du Rapport Fraser sur la prostitution.

Il est évident que jusqu'à présent, on a méconnu la raison d'être de cette recommandation. Il est évident aussi que le projet de loi C-61 ne fera que confirmer davantage le contrôle exercé par l'article 193. Les femmes qui se

[*Texte*]

prostitution is liable to attract even greater attention, bringing even greater harassment upon women working in prostitution, particularly from neighbourhood residents' groups. In this scenario there is an increased focus upon the public nuisance aspects that may be associated with prostitution. In the city of Toronto in particular, prostitution is being conducted in residential districts. It has been forced there, in particular because of section 193.

• 1545

Working indoors is not a matter of "out of sight, out of mind", rather, women working in prostitution prefer to work indoors and are prevented from doing so by this law.

The inclusion of section 193 within the scope of enterprise crime, as defined in Bill C-61, contains an even greater threat to the livelihood and security of women who work in prostitution. The woman who chooses to work from her own home is put at risk, not only under the charge of keeping a common bawdy house but she is also put at risk by the provisions of proposed sections 420.12 and 420.15 of Bill C-61. These proposed sections permit the seizure and/or freezing of assets and property for a period of six months, whether or not a conviction has been or is ultimately to be obtained. Surely this provision constitutes a profound violation of our civil rights. Furthermore, proposed subsection 420.12(1) contains the clause "and any other property", that is, property that may be linked to the profits of criminal enterprise. It is left to the discretion of the law enforcement official to determine which property is which.

Should a woman working in prostitution choose to work from her own residence on an in-call basis, and should she own that home under mortgage, one can easily foresee a situation in which her house and its entire contents, save perhaps a few articles of clothing, would be seized. That means that she will not only lose her house or her home for a period of six months, but she could easily lose the house by default even if she were to be acquitted of the original charge under section 193.

Section 195 sets out the offences of procuring and living on the avails of prostitution. The distinct statutes of living on the avails and purchasing the sexual services of a person under the age of 18 are not within the purview of this brief.

Subsection 195.(2) provides that:

> Evidence that a person lives with or is habitually in the company of prostitutes, or lives in a common bawdy house or a house of assignation is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution.

[*Traduction*]

prostituent sont donc forcées de travailler dans les rues où la prostitution peut susciter une attention encore plus grande, et aboutir même à un plus grand harcèlement de ces femmes, particulièrement de la part de groupes de résidents du quartier. Dans ce scénario, la nuisance publique qui peut être associée à la prostitution se trouve accentuée. A Toronto en particulier, la prostitution se pratique dans les quartiers résidentiels. C'est par la force des choses ou plutôt de l'article 193.

Les prostituées préfèrent travailler chez elles—pas pour se cacher—et cette loi les en empêche.

L'inclusion de l'article 193 à la définition d'infraction de criminalité organisée, dans le projet de loi C-61, présente une menace encore plus grande à la vie et à la sécurité des femmes qui travaillent dans la prostitution. Celle qui préfère travailler chez elle court des risques, pas uniquement celui d'être accusée de tenir une maison de débauche, mais aussi de tomber sous le coup des articles 420.12 et 420.15 proposés au projet de loi C-61. Ces dispositions autorisent la saisie ou le blocage des éléments d'actif et des biens pendant six mois, qu'il y ait ou non inculpation. Cette disposition représente de toute évidence une violation grave de nos droits civils. En outre, le paragraphe 420.12(1) proposé fait mention de «tout autre bien», c'est-à-dire des biens qui peuvent être associés aux profits découlant de la criminalité organisée. C'est aux agents d'application de la loi qu'est laissé le soin de déterminer quel bien tombe sous le coup de ces dispositions.

Si une femme qui se livre à la prostitution décide de travailler dans sa propre résidence en réponse à des appels qu'elle y reçoit, et qu'elle est propriétaire de sa maison, cette dernière étant hypothéquée, il est facile de prévoir une situation dans laquelle sa maison et tout son contenu, sauf peut-être quelques articles d'habillement, pourraient être saisis. Cela signifie qu'elle pourra non seulement perdre son foyer pendant six mois mais qu'elle risque facilement aussi de perdre sa maison puisqu'elle aurait manqué à ses obligations financières, même si elle devait être acquittée de l'inculpation initiale aux termes de l'article 193.

L'article 195 fait mention des infractions de proxénétisme. Ce mémoire ne traite pas de la situation différente de ceux qui vivent du produit de la prostitution des moins de 18 ans et qui achètent leurs services sexuels.

Le paragraphe 195.(2) stipule:

> La preuve qu'une personne vit ou se trouve habituellement en compagnie de prostitués ou vit dans une maison de débauche ou une maison de rendez-vous, constitue, en l'absence de preuve contraire, une preuve qu'elle vit des produits de la prostitution.

[Text]

NAC opposes legislation that dictates whom adults working in prostitution may live with, associate with and financially support, or which places legal judgment on women's personal relationships. The inclusion of this proposed section within Bill C-61 puts the financial basis and livelihood of adult women who earn their living through prostitution at risk, at the same time as it effectively jeopardizes the financial security of any relationship between herself and any dependants she might have. Further, this assumes that anyone who is habitually in the company of a woman who works in prostitution is so for the purposes of criminal profit and is additionally subject to criminal sanction under the further definition of enterprise crime.

The purpose of Bill C-61 is, we assume, to take the profit out of crime. We must, therefore, question who is assumed to be profiting from the business of prostitution. The National Action Committee does not accept the exaggerated link between prostitution and organized crime. This link is very deeply embedded within our cultural mythology. NAC agrees with and accepts the finding of the Fraser committee that the majority of women who work in prostitution in Canada, on a full- or part-time basis, do so independently. This finding is also upheld by the numerous independent studies into the question and by prostitutes' rights organizations such as NAC member group, the Canadian Organization for the Rights of Prostitutes.

Since NAC, in agreement with the findings of the Fraser committee, knows of no evidence to substantiate this alleged link, and since the majority of women who work in prostitution do so on an individual basis and earn, at most, only enough to support themselves and their dependants, we do not accept the view that prostitution is such a vastly profitable enterprise.

Again, NAC opposes the inclusion of either section 193 or section 195 in Bill C-61 and/or in the Criminal Code of Canada.

• 1550

Finally, we must question the priorities of law enforcement itself since it is these priorities that lie at the very root of the matter at hand. In Canada there has been a protracted debate over the question of whether prostitution-related activities belong in the Criminal Code and, if so, which activities ought to be subject to criminal sanction.

There is a threshold test which may be applied to what people generally feel constitutes a criminal action and what activity does not. This threshold test is based upon the harm associated with the activity in question. We accept that the harm constituted by a threat to property and to the person would survive the threshold test of ambivalence toward whether an activity should be criminalized or not. It is this threshold that separates an activity such as prostitution from direct victim crime.

[Translation]

Le CCA s'oppose à une loi imposant à des adultes travaillant dans la prostitution avec qui elles peuvent vivre, s'associer ou qu'elles peuvent aider financièrement, ou qui portent un jugement sur les relations personnelles des femmes. L'inclusion de l'article proposé au projet de loi C-61 compromet la capacité financière et les moyens d'existence de femmes adultes qui gagnent leur vie en se prostituant, de même que la sécurité financière de leurs relations avec les personnes à leur charge. En outre, en vertu de cette disposition, quiconque se trouve habituellement en compagnie d'une femme qui travaille dans la prostitution le fait pour obtenir des profits illicites, de sorte qu'il peut être aussi incriminé en vertu de la définition plus complète de «criminalité organisée».

Il nous semble que l'objet du projet de loi C-61 est de supprimer le profit de la criminalité. Par conséquent, nous devons chercher à savoir qui est censé profiter de la prostitution. Le Comité canadien d'action n'accepte pas le lien exagéré entre cette dernière et la criminalité organisée. Ce lien est très solidement ancré dans notre mythologie culturelle. Le CCA appuie les conclusions du Comité Fraser selon lesquelles la majorité des femmes qui se livrent à la prostitution au Canada, à plein temps ou à temps partiel, le font de façon indépendante. C'est ce qu'indiquent aussi de nombreuses études indépendantes sur la question ainsi que des organisations de défense des droits des prostitués, comme le groupe membre du CCA, la Canadian Organization for the Rights of Prostitutes.

Étant donné qu'en accord avec les conclusions du Comité Fraser, le CCA ne connaît aucune preuve pour étayer ce lien présumé, et étant donné que la majorité des femmes qui travaillent dans la prostitution le font individuellement pour gagner au plus suffisamment d'argent pour subvenir à leurs besoins et aux besoins des personnes à leur charge, nous rejetons l'opinion selon laquelle la prostitution constitue une activité extrêmement rentable.

Encore une fois, le CCA s'oppose à l'inclusion des articles 193 ou 195 au projet de loi C-61 de même que dans le Code criminel du Canada.

Finalement, nous devons mettre en question les priorités de l'application de la Loi qui se trouvent à l'origine même de tout ce problème. Au Canada, on débat depuis longtemps la question de savoir si les activités associées à la prostitution relèvent du Code criminel, et dans ce cas, lesquelles devraient être assujetties à des sanctions pénales.

Un critère minimal peut s'appliquer pour différencier un acte criminel d'une activité qui ne l'est pas. Ce critère est fondé sur le préjudice associé à l'activité en question. Nous estimons que le préjudice que constitue une menace envers les biens et la personne résisterait au critère minimal d'ambivalence à savoir si une activité devrait être criminalisée ou non. C'est ce seuil qui sépare une activité comme la prostitution d'un acte criminel impliquant directement des victimes.

[*Texte*]

The practice of prostitution by individual women is not a direct victim crime. It does not bring harm to others and therefore does not survive the threshold test. Therefore, NAC supports the removal of section 193 and section 195 from the Criminal Code and from Bill C-61.

Women who choose to work indoors or in escort services, where conditions of work are safe and reasonable, are forced into the street by the provisions of section 193 of the Criminal Code. The personal lives of women who work in prostitution are heavily criminalized by the provisions of section 195 of the Criminal Code and, we must remember, women who work in prostitution are for the most part among the most economically deprived members of this society.

For these reasons we believe that Bill C-61 reflects a misdirected view that prostitution-related offences are enterprise crimes which reap profit. Bill C-61 loses track of the distinction between third parties who may engage in organized, integrated criminal activity for profit through the manipulation, extortion and deception of others, on the one hand, and those who themselves engage in prostitution as a means of supporting themselves and their dependants on the other hand.

Whatever the merits of Bill C-61, NAC strongly opposes the inclusion of section 193 and section 195 of the Criminal Code within the definition of enterprise crime set out in Bill C-61. It is our view that the inclusion of these sections will hit hardest against those who are already rendered vulnerable: individual women who work in prostitution on an individual basis. As NAC has stated elsewhere, the attack against women working in prostitution is unjustifiable and excessive. This latest proposal will only serve to deepen the exploitive conditions under which women work on an individual basis in prostitution.

The Chairman: Thank you, Ms Stephen. We will go to questions now. I am prepared to start with a government member, if either one of you wishes to go first.

Mr. Thacker: The tradition is to start on the opposition side, Mr. Chairman.

The Chairman: Right. I came a bit late this morning and this afternoon, so I was going to give the benefit to the government, but if they wish to let you go first then go ahead.

Mr. Robinson: Thank you, Mr. Chairman. I would like to welcome the witnesses before the committee. This is of course not the first appearance of NAC before Parliament. They have certainly appeared on a whole range of issues that have been of great assistance to parliamentarians in committee on a number of issues.

I just want to get clarification with respect to the position you are taking on this particular bill. I take it

[*Traduction*]

Or, ce n'est pas ce qu'implique l'exercice de la prostitution par des femmes à titre individuel. Cette activité ne porte pas préjudice à autrui et elle ne peut donc pas être visée par le critère minimal. Par conséquent, le CCA appuie la suppression des articles 193 et 195 du Code criminel et du projet de loi C-61.

Les femmes qui préfèrent se livrer à la prostitution chez elles ou dans des services d'escorte où les conditions de travail sont sûres et raisonnables sont forcées de faire le trottoir en raison des dispositions de l'article 193 du Code criminel. La vie personnelle des femmes qui se livrent à la prostitution est fortement criminalisée en raison des dispositions de l'article 195 du Code criminel, et il ne faut pas oublier que ces prostituées sont pour la plupart parmi les membres les moins nantis de la société.

Pour ces raisons, nous pensons que le projet de loi C-61 exprime le point de vue erroné selon lequel les infractions en rapport avec la prostitution relèvent de la criminalité organisée qui permet d'accumuler des profits. Le projet de loi C-61 n'établit pas de distinction entre des tierces parties qui peuvent se livrer à des activités criminelles organisées et intégrées aux fins de profits, au moyen de manipulation, d'extorsion et de duperie d'autrui, d'une part, et de l'autre, celles qui se livrent à la prostitution pour subvenir à leurs besoins et à ceux des personnes à leur charge.

Quels que puissent être les points forts du projet de loi C-61, le CCA s'oppose catégoriquement à l'inclusion des articles 193 et 195 du Code criminel dans la définition de la «criminalité organisée» énoncée dans cette législation. Nous estimons que les articles susmentionnés viseront surtout celles qui sont déjà vulnérables, les femmes qui se livrent à la prostitution sur une base individuelle. Et comme l'a dit d'ailleurs le CCA, s'en prendre aux femmes qui travaillent dans la prostitution ne se justifie pas tout en étant excessif. Cette toute dernière proposition ne pourra que renforcer les conditions d'exploitation dans lesquelles travaillent celles qui se livrent à la prostitution sur une base individuelle.

Le président: Merci, madame Stephen. Nous allons passer maintenant aux questions. Je suis disposé à commencer par un député du gouvernement, si l'un d'entre vous souhaite commencer.

M. Thacker: La tradition est de commencer par l'Opposition, monsieur le président.

Le président: Très bien. Je suis arrivé un peu tard ce matin et cet après-midi et j'allais donc accorder l'avantage au gouvernement, mais s'il souhaite vous laisser commencer d'abord, allez-y.

M. Robinson: Merci, monsieur le président. Je voudrais souhaiter la bienvenue à nos témoins. Ce n'est naturellement pas la première fois que le CCA comparaît devant le Parlement. Il a bien sûr témoigné sur toutes sortes de questions, ce qui a fort aidé les parlementaires et leurs travaux en comité.

Je voudrais obtenir une précision quant à la position que vous avez adoptée sur ce projet de loi. Il me semble

[*Text*]

that you are focusing solely on this issue, the issue of the implications of the inclusion of sections 193 and 195 of the Criminal Code in the definition of enterprise crime offence, and you are not suggesting that in any way the thrust of the legislation itself is inappropriate in its focus on organized crime. You are simply saying that these offences should not be included in the definition. Would that be an accurate assesssment?

• 1555

Ms Dulude: That is right. From the discussions we have had and looking more at the bill itself, if we considered women as criminals, we might have other objections to the kinds of disregard for civil liberties that might be found in the bill. But this is not something our committee has looked at, and we do not have a position on it, other than the two proposed sections we want to have removed.

Mr. Robinson: I know this is an issue that has occupied some time in the halls of debate of NAC within the last four or five years, and I must say I commend NAC for dealing with this issue in a thoughtful and important way.

The concern I have is that in a bill that purports to be focusing on organized crime and serious drug offences and the involvement of organized crime in drug offences, we find the inclusion of these offences, which really, of course, do not . . . there is no evidence to involve organized crime, and as you pointed out in your brief, the potential for real abuse and a greater degree of violence directed at prostitutes is very real if the bill is adopted.

So I want to make my position very clear. I have made it clear in the course of earlier hearings with the Canadian Bar Association and this morning with the Criminal Lawyers Association. I believe these proposed sections of the bill should be removed. Certainly I think you have made a powerful and compelling argument as to why that is the case.

Perhaps you could just elaborate on the point you have made in your brief about prostitutes who are working out of their own homes. Of course under Bill C-49 the prostitutes were theoretically swept off the streets, although we know, judging from the complaints of many neighbourhoods and so on, the bill was a miserable failure in achieving its alleged objective. There has been more violence directed at prostitutes, there have been more charges, but it certainly has not cleaned the streets, as its drafters suggested it would. So if we have Bill C-49, which is supposedly driving prostitutes off the streets, and we have bawdy-house laws that say prostitutes cannot operate out of their own homes, where are prostitutes supposed to operate?

Ms Stephen: I suppose that is an excellent question, which I think we have dealt with at NAC to considerable extent. I know you will be hearing from the Canadian

[*Translation*]

que vous n'insistez que sur cette question, celle des implications de l'inclusion des articles 193 et 195 du Code criminel dans la définition d'infraction de criminalité organisée et que votre intention n'est pas du tout de déplorer que cette loi mette l'accent sur la criminalité organisée. Vous dites simplement que ces infractions ne devraient pas être incluses dans la définition. Est-ce bien cela?

Mme Dulude: C'est exact. D'après nos discussions et un examen plus approfondi du projet de loi, si nous considérions les femmes comme des criminelles, nous pourrions avoir d'autres objections quant au mépris des libertés civiles que l'on pourrait trouver dans cette législation. Mais notre comité ne s'est pas penché là-dessus et notre position se limite à demander la suppression des deux articles proposés.

M. Robinson: Je sais que le CCA discute de cette question depuis quatre ou cinq ans, et je dois dire que je félicite votre comité qui s'en est saisi de façon extrêmement sérieuse.

Ce qui me préoccupe ici c'est que ce projet de loi se propose de porter essentiellement sur la criminalité organisée, sur de graves infractions associées aux drogues, y compris la participation de la criminalité organisée, alors que nous trouvons l'inclusion de ces infractions, qui naturellement, ne sont pas . . . rien ne prouve la participation de la criminalité organisée, et comme vous l'avez dit dans votre mémoire, la possibilité d'abus et de plus grande violence contre les prostituées est très réelle si le projet de loi est adopté.

Je voudrais donc que ma position soit très claire. Je l'ai présentée sans détours lors d'audiences précédentes où comparaissait l'Association du barreau canadien, et ce matin à la Criminal Lawyers Association. J'estime qu'il faudrait supprimer les articles proposés du projet de loi. Vous avez dit de façon très convaincante pourquoi il faudrait le faire.

Vous pourriez peut-être nous parler un peu plus de ce que vous nous avez dit dans votre mémoire au sujet des prostituées qui travaillent hors de chez elle. Naturellement, en théorie, le projet de loi C-49 retirait les prostituées de la rue bien que nous sachions, d'après les plaintes des résidents de nombreux quartiers, que le projet de loi a échoué lamentablement à atteindre son objectif présumé. Les prostituées ont subi plus de violence, il y a eu davantage d'inculpations mais les rues n'en ont pas été épurées, comme le suggéraient les rédacteurs de cette législation. Si nous avons d'une part le C-49 qui est censé retirer les prostituées de la rue et de l'autre des lois sur les maisons de débauche disant qu'elles ne peuvent pas se livrer chez elles à la prostitution, où sont-elles censées travailler?

Mme Stephen: Votre question est excellente, et le CCA s'y est beaucoup attardé. Je sais que nous allons entendre tout à l'heure la Canadian Organization for the Rights of

[*Texte*]

Organization for the Rights of Prostitutes in a short while, and I am sure they would be happy to field that question as well.

It would appear we are back to the original position, the original problem, that prostitution is not a crime in this country, yet there is nowhere prostitution can be practised. The suggestion that came out of the Fraser committee report, which I cited to you in the brief, does appear to take a logical and reasoned approach. You do not want prostitution in the streets, because of the various nuisance aspects that may be associated with it, and certainly the women who engage in prostitution do not want to be on the streets either. The preference of all of us, I suppose, where prostitution is engaged in as a means of survival, would be to permit women to work in their own homes, where they have greater control over the activity itself, where they can screen the calls, where they can keep track of who is coming and who is going, and where they can essentially maintain control in what would be a safe and reasonable work environment. However, given the current legislative scheme, as you have pointed out, prostitutes cannot work in the streets and they cannot work in their own homes.

So I would just have to put the question back to you. Where are prostitutes intended to work?

Ms Dulude: It is obvious to us when we look at the way legislators are treating prostitution that there is a great deal of hypocrisy. Politicians do not want to make prostitution illegal, for their own reasons, but they manage it so there will be maximum harassment of prostitutes.

• 1600

All the provisions we find in the Criminal Code are specifically designed to harass prostitutes. In fact, they give the police enormous powers over prostitutes. They push prostitutes into the arms of pimps to a greater degree than they would otherwise. There would probably not be pimps at all if it were not for the law. This is what we are here to try to prevent—escalation of this harassment against women whose jobs exists only because there are men who want them as clients.

Mr. Robinson: Presumably your concern would be that if this legislation were adopted, there would be an even greater risk of operating out of one's home as a prostitute and a greater likelihood of the possibility of violence, since on out-calls of course you are taking a greater risk. If you are going to someone else's home, or a hotel room, or if you are back on the street, you are not in control of your environment. There is a greater risk of violence in those circumstances.

Ms Dulude: There is a very intimate control over the kinds of relationships they can have. Under the present law they can arrest the people these women are living with, and now they can seize their homes. It is a catch-22

[*Traduction*]

Prostitutes, et je suis sûre que ses porte-parole seront heureuses de poser aussi cette question.

Il semble que nous revenions au problème initial. La prostitution n'est pas un crime au Canada or on ne peut la pratiquer nulle part. Dans le rapport du Comité Fraser que je vous ai cité dans le mémoire, on présente une approche logique et raisonnable. On ne veut pas de prostitution dans les rues à cause des nombreux aspects de nuisance qui peuvent y être associés et les femmes qui se livrent à cette activité ne veulent pas non plus de cette solution. La préférence de nous toutes, lorsque la prostitution se fait comme moyen de survie, serait de permettre aux femmes de travailler chez elles où elles peuvent exercer un plus grand contrôle de cette activité, où elles peuvent trier les appels, vérifier qui vient et qui part, et où elles peuvent essentiellement exercer un contrôle d'un milieu de travail qui serait sûr et raisonnable. Cependant, étant donné les dispositifs législatifs actuels, comme vous l'avez dit, les prostituées ne peuvent pas travailler dans la rue pas plus qu'elles ne peuvent travailler chez elles.

Je voudrais donc vous renvoyer la balle. Où les prostituées sont-elles censées travailler?

Mme Dulude: Il nous paraît évident, si l'on considère la façon dont les législateurs traitent la prostitution, qu'il y a là énormément d'hypocrisie. Pour leurs propres raisons, les politiciens ne veulent pas faire de la prostitution une activité illégale, mais pour leurs propres raisons ils s'arrangent pour que les prostituées subissent le plus de harcèlement possible.

Toutes les dispositions qui figurent au Code criminel visent spécifiquement à harceler les prostituées et donnent en fait à la police un pouvoir considérable sur elles. Sans ces dispositions, les prostituées n'auraient pas tellement besoin de proxénètes, et n'était la loi, ces derniers n'auraient probablement aucune raison d'être. Si nous comparaissons, c'est pour empêcher l'exacerbation des tracasseries infligées à des femmes qui ne trouvent à s'employer que parce que les hommes recherchent leurs services.

M. Robinson: Vous craignez donc que, si cette loi était adoptée, les prostituées courent un danger encore plus grand à travailler à domicile, elles auraient encore plus à redouter la violence, car il est plus dangereux, dans ce métier, de s'aventurer hors de chez soi. Quand on se rend au domicile d'un autre, ou dans une chambre d'hôtel, ou quand on fait le trottoir, on est livré à la merci des autres et donc beaucoup plus en danger.

Mme Dulude: Il existe un contrôle très serré du genre de relation que les prostituées peuvent avoir. Avec la loi actuelle, on peut arrêter les gens avec lesquels ces femmes vivent et on peut maintenant saisir leur domicile. C'est un

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situation, and this would just increase the pressure and the intolerableness of the situation, while not offering these women any escape, because of course there are not a whole lot of good jobs available out there for these women to take.

Mr. Robinson: Just one final question with respect to the link between prostitution and organized crime. You deal with that in your brief and you suggest that this link has not been established. Have you in fact done studies or examined studies? Have you been made aware of anything that does suggest a link? Have you had discussions, for example, with police forces in major metropolitan areas to determine whether they have any evidence to support the suggestion of a link between organized crime and prostitution?

I think the Fraser committee looked at this, and after speaking with the police they reached the conclusion that no link could be established, but do you have any evidence? On what did you base your conclusion that this link was not established?

Ms Stephen: The conclusion is based first of all on the findings of the Fraser committee. Regrettably, NAC cannot harness the kind of financial resources the Fraser committee could in order to conduct our own independent study. Going on the basis of the findings of the Fraser committee and other independent studies, and for that matter the police themselves, it is nearly impossible to obtain any hard data to substantiate that link.

Ms Dulude: If I could add a most unscientific statement, I read a newspaper comment by the Chief of Police of Montréal to the effect that most women who are prostitutes in that city are working independently.

Mr. Thacker: I just have a couple of questions, Mr. Chairman. The first is on the general point of sections 193 and 195. It is not before us in terms of the Criminal Code itself, and that is another policy question Parliament has refused to take up or will not decide in your favour at this moment, but it is before the committee as to whether that is extended to this bill as provided for. Would you agree that your case would be stronger if property rights were entrenched in the Constitution—if this section is passed—in terms of having it knocked out by the court?

Ms Dulude: I can see where there might be some links, but having looked at the question of property rights in the Charter from many other points of view, and particularly as a former practitioner of family law, we have come to the conclusion that for women it would be a disaster if such a move were ever to be made.

• 1605

Mr. Thacker: Is there an amendment that would catch the genuine bawdy-houses, if there are such places in

[Translation]

cercle vicieux, et ces dispositions ne feraient que rendre la situation plus intolérable sans pour autant offrir d'issue à ces femmes parce qu'en matière de travail, leurs options sont très limitées.

M. Robinson: Une dernière question sur le lien entre la prostitution et le crime organisé: vous dites en effet, dans votre mémoire, que rien ne prouve qu'il existe. Avez-vous fait une enquête là-dessus, ou avez-vous lu des études? Voyez-vous un lien quelconque? En avez-vous discuté avec, par exemple, la police des grands centres urbains pour savoir s'il existe des éléments qui permettent de conclure à la possibilité d'un lien entre le crime organisé et la prostitution?

Le comité Fraser a examiné cette question et a conclu, après avoir eu des entretiens avec la police, qu'aucun lien ne pouvait être prouvé. Qu'en pensez-vous? Sur quoi fondez-vous votre conclusion selon laquelle ce lien n'existerait pas?

Mme Stephen: Notre conclusion se fonde avant tout sur celles du comité Fraser. Le CCA n'a malheureusement pas à sa disposition le genre de ressources dont disposait le comité Fraser pour mener sa propre enquête en toute indépendance. Nous nous sommes donc appuyés sur les conclusions du comité Fraser et d'autres études indépendantes ainsi que sur les affirmations de la police elle-même pour conclure qu'il n'existe aucune preuve réelle de l'existence d'un tel lien.

Mme Dulude: J'aimerais ajouter un commentaire purement empirique: j'ai lu dans le journal une déclaration du commissaire principal de la police de Montréal, d'après laquelle la plupart des prostituées de cette ville travaillent de façon indépendante.

M. Thacker: J'ai quelques questions à poser, monsieur le président. La première porte sur les articles 193 et 195, dont nous ne sommes pas saisis, à proprement parler puisqu'ils figurent au Code criminel. C'est une autre question que le Parlement a refusé d'aborder ou sur laquelle il ne prendra pas de décision en votre faveur à l'heure actuelle, mais c'est une question sur laquelle doit se pencher le Comité pour savoir si ces articles s'appliquent dans le cadre de ce projet de loi. N'est-il pas vrai que votre position serait plus solide si les droits de propriété étaient incorporés à la Constitution—si cet article est adopté—en ce sens que les tribunaux révoqueraient ces saisies?

Mme Dulude: Je vois où il peut y avoir un lien, mais après avoir examiné, sous des angles divers, la question des droits de propriété dans la charte au temps où j'étais spécialiste du droit familial, nous en sommes arrivés à la conclusion que si une telle mesure était adoptée, elle serait catastrophique pour les femmes.

M. Thacker: Peut-on concevoir un amendement qui viserait les vraies maisons de débauche, s'il en existe au

[*Texte*]

Canada that are organized and operated by organized-crime people, but that would leave the individual entrepreneur operating out of her home alone?

Ms Dulude: There is none at present, and this will not do it. So we are restricting ourselves at this point to saying that this would not reach the people whom purportedly the bill is seeking, the big entrepreneurs, and would mostly be hitting the individuals.

Mr. Thacker: No, I think there is no doubt that the bill will get the big organized operators; but, if the police choose to use it that way, it would catch all the individual entrepreneurs too. Would it not?

Ms Dulude: I am not sure about that. That depends on many other factors concerned with law enforcement and—

Mr. Thacker: What are you saying? Are you saying that the police will use it only against the individual and not the organized crime?

Ms Dulude: No, I am not saying that they will use it only against those. It is just that the bawdy-houses. In terms of number, I am saying it will be used mainly against the small ones, because large whore-houses simply are not an institution that exists very much in this decade. So in terms of frequency this is what you would get. This is who would be under the scope of the law.

Ms Stephen: Just to add to that, we cannot confuse the Canadian situation with the American situation. For example, if you were to take into account, under a system of legalization as opposed to decriminalization, the system of legalization that exists in some of the states in the U.S., there you could argue that you have large operators of bawdy-houses, and so on. That situation does not apply in Canada.

This again brings us back to the question of how prostitution itself is organized and conducted across the country. You would be hard put to argue that *x*% are organized on a larger scale through a group or a consortium of individuals, who control the business in this part of the market, whereas the rest operate as individual proprietors, if you like. We cannot say that this is one of the problems. I would invite you to present some evidence that would substantiate that argument.

Coming back to your original points, one of the things we have seen with regard to prostitution is this political football that keeps going back and forth between greater criminalization, somewhat less stringent criminalization, greater enforcement, less enforcement—blah, blah, blah!—all of which results in a very piecemeal approach to the question.

I would just reiterate that NAC's position since 1979, I believe, has been in favour of decriminalization. In the event that there are situations where improper

[*Traduction*]

Canada, qui sont organisées et exploitées par les gens du milieu, mais qui ne joueraient pas dans le cas d'une prostituée travaillant seule à domicile?

Mme Dulude: Ces genres de maisons de débauche n'existent pas à l'heure actuelle, et cet amendement n'y parviendra pas. Nous nous limitons donc, à l'heure actuelle à affirmer que cette loi ne touchera pas ceux qu'elle vise, à savoir les gros tenanciers, mais touchera surtout les particuliers.

M. Thacker: Non, il n'y a pas de doute, à mon avis, ce sont les gros tenanciers que visent le projet de loi, mais si la police décide de se servir de la loi de cette façon, elle mettra également la main sur tous les particuliers qui pratiquent ce métier, n'est-ce-pas?

Mme Dulude: Je n'en suis pas sûre, cela dépend de bien d'autres facteurs touchant à l'application de la loi et.

M. Thacker: Est-ce que vous entendez par là que la police ne l'utilisera que contre les particuliers, et non contre les gens du milieu?

Mme Dulude: Non, ce n'est pas que la police ne l'utilisera que contre ceux-ci, mais que les maisons de tolérance... Quantitativement, c'est surtout ceux qui pratiquent la prostitution à l'échelle artisanale qui seront touchés, parce qu'à notre époque il n'existe tout simplement plus beaucoup de grandes maisons de tolérance. C'est donc ceux-là que la loi touchera le plus souvent. C'est ce genre d'établissement qui tombera sous le coup de la loi.

Mme Stephen: Je voudrais préciser qu'au Canada, les choses ne se présentent pas comme aux États-Unis. C'est ainsi que si vous adoptez un système de légalisation et non de décriminalisation, celui qui existe dans certains États des États-Unis, l'argument s'appliquerait, parce qu'il existe des tenanciers de grandes maisons de passe, mais il n'en est pas de même dans notre pays.

Cela nous ramène à la question de l'organisation proprement dite de la prostitution au Canada. Vous auriez bien du mal à prouver quels réseaux sont organisés sur une grande échelle par l'intermédiaire d'un groupe ou d'un consortium de particuliers qui occupent ce créneau du marché, alors que le reste est constitué de petits tenanciers, si vous préférez. Ce n'est toutefois pas l'un des problèmes, et je vous invite à présenter des preuves à l'appui de cet argument.

Mais pour en revenir à ce que nous disions au début, la prostitution est devenue un enjeu politique soumis à toutes sortes de tiraillements entre une accentuation de la criminalisation ou au contraire son relâchement, entre sa mise en application plus ou moins stricte, bref, toutes sortes de discours qui aboutissent à une façon très incohérente d'envisager la question.

Je voudrais simplement répéter que depuis 1979, je crois, la position du CCA a été en faveur d'une décriminalisation. Dans des situations où des pressions

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inducement is applied through the threat of. . . or direct coercion, force, and so on and so forth, other sections of the Criminal Code exist that could be used to address that. You are opening up an entire ballgame that really is not the question at hand right now, which is precisely the sections of the Criminal Code—taking another look at section 193, and so on and so forth. I do not know if we can get into that here, but that certainly is one of the problems.

Ms Dulude: Let me try to take another crack at your question, looking at laws regulating against bawdy-houses. Who is actually the owner of that house? Who is benefitting from the proceeds of prostitution taking place there? If it is a big business then you will not have the name of the big operator as being the owner of the house. There will be all kinds of go-betweens.—

Mr. Reid: Launderers.

Ms Dulude: —launderers. So you will not catch your big operators through that kind of provision.

• 1610

Looking at procuring, it is even more obvious, because living with the prostitute herself is what has been the most accepted proof that someone is a pimp. You will not find your racketeer who is supposed to have a string of prostitutes in the one place where he could be charged, if he is a smart operator.

Yes, I reverse my answer from before. They are not going to get the big operators with this at all; they are going to get only the little ones. They are going to get only another tool to harass the prostitutes further. They are not going to get the big ones.

Ms Stephen: To add to that, you have to recall that under "habitually in the company of", which is the procuring provision, the minimum requirement is three days in the company of a prostitute.

Ms Dulude: The owner of the escort service is not at the office if he is a big operator.

Ms Stephen: No, he will be in Miami or somewhere getting a sun-tan.

Mr. Reid: My notes, madam, are somewhat similar to those of Mr. Thacker on the basis that I recognize the premise of your submission being that prostitution in itself is not a crime—

Ms Dulude: That is the law.

Mr. Reid: —and an independent operator working in the field of prostitution should not be subject to this bill because it is not a criminal offence in the first place. Now, I might not be quite so sympathetic when we get into the related offences such as a bawdy-house, recognizing that perhaps a bawdy-house might involve organized crime to

[*Translation*]

excessives s'exercent pour le recrutement, les menaces ou l'usage de la force, etc., il existe d'autres articles du Code criminel que l'on peut invoquer. Vous abordez là une question toute différente, qui n'est pas celle visée par le projet de loi, à savoir les articles du Code criminel—une révision de l'article 193, par exemple, etc. Je ne sais pas si le moment est opportun d'aborder cette question, mais c'est certainement l'un des problèmes.

Mme Dulude: Permettez-moi d'aborder votre question sous un autre angle, à savoir les lois qui réglementent les maisons de tolérance. Qui est en est effectivement le propriétaire? Qui est-ce qui touche les subsides des actes prostitutionnels qui y ont lieu? S'il s'agit d'une grosse affaire, vous n'aurez pas connaissance du nom de l'exploitant, du propriétaire de la maison de tolérance. Il y aura toutes sortes d'intermédiaires. . .

M. Reid: Ceux que l'on appelle les blanchisseurs.

Mme Dulude: . . . des blanchisseurs. Ce genre de disposition ne vous permettra donc pas de mettre la main sur eux.

Dans le cas des souteneurs, c'est encore plus évident, car la preuve la mieux établie que l'on est souteneur est de vivre avec la prostituée. Or le souteneur pour lequel travaillent plusieurs femmes, s'il est malin, ne se trouvera jamais là où il pourrait être poursuivi en justice.

Non, je reviens sur ce que j'ai dit tout à l'heure: avec cette loi vous n'atteindrez pas les gros exploitants, mais seulement le menu fretin. La loi ne constituera qu'un outil de plus pour harceler les prostituées en laissant les gros exploitants bien tranquilles.

Mme Stephen: Rappelez-vous aussi que d'après la disposition qui dit «habituellement en compagnie de», celle qui porte sur le proxénétisme, il faut que la personne en question ait passé au moins trois jours en compagnie de la prostituée.

Mme Dulude: S'il s'agit d'un gros exploitant, le propriétaire d'un service d'escorte ne se trouvera certainement pas à son bureau.

Mme Stephen: Non, il sera à Miami ou ailleurs, en train de se faire bronzer.

M. Reid: Je pars plus ou moins des mêmes bases que M. Thacker, à savoir l'hypothèse contenue dans votre mémoire selon laquelle la prostitution en elle-même ne constitue pas un délit. . .

Mme Dulude: C'est la loi.

M. Reid: . . . et un exploitant indépendant qui opère dans le domaine de la prostitution ne relèverait donc pas du projet de loi, puisque la prostitution n'est pas un délit. Je ne serais peut-être pas aussi indulgent quand on en arrive aux délits connexes, ceux qui portent sur une maison de débauche et où le crime organisé intervient

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a greater degree than we have contemplated in its simplest form here, such as a dwelling, a place of residence or whatever. I would not be sympathetic to persons procuring for prostitution or living off the avails of prostitution. I would be concerned with respect to those aspects of it.

You have come out with the recommendation that both sections 193 and 195 be stricken from the 23 offences contained in the bill itself. Have you considered any definition aspect that would allow this committee to catch within the network organized crime, as you look at it from the point of view of bawdy-houses, procuring, and pimps? We also have to deal with living off the avails if you take a person living in the same place of residence. We should concern ourselves with that as well, perhaps.

But we are concerned with crime in the sense of a criminal act and those who are taking advantage of that crime. Now, if you were drafting the bill, how would you exclude yourselves as independent operators?

Ms Stephen: As I understand your question, I do not think the matter can be resolved simply by trying to restrict the application of section 193 and section 195 in such a way as not to catch the individual women who work on an individual basis, but to catch those who would be in a position to act as a third party to exploit the woman and take the earnings from her. You see, the difficulty is that the sections in question, in our view, have to be scrapped because they cannot be restricted by the way they are written and by the way they are therefore enforced and applied. They cannot be restricted. The ambit cannot be narrowed so that it will get only these people and not the individual women.

• 1615

Therefore, while I understand the difficulty you might have with this question, I really do not think—and NAC has gone through this to some great extent—that those sections can be modified or tidied up in some way, certainly not within the purview of this committee at any rate. If anything, our position again is to simply strike them from the Criminal Code. They are a mess and they cannot be cleaned up in such a way as to get those who would perhaps be in the position to exploit, assault women who work in prostitution on a third-party basis.

Ms Dulude: I agree that it is not by using anything that is in the Criminal Code now that you could catch the people you have in mind. When you say, Mr. Reid, that you—I do not want to put words in your mouth—can feel sympathy for prostitutes themselves, or something like that, but when you thought of somebody running a bawdy-house, then you felt differently about it. . . The way you said that, it was as if the words to you evoked something big. But the fact is that a bawdy-house is usually the place where the prostitute lives. It is usually her apartment. This has been the reality in Canada and this is all that is caught. There is no sense in which you can imagine a big

[*Traduction*]

peut-être davantage que ce que nous avons vu jusqu'à présent, à savoir la prostitution réduite à son expression la plus simple, à domicile, une chambre, etc. Je n'aurais aucune indulgence pour ceux qui font du racolage pour la prostitution ou qui vivent des subsides de celle-ci. Ces aspects ne laissent pas de m'inquiéter.

Votre recommandation est d'éliminer les articles 193 et 195 des 23 délits relevés sous le titre «infraction de criminalité organisée» du projet de loi. Auriez-vous une définition à nous proposer qui nous permette de prendre dans le filet les auteurs de crimes organisés, ceux qui vivent des maisons de débauche, du proxénétisme et du racolage? Nous devons également songer à ceux qui vivent au domicile d'une prostituée et vivent de ses gains; c'est une question que nous ne devrions peut-être pas laisser de côté.

Mais la question dont nous nous occupons, c'est l'acte criminel et ceux qui en tirent profit. Si vous deviez rédiger ce projet de loi, comment feriez-vous pour en exclure ceux qui pratiquent la prostitution à titre indépendant?

Mme Stephen: Si je vous ai bien compris, la question ne peut se résoudre simplement en essayant de restreindre l'application des articles 193 et 195 de telle façon qu'ils ne visent pas les femmes qui travaillent à leur propre compte, mais qu'ils visent des intermédiaires qui exploitent la femme et en reçoivent des subsides. La difficulté, c'est que ces articles, à notre avis, doivent être éliminés parce que, de la façon dont ils sont rédigés, mis en vigueur et en application, on ne peut limiter leur action. Leur portée ne peut être suffisamment délimitée pour qu'ils ne visent que certaines catégories, et non les femmes qui travaillent à leur propre compte.

Tout en comprenant donc la difficulté que cette question soulève, je ne pense vraiment pas—et le CCA s'est beaucoup préoccupé de cette question—que ces articles puissent être modifiés ou remaniés de quelque façon que ce soit, en tout cas dans le cadre du mandat du Comité. Nous demandons donc simplement qu'il soit éliminé du Code criminel: ils sont trop mal rédigés pour que l'on puisse les remanier pour permettre d'incriminer ceux qui exploitent les prostituées et exercent contre elles, par tiers, des violences.

Mme Dulude: Effectivement, ce n'est pas à l'aide d'un article quelconque du Code criminel actuel que vous incriminerez les gens que vous visez. Je ne veux pas vous faire dire ce que vous n'avez pas dit, monsieur Reid, mais quand vous dites que vous avez de la compréhension pour les prostituées—c'est plus ou moins ce que vous avez dit—mais qu'il n'en était pas de même pour le tenancier d'une maison de débauche. . . Vous aviez l'air de penser à un tenancier de grand établissement, mais en réalité, une maison de débauche est souvent la maison dans laquelle vit la prostituée. C'est généralement son appartement, tout au moins au Canada, et c'est donc lui que l'on vise. Les

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criminal, an important criminal running a bawdy-house. Maybe in other times, the time of Al Capone it was done, but nowadays it just is not the way they operate.

It is the same with living off the avails. To be able to make the direct link between the prostitute and the person who is living off the avails, you have to be dealing with somebody who is very small and sophisticated, because anybody who is at all knowledgeable about the law will very easily know how to get around such a provision. So, I am sorry. If we had suggestions about how to catch the big criminals who are in fact exploiting women, we would give them to you because we are just as anxious to catch exploiters of women as you are.

Mr. Reid: I am under the chairman's axe with respect to time, but if not today then at some other time I would like to explore with you further the jurisprudence with respect to bawdy-houses and the incidence of organized crime—and I am not talking about the United States. But I do not hear you denying, I cannot hear you denying that there is organized crime with respect to prostitution across this country. We have missing children, we have degrees of organized crime in the particular field of prostitution. We cannot let it go by and it is no consolation to me to hear you talk about the Fraser report. We have already dealt with that. There is no public outcry to change the present law with respect to solicitation, communication, so we want to live within the field as we have it. I want to see that the entrepeneur is protected—

The Chairman: We are going to run out of time, Mr. Reid. Do you have a question or are you making a comment?

Mr. Reid: I am making a comment to see what kind of help we can get.

Ms Dulude: I think what we want to make perfectly clear is that those two sections being included in the bill will not do what it is you are seeking and it will do harm, for sure, to many women. So I think the conclusion has to be that these sections must be taken out.

The Chairman: Let me just put my quick question to get around this dilemma we are dealing with, maybe to legalize prostitution and have it managed and taxed accordingly by the state. Would NAC support that kind of initiative?

Ms Stephen: I am hoping this is not a question of semantics, but legalization is not something that NAC supports; decriminalization is something that NAC would support. Under a scenario of decriminalization, the kinds of things which have been alluded to here and in other discussions in terms of improper inducement, in terms of the application of coercive, threatening behaviour, force, extortion, so on and so forth by third parties, would be taken up under other sections of the Criminal Code which do exist.

[*Translation*]

grands criminels, les «caïds» n'exploitent pas les maisons de débauche. Cela se faisait peut-être autrefois, autant de Al Capone, mais les temps ont changé, et cela se passe différemment.

Il en est de même de ceux qui vivent des subsides de la prostitution. Pour établir un lien direct entre la prostituée et la personne qui vit des gains de cette dernière, vous devez avoir affaire à un «demi-sel» parce que tout proxénète qui connaît la loi tant soit peu saura aisément contourner cette disposition. Je regrette donc, mais si nous avions une proposition solide à vous faire sur la façon de mettre la main sur les grands criminels qui exploitent les femmes, nous vous la donnerions parce que nous en voulons tout autant que vous aux proxénètes.

M. Reid: Je sais que le président va m'interrompre sous peu, parce que mon temps est presque écoulé, mais j'aimerais, peut-être à un autre moment, examiner davantage avec vous la loi touchant aux maisons de débauche et l'incidence du crime organisé, non aux États-Unis, mais dans notre pays. Mais vous n'avez pas nié, du moins je ne l'ai pas entendu, l'existence au Canada de crime organisé portant sur la prostitution. Des enfants disparaissent et le milieu règne sur la prostitution. Nous ne saurions passer cette question sous silence, et le fait que vous mentionniez le rapport Fraser ne me console guère. Nous nous sommes déjà penchés là-dessus. Le public ne semble pas réclamer à cor et à cri la modification de la Loi actuelle portant sur le racolage, l'interpellation, et nous devons donc nous en tenir à la réalité. Je souhaite voir protéger les femmes qui exercent la prostitution. . .

Le président: Le temps va nous manquer, monsieur Reid. Avez-vous une question à poser ou est-ce un commentaire que vous faites?

M. Reid: C'était un commentaire, pour voir comment on pourrait nous aider.

Mme Dulude: Ce que nous voudrions bien préciser, c'est que le projet de loi, avec l'inclusion de ces deux articles ne réalisera pas les objectifs recherchés et nuira à un grand nombre de femmes. La seule conclusion à en tirer, c'est que ces articles doivent en être éliminés.

Le président: Permettez-moi une petite question pour essayer de trancher le dilemme dans lequel nous nous trouvons: on pourrait peut-être légaliser la prostitution et la rendre imposable par l'État comme toute activité professionnelle. Le CCA serait-il en faveur d'une mesure de ce genre?

Mme Stephen: Je ne voudrais pas que nous nous battions pour des mots; ce n'est pas la légalisation que réclame le CCA, mais la décriminalisation. Dans cette dernière hypothèse, les questions telles que le racolage indécent, l'application de la contrainte, de menaces, de force, l'extorsion etc., par des tiers, relèveraient d'autres articles du Code criminel actuel.

[Texte]

• 1620

Prostitution itself would be conducted in the way any other business is—subject to taxation, health standards, the whole works.

Mr. Kaplan: Our party is very supportive of the Fraser approach. In other words, there are common bawdy-houses and common bawdy-houses, and when you are talking about a small place where prostitutes live in a small number and practise prostitution, that is one thing. That is within Fraser's idea of an acceptable system that should be decriminalized.

Mr. Robinson: You support that.

Mr. Kaplan: Yes, I do. I gather from the way you are talking that the characterization of what Fraser would have permitted covers the kind of prostitution and bawdy-houses that we have in Canada. I liked your point that we were going after a historic type of enterprise, which enriched organized crime but does not exist now.

Ms Dulude: The sections as they are now apply mainly to small people.

We are not denying that there is some element of crime related to prostitution, though we contend that it is very small. These sections are not the means through which you would catch those who are the big operators in this area. But it would catch a lot of little people and it would give tools to worsen the catch-22 situations in which prostitutes already find themselves.

Mr. Kaplan: I want to tell you that I am very sympathetic with that point of view. If the Minister can convince us that indeed the exploitation of prostitution is a way in which organized crime is enriching itself, then I would like to hear more. In other words, it would be contradicting your evidence. I would like to press them on that. If we can be satisfied that the kind of characterization you have given to prostitution in Canada is as you say, then I think you are right. I do not think it ought to be in this section.

Ms Dulude: We are saying, even in the cases where there are criminals involved, these two sections from the Criminal Code would not catch them because there are intermediaries which would make it impossible in most cases to use these sections to catch criminals.

Mr. Kaplan: If the witnesses we have heard so far are correct... They would contradict that because they have given the impression that this legislation allows you to pursue fortunes through all kinds of gear shifting and laundering.

Ms Dulude: You are talking about the whole thrust of all of these sections. We are talking about only two specific sections: the bawdy-house and the procuring and living off the avails. Those are the only two that we would like taken out. We are not commenting on the whole legislation.

Mr. Kaplan: I understand. Thank you.

[Traduction]

La prostitution serait donc pratiquée comme tout autre métier, donc soumise à l'impôt, dans l'obligation de respecter des normes d'hygiène, etc.

M. Kaplan: Notre partie approuve entièrement le rapport Fraser: autrement dit, il y a toutes sortes de maisons de débauche, et parmi toutes ces catégories, il y a la chambre ou le petit appartement où vivent les prostituées, en petit nombre, pour y rencontrer leurs clients. C'est ce genre de prostitution que visait le rapport Fraser quand il préconisait la décriminalisation.

M. Robinson: Et vous êtes en faveur de cela.

M. Kaplan: Oui. D'après ce que vous avez dit, le rapport Fraser aurait préconisé de décriminaliser ce genre de prostitution et de maison de débauche que nous avons au Canada. Je suis tout à fait avec vous lorsque vous dites qu'avec le projet de loi nous visons une catégorie d'entreprises qui ont profité au crime organisé, mais qui n'existent plus.

Mme Dulude: Les articles actuels s'appliquent surtout à de petites gens.

Nous ne nions pas l'existence d'un aspect criminel dans la prostitution, mais il est très limité, et ce n'est pas par ces articles que vous incriminerez les gros exploitants. Le projet de loi actuel frapperait un grand nombre de petites professionnelles et ne ferait que rendre plus désespéré le cercle vicieux dans lequel se trouvent déjà les prostituées.

M. Kaplan: Je pense que vous avez parfaitement raison. Si le ministre peut effectivement nous convaincre que la prostitution enrichit le crime organisé, j'aimerais en entendre davantage. Autrement dit, ce serait en contradiction avec votre témoignage. Je voudrais donc qu'on nous apporte d'autres arguments. Si la prostitution au Canada se présente effectivement comme vous le dites, je pense que vous avez raison et que ces articles ne devraient pas figurer dans ce projet de loi.

Mme Dulude: Ce que nous disons, c'est que même dans les cas où jouent des éléments criminels, ces deux articles du Code criminel ne suffiraient pas à les incriminer parce que les criminels savent se protéger à l'aide d'intermédiaires.

M. Kaplan: Si les témoins que nous avons entendus à ce jour ont raison... Ils ne seraient pas d'accord parce qu'ils nous ont donné l'impression que ce projet de loi vous permet de vous enrichir par toutes sortes de manigances et de recyclage d'argent.

Mme Dulude: Vous parlez là de l'objectif global de tous ces articles, mais nous nous attachons en particulier à deux d'entre eux seulement: les maisons de débauche et le proxénétisme, ce sont les deux seuls que nous voudrions voir exclus. Ce n'est pas de l'ensemble du projet de loi que nous voulons parler.

M. Kaplan: Je vous comprends. Je vous remercie.

[*Text*]

Ms Stephen: The reason is that sections 193 and 195 in themselves do not catch those who do operate as a third party. So, by that logic, there is no way that Bill C-61 will accomplish that.

Ms Dulude: If you want to see who would be caught, look at who is caught by these provisions now. Ask the police who is being caught and you will find out for sure that it is not big operators.

Ms Stephen: Where they do exist.

The Chairman: We are getting a little bit off schedule. Mr. Thacker has asked for one last short question, with no preamble, so we will give it to Mr. Thacker.

Mr. Thacker: Am I wrong or is it the view of NAC that the owners of these escort agencies, which seeem to be growing rapidly across the country, are not exploiting women in any way and that they are a legitimate business?

Ms Stephen: Let me give you an example. There is in the city of Toronto one woman who operates five escort agencies. She takes the calls and she goes out and provides the service in question. She has five separate agencies, one telephone number, and it is all handled by her. She is what might appear on the surface to be a franchise operation of an escort service. This you can corroborate with the Metro Toronto police, which is where I got the information from. That woman is simply trying to capture or maximize her share of the market. Somebody else coming along might say, oh, my, here we have a strong case of someone who is setting this up as a large organization and exploiting the women.

• 1625

So again there seems to be a paucity of hard data that would substantiate that these escort agencies are operating as consortiums and setting up franchises dotted across the country and operating as third parties. We have to come back to the point that for the most part prostitution is conducted not on the basis of third-party exploitation but of individual women—and men—working independently.

Ms Dulude: It is all relative. If you have in front of you a choice of having an escort service that will to some extent screen clients and make sure you are in a safe condition and ensure payment and your choice would be to be cruising in the bar or on the street, I think you would have to admit the escort service in that situation is not in any way exploiting the woman. That is not to say some of them do not. But I do not think it can be assumed automatically they all do.

The Chairman: Thank you very much, Ms Dulude and Ms Stephen, for your very valuable input to the committee.

[*Translation*]

Mme Stephen: La raison en est que les articles 193 et 195, en soi, ne permettent pas de poursuivre ceux qui exploitent la prostitution en tiers. C'est pourquoi le projet de loi C-61 est incapable de faire cela.

Mme Dulude: Pour savoir qui serait incriminé, il vous suffit de demander à la police qui ils arrêtent avec les dispositions actuelles, et vous constaterez qu'il ne s'agit pas de grands exploitants.

Mme Stephen: Là où ils se trouvent.

Le président: Nous commençons à manquer de temps. M. Thacker a demandé à poser une dernière question, très rapidement et sans préambule; nous lui donnons donc la parole.

M. Thacker: Je me trompe peut-être, mais le CCA ne pense-t-il pas que les propriétaires de ces agences de call-girls qui semblent proliférer dans tout le pays, n'exploitent nullement les femmes et constituent une entreprise comme une autre?

Mme Stephen: Permettez-moi de vous donner un exemple. A Toronto il y a une femme qui est propriétaire de cinq agences de call-girls. Elle répond au téléphone et fournit le service réclamé. Avec un seul numéro de téléphone elle a cinq agences qu'elle administre à elle seule. A première vue elle semble avoir une concession d'exploitation d'une agence de call-girls. Vous pourriez vérifier cela auprès de la police de la région métropolitaine de Toronto, qui m'a fourni ces renseignements. Cette femme essaie tout simplement d'accaparer ou de maximiser sa part du marché. Cependant quelqu'un pourrait très bien se présenter et dire: Voici un cas flagrant où quelqu'un essaie de monter une grosse organisation et d'exploiter les femmes.

Là encore donc, il semblerait qu'il y ait une pénurie de données fiables prouvant que ces agences d'escorte fonctionnent comme des consortiums et qu'elles montent partout dans le pays des franchises de façon à fonctionner comme une tierce partie. Or, il ne faut pas perdre de vue que le gros de la prostitution se fait par des hommes et des femmes qui travaillent indépendamment et non pas dans le cadre d'un système d'exploitation par une tierce partie.

Mme Dulude: Tout cela est relatif. Si vous pouvez choisir entre un service d'escorte qui trie, dans une certaine mesure, les clients et veille à ce que vous travailliez dans des conditions sûres et à ce que vous soyez payée, et aller faire la retape dans les rues ou les bars... Je pense qu'il faut reconnaître que dans ce cas, le service d'escorte n'exploite aucunement les femmes. Il y a, bien sûr, des exceptions, mais je ne pense pas que l'on puisse supposer dès le départ que tous ces services exploitent automatiquement les femmes.

Le président: Mesdames Dulude et Stephen, je vous remercie beaucoup de votre participation fort intéressante aux travaux du Comité.

[*Texte*]

I understand we have three witnesses here from the Canadian Organization for the Rights of Prostitutes: Ms Valerie Scott, Ms Hatchkiss, and Mr. Cockerline.

Welcome to our committee, and please begin.

Ms Valerie Scott (Canadian Organization for the Rights of Prostitutes): The Canadian Organization for the Rights of Prostitutes, CORE, is a Toronto-based, prostitute-run organization that was founded in 1983 to advocate the destigmatization and decriminalization of prostitution. CORE is opposed to the inclusion of the offences of keeping a common bawdy-house, Criminal Code section 193, and living on the avails of prostitution, section 195, in Bill C-61, a bill designed to take the profit out of crime. Extending the sanctions of the criminal law against prostitution activities, as Bill C-61 would do, would only accentuate the paradox now present in our law. While prostitution itself is legal, there is almost no way to engage in it without committing one offence or another. Furthermore, many organizations and individuals support less restrictive controls on prostitution.

In 1985 the government-commissioned Fraser report argued for a further decriminalization of indoor prostitution, to reduce street soliciting. Since all the prostitution-related offences in the Criminal Code may soon be reconsidered by Parliament when section 195.1—soliciting—is reviewed next year, now is not an appropriate time to expand the scope of the criminal law over prostitution.

• 1630

Under section 193, and the wide definition of common bawdy-house in section 179, a prostitute working alone in her own apartment, and making just enough money to live on, can be guilty of keeping a common bawdy-house, an enterprise crime under Bill C-61. Since the bill empowers the police to seize the assets of anyone convicted of an enterprise crime, she could lose all her belongings, even furniture and clothing, despite the fact she is not part of a criminal organization and is not exploiting others. She need not even be creating a nuisance or disturbing anyone. Someone who operates a bath-house or a hotel where prostitution or indecent acts take place, or who employs prostitutes in a brothel, activities that are not necessarily exploitive, could also lose everything they had earned by keeping a common bawdy-house.

[*Traduction*]

Si j'ai bien compris, nous allons maintenant entendre trois témoins de la Canadian Organization for the Rights of Prostitutes, il s'agit de M^me^ Valerie Scott, de M^lle^ Hatchkiss et de M. Cockerline.

Bienvenue au Comité. Vous avez la parole.

Mme Valerie Scott (Canadian Organization for the Rights of Prostitutes): La Canadian Organization for the Rights of Prostitutes (CORE), est un organisme torontois administré par et pour les prostituées, fondé en 1983 dans le but de promouvoir la déstigmatisation et la décriminalisation de la prostitution. La CORE s'oppose à l'inclusion, dans le projet de loi C-61, qui vise à faire en sorte que le crime ne soit pas payant, des infractions comme la tenue d'une maison de débauche et le proxénétisme, en vertu, respectivement, des articles 193 et 195 du Code criminel. Le fait d'étendre les sanctions prévues dans le Code criminel aux activités de prostitution, comme prévu dans le projet de loi C-61, ne ferait qu'accentuer le paradoxe qui existe déjà dans nos lois. Même si la prostitution elle-même est légale, il est pratiquement impossible de s'y adonner sans commettre une infraction ou une autre. Par ailleurs, de nombreux particuliers et organismes seraient favorables à des mesures de contrôle moins restrictives en matière de prostitution.

En 1985, le rapport Fraser, parrainé par le gouvernement, prônait une décriminalisation plus poussée de la prostitution intérieure, dans le but de réduire le racolage public. Étant donné que toutes les infractions liées à la prostitution qui figurent dans le Code criminel seront sans doute revues par le Parlement lors de son réexamen l'an prochain de l'article 195.1—Sollicitation—il ne serait pas opportun de s'étendre maintenant sur la portée du droit pénal en matière de prostitution.

En vertu de l'article 193 et de la définition très large de ce qu'est une maison de débauche donnée dans l'article 179, une prostituée travaillant toute seule dans son propre appartement et se faisant à peine de quoi vivre, pourrait être coupable de tenue d'une maison de débauche, ce qui serait une infraction de criminalité organisée en vertu du projet de loi C-61. Le projet de loi habilitant la police à saisir les biens de toute personne déclarée coupable d'une infraction de criminalité organisée, une prostituée dans la situation que je viens de décrire, pourrait perdre tous ses biens, même ses meubles et ses vêtements, bien qu'elle ne fasse pas du tout partie d'une organisation criminelle et qu'elle n'exploite personne d'autre. Il ne serait même pas nécessaire qu'elle soit une gêne pour le public ou que ses activités atteignent la moralité publique. Par ailleurs, le propriétaire d'un établissement de bains ou d'un hôtel où il y a de la prostitution ou des actes indécents, ou la personne qui emploie des prostituées dans un bordel—et ces activités ne relèvent pas forcément de l'exploitation—pourraient eux aussi perdre tous les revenus qu'ils auraient gagnés en tenant une maison de débauche.

[Text]

Similarly, section 195 extends beyond the stereotype of the abusive pimp to any spouse, boyfriend, girlfriend, or even a child who is being supported in part or in whole by a prostitute. Any of these dependants could be convicted under section 195 of living on the avails of prostitution, and under Bill C-61 they could also face the loss of their property, as could anyone who owns or operates an escort service.

A particularly disturbing aspect of Bill C-61 is that under section 193 or section 195, a person would not have to be charged or even convicted to be in danger of losing his property. Bill C-61 empowers the police to obtain a warrant to freeze the assets of a person, simply on the police officer's belief on reasonable grounds that the person's property is subject to forfeiture—proposed subsection 420.12(1). The police do not need to prove the grounds for forfeiture before a judge, or lay the charges, for up to six months after the seizure—proposed section 420.15. That would leave some people unable to pay their mortgages and could result in a loss of their homes. Although a judge could release funds for living expenses, this would be at the judge's discretion—proposed section 420.14. A person whose assets were wrongfully seized would have to prove deliberate and malicious intent on the part of the officer involved in order to sue for compensation—proposed subsection 420.12(6).

For several years there has been considerable pressure on the government to get prostitution off the streets. The Fraser report recommended that one or two adult prostitutes be allowed to work out of their own residence and that the provinces be allowed to regulate larger commercial brothels. It also recommended that living on the avails be an offence only if force, threat of force, or other coercive or threatening behaviour is used. Noting that there is no evidence to justify such a Draconian system, the report argued for a lessening of the criminal law controls on prostitution to allow the business to move off the streets. Instead, the government has increased that control with the enactment of section 195.1, and is now proposing to increase it further with the introduction of Bill C-61.

Bill C-61 will inevitably lead to an increase in street prostitution. It increases sanctions against prostitutes who work indoors and against those who operate escort services, and it provides police with a new incentive to enforce the bawdy-house and living-on-the-avails provisions against prostitutes and escort services. Already the police have provided themselves with a rationale for

[Translation]

D'autre part, l'article 195 s'étend bien au-delà du stéréotype du souteneur abusif, pour inclure tout époux ou épouse ou ami du sexe féminin ou du sexe masculin, et même tout enfant, dont la prostitution finance en tout ou partie les besoins. Toutes ces personnes à charge pourraient être déclarées coupables, en vertu de l'article 195, de tirer des revenus de la prostitution d'autrui, et en vertu du projet de loi C-61, elles pourraient également perdre leurs biens, comme ce serait le cas de toute personne qui posséderait ou qui exploiterait un service d'escorte.

Un aspect du projet de loi C-61 qui nous dérange tout particulièrement est qu'en vertu de l'article 193 ou 195, il ne serait même pas nécessaire d'être déclaré coupable ni même d'être accusé pour risquer de perdre ses biens. En effet, le projet de loi C-61 habilite la police à obtenir un mandat pour geler les avoirs d'une personne si l'agent de la paix pense qu'il existe des motifs raisonnables de croire que ces biens pourraient faire l'objet d'une ordonnance de confiscation. Cela est prévu à l'alinéa 420.12(1) du projet de loi. D'autre part, en vertu du paragraphe 420.15, le blocage de ces biens peut se poursuivre pendant six mois sans que la police n'ait à démontrer, à la satisfaction du juge, que les biens doivent être confisqués et sans même qu'il y ait de poursuite. Il se pourrait ainsi que certaines personnes se trouvent dans l'impossibilité de payer leurs hypothèques, et qu'elles perdent leur maison. Le juge peut, bien sûr, débloquer certains fonds pour couvrir les frais de subsistance de la personne dont les biens ont été saisis, mais cela relève de sa seule discrétion. C'est ce qui est prévu au paragraphe 420.14. Enfin, en vertu du paragraphe 420.12(6), pour obtenir des dommages et intérêts, une personne dont les biens auraient été saisis à tort aurait à prouver qu'il y a eu intention délictueuse de la part de l'agent.

Le public fait depuis plusieurs années pression sur le gouvernement pour que celui-ci supprime la prostitution dans la rue. Le rapport Fraser avait recommandé que l'on permette à une ou deux prostituées adultes de travailler chez elles et que les provinces soient autorisées à réglementer les plus importants bordels commerciaux. Il avait également recommandé que le proxénétisme ne constitue une infraction que s'il y a usage de force, menace de force ou d'autre menace ou mesure coercitive. Soulignant qu'il n'y avait aucune preuve justifiant un système aussi draconien, les auteurs du rapport ont préconisé un relâchement du contrôle législatif de la prostitution de façon à permettre à ceux qui s'y adonnent de quitter la rue. Mais au lieu de cela, le gouvernement a augmenté ce contrôle avec l'application du paragraphe 195.1, et il se propose maintenant de l'étendre encore davantage avec l'adoption du projet de loi C-61.

Le projet de loi C-61 amènerait inévitablement une augmentation de la prostitution dans la rue. Il augmentera les sanctions pour les prostituées qui travaillent à l'extérieur et pour les exploitants de services d'escorte, et il encouragera la police à appliquer aux prostituées et aux services d'escorte les dispositions en matière de tenue de maison de débauche et de proxénétisme. La police a

[*Texte*]

such actions. The Organized Crime Committee report of the Canadian Association of Chiefs of Police, released in September, argues that although the new soliciting provisions have aided the police greatly in control of visible prostitution, it has created a renewed enterprise for Canadian criminals. Forced from the streets, the prostitutes are working underground through the agencies, and now that they are more susceptible, the organized crime groups are regaining control.

• 1635

The authors conclude that the way to control the activity effectively is to take the profit out of crime. This analysis can certainly bear closer scrutiny. No evidence is given in the police report to support the assertion that the soliciting law is pushing prostitutes off the streets and into the hands of organized crime. A Metro Toronto police report released a few weeks later argued that the new soliciting provisions were not working and that the number of street prostitutes had doubled in Toronto. Furthermore, the Fraser report noted that most prostitutes are independent operators. We found no evidence to support a link between prostitution and organized crime.

The only actual crime spoken of in the Organized Crime Committee Report is the organized business of prostitution, including one-person operations in which the girl who answers the phone is the girl who owns the agency and meets with the customer. The report's author seemed incensed that a prostitute can advertise alone as an escort and do out calls and that the police cannot charge her because she is not breaking any laws.

It is clear that at least some members of the police force view prostitution itself as criminal, despite the fact that it is not, and they are quite prepared to charge indoor prostitutes simply for being prostitutes, despite the desire of many Canadians to see prostitution move off the streets.

When criminals do manage to exploit prostitutes, it is not because there is an inherent link between prostitution and crime. It is because tougher laws against the business of prostitution make prostitutes more vulnerable to exploitation, just as prohibition of alcohol pushed that business into the hands of criminals.

Even the Organized Crime Committee Report noted that when the Hutt decision took the teeth out of the soliciting legislation in 1978, the criminals lost control of street prostitutes, just as the police did. The profit had gone out of the crime for organized criminals through loss of control.

[*Traduction*]

d'ailleurs déjà justifié de pareilles mesures. En effet, le rapport du Comité sur le crime organisé de l'Association canadienne des chefs de police, paru en septembre, explique que bien que les nouvelles dispositions en matière de sollicitation aient grandement aidé la police dans le contrôle de la prostitution visible, elles ont amené un relancement des activités des criminels canadiens. Obligées de quitter la rue, les prostituées travaillent maintenant de façon cachée, en recourant à des agences, et maintenant qu'elles sont plus vulnérables, le milieu reprend le contrôle.

Les auteurs concluent que pour contrôler efficacement ces activités, il faut faire en sorte qu'elles ne soient plus rentables. Cette analyse mérite qu'on s'y penche de plus près. Le rapport de la police ne fournit aucune preuve que la loi en matière de sollicitation pousse les prostituées à quitter la rue et à intégrer le milieu. Un rapport de la police de la région métropolitaine de Toronto, diffusé, celui-ci, quelques semaines plus tard, disait que les nouvelles dispositions en matière de sollicitation ne donnaient pas de résultat et que le nombre de filles des rues avait doublé à Toronto. D'autre part, le rapport Fraser souligne que la plupart des prostituées sont indépendantes. Nous n'avons trouvé aucune preuve qu'il existe un lien entre la prostitution et le crime organisé.

Le seul véritable crime dont le rapport du Comité sur le crime organisé fait état est celui de la prostitution organisée, et les auteurs y incluent les filles qui travaillent seules où c'est la même fille qui répond au téléphone, qui exploite l'agence et qui rencontre le client. Les auteurs du rapport semblent trouver incroyable qu'une prostituée travaillant seule puisse se faire de la publicité pour un service d'escorte et se rendre à des rendez-vous sans que la police ne puisse la poursuivre parce qu'elle n'enfreint aucune loi.

Il est clair qu'au moins certains membres de la police jugent que la prostitution constitue en elle-même une activité criminelle, même si ce n'est pas le cas, et ces agents sont tout à fait prêts à arrêter des prostituées intérieures, simplement parce qu'elles se prostituent, bien qu'un grand nombre de Canadiens souhaitent tout simplement que la prostitution quitte la rue.

Si des criminels parviennent à exploiter des prostituées, ce n'est pas parce qu'il existe un lien inhérent entre la prostitution et le crime. C'est tout simplement parce que des lois plus sévères à l'égard de la prostitution font que les prostituées sont plus vulnérables à l'exploitation, tout comme l'interdiction des boissons alcoolisées a amené les criminels à en prendre le contrôle.

Même le rapport du Comité sur le crime organisé a souligné que lorsque la décision Hutt a affaibli la loi en matière de sollicitation en 1978, les criminels, ont, tout comme la police, perdu le contrôle des filles de la rue. Le milieu ayant perdu le contrôle de la prostitution, il n'a pas pu continuer d'en tirer des profits.

[*Text*]

So the increased control of prostitution provided for in Bill C-61 would make prostitutes more vulnerable to organized crime, and because Bill C-61 would make it impossible for prostitutes and escort service operators to invest their money legally, prostitution-related income could be funnelled back into the black market economy, perhaps even into other criminal activities. This would be exactly the opposite of what Bill C-61 is intended to do.

The only way to keep criminals out of prostitution altogether is to get prostitution out of the Criminal Code and to enforce extortion, coersion, assault and kidnapping provisions against those who exploit prostitutes. This would also get most prostitution off the streets by allowing the business to move back indoors.

As the Fraser report concluded, adults who determine that they want to be prostitutes should be able to do so with dignity and without harassment.

The Chairman: Thank you, Ms Scott.

Ms Ryan Hatchkiss (Canadian Organization for the Rights of Prostitutes): We are concerned about many things about this bill. One thing I would like to bring up is that the reality of the business is that many prostitutes do mostly out-calls and occasionally in-calls, but under the proposed Bill C-61 all the assets could be seized. How is the state going to differentiate those assets that are legal earnings, because it is legal for a prostitute to make her contact privately with a client and then to go out to a hotel or to go to his residence... How are they going to distinguish between the legal earnings and the so-called illegal earnings of the prostitute seeing the client in her home? The problem with this is that prostitutes often do not keep records of the time, location, name and telephone number of their clients because they are afraid of police harassment, and also because the clients do not want them to keep those records and are very nervous if they know that the prostitute does. It would be very, very difficult for a woman who does both out-calls and in-calls to prove that 98% of her business, say, is out-calls and yet 2% is in-calls. So she could lose everything she has earned, her RRSPs, her bank accounts, her house—just for doing one in-call with an undercover police agent.

• 1640

That terrifies me and many of the women I know. They are already closing their bank accounts, hiding their money in the lawn. Where do you want us to put it? We would rather invest it in Canada, in the banking system, in stocks, in Canada Savings Bonds. We would like to be able to do that, and to start other businesses. Under this proposed law we will be unable to do that, and also be unable to get out of the business. It will effectively trap us

[*Translation*]

Par conséquent, le contrôle accru de la prostitution prévu dans le projet de loi C-61 rendrait les prostituées plus vulnérables au crime organisé, et, le projet de loi interdisant aux prostituées et aux exploitants de services d'escorte de réinvestir leur argent de façon légale, les revenus en provenance de la prostitution retourneraient dans l'économie de marché noir et s'achemineraient peut-être même vers d'autres activités criminelles. C'est là tout le contraire de ce que vise le projet de loi.

La seule façon d'éliminer les criminels de la prostitution, c'est de retirer la prostitution du Code criminel et de prévoir des dispositions et des sanctions en matière d'extorsion, de coercition, de lésion corporelle et de rapt. De cette façon, la quasi totalité de la prostitution quitterait la rue pour retourner à l'intérieur.

Comme le dit le rapport Fraser, les adultes qui veulent se prostituer devraient pouvoir le faire en toute dignité et sans se faire harceler.

Le président: Merci, madame Scott.

Mme Ryan Hatchkiss (Canadian Organization for the Rights of Prostitutes): Nous sommes préoccupées par un grand nombre d'aspects du projet de loi. Une chose que j'aimerais souligner, c'est qu'un grand nombre de prostituées prennent surtout des rendez-vous à l'extérieur, et ne rencontrent des clients que très rarement chez elles. Mais en vertu du projet de loi C-61 tous leurs biens pourraient être saisis. Comment va-t-on faire la distinction entre les biens qui ont été obtenus avec de l'argent gagné légalement parce qu'il est légal pour une prostituée d'établir un contact directement et en privé avec un client, pour ensuite aller dans un hôtel ou chez lui... Comment va-t-on faire la distinction entre les gains légaux et les gains illégaux de la prostituée qui reçoit son client chez elle? Le problème, c'est que les prostituées ne sont pas nombreuses à inscrire les lieux et moments de rencontre, le nom et le numéro de téléphone de leurs clients, parce qu'elles craignent de se faire harceler par la police et également parce que les clients n'aiment pas beaucoup cela. Ils sont très inquiets lorsqu'ils savent que la prostituée tient ce genre de dossier. Il serait extrêmement difficile à une femme qui reçoit chez elle et qui accepte des rendez-vous à l'extérieur de prouver que 98 p. 100 de ses rendez-vous sont à l'extérieur. Elle pourrait perdre tout ce qu'elle a gagné, ses régimes enregistrés d'épargne-retraite, ses comptes bancaires, sa maison... en recevant une seule fois chez elle un provocateur de la police.

Cela me terrifie, tout comme un grand nombre des femmes que je connais. Elles commencent déjà à fermer leur compte en banque et à cacher leur argent dans leur jardin. Où voulez-vous qu'on le mette, notre argent? Nous préférerions pouvoir l'investir au Canada, dans le système bancaire, le placer sous forme d'actions, d'obligations d'épargne du Canada. Nous aimerions pouvoir faire cela et nous en servir pour nous lancer dans d'autres affaires. Cependant, en vertu du projet de loi, nous ne pourrons

[*Texte*]

Mr. Kaplan: I am very glad you have come, because you have given an important perspective on the bill. You have told us about the concerns of your association and its members, and I think we ought to take account of it.

This is a bill, really, that is designed to give the police and the state more power to confront big business of crime. I am very taken with the idea that the type of enterprise you are talking about and that Louise Dulude was talking about, which she claims characterizes prostitution in Canada, is not the kind of big business for which the police need the extra powers and the state needs the extra punishments or penalties that are contained in this law.

You come from our biggest city, I gather. Are you from Toronto?

Ms Scott: Yes.

Mr. Kaplan: I want just to ask you whether you agree with her characterization of prostitution, in all of its manifestations, as a small type of operation. Are there big prostitution enterprises from which fortunes are being earned off prostitutes and socked away somewhere, converted into other types of assets? Is it a criminal business under present law—and I will talk about that in a moment—is it the kind of business that is characterized by one or two or how many people working together and limiting their gains to what they actually earn by working as prostitutes?

Ms Scott: Generally bawdy-houses are the woman's own apartment or home. Occasionally two women may work together. I have yet—in, off and on, 10 years in this business, in different parts of Canada—to see or even hear of a large bawdy-house. It is primarily—

Mr. Kaplan: How about a large escort operation, where you can make just as much money, I suppose, as from a big bawdy-house?

Ms Scott: Yes. Well, the majority of escort agencies are owned by one or two people. Many of them are owned by one woman and she works with two or three, maybe four, of her friends. I would say that generally it is not more than a 10-person operation. That is not all the time. Some people check out for a week. You phone up when you want to work. Some people work a week per month. Other people work more often, some less often. There are some larger agencies.

The thing we are concerned with here is that we do not think there is anything really wrong with an escort agency. If someone is paying for the advertising and having the phones answered all the time, checking the Visa and MasterCard, making sure that they are valid, you

[*Traduction*]

pas le faire, mais nous ne pourrons pas non plus sortir de notre situation. Nous serons piégées.

M. Kaplan: Je suis ravi que vous soyez venue, parce que vous nous avez donné un point de vue très important sur le projet de loi. Vous nous avez expliqué les préoccupations de votre association et de ses membres, et je pense que nous devrions en tenir compte.

En vérité, le projet de loi a été conçu en vue de doter la police et l'État de pouvoirs accrus pour lutter contre la criminalité organisée. Je suis très heureux de savoir que le genre d'entreprise dont vous et Louise Dulude avez parlé—et elle prétend que c'est ce genre d'activité qui caractérise la prostitution au Canada—n'a rien à voir avec les grosses entreprises contre lesquelles la police a besoin de moyens supplémentaires, de peines et de sanctions supplémentaires, comme le prévoit le projet de loi.

Si j'ai bien compris, vous venez de notre plus grosse ville. Êtes-vous de Toronto?

Mme Scott: Oui.

M. Kaplan: J'aimerais tout simplement vous demander si vous êtes d'accord pour décrire la prostitution, dans toutes ses manifestations, comme une activité de petite entreprise. Existe-t-il de grosses entreprises de prostitution, auxquelles le proxénétisme rapporte des fortunes, cachées quelque part et converties en autres choses? S'agit-il en vertu de la loi actuelle—et je vais revenir là-dessus dans un instant—d'entreprises où il y a une ou deux ou trois personnes seulement, qui travaillent ensemble et dont les revenus se limitent à ce qu'elles peuvent gagner en se prostituant elles-mêmes?

Mme Scott: En général, les maisons de débauche sont l'appartement ou la maison de la femme. Il arrive parfois que deux femmes travaillent ensemble. Je travaille dans ce domaine de façon intermittente depuis dix ans, et je me suis déplacée un peu partout au pays. Or, je n'ai jamais encore vu de grosse maison de débauche, je n'en ai pas non plus entendu parler. Il s'agit surtout...

M. Kaplan: Qu'en est-il des grosses agences d'escorte, qui peuvent sans doute rapporter autant d'argent que les grosses maisons de débauche?

Mme Scott: Eh bien, la majorité des agences d'escorte appartiennent à une ou deux personnes. Beaucoup appartiennent à une seule femme, qui travaille avec deux, trois ou peut-être quatre de ses amies. Je dirais qu'en règle générale, ces agences ne regroupent pas plus de dix personnes. Mais ces maisons ne tournent pas tout le temps. Certaines personnes s'accordent des congés d'une semaine. Vous téléphonez lorsque vous avez envie de travailler. Certaines personnes travaillent une semaine par mois. Certaines filles travaillent plus, et d'autres moins. Il existe un certain nombre de plus grosses agences.

Le problème, c'est que nous ne pensons pas que les agences d'escorte fassent quoi que ce soit de mal. Si l'agence paie la publicité, répond au téléphone, vérifie les cartes Visa et MasterCard, veille à ce qu'elles soient valides, prend votre appel lorsque vous téléphonez dès

[*Text*]

call there when you get to the hotel room or the person's residence, they provide protection, and all of that stuff, then we do not see that giving them 25% or 30% of our income is a bad thing.

Mr. Kaplan: That, though, is a different issue. I want to ask you about that in a moment, about whether any of these areas of prostitution should be criminalized the way they are. What I am asking you about now is, taking it that they are criminalized, are they the types of crimes and are the illegal profits being earned in them such that it justifies the sledge-hammer this legislation represents, and is meant to represent, to deal with the phenomenon of modern-day crime?

• 1645

The feeling I am getting is that prostitution is outside of that kind of crime; and we will talk about it as a crime in a minute. But taking it as a crime, it is a relatively small-potatoes kind of crime, in terms of illegal profits that would be used to corrupt institutions in society and see vast fortunes flowing through banks and so on.

Ms Scott: That is definitely so in our experience; and we have had lots of experience. It is not the type of big business used to ruin society or to be funnelled into drugs or anything like that.

Mr. Kaplan: In your experience—and this might be indirect and so on, but I think you are good people to ask—is it different in the United States? In the United States, is it the type of enterprise that does produce the kinds of profits and flows of cash that require extra powers to be given to the police and to the state?

Ms Scott: In Nevada they have large brothels, but then those are legalized. Even in the United States—and I have worked Florida—I have not seen or heard of any of those types of places; although I should say I do not know much about the escort scene in the United States.

Ms Hatchkiss: One thing, though, is that the RICO law, which the United States had for a while, has had an effect on the prostitution business. Unfortunately the people who have been charged under that law on prostitution are the small-time prostitutes. Almost half of Coyote's membership—that is another prostitutes' rights group—have had their assets seized.

Mr. Kaplan: Under the RICO law?

Ms Hatchkiss: Yes. And the bigger agencies have gotten bigger, because women do not want to take that risk. So if they were working as an independent, out of their own home, a law like Bill C-61 will encourage them to work on the street, where they are not subject to it, or for an

[*Translation*]

que vous arrivez dans la chambre d'hôtel ou chez le client, vous offre une protection, et tout le reste, nous ne voyons pas quel mal il y a à lui donner 25 ou 30 p. 100 de nos revenus.

M. Kaplan: Il s'agit cependant là de quelque chose de tout à fait différent. Je comptais justement vous interroger là-dessus dans un instant et vous demander si certaines de ces activités de prostitution devraient selon vous continuer d'être criminalisées. Cependant, la question que je vous pose maintenant est la suivante: étant donné que ces activités sont criminalisées, les crimes qu'elles constituent et les profits illégaux qu'elles procurent justifient-ils l'intervention massive qu'est ce projet de loi visant à traiter du phénomène de la criminalité d'aujourd'hui.

Mon impression, c'est que la prostitution est à l'extérieur de ce genre d'activités criminelles, mais nous en parlerons dans un instant comme s'il s'agissait d'un véritable crime. Même s'il s'agit d'un crime, c'est un crime de bien petite envergure si l'on pense aux profits illégaux qui pourraient être utilisés pour corrompre des institutions de la société et qui pourraient s'entasser dans les banques, etc.

Mme Scott: C'est tout à fait le cas, si nous nous fions à notre propre expérience, et nous en avons une très grande. Ce n'est pas le genre de grosse entreprise que l'on peut utiliser pour détruire la société ou pour financer les stupéfiants ou autres choses.

M. Kaplan: D'après votre expérience—indirecte peut-être, car vous êtes sans doute bien placée pour nous renseigner—la situation est-elle différente aux États-Unis? Aux États-Unis, est-ce le genre d'entreprise qui produit des profits tels qu'il faut doter la police et l'État de pouvoirs supplémentaires?

Mme Scott: Dans l'État du Nevada, il existe de gros bordels, mais ils sont légaux. Même aux États-Unis—et j'ai travaillé en Floride—je n'ai jamais vu ni entendu parler d'endroits comme ceux dont vous avez parlé. Je devrais cependant préciser que je suis beaucoup moins au courant de la situation qui existe aux États-Unis en ce qui concerne les services d'escorte.

Mme Hatchkiss: Il conviendrait cependant de préciser que la loi RICO, en vigueur aux États-Unis depuis quelque temps, a eu une incidence sur la prostitution. Malheureusement, les personnes qui ont été poursuivies pour de la prostitution en vertu de cette loi sont les petites prostituées. Près de la moitié des membres de Coyote—autre groupe de défense des droits des prostituées—ont vu leurs avoirs saisis.

M. Kaplan: En vertu de la loi RICO?

Mme Hatchkiss: Oui. Les grosses agences sont devenues encore plus importantes, parce que les femmes ne veulent pas prendre ce risque. Si elles travaillent chez elles de façon indépendante, une loi comme le projet de loi C-61 les encouragerait à travailler dans la rue, où elle n'y serait

[*Text*]

escort agency, where the escort agency is subject to it but they are not. It will have the exact opposite effect. The street is the physically most dangerous place to work, but it is the legally safest place to work. A woman who works on the street, though she may be risking a lot personally, is not risking a lot in terms of a court sentence. The person who works and takes the most control of her business, works in the safest way possible, out of her own home or with protection, runs the greatest legal risk. She can do the most time. Under this proposed law that risk will increase. Many woman will not take it and will end up working for the larger conglomerates or for people who may exploit them.

Mr. Kaplan: I just want to use this question to make a point with you on the subject of prostitution as a criminal activity. We in the Official Opposition do not agree with the street-soliciting bill the government brought forward. We preferred the Fraser commission recommendations for dealing with that and for dealing with the bawdy-house. But I think in the light of your earlier remarks I ought to make it clear that the Fraser recommendation about regulation of larger bawdy-houses is not something we agree with or approve of. I would like some element of criminal sanction to apply to prostitution when it is practised on an enterprise scale. So that is where we agree or we disagree.

Ms Scott: The reason we advocate that is a lot of woman do not want to work out of their own homes, for various reasons. Many women have children there or have a family. There are many different reasons why women do not want to work out of their own homes. So if they do not work out of their own homes, where are they going to work, unless it is on the street or in hotels? So we were thinking it might be a good idea to have commercial brothels where you can check in to work, for people who cannot work out of their own homes. That was our rationale behind it.

Mr. Thacker: I have just one point I would like to review. As lay people, I guess we just read the paper and we watch *Marketplace* and *The Journal* and so on, and they seem forever to have programs on young girls who are spirited off to Vancouver and hooked on cocaine and drugs and then forced out onto the street to maintain their habits. There is always some man manipulating them and taking in the profits. This bill comes to us designed to try to get at that—at least we are informed of that. It seems like a good bill, but you kind of give a different cast to it.

[*Traduction*]

pas assujettie, ou pour une agence d'escorte qui, elle, y serait assujettie, mais pas les prostituées. Cela aurait l'effet opposé. C'est dans la rue qu'on est plus en danger physiquement, mais c'est dans la rue qu'on est le plus à l'abri pour ce qui est de la loi. Une femme qui travaille dans la rue, même si elle court d'importants risques personnels, ne risque pas beaucoup de se faire condamner par un tribunal. Cependant, la fille qui travaille en contrôlant son affaire chez elle ou avec une certaine protection, en veillant à courir le moins de risques physiques possible, court les plus gros risques du point de vue de la loi. C'est elle qui risque les peines d'incarcération les plus longues. Avec ce projet de loi, s'il est adopté, le risque augmentera encore. Un grand nombre de femmes ne voudront pas le prendre, et elles finiront par travailler pour des gros groupes ou pour des gens qui les exploiteront.

M. Kaplan: Je voulais tout simplement utiliser cette question pour avancer un argument concernant le côté criminel de la prostitution. Nous autres, de l'opposition officielle, ne sommes pas d'accord avec le projet de loi sur la sollicitation dans la rue, que le gouvernement a proposé. Nous préférons les recommandations de la Commission Fraser couvrant cette question ainsi que la tenue des maisons de débauche. Vu ce que vous avez dit tout à l'heure, je dois cependant préciser que nous n'approuvons pas la recommandation du rapport Fraser sur la réglementation des grosses maisons de débauche. J'aimerais pour ma part que certaines sanctions, relevant du Code criminel, s'appliquent à la prostitution lorsque celle-ci est pratiquée sur une échelle industrielle. Voilà donc ce sur quoi nous sommes d'accord ou pas d'accord.

Mme Scott: Si nous préconisons cela, c'est parce qu'un grand nombre de femmes ne veulent pas, pour diverses raisons, travailler chez elle. Elles sont nombreuses à avoir des enfants et une famille. Il y a bien des raisons pour lesquelles les femmes ne veulent pas travailler chez elles. Et si elles ne travaillent pas chez elles, où peuvent-elles aller ailleurs que dans la rue ou dans les hôtels? C'est pourquoi nous pensons qu'il serait peut-être une bonne chose d'avoir des bordels commerciaux, où vous pourrez aller travailler si vous ne voulez pas travailler chez vous. C'est la raison pour laquelle nous avons proposé cela.

M. Thacker: J'aimerais revenir sur une seule question. Nous ne sommes pas spécialisés dans le domaine; nous lisons le journal et nous regardons *Marketplace* et *The Journal* etc. Il semble qu'il y ait sans cesse des émissions sur des jeunes filles qui sont enlevées et expédiées à Vancouver où on les accroche à la cocaïne ou à d'autres stupéfiants pour ensuite les envoyer dans la rue financer leur toxicomanie. Il y a toujours quelqu'un qui manipule et qui en tire profit. Le projet de loi a donc été conçu pour empêcher cela, tout au moins pour nous en informer. Il semble bon, mais vous le montrez sous une autre lumière.

[Text]

• 1650

Ms Hatchkiss: To address the pimping issue for a moment, last year I lived with Valerie Scott, and I was unemployed so she supported me, as friends often do in those situations. Yet because she chose to do that, I was a pimp. I did live off her avails; she is a prostitute. I am not your stereotypical pimp, and in no way was I exploiting or coercing her to take part in the business, and yet I fell under that provision.

You would still be subject to the law even if you were not unemployed because you are habitually in her company. The law does cover husbands, lovers and children over 12. But if you are being supported by a prostitute, you can be convicted of pimping, not just charged with it. Last year I could have been charged and maybe convicted of pimping, and yet what possible good could it do the state to put me in jail for 10 years when someone voluntarily helped me through a tough time? But that is the effect of the law.

If a woman is married to a guy and they have shared bank accounts and they share the mortgage on the house, under Bill C-61 those bank accounts would be seized, even though she was legally conducting her business—she was doing only out-calls. But because they have shared bank accounts, the whole thing would be seized, and the house. That would victimize her, which was not your intent I assume, and also victimize someone who may not be doing her any harm, who may simply be her husband.

Ms Scott: We would like to see extortion, coercion, and intimidation—all of which have pretty tough laws and long sentences, not slap-on-the-wrist type of things—put in place, because the pimping law as it is now criminalizes all our relationships. If someone is exploiting me, I would like to see them charged for what they are doing—if it is assault or extortion. It is sort of like the battered wives thing. You charge your husband with assault; you do not charge him with being your husband. We feel we are in the same situation.

Mr. Robinson: I want to welcome the witnesses back before the committee and just note that this is the second time CORP has appeared. I welcome the fact that this time the witnesses are appearing without concealing their identity. I know Ms Scott, for example, appeared last time and the conditions were such then that the witnesses felt it was necessary to conceal their identities. I think they are to be commended for having the courage to appear and assist the committee on this important question that we are addressing in the context of the legislation.

I just want to deal for a moment with the last point made, and that is with respect to the business of living on the avails of prostitution. This is an area of the law that goes back many, many years, and the implication of this is that prostitutes are somehow less than human beings and

[Translation]

Mme Hatchkiss: Au sujet du proxénétisme, l'année dernière, j'étais sans travail et je vivais avec Valerie Scott, ce qui veut donc dire que j'étais à sa charge, comme cela arrive souvent entre amis dans de telles situations. Or parce qu'elle avait choisi de m'aider, j'étais considérée comme proxénète. Il est vrai que je vivais de ses ressources et que c'est une prostituée. Cependant, je n'agissais certainement pas comme les proxenètes, je ne l'exploitais nullement, ni ne la forçais à travailler comme prostituée, mais malgré cela, j'étais quand même un proxénète.

On est visé par ces dispositions de la loi même si on est au chômage, tout simplement du fait qu'on vit avec une telle personne. La loi englobe bien les maris, les hommes vivant en union libre et les enfants de plus de 12 ans. Toutefois, si on vit à la charge d'une prostituée, on peut être reconnu coupable de proxenétisme, pas seulement en être accusé. L'année dernière, c'est ce qui aurait pu m'arriver, mais quel avantage l'Etat aurait-il eu à m'incarcérer pour 10 ans tout simplement pour avoir accepté l'aide de quelqu'un pendant des circonstances pénibles? C'est toutefois l'une des conséquences de la loi.

Si une femme est mariée et qu'elle partage avec son conjoint un compte en banque et une hypothèque, en vertu du projet de loi C-61, les comptes et l'hypothèque seraient saisis, même si l'épouse ne faisait que son travail, c'est-à-dire accepter les appels téléphoniques. Cependant, la loi permettrait la saisie des comptes conjoints et la maison. En conséquence, sans qu'on l'ait voulu, on se trouverait à léser la femme ainsi que quelqu'un qui ne lui faisait aucun tort, son mari.

Mme Scott: Nous aimerions que l'on impose de très lourdes peines dans les cas d'extorsion, de contrainte et d'intimidation, car à l'heure actuelle, la Loi sur le proxénétisme pénalise tous nos rapports. Si quelqu'un m'exploite, que ce soit par des voies de fait ou de l'extorsion, j'aimerais que le coupable soit poursuivi pour cela. C'est un peu analogue à ce qui se passe dans le cas des femmes battues. On poursuit son mari pour voies de fait, mais on ne l'accuse pas d'être son mari. Nous estimons être dans la même situation.

M. Robinson: Je tiens à souhaiter de nouveau la bienvenue à nos témoins, car c'est la deuxième fois que les membres du CORP s'expriment devant nous. Je suis heureux que cette fois-ci, elles le fassent sans dissimuler leur identité. Je me rappelle que la dernière fois que M^me^ Scott était ici, compte tenu des circonstances, elle avait estimé nécessaire de témoigner sous un faux nom. À mon avis, il y a donc lieu de féliciter les témoins d'avoir eu le courage de venir ici afin d'aider le Comité à étudier l'importante question dont nous sommes saisis.

J'aimerais maintenant revenir au dernier point soulevé, à savoir le fait de vivre des fruits de la prostitution. Cet aspect de la loi remonte à il y a très, très longtemps et se fonde sur le postulat d'après lequel les prostituées ne sont pas vraiment des êtres humains; cela veut donc dire que

[*Texte*]

anyone who would actually associate in any way with a prostitute was somehow also to be condemned by society.

Of course the law, as you pointed out, indicates quite clearly that anyone who lives with a prostitute is, in the absence of evidence to the contrary, living on the avails of prostitution, and the law provides for whether you live wholly or in part on the avails of prostitution. Even if you receive a small amount of money from the person with whom you are living, if that person happens to be a prostitute, then you are a criminal and you could be convicted of a very serious indictable offence. I think that is a serious concern.

My understanding as well is that this reverse onus provision in section 195.2 has in fact been the subject of challenge in the courts. Are you aware of that?

Ms Scott: That was in the Oakes case, which was a drug trafficking case, but it has never been subject to scrutiny with regard to the pimping law.

Ms Hatchkiss: Actually, the Nova Scotia Supreme Court decided in 1986 that section no longer has the force of law in Nova Scotia.

• 1655

Mr. Robinson: Because of the Charter.

Ms Hatchkiss: Because of the reverse onus, because it was a Charter challenge. But of course, the person won the case and so did not appeal it, so it has never got to the Supreme Court level. The Supreme Court has not decided whether the reverse onus clause is justifiable.

What the reverse onus clause says in effect is that anyone who would live with a prostitute must be living off her avails, and it asks you to prove otherwise. Under Bill C-61, of course, for the assets to be seized, all the police would need is a reasonable suspicion not that you were living off the avails, but that you were habitually in the company of a prostitute. That is not very much evidence upon which to seize all your assets.

Mr. Robinson: Of course, the other point about the bawdy-house provisions is that, under the definition of common bawdy-house, there does not even have to be an act of prostitution. Under section 179, the definition of common bawdy-house is:

> a place that is
>
> (a) kept or occupied, or
>
> (b) resorted to by one or more persons
>
> for the purpose of prostitution or the practice of acts of indecency;

So there again, legislation that purports to be dealing with serious organized crime, in my view, is just extending the net too far.

[*Traduction*]

quiconque a des liens avec l'une d'elles méritait aussi la réprobation sociale.

Comme vous l'avez précisé, d'après la loi, qui est très claire à cet égard, en l'absence d'une preuve du contraire, quiconque vit avec une prostituée vit des fruits de sa prostitution, qu'il ou elle soit entièrement à sa charge ou non. En conséquence, même si on reçoit une très petite somme de la personne avec qui l'on vit, s'il s'agit d'une prostituée, alors on est considéré comme un criminel et passible d'une lourde peine. Il s'agit donc d'une question assez grave.

Je crois savoir que cette inversion du fardeau de la preuve telle qu'elle figure à l'article 195.2 a été contestée devant les tribunaux. Le saviez-vous?

Mme Scott: La disposition a été portée devant les tribunaux à l'occasion de la cause Oakes, où il était question de trafic de drogue, mais son aspect qui portait sur le proxénétisme n'a jamais été contesté.

Mme Hatchkiss: En fait, en 1986, la Cour suprême de la Nouvelle-Écosse a jugé que l'article est devenu caduc dans cette province.

M. Robinson: A cause de la Charte.

Mme Hatchkiss: A cause de l'inversion du fardeau de la preuve et parce que la cause était fondée sur la Charte. Cependant le demandeur a eu gain de cause et il n'y a pas eu pourvoi en Cour suprême. Nous ne savons donc pas si d'après la Cour suprême, la disposition relative à l'inversion de la preuve est constitutionnelle.

Ce que cette disposition signifie, c'est que quiconque vit avec une prostituée, doit vivre des fruits de son travail, et qu'il lui incombe de prouver le contraire. Sous le régime du projet de loi C-61, bien entendu, tout ce dont la police aurait besoin pour saisir les biens de l'intéressé est le soupçon raisonnable, non pas qu'il vit des fruits de la prostitution mais que l'on le voit habituellement en compagnie d'une prostituée. C'est une très mince preuve lorsqu'il s'agit de saisir tous les biens de quelqu'un.

M. Robinson: Bien entendu, l'autre aspect des dispositions relatives aux maisons de débauche est qu'il n'est même pas nécessaire d'alléguer qu'il y a eu prostitution. Aux termes de l'article 179, une maison de débauche est, et je cite:

> un local
>
> a) qui est tenu ou occupé ou
>
> b) que fréquentent une ou plusieurs personnes,
>
> à des fins de prostitution ou pour la pratique d'actes d'indécence;

Encore une fois, il s'agit d'un texte de loi conçu pour sanctionner le crime organisé et grave mais qui à mon avis, va trop loin.

[*Text*]

We have heard now a considerable amount of evidence with respect to escort services and prostitutes who work in escort services, out-calls and so on. Obviously, if this legislation were enacted without amendment it would quite clearly increase the pressure on prostitutes who do operate out of their own homes, and some of those may be forced to operate either on the street or through out-calls. What are the increased risks of operating through out-calls as opposed to out of your own home?

Ms Scott: What happens is this, and it is not my personal experience but that of a close friend of mine. She was doing an out-call for an escort service to see a gentleman in a hotel, and she had his driver's licence number, his VISA card number, which checked out; he checked out in the phone book. She had all this information, so she knew who he was. She went to the hotel, and there were two other men hiding in the closet. When she got into the room, the two other men came out of the closet and beat her, raped her and robbed her.

One of the pitfalls of doing out-calls is that you are on their turf. You do not know what is going to happen, even though the guy sounds perfectly all right on the phone and you have all this information on him. If you go to the police and tell them you work for this escort agency and that this guy—whatever his name is—beat you up in a hotel room, what always happens is that the police investigate the escort agency. So the escort agency cannot call the police because they do not want to be investigated.

There was a case with The Great Escape escort agency where the girl was given a phony cheque. She was silly enough to go to the police and ask them about it, and they investigated the escort agency and charged them. They did get off with a $15,000 fine, so they were fairly lucky there.

But when you see someone in your home, you have checked him out and all that, and the thing is that he does not know if you have two guys in the closet. It is your turf.

Mr. Thacker: Or two women.

Ms Scott: Or two women. So you are in a much better position of strength, and he does not know the lay-out of your house. It is much, much better.

Mr. Robinson: Are you saying that if this bill were enacted in its present form it would increase the risk of violence directed against prostitutes?

Ms Scott: Certainly, because many women would have to go only to places where they are not as protected.

Also, on the street what will happen is this. Since Bill C-49, the communicating law, came in, there has been an

[*Translation*]

Nous avons entendu de nombreux témoignages au sujet de services d'escorte et des prostituées qui y travaillent, de prostitution organisée sur rendez-vous téléphonique, etc. Or si le projet de loi était adopté tel quel, il ajouterait aux pressions déjà exercées sur les prostituées qui travaillent chez elles, ce qui signifierait que certaines d'entre elles seraient peut-être forcées soit de faire le trottoir soit d'accepter de travailler à l'extérieur sur rendez-vous téléphonique. Dans quelle mesure cette prostitution sur rendez-vous téléphonique accroit-elle les risques par rapport à la prostitution à domicile?

Mme Scott: En guise d'exemple, je vais vous parler de l'expérience d'une de mes meilleures amies. Elle avait accepté un rendez-vous dans un hôtel, que lui avait fixé pour elle une agence d'escorte qui l'avait rejointe par téléphone; elle avait le numéro du permis de conduire du client ainsi que du numéro de sa carte Visa, qu'elle a pu vérifier; elle a aussi retrouvé son nom dans l'annuaire téléphonique. Forte de tous ces renseignements, elle savait donc de qui il s'agissait. Elle s'est rendue à l'hôtel, où il y avait deux autres hommes cachés dans le placard. Quand elle est entrée dans la pièce, les deux hommes en question sont sortis du placard, l'ont battue, violée et volée.

L'un des risques de ce genre de rendez-vous, c'est qu'on se rend sur le terrain du client. On ignore ce qui va se passer, même si le type semble tout à fait normal au téléphone et qu'on ait toutes sortes de renseignements sur lui. Si l'on se plaint à la police des voies de fait de la part du client, quel que soit son nom, la police effectuera une enquête sur l'agence d'escorte. Cela veut donc dire que l'agence ne peut appeler la police car elle ne veut pas faire l'objet d'une enquête.

Je songe au cas où une fille du service d'escorte appelé The Great Escape s'était fait donner un chèque sans provisions. Elle avait été assez étourdie pour appeler la police et se plaindre, ce qui entraîna une enquête sur l'agence en question, une poursuite judiciaire et une amende. L'agence a dû payer une amende de 15,000$, elle s'en est donc tirée à bon compte.

Quand on travaille chez soi, on se sera pleinement renseigné sur le client, et c'est lui qui ignore si vous avez deux types cachés dans le placard. Vous êtes sur votre propre terrain.

M. Thacker: Ou deux femmes.

Mme Scott: Ou deux femmes. On est donc beaucoup plus avantagé, il ne connait même pas l'agencement de votre logement. C'est beaucoup mieux ainsi.

M. Robinson: Estimez-vous que si le projet de loi est adopté tel quel, les prostituées seront davantage exposées à des actes de violence?

Mme Scott: Tout à fait, parce qu'un grand nombre de femmes seront obligées de travailler dans des lieux où elles ne sont pas bien protégées.

De plus, voici ce qui se passera dans la rue. Depuis l'adoption du projet de loi C-49 sur le racolage, on a

[*Texte*]

awful lot more violence out there. The territorial wars, which were never seen before in Toronto, are incredible. You hit cement if you walk on somebody's territory, even if you are just passing by. I can see that with Bill C-61 we are going to have more people forced onto the street and there will be even more increased violence.

- 1700

Mr. Robinson: We have heard talk about women and about girls, but we also have a male prostitute who is part of the organization and we have not heard anything from him. Is there anything different in the operations of a male prostitute, as it were, from those of a female prostitute that would cause concern from your perspective?

Mr. Danny Cockerline (Canadian Organization for the Rights of Prostitutes): No, there is not any really big differences. The male prostitution business is even less organized than female prostitution so there are absolutely no pimps or organized crime involved in it, or anything like that. The closest you will get is a telephone referral service where for something like $60 every two weeks you can rent an extension on a line so that instead of publishing your own phone number in a newspaper, you publish their number with the extension and then someone will phone and ask for your extension number and they will put them through. So you are renting a phone service which the people who are running the service are making money from. They are not exploiting anybody; nobody has to do it. I personally do not work that way because it is much more financially sensible just to rent an extra phone and a phone machine, but a lot of people have not figured that out yet.

Mr. Robinson: So effectively you are saying that male prostitutes generally work as individuals. Would that be on an out-call basis or would it be to a significant extent out of their own homes?

Mr. Cockerline: No, a lot of them do some out-calls and some in-calls. In the wintertime you do a lot more in-calls, and in the summertime you do a lot more out-calls. So they are all technically the same as with female prostitutes, keeping a bawdy house and therefore subject to being arrested. So if Bill C-61 passes, what it will mean is that rather than wanting to take the chance yourself where you are maybe going to lose all your assets, you would be much better off working for one of these agencies. So basically what this bill will be is a Godsend to escort agencies because it will just make all the prostitutes want to work for them to have a cover. So if you want to stop prostitution from being very organized, do not pass this bill.

Ms Hatchkiss: It is also a bigger Godsend to the larger escort agencies, and that is because of the way they

[*Traduction*]

assisté à une escalade de la violence. Il y a maintenant de terribles guerres territoriales à Toronto comme on n'en avait jamais vu auparavant. On se fait tabasser si on empiète sur le territoire de quelqu'un d'autre, même si ce n'est que pour passer. Or l'adoption du projet de loi C-61 forcera davantage de prostituées à travailler dans la rue, ce qui veut dire qu'il y aura encore plus de violence.

M. Robinson: On nous a parlé des femmes et des filles, mais un homme fait également partie de votre organisation, et il n'a pas encore pris la parole. Y a-t-il une différence de mode de travail entre un prostitué et une prostituée, qui vous préoccupe?

M. Danny Cockerline (Canadian Organization for the Rights of Prostitutes): Non, il n'y a pas vraiment de grande différence. Le milieu de la prostitution masculine est encore moins bien organisé que celui des femmes, on n'y trouve ni proxénète ni crime organisé. Tout ce que vous trouverez, c'est un service de présentation téléphonique auquel on peut s'abonner pour environ 60$ les deux semaines, et qui vous évite d'annoncer votre propre numéro dans un journal; vous avez accès à son numéro, grâce à un poste supplémentaire, et on donnera le numéro de votre poste à quiconque désire vous rejoindre. Il s'agit donc d'un abonnement à un service téléphonique qui est bien entendu à but lucratif. Ses propriétaires n'exploitent personne, et d'ailleurs personne n'est obligé d'exploiter qui que ce soit, il s'agit tout simplement d'administrer un service téléphonique et en tirer profit. Pour ma part, je ne fonctionne pas ainsi car il me paraît beaucoup plus rentable de louer un téléphone supplémentaire ainsi qu'une machine à enregistrer les messages, mais beaucoup de gens ne s'en sont pas encore rendu compte.

M. Robinson: Cela veut donc dire que d'après vous, les hommes prostitués travaillent généralement seuls. Cependant, est-ce qu'ils travaillent à l'extérieur sur rendez-vous fixé grâce à une agence d'escorte ou sont-ils assez nombreux pour travailler à domicile?

M. Cockerline: Non, un grand nombre d'entre eux travaillent à l'extérieur et aussi à domicile. En hiver, on travaille davantage chez soi tandis qu'en été on accepte davantage de rendez-vous à l'extérieur. Sur le plan juridique, les prostitués hommes sont dans la même situation que les femmes, c'est-à-dire qu'ils sont tout aussi menacés d'arrestation du fait qu'ils tiennent une maison de débauche. En conséquence, si le projet de loi C-61 est adopté, plutôt que de s'exposer à tout perdre, on préférera travailler pour une agence d'escorte. Le projet de loi est donc du pain béni pour ces agences car il incitera tous les prostitués à y avoir recours pour être à l'abri. Si donc vous voulez empêcher que la prostitution soit très organisée, n'adoptez pas ce projet de loi.

Mme Hatchkiss: Ce sera aussi un cadeau pour les grandes agences d'escorte, en raison de la façon dont ils

[*Text*]

operate. The small ones where you have just a few women, just two or three women, women often talk on the phone about the particular service involved. So it is obvious that there is sex for sale, whereas the larger agencies hire telephone people and when someone calls up and asks for a prostitute, they say, we do not hire prostitutes, we have escorts. Then the caller asks for an escort and their line is passed through to the prostitute's home.

The escort agency's defence is that they are not living off the avails, they are just simply putting these two parties together, they are facilitators, and what they do is their own business. I mean, they could be going out for dinner, they could be. Who knows what they are doing? And that is what the agencies have used in defence in court and the large agencies have not been hit with the pimping law. One in particular is Five Star which runs a number of ads in the yellow pages. They have not been hit with pimping provisions because they run their business that way and because they refuse to provide back-up for prostitutes. They do not provide any sort of safety, they do not involve themselves in the business of the prostitute, so they are in fact providing less of a service than the small operations.

Mr. Robinson: Again with respect to this question of organized crime and the alleged link, you quite properly point out that in the Organized Crime Committee report the only crime to which they refer is this business of the girl answering the phone being the girl that owns the agency and meeting with the customer. This legislation, of course, deals with the proceeds of organized crime and laundering of those proceeds and so on. But nothing under the current law stops the police from charging organized criminals if in fact they are engaged in prostitution. To the best of your knowledge, what has been the experience under the current provisions of the Criminal Code? Is there any evidence that organized criminals or organized crime has in fact been charged, or is it in fact the prostitutes who are being charged?

Ms Scott: It is always the prostitutes. They are so much easier to get. The large agencies hide behind the fact that if they do anything to help you the police will investigate them. And that is a valid concern of theirs, I can see. If they try to do anything, they are hit.

• 1705

Ms Hatchkiss: The people who are charged with living of the avails in agencies have been the telephone people, the people who make $10 an hour answering the phones, not the owner of the agency.

[*Translation*]

fonctionnent. Dans les petites agences, où ne travaillent que deux ou trois femmes, il arrive souvent qu'on parle ouvertement au téléphone du service offert. On sait manifestement de quoi il s'agit dans les petites agences, tandis que si on appelle les grandes agences et qu'on demande les services d'une prostituée, elles vous répondront qu'elle n'embauchent pas de prostituées, mais des calavières servantes. Si l'interlocuteur demande alors à parler à l'une de ces dernières, l'appel est acheminé jusqu'au domicile de la prostituée.

Pour se justifier, les agences d'escorte nient qu'elles vivent des fruits de la prostitution. À leurs yeux, elles ne font que faciliter des rencontres, et une fois que cela a été fait, elles n'ont rien à voir avec ce que font les deux parties. Vous savez, il se pourrait que les deux sortent seulement pour dîner, ou bien. Qui sait ce qu'ils font? C'est tout au moins ce que les grandes agences d'escorte ont invoqué pour se défendre devant les tribunaux, et d'ailleurs, elles n'ont pas été poursuivies en vertu des dispositions relatives au proxénétisme. Je songe en particulier à une agence appelée Five Star, qui publie quelques annonces dans les pages jaunes. Or elle n'a pas été poursuivie pour proxénétisme parce que c'est ainsi qu'elle procède et parce qu'elle a toujours refusé de fournir des services de soutien aux prostituées. Elle n'offre donc aucune sécurité aux prostituées et ne participe pas aux transactions de la prostituée, et par conséquent fournit des services moins complets que dans les petites agences.

M. Robinson: Encore au sujet de cette question du crime organisé, dont on allègue qu'il a des liens avec la prostitution, vous avez rappelé avec raison que dans le rapport déposé par le Comité chargé d'étudier le crime organisé, le seul crime mentionné en matière de prostitution est celui où la femme propriétaire d'une agence répond elle-même au téléphone et rencontre le client. Bien entendu, le projet de loi porte sur les bénéfices réalisés par le crime organisé et la façon dont on les blanchit. Cependant, il n'y a rien dans la loi actuelle qui empêche la police de poursuivre des malfaiteurs s'ils participent à des activités de prostitution. Sous le régime des dispositions du Code criminel actuel, pouvez-vous nous dire ce qui se passe à cet égard? A-t-on poursuivi des membres du crime organisé ou est-ce que ce sont les prostituées seules qui en font les frais?

Mme Scott: Ce sont toujours les prostituées. Elles sont tellement plus faciles à atteindre. Les grandes agences s'abstiennent de nous aider car si elles le font, la police fera une enquête sur le compte. Je comprends d'ailleurs que ça les préoccupe. Si elles font le moindrement quelque chose, elles se font pincer.

Mme Hatchkiss: Parmi ceux qui travaillent pour les agences, les seuls qui se sont fait accuser de vivre de la prostitution sont les téléphonistes, c'est-à-dire ceux ou celles qui gagnent seulement 10$ l'heure, non les propriétaires.

[*Texte*]

Ms Scott: The receptionist always gets it.

Ms Hatchkiss: Yes, the receptionist gets it. The receptionist is the one who is going to get it under Bill C-61. I know that your intentions are laudible in terms of getting organized crime, but the reality is that the way a law is meant to happen and its actual effect can be two very different things because of course the legislators are not enforcing the law; the police are enforcing it, and they have told us that they plan to use it in as inventive a way as possible.

Ms Scott: Yes they were quoted in *Now Magazine*, a paper in Toronto, as saying that they intended to be as creative as possible. I know they have charged prostitutes before for keeping a common bawdy house when they were doing sex acts in parking lots. They said that the parking lot was a common bawdy house. Well, thankfully the judge threw it out, but to me that is an example of creativity.

The Chairman: Mr. Cockerline, the level of violence and harassment that we have heard the female prostitutes refer to on the street has been sometimes significant. Does that also apply to male prostitutes?

Mr. Cockerline: No, there is not nearly as much violence in male prostitution. Generally, the main violence that male prostitutes face—if you take a look at the Fraser report for example—is harassment from the police calling them faggots and taking them down to Cherry Beach and beating them up. That also takes place with other people who are making fun of them just because they are visible gay people on the street, but they do not tend to experience violence from pimps or clients.

Mr. Reid: Ms Scott, I am concerned with the definition of bawdy houses, but because we have both male and female prostitutes we have a little difficulty in distinguishing from the point of view of defining a bawdy house. I have heard today that you had a guest staying at your place for a period of time. Were you charged? Do you know how many people have been charged under circumstances in which obviously the person residing with you is not a person living off the avails of prostitution? I am concerned with the implications of that definition and its application.

Ms Scott: I do not know of hundreds of cases, but I certainly do know of cases in the tens in which people are charged with pimping who were doing nothing of that sort whatsoever. I know guys who are truck drivers, who have steady jobs, who have been charged with pimping. A male stripper recently was charged with pimping his girlfriend or his fiancée. The police did not think that being a stripper was a job. I know of lots of people who have had this happen. The lucky ones the police just sort

[*Traduction*]

Mme Scott: C'est toujours la réceptionniste qui se fait pincer.

Mme Hatchkiss: Oui, la réceptionniste. C'est encore elle qui se fera poursuivre en vertu du projet de loi C-61. Je n'ignore pas que vos intentions sont tout à fait louables; vous voulez combattre le crime organisé, mais dans les faits, il y a tout un fossé entre les intentions qui président à l'adoption d'une loi et la façon dont elle est mise en vigueur. Il convient de se rappeler que ce ne sont pas les législateurs qui l'appliqueront, mais bien la police. Cette dernière nous a dit avoir l'intention de s'en servir avec le plus d'imagination possible.

Mme Scott: Oui, c'est ce genre de propos-là qu'on trouve dans un journal de Toronto, le *Now Magazine*, où la police dit avoir l'intention de faire preuve d'imagination le plus possible. Ainsi, par exemple, je sais que des prostituées ont été accusées par la police de tenir une maison de débauche parce qu'elles avaient posé des actes sexuels dans des terrains de stationnement. Il avait été décidé que le terrain de stationnement était une maison de débauche. Heureusement, le juge a rejeté cette prétention, mais c'est un bon exemple de cette imagination dont veut faire preuve la police.

Le président: Monsieur Cockerline, les prostituées nous ont parlé de la violence et du harcèlement dont elles sont l'objet, parfois à des niveaux très élevés. Est-ce qu'on trouve la même chose dans la prostitution masculine?

M. Cockerline: Non, il est loin d'y avoir autant de violence dans la prostitution masculine. En général—et si vous vous reportez au rapport Fraser, par exemple—c'est surtout au harcèlement que les prostitués sont exposés lorsque les policiers les traitent de pédés, les amènent à Cherry Beach et les battent. D'autres personnes leur font aussi subir le même genre de choses, tout simplement parce que ce sont des cibles faciles, des gens qui s'affichent comme homosexuels en pleine rue, mais ils ne subissent pas de voies de fait de la part de proxénètes ou de clients.

M. Reid: Madame Scott, je m'interroge sur la définition que l'on devrait donner d'une maison de débauche, mais étant donné qu'il y a des prostitués hommes et femmes, nous avons quelques difficultés à y arriver. Aujourd'hui, j'ai entendu dire que vous avez eu une invitée chez vous pendant quelque temps. Avez-vous été poursuivie? Aussi, savez-vous combien de personnes ont été poursuivies dans les mêmes circonstances, c'est-à-dire où quelqu'un d'autre partageait sa vie avec vous tout en ne vivant manifestement pas des fruits de la prostitution? Je suis préoccupé par les ramifications que cette définition peut avoir.

Mme Scott: Je ne puis vous citer des centaines de cas, mais certainement des dizaines, où des personnes accusées de proxénétisme n'avaient aucunement participé à ce genre d'activité. Je connais par exemple des camionneurs qui travaillent régulièrement et qui, malgré cela, ont été accusés de proxénétisme. Récemment, un homme qui vivait d'effeuillage et qui vivait avec son amie ou sa fiancée a été accusé de proxénétisme. La police estimait que l'effeuillage n'est pas un métier. Je connais beaucoup

[*Text*]

of harass them a bit, but lots and lots of people. . . It is very rare that the pimping law gets those real idiots, those real guys who I would love to see in jail for 25 years. You need so much evidence.

Mr. Reid: I wonder if you could direct your attention to bawdy houses themselves and taking the people home, and I will put it in the application of information given. Either you or one of the other witnesses told us that by and large prostitutes go to out-calls, not in-calls. If they are driven to walking the streets, this bill, you said, would only enhance that trend. If a woman or a male is walking the street, where do they go when they make contact—in-house, out-house, out-call?

Ms Scott: Hotels or his residence or in the back of abandoned factories, lonely parking lots, places like that.

• 1710

Ms Hatchkiss: Valerie and I were discussing earlier the fact that sometimes guys go on binges of hiring prostitutes. They will go to a town and they do not go the theatre, as Valerie was saying, or go to shows. They just hire one prostitute after the other for a couple of days. Although those customers are using that place to see many different women and to have all these various sex acts, none of them has ever been charged with keeping a common bawdy house. It is always the other way around. We feel that the law discriminates against the prostitute, even though the consumer could be using his residence almost as frequently as the prostitute for acts of prostitution.

Mr. Reid: Ms Scott, how frequently is the bawdy-house term, as represented here today, put into application and charges levied?

Ms Scott: It depends. Sometimes the police will go through the ads in the papers alphabetically, so you can sort of warn girls you know that their number is coming up. Many times the police come in, pretending they are customers, and then they arrest the girls. Almost everybody who has been in the business for more than three years has been arrested under the bawdy house term. It is the one woman working out of her home or apartment who is named inmate keeper of a common bawdy house, and it happens quite often.

Mr. Robinson: I want to satisfy my curiosity. When you let your fingers do the walking through the yellow pages of the Ottawa phone book, there are pages and pages of phone numbers for escort services.

The Chairman: It is a prosperous town.

[*Translation*]

de gens à qui c'est arrivé. Ceux qui ont eu de la chance ne se sont fait qu'harceler un peu par la police, mais il y en a beaucoup parmi eux qui . . . Il est très rare que la loi sur le proxénétisme permette de mettre le grappin sur les véritables coupables, ceux que j'aimerais bien voir passer 25 ans en prison. On a besoin de tant de preuves pour les pincer.

M. Reid: Pouvez-vous maintenant revenir aux maisons de débauche elles-mêmes et au travail à domicile, et j'essaierai de transmettre les renseignements que vous m'avez donnés. Je crois que selon vous, ou selon l'un des autres témoins, en général, les prostituées travaillent à l'extérieur, et non à domicile. Or, le projet de loi ne pourra que les acculer davantage à travailler à l'extérieur. Quoi qu'il en soit, lorsqu'un homme ou une femme fait le trottoir, où est-ce qu'il ou elle amène le client, à domicile, dans un lieu choisi par lui ou elle ou par le client?

Mme Scott: Dans des hôtels ou chez le client, derrière des usines abandonnées, dans des stationnements déserts, et d'autres endroits de ce genre.

Mme Hatchkiss: Un peu plus tôt, Valerie et moi discutions du fait que parfois certains hommes ont des espèces de fringale de prostituées. Ils iront en ville, et comme le disait Valerie, ce ne sera pas pour aller au théâtre, ni au cinéma. Ils vont seulement aller voir des prostituées pendant quelques jours. Or, bien que ces clients profitent du lieu où ils se trouvent pour voir un bon nombre de femmes et pour avoir beaucoup de rapports sexuels, aucun d'entre eux n'a jamais été accusé de tenir une maison de débauche. C'est toujours le contraire qui arrive. Nous estimons que la loi frappe injustement la prostituée, même si le client peut utiliser son domicile aussi souvent qu'elle pour poser des gestes assimilables à la prostitution.

M. Reid: Madame Scott, est-ce qu'on recourt souvent aux dispositions relatives à la maison de débauche pour poursuivre des prostituées?

Mme Scott: Cela dépend. Parfois, la police parcourra les annonces des journaux par ordre alphabétique, ce qui nous permet de prévenir les filles avant qu'on puisse les pincer. Assez souvent aussi, des membres de la police se font passer pour des clients et arrêtent les filles. Presque tous ceux et celles qui travaillent depuis plus de trois ans ont été arrêtés en vertu de la disposition relative aux maisons de débauche. Il arrive assez souvent que ce soit une femme travaillant à domicile qui est accusée d'être tenancière.

M. Robinson: Pour satisfaire ma curiosité, j'ai parcouru les pages jaunes de l'annuaire téléphonique d'Ottawa, où j'ai trouvé des pages et des pages de services d'escorte et de numéros de téléphone.

Le président: C'est une ville prospère.

[*Texte*]

Mr. Robinson: Does Ottawa have a reputation as being a particularly lucrative spot for prostitutes?

Ms Scott: It has been said that if you are ever stuck in a town with no money, this is the town to be stuck in.

The Chairman: As a Member of Parliament for Ottawa I had better defend my city and say the answer is no.

Mr. Robinson: I was asking the experienced people, Mr. Chairman.

The Chairman: Right. We very much appreciate your presence and thank you very much for your very useful input to the committee process.

Ms Scott: Thank you. It was our pleasure.

The Chairman: Thank you all.

The committee is adjourned to the call of the Chair.

[*Traduction*]

M. Robinson: La ville d'Ottawa est-elle considérée comme une très bonne source de travail pour les prostitués?

Mme Scott: Il a été dit que si jamais on se trouve égaré dans une ville sans argent, c'est à Ottawa qu'il faut être.

Le président: En tant que député représentant une circonscription d'Ottawa, je crois que je dois voler au secours de ma ville et répondre que non.

M. Robinson: Monsieur le président, j'interrogeais des gens d'expérience.

Le président: Bien. Nous vous remercions très vivement d'être venues aujourd'hui; votre témoignage nous sera certainement très utile.

Mme Scott: Merci à vous. Le plaisir fut pour nous.

Le président: Merci à tous.

La séance est levée.

April 26, 1988 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act]

EVIDENCE

[Recorded by Electronic Apparatus]

[Texte]

Tuesday, April 26, 1988

• 1107

The Chairman: I would like to call this meeting to order.

I would like to first of all read a letter from the Speaker addressed to Mr. Fred King, MP, pursuant to Standing Order 93-2.

> This is to confirm your appointment as Chairman of the Legislative Committee on Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, in place of Mr. Barry Turner, MP.

Further to that, there is a letter from Mr. King to myself dated April 20 to the clerk of the committee. It states:

> Dear Sir: Please note that Mr. Rob Nicholson will be replacing me at the committee meeting scheduled for April 26th.

I wonder if we could agree on the allotted questioning for each member. I am open to suggestions, or, if you like, I will make one for you.

Mr. Grisé: Ten and five.

The Chairman: Ten and five. Does that sound all right? Ten minutes for each member and five minutes in the second round. Is that acceptable?

Mr. Fontaine: Yes.

Mr. Grisé: Agreed.

The Chairman: I wonder if I could have a motion to that effect. Mr. Grisé?

Motion agreed to.

The Chairman: I would like to welcome Mr. Michael Ballard, representing the Canadian Bankers' Association.

Before you begin, please introduce those who are appearing with you.

Mr. Michael E. Ballard (Vice-President, Security, Canadian Bankers' Association): Thank you. Appearing with me this morning are three members of our Canadian Bankers' Association Money Laundering Task Force. They are also the corporate security directors of their banks.

I have with me Ken Johnston, director of security for the Royal Bank of Canada. Ken is the former police chief for the City of Winnipeg. I also have Brian Jilek, chief security officer for the Canadian Imperial Bank of Commerce, formerly with the Metro Toronto Police Department, and Bill Sherman, vice-president and

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le mardi 26 avril 1988

Le président: La séance est ouverte.

Permettez-moi tout d'abord de lire une lettre du Président de la Chambre adressée à M. Fred King, député, conformément à l'article 93-2:

> La présente confirme votre nomination à la présidence du Comité législatif sur le projet de loi C-61, loi modifiant le Code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants, en remplacement de M. Barry Turner, député.

En outre, il y a une lettre que M. King m'adresse à moi-même, en date du 20 avril, par l'intermédiaire du greffier du Comité. Je cite:

> Monsieur, la présente pour vous signaler que M. Rob Nicholson me remplacera à la séance du Comité fixée au 26 avril.

Pouvons-nous nous entendre sur le temps de parole réservé à chaque membre du Comité? Vous pouvez proposer quelque chose, mais si vous le voulez, je vous ferai une suggestion.

M. Grisé: Dix et cinq.

Le président: Dix et cinq. Êtes-vous tous d'accord? Chaque membre aura droit à 10 minutes au premier tour et cinq minutes au deuxième tour. Êtes-vous d'accord?

M. Fontaine: Oui.

M. Grisé: Oui.

Le président: Quelqu'un peut-il présenter une motion. Monsieur Grisé?

La motion est adoptée.

Le président: Je souhaite la bienvenue à M. Michael Ballard, représentant de l'Association des banquiers canadiens.

Avant de commencer, pouvez-vous présenter ceux qui vous accompagnent?

M. Michael E. Ballard (vice-président, sécurité, Association des banquiers canadiens): Merci. Ce matin trois membres de l'Association des banquiers canadiens m'accompagnent et ils font partie du Groupe de travail sur le recyclage de l'argent. De plus, ils sont directeurs de la sécurité pour leurs banques respectives.

M. Ken Johnston, directeur de la sécurité pour la Banque Royale du Canada. Ken est l'ancien chef de police de la ville de Winnipeg. Brian Jilek, chef de la sécurité pour la Banque de Commerce canadienne impériale, anciennement de la sûreté de Toronto, et Bill Sherman, vice-président et directeur de la sécurité pour la Banque

[*Text*]

director of corporate security for the Bank of Montreal. Bill was formerly a chief superintendent with the RCMP.

• 1110

Having said that, Mr. Chairman, with your permission might we read a short opening statement into the record?

The Chairman: Yes, please.

Mr. Ballard: The Canadian Bankers' Association, on behalf of our membership, the chartered banks of Canada, is pleased to have this opportunity to appear before the legislative committee, and to provide our views on Bill C-61.

We should like to say the banking industry welcomes the introduction of legislation on the subject of money laundering as part of the fight against organized crime generally and drug trafficking in particular. We welcome it because it will assist us in our efforts to ensure our domestic and international service networks will not be used as conduits for criminal funds. We also welcome it because it will give Canada a money laundering statute similar to the Money Laundering Control Act enacted in the U.S.A. in October of 1986, thereby deterring a possible spill-over of American money laundering activity into our country. Finally we welcome Bill C-61 because it provides a clearly defined legal framework in which banks may co-operate with law enforcement in combating organized crime.

Moreover we wish to assure this committee Canadian bankers are well aware money laundering is the end product of organized crime, and we are conscious of our obligation to counter it in every possible way.

We also wish to point out that notwithstanding the absence of specific money laundering legislation in Canada, the banks have over the past few years implemented programs to prevent the flow of criminally-obtained funds through our payment systems.

For instance, each of the major banks has issued internal policies and procedures designed to enhance staff awareness of the problem of money laundering. Based on the know-your-client rule of good banking practice, these procedures generally list commonly used laundering schemes and instruct personnel on how to deal with given situations. In all suspect cases, the client's disclosure as to the source of funds forms part of the procedural requirements under these policies.

In addition to written procedures on money laundering, bank counteraction includes training programs for personnel most likely to come in contact with money launderers. These training initiatives

[*Translation*]

de Montréal. Bill était autrefois surintendant en chef à la GRC.

Cela dit, monsieur le président, permettez-moi de lire une courte déclaration préliminaire.

Le président: Allez-y, je vous en prie.

M. Ballard: L'Association des banquiers canadiens, au nom de ses membres, les banques à charte, se réjouit de l'occasion qui lui est offerte de présenter ses points de vue sur le projet de loi C-61 devant le Comité législatif.

D'abord et avant tout, nous tenons à préciser que le secteur bancaire voit d'un bon oeil l'adoption d'une loi sur le recyclage de l'argent dans le cadre de la lutte engagée contre le crime organisé en général, et le trafic de la drogue en particulier. Nous l'accueillons d'autant plus favorablement que cette loi viendra appuyer les efforts que nous déployons pour empêcher la canalisation de fonds de provenance criminelle par le biais de nos réseaux de services nationaux et internationaux. Nous nous en réjouissons également parce que le Canada se dote ainsi de dispositions législatives semblables à celles de la loi américaine intitulée *Money Laundering Control Act*, sanctionnée en octobre 1986, mettant ainsi fin à tout espoir de débordement des activités américaines de recyclage de l'argent sur le territoire canadien. Enfin, nous voyons d'un bon oeil le projet de loi C-61 puisqu'il établit un cadre juridique bien défini, permettant ainsi une meilleure collaboration entre les banques et les autorités policières dans la lutte contre le crime organisé.

De plus, nous tenons à assurer au Comité que les banques canadiennes se rendent très bien compte que le recyclage de l'argent représente l'aboutissement du crime organisé et qu'elles reconnaissent l'obligation qu'elles ont de prendre toutes les mesures possibles pour contrer ces activités criminelles.

Nous souhaitons en outre faire remarquer au Comité que, même en l'absence de législation particulière sur le recyclage de l'argent au Canada, les banques ont, au cours des dernières années, élaboré des programmes visant à empêcher la circulation de fonds de provenance criminelle dans notre système de paiement.

Ainsi, chacune des grandes banques a émis des normes et des directives internes destinées à sensibiliser davantage le personnel au problème du recyclage de l'argent. Reposant sur le principe bancaire fondamental de la notoriété du client, ces méthodes dressent habituellement une liste des scénarios de recyclage les plus courants et préparent le personnel à faire face à de telles situations. Dans tous les cas suspects, les normes prévoient l'obligation de divulgation de la provenance des fonds par le client.

Outre les directives écrites sur le recyclage, les mesures préventives des banques comprennent des programmes de formation à l'intention de leurs employés les plus susceptibles d'avoir des contacts avec des personnes

[*Texte*]

generally include seminars, in-house video productions, distribution of warning circulars, reinforcement head office letters on money laundering, and lectures to branch staff by security specialists.

As an industry initiative, a task force on money laundering was established by the Canadian Bankers' Association over two years ago to address issues of common concern to the banks. Staffed by bank security directors, all of whom are former police officers, the task force is charged with determining the scope of money laundering in Canada, monitoring new developments in laundering schemes at home and abroad, reviewing available protective measures, and promoting industry liaison with the RCMP Drug Enforcement Directorate and other law enforcement bodies across Canada and elsewhere.

In order to reach out to municipal and provincial police agencies throughout the country, our task force and the Organized Crime Committee of the Canadian Association of Chiefs of Police have a formal joint subcommittee to consider mutual concerns in the area of money laundering.

We would estimate that on at least 50 to 60 occasions each year since anti-laundering procedures have been in place, bank security officers across Canada have provided vital information to law enforcement authorities on criminal money laundering situations.

This does not mean the banks disregard the duty of confidentiality they owe their clients. The right of Canadians to expect their financial affairs will not be disclosed to third parties is a right we are duty bound to respect. It is our view the right to financial privacy, which all of us enjoy, should not be routinely compromised because it may appear expedient at some stage of a criminal investigation. We see it as our responsibility to balance the sometimes conflicting duties of confidentiality concerning the financial affairs of our customers with that of reporting suspected criminal activity to the police.

To assist in making these determinations, the Canadian banks employ some 130 security specialists across Canada, almost all of whom are former law enforcement officers. As a result, the liaison and the level of co-operation that exists between the police and the bank security communities in Canada is second to none.

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The legal basis upon which banking information is presently provided to the police is the principle that the confidential nature of the banker-client relationship is not an absolute right. There are circumstances that permit disclosure on the part of the bank. For example, account information may be released when a bank is under

[*Traduction*]

impliquées dans le recyclage. Ces programmes de formation comportent d'habitude des séminaires, des productions vidéo internes, la distribution de circulaires de mise en garde, des lettres de sensibilisation sur le sujet en provenance du siège social et des conférences données par des spécialistes de la sécurité à l'intention du personnel des succursales.

Voilà plus de deux ans, l'Association des banquiers canadiens a formé un groupe de travail sur le recyclage de l'argent chargé de se pencher sur les questions d'intérêt commun pour les banques. Composé de directeurs de la sécurité des banques, tous d'anciens policiers, le groupe de travail est plus particulièrement responsable de déterminer l'étendue des opérations de recyclage au Canada, de contrôler l'evolution des scénarios de recyclage ici et à l'étranger, de passer en revue les mesures de protection disponibles et de favoriser les relations entre les banques et la Direction de la police des drogues de la GRC ou autres autorités judiciaires au Canada et à l'étranger.

Soucieux de s'assurer la collaboration des corps policiers provinciaux et municipaux, notre groupe de travail et le Comité du crime organisé de l'Association canadienne des chefs de police ont formé un sous-comité afin d'étudier les préoccupations communes en ce qui concerne le recyclage de l'argent.

Depuis que ces méthodes de lutte contre le recyclage ont été mises en place, nous estimons que les services de sécurité des banques ont fourni, à au moins 50 ou 60 reprises chaque année, des renseignements essentiels aux autorités policières sur des cas de recyclage.

Il faut se garder de croire pour autant que les banques passent outre à leur responsabilité de confidentialité à l'égard de leurs clients. Les Canadiens sont en droit de compter sur la non-divulgation à des tiers de leurs affaires financières et il nous appartient de respecter ce droit. Nous croyons que le droit à la confidentialité financière, dont nous jouissons tous, ne devrait pas être compromis sans raison, parce que cette mesure peut sembler justifiée dans le cas d'une enquête criminelle. Nous considérons qu'il nous appartient de concilier notre responsabilité de confidentialité à l'égard des affaires financières de nos clients et celle de signaler à la police les activité louches.

Afin de les aider dans cette tâche, les banques canadiennes emploient quelque 130 spécialistes en sécurité, dont la presque totalité sont d'anciens policiers. Par conséquent, les relations et le niveau de collaboration qui existent entre la police et les services de sécurité des banques au Canada n'ont pas leur pareil.

À l'heure actuelle, la divulgation d'un renseignement bancaire à la police repose sur le principe juridique voulant que la nature confidentielle de la relation entre une banque et son client n'est pas un droit absolu. Certaines circonstances peuvent justifier la divulgation d'un renseignement confidentiel par une banque. Ainsi, la

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compulsion of law to do so, in the case of a court order or a search warrant, or when the bank feels it has a public duty to disclose normally confidential banking information.

While there have been from time to time apparent conflicts on the confidentiality of banking records, we can assure the committee there exists no principal procedure or policy under which a bank feels obliged to conduct a transaction or to operate an account where it has reason to believe the funds involved are the proceeds of criminal activity.

It is moreover not in the interest of a bank to act as a currency-processing plant, converting large amounts of small-denomination banknotes into consolidated payment items quickly transferred to other banks and/or other jurisdictions.

The image of banks accommodating drug dealers, by taking in bags full of soiled currency, counting it, and issuing bank drafts for corresponding amounts, simply does not represent reality in 1988.

It is nevertheless quite often in reaction to this image that the casual observer calls for legislation similar to U.S. law, which requires financial institutions to report all cash transactions of $10,000 or more.

It is suggested that U.S. Bank Secrecy Act of 1970, which, among other things, requires such cash transactions be reported to the Internal Revenue Service, is the answer to our criminal money laundering problem in Canada. If this were true, the Americans would likely not have found it necessary to enact the Money Laundering Control Act of October 1986, which, like Bill C-61, makes money laundering a criminal offence.

It is our view that reporting requirements similar to those contained in the Bank Secrecy Act are not needed in Canada because they would be ineffective in addressing the problem at hand, they are easy to circumvent and would place a costly administrative burden on all concerned.

We say "ineffective", because it is our understanding that the problem faced by law enforcement officers in Canada is not one of identifying organized crime figures and major drug dealers, but rather existing legal obstacles that impede their ability to trace, seize and freeze the proceeds of criminal activity pending investigation and prosecution. Bill C-61 would correct this, and more.

We state that reporting requirements are easy to circumvent because U.S. experience testifies to this. American money launderers became quite expert at devising schemes to deposit their cash in amounts just below the $10,000 threshold. Some in fact hired large

[*Translation*]

banque peut donner des renseignements sur un compte si les tribunaux l'obligent à le faire en vertu d'une ordonnance de la Cour ou d'un mandat de perquisition ou lorsqu'elle estime qu'il est de sa responsabilité publique de dévoiler des renseignements bancaires normalement confidentiels.

Si la confidentialité des dossiers bancaires a donné lieu à l'occasion à des conflits manifestes, nous tenons à assurer le Comité qu'il n'existe pas de principe, de directive ou de norme en vertu desquels une banque se sent obligée d'effectuer une transaction ou de gérer un compte lorsqu'elle a des raisons de croire que les fonds en cause sont de provenance criminelle.

Par ailleurs, il n'est pas dans l'intérêt d'une banque d'agir comme une usine de traitement de monnaie, en convertissant de fortes sommes en petites coupures en effets de paiements consolidés qui sont transférés rapidement à d'autres banques ou dans d'autres pays.

Dire que les banques se font les complices des trafiquants de drogue en acceptant de pleins sacs de billets défraîchis, en les comptant et en émettant des traites bancaires pour des montants correspondants, n'a rien à voir avec la réalité de 1988.

Néanmoins, c'est très souvent en réaction à cette idée que l'observateur moyen réclame l'adoption d'une loi semblable à celle qui a été adoptée aux États-Unis, laquelle oblige les institutions financières à signaler toutes les transactions au comptant de 10,000$ et plus.

La loi américaine, *Bank Secrecy Act* de 1970 qui, notamment, rend obligatoire la divulgation de telles transactions au comptant au Internal Revenue Service, apparaît à plusieurs comme la solution au problème du recyclage de l'argent au Canada. Si c'était le cas, les États-Unis n'auraient probablement pas éprouvé le besoin d'adopter en octobre 1986 la loi *Money Laundering Control Act* qui, à l'instar du projet de loi C-61, définit le recyclage de l'argent comme une activité criminelle.

À notre avis, le Canada n'a pas intérêt à adopter des exigences de divulgation semblables à celles qui figurent dans la BSA, car elles ne réussiraient pas à résoudre le problème actuel, pourraient facilement être contournées et alourdiraient inutilement le fardeau administratif et financier de toutes les parties en cause.

Nous ne croyons pas à l'efficacité de ces dispositions car, d'après nos renseignements, les autorités policières au Canada n'ont pas de mal à identifier les personnalités du crime organisé et les principaux trafiquants de drogue, mais elles font face à des obstacles judiciaires qui les empêchent de dépister, de saisir et de geler des profits tirés d'activités criminelles en attendant l'enquête et les poursuites. Le projet de loi C-61 contribuerait à redresser cette situation et plus encore.

Nous affirmons que les exigences de divulgation sont faciles à contourner, car l'expérience américaine s'est chargée de le prouver. Les Américains s'adonnant au recyclage de l'argent n'ont pas tardé à devenir spécialistes en élaboration de scénarios pour déposer les espèces en

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numbers of couriers or smurfs, as they were called, to go from bank to bank, buying cashier's cheques in amounts of $9,900.

Alternately, several deposits, all of less than $10,000, might be made to an account throughout the day in order to avoid the reporting requirements of the Bank Secrecy Act. To counter this, anti-structuring provisions were introduced into the act, and took effect in January 1987. These provisions made it illegal to structure currency transactions for the purpose of evading the reporting requirements of the law.

Another contemplated measure against structuring and smurfing was the U.S. Treasury Department's controversial proposal to require financial institutions to obtain reports on all cash transactions of more than $3,000 in monetary instruments. In view of overwhelming negative comments, the proposal was, however, withdrawn by the Treasury on February 29, 1988.

We feel enacting Bank Secrecy Act-like monitoring and reporting in Canada would place an undue and costly administrative burden on all concerned, because it has done just that in the U.S. The Bank Secrecy Act requires all financial institutions, currency dealers, casinos, boat dealers, car dealers, aircraft sales companies, and others to report currency transactions to the Internal Revenue Service.

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An even longer list of businesses which have normally high turnovers of cash—for example, racetracks, supermarkets, department stores and so on—may be exempted from the reporting requirements of the law.

In the case of financial institutions, reporting is not restricted to deposits but includes withdrawals and cash purchases of all financial instruments.

In 1987, just under 5 million report forms or currency transaction reports, as they are termed, were filed with the IRS.

Compliance with and enforcement of the Bank Secrecy Act in the U.S. is a costly undertaking, both for those regulated and for government enforcement bodies. Although we have sought out the more positive effects of the Bank Secrecy Act, we have been unable to find any empirical data on the number of drug dealers or money launderers brought to justice as a result of Bank Secrecy Act reporting.

We suggest it is illusory to believe that drug dealers and enterprise criminals would in any way participate in the accurate completion of currency transacton report

[*Traduction*]

tranches de moins de 10,000$. En fait, certains ont même embauché un grand nombre de messagers pour faire la tournée des banques en achetant des traites bancaires au montant de 9,900$.

D'autres effectuaient plutôt plusieurs dépôts, tous de moins de 10,000$, en une seule journée afin de se soustraire aux exigences de divulgation de la BSA. Le gouvernement américain a donc apporté des modifications à la BSA afin de contrer cette pratique et les a mises en vigueur en janvier 1987. En vertu de ces dispositions, il est illégal de structurer des transactions monétaires dans le but de contourner les exigences de divulgation prévues dans la loi.

Par ailleurs, le Trésor américain a envisagé une autre mesure visant à contrer cette pratique. Cette proposition, controversée, prévoyait l'obligation pour les institutions financières d'obtenir des rapports sur tous les achats au comptant d'instruments monétaires excédant 3,000$. Le Trésor a dû retirer sa proposition le 29 février 1988 en raison de la vive opposition qu'elle avait suscitée.

Selon nous, que le Canada adopte des dispositions de contrôle et de divulgation semblables à celles qui figurent dans la PSA aurait pour effet d'alourdir inutilement le fardeau administratif et financier de toutes les parties en cause, comme on a pu le constater aux États-Unis. La BSA oblige toutes les institutions financières, tous les négociants en monnaie, les casinos, les vendeurs de bateaux et d'avions et autres à signaler les transactions au comptant au IRS.

Une liste encore plus longue d'entreprises qui enregistrent normalement des mouvements d'espèces élevés, tels les pistes de course, les supermarchés, les grands magasins, peuvent être exemptées des exigences de divulgation prévues dans la loi.

Dans le cas des institutions financières, les exigences de divulgation ne visent pas que les dépôts, mais également les retraits et les achats au comptant d'instruments financiers.

En 1987, près de 5 millions de formulaires de divulgation, *currency transaction reports*, sont parvenus au IRS.

Le respect et la mise en application de la BSA aux États-Unis représentent une entreprise coûteuse, tant pour ceux qui sont visés par les règlements que pour les organismes gouvernementaux chargés de faire respecter la loi. Bien que nous ayons cherché les répercussions plus positives de la BSA, nous avons été incapables de trouver des données empiriques sur le nombre de trafiquants de drogue ou de responsables de recyclage d'argent traduits devant les tribunaux américains par suite de la divulgation de renseignements en vertu de la BSA.

À notre avis, il est illusoire de croire que les trafiquants de drogue et les criminels d'entreprise accepteraient de fournir aux banques les renseignements exacts pour

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forms, which they know full well will result in either a tax assessment or an arrest warrant.

In conclusion, Mr. Chairman, on behalf of my colleagues, we thank you for the invitation to appear before the committee and to present our views on money laundering generally and Bill C-61 in particular. My colleagues and I would be pleased to answer any questions you might wish to address to us. Thank you.

The Chairman: Thank you for your comments, Mr. Ballard. To begin the questioning, Mr. Robinson.

Mr. Robinson: Thank you, Mr. Chairman, and as the witnesses will know, I am particularly interested in the evidence they are giving before the committee today on the question of bank secrecy legislation.

I have listened with interest to the statement that was made on this subject, but I must say I remain unconvinced and I have a number of questions arising from the statement that was given.

I think all of us have to be deeply concerned, for example, when we see in Montreal from 1978-1984 the laundering of almost $32 million U.S. through Montreal banks and, in some cases, the quantities of bills were so huge that those involved drove up to the banks in pick-up trucks to deposit the funds in question.

In light of that kind of abuse, I find it surprising to suggest that laws are not necessary to report significant financial transactions.

I just want to just ask first of all, by way of preamble, whether you brought a copy of the Canadian Bankers' Association policy statement on bank laundering with you. Do you have a copy with you?

Mr. Ballard: Somewhere, yes.

Mr. Robinson: I would like to have a copy of their policy statement on bank laundering, Mr. Chairman. I think it would be helpful for us.

I will ask some questions in my second round based on the policy statement, because certainly my understanding is this policy statement indicated that account information would only be disclosed where there was a legal obligation, legal compulsion, to do so.

Today, you are suggesting that there is an additional disclosure provision which is, in your words, when the bank feels it has a public duty to disclose normally confidential bank information. Perhaps you can enlighten me: Is the reference to "public duty" included in your policy statement of money laundering?

Mr. Ballard: I do not quite recall, but would you like an answer? Your questions are two in number.

Mr. Robinson: Yes.

[Translation]

remplir correctement des formulaires de divulgation qui, ils le savent très bien, donneraient lieu à l'imposition de leurs revenus ou à l'émission d'un mandat d'arrestation.

En conclusion, je tiens à vous remercier, au nom de mes collègues, de nous avoir invités à présenter au Comité nos points de vue sur le recyclage de l'argent en général, et sur le projet de loi C-61 en particulier. Nous serons heureux, mes collègues et moi-même, de répondre à vos questions le cas échéant. Merci.

Le président: Merci, monsieur Ballard. Monsieur Robinson, vous avez la parole.

M. Robinson: Merci, monsieur le président. Comme les témoins le savent, je m'intéresse particulièrement à ce qu'ils ont à nous dire aujourd'hui concernant les lois sur le secret bancaire.

J'ai écouté attentivement l'exposé fait sur le sujet, mais je ne suis pas encore convaincu et j'ai bon nombre de questions à leur poser.

Je pense que nous devons tous nous inquiéter énormément quand on apprend qu'à Montréal, entre 1978 et 1984, près de 32 millions de dollars américains ont été recyclés dans des banques, et dans certains cas, il s'agissait d'une quantité de billets si énormes que les intéressés arrivaient à la banque en camions pour y faire leurs dépôts.

Devant ce genre d'abus, je trouve étonnant que vous soyez d'avis qu'il n'est pas nécessaire d'édicter des lois pour que soient déclarées des transactions financières de cette importance.

En guise de préambule, je voudrais que vous me disiez si vous avez ici un exemplaire de la déclaration de politique préparée par l'Association des banquiers canadiens sur le recyclage de l'argent? En avez-vous un exemplaire?

M. Ballard: Oui, je pense.

M. Robinson: Monsieur le président, j'aimerais qu'on me fournisse cette déclaration de politique sur le recyclage de l'argent. Je pense qu'elle pourrait nous être utile.

Je poserai des questions là-dessus à mon deuxième tour car si j'ai bien compris, il y est précisé que les banques ne révéleront de renseignements sur les comptes que si elles y sont forcées par la loi.

Aujourd'hui, vous affirmez qu'il existe un autre cas où les banques estiment qu'elles peuvent divulguer des renseignements bancaires confidentiels, c'est-à-dire quand elles estiment que c'est leur devoir à l'égard du public. Je voudrais savoir ceci: est-ce que votre déclaration de politique sur le recyclage de l'argent décrit ce que vous entendez par «devoir à l'égard du public»?

M. Ballard: Je ne me rappelle pas avec précision, mais je pense que vous m'avez posé deux questions.

M. Robinson: Oui.

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Mr. Ballard: Fine. With respect to your comment on the Montreal news stories which appeared a while ago, as you correctly point out, they talk of money laundering situations which took place between 1978 and 1984. We suggest, Mr. Chairman, that this is making hay of history.

We have said in our statement that we have over the last several years, three, four, five, six years, depending on individual banks, enacted money laundering procedures exactly in reaction to this kind of situation. Sure, this existed. This existed in some areas. It does not exist any more, we suggest, nor could it exist under the present circumstances.

With respect to our comment on banks releasing account information when under compulsion of law to do so, this was said in an earlier public statement when Bill C-61 was introduced in the spring.

Our reference at that time was to make some comment and perhaps we were not judicious in selecting the word "compulsion". What we referred to in the release of account information was that there exists no statutory law in this country that provides for the confidentiality of account information. We are therefore guided by what is known in the industry as the Tournier doctrine, which is based on a case before the English courts in 1923. The doctrine states that a bank may release account information in four circumstances.

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The first is when it is under compulsion of law to do so; hence the use of the term "compulsion". This simply means that when faced with an arrest warrant or when faced with the law—such as Revenue Canada has, to access bank information—we must release the information.

The second circumstance is when the customer agrees to do so.

The third circumstance is when the bank is involved in litigation, for example, and its own interest requires that it release the information.

Fourthly, the bank may release information when it feels under a public duty to do so. This is not, however, a duty that one feels routinely, but is one that is very carefully determined before the information is released.

Mr. Robinson: You would agree that there is no reference to this release of information pursuant to public duty in your policy statement on the law.

Mr. Ballard: The Tournier doctrine, Mr. Robinson, is about five pages. We were not about to explain it in the policy but simply list some examples under which account information would be disclosed.

Mr. Robinson: Your policy statement on money laundering indicates the circumstances in which you

[*Traduction*]

M. Ballard: Je vais répondre à ce que vous avez dit concernant ce qu'on pouvait lire récemment dans la presse à propos de Montréal. Comme vous l'avez signalé, il s'agissait de recyclage d'argent qui se serait produit entre 1978 et 1984. Vous tirez argument d'une situation passée.

Nous affirmons dans notre déclaration que depuis trois, quatre, cinq ou six ans, selon la banque, il existe des procédures concernant le recyclage de l'argent pour réagir à ce genre de situation. Il est vrai que cela s'est produit dans certaines régions. Ce n'est plus le cas, selon nous, et le cas ne pourrait plus se représenter.

Quant à ce que vous avez dit concernant la divulgation de renseignements sur les comptes bancaires, exigée par la loi, c'est bien ce que nous avons affirmé dans une déclaration faite au moment où le projet de loi C-61 a été déposé.

À ce moment-là, quand nous nous sommes prononcés là-dessus, nous avons utilisé l'expression «forcés par la loi», ce qui n'était pas très heureux. Nous voulions tout simplement rappeler qu'il n'existe pas au Canada de dispositions législatives régissant la confidentialité des renseignements bancaires. Nous nous en tenons donc à ce qui est connu dans notre milieu comme la doctrine Tournier, qui s'appuie sur une cause dont ont été saisis les tribunaux britanniques en 1923. Selon cette doctrine, une banque peut divulguer des renseignements sur un compte dans quatre circonstances.

La première, c'est lorsque la loi l'exige, c'est-à-dire que nous devons divulguer ces renseignements si l'on nous présente un mandat d'arrêt ou si l'on invoque la loi—c'est ce que peut faire Revenu Canada pour avoir accès à des renseignements bancaires.

La seconde circonstance c'est lorsque le client accepte qu'il en soit ainsi.

La troisième circonstance c'est lorsque la banque est partie au litige, par exemple, et que son propre intérêt exige la divulgation des renseignements.

Quatrièmement, la banque peut divulguer ces renseignements lorsqu'elle s'estime tenue de le faire dans l'intérêt public. Ce n'est cependant pas quelque chose d'habituelle et il y a lieu d'en juger très sérieusement avant de divulguer.

M. Robinson: Vous conviendrez que votre énoncé sur la loi ne fait pas mention de cette divulgation des renseignements conformément à l'intérêt public.

M. Ballard: Monsieur Robinson, la doctrine Tournier couvre environ cinq pages. Nous n'allions pas l'expliquer ici mais énumérer plutôt certains cas dans lesquels des renseignements sur les comptes seraient divulgués.

M. Robinson: Ce que vous dites dans votre mémoire sur le recyclage de l'argent montre dans quelles

[*Text*]

release of information under compulsion of law.

Mr. Ballard: By compulsion of law, as I have just said, we are referring to common law, which in this case is the Tournier decision.

Mr. Robinson: Even though you do not refer to common law in the statement itself?

Mr. Ballard: As I said, the Tournier doctrine is several pages and we did not want to go into that in the statement.

Mr. Robinson: When you talk about this being a costly administrative burden and a costly undertaking: how much cost? What would your estimate of the cost be in Canada?

Mr. Ballard: I have not made any exact estimate of the cost. We have said in our statement that last year close to 5 million currency transaction reports were filed by the banks in the U.S.A. Within each of those banks there are compliance divisions which must set up programs to cope with the filling or completing of forms. Within the Treasury Department or the IRS there are enforcement officers who must implement and enforce this law. All of it is a costly undertaking. We suggest—I would be at a loss to put an exact figure on it—it is in the many, many millions of dollars each year.

Mr. Robinson: Now I assume that the Canadian Bankers' Association has researchers who are doing research for them in this area. Are you familiar with a study that was done by the United States General Accounting Office on the *Bank Secrecy Act* in June of 1986? The study found that the act is a key tool in the investigation and prosecution of drug traffickers, organized crime elements and other major criminal enterprises. The study also found that the act is currently the principal tool available to law enforcement agencies to detect and measure the financial activities of, and to punish individuals engaged in, money laundering schemes.

This was an independent investigation of the provisions of the *Bank Secrecy Act*, which found that it was an essential tool in dealing with the proceeds of organized crime in the United States. Similarly the Deputy Solicitor General here in Canada suggested in 1985 that Canadian legislation that would permit the freezing, seizure, and so on would have little effect unless there were mechanisms in place whereby these profits could be traced. The profits are used to finance other illegal activities or are laundered through financial institutions in Canada and abroad and infiltrate legitimate business. A federal-provincial study came to the same conclusion.

You are saying you do not like this suggestion because it would involve a costly administrative burden. You have not done an estimate as to what that cost would be. Do you have any other objection to the suggestion that we have similar legislation, other than the costly administrative burden?

[*Translation*]

circonstances vous divulguez les renseignements. Il n'est question que des circonstances où la loi l'exige.

M. Ballard: À ce propos, comme je viens de le dire, nous parlons de la common law et, dans ce cas-ci, de la décision Tournier.

M. Robinson: Même si vous ne mentionnez pas la common law dans la déclaration?

M. Ballard: Encore une fois, la doctrine Tournier comprend plusieurs pages que nous n'avons pas voulu inclure dans l'énoncé.

M. Robinson: Lorsque vous dites qu'il s'agit d'une entreprise et d'un fardeau administratif coûteux, qu'entendez-vous par là? Quel en serait le coût, selon vous, au Canada?

M. Ballard: Je ne l'ai pas établi de façon précise. Nous vous avons indiqué dans notre mémoire que l'an dernier les banques des États-Unis ont signalé pour 5 millions de transactions en monnaie. Des services internes à ces banques doivent élaborer des programmes sur la façon de remplir les formules nécessaires. Au Treasury Department ou à l'IRS, les agents d'application de la loi doivent s'assurer de sa mise en oeuvre. Tout cela coûte cher. Nous estimons—il nous serait impossible de donner des chiffres exacts—que cela doit représenter plusieurs millions de dollars chaque année.

M. Robinson: J'imagine que l'Association des banquiers canadiens a des services de recherche qui s'informent pour elle dans ce domaine. Connaissez-vous une étude faite aux États-Unis par le General Accounting Office sur la *Bank Secrecy Act* en juin 1986? Selon cette étude, la loi est un outil essentiel pour faire enquête sur les trafiquants de stupéfiants, les membres de la pègre et d'autres grandes activités criminelles, et pour intenter des poursuites. Une autre conclusion de cette étude est que la loi représente actuellement le principal moyen dont disposent les organismes d'application de la loi pour détecter et évaluer les activités financières de recyclage d'argent et pour punir ceux qui s'y adonnent.

Il s'agissait là d'une étude indépendante des dispositions de la *Bank Secrecy Act*, jugée outil essentiel pour lutter contre les produits de la criminalité aux États-Unis. Dans le même ordre d'idées, le sous-solliciteur général du Canada a dit en 1985 que la loi canadienne qui permettrait le gel, la saisie, et ainsi de suite aurait peu d'effets en l'absence de mécanismes permettant de retracer ces profits. Ces derniers sont en général utilisés pour financer d'autres activités illicites, à moins qu'ils ne soient recyclés par le biais d'institutions financières au Canada et à l'étranger pour s'intégrer à des transactions légitimes. La même conclusion a été établie par une étude fédérale-provinciale.

Vous vous dites opposés à cette suggestion car elle entraînerait des frais d'administration élevés; or, vous ne l'avez pas évalué. Outre cet argument quant au coût, avez-vous d'autres objections à ce que nous adoptions une telle loi?

[*Texte*]

Mr. Ballard: We have not said in our statement that we do not like it. We simply have said that the implementation of such legislation in this country was not needed, would be ineffective, and would be an horrendous administrative burden. We say that because there is no body of enforcement opinion existing in Canada that believes reporting requirements would bring drug dealers to book, except for—

Mr. Robinson: When you say there is no evidence it works, are you familiar with the study of the American legislation?

Mr. Ballard: I am very familiar with the American legislation. I am very familiar with a number of studies. The one you quote from I do not have at my fingertips. Certainly, people who are implementing this type of legislation are its biggest fans. We have no fans in Canada, either within the police community or within the financial community. You would seem to be one of the only fans of reporting requirements.

Mr. Robinson: The federal-provincial study that was done was also another fan, of course, as you are aware, I assume.

Mr. Ballard: Yes, I am aware.

Mr. Robinson: You are saying now that you do not object as such to the suggestion of a Bank Secrecy Act, that you are just concerned about the cost. Is that it?

• 1130

Mr. Ballard: We have dealt with it in the statement in an articulate manner. We do not object to anything. We simply object to our country's wasting money on an administrative burden that is not required in the circumstances.

Mr. K. Johnston: Mr. Robinson, I think you are correct. In 1984, 1983, 1985, we had a serious problem regarding money laundering. Something had to be done, and I think things have been done. I think the banks themselves have realized this and have put policies in place. I do not think that statement is a rejection of Bill C-61. Our statement is saying that the mandatory reporting of funds to government is not necessary.

Mr. Robinson: Even though it has been very helpful in the United States, according to the study that was done there?

Mr. K. Johnston: There are many things in the United States that would not be helpful in Canada. I think those arguments are coming out in the House of Commons now. I do not think it would. I have, in all humility, considerable experience in the police field, and I think the banks are doing a commendable job at this time. Mandatory reporting of these sums of money to government would not assist you in what you are trying to

[*Traduction*]

M. Ballard: Nous n'avons pas mentionné notre opposition dans notre mémoire. Nous avons simplement dit que la mise en oeuvre d'une telle loi dans ce pays ne serait pas nécessaire, qu'elle serait inefficace et qu'elle entraînerait un fardeau administratif considérable. Nous disons cela parce qu'au Canada, dans l'ensemble, les forces de l'ordre ne pensent pas que l'obligation de rendre compte forcerait les trafiquants de stupéfiants à s'expliquer, sauf que. .

M. Robinson: Lorsque vous dites qu'il n'est pas prouvé que le système fonctionne, est-ce que vous connaissez l'étude de la législation américaine?

M. Ballard: Je connais très bien cette législation et un certain nombre d'études. Je ne connais pas sur le bout des doigts celle que vous citez. Les gens qui mettent en oeuvre ce genre de législation l'appuient, bien sûr. Ce n'est pas le cas pour nous au Canada, aussi bien que du côté des polices que dans les milieux financiers. Vous semblez être l'un des seuls à vouloir à tout prix l'exigence de rendre compte.

M. Robinson: Avec, bien sûr, l'étude fédérale-provinciale qui a été effectuée, comme vous le savez, sans doute.

M. Ballard: Oui.

M. Robinson: Vous dites maintenant que vous n'avez pas d'objection comme telle à la proposition d'une loi semblable à la *Bank Secrecy Act*, que vos seules préoccupations concernent le coût. Est-ce bien cela?

M. Ballard: Nous avons examiné cela de façon détaillée dans le mémoire. Nous ne nous opposons à rien. Nous ne voulons simplement pas que notre pays gaspille de l'argent pour un fardeau administratif que n'exigent pas les circonstances.

M. K. Johnston: Monsieur Robinson, je pense que vous avez raison. En 1984, 1983, 1985, nous avions de graves problèmes quant au recyclage de l'argent. Il fallait faire quelque chose, et je crois qu'on a trouvé des solutions. Je pense que les banques s'en sont rendu compte elles-mêmes et qu'elles ont adopté certaines politiques. Je ne pense pas que ce mémoire signifie notre opposition au projet de loi C-61. Nous disons simplement que l'obligation de signaler certains fonds au gouvernement ne s'impose pas.

M. Robinson: Même si c'est extrêmement utile aux États-Unis, selon l'étude qui y a été faite?

M. K. Johnston: Il se fait beaucoup de choses aux États-Unis qui ne seraient pas utiles au Canada. Je pense que la Chambre des communes examine maintenant ces arguments. Ce ne serait donc pas utile, à mon sens. Je peux dire sans me vanter que j'ai une expérience considérable dans le domaine de la police, et je pense que les banques font actuellement un travail louable. Exiger que ces sommes soient signalées au gouvernement ne vous

[Text]

do, though what you are trying to do is quite commendable.

Mr. Robinson: I would like to ask the witness to elaborate now. According to the policy statement, there is no reference to this business of the bank's disclosing account information when it feels a public duty to disclose it. We are told that in some 50 to 60 cases last year, or each year since the anti-laundering procedures have been in place, bank security officers have provided vital information to law enforcement authorities. Are there any written guidelines for your bank security officers as to when information will be disclosed to law enforcement authorities pursuant to this general public policy guideline?

Mr. Ballard: You seem to wish to plead the contract of our public statement done last spring. That, Mr. Robinson, was merely a reaction issued by the industry in support of Bill C-61. It was not our intention at that time to draft a huge document listing all of the circumstances under which account information might be released. I do not know the purpose of your line of questioning with respect to that public statement, which is only a couple of pages long. You insist on taking us to task on each word of it. We have said that we have not elaborated in great detail.

Now, having given that clarification, I would like to ask our colleagues, who are corporate security directors of their own banks, to give you an idea of what they do internally and when they release information.

Mr. Robinson: Particularly the public policy aspect.

Mr. W.T.F. Sherman (Vice-President, Corporate Security, Bank of Montreal): We treat each individual case on its own merits. For instance, if there is a true money laundering situation, then we look at it and we go in-house for direction. We reach a decision on whether there should be disclosure to the police or not. That is the way we deal with the situation.

Mr. K. Johnston: We have our own policies in place regarding this. The information, when a suspicion of money laundering is taking place, comes to my office. The decision as to whether that information is going to be passed to the police is made by myself in consultation with our chief legal adviser, and then I pass the information.

Mr. J.B. Jilek (Chief Security Officer, Canadian Imperial Bank of Commerce): Our policy is to assess each case on its individual merits. If there is evidence to suggest that money laundering is present, then I would discuss the merits of the case with our chief general counsel as well as our chief inspector, both senior executives of the organization. Based on those discussions, I would refer the information to the police departments.

[Translation]

serait pas utile dans ce que vous essayez d'accomplir, encore que vos efforts soient très louables.

M. Robinson: Je voudrais demander au témoin de développer cet aspect. Selon l'énoncé de principe il n'est pas question que la banque divulgue des renseignements sur des comptes lorsqu'elle estime qu'il y va de l'intérêt public. On nous dit que l'an dernier il y a eu 50 à 60 cas, ou que chaque année depuis que les mécanismes d'anti-recyclage ont été adoptés, les agents de sécurité des banques ont fourni des renseignements très importants aux forces de l'ordre. Vos agents de sécurité qui travaillent pour les banques peuvent-ils consulter des directives écrites pour savoir quand des renseignements doivent être divulgués aux forces de l'ordre, conformément aux critères de l'intérêt public?

M. Ballard: Vous semblez vouloir mettre en question l'énoncé de principe que nous avons présenté au printemps dernier. Il ne s'agissait, monsieur Robinson, que de l'appui que nos membres manifestaient pour le projet de loi C-61. Notre intention n'était pas alors de rédiger un très vaste document indiquant toutes les circonstances dans lesquelles des renseignements sur des comptes pourraient être divulgués. J'ignore pour quelle raison vous posez ce genre de questions sur cette déclaration publique qui ne compte que quelques pages. Vous insistez pour que nous vous en expliquions chaque mot. Nous avons dit que nous n'avons pas soumis d'étude très détaillée.

Vous ayant donné cette précision, j'aimerais demander à nos collègues, qui sont directeurs de la sécurité pour leur propre banque, de vous donner une idée de ce qu'ils font sur le plan interne, et de vous dire quand ils diffusent des renseignements.

M. Robinson: J'aimerais qu'ils nous parlent en particulier de la question de l'intérêt public.

M. W.T.F. Sherman (vice-président, Service de sécurité, Banque de Montréal): Nous traitons chaque cas en toute objectivité. Par exemple, si la situation est véritablement un recyclage d'argent, nous l'examinons et nous demandons des conseils à la haute direction de la banque. Nous décidons finalement s'il y a lieu d'en informer la police ou non. Voilà comment nous procédons.

M. K. Johnston: Nous avons nos propres politiques à ce sujet. Lorsque l'on soupçonne un recyclage d'argent, le renseignement parvient à mon bureau. Je décide ensuite moi-même, après avoir consulté notre principal conseiller juridique, s'il y a lieu de transmettre ces renseignements à la police, et je le fais le cas échéant.

M. J.B. Jilek (agent principal de sécurité, Banque de Commerce canadienne impériale): Notre politique est d'examiner chaque cas objectivement. Si l'on a des raisons de croire à un recyclage d'argent, je discute du cas avec notre principal conseiller juridique ainsi qu'avec notre inspecteur en chef, qui sont tous les deux des cadres supérieurs de l'organisation. D'après ces discussions, je transmets le renseignement aux services de police.

[*Texte*]

Mr. Ballard: We have estimated that this happens 50 or 60 times each year.

The Chairman: There has been quite a bit of discussion concerning the policy statement of the banks. I wonder if the Chair could obtain a copy. Perhaps we could get copies to other members as well. If you have it in both official languages, that would be preferable.

• 1135

Mr. Ballard: We do have it, Mr. Chairman. I am not sure I have it here. As I say, it dates back to the spring, and. . . It is the current—

The Chairman: Did you give a copy to Mr. Robinson?

Mr. Ballard: Yes.

The Chairman: I wonder if the clerk could perhaps get some copies here.

Monsieur Grisé.

M. Grisé: Je veux remercier les représentants de l'Association des banquiers canadiens d'avoir présenté leurs documents dans les deux langues officielles et de nous avoir fait part de l'intérêt qu'ils portent à ce projet de loi. J'aimerais souhaiter la bienvenue particulièrement à M. Ballard qui est de la région de Montréal. Je suis également de la région de Montréal.

À la page 2 de votre exposé, vous parlez du principe bancaire fondamental de la notoriété du client. J'aimerais que vous clarifiez un peu la situation quant à la notoriété du client et aux méthodes de blanchissage d'argent les plus courantes.

M. Ballard: Voici ce que nous entendons par «notoriété du client». C'est peut-être une expression bizarre, mais nous voulons simplement dire que ces politiques sont basées sur le concept de la connaissance de l'endosseur. Le banquier a la responsabilité de connaître la personne avec qui il fait affaire, ce qui lui permet de juger le cas.

Par exemple, quelqu'un arrive à la banque avec un million de dollars dans un sac à ordures et veut déposer cet argent; il n'a pas de compte et on ne l'a jamais vu. Il est fort probable qu'en vertu du concept de la connaissance de l'endosseur, nous refuserons le dépôt ou mettrons en branle la procédure contre le blanchissage des capitaux.

M. Grisé: C'est directement relié à ce que vous dites à la page 3:

> Nous considérons qu'il nous appartient de concilier notre responsabilité de confidentialité à l'égard des affaires financières de nos clients et celle de signaler à la police les activités louches.

Sur quel principe ou sur quel énoncé vous basez-vous pour définir ces activités louches? Comment les identifiez-vous? Que faites-vous lorsque vous identifiez ces activités que vous considérez louches?

[*Traduction*]

M. Ballard: Vous avez dit que cela se produit 50 ou 60 fois chaque année.

Le président: On a beaucoup discuté de l'énoncé de principe des banques. Je voudrais savoir si le président pourrait en obtenir un exemplaire. Nous pourrions en avoir peut-être des exemplaires aussi pour d'autres membres du comité. Ce serait préférable que vous nous les donniez dans les deux langues officielles.

M. Ballard: Nous l'avons, monsieur le président. Je ne suis pas certain si nous l'avons ici. Comme je le disais, cela remonte au printemps, et. . . C'est actuellement. . .

Le président: En avez-vous donné un exemplaire à M. Robinson?

M. Ballard: Oui.

Le président: Je me demande si le greffier pourrait nous en fournir des photocopies.

Mr. Grisé.

Mr. Grisé: I wish to thank the representatives of The Canadian Bankers' Association for having submitted their document in both official languages and for having expressed their interest in this bill. I would particularly like to welcome Mr. Ballard, who, like me, is from the Montreal area.

On page 2 of your presentation, you discuss the fundamental banking principle "know your client". I would like you to clarify the situation regarding the banker's knowledge of the client and the most common money-laundering schemes.

Mr. Ballard: This is what we mean by "know your client". It may be a strange expression, but we simply mean that these policies are based on knowing the endorser. Bankers have a responsibility to know the people with whom they deal, which allows them to judge each case on its own merits.

For instance, let us say someone comes to the bank with a $1 million in a garbage bag and wants to deposit that money. He has no account and we have never seen him before. It is highly likely that based on the principle of knowing the endorser, we will refuse the deposit or initiate the procedure against money-laundering.

Mr. Grisé: This is directly related to what you say on page 3:

> We see it as our responsibility to balance the sometimes conflicting duty of confidentiality concerning the financial affairs of our customers and that of reporting suspected criminal activity to the police.

On what basis or principle do you base yourself to define these suspicious activities? How do you identify them? What do you do once you have identified these activities that you consider suspicious?

[*Text*]

M. Ballard: J'ai cité tout à l'heure l'exemple de quelqu'un qui veut déposer des montants d'argent qui ne sont pas normaux, des centaines de milliers de dollars ou même des cinquantaines de milliers de dollars, et qui n'est pas connu. En vertu du principe de connaissance de l'endosseur ou de notoriété du client, le type n'étant pas connu, c'est une situation louche qui ferait l'objet d'une enquête plus poussée, d'abord par le personnel de la succursale bancaire et ensuite par le bureau de sécurité de la banque, et qui, si nécessaire, serait signalée à la police.

M. Grisé: C'est un système que vous avez établi au cours des années. Si j'ai bien compris, les chiffres que M. Robinson a cités tout à l'heure sont tirés d'un rapport qui date de quelques années.

M. Ballard: Les articles de journaux auxquels nous nous sommes référés parlaient de l'époque allant de 1978 à 1984, c'est-à-dire il y a au moins quatre ans.

M. Grisé: Vous dites que vous n'avez plus ces problèmes-là. L'application de vos directives vous permet maintenant d'identifier ces transactions-là et de les stopper. Quelle est la valeur annuelle des transactions de blanchissage d'argent que vous stoppez depuis cette époque? Avec votre système actuel, stoppez-vous des transactions de blanchissage d'argent d'une valeur de 200,000$ par année, de 2 millions de dollars, de 20 millions de dollars par année?

M. Ballard: Il m'est très difficile de vous répondre, car nous n'avons pas de statistiques à ce sujet. Dans certains cas, il s'agit d'un million ou de deux millions de dollars et, dans d'autres, il s'agit de 50,000$, etc. Est-ce que ce sont tous des cas de blanchissage de capitaux? La police ne nous fait pas toujours un rapport de son enquête sur les cas que nous lui avons signalés.

Il m'est difficile de vous donner un chiffre exact. J'estime qu'il s'agit de millions de dollars.

M. Grisé: Donc, vous croyez sincèrement qu'il y a eu une diminution des cas de blanchissage d'argent au Canada au cours des dernières années?

• 1140

M. Ballard: Oui. Nous sommes convaincus que les situations comme celles citées dans les articles de journaux auxquels M. Robinson s'est référé ne peuvent plus se produire aussi facilement qu'on le dit dans ces articles. Des procédures bancaires sont maintenant prévues pour ce genre de problème, et nous croyons sincèrement que le problème n'existe tout simplement plus.

M. Grisé: Vous disiez tout à l'heure qu'aux États-Unis, il y a des transactions à 10,000$ ou à 9,900$. Croyez-vous que ce genre de transaction existe actuellement au Canada et qu'il se fait assez régulièrement?

M. Ballard: Eh bien, si ce genre de transaction existe aux États-Unis, c'est qu'on a un plafond de 10,000$. Chaque dépôt de plus de 10,000$ doit être signalé au gouvernement.

[*Translation*]

Mr. Ballard: Earlier I mentioned the example of someone who wants to deposit amounts which are not normal, hundreds of thousands of dollars or even $50,000, and who is unknown to us. Based on the principle of knowing the endorser or the client, since the person is not know, this is a suspicious situation which should be subjected to a more thorough investigation, first by branch staff and subsequently by the bank's security division. If necessary, the activities would be reported to the police.

Mr. Grisé: This is a system that you have established over the years. If I have understood correctly, the figures that Mr. Robinson quoted earlier are excerpted from a report which goes back a few years.

Mr. Ballard: The newspaper articles to which we referred earlier dealt with events which occurred between 1978 and 1984, that is, at least four years ago.

Mr. Grisé: You say that you no longer have those problems. The application of your directives now allows you to identify those transactions and stop them. What is the annual value of the money-laundering transactions that you have been stopping since that time? Under your current system, do you stop each year money-laundering transactions worth $200,000, $2 million, $20 million?

Mr. Ballard: It is very difficult to answer that question, because we do not have any statistics on this matter. In some cases, it can be $1 million or $2 million, and in others, it can be $50,000, and so on. Are these all cases of money-laundering? The police do not always inform us of their investigation findings after we report a case.

It is difficult for me to give you an exact figure. I would estimate that it would be in the millions of dollars.

Mr. Grise: So you sincerely believe that there has been a reduction in the number of money-laundering cases in Canada over the past few years?.

Mr. Ballard: Yes. We are convinced that situations such as those described in the newspaper articles Mr. Robinson referred to earlier can no longer occur as easily as the articles would seem to imply. There are now banking procedures in place to deal with this type of problem, and we sincerely believe that the problems simply no longer exist.

Mr. Grisé: You said earlier that in the United States, there are transactions of $10,000 or $9,900. Do you think that this type of transaction exists in Canada, and is it a common occurrence?

Mr. Ballard: Well, if this type of transaction does occur in the United States, it is because they have a $10,000 ceiling. Every deposit of more than $10,000 must be reported to the government.

[*Texte*]

M. Grisé: Automatiquement.

M. Ballard: Donc, les trafiquants de drogue ou ceux qui font le blanchissage de l'argent arrivent avec des montants de 9,900$ pour contourner la loi et retournent plusieurs fois à la banque.

M. Grisé: Pour ce qui est de la divulgation de renseignements bancaires normalement confidentiels, sur quel principe vous basez-vous pour soumettre ces renseignements-là aux corps policiers et aux différents intervenants de manière à contrer ce transfert d'argent?

M. Ballard: Comme je viens de le dire à M. Robinson, il n'existe au Canada aucune loi gouvernant la confidentialité des renseignements bancaires. Donc, nous interprétons un jugement des cours de l'Angleterre de 1924, je crois, qui est communément connu sous le nom de l'individu en cause, Tournier. Dans le jugement Tournier, en droit commun britannique, on donne quatre circonstances dans lesquelles on peut donner des renseignements bancaires confidentiels: premièrement, si le client nous donne la permission de les donner; deuxièmement, si c'est dans l'intérêt de la banque et que la banque est impliquée dans un procès juridique, par exemple; troisièmement, si c'est dans l'intérêt public de le faire; et quatrièmement . . Je l'ai dit tout à l'heure, mais cela m'échappe. *The fourth Tournier*. . . C'est dans ces circonstances-là que nous pouvons donner les renseignements.

M. Grisé: Monsieur Ballard, vous disiez que vous ne jugiez pas nécessaire de faire rapport obligatoirement de différentes transactions—*mandatory reporting*. Quel est le but de cet énoncé? Pourquoi jugez-vous qu'il n'est pas nécessaire, au Canada, de soumettre obligatoirement un rapport sur les transactions?

M. Ballard: Nous prétendons que ce n'est pas nécessaire, étant donné les circonstances particulières que nous avons au Canada. Comme vous le savez tous, le système bancaire canadien n'est pas du tout le même que le système bancaire américain. Il y a 14,000 différentes banques aux États-Unis avec quelque 46,000 succursales. Au Canada, six ou sept institutions couvrent 98 p. 100 de l'entreprise bancaire. Même si nous ne le mentionnons pas dans notre mémoire, l'une des raisons est celle-ci.

L'autre raison, c'est que personne, ni au niveau de la communauté, ni à celui de la police, ni à celui des institutions financières, ne croit que c'est la réponse à nos problèmes. Donc, pourquoi le faire?

Le président suppléant (M. Nicholson): Merci beaucoup, monsieur Grisé. Monsieur Fontaine.

M. Fontaine: Tout d'abord, je veux remercier les membres de l'Association des banquiers canadiens pour leur mémoire. Pour moi, le système bancaire est crédible, très fiable et très coopératif envers les organismes publics. Depuis plusieurs années, les banques canadiennes ont une réputation nationale et internationale.

M. Ballard: Merci.

[*Traduction*]

Mr. Grisé: Automatically.

Mr. Ballard: Therefore, drug traffickers and money launderers arrive at the bank with amounts of $9,900 in order to evade the law and simply return to the bank several times.

Mr. Grisé: With regard to the reporting of banking information which is normally confidential, on what principle do you base yourself to provide that information to police forces and to various other parties in order to combat this transfer of funds?

Mr. Ballard: As I just told Mr. Robinson, there are no laws in Canada governing the confidentiality of banking information. Therefore, we interpret a British court decision which dates back to 1924, I think, and which is commonly known by the name of the individual involved, Tournier. In British Common Law, the Tournier decision lists four circumstances under which confidential banking information can be divulged: First, if the client gives us permission to divulge the information; second, if it is in the bank's interest and the bank is involved in a trial, for instance; third, if it is in the public interest to do so; and fourth, . . I mentioned it earlier but I have just forgotten. The fourth Tournier. . . those are the circumstances under which we can divulge information.

Mr. Grisé: Mr. Ballard, you said that you did not feel that it was necessary to have mandatory reporting of various transactions. What is the purpose of that statement? Why do you feel that it is not necessary in Canada to have mandatory reporting on transactions?

Mr. Ballard: We claim that this is not necessary, given the particular circumstances that we have here in Canada. As you know, the Canadian banking system is completely different from the American one. There are 14,000 different banks in the United States with approximately 46,000 branches. In Canada, six or seven institutions cover 98% of the banking business. Even though we do not say so in our brief, that is one of the reasons.

The other reason is that nobody, either in the community, or in the police, or in financial institutions, believes that this would be an answer to our problems. Therefore, why do it?

The Acting Chairman (Mr. Nicholson): Thank you, Mr. Grisé. Mr. Fontaine.

Mr. Fontaine: First of all, I wish to thank the members of the Canadian Bankers' Association for their brief. In my view, the banking system has good credibility. It is highly reliable and is always very co-operative with public agencies. For many years now, Canadian banks have enjoyed a national and international reputation.

Mr. Ballard: Thank you.

[*Text*]

M. Fontaine: J'aimerais que vous me donniez une petite précision. Vous dites à la page 2 de votre rapport, et vous en avez parlé d'ailleurs, que depuis plus de deux ans, vous avez décidé de mettre en place votre groupe de travail sur le blanchissage. Pourquoi avez-vous pris cette décision? Quels événements ont précédé votre décision officielle de créer cette équipe de travail?

• 1145

M. Ballard: C'est justement la sorte d'activités à laquelle nous avons fait allusion tout à l'heure. On en a parlé dans *The Gazette* il y a environ deux semaines. Il s'agit de ce genre d'activités. C'est en consultation avec la communauté policière, la Gendarmerie royale et la section des drogues surtout, que nous avons décidé de mettre sur pied un groupe de travail pour étudier le problème du blanchissage de l'argent. Dans ce groupe, il y a un président et trois membres. Notre groupe de travail a communiqué avec l'Association canadienne des chefs de police, dont vous entendrez les représentants après nous, en vue de mettre sur pied un autre groupe de travail conjoint avec ses membres, afin de déterminer où se situe le problème au Canada et de le régler.

Le groupe de travail a complété une bonne partie de son mandat. Chaque banque au Canada a maintenant des procédures contre le blanchissage ou le lessivage de l'argent.

M. Fontaine: Les différentes banques ont-elles des façons de communiquer entre elles pour se renseigner avant de le faire auprès des autorités publiques?

M. Ballard: Au point de vue procédure et politique, nous communiquons entre nous pour nous entraider. Pour ce qui est des cas particuliers, la communication se fait surtout entre le directeur de la sécurité d'une banque et le corps policier en question. Dans la plupart des cas, il n'y a aucune raison de faire circuler ces renseignements dans les différentes banques.

Would any of you fellows like to comment on the questions that have been asked so far?

The Chairman: We are running out of time and I think one of the other members wants to speak, so thank you, Mr. Fontaine. Mr. Robinson, five minutes, please.

Mr. Robinson: Thank you, Mr. Chairman. Just for the sake of accuracy, I want to pick up the second to last paragraph in your brief.

You suggest it is illusory to believe that drug dealers and enterprise criminals would in any way participate in the accurate completion of currency transaction report forms, which they know will result in a tax assessment or an arrest warrant.

I assume you are aware of the fact that this is not accurate, that it is not the drug dealers and entreprise

[*Translation*]

Mr. Fontaine: I would like you to clarify a minor point. On page 2 of your report, you say—and you have also discussed it here—that some two years ago you decided to establish a task force on money-laundering. Why did you make that decision? What events preceeded your official decision to create this task force?

Mr. Ballard: That is exactly the type of activity to which we referred earlier. It was mentioned in *The Gazette* about two weeks ago. That is the type of activity we mean. In consultation with the police community, the RCMP and the drug squad particularly, we decided to establish a task force to examine the problem of money-laundering. The group includes a chairman and three members. Our task force contacted the Canadian Association of Chiefs of Police, who will be appearing as witnesses here today after us, in order to establish another joint task force with its members, in order to determine where the problem lies in Canada and to solve it.

The task force has completed a good part of its mandate. Every bank in Canada now has procedures against money-laundering.

Mr. Fontaine: Do the various banks have any way of communicating with each other in order to obtain information before going to public authorities?

Mr. Ballard: With regard to procedures and policies, we communicate between ourselves and help each other. With regard to individual cases, communication is primarily between the bank's director of security and the police force involved. In most cases, there is no reason to circulate this information to the other banks.

Est-ce que l'un de vous voudrait faire des commentaires sur les questions que nous avons eues jusqu'à maintenant?

Le président: Notre temps s'écoule et je crois qu'un autre membre désire prendre la parole, alors merci, monsieur Fontaine. Monsieur Robinson, cinq minutes, s'il vous plaît.

M. Robinson: Merci, monsieur le président. Pour des fins d'exactitude, je voudrais une précision sur l'avant-dernier paragraphe de votre mémoire.

Selon vous, il est illusoire de croire que les trafiquants de drogues et les criminels d'entreprise accepteraient de fournir aux banques les renseignements exacts pour remplir correctement des formulaires de divulgation qui, ils le savent très bien, donneraient lieu à l'imposition de leurs revenus ou à l'émission d'un mandat d'arrestation.

J'imagine que vous êtes conscient du fait que cela n'est pas tout à fait exact, que ce ne sont pas les trafiquants de

[*Texte*]

criminals who fill out the forms, it is the financial institutions that fill them out.

Mr. Ballard: This is why we qualified our statement with "participate in the completion", because completing a form requires the person about whom the form is being completed to participate in the interrogation.

Mr. Robinson: Well, who completes the form, sir?

Mr. Ballard: In the U.S., the *Bank Secrecy Act* requires that the bank employee complete the form.

Mr. Robinson: That is correct.

Mr. Ballard: The form has questions on it which the bank employee must ask the depositor. We suggest there that the depositor is not likely to give you the absolute truth if he knows he is about to be arrested or—

Mr. Robinson: I assume you are aware of the fact, sir, that there have been a number of prosecutions under the American *Bank Secrecy Act* for failure to disclose information. Are you?

Mr. Ballard: Yes, I am aware of a great number of prosecutions under the *Bank Secrecy Act*, most of them directed against banking houses for failure to comply to the letter of the *Bank Secrecy Act*, not against drug dealers or enterprise criminals.

Mr. Robinson: According to this report, the act has been instrumental in dealing with a number of drug dealers and enterprise criminals.

Mr. Ballard: Everything is instrumental in doing something.

Mr. Robinson: That is a profound statement. If in fact the *Bank Secrecy Act* in the United States is being enforced far more vigorously, as recent information would lead us to believe, that may mean Canada would become even more of a haven for money launderers than it already has been in the past, because of course if we do not have similar provisions, then they are going to move northward.

I did not refer to the scandalous situation involving Scotiabank in the late 1970s. I was told they have cleaned up their act, but it used to be that they had an international reputation as one of the easiest banks to launder funds through.

What I am wondering at this point is in terms of this, again, as public policy, what you are telling us is that we should just rely on the discretion of your bank security officers, and that in fact they do report whenever they feel that there is something suspicious.

[*Traduction*]

drogues et les criminels d'entreprise qui remplissent les formulaires, ce sont les institutions financières qui les remplissent.

M. Ballard: C'est pourquoi nous avons bien dit «accepteraient de fournir aux banques les renseignements exacts», puisqu'afin de remplir un formulaire, il faut bien que la personne au sujet de laquelle on remplit cette formule participe et réponde aux questions.

M. Robinson: Eh bien, alors, qui remplit cette formule, monsieur?

M. Ballard: Aux États-Unis, le *Bank Secrecy Act* exige que les employés des banques remplissent ce formulaire.

M. Robinson: C'est exact.

M. Ballard: Le formulaire comprend des questions que l'employé de la banque doit poser à la personne qui effectue les dépôts. Ce que nous voulons suggérer, c'est qu'il est peu probable que la personne qui effectue les dépôts va divulguer toute la vérité si elle sait très bien qu'elle sera bientôt arrêtée ou encore...

M. Robinson: Monsieur, je présume que vous êtes au courant qu'il y a eu de nombreuses poursuites aux États-Unis en conséquence de la *Bank Secrecy Act* pour défaut de divulguer des renseignements. Vous êtes au courant de ce fait?

M. Ballard: Oui, je sais qu'il y a eu de nombreuses poursuites sous l'égide de la *Bank Secrecy Act*. La plupart impliquaient des banques qui avaient manqué de se conformer à la lettre de la *Bank Secrecy Act*, et non pas des trafiquants de drogues ou des criminels d'entreprise.

M. Robinson: D'après ce rapport, cette loi américaine aurait contribué à la poursuite de nombreux trafiquants de drogues et criminels d'entreprise.

M. Ballard: Tout peut contribuer à tout.

M. Robinson: Voilà une remarque très profonde. Si la *Bank Secrecy Act* est appliqué de façon encore plus rigoureuse, comme nos plus récentes informations semblent l'indiquer, cela pourrait signifier que le Canada abritera encore plus de recycleurs d'argent qu'il ne l'a fait par le passé, puisque, évidemment, nous n'avons pas de loi semblable. Ils vont simplement se diriger vers le nord, chez nous.

Je n'ai pas fait allusion à la situation scandaleuse impliquant la Banque de Nouvelle-Écosse survenue à la fin des années 1970. On me dit que cette situation s'est réglée depuis, mais que cette banque avait autrefois une réputation internationale pour la facilité avec laquelle on pouvait y recycler l'argent.

Ce que je me demande à ce stade-ci, encore une fois, comme politique publique, ce que vous nous dites c'est que nous devrions simplement faire confiance à vos agents de sécurité bancaire, et qu'en fait ils divulguent des informations lorsqu'ils considèrent qu'il y a quelque chose de louche.

[*Text*]

There are no written guidelines, we are told, on when they are to report in terms of amount, in terms of the circumstances, it is just—

Mr. Ballard: Mr. Chairman, is this a question you are addressing? I have some difficulty following the length of it.

Mr. Robinson: Well, try to follow it and maybe you will be able to follow.

We are told that there are no guidelines whatsoever, unless I missed something; that there are no written guidelines for this public policy determination here. If I am wrong in that, one of your security officers can indicate. There are no guidelines in terms of amount, no guidelines in terms of the circumstances. In terms of the 58 to 60 disclosures each year since these anti-laundering procedures have been in place, have any of those disclosures, to the best of your knowledge, led to prosecution?

• 1150

Mr. K. Johnston: To answer the last question, no, because the police have not gotten back to us and told us whether there has been a prosecution or not. It is a two-way street, you know, Mr. Robinson.

Mr. Robinson: So you are not aware of any circumstance in which this disclosure has led to prosecution.

Mr. K. Johnston: No, I am not personally aware of one.

Mr. Ballard: Perhaps the other—

Mr. K. Johnston: I would like to continue a little more. This ties your question in with something Mr. Grisé . . . you referred to the Bank of Nova Scotia—and I do not represent the Bank of Nova Scotia—and you indicated the Bank of Nova Scotia have cleaned up their act. You ask whether we have had any success.

On behalf of the Royal Bank of Canada, I would say, yes, it is on public record that approximately $16 million was laundered through one of our islands. Not one dollar has been laundered through that same island in these last two years. I would challenge anyone to investigate it. So we are having some success, and the banks are doing this voluntarily. You know, Mr. Robinson and gentlemen, one volunteer is better than ten pressed men.

Mr. Robinson: Under the voluntary disclosure system, though, you are not aware of a single instance in which a prosecution has resulted.

Mr. Ballard: There have been a number of instances in which the police have come to the banks and the banks have provided the information. A lot of this information, I suggest to you, is not of the exact process under which it is provided to the police and is not in the best interest of all concerned, because it is a security procedure to declare

[*Translation*]

Il n'y a pas de directives écrites, nous dit-on, concernant ce qu'ils doivent divulguer en termes de montants, de circonstances, c'est simplement. . .

M. Ballard: Monsieur le président, est-ce que ceci est une question que vous nous posez? J'éprouve quelque difficulté à en saisir le contenu.

M. Robinson: Eh bien, essayez un peu de saisir et peut-être que vous y arriverez.

On nous dit qu'il n'y a aucune directive, à moins que j'aie manqué quelque chose; il n'y a aucune directive écrite en ce qui concerne la politique publique à ce sujet. Si je me trompe, peut-être qu'un de vos agents de sécurité pourrait me l'indiquer. Il n'y a aucune directive en ce qui concerne le montant, ni aucune directive en ce qui concerne les circonstances. En ce qui concerne les 58 à 60 divulgations par an depuis la mise en place de ces procédures, à votre connaissance, y en a-t-il qui ont résulté en des inculpations?

M. K. Johnston: Pour répondre d'abord à votre dernière question, je ne sais pas, car la police ne nous a jamais informés des suites. C'est une voie à double sens, savez-vous, monsieur Robinson.

M. Robinson: Donc, vous ne savez pas dans quelle mesure ces divulgations ont pu résulter en une inculpation.

M. K. Johnston: Personnellement, je ne suis pas informé.

M. Ballard: Peut-être les autres. . .

M. K. Johnston: Je voudrais m'attarder un peu là-dessus. Cela nous ramène à ce que demandait M. Grisé. . . Vous avez mentionné la Banque de Nouvelle-Écosse—et je ne représente pas la Banque de Nouvelle-Écosse—vous avez dit que celle-ci a rectifié ses problèmes. Vous demandez dans quelle mesure nous en avons fait autant.

Au nom de la Banque Royale du Canada, je peux répondre que, oui, on sait que près de 16 millions de dollars ont transité par les comptes de l'une de nos succursales des Îles. Or, pas un seul dollar n'a été recyclé dans cette même île au cours des deux dernières années. Je mets au défi quiconque de prouver le contraire. Nos mesures ont donc réussi et les banques font cela à titre facultatif. Vous savez, monsieur Robinson, messieurs, un volontaire vaut mieux que dix qui ne le sont pas.

M. Robinson: Cependant, vous ne pouvez citer aucun cas d'inculpation ayant résulté d'une divulgation volontaire.

M. Ballard: La police s'est adressée à plusieurs reprises aux banques et celles-ci leur ont donné les renseignements voulus. Il n'est peut-être pas très bon que nous parlions publiquement ici de cette collaboration, mais nous pourrions vous donner des réponses un peu plus détaillées dans une séance à huis clos.

[*Texte*]

an open forum. If you wish to discuss this in camera, perhaps we can give you a little more detail on the process.

Mr. Robinson: As I understand the evidence, and correct me if I am wrong, we have the three security officers here under the system in place since your anti-laundering procedures took effect, a voluntary reporting to the police, even though that is not clearly set out in your disclosure statement—we are told it happens under non-written guidelines—under that voluntary system, and I appreciate there may have been prosecution, but are you aware—

Mr. Ballard: What sort of prosecutions are you referring to?

Mr. Robinson: —of any instance in which that voluntary reporting has led to a subsequent prosecution?

Mr. Ballard: For money laundering?

Mr. Robinson: That is correct.

Mr. Ballard: There is no law against money laundering.

Mr. Robinson: Not for money laundering . . but for any subsequent criminal prosecution in relation to those clauses.

Mr. K. Johnston: We cannot give you a fair answer. I would suggest you ask the police—they are coming on this afternoon—if there has been any success with the information we have given them. We do not know.

The Chairman: I think we are just about to get to them. Do you have one final question, Mr. Robinson?

Mr. Robinson: Was there any consultation by government officials with the Canadian Bankers' Association before this legislation was drafted on the possibility of reporting requirements being a part of it? Has there been any consultation since the legislation was tabled on this particular issue?

Mr. Ballard: No, there never has been any consultation with anyone in the government on reporting requirements of proposed legislation.

Mr. Robinson: What about since the legislation was tabled?

Mr. Ballard: Nor since the legislation has been tabled.

Mr. Robinson: So the suggestion by government officials that there is ongoing consultation on this subject is not accurate to the best of your knowledge?

Mr. Ballard: I do not know that anyone suggested there is ongoing consultation on the subject of the absence or presence of reporting requirements in Canadian law.

Mr. Robinson: That has indeed been suggested by government officials.

Mr. Ballard: I think the suggestion, Mr. Robinson, has been that there has been ongoing consultation on many

[*Traduction*]

M. Robinson: Si j'ai bien compris ce que vous avez dit, et reprenez-moi si je me trompe, nous avons ici trois responsables de la sécurité. . . Avec le système tel qu'il existe depuis que ces procédures anti-recyclage ont pris effet, il y a divulgation volontaire à la police, même si cela n'est pas clairement énoncé par écrit—il y a peut-être eu des inculpations, mais êtes-vous au courant. .

M. Ballard: De quelles inculpations parlez-vous?

M. Robinson: . . . d'une toute inculpation qui serait intervenue par suite de ces déclarations volontaires?

M. Ballard: D'une inculpation pour recyclage d'argent?

M. Robinson: Oui.

M. Ballard: Ce n'est pas contre la loi que de recycler de l'argent.

M. Robinson: Pas une inculpation de recyclage . . mais toute poursuite criminelle ultérieure en rapport avec ces déclarations.

M. K. Johnston: Nous ne sommes pas en mesure de vous répondre. Je vous suggère de demander à la police—les chefs de police comparaîtront cet après-midi—si les renseignements que nous leur avons fournis étaient utiles. Nous-mêmes ne le savons pas.

Le président: Je pense que nous allons les entendre juste après vous. Avez-vous une dernière question, monsieur Robinson?

M. Robinson: Les auteurs du projet de loi ont-ils consulté votre association concernant l'inscription éventuelle de l'obligation de déclarer dans ce texte? Vous a-t-on contactés à ce sujet depuis le dépôt du projet de loi?

M. Ballard: Non, nous n'avons pas été consultés à ce sujet.

M. Robinson: Pas non plus depuis que le projet de loi a été introduit?

M. Ballard: Non plus.

M. Robinson: À votre connaissance, lorsque le ministère nous dit que des consultations sont en cours, cela est faux?

M. Ballard: Je ne savais pas que quiconque a affirmé que des consultations à cet égard sont en cours.

M. Robinson: C'est ce que les fonctionnaires nous ont affirmé.

M. Ballard: Ils voulaient peut-être dire, monsieur Robinson, que des consultations ont lieu sur toutes sortes

[Text]

things. Reporting requirements. . your question seemed to be directed mostly at what is not in the bill than what is in the bill. What is not in the bill has not been the subject of consultation.

Mr. Robinson: There has been no further discussions with you on reporting requirements.

Mr. Ballard: No discussions, ever. . further, or otherwise.

Mr. Robinson: That is what I was afraid of. Thank you, Mr. Chairman.

The Chairman: Okay, thank you, Mr. Robinson, and thank you very much, gentlemen, for your testimony. It has been very helpful.

Nous recevons maintenant l'Association canadienne des chefs de police dont le président est M. Pierre Trudeau.

• 1155

Gentlemen, welcome to the committee. Mr. Trudeau, it is my understanding you will be making the opening comments. If this is the case, welcome as well, and perhaps you could introduce your colleagues.

M. Pierre Trudeau (président de l'Association canadienne des chefs de police): Monsieur le président, j'aimerais vous présenter M. Tom Flanagan de la Police d'Ottawa, qui est le président de notre Comité sur la réforme du droit, et M. Don Cassidy, directeur exécutif à l'Association canadienne des chefs de police.

Je tiens d'abord à vous remercier de nous recevoir et de nous permettre de vous présenter le mémoire que nous avons préparé sur le projet de loi C-61.

Mr. Grisé: A point of order, Mr. Chairman.

J'ai reçu la semaine dernière la copie du mémoire qui est présenté aujourd'hui par l'Association canadienne des chefs de police. Le greffier m'en a donné la version anglaise jeudi le 21 avril en me précisant que nous en aurions la version française aujourd'hui. Je ne reproche rien à l'Association canadienne des chefs de police, car elle nous a soumis le document le 19 avril. Cependant, je m'explique très mal que nous soyons obligés d'attendre une semaine pour obtenir la traduction française du document. C'est tout à fait inadmissible. Je dois dire que je n'accepterai plus de siéger au Comité lorsqu'un document ne nous parviendra pas simultanément dans les deux langues officielles. Encore une fois, je ne reproche rien à l'Association canadienne des chefs de police, mais je crois sincèrement que nous aurions pu obtenir les deux documents à la même date. Merci. Je m'excuse, monsieur Trudeau.

Le président suppléant (M. Nicholson): Vous avez bien fait de soulever cette question, monsieur Grisé.

To the extent national associations can—and it would seem to me the resources are probably available among national associations—they should submit all documents

[Translation]

de choses. La déclaration obligatoire . . Votre question semblait viser principalement ce qui ne figure pas dans le projet de loi plutôt que ce qui y figure. Il y a eu effectivement concertation sur ce qui y est.

M. Robinson: Et vous n'avez pas eu d'autres discussions au sujet de la déclaration?

M. Ballard: Non, jamais.

M. Robinson: C'est ce que je craignais. Je vous remercie, monsieur le président.

Le président: Bien. Je vous remercie, monsieur Robinson, ainsi que vous, messieurs, de votre témoignage. Cela a été très utile.

We will now hear the Canadian Association of Chiefs of Police, whose president is Mr. Pierre Trudeau.

Messieurs, bienvenue au Comité. Monsieur Trudeau, je crois savoir que vous ferez la déclaration préliminaire. Je vous souhaite la bienvenue, donc, et je vous prie de nous présenter vos collègues.

Mr. Pierre Trudeau (President of the Canadian Association of Chiefs of Police): Mr. Chairman, I would like to introduce Mr. Tom Flanagan of the Ottawa Police Force, who is the chairman of our law reform committee, and Mr. Don Cassidy, executive director of the Canadian Association of Chiefs of Police.

I would like, first of all, to thank you for the invitation to appear before you, to present the brief we have prepared on Bill C-61.

M. Grisé: Un rappel au Règlement, monsieur le président.

I received last week a copy of the brief which the Canadian Association of Chiefs of Police are going to present today. The clerk sent me the English text on Thursday, April 21, and said we would have the French translation today. I am not blaming the Canadian Association of Chiefs of Police, as they provided their document on April 19. However, I have great difficulty understanding why we have to wait a full week to get the French translation of this document. This is absolutely intolerable. I will no longer sit on this committee if we do not get documents in both languages simultaneously. Again, I am not blaming the Canadian Association of Chiefs of Police, but I sincerely believe that we should get both documents at the same time. Thank you. I am sorry, Mr. Trudeau.

The Acting Chairman (Mr. Nicholson): You were right to raise this question, Mr. Grisé.

Dans la mesure où les associations nationales peuvent le faire—et il me semble qu'elles disposent des ressources voulues—elles devraient soumettre tous les documents

[*Texte*]

to House of Commons standing committees in both official languages, where at all possible. The clerk indicates to me he has in fact made a translation. Mr. Grisé, I take it you did not receive a copy of it, but I have it now. In the letter I received from the clerk, it states the French translation would be available at the meeting to be held on Tuesday, April 26, which is today. I now have it in French.

M. Robinson: Je suis tout à fait d'accord avec M. Grisé pour dire qu'il est essentiel d'avoir les documents avant la réunion pour pouvoir se préparer. Est-ce qu'il y a une explication? Par exemple, si on a besoin de plus de traducteurs ou quelque chose de ce genre, on veut le savoir.

M. Grisé: C'est cela. Encore une fois, je ne reproche rien à l'Association canadienne des chefs de police, mais il y a un greffier et il y a un travail qui doit être fait par la Chambre des communes.

M. Robinson: C'est cela.

M. Grisé: Monsieur le président, je ne considère pas que ce travail a été fait adéquatement.

M. Robinson: S'il n'y a pas assez de ressources, par exemple, on veut le savoir.

The Chairman: I think the point is well taken. I have been informed by the clerk that it takes approximately five to six days to have the matter translated, but I agree with you, Mr. Grisé, it is unacceptable here. I will take the matter up with the translation department, because I agree with you 100% that a translation not available until the day on which the testimony actually given is completely unfair to you and to others.

Deputy Chief T. Flanagan (Canadian Association of Chiefs of Police): Mr. Chairman and members of the committee, on behalf of my colleagues, I would like to thank you for the opportunity to appear before you.

• 1200

The Canadian Association of Chiefs of Police is an incorporated non-profit association representing senior officers from municipal, regional, and provincial police forces and the Royal Canadian Mounted Police.

The members of this association are responsible for the daily command and performance of duties by 60,000 police officers located in every province and territory of Canada. The benefit of this collective experience is therefore reflected in the broad consensus, which we submit here for your information.

The principal objectives of the Canadian Association of Chiefs of Police are:

[*Traduction*]

aux comités permanents de la Chambre des communes dans les deux langues officielles, chaque fois que possible. Le greffier me dit qu'il a effectivement fait traduire ce mémoire. Monsieur Grisé, je suppose que vous n'en avez pas reçu un exemplaire, mais j'en ai un ici. Dans la lettre que m'a faite parvenir le greffier, il est dit que la traduction française serait distribuée au début de la réunion du mardi, 26 avril, c'est-à-dire aujourd'hui. J'ai le texte français ici.

Mr. Robinson: I fully agree with Mr. Grisé that it is essential to have the documents in advance of the meeting in order to prepare for it. Is there not some explanation? For example, if there is a lack of translators, or something of that order, we should know about it.

Mr. Grisé: Precisely. What is more, I am not blaming in any way the Canadian Association of Chiefs of Police, but we do have a clerk and there is work that has to be done by the House of Commons.

Mr. Robinson: Precisely.

Mr. Grisé: Mr. Chairman, I do not think this work has been adequately done.

Mr. Robinson: If there is a lack of resources, for example, we want to know about it.

Le président: Nous avons pris bonne note. Le greffier m'informe qu'il faut compter de 5 à 6 jours pour faire traduire un document, mais je suis d'accord avec vous, monsieur Grisé, c'est inacceptable. J'en parlerai avec le service de traduction mais je suis pleinement d'accord avec vous, il est tout à fait injuste à votre égard et pour d'autres que la traduction ne soit prête que le jour même de la comparution des témoins.

Le directeur adjoint T. Flanagan (Association canadienne des chefs de police): Monsieur le président, membres du Comité, au nom de mes collègues, je voudrais vous remercier de m'avoir permis de comparaître devant vous.

L'Association canadienne des chefs de police est un organisme sans but lucratif ayant un statut de droit privé qui représente les officiers supérieurs des corps de police municipaux, régionaux et provinciaux ainsi que de la Gendarmerie royale du Canada.

Nos membres commandent quotidiennement 60,000 agents de police qui travaillent dans toutes les provinces et territoires du Canada et doivent veiller à ce que ceux-ci remplissent leurs fonctions adéquatement. Cette expérience collective nous a permis d'en venir à un consensus dont nous vous faisons part dans le présent document, à titre d'information.

Les principaux objectifs de l'Association canadienne des chefs de police sont:

[Text]

1. to promote and develop co-operation among Canadian police organizations in their mutual pursuit of common objectives and expectations;

2. to attain the highest standard of performance in policing through the professional development of police training by education and research;

3. to promote and maintain integrity, honour, and conduct in the police profession through the universal acceptance and practice of a high standard of police ethics;

4. to encourage and further the study of progressive practices for the prevention and detection of crime; and

5. to affirm and establish those practices that are of the greatest benefit, protection, and security for all the people of Canada.

The Canadian Association of Chiefs of Police is pleased for this opportunity to report for your benefit our general endorsement of the provisions of Bill C-61.

Although we do have some specific comments, our submissions are purposely brief so our representatives may be available to answer any questions you may have.

By long tradition, the police service in Canada has been principally concerned with the prevention and detection of crime. Although this relatively straightforward objective has served well and been well served, it is now an inadequate expression of the contemporary policing obligation created and imposed by the development of criminal organizations in the 1970s and 1980s.

New times and new needs occasion new solutions. We therefore encourage the committee, Mr. Chairman, and your fellow Members of Parliament, to give your support to this new means of stopping the pervasive flow of the proceeds of crime to criminal organizations.

This association welcomes Bill C-61 as an important and fundamental legislative initiative that will assist police agencies in dealing with the problem of illicit conduct that is also purely derivative. In this regard, we agree the bill is an effective new tool in the fight against drug trafficking and other enterprise crimes, and further, this initiative will provide a strong base for international action against criminals and their accumulated proceeds of crime both here in Canada and abroad.

You can be assured, Mr. Chairman, that we do strongly recommend Bill C-61 for your favourable consideration. Therefore, we urge and encourage Members of Parliament to support this bill as it affords such a basic measure of protection for the public.

[Translation]

1. promouvoir et établir la collaboration entre les différents corps policiers canadiens, qui ont des attentes et des objectifs communs;

2. chercher à atteindre les normes les plus élevées possible dans le travail policier, par des études et travaux de recherche permettant de perfectionner la formation professionnelle des policiers;

3. promouvoir et maintenir l'intégrité, l'honneur et la bonne conduite des agents de police en veillant à ce que tous acceptent et pratiquent une éthique policière rigoureuse;

4. encourager et approfondir l'examen de méthodes progressistes visant à prévenir et à détecter le crime et

5. mettre en place et privilégier les méthodes qui sont les plus avantageuses pour tous les Canadiens et qui assurent le mieux leur protection et leur sécurité.

L'Association canadienne des chefs de police est heureuse de vous indiquer qu'elle appuie de façon générale les dispositions du projet de loi C-61.

Bien que nous désirions formuler certains commentaires précis, notre mémoire est volontairement bref afin de permettre à nos représentants de répondre à vos questions.

De longue date, les services de police du Canada s'occupent principalement de la prévention et de la détection du crime. Bien que cet objectif relativement simple ait bien servi la société et que nous ayons tout fait pour l'atteindre, il ne nous permet plus de remplir les obligations en matière de maintien de l'ordre dont nous devons maintenant nous acquitter en raison de la prolifération des organisations criminelles depuis les années 1970 et 1980.

Autre temps, autre moeurs et, par conséquent, nouveaux besoins et nouvelles solutions! Nous incitons donc les membres du Comité et leurs collègues députés à appuyer cette nouvelle mesure qui vise à enrayer le mouvement des produits de la criminalité qui affluent de toutes parts vers les organisatons criminelles.

Selon l'Association, le projet de loi C-61 est une mesure législative importante et fondamentale qui aidera les services de police à s'attaquer au problème des pratiques illicites purement accessoires. À cet égard, nous convenons que ce nouvel instrument nous permettra de nous attaquer efficacement au trafic des stupéfiants et à d'autres types de criminalité organisée. De plus, cette initiative nous fournira une base solide en vertu de laquelle des mesures pourront être prises à l'échelle internationale contre les criminels et les produits de la criminalité que ceux-ci ont accumulés au Canada et à l'étranger.

Nous vous recommandons donc fortement d'examiner le projet de loi C-61 d'un oeil favorable et nous exhortons les députés à l'appuyer, car il assurera une protection fondamentale au grand public.

[*Texte*]

Although we can, and do, voice strong approval for this bill, there are a number of questions and observations we are also compelled to bring to your attention.

First, it is noted that the prohibition against obtaining or using the proceeds of crime applies only with respect to designated drug offences and enterprise crimes. Although these categories are exhaustively defined and do include those offences of the greatest concern to the police and the public, a matter of principle does remain.

We ask the question: Would it not be more beneficial and appropriate to prohibit the laundering of proceeds from any crime?

Second, we note proposed section 420.28 will permit, in limited circumstances, the disclosure of income tax information. Although the procedures to be followed in such circumstances are unusually burdensome and complex, we are very pleased with the recognition of a public obligation of government to provide police agencies with information that may assist criminal investigations.

It must therefore be asked why this beneficial assistance is restricted to one information source only and does not include other government-controlled information areas. From the perspective of this association, it does not appear that such an extended application breaches the principle, which we feel has already been accepted.

With respect to this same section, proposed section 420.28, we are also compelled to point out that its benefits will apparently only apply to designated drug offences. We assume that the failure to include enterprise crime offences is a mere drafting omission that will soon be corrected. It is, of course, our preference that both types of offences be subject to the provisions of this proposed section.

• 1205

Third, and with respect to the forfeiture of property pursuant to proposed subsection 420.17(1), it is observed that there is no legislative provision for reimbursement to police agencies for their investigative, storage, or maintenance costs arising out of the property forfeited. If experience is an accurate guide, then we can anticipate that these expenses may be very substantial, particularly in relation to enterprise crime offences.

As the financial resources of most police agencies are already fully committed, it would be unfortunate if such a practical consideration impeded access to this legislative scheme.

We must therefore ask, Mr. Chairman, that you consider an amendment to proposed section 420.17 that creates a charge against forfeited property for repayment of such expenses incurred by the investigating police agency.

[*Traduction*]

Bien que le C-61 obtienne notre assentiment sans partage, nous tenons à attirer votre attention sur un certain nombre de questions.

En premier lieu, il importe de noter que l'interdiction ne s'applique qu'à l'obtention ou à l'utilisation des produits de la criminalité provenant de la perpétration d'une infraction grave en matière de drogue ou d'une infraction de criminalité organisée. Bien que ces catégories soient définies de façon exhaustive et incluent les infractions qui préoccupent le plus les corps policiers et le grand public, une question de principe se pose.

Ne serait-il pas plus avantageux et approprié d'interdire le recyclage de tous les produits de la criminalité, quel que soit le crime?

Deuxièmement, nous avons remarqué que l'article 420.28 permettra, dans des circonstances particulières de communiquer des renseignements fiscaux. Bien que la procédure à suivre en pareils cas soit exceptionnellement pénible et complexe, nous sommes très heureux qu'on reconnaisse la reponsabilité gouvernementale de fournir aux services de police les renseignements qui peuvent les aider à mener leurs enquêtes criminelles.

On ne peut donc s'empêcher de demander pourquoi cette aide bénéfique se limite à une seule source de renseignements et n'inclut pas d'autres domaines d'information contrôlés par l'État? Selon l'Association, une telle demande ne semble pas aller à l'encontre du principe déjà accepté.

Nous tenons également à souligner que les avantages dont nous pourrions bénéficier en vertu de l'article 420.28 ne s'appliqueront apparemment qu'aux infractions graves en matière de drogue. Nous présumons que l'absence des infractions de criminalité organisée n'est qu'un oubli qui sera bientôt réparé. Nous préférerions évidemment que les deux types d'infractions soient assujettis aux dispositions de cet article.

Troisièmement, en ce qui a trait à la confiscation de biens dont il est question au paragraphe 420.17(1), nous signalons qu'aucune disposition législative ne prévoit le remboursement, aux services de police, des frais supportés pour leurs enquêtes ainsi que pour l'entreposage ou l'entretien des biens confisqués. Si l'on se fie à notre expérience, ces dépenses seront très considérables, particulièrement dans les cas d'infraction de criminalité organisée.

Comme toutes les ressources financières de la plupart des services de police sont déjà engagées, il serait malheureux qu'une telle considération pratique empêche les forces policières de recourir à cette disposition législative.

Nous vous demandons donc de modifier l'article 420.17 de façon à ce que le service de police ayant effectué l'enquête puisse exiger le remboursement des frais supportés à l'égard des biens confisqués.

[*Text*]

At present, the only alternative is for the provincial Crown to enter into separate agreements concerning this subject with every police agency within the jurisdiction pursuant to proposed subsections 420.17(1) and 420.18(2) and proposed subparagraph 420.23(c)(iii).

For reasons of practicality and uniformity we suggest the amendment to proposed section 420.17 is preferable by far.

Fourthly, it is suggested that this initiative attacking the proceeds of crime may be compromised in practice by proposed subsection 420.14(4). The purposes for which an accused can apply to continue, with judicial sanction, his use of property, financial proceeds or business interests are so broadly defined in proposed paragraph 420.14(4)(c) that the efficacy of pre-trial seizures may be questioned.

As a result, we anticipate the language of the bill will encourage a rule of practice that favours applications for restoration by accused persons in virtually every case.

We are also concerned, Mr. Chairman, that an accused should not be able to subvert the intention of this legislation by exhausting resources returned to him, but which are subsequently ordered to be forfeited. Although proposed paragraph 420.14(4)(a) grants considerable discretion to a judge before the fact, it does not apparently contemplate the necessity of a judicial order to return or otherwise deal with property after the fact. We think it would be prudent to provide expressly for this contingency.

Fifthly, we note that proposed subsections 420.12(6) and 420.13(7) each impose an obligation upon the Attorney General to provide his undertaking for future liabilities arising out of process for the search, seizure, or detention of proceeds of crime. We think the creation of such an unusual Crown obligation may naturally impose an artificial caution that may adversely affect the interest in having recourse to the this legislation. We think such a proviso is counter-productive, particularly because of the broad scope of proposed section 420.14 and, therefore, it ought to be deleted in favour of a recognition of the ordinary principles of protection enunciated in section 25 of the Criminal Code.

Lastly, Mr. Chairman, we note that the conjunctive nature of proposed subsection 420.18(2) compels some difficult questions with respect to the proper interpretation of when proceedings are commenced. A strict interpretation of this section must, therefore, invite the following conclusions. Where a subject dies before an information is laid against him, an order of forfeiture will not be available against his estate or beneficiaries. In those situations where Canada is merely used to hide the proceeds of crime obtained elsewhere, and the suspect has himself never been here, then proceedings are not possible in law. Thus, an order of forfeiture is presumably

[*Translation*]

À l'heure actuelle, la seule possibilité qui s'offre à la Couronne au titre provincial, c'est de conclure un accord distinct à ce sujet avec chaque service de police qui relève de sa juridiction aux termes des paragraphes 420.17(1) et 420.18(2) et du sous-alinéa 420.23c)(iii).

Pour l'aspect pratique et pour des raisons d'uniformité, nous suggérons de modifier l'article 420.17.

Quatrièmement, il nous semble que le paragraphe 420.14(4) pourrait en pratique compromettre l'efficacité de la mesure législative qui vise à confisquer les produits de la criminalité. En effet, l'alinéa 420.14(4)c) définit en termes si généraux les raisons pour lesquelles un accusé peut demander à un juge de continuer à utiliser ses biens, ses ressources financières ou les intérêts de ses entreprises qu'on peut se demander à quoi il servira de les confisquer avant le procès.

Nous prévoyons donc que le libellé du projet de loi incitera les tribunaux à adopter des règles de procédure qui inviteront l'accusé à présenter une demande de restitution dans presque tous les cas.

Nous croyons également qu'un accusé ne devrait pas pouvoir se soustraire à l'intention de la loi en épuisant les ressources qui lui sont restituées avant qu'on ordonne leur confiscation. Bien que l'alinéa 420.14(4)a) donne un pouvoir discrétionnaire considérable au juge «avant le fait» rien ne semble prévoir qu'il soit nécessaire de rendre une ordonnance de la Cour pour reprendre possession des biens «après le fait». Nous croyons qu'il serait prudent de prévoir expressément cette éventualité.

Cinquièmement, nous remarquons que les paragraphes 420.12(6) et 420.13(7) permettent au juge d'exiger du procureur général qu'il prenne des engagements à l'égard des dettes qui pourraient être contractées à la suite de la perquisition, de la confiscation ou de la détention des produits de la criminalité. Nous croyons que le fait d'imposer une telle obligation exceptionnelle à la Couronne inciterait tout naturellement à agir avec prudence, ce qui risque de décourager l'application de cette mesure législative. Selon nous, une telle disposition restrictive va à l'encontre du but recherché, tout particulièrement en raison de la vaste portée de l'article 420.14. En conséquence, il faudrait l'abroger et appliquer plutôt les principes de protection habituels énoncés à l'article 25 du Code criminel.

En dernier lieu, monsieur le président, nous signalons que la nature arbitraire du paragraphe 420.18(2) soulève certaines questions complexes parce qu'il faut établir avec précision le moment où débutent les procédures. Une interprétation rigoureuse de cette disposition nous amènerait aux conclusions suivantes. Lorsqu'un suspect décède avant qu'une ordonnance de communication ne soit rendue contre lui, une ordonnance de confiscation ne pourrait être rendue à l'égard de ses biens ou contre ses légataires. Dans le cas où le Canada a tout simplement servi à cacher les produits de la criminalité provenant d'ailleurs et où le suspect n'est jamais entré au pays, il est

[*Texte*]

not available with respect to the proceeds of crime in this country.

We suggest these difficult and technical problems require some reconsideration.

However, Mr. Chairman, we must stress that this vital legislative initiative has been long awaited by Canadian police forces. Bill C-61 will substantially assist in dealing with the important public and policing issues created by criminal organizations in this country.

• 1210

The Canadian Association of Chiefs of Police therefore recommends, notwithstanding our observations and submissions delivered this morning for your respectful review, that passage of this important legislation not be delayed. We respectfully submit that with its companion Bill C-58 concerning mutual legal assistance, we believe very much will be achieved in removing the profit from crime.

We would appreciate, if possible, being consulted about any future amendments proposed for Bill C-61.

The Chairman: Thank you very much for your testimony. It is particularly helpful for legislative committees to have specific comments on individual sections of the bill for our line-by-line consideration of them.

Mr. Robinson: Mr. Chairman, I would like to welcome the witnesses before the committee. Over the years Deputy Chief Flanagan and the other members have appeared before our committees on a whole range of justice bills. While we do not always adopt their recommendations in the precise form in which they suggest them, we welcome their input.

I would like to follow up on my questioning to the previous witnesses. I am not sure if you were here for my questions to the witnesses from the Canadian Bankers' Association, but I am quite concerned that there should be some reporting mechanism to assist in making these provisions to the Criminal Code effective, some mechanism for reporting large transactions and suspicious transactions of funds.

We were told this morning by the bankers that they have a voluntary system in place with no written guidelines for reporting suspicious transactions, at least in the last couple of years. Some of the more horrendous examples were given. Are you in a position to advise the committee about this particular mechanism and if, from your perspective, it is effective?

[*Traduction*]

impossible de confisquer ces produits en vertu de la loi. En conséquence, nous présumons qu'une ordonnance de confiscation ne pourrait être rendue à l'égard des produits de la criminalité de cette personne qui se trouvent au Canada.

Nous croyons que ces problèmes complexes et techniques nécessitent un examen attentif.

Cependant, monsieur le président, nous soulignons que les services de police du Canada attendent depuis longtemps cette mesure législative d'importance capitale. Le projet de loi C-61 nous aidera énormément à régler les questions d'intérêt public et les importants problèmes de maintien de l'ordre engendrés par les organisations criminelles dans notre pays.

L'Association canadienne des chefs de police recommande donc, nonobstant les observations formulées et le mémoire présenté ce matin, que cette importante loi soit adoptée sans retard. Nous croyons que le C-61 et le C-58, qui concerne l'entraide juridique, nous aideront grandement à éliminer les avantages qu'on peut retirer du crime.

Nous vous saurions gré de nous consulter, si possible, relativement aux amendements qui pourraient être apportés au projet de loi C-61.

Le président: Merci beaucoup de votre témoignage. Il est particulièrement utile pour les comités législatifs d'entendre des observations précises sur certaines dispositions du projet de loi que nous allons étudier dans les moindres détails.

M. Robinson: Monsieur le président, je voudrais souhaiter la bienvenue aux témoins. Depuis des années, le chef adjoint Flanagan et les autres membres de cette association ont comparu devant nos comités pour tout un éventail de projets de loi juridiques. Bien que nous n'adoptions pas toujours leurs recommandations telles qu'ils nous les présentent, nous sommes très heureux de leur participation au processus.

Mes questions vont être du même ordre que celles que j'ai posées aux témoins précédents. Je ne sais pas si vous étiez ici lorsque j'ai interrogé les témoins de l'Association des banquiers canadiens, mais j'estime vraiment qu'il devrait y avoir certains mécanismes pour renforcer l'efficacité de ces dispositions du Code criminel, mécanismes qui permettraient de signaler d'importantes et douteuses transactions de fonds.

Les banquiers nous ont dit ce matin avoir depuis au moins deux ans un système officieux pour signaler les transactions douteuses. Ils nous ont cité des exemples parmi les plus effroyables. Êtes-vous en mesure de donner des conseils au comité sur ce type de mécanisme, et pouvez-vous nous dire s'il est efficace, selon votre perspective?

[*Text*]

D/Chief Flanagan: Mr. Chairman, we have discussed the banking aspect of the bill and our law amendments committee has discussed it. We feel that the co-operation at present is sufficient and it would not be something we would bring forward. I heard the latter part of your question to the Canadian Bankers' Association and the security officers representing the bank and we would have to agree with what they are saying at this time.

The law amendments committee is composed of police chiefs from one coast to the other. We did not see any difficulty that might cause us to bring such a submission to this committee.

Mr. Robinson: Are you able to assist us in terms of the nature of the present relationship between the police forces and the banks in Canada?

D/Chief Flanagan: I would summarize the present relationship as a co-operative one. We have good relations with the bank security officers. To the best of my knowledge we have no reason to believe that the banks are hiding things from the police. Having regard for their confidentiality rules and any other civil regulations that might be in existence, we are anticipating the speedy passage of this bill which will help us even more.

Mr. Robinson: Have you had any discussions with representatives of the Canadian Bankers' Association on this point?

D/Chief Flanagan: Do you mean on this bill?

Mr. Robinson: No, I mean on the bank reporting provision.

D/Chief Flanagan: I have not had any, but some of our people have had discussions with them.

Mr. Robinson: Was that within the past few months?

D/Chief Flanagan: Yes.

Mr. Robinson: Has your association looked at the comparable provisions of American legislation?

D/Chief Flanagan: We have not looked at them in depth, but the information we receive is that it may not be working all that well in the United States. There might be a different atmosphere in the United States and our people do not feel it is necessary to have similar regulations in Canada at this time.

• 1215

Mr. Robinson: When you say you hear it is not working too well, what is this based on? I take it you have not given this particular issue any kind of in-depth examination. Is this based on conversations, or what is this based on?

D/Chief Flanagan: We have not felt it necessary to go into it in any greater depth than we have. And no, we have not given it any great in-depth consideration because we do not think it is necessary.

[*Translation*]

M. Flanagan: Monsieur le président, nous avons discuté des questions bancaires du projet de loi qu'a examiné notre comité chargé des amendements législatifs. Nous estimons que la coopération actuelle est suffisante et nous ne ferons donc pas de proposition dans ce sens. J'ai entendu la dernière partie des questions que vous avez posées à l'Association des banquiers canadiens et aux agents de sécurité représentant les banques, et nous devons dire que nous appuyons ce qu'elles disent actuellement.

Le comité examinant les modifications de lois se compose de chefs de police provenant des quatre coins du pays. Nous n'avons pas vu de difficultés qui pourraient nous amener à présenter de telles recommandations au comité.

M. Robinson: Pourriez-vous nous dire quelles sont les relations actuelles entre les forces de police et les banques du Canada?

M. Flanagan: En deux mots, nous coopérons. Nous entretenons de bonnes relations avec les agents de sécurité des banques. Pour autant que je sache, nous n'avons pas de raison de croire que les banques cachent des choses à la police. Compte tenu de leur règles sur la confidentialité et d'autres dispositions qui pourraient exister, nous prévoyons que l'adoption rapide de ce projet de loi nous aidera encore davantage.

M. Robinson: Avez-vous discuté de ce sujet avec des représentants de l'Association canadienne des banquiers?

M. Flanagan: Au sujet de ce projet de loi?

M. Robinson: Non, sur les informations qu'elles pourraient signaler.

M. Flanagan: Pas personnellement, mais certains de nos collègues ont discuté avec eux.

M. Robinson: Ces derniers mois?

M. Flanagan: Oui.

M. Robinson: Votre association a-t-elle examiné les dispositions semblables de la législation américaine?

M. Flanagan: Nous ne les avons pas examinées en détail, mais nous avons su que le système ne fonctionne pas très bien aux États-Unis. L'atmosphère peut y être différente et nos membres n'estiment pas nécessaire de prévoir des règlements semblables au Canada pour le moment.

M. Robinson: Sur quoi vous appuyez-vous pour dire que le système ne fonctionne pas très bien? Il m'a semblé que vous ne vous êtes pas vraiment penché sur cette question. Votre opinion est-elle fondée sur des conversations, par exemple?

M. Flanagan: Nous n'avons pas jugé utile d'examiner plus avant la question. Cela ne nous a pas semblé nécessaire.

[*Texte*]

Mr. Robinson: Just exactly what is the relationship now between the banks and the police, in terms of reporting?

D/Chief Flanagan: The relationship is that the banks and the police have an understanding that crime will be reported to the police. The banks, as good corporate citizens, the same as any other good citizen, are reporting matters to the police. There is an ongoing relationship. They have in place liaison people such as the bank corporate security officers who deal with the police, who have meetings with the police from time to time and who are members of the Canadian Association of Chiefs of Police. There is a constant flow of communication between these people and the police community and we just do not see any problem in it at the present time.

Mr. Robinson: So, the bank security officers are members of your association?

D/Chief Flanagan: Yes.

Mr. Robinson: So for example, the three—

D/Chief Flanagan: A number of them are, I know that Mr. Ballard is and Mr. Johnston is. I am not sure about the other two gentlemen. Probably they are.

Mr. Robinson: So the people who appeared previously are members of your association?

D/Chief Flanagan: Yes.

Mr. D. Cassidy (Executive Director, Canadian Association of Chiefs of Police): Associate members.

Mr. Robinson: I see, I see. Well, that is helpful to know.

In terms of your brief now: I take it at page 4 of your brief you are suggesting that all government information should be made available to police agencies. I remember former Commissioner Simmonds of the RCMP made a similar suggestion, that all government records should be available to the police. Just so I understand you clearly, that is what you are saying, is it?

D/Chief Flanagan: Yes, in the appropriate circumstances, of course.

Mr. Robinson: Are you aware of the current provisions of the Privacy Act, for example?

D/Chief Flanagan: Yes.

Mr. Robinson: I take it you disagree with those.

D/Chief Flanagan: We think, for instance, that unemployment insurance information should be available to the police if required. This only allows income tax information to be obtained by the police.

[*Traduction*]

M. Robinson: Quelle est exactement la relation actuelle entre les banques et la police pour ce qui est des informations à signaler?

M. Flanagan: En vertu de l'entente que nous avons avec les banques, la police est informée des activités criminelles. Tout comme n'importe quel autre bon citoyen, comme bonne personne morale les banques signalent certaines questions à la police. Notre relation est permanente. Les banques ont des agents de sécurité qui communiquent et traitent avec la police, qui ont des rencontres de temps en temps avec cette dernière, et qui sont membres de l'Association canadienne des chefs de police. La communication entre ces gens et les forces de police est constante et pour le moment nous ne voyons là aucun problème.

M. Robinson: Par conséquent, les agents de sécurité de la banque sont membres de votre association?

M. Flanagan: Oui.

M. Robinson: Ainsi, par exemple, les trois. . .

M. Flanagan: C'est vrai pour un certain nombre d'entre eux. Je sais que M. Ballard et M. Johnston sont membres. Je ne sais pas ce qu'il en est pour les deux autres messieurs. Ils le sont probablement.

M. Robinson: Les gens qui ont donc comparu précédemment sont des membres de votre association, est-ce bien cela?

M. Flanagan: Oui.

M. D. Cassidy (directeur exécutif, Association canadienne des chefs de police): Ce sont des membres associés.

M. Robinson: Je vois. C'est utile à savoir.

Pour revenir maintenant à votre mémoire, à la page 4, vous semblez dire que toutes les informations gouvernementales devraient pouvoir être communiquées aux organismes policiers. Je me souviens que l'ancien commissaire Simmonds avait fait une proposition semblable, à l'effet que la police ait accès à toutes les archives publiques. Je veux m'assurer de bien vous comprendre et j'aimerais savoir si c'est bien ce vous nous dites.

M. Flanagan: Oui, quand les circonstances l'exigent, bien sûr.

M. Robinson: Êtes-vous au courant des dispositions actuelles de la Loi sur la protection des renseignements personnels, par exemple?

M. Flanagan: Oui.

M. Robinson: J'imagine que vous ne les approuvez pas.

M. Flanagan: Par exemple, nous estimons que les renseignements sur l'assurance-chômage devraient être communiqués, le cas échéant, à la police. En vertu de cette loi, elle ne peut obtenir que des renseignements relatifs à l'impôt sur le revenu.

[*Text*]

Mr. Robinson: But you are saying any federal government records in existence should be made available to the police.

D/Chief Flanagan: Yes, that would be our position.

Mr. Robinson: That is what you are saying.

D/Chief Flanagan: Yes.

Mr. Robinson: That is sort of an Orwellian society, is it not, Mr. Flanagan, in which the police have access to every possible government record?

D/Chief Flanagan: Well, of course, there are certain safeguards to having access. Namely, there are safeguards in this bill. We do not think the police should have access to government information without safeguards.

Mr. Robinson: I take it you would want the police to have access to all provincial government records and municipal government records, as well, would you?

D/Chief Flanagan: Under certain circumstances, with certain safeguards, yes.

Mr. Robinson: Now—

M. Trudeau: Monsieur Robinson, il faut toujours que cela soit rattaché à un acte criminel ou à quelque chose qu'on doit faire. M. Flanagan dit qu'il faut des *safeguards* quelque part. On est complètement d'accord sur ce principe-là.

Mr. Robinson: So you are saying it should not just be made available without any form of safeguard. Well, that is reassuring.

When you talk about the provision here, you express some concern that when a suspect dies before any information is laid, that an order of forfeiture will not be made available against his estate or beneficiaries. My understanding is that we are dealing here with the presumption of innocence in this country. If a person dies before any information is laid, what possible basis could there be then to order a forfeiture against his estate or beneficiaries? He has not even been charged with anything, let alone convicted. How would you possibly justify moving in on his estate or his beneficiaries?

D/Chief Flanagan: Well, I would suggest if it can be established that the person was guilty that yes, you should be able to do that—

Mr. Robinson: But the person is dead.

D/Chief Flanagan: —dead or alive.

Mr. Robinson: But the person is dead. How do you try a dead person, Mr. Flanagan?

D/Chief Flanagan: Well, he could be dead and still be guilty.

[*Translation*]

M. Robinson: Mais vous êtes en train de dire que tout dossier existant du gouvernement fédéral devrait être communiqué à la police sur demande.

M. Flanagan: Oui, telle serait notre position.

M. Robinson: C'est ce que vous dites.

M. Flanagan: Oui.

M. Robinson: Ne nous trouverions-nous pas dans une société orwellienne, monsieur Flanagan, si la police avait accès à tous les dossiers du gouvernement?

M. Flanagan: Bien, naturellement, cet accès exige certaines mesures de précaution que prévoit ce projet de loi. Nous ne pensons pas que la police devrait avoir accès aux renseignements gouvernementaux en l'absence de certaines précautions.

M. Robinson: Vous voudriez sans doute que la police ait accès à tous les dossiers des gouvernements provinciaux ainsi qu'à ceux des municipalités, n'est-ce pas?

M. Flanagan: Dans certaines circonstances oui, avec certaines précautions.

M. Robinson: Eh bien...

Mr. Trudeau: Mr. Robinson, it must always be linked to a criminal act or to something that must be done. Mr. Flanagan is saying that there must be safeguards somewhere. We are completely in agreement with that principle.

M. Robinson: Vous dites donc qu'ils ne devraient pas être mis à votre disposition en l'absence de certaines précautions. Voilà qui me rassure.

En parlant de cette disposition, vous dites craindre que lorsqu'un suspect décède avant qu'une ordonnance de communication ne soit rendue contre lui, une ordonnance de confiscation ne pourrait pas être rendue à l'égard de ses biens ou contre ses légataires. Je crois savoir que ce dont il s'agit ici c'est la présomption d'innocence qui existe dans ce pays. Si la personne décède avant qu'une ordonnance de communication ne soit rendue contre elle, pour quelles raisons pourrait-on rendre une ordonnance de confiscation à l'égard de ses biens ou contre ses légataires? Elle n'a même pas été accusée de quoi que ce soit, ni même inculpée. Comment pourriez-vous justifier que l'on s'en prenne à ses biens ou à ses légataires?

M. Flanagan: Si l'on peut prouver que la personne était coupable alors il serait possible de faire cela...

M. Robinson: Mais la personne est décédée.

M. Flanagan: ... que la personne soit décédée ou en vie.

M. Robinson: Mais elle est décédée. Peut-il y avoir procès contre un défunt, monsieur Flanagan?

M. Flanagan: La personne pourrait être décédée tout en étant coupable.

[*Texte*]

Mr. D. Cassidy: He could have also been murdered by a gang member to avoid that very thing.

Mr. Robinson: When you say he could be dead and still be guilty. . .

D/Chief Flanagan: And still have been guilty.

Mr. Robinson: My understanding of Canadian law is that it is up to the Crown to prove guilt beyond a reasonable doubt. And if the person involved is dead that is a little difficult, is it not?

• 1220

My final question is with respect to your suggestion at the bottom of page 6, top of page 7, where you suggest you do not like the provisions that impose an obligation on the Attorney General to provide his undertaking for future liabilities arising out of process for the search, seizure or detention of proceeds of crime. You want to get rid of it and just stick with section 25 of the Criminal Code. Presumably you recognize this provision says that if a search and seizure or detention is found unreasonable, a person is entitled to be compensated for it. That is what the provision states. The person if found innocent, for example, is entitled to be compensated. Why do you have difficulty accepting this principle?

D/Chief Flanagan: We think our system at the present provides for that adequately and we do not see why this extraordinary Crown obligation should be imposed.

Mr. Robinson: How frequently is recourse made to section 25 of the Criminal Code for compensation purposes?

D/Chief Flanagan: I cannot answer that.

Mr. Robinson: I suggest it is unheard of.

The Chairman: I think I will have to have your questions on that concluded, Mr. Robinson.

Monsieur Grisé.

M. Grisé: Je voudrais souhaiter la bienvenue à l'Association canadienne des chefs de police et particulièrement à son président, M. Pierre Trudeau, qui est chef de police de la ville de Saint-Hubert, dans le merveilleux comté de Chambly. C'est très important pour moi de souhaiter la bienvenue à M. Trudeau qui, soit dit en passant, fait un travail de géant sur la rive sud de Montréal et partout au Canada, bien sûr. M. Trudeau est toujours un grand initiateur dans le domaine des services policiers au Canada. Je l'en félicite publiquement.

À votre paragraphe n° 1, vous dites que vous aimeriez que ce projet de loi C-61 s'applique à d'autres crimes. Pouvez-vous m'expliquer? Vous parlez de drogue et d'autre criminalité organisée. Dans le domaine de la criminalité organisée, quels crimes ne sont pas inclus dans cela, selon vous?

[*Traduction*]

M. D. Cassidy: Elle aurait pu aussi être assassinée par un membre d'une bande pour éviter justement cela.

M. Robinson: Lorsque vous dites que la personne peut être décédée tout en étant coupable.

M. Flanagan: Rétrospectivement.

M. Robinson: D'après mon interprétation du droit canadien, c'est à la Couronne de prouver la culpabilité au-delà d'un doute raisonnable. Et si la personne impliquée est décédée, cela devient un peu difficile, n'est-ce pas?

Ma dernière question concerne votre suggestion au bas de la page 6, début de la page 7 de la version anglaise, où vous nous dites que vous n'êtes pas d'accord avec les dispositions qui permettent aux juges d'exiger du procureur général qu'il prenne des engagements à l'égard d'obligations qui pourraient découlées d'une perquisition, ou de la confiscation des produits de la criminalité. Vous voulez vous en débarrasser et simplement vous en tenir à l'article 25 du Code criminel. Je présume que vous reconnaissez que cette disposition dit bien que si une perquisition, ou une confiscation est jugée déraisonnable, la personne en question a droit à une certaine indemnisation. C'est bien ce que la disposition indique. La personne qui est jugée innocente, par exemple, a le droit d'être indemnisée. Pourquoi éprouvez-vous de la difficulté à accepter ce principe?

M. Flanagan: Sur ce, nous croyons que notre système actuel est adéquat et nous ne voyons pas pourquoi on imposerait cette obligation extraordinaire à la Couronne.

M. Robinson: Est-ce qu'on a fréquemment recours aux dispositions de l'article 25 du Code criminel à des fins d'indemnisation?

M. Flanagan: Je ne peux pas répondre à cette question.

M. Robinson: J'affirme que cela ne s'est jamais vu.

Le président: Je crois que je dois mettre fin à vos questions monsieur Robinson.

Mr. Grisé.

Mr. Grisé: I would like to welcome the Canadian Association of Chiefs of Police, particularly its President, Mr. Pierre Trudeau, who is Chief of Police of the City of St. Hubert, in the wonderful riding of Chambly. It is very important for me to welcome Mr. Trudeau who, incidentally, is accomplishing extraordinary work on the south shore of Montreal and everywhere in Canada, of course. Mr. Trudeau is always a great innovator in the area of police services in Canada. I would like to congratulate him publicly.

In paragraph 1, you say that you would like to see Bill C-61 apply to other crimes. Could you explain that? You talk about drugs and other organized crime. In your opinion, which crimes cannot be included in the category of organized crime?

[*Text*]

D/Chief Flanagan: It is really a question of principle and it is more than a suggestion; it is a question we are asking, because all crimes are not included. We are just wondering whether, as a matter of principle, all crimes whereby money was laundered should be included. It is not a very big point with us, but it is just something we thought we should bring to the attention of the committee in the event they might want to consider it.

Mr. Grisé: So you believe there are some crimes that are not included in organized crimes?

D/Chief Flanagan: No. We do not believe that. We just wonder whether other crimes, other than organized crimes should be included.

M. Grisé: Au paragraphe 2, vous dites que vous souhaitez la divulgation obligatoire des renseignements. Vous avez sans doute entendu les représentants de l'Association des banquiers canadiens qui ont dit qu'il n'était pas nécessaire de divulguer obligatoirement les renseignements étant donné que leur système semblait adéquat. Vous dites que certains membres de l'Association des banquiers canadiens font également partie de votre association. Il semble y avoir une divergence d'opinion assez évidente à ce sujet-là. Pourriez-vous expliquer votre divergence d'opinion?

M. Trudeau: Monsieur Grisé, au deuxième paragraphe, on rattache cela à l'obligation de divulguer des renseignements fiscaux dans certaines circonstances. Peut-être que dans d'autres domaines de responsabilité gouvernementale, comme à Emploi et Immigration Canada, on pourrait nous divulguer certains renseignements lorsqu'une de nos enquêtes l'exige.

M. Grisé: Vous exigeriez ces documents-là seulement lorsqu'il y aurait une enquête en cours, et non de façon régulière.

• 1225

M. Trudeau: Oui. Notre position en ce qui concerne ces cas a toujours voulu que les renseignements ne puissent être obtenus que lorsqu'une enquête est en cours. On pourrait légiférer sur notre façon de procéder dans ces cas, mais on devrait pouvoir avoir ces renseignements.

M. Grisé: Vous aimeriez être remboursés des frais d'enquête, d'entreposage de biens confisqués, et ainsi de suite. Dans votre analyse, avez-vous établi le coût de cela? Deuxièmement, qu'est-ce qui se passe actuellement dans les corps policiers lorsqu'on fait une saisie de biens? Par exemple, la semaine dernière, la ville de Montréal a tenu son encan annuel. Elle a toutes sortes de biens en entreposage. Lorsque vous faites des saisies actuellement, quel est le processus? Qui paie les frais d'entreposage? Est-ce chaque municipalité qui en est responsable?

M. Trudeau: Actuellement, c'est chaque municipalité canadienne qui en est responsable. Je n'ai pas les chiffres devant moi, mais une étude a été faite il y a deux ans par la police municipale de Vancouver. Ils ont établi les montants exacts qu'ils avaient dû débourser au cours des

[*Translation*]

M. Flanagan: C'est vraiment une question de principe, et c'est plus qu'une suggestion; nous posons la question, parce que tous les crimes ne sont pas inclus. Nous nous demandons simplement, si en principe, tous les crimes où l'argent est blanchi ne devraient pas être inclus. Ce n'est pas d'une importance primordiale pour nous, mais c'est quelque chose que nous désirions porter à l'attention du comité au cas où il voudrait y réfléchir.

M. Grisé: Alors vous croyez qu'il y a certains crimes qui ne peuvent être inclus dans la catégorie de la criminalité organisée?

M. Flanagan: Nous ne croyons pas cela. Nous nous demandons simplement s'il y a d'autres crimes, outre la criminalité organisée, qui devraient être inclus.

Mr. Grisé: In paragraph 2, you state that you are in favour of the mandatory reporting of information. You have undoubtedly heard the representatives of the Canadian Bankers' Association who have said that it was not necessary to have mandatory reporting of information since the current system seems to be effective. You said that some members of the Canadian Bankers' Association are also members of your organization. There seems to be quite a difference of opinion on this subject. Could you explain that difference of opinion?

Mr. Trudeau: Mr. Grisé, in the second paragraph we liken that to the obligation of divulging tax information under certain circumstances. Maybe in other areas of government responsibility, such as that of Employment and Immigration Canada, some information could be divulged when required by one of our investigations.

Mr. Grisé: You would require those documents only when there is an investigation underway, and not on a regular basis.

Mr. Trudeau: Yes. In all such cases our position has always been that the information could not be obtained unless an investigation was in progress. The legislation might include the procedure to be followed in such cases, but it should be possible for us to get this information.

Mr. Grisé: You would like to be reimbursed for your investigative costs, the storage of seized goods, and so forth. In your analysis, have you done this costing? Secondly, what do the police agencies do right now when goods are seized? For instance, last week, the City of Montreal held its annual auction. They had all kinds of goods in storage. Now, when goods are seized, what procedure do you follow? Who pays the storage costs? Is each municipality responsible for them?

Mr. Trudeau: In fact, each Canadian municipality is responsible for those costs. I do not have the figures before me, but a study was carried out, a couple of years ago, by the City of Vancouver police force. They set out the exact amounts they had to pay for the last few years in

[*Texte*]

dernières années pour les frais d'entreposage, etc. Ces montants étaient assez élevés. Ils sont assez élevés dans les plus gros corps de police. Bien sûr, c'est moins coûteux dans les corps policiers moyens et petits, mais les corps policiers de Montréal, Toronto, Vancouver et Winnipeg paient des frais assez élevés pour l'entreprosage et l'entretien de tout cela.

The Chairman: While I have you here, I wonder if I could ask you two questions, one regarding the section that deals with the forfeiture of the proceeds of crime. As it is currently drafted, it says that the proceeds of crime would be forfeit to the Crown.

You are suggesting that those proceeds should—among other things—be directed directly to the police agencies. It is my understanding of all the Criminal Code sections, I know of no section in which the investigative costs of a police department are recoverable within the Criminal Code.

Do you not think the present funding of police investigation is more properly something to be decided between yourselves and the municipal and provincial funding agencies?

The money is going to the Crown. It seems to me your dealings have certainly been traditionally with your funding agencies as opposed to getting involved with the criminal justice system in trying to get a certain cut yourself out of. . . I have some problems with that, and I have expressed them.

D/Chief Flanagan: There was some difference of opinion on this. We decided on the submission we have made here with regard to this.

We are wondering with this new bill, if passed, the maintenance costs, the storage costs, will be much more and tremendously much more, depending on what assets may be seized, such as fleets of trucks, buildings, and restaurants. We felt it would be simpler if it were in the bill that the police agency itself would be compensated.

This is another thought we have had, and we thought we should pass it on to the committee. It is not something we are hung up on. We simply thought we should bring it up at this time rather than say afterwards that we should have mentioned it.

The Chairman: I appreciate your comments. When I first read that, it seemed to me it might further complicate it if we got into the business of trying to prove how much it cost the various police departments to investigate a particular type of crime. I thank you for your comments.

• 1230

I know we do not have much time, but I would like to just ask you about your comments on page 6 of the English translation, point number 4, which concerns proposed section 420.14. You were worried that the language of the bill would encourage a rule of practice that favours applications for restoration of property. I

[*Traduction*]

storage costs, etc. Those amounts were quite high. They get to be quite high for large police forces. Of course, they are not so high for small and medium size police forces, but in Montreal, Toronto, Vancouver and Winnipeg, the police forces' expenditures are rather high for storage and maintenance of all those goods.

Le président: Pendant que vous êtes ici, je me demande si je ne pourrais pas vous poser deux questions, la première ayant trait à l'article concernant la confiscation des produits de la criminalité. Selon le libellé actuel, cette confiscation se ferait au profit de la Couronne.

Vous proposez que ces produits soient—entre autres choses—versés directement aux corps policiers. Or, dans le Code criminel, il me semble qu'il n'y a aucun article qui permette aux corps policiers de récupérer les coûts de ces enquêtes.

Ne croyez-vous pas que le financement des enquêtes policières est une question que les corps policiers, les municipalités et les organismes provinciaux de financement devraient trancher eux mêmes?

Ces montants vont à la Couronne. Il me semble que, de tout temps, vous avez toujours fait affaire avec les organismes de financement, au lieu de vous interposer dans le régime juridique de droit pénal en essayant d'obtenir pour vous mêmes une partie des recettes. . . J'y vois des inconvénients, et j'en ai déjà fait mention.

M. Flanagan: Les avis sont partagés à ce propos. Nous avons convenu de faire la proposition qui est dans notre mémoire.

Nous nous demandons, si le projet était adopté, si les frais d'entretien et d'entreposage ne vont pas se multiplier, selon les biens qui seront saisis, comme de nombreux camions, des immeubles, des restaurants. Ce serait plus simple, à notre avis, que le projet de loi prévoit une indemnisation des corps policiers eux mêmes.

C'est une autre pensée qui nous est venue, et nous avons cru bon de la transmettre au comité. Nous n'y tenons pas plus que cela. Nous avons simplement pensé que c'était le moment opportun d'en faire mention au lieu de regretter de ne pas l'avoir fait.

Le président: Je vous remercie de vos observations. Lorsque j'ai lu votre mémoire, il m'est venu à l'esprit que ce serait compliquer les choses davantage que d'essayer d'établir combien il en coûte à une force policière pour effectuer une enquête. Je vous remercie de vos commentaires.

Je sais que nous disposons de peu de temps, mais j'aimerais bien entendre vos observations au sujet de la page 6, version anglaise, point nº 4, qui a trait à l'article 420.14. Vous craignez que le libellé du projet de loi encourage les gens à demander que leurs biens leur soient rendus. Je dois admettre—bien que notre étude ne fasse

[*Text*]

have to confess—and I guess it is early in our study of this—that my reading of it does not lead me to believe it encourages the restoration of property. It seems to me there are a number of safeguards inasmuch as this is discretionary in the hands of the judge. As I say, in my reading of it, there are a number of safeguards, among other things that the property in question would no longer be required for the purpose of any investigation or as evidence in any proceeding.

As Mr. Robinson pointed out, in many cases the individual is not convicted. He is not guilty of something until that is proven and we do not necessarily want to immediately bankrupt an individual who has been charged with this. I wonder if you have any further thoughts on this and perhaps if you have any alternate wording or specific wording within that rather long section that gives you problems.

D/Chief Flanagan: Mr. Chairman, with respect, we find this bill to be an extremely complicated legal document and very difficult to understand. Some of these submissions, and in particular this one—it is the feeling of our legal people on our committee, our technical advisers, none of whom are sitting in front of you today—we have accepted their thoughts on the matter, in particular that this should be brought before you for your consideration. Unless either of my colleagues wishes to elaborate further, I do not think we are prepared to elaborate on this legal technicality.

The Chairman: Well, as I say, if you have any further thoughts on it or if your legal department has, we certainly would be pleased to hear them. If any alternate wording is being suggested, we would be pleased to have that as well.

Unless there are further questions by the committee, I will thank you then and adjourn this meeting until 3.30 this afternoon in this room. Thank you.

D/Chief Flanagan: Thank you.

Mr. Trudeau: Thank you.

[*Translation*]

que débuter—que ce n'est pas mon interprétation de cet article. J'y vois un certain nombre de garanties, car les juges disposent de pouvoirs discrétionnaires en la matière. Je le répète, selon mon interprétation, cet article comporte un certain nombre de garanties, notamment lorsque le juge est convaincu qu'on n'a plus besoin de ces biens soit pour une enquête soit à titre d'élément de preuve dans d'autres procédures.

Comme M. Robinson l'a signalé, il arrive bien souvent qu'une personne ne soit pas inculpée. Elle est jugée innocente jusqu'à preuve du contraire, et nous ne voulons pas nécessairement pousser à la faillite quelqu'un sur qui pèse une telle accusation. Je me demande si vous avez d'autres observations à ce sujet, peut-être auriez-vous des modifications à apporter au libellé de cet article assez long qui semble vous déplaire.

M. Flanagan: Monsieur le président, sauf votre respect, ce projet de loi nous semble un document juridique extrêmement compliqué et très difficile à comprendre. Au sujet de certains mémoires, dont celui-ci en particulier—les conseillers juridiques de notre comité, nos conseillers techniques, dont aucun n'est ici présent aujourd'hui, partagent cet avis—nous acceptons les propositions qui y figurent, dont celle qui vous invite à prendre la chose en considération. À moins que l'un ou l'autre de mes collègues ne veuille intervenir, nous ne sommes pas en mesure de développer notre pensée au sujet de ce point technique.

Le président: Bon, je le répète, si vous ou votre contentieux avez d'autres observations à nous communiquer, nous les accueillerons volontiers. Si vous avez un libellé différent à proposer, nous l'accueillerons tout aussi bien.

En l'absence d'autres questions de la part du comité, je tiens à vous remercier et je lève la séance jusqu'à 15h30 cet après-midi dans cette même pièce. Merci.

M. Flanagan: Merci.

M. Trudeau: Merci.

AFTERNOON SITTING

• 1535

The Chairman: Colleagues, I see a quorum. I am pleased to welcome representatives of the Royal Canadian Mounted Police. Mr. Stamler, the director of the Drug Enforcement Directorate of the RCMP, is with us today. Welcome to the committee.

Assistant Commissioner R.T. Stamler (Director, Drug Enforcement Directorate, Royal Canadian Mounted Police): With me are Mr. Bruce Bowie, with the anti-drug profiteering unit of the Drug Enforcement Directorate; Superintendent Doug Egan, the director of the Criminal Intelligence Service of Canada; and John Pratt, one of the analysts and senior administrators within that particular unit.

SÉANCE DE L'APRÈS-MIDI

Le président: Chers collègues, nous avons le quorum. J'ai le plaisir de souhaiter la bienvenue aux représentants de la Gendarmerie royale du Canada. Nous avons aujourd'hui M. Stamler, directeur de la police des drogues. Soyez les bienvenus.

Le commissaire adjoint R.T. Stamler (directeur, police des drogues, Gendarmerie royale du Canada): Je suis accompagné de M. Bruce Bowie, de la section d'enquête sur les profits des trafiquants, police des drogues; du surintendant Doug Egan, directeur des renseignements criminels et John Pratt, qui est un des analystes et principaux administrateurs de cette unité.

[*Texte*]

On behalf of the Royal Canadian Mounted Police, I wish to thank you for the opportunity of appearing before you today to discuss this very important legislative proposal.

The RCMP is charged with the primary responsibility for enforcing federal laws with respect to the traffic of illicit drugs in Canada, and to this end we have over 1,000 members of the RCMP employed in drug enforcement units across Canada. This is at an annual cost of approximately $60 million. The principle focus of our enforcement effort is directed against organized crime groups active in the importation and the distribution of large quantities of illicit drugs within Canada.

The scope of the drug trade is international. The attack against powerful drug organizations, which extend across international boundaries, presents a unique challenge to the enforcement agencies of any country. Despite the hundreds of millions of dollars expended on the world-wide enforcement effort, over the last several decades the international drug trade has continued to flourish, with crime groups growing more powerful. The situation has become critical in several countries where the power of dominant trafficking organizations rivals or even surpasses that of the legitimate government. While there is no prospect of a similar situation threatening Canada at this time, there are nevertheless strong indications that the drug problem in our country has not yet reached its peak, especially with respect to cocaine and certain psychotropic drugs.

• 1540

With the exception of some illicit chemical drugs, Canada is primarily a victim nation, a consumer of illicit drugs that are imported by sophisticated criminal organizations with close links to trafficking cartels in source countries. In the case of some crime groups in Canada, we are encountering close-knit trafficking organizations bound together by ethnic or family ties which have been particularly difficult to penetrate.

Due to the understandable lack of precision in the measurement of the illegal activity, estimates of the annual revenues generated in Canada by the illicit drug trade have varied widely, ranging from about $3 billion to over $12 billion per year. Measurement problems are compounded by the fact that Canada is sometimes used as a transit point for drug shipments destined to the U.S., as well as being the source country for certain illegally produced or diverted psychotropic drugs.

Based on intelligence information available to us from domestic and foreign sources, which embodies all aspects of the drug trade, I believe the quantities of illicit drugs available for sale in Canada would, if sold at the street level, generate revenues in excess of $10 billion annually.

The enormous profit potential of the illicit drug trade causes unique problems to those involved in drug

[*Traduction*]

Au nom de la Gendarmerie royale du Canada, je vous remercie de cette occasion qui nous est donnée de comparaître aujourd'hui devant le comité pour discuter de ce très important projet de loi.

La GRC a la responsabilité première d'appliquer les lois fédérales en matière de trafic illicite de stupéfiants au Canada et pour ce faire, elle affecte plus de 1,000 membres aux services de lutte antidrogues à travers le pays et dépense annuellement environ 60 millions de dollars. Ses efforts de répression sont dirigés principalement contre les groupes organisés de criminels qui importent et distribuent de grande quantité de drogues illicites au Canada.

Le trafic des stupéfiants a une envergure nationale. La lutte contre les puissantes organisations de trafiquants dont les activités débordent les frontières nationales constituent un défi unique pour les services de police de n'importe quel pays. En dépit des centaines de millions de dollars qui ont été consacrés à la lutte antidrogue au cours des dernières décennies, le trafic international des stupéfiants a continué de prospérer et les groupes de criminels organisés n'ont pas cessé d'étendre leurs pouvoirs. Dans plusieurs pays, la situation est devenue critique, car les organisations de trafiquants rivalisent de puissance avec le gouvernement légitime, et parfois même les dépassent. Si la situation ne menace pas d'arriver à ce point au Canada, tout indique néanmoins que le problème de la drogue, et particulièrement de la cocaïne et de certaines substances psychotropes, n'a pas encore atteint son sommet.

À l'exception de la fabrication de quelques drogues chimiques illicites, le Canada est surtout une victime du trafic des stupéfiants, c'est-à-dire un pays de consommateurs de drogues importées par des organisations criminelles raffinées abouchées avec les cartels de trafiquants de pays sources. Certaines de ces organisations criminelles sont constituées d'éléments étroitement unis par des liens ethniques ou familiaux et sont très difficiles à infiltrer.

Comme il est évidemment impossible de mesurer avec précision l'étendue des activités illégales, l'évaluation des profits générés au Canada par le trafic des stupéfiants varie considérablement, passant de trois à plus de douze milliards de dollars par année. Le calcul de ces revenus est d'autant plus difficile que le Canada sert souvent de point de transit pour les cargaisons de drogues destinées aux États-Unis, et qu'il est aussi une source de produits illégaux et de substances psychotropes détournées.

Selon les renseignements obtenus de sources canadiennes et étrangères sur tous les aspects du trafic des stupéfiants, j'estime que si toute la drogue importée au Canada était vendue au détail, elle produirait un flux monétaire de plus de 10 milliards de dollars par année.

Les sommes énormes que peut rapporter le trafic de drogues illicites causent de graves problèmes pour les

[*Text*]

enforcement, because the promise of large financial rewards far outweighs the risks presented by traditional enforcement action or judicial sanctions. In the drug trade, the risks of imprisonment or the loss of a drug shipment are often viewed as merely an inherent cost of doing business.

The profits available from the traffic in illicit drugs represents a double-edged threat to the success of conventional enforcement measures. On the one hand, the potential for profit is a motivating factor which encourages new entrants to the drug trade. On the other hand, a criminal organization with accumulated financial resources is able to finance sophisticated importation and distribution networks as well as being able to absorb periodic enforcement actions.

As an example to this latter point, we have experienced a sharp increase in the frequency and magnitude of mother ship operations utilized by trafficking organizations to import multi-tonne shiploads of illicit drugs on both the east and west coasts of Canada. It is no longer unusual to encounter the case of a trafficking organization which has invested $8 million or $10 million in a mother ship operation, which, if successful, could generate an anticipated return on the investment of over $100 million.

An essential aspect of the organized drug trade is the money laundering—the process whereby cash from illegal activities is converted to an alternate form in a manner that conceals its origins, ownership, or other potentially incriminating factors. While hard cash remains the common medium of exchange in the drug trade, few trafficking organizations are content to merely accumulate large quantities of currency. At some point, the organization must convert troublesome inventories of cash to a less suspicious form. Criminal organizations employ extremely sophisticated techniques to accomplish this, often moving moneys through several offshore financial havens in an effort to sever the audit trail of the money flow.

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A recent drug case investigated by our force uncovered the fact that specific members of trafficking organizations were delegated solely to the process of laundering drug moneys. An elaborate series of interlocking corporations established in various foreign jurisdictions was designed to facilitate the movement of large sums of money. To date, our investigators have been able to trace over $17 million laundered in this particular scheme, and we believe that the total of the drug moneys handled by this organization over a four-year period was in excess of $100 million. Approximately $20 million in assets controlled by this particular group have been identified thus far.

Another recent investigation into a mother ship operation in British Columbia resulted in the seizure of eight tonnes of Thai marijuana, together with nearly $2 million, primarily in Canadian $20 bills. One member of this organization was able to evade arrest at the time of

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organismes antidrogues, car elles compensent largement les risques que représentent les mesures traditionnelles d'exécution de la loi et les sanctions judiciaires. Dans le milieu, les risques d'emprisonnement ou de perte d'une cargaison font partie du métier.

Les profits tirés du commerce des drogues illicites représentent une double menace pour les services de police: d'une part, l'appât du gain incite bien des gens à tenter leur chance, et d'autre part, les profits accumulés permettent aux organisations criminelles de financer l'exploitation de réseaux perfectionnés d'importation et de distribution ainsi que d'absorber les pertes causées par la répression.

Ainsi, nous avons récemment constaté une augmentation marquée du nombre et de l'envergure des opérations effectuées à l'aide de navires ravitailleurs, qui sont utilisés par les groupes de trafiquants pour l'importation de cargaisons de plusieurs tonnes sur les côtes est et ouest du Canada. Il n'est pas rare qu'une organisation criminelle investisse huit à dix millions de dollars dans une opération par navires ravitailleurs qui, si elle se déroule avec succès, rapportera plus de 100 millions de dollars.

Un aspect essentiel du trafic de stupéfiants est le blanchissage de l'argent, c'est-à-dire le processus par lequel on transforme les profits acquis de façon illicite afin de camoufler leur origine, l'identité de leur propriétaire et d'autres facteurs incriminants. L'argent comptant demeure le mode de paiement le plus courant dans ce milieu, mais peu d'organisations se contentent d'accumuler de grosses sommes en espèces, tôt ou tard, elles doivent toutes convertir leur fortune afin d'éloigner les soupçons. Pour ce faire, les organisations criminelles emploient des techniques très perfectionnées et font souvent passer l'argent par plusieurs banques étrangères afin de brouiller les pistes.

Récemment, au cours d'une enquête sur une organisation de trafiquants, nous avons découvert que certains membres avaient pour seule tâche le blanchissage des bénéfices. Tout un réseau de sociétés affiliées établies dans divers pays avait été mises sur pied pour faciliter la circulation de grosses sommes. Jusqu'à présent, nos enquêteurs ont réussi à établir que 17 millions de dollars avaient été blanchis dans cette opération, mais nous croyons que sur une période de quatre ans, cette organisation a traité plus de 100 millions de dollars. Environ 20 millions des avoirs de ce groupe particulier ont été identifiés jusqu'ici.

Une autre enquête sur une opération effectuée par navire ravitailleur en Colombie-Britannique a entraîné la saisie de 8 tonnes de marijuana thaïlandaise et de près de 2 millions de dollars, essentiellement en coupures de 20$ canadiens. Un des trafiquants a réussi à s'enfuir pendant

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the seizure of the ship and he was apprehended in Las Vegas several weeks later by U.S. agents at a time when he was attempting to launder $50 million. Nearly $8 million in U.S. funds were seized.

Recognizing the integral part that profits play in the illicit drug trade, many countries have undertaken legislative and enforcement initiatives designed to attack the proceeds of the illicit drug trade. The United States of America, a leader in this type of enforcement initiative, has experienced a considerable degree of success in dismantling powerful drug organizations through asset seizure and forfeiture. Last year, for example, the Drug Enforcement Administration seized $502 million in trafficker assets and that is a significant figure when compared with the total Drug Enforcement Administration budget of $479 million for the year. That figure represents an astonishing average of seizure of $230,000 per agent.

Several other countries, including Australia, the United Kingdom, the Bahamas, Malaysia, and others have enacted new legislation which allows for the freezing, seizing and forfeiture of the proceeds of drug trafficking and other similar crimes. As well, extensive negotiation among the members of the United Nations over the recent years has resulted in the formulation of a new draft convention against illicit traffic in narcotic and psychotropic substances. This convention, which is expected to be adopted this coming fall, contains specific measures to deal with the possession and laundering of drug-crime proceeds, as well as the confiscation of all property used or intended to be used in the commission of a drug-trafficking offence.

If Canada is to continue her tradition of support for international co-operative efforts against the drug trade, the adoption of the legislative measures contained in Bill C-61 is required. Recognizing that an effective enforcement program against drug-trafficking organizations must include an attack against the profits, in 1981 the RCMP established the anti-drug profiteering program within the Drug Enforcement Directorate. The function of this program is to gather evidence to support charges of possession of proceeds of crime pursuant to section 3(12) of the criminal code, and to identify and seize those assets that can be proven to have been generated by drug-trafficking offences.

Beginning with 14 investigators, and growing to 24 by May of 1987, the program met with some degree of success, resulting in the seizure of over $40 million in assets from 1983 to 1987 inclusive. As a result of additional investigative resources provided by the national drug strategy, we now have 60 investigators assigned to anti-drug profiteering sections situated in key geographical areas of the country.

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While the offence as set out in section 312 of the Criminal Code is an excellent piece of legislation, we have

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que le navire était arraisonné, mais il a été arrêté quelques semaines plus tard à Las Vegas par des agents américains après avoir tenté de blanchir 50 millions de dollars. Près de 8 millions de dollars américains ont alors été saisis.

De nombreux pays, conscients de l'importance des profits provenant du trafic des stupéfiants, ont adopté de nouvelles lois et des mesures policières axées sur les profits des trafiquants. Les États-Unis, chef de file dans ce domaine, ont réussi à démanteler de puissantes organisations de trafiquants par la saisie et la confiscation de leurs avoirs. L'an dernier, par exemple, la Drug Enforcement Administration a saisi 502 millions de dollars de revenus et de biens acquis par les trafiquants, somme considérable compte tenu du budget annuel de la D.E.A., qui s'élevait cette année-là à 479 millions de dollars. Cette somme représente une saisie moyenne de 230,000$ par agent.

Plusieurs autres pays, dont l'Australie, le Royaume-Uni, les Bahamas et la Malaisie, ont promulgué des lois permettant le bloquage, la saisie et la confiscation des profits tirés du trafic des stupéfiants et d'autres activités criminelles semblables. En outre, des négociations intenses au cours des dernières années entre les pays membres des Nations unies ont abouti à la rédaction du projet de convention relative au trafic illicite des stupéfiants et des substances psychotropes. Cette convention, qui devrait être adoptée en octobre prochain, contient des dispositions précises sur la confiscation des biens utilisés ou devant être utilisés pour la perpétration d'un crime relatif au trafic de la drogue.

Si le Canada tient à continuer sa participation traditionnelle à la lutte anti-drogue au niveau international, il faut que le projet de loi C-61 soit adopté. Reconnaissant qu'un programme efficace de répression des organisations de trafiquants de drogue doit s'attaquer au produit de la criminalité, la GRC a mis en oeuvre en 1981 le programme anti-drogue axé sur les profits des trafiquants. Ce programme, administré par la Direction de la police des drogues, a pour but de recueillir des preuves à l'appui des accusations portées aux termes de l'article 3(12) du Code criminel sur la possession de biens obtenus par des moyens criminels, d'identifier et de saisir les biens associés de toute évidence au trafic de la drogue.

Avec 14 enquêteurs au départ et 10 de plus en mai 1987, le programme a connu un certain succès puisqu'il a permis la saisie de biens d'une valeur de plus de 40 millions de dollars au cours d'opérations menées de 1983 à 1987. Grâce aux ressources additionnelles obtenues dans le cadre de la stratégie anti-drogues nationale, 60 enquêteurs sont maintenant affectés, dans les secteurs-clés du pays, aux sections d'enquête sur les produits des trafiquants.

Bien que l'article 312 du Code criminel soit en soi excellent, l'expérience a démontré que nos lois sont tout à

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discovered through experience that our laws are totally inadequate to permit the freezing and seizure of certain major classes of criminal assets. Specifically, Criminal Code search warrants do not permit the seizure of real estate or the so-called intangible assets such as money on deposit in a financial institution. This latter problem was highlighted in 1985 when we attempted unsuccessfully to seize $600,000 of cocaine profits deposited in a Montreal bank by Louis Pinto, a chief money launderer for a powerful group of Colombian cocaine traffickers.

The deficiencies of current Canadian law have allowed drug trafficking organizations to maintain these major classes of assets in Canada with impunity. This has resulted in Canada being used as a financial haven. We have encountered many instances of U.S.-based trafficking organizations smuggling money across the border into Canada in an effort to evade possible forfeiture action by U.S. authorities.

In a recent case a representative of a powerful Mexican trafficking organization entered a Vancouver bank unannounced, carrying with him several large cardboard boxes stuffed with U.S. currencies in small denominations. Several hours of counting revealed the total of his deposits to be over $800,000. An associate was arrested by U.S. authorities several days later while attempting to smuggle a further $1.3 million into Canada.

The inability to seize the illegally obtained property of known trafficking organizations in instances such as this has been a constant source of frustration. In such a case our investigators are faced with the indisputable proof that crime in fact pays and are well aware that these funds will ultimately be used to further finance illegal activity.

Compounding the problem is the reluctance of many Crown prosecutors to proceed with cases involving a proceeds-of-crime offence pursuant to section 312 of the Criminal Code. A common view expressed by prosecutors is that we are attempting to bend the existing legislation to fit a set of circumstances for which it was not designed and that if Parliament had intended that proceeds of crime be subject to forfeiture, more appropriate legislation would have been enacted.

In view of our experience with the existing laws, we believe that the legislative amendments contained within Bill C-61 represent an important step towards effect treatment of enormous profits generated by organized criminal activities.

From the police perspective, we are pleased with the overall thrust of the bill and, if it were enacted, we would regard it as the cornerstone of our anti-drug profiteering program. We believe this bill maintains an appropriate balance between the necessary protection to innocent third parties who legitimately acquire property and the

[Translation]

fait inadéquates pour le blocage et la saisie de certaines catégories importantes de biens criminellement acquis. Plus précisément, les mandats de perquisition prévus par le Code criminel ne permettent pas la saisie de biens immobiliers ni de biens incorporels comme les sommes déposés dans un établissement financier. Nous avons pu nous en rendre compte en 1985 lorsque nous avons tenté, sans succès, de saisir 600,000$ de profits du trafic de la cocaine qui avaient été déposés dans une banque de Montréal par Louis Pinto, un des principaux blanchisseurs d'un puissant groupe de trafiquants colombiens.

Les lacunes de la Loi canadienne actuelle ont permis à des organisations criminelles de conserver impunément leurs avoirs acquis illégalement, et le Canada est devenu une sorte de havre financier. En effet, il nous est souvent arrivé de constater que des organisations de trafiquants basées aux États-Unis passaient de l'argent en contrebande au Canada pour éviter les mesures de confiscation prises par les autorités américaines.

Récemment, le représentant d'une importante organisation de trafiquants mexicains s'est présenté à l'improviste dans une banque de Vancouver; il transportait plusieurs grosses boîtes de carton bourrées d'argent américain en petites coupures. Après plusieurs heures passées à les compter, on est arrivé à un total de 800,000$. L'un de ses associés a été appréhendé par les autorités américaines quelques jours plus tard, alors qu'il tentait de faire entrer en contrebande au Canada 1,3 million de dollars.

L'impossibilité de saisir les biens obtenus de manière illicite par des organisations de trafiquants connues, dans des cas comme celui-ci, est devenu une source de frustration constante. Devant pareille situation, nos enquêteurs sont obligés d'admettre que le crime paye vraiment, et ils savent fort bien que les fonds qui n'ont pas été touchés serviront à financer d'autres activités illicites.

Pour ajouter au problème, les procureurs de la Couronne sont souvent réticents à intenter des poursuites aux termes de l'article 312 du Code criminel. Beaucoup d'entre eux disent en effet que nous tentons d'adapter la loi actuelle à des circonstances pour lesquelles elle n'a pas été conçue et que si le Parlement avait voulu permettre la saisie des produits du crime, il aurait adopté une loi plus adéquate.

Connaissant bien les limites des lois actuelles, nous estimons que les modifications législatives prévues dans le projet de loi C-61 représenteraient un grand progrès dans la lutte contre les profits énormes que génèrent les activités des organisations criminelles.

En tant que policiers, nous sommes satisfaits de l'orientation générale du projet de loi et nous pensons que s'il était adopté, il deviendrait pour nous la pierre angulaire du programme anti-drogues axé sur les profits des trafiquants. Selon nous, il assurerait un équilibre entre le besoin de protéger les tiers innocents qui achètent de

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need to remove the profits from organized criminal activities.

While endorsing the general tone of the proposed legislation, I would like to draw your attention to certain aspects of the bill that I believe require further development. Paragraph 420.14(4)(c) permits a judge to return seized property to satisfy the reasonable living, business or legal expense of the individual from whom it was seized. This is an important consideration, especially considering the guarantee of the Canadian Charter of Rights for an accused person's right to retain and instruct legal counsel without delay.

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However, it must be remembered that the intent of Bill C-61 is not to forfeit all assets. It is designed solely to deprive the criminal of those assets that were obtained by the commission of an enterprise or designated drug offence. The proposed section now reads:

> Seized property could be considered as the first source of moneys to meet the necessary expenses, even though the accused person may possess considerable other assets.

We believe this clause should be altered to include a provision that the seized funds would be available for the stated purpose if no other funds were available. Without this amendment, criminals will no doubt use this provision of the law to draw first upon seized assets until they are depleted, which is defeating the intent of the proposed legislation.

On a related point, the issue of how this bill impacts the solicitor-client relationship has been raised before this committee and in other forums. It has been suggested that moneys held by a lawyer should be somehow exempt from police and judicial scrutiny, which would be a radical departure to what now exists in our laws.

While I am in no way suggesting that the legal profession in Canada is dishonest, unscrupulous individuals exist in every walk of life, even in the legal profession. For example, in 1985 the RCMP investigated the case of Gary Hendin, an Ontario lawyer who was ultimately sentenced to five years' imprisonment for laundering over $12 million of organized crime heroine profits through his law office.

We continue to encounter individual cases of dishonest lawyers who are assisting organized criminal groups to launder drug moneys. We do not believe that the ethical standards of the profession are sufficient to protect the public in cases such as this. Exempting funds maintained in a law office from normal judicial scrutiny could lead to

[*Traduction*]

bonne foi des biens acquis illégalement et la nécessité de supprimer les profits des activités des organisations criminelles.

Tout en étant d'accord avec le ton général de la Loi proposée, je désire attirer votre attention sur certains aspects du projet de loi qui méritent un examen plus approfondi. Ainsi, en vertu de l'alinéa 420.14(4)c), un juge peut permettre au détenteur de biens saisis de prélever sur ces biens les sommes nécessaires à ses dépenses courantes, à ses dépenses d'affaires et à ses frais juridiques. Il s'agit là d'un point important, puisque la Charte des droits garantit à l'accusé le droit de retenir les services d'un avocat et de le mandater sans délai.

Certes, l'intention du projet de loi C-61 n'est pas de permettre la saisie de tous les biens. Il a été élaboré dans le seul but de priver les criminels des biens obtenus par la perpétration d'une infraction de criminalité organisée ou d'une infraction grave en matière de drogue. Selon le texte actuel de l'article:

> Les biens saisis pourraient être considérés comme la principale source de financement des dépenses de l'accusé, même si celui-ci possède de nombreux autres biens.

Nous croyons que cet article devrait être modifié de manière à inclure une disposition stipulant que les sommes saisies ne pourront être utilisées pour les raisons précitées que si elles représentent tout l'avoir de l'accusé. Sans cette modification, les criminels auront sûrement recours à cette disposition de la loi pour écouler d'abord les biens saisis, ce qui irait à l'encontre de l'objet de la loi proposée.

En passant, permettez-moi d'aborder la question des répercussions de ce projet de loi sur les rapports entre l'avocat et son client, question qui a déjà été soulevée durant ce comité ainsi qu'à d'autres séances de discussion. On a suggéré que l'argent confié à l'avocat devrait échapper à tout examen détaillé de la police et de l'appareil judiciaire, ce qui serait tout à fait contraire aux dispositions des lois actuelles.

Sans vouloir aucunement taxer le Barreau canadien de malhonnêteté, il faut admettre qu'on trouve des gens sans scrupules dans toutes les classes sociales, même chez les avocats. En 1985, par exemple, la GRC a enquêté sur le dénommé Gary Hendin, un avocat ontarien qui a finalement écopé d'une peine de cinq ans de prison pour avoir blanchi, à son cabinet d'affaires, au-delà de 12 millions de dollars issus du trafic de l'héroïne et appartenant au crime organisé.

On a été témoin d'autres cas isolés d'avocats malhonnêtes qui aident des groupes du crime organisé à blanchir de l'argent provenant du trafic des drogues. Nous ne croyons pas que le code de déontologie de la profession suffise à mettre le public à l'abri de cas semblables. En soustrayant les fonds gardés dans un cabinet d'avocat à

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considerable abuse by those practitioners who become controlled by organized crime.

Another provision of this bill that requires further examination is the process for *in rem* forfeiture, which is contained within proposed section 420.18. *In rem* is an essential component of any legislation dealing with the forfeiture of the proceeds of crime, because there will invariably be instances when it is impossible to bring the accused before the court to obtain a criminal conviction.

In this proposed section, forfeiture following the death of an accused person is permitted if criminal proceedings have already commenced. It does not provide a remedy for those cases involving the death of an accused prior to the laying of the charge. It does not seem realistic that the death of an individual should be the mechanism that transforms tainted proceeds into a legitimate legacy.

While this is not likely to be a common occurrence, we have experienced similar situations. One such case involved the death of an individual travelling by train in western Canada. A search of the deceased's three large suitcases resulted in the discovery of over $3 million in cash, the origin of which was suspicious. In such a case, this proposed section as written would not allow for forfeiture, even if it was proven that the moneys were in fact proceeds of crime, because it is obviously impossible to commence criminal proceedings against a dead person. This means that the forfeiture provisions of this proposed section of Bill C-61 do not extend as far as those already existing in Canadian criminal law, specifically subsection 446.(9) of the Criminal Code.

Under section 446, the courts are permitted to forfeit seized property if possession of such is unlawful. Possessing the proceeds of crime is clearly unlawful under both current and proposed legislation.

Proposed section 420.18 represents similar difficulties in some instances of individuals absconding prior to trial. The section states that forfeiture can proceed if efforts to locate the fugitive have been unsuccessful for a period of six months. The problem with this wording is that in many cases, while the location of the fugitive is known, there is no legal means of returning the subject to Canadian jurisdiction. I strongly suggest that the wording of this section should be amended to anticipate such a situation.

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Some criticism has been generated by the standard of proof for forfeiture upon conviction as set out in proposed subsection 420.17(1), being based on a balance of probabilities rather than the more onerous requirement of proof beyond a reasonable doubt. It should be remembered that by this stage of the proceedings, the accused has already been convicted of the crime charged.

[*Translation*]

tout examen judiciaire, on risquerait d'encourager bien des abus de la part de professionnels manipulés par le crime organisé.

Une autre disposition de ce projet de loi qui exige un examen plus poussé est la procédure de confiscation *in rem*, dont il est question au paragraphe 420.18. Une telle procédure est une composante essentielle de toute loi traitant de la saisie des produits de la criminalité, puisqu'il existe toujours des cas où il est impossible de faire comparaître l'accusé en cour aux fins d'une condamnation.

Aux termes de cet article, une confiscation après le décès de l'accusé est permise lorsque des procédures criminelles ont déjà été entamées. C'est donc dire qu'on ne peut pas faire des confiscations quand le décès survient avant qu'une plainte soit portée. Il ne nous semble pas très réaliste que le décès d'une personne serve à transformer des produits illicites en heritage légitime.

Même si de telles situations ne sont pas courantes, elles se sont déjà produites, à preuve le cas de cet individu décédé alors qu'il voyageait par train dans l'Ouest canadien. En fouillant ses trois grandes valises, on a trouvé plus de 3 millions de dollars en argent comptant, dont l'origine était fort douteuse. Dans pareil cas, l'article, tel qu'il est rédigé, ne permettrait pas la confiscation même si on prouvait que l'argent provient d'activités criminelles, étant donné que, de toute évidence, il est impossible d'intenter des poursuites pénales contre une personne décédée. Cela signifie que les dispositions sur la confiscation, dans le projet de loi C-61, n'ont pas autant de portée que celles qui existent déjà dans le droit pénal canadien, plus précisément au paragraphe 446.(9) du Code criminel.

En effet, selon l'article 446, les tribunaux peuvent confisquer des biens saisis lorsque la possession desdits biens est illicite, et la possession des produits de la criminalité est nettement illégale, tant dans la loi actuelle que dans celle qui est proposée.

L'article 420.18 présente des difficultés semblables dans certains des cas où l'accusé s'esquive avant son procès. Suivant cet article, on peut procéder à la confiscation lorsque les efforts pour retrouver le fugitif se sont avérés infructueux sur une période de six mois. Le problème est que, dans bien des cas, même si l'on sait où se trouve le fugitif, il n'existe aucun moyen légal de le ramener sous la juridiction canadienne. Je recommande fortement que l'on modifie le texte de ce paragraphe en vue de prévenir une telle situation.

La norme de la preuve en vue d'une confiscation sur déclaration de culpabilité, telle qu'elle est établie au paragraphe 420.17(1), et qui est fondée sur la prépondérance des probabilités plutôt que sur l'exigence plus stricte que représente la preuve hors de tout doute raisonnable, a suscité quelques critiques. On doit cependant se rappeler que, à cette étape de la procédure,

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Lowering the threshold of proof for the forfeiture proceedings is reasonable and necessary when one considers the fact that criminal assets are often maintained using interlocking corporate entities, which are often very difficult to unravel.

The question of the rationale for the inclusion of protection for sources of information, as contained in proposed section 420.27, has been raised. From our perspective, this section is directed primarily towards employees of financial institutions. We currently enjoy a good cooperation with the banks, but often encounter individual employees who are reluctant to provide information regarding proceeds of crime transactions, fearing exposure to civil liability as a result of the disclosure. This section should serve as reassurance to these persons and will no doubt increase the information flow from financial institutions.

With the exception of the minor amendments that I have suggested, the bill appears to be a very worthwhile legislative initiative and should dramatically improve our effectiveness in attacking the profits generated by organized drug trafficking and other profitable criminal endeavours. From our perspective, this is certainly a piece of legislation whose time has come. I would strongly urge the committee to move for passage of this bill as quickly as possible. Thank you, Mr. Chairman.

The Chairman: I believe you have some comments you would like to make, Superintendent Egan. We do not have that much time this afternoon. If there is any place you might be able to condense or summarize any particular section, it may helpful in terms of getting to comments. I noticed your brief is about 14 pages, albeit split between the two languages, but I leave that in your hands. It is whatever you feel comfortable with.

Superintendent Doug Egan (Director, Criminal Intelligence, Royal Canadian Mounted Police): Thank you very much, Mr. Chairman and members of this legislative committee. On behalf of Criminal Intelligence Service Canada, which is known by the acronym CISC, I thank you very much for the opportunity to appear before you concerning Bill C-61 and the proposed legislative change directed at illicit proceeds derived from crime.

Mr. Chairman, organized criminal activity in Canada will be minimized should Parliament support this bill in its present form. I will not discuss the specific provisions of Bill C-61, but inform this committee about organized crime activity in Canada today.

The origin of organized crime in Canada dates back to the early 1900s, when organized Italian mafia groups surfaced in southwestern Ontario. In the 1930s there is evidence of organized criminal activity associated with narcotics, gambling, prostitution, illicit alcohol, smuggling and other lucrative crimes. However, not until the early 1950s was it abundantly clear that refined and organized criminal behaviour had evolved in Canada.

[*Traduction*]

la personne a déjà été condamnée. La réduction du seuil de preuve autorisant la confiscation est raisonnable et nécessaire, compte tenu du fait que les biens obtenus par des voies criminelles sont souvent protégés par tout un réseau d'entités constituées qu'il est très difficile de remonter.

Certains ont aussi mis en doute le propos de l'article 420.27, qui offre une protection aux sources d'information. Selon nous, ces dispositions visent avant tout les employés d'établissements financiers. Nous jouissons déjà d'une bonne collaboration avec les banques, mais il arrive souvent que des employés de ces institutions hésitent à nous signaler des transactions mettant en cause des produits de la criminalité par crainte de procédures de responsabilité civile. Cet article devrait rassurer ces gens et augmenter le flux des informations provenant des établissements financiers.

À l'exception des modifications secondaires que j'ai mentionnées, ce projet de loi est fort valable et il devrait augmenter considérablement notre efficacité dans la lutte que nous menons contre les produits générés par le trafic des drogues et par d'autres entreprises criminelles profitables. Il s'agit d'un projet de loi très attendu, et je prie instamment le comité d'en appuyer l'adoption dans les plus brefs délais. Merci, monsieur le président.

Le président: Je crois que vous avez également des observations à faire, surintendant Egan. Comme nous n'avons pas beaucoup de temps à notre disposition cet après-midi, je vous signale qu'il pourrait être utile que vous essayiez de vous résumer quelque peu. J'ai remarqué que votre mémoire fait 14 pages, même si c'est avec les deux langues. En tout état de cause, je vous laisse le choix.

Le surintendant Doug Egan (directeur, Renseignements criminels, Gendarmerie Royale du Canada): Merci beaucoup, monsieur le président, membres du comité législatif. Au nom du Service canadien de renseignements criminel, le SCRS, je vous remercie de l'occasion de faire cette présentation relativement au projet de loi C-61 et aux modifications législatives proposées par rapport aux biens criminellement obtenus.

Monsieur le président, le projet de loi adopté sous sa forme actuelle veut minimiser les activités des éléments du crime organisé au Canada. Plutôt que de discuter de dispositions particulières du projet de loi C-61, je voudrais informer le comité de la situation courante du crime organisé au Canada.

L'origine du crime organisé au Canada remonte au début du siècle avec l'émergence de groupes de la mafia italienne dans le Sud-Ouest de l'Ontario. Au cours des années 1930, le crime organisé est relié à diverses activités criminelles lucratives telles que les stupéfiants, le jeu, la prostitution, l'alcool illicite et la contrebande. Cependant, ce n'est qu'au début des années 1950 que le degré de raffinement et d'organisation de ces éléments criminels devient très apparent au Canada.

[*Text*]

During the 1960s it was evident that major criminal and group activity now maintained close ties with powerful groups in the United States. Organized crime in Canada was now a matter of national concern. Governments and law enforcement agencies began to recognize the need for special measures in a national framework to counter these organized crime groups and their related illicit activities; thus the evolution of Criminal Intelligence Service Canada.

The federal government called a federal-provincial conference of attorneys general in January 1966, and as a consequence the RCMP was tasked as the co-ordinating body for the collection, analysis, and dissemination of criminal intelligence. This agreement provided the framework to assist provinces in combatting organized crime in Canada. Co-ordination of police efforts was considered of primary importance, and it was recommended that all police forces, in areas where an organized crime problem existed, establish criminal intelligence units, and that a central bureau be created for the use of all Canadian police forces.

• 1605

The result was the establishment of Criminal Intelligence Service Canada in October 1969. CISC is administered by the RCMP at the CISC Central Bureau in Ottawa. It is an organization of Canadian law enforcement agencies, with a primary purpose to provide facilities to ensure the exchange of criminal intelligence between enforcement units, intelligence units and CISC provincial bureau. The membership is nation-wide, and includes the Royal Canadian Mounted Police, the Ontario Provincial Police, the Quebec Police Force, the Royal Newfoundland Constabulary, and more than 70 municipal and regional police departments. CISC has an extensive repository for the storage, analysis, and retrieval of criminal intelligence concerning organized criminal groups and individuals.

In Canada enforcement authorities have defined organized crime as two or more persons concerting together on a continuing basis to participate in illegal activities, either directly or indirectly, for gain. This definition is not legally entrenched in Canadian law, and it is not an offence to be a member of an organized crime group. The principal objectives of organized crime groups or individuals are wealth and power. These motives or objectives provide insulation from the criminal activity and the consequent danger of prosecution.

United States experts at the 1965 Oyster Bay Conference on Organized Crime provided another definition:

> Organized crime is a product of a self-perpetuating criminal conspiracy to ring exorbitant profits from our society by any means, fair or foul, legal and illegal. It

[*Translation*]

Au cours des années 1960, il est évident que les principaux criminels organisés entretiennent des liens étroits avec des groupes criminels puissants aux États-Unis. Étant donné l'étendue du crime organisé au Canada, les gouvernements et les services de police reconnaissent le besoin d'adopter des mesures spéciales et de créer un organisme national pour lutter contre ces groupes criminels organisés et réprimer leurs activités illicites. C'est ainsi que le Service canadien de renseignements criminels voit le jour.

En janvier 1966, le gouvernement fédéral convoque une conférence fédérale-provinciale des procureurs généraux, à la suite de laquelle la GRC se voit conférer le rôle de service coordonnateur de la collecte, de l'analyse et de la diffusion des renseignements criminels. Cette entente prévoit un cadre de travail pour aider les provinces à lutter contre le crime organisé au Canada. Puisque la coordination des efforts policiers constitue une considération primordiale, on recommande la formation d'unités de renseignements criminels dans tous les services policiers qui éprouvent des problèmes de crime organisé sur leur territoire, ainsi que la création d'un bureau central de renseignements à la disposition de tous les services de police canadiens.

C'est ainsi que le Service canadien de renseignements criminels voit le jour en octobre 1969. Le SCRC est administré par la GRC au Bureau central du SCRC à Ottawa. Il s'agit d'une organisation de services de police canadiens dont le but premier est de «fournir des installations pour assurer l'échange de renseignements criminels entre services de police, services de renseignements et les bureaux provinciaux du SCRC». Cet organisme national comprend la Gendarmerie royale du Canada, la Police provinciale de l'Ontario, la Sûreté du Québec, la Royal Newfoundland Constabulary et quelque 70 corps policiers municipaux et régionaux. Le SCRC peut emmagasiner, analyser et récupérer une très grande quantité de renseignements criminels sur des groupes criminels organisés et sur des individus.

Les autorités policières canadiennes définissent le crime organisé comme étant l'association permanente de deux personnes ou plus pour se livrer à des activités illégales afin d'en tirer directement ou indirectement des gains. Cette définition n'est pas enchâssée dans la législation canadienne et l'adhésion à un groupe du crime organisé ne constitue pas une infraction. Les principaux objectifs des groupes ou des membres du crime organisé sont l'argent et le pouvoir. Une fois acquis, ils permettent aux individus de s'isoler des activités criminelles mêmes et de se protéger ainsi des risques des poursuites judiciaires.

Lors de la conférence d'Oyster Bay en 1965, des autorités américaines ont défini le crime organisé comme suit:

> Le crime organisé est le fruit d'un complot criminel perpétuel visant à extirper des profits exorbitants de la société par tous les moyens—justes ou injustes, légaux

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survives on fear and corruption. By one or another means, it obtains a high degree of immunity from the law. It is totalitarian in organization. A way of life, it imposes rigid discipline on underlings who do the dirty work while the top men of the organized crime are generally insulated from the criminal act and the consequent danger of prosecution.

Mr. Chairman, I believe that organized crime consists of criminal organizations whose primary objective is to obtain wealth and power through illegal activities.

The problem in Canada is that we share a long and open border with the United States, and it is difficult to control the movement of criminal and illicit goods. Canada is also a very multicultural society, and many citizens and residents, including a small criminal element, have strong ties to other regions of the world. It is thus not surprising the organized crime problem is not unlike that in other countries, but the difference does exist, largely on one of scale.

Organized crime groups operate in all of Canada's largest cities, but particularly in Vancouver, Toronto, and Montreal. The most prominent groups include Outlaw motorcycle gangs, Triads and other related groups, the Mafia, N'Drangheta, the Cosa Nostra, and other criminal organizations with ethnic ties to foreign countries. Each group has its crime specialties, but collectively they are all involved in major criminal activities, including drugs, loan-sharking, gambling, prostitution, extortion, robbery, white-collar crime, and murder. Most important is their involvement in legitimate business as a means of acquiring respectability in the community, thereby camouflaging their criminal activities. In some cases they seek to control these legitimate businesses. Wealth and power is the order of the day.

There are 40 Outlaw motorcycle gangs or chapters in Canada, with over 900 members. They operate in all provinces except Prince Edward Island. Their major criminal activities are importing and trafficking in drugs, prostitution, theft and possession of restricted firearms. To facilitate their drug activities, they interact with their counterparts in the United States and several other overseas countries, including the United Kingdom, Australia, Denmark, and the Netherlands.

With an estimated 600 to 700 members, there are believed to be 11 Triad groups active in Canada. These groups operate mainly in Vancouver, Calgary, Edmonton, Toronto, and Ottawa. The most prominent of the Triads, the 14K, Kung Lok, Ghost Shadow, Lotus, and Red Eagles, maintain strong ties with the larger groups in Hong Kong and elsewhere in the world. Gang members frequently travel from city to city to commit their

[*Traduction*]

ou illégaux. Sa survie se fonde sur la peur et la corruption. D'une façon ou d'une autre, le crime organisé est immunisé considérablement contre les poursuites judiciaires. En effet, parce qu'il s'agit d'une organisation totalitaire où l'on impose une discipline sévère aux subalternes qui exécutent les tâches viles, les dirigeants ne s'exposent pas aux poursuites en ne participant pas à la perpétration du crime même.

Monsieur le président, j'estime que le crime organisé consiste en des organisations criminelles dont l'objectif premier est de s'enrichir et d'acquérir du pouvoir par des moyens illégaux.

Le problème du crime organisé au Canada tient au fait que la frontière entre le Canada et les États-Unis est longue et ouverte et qu'il est difficile de contrôler le va-et-vient des criminels et des biens illicites. Le Canada est aussi une société multiculturelle et de nombreux citoyens et résidents, y compris une petite partie de criminels, conservent des liens étroits avec d'autres régions du globe. Il n'est donc pas étonnant que le problème du crime organisé au Canada soit le même qu'à l'étranger et qu'il n'y ait des différences qu'au chapitre de la grandeur.

Les groupes criminels organisés sont établis dans presque toutes les grandes villes du Canada, mais surtout à Vancouver, Toronto et Montréal. Les groupes plus importants sont les bandes de motards, les Triades et autres groupes apparentés, la mafia, la N'Drangheta, La Cosa Nostra et les autres groupes d'organisations criminelles qui ont des liens ethniques avec des pays étrangers. Chaque groupe se «spécialise» dans un secteur de la criminalité, mais ensemble, ils participent à toutes les activités criminelles importantes, dont le trafic de drogues, le prêt usuraire, le jeu, la prostitution, l'extorsion, le vol, la criminalité en col blanc et le meurtre. Ils ont aussi des intérêts dans des commerces légitimes dans le but de se faire respecter du public et de camoufler leurs activités criminelles et, dans certains cas, de tenter de contrôler des commerces. L'argent et le pouvoir constituent leur raison d'être.

Il existe plus de quarante bandes de motards ou chapitres au Canada avec plus de neuf cents membres. Ces groupes sont établis dans toutes les provinces, sauf l'Île-du-Prince-Édouard. Ils participent à une grande gamme d'activités criminelles, mais les plus importantes sont l'importation et le trafic des drogues, la prostitution, le vol et la possession d'armes à feu à autorisation restreinte. Dans le but de faciliter leurs activités en matière de drogues, ils font affaire avec leurs homologues aux États-Unis et dans plusieurs pays d'outre-mer tels que le Royaume-Uni, l'Australie, le Danemark et les Pays-Bas.

Au Canada, il y aurait onze Triades, comptant environ 600 ou 700 membres. Ces groupes sont principalement établis à Vancouver, Calgary, Edmonton, Toronto et Ottawa. Les Triades les plus connues—le 14K, le Kung Lok, le Ghost Shadow, le Lotus et les Red Eagles—conservent des liens étroits avec les groupes importants à Hong Kong et ailleurs. Les membres des bandes se déplacent souvent d'une ville à l'autre pour perpétrer

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criminal acts and thus avoid arrest and prosecution. Their most prevalent criminal activities are armed robbery, extortion, murder, gambling, drug importation and trafficking, which has risen sharply in recent years. Violence, intimidation, and gang rivalry are common.

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The Triads confine their criminal activities for the most part to their ethnic community, but are emerging into society as they expand their base of illegal activities. There is also the concern that with Hong Kong returning to Chinese sovereignty in 1997, some Triad members may view Canada as a country fertile with illicit financial opportunity.

There are also gangs with links to persons from Vietnam. These gangs have become a problem in Canada in recent years. Their membership is comprised of immigrant and refugee youths between 16 and 25 years of age. The crimes committed by these gangs include extortion, robbery, assault, weapon offences and prostitution. Gang members are used as muscle men or enforcers for career criminals, and/or these Tongs, which have criminal involvement. The gangs travel extensively throughout North America for the purpose of committing criminal acts. Although these particular gangs lack sophistication and organization ability, nothing appears to deter them. Some have been heard to say that jail means nothing. Others view jail as an educational institution that leaves one knowing how to speak English or French.

The Mafia, La Cosa Nostra, N'Drangheta are organizational groups operating primarily in Toronto, Hamilton, and Montreal. While these groups operating in southern Ontario appear to have become more structured in recent years, only the Montreal group is comparable to La Cosa Nostra families in the United States. There are also individuals in Vancouver who maintain contact with groups in other parts of Canada and the United States. Most of the revenues of these groups come from drug-trafficking activities, gambling, prostitution and loan sharking and white-collar crime. These Canadian groups maintain strong links with their counterparts in the United States and southern Italy.

Other criminal groups include those persons who have links with persons from Iran. During the 1980s many Iranian nationals arrived at Canadian ports of entry with counterfeit or forged passports. As with any group of immigrants, a small percentage of these individuals are criminals. Since their arrival individuals have been surfacing in a number of criminal activity areas, and now are responsible for importing large amounts of heroin into Canada.

Other crime families have links to Colombia, and are establishing operating bases in Canada and no doubt are

[*Translation*]

leurs méfaits sans se faire arrêter et sans être poursuivis. Leurs activités illicites les plus importantes sont le vol à main armée, l'extorsion, le meurtre, le jeu, l'importation et le trafic des drogues, qui ont connu une hausse considérable ces dernières années. La violence, l'intimidation et la rivalité entre bandes sont courantes.

Les activités criminelles des Triades sont en grande partie limitées à leur groupe ethnique, mais elles touchent de plus en plus le reste de la société au fur et à mesure que ces groupes étendent leurs domaines d'activités. Il y a aussi la question de Hong Kong qui relèvera de nouveau de la Chine à compter de 1997: les membres des Triades verront donc le Canada comme un pays offrant de nombreuses perspectives d'avenir.

Il y a aussi des groupes criminels organisés qui ont des liens avec des personnes du Vietnam. Ces bandes sont aussi devenues un problème au Canada au fil des dernières années. Leur effectif est composé de jeunes immigrés et réfugiés âgés entre seize et vingt-cinq ans. Les crimes commis par ces bandes sont l'extorsion, le vol, les voies de fait, les infractions relatives aux armes et la prostitution. Les membres des bandes servent de fier-à-bras pour les criminels endurcis ou les Tongs qui participent aux activités illicites. Les bandes se déplacent partout à travers l'Amérique du Nord pour perpétrer leurs méfaits. Même si ces bandes manquent de raffinement et d'organisation, rien ne semble les arrêter. Certains auraient déclaré ne pas craindre la prison. D'autres voient la prison comme un établissement d'enseignement où l'on apprend à parler l'anglais ou le français.

La mafia, La Cosa Nostra et la N'Drangheta sont des groupes criminels organisés principalement établis à Toronto, Hamilton et Montréal. Même si les groupes du sud de l'Ontario semblent prendre de l'importance depuis quelques années, seul le groupe de Montréal peut se comparer aux familles de La Cosa Nostra aux États-Unis. Il y a aussi des membres à Vancouver qui restent en contact avec les autres groupes du Canada et des États-Unis. La majorité des revenus des groupes proviennent des activités reliées au trafic des drogues, à la prostitution, au jeu, au prêt usuraire, et de la criminalité en col blanc. Les groupes canadiens entretiennent des liens étroits avec leurs homologues des États-Unis et du sud de l'Italie.

Il y a aussi des groupes criminels organisés qui ont des liens avec des personnes de l'Iran. Au début des années 1980, de nombreux ressortissants iraniens sont arrivés au Canada en possession de passeports contrefaits. Comme pour tout groupe d'immigrants, un petit pourcentage était composé de criminels. Depuis leur arrivée, les individus se sont fait connaître dans un certain nombre de domaines d'activités illicites et sont maintenant responsables de l'importation d'une grande partie de l'héroïne sur le marché canadien.

Il y a aussi des familles criminelles qui ont des liens en Colombie, oeuvrent au Canada et cherchent, sans aucun

(Texte)

seeking to dominate cocaine importation into Canada completely. Accordingly, the large financial return is significant and worthy of attention now and in the future.

It is certain that increasingly large amounts of illicit profit will continue to benefit South American criminal groups with broad ties to Canada. It is certain, as evidenced by the Caruana case in Montreal, that the Mafia base in Canada has control of large shipments of heroin for consumption in the United States, primarily in New York, and that this group has utilized Canadian banking institutions to facilitate large financial transfers to other countries. This is not a case in isolation. Investigation has established that these organized crime groups have been involved in multi-tonne importation of hashish into Canada. This is a clear departure from traditional involvement with heroin or cocaine importation, the point being the large illicit return on minimum investment and risk is very inviting to these organized crime groups.

Recently 56 persons, including the organizers, were arrested, all part of an organized vehicle theft network. Investigation by Quebec authorities revealed involvement in Prince Edward Island and Ontario. The OPP have recovered in excess of $2 million in stolen vehicles and parts. Vehicle theft represents an annual loss in excess of $100 million in that province. In Quebec, 60 to 70 vehicles are stolen every day. There are three victims of this organized criminal activity: the owner, the insurance company, and the public.

In 1997 the territory of Hong Kong will return to Chinese sovereignty. Of concern is the anticipated arrival of criminal elements linked to increased migration from Hong Kong. Seizures of heroin in Canada from Kung Lok Triad members or associates have amounted to approximately 65 pounds, in essence confirming Canada as an international transit base of groups who form these societies with ties to organized groups in Canada.

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In the United States organized crime influence over legitimate businesses and unions has been largely overlooked prior to recent years. Canada must ensure the evolution of a national strategy to counter broadly based economic corruption of essential industries. In other words, Bill C-61 can be an initial legislative framework in support of legitimate enterprise in the Canadian marketplace.

New problems require new tools. Because Bill C-61 represents an important Canadian legislative measure and is a strong indicator of Canada's proposed action against the profits of organized crime in Canada and abroad, I do wish to review some important messages for your consideration. Organized crime has two motives—wealth

(Traduction)

doute, à monopoliser l'importation de la cocaïne dans notre pays. Ce commerce génère des sommes considérables, ce qui justifie une attention immédiate et future de notre part.

Il est certain que les groupes criminels sud-américains vont continuer à tirer des profits de plus en plus élevés de cette activité. Comme nous avons pu le constater d'après l'affaire Caruana et associés à Montréal, la mafia établie au Canada est responsable de l'importation d'importants envois d'héroïne destinée aux États-Unis, et plus particulièrement au marché de New York. De plus, ce groupe a eu recours à des institutions bancaires canadiennes pour effectuer le virement de fonds considérables à d'autres pays. Il ne s'agit pas d'un cas isolé. Des enquêtes ont révélé que des groupes du crime organisé sont impliqués dans l'importation au Canada de cargaisons de plusieurs tonnes de haschich, alors qu'auparavant, ils se limitaient à l'importation d'héroïne ou de cocaïne. Ce qui illustre que ces groupes s'intéressent à toute activité très lucrative qui représente un investissement minimal et peu de risques.

Un récent coup de filet a permis l'arrestation de 56 personnes comprenant les chefs et les membres d'un réseau de vol de véhicules. Des éléments de l'Île-du-Prince-Édouard et de l'Ontario ont été impliqués dans cette affaire. La Sûreté du Québec a récupéré des véhicules et des pièces volés d'une valeur de plus de 2 millions de dollars. De 60 à 70 véhicules sont volés quotidiennement au Québec, ce qui représente une perte annuelle de plus de 100 millions de dollars dans cette province. Ce genre d'activité criminelle organisée fait trois victimes: le propriétaire, l'assureur et le grand public.

En 1997, la Chine reprendra la souveraineté de Hong Kong. Ce qu'on craint surtout, c'est l'arrivée d'éléments criminels parmi l'augmentation des immigrants venus de Hong Kong. Jusqu'à présent, des membres de la triade Kung Lok ont été impliqués dans ces saisies au Canada qui ont rapporté environ 65 livres d'héroïne, ce qui confirme le rôle du Canada comme lieu de transit international utilisé par des sociétés étrangères ayant des liens avec des groupes organisés au pays.

Aux États-Unis, les autorités ne font que commencer à constater l'influence du crime organisé sur le commerce légitime et les syndicats. Le Canada doit veiller à l'évolution d'une stratégie nationale pour combattre la corruption économique générale de nos industries essentielles. Le projet de loi C-61 pourrait donc être un cadre de travail législatif pour appuyer l'entreprise légitime sur le marché canadien.

Les nouveaux problèmes nécessitent de nouveaux outils. Puisque le projet de loi C-61 constitue une importante mesure législative canadienne et démontre clairement la volonté du Canada de s'attaquer aux profits du crime organisé au pays et à l'étranger, je voudrais souligner certains faits importants qui méritent votre

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and power. Therefore, recognize that organized crime knows no social or geographical boundary. It preys on the family through consentual crime such as drug abuse, illegal gambling, pornography and prostitution, where the victim seldom complains and voluntarily participates.

Organized crime accepts the risk of prison, especially when acquired assets are not at risk, and it exacts a toll from insurance companies. It impacts on the workplace through drug abuse, gambling, absenteeism, extortion and intimidation. It invests illicit proceeds into legitimate businesses using laundered funds. Its investment into the legitimate marketplace is of prime concern. It has international implications requiring an international response to national problems. Organized crime groups provide those who for whatever reason are unable to participate in legitimate enterprise as a means for upward mobility.

Bill C-61 is a long-term legislative measure by the Government of Canada aimed at the proceeds of crime. Bill C-61 will make illicit proceeds unattractive. Therefore, Bill C-61 is indeed directed at organized crime groups, their illegal assets, their wallets, and indeed their power and immunity. Internationally such legislation would be a strong long-term partner for Bill C-58, concerning mutual legal assistance.

Criminal Intelligence Service Canada recommends that this essential legislation receive priority and that it not be further delayed. The need to address the acquired illicit wealth of organized groups in Canada is clear and convincing. This important legislation will help to ensure that Canada does not become a haven for national and international organized-crime figures and their profits. Canada should continue to support and encourage similar efforts of other countries in this important area of law enforcement.

Thank you very much. We will now answer any questions you may have.

Mr. Redway: Superintendent, I was particularly interested in your comment on page 6, where you have indicated that most important is their involvement in legitimate businesses as a means of acquiring respectability in the community, thereby camouflaging their criminal activities and in some cases they seek to control these illegitimate businesses. I take it you have identified a number of so-called legitimate businesses in Canada today that are in fact a camouflage for criminal activities for which the proceeds of crime have been used to acquire them.

Supt Egan: Yes, there have been, and this has occurred in pretty well all the provinces. The majority of the legitimate businesses that are now operated by organized

[*Translation*]

considération. Le crime organisé a deux motifs, l'argent et le pouvoir. Il faut donc reconnaître que le crime organisé ne se limite à aucune couche sociale ou frontière géographique. Il s'attaque à la famille par le crime consensuel (c'est-à-dire l'abus des drogues, le jeu illicite, la pornographie et la prostitution) où la victime participe volontairement et porte rarement plainte.

Le crime organisé accepte le risque de l'emprisonnement, en particulier lorsque les biens acquis ne sont pas en danger, et il coûte cher aux sociétés d'assurance. Il a des conséquences sur le milieu du travail par l'abus des drogues, le jeu illicite, l'absentéisme, l'extorsion et l'intimidation. Il investit ses profits illicites dans des commerces légitimes en se servant de fonds blanchis. Il s'infiltre par ses investissements dans le marché légitime. Il pose des problèmes nationaux qui nécessitent une intervention à l'échelle internationale en raison de ses ramifications à l'étranger. Le crime organisé offre à des individus qui, pour quelque raison que ce soit, ne peuvent pas participer dans une entreprise légitime, les moyens d'améliorer leur situation.

Le projet de loi C-61 est une mesure législative à long terme axée sur les biens criminellement obtenus, qui vise à retirer l'attrait des profits illicites. Par conséquent, le projet de loi C-61 est orienté vers les groupes du crime organisé, leurs biens illicites et leurs portefeuilles, et il cherche à les priver de leur pouvoir et de leur immunité. Sur le plan international, une telle loi combinée au projet de loi C-58 relativement à l'entraide juridique constituerait un arsenal puissant pour lutter contre le crime.

Le Service canadien de renseignements criminels recommande qu'on accorde la priorité à ce projet de loi, que le projet de loi ne fasse plus l'objet de délais, étant donné qu'il est clair et évident que des mesures légales s'imposent, relativement aux biens illicites des groupes du crime organisé. Ce projet de loi permettra d'empêcher le Canada de devenir un refuge pour des éléments de groupes nationaux et internationaux du crime organisé ou pour leurs profits. Le Canada doit continuer à appuyer et à encourager les efforts d'autres pays relativement à la promulgation de lois de ce genre.

Merci beaucoup, je vais maintenant répondre à vos questions.

M. Redway: Monsieur le surintendant, ce que vous dites à la page 6 m'intéresse particulièrement, vous dites que le crime organisé s'intéresse à des entreprises légitimes pour devenir respectable dans la communauté, pour mieux cacher ses activités criminelles, et il arrive que ces entreprises légitimes passent sous le contrôle du crime organisé. J'imagine que vous connaissez un certain nombre d'entreprises légitimes canadiennes qui, en réalité, servent de façade à des activités criminelles et qui ont été acquises avec les bénéfices d'activités criminelles.

Sdt Egan: Effectivement, cela s'est produit, pratiquement dans toutes les provinces. La majorité des entreprises légitimes qui sont actuellement exploitées par

[*Texte*]

crime figures are located within the provinces of Ontario, British Columbia, and Quebec.

Mr. Redway: Are there some very major businesses or would they be classified as small business, or how would you classify?

Supt Egan: The businesses are acquired and in some cases are in the $2 million to $3 million area: businesses such as ice cream parlours, and from research in the past, some suggestion of the cheese industry and areas of that nature.

Mr. Redway: I guess I have heard from time to time that in the dairy industry there was money in one particular major corporation in the dairy industry. Is that correct?

Supt Egan: I am not familiar with that one, but I do not have all the particulars.

Mr. Redway: Would this bill then give you the authority to actually seize a so-called legitimate business? If so, what would you do with it?

• 1620

Supt Egan: I think the intent of the bill is to provide police with the tools to determine whether that business was acquired through criminal activities. If that could be established and those are the profits of criminal activities, the legislation would allow for the seizure of that business. Obviously the bill addresses who would be the caretaker of that particular property or business during the time it was before the courts and until such time as it was decided whether the profits should be confiscated to the Crown.

Mr. Redway: I take it the business was confiscated to the Crown. Would you need anything else in the legislation to allow you to deal with that situation or would you go into running ice cream parlors with RCMP officers?

Supt Egan: Since I like ice cream, it is a good thought, but the current provisions of the bill seem quite sufficient where it would allow for forfeiture to the Attorney General who is responsible for the prosecution. There are provisions in the bill for maintaining that business.

Obviously a lot of regulatory measures and steps would have to be taken as to precisely what procedures would have to be implemented to take care of it. Who would pay for the cost and upkeep of the business? For example, I can see that if in the middle of winter a business was seized in northern Saskatchewan, there has to be power, gas, and all the other utilities paid for so there would be no damage or loss to the business.

Mr. Redway: You do not see the need for any other provisions in this bill to take care of that situation or the ultimate disposal of the business. I suppose my friends in

[*Traduction*]

des membres du crime organisé se situent en Ontario, en Colombie-Britannique et au Québec.

M. Redway: Est-ce que ce sont de grosses entreprises, ou bien doit-on les classer dans les petites entreprises?

Sdt Egan: Cela dépend, parfois elles sont de l'ordre de deux à trois millions de dollars, ce sont des entreprises comme des salons de crème glacée, parfois des fabriques de fromage, comme nous avons pu le constater dans le passé.

M. Redway: On entend parfois parler d'une entreprise laitière en particulier, une grosse entreprise, est-ce exact?

Sdt Egan: Je ne connais pas ce cas particulier, mais je n'ai pas tous les détails.

M. Redway: Est-ce que ce projet de loi vous donnerait le pouvoir de saisir une entreprise soi-disant légitime? Et dans ce cas, qu'en feriez-vous?

Sdt Egan: À mon sens, ce projet de loi doit donner à la police les outils nécessaires pour déterminer qu'une entreprise a été acquise grâce à des activités criminelles. S'il était possible d'établir cela, et d'établir que les bénéfices de l'entreprise sont dûs à des activités criminelles, il deviendrait possible de la saisir. Bien sûr, le projet de loi prévoit que pendant des poursuites devant les tribunaux et jusqu'à ce qu'une décision soit prise sur la nécessité pour la Couronne de confisquer les profits, la garde du bien en question ou de l'entreprise devra être confiée à un tiers.

M. Redway: Supposons que l'entreprise ait été confisquée par la Couronne. Est-ce qu'il faudrait adopter d'autres dispositions pour vous permettre de faire face à cette situation ou bien est-ce que les agents de la GRC et vous-mêmes vous mettriez à vendre de la crème glacée?

Sdt Egan: C'est une bonne idée parce que j'aime beaucoup la crème glacée, mais les dispositions actuelles du bill, qui prévoient que le procureur général responsable des poursuites peut confisquer une entreprise, me semblent suffisantes. Il y a des dispositions qui permettent de continuer l'exploitation.

Bien sûr, il faudra beaucoup de règlements, des procédures précises pour déterminer les modalités, qui sera responsable des frais et de l'entretien, etc. Par exemple, si une entreprise était saisie au milieu de l'hiver dans le nord de la Saskatchewan, pour éviter des dommages possibles, il faudrait s'assurer que l'électricité, le gaz, etc, sont payés.

M. Redway: Vous croyez donc que les dispositions actuelles du projet de loi sont suffisantes pour faire face à une telle situation et, éventuellement, disposer de

[*Text*]

the NDP, if they were here, would see this as a way of nationalizing part of our economy.

Supt Egan: I think the bill in its present form is quite sufficient to take care of that, but procedures and regulations will have to be developed to implement the provisions of the bill.

Mr. Redway: Going back to you, commissioner, and your comments about the deficiencies you see in the bill at present, particularly your concern about the solicitor-client relationship, you seem to imply that you feel that anything in a lawyer's office, so long as it could be established—it might be difficult—should be subject to seizure. Is that your feeling? Do you think there should be some sort of safeguard, bearing in mind the traditional concerns the legal profession has in this sort of area?

A/Commr Stamler: I think there are basically two issues involved. One is whether the legal fees should be paid firstly from legitimate assets owned by the individual, and secondly, if those are depleted, whether any of the illegally acquired assets should be used for payment of fees. Dealing with funds handled or controlled by solicitors or lawyers is a very significant problem. If all the transactions a lawyer might become involved in were somehow protected and the funds he might handle in the course of providing some kind of assitance to his client were protected, a lot of funds would not be subject to seizure.

As you know, lawyers become involved in many business transactions when providing legal assistance, in the incorporation and establishment of a company, for example. During that course he may handle a great deal of funds. I think those funds are subject to review in the same way they would be if they were in the hands of anyone else in the country. They are not in a different class simply because a lawyer handles them or is receiving or disbursing them. I think he is doing it more as a businessman or in a business sense than in providing legal advice.

• 1625

Mr. Redway: You do not see any safeguards. You would not suggest that safeguards be allowed in that situation; it would just be treated exactly the same as every other situation. Is that what you are saying?

A/Commr Stamler: I think the safeguards are there with respect to solicitor-client privilege and if it is a legitimate solicitor-client privilege it is of course not reviewable in the same sense. If the business transaction is a straightforward business transaction, it should be reviewable in the same sense whether the person is a lawyer, an accountant, or whatever. He is handling the proceeds and should be subject to review, or at least investigation.

[*Translation*]

l'entreprise. Si mes amis du NPD étaient là, ils diraient que c'est un moyen de nationaliser une partie de l'économie.

Sdt Egan: À mon avis, les dispositions actuelles du projet de loi sont tout à fait suffisantes, mais il faudra adopter des règlements, mettre en place des procédures pour en appliquer les dispositions.

M. Redway: Commissaire, je reviens à vous et à certaines lacunes du bill dont vous avez parlé, en particulier, en ce qui concerne les relations entre avocats et clients. Vous semblez penser qu'à condition de posséder des preuves, ce qui n'est peut-être pas très facile, on devrait pouvoir tout saisir dans un bureau d'avocat. C'est bien votre sentiment? C'est un domaine qui est toujours très sensible aux avocats, ne pensez-vous pas que certaines sauvegardes s'imposent?

Comm. adj. Stamler: Deux choses sont en cause. D'une part, la question de savoir si les frais d'avocats doivent être payés avant tout à même les avoirs légitimes de l'intéressé et, deuxièmement, lorsque ceux-ci sont épuisés, si les honoraires peuvent être payés en utilisant les biens acquis de façon illégitime. Le problème des fonds contrôlés par les avocats est particulièrement difficile. S'il était possible de protéger toutes les transactions auxquelles un avocat peut participer, tous les fonds dont il est appelé à s'occuper dans le cadre de ses relations avec son client, beaucoup de fonds échapperaient à la saisie.

Comme vous le savez, les avocats participent à beaucoup de transactions commerciales lorsqu'ils rendent des services juridiques, par exemple lorsqu'une compagnie est constituée en société. Pour ce genre de transaction, l'avocat est appelé à s'occuper de fonds considérables. À mon avis, ces fonds doivent être traités comme n'importe quels fonds au mains de n'importe qui. Leur nature ne change pas pour la simple raison qu'un avocat s'en occupe, qu'il les encaisse ou qu'il les débourse. En effet, lorsqu'il est appelé à s'occuper de fonds, c'est plus à titre d'homme d'affaires, ou du moins à titre commercial, qu'à titre de conseiller juridique.

M. Redway: Vous ne voyez pas la nécessité de mesures de protection spéciales dans pareil cas; il serait traité exactement comme n'importe quel autre cas. Est-ce ce que vous nous dites?

Comm. adj. Stamler: J'estime qu'il existe des protections à l'égard du secret professionnel qui lie l'avocat et son client, et s'il s'agit d'un secret professionnel légitime, il ne pourrait être de la même façon sujet à examen. S'il s'agit purement d'une transaction commerciale, celle-ci devrait être assujettie aux mêmes procédures d'examen, que le client fasse affaire avec un avocat, un comptable, ou qui que ce soit d'autre. Le produit de la transaction lui est confié, et celle-ci devrait être assujettie aux procédures régulières de révision, ou du moins d'enquête.

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Mr. Redway: You are saying that the common law with respect to solicitor-client privilege would apply, but nothing else. Is that what you are saying?

A/Commr Stamler: Yes, the common law and also the other provisions in the Criminal Code that may attach themselves to a solicitor-client relationship.

The Chairman: Superintendant Egan, on the subject of prostitution, you have suggested that is one of the things controlled by one of the areas that organize crime. This comes as a bit of departure from testimony before a number of House of Commons committees in which we have been told that prostitution, by and large, is unorganized, very small-time, with independent individuals operating it who do not cause particular to anyone. Yet, on a couple of occassions you seem to have highlighted that as an area in which organized crime is interested. How extensive is organized crime's involvement with prostitution?

Supt Egan: Perhaps I could clarify that by saying there will probably be no direct control of any prostitute by any organized major crime figure. The control is exercised through the underlings on the street, known as the pimps or the boyfriends. Several of the girls are controlled by the boyfriends, or pimps, circulated from city to city. For example, we know of one area where girls are taken from Vancouver to Edmonton to Calgary to Winnipeg to Minnesota to Seattle. They are controlled through a series of pimps who have contact with each other in the various cities.

Obviously the proceeds of some of the prostitution activities that get back to the pimps are in turn used for reinvestment purposes. We have found that pimps are in turn using these profits to invest in drugs. Now we are into the drug trade. These profits are in turn invested into legitimate businesses at times.

The Chairman: These pimps are under the control of organized crime, you say.

Supt Egan: We find one particular organized crime group that will have control over several of the pimps and the girls—the Outlaw motorcycle gangs. We have evidence in Ontario and Quebec that the girls were employed as table-top dancers in bars and taverns and were circulated back and forth under the control of the motorcycle gangs.

The Chairman: Is it just Toronto you are referring to?

Supt Egan: The known examples we have were from Toronto and Montreal. I do not have any other specifics on other cities involved.

The Chairman: You paint a pretty bleak picture in many ways. A couple of times you mention the transfer of sovereignty in Hong Kong from Britain to China in the next decade. The second time you mention the subject

[Traduction]

M. Redway: Vous dites que la jurisprudence en common law s'appliquerait à l'égard du secret professionnel liant le client et son avocat, sans plus. Est-ce ce que vous nous dites?

Comm. adj. Stamler: Oui, les dispositions du common law et les autres dispositions du Code criminel qui traitent de la relation entre un client et son avocat.

Le président: Monsieur Egan, vous avez dit, en parlant de la prostitution, que c'est l'une des activités contrôlées par la pègre. Cela contredit dans une certaine mesure d'autres témoignages faits devant les comités de la Chambre des communes, selon lesquels la prostitution est essentiellement une activité de faible envergure, qui n'est pas organisée, le fait de personnes agissant seules et qui ne causent pas de tort particulier à quiconque. Or, à quelques reprises, vous avez semblé dire qu'il s'agit d'une activité à laquelle s'intéresse la pègre. Dans quelles mesures la pègre contrôle-t-elle la prostitution?

Sdt Egan: Je devrais peut-être préciser qu'aucun grand dirigeant de la pègre ne contrôle directement une prostituée. Le contrôle s'exerce au niveau de la rue par des sous-fifres, qui sont soit les proxénètes ou les concubins des prostituées. Plusieurs prostituées sont sous le contrôle de leurs protecteurs, ou proxénètes, qui les font travailler dans un circuit de plusieurs villes. Par exemple, dans un secteur, les prostituées sont amenées de Vancouver à Edmonton puis à Calgary, et de là, à Winnipeg puis à Minnesota et à Seattle. Elles sont contrôlées par une série de proxénètes des diverses villes, qui sont en contact les uns avec les autres.

Il est clair que le produit de certaines activités de prostitution qui sont reversées aux proxénètes, sont ensuite réinvesties. Nous avons constaté que les proxénètes utilisent ensuite ces profits pour l'achat de drogues. C'est là que s'établit le lien avec le trafic de la drogue. Par la suite, ces profits sont investis à l'occasion dans des entreprises légitimes.

Le président: Et vous dites que ces proxénètes sont contrôlés par la pègre.

Sdt Egan: Nous avons constaté qu'un groupe lié à la pègre contrôle plusieurs proxénètes et leurs prostituées, à savoir les motards du groupe Outlaw. Nous avons réuni des preuves, en Ontario et au Québec, montrant que ces prostituées travaillaient comme danseuses aux tables dans les bars et les tavernes, et que les bandes de motards les faisaient travailler tour à tour dans plusieurs endroits du circuit sous leur contrôle.

Le président: Parlez-vous uniquement de Toronto?

Sdt Egan: Les exemples connus de cette pratique ont été relevés à Toronto et à Montréal. Je ne peux pas vous donner d'autres détails sur d'autres villes.

Le président: Vous nous dressez un tableau assez déprimant à maints égards. À quelques reprises, vous avez parlé du transfert de la souveraineté de Hong-Kong de la Grande-Bretagne à la Chine, au cours de la prochaine

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you said "Of concern is the anticipated arrival of criminal elements linked to increased migration from Hong Kong". Are these criminal elements you are referring to known to the authorities in Hong Kong?

Supt Egan: We have had extensive dealings with the Royal Hong Kong Police. In some cases they are known and in other cases they are not. For example, several of the Vietnam refugees in stockades or camps in Hong Kong are not known to the Royal Hong Kong Police, nor are some of the Chinese from the People's Republic of China. There is no official exchange of information between the Royal Hong Kong Police and the Government of Vietnam or police officials or the People's Republic of China.

• 1630

The police have received in the past—and I know Assistant Commissioner Stamler could comment on it better than I can—some co-operation in drug trafficking from some of the Asian countries. However, many of the people in the stockades are not known to the Royal Hong Kong Police, nor do they have any means, or ways of verifying what their true identity is, because there are no records in Vietnam. Many of these refugees have fled Vietnam because they are not wanted by the government, and that was their reason for leaving that country.

The Chairman: Do you have any suggestions on how we might be able to stop or stem this anticipated flow?

Supt Egan: I think the police responsibility, if there are criminal activities occurring within Canada, is to develop the means of identifying and successfully prosecuting those people. The Government of Canada has an entrepreneurial program, and we are inviting citizens from other countries; it is an excellent program. If criminals do come in with those people—and we can expect that is going to happen, no matter what the good intentions are of screening the refugee people—it becomes a police problem of enforcement.

The Chairman: I do not want to get into a discussion of past history, but in one of your comments you said that during the 1980s many Iranian nationals arrived at Canadian ports of entry with counterfeit or forged passports. Was there any way we could have discovered those things, or were they very clever forgeries? How did these people get in there, and what happened when it was discovered that they did have forged passports or forged identification papers?

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décennie. La deuxième fois que vous avez abordé cette question, vous avez dit «ce qui nous préoccupe plus particulièrement, c'est l'arrivée prévue d'éléments criminels liés à la migration accrue de personnes quittant Hong-Kong». Ces éléments criminels dont vous parlez sont-ils connus des autorités de Hong-Kong?

Sdt Egan: Nous avons des rapports soutenus avec la police royale de Hong-Kong. Dans certains cas, ces éléments criminels sont connus, mais pas toujours. Par exemple, plusieurs réfugiés vietnamiens qui se trouvent dans des camps à Hong-Kong ne sont pas connus de la police royale de Hong-Kong, comme le sont certains Chinois de la République populaire de Chine. Il n'y a pas d'échange officiel d'information entre la police royale de Hong-Kong et le gouvernement du Vietnam, ou entre les dirigeants de la police et la République populaire de Chine.

Dans le passé—et je sais que le sous-commissaire Stamler pourrait vous en dire là-dessus plus long que moi—la police a pu compter sur la coopération de certains pays asiatiques dans sa lutte contre le trafic des drogues. Toutefois, un grand nombre des personnes détenues dans les camps pour prisonniers militaires ne sont pas connues de la police royale de Hong-Kong, et cette dernière n'est pas en mesure de vérifier leur vraie identité puisqu'aucun dossier n'est tenu au Vietnam. Un grand nombre de ces réfugiés ont fui le Vietnam parce qu'ils étaient considérés comme des indésirables par le gouvernement.

Le président: Avez-vous des idées quant aux moyens que nous pourrions mettre en oeuvre pour arrêter ou empêcher l'arrivée prévue de ces personnes?

Sdt Egan: Si des opérations criminelles sont conduites sur le territoire canadien, il appartient à la police de mettre en place des mécanismes permettant d'identifier ces personnes et d'obtenir leur condamnation. Le gouvernement du Canada a lancé un programme à l'intention des immigrants entrepreneurs, et nous invitons des citoyens d'autres pays à venir s'établir ici; c'est un excellent programme. Si certains criminels réussissent à se glisser parmi eux—et nous pouvons nous y attendre, malgré toutes les bonnes intentions que nous avons de trier sur le volet les réfugiés que nous acceptons—cela deviendra pour la police un problème de l'application de la loi.

Le président: Je ne veux pas lancer de débat sur des faits qui appartiennent à l'histoire, mais vous avez dit que dans les années 1980, de nombreux ressortissants iraniens s'étaient présentés à des points d'entrée canadiens avec des passeports faux ou contrefaits. Aurions-nous été en mesure de les repérer ou s'agissait-il de contrefaçon très bien faite? Comment ces personnes se sont-elles rendues jusqu'à ces points d'entrée et qu'est-il arrivé lorsque les autorités ont constaté que leurs papiers d'identité ou leurs passeports étaient contrefaits?

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Supt Egan: In the majority of those instances, the people arrive at a airport—for example, Mirabel—with the forged document. Where it was obtained from or how they got it, the police do not have any idea. It ensured their arrival, and in many cases once they have arrived any of the forged papers and stuff are destroyed and refugee status is claimed.

The Chairman: I guess you would not be in a position to say whether any of them were subsequently deported after this was found out.

Supt Egan: I do not have any figures on that, sir, at all.

Mr. Redway: Put that into perspective for us. Have you any idea what percentage of the people you are referring to generally in the organized crime area would be home-grown Canadian types? What percentage would have come from elsewhere, at some time or other? Do you have any idea about that?

Supt Egan: I guess most Canadians come from someplace else.

Mr. Redway: I mean native-born Canadians, for instance.

Supt Egan: We do not have any statistics on those at all. It is really not within the police mandate to keep statistics on any particular ethnic group, and I just do not have any answer to that one.

Mr. Redway: You do not keep statistics on Canadian citizens versus non-Canadian citizens you deal with.

Supt Egan: No.

The Chairman: Mr. Stamler, I wonder if I could ask you one or two questions concerning your statement. On page 2 you indicated, among other things, that in the drug trade the risks of imprisonment or the loss of a drug shipment are often viewed as merely an inherent cost of doing business. Concerning the risk of imprisonment, are you telling us that the sentences drug smugglers are getting may be too light? Is there any sentence we could impose that would act as a deterrent and would be an unacceptably high price for trafficking in narcotics?

A/Commr Stamler: I think prison terms do not really deter drug traffickers because of the profits that are generated by that trade, and simply the amount of time that they have to spend in prison if they are caught and sentenced with respect to that crime. Even in a 20-year sentence, perhaps 7 years would have to be served. The profits from that particular offence might amount to the millions.

A good example was one organized criminal who made perhaps over $10 million or $12 million from a hashish trade he was involved in. He had the money well hidden. He got 12 years in prison. As far as I know, at the present time he is out enjoying his proceeds. As I understand, he owns some very luxurious hotels in Europe. The point

[*Traduction*]

Sdt Egan: Dans la majorité de ces cas, les gens arrivent à un aéroport, par exemple, Mirabel, avec des documents contrefaits. La police ne sait pas du tout où ils les ont obtenus, ni comment. Ces documents ont permis à ces personnes d'arriver jusqu'ici, après quoi elles détruisaient, dans de nombreux cas, leurs papiers et documents contrefaits, et réclamaient ensuite le statut de réfugié.

Le président: J'imagine que vous n'êtes pas en mesure de nous dire si certaines de ces personnes ont été renvoyées après que les autorités eurent constaté le fait.

Sdt Egan: Je n'ai aucun chiffre là-dessus, monsieur.

M. Redway: J'aimerais que vous nous donniez de plus amples précisions. Avez-vous une idée du pourcentage de ces personnes, dont vous dites qu'elles sont généralement liées à la pègre, qui seraient d'origine canadienne? Quel pourcentage d'entre elles sont venues d'ailleurs, à une époque plus ou moins récente? En avez-vous une idée?

Sdt Egan: J'imagine que la plupart des Canadiens sont des immigrants plus ou moins récents.

M. Redway: Je voulais parler, par exemple, de personnes nées au Canada.

Sdt Egan: Nous n'avons aucune statistique là-dessus. Ce n'est pas vraiment le mandat de la police de recueillir des statistiques sur certains groupes ethniques en particulier, et je préfère ne pas répondre à cette question.

M. Redway: Vous ne faites pas la ventilation statistique du nombre de citoyens canadiens et de citoyens non canadiens dont les dossiers vous passent entre les mains.

Sdt Egan: Non.

Le président: Monsieur Stamler, je me demande si vous accepteriez de répondre à une ou deux questions sur votre exposé. À la page 2, vous dites, entre autres choses, que dans le milieu de la drogue, les risques d'emprisonnement ou de perte d'une cargaison sont souvent perçus comme faisant partie du métier. En ce qui concerne plus particulièrement le risque d'emprisonnement, nous dites-vous que les sentences imposées aux trafiquants de drogues ne sont pas assez sévères? Y a-t-il une sentence que nous pourrions imposer, qui aurait un effet dissuasif et que les trafiquants de narcotiques considéreraient comme un prix à payer excessivement élevé?

Comm. adj. Stamler: Je crois que les peines d'emprisonnement n'ont pas réellement d'effets dissuasifs sur les trafiquants de drogues parce que les profits générés par ce trafic sont énormes et aussi parce que, s'ils sont arrêtés et condamnés, le temps qu'ils devront passer en prison ne leur semble pas indûment long. Même lorsqu'ils sont condamnés à 20 ans d'emprisonnement, ils en purgent peut-être sept ans. Or, les profits générés par cette infraction se montent à des millions de dollars.

Le meilleur exemple que je puisse vous donner, c'est celui d'un membre de la pègre à qui le trafic du hashish a rapporté plus de 10 ou 12 millions de dollars. Son argent était bien caché. Il a été condamné à 12 ans d'emprisonnement. Pour autant que je sache, il est maintenant en liberté et se paie la belle vie avec ce que

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here is that really it is worth the risk to serve time, considering the profits one will have at the end of that term.

• 1635

The Chairman: I realize that Canada has a smaller drug problem than the United States, and that is because of our respective sizes, but on a per capita basis is the problem equal to what it is in the United States? Is it less or worse, and if so, would you care to put a figure on it? Is it twice as bad per capita in the United States?

A/Commr Stamler: Well, I think it measures very closely to the United States. There are some unusual spots in the United States, for example Miami and New York. They are unusual in the sense that they may be a major transit spot for aircraft coming and going from South America and so forth, and other just size problems, but apart from that, really our problem is basically 10% of that of the United States pretty well in all respects, and I think every illicit drug that is a major problem in the United States today is also an equal problem here in Canada.

The second aspect I think we have to recognize is we have a 4,000-mile border with the United States. Most of the population of Canada lives very close to that border. The drug trade in the United States is to a large extent the result of drugs brought in from other countries. Therefore it may be profitable for some organizations to establish themselves in Canada in order to distribute drugs in the United States.

We have a case in Montreal, for example, where a major organized crime group established itself in Montreal for the purposes of distributing heroin in the eastern part of the United States. So those kinds of activities are there because of the border. It is more difficult then to deal with cross-border activities, particularly when it comes to money flow and things of that nature.

Mr. Redway: I have been told we are on the verge of a great, tremendous increase in the inflow of crack into Canada, probably this summer, because the selling price is higher in Canada than it is in the United States. Is that correct, and how do you see that situation?

A/Commr Stamler: Well, I think that crack/cocaine is a very profitable enterprise for South American criminals to distribute. I might add that crack is made from cocaine hydrochloride, and we do have a large amount of cocaine hydrochloride introduced into Canada illegally every year. Then people make crack from that cocaine.

[Translation]

lui a rapporté son trafic. Je crois même savoir qu'il est propriétaire de quelques hôtels très luxueux en Europe. En fait, les profits qu'ils auront à dépenser quand ils seront libérés, justifient à leurs yeux le risque d'emprisonnement.

Le président: Je sais bien que le problème de la drogue est moins grave au Canada qu'aux États-Unis, mais c'est sans doute attribuable à la différence de grandeur de nos deux pays. Toutefois, par habitant, le problème est-il aussi sérieux ici qu'aux États-Unis? Est-il moindre ou plus grand, et pouvez-vous nous donner un ordre de grandeur? Le problème est-il deux fois plus grave, par habitant, aux États-Unis?

Comm. adj. Stamler: Je pense qu'il est d'une ampleur assez comparable à ce qu'il est aux États-Unis. Toutefois, aux États-Unis, le problème est plus grave dans certaines villes, comme Miami et New York. La situation est inhabituelle dans ces villes en ce sens que les vols en provenance et à destination de l'Amérique du Sud, par exemple, s'y croisent, et aussi en raison de leur taille. À part cela, notre problème de drogue est essentiellement 10 fois moins important que celui des États-Unis, à tous les égards, mais j'estime que le trafic des drogues illicites est tout aussi inquiétant au Canada qu'il ne l'est actuellement aux États-Unis.

Il ne faut pas non plus oublier que nous partageons une frontière de 4,000 milles avec les États-Unis. Une très forte proportion de la population canadienne vit à proximité de cette frontière. Les drogues trafiquées aux États-Unis proviennent dans une large mesure d'autres pays. Par conséquent, certaines organisations peuvent très bien juger rentable de s'établir au Canada afin de distribuer leur drogue aux États-Unis.

Par exemple, un des principaux groupes de la pègre s'est établi à Montréal afin de distribuer de l'héroïne dans l'est des États-Unis. Ainsi, ce genre d'activités existe ici en raison de cette frontière partagée. Il est plus difficile de contrôler les activités transfrontalières, particulièrement lorsqu'il s'agit de transfert d'argent et autres choses de ce genre.

M. Redway: On m'a dit qu'il y aura, probablement cet été, une augmentation faramineuse des quantités de crack disponibles au Canada parce que le prix de vente est plus élevé ici qu'aux États-Unis. Est-ce exact et comment percevez-vous la situation?

Comm. adj. Stamler: Je suis convaincu que la distribution de crack/cocaïne est une entreprise très rentable pour les criminels de l'Amérique du Sud. J'ajouterais que le crack est fabriqué à partir d'hydrochlorure de cocaïne et que des quantités importantes de cette substance sont introduites illégalement au Canada chaque année. Les gens fabriquent ensuite du crack à partir de cette cocaïne.

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The Chairman: I realize that Canada has a smaller drug problem than the United States, and that is because of our respective sizes, but on a per capita basis is the problem equal to what it is in the United States? Is it less or worse, and if so, would you care to put a figure on it? Is it twice as bad per capita in the United States?

A/Commr Stamler: Well, I think it measures very closely to the United States. There are some unusual spots in the United States, for example Miami and New York. They are unusual in the sense that they may be a major transit spot for aircraft coming and going from South America and so forth, and other just size problems, but apart from that, really our problem is basically 10% of that of the United States pretty well in all respects, and I think every illicit drug that is a major problem in the United States today is also an equal problem here in Canada.

The second aspect I think we have to recognize is we have a 4,000-mile border with the United States. Most of the population of Canada lives very close to that border. The drug trade in the United States is to a large extent the result of drugs brought in from other countries. Therefore it may be profitable for some organizations to establish themselves in Canada in order to distribute drugs in the United States.

We have a case in Montreal, for example, where a major organized crime group established itself in Montreal for the purposes of distributing heroin in the eastern part of the United States. So those kinds of activities are there because of the border. It is more difficult then to deal with cross-border activities, particularly when it comes to money flow and things of that nature.

Mr. Redway: I have been told we are on the verge of a great, tremendous increase in the inflow of crack into Canada, probably this summer, because the selling price is higher in Canada than it is in the United States. Is that correct, and how do you see that situation?

A/Commr Stamler: Well, I think that crack/cocaine is a very profitable enterprise for South American criminals to distribute. I might add that crack is made from cocaine hydrochloride, and we do have a large amount of cocaine hydrochloride introduced into Canada illegally every year. Then people make crack from that cocaine.

[*Translation*]

lui a rapporté son trafic. Je crois même savoir qu'il est propriétaire de quelques hôtels très luxueux en Europe. En fait, les profits qu'ils auront à dépenser quand ils seront libérés, justifient à leurs yeux le risque d'emprisonnement.

Le président: Je sais bien que le problème de la drogue est moins grave au Canada qu'aux États-Unis, mais c'est sans doute attribuable à la différence de grandeur de nos deux pays. Toutefois, par habitant, le problème est-il aussi sérieux ici qu'aux États-Unis? Est-il moindre ou plus grand, et pouvez-vous nous donner un ordre de grandeur? Le problème est-il deux fois plus grave, par habitant, aux États-Unis?

Comm. adj. Stamler: Je pense qu'il est d'une ampleur assez comparable à ce qu'il est aux États-Unis. Toutefois, aux États-Unis, le problème est plus grave dans certaines villes, comme Miami et New York. La situation est inhabituelle dans ces villes en ce sens que les vols en provenance et à destination de l'Amérique du Sud, par exemple, s'y croisent, et aussi en raison de leur taille. À part cela, notre problème de drogue est essentiellement 10 fois moins important que celui des États-Unis, à tous les égards, mais j'estime que le trafic des drogues illicites est tout aussi inquiétant au Canada qu'il ne l'est actuellement aux États-Unis.

Il ne faut pas non plus oublier que nous partageons une frontière de 4,000 milles avec les États-Unis. Une très forte proportion de la population canadienne vit à proximité de cette frontière. Les drogues trafiquées aux États-Unis proviennent dans une large mesure d'autres pays. Par conséquent, certaines organisations peuvent très bien juger rentable de s'établir au Canada afin de distribuer leur drogue aux États-Unis.

Par exemple, un des principaux groupes de la pègre s'est établi à Montréal afin de distribuer de l'héroïne dans l'est des États-Unis. Ainsi, ce genre d'activités existe ici en raison de cette frontière partagée. Il est plus difficile de contrôler les activités transfrontalières, particulièrement lorsqu'il s'agit de transfert d'argent et autres choses de ce genre.

M. Redway: On m'a dit qu'il y aura, probablement cet été, une augmentation faramineuse des quantités de crack disponibles au Canada parce que le prix de vente est plus élevé ici qu'aux États-Unis. Est-ce exact et comment percevez-vous la situation?

Comm. adj. Stamler: Je suis convaincu que la distribution de crack/cocaïne est une entreprise très rentable pour les criminels de l'Amérique du Sud. J'ajouterais que le crack est fabriqué à partir d'hydrochlorure de cocaïne et que des quantités importantes de cette substance sont introduites illégalement au Canada chaque année. Les gens fabriquent ensuite du crack à partir de cette cocaïne.

[*Texte*]

The startling figures are that of the people who try crack for the first time, 78% will become addicted. The cost involved in trying to cure an addicted person with respect to crack is very high, so once a person is hooked it automatically escalates, because the market increases. There is more demand, so on it goes.

A typical example is the Bahamas, where major South American organized crime figures dumped cocaine in the Bahamas simply to pay for services they were rendering to the organized criminals there. Crack was the product the Bahamians went to. It is considered a real epidemic there that is going to take a lot of their resources and a lot of their efforts to try to eliminate, because the addict population is in place.

That same situation can occur in Canada. It has not yet to the extent that it has in the United States, but it could. Cocaine is the second most popular drug next to marijuana in this country, and it is increasing in popularity. The obvious way to ingest cocaine for many is through smoking of crack.

The Chairman: On the example you gave on page four of your brief, you said among other things that in a recent case a representative of a Mexican trafficking organization entered a Vancouver bank with $800,000. First of all, tell me, how recent was that?

A/Commr Stamler: I believe it is about a year and a half ago.

The Chairman: I take it the bank in question notified the RCMP.

A/Commr Stamler: In that particular case, I think we found out about it after the fact. The bank in that case did not notify us.

The Chairman: Well, it is interesting you should say that, because earlier today we had representatives of the Canadian Banker's Association who said over the last few years they have developed internal policies to combat that sort of thing. Is this one that has slipped through the cracks? I guess you are not in a position to say, but would you care to identify which bank that was?

• 1640

A/Commr Stamler: I do not know if I should do that. I will if I am pressed. With respect to whether that is an isolated situation, it is always dependent upon the bank manager and the bank officials present when those transactions occur. We have found in many cases that bank managers and bank employees want to increase their bank deposits. That is the name of the game they are in, and I think that sometimes they tend to overlook some of the policies of the bank.

[*Traduction*]

Selon des chiffres renversants, 78 p. 100 de ceux qui utilisent du crack pour la première fois succombent à l'accoutumance instantanée. La désintoxication d'une personne accoutumée au crack coûte très cher, ainsi, quand une personne est accoutumée, le coût augmente automatiquement en raison de l'expansion du marché. La demande augmente, et le cycle se perpétue.

L'exemple typique est celui des Bahamas, où un dirigeant bien connu de la pègre sud-américaine a déversé des quantités énormes de cocaïne pour rémunérer les services rendus à des figures de la pègre à cet endroit. Les Bahamiens se sont convertis au crack. Le problème prend là-bas des proportions épidémiques, et il faudra que les Bahamas consacrent une proportion importante de leurs ressources et de leurs efforts à l'élimination de cette substance, étant donné la forte proportion de la population qui y est accoutumée.

La même situation pourrait survenir au Canada. Le phénomène n'a pas encore atteint l'ampleur qu'il a aux États-Unis, mais la possibilité existe. Après la marijuana, c'est la cocaïne qui fait le plus d'adeptes au Canada, et sa popularité ne cesse d'augmenter. La façon la plus évidente de consommer la cocaïne, c'est de fumer le crack.

Le président: À la page 4 de votre mémoire, vous donnez un exemple et vous dites, entre autres, qu'un représentant d'une organisation de trafiquants mexicains s'est présenté récemment dans une banque de Vancouver pour y déposer 800,000$. D'abord, pouvez-vous me dire à quand cela remonte?

Comm. adj. Stamler: C'était il y a environ un an et demi.

Le président: J'ose croire que la banque en question a communiqué avec la GRC.

Comm. adj. Stamler: Dans ce cas-là, je crois que nous avons été avertis après le fait. La banque ne nous a pas avertis.

Le président: C'est curieux que vous nous disiez cela puisque nous avons entendu plus tôt les représentants de l'Association des banquiers du Canada qui nous ont dit avoir mis en place, depuis quelques années, des politiques internes de lutte contre ce genre de choses. S'agit-il d'un cas qui faisait exception? J'imagine que vous n'êtes pas en mesure de nous le dire, mais accepteriez-vous de nommer la banque en question?

Comm. adj. Stamler: Je ne sais pas si je dois le faire. Je le ferai si vous insistez. Pour ce qui est de savoir s'il s'agissait d'un cas isolé, il me faudrait répondre que c'est au gérant de la banque et aux employés présents lorsque ces transactions sont faites qu'il appartient d'agir. Nous avons constaté, dans de nombreux cas, que les gérants et les employés de banque veulent avant tout augmenter leurs dépôts. Ils sont là pour cela et ils ont parfois tendance à faire fi de certaines politiques de la banque.

[*Text*]

I might point out as well that when we are talking about financial institutions, many of the laundering systems in place go through trust companies not controlled by the major banks. Secondly, the B banks in this country are very much involved in dealing with a lot of the transfer of funds for the various ethnic communities that Superintendent Egan spoke of because of the close links to these people. The B bank therefore does business with the A bank; and I believe the Canadian Banker's Association, when they spoke about the strict policy that they had in place, were speaking largely for the major A banks that they represent, although I suppose the B banks are in part involved as well. But the trust companies are not.

The Chairman: Is that what you are suggesting in this case—the $800,000, which bank employees presumably spent several hours counting?

A/Commr Stamler: That was an A bank. That was the bank that may have been represented here.

Mr. Redway: Did he impose a service charge for counting it?

The Chairman: In their testimony, they say the banks over the past few years have implemented programs to prevent the flow of criminally obtained funds through our payment system. Have you noticed a change, quite apart from this particular case, in the level of co-operation with the banks in this particular area?

A/Commr Stamler: In some cases. But first of all let me say that the Canadian Banker's Association and the security officers of the major banks have been very co-operative, and so have the senior executive officers of those banks. I think their intent is good. The point is that they are going to be in a position to report these kinds of transactions when they see or suspect that there is criminality attached to the delivery of that particular money. This means that on the cases that are obvious, we will get information. They believe there is a crime being committed with respect to the depositing of money and that is when they will call us. They will call the police if a person comes in with a machine gun under his arm and a ski cap. They will also report when they believe a fraud is occurring. They will also report when they suspect the money a person is depositing is the proceeds of an illegal activity, but they have to have some means of suspecting that.

Some employees and some managers may meet a higher standard than others. It is all subjective in terms of deciding whether or not this is a case that falls into that category. They have been very co-operative, I must say, in respect of the major cases. The one we speak of is an unusual situation, considering their current position.

[*Translation*]

Je me dois de signaler que nous parlons ici d'institutions financières et que dans de nombreux cas les fonds sont recyclés auprès de compagnies de fiducie et non pas des grandes banques. Par ailleurs, les banques canadiennes de l'annexe B font énormément de transferts de fonds pour le compte des diverses communautés ethniques dont a parlé le surintendant Egan en raison des liens étroits qui les unissent à ces gens. Une banque de l'annexe B ne fait donc pas affaires avec une banque de l'annexe A, et je crois que, quand ils parlaient de la politique très stricte qu'ils ont adoptée, les représentants de l'Association des banquiers du Canada parlaient essentiellement des grandes banques de l'annexe A que représente l'association, même si certaines banques de l'annexe B en font partie aussi. Or, les compagnies fiduciaires ne sont pas membres de l'association.

Le président: Quand vous avez parlé des 800,000$ que les employés de la banque ont mis des heures à compter, vouliez-vous parler d'une institution appartenant à ce groupe?

Comm. adj. Stamler: Il s'agissait d'une banque de l'annexe A. C'était donc une banque représentée par l'association.

M. Redway: Ont-ils prélevé des frais de service pour le comptage de cet argent?

Le président: Lorsque l'association a comparu, elle nous a dit que les banques avaient mis en oeuvre depuis quelques années des programmes visant à prévenir l'acheminement, par notre système de paiement, de fonds provenant d'activités criminelles. Mis à part ce cas, avez-vous noté une plus grande coopération des banques à cet égard?

Comm. adj. Stamler: Dans certains cas. Mais permettez-moi de dire d'abord que l'Association des banquiers du Canada et les agents de la sécurité des grandes banques se sont montrés très coopératifs, comme d'ailleurs les dirigeants principaux de ces banques. Ils sont animés de bonnes intentions. Le point essentiel à retenir, c'est qu'ils seront en mesure de nous aviser lorsqu'ils constateront ou soupçonneront que ces fonds proviennent de transactions criminelles. Par conséquent, dans les cas évidents, l'information nous sera transmise. Lorsqu'ils ont des raisons de croire que les fonds déposés proviennent d'une activité criminelle, ils communiqueront avec nous. Ils communiqueront avec la police si une personne portant un passe-montagne se présente avec une mitraillette sous son bras. Ils communiqueront aussi avec nous s'ils croient qu'il y a fraude. Ils communiqueront aussi avec nous s'ils soupçonnent que l'argent qu'une personne dépose provient d'une activité illégale, mais ils doivent être en mesure de le soupçonner.

Des employés et certains gérants de banque ont peut-être plus de principes que d'autres. Lorsqu'il s'agit de décider si une transaction appartient à cette catégorie, la décision ne peut être que subjective. Je dois dire que, pour les affaires les plus importantes, les banques se sont montrées très coopératives. Le cas dont nous avons parlé est inhabituel.

[*Texte*]

The Chairman: Those unscrupulous and dishonest members of the legal profession must be a very tiny minority. Would you not agree, commissioner?

A/Commr Stamler: I agree.

The Chairman: The smallest of all minorities.

A/Commr Stamler: It is interesting that sometimes the tiny minority get themselves into a position where they do a lot of damage.

The Chairman: It is the same in all walks of society.

Thank you very much for your testimony, gentlemen.

Supt Egan: Thank you.

The Chairman: This committee stands adjourned until the call of the Chair.

[*Traduction*]

Le président: Ces membres de la profession juridique qui sont malhonnêtes et sans scrupules doivent représenter une très petite minorité. Ne le croyez-vous pas, monsieur le commissaire?

Comm. adj. Stamler: Je suis d'accord.

Le président: La plus petite de toutes les minorités.

Comm. adj. Stamler: Il reste néanmoins que les petites minorités arrivent parfois à causer énormément de dommage.

Le président: C'est vrai dans tous les segments de la société.

Je vous remercie d'être venus, messieurs.

Sdt Egan: Merci.

Le président: La séance est levée jusqu'à nouvelle convocation du président.

May 10, 1988 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act]

EVIDENCE

[Recorded by Electronic Apparatus]

[Texte]

Tuesday, May 10, 1988

• 1537

The Chairman: We will bring the committee to order and welcome to the witness seat the Hon. Ray Hnatyshyn, Minister of Justice, Attorney General of Canada as the final witness before we go into clause by clause study of Bill C-61. Mr. Minister, you might wish to introduce the officials with you and then tell us how you would like to proceed.

Hon. Ray Hnatyshyn (Minister of Justice): Thank you, Mr. Chairman. I appreciate the opportunity to be here again. I will introduce the officials whom I think probably are known to many of you, but for the record, they are are Richard G. Mosley, Senior General Counsel, Criminal and Family Law Policy Directorate of the Department of Justice, and John McIsaac, Counsel, Criminal Law and Policy Section of the Department of Justice.

Mr. Robinson: Does the minister have a copy of his statement for the committee?

Mr. Hnatyshyn: I do not. I have notes prepared which I scribbled in the index. I wanted to go over some of these items and I thought it would be useful to comment on the basis of some of the information which has been brought before the committee. I will try to make this as brief as possible.

Mr. Robinson: I just thought perhaps there might be a copy of the statement.

Mr. Hnatyshyn: I do not have one. As a matter of fact, I was scratching it out again this morning. I looked at it before the last abortive attempt to meet and then today I had a look at it again. I have added a few additional things that I thought I should mention to you.

Mr. Redway: That is what happens when you do not answer the question in Question Period.

Mr. Hnatyshyn: Well, this is the case. On the other hand, as we say in Question Period, no news is good news, is it not?

Mr. Redway: Certainly.

• 1540

Mr. Hnatyshyn: With your permission, I would maybe just address some remarks about some of the things that have been brought forward by witnesses, and then I would be glad to answer questions.

I wanted to start by saying to you that I was pleased to hear of favourable comments by witnesses in relation to the pressing need for this enterprise regarding crime

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le mardi 10 mai 1988

Le président: Je déclare la séance ouverte. Je souhaite la bienvenue au ministre de la Justice et procureur général du Canada, M. Ray Hnatyshyn. Il s'agit du dernier témoin que nous entendrons avant l'examen article par article du projet de loi C-61. Monsieur le ministre, si vous voulez bien nous présenter les collaborateurs qui vous accompagnent, puis nous dire de quelle façon vous comptez présenter votre témoignage.

L'honorable Ray Hnatyshyn (ministre de la Justice): Merci, monsieur le président. Je suis heureux de comparaître ici à nouveau. Vous connaissez sûrement déjà mes collaborateurs, mais je vais quand même vous les présenter pour mémoire. Il s'agit de M. Richard G. Mosley, avocat général principal, Sous-direction de la politique en matière de droit pénal et familial, du ministère de la Justice, et de M. John McIsaac, conseiller juridique, Section de la politique en matière de droit pénal, également du ministère de la Justice.

M. Robinson: Le ministre a-t-il une copie de sa déclaration pour le Comité?

M. Hnatyshyn: Non. Il s'agit de notes que j'ai gribouillées. Je voulais passer en revue certains points qui ont été soulevés en comité. Je serai aussi bref que possible.

M. Robinson: Je me demandais seulement s'il y avait une copie de la déclaration.

M. Hnatyshyn: Je n'en ai pas. De fait, j'étais encore à gribouiller ce matin. J'y ai jeté un coup d'oeil avant la dernière fois où nous avons essayé sans succès de nous réunir, puis aujourd'hui encore. J'ai fait quelques ajouts.

M. Redway: C'est ce qui arrive lorsque l'on ne répond pas pendant la période des questions.

M. Hnatyshyn: J'imagine. Par contre, on sait qu'à la période des questions, pas de nouvelles, bonnes nouvelles, n'est-ce pas?

M. Redway: Effectivement.

M. Hnatyshyn: Si vous me le permettez, j'aimerais faire suite à certaines interventions des témoins, après quoi je me ferai un plaisir de répondre à vos questions.

Tout d'abord, j'aimerais dire à quel point je suis heureux de constater que le projet de loi ayant trait à la criminalité érigée en entreprise est vu d'un bon oeil par

[*Texte*]

legislation in Canada. In particular I wanted to commend the witnesses from the National Criminal Justice Section of the Canadian Bar Association and the Criminal Lawyers Association, who indicated their general agreement with the necessity in a democratic society for proceeds-of-crime legislation of some nature.

This is not to say that they were entirely and absolutely enthusiastic proponents of this bill. However, their acknowledgement of the need of this type of legislation was a more constructive contribution to the work of the committee than we have received from the defence bar in the past. Those of us who have sat on this committee know that they have been far more critical of this type of legislation in the past. I take minor endorsements as an indication that we are making some very substantial progress.

While I am not persuaded by their specific criticisms of the legislation, I want to take the opportunity to express to them sincerely my appreciation for their involvement in the process.

As you know, I regard this bill to be a fundamentally important initiative in the effort to control organized and profit-motivated crime. It provides the legal tools required to do that job, which had been lacking in our criminal law, as you heard from Assistant Commissioner Stamler of the RCMP and the representatives of the Canadian Association of Chiefs of Police.

I appreciate the advent of the Charter of Rights and Freedoms. It has altered the rules of the game somewhat in relation to the investigation and prosecution of all criminal offences. On the other hand, I am confident that the procedures laid down in this bill will pass constitutional muster when the provisions are tested in court.

As some members of the committee have already noted, this proposal is intended to be a tough and effective tool against enterprise crime. I would, however, remind everyone of my continued intention to create a fair procedure in relation to accused persons as well as to innocent third parties who become involved with crime proceeds.

I admit that this legislation is, in some aspects, susceptible of being described as complex. The reason for it is that there are many necessary mechanisms provided throughout the seizure restraint and forfeiture process to ensure ample opportunity for any aggrieved party to claim redress from the courts. It is in the interests of making sure that protection is afforded to innocent people that we have put in a process that does require some complexity and some process.

I note from a review of a transcript of the hearings that there was concern voiced about the lack of double criminality in the application of the proposed laundering offence in proposed section 420.1). In fairness, the

[*Traduction*]

les témoins. J'aimerais plus spécialement louer les témoins de la Section nationale de droit pénal de l'Association du barreau canadien et de la Criminal Lawyers Association, qui considèrent qu'une loi relative aux produits de la criminalité s'impose dans une société démocratique.

Sans affirmer qu'ils se font les ardents défenseurs du projet de loi, on peut dire qu'ils reconnaissent sa nécessité: ce faisant, leur participation aux travaux du Comité se révèle plus constructive qu'elle ne l'a été dans le passé. Ceux d'entre nous qui ont siégé au Comité savent qu'ils ont par le passé été considérablement plus hostiles à ce genre de loi. Pour moi, même les appuis assortis de réserves sont la preuve que nous faisons des progrès.

Bien que je ne sois pas convaincu du bien-fondé de leurs critiques à l'endroit du projet de loi, j'aimerais les remercier d'avoir participé à son examen.

Vous savez que je considère ce projet de loi comme un instrument de première importance dans notre lutte contre la criminalité organisée et motivée par le profit. Le projet de loi C-61 nous fournira les moyens juridiques pour combattre cette forme de criminalité et comblera ainsi une lacune de notre droit pénal, comme l'ont affirmé le commissaire adjoint de la GRC, M. Stamler, et les représentants de l'Association canadienne des chefs de police.

Je suis heureux que la Charte des droits et libertés ait été adoptée. Son adoption a quelque peu modifié les règles du jeu pour ce qui est des enquêtes et des poursuites intentées relativement aux infractions criminelles. Par ailleurs, je suis persuadé que les procédures prévues dans le projet de loi seront jugées constitutionnelles par les tribunaux devant lesquels elles seront contestées.

Comme certains membres du Comité l'ont constaté, le projet de loi vise à nous permettre de lutter énergiquement et efficacement contre la criminalité organisée. Toutefois, j'aimerais vous rappeler que j'entends instituer une procédure qui soit juste pour les accusés et les tiers innocents touchés par les produits de la criminalité.

J'admets que certains aspects du projet de loi peuvent être qualifiés de complexes, mais il ne peut en être autrement, vu les nombreux mécanismes que nécessitent les ordonnances de saisie, de blocage et de confiscation pour donner la possibilité à toute partie lésée de demander un redressement aux tribunaux. C'est pour s'assurer que les innocents soient protégés que les mécanismes sont si complexes.

Je constate qu'au cours des audiences, certains se sont inquiétés de l'absence du principe de la double criminalité dans l'application de la disposition relative à l'infraction de recyclage des produits de la criminalité, à

[*Text*]

witness, Mr. Allan Gold, from the Criminal Lawyers Association, admitted that his concern did not originate with the presentation of Bill C-61, but related to amendments to section 312 of the Criminal Code some 12 years ago. Specifically, he was underlining the fact that conduct that generated property in a jurisdiction outside Canada did not necessarily have to be defined as criminal in that country as long as the conduct was criminalized in this country for section 312 to apply. That has been the law of Canada respecting the receiving of property obtained by the commission of an indictable offence since our Criminal Code was first enacted in 1892.

I believe that Mr. Gold has provided no evidence that the scenario he described has in fact occurred in the intervening years. I think that the prospect of its taking place is extremely remote. However, it is within the competence of Canada to impose controls on the sources of property possessed by individual residents here. I would just remind members of the committee that it is, as they say in the double negative, not inconceivable or indeed it is conceivable that a country could succumb to the financial influence of enterprise offenders such as the drug barons of South America and repeal all their drug-control legislation, which would place us in a position where the proceeds from that type of property, which is illicit here, would not be available to us if we took that view.

• 1545

If the dual criminality applied, the present possession offence, section 312—the new laundering offence in these circumstances—Canada would be vulnerable to the influx of drug proceeds generated in those jurisdictions. I do not believe any of us would wish that outcome.

For that reason and for the practical concern that proof of double criminality would further complicate each proceeding—unnecessarily, in my view—I do not think we should hasten to change a rule which has been part of our law for so many years.

The same witness also registered concern that subsection 420.12(1) entitled a peace officer to seize property that was not specifically authorized in the search warrant. This empowers the judge issuing a warrant to authorize such seizures, known in legal jargon as "plain-view seizures". Such plain-view seizures are not new. They have existed for many years in relation to routine search warrants under the authority of section 445 of the Criminal Code, and have not encountered any Charter of Rights vulnerability that I know of.

Given the distinct possibility that unspecified property found by the police officer during the course of his search would disappear while the police re-attended before a judge for an additional seizure warrant, and given the

[*Translation*]

l'article 420.11. En toute justice, M. Allan Gold, de la Criminal Lawyers Association, a admis que sa crainte ne découle pas de l'introduction du projet de loi C-61, mais plutôt des modifications apportées à l'article 312 du Code criminel, il y a 12 ans. Il a insisté en particulier sur le fait que la conduite qui a permis l'acquisition de biens dans un pays autre que le Canada n'a pas à être considérée comme criminelle dans ce pays pour que l'article 312 s'applique, pour autant que cette conduite soit une infraction criminelle au Canada. C'est ce que prévoit le droit canadien concernant les biens obtenus par la perpétration d'une infraction criminelle depuis l'entrée en vigueur du Code criminel, en 1892.

M. Gold n'a pas prouvé que la situation décrite se soit jamais présentée depuis et, à mon avis, il y a peu de chances qu'elle se présente jamais. Toutefois, le Canada a toute compétence pour réglementer la source des biens appartenant à des personnes résidant au Canada. Je rappelle aux membres du Comité qu'il n'est pas inconcevable qu'un pays cède aux pressions financières des personnes coupables d'infractions de criminalité organisée, comme les rois de la drogue en Amérique du Sud, et abroge toutes les lois régissant le trafic des drogues. Dans un cas comme celui-là, il ne nous serait pas possible de confisquer les produits de ces actes criminels.

Si, dans ce cas, le principe de la double criminalité s'appliquait à l'infraction relative à la possession, article 312, et à la nouvelle infraction concernant le recyclage des produits de la criminalité, le Canada pourrait devenir un havre pour les personnes désirant investir les produits obtenus à l'étranger grâce au trafic des drogues. Je suis convaincu qu'aucun de nous ne souhaite une telle chose.

Compte tenu de ce fait et du fait que la nécessité d'établir la double criminalité compliquerait chaque cause—inutilement, à mon avis—nous ne devons pas nous empresser de changer une règle qui est partie intégrante de notre droit depuis longtemps.

M. Allan Gold s'inquiète aussi du fait que le paragraphe 420.12(1) autorise un agent de la paix à saisir des objets qui ne figurent pas dans le mandat de perquisition. Le projet de loi confère au juge le pouvoir de délivrer un mandat qui autorise de telles saisies, qui sont connues sous le nom de «saisie d'objets en vue» dans le jargon juridique. De telles saisies ne sont pas nouvelles; elles se font depuis de nombreuses années dans le cadre de l'exécution de mandats de perquisition courants aux termes de l'article 445 du Code criminel, et que je sache, elles n'ont jamais fait l'objet de contestations fondées sur la Charte des droits et libertés.

Étant donné qu'il est fort possible que des biens non spécifiés découverts par un policier au cours d'une perquisition disparaissent au moment où celui-ci doit retourner devant le juge pour obtenir un autre mandat de

[*Texte*]

ample opportunities to review such seizures provided for in this legislation, I would again ask that members leave this provision intact.

Because of the nature of enterprise crime, the authorities will in many cases be unable to know with precision the extent of an offender's illicit holdings that may be found. In particular, this will happen when an offender has laundered his assets. Representatives from both associations representing the defence bar expressed concern in relation to the use of the words "appears to be innocent" in the context of applications for relief from seizure, restraint or forfeiture. Specifically, a complaint has been registered that this is, in I think these words, a "novel departure" from the norm in criminal law in Canada. I disagree.

Similar words have been used for many years in the Customs Act for application for the relief and forfeiture there when assets are seized. The same principle under the provisions of the Customs Act appears to be innocent.

In addition, since 1961, section 11 of the Narcotics Control Act contains limited forfeiture provisions. The term is well recognized and routinely employed in Canadian legislation. We are therefore incorporating a familiar concept into this "proceeds of crime" initiative.

In response to the criticism that was brought forward—that this approach offends the Charter of Rights—I can advise the committee that the British Columbia Court of Appeal very recently found no constitutional infirmity with this expression, in relation to the guarantee of a fair hearing and to the presumption of innocence. At the Court of Appeal level, at least the manner has been addressed in respect to this approach. I am confident the provision is neither an offence to the Canadian Bill of Rights nor to the Canadian Charter of Rights and Freedoms.

I am aware that the legislation contains a provision lowering the normal onus of proof of beyond a reasonable doubt concerning the connection between the substantive offence for which the offender was prosecuted and convicted, and the property that constitutes the illicit fruits of that crime.

This provision specifically responds to a recommendation from the 1983 "Enterprise Crime Study Report" and was viewed in that document as being of fundamental necessity, given the elaborate attempts made to disguise the tainted origins of assets derived from criminal activity.

Mr. Robinson: Sir, is that the federal-provincial report?

Mr. Hnatyshyn: Yes it is.

[*Traduction*]

saisie, et comme, aux termes du projet de loi, ces saisies peuvent facilement être révisées, je vous demanderais de ne pas amender cette disposition.

De par la nature même de la criminalité organisée, les autorités seront souvent dans l'impossibilité de déterminer de façon précise quelle quantité de biens acquis de façon illicite peut être trouvée. C'est ce qui se produit notamment dans le cas de «biens recyclés». Les représentants des deux associations des avocats de la défense ont fait part de leur inquiétude concernant l'usage des termes «semble innocent» employés dans la disposition, ce qui permet au prévenu de demander d'être soustrait à une ordonnance de saisie, de blocage ou de confiscation. On a particulièrement critiqué cette formulation, qui constituerait un nouvel écart par rapport à la norme du droit pénal au Canada. Je ne suis pas de cet avis.

C'est sensiblement dans les mêmes termes que la disposition relative aux demandes d'exemption de la confiscation a été formulée il y a de nombreuses années dans la Loi sur les douanes. Le recours à ce principe dans la Loi sur les douanes ne semble causer aucun problème.

En outre, l'article 11 de la Loi sur les stupéfiants, concernant la confiscation, est rédigé de la même façon depuis 1961. Cette expression est admise et employée couramment dans les textes législatifs au Canada. Nous n'avons fait qu'insérer ce concept bien connu dans le projet de loi sur les produits de la criminalité.

En réponse aux critiques voulant que cette formulation contrevienne à la Charte des droits, j'aimerais signaler au Comité que la Cour d'appel de la Colombie-Britannique vient de confirmer la constitutionnalité de cette expression par rapport au droit à un procès juste et équitable et à la présomption d'innocence. Je suis persuadé que cette disposition ne va pas à l'encontre de la Déclaration des droits ou de la Charte canadienne des droits et libertés.

Je sais pertinemment qu'une disposition de ce projet de loi atténue l'obligation d'usage de prouver hors de tout doute raisonnable qu'il existe un lien entre l'infraction réelle, qui a entraîné la mise en accusation et la condamnation du contrevenant, et les biens constituant les produits illicites de ce crime.

Cette disposition a été insérée sur la recommandation expresse du Groupe de travail de l'étude sur la criminalité érigée en entreprise. Dans son rapport publié en 1983, ce groupe de travail jugeait que cette précision s'avérait absolument nécessaire si l'on considère le soin avec lequel on s'emploie à dissimuler la provenance délictueuse des biens résultant de la participation à des activités criminelles.

M. Robinson: Monsieur Hnatyshyn, s'agit-il du rapport fédéral-provincial?

M. Hnatyshyn: Oui, justement.

[*Text*]

The lowering of the standard of proof at the sentencing stage of a criminal proceeding has recently survived a constitutional attack in the United States. There, it was specifically approved at the Federal Court of Appeal level in an application of their proceeds of crime legislation, which is interesting.

Incidentally, this burden only applies after trial, where the offence to which the property relates has been proven beyond a reasonable doubt. What we are talking about is not the question of guilt or innocence but the onus of proof with respect to the proceeds of crime of the offence for which the accused has been convicted.

• 1550

Placing this in a Canadian context, I am certain that the provision will be seen as a reasonable limit, given the present threat, for example in the areas of drug trafficking, and with respect to the real problems I think we face with respect to organized crime.

I wanted to thank the witnesses from the police community for their input in relation to the extent and complexity of organized crime. I think it is clear that it has international as well as domestic implications. I am sure it is now clear that the proceeds of crime and the mutual legal assistance bills are a package that must be addressed and acted upon at the same time. In that regard I was pleased that this same committee will be dealing with Bill C-58 after the work on this bill has been concluded.

In any event I am sure that the picture of enterprise crime you will now have will satisfy you that this legislation will involve major investigations that will be both time and resource consuming. The need for a six-month limitation on the new seizure and restraint powers is obvious, especially when it is balanced by the immediate-review procedure in the legislation.

The representatives of the Canadian bar expressed considerable concern about the parts of the initiative that may have an impact on legal fees. Once again the Canadian bar is ever vigilant with respect to the question of fees. I am going to try to address this matter in the best way I can in support of the provisions we have here.

The weight of the jurisprudence on this point from the American experience would deny any access to prima facie tainted assets for the purpose of a legal retainer. The allowance for what they term "Rolls Royce lawyers" is as offensive to them as allowing an accused to use proceeds from a bank robbery for his defence.

This bill, I hasten to add and underline, would leave the discretion to authorize the use of the alleged proceeds with the court for the purposes of legal fees and other

[*Translation*]

L'atténuation du degré de preuve au moment de la détermination de la peine a récemment été contestée devant les tribunaux américains. La Cour suprême des États-Unis l'a cependant déclarée conforme à la constitution, de même que la Cour d'appel fédérale, qui avait à appliquer la Loi sur les produits de la criminalité, ce qui est intéressant.

Ce fardeau de la preuve ne s'applique qu'après le procès, au niveau de la sentence, une fois qu'on a prouvé hors de tout doute raisonnable l'infraction en cause. Il n'est donc pas question ici de culpabilité ou d'innocence, mais bien du fardeau de la preuve par rapport aux produits de l'activité criminelle qui a entraîné la condamnation du coupable.

Si l'on se reporte à la situation canadienne, je suis convaincu que cette disposition sera considérée comme une «limite raisonnable», compte tenu de la menace que représente actuellement la criminalité organisée et, surtout, le trafic de stupéfiants.

Je tiens à remercier les représentants des corps policiers de nous avoir éclairés sur l'importance et la complexité de la criminalité érigée en entreprise. Celle-ci exerce manifestement son influence au pays comme à l'étranger. Il me paraît ne faire aucun doute que les projets de loi sur les produits de la criminalité et l'entraide juridique forment un tout et doivent être étudiés et adoptés ensemble. A cet égard, je suis heureux que vous procédiez à l'examen du projet de loi C-58 tout de suite après l'étude du projet de loi C-61.

Quoi qu'il advienne, je suis certain que le portrait que nous avons brossé de la criminalité érigée en entreprise vous convaincra que ce texte législatif se traduira par d'importantes enquêtes auxquelles il faudra consacrer beaucoup de temps et de ressources. La nécessité de fixer un délai de six mois dans le cas de l'application des nouvelles dispositions sur la saisie et le blocage est incontestable, surtout si le projet de loi prévoit une procédure de révision consécutive.

Les représentants de l'association des criminalistes ont été très préoccupés par les dispositions du projet de loi qui pourraient influer sur les frais juridiques. Une fois de plus, le barreau canadien fait montre de sa vigilance habituelle lorsqu'il s'agit de frais. Je vais m'efforcer d'aborder la question du mieux que je le puis, tout en appuyant les dispositions du projet de loi.

Selon la jurisprudence américaine sur ce point, des biens présumés d'origine criminelle ne doivent pas être employés pour payer les honoraires des avocats. Aux yeux des Américains, l'utilisation de fonds tirés de tels biens pour rémunérer «les avocats en Rolls Royce» est aussi insupportable que de permettre à un accusé d'utiliser le produit d'un vol de banque pour assurer sa défense.

Ce projet de loi autoriserait le tribunal à permettre l'emploi de ces prétendus produits de la criminalité pour payer les honoraires d'avocats et d'autres dépenses

[*Texte*]

expenses, but because these assets have been shown on reasonable grounds to have been tainted, the proposed legislation insists that the fees to be paid must be reasonable in the discretion and in the mind of the court, so you always have the court making that independent assessment with respect to the reasonableness not only of the amount but also of the appropriateness and applicability of using these proceeds for defence purposes.

I believe that this provision does strike a reasonable balance between the right to counsel of choice and the interest of state and forfeiture of the illicit proceeds of crime. I do not think it inappropriate to require justification for legal fees in these circumstances in the same fashion as for living and business fees. The provision of allowing an application for reasonable legal fees is in fact a notable improvement to the present law, and one which I think we have to acknowledge will ensure the constitutional right to retain and instruct counsel. I am sure that the court will be able to determine the parameters of such an inquiry in an appropriate fashion.

Generally speaking, this legislative initiative has received all-party support since its introduction on May 29, 1987. The only negative comment of any consequence has related to the issue of currency-transaction reporting. I wanted to deal with this matter now to try to make an assessment. Hopefully this might be helpful to members of the committee.

Throughout the process of the bill throughout Parliament I have never expressed an opinion that such a regime would not be useful to law-enforcement investigations. Obviously such a process would in fact be of assistance. It would be I think analogous for me and for any of us to say that a requirement that all persons be fingerprinted at birth would not be useful in the process of investigation and prosecution of crime.

However, there are different interests that I think must be balanced in making the possession of crime detection easier. So I reiterate what I said when I introduced this bill in Parliament: when a government is considering a substantial intervention, which this will be, into the area of the financial privacy of its citizens it must be assured that the proposal is necessary and cost-effective. When I speak of costs, I have in mind the costs to the public through the tax dollars required to administer the scheme and as consumers of financial services.

• 1555

I think we have to remind ourselves—and not that this is the case or there is any motivation for it—that if the purpose is to punish the banks or to make some sort of a system that will put the banks to the test, we should have no misunderstanding about the fact the costs will be borne, for any of these regimes, by the depositors, people who are bank customers, and ultimately the taxpayers, because not only will it require an administrative process within the banks, it will also require some agencies to

[*Traduction*]

Toutefois, comme ces biens ont été, dans une mesure raisonnable, jugés d'origine criminelle, le projet de loi insiste sur le fait que les honoraires doivent être raisonnables aux yeux du tribunal. Autrement dit, le tribunal se prononce en toute liberté, non seulement sur le montant raisonnable à accorder, mais aussi sur la question de savoir s'il est approprié et pertinent de s'en servir aux fins de la défense.

Je crois que cette disposition établit un juste équilibre entre le droit à un avocat de son choix et l'intérêt de l'État dans la confiscation des produits de la criminalité. Je ne crois pas qu'il soit déplacé de demander que les honoraires d'avocat soient justifiés dans de telles circonstances, comme c'est le cas pour des dépenses courantes et des dépenses d'affaires. Cette disposition est une amélioration du droit actuel et aidera à concrétiser la garantie constitutionnelle du recours à l'aide d'un avocat. Je ne doute pas que les tribunaux sauront déterminer de la façon qui convient les paramètres applicables à cet égard.

De façon générale, ce projet législatif a reçu l'appui de tous les partis depuis qu'il a été présenté, le 29 mai 1987. Le seul commentaire négatif d'importance concerne la question des rapports de transactions de devises. J'aimerais vous communiquer ici mon idée sur cette question, en espérant que cela puisse vous être utile.

Depuis que ce projet de loi a été présenté au Parlement, je n'ai jamais prétendu qu'un tel régime ne serait pas utile aux fins des enquêtes policières. Toute opinion contraire serait plus que naïve. Cela équivaudrait à dire que l'obligation de prélever les empreintes digitales de toutes les personnes à leur naissance ne serait d'aucune utilité pour les enquêtes criminelles et les poursuites.

Cependant, il existe d'autres intérêts dont il faut tenir compte, mis à part le fait de faciliter la lutte contre le crime. Je répète donc ce que je disais lorsque j'ai présenté ce projet de loi au Parlement: quand un gouvernement envisage d'intervenir de manière importante dans les activités financières privées des citoyens, comme il le ferait avec ce projet de loi, il doit être certain que ce sera nécessaire et efficient. Quand je parle de coûts, je songe aux deniers publics que devront verser les citoyens pour payer les frais d'administration du système, et aux coûts que devront assumer les consommateurs de services financiers.

Il importe de ne pas oublier, même si le but de ce projet de loi n'est aucunement de pénaliser les banques ou de leur causer des difficultés, que les coûts devront être assumés par les déposants, les clients des banques, ainsi que par les contribuables, car il faudra mettre en place non seulement des procédures administratives dans les banques elles-mêmes, mais aussi des organismes capables d'analyser la masse énorme d'informations que produiront ces rapports.

[*Text*]

scrutinize the voluminous information obtained through this reporting.

The question is whether it would be worth these costs in terms of the benefits to the criminal justice system it may provide. I do not think at this time we can justify an initiative, given the lack of adequate data to support it.

I would like to point out that in the last few years the banks have put into place programs to prevent the criminal element from laundering money through its payment systems. As the Canadian Bankers' Association representative testified this week, the banks have issued internal policies and procedures designed to improve staff awareness of the money-laundering problem.

I did want to correct one error made in certain comments in relation to the "Enterprise Crime Study Report". Nowhere in this report did it recommend the adoption of a system of currency transaction reporting. It only suggested that a study of the effectiveness of such a system be instituted. This is presently being done by officials of the federal Ministry of the Solicitor General, funded as a result of the development of a national drug strategy. I hope their report will be available in the near future.

Members of the committee may also be aware that the Department of National Revenue, Taxation, is presently examining the effectiveness of currency transaction reporting for tax law enforcement purposes. Moreover, I have always reserved the right to look at a system of mandatory currency transaction reporting for criminal law enforcement purposes, if and when a voluntary system does not prove adequate.

I am convinced, given the newly created protection from disclosure that is included in this legislation, that the financial community will co-operate in making this law work. It seems to me we are examining this whole question to get a proper analysis, and if the government in its wisdom with respect to income tax considerations decides to have a reporting there will be nothing to prevent us from piggy-backing to also make this information available for this type of prosecution. We discussed this in the initial stage.

There is a term used south of the border with respect to their arbitrary limit, which is $10,000, called "smurfing". A "smurfer" is a courier who makes the rounds around town and across the country to make sure the deposits are $9,900, under $10,000. It is the old idea that in government somebody can pass regulations and institute some sort of scheme and immediately the stupid criminals, who will never twig onto these things, will have this elaborate labyrinth, and these morons are all going to walk into this thing and make huge deposits. The only time these people are going to be found out is if Svend Robinson puts in a deposit of $15,000 and has no visible means of support; or Ray Hnatyshyn gets money from the sale of his house; or Bob Kaplan receives an inheritance.

[*Translation*]

La question est donc de savoir si ces coûts sont justifiés par rapport aux avantages que nous pourrons tirer au niveau de la justice pénale. A mon avis, nous ne pouvons pas justifier une telle initiative à l'heure actuelle, étant donné le manque de données adéquates.

Je tiens à vous rappeler que, depuis quelques années, les banques ont mis en place des programmes destinés à empêcher les criminels de les utiliser pour blanchir leur argent. Comme l'a déclaré cette semaine le représentant de l'Association des banquiers canadiens, les banques ont adopté des politiques et procédures destinées à sensibiliser leurs employés à ce problème.

Je tiens à corriger une erreur faite au sujet du rapport d'étude sur le crime organisé. Ce rapport ne contient en effet aucune recommandation visant l'adoption d'un système de communication d'informations sur les transactions en devises. Il recommandait seulement qu'on étudie l'efficacité d'un tel système, ce que font actuellement des représentants du ministère fédéral du Solliciteur général, grâce à des crédits obtenus au titre de la stratégie nationale de lutte contre la drogue. J'espère que les résultats de l'étude seront bientôt disponibles.

Les membres du Comité savent peut-être également que le ministère du Revenu national, Impôt, étudie actuellement l'efficacité des systèmes d'information sur les transactions en devises aux fins de l'application des lois fiscales. Par ailleurs, je me suis toujours réservé le droit d'envisager la mise en place d'un système obligatoire de communication d'informations sur les transactions en devises, aux fins de l'application des lois pénales, au cas où un système à participation volontaire s'avérerait insuffisant.

Etant donné les nouvelles mesures de protection contre la divulgation que contient ce projet de loi, je suis convaincu que les milieux financiers feront preuve de coopération. Si le gouvernement estime plus tard qu'il faut mettre en place un système d'information, pour des raisons fiscales, rien ne nous empêchera de nous greffer à ce système pour obtenir les informations requises aux fins des lois pénales. Nous en avons d'ailleurs déjà discuté à l'étape initiale.

Aux États-Unis, ceux qui agissent pour contourner la limite arbitraire, de 10,000$, sont appelés des «schtroumpfs». Un «schtroumpf» est un messager qui passe d'une banque à l'autre, d'une ville à l'autre, pour faire toute une série de dépôts de 9,900$, de façon à ne jamais dépasser la limite de 10,000$. Évidemment, le gouvernement s'était imaginé qu'il lui suffirait d'adopter un règlement et que les truands, qui sont évidemment des imbéciles caractérisés et ne comprennent rien à rien, continueraient de faire bêtement des dépôts énormes dans les banques. En fait, les seules personnes qui se feront attraper par un tel système seront des gens comme Svend Robinson, s'il fait jamais un dépôt de 15,000$ sans avoir de sources de revenus évidentes, ou Ray Hnatyshyn, s'il

[*Texte*]

Then their names, for sure, are going to be going into the central registry for all the people who are interested in what is going on.

Without overstating the case, this would involve us, I think, in a rather complex process. If I was convinced this was going to facilitate the tracing of funds—and this is really a question that is still open in my mind—we are committing, as far as I am able, in demonstrating that there are studies going on. There are other circumstances that may overtake us, but for the purposes of this legislation I am not sure we should get involved in intrusive . . . from the point of individuals' civil liberties, for the purposes of a particular problem here, a reportage situation . . . which allow people to be investigating all our individual citizens' private affairs.

• 1600

The other thing that has been brought up with respect to this bill has been the reference to the inclusion of prostitution-related offences in the list of enterprise crimes. These are prostitution-related offences because, as we all know, prostitution in itself is not an offence under the Criminal Code. But the offences are related to prostitution—street soliciting—and they are more appropriate here: living off the avails of prostitution, or keeping a common bawdy house.

Specifically, the criticism has been that this will affect individual offenders only and will not expose the upper-echelon participants. I think that is the criticism. In addition, the witnesses from the National Action Committee on the Status of Women and the Canadian Organization for the Rights of Prostitutes have denied any connection between organized crime and prostitution.

I just wanted to make this statement on their observations. Because of the nature of this legislation—involving supervision by the Attorney General, and the intervention of the higher courts for the purpose of process—it would be directed of necessity toward organized elements of criminal enterprise as opposed to the so-called street criminal. There is no point in trying to trace down a minor, because of the expense involved in the whole process. I think the reality, looking at this pragmatically . . . they will be looking for the larger enterprise-crime endeavours. So to employ a phrase from the hearings, "a hammer will not be employed to kill a fly".

Secondly, in addition to the financial statistics from the profits realized from prostitution as detailed in the "Enterprise Crime Study Report", I would refer members to page 379 of Vol. II of the Fraser report, the Royal Commission on Pornography and Prostitution:

> Prostitutes who are in what can be considered to be the stereotypical pimp-prostitute relationship, that is a

[*Traduction*]

dépose le produit de la vente de sa maison, ou Bob Kaplan, s'il fait un héritage. Vous pouvez alors être certains que leurs noms vont se retrouver dans le registre central.

Sans vouloir insister, je dois préciser que cela nous entraînerait dans une procédure assez complexe. Si j'étais convaincu que cela nous permettrait de trouver l'origine des fonds—et je ne le suis pas, pour le moment—j'irais peut-être plus loin; pour le moment, nous sommes prêts à attendre les résultats des études. Les choses changeront peut-être plus tard, mais dans le cadre de ce projet de loi, je ne pense pas qu'il soit justifié d'adopter des mesures qui constitueraient une ingérence excessive dans la vie privée des citoyens. Nous risquerions en effet de nous retrouver avec un système d'information permettant aux pouvoirs publics de faire enquête sur toutes les activités privées de chaque citoyen.

Autre chose qu'on a mentionnée au sujet de ce projet de loi: l'inclusion des infractions de prostitution dans la liste des infractions de criminalité organisée. On parle ici d'infractions reliées à la prostitution, car, chacun le sait, la prostitution n'est pas en soi une infraction au Code criminel. Il y a par contre des infractions qui sont reliées à la prostitution, telles que la sollicitation de rue, l'utilisation du produit de la prostitution ou la tenue d'une maison de débauche.

La critique formulée à ce sujet est que cette disposition touchera uniquement des contrevenants individuels, sans jamais atteindre les organisateurs. D'autre part, des témoins du Comité canadien d'action sur le statut de la femme et de la Canadian Organization for the Rights of Prostitutes ont nié l'existence de tout lien entre le crime organisé et la prostitution.

Ce commentaire m'oblige à apporter la précision suivante: étant donné la nature du projet de loi, fondé sur la surveillance exercée par le procureur général et le recours aux tribunaux supérieurs, il vise nécessairement ce qu'on appelle communément le crime organisé, et non ce qu'on appelle la petite criminalité ou la criminalité de rue. A quoi servirait de s'attaquer à de petits truands, considérant ce que cela coûterait? Soyons pragmatiques: ce sont les responsables du crime organisé que vise ce projet de loi. Autrement dit, pour répondre à la crainte d'un participant aux audiences, nous n'allons pas utiliser une massue pour écraser une mouche.

Deuxièmement, au sujet des statistiques détaillées figurant dans le rapport de l'étude sur le crime organisé au sujet des profits de la prostitution, je voudrais attirer votre attention sur cet extrait de la page 409 du deuxième volume du rapport Fraser, c'est-à-dire du rapport du Comité spécial d'étude de la prostitution et de la pornographie:

> Les prostituées qui répondent au stéréotype des relations souteneur-prostituée, c'est-à-dire contrainte et

[*Text*]

coersive and exploitative one, are unlikely to want to talk about their situation because of the violence that is likely to result when their pimps learn that they had been talking about the relationship.

These women work for men who set quotas for their daily earnings—with $200 to $300 being the most common figure—and who take 40% to 100% of the prostitutes' daily revenues. In some ways the relationship is most closely analagous to slavery. Prostitutes have no control over their lives. They are subject to constant exploitation and there are accounts of prostitutes being traded to another pimp to pay off debts or for money.

This insight into the pimp-prostitute relationship has also been described in a recent account by a former Canadian Outlaw motorcycle gang member, Cecil Kirby, in his book *Mafia Assassin*, in a chapter entitled "Girls for Sale":

> Girls disappeared for other reasons too. Sometimes they had to work as prostitutes and dancers in topless bars too long, and then they became too old and used physically at 16, and 17 and 18. Others tried to run away from the club members who owned them. Some cheated on the money they were supposed to turn over. And some just weren't making enough money, so they would get wasted. The bikers didn't want them running to cops and talking about what had happened to them—that could mean long stretches in jail.

I want to remind the members of the committee of the testimony of Superintendent Egan, Director of Criminal Intelligence Service Canada, where he clearly pointed to a link between the Outlaw motorcycle gangs and prostitution, especially in the Toronto and Montreal areas.

In my opinion, the evidence overwhelmingly supports the position that prostitution and organized crime are connected. The proceeds-of-crime legislation should apply to the profits that are realized in large scale from such criminal activity.

• 1605

I think a realistic assessment of this legislation is not directed towards the working girl, as has been pointed out. They are working towards those people who are exploiting women in a serious and degrading way. I think in those instances we should have the availability of this process for this "Enterprise Crime Study Report".

I thank the committee for its very hard work in hearing the witnesses. I thank the chairman for pointing out you are going to be dealing with clause-by-clause consideration. I think it is an important piece of legislation. The committee has worked very well. I think we can all take credit for putting through this legislation to the benefit of our society generally.

[*Translation*]

exploitation, ne veulent généralement pas parler de leur situation, étant donné les conséquences violentes qui pourraient en résulter si les souteneurs venaient à apprendre qu'elles l'ont fait.

Ces femmes travaillent pour des hommes qui leur fixent des quotas quotidiens, le chiffre le plus courant étant de 200 à 300$, et qui prélèvent de 40 à 100 p. 100 des sommes obtenues. En fait, la relation la plus proche que l'on puisse trouver avec la relation souteneur-prostituée est celle de l'esclavage. Les prostituées n'exercent aucun contrôle sur leur propre vie. Elles font l'objet d'une exploitation constante, et on a déjà entendu parler de prostituées vendues à un autre souteneur pour payer des dettes ou simplement pour avoir de l'argent.

Cette présentation du rapport souteneur-prostituée se retrouve également dans un livre récemment publié par un ancien membre du gang de motards Canadian Outlaw, Cecil Kirby, intitulé: *Mafia Assassin*, notamment au chapitre intitulé: *Girls for Sale*:

> Des filles disparaissaient également pour d'autres raisons. Parfois, elles avaient travaillé trop longtemps comme prostituées ou danseuses dans des bars de filles aux seins nus et elles étaient déjà devenues trop vieilles et trop usées physiquement, à 16, 17 ou 18 ans. D'autres tentaient d'échapper à l'emprise des membres de clubs qui les possédaient. D'autres ne donnaient pas tout l'argent qu'elles étaient censées donner. Certaines enfin ne gagnaient tout simplement pas assez d'argent; alors on les liquidait. Les motards ne tenaient certainement pas à ce qu'elles aillent raconter à la police ce qui leur était arrivé, car cela aurait pu entraîner de longs séjours à l'ombre.

Je tiens également à vous rappeler le témoignage du surintendant Egan, directeur du Service d'information criminelle du Canada, qui avait manifestement confirmé l'existence d'un lien entre les gangs de motards Outlaw et la prostitution, surtout à Toronto et Montréal.

A mon sens, l'existence d'un lien entre la prostitution et le crime organisé a été largement confirmée. Voilà pourquoi cette loi sur les produits de la criminalité doit s'appliquer aux profits énormes de cette activité criminelle.

L'analyse honnête du projet de loi montre qu'il n'est pas destiné à s'attaquer aux filles de rue, comme certains l'ont prétendu, mais plutôt aux personnes qui exploitent les femmes de manière grave et avilissante. Le rapport de l'étude sur le crime organisé montre que l'application de cette loi à cet élément du crime organisé est justifiée.

Je remercie les membres du Comité, qui ont beaucoup travaillé durant les audiences. Je remercie également le président pour le travail qu'il a fait au sujet de cet important projet de loi. Votre Comité a très bien travaillé. Je crois que nous pouvons tous être fiers d'avoir ainsi contribué au bien-être de la société.

[*Texte*]

Mr. Kaplan: Mr. Chairman, I would like the opportunity to just thank the minister for a very good comprehensive review of all the significant points made by witnesses. I am not satisfied yet with some of the answers he has given in his defences of his legislation, but he has certainly covered all the points worth taking most seriously.

In the Official Opposition, we continue to recognize the need for giving law enforcement this extra tool. I also appreciate your observation this is a powerful new weapon for law enforcement, which should be used with discretion. This troubles me a little, because I worry about the idea of giving the police a powerful tool, and counting on them to use it with discretion. I do not think I approve of this approach. When you give the police a powerful new tool, I think it is important the authority be prescribed, so we can be certain the powerful new tool will not be used to harass the working-woman prostitute, as you say. I will turn to this example first, because I am very concerned it will be abused unless we, on Parliament Hill, limit its scope.

You have described very well the evils of prostitution. The basic act of prostitution is not even a crime in our country, but the evil part of it, the exploitation of women that is involved, which you describe, whether by motorcycle gangs or by an individual, is serious, and we have a law against this.

But you have not persuaded me, by what you have just said, that this new tool of taking away the proceeds of crime, really ought to be put into this context. Do you not forget that living off the avails of prostitution applies to the partner of the prostitute, who could be sick.

We have an example of the witness. Probably you read the evidence of a woman who was sick or out of work for a while, and was supported by a prostitute. She is also now eligible for the treatment of this very powerful new tool, if the bill goes through. I do not think it is a proper police power, in this context.

Although you describe the evils of prostitution well, you did not really show that the, what I could call in its pejorative sense, the conventional wisdom that there is some kind of a link between prostitution and big bucks, and the stuff of movies or of the 1920s and 1930s, is really an accurate characterization of prostitution as we know it in our society today.

I am not approving of prostitution. I am not saying at the moment that we should change the Criminal Code about living off the avails of prostitution or keeping a common bawdy house, but in the analyses done of organized crime, is prostitution still an important part of it?

[*Traduction*]

M. Kaplan: Je voudrais commencer par remercier le ministre d'avoir répondu de manière très complète aux commentaires les plus importants des témoins. Certes, certaines de ses réponses ne me donnent toujours pas satisfaction, mais il est évident qu'il a pris très au sérieux les critiques formulées par les témoins.

L'Opposition officielle est toujours convaincue qu'il importe de donner cet outil supplémentaire à la police, et je suis heureux de vous avoir entendu souligner qu'il s'agit là d'un nouvel outil très puissant que les organismes d'exécution des lois se devront d'utiliser avec modération. Malgré tout, je n'aime pas l'idée qu'on puisse donner un outil aussi puissant à la police, en espérant que celle-ci pourra faire preuve de modération. Je ne pense pas pouvoir approuver une telle action. Lorsqu'on donne un outil puissant à la police, il est très important, me semble-t-il, d'expliquer clairement comment on pourra l'utiliser, si on veut avoir la garantie qu'il ne le sera pas pour harceler les prostituées elles-mêmes. J'évoque ce cas en premier, car il fait très bien ressortir les risques d'abus, si nous n'imposons pas certaines limites.

Vous avez très bien décrit le fléau que constitue la prostitution. Certes, l'acte même de la prostitution n'est même pas un crime dans notre pays; ce qui l'est, c'est l'exploitation des femmes, que ce soit par des gangs de motards ou par des particuliers, et nous avons déjà une loi pour la réprimer.

Ce que vous avez dit ne m'a pas du tout convaincu que ce nouvel outil destiné à confisquer les produits de la criminalité devrait être mis à la disposition de la police. N'oubliez pas que vivre du fruit de la prostitution peut s'appliquer au partenaire de la prostituée, qui pourrait fort bien être une personne malade.

Un témoin nous a donné un tel exemple. Avez-vous lu le témoignage de cette femme qui s'était retrouvée au chômage parce qu'elle était malade, et qui avait survécu grâce à l'aide d'une prostituée? Maintenant, si le projet de loi est adopté, cette femme risque d'être prise dans le piège créé par ce nouvel outil extrêmement puissant. Je ne pense pas que cela soit approprié, dans ce contexte.

Bien que vous ayez décrit adéquatement le fléau que constitue la prostitution, vous n'avez pas vraiment validé l'idée conventionnelle, si je puis dire, qu'il existe un lien entre la prostitution et les gros sous, comme pouvaient le montrer les films noirs des années 20 et 30. Croyez-vous vraiment que cela décrit bien la prostitution contemporaine?

Entendez-moi bien: je n'approuve pas la prostitution. Je ne recommande aucunement qu'on modifie le Code criminel pour en supprimer les dispositions concernant les personnes qui vivent du fruit de la prostitution ou qui tiennent une maison de débauche. Par contre, si on veut bien analyser le crime organisé aujourd'hui, peut-on vraiment dire que la prostitution en constitue un élément important?

[Text]

• 1610

You talked about motorcycle gangs; is that all there is to it? I am not saying it is not serious, but if that is all there is to it, I do not think you have made a good case because the biker gangs we are talking about make their big money in the drug business and surely we ought to be able to get them on the drug connection rather than having to worry about the prostitution connection.

I would like to urge you either to give more evidence or to agree that we can get the illegal activities of bikers without having to put pressure on prostitutes.

Mr. Hnatyshyn: Let me answer your question. As a legal principle, unless we define clearly or make notable exceptions that are justifiable, we cannot have a different standard of justice with respect to any criminal offence, and so the application is for living with that particular enterprise crime.

I think I should correct maybe one thing which I may have inadvertently said as a premise for your question—that this power is one which can be used by the police. This allegation was made by different fora in different circumstances. This is not the case. All the remedies available here are under court supervision; the prosecution and the Attorney General. It is always the case.

Mr. Kaplan: I understand that.

Mr. Hnatyshyn: Yes. So it is not as if the police arbitrarily come up and are able to threaten the prostitute on the street.

There has been evidence before you which I alluded to which does connect this matter to organized crime. I can spend some time, there are lots of stories, whether it is motorcycle gangs or other networks. . .

Mr. Kaplan, you have had enough experience as Solicitor General and also as a member of this committee to know that women are traded between Buffalo and Toronto. You know there is an international dimension to this thing.

This is not volunteer week, this is where women are dealt with as chattels in a very cruel and oppressive way by an element of society that I personally, as Attorney General of Canada, have no particular interest in exempting from the application of this legislation.

I say that I think the question of prostitution is a very complex one. We have discussed it with respect to

[Translation]

Vous avez parlé des gangs de motards. Vous n'avez rien d'autre? Je ne veux pas dire que ce n'est pas un problème grave, mais si c'est tout ce que vous avez comme argument à nous fournir, vous n'allez quand même pas essayer de nous faire croire que c'est par la prostitution qu'ils font beaucoup d'argent. Si vous voulez parler de gangs de motards, vous savez bien que c'est la drogue qui leur permet de gagner beaucoup d'argent, et nous devrions bien être capables de les coincer pour les infractions sur la drogue plutôt que sur la prostitution.

Je vous invite donc à réexaminer très sérieusement ce problème, car, vous en conviendrez, nous devrions être capables de réprimer les activités illégales des motards sans commencer à nous attaquer aux prostituées.

M. Hnatyshyn: Je tiens à répondre à cette question. Sur le plan juridique, à moins que l'on ne puisse clairement définir des infractions distinctes, ou prévoir des exceptions justifiables, on ne peut pas adopter un comportement différent à l'égard d'une infraction donnée. Cela signifie que ce projet de loi doit s'appliquer à toutes les activités du crime organisé.

Peut-être devrais-je corriger une chose que vous avez dite au début de votre question, à savoir que ce nouvel outil pourra être utilisé par la police, critique que j'ai déjà entendue ailleurs. Cela n'est pas du tout le cas. Toutes les mesures prévues ici sont des mesures judiciaires qui feront l'objet d'une supervision judiciaire, et qui devront être validées par le ministère public. C'est là la procédure normale.

M. Kaplan: Je comprends.

M. Hnatyshyn: Il ne faut donc pas affirmer que la police pourrait arbitrairement se mettre à menacer des prostituées dans la rue, du fait de l'adoption de ce projet de loi.

J'ai toutefois fait allusion à certaines études qui confirment l'existence d'un lien entre la prostitution et le crime organisé. Je pourrais vous donner beaucoup d'autres informations qui vont dans le même sens, mais cela risquerait de nous prendre énormément de temps, car ce ne sont pas seulement les gangs de motards qui sont concernées; il y a beaucoup d'autres raisons.

Franchement, monsieur Kaplan, vous avez acquis suffisamment d'expérience comme solliciteur général et comme membre de ce Comité pour bien savoir qu'il y a des ventes de femmes entre Buffalo et Toronto. Vous savez bien qu'il s'agit là d'un trafic international.

Ne jouons pas aux saintes nitouches. Nous parlons ici de femmes qui sont traitées comme du bétail, de manière cruelle et avilissante, par certains membres de la société que moi, personnellement, le procureur général du Canada, je ne tiens aucunement à exempter de l'application de cette loi.

Je reconnais que la prostitution est un problème très complexe, et nous en avons d'ailleurs discuté dans le

[*Texte*]

legislation as to how to deal with street soliciting. Why is it that prostitution is not an offence?

I think it is the realization that there are a lot of other reasons why women and men get into prostitution quite apart from a lot of social reasons why people get involved in the business, but there is the baggage attached to prostitution which...

If you want me to define organized crime, I say it is organized in the sense that there is a network involved there in the exploitation of women most particularly and it seems to me if you take the profit motive out of this thing, you are not offending the prostitutes themselves.

All of us have had experience and we have watched with some interest with respect to young women who have been exploited by the system and who are on drugs and they become chattels and are dealt with in that very way. These are heart-rending stories that we do hear but just look at it, I guess, as clinically as we can.

I simply ask the committee members to consider this: what signal are we giving to the pimps and to the people who exploit women by giving them a special exemption as not being an enterprise crime?

Finally, it just does not make any sense for the police to spend the amount of time and effort in court proceedings to go after the kind of situation you referred to as the partner who is relying on a friend for...

I just do not see the police ever getting involved in that kind of situation; it is just not worth the resources and the time. They are going to concentrate on circumstances that involve serious exploitation of another person and substantial dollars because otherwise, the resources are not available to them. Even the most heavily financed police force in the country does not have the time and resources. Those are my comments on it. I hope you will be persuaded not to try to pass an amendment that is going to protect or give special status to people who exploit prostitutes.

• 1615

Mr. Kaplan: Well, Minister, you have well described the evils associated with prostitution, but I do not agree that this extra tool is necessary. I think the law is good enough to fight those evils.

Mr. Hnatyshyn: We usually agree, that is why I am trying to prevent you.

Mr. Kaplan: On the currency transaction reporting, you mentioned we might adopt it into our criminal system if the Department of National Revenue decides they want to get that type of reporting from banks.

[*Traduction*]

cadre du projet de loi destiné à traiter du racolage de rue. Comment se fait-il que la prostitution ne soit pas une infraction?

C'est parce que nous savons qu'il y a beaucoup d'autres raisons pour lesquelles des femmes et des hommes se prostituent, en plus de toutes les raisons sociales qui peuvent les pousser à le faire.

Si vous voulez que je vous donne une définition du crime organisé, je vous dirais qu'il s'agit de réseaux qui participent à l'exploitation des femmes, notamment, et qu'on ne fera aucun mal aux prostituées elles-mêmes si on réussit à confisquer les profits du crime organisé.

Nous avons tous connu des jeunes femmes qui ont été exploitées par le système, qui ont été droguées et qui ont été traitées comme du bétail. Nous avons tous entendu parler de ces histoires pitoyables, et il est important de garder la tête froide.

Je vous pose franchement cette question: quel signal allons-nous donner aux souteneurs si nous leur accordons une exemption spéciale en affirmant qu'ils ne font pas partie du crime organisé?

Finalement, en ce qui concerne la situation que vous avez évoquée, celle d'une personne malade qui est aidée par une prostituée, croyez-vous vraiment qu'il serait justifié que la police consacre tout le temps et l'effort nécessaires pour traîner une telle personne devant les tribunaux?

Il est tout simplement inconcevable que la police s'engage jamais dans une telle voie; le jeu n'en vaudrait aucunement la chandelle. La police va concentrer ses efforts sur les activités entraînant l'exploitation grave de certaines personnes pour des profits substantiels. Elle n'aura pas les ressources voulues pour faire autre chose. Même le service de police le plus riche au pays n'aurait pas le temps ou les ressources voulues. C'est tout ce que j'ai à dire là-dessus. J'espère vous avoir persuadé de ne pas tenter de proposer un amendement destiné à protéger ceux qui exploitent les prostituées, ou à leur accorder un statut spécial.

M. Kaplan: Évidemment, monsieur le ministre, vous décrivez très bien le fléau que constitue la prostitution, mais je ne suis toujours pas d'accord lorsque vous dites que cet outil supplémentaire est nécessaire. Je crois que la loi actuelle est suffisante pour lutter contre ce fléau.

M. Hnatyshyn: Nous sommes généralement d'accord; c'est pour cela que j'essaie de vous mettre en garde.

M. Kaplan: En ce qui concerne les transactions en devises, vous avez dit que nous pourrions intégrer un mécanisme d'information pertinent dans notre système pénal si le ministère du Revenu national décidait de demander ce genre d'information aux banques.

[*Text*]

That is putting it backwards, to me. Usually it has gone the other way, that the Department of National Revenue benefits from whatever the criminal law puts its way, but to suggest that the criminal law should be able to benefit from what the Department of National Revenue is doing raises for me some troubles about the privacy associated with income tax returns.

I do not agree with your position on this either, and I find one of the main reasons why I do not is something you did not mention, and that is that the American requirement for it has an effect on the situation of Canadian banks, because it leads criminals to avoid the American banking system.

You are making Canadian banks a kind of a haven, which would make them a target for use by the criminal element more than they would be if the Americans did not have their system. We cannot make a totally independent decision about the merits of it apart from the recognition that American banks require it. I think in a funny way we are giving a commercial appeal and advantage to Canadian institutions, because they do not have to report. I would urge you to maybe even start with a higher threshold, taking all of the arguments that you have given for nuisance and invasion. Maybe we could start with more than $10,000, and just see if it is productive. Have you given any thought to that?

Mr. Hnatyshyn: First, I am not sure that your conclusion is justified by the premise, because I think there are probably other jurisdictions in Canada that are far more attractive if that argument were to be pursued, because we have in this legislation given very powerful protection for the disclosure of illicit proceeds.

What I am not satisfied with is that it has not been drawn conclusively to my satisfaction that the system of disclosure is cost-effective in the United States any more than it would be in Canada. This is to presume that criminals do not read the criminal law, that they do not know they are going to be involved in the depositing of any amount over $10,000, and that they do not react and respond to reality.

I think it is more important for us to have successful devices and protections built into our legislation for disclosure of this type of activity than it is to have an artificial and rather cumbersome intrusion into privacy.

There may be a variety of reasons. If there were some other reason why Parliament decided we should have disclosure of certain transactions, it would not offend my sense of propriety to say to have regard to this overall consideration other than taxation, and also on the criminal side then, it would be available for both of those purposes.

[*Translation*]

À mon avis, cela revient à mettre la charrue avant les boeufs. Les choses se font généralement dans l'autre sens, c'est-à-dire que c'est le ministère du Revenu national qui tire profit des mécanismes mis en place à des fins pénales. Prétendre aujourd'hui que l'appareil judiciaire pourrait profiter de décisions prises dans l'intérêt du ministère du Revenu national m'amène à me poser de sérieuses questions au sujet de la protection des informations figurant dans les déclarations d'impôt sur le revenu.

Je ne suis donc pas non plus d'accord avec vous là-dessus, et cela provient surtout du fait qu'il y a une chose que vous n'avez pas mentionnée, à savoir que la loi américaine pertinente a un effet sur les banques canadiennes, puisqu'elle amène les truands à éviter le réseau bancaire américain.

Autrement dit, les banques canadiennes vont devenir une sorte de paradis des truands, et ceux-ci les utiliseront beaucoup plus qu'ils ne le feraient si les Américains n'avaient pas adopté leur système. Nous ne pouvons pas prendre une décision totalement autonome au sujet de l'intérêt d'un tel système, nous sommes obligés de l'évaluer en tenant compte de ce qui existe aux États-Unis. De manière assez bizarre, nous allons donner un avantage commercial aux banques canadiennes, puisqu'elles ne sont pas obligées de rapporter ce genre de transactions. S'il vous plaît, considérant tous les arguments que vous avez donnés, vous pourriez quand même faire un effort, peut-être en appliquant une limite supérieure à 10,000$, pour voir ce que cela donne. Qu'en pensez-vous?

M. Hnatyshyn: Tout d'abord, je ne crois pas que votre conclusion soit justifiée, car il y a probablement beaucoup d'autres systèmes bancaires qui sont beaucoup plus attrayants que le système canadien, si c'est cela votre argument. D'autre part, ce projet de loi prévoit un mécanisme de protection très puissant pour la divulgation des revenus illicites.

Cela dit, personne n'a encore réussi à me convaincre que le système de divulgation appliqué aux États-Unis est plus efficient que celui que nous pourrions mettre en place chez nous. Un tel système suppose que les truands ne connaissent pas la loi, qu'ils ne savent pas qu'ils vont faire des dépôts de plus de 10,000$ et qu'ils vont tout simplement fermer les yeux sur la réalité.

Il me paraît plus important d'intégrer à notre législation des mécanismes de protection très solides pour ceux qui divulgueront ce type d'activité, ce qui nous évitera de nous ingérer de manière injustifiée dans la vie privée des gens.

S'il y avait une autre raison pour laquelle le Parlement déciderait que certaines transactions devraient être divulguées, je ne serais certainement pas choqué de dire que c'est pour une raison autre que la fiscalité, et que l'on devrait également essayer d'en tirer profit au niveau des lois pénales.

[*Texte*]

I ask you a question, because I think, Mr. Kaplan, you have demonstrated and articulated a position in support of the civil liberties and privacy of individuals. This is equating an obligation for organized crime activity to the average citizen of Canada, your constituents.

• 1620

I think if we move into this intrusive disclosure type of situation, we have to ask ourselves as legislators and parliamentarians at what cost. Can we do the job on the basis of the protections built into this legislation? That is the only point I am making. I think we can, but I have committed to continue to monitor the situation. The Solicitor General is looking at this whole question just to make sure that we can be satisfied with respect to whether this would be an asset to this whole enterprise and be cost effective.

I think we should let this work continue and we will be able to make a better assessment, I am sure, as we have had some experience.

The Chairman: We will move along. I would observe that we allowed more than 10 minutes over here and I should tell opposition members that they will not be charged with any time for any complimentary remarks they made.

Mr. Kaplan: Mr. Chairman, I would like to congratulate you for that excellent ruling.

Mr. Nicholson: I too would like to welcome the Minister of Justice and those officials with him and certainly congratulate him on this piece of legislation. I think the minister quite correctly summed up after looking at the testimony of people who appeared before this committee that by and large this thing is well supported. It does receive broad support and I think even some of the criticism the minister alluded to in the first part of his testimony is fairly muted. I think all in all this, with Bill C-58, is a very positive step forward.

I was very interested in the minister's comments about currency transaction reporting and the evidence we heard that the rules in place in the United States are not working very well for the reasons the minister has indicated; people will then just deposit $9,900 in an account and just move around to other banking institutions. It would seem to me, certainly from the testimony that we heard, that it is a complex and expensive system and one that seems to take aim at all the wrong individuals.

I was encouraged as well; I believe the minister said that he is looking at a report that is going to be done by Revenue Canada. Do you have any indication that we might expect something this year or sometime in the near future?

Mr. Hnatyshyn: This is a compliment to you to say that I have very much appreciated your counsel and advice in this area and in many areas of the justice field.

[*Traduction*]

Comme vous venez de prendre position en faveur des libertés civiles et de la protection de la vie privée, je vais vous poser une question, monsieur Kaplan: tenez-vous à mettre sur le même pied le crime organisé et le simple citoyen, votre électeur?

Si nous voulons nous engager dans cette voie qui représente une intrusion dans la vie privée, demandons-nous à quel prix nous allons le faire. Ne serait-il pas possible d'atteindre le même résultat en nous basant sur les dispositions prévues par ce projet de loi? C'est tout ce que je demande, et je suis convaincu que nous le pouvons, car j'ai pris l'engagement que nous allons continuer à surveiller cette situation. Le solliciteur général étudie ce problème pour vérifier si nous obtiendrons des résultats satisfaisants, de manière efficiente, contre le crime organisé.

Je crois que nous devrions lui permettre de continuer ce travail, car l'expérience acquise nous permettra de mieux évaluer la situation.

Le président: Nous devons avancer. Je vous signale que j'ai accordé plus de dix minutes à l'intervenant précédent, et je précise aux membres de l'opposition que nous ne déduirons pas de leur temps de parole tout le temps qu'ils utiliseront pour nous adresser des félicitations.

M. Kaplan: Que voilà une excellente décision, monsieur le président!

M. Nicholson: Je tiens moi aussi à souhaiter la bienvenue au ministre de la Justice et à lui adresser mes félicitations pour ce projet de loi. À mon avis, le ministre a parfaitement résumé les principaux témoignages recueillis par le Comité, qui montrent que ce projet de loi est généralement appuyé par la population. Même les critiques auxquelles le ministre a fait allusion durant la première partie de ce témoignage sont loin d'être virulentes. Dans l'ensemble, ce projet de loi constitue un pas en avant avec le projet de loi C-58.

Je voudrais maintenant revenir sur la question des transactions en devises, car nous avons entendu dire que le système appliqué aux États-Unis ne marche pas très bien, pour les raisons que le ministre a mentionnées. Les gens ne sont pas bêtes, ils se contentent de déposer 9,900$ dans plusieurs comptes différents. D'après les témoins que nous avons entendus, il semble que le système américain soit très complexe et ait des effets regrettables sur les mauvaises personnes.

Je suis d'ailleurs heureux que le ministre ait dit qu'il va attendre un rapport préparé à ce sujet par Revenu Canada. Pensez-vous que nous aurons ce rapport cette année?

M. Hnatyshyn: Je commencerai par vous faire un compliment en vous disant que j'ai beaucoup apprécié vos conseils dans ce domaine, et sur tout ce qui concerne la justice.

[*Text*]

Mr. Nicholson, the answer to your question is that there are two considerations being given. One is the study by the Solicitor General with respect to cost effectiveness and appropriateness with respect to criminal activity and the mandatory reporting regime. I am aware of the fact that Revenue Canada has been looking at this whole question with respect to tax enforcement questions on obligation. It is quite a separate examination. The matter is receiving attention from different points of view.

The criticisms that are made of this legislation make me think that maybe we are on the right course; we are taking what I think is a moderate and middle course. A lot of critics have said it is intrusive legislation and other people on the other hand—some members of the committee I gather—want more and more restrictive and more intrusive types of provisions put in with respect to average citizens who may have no connection whatsoever with crime in Canada—the vast majority of whom will not.

• 1625

I am trying to take a balanced approach on this. My answer is not to err on the side of any extreme point of view, but to say what is a reasonable and fair regime that will allow us to crack down where we want to, yet not set up another governmental agency snooping into the affairs of the average citizen.

Mr. Nicholson: Some of the comments made by the Canadian Bankers' Association on that subject of reporting currency transactions encouraged me. They said:

> The image of banks accommodating drug dealers—like taking in bags full of soiled currency, counting it and issuing bank drafts for corresponding amounts—simply does not represent reality in 1988.

You alluded to that policy in your opening testimony. I am sure you are aware of criticism levelled in the past towards Canadian banking institutions with respect to this. Have you or your officials noticed any change in the practices or attitudes of banks in the recent past?

Mr. Hnatyshyn: The banks are very sensitive to this issue. It is obvious. They are trying as best they can to make sure they will not get the reputation; will work against getting any type of reputation for accommodating questionable transactions.

Is compulsory transaction reporting going to resolve that, or could that artificial requirement say we have fulfilled all our responsibilities, we know there are a lot of $9,900 deposits floating around, but all we have to do is strictly comply with the law? That argument can be used.

[*Translation*]

Pour répondre à votre question, je dois vous dire que nous avons deux fers au feu. Le premier est l'étude du solliciteur général au sujet de l'efficience et de l'efficacité du système de rapports obligatoires face au crime organisé. Le deuxième est l'étude distincte entreprise par Revenu Canada au sujet des aspects fiscaux du même problème.

Les critiques formulées à l'égard de ce projet de loi m'amènent à me demander si nous n'avons pas précisément choisi la meilleure attitude, empreinte de modération. D'aucuns nous ont dit que le projet de loi représentait une ingérence dans la vie privée des gens, et d'autres, dont certains membres de ce Comité, veulent que nous allions encore plus loin, quitte à nous ingérer dans la vie privée des citoyens qui n'ont strictement rien à voir avec le crime organisé.

Nous essayons d'adopter une attitude pondérée face à ce problème. Nous ne voulons faire preuve d'aucun extrémisme, nous voulons simplement mettre en place un système raisonnable et juste qui nous permette de réprimer ce qu'il faut réprimer, en évitant de permettre aux pouvoirs publics de mettre leur nez dans les affaires des citoyens.

M. Nicholson: Certaines des déclarations de l'Association des banquiers canadiens me semblent très encourageantes en ce qui concerne les transactions en devises. Ils ont en effet dit que:

> L'image des banques faisant tout pour rendre service aux trafiquants de drogues, par exemple en acceptant des sacs pleins de billets sales pour remettre en contrepartie des mandats bancaires, ne représente aucunement la réalité de 1988.

Vous avez fait allusion à ce problème dans votre déclaration. Vous avez probablement pris connaissance des critiques formulées à l'égard des banques canadiennes dans ce domaine. Je vous demande par conséquent si vous avez constaté un changement quelconque dans l'attitude des banques, ces derniers temps.

M. Hnatyshyn: Les banques sont très sensibles à ce problème, c'est évident. Elles tiennent absolument à éviter ce genre de réputation.

Parviendrons-nous à résoudre ce problème en les obligeant à rapporter toutes les transactions, ou pourrons-nous considérer que nous nous sommes acquittés de nos responsabilités en imposant l'obligation artificielle de déclarer les transactions supérieures à un certain montant, alors que nous savons parfaitement qu'il y a beaucoup de dépôts de 9,900$ qui permettent aux trafiquants de respecter la loi?

[*Texte*]

I think it interesting to note that in none of the police testimony was there a recommendation this be included as a useful assistance to enforcement. If they thought it was, they would have said so.

Mr. Nicholson: Because we did hear testimony of the involvement with organized crime, with respect to prostitution here, I am glad you would resist any movement to restrict the application of this bill that might give comfort to pimps and those who are buying and selling.

The Canadian Association of Chiefs of Police said the type of crime enterprise this bill applies to is fairly exhaustive, and there is a list in the bill of the different sections of the Criminal Code. One of the questions they pose is: Why did you not make it apply to all the proceeds of crime? Would it include things like money paid to an individual to wound, maim or assault? Might it be better to start with the general principle that this bill applies to all the proceeds of crime, rather than enumerating different sections of the Criminal Code?

Mr. Hnatyshyn: Mr. Mosley will be able to address the specific instances you have indicated.

It is important to remember that a previous administration brought forward legislation far more wide-sweeping and Draconian in its application and received substantial public opposition. There we were talking not only about proceeds of crime directly attributable but also the instruments of crime all offences, all instruments of crime. It was very, very broad indeed. I think the criticism was justified, that we have to be careful we are not getting involved in an oppressive and unfair total regime. So the reaction and response I have taken as minister on this legislation has been to make sure we have specifically prescribed those offences so we would not be accused of bringing in a Draconian and oppressive, and in terms of civil liberties, very unfair piece of legislation.

• 1630

As parliamentarians I am satisfied we will expand the list as circumstances dictate, as new offences are shown to be legitimate. But in the interests of moving ahead in this area, I think it is more appropriate for us to define those areas that are appropriate candidates in the enterprise climate. I have opted for enterprise crime, as the government has, which I think is a reasonable compromise.

Mr. Robinson: Mr. Chairman, I would like to seek clarification from the minister with respect to the response he has now made to several witnesses that appeared before the committee, particularly the Canadian Bar Association and the Criminal Lawyers Association. I take it, unless I misunderstood, the minister is not agreeing to any significant change, or any amendments in fact, along the lines proposed by the witnesses appearing before this committee. He has systematically gone

[*Traduction*]

Je précise d'ailleurs qu'aucun des témoins des services de police n'a recommandé l'adoption de cette mesure. S'ils avaient pensé qu'elle pourrait être utile, ils l'auraient probablement fait.

M. Nicholson: Étant donné les témoignages que nous avons recueillis au sujet du lien qui existe entre la prostitution et le crime organisé, je suis heureux que vous résistiez à toute tentative destinée à limiter l'application de ce projet de loi au profit des souteneurs.

Selon l'Association canadienne des chefs de police, ce projet de loi s'applique à une liste relativement exhaustive des activités de criminalité organisée. Par contre, l'association se demande pourquoi le projet de loi ne devrait pas s'appliquer à la totalité des revenus de la criminalité. Pourquoi ne pas l'appliquer aux sommes reçues par quelqu'un pour blesser ou attaquer quelqu'un d'autre? Ne serait-il pas préférable d'adopter comme principe général que le projet de loi s'applique à tous les revenus de la criminalité, plutôt que d'énumérer diverses parties du Code criminel?

M. Hnatyshyn: M. Mosley pourra répondre aux aspects détaillés de votre question.

Pour ma part, je dois vous dire qu'il est important de rappeler que le gouvernement précédent avait proposé une législation de portée beaucoup plus générale et plus draconienne que celle-ci, et qu'elle avait suscité une vive opposition de la population. Cette législation parlait non seulement des revenus directement attribuables à la criminalité, mais aussi de tous les instruments du crime. À mon avis, les critiques suscitées par ce projet de loi étaient justifiées, car nous devons éviter d'être injustes et d'être trop répressifs. Ma solution a donc été d'indiquer en détail les infractions auxquelles s'appliquerait ce projet de loi, de façon à ce qu'on ne puisse pas nous accuser d'être trop draconiens, ni de porter atteinte aux libertés civiles.

Cela dit, nous pourrons augmenter la liste si les circonstances l'exigent, parce que cela sera légitime. Pour le moment, il importe de passer rapidement à l'action, ce que nous pouvons faire en définissant exactement les infractions concernées. Nous avons retenu une définition générale de la criminalité organisée, ce qui nous paraît être un compromis raisonnable.

M. Robinson: Je voudrais maintenant demander des éclaircissements au ministre au sujet d'une réponse qu'il a fournie à plusieurs témoins qui se sont présentés devant le Comité, notamment à l'Association du barreau canadien et à la Criminal Lawyers Association. À moins que je ne vous aie mal compris, vous n'accepterez pas d'apporter de modifications importantes à la loi pour tenir compte des recommandations de ces témoins. Comme l'a dit M. Kaplan, vous semblez avoir examiné toutes les

[*Text*]

through, as Mr. Kaplan indicated, the various changes and has rejected them.

Is there any area of the legislation in which the minister is in fact responding positively to the representations that have been made?

Mr. Hnatyshyn: I think I have tried to address all the areas I think are of substantive interest. You are quite right, I have rejected many of the recommendations that have been made. This type of legislation, as Mr. Robinson will know, has had a very long history.

Mr. Robinson: I am just asking the minister if there is any recommendation made for change in the legislation.

Mr. Hnatyshyn: I think the government is prepared to have technical amendments, but nothing of a substantive nature to the items I have addressed.

Mr. Robinson: So the minister effectively is closing the door from his perspective—obviously the committee is theoretically independent—but from the minister's perspective—

Mr. Hnatyshyn: I am giving you my best advice.

Mr. Robinson: —the minister is saying that in terms of any substantive change, forget it.

Mr. Hnatyshyn: No. What I am saying is that I think there are good and legitimate reasons. The criticism of this bill comes from two different extremes. It comes from people who want us to back off and to withdraw some of the rights of Attorneys General and law enforcement agencies to move against the proceed of crime, or it comes from another extreme that says we are not tough enough, that we should be far more intrusive, should toughen it up and not leave discretion. I have tried to deal with this, I think, in a moderate approach. The committee can make an assessment. All I am recommending to the committee is that of those things I have mentioned I think the bill is a reasonable and moderate response. As you know, I am very interested in the point of view of committee members, but I have to tell you what my opinion is, and I have given it as clearly as I can.

Mr. Robinson: Let us just deal with, in my view, one of the glaring loopholes in this government's approach to the proceeds of crime, and that is the government's failure to implement a system of reporting of substantial deposits. We know that in November 1985 the Deputy Solicitor General, Mr. Fred Gibson, wrote a letter to the Inspector General of Banks saying:

> Canadian legislation that would permit the freezing, seizure and forfeiture of the profits from enterprise crime would have little effect unless there were mechanisms in place whereby these profits could be traced. That was in 1985. He said there should be a study, that we have to look at this whole thing and establish whether or not in fact this should proceed. If I could have his attention, Mr. Mosley, you can advise the minister at the appropriate time—

[*Translation*]

recommandations proposées et vous avez clairement rejeté celles-là.

Y a-t-il donc un domaine quelconque dans lequel vous répondrez positivement aux recommandations qui ont été faites?

M. Hnatyshyn: J'ai essayé de présenter tous les domaines qui ont suscité le plus d'intérêt. Vous avez raison, j'ai rejeté bon nombre des recommandations qui ont été faites. Comme vous le savez, cette législation a une très longue histoire.

M. Robinson: Je vous demande simplement si vous allez accepter d'apporter des modifications au projet de loi.

M. Hnatyshyn: Le gouvernement est prêt à accepter des modifications techniques, mais il n'en acceptera aucune de fond.

M. Robinson: Évidemment, notre Comité est théoriquement indépendant, mais vous semblez nous dire sans ambages que vous...

M. Hnatyshyn: Je vous donne mon avis.

M. Robinson: ... n'accepterez aucune modification de fond.

M. Hnatyshyn: Non, je vous dis qu'il y a des raisons légitimes à notre attitude. Les critiques formulées à l'encontre de ce projet de loi émanent des deux extrêmes, c'est-à-dire de ceux qui veulent que nous fassions marche arrière et que nous ne donnions pas au procureur général et aux organismes d'exécution des lois les pouvoirs requis pour saisir les revenus de la criminalité et, d'autre part, de ceux qui disent que nous n'allons pas assez loin et que nous devrions être beaucoup plus vigoureux. Pour ma part, j'ai tenté d'adopter une attitude plus modérée, et le Comité aura tout le loisir de l'évaluer. À mon sens, notre position est très raisonnable et pondérée. Vous savez bien que votre opinion m'intéresse toujours, mais je tiens à vous donner mon avis le plus clairement possible.

M. Robinson: Examinons donc l'une des échappatoires à mon sens les plus flagrantes de la solution retenue par le gouvernement, c'est-à-dire l'absence de mécanisme de rapport des dépôts importants. Nous savons que le sous-solliciteur général, M. Fred Gibson, avait adressé en novembre 1985 une lettre à l'inspecteur général des banques, lui disant que:

> Une loi canadienne permettant de geler, de saisir et de confisquer les profits du crime organisé aurait peu d'effets si elle n'était pas accompagnée de mécanismes permettant de retracer ces profits. Il avait dit que nous devrions étudier cette question de près pour voir si un tel système devrait être mis en place. Monsieur Mosley, si vous pouvez attirer l'attention du ministre, vous pourriez lui dire que...

[*Texte*]

• 1635

Mr. Hnatyshyn: I can chew gum and listen to you speak.

Mr. Robinson: So that was the serious criticism made at that time. The minister says we are studying this, the Solicitor General's ministry is studying this. I asked the representatives of the banks. They did not know anything about a study. Nobody had even talked to them about this theoretical study.

Mr. Chairman, let us look at what is happening after the banks' so-called guidelines have come into effect. According to the head of the RMCP drug squad, Assistant Commissioner Stamler, a representative of a Mexican trafficking organization recently entered a Vancouver bank with $800,000. He came up to the bank with a box full of cash, $800,000 in cash. Apparentlybank employees spent several hours counting this cash. This was one of the main banks in Canada, the A banks, as the minister called it, represented by the Canadian Bankers' Association.

Assistant Commissioner Stamler says they may have been co-operative, but in fact it is only the cases that are obvious that they will get information on. He says, for example, they will call the police if a person comes in with a machine-gun under his arm and a ski cap on. Well, Mr. Chairman, that is certainly of little comfort to those of us who believe there should be an effective system of reporting.

Assistant Commissioner Stamler goes on to point out that trust companies are not even covered by this cozy little procedure of the banks, which obviously is not working in any event, and that B banks, as he refers to them, are not even covered as well and they are many of the banks which deal with the transfer of funds in question.

Finally, the assistant commissioner goes on to note that in many cases "bank managers and bank employees want to increase their bank deposits". That is the name of the game they are in.

Well, Mr. Chairman, given this evidence and given the evidence of the former deputy solicitor general, why is it that the minister effectively has caved in to the banks?

Why is it that the minister does not recognize that unless there is an effective reporting system, this legislation—which may very well pose a serious threat to civil liberties from another perspective, as the Criminal Lawyers Association has pointed out—misses its target? The minister may very well succeed in hitting women who are working as prostitutes but he is not touching the big banks and the trust companies.

And the minister says, what about the American experience? They have not had a very good experience. The minister obviously has not read the material that was forwarded to members of this committee.

[*Traduction*]

M. Hnatyshyn: Vous savez, je suis capable de mâcher du chewing-gum et d'écouter en même temps.

M. Robinson: Vous avez dit, monsieur le ministre, que le solliciteur général et Revenu Canada étudient cette question, mais les représentants des banques n'en savent absolument rien. Personne ne leur a jamais parlé d'une telle étude.

Examinons maintenant, monsieur le président, ce qui est arrivé après l'entrée en vigueur des soi-disant lignes directrices des banques. Selon le chef de l'escouade anti-drogue de la GRC, le commissaire adjoint Stamler, un représentant de trafiquants de drogue mexicains est récemment entré dans une banque de Vancouver avec une boite pleine de billets, totalisant 800,000$. Apparemment, les employés de la banque ont passé plusieurs heures à faire le compte. Or, il s'agissait là d'une des principales banques du Canada, une banque de catégorie A, comme dit le ministre, faisant partie de l'Association des banquiers canadiens.

Selon le commissaire adjoint Stamler, la police n'est informée que dans des cas absolument évidents. Ainsi, dit-il, la banque va appeler la police si elle voit arriver quelqu'un avec une mitraillette sous le bras et un bas sur la tête. Laissez-moi vous dire, monsieur le président, que ce n'est pas tout à fait cela que nous attendons d'un système efficace de rapports.

Le commissaire adjoint Stamler a d'ailleurs précisé que les sociétés de fiducie ne sont même pas touchées par cette petite procédure des banques, qui n'a de toute façon aucun effet sur le plan pratique, et que les banques de catégorie B ne le sont pas non plus. Autrement dit, il y a beaucoup d'institutions au Canada qui sont prêtes à accepter ce genre de fonds.

Finalement, le commissaire adjoint a déclaré que, très souvent, «les directeurs et employés des banques veulent augmenter les dépôts», puisque c'est leur raison d'être.

Considérant tout cela, monsieur le président, pourquoi le ministre a-t-il purement et simplement capitulé devant les banques?

Pourquoi n'est-il pas prêt à reconnaître que ce projet de loi n'aura aucun effet tant qu'il n'y aura pas un système de rapports efficace, même si ce projet de loi risque de gravement compromettre les libertés civiles, comme l'a signalé la Criminal Lawyers Association? Vous allez peut-être réussir à vous attaquer aux femmes qui travaillent comme prostituées, mais vous allez laisser les grandes banques et les sociétés de fiducie complètement en paix.

Au sujet de l'expérience américaine, le ministre nous dit qu'elle n'a pas été très positive. Manifestement, il n'a pas lu les documents qui ont été communiqués aux membres de ce Comité.

[*Text*]

There was a study done by the United States General Accounting Office which stated that the act—and this is the United States act—is a key tool in the investigation and prosecution of drug traffickers, organized crime elements and other major criminal enterprises.

The study, which the minister might want to read, goes on to give specific examples of how this act has been very successful in dealing with proceeds of organized crime in the United States.

William Carter, a spokesman for the FBI, said the U.S. transactions reporting requirements have helped the police to spot money-laundering schemes and make several big drug arrests.

So what I am saying to the minister—and he seems to have his mind made up—is that this legislation, while it may hit the prostitutes, while it may in fact involve significant incursions into the civil liberties of Canadians involving seizures with a lower threshold before conviction, ultimately the big boys will escape; those who could be targeted, who should be targeted, will escape.

Mr. Chairman, I think the failure of the government to bring in bank secrecy legislation in my view fatally, fatally weakens this government's approach in this area.

I would like to ask the minister in terms of some of the recommendations, the concrete recommendations that were made by the Canadian Bar Association with respect to the threshold of criminality—

Mr. Hnatyshyn: I think this is a different question.

Mr. Robinson: Mr. Chairman, I would like to ask the minister what is the mechanism. Assuming a person has their business seized, has their property seized—

Mr. Hnatyshyn: They do not have the business seized.

Mr. Robinson: —they go through a trial and they are acquitted. What is the mechanism at that point for a return of their property? Where is it set out in the bill? For compensation, for the losses which they may have suffered as a result. . . where is that set out in the bill?

• 1640

Mr. Hnatyshyn: I will now try to deal with these matters, you have raised a lot of issues. Unfortunately, Mr. Robinson—and do not take this personally—most of your premise is totally and absolutely unfounded and incorrect, and I say that with a generosity of spirit towards towards you, which you know has existed over the years. Now, I have been complimentary about you, but I wish you would not throw in a lot of definitions of these matters, examples that bear no relationship to the proposition you are making.

Mr. Robinson: What about the RCMP example?

[*Translation*]

Selon une étude réalisée par le General Accounting Office des États-Unis, la loi américaine constitue un instrument fondamental pour réaliser des enquêtes et intenter des poursuites contre les trafiquants de drogue et le crime organisé.

Cette étude donne des exemples précis de succès obtenus grâce à cette loi pour confisquer des profits du crime organisé aux États-Unis.

Selon William Carter, porte-parole du FBI, l'obligation de rapporter les transactions aux États-Unis a aidé la police à identifier divers cas de recyclage d'argent illicite et à arrêter plusieurs gros trafiquants de drogue.

Même si vous semblez être inflexible, monsieur le ministre, je dois vous dire que votre projet de loi, qui vous permettra peut-être de vous attaquer aux prostituées et qui risque de compromettre gravement les libertés civiles des citoyens, permettra toujours aux gros trafiquants de s'en sortir indemnes, alors que ce sont précisément eux que nous devrions attaquer.

À mon sens, monsieur le président, l'incapacité du gouvernement de légiférer dans le domaine du secret bancaire porte un coup fatal à la politique énoncée dans ce projet de loi.

Je voudrais donc demander au ministre, au sujet des recommandations concrètes formulées par l'Association du barreau canadien au sujet du niveau de criminalité. . .

M. Hnatyshyn: C'est une question différente.

M. Robinson: Expliquez-moi donc le mécanisme. Supposons que vous saisissez le commerce ou les biens d'une personne. . .

M. Hnatyshyn: On ne saisira pas son commerce.

M. Robinson: . . . et qu'il y ait un procès et que la personne soit acquittée. Y a-t-il un mécanisme pour restituer ses biens à cette personne? Que prévoit le projet de loi? Y aura-t-il également un mécanisme d'indemnisation pour les pertes subies à cause de cette saisie?

M. Hnatyshyn: Je ne tenterai pas de répondre à ces questions. Vous en avez d'ailleurs soulevé beaucoup. Hélas, monsieur Robinson, et je dis ceci sans vous attaquer personnellement, les prémisses de votre question sont totalement et absolument injustifiées et inexactes. Croyez-moi, je vous dis cela dans l'esprit d'amitié qui nous lie depuis longtemps. Je vous ai félicité tout à l'heure, mais je voudrais bien que vous n'utilisiez pas d'exemples qui n'ont strictement rien à voir avec la proposition que vous avez faite.

M. Robinson: Même l'exemple de la GRC?

[*Texte*]

Mr. Hnatyshyn: The police here are talking about a circumstance where a Mexican citizen comes out with $800,000 in small Mexican currency—

Mr. Robinson: It was U.S. currency.

Mr. Hnatyshyn: —U.S. currency—and you are telling me that the mere reportage of a deposit of $800,000 was somehow going to bring this matter to a successful conclusion. That is not a fair assessment of reporting and the effect reporting is going to have. It just simply said reporting of fact, that there was this deposit, and the information could be obtained whether it was reported or not, the bank would be able to testify to this amount being deposited. It is not going to demonstrate the source of this fund.

I would like to know what the proposition is that Mr. Robinson, on behalf of his party is suggesting. . . Are you telling me that what you want us to do is have every Canadian citizen say that this money being deposited now came from this or this source, that income tax has been paid on it, that it has been duly reported, that this is a lawful deposit? Are you going to require every depositor to make that declaration for every deposit? You see, I think it goes further than merely reportage.

Secondly, the fact is that the assessment with respect to the study you refer to in the general accounting office assessment said that the Treasury offices, office of financial enforcement, could not provide us with information about individuals or businesses that have been prosecuted for violations of the Bank Secrecy Act. Quite the contrary. There are anecdotal references there with respect to the operation of this process in the United States, but there is no conclusive evidence that it has served as a useful tool, as you say, with respect to this matter. It has been merely anecdotal.

Thirdly, the then Deputy Solicitor General made the observation that he thought the matter should in fact be investigated. I do not think what he was talking about was a system of reportage being fundamental. He thought the matter was one that should bear some careful and close scrutiny.

Mr. Robinson: I can quote his letters.

Mr. Hnatyshyn: I am happy to tell you that I think if you look at what he said in context, we dealt with this at an earlier stage.

Mr. Robinson, I know the New Democratic Party has purported to stand up for civil liberties, for privacy. And it is one thing to rail against the fact that we do not have a reportage provision in this legislation, but I am not convinced, and I am not saying this. . . The mere fact that you report all transactions, is this necessarily going to make law enforcement any easier?

It is not a question of caving into the banks. I thought I made it quite clear that the real losers here, in cost, expenses, is going to be the taxpayer—the bank customer, the consumer, because you can rest assured that the Credit Union in Burnaby, British Columbia, is going to

[*Traduction*]

M. Hnatyshyn: Lorsque la police parle d'un Mexicain qui vient dans une banque canadienne avec 800,000$ en pesos. . .

M. Robinson: Non, en monnaie américaine.

M. Hnatyshyn: . . . ou en monnaie américaine, et que vous me dites que ce problème aurait pu être résolu si simplement la banque avait été obligée de le signaler, je dois dire que vous vous trompez. Ce n'est pas comme cela que fonctionnerait le système de rapports. Le système permettrait simplement de savoir que ce dépôt a été effectué, c'est tout. Si aucune autre information n'était fournie par le client, aucune autre ne serait rapportée. La banque pourrait simplement confirmer qu'elle a reçu cette somme. Cela ne nous en fera pas connaître l'origine.

Je voudrais bien comprendre ce que vous recommandez, au nom de votre parti. Êtes-vous en train de nous dire que chaque citoyen canadien devrait être obligé de divulguer l'origine des sommes qu'il dépose à la banque, de dire qu'il a payé de l'impôt sur le revenu à ce sujet, et qu'il a fait une déclaration d'impôt sur le revenu? Allez-vous obliger chaque déposant à faire ce genre de déclaration pour chaque dépôt? Voyez-vous, le problème est plus complexe que vous ne le dites.

Deuxièmement, en ce qui concerne l'étude du General Accounting Office, laissez-moi vous dire que les représentants des organismes d'exécution des lois ont été incapables de nous donner un seul nom de personne ou d'entreprise ayant fait l'objet de poursuites pour avoir enfreint les dispositions de la Loi sur le secret bancaire. Certes, beaucoup de rumeurs circulent au sujet de l'efficacité du mécanisme mis en place aux États-Unis, mais nous n'en avons obtenu aucune preuve complète.

Troisièmement, le vous-solliciteur général de l'époque avait dit qu'il pensait que la question devrait faire l'objet d'une étude. Je ne sache pas toutefois qu'il ait affirmé qu'un système de rapports soit fondamental. Il pensait que c'était une chose qu'il vaudrait la peine d'étudier.

M. Robinson: Je peux citer ses lettres.

M. Hnatyshyn: En fait, si vous examinez bien ce qu'il a dit, dans le contexte, vous verrez que nous y avons répondu à une étape précédente.

Je sais, monsieur Robinson, que le Parti néo-démocrate se sent très fort pour défendre les libertés civiles et la vie privée. C'est peut-être facile de nous reprocher de ne pas prévoir de système de rapports dans ce projet de loi, mais vous savez bien que le simple fait de rapporter les transactions ne facilitera aucunement l'application des lois.

Il ne s'agit pas ici d'avoir capitulé devant les banques. J'ai clairement indiqué que les vrais perdants seraient en fait les contribuables, c'est-à-dire les clients des banques, les consommateurs, car vous pouvez être certain que votre petite caisse populaire de Burnaby, en Colombie-

[*Text*]

pass on this cost of reportage to their depositors. It is going to be people, such as your constituents, who are going to pay the cost of this new administrative process if you are going to apply this across the board, you are going to have to apply it to all financial institutions.

All I am saying to you is to not be too categorical in your criticism of the fact that we have not obliged people to move forward to this area. I think we want to weigh these things. I think we all take a moderate view towards these matters, and there has to be a demonstrated benefit to us before we get involved in intrusive legislation that allows us to get into private affairs of the individual citizen.

Mr. Robinson: Mr. Chairman, I did ask the minister about the mechanism for return.

The Chairman: Mr. Robinson, you will have a chance in the second round.

Mr. Hnatyshyn: I will just take the time to answer Mr. Robinson. It is section 420.23. If Mr. Robinson would look at that, I think it deals with the whole process of how the matter is disposed of. If he would not mind having a look at that section, he might want to ask a supplementary question.

• 1645

Mr. Jepson: Mr. Minister, thank you for your appearance this afternoon.

Just a couple of points of curiosity here, if nothing else, in terms of the prostitution market in Canada, do you or your department have any numbers as to exactly what kind of dollars are involved in the prostitution market in Canada, and who principally controls the prostitution market?

Mr. Hnatyshyn: Well, Mr. Chairman, I will ask my officials to give me the information they have here. There are all levels of involvement in prostitution. It is not a monolithic. I do not believe it is controlled by a single organized-crime syndicate. I did not mean to suggest that. There are a lot of people who make a living acting as pimps, and who are networking with other pimps in dealing with prostitutes.

In *The Toronto Star* of May 7, I noticed a reportage from the editorial page. There is an allegation that an 18-year-old woman was bought in Buffalo for $1000, smuggled across the border, and brought here to work as a prostitute, according to Metro police. I mean, I think that there are so many instances of that, that are reported.

Mr. Jepson: I thought possibly your officials in your department might have had some overall idea of just what kind of dollars we are talking about.

Mr. Hnatyshyn: In the enterprise-crime study report, table 2, of known amounts spent on selected criminal activities with 11 metro areas compared with 46 respondent cities in 1981, the prostitution in 11 metro areas involved $7,177,440, as compared with $10,910,216

[*Translation*]

Britannique, fera payer à ses déposants les frais de ce système de rapports. Ce sont des gens comme vous et moi qui vont donc payer le coût de cette nouvelle exigence bureaucratique. Si vous voulez l'appliquer à certains types d'organismes bancaires, vous devrez l'appliquer à tous les établissements financiers.

Je vous invite donc à ne pas être trop virulent dans vos critiques et à bien réaliser que nous avons adopté une attitude très pondérée face à ce problème. Il faudra qu'on nous prouve qu'il y a des avantages évidents pour que nous acceptions de proposer une mesure législative qui nous donnerait le pouvoir de mettre notre nez dans les affaires privées des citoyens.

M. Robinson: J'avais posé une question au ministre au sujet de la restitution des biens, monsieur le président.

Le président: Vous aurez votre chance au deuxième tour, monsieur Robinson.

M. Hnatyshyn: J'ai le temps de répondre, monsieur le président. Examinez l'article 420.23; vous verrez qu'il traite de toute la question et de la disposition des biens saisis ou bloqués. Peut-être voudrez-vous poser une question supplémentaire?

M. Jepson: Merci de votre comparution, monsieur le ministre.

Purement à titre d'information personnelle, monsieur le ministre, votre ministère a-t-il de l'information exacte sur l'importance financière du marché de la prostitution au Canada et sur qui le contrôle?

M. Hnatyshyn: Je vais demander à mes fonctionnaires de vous donner les informations qu'ils détiennent à ce sujet. Je dois cependant vous dire que la prostitution n'est pas une entité monolithique. Elle n'est pas contrôlée par une seule organisation criminelle. Il y a beaucoup de gens qui gagnent leur vie comme souteneurs et qui établissent des réseaux avec d'autres souteneurs.

Le *Toronto Star* du 7 mai contenait un reportage sur une jeune fille de 18 ans qui affirmait avoir été achetée à Buffalo pour 1,000$ et avoir été amenée illégalement au Canada pour y faire de la prostitution. Cette allégation avait été rapportée par la police de Toronto. Hélas, il y a beaucoup trop de cas de cette nature.

M. Jepson: Je pensais que votre ministère avait peut-être des informations plus précises sur le chiffre d'affaires de la prostitution.

M. Hnatyshyn: Le tableau 2 du rapport de l'étude sur la criminalité organisée présente les sommes consacrées à diverses activités criminelles dans 11 régions métropolitaines et dans 46 villes, en 1981. Cette année-là, la prostitution représentait 7,177,440$ dans les 11 régions

[Texte]

in 46 cities. The estimated amount for these activities in prostitution is $100,448,200, and in the 46 city sampling, $114,000,000. I just give you an example of the kind of estimates made. They are there on the basis of this study made on a federal-provincial basis.

Mr. Jepson: The other thing I would like to ask, particularly bearing in mind we are anxiously awaiting C-54 going to second reading, in terms of this particular bill are there any implications in terms of pornography and revenues from there, or is there absolutely no connection?

Mr. Hnatyshyn: The bill itself covers obscene materials under the Criminal Code, and ostensibly will cover the successor legislation when that passes.

Mr. Jepson: Do you anticipate a particular date for that bill looking at second reading?

Mr. Hnatyshyn: We are hoping to bring it forward when the obstructionist tactics of the opposition cease in the floor of the House.

Mr. Kaplan: No one has touched yet on the defence you gave of rejecting that double criminality argument, which cut a lot of ice with me, I must say, as I listened to it unfolding. I know there is a Canadian tradition—under the receiving of property and so on, from 1892 you mentioned. I did not know that property legally acquired in another country might be subject to this criminal procedure because the legal activity in the other country would have been criminal if committed in Canada. You said that it has never arisen as a problem.

• 1650

Mr. Hnatyshyn: That is my information. I am not aware of it. I have asked about that and I am not aware of—

Mr. Kaplan: What you mean is that the law enforcement authorities have never seized property that was obtained legally in another country in a way which would have been a crime in Canada.

Mr. Hnatyshyn: I cannot say that, but there are no reported cases. I am looking at the judicial interpretation of it. A challenge to the double criminality—

Mr. Kaplan: But are you in a position to confirm the examples Allan Gold, the witness from the criminal bar, used? He talked about gambling profits in off-track gambling, in New York State or in Britain, that are legal under the laws of those countries but would not be legal if done in Canada. If that money found its way into criminal hands in Canada, it could be subjected to this new machinery.

Mr. Hnatyshyn: I was wondering whether or not the examples he gave would be applicable under the legislation, to start with. The proceeds of crime, as such—

[Traduction]

métropolitaines, et 10,910,216$ dans les 46 villes. D'après les dernières estimations, les chiffres sont maintenant respectivement de 100,448,200$ et de 114,000,000$. Ce sont simplement des estimations, fondées sur une étude fédérale-provinciale.

M. Jepson: Je vais maintenant passer à un autre sujet. Considérant que nous attendons avec impatience le passage en deuxième lecture du projet de loi C-54, envisagez-vous des effets quelconques du projet de loi C-61 sur la pornographie?

M. Hnatyshyn: Le projet de loi lui-même touche les productions obscènes, par le truchement d'un article du Code criminel, et on retrouvera cela dans le projet de loi suivant.

M. Jepson: Quand croyez-vous que ce projet de loi passera en deuxième lecture?

M. Hnatyshyn: J'espère que nous pourrons le faire avancer lorsque l'opposition cessera son obstruction systématique à la Chambre.

M. Kaplan: Personne n'a encore abordé l'argument que vous avez utilisé pour rejeter le principe de la double criminalité, que je trouve personnellement très convaincant, je dois le dire. Je sais qu'il y a une tradition canadienne à ce sujet, qui remonte à 1892, concernant la réception de biens illégalement acquis. Je ne savais cependant pas que des biens légalement acquis dans un autre pays pourraient être assujettis à cette procédure pénale si l'activité qui était légale dans cet autre pays était considérée comme criminelle au Canada. Vous avez dit que ce problème n'a jamais été soulevé.

M. Hnatyshyn: Je ne sache pas qu'il l'ait été. J'ai posé la question, et on m'a dit. . .

M. Kaplan: Ce que vous voulez dire, c'est qu'aucune agence de police n'a jamais saisi de biens obtenus légalement dans un autre pays d'une manière qui aurait constitué un crime au Canada.

M. Hnatyshyn: Je ne peux pas dire que ce ne soit jamais arrivé, mais je n'en ai jamais entendu parler. Nos services étudient le problème. Une cause fondée sur la double criminalité. . .

M. Kaplan: Mais êtes-vous en mesure de confirmer les exemples utilisés par Allan Gold, le représentant du barreau? Il a parlé des profits des paris hors course dans l'État de New York ou en Grande-Bretagne, où ces activités sont légales, alors qu'elles ne le sont pas au Canada. Si cet argent se retrouvait au Canada, dans les mains de criminels, il pourrait être saisi grâce à ce projet de loi?

M. Hnatyshyn: Je me demande si les exemples qu'il avait utilisés sont valides dans le cadre de ce projet de loi. Ainsi, les paris sont autorisés, dans certaines

[*Text*]

gambling is allowed under certain circumstances in Canada, with respect to betting and paramutuals in racing, and so on. Off-track is—

Mr. Kaplan: But there are illegal gambling activities in Canada—

Mr. Hnatyshyn: There are specific types of activities. There is a rubric of permission that is allowed in Canada. I am just not aware of that being a problem with respect to any prosecution under the existing law. The other thing I think we have to remember is in terms of drug proceeds. We have to be very careful in that. With regard to what is going on in some South American countries. . . I have made that reference because I think that is a good example of why we should keep the option available to us. On the basis that we in Canada should determine what type of property it is appropriate for Canadians to have.

Mr. Kaplan: What examination have you made of other machinery or safeguards that might be built into the legislation to ensure certain types of legal activities in other countries of a more offensive nature might be covered by this legislation? Other than those more or less regulatory offences, without the kind of moral opprobrium associated with drug trafficking, which would be covered? Have you or your officials given any thought to that?

Mr. Hnatyshyn: Yes. I think the question is of having a different standard. This is not something this bill introduces or, in the normal concept, tries to suggest. It has been in existence for many, many years. All I am saying is if you did not have a general application, you might get yourself into Charter problems.

I am just saying I am not aware of it being a problem. I am trying to answer this in the best way I know how. I do not accept that the hypothetical examples Mr. Gold made to us would be any problem. I do not accept his examples.

The Chairman: That is fine. Maybe you can proceed in private with that. I am sorry.

Mr. Robinson, one quick question, and then we have three items of business we must deal with quickly.

• 1655

Mr. Robinson: Mr. Chairman, with respect to the inclusion of the prostitution-related offences in this legislation, the minister has referred to the question of organized crime, but the minister will know as well that the evidence we received from the Canadian Organization for the Rights of Prostitutes cited the Fraser report. They quoted from the Fraser report the following:

> Most prostitutes are independent operators. We found no evidence to support a link between prostitution and organized crime.

That was from the Fraser report which looked at this whole question in depth. The Canadian Oranization for the Rights of Prostitutes went on to note that the increased control of prostitution provided in this bill

[*Translation*]

circonstances, par exemple les paris mutuels sur les champs de courses.

M. Kaplan: Mais il y a également des paris illégaux qui sont organisés au Canada.

M. Hnatyshyn: Il y a beaucoup d'activités différentes dans ce domaine. Disons qu'il y a une certaine marge de tolérance au Canada. Je ne sache pas que cela constitue un problème pour l'application des lois existantes. Ce qui nous importe, ne l'oubliez pas, ce sont les sommes produites par le commerce de la drogue. Considérant ce qui se passe dans certains pays d'Amérique latine. . . J'ai évoqué cet exemple parce qu'il représente bien la latitude que nous devrions nous réserver. Autrement dit, nous devrions avoir le pouvoir de déterminer quel type de biens les Canadiens devraient être autorisés à posséder.

M. Kaplan: Avez-vous envisagé d'autres mécanismes, dans le cadre de ce projet de loi, qui garantiraient que certaines activités légales à l'étranger, et de nature beaucoup plus répréhensible, pourraient être réprimées par ce projet de loi? À part ces infractions, qui sont plus ou moins d'ordre réglementaire, et qui ne suscitent pas autant d'opprobre que le trafic de la drogue, lesquelles seraient touchées par le projet de loi? Y avez-vous réfléchi?

M. Hnatyshyn: Oui. La question vient du fait qu'il existe des normes différentes. Ce n'est pas quelque chose que nous venons d'inventer avec ce projet de loi; ça existe depuis très longtemps. Cela dit, si le projet de loi n'était pas d'application générale, il y aurait peut-être des problèmes à cause de la charte.

Quoi qu'il en soit, je ne sache pas que cela constitue un problème. À mon avis, les hypothèses de M. Gold ne sont pas justifiées. Je n'accepte pas ses exemples.

Le président: Très bien. Vous pourrez continuer d'en discuter en privé.

Monsieur Robinson, si vous avez une dernière brève question à poser, après quoi nous aurons trois choses à régler rapidement.

M. Robinson: Monsieur le président, à propos des infractions prévues pour actes de prostitution dans ce texte de loi, le ministre a évoqué le crime organisé, mais le ministre sait fort bien que les représentantes de l'Organisation canadienne des droits des prostitués ont cité le rapport Fraser, et notamment ceci:

> La plupart des prostitués sont indépendants. Rien ne nous permet de croire qu'il existe des liens entre la prostitution et le crime organisé.

Cette citation est tirée du rapport du groupe Fraser, qui s'est penché sur toute cette question. L'Organisation canadienne des droits des prostitués a ensuite ajouté que le contrôle accru de la prostitution prévu dans ce projet

[*Texte*]

might even make prostitutes more vulnerable to organized crime and would increase the level of street prostitution at a time when communities such as Metropolitan Toronto are expressing their concern and their anger about the level of street prostitution that currently exists.

I find the minister's response in this area really quite unsatisfactory.

Mr. Hnatyshyn: I do not accept that, in case you are wondering.

Mr. Robinson: I did not think silence implied consent, Mr. Chairman.

When the minister appeared before the committee in November, I did ask him whether or not the committee could obtain a copy of the 1983 "Enterprise Crime Study Report". At that point, the minister indicated he would have to obtain the consent of the provinces but he would undertake to contact the provinces. "Sure, absolutely", he said.

I am wondering if we now finally have a copy of that study, which would assist the committee.

Mr. Hnatyshyn: Sorry, I thought we had obtained the consent. I mean—

Mr. Robinson: I had heard the consent had been obtained but we have not received—

Mr. Hnatyshyn: We sent it to the committee.

Mr. Robinson: We have not received a copy of that study.

Mr. Hnatyshyn: I sent it to the committee, true to my word. That is my recollection to the best of my knowledge—unless I did not do it; then I will take it all back.

Mr. Robinson: Certainly it has not yet been circulated to members of the committee.

Mr. Hnatyshyn: I think I sent it.

Mr. Robinson: My final question, Mr. Chairman, is on the follow-up study. The minister says there is a follow-up study. I mention—

The Chairman: We will follow up that point.

Mr. Robinson: Yes, if that could be followed up, Mr. Chairman.

In terms of this follow-up study—that the Canadian Bankers' Association at least knows nothing about—who within the Ministry of the Solicitor General is co-ordinating this study? When did it start and what is the anticipated timetable for that study?

Mr. Richard G. Mosley (Senior General Counsel, Criminal and Family Law Policy Directorate): The study is being led by the Policy Branch of the Ministry of the Solicitor General. The director general responsible is Ross Christensen, and the officer directly responsible is Margaret Beer.

Mr. Robinson: When did this study start and what is the timetable for the study?

[*Traduction*]

de loi pourrait rendre les prostitués encore plus vulnérables au crime organisé et augmenterait le racolage dans les rues, alors que des agglomérations comme celle de Toronto ne cessent de s'inquiéter du racolage qui existe à l'heure actuelle, sans parler de leur colère.

C'est pourquoi j'estime que la réponse donnée par le ministre est tout à fait insatisfaisante.

M. Hnatyshyn: Au cas où vous vous poseriez la question, je ne suis absolument pas d'accord avec vous.

M. Robinson: Je ne pensais pas que qui ne disait mot consentait, monsieur le président.

Lorsque le ministre a comparu devant le Comité en novembre dernier, je lui ai demandé s'il pouvait faire parvenir au Comité un exemplaire du rapport de 1983, intitulé: *Enterprise Crime Study Report*. Le ministre m'a répondu qu'il devrait obtenir l'assentiment des provinces, mais qu'il s'en chargeait. «Bien sûr, absolument», a-t-il dit.

Je me demande alors si nous avons enfin pu obtenir un exemplaire de ce rapport, qui serait très utile au Comité.

M. Hnatyshyn: Excusez-moi, mais je pensais que les provinces nous avaient donné leur assentiment. Enfin. . .

M. Robinson: C'est ce que j'ai entendu également, mais nous n'avons toujours pas reçu. . .

M. Hnatyshyn: Nous l'avons envoyé au Comité.

M. Robinson: Nous n'avons toujours pas reçu d'exemplaire de ce rapport.

M. Hnatyshyn: Je l'ai envoyé au Comité, parole d'honneur. C'est du moins ce dont je me souviens—à moins que je ne l'aie pas fait, et dans ce cas-là, je retirerais tout ce que j'ai dit.

M. Robinson: En tout cas, les députés membres de ce Comité ne l'ont pas reçu.

M. Hnatyshyn: Je crois l'avoir envoyé.

M. Robinson: Ma dernière question, monsieur le président, porte sur le suivi du rapport. Le ministre nous dit qu'il y aura suivi. J'ai dit. . .

Le président: Nous y verrons.

M. Robinson: Oui, monsieur le président, si vous n'y voyez pas d'inconvénient.

A propos de cette étude—dont l'Association des banquiers canadiens semble tout ignorer—qui est chargé de sa coordination au sein du bureau du solliciteur général? Quand a-t-elle été entamée et quand ces travaux seront-ils terminés?

M. Richard G. Mosley (avocat général principal, Sous-direction de la politique en matière de droit pénal et familial): Cette étude est effectuée par la Sous-direction de la gestion des politiques du bureau du solliciteur général. Le directeur général responsable de cette étude est Ross Christensen, et sa collaboratrice est Margaret Beer.

M. Robinson: Quand cette étude a-t-elle commencé et quand ces travaux seront-ils terminés?

[*Text*]

Mr. Mosley: My understanding is that the lifespan of the study is the current and next fiscal years, but the study will be producing reports periodically. It is a larger study with a number of sub-projects.

The reference in Mr. Gibson's letter to tracing identification, for example, is a reference to the much larger question of whether or not the existing measures in criminal law or civil law are adequate to achieve the purpose. The study will be looking at what is in place in Canada, what is in place abroad—including the currency transaction recording system in the United States—and examining the feasibility or the need for improving any of the systems we currently have—

Mr. Robinson: Maybe I can try my question again, for the third time. When did the study start, and when is it anticipated to finish?

Mr. Hnatyshyn: I think he has the finished part.

Mr. Robinson: When did it start?

Mr. Mosley: My understanding is that resources were made available through the National Drug Strategy for the current fiscal year, so I presume it began with the beginning of the current fiscal year, April 1, 1988.

Mr. Robinson: So this study started April 1, 1988.

Mr. Mosley: Yes, but there has been a great deal of work done on this subject in the past. The question was first examined back in 1982 and 1983 in the context of the "Enterprise Crime Study Report" itself. The Ministry of the Solicitor General has looked at the question of the U.S. Bank Secrecy Act since then. We have looked at it again, including a further review of the question in 1986 and again last year. There has been a great deal of preliminary work.

- 1700

Mr. Robinson: Have you produced any written material at all on it?

Mr. Mosley: The study which is underway is a properly funded, organized and thorough examination.

Mr. Robinson: Have you produced any written material in your department?

Mr. Mosley: If I may complete, Mr. Chairman, by referring to one of the problems the GAO study points out that we simply do not know how effective this legislation in the United States has been in actual prosecutions. One of the sub-projects underway through the MSG study is to examine the use in actual prosecutions of the information obtained from the Bank Secrecy Act in the United States.

Mr. Robinson: Have you produced any written material at all?

[*Translation*]

M. Mosley: Cette étude devrait être terminée vers avril 1990, bien que des rapports seront rendus publics périodiquement. Cette étude comprend un certain nombre de sous-études.

L'identification dont il est question dans la lettre de M. Gibson renvoie, par exemple, à la question beaucoup plus importante de savoir si les mesures actuelles prévues par le droit pénal ou le droit civil suffisent à atteindre cet objectif. Cette étude examinera ce qui existe au Canada, ce qui existe à l'étranger—y compris le système d'enregistrement des transactions de devises aux États-Unis—et décidera si les systèmes actuels doivent ou peuvent être améliorés. . .

M. Robinson: Je vais essayer de poser ma question une troisième fois. Quand cette étude a-t-elle commencé et quand devra-t-elle être terminée?

M. Hnatyshyn: Je crois qu'il vous a dit quand elle devrait être terminée.

M. Robinson: Quand a-t-elle commencé?

M. Mosley: Je crois savoir que les crédits ont été mis à la disposition des intéressés par l'entremise de la Stratégie nationale anti-drogues prévue pour cet exercice budgétaire, si bien que je suppose qu'elle a commencé au début de l'actuel exercice budgétaire, soit le 1er avril 1988.

M. Robinson: Cette étude a donc commencé le 1er avril 1988.

M. Mosley: Oui, mais beaucoup de travaux ont été réalisés dans ce domaine par le passé. Cette question a été examinée pour la première fois en 1982 et en 1983, dans le contexte du rapport intitulé: *Enterprise Crime Study Report*. Depuis lors, le bureau du solliciteur général s'est penché sur la loi américaine intitulée: *Bank Secrecy Act*. Nous l'avons examinée de nouveau, puis en 1986, et encore l'année dernière. Vous voyez donc que beaucoup de travaux préliminaires ont été effectués.

M. Robinson: Des rapports écrits sur ces travaux préliminaires existent-ils?

M. Mosley: L'étude en cours est une étude financées et organisée en bonne et due forme et sera complète.

M. Robinson: Votre ministère a-t-il préparé des rapports écrits sur ces travaux préliminaires?

M. Mosley: Si vous me permettez de terminer mon intervention, monsieur le président, l'étude GAO montre bien que nous ne pouvons tout simplement pas savoir si cette loi, aux États-Unis, a vraiment entraîné des procès. Une des sous-études en cours tentera d'examiner si les renseignements obtenus grâce à la Bank Secrecy Act américaine ont donné des résultats.

M. Robinson: Avez-vous préparé des rapports écrits?

[*Texte*]

Mr. Hnatyshyn: Only internal matters generated within the department for the benefit of *le ministre*.

The Chairman: On behalf of the committee, I would like to thank the Minister and the officials for their attendance and their assistance.

We have three items of business.

The first one is that we have had a request for witness expenses from the Canadian Organization for the Rights of Prostitutes. We have a motion before us, by Mr. Robinson, which I will read:

Moved that easonable travelling and living expenses be paid to representatives of the Canadian Organization for the Rights of Prostitutes who appeared before the committee on Thursday, April 14, 1988 in accordance with the policies laid down by the Board of Internal Economy.

Motion agreed to.

The Chairman: The second item of business is that I want you to be thinking about Bill C-58 and preparing a list of witnesses we might call when we move into Bill C-58. If you can bring that to committee sometime, we will make a determination.

Mr. Robinson: On item two I wonder if perhaps we might ask the researcher from the Library of Parliament to assist us, if there are people she might suggest that are interested. Also, she might contact the Ministry of Justice to determine who has expressed an interest in the legislation from their perspective as well. That would assist the committee.

The Chairman: Item three is that we have had a brief sent to us by the Attorney General of Ontario. It arrived late yesterday and it is in relation to Bill C-61. We have copies in English; it has been sent for translation. It would possible to distribute them in English today if the committee so desires. If not, we will retain them until the translation is available.

Mr. Grisé: Mr. Chairman, at a previous meeting I indicated to the committee very clearly that I will not accept any document in either French or English only presented to the members of the committee. Therefore I refuse to accept this document until it is translated.

• 1705

The Chairman: I am just putting it before the committee. I believe we will abide by whatever decision is made.

Mr. Kaplan: Is the document prepared for the committee?

The Chairman: It is from the Attorney General of Ontario, and it says he is writing in order to forward to our committee his views with respect to Bill C-61. Then there is a brief.

Mr. Kaplan: Mr. Chairman, I think I agree. I think it is important documents prepared for the committee be

[*Traduction*]

M. Hnatyshyn: Seuls des rapports internes ont été préparés pour le compte du ministre.

Le président: Au nom du Comité, j'aimerais remercier le ministre et ses collaborateurs d'être venus aujourd'hui.

Nous devons régler trois points.

Primo, l'Organisation canadienne des droits des prostitués nous a demandé de bien vouloir lui rembourser ses frais de séjour. M. Robinson a préparé une motion à cet effet; la voici:

Que les frais de séjour et de déplacement soient remboursés aux représentants de l'Organisation canadienne des droits des prostitués, organisation qui a comparu devant le Comité le jeudi 14 avril 1988, conformément aux mesures prises par le Bureau de régie interne.

La motion est adoptée.

Le président: Secundo, je voudrais que vous réfléchissiez au projet de loi C-58 et que vous prépariez une liste de témoins à convoquer. Lorsque cette liste sera prête, nous déciderons qui convoquer.

M. Robinson: A ce propos, je me demande si nous ne pourrions pas demander à la chargée de recherche de la Bibliothèque du Parlement de nous aider; peut-être pourrait-elle nous proposer quelques noms. Elle pourrait aussi se mettre en rapport avec le ministère de la Justice pour savoir si ses représentants veulent présenter leur point de vue. Tout cela serait fort utile.

Le président: Tertio, le procureur général de l'Ontario nous a envoyé un mémoire qui est arrivé tard hier soir et qui porte sur le projet de loi C-61. Nous en avons des exemplaires en anglais, et ce document a été envoyé aux services de traduction ad hoc. On pourrait en distribuer la version anglaise aujourd'hui, si le Comité le désire. Dans la négative, nous la garderons ici tant que ce document ne sera pas traduit.

M. Grisé: Monsieur le président, lors d'une réunion antérieure, j'ai indiqué au Comité sans ambages que je n'accepterais aucun document rédigé dans une seule langue. Par conséquent, je refuse d'accepter ce document tant qu'il ne sera pas traduit.

Le président: J'en fais tout simplement la proposition au Comité. Je suppose que nous nous plierons à la décision qui sera prise.

M. Kaplan: Ce document est-il préparé pour le compte du Comité?

Le président: Ce document nous vient du procureur général de l'Ontario, qui exprime, dans ce document, son point de vue sur le projet de loi C-61.

M. Kaplan: Monsieur le président, je suis d'accord. Je crois qu'il est important que les documents préparés pour

[Text]

provided in both languages. I would make an exception for documents prepared for magazine articles or something like that which are submitted to us, or information from other countries that comes in English or French, or in some third language. I would maybe want to look at those. But in a case like this, I do not think the committee ought to distribute it until it is in both languages.

The Chairman: This is exactly why we did not distribute it.

Mr. Robinson: Just on this point, the difficulty arising is that the committee is supposed to be starting clause-by-clause study tomorrow afternoon. If this were just a brief from an ordinary citizen, it might be one thing. But it is a brief from the Attorney General of the largest province in Canada, and presumably raises some concern about the legislation, some areas that might assist us.

Je suis tout à fait d'accord avec M. Grisé pour dire qu'il est tout à fait inacceptable que le Comité reçoive un mémoire uniquement en anglais. Le problème, c'est que le Comité doit étudier le mémoire. Je ne propose pas qu'on demande à M. Scott de comparaître devant le Comité. Ce n'est pas le cas.

I think the committee has to have an opportunity to examine this brief. It seems to be a brief of some substance, at least in terms of size.

The other concern I have, Mr. Chairman—and this I did raise in the course of the minister's appearance—is I still have not seen this "Enterprise Crime Study Report". We are apparently trying to track it down. I do not know if the clerk has anything that might assist us, but it is a very important document. It is the product of a study between the federal Solicitor General and the provincial Solicitor General. Even though Ms Crawford apparently did forward it to the committee, the committee has not seen it.

Mr. Chairman, while we must accept Mr. Grisé's suggestion that the document be received, we are in a dilemma, because we cannot get into clause-by-clause study until we have at least been given the courtesy of considering both of these documents beforehand. I would suggest perhaps we might want to consider scheduling a meeting for early next week. This will give us a chance to consider it.

The Chairman: This will be available in the translated form on Thursday, at the earliest. So there is a dilemma.

Mr. Nicholson: Mr. Chairman, I am in complete agreement with Mr. Grisé. I do not think it would have been too much to ask for the resources of the Province of Ontario to have provided documents to this committee or any other committee of the House of Commons in both official languages.

At the same time, I do not believe we can, nor should we, hold up the work of this committee. God knows, you

[Translation]

le compte du Comité le soient dans les deux langues. Ce serait différent si ces textes étaient préparés pour des revues ou autres documents qui nous sont présentés, ou s'il s'agissait de renseignements venant d'autres pays en anglais, en français, ou dans une autre langue. Je voudrais peut-être examiner ces documents immédiatement. Mais en l'espèce, je ne crois pas que le Comité devrait distribuer ce document tant qu'il n'est pas dans les deux langues.

Le président: C'est précisément la raison pour laquelle nous ne l'avons pas distribué.

M. Robinson: A ce sujet, l'ennui, c'est que le Comité est censé entamer l'examen article par article du projet de loi demain après-midi. S'il s'agissait d'un mémoire d'un citoyen ordinaire, ce serait une chose, mais il s'agit d'un mémoire préparé par le procureur général de la plus grosse province du Canada, mémoire qui exprime sans doute certains doutes quant à l'efficacité du projet de loi, ou qui propose certaines améliorations.

Mr. Grisé is right when he says that it is totally unacceptable that the committee receive a brief in English only. But the problem is that this committee has to review the brief. I am not suggesting that we ask Mr. Scott to appear before the committee. This is not the case at all.

Je crois que le Comité doit pouvoir étudier ce mémoire. Il semble être assez substantiel, du moins à en juger par sa taille.

D'autre part, monsieur le président—et j'en ai parlé au ministre tout à l'heure—je n'ai toujours pas vu ce rapport intitulé: «Enterprise Crime Study Report». On essaie apparemment de savoir où il se trouve. Je ne sais si le greffier peut nous aider, mais c'est un document très important. Cette étude a été réalisée conjointement par le solliciteur général fédéral et le solliciteur général provincial. Même si Mme Crawford l'a apparemment fait parvenir au Comité, nous ne l'avons pas reçu.

Monsieur le président, nous devons respecter la suggestion faite par M. Grisé, mais la question demeure entière, puisque nous ne pouvons pas passer à l'examen article par article du projet de loi tant que nous n'aurons pas eu l'occasion d'examiner ces deux documents. Peut-être devrions-nous nous réunir en début de semaine pour les examiner.

Le président: Ce document ne sera traduit que jeudi, au plus tôt. Le problème demeure donc entier.

M. Nicholson: Monsieur le président, je suis tout à fait d'accord avec M. Grisé. Je ne crois pas que cela aurait été trop demander à la province de l'Ontario de fournir des documents au Comité, ou à n'importe quel autre comité de la Chambre des communes, dans les deux langues officielles.

Entre temps, je ne crois pas que nous puissions, ou même que nous devrions, retarder les travaux de ce

[*Texte*]

might receive a hoard of interesting briefs this evening, or you might receive them tomorrow afternoon.

I would like to proceed with the clause-by-clause consideration. If and when this is in a proper form to be brought before this committee, if we have not concluded our work, I am sure it will be read with great interest by all members. If not, I am sure it will be available for us to consider at the report stage and at the third reading stage, when this is before the House of Commons.

But I cannot agree that because there is some sort of a mix-up on one particular study, or the document has not been put in a proper form for this committee to study, we should hold up our work. I think it has been agreed we would go ahead with the clause-by-clause consideration, and I think we should proceed on this basis tomorrow.

• 1710

Mr. Robinson: Mr. Chairman, I do not have any difficulty in proceeding tomorrow. The concern I have is that there be an opportunity to consider the arguments that are made. This is a complex piece of legislation. I doubt whether we would conclude clause-by-clause study in one meeting in any event.

Mr. Nicholson may very well be right. We may then put off the next meeting and then in the meantime we would have an opportunity to consider the brief. But I am prepared to proceed tomorrow with—

Mr. Kaplan: I just wanted to say to worry about the hypothetical situation, where we do not have a proper reaction time, when we get to it.

Mr. Grisé: That is right. Yes.

Mr. Kaplan: It has not happened so far.

Mr. Grisé: Yes, I agree. As Mr. Nicholson said, any time some document is presented to any committee, it could delay. Mind you, I have nothing about the great province of Ontario, which is the largest in population and economy in the country.

Mr. Nicholson: I am blushing.

Mr. Grisé: They have been contacted for this very legislation several times, so they were well aware that they could present this document much before the last day before we go to clause by clause.

The Chairman: That is fine. I think there is general agreement then. So we meet tomorrow at—

Mr. Robinson: Mr. Chairman, what about the Enterprise Crime Study?

The Chairman: The clerk has undertaken to find it and to get it circulated to the members of the committee.

Mr. Robinson: If it has disappeared into a hole in the Wellington building somewhere, perhaps Ms Hébert could provide another

[*Traduction*]

Comité. On ne sait jamais, vous pourriez très bien recevoir un tas de mémoires intéressants ce soir ou demain après-midi.

Mais j'aimerais que l'examen article par article du projet de loi ne soit pas retardé. Lorsque ce document sera présenté sous la forme voulue au Comité, et si nous n'avons pas terminé nos travaux, je suis sûr qu'il sera lu avec grand intérêt par tous les députés. Dans la négative, je suis sûr que nous pourrons toujours l'examiner lors de l'étape du rapport ou de la troisième lecture, lorsque ce projet de loi sera renvoyé à la Chambre des communes.

Mais nos travaux ne devraient pas être retardés pour la simple raison qu'on n'arrive pas à trouver un document quelconque ou qu'un autre n'a pas été présenté en bonne et due forme au Comité. Nous étions convenus de passer à l'examen article par article du projet de loi demain, et je crois que nous devrions nous y tenir.

M. Robinson: Monsieur le président, je ne m'oppose pas à ce que nous commencions demain. Ce qui m'intéresse, c'est de pouvoir examiner les arguments présentés. Ce texte de loi est très complexe. Je doute fort que nous terminions l'examen article par article du projet de loi en une seule séance.

M. Nicholson a peut-être raison. Nous pourrions alors reporter la séance suivante et, entre-temps, examiner le mémoire. Je suis disposé à commencer dès demain. . .

M. Kaplan: Il faudrait peut-être s'inquiéter de la situation hypothétique où le temps nous manquerait lorsque nous y arriverions.

M. Grisé: Oui, vous avez raison.

M. Kaplan: Cela ne s'est pas produit jusqu'à présent.

M. Grisé: En effet. Comme M. Nicholson l'a dit, la présentation de tout document à un Comité peut chaque fois retarder les choses. Mais je n'ai rien contre la grande province de l'Ontario, qui compte le plus d'habitants au Canada et dont l'économie est la plus importante.

M. Nicholson: Ne me faites pas rougir.

M. Grisé: La province avait été contactée déjà plusieurs fois à propos de ce projet de loi, si bien qu'elle savait très bien qu'elle pouvait présenter ce document bien avant la veille de notre passage à l'examen article par article du projet de loi.

Le président: Très bien. Je crois que nous sommes tous d'accord. Nous nous réunirons donc demain, à. . .

M. Robinson: Monsieur le président, et le rapport «Enterprise Crime Study»?

Le président: La greffière s'est chargée de le trouver et de le distribuer aux députés membres de ce Comité.

M. Robinson: S'il a disparu quelque part dans les donjons de l'édifice Wellington, M^me^ Hébert pourra peut-être nous en procurer un autre exemplaire.

May 11, 1988 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act]

EVIDENCE

[*Recorded by Electronic Apparatus*]

[*Texte*]

Wednesday, May 11, 1988

• 1537

The Chairman: We have a quorum and we are going to proceed with clause-by-clause consideration of Bill C-61. You have before you a compendium of amendments proposed from the committee members and you also have government amendments, which we will be attempting to insert as we go along. We will deal as the procedure calls for a clause by clause, and we will be asking for amendments to be moved as we go along.

Mr. Robinson: Mr. Chairman, on a point of order, before we start with the clause-by-clause study, I wonder if we could get some clarification on the history of this particular rather voluminous report here, the *Enterprise Crime Study Report*. This is the federal-provincial report that was just circulated to members at the beginning of this meeting, approximately five minutes ago.

Obviously this document is very relevant to our study of the legislation and I would like to know what happened here. There have been a variety of suggestions: When was it forwarded to the committee? To whom was it forwarded? If in fact it did end up somewhere, where did it end up and why are we receiving it only five minutes before we start clause-by-clause study of the bill?

The Chairman: This is the one that was discussed yesterday, I am sure, but we can get some light put on the subject by the clerk.

The Clerk of the Committee: As far as I know, it was sent to the chairman's office, Mr. Malone's, the first week of March and it stayed there. Ms Deborah Crawford from the minister's office and I were talking last night and this morning the Department of Justice supplied us with ten copies for the members today as promised.

Mr. Robinson: The report was forwarded by Justice to Mr. Malone's office at the beginning of March, but it did not go any further than that until this morning.

The Clerk: Until you brought it up yesterday.

Mr. Robinson: Mr. Chairman, I see Mr. Malone here and I understand that he did resign from the committee or from chairing the committee. If the committee is to do its work properly, we have to have the background information.

• 1540

The Chairman: I think an explanation would be in order if there is one. I would tend to agree that it should

TÉMOIGNAGES

[*Enregistrement électronique*]

[*Traduction*]

Le mercredi 11 mai 1988

Le président: Comme nous avons le quorum, nous allons passer à l'étude article par article du projet de loi C-61. Vous avez sous les yeux une série d'amendements proposés par les membres du Comité, de même que des amendements du gouvernement que nous chercherons à y glisser. Nous allons procéder à ce qu'il est convenu d'appeler une étude article par article et nous demanderons aux membres du Comité de proposer des amendements au fur et à mesure que nous progresserons.

M. Robinson: Monsieur le président, avant que nous n'entamions l'étude article par article, pourrions-nous obtenir des précisions au sujet du document assez volumineux intitulé *Rapport de l'étude sur la criminalité érigée en entreprise*. Il s'agit du rapport fédéral-provincial que l'on vient de distribuer aux membres du Comité au début de la séance, il y a cinq minutes environ.

Comme ce document se rapporte directement à notre étude, je voudrais savoir ce qui s'est passé. Quand l'a-t-on envoyé au Comité? A qui l'a-t-on adressé? Où a-t-il abouti et pourquoi le recevons-nous seulement cinq minutes avant d'entreprendre l'étude article par article du projet de loi?

Le président: Il s'agit certainement du document dont nous avons parlé hier, mais nous pouvons demander au greffier de nous éclairer à ce sujet.

Le greffier du Comité: A ma connaissance, le rapport a été envoyé au bureau du président, M. Malone, au cours de la première semaine de mars, et il est resté là-bas. Et j'en ai parlé, hier soir, avec M^me^ Deborah Crawford, du bureau du ministre et, ce matin, le ministère de la Justice nous a fourni 10 exemplaires du rapport à l'intention des membres du Comité, comme promis.

M. Robinson: Le ministère de la Justice a envoyé le rapport au bureau de M. Malone au début de mars, mais il y est resté jusqu'à ce matin.

Le greffier: Jusqu'à ce que vous souleviez la question hier.

M. Robinson: Monsieur le président, je constate la présence de M. Malone et je comprends pourquoi il a démissionné du Comité ou du moins du poste de président. Nous avons besoin des renseignements nécessaires pour que le Comité puisse bien faire son travail.

Le président: Je pense que cela exige une explication si toutefois il y en a une. Je suis d'accord que nous aurions

[*Text*]

have been in our hands prior to this. Mr. Malone, do you want to shed any light on it?

Mr. Malone: Perhaps I can give an apology, Mr. Chairman, and that is all. I had only the one copy. I did not have copies for distribution. You know, as often happens on these things, when you receive something in your office, you make the presumption that other members on the committee are receiving it also.

I believe that is the environment within which I received my copy—thinking that was general mailing to committee members. Given history over again, I still do not know how I would have shared one document so thickly—

Mr. Nicholson: You could have xeroxed it of course.

Mr. Malone: —amongst all committee members, other than to, say, give every sixth or eighth page to somebody, and that was not, of course, satisfactory.

Mr. Robinson: Mr. Chairman, the only reason I raised it is that it was suggested yesterday that nine copies had been forwarded by the Department of Justice. It was on that basis that the question arose.

The Chairman: Well, we have an explanation, and I would think there was no deliberate attempt to deny committee members a document. It was inadvertent, and I would suggest we proceed with clause by clause.

On clause 1

The Chairman: On clause 1 we have no amendment offered.

Mr. Robinson: Could I just ask whether Mr. Kaplan has given any indication to the clerk as to whether he is coming? We had in fact been informed he would be here, and that he does have amendments.

The Chairman: He said he would be here later.

Mr. Robinson: Oh, I see.

Clause 1 agreed to

On clause 2

The Chairman: On clause 2 we have a number of amendments. The first one is by Mr. Robinson, which is to strike out line 30 on page 2 and substitute the following:

(b) an offence against section 4, 5

Mr. Robinson: Mr. Chairman, I did have a question with respect to the reference to section 5 of the Narcotic Control Act. As I understand it, the seven-year minimum sentence has been struck down by the Supreme Court of Canada, I believe it was the Dewey Smith decision.

That being the case, I just wonder why we were not given the appropriate amendments to that section in this bill, or is it anticipated that other legislation will be brought forward to reflect that decision of the court?

[*Translation*]

dû recevoir ce rapport avant. M. Malone, avez-vous des explications à fournir?

M. Malone: Je peux seulement présenter mes excuses, monsieur le président. J'avais un seul exemplaire du rapport. Je n'avais pas d'autres exemplaires à distribuer. Comme vous le savez, lorsque nous recevons un document à notre bureau, nous supposons que les autres membres du Comité l'on reçu également.

Ce sont je crois, les circonstances dans lesquelles j'ai reçu mon exemplaire du rapport. Je pensais que tous les membres du Comité en avaient reçu un. Je ne vois toujours pas comment j'aurais pu partager un document aussi épais. . .

M. Nicholson: Vous auriez pu le faire photocopier, bien sûr.

M. Malone: . . . entre tous les membres du Comité si ce n'est en le divisant en paquets de six ou huit pages, ce qui n'aurait pas été une solution satisfaisante.

M. Robinson: Monsieur le président, si j'ai soulevé la question c'est uniquement parce qu'on a laissé entendre, hier, que le ministère de la Justice en avait envoyé neuf exemplaires.

Le président: Nous avons obtenu une explication et je pense que personne n'a cherché délibérément à soustraire un document aux membres du Comité. Il s'agit d'une omission et je propose que nous passions à l'étude article par article.

Sur l'article 1

Le président: Nous n'avons pas d'amendement à proposer à l'article 1.

M. Robinson: Pourrais-je simplement demander si M. Kaplan a fait savoir au greffier s'il allait venir ou non? On nous a dit qu'il viendrait et qu'il avait des amendements à proposer.

Le président: Il a dit qu'il viendrait plus tard.

M. Robinson: Je vois.

L'article 1 est adopté.

Sur l'article 2

Le président: Nous avons plusieurs amendements concernant l'article 2. Le premier émane de M. Robinson et consiste à biffer la ligne 30, à la page 2, et à la remplacer par ce qui suit:

b) une infraction aux articles 4 et 5

M. Robinson: Monsieur le président, j'ai une question à poser au sujet de l'article 5 de la Loi sur les stupéfiants. Si j'ai bien compris, la Cour Suprême du Canada a éliminé la peine minimum de sept ans. Je crois que c'était dans l'affaire Dewey Smith.

Dans ces conditions, pourquoi ne nous a-t-on pas remis les amendements qu'il convient d'apporter à cette partie du projet de loi ou a-t-on l'intention de présenter un nouveau projet de loi à la suite du jugement du tribunal?

[*Texte*]

Mr. Richard Grisé (Acting Parliamentary Secretary to the Minister of Justice): Mr. Chairman, if the committee allows me, I would like to present the two officials who are with me today. Mr. Richard Mosley is the Senior General Counsel of the Criminal and Family Law Policy Directorate, and Mr. John McIsaac is Counsel, Criminal Law Policy Section. During the course of the afternoon I will ask these two officials to respond on behalf of government.

Mr. Robinson: I appreciate that, because it does involve amendment, but we are referring to a section certainly a portion of which has been struck down by the Supreme Court of Canada. I would have thought that our officials might take this opportunity to reflect that decision in this legislation.

Mr. Grisé: Mr. Mosley, please.

Mr. Richard Mosley (Senior General Counsel, Criminal and Family Law Policy Directorate, Department of Justice): If I may, Mr. Chairman, section 5, the Narcotic Control Act, is still operative. The penalty applicable to that has been struck down by the Supreme Court.

There is under way at present a process of consolidation of the two drug-control statutes, which would involve a substantial amendment to both, and I would suggest that the change Mr. Robinson spoke of will be found in that bill when it is introduced in the House.

• 1545

Mr. Robinson: Do we have any indication when that might be, Mr. Chairman?

Mr. Mosley: I cannot comment, Mr. Chairman, on a matter of House business or on the government's schedule with respect to the introduction of legislation and the—

Mr. Nicholson: That is all the legislation presently before Parliament, Svend. We would need unanimous agreement to bring in new amendments to that particular section.

The Chairman: Does that satisfy you, Mr. Robinson? We will move on to clause 2 and the amendment I previously read out in the name of Mr. Robinson.

Mr. Robinson: Mr. Chairman, I move that clause 2 of Bill C-61 be amended by striking out line 30 on page 2 and substituting the following therefor:

(b) an offence against section 4, 5

The purpose of this is to remove the reference to section 6 of the Narcotic Control Act from the definition of designated drug offence. I note, for example, that in the definition of offences section referred to under the wiretap provisions there is no reference to the cultivation offence, that is, to section 6.

[*Traduction*]

M. Richard Grisé (secrétaire parlementaire suppléant du ministre de la Justice): Monsieur le président, si le Comité est d'accord, je voudrais vous présenter les deux fonctionnaires qui m'accompagnent aujourd'hui. M. Richard Mosley est le premier avocat général de la Direction de la politique en matière de droit pénal et familial et M. John McIsaac est avocat conseil de la section de la politique en matière de droit pénal. Cet après-midi, je demanderai à ces deux fonctionnaires de répondre à vos questions au nom du gouvernement.

M. Robinson: Je l'apprécie étant donné les amendements proposés, mais nous parlons d'une disposition que la Cour Suprême du Canada a abrogée, en tout cas en partie. Je pensais que les fonctionnaires pourraient en profiter pour faire en sorte que la loi reflète son jugement.

M. Grisé: Monsieur Mosley, s'il vous plaît.

M. Richard Mosley (premier avocat général, Direction de la politique en matière de droit pénal et familial, ministère de la Justice): Monsieur le président, je dirais que l'article 5 de la Loi sur les stupéfiants est toujours en vigueur. La Cour Suprême s'est contentée d'éliminer la peine prévue.

Nous sommes en train de fusionner les deux lois sur les stupéfiants, ce qui nécessitera des amendements importants et M. Robinson trouvera sans doute les changements dont il parle dans la nouvelle loi lorsqu'elle sera déposée à la Chambre.

M. Robinson: Savons-nous quand cela se fera, monsieur le président?

M. Mosley: Monsieur le président, je ne peux rien dire, car cela dépend des travaux de la Chambre ou du programme législatif du gouvernement et...

M. Nicholson: Autrement dit, toutes les lois sur lesquelles le Parlement se penche actuellement, Svend. Il nous faudrait le consentement unanime pour apporter de nouveaux amendements à cet article.

Le président: Cette réponse vous satisfait-elle, monsieur Robinson? Nous allons passer à l'article 2 et à l'amendement de M. Robinson, que j'ai déjà lu.

M. Robinson: Monsieur le président, je propose que l'on modifie l'article 2 du projet de loi C-61 en retranchant la ligne 7, à la page 4, et en la remplaçant par ce qui suit:

b) articles 4, 5, 11.(1) ou 11.(2) de la loi.

Cela vise à supprimer la mention qui est faite de l'article 6 de la Loi sur les stupéfiants dans la définition d'une infraction grave en matière de drogue. Je remarque, par exemple, que l'article qui donne la définition des infractions en ce qui concerne des dispositions à l'égard des tables d'écoute ne fait pas mention de la culture du pavot et de la marijuana, une infraction visée à l'article 6.

[*Text*]

I would ask why this particular section has been included and whether, in fact, the purpose of the legislation could not be just as effectively addressed by dealing with sections 4 and 5—section 4 being the trafficking section and section 5 being the section on importing and exporting—since section 6 deals with cultivation. I certainly do not think there has been any evidence to suggest this is an offence in which there has been any degree of involvement of organized crime.

Mr. Grisé: I can respond briefly and then Mr. Mosley can add to it, but section 6 deals with the cultivation of opium poppies and marijuana, and it can be extended to a very large industrial basis, if you want. This bill deals with the proceeds of crime, and it is our understanding that it applies also to cultivation because it is not done only on a very small scale. It could be done, and it is done, on a very large scale, on an industrial basis.

The Chairman: Anyone else?

Mr. Nicholson: It certainly qualifies under the proceeds of crime. It is the cultivation of opium and everything else.

The Chairman: It would be helpful if you get the eye of the Chair and—

Mr. Nicholson: Excuse me, Mr. Chairman.

Mr. Kaplan: I do not support this amendment.

Mr. Robinson: Could I just ask whether there is any evidence to suggest the involvement of organized crime in the cultivation area?

Mr. Mosley: Mr. Chairman, I cannot speak directly on that point, but it is known that there is wholesale cultivation of cannabis for the purpose of sale and profit taking place, particularly in the province of British Columbia. The inclusion of the offence in this category relates to the proceeds from the cultivation of the narcotic for sale.

Mr. Malone: I also would not support the amendment. I think it should be clearly obvious to all of us that the cultivation of poppies or marijuana for drug use is easily possible. I think it is quite irrelevant whether or not it is presently an activity of organized crime. The removal of section 6 is an invitation to allow such proceedings to happen. I think it only makes good sense that the protection be there in law.

The Chairman: Is there any other debate? Shall the amendment carry?

Amendment negatived.

• 1550

The Chairman: We will get a little smoother on this as we go along. The next amendment is N-2; Mr. Robinson on N-2.

[*Translation*]

Je voudrais savoir pourquoi on a inclus cet article et s'il ne serait pas possible d'atteindre tout aussi bien l'objectif de la loi en mentionnant les articles 4, 5, 11.(1) ou 11.(2), portant sur le trafic de même que l'importation et l'exportation, étant donné que l'article 6 porte sur la culture. Rien ne prouve, à ma connaissance, que ce genre d'infraction soit commis avec la participation du crime organisé.

M. Grisé: Je répondrai brièvement à cette question après quoi M. Mosley pourra fournir les renseignements complémentaires, mais l'article 6 porte sur la culture de l'opium et de la marijuana qui peut se faire à une échelle industrielle. Ce projet de loi porte sur les produits de la criminalité et nous pensons qu'il s'applique également à la culture de l'opium et de la marijuana étant donné qu'elle ne se fait pas uniquement à très petite échelle. Il serait possible de s'y livrer à très grande échelle.

Le président: Quelqu'un d'autre a une question à poser?

M. Nicholson: Cela peut certainement entrer dans les produits de la criminalité. Il s'agit de la culture de l'opium et des autres drogues.

Le président: Si vous pouviez attendre d'avoir la parole.

M. Nicholson: Excusez-moi, monsieur le président.

M. Kaplan: Je n'appuie pas cet amendement.

M. Robinson: Pourrais-je demander si nous avons la preuve que le crime organisé joue un rôle dans la culture de ces plantes?

M. Mosley: Monsieur le président, je ne pourrais pas répondre directement à cette question, mais chacun sait qu'on cultive du cannabis dans le but de le revendre et de réaliser un profit, surtout en Colombie-Britannique. Cette infraction se rapporte aux produits de la culture des narcotiques destinés à la vente.

M. Malone: Moi non plus, je n'appuie pas cet amendement. Chacun devrait comprendre qu'il est possible de cultiver le pavot ou la marijuana pour le commerce de la drogue. Peu importe qu'il s'agisse ou non d'une activité du crime organisé. La suppression de l'article 6 ouvrirait la porte à ce genre de commerce. Il me paraît logique d'inclure cette protection dans la loi.

Le président: Poursuivons-nous la discussions? L'amendement est-il adopté?

L'amendement est rejeté.

Le président: Nous allons procéder plus en douceur. Nous passons maintenant à l'amendement N-2 de M. Robinson.

(*Texte*)

Mr. Robinson: Mr. Chairman, I move that clause 2 of Bill C-61 be amended by striking out lines 12 to 14 on page 3 and substituting the following therefor:

(viii) Subsection 195(1)(a) to (i) (procuring).

Mr. Chairman, N-3, the subsequent amendment, would delete lines 12 to 14 entirely and in effect, these are two alternate proposals.

This particular proposal, Mr. Chairman, would delete the reference to section 193, keeping a common bawdy-house, from the list of enterprise crime offences but it would retain those sections of the procuring offence set out in subsection 195(1) except for paragraph (j).

This would mean, for example, that anyone who procured or attempted to procure a person to become a prostitute, whether in or out of Canada; directs a person to a common bawdy-house or house of assignation for purposes of gain; exercises control, direction or influence over the movements of a person; applies or administers any drug, intoxicating liquor and so on . . . all of those references in the procuring offence would remain as part of the definition of enterprise crime offence.

But, Mr. Chairman, the reference to section 193, keeping a common bawdy-house and to paragraph 195(1)(j), which is a reference to living wholly or in part on the avails of prostitution of another person, would be excluded from this definition.

Of course, it does not mean these are legal but it means the very serious powers contained in this bill to deal with enterprise crime offences would not be available in the case of keeping a common bawdy-house and in the case of living on the avails.

The reason I have excluded "living on the avails", Mr. Chairman, is that as the witnesses who appeared before the committee pointed out to us, it is so broadly drawn that, for example, an individual who lives in the same house as a prostitute in the absence of this reverse onus provision is in effect deemed to be living on the avails of prostitution.

That reverse onus was struck down in a Nova Scotia court not that long ago and it will make its way eventually up to the Supreme Court of Canada.

But the fundamental point, Mr. Chairman, is that I think the arguments made by the Canadian Organization for the Rights of Prostitutes and by the National Action Committee on the Status of Women were powerful arguments. They noted that in fact there is to be a review next year of the relevant provisions of the Criminal Code on prostitution, on soliciting. This is built into Bill C-49, which was adopted some time ago.

So they say rather than moving at this point with respect to these particular sections, let us look at the

(*Traduction*)

M. Robinson: Monsieur le président, je propose que l'on modifie l'article 2 du projet de loi C-61 en retranchant les lignes 1 à 3, à la page 3, et en les remplaçant par ce qui suit:

(viii) Paragraphe 195(1)a) à (i) (proxénétisme)

Monsieur le président, l'amendement N-3, qui fait suite à celui-ci vise à retrancher entièrement les lignes 1 à 3 et, en fait, je vous propose deux solutions.

Cette proposition vise à supprimer la mention qui est faite de l'article 193 concernant la tenue d'une maison de débauche, de la liste des infractions de criminalité organisée, tout en maintenant le délit de proxénétisme énoncé au paragraphe 195(1) sauf pour le paragraphe j).

Cela veut dire que, par exemple, est coupable d'un acte criminel quiconque induit ou tente d'induire une personne à se prostituer, soit au Canada, soit à l'étranger; entraîne une personne vers une maison de débauche ou une maison de rendez-vous aux fins de lucre; exerce un contrôle, une direction ou une influence sur les mouvements d'une personne; applique ou administre ou fait prendre une drogue, de la colle, etc. . . toutes les infractions relatives au proxénétisme demeurent dans la définition de l'infraction de criminalité organisée.

Néanmoins monsieur le président, la mention qui est faite de l'article 193 portant sur la tenue d'une maison de débauche et au paragraphe 195(1)j) visant les personnes qui vivent entièrement ou en partie des produits de la prostitution d'une autre personne serait exclue de cette définition.

Bien sûr, cela veut dire non pas que ces activités sont légales, mais que les pouvoirs très importants que le projet de loi confère à l'égard des infractions de criminalité organisée ne pourraient pas être invoqués pour la tenue d'une maison de débauche ou contre les personnes vivant des produits de la prostitution.

Si j'ai exclu les personnes vivant des produits de la prostitution, monsieur le président, c'est parce que, comme les témoins qui ont comparu devant le Comité nous l'ont signalé, une personne qui vit dans la même maison qu'une prostituée est censée vivre des produits de la prostitution à moins qu'elle ne puisse prouver le contraire.

Un tribunal de Nouvelle-Écosse a récemment rejeté le principe de la charge inversée et cette décision devrait se retrouver un jour devant la Cour suprême du Canada.

En tout cas, monsieur le président, l'Organisation canadienne pour les droits des prostituées et le Comité canadien d'action sur le statut de la femme ont présenté d'excellents arguments à cet égard. Ils ont fait valoir que des dispositions pertinentes du Code criminel sur la prostitution devaient être révisées l'année prochaine. Cela a été intégré dans le projet de loi C-49 qui a été adopté il y a quelque temps.

Ces organismes estiment qu'au lieu d'adopter ces articles maintenant, il fallait d'abord réexaminer toute la

[*Text*]

whole area when we review the provisions of the Criminal Code dealing with soliciting.

They point out as well that under section 193, which is included in this act, a prostitute who is working alone in her own apartment is technically guilty of keeping a common bawdy-house under the Criminal Code.

We are not changing the law in this particular section, but I suggest we do not want to extend the law in the manner in which it has been proposed in this particular definition of enterprise crime offence.

They note, Mr. Chairman, that if in fact this section is adopted without amendment, the police could seize the assets of anyone who is convicted of an enterprise crime so that the prostitute who is working on her own could lose all of her belongings, furniture, clothing and so on, even though she is not part of any criminal organization. She is not exploiting anybody and is not creating any kind of a nuisance or anything else.

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The other point, Mr. Chairman, as the witnesses for NAC and CORP pointed out, is that these powers come into effect even before a person is found guilty of an offence. It is a very, very Draconian provision to use with respect to these particular offences.

There has been some suggestion, Mr. Chairman, that maybe it is necessary to include these offences to deal with the possibility that organized crime might be involved in prostitution. The reality, Mr. Chairman, according to the Fraser report—and I am quoting from that report:

> Most prostitutes are independent operators. We found no evidence to support a link between prostitution and organized crime.

That was their conclusion, Mr. Chairman, and that is quite clear.

The final point I would make with respect to this amendment is that it has been noted—and I think quite properly noted—that the effect of this particular clause would be to increase the control of prostitution in the hands of pimps and possibly organized crime. As has been pointed out, it might very well make prostitutes more vulnerable to organized crime.

Since it is impossible for prostitutes and escort service operators to invest their money legally—because it could be seized under this; I am not talking about organized crime here; I am just talking about prostitution—their income could be funnelled into a black market economy or possibly, as they point out, even into other criminal activities, which is the opposite of what Bill C-61 is supposed to be getting at.

As well, Mr. Chairman, another implication of this could be—again as the witnesses noted—to drive prostitutes back on to the streets. If there is a risk by operating in their own homes or in an apartment or

[*Translation*]

question en révisant les dispositions du Code criminel concernant la prostitution.

Ils soulignent également qu'en vertu de l'article 193, qui est inclus dans cette loi, une prostituée qui travaille seule dans son propre appartement tient une maison de débauche en vertu du Code criminel.

Nous ne modifions pas la loi dans cet article, mais j'estime qu'il ne faudrait pas étendre sa portée comme on le propose dans cette définition d'une infraction de criminalité organisée.

Ces deux organisations font remarquées que si cet article est adopté sans amendement, la police pourrait saisir les biens de toute personne reconnue coupable d'une infraction de criminalité organisée si bien que la prostituée qui travaille à son compte pourrait perdre tout ce qui lui appartient, ses meubles, ses vêtements, et le reste, même si elle ne fait pas partie d'une organisation criminelle. La prostituée n'exploite personne et ne constitue pas une nuisance quelle qu'elle soit.

Un autre fait à noter, monsieur le président, comme l'ont fait les témoins du CNA et de la CORP, ces pouvoirs peuvent être utilisés avant que la personne ne soit inculpée d'une infraction. Ces infractions font donc l'objet de dispositions vraiment draconiennes.

Il a été dit qu'elles sont nécessaires à cause de la possibilité que le crime organisé soit mêlé d'une façon ou d'une autre à la prostitution. Je fais remarquer, monsieur le président, que le rapport Fraser indiquait ce qui suit à ce sujet:

> La plupart des prostituées agissent de façon indépendante. Nous n'avons pas pu prouver qu'il y avait un lien entre la prostitution et le crime organisé.

Voilà donc la conclusion claire à laquelle en est arrivée la commission Fraser.

Encore un point au sujet de mon amendement. Il est indiqué, à juste titre, d'ailleurs, que cet article pourrait avoir pour effet d'accroître le rôle des proxénètes et même du crime organisé dans la prostitution. Les prostituées pourraient se retrouver dans une situation encore plus vulnérable face au crime organisé.

Comme il serait impossible aux prostituées et aux exploitants de services d'escorte d'investir leur argent légalement, il pourrait être saisi, et je ne parle pas ici du crime organisé, je parle strictement de la prostitution, ils seraient forcés de passer par le marché noir et même de se lancer dans d'autres activités criminelles, ce qui va l'encontre de l'objectif visé par le projet de loi C-61.

Ainsi, comme il a été dit, les prostituées pourraient être forcées de retourner dans la rue. Si elles subissaient un risque quelconque en travaillant chez elles, si discrètes soient-elles, s'il y avait possibilité que leur argent soit saisi,

[*Texte*]

whatever discreetly they might have their proceeds seized, then that is what could happen. We have seen complaints from too many residential groups already, in Toronto and elsewhere, with respect to the problem of street prostitution.

Mr. Chairman, prostitution in Canada is not illegal. Given the sweeping scope of section 193, keeping a common bawdy-house, and the reality that there is no evidence whatsoever to suggest those involved in that particular offence—those arrested for that offence—are in any way involved in organized crime, I would hope the committee might in fact support this amendment, which in a sense is a compromise. I believe both subparagraphs (viii) and (ix) should be deleted from the legislation, and that is the thrust of my next amendment. This is a compromise, which I had discussed with a couple of members on the government side, and at least had some indication there might be some openness to that. It does retain most of the "procuring" section.

The Chairman: Can we have a response from—

Mr. Nicholson: Do you have me on the list?

The Chairman: Yes. I have you first, Mr. Nicholson. I thought we ordinarily got a response from the minister. But we will go to Mr. Nicholson.

Mr. Nicholson: Thank you, Mr. Chairman. First, I am not going to reargue the evidence here. It seemed to me it was clear when we had representatives of the RCMP here that organized crime, the mob, is involved with prostitution. That was confirmed by the Minister of Justice yesterday. I have to oppose this NDP motion, because it would have the effect of making money that is made by the mob—the Mafia here in Canada—on prostitution exempt from this law. It would make the money that pimps derive from buying and selling, as the Fraser report states, of Canada's children on our streets... That money would now be exempt, as well as that of the people who run brothels.

I think I speak for most Canadians when I say most Canadians would object to that. I would say this amendment should be defeated.

Mr. Kaplan: None of us approves of the exploitation of prostitution, whether it is by organized crime or by—

Mr. Nicholson: All prostitution is exploitation.

Mr. Kaplan: I do not agree with that; I am sorry. I will make my own statement.

Mr. Nicholson: I did not mean to interrupt.

• 1600

Mr. Kaplan: Prostitution itself is legal. The definitions of these offences Mr. Robinson has referred to actually do

[*Traduction*]

elles retourneraient probablement dans la rue. Et nous avons déjà reçu trop de plaintes de groupes de résidents, à Toronto et ailleurs, au sujet de la prostitution dans la rue.

Monsieur le président, la prostitution n'est pas illégale au Canada. Compte tenu de la portée exagérée de l'article 193, ayant trait à la tenue d'une maison de débauche et d'autres infractions, compte tenu du fait qu'il n'y a pas de preuves que les personnes qui commettent cette infraction, qui sont arrêtées pour cette infraction, aient des liens avec le crime organisé, j'espère que le Comité sera près à accepter mon amendement qui, de fait, est une sorte de compromis. J'estime que les deux sous-alinéas (viii) et (ix) devraient être supprimés, et c'est ce à quoi tend mon prochain amendement. Donc, mon présent amendement est un compromis, et j'en ai discuté avec quelques députés ministériels qui m'ont semblé réceptifs. Le reste de l'article sur le proxénétisme reste à peu près intact.

Le président: Pouvons-nous avoir une réponse...

M. Nicholson: Ne suis-je pas inscrit sur la liste?

Le président: Oui, monsieur Nicholson, vous êtes le premier sur ma liste. Je pensais seulement qu'il fallait une réponse du ministre. Cependant, allez-y, je vous en prie, monsieur Nicholson.

M. Nicholson: Merci, monsieur le président. Je ne vais pas revenir sur tous les témoignages entendu ici. Il me semble cependant que lorsque nous avons reçu les représentants de la GRC ceux-ci nous ont indiqué clairement que le crime organisé était mêlé à la prostitution. Le ministre de la Justice l'a confirmé encore hier. Je dois me prononcer contre la motion NPD, parce qu'elle aurait pour effet d'exempter l'argent que ferait le crime organisé, la mafia au Canada, au niveau de la prostitution. L'argent que réaliseraient les proxénètes, en achetant et en vendant les enfants canadiens dans la rue, comme le soulignait le rapport Fraser... Cet argent serait exempt de la loi, et ceux qui tiennent des maisons de débauche en seraient également exempts.

Je pense que la plupart des canadiens seraient contre une telle exemption. Je pense donc que l'amendement devrait être rejeté.

M. Kaplan: Aucun de nous n'approuve l'exploitation des gens par la prostitution, que ce soit par le crime organisé ou...

M. Nicholson: Toute la prostitution est de l'exploitation.

M. Kaplan: Je m'excuse, mais je ne suis pas d'accord avec vous. J'ai droit à ma propre opinion.

M. Nicholson: Je ne voudrais pas vous interrompre.

M. Kaplan: La prostitution elle-même n'est pas interdite par la loi. Et les infraction décrites par M.

[*Text*]

include quite a lot of activities that are very far from the offensive type of exploitation of prostitution which offend all of us. The examples given by the witnesses who appeared are situations that would be touched by this legislation. I am offended by that. I think if a prostitute is paying the rent on a place and keeping someone in it, it should not be the kind of activity that is brought within the ambit of this powerful new instrument for taking property away that is earned through crime.

So I support these amendments and I would urge the government members to think about the situations that were put to us by witnesses and to remember also the work the Fraser commission did. It could not find a link between organized crime and prostitution. I know that through history prostitution was a very different type of an activity from what it seems to be now in the kind of society we are living in where most prostitutes do operate independently and yet are involved in arrangements which will bring their earnings under the ambit of this new legislation. I think that is wrong. We should not allow that to happen. We should accept this amendment.

I heard the minister say something yesterday that I also find unacceptable and that is these powers will be used with discretion by those who are given authority under them, attorneys general in some cases, police in other cases, going about their duties and exercising the powers they have under the law. I think that is a wrong approach to the police. I do not think the legislators should give them wide powers and then say we hope they will use these powers with discretion. I think the police should use the powers they have and if these powers are given to them, I will not be surprised to see them used. I will not be surprised to see attorneys general authorizing the use of these powers. I think we should restrain these powers here, because I feel they are excessive, and not turn them over to the administrative system assuming the provincial attorneys general will exercise discretion.

When I heard the minister defend these powers on the basis that they would be used with discretion, I thought he was selling me the other way. I hope some other members on the government side will react the same way and recognize he was admitting thereby that these powers are excessive in a lot of the cases to which they will legally apply.

I am going to vote for this amendment. It is a good one.

Mr. Grisé: Mr. Chairman, I do not intend to sell anything to the members of this committee this afternoon or later at other meetings, but if we support these amendments it would make it impossible in this legislation to get to the organizing pimps. Most pimps are under motorcycle gangs and things like that so it is directly related to organized crime.

As for police intervention, the police cannot intervene in any case without the Attorney General's decision. Am I correct? Does Mr. Mosley wants to add anything to the issue?

[*Translation*]

Robinson incluent des activités qui sont loins d'être aussi répréhensibles que l'exploitation par la prostitution à laquelle nous objectons tous. Les témoins ont donné des exemples de situations qui seraient visées par cette loi. Je ne puis l'accepter. Une prostituée qui paie son loyer et qui reçoit quelqu'un chez elle ne devrait pas être visée par cette nouvelle disposition des plus radicales qui a pour effet de permettre la saisie des biens qui sont le produit du crime.

Je suis donc d'accord avec ces amendements et j'incite fortement les députés ministériels à se rappeler les situations données en exemple par les témoins ainsi que les recommandations de la commission Fraser. Cette commission n'a pu trouver de lien entre le crime organisé et la prostitution. La prostitution n'a pas toujours été ce qu'elle est maintenant: dans notre société actuelle, la plupart des prostituées travaillent de façon indépendante il ne faut rien qui justifie la saisie de leurs biens dans le cadre de cette nouvelle loi. Je pense que nous risquons de commettre une erreur. Nous devons accepter ces amendements.

J'ai entendu le ministre dire hier quelque chose que j'ai trouvé répréhensible. Il a indiqué que ces nouveaux pouvoirs seraient utilisés de façon discrétionnaire par les autorités, les procureurs généraux dans certains cas, la police dans d'autres, dans l'exercice de nos fonctions. Je pense que c'est une mauvaise façon de procéder avec la police. En tant que législateur, nous ne devrions pas lui accorder des pouvoir étendus en espérant qu'ils s'en serviront avec discernement. La police devrait utiliser les pouvoirs qu'elle a et personne ne devrait être surpris du fait qu'elle les exerce. Il en va de même pour les procureurs généraux. Nous devrions donc restreindre ces pouvoirs, parce qu'ils sont excessifs actuellement, et ne pas nous fier à l'appareil administratif en supposant que les procureux généraux provinciaux les utiliseront avec retenue.

Lorsque j'ai entendu le ministre parler de l'utilisation de ces pouvoirs d'une façon prudente, j'ai été encore plus inquiet. J'espère que les députés ministériels seront eux aussi prêts à admettre que ces pouvoirs sont excessifs dans bien des situations où ils sont censés s'appliquer.

Je vais donc voter pour cet amendement. Je pense qu'il est excellent.

M. Grisé: Monsieur le président, je ne cherche pas à convaincre les membres du Comité de quoi que ce soit cet après-midi ou en un autre temps, mais si ces amendements sont acceptés, la loi risque d'exempter complètement les proxénètes responsables de la prostitution. La plupart d'entre eux relèvent de bandes de motards ou d'autres organisations qui sont directement liées au crime organisé.

En ce qui concerne l'action policière, la police ne peut pas intervenir sans une décision du procureur général. C'est bien cela? M. Mosley désire-t-il ajouter quelque chose?

[*Texte*]

Mr. Mosley: Mr. Chairman, Mr. Robinson's point that this may represent a compromise between the next motion, based on the understanding that the inclusion of paragraphs 195.(1)(a) through (i) would enable the legislation to be applied against pimps, is perhaps a misunderstanding. The procurement of a prostitute does not necessarily lead directly to obtaining the proceeds. The procurement itself is a criminal act but the acts of prostitution by the individual prostitute are what generate the proceeds. I wonder whether the courts would draw the nexus between the offence of procurement and the generation of that income.

• 1605

There is another point I would like to make, cited in *Martin's Criminal Code*. It is a decision from the Alberta Court of Appeal to the effect that it is no offence to recruit a woman who is already a prostitute. The point is that if the pimps trade—as the expression goes—their stable of prostitutes between them, they are not committing the offence under paragraph 195.(1)(a). Accordingly, even if that were to apply to any proceeds generated by the prostitutes, they could not be reached through this legislation.

Mr. Robinson: The one point I did want to make, Mr. Chairman, is that if this amendment is defeated, the arguments made have been arguments with respect to exploitation, organized crime, pimping and procuring. Those are all to section 195 of the Criminal Code. If this amendment is defeated, I hope members of the committee would be prepared to consider an amendment which would delete the reference to keeping a common bawdy-house. I have not submitted an amendment in writing to this effect, but it would maintain all the references to pimping, procuring and all the exploitation, which, it has been argued, is involved with organized crime. It would delete section 193, keeping a common bawdy-house, which is dealt with in the Criminal Code. It is a relatively minor offence involving an individual who operates as a prostitute in his or her own home. Surely to God it cannot be argued that should be the subject of the kinds of powers contained in this legislation. So I would hope that might be an acceptable—

The Chairman: Well, we have an amendment before us now—

Mr. Robinson: But I have nothing to add, Mr. Chairman.

The Chairman: —and the question is on the amendment.

Amendment negatived.

Mr. Robinson: Mr. Chairman, I would move a slight variation of N-3, to the effect that clause 2 of Bill C-61 be amended by striking out lines 12—

The Chairman: Can you give us that in writing?

[*Traduction*]

M. Mosley: Monsieur le président, M. Robinson affirme que cette présente motion est un compromis par rapport à sa motion suivante en supposant que l'inclusion des alinéas 195.(1)a) à (i) fait en sorte que la loi s'applique aux proxénètes, mais c'est un malentendu. Le fait de fournir une prostituée n'entraîne pas nécessairement la saisie des produits. Le proxénétisme lui-même est un acte criminel, mais le fait de s'adonner à la prostitution pour une prostituée individuelle est ce qui produit l'argent. Je me demande si les tribunaux feraient nécessairement le lien entre l'infraction de proxénétisme et la production d'argent.

Il y a un autre point qui se trouve dans le *Martin's Criminal Code*. Il s'agit d'une décision qui a été rendue par la Cour d'appel de l'Alberta voulant que ce ne soit pas une infraction de recruter une femme qui est déjà une prostituée. Si des proxénètes, donc, s'échangent des prostituées qui leur appartiennent, selon leur expression, ils ne commettent pas d'infraction en vertu de l'alinéa 195.(1)a). Dans le cas où cette activité produirait de l'argent, cet argent ne pourrait pas être touché par la loi.

M. Robinson: Monsieur le président, si cet amendement est rejeté, il le sera parce que les arguments auront porté sur l'exploitation, le crime organisé et le proxénétisme. Ce sont toutes des infractions qui sont prévues à l'article 195 du code criminel. Dans ce cas, j'espère que le Comité sera prêt à examiner au moins l'amendement qui supprime toute mention de la tenue d'une maison de débauche. Je n'ai pas d'amendement déjà préparé à cet effet, mais il laisserait intactes les mentions de proxénétisme et d'exploitation qui, selon les avis exprimés, ont quelque chose à voir avec le crime organisé. Mon nouvel amendement aurait pour effet de supprimer l'article 193, la tenue d'une maison de débauche, dont il est question dans le code criminel. C'est une infraction relativement mineure qui suppose qu'une prostituée travaille à partir de chez elle. J'espère que personne n'ose prétendre que c'est le genre d'activité qui devrait être visée par cette loi avec les pouvoirs étendus qu'elle contient. Aussi, je m'attends à ce que cet amendement au moins. . .

Le président: Nous avons déjà un amendement.

M. Robinson: Je n'ai rien d'autre à ajouter sous ce rapport, monsieur le président.

Le président: . . . et nous allons le mettre au voix.

L'amendement est rejeté.

M. Robinson: Dans ce cas, monsieur le président, je propose un amendement légèrement différent de l'amendement N-3, voulant que l'article 2 du projet de loi C-61 soit modifié par le retranchement des lignes 1. . .

Le président: Avez-vous votre nouvel amendement par écrit?

[*Text*]

Mr. Robinson: Mr. Chairman, it involves just one change to N-3.

The Chairman: Okay, give it to us.

Mr. Robinson: It would be to strike out lines 12 and 13. Instead of lines 12 to 14, strike out lines 12 and 13 on page 3 and renumber the following. That would retain the reference to procuring but would delete the reference to keeping a common bawdy-house, which, based both on the penalty and the substance of the offences, is a far less serious offence. Certainly there is not a shred of evidence to suggest any involvement of organized crime in that particular activity.

The Chairman: Any comment from the committee members?

Mr. Kaplan: I would urge members to accept this amendment for the reasons I gave before.

Mr. Mosley: Mr. Chairman, I would simply comment that one may in fact be guilty of the offence of keeping a common bawdy-house without living on the avails of prostitution. That is because proof of the offence of living on the avails requires evidence that the individual is in fact living on those proceeds, on that money. If one is in the business of prostitution as well as in other businesses, such as drug dealing, it is very difficult for the prosecution to establish that one is living on the avails of prostitution whereas it may be not difficult to establish that the accused is operating a bawdy-house.

• 1610

Mr. Malone: I think it is also the case that many laws operate in an environment of degree. A speeding law of 50 miles an hour maximum makes it illegal if you go 51. It is also illegal if you go 120.

I think we have to put some confidence in law enforcement and the legal systems in our country. Conversely, if you remove reference to the keeping of a common bawdy-house, it seems to me that you have weakened the law's capacity to handle what society would consider to be the significant offence of keeping common bawdy-houses.

In that perspective, I think the law should proceed as it is currently written. I do not do that ideologically or just to support the government side. I do that because I think it is appropriate that it be there in the legislation.

Mr. Kaplan: The thing is, Mr. Chairman, keeping a common bawdy-house could be a woman's own home.

Mr. Malone: Sure; and going over a 50-mile speed limit could be going 51.

Mr. Kaplan: Bear in mind we are talking about a powerful tool that provides, in effect, an expropriation of all of a person's assets.

Mr. Robinson: Before they are even convicted.

[*Translation*]

M. Robinson: Il est presque semblable à N-3.

Le président: Très bien.

M. Robinson: Il retranche les lignes 1 et 2 au lieu des lignes 1 à 3 et il change la désignation des sous-alinéas qui suivent. Dans ce cas, le proxénétisme reste, mais la tenue d'une maison de débauche disparaît. En effet, dans ce dernier cas, l'infraction est beaucoup moins grave comme en atteste les peines prévues ainsi que la description de l'infraction. En tout cas, rien ne prouve que le crime organisé y soit relié d'une façon ou d'une autre.

Le président: D'autres membres du Comité désirent-ils faire des observations?

M. Kaplan: J'incite simplement mes collègues à accepter l'amendement pour les raisons que j'ai déjà indiquées.

M. Mosley: Je voudrais seulement faire remarquer, monsieur le président, qu'il est possible d'être coupable de l'infraction de tenue d'une maison de débauche sans nécessairement vivre des produits de la prostitution. Il faut qu'il soit prouvé que l'inculpé vit directement des produits de la prostitution, de l'argent qui en découle. Si l'inculpé ou l'accusé s'adonne à d'autres activités, comme le trafic des drogues, il est difficile de prouver qu'il fait des produits de la prostitution. En revanche, il est très aisé de prouver que l'accusé tient une maison de débauche.

M. Malone: Il y a également le fait que beaucoup de lois sont une question de mesure. La loi qui limite les vitesses maximales à 50 milles à l'heure fait qu'il est illégal de conduire à 51 milles à l'heure comme à 120 milles à l'heure.

Nous devons nous fier à l'appareil administratif et à l'appareil judiciaire de notre pays. Si vous faites sauter la mention de tenue d'une maison de débauche, il me semble que vous empêchez la société de s'attaquer, par le biais de la loi, à ce qu'elle considère comme une infraction assez importante.

Pour cette raison, j'estime que le libellé de la loi doit rester tel quel. Ce n'est pas une question d'idéologie ou de ligne de parti. Je pense simplement que cette infraction doit être maintenue.

M. Kaplan: Il reste, monsieur le président, que la tenue d'une maison de débauche pourrait vouloir dire une femme qui travaille chez elle.

M. Malone: Conduire à 51 milles à l'heure serait également illégal si la limite était de 50 milles à l'heure.

M. Kaplan: Nous avons sous les yeux un instrument très puissant qui a pour effet d'exproprier tous les biens d'une personne.

M. Robinson: Avant même qu'elle ne soit inculpée.

[*Texte*]

Mr. Kaplan: Do you want that penalty to apply when the offence could be so small? Look at the list of offences here. They are heavy-duty, serious offences.

There are some put in there, like the one we are talking about now, that just do not deserve to be on that list from everything we know about it and from the evidence we got from people who are involved. It just seems to me, especially when we are starting a new power, that we should take a conservative approach and not apply this new power so broadly.

Mr. Malone: I think we are taking a conservative approach.

The Chairman: Can we deal with the amendment?

Mr. Robinson: I would like to ask for some clarification from the acting parliamentary secretary, or from Mr. Mosley, with respect to the inclusion of this section.

I do not recall receiving any evidence whatsoever from the minister, from Mr. Stamler, or from Mr. Egan of the RCMP, suggesting any involvement of organized crime, whether it be motorcycle gangs or the Mafia—as Mr. Nicholson referred to it—or anyone else in the keeping of common bawdy-houses.

I may have missed something, but I would like to ask for clarification on that point. Is there any evidence whatsoever to suggest that organized crime is involved in this particular offence under section 193 of the Code?

The evidence that we have heard from the National Action Committee on the Status of Women, the evidence that we have heard from the Canadian Organization of the Rights of Prostitutes, and the evidence of the Fraser commission—which looked into this question exhaustively—was that most prostitutes are independent operators; they found no evidence to support a link between prostitution and organized crime.

If the suggestion is that we want to get at the proceeds of organized crime flowing from section 193 offences, presumably there has to be some evidence that organized crime is involved in them. I am asking what that evidence is.

Mr. Malone: I just want to ask the question: Does it need to be organized crime? Is it not the proceeds from crime? It does not strike me that it has to be somehow organized other than that there may be one or more persons involved.

Mr. Nicholson: Mr. Robinson is asking: Is there any shred of evidence? The evidence I heard was that organized crime was involved with prostitution. As it is contained in the Criminal Code, prostitution has different elements—keeping a common bawdy-house, street soliciting, a number of different areas. That was the evidence we heard.

You are quite correct that nobody cross-examined Commissioner Stammer or the Minister of Justice and

[*Traduction*]

M. Kaplan: Voulez-vous qu'une telle peine s'applique à une infraction aussi mineure? Voyez les autres infractions qui se trouvent dans cette liste. Elles sont très graves pour la plupart.

Il y en a quelques-unes, comme celles dont nous parlons actuellement, qui ne méritent certainement pas de se trouver dans cette liste d'après notre expérience et d'après les témoignages que nous avons entendus. Il me semble que lorsque nous accordons un nouveau pouvoir nous devons adopter une attitude conservatrice.

M. Malone: C'est ce que nous faisons.

Le président: Pouvons-nous mettre l'amendement aux voix?

M. Robinson: J'aimerais avoir une précision du secrétaire parlementaire suppléant ou de M. Mosley en ce qui concerne cet article.

Relativement à la tenue d'une maison de débauche, je ne me souviens pas d'avoir entendu des témoignages, du ministre, de M. Stamler, de M. Egan de la GRC, à l'effet que le crime organisé, les bandes de motards ou la mafia, comme l'a laissé entendre M. Nicholson, soient impliqués.

J'ai peut-être raté quelque chose, mais je ne m'en souviens pas. Y a-t-il eu des témoignages quelconques voulant que le crime organisé ait un rôle à jouer dans cette infraction prévue à l'article 193 du Code?

D'après le Comité canadien d'action sur le statut de la femme, la Canadian Organization of the Rights of Prostitutes, la Commission Fraser, qui a longuement examiné la question, la plupart des prostituées travaillent de façon indépendante. D'après tous ces témoins, il n'y a rien qui permette d'affirmer que la prostitution soit liée au crime organisée.

Si nous voulons nous attaquer aux produits du crime organisé qui découlent des infractions prévues à l'article 193, nous devons avoir des preuves que le crime organisé a quelque chose à y voir. Je demande simplement quelles sont ces preuves.

M. Malone: Pourquoi faut-il que ce soit le crime organisé? Pourquoi pas le crime tout court? La notion d'organisation n'a rien à voir sauf qu'il peut y avoir une ou plusieurs personnes impliquées.

M. Nicholson: M. Robinson veut savoir s'il y a la moindre preuve à cet effet. J'ai entendu des témoignages qui en ont fait état. Et selon le Code criminel, la prostitution comprend plusieurs éléments: la tenue d'une maison de débauche, la sollicitation dans la rue, entre autres.

Évidemment, personne n'a contre-interrogé le commissaire Stammer ou le ministre de la Justice afin de

[*Text*]

asked what type of prostitution they were talking about. For you to assume they were only talking about street soliciting or some other element of prostitution is leading to a conclusion that is not justified.

• 1615

We heard evidence that organized crime is involved with prostitution, specifically in Toronto and in Montreal. The effect of your amendment would be to exempt a very important component of the problem, and I think other members of the government cannot support this.

Mr. Jepson: Right on.

The Chairman: Mr. Kaplan, then we will go to Mr. Grisé for a response.

Mr. Kaplan: Surely Mr. Nicholson would agree that the involvement—if there is any—is marginal compared to the types of things that organized crime does where the big money and the major evils are: the drug trafficking business, racketeering and so on.

Mr. Nicholson: I agree. They did not put a dollar figure on it, and God knows drugs are probably worse in terms of how much money they are collecting than buying and selling human beings, but—

Mr. Kaplan: The trouble with putting prostitution into this category is that it brings in a lot of the petty activities that are now being reviewed to see whether they should be considered criminal at all.

Mr. Nicholson: I disagree on whether this is petty or not. We might have a difference of opinion on that. I consider this a very serious business.

Mr. Kaplan: If this law is going to work, if we are going to be able to get the organized criminals and proceeds we are talking about, we will be able to give crime a real setback without having to involve or put in jeopardy the types of arrangements described to us by the prostitutes who appeared here. So why do it?

Mr. Nicholson: I can tell you that Mr. Mosley says that job may be more difficult if we are trying to separate out a motorcycle gang that is deriving its income from prostitution and drugs.

Mr. Robinson: The amount motorcycle gangs are involved in keeping bawdy-houses is nothing.

Mr. Nicholson: Their involvement in prostitution, plus evidence before the committee—

The Chairman: You asked a question, Mr. Robinson, and I was about to ask Mr. Grisé for a response.

Mr. Grisé: I will ask Mr. Mosley to answer the question.

Mr. Mosley: Superintendent Egan specifically related the Outlaw motorcycle gangs to prostitution. Unfortunately, Mr. Robinson was not present for his testimony, so the question was not posed to

[*Translation*]

savoir de quel genre de prostitution il parlait. Il ne s'agit pas seulement du racolage dans la rue ou d'un autre aspect particulier de la prostitution.

Selon les témoignages que nous avons entendus, le crime organisé est impliqué dans la prostitution, surtout à Toronto et à Montréal. Vous voudriez qu'un aspect important du problème soit soustrait à la loi, mais je ne vois pas comment les députés ministériels pourraient être d'accord avec vous.

M. Jepson: Parfaitement.

Le président: M. Kaplan, puis M. Grisé pour sa réponse.

M. Kaplan: M. Nicholson convient sûrement que l'implication du crime organisé, si implication il y a, est beaucoup moindre que dans d'autres activités beaucoup plus rémunératrices pour lui: le trafic des drogues, le racket, etc.

M. Nicholson: Je suis d'accord. Les témoins n'ont pas donné de chiffres, mais le trafic des drogues rapporte probablement plus que l'achat et la vente d'êtres humains. .

M. Kaplan: Le problème avec cette approche est qu'elle inclut beaucoup d'activités mineures qu'on est en train de revoir actuellement afin de déterminer si elles doivent être considérées comme criminelles.

M. Nicholson: Je ne suis pas d'accord sur le fait qu'il s'agisse nécessairement d'activités mineures. Je considère personnellement le problème comme très grave.

M. Kaplan: Nous pouvons faire en sorte que cette loi s'attaque au crime organisé et aux produits du crime organisé que nous avons décrits; nous pouvons faire régresser le crime sans avoir à mettre en cause les arrangements dont nous ont parlé les prostituées que nous avons entendues. Pourquoi ne le faisons-nous pas?

M. Nicholson: M. Mosley nous a indiqué qu'il pourrait être plus difficile de prouver l'infraction dans le cas d'une bande de motards qui tireraient des revenus de la prostitution et du trafic des drogues.

M. Robinson: Il n'y a pas de bandes de motards qui tiennent des maisons de débauche.

M. Nicholson: Elles sont impliquées dans la prostitution, et le Comité a entendu des témoignages. . .

Le président: Vous avez posé une question, monsieur Robinson, et j'allais demander à M. Grisé d'y répondre.

M. Grisé: Je vais m'en remettre à M. Mosley.

M. Mosley: Le surintendant Egan a établi un lien précis entre la bande des Outlaw et la prostitution. Malheureusement, M. Robinson n'était pas là pour son témoignage, mais le surintendant Egan s'est vu poser la

[*Texte*]

Superintendent Egan whether he was talking about common bawdy-houses or street prostitution.

The fact remains—as one of the members of the committee has indicated—that prostitution in this country is carried out in a number of ways. It is carried out in the street, in bars, through escort services and in common bawdy-houses. This provision may be the only way to get at those who are using premises and escort services to supply prostitutes to customers.

Perhaps I could give an illustration of the point I was trying to make earlier. If you launch an investigation and prosecution against a group of Outlaw motorcycle members, for example, on the basis of living off the avails, and if they are also engaged in other activity—whether legitimate or illegitimate—they can make a simple response to the charge by saying they are banking or shipping the proceeds from the prostitution out of the country. They are not caught under section 195. At the same time, they may well be operating a common bawdy-house. If they are generating any proceeds—whether they are living off those proceeds or not—they would be subject to the application of this legislation.

The Chairman: Are we ready for the question? Mr. Robinson?

Mr. Robinson: First of all, Mr. Malone asked why we are focusing on organized crime, and I think that is precisely the concern here. The implications of including this section—and we know its sweeping scope—might very well mean that an individual prostitute who may be involved in keeping a bawdy-house might very well find himself or herself in a situation in which all of the heavy powers of this legislation are brought down. I do not think that is the purpose of legislation of this nature. Certainly the minister has never indicated that was the purpose of this legislation. If it is—and if that is what Mr. Malone is suggesting—I think that reinforces precisely the argument I am making.

• 1620

Again, Mr. Chairman, Mr. Mosley refers to the evidence of the police. If there was any evidence whatsoever of a concrete nature of the involvement of organized crime, the Outlaws motorcycle gang, or anyone else in keeping common bawdy houses, I would have thought that one of the police witnesses might have brought that to the attention of the committee. In fact, I know that they would have brought that to the attention of the committee.

That was an issue, and the previous evidence was received on that subject, and with respect, I think it is nonsense to suggest that if they had any evidence to support that they would not have brought it, particularly in the face of the arguments of the findings of the Fraser commission, which said that just was not the case.

Mr. Mosley says we want to be able to get at the escort services. Maybe now we are really coming down to what

[*Traduction*]

question à savoir s'il parlait de la tenue des maisons de débauche ordinaires ou de la prostitution dans la rue.

Le fait est, comme l'a indiqué l'un des membres du Comité, que la prostitution peut prendre un certain nombre de formes au pays. Elle est présente dans la rue, dans les bars, dans les services d'escorte et dans les maisons de débauche. Cette disposition est probablement le seul moyen de poursuivre ceux qui fournissent des prostituées à leurs clients à partir de locaux ou par l'intermédiaire de services d'escorte.

Je vous donne un exemple de ce que je voulais dire un peu plus tôt. Si vous accusez un des membres de la bande des Outlaw de vivre des produits de la prostitution et que ce membre s'adonne à une autre activité, légale ou illégale, il peut se défendre en disant qu'il met l'argent provenant de la prostitution à la banque ou qu'il l'envoie en dehors du pays. Il ne peut être accusé en vertu de l'article 195. Cependant, il peut en même temps tenir une maison de débauche. S'il y a des produits, que le membre vive des produits ou non, il peut être assujetti à cette loi.

Le président: Êtes-vous prêts pour la mise aux voix? Monsieur Robinson?

M. Robinson: M. Malone a voulu savoir pourquoi nous insistons sur le crime organisé. Tout est là. Cet article, nous savons quelle est sa portée, peut très bien s'appliquer à une prostituée individuelle qui tient une maison de débauche. Ses pouvoirs très étendus peuvent s'appliquer dans toute leur force à ce genre de situation. Cependant, je ne pense pas que ce soit le but de cette loi. En tout cas, le ministre ne l'a jamais indiqué. Si elle doit s'appliquer à ce genre de situation, et c'est ce qu'a semblé dire M. Malone, mon argument est encore plus fondé.

Monsieur le président, M. Mosley fait allusion au témoignage de la police. S'il y avait quelque preuve concrète que le crime organisé, les Outlaws ou d'autres motards s'intéressent à la tenue de maison de débauche, il me semble que les témoins de la police, nous en auraient parlé. Je suis même convaincu qu'ils l'auraient fait, si cela avait été le cas.

Avec tout le respect que je vous dois, je pense qu'il est absolument illogique de laisser entendre qu'ils ne l'auraient pas fait s'ils avaient eu des preuves, particulièrement si l'on considère les conclusions de la Commission Fraser qui a dit que ce n'était tout simplement pas le cas.

M. Mosley dit que nous voulons pouvoir nous attaquer aux services d'escorte. Voilà peut-être enfin le but réel de

[*Text*]

this clause is all about. Is that really the purpose of this, to get at escort services, as Mr. Mosley is suggesting, even though there is no suggestion, no evidence of involvement of organized crime in escort services?

The Chairman: Just a point of information for myself. We hear the term "organized crime" brought up frequently. This bill is not restricted to organized crime as we commonly think of it, or am I wrong? I would like clarification.

Mr. Nicholson: You are not wrong, Mr. Chairman.

Mr. Robinson: That has been the focus, Mr. Chairman.

Mr. Nicholson: Proceeds of crime.

Mr. Robinson: Mr. Chairman, the focus of the minister's defence of this bill has been on organized crime. That is what the minister has certainly been focusing on, no question about that. That is one of the concerns I mentioned. Now it has been suggested by Mr. Mosley that we will be able to crack down on escort services using this provision.

I think that suggestion is one of some concern, because if in fact that is the real agenda, if that is the hidden agenda of the government in this, to crack down on escort services, then really, we are going to see a terrible situation, because we have of course been told that prostitutes are supposed to be swept off the streets. That is the effect of Bill C-49, another one of Mr. Mosley's bills, and that swept them off the streets, and he defended that with the same vigour with which he is defending this. That swept the prostitutes off the streets, Mr. Chairman, theoretically, and into private dwellings.

Now the same government is bringing forward legislation which is, according to Mr. Mosley's comments of a couple minutes ago, trying to nail them there. So we have this incredible hypocrisy going on here, where the government says it is okay to be a prostitute—prostitution is not illegal in Canada—but if you engage in prostitution anywhere, including under an escort service, then you are a criminal, and they are going to nail you.

I think the fundamental point in proposing this amendment is—and I want to quote now just in closing from the brief of the Canadian Organization for the Rights of Prostitutes:

> If the bill is enacted in its present form, the amount of street prostitution in Canada will increase, and prostitutes both on and off the street will be more vulnerable to exploitation. The confiscation of property from prostitutes or their dependants or the managers of prostitution businesses—i.e. escort services that the government seems so keen to get at—would not only be ineffective to reduce exploitation in the business of prostitution; it would be a shameful violation of the human rights of independent working men and women.

[*Translation*]

cet article. Est-ce là le véritable objectif? Nous attaquer aux services d'escorte, comme le laissé entendre M. Mosley, malgré que rien ne permet d'affirmer que le crime organisé y ait quelque intérêt que ce soit?

Le président: Il me semble qu'on entend bien souvent le terme «crime organisé». Pouvez-vous me dire si ce projet de loi se limite strictement au crime organisé. Je voudrais bien savoir ce qu'il en est.

M. Nicholson: Non, monsieur le président, absolument pas.

M. Robinson: C'est surtout le crime organisé que l'on vise, monsieur le président.

M. Nicholson: Les produits de la criminalité.

M. Robinson: Monsieur le président, c'est sur le crime organisé qu'a porte la justification du projet de loi. C'est là-dessus que le ministre a insisté, cela ne fait aucun doute. C'est l'une des inquiétudes que j'ai soulevées. M. Mosley a laissé entendre que cette disposition nous permettra de nous attaquer aux services d'escorte.

Cela est plutôt inquiétant, parce que si c'est l'intention qui se cache derrière les agissements du gouvernement, s'il a vraiment l'intention de s'attaquer aux services d'escorte, la situation sera terrible, puisqu'on nous a évidemment dit que l'on veut éliminer des rues les prostituées. C'est l'effet qu'a eu le projet de loi C-49, un autre projet de loi qu'a défendu avec la même vigueur M. Mosley. Il a bel et bien enlevé de la rue les prostituées, monsieur le président, mais ça n'en a eu l'effet que de déplacer le problème, car elles opèrent maintenant dans des maisons privées.

Si j'en juge aux observations que nous faisait M. Mosley il y a une ou deux minutes, le même gouvernement veut maintenant adopter une loi pour tenter de les rattraper dans ces endroits privés. Quelle incroyable hypocrisie! Le gouvernement dit que la prostition n'est pas illégale au Canada, mais que si on se livre à des activités de ce genre ou que ce soit, y compris dans le cadre des services d'escorte, on est considéré comme un criminel, et l'on sera traité comme tel.

L'argument fondamental en proposant cet amendement, c'est un peu ce que l'on disait dans le mémoire de la Candian Organization for the Rights of Prostitutes:

> On disait que si l'on mettait en vigueur le projet de loi dans sa formulation actuelle, la prostitution sur la rue augmenterait au Canada, et les prostituées de toutes sortes seront davantage vulnérables à l'exploitation. Confisquer des biens détenus par des prostituées ou des personnes à leur charge, ou par les personnes qui exploitent des entreprises de prostitution—des services d'escorte, par exemple, auxquels le gouvernement semble tellement tenir à s'attaquer—serait non seulement inefficace à réduire l'exploitation dans le milieu de la prostitution, mais constituerait une

[Texte]

Mr. Chairman, that is the effect of this legislation, and the purpose of the amendment is to try to remove that inequity.

Mr. Kaplan: Mr. Chairman, I want to make a point about this bill, but before I say that, I would like to express my objection to Mr. Robinson's characterization of this bill and preceding bills as somehow or other being the projects of an official of the Department of Justice.

The officials of the Department of Justice now have the responsibility of carrying the legislation of the government of the day, and they do that as professionals. I think it is totally inappropriate to suggest that Mr. Mosley agrees with or disagrees with the policies of extending the bill in this way. I think it is very damaging to the concept of the Public Service as we have it and to the professionalism of the department to suggest that they agree with these bills. I think they do not. Some people think they do. Their job is to present them and to explain them.

• 1625

With the former government, ministers would come and they would defend the bills. They do not do that any more with this government. Officials are coming with acting parliamentary secretaries, in this case, to explain the legislation. I think it is misguided to criticize or accuse the official as being in favour of this legislation in explaining it.

Now I would like to turn to this turn of events in which members of the government party are suggesting that this is a measure that will apply to all criminal activity. I do not accept that. I was very clear that this was a tool we are giving to the law enforcement authorities because we are finding in Canadian society that the criminal element is becoming rich and powerful, that the proceeds of crime are being diverted into areas beyond criminal activities, and that this was going to be a measure to be used to try to catch up with them.

To suggest that while we are at it we should use this tool for escort services and for ordinary prostitutes who are conducting prostitution in their own homes is, I think, just going too far. I think government members could show good faith about that by excluding this activity from the ambit of the bill. I thought that the government had intended to collect out of the Criminal Code those crimes that are associated with the development I described a moment ago and not other crimes. The kind of criminal activity we are talking about here in relation to prostitution, as deplorable as it is, especially when women are exploited, to me is going too far.

[Traduction]

violation honteuse des droits d'hommes et de femmes qui travaillent d'une manière autonome.

Monsieur le président, c'est là l'effet de cette loi, et l'objectif de cet amendement est d'éliminer cette injustice.

M. Kaplan: Monsieur le président, je veux faire une mise au point au sujet de ce projet de loi, mais avant cela, je voudrais dire à M. Robinson que je m'inscrit en faux contre ce qu'il disait à propos de ce projet de loi et de projet de loi antérieur, à savoir qu'ils seraient des projets appartenant à un haut fonctionnaire du ministère de la Justice.

Les hauts fonctionnaires du ministère de la Justice ont désormais la responsabilité de faire tout le nécessaire en vue de l'adoption des lois proposées par le gouvernement, et ils s'aquittent de cette tâche d'une manière professionnelle. Il me paraît tout à fait déplacé de laisser entendre que M. Mosley approuve ou désapprouve les buts visés par ce projet de loi. Je pense qu'il est très nuisible pour l'image de la fonction publique et le professionnalisme du ministère de laisser entendre qu'ils approuvent ces projets de loi. Je pense que ce n'est pas le cas. Certains sont persuadés du contraire, mais leur tâche consiste à les présenter et à les expliquer.

Sous l'ancien gouvernement, les ministres venaient eux-mêmes défendre les projets de loi. Le présent gouvernement a changé la formule. Aujourd'hui, des hauts fonctionnaires, accompagnés de secrétaires parlementaires, dans ce cas, viennent expliquer la loi. Ces une erreur que d'accuser le haut fonctionnaire d'être en faveur de cette loi, quand il ne vient que l'expliquer.

Je voudrais maintenant parler un peu du fait que certains députés du gouvernement laissent entendre qu'il s'agit là d'une mesure qui s'appliquera à toutes les activités criminelles. Je ne suis pas de cet avis. J'ai dit très clairement qu'il s'agissait d'un instrument dont nous dotions les autorités de mise en application de la loi, parce qu'on avait constaté que dans la société canadienne, les criminels s'enrichissaient et devenaient de plus en plus puissants, les produits de la criminalité étaient transférés dans des activités qui dépassent la criminalité, et que cette mesure allaient permettre de régler en partie le problème.

Laisser maintenant entendre que puisque nous y sommes, nous pourrions tout aussi bien d'utiliser cet instrument pour régler le problème des services d'escorte et des prostituées ordinaires qui exercent leur métier à la maison, c'est aller trop loin. Les députés du gouvernement pourraient faire preuve de bonne volonté en excluant cette activité de la portée du projet de loi. Je pensais que le gouvernement voulait décriminaliser les crimes que j'ai décrits tout à l'heure. Vouloir inclure les activités criminelles liées à la prostitution, aussi déplorables qu'elles soient, en particulier lorsque des femmes sont exploitées, c'est à mon avis aller trop loin.

[*Text*]

I would like to make another argument that has to do with the idea of giving discretion by saying here are the powers, but do not use it for the small-time activities. I think when you include that in the law, you are opening the door to corruption of the police. It is a very serious thing when police are given powers or when an Attorney General is given powers and they have the discretion about whether to use them or not. It gives them power to manipulate criminals and, in this case, to manipulate prostitutes in ways I think we should try to avoid.

We should give the police powers that we want them to use. We should tell them the Criminal Code is there, to take it and to go out and use every power that is available. Here we are talking about a power we say we are giving, but which we do not want to be used; it is to be used only with discretion. Police are not perfect. Their effectiveness and their integrity is undermined when they are given a selection of powers and told to use their own discretion about which to use. I think it is a mistake to give the police powers and to tell them to use them with discretion, instead of using them to the limit of the law, which I think is the proper way to task the police forces of our country.

For that reason I also would urge that this amendment be supported and that this legislation be confined only to that type of heavy criminal activity, heavy criminal element, where they have been getting away with it under the existing criminal law.

Mr. Jepson: I am just somewhat confused by the Justice critic of the NDP who is defending the escort service. Is this the position of the NDP to defend escort services and to protect them? Is this what we can expect as a job-creation project from the NDP?

Mr. Robinson: Mr. Chairman, I am not going to respond to Mr. Jepson's comment with respect to an activity that is legal in Canada. He may not approve of it, just as he does not approve of many other legal activities in Canada. He is entitled to voice his views on those legal activities with his friends and counterparts from various legal organiations in Canada, whether it be REAL Women or other organizations.

Mr. Jepson: I thought you were not going to comment on that.

Mr. Robinson: Mr. Chairman, that is his right in a democractic society, certainly. I am sure he can have great debates on many of those subjects with the Conservative candidate for Carleton—Gloucester in the upcoming period of time.

Mr. Nicholson: We will do that in the next Parliament.

[*Translation*]

Je voudrais aussi discuter un peu de l'idée d'accorder une certaine latitude dans un projet de loi dans 10 ans: Voici les pouvoirs dont vous disposez, mais ne les utilisez pas pour les activités de peu d'envergure. Accorder ainsi une telle latitude dans un projet de loi, c'est ouvrir la porte à la corruption des autorités. C'est très grave que de donner des pouvoirs à la police ou à un procureur général, et en même temps, la latitude de les utiliser ou non. Cela leur donne la possibilité de manipuler des criminels et, en l'occurrence, des prostituées, d'une manière que nous devrions tenter d'éviter.

Nous devrions donner aux policiers des pouvoirs que nous voulons qu'ils exercent. Nous devrions leur dire que le Code criminel existe, de l'observer, et d'utiliser tous les pouvoirs qu'il leur confère. Nous donnons des pouvoirs, mais nous ne voulons pas qu'ils soient utilisés tout le temps; nous en laissons l'application à la discrétion des autorités. Les policiers ne sont pas des êtres parfaits. On mine leur efficacité et leur intégrité quand on leur donne des pouvoirs, et qu'on leur dit en même temps que l'application est laissée à leur discrétion. Je pense que c'est une erreur que de donner des pouvoirs aux policiers et de leur dire de faire preuve de discrétion dans leur application, plutôt que de les utiliser dans les limites de ce que prévoit la loi, ce qui serait, selon moi, approprié.

Pour cette raison, j'insisterai aussi fortement pour que l'on adopte cet amendement et que cette loi ne se limite qu'au genre d'activités criminelles graves, aux auteurs de crimes graves que la loi existante n'a pas permis de punir d'une manière qui soit juste.

M. Jepson: Je suis quelque peu étonné d'entendre le critique de la justice du NPD défendre ainsi les services d'escorte. Est-ce là l'intention du NPD? Défendre ces services et les protéger? Est-ce le genre de projets de création d'emplois auxquels il faut s'attendre du NPD?

M. Robinson: Monsieur le président, je n'ai pas l'intention de répondre à l'observation de monsieur Jepson au sujet d'une activité qui est légale au Canada. Il ne l'approuve peut-être pas, tout comme il désapprouve bien d'autres activités légales au Canada. Il a le droit d'exprimer ses opinions au sujet d'activités légales avec ses amis et ses confrères et consoeurs de divers organismes au Canada, qu'il s'agisse de genre de REAL Women ou d'autres organismes.

M. Jepson: Je pensais vous avoir entendu dire que vous n'alliez pas faire de commentaires là-dessus.

M. Robinson: Monsieur le président, c'est tout à fait son droit au sein d'une société démocratique. Je suis persuadé qu'il pourra avoir des discussions fort intéressantes sur un grand nombre de ces sujets avec le candidat conservateur de Carleton-Gloucester dans les temps à venir.

M. Nicholson: Oui, nous le ferons à la prochaine législature.

[*Texte*]

• 1630

Mr. Robinson: Mr. Chairman, I just wanted to respond to the point Mr. Kaplan made. I think in general terms, Mr. Kaplan is quite right: it is inappropriate to fire arrows at public servants.

We are in what I think is an untenable position in this committee, unfortunately, in the sense that the minister is not here to defend his legislation. The minister does not have a parliamentary secretary, which is inexcusable, Mr. Chairman. The role of the parliamentary secretary in this Parliament has been to work closely with the minister, to work closely with the department, and to defend legislation before a parliamentary committee.

Mr. Kaplan: They only have 200 to choose from.

Mr. Robinson: Mr. Chairman, for many months now, there has been no parliamentary secretary to the Minister of Justice. This is no reflection on Mr. Grisé, but Mr. Grisé—

The Chairman: We are dealing with an amendment.

Mr. Robinson: I recognize that, Mr. Chairman.

The Chairman: There is a different forum in which you can bring up this objection.

Mr. Robinson: Mr. Chairman, this is an important point because it responds to the point that was made by Mr. Kaplan. I believe Mr. Grisé is, as I indicated, a parliamentary secretary to another minister. He has responsibilities in that regard. So effectively we are in a situation in which, as is quite obvious—and let us call a spade a spade—Mr. Mosley is calling the shots in terms of response to the acting parliamentary secretary. That is what is going on. I am not going to play the little fantasy game of suggesting otherwise. The purpose of my intervention was to make that reality clear.

The Chairman: Are you suggesting that Mr. Mosley's views do not—

Mr. Nicholson: I think I am going to have to reply to that, Mr. Chairman. It is a real cheap shot against Mr. Mosley, one of the officials.

When you asked the question, how could this section be applied? He gave some examples. This is what he has done for three and a half years and probably before I got here. To take a cheap shot at him here this afternoon I think is absolutely wrong.

I will start with Mr. Grisé. Mr. Grisé, as a parliamentary secretary, has wide responsibilities. He has taken a particular interest and has sat on this committee now for quite some time. He has developed an expertise and has been of considerable help to this committee.

An hon. member: Hear, hear!

[*Traduction*]

M. Robinson: Monsieur le président, je voulais seulement répondre à M. Kaplan. De manière générale, je pense qu'il a tout à fait raison: il n'est pas juste de s'attaquer aux fonctionnaires.

Nous sommes dans une position très délicate, malheureusement, parce que le ministre n'est pas ici pour défendre son projet de loi. Le ministre n'a pas de secrétaire parlementaire, ce qui inexcusable, monsieur le président. Au cours de cette législature, le rôle du secrétaire parlementaire a consisté à travailler de près avec le ministre, à travailler aussi de près avec le ministère, et à défendre le projet de loi devant un Comité parlementaire.

M. Kaplan: Oui, ils n'ont le choix que parmi 200 députés.

M. Robinson: Monsieur le président, le ministre de la Justice n'a pas de secrétaire parlementaire depuis maintenant plusieurs mois. Cela n'a rien à voir avec M. Grisé, mais M. Grisé. . .

Le président: Ne devrions-nous pas plutôt discuter d'un amendement?

M. Robinson: Oui, vous avez raison, monsieur le président.

Le président: Ce n'est pas tellement l'endroit où soulever cette objection.

M. Robinson: Monsieur le président, c'est important, parce que cela répond à ce que disait M. Kaplan. Comme je le disais, M. Grisé est secrétaire parlementaire d'un autre ministre. Il a des responsabilités à cet égard. Il est donc plutôt évident que M. Mosley joue le rôle du secrétaire parlementaire. C'est là où nous en sommes. Mon intervention n'avait pour but que d'apporter cet éclaircissement.

Le président: Voulez-vous dire que les opinions qu'exprime M. Mosley ne sont pas. . .

M. Nicholson: Je ne peux pas laisser passer cela, monsieur le président. C'est vraiment mesquin à l'égard de M. Mosley, l'un des hauts fonctionnaires.

Quand vous avez demandé comment cet article pourrait s'appliquer, il a donné quelques exemples. C'est ce qu'il fait depuis trois ans et demi, et peut-être même avant mon arrivée. Je trouve tout à fait inadmissible qu'on l'attaque ainsi cet après-midi.

Je commencerai par M. Grisé. En tant que secrétaire parlementaire, M. Grisé a de vastes responsabilités. Il s'intéresse particulièrement aux travaux de ce Comité et y participe depuis un certain temps. Il connaît maintenant très bien la question, et il a beaucoup aidé le Comité.

Une voix: Bravo! Bravo!

[*Text*]

Mr. Nicholson: I am surprised the NDP would take the attitude that we have to have the minister here to hold our hands, to take us through this legislation.

The Chairman: We are straying from the amendment.

Mr. Nicholson: A cheap shot was taken at the Minister of Justice and I do not think it should sit on the record. I am surprised the NDP would now be opposing the spirit of parliamentary reform in which legislative committees deal with these things on their own.

Mr. Robinson: It makes a mockery of parliamentary reform.

Mr. Nicholson: I have heard nothing to say this is a mockery.

An hon. member: It is quite the contrary!

The Chairman: I am going to call the questions. The question is on the amendment. Shall the amendment carry?

Amendment negatived

The Chairman: We will now move to government technical amendment G-1. It does not show Clause 2. Mr. Grisé, would you present it?

Mr. Grisé: If Mr. Robinson allows me, even if I am only the acting parliamentary secretary. Of course, I am the Parliamentary Secretary to the Deputy Prime Minister, Mr. Chairman. I believe the Deputy Prime Minister has an overview and overlook of all the bills in government.

Mr. Nicholson: It is a great honour to have you here.

Mr. Robinson: You represent all ministers.

Mr. Grisé: I just cannot afford to be everywhere, Mr. Robinson, like you are.

The Chairman: I am asking you for the amendment.

M. Grisé: Monsieur le président, ce sont des amendements techniques qui concernent un mot dans la version française du projet de loi. Ce mot est le mot «grave» qui est remplacé par le mot «désigné». Il revient à plusieurs reprises dans le projet de loi, soit à la page 3, aux lignes 37 et 42; à la page 4, aux lignes 1, 24, 29, 43 et 49; à la page 10, aux lignes 27 et 44; à la page 16, lignes 5 et 25 et à la page 20 lignes 5, 12, 19 et 23.

Monsieur le président, c'est simplement un amendement technique. Il y a quelques mois, on utilisait le mot «grave»; au fur et à mesure de la rédaction de ce projet de loi le terme «désigné» s'est imposé. Cela, c'est seulement pour être conforme au texte anglais. L'anglais parle de *designated drug offence*.

• 1635

M. Kaplan: C'est une définition créée au cours de la rédaction du projet de loi?

[*Translation*]

M. Nicholson: Je suis étonné que le NPD pense qu'il faille que le ministre nous tienne la main pour examiner ce projet de loi.

Le président: Nous nous éloignons de l'amendement.

M. Nicholson: On s'est montré mesquin à l'égard du ministre de la Justice, et je ne voudrais pas que cela demeure au procès-verbal. Je suis étonné que le NPD s'oppose maintenant à l'esprit de la réforme parlementaire à la suite de laquelle on a décidé que les Comités législatifs soient davantage autonomes.

M. Robinson: On tourne la réforme parlementaire en ridicule.

M. Nicholson: Non, absolument pas.

Une voix: Ce serait même plutôt le contraire.

Le président: Nous revenons maintenant à l'amendement. L'amendement est-il adopté?

L'amendement est rejeté

Le président: Nous allons maintenant passer à l'amendement G-1 proposé par le gouvernement. Ce n'est pas indiqué. Il s'agit d'un amendement à l'article 2. Monsieur Grisé, voudriez-vous nous le présenter?

M. Grisé: Si M. Robinson me le permet, même si je ne suis que le secrétaire parlementaire suppléant... Evidemment, je suis le secrétaire parlementaire du vice-premier ministre, monsieur le président. Je pense que le vice-premier ministre a une certaine vue d'ensemble de tous les projets de loi.

M. Nicholson: Nous sommes très honorés de votre présence.

M. Robinson: Vous représentez tous les ministres.

M. Grisé: Je ne peux pas être partout, comme vous, monsieur Robinson.

Le président: Monsieur Grisé, l'amendement, je vous prie.

Mr. Grisé: Mr. Chairman, these are technical amendments concerning one word in the French version. This word is *désigné* which is substituted for the word *grave*. It is substituted on page 3, lines 37 and 42; page 4, lines 1, 24, 29, 43 and 49; page 10, lines 27 and 44; page 16, lines 5 and 25; and on page 20, lines 5, 12, 19, and 23.

Mr. Chairman, it is only a technical amendment. A few months ago, the word that was used was *grave*; as the writing of the bill was progressing, the word *désigné* was recognized. It is only to be closer to the English version. In English, it is *designated drug offence*.

Mr. Kaplan: It is a definition that was created during the writing of the bill?

[*Texte*]

M. Grisé: Oui.

M. Kaplan: Bien! Il n'y a pas de problème.

Amendment agreed to

The Chairman: We now move to N-4, an amendment in the name of Mr. Robinson.

Mr. Robinson: Mr. Chairman, before moving to that amendment, I have a question with respect to the manner in which the definition of enterprise crime offence is set out. There are a number of sections that refer to the substantive offences and there are other sections that refer to the punishment provisions of the Criminal Code. Why are both of those included? For example, where there is reference to section 218, punishment for murder, why are we not just including the substantive offences in question rather than the punishment section of the Criminal Code?

Mr. Mosley: It is a drafting convention followed by our legislative counsel to refer to the punishment section as a matter of practice.

Mr. Robinson: This is done in other sections of the Criminal Code as well?

Mr. Mosley: Yes.

Mr. Robinson: Mr. Chairman, with respect to the lines on this page, I would like to ask for some clarification. There is an inclusion here of section 159, corrupting morals. That is the obscenity section of the Criminal Code and I would like to ask whether the government anticipates any changes to that section in the foreseeable future.

Mr. Nicholson: Is Bill C-54 coming forward in a back-handed way ?

Mr. Grisé: Bill C-54 is still on our agenda, Mr. Robinson.

Mr. Robinson: Mr. Chairman, is it in fact the intention of the government to proceed with that iniquitous piece of legislation in the near future? You have given it strong support in the Quebec caucus.

The Chairman: I think we should stick to this bill.

Mr. Robinson: Mr. Chairman, on the inclusion of section 159, corrupting morals, there is a separate punishment section, section 165, and it is not clear to me why, if the drafting practice is to refer to the punishment in other sections, that is not done in this particular case. There might be an explanation for that, but it does not seem to be consistent with what we have just been told.

• 1640

Mr. Mosley: That is a good question, Mr. Chairman. I would have to check with legislative counsel on that.

Mr. Robinson: Perhaps we could have a report back at the next meeting, Mr. Chairman.

[*Traduction*]

Mr. Grisé: Yes.

Mr. Kaplan: I do not see any problem with that!

L'amendement est adopté.

Le président: Nous passons maintenant à l'amendement N-4, amendement proposé par M. Robinson.

M. Robinson: M. le président, avant de discuter de cet amendement, j'ai une question à poser au sujet de la façon dont la définition de «infraction de crime organisé» est articulée. Dans cette définition, il y a plusieurs alinéas qui renvoient à des articles ayant trait aux infractions, et d'autres qui renvoient à des dispositions relatives aux peines du code criminel. Pourquoi a-t-on procédé ainsi? Par exemple, à l'alinéa, où l'on mentionne l'article 218, où il est question des peines en cas de meurtre, pouquoi ne renvoie-t-on pas uniquement à l'article du code criminel concernant les infractions?

M. Mosley: C'est une convention qu'a adopté notre conseiller juridique pour la rédaction de cette définition.

M. Robinson: C'est aussi le cas dans d'autres articles du code criminel, n'est-ce pas?

M. Mosley: Oui.

M. Robinson: M. le président, j'ai d'autres précisions à demander. On fait ici référence à l'article 159: corruption des moeurs. C'est l'article du code criminel concernant l'obscénité, et je voudrais savoir si le gouvernement prévoit apporter des modifications à cette article dans un avenir prévisible.

M. Nicholson: Où en est-on du projet de loi C-54?

M. Grisé: Il est toujours prévu au programme, M. Robinson.

M. Robinson: M. le président, le gouvernement a-t-il l'intention d'aller de l'avant au sujet de ce projet de loi unique dans une avenir rapproché? Les députés du Québec l'appuient fortement.

Le président: Nous devrions nous en tenir au projet de loi que nous étudions présentement.

M. Robinson: M. le président, au sujet de l'article 159, celui sur la corruption des moeurs, il y a un article distinct dans le code criminel sur les peines que cela entraîne, l'article 165, et puisque l'on renvoie ailleurs aux articles ayant trait aux peines, je ne comprends pas pourquoi on ne le fait pas dans ce cas précis. Il y a peut-être une explication à cela, mais ce n'est pas conforme à ce qu'on vient tout juste de nous dire.

M. Mosley: C'est une bonne question, monsieur le président. Je vais devoir vérifier cela auprès de notre conseiller juridique.

M. Robinson: M. Mosley pourra peut-être nous dire ce qu'il en est à la prochaine réunion, monsieur le président.

[*Text*]

The Chairman: You will undertake to bring that to us, Mr. Mosley?

Mr. Mosley: Yes, Mr. Chairman.

Mr. Robinson: Mr. Chairman, I move that clause 2 of Bill C-61 be amended by striking out lines 46 to 51 on page 3 and lines 1 to 3 on page 4 and substituting the following therefor:

result of the commission in Canada of an offence referred to in paragraph (a) or a designated drug offence or

The effect of this amendment is to remove the reference to subsection (b)(ii), the section that refers to:

an act or ommission anywhere that, if it had occured in Canada, would have constituted an offence referred to in paragraph (a) or a designated drug offence, or

The arguments for this were made quite forcefully by the representative of—I think—the Criminal Lawyers Association. He pointed out that if funds in Canada were the proceeds of an activity that was entirely legal outside Canada, they could in fact be seized under the provisions of this bill as it is presently worded.

I also have a number of amendments that will deal with this later. He noted, for example, that the proceeds of certain legal activities in Britain—the gambling activities that are entirely legal and quite popular there—might very well be subject to seizure in Canada under this legislation because similar activity is indeed illegal in Canada. It is this question of double criminality, in effect. I wonder whether we could get some advice from Mr. Grisé or Mr. Mosley as to the implications of this amendment as well as a response to the concern that was raised by the witness from the Criminal Lawyers Association.

The other example he gave, Mr. Chairman, was with respect to the definition of obscenity. Proceeds from the sale of materials that fall under the Canadian definition of obscenity but that do not fall under that definition in another jurisdiction, would also be subject to seizure under this act. Perhaps we could get some clarification on this particular point.

Mr. Kaplan: I agree with this amendment and want also to make the point that I feel we ought not to look for extensions of the powers being created in this legislation. As I said to Mr. Malone, I take a more conservative approach and start with the requirement of double criminality in order to attach proceeds of crime.

As the minister told us yesterday, I recognize there is some precedent for dealing with legal activities in other countries that are criminal in Canada within the ambit of existing sections of the Criminal Code. As one who is hoping this new law will be used extensively and vigorously by the police, I want to be certain we do not

[*Translation*]

Le président: Est-ce que cela vous va, monsieur Mosley?

M. Mosley: Oui, monsieur le président.

M. Robinson: Monsieur le président, je propose de modifier l'article 2 du projet de loi C-61 en retranchant les lignes 33 à 43, à la page 3, et en les remplaçant par ce qui suit:

ment ou indirectement de la perpétration au Canada d'une infraction mentionnée à l'alinéa a) ou d'une infraction grave en matière de drogue;

Cet amendement a pour effet d'éliminer la référence à l'alinéa b)(ii), où l'on dit:

soit d'un acte ou d'une omission survenu à l'extérieur du Canada qui, au Canada, aurait constitué une infraction visée à l'alinéa a) ou une infraction grave en matière de drogue;

La justification de cet amendement nous a été donnée, je pense, d'une manière fort convaincante, d'ailleurs, par le représentant de la Criminal Lawyers Association. Il a fait remarquer que des fonds, au Canada, qui seraient le produit d'une activité tout à fait légale ailleurs qu'au Canada, pourraient en fait être saisis en vertu des dispositions de ce projet de loi dans sa formulation actuelle.

J'ai encore plusieurs amendements à ce sujet. Il a fait remarquer, par exemple, que le produit de certaines activités légales en Angleterre—d'activités de gageure qui sont tout à fait légales et très populaires dans ce pays—pourrait très bien faire l'objet d'une saisie au Canada, puisque cette loi le permettrait, parce que de telles activités sont illégales au Canada. C'est la question de double criminalité qui se pose ici. M. Grisé ou M. Mosley pourraient-ils nous dire quelles pourraient être les conséquences de cet amendement, et nous dire aussi ce qu'ils pensent de l'inquiétude qu'a exprimé ce témoin?

Il a aussi utilisé l'exemple de la définition de l'obscénité, monsieur le président. Le produit de la vente de films ou de revues qui sont visés par la définition canadienne de l'obscénité, mais qui ne le sont pas dans d'autres pays, pourrait aussi être saisi en vertu de cette loi. Pourrait-on obtenir quelques précisions à ce sujet?

M. Kaplan: Je suis en faveur de cet amendement, et je veux aussi faire remarquer que nous ne devrions pas chercher à étendre davantage les pouvoirs que confère cette loi. Comme je le disais à M. Malone, mon approche est plus conservatrice qu'autre chose et tient compte de l'exigence de la double criminalité pour mettre la main sur le produit de la criminalité.

Comme nous le disait le ministre hier, je reconais qu'il y a des précédents pour traiter des activités qui sont légales dans d'autres pays, et qui ne le sont pas au Canada, dans la portée d'articles qui existent actuellement dans le Code criminel. Compte tenu que je suis de ceux qui espèrent que la police appliquera cette nouvelle loi d'une

[*Texte*]

give it too broad an ambit. Considering that activities like the publication of certain kinds of literature and gambling activities are legal in other countries, I do not think we ought to sweep them into this legislation, at least not in a phase one period. I therefore support the amendment and urge this limitation in the legislation.

• 1645

Mr. Grisé: Mr. Chairman, if we accept this amendment it would mean the proceeds of crime—like drug trafficking in the United States—would come to Canada.

Mr. Kaplan: Only if they are legal in the United States.

Mr. Grisé: Are the proceeds of drug trafficking legal in the United States?

Mr. Kaplan: No.

Mr. Grisé: That is right. That kind of money could come here and we would not be able to do anything about that.

Mr. Kaplan: The way the minister explained it yesterday was that if any jurisdiction legalized drug trafficking, he might have a problem with this limitation.

Mr. Mosley: There is a technical problem with the motion in that it connects with the words at the top of page 4 rather than paragraph (c), which I believe was Mr. Robinson's intent. It should continue to delete those opening three lines on page 4.

Mr. Robinson: It does. It deletes lines 1 to 3 on page 4.

Mr. Mosley: I am sorry. I missed that in reading it.

But the point of the inclusion of paragraph (b) is to apply to proceeds of the offence under subsection 312 of the Criminal Code. If subparagraph (ii) is deleted, the effect would be that if one were to bring into Canada proceeds of the commission of an offence abroad, even an offence which was clearly a crime abroad—drug proceeds, for example—it would still be a crime under subsection 312 of the Criminal Code. This is because the motion does not amend subsection 312, it amends the reference to subsection 312 in paragraph (b) of the definition of enterprise crime offence. The consequence would be that you could be prosecuted for possession, but the court would be powerless to do anything about those proceeds.

If I could give you an illustration of an actual case, involving a fellow by the name of Louis Pinto, who deposited a sum approaching $1 million in the Royal Bank of Canada in Montreal. That money was generated by drug offences in the United States. Pinto was a Colombian drug dealer. He committed no particular crime in Canada, other than a crime under subsection 312, for being in possession of those offences.

[*Traduction*]

manière exhaustive et vigoureuse, je veux m'assurer qu'on ne lui donne pas une portée qui soit trop vaste. Puisque certaines activités sont légales dans d'autres pays, comme la publication de certains genres de littérature et le jeu, je ne pense pas que nous devrions les inclure dans cette loi, en tout cas, pas dans un premier temps. J'appuie donc l'amendement proposé, et j'insiste fortement pour que l'on établisse les limites dans la loi.

M. Grisé: Monsieur le président, si nous adoptions cet amendement, cela signifierait que le produit de certains crimes—comme le trafic des stupéfiants aux États-Unis—entrerait au Canada.

M. Kaplan: Seulement s'il provenait d'activités légales aux États-Unis.

M. Grisé: Le produit du trafic des stupéfiants est-il légal aux États-Unis?

M. Kaplan: Non.

M. Grisé: Voilà. Cet argent pourrait donc entrer au Canada, et nous ne pourrions rien faire.

M. Kaplan: Le ministre expliquait justement hier que si un pays légalisait le trafic des stupéfiants, cette limite pourrait lui causer certains problèmes.

M. Mosley: Mais il faudrait toutefois que toutes les lignes soient éliminées.

M. Robinson: Mais, c'est le cas.

M. Mosley: Mes excuses, cela m'a échappé à la lecture.

Mais l'alinéa b) s'applique aux produits résultant d'une infraction visée à l'article 312 du Code criminel. Si on éliminait le sous-alinéa (ii), celui qui introduirait au Canada le produit résultant de la perpétration d'une infraction dans un autre pays, même d'une infraction qui serait clairement reconnue comme un crime—le trafic de stupéfiants—ce serait toujours un crime en vertu de l'article 312 du Code criminel, et ceci, parce que la motion ne modifie pas l'article 312, mais le renvoit à l'article 312 à l'alinéa b) de la définition de l'«infraction de criminalité organisée». On pourrait donc entamer des poursuites en raison de la possession de ce produit, mais le tribunal n'aurait aucun pouvoir en ce qui a trait au produit en question.

Je pourrais peut-être vous donner un exemple concret concernant un dénommé Louis Pinto, qui avait déposé à la Banque royale du Canada, à Montréal, une somme qui s'approchait de un million de dollars. C'était de l'argent qu'il avait tiré du trafic de stupéfiants aux États-Unis. Pinto était un trafiquant colombien. Il n'avait commis aucun crime au Canada, si ce n'est celui d'être en possession de cet argent, en vertu de l'article 312 du Code criminel.

[*Text*]

One of the objects of this bill is to provide a mechanism for the Canadian courts to go after those proceeds generated abroad which are brought into Canada. I suggest the effect of this motion and other motions submitted by Mr. Robinson to like effect would be to preclude the application of the legislation to those proceeds. It goes beyond the concern that Mr. Gold advanced, which was that there was no requirement for proof of double criminality. In effect, it emasculates the bill in one important regard.

Mr. Robinson: Mr. Chairman, I would like to ask a question. I would note that subsection 315 of the Criminal Code is entitled "Bringing into Canada property obtained by crime", and reads as follows:

> Everyone who brings into or has in Canada anything that he has obtained outside Canada by an act that if it had been committed in Canada would have been the offence of theft or an offence under section 301.1 or 312 is guilty of an indictable offence and is liable to a term of imprisonment not exceeding ten years.

So bringing into Canada property obtained by crime is obviously a serious offence under subsection 315 of the Criminal Code already. The suggestion that it is not is just not founded.

Mr. Mosley: Mr. Chairman, I never suggested that. It is in fact an offence to be in possession. It is a crime to bring it into the country. Without proof of double criminality—neither subsection 312 nor 315 require proof that the property was obtained by the commission of conduct which is not only a crime in Canada but also was a crime in the country of origin.

My point is that they could be prosecuted, as they can now—under either subsection 312 or 315—for bringing into the country or being in possession in the country. But the law does not provide for the forfeiture or the confiscation of that property. Mr. Pinto met his demise in a southern state, but had he been prosecuted in Canada for the offence of bringing into the country or being in possession in the country, the government would have been powerless to take action against the money he deposited in the Royal Bank. One of the principal objects of this legislation is to fill that gap in the law.

• 1650

Mr. Kaplan: I am not quite ready to vote on it yet, because in the Pinto example you gave, which sounds to me like a pretty good talking example, was not the money deposited in the bank in Montreal the proceeds of crime?

Mr. Mosley: Most definitely. They were the proceeds of cocaine-related offences in the United States.

Mr. Kaplan: Was it a crime in the country where the activities were committed?

[*Translation*]

L'un des objectifs de ce projet de loi est de doter les tribunaux canadiens d'un instrument qui leur permettra de prendre des mesures au sujet de ces sommes d'argent qui sont introduites au Canada. Cette motion ainsi que d'autres motions présentées par M. Robinson auraient pour effet d'empêcher que cette loi ne puisse s'appliquer à ces produits de la criminalité. Cela va même au-delà de l'inquiétude que soulevait M. Gold, à savoir que l'on exigeait aucune preuve à l'égard de la double criminalité. Ceci enlève beaucoup de mordant au projet de loi sur cet élément très important.

M. Robinson: Monsieur le président, j'ai une autre question à poser. L'article 315 du Code criminel s'intitule «apporter au Canada des objects criminellement obtenus» et se lit comme suit:

> Est coupable d'un acte criminel et passible d'un emprisonnement de dix ans, quiconque apporte au Canada ou a dans ce pays une chose qu'il a obtenu hors du Canada au moyen d'un acte qui, s'il avait été commis au Canada, aurait constitué l'infraction de vol ou une infraction aux termes de l'article 312 ou 301.1.

Apporter au Canada une chose obtenue au moyen d'un acte criminel est donc évidemment déjà une infraction grave aux termes de l'article 315 du Code criminel. Comment peut-on prétendre le contraire?

M. Mosley: Monsieur le président, je n'ai jamais dit le contraire. C'est bel et bien une infraction que d'être en possession d'une telle chose. C'est un crime que de l'introduire au Canada. Mais ni l'article 312, ni l'article 315 n'exige la preuve que l'on a obtenu la chose en question au moyen d'un acte reconnu comme un crime non seulement au Canada, mais aussi dans le pays d'origine.

On pourrait entamer des poursuites contre ces criminels—en vertu des articles 312 ou 315—pour avoir introduit la chose en question au pays, ou l'avoir eue en sa possession. Mais la loi demeure muette au sujet de la confiscation de cette chose. La carrière de M. Pinto a pris fin d'une façon tragique dans un état du sud, mais si l'on avait entamé des poursuites à son endroit, au Canada, pour avoir introduit ou avoir été en possession de cet argent au Canada, le gouvernement n'aurait rien pu faire à l'égard de l'argent qu'il avait déposé à la Banque royale. L'un des principaux objectifs de ce projet de loi, c'est précisément de corriger cette lacune dans la loi.

M. Kaplan: Je ne suis pas encore tout à fait prêt à me prononcer là-dessus, parce que dans l'exemple de M. Pinto, que vous nous donnez, et qui paraît plutôt révélateur, l'argent qui avait été déposé n'était-il pas le produit d'un crime?

M. Mosley: Absolument. C'était de l'argent que M. Pinto avait tiré du trafic de cocaïne qu'il exerçait aux États-Unis.

M. Kaplan: Était-ce un crime là où M. Pinto avait exercé ses activités?

[*Texte*]

Mr. Mosley: Definitely. It was a crime in the United States. Mr. Pinto had in fact been apprehended by the American authorities and was subsequently killed by former associates.

Mr. Kaplan: Then if it was the process of crime by the criminal law of the country where the money was earned, why are you concerned that this amendment will take away your access to it?

Mr. Mosley: Mr. Chairman, as I understand the effect of this amendment and the others of a similar nature, it does impose a requirement of double criminality. It removes the opportunity to apply Canadian criminal law to property brought into Canada, in possession in Canada, which has been obtained abroad by the commission of an offence, not by the commission of an offence in Canada.

Mr. Kaplan: I see. I have an amendment of my own, and I know it is to a subsequent proposed section, Mr. Chairman, but it is relevant.

Mr. Malone: There is an amendment on the floor, Mr. Chairman.

Mr. Kaplan: No, I understand that. I am talking about an idea here.

The Chairman: I will let Mr. Kaplan proceed, because he says it is relevant to this amendment.

Mr. Kaplan: I am not going to move my amendment. I know I cannot do that, but if you refer to it, L-1—and I did not apply it to this proposed section, perhaps I should have—but I wanted to make it clear that the Pinto money, if it was obtained in a foreign jurisdiction by an act that was an offence there, would be covered. Perhaps the form of amendment I proposed to a subsequent proposed section would be better here if the government were prepared to move to a true double criminality standard.

Mr. Mosley: There are other concerns about double criminality which the Minister spoke of yesterday and which I could go into if you wish to address that at this point.

Mr. Kaplan: If this amendment is defeated, I would like to move an amendment of my own that would impose a double criminality standard to follow it.

I notice it is pretty close to our stopping time. I have a plane to catch at 6 p.m. Could we agree that this would be the last amendment we deal with today?

The Chairman: Well we have to be out of here by 5 p.m.

Mr. Kaplan: Would we agree that this would be the last amendment? Then if it is defeated—and I will vote against it—tomorrow I will bring the amendment like the one I just described.

Mr. Robinson: Just ask a question to of Mr. Mosely. What is the effect of the provisions that were adopted by

[*Traduction*]

M. Mosley: Bien sûr. C'était un crime aux États-Unis. Les autorités américaines avaient arrêté M. Pinto qui, par la suite fut assassiné par d'anciens collègues.

M. Kaplan: Si c'était le produit d'une activité criminelle aux termes de la loi du pays où cet argent avait été gagné, pourquoi craignez-vous que cet amendement vous empêche d'agir?

M. Mosley: Monsieur le président, cet amendement, ainsi que d'autres amendements analogues imposent une exigence de double criminalité. Il élimine la possibilité d'appliquer le code criminel canadien à des biens introduits au Canada ou dont on est en possession au Canada, bien que l'on a obtenu au moyen d'une infraction dans un autre pays, et non au Canada.

M. Kaplan: Oui, je vois. J'ai un amendement à proposer, malgré qu'il porte sur un article à venir, monsieur le président, mais il est pertinent à l'amendement dont nous discutons.

M. Malone: Nous discutons déjà d'un amendement, monsieur le président.

M. Kaplan: Non, je comprends cela. Ce n'est qu'une idée que je voudrais soumettre.

Le président: Je vais permettre à M. Kaplan de poursuivre puisqu'il dit que son idée est pertinente à cet amendement.

M. Kaplan: Je ne vais pas proposer mon amendement. Je sais que je ne peux pas le faire, mais si vous vous y référez, c'est l'amendement L-1—j'aurais peut-être dû le proposer pour cet article—mais je voulais préciser que si M. Pinto avait obtenu son argent dans un autre pays au moyen d'un acte reconnu comme une infraction dans ce pays, le cas serait prévu. L'amendement que je propose à un autre article serait peut-être mieux adapté ici, si le gouvernement avait l'intention de s'orienter vers une véritable norme en fonction de la double criminalité.

M. Mosley: Il y a d'autres inquiétudes à propos de la question de la double criminalité dont a parlé le ministre hier, et dont je pourrais moi aussi en discuter, si vous le désirez.

M. Kaplan: Si cet amendement est rejeté, je voudrais en proposer un qui imposerait une norme en fonction de la double criminalité.

Je remarque que la séance d'aujourd'hui est presque terminée. J'ai un avion à prendre à 18 heures. Sommes-nous tous d'accord pour que ce soit le dernier amendement que nous examinions aujourd'hui?

Le président: Nous devons libérer la salle à 17 heures.

M. Kaplan: Sommes-nous tous d'accord pour que ce soit le dernier amendement, alors? S'il n'est pas adopté—et je voterai contre—je proposerai demain l'amendement dont je parlais tout à l'heure.

M. Robinson: Monsieur Mosley, quel est l'effet de la disposition qu'a adoptée le Parlement en 1985, le

[*Text*]

this Parliament in 1985, 446.2, An order for restitution or forfeiture of property obtained by crime? Could these proceeds not now be seized under that section, which was adopted, presumably, subsequent to Pinto?

Mr. Mosley: No, with respect. Again, using the Pinto case as an illustration, there was no basis in law to seize the actual property. It was not evidence. It could not be seized under section 443, because it was an intangible. It was a bank account. Subsection 446.(2), and the other provisions in that part of the code relating to the disposition of things seized, apply when there is an authority to seize the property, or it has been seized by the police in the execution of their duties.

This bill, of course, proposes both an authority to seize proceeds that may have no evidentiary value in and of themselves at all, and also to order the restraint of proceeds that cannot be physically seized, such as the contents of a bank account, or real property.

Mr. Robinson: So there could be no seizure pursuant to subsection 446.(2)?

• 1655

Mr. Mosley: That is one of the gaps in the current law. For example, if the police have been able to seize the money from a bank robbery after a hot pursuit of the villain and they have been able to seize it as evidence of the crime of robbery, then this provision that Mr. Robinson has referred to would operate to permit the court to order the forfeiture or, in the case of the bank, the return of the money to the victim.

The Chairman: The question is on the amendment.

Amendment negatived.

The Chairman: We will not deal with anything further now. It is our understanding that Mr. Grisé will not be able to appear on Tuesday; we will ask the clerk to see what arrangements he can make and advise us in the normal fashion.

Mr. Grisé: Mr. Chairman, I want to thank the officials for doing an outstanding job.

Some hon members: Hear, hear!

The Chairman: Meeting adjourned.

[*Translation*]

paragraphe 446.2, l'ordonnance de restitution ou de confiscation de biens obtenus au moyen d'activités criminelles? Cette disposition, que l'on a adoptée, je suppose, après l'histoire Pinto, ne permettrait-elle pas aujourd'hui de confisquer de tels produits?

M. Mosley: Non. Dans l'affaire Pinto, pour utiliser encore une fois cet exemple, la loi ne permettait pas de confisquer l'argent. L'article 443 ne le permettait pas parce qu'il s'agissait d'un bien intangible. C'était un compte de banque. Le paragraphe 446.(2) et les autres dispositions de cette partie du code concernant les objets confisqués ne s'appliquent que lorsque l'autorisation de confisquer les biens a été donnée, ou que la police les a confisqués dans l'exercice de ses fonctions.

Dans ce projet de loi, bien entendu, on propose en même temps une ordonnance de confiscation de produits qui peuvent n'avoir aucune valeur de preuve en soi, et une ordonnance de blocage de produits que l'on ne peut confisquer, comme de l'argent dans un compte de banque ou des biens immobiliers.

M. Robinson: Ainsi, le paragraphe 446.(2) n'aurait pas permis de confisquer l'argent en question?

M. Mosley: C'est l'une des lacunes de la loi actuelle. Par exemple, si des policiers récupéraient l'argent d'un vol de banque, après avoir poursuivi les voleurs, et s'ils le confisquaient à titre de preuve du vol, cette disposition, à laquelle M. Robinson faisait allusion, permettrait au tribunal d'ordonner la confiscation ou, dans le cas de la banque, le retour de l'argent à la victime.

Le président: L'amendement est-il adopté?

L'amendement est rejeté.

Le président: Nous allons nous arrêter ici pour aujourd'hui. Il semble que M. Grisé ne pourra pas venir mardi; nous allons donc demander à notre greffier de voir quelles dispositions il peut prendre et de nous en aviser de la façon habituelle.

M. Grisé: Monsieur le président, je veux remercier les hauts fonctionnaires de leur travail absolument remarquable.

Des voix: Bravo, bravo!

Le président: La séance est levée.

May 18, 1988 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act

EVIDENCE

[Recorded by Electronic Apparatus]

[Texte]

Wednesday, May 18, 1988

• 1534

The Chairman: We are going to proceed with a clause-by-clause study of Bill C-61. You may remember that we have a volume of proposed amendments. We have dealt with N-4. The next one in order of sequence is L-1.

• 1535

Mr. Robinson: Mr. Chairman, maybe the clerk might contact Mr. Kaplan's office to see if he is on his way. He is in Ottawa; he was here earlier.

The Chairman: I suggest that we stand L-1. Let us move to N-5, which is Mr. Robinson's.

Mr. Robinson: Mr. Chairman, I think we should wait until Mr. Kaplan has arrived.

Mr. Malone: We have a quorum.

Mr. Richard Grisé (Parliamentary Secretary to Deputy Prime Minister and President of the Privy Council): Mr. Chairman, I would like to clarify a question from our previous meeting. Mr. Robinson asked why the numbering question was referred to clause 159 instead of clause 165. The matter that relates to clause 165 would not only concern clause 159, but also clauses 161, 162, 163 and 164, so therefore it would broaden the range for the application of this bill. That is why we referred to clause 159.

The Chairman: Any comment?

Mr. Grisé: Mr. Chairman, I would like to once again welcome and present to the committee members the two officials with me: Mr. Richard Mosley and Mr. John McIsaac. Once again I am sure these two gentlemen will respond to the committee members and do an outstanding job.

The Chairman: I am going to suggest we start now with L-1.

Mr. Kaplan: I wondered if we ought to have another discussion about the decisions we made on the bawdy house and living off the avails in the light of the very powerful representations made by the National Action Committee on the Status of Women earlier this week. This would require unanimous consent. I do not exactly know what they raised with other caucuses, but with our caucus they raised their strong feeling that these two clauses not only should not be the subject of Bill C-61 but they should be removed from the Criminal Code.

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le mercredi 18 mai 1988

Le président: Nous allons continuer notre examen article par article du projet de loi C-61. Vous vous souvenez peut-être que nous avons une liasse d'amendements proposés. Nous en avons fini avec l'amendement N-4. Le suivant est le L-1.

M. Robinson: Monsieur le président, le greffier pourrait peut-être appeler le bureau de M. Kaplan pour voir s'il est en route. Il est en ville; il était ici plus tôt.

Le président: Je suggère que nous réservions l'amendement L-1. Passons au N-5, qui est celui de M. Robinson.

M. Robinson: Monsieur le président, je pense que nous devrions attendre l'arrivée de M. Kaplan.

M. Malone: Nous avons le quorum.

M. Richard Grisé (secrétaire parlementaire du vice-premier ministre et président du Conseil privé): Monsieur le président, j'aimerais apporter un éclaircissement à une question qui a été posée lors de la dernière réunion. M. Robinson demandait pourquoi la numérotation était reliée à l'article 159 plutôt qu'à l'article 165. La question qui touche à l'article 165 ne concerne pas seulement l'article 159, mais également les articles 161, 162, 163 et 164, et par conséquent, cela élargirait le champ d'application du projet de loi. C'est la raison pour laquelle nous l'avons rattachée à l'article 159.

Le président: Y a-t-il des observations?

M. Grisé: Monsieur le président, permettez-moi encore une fois de souhaiter la bienvenue aux deux fonctionnaires qui m'accompagnent et de vous les présenter. Ce sont M. Richard Mosley et M. John McIsaac. Encore une fois, je suis sûr que ces deux messieurs sauront répondre au mieux aux questions des députés et qu'ils feront un excellent travail.

Le président: Je propose que nous commencions maintenant avec l'amendement L-1.

M. Kaplan: Je me suis posé la question de savoir si nous devrions discuter à nouveau des décisions que nous avons prises concernant les maisons de débauche et le proxénétisme à la lumière des représentations fort convaincantes du Comité national d'action sur la situation de la femme. Il faudrait pour cela le consentement unanime des membres du Comité. Je ne sais pas exactement ce que leurs porte-parole ont dit aux autres caucus, mais devant le nôtre elles ont fait valoir avec beaucoup de force que non seulement ces deux articles ne devraient pas être inclus dans le projet de loi C-61, mais qu'ils devraient être rayés du Code criminel.

[Texte]

Mr. Robinson: Is that a Liberal position?

Mr. Kaplan: That is another issue, but I am asking, in the light of that and the strong representations I made on behalf of our caucus for not applying Bill C-61 to these two provisions, whether there would be any interest. I do not want to reopen it if the government members are still going to insist on it, but as far as I was concerned it was a pretty powerful representation by 500 women's groups across the country and I wondered if government members were interested in returning to those clauses.

The Chairman: I guess I would prefer that we push on. If you want to bring up a motion to reopen it when we complete what we are doing, you could make the motion at that time. Let us get on to L-1, Mr. Kaplan.

• 1540

Mr. Malone: Mr. Chairman, I will volunteer to go to speak to his constituents for him.

Some hon. members: Oh, oh.

Mr. Robinson: That is very kind of you.

The Chairman: Okay, let us get on to L-1 then, Mr. Kaplan?

Mr. Kaplan: I move that we strike out lines 50 and 51 on page 3 and substitute the following therefor:

> (ii) an act or omission in a foreign jurisdiction that is designated as an offence in that jurisdiction

Mr. Chairman, I had in mind here the discussion with Mr. Mosley in which he criticized and convinced me that Mr. Robinson's motion would not achieve what I was expecting it to do, and that the double criminality should be imported into this legislation.

I make the point because the state is abrogating a heavy new power to itself. I propose that it not apply to the proceeds of acts not criminal in the country where they were committed and where the assets in question were originally earned. I will not make the whole argument again. I am hoping we can make a lot of progress today. So there is an amendment, and I hope that the government members will find it acceptable.

The Chairman: We had an explanation of this from the minister, but do you wish to say anything further, Mr. Grisé?

Mr. Grisé: Thank you, Mr. Chairman. There are many comments to be made; therefore, I will ask Mr. Mosley to make a presentation on this and bring some clarification.

Mr. Richard G. Mosley (Senior General Counsel, Criminal and Family Law Policy Directorate, Department of Justice): Thank you, Mr. Chairman. If I may, I will also ask my colleague Mr. McIsaac to make a few comments.

[Traduction]

M. Robinson: Est-ce là une position libérale?

M. Kaplan: Cela est une autre question, mais je demande qu'à la lumière de cette intervention et des forts arguments que j'ai moi-même exposés au nom de notre caucus contre l'application du projet de loi C-61 à ces deux dispositions, si les députés seraient intéressés à rouvrir la question. Je ne suis pas intéressé à le faire si les députés de la majorité sont absolument fermes là-dessus, mais j'estime quant à moi que les arguments présentés par ces 500 groupes de femmes venus de tout le pays portaient, et je me demandais si les députés de la majorité étaient intéressés à rouvrir la discussion.

Le président: Je préférerais que nous continuions. Si vous voulez présenter une motion proposant que l'on rouvre la discussion, vous pourrez le faire lorsque nous aurons terminé ce que nous avons mis en train. Monsieur Kaplan, passons maintenant à l'amendement L-1.

M. Malone: Monsieur le président, je me porte volontaire pour aller en parler à ses électeurs.

Des voix: Oh, oh

M. Robinson: C'est bien aimable à vous.

Le président: Bon, passons au L-1. Monsieur Kaplan?

M. Kaplan: Je propose de retrancher les lignes 38 à 43, à la page 3, et de les remplacer par ce qui suit:

> (ii) soit d'un acte ou d'une omission survenu dans une juridiction étrangère qui est qualifié d'infraction dans cette juridiction

Monsieur le président, j'avais à l'esprit une discussion avec M. Mosley au cours de laquelle il critiquait la motion de M. Robinson et m'a convaincu que celle-ci n'atteindrait pas l'objectif que je recherchais, et qu'il fallait inclure dans cette loi le concept de double criminalité.

Je dis cela parce que l'État s'arroge ici un très gros pouvoir. Je propose que l'infraction ne s'applique pas aux produits d'actes qui ne sont pas criminels dans le pays où ils ont été commis, et où les biens en question ont été obtenus. Je ne représenterai pas tout l'argument. J'espère que nous allons progresser dans nos travaux aujourd'hui. Voilà donc un amendement dont j'espère qu'il sera acceptable aux députés de la majorité.

Le président: Le ministre nous a déjà donné une explication là-dessus, mais désirez-vous ajouter quelque chose, monsieur Grisé?

M. Grisé: Merci, monsieur le président. Il y a beaucoup de choses à dire sur ce point, je vais donc demander à M. Mosley de vous en parler et d'apporter certains éclaircissements.

M. Richard G. Mosley (avocat général principal, Direction générale de la politique de droit pénal et de droit de la famille, ministère de la Justice): Merci, monsieur le président. Avec votre permission, je

[*Text*]

If I could just point out a few matters about the motion itself, it does impose a double criminality requirement, unlike the motion discussed last week. However, it is in a sense broader than the scope of the bill in that it would apply to an offence in the foreign jurisdiction. It is not restricted to an offence comparable to an enterprise crime offence or a designated drug offence or even indeed to a criminal offence. The word "offence" in this context is extremely broad. The act or conduct might not be a crime.

Notwithstanding that, it does continue to bear the same problems that the minister spoke of in his last appearance before the committee. A very practical consideration was that it would require proof in a Canadian court that the act or omission would be designated as an offence in the foreign jurisdiction. This issue has been addressed in the context of extradition law.

There was some confusion for a number of years over whether there was a requirement for double criminality in that context. The courts of late have clarified this. What is meant by double criminality in the context of extradition is that it be proven before the court that the act or conduct is a crime in Canada, not necessarily that in the requesting state.

So one of the major concerns the minister indicated he has with this bill is that in each case to which this provision applied, it would have to be proven before the Canadian court—a court that has been acknowledged in decisions of the House of Lords and Canadian courts as being ill-equipped to enter into an examination of what the law may be in a foreign jurisdiction. These jurisdictions of course may not adhere to the common law tradition. The law may be quite different from what the Canadian court is accustomed to dealing with.

• 1545

The concern is that the Crown would be obliged, in every instance in which the proceeds had been obtained in the foreign jurisdiction, to prove the law of that foreign jurisdiction, and the act or omission from which the proceeds flowed would be designated as an offence in that foreign jurisdiction. As I am sure the committee will appreciate, this would be an extremely difficult burden for the Crown to bear. In fact, it might discourage the use of this provision in cases where it was simply too costly to obtain from the foreign jurisdiction expert legal opinion evidence that would have to be presented to the court. I wonder if my colleague could add any comments to that.

[*Translation*]

demanderais également à mon collègue M. McIsaac de dire quelques mots.

Si vous me permettez de dire d'abord quelques mots à propos de la motion, elle impose effectivement la nécessité de double criminalité, contrairement à la motion présentée la semaine dernière. Cependant, celle-ci va en un certain sens plus loin que le projet de loi puisqu'elle s'appliquerait à une infraction commise dans une juridiction étrangère. Elle ne se limite pas aux infractions comparables à une infraction de criminalité organisée ou à une infraction grave en matière de drogue, ou même à une infraction criminelle. Dans ce contexte, le mot «infraction» est très vague. L'acte ou le comportement en question pourrait très bien ne pas constituer un crime.

La motion continue néanmoins de présenter les problèmes qu'a mentionnés le ministre lorsqu'il a comparu la dernière fois devant le Comité. Sur le plan strictement pratique, cela voudrait dire qu'il faudrait prouver devant un tribunal canadien que l'acte ou l'omission serait considéré comme une infraction dans la juridiction étrangère. La question a déjà été réglée dans le contexte du droit des extraditions.

Pendant un certain nombre d'années on n'était pas certain si dans ce contexte la double criminalité était nécessaire. Les tribunaux ont récemment apporté des éclaircissements. Ce que l'on veut dire par double criminalité dans le contexte des extraditions, c'est qu'il est nécessaire de prouver devant le tribunal que l'acte ou le comportement est un crime au Canada, et non pas nécessairement dans l'État demandant l'extradition.

Le ministre craint donc surtout, comme il l'a expliqué, que dans chaque cas auquel cette disposition s'appliquerait, il devienne nécessaire d'apporter cette preuve devant un tribunal canadien, tribunal qui comme le confirment des décisions de la Chambre des Lords et des tribunaux canadiens est bien peu en mesure de rendre une détermination sur la loi dans une juridiction étrangère. Ces juridictions n'appliquent bien sûr pas nécessairement le droit commun. Leur régime de droit pourrait être très différent de celui auquel sont habitués les tribunaux canadiens.

Ce qui nous inquiète c'est que la Couronne serait tenue, chaque fois que les produits ont été obtenus dans une juridiction étrangère, de prouver ce qu'est la loi dans cette juridiction étrangère et le fait que l'acte ou l'omission dont découle le produit serait considéré comme une infraction dans cette juridiction. Je suis certain que les membres du Comité comprendront que ce serait un fardeau énorme à imposer à la Couronne. En fait, cela pourrait la dissuader d'invoquer cette disposition en certains cas où il serait tout simplement trop onéreux d'obtenir les témoignages d'experts juridiques de la juridiction étrangère pour les présenter au tribunal. Je me demande si mon collègue a quelque chose à ajouter.

[*Texte*]

Mr. John McIsaac (Counsel, Criminal Law Policy Section, Department of Justice): The only thing I can add to that is in relation to a recent judgment from the Supreme Court of Canada dealing with this issue of double criminality. The court was concerned with the imposition of double criminality in relation to a situation where a requested country would be forced to turn over an individual to another country for conduct not defined as criminal in the requested country. This offended the principles of comity and reciprocity.

I believe this same principle is applicable in these circumstances. It recognizes the ability of a country to define what is right and proper in relation to the proceeds that make their way from one jurisdiction to another, and to define that conduct as criminal through the use of the possession offence. It really is an application of the double criminality principle.

Mr. Robinson: Mr. Chairman, my questions actually apply as well to two or three of my sub-sequent amendments. I am wondering if we could get any concrete examples from Mr. Grisé or his assistants of acts or omissions which do not constitute crimes in other jurisdictions from which there may be proceeds that arrive in Canada. Do we have any examples of that? What is the intent of this provision?

Mr. Grisé: The only example we have is related to Mr. Allan Gold's presentation to the committee about obscenity, especially in Denmark, where there is a more relaxed process. I will ask Mr. Mosley to add to this.

Mr. Mosley: The issue arose because Mr. Gold spoke of a possible situation arising where someone dealing in pornographic materials in Denmark was to bring his proceeds to Canada. In theory, that individual would then be in possession of proceeds, which, if the offence had been committed in Canada, would constitute an offence. The possession would therefore be an offence in itself. There are a number of difficulties with that. One is that there are of course absolutely no examples of any such cases ever arising. As the minister indicated when he appeared, in theory the same has been possible in Canada since 1892 when the Code was first adopted.

Mr. Kaplan: Under 312, you mean?

Mr. Mosley: Yes.

Mr. Robinson: Just so that I understand it, this law as currently drafted would allow you to seize the proceeds of legal activity. In Britain, for example, funds generated through gambling... Gambling activity is entirely legal and is in fact quite widespread in Britain. If an individual from Britain made his or her money through that legal means in Britain and then retired to Canada with perhaps a substantial bank account, then under this bill, as I

[*Traduction*]

M. John McIsaac (avocat-conseil, Section de la politique de droit pénal, ministère de la Justice): La seule chose que je peux ajouter à trait à un jugement rendu récemment par la Cour suprême du Canada sur cette question de la double criminalité. La Cour a exprimé la crainte que la notion de double criminalité puisse entraîner une situation où un pays serait forcé d'accepter la demande d'extradition en provenance d'un autre pays pour des actes qui ne sont pas considérés comme criminels dans le premier pays. Ce serait contraire aux principes de courtoisie et de réciprocité.

Je crois que le même principe s'applique dans ces circonstances. Il reconnaît qu'un pays a le droit de définir ce qu'il considère comme juste et convenable à l'égard des produits provenant d'une autre juridiction et de définir la conduite comme étant criminelle en invoquant le délit de possession. C'est en effet l'application du principe de double criminalité.

M. Robinson: Monsieur le président, mes questions valent en fait aussi pour deux ou trois des autres amendements que j'ai l'intention de proposer. M. Grisé ou ses adjoints pourraient-ils nous donner des exemples concrets d'actes ou d'omissions qui ne sont pas des crimes dans d'autres juridictions et dont le produit pourrait être introduit au Canada? En avons-nous des exemples? Quel est le but visé par cette disposition?

M. Grisé: Le seul exemple que nous ayons est celui qu'a donné M. Allan Gold devant le Comité concernant le matériel obscène, surtout au Danemark, où la loi est plus souple. Je vais demander à M. Mosley de vous l'expliquer.

M. Mosley: La question a été soulevée parce que M. Gold a dit que l'on pourrait envisager le cas d'une personne qui a vendu du matériel pornographique au Danemark et qui vient au Canada avec le produit de cette activité. Théoriquement, cette personne se trouverait alors en possession du produit d'un acte qui, s'il avait été commis au Canada, constituerait une infraction. La possession de ce produit constituerait donc en elle-même une infraction. Cela pose plusieurs problèmes. D'abord, nous n'avons bien sûr aucun exemple qu'un tel cas se soit produit. Comme l'a dit le ministre lorsqu'il a comparu devant le Comité, cela est théoriquement possible au Canada depuis 1892, soit depuis l'adoption du Code criminel.

M. Kaplan: Vous voulez dire en vertu de l'article 312?

M. Mosley: C'est cela.

M. Robinson: Pour que ce soit bien clair, la loi telle qu'elle est rédigée actuellement vous autoriserait à saisir le produit d'une activité légale. En Grande-Bretagne, par exemple, l'argent gagné au jeu... Le jeu est une activité parfaitement légale et même très répandue en Grande-Bretagne. Donc, si j'ai bien compris, en vertu de ce projet de loi, une personne qui aurait gagné de l'argent par cette activité légale en Grande-Bretagne et qui viendrait

[Text]

understand it, the proceeds of that activity could in fact be seized.

• 1550

Mr. Mosley: Under the existing law it would be an offence to be in possession of those proceeds in Canada. The Criminal Code was amended in 1975 to apply to proceeds obtained directly or indirectly. The individual who brought his gambling proceeds from Britain since 1975 was technically committing an offence.

The point I am making is that there is no recorded instance of anyone ever being prosecuted for doing so. It is at least arguable that it would be offensive under fundamental rights, section 7 of the Charter, for such a prosecution to be launched at the present time.

The converse of that, however, putting a specific statutory requirement that proof of the foreign offence be established, means that in every case, even the clearest case of drug money from the U.S. or other countries, the Crown would have to prove the source of those funds and that the act or omission in the foreign jurisdiction was an offence.

Mr. Robinson: When dealing with drug offences it should be a relatively straightforward matter.

Mr. Mosley: No, not necessarily. The offences may vary according to the jurisdiction. Not every country has exactly the same drug offences. It may be that the conduct which would constitute the offence of cultivation, for example, in this country is not an offence in a South American jurisdiction. If the individual brings the proceeds of cultivation into this country, he is in possession of proceeds from the commission of an act that Canadian society regards as a crime, but his own society may not regard that specific act as a crime. They may have something comparable, something similar, but not that specific act or omission. In that case the Crown would have to import someone from the foreign jurisdiction to testify about the foreign law. As our courts have found in the extradition context, they are ill-suited to determine what that foreign law may be and how it would apply to the act or omission which is clearly a crime in Canada.

Mr. Robinson: You are saying that one of the objects of this law is to attack the proceeds of that kind of activity which may be entirely legal in the other jurisdictions.

Mr. Mosley: That is not one of the objects of the bill. The object is to deal with the proceeds of crimes, for the most part crimes committed in this country or crimes which clearly would also be crimes in the foreign jurisdiction. The difficulty is providing for the theoretical possibly that Mr. Gold spoke of. It is quite true that in theory you can be found guilty for the possession of those proceeds in Canada, but it has never happened. It is

[Translation]

s'installer lors de la retraite au Canada avec un compte bancaire peut-être bien garni, pourrait se faire saisir son argent.

M. Mosley: D'après la loi actuelle, ce serait un délit que d'être en possession de cet argent au Canada. Le Code criminel a été amendé en 1975 de façon à inclure les produits obtenus directement ou indirectement. Depuis 1975, toute personne qui serait entrée au Canada avec de l'argent obtenu au jeu en Grande-Bretagne aurait donc techniquement commis une infraction.

Ce que je disais c'est que nous n'avons aucun exemple connu où des poursuites auraient effectivement été engagées. On pourrait pour le moins faire valoir que de telles poursuites sont devenues inacceptables en raison de l'article 7 de la Charte qui porte sur les droits fondamentaux.

Par contre, si la loi exige explicitement que l'on prouve qu'il y a eu infraction dans la juridiction étrangère, cela voudrait dire que la Couronne serait tenue, dans tous les cas, même dans les cas les plus flagrants d'argent provenant du trafic de drogues aux États-Unis ou dans d'autres pays, de prouver la source de ces fonds et le fait que l'acte ou l'omission constituait une infraction dans la juridiction étrangère.

M. Robinson: Dans les cas des infractions en matière de drogue cela devrait être relativement simple.

M. Mosley: Non, pas nécessairement. Les infractions peuvent varier selon les juridictions. Tous les pays n'ont pas exactement les mêmes délits en matière de drogue. Il se peut que ce qui constitue dans notre pays le délit de culture, par exemple, ne soit pas un délit dans un pays d'Amérique du Sud. Si la personne apporte le produit de cette activité au Canada, elle est en possession de produits provenant d'un acte considéré comme criminel par la société canadienne, mais pas par la sienne. Son pays prévoit peut-être une infraction comparable mais pas spécifiquement cet acte ou cette omission. Dans ce cas, la Couronne devrait faire venir quelqu'un de cette juridiction étrangère pour témoigner de la loi dans ce pays. Comme les tribunaux s'en sont rendu compte dans le contexte de l'extradition, ils ne sont vraiment pas en mesure de déterminer quelle est la loi dans ce pays, et comment l'appliquer à l'acte ou à l'omission qui de toute évidence constitue un crime au Canada.

M. Robinson: Vous êtes donc en train de dire que cette loi vise notamment les produits d'activités qui pourraient être parfaitement légales dans d'autres pays.

M. Mosley: Cela n'est pas parmi les objectifs visés. La loi vise les produits d'activités criminelles, essentiellement de crimes commis dans ce pays ou de crimes qui seraient clairement considérés comme tels dans la juridiction étrangère. La difficulté est de tenir compte de la possibilité théorique dont a parlé M. Gold. Il est tout à fait vrai que théoriquement une personne pourrait être jugée coupable de la possession de ces produits au

[*Texte*]

extremely unlikely that they would ever be brought to the attention of a court, but it is quite true that it could happen.

The converse of dealing with that theoretical possibility is that the routine prosecution of these cases would be encumbered by a very costly and substantial impediment to the prosecution if a witness has to be brought in on each occasion from the foreign jurisdiction. Cases will fail if the witness does not make it on time. If the prosecution is deemed to be too costly, it will not go ahead. It would undermine the purpose of this legislation by increasing the impediments to its successful prosecution.

Mr. Nicholson: It would become difficult, bordering on impossible, to get a conviction depending on where the person or the act originated. The farther away the country is, the less we know about it and the more difficult it would be to make any sort of conviction in a Canadian court.

I believe I heard you say, and I just wanted to confirm it, that a couple of courts have already commented that our system of justice would be ill-equipped—I believe that was the word you used—to start ruling on whether an offence had been committed in another jurisdiction.

• 1555

Mr. Mosley: Precisely. It had been argued in the context of extradition that it had to be proven in the Canadian court that the act complained of was a crime in the requesting state—double criminality, in the sense that you prove not only that it is a crime in Canada, but also a crime in the foreign jurisdiction. This became a very difficult burden to be imposed in those proceedings. The courts ultimately resolved it by saying it really is not the concern of the Canadian courts whether this act or omission is a crime in the foreign jurisdiction, and they are moreover not suited to decide this issue. It is an issue of the law of that jurisdiction, which our courts are not trained to deal with.

Mr. Nicholson: This satisfies my concern.

Mr. Robinson: What I hear Mr. Mosley saying is yes, you are right. On the face of it, there could be a situation in which an unjust application of this provision could occur. There could be abuses. There might even be abuses that would lead to Charter challenges. But because a difficult burden is being imposed on the Crown, we are going to write a law that is flawed.

This is a rather extraordinary way to write criminal law, and it is exactly what Mr. Mosley appears to be saying, Mr. Chairman, that in fact he recognizes the

[*Traduction*]

Canada, mais cela n'est jamais arrivé. Il est extrêmement peu probable que cela soit jamais porté devant un tribunal, mais il est tout à fait vrai que cela pourrait arriver.

Par contre, en tenant compte de cette possibilité théorique, on crée un obstacle à la mise en poursuite routinière de ces cas en imposant à la Couronne un fardeau de taille et onéreux en l'obligeant à chaque fois à faire venir un témoin de la juridiction étrangère. Les poursuites peuvent ne pas aboutir si les témoins ne se présentent pas dans les délais. Si l'on juge qu'il serait trop coûteux d'entamer des poursuites, on s'abstiendra. En créant des obstacles à la bonne marche des poursuites, on affaiblirait la portée de cette loi.

M. Nicholson: Selon le pays d'où vient la personne où l'acte a été commis, il deviendrait difficile, sinon impossible, d'obtenir une condamnation. Plus le pays est lointain, moins nous connaissons ses coutumes et plus il devient difficile d'obtenir une condamnation devant un tribunal canadien.

Il me semble que vous avez dit, et je voulais simplement le confirmer, que certains tribunaux ont déjà fait valoir qu'ils n'étaient véritablement pas en mesure—il me semble que c'est ce que vous avez dit—de déterminer s'il y a eu infraction dans une autre juridiction.

M. Mosley: Précisément. On a déjà dit, en parlant d'extradition, qu'il fallait prouver devant les tribunaux canadiens que les activités dont on se plaignait étaient considérées comme un crime dans l'État d'origine; autrement dit, il s'agit d'invoquer la double criminalité, car il faut prouver non seulement qu'il y ait eu crime au Canada, mais également crime dans une juridiction étrangère. On avait considéré cela comme étant un fardeau trop imposant. Les tribunaux ont donc fini par décider que les tribunaux canadiens ne devaient pas s'inquiéter de savoir si l'acte ou l'omission, survenu dans une juridiction étrangère, était considéré comme un crime dans cette juridiction, et qu'ils n'étaient pas non plus en mesure d'en décider. Comme il s'agissait d'une question qui relevait du droit de cette juridiction, nos tribunaux n'étaient pas formés pour remettre le jugement en question.

M. Nicholson: Cette explication me satisfait.

M. Robinson: Mais M. Mosley est en train de vous dire que vous avez raison. À première vue, il pourrait se trouver des cas où l'on appliquerait cette disposition injustement. Il pourrait y avoir des abus. Il pourrait même y avoir contestation devant les tribunaux, sur invocation de la Charte. Or, vous, vous préférez adopter une loi qui présente des vices de forme, plutôt que de faire assumer un fardeau—lourd, je l'admets—à la Couronne.

C'est assez extraordinaire comme façon de faire, et M. Mosley semble admettre qu'il vaut mieux adopter une loi qui souffre de quelques vices de forme plutôt que

[*Text*]

possibility people who are in fact, practically speaking, innocent—and I gave the example of the fellow from Britain—could be subject to prosecution under this statute, because it is tough to write a law that is going to ensure this does not happen, and this difficulty may result in additional costs. Proving foreign law is already well established in Canada. It may be awkward. It may be difficult. It may cost money.

I am concerned, Mr. Chairman, that the spokesperson for the Department of Justice is saying let us write this law, in effect, too broadly, because we cannot really afford to pay the price of proving foreign law. In my view, this is a very novel, very dangerous concept of criminal law.

Could Mr. Mosley elaborate on the suggestion he made that there might be a Charter argument with respect to the circumstances raised in Mr. Gold's example?

Mr. Mosley: I might also add that, as Oliver Wendell Holmes said, the life of the law is experience, and experience over 90 years has shown this simply has not happened. There are no doubt a number of good reasons for this, including the fact the provincial attorneys general, who are charged with the administration of this law, exercise that responsibility with common sense, and would not impose what would be regarded by some as an oppressive prosecution.

Mr. Robinson: It is the old prosecutorial discretion argument, Mr. Chairman. You write law that might not be too good because they will not enforce it anyway.

The Chairman: Did I understand you to say that under the present criminal law, 301 or whatever it was, this would be an offence, or could be an offence?

Mr. Mosley: It would be an offence to be in possession in Canada today of property obtained abroad by the commission of an act or omission which, if committed in Canada, would have constituted an indictable offence.

The Chairman: I think that is a very important remark, and I just wanted to have you repeat it.

Mr. Robinson: Mr. Chairman, could Mr. Mosley expand on the question of the possibility of a Charter challenge to this particular provision?

Mr. Mosley: Anything is potentially challengeable under the Charter, in the extremely remote and theoretical possibility that one were to be charged with being in possession of proceeds obtained by an activity legal in the country of origin. I would think it would be open to the accused to argue it was not in accord with the principles of fundamental justice that he be convicted of such an offence, or suffer any punishment.

[*Translation*]

d'imposer à la Couronne des coûts supplémentaires, puisque la loi nous permettrait de poursuivre des gens qui sont, à toutes fins utiles, innocents—et j'ai donné l'exemple du Britannique. Or, démontrer la validité d'une loi étrangère, ce n'est pas tout à fait un phénomène inconnu pour nos tribunaux canadiens. J'admets que c'est peut-être bizarre, difficile et que cela peut coûter cher.

Si j'ai bien compris le représentant du ministère de la Justice, monsieur le président, il préférerait que l'on élargisse la loi, plutôt que d'avoir à payer pour démontrer la validité de quelques lois étrangères. Cela me semble nouveau, voire dangereux, comme façon d'aborder le droit criminel.

M. Mosley peut-il nous expliquer pourquoi on pourrait invoquer la Charte dans l'exemple cité par M. Gold?

M. Mosley: Comme le disait Oliver Wendell Holmes, c'est l'expérience qui fait des lois ce qu'elles sont, et l'expérience des 90 dernières années nous a montré que jamais cela ne s'est produit. Cela, sans doute pour bon nombre de bonnes raisons, y compris le fait que les procureurs généraux des provinces qui doivent administrer la loi, exercent leurs responsabilités avec beaucoup de bon sens et ne voudraient pas imposer au trésor public ce qui pourrait être considéré par certains comme étant des poursuites oppressives.

M. Robinson: Nous y voilà encore, monsieur le président, avec ce fameux argument des pouvoirs discrétionnaires en matière de poursuite. Vous voudriez adopter une loi qui ne servira pas trop à grand-chose, parce qu'on pourrait décider de ne pas l'appliquer.

Le président: Je voudrais être sûr de bien vous avoir compris: en vertu de l'article 301, je pense, du Code criminel, cela pourrait être considéré comme une infraction?

M. Mosley: Cela serait considéré comme une infraction si vous étiez au Canada en possession de biens obtenus autrefois par la perpétration d'un acte ou d'une omission qui, s'il avait été commis au Canada, aurait été considéré comme une infraction donnant lieu à une mise en accusation.

Le président: Je suis content de vous l'avoir entendu répéter, car cela me semble très important.

M. Robinson: Monsieur le président, M. Mosley pourrait-il nous expliquer comment il serait possible d'invoquer la Charte pour contester cette disposition?

M. Mosley: On peut invoquer la Charte pour contester à peu près n'importe quoi; il est donc théoriquement possible, quoique extrêmement improbable, qu'une personne le fasse si elle devait être mise en accusation parce qu'elle est trouvée en possession de produits d'une activité qui était jugée légale dans son pays d'origine. Ce serait à l'accusé, je suppose, d'invoquer les principes de justice fondamentale s'il devait être condamné pour cette infraction ou s'il devait en subir les conséquences.

[*Texte*]

Mr. Robinson: This would presumably apply to the cultivation example as well?

Mr. Mosley: To any example of an offence not an offence in the country of origin.

Mr. Robinson: So we are writing law, Mr. Chairman, that might very well leave us open to a Charter challenge. It is a real possibility.

My final question, Mr. Chairman, is for Mr. Kaplan. It is with respect to his amendment. I have some difficulty in supporting the amendment, because it seems to me he is in fact going from one extreme to the other. He is referring now to an act or omission in the foreign jurisdiction that is designated as an offence in that jurisdiction. It does not even have to be an enterprise crime offence or a designated drug offence. I think Mr. Grisé or Mr. Mosley made this point. It is literally the proceeds of any offence that would give rise to—

• 1600

Mr. Nicholson: I do not think you were listening to what went onto page 4. I am not speaking for Mr. Kaplan—

Mr. Kaplan: But it is somewhat—

Mr. Nicholson: It is far broader.

Mr. Kaplan: It is broader than Mr. Robinson's position; it is broader than a tight definition that could require the double criminality to be enterprise crime or these designated offences, but it is narrower than the position the government is taking. I had hoped that by coming up with something in the middle, I might obtain the government's approval.

Amendment negatived.

The Chairman: N-5, in the name of Mr. Robinson.

Mr. Robinson: Mr. Chairman, I move that clause 2 of Bill C-61 be amended by striking out lines 15 to 22 on page 4 and substituting the following therefor: "indirectly as a result of the commission in Canada of an enterprise crime offence or a designated drug offence".

I have made the arguments earlier on this, and I will not repeat them at this point. They stand as before.

Amendment negatived.

The Chairman: The next one—in the name of Mr. Kaplan—is redundant, I believe.

Mr. Kaplan: Not if we simply apply this double criminality test to another aspect of the bill. It is labelled L-1A by the staff on page 4.

[*Traduction*]

M. Robinson: Cela s'appliquerait aussi à votre exemple de la culture des hallucinogènes?

M. Mosley: Cela s'applique à n'importe quel exemple d'une infraction qui n'est pas considérée comme crime dans le pays d'origine.

M. Robinson: Si je comprends bien, monsieur le président, nous sommes en train d'adopter une loi qui pourrait fort bien être contestée par recours à la Charte.

Ma dernière question s'adresse à M. Kaplan. J'hésite quelque peu à appuyer votre amendement, parce qu'il me semble aller d'un extrême à l'autre. M. Kaplan renvoie à un acte ou une omission dans la juridiction étrangère et qui est qualifié d'infraction dans cette juridiction. Il ne s'agit même pas nécessairement d'infraction de criminalité organisée ou d'infraction grave en matière de drogue. C'est d'ailleurs ce que nous a dit M. Grisé ou M. Mosley. Ce sont littéralement les produits du crime qui donneraient lieu à. . .

M. Nicholson: Vous n'avez peut-être pas entendu ce que nous avons dit au sujet de la page 4. Je ne voudrais pas parler pour M. Kaplan. . .

M. Kaplan: Mais c'est un peu. . .

M. Nicholson: C'est beaucoup plus vaste.

M. Kaplan: C'est beaucoup plus large que ce que demande M. Robinson; c'est une définition beaucoup moins étroite que celle qui supposerait par double criminalité la perpétration uniquement d'infractions de criminalité organisée ou d'infractions graves en matière de drogue; mais c'est quand même plus étroit que la définition du gouvernement. J'avais espéré qu'en restant entre les deux, le gouvernement m'aurait accordé son appui.

L'amendement est rejeté.

Le président: L'amendement N-5, de M. Robinson.

M. Robinson: Monsieur le président, je propose de modifier l'article 2 du projet de loi C-61 en retranchant les lignes 21 à 30, à la page 4, et en les remplaçant par ce qui suit: «Canada, directement ou indirectement, de la perpétration au Canada d'une infraction de criminalité organisée ou d'une infraction grave en matière de drogue.»

Je vous ai déjà donné mes explications, qui ne changent pas. Je ne me répéterai donc pas.

L'amendement est rejeté.

Le président: L'amendement suivant, déposé par M. Kaplan, devient aussi redondant.

M. Kaplan: Pas si l'on applique tout simplement la notion de double criminalité aux autres aspects du projet de loi. Il s'agit de l'amendement que l'on a numéroté L-1A, à la page 4.

[*Text*]

Mr. Grisé: We do not have it.

The Chairman: L-1A, Mr. Kaplan, you are saying it is not redundant as a result of our defeating L-1?

Mr. Kaplan: Well, you might defeat L-1A as well, since it is similar, but it applies to a different provision of the bill. I would like to move that we strike out lines 19 to 21 on page 4 and substitute the following therefor: "(b) an act or omission in a foreign jurisdiction that is designated as an offence in that jurisdiction".

I will just indicate that this is the actual section to which the representative of the Criminal Bar Association proposed the amendment. So Allan Gold endorses it.

The Chairman: Same arguments?

Mr. Kaplan: Same arguments.

Amendment negatived.

The Chairman: N-6, Mr. Robinson.

Mr. Robinson: I move that clause 2 of Bill C-61 be amended by striking out lines 34 to 41 on page 4 and substituting the following therefor: "as a result of the commission in Canada of an enterprise crime offence or a designated drug offence".

The arguments for this are the same as indicated earlier, and I have nothing further to add.

Amendment negatived.

The Chairman: L-2, Mr. Kaplan.

Mr. Kaplan: This is similar to the previous one; it is the same point. I move we strike out lines 38 to 41 on page 4 and substitute the following therefor: "(b) an act or omission in a foreign jurisdiction that is designated as an offence in that jurisdiction"

Amendment negatived.

The Chairman: N-7, Mr. Robinson.

Mr. Robinson: Mr. Chairman, I move that clause 2 of Bill C-61 be amended by striking out line 41 on page 4 and substituting the following therefor: "or a designated drug offence and that constitutes a criminal offence in the jurisdiction in which it occurred".

The Chairman: The same type of argument?

Mr. Robinson: Yes, Mr. Chairman.

Amendment negatived.

• 1605

The Chairman: N-8 is identical with L-3, so we will take it as Mr. Robinson's motion and we will deal with N-8 and L-3 at the same time.

[*Translation*]

M. Grisé: Nous ne l'avons pas.

Le président: Monsieur Kaplan, vous prétendez que votre amendement L-1A n'est pas redondant, même si votre amendement L-1 a été rejeté?

M. Kaplan: Bien sûr, vous pourrez peut-être rejeter mon amendement L-1A, puisqu'il est semblable au précédent, mais il s'applique à une différente disposition du projet de loi. Je propose donc de modifier l'article 2 en retranchant les lignes 26 à 30, à la page 4, et en les remplaçant par ce qui suit: «b) soit d'un acte ou d'une omission survenu dans une juridiction étrangère qui est qualifié d'infraction dans cette juridiction.»

Je vous ferai remarquer que c'est justement le représentant de l'Association du barreau canadien qui a proposé d'amender ainsi ce paragraphe. Allan Gold est donc d'accord avec mon amendement.

Le président: Et vous invoquez les mêmes arguments?

M. Kaplan: Les mêmes.

L'amendement est rejeté.

Le président: L'amendement N-6 de M. Robinson.

M. Robinson: Je propose de modifier l'article 2 du projet de loi C-61 en retranchant les lignes 40 à 49, à la page 4, et en les remplaçant par ce qui suit: «tement ou indirectement de la perpétration, au Canada, d'une infraction de criminalité organisée ou d'une infraction grave en matière de drogue.»

Ce sont les mêmes arguments que précédemment, et je n'ai rien à y ajouter.

L'amendement est rejeté.

Le président: Monsieur Kaplan, votre amendement L-2.

M. Kaplan: C'est un amendement semblable au précédent. Je propose de modifier l'article 2 en retranchant les lignes 45 à 49, à la page 4, et en les remplaçant par ce qui suit: «b) soit d'un acte ou d'une omission survenu dans une juridiction étrangère qui est qualifié d'infraction dans cette juridiction.»

L'amendement est rejeté.

Le président: Monsieur Robinson, l'amendement N-7.

M. Robinson: Monsieur le président, je propose de modifier l'article 2 en retranchant la ligne 49, à la page 4, et en la remplaçant par ce qui suit: «tion grave en matière de drogue et qui constitue une infraction criminelle dans la juridiction où il est survenu.»

Le président: Vous invoquez les mêmes arguments?

M. Robinson: En effet, monsieur le président.

L'amendement est rejeté.

Le président: Comme l'amendement N-8 est identique à l'amendement L-3, nous écouterons M. Robinson nous expliquer les deux à la fois.

[*Texte*]

Mr. Robinson: Mr. Chairman, I move that clause 2 of Bill C-61 be amended by striking out line 12 on page 5 and substituting the following therefor: "and probable grounds to believe that there is in any".

Mr. Chairman, the purpose of this amendment is to import the standard of "reasonable and probable grounds" into the requirements for obtaining a special search warrant under proposed section 420.12 of the Criminal Code. It has been strongly recommended to us by the Canadian Bar Association that the current standard under section 453 of the Criminal Code for the current search warrant provision of the Criminal Code should apply to this section as well. Under section 453 of the Criminal Code the standard is "reasonable and probable grounds", Mr. Chairman, before a search warrant is issued.

Section 453 starts out: "Any one who, on reasonable and probable grounds, believes that a person has committed an indictable offence". The Canadian Bar Association suggests, Mr. Chairman, and they have looked at it with care, that the requirement that the informant need only have a reasonable belief that a forfeiture order may be made is not rigorous enough. Mr. Chairman, they therefore urge that the standard of "reasonable and probable grounds for belief" prior to the issuance of a special search warrant be included in this legislation. I would hope that government members might recognize the importance of having that same standard before these important powers can be invoked.

Mr. Kaplan: Since I have proposed a similar amendment, I would just like to just add a word; I think the onus is on the government to explain in taking on these new powers why the normal standard of "reasonable and probable grounds" is not used, as was suggested by the Canadian Bar Association.

Mr. Grisé: Of course this has been brought up by some witnesses and at the committee. However, it is not necessary, since the *Revised Statutes of Canada 1985*, which will be in effect this summer, have dropped "probable grounds" all over the court. The Law Reform Commission as well has adopted "reasonable grounds". It seems the Supreme Court of Canada also has accepted the words "reasonable grounds" Mr. Mosley, do you want to add on to that?

Mr. Mosley: If I could add to that, Mr. Chairman, this question was looked at some years ago because the code had a number of different ways of expressing the test for the issuance of a warrant. Mr. Robinson has referred to the arrest warrant test, which is "reasonable and probable". The search warrant test was simply "reasonable grounds to believe". As a result of that—

Mr. Robinson: Which section is that?

Mr. Mosley: Section 443. The "and probable" was not consistently used throughout the code. Section 443 is

[*Traduction*]

M. Robinson: Monsieur le président, je propose de modifier l'article 2 du projet de loi C-61 en retranchant la ligne 13, à la page 5, et en la remplaçant par ce qui suit: «motifs raisonnables et probables de croire que des biens».

Monsieur le président, mon objectif est ici d'appliquer le critère des «motifs raisonnables et probables» à l'obtention d'un mandat spécial de perquisition en vertu du paragraphe 420.12 proposé du Code criminel. L'Association du barreau canadien nous a fortement recommandé d'appliquer cette disposition qui existe déjà dans l'article 453 du Code criminel pour les mandats de perquisition, à cet article-ci également. L'article 453 du Code criminel prévoit effectivement, monsieur le président, qu'il faut avoir «des motifs raisonnables et probables» pour émettre un mandat de perquisition.

L'article 453 parle de «quiconque a des motifs raisonnables et probables de croire que quelqu'un a perpétré un acte criminel». L'Association du barreau canadien, qui a étudié tout cela avec grand soin, n'estime pas assez rigoureux le critère selon lequel il suffirait d'avoir des motifs raisonnables de croire que l'on pourrait faire l'objet d'une ordonnance de confiscation. Monsieur le président, le Barreau nous exhorte donc à inscrire à la loi «les motifs raisonnables et probables», avant même l'émission du mandat spécial de perquisition. J'espère que mes collègues du gouvernement reconnaîtront à quel point il est important d'appliquer les mêmes normes partout, avant d'invoquer des pouvoirs aussi importants.

M. Kaplan: Puisque j'ai proposé un amendement similaire, j'aimerais ajouter ceci: je pense qu'il revient au gouvernement d'expliquer, puisqu'il s'arroge de nouveaux pouvoirs, pourquoi il entend ne pas suivre la suggestion du Barreau, c'est-à-dire parler de «motifs raisonnables et probables».

M. Grisé: Je sais que certains témoins nous l'ont proposé en comité. Cependant, cela ne nous semble pas nécessaire, étant donné que dans les *Statuts révisés du Canada de 1985*, qui seront en vigueur cet été, nous avons laissé tomber la notion «motifs probables» dans tous les tribunaux. La Commission de réforme du droit a choisi elle-même de ne parler que de «motifs raisonnables». Il semble que la Cour suprême du Canada ait également accepté la notion plus restreinte. Monsieur Mosley, vous avez quelque chose à ajouter?

M. Mosley: Monsieur le président, cela fait déjà quelques années que l'on étudie cette question, parce que le Code criminel étudie différentes expressions pour parler des critères à suivre pour émettre des mandats. M. Robinson a parlé du critère pour émettre le mandat d'arrestation, celui des motifs «raisonnables et probables». Le critère du mandat de perquisition était tout simplement celui des «motifs raisonnables de croire». Par conséquent. . .

M. Robinson: De quel article s'agit-il?

M. Mosley: De l'article 443. Vous voyez donc que l'on ne parle pas partout dans le Code des motifs «probables».

[*Text*]

more directly analogous to what the special search warrant in this bill does. Quite apart from this, the question of whether consistency was desirable was addressed. The Supreme Court of Canada in the case of Southam examined the issue of what the test was in the Combines Investigation Act and read in a test of "reasonable and probable". In doing so, Mr. Justice—as he was then—Dickson indicated it is all the same test and that "reasonable grounds to believe" is the same as the American notion of "probable cause", there is no difference between the two.

Accordingly, the Statute Revision Commission adopted as a matter of practice, believing "and probable" was surplusage, that there was no need for it in the code. This in fact has been carried through in the *Revised Statutes of Canada 1985*, which Parliament has adopted and which will be coming into effect this summer. In addition to this, the Law Reform Commission in its proposals for a new code has also adopted the same conclusion and refers to "reasonable grounds" wherever it cites this test of an objective standard for the doing of the act.

• 1610

Mr. Robinson: Mr. Chairman, I wonder if we could get some clarification on this business of revised statutes, because both Mr. Kaplan and myself participated in that process of revision of statutes and I think Mr. Nicholson participated too. I remember meeting in this room, and I certainly do not recall anyone drawing to our attention at that time this particular change in the Criminal Code. We were assured that any changes that were made were mere changes of form and certainly not changes of substance.

Mr. Mosley: It is a change of form. With respect to Mr. Pollock in the Canadian Bar Association, no research was done into this question of whether there is any meaning to the words "and probable".

The point that the statute revision commission arrived at after an examination of the authorities in the area of search warrant law is that there was no value added by the use of those words "and probable". The Southam decision confirmed the conclusion that it was all the same objective standard that was being employed by the courts.

Mr. Robinson: The difficulty with that, Mr. Chairman . . . This is not Mr. Mosley's responsibility, but I would have hoped if a change of this nature were being made in this process of statute revision it would have been drawn to the attention of the justice committee, and it was not. I think this is a problem with the process of statute revision that we will have to address separately.

[*Translation*]

L'article 443 est plus près de l'article du projet de loi qui parle du mandat spécial de perquisition. En plus, on s'est d'ailleurs demandé s'il ne serait pas opportun d'utiliser partout les mêmes expressions. La Cour suprême du Canada, dans l'affaire Southam, s'est demandé quel était le critère nécessaire pour l'émission d'un mandat en vertu de la Loi relative aux enquêtes sur les coalitions, et a parlé des motifs «raisonnables et probables». À l'époque, le juge, qui était le juge Dickson, expliqué qu'il s'agissait partout du même critère et que la notion de «motifs raisonnables de croire» était la même que la notion américaine de la «cause probable», et qu'il n'y avait aucune différence entre les deux.

Par conséquent, la Commission de révision des lois a donc décidé en pratique de supprimer l'expression «et probables», en décidant qu'elle n'ajoutait rien au texte. C'est d'ailleurs ce que l'on a fait aussi dans les *Statuts révisés du Canada de 1985*, que le Parlement a adoptés et qui entreront en vigueur cet été. En outre, la Commission de réforme du droit, lorsqu'elle a proposé un nouveau Code, a conclu à la même chose et a décidé de ne parler que de «motifs raisonnables», partout où l'on parle des critères objectifs à suivre.

M. Robinson: Monsieur le président, j'aimerais bien avoir des explications sur ces statuts révisés. M. Kaplan et moi-même avons tous deux siégé au Comité de révision des statuts, de même que M. Nicholson, je crois. Je me rappelle avoir assisté à des réunions dans cette salle-ci, mais je ne me rappelle pas avoir entendu qui que ce soit attirer notre attention à l'époque sur cette modification-là du Code criminel. Il me semble que l'on nous avait assurés que toute modification serait purement une modification de forme, et certainement pas une modification de fond.

M. Mosley: C'est en effet un changement de forme. En ce qui concerne M. Pollock de l'Association du barreau, aucune recherche n'a été effectuée sur le sens de l'expression «et probables».

Après avoir étudié les textes qui font autorité en matière de droit des mandats de perquisition, la Commission de révision des lois en a conclu que de parler aussi de motifs «probables», cela n'ajoutait rien à la notion de motifs «raisonnables». Le jugement dans l'affaire Southam a d'ailleurs confirmé cette décision et a prouvé que les tribunaux employaient tous le même critère objectif.

M. Robinson: Monsieur le président, ce que j'ai du mal à. . . Je sais que cela ne relève pas de M. Mosley, mais j'aurais osé espérer qu'une modification de cette nature au cours de la révision des statuts aurait été portée à l'attention du Comité de la justice, mais cela n'a malheureusement pas été fait. Je pense qu'il faudra que cela soit résolu séparément.

[*Texte*]

Mr. Kaplan: I do not recall having heard about this change, but neither have I seen Mr. Justice Dickson's reasons for considering the expression redundant.

I would have thought that "probable" was a higher standard than "reasonable", but while one is a higher standard than the other in my opinion, I do not think they are different in quality so I can understand why they could be considered redundant. I would have thought "probable" would be preserved rather than "reasonable", since it would have given greater protection to the subject.

I wonder if we could stand this clause and have a look at what Mr. Justice Dickson said before our next meeting. . . I hope we will finish the bill today; but if we do not, maybe we could stand this clause and get the clerk or someone to let us see what Mr. Justice Dickson had to say about it.

Mr. Robinson: What was the decision?

Mr. Mosley: Hunter and Southam.

Mr. Kaplan: I have the relevant extract here. Perhaps we could just stand it and I could look at the clause.

The Chairman: Any objection to standing it?

Mr. Kaplan: He is a hard judge to argue with, as it happens.

The Chairman: Alternately, we could pass it and you could reopen the subject later. You are attempting to do another.

Mr. Kaplan: I think you are being cute, Mr. Chairman.

Amendment allowed to stand.

The Chairman: Let us turn to N-9.

Mr. Robinson: Mr. Chairman, I moved that clause 2 of Bill C-61 be amended by striking out lines 20 to 24 on page 5 and substituting the following therefor: "seize that property."

Mr. Chairman, the purpose of this amendment is to delete the remaining words in proposed subsection 420.12(1): and any other property in respect of which that person or peace officer believes, on reasonable grounds, that an order of forfeiture may be made under that subsection.

Mr. Chairman, the purpose of this is to ensure that when a seizure is made the seizure is confined to the items in question, the items that are believed to be the subject of criminal wrongdoing. To extend that power to allow for seizure of anything an officer believes on reasonable grounds might give rise to an order of forfeiture I think is taking the section too far. I would suggest that it should be restricted along the lines my amendment proposes.

Mr. Kaplan: Well, I do not agree with this amendment because I do not consider it unreasonable, once the seizure is underway, for additional property to be added.

[*Traduction*]

M. Kaplan: Je ne me rappelle pas avoir entendu parler de cette modification, et je n'ai pas vu non plus les motifs qu'aurait exposés le juge Dickson et pour lesquels il aurait considéré l'expression comme étant redondante.

J'aurais cru que le terme «probable» était d'un cran plus élevé que «raisonnable», mais cela étant là mon avis, ces deux termes reviennent à peu près au même et je puis comprendre qu'on ait considéré l'expression comme redondante. Personnellement, j'aurais préféré garder le terme «probable» plutôt que «raisonnable», car cela aurait pu mieux protéger celui qui fait l'objet d'une saisie.

Ne pourrions-nous pas réserver cet article pour pouvoir étudier les motifs du juge Dickson. . . J'aurais espéré que nous en finirions avec le projet de loi aujourd'hui, mais si c'est impossible, nous pourrions peut-être réserver cet article et demander au greffier de nous faire parvenir les motifs du juge Dickson.

M. Robinson: De quelle affaire s'agit-il?

M. Mosley: De l'affaire Hunter contre Southam.

M. Kaplan: J'ai ici l'extrait du jugement qui nous intéresse. Nous pourrions peut-être attendre pour la mise aux voix, pour que je puisse lire les motifs.

Le président: Y a-t-il objection?

M. Kaplan: Il m'est difficile de contredire le juge.

Le président: Il y a une autre solution, c'est que nous adoptions l'amendement, quitte à rouvrir la mise aux voix ultérieurement. Vous essayez de...

M. Kaplan: Vous blaguez sûrement, monsieur le président.

L'amendement est réservé.

Le président: Passons maintenant à l'amendement N-9.

M. Robinson: Monsieur le président, je propose de modifier l'article 2 du projet de loi C-61 en retranchant les lignes 21 à 25, à la page 5, et en les remplaçant par ce qui suit: «nant ou lieu et à saisir les biens en question.»

Monsieur le président, mon amendement vise à supprimer la fin de l'alinéa 420.12(1) qui dit ceci: nant ou lieu et à saisir les biens en question ainsi que tout autre bien dont cette personne ou l'agent de la paix a des motifs raisonnables de croire qu'il pourrait faire l'objet d'une telle ordonnance.

Monsieur le président, je veux être sûr que la saisie est limitée aux biens en question que l'on croit être les produits d'un acte criminel. Il me semble que c'est aller un peu trop loin que de permettre à l'agent de la paix de saisir tout autre bien qu'il aurait des motifs raisonnables de croire qu'ils pourraient faire l'objet d'une ordonnance de confiscation. Je suggère de limiter la portée de l'article en fonction de ce que propose mon amendement.

M. Kaplan: Je ne suis pas d'accord, car je ne trouve pas déraisonnable qu'un agent de la paix puisse saisir d'autres biens, une fois la saisie commencée.

[*Text*]

• 1615

Mr. Nicholson: I think the property would disappear pretty quickly if they had to go back and get the second item.

Mr. Kaplan: It would be one of those conditions that makes the law look like an ass.

Mr. Robinson: Mr. Gold was one of the people who suggested this.

Mr. Kaplan: I remember that, and I questioned it because I thought it was just too great a restriction.

Mr. Robinson: It has been pointed out that, if there was a concern about property being removed from the premises, the police car could wait outside while an order was obtained. That is not that difficult to do. I just think that the potential for abuse of this section is too great as it is currently worded.

Mr. Mosley: There has been a comparable provision in the Criminal Code since 1954. It compares to what is known in the U.S. as the plain view seizure doctrine, which has long been accepted by the courts and upheld as constitutionally valid. Since the Charter has come into effect, plain view seizures have been upheld by the courts in Canada on a number of occasions, notably by the Ontario Court of Appeal. The Law Reform Commission of Canada has indicated that it is viewed as a valuable doctrine in the law. You can park a police officer outside the door, but that does not prevent burning or flushing down a toilet or other destruction of the property.

Amendment negatived.

The Chairman: And so to amendment L-4.

Mr. Kaplan: In light of the discussion that we had on "reasonable and probable", I will take your suggestion on this and withdraw it on the understanding that I could ask the committee to reopen it if after reading Mr. Justice Dickson's statement.

The Chairman: You are withdrawing it, but you might. . .

Mr. Kaplan: I am hoping I can approach you if you are not satisfied.

The Chairman: You could stand it.

Mr. Kaplan: I could do that; I did it with the other one. This one I will just withdraw to make the bookkeeping a bit easier.

The Chairman: Amendment G-2.

Mr. Grisé: Mr. Chairman,

il est proposé que l'article 2 de la version française du projet de loi C-61 soit modifié par substitution, à la ligne 45, page 5, par ce qui suit:

[*Translation*]

M. Nicholson: Je crois que des biens pourraient disparaître prestement s'il devait y avoir un délai entre les prairies.

M. Kaplan: On pourrait se moquer encore une fois—et à raison—de la loi.

M. Robinson: M. Gold était un de ceux qui l'avaient suggéré.

M. Kaplan: Je m'en souviens, et je me rappelle aussi lui avoir demandé pourquoi il nous suggérait quelque chose d'aussi restrictif.

M. Robinson: A ceux qui s'inquiétaient de voir les biens disparaître des lieux, on a proposé de laisser une voiture de police à l'extérieur pendant que l'agent essayait d'obtenir une nouvelle ordonnance. Ce ne serait pas trop difficile. Mais je pense tout simplement que l'article, tel qu'il est libellé actuellement, ouvre la porte à des abus.

M. Mosley: Il existe une disposition comparable dans le Code criminel depuis 1954. Cette disposition se compare à ce que l'on appelle aux États-Unis la doctrine de la saisie des objets «bien en vue» qui a de tout temps été acceptée par les tribunaux et considérée comme constitutionnelle. Depuis l'avènement de la Charte, les saisies d'objets bien en vue ont été maintenues par les tribunaux canadiens à diverses reprises, et notamment par la Cour d'appel de l'Ontario. La Commission de réforme du droit la considère d'ailleurs comme une doctrine juridique tout à fait valable. En effet, même si vous stationnez une voiture de police à l'extérieur de la porte, cela n'empêche pas le prévenu de brûler quelque objet incriminant, de le jeter dans la chasse d'eau ou de le détruire autrement.

L'amendement est rejeté.

Le président: Passons maintenant à l'amendement L-4.

M. Kaplan: A la lumière de la discussion que nous avons eue au sujet de l'expression «raisonnable et probable», j'accepte votre suggestion de retirer mon amendement dans la mesure où je pourrai demander au Comité de le remettre aux voix, après avoir lu l'énoncé des motifs du juge Dickson.

Le président: Vous le retirez, mais vous pourriez. . .

M. Kaplan: J'espère pouvoir vous faire entendre raison si je ne suis pas satisfait.

Le président: Vous pourriez demander de le réserver.

M. Kaplan: En effet, comme je viens de le faire pour l'autre. Mais je vais tout simplement retirer celui-ci, pour qu'il soit plus facile de s'y retrouver.

Le président: L'amendement G-2.

M. Grisé: Monsieur le président,

I move that the French version of clause 2 of Bill C-61 be amended by striking out line 41 on page 5 and substituting the following:

[*Texte*]

égard conformément à la loi

C'est une clarification du texte français pour qu'il corresponde, dans le texte anglais, à

"in accordance with the law".

Le président: Oui, d'accord.

Amendment agreed to

The Chairman: Amendment L-5 and amendment N-10 are identical.

Mr. Kaplan: I move that we strike out line 5 on page 6 and substitute the following therefor: "provided to the person from".

I have removed the condition that the individual whose property is seized needs to request information to get a copy of the report. Given the circumstances of having property seized from individuals who may not know their rights, a copy should be routinely and obligatorily provided to them whenever property is seized. That is the purpose of the amendment.

• 1620

Mr. Robinson: Mr. Chairman, I agree. I have proposed an identical amendment, and I hope it might meet with the approval of members of the committee. It is a reasonable request that in these serious circumstances it not be a matter of asking for a copy of the report, but rather that it be provided as a matter of course.

Mr. Malone: I ask this question to Mr. Kaplan, Mr. Robinson, or the officials. If this amendment were to pass, would it be the case that if the police, upon having seized property and having made a report, could not find the person and not having reported back to them, on a technicality the person can claim that the law has been abridged? This puts that requirement there; your amendment puts the requirement to—

Mr. Robinson: I would assume that if it could be shown that a bona fide reasonable attempt were made to provide the report to the person from whom the property was seized and any other person who in the opinion of the judge appears to have a valid interest in the property... If the person had, for example, left the jurisdiction, they would have satisfied the requirement under this section.

Mr. Nicholson: I suppose you could put it as "cause a copy of the report, where possible, to be provided to the person", which would, I suppose, cover—

Mr. Robinson: If you said that, you would open up the possibility that it might not be provided because the police might say it was not possible. They might have reasons for not making it possible.

Mr. Malone: Mr. Chairman, I am attempting to prevent a capacity for someone who, once having broken the law, . . to simply make it inconvenient for him to be informed of the report and thereafter make the claim that

[*Traduction*]

égard conformément à la loi

The French text has to match the English version which says:

«In accordance with the law»

The Chairman: I agree.

L'amendement est adopté.

Le président: Les amendements L-5 et N-10 sont identiques.

M. Kaplan: Je propose de retrancher la ligne 4, à la page 6, et de la remplacer par ce qui suit: «c) faire remettre un».

J'ai supprimé la condition selon laquelle le saisi est obligé de demander un exemplaire du rapport. Comme il arrive que l'on saisisse des biens de personnes ne connaissant pas leurs droits, il me semble que l'on devrait fournir obligatoirement un exemplaire du rapport, chaque fois qu'il y a saisie. Voilà mon objectif.

M. Robinson: Monsieur le président, je suis d'accord. J'ai d'ailleurs proposé un amendement identique qui, je l'espère, sera approuvé par le Comité. Il ne me semble pas déraisonnable de demander que dans des circonstances aussi graves, on envoie obligatoirement et automatiquement un exemplaire du rapport.

M. Malone: Puis-je poser à MM. Kaplan et Robinson, et même aux fonctionnaires du ministère, une question? Advenant l'adoption de cet amendement, si la police ne pouvait pas trouver le saisi et lui envoyer un rapport de ses biens confisqués, se pourrait-il que le saisi prétende qu'on l'a lésé dans ses droits en invoquant la lettre de la loi? Votre amendement obligerait. . .

M. Robinson: Je suppose que s'il est possible de prouver que l'on a fait toutes les tentatives raisonnables pour faire parvenir le rapport au saisi ou à toute autre personne qui, de l'avis du juge, semble avoir un droit sur les biens visés. . . Supposons, par exemple, que le saisi ait quitté la juridiction: on pourrait dire que l'on a fait tous les efforts raisonnables.

M. Nicholson: On pourrait peut-être dire plutôt «faire remettre un exemplaire du rapport, dans la mesure du possible, au saisi», ce qui tiendrait compte de. . .

M. Robinson: Mais ce faisant, vous laisseriez à la police la possibilité de dire qu'elle n'a pu faire remettre un exemplaire du rapport, parce que cela lui était impossible. La police pourrait avoir de bonnes raisons pour se mettre dans l'impossibilité de le lui remettre.

M. Malone: Monsieur le président, supposons quelqu'un qui a déjà enfreint la loi et qui s'arrange pour ne pas être en mesure de recevoir le rapport et qui prétend par la suite ne jamais avoir été informé et qui

[Text]

he never was informed, and for technicalities ask for a set-aside of the law.

Mr. Grisé: There is no need to apply to every case. It might become a burden for the police force and too many relations between the police and the accused might sometimes create violence. In its report the Law Reform Commission says:

> Concern was expressed that situations may arise in which a person affected would not wish to be given an inventory. Accordingly, we have proposed that the provision of an inventory to a person from whom things have been seized stem from the request of that person in order to assist in informing the person who has been searched, or a place or a vehicle has been searched, of his right to receive an inventory from the peace officer who executed the seizure. A notice to that effect should be printed on the search warrant.

There was a very good explanation by Mr. Malone and Mr. Robinson on this issue.

Mr. Nicholson: Might not a person, for whatever reason, come forward later and say that he has a valid interest in this, did not receive a copy, and challenge the trial itself and the use of that as evidence in the trial? It seems to me that it would not be too difficult for a person to say he had a written agreement and therefore a valid interest. He was not provided with a copy, as the law directed, and therefore this should not be submitted into evidence. It would make it—

Mr. Kaplan: You are asking a legal question. What are the consequences of—

Mr. Nicholson: I am thinking about possibilities where this could be much abused.

Mr. Kaplan: I was thinking also of the other side of it, that by getting the report out to the individual with an interest, you are settling what was taken at that point. If he does not request a report and he does not get one, he can come back later and complicate the administration of justice by making an exaggerated claim about what was actually seized.

Mr. Nicholson: I do not know if he would get very far.

Mr. Kaplan: There is something to be said for getting the report out to the individual. I doubt that this is a condition where best efforts were made to comply with it. A failure to comply with it in spite of best efforts would invalidate the whole procedure.

Mr. Nicholson: If you were the counsel for somebody, would you not argue that?

• 1625

Mr. Kaplan: Well, it would be hard to really argue that if my client were unavailable for receiving a report.

[Translation]

invoque la lettre de la loi pour faire annuler la saisie. Voilà ce que j'essaie d'empêcher.

M. Grisé: Il n'est pas nécessaire d'appliquer cette disposition à tous les cas. Cela pourrait devenir trop onéreux pour la police, et les relations entre la police et le prévenu pourraient s'envenimer parfois. Dans son rapport, la Commission de réforme du droit dit ceci:

> On s'inquiète de ce qu'un saisi pourrait ne pas vouloir nécessairement recevoir d'inventaire. Par conséquent, nous proposons que l'envoi d'un inventaire au saisi ne se fasse que si le saisi en fait la demande, et que l'on informe celui qui a été fouillé, dont le véhicule a été fouillé ou chez qui la perquisition a eu lieu, de son droit de recevoir un inventaire de l'agent de la paix qui a effectué la saisie. Un avis en ce sens devrait être imprimé sur le mandat de perquisition.

M. Malone et M. Robinson nous ont bien expliqué pourquoi.

M. Nicholson: Mais est-ce que quelqu'un ne pourrait pas, pour des raisons qui lui sont propres, réagir par après et déclarer qu'il a un droit sur les biens visés, mais qu'il n'a pas reçu un exemplaire de l'inventaire, et que par conséquent il veut contester la mise en accusation et l'utilisation de cette preuve lors du procès? N'importe qui pourrait prétendre qu'il a conclu un contrat par écrit avec le saisi et qu'il a donc un droit sur les biens visés. Or, si cette personne n'a pas reçu d'exemplaire de l'inventaire comme le prévoit la loi, cet inventaire ne peut donc pas être cité comme preuve. Cela invaliderait.

M. Kaplan: C'est une question juridique intéressante. Quelles seraient les conséquences...

M. Nicholson: Je pense à des possibilités d'abus.

M. Kaplan: Moi, je pense à l'autre côté de la médaille: si vous envoyez rapport de l'inventaire à ceux qui peuvent avoir des droits sur les biens visés, vous fixez automatiquement l'inventaire de ces biens. En effet, l'intéressé qui ne demande pas de rapport et n'en obtient donc pas peut toujours revenir ultérieurement à la charge et entraver l'administration de la justice en exagérant le nombre de biens qui ont été effectivement saisis.

M. Nicholson: Je ne pense pas qu'il irait bien loin.

M. Kaplan: Voilà un argument qui prêche en faveur d'envoyer au saisi un rapport de l'inventaire. Je doute que l'on puisse prétendre ici que l'on a déployé tous les efforts possibles pour respecter la loi. En ne faisant pas tout ce qu'il faut pour envoyer ce rapport, on pourrait invalider toute la procédure.

M. Nicholson: Mais si vous aviez à défendre un saisi, n'est-ce pas ce que vous invoqueriez?

M. Kaplan: Il serait difficile de le contester si mon client n'est pas là pour recevoir un rapport.

[*Texte*]

Mr. Nicholson: It is the second half—it is the valid interest part that gives me some concern.

Mr. Kaplan: It is in the opinion of the judge. If the judge is there and determines that an individual has a valid interest he has to know something about that individual that ought to make it easy to serve him with a copy of the report. In spite of the explanation, I would like to see that change made.

Mr. Nicholson: Before we leave this, I would like to pose a question to Mr. Mosley. You have heard my concern. Some challenge that. Is that valid? Is that something that you could see could take place, Mr. Mosley, or is it somewhat remote?

Mr. Mosley: This issue has been debated for years in the context of the disposition of things seized, the various projects concerned with that, both those leading up to the amendments to the Code in 1985 and various proposals the Law Reform Commission has brought forward from time to time. There have been a number of reasons advanced for not providing it automatically. It is formalistic. You are saying you are imposing a further regime to the police officer, which is not going to be well received in many cases. Even the defence counsel who have been consulted on this recognize that many of their clients are going to disappear rather than hang around to wait for the outcome of these court proceedings. So you are increasing the burden on the police. They have to go out and try to find the person from whom the property has been seized. That person may well not want to have anything to do with the police at that time.

One of the concerns raised is that you are increasing the number of incidents of contact between the police and this person. That could lead to disturbances of the peace and violence, and to no great end. The provision clearly entitles the individual who is definitely interested, who is going to hang around to the end of the proceedings, to a copy of that document. It is on record.

As to whether or not there could be a problem with other persons, I read the section as indicating that the question of delivery to other persons arises only when the judge determines that they have a valid interest in the property. It is at that time that the question of whether someone else should get it . . . but otherwise it is the individual from whom the property has been seized.

The Chairman: Did you indicate, for instance, that this search warrant would state the right of the individual to request . . .? You made some reference that the right of the individual to make this request would be provided, would be emphasized to him in some way.

Mr. Mosley: That was actually Mr. Grisé, who was referring to the LRC proposal, which would have provided that a notice to that effect should be printed on

[*Traduction*]

M. Nicholson: C'est la deuxième partie, celle concernant le droit sur les biens visés qui me préoccupe.

M. Kaplan: Tout dépend de l'opinion du juge. Si le juge détermine qu'une personne semble avoir un droit sur les biens visés, il lui faut connaître quelque chose au sujet de cette personne qui soit susceptible de faciliter la remise d'un exemplaire du rapport. Malgré l'explication, j'aimerais quand même que cette modification soit apportée.

M. Nicholson: Avant de passer à autre chose, je voudrais poser une question à M. Mosley. Vous avez entendu mes préoccupations. Certains ne sont pas d'accord. À votre avis, monsieur Mosley, est-ce une possibilité réelle ou quelque chose de hautement improbable?

M. Mosley: La question de la destination des objets saisis, qui a mené à la modification du Code en 1985 et aux diverses propositions de la Commission de réforme du droit, revient régulièrement sur le tapis et fait l'objet de débats depuis des années. On a avancé plusieurs raisons pour refuser la remise automatique. C'est une question de forme. On impose de nouvelles formalités à l'agent de police, ce qui n'a pas l'heur de plaire à tout le monde. Même les avocats de la défense que l'on a consultés à ce sujet reconnaissent que bon nombre de leurs clients préfèrent disparaître plutôt que d'attendre l'issue de la procédure judiciaire. On ne fait alors qu'accroître le fardeau de la police. Celle-ci doit essayer de trouver la personne à qui appartient le bien saisi. Cette personne n'a peut-être pas du tout envie à ce moment-là d'avoir affaire à la police.

On a également fait valoir que cette mesure a pour effet d'accroître le nombre de contacts entre la police et cette personne, ce qui risque d'entraîner inutilement les incidents de désordre et de violence. La disposition accorde clairement le droit à la personne qui a un droit sur les biens visés et qui est désireuse d'attendre l'issue de la procédure d'obtenir copie du document. Celui-ci se trouve dans le dossier.

Quant aux problèmes liés à la remise du bien à d'autres personnes, d'après mon interprétation de l'article, ils ne peuvent se présenter que si le juge détermine que ces personnes ont un droit réel sur les biens visés. C'est à ce moment-là qu'on peut s'interroger sur l'opportunité de remettre l'objet à quelqu'un d'autre. Autrement, seule la personne ayant fait l'objet de la saisie peut exercer son droit.

Le président: Avez-vous précisé, par exemple, si le mandat de perquisition ferait état du droit de la personne à demander . . .? Vous avez mentionné que le droit de la personne à faire cette demande lui serait notifié d'une façon ou d'une autre.

M. Mosley: En réalité, c'est M. Grisé qui a mentionné la proposition de la Commission de réforme du droit, voulant qu'un avis à cet effet soit imprimé sur le mandat

[*Text*]

the search warrant. The LRC work was in the context of general seizure of property.

Amendment negatived.

Mr. Kaplan: I move that we strike out line 12 on page 6 and substitute the following therefor: "shall require notice to be given to and upon request"

The Chairman: This is the same as N-11, by the way.

Mr. Robinson: It is, Mr. Chairman, but I am just wondering, procedurally my amendment had been submitted earlier.

The Chairman: Yes, I am sorry. You should have been called, and I am sorry. I erred. We will give you an opportunity. My error.

• 1630

Mr. Malone: I had never seen it before.

Mr. Kaplan: Is it a different amendment or is it the same amendment? I have moved it. I will not make a big argument for it. I feel if a judge is convinced of the other conditions contained in the section, he should have a duty rather than an option of requiring notice to be given.

The Chairman: We will deal with each one separately, with one word difference.

Mr. Robinson: I am prepared to deal with them both together. There are two objectives to the amendment. First, the judge must give notice to an individual who in the judge's opinion appears to have a valid interest in the property, unless the judge is concerned the property might disappear, or there might be other problems.

But in circumstances in which that is not the case, we are dealing with a very important power. The judge should be required to give notice to the individual involved so that person can say no, I do not think my property should be seized.

The second part of the amendment is to ensure where a person requests the right to be heard in those circumstances, the judge does not have the power to give notice and not hear the individual. It is not a radical amendment. It recognizes the importance of these powers, and preserves the right of the judge to dispense with notice in cases in which there could be a problem giving notice.

Mr. Malone: Are you talking about giving notice for seizure? I take it you are asking for notice of seized properties.

Mr. Robinson: Before the warrant to seize the proceeds is issued, or in relation to any property, according to the clause as it is now worded, the judge "may" require notice to be given an individual and "may" hear any person who has an interest in the property, unless the judge thinks the property might disappear—as they say, "disappearance,

[*Translation*]

de perquisition. Les travaux de la Commission portaient sur la saisie de biens en général.

L'amendement est rejeté.

M. Kaplan: Je propose de retrancher les lignes 9 à 12, à la page 6, et de les remplacer par ce qui suit: «le régime du présent article, le juge exige qu'en soient avisées les personnes qui, à son avis, semblent avoir un droit sur les biens visés, il peut aussi les entendre, sur demande»

Le président: Cette proposition est identique à celle de N-11, soit dit en passant.

M. Robinson: C'est juste, monsieur le président, mais je me demandais si mon amendement ne devait pas, sur le plan de la procédure, être présenté plus tôt.

Le président: Vous avez raison, excusez-moi. Il aurait dû être mis en délibération. J'ai commis une erreur. Nous allons la corriger.

M. Malone: Je ne l'ai pas encore vu.

M. Kaplan: Est-ce un amendement différent ou est-ce le même amendement? J'en ai fait la proposition. Je n'insisterai pas lourdement. A mon avis, si un juge est convaincu que les autres conditions prévues dans l'article ont été remplies, il devrait avoir l'obligation plutôt que l'option d'exiger un avis.

Le président: Nous allons examiner les deux amendements séparément, car il y a un mot qui diffère.

M. Robinson: Je veux bien les examiner en même temps. L'amendement vise deux objectifs. Le premier, c'est d'obliger le juge à aviser les personnes qui, à son avis, semblent avoir un droit sur les biens en question, à moins qu'il craigne la disparition du bien ou d'autres problèmes.

Autrement, le juge se retrouve avec un pouvoir extrêmement important. Il devrait être tenu d'aviser l'intéressé pour que celui-ci puisse s'opposer à la saisie de son bien.

La deuxième partie de l'amendement vise à accorder à une personne le droit d'être entendue sur demande, lorsque les circonstances le justifient. Le juge ne pourrait alors se contenter d'aviser la personne et refuser de l'entendre. L'amendement ne touche à rien de fondamental. Il reconnaît l'importance de ces pouvoirs et autorise le juge à ne pas émettre d'avis dans les cas où cela pourrait poser un problème.

M. Malone: Est-ce à un avis de saisie que vous pensez? Je suppose que vous demandez que la personne soit avisée des biens saisis.

M. Robinson: Avant que soit rendue l'ordonnance de confiscation des biens ou des produits de la criminalité, selon le libellé actuel de l'article, le juge «peut» exiger que les personnes en soient avisées et «peut» entendre les personnes qui semblent avoir un droit sur les biens visés, sauf s'il estime que le fait de donner cet avis «risquerait

[*Texte*]

dissipation, or reduced in value, or otherwise affect the property"—so it could not be seized. If the judge is concerned any of those things might happen, then the judge does not have to give notice.

The point was made by the Canadian Bar Association as well, and they have urged us to amend this clause, that where those conditions do not apply, where there is no concern that the property might be taken out of the jurisdiction, the judge "should" give notice to the person who owns the property, and that person should have the right to be heard.

Mr. Grisé: Search warrants are issued in this country regularly without notice. For instance, if you have to give notice—some information, some money into a bank account, a banking transfer can be done within minutes, if not seconds. There is no more money in the account, no more proceeds, they are gone—

Mr. Robinson: That is covered, quite clearly.

Mr. Grisé: —and many other events can happen like that. I would like Mr. Mosley to comment.

Mr. Mosley: The presumption implicit in this subclause is that in dealing with the criminal element you expect they are going to try to get rid of the property as quickly as possible. There have been cases in which huge sums of money have been transferred out of the country within a short period of time in which the suspect became aware of the police investigation.

• 1635

So the section quite properly begins on the premise that there is a very strong likelihood of the property being removed from the jurisdiction of the court. But it adds something to our current law. This is not part of the law in relation to search warrants as Mr. Grisé has indicated. There is no requirement whatsoever of notice before a search warrant is issued and that warrant to seize evidence may in fact cause as much disruption in terms of the property of the individual as this certainly would.

The point is this gives the court the option to exercise its discretion if it feels this is an appropriate case, unless it is satisfied that even where it would otherwise be an appropriate case, the property is going to be removed. To impose the mandatory requirement on the court means that in every instance it would have to issue notice unless it was satisfied on the basis of evidence put before it that in a particular case the property was going to be dissipated. Quite frankly, the Crown and the police are not going to be able to look into the mind of the suspect to indicate he is ready and willing to move property as soon as he knows the authorities are on to him.

Another point I think needs to be made is it would be quite strict, as was discussed by the committee in relation to the earlier proposal for an amendment. It means in every case. You may not be able to find the individual. What happens then, does it become a further issue to be

[*Traduction*]

d'occasionner la disparition des biens visés, une diminution de leur valeur ou leur dissipation». Dans ce cas, le juge n'est pas tenu de donner un avis.

Le même argument a été présenté par l'Association du Barreau canadien qui a demandé instamment la modification de cet article. Mais lorsque ces conditions ne s'appliquent pas, lorsqu'il n'y a pas lieu de craindre que les biens disparaissent, le juge aviserait le propriétaire des biens et cette personne aurait le droit d'être entendue.

M. Grisé: Des mandats de perquisition sont délivrés régulièrement au Canada sans préavis. S'il faut donner un avis, certaines informations risquent d'être perdues. Il ne faut que quelques minutes, voire quelques secondes, pour réaliser un virement bancaire, et voilà que tout à coup le compte bancaire se retrouve à sec, les produits de la criminalité ont disparu. . .

M. Robinson: Cet aspect est prévu, très nettement.

M. Grisé: . . . on pourrait donner beaucoup d'autres exemples du même genre. Je demanderais à M. Mosley de nous faire part de ses commentaires à ce sujet.

M. Mosley: L'hypothèse implicite que sous-tend ce paragraphe, c'est que les criminels ne manqueront pas de chercher à se débarrasser des biens aussi rapidement que possible. On connaît des cas où des montants énormes ont été transférés à l'étranger en très peu de temps, après que le suspect se soit rendu compte que la police menait une enquête.

L'article s'appuie donc, à juste titre, sur l'hypothèse que les biens visés risquent fort d'être soustraits à la juridiction du tribunal. Mais il ajoute quelque chose à notre droit actuel, qui n'a rien à voir avec le mandat de perquisition dont M. Grisé a parlé. En effet, il n'existe pas de disposition qui obligerait à notifier l'émission d'un mandat de perquisition, même si ce mandat, qui a pour but de permettre la saisie d'éléments de preuve, risque de porter atteinte au droit de propriété.

La disposition qui nous intéresse est celle qui habilite le juge à user d'un pouvoir discrétionnaire si les circonstances le justifient, s'il craint que les biens puissent disparaître. Autrement, la cour serait obligée d'aviser les intéressés dans tous les cas, à moins de posséder la preuve que les biens visés disparaîtront effectivement. Il faut être réaliste. La Couronne et la police ne sont pas en mesure de lire dans l'esprit du suspect s'il a l'intention de faire disparaître les biens dès qu'il apprend que les autorités s'intéressent à lui.

Il y a un autre facteur qui entre en ligne de compte, comme on a discuté le Comité en rapport avec une proposition d'amendement précédente. C'est que bien souvent il n'est pas possible de trouver la personne à aviser. Que faut-il faire dans ce cas? Faudra-t-il à chaque

[*Text*]

litigated? Are the authorities paralyzed because they cannot serve the notice that the court, acting under the strict requirements of the law, has indicated they have to serve before they can effect seizure?

Mr. Malone: Mr. Mosley responded to some of the points I was just going to raise, but I think the element of surprise is an important tool in the control of criminal activity. The more we try, under the guise of some sense of justice, to remove the powers of enforcement I think we ultimately end up giving a provision for even more complicated law with greater opportunity for abuse. I think the amendments, though they do not go extensively in that direction, lean in that direction and I intend to vote against them. I still hope I will find the moment when I can vote for an amendment put forward, but for the reasons I have mentioned, I cannot support this one.

Mr. Kaplan: In light of the signals from both sides of the committee, we could vote on both amendments in the same vote.

Mr. Robinson: On the amendment, it was suggested that we have to move quickly, and I certainly do not disagree that in many instances it is necessary to move quickly. Mr. Mosley referred to alleged criminals getting rid of property quickly. Well, if there is any evidence that is going to happen, if the judge is satisfied that it might happen, then notice would not be required under this particular section. It is quite clear in the way the section is worded.

So why would we not accept the recommendation of the Canadian Bar Association in this case to ensure that notice and hearing is only dispensed with where it is believed there would be a disappearance, dissipation or reduction? I just do not understand the logic of that. If any of those things can be established then quite clearly there is no notice required. Mr. Mosley says they might not be able to find the person. Well, that is the case now. What if the judge requires notice to be given now that is discretionary if it is not worded and they cannot find the person? The same argument applies, so I do not think that is an answer to the amendment.

Mr. Malone: Mr. Robinson, in your own words you say that if evidence can be established it becomes the whole point. How is a judge to make a decision with no evidence? If there is a requirement that some kind of evidence has to be there to persuade him, then obviously there has to be something stirring up in the legal processes, something that could easily send signals to criminals by the attempt to discover and present evidence. With a lack of evidence, judges may very well send the notice out to a prospective criminal that his property is about to be seized. With that comes all of the warning

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M. Malone: M. Mosley a déjà répondu à certaines des questions que j'allais soulever. Je pense, effectivement, que l'élément de surprise est un aspect important de la lutte contre les activités criminelles. Si au nom d'une certaine conception de la justice nous sabotons tous les pouvoirs d'application de la loi, je crains fort que l'on aboutisse alors à un droit extrêmement complexe qui ouvre la porte à tous les abus. Selon moi, les amendements proposés vont dans ce sens, et même s'ils ne vont pas bien loin dans ce sens, j'ai quand même l'intention de voter contre. J'espère encore avoir l'occasion de voter en faveur de l'adoption d'un amendement mais, pour les raisons que je viens de signaler, je ne peux appuyer cet amendement particulier.

M. Kaplan: Si l'on en juge par la réaction générale des membres du Comité, quel que soit leur parti, on pourrait peut-être soumettre aux voix les amendements en même temps.

M. Robinson: Il a été suggéré que l'on passe rapidement sur les amendements, et je conviens volontiers que bien souvent il est essentiel de procéder avec célérité. M. Mosley vient de mentionner la possibilité que des criminels présumés se débarrassent rapidement des produits de la criminalité. Il m'apparaît donc logique que cet article prévoie la possibilité de ne pas émettre d'avis, si l'on dispose de preuves suffisantes et si le juge a des doutes raisonnables. Cette possibilité semble très claire dans le libellé actuel de l'article.

Pourquoi n'accepterions-nous pas alors la recommandation du Barreau canadien pour nous assurer qu'il ne sera pas dérogé au droit des personnes à recevoir un avis ou à obtenir une audience que si cet avis risquerait d'occasionner la disparition des biens visés, une diminution de leur valeur ou leur dissipation? Je ne comprends pas le problème. Si ces craintes sont fondées, il m'apparaît évident que l'avis devient superflu. M. Mosley a ajouté qu'il arrive même qu'on ne puisse trouver la personne. Qu'arrivera-t-il si le juge exige que la personne soit avisée, puisqu'il s'agit d'un pouvoir discrétionnaire dans la formulation actuelle, et qu'il serait impossible de trouver cette personne? Le même argument s'applique à ce cas de sorte que je ne pense pas que cela réponde à l'amendement.

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signals that allow them to get rid of their properties obtained through crime.

• 1640

Mr. Robinson: Mr. Chairman, I will make a final brief point, because I do not want to prolong the debate. It does not refer to "evidence", but to the judge being of the opinion that giving such notice would result in disappearance and so on. Obviously there has to be some basis for such an opinion, and once the judge is of that opinion, that is it. Surely it is not unreasonable to suggest that, where the judge is not of the opinion there would be a disappearance, dissipation, or reduction, the person is entitled to be heard before his property is seized. Remember that we are talking about possibly seizing property that could paralyse a business or anything else. The argument has been made.

The Chairman: Ready for the question? We are dealing with L-5(a) and N-11 at the same time.

Amendments negatived.

The Chairman: Amendments N-12 and L-6 are identical, and we will ask Mr. Robinson to speak.

Mr. Robinson: I move that clause 2 of Bill C-61 be amended by striking out line 24 on page 6 and substituting the following therefor: "section, a judge shall require the Attorney"

The effect of this amendment, Mr. Chairman, is to ensure that the undertaking by the Attorney General to pay damages or costs be not discretionary, but rather be mandatory. If there are in fact damages or costs as a result of the issuance and execution of the order, and if the person is ultimately acquitted, he is to be compensated.

I do not want to make the argument at great length, but this was one of the areas flagged by the Canadian Bar Association as being an important area of concern. I am going to quote briefly from their submission to the committee:

> It is preferable in our view that the permissive "may" be replaced by the mandatory "shall" so as to oblige the judge to require an undertaking, the extent of which would then be left to his discretion.
>
> In view of the unprecendented nature of the search and seizure provisions contained in this Bill, it would seem appropriate to require the Attorney General to undertake to fully indemnify the respondent for the costs of the application and for any damage to the property should the application prove unfounded.

We are saying the Attorney General would in fact be required to give the undertaking in question, and if the

[*Traduction*]

M. Robinson: Monsieur le président, je vais rapidement présenter mon dernier point, car je ne voudrais pas prolonger indûment le débat. En réalité, il n'est pas question que le juge ait la «preuve» que les objets disparaîtront. Il suffit qu'il soit d'opinion que ces objets risquent de disparaître. De toute évidence, il faut bien que cette opinion s'appuie sur certains éléments concrets. Mais si le juge ne pense pas que l'avis risquerait d'occasionner la disparition des biens visés, une diminution de leur valeur ou leur dissipation, il me semble alors qu'il n'est pas déraisonnable d'accorder à l'intéressé le droit d'être entendu avant qu'on ne procède à la saisie de ses biens. Il ne faut pas oublier que la saisie des biens pourrait avoir pour effet de paralyser une entreprise ou de causer d'autres préjudices. On a déjà présenté cet argument.

Le président: Êtes-vous prêts à vous prononcer? Le vote porte sur les amendements L-5a) et N-11 tout à la fois.

Les amendements sont rejetés.

Le président: Les amendements N-12 et L-6 sont identiques, et nous allons donner la parole à M. Robinson.

M. Robinson: Je propose que l'article 2 du projet de loi C-61 soit modifié par suppression des lignes 21 et 22, à la page 6, et par substitution de ce qui suit: «le régime du présent article, le juge exige du procureur général qu'il prenne»

Cet amendement, monsieur le président, vise à faire en sorte que le paiement des dommages et des frais ne soit pas discrétionnaire, mais obligatoire. Si l'ordonnance rendue et son exécution entraînent effectivement des dommages et des frais, et que la personne est finalement acquittée, celle-ci devrait avoir droit à une indemnité.

Je ne voudrais pas insister longuement sur ce point, mais l'Association du Barreau canadien a jugé qu'il s'agissait là d'un problème important. Je vais vous présenter brièvement quelques extraits du mémoire qu'ils ont envoyé au Comité:

> Il serait souhaitable, à notre avis, de remplacer l'auxiliaire «peut» qui n'exprime que la possibilité, par un verbe qui oblige le juge à exiger des engagements, dont la portée serait laissée à sa discrétion.
>
> En raison du caractère sans précédent des dispositions du projet de loi relatives à la perquisition et à la saisie, il conviendrait d'exiger que le procureur général s'engage à rembourser intégralement le répondant des frais de la demande d'ordonnance et de tout autre dommage aux biens si la demande se révèle non fondée.

Ainsi, le procureur général serait tenu de prendre l'engagement, dans l'éventualité où la demande ne serait

[*Text*]

order turned out to be unfounded the person would be compensated for any loss incurred.

The Chairman: Mr. Kaplan, do you wish to add anything?

Mr. Kaplan: I agree with the amendment.

Mr. Mosley: For the most part, this bill has been well received by the provincial Attorneys General and by the police community. If there is any element of the bill that causes the provincial Attorneys General alarm, it is the undertakings section. They are quite disturbed by how it now reads, which is discretionary. Mr. Robinson's amendment would require an undertaking in every case. That would include the clear case in which there was no doubt whatsoever about the nature of the property, in which case the undertaking would come to no effect. But it would also include the many cases in which there was an issue to be litigated and the Attorney General was proceeding on the basis the evidence was there, and more likely than not the prosecution would be successful.

• 1645

We have been told by the provincial Attorneys General that the undertaking provision will have a most decidedly chilling effect on those cases that fall into the category of the grey area. There is evidence that has to be considered by a court, but it is not absolutely certain at the outset that the result will be the conviction of an accused and forfeiture of the suspect property.

The provision is an innovation in the criminal law. There is nothing comparable which requires the provincial Attorneys General to offer undertakings to the court. Its purpose was to provide that in those circumstances in which the court was concerned the effect of either the seizure warrant or the restraining order would be to cause damages to the owner or person in possession of that property which they could not otherwise recover—or if at the end of the day, notwithstanding that the Crown had the reasonable grounds to obtain the order, there would be no opportunity for recovery. The object was to innovate and to provide the court with this discretion, to be exercised cautiously in the appropriate case, to require the undertaking of the Attorney General and to put him on his election as to whether he wished to proceed with the application for the order or would withdraw it if the court insisted on an undertaking.

In the province of Ontario the Attorney General cannot commit his government to any public expenditure without first obtaining the approval of its management committee. I would imagine they have a similar type of restriction on public accounts in other provinces and that the decision to proceed would not be made in the interests of criminal justice, but on the basis of whether the province could afford the risk at that time. Accordingly, they are very concerned with the provision

[*Translation*]

pas fondée, d'indemniser la personne pour les pertes subies.

Le président: Monsieur Kaplan, désirez-vous ajouter quelque chose?

M. Kaplan: Je suis d'accord avec cet amendement.

M. Mosley: Pour l'essentiel, le projet de loi a été bien accueilli par les procureurs généraux provinciaux et par la police. S'il est un élément du projet de loi qui inquiète les procureurs généraux provinciaux, toutefois, c'est bien cet article sur les engagements à prendre, qui demeurent discrétionnaires selon le libellé actuel. L'amendement que propose M. Robinson aurait pour effet d'exiger un engagement dans tous les cas, y compris dans les cas clairs et nets où il n'y a aucun doute sur la nature des biens et pour lesquels, par conséquent, l'engagement n'aurait aucun effet. Mais cet engagement serait pris également dans tous les cas de litige réel et dans tous les cas où le procureur général intenterait des poursuites aboutissant à une condamnation.

Les procureurs généraux des provinces nous ont affirmé que l'article sur les engagements pourrait constituer une entrave dans les cas indécis. Lorsque le tribunal examine les preuves, il n'est pas du tout évident au départ que l'affaire aboutira à un condamnation et à la saisie des biens.

Cette disposition représente une innovation dans le droit pénal. C'est la première fois que les procureurs généraux provinciaux doivent prendre ce genre d'engagements devant le tribunal. Le but, naturellement, est de prendre des mesures lorsqu'il craint que le mandat de saisie ou l'ordonnance de blocage de certains biens ne cause un préjudice au propriétaire ou à la personne en possession des biens qu'ils ne pourront recouvrer—indépendamment des motifs à l'origine de la demande d'ordonnance. Il s'agit donc d'une innovation permettant au tribunal d'user d'un pouvoir discrétionnaire, à exercer avec prudence, afin d'obliger le procureur général à prendre un engagement. Celui-ci aurait alors le choix de décider s'il désire toujours demander une ordonnance ou de retirer cette demande.

En Ontario, le procureur général ne peut s'engager à dépenser des fonds publics sans avoir obtenu l'autorisation préalable d'un comité de gestion. J'imagine que des restrictions analogues s'appliquent aux dépenses publiques dans les autres provinces, de sorte que la décision de demander l'ordonnance risque d'être prise en fonction du risque encouru par la province plutôt que selon des critères de justice pénale. C'est pourquoi les procureurs généraux sont extrêmement réticents devant

[*Texte*]

as it stands, but have indicated that no such applications would be made if this was a mandatory requirement.

Mr. Nicholson: I have some sympathy when the Attorneys General are concerned about something like that. I find it interesting there are no provisions similar to this in the Criminal Code. In many ways that is a shame. Sometimes people who find their property somehow gets damaged in the process here have very little recourse should they be cleared of the particular crime.

Mr. Mosley, as it reads now, "before issuing a warrant", I guess a judge looking at the case would not know whether the property in question is going to get damaged or is improperly stored or gets vandalized somewhere down the line. I would say to the Attorneys General it would probably be a very rare thing that there would be undertakings required of the Attorney General for costs, etc. In a normal case where property was seized there would be no requirement of the Attorneys General. If the property got damaged or vandalized or was neglected in the course of a trial, there would probably be very little chance of recourse for the person who was ultimately cleared. Would you agree with that?

Mr. Mosley: That is the reality with search warrants. For example, if the court were to order the seizure of the property because of its evidentiary value, and if at the end of the day the accused was not convicted and the property was ordered returned and it had suffered damages as a result, the individual would have no recourse. So this is an innovation in the law and may well have a beneficial effect.

• 1650

It may be that in this case experience with such a provision may lead to a willingness to see it adopted on a broader basis within the Criminal Code. I can tell you that if it is put in on a mandatory basis they simply will not make these applications. We will have no test of whether or not it works. It will simply mean that they do not seek the orders where the court is going to require an undertaking.

Mr. Nicholson: If it was mandatory I imagine there would be a standard undertaking that would be done in every case whereby the Attorney General would be directed that if there was, for instance, damage to the property in question, compensation would follow.

Mr. Mosley: The point being forcefully conveyed to us is that the Attorneys General will make no such applications for such orders if there is a mandatory undertaking requirement.

Mr. Nicholson: Do you mean to tell me they will not pursue the proceeds of crime if they know that if they damage those proceeds in some way they may end up having to compensate the—

[*Traduction*]

cette disposition et ont même fait savoir qu'ils ne demanderaient pas d'ordonnance si l'article demeurait libellé comme il l'est actuellement.

M. Nicholson: Lorsque les procureurs généraux s'inquiètent d'une question comme celle-là, mon intérêt est tout de suite éveillé. Je trouve curieux que le Code criminel ne contienne pas de dispositions analogues. C'est dommage, de bien des points de vue. Il arrive parfois que des dommages soient causés aux biens d'une personne et que celle-ci n'ait pratiquement aucun recours lorsque par la suite elle est déclarée non coupable.

Monsieur Mosley, selon la formulation actuelle, «avant de décerner un mandat» le juge chargé de l'affaire ne peut savoir si les biens en question seront endommagés, que ce soit parce qu'ils sont mal entreposés ou qu'ils font l'objet de vandalisme. Je répondrais aux procureurs généraux qu'ils seront probablement rarement tenus de prendre des engagements de remboursement des coûts. En règle générale, en cas de saisie de biens, les procureurs généraux n'auraient pas à prendre de tels engagements. Or, si les biens en question sont effectivement endommagés ou font l'objet de vandalisme pendant le procès, la personne lésée se retrouverait pratiquement sans recours, même si elle est finalement déclarée non coupable. N'êtes-vous pas d'accord?

M. Mosley: C'est la même chose pour les mandats de perquisition. Si un tribunal ordonne la saisie de biens à titre de preuve et que l'accusé n'est pas condamné, les biens sont alors restitués. Mais si entre temps ils ont subi des dommages, la personne n'a aucun recours. Cette innovation dans le droit pourrait donc se révéler bénéfique.

Il se peut que l'expérience nous incite à adopter une telle disposition de façon plus générale dans le Code criminel. Je peux vous dire que si l'engagement est obligatoire, ils ne feront tout simplement pas de demandes. Nous ne pourrons pas alors savoir si c'est une bonne chose ou non. Cela voudra tout simplement dire qu'ils ne demanderont pas d'ordonnances sachant que le tribunal va exiger un engagement de leur part.

M. Nicholson: Si c'était obligatoire, j'imagine que l'on prévoirait un engagement type imposant au procureur général de compenser le saisi si les biens en question ont été endommagés.

M. Mosley: Ce que nous ont fait comprendre sans ambages les procureurs généraux, c'est qu'ils ne demanderont pas d'ordonnances si on les oblige à s'engager ainsi.

M. Nicholson: Voulez-vous dire qu'ils renonceraient à s'attaquer aux produits d'activités criminelles parce que dans le cas où ces produits seraient endommagés, ils pourraient avoir à verser une compensation.

[*Text*]

Mr. Mosley: They will pursue the proceeds of crime. It would still be open to them to prosecute and at the end of the day ask the court if it would order the forfeiture of the property they have established to be the proceeds of crime. They will not seek a warrant or a restraining order if the consequence of that is a mandatory charge on the provincial treasury.

Mr. Robinson: Mr. Chairman, we are not talking about a mandatory charge on the provincial treasury. As Mr. Nicholson pointed out quite effectively, one would hope it would only be in the very rare instance that there would be any charge on the provincial treasury. The only circumstances in which there would be a charge on the provincial treasury would be in circumstances in which there were damages incurred as a result of the inappropriate action of the Crown. If there was some damage to property or something of that nature, then the individual would have recourse. That is the only circumstance in which this would be the case.

The other point, Mr. Chairman, is that the Attorney General would be required to give such undertakings as the judge considers appropriate. There is a very broad discretion in the hands of the judge. I know Mr. Mosley is carrying the brief of the Attorneys General on this point, but we have a broader interest as members of the committee.

We want to make sure the law is written effectively, not just to please the Attorneys General. We have a broader interest—the public interest—to ensure this law is well written and to look at it from the perspective of individuals whose property is seized and may be damaged.

I have the letter from the Attorney General of Ontario, for example, on this particular point. We have not received any submissions from any other Attorney General on this point. Mr. Mosley informs us they are concerned, but that is hearsay. If there is other evidence from other Attorneys General, presumably we would want to have that before the committee.

The Attorney General of Ontario suggests as one of his arguments that as opposed to the undertaking,

> Surely a simpler solution would be to include a provision enabling a judge to refuse to issue a search warrant or restraining order where he is of the opinion that there is insufficient material before him to justify interference with the property rights of citizens.

That is a rather extraordinary suggestion from the Attorney General. He is saying tell them just not to issue the warrant if they are concerned about there being insufficient material. All this amendment does is to respect the right of individuals whose property is seized and who at the end of the day have damage to that property. It is an assurance that they will be compensated for that damage.

Mr. Malone: I am bothered by the word "required", because that brings in the mandatory notion. The other aspect is that some property will be damaged at the point

[*Translation*]

M. Mosley: Ils s'attaqueront aux produits du crime. Ils pourront toujours engager des poursuites et demander au tribunal de bien vouloir ordonner la confiscation des biens dont il a été démontré qu'ils sont le produit d'un crime. Ils ne demanderont pas de mandats ou d'ordonnances de blocage si cela doit automatiquement grever le Trésor provincial.

M. Robinson: Monsieur le président, il ne s'agit pas de grever automatiquement le Trésor provincial. Comme l'a très bien dit M. Nicholson, on peut espérer que cela ne se produirait que très rarement. Le Trésor provincial ne pourrait être grevé que dans les cas où les biens ont été endommagés à la suite d'actions inappropriées de la part de la Couronne. La personne dont les biens auraient été endommagés aurait alors un recours. Cela ne se produirait que dans ces cas-là.

En outre, monsieur le président, le procureur général n'aurait à s'engager de telle manière seulement si le juge l'estime opportun. Le juge a un grand pouvoir discrétionnaire. Je sais que M. Mosley se fait ici le porte-parole des procureurs généraux, mais les membres du Comité ont à l'esprit des intérêts plus vastes.

Nous devons nous assurer que la loi est bien rédigée, et non pas seulement pour plaire aux procureurs généraux. Nous défendons un intérêt plus vaste, l'intérêt public, et nous devons veiller à ce que la loi soit bien rédigée du point de vue des personnes dont les biens sont saisis et pourraient être endommagés.

J'ai la lettre du procureur général de l'Ontario, par exemple, sur ce point. Aucun autre procureur général ne nous a donné son point de vue là-dessus. M. Mosley nous dit qu'ils sont inquiets, mais c'est de l'ouï-dire. S'il y a des pièces provenant de procureurs généraux, je pense que le Comité serait intéressé à les voir.

Le procureur général de l'Ontario se prononce contre cet engagement en disant,

> Il serait certainement plus simple de prévoir une disposition permettant au juge de refuser le mandat de perquisition ou l'ordonnance de blocage s'il estime que les pièces à l'appui sont insuffisantes pour justifier que l'on entrave le droit à la propriété.

Venant du procureur général, la suggestion est assez extraordinaire. Il propose qu'on dise tout simplement aux juges de ne pas accorder de mandat s'ils estiment que les pièces à l'appui sont insuffisantes. Cet amendement vise tout simplement à respecter le droit des personnes dont les biens ont été saisis et endommagés. Il leur garantit qu'elles seront alors compensées.

M. Malone: C'est le mot «exiger» qui me gêne, parce que cela entraîne une obligation. Il y a aussi le fait que certains biens seront endommagés au moment de la saisie

[*Texte*]

of seizure by the relationship that exists between the alleged criminal and the law enforcers. If we are to get into the notion that the state is to compensate in what may very well be a response to a relationship—

Mr. Robinson: If they are innocent, if they are acquitted, and their property is damaged during the original seizure, they are entitled to compensation. Put yourself in that position. The police show up, seize some property, and damage it. You are tried on a particular offence. You are acquitted, but your property is damaged. Unless there is an undertaking, you actually have to sue the Crown to recover. In many cases, it is just not financially possible. All this says is if this is the case at the end of the day, you get your compensation.

• 1655

Mr. Nicholson: Mr. Chairman, I am usually never one to try to delay the work of a committee, particularly on one of these justice-related bills, but I would ask that this matter be stood down until the next time it appears before this committee. I am not trying to burden my fellow committee members.

Mr. Malone: My difficulty is with the word required; it is not with the sentiment of what I think the hon. members proposing this style of amendment are trying to do.

Amendments L-6 and N-12 allowed to stand

The Chairman: There will be two sessions on Thursday. We will now adjourn.

[*Traduction*]

en raison des rapports entre l'accusé et la police. S'il faut que nous adoptions le principe que l'État est tenu de verser une compensation pour ce qui peut bien être le résultat d'un rapport. . .

M. Robinson: S'ils sont innocents, s'ils sont acquittés, et que leurs biens ont été endommagés pendant la saisie, ces gens ont droit à une compensation. Mettez-vous à leur place. La police débarque, saisit des biens et les endommage. Vous êtes poursuivi pour une infraction donnée. Vous êtes acquitté, mais vos biens ont été endommagés. S'il n'y a pas d'engagement, vous serez obligé d'intenter des poursuites contre la Couronne pour obtenir compensation. Dans bien des cas, ce sera impossible pour des raisons financières. Tout ce que l'on dit ici, c'est que si cela devait arriver, vous obtiendriez compensation.

M. Nicholson: Monsieur le président, il n'est pas dans mes habitudes de retarder un comité dans ses travaux, surtout lorsqu'il s'agit d'un projet de loi de nature juridique, mais je demanderais que cet amendement soit réservé jusqu'à la prochaine réunion. Mon intention n'est pas d'imposer un fardeau aux autres membres du Comité.

M. Malone: Ce qui me gêne, c'est le mot «exiger»; je crois que cela ne correspond pas aux intentions des députés qui ont présenté cet amendement.

Les amendements L-6 et N-12 sont réservés.

Le président: Nous aurons deux réunions jeudi. La séance est levée.

May 26, 1988 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act]

EVIDENCE

[Recorded by Electronic Apparatus]

[Texte]

Thursday, May 26, 1988

• 1124

The Chairman: I would like to call this meeting to order, please. Mr. Robinson, I think you have two amendments that were stood down. Perhaps if the committee would like, we would deal with those. Again I would like to welcome Mr. Grisé and the officials from the Department of Justice.

I wonder if I could refer members to amendment N-8 moved by Mr. Robinson, clause 2, page 5. This is something that was stood down. Are you prepared to deal with that one, Mr. Robinson?

Apparently Mr. Kaplan has an amendment, L-3, which is similar if not identical. Yes, it is identical.

Mr. Robinson: Mr. Chairman, I am prepared to move the amendment without any further debate. I have read the court decision in question and, despite the decision of the court, I think the amendment is appropriate and helpful to the bill.

The Chairman: We have certainly had a somewhat extensive discussion on this. Mr. Grisé, did you have any further comments on this?

Mr. Richard Grisé (Acting Parliamentary Secretary to Minister of Justice): No. Once again, Mr. Chairman, as mentioned at the last meeting, we were referred to the Law Reform Commission. The officials gave plenty of explanation on it, so I have no further comment.

• 1125

Mr. Redway: Is the government for this amendment or against it?

An hon. member: The government is not.

Mr. Redway: Oh, I see. What a surprise!

Mr. Robinson: It is the next one.

Amendment negatived.

The Chairman: The next one that was stood down is listed as N-12 in your package, and this refers to clause 2, page 6. This was stood down from the last meeting as well.

I have been told that L-6 is the same thing, so I suppose we can just dispose of this. Is there any discussion on this?

Mr. Robinson: I shall just wait until we have a quorum.

The Chairman: I actually do see a quorum.

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le jeudi 26 mai 1988

Le président: Je déclare la séance ouverte. Je pense qu'il y a deux amendements de M. Robinson qu'on a réservés. Si le Comité est d'accord, nous allons commencer par examiner ces amendements. Je tiens à souhaiter la bienvenue encore une fois à M. Grisé et aux fonctionnaires du ministère de la Justice.

Je renvoie les membres du Comité à l'amendement N-8 proposé par M. Robinson à l'article 2, page 5. C'est un amendement qui a été réservé. Êtes-vous prêt à examiner cet amendement, monsieur Robinson?

Il semble que M. Kaplan a un amendement, le L-3, qui ressemble à l'amendement de M. Robinson, mais qui n'est pas identique. Si, c'est identique.

M. Robinson: Monsieur le président, je suis prêt à proposer l'amendement sans plus de discussion. J'ai lu la décision du tribunal en question, et malgré cette décision, je pense que l'amendement est approprié et améliore le projet de loi.

Le président: Nous avons certainement discuté de cet amendement assez longuement. Avez-vous d'autres remarques à faire, monsieur Grisé?

M. Richard Grisé (secrétaire parlementaire suppléant du ministre de la Justice): Non. Je répète, monsieur le président, comme on l'a signalé lors de la dernière réunion, qu'on nous a renvoyés à la Commission de la réforme du droit. Les fonctionnaires ont donné beaucoup d'explications, donc je n'ai pas d'autres observations à faire.

M. Redway: Le gouvernement est-il pour ou contre l'amendement?

Une voix: Le gouvernement est contre.

M. Redway: Ah bon. Quelle surprise!

M. Robinson: C'est le prochain.

L'amendement est rejeté.

Le président: Le prochain amendement qui a été réservé est le N-12 dans votre liasse. Il porte sur l'article 2 à la page 6. Cet amendement a également été réservé lors de la dernière réunion.

On m'a dit qu'il en est de même pour le L-6. Donc, je suppose qu'on peut régler les deux en même temps. Y a-t-il de la discussion au sujet de cet amendement?

M. Robinson: Je vais attendre qu'on ait le quorum.

Le président: Il y a pourtant quorum, à mon avis.

[*Texte*]

Mr. Robinson: I shall just wait until Mr. Redway is off the phone.

This amendment did receive considerable discussion during the course of the last meeting, and you will recall that it was at your request, Mr. Chairman, that this amendment was in fact stood down for the next meeting.

The issue here is that under the proposed subsection as it is worded in the bill, proposed subsection 420.12(6), a judge, before issuing a warrant under this section—and that is the warrant to authorize a search and seizure of property—may require the Attorney General to give such undertakings as a judge considers appropriate with respect to the payment of damages or costs or both in relation to the issuance and execution of the order.

My amendment—and it was an amendment that was proposed as well by Mr. Kaplan—would make that mandatory: in other words, would require that, before the warrant is issued under this section, the judge "shall" require the Attorney General to give the necessary undertakings—whatever the judge considers to be appropriate; there is a great deal of flexibility within the wording of that proposed section—with respect to the payment of damages, costs, or both.

The purpose of that is to ensure that, if indeed a person is acquitted and suffers damage to his or her property following that acquittal or while the property, for example, has been in the custody of law enforcement authorities, that person does not then have to sue civilly to recover for that damage.

This is an important provision. I recognize that it would be an extension of the current law, but I think it is a welcome extension in terms of the rights of the citizen. There has been considerable discussion in the House about the whole concept of property rights, and indeed some have gone so far as to suggest that we entrench property rights in the Constitution. Well, Mr. Chairman,—

Mr. Redway: I wonder if we could do that without your amendment.

Mr. Robinson: —without getting into the substance of that debate, all that this is saying is that the judge in fact shall protect the citizen in effect, shall be in a position to protect the citizen by asking the Attorney General for an undertaking that if in fact, and only if, there is damage incurred for which the Crown is liable then the Crown will compensate the citizen. That is all that is being requested here.

The attorneys general do not like the current provisions, we are told; they are not happy with the current provision. But we do not write legislation just to satisfy one particular interest group; we write legislation in the best interest, presumably, of the country as a whole, and in doing that we have to keep in mind those citizens whose property may in fact be the subject of damage and who are entitled, surely, not to have to sue for recovery if there is damage. That is the purpose of the amendment.

[*Traduction*]

M. Robinson: Je vais attendre que M. Redway revienne du téléphone.

Nous avons discuté assez longuement de cet amendement pendant la dernière réunion, et vous vous souviendrez, monsieur le président, que c'était à votre demande qu'on a réservé l'amendement.

D'après le paragraphe proposé 420.12(6), un juge, avant de décerner un mandat sous le régime du présent article—et il s'agit d'un mandat autorisant une perquisition et une saisie de biens—peut exiger du Procureur général qu'il prenne les engagements que lui-même estime indiqués à l'égard du paiement des dommages et des frais que pourrait entraîner l'exécution du mandat.

Mon amendement—et M. Kaplan a également proposé le même—viserait à obliger le juge d'exiger du Procureur général qu'il prenne les engagements nécessaires. Autrement dit, il s'agit de supprimer le mot «peut». Le libellé proposé laisse beaucoup de marge de manoeuvre en ce qui concerne le paiement des dommages et des frais.

Le but de mon amendement est de faire en sorte que, si une personne est acquittée et subit des dommages à ses biens après l'acquittement ou pendant que les biens sont gardés par les responsables de l'application de la loi, la personne ne soit pas obligée d'engager une action civile pour recupérer les dommages.

Il s'agit d'une disposition importante. Je reconnais qu'elle représente un élargissement de la loi actuelle, mais je pense qu'elle est dans l'intérêt des droits des citoyens. À la Chambre, il y a eu d'assez longues discussions sur toute la notion des droits à la propriété, et certains sont allés jusqu'à proposer l'enchâssement des droits à la propriété dans la Constitution. Eh bien, monsieur le président...

M. Redway: Je me demande si on pourrait le faire sans votre amendement.

M. Robinson: ... sans vouloir me lancer dans le fond de ce débat, mon amendement vise tout simplement à s'assurer que le juge protège le citoyen en exigeant du Procureur général qu'il prenne certains engagements selon lesquels la Couronne dédommagera le citoyen s'il subit des dommages dont la Couronne est responsable. C'est tout ce que vise l'amendement.

On nous dit que les procureurs généraux ne sont pas en faveur des dispositions actuelles. Mais notre rôle n'est pas de rédiger des lois qui satisfassent à un groupe d'intérêt donné, mais d'en faire qui soient plutôt dans le meilleur intérêt du pays dans son ensemble. Ce faisant, il ne faut pas oublier les citoyens dont les biens risquent d'être endommagés et qui ne devraient pas avoir à engager une action civile pour récupérer ces dommages. Voilà le but de l'amendement.

[Text]

• 1130

The Chairman: Mr. Grisé, did you want to put the government's position. We have a couple of new members here.

Mr. Grisé: First of all, Mr. Chairman, I would like once again to welcome the two officials who are with me today; Mr. McIsaac and Mr. Mosley. First of all, I will just make a few comments and then I will ask the officials to respond to Mr. Robinson.

I think changing by putting the word "shall" instead of "may" would add another obligation, on top of which there are already some civil remedies to damages of properties and so on.

Mr. Richard G. Mosley (Senior General Counsel, Criminal and Family Law Policy Directorate, Department of Justice): Mr. Chairman, as Mr. Robinson has indicated, there are civil remedies that could be relied upon in these circumstances. Although they do require some initiative on the part of the citizen, it does not mean that in every case they have to go to the lengths of an actual trial on the merits of the issue in order to obtain redress. These matters are frequently and routinely settled without the necessity of prolonged proceedings.

The concern that was addressed last week on the part of the Attorney General is that in every case the amendment that has been proposed would mandate the court to require of the Attorney General such an undertaking and it would leave no discretion whether it was appropriate in the particular circumstances to require such an undertaking.

The proposal which is in the bill is to leave that discretion to make such an undertaking with the court if it deems this fitting and proper. If the court does not believe it is appropriate in the circumstances, that of course does not affect the citizen's civil remedies that he or she may be able to rely upon in the absence of such an undertaking.

Mr. Robinson: Mr. Chairman, I did want to make just one other point: this proposed amendment has in fact also been proposed by the Canadian Bar Association. They have put together a very comprehensive submission to the committee and I just wanted to read an extract from their recommendation to the committee on this particular point. They say:

> It is unclear whether the Attorney General must give an undertaking

in the relevant subsection, and they quote:

> A judge "may" require . . .

Then they say:

> It is preferable in our view that the permissive "may" be replaced by the mandatory "shall" so as to oblige the judge to require an undertaking, the extent of

[Translation]

Le président: Monsieur Grisé, voulez-vous expliquer le point de vue du gouvernement? Nous avons quelques nouveaux membres à cette séance.

M. Grisé: Tout d'abord, monsieur le président, je voudrais souhaiter encore une fois la bienvenue aux deux fonctionnaires qui m'accompagnent aujourd'hui, M. McIsaac et M. Mosley. Je fais d'abord quelques commentaires et je demande ensuite aux fonctionnaires de répondre à M. Robinson.

Je pense que le fait de remplacer «peut exiger» par «exige» créerait une obligation supplémentaire et il ne faut oublier qu'il existe déjà des recours civils en matière de dommages occasionnés aux biens.

M. Richard G. Mosley (avocat général principal, section de la politique et de la modification du droit en matière pénale et en matière familiale, ministère de la Justice): Monsieur le président, comme vient de le dire M. Robinson, il existe des recours civils dans de telles circonstances. Même s'il faut que les citoyens prennent une initiative, cela ne veut pas dire que dans chaque cas un procès sera nécessaire pour statuer sur le fond de la question afin d'obtenir réparation. Ces questions sont souvent réglées sans qu'il soit nécessaire d'intenter un procès ou prendre d'autres mesures qui exigent beaucoup de temps.

La semaine dernière des représentants du Procureur général ont fait remarquer que cet amendement ferait en sorte que dans chaque cas le tribunal devrait exiger du Procureur général de tels engagements, sans user d'un pouvoir discrétionnaire selon les circonstances.

Le texte actuel du paragraphe permet au tribunal de décider s'il convient d'imposer ces engagements. Si le tribunal ne les estime pas appropriés dans les circonstances, le citoyen a bien entendu le droit d'invoquer des recours civiles.

M. Robinson: Monsieur le président, j'ai seulement une autre observation à faire. Cet amendement a également été proposé par l'Association du Barreau canadien. Elle a préparé un mémoire très détaillé pour le Comité, je voudrais lire un extrait de sa recommandation au Comité sur ce point précis. On dit:

> Il n'est pas certain que le Procureur général doive prendre un engagement

dans le paragraphe indiqué, et ils signalent:

> Le juge peut exiger . . .

Ils disent plus tard:

> À notre avis il est préférable de remplacer «peut exiger» par «exige», ainsi le juge doit exiger des engagements dont la nature serait laissée à sa

[*Texte*]

which would then be left to his discretion. In view of the unprecedented nature of the search and seizure provisions contained in this bill, it would seem appropriate to require the Attorney General to undertake to fully indemnify the respondent for the costs of the application and for any damage to the property should the application prove unfounded.

That is the purpose of the amendment, Mr. Chairman. I recognize, as I say, that this is a new area. This whole concept of seizure of proceeds and so on before conviction and in some cases before charges, is a novel concept in the law, and I would hope that the committee would be prepared to recognize, as the bar has recommended, that we leave the nature of the undertaking to the judge. The wording of the clause gives broad discretion to the judge to determine, as the wording says, whatever the judge considers appropriate, but there should be a requirement that in the event the citizen is aggrieved, he or she should not have to go to the court.

It is suggested that there can always be a settlement before it actually goes to trial, but why should a person, when it can clearly be shown that his goods were damaged as a result of this particular provision, have to go to court? Why should he have to hire a lawyer to engage in settlement discussions and so on? It is quite unfair.

Mr. Redway: I have a question and probably a comment too, Mr. Chairman. Mr. Mosley, maybe I am dense but I did not grasp from your comments the rationale why the department has problems with making this mandatory. Maybe you could expand on that. All you indicated was that the attorneys general do not like it, but why do you have these problems?

• 1135

Mr. Mosley: Mr. Chairman, the seizure and restraint provisions in this bill are, as Mr. Robinson has indicated, somewhat novel, although an analogy can be drawn between the search and seizure provisions which are currently part of the law and which are frequently exercised.

It is possible at present for a justice of the peace to issue a search warrant which would result in the seizure of all of the operating assets of a business, as they may constitute evidence in proceedings which would be before a court. In effect, a search warrant can freeze the operations of a business, can freeze property, can result in the seizure of large quantities of property.

So there is an analogy to be drawn with the existing situation and under the existing law, there has never been any requirement for the Attorney General to give an undertaking of this nature.

It was felt appropriate by the government to include a discretionary provision in this bill, in part because of the change of the expansion of the seizure provisions that it

[*Traduction*]

discrétion. Compte tenu du caractère sans précédent des dispositions du projet de loi en matière de perquisition et de saisie, nous estimons qu'il convient que le Procureur général s'engage à dédommager entièrement le défendeur des frais que pourrait entraîner l'exécution du mandat ou des dommages occasionnés à ces biens si la procédure s'avérait injustifiée.

Voilà l'objet de l'amendement, monsieur le président. Je reconnais qu'il s'agit d'une innovation. Cette idée de saisir des biens la condamnation ou même dans certains cas avant l'inculpation est une nouvelle façon de procéder dans le droit et j'espère que le Comité acceptera, selon la recommandation du Barreau, de laisser au juge le soin de préciser la nature des engagements. Le libellé de l'article accorde une grande latitude au juge pour déterminer les engagements qu'il estime indiqués, mais l'obligation devrait être imposée pour que le citoyen lésé ne soit pas obligé d'intenter un procès.

On nous dit qu'il sera toujours possible de régler la question avant un procès mais quand on peut démontrer sans équivoque les dommages occasionnés à ses biens à cause de cette disposition, pourquoi le citoyen serait-il obligé de s'adresser aux tribunaux? Pourquoi devrait-il engager un avocat pour régler le litige? C'est tout à fait injuste.

M. Redway: J'ai une question et aussi un commentaire, monsieur le président. Monsieur Mosley, je suis peut-être obtus mais je n'ai pas bien saisi, dans votre explication, pourquoi le ministère ne veut pas que ces engagements soient obligatoires. Voudriez-vous nous donner des précisions? Vous avez dit simplement que ça ne plaît pas aux procureurs généraux mais quelle est la raison de cette attitude?

M. Mosley: Monsieur le président, comme l'a dit M. Robinson, les dispositions du projet de loi concernant la saisie et les ordonnances de blocage, même si elles ont des éléments en commun avec les dispositions actuelles sur la perquisition et la saisie, dispositions qui sont souvent appliquées, sont assez nouvelles.

À l'heure actuelle un juge de la paix peut décerner un mandat de perquisition qui aboutirait à la saisie de tous les actifs d'une entreprise qui pourraient constituer des éléments de preuve lors d'un procès. Un mandat de perquisition peut effectivement geler le fonctionnement d'une entreprise, bloquer ses avoirs et donner lieu à la saisie d'importantes quantités de biens.

On peut donc faire une comparaison avec la situation actuelle où la loi n'a jamais obligé le Procureur général à prendre des engagements de ce genre.

Le gouvernement estimait qu'il convenait d'accorder un pouvoir discrétionnaire dans ce projet de loi, en partie à cause de l'élargissement des dispositions en matière de

[*Text*]

was incorporating into the Criminal Code—that it would provide for a broader range of opportunities, for the seizure of property belonging to persons whose conduct was under scrutiny by the courts and invariably, in some of those cases, there were going to be situations where the court would opt for the seizure order out of a concern that the property may be removed from the country but in which the Crown was unable at the end of the day to make out its case—in this instance, that the property was in fact proceeds.

It could be that the accused is in fact convicted of a crime. The accused may be found guilty of drug trafficking, for example, but the court at the end of the day may feel that the property in question—although its seizure or restraint at the time was justified in view of the evidence indicating the involvement of the individual in criminal activity, the Crown had not established that the property in question in fact flowed from the crime or other crimes.

In those circumstances, the court may have deemed it appropriate to require an undertaking from the Attorney General to make good any damage or loss.

The court may also feel that in the circumstances, such an order is not required. The amendment would oblige the court to require such an undertaking and it may be, as Mr. Robinson suggests, merely formalistic in some circumstances. If a court does not like having to impose the undertaking, it may impose an undertaking of no force or effect.

The courts can find ways around statutory provisions which they are not comfortable with in a particular case. If they are dealing with someone who is a known member of an organized crime family, it is not going to sit too well with members of bench to have to require the Attorney General to make such an undertaking.

Mr. Redway: They may make an undertaking of a dollar, or something like that.

Mr. Mosley: They might. On the other hand—

Mr. Redway: And would you not have to agree, Mr. Mosley, that on the wording of the amendment, it would still leave it open to the judge, even though he has to require the Attorney General to give an undertaking, but it is an undertaking that the judge considers appropriate with respect to the matter so there would be still quite a discretion with the judge?

Mr. Mosley: That is quite correct, sir.

Mr. Redway: We are also talking about people basically who are innocent parties. We are talking about compensating people here, it seems to me. You pointed a couple of cases, I guess, where you might have some doubts but at the same time, I guess there is also the possibility of some innocent party being caught in this web.

[*Translation*]

saisie prévues par le Code criminel. Ces dispositions augmenteraient le nombre de circonstances donnant lieu à la saisie de biens appartenant à des personnes dont les activités seraient surveillées par les tribunaux. Or inévitablement, dans certains de ces cas, le tribunal décidera de décerner un mandat de saisie pour empêcher que les biens quittent du Canada dans des circonstances où, finalement, le Procureur n'est pas en mesure de prouver que ces biens sont effectivement des produits de la criminalité.

Il pourrait s'agir d'un inculpé qui serait trouvé coupable d'un acte criminel, comme par exemple le trafic de la drogue, sans que le Procureur puisse établir en fin de compte que les biens en question sont le produit du crime, alors même que la saisie ou le blocage ont pu se justifier par des preuves indiquant que la personne a participé à des activités criminelles.

Dans ces circonstances, le tribunal peut estimer qu'il est indiqué d'exiger du Procureur général qu'il s'engage à réparer tout dommage ou perte.

Le tribunal peut également être d'avis que dans les circonstances une telle ordonnance n'est pas nécessaire. Cet amendement obligerait le tribunal à exiger de tels engagements même si dans certains cas ce n'était qu'une formalité, comme le dit M. Robinson. Si le tribunal ne veut pas imposer cet engagement, il peut imposer un engagement qui n'a aucune portée.

Les tribunaux peuvent trouver des moyens de contourner les dispositions de la loi qui ne semblent pas convenir aux circonstances particulières d'une affaire. Si c'est un membre connu d'une famille de la pègre, certains juges n'accepteront pas facilement de devoir exiger ces engagements du Procureur général.

M. Redway: Il pourrait s'agir d'un engagement d'un dollar ou quelque chose de semblable.

M. Mosley: Effectivement. Par contre. . .

M. Redway: Ne convenez-vous pas, monsieur Mosley, que d'après le libellé de l'amendement, le juge aurait encore la possibilité d'exercer une certaine discrétion, même s'il doit exiger un engagement de la part du Procureur général, car c'est un engagement qu'il estime indiqué à l'égard des circonstances?

M. Mosley: C'est exact, monsieur.

M. Redway: Nous parlons aussi de personnes qui sont essentiellement des parties innocentes. Il s'agit de les indemniser. Vous avez mentionné des cas où des doutes sont raisonnables mais je suppose qu'il est aussi possible qu'une personne innocente se retrouve prise dans cet engrenage.

[*Texte*]

• 1140

The other thing that strikes me is in civil proceedings, in injunction proceedings where you are applying for an interim injunction, it is inevitably the rule that there has to be an undertaking to pay damages and costs in the event of a—

Mr. Mosley: But that discretion rests with the court. That is a very good comparison to be drawn, and you are quite right that the court has the authority to require such an undertaking in those circumstances. But the difference is that the court is not obliged to do so. The court looks at the application before it and determines whether in this case—

Mr. Redway: Have you ever found a case where they do not require an undertaking on an interim injunction?

Mr. Mosley: That question was addressed quite extensively in a brief submitted by the Attorney General of Ontario.

If I could speak, we went over this ground—

Mr. Redway: I am sorry, I was not here.

Mr. Mosley: —the last time. But just to cover the same—

Mr. Redway: Help me around this, because I am having great difficulty with it.

Mr. Mosley: Mr. Scott has been the only one to submit anything in writing to the committee, but we are aware that his concerns are shared by other provincial attorneys general. Their major concern is their fiscal responsibility to their provincial taxpayers.

In a situation such as this, Mr. Scott has indicated that before making a commitment of this nature to the court, which would in effect be a charge on the taxpayers of Ontario, he would have to go through the approval process within the Province of Ontario: i.e., getting the management committee or management board or provincial treasury board to agree that he could commit the provincial treasury to any costs or compensation required to be paid as a result of this undertaking. I suggest that practice is similar in other provinces.

The result is that in effect we are saying that would have such a chilling effect on the use of this procedure—which has been deemed necessary: i.e., the notion that you can seize or freeze the property before it is carried out of the country or otherwise disposed of—the requirement for a mandatory undertaking would have such a chilling effect on the use of the procedure that it would in fact not be employed by the provincial attorneys general because of their concerns about the potential liability to the public purse that would result.

[*Traduction*]

L'autre chose qui me frappe, c'est que dans une cause civile, quand on demande une ordonnance interlocutoire, on exige toujours un engagement relatif au paiement des dommages et frais au cas où. . .

M. Mosley: Mais c'est un pouvoir discrétionnaire confié au tribunal. On peut faire une bonne comparaison et vous avez raison de dire que le tribunal a l'autorité d'exiger un engagement dans ces circonstances. Mais la différence, c'est que le tribunal n'est pas tenu de le faire. Il examine la demande et détermine si les circonstances justifient. . .

M. Redway: Êtes-vous au courant d'une cause où on n'a pas exigé d'engagement pour une ordonnance interlocutoire?

M. Mosley: Cette question a été traitée en détail dans un mémoire soumis par le Procureur général de l'Ontario.

Si vous me permettez, nous avons déjà expliqué les raisons de cette position. . .

M. Redway: Je m'excuse, je n'étais pas présent.

M. Mosley: . . . la dernière fois. Mais pour répéter. . .

M. Redway: Je vous serais reconnaissant d'éclaircir cette question pour moi, j'ai beaucoup de mal à la comprendre.

M. Mosley: M. Scott a été le seul à nous envoyer un mémoire là-dessus, mais nous savons que ses inquiétudes sont partagées par les autres procureurs généraux des provinces. Leur préoccupation tient essentiellement à leur responsabilité financière à l'égard des contribuables provinciaux.

Dans une situation semblable, M. Scott nous a dit qu'avant de prendre de tels engagements, qui représenteraient effectivement une charge pour les contribuables de l'Ontario, il devrait passer par le processus d'approbation prévu en Ontario, c'est-à-dire faire approuver par la commission de direction ou le conseil du Trésor provincial des engagements susceptibles d'entraîner des frais pour le Trésor de la province. Je crois qu'on suit la même pratique dans les autres provinces.

Au fond, cet amendement aurait un tel effet d'inhibition sur le recours à cette procédure—procédure estimée nécessaire, c'est-à-dire la saisie ou le blocage des biens avant qu'ils puissent être transférés à l'extérieur du pays ou autrement liquidés—cette exigence d'un engagement aurait un tel effet d'inhibition sur le recours à cette procédure que les procureurs généraux des provinces ne voudraient pas s'en servir à cause des dettes éventuelles que cette mesure risque de créer pour le Trésor public.

[Text]

Mr. Redway: Why would the discretionary one not have the same effect, in the event a judge gave that exercise discretion under the clause as it now reads?

Mr. Mosley: They are not all happy with the discretionary provision, but in comparison with a mandatory requirement it is the better of two evils.

Mr. Redway: Are you saying that in your view of what you understand Mr. Scott's evidence is the Attorney General of the Province of Ontario would instruct his law officers not to proceed under this proposed legislation whatsoever, because there was too great a risk for the taxpayers of Ontario?

Mr. Mosley: Not under the proposed legislation as a whole, but not with the seizure and freezing applications.

Mr. Redway: That is your view of Mr. Scott's evidence before this committee.

Mr. Mosley: That is as I have been advised by a senior official of Mr. Scott's department.

Mr. Robinson: Mr. Chairman, I want to make that point. We do not have any evidence to this effect whatsoever. I understand Mr. Mosley has suggested this to be the case, but there is certainly no evidence before this committee. We are now into clause by clause. There is no evidence whatsoever before the committee on this point.

Mr. Redway: Actually, constituents have raised the concern about this clause with me. They are just ordinary Joe Citizens who do not consider themselves criminals, and are not, but they are concerned about the impact of this, with the police going around and making an arbitrary seizure of property, and then they would find they are in a very difficult position, trying to recover it.

Mr. Grisé: I would like to read to the committee members part of the letter presented by Mr. Scott, the Attorney General, to the Minister of Justice and Attorney General of Canada.

• 1145

Mr. Redway: Is this on the record, Mr. Grisé?

Mr. Grisé: Yes. It says:

In our view, the undertaking provisions, as presently drafted, will inappropriately prevent justifiable applications for orders of seizures or freezing. While we agree that there must be an appropriate counter-balance to deter unjustifiable applications, the current provisions do not strike that balance. Rather, the bold provision for an open-ended undertaking, without a good faith threshold test, seems completely contrary to the purpose and spirit of the bill. We therefore strongly recommend that, at the very least, the United Kingdom model, Drug Trafficking Offences Act, 1986, replace the current provisions.

[Translation]

M. Redway: La mesure discrétionnaire n'aurait-elle pas le même effet au cas où le juge déciderait d'exercer le pouvoir que lui donne le paragraphe actuel?

M. Mosley: Ils ne sont pas tous satisfaits de ce pouvoir discrétionnaire mais ils estiment que c'est le moindre de deux maux par rapport à l'exigence obligatoire.

M. Redway: Si je vous comprends bien, M. Scott aurait dit que le Procureur général de la province d'Ontario chargerait les avocats de la Couronne de ne jamais recourir à ce projet de loi à cause du trop grand risque pour les contribuables ontariens?

M. Mosley: Il ne s'agit pas du projet de loi dans son ensemble, mais des dispositions sur la saisie et le blocage.

M. Redway: C'est votre interprétation de la déposition de M. Scott à ce Comité.

M. Mosley: C'est ce que m'a dit un haut fonctionnaire du ministère de M. Scott.

M. Robinson: Monsieur le président, je voudrais faire une observation. Nous n'avons reçu aucun témoignage à cet effet. Je comprends l'affirmation de M. Mosley mais nous n'avons certainement reçu aucun témoignage en Comité. Nous en sommes maintenant à l'étude article par article et rien n'a été soumis au Comité sur ce point.

M. Redway: En fait, des électeurs m'ont exprimé leur inquiétude au sujet de cet article. Ce sont des citoyens ordinaires qui n'ont rien de criminels mais qui se préoccupent de cette mesure et de la possibilité pour la police de faire des saisies arbitraires, les biens étant très difficiles à récupérer par la suite.

M. Grisé: Je voudrais lire aux membres du Comité une partie de la lettre envoyée par M. Scott, le Procureur général, au ministre de la Justice et Procureur général du Canada.

M. Redway: La lettre sera-t-elle consignée au procès-verbal, monsieur Grisé?

M. Grisé: Oui. Elle dit:

À notre avis, le libellé actuel de la disposition portant sur les engagements aura pour effet d'empêcher abusivement des demandes justifiables d'ordonnance de saisie ou de blocage. Tout en admettant la nécessité d'un contrepoids pour décourager des demandes abusives, nous estimons que les dispositions actuelles ne permettent pas de parvenir au juste milieu. Au contraire, l'exigence d'un engagement sans limite et sans égard à des critères de bonne foi nous semble foncièrement contraire à l'esprit et à l'objet du projet de loi. Par conséquent nous recommandons vivement qu'on les remplace, à tout le moins, par le modèle britannique, c'est-à-dire la *Drug Trafficking Offences Act* de 1986.

[*Texte*]

The proceeds of crime prior to the undertaking provisions of the bill, as presently drafted, will totally frustrate that legitimate purpose.

Do you want to add more, Mr. Mosley?

Mr. Redway: So what we see in the bill is the current draft?

Mr. Grisé: Yes.

Mr. Redway: He is saying that this will frustrate the thing anyway.

Mr. Grisé: Yes. If you put "shall" instead of "may"—

Mr. Redway: It is not going to matter because he is saying this frustrates him.

Mr. Mosley: The advantage of the wording as it is in the bill is that it at least gives the Attorney General the opportunity to argue before the court to which the application is made that an undertaking should not be required. If the court deems it appropriate to impose such an undertaking, it would still be the option of the Attorney General to withdraw the application at that point in time.

Mr. Redway: Does the U.K. have a provision like this?

Mr. Mosley: They have a provision which provides for compensation after the fact on a finding of serious default or negligence on the part of the Attorney General. Now, it may be argued that this would add nothing to the civil law in this country at present because it would require the—

Mr. Redway: Proof of negligence.

Mr. Mosley: Yes.

Mr. Kaplan: I simply wanted to make the observation that I had a similar amendment before the committee. I agree with the arguments advanced in favour of this amendment.

I wanted also, on a point of order, to note that the clause-by-clause review of this bill is quickly becoming a career for those of us who are participating in it. I am not going to be able to attend a lot of long meetings on the subject, but I think we are going to need them to cover the bill. I am wondering whether we might not reach an understanding in order to facilitate progress. If members are not here, perhaps the committee could go ahead on the bill and reserve clauses until the next meeting. I am not saying reserve them indefinitely.

Perhaps as a courtesy, clauses to which people have an amendment could be reserved for one meeting, let us say, except the last meeting. In the absence of any of us we can still move ahead and respect the courtesy, which I appreciate very much from government members, of trying to accommodate us for the holding of meetings. I think it would be within the government's power to call

[*Traduction*]

Les dispositions du projet de loi sur la saisie des produits de la criminalité avant l'engagement serviront à contrer cet objectif légitime.

Voulez-vous ajouter quelque chose, monsieur Mosley?

M. Redway: Donc la disposition du projet de loi est la rédaction actuelle?

M. Grisé: Oui.

M. Redway: Il dit que cette mesure ira à l'encontre de l'objet de la loi.

M. Grisé: Oui. Mais si vous rendez cette mesure obligatoire au lieu de discrétionnaire.

M. Redway: Peu importe, car d'après lui cette mesure va à l'encontre de l'objectif de la loi.

M. Mosley: L'avantage du libellé actuel c'est qu'il donne au moins au Procureur général la possibilité de présenter au tribunal des arguments contre la décision de prendre des engagements. Si malgré tout le tribunal est d'avis qu'un engagement s'impose, le Procureur général pourrait retirer sa demande à ce moment-là.

M. Redway: Existe-t-il une disposition analogue au Royaume-Uni?

M. Mosley: Leur disposition permet l'indemnisation après constat d'un sérieux défaut ou négligence de la part du procureur général. Or, on pourrait prétendre que cela n'ajouterait rien au droit civil actuel au Canada car on exigerait la...

M. Redway: Preuve de négligence.

M. Mosley: Oui.

M. Kaplan: Je voulais simplement faire remarquer que j'ai un amendement semblable à proposer. Je suis d'accord avec les arguments en faveur de cet amendement.

Je tenais à dire aussi que l'examen article par article de ce projet de loi commence à devenir une occupation à plein temps pour les membres du Comité. Je ne vais pas pouvoir assister à plusieurs longues réunions là-dessus mais je pense qu'elles seront nécessaires pour terminer l'étude du projet. Ne pourrait-on pas parvenir à un accord pour faciliter les progrès? Si certains membres sont absents, le Comité pourrait peut-être continuer son examen en réservant les articles jusqu'à la réunion suivante? Je ne propose pas de les réserver indéfiniment.

Quand il s'agit d'un article auquel un membre a proposé un amendement, on pourrait peut-être, par politesse, le réserver jusqu'à la réunion suivante, sauf la dernière réunion. Cela nous permettrait de faire des progrès malgré les absences et j'apprécie beaucoup le désir manifesté par les députés ministériels de nous accommoder quand on fixe la date des réunions. Le

[*Text*]

these meetings. It would be up to us to attend or not be able to move our amendments.

I appreciate the efforts that the Chair has made and that the parliamentary secretary has made to find times when we can all be together, but I do not want to have this bill drag out into the election campaign. I would like us to get it over with. I hope that this suggestion that I am making about standing clauses and proceeding in the absence of individual members might be acceptable. This will give us a tighter agenda. I put it forward for your consideration.

The Chairman: It is not exactly a topic with this particular clause, but—

Mr. Kaplan: No, it is a point of order.

The Chairman: —go ahead, Mr. Robinson, on that.

Mr. Robinson: I had mentioned to the clerk that I had considerable difficulty with a meeting this afternoon and I think the clerk may have communicated it as well to the Acting Chairman. I suggested that I would be prepared to sit longer, until 1 p.m. or 1.30 p.m., depending on what sort of progress we are making.

I understand Mr. Kaplan is not in a position to sit a little bit longer. Perhaps we could arrive at a time that was agreeable—maybe a double session some time next week—to complete the bill. This particular amendment is a very important amendment. There have been a lot of representations on it.

• 1150

I have a lot of amendments still to go, but my own sense is that we would be able to make considerable progress through the bill and quite possibly finish it up at a couple of meetings next week, at a time when both Mr. Kaplan and myself and, hopefully, government members could be present. Certainly that would be my intention.

The Chairman: With respect to today's meetings, and I will hear from government members, the clerk has pointed out to me that in the *Minutes of Proceedings and Evidence* the chairman asked if there was any possibility of holding two sessions on Thursday—which would be today. The members replied that there was no problem with that and you, Mr. Robinson, said "Two sessions on Thursday is okay, Mr. Chairman. Thursday, two sessions".

Mr. Robinson: Mr. Chairman, I had understood the two sessions would be back-to-back morning sessions, 9.30 a.m. to 11 a.m.; 11 a.m. to 12.30 p.m. It was never specified what they would be at that time and I had no difficulty whatsoever with that. In the meantime, the justice committee had been meeting in this room before that. That was the dilemma we faced.

The Chairman: The clerk informs me that the legislative committee can only sit when the House is sitting, it appears.

[*Translation*]

gouvernement pourrait convoquer les réunions et ce serait notre responsabilité d'assister ou bien nous ne pourrions pas proposer nos amendements.

J'apprécie les efforts du président et du secrétaire parlementaire pour trouver des heures qui conviennent à tout le monde mais je ne voudrais pas que ce projet de loi traine jusqu'à la campagne électorale. J'aimerais qu'on en termine. J'espère que ma suggestion concernant le fait de réserver les articles et continuer notre examen en l'absence de membres sera acceptable. Nous aurons un calendrier plus serré. Je vous soumets cette proposition.

Le président: Ce n'est pas vraiment relié à cet article mais. . .

M. Kaplan: Non, c'est un rappel au Règlement.

Le président: . . . vous avez la parole là-dessus, monsieur Robinson.

M. Robinson: J'ai mentionné au greffier que j'ai eu beaucoup de difficulté à assister à cette séance et le greffier l'a peut-être fait savoir au président suppléant. J'ai dit que je serais disposé à continuer plus longtemps, jusqu'à 13 heures ou 13h30, selon les progrès.

Si je comprends bien, M. Kaplan ne pourra pas rester plus longtemps. On pourrait peut-être se mettre d'accord sur une heure qui nous convienne—peut-être une séance double au cours de la séance prochaine—pour terminer l'étude du projet de loi. Cet amendement-ci est très important. Il a fait l'objet de beaucoup d'instances.

Il me reste encore de nombreux amendements mais j'ai l'impression que nous pourrions faire des progrès sensibles et peut-être en terminer avec le projet après quelques réunions la semaine prochaine à un moment où M. Kaplan et moi-même et les députés ministériels pourrions être tous présents. Ce serait mon intention.

Le président: Concernant la réunion d'aujourd'hui, et je vais ensuite entendre les députés ministériels, le greffier m'a fait remarquer qu'on lit dans le procès-verbal que le président avait demandé s'il était possible d'avoir deux séances jeudi, c'est-à-dire aujourd'hui. Cela ne posait pas de difficultés pour les membres et vous avez dit, monsieur Robinson: «deux séances jeudi ça va très bien, monsieur le président c'est d'accord».

M. Robinson: Monsieur le président, j'avais compris deux séances au cours de la matinée, de 9:30 à 11 heures et de 11 heures à 12:30. On n'avait pas donné de plus amples précisions et cette proposition me convenait bien. Mais il y avait la séance antérieure du Comité de la justice dans la même salle, c'était là le dilemme.

Le président: Le greffier m'informe que le Comité législatif peut siéger seulement pendant les heures de session de la Chambre.

[*Texte*]

Mr. Robinson: A legislative committee can sit outside those hours. I have sat on legislative committees that did so.

The Chairman: All I know, Mr. Robinson is. . . I will hear from the government. I mean, I am obviously in the hands of the committee. I am just pointing out that this is what was agreed to last week.

Mr. Grisé: Mr. Chairman, I recall very well what was agreed and what you just mentioned is absolutely true. It was unanimous; there was unanimous consent to have two sittings today. I was ready to have a meeting last Tuesday but some members could not. I proposed that we have a meeting yesterday but other members could not, which is acceptable. Therefore, we accepted unanimously to have two meetings today. I think members of this committee have adjusted their own agenda to hold those two meetings today.

On the other matter raised by Mr. Kaplan, that if he is not in the committee we would wait for his amendments to be discussed, Mr. Kaplan has 18 amendments. If the same provision applies to Mr. Robinson, who is bringing 45 amendments to this committee, we would deal only with government amendments and most of them are simply technical amendments. It is my understanding that we would have to go through with some 50 or 60 amendments within an afternoon or one session or two hours. I find it very difficult.

However, one thing I would like the committee members to look upon is that, first, we have accepted that we will hold two meetings today. Mr. Chairman, I would also like to have a commitment of the committee members to get through this bill by the end of next week because we know that the week after, the justice committee is travelling across the country once again. So it will get later and later in June and we will have that bill during an election period; I do not know.

I think we have to go through the two meetings today and perhaps we could have an understanding with committee members that we will get through this bill by the end of next week.

Mr. Kaplan: Mr. Chairman, I made my suggestion about dealing with amendments. I have not counted the number of amendments. I think in the light of that—

Mr. Grisé: I did.

M. Kaplan: Il n'est pas vraiment réaliste de retarder l'adoption d'articles auxquels les députés veulent proposer des amendements. Permettez-moi de vous rappeler que nous avons le droit de proposer des amendements à la Chambre si nous ne les proposons pas ici. Par conséquent, on pourrait prévoir un échéancier assez court. Je suis très en faveur de la suggestion de terminer nos travaux d'ici la fin de la semaine prochaine. Si moi-même et mon collègue Robinson, ne pouvons assister à l'une ou l'autre des réunions, nous pourrons proposer des amendements à la Chambre si nous le voulons. J'appuie donc la proposition de fixer un échéancier limité et de terminer l'étude à la fin de la semaine prochaine ou plus tôt.

[*Traduction*]

M. Robinson: Un comité législatif peut siéger en dehors de ces heures. J'en ai déjà eu l'expérience dans d'autres comités législatifs.

Le président: Tout ce que je sais, monsieur Robinson, c'est que. . . J'aurai des comptes à rendre. Je m'en remets à la volonté du comité. Je vous signale simplement ce qui a été convenu la semaine dernière.

M. Grisé: Monsieur le président, je me souviens très bien de notre accord, votre description est tout à fait exacte. Il y a eu accord unanime pour avoir deux séances aujourd'hui. J'étais prêt à accepter une séance mardi dernier mais cela ne convenait pas à certains membres. J'ai proposé une réunion hier mais c'était impossible pour d'autres membres, je le comprends fort bien. Nous avons donc convenu à l'unanimité d'avoir deux séances aujourd'hui. Les membres du Comité ont donc sans doute organisé leur calendrier en conséquence.

Quant à la question soulevée par M. Kaplan, c'est-à-dire le fait de réserver ces amendements en son absence, M. Kaplan a 18 amendements. Si on doit suivre la même procédure pour M. Robinson, qui nous propose 45 amendements, nous pourrons nous occuper uniquement des amendements du gouvernement, dont la plupart sont de simples amendements techniques. J'en conclus que nous devrions expédier quelques 50 ou 60 amendements dans un après-midi ou une séance de deux heures, ce qui me paraît très difficile.

Je vous rappelle que nous avons accepté de tenir deux séances aujourd'hui. Monsieur le président, je voudrais aussi que les membres du Comité s'engagent à terminer l'étude de ce projet de loi d'ici la fin de la semaine prochaine car nous savons que la semaine suivante le Comité de la justice devra encore se déplacer. Nous allons nous rapprocher de plus en plus de la fin de juin et nous retrouver avec le projet de loi pendant la période électorale.

Je pense que nous devrons tenir les deux réunions aujourd'hui et nous pourrons peut-être convenir entre nous de conclure l'étude du projet de loi avant la fin de la semaine prochaine.

M. Kaplan: Monsieur le président, j'ai déjà fait une proposition sur les amendements. Je n'ai pas compté le nombre d'amendements. Compte tenu de cela. . .

M. Grisé: Je les ai comptés, moi.

Mr. Kaplan: It is not realistic to postpone the passage of clauses to which amendments are being proposed. I want to remind you that we are entitled to move amendments in the House if we do not do so here. We could therefore make provision for a fairly short time frame. I am quite in favour of the suggestion to conclude our deliberations before the end of next week. If my colleague, Mr. Robinson and myself are unable to attend either of the meetings, we can move amendments in the House if we wish to do so. I therefore support the proposal to establish a limited time frame and to finish our study by the end of next week or earlier.

[Text]

• 1155

M. Grisé: J'accepte les commentaires de M. Kaplan. Il est évident que des amendements peuvent être proposés, mais je ne vois pas l'utilité de reporter à l'une des réunions de la semaine prochaine l'adoption de tous les amendements que nous avons devant nous. Ce serait assez difficile. Nous devons étudier le plus sérieusement possible les amendements que nous avons devant nous, mais nous devons aussi faire preuve de beaucoup de diligence afin que nous puissions arriver à passer à travers ces amendements avant la fin de la semaine prochaine.

M. Kaplan: Est-ce qu'on va prendre une décision ou si ce n'est qu'une cible que le Comité tentera d'atteindre?

M. Grisé: Si les membres du Comité sont d'accord, je préfère qu'on prenne la décision de terminer l'étude de ce projet de loi avant tel jour et de dresser le programme de nos réunions immédiatement ou au cours des prochaines heures. Le greffier pourrait nous donner des précisions à la réunion de cet après-midi quant au nombre de réunions possibles la semaine prochaine afin que les membres du Comité acceptent immédiatement de terminer l'étude des amendements la semaine prochaine.

M. Kaplan: Pour ma part, je préférerais que ce soit une cible. J'aimerais que l'on tienne toutes les réunions nécessaires, mais que l'on continue l'étude du projet de loi si des membres ne peuvent pas assister à ces réunions, tout en reconnaissant à chacun des membres le droit de proposer à la Chambre les amendements qu'ils n'auront pas proposés au Comité. Alors, faisons notre possible pour atteindre une cible et prévoyons trois ou quatre réunions pour la semaine prochaine si nécessaire. Et si je ne peux pas venir, ou si M. Robinson ne peut pas venir, tant pis.

Mr. Robinson: I was in communication with the clerk earlier this week concerning the conflict with this afternoon's session.

I am prepared do everything I can to ensure the bill is completed next week, if we can deal with the bill next week as opposed to this afternoon.

Mr. Grisé: I do not believe I can accept. It is a kind of challenge Mr. Robinson puts to the government.

Mr. Robinson: It is not a challenge. It is a request.

Mr. Grisé: The clerk has mentioned we have two meetings scheduled for today and we should proceed with those two meetings.

Mr. Redway: I cannot say I will support them, but I will move them to get them on record.

The Chairman: I have not heard a consensus to cancel this afternoon's meeting. At least two meetings were agreed to unanimously on Thursday. I do not think I have any choice except to continue to proceed unless I hear a consensus. Unless there is further discussion on that, I propose to get back to the amendment we were referring

[Translation]

Mr. Grisé: I accept Mr. Kaplan's comments. Of course amendments can be moved but I do not see the point in postponing until one of next week's meetings the passage of all the amendments we have before us. It would be very difficult. We must give as serious consideration as possible to the amendments we have before us and also be very diligent if we want to get through all these amendments before the end of next week.

Mr. Kaplan: Shall we come to a decision or do we simply mean to establish this as a target for the committee?

Mr. Grisé: If committee members agree, I prefer that we make a decision about finishing this bill by a particular date and drawing up a timetable for our coming meetings. At this afternoon's meeting the clerk can give us more details on the number of possible meetings next week so that we can come to an agreement on dealing with the amendments next week.

Mr. Kaplan: I personally would prefer to leave it as a target. I would like us to have as many meetings as necessary and to continue our study of the bill if some members are unable to be present, with the understanding that all members are entitled to move amendments in the House if they have not done so in committee. So let us do our utmost to meet this deadline and schedule three or four meetings next week if necessary. And if I, or Mr. Robinson, are unable to come, too bad.

M. Robinson: J'ai été en rapport avec le greffier plus tôt cette semaine au sujet du conflit avec la séance de cet après-midi.

Je suis disposé à faire tout mon possible pour que l'étude du projet de loi soit terminée la semaine prochaine si nous pouvons la continuer la semaine prochaine plutôt que cet après-midi.

M. Grisé: Je ne peux pas accepter cette proposition. C'est comme un défi que M. Robinson lance au gouvernement.

M. Robinson: Ce n'est pas un défi, c'est une demande.

M. Grisé: Le greffier a déjà mentionné les deux réunions prévues pour aujourd'hui, il faudra y donner suite.

M. Redway: Je ne peux pas dire que je vais les soutenir mais je veux que tout cela soit aéré publiquement.

Le président: Les membres ne sont pas d'accord pour annuler la séance de cet après-midi. On a accepté à l'unanimité, jeudi, d'avoir au moins deux séances. Je devrai maintenir cette décision à moins que tout le monde s'accorde pour faire autrement. S'il n'y a pas d'autres commentaires, je propose de reprendre l'examen de

[*Texte*]

to and unless, Mr. Kaplan, you had further comments on it.

• 1200

Mr. Kaplan: No. I made my comments. They were to hope that the amendments are accepted by the government members.

Mr. Reid: Getting back to the proposed amendment, N-12, in my submission the government has seen fit to insert a discretionary provision whereby the judge may require the Attorney General to give certain undertakings as he considers appropriate at the time.

We have asked the witnesses to distinguish between the necessity of the discretionary "may" and the mandatory "shall". I have heard a response that it imposes a further obligation on the attorneys general, which is not going to be part of my concern at this moment. I have heard as well a reference to civil remedies. We know that they are costly, difficult and uncertain. If a judge has discretion in terms of imposing certain conditions, the process the Attorney General has to go through is already there. We would simply be talking about possibly a greater number if it were mandatory.

At the moment I opt in favour of the mandatory "shall" by reason of the obligations they point out as not being a matter of priority concern. I think the private citizen is the one who is involved here by reason of the search-and-seizure aspect. Our attempt to streamline the law to protect that private citizen will make it a heck of a lot more easy in its implementation and should be the course we should follow. I am not yet impressed by the desire of the government to maintain its discretionary "may".

The Chairman: Is that a question or a comment, Mr. Reid?

Mr. Reid: I am not persuaded by the arguments put forward. I think the advantages lie with the mandatory. The judge and the attorney general of the province he is operating in will work out a process of jurisprudence where and when the conditions would be appropriate.

Amendment agreed to.

The Chairman: I ask members to turn to government amendment G-3.

M. Grisé: Encore une fois, il s'agit d'un amendement d'ordre technique. Je propose que l'article 2 du projet de loi C-61 soit modifié par substitution, à la ligne 29 de la page 6 de la version anglaise, de ce qui suit:

the warrant

et par substitution, aux lignes 23 à 26 de la page 6 de la version française, de ce qui suit:

les engagements que le juge estime indiqués à l'égard du paiement des dommages et des frais que pourrait entraîner le mandat

L'amendement est adopté.

[*Traduction*]

l'amendement dont nous parlions. Avez-vous autre chose à dire, monsieur Kaplan?

M. Kaplan: Non, c'est tout ce que j'avais à dire. J'espérais simplement que les membres du gouvernement acceptent ces amendements.

M. Reid: Pour en revenir à l'amendement proposé, N-12, j'ai fait valoir que le gouvernement avait cru bon d'utiliser une disposition prévoyant l'attribution de l'autorité discrétionnaire en vertu de laquelle le juge peut exiger du procureur général qu'il prenne les engagements qu'il estime indiqués en temps et lieu.

Nous avons demandé aux témoins de nous expliquer la distinction d'autorité entre «peut exiger» et «exige». On nous a répondu que dans le second cas, les procureurs généraux se voyaient imposer une obligation accrue, ce qui ne me préoccupe pas pour le moment. On nous a également parlé de recours civils. Or, ce genre de recours est coûteux, difficile et incertain. Si le juge possède l'autorité discrétionnaire d'imposer certaines conditions, les étapes que doit suivre le Procureur général existent déjà. Si l'autorité du juge était limitée en cette matière, seul le nombre serait peut-être plus grand.

Pour ma part, je préconise l'utilisation du mot «exige», à cause de l'obligation qu'elle entraîne qui n'est pas toujours une priorité. J'estime que c'est le particulier qui est touché par cette disposition puisqu'il est question de perquisition et de saisie. Il sera beaucoup plus facile de mettre en oeuvre cette loi si nous faisons en sorte que le particulier soit protégé, et je crois que c'est ce que nous devons faire. Je ne vois aucun avantage au libellé du gouvernement.

Le président: S'agit-il d'une question ou d'un commentaire, monsieur Reid?

M. Reid: Les arguments mis de l'avant ne m'ont pas convaincu. Je crois que nous aurions avantage à rendre cette disposition obligatoire. Le juge et le procureur général de la province en question établiront une jurisprudence en temps et lieu.

L'amendement est adopté.

Le président: Passons maintenant à l'amendement du gouvernement G-3.

Mr. Grisé: Once again, this is a technical amendment. I move that clause 2 of Bill C-61, in its English version, be amended by striking out line 29 on page 6 and substituting the following:

the warrant

and by striking out lines 23 to 26 of page 6 of the French version and substituting the following:

les engagements que le juge estime indiqués à l'égard du paiement des dommages et des frais que pourrait entraîner le mandat

Amendment agreed to.

[*Text*]

The Chairman: I ask members to turn to amendment L-7. It is my understanding that this is identical, Mr. Robinson, to N-13, which is yours.

• 1205

Mr. Kaplan: Mr. Chairman, in light of the explanation and the position taken by the government at our last meeting about that phrase, and the authority cited, which I read toward the end of that meeting, I will withdraw my amendment.

Mr. Robinson: I will do the same, Mr. Chairman.

The Chairman: Thank you. I would ask members to turn to government amendment G-4.

M. Grisé: Encore une fois, c'est un amendement d'ordre technique, uniquement à la version française. Je propose que l'article 2 de la version française du projet de loi C-61 soit modifié par substitution, aux lignes 19 et 20, page 7, de ce qui suit:

de ces biens et l'ordre à cet admi-

C'est simplement un amendement d'ordre technique visant à clarifier cette disposition.

Amendment agreed to

The Chairman: The next amendment is L-7A.

Mr. Kaplan: I move that we strike out lines 36 and 37 on page 7, and substitute the following therefor:

judge shall require notice to be given to and upon request, hear any person who, in the

This is a substitution of "shall" for "may". I will not take the committee's time to make the same type of arguments that were made for earlier changes, but I note that the committee adopted a change of a "may" to a "shall" in an earlier resolution. I hope that indicates some understanding of the importance in a Criminal Code amendment like this, in general where new powers are being given to the government, to be certain that notices are given and that citizen's rights are protected to the maximum extent possible.

The Chairman: Just for clarification purposes, Mr. Robinson, I notice your N-14 is similar but not identical to this.

Mr. Robinson: It has the same effect, Mr. Chairman, that is right, to require that notice be given to the person and that the person be heard upon request. Unless Mr. Kaplan has any further comments—

Mr. Kaplan: No.

Mr. Robinson: —I will briefly expand on the argument he made.

[*Translation*]

Le président: Nous passons maintenant à l'amendement L-7. Monsieur Robinson, j'ai cru comprendre que cet amendement est identique au vôtre, numéro N-13.

M. Kaplan: Monsieur le président, étant donné les explications qui nous ont été offertes et la position du gouvernement telle qu'exprimée lors de notre dernière rencontre au sujet de cette expression, ainsi que l'autorité citée que j'ai lue vers la fin de la réunion, je retire mon amendement.

M. Robinson: Moi aussi, monsieur le président.

Le président: Merci. Passons donc à l'amendement du gouvernement numéro G-4.

Mr. Grisé: Once again, this is a technical amendment which affects only the French version. I move that the French version of clause 2 of Bill C-61 be amended by striking out lines 19 and 20 on page 7, and substituting the following:

de ces biens et l'ordre à cet admi-

This is simply to clarify the provision.

L'amendement est adopté.

Le président: Le prochain amendement est le numéro L-7A.

M. Kaplan: Je propose que nous retranchions les lignes 34 à 37, à la page 7, et les remplacions par ce qui suit:

blocage, le juge exige qu'en soient avisées les personnes qui, à son avis, semblent avoir un droit sur les biens visés; il entend ces personnes, sur demande. Le présent para-

Il s'agit de remplacer «peut exiger» et «peut entendre» par «exige» et «entend». Je ne veux pas prendre le temps du Comité pour faire valoir les mêmes arguments qui ont été mis de l'avant pour des changements précédents, mais je vous signale que le Comité a adopté une proposition ayant pour but de remplacer «peut exiger» par «exige» lors d'une résolution précédente. J'espère que cela signifie que nous comprenons bien l'importance d'un tel amendement au Code criminel, qui accorde de nouveaux pouvoirs au gouvernement, afin de garantir qu'avis soit donné et que les droits des citoyens soient protégés dans la mesure du possible.

Le président: Monsieur Robinson, je constate que votre amendement N-14 est semblable à celui-ci mais non pas identique.

M. Robinson: Il est vrai que l'effet est le même, monsieur le président, c'est-à-dire qu'on exige que soient avisées les personnes touchées et que ces personnes soient entendues sur demande. À moins que M. Kaplan n'ait d'autres commentaires...

M. Kaplan: Non.

M. Robinson: ... je me permettrai d'expliquer un peu son argument.

[*Texte*]

This amendment is similar to one that was proposed at I think the last meeting of the committee, and it was defeated. It was to proposed subsection 420.12(5). I believe. Again, Mr. Chairman, it was the Canadian Bar Association that recommended, in strengthening the rights of citizens in this bill, that this be required. The effect of the change would be to ensure that the judge give notice to the individual affected and that if in fact notice has been given that the individual be given the right to be heard, unless—and it states quite clearly here—the judge is of the opinion that giving such notice would result in the disappearance, dissipation or reduction in value or otherwise affect the property so that all or a part thereof could not be subject to an order. That safeguard remains in the bill, but we would be strengthening the interests of the citizen by requiring that notice be given.

The Chairman: I think this discussion is similar to one we had last time.

Mr. Grisé: Mr. Chairman, it is exactly the same kind of argument raised last week to amendment L-5A and N-11. Referring to the LRC response—

• 1210

Mr. Mosley: Mr. Chairman, I cannot put my fingers on it at the moment, but the Law Reform Commission in a number of its working papers and reports has refrained from imposing a mandatory obligation of this nature to require notice to be given. The subject has been debated at length in recent years as to whether that was necessary or not, or whether it would be purely formalistic. It would also impose an increased burden on the police. It would be difficult to carry out if in fact the person concerned could not be found. It would give rise to increased contacts between the police and the criminal subculture, which would possibly lead to increased opportunities for violence.

These are all concerns that have been raised and discussed in the consultation process, which has given rise to the various recommendations that have been put forward. If it is a white collar fraud, for example, where there is no question of a problem in locating the individuals, the court may well deem it appropriate to require notice be given to everyone who has an interest in the property. In other circumstances, it may seem absolutely futile to have to make such an order, knowing it would be difficult for the police to carry out and would lead to these other problems I have spoken of.

The conclusion which has been reached is that it is proper and fitting to give the court the authority to require notice to be given, but to make that mandatory is not necessary and is in a sense formalistic. It may lead to problems which would not be desirable in the administration of criminal justice.

[*Traduction*]

Cet amendement est semblable à celui qui a été proposé et rejeté lors de notre dernière rencontre. Je crois qu'il touchait le paragraphe 420.12(5). Encore une fois, monsieur le président, c'est l'Association du Barreau canadien qui a recommandé cette disposition obligatoire afin de renforcer les droits des citoyens dans ce projet de loi. L'effet de cette modification serait d'assurer que le juge avise la personne concernée et que, le cas échéant, la personne ait le droit d'être entendue, à moins que—et c'est très clair dans le projet de loi—le juge estime que le fait de donner cet avis risquerait d'occasionner la disparition des biens visés, une diminution de leur valeur ou leur destruction, de telle façon qu'une ordonnance de blocage ne pourrait plus être rendue. Cette garantie demeure dans le projet de loi, mais nous renforcerions les intérêts des citoyens en exigeant qu'ils soient avisés.

Le président: Je crois que cette discussion ressemble à celle que nous avons eue précédemment.

M. Grisé: Monsieur le président, il s'agit du même argument qui a été invoqué la semaine dernière en regard des amendements L-5A et N-11. En ce qui concerne la réponse de la Commission de réforme du droit...

M. Mosley: Monsieur le président, je n'ai pas le document voulu sous la main, mais dans bon nombre de ces documents de travail et rapports, la Commission de réforme du droit n'a pas cru bon imposer d'obligation de ce genre en ce qui concerne les avis. C'est une question qui a suscité de nombreux débats au cours des dernières années, à savoir si une telle obligation était nécessaire ou non, ou si elle risquait de devenir simplement une question de forme. Ce serait également un nouveau fardeau pour la police. Ce serait difficile de mettre en pratique si la personne concernée ne peut être trouvée, et cela donnerait lieu à un contact accru entre la police et les criminels, ce qui pourrait augmenter le nombre d'incidents violents.

Toutes ces préoccupations ont été soulevées lors du processus de consultation qui a donné lieu à diverses recommandations. S'il s'agit de fraudes dites de col blanc, par exemple, où il n'est pas difficile de trouver l'individu, la Cour pourrait fort bien exiger qu'on avise les personnes qui ont des droits sur les biens visés. Dans d'autres circonstances, il serait futile d'exiger un tel avis, puisque ce serait très difficile pour la police de s'en charger et que cela donnerait lieu aux autres problèmes que j'ai mentionnés.

On a donc conclu qu'il est juste et convenable de donner aux tribunaux l'autorité d'exiger que les personnes touchées soient avisées, mais qu'il n'est pas nécessaire que ce soit obligatoire, car une telle obligation ne deviendrait qu'une question de forme. Cela donnerait lieu à des problèmes qui entraveraient l'administration de la justice criminelle.

[*Text*]

Mr. Reid: Mr. Chairman, we are talking about a restraint order, and proposed subsection 420.11(5) seems to have a double discretion. It is a discretion that "may require notice", and then it goes on. The judge can exercise that discretion unless he feels it would result in some disppearance or misapprehension of property. Again, it seems to me that notice has the notion of fairness, and if the court is protected by reason of that discretion, unless the judge thinks something is going to wrongfully and improperly happen to it, he should give notice. I rather support the "shall" giving notice in the first place.

Mr. Redway: I would be inclined to support that position as well, except for the fact that it has been recently brought to my attention, and I think to the attention of Mr. Kaplan and Mr. Robinson, that in another instance, under the street soliciting provisions, the Metropolitan Toronto Police Department have 1,000 unexecuted warrants because of the use of false names and what-have-you and are unable in any way, shape or form to enforce warrants that they have, just because of the difficulty of dealing with the criminal subculture, as Mr. Mosley points out.

While I normally would feel it should be essential to give such notice, I think perhaps the fact that we have also now required an undertaking to be given where property is seized may reinforce the fact that it is going to come to people's attention anyway, and there is an extra protection there that was not there before we made the other amendment. I am not going to support this amendment in this situation. I am going to go along with the government's argument.

Amendment negatived.

• 1215

The Chairman: Next, Mr. Robinson, I would have to rule that N-14 would be withdrawn inasmuch as it is substantially similar to the other one.

Mr. Robinson: Yes, that is fine.

Mr. Grisé: Mr. Chairman, I move that clause 2 of Bill C-61 be amended by striking out lines 45 and 46 on page 7 and substituting the following:

part thereof could not be subject to an order of forfeiture under subsection 420.17(1) or 420.18(2).

Amendment agreed to.

Mr. Robinson: Mr. Chairman, I move that clause 2 of Bill C-61 be amended by striking out line 4 on page 8 and substituting the following therefor:

section (3), a judge shall require the Attor-

This, Mr. Chairman, is an amendment that would achieve the same effect as the amendment we just adopted previously. It would require that the undertaking be given by the Attorney General. The judge would still have the same discretion as before in terms of appropriateness, and

[*Translation*]

M. Reid: Monsieur le président, il s'agit d'une ordonnance de blocage, et le paragraphe proposé 420.11(5) semble accorder un double pouvoir discrétionnaire. Premièrement, le juge «peut exiger» un avis, et ainsi de suite. Le juge peut donc exercer cette discrétion à moins qu'il n'estime que cet avis risquerait d'occasionner la disparition ou le vol du bien. Il me semble qu'il est juste de donner cet avis et que les tribunaux sont protégés par cette autorité discrétionnaire. À moins que le juge n'estime que le bien est menacé, il devrait exiger une avis. Je préconise donc l'utilisation de l'expression «exige».

M. Redway: J'aurais tendance à appuyer cette position, sauf qu'on m'a récemment signalé, ainsi qu'à M. Kaplan et M. Robinson, que dans un autre cas, c'est-à-dire les dispositions concernant le racolage, la police torontoise a actuellement 1,000 mandats inexécutés à cause de l'utilisation de pseudonymes etc. Ils ne peuvent donc pas mettre en vigueur les mandats qu'ils ont obtenus, justement à cause des difficultés que connait quiconque a affaire au monde interlope, comme M. Mosley l'a signalé.

Bien que je crois que normalement, il serait essentiel de donner avis, je crois que, puisque nous avons également exigé un engagement lorsqu'un bien est saisi, les gens en seront au courant de toute façon. Il existe donc un élément additionnel de protection qui n'était pas présent avant que nous adoptions l'autre amendement. Dans ces circonstances, je n'appuyerai pas cet amendement. Je suis donc d'accord avec le gouvernement.

L'amendement est rejeté.

Le président: Donc, monsieur Robinson, je dois déclarer irrecevable l'amendement N-14, puisqu'il est très semblable au précédent.

M. Robinson: Oui, très bien.

M. Grisé: Monsieur le président, je propose que l'article 2 du projet de loi C-61 soit modifié par substitution, aux lignes 42 à 44, page 7, de ce qui suit:

ou leur dissipation de telle façon qu'il serait impossible de rendre à leur égard une ordonnance de confiscation en vertu du paragraphe 420.17(1) ou 420.18(2).

L'amendement est adopté.

M. Robinson: Monsieur le président, je propose que l'on retranche la ligne 4, à la page 8, et la remplacer par ce qui suit:

blocage, le juge exige du Procureur

Monsieur le président, cet amendement aurait le même effet que celui que nous venons d'adopter. Il exigerait un engagement de la part du Procureur général. Le juge conserverait la même autorité discrétionnaire en ce qui concerne l'à propos d'un tel engagement. Puisque nous

[*Texte*]

certainly having adopted the previous amendment, I hope the same arguments would apply just as forcefully in this case.

The Chairman: Are there comments or questions by any of the members?

Mr. Robinson: This proposed subsection is identical to proposed subsection 420.12(6); it is the identical wording. We have agreed that we would make mandatory the requirement that the judge require the Attorney General to give the appropriate undertaking in that subsection, and I think the same arguments would apply with respect to restraint orders under this subsection.

Mr. Chairman, I wonder if we could have a recorded vote on this last one.

• 1220

Amendment agreed to: yeas, 5; nays, 1

Mr. Kaplan: I move we strike out line 16 on page 8 and substitute the following therefor:

subsection (3) shall be registered against

What we are talking about here is an order under this proposed section which provides for the constraining of property, and what my amendment would do is ensure that if there is a method by which the order can be registered under the laws of the province concerned, the order would be registered. I think that has a lot going for it as a way of ensuring broad public awareness of people concerned about the fact that the title to the property is affected by the application of this provision of the Criminal Code.

Mr. Mosley: That provision was intended as an enabling provision to permit the order to be registered where it was felt necessary by the Crown in a particular case to protect against the sale or dispersal of the property. I take it from Mr. Kaplan's comments that the object of the motion to amend is to serve as a further degree of protection against the innocent third-party bona fide purchaser-for-value; and it may well have that effect. It would also, of course, impose a further burden on the enforcement personnel to ensure compliance with this in every case in which such an order is made.

Mr. Redway: They do not have any problem doing that under the Income Tax Act.

Mr. Mosley: It would probably be advisable to do so in every case, so I do not see it as a major problem.

Amendment agreed to.

Mr. Kaplan: I move that we strike out line 13 on page 9 and substitute the following therefor:

(b) the judge shall require notice of the

Here again I am proposing to change a "may" to a "shall" to ensure that notice will be given to people who

[*Traduction*]

avons adopté l'engagement précédent, j'ose croire que les mêmes arguments sont valables dans ce cas-ci.

Le président: Les autres membres ont-ils des questions ou commentaires?

M. Robinson: Le libellé de ce paragraphe proposé est identique à celui du paragraphe proposé 420.12(6). Nous avons convenu que le juge devait obligatoirement exiger que le Procureur général prenne les engagements nécessaires dans ce paragraphe, et je crois que les mêmes arguments sont valables en ce qui concerne les ordonnances de blocage dont il est question dans ce paragraphe.

Monsieur le président, cet amendement pourrait-il être mis aux voix?

L'amendement est adopté: pour, 5; contre, 1

M. Kaplan: Je propose que l'on retranche la ligne 15, à la page 8, et qu'on la remplace par ce qui suit:

cage est enregistré à l'égard d'un

Il est question ici d'une ordonnance de blocage et mon amendement a pour but d'assurer l'enregistrement de l'ordonnance conformément aux lois de la province en question, si cet enregistrement est possible. Je crois que c'est une bonne façon d'assurer une certaine sensibilisation au fait que les droits de propriété sont touchés par la mise en vigueur de cette disposition du code criminel.

M. Mosley: Il s'agit d'une disposition habilitante visant à permettre qu'une ordonnance soit enregistrée lorsque la Couronne estime que c'est nécessaire dans un cas particulier afin de protéger le bien contre la vente ou la dispersion. Si j'ai bien compris les commentaires de M. Kaplan, le but de cette motion d'amendement est d'offrir une protection accrue pour l'acheteur à titre onéreux qui agit de bonne foi. Il est fort probable que l'amendement aurait cet effet. Bien sûr, cela imposerait un fardeau supplémentaire au personnel d'exécution qui devra assurer la conformité dans chaque cas qui fait l'objet d'une telle ordonnance.

M. Redway: Ils n'ont aucun problème à le faire en vertu de la Loi de l'impôt sur le revenu.

M. Mosley: Il serait probablement préférable de le faire dans chaque cas, donc, je ne crois pas que cela cause de gros problèmes.

L'amendement est adopté.

M. Kaplan: Je propose que l'on retranche la ligne 9, à la page 9, et qu'on la remplace par ce qui suit:

au Procureur général, le juge exige

Encore une fois, je propose que l'on remplace «peut exiger» par «exige» afin d'assurer que le préavis soit remis

[Text]

in the opinion of the judge have a valid interest in the property. To borrow the arguments that succeeded earlier in changing some "mays" to "shall", what we are talking about here is a discretion by the judge to conclude that a person appears to have a valid interest.

I mentioned to Mr. Reid that the discretion remains in the judge, but once he exercises that discretion and determines that the person does have a valid interest, the judge is then obliged to require notice to be given to that person. So again judicial discretion is preserved, but the rights of those who are found to have a valid interest are protected by ensuring that they do get notice.

Mr. Robinson: I would like to ask a question of Mr. Kaplan. His earlier amendment made mandatory both the giving of the notice and the requirement to hear the person who had an interest. Is there any particular reason for the failure to include that second element in this amendment?

Mr. Kaplan: I was thinking of the possibility of the person not being available, or receiving the notice and choosing not to come, and difficulties of that sort. I thought if the judge gave notice to the person, that would accomplish some additional protection for individuals whose property was affected.

• 1225

Mr. Robinson: Would not that logic apply to the previous amendment as well?

Mr. Kaplan: Yes. I do not think the concern is as serious where you are talking about a hearing as opposed to an order affecting property.

Mr. Grisé: By changing the word "may" to "shall", the meaning would be that it would be imposing a burden on the applicant. It seems to me that by saying "may" the judge, like it says, may require notice; but if we change it then the burden will be on the applicant that a notice be given. So I think there is a major change there. Can you add any comments, Mr. Mosley?

Mr. Mosley: Proposed section 420.14 deals with the application by any person who has an interest in the property. To substitute "shall" for "may" in these circumstances would mean that the applicant, as the party advancing the proposition that an order should be made under that provision, would bear the burden of serving the notice that would therefore be required. So it might have a discouraging effect on someone who might not have the resources to seek out and serve everyone who may possibly be concerned.

Mr. Redway: For the same reasons as stated before on the notice, I shall be supporting the government on this.

Amendment negatived.

[Translation]

aux personnes qui, de l'avis du juge, semblent avoir un droit sur les biens visés. Si je peux emprunter les arguments que l'on a mis de l'avant plus tôt afin de remplacer certains «peut exiger» par «exige», il s'agit de l'autorité discrétionnaire du juge de décider si la personne semble avoir un droit sur les biens visés.

J'ai mentionné à M. Reid que le juge conserve le pouvoir discrétionnaire, mais dès qu'il exerce ce pouvoir et décide que la personne a un droit sur le bien, il est obligé d'exiger qu'un préavis lui soit remis. Donc, on conserve le pouvoir discrétionnaire des tribunaux, tout en protégeant ceux qui ont un droit dans le bien visé en s'assurant qu'un préavis leur soit remis.

M. Robinson: Je voudrais poser une question à M. Kaplan. Son amendement précédent rendait obligatoire à la fois l'avis et l'exigence d'entendre la personne qui avait un droit dans le bien visé. Pourquoi n'inclut-on pas ce second élément dans cet amendement?

M. Kaplan: J'ai cru qu'il serait possible que la personne ne soit pas disponible, ou encore qu'elle reçoive l'avis et qu'elle décide de ne pas se présenter, etc. J'ai pensé que si le juge remettait un avis à la personne, cela constituerait une protection accrue pour les individus dont les biens sont touchés.

M. Robinson: Ce raisonnement ne serait-il pas tout aussi valable pour l'amendement précédant?

M. Kaplan: Oui. Je ne crois pas que ce soit aussi grave lorsqu'il s'agit d'une audience que dans le cas d'une ordonnance de blocage qui touche un bien.

M. Grisé: En remplaçant l'expression «peut exiger» par «exige», on impose un fardeau accru au demandeur. Il me semble que si l'on dit «peut exiger», le juge peut exiger le préavis; mais si nous remplaçons cette expression, ce sera au demandeur de s'assurer que le préavis a été renouvelé. Donc, je crois qu'il s'agit d'un changement important. Avez-vous quelque chose à ajouter, monsieur Mosley?

M. Mosley: L'article proposé 420.14 concerne les demandes faites par les personnes qui ont un droit dans le bien. Si l'on remplace «peut exiger» par «exige» dans ces circonstances, le demandeur, qui fait valoir qu'une ordonnance de blocage devrait être déposé en vertu de cette disposition, assume la responsabilité de remettre le préavis requis. Cela pourrait donc avoir un effet disuasif sur ceux qui n'ont pas les ressources voulues pour chercher toutes les personnes concernées et leur remettre un préavis.

M. Redway: Pour les mêmes raisons que j'ai citées précédemment concernant l'avis, j'ai l'intention d'appuyer le gouvernement à ce sujet.

L'amendement est rejeté.

[*Texte*]

The Chairman: I believe G-6 is a technical amendment, Mr. Grisé. I see we are at the end of our time so we might be able to get one more in.

Mr. Grisé: It is only a clarification to add

tout ou en partie

on line 26 on page 9.

Amendment agreed to.

Mr. Grisé: Mr. Chairman, after consideration and the improvement that the committee made this afternoon, if we could have some kind of an agreement or a schedule for meetings next week to get the passage of the bill for next week, then I will be prepared to ask the committee members, and the chairman of course, to cancel this afternoon's meeting.

The Chairman: I am just conferring with the clerk. I know that the justice committee meets Tuesday in the morning and afternoon from—

Mr. Kaplan: [*Inaudible—Editor*] . . . got a proposal, and then you could tell us during the Question Period whether government members are willing to cancel the meeting. I will go along with whatever you can agree with Mr. Robinson about it since—

The Chairman: For clarification, the justice committee will be meeting next Tuesday from 11 a.m. to 12.30 p.m. and from 3.30 p.m. until 5 p.m.

Mr. Robinson: I appreciate very much Mr. Grisé's suggestion, and I am certainly prepared to work with him and the clerk to come up with a schedule that will enable us to complete consideration of the bill next week.

The Chairman: Is that agreed by all members? This meeting stands adjourned to the call of the Chair.

[*Traduction*]

Le président: Monsieur Grisé, je crois que l'amendement G-6 est un amendement d'ordre technique. Je constate que notre temps s'épuise, mais il serait peut-être possible d'en régler encore un autre.

M. Grisé: Il ne s'agit que d'un éclaircissement rajoutant

tout ou en partie

à la ligne 26, page 9.

L'amendement est adopté.

M. Grisé: Monsieur le président, après y avoir réfléchi et après avoir constaté les améliorations que le Comité a su apporter cet après-midi, si nous pouvions nous entendre sur un horaire de rencontre la semaine prochaine afin que le projet de loi puisse être adopté la semaine prochaine, je serais prêt à demander aux membres du Comité, et au président, bien sûr, de contremander la réunion de cet après-midi.

Le président: J'étais justement en train de consulter le greffier. Je sais que le Comité de la justice se réunit le mardi matin et le mardi après-midi de. . .

M. Kaplan: [*Inaudible—Éditeur*] . . . ont reçu la proposition, et vous pourriez ensuite nous dire pendant la période de questions si les membres du gouvernement sont disposés à contremander la réunion. Je m'en tiendrai à ce que vous déciderez avec M. Robinson puisque. . .

Le président: Aux fins d'information, le Comité de la justice se rencontrera mardi prochain de 11 heures à 12h30 et de 15h30 à 17 heures.

M. Robinson: Je sais très gré de sa suggestion à M. Grisé, et je suis certainement disposé à travailler avec lui et le greffier afin d'établir un horaire qui nous permettra de terminer l'étude du projet de loi la semaine prochaine.

Le président: Les membres sont-ils tous d'accord? La séance est levée.

June 1, 1988 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act]

EVIDENCE

[Recorded by Electronic Apparatus]

[Text]

Wednesday, June 1, 1988

• 1537

The Chairman: I want to call this meeting to order and refer first to a communication addressed to the clerk, Mr. Bill Farrell, committee on Bill C-61:

> This is to advise that Joe Reid, MP, will be replacing me at the committee on the following date: Wednesday, June 1, 1988.

It is signed by Mr. Fred King, the chairperson.

It is, as you will note, a temporary authority, and I would be happy to assume the Chair in that capacity.

We are dealing with the clause-by-clause consideration of Bill C-61, and we are going to attempt to move along with respect to the resolutions and amendments of that bill as rapidly as we can, because I am cognizant of the comments made last week that we would conclude consideration of Bill C-31 this week. Unless there are any other questions, we will begin.

Mr. Robinson: Mr. Chairman, just on that preliminary point, I have not counted the number of amendments that are in my name, but it would certainly be my hope that we could complete consideration of the amendments in my name today because I understand that Mr. Kaplan's amendments will be—

Mr. Nicholson: Hear, hear!

The Chairman: That makes it easy for me to submit the other comment I should have made earlier. Mr. Kaplan will not be present and out of courtesy to him, we indicated to him that we would stand his proposed amendments over until tomorrow. We will proceed, then, with the Robinson and the government amendments today.

Mr. Robinson: Mr. Chairman, just one other preliminary point. I did just mention to Ms Crawford that I am hoping we will be finished with my amendments this afternoon or first thing tomorrow morning.

I did indicate that the justice committee will be on the road at the beginning and middle part of next week. I will be in my constituency the latter part of next week and I would assume that the bill would not be called for debate in the House of Commons. That being the case, Mr. Grisé, I trust that would be the understanding.

• 1540

Mr. Richard Grisé (Acting Parliamentary Secretary to Minister of Justice): I do not have the government agenda in front of me, Mr. Robinson. It is pretty hard for me to

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le mercredi 1er juin 1988

Le président: Je déclare la séance ouverte, et je voudrais commencer par un avis adressé au greffier du Comité chargé d'étudier le projet de loi C-61, M. Bill Farrell:

> J'ai l'honneur de vous informer que M. Joe Reid, député, me remplacera au comité à la date suivante: le mercredi 1er juin 1988.

C'est signé de M. Fred King, président.

Comme vous le constatez, c'est une délégation de pouvoir temporaire, et je suis heureux d'assurer la présidence à ce titre.

Nous en sommes à l'étude article par article du projet de loi C-61, et nous allons essayer de progresser le plus rapidement possible, compte tenu de la volonté exprimée la semaine dernière d'en finir avec ce projet de loi cette semaine. S'il n'y a pas d'autres questions, nous allons commencer tout de suite.

M. Robinson: Monsieur le président, à ce sujet, je n'ai pas compté le nombre d'amendements présentés en mon nom, mais j'espère que nous allons pouvoir en terminer l'étude aujourd'hui, car je crois que les amendements de M. Kaplan vont être...

M. Nicholson: Bravo!

Le président: Je voulais justement faire une autre remarque. M. Kaplan ne sera pas là aujourd'hui, et par courtoisie, nous lui avons dit que nous attendrions demain pour étudier ses propositions d'amendements. Nous allons donc passer aujourd'hui à l'étude des amendements présentés au nom de M. Robinson et du gouvernement.

M. Robinson: Monsieur le président, juste une autre remarque préliminaire. Je viens de dire à Mme Crawford que j'espérais que nous en aurions terminé avec mes amendements cet après-midi ou en début de matinée demain.

Le Comité de la justice va voyager au début et au milieu de la semaine prochaine. Je serai dans ma circonscription à la fin de la semaine prochaine, et j'espère donc que le débat sur ce projet de loi ne commencera pas d'ici là à la Chambre des communes. Je considère donc que c'est une chose entendue.

M. Richard Grisé (secrétaire parlementaire suppléant du ministre de la Justice): Monsieur Robinson, je n'ai pas le programme du gouvernement sous les yeux. Il m'est

[Text]

answer that question right now. I can try to find some more information before the end of tomorrow, and—

Mr. Robinson: There has certainly been that level of co-operation in the past and I would hope it would continue.

Mr. Grisé: One more question, Mr. Chairman. I would like to have your clarity and your wisdom on what happens if we have the same amendment by Mr. Robinson and Mr. Kaplan. What do we do?

The Chairman: My reaction is that if the amendments are identical, then if it happens to be one by Mr. Robinson and another one by Mr. Kaplan, and we reach Mr. Robinson's first, then we will deal with it, and the Kaplan amendment will be automatically disposed of.

Mr. Grisé: Okay.

The Chairman: I welcome you to the table, Mr. Grisé, and I should ask you to identify yourself and the people with you.

Mr. Grisé: Thank you, Mr. Chairman. Well, I think you have already identified me, Mr. Chairman. I would like to introduce Mr. Richard Mosley and Mr. John McIsaac, both officials with the Department of Justice.

The Chairman: We are ready to proceed, with Robinson amendment number N-16.

On clause 2—Definitions

Mr. Robinson: Thank you, Mr. Chairman. I move that Bill C-61 be amended by striking out lines 12 and 13 on page 10, and substituting the following therefor:

> (ii) meeting the legal expenses and reasonable business expenses of a person

Mr. Chairman, members of the committee will recall that we did receive extensive evidence on this subject, the concern being raised that the determination of what constituted reasonable legal expenses might in fact lead to a revelation of the strategy of the defence in the course of determination of that criterion of reasonable legal expenses.

I think it is appropriate to mention at this point that I have also proposed an additional subclause, subclause (5), which would indicate that in the event this amendment is defeated, for the purpose of determining the reasonableness of legal expenses, the judge shall hold an in-camera hearing without the presence of the Attorney General. In other words, these are effectively two alternatives.

If the proposed amendment now on the table with respect to not quantifying legal expenses as being reasonable legal expenses is defeated, then, Mr. Chairman, the alternative I would propose is that at the very least the hearing on this question of reasonableness should be held in camera. This would meet the concern of the defence, for our Criminal Lawyers Association that their strategy not be revealed, for example, by disclosing the nature of expenditures. This particular amendment, however, Mr. Chairman, would remove the reasonableness criterion for legal expenses.

[Translation]

assez difficile de vous répondre immédiatement. Je peux essayer de me renseigner d'ici à demain soir et...

M. Robinson: Nous nous sommes bien entendus jusqu'à présent, et j'espère que nous allons continuer.

M. Grisé: Une autre question, monsieur le président. Pourriez-vous nous dire ce qui se passe à votre avis lorsque M. Robinson et M. Kaplan présentent le même amendement?

Le président: À mon avis, s'ils sont identiques, nous commençons par celui de M. Robinson, et cela règle automatiquement le cas de celui de M. Kaplan.

M. Grisé: Bon.

Le président: Bienvenue, monsieur Grisé. Pourriez-vous vous présenter, ainsi que les personnes qui vous accompagnent?

M. Grisé: Merci, monsieur le président. Vous venez de me présenter. Je suis accompagné de M. Richard Mosley et de M. John McIsaac, tous deux hauts fonctionnaires du ministère de la Justice.

Le président: Nous pouvons commencer avec l'amendement numéro N-16 de M. Robinson.

Article 2—Définitions

M. Robinson: Merci, monsieur le président. Je propose qu'on modifie le projet de loi C-61 en retranchant la ligne 8, à la page 10, et en la remplaçant par ce qui suit:

> nes à sa charge, à ses dépenses raisonnables et à ses

Monsieur le président, les membres du Comité se souviendront que nous avons entendu d'abondants témoignages à ce sujet, le problème étant qu'en déterminant un niveau raisonnable de frais juridiques, on risquait de révéler la stratégie de la défense.

Je pense qu'il convient de préciser ici que j'ai aussi proposé un paragraphe supplémentaire, le paragraphe (5), qui dirait dans le cas où cet amendement serait rejeté, que pour déterminer le caractère raisonnable des frais juridiques, le juge doit tenir une audience à huis clos hors de la présence du procureur général. Autrement dit, il y a deux options.

5) L'amendement actuellement à l'étude, amendement en vertu duquel les frais juridiques raisonnables ne seraient pas déterminés au total, je proposerai en remplacement que s'il y a lieu une audience à huis clos pour déterminer le caractère raisonnable de ces frais. Je pense que cette procédure donnerait satisfaction à la Criminal Lawyers Association qui ne souhaite pas que la divulgation de ces dépenses permette de révéler sa stratégie. Toutefois, monsieur le président, cet amendement supprimerait le critère du caractère raisonnable des frais juridiques.

[*Text*]

The Chairman: Is your reasonable alternative the proposed N-17?

Mr. Robinson: Correct.

The Chairman: We will deal with N-16 first. You have heard the motion. Any comment, Mr. Grisé?

Mr. Grisé: Yes, Mr. Chairman. If we accept Mr. Robinson's motion it would mean that the court would have no scrutiny on what kind of legal expenses would be related to the proper cause. I also think that could apply as well to some untainted money and we would have no proof to get because it would simply relate to meeting the legal expenses. But, yes, Mr. Mosley, do you want to add...?

Mr. Richard G. Mosley (Senior General Counsel, Criminal and Family Law Policy Directorate, Department of Justice): Just this, Mr. Chairman. The court has determined that there are at least reasonable grounds to believe the property in question is the proceeds of crime. The purpose of the clause in the bill is to provide some scrutiny before any order may be made for the release of those moneys allegedly tainted to the accused for purposes of his legal expenses.

• 1545

The motion would remove any opportunity for the court to make a meaningful examination of the application for release of those funds.

The Chairman: Any other comment?

Mr. Robinson: Mr. Chairman, I would just note that in their submission on this brief the Canadian Bar Association has highlighted this section and suggested that this provision would significantly erode the solicitor-client privilege. They have said that the impact this would have on the legally privileged solicitor-client relationship is of serious concern.

I would like to ask Mr. Grisé to clarify his response to the suggestion that this does constitute at least a potential intrusion into the privileged relationship between solicitor and client. As the bar notes, if the accused has to come to court and disclose his financial situation, his legal strategy, what legal expenses are being directed to and so on, does Mr. Grisé not recognize that this in fact could intrude significantly into that privileged relationship?

Mr. Nicholson: Just referring to vote, Mr. Robinson, may be helpful on this. Why do we not deal with this one and then get on to the one I think specifically relates to the solicitor-client privilege and the question you have raised?

Mr. Robinson: There are really two alternatives in responding to the criticism. One is to say that legal expenses will be exempted and that the court is not going to start deciding whether it is reasonable or unreasonable.

[*Traduction*]

Le président: Votre solution de remplacement raisonnable, c'est la proposition d'amendement N-17?

M. Robinson: Exact.

Le président: Nous allons commencer par le N-16. Vous avez entendu la motion. Vous avez des commentaires, monsieur Grisé?

M. Grisé: Oui, monsieur le président. Si nous acceptions cette motion, le tribunal n'aurait aucune idée des frais juridiques réellement consacrés à l'affaire en question. Cela pourrait d'ailleurs s'appliquer aussi à des frais tout à fait légitimes, et nous n'aurions strictement aucune information, dans la mesure où il s'agirait de frais officiellement juridiques. Monsieur Mosley, vous vouliez ajouter quelque chose?

M. Richard G. Mosley (avocat général principal, Direction générale de la politique en matière de droit penal et de droit de la famille, ministère de la Justice): Une seule chose monsieur le président. Le tribunal a déterminé qu'il y avait au moins des motifs raisonnables de penser que les biens en question sont un produit de la criminalité. Cet article du projet de loi permet de procéder à un certain examen de ces biens avant qu'il ne puisse être ordonné de rendre de l'argent qui aurait pu être obtenu frauduleusement à l'accusé pour lui permettre de défrayer ses frais juridiques.

Cette motion empêcherait le tribunal de procéder à un examen sérieux de la demande de restitution des fonds.

Le président: D'autres commentaires?

M. Robinson: Monsieur le président, dans son mémoire, l'Association du barreau canadien insiste sur cet article et dit que cette disposition entraînerait une grave érosion du secret professionnel de l'avocat. Selon cette association, cette disposition détériorerait gravement les rapports privilégiés de l'avocat et du client.

J'aimerais que M. Grisé nous explique un peu plus sa réponse à l'argument selon lequel il s'agirait au moins d'une intrusion potentielle dans les rapports privilégiés de l'avocat et de son client. Comme le dit le Barreau, si l'accusé doit venir divulguer au tribunal sa situation financière, sa stratégie, ses frais juridiques, etc., M. Grisé n'admet-il pas que cette disposition empiète très sérieusement sur le secret professionnel.

M. Nicholson: Monsieur Robinson, il serait peut-être bon de soumettre cette question au vote. Pourquoi ne pas régler ce problème et passer à l'amendement qui, à mon avis, porte précisément sur le secret professionnel et sur la question que vous venez de poser?

M. Robinson: On peut en fait répondre aux critiques de deux façons. D'une part, on peut dire que les frais juridiques seront exemptés et que le tribunal n'aura pas à se prononcer sur la notion de frais raisonnables ou

[*Text*]

They will recognize there is in fact no evidence to support the suggestion that lawyers—

Mr. Nicholson: I do not intend to vote on this one just for the reasons Mr. Grisé says. In the end anything could be just piled up if we kept a blank cheque for expenses. I do not think you are going to get that one, and I think it would be useful to get on to N-17 and let us have a discussion with that.

The Chairman: Mr. Nicholson, the question was asked if Mr. Grisé had any further comment to make. If not, we will put the question on N-16.

Mr. Grisé: No.

The Chairman: The question is on the amendment, N-16. All those in favour?

Amendment is negatived.

Mr. Robinson: I will move that Bill C-61 be amended by adding immediately after line 17 on page 10 the following:

> (iv) determining the reasonableness of legal expenses referred to in subparagraph (c)(i) above

I think that should be proposed subparagraph (c)(ii), Mr. Chairman, not (c)(i). Then it reads:

> a judge shall hold an in camera hearing and without the presence of the Attorney General.

Mr. Chairman, I think the arguments on this are clear. We have defeated an amendment that would prevent the court from delving into the reasonableness, or lack thereof, of proposed legal expenses. I would hope that perhaps Mr. Nicholson, in particular, might be prepared to entertain positively this amendment, which would respond to the concern raised. If indeed there is to be scrutiny of these expenses, it should in effect be done without the presence of the Crown. We have an adversarial system. This would ensure that the judge would still be able to scrutinize the reasonableness of those expenses without it being done in such a way as to possibly reveal the strategy of defence.

The Chairman: Thank you, Mr. Robinson. Mr. Grisé, any comment? Mr. Mosley?

Mr. Mosley: In the context of this application, Mr. Chairman, it contemplates an application to the court to exercise its discretion in favour of the release of some of the property lawfully seized and held under process issued by the court for the purposes specified in the section.

In those circumstances it would be of great assistance to the court to have the benefit of representations and argument made by the Crown relating to the use to which that money may be put. If I may remind the committee, we are again dealing with property that has been seized on the basis of an order by the court on a showing of reasonable grounds to believe that this property is in fact the proceeds of crime.

[*Translation*]

déraisonnables. Il reconnaîtra qu'il n'y a pas de preuve à l'appui des arguments selon lesquels les avocats...

M. Nicholson: Je ne veux pas voter sur cet amendement précisément pour les raisons avancées par M. Grisé. En fin de compte, on pourrait accumuler n'importe quoi si l'on accorde un chèque en blanc pour les frais. Je crois que nous n'aboutirons à rien sur cet amendement, et je pense qu'il serait bon de passer au N-17 pour en discuter.

Le président: Monsieur Nicholson, je voulais savoir si M. Grisé avait d'autres commentaires. Sinon, nous passerons au vote sur l'amendement N-16.

M. Grisé: Non.

Le président: Le vote porte sur la proposition d'amendement N-16. Pour?

L'amendement est rejeté.

M. Robinson: Je propose qu'on modifie le projet de loi C-61 en ajoutant immédiatement après la ligne 12, à la page 10, ce qui suit:

> (5) Pour déterminer le caractère raisonnable des frais juridiques visés à l'alinéa c), le juge tient une audience à huis clos, hors la présence du procureur général.

Monsieur le président, je pense que cette argumentation est claire. Nous avons rejeté un amendement qui empêcherait le tribunal de se prononcer sur le caractère raisonnable ou non des frais juridiques envisagés. J'espère que M. Nicholson, en particulier, sera disposé à accueillir favorablement cette proposition d'amendement, qui lève l'objection formulée. Si ces frais doivent être examinés, il faut effectivement que ce soit en l'absence de la Couronne. Nous avons un régime de confrontation. Cela permettrait au juge de s'assurer que les frais en question sont raisonnables, sans que la stratégie de la défense soit révélée.

Le président: Merci, monsieur Robinson. Des commentaires, monsieur Grisé, ou monsieur Mosley?

M. Mosley: Monsieur le président, il s'agit ici de permettre au tribunal d'exercer sa discrétion pour permettre la restitution d'une partie des biens légalement saisis et détenus aux fins précisés dans l'article.

Dans ces conditions, il serait très utile que le tribunal puisse bénéficier des éclaircissements de la Couronne sur l'utilisation éventuelle de cet argent. Je rappelle au Comité qu'il s'agit de biens saisis sur ordonnance du tribunal sur la foi de motifs raisonnables de croire que les biens en question sont un produit de la criminalité.

[*Texte*]

In those circumstances, which are perhaps analogous to the seizure under a search warrant in which there is nothing comparable to this provision, it would assist the court to be reminded of the evidence that has led to the issuance of the order for the seizure or restraint of the property in the first place, as the case may be, and to have the Crown make representations as to the purpose to which it is put.

• 1550

Now, the concern that has been made about solicitor-client privilege, in my respectful submission, is not entirely appropriate. Solicitor-client privilege relates to communications between the solicitor and the client.

The nature of the inquiry that is contemplated here is not a detailed examination of what possible disbursements the client may have in mind and may have suggested to the solicitor. It would be, in my submission, a review of the global figures being asked for. The applicant may be asking for a sum of money, which would be presented to the court on the basis that this is for fees and disbursements. It is unnecessary for the court to inquire into what those disbursements are going to be.

Mr. Nicholson: Perhaps you can explain to me, Mr. Mosley, what would be the harm, if it were presumably just a global figure, in having it held in camera without the Crown there.

Mr. Mosley: The harm is that there would be no opportunity for representations to be made to the court not to make the order in favour of the release of the funds. The court is getting a one-sided pitch, if I may use that expression.

Mr. Robinson: Mr. Chairman, the point surely is that the one-sided pitch, as Mr. Mosley puts it, is only with respect to reasonableness of legal expenses referred to in that subparagraph.

The Crown will be present for all other parts of that application. Mr. Nicholson will recognize this from the wording of proposed subsection 420.14(4), for example:

> after hearing the applicant and the Attorney General and any other person to whom notice was given. . .

For all of the other circumstances, the question of living expenses, use of the property, and reasonable business expenses as well, there is no exclusion there. It is only with respect to the question of reasonable legal expenses. If the individual in question, whose property has been seized, raises that as an argument, and in those circumstances only, it will then be up to the judge to determine the reasonableness. This is precisely what the amendment says—for the purpose of determining the reasonableness. It would be up to the judge to determine the reasonableness of those expenses. In those very narrow circumstances, and only in those narrow circumstances, Mr. Chairman, would the Crown not be present on that specific point. With respect to all other aspects of the application, the Crown would be present.

[*Traduction*]

Dans ces circonstances, qui sont peut-être analogues à celles d'une saisie dans le cadre d'un mandat de perquisition où il n'y a rien de comparable à cette disposition, il serait utile de rappeler au tribunal les témoignages qui ont initialement entraîné l'ordonnance de saisie ou de blocage, selon le cas, et de permettre à la Couronne d'en expliquer les raisons.

Pour revenir à la question du secret professionnel de l'avocat, sans vouloir vous offenser, je crois que c'est un faux problème. Le secret professionnel ne concerne que les rapports entre l'avocat et son client.

Or, il ne s'agit pas ici d'étudier de façon détaillée les frais que le client envisage et peut avoir suggéré à son avocat. Il s'agit plutôt à mon avis de demander à voir un montant global. Le requérant peut demander une certaine somme d'argent en disant au tribunal que cet argent doit servir à couvrir ses frais. Le tribunal n'a pas à s'occuper de la façon dont cet argent sera utilisé.

M. Nicholson: Monsieur Mosley, peut-être pourriez-vous m'expliquer en quoi le fait de divulguer un simple chiffre global à huis clos et en l'absence du procureur général pourrait entraîner un préjudice.

M. Mosley: Le préjudice, c'est que personne ne pourrait intervenir auprès du tribunal pour lui demander de ne pas prononcer une ordonnance favorable à la restitution des fonds. Le tribunal n'entend qu'un seul son de cloche, si vous me permettez cette expression.

M. Robinson: Cet unique son de cloche, comme dit M. Mosley, concerne uniquement le caractère raisonnable des frais mentionnés à cet alinéa.

Le procureur général sera présent à tous les autres niveaux de la requête. M. Nicholson peut en prendre pour preuve l'alinéa 420.14(4), par exemple:

> après avoir entendu le demandeur, le procureur général et, éventuellement, les personnes à qui l'avis mentionné. . .

Il n'y a donc aucune exclusion pour toutes les autres situations, pour la question des dépenses courantes, de l'utilisation des biens ou des dépenses d'affaires. Il s'agit uniquement des frais juridiques raisonnables. Si l'individu en question dont les biens ont été saisis avance cet argument, uniquement dans ces circonstances, il appartiendra au juge de déterminer le caractère raisonnable des frais. C'est exactement ce que dit l'amendement. Il appartiendra au juge de déterminer le caractère raisonnable des frais. C'est uniquement dans ces circonstances très limitées, monsieur le président, que le procureur général ne sera pas là. Tout le reste de la requête, il sera présent.

[*Text*]

Mr. Nicholson: Let me ask Mr. Mosley something again. I do not want to prolong this here, Mr. Mosley, but it would be my understanding of proposed subsection (1) of that particular thing that the Crown attorney would be present, the applicant, and any other person who may have an interest. It was only after it has been decided that this second step comes in with respect to the legal expenses. It seems to me that the pitch would have been made by the Crown attorney earlier in the application. Am I misreading this particular proposed subsection here?

It seems to me the Crown Attorney would be there. It says:

> (4) On an application made to a judge under paragraph (1)(a)

for a warrant. Well, I do not know.

Mr. Mosley: Mr. Chairman, I think this is quite correct. I think Mr. Robinson and Mr. Nicholson have fairly characterized the process contemplated by the proposed subsection: it would involve an initial series of representations. It may be that in those representations the Crown could make a sufficient argument in which to rebut the first premise, which is that the accused should be entitled to the return of some of his property.

The concern is that when it gets beyond that, it gets to the question of whether the money should be used for the legal expenses. It is at this point in time the Crown will be excluded from the proceedings. It may be that the individual in question has other resources with which to meet the fees and disbursements that are being cited.

The Crown would not have the opportunity in the course of that later subset of the application process to make the argument against the allocation of the seized funds to that purpose.

• 1555

Mr. Robinson: With respect, that is simply not accurate. The purpose of the in-camera hearing is solely to determine the reasonableness of the legal expenses. That is all. Once that has been determined, the amount in question will not be a matter that is in any way in camera. And if the Crown believes that this amount can be satisfied through resources available to the accused, then the Crown can make those arguments. The amendment is clear. It is solely for the purpose of determining reasonableness. The amount itself is not a secret.

Amendment agreed to.

The Chairman: That brings us to the next Robinson motion.

Mr. Robinson: It is a technical point. I note that proposed paragraph (b), at the top of page 10, says:

> (b) if the conditions referred to in subsection (5) are satisfied, or

[*Translation*]

M. Nicholson: Je voudrais poser encore une question à M. Mosley. Je ne veux pas prolonger ce débat, monsieur Mosley, mais si je comprends bien le paragraphe (4), le procureur de la Couronne serait là, ainsi que le requérant et toute autre personne concernée. C'est ensuite seulement qu'interviendrait cette deuxième étape concernant les frais juridiques. Je pense que le procureur général aurait déjà clairement exposé la situation dans un premier temps, du moins, c'est ainsi que j'interprète le paragraphe en question.

Je pense que le procureur général serait là. Le texte dit:

> (4) Le juge saisi d'une demande d'ordonnance présentée en vertu du paragraphe (1). . .

Enfin, je ne sais pas.

M. Mosley: Monsieur le président, je crois que c'est tout à fait exact. M. Robinson et M. Nicholson ont bien défini la procédure envisagée; il y aurait au départ une série d'argumentations. Au cours de ces argumentations, le procureur pourrait présenter des arguments suffisants pour que soit rejetée la première proposition, à savoir que l'accusé soit autorisé à récupérer une partie de ses biens.

Le problème, c'est qu'après cela, on en arrive à la question de savoir si cet argent doit pouvoir être consacré à des frais juridiques. C'est à ce moment-là que le procureur général se voit exclu des délibérations. On peut imaginer que l'individu en question dispose d'autres ressources lui permettant de couvrir les frais en question.

À ce moment-là, le procureur général n'aurait pas la possibilité d'argumenter contre la restitution des fonds saisis à cette fin.

M. Robinson: Malgré tout le respect que je vous dois, cette observation n'est tout simplement pas exacte. L'audience à huis clos se tient uniquement pour déterminer le caractère raisonnable des frais juridiques. Rien de plus. Une fois ce caractère déterminé, le montant des frais n'a pas à rester secret. Si la Couronne estime que l'accusé peut payer les frais de son avocat à même les ressources dont il dispose, elle peut alors soulever cet argument. L'amendement est clair. Il s'agit uniquement de déterminer le caractère raisonnable. Le montant en soi n'a rien de secret.

L'amendement est adopté.

Le président: Nous voilà donc à la motion suivante de M. Robinson.

M. Robinson: Il s'agit d'un point de détail. Je remarque que l'alinéa b) proposé, au bas de la page 9, dit ce qui suit:

> b) les conditions mentionnées au paragraphe (5) sont remplies;

[*Text*]

Presumably with renumbering that would be subsection (6).

The Chairman: It would be an automatic renumbering. It is called a consequential amendment. N-18 is the next one up.

Mr. Robinson: I move that Bill C-61 be amended by striking out lines 41 and 42 on page 10, and substituting the following therefor:

> titled to possession of the property unless the court is satisfied beyond a reasonable doubt of the complicity of the applicant in an

The purpose of this amendment is to respond again to strong representations that were made to the committee with respect to this notion of appearing innocent. It would ensure that the wording would reflect the standard of reasonable doubt. So the proposed paragraph would read as follows:

> (b) in any other case, that the applicant is the lawful owner of or lawfully entitled to possession of the property unless the court is satisfied beyond a reasonable doubt of the complicity of the applicant in an enterprise crime offence or designated drug offence or of any collusion in relation to such an offence,

In other words, the order referred to is that in proposed paragraph 420.14(4)(b). In those circumstances the property would be restored, provided the court was not satisfied beyond a reasonable doubt that the individual was involved in one of the two offences listed: the enterprise crime offence or the designated drug offence. This notion of appearing innocent of complicity is one that was severely criticized by witnesses who appeared before the committee.

We are told that it is found in customs legislation or something to that effect. We are dealing here with the Criminal Code of Canada. Surely when we are dealing with the Criminal Code the standard that should apply in these kinds of circumstances is reasonable doubt and not some vague notion of apparent innocence.

Mr. John McIsaac (Counsel, Criminal Law Policy Section, Department of Justice): One of the complaints of the Criminal Justice Section of the Canadian Bar in relation to this provision was that it was a novel departure in Canadian criminal law. The provision is lifted almost word for word from section 11 of the Narcotic Control Act, which has been in existence, as I understand it, since 1961.

Subsection (4) of that provision allows for an application by a person who has an interest, or claims to have an interest, in relation to a conveyance that has been used for the transportation or importation of narcotic substances to apply to the court for relief from forfeiture. The words that are used in subsection (4) are as follows:

> (4) Where, upon the hearing of an application, it is made to appear to the satisfaction of the judge

[*Traduction*]

je suppose qu'après renumérotation, cela deviendra le paragraphe (6).

Le président: On renumérote automatiquement. C'est ce qu'on appelle un changement corrélatif. Nous passons maintenant à l'amendement N-18.

M. Robinson: Je propose de modifier le projet de loi C-61 en retranchant les lignes 40 et 41, à la page 10, et en les remplaçant par ce qui suit:

> légitime, sauf si le tribunal est convaincu hors de tout doute raisonnable de la complicité ou de la collusion du demandeur à

L'objet de cet amendement est de réagir encore une fois aux vives instances faites au Comité relativement à cette notion d'apparence d'innocence. Il s'agit d'assurer que le libellé reflète la norme du doute raisonnable. L'alinéa proposé se lirait donc ainsi qu'il suit:

> b) dans tous les autres cas, que le demandeur est le propriétaire légitime de ces biens ou a droit à leur possession légitime, sauf si le tribunal est convaincu hors de tout doute raisonnable de la complicité ou de la collusion du demandeur à l'égard de la perpétration d'une infraction de criminalité organisée ou d'une infraction grave en matière de drogue,

En d'autres termes, il s'agit de l'ordonnance dont il est question à l'alinéa 420.14(4)b) proposé. En pareil cas, les biens seraient restitués si le tribunal n'était pas convaincu hors de tout doute raisonnable de la participation du demandeur à l'une des deux infractions précisées, soit une infraction de criminalité organisée ou une infraction grave en matière de drogue. Cette notion d'innocence apparente de complicité a été sévèrement critiquée par certains témoins qui ont comparu devant le Comité.

On nous dit que cette disposition figure dans la législation douanière, ou dans quelque chose du genre. Cependant, nous traitons ici du Code criminel du Canada. Sûrement, lorsque l'on traite du Code criminel, la norme à appliquer est celle du doute raisonnable, et non quelques vagues notions d'innocence apparente.

M. John McIsaac (avocat-conseil, Section de la politique du droit pénal, ministère de la Justice): Une des plaintes formulées par la Section de la justice pénale du barreau canadien au sujet de cette disposition est que celle-ci représente une nouveauté en droit pénal canadien. Elle reprend pourtant presque mot à mot l'article 11 de la Loi sur les stupéfiants, qui, si je ne me trompe, est en vigueur depuis 1961.

Le paragraphe (4) de cette disposition permet à toute personne qui a ou prétend avoir un intérêt relatif à un moyen de transport utilisé pour transporter ou importer des narcotiques de demander au tribunal de faire restituer ce bien. Le paragraphe (4) dit plus précisément ceci:

> (4) Si, à l'audition d'une demande, il est établi à la satisfaction du juge

[Text]

(a) that the applicant is innocent of any complicity in the offence that resulted in the forfeiture and of any collusion in relation to that offence with the person who was convicted thereof.

Then there is another subcondition that applies.

• 1600

The wording that has been used in these circumstances is very close to the words that have been well recognized since at least 1961. The same types of words are used in customs legislation.

The Narcotics Control Act, the penalties that apply in that situation are in many situations life imprisonment, so it is a piece of criminal legislation that the courts are used to dealing with.

In relation to the second concern about the question in relation to the presumption of innocence, the British Columbia Court of Appeal very recently in a case called Milton, which is reported in the 1987-32 Canadian Criminal Cases, 3 Series, p. 159, had occasion to examine words that are very similar, again. Almost identical wording is used in the Fisheries Act in relation to the seizure and forfeiture of fishing equipment.

In their examination of these words, they found no constitutional infirmity both in relation to the Bill of Rights and in relation to the Charter of Rights and Freedoms. It was for those reasons that those words were chosen in these circumstances.

Basically, the British Columbia Court of Appeal said an individual in these circumstances is not acting as an accused person but the individual is acting as an applicant and because that person has some special knowledge about the property in question, it is not offensive to cast upon him the onus of establishing the lack of either complicity or collusion.

They are not accused persons, because this is the stage where they are coming in as applicants. Therefore the presumption of innocence under paragraph 11(d) does not apply to them, and that is the reason for the adoption of those words, Mr. Chairman.

The Chairman: Thank you, Mr. McIsaac. Mr. Nicholson, any further comment?

Mr. Nicholson: No, no further comments.

Mr. Robinson: May I ask, Mr. Chairman, how this apparent innocence of any complicity would be established in practical terms? What would be the mechanism for that? Would there be some sort of onus on the applicant to establish this?

Mr. McIsaac: Again, the Milton case has stated that the onus in those circumstances is on the preponderance of evidence or the balance of probabilities.

The Chairman: The question is on the amendment as proposed by Mr. Robinson.

Amendment negatived.

[Translation]

a) que le requérant est innocent de toute complicité relativement à l'infraction qui a entraîné la confiscation et de toute collusion à l'égard de cette infraction avec la personne qui en a été déclarée coupable.

Il y a aussi un autre paragraphe qui s'applique à ce cas.

Le libellé utilisé dans ce cas se rapproche beaucoup de celui qui est généralement admis, au moins depuis 1961. La législation douanière comporte aussi quelque chose de semblable.

La peine applicable en pareil cas aux termes de la Loi sur les stupéfiants est souvent l'emprisonnement à vie; les tribunaux ont donc l'habitude de ce genre de dispositions en matière de droit pénal.

Pour ce qui est de la deuxième préoccupation soulevée, au sujet de la présomption d'innocence, la Cour d'appel de la Colombie-Britannique s'est penchée tout récemment sur une situation très semblable dans le cas de l'affaire Milton, qui figure à la page 159 de 1987-32 Canadian Criminal Cases, 3 Series. La Loi sur les pêcheries comporte des dispositions presque identiques relatives à la saisie et à la confiscation de matériel de pêche.

Il a été constaté à l'examen que ces termes ne sont affaiblis ni par la Déclaration des droits, ni par la Charte des droits et libertés. C'est pourquoi on les a retenus pour la circonstance présente.

La Cour d'appel de la Colombie-Britannique a statué fondamentalement qu'une personne dans cette situation n'agit pas comme prévenu, mais comme demandeur et, parce que cette personne a une certaine connaissance particulière du bien en question, il n'est pas excessif d'exiger de cette personne qu'elle démontre l'absence de complicité ou de collusion.

Ce ne sont pas des accusés, parce qu'à cette étape de la procédure, elles se présentent comme demandeurs. C'est pourquoi la présomption d'innocence aux termes du paragraphe 11d) ne s'applique pas, et c'est pourquoi on a retenu le texte figurant dans la loi.

Le président: Merci, monsieur McIsaac. Monsieur Nicholson, avez-vous quelque chose à ajouter?

M. Nicholson: Non, monsieur le président.

M. Robinson: Puis-je demander, monsieur le président, comment, en pratique, on fait la preuve de son innocence de toute complicité? Quelle démarche faut-il accomplir? Appartient-il au demandeur de le faire?

M. McIsaac: Encore une fois, il a été dit, dans l'affaire Milton, que la détermination repose sur la prépondérance de la preuve ou sur l'équilibre des probabilités.

Le président: Veuillez vous prononcer sur l'amendement proposé par M. Robinson.

L'amendement est rejeté.

[Text]

Mr. Robinson: Briefly, Mr. Chairman, I have a question with respect to this section before we go to the next amendment. The last words... there is a test set out in proposed subsection (5)

If those various provisions in paragraphs (a) and (b) are met, there is still a residual provision there which states that,

> and that the property will no longer be required for the purpose of any investigation or as evidence in any proceeding.

Mr. Chairman, if in fact the criteria in paragraphs (a) and (b) have been established, why then should the Crown be able to hold onto the property despite that?

Mr. McIsaac: The situation that is contemplated in those circumstances is the situation of a rifle which, upon first blush, the police were trying to establish reasonable, probable grounds that it was the proceeds of crime; but if that case fails and then it turns out that it is a murder weapon, the item in question does not go back to the applicant but remains available to the court as evidence in the murder investigation and in the prosecution. That is how it was intended to work.

Mr. Robinson: But if it is suspected to be part of a murder investigation, could it not be seized under that particular investigation?

Mr. McIsaac: It could have been, but it is where things change because of the development of the legislation. Rather than having the item go back and maybe not be available for execution of a regular 443 warrant, it was thought best to have the item stay within the control of the court as an exhibit for the murder investigation, which was originally a proceeds of crime investigation, and that is the reason for it.

Mr. Robinson: One of the reasons I asked the question, Mr. Chairman, is that there is no time limit on this. Presumably, property could be held indefinitely for investigation. Investigations can drag on for many months, as we have seen.

• 1605

The Chairman: Mr. Robinson, in fairness, we do not have an amendment before us. We are having an exchange after. I see nothing wrong with asking for information, but there is no use carrying on a debate unless we have something to pose.

Mr. Robinson: It is not a question of debate, Mr. Chairman.

Mr. McIsaac: There is an answer under section 446, which allows for an application for return of any property, be it seized under a section 443 warrant or on any other basis for seizure by a police officer in the execution of his duty. A person can come in for an application under section 446. So the code does provide relief in those circumstances.

[Traduction]

M. Robinson: Brièvement, monsieur le président, j'ai une question à poser au sujet de cette disposition avant que nous passions à l'amendement suivant. Il y a un critère énoncé au début du paragraphe (5) proposé

Si l'on se conforme aux dispositions des alinéas a) et b), il reste encore une disposition résiduelle, que je cite:

> qu'on n'a plus besoin de ces biens, soit pour une enquête, soit à titre d'éléments de preuve dans d'autres procédures.

Monsieur le président, si l'on a satisfait aux critères figurant dans les alinéas a) et b), pourquoi la Couronne devrait-elle pouvoir encore garder les biens en question?

M. McIsaac: Le genre de situation auquel on songe en pareil cas est celui d'une carabine au sujet de laquelle la police tente d'abord de démontrer qu'il s'agit d'un produit de la criminalité, elle n'y parvient pas, mais il arrive, par contre, qu'il s'agit d'une arme utilisée pour un meurtre; la carabine n'est donc pas remise au demandeur, mais reste à la disposition du tribunal en tant que preuve aux fins de l'enquête et de la poursuite pour meurtre. Voilà le genre de situation qu'on envisageait.

M. Robinson: Mais si l'on croit que l'objet peut servir dans une enquête sur un meurtre, ne peut-il être saisi dans le cadre de cette enquête?

M. McIsaac: C'est possible, mais là, la situation n'est plus la même à cause de l'évolution de la législation. Au lieu de restituer l'article et de risquer qu'il ne soit plus disponible lors de l'exécution d'un mandat 443 ordinaire, il a été jugé préférable de garder l'article à la disposition du tribunal en tant qu'élément de preuve pour une cause de meurtre, même si cet article avait d'abord été saisi en tant que produit de la criminalité.

M. Robinson: Une des raisons pour lesquelles je pose la question est que cette disposition ne comporte aucune limite de temps. L'article pourrait donc être gardé indéfiniment à des fins d'enquête. Certaines enquêtes, comme on l'a constaté, peuvent traîner pendant des mois.

Le président: En toute justice, monsieur Robinson, nous ne sommes saisis d'aucun amendement. Nous sommes en train de discuter après le fait. Je ne m'oppose pas à ce qu'on demande des renseignements, mais rien ne sert de poursuivre le débat, à moins d'avoir quelque chose à démontrer.

M. Robinson: Il ne s'agit pas d'un débat, monsieur le président.

M. McIsaac: La réponse à cette question se trouve à l'article 446, qui permet de demander la remise de tout bien saisi en exécution d'un mandat délivré en vertu de l'article 443 ou de toute autre façon par un agent de police dans l'exécution de ses fonctions. La demande peut se faire aux termes de l'article 446. Le code prévoit donc un remède en pareil cas.

[Text]

The Chairman: We will now proceed to the next amendment.

Mr. Robinson: I move, Mr. Chairman, that Bill C-61 be amended by striking out line 22 on page 11 and substituting the following therefor

case may be, for a period of more than two months.

This again is in response to a recommendation by the Canadian Bar Association that suggests the two-month period afforded in another section of the Criminal Code—I do not have the section in front of me—in similar circumstances should also apply to a seizure under these provisions. I do not believe there is any reason for a different standard in the two provisions. I would hope this might commend itself to members of the committee.

Mr. Grisé: Of course we are dealing here with a very complicated investigation, and it might not be over within two months. I would also cite the minister when he appeared in front of this committee. He was sure:

> the picture of enterprise crimes, you will know, will satisfy you that this legislation will involve major investigations that will be both time and resource consuming. The need for a six-month limitation on the new seizure or restraint powers is obvious, especially when it is balanced by the immediate review procedure in this legislation.

Mr. Robinson: There is already provision within the proposed section for an extension if the Attorney General establishes that further time is needed—in fact, an indefinite extension—as I read it, if the Attorney General establishes that more time is needed for the purpose of the proposed section. So I do not understand that argument. If you need more time, if it is a complicated investigation, then you just seek an extension for whatever time is...

Mr. Mosley: That is quite correct, Mr. Chairman. But of course every one of those applications contributes—

Mr. Nicholson: Is expensive.

Mr. Mosley: —exactly—to a multiplicity of proceedings and, where pro forma because of the overwhelming argument to be made in favour of the extension, still wastes court resources.

The reference earlier in the two months, I believe, was to section 10 of the Narcotic Control Act. My understanding of the application of the two months in those circumstances is that after the two months, if there has been no application for restoration by the person from whom it is being seized, then it is in effect subject to forfeiture and disposition by the minister. Unless Mr. Robinson has another reference, that is, I believe, the one that was being referred to.

Mr. Robinson: It is subsection 10.(5) that was referred to in the Canadian Bar Association submission at page 5. They suggest the six-month period is simply too long, in the circumstances.

[Translation]

Le président: Nous passons maintenant à l'amendement suivant.

M. Robinson: Je propose, monsieur le président, de modifier le projet de loi C-61 en retranchant la ligne 19, à la page 11, et en la remplaçant par ce qui suit:

peut se poursuivre au-delà de deux mois que

Encore une fois, il s'agit de suivre une recommandation du Barreau canadien, qui estime que le délai de deux mois prévu par un autre article du Code criminel—je ne l'ai pas devant les yeux—dans une situation semblable devrait aussi s'appliquer à une saisie effectuée dans le cadre de ces dispositions. Rien ne semble justifier cette différence entre les deux dispositions. J'espère que les membres du Comité jugeront bon de l'adopter sans autre explication.

M. Grisé: Bien entendu, il s'agit ici d'une enquête très complexe, qui peut très bien exiger plus de deux mois. Je me permets également de rappeler que le ministre, lorsqu'il a comparu devant ce Comité, était certain que

> ce tableau de la criminalité organisée vous convaincrait que cette disposition législative donnerait lieu à de grandes enquêtes nécessitant beaucoup de temps et de ressources. Le besoin d'une limite de six mois sur les nouveaux pouvoirs de saisie ou de blocage est évident, surtout si l'on tient compte de la procédure de revue immédiate que comporte la disposition.

M. Robinson: L'article proposé prévoit déjà la possibilité de prolongation si le procureur général estime qu'il faut plus de temps—si je comprends bien, la prolongation peut-être indéfinie: si le procureur général détermine qu'il faut plus de temps aux fins de l'article proposé. Je ne comprends donc pas cet argument. S'il vous faut plus de temps, si l'enquête est compliquée, il suffit de demander la prolongation voulue...

M. Mosley: C'est exact, monsieur le président. Mais chaque fois, chacune de ces demandes ajoute...

M. Nicholson: Elles coûtent cher.

M. Mosley: ... exactement—à la multiplicité des démarches et, lorsque la démarche est suivie effectivement pour la forme, vu la prépondérance de l'argumentation en faveur de la prolongation, elle constitue encore un gaspillage des ressources du tribunal.

La mention antérieure d'un délai de deux mois renvoyait, je pense, à l'article 10 de la Loi sur les stupéfiants. Si je comprends bien, dans ce cas, si dans les deux mois, la personne dont le bien a été saisi n'en demande pas la restitution, ce bien est alors sujet à confiscation et aliénation par le ministre. À moins que M. Robinson n'ait un autre renvoi précis, je pense que celui-ci est exact.

M. Robinson: Le Barreau canadien renvoyait, à la page 5 de son mémoire, au paragraphe 10.(5). Il laisse entendre qu'un délai de six mois est tout simplement trop long en pareil cas.

[*Texte*]

Mr. Mosley: If I may refer, Mr. Robinson, to subsection 10.(7) of the same section . . under section 10 you have two months to apply. If you do not apply, then my understanding is that subsection 10.(7) kicks in. Where no application has been made for the return of any narcotic or other thing seized under subsection 10.(1) within two months, the thing so seized shall be delivered to the minister, who may make such disposition thereof as he thinks fit. It is a form of administrative forfeiture.

• 1610

Amendment negatived.

Mr. Grisé: I have a government motion.

Je propose que l'article 2 de la version française du projet de loi C-61 soit modifié par substitution, à la ligne 28, page 11, de ce qui suit:

nécessaires soit pour une enquête soit à titre d'élé-

C'est afin que ce soit conforme au texte anglais. Dans la version française, c'était très mal écrit. On disait: «dans une enquête à titre d'élément», alors que cela doit être: «soit dans une enquête soit à titre d'élément de preuve». C'est très différent, et il fallait que ce soit conforme au texte anglais.

The Chairman: I just wanted to point out again that at the outset we indicated that, where a motion of Mr. Kaplan's was identical to that of Mr. Robinson—in this case N-20—a vote on this motion will . . Oh, we are on G-7. I thought we were on N-20.

Mr. Grisé: On L-8A Mr. Kaplan wanted three months instead of two months for you, Mr. Robinson, so I think we have dealt with that motion as well.

Is the clerk saying no because it is not identical? Okay, we will deal with it tomorrow.

Amendment agreed to.

Mr. Robinson: On N-20, I move that Bill C-61 be amended by striking out lines 4 and 5 on page 12 and substituting the following therefor:

ney General, is satisfied, beyond a reasonable doubt, that any property is proceeds

I have made the argument in the past with respect to the balance of probability standard. I believe it should be the higher standard of beyond a reasonable doubt. That as well was the position taken by the bar, and I move the amendment.

Amendment negatived.

Mr. Nicholson: I take it that would eliminate L-9 then?

The Chairman: It deals with L-9 at the same time.

[*Traduction*]

M. Mosley: Si je puis vous renvoyer au paragraphe 10.(7), monsieur Robinson, l'article 10 permet de faire la demande dans les deux mois. En l'absence d'une demande, c'est alors le paragraphe 10.(7) qui entre en jeu. Si l'on ne demande pas la restitution de narcotiques ou de tout autre objet saisi aux termes du paragraphe 10.(1) dans les deux mois, le bien ainsi saisi est remis au ministre, qui peut l'aliéner comme bon lui semble. C'est une sorte de confiscation administrative.

L'amendement est rejeté.

M. Grisé: J'ai une motion du gouvernement à présenter.

I move that the French version of clause 2 of Bill C-61 be amended by striking out line 28 on page 11 and substituting the following:

nécessaires soit pour une enquête soit à titre d'élé-

This is so the French version will agree with the English copy. It was very badly put in the French text. It said: "dans une enquête à titre d'élément", whereas it should have said: "soit dans une enquête soit à titre d'élément de preuve". There is quite a difference, and the French version had to be made to agree with the English.

Le président: Je tiens seulement à rappeler qu'au début, il est indiqué que dans le cas de la motion de M. Kaplan qui est identique à celle de M. Robinson—dans ce cas la motion N-20—la mise aux voix de cette dernière. . Oh, nous en sommes à G-7. Je pensais que nous étions rendus à l'amendement N-20.

M. Grisé: En proposant l'amendement L-8A, M. Kaplan voulait trois mois plutôt que les deux que vous proposiez, monsieur Robinson; je crois donc que nous avons réglé les deux motions en même temps.

Le greffier dit-il non parce que les deux ne sont pas identiques? Bon, nous nous y pencherons demain.

L'amendement est adopté.

M. Robinson: Relativement à l'amendement N-20, je propose de modifier le projet de loi C-61 en retranchant les lignes 8 et 9, à la page 12, et en les remplaçant par ce qui suit:

il est convaincu, hors de tout doute raisonnable, qu'ils constituent des pro-

J'ai déjà parlé de la norme de la prépondérance des probabilités. Il faudrait à mon avis une norme plus exigeante que celle du doute raisonnable. Cette position est également celle qu'a adoptée le Barreau, et je propose cet amendement.

L'amendement est rejeté.

M. Nicholson: Je suppose que l'amendement L-9 tombe automatiquement?

Le président: L'amendement L-9 est réglé en même temps.

[Text]

Mr. Robinson: I have a question on proposed section 420.17. What was the rationale for applying this to enterprise crime offences and not to DDOs, dangerous drug offences?

Mr. Foster: Sorry. Which...?

Mr. Robinson: The proposed subsection we just dealt with, proposed subsection 420.17(1). Why does that not apply for DDOs, or is there another proposed section that deals with DDOs?

Mr. McIsaac: There is a roll-over provision later on that has it apply to the DDO offences also.

Mr. Robinson: I assumed that there must be one somewhere. Which proposed section is that?

Mr. McIsaac: For the food and drugs matters—subsection 37.4(1)—proposed sections 420.1 and 420.12 to 420.13. All of those items are picked up to be applied to the Food and Drugs Act. The same is done for the narcotics by a similar type of amendment.

Mr. Robinson: On N-21, I move that Bill C-61 be amended by striking out line 22 on page 12 and substituting the following therefor:

erty is proceeds of an enterprise crime offence or designated drug offence, the court may

* 1615

Mr. Chairman, this would ensure that proceeds of crime derived from other offences, which can in fact be seized, would be limited to proceeds of enterprise crime offences or designated drug offences and not to any crime. As it is now worded, it would apply to any crime whatsoever and not just to enterprise crime offences or designated drug offences. I think the scope of the current provision is too broad.

Mr. McIsaac: Mr. Chairman, there is a limitation to "proceeds of crime". In the definition in proposed section 420.1, specifically on page 4, the "proceeds of crime" definition is self-limiting to enterprise crime offences and designated drug offences.

Mr. Robinson: Well, that is fine, Mr. Chairman. I withdraw the amendment.

I move, Mr. Chairman, that Bill C-61 be amended by striking out line 30 on page 12 and substituting the following therefor:

be made subject to such an order because of steps wilfully taken by the offender to avoid the effect of such an order and, in

Mr. Chairman, the purpose of this is to ensure that the fine-instead-of-forfeiture provisions apply when there is an element of wilfulness on the part of the individual involved and not in the very broad circumstances which

[Translation]

M. Robinson: J'ai une question à poser au sujet de l'article 420.17 proposé. Pourquoi cette disposition s'applique-t-elle aux infractions de criminalité organisée et non aux infractions graves en matière de drogue?

M. Foster: Toutes mes excuses. De quel article...?

M. Robinson: Il s'agit du paragraphe 420.17(1) proposé, dont nous venons de parler. Pourquoi ne s'applique-t-il pas aux infractions graves en matière de drogue? Y a-t-il un autre article proposé relativement aux infractions graves en matière de drogue?

M. McIsaac: Il y a plus loin une disposition qui s'applique aussi aux infractions graves en matière de drogue.

M. Robinson: J'ai bien supposé qu'il y en avait une quelque part. De quel article proposé s'agit-il?

M. McIsaac: Relativement aux questions d'aliments et drogues—paragraphe 37.4(1)—articles proposés 420.1 et 420.12 à 420.13. Tous ces articles sont repris et s'appliquent à la Loi sur les aliments et drogues. On fait la même chose pour les stupéfiants au moyen d'un amendement semblable.

M. Robinson: Relativement à l'amendement N-21, je propose de modifier le projet de loi C-61 en retranchant la ligne 26, à la page 12, et en la remplaçant par ce qui suit:

de produits d'une infraction de criminalité organisée ou d'une infraction grave en matière de drogue.

Monsieur le président, cet amendement vise à soustraire les produits d'autres crimes et à limiter la saisie aux produits d'une infraction de criminalité organisée ou d'une infraction grave en matière de drogue. Pour l'instant, le libellé englobe n'importe quelle infraction, et non pas uniquement les infractions de criminalité organisée ou les infractions graves en matière de drogue. Je pense que la portée de la disposition est actuellement trop vaste.

M. McIsaac: Monsieur le président, les «produits de la criminalité» sont définis au projet d'article 420.1, page 4. Ils sont confinés aux produits d'une infraction de criminalité organisée ou d'une infraction grave en matière de drogue.

M. Robinson: Très bien, monsieur le président. Je retire l'amendement.

Je propose de retrancher la ligne 35, à la page 12, et de la remplacer par ce qui suit:

l'objet d'une telle ordonnance du fait de mesures prises délibérément par le contrevenant pour le soustraire à l'effet d'une telle ordonnance, et notam-

Monsieur le président, cet amendement vise à garantir que les dispositions concernant l'amende ne s'appliqueront que quand on aura déterminé que l'accusé a délibérément pris des mesures et qu'elles ne

[*Texte*]

are set out in proposed subsection (3) as it is now worded. In other words if it can be demonstrated that the offender has wilfully taken steps, for example, to transfer property to a third party, to transfer it outside Canada, then the fine would kick in. But it may very well be, Mr. Chairman, that one or more of the circumstances set out in proposed paragraphs (a) through (e) have arisen because of circumstances that are entirely beyond the control of the offender. This would require an element of wilful responsibility for these steps.

Mr. Grisé: Line 42 of the same proposed subsection reads "the court may, instead of ordering that property or part thereof..." This means clearly that it does not have to be done all the time.

Mr. Robinson: Mr. Chairman, certainly the court may, but the question is whether we want to give the court a discretion to order a fine. Remember that as the subsection is now worded there is mandatory imprisonment in default of payment of a fine. Do we want to give the court that discretion in circumstances in which there is no wilfulness whatsoever on the part of the individual involved? For example, if the property is located outside Canada for a reason that is entirely beyond the control of the individual involved, why would we even want to give the court the discretion to order a fine in those circumstances?

The Chairman: Mr. Mosley.

Mr. Mosley: The application of a fine of this nature is intended, Mr. Chairman, to serve as a powerful incentive to the offender to keep the property within the country or, if it has been removed from the country, to ensure its retrieval.

If the motion as presented is adopted, the Crown in every case would be required to prove that the offender has wilfully taken the steps to avoid the effect of such an order. In other words, an offender who has simply gone to the racetrack and dissipated the proceeds of crime can come before the court and say that he is broke and has no resources with which to pay this fine in lieu of forfeiture. You cannot seize the money; you cannot impose a fine; the money is gone. If he states that he has not done so wilfully in order to avoid the effects of the order, and the Crown cannot prove that, the object of the legislation would effectively be defeated.

Mr. Robinson: Mr. Chairman, what is the purpose of a fine in those circumstances in any event? Surely the objective of this is to dissuade individuals from wilfully taking steps—as the amendment says—to avoid the effect of an order by dissipating the property, by transferring it outside the jurisdiction and so on. If that cannot be shown as it now is worded—for example, if the property is located outside Canada for reasons entirely beyond the

[*Traduction*]

s'appliqueront pas en tout état de cause dans toutes les conditions définies au projet de paragraphe (3), tel que libellé actuellement. En d'autres termes, si l'on peut prouver que le contrevenant a délibérément pris des mesures pour aliéner un bien à un tiers ou encore l'envoyer à l'extérieur du Canada, alors on imposera une amende. Monsieur le président, il est fort possible que les conditions décrites au projet d'alinéas a) à e) découlent de circonstances tout à fait hors du contrôle du contrevenant. Il est donc opportun de prévoir que l'amende ne serait imposée que lorsque le contrevenant aurait délibérément pris des mesures.

M. Grisé: Je vous demanderais de vous reporter au début du projet de paragraphe: «Le tribunal ... peut, en remplacement de l'ordonnance, prendre à l'égard d'un bien—d'une partie d'un bien...» On constate donc que le tribunal n'est pas forcé d'imposer une amende dans tous les cas.

M. Robinson: Monsieur le président, je me rends bien compte que le tribunal a une certaine latitude, mais la question est de savoir si nous voulons vraiment donner au tribunal la latitude d'imposer une amende. Rappelez-vous que le paragraphe, tel que libellé, prévoit une incarcération obligatoire pour non-paiement de l'amende. Est-ce que nous voulons vraiment que le tribunal ait cette latitude dans les cas où le contrevenant n'a pas pris de mesures délibérées? Par exemple, si les biens se trouvent à l'extérieur du Canada pour une raison tout à fait hors du contrôle du contrevenant, pourquoi laisser au tribunal la possibilité d'imposer une amende de toute façon?

Le président: Monsieur Mosley.

M. Mosley: Si une amende est prévue dans ces cas-là, monsieur le président, c'est pour inciter fermement le contrevenant à ne pas envoyer ses biens en dehors du Canada, ou, le cas échéant, pour garantir que les biens pourront être récupérés.

Si la motion présentée est adoptée, la Couronne devra, dans tous les cas, prouver que le contrevenant a délibérément pris des mesures pour se soustraire à l'effet de l'ordonnance. En d'autres termes, si le contrevenant a dilapidé les produits de la criminalité en pariant aux champs de course, il pourrait prétendre devant le tribunal qu'il n'a pas les moyens de payer l'amende imposée en remplacement de la confiscation. Il est impossible de saisir l'argent, d'imposer une amende, car il n'y a plus d'argent. Si le contrevenant déclare qu'il n'a pas agi délibérément pour se soustraire à l'effet de l'ordonnance, mais que la preuve de cela ne peut pas être faite par la Couronne, ces dispositions législatives deviendraient concrètement sans objet.

M. Robinson: Monsieur le président, à quoi sert l'amende ici, de toute façon? Assurément, l'amende vise ici à dissuader les contrevenants de prendre délibérément des mesures pour se soustraire à l'ordonnance, de dilapider les biens, ou encore de les aliéner à l'extérieur du Canada. Si l'on ne peut pas prouver—par exemple, si les biens sont à l'extérieur du Canada pour des raisons qui échappent au contrôle du contrevenant, le tribunal a

[Text]

control of the individual—the court still has a discretion to order that it be forfeited or that there be a fine, with imprisonment in default. And surely that is an excessive power being given to the courts.

• 1620

Mr. Mosley: That, of course, is the discretion with which the court is armed. If in fact the court is dealing with someone who through no fault of his own has lost the money or dissipated it and comes before the court effectively with clean hands and says he is not to blame for this situation, then the court has the discretion not to impose a fine in lieu of an order of forfeiture. The motion would impose a burden on the Crown to prove the wilful action on the part of the accused in every case, which is an entirely different situation.

Mr. Robinson asked, what is the point of all this? Well, this is part of a package. The fine in lieu of forfeiture is backed up by a significant, very powerful deterrent in the form of imprisonment in lieu of payment of that fine.

Amendment negatived

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 25 to 45 on page 12 and lines 1 to 2 on page 13. That would in effect repeal proposed subsection (3). Mr. Chairman, Certainly, given the vote on the previous section, I am not terribly optimistic of the likelihood of the success of this amendment, but I will not withdraw it.

The Chairman: Did I hear you withdraw it?

Mr. Robinson: I will not withdraw it, Mr. Chairman, no. Perhaps there could be a last minute conversion.

The Chairman: I did hear you say you were withdrawing it.

Mr. Robinson: No, Mr. Chairman, I think it makes eminent good sense.

Amendment negatived

The Chairman: We will deal with G-8, Mr. Grisé.

M. Grisé: Je propose que l'article 2 de la version française du projet de loi C-61 soit modifié par substitution, à la ligne 39 de la page 12, de ce qui suit:

b) remise à un tiers;

Ceci remplace «aliénation à un tiers». C'est simplement un terme français qui est plus conforme au texte anglais du projet de loi.

Amendment agreed to

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out line 11—

The Chairman: Mr. Robinson, I am receiving notes here. N-24 to N-29 standing in the name of Mr. Robinson.

[Translation]

encore la latitude de les confisquer là où ils se trouvent, ou d'imposer une amende, avec incarcération pour défaut de paiement. On donne ici aux tribunaux des pouvoirs qui sont certainement draconiens.

M. Mosley: Il s'agit bien entendu de la latitude que l'on donne au tribunal. Si, de fait, le tribunal a affaire à un contrevenant qui n'y est pour rien dans le fait qu'il a perdu l'argent ou que l'argent a été dilapidé, qui est tout à fait innocent et qui n'est absolument pas responsable de la situation, il peut, car il en a la latitude, choisir de ne pas imposer une amende en remplacement de la confiscation. Cet amendement imposerait à la Couronne de prouver qu'il y a eu des mesures délibérées de la part de l'accusé dans chacun des cas, et cela modifie tout à fait la situation.

M. Robinson a demandé ce que l'on visait en imposant une amende. Cela fait partie d'un ensemble de mesures. L'amende en remplacement de la confiscation est assortie d'une dissuasion très rigoureuse, appréciable, car il s'agit d'une incarcération pour défaut de paiement de l'amende.

L'amendement est rejeté

M. Robinson: Monsieur le président, je propose de retrancher les lignes 27 à 44, à la page 12 du projet de loi C-61. Il s'agit de retrancher le projet de paragraphe (3). Etant donné le rejet de l'amendement au paragraphe précédent, je ne suis pas très optimiste quant au succès de celui-ci, mais je ne le retire pas.

Le président: Avez-vous dit que vous le retiriez?

M. Robinson: Non, monsieur le président. Qui sait, il peut toujours y avoir un revirement de dernière minute.

Le président: J'ai cru que vous aviez dit que vous le retiriez.

M. Robinson: Non, monsieur le président, je pense que mon amendement est tout à fait à propos.

L'amendement est rejeté

Le président: Nous passons maintenant à l'amendement G-8. Monsieur Grisé.

Mr. Grisé: I move that the French version of clause 2 of Bill C-61 be amended by striking out line 39 on page 12 and substituting the following:

b) remise à un tiers;

This is to replace «aliénation à un tiers». The French word is more consistent with the English version of Bill C-61.

L'amendement est adopté

M. Robinson: Je propose de retrancher la ligne 8.

Le président: Monsieur Robinson, je viens de recevoir une note. Les amendements N-24 à N-29 que vous

[*Texte*]

are consequential amendments. Therefore, N-24 if negatived will dispose of N-25 to N-29.

Mr. Robinson: That is not accurate, Mr. Chairman. They are entirely separate. They have the same objective but certainly one does not dispose of the other.

The Chairman: I think perhaps you might be right in formal . . . if there is not—

Mr. Robinson: You have been formal and procedural in every other respect, Mr. Chairman. You are getting bad information on this one.

The Chairman: If they are not consequential amendments, we will have to deal with them as they are.

Mr. Robinson: They are not.

The Chairman: All right. We will start with N-24.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out line 11 on page 13 and substituting the following therefor:

(ii) not exceeding twelve months, where

Mr. Chairman, the purpose of this amendment is to eliminate the mandatory term of imprisonment which is attached to the offences set out in proposed subsection (4). Members of the committee will recall that we did in fact receive substantial evidence with respect to this particular point, not only from the Canadian Bar Association but from others. The bar pointed out that there was absolutely no discretion left with respect to a jail term where the property owner cannot pay the fine required. This goes directly against the recommendations of the Canadian Sentencing Commission, which has called for the abolition of minimum sentences, and as well, Mr. Chairman, there is no element whatsoever of judicial discretion, as I indicated.

• 1625

The purpose of the amendment is to set out a maximum term of imprisonment not exceeding 12 months, but to eliminate the mandatory minimum of six months. The other amendments, Mr. Chairman, in this sequence have a similar objective, and that is to eliminate the mandatory minimum term of imprisonment. This will undoubtedly lead to further crowding of our prison system. I do not know to what extent we are talking in terms of numbers, but as I say, the notion of mandatory minimum jail terms, particularly in this new area of fines instead of forfeiture, I find Draconian and excessive, and certainly that was the submission of the Canadian Bar Association as well.

I did have an opportunity to examine the Canadian Sentencing Commission's recommendations. Certainly, this goes against those recommendations, and I would hope, Mr. Chairman, that we would leave the discretion

[*Traduction*]

proposez sont des amendements corrélatifs. Par conséquent, puisque l'amendement N-24 a été rejeté, la mise aux voix des autres est sans objet.

M. Robinson: Monsieur le président, pas du tout. Il s'agit d'amendements tout à fait distincts. L'objectif est sans doute le même, mais le rejet de l'un ne rend pas les autres sans objet.

Le président: Vous avez probablement raison de façon . . . s'il n'y avait pas.

M. Robinson: Vous avez été impeccable du point de vue de la logique et de la procédure à tous les égards, monsieur le président. On vous a mal renseigné dans ce cas-ci.

Le président: Si ces amendements ne sont pas corrélatifs, nous devrons donc les mettre aux voix.

M. Robinson: Soyez assuré de cela.

Le président: Très bien. Commençons par l'amendement N-24.

M. Robinson: Monsieur le président, je propose de retrancher la ligne 8, à la page 13 du projet de loi C-61, et de la remplacer par ce qui suit.

(ii) maximale d'un an, si l'amende

Monsieur le président, cet amendement vise à supprimer l'imposition d'une peine pour les infractions prévues au projet de paragraphe (4). Les membres du Comité se souviendront que beaucoup de témoins ont soulevé cette question, notamment les représentants de l'Association du barreau canadien. Le Barreau a signalé que le tribunal n'avait désormais plus aucune latitude en ce qui a trait aux peines d'emprisonnement imposées en cas d'impossibilité de verser l'amende. Cela va directement à l'encontre des recommandations de la Commission canadienne de la détermination de la peine, qui réclame l'abolition des peines minimales, et d'autre part, monsieur le président, on retire ici toute latitude.

Le but de mon amendement est d'établir une peine maximale de 12 mois, tout en supprimant la peine minimale de six mois. Monsieur le président, les amendements qui suivent visent plus ou moins le même objectif, c'est-à-dire de supprimer les peines minimales d'incarcération. A défaut de cela, les prisons seront encore plus pléthoriques. Je ne sais pas de combien de détenus il s'agit, mais cette notion de peine d'emprisonnement minimale, surtout quand nous prenons des mesures prévoyant des amendes plutôt que la confiscation, est draconienne et excessive, et c'est certainement l'opinion de l'Association du barreau canadien également.

J'ai pris connaissance des recommandations de la Commission canadienne de la détermination de la peine. Assurément, cette disposition va à l'encontre de ces recommandations, et j'ose croire, monsieur le président,

[Text]

to the judiciary. That is what I have done in the wording of the amendment. It is still the same maximum, but we would not impose a mandatory minimum term of imprisonment, as is suggested in this clause.

Mr. McIsaac: Mr. Chairman, there is a discretion in relation to the application of the fine in lieu of forfeiture. That has already been referred to at page 12, line 42. It is only when the court has decided, in its discretion, to use the mechanism of the fine in lieu of forfeiture that the set terms in default of unavailable proceeds of crime come into play.

In relation to the comments about the recent Canadian Sentencing Commission report, the report specifically recognizes in special circumstances exemptions. The ones they refer to are in the cases of murder and treason; and it is the opinion of the government in this matter, as I understand it, that enterprise crime is of sufficient magnitude and sufficient concern that substantial teeth must be built into the legislation in order to make it work.

Very recently, in addition to these comments about the report, the Supreme Court of Canada in the Vaillancourt case, which struck down part of the constructive murder provisions, recognized specifically the minimum mandatory penalty that is available under section 83 of the Criminal Code in relation to the use of firearms in the commission of listed offences, such as robbery and so forth, as an item that would sufficiently deter their use. That was looked upon in the Supreme Court as a beneficial thing in the administration of criminal justice in Canada.

Last, the United Kingdom, in the development of their Drug Trafficking Offences Act, 1986, has adopted a similar provision in relation to the mechanisms used to enforce what they term their confiscation orders. It is a very similar type of situation that they have used, and as I read their legislation, it also has minimum offences. I have a copy of it here, and section 6 of their statute starts off that "an amount exceeding £10,000, but not exceeding £20,000, 12 months is applicable".

Now, there is just no room for manoeuvering in that case. It is 12 months; it is not one day less or one day more. In the Canadian approach, in this bill, there is room for manoeuvering in relation to the trial judge's being able, because he is given some manoeuvering in relation to this position, to tailor the time, in lieu of proceeds not being available, to specifically relate to the dollar amount that is unavailable.

Those are my comments, Mr. Chairman.

The Chairman: Thank you, Mr. McIsaac.

• 1630

Mr. Robinson: Surely the suggestion that we treat these offences in the same manner in which we treat murder and treason is rather extraordinary logic, particularly

[Translation]

que nous saurons laisser au pouvoir judiciaire toute la latitude souhaitable. Voilà pourquoi je propose ce libellé. La peine maximale demeure la même, sans imposer de peine minimale, tel que prévu actuellement.

M. McIsaac: Le tribunal a une certaine latitude et peut choisir d'imposer une amende en remplacement de la confiscation. Déjà on en parle à la page 12, ligne 27. C'est seulement quand le tribunal a décidé, avec la latitude dont il dispose, d'avoir recours à l'amende qu'intervient, pour défaut de paiement, la peine d'emprisonnement, quand les produits de la criminalité ne peuvent pas être confisqués.

Vous avez fait allusion au récent rapport de la Commission canadienne de la détermination de la peine, qui reconnaît précisément des exemptions dans certaines conditions. On a prévu le cas de meurtre ou de trahison, et si je ne m'abuse, le gouvernement est d'avis à cet égard qu'une infraction de criminalité organisée est de taille et assez appréciable pour donner à la loi la poigne nécessaire qui permettra de lutter contre elle.

Tout récemment, la Cour suprême du Canada, dans l'affaire Vaillancourt, qui a rejeté une partie des dispositions concernant le meurtre prémédité, a reconnu que la peine obligatoire minimale, que l'on peut imposer en vertu de l'article 83 du Code criminel pour l'usage d'armes à feu lors de vols notamment, constituait une dissuasion appropriée. La Cour suprême a décrété qu'il s'agissait d'un outil utile pour l'administration de la justice pénale au Canada.

J'ajouterai qu'au Royaume-Uni, en 1986, quand on a adopté la Loi sur les infractions en matière de trafic de drogue, on a prévu des dispositions semblables, où figurent les mécanismes permettant d'appliquer les ordonnances de confiscation. D'après mon interprétation de la loi britannique, dans une situation tout à fait analogue, des peines minimales sont prévues. J'en ai un exemplaire ici, et à l'article 6, il est prévu «une somme de plus de 10,000£, mais ne dépassant pas 20,000£, 12 mois sont imposés».

Dans le cas qui nous occupe, il n'y a pas une grande marge de manoeuvre. Il s'agit de 12 mois, pas un jour de plus, pas un jour de moins. Au Canada, dans ce projet de loi, il y a une marge de manoeuvre, car le juge de première instance peut adapter la durée de la peine imposée quand les produits de la criminalité ne sont pas accessibles, et c'est dès lors lié à la somme réclamée.

Monsieur le président, voilà ce que j'avais à dire.

Le président: Merci, monsieur McIsaac.

M. Robinson: Traiter ce genre d'infraction de la même façon que l'on traite le meurtre ou la trahison me paraît un peu tiré par les cheveux, surtout quand il s'agit

[*Texte*]

hearing in mind that one of the offences in question is keeping a common bawdy house. That is the reality, Mr. Chairman, and I find it not only incredible but offensive that a spokesperson for the government would suggest that this offence—and indeed some of the other ones, like bookkeeping—would be in the same league as murder and treason, and that in fact these mandatory minimum terms of imprisonment should be applied following that logic. That is rather an extraordinary suggestion, Mr. Chairman.

I would like to ask how this fine will in fact be determined. There is a reference here to the value of the property, part or interest. Are there going to be hearings then before the courts and evidence led on that particular question as well, particularly in the case of property that has been transferred outside Canada or to a third party? How will the value be determined?

Mr. McIsaac: The value will be determined in the age-old fashion of the Crown having the burden in these circumstances of satisfying that the item of property had that value on that date, and from that the court, if it is satisfied, will determine a dollar value. Most of these courts also have civil jurisdiction, so they are used to the problems in the civil area of valuating property. This is not anything that is going to be extremely new for most of the courts.

Mr. Robinson: The implications of this valuation are pretty serious, Mr. Chairman, because they involve a fine, and we are dealing in some cases with property that has disappeared. The purpose of the amendment is, as I say, to give judges the kind of discretion they already have but to recognize the force of the submissions that were made to the committee, noting for example that the bill takes no account whatsoever of ability to pay. This is an incredible provision.

The process that has been suggested here is that the value of the property will be determined. Once the value of the property has been determined, then there has to be a fine with a term of imprisonment on default, and it does not matter what the income or the ability of the individual is to pay. Surely to God, that kind of fettering of judicial discretion is not necessary in this area.

Mr. Mosley: Mr. Chairman, there is no obligation on the court to impose a fine in lieu of forfeiture in these circumstances. That is why the court is vested with the discretion to consider the circumstances of the offender, including the offender's ability to pay. Where the court deems it inappropriate to impose a fine, the court has the power to reject the Crown's application for such a fine in lieu of the forfeiture order.

Mr. Robinson: Mr. Mosley is putting enormous significance on the word "may" in this section. The fact of the matter is that once the court has determined there should be a fine, then effectively the hands of the court are tied. The next step is to determine what the value of the property is. Once the value of the property has been

[*Traduction*]

d'infractions comme la tenue d'une maison de débauche. Monsieur le président, je trouve cela non seulement incroyable, mais inconvenant que le porte-parole du gouvernement prétende que ce genre d'infraction—et certaines autres, comme le *bookmaking*—pourrait être comparée au meurtre ou à la trahison. C'est en vertu de cette logique qu'il prétend que l'on doit imposer des peines minimales. Je trouve ça tout à fait renversant.

Je voudrais savoir comment on va établir l'amende. On a parlé ici de la valeur d'un bien, d'une partie d'un bien ou d'un droit sur celui-ci. Y aura-t-il des audiences devant les tribunaux et des preuves recueillies à cet égard, surtout dans le cas d'un bien qui aurait été envoyé à l'extérieur du Canada ou aliéné à un tiers? Comment va-t-on en déterminer la valeur?

M. McIsaac: La valeur va en être déterminée suivant les méthodes dont s'est servi la Couronne, qui doit prouver quelle est la véritable valeur d'un bien à un moment précis, et c'est sur cela que se fondera le tribunal pour en déterminer la valeur marchande. La plupart de ces tribunaux sont également de juridiction civile, si bien qu'ils ont l'habitude de faire l'évaluation des biens. Pour la plupart des tribunaux, il ne s'agira pas de quelque chose de nouveau.

M. Robinson: Les conséquences de l'évaluation d'un bien sont très lourdes, car il y a possibilité d'une amende, et dans bien des cas, les biens ont disparu. Le but de cet amendement, je l'ai dit, est de donner au juge toute la latitude dont il dispose actuellement, mais en même temps de reconnaître le bien-fondé des arguments présentés devant le Comité, car le projet de loi ne tient absolument pas compte de l'éventualité de l'impossibilité de payer. C'est une disposition renversante.

On propose que la valeur du bien soit déterminée. Une fois cette valeur déterminée, on imposera une amende, et à défaut de paiement, l'incarcération, sans tenir compte des revenus ou des moyens du contrevenant. Assurément, une latitude aussi contraignante n'est pas nécessaire.

M. Mosley: Monsieur le président, le tribunal n'est absolument pas forcé d'imposer une amende en remplacement de la confiscation dans ces conditions-là. Voilà pourquoi il jouit de la latitude d'étudier les conditions du contrevenant, y compris ses possibilités de paiement. Si le tribunal juge qu'il ne convient pas d'imposer une amende, il a le pouvoir de rejeter la demande de la Couronne à cet effet.

M. Robinson: M. Mosley donne beaucoup d'importance au terme «peut». Le fait est que lorsque le tribunal aura déterminé qu'une amende s'impose, il aura les mains liées. Il devra déterminer ensuite la valeur des biens. Une fois cela fait, le tribunal devra imposer une amende qui corresponde à cette valeur, et si le

[*Text*]

determined, then the court has to order a fine in that amount, and what flows from an inability to pay that fine is a mandatory term of imprisonment.

The Chairman: But that is the argument. The reference by the government is back to lines 40 to 45 of the preceding clause and the imposition of a mandatory minimum fine, if a fine is imposed.

Amendment negatived.

The Chairman: Again, Mr. Robinson, would the argument not be the same with respect to proposed amendments N-25 to N-29 inclusive?

Mr. Robinson: Mr. Chairman, I intend to put each of the amendments. The argument is the same, but they are distinct amendments. I move that Bill C-61 be amended by striking out lines 16 and 17 on page 13 and substituting the following therefor:

(iii) not exceeding eighteen months

Amendment negatived.

• 1635

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 21 and 22 on page 13 and substituting the following therefor:

(iv) not exceeding two years, where

The Chairman: Any comment? All those in favour of the amendment?

Amendment negatived.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 26 and 27 on page 13 and substituting the following therefor:

(v) not exceeding three years, where the

The Chairman: Any comment? Then I will put the question. All those in favour of the motion?

Amendment negatived.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 32 and 33 on page 13 and substituting the following therefor:

(vi) not exceeding five years, where the

The Chairman: Any comment? All those in favour of the amendment as proposed?

Amendment negatived.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 37 and 38 on page 13 and substituting the following therefor:

(vii) not exceeding ten years, where the

The Chairman: Would there be any comment?

Mr. Robinson: Mr. Chairman, just to note, we are talking here about a mandatory term of imprisonment of not less that five years and not exceeding ten years. The series of amendments that have been rejected here and the

[*Translation*]

contrevenant est dans l'impossibilité de la verser, ce sera l'incarcération.

Le président: Voilà donc la discussion. On trouve plus haut l'argument du gouvernement quant à l'imposition d'une amende obligatoire minimale, le cas échéant.

L'amendement est rejeté.

Le président: Monsieur Robinson, est-ce que votre argumentation ne serait pas la même dans le cas des amendements N-25 à N-29?

M. Robinson: Monsieur le président, j'ai l'intention de proposer chacun des amendements. Les arguments sont les mêmes, mais il s'agit d'amendements distincts. Je propose de retrancher la ligne 12, à la page 13 du projet de loi C-61, et de la remplacer par ce qui suit:

(iii) maximale de dix-huit mois, si

L'amendement est rejeté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié par substitution, à la ligne 16, page 13, de ce qui suit:

(iv) maximale de deux ans, si

Le président: Des commentaires? Ceux qui sont pour l'amendement?

L'amendement est rejeté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié par substitution, à la ligne 20, page 13, de ce qui suit:

(v) maximale de trois ans, si

Le président: Des commentaires? Je vais donc mettre la motion aux voix. Ceux qui sont en faveur?

L'amendement est rejeté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié par substitution, à la ligne 24, page 13, de ce qui suit:

(vi) maximale de cinq ans, si

Le président: Des commentaires? Ceux qui sont en faveur de l'amendement?

L'amendement est rejeté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié par substitution, à la ligne 28, page 13, de ce qui suit:

(vii) maximale de dix ans, si

Le président: Y a-t-il des commentaires?

M. Robinson: Je signalerai seulement, monsieur le président, qu'il s'agit ici d'une peine d'emprisonnement obligatoire minimale de cinq ans et maximale de dix ans. En rejetant la série d'amendements que je viens de

[*Texte*]

proposed wording as unamended represents a very serious step backward in criminal justice in this country

The Chairman: All those in favour of the proposed amendment?

Amendment negatived.

The Chairman: That brings me to G-9.

Mr. Grisé: I move that the English version of clause 2 of Bill C-61 be amended by striking out line 44 on page 13 and substituting the following:

> other term of imprisonment imposed on the offender

It is to be consistent with the other.

The Chairman: Any further comment? All those in favour of the proposed amendment?

Amendment agreed to.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 46 to 48 on page 13.

Mr. Chairman, this would delete proposed subsection (5), which states that section 646.1 does not apply to an offender against whom a fine is imposed. Section 646.1, Mr. Chairman, is the section that allows for fine option programs. I would hope, Mr. Chairman, that the committee would recognize that this discretion should surely be left in the circumstances, particularly in the case of an offender who does not have resources or who does not have the funds in question. The option of a program established by the province—and these are set up by agreement between the federal government and the provincial government in section 646.1—should nevertheless remain. The only purpose of the amendment, Mr. Chairman, is to maintain that discretion there, and I do not understand why even that is being removed from the province.

Mr. Mosley: Mr. Chairman, the fine option programs in place across this country and the amendment that was made to the Criminal Code to facilitate those programs a few years ago were intended to deal with the many cases of individuals who, for want of the means to pay perhaps even a very modest fine, are serving sentences of incarceration in our jails—levels that can reach as high as 30% or 40% in some of the provinces.

Those programs are designed to permit those individuals to work off the fines in community service programs. They are not designed for the type of enterprise criminal or drug offender this bill is aimed at.

The amendment would in effect be inconsistent with the effect of proposed subsection (4), which is meant to send a very strong message that if the property is dissipated or removed from the jurisdiction, the offender can expect a fine and, in default of payment of the fine, incarceration. The message is that this law is going to strip the offender of the profits obtained by crime; it is not that

[*Traduction*]

proposer et en retenant le libellé actuel, on fait faire un grand pas en arrière à la justice pénale canadienne.

Le président: Ceux qui sont en faveur de l'amendement proposé?

L'amendement est rejeté.

Le président: Voilà qui nous amène à l'amendement G-9.

M. Grisé: Je propose que l'article 2 de la version anglaise du projet de loi C-61 soit modifié par substitution, à la ligne 44, page 13, de ce qui suit:

> other term of imprisonment imposed on the offender

C'est pour que cela concorde avec l'autre.

Le président: D'autres interventions? Ceux qui sont en faveur de l'amendement proposé?

L'amendement est adopté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié par suppression des lignes 36 à 39, à la page 13.

Monsieur le président, cela retrancherait le paragraphe (5), aux termes duquel l'article 646.1 ne s'applique pas au contrevenant à qui une peine d'emprisonnement, ou plutôt une amende, est infligée. L'article 646.1 est celui qui autorise un mode facultatif de paiement d'une amende. Le Comité reconnaîtra, monsieur le président, je l'espère, que cette option devrait rester ouverte, surtout dans le cas du contrevenant qui n'a pas les moyens nécessaires. Ces programmes sont établis aux termes d'une entente entre le gouvernement fédéral et le gouvernement provincial en vertu de l'article 646.1(1). Il faudrait que cette option demeure. C'est le seul objet de l'amendement, monsieur le président, et je ne comprends pas pourquoi on voudrait enlever cette option aux provinces.

M. Mosley: Monsieur le président, les programmes autorisant un mode facultatif de paiement d'une amende en vigueur au pays, ainsi que l'amendement apporté au Code criminel il y a quelques années pour en faciliter l'application, visent les nombreux cas où, faute d'avoir les moyens de payer une amende même modeste, des contrevenants doivent purger des peines d'emprisonnement, jusqu'à 30 ou 40 p. 100 dans certaines provinces.

Ces programmes permettent à ces personnes d'effectuer des travaux compensatoires. Ils ne visent pas les auteurs d'infractions de criminalité organisée ou en matière de drogue, qui sont visés par ce projet de loi.

Cet amendement irait à l'encontre du paragraphe (4), dont le but est de faire savoir très clairement que si les biens sont soustraits à la juridiction des autorités, le contrevenant peut s'attendre à se voir infliger une amende et, faute de pouvoir la payer, une peine d'emprisonnement. Le message, c'est que cette loi va enlever au contrevenant les gains obtenus du crime; ce

[*Text*]

the offender would have an opportunity to work off the fine by way of a community service order if that option were left open to him.

• 1640

Mr. Robinson: If you look at the purpose of fine option programs—and I have the Criminal Code in front of me—subsection 646.(1) refers to work performed during the period and it is work that is determined by way of agreement between the government of the province and the Government of Canada. How it could be suggested that this is in any way diminishing the impact of section 4 is beyond me. We are dealing with, in the case of an enterprise criminal or a dangerous drug offender, a person who is either going to do time in prison or, by agreement between the provincial government and the federal government, is going to be doing work of some sort to pay back his debt to society.

Surely it is not unreasonable to suggest that the option should remain and that this is not being soft on organized crime. Whatever the nature of the programs established, they are established by agreement between the province and the federal government, and that discretion to allow the fine to be paid off instead of doing time in prison—and Mr. Nicholson, certainly, and Mr. Grisé are aware of the lack of utility of that particular option. . . are actually performing some work.

I appeal to members of the committee not to remove that option, particularly given that the terms of imprisonment are mandatory.

The Chairman: Clearly, the legislation proposed that the fine option be not available.

Amendment negatived.

The Chairman: G-10.

M. Grisé: Je propose que l'article 2 de la version française du projet de loi C-61 soit modifié par substitution, à la ligne 2, page 14, de ce qui suit:

demander à un juge une ordonnance de confiscation

C'est pour que ce soit conforme au texte anglais.

Amendment agreed to.

Mr. Robinson: I move that Bill C-61 be amended by striking out lines 10 to 12 on page 14 and substituting the following therefor:

judge is satisfied beyond a reasonable doubt that

(a) any property is proceeds of crime,

I am just trying to determine this one here, Mr. Chairman.

Mr. Nicholson: Is there much of a change?

Mr. Mosley: The amendment would apply the reasonable doubt standard to all of paragraphs (a), (b), and (c).

[*Translation*]

n'est pas que le contrevenant pourrait rembourser l'amende au moyen de travaux communautaires si la chance lui en était donnée.

M. Robinson: Si l'on considère l'objet du mode facultatif de paiement d'une amende—j'ai le Code criminel sous les yeux—il est question au paragraphe 646.(1) de travail effectué au cours d'une période, et ce travail est déterminé au moyen d'une entente entre le gouvernement de la province et le gouvernement du Canada. Laisser entendre que cela affaiblit les dispositions de l'article 4 me dépasse. Quand il s'agit de celui qui commet une infraction de criminalité organisée ou une infraction grave en matière de drogue, on a affaire à quelqu'un qui va soit purger une peine d'emprisonnement, soit, aux termes d'une entente entre le gouvernement provincial et le gouvernement fédéral, faire un travail quelconque pour rembourser sa dette à la société.

Il n'est sûrement pas déraisonnable de préconiser que cette option soit conservée; il n'est aucunement question d'indulgence à l'endroit du crime organisé. Qu'importe la nature des programmes, ils sont créés conjointement par la province et le gouvernement fédéral, et la faculté de rembourser l'amende plutôt que d'aller en prison—M. Nicholson et M. Grisé voient très bien l'inutilité de cette option. . . Il y en a qui font effectivement du travail.

J'exhorte les membres du Comité à ne pas faire disparaître cette option, d'autant plus que les peines d'emprisonnement sont obligatoires.

Le président: De toute évidence, l'objet du projet de loi est de ne pas permettre cette option.

L'amendement est rejeté.

Le président: G-10.

Mr. Grisé: I move that the French version of clause 2 of Bill C-61 be amended by striking out line 2 on page 14 and substituting the following:

demander à un juge une ordonnance de confiscation

This is to ensure consistency with the English version.

L'amendement est adopté.

M. Robinson: Je propose que le projet de loi C-61 soit modifié par substitution, aux lignes 11 à 14, page 14, de ce qui suit:

est convaincu, hors de tout doute raisonnable, que les conditions suivantes sont réunies:

a) ces biens constituent des produits de la.

J'essaie de voir ce qui en est, monsieur le président.

M. Nicholson: Est-ce que ça change beaucoup?

M. Mosley: L'amendement appliquerait le critère du doute raisonnable à tous les alinéas: a), b) et c).

[*Texte*]

Mr. Robinson: That is correct. The purpose of it is to apply the reasonable doubt standard to each of the elements contained in proposed subsection 420.18(2). Again that is following on the recommendations of the Canadian Bar Association, which urged that in fact that standard should apply throughout that proposed subsection.

Amendment negatived.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out line 19 on page 14 and substituting the following therefor:

absconded.

That would delete the reference to death in proposed paragraph 420.18(2)(c). In circumstances in which the individual has died, surely that order of forfeiture is inappropriate, and members of the committee will recall the evidence from Allan Gold of the Criminal Lawyers Association on this point.

Mr. Mosley: I am sure the committee members will also recall the evidence of Assistant Commissioner Stamler and particular references that have been made during the proceedings to the Pinto case, which is a prime example of why this provision is necessary. Mr. Pinto, being a Colombian national trafficking in cocaine in the southern United States, deposited his proceeds in a Canadian bank, and then, after being interned or becoming a witness for the American authorities, was subsequently killed by his former associates. The property in question, amounting to hundreds of thousands of dollars in a Montreal bank account, then is, of course, tainted money. There was no question as to its origin. It had been obtained by the trafficking in cocaine.

• 1645

The effort of the amendment would be to remove any mechanism whatsoever by which Canadian authorities could go after those proceeds in circumstances in which the offender has in fact died before the proceedings could be completed. In Mr. Pinto's case it would have meant the $800,000 or so deposited in that Canadian bank account would have, as Assistant Commissioner Stamler put it, become an illegitimate devise or gift to his heirs.

The Chairman: Mr. Robinson, any further comment?

Mr. Robinson: No, other than to note that we are dealing here with forfeiture of property before an individual has been found guilty of the offence in question.

Mr. Mosley: Or in circumstances in which he can never be found guilty, because of his absence or death.

Amendment negatived.

Mr. Nicholson: I would like to move that clause 2 of Bill C-61 be amended by striking out line 34 on page 14 and substituting the following:

[*Traduction*]

M. Robinson: C'est juste. L'objet de l'amendement est d'appliquer le critère du doute raisonnable à tous les éléments du paragraphe 420.18(2). Cela aussi fait suite aux recommandations de l'Association du barreau canadien, qui, en fait, a demandé que ce critère s'applique à l'ensemble du paragraphe.

L'amendement est rejeté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié par substitution, à la ligne 21, page 14, de ce qui suit:

visée à l'alinéa b) s'est

Cela ferait disparaître la référence au décès qui se retrouve à l'alinéa 420.18(2)c). Si la personne est morte, une ordonnance de confiscation n'a sûrement pas sa raison d'être, et les membres du Comité se souviendront sûrement du témoignage d'Allan Gold, de la Criminal Lawyers Association, sur cette question.

M. Mosley: Les membres du Comité se souviendront aussi, j'en suis sûr, du témoignage du sous-commissaire Stamler et des renseignements donnés au sujet de l'affaire Pinto, qui montrent très bien pourquoi cette disposition est nécessaire. M. Pinto, ressortissant colombien impliqué dans le trafic de la cocaïne dans le Sud des États-Unis, avait déposé ses gains dans une banque canadienne, puis, après avoir été placé en détention ou avoir accepté de témoigner pour aider les autorités américaines, a été tué par ses anciens complices. Il va sans dire que ces centaines de milliers de dollars placés dans un compte bancaire montréalais sont de l'argent mal acquis. Son origine ne fait pas de doute. Il vient du trafic de la cocaïne.

Cet amendement empêcherait les autorités canadiennes de chercher à récupérer cet argent lorsque le contrevenant est mort avant que les démarches n'aient pu être menées à terme. Dans le cas de M. Pinto, cela signifierait que les quelque 800,000$ déposés dans un compte bancaire canadien seraient devenus, pour reprendre les termes du sous-commissaire Stamler, un legs illégal pour ses héritiers.

Le président: Monsieur Robinson, d'autres commentaires?

M. Robinson: Non, sauf pour signaler qu'il est question ici de confiscation de biens avant que le prévenu n'ait été trouvé coupable.

M. Mosley: Ou dans le cas où il est impossible de conclure à sa culpabilité parce qu'il s'est enfui ou parce qu'il est mort.

L'amendement est rejeté.

M. Nicholson: Je voudrais proposer que l'article 2 du projet de loi C-61 soit modifié par substitution, à la ligne 39, page 14, de ce qui suit:

[*Text*]

(c) reasonable attempts to arrest the

This comes within the clause defining what it means to have a person abscond. I am not particularly happy with the present wording under proposed paragraph 420.18(3)(c), which speaks of "reasonable attempts to locate". It would seem to me there are some countries, some areas of the world, where we could indeed locate the person but could not arrest him, although I think everyone would conclude he has very definitely absconded. There are countries, I am sure the committee members know, with which we do not have an extradition treaty. So what is important is that the reasonable attempt to arrest the individual has been made, even where that may not be possible because of our relationship with various countries.

Mr. Grisé: Mr. Nicholson makes a very valid point, Mr. Chairman. I am ready to accept the motion.

Mr. Nicholson: That is very generous of you, I am sure, Mr. Grisé.

Amendment agreed to.

Mr. Robinson: I move that Bill C-61 be amended by striking out lines 24 to 41 on page 14.

This would eliminate the reference to absconding, as was proposed by the Canadian Bar Association in its submission to the committee, for the reasons they have set out.

Amendment negatived.

Mr. Robinson: I move that Bill C-61 be amended by striking out lines 7 to 10 on page 15 and substituting the following therefor:

that offence and the court is satisfied beyond a reasonable doubt that the income of that person from sources unrelated to enterprise crime offences or designated drug offences by that person cannot reasonably account for such an increase in value.

The purpose of this amendment is to narrow the ambit of that proposed section to proceeds that relate to ECOs or DDOs. As the proposed section is now worded, it is any form of criminal conduct, possibly not even enterprise crime or drug offences. Surely what we should be focusing on, and what the bill purports to focus on, is ECOs or DDOs, and that should be the income that is of concern.

• 1650

Mr. Nicholson: In the definition section—

Mr. Robinson: I do not believe it does. I checked that.

Mr. Grisé: "Beyond a reasonable doubt" is what you are adding. Is that—

Mr. Nicholson: As well he is defining what—

[*Translation*]

sens il a été impossible d'arrêter

Cela se retrouve dans l'article où l'on définit ce que l'on entend par s'esquiver. Je n'aime pas particulièrement le libellé actuel de l'alinéa 420.18(3)c), qui parle «d'efforts raisonnables pour retrouver». Il y a certains pays, je pense, certaines parties du monde, où l'on pourrait effectivement retrouver la personne, mais être dans l'impossibilité de l'arrêter même s'il a été établi que la personne s'était esquivée. Les membres du Comité savent bien que le Canada n'a pas de traité d'extradition avec certains pays. Ce qui compte, c'est que l'on ait fait des efforts raisonnables pour arrêter cette personne, même si cela n'est pas possible en raison de nos relations avec certains pays.

M. Grisé: L'argument de M. Nicholson se défend très bien, monsieur le président. Je suis prêt à accepter la motion.

M. Nicholson: Voilà qui est très généreux de votre part, monsieur Grisé.

L'amendement est adopté.

M. Robinson: Je propose que le projet de loi C-61 soit modifié par suppression des lignes 27 à 44, à la page 14.

Cela ferait disparaître toute allusion à la personne qui s'esquive, comme l'a proposé l'Association du barreau canadien pour les motifs qu'elle a exposés devant le Comité.

L'amendement est rejeté.

M. Robinson: Je propose que le projet de loi C-61 soit modifié par suppression des lignes 6 à 8, page 15, et substitution de ce qui suit:

avant cette perpétration, et que le tribunal est convaincu hors de tout doute raisonnable que son revenu de sources non reliées à des infractions de criminalité organisée ou à des infractions graves en matière de drogue ne peut raisonnablement justifier cette augmentation de valeur.

L'objet de l'amendement est de restreindre la portée de cet article pour qu'il ne s'applique qu'aux produits des ICO ou des IGD. Aux termes du libellé actuel, l'article vise toute forme d'acte criminel, et peut-être pas nécessairement les infractions de criminalité organisée ou les infractions en matière de drogue. C'est là qu'il faut faire porter le projet de loi, comme c'est censé être son objectif, et ce sont les revenus qui devraient nous intéresser.

M. Nicholson: Dans les définitions...

M. Robinson: Je ne pense pas. J'ai vérifié.

M. Grisé: «Hors de tout doute raisonnable», c'est ce que vous ajoutez. Est-ce que...

M. Nicholson: Vous définissez aussi...

[*Texte*]

Mr. Robinson: I am just defining that income. In fact, you are quite right, it does have two elements to it. It would add the reasonable doubt test as well as the ECO or DDO. I am prepared, Mr. Chairman, if there is a recognition of that latter element of referring to income from ECOs or DDOs, to remove the reasonable doubt provision. The main concern, Mr. Chairman, is an increase in income from those offences and not from any form of criminal conduct whatsoever.

The Chairman: The government side is having a little conference. Mr. Grisé, have you come to an agreement?

Mr. Grisé: It would be acceptable if Mr. Robinson would accept withdrawing the words "beyond a reasonable doubt". That would be acceptable to the government side.

Mr. Robinson: I am prepared to withdraw those words. So the amendment would then read:

> of that offence and the court is satisfied that the income of that person

and so on.

Mr. Mosley: I wonder if this could be stood down, Mr. Chairman, to have an opportunity to see how this would read.

Mr. Robinson: It would read, Mr. Chairman:

> the court may infer that property was obtained or derived as a result of the commission of an enterprise crime offence where evidence establishes that the value, after the commission of that offence, of all the property of the person alleged to have committed the offence exceeds the value of all the property of that person before the commission of that offence and the court is satisfied that the income of that person from sources unrelated to enterprise crime offences or designated drug offences by that person cannot reasonably account for such an increase in value.

Mr. Nicholson: My understanding is you are simply giving a definition of criminal conduct.

Mr. Robinson: That is right. We are saying it would be confined to—

Mr. Nicholson: Limiting that criminal conduct to the definition we already have in the bill.

Mr. Robinson: Yes.

Mr. Grisé: Mr. Chairman, if Mr. Robinson agrees, we accept his motion as amended, but we will check with the officials regarding the technical wording.

Mr. Robinson: That is fine, Mr. Chairman.

Ms M. Hébert (Committee Researcher): The point I want to raise, Mr. Chairman, is that at the end of the bill, under amendments to the Narcotic Control Act and the Food and Drugs Act, there is that roll-over provision that was mentioned earlier on, and therefore it would not be

[*Traduction*]

M. Robinson: Je définis seulement le revenu. Quinque... vous avez raison, il y a deux parties. Cela ajouterait le critère du doute raisonnable ainsi que les ICO et les IGD. Si l'on veut accepter la référence au revenu tiré de ces infractions, je suis prêt à faire disparaître le critère du doute raisonnable. Ce qui m'intéresse le plus, monsieur le président, c'est de montrer que l'augmentation du revenu est attribuable à ces infractions et non pas à n'importe quel autre acte criminel.

Le président: Les ministériels sont en train de discuter. Monsieur Grisé, vous êtes-vous entendus?

M. Grisé: L'amendement serait acceptable si M. Robinson voulait supprimer les mots «hors de tout doute raisonnable». La partie ministérielle serait d'accord.

M. Robinson: Je suis disposé à retrancher ces mots. L'amendement se lirait donc ainsi:

> avant cette perpétration, et que le tribunal est convaincu que son revenu

et ainsi de suite.

M. Mosley: Est-ce que l'amendement pourrait être réservé, monsieur le président, pour que nous puissions voir comment il se présente.

M. Robinson: Il se présenterait ainsi, monsieur le président:

> le tribunal peut déduire que des biens ont été obtenus ou proviennent de la perpétration d'une infraction de criminalité organisée lorsque la preuve démontre que la valeur du patrimoine de la personne accusée de cette infraction après la perpétration de l'infraction dépasse la valeur de son patrimoine avant cette perpétration, et que le tribunal est convaincu que son revenu de sources non reliées à des infractions de criminalité organisée ou à des infractions graves en matière de drogue ne peut raisonnablement justifier cette augmentation de valeur.

M. Nicholson: Si j'ai bien compris, vous ne faites que donner une définition d'acte criminel.

M. Robinson: Précisément. Il serait limité à...

M. Nicholson: Cela revient à limiter l'acte criminel à la définition que l'on retrouve déjà dans le projet de loi.

M. Robinson: Oui.

M. Grisé: Monsieur le président, si M. Robinson le veut bien, nous allons accepter sa motion telle que modifiée, mais nous allons vérifier le libellé auprès des juristes.

M. Robinson: C'est très bien, monsieur le président.

Mme M. Hébert (documentaliste du Comité): Ce que je veux signaler, monsieur le président, c'est qu'à la fin du projet de loi, dans les amendements à la Loi sur les stupéfiants et la Loi des aliments et drogues, il est question de la disposition de transfert dont on a parlé tout à

[*Text*]

necessary under Mr. Robinson's amendment to include designated drug offence, because I think it would automatically be included.

• 1655

Mr. Robinson: Yes, that is quite right. So it should just refer to enterprise crime offences. But certainly the final wording can be agreed upon.

The Chairman: The Chair and the officials want to be sure they have the amendment drafted in the form that is intended and desirable.

Mr. Robinson: Yes, that is fine with me.

Mr. Grisé: Can we stand it and we will bring the new wording tomorrow?

Mr. Robinson: That is fine, Mr. Chairman.

Amendment allowed to stand.

Mr. Robinson: I would like to thank Ms Hébert for assisting us on this.

The Chairman: Mr. Grisé, G-11.

M. Grisé: Monsieur le président, il est proposé que l'article 2, de la version française du projet de loi soit modifié par substitution, à la ligne 16, page 15, de ce qui suit:

le tribunal peut «écarter» toute cession de ce

On change «exiger» pour «ecarter». Ce n'est qu'un mot, mais il est très différent.

M. Robinson: D'accord.

M. Grisé: C'est pour être en conformité, encore une fois, avec le texte anglais.

The Chairman: Have you heard the comment? Are we agreed?

M. Nicholson: D'accord.

Amendment agreed to.

The Chairman: G-12.

M. Grisé: Monsieur le président, il est proposé que l'article 2 de la version française du projet de loi C-61 soit modifié par substitution, à la ligne 25, page 15, de ce qui suit.

nal doit exiger qu'un avis soit donné à

Au lieu de «peut exiger».

M. Robinson: D'accord.

M. Grisé: C'est encore pour être en conformité avec le texte anglais.

Amendment agreed to.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out line 31 on page 15 and substituting the following therefor:

tion (2) to be given to and shall hear any

[*Translation*]

l'heure. Il ne serait donc pas nécessaire que l'amendement de M. Robinson fasse allusion aux infractions graves en matière de drogue; ce serait compris d'office.

M. Robinson: Oui, c'est tout à fait vrai. Il ne devrait donc y être question que d'infractions de criminalité organisée. Mais on peut certes s'entendre sur le libellé final.

Le président: Le président et les fonctionnaires veulent s'assurer que le libellé de l'amendement sera exact et conforme.

M. Robinson: Oui, cela me va.

M. Grisé: Peut-on réserver tout cela pour proposer le nouveau libellé demain?

M. Robinson: C'est parfait, monsieur le président.

L'amendement est réservé.

M. Robinson: Je tiens à remercier M^me^ Hébert pour son aide à ce propos.

Le président: Monsieur Grisé, G-11.

Mr. Grisé: Mr. Chairman, I move that the French version of clause 2 of Bill C-61 be amended by striking out line 16 on page 15 and substituting the following:

le tribunal peut «écarter» toute cession de ce

We are replacing "exiger" by "écarter". It is only one word, but the meaning is quite different.

Mr. Robinson: Fine.

Mr. Grisé: Once more, it is to conform to the English text.

Le président: Des observations? Sommes-nous d'accord?

Mr. Nicholson: Agreed.

L'amendement est adopté.

Le président: G-12.

Mr. Grisé: Mr. Chairman, I move that the French version of clause 2 of Bill C-61 be amended by striking out line 25 on page 15 and substituting the following:

nal doit exiger qu'un avis soit donné à

Instead of "peut exiger"

Mr. Robinson: Agreed.

Mr. Grisé: Once more, to conform to the English text.

L'amendement est adopté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié en retranchant les lignes 27 et 28, à la page 15, et en les remplaçant par ce qui suit:

bient avoir un droit sur le bien et il entend ces personnes.

[*Texte*]

As now worded, it states "may hear" and this would require the court to hear an individual who in fact wishes to be heard.

The Chairman: Mr. Grisé and Mr. Mosley?

Mr. Mosley: This imposes a burden on the court if I could situate in the context of a case in which the court recognizes a number of interests, some of which—

Mr. Robinson: I think, Mr. Chairman, I can cut Mr. Mosley short. I think in reading the amendment I recognize the potential implications of it and I would withdraw the amendment with consent. I think some implications were not intended.

Amendment withdrawn.

The Chairman: G-13.

M. Grisé: Oui, monsieur le président.

Il est proposé que l'article 2 de la version française du projet de loi C-61 soit modifié par:

a) substitution, à la ligne 3, page 16, de ce qui suit:

partie à une personne—autre que celle qui

b) substitution aux lignes 12 et 13, à la page 16, de ce qui suit:

d'éviter la confiscation des biens—à la condition d'être convaincu que cette personne en est le propriétaire légitime ou

Encore une fois, c'est pour être en conformité avec le texte anglais, monsieur le président.

M. Robinson: D'accord.

Amendment agreed to.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 15 and 16 on page 16 and substituting the following therefor:

420.18(2) unless the court is satisfied beyond a reasonable doubt of complicity by that person in an offence

I have already made the argument on this, Mr. Chairman. This deals with the question of "appears innocent" and the same arguments apply here as applied, I suspect, with the same lack of success.

The Chairman: Ready for the question? Did you withdraw it?

Mr. Robinson: No, Mr. Chairman.

Amendment negatived.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 25 to 37 on page 16 and substituting the following therefor:

[*Traduction*]

Le libellé actuel est «peut aussi les entendre». De cette façon, le tribunal serait tenu d'entendre une personne qui désire être entendue.

Le président: Messieurs Grisé et Mosley?

M. Mosley: Voilà qui impose un fardeau au tribunal, si vous me permettez de situer la chose dans le contexte d'un cas où le tribunal reconnaît qu'il y a un certain nombre d'intérêts en jeu dont certains. . .

M. Robinson: Monsieur le président, je crois que je puis me permettre de couper là l'intervention de M. Mosley. Relisant cet amendement, j'en reconnais les conséquences éventuelles et je suis prêt à retirer mon amendement avec l'assentiment du Comité. L'erreur n'était pas intentionnelle.

L'amendement est retiré.

Le président: G-13.

Mr. Grisé: Yes, Mr. Chairman.

I move that the French version of clause 2 of Bill C-61 be amended:

a) by striking out line 3 on page 16 and substituting the following:

partie à une personne—auire que celle qui

b) by striking out lines 12 and 13 on page 16 and substituting the following:

d'éviter la confiscation des biens—à la condition d'être convaincu que cette personne en est le propriétaire légitime ou

Once more, this is to conform with the English text, Mr. Chairman.

Mr. Robinson: Agreed.

L'amendement est adopté.

M. Robinson: Monsieur le président, je propose que soit modifié le projet de loi C-61 en retranchant les lignes 14 et 18, à la page 16, et en les remplaçant par ce qui suit:

420.18(2) . . . a droit à leur possession légitime, sauf s'il est convaincu hors de tout doute raisonnable de la complicité ou de la collusion de cette personne à l'égard de l'infraction.

J'ai déjà présenté mes arguments à ce propos, monsieur le président. Il s'agit de toute cette question de savoir si la personne «semble innocente» et les mêmes arguments s'appliquent maintenant comme tout à l'heure et avec tout autant d'insuccès, je présume.

Le président: Prêts à voter? Vous l'avez retiré?

M. Robinson: Non, monsieur le président.

L'amendement est rejeté.

M. Robinson: Monsieur le président, je propose que soit modifié le projet de loi C-61 en retranchant les lignes 23 à 32, à la page 16, et en les remplaçant par ce qui suit:

[*Text*]

420.22(1)(a) a person who was charged with an enterprise crime offence or a designated drug offence that was committed in relation to the property forfeited

• 1700

That removes the reference there, Mr. Chairman, to proposed paragraph (b), to the circumstances in question. I think again, as was suggested by Mr. Gold in his evidence to the committee, (b) extends this particular power just too far.

Mr. McIsaac: Just last week the Supreme Court of Canada had occasion, in the case involving an examination of the house-breaking tool section of the Criminal Code, section 309, to examine the words "reasonable inference" and in those circumstances, applying the very recent judgment of the court, it would appear to be that in no circumstances would the Crown have the onus of establishing, on a balance of probabilities, that the title or right was transferred to that individual for the purpose of defeating the forfeiture provisions of the statute. So in those circumstances, I submit that again when that individual is not standing in the shoes of an accused person, but again is acting like a third party who does not stand to be convicted, it is appropriate to cast upon the Crown, in those circumstances, the lower standard of proof. But it appears that the Supreme Court has approved that type of wording.

The Chairman: Thank you, Mr. McIsaac. Any further comment? The question is on the amendment as contained in N-37.

Amendment negatived.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 7 on page 17 and substituting the following:

(b) unless the court is satisfied beyond a reasonable doubt of any complicity

Again, Mr. Chairman, this removes the "appears innocent" reference for the same reasons as I proposed earlier.

Amendment negatived.

The Chairman: G-14.

M. Grisé: Il est proposé que l'article 2 de la version française du projet de loi C-61 soit modifié par substitution aux lignes 33 à 36 de la page 17 de ce qui suit:

nance, lui soit remise.

420.23 Le juge qui, à la demande du procureur général ou du titulaire d'un droit sur le bien en question ou d'office—à la condition qu'un avis soit donné au

[*Translation*]

420.22(1) tion de celle qui est accusée de l'infraction de criminalité organisée ou de l'infraction grave en matière de drogue commise à l'égard du bien confisqué—peut.

On fait disparaître, donc, ce renvoi, monsieur le président, à l'alinéa b) proposé concernant les circonstances en question. Encore là, comme l'a dit M. Gold lors de son témoignage au Comité, l'alinéa b) donne un pouvoir bien trop étendu à ce niveau.

M. McIsaac: La semaine dernière, la Cour suprême du Canada, dans un cas concernant l'étude de l'article 309 du Code criminel portant sur les outils servant au cambriolage, a eu, donc, l'occasion d'étudier la signification de «raisonnablement induire» et, dans ces circonstances, appliquant cette décision très récente du tribunal, il semble que dans aucun cas la Couronne aurait à charge de prouver, en se fondant sur une prépondérance des probabilités, que le titre ou le droit a été transféré à cette personne dans l'intention de contourner les dispositions de cette loi sur la confiscation. Donc, dans ces circonstances, je prétends encore une fois que, lorsque quelqu'un ne porte pas le chapeau de l'accusé, mais qu'il agit à titre de tierce partie qui n'est pas en situation de se voir condamner, il est alors approprié de n'exiger de la Couronne, dans de telles circonstances, qu'une preuve un peu moins irréfutable. Mais il semblerait que la Cour suprême a approuvé ce genre de libellé.

Le président: Merci, monsieur McIsaac. D'autres observations? Le vote porte sur l'amendement N-37.

L'amendement est rejeté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié en retranchant les lignes 4 à 7, à la page 17, et en les remplaçant par ce qui suit.

n'est pas la personne visée à ce paragraphe, sauf s'il est convaincu hors de tout doute raisonnable de la complicité ou de la collusion du demandeur à l'égard de l'infraction qui a donné lieu à la confiscation, peut

Encore une fois, monsieur le président, il s'agit de faire disparaître cette présomption d'innocence dont il est question pour les mêmes raisons que j'ai avancées tout à l'heure.

L'amendement est rejeté.

Le président: G-14.

Mr. Grisé: I move that the French version of clause 2 of Bill C-61 be amended by striking out lines 33 to 36 on page 17 and substituting the following:

nance, lui soit remise.

420.23 Le juge qui, à la demande du procureur général ou du titulaire d'un droit sur le bien en question ou d'office—à la condition qu'un avis soit donné au

[*Texte*]

procureur général et aux personnes qui ont un droit sur le bien en question—est

Pour être, encore une fois, en conformité avec le texte anglais

Amendment agreed to.

The Chairman: G-15.

M. Grisé: Monsieur le président, il est proposé que l'article 2 de la version française du projet de loi C-61 soit modifié par substitution aux lignes 27 à 38, page 18 de ce qui suit:

[*Voir le procès-verbal—le rédacteur*]

Amendment agreed to.

The Chairman: N-39.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out lines 22 to 38 on page 19.

Mr. Chairman, this is the proposed section that states that the Attorney General may, before returning a document or complying with an order, cause a copy of a document to be made and retained. In circumstances, Mr. Chairman, in which documents in fact are returned, or ordered to be returned, I do not understand why the Attorney General would be allowed to retain a copy. Certainly we received evidence on this and I suggest that this power is one that should not be extended and the purpose of the amendment is to delete it.

Mr. Grisé: Mr. Mosley, please.

Mr. Mosley: The provision is identical to a subsection of section 446 found in the Criminal Code, the object of which is where property is ordered returned that any evidentiary value that may attach to that property is not lost. This has been recognized by the Law Reform Commission in their paper on the disposition of seized goods. The object of a return provision, such as the one in this bill and that in section 446 of the Criminal Code, is to encourage return wherever possible and to provide the courts with the authority to do so. However, this particular provision that the amendment addresses is directed at ensuring that, if there is an evidentiary value in the property, it is not lost to the court in the proceedings that the court is concerned with.

• 1705

Motion negatived.

Mr. Grisé: I move that clause 2 of Bill C-61 be amended by striking out line 39 on page 19 and substituting the following:

420.27 For greater certainty, but subject to section 241 of the Income Tax Act, a person

Mr. Nicholson: Could the clerk give me a copy of that as well? I believe this is a new one or the latest addition to the package.

[*Traduction*]

procureur général et aux personnes qui ont un droit sur le bien en question—est

Once more, to conform to the English text

L'amendement est adopté.

Le président: G-15.

Mr. Grisé: Mr. Chairman, I move that the French version of clause 2 of Bill C-61 be amended by striking out lines 27 to 38 on page 18 and substituting the following:

[*See Minutes of Proceedings—The Editor*]

L'amendement est adopté.

Le président: N-39.

M. Robinson: Monsieur le président, je propose que soit modifié le projet de loi C-61 en en retranchant les lignes 24 à 37, à la page 19.

Monsieur le président, il s'agit de l'article prévoyant que le procureur général peut faire et conserver une copie des documents saisis avant de se conformer à une ordonnance de confiscation ou de restitution. Dans des circonstances où, monsieur le président, il y a ordonnance de restitution ou restitution de documents, je ne comprends pas pourquoi le procureur général peut en conserver une copie. Il s'est certes dit beaucoup de choses à ce propos et, à mon avis, ce pouvoir en est un qu'on ne devrait pas accorder au procureur général et l'amendement vise justement cela.

M. Grisé: Monsieur Mosley, s'il vous plaît.

M. Mosley: Cette disposition est identique à un paragraphe de l'article 446 du Code criminel dont les dispositions visent à assurer que lorsqu'il y a ordonnance de restitution d'un bien qui a valeur de preuve, ce bien ne sera pas perdu. C'est une disposition acceptée par la Commission de réforme du droit dans son document sur l'aliénation de biens saisis. La disposition concernant la restitution que l'on trouve dans le présent projet de loi ainsi qu'au Code criminel, à l'article 446, vise à encourager la restitution lorsque c'est possible et aussi à accorder aux tribunaux l'autorité de le faire. Toutefois, la disposition visée par l'amendement a pour but de garantir que, si les biens ont valeur de preuve, le tribunal ne s'en trouvera pas privé.

La motion est rejetée.

M. Grisé: Je propose que l'article 2 du projet de loi C-61 soit modifié par substitution, à la ligne 39, page 19, de ce qui suit:

tude mais sous réserve de l'article 241 de la Loi de l'impôt sur le revenu qu'aucune action ne peut être inten-

M. Nicholson: Le greffier pourrait-il m'en donner une copie aussi? Je pense qu'il s'agit d'un des derniers ajouts à la liasse

[*Text*]

The Chairman: Would you like to make any further comment to assist those who did not have it before them at the time?

Mr. Grisé: I am going to make these comments

en français.

1. La modification veut assurer que le règlement divulgué dans la Loi de l'impôt sur le revenu soit gardé intact.

2. Les représentants de Revenu Canada doivent se conformer à l'article 241 de la Loi de l'impôt sur le revenu.

3. Le Projet de loi C-61 modifie l'article 241 de la Loi de l'impôt sur le revenu pour ajouter une acception. Pour que le projet de loi soit consistant, la partie sur l'exemption doit refléter la balance du projet de loi.

4. Que les représentants de Revenu Canada n'aient pas l'impression qu'ils ont «carte blanche». Les amendements maintiennent la balance du projet de loi.

Je voudrais présenter mes excuses, monsieur le président. La raison du retard est que le représentant de Revenu Canada ne réalisait que récemment l'omission technique. Ils ont alors demandé au ministère de la Justice que cet amendement soit présenté.

Mr. Robinson: I take it that this would mean that an individual who works for Revenue Canada would not be given this immunity if he suspected that information he saw in a return, for example, might disclose the proceeds of crime if reported to the Attorney General. The normal provisions and sanctions contained in the Income Tax would apply. Is that the essence of the amendment?

Mr. Mosley: Yes.

Amendment agreed to.

Mr. Robinson: I move that Bill C-61 be amended by striking out lines 39 to 44 on page 19 and lines 1 and 2 on page 20. The effect of this is to delete proposed section 420.27. It is not clear what purpose there is for this section. There is already coverage under Canadian tort law to protect bona fide disclosure by an informant to a person in authority. If that is the case, then this section is not necessary. In other instances we have been told that case law applies and we do not have to amend legislation to deal with what is already covered by case law. If that is not the case, if this is a greater disclosure provision, some sort of a sweeping sanction, sweeping immunity from any form of suit, then it applies both civilly and criminally, and I suggest it goes way too far. I would like to ask what protection this is supposed to be providing that is not already provided by decisions of the courts.

Mr. Nicholson: Mr. Mosley, this is just a codification of the common law.

Mr. Mosley: It is a codification and clarification of the common law. The problem, which is not one that would be apparent to most criminal lawyers, is the common law

[*Translation*]

Le président: Voulez-vous faire d'autres commentaires pour venir en aide à ceux qui ne l'auraient pas reçu à temps?

M. Grisé: Je vais faire ces commentaires

in French.

1. The amendment aims to ensure that the rule found in the Income Tax Act remains intact.

2. Representatives of Revenue Canada must abide by section 241 of the Income Tax Act.

3. Bill C-61 amends section 241 of the Income Tax Act to add a new meaning. To make the bill consistent, the part dealing with the exemption must reflect the balance of the bill.

4. So that representatives from Revenue Canada do not have the impression that they have "carte blanche". The amendments maintain the balance of the bill.

I would like to apologize, Mr. Chairman. The reason for the delay is that the representative from Revenue Canada realized only recently that there was a technical omission. He then requested the Department of Justice to submit this amendment.

M. Robinson: J'en conclus que l'employé de Revenu Canada ne se verra pas accorder cette immunité s'il soupçonnait que les renseignements dont il a pris connaissance dans une déclaration de revenu, par exemple, pourraient révéler des produits de la criminalité s'ils étaient communiqués au procureur général. Les dispositions et les sanctions normales de la Loi de l'impôt sur le revenu s'appliqueraient. C'est bien le sens de cet amendement?

M. Mosley: Oui.

L'amendement est adopté.

M. Robinson: Je propose que le projet de loi C-61 soit modifié par suppression des lignes 38 à 43, page 19, et des lignes 1 à 6, page 20. L'amendement a pour effet de supprimer l'article 420.27. L'objet de cet article n'est pas clair. Le droit canadien en matière de responsabilité délictuelle protège déjà les révélations faites en bonne foi par un dénonciateur. Ce passage n'est donc pas nécessaire. Dans d'autres cas, on nous a dit que le droit jurisprudentiel s'appliquait et qu'il n'était pas nécessaire de modifier la loi pour s'occuper de ce qui est déjà prévu par le droit jurisprudentiel. Si cela n'est pas le cas, si cette restriction du droit d'action est plus sévère, si elle est à toute épreuve, elle s'applique donc alors au civil comme au criminel, et à mon avis, cela, c'est aller trop loin. J'aimerais savoir en quoi la protection offerte ici se distinguerait de celle garantie par le droit jurisprudentiel.

M. Nicholson: Monsieur Mosley, il s'agit uniquement d'une codification du common law.

M. Mosley: Il s'agit d'une codification et d'une clarification du common law. La difficulté, qui n'est pas évidente pour un grand nombre de criminalistes, c'est le

[*Texte*]

principle of confidentiality that governs relations between bankers, clients, and others in that type of a relationship. It is quite true that there is a public interest exception to that common law rule, but the parameters of that exception have not been set by the courts.

• 1710

There has been virtually no jurisprudence on the nature of that exception and what it means in a particular case.

The object of this is to put a statutory provision forward which would set the parameters in the context of the public interest exception and would raise in effect the comfort level of those who are in that type of relationship and who tend to take a very restrictive interpretation of the scope of the exception that would protect them in the circumstances in which they would make such a disclosure.

The Chairman: Any further comment?

Mr. Robinson: Mr. Chairman, this is an extraordinary provision; it elevates the big brother mentality to new heights. Any form of disclosure, as it is put euphemistically, in the section—not just that it is suspected that property is proceeds of crime, not just that it is suspected that a person has committed an enterprise crime offence or designated drug offence, but even that they are about to commit an offence—all of that is subject to totally immunity under the provisions of this statute.

I would suggest that it is a dangerous provision. It is an excessive provision and if Mr. Mosley suggests that the public interest exceptions in the case law are not adequate, have not been clearly flushed out, certainly they will be flushed out in the course of litigation.

By adopting this provision, we are codifying a total immunity for any form of disclosure by informants, as it suggested. The possibilities of abuse of this kind of provision are very real—very real—because what it could mean is that a person who, for example, maliciously discloses, rats on a neighbour or spies on somebody else and says that property is proceeds of crime or gee, they are just about to commit an offence—a prostitution offence, for example, old Mrs. Grady down the street is running a whore-house—that can lead to all sorts of consequences which are very serious indeed, and we are just saying total immunity in those circumstances.

The Chairman: Could I have Mr. Nicholson next.

Mr. Grisé: I have a comment, if I may, Mr. Chairman. Mr. Robinson, it says clearly "of which that person reasonably suspects", so it does not apply in every case.

Mr. Robinson: Mr. Chairman, it is still very, very broad.

Mr. Grisé: I am sorry, Mr. Nicholson.

[*Traduction*]

principe de la confidentialité en common law qui regit les relations entre les banquiers, leurs clients et autres relations de ce genre. Certes, ce principe souffre une exception dans le cas de l'intérêt public, mais cette exception n'a pas été clairement délimitée par les tribunaux.

Il n'y a presque aucune jurisprudence sur la nature de cette exception et ce qu'elle signifie dans une affaire donnée.

Cet article a pour but de légiférer les paramètres de l'exception dans le cas de l'intérêt public et d'atténuer les craintes de ceux qui ont ce genre de relations et qui interprètent souvent de façon très restrictive l'exception qui les protégerait s'ils faisaient des révélations de ce genre.

Le président: D'autres commentaires?

M. Robinson: Monsieur le président, voilà une disposition extraordinaire. C'est un nouveau sommet de l'État policier. Toute forme de révélation, pour reprendre l'euphémisme employé—non seulement lorsque l'on soupçonne qu'un bien est un produit de la criminalité, qu'une personne a commis une infraction de criminalité organisée ou en matière de drogue, mais même lorsque l'on soupçonne qu'elle s'apprête à le faire—tout cela est protégé par l'immunité.

Pour moi, c'est une disposition dangereuse. Elle est excessive, et si M. Mosley trouve que les exceptions prévues pour l'intérêt public dans le droit jurisprudentiel ne sont pas suffisantes, n'ont pas été énoncées avec clarté, je suis d'avis que ce sont les tribunaux qui s'en chargeront.

Si nous adoptons cette disposition, nous allons créer dans la loi une immunité totale pour toute forme de dénonciation. Les risques d'abus sautent aux yeux. Par exemple, quelqu'un pourrait moucharder un voisin ou affirmer que les biens de quelqu'un d'autre sont des produits de la criminalité ou même que quelqu'un s'apprête à commettre une infraction—se livrer à la prostitution, par exemple, la voisine d'à côté tient un bordel, par exemple. Cela peut avoir des conséquences très graves et nous sommes en train d'envisager une immunité totale dans ces cas-là.

Le président: Je donnerai ensuite la parole à M. Nicholson.

M. Grisé: J'ai un commentaire à faire, si vous me le permettez, monsieur le président. Monsieur Robinson, on parle clairement «de motifs raisonnables de croire», c'est donc dire que cela ne s'applique pas dans tous les cas.

M. Robinson: Monsieur le président, c'est quand même encore très vaste.

M. Grisé: Je suis désolé, monsieur Nicholson.

[Text]

Mr. Nicholson: Just that point, as I say, I do not see that this gives a person anything he does not already have under the common law, which is my next question.

Might this not just standardize the test for the purpose of the federal jurisdiction rather than using the provincial test inasmuch as one province, at least, does not have the common law as it relates to something in this particular area?

I do not know if there would be any difference, and I am not quite sure what relationship the Civil Code of Quebec would have with this, but certainly this would have the effect of standardizing the same test for all 10 jurisdictions and territories.

Mr. Mosley: Mr. Chairman, I am not knowledgeable in the area of civil law at all, but I have been advised by a lawyer who is that in effect the civil law has adopted a principle which is virtually the same as that reflected in the common law, and that common law principle applies virtually throughout all of the common law jurisdictions of the western world.

It is based on an English decision from the 1920s, the basic idea being that those in a relationship such as banker-customer are entitled to confidentiality from the banker. This provision would define the exception which the courts have spelled out.

They have said there is a public interest exception, but the problem is they have not told us just what this means. How it is arrived at? Does it apply to the individual who has no reasonable basis for his suspicion and makes a disclosure in the circumstances such as Mr. Robinson has suggested to provide total anonymity?

This provides a threshold that it is not any disclosure in any circumstance, it is only that disclosure based on reasonable suspicion, and the reasonableness of that of course would be tested by the courts in a subsequent civil action that might be brought.

• 1715

Mr. Nicholson: With respect to the comments you made, Mr. Robinson, this would encourage a person... Let us take the example of the banker who reasonably suspects that laundering of money is taking place. If I remember your comments earlier, I thought you were in favour of mandatory reporting by the banks.

Mr. Robinson: I remain in favour of that, Mr. Chairman. This goes far beyond bankers, though; this applies to any person.

Mr. Nicholson: I think it is a good principle that where there is a common law principle in the federal jurisdiction it should be codified. If we are going to use it, it should be codified so that it is standard throughout, and so if there are any differences between the civil or the common law, that is resolved by one standard for the

[Translation]

M. Nicholson: Sur le même point, je ne vois pas en quoi cette disposition accorde quoi que ce soit qui ne se retrouve déjà dans le common law. Ce sera ma question.

Est-ce que cela ne revient pas à uniformiser le critère pour les autorités fédérales au lieu de retenir le critère provincial dans la mesure où une province, en tout cas, ne dispose pas du common law dans ce domaine particulier?

Je ne sais pas si cela fait une différence. Et je ne sais pas ce que le Code civil du Québec a à dire là-dessus, mais il est certain que cela vient uniformiser le critère dans les 10 provinces et dans les territoires.

M. Mosley: Monsieur le président, je ne connais pas du tout le droit civil, mais un civiliste m'a indiqué que le droit civil avait adopté un principe qui est virtuellement le même que celui du common law et ce principe du common law s'applique virtuellement dans presque tous les pays d'Occident sous le régime du common law.

Il se fonde sur un arrêt anglais des années 1920, en fonction duquel les rapports semblables à ceux d'un banquier avec son client doivent être placés sous le sceau de la confidentialité par le banquier. Cette disposition viendrait définir l'exception établie par les tribunaux.

Ils ont dit qu'il existe une exception dans le cas de l'intérêt public; l'ennui, c'est qu'ils ne nous ont pas dit exactement ce que cela signifiait. Comment la détermine-t-on? S'applique-t-elle à celui dont les soupçons ne sont pas fondés sur des motifs raisonnables et qui fait une dénonciation semblable à celle que M. Robinson a évoquée et accorde-t-elle l'anonymat le plus total?

Cette disposition établit une ligne de démarcation, il ne s'agit pas de n'importe quelle révélation dans n'importe quelle circonstance, il ne s'agit que de révélations fondées sur des motifs raisonnables et ce sont évidemment les tribunaux qui détermineront le caractère raisonnable des motifs lors d'une éventuelle poursuite civile.

M. Nicholson: Pour ce qui est de vos remarques, monsieur Robinson, elles encourageraient quelqu'un à... Prenons l'exemple d'un banquier qui a d'assez bonnes raisons de soupçonner le blanchissage de l'argent. Si je me rappelle vos observations antérieures, je croyais que vous étiez favorable à des déclarations obligatoires de la part des banques.

M. Robinson: Je demeure favorable à cela, monsieur le président. Cependant, il ne faut pas se limiter aux banquiers, cela devrait être exigé de toutes les personnes.

M. Nicholson: Il est bien établi que lorsqu'un principe de common law intervient au niveau fédéral, ce dernier devrait être codifié. Si nous allons y recourir, il devrait être codifié afin d'être normalisé, par conséquent s'il y a des différences entre le droit civil et le common law, que ces difficultés soient aplanies par l'existence d'une même

[*Texte*]

whole country. I do not think this goes any farther than the common law standard, and as such, codification is good idea and should be kept.

Mr. Robinson: Mr. Chairman, could I ask what the constitutional basis is for suggesting that we can in fact absolve informants of civil liability as well?

Mr. Mosley: Now, that is an issue that has arisen in the context of section 25 of the Criminal Code, which also addresses civil liability, and has been held to be a necessary incident of the federal criminal law power.

Mr. Robinson: So this provision as well would likely be upheld under that decision.

Mr. Mosley: Yes, we examined that very question out of the same concern that Mr. Robinson has raised and are satisfied that it would pass muster on the basis of that necessarily incidental test.

The Chairman: The question is on amendment N-40 by Mr. Robinson.

Amendment negatived.

Mr. Robinson: Mr. Chairman, I move that Bill C-61 be amended by striking out line 44 on page 20 and substituting the following therefor:

belief, on reasonable and probable grounds, that the

Mr. Chairman, the arguments on this have been made elsewhere and resoundingly rejected, but I persevere nonetheless.

Mr. Nicholson: It was rejected by the Supreme Court, was it not?

Mr. Robinson: No, not explicitly.

Amendment negatived.

Mr. Robinson: Mr. Chairman, I will withdraw N-42.

M. Grisé: Monsieur le président, il est proposé que l'article 2 de la version française du projet de loi soit modifié par substitution, aux lignes 14 à 16, page 22, de ce qui suit:

ou un autre traité, bilatéraux ou internationaux, en matière d'impôt que le gouvernement du Canada a signés interdisent au ministre du Revenu national de les

C'est encore pour être en conformité avec le texte anglais.

Amendment agreed to.

The Chairman: I am going to ask the clerk to make comment on the process. We are now on clause by clause and reaching a stage where it is suggested that we stand clauses perhaps 2 and 3.

[*Traduction*]

norme pour l'ensemble du pays. Je ne crois cependant pas que cela va plus loin que cette question d'une norme qui découle du common law, et en conséquence, la codification est une bonne chose et l'on devrait s'en tenir à cela.

M. Robinson: Monsieur le président, peut-on me dire sur quel principe constitutionnel l'on s'appuie pour affirmer que tous ceux qui renseignent sur un tel état de choses sont aussi exemptés de poursuites au civil?

M. Mosley: Cette question a peut-être été soulevée au sujet de l'article 25 du Code criminel, où il est aussi question de la responsabilité civile et où il est dit qu'une telle responsabilité doit accompagner la responsabilité criminelle au fédéral.

M. Robinson: En vertu de cette décision, la disposition en question sera donc probablement maintenue.

M. Mosley: Oui, nous avons examiné cette même question à la lumière des préoccupations de M. Robinson, et sommes convaincus que cette immunité serait jugée recevable, sur la foi de ce précédent.

Le président: Nous mettons aux voix l'amendement N-40 proposé par M. Robinson.

L'amendement est rejeté.

M. Robinson: Monsieur le président, je propose que le projet de loi C-61 soit modifié en en retranchant la ligne 46, à la page 20, et en la remplaçant par ce qui suit:

raisonnables et probables de croire que la personne men

Les arguments déjà présentés en faveur de cet amendement ont été rejetés sans équivoque, mais je persévère néanmoins.

M. Nicholson: N'ont-ils pas été rejetés par la Cour suprême?

M. Robinson: Non, pas de façon explicite.

L'amendement est rejeté.

M. Robinson: Monsieur le président, je voudrais retirer l'amendement N-42.

Mr. Grisé: Mr. Chairman, it is proposed that the French version of clause 2 of Bill C-61 be amended by striking out line 14 to 16 on page 22 and substituting the following:

ou un autre traité, bilatéraux ou internationaux, en matière d'impôt que le gouvernement du Canada a signés interdisent au ministre du Revenu national de les

Once more, it is to conform to the English text.

L'amendement est adopté.

Le président: Je vais demander au greffier de nous dire ce qu'il pense de notre travail jusqu'à maintenant. Nous sommes rendus à l'étude article par article, et on propose de réserver les articles 2 et 3.

[*Text*]

The Clerk of the Committee: We proposed that clause 2 as amended stand for Mr. Kaplan's amendments. On clause 3, we do not have any amendments, so we can pass that. Then we will move on to clause 4.

Clause 2 as amended allowed to stand

Clause 3 agreed to

On clause 4

Mr. Grisé: I move that clause 4 of Bill C-61 be amended by striking out lines 7 and 8 on page 25 and substituting the following:

178.21(1), 242(1) or (2) or 243.1(1) or section 420.17, subsection 446.2(2) or 662.1(1) or sec-

Mr. Nicholson: What is the purpose of this?

Mr. Mosley: Mr. Gold, in his testimony, has pointed to the absence of a reference to subsection 420.17(3). Mr. Robinson has a motion to the same effect. In looking at it, we felt that a more appropriate amendment might be to the section as a whole to avoid the repetition of subsection (1) and subsection (3).

Amendment agreed to.

Mr. Robinson: Mr. Chairman, I withdraw N-43.

Clause 4 as amended agreed to.

Clauses 5 to 7 inclusive agreed to

On clause 8

M. Grisé: Messieurs les députés, il est proposé que l'article 8, du projet de loi C-61, soit modifié par la substitution, à la ligne 29, page 27, de ce qui suit:

• 1720

[*See Minutes of Proceedings*]

Amendment agreed to

Clause 8 as amended agreed to.

On clause 9

The Chairman: Now we are at G-17.

M. Grisé: Il est proposé que l'article 9 de la version française du projet de loi C-61 soit modifié par substitution, aux lignes 10 et 11, page 28, de ce qui suit:

ments, demander à un juge de la cour provinciale ayant compétence dans le territoire où la saisie a

Amendment agreed to

Clause 9 as amended agreed to.

The Chairman: I hope there are no Liberal members in those. G-18.

On clause 10

M. Grisé: Il est proposé, monsieur le président, que l'article 10 de la version française du projet de loi soit

[*Translation*]

Le greffier du Comité: Nous avons proposé de réserver l'article 2 en attendant les amendements de M. Kaplan. Pour ce qui est de l'article 3, nous n'avons pas d'amendement, et pouvons donc l'adopter. Nous passerons ensuite à l'article 4.

L'article 2 amendé est réservé.

L'article 3 est adopté.

Article 4

M. Grisé: Je propose que l'article 4 du projet de loi C-61 soit modifié par substitution, à la ligne 9, page 25, de ce qui suit:

242(1), ou (2), ou 243.1(1), ou de l'article 420.17, des paragraphes

M. Nicholson: Quelle est la raison d'être de cela?

M. Mosley: Lors de son témoignage, M. Gold a souligné l'absence de renvoi à l'article 420.17(3). M. Robinson a présenté une motion dans ce même sens. Après examen, nous avons estimé qu'il serait préférable de proposer un amendement à l'ensemble de l'article pour éviter de répéter les paragraphes (1) et (3).

L'amendement est adopté.

M. Robinson: Monsieur le président, j'aimerais retirer l'amendement N-43.

L'article 4 amendé est adopté.

Les articles 5 à 7 inclusivement sont adoptés

Article 8

Mr. Grisé: Dear members, it is proposed that the French version of clause 8 of Bill C-61 be amended by striking out line 29 on page 27 and substituting the following:

[*Voir le procès-verbal*]

L'amendement est adopté.

L'article 8 amendé est adopté.

Article 9

Le président: Nous en sommes à l'amendement G-17.

Mr. Grisé: It is proposed that the French version of clause 9 of Bill C-61 be amended by striking out lines 10 and 11 on page 28 and substituting the following:

ments, demander à un juge de la cour provinciale ayant compétence dans le territoire où la saisie a

L'amendement est adopté.

L'article 9 amendé est adopté.

Le président: J'espère qu'il n'y a pas de membres libéraux parmi eux. G-18.

Article 10

Mr. Grisé: Mr. Chairman, I move that the French version of clause 10 of Bill C-61 be amended by striking

[*Texte*]

modifié par substitution, aux lignes 2 et 3, page 30, de ce qui suit:

420.3 du Code criminel s'appliquent, compte tenu

Amendment agreed to.

Clause 10 as amended allowed to stand.

Clauses 11 and 12 agreed to.

On clause 13

M. Grisé: Il est proposé que l'article 13 de la version française du projet de loi C-61 soit modifié par substitution, à la ligne 18, page 32, de ce qui suit:

a) soit de la perpétration, au Canada, d'une

Amendment agreed to.

The Chairman: N-44.

Mr. Robinson: I move that clause 13 be amended by striking out line 19, on page 32, and substituting the following:

offence under section 4 or 5; or

Mr. Chairman, I made the arguments already on this. This would delete the cultivating offence from the section and I am not going to repeat the arguments now.

The Chairman: Any further comment?

Amendment negatived.

Mr. Robinson: And Mr. Chairman, in the circumstances I will withdraw N-45.

The Chairman: N-45 has been withdrawn. Now G-20 on clause 13.

• 1725

M. Grisé: Monsieur le président, je propose que l'article 13 de la version française du projet de loi C-61 soit modifié par substitution, aux lignes 31 à 34, page 33, de ce qui suit:

420.3 du Code criminel s'appliquent, compte tenu des adaptations de circonstance, aux procédures engagées à l'égard:

Amendment agreed to.

Clause 13 as amended agreed to.

Clauses 14 and 15 agreed to.

The Chairman: I want to commend the members who have worked so hard and diligently to get as far as we did this afternoon. Well done. See you tomorrow at 9.30 a.m. in this room. The meeting is adjourned.

[*Traduction*]

out lines 2 and 3 on page 30 and substituting the following:

420.3 du Code criminel s'appliquent, compte tenu

L'amendement est adopté.

L'article 10 amendé est réservé.

Les articles 11 et 12 sont adoptés.

Article 13

Mr. Grisé: I move that the French version of clause 13 of Bill C-61 be amended by striking out line 18 on page 32 and substituting the following:

a) soit de la perpétration, au Canada, d'une

L'amendement est adopté.

Le président: N-44.

M. Robinson: Je propose de modifier l'article 13 en en retranchant la ligne 19, à la page 32, et en la remplaçant par ce qui suit:

infraction prévue à l'article 4 ou 5;

Monsieur le président, j'ai déjà fait valoir mes arguments à ce sujet. L'amendement supprimerait le délit de culture de cet article, et c'est ce que je vais me borner à dire, plutôt que de me répéter.

Le président: Y a-t-il d'autres remarques?

L'amendement est rejeté.

M. Robinson: Compte tenu de cela, monsieur le président, je retire l'amendement N-45.

Le président: L'amendement N-45 a été retiré. Nous sommes maintenant rendus à l'article 13, et à l'amendement G-20.

Mr. Grisé: Mr. Chairman, I move that the French version of clause 13 of Bill C-61 be amended by striking out lines 31 to 34 on page 33 and substituting the following:

420.3 du Code criminel s'appliquent, compte tenu des adaptations de circonstance, aux procédures engagées à l'égard:

L'amendement est adopté.

L'article 13 amendé est adopté.

Les articles 14 et 15 sont adoptés.

Le président: Je tiens à féliciter les membres de notre Comité d'avoir travaillé avec autant de constance et de diligence, ce qui nous a permis d'avancer autant que nous l'avons fait cet après-midi. Voilà du travail bien fait. Nous nous revoyons demain à 9h30 dans la même salle. La séance est levée.

June 2, 1988 [Legislative Committee on Bill C-61, An Act to amend the Criminal Code, the Food and Drug Act and the Narcotic Act]

EVIDENCE

[Recorded by Electronic Apparatus]

[Texte]

Thursday, June 2, 1988

• 0934

The Chairman: Gentlemen, I see a quorum, and I will call this meeting to order, it now being past 9.30 a.m. I will again refer to a letter addressed to the clerk of the legislative committee on Bill C-61, Mr. Bill Farrell:

> This is to advise that Joe Reid, MP, will be replacing me at the committee on the following date, Thursday, June 2, 1988.

If that meets with the accord of the committee, we shall proceed. This legislative committee on Bill C-61 is dealing with clause-by-clause consideration of the bill. We made great progress yesterday, and we expect to conclude today, in accordance with our commitment of last week.

• 0935

Yesterday we deferred consideration of all Liberal proposed amendments. Today, Mr. Kaplan, we are in your good hands. I suppose Liberal amendment L-7D is the one before us.

Mr. Kaplan: I would like to begin by congratulating you on assuming the chair. I know from your eminent record that you will exercise that office with distinction and fairness. I want to pay a tribute to your predecessor, particularly in the terms that he allowed my amendments to stand. I appreciate that very much. When I agreed last week to any number of meetings at any time I knew I might not be able to attend. I figured that the amendments I would have moved would have been lost, but I return to find them at least still on our *Order Paper*. I am very grateful for that.

As far as I am concerned, we ought to be able to get through them very quickly. I will explain what I had in mind in each of them and why I hope the committee will support them, but I do not intend to have a prolonged debate. I hope the other meetings of the day can be cancelled and that this morning's first session can be a short one.

The Chairman: Thank you, Mr. Kaplan. I trust you will take into consideration what we did yesterday. When motions were identical, as proposed by both yourself and Mr. Robinson, we disposed of the Robinson amendment, which had in its process the disposition of your amendment as well. I am referring to 7D particularly.

Mr. Nicholson: Something similar to your first amendment was actually passed. We are going to hold an

TÉMOIGNAGES

[Enregistrement électronique]

[Traduction]

Le jeudi 2 juin 1988

Le président: Messieurs, nous avons le quorum, il est 9h30 passé, je déclare donc la séance ouverte. Je vous renvoie de nouveau à une lettre adressée au greffier du Comité législatif sur le projet de loi C-61, M. Bill Farrell:

> Cette lettre a pour but de vous informer que Joe Reid, député, me remplacera au comité à la date suivante, le jeudi 2 juin 1988.

Si les membres du comité sont d'accord, allons-y. Ce comité législatif procède à l'étude article par article du projet de loi C-61. Nous avons beaucoup progressé hier, et nous espérons conclure aujourd'hui, conformément à l'entente de la semaine dernière.

Hier, nous avons reporté l'étude de toutes les propositions d'amendements des Libéraux. Aujourd'hui, monsieur Kaplan, nous nous en remettons à vos bons offices. Je suppose que nous commencerons par l'amendement L-7D.

M. Kaplan: Pour commencer, j'aimerais vous féliciter d'avoir accepté de présider la réunion. Je sais d'expérience que vous exercerez cet office avec distinction et équité. Je tiens à rendre hommage à votre prédécesseur, tout particulièrement à la manière dont il a permis à mes amendements d'être réservés. Je lui en suis infiniment reconnaissant. Lorsque j'ai accepté la semaine dernière le calendrier de réunions, je savais qu'il me serait peut-être impossible d'assister à toutes. J'étais convaincu que mes amendements avaient été mis aux voix et rejetés, et c'est avec grand plaisir que je constate qu'ils sont encore à l'ordre du jour.

En ce qui me concerne, nous devrions pouvoir les expédier très rapidement. Je vais vous présenter mes arguments pour chacun d'entre eux et les raisons pour lesquelles j'espère que le comité les approuvera, mais mon intention n'est pas de prolonger indûment le débat. J'espère que les autres réunions d'aujourd'hui peuvent être annulées et que cette première séance de ce matin sera courte.

Le président: Merci, monsieur Kaplan. Je pense que vous comprendrez ce que nous avons fait hier. Lorsque les motions proposées par vous-même et par M. Robinson étaient identiques, nous avons mis aux voix l'amendement Robinson, réglant en même temps le sort de votre amendement analogue. Je me réfère tout particulièrement au 7D.

M. Nicholson: Une motion analogue à votre premier amendement a été en fait adoptée. Lors d'une réunion à

[*Texte*]

in-camera meeting to determine the reasonableness of the amendments and of the legal expenses.

Mr. Kaplan: It was discussed yesterday, but I can wait and read it in *Maclean's* magazine.

Mr. Robinson: Mr. Chairman, I wonder if I might propose the amendment to clause 2 that was stood yesterday at this point. It was the only amendment that remained.

The Chairman: Would that be N-34?

Mr. Robinson: Yes. I would move that Bill C-61 be amended by striking out lines 7 to 10 on page 15 and substituting the following:

> of that offence and the court is satisfied that the income of that person from sources unrelated to enterprise crime offences by that person cannot reasonably account for such an increase in value.

I had a brief discussion with Mr. Grisé and his officials, and they have advised me that this wording does meet with their—

Mr. Richard G. Mosley (Senior General Counsel, Criminal and Family Law Policy Directorate, Department of Justice): Mr. Chairman, there is a point that I overlooked in speaking with Mr. Robinson. Deleting the reference to "or designated drug offence" is not picked up by the roll-over provisions in the two drug statutes. It was raised by the researcher yesterday. If we could leave those words in, it would be preferable.

Mr. Robinson: Mr. Chairman, I will leave those words in: "enterprise crime offences or designated drug offences by that person".

The Chairman: Has either Mr. Mosley or Mr. Robinson a copy of the amendment as finally agreed upon?

Mr. Robinson: It is exactly the same form as N-34 without the words "beyond a reasonable doubt". Those words are deleted.

Mr. Richard Grisé (Parliamentary Secretary to Deputy Prime Minister and President of the Privy Council): The government has no problem with this amendment as amended, Mr. Chairman.

The Chairman: Mr. Horner, do all members of the committee have before them N-34 with the deletion of the words "beyond a reasonable doubt" in the first and second lines of that proposed amendment?

Amendment agreed to.

Mr. Robinson: That concludes my amendments, Mr. Chairman.

[*Traduction*]

huis clos, nous déterminerons si ces amendements sont raisonnables et quels frais juridiques ils entraînent.

M. Kaplan: Vous en avez discuté hier mais je peux attendre et lire le compte rendu dans *Maclean's*.

M. Robinson: Monsieur le président, pourrais-je proposer l'amendement à l'article 2 qui a été réservé hier? C'était le seul amendement qui restait.

Le président: S'agirait-il du N-34?

M. Robinson: Oui. Je propose de retrancher les lignes 6 à 8, à la page 15, et de les remplacer par ce qui suit:

> avant cette perpétration, et que le tribunal est convaincu que son revenu de sources non reliées à des infractions de criminalité organisée ne peut raisonnablement justifier cette augmentation de valeur.

J'en ai brièvement discuté avec M. Grisé et ses collaborateurs, et ils m'ont informé que ce libellé concordait . . .

M. Richard G. Mosley (avocat général principal, sous-direction de la politique en matière de droit pénal et familial, ministère de la Justice): Monsieur le présdient, il y a un point de détail que j'ai oublié de signaler à M. Robinson. La référence à «des infractions graves en matière de drogue» ne figure pas dans les dispositions originales des deux lois sur les drogues et stupéfiants. La documentaliste nous l'a signalé hier. Il serait donc préférable de conserver cette référence.

M. Robinson: Monsieur le président, je suis tout à fait disposé à ce que figure: «infractions de criminalité organisée ou à des infractions graves en matière de drogue».

Le président: M. Mosley ou M. Robinson ont-ils une copie de cet amendement sous sa forme définitive?

M. Robinson: C'est exactement le même que le N-34 sans «hors de tout doute raisonnable». Ces mots sont supprimés.

M. Richard Grisé (secrétaire parlementaire du Vice-premier ministre et du Président du Conseil Privé): Sous sa forme modifiée, cet amendement ne pose pas de problème au gouvernement, monsieur le président.

Le président: Monsieur Horner, est-ce que tous les membres du comité ont ce N-34 sans les mots «hors de tout doute raisonnable» à la première et à la deuxième ligne de cette proposition d'amendement?

L'amendement est adopté.

M. Robinson: C'était mon dernier amendement, monsieur le président.

[*Text*]

• (0940)

Mr. Kaplan: Mr. Chairman, I move that we strike out lines 39 to 42 on page 10 and substitute the following therefor:

(b) that the applicant is the lawful owner of or lawfully entitled to possession of the property unless the court is satisfied beyond a reasonable doubt of the complicity of the applicant in an

The arguments in favour of this wording were presented by the witness for the Canadian Bar Association. It was to raise the standard above the standard in the government bill, which is that the accused simply appear innocent of complicity. I will not make further arguments about it; I am content to. . .

Mr. John McIsaac (Counsel, Criminal Law Policy Section, Department of Justice): Mr. Chairman, as outlined yesterday, the wording that is proposed is not novel in Canadian criminal law. The wording is very similar to subsection 11.(4) of the Narcotic Control Act, which provides for an applicant obtaining relief from forfeiture for the seizure of a conveyance that has been used in the criminal conduct related to narcotic offences. Secondly, Mr. Chairman, the wording is also used in other federal statutes, such as the Customs Act and the Fisheries Act.

The British Columbia Court of Appeal very recently, in 1987, in the Milton case had occasion to examine the possible constitutional infirmity of this wording in relation to an applicant. The British Columbia Court of Appeal did indicate that an applicant in this situation does not stand in the same situation as an accused person. Therefore, the presumption of innocence principles do not apply to that individual.

The court confirmed that it was satisfactory to place the onus on that individual in those special circumstances because he would have particular knowledge whether or not there was collusion or complicity in relation to the commission of another person's offence. Therefore they found no problem with this type of wording, which is almost identical to the proposed wording in this section, in relation to the Bill of Rights and the Charter of Rights. Thank you very much, Mr. Chairman.

Amendment negatived.

The Chairman: Amendments L-8 and L-8a have been withdrawn.

Mr. Kaplan: Yes. I assume that if three months was unacceptable, the change in time will not make a difference. And as I say, I do not want to go over the arguments.

The Chairman: Thank you, Mr. Kaplan. We will move on to L-9. I have a note here that L-9 was dealt with yesterday when we dealt with the Robinson amendment

[*Translation*]

M. Kaplan: Monsieur le président, je propose que nous retranchions les lignes 37 à 41, à la page 10, et que nous les remplacions par ce qui suit:

b) que le demandeur est le propriétaire légitime de ces biens ou a droit à leur possession légitime, sauf si le tribunal est convaincu hors de tout doute raisonnable de la complicité ou de la collusion du demandeur à

Les arguments en faveur de ce libellé ont été présentés par le témoin représentant l'Association du barreau. L'objet est de mettre la barre un peu plus haut que le gouvernement qui demande simplement dans son projet de loi que l'accusé semble innocent de toute complicité. Je n'en dirai pas plus, je me contenterai. . .

M. John McIsaac (conseiller juridique, Section de la politique en matière de droit pénal, ministère de la Justice): Monsieur le président, comme nous l'avons dit hier, le libellé proposé n'est pas une nouveauté dans le droit pénal canadien. Ce libellé est très analogue à celui du paragraphe 11.(4) de la Loi sur les stupéfiants qui prévoit un recours contre la confiscation d'un moyen de transport utilisé dans la perpétration d'un acte criminel relevant de la Loi sur les stupéfiants. Deuxièmement, monsieur le président, ce libellé est également utilisé dans d'autres lois fédérales comme la Loi sur les douanes et la Loi sur les pêches.

La Cour d'appel de Colombie-Britannique tout dernièrement en 1987, dans l'affaire Milton a eu l'occasion d'examiner les arguments d'invalidité constitutionnelle de ce libellé. La Cour d'appel de Colombie-Britannique a déclaré qu'un demandeur dans ces circonstances ne se trouve pas dans la même situation qu'un accusé. En conséquence, les principes de présomption d'innocence ne s'appliquent pas à cette personne.

La cour a confirmé que le fait de demander à la personne dans ces circonstances spéciales de faire la preuve de son innocence était justifiée, car c'est elle qui sait si elle est innocente de toute collusion ou de toute complicité relativement à l'infraction commise par une autre personne. En conséquence ils ont décrété que ce type de libellé qui est pratiquement identique à celui proposé dans cet article, ne posait pas de problème par rapport à la Déclaration des droits et à la Charte des droits. Merci beaucoup, monsieur le président.

L'amendement est rejeté.

Le président: Les amendemens L-8 et L-8a ont été retirés.

M. Kaplan: Oui. Je suppose que si trois mois étaient inacceptables, le changement de temps ne fait pas de différence. Comme je l'ai dit, je ne veux pas revenir sur ces arguments.

Le président: Merci, monsieur Kaplan. Nous passons au L-9. J'ai une note ici me disant que la question du L-9 a été réglée hier en même temps que l'amendement

[*Text*]

Mr. Mosley: I think it is used very rarely, most likely because provinces have established funding mechanisms in their relationships with the municipalities, and police budgets are normally met, in the normal course of events, through municipal taxation and any grants the province may make to the municipalities for that purpose, and provincial policing costs of course are paid by the provincial governments.

There are a number of concerns about the fiscal propriety of making direct grants to police agencies from forfeited proceeds of crime. Some concerns have been expressed with... Perhaps I could refer to the American example of the local sheriff ending up driving the Mercedes-Benz that has been seized and forfeited from the drug trafficker. That lacks a certain appearance of propriety, and it also does not lead in every case to the most appropriate use of the resources concerned.

For that reason subsection 651.(3) to my knowledge is used very infrequently. It is there, however, and in a case where it was deemed appropriate either at the federal or the provincial level, the authority exists for making such a transfer.

Mr. Horner: Mr. Chairman, while I can understand why the Canadian Association of Chiefs of Police would recommend this amendment, and I have some sympathy for directing these funds to crime-prevention forces, I believe the explanation given by Mr. Mosley is perfectly satisfactory and the funding will come from other directions. Therefore I would not support the amendment.

Mr. Kaplan: In general I feel also it is better to fund government programs out of the Consolidated Revenue Fund, and when you dedicate funds such as the highway trust fund in the United States or lottery proceeds in Canada, governments may tend to take a less responsible attitude to funds that are not part of the Consolidated Revenue Fund, that directly come from taxpayers.

But I do not think in this case we are talking about large sums of money. I mean relatively large sums of money. Even the case of the Mercedes-Benz... There is something to be said for giving the public the sense that the law enforcement agencies are working and that they are taking property from the criminal element in the society under the mechanisms provided for by law. I do not approve of sheriffs using fancy cars to do their jobs. But I would not be surprised if there are some positive impacts in jurisdictions where things like that happen, and the public, which can be very disillusioned about the war on drugs or the failure of the war on drugs, might get some sense that the law is working from watching that type of allocation of proceeds.

• 0950

So I would like to insist on the amendment. I hope it has the effect of seeing some property transferred,

[*Translation*]

M. Mosley: Je crois qu'il est très rarement utilisé, fort vraisemblablement parce que les provinces ont des mécanismes de financement des municipalités, et les budgets de la police sont, dans des circonstances normales, financés par les impôts municipaux et les subventions que la province peut accorder aux municipalités à cette fin, et, bien entendu, les coûts de police provinciale sont assumés par les gouvernements provinciaux.

La probité fiscale de la subvention des forces de police par le produit de la vente de biens confisqués à la suite d'activités criminelles soulève un certain nombre de questions. D'aucuns craignent... il y a l'exemple américain du shérif qui se retrouve au volant de la Mercedes qu'il a confisquée aux trafiquants de drogue. Il y a un manque de probité apparente, et, dans tous les cas, cela ne correspond pas également à la meilleure utilisation de ces ressources.

Pour cette raison, le paragraphe 651.(3), à ma connaissance, est utilisé très rarement. Néanmoins, il est là, et dans un cas où cela serait jugé opportun soit au niveau fédéral soit au niveau provincial, le pouvoir de procéder à ce genre de transfert existe.

M. Horner: Monsieur le président, bien que je puisse comprendre pourquoi l'Association canadienne des chefs de police recommande cet amendement, et que cette idée de verser ces fonds aux forces de lutte contre le crime me plaise, je crois que l'explication de M. Mosley est parfaitement satisfaisante et que ce financement doit venir d'ailleurs. En conséquence, je n'appuierai pas cet amendement.

M. Kaplan: D'une manière générale j'estime également préférable de financer les programmes du gouvernement à partir du fonds du revenu consolidé, et quand des gouvernements financent des programmes avec un fonds de fiducie pour la voirie comme aux États-Unis où les loteries comme au Canada, ils ont tendance à adopter une attitude moins responsable envers ces fonds qui ne font pas partie du fonds du revenu consolidé, qui viennent directement des contribuables.

Il reste dans ce cas, il ne s'agit pas à mon avis de sommes d'argent importantes, relativement parlant. Même dans le cas de cette Mercedes... Montrez au public que les agences d'application de la loi travaillent et qu'elles confisquent les biens des éléments criminels de la société conformément aux mesures prévues par la loi est peut-être aussi une bonne chose. Je n'approuve pas les shérifs qui roulent au volant dans une voiture de rêve pour faire leur travail. Cependant je ne serais pas surpris que de telles méthodes aient des conséquences positives dans certaines juricitions et que le public souvent sans illusion quand on lui parle de guerre contre la drogue, puisse penser en voyant cette utilisation des biens confisqués qu'après tout il y a quand même injustice.

J'aimerais donc insister sur la valeur de cet amendement. J'aimerais qu'il permette le transfert de

[*Texte*]

although, as I say, I would have a different view if it resulted in large amounts of money that gave the police a luxurious lifestyle on the job.

Mr. Horner: Since Mr. Kaplan has stated that there may not be large sums of money involved, and I guess in the big scheme of things they are not considered large sums of money, I think there might be a larger bureaucracy set up to handle these so-called small sums of money, and therefore none of it would get to the crime prevention forces anyhow. So I would vote against the amendment.

Amendment negatived.

The Chairman: We will proceed with L-11, Mr. Kaplan.

Mr. Kaplan: Amendment L-11 is to add a paragraph, proposed paragraph 420.17(4)(c). I move that we add immediately after line 45 on page 13 the following:

> (c) in order to effect subsections (3) and (4), determine beyond reasonable doubt that the accused is not able to forfeit the property, unless through willful default of the accused not to comply with an order of forfeiture.

This is an amendment inspired by the Canadian Bar Association. It attempts to ensure that the court does not just order a fine and a term of imprisonment in default of that fine. It would have to be determined whether the property or money could not be provided to the court, whether the reason for that was a willful attempt on behalf of the accused. I will not say more about it than that.

The Chairman: This has the effect of adding a new paragraph (c) to that particular proposed section.

Mr. Grisé: Mr. Chairman, this amendment is fairly similar to N-22 that was defeated yesterday. I am going to ask Mr. Mosley to comment on it.

Mr. Mosley: The concerns expressed yesterday in relation to Mr. Robinson's motion of similar effect were that the amendment would require the Crown to prove in every case, beyond a reasonable doubt, (a) that the accused was not able to forfeit the property—and that may be difficult to do in situations in which efforts have been made to conceal or transfer the property out of the country; the Crown may not have access to the evidence that would establish that—and (b) that the accused was unable to comply with an order of forfeiture through willful default.

One of the objects of the legislative package as a whole is to strip offenders of the assets obtained through enterprise or designated drug offence activity. The fine in lieu of forfeiture provision and the imprisonment in

[*Traduction*]

certains biens, bien que, comme je l'ai déjà dit, mon point de vue serait différent si la police se retrouvait avec des sommes d'argent importantes ayant des conséquences néfastes sur ces méthodes de travail.

M. Horner: Étant donné que d'après M. Kaplan il est possible qu'il ne s'agisse pas de grosses sommes d'argent, et je suppose que dans ce milieu ces sommes ne sont pas considérées comme de grosses sommes, il est possible qu'il faille créer une véritable bureaucratie pour administrer ces petites sommes d'argent, et en conséquence les forces de répression du crime n'en verraient n'importe comment jamais la couleur. Je me vois donc obligé de voter contre cet amendement.

L'amendement est rejeté.

Le président: Nous passons au L-11. Monsieur Kaplan.

M. Kaplan: L'amendement L-11 ajoute un alinéa, l'alinéa 420.17(4)c). Je propose d'ajouter immédiatement après la ligne 35, à la page 13, ce qui suit:

> c) pour donner effet au paragraphe (3) et au présent paragraphe, de déterminer hors de tout doute raisonnable que l'accusé n'est pas en mesure de subir la confiscation des biens en cause, sauf si cela résulte du fait que l'accusé a délibérément fait défaut de se conformer à une ordonnance de confiscation.

C'est un amendement inspiré par l'Association du barreau. C'est pour s'assurer que le tribunal n'ordonne pas simplement une amende et une peine de prison pour manquement à une ordonnance. Il faudrait déterminer si les biens ou l'argent en cause n'ont pu être fournis au tribunal et si c'est le résultat d'une tentative délibérée de l'accusé. Je n'en dirai pas plus.

Le président: C'est un nouvel alinéa c) qui est ajouté à cette proposition d'article.

M. Grisé: Monsieur le président, cet amendement est très analogue au N-22 qui a été rejeté hier. Je vais demander à M. Mosley de nous donner quelques explications.

M. Mosley: Nous avons dit hier au sujet de la motion analogue de M. Robinson que cet amendement aurait pour conséquence de requérir de la Couronne qu'elle prouve dans tous les cas, hors de tout doute raisonnable, a) que l'accusé n'était pas en mesure de subir la confiscation des biens en cause—et la démonstration peut en être difficile quand des efforts ont été faits pour cacher ou transférer les biens hors du pays; la Couronne peut ne pas avoir accès aux preuves l'établissant—et b) que l'accusé a délibérément fait défaut de se conformer à une ordonnance de confiscation.

Un des objets de ces nouvelles dispositions législatives est de confisquer aux contrevenants les revenus liés à des infractions de criminalité organisée ou à des infractions graves en matière de drogue. L'amende pour remplacer la

[Text]

default is complementary to the basic forfeiture power the bill would provide for.

• 0955

If forfeiture cannot be accomplished, the fine is meant to serve as an alternative; if the fine cannot be paid, incarceration in default is intended to serve as a powerful incentive to the offender not to transfer the property out of the country or to dissipate it. There will be circumstances when the offender will have dissipated the funds through activities such as gambling or whatever, but will not have wilfully defaulted in order to avoid compliance with an order of forfeiture. Line 42 on page 1 says that when the offender comes before the court with clean hands, the court has a residual discretion not to impose the fine in lieu of forfeiture when it would, if imposed, eventually lead to the term of imprisonment in default if the fine is not paid. The offender therefore has an opportunity to present his case to the court. If the motion to amend is adopted, the burden of establishing those two further elements would be cast on the Crown on the beyond a reasonable doubt standard.

Amendment negatived.

The Chairman: Next is L-12.

Mr. Kaplan: This refers to lines 22 and 23 on page 14. The argument is similar to that I made earlier about the proceeds of crime being directed to crime prevention forces. I suspect its fate will be the same, but I would like to put it on the record.

I move that we strike out lines 22 and 23 on page 14 and substitute the following therefor:

General directs and such proceeds of the disposition be directed to crime prevention forces, upon regulations made by the Attorney General governing the direction of the property.

Mr. Chairman, I will not say more about it.

Mr. Grisé: Mr. Chairman, it is exactly the same amendment as L-10, which was defeated a few minutes ago.

The Chairman: Your position is the same as before.

Mr. Horner: Yes.

Amendment negatived.

The Chairman: N-34 was disposed of, so we will move on with L-13.

Mr. Kaplan: I move that we strike out lines 15 to 18 on page 16 and substitute the following therefor:

420.18(2) and that the court is satisfied beyond a reasonable doubt that the person is free from any complicity in an offence referred to in paragraph (a), the

[Translation]

confiscation et l'emprisonnement pour défaut de conformité sont les compléments du pouvoir de confiscation fondamentale prévue par le projet de loi.

S'il ne peut y avoir confiscation, c'est l'amende, à la place; si l'amende ne peut être payée, l'incarcération pour défaut doit puissamment inciter le contrevenant à ne pas transférer le bien hors du pays ou à le dissiper. Il peut arriver que le contrevenant ait dissipé ses fonds au jeu, par exemple, mais qu'il n'ait pas délibérément refusé de se conformer à une ordonnance de confiscation. La ligne 42 de la page 1 dit que le contrevenant vient devant le tribunal les mains propres, que le tribunal a le pouvoir discrétionnaire de ne pas imposer d'amende en remplacement d'une confiscation si le défaut de son paiement risque d'entraîner une peine d'emprisonnement. Le contrevenant a par conséquent la possibilité de plaider son cas devant le tribunal. Si cet amendement est adopté, la Couronne, hors de tout doute raisonnable, aura la charge de démontrer ces deux éléments supplémentaires.

L'amendement est rejeté.

Le président: Le suivant est le L-12.

M. Kaplan: Il s'agit des lignes 25 et 26 à la page 14. L'argument est similaire à celui que j'ai présenté tout à l'heure au sujet du produit de la vente des biens versés aux organisations chargées de lutter contre la criminalité. Je suppose que son sort sera le même, mais j'aimerais quand même le proposer.

Je propose de retrancher les lignes 25 et 26, à la page 14, et de les remplacer par ce qui suit:

Procureur général et que le produit de la vente des biens est destiné aux forces de lutte contre la criminalité, conformément aux règlements pris par le procureur général pour régler l'affectation de ces biens.

Monsieur le président, je n'en dirai pas plus.

M. Grisé: Monsieur le président, c'est exactement le même amendement que le L-10 qui a été rejeté il y a quelques minutes.

Le président: Votre position est la même que tout à l'heure.

M. Horner: Oui.

L'amendement est rejeté.

Le président: Le sort du N-34 a été réglé, nous passons donc au L-13.

M. Kaplan: Je propose de retrancher les lignes 15 à 18, à la page 16, et de les remplacer par ce qui suit.

A condition qu'il soit convaincu hors de tout doute raisonnable que celle-ci est innocente de toute complicité dans la perpétration de l'infraction.

[*Texte*]

I think all I have to do is remind members of the argument I made earlier about having a higher standard than appearance, and I noted the argument made on behalf of the government against the amendment. I would like to move it nonetheless.

Mr. Grisé: Once again, this amendment is quite similar to N-18 and L-7, both of which were defeated.

The Chairman: The issue is one of degree.

Amendment negatived.

• 1000

The Chairman: On L-14, Mr. Kaplan.

Mr. Kaplan: I move that we add immediately after line 20 on page 16 the following:

(4) Upon acquittal, that the property be returned automatically to the person referred to in paragraphs 420.21(3)(a) and (b) without application for restoration and without costs for storage and recovery of the property.

This amendment covers a concern of the Canadian Bar Association and would assure that if a person is acquitted then he would not be put to the financial trouble and costs of recovering property seized from him. The onus is put on the Crown to restore the property.

Mr. Grisé: I will ask Mr. McIsaac to respond.

Mr. McIsaac: I direct the committee's attention to proposed section 420.23, at the bottom of page 17, which creates the residual disposal power of a court which would apply in these circumstances and would not require a further application on the part of an acquitted person. At that time, immediately after the acquittal, upon his application or indeed on the judge's own motion, the return of the property can be effected.

There is one little release valve in that provision, or in relation to all of the return provisions, that there is an automatic 30-day period of grace in case the Attorney General wants to appeal the case. But subject to that, there is in effect an automatic return at the time of the acquittal.

Mr. Nicholson: Would property that is returned under the section you just read, Mr. McIsaac, in any circumstances attract costs for restoration or costs for storage?

Mr. McIsaac: No, there is no provision that would place an onus upon an acquitted person to pay any costs for the storage.

Mr. Nicholson: I see that there is nothing that places an onus on him, but in the real world would they try to charge? Do they charge people for storage costs if they have detained property here and the person is subsequently acquitted or found—

[*Traduction*]

Je crois que tout ce que j'ai à faire c'est de rappeler aux députés mon argument précédant concernant une norme supérieure à la simple apparence, et j'ai noté l'argument présenté au nom du gouvernement contre cet amendement. Quoi qu'il en soit, j'aimerais le proposer.

M. Grisé: Encore une fois, cet amendement est très analogue au N-18 ou au L-7, amendements tous deux rejetés.

Le président: C'est une question de degré.

L'amendement est rejeté.

Le président: Au sujet de l'amendement L-14, monsieur Kaplan.

M. Kaplan: Je propose d'ajouter immédiatement après la ligne 18, à la page 16, ce qui suit:

(4) En cas d'acquittement, les biens sont remis automatiquement à la personne visée au paragraphe 420.21(3)a) et b), sans demande de restitution et sans frais d'entreposage ou de recouvrement à leur égard.

Cet amendement répond à une préoccupation de l'Association du barreau canadien et fait en sorte qu'une personne qui a été acquittée n'a pas à assumer de frais pour couvrir les biens qui lui ont été pris. Il appartient à la Couronne de les lui rendre.

M. Grisé: Je vais demander à M. McIsaac d'en parler.

M. McIsaac: J'attire l'attention du Comité sur l'article 420.23, au bas de la page 17, qui accorde au juge le pouvoir de disposer des biens dans ces conditions sans que la personne acquittée ait nécessairement à en faire la demande. Donc, dès que la personne est acquittée, à la demande de la personne ou sur l'ordre du juge, les biens peuvent être rendus.

Il y a par ailleurs une petite soupape de sûreté dans cet article en ce sens qu'il est prévu une période de grâce automatique de 30 jours au cas où le procureur général veut parler de la décision en appel. Autrement, les biens sont rendus automatiquement tout de suite après l'acquittement.

M. Nicholson: Les biens qui sont rendus en vertu de cet article, monsieur McIsaac, peuvent-ils donner lieu à des frais d'entreposage ou de recouvrement?

M. McIsaac: Il n'y a pas de disposition qui force la personne acquittée à supporter des frais d'entreprosage quels qu'ils soient.

M. Nicholson: Il n'y a rien théoriquement qui force la personne à le faire, mais en pratique risque-t-elle de se voir exiger des frais? Si l'on a gardé des biens à un endroit en attendant l'acquittement ou une autre décision, peut-on essayer d'exiger des frais d'entreposage. . .

[*Text*]

Mr. McIsaac: Going back to the history of the search warrant provision, section 443, which has been around for many years, I am not aware of any situation where an individual has been charged for storage costs. Those have always been borne by the Crown as a part of the prosecution.

Mr. Horner: Can you show me where it states anything about the 30-day period in the case of the Crown wanting to appeal? Because I just do not see it right now.

Mr. McIsaac: Yes, proposed section 420.25, at the top of page 19. The closing words of that proposed section give the 30-day period of grace.

Mr. Nicholson: It seems to me it would only make sense to have that 30 days.

Mr. McIsaac: Yes. It is applicable presently in criminal statutes in relation to seizure of property.

Amendment negatived.

Mr. Kaplan: L-15 is on page 17. I move that we strike out line 26 on page 17 and substitute the following therefor:

under subsection (4) or if the accused has been acquitted and where the peri-

• 1005

The purpose of this amendment, which is inspired by the Canadian Bar Association brief, would take into consideration the possibility of an acquittal.

Mr. Grisé: Mr. Chairman, the same comments would apply as in L-14 and previous amendments.

Mr. Kaplan: That is right. Exactly!

Amendment negatived.

The Chairman: L-16.

Mr. Kaplan: L-16 is on page 20. I move that we add immediately after line 6 on page 20 the following:

(*b*) a designated enterprise crime offence, or

The purpose of the amendment is, following a suggestion made by the Royal Canadian Mounted Police, that this clause would thereby include enterprise crime offences which should be included for the sake of continuity.

Mr. Grisé: Mr. Chairman, I would like Mr. Mosley to make some comments on this amendment.

Mr. Mosley: I ask through you, Mr. Chairman, for some clarification from Mr. Kaplan. It is our understanding that the RCMP has not advocated this change. It may have been put forward by the Canadian Association of Chiefs of Police. This is a matter of some considerable concern to the federal government and the

[*Translation*]

M. McIsaac: Si je me fie à ce qui s'est passé pour les mandats de perquisition prévus à l'article 443, ces dispositions-là existent depuis des années, je constate qu'on n'a jamais exigé de frais d'entreposage dans ces circonstances. La Couronne a toujours assumé ces frais comme faisant partie de la poursuite.

M. Horner: Pouvez-vous me dire où se trouve le délai de 30 jours prévu dans le cas où la Couronne désire faire appel? Je ne le vois pas nulle part.

M. McIsaac: C'est à l'article 420.25, au haut de la page 19. À la toute fin, il est question des 30 jours.

M. Nicholson: Il me semble que c'est avisé dans les circonstances.

M. McIsaac: Oui. La même disposition vaut dans le cas des autres saisies.

L'amendement est rejeté.

M. Kaplan: L'amendement L-15 concerne la page 17. Je propose de retrancher la ligne 24, à la page 17, et de la remplacer par ce qui suit:

présent article où si l'accusé a été acquitté et lorsque les délais d'appel

Le but de l'amendement, qui s'inspire encore une fois du mémoire de l'Association du barreau canadien, est d'entrevoir la possibilité d'un acquittement.

M. Grisé: Monsieur le président, les mêmes considérations que dans le cas de l'amendement L-14 et des amendements précédents s'appliquent.

M. Kaplan: Très bien.

L'amendement est rejeté.

Le président: L'amendement L-16.

M. Kaplan: Il s'insère à la page 20. Je propose d'ajouter, immédiatement après la ligne 13, à la page 20, ce qui suit:

b) soit d'une infraction de criminalité organisée désignée;

Cet amendement fait suite à une suggestion de la Gendarmerie Royale du Canada voulant que les infractions de criminalité organisée désignées soient incluses dans un souci de continuité.

M. Grisé: Je demanderais à M. Mosley d'expliquer la situation en ce qui concerne cet amendement.

M. Mosley: J'aimerais préciser un point avec M. Kaplan, par votre intermédiaire, évidemment, monsieur le président. Nous avions l'impression que la GRC n'avait pas demandé ce changement. Nous pensions qu'il avait plutôt été proposé par l'Association canadienne des chefs de police. Quoi qu'il en soit, c'est une modification

[*Texte*]

RCMP has been involved in discussions from the beginning in relation to this change in the law.

I can give you some background: the Income Tax Act, since its inception during World War I has striven to protect the confidentiality of the personal information that is received by Revenue Canada in the course of administering the income tax system in this country. The basic rationale for that principle is to protect the integrity of the self-reporting system which is at the heart of our revenue collection efforts. Persons who make returns have to be assured that in doing so the information they supply about their sources of income will not be disclosed except in very limited circumstances.

The Income Tax Act does provide an exception. After charges have been laid in any criminal proceeding, a subpoena may issue and the evidence in relation to the information held by Revenue Canada may be presented to the court.

What proposed section 420.28 of this bill does is to expand in effect the exception which the Income Tax Act now allows to permit the disclosure through the court of information in relation to the tax returns of an individual prior to charges being laid for investigative purposes. It does so specifically with respect to designated drug offences only.

It is recognized that this is a significant departure from the confidentiality principle in relation to tax information, and the reason why it is felt necessary to make that departure at this point in time is, of course, the very grave problem with drugs in this country and internationally and the need to mount effective investigations into drug crimes.

It is felt the information that is held by Revenue Canada would be of particular assistance in the investigation of drug crimes. For that reason, the government proposed to expand the exception to the basic principle that information not be disclosed for the purpose of the investigation of designated drug offences.

• 1010

To expand it further, as the motion provides, is a departure from the status quo, a very significant departure. It is felt to be justified in relation to drug crimes. To take it that step further, it is felt by the government, would not be justified at this time, Mr. Chairman.

The RCMP has a very sophisticated drug-profiteering investigative capacity. For some years now they have had personnel devoted to that task across the country as part of the drug enforcement branch. They have the skills and the knowledge required to conduct sophisticated financial investigations, which would be supported by this type of information. That is not to say that other forces do not have similar capacity, or the ability to develop such a

[*Traduction*]

législative qui préoccupe énormément le gouvernement fédéral, et la GRC participe aux discussions depuis le début.

Je vous explique un peu ce qu'il en est. La Loi de l'impôt sur le revenu, depuis son introduction au cours de la Première guerre mondiale, a essayé de protéger la confidentialité des renseignements personnels fournis à Revenu Canada dans le cadre de sa mise en application. L'objectif fondamental vise à protéger le concept de l'autodéclaration sur laquelle repose tout le régime de perception des impôts au Canada. Les personnes qui présentent leurs déclarations doivent être sûres que les renseignements qu'elles fournissent au sujet de leurs sources de revenu ne sont pas divulgués, sauf en de très rares circonstances.

La Loi de l'impôt sur le revenu prévoit quand même une exception. Lorsque des accusations criminelles ont été portées, une citation à comparaître peut être demandée et Revenu Canada peut être forcé à révéler au tribunal les renseignements qu'il détient.

L'article 420.28 étend la portée de l'exception qui est prévue actuellement en vertu de la Loi de l'impôt sur le revenu de façon à permettre la divulgation au tribunal des renseignements contenus dans la déclaration d'impôt de certaines personnes avant que des accusations soient portées contre elles pour fins d'enquête. Cependant, dans ces nouvelles circonstances, il doit s'agir d'infractions graves en matière de drogues.

Il est évident que c'est une autre exception importante au principe de la confidentialité des renseignements fiscaux. La mesure est cependant jugée nécessaire face aux graves problèmes de drogues qui sévissent actuellement au pays ainsi que dans le monde entier en vue de faciliter les enquêtes au sujet des infractions possibles.

On estime que Revenu Canada peut être d'un grand secours aux enquêteurs dans le cas des infractions en matière de drogues. C'est pour cette raison que le gouvernement a proposé d'étendre l'exception au principe de la confidentialité des renseignements aux enquêtes au sujet des infractions graves en matière de drogue.

Aller encore plus loin, comme le propose l'amendement, constituerait un changement d'orientation très marqué. Le gouvernement est bien d'accord pour ce qui est des infractions en matière de drogue. Cependant, il estime que d'étendre l'exception à d'autres infractions à ce moment-ci ne serait pas justifié.

La GRC a des moyens d'enquête très poussés en matière de trafic des drogues et du produit de ce trafic. Depuis des années, elle affecte du personnel à cette tâche dans tout le pays dans le cadre de sa direction de la police des drogues. Elle dispose des compétences nécessaires pour mener des enquêtes financières très approfondies et cette nouvelle disposition de la loi viendrait appuyer son effort. Ce qui ne veut pas dire que d'autres sections ne

[*Text*]

capacity, but at this point in time, if I may say, Mr. Chairman, the greatest value to be obtained from that information is in relation to the drug-trafficking problem in drug investigations.

There are other investigative avenues that may be pursued with relation to enterprise crimes. It is not at all clear this information would be of great benefit. I know the Canadian Association of Chiefs of Police called for this change, but I would respectfully submit, Mr. Chairman, there is a need for some experience with the administration of such a scheme before it is expanded beyond the area within which it is clearly needed at this time.

Mr. Kaplan: I agree very much with Mr. Mosley's observation that we are dealing here with an important issue, the question of how much confidentiality we will continue to provide to people who are relying on that and reporting income on criminal earnings. Fundamentally we are asking the question of which is more important, getting people to pay their taxes, or using information the government has in its hands to bring criminals to justice.

We looked at this issue, and I tell you I have given it a lot of thought, because I was a member of the legislative committee that looked at using tax information to help in the enforcement of maintenance orders. For the first time in our Canadian tradition, we provided that tax information, and a lot of other confidential information, would be open to assist spouses who are supporting children to get contributions from their defaulting spouses to help maintain their children. We were looking at a situation where welfare was being used in cases where spouses who were capable of making a contribution were able to avoid it until now, and we made a decision there.

The government has come along so far as to say in designated drug offences it is more important to get the drug dealers and to bring them to justice than to get them to pay their taxes. To me it is not a very much further step, although I concede it is a further step, to say that enterprise crime is worthy also of this special treatment and of opening of the books to assist in collecting.

It would assist me if there were some way of knowing how effective is the confidentiality we offer to criminals in getting them to pay their taxes. That is something that has perhaps never been explored, in a public way anyway, but I suppose we would need income tax officials to tell us about that.

Mr. Mosley: If I may assist, Mr. Chairman, income tax officials have indicated, without disclosing any particulars about any individuals, that there are cases where people do report their income from criminal activity, prostitution as an example.

[*Translation*]

pourraient pas profiter du renforcement de ces mêmes pouvoirs, mais le gouvernement estime qu'à ce moment-ci, là où ces renseignements peuvent être les plus utiles, c'est dans le domaine du trafic des drogues et des enquêtes s'y rattachant.

En ce qui concerne les enquêtes sur les infractions de criminalité organisée, il y a d'autres possibilités. Et dans ces cas, il n'est pas sûr que ces renseignements pourraient avoir une utilité quelconque. Je sais que l'Association canadienne des chefs de police a réclamé la modification à cet égard, mais il me semble, monsieur le président, qu'on doit examiner de près l'application de cette disposition dans la pratique avant de songer à l'étendre dans un autre domaine.

M. Kaplan: Je suis tout à fait d'accord avec M. Mosley en ce qui concerne l'importance de la question, à savoir jusqu'où doit aller la confidentialité dont bénéficient ceux qui s'y fient pour déclarer des revenus provenant d'activités criminelles. Justement, la question fondamentale est de savoir ce qui est le plus important, amener les gens à payer leurs impôts ou utiliser l'information dont dispose le gouvernement pour amener les criminels devant les tribunaux.

Nous avons examiné cette question, et j'y ai personnellement beaucoup réfléchi. J'étais membre du comité législatif qui a examiné la possibilité d'utiliser les renseignements fiscaux pour aider à faire respecter les ordonnances de pension alimentaire. Pour la première fois au Canada, nous avons décidé d'utiliser les renseignements fiscaux et d'autres renseignements confidentiels pour aider les hommes et les femmes qui ont des enfants à charge et dont les conjoints manquent à leurs obligations. Nous avons également examiné le cas des conjoints qui s'en remettent au Bien-être social pour éviter d'apporter leur contribution.

Le gouvernement a déjà fait un progrès considérable en indiquant que les infractions graves en matière de drogue et la poursuite des trafiquants sont plus importantes que la perception des impôts de ces mêmes trafiquants. En ce qui me concerne, même si j'admets qu'il y a une différence, cela revient presque à dire que le crime organisé mérite une attention spéciale et justifie l'accès aux renseignements qui permettent le recouvrement des impôts.

J'aimerais bien savoir à quel point le principe de la confidentialité qui leur est offerte amène les criminels à payer leurs impôts. A ce que je sache, c'est une question qui n'a jamais été examinée, du moins en public, mais je suppose que les fonctionnaires de l'impôt savent ce qu'il en est.

M. Mosley: Si vous le permettez, monsieur le président, j'aimerais dire que les fonctionnaires de l'impôt ont déjà indiqué, sans mentionner le nom des intéressés, que certains faisaient parfois état de revenus provenant d'activités criminelles, la prostitution, par exemple.

[*Texte*]

• 1015

Mr. Horner: Mr. Chairman, we are talking about disclosure provisions. In view of what it says in the preceding proposed section, 420.27, where it includes an enterprise crime offence, I think there is something to be said for also putting it into proposed section 420.28 as a subsection (b).

I am not sure what an enterprise crime offence is. Perhaps Mr. Mosley could explain it to me exactly. Is it only under the Income Tax Act we are talking about?

Mr. Mosley: No, Mr. Chairman, the expression "enterprise crime offence" is defined in the bill and refers to a limited schedule of offences—roughly 22 or 23 in number. They are primarily those that are profit-oriented and are found in the Criminal Code. Proposed section 420.27, although—

Mr. Kaplan: Enterprise crimes are business kinds of crimes.

Mr. Horner: All right, so are you talking about computer theft.

Mr. Mosley: Computer theft would be an example—fraud, extortion and so on. Proposed section 420.27 is intended to deal with the problem of—

Mr. Horner: With the informant.

Mr. Mosley: —with an informant who may be subject to confidentiality rules, primarily the common law confidentiality doctrine, which attaches to anyone who is in a relationship such as bank customer, an accountant customer, or that type of situation. The banker or the accountant is liable civilly in damages for the disclosure of any confidential information concerning the affairs of the individual.

Now, there is a public interest exception to that. The rule was first formulated in the 1920s by a British court and has been followed throughout the common law world. The public interest exception has never been adequately defined by the courts. There is no jurisprudence to assist us in what it means. Proposed section 420.27 is intended to fill the void by spelling out that in relation to proceeds of crime or the commission of an enterprise crime offence or designated drug offence, the individual informant is protected, if he acts on the basis of reasonable suspicion.

It was amended yesterday, as you recall, Mr. Chairman, to specifically exclude the operation of section 241 of the Income Tax Act. Section 241 is the provision that governs confidentiality in relation to information held by Revenue Canada. It was our view prior to that amendment that proposed section 420.27 was limited by section 241. Proposed section 420.27 is a general provision, section 241 is a specific provision, and under general principles of interpretation, the specific would quality the general.

[*Traduction*]

M. Horner: Monsieur le président, nous parlons ici de la communication des renseignements. Comme il est question des infractions de criminalité organisée dans l'article 420.27, qui précède, il serait logique qu'il en soit de même dans cet article 420.28, à l'alinéa b), par exemple.

Cependant, je ne suis pas sûr de bien comprendre ce qu'est une infraction de criminalité organisée. M. Mosley est peut-être en mesure de me l'expliquer. Est-ce que cela concerne seulement la Loi de l'impôt sur le revenu?

M. Mosley: Non, monsieur le président, l'expression «infraction de criminalité organisée» est définie dans ce projet de loi et est limitée seulement à un certain nombre d'infractions, 22 ou 23 environ. Ce sont essentiellement les infractions qui rapportent des profits qu'on trouve dans le Code criminel. L'article 420.27, même...

M. Kaplan: Les infractions de criminalité organisée concernent le domaine des affaires.

M. Horner: Le vol informatique est donc inclus.

M. Mosley: Le vol, la fraude, l'extorsion etc. L'article 420.27 vise essentiellement...

M. Horner: Un informateur.

M. Mosley: ... un informateur assujetti aux règles de la confidentialité, à la doctrine de la confidentialité prévue en common law, quiconque est en rapport avec la personne, une banque, un comptable etc. Le banquier ou le comptable peut faire l'objet d'une poursuite civile s'il a divulgué des renseignements confidentiels au sujet des affaires de la personne.

Il y a une exception de prévue dans l'intérêt public. La règle a été établie pour la première fois au cours des années 1920 par un tribunal britannique et a été respectée depuis dans tous les pays de common law. Cependant, l'exception pour l'intérêt public n'a jamais été précisée de façon adéquate par les tribunaux. Il n'y a pas de jurisprudence qui puisse nous aider à cet égard en plus. L'article proposé 420.27 est destiné à remédier à cet état de choses en précisant que pour ce qui est des produits du crime, de la perpétration d'infraction de criminalité organisée ou d'infraction grave en matière de drogue, l'informateur est protégé s'il a agi à partir d'un doute raisonnable.

Si vous vous souvenez bien, monsieur le président, cet article a été modifié hier spécifiquement pour exclure l'application de l'article 241 de la Loi de l'impôt sur le revenu. Le dit article est celui qui établit le caractère confidentiel des renseignements détenus par Revenu Canada. Sans la modification, nous pensions que l'article 420.27 ne pouvait être limité dans son application par l'article 241. L'article 420.27 est une disposition générale tandis que l'article 241 est une disposition précise. En vertu des principes reconnus d'interprétation, et les

[*Text*]

However, for greater certainty and to ensure that there was no misinterpretation perhaps by Revenue Canada employees themselves, it was felt necessary to amend proposed section 420.27 to ensure that it referred specifically to section 241 of the Income Tax Act. Section 241 contains a general rule of confidentiality with exceptions and it does qualify the scope of proposed section 420.27.

Mr. Horner: May I ask, Mr. Chairman, if it would be possible, since the amendment has been put in to exclude section 241 of the Income Tax Act, to also put in enterprise crime offence as a subsection (b) and exclude section 241 of the Income Tax Act?

Mr. Mosley: I am not sure I understand, Mr. Chairman.

Mr. Kaplan: It is the income tax information that we want, though.

Mr. Horner: Well, yes, okay.

Mr. Kaplan: The issue really, first of all, is whether we think it is more important to protect criminals earning this income so that they will report their taxes, or to use that information to help nail them and take their proceeds of crime away.

The government feels that in the case of designated drug offences, because of the epidemic, it is, but in the case of enterprise crime it is not. I am arguing by this amendment that enterprise crime ought to be treated in the same way as designated drug offences. Perhaps I will not say any more about it just now.

• 1020

Mr. Nicholson: Let me say that I think the issue at stake is just a little broader than whether or not we are trying to protect income tax records of criminals here.

Mr. Horner: I would hope so.

Mr. Nicholson: There is the overall principle of confidentiality of income tax records that applies to all Canadians. When we are asking for an exception, I think it is legitimate to look very long and very carefully at just what exceptions we will make. I for one, for instance, think the exception should be made in the area of designated drug crimes because of the difficulty in tracking this down, because of the large scales of money that are involved, and because of the epidemic problem we have with this.

Now, when I look at the other ones in the enterprise crime sections, I do not see the urgency to open up the income tax records. It seems to me that the person should be caught, if we are going to nail some of these people, long before they file their income tax records the

[*Translation*]

dispositions précises limitent la portée de la disposition générale.

De façon à ce qu'il n'y ait absolument aucune possibilité de mauvaise interprétation relativement aux employés de Revenu Canada, il a été jugé nécessaire de modifier l'article 420.27 de façon à mentionner spécifiquement l'article 241 de la Loi de l'impôt sur le revenu. L'article 241 a établi la règle générale de la confidentialité avec certaines exceptions et il limite la portée de l'article 420.27.

M. Horner: Puisque cette modification a été apportée, serait-il possible de mentionner à l'alinéa b) les infractions de criminalité organisée et d'exclure également ici l'article 241 de la Loi de l'impôt sur le revenu?

M. Mosley: Je crains de ne pas avoir très bien compris, monsieur le président.

M. Kaplan: Ce sont les renseignements fiscaux que nous désirons obtenir.

M. Horner: Je comprends.

M. Kaplan: La question vraiment est de savoir si nous voulons protéger les criminels de façon à ce qu'ils puissent déclarer leurs revenus et payer leurs impôts ou si nous voulons utiliser les renseignements dont nous disposons pour les traîner devant la justice et saisir les profits de leur activité criminelle.

Le gouvernement estime qu'il faut prendre des mesures spéciales seulement dans le cas des infractions graves en matière de drogue, à cause de l'étendue du problème, non pas dans le cas des infractions de criminalité organisée. Mon amendement place sur le même pied les infractions de criminalité organisée et les infractions graves en matière de drogue. Il convient peut-être que je m'arrête là.

M. Nicholson: Selon moi, la question n'est pas seulement de savoir s'il convient de protéger les déclarations d'impôt des criminels.

M. Horner: J'espère bien.

M. Nicholson: Le principe fondamental de la confidentialité des déclarations d'impôt s'applique à tous les Canadiens. Chaque fois que nous voulons nous écarter de ce principe, nous devons nous montrer d'une extrême prudence. En ce qui me concerne, j'estime qu'une exception doit être faite dans le cas des infractions graves en matière de drogue, à cause de la difficulté de réunir les preuves à cet égard, à cause des montants d'argent impliqués et à cause de l'étendue du problème de façon générale.

Dans le cas des infractions de criminalité organisée, je ne vois pas la même urgence à ouvrir les dossiers de l'impôt. Il me semble que la personne doit être arrêtée, si besoin en est, bien avant qu'elle n'ait la possibilité de présenter sa déclaration d'impôt pour l'année écoulée. Et,

[*Texte*]

following year. The frequency and the seriousness is not there in all cases, as we see with the drug crime. So I for one am willing to make the exception for designated drug offences. Let us see how that works here before we open it up for other exceptions.

Mr. Horner: With respect, Mr. Chairman, what you are dealing with here is organized crime. I cannot buy that there is no urgency just because it is a different type of offence and not a drug offence.

Mr. Nicholson: That is what I am saying. I am saying, Dr. Horner, that the enterprise crime sections cover things like the money from keeping common bawdy-houses and procuring and other offences. I am not saying they are not serious; I am just saying that if you are going to catch some of these people here, you will have to do it long before you trust them to fill out an income tax form for the following year or the previous year. But because drugs are such an international huge crime—and as I say, it is something different and much more serious, I would suggest, than the procuring sections of the Criminal Code—I could see why we would make the exception for income tax records on that because of the sophistication of the international drug market.

The Chairman: This proposed amendment would add a new offence under the provisions of proposed section 420.28.

Amendment negatived.

Mr. Kaplan: I would like to move this amendment because it puts the issue in a slightly different place, but in the same scheme of things, and I expect the same result. In any event, I move that we add immediately after line 14 on page 20 the following:

(ii) a designated enterprise crime offence or

There would be some consequential changes needed, but I will leave it at that, and then if I am successful we will worry about the consequential changes.

Mr. Grisé: Mr. Chairman, I think the same comments would apply as to the previous amendment.

Mr. Horner: If the last one did not pass, this one cannot possibly, because it does not follow along. So I would have to not support this one as well.

Amendment negatived.

Clause 2 as amended agreed to.

• 1025

The Chairman: Have we any more on clause 10?

[*Traduction*]

de façon générale, ces infractions ne sont pas aussi fréquentes ou graves que les infractions en matière de drogue. Donc, personnellement, je suis prêt à faire une exception dans le cas des infractions graves en matière de drogue. Cependant, je veux voir quel effet cette disposition aura avant de l'étendre à d'autres infractions.

M. Horner: En toute déférence, monsieur le président, nous parlons ici de criminalité organisée. Je ne vois pas en quoi les infractions de ce genre requièrent une intervention moins urgente que les infractions en matière de drogue.

M. Nicholson: Je veux dire, monsieur Horner, que les infractions de criminalité organisée ont trait à des activités comme la tenue de maisons de débauche ou le proxénétisme. Je ne veux pas minimiser leur gravité, mais je fait remarquer que les coupables sont censés être arrêtés bien avant d'avoir l'occasion de présenter leur déclaration d'impôt pour l'année écoulée. Dans le cas du trafic des drogues, qui a une portée internationale, la situation est tout à fait différente et beaucoup plus grave, selon moi; il ne s'agit plus de proxénétisme dans le sens prévu au Code criminel. C'est à cause du degré de raffinement du trafic international des drogues que j'estime qu'une exception doit être faite en ce qui concerne les dossiers de l'impôt.

Le président: Cet amendement créerait une nouvelle infraction en vertu de l'article 420.28.

L'amendement est rejeté.

M. Kaplan: Je propose quand même l'amendement suivant, parce que j'estime qu'il est quelque peu différent, mais il s'inscrit dans la même ligne de pensée; je m'attends aux mêmes résultats. En tout état de cause, je propose de retrancher la ligne 20, à la page 20, et de la remplacer par ce qui suit:

en matière de drogue, d'une infraction de criminalité organisée désignée ou d'un acte ou

Il y a un certain nombre de modifications qui en découlent, mais je vais m'arrêter là pour l'instant. Si l'amendement est adopté, je verrai pour ce qui est des modifications corrélatives.

M. Grisé: Monsieur le président, les arguments déjà invoqués valent dans ce cas-ci.

M. Horner: Si l'amendement précédent n'a pas été adopté, celui-ci n'a pas grand-chance non plus. Je ne suis donc pas plus en faveur.

L'amendement est rejeté.

L'article 2 modifié est adopté.

Le président: Avons-nous d'autres amendements à l'article 10?

[*Text*]

The Clerk of the Committee: L-18 is the next one.

The Chairman: L-18 is the last amendment. Mr. Kaplan, please.

Mr. Kaplan: It is on page 29. This will sound familiar to members. It harks back to the issue of defining proceeds earned in other jurisdictions that would be covered by the scope of this legislation. I move that we strike out lines 5 to 7 on page 29 and substitute the following therefor:

(b) an act or omission in a foreign jurisdiction that is designated as an offence in that jurisdiction.

Without having to repeat the arguments, Mr. Chairman, this would protect earnings in other jurisdictions that were not earned as a result of crimes as defined in those jurisdictions.

Mr. Grisé: Mr. Chairman, this amendment would deal with double criminality and is similar to some previous amendments that were defeated. L-1, N-4, N-5, L-1A, N-6, L-2, and N-7 were all defeated.

Amendment negatived.

Clause 10 as amended agreed to.

The Chairman: Shall the title carry?

Some hon. members: Agreed.

The Chairman: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chairman: Shall the committee order a reprint of Bill C-61 as amended for the use of the House of Commons at report stage?

Some hon. members: Agreed.

The Chairman: I want to thank all members, and Mr. Binns for joining us—

Mr. Horner: Great leadership.

The Chairman: —in this happy finale.

Mr. Grisé: Especially Mr. Binns.

The Chairman: The officials and the staff have made it very easy for the Chair. I also want to thank Mr. Kaplan for abiding by his commitment to be here this morning and completing the resolutions before us.

Mr. Grisé: Mr. Chairman, once again I want to thank all members of the committee for their co-operation, as well as the officials and the people at the table.

The Chairman: Thank you very much. This meeting is adjourned.

[*Translation*]

Le greffier du Comité: L-18 est le suivant.

Le président: C'est le dernier. Monsieur Kaplan, s'il vous plaît.

M. Kaplan: Il se trouve à la page 29. Et il ne semblera pas étranger aux membres du comité. Il a trait encore une fois à la définition des produits touchés dans d'autres juridictions et visés par ce projet de loi. Je propose de retrancher les lignes 5 à 8, à la page 29, et de les remplacer par ce qui suit:

b) soit d'un acte ou omission survenu dans une juridiction étrangère qui est qualifié d'infraction dans cette juridiction.

Je ne veux pas reprendre les mêmes vieux arguments, monsieur le président, mais cet amendement protégerait les revenus gagnés dans d'autres juridictions autrement que dans le cadre d'activités criminelles selon ce que prévoieraient ces autres juridictions.

M. Grisé: Monsieur le président, cet amendement a trait à la double criminalité et est semblable aux amendements antérieurs qui ont été rejetés. Les amendements L-1, N-4, N-5, L-1A, N-6, L-2, et N-7 ont tous été rejetés auparavant.

L'amendement est rejeté.

L'article 10 modifié est adopté.

Le président: Le titre est-il adopté?

Des voix: D'accord.

Le président: Dois-je faire rapport du projet de loi modifié à la Chambre?

Des voix: D'accord.

Le président: Le comité doit-il ordonner la réimpression du projet de loi C-61 modifié en vue de son étude à la Chambre des Communes à l'étape du rapport?

Des voix: D'accord.

Le président: Je remercie tous les membres du comité, ainsi que M. Binns qui a bien voulu se joindre à nous. . .

M. Horner: Il a donné un excellent exemple.

Le président: . . . en fin de parcours.

M. Grisé: Spécialement M. Binns.

Le président: Les fonctionnaires et le personnel du comité m'ont beaucoup facilité la tâche. Je tiens également à remercier M. Kaplan d'avoir respecté sa promesse d'être ici ce matin pour régler les questions en suspens.

M. Grisé: Monsieur le président, je tiens à remercier encore une fois tous les membres du comité de leur coopération, ainsi que les fonctionnaires et les personnes assises à cette table.

Le président: Merci beaucoup. La séance est levée.

May 31, 1988 [Standing Committee on Justice and Solicitor General]

[Texte]

Criminal Code as well as the report of the Canadian Sentencing Commission.

With respect to the proposed new Criminal Code, we agreed that additional work needs to be done. At the subsequent federal-provincial meeting held in Quebec City last week, my provincial colleagues and I discussed Criminal Code matters and agreed upon the immediate priorities to be addressed.

In Saskatchewan, my colleagues and I recognized the need to examine the recommendations of the Canadian Sentencing Commission on a priority basis and to hold further, more detailed discussions on this issue.

Officials of my department are closely following the excellent work of the standing committee, and I believe your work will prove to be as most valuable contribution to reform in this area.

In Quebec City last week, my provincial colleagues and I agreed that the preliminary round of consultations, which is now being undertaken with the provinces, is proving to be extremely useful. The purpose of these consultations is to permit us to respond quickly to important recommendations that your committee will make.

As you are well are, provisions of the Official Languages Act will also have an impact in the administration of justice and periodically need to be thoroughly reviewed to ensure recognition of rights respecting use of English and French as official languages in federal institutions.

The President of the Treasury Board, the Secretary of State and I are participating in a comprehensive review of legislation and policy in the field of official languages. I informed committee members of this study at the last meeting.

On June 25, 1987, an act respecting the status and use of the official languages of Canada was tabled in the House. The legislation reinforces the rights of all Canadians to communicate with and to receive services from federal institutions in the official language of their choice.

Mr. Chairman, the Government of Canada must meet not only the justice demands of its own people but also international obligations. It must play its part in addressing justice concerns that go beyond our borders.

On May 29, 1987, I introduced another criminal law initiative, Bill C-61, entitled "Proceeds of Crime". The proposed legislation is intended to apply to illicit drug activities and to those offences under the Criminal Code, such as prostitution, robbery, extortion, and fraud, which will be designated as enterprise crimes. The proposals would permit law enforcement authorities, subject to approval by a court, properly to attack the proceeds of crime by granting the power to investigate, freeze, and

[Traduction]

criminel de la Commission de réforme du droit, ainsi que sur le rapport de la Commission de la détermination de la peine.

En ce qui concerne le nouveau Code criminel, nous avons jugé qu'un travail supplémentaire restait à faire. A la réunion fédérale-provinciale subséquente, tenue à Québec la semaine dernière, mes collègues provinciaux et moi-même avons discuté de nouveau du Code criminel et arrêté les priorités immédiates.

En Saskatchewan, mes collègues et moi-même avons reconnu la nécessité d'examiner en priorité les recommandations de la Commission canadienne de la détermination de la peine et de tenir des discussions plus détaillées à ce sujet.

Les fonctionnaires de mon ministère suivent l'excellent travail du Comité permanent et j'estime que vos travaux seront une contribution très précieuse à la réforme en ce domaine.

À Québec la semaine dernière, mes collègues provinciaux et moi-même avons convenu que la série préliminaire de consultations, qui se déroule actuellement dans les provinces, est une chose extrêmement utile. L'objet en est de nous permettre de réagir rapidement aux recommandations importantes que votre comité formulera.

Ainsi que vous le savez, les dispositions de la Loi sur les langues officielles influeront également sur l'administration de la justice et exigent un réexamen périodique pour assurer le respect des droits en matière d'usage de l'anglais et du français dans les institutions fédérales.

Le président du Conseil du Trésor, le secrétaire d'État et moi-même participons à un réexamen complet de la législation et de la politique en matière de langues officielles. J'ai informé les membres du comité de cette étude lors de la dernière réunion.

Le 25 juin 1987, une loi intéressant le statut et l'utilisation des langues officielles au Canada fut déposée à la Chambre. Elle renforce le droit de tous les Canadiens de communiquer avec les institutions fédérales et d'en recevoir les services dans la langue officielle de leur choix.

Monsieur le président, le gouvernement du Canada doit non seulement assurer la justice pour les Canadiens mais s'acquitter également de ses obligations internationales. Il doit donc se pencher sur des problèmes de justice qui transcendent ses frontières.

Le 29 mai 1987, j'ai introduit une autre initiative de droit pénal, le projet de loi C-61, intitulé «Produits de la criminalité». Il s'applique au trafic de drogues et à ces infractions au Code criminel que sont la prostitution, le vol à main armée, l'extorsion de fonds et l'escroquerie, toutes désignées comme entreprises criminelles. Ces propositions permettraient aux autorités de police, avec l'autorisation d'un tribunal, de s'attaquer aux produits de la criminalité, avec des pouvoirs d'enquête, la possibilité

[*Text*]

seize these proceeds. Additionally, the courts would be given adequate powers to order the confiscation of these proceeds.

• 1600

In a related area, Canada and the United States signed a treaty on mutual legal assistance in criminal matters on March 18, 1985 to address the ever-increasing problem of transnational criminal activity. In an effort to implement the provisions of this treaty and any other treaty on mutual legal assistance, I tabled the Mutual Legal Assistance in Criminal Matters Act. This proposed legislation would enhance co-operation between Canada and its treaty partners to ensure that the existing informal co-operation in this area will continue, with enhanced efficiency.

I would like to mention a matter that although it has international importance is one that seeks a Canadian solution, that of war crimes and crimes against humanity. This is a matter I gave considerable time to at our last meeting, and I am pleased to advise that on September 16, 1987 amendments to the Criminal Code which give Canadian courts jurisdiction to try war crimes and crimes against humanity where the conduct in question would amount to a criminal offence in Canada were proclaimed into force.

I would at this time like to turn my attention to initiatives the department undertook during the past year to respond to the needs of Canadian families through family law reform.

Each year in Canada, thousands of marriages and common-law relationships break down. The result is often separation or divorce. In many cases the separating or divorcing spouses are able to reach a mutual agreement on child custody, access rights for the non-custodial parent, and any child support or spousal payment required. Where this is not possible, a court may issue a family order stipulating support, custody, or access rights. A large percentage of support orders issued in Canada regrettably are not complied with. The enforcement of family orders is a provincial and territorial responsibility. However, with the passage of the Family Orders and Agreements Enforcement Assistance Act, Parliament provided the legislative framework by which the federal government can assist in the enforcement process.

As I reported at our last meeting, royal assent had been given to that act in 1986, and part I, allowing for the release of certain information from a designated federal information bank to assist in locating those who breach support, custody, or access orders or agreements, was proclaimed in 1987.

The act has now been brought fully into force with the proclamation of part II on May 2 of this year. Part II of

[*Translation*]

de bloquer et de saisir ces produits. En outre, les tribunaux disposeront de pouvoirs adéquats pour ordonner la confiscation de ces biens.

Dans un domaine connexe, le Canada et les États-Unis ont signé un traité d'assistance juridique mutuelle en matière criminelle le 18 mars 1985 pour s'attaquer au problème croissant de l'activité criminelle transnationale. Pour mettre en oeuvre les dispositions de ce traité et de tout autre traité d'assistance juridique mutuelle, j'ai déposé la Loi sur l'assistance juridique mutuelle en matière criminelle. Elle renforcerait la collaboration entre le Canada et ses cocontractants afin que la coopération officieuse qui existe dans ce domaine puisse se poursuivre de manière plus efficace.

Je voudrais mentionner un autre aspect qui, bien que revêtant une dimension internationale, réclame aussi une solution canadienne, celui des crimes de guerre et des crimes contre l'humanité. C'est une question que j'ai longuement traitée lors de notre dernière réunion et j'ai le plaisir de vous informer que le 16 septembre 1987, des modifications du Code criminel ont été déposées qui donneront aux tribunaux canadiens la compétence de juger les crimes de guerre et les crimes contre l'humanité dans les cas où les actes en question seraient considérés comme une infraction criminelle au Canada.

Je voudrais maintenant aborder les initiatives que mon ministère a prises au cours de l'année écoulée pour satisfaire les besoins des familles canadiennes, par l'intermédiaire de la réforme du droit de la famille.

Chaque année, au Canada, des milliers de mariages et d'unions de fait se défont. Il en résulte souvent la séparation ou le divorce. Dans de nombreux cas, les conjoints qui se séparent ou divorcent sont incapables de s'entendre par eux-mêmes sur la garde des enfants, le droit de visite du parent ou de la mère qui n'a pas la garde, et sur la pension alimentaire à l'égard du conjoint ou des enfants. Dans ce cas, un tribunal peut rendre une ordonnance familiale fixant la pension alimentaire, les dispositions de garde ou le droit de visite. Malheureusement, un grand nombre de ces ordonnances ne sont pas respectées au Canada. Il s'agit là d'une responsabilité provinciale et territoriale, mais avec l'adoption de la Loi d'aide à l'exécution des ordonnances et des accords familiaux, le Parlement a mis en place le cadre législatif qui permettra au gouvernement fédéral de faciliter le processus.

Ainsi que je l'ai signalé lors de notre dernière rencontre, loi a reçu la sanction royale en 1986 et la partie I, qui autorise la divulgation de certains renseignements contenus dans une banque d'information fédérale désignée dans le but de permettre de retrouver ceux qui enfreignent ces ordonnances ou accords, fut promulguée en 1987.

La loi est maintenant pleinement en vigueur avec la promulgation de la partie II, cette année. Celle-ci permet

June 3, 1988 [House of Commons]

inquisition. What is necessary is to turn the bright light of publicity on those who would exploit our fellow Canadians.

Something about which we must all surely be aware is that many of the activities of organized crime in Canada hurt the poor and defenceless in particular. Organized crime is being addressed by a Bill still before the House, that is, Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act. This Bill, among other things, addresses the seizures of criminals' profits as well as money laundering. But we have yet to see this Bill available for third reading debate.

Canada still lags behind both the United States and Italy where organized crime has been examined and legislation enacted. The present Secretary of State for External Affairs (Mr. Clark), when he was in opposition, called for a royal commission into organized crime. So did the late Right Hon. Diefenbaker when he was in opposition. But there has never been a national commission into organized crime in Canadian history. We have had two provincial inquiries, one in Montreal and one in Ontario, the Waisberg Commission, which reported, I believe, in 1973. Both of these commissions were very effective in bringing to public attention abuses in the construction trade and other legitimate trades and unions which had been infiltrated by members of organized crime. It is this white light of publicity that will be one of the greatest deterrents to organized crime. When citizens are informed, they can protect themselves and, indeed, more public support and public pressure is needed.

Criminals fear the exposure of their crimes and the resulting efforts by society to limit profitability. The history of what has happened when organized crime has gotten into legitimate business is full of dangerous and unpleasant situations. When organized crime is involved in contract bidding in the construction industry, inferior materials can be used and lives can be lost. The corruption of public officials is necessary for this to happen and the corruption of public officials and business is very difficult to uncover. Last October, in the course of debate, the Hon. Member for St. Catharines (Mr. Reid), described how business people, well known in the community, may be drawn innocently into the circle of organized crime by the prospects of large profits, not always knowing that the links to criminal organizations exist. Poor people find themselves drawn into organized crime. They borrow, they gamble, they then find they are being pressured to do unacceptable things. In Canada and in other countries, organized criminals are protected by using legal businesses to mask their activities.

To look outside of Canada at things that have happened elsewhere in the world, I will point out that in the fall of 1986, most Members here, I think, were reading about the situation of the European Economic Community where millions of dollars a year were being drained from the Community by the very ingenious use by organized crime of the common agricultural policy in Europe. Criminals are ingenious, and if they have officials in place who can give them information about how certain systems work, they are able to exploit the system.

Something else was happening at the same time as the European Economic Community was able to pinpoint the involvement by organized crime in this exploitation and abuse of a particular compensation measure under the common agriculture policy. In Britain people were becoming concerned about the organized structure of the United States illicit drug industry moving into Britain.

• (1440)

To go back a little further, in 1982, an Italian banker was found hanging from a bridge in Blackfriars, London. It was never determined whether this was suicide or murder. But you will remember, Mr. Speaker, this banker was the head of the Vatican Bank. In fact, the Italian Justice Ministry later issued arrest warrants for senior personnel of that bank. This was again proven to be a situation in which the tentacles of organized crime had extended even into the Vatican's own bank.

Members of this House who have read the book *Mob Rule* by James Dubro will be aware of incidents that have happened in Canada in which criminals have talked about laundering their money through apparently legitimate businesses. They have also talked about their practices in corrupt registration of deeds. Much of this depends on having an official in place who is controlled by these individuals. Without someone in a key position some of these schemes would fail.

Members of this House have been lobbied on behalf of organized crime, but innocently. One particular Member of the House whose integrity is absolutely beyond question was asked by local business people who were well respected and by a priest to write to the Solicitor General asking for special treatment for a prisoner on the grounds of the prisoner's youth and inexperience. That prisoner was a key figure in organized crime who is well known now to have ordered murders from his cell and who was himself subsequently killed by a rival gang. One could go on.

We are all aware that from time to time criminals will allege that they had a judge or a policeman in their pocket. In many cases this allegation is totally without foundation. It is merely a matter of boasting and trying to appear more powerful to the people they are trying to impress. However, it may not always be boasting. While the question exists it should be examined.

I repeat what I said at the outset. I certainly would not want to see, and I know that no Member of the House would want to see, a special committee of the Senate and of the House of Commons used in any way as a fishing expedition or used in any way to endanger people's reputations without full proof. But the mere fact that such a committee was known to be sitting, was known to be willing to receive witnesses, would itself cast a very bright light of publicity on the activities of organized crime and would act as a deterrent.

We have certainly seen that whenever politicians have shown the courage to tackle organized crime they have been able to win. We need only look to that extraordinarily brave

Italian mayor in Palermo who in spite of threats to him and his family went ahead in standing up to organized crime. The implications have been tremendous, both in the United and in Italy.

We also have to remember, as my colleague from Winnipeg pointed out in a previous debate on this subject, now that it is less profitable and less safe for organized criminals to ply their trade in the United States and in Italy they will be looking for other places to move to and other sources of influence. Canada must be prepared for this. I suggest that the establishment of a special joint committee of the House of Commons and the Senate to examine this whole subject could only be a useful and constructive one.

Mrs. Pauline Browes (Parliamentary Secretary to Minister of the Environment): Mr. Speaker, I appreciate this opportunity to address the House on the motion of the Hon. Member for Trinity (Miss Nicholson) for a parliamentary inquiry into organized crime. Much of the organized criminal activity in Canada involves the supplying of illegal goods and services, gambling, loan sharking, drugs, prostitution, pornography, and other forms of vice are included. Press reports indicate that organized crime is also involved in legitimate business with the purpose to monopolize services and manipulate prices. Within these structures activity is not dependent upon any one individual, and the criminal activity will continue to flourish even if one or more of the principals is removed.

We also know that persons involved in organized crime represent a wide variety of backgrounds and origins. They are groups of criminals, some working within structures as complex as those of some large corporations and subject to internal laws which are rigidly enforced. Their actions are well thought out conspiracy aimed at gaining control over fields of activity in order to amass profits.

All Canadians are concerned that organized criminals be thwarted, exposed, punished, and incapacitated to show that their business will not be tolerated in Canada. But I ask, Mr. Speaker, is the way the Hon. Member for Trinity suggests the best way to deal with organized crime in Canada?

Some Canadians, perhaps influenced by media, may have vastly inflated views of the extent of organized crime in Canada. While I do not want to minimize the threat posed by organized crime in Canada, particularly with respect to drug trafficking, the combined law enforcement efforts of the various orders of government in Canada are increasingly effective in controlling organized crime.

A major problem with inquiries of the nature proposed here is that they attract a great deal of public attention. There are public hearings, daily reports in the media, and discussions of the latest revelations on national news and interview programs which could sensationalize the issue and undermine the work of law enforcement authorities.

A parliamentary committee collects information. It is not a court of law where the rules of evidence are strictly applied. When there is a breach of criminal conduct only a trial, where a defence can be made public, satisfies the Canadian sense of justice.

Therefore, because the rules of evidence are less rigorous in parliamentary inquiries than those applicable to Canadian courts, inquiries have to be handled very carefully. Moreover, evidence educed before such an inquiry could not be used in court proceedings and thus is of little value from a law enforcement perspective.

■ (1420)

Moreover, it is likely that a parliamentary inquiry would unnecessarily alarm Canadians by creating the impression that organized crime has not been adequately addressed by Canadian police and the courts. In addition, I am concerned that an inquiry would tend to deflect both attention and resources away from ongoing intelligence and enforcement efforts, and possibly retard the investigation and prosecution of major cases.

I believe that the arrangements we already have in this country are our strength in combating organized crime. We have a federal police force, the RCMP, dealing with the problem. We have all levels of government and their enforcement agencies co-operating to provide an effective shield against organized crime. We have national intelligence systems, national police training programs, joint force operations, and a host of other mechanisms. Major institutions, such as the Canadian banking community, are examining ways and means of minimizing the extent to which they can be used to launder money.

Those efforts are not widely appreciated and reported on in the media. In Canada, we tend to proceed more quietly and with less fanfare than in the United States.

In my view the approach of Canadian law enforcement authorities to organized crime is effective. It focuses efforts and resources and reflects excellent co-operation between all jurisdictions in the prevention, detection, investigation, and prosecution of organized crime figures. Enforcement policy and activities operate to preserve the confidence of Canadians in the integrity of our social, political and economic institutions as the major influences constraining the corruption that organized crime attempts to promote.

Key to this is the integrity of Canada's police, courts, and other law enforcement institutions as our front line defence against organized crime. Fortunately, these institutions have been and remain free of corruption, and we must sustain policy and programs to ensure that it will never become a country in which the underworld can take root.

The Government recognizes the Hon. Member's legitimate concerns respecting organized crime. A parliamentary inquiry would add little to the mechanisms already in place to deal with organized crime. Rather, this House should support and encourage the federal and provincial Governments in their law

enforcement activities, including the expeditious handling of the proceeds of crime and mutual legal assistance legislation which are designed to make the law more effective in dealing with organized crime.

While I am confident that the motion put forward by the Hon. Member for Trinity reflects serious concern over the extent of organized crime in Canadian society and in advancing measures to facilitate enforcement efforts, the Hon. Member can be assured that members of the Canadian police community and other dedicated criminal justice professionals are dealing competently in their response to the problem. They have the confidence of this Government and merit the support of all Members of the House, and Canadians generally.

I believe that it would not be in the best interest of Canadians and our efforts against organized crime to establish a parliamentary inquiry.

Mr. Jack Harris (St. John's East): Mr. Speaker, I am pleased to participate in the debate before the House on the motion of the Hon. Member for Trinity (Miss Nicholson). In looking carefully at the motion I see are not talking about an over-all investigation into organized crime in this country. Canada is a very different country from that south of the border in the United States of America. Many of our images of organized crime come from the United States and perhaps from things that we as children may have seen on television, for those of us who had television when we were children, or read about from south of the border.

Television programs, movies, and books all give us a picture of organized crime, violence and essentially corruption that may result, in addition to the terror, murder, and death that is caused by the activities of people engaged in organized crime. That is one image that we have of organized crime, as I say, mostly coming from south of the border, but more and more we also hear of the activities of organized crime in Canada.

When one looks closely at the motion proposed by the Hon. Member for Trinity, an over-all investigation into organized crime and the extent of organized crime is not what is being suggested, but rather an inquiry into the extent to which organized crime is connected to the legislative, judicial, and administrative institutions of Canadian society. That is a very directed question and I would submit a very timely one, given the nature of this Parliament and the type of changes that are taking place in the way legislative decisions are made in this country.

As a result of the recent reforms to the House of Commons, as a further result of the greater efforts at lobbying individual Members and Governments that have taken place only in the last several years, we are seeing effective means whereby individuals, corporations, or groups with large sums of money, however they may get it, can use that money to influence the decision-making of this Parliament, of the Cabinet, and of the Government.

If that can be done at this level of Canadian society, at what we regard as the highest level of democratic decision-making in the country, at the level of the federal Parliament, and if those lobbying efforts can be made which are financed by funds collected in various ways or coming from corporate coffers, then we must be careful to ensure that any activity of that nature, that any influencing attempted on the legislative, judicial, and administrative bodies, and on the institutions of Canadian society which guarantee us the democracy, is tightly controlled, regulated, and insulated from the activities of those who would seek to corrupt governmental, institutional, and administrative decision-making in this country.

As we know, so many of the decisions that are most important in this country are not made in this legislature or by the Cabinet, because it is impossible for these decisions to be made. There are numerous administrative tribunals and boards. The CRTC makes numerous decisions which affect the corporate viability and profitability of Canadian corporations whether they be privately or publicly owned, or owned by a consortium. The operation of those companies and institutions are affected by many administrative decisions made outside this House.

If we look only at the House of Commons, we increasingly see an incredible effort to influence the decisions of Members of the House. We saw it most recently with the tobacco Bills, C-51 and C-204. There was extensive lobbying of individual Members, and I believe that will increase, perhaps to the extent that it is carried on in the United States where thousands of lobbyists in Washington attempt to influence the decision-makers in the Senate and House of Representatives.

■ (1430)

I believe a study of the effect of organized crime on institutions is not a narrow point but a focused point. This is a timely motion moved by the Hon. Member for Trinity. There will be an increased focus of attention on how Members of Parliament and members of the Cabinet are making decisions that affect what happens in Canada.

There has been a rise in the number of corporations that are involved in the decisions that are made behind closed doors on the Hill. Many of these corporations include many former powerful federal and provincial politicians.

We know that organized crime is active in this country but we cannot limit an inquiry of this nature into the kind of godfather, Mafia-type activity with which we associate organized crime.

The definition of organized crime urged upon us by the Member for Trinity involved two or more people working together to effect an illegal purpose. That is somewhat the definition of conspiracy. Any conspiracy where two or more people get together for an illegal purpose is an organized criminal activity.

We must also consider organized crime in relation to corporate activity, whether it is in the area of environmental pollution or the breaking of environmental laws in an organized way by corporate decision-making or by criminal neglect on the part of corporate boards or management. That too is an organized crime and we must be vigilant about that type of activity as well.

When organizations that violate environmental laws, health and safety laws, or laws protecting workers, band together to try to influence the Members of the House, committees of the House or influence the Government to relax enforcement procedures, that too is evidence of organized crime influencing the legislative and administrative institutions of Canadian society.

The Hon. Member who spoke before me was concerned about the danger that this motion may scare people. Other Members may debate organized crime in this country and the extent to which it should be addressed. I think we should focus on what the motion says, which is to consider to what extent organized criminal activity is connected to the legislative, judicial and administrative institutions of Canadian society.

This would be a timely inquiry and one that should consider the activities of lobbyists and lobbying groups. I think this question ought to be studied and a joint committee of this Parliament and the other place would be the appropriate body to study it. I support the motion.

Mr. Barry Turner (Ottawa—Carleton): Mr. Speaker, no one can dispute that there is organized crime in Canada. However, the motion before us today would seem to suggest that Canada does not have enough legal mechanisms to counter organized crime and those who live by it.

The mechanisms we have may not be perfect, but they are continually being improved to ensure that Canadians can live in a safe country.

[Translation]

Mr. Speaker, perhaps I may describe, for the benefit of the Hon. Member for Trinity, a few of the mechanisms that already exist for investigating and fighting organized crime. The police, Crown counsel and the regulatory authorities have used these mechanisms successfully to render harmless those criminals who would otherwise profit from society's illicit lusts and cravings.

[English]

First, let us take the Criminal Code. It contains, in section 31(2), a provision which enables the court to declare "forfeit" the possession of property obtained by crime. Similarly, the Narcotic Control Act allows for the seizure of anything relating to an offence under the Act. Clever use of the provisions of these two Acts has led to the ill-gotten gains of the organized criminal drug trafficker being seized by the courts.

The Member for Trinity (Miss Nicholson) spoke also of the ingenuity of the criminal. I dare say that we have a tremendous amount of ingenuity in our police forces and our research institutions. As they develop more effective techniques of criminal analysis, that ingenuity is on the leading edge of keeping up with and in fact ahead of the criminal element that exists in our country.

Another section of the Criminal Code allows for the same punishment to be given for a conspiracy to commit an offence as for the offence itself. This is a particularly valuable weapon against organized crime because it allows police to be proactive in their investigations. By the means of legal wiretaps, they can follow the planning of a crime and then step in and arrest the offenders before the crime itself has been actually committed. This can stop illicit drugs hitting the street, release the loan shark victim from the threat of violence, and prevent the bookie from laying off his bets with another organized criminal in the United States. In addition, the whole organized criminal gang can be prosecuted at the same time as co-conspirators.

[Translation]

In the past ten years, this tactic has been used successfully against organized criminals. Thanks to the help of judges who are more inclined to impose severe penalties on drug traffickers and want to acquire a better understanding of the mechanisms of organized crime, there have been some real mopping-up operations recently.

[English]

I used the words *peines plus sévères*. I call upon the Justices of our country to vigorously enforce severe penalties which I believe are the deterrent element.

In one Canadian jurisdiction, 400 organized criminals of one sort or another were put behind bars, rendered inactive, or induced to flee this country to escape prosecution. All this within five years of the decision being taken to declare legal war on organized crime.

The criminal courts are not the only battle front on which the war is being waged. Neither are all the soldiers, police and prosecutors. As vendors of illegal goods and services, organized criminals frequently cross swords with the regulatory agencies in our country, both federal and provincial. Customs and income tax officers, stock exchange and liquor licensing officials are just as involved in suppressing organized criminal activity as are police officers and Crown attorneys.

■ (1440)

There is a program you may know of, Sir, called Crime Stoppers which evolved from the U.S. It is now very successfully established in the National Capital Region in co-operation with the public, police forces, the judiciary and the legal community. I want to mention Richard Raymond, from Raymond Steel, Bruce Hillary, Sketchley Cleaners, Sgt. Harrison of the Ottawa Police Force, Gary Grant from Sheffield Graphics and Doris Johnson from Crime Stoppers,

all of whom have played a major, private role in making this program in Ottawa a most successful one in attacking the criminal element in the National Capital Region. In fact, it is the most successful one of its kind in North America. All of the individuals and officials I have mentioned are fundamental to the task of tracing the financial exploits, the business deals, the empire building, the cheating and the lying and the scams of the organized criminal. These almost invisible officials and individuals patiently weed out the liquor licence application of known criminals who are seeking it for a bar where the real business is to sell and push drugs. They develop evidence to collect the thousands of dollars of tax on undeclared illicit income. They bring about the dispersion of trading in phoney stock and seize consignments of heroine or other contraband coming into the country's ports of entry.

All this activity incapacitates the organized criminal without fanfare, without drama and usually without the public ever knowing about it. These are the concerned officials and citizens of our country. Regulatory agencies and administrative tribunals do not always make front page news. You know as well as I, Mr. Speaker, that the RCMP always get their man or woman. What they need are more resources to allow them to do that. They do not want to see more public funds spent on expensive task forces to tell them what they should be doing. They know what they should be doing. They need more help and more money.

In the area of legislation, the Hon. Member for Trinity made reference to the fact that the Minister of Justice (Mr. Hnatyshyn) has introduced Bill C-61, which I understand is coming back to the House shortly from committee. It focuses on the proceeds of crime legislation. It will enable the courts in certain circumstances to strip criminals of assets obtained through criminal means. The proposed legislation will allow the courts to order that the proceeds of designated drug offences and 23 Criminal Code offences be forfeited to the federal or provincial Governments. I urge my colleagues on all sides of the House to make the public aware of these efforts and to pass this legislation before a recess for the summer.

It is essential and it is long overdue. It will give the courts an opportunity to enforce more vigorously what we have to do to seize those assets acquired through criminal activity.

The Minister of Justice has also introduced Bill C-58 which will enable the implementation of the mutual legal assistance treaties discussed previously. The battle is far from won. We all know that. A concerted and continuous effort has to be made, but we are on the right track and this Government is proud of what it has tried to accomplish in this area. I am a little apprehensive that the proposed parliamentary task force might retard ongoing federal, national and international initiatives aimed at organized crime control. The key to this is to get Bill C-61 passed to give the courts and the judges more power to seize assets acquired through criminal activities. Let us throw the book at them so that your children, Sir, my children and our children's children will not have their lives affected by disgusting criminal activity that infiltrates our schools, even the primary schools where kids acquire drug habits.

Let us not set up a task force. Let us give the authorities more power, money and resources to go after the criminal element in our country.

• (1400)

[*Translation*]

Mr. Gilbert Chartrand (Verdun—Saint-Paul): Mr. Speaker, today I would like to give my assessment of the problem of organized crime. First of all, I would like to say that the Hon. Member for Trinity (Miss Nicholson) is right to be concerned about organized crime in Canada. My only criticism is the solution she suggests. In fact, an inquiry of this type would be more appropriate in the United States, where fragmented attempts to enforce legislation, lack of co-ordination, states' rights and many other elements make it very difficult to discover the extent of the problem posed by organized crime.

In Canada, we are lucky to have a very co-operative system under which policing, prosecution and enforcement bodies exchange information and co-operate in their operations. Thanks to this network we have a very clear understanding of the problem we are dealing with.

The many information sources at our disposal include the annual report prepared by Criminal Intelligence Service Canada, published by the committee on organized crime of the Canadian Association of Chiefs of Police; the annual RCMP report on drugs, Customs Canada's drugs seizure report; and the excellent reports prepared by the various services in Quebec and British Columbia dealing with organized crime. According to these sources, organized crime is not beaten but at least there is little chance it will expand.

In recent years, motorcycle gangs have been a major problem. They have become involved in all forms of organized crime, including drug trafficking, prostitution and contract killings.

The major gangs are very business-like. They increase their numbers by taking over smaller ones. Many bikers have shed the image of the sloppily-dressed trouble-maker and become clever, extremely image-conscious businessmen. The big crime organizations are also present in Canada. The most important members work in central and western Canada, but they often have contacts in many other countries. These groups are involved in what are often referred to as consensual crimes, in other words, customers agree to purchase the illicit goods or services they are offered. These crimes include drug trafficking, prostitution, gambling and loan sharking.

Although the Atlantic provinces appear to be relatively untouched by the more insidious forms of organized crime, there is nevertheless a thriving business in cigarette and alcohol smuggling. The region is also used as a dropping-off point for large cargoes of soft drugs, most of which come from the Caribbean. Youth gangs are also involved in organized

crime activities and concentrate on gambling, drug trafficking and extortion. Occasionally, intense rivalry among gangs lead to multiple killings.

In a way, these gangs are similar to the motorcycle gangs. Since 1920, sociologists have held the view that youth gangs are often the first step towards much greater involvement in organized crime.

It is essential that measures be taken to prevent new generations of criminals, but I don't think an inquiry on organized crime is the answer. The emphasis must be on education and jobs.

By reducing the unemployment rate and by stressing the needs of Canada's youth, this Government has done a great deal to create a socio-economic climate that is not favourable for the development of organized crime.

Organized crime is a problem in most countries throughout the world. Even East Block countries will admit it exists there as well. There is an international network that focusses on dealing with these problems on a worldwide basis.

Thanks to this mechanism we are familiar with the problems of other countries, and it is reassuring to find that, compared to most countries, Canada has not been overrun by organized crime. Our parliamentary system, and our custom of appointing judges, Crown counsels, police officers and administrators according to merit, have given us a tradition of loyal public servants. It is one of our best defences against organized crime. We have a judicial system that we can trust and of which we can be proud. However, we must be prepared to provide the material assistance that goes along with that trust and that pride. We cannot ask our police officers, our Crown counsels and our judges to keep fighting organized crime without giving them the necessary tools, and today, these include the authority to participate with other countries in a form of judicial co-operation, and also the authority to declare forfeit the financial proceeds of organized crime. The House can give them those tools by adopting Bills C-68 and C-61. We should focus our efforts on supporting our judicial system, instead of ignoring its needs and creating a parliamentary task force.

[*English*]

Mr. Benno Friesen (Parliamentary Secretary to Minister of Employment and Immigration): Mr. Speaker, we are indebted to the Hon. Member for Trinity (Miss Nicholson) for bringing forward a very interesting motion which has to do with the calling of a special joint committee of the House of Commons and the Senate to inquire into the nature and the extent of organized crime in Canada.

I recall the opening remarks of the Hon. Member for Trinity. She pointed out that when she put forward a similar motion last year, the speeches of government Members who responded had a certain ring of similarity. She responded with some measure of disdain for that, and I do not blame her. I feel the same way about that as she does. Nevertheless, if we wanted to go back into the annals of *Hansard*, I suspect that we would find that about five or six years ago, she may have been guilty of the same offence. However, we do not take offence for that. I might just say that that is one of the illnesses that exists in this Chamber that we wish we would be cured of.

While the motion is an interesting one, I doubt that it is a very workable one. I say that not because we do not share the same goals. What she is talking about has an awesome ring of urgency to it. We know that organized crime does infiltrate into many segments of our society, and it causes fear and dread in many households, and it feeds on fear and recrimination if the detailed terms of any contract are not fulfilled. We know that it is an awesome problem in Canada. However, it is the kind of problem that I do not know whether we can solve or even approach through a special joint committee of the House of Commons and the Senate.

I might use as an analogy an experience I had when I was living in the United States. I attended a university in the mid-western United States and was graduated there. Upon graduation, I decided that because I could not afford to move home, I would take employment in the United States as a teacher. That was in the late 1950s when that country was still suffering from the backlash of McCarthyism.

Because of the McCarthyism earlier in the fifties, many of the states had enacted legislation which required that people who worked in any way within the public sector, people like teachers, would have to take an oath upholding the Constitution of the United States. That was an admirable goal and I do not blame those states for wanting to ensure that those who worked for the Government in any way and particularly those who were entrusted with the education of their children would also be those who respected democracy and would not endorse the violent overthrow of their Government.

The problem with the proposal, however, was that those people who respected democracy, wanted to enhance freedom, and respected the family and the rights of the children were shut out from the teaching profession, for example, if they were not American citizens. They could not help the United States by enhancing democracy and a sense of freedom within the country. However, native-born Americans, who were full citizens but may have been communists or communist sympathizers and who may have endorsed the violent overthrow of the Government, would have no compunction about taking an oath like that since their sense of morality has nothing to do with absolutes, absolute honesty or absolute truth. They would not mind taking an oath of fidelity to the Constitution of the United States and then doing everything in their power to overthrow the Government of the United States. That would not bother people like that a bit.

There we had the anomaly of people who wanted to preserve and enhance democracy in the United States being shut out if they were not citizens, and those who would have gladly created problems in the United States being willing to take an

oath which they did not intend to uphold. The problem is that the proposal of the Hon. Member for Trinity, while it may not be exactly parallel to that, has a similar ring to it.

If we were to conduct public hearings across Canada of the nature the Hon. Member is proposing, those people who have been affected by organized crime would be the least likely to come forward to give testimony in a public hearing because of the nature of the problem. What person who has been caught in the grip of extortionate financiers, threatened for not keeping up extortionate payments, what person who has had his life or possessions threatened or has been told that his legs will be broken if he does not pay that 30 per cent on his loan, will come forward in a public hearing to give evidence of how organized crime is treating him in Canada? Will people like that come forward?

The nature of the problem militates against the success of the proposal. If we recall the Congressional hearings in the United States, the only people who came forward were those who were totally disguised and had been given immunity. They were people who had earlier been convicted of a crime or who were part of the family of crime in the United States and were given immunity from further prosecution or were promised protection. They were people who were plea-bargaining. They appeared because their sentences were minimized or done away with. Those Congressional hearings were at least moderately successful.

However, the proposal of the Hon. Member, while it is a goal that the Government shares and I certainly endorse, will probably not be workable. While I commend her for the goal and the ambition she is showing in trying to deal with organized crime, I think the proposal itself would not be a workable one.

Mr. Deputy Speaker: The time provided for the consideration of Private Members' Business has now expired. Pursuant to Standing Order 42(1), the order is dropped from the Order Paper.

It being three o'clock, this House stands adjourned until Monday next at eleven o'clock pursuant to Standing Order 3(1).

The House adjourned at 3 p.m.

July 7, 1988 [House of Commons]

The extradition treaty provides for a court process before the suspected or the accused person can be extradited. The standards under which these provisions are being put forward would appear to be somewhat less in terms of the gathering of evidence, investigations and other forms of mutual legal assistance.

The final point I want to make is the following. The Government has agreed that the Schedule to the Act will contain the names of states which are signatories to the treaties. If we had had the opportunity, we would have liked to have moved as well for some means of public disclosure around the power of the Government to enter into informal or temporary agreements for mutual legal assistance for periods of up to six months. This can be done either for areas not specified in the treaty—if a treaty exists—or with a country that has not signed the treaty.

Again, there is the possibility of being able to agree to the request from, let us say, a country in Central America, where there are rather undemocratic regimes, for mutual legal assistance because they feel that there are persons in this country whom they are pursuing because of some political problems in their own country. And the idea that that could be done for six months and possibly renewed thereafter—

Mr. Hnatyshyn: It is not possible.

Mr. Cassidy: —without any public disclosure under Section 6—the Minister says that it is not possible, but I am sure that that is the case. That is a very legitimate question which raises concerns with us.

According to the note that was prepared for the House of Commons in June by the Parliamentary Research Bureau, "the administrative arrangements that would be allowed under Section 6 could be negotiated and executed in total secrecy". I do not believe that that has changed.

Those are some of the concerns that we have and those are the reasons why we are not prepared to support the Bill. As indicated previously, we will agree to let the Bill go to third reading on division rather than calling a vote.

I would like the Minister of Justice (Mr. Hnatyshyn) or one of his colleagues to stand up and say, at the very least, that Canada had now determined that we are going to take an active role in negotiating those restrictions on Canadians under the McCarran Act, and in reaching for a resolution for the victims of the CIA experiments and that that would be one of the things that the Government would guarantee as part of the package for mutual legal assistance with the United States.

The Acting Speaker (Mrs. Champagne): Is the House ready for the question?

Some Hon. Members: Question.

[*Translation*]

Mr. Hnatyshyn moved that Bill C-58, an Act to provide for the implementation of treaties for mutual legal assistance in criminal matters and to amend the Criminal Code, the Crown Liability Act and the Immigration Act, 1976, be read the third time and do pass.

The Acting Speaker (Mrs. Champagne): Is it the pleasure of the House to adopt the motion?

Some Hon. Members: On division.

Motion agreed to on division and Bill read the third time and passed.

* * *

[*English*]

CRIMINAL CODE, FOOD AND DRUGS ACT AND NARCOTIC CONTROL ACT

MEASURE TO AMEND

The House proceeded to the consideration of Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, as reported (with amendments) from the legislative committee.

The Acting Speaker (Mrs. Champagne): There are 14 motions and amendments on the Order Paper for report stage of Bill C-61, an Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control act.

[*Translation*]

Motions Nos. 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13 and 14, standing in the names of the Hon. Member for Burnaby (Mr. Robinson), the Hon. Member for Nickel Belt (Mr. Rodriguez) and the Hon. Member for Hamilton Mountain (Mrs. Dewar) are the same as the amendments which were moved, debated and negatived in committee. Therefore, in accordance with Standing order 114(10), they will not be selected for debate in the House.

[*English*]

Motion No. 5 of the Hon. Member for Burnaby (Mr. Robinson) is similar to an amendment moved at the committee stage, debated and later negatived. Although similar, this motion is sufficiently different that it shall be put to the House.

[*Translation*]

Motion No. 10, standing in the name of the Minister of Justice and Attorney General of Canada (Mr. Hnatyshyn), will be debated and voted on separately.

[*English*]

Mr. Cassidy: Madam Speaker, it was agreed that in the absence of the Member for Burnaby (Mr. Robinson) the motion could be moved by the Member for Hamilton Mountain (Ms. Dewar).

[*Translation*]

Mr. Grisé: Madam Speaker, on a point of order.

The Acting Speaker (Mrs. Champagne): The Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council (Mr. Grisé), on a point of order.

Mr. Grisé: Madam Speaker, after discussion among the various parties, I believe you will find there is unanimous consent for the Hon. Member for Hamilton Mountain to move the motion in the name of the Hon. Member for Burnaby.

[*English*]

The Acting Speaker (Mrs. Champagne): Is there unanimous consent?

Some Hon. Members: Agreed.

Ms. Marion Dewar (for Mr. Robinson) moved:

Motion No. 5

That Bill C-61 be amended in Clause 2 by striking out lines 36 and 37 and substituting the following therefor:

"judge shall require notice to be given to and shall upon request hear any persons who, in the"

She said: Madam Speaker, the purpose in asking for this amendment is that if a person has an interest in the property it should be not only a request but a demand that they be heard. That is all we are asking for. I certainly hope that the Government will agree to the amendment.

• (1600)

The other amendments which have been ruled out of order were ruled out of order because they were debated at committee. However, this one, as you have seen, Madam Speaker, and as you agree, is different enough that it would certainly make the Bill much more fair. The judge would have to hear anybody who has an interest in the property. I see the Minister nodding. I hope that the Government will agree to the amendment.

The amendments which were not allowed included references to bawdy houses and prostitution. Prostitution in this country is not illegal. If this type of recommendation were included, and the Fraser Committee report was very clear on what it would do, prostitutes would be put in the same category as victims of organized crime. If their property, which was acquired not as a result of organized crime but legally, is seized and they have not been heard, it seems important that they should be heard before there is an order put in on it.

I must admit that I am certainly not as familiar with the Bill as the Hon. Member for Burnaby (Mr. Robinson) who worked on it at committee. I apologize for that. But the measure made all sorts of sense to me and I believe that this is the type of amendment that helps to make the Bill more fair.

I will speak to the Bill as a whole after report stage is dealt with.

[*Translation*]

Mr. Richard Grisé (Parliamentary Secretary to Deputy Prime Minister and President of the Privy Council): Madam Speaker, on a point of order.

The Acting Speaker (Mrs. Champagne): The Parliamentary Secretary, on a point of order.

Mr. Grisé: Thank you Madam Speaker. The Hon. Member for Hamilton Mountain (Mrs. Dewar) is speaking to Motion No. 3, which the Chair has already ruled out of order.

The Acting Speaker (Mrs. Champagne): I will try to clarify the issue for the Parliamentary Secretary. It is true that in the case of Motion No. 5, the Chair's decision acknowledges there is a similarity with another amendment. However, the Chair found that there was nevertheless sufficient difference to allow Motion No. 5 to be moved again in the House.

The Minister of Justice (Mr. Hnatyshyn).

[*English*]

Mr. Hnatyshyn: Madam Speaker, I just want to spend a couple of minutes trying to deal with the motion which has been accepted by the Chair moved by the Hon. Member for Hamilton Mountain (Ms. Dewar) on behalf of the Hon. Member for Burnaby (Mr. Robinson).

This appears to be something which, if one were to use the logic that is put forward by the Hon. Member that it is something that is desirable, would mandate a court to take certain action, that is to say, hear people who claim to have an interest in property which is subject to deliberations before the court. However, one can understand, in terms of our judicial process, that these are questions, after all, that should be left to the courts to decide.

First, does the claimant have a sufficient *prima facie* basis upon which to have a hearing? Second, once that has been established, the court should have the discretion to determine the basis upon which the person claiming interest can be heard. It is up to the court, in the final analysis, to determine the merits of these cases.

If we were to put a mandatory provision such as has been suggested by the Hon. Member there would be absolutely no discretion. Anyone could walk in off the streets and say: "I have an interest in this matter" and would be able to take up the time of the court simply as a matter of right.

You point out in your ruling, Madam Speaker, that a similar matter was discussed in the course of the committee. In effect, it was voted down. But since there is some difference in the wording put forward by the Hon. Member today and because it is sufficiently different we are considering it.

We still think that this Bill in its present form, with the exception of an amendment that I want to put forward myself at report stage, achieves a reasonable balance in the interests of the state to pursue, to seize, to freeze and, in effect, to forfeit the proceeds of illicit activity. The whole function of the Bill is to allow us to overcome a situation which, on the face of it, to any Canadian looking at the present situation is absurd.

What we now have is a situation in which a person could be convicted of illegal drug trafficking, could have made an enormous amount of money out of this activity, could be convicted of the offence, served time in jail, came out and enjoyed the proceeds of the crime in circumstances in which the state has no right to attach the proceeds of that illicit activity and use the money for worth-while purposes such as public health, education and other important governmental objectives.

What happens is that we also in the same vein want to allow people who have a legitimate claim to come forward and make application to the court to establish that the moneys that are attempted to be seized by the provincial Attorney General are in fact property which should not be seized because it belongs to them. In our system, of course, there is an obligation to establish not beyond a reasonable doubt but on the basis of reasonable probabilities that there is a case for that person to make. It is always left in these circumstances for the court to hear the application. The discretion is there in the court to hear the application, by all means, but then if it is satisfied that there is a sufficient basis it will give an order.

I do not know whether there is anything accomplished by mandating every claimant, regardless of the merits of the case, to have their day in court to put forward this situation. I think that this balance is one which is understandable. It is consistent with the processes that we have in our Canadian judicial system. It allows an opportunity, a counterbalance, for legitimate third party interests to come forward and to apply to the court to have their cases heard.

I cannot say anything further. I will talk on third reading about this Bill which is, I think, a very good Bill which moves us forward in terms of fairness in the criminal justice system to allow the state to pursue and to discourage people who make large amounts of money out of illicit activity. I gave the example of drug trafficking.

This Bill is a good Bill. I wish I could be more accommodating to the Hon. Member with respect to her amendment. I think, on balance and reflection, she might agree with me that it might lead to unusual and unacceptable consequences for our judicial system. With the greatest of respect for the Hon. Member, I would like to indicate that we are not prepared to agree at this point in time.

The Acting Speaker (Mrs. Champagne): Is the House ready for the question?

Some Hon. Members: Question.

The Acting Speaker (Mrs. Champagne): Is it the pleasure of the House to adopt the motion?

Some Hon. Members: No.

Mr. Cassidy: On division.

The Acting Speaker (Mrs. Champagne): I declare the motion lost.

Motion No. 5 negatived.

■ (1640)

[Translation]

Hon. Ray Hnatyshyn (Minister of Justice and Attorney General of Canada) moved:

Motion No. 10:

That Bill C-61 be amended in Clause 2 in the French version by striking out lines 2 and 3 at page 14 and substituting the following therefor:

«contrevenant à qui une amende est infligée en vertu du paragra-».

The Acting Speaker (Mrs. Champagne): Is it the pleasure of the House to adopt the motion? Debate. The Parliamentary Secretary.

Mr. Richard Grisé (Parliamentary Secretary to Deputy Prime Minister and President of the Privy Council): Madam Speaker . . .

Some Hon. Members: Hear, hear!

Mr. Grisé: I am sure my comments will be much shorter than the applause I just received, since this amendment, proposed by the Government, is merely aimed at bringing the term "amende" in the French version in line with the word "fine" in the English text in Clause 2, lines 2 and 3, at page 14.

[English]

The Acting Speaker (Mrs. Champagne): Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Motion No. 10 agreed to.

[Translation]

Hon. Ray Hnatyshyn (Minister of Justice and Attorney General of Canada) moved:

That Bill C-61, An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, be concurred in as amended.

The Acting Speaker (Mrs. Champagne): Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Motion agreed to.

[English]

The Acting Speaker (Mrs. Champagne): When shall the Bill be read the third time? By leave, now?

Some Hon. Members: Agreed.

Hon. Ray Hnatyshyn (Minister of Justice and Attorney General of Canada) moved that the Bill be read the third time and passed.

Proceeds of Crime

He said: It gives me great pleasure to rise once again to speak to Bill C-61 which has been recognized as fundamental to law enforcement efforts against enterprise crime, especially drug trafficking. It is now recognized that it is long overdue. The Bill is designed to ensure that offenders are not allowed to profit from their crimes. Bill C-61 will provide effective but fair measures to ensure that crime does not pay.

At this time, I would like to commend the legislative committee that reviewed Bill C-61 and has now presented its report to the House. It is obvious that all members of the committee recognized the pressing need for this legislation, given the growth of enterprise crime in recent times. They have obviously carefully considered both the need for the new measures in the Bill and the safeguards contained therein which ensure that the interests of the accused person and the innocent third parties are protected.

Regarding the principles of the Bill, I refer Members to my remarks during second reading. Allow me to review briefly some of the major aspects of the legislation. The courts have been empowered to authorize seizure and restraint of assets upon the undertaking of the Attorney General to provide such compensation as the court deems appropriate where the case for forfeiture cannot be made out and losses to the owner or third parties are suffered. A process of immediate judicial review of these powers, upon application by the persons concerned, has been provided for and includes an opportunity for an accused person to claim the payments of reasonable living, business, and legal expenses out of the seized or restrained property.

I must point out that these types of safeguards are unprecedented in Canadian law. In addition, the rights of third parties are recognized throughout the entire process of seizure, restraint, and forfeiture. The legislation has balanced an effective forfeiture mechanism with the constitutionally protected right to counsel in a manner that is characteristic of the Government's approach to criminal matters and avoids the criticisms that have been levied at similar American legislation in this area.

[*Translation*]

The Bill also provides that a court may order the payment of a fine when forfeiture is impossible either because the offender has hidden his illicit gains or has removed them from the jurisdiction of Canadian courts.

Aside from the power to order the forfeiture of property on conviction, when the prosecution has established beyond a reasonable doubt, following a hearing, that the property in question is proceeds of crime, the Bill provides that the court may order forfeiture of the goods when the offender has died or absconded to another country.

Madam Speaker, in this regard the legislative committee has passed an amendment allowing this procedure to be applied if the offender has fled to a country that refuses to extradite him to Canada where he would stand trial in criminal court.

I think that this is a useful amendment that complies with the spirit of the act.

[*English*]

In recognition of the sophisticated attempts that are made to disguise the tainted sources of proceeds of crime and to invest them in so-called "legitimate" enterprises and other forms of property, the Bill creates a new offence of "laundering" that will be punishable by up to 10 years imprisonment.

In recognition of the need for assistance to law enforcement agencies in their efforts against organized and enterprise crime, the Bill has created a protection against liability for any person, such as a bank employee, who reports to the authorities activity related to proceeds of crime on condition that the belief is reasonably held. Also, a provision for access to income tax records to assist in the investigation of drug related offences has been proposed. This will only be available upon court authorization to ensure that confidentiality of these records will be protected as much as possible. All members of the committee recognized the need for special rules regarding income tax information.

These are the principal elements of Bill C-61. In conjunction with Bill C-58—which has just received third reading—concerning mutual legal assistance in criminal matters, Canada will be fulfilling her international commitment to combat organized crime, especially in the area of drug trafficking.

In this regard I find it most appropriate that at this very time officials of my Department, as well as of the Departments of National Health and Welfare, External Affairs, and the Ministry of the Solicitor General, are in Vienna, Austria, with other officials from all countries of the United Nations finalizing the *Draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* which is expected to be concluded this fall. That document specifically calls for an undertaking on behalf of signatories to implement proceeds of crime legislation.

Bill C-61 represents, together with Bill C-58, Canada's commitment to the international fight against drug trafficking. I ask that Canada be allowed to join the ranks of such nations as the United Kingdom, Australia and the United States that have all recently passed similar legislation.

• (1600)

Let me point out once again that this Bill has finally proceeded to third reading. I trust it will be accepted by the other place and made the law of the land. Similar attempts have been made by previous Governments to bring in legislation in connection with forfeiture of illicit proceeds of crime. This Bill is the synthesis of much consultation by Members of Parliament, in particular the Hon. Member for Etobicoke—Lakeshore (Mr. Boyer) and others who have been of great assistance to me with the legislation.

This Bill is a balanced and fair piece of legislation which does not contain some of the excesses seen in previous legislation. It is one in which the rights of parties are fully respected. There is an an effective mechanism for getting at the illicit proceeds of crime. It does not expand itself to the extent that it is done in the United States. I think this is the Canadian way. We want to make sure, when we are attacking the proceeds of crime, that we do so in a fair way respecting the rights of individuals to ownership of property legitimately obtained.

I commend this legislation at third reading. I hope it will receive the unanimous consent of all Parties. I thank Hon. Members who have been so helpful in their deliberations, especially the Parliamentary Secretary, the Hon. Member for Chambly (Mr. Grisé), who has been in the forefront of the legislative committee's work on Bill C-58 and to whom I owe a great debt of gratitude. He is an outstanding parliamentarian, a man who commands respect of Members on both sides of the House and who does a lot of work for me. I appreciate the great assistance that he gives.

Ms. Marion Dewar (Hamilton Mountain): Madam Speaker, I only wish this Bill contained all the great attributes to which the Hon. Minister has alluded. But we are very disappointed on this side of the House. It could have been a much better Bill.

First, I think this kind of legislation is long overdue in Canada. It is something that we must see implemented. I want to commend the Minister and the Parliamentary Secretary for the amendment which they accepted in recognizing that if a person were found innocent the Government would be required to see that he or she was compensated for loss. That is very important. I also commend the Hon. Member for Burnaby (Mr. Robinson) for putting the amendment forward.

I am disappointed with some of the inclusions. I refer particularly to procurement and bawdy houses. It has been very clear in studies done in this country over the last decade—the latest one being the Fraser Commission Report—is that no direct connections have been made between organized crime and prostitution. We recognize that prostitution is not legal in Canada. But it has not be tied to organized crime. Some prostitutes have been seen to be operating very much in an entrepreneurial sense. The money they have acquired has been money which they have invested and used to look after families and this kind of thing. The Fraser Commission was very clear that if something specific were put in this legislation it would drive prostitutes into organized crime networks and connections. That is something about which we are very concerned. Evidence was brought forward in the committee and it was addressed at that time.

I am very disappointed that the Conservative Government did the royal cave-in to the banks. You can drive a truck full of money to a bank and unload it with no accountability as to where those proceeds came from. Even the administration in the United States that we on this side of the House have often criticized made U.S. banks accountable. It is a shame and a disgrace that the Government has not made the banks accountable for this kind of thing. Many things will be whitewashed if you cannot trace them through the financial institutions.

The Minister has not rushed with this Bill. We had first reading of the Bill in 1987. Here we are at the last minute in an extended session trying to pass the Bill. The Minister has had plenty of time to recognize that the banks should be held accountable.

In 1981 the Government asked that a study be done. The report to the Justice Department in 1983 said:

> —Without clear track and identify the movement of profits by sophisticated criminals, it will be hard for police and the courts to effectively use the—"freeze and seize" provisions.
>
> Without clear powers to identify and track the proceeds of crime, it is difficult to connect the proceeds to a particular offence or to a particular criminal.
>
> Given this obstacle, it follows that it would be equally difficult to apply provisions for freezing, seizure and forfeiture of criminal proceeds.

It will be very difficult to implement the objectives of the Bill before us. The senior counsel at the Bank of Nova Scotia said:

> We're efficient at what we do. As such we're a good target of money launderers.

The bank is admitting to laundering, yet the Government has chosen to do nothing about it and has not made the banks accountable. My understanding is that the banks objected to the large amount of paper work. If that is the kind of thing that we are accepting as a legitimate excuse to not make the banks accountable, we should be ashamed of ourselves.

For the record, Madam Speaker, I would like to quote Mr. Rocky Pollack of the Canadian Bar Association. The Bar Association was very concerned. Mr. Pollack said:

> I must say that everyone to whom I spoke, and it is not a representative population, was amazed that, as was reported I think in the paper last week, you can literally back up a truck to a Canadian bank, unload all those dollar bills in the back of the truck, and get a deposit slip, and so on, and it is all private and secret; nobody knows about it. That is rather amazing. That is my only comment.

We had the Hon. Member for Kitchener (Mr. Reimer) saying that he too felt strongly that the Bill had major loopholes and he wished the Government would amend it. When we get those kinds of comments from government Members, surely we must recognize that the Government has done a royal cave-in to the banks. Under no circumstances must the Government ask the banks to be accountable.

That is not the kind of thing New Democrats like to see in legislation. New Democrats believe that all Canadians should be accountable. We think it is very nice to draft legislation, but we will be unable to implement the intent of it because of grand loopholes like those found in tax reform.

The intent of the Bill is good. The goals and objectives are real. They are the kinds of things we like to see. We feel that the Bill is very inadequate when we cannot make the financial institutions accountable to the Government of Canada. We know that nothing different will happen. We know that the banks will still be the source through which people can launder money and remain attractive to criminals. I take exception to the Minister's comments that this is the Canadian way. The Canadian way is much more accountable and not becoming the protectors of people who want to launder money.

The Acting Speaker (Mrs. Champagne): Is the House ready for the question?

Some Hon. Members: Question.

The Acting Speaker (Mrs. Champagne): Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Motion agreed to and Bill read the third time and passed.

• (1700)

The Acting Speaker (Mrs. Champagne): It being five o'clock p.m., the House will now proceed to the consideration of Private Members' Business as listed on today's Order Paper.

PRIVATE MEMBER'S BUSINESS—BILLS

[Translation]

FOOD AND DRUGS ACT

MEASURE TO AMEND

The House resumed from Thursday, June 9, consideration of the motion of the Hon. Member for Hamilton East (Ms. Copps) that Bill C-289, an Act to amend the Food and Drugs Act (list of ingredients), be read a second time and referred to a legislative committee.

The Acting Speaker (Mrs. Champagne): When the House last considered Bill C-289, the Hon. Member for Scarborough East (Mr. Stackhouse) had the floor. Resuming debate, the Hon. Member for Kent (Mr. Hardey).

[English]

Mr. Elliott Hardey (Kent): Madam Speaker, I rise today to speak on this Private Member's Bill, Bill C-289, which is intended to amend the Food and Drugs Act regarding the listing of ingredients. The most important aspect of Private Members' Business, of course, is the opportunity for Members of Parliament from all Parties to develop and promote new laws and ideas together or, if some choose, to speak and vote against them and to do so as individual Members regardless of what side of the House they sit on. It is certainly a refreshing exercise and one that we all look forward to participating in.

I want to compliment the Hon. Member for Hamilton East (Ms. Copps) for bringing forward this issue. It is a matter that I support. It is an issue of sensitivity which is receiving increased attention by health professionals and food regulators due to concerns raised by the public at large as well as the print and visual media.

I have noticed that previous speakers have referred to tragedies resulting from food sensitivity reactions in their ridings or in ridings nearby. I too witnessed the grief of a family who lost their nine-year-old daughter last October. Kelly Chinnick was allergic to nuts and she was unaware that peanut butter was in the icing of a cake she tasted at a Thanksgiving celebration at her school. The reaction was fast and no one could help her. I know first hand that this type of grief never really subsides. As a caring society, we must do everything we can to help the Chinnicks and other families who find themselves in such distress.

In order to be of assistance, at first it seemed that I simply had to research and assess this problem in a practical way and surely some answers would surface. As I began that research, I found that the Minister of National Health and Welfare (Mr. Epp) was not only aware of the increased prevalence of food allergy reactions but was also very concerned. He had already issued instructions to his Department to determine how much real increase in food-sensitivity reactions there had been, how much was perceived due to the availability of better instrumentation and diagnoses and how much was due to the population as a whole becoming more sensitive for one reason or another.

I found as well that the Standing Committee on Health and Welfare was already conducting a study on the feasibility of mandatory labelling of food products sold in restaurants and fast-food outlets. Non-medical components used as fill found in prescription drugs, both brand name and generic, were also under study, and representatives from the Canadian Restaurant Association and the Canadian Pharmaceutical Association as well as the Minister of National Health and Welfare were called as witnesses.

I also found that difficulties in assessing the problem also included documenting the specific incidents, determining if the adverse response was related to the consumption of foods in the first instance, and if so, to which food component. Health professionals have to play a detective game, the complexity of which would put any amateur sleuth to shame. They have to consider such things as age, sex, geographic location, racial origin, income levels, lifestyle, diseased state and much more to even properly assess the question. Of course, the question is, what is the rationale for labelling and what needs to be labelled.

The Government is seriously trying to wrestle with these problems in the face of pressure from individuals or groups proposing any number of quick solutions. The Government does not want to end up with an arbitrary system of disclosure that is patently and scientifically unsound. It is likely that a large proportion of food-sensitivity reactions are due to relatively few foods or food components. On the other hand, this is offset by the potential of almost any food to elicit a food-sensitivity response in an occasional individual.

July 12, 1988 [Senate]

THE SENATE

Tuesday, July 12, 1988

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

[*Translation*]

EMERGENCIES BILL

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons to acquaint the Senate that they had agreed, without further amendments, to the amendments made by the Senate to Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

[*English*]

CRIMINAL CODE
FOOD AND DRUGS ACT
NARCOTIC CONTROL ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-61, to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

Hon. Nathan Nurgitz: Honourable senators, with leave of the Senate and notwithstanding rule 44(1)(*f*), I move that this bill be read the second time later this day.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, with respect to the question of leave on these bills—and I say "these bills" because I hope the Senate will give me leave to mention that there are, in all, coming from the House of Commons today, Bill C-61, Bill C-124, Bill C-75 and Bill C-58. The Deputy Leader of the Government and I discussed the anticipated legislative program for this week and we understand—although not officially—that the House of Commons will be sending us a fair amount of legislation this week and that the house leaders in the other place are attempting to complete their work on the other side before adjournment, either this week or early next week.

That, of course, will mean the adoption in the other place of quite a lengthy and important menu of legislation, and we in the Senate will try to deal with and have ready for Royal Assent as much of that menu as it is reasonable to expect from us. However, I believe that the Deputy Leader of the Government and I are agreed that it is impossible for us to have the total program ready for Royal Assent or otherwise dealt with in such a short time. Therefore, he and I have agreed that this week we will try to abridge the time for debate to see if we can at least help the government with legislation that—famous last words!—is non-controversial.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, Senator Frith is quite correct. We did have a discussion this morning. It is our hope to move along as much of this legislation as we reasonably can. I agree that some bills are perhaps more controversial than they appeared to be at the beginning—

Senator Frith: And more meaty!

Senator Doody: —but that will evolve as we go along. Therefore, without making any major commitment on either side at this point, it is our hope to move the legislative program that we now have before us fairly quickly, and as additional legislation comes up from the other place we will look at it and judge it on its merits.

At this point I can see no reason why we cannot hope for a speedy disposition of the legislation before us, and I hope that everything else that comes up can be treated equally quickly.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to and bill placed on the Orders of the Day for second reading later this day.

[*Translation*]

CANADA LABOUR CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-124, an Act to amend the Canada Labour Code.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Doody, notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading later this day.

Second reading of the Bill C-72, An Act respecting the status and use of the official languages of Canada.—(*Honourable Senator Doody*).

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, could that order stand in the name of Senator Murray? He has asked that he be given the right to speak on this order tomorrow.

Hon. Royce Frith (Deputy Leader of the Opposition): Agreed.

Order stands in name of Senator Murray.

CRIMINAL CODE
FOOD AND DRUGS ACT
NARCOTIC CONTROL ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Nathan Nurgitz moved the second reading of Bill C-61, to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act.

He said: Honourable senators, having moved second reading, I should like to explain that the purpose of this legislation is to strike at the profits generated by certain types of criminal offences. The legislation will do this by providing law enforcement agencies with the necessary powers to investigate, freeze and seize the proceeds of certain crimes and by providing the courts with the powers to confiscate the proceeds of these crimes.

It is an initiative that is both firm and fair. The need to deal appropriately with this growing problem has been tempered with the requirement to insure that the fundamental principles of due process are maintained throughout the entire forfeiture process. It is obvious that these measures are sensitive to all of the protections of our criminal justice system, including the developing principles of the Canadian Charter of Rights and Freedoms.

First I wish to comment on the "proceeds of crime" initiative in the international context. In relation to the growing world tragedy of drug abuse, the United Nations has recognized the need to approach the problem on a global level. It is apparent that drug traffickers ignore international borders and the reality of drug abuse will continue to flourish and grow unless all the nations of the world confront it with appropriate criminal sanctions.

In response to this, the United Nations is presently in the process of developing a draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. I, for one, would expect Canada to continue to show leadership in this area by means of a firm commitment to the proposals of that Convention.

In recognition of the fundamental need to prevent and repress the acquisition and laundering of the proceeds of illicit traffic in drugs, the principal undertaking of participating nations is to adopt legislative measures to facilitate the identification, tracing, freezing, seizing and forfeiture of such proceeds. It is clear, therefore, that Canada has anticipated her commitment to the international community of nations with the presentation of this legislation.

I trust honourable senators will allow Canada to join the other members of the United Nations in this important endeavour by allowing the proceeds of crime proposal expeditious passage into law. In addition, this legislation echoes the provisions of the draft convention by authorizing the pre-trial maintenance of the *status quo* by allowing for court-authorized freezing and seizure of the proceeds of crime. All of these elements of the legislation are reflective of the United Nations' model.

Similar comments apply to the provisions in the bill that create the inference from an unexplained increase in net worth, so that there will be certain procedures for the appointment of managers in conjunction with restraining orders; all of this to stop the fleeing of funds once criminals know they have been detected.

I note that the many built-in protections for third parties are also a feature of the draft convention as well as of this piece of legislation. I am pleased that this bill will enable Canada to assist the United Nations in the efforts that are being made to rid the world of the tragedy flowing from the abuse of drugs by striking out at the very lifeblood of these profiteers: their financial base.

Honourable senators, the communiqué of the 1986 meeting of Commonwealth Law Ministers held in Harare, Zimbabwe, last summer calls on member states to strengthen legal provisions to enable the proceeds of crime to be identified and forfeited, especially in light of the growth of drug abuse and illicit drug trafficking. That communiqué went on to note the concern that these drug trafficking empires posed to the social fabric and security of many countries. One only has to look at the situation in Colombia, where a criminal organization such as the Medillan Cartel, through its involvement and virtual control of the North American cocaine market, is able to function freely, bringing the judiciary, the police and the democratic process to their knees by acts of terrorism and murder. Democracy cannot survive in the face of the strength of such empires based on the trafficking of drugs.

In any event, I note that this bill is consistent with the resolve that has been established in the Commonwealth of Nations to deal appropriately with the international problem of traffic in drugs. We owe this much to the developing nations of the Third World.

• (1430)

With the presentation of this legislation, Canada now joins the list of western democracies to implement a procedure for the confiscation of the proceeds of crime. The most obvious example that we can think of is the RICO or Racketeer Influenced and Corrupt Organizations Statutes in the United States of America. I note that, although this Canadian proposal has the same objective in mind as the American legislation, that is, the elimination of criminal profiteering, it does so in a uniquely "Made in Canada" fashion: the proceeds of crimes—and only the proceeds of crime—will be forfeited

under our legislation rather than entire interests in enterprises that may have only a minimal connection with criminal activity. In the Canadian context, the sanction of forfeiture will be proportional to the criminal involvement. Also, the proposal does not target instruments of crime, which can be an unfair application. I believe honourable senators will be impressed by the balance, as well as the firmness, of these measures.

The United Kingdom has recently passed legislation to deal with the problem of the proceeds of crime. In the drug area, the Drug Trafficking Offences Act, 1986 was proclaimed in force in January of 1987. It includes many measures that are similar to this legislation. In particular, it provides for a form of pre-trial seizure of the proceeds of crime. This element of pre-trial restraint appears to be a fundamental feature of proceeds of crime legislation in all countries, including the United States and the United Kingdom. The collective opinion is that it is necessary, like pre-trial detention, in order to make the forfeiture provisions effective.

I note, returning to the situation in England, that they have a provision that is similar, to some extent, to the proposal in our legislation—to allow for the imposition of an alternative fine as a substitute for the proceeds of crime that have been placed out of reach of the authorities. The British experience must be similar to the Canadian one to foresee the need to create this incentive in the minds of enterprise criminals to make their proceeds of crime available to the courts for forfeiture.

When we look at Australia, there are proceeds of crime forfeiture statutes in virtually all of the states and at the federal level. All of them have the same fundamental features that the Canadian proposal will have, including pre-trial restraint of the proceeds of crime. When one looks at the New South Wales legislation, one will see that it too provides for the confiscation of the proceeds of crime of an absconding offender. That feature is found in our bill as well.

In closing, I do not think that anyone would argue against the suggestion that each one of these countries that already have proceeds of crime legislation is, to use words from the opening paragraph of our Charter of Rights and Freedoms, a "free and democratic society." That is obvious. They have all seen fit to attempt to limit the growth of enterprise crime by confiscating its profits from the hands of the criminal.

I trust that all honourable senators will approach this legislation with the same unanimity as the members of the British Parliament did in granting speedy passage to their Drug Trafficking Offences Act, 1986. Not only would this show our maturity as a nation but it would, we hope, be noted by the criminal element that Canada treats the proceeds of crime as seriously as do other nations of the world.

Honourable senators, this bill was passed Thursday last, July 7, in the House of Commons, on division. The New Democratic Party expressed some concern, and no one from the Liberal side spoke on it. However, I should mention that the Liberal Justice critic, Mr. Kaplan, spoke on second reading, I might say endorsing the entire bill and urging quick passage of the bill. Honourable senators, I ask you to support this bill, and I trust it will, after short consideration, be sent to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration.

On motion of Senator Stanbury, debate adjourned.

CANADA LABOUR CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Mira Spivak moved the second reading of Bill C-124, to amend the Canada Labour Code.

She said: Honourable senators, Bill C-124 amends Part IV of the Canada Labour Code.

Enterprises under federal jurisdiction, and to which the Canada Labour Code applies, include interprovincial or international works and undertakings such as railways, highways, transport, telephone, telegraph and cable systems, pipelines, canals, ferries, tunnels, bridges and shipping. As well, the Code applies to broadcasting, banking, air transport and some 40 crown corporations. Also included are industries declared by Parliament to be for the general advantage of Canada, such as grain elevators.

In addition, the occupational safety and health provisions of the Code apply to the federal public service, operating employees in the transportation industry and workers involved in the exploration and development of oil and gas in certain Canada lands. Therefore, over one million workers are covered by the Canada Labour Code's provisions on occupational safety and health.

The bill before us would make necessary changes to this legislation. These changes, while minor in themselves, will help make the Canada Labour Code a more flexible and efficient instrument for the protection of Canadian workers. The first of these changes is a series of amendments to Part IV of the Code, which have general application. The second relates only to the federally regulated coal mines in Cape Breton.

The objective of the proposed bill is to ensure consistency between the recently amended Part IV of the Canada Labour Code and the regulations made pursuant to the Code. One major intent of the Code amendments enacted in 1984 and proclaimed in 1986 was to clarify the prime responsibility of the employer for employees' occupational safety and health. The regulation-making authorities of the Code in this respect were therefore limited to precise standards which could be rigidly prescribed.

This approach has generally shown its merits. However, there can be a problem in some situations and environments in which some flexibility is required. The proposed amendments to the Code will address this problem by providing new or clearer authorities.

Honourable senators, I should now like to present these changes in logical order rather than clause by clause in order to explain more clearly the purpose of this bill and the thinking behind it.

July 14, 1988 (The Standing Senate Committee on Legal and Constitutional Affairs)

EVIDENCE

Ottawa, Thursday, July 14, 1988

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs, to which were referred Bill C-58, to provide for the implementation of treaties for mutual legal assistance in criminal matters and to amend the Criminal Code, the Crown Liability Act and the Immigration Act, 1976; and Bill C-61, to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, met this day at 9:30 a.m. to give consideration to the bills.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, we had to call this rather impromptu meeting this morning because two additional bills were referred to the committee. I am sure no one has had an opportunity to study them in detail but Mr. Mosley was good enough to make himself available again this morning and he has brought with him Mr. William Corbett, Senior General Counsel, Criminal Prosecutions.

We will commence our hearing by dealing with Bill C-61. Please proceed, Mr. Mosley.

Mr. Richard G. Mosley, Senior General Counsel, Criminal and Family Law Policy Section, Department of Justice: Thank you, Madam Chairman. Perhaps I should indicate that Mr. Corbett will address matters respecting Bill C-58 when the committee proceeds to study that bill.

Bill C-61 to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act with respect to proceeds of crime is a result of some eight years of work at the federal and provincial level. The work began with the publication in 1980 by the Attorney General of British Columbia of a report entitled "The Business of Crime." The report was authored by a Vancouver defence counsel who examined the existing Canadian legislation and concluded that it was inadequate to provide the Crown and the courts with the tools necessary to strip offenders of the profits that might be generated from their criminal activity.

As a result of that report, a study was commissioned by federal and provincial ministers responsible for criminal justice late in 1981, and it began in 1982. The study was comprised of representatives of a number of provincial governments, officials of provincial governments and from the federal departments of justice, the ministry of the solicitor general and the RCMP. The study reported in July of 1983 to ministers and, as an outcome of that work, and also as a result of other work that was being done at the time on sentencing, the Minister of Justice, the Honourable Mark MacGuigan, in February 1984, introduced proposals to amend the Criminal Code as part of a piece of omnibus legislation, Bill C-19 which was tabled at that time and which subsequently died on the order paper of the other place with the calling of the general election in the summer of 1984.

Those proposals in 1984 essentially reflected the conclusion of the Enterprise Crime Study which was the task force set up by federal and provincial ministers that Canadian law was, in

TÉMOIGNAGES

Ottawa, le jeudi 14 juillet 1988

[*Traduction*]

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles auquel ont été renvoyés le projet de loi C-58, Loi portant mise en œuvre des traités d'entraide juridique en matière criminelle et modifiant le Code criminel, la Loi sur la responsabilité de la Couronne et la Loi sur l'immigration de 1976 et le projet de loi C-61, Loi modifiant le Code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants, s'est réuni ce jour à 9 h 30 pour étudier les projets de loi.

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Honorables sénateurs, nous avons dû convoquer cette réunion impromptue ce matin parce que deux nouveaux projets de loi ont été renvoyés à notre Comité. Je suis sûre que personne n'a pu les étudier en détail mais M. Mosley a eu la gentillesse de se mettre de nouveau à notre disposition ce matin et il a amené avec lui M. William Corbett, avocat général, Poursuites pénales.

Nous commencerons notre séance par l'examen du projet de loi C-61. Monsieur Mosley, nous vous écoutons.

M. Richard G. Mosley, avocat général, Section de la politique du droit en matière pénale et familiale, ministère de la Justice: Merci, madame la présidente. Je voudrais vous signaler que c'est M. Corbett qui parlera du projet de loi C-58 lorsque le Comité l'examinera.

Le projet de loi C-61 modifiant le Code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants en ce qui concerne les produits de la criminalité est le fruit de quelque huit ans de travail au niveau provincial et fédéral. Ceci a commencé lorsque le Procureur général de Colombie-Britannique a publié en 1980 un rapport intitulé «The Business of Crime.» Le rapport était signé par un avocat de la défense de Vancouver qui, après avoir examiné la législation canadienne en vigueur, concluait qu'elle était insuffisante pour donner à la Couronne et aux tribunaux les instruments nécessaires pour enlever aux criminels les produits de leurs activités criminelles.

À la suite de ce rapport, les ministres responsables de la justice pénale aux niveaux fédéral et provincial ont demandé à la fin de 1981 qu'une étude soit entreprise et celle-ci a commencé en 1982. À cette étude participaient des représentants de plusieurs gouvernements provinciaux, des fonctionnaires de gouvernements provinciaux et du ministère de la Justice, du ministère du Solliciteur général et de la GRC. En juillet 1983, les résultats de l'étude ont été communiqués aux ministres et, à la suite de ce travail et d'autres recherches effectuées à l'époque sur la détermination de la peine, le ministre de la Justice, l'honorable Mark MacGuigan, a présenté en février 1984, des propositions visant à amender le Code criminel dans le cadre d'un projet de loi omnibus, le projet de loi C-19, qui a été déposé à ce moment-là mais est ensuite mort au Feuilleton de l'autre endroit, lors de la convocation des élections générales de l'été 1984.

Ces propositions de 1984 reflétaient essentiellement les conclusions de l'étude sur le crime organisé, c'est-à-dire du groupe de travail créé par les ministres fédéral et provinciaux, selon

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fact, inadequate, and that there was no provision empowering the courts to strip offenders of the actual proceeds of their criminal activity although there were certain specific measures which the courts could employ. Forfeiture, which is the concept we are basically talking about, has long been known in Anglo-Canadian criminal law and, in fact, it is now found in some 100 federal statutory provisions; but it is forfeiture which is specific to either certain instruments of crime or certain specific types of proceeds of crime or contraband—property which is, in itself, illegal to possess.

The conclusion of the 1983 study and the purpose of the 1984 amendments was to provide the courts with a general forfeiture power and with complementary powers of seizure and pretrial, preconviction restraint in order to preserve the property until the ultimate disposition of the issues at trial and an order of forfeiture if one were to follow.

This effort that was attempted in 1984 and which is now reflected in Bill C-61, is part of a worldwide attempt to provide new means to deal with the problem of crime and, in particular, transnational crime. Mr. Corbett will be speaking to Bill C-58 a little later which is also part of this generalized effort on the international level and domestically within nations to try to come up with new tools to deal with the modern problems associated with criminal activity.

It is consistent with efforts which began in the United States with the Organized Crime Commission hearings in the 1950s and 1960s which culminated in 1970 with the adoption of legislation which is popularly known as RRCO, the Racketeer Influenced and Corrupt Organizations Statute and complementary legislation which was found in other pieces of American statutory authority.

It is consistent with legislation which has been adopted in recent years in the United Kingdom; in other European nations; with the terms of a draft convention against drug trafficking which the United Nations is currently working on; and with similar efforts which are underway within the Council of Europe and within the Commonwealth of Nations.

I might characterize this as a generalized response to modern crime problems. It is a recognition that, in the current age, it is extremely simple to transfer property outside of the territorial boundaries of any individual nation.

In Canada we have had for many years—it was adopted as part of the Criminal Code of 1892—a provision against the possession of property that has been obtained by the commission of an indictable offence. Section 312 of the code, which contains that provision, was, in fact, amended in the mid-1970s to extend its ambit to include the profits or proceeds of criminal activity committed either in Canada or abroad and brought into Canada—proceeds that were obtained either directly or indirectly. That amendment in 1975-76 was the direct result of concerns in Canada that the American legislation adopted in 1970 would drive criminal proceeds from the United States

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lesquelles la loi canadienne était effectivement insuffisante, dans la mesure où aucune disposition ne permettait aux tribunaux d'enlever aux criminels les produits de leurs activités criminelles, en dépit de certaines mesures précises auxquelles les cours pouvaient recourir. La notion de confiscation, puisque c'est en fait de ceci qu'il s'agit, était connue depuis longtemps en droit criminel anglo-canadien et se trouve en fait actuellement dans une centaine de dispositions statutaires fédérales; il s'agit toutefois de confiscation propre soit à certains instruments du crime, soit à certains types de produits d'activités criminelles ou de contrebande—c'est-à-dire des biens qu'il est illégal d'avoir en sa possession.

Les conclusions de l'étude de 1983 et les amendements de 1984 devaient donner aux tribunaux un pouvoir général de confiscation et des pouvoirs complémentaires de saisie et de blocage avant le jugement ou la condamnation, afin de préserver les biens jusqu'au règlement final lors du procès et jusqu'à l'éventuelle ordonnance de confiscation.

Cette tentative de 1984 se retrouve maintenant dans le projet de loi C-61 dans le cadre d'un effort mondial visant à trouver de nouveaux moyens de régler le problème de la criminalité, et en partie, des activités criminelles transnationales. M. Corbett parlera tout à l'heure du projet de loi C-58 qui fait également partie de cet effort généralisé entrepris au niveau international et dans les différents pays pour tenter de trouver de nouvelles solutions aux problèmes modernes associés aux activités criminelles.

Cette démarche est parallèle à celle qui a commencé aux États-Unis avec les audiences de la Commission sur le crime organisé, au cours des années 1950 et 1960, et qui ont atteint leur point culminant en 1970 avec l'adoption de la loi que l'on appelle généralement RRCO, le Racketeer Influenced and Corrupt Organizations Statute et des dispositions complémentaires que l'on trouve dans d'autres textes législatifs américains.

Ceci va également de pair avec les lois adoptées au cours des dernières années au Royaume-Uni, dans divers pays européens, ainsi qu'avec les dispositions d'un projet de convention contre le trafic de stupéfiants sur lequel travaillent actuellement les Nations Unies et avec d'autres initiatives semblables du Conseil de l'Europe et des pays membres du Commonwealth.

C'est un effort généralisé pour répondre aux problèmes de la criminalité moderne. En effet, on reconnaît qu'il est actuellement extrêmement simple de faire sortir des biens des limites territoriales d'un pays.

Au Canada, nous avons depuis de nombreuses années une disposition—elle a été adoptée dans le cadre du Code criminel en 1892—interdisant de posséder des biens obtenus grâce à un acte criminel. l'article 312 du Code, qui contient cette disposition, a été en fait amendé au milieu des années 1970, pour inclure les profits ou produits d'activités criminelles perpétrées soit au Canada soit à l'étranger, et amenés au Canada—produits obtenus directement ou indirectement. Cette modification a été apportée en 1975-1976 parce que l'on craignait au Canada que la législation américaine adoptée en 1970 ne pousse les criminels à faire entrer au Canada les produits de

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into Canada and that this country would be used to launder those moneys.

That was actually first raised in the Ontario legislature by the late Mr. Renwick and was subsequently adopted by the Minister of Justice and passed by the federal Parliament.

That offence under section 312 makes it a crime to be in the possession, in Canada, of criminal proceeds, but there is nothing in the way of supporting legislation for that offence. In other words, it is entirely possible that an individual who is in possession of criminal proceeds in this country may be arrested and charged, but the court would have no authority to order the confiscation of those proceeds, which is an extraordinary anomaly in our existing law.

There have been some examples and I can point to one in particular. Some years ago, a person of Colombian extraction, who was involved in cocaine trafficking in the southern United States, chose to deposit substantial quantities of money in the Royal Bank of Canada in the City of Montreal. That individual was subsequently killed as a result of having given information to the American Drug Enforcement Administration. When the Attorney General of Quebec attempted to seize the drug moneys in the Royal Bank, it was discovered that there was no authority under our law to permit that seizure. An attempt was made to execute a search warrant, and the courts found—from the Superior Court of Quebec to the Supreme Court of Canada—that there was no room in section 443 of the Criminal Code, the search warrant provision, to permit such a seizure. So the efforts on the part of the Attorney General of Quebec to do something about that money sitting in an account in the Royal Bank were stymied.

Bill C-61 attempts to resolve that anomoly, among others, and to flush out the existing law to provide the necessary mechanisms in order to permit the courts to authorize the seizure or restraint of seizures not physically or practically possible; and, ultimately, if the property is deemed to be the proceeds of crime, to order its confiscation or forfeiture. To a great extent, it reflects the principles that were put forward in the legislation proposed in 1984, although there are significant differences. The bill in 1984 would have applied to all instruments of crime, and it would have applied to the proceeds from all indictable offences. There was a considerable amount of concern expressed at that time and a fair amount of media attention to those proposals.

The Chairman: Sir, what were the objections?

Mr. Mosley: The concern raised by the defence bar at the time was that the proposals went too far, and these were addressed in a number of debates held under the auspices of the Canadian Bar Association at their mid-winter and annual conference in 1984. These concerns were picked up by the media and received considerable attention at the time. Bill C-61 responds to those concerns. It does not apply to instruments at all.

The Chairman: What do you define as an instrument, a bond?

[*Traduction*]

leurs activités criminelles aux États-Unis et que notre pays ne soit utilisé pour recycler ces fonds.

Cette possibilité a en fait été évoquée pour la première fois au Parlement ontarien par feu M. Renwick et l'idée a ensuite été reprise par le ministre de la Justice et par le Parlement fédéral.

C'est donc une infraction en vertu de l'article 312, que d'avoir en sa possession au Canada le produit d'activités criminelles, mais il n'existe aucune loi sur laquelle s'appuyer dans ce domaine. Autrement dit, il est tout à fait possible d'arrêter et de condamner une personne ayant en sa possession le fruit d'activités criminelles au Canada mais les tribunaux n'auraient aucun pouvoir pour ordonner la confiscation de ces biens, ce qui est une anomalie considérable de notre droit.

Il y a eu plusieurs cas et je peux vous en citer un en particulier. Il y a quelques années, une personne d'origine colombienne, qui faisait du trafic de cocaïne dans le sud des États-Unis, a décidé de déposer des sommes importantes à la Banque royale du Canada à Montréal. Cette personne a ensuite été tuée pour avoir donné des renseignements à l'American Drug Enforcement Administration. Lorsque le Procureur général du Québec a tenté de saisir les fonds déposés à la Banque royale, on a découvert que la loi ne contenait aucune disposition permettant cette saisie. On a tenté d'utiliser un mandat de perquisition et les tribunaux, depuis la Cour suprême du Québec jusqu'à la Cour suprême du Canada, ont conclu que rien dans l'article 443 du Code criminel, qui concerne les mandats de perquisition, ne permettait cette saisie. Ainsi, les efforts entrepris par le Procureur général du Québec pour récupérer cet argent bloqué dans un compte à la Banque royale, sont restés vains.

Le projet de loi C-61 vise à résoudre cette anomalie, entre autres, et à mettre en place les mécanismes nécessaires pour permettre aux tribunaux d'autoriser la saisie ou le blocage si la saisie est physiquement ou pratiquement impossible et, en dernier recours, si les biens sont considérés comme étant les produits d'activités criminelles, d'ordonner leur confiscation. Il reflète dans une grande mesure les principes exposés dans la législation proposée en 1984, quoiqu'il y ait des différences considérables. Le projet de loi de 1984 se serait appliqué à tous les instruments du crime et aux produits de toutes les activités criminelles. De vives inquiétudes avaient été exprimées à l'époque et les médias avaient beaucoup parlé de ces propositions.

La présidente: Quelles étaient les objections?

M. Mosley: Selon les avocats de la défense, les propositions allaient trop loin et elles ont été discutées dans le cadre de plusieurs débats organisés par l'Association du Barreau canadien lors de sa conférence annuelle du milieu de l'hiver de 1984. Ces objections ont été reprises par les médias et ont beaucoup attiré l'attention à l'époque. Le projet de loi C-61 répond à ces inquiétudes dans la mesure où il ne s'applique absolument pas aux instruments.

La présidente: Qu'appelez-vous un instrument, un lien?

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Mr. Mosley: Anything that is used to commit a crime. For example, a car may be an instrument in a bank robbery; a business may be an instrument to commit a sophisticated commercial fraud. One of the concerns raised in 1984 was that those proposals would have permitted the seizure and forfeiture of a business which was only peripherially connected to the commission of the offence, and it would cause a great deal of harm to third parties who might have an interest in that business, but who would not otherwise be involved in the commission of the offence.

Bill C-61 does not deal with instruments at all, nor does it apply to all indictable offences. It applies to a select list of offences that was compiled with the assistance of the provincial Attorney General, which are characterized as enterprise crimes, and to a list of these more serious drug offences, which are characterized as designated drug offences. So its provisions apply only to certain crimes. They do not apply across the board to every offence that the Criminal Code or the two drug statutes provide for.

The scheme is that if the police are investigating an enterprise crime or a designated drug offence and if they have grounds to establish to the satisfaction of a superior court—it would not be a justice of the peace or a provincial magistrate—that certain property is the proceeds of an enterprise or designated drug offence, they may make application to the court for either a seizure warrant, which would normally be employed if the property was tangible and susceptible to being removed and held by the police, or a restraining order.

The restraining order would be used if the property was intangible—such as a bank account—or could not practically be removed—such as real property or a large item such as a boat. The court would have the discretion to issue those orders, depending on the evidence that was presented to the court. If it was established at trial, following the charge and the trial on the merits of the guilt or innocence of an individual, that that individual was guilty of the offence charged and that the property concerned was property obtained by the commission of an enterprise crime or designated drug offence, then the court would have the authority to order the forfeiture of that property to the Crown.

There is also provision made for forfeiture in the case where an offender has either died or absconded. The need for that provision is shown in the case that I referred to earlier of Mr. Luiz Pinto who had deposited the funds in the Royal Bank in Montreal. Mr. Pinto, as I indicated, was killed by his former associates so there was no one to bring to trial within Canada for being in possession of that property in this country. In circumstances in which a charge has been laid, the court could then proceed to a determination that the property was the proceeds of crime and order its forfeiture where the accused has absconded or is dead.

It is felt necessary to require that a charge be laid to ensure that the federal criminal law jurisdiction would permit these proceedings. This area falls under the criminal law of power or within the field of property and civil rights. So this procedure

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M. Mosley: Tout ce qui est utilisé pour commettre un crime. Par exemple, une voiture peut être un instrument dans un vol de banque; une entreprise peut être un instrument utilisé pour une fraude commerciale complexe. On redoutait en 1984 que ces propositions permettent la saisie et la confiscation d'une entreprise qui n'avait qu'un lointain rapport avec l'activité criminelle, et ceci risquait de causer des torts considérables à des tierces parties ayant des intérêts dans cette entreprise mais n'ayant autrement rien à voir avec l'activité criminelle.

Le projet de loi C-61 ne traite absolument pas des instruments et il ne s'applique pas non plus à tous les actes criminels. Il s'applique seulement à certaines infractions dont la liste a été établie avec l'aide du Procureur général provincial, dites infractions de criminalité organisée, et à une liste d'infractions graves en matière de drogue, appelées infractions désignées en matière de drogue. Ainsi, ces dispositions ne s'appliquent qu'à certains actes criminels et non à toutes les infractions prévues au Code criminel ou dans les deux lois sur les stupéfiants.

Fondamentalement, si la police fait enquête sur une infraction de criminalité organisée ou une infraction désignée en matière de drogue et a suffisamment d'éléments pour prouver à un tribunal supérieur—il ne pourrait pas s'agir d'un juge de paix ou d'un magistrat provincial—que certains biens sont le produit d'activités de criminalité organisée ou d'infractions désignées en matière de drogue, elle peut demander au tribunal, soit un mandat de saisie, qui serait normalement employé pour des biens tangibles et susceptibles d'être enlevés et détenus par la police, soit une ordonnance de blocage.

L'ordonnance de blocage sera utilisée pour des biens intangibles—comme un compte bancaire—ou impossibles à déplacer—comme un bien immobilier ou un bien de grande taille comme un bateau. Le tribunal a le pouvoir de délivrer ces mandats, selon les éléments de preuve qui lui sont présentées. S'il est établi au procès, après les accusations et le jugement sur la culpabilité ou l'innocence d'un individu, que celui-ci était coupable de l'infraction dont il était accusé et que les biens concernés avaient été obtenus grâce à la perpétration d'une infraction de criminalité organisée ou d'une infraction désignée en matière de drogue, le tribunal a le pouvoir d'ordonner la confiscation de ces biens au bénéfice de la Couronne.

Il existe également une disposition permettant la confiscation dans les cas où le coupable de l'infaction est mort ou s'est esquivé. Cette disposition est nécessaire comme le montre le cas auquel j'ai fait allusion tout à l'heure, de M. Luiz Pinto, qui avait déposé des fonds à la Banque royale à Montréal. Comme je l'ai expliqué, M. Pinto a été tué par ses anciens associés de sorte que l'on ne pouvait plus accuser personne d'avoir eu ces biens en sa possession au Canada. Dans les cas où des accusations ont été portées, le tribunal peut déterminer si les biens sont le produit de criminalité et ordonner leur confiscation si l'accusé s'est esquivé ou est décédé.

On considère qu'il est nécessaire d'exiger que des accusations soient portées pour être sûr que la juridiction fédérale en matière de droit criminel permettrait cette procédure. C'est un domaine qui fait partie soit du droit criminel, soit du droit des

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in Bill C-61 is tied very closely to criminal proceedings. It is unlike some of the powers in the United States.

The Americans have a mixed system in which they can either use a criminal forfeiture procedure or an administrative forfeiture. You have seen accounts of how the American authorities have seized cars, boats, and planes without obtaining a court order in advance. That is possible because under their system, which is a mixed civil and criminal system at the federal level, they have statutory authority to conduct what are known as administrative seizures which will result in a forfeiture to the state unless challenged by the person from whom the property has been seized or someone else with an interest in the property. If challenged, then the state must bear the onus of proof, but it has proven to be an infrequent occurrence that such seizures are challenged. In many cases, the suspected drug trafficker or other offender walks away from the property and abandons it to forfeiture by the state.

Under our system, because of the constraints of the division of powers, seizures and forfeitures related to crime proceeds have to be linked to criminal procedure. Bill C-61 is very much a criminal scheme of seizure or restraint and forfeiture.

That covers my introductory remarks. I will be pleased to respond to any questions that the committee may have.

Senator Buckwold: Why did you not move to compulsory reporting?

Mr. Mosley: There is a long history to our examination of that question, senator.

Senator Buckwold: I presume that that is done in the United States.

Mr. Mosley: Yes, it is. In Canada, that whole issue was really blown out of proportion as a result of a *Globe and Mail* story that was published just before this bill was introduced. The journalist had obtained materials through the Access to Information Act and had interpreted those materials as suggesting that government officials had recommended the use of such a procedure in Canada. That was far from the truth.

The Enterprise Crime Study, in which I participated, began looking at the issue as early as 1982-83. At that time, officials travelled to Washington to take a close look at the procedure. The Americans were then having a great many difficulties with the reporting of currency transactions. Under the euphemistic title of "the Bank Secrecy Act", they require a form of disclosure of information. This measure had been brought in in the seventies as part of a general package of measures against organized crime. However, in 1983 they were only beginning to enforce it. The measures had simply not been observed by the major financial institutions in the United States and there had been few efforts to enforce them up to that time. The Americans got tough and went after the financial institutions by imposing upon them significant civil penalties, some of which were in the order of millions of dollars. The institutions then started to respond by more scrupulously observing the terms of that statute.

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biens et des droits civils. Cette procédure du projet de loi C-61 est donc très proche d'une procédure pénale. La situation est un peu différente aux États-Unis.

Les Américains ont un système mixte qui leur permet d'utiliser une procédure de confiscation soit pénale, soit administrative. Vous avez sûrement entendu parler de cas où les autorités américaines ont saisi des voitures, des bateaux et des avions sans avoir demandé d'ordonnance préalable du tribunal. Ceci est possible grâce à leur système mixte, civil et criminel, au niveau fédéral, qui permet d'effectuer des saisies dites administratives, qui deviendront des confiscations au bénéfice de l'État, à moins qu'il n'y ait contestation de la part de la personne à qui les biens ont été saisis ou d'une autre personne ayant un intérêt dans ces biens. En cas de contestation, le fardeau de la preuve repose sur l'État, a mais historiquement, les contestations dans ce genre de saisies ont été extrêmement rares. Dans de nombreux cas, la personne soupçonnée de trafic de stupéfiants ou de l'infraction s'en va et abandonne les biens à l'État.

Avec notre système, étant donné les limites imposées par la division des pouvoirs, les saisies et les confiscations des produits de la criminalité ne sont possibles que dans le cadre d'une procédure pénale. Le projet de loi C-61 met en fait en place un système pénal de saisie ou de blocage et de confiscation.

Ceci met fin à mes remarques d'introduction. Je me ferai un plaisir de répondre à toutes les questions du Comité.

Le sénateur Buckwold: Pourquoi n'avez-vous pas opté pour la déclaration obligatoire?

M. Mosley: Nous avons longuement réfléchi à cette question, sénateur.

Le sénateur Buckwold: Je présume que c'est ce qui se fait aux États-Unis.

M. Mosley: Oui. Au Canada, la question a vraiment pris une importance disproportionnée à la suite de l'article du «Globe and Mail» publié juste avant la présentation du projet de loi. Le journaliste avait obtenu des documents grâce à la Loi sur l'accès à l'information et, d'après lui, les fonctionnaires du gouvernement préconisaient ce type de procédure pour le Canada. C'était très loin de la vérité.

Cette question a été examinée dans le cadre de l'étude sur le crime organisé à laquelle j'ai participé, dès 1982-1983. A l'époque, des fonctionnaires étaient allés à Washington pour examiner la procédure de plus près. Les américains avaient alors de grandes difficultés avec les déclarations concernant les transactions monétaires. selon la loi dite—c'est un euphémisme—«Bank Secrecy Act», les renseignements doivent obligatoirement être communiqués. Cette mesure avait aété adoptée au cours des années 1970 dans le cadre du train de mesures de lutte contre le crime organisé. Cependant, en 1983, on commençait à peine à la faire appliquer. Les dispositions n'avaient pas été observées par les grandes institutions financières américaines et l'on n'avait pas fait grand-chose pour y remédier jusque-là. Les Américains adoptèrent une ligne plus dure et imposèrent des pénalités civiles importantes aux institutions financières, allant parfois jusqu'à des millions de dollars. Cel-

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The statute provides that whenever a customer deposits or withdraws a sum of cash in excess of $10,000 a form must be filled out and sent to Washington—actually, these forms are now sent to a data processing centre in the Detroit area. The purpose is to provide information concerning large-scale currency movement. The result, however, is that that processing centre now receives some 5 million forms a year. This is an extraordinarily cumbersome system. Those 5 million forms have to be translated into computer-readable form, and there is an army of data processors at the IRS facility near Detroit to do that. The information then has to be analyzed, which is done by a large number of intelligence analysts in Washington.

When we looked at the system in 1983, we could not get any hard information from the Americans as to how effective it was. We went back again in 1986, after they had tightened up their system and had improved enforcement so that the level of compliance was much better. They had tried through legislative and administrative changes to improve the effectiveness of that scheme. However, at that time and even today they still could not give us any hard information about how effective the system really is. Looking for specific information through those 5 million forms every year, from the point of view of cost effectiveness, is like looking for a needle in a hay stack. However, some of the field personnel say that they have been able to use that information to track individuals. There was notable success with an operation entitled "Greenback" as few years ago. The problem is that we simply cannot get an assessment of whether this system is worth it in terms of the cost to the industry, which is a significant factor because those costs are, in turn, passed on to the consumer. It is also difficult to estimate whether it is worth it to government in terms of its improvement in law enforcement effectiveness.

The general accounting office, which is similar to our Auditor General's office, conducted a study a few years ago, the conclusion of which was that the Treasury Department, which administers part of the scheme, simply could not provide any information about the effectiveness of this scheme. We have repeatedly asked the Americans for that sort of information and they still cannot come up with it. Therefore, as a result of our examination of the American scheme, we have concluded that there may be some benefits to it, certainly for tax law enforcement, but for tracking drug offenders or enterprise criminals, as we call them, its cost effectiveness has yet to be demonstrated. In our view, there may well be better ways to get that information. As a result of the Enterprise Crime Study, it was agreed that one of the follow-ups would be a study of methods to obtain information to trace and identify proceeds. The resources were not available for that study immediately following the 1983 report, but it has been undertaken in the context of the national drug strategy that was announced by the government last spring. It is being handled by the ministry of the Solicitor General. It is intended that that study take another look at the American system to see whether some version of it might be feasible in this country—a

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les-ci commencèrent alors à respecter plus scrupuleusement les dispositions de la loi.

La loi prévoit que lorsqu'un client dépose ou retire une somme en espèces dépassant 10 000 $, un formulaire doit être rempli et envoyé à Washington—en fait, ces formulaires sont maintenant envoyés à un centre de traitement des données dans la région de Detroit. L'objectif est d'obtenir des renseignements sur tous les grands mouvements de fonds. Cependant, en pratique, le centre de traitement reçoit maintenant environ cinq millions de formulaires par an. C'est un système extrêmement lourd. Ces cinq millions de formulaires doivent être traduits en un langage lisible par l'ordinateur et il y a pour cela une armée d'informaticiens dans les locaux de l'IRS près de Detroit. Les renseignements doivent ensuite être analysés, ce qui est fait par un grand nombre d'analystes à Washington.

Lorsque nous avons examiné le système en 1983, il était très difficile de juger de son efficacité d'après les renseignements donnés par les Américains. Nous y sommes retournés en 1986, après que le système ait été renforcé et qu'à la suite de mesures plus sévères, il soit devenu mieux respecté. L'on avait tenté par des changements administratifs et législatifs d'améliorer l'efficacité de la formule. Cependant, il était toujours impossible aux Américains de nous donner des renseignements précis sur l'efficacité véritable du système. C'est encore vrai aujourd'hui. Du point de vue de la rentabilité, l'examen de ces cinq millions de formulaires annuels revient à chercher une aiguille dans une botte de foin. Cependant, certains des employés sur le terrain disent qu'il leur a été possible grâce à ces renseignements de retrouver la piste de certaines personnes. Il y a eu une opération appelée «Greenback» il y a quelques années qui a bien réussi. Le problème, c'est qu'il est impossible de savoir si le système est vraiment rentable sur le plan du coût pour l'industrie, ce qui est un facteur important parce que ces coûts sont ensuite répercutés sur le consommateur. Il est également difficile de savoir s'il est rentable pour le gouvernement dans la mesure où il permet de mieux faire respecter la loi.

Le General Accounting Office, qui se compare à notre Bureau du Vérificateur général, a entrepris une étude il y a quelques années et conclu que le Département du Trésor, qui administre une partie du système, était incapable d'évaluer l'efficacité du système. Nous avons à plusieurs reprises demandé ce genre de renseignements aux Américains et ils n'ont jamais pu nous les donner. Par conséquent, nous avons conclu de cet examen du système américain, qu'il comportait peut-être certains avantages, particulièrement pour le respect de la loi de l'impôt, mais que pour retrouver la piste des trafiquants de stupéfiants ou des criminels organisés, comme nous les appelons, sa valeur était loin d'être démontrée. D'après nous, il y a peut-être de meilleures façons d'obtenir cette information. À la suite de l'Étude sur le crime organisé, on a décidé d'effectuer une étude des méthodes permettant d'obtenir des renseignements pour retrouver et identifier les produits de la criminalité. Les ressources nécessaires n'étaient pas immédiatement disponibles pour ce travail après le rapport de 1983, mais il a été entrepris dans le contexte de la stratégie nationale sur les drogues annoncée par le gouvernement au printemps dernier. C'est le ministère du Solliciteur général qui s'en occupe. Cette étude doit permettre de réexaminer le système

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version that might be administered by Revenue Canada, for example. Alternatively, we could look at other methods for obtaining the same or better results. The RCMP have told us, for instance, that their main problem is not so much in identifying individuals as it is in being able to trace the flow of the money through the banking system. It may be more effective, then, having taken a hard look at all of these considerations through this study, to require the banks to keep better in-house records that could be accessible through a search warrant or another mechanism than it would be to impose an obligation upon them to routinely submit a form which the government then has to handle and analyze.

I have taken a lot of time to respond to your question, senator, but this has been a bit of a thorn in our side over the course of the past year. It stems from a misinterpretation, if I may respectfully call it that, on the part of a journalist who was chasing a story when the bill was introduced.

Senator Buckwold: Do you feel that voluntary disclosure by the banks is an effective method?

Mr. Mosley: In that regard, there has been a remarkable degree of cooperation from the banks in recent years. I think it fair to say that Canadian financial institutions woke up some years ago to the reality that they were being used to launder drug money and the proceeds of other crimes. As good corporate citizens, this is not something they were very pleased about. There was a case in St. Catherines, Ontario, of a lawyer who managed to launder, through a local branch bank, something in excess of $6 million. This was cash money which he was routinely trundling off to this branch. Nobody twigged to the fact that this was unusual for a lawyer in a small Canadian city.

The banks have implemented "Know Thy Customer" procedures. Their security personnel have worked very closely with senior officers of the RCMP and other Canadian police forces. They now have a money laundering committee which is very much alert to these considerations. so, there has been a remarkable turnaround in the awareness on the part of the Canadian financial community in recent years. We have seen no evidence of any lack of willingness to cooperate.

Senator Buckwold: Through the voluntary disclosure of banks regarding larger deposits, can you say that that disclosure resulted in prosecution?

Mr. Mosley: Cooperation from the banks has always resulted in criminal charges. Over the years, local branch managers have had a quiet word with the police to inform them that something is going on. The financial community has always been very concerned about their liability for the breach of the banker-client confidential relationship.

Bill C-61 attempts to alleviate that concern by clarifying the public interest exception to that confidentiality principle. This is intended to encourage disclosure in circumstances where there is a reasonable basis to believe that a customer is, in fact,

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américain afin de voir s'il serait possible d'en reprendre une partie dans notre pays, partie qui pourrait par exemple être administrée par Revenu Canada. Autrement, nous pouvons envisager d'autres méthodes qui permettraient d'obtenir les mêmes résultats, sinon mieux. La GRC nous a dit, par exemple, que le principal problème n'était pas tant d'identifier les personnes que de suivre le parcours de l'argent dans le système bancaire. Il serait donc peut-être plus efficace, après avoir passé en revue tous ces éléments dans le cadre de cette étude, de demander aux banques de tenir des dossiers qui pourraient être accessibles grâce à un mandat de perquisition ou un autre mécanisme, plutôt que de les obliger à soumettre régulièrement un formulaire que le gouvernement doit ensuite traiter et analyser.

J'ai mis très longtemps à répondre à votre question, sénateur, mais c'est un problème assez douloureux dont nous avons beaucoup souffert au cours de l'année passée. Il provient d'une erreur d'interprétation, si je puis parler ainsi, de la part d'un journaliste en mal de copie, lorsque le projet de loi a été présenté.

Le sénateur Buckwold: Pensez-vous que la déclaration volontaire par les banques soit une méthode efficace?

M. Mosley: A cet égard, la coopération des banques au cours des dernières années a été remarquable. On peut dire que les institutions financières canadiennes ont ouvert les yeux sur la réalité il y a quelques années, en se rendant compte qu'on se servait d'elles pour recycler les fonds tirés du trafic de stupéfiants et les produits d'autres activités criminelles. C'est évidemment quelque chose qui ne leur a guère plu. Il y a eu le cas à St. Catharines, Ontario, d'un avocat qui avait réussi à recycler, par l'intermédiaire de la succursale locale d'une banque, plus de 6 millions de dollars. C'était de l'argent en espèces qu'il écoulait régulièrement par cette succursale. Personne n'a froncé le sourcil en pensant que c'était inhabituel pour un avocat d'une petite ville canadienne.

Les banques ont adopté des procédures pour «connaître leurs clients». Leur personnel de sécurité a travaillé étroitement avec des agents supérieurs de la GRC et d'autres forces policières canadiennes. Elles ont maintenant un comité sur le recyclage des fonds qui est très attentif à ces considérations. Il y a donc eu un volte-face remarquable de la part de la communauté financière canadienne au cours des dernières années. Nous n'avons vu aucun cas où l'on ait refusé de coopérer.

Le sénateur Buckwold: Est-ce qu'il est arrivé que les déclarations volontaires des banques sur les dépôts importants permettent d'intenter des poursuites?

M. Mosley: La coopération des banques a toujours conduit à des accusations criminelles. Au cours des années, les gérants de succursale ont pris l'habitude de dire un petit mot à la police pour l'informer de ce qui se passait. La communauté financière a toujours été très préoccupée par la confidentialité des relations entre le banquier et ses clients et sa responsabilité dans ce domaine.

Le projet de loi C-61 tente de soulager cette inquiétude en permettant que l'on déroge à ce principe de confidentialité uniquement lorsque l'intérêt public est en jeu. Ceci vise à encourager la communication de renseignements dans les circonstances

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engaged in laundering moneys. We hope that it will have the intended effect to make such disclosures more common.

Senator Stanbury: Generally speaking, I think all of us—and perhaps I should only speak for myself—are in favour of the bill and are happy to see it coming forward.

The area that senator Buckwold explored is perhaps one of the areas that concerns us most, as it had in the House of Commons and the Commons committee. You have explained quite fully the reasoning for choosing the one course rather than the other.

We will want to satisfy ourselves of the potential effectiveness of the bill in several areas. In other words, will this dependency on the volunteer efforts of the banks and the cooperation with the police be effective? It is not very persuasive when we see that only 50 or 60 disclosures have been made by the banks each year. It is hard for me to believe that there are that few transactions that would fall into this category. I appreciate that we do not have the $5 million, but there must be some middle road between the $5 million and the 50 or 60. I find it incredible that there are only 50 or 60 situations in Canada in a year where the banks feel that the situation calls for an examination by the police.

I am not satisfied at the moment that this bill will be all that effective, but if we are not prepared to follow the course of compulsory reporting, then we have to take this course and monitor it, and see whether it has to be changed at some time in the future. I would like your comments on whether or not it will be effective in terms of fulfilling the purpose for which the bill is developed.

I have another question to ask, and I will ask it now. If you recall, four or five years ago the State of Florida went after a Florida branch of one of our chartered banks. The state held it to ransom and eventually fined it $4 million because the head office of the bank in Canada was not disclosing information that they wanted from the branch in the Bahamas or some place offshore. In my opinion, the State of Florida courts were not using due process of law in attacking that situation. However, their complaint was that we had no laws which would deal with this situation, and therefore they were justified in dealing with it in a harsh way if they felt it necessary to do so.

At the time, that was a real irritant between Canada and the United States. I remember that we promised we would fix it up, that we would have discussions with them and would develop a course of legislation to deal with that kind of situation. Is such legislation going to help in dealing with that sort of situation? If not, what do we do about that?

Mr. Mosley: This bill will not assist in that regard at all. My colleague, Mr. Corbett, could speak to the implications of our efforts with respect to mutual legal assistance, which may help to a certain extent.

I would like to respond to your earlier question about effectiveness. This bill will have an immediate impact in terms of effectiveness, because it will fill the gaps in our legislative framework. The RCMP have contributed significant resources

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où il y a des raisons valables de croire qu'un client essaie en fait de recycler des fonds. Nous espérons obtenir l'effet recherché, c'est-à-dire rendre ces communications plus fréquentes.

Le sénateur Stanbury: D'une façon générale, nous sommes tous—je devrais peut-être parler seulement en mon nom personnel—favorables à ce projet de loi et nous sommes heureux qu'il soit présenté.

Le problème évoqué par le sénateur Buckwold est peut-être celui qui nous préoccupe le plus, comme c'était le cas pour la Chambre des communes et le comité de la Chambre. Vous avez longuement expliqué les raisons pour lesquelles on a opté pour cette formule plutôt que pour une autre.

Nous voulons être sûrs de l'efficacité potentielle du projet de loi dans plusieurs domaines. En d'autres termes, est-ce que ce système qui repose sur les efforts volontaires des banques et la coopération avec la police sera efficace? Ce n'est pas très convaincant lorsqu'on voit que les banques n'ont fait que 50 ou 60 déclarations de renseignements chaque année. J'ai du mal à croire qu'il y a si peu de transactions qui tombent dans cette catégorie. Je sais que nous n'avons pas les 5 millions de dollars, mais il doit y avoir un moyen terme entre les 5 millions et les 50 ou les 60. Je trouve incroyable qu'il n'y ait que 50 ou 60 cas par an au Canada où les banques estiment qu'il y a lieu de demander un examen de la police.

Pour le moment, je ne suis absolument pas convaincu que ce projet de loi sera aussi efficace, mais si nous ne sommes pas disposés à opter pour la déclaration obligatoire, nous sommes contraints de choisir cette formule en surveillant la situation, pour voir s'il faut apporter des changements à l'avenir. J'aimerais que vous nous disiez si, d'après vous, ce système sera efficace pour atteindre les objectifs visés par le projet de loi.

J'ai une autre question à l'esprit et je vais vous la poser tout de suite. Vous vous souvenez peut-être qu'il y a quatre ou cinq ans, l'État de Floride s'en est pris à la succursale de Floride de l'une de nos banques à charte. L'État a fini par lui imposer une amende de 4 millions de dollars parce que le siège social de la banque au Canada ne communiquait pas les renseignements demandés à la succursale des Bahamas ou d'un autre pays étranger. Je n'approuve pas la procédure adoptée dans ce cas par les tribunaux de l'État de Floride. Ils se sont plaints de ce que nous n'avions pas de loi permettant de régler le problème et ont estimé par conséquent qu'ils avaient le droit d'employer la manière forte, s'ils le jugeaient bon.

A l'époque, ceci a suscité une certaine irritation entre le Canada et les États-Unis. Je me souviens que nous avions promis d'arranger les choses, d'entamer des discussions avec les États-Unis et de mettre en place un projet de loi pour régler ce genre de problème. Ce projet de loi-ci va-t-il être utile dans ce genre de cas? Sinon, que pouvons-nous faire à ce propos?

M. Mosley: Ce projet de loi ne sera d'aucune utilité sur ce plan. Mon confrère, M. Corbett, pourra vous parler des implications de nos efforts en ce qui concerne l'entraide juridique, ce qui pourrait être d'une certaine utilité.

Je voudrais répondre à votre question précédente sur l'efficacité. Ce projet de loi aura un impact immédiat sur le plan de l'efficacité, car il comblera les lacunes existant dans notre cadre législatif. La GRC a consacré des ressources importantes

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in recent years to conduct financial investigations. Where a financial investigation is underway, they will know that they will have the capacity to make application to a court to seize the property once they are in a position to present their case, or to restrain that property; and, at the end of the road, the court would be in a position to order forfeiture of that property. I think it would certainly serve as an incentive to those financial investigations and would have an immediate impact in that respect.

We do not know whether or not it will result in a greater number of disclosures. We did consult with the financial community before making this proposal. This is based on a British model, and we obtained their view that it would assist them in advising their local branch managers to be more cooperative with the police without fear of liability for infringing the confidential client relationship. It is our great hope and expectation in the context of the new era of cooperation with the financial community in these matters that it will have that result.

We will have to monitor and see what practical effect it has. This study into means to trace and identify will be looking very closely at the effects of this measure and the effects of the bill in general. If it is necessary to consider other means, then, of course, they will be considered in due course.

Senator Stanbury: Does this create any breach into the offshore branches of the banks or other financial institutions?

Mr. Mosley: You are talking there about territorial jurisdiction and sovereignty. The Americans, of course, were acting entirely within their rights vis-à-vis a bank which was in fact operating within the United States, as well as in the Bahamas and Canada. Under their domestic law they could seek that information.

Perhaps my colleague, Mr. Corbett, could provide you with further comments on that.

Senator Stanbury: In view of the time, I will stop there, Madam Chairman.

Senator Doyle: Madam Chairman, I am quite sure that you were surprised—as I was—to hear about the bank disclosures, because this is something for which they do not charge a fee.

May I come back to those disclosures and ask a bit more about the banker-client relationship, because it is one that has not had as much public examination as, say, that of the doctor, priest and lawyer.

Senator Buckwold: The journalist.

Senator Doyle: The journalist, yes, but the journalist goes to jail for it if he preserves it.

Does the act suggest where bankers can look for guidance as to what they should responsibly report and what they should not? What would you do if you were to try to force a bank to say, "You have not made the proper disclosure." Is there a mechanism for that, or just this general feeling of good citizenship?

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au cours des dernières années aux enquêtes financières. Dorénavant, lorsqu'une enquête financière sera en cours, les membres de la GRC sauront qu'il leur est possible, une fois qu'ils disposent de tous les éléments de l'affaire, de demander à un tribunal de saisir les biens concernés, ou de les bloquer et, en fin de compte, le tribunal pourra ordonner la confiscation de ces biens. Ceci contribuera certainement à encourager ces enquêtes financières et aura sur ce plan un impact immédiat.

Nous ne savons pas si le projet de loi entraînera un accroissement du nombre de communications de renseignements. Nous avons consulté les membres de la communauté financière avant de faire cette proposition. Celle-ci est inspirée d'un modèle britannique et il semble qu'elle permettrait aux institutions financières d'encourager les directeurs de succursales locales à coopérer davantage avec la police, sans craindre d'être tenus responsables pour n'avoir pas respecter la confidentialité de leurs relations avec leurs clients. C'est en tout cas ce que nous espérons, dans le contexte de cette nouvelle ère de coopération avec le monde financier.

Nous devons suivre l'évolution de la situation et voir quels sont les effets pratiques du système. Cette étude sur les moyens permettant de retrouver et d'identifier les fonds nous permettra d'examiner de très près les effets de cette mesure et du projet de loi en général. S'il est nécessaire d'envisager d'autres moyens, ce sera fait en temps opportun.

Le sénateur Stanbury: Est-ce que ceci crée des problèmes pour les succursales des banques ou d'autres institutions financières situées à l'étranger?

M. Mosley: Vous voulez parler de la juridiction territoriale et de la souveraineté. Les Américains étaient bien sûr tout à fait dans leur droit à l'égard d'une banque exerçant aux États-Unis, ainsi qu'aux Bahamas et au Canada. Leur loi leur permettait de chercher à obtenir ces renseignements.

Mon confrère, M. Corbett, pourra peut-être vous donner davantage des précisions sur ce sujet.

Le sénateur Stanbury: Étant donné le peu de temps que nous avons, je vais m'arrêter ici, madame la présidente.

Le sénateur Doyle: Madame la présidente, je suis sûr que vous avez été aussi étonnée que moi d'entendre dire que les banques allaient communiquer des renseignements sans faire payer de frais.

Je voudrais revenir à ces communications de renseignements et poser quelques questions sur cette relation banquier-client, dans la mesure où l'on en a moins parlé que des relations avec son médecin, son prêtre et son avocat.

Le sénateur Buckwold: Avec les journalistes.

Le sénateur Doyle: Les journalistes, oui, mais les journalistes vont en prison pour sauvegarder leurs sources.

Est-ce que la loi précise où les banquiers peuvent demander conseil pour savoir dans quels cas ils doivent ou ne doivent pas faire une déclaration? Que feriez-vous si vous essayiez de forcer une banque à dire: «Vous n'avez pas fait la déclaration voulue». Y a-t-il un mécanisme pour cela ou fait-on simplement appel aux bons sentiments des banques?

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Mr. Mosley: There is no obligation on the banker to disclose, which is consistent with our general approach to the criminal law and our general legal principle that no one is obliged to report information relating to a criminal offence; you are not; I am not.

Senator Doyle: No. If you wanted something and they were not cooperative, you could bring them into court as a witness, and the judge, if he felt inclined, could charge them with contempt for not producing evidence. That is the only prod that is there, other than goodwill and understanding.

Mr. Mosley: Yes. They are very much at risk.

Senator Doyle: Sure. It is the general argument, though, for sensible and responsible citizenship.

Mr. Mosley: Sure, but they perhaps have an even greater interest in being a responsible citizen in the fact that they are handling the property. They have the proceeds in their possession.

Senator Doyle: When you get into their offshore operations I am lost and amazed. I sometimes do not understand where their sense of responsibility does lie.

Mr. Mosley: A simple example is the Hendin case in St. Catharines, for example. The bank branch that handled those funds was laundering the proceeds of crime.

The banks recognize that there is a potential liability for their officers, and that is one of the reasons why they have been anxious to adopt these "know thy customer" policies. It is not inconceivable that a financial institution or its officers could be charged, under either the existing law or the provisions of this bill, with having the possession of the proceeds of crime or laundering. So there is a certain incentive on their part to act responsibly. But there is no obligation on them to comply with section 420.27. It gives them some guidance in that it is not any suspicion which they should report, but they must have some reasonable basis for their suspicion. So a completely arbitrary or capricious report to the police is not protected by this; there has to be some basis for it.

The profile which is now given to bank employees of laundering includes a lot of small bills, money which is not clean and money which does not seem to come from a business that would normally handle small bills. That type of information should normally arouse a reasonable basis for a suspicion that something is amiss. In those circumstances, we feel confident that this provision would protect the bank employee who reported it to the authorities.

There has always been a public interest exception to the confidentality principle, but unfortunately jurisprudence has not defined the scope of that exception. So it has been difficult for the banks and their legal advisers to tell their officers, "Well, you will be okay if you act on these grounds, because there is this exception to the rule." By codifying, in effect, that exception, in these circumstances we hope to give them some more

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M. Mosley: Le banquier n'est pas tenu de communiquer des renseignements, ce qui est conforme à notre approche vis-à-vis du droit criminel et correspond à notre principe juridique général voulant que personne n'est tenu de communiquer des renseignements concernant une infraction criminelle; vous n'y êtes pas obligé, moi non plus.

Le sénateur Doyle: Non. Si vous vouliez quelque chose et que la banque refuse de coopérer, vous pourriez la faire comparaître comme témoin devant le tribunal, et le juge pourrait, s'il le désire, l'accuser de désobéissance pour n'avoir pas produit de renseignements. C'est le seul moyen de pression, en dehors de la bonne volonté et de la compréhension.

M. Mosley: Oui. C'est un risque qu'elles courent.

Le sénateur Doyle: Bien sûr. Mais, d'une façon générale, on fait surtout appel à leur sens de la responsabilité et à leur compréhension.

M. Mosley: Oui, mais elles ont peut-être encore plus intérêt à se comporter en citoyens responsables dans la mesure où elles disposent des biens. Elles ont les produits en leur possession.

Le sénateur Doyle: Lorsqu'on parle de leurs activités à l'étranger, je suis perdu et stupéfait. Quelquefois, je me demande vraiment en quoi elles se sentent responsables.

M. Mosley: Il existe un exemple simple, le cas Hendin à St. Catharines. La succursale de la banque qui détenait ces fonds recyclait les produits d'activités criminelles.

Les banques savent que leurs agents peuvent être tenus responsables et c'est entre autres, pour cette raison qu'elles ont tellement tenu à adopter ces politiques pour mieux connaître leurs clients. Il n'est pas impossible qu'une institution financière ou ses directeurs soient accusés, en vertu de la loi existante ou des dispositions de ce projet de loi, pour avoir en leur possession les produits d'activités criminelles ou les avoir recyclés. Les banques ont donc intérêt dans une certaine mesure à se comporter de façon responsable. Mais elles ne sont pas obligées de se conformer à l'article 420.27. Il leur donne une indication dans la mesure où elles ne doivent pas faire de déclaration en se fondant uniquement sur un soupçon mais bien avoir des motifs raisonnables. Ainsi, cette protection n'est pas valable pour un rapport complètement arbitraire ou capricieux à la police; il faut des motifs raisonnables.

Selon la description actuellement donnée aux employés de banques, l'argent recyclé comprend généralement un grand nombre de petites coupures, des billets qui ne sont pas propres et qui ne semblent pas venir d'une entreprise qui reçoit normalement des petites coupures. Ce type de renseignements devrait normalement éveiller les soupçons pour des motifs raisonnable et ainsi, cette disposition protégerait l'employé de banque qui fait une déclaration aux autorités.

Le principe de la confidentialité a toujours comporté l'exception concernant l'intérêt public mais, malheureusement, la jurisprudence n'a pas défini la portée de cette exception. Il a dont été difficile aux banques et à leurs conseillers juridiques de dire à leurs directeurs: «Tout ira bien, si vous agissez sur cette base, parce que c'est une exception à la règle.» En codifiant, en fait, cette exception, nous espérons leur donner des

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guidance as to when they can feel protected in making such a disclosure.

Senator Doyle: When a person is facing a charge or is convicted of a charge which involves, for example, drug trafficking, and it is found that he has $10 million sitting in the bank or a group of banks and this legislation starts to be activated, is it necessary to prove that the $10 million that is there is entirely from illegal sources, or does the fight then begin over how much of the $10 million that is sitting in the bank accounts is from the proceeds of illegal enterprise?

Mr. Mosley: That will present considerable difficulty. The Crown will always retain the burden of proving that the property has been obtained by crime.

In those circumstances the bill permits an inference to be drawn by the court. If there is no legitimate source of income for the individual, then the court may draw the inference that the net worth of the individual has been obtained by the commission of enterprise or designated drug offences.

One of the reasons why this bill provides for the disclosure of tax information is to support that inference. Quite frankly, we do not expect that the application for tax information will often disclose income from criminal sources—although that is not inconceivable. We are advised by Revenue Canada that sometimes taxpayers report the source of their income, and that source is illegal. But, for the most part, it will go to prove a negative, namely, that this individual has not reported any legitimate source of income from which the assets could have grown.

One example which the police brought to our attention some years ago was of a motorcycle gang member in Calgary who had managed, over the course of a few years, to acquire a magnificent ranch, beautiful automobiles, a plane and business interests. During the course of that period of years he had never worked at any visible job.

In that type of case—and there was evidence that that individual was engaged in drug trafficking—the Crown would have to go to court and prove the predicate offence—that is, the fact that the individual was drug trafficking. He would then have to lead the evidence to support the inference that all this property which has been amassed could not have come from any legitimate source, but must have come from the designated drug offence which the individual had been committing, the drug trafficking.

Senator Doyle: Not the individual offence, but the area of the offence.

Mr. Mosley: Yes.

Senator Doyle: For example, let us sy that I am this drug dealer again. If I get caught bringing in 10 pounds of hashish on an airplane, that could leave my entire fortune vulnerable if I cannot say, "Well this came from this and that came from that."

Mr. Mosley: Yes. The system would be totally ineffective if it did not.

Senator Doyle: That is right.

[*Traduction*]

indications plus précises afin qu'ils sachent à quel moment ils peuvent impunément communiquer les renseignements.

Le sénateur Doyle: Lorsqu'une personne est accusée ou condamnée pour une infraction concernant, par exemple, le trafic de drogues, et que l'on s'aperçoit qu'elle a dans une ou plusieur banques une somme de 10 millions de dollars, est-il nécessaire, avec ce projet de loi, de prouver que les 10 millions de dollars viennent entièrement de sources illégales, ou va-t-on se battre pour savoir quelle proportion des 10 millions déposés à la banque provient d'activités illègales?

M. Mosley: Ceci posera des problèmes considérables. Ce sera toujours à la Couronne de prouver que les biens ont été criminellement obtenus.

Ici le projet de loi permet au tribunal de faire des déductions. Si la personne concernée n'a pas de source légitime de revenu, le tribunal peut en déduire que ces biens ont été obtenus poar la perpétration d'infractions de criminalité organisée ou désignées en matière de drogue.

C'est justement pour étayer ces déductions que le projet de loi prévoit la communications de renseignements fiscaux. Très franchement, nous ne pensons pas que l'ordonnance de communication de renseignements fiscaux permettra souvent de faire apparaître des revenus de sources criminelles—quoi que ce ne soit pas inconcevable. On nous a dit à Revenu Canada que les contribuables révélaient parfois la source de leur revenu et que cette source était illégale. Mais dans la plupart des cas, le résultat sera négatif, c'est-à-dire que cette communication de renseignements permettra de montrer que la personne n'a pas fait état d'une source de revenu légitime d'où aurait pu provenir les biens.

Il y a quelques années, la police a attiré notre attention sur les cas d'un membre d'une bande de motards à Calgary qui avait réussi, en quelques années, à acquérir un superbe ranch, de belles voitures, un avion et des intérêts commerciaux. Pendant cette période, il n'avait jamais eu d'emploi visible.

Dans ce type de cas—et il était clair que cette personne faisait du trafic de stupéfiants—la Couronne serait obligée de prouver au tribunal l'infraction présumée, c'est-à-dire que la personne du trafic de drogue. Il faudrait ensuite fournir les preuves suffisantes pour que l'on puisse conclure que tous les biens ainsi amassés ne peuvent pas provenir d'une source légitime mais bien de l'infraction désignée en matière de drogue dont la personne est coupable, c'est-à-dire le trafic.

Le sénateur Doyle: Pas l'infraction proprement dite, mais le type d'infraction.

M. Mosley: Oui.

Le sénateur Doyle: Supposons que je sois ce trafiquant. Si je me faisais prendre avec 10 livres de haschisch à bord d'un avion, toute ma fortune serait vulnérable si je ne pouvais pas expliquer d'où est provenu ceci et d'où est provenu cela.

M. Mosley: Oui. Le système serait tout à fait inefficace autrement.

Le sénateur Doyle: C'est juste.

[*Text*]

Mr. Mosley: In those circumstances you cannot establish any proceeds from that particular occurrence.

Senator Doyle: It is not just the one transaction, it is the area.

Mr. Mosley: That is right.

The Chairman: Will this bill help you catch that man in Calgary?

Mr. Mosley: Most definitely it will.

The Chairman: How do you link them if you do not have the direct evidence?

Mr. Mosley: You establish first, beyond a reasonable doubt, that the individual is engaged in drug trafficking.

Senator Flynn: It is a presumption.

Mr. Mosley: At that point in time in the sentencing process—

The Chairman: You would have to establish that, though?

Mr. Mosley: Yes. You could not launch an action against the individual without establishing the criminal activity, and it has to be criminal activity of the nature that the bill addresses—that is, an enterprise crime or designated drug offence.

The Americans, as I mentioned earlier, have administrative forfeitures. In a case like that, under their system they might be able to move in and seize the ranch and the other property on the basis of their belief that the individual was a drug trafficker and then put him to the challenge of belief. Our system has to be linked to a criminal prosecution, with the exception of where the accused absconds or dies. In those circumstances, a charge has been laid and then the court could proceed, but the Crown would still have to prove that the individual had been engaged in drug trafficking or other criminal enterprise and that the property in those circumstances, beyond a reasonable doubt, flowed from the commission of such offences.

Senator Doyle: I have one very short question before we finish. It is really not a question; it is an observation, but I will frame it as a question. I hope that you are working on the other half of the legislation, which would prohibit people from making money from having been involved in crime.

Senator Flynn: Having been involved in crime?

Senator Doyle: Yes, people who sell their life stories.

Senator Buckwold: Would that apply to politicians, too?

Senator Doyle: Only if they are caught or if they abscond.

Senator Flynn: That is not fair.

Senator Doyle: No. It is quite a serious question.

Mr. Mosley: It is a serious issue. We have, in fact, looked at that question over the years.

[*Traduction*]

M. Mosley: Dans ces circonstances, vous ne pouvez pas prouvé que des profits ont été tirés de cette situation particulière.

Le sénateur Doyle: Il ne s'agit pas de la transaction proprement dite, mais bien du domaine d'activité.

M. Mosley: Oui.

La présidente: Est-ce que ce projet de loi vous aidera à attraper cet homme à Calgary?

M. Mosley: Absolument.

La présidente: Comment pouvez-vous établir des liens, si vous n'avez pas la preuve directe?

M. Mosley: Premièrement, vous établissez, au-delà de tout doute raisonnable, que la personne fait du trafic de stupéfiants.

Le sénateur Flynn: C'est une supposition.

M. Mosley: A ce moment-là du processus de détermination de la peine . . .

La présidente: Cependant, vous devriez le démontrer?

M. Mosley: Oui. Vous ne pouvez pas intenter de poursuites contre quelqu'un sans prouver qu'il y a une activité criminelle et ce doit être l'une des activités criminelles concernées par le projet de loi—c'est-à-dire en rapport avec la criminalité organisée ou une infraction désignée en matière de drogue.

Comme je l'ai dit tout à l'heure, les Américains ont un système de saisie administrative. Dans un cas comme celui-là, ils pourraient intervenir et saisir le ranch et les autres biens parce qu'ils pensent que cette personne fait du trafic de stupéfiants et l'obliger ensuite à contester la décision. Notre système exige des poursuites pénales, sauf dans les cas où l'accusé s'esquive ou meurt. Dans ces circonstances, le tribunal peut juger l'affaire lorsque des accusations ont été portées mais la Couronne doit néanmoins prouver que l'individu a fait du trafic de stupéfiants ou s'est livré à d'autres activités criminelles et que les biens en question proviennent, au-delà de tout doute raisonnable, de la perpétration de ces infractions.

Le sénateur Doyle: Une toute petite question avant de terminer. En fait ce n'est pas une question, c'est plutôt une observation, mais je vais la présenter come une question. J'espère que vous travaillez sur l'autre moitié de la législation, qui empêcherait les gens de gagner de l'argent pour avoir participé à des activités criminelles.

Le sénateur Flynn: Avoir participé à des activités criminelles?

Le sénateur Doyle: Oui, des gens qui vendent l'histoire de leur vie.

Le sénateur Buckwold: Est-ce que ceci s'appliquerait aussi aux politiciens?

Le sénateur Doyle: Seulement s'ils sont pris ou s'ils s'esquivent.

Le sénateur Flynn: Ce n'est pas juste.

Le sénateur Doyle: Non. C'est une question très sérieuse.

M. Mosley: C'est une question grave. En fait, nous y réfléchissons depuis plusieurs années.

[*Text*]

Senator Doyle: You should do it before Peter Demeter dies.

Senator Buckwold: And before Olson writes his book.

Mr. Mosley: It will be addressed by the Uniform Law Conference in August, but it is rife with difficulties, if I may say so.

Senator Doyle: Oh, I understand.

Senator Flynn: I note that the crime of soliciting is not mentioned.

Mr. Mosley: No, although bawdy house is. The pimping and bawdy house provisions were included in the list of enterprise crimes under sections 193 and 195 of the Code.

Senator Flynn: Yes. I see it under procuring, but soliciting itself is not mentioned. I know that they have established that such income is subject to income tax.

Mr. Mosley: The bill really is not addressed to the street level individual.

Senator Flynn: Street level? Would that be the proper description to provide an exception for soliciting?

The Chairman: Mr. Mosley, before we let you go, will you please tell us what happened to the money that Mr. Pinto deposited in the Royal Bank? Is it waiting for this bill to be passed?

Mr. Mosley: I believe it is still there subject to a civil action by the U.S. government, I believe. My friend, Mr. Corbett, may be closer to the actual circumstances.

The Chairman: We will not carry you to the next chapter.

Mr. William H. Corbett, Senior General Counsel, Criminal Prosecutions, Department of Justice: I would expect his heirs are after it now. I would expect it is still sitting there.

Senator Buckwold: But who gets the money?

Mr. Mosley: Under this, either the federal or provincial Crown would get it, depending on who had carriage of the action.

Senator Buckwold: It could be a fair amount of money.

Mr. Mosley: It could be. We have avoided trying to predict the amount because it is difficult to estimate. However, it could be, on a national level, in the millions of dollars every year.

Senator Buckwold: Could I ask Mr. Corbett what to me is an interesting question? When the Americans put in their legislation, was there a trend toward these illegal operators, these criminals, putting their money in our financial institutions?

Mr. Corbett: That is a good question. I have had individuals tell me that there is a trend, not just for money to come to Canada but for criminals themselves to come to Canada and bring their money with them. I had a senior German public servant tell me, years ago in a very quiet and polite way, that

[*Traduction*]

Le sénateur Doyle: Vous devriez le faire avant que Peter Demeter ne meure.

Le sénateur Buckwold: Et avant qu'Olson n'écrive son livre.

M. Mosley: Ce sera examiné lors de la Conférence sur l'uniformisation du droit au mois d'août, mais c'est rempli de difficultés, si je puis dire.

Le sénateur Doyle: Oh, je comprends.

Le sénateur Flynn: Je note que la sollicitation n'est pas mentionnée.

M. Mosley: Non, quoique l'on parle de maisons de débauche. Les dispositions sur le proxénétisme et les maisons de débauche ont été incluses dans la liste des infractions de criminalité organisée, en vertu des articles 193 et 195 du Code.

Le sénateur Flynn: Oui. Je vois que l'on parle de proxénétisme mais la sollicitation n'est pas mentionnée. Je sais que l'on a décidé que ces revenus étaient imposables.

M. Mosley: Le projet de loi ne vise pas vraiment les personnes qui travaillent dans la rue.

Le sénateur Flynn: Dans la rue? Est-ce que c'est ainsi qu'il faudrait décrire les choses pour faire une exception pour la sollicitation?

La présidente: Monsieur Mosley, avant de partir, pouvez-vous nous dire ce qui est arrivé à l'argent que M. Pinto avait déposé à la Banque royale? Attend-on que le projet de loi soit adopté?

M. Mosley: Je crois qu'il y a toujours des poursuites civiles intentées par le gouvernement américain. Mon confrère, M. Corbett, connaît peut-être mieux la situation que moi.

La présidente: Nous n'allons pas vous faire passer au chapitre suivant.

M. William H. Corbett, avocat général, Poursuites pénales, ministère de la Justice: Je suppose que ses héritiers essaient maintenant d'obtenir l'argent. Je présume qu'il est toujours là.

Le sénateur Buckwold: Mais qui va avoir l'argent?

M. Mosley: Avec ceci, ce sera la Couronne, soit fédérale soit provinciale, selon la procédure qui a été suivie.

Le sénateur Buckwold: Ce pourrait être une somme considérable.

M. Mosley: Oui. Nous avons évité de tenter d'évaluer la somme, parce qu'elle est difficile à estimer. Cependant, au niveau national, ce pourrait être des millions de dollars chaque année.

Le sénateur Buckwold: Puis-je poser à M. Corbett une question qui m'intrigue? Lorsque les Américains ont adopté leur loi, ces criminels ou ces trafiquants ont-ils eu tendance à déposer leur argent dans nos institutions financières?

M. Corbett: C'est une bonne question. Certains m'ont dit qu'il y avait là une tendance et que c'était non seulement l'argent mais aussi les criminels eux-mêmes, apportant leurs fonds avec eux, qui venaient au Canada. Il y a des années, un haut fonctionnaire allemand n'avait dit très calmement et très

[*Text*]

Canada was becoming known as a place for criminals and their money to locate because of our lax immigration laws, our absence of mutual legal assistance legislation and the absence of effective proceeds of crime legislation. So it is a combination of things. It is not just a place to put your money; it is also a comfortable place to live with your money.

Senator Buckwold: My question is: Has that happened? You say it has been talked about; but, from your point of view, have you seen people move into Canada as a result?

Mr. Corbett: Yes.

Senator Buckwold: Do you feel this legislation might have a restrictive element in that regard?

Mr. Corbett: Bill C-61, in dealing with the foreign proceeds?

Senator Buckwold: Yes.

Mr. Corbett: Does it cover foreign proceeds?

Mr. Mosley: Most definitely, it does. It does not matter where you made the proceeds.

Senator Buckwold: It says the crime can be committed anywhere, if it was an offence in Canada?

Mr. Mosley: Exactly.

Senator Flynn: This legislation has no retroactive effect?

Mr. Mosley: No.

Senator Flynn: It does not apply to people who are presently in jail and who will come out in a few years and be able to live in luxury for the rest of their lives?

Mr. Mosley: That is an interesting question. It has retrospective effect, in that if they are in possession of the proceeds of crime after the legisltion comes into effect, whenever those proceeds have been generated, then they are committing a crime under this legislation.

Senator Flynn: By keeping them?

Mr. Mosley: By keeping the proceeds.

Senator Flynn: That is interesting.

Senator Buckwold: Would Olson's $100,000 come into that type of proceeds of crime?

Mr. Mosley: No.

Senator Flynn: Would the retroactivity not be contested?

Mr. Mosley: I would characterize it as restrospective.

Senator Flynn: That might go against the Charter; not that I am coming to the defence of these people.

Mr. Mosley: But the offence is committed after the legislation comes into effect.

[*Traduction*]

poliment, que le Canada commençait à se faire connaître comme un endroit privilégié pour les criminels et leurs fonds, étant donné la souplesse de nos lois d'immigration, l'absence de législation d'entraide juridique et l'absence d'une loi efficace sur les produits de la criminalité. C'est donc un ensemble d'éléments. Ce n'est pas simplement un endroit où placer son argent, c'est un endroit confortable pour vivre avec son argent.

Le sénateur Buckwold: La question est de savoir si ceci s'est produit? Vous dites qu'on en a parlé, mais avez-vous vu des gens s'installer au Canada de cette façon-là?

M. Corbett: Oui.

Le sénateur Buckwold: Pensez-vous que cette loi pourrait avoir un effet restrictif à cet égard?

M. Corbett: Le projet de loi C-61, en ce qui concerne les revenus étrangers?

Le sénateur Buckwold: Oui.

M. Corbett: Le projet de loi concerne-t-il les produits étrangers?

M. Mosley: Oui, certainement. Peu importe où les produits de la criminalité ont été obtenus.

Le sénateur Buckwold: Il prévoit que les infractions peuvent être commises n'importe où, à partir du moment où c'est une infraction au Canada.

M. Mosley: Exactement.

Le sénateur Flynn: Cette loi n'a pas d'effet rétroactif?

M. Mosley: Non.

Le sénateur Flynn: Elle ne s'applique pas aux personnes actuellement incarcérées, qui vont sortir dans quelques années et vivre dans le luxe pour le reste de leurs jours?

M. Mosley: C'est une question intéressante. Il y a un effet rétrospectif en ce sens que si ces personnes ont en leur possession les produits d'activités criminelles après l'entrée en vigueur de la loi, quel que soit le moment où ces produits ont été obtenus, elles sont coupables d'une infraction en vertu de cette loi.

Le sénateur Flynn: En les conservant?

M. Mosley: En conservant les produits d'activités criminelles.

Le sénateur Flynn: C'est intéressant.

Le sénateur Buckwold: Est-ce que les 100 000 $ d'Olson entreraient dans cette catégorie de produits d'activités criminelles?

M. Mosley: Non.

Le sénateur Flynn: La rétroactivité ne serait-elle pas contestée?

M. Mosley: Je parle de côté rétrospectif.

Le sénateur Flynn: Ceci peut être contraire à la Charte, non pas que je cherche à défendre ces personnes.

M. Mosley: Mais l'infraction est commise après l'entrée en vigueur de la législation.

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Senator Flynn: Well, yes, but they are already in possession. You say the fact that you have had possession before this legislation came into force is a crime.

Mr. Mosley: I would argue that the possession is a continuing offence.

Senator Flynn: Yes, continuation of a state of facts that existed prior to the legislation coming into force. That would be an interesting question.

Senator Doyle: We used to get some of this money out of inheritance taxes.

The Chairman: Mr. Mosley, I just want to ask you a short question. I see extortion in the list of offences here. We were just dealing with Bill C-89 where extortion and loan-sharking are mentioned. I do not see loan-sharking here. Maybe I have missed it somewhere. We were talking about restitution in Bill C-89, and here we are talking about forfeiture. Using extortion as an example, can you tell me how you would deal with the money there, or how is it going to be dealt with? If you convict somebody of extorting large sums of money from a range of people, small shopkeepers, for instance, will the first emphasis be on restitution, and if there is any left over or that cannot be traced back to a particular person, then the rest would be forfeited to the Crown?

Mr. Mosley: Exactly.

The Chairman: Is that what happens?

Mr. Mosley: The bill gives priority to restitution. It may be that, in those cases, there will be, in fact, no forfeiture to the state. The bill does provide very useful mechanisms in order to seize or freeze the property. So presumably, if there were identifiable victims, and if at the end of the day the victims received restitution and there was nothing left over for forfeiture, then this legislation would still have provided the administration of justice with a very effective means of grabbing that money before the accused was able to dispose of it. So it would be protected and preserved for disposition by the court and for the benefit of the victims, I would imagine, in most cases of extortion and similar crimes.

The Chairman: Thank you very much. That has certainly given us a useful first look at Bill C-61, Mr. Mosley.

Mr. Mosley: If you do not mind, Madam Chairman, I will remain for Mr. Corbett's presentation.

The Chairman: By all means. I am sorry that we are not leaving very much time this morning for you, Mr. Corbett, but if we cannot finish today, we will certainly look forward to your coming back a little later.

Mr. Corbett: I will try to present this in a brief fashion. I should start, in speaking about mutual legal assistance in criminal matters, which is the mouthful we have to use, with a description of what it is. It has been defined as follows: It is an arrangement whereby a country—the requested state—at the request of another country—the requesting state—agrees to gather, in its own territory, evidence of a crime which is largely or entirely committed in the requesting state. It is gath-

[*Traduction*]

Le sénateur Flynn: Oui, mais ces biens sont déjà en leur possession. Vous dites que le fait d'avoir eu sa possession ces biens avant l'entrée en vigueur de la législation constitue une infraction.

M. Mosley: Je dirais que la possession est une infraction permanente.

Le sénateur Flynn: Oui, le maintien d'une situation existant avant l'entrée en vigueur de la législation. La question pourrait être intéressante.

Le sénateur Doyle: Nous avions certains de ces fonds avec les impôts sur les successions.

La présidente: Monsieur Mosley, je voudrais vous poser une brève question. Je vois que l'extorsion figure dans la liste d'infractions. Nous parlions justement du projet de loi C-89 où l'on mentionne l'extorsion et l'usure. Je ne vois pas l'usure ici. J'ai peut-être mal regardé. Nous parlions de restitution dans le projet de loi C-89 et ici, il s'agit de confiscation. Si l'on prend l'extorsion comme exemple, pouvez-vous me dire ce que l'on va faire de l'argent? Si l'on condamne quelqu'un pour avoir extorqué de grosses sommes d'argent à différentes personnes, par exemple à de petits commerçants, insistera-t-on sur la restitution, et, s'il reste de l'argent ou si l'on ne peut savoir à qui il appartient, le reste serait confisqué pour la Couronne?

M. Mosley: Exactement.

La présidente: Est-ce ainsi que ça se passe?

M. Mosley: Le projet de loi donne la priorité à la restitution. Il se peut que, dans ces cas-là, il n'y ait pas en fait, de confiscation au profit de l'État. Le projet de loi établit des mécanismes très utiles pour saisir ou bloquer des biens. Par conséquent, s'il est possible d'identifier les victimes et qu'après leur avoir restitué leurs biens, il ne reste rien à confisquer, la loi aura néanmoins donné à l'administration de la justice un moyen très efficace de récupérer ces fonds avant que l'accusé ne puisse en disposer. Ils seront ainsi protégés et préservés pour que les tribunaux en disposent comme ils l'entendent et pour que les victimes reçoivent une compensation, dans la plupart des cas d'extorsion ou d'activités criminelles semblables.

La présidente: Merci beaucoup. Ce premier aperçu du projet de loi C-61 que vous nous avez donné aura été très utile, monsieur Mosley.

M. Mosley: Si vous me le permettez, madame la présidente, je voudrais rester pour l'exposé de M. Corbett.

La présidente: Mais bien sûr. Je regrette que nous ne vous ayons pas laissé devantage de temps, monsieur Corbett, mais s'il nous est impossible de finir aujourd'hui, j'espère que vous pourrez revenir un peu plus tard.

M. Corbett: Je vais essayer d'être bref. Pour commencer, je devrais vous expliquer ce que l'on entend par entraide juridique en matière criminelle. La définition en est la suivante: il s'agit d'une entente en vertu de laquelle un pays, le pays faisant l'objet de la demande, accepte, à la demande d'un autre pays, le pays demandeur, de recueillir, sur son propre territoire, des éléments de preuve sur des activités criminelles perpétrées totalement ou partiellement dans l'État demandeur. Il

[*Text*]

cring information, intelligence, evidence in Canada by Canadians at the request of a foreign state to assist their investigation or prosecution, and it is reciprocal. In these arrangements, Canada receives the same kind of benefits as it is able to provide.

To distinguish this from extradition, for instance, extradition is the location and the return of a fugitive at the request of a foreign state. Mutual assistance is the obtaining and providing of information, evidence, intelligence to that foreign state. The two are similar. In a general context, both extradition and the providing of information and evidence are mutual assistance factors.

Law enforcement agencies have recognized for many decades that major crimes and criminal organizations are transnational in scope. For instance, drug trafficking, money laundering, major fraud cases, major tax evasion and terrorist offences are all transnational in scope and, in fact, the activities of organized crime are transnational in scope and the police have known this for some considerable time. There has been a great deal of mutual assistance at the police level—that is, police forces across the border helping each other out and providing information and intelligence. The existence of Interpol is a recognition of this. Interpol is, essentially, an organization that looks for fugitives and that indexes international warrants to locate people.

But criminals have also learned, long before the police recognized this, to use international boundaries to cloak their activities, and to use bank secrecy jurisdictions to hide the proceeds of crime and to escape detection.

The solution to this growing international phenomenon was for nations to start acting together to deal with the problem. The Europeans have had a convention and mutual assistance since 1959. The response to the problem has been through the negotiation of treaties.

Canada became involved in this phenomenon as a result of the Bank of Nova Scotia case, which was referred to here, in 1983. We recognized the limitations of existing law in providing the kind of assistance our neighbours wanted. As a conscious decision, we decided that we would sit down and negotiate a treaty with the United States in order to learn what mutual assistance was about; determine what we wanted from it and what the Americans were concerned about. We held seven sessions with them during which we changed from being rather lukewarm about the enterprise to being somewhat enthusiastic about it. A treaty was signed with the Americans on March 18, 1985 and, since then, we have concluded negotiations with the United Kingdom; and we are close to a conclusion with Australia, the Bahamas, and we are about to commence with Switzerland.

The RCMP identified the countries with which they felt mutual assistance was a priority and, besides our close neighbours, they have identified the bank secrecy jurisdictions.

[*Traduction*]

s'agit de recueillir des renseignements, de l'information, des éléments de preuve au Canada, à la demande d'un État étranger, pour l'aider dans une enquête ou des poursuites, et l'entente est réciproque. En effet, le Canada reçoit le même genre de services que ceux qu'il fournit.

C'est différent de l'extradition puisque, en réponse à une demande d'extradition d'un État étranger, on essaie de retrouver et de renvoyer un fugitif dans cet État. Lorsqu'on parle d'entraide juridique, il s'agit d'obtenir et de fournir des renseignemetns, des éléments de preuve, des informations à cet État étranger. Dans un contexte général, l'extradition et la communication de renseignements et d'éléments de preuve sont toutes deux des facteurs d'entraide.

Depuis de nombreuses années, toutes les polices savent que les grandes organisations criminelles et les principales activités criminelles dépassent les frontières. Par exemple, le trafic de stupéfiants, le recyclage de fonds, les grandes escroqueries, les fraudes fiscales graves et les actes terroristes sont tous de nature transnationale et, en fait, ceci est vrai pour toutes les activités du crime organisé, comme les polices le savent depuis bien longtemps. Il y a eu beaucoup d'entraide au niveau de la police, c'est-à-dire que les forces policières des deux côtés d'une frontière s'entraident et se communiquent des renseignements et des informations. L'existence d'Interpol en est la preuve. Interpol est, essentiellement, une organisation qui recherche les fugitifs et établit des mandats internationaux pour retrouver des gens.

Mais les criminels ont également appris, bien avant la police, à se servir des frontières internationales pour dissimuler leurs activités et à utiliser les pays où existe le secret bancaire pour faire disparaître les produits d'activités criminelles et ne pas être découverts.

Pour s'attaquer à ce phénomène international de plus en plus important, il fallait que les pays décident d'agir ensemble. Les Européens ont une convention d'entraide mutuelle depuis 1959. On a tenté de résoudre le problème en négociant des traités.

Ce phénomène a intéressé le Canada pour la première fois lors de l'affaire de la Banque de Nouvelle-Écosse, qui lui a été renvoyée en 1983. Nous nous sommes rendu compte alors que notre loi ne nous permettait pas de donner à nos voisins le type d'aide qu'ils nous demandaient. Nous avons donc décidé d'entamer des négociations en vue de conclure un traité avec les États-Unis pour mieux connaître la question de l'entraide juridique, savoir ce que nous en attendions et ce que souhaitaient les Américains. Nous avons eu sept rencontres avec les représentants américains au cours desquelles notre attitude a considérablement changé puisque nous étions plutôt tièdes au début et que nous étions devenus absolument enthousiastes à la fin. Un traité a été signé avec les Américains le 18 mars 1985 et, depuis lors, nous avons terminé nos négociations avec le Royaume-Uni, nous avons presque terminé avec l'Australie et les Bahamas et nous sommes sur le point de commencer avec la Suisse.

La GRC a déterminé les pays avec qui nous devrions nous entendre en premier lieu et, outre nos voisins immédiats, ce sont les pays où existe le secret bancaire qui ont été retenus.

[*Text*]

Our objective is to set up a treaty network that will allow us to pursue crime around the world and to provide assistance to those countries where Canada has been the locus of the evidence or the proceeds of crime.

A treaty, essentially, is a contract. It is an orderly international set of relationships for both receiving and providing assistance, to investigate the crime and then provide the evidence for the trial. The treaties set out what kind of assistance we will obtain and give and they advance the system from the existing law. For instance, under the treaties we are obliged to be able to provide a search warrant to a wholly foreign investigation and receive similar assistance. We are obliged to gather documents, records, evidence, to take evidence on oath, to exchange information or intelligence, as the police call it and, for instance, to survey things for foreign police forces.

The assistance breaks down into two categories: what you would call assistance that needs a compulsory process, where you would go to a court to get an order, and assistance which can be provided without that kind of an order. For instance, if the foreign police simply want to know who is living at a certain address, or if a certain witness can be located in Canada, that does not require court assistance. However, if a search warrant is needed, then that would be something which, under our principles, would require to be obtained through a court.

The treaties need legislation to implement them. The existing legislation is not sufficient. The bill before you, Bill C-58, provides the authority for Canadian officials—those being attorneys, judges and police—to gather the information and evidence that may be contained in the foreign request. Compulsory processes are orders from the court for a search warrant, or for an evidence-gathering order, which may be to produce the records or bring forward documents or to come forward and testify in a certain matter. It is an order from the court. The court may order the release of a prisoner in Canada to allow him, on his own consent, to testify abroad or to help a foreign investigation abroad. In other words, it is a temporary release of a serving prisoner in Canada. It is not uncommon that a prisoner is prepared to assist a foreign investigation.

The order may involve the removal of exhibits that are tied up in a Canadian prosecution to a foreign jurisdiction. For instance, if a murder weapon were involved in a case in Canada and the same weapon needed to be tested for a foreign homicide, an order could be obtained to release an exhibit.

In these cases, applications are made to Canadian courts and those courts must be satisfied that there are grounds to issue the order—that is, grounds that an offence has been committed in a foreign jurisdiction and that there is evidence in Canada that would assist the investigation of that offence.

[*Traduction*]

Notre objectif est d'établir un réseau de traités qui nous permettra de poursuivre les criminels dans le monde entier et de venir en aide à d'autres pays, lorsque les activités criminelles se sont déroulées au Canada ou que les produits de ces activités s'y trouvent.

Un traité est essentiellement un contrat. C'est un système ordonné de relations internationales permettant de recevoir et de fournir de l'aide, de faire enquête sur des activités criminelles et de transmettre des éléments de preuve pour le procès. Les traités précisent le type d'aide que nous obtiendrons et que nous donnerons et vont au-delà de la loi existante. Par exemple, les traités nous obligent à fournir un mandat de perquisition pour une enquête totalement étrangère et nous permettent de recevoir une aide semblable. Nous sommes obligés de recueillir des documents, des dossiers, des éléments de preuve, d'entendre des témoignages sous serment, d'échanger des informations ou des renseignements, comme dit la police et, par exemple, de surveiller certaines activités pour des polices étrangères.

L'aide se divise en deux catégories: d'une part, les mesures obligatoires pour lesquelles il faut obtenir un mandat du tribunal, et d'autre part, l'aide que l'on peut fournir sans ce type d'ordonnance. Par exemple, si une police étrangère veut simplement savoir qui habite à une certaine adresse ou s'il est possible de retrouver un certain témoin au Canada, il n'est pas nécessaire de faire intervenir le tribunal. Par contre, pour détenir un mandat de perquisition, nous devons passer par un tribunal.

Pour appliquer les traités, il faut une loi. En effet, la législation en vigueur n'est pas suffisante. Le projet de loi devant vous, le C-58, donne aux autorités canadiennes, c'est-à-dire les procureurs, les juges et la police, le pouvoir de recueillir les renseignements et les éléments de preuve requis dans une demande étrangère. Il y a des procédures obligatoires comme les mandats de perquisition délivrés par les tribunaux et les ordonnances d'obtention d'éléments de preuve, demandant de produire des dossiers ou de présenter des documents ou de venir témoigner dans une certaine affaire. Ce sont des ordonnances du tribunal. Le tribunal peut ordonner la libération d'un prisonnier au Canada pour lui permettre, avec son consentement, de témoigner à l'étranger ou dans le cadre d'une enquête à l'étranger. Autrement dit, on libère temporairement un prisonnier purgeant sa peine au Canada. Il n'est pas rare qu'un prisonnier consente à apporter son aide dans une enquête étrangère.

L'ordonnance peut obliger parfois de mettre à la disposition d'une juridiction étrangère des pièces à conviction utilisées dans des poursuites canadiennes. Par exemple, si une arme était l'arme d'un crime commis au Canada et devait en même temps être expertisée dans le cadre d'un homicide à l'étranger, il serait possible d'obtenir une ordonnance permettant de la prêter.

Dans ces cas-là, les demandes sont présentées aux tribunaux et ceux-ci doivent être convaincus qu'il existe des motifs raisonnables de délivrer l'ordonnance, c'est-à-dire avoir des raisons de penser qu'une infraction a été commise dans une juri-

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Applications are made to superior court judges—that is, high court judges in Canada.

Where a compulsory process is not involved, the police themselves can provide the assistance directly by obtaining publicly available information, records, or things of that nature.

There are built-in safeguards to the process both in the treaties and in the legislation. The assistance is available to what are the more serious crimes, not every crime. In the treaty with the U.S., it is an offence punishable by more than one year imprisonment. For Canada, it is an indictable offence plus a list of selected provincial offences such as securities, wildlife and environment. We are trying to confine it to the more serious criminal matters.

An application for assistance made to Canada must be approved by the Minister of Justice and he can refuse that request if, in his view—and he may consult with provincial colleagues—it is not in Canada's public interest to grant it. Similarly, he can postpone if providing that assistance would interfere with something ongoing in Canada, particularly an ongoing investigation of our own.

As I indicated, it is the Canadian courts that will authorize the compulsory orders. They are also obliged to protect the interests of witnesses and third parties in the proceedings before the courts.

Conditions can be attached to the transfer of evidence by our courts to the foreign authorities—that is, conditions for the return of items that are taken or for the securing of the items that may be sent abroad.

The position would be that this legislation and this system would enhance Canadian sovereignty. In the U.S. treaty, the U.S. is obliged to use the treaty. If they want records from Canada, they cannot issue a subpoena to Canadian banks to cough up the records. They must make a request under this treaty. They cannot act unilaterally.

Under the system, we obtain the same kind of assistance as we are providing. In fact, today we have obtained the same kind of assistance covered here from the United States without being able to provide it on the basis of a good neighbour policy.

Under this system, the foreign police agencies have no authority to act in Canada. We do not open up our systems to foreign police to come in and make use of them. We obtain the request and put it into effect ourselves.

Senator Buckwold: Does that mean that a foreign agent is illegal in Canada?

Mr. Corbett: No, it does not mean that. In our relations with the United States, when foreign U.S. agencies want to do something in Canada, there is a mechanism in place now where they consult with the RCMP, and they obtain the

[*Traduction*]

diction étrangère et qu'il existe au Canada des éléments de preuve qui seraient utiles à l'enquête sur cette infraction.

Les demandes sont présentées aux juges des cours supérieures au Canada.

Lorsqu'il n'y a pas de procédure obligatoire, la police peut apporter une aide directe en se procurant les renseignements, les dossiers ou les pièces disponibles au public.

Il y a des mesures de sauvegarde aussi bien dans les traités que dans la législation. Cette entraide n'est valable que pour les actes criminels graves et non dans tous les cas. Dans le traité avec les États-Unis, il faut que ce soit une infraction passible de plus d'un an de prison. Pour le Canada, ce doit être un acte criminel ou une liste d'infractions provinciales touchant par exemple des titres mobiliers, la faune et l'environnement. Nous essayons de limiter ces mesures aux activités criminelles graves.

Les demandes d'aide présentées au Canada doivent être approuvées par le ministre de la Justice qui peut refuser la demande, s'il estime—et il peut consulter ses collègues provinciaux—qu'il n'est pas dans l'intérêt public canadien d'y accéder. De même, il peut surseoir à la demande s'il y a un conflit avec une procédure en cours au Canada, particulièrement une enquête.

Comme je l'ai expliqué, ce sont les tribunaux canadiens qui délivrent les ordonnances obligatoires. Ils sont tenus de protéger les intérêts des témoins et des tierces parties dans les procédures judiciaires.

Il est possible de fixer des conditions à la transmission d'éléments de preuve par nos tribunaux aux autorités étrangères, c'est-à-dire, des conditions concernant le retour d'articles empruntés, ou la mise en sûreté des articles envoyés à l'étranger.

En principe, cette loi et ce système renforceraient la souveraineté canadienne. Selon les dispositions du traité conclu avec les États-Unis, ceux-ci sont obligés d'utiliser le traité. S'ils veulent obtenir des dossiers du Canada, ils ne peuvent pas envoyer une assignation aux banques canadiennes les obligeant à produire les dossiers. Ils sont tenus de présenter une demande en vertu de ce traité et ne peuvent agir de façon unilatérale.

Avec ce système, nous pouvons bénéficier du même type d'aide que celle que nous fournissons. En fait, aujourd'hui, nous avons obtenu des États-Unis le même type d'assistance, ce qui n'aurait pas été possible simplement en vertu de la politique de bon voisinage.

Selon cette formule, les polices étrangères n'ont pas le pouvoir d'agir au Canada. Nous n'ouvrons pas nos portes à la police étrangère en lui permettant d'utiliser notre système comme elle l'entend. Nous recevons les demandes et les mettons en œuvre nous-mêmes.

Le sénateur Buckwold: Est-ce que ceci signifie que la présence d'un agent étranger au Canada est illégale?

M. Corbett: Non, ce n'est pas ce que ça signifie. Avec les États-Unis par exemple, lorsque des organismes américains veulent faire quelque chose au Canada, il existe un mécanisme leur permettant de consulter la GRC en vue d'obtenir son

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umbrella of the RCMP. If they want to come and speak to someone, it is usually with the RCMP; but it is not illegal for them to come in and endeavour to locate a potential witness.

Senator Buckwold: What about someone in an embassy in Ottawa who has agents who are getting information?

Mr. Corbett: I am not of the view that that would be illegal, although there might be complaints, depending on how he behaved. The danger is that the foreign police officer gets into trouble, and then it embarrasses him, his government, and his police force. The practice is that they consult with the RCMP who will make sure that they do not get into trouble.

Senator Doyle: For years the RCMP have been doing the work of the FBI and the CIA and anyone else who asked them, without reservation. I do not say this off the top of my head. I have been involved with a number of cases where this has been the fact where we have not had a law. Is this simply a law, a bill, a treaty arrangement that establishes what the RCMP have been doing is now legal and we now provide a law to contain it?

Mr. Corbett: I am not familiar with what they have been doing, but this system is predicated—

Senator Doyle: This had a great deal to do with the period involving the U.S. investigation of un-American activities and the entire communist scare up to and including 1981 and 1982; offences that are not offences in Canada that are offences in the United States.

Mr. Corbett: This scheme will only assist the investigation of a foreign offence that is covered in the treaty. In other words, in the United States, it must be an offence punishable by more than one year imprisonment. It could be investigated by local, state, city or federal police or by the FBI, but we could not provide assistance, for instance, to an inquiry into certain activities. It must be in pursuit of a criminal matter.

As my friend reminds me, there is the aspect that they come through us. We must be satisfied that it is in the Canadian public interest to provide the assistance requested. The treaty contains that clause. It is not in the Canadian public interest to provide assistance, for instance, in the investigation of a U.S. company selling buses to Cuba through a Canadian subsidiary. The Minister of Justice can refuse.

Senator Doyle: Then this would not include such things as the U.S. equivalent of a Royal Commission or a Crime Commission.

Mr. Corbett: That is correct.

Senator Doyle: It has to be a specific crime under their Criminal Code—

Mr. Corbett: That is correct.

Senator Doyle: —under their laws, and it would have to be offences that parallel offence here. As you know, there are some areas where extradiction does not work, even though we have a treaty with the United States.

[*Traduction*]

accord pour agir. S'ils désirent venir parler à quelqu'un, c'est généralement par l'intermédiaire de la GRC, mais il n'est pas illégal de venir sur place pour tenter de trouver un témoin potentiel.

Le sénateur Buckwold: Qu'en est-il de quelqu'un qui dans une ambassade à Ottawa a des agents chargés d'obtenir des renseignements?

M. Corbett: Je ne pense que ce soit illégal, quoiqu'il puisse y avoir des plaintes, selon la façon dont la personne se comporte. Le danger c'est que l'agent de la police étrangère s'attire des ennuis et la situation devient alors embarrassante pour lui, son gouvernement et sa police. Dans la pratique, ces agents consultent la GRC pour être sûrs de ne pas avoir de problèmes.

Le sénateur Doyle: Pendant des années, la GRC a fait le travail du FBI et de la CIA et de tous ceux qui le lui demandaient, sans réserve. Je n'invente rien. J'ai suivi de près un certain nombre d'affaires où les choses se sont passées ainsi alors que nous n'avions pas de loi. En somme, nous avons là un projet de loi, un système de traités qui confirme et légalise ce que faisait déjà la GRC.

M. Corbett: Je ne sais pas exactement comment les choses se passaient, mais ce système vise . . .

Le sénateur Doyle: Il s'agit essentiellement de la période où les Américains enquêtaient sur toutes sortes d'activités anti-américaines et toutes les menaces communistes, y compris 1981 et 1982; ce sont des activités qui constituent des infractions aux États-Unis et non au Canada.

M. Corbett: Ce système ne sera valable que pour les enquêtes sur les infractions étrangères mentionnées dans le traité. Aux États-Unis, il faut que ce soit une infraction passible de plus d'un an d'emprisonnement. Ce pourrait être une enquête menée par la police locale ou de l'État, ou la police municipale ou fédérale, ou encore le FBI mais nous n'accordons pas notre aide pour tous les types d'enquêtes; il doit s'agir d'activités criminelles.

Comme me le rappelle mon confrère, il ne faut pas oublier qu'ils doivent passer par nous. Nous devons être convaincus qu'il est dans l'intérêt public canadien de fournir l'aide requise. Cette clause fait partie du traité. Par exemple, il n'est pas dans l'intérêt public canadien de fournir de l'aide dans une enquête sur une compagnie américaine vendant des autobus à Cuba par l'intermédiaire d'une filiale canadienne. Le ministre de la Justice peut refuser.

Le sénateur Doyle: Ceci ne concernerait donc pas l'équivalent américain d'une commission royale d'enquête ou d'une commission sur le crime.

M. Corbett: Exact.

Le sénateur Doyle: Il faut que ce soit un acte criminel particulier en vertu du Code criminel.

M. Corbett: C'est juste.

Le sénateur Doyle: Et il faut que ce soit des infractions qui se retrouvent ici. Comme vous le savez, il y a certains domaines où l'extradition est impossible, même s'il existe un traité avec les États-Unis.

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Mr. Corbett: We did not build a dual criminality aspect into this. In other words, they may request an offence that we do not have.

Senator Doyle: And we would allow that?

Mr. Corbett: If it is in the Canadian public interest to provide it.

Senator Doyle: If something is legal in Canada, then we assume that it is within the Canadian public interest, and it is good for Canada. As in the case of extradiction, we would not cooperate in the persecution and prosecution of a person in the United States for something that is not an offence in Canada, would we?

Mr. Corbett: Let me give you an example. The U.S. may have legislation aimed at a social evil that we do not have. We may have a different kind of legislation aimed at the same objective. My friend referred to the Bank Act in the United States that tries to monitor the movement of moneys across the border. That is a tool used to go after the proceeds of crime in U.S. prosecutions. We do not have the same kind of legislation. We have a different kind of legislation to attack the same social evil, if you will. The public interest protection allows us to look at the request, require as much information about that request as we think we need—it is set out in the treaty—and then to determine if providing assistance is in our interest.

Senator Doyle: And they will do the same for us?

Mr. Corbett: And they will do the same for us.

Senator Doyle: If they find somebody there who is good at mixing the yellow colour in margarine, they would let us know and give us all of the material that we would need to prosecute him here because it is an offence here and it is not there.

Mr. Corbett: Unless they felt that it was so far removed from the realm of what they wanted to help that it was against their public interest. Even the courts are wondering about the principle of dual criminality. You start looking for a match to those offences. We do not have the RICO legislation, as does the United States, but we recognize the purpose of it, which is to go after organized crime. We do it in a different way, through conspiracy and through the proceeds of crime legislation.

So we wanted something more flexible that would allow us to look at the requests, and, even though we do not have that kind of law, we could see the intent and purpose of the law and the objective they were seeking to achieve. If it were in our interest to provide assistance, we would provide it.

Senator Doyle: How would you explain to some poor Joe who finds that he is being investigated for something that is not a crime in this country, so his police, for whom he pays his taxes can give that information to another country?

Mr. Corbett: If you bind yourself with the dual criminality principle, you will be refusing mutual assistance for the legisla-

[*Traduction*]

M. Corbett: Dans ce cas-ci, il n'y a pas de disposition concernant la double criminalité. En d'autres termes, il peut s'agir d'une infraction que nous n'avons pas.

Le sénateur Doyle: Et nous pouvons le permettre?

M. Corbett: Si c'est dans l'intérêt public canadien.

Le sénateur Doyle: Si quelque chose est légal au Canada, on peut supposer que c'est dans l'intérêt public canadien et que c'est une bonne chose pour le Canada. En ce qui concerne l'extradition, nous ne coopérerions pas pour poursuivre aux états-Unis une personne accusée de quelque chose qui n'est pas une infraction au Canada, n'est-ce pas?

M. Corbett: Je vais vous donner un exemple. Les États-Unis pourraient avoir une loi visant à lutter contre un mal social dont nous ne souffrons pas. Nous pourrions avoir une loi un peu différente visant le même objectif. Mon confrère parlait de la Loi sur les banques aux États-Unis qui vise à surveiller les mouvements d'argent de part et d'autre de la frontière. C'est un instrument que l'on utilise pour retrouver les produits d'activités criminelles dans les poursuites américaines. Nous n'avons pas le même type de loi. Nous avons une loi différente pour lutter contre le même mal social, si vous voulez. Dans le but de protéger l'intérêt public, nous pouvons examiner la demande, demander toutes les précisions qui nous semblent nécessaires—c'est prévu dans le traité—pour définir s'il est dans notre intérêt d'accorder l'aide demandée.

Le sénateur Doyle: Et l'on fera la même chose pour nous?

M. Corbett: On fera la même chose pour nous.

Le sénateur Doyle: Si l'on trouve là-bas quelqu'un qui est particulièrement doué pour ajouter du colorant jaune à la margarine, on nous préviendra et l'on nous donnera tous les éléments nécessaires pour poursuivre cette personne ici, parce que c'est une infraction ici et pas là-bas.

M. Corbett: A moins que les États-Unis ne considèrent que c'est tellement loin de leurs préoccupations que ce n'est pas dans l'intérêt public pour eux. En fait, même les tribunaux se posent des questions au sujet du principe de la double criminalité. On essaie de faire correspondre les infractions. Nous n'avons pas la loi RICO qui existe aux États-Unis, mais nous savons qu'elle a pour but de lutter contre le crime organisé. Nous précédons différemment, en utilisant des lois contre la conspiration et les produits de la criminalité.

Nous voulions donc quelque chose de plus flexible qui nous permette d'examiner les demandes et, même si nous n'avons pas le même type de loi, nous pouvons tenir compte de l'intention et de l'esprit de la loi et de l'objectif que l'on cherche à atteindre. S'il était dans notre intérêt d'accorder de l'aide, nous le ferions.

Le sénateur Doyle: Quelles explications allez-vous donner au pauvre diable qui se rend compte qu'il fait l'objet d'une enquête pour une activité qui n'est pas une infraction dans ce pays afin que sa police, qu'il paie dans ses impôts, puisse communiquer ces renseignements à un autre pays?

M. Corbett: Si vous vous en tenez au principe de la double criminalité, vous refusez le système d'entraide en vertu des

[*Text*]

tive goals that we pursue. I would say to him: "They say that you are involved in money laundering and that you broke the Bank Act in pursuing money laundering. We have the same kind of legislation here, sir. If you had committed those acts in Canada, all of the acts, not just the movement of money, we would prosecute you." We have looked at their whole investigation, and we are satisfied that this is an attack on a money laundering situation. Even though their legislation is different from ours, we think that it is in the Canadian public interest to provide that sort of help.

Senator Doyle: But you are talking about where it is the equivalent but different.

Mr. Corbett: Equivalent but different, yes.

Senator Doyle: I am sure that you can go through the code and find that there are 87 different offences that have different names in different countries; but surely we are talking about acts here—at least I am—that are not an offence in Canada. It is the same in the United States. There are many things that people can do there that we cannot do here, like have a drink at 2 o'clock in the morning.

Mr. Corbett: Once again, we tried to keep it in the serious realm.

Senator Doyle: I am just using that because it is an obvious example.

Senator Buckwold: That is serious.

Senator Doyle: I think there is an area there where you would have to be—

Mr. Corbett: On the other side, there are Canadian offences that the Americans do not have and do not recognize. Until recently they did not have section 3(12), the possession of proceeds of crime. At one time, we sat down and listed the offences that we had that were not similar in the U.S.

Mr. Mosley: One thing to keep in mind, honourable senator, is that the Minister of Justice of Canada will be accountable in Canada for the administration of this statute. So, in the type of situation you have described, if there is a determination which is believed to be contrary to Canadian public interest, then our minister is accountable for accepting that request from the foreign jurisdiction and for setting the processes in motion for its application in this country. So that is an important safeguard. Questions could be asked in the house; there could be an extremely close scrutiny of the justification for that. There are many such offences in the area of securities law, for example, or elections law. I recently heard an account of an indictment laid down in New York State against a politician for conduct which certainly would not be criminal by any Canadian standard. My point is that the U.S. has determined that conduct to be criminal and accordingly has put in place the mechanisms for the enforcement of that law.

We are not talking about enforcement in Canada. No Canadian citizen is going to be subject to the sanctions of American law as a result of this legislation.

Senator Buckwold: A Canadian citizen could still commit a crime in a foreign country, however.

[*Traduction*]

objectifs législatifs que nous proposons. Je dirais à cette personne: On dit que vous recyclez des fonds d'activités criminelles et que vous avez enfreint la Loi sur les banques. Nous avons le même genre de loi ici, Monsieur. Si ces infractions avaient été commises au Canada, toutes et pas seulement le mouvement d'argent, nous vous poursuivrions. Nous avons examiné toute l'enquête et nous sommes convaincus que l'on cherche à empêcher le recyclage de fonds criminelles. Même si la loi n'est pas exactement la même que la nôtre, nous pensons qu'il est dans l'intérêt public canadien d'accorder notre aide.

Le sénateur Doyle: Mais vous parlez d'un cas où c'est équivalent tout en étant différent.

M. Corbett: Équivalent mais différent, oui.

Le sénateur Doyle: Je suis sûr qu'en examinant le Code, on pourrait trouver 87 infractions différentes ayant des noms différents dans différents pays, mais ici, il s'agit d'activités qui ne constituent pas une infraction au Canada. C'est la même chose aux États-Unis. Là-bas, les gens peuvent faire beaucoup de choses qui sont interdites ici, comme de boire de l'alcool à 2 heures du matin.

M. Corbett: Je le répète, nous nous sommes limités aux choses sérieuses.

Le sénateur Doyle: J'ai pris cet example parce qu'il est particulièrement frappant.

Le sénateur Buckwold: C'est sérieux.

Le sénateur Doyle: D'après moi, c'est un domaine où il faudrait être assez . . .

M. Corbett: Par ailleurs, il existe des infractions canadiennes que les Américains ne reconnaissent pas. Jusqu'à tout récemment, il n'avait pas aux États-Unis l'article 3(12), sur la possession des produits de la criminalité. A un certain moment, nous nous sommes mis à faire la liste des infractions existant au Canada et non aux États-Unis.

M. Mosley: Ce qu'il ne faut pas oublier, honorable sénateur, c'est que le ministre de la Justice du Canada sera responsable de l'administration de cette loi. Ainsi, dans les cas que vous avez évoqués, si l'on n'est pas sûr de défendre l'intérêt public canadien, c'est à notre ministre d'accepter ou de refuser la demande de l'État étranger et de mettre en œuvre les procédures voulues. C'est un élément de protection important. On pourrait poser des questions en Chambre et surveiller les choses de très près. Il y a beaucoup d'infractions de ce genre dans le domaine des titres mobiliers, par exemple, ou des élections. J'ai entendu parler récemment d'un politicien qui avait été condamné dans l'État de New York pour une conduite qui n'aurait pas été considérée comme criminelle au Canada. Mais les États-Unis ont considéré qu'il s'agissait d'une conduite criminelle et mis en place le mécanisme nécessaire pour faire respecter la loi.

Nous ne parlons pas de faire respecter la loi au Canada. Aucun citoyen canadien ne pourra faire l'objet des sanctions prévues dans les lois américaines à la suite de cette loi.

Le sénateur Buckwold: Cependant, un citoyen canadien peut toujours commettre un acte criminel dans un pays étranger.

[*Text*]

Mr. Mosley: That is true, but all this bill does is provide the means to assist in the investigation, not in the enforcement. Nobody will be hauled across the border as a result of this legislation.

Senator Doyle: What suddenly comes to my mind is the difference in the way in which the two countries treat sexual activities between two consenting adults. There are different laws governing those activities in Canada and the United States. In the U.S., there is the imposition of a sentence in excess of one year in prison for activities that are considered legal here. What if someone down there has in mind that a certain person is some kind of pervert and wants to check it out by finding out what he does in Canada?

The Chairman: Honourable senators, I am afraid that we will have to suspend this very interesting discussion for the moment because another committee is waiting for this room. On behalf of the committee I would like to thank Mr. Mosley and his colleague for appearing before us.

The committee adjourned.

[*Traduction*]

M. Mosley: C'est vrai, mais on ne parle dans ce projet de loi que des façons de contribuer à l'enquête et non de l'application de la loi. Ce n'est pas parce que cette loi est adoptée que les gens vont être traînés à travers la frontière.

Le sénateur Doyle: Je pense tout d'un coup aux différences dans la façon dont nos deux pays considèrent les activités sexuelles entre deux adultes consentants. Les lois sur ces activités ne sont pas du tout les mêmes au Canada et aux États-Unis. Aux États-Unis, on impose une peine de plus d'un an de prison pour des activités considérées comme légales ici. Que se passe-t-il si quelqu'un là-bas pense qu'une personne est pervertie et veut vérifier ses activités au Canada?

La présidente: Honorables sénateurs, nous allons malheureusement devoir interromptre cette passionnante discussion pour le moment parce qu'un autre comité attend la salle. Au nom de notre Comité, je voudrais remercier M. Bosley et son collègue d'avoir comparu devant nous.

La séance est levée.

July 19, 1988 [Standing Senate Committee on Legal and Constitutional Affairs

[Text]

Senator Fairbairn: This is a prime example of why we should have the right to put this kind of thing in the report, rather than in a speech, because it is on the strength of this letter that we have come to our conclusion, and it should form part of our report to the Senate.

Senator Doyle: I agree.

The Chairman: I suggest that we use phrasing to say that we concur in the motion for the reasons indicated hereunder, or the following reasons, or whatever. Then we can say that the committee is in receipt of the letter.

Senator Fairbairn: And let it form part of our response.

The Chairman: Yes. And then we will put in a paragraph outlining our considerations.

Assuming there will be Royal Assent at some time before the end of the week, would you prefer that we have a draft of the report made up to be reviewed by the members later this afternoon? I think the members of the committee should see the draft report before we make up the final one for presentation to the house. We could look at it this afternoon after we finish our other hearing today and perhaps report to the house tomorrow.

Senator Grafstein: Could we speak to it tomorrow ? I am not going to be here next week, and I would really like to speak to it.

The Chairman: We would have to get agreement to speak on it tomorrow, but if there is not alot of other legislation, I am sure the Senate would be happy to have us proceed.

Senator Nurgitz: If Senator Grafstein is keen, and if the other members of the committee wish, we could try to have the report ready for today.

The Chairman: I do not think you will get it translated in time.

Senator Hébert: Tomorrow is good enough.

The Chairman: Is there agreement on that procedure?

Hon. Senators: Agreed.

The committee continued *in camera*.

Ottawa, Tuesday, July 19, 1988

The Standing Senate Committee on Legal and Constitutional Affairs to which was referred Bill C-58, to provide for the implementation of treaties for mutual legal assistance in criminal matters and to amend the Criminal Code, the Crown Liability Act and the Immigration Act, 1976; and Bill C-61, to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, met this day at 4:50 p.m. to give consideration to the bills.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are now resuming our consideration of Bill C-61. We are pleased to have with us, from the Canadian Bar Association, Mr. Rocky Pollack, whom

[Traduction]

Le sénateur Fairbairn: Voilà vraiment pourquoi nous devrions inclure cette lettre dans un rapport et non dans un discours. C'est cette lettre qui nous a fait changer d'avis et elle devrait figurer dans notre rapport au Sénat.

Le sénateur Doyle: Je suis d'accord.

La présidente: Je propose que nous disions que nous adoptons la motion pour les raisons ci-dessous ou pour les raisons suivantes. Nous dirons ensuite que le Comité a reçu la lettre de la Ministre.

Le sénatrice Fairbairn: Et la lettre fera partie de notre réponse.

La présidente: Oui. Nous ajouterons ensuite un paragraphe exposant nos raisons.

A supposer que la sanction royale soit donnée avant la fin de la semaine, préféreriez-vous étudier cet après-midi un projet de rapport? Je crois que les membres du Comité devraient étudier le projet de rapport avant que nous en déposions la version finale à la Chambre. Nous pourrions l'étudier cet après-midi à la fin de notre autre audience et nous pourrions faire rapport à la Chambre demain.

Le sénateur Grafstein: Pourrions-nous en parler demain? Je ne serai pas ici la semaine prochaine et j'aimerais vraiment en parler.

La présidente: Il faudrait que nous obtenions l'autorisation de le faire, mais si l'ordre du jour n'est pas trop chargé, je suis sûr que le Sénat nous permettra de parler du rapport.

Le sénateur Nurgitz: Si le sénateur Grafstein et les autres membres du Comités sont d'accord, nous pourrions tâcher de voir si on ne peut pas préparer le rapport aujourd'hui.

La présidente: Je ne crois pas que vous pourrez le faire traduire à temps.

Le sénateur Hébert: Pourvu que nous l'ayons pour demain.

La présidente: Êtes-vous d'accord pour procéder ainsi?

Des voix: D'accord.

Le Comité poursuit ses travaux à huis clos.

Ottawa, le mardi 19 juillet 1988

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles, auquel ont été renvoyés le projet de loi C-58, loi portant mise en œuvre des traités d'entraide juridique en matière criminelle et modifiant le code criminel, la Loi sur la responsabilité de la couronne et la Loi sur l'immigration de 1976, et le projet de loi C-61, Loi modifiant le code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants, se réunit aujourd'hui à 16 h 50 afin d'étudier lesdits projets de loi.

Le sénateur Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Honorables sénateurs, nous poursuivons maintenant l'étude du projet de loi C-61. Nous aurons le plaisir d'accueillir aujourd'hui M. Rocky Pollack de l'Association

[*Text*]

I understand is a former partner of our vice-chairman, Senator Nurgitz. Mr. Pollack is Chairman of the National Criminal Justice Section. He will give us his views of Bill C-61.

Mr. Rocky Pollack, Chairman, National Criminal Justice Section, Canadian Bar Association: Thank you, honourable senators. This is the second opportunity we have had to talk to those who make our laws about what we see as a significant and important piece of legislation that must succeed.

There is only one part of what I said previously to the parliamentary committee that I want to repeat here today, and it is this: We do not say that the proceeds of crime should be left untouched by the state; we do not say that the profits of crime should be left for the enjoyment of felons after they have served their penitentiary sentences; we do not say that priorities should not be given to the victims of crime when it comes to a redistribution or return of the proceeds of crime. We are not against legislation like this, which deals with the ability of the state to seize the ill-gotten gains of crime. We do not think it is necessary to consult with police chiefs or criminologists to come to the conclusion that taking the profit out of crime is of prime importance to police and the courts in order to deter crime.

What we are concerned about with Bill C-61 is that it might not achieve the important goal that my learned friend, Mr. Mosley, spoke to you about a couple of weeks ago. I see that he is here this afternoon. We are concerned enough that there should be legislation in place to follow up on the Criminal Code section 312 so that once it is proved that someone knowingly had something obtained by crime in their possession it can be dealt with.

Look at how this bill attempts to do that. Mr. Mosley told you—and I hope I do not sound too adversarial here, because I realize that this is not an adversarial process—that, unlike the procedures in the United States, this is primarily criminal law legislation and not legislation which would lead to civil litigation and law concerning private property. Let us look at that for a moment.

It certainly is consistent with existing criminal legislation when a police officer can go before a judge—and when we say "judge" here we are talking about a high court, not a magistrate or justice of the peace—and depose to certain grounds upon which there should be a seizure. We already have that in our criminal law under the existing search-warrant provisions. Here, however, the informant, under section 420.12(1), must satisfy the judge, on reasonable grounds—not reasonable and probable grounds—that property originating from crime is in a certain place. What that amounts to is the deponent saying to the judge, "There has been a crime committed, and the proceeds of that crime are at location A, B and C."

There is another place in the Criminal Code where an officer can depose to the fact that a crime has been committed. That is when an information is laid—not before a high court

[*Traduction*]

du Barreau canadien, qui, sauf erreur, était un associé de notre vice-président, le sénateur Nurgitz. M. Pollack est président de la section nationale de la justice criminelle. Il va nous dire ce qu'il pense du projet de loi C-61.

M. Rocky Pollack, président, section nationale de la justice criminelle, Association du Barreau canadien: Merci, honorables sénateurs. C'est la deuxième fois que j'ai l'occasion de discuter avec nos législateurs à propos de cette loi que nous considérons importante et qui doit, selon nous, être adoptée.

Je n'ai pas l'intention de répéter qu'une seule partie de ce que j'ai déjà dit au comité parlementaire, et c'est ceci: nous ne disons pas que l'État ne devrait rien faire à propos des produits de la criminalité; nous ne disons pas non plus que ces produits devraient profiter aux criminels qui les ont acquis, après que ceux-ci ont purgé leur peine. Nous ne prétendons pas non plus qu'il ne faudrait pas accorder certaines priorités aux victimes au moment de la redistribution ou de la restitution des produits de la criminalité. Nous n'avons rien contre une telle loi, qui traite du pouvoir de l'État à saisir des produits de la criminalité. Nous ne pensons pas qu'il est nécessaire de consulter des chefs de police ou des criminologues pour conclure qu'il est de première importance pour la police et les tribunaux d'éliminer les bénéfices que rapporte le crime, afin de les aider à décourager le crime.

Ce qui nous inquiète, à propos du projet de loi C-61, c'est qu'il ne puisse peut-être pas permettre d'atteindre l'objectif important dont vous parlait mon savant ami, M. Mosley, il y a une ou deux semaines. Je constate qu'il est ici cet après-midi. Nous tenons à ce qu'une loi permettre de prendre des mesures après l'application de l'article 312 du Code criminel, de manière à ce que lorsqu'il est prouvé qu'une personne a sciemment profité d'un crime, on puisse faire le nécessaire pour redresser la situation.

Que permet ce projet de loi à cet égard? M. Mosley vous disait—et j'espère ne pas avoir l'air trop accusatoire en disant cela, parce que je comprends que ce n'est pas le caractère du présent processus—que contrairement aux procédures en vigueur aux États-Unis, cette loi est avant tout une loi criminelle, et non pas une loi qui pourrait entraîner des litiges au civil ni une loi qui concerne la propriété privée. Examinons un peu cet argument.

Cela correspond sûrement au droit criminel lorsqu'un policier peut présenter à un juge—et quand nous disons «juge», il s'agit ici d'un haut tribunal, et non d'un magistrat ou d'un simple juge de paix—des motifs justifiant une saisie. Cette mesure est déjà prévue dans les dispositions relatives aux perquisitions de notre Code criminel. Dans le cas qui nous occupe, toutefois, en vertu du paragraphe 420.12(1), celui qui présente les renseignements doit convaincre le juge, à l'aide de motifs raisonnables—et non pas de motifs raisonnables et probables—que certains produits de la criminalité se trouvent dans un certain lieu. Cela revient à dire que celui qui fournit les renseignements informe le juge qu'un crime a été commis et que le produit de ce crime se trouve dans tel et tel lieu.

Il y a un autre endroit dans le Code criminel où il est prévu qu'un agent peut signaler qu'un crime a été commis. C'est l'article où l'on prévoit la présentation de renseignements pour

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judge but before a justice of the peace or a magistrate—in the initial charging process that someone has committed a crime, deposed to "on reasonable and probable grounds".

If you look at any criminal charge in any provincial court it will say that the officer who swore the charge has reasonable and probable grounds to believe that so and so committed a crime, and the crime will be specified. This bill should say that, when you are talking about an officer who, on the strength of his oath that a crime was committed, can go out and seize and freeze property and tie it up for any number of years during which there will be any number of applications to vary the order so that the subject—I will not say the accused, because we may be talking about someone whose property was seized who is never an accused—can try to get his of her hands on some of the property to pay lawyer's fees, to run his business, or to send his children to university.

Senator Grafstein: To please all lawyers.

Mr. Pollack: One of the reasons why you should accept my sincerity is that I do not think I will make as much money out of this bill as a defence counsel if it is changed the way we are suggesting. I think I will do much better if it is the present third reading form.

The process itself of the officer appearing before the judge and getting the order to seize is a bit like some existing processes that we know of. I refer you to the wiretap legislation where there is a hearing *in camera*, the other side is not present and certain statutory prerequisites must be met under oath and an order can be issued to intercept someone's private conversations.

There have been some problems with that legislation. I want to tell you about the outcome of one of the cases, a well-known case called Wilson. Finally, after about four or five years of litigation over whether or not a trial judge should have excluded certain wiretap evidence, we got to the point where the Supreme Court of Canada had told us—because the Criminal Code did not—how you go about attacking these orders. When we appeared in front of Mr. Justice Schultz in Winnipeg several years after the making of the wiretap order, we had in the witness box the officer who got the authorization in the first place. That officer did not remember much about what had happened the day he appeared in front of the now deceased judge to get the wiretap order, and there was no court reporter present. In the Winnipeg case—and I know there have been other similar rulings—the judge commented upon how useful it would have been to have had someone taking down the proceedings.

The legislation you approved of involving telephone warrants includes a provision that the proceedings be tape recorded. We do not see anything about that in this bill.

We see a procedural and substantive flaw in the nub of this bill, which is the ability of the police to get orders to seize and freeze the assets of crime.

Let me jump ahead and point out to you that I do not think you want to see four or five years of procedural wrangling in three or four levels of courts before the first cases get down to

[*Traduction*]

des motifs raisonnables et probables au début de la procédure, non pas à un juge d'un haut tribunal, mais à un juge de paix ou à un magistrat.

Dans toute accusation criminelle portée devant une cour provinciale, on dira que l'agent qui a porté l'accusation avait des motifs raisonnables et probables de croire que telle ou telle personne avait commis un crime, et le crime en question sera précisé. Ce projet de loi devrait stipuler qu'un agent qui déclare, sous serment, qu'un crime a été commis, peut saisir et détenir les biens pendant un certain nombre d'années au cours desquelles pourraient être faites des demandes pour modifier l'ordonnance afin que le sujet—je ne dirais pas l'accusé, parce qu'il se peut que quelqu'un dont les biens ont été saisis ne soit jamais accusé—puisse tenter de récupérer une partie des biens afin de régler les honoraires de son avocat, de faire tourner son entreprise ou d'envoyer ses enfants à l'université.

Le sénateur Grafstein: Pour faire plaisir à tous les avocats.

M. Pollack: L'une des preuves de ma sincérité, c'est que je ne pense pas que je ferai autant d'argent en tant qu'avocat de la défense après l'adoption de ce projet de loi, si on le modifie comme nous le proposons. J'en ferai au contraire beaucoup plus si on l'adopte dans sa formulation actuelle.

Ce processus, qui veut que l'agent se présente devant un juge pour obtenir une ordonnance de saisie, ressemble quelque peu à certains processus que nous connaissons déjà. Il n'y a qu'à songer à la loi qui régit l'écoute en tiers, dans laquelle on prévoit une audition à huis clos, en l'absence de l'autre partie, et il faut satisfaire à un certain nombre de prérequis juridiques, sous serment. Une ordonnance peut ensuite être émise pour écouter les conversations privées de quelqu'un d'autre.

Cette loi n'a pas toujours été sans difficultés. J'en donnerai pour preuve l'issue d'une cause bien connue, l'affaire Wilson. Après environ quatre ou cinq procédures afin de déterminer si un juge aurait dû exclure certaines preuves d'écoute en tiers, c'est finalement la Cour suprême du Canada qui nous a dit—parce que le Code Criminel ne le faisait pas—comment contester ces ordonnances. Devant le juge Schultz, à Winnipeg, plusieurs années après la délivrance de l'ordonnance d'écoute en tiers, nous avions à la barre des témoins l'agent qui avait initialement obtenu l'autorisation. Il avait oublié en grande partie ce qui s'était passé le jour où il avait comparu devant le juge, maintenant décédé, pour obtenir l'ordonnance en question, et aucun enregistrement n'avait été fait. Le juge de Winnipeg—et je sais qu'il y a déjà eu d'autres jugements analogues—a fait quelques remarques à propos de l'opportunité qu'un greffier ait pris note des délibérations à ce moment-là.

La loi que vous avez approuvée, relativement à ces ordonnances, stipule que les procédures soient enregistrées sur bande. On n'y fait aucunement référence dans ce projet de loi.

Nous voyons une lacune, quant aux procédures et au fond, dans l'intention de ce projet de loi, c'est-à-dire la capacité de la police à obtenir des ordonnances de saisie et de blocage de biens acquis criminellement.

Regardons un peu plus loin, et permettez-moi de vous faire remarquer que je ne pense pas que vous ayez tellement le goût de voir des procédures traîner pendant quatre ou cinq ans

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whether or not a crime was committed and whether or not someone is guilty and should be punished for the crime while all of this gets sorted out. I do not think you want to see that happen.

The bill concerns, as well, another aspect of existing criminal law down the road at the other end of the case. That is the sentencing aspect of a criminal case when someone is found guilty beyond a reasonable doubt of a crime.

When someone is found guilty beyond a reasonable doubt of, for instance, wilfully damaging a window of a police station, that person will have a sentence hearing at which certain facts may be referred to. If the Crown attorney says that the window costs $100 to repair and the accused says, "I am in the window business; those windows do not cost more than $25 to repair," either the Crown attorney must prove beyond a reasonable doubt that the window costs $100 to repair or the assertion by the accused stands. So even the facts of a sentencing hearing have to be proved beyond a reasonable doubt. Yet that is not the standard for a judge, having convicted someone, to determine under .17(1) that an enterprise crime offence was committed, that seized property came from that enterprise crime and that it should be confiscated or otherwise dealt with.

Again, that is another aspect that is somewhat similar to existing Canadian criminal law, the sentencing process. Yet there is a new rule here that lightens up the burden on the Crown, which we think has been a good burden over the last several centuries, and we would hate to see it be eroded by this piece of legislation. One of the problems that I think you can see developing here is that there is conflict with existing criminal law legislation and jurisprudence, and we have pointed that out in our brief.

I mentioned earlier that, with respect to Mr. Mosley's observations, these are essentially criminal in nature. Of equal concern to the Canadian Bar Association—although not necessarily to those of us who want to see our incomes enhanced, I suppose—is that a whole new area of litigation will be derived from Bill C-61 in its present form. While it is nice to call it criminal legislation, we see it as being inherently civil in nature. Without the development of civil rules of procedure and years of jurisprudence, form which for instance, laws concerning contracts and torts now benefit, the confiscation aspect of this bill—when you consider that the confiscation can affect someone who is not an accused and not even a suspect in a crime—will lead to litigation over the origin of the items seized, commenced by the person from whom they were seized or who is affected by the seizure.

There will be all sorts of civil inquiries about this criminal law bill that is now before you, and what concerns us is that in

[*Traduction*]

devant trois ou quatre niveaux de tribunaux, avant que les premières causes visant à déterminer si un crime a été commis ou non et si une personne est coupable d'un crime et devrait être punie en conséquence aient lieu. Je ne pense pas que c'est ce que vous souhaitez.

Dans le projet de loi, on aborde aussi un autre aspect du droit criminel existant, à l'aboutissement des procédures, celui de la peine décernée à celui ou celle qui est reconnu coupable d'un crime au-delà de tout doute raisonnable.

Par exemple, lorsque quelqu'un est reconnu coupable, hors de tout doute raisonnable, d'avoir sciemment endommagé une fenêtre d'un poste de police, cette personne devra se présenter à une audience relativement à la détermination de sa peine où certains faits pourront être invoqués. Si le procureur de la couronne dit que remplacer la fenêtre coûtera 100 $, et que l'accusé prétend de son côté, parce qu'il est dans le domaine, que la réparation coûtera 25 $, le procureur de la Couronne devra prouver ce qu'il avance au-delà de tout doute raisonnable, ou l'on donnera raison à l'accusé. Ainsi, même les faits avancés lors d'une telle audience doivent être prouvés au-delà de tout doute raisonnable. Malgré cela, après avoir reconnu quelqu'un coupable, un juge n'a pas à déterminer en vertu de l'alinéa 17(1) qu'une infraction de criminalité organisée a été commise, que les biens saisis provenaient de cette infraction, et qu'il y aurait lieu de les confisquer ou de prendre d'autres mesures.

Le processus de la détermination de la peine est un autre aspect qui ressemble à certaines dispositions que nous avons déjà dans notre Code criminel. Il y a une nouvelle règle qui allège le fardeau de la Couronne, fardeau dont nous pensons qu'elle s'est bien acquittée au cours des quelques derniers siècles, et nous ne voudrions vraiment pas que cette loi renverse ce mouvement. L'une des difficultés que l'on peut entrevoir ici, c'est un conflit entre le droit criminel existant et la jurisprudence en la matière, ce que nous avons d'ailleurs signalé dans notre mémoire.

Au sujet des observations de M. Mosley, j'ai mentionné plus tôt qu'elles relevaient essentiellement de l'aspect criminel. À l'Association du Barreau canadien, nous craignons également—malgré que cela ne s'applique peut-être pas forcément à ceux d'entre nous qui souhaitent voir augmenter leurs revenus, je suppose—que dans sa formulation actuelle, le projet de loi C-61 engendre une foule de nouvelles matières à litige. Malgré que l'on considère qu'il fait partie du droit criminel, nous pensons pour notre part que le projet de loi C-61 se rattache davantage au droit civil de par son caractère. Sans les règles de procédures élaborées au civil et sans les années de jurisprudence dont bénéficient, par exemple, les lois concernant les contrats et le redressement des torts, les dispositions de ce projet de loi relatives à la confiscation—quand on songe qu'elles peuvent s'appliquer à quelqu'un qui n'est pas accusé ni même soupçonné d'un crime—aboutiront à des poursuites relativement à la provenance des biens saisis, qui seront entamées par la personne qui était en possession des biens en cause ou que vise la saisie.

Ce projet de loi au criminel, que vous avez entrepris d'examiner, va entraîner toutes sortes d'enquêtes civiles, et ce qui

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the midst of this civil litigation by criminal lawyers over what should become of property, what was its origin, and so on, there is a very serious erosion of what we see as a consistent thread in the criminal law, and that is the sanctity of the presumption of innocence. We do not like to see occurring three or four times in this bill the requirement that a person initiate litigation so that they can show that they appear innocent, and then be entitled to what was lawfully theirs in the first place. We say that there is something inherently wrong with a bill, whether it is called criminal law or not, it puts that kind of an onus on an applicant. That kind of an onus that requires a person to come before a court and to have to ask for your property back, and to show that he appears innocent, is unheard of, and our concern again is that the goals to which this bill is directed will not be attained, and this bill will be a failure unless procedurally it is sanitized and Charter-proofed—and, of course, that means protecting everyone's rights that heretofore the criminal law has attempted to protect.

It is interesting that when I talk about onuses the Crown does not always have the burden of proof beyond reasonable doubt, as I mentioned earlier. There are times when the Crown needs only to show cause on credible and trustworthy evidence why, for instance, someone should be detained in custody if he has been arrested for a crime. The Crown, at a bail hearing, does not have to prove anyone guilty beyond a reasonable doubt but they certainly have the onus of showing cause.

When it comes to ownership or entitlement to property, we say that it is not unreasonable, at some stage, to expect that the Crown will initiate a proceeding to show cause—or at least to alert a person that he may be in jeopardy of losing his property, or at least alert his as to just what it is that some police officer has allegedly done, and what he may be involved in. The very idea of including in a bill the requirement that someone show that he appears innocent we find repugnent. Everyone, unless he has been properly convicted, is presumed to be innocent, and I do not think we needed a Charter of Rights to tell us about that.

Honourable senators, I know you will have some questions and I am not going to deal with every single section of our brief. However, I do want to touch upon one or two other areas that concern us, and one that was modified somewhat on third reading.

The bill deals with a number of ways in which property will become restored, or some other kind of an order will be made. Whether it is in connection with property that has been restrained or property that is actually under physical siege, or perhaps with some kind of receiver-manager appointed, the bill deals with a number of ways in which one can deal with that property. There are at least four sections in the bill that deal with various kinds of hearings in connection with property seized. However, it is not at all clear—and I challenge anyone to read this bill and tell me that it is—what one does if one has been the subject of a seizure, has been found innocent of the crime and all of his appeals are over. It is not at all clear what

[*Traduction*]

nous inquiète, dans le contexte de toutes ces procédures civiles qui seront menées par des avocats au criminel à propos de la propriété des biens, de leur provenance, et le reste, c'est une très grave érosion d'une trame que nous considérons continue dans le droit criminel, à savoir le caractère sacré de la présomption d'innocence. Nous n'aimons pas tellement cette récurrence, dans ce projet de loi, de l'exigence qu'une personne entreprenne des procédures pour faire la preuve de son innocence et récupérer son bien, qui lui appartenait de plein droit. Nous soutenons qu'il y a quelque chose de fondamentalement mauvais dans un projet de loi, qu'on le qualifie de loi criminelle ou non, qui impose un tel fardeau à un demandeur. Une telle obligation, qui exige qu'une personne se présente devant un tribunal pour récupérer ce qui lui appartient et démontrer son innocence, est inédite, et je répète que nous craignons que ce projet de loi ne permette pas d'atteindre les objectifs que l'on vise et qu'il soit un échec, à moins qu'on ne l'épure sur le plan des procédures, et qu'on fasse en sorte qu'il satisfasse à la Charte—ce qui signifie, évidemment, qu'il protège les droits de tous, droits que l'on a toujours tenté de préserver dans le Code criminel.

Il est toutefois intéressant de noter que la Couronne n'a pas toujours à faire la preuve hors de tout doute raisonnable, comme je le disais plus tôt. Il arrive parfois qu'elle n'ait qu'à présenter des justifications dignes de foi pour justifier la détention d'une personne soupçonnée d'un crime. À une audience relative à la détermination d'un cautionnement, la Couronne n'a pas à prouver la culpabilité de qui que ce soit au-delà de tout doute raisonnable, mais doit sûrement justifier sa requête.

Pour ce qui est de la propriété et du droit à la propriété, il n'est pas impensable qu'à un moment ou à un autre, la Couronne entreprenne une procédure— ou à tout le moins avertisse une personne qu'elle risque de perdre sa propriété, ou l'informe des mesures qu'a prises un policier, et de ce à quoi elle peut s'attendre. La simple idée d'inclure dans un projet de loi l'exigence que quelqu'un fasse la preuve de son innocence nous répugne. Toute personne est innocente jusqu'à preuve du contraire, et je ne pense que nous ayons besoin d'une charte des droits pour nous le dire.

Honorables sénateurs, je sais que vous avez des questions à me poser, et je ne m'attarderai pas à toutes les idées que nous avons développées dans notre mémoire. Je veux toutefois en aborder une ou deux autres qui nous inquiètent particulièrement, dont l'une a été quelque peu modifiée au moment de la troisième lecture.

Dans le projet de loi, on aborde de nombreuses façons dont les biens seront restitués, ou dont un autre genre d'ordonnance sera émise. Qu'il s'agisse de biens qui ont fait l'objet d'une ordonnance de blocage ou d'une confiscation, ou qui ont été confiés au soin d'un gestionnaire quelconque, on y énumère différentes façons de traiter ces biens. Il y a au moins quatre articles, dans le projet de loi, où il est question des différentes genres d'auditions relatives aux biens saisis. La marche à suivre est toutefois loin d'être claire—et je défie qui que ce soit de soutenir le contraire, après avoir lu le projet de loi—pour celui dont les biens ont été saisis, dont on a reconnu l'innocence, et qui a épuisé toutes les possibilités d'appel. Que doit-il faire

[*Text*]

he is supposed to do next in order to repossess his property. In other words, he has to do something. Here I am talking about people who have been proclaimed innocent by a court. They cannot expect a knock at the door and the common courtesy of having their property returned to them. We do not understand in this day and age—and indeed when our President of the Canadian Bar Association stresses access to justice—why it is that a bill has to be as complicated as this one is.

I have touched upon the sentencing provisions and the onuses. You will note, of course, when you read the bill over, that for the designated drug offences and the enterprise crime offences of which someone is found guilty, if restoration of the property cannot be carried out because it has been spirited out of the country and is therefore not accessible, a fine equal to the amount of the value of the ill-gotten property can be imposed. However, if the fine cannot be paid, there are mandatory jail sentences, and a vast amount of sentencing discretion is going to be taken away from sentencing judges at a time when, I add parenthetically, the Canadian Sentencing Commission says that these minimum sentences are not satisfactory; they are not desirable and they should be taken out of the criminal law.

Therefore you have people in two kinds of jeopardy at a sentencing hearing. There is the ordinary jeopardy, if you will, of the court not being lenient with them, based upon the sentencing case law to date. Then there is the mandatory sentencing requirement. One can just imagine the protracted litigation that will take place over sentencing when, for instance, you have a drug conspiracy case involving millions of dollars which would normally attract a sentence of ten years, if the value of the drugs could not be paid by way of a fine. You could have someone who was perhaps a courier saying: "I was never involved to that extent," or someone who was a bookkeeper in a criminal enterprise, who never had anything to do directly with the drugs, arguing that he had so little effect on the criminal enterprise that he is not liable for the amount of the contraband that was seized. Therefore we may see all sorts of protracted litigation for nothing, because of a sentencing provision that goes against the current trends in sentencing and takes away a very important discretion vested in the trial judges.

We commented earlier that we were concerned about lawyer-client privilege and that we were aware of the fact that amendments had been made to provide for a hearing at which the prosecutor will not be present, so that the subject can try and justify obtaining some of his or her funds that have been saved in order to pay for legal costs. I am interested in the modification of the clause, because I do not think it refers to business expenses; it refers only to legal expenses that will be dealt with in an *in camera* hearing. Our objection was simply this, that at the hearing to determine how much money someone needs for his defence, the prosecutor would be there and all sorts of tactical matters would be revealed to the prosecutor that ordinarily one could never compel an accused to reveal. This may satisfy part of that concern. It is a small part of the bill and it certainly takes a useful step in the determination of just how much access a defendant can have to the seized bank

[*Traduction*]

ensuite pour récupérer ses biens? C'est loin d'être clair. Autrement dit, il doit faire quelque chose pour récupérer ses biens. Je parle ici de gens dont un tribunal a reconnu l'innocence. Ils ne peuvent espérer que l'on vienne cogner à leur porte pour leur rapporter leurs biens. Nous ne comprenons pas pourquoi, de nos jours—alors même que le président de l'Association du Barreau canadien met l'accent sur l'accès à la justice—un projet de loi doit être aussi complexe que celui-là.

J'ai fait allusion aux dispositions relatives à la détermination de la peine et aux fardeaux que l'on impose aux demandeurs. En relisant le projet de loi, vous remarquerez, évidemment, que dans le cas des infractions reliées au trafic de stupéfiants et des infractions de criminalité organisée dont quelqu'un est reconnu coupable, lorsque la restitution des biens est impossible, parce qu'ils ne sont plus au pays et qu'ils ne sont donc plus accessibles, on peut imposer une amende égale à la valeur des biens mal acquis. Toutefois, lorsque l'amende ne peut être acquittée, on impose des peines d'emprisonnement, ce qui enlève énormément de latitude au juge chargé de déterminer la peine au moment même où la Commission canadienne sur la détermination de la peine dit que ces peines minimales ne sont pas satisfaisantes, elles ne sont pas souhaitables, et il faudrait les retirer du droit criminel.

Il y a donc deux dangers qui se posent en ce qui a trait à la peine imposée: celui que le tribunal ne soit pas suffisamment indulgent, et celui de l'imposition de la peine obligatoire. On peut imaginer combien de temps prendra la détermination de la peine, par exemple, dans le cas d'une organisation de trafic de stupéfiants impliquant des millions de dollars, qui appellerait normalement une peine de dix ans d'emprisonnement, si la valeur des stupéfiants ne pouvait être acquittée sous forme d'amende. Quelqu'un qui n'était qu'un passeur pourrait prétendre n'avoir jamais participé au trafic pour une telle valeur, ou le teneur de livres d'une entreprise criminelle, qui n'avait jamais rien eu à voir directement avec les stupéfiants, pourrait dire que sa contribution à l'entreprise criminelle était si minime qu'il ne peut être tenu responsable de la totalité de la valeur des biens saisis. Il peut donc arriver que toutes sortes de procédures traînent pour des riens, et ce, parce qu'une disposition va à contre-courant de la tendance actuelle dans la détermination de la peine et enlève une très grande partie de la latitude accordée au juge.

Nous avons dit plus tôt que nous entretenons certaines inquiétudes au sujet des relations privées entre le client et son avocat, et que nous savons que l'on a apporté des modifications visant à permettre une audition où la partie demanderesse ne sera pas présente, afin que le sujet puisse justifier d'obtenir une partie de ses fonds pour régler ses frais juridiques. La modification de cet article m'intéresse particulièrement, parce que je ne pense pas qu'elle vise les dépenses d'affaires; elle n'a trait qu'aux frais juridiques dont il sera question à l'audition à huis clos. Nous proposerions que le procureur de la Couronne soit présent à l'audition visant à déterminer la somme nécessaire à l'accusé pour assurer sa défense, afin que toutes les tactiques que l'on ne pourrait ordinairement jamais obliger un accusé à révéler le soient. Cela pourrait en partie calmer cette inquiétude. C'est une petite partie du projet de loi, mais sans doute une étape utile dans la détermination de l'accès que peut avoir

[*Text*]

account or, indeed, business property. But we still have an overriding concern about a defendant having to go to the court that is supposed to judge him or her, having to justify how much he or shee will have to spend defending a case in which they are, of course, presumed innocent. The Crown has to prove that they are guilty beyond a reasonable doubt, and that has to be done in an open hearing before an impartial jury, and so on, according to the Charter.

That is always going to be a problem with a bill. If there has to be some compromising with individual liberties, that may be where the compromise is going to have to come.

We have just became aware of this change and have not examined it in any depth. What is of concern to us is that the rest of the changes on third reading are merely housekeeping changes. They have not altered the essential problems that we see with this piece of legislation. This, of course, gives you the opportunity to make those alterations so that this bill will be a success and not a failure. That is the message I want to give you on behalf of the Canadian Bar Association. We are not telling you, and we did not tell the House of Commons, that this bill ought to be scraped because some day the Supreme Court is going to shoot it down; our position is that it has to be made workable. It has to be made consistent with individual rights. We think it can be done.

Senator Buckwold: Have you prepared any suggested amendments?

Mr. Pollack: No, sir, we did not.

The Chairman: But you have recommended, here in your brief, certain clauses that should be changed or dropped.

Senator Grafstein: I have some questions arising out of the testimony of the witness. You dealt with two areas on which I would like to have your thoughts. I will deal with the last area first.

The property of a person is seized. That person then seeks to get relief from that seizure order by appearing before a judge. He must establish, not on reasonable grounds, that he needs the property for reasonable business and legal expenses.

Mr. Pollack: Under that section, yes.

Senator Grafstein: Why do you say that it would necessarily be the same judge?

Mr. Pollack: I ought to have said, "The same court." It may not necessarily be the same judge.

Senator Grafstein: There is a material difference between them.

Mr. Pollack: I agree with you.

Senator Grafstein: The person has some protection in the solicitor-client situation. I can, however, see that it might create a problem if he appeared before the same judge.

The second safeguard is that that representation under subsection (5) is made *in camera*, without the presence of the

[*Traduction*]

un défendeur à un compte de banque ou à des actifs ayant fait l'objet d'une saisie. Mais le fait qu'un demandeur ait à justifier à un tribunal qui est censé le juger combien il entend dépenser pour défendre sa cause, compte tenu qu'il est présumé innocent, évidemment, nous inquiète encore énormément. La Couronne doit prouver sa culpabilité hors de tout doute raisonnable, et cela, dans le cadre d'une audition ouverte devant un jury impartial, et le reste, selon la Charte.

Ce sera toujours un problème. S'il y a des compromis à faire au sujet des libertés individuelles, ce sera peut-être de là qu'ils devront venir.

Nous venons tout juste d'apprendre que l'on avait apporté cette modification et nous n'avons pas encore examiné la question en profondeur. Ce qui nous inquiète, c'est que les autres modifications que l'on a apportées à la troisième lecture ne sont que d'ordre technique. Elles n'ont rien réglé aux problèmes de fond que nous avons décelés dans ce projet de loi. Évidemment, les travaux que vous avez entrepris vous donnent l'occasion d'apporter les modifications qui lui sont nécessaires pour éviter qu'il ne soit un échec. C'est le message que je voulais vous livrer au nom de l'Association du barreau canadien. Nous ne vous disons pas, pas plus que nous ne l'avons dit à la Chambre des communes, qu'il faudrait mettre ce projet de loi à la poubelle parce qu'un jour, la Cour suprême le fera de toute façon; nous sommes plutôt d'avis qu'il faut faire en sorte qu'il soit applicable. Il faut qu'il contribue à protéger les droits individuels. Nous pensons que c'est possible.

Le sénateur Buckwold: Avez-vous préparé des modifications à nous proposer?

M. Pollack: Non.

La présidente: Mais, dans votre mémoire, vous recommandez de modifier certains articles et d'en éliminer certains autres.

Le sénateur Grafstein: J'ai quelques questions à poser à notre témoin. Vous avez abordé deux éléments dont je voudrais discuter avec vous, en commençant par le dernier.

Les biens d'une personne sont saisis. Cette personne cherche alors à faire modifier cette ordonnance en se présentant devant un juge. Elle doit démontrer, et non pour des motifs raisonnables, qu'elle a besoin de ses biens en prévision de certaines dépenses.

M. Pollack: Selon cet article, oui.

Le sénateur Grafstein: Pourquoi dites-vous que la requête serait forcément adressée au même juge?

M. Pollack: J'aurais plutôt dû dire: «au même tribunal». Ce ne sera pas forcément au même juge.

Le sénateur Grafstein: Oui, ce ne sera pas forcément à la même personne.

M. Pollack: Vous avez raison.

Le sénateur Grafstein: Le demandeur jouit donc d'une certaine protection. Mais la situation serait peut-être un peu plus difficile s'il avait affaire au même juge.

Le deuxième élément de protection, c'est que la procédure décrite au paragraphe (5) se déroule à huis clos, sans que le

[*Text*]

Attorney General. In effect, the other side, the Crown, does not have knowledge, if it is made *in camera*, as to the nature of the request for reasonable legal expenses.

Mr. Pollack: As I understand the amendment, it is only *in camera* for the purpose of determining the reasonableness of legal expenses. That is the only part that is *in camera*.

Senator Grafstein: Which is the point you make on page 13 of your submission.

Mr. Pollack: Right. I presume the Crown will know about the motion. The Crown will know the application is going to be made. As I understand it, the only part that is *in camera* is the part that is for the purpose of determining the reasonableness of legal expenses.

Senator Grafstein: All that the Crown will know is that an application for relief from forfeiture for legal expenses is being made.

The Chairman: Is it business and legal expenses?

Mr. Pollack: It is only legal expenses.

Senator Grafstein: Subsection (5) limits it to the purpose of determining reasonable legal expenses. Business expenses is not a question of solicitor-client privilege.

Mr. Pollack: Living expenses would be mentioned too.

Senator Grafstein: This would be heard before a separate judge; it would be *in camera* and the defendant would have made a request. That is all that the Crown would know. What else would the Crown know?

Mr. Pollack: On the aspect of reasonable legal expenses, that is all the Crown would know.

Senator Grafstein: You say that the impact of this legislation will affect the privileged solicitor-client relationship?

Mr. Pollack: That was prepared when we had second reading.

Senator Grafstein: Has that now been modified?

Mr. Pollack: Yes, it has.

Senator Grafstein: Is that no longer a concern?

Mr. Pollack: It is still a concern. It is not as well thought out as it was before the amendment. I tried to give it as much thought as I could today, but there has been a significant change and we acknowledge that.

Senator Grafstein: There would be an application by counsel in the absence of the Crown Attorney to the judge responsible for the forfeiture, directly. The only time the Crown would know is if the release from the forfeiture were granted.

Mr. Pollack: As I read the entire section, I think that notice has to be given to the Attorney General that application is going to be made.

Senator Grafstein: Where does it say that?

Mr. Pollack: 420.14.

[*Traduction*]

procureur général ne soit représenté. Puisque l'audition est à huis clos, la Couronne n'est pas au courant de la teneur de la requête.

M. Pollack: Si je comprends bien la modification, le huis clos n'est imposé que lorsqu'il s'agit de déterminer le caractère raisonnable des frais juridiques.

Le sénateur Grafstein: Oui, ce que vous faites valoir à la treizième page de votre mémoire.

M. Pollack: Oui. Je suppose que la Couronne sera informée de la motion. Elle saura que le demandeur présentera une demande. Le huis clos ne sera imposé que lorsqu'il s'agira de justifier le caractère raisonnable des frais juridiques.

Le sénateur Grafstein: Tout ce que la Couronne saura, c'est qu'une demande de restitution aura été faite.

La présidente: Pour quel genre de dépenses?

M. Pollack: Uniquement pour des frais juridiques.

Le sénateur Grafstein: Au paragraphe (5), on limite l'ordonnance aux frais juridiques. Les dépenses à caractère commercial sont exclues.

M. Pollack: Mais les dépenses courantes sont aussi mentionnées.

Le sénateur Grafstein: Cette demande serait donc adressée à un autre juge; l'audition se tiendrait à huis clos et le défendeur aurait présenté une demande. C'est tout ce que saurait la Couronne. Que saurait-elle encore?

M. Pollack: En ce qui a trait aux frais juridiques raisonnables, rien d'autre?

Le sénateur Grafstein: Vous dites que cette loi influera sur les relations privilégiées entre l'avocat et le client?

M. Pollack: Ce mémoire a été préparé en fonction de la deuxième lecture.

Le sénateur Grafstein: A-t-on apporté des modifications?

M. Pollack: Oui.

Le sénateur Grafstein: Et elles ont calmé vos inquiétudes?

M. Pollack: Non, pas tout à fait. Nous n'avons pas examiné la question avec autant d'attention qu'avant la modification. J'en ai parlé du mieux que j'ai pu aujourd'hui, mais la modification est importante, et nous le reconnaissons.

Le sénateur Grafstein: Une demande serait donc directement adressée par l'entremise d'un avocat au juge qui a imposé l'ordonnance de confiscation, et ce, sans que le procureur de la Couronne ne soit présent. Le seul moment où la Couronne saurait quoi que ce soit serait lorsque la demande de restitution serait acceptée.

M. Pollack: Si j'ai bien compris l'article, je pense que le demandeur doit remettre un préavis de sa demande au procureur général.

Le sénateur Grafstein: Où est-ce?

M. Pollack: À l'article 420.14.

[*Text*]

Senator Grafstein: That is the notice for relief from forfeiture.

Mr. Pollack: I would refer to subsection (2).

Senator Grafstein: It says that where an application is made under 1(a), which relates to an order for inspection under (4), and (4) is the restoration of property. If it is to deal with legal expenses, he asks that that portion be dealt with *in camera* or he gives notices that he is going to make a request for legal expenses *in camera*. That is all he knows.

Mr. Pollack: Right.

Senator Grafstein: How is that a breach of the solicitor-client privilege? What knowledge does a Crown have other than that the person is going to seek money to pay his lawyer for something—an amount which is undefined?

Mr. Pollack: I want to thank you for pointing that out because I had not looked at that aspect of it. The very fact that the subject has to resort to an application like this to pay his lawyer may well be something that ought to remain privileged. I have not given that much thought.

Our concern earlier was that if the Attorney General were at this hearing he would know that it was the intention of the accused to spend a lot of money on, say, electronic surveillance of Crown witnesses and that sort of thing.

Senator Grafstein: The point is that a person not accused but who has property seized would go before a judge and say that he wants to get his property back so he can pay a lawyer to help him with this forfeiture application? The Crown would not have knowledge of that. Am I wrong in my interpretation. I am trying to follow your argument because I am very sensitive to breaches of solicitor-client relationships. Every day the Crown has knowledge of individuals seeking to pay lawyers to defend them on charges where the accused is innocent. That is not a mutual solicitor-client privilege. That is only the knowledge or the nature of it, and that seems to have been amended, I assume.

Mr. Pollack: I would think that discussions between a lawyer and a client about a retainer are ordinarily privileged. That is fundamental to the lawyer-client relationship.

Senator Grafstein: The only issue is, he is making an application to pay a lawyer, and that is all. In other words, I do not see it as going beyond that.

Mr. Pollack: With respect, Senator Grafstein, it could be to pay a lawyer's disbursements for laboratory analysis, hiring private investigators—

Senator Grafstein: But the Crown does not know that.

Mr. Pollack: But our earlier concern was that the Crown would.

Senator Grafstein: Are you satisfied now that the Crown is precluded from this?

Mr. Pollack: I am not sure, frankly.

[*Traduction*]

Le sénateur Grafstein: C'est pour demander la restitution des biens.

M. Pollack: Au paragraphe (2).

Le sénateur Grafstein: Où il est question de la demande d'ordonnance prévue au paragraphe (1), qui a trait à une ordonnance d'inspection en vertu du paragraphe (4), et le paragraphe (4) porte sur la restitution des biens. Si le demandeur a l'intention d'en réclamer une partie pour régler ses frais juridiques, il demande que cette partie de l'audition soit à huis clos, ou en donne avis. C'est tout ce qu'elle sait.

M. Pollack: C'est juste.

Le sénateur Grafstein: En quoi cela affecte-t-il les relations privilégiées entre l'avocat et le client? La Couronne ne sait rien d'autre que la personne demandera de l'argent pour payer son avocat—une somme quelconque.

M. Pollack: Je vous remercie de me souligner cela, car je ne m'étais pas arrêté à cet aspect. Le fait que le sujet doive faire une telle demande pour payer son avocat peut bien être quelque chose qui doit demeurer privé. Je n'y ai pas tellement réfléchi.

Nous pensons que si le procureur général était représenté à cette audition, il saurait alors que l'accusé avait l'intention de dépenser beaucoup d'argent en fonction, dirons-nous, de la surveillance électronique des témoins de la Couronne, par exemple.

Le sénateur Grafstein: Le fait est qu'une personne qui ne serait pas accusée, mais dont les biens auraient été saisis, devrait se présenter devant un juge et demander la restitution de ses biens afin de pouvoir régler ses frais juridiques. La Couronne ne le saurait pas. Mon interprétation est-elle juste? J'essaie de comprendre ce que vous dites, parce que je m'intéresse énormément à tout ce qui peut nuire aux rapports entre l'avocat et son client. La Couronne rencontre chaque jour des cas de personnes innocentes qui veulent payer des avocats pour les défendre. Ce n'est pas tellement une question de privilège mutuel entre l'avocat et son client. Il s'agit bien davantage de sa connaissance ou de son caractère, ce que l'on semble avoir modifié, je suppose.

M. Pollack: Je pense que les discussions entre un avocat et un client à propos d'un mandat ont habituellement un caractère privé. C'est un élément fondamental des rapports entre un avocat et son client.

Le sénateur Grafstein: Le client fait une demande pour payer son avocat, et ça s'arrête là. Autrement dit, ça se limite à cela.

M. Pollack: Oui, mais ce pourrait aussi être pour rembourser son avocat des frais encourus pour des analyses de laboratoire ou pour l'embauche de détectives privés . . .

Le sénateur Grafstein: Mais, la Couronne n'en sait rien.

M. Pollack: Mais nous pensions qu'il en serait autrement.

Le sénateur Grafstein: Êtes-vous satisfait, maintenant que la Couronne est exclue du processus?

M. Pollack: Je ne sais pas vraiment.

[*Text*]

Senator Grafstein: Then I suppose the only question I have is: Give us an amendment that would shield this solicitor-client privilege.

Mr. Pollack: This may do it.

Senator Grafstein: This may be a nifty way of solving it. In any event, I just raise that. I am more concerned with my primary question, which related to breach of the Charter, and your argument was that, on forfeiture, the test is "reasonable and probable grounds."

I think your argument, if I followed it, was that reasonable grounds was not good enough, that we should add "and probable grounds." Is that your argument?

Mr. Pollack: Yes. If you were charged with an offence, I would be entitled, as your defence lawyer, to examine the police officer who swore the charge out against you to find out if he had, indeed, reasonable and probable grounds. If he did not, the judge hearing the matter would dismiss the charge right then and there. As reasonable as the grounds may be, if they are highly improbable, the charge will be dismissed right then and there by the judge.

Senator Grafstein: I understand that. The question I want to ask you, though, is this: I take it that the Canadian Bar Association is suggesting the addition of "and probable grounds." Again I want to tell you that I am super sensitive to ensuring that legislation conforms to the Charter and not force a test of presumed innocence.

The staff brought our attention to a case that I am familiar with, the Hunter and Southam case, a Supreme Court case that said there is no difference between reasonable and probable grounds.

Is that right?

Mr. Pollack: That is the Department of Justice's position.

Senator Grafstein: Is that not what the case says?

Mr. Pollack: I do not think that is what the case says.

Senator Grafstein: What does the case say?

Mr. Pollack: I think the case says that when it comes to the kinds of intrusions that the Combines people made in that case, the minimum standard is the search warrant standard.

Senator Grafstein: That is "reasonable"?

Mr. Pollack: That is "reasonable grounds".

Senator Grafstein: And you think that adding the word "and probable" is a higher standard than "reasonable"?

Mr. Pollack: It is a higher standard. Remember, we say it should be applied here because the deponent police officer is saying to the judge that a crime was committed.

Senator Grafstein: This is a pre-emptive strike in advance of the charge. You are saying the strike has to be done on a standard consistent with the charge.

Mr. Pollack: I do not know if it will be in advance of the charge, necessarily.

Senator Grafstein: It normally is because a person has not been charged before the property is seized, such property to be

[*Traduction*]

Le sénateur Grafstein: Proposez-nous donc une modification qui permettrait de protéger la relation entre l'avocat et son client.

M. Pollack: Ce serait peut-être une solution.

Le sénateur Grafstein: Oui, cela réglerait peut-être le problème. Votre réaction à ma première question m'intéresse davantage. En ce qui a trait au respect de la Charte, vous disiez qu'au sujet de la confiscation, le critère était que les motifs soient raisonnables et probables.

Si je vous ai bien compris, vous disiez que les motifs raisonnables n'étaient pas suffisants, et qu'il faudrait ajouter «motifs probables». Est-ce bien cela?

M. Pollack: Oui. Si vous étiez accusé d'une infraction, je pourrais, en tant qu'avocat de la défense, interroger le policier qui a porté les accusations contre vous afin de déterminer si ses motifs étaient raisonnables et probables. Si ce n'était pas le cas, le juge rejetterait les accusations sans autre forme de procès. Que les motifs soient raisonnables, s'ils sont très improbables, le juge rejettera immédiatement les accusations.

Le sénateur Grafstein: Je comprends cela. L'Association du Barreau canadien voudrait qu'on ajoute les mots «et pour des motifs probables. Je répète que je tiens absolument à ce que les lois satisfassent à la Charte en tous points.

Notre personnel de recherche a attiré notre attention sur une cause que je connais bien, la cause Hunter et Southam, dans laquelle la Cour suprême a dit qu'il n'y avait aucune différence entre des motifs raisonnables et des motifs probables.

Êtes-vous du même avis?

M. Pollack: C'est la position du ministère de la Justice.

Le sénateur Grafstein: N'est-ce pas celle qu'a adoptée la Cour suprême?

M. Pollack: Non, je ne pense pas.

Le sénateur Grafstein: Qu'a-t-elle dit, alors?

M. Pollack: Je pense qu'elle a dit que c'était la norme des mandats de perquisition qui s'appliquait dans de tels cas.

Le sénateur Grafstein: C'est un motif raisonnable?

M. Pollack: Oui.

Le sénateur Grafstein: Et vous pensez qu'ajouter le mot «probables» renforce la norme?

M. Pollack: Oui, je le pense. N'oubliez pas que nous disons que ce serait nécessaire parce que le policier en question dit au juge qu'un crime a été commis.

Le sénateur Grafstein: C'est une accusation portée avant la mise en accusation réelle. Vous dites qu'il faudrait qu'elle soit au même degré que les accusations qui seront portées.

M. Pollack: Je ne sais pas si elle précédera forcément les accusations formelles.

Le sénateur Grafstein: Habituellement, oui, parce que les accusations ne seront pas portées avant la saisie des biens, qui

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used as evidence. Then subsequently a charge is laid. I assume that this is what this is all about, to allow the authorities to pre-emptively obtain property and then lay a charge.

Mr. Pollack: The people affected by the seizure may not necessarily be those who are charged.

Senator Grafstein: I understand that. I am not quarrelling with that. It is a pre-emptive strike against people who may or may not be charged. Some people may be charged subsequently, some may not be charged. The only question on the Charter side—and I am trying to understand this so that the staff will come back and give us their version; but again I read the Hunter and Southam case, as the staff did, and I see that "reasonable" and "probable grounds" are virtually the same and, therefore, a good test is reasonable, and you can import the same standard into "reasonable" as you could into "probable."

Mr. Pollack: If that is how the law unfolds, then we will not have a problem with "reasonable". If "reasonable" is always going to mean "reasonable and probable", then fine.

The Chairman: That is a very moot point.

Senator Grafstein: That is the debatable point on which I want to get the witness' evidence.

My final question is. Is there some place else in the set of provisions where you think the Charter is offended; and, if so, how?

Mr. Pollack: If this is a bill, as we say, that is fundamentally defective because of the lack of reasonable and probable grounds, and if we say further—and we are right—that this is a bill that puts an unfair onus on people who are really accused of some kind of criminality—first of all to come forward, and then to show they are innocent—and if we say in addition that this is a bill that puts a person facing sentencing in a form of jeopardy—if this is not double jeopardy, it is certainly one and three-quarters jeopardy, because they face two sentencing hearings—

Senator Grafstein: You mean they would be hit twice because of the property and the charge itself?

Mr. Pollack: They are hit twice because if they are found guilty of an enterprise crime, or a designated drug offence, they may then face a hearing on the penalty to be imposed in lieu of restoration of the property.

If you look at that you will see that it is a fairly shaky scheme in light of the Charter.

There are some other details. You might want to consider that in the notice provisions—that is, where a judge is asked to give a seizure order—the judge has a discretion to give notice. They have not been tightened up at all. If you look at the reasons why a judge may give notice—well, I can refer you to section 420.12, subparagraph (5). That says that a judge may

[*Traduction*]

seront utilisés comme preuves. Les accusations ne sont portées qu'après la saisie. Je suppose que l'on veut permettre ainsi aux autorités de mettre tout d'abord la main sur les biens, et de porter ensuite les accusations.

M. Pollack: Les personnes dont les biens sont saisis ne sont pas forcément celles contre lesquelles porteront les accusations.

Le sénateur Grafstein: Je comprends cela. Je suis tout à fait d'accord avec vous. C'est une mesure que l'on prend à l'égard de personnes contre lesquelles des accusations seront portées ou non. Certaines seront mises en accusation par la suite, et d'autres pas. La seule question qui se pose, en ce qui a trait à la Charte—et j'essaie de comprendre cela, de manière à ce que notre personnel puisse ensuite nous donner son opinion—mais, là encore, je me réfère à la cause Hunter et Southam, comme notre personnel de recherche l'a fait, et je constate que «motifs raisonnables» et «motifs probables» ont à toute fin pratique la même signification, et que par conséquent, le caractère raisonnable des motifs est un critère acceptable, et la notion de probable est sous-jacente à celle de raisonnable.

M. Pollack: Si c'est la signification qu'aura le mot «raisonnable» dans la loi, nous n'avons aucune objection. Si «raisonnable» signifiera toujours «raisonnable et probable», très bien.

La présidente: C'est un aspect très discutable.

Le sénateur Grafstein: C'est un élément controversé sur lequel je veux avoir l'avis de notre témoin.

Ma dernière question est celle-ci: Dans le projet de loi, y a-t-il un autre article qui déroge à la Charte? Le cas échéant, en quoi y déroge-t-il?

M. Pollack: Si l'on admet que ce projet de loi est fondamentalement lacunaire, en raison de l'absence de motifs raisonnables et probables, et si nous disons en outre—et nous avons raison là-dessus—que ce projet de loi impose un fardeau injuste à des personnes vraiment accusées d'un acte criminel quelconque—à savoir, d'assurer leur défense et de prouver leur innocence—et si l'on reconnaît, en outre, que ce projet de loi comporte des risques pour une personne à laquelle une peine doit être imposée—il y a sûrement un double risque, ou presque, parce que cette personne doit faire face à deux auditions pénales—

Le sénateur Grafstein: Vous dites qu'elle subirait deux auditions? Pour la restitution des biens et pour répondre aux accusations portées?

M. Pollack: Oui, en effet, parce qu'en étant reconnue coupable d'une infraction de criminalité organisée ou d'une infraction désignée en matière de trafic de stupéfiants, elle pourrait devoir subir une audition visant à déterminer la peine qui sera imposée au lieu de la restitution des biens.

Si vous examinez cela d'un peu plus près, vous constaterez que ce n'est pas bien reluisant en ce qui a trait à la Charte.

Il y a encore d'autres détails à considérer. Vous remarquerez que dans les dispositions relatives aux avis—c'est-à-dire, lorsqu'un juge se voit demander de décerner un mandat de saisie—le juge a la liberté d'exiger ou non qu'un avis en soit donné. On ne les a pas du tout renforcées. Si vous examinez les raisons pour lesquelles un juge peut donner un avis—jetez un

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require notice to be given to people who will be affected by the seizure, if I can generalize. There are some reasons stated why a judge would not give notice. If, by giving notice, the judge was going to make sure the property was going to disappear, he would not give notice.

Surely in subparagraph (5) the drafters have exhausted why notice should not be given.

Senator Grafstein: Can I give you a parallel to this, and you tell me if it is offensive. A narcotics squad goes out and decides it will seek permission for a wire tap on reasonable grounds that the person whose telephone is being tapped is a criminal or involved in an enterprise offence.

During the course of that conversation, in the course of the wire tap, I phone, the person's doctor phones, or his lawyer phones. In effect, that person's rights, if you will, are being affected as are other people's rights by the same process.

Does that not happen all the time?

Mr. Pollack: That has happened to me. I have heard my voice on a police tape recorder in a court room.

Senator Grafstein: I have also. I am not sure I characterized the rights, but certainly my rights have been affected. I suppose society's answer to that is that this is one of the costs of ensuring—assuming it is on reasonable grounds that the warrant was issued to begin with—that it weeds out the ills of society; and that is one of the costs to society, that my rights will be interfered with because I happen, innocently or otherwise, to talk to somebody who is affected by this particular tap. This happens to everybody. I am sure that a person who is wire-tapped comes into contact with a lot of people who are not necessarily related to his criminal enterprise. How different is that from this particular statute in terms of that provision? The judge does not phone me up to say, "By the way, I am giving you notice that I am wire-tapping someone you were acting for." If I hear myself on tape in the courtroom, that could be a little embarrassing.

Mr. Pollack: All we are saying about subclause 5 is that the judge should have to give notice, unless notice would result in a dissipation of or reduction in the value of property.

Senator Grafstein: You are saying that it should be mandatory?

Mr. Pollack: Yes. Surely that subsection exhausts the reasons why you would not give notice. Surely there should be an onus on the judge, otherwise, to give notice. Under the wire-tap legislation, for instance, if a law office is going to be affected, then certain safeguards must be applied. A judge actually must conduct part of his inquiry into the nature of that intrusion and apply some safeguards. That is all I am suggesting.

But let me go further to point out that before the issuance of notice under that subclause is dealt with, all the judge has to

[*Traduction*]

coup d'œil au cinquième paragraphe de l'article 420.12. On y dit qu'un juge peut exiger qu'un avis soit donné à des personnes qui seront touchées par la saisie, si je peux me permettre de généraliser. On y stipule quelques raisons pour lesquelles un juge n'émettrait pas d'avis, par exemple, si cela risquait d'entraîner la disparition des biens visés . . .

On peut sûrement dire que les rédacteurs n'ont rien oublié au paragraphe 5 en ce qui a trait aux raisons pour ne pas émettre d'avis.

Le sénateur Grafstein: Permettez-moi de vous donner un exemple? Vous me direz ce que vous en pensez. Supposons qu'une équipe de surveillance du trafic de stupéfiants décide, pour des motifs raisonnables, de demander la permission d'écouter les conversations d'une personne soupçonnée d'un acte criminel ou de faire partie d'une entreprise criminelle.

Supposons maintenant que je téléphone à cette personne, que son médecin ou son avocat l'appelle. On empiète sur les droits de cette personne et, en même temps, sur ceux des autres personnes qui l'appellent.

N'est-ce pas fréquent?

M. Pollack: Cela m'est arrivé. Il m'est déjà arrivé d'entendre ma voix, dans un tribunal, sur un enregistrement qu'avait fait la police.

Le sénateur Grafstein: Oui, ça m'est arrivé à moi aussi. Je n'ai rien dit à propos de mes droits, mais on ne les a sûrement pas respectés. Je suppose que la justification de la société à cela, c'est que c'est l'un des prix à payer pour faire en sorte d'éliminer les problèmes dans la société—en supposant que le mandat ait au départ été émis pour des motifs raisonnables—et que mes droits ne seront pas complètement respectés parce que j'aurai eu le malheur d'appeler innocemment quelqu'un dont les conversations sont surveillées. Nous ne sommes pas les seuls à qui cela arrive. Je suis persuadé qu'une personne dont les conversations sont surveillées communique avec bien des gens qui n'ont pas forcément quoi que ce soit à voir avec ses activités criminelles. Quelle est la différence par rapport à cette loi précise? Le juge ne m'appelera pas pour m'informer que les conversations d'une personne que je représente sont surveillées. Il pourrait être un peu gênant d'entendre ma voix sur un enregistrement dans une salle d'audience.

M. Pollack: Tout ce que nous disons, à propos du paragraphe 5, c'est que le juge devrait être tenu d'émettre un avis, à moins que cela risque d'occasionner la dissipation des biens ou une diminution de leur valeur.

Le sénateur Grafstein: Vous dites que cela devrait être obligatoire?

M. Pollack: Oui. On ne peut douter que toutes les raisons pour ne pas émettre d'avis sont mentionnées dans cet alinéa. Dans tous les autres cas, le juge devrait être tenu d'émettre un avis. Dans la loi relative à l'écoute entiers, par exemple, lorsqu'un cabinet juridique est visé, certaines limites doivent être imposées. Un juge doit s'enquérir du caractère de cette intrusion et poser des limites. C'est tout ce que je dis.

Mais permettez-moi de souligner qu'avant que la question de l'émission de l'avis visé par ce paragraphe soit réglée, le

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go by is one side of the case—the deposition of an eager police officer, who is ready to detect an enterprise crime or a designated drug offence. Surely that calls for some mandatory form of notice, unless the judge can include in the order the reason why notice is not going to be given.

The Chairman: I should probably know this, Mr. Pollack, but has the question of reverse onus been decided definitively by the Supreme Court of Canada?

Mr. Pollack: I think that recent events in the Supreme Court of Canada have indicated that the reverse onus provisions of various statutes are going to be upheld by the courts. This the Supreme Court recently did in terms of the presumption concerning the person driving a car while he is over .08. The court has said that if the shift of the burden is an unfair one, then it will not be upheld by the courts. In a case I was involved in several years ago, the Supreme Court of Canada said that there are unfair burdens placed upon accused persons under the Customs Act. These people were told that they had something in their possession that was imported—prove it in order to enter Canada lawfully. That is what happened to the appellant in the case in which I was involved and that section was struck down. However, a section of the Criminal Code that calls upon a drunk person found behind the wheel of a motor vehicle to give an account of himself that does not include driving is not an unreasonable or unfair reverse onus at all. That kind of reverse onus will be upheld by the courts, because it is fair to cast the onus on the individual. Why? Because there is substantial nexus, in the words of the Supreme Court, between the presumed fact and the subject upon whom the burden is placed.

The Chairman: Your argument is that in proposed subsection 420.21(3) and proposed section 420.22, the reverse onus is unfair. You go further than that to say that the applicant must establish innocence rather than simply to be proven not guilty, which is what any other person would have to do.

Mr. Pollack: That is right. Not only that; when you think about it, this notion of appearing innocent is not something one normally comes across—I certainly have not come across it in my 16 or 17 years of practising this kind of law. It is fairly new. How do you show that you are innocent? How do you appear to be innocent? If you try to show that you appear innocent, is the Crown then allowed to show that you appear guilty? Is that how the disposition of somebody's lifetime acquisition of assets is going to be decided?

Senator Grafstein: The Law Society has done exactly that to a law firm in Toronto.

Mr. Pollack: I know the case of which you are speaking, although I am not familiar with the facts of it.

Senator Grafstein: I wonder whether that is of concern to the Canadian Bar Association. I think it is an obscene way to

[*Traduction*]

juge n'a reçu qu'un seul son de cloche—la déposition d'un policier qui a bien hâte de mettre la main au collet de supposés criminels. Il ne fait aucun doute que cela exige que les avis soient obligatoires, à moins que le juge ne puisse inscrire au mandat la raison pour laquelle on n'a pas avisé les intéressés.

La présidente: Je devrais probablement le savoir, M. Pollack, mais la Cour suprême du Canada s'est-elle prononcée de façon définitive sur la question du renversement du fardeau de la preuve?

M. Pollack: Je pense que les derniers jugements qu'a rendus la Cour suprême du Canada indiquent que ces dispositions que l'on retrouve dans diverses lois seront appliquées par les tribunaux. C'est ce qu'a récemment fait la Cour suprême en ce qui a trait à la présomption relative à la personne qui conduit un véhicule en état d'ébriété. La Cour a déclaré que si le renversement du fardeau de la preuve est injuste, les tribunaux ne l'admettront pas. Dans une cause à laquelle j'ai participé, il y a plusieurs années de cela, la Cour suprême du Canada a déclaré que la loi sur les douanes impose des fardeaux injustes à certaines personnes contre lesquelles des accusations sont portées. Ces personnes sont soupçonnées d'avoir en leur possession des produits qui sont importés—elles doivent le prouver pour les introduire légalement au Canada. C'est ce qui est arrivé à celui qui en avait appelé du jugement, et cet article a été éliminé. Toutefois, un article du Code criminel qui exige d'une personne qui a été arrêtée alors qu'elle conduisait un véhicule après avoir consommé des boissons alcooliques qu'elle rende compte de ses gestes, sans qu'il soit question de la conduite du véhicule, n'est pas du tout un renversement du fardeau de la preuve que l'on pourrait considérer déraisonnable ou injuste. Les tribunaux l'appliqueront, parce qu'il est juste d'obliger cette personne à s'expliquer. Pourquoi? Parce qu'il y a un lien important, selon la Cour suprême, entre le fait présumé et la personne qui doit se justifier.

La présidente: Vous soutenez que le renversement du fardeau de la preuve au paragraphe 420.21(3) et à l'article 420.22 est injuste? Vous allez même jusqu'à dire que le demandeur doit prouver son innocence plutôt que de se voir tout simplement reconnaître non coupable, ce qui serait la procédure normale.

M. Pollack: C'est juste. Qui plus est, quand on y songe, cette notion de paraître innocent n'est pas habituelle—il n'en a jamais été question au cours de mes 16 ou 17 années de pratique. C'est une notion plutôt nouvelle. Comment démontrer que l'on est innocent? Comment fait-on pour paraître innocent? S'il en est ainsi, la Couronne peut-elle, de son côté, chercher à démontrer que l'on paraît coupable? Est-ce ainsi que l'on disposera des biens qu'une personne aura accumulés au cours de son existence?

Le sénateur Grafstein: C'est précisément de cette façon qu'a agit la Société du droit à l'égard d'un cabinet juridique de Toronto.

M. Pollack: Je sais que quoi vous parlez, mais je ne suis pas au courant de tous les faits.

Le sénateur Grafstein: Cela inquiète-t-il l'Association du Barreau canadien? Je pense que c'est une façon absolument

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deal with a firm's reputation. That is precisely what has been done—their innocence has been dealt with on the front page of the *Globe and Mail* without affording to them the opportunity to defend themselves, whether they are guilty or not. The Law Society has done that. Has the Canadian Bar Association done anything about it? I do not know anything about the facts of that case, either. I just felt that it was a terrible tragedy to take a great firm's name down the pipe, and, with it, the names of 100 lawyers.

Mr. Pollack: I will see to it that that inquiry is addressed with dispatch.

Senator Grafstein: Is the Canadian Bar Association concerned about the innocence of an accused? I am concerned about it. When 100 lawyers get swamped by a blanket charge, I think that is extremely offensive.

Senator Doyle: The only thing I know about that case is that the law firm in question will probably never recover its good name, no matter what the circumstances are.

Senator Grafstein: I agree with that. I found the whole thing obscene.

Senator Doyle: And the attack was from the Law Society, not the Canadian Bar Association. I am not challenging the Canadian Bar Association in this.

Senator Buckwold: I wanted to explore another aspect that was pointed out at page 20 of your brief, Mr. Pollack, and that is the restoration provisions that are too complex. You point out that restoration of seized or restrained property of an accused found not guilty after trial should be automatic. I agree with that. Would you explain to us how it is not automatic? What are the problems? Is this a normal procedure in terms of getting property back?

Mr. Pollack: The problem the justice department has is illustrated by the case of the Montreal bank account containing funds that the entire world knew were obtained through crime. There was no instrument that any judge or magistrate was capable of issuing that could attach to that money. As a result, some modification of the law was called for. In that case, if the subject had not died, had he been prosecuted and had the money become an exhibit in the case, then, under certain provisions of the Criminal Code, the judge could have made any number of orders dealing with it. I am not saying that the money would necessarily have become an exhibit—in the eyes of the court, it may have been irrelevant to the prosecution.

Senator Buckwold: But the bank account could have been frozen?

Mr. Pollack: In that case, it may not have been. Let me provide a better example. If I am accused of stealing this glass and, after the trial, I have been found guilty of having stolen it, the owner of that glass, which would have been marked an exhibit at the trial, would have been able to come forth to make an application under a section of the Criminal Code to

[*Traduction*]

immorale de traiter la réputation d'un cabinet juridique. On a discuté de son innocence à la première page du *Globe and Mail*, sans lui donner la possibilité de se défendre. L'Association du Barreau canadien est-elle intervenue d'une façon quelconque? Je n'en sais pas tellement plus long que vous à ce sujet. J'ai trouvé extrêmement déplorable qu'on salisse ainsi la réputation d'un important cabinet juridique, en même temps que celle d'une centaine d'avocats.

M. Pollack: Je verrai à ce que cette enquête se fasse rapidement.

Le sénateur Grafstein: L'innocence d'un accusé intéresse-t-elle l'Association du barreau canadien? C'est une question que je me pose. Quand une accusation porte sur 100 avocats à la fois, cela me paraît extrêmement offensant.

Le sénateur Doyle: Tout ce que je sais, à ce propos, c'est que ce cabinet juridique ne s'en remettra probablement jamais, quoiqu'ils advienne.

Le sénateur Grafstein: Je suis d'accord avec vous. J'ai trouvé toute cette affaire absolument immorale.

Le sénateur Doyle: Et les accusations provenaient de la Société du droit, et non de l'Association du barreau canadien. Je n'accuse pas l'Association du barreau canadien dans cette affaire.

Le sénateur Buckwold: Monsieur Pollack, je voulais vous demander quelques précisions à propos de certaines observations que nous faites à la 20e page de votre mémoire, au sujet de la trop grande complexité des dispositions relatives à la restitution des biens. Vous dites que la restitution des biens saisis ou bloqués d'une personne reconnue non coupable après un procès devrait être automatique. Je suis d'accord avec vous là-dessus. En quoi n'est-ce pas le cas? Quelles difficultés voyez-vous? N'est ce pas la procédure normale?

M. Pollack: Le cas du compte bancaire à la Banque de Montréal, qui contenait de l'argent que le monde entier savait provenir d'activités criminelles, illustre bien la difficulté à laquelle fait face le ministère de la Justice. Un juge ou un magistrat ne disposait d'aucun instrument permettant de bloquer cet argent. Des modifications à la loi s'imposaient donc. Dans ce cas précis, si le sujet n'était pas décédé, s'il avait fait l'objet de poursuites, et si l'argent avait été retenu comme pièce à conviction au cours du procès, le juge aurait alors disposé d'un certain nombre d'instruments en vertu de certaines dispositions du Code criminel. Je ne dis pas que l'on aurait forcément retenu l'argent comme pièce à conviction, car aux yeux du tribunal, il n'aurait peut-être présenté aucun intérêt pour la poursuite.

Le sénateur Buckwold: Mais le compte bancaire aurait pu être bloqué?

M. Pollack: Dans ce cas précis, peut-être pas. Permettez-moi de vous donner un meilleur exemple. Supposons que je sois accusé d'avoir volé ce verre, et que je sois par la suite reconnu non coupable, après un procès. Le propriétaire de ce verre, qui aurait été reconnu comme pièce à conviction au moment du procès, pourrait demander de le récupérer en vertu d'un article

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get it back. The judge could agree or disagree, and, in the case of a dispute, civil litigation would be entered into.

This bill is designed to deal with other kinds of things that must be disposed of because they can be proven to result from crime. We are simply saying that when you are affecting someone's property in that way by confiscating it from him, what is wrong with giving him due notice? What is wrong with having in place a reasonable standard—a standard that has stood the test in criminal cases over the years? If it is the intention to restore victims to their earlier status, the Canadian Bar Association thinks that is a good way to deal with the proceeds of crime. If you want to use this as a penalty, we suggest that you have a sentencing hearing. We suggest that you not have in place anything that will tie the judges' hands—have a hearing to determine the disposition of the seized money, thing or whatever the property is.

Senator Doyle: Is this much different from what happens in pornography cases, where entire stocks of books or paraphernalia are seized and sometimes held for years while the guilt or innocence of the accused is determined?

Mr. Pollack: In those cases, though, ultimately the court has the right to confiscate them. Do not forget, there has been proof beyond a reasonable doubt that the books are obscene or the videos are obscene. That is the issue before the court.

Senator Doyle: That is right, and the person is innocent and his stock is his and is his legitimate material for making his livelihood.

Mr. Pollack: Not too many of those prosecutions were under the provisions of the Charter, which called for trial within a reasonable time. It may well be that a trial cannot be held within a reasonable time if it means that the person is put out of business in the meantime while they are presumed to be innocent.

Senator Doyle: I am concerned about whether or not there is a difference in the principle of the procedure. You are taking something and saying, "We think that you got this illegally, you are using it illegally and you are selling it illegally. We are going to hold onto it until we have had a trial." Is that not what is happening here under this bill? We are saying, "Whatever you have there—it may be a house or a business or a solid gold cadillac—we are going to hold onto it until we have had a trial and find out whether or not you are guilty or innocent." I am not saying I am defending that, but is that not a similar process?

Mr. Pollack: It is similar.

Senator Buckwold: Getting back to my original question, after a man has been found innocent and his gold-plated Cadillac or his house has been seized, what are the complications in getting it back? You have referred to it as being too complex and too difficult. Would the judge not normally say that this property is to be returned?

Mr. Pollack: Normally, yes, one would expect that.

[Traduction]

du code criminel. Le juge pourrait accepter sa requête ou non, et, en cas de litige, le demandeur ferait une requête au civil.

Ce projet de loi porte sur des biens dont on peut prouver qu'ils ont été acquis à la suite d'actes criminels. Nous disons tout simplement que si l'on a l'intention de confisquer ainsi les biens d'une personne, pourquoi ne pas l'en informer en bonne et due forme? Pourquoi ne pas appliquer une norme raisonnable qui a fait ses preuves dans de nombreuses causes criminelles depuis nombre d'années? Si l'intention est de redresser les torts faits aux victimes, l'Association du barreau canadien est d'avis que c'est une bonne façon de procéder en ce qui a trait aux produits de la criminalité. Si vous voulez appliquer cette mesure en guise de peine, nous pensons qu'il y aurait lieu qu'une audition soit tenue en la matière. Il faudrait éviter de limiter la latitude des juge et pour cela, faire en sorte que les moyens de disposer de l'argent ou des biens saisis soient déterminés dans le cadre d'une audition.

Le sénateur Doyle: Est-ce très différent de ce qui se passe pour les affaires de pornographie, dans lesquelles des stocks entiers de livres ou d'objets érotiques divers sont saisis, parfois conservés sous séquestre, pendant des années en attendant que l'on établisse la culpabilité ou l'innonce de l'accusé?

M. Pollack: Dans de telles affaires, c'est finalement le tribunal qui a le droit de les confisquer. N'oubliez pas qu'il existe déjà une preuve au-delà de tout doute raisonnable que ces livres ou ces vidéos sont obscènes. C'est cela qui est porté devant le tribunal.

Le sénateur Doyle: C'est vrai, et la personne est innocente, son stock lui appartient et est un moyen légitime pour elle de gagner sa vie.

M. Pollack: Peu de ces poursuites relèvent des dispositions de la Charte, qui prévoyaient que les procès devait se dérouler dans des délais raisonnables. Or, cela n'est pas possible si cela signifie qu'en attendant, une telle personne ne peut plus travailler alors qu'elle est présumée être innocente.

Le sénateur Doyle: Ce qui m'intéresse, c'est de savoir s'il y a une différence dans le principe de la procédure. Vous saisissez quelque chose et déclarez: «Vous avez obtenu ceci illégalement, vous l'utiliser illégalement et vous le vendez illégalement. Nous allons le garder sous séquestre jusqu'au jugement.» N'est-ce pas là ce qui se passe en vertu de ce projet de loi? Cela se ramène après tout à dire, «Quoi que vous ayez là—que ce soit une maison, une entreprise ou une Cadillac en or massif—nous allons le conserver sous séquestre jusqu'à ce que vous soyez jugé coupable ou innoncent.» Je ne prétends pas être partisan de cela, mais n'est-ce pas là un processus analogue?

M. Pollack: En effet.

Le sénateur Buckwold: Revenons à ma première question; après qu'un homme ait été reconnu innoncent alors que sa Cadillac plaquée or ou sa maison avait été saisie, à quel genre de complications se heurte-t-il pour la récupérer? Vous avez dit que c'était trop complexe et trop difficile. Le juge ne déclare-t-il pas normalement que ce bien doit être rendu?

M. Pollack: Normalement, oui, c'est ce à quoi on s'attendrait.

[*Text*]

Senator Buckwold: How is that not done in this bill?

Mr. Pollack: Unless I misread the bill, you have to ask for it. If there is a hearing to determine whether or not a person should have something returned, the judge may well give notice to others involved.

Senator Buckwold: Would he not have to ask for it in any case?

Mr. Pollack: I think he would.

Senator Buckwold: If, for example, you had property that had been stolen and you wanted to get it back because it was your property, you would have to ask for it and have identification in order to get it back. It is not quite automatic.

Mr. Pollack: A judge at a trial has to do something with the matters that are brought before him or her.

Senator Buckwold: I am trying to find out the difference between the judge's powers in this particular bill and what happens in the couse of ordinary litigation.

Mr. Pollack: We have not been too concerned with crime victims until recently. Many is the occasion when the crime victim finds out that someone was convicted of breaking into their house or stealing their bicycle or whatever when they read it in the newspapers. They are not told anything until they ask around the police station, "When can I get my property back?" We do not deal with victims with the sensitivity that we should.

In a new piece of legislation we should know that once it has been determined that someone is innocent of a crime and something was seized from that person that was the subject of prosecution, at least there is an onus on the state to give it back.

Senator Buckwold: Again, you have not answered my question to the satisfaction I would like. Why is this different from any other legislation in getting property back? Is it not almost the same? You are saying that the law should be clearer in this case.

Mr. Pollack: Unless I misread the legislation, it calls on someone to establish to some degree that they appear innocent.

Senator Doyle: But that raises a separate point.

Senator Buckwold: Once the man has been declared innocent by trial, in due course he gets his property back without too much problem.

Senator Grafstein: That does not follow. I have a car in my garage and the kids next door are having a cocaine party. They decide they will dump the coke in my car because the cops are chasing them through the backyard. I have to go and get my car. I am innocent, but the police are not necessarily going to give me my car because they say that they will use it at trial.

[*Traduction*]

Le sénateur Buckwold: Comment se fait-il que ce projet de loi ne le prévoit pas?

M. Pollack: À moins que je l'aie mal interprété, il faut le demander. S'il y a une audience afin de déterminer si l'on doit rendre quelque chose à quelqu'un, le juge peut fort bien en aviser les autres parties en cause.

Le sénateur Buckwold: De toute façon, ne faut-il pas demander la restitution?

M. Pollack: Je crois que oui.

Le sénateur Buckwold: Si, par exemple, on vous a volé quelque chose que vous voulez récupérer parce qu'elle vous appartenait, a vous êtes obligé d'en faire la demande et de fournir la preuve de votre identité. Ce n'est pas tout à fait automatique.

M. Pollack: À un procès, un juge doit prendre une décision sur les questions qui lui sont soumises.

Le sénateur Buckwold: J'essaie de trouver la différence entre les pouvoirs conférés au juge par ce projet de loi et ce qui se passe dans le cas d'un litige ordinaire.

M. Pollack: Jusqu'à ces derniers temps, nous nous sommes guère souciés des victimes de crimes. Il arrive bien souvent qu'elles apprennent par les journaux que leur cambrioleur ou celui qui leur avait volé leur bicyclette ou autre chose a été condamné. Tant qu'elles ne se rendent pas au poste de police pour demander, «Quand puis-je récupérer mon bien?», on ne leur dit rien du tout. Nous ne traitons pas les victimes avec la compréhension nécessaire.

Un nouveau texte de loi devrait préciser qu'une fois qu'une personne a été déclarée innocente, ce devrait être la responsabilité de l'État de lui rendre ce qui a été saisi et qui a fait l'objet des poursuites.

Le sénateur Buckwold: Encore une fois, vous n'avez pas vraiment répondu à ma question. En quoi la question de la récupération des biens diffère-t-elle ici des autres lois? N'est-ce pas pratiquement la même chose? Vous dites que dans ce cas particulier, la loi devrait être plus claire.

M. Pollack: À moins que je ne l'aie mal interprétée elle exige de vous que vous établissiez dans une certaine mesure votre innocence.

Le sénateur Doyle: Cela soulève une question tout à fait différente.

Le sénateur Buckwold: Une fois qu'une personne a été déclarée innocente à l'issue d'un procès, elle finit par récupérer ses biens sans trop de difficulté.

Le sénateur Grafstein: Il y a une faille dans ce raisonnement. Supposons que j'ai un auto dans mon garage et que les jeunes gens d'à côté fassent la fête et se droguent à la cocaïne. Ils décident de la planquer dans mon auto parce que la police les poursuit dans la cour. Je suis obligé d'aller récupérer ma voiture; je suis innocent, mais la police ne va pas nécessairement me la rendre car elle va me dire qu'elle en a besoin comme pièce à conviction.

[*Text*]

Senator Buckwold: I do not think we are talking on the same wavelength in this regard. The kids could be found guilty and, in due course, you would get your car back, I would presume.

Mr. Pollack: Let me add another ingredient to the scenario. Suppose the car was driven across the border into Canada. I am not talking about the American zero tolerance operation. After the case was over involving the felon who threw the cocaine into the car, like a client of my firm's recently, Senator Grafstein could find himself dealing with Canada Customs down the street, trying to pursuade them to release the car. That is exactly what occurred in a case in Winnipeg.

Senator Spivak: The question here, though, is this: In every other piece of legislation does the innocent party have to ask for his property back or is it automatically disposed of?

I have a further question: If the innocent party or the victim does not ask for his property back, what automatically happens to that property, either in this piece of legislation or in any other piece of legislation? What is the judge'e role? Who is the person in charge of that property? Who is the agent of the Crown? I do not understand this.

Mr. Pollack: Where a statute gives out responsibility, as this one does, that responsibility appears to be that of the court. The court makes the orders, and the court has to safeguard the property. The court can only do what the statute says. To give back a property, the court has to do what the statute says, and that is to give it back only to those who appear innocent.

Senator Spivak: And those people who come and ask for it?

Mr. Pollack: Yes.

Senator Spivak: Is that any different from any other piece of legislation?

Mr. Pollack: It is different from every other piece of legislation, because there is no other legislation where someone has to come to a court and prove innocence to any degree in order to get back something that is his.

Senator Grafstein: I misunderstood what Senator Buckwold and Senator Spivak said, although I think I understand now. Let us assume there was no legislation, the property is seized and the judge has no sequential legislation to deal with the issue. Assume, also that the man is innocent and he says to the judge, "I want my property back." Does the judge not have the equitable power of the court to give the man back his property?

Mr. Pollack: Are you talking about present search warrant law?

Senator Grafstein: Yes. That was Senator Buckwold's question.

Mr. Pollack: Under present search warrant law, unless there is an extension, the property has to be given back in 90 days or whatever the law says.

[*Traduction*]

Le sénateur Buckwold: Je ne crois pas que nous soyons sur la même longueur d'ondes. Ces jeunes gens pourraient être déclarés coupables et je suppose que vous finiriez par récupérer votre auto.

M. Pollack: Laissez-moi ajouter un élément supplémentaire à ce scénario. Supposons que l'auto vienne des États-Unis et ait donc franchi notre frontière. Je ne parle pas de l'opération américaine actuelle dans laquelle absolument rien n'est toléré. Cela est arrivé récemment à un client de mon cabinet, et il se pourrait fort bien qu'après que le criminel qui a jeté de la cocaïne dans son auto ait été jugé, le sénateur Grafstein se retrouverait au bureau de Douanes Canada pour essayer de convaincre les douaniers de lui rendre son auto. C'est exactement ce qui s'est passé à Winnipeg.

Le sénateur Spivak: Ma question demeure cependant la suivante: Dans les autres lois, la partie innocente est-elle obligée de demander qu'on lui rendre son bien ou cela se fait-il automatiquement?

J'ai une autre question à poser. Si la partie innocente ou la victime ne demande pas qu'on lui rende son bien, qu'arrive-t-il automatiquement à celui-ci, aux termes de ce projet de loi ou de tout autre texte législatif? Quel est le rôle du juge? Qui est la personne responsable de ce bien? Qui est l'agent de l'État? Il y a là quelque chose que je ne comprends pas.

M. Pollack: Lorsqu'une loi détermine la responsabilité, comme le fait le présent projet de loi cette responsabilité semble être celle du tribunal. C'est le tribunal qui ordonne, et c'est lui qui doit sauvegarder le bien. Ils ne peuvent rien faire d'autre que ce que dit la loi. Pour rendre un bien, le tribunal doit respecter ce que dit la loi, à savoir ne le rendre qu'à ceux qui paraissent innocents.

Le sénateur Spivak: Et à ceux qui viennent le réclamer?

M. Pollack: Oui.

Le sénateur Spivak: En quoi cela diffère-t-il des autres textes de loi?

M. Pollack: Par le fait qu'aucune autre loi n'exige que l'on comparaisse devant un tribunal pour prouver son innocence afin de récupérer quelque chose qui nous appartient.

Le sénateur Grafstein: J'avais mal compris ce que disaient le sénateur Buckwold et le sénateur Spivak, mais je crois saisir maintenant. Supposons qu'il n'y ait pas de loi: le bien est saisi et le juge n'a autre texte sur lequel s'appuyer pour régler la question. Supposons également que la personne est innocente et qu'elle dise au juge, «Je veux qu'on me rende ce qui m'appartient:» le juge ne dispose-t-il pas des moyens de l'équité pour rendre son bien à cette personne?

M. Pollack: Parlez-vous là de la loi actuelle concernant les ordres de perquisition?

Le sénateur Grafstein: Oui. C'était la question du sénateur Buckwold.

M. Pollack: En vertu de cette loi, à moins de l'octroi d'une prolongation, le bien doit être rendu dans les 90 jours qui sont je crois prévus par la loi.

[*Text*]

Senator Buckwold: You made a major point of how difficult it is, and I am still trying to find out how it is different from any other legislation.

Mr. Pollack: There is an onus on the subject not only to ask for it back but, practically speaking, to get a lawyer to go to the court to persuade the court against perhaps a submission by the Crown or others that he ought not to have it back.

Senator Buckwold: After the man is found innocent does he still have to go through this whole exercise?

Mr. Pollack: Absolutely.

Senator Spivak: This is a step in the wrong direction in terms of getting your property back as an innocent victim.

Mr. Pollack: That is right.

Senator Spivak: It adds a burden that was not there previously.

Mr. Pollack: That is right.

Senator Buckwold: Can you explain how that is read into the law? How does Bill C-61 determine what you have said, namely, after being found innocent of a crime, a person has to go through these procedures you talk about before he or she can get back the property that has been seized.

Mr. Pollack: Would you look at subsection 420.21(3)? Senator, if you are having difficulty understand the clause, of course that is another of our complaints.

Senator Buckwold: Yes, I am having difficulty.

Mr. Pollack: It would be nice if you could read the clause without having any of the interpretive skills that legislative draftsmen have, and know what to do next.

Senator Buckwold: I cannot follow that clause.

Mr. Pollack: Perhaps I could just add something else that comes to mind. It is obvious that it is the intention of those who are behind this legislation to deal with those who make serious profits out of crime, and not with what we are fond of referring to as street-level criminals. However, the problem with a piece of legislation such as this is that it is not only right thinkers who are given power to do things under laws such as this. Time and again, judges have said to prosecutors who would ask that laws be interpreted in that fashion—in other words the way a right thinker would act—that that is not the test; it is the validity of the law. Our concern is also with that.

Senator Grafstein: May I raise another subject matter? I recall that we were upset when the Americans exercised the extraterritorial reach of their sovereignty in a very celebrated case. A bounty hunter came up to Toronto and secured the person of an individual and returned him to a southern state of the U.S.A. We were quite upset by that because we felt that that was a breach of our sovereignty.

[*Traduction*]

Le sénateur Buckwold: Vous avez beaucoup insisté sur la difficulté et j'essaie toujours de découvrir en quoi cela diffère des autres lois.

M. Pollack: Il appartient non seulement à l'intéressé de demander la restitution mais, dans la pratique, de se faire représenter par un avocat au tribunal afin de persuader celui-ci de rejeter la demande de l'État ou de ceux qui estiment que la restitution ne devrait pas se faire.

Le sénateur Buckwold: Une fois l'innocence d'une telle personne établie, est-elle obligée de se soumettre à toutes ces formalités?

M. Pollack: Absolument.

Le sénateur Spivak: Quand on est une victime innocente et qu'on veut récupérer ce qui vous appartient, cela me paraît constituer un pas dans la mauvaise direction.

M. Pollack: C'est exact.

Le sénateur Spivak: Cela ajoute un fardeau qui n'existait pas auparavant.

M. Pollack: C'est exact.

Le sénateur Buckwold: Pouvez-vous nous expliquer ce que dit la loi? Comment le projet de loi C-61 établit-il ce que vous venez de dire, à savoir, qu'après avoir été reconnu innocente d'un crime, une personne doit se soumettre à la procédure dont vous parlez avant de pouvoir récupérer le bien saisi.

M. Pollack: Voulez-vous vous reporter au paragraphe 420.21(3)? Sénateur, si vous avez des difficultés à comprendre cette disposition, cela ne me surprend pas car c'est également là une des autres choses dont nous nous plaignons.

Le sénateur Buckwold: Oui, j'ai des difficultés.

M. Pollack: Il serait agréable de pouvoir la lire sans avoir besoin des talents d'interprétation des rédacteurs juridiques, et de pouvoir savoir que faire.

Le sénateur Buckwold: Je ne réussis pas à comprendre cette clause.

M. Pollack: Permettez-moi d'ajouter une remarque qui me vient à l'esprit. Il est manifeste que les auteurs de ce texte de loi visent ceux qui tirent des profits importants du crime, et non pas ceux que l'on se plaît à appeler les petits criminels communs. Le problème, avec ce projet de loi, c'est que ce ne sont pas seulement les personnes qui pensent sainement auxquelles il donne des pouvoirs. Les juges ont maintes fois répété aux plaignants qui demandaient que les lois soient interprétées de cette manière, c'est-à-dire de la manière dont une personne qui pense sainement agirait, que ce n'est pas là le critère, ce qui compte, c'est la validité de la loi. Cela nous inquiète également.

Le sénateur Grafstein: Puis-je soulever une autre question? Je me souviens combien nous avons été choqués lorsque les Américains ont exercé leur souveraineté au-delà de leur territoire dans une affaire qui a reçu beaucoup de publicité. Un chasseur de primes est venu à Toronto, s'est emparé d'une personne et l'a ramenée dans un état du sud des États-Unis. Cela nous a beaucoup troublés car nous y avons vu une infraction contre notre souveraineté.

[*Text*]

However, I now look at the definition under 420.1: "Proceeds of crime". It is the last definition on page 4. Let me take you through this and then you can tell me if I should be concerned about this:

> 'proceeds of crime' means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of
>
> (*a*) the commission in Canada of an enterprise crime offence or a designated drug offence—

That seems to be all right. In other words, up to the bottom of (a) it means that, wherever the proceeds went, either this country or that country, if it happened here we could seek to wrest it out. That seems to have some extraterritorial nuances, but it arises out of an offence committed in Canada.

However, the next section takes it one step further where it says:

> (*b*) an act or omission—

In other words, proceeds from an act or omission:

> —anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated drug offence

That, in my opinion, is a highly unusual provision; or am I all wrong?

Mr. Pollack: No, you are not. You may want to consider that one of the series of enterprise crime offences involves book-making. Clearly, you cannot be a "bookie" in Canada unless you are licenced. If you are someone who is a "bookie" where it is legal to be a "bookie", then it would appear that your proceeds of book-making, if they were in Canada, could indeed be seized, even though you broke no law in accumulating that wealth.

One can imagine, I suppose, the temptation that some law enforcers would be faced with in saying to someone: "You have unexplained wealth here. You are not working for a living and you have all these millions of dollars. Where did you get it?" The answer is that I got it at a legal bookmaking outlet in some island somewhere and, conceivably, that money would be seized as crime proceeds under this bill.

Senator Grafstein: I had something else in mind, but that is not a bad example. The scenario I had in mind was that Mr. X or Mr. Y decides he is going to leave this jurisdiction and go to a laxer jurisdiction, or tax haven. Let us use Monte Carlo as an example. He then decides that he wants to conduct business there and he conducts his stock business from there. If he had conducted that stock business in Toronto, it would have been unlawful; however, if he does it in Monte Carlo, he is not breaking the law. However, he would offend section (b) if he did that, would he not? If he makes money from a stock promotion business that is unlawful in Canada but not unlawful in Monte Carlo, he would be breaking this law?

[*Traduction*]

Lisons cependant maintenant la définition de «Produits de la criminalité» à l'article 420.1. C'est la dernière définition, à la page 4. Je vais vous la lire et vous direz si j'ai raison de m'en inquiéter:

> «Produits de la criminalité». Bien, bénéfice ou avantage qui est obtenu ou qui provient, au Canada ou à l'extérieur du Canada, directement ou indirectement:
>
> *a*) soit de la perpétration ou d'une infraction de criminalité organisée ou d'une infraction désignée en matière de drogues—

Cela paraît acceptable. En d'autres termes, jusqu'à ce que l'on arrive au bas de a), cela signifie que, où que se retrouvent les produits de la criminalité, que ce soit ici ou ailleurs, si le crime s'est produit chez nous, nous pouvons nous efforcer de récupérer ces produits. Cela semble entraîner quelques répercussions sur le plan extraterritorial, mais au départ, c'est une infraction commise au Canada.

Cependant, la suite nous fait faire un pas supplémentaire:

> *b*) soit d'un acte ou d'une omission qui, au Canada, aurait constitué une infraction de criminalité organisée ou une infractin désignée en matière de drogues.

Sauf erreur de ma part, il s'agit là d'une disposition extrêmement inhabituelle.

M. Pollack: Non, vous ne vous trompez pas. Considérons, par exemple, le book-making. Manifestement, vous ne pouvez pas être bookmaker au Canada à moins d'être titulaire d'un permis. Si vous êtes bookmaker à un endroit où cette activité est légale, il semble bien que les produits de vos activités, s'ils se trouvent au Canada, pourraient être saisis, en dépit du fait que vous n'avez commis aucune infraction à la loi en accumulant cet argent.

Je suppose qu'on peut imaginer la tentation à laquelle seraient confrontés les défenseurs de l'ordre lorsqu'ils disent à quelqu'un: «Vous avez ici des richesses dont la source est inexpliquée. Vous ne travaillez pas, et pourtant, vous avez des millions de dollars. Où les avez-vous gagnés?» La réponse est que je les ai gagnés chez un bookmaker légal dans une île quelconque. Eh bien, il est concevable que cet argent serait saisi comme produit de la criminalité en vertu de ce projet de loi.

Le sénateur Grafstein: J'avais pensé à autre chose, mais l'exemple n'est pas mauvais. Mon scénario était le suivant: M. X ou M. Y décidie de quitter cette juridiction pour aller vivre dans un endroit où les lois sont moins rigoureuses, ou dans un paradis fiscal, Monte Carlo, par exemple. Il décide alors de s'y lancer dans le commerce des valeurs boursières. S'il l'avait fait à Toronto, cela aurait été illégal; mais à Monte Carlo, il n'enfreint pas la loi. Cependant, il enfreindrait le paragraphe b) s'il le faisait, n'est-ce pas? S'il gagne de l'argent dans une entreprise de promotion des actions, qui est illégale au Canada, mais pas à Monte Carlo, il enfreindrait donc cette loi?

[*Text*]

Mr. Pollack: Yes.

Senator Grafstein: It would then constitute an enterprise crime offence in Canada?

Mr. Pollack: That is right, and the proceeds are seizable and freezable in Canada under this legislation.

Senator Doyle: But not in Monte Carlo?

Mr. Pollack: No.

Senator Doyle: You may have to leave your ill-gotten gains in Monte Carlo. Is that not the case with respect to every kind of business? People have to leave their money in Switzerland, not just because of tax avoidance but sometimes because of the currency restrictions in the country where you have earned it. For example, authors have to go to Russia in order to spend their Russian royalties, now that the Russians are aligned.

Senator Buckwold: What about the fellow who goes to Las Vegas and makes a killing at the crap tables of large amounts of money and he takes it back? Is he carrying on an illegal act in Canada and would he be subject to this bill?

Mr. Pollack: If what he did was a crime in Canada, yes. It must be a specific crime. If it is a specific crime, it is an enterprise crime offence, so you have to look at the legislation.

Senator Grafstein: In other words, if a male or female attended in a legalized house of what is repute in Nevada but ill-repute in Canada, and brought those proceeds to Canada, that certainly would be an offence under this legislation.

Senator Buckwold: So the crap shooter would be all right?

Senator Grafstein: Not necessarily, if your crap shooter was not into betting pool bookmaking.

Mr. Pollack: If he was the kind of crap shooter that is forbidden in Canada—and there are a number of requirements before you are forbidden—if you are a kind of Nathan Detroit of the game, taking a rake-off and so on, then you are committing a crime in Canada. Therefore if you are involved in that kind of activity in Las Vegas, then certainly that would constitute a crime under this legislation.

However, let me give you one example—

Senator Grafstein: Is that of concern to the bar association? I am not sure whether I am concerned about it or not. I tend to feel that if we complain of others being offensive in the reach of their sovereignty and we are doing the same thing, we should be careful not to criticize others when they do things which we ourselves are doing.

Mr. Pollack: I just want to point out to you that, despite our criticisms, this is still a seizing provision that will be subject to some kind of hearing by a judge before a disposition will be made with respect to what is to be seized.

Senator Grafstein: But that is precisely the point, though, is it not? Because a person's proceeds are seized not on the basis of a crime having been committed but on the basis of reasonable grounds that if the deed or transaction had occurred in Canada, it would have constituted a crime.

[*Traduction*]

M. Pollack: Oui.

Le sénateur Grafstein: Cela constituerait alors au Canada un crime érigé en entreprise licite?

M. Pollack: Oui, et les produits sont saisissables et gelables au Canada en vertu de la loi.

Le sénateur Doyle: Mais pas à Monte Carlo?

M. Pollack: Non.

Le sénateur Doyle: Vous serez peut-être obligé de laisser vos gains acquis à Monte Carlo. N'est-ce pas ce qui se passe, quelle que soit la nature de vos affaires? Les gens sont obligés de laisser leur argent en Suisse, pas seulement pour éviter les impôts mais parfois à cause des restrictions sur le change dans le pays où ils ont gagné cet argent. Par exemple, certains écrivains sont obligés d'aller en Russie pour y dépenser leurs droits d'auteur, maintenant que les Russes se sont alignés.

Le sénateur Buckwold: Que se passe-t-il pour celui qui va à Las Vegas, qui fait un malheur aux tables de jeu et qui ramène tout cet argent? Commet-il un acte illégal au Canada et serait-il assujetti aux dispositions de ce projet de loi?

M. Pollack: Si ce qu'il a fait était un crime au Canada, oui. Il faut que ce soit un crime précis. Dans ce cas, c'est un crime érigé en entreprise licite, et il faut donc voir ce que dit la loi.

Le sénateur Grafstein: En d'autres termes, si un homme ou une femme fréquentait une maison considérée comme de mauvaises mœurs au Canada, mais pas au Nevada, et ramenait l'argent gagné au Canada, cela constituerait indiscutablement une infraction en vertu de cette loi.

Le sénateur Buckwold: Donc, le joueur de dés s'en sortirait?

Le sénateur Grafstein: Pas nécessairement, s'il trempait dans le book-making.

M. Pollack: Si c'était le genre de joueur de dés interdit de séjour au Canada—il faut réunir un certain nombre de conditions avant que cela n'arrive—mais si vous êtes une sorte de Nathan Detroit du jeu, que vous prélevez votre part, etc., vous commettez un crime au Canada. Donc si vous avez ce genre d'activité à Las Vegas, cela constituerait indiscutablement un crime en vertu de ce projet de loi.

Laissez-moi cependant vous donner un exemple—

Le sénateur Grafstein: Est-ce que cela intéresse vraiment le Barreau? Je ne suis pas certain que cela me concerne. J'ai tendance à penser que si nous nous plaignons de ce que d'autres abusent de leur souveraineté et que nous faisons à notre tour la même chose, nous devrions éviter de les critiquer alors que nous en faisons autant.

M. Pollack: Je voudrais simplement vous faire observer qu'en dépit de nos critiques, il existe une disposition relative aux saisies qui fera l'objet d'une audition devant un juge avant qu'il soit décidé de ce que sera saisi.

Le sénateur Grafstein: N'est-ce point là précisément le problème? Après tout, les produits des activités d'une personne sont saisis non point parce qu'un crime a été commis mais parce qu'il y a des raisons valables de penser que si l'acte ou la transaction s'était produit au Canada, cela aurait constitué un crime.

[*Text*]

Senator Doyle: In other words, you cannot bring your profits home. You cannot seize those proceeds if they are kept out of the country.

Senator Grafstein: I assume that what this bill is aimed at is laundered funds. It is a major way of doing it. Therefore if someone decides he is going to deposit his money at the Royal Bank while he is conducting business in Bogota or Guatemala, the crown can go in and seize those funds. That is what this bill allows the crown to do.

Mr. Pollack: It allows the court to do it. The court must issue an order.

Senator Grafstein: Yes, it allows the judge, on reasonable grounds, to seize those funds.

Mr. Pollack: Presumably one of the first Charter challenges would be when a person says, "I did nothing illegal", someone who is, perhaps, involved in a pornographic video business where there are not the restrictions that we have in section 159.

Senator Grafstein: But that is not an enterprise offence, is it?

Mr. Pollack: Section 159 of the Criminal Code certainly is. That relates to corrupting morals.

Senator Grafstein: Yes; after reading that, I see that corrupting morals is included in that section.

Mr. Pollack: It could be a legitimate limited partnership venture in an American state where, because of state sovereignty, enforcement is quite lax. You could be a person under that section.

The Chairman: Are there any further questions? In that event, Mr. Pollack, we thank you very much. Your critique has been very helpful. We appreciate your appearing before the committee.

Senator Nurgitz: I apologize for not being here, but I have heard Mr. Pollack before.

The Chairman: Honourable senators, we will now deal with the committee's reports on Bill C-55 and Bill C-84. We will stay on the record since I think honourable senators have had an opportunity of looking at both drafts.

I want to say that I have exercised my pride of authorship and made a couple of minor adjustments to the report relating to Bill C-55.

If honourable senators will look at the final paragraph in the report with respect to Bill C-55, which is the twenty-fifth report of the committee, I am suggesting that that one long paragraph be made into two paragraphs, the first paragraph ending with the words "can not be returned there." And then I suggest that we add, for more emphasis, the following sentence: "As she has stated in the above-quoted letter, 'this policy will ensure that no claimant is put at risk in the interim'".

In the beginning of the second paragraph I am suggesting a slight amendment to the wording as follows: "The Committee is pleased that the Minister is equally concerned that the provi-

[*Traduction*]

Le sénateur Doyle: En d'autres termes, vous ne pouvez pas ramener vos profits chez vous. Vous ne pouvez pas non plus les saisir s'ils sont laissés à l'étranger.

Le sénateur Grafstein: Je suppose que ce que vise ce projet de loi, ce sont les fonds recyclés. C'est une des façons les plus courantes de le faire. Si donc quelqu'un décide de déposer son argent à la Banque royale alors qu'il fait affaire à Bogota ou au Guatémala, l'État peut saisir ces fonds. Ce projet de loi lui en donne le pouvoir.

M. Pollack: Il permet au tribunal de le faire. Le tribunal doit émettre un ordre.

Le sénateur Grafstein: Oui, cela permet au juge, pour des motifs raisonnables, de saisir ces fonds.

M. Pollack: Il est probable qu'une des premières objections en vertu de la Charte prendrait la forme suivante: quelqu'un déclarerait «je n'ai rien fait d'illégal»; il pourrait s'agir de quelqu'un qui vend des vidéos pornographiques là où les restrictions imposées par l'article 159 n'existent pas.

Le sénateur Grafstein: Mais il ne s'agit pas là d'une infraction de criminalité organisée?

M. Pollack: Cela concerne en tout cas l'article 159 du Code criminel, qui a trait à la corruption des mœurs.

Le sénateur Grafstein: Oui après l'avoir lu, je vois que la corruption des mœurs est couverte par cet article.

M. Pollack: Il pourrait s'agir d'une société en commandite légitime dans un État américain où, à cause de la souveraineté de chaque État, la loi est appliquée avec une certaine mollesse. Vous pourriez être visé par cet article.

La présidente: Avez-vous d'autres questions à poser? Puisqu'il n'y en a pas, nous tenons à vous remercier très sincèrement, monsieur Pollack. Vos critiques nous ont été très utiles. Nous nous réjouissons que vous ayiez bien voulu comparaître devant le comité.

Le sénateur Nurgitz: Je vous prie d'excuser mon absence, mais j'ai déjà entendu M. Pollack.

La présidente: Honorables sénateurs, nous allons maintenant examiner les rapports du Comité sur les projets de loi C-55 et C-84. Notre discussion continuera à faire l'objet d'un compte rendu puisque je crois que les honorables sénateurs ont pu examiner les deux textes.

Je tiens à dire que j'ai exercé mes prérogatives d'auteur et apporté une ou deux modifications mineures au rapport relatif au projet de loi C-55.

Les honorables sénateurs voudront bien maintenant se reporter au paragraphe final du rapport sur le projet de loi C-55, qui est le vingt-cinquième rapport du comité. Je propose de scinder en deux parties, dont la première se terminera par les mots suivants «ne peut pas être ramené ici.» Et je propose d'ajouter, pour lui donner plus de poids, la phrase suivante «comme l'a déclaré dans la lettre mentionné ci-dessus, cette politique évitera au plaignant de courir des risques dans l'intervalle.»

Je propose d'apporter une légère modification au libellé du second paragraphe: «le Comité se réjouit de voir que le ministre souhaite également que la disposition soit précisée de

[*Text*]

sion be clarified so that refugee claimants are not put into 'orbit'." Then we would go on to state: "As she stated in the House of Commons on 3 June 1988."

There is another mistake in that paragraph which we can deal with. It should read: "will be accepted there or will have access—".

Then it will read: "It is with this understanding that the Committee recommends adoption of the motion."

I suggest that we go off the record at this point.

(Discussion off the record.)

The Chairman: Now that we are back on the record, is it agreed that I present the twenty-fifth report as indicated?

Hon. Senators: Agreed.

The Chairman: We will now deal with the twenty-sixth report of the committee relating to Bill C-84. There will be the regular form of report, and then the two paragraphs to be added to the end of the present printed version. Apart from that reservation, are you in favour of what the twenty-sixth report says?

Some Members: Agreed.

Senator Spivak: I would like to say that there are groups out there who had wanted the Senate to stand firm.

The Chairman: I have a file full of that.

Senator Spivak: Certainly there are those in Manitoba who remain unconvinced.

The committee adjourned.

[*Traduction*]

manière à ce que les personnes qui demandent le statut de réfugié ne soient pas mises en «orbite;» ce à quoi nous ajouterions: «comme elle l'a déclaré à la Chambre des communes, le 3 juin 1988.»

Ce paragraphe contient une autre erreur que nous pouvons corriger. On devrait lire «y sera accepté ou y aura accès . . . ».

Le texte sera donc le suivant: «C'est dans cet esprit que le Comité recommande l'adoption de la motion».

Je propose qu'il n'y ait pas de compte rendu pour la discussion que nous allons maintenant avoir.

(Discussion à huis clos.)

La présidente: Maintenant que nos propos vont de nouveau faire l'objet d'un compte rendu, sommes-nous convenus que je soumette le vingt-cinquième rapport tel qu'indiqué?

Les honorables sénateurs: D'accord.

La présidente: Nous allons maintenant examiner le vingt-sixième rapport du Comité relatif au projet de loi C-84. Il y aura le rapport normal, puis les deux paragraphes qui seront ajoutés à la fin de la version imprimée actuelle. Hormis cette réserve, êtes-vous d'accord avec les conclusions du vingt-sixième rapport?

Des voix: D'accord.

Le sénateur Spivak: Je tiens à dire qu'il existe des groupes qui voulaient que le Sénat conserve une attitude ferme.

La présidente: J'en ai un plein dossier.

Le sénateur Spivak: Il y a certainement des gens au Manitoba qui ne sont toujours pas convaincus.

La séance est levée.

August 17, 1988 [Senate Standing Committee on Legal and Constitutional Affairs]

EVIDENCE

Ottawa, Wednesday, August 17, 1988

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-61, to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, met this day at 3:45 p.m. to give consideration to the bill.

Senator Joan Neiman (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are pleased to have with us this afternoon Mr. David McCombs from the Criminal Lawyers' Association. Some of you may know that he was good enough to attend in anticipation of testifying on this a few weeks ago; but then we got involved in a long session in the Senate and Mr. McCombs had to leave. He has made a special trip back to appear before the committee today, and for that we are grateful.

As you can see, we are here early today, Mr. McCombs, in compensation for your being delayed here so long on the last occasion. I will let you proceed with your presentation on Bill C-61.

Mr. David McCombs, Director, Criminal Lawyers' Association: Thank you.

Senators may not know anything about which association I represent. It is the Criminal Lawyers' Association of Ontario, which has approximately 500 members in Ontario. The views that I am expressing here today are those that are supported by the board of directors of that association. I am one of those directors.

I do not want to bore you with a big preamble of lofty observations, but I want to stress this: There is often a perception that somehow criminal lawyers are the poor cousins in the profession, that perhaps we are the ones with the least integrity, and so on. I do not think that is the perception of members of this committee. It is quite clear that that is not the case. Indeed, many of our finest jurists have been drawn from our profession.

We are not here as a knee-jerk reaction to this bill because it will probably mean that sometimes we will not get paid. We are not here for that reason at all. We are here, first, to say that the principle which says that criminals should not profit from their ill-gotten gains is one that the Criminal Lawyers' Association of Ontario endorses. We are here because, as an association of lawyers who are in court on a daily basis, we see a lot of serious practical problems with this legislation.

With great respect to the people who have drafted the legislation, and who have been kind to us in exchanging views and sharing information with us—and I want to preface my remarks by saying that—we think there are areas of this legislation that have not been carefully thought through. We think they have been vaguely drafted and that the legislation is rife with unfairness and has the potential of being unfair. It is those areas on which I would like to focus.

TÉMOIGNAGES

Ottawa, le mercredi 17 août 1988

[*Traduction*]

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles, auquel a été déféré le projet de loi C-61, Loi modifiant le Code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants, se réunit aujourd'hui à 15 h 45 pour en étudier la teneur.

La sénatrice Joan Neiman (*présidente*) occupe le fauteuil.

La présidente: Honorables sénateurs, nous sommes heureux d'accueillir cet après-midi M. David McCombs de la *Criminal Lawyers' Association*. Certains d'entre vous savent peut-être qu'il avait été assez bon de venir il y a quelques semaines pour témoigner; nous avons malheureusement ce jour-là siégé longtemps au Sénat et il a dû repartir. Il s'est déplacé de nouveau spécialement pour comparaître devant le Comité aujourd'hui et nous l'en remercions.

Comme vous pouvez le constater, nous nous réunissons tôt aujourd'hui, monsieur McCombs, pour compenser le long retard que nous vous avons imposé la dernière fois. Je vous laisserai donc présenter votre exposé sur le projet de loi C-61.

M. David McCombs, membre du Conseil d'administration, Criminal Lawyers' Association: Merci.

Il se peut que les sénateurs ne connaissent pas l'Association que je représente. Il s'agit de la *Criminal Lawyers' Association of Ontario*, qui compte quelque 500 membres en Ontario. Les opinions que je vais exprimer ici aujourd'hui sont partagées par le conseil d'administration de cette association, dont je fait partie.

Je ne voudrais pas vous ennuyer avec un long préambule d'observations condescendantes, mais permettez-moi d'insister sur un point: on perçoit souvent les criminalistes, sans trop de justification, comme les parias de la profession, comme peut-être les moins intègres, par exemple. Je ne crois pas que ce soit le cas des membres de ce Comité. C'est très évident qu'il n'en n'est pas ainsi. En fait, un grand nombre de nos meilleurs juristes ont été des criminalistes.

Notre présence n'est pas une réaction instinctive dictée par la crainte que ce projet de loi nous prive éventuellement d'une partie de nos revenus. Nous ne sommes pas ici du tout pour cette raison. Nous nous présentons devant vous pour vous dire premièrement que la *Criminal Lawyers' Association of Ontario* souscrit au principe selon lequel les criminels ne devraient pas tirer profit de leurs biens mal acquis. Nous sommes ici à titre de représentants d'une association d'avocats qui plaident en cour tous les jours et qui appréhendent que ce projet de loi n'entraîne un tas de problèmes pratiques de taille.

Avec tout le respect que nous devons aux rédacteurs de ce projet de loi, qui ont eu l'amabilité d'échanger avec nous des points de vues et des renseignements—et je dis cela en guise d'introduction—nous estimons que certaines parties de ce projet de loi n'ont pas été examinées dans leurs menus détails. Nous croyons que celles-ci ont été vaguement rédigées, que la mesure législative est parsemée d'injustices et qu'elle risque d'être inéquitable. C'est sur ces points que j'aimerais insister.

[*Text*]

This legislation has, as its purpose, from there is the way I read it, two things: First, the preservation of property, which the state thinks was obtained by crime, pending the determination in court of the question of guilt. That is its first purpose, namely, to hang onto the property until it is known whether the guy that is thought to be a crook is found really to be a crook. Secondly, if it is proved that he is a crook and that the property came from his crimes, then the property will be taken away from him.

Our association has no quarrel with those objectives. They are valid federal objectives and we would fools to come here to try to suggest otherwise. However, this legislation goes beyond those objectives for the reasons I have stated, namely, that they are vague and potentially unfair.

I know how busy members of the Senate are, and I am not so naive as to think that you have all spent hours in preparation for my attendance here today, but Mr. Gold, who also is a director of the Criminal Lawyers' Association, appeared on April 14 before the House of Commons legislative committee on Bill C-61 and made a number of submissions on behalf of the Criminal Lawyers' Association.

I do not propose to go over the same ground again. If members of this committee are interested in those submissions, I have them here. I will probably be referring to them from time to time, but I realize that this week, for example, you have had a visit from the Ottawa Defence Lawyers' Association, and you have had written submissions from the Canadian Bar Association. So I will try not to go over the same turf again and will try to make as much use of the time that I have as I can.

There were specific criticisms levelled at that time. Some of those criticisms have been answered by Mr. McIsaac and others in informal discussions. So we will not deal with some of them. But we raised some fundamental problems. Quite frankly, in our view the, changes that were made to the bill after April 14 were so minor that they were just window dressing, with the possible exception of the legislation dealing with kicking out the Crown when you go in to talk to the trial judge about what you should be paid or whether you should be paid out of the money that has been restrained. It was important that the Crown not be present.

Since the amendments have already been made I will not waste a lot of time on it, but it is fundamental that the communications made by a client to his lawyer be privileged. If those communications have to be disclosed in circumstances where your opponent in a courtroom will know them, the whole system will not work. So that change was extremely important.

I am jumping ahead of my notes here. If you will bear with me when I pause, it is probably saving you a lot of talk by me.

[*Traduction*]

Après avoir lu ce projet de loi, j'en dégage deux objectifs: premièrement, le projet de loi veut assurer la protection des biens qu'on présume avoir été acquis avec le produit d'une infraction criminelle en attendant que le tribunal se soit prononcé sur la culpabilité de l'accusé. C'est là son premier objectif, à savoir, garder les biens tant qu'il n'a pas été déterminé que le présumé escroc a bel et bien été reconnu comme tel. Deuxièmement, s'il est prouvé que cette personne est un escroc et que les biens proviennent de la perpétration d'une infraction criminelle, ils peuvent alors être confisqués.

Notre association n'a rien à rédire à ces objectifs. Il s'agit d'objectifs valables de la loi fédérale et nous serions stupides de venir ici pour tenter de laisser croire qu'il en est autrement. Cette mesure législative outrepasse toutefois ses objectifs pour les raisons que j'ai données, à savoir, parce qu'ils sont vagues et risquent d'être injustes.

Je sais combien les sénateurs sont occupés et je ne suis pas assez naïf pour croire que vous avez tous passé des heures à vous préparer à ma venue ici aujourd'hui, mais M. Gold, qui est également membre du conseil d'administration de la *Criminal Lawyers' Association*, a comparu le 14 avril devant le Comité législatif des Communes chargé du projet de loi C-61 et a fait un certain nombre de recommandations au nom de la *Criminal Lawyers' Association*.

Je n'ai pas l'intention de les reprendre ici. Si les membres de ce comité sont intéressés à en prendre connaissance je les ai ici. Je m'y référerai probablement de temps à autre, mais je me rends compte que cette semaine, par exemple, vous avez reçu un représentant de la *Ottawa Defence Lawyers' Association* ainsi que des mémoires de l'Association du Barreau canadien. J'essaierai donc de ne pas reprendre les mêmes questions et d'utiliser le mieux possible le temps que vous me consacrez.

Des critiques précises ont déjà été formulées. M. McIsaac et d'autres personnes ont répondu à certaines d'entre elles dans le cadre de discussions non officielles. Nous en laisserons donc quelques-unes de côté. Nous avons toutefois soulevé quelques problèmes fondamentaux. En toute franchise, selon nous, les changements qui ont été apportés au projet de loi après le 14 avril étaient à ce point mineurs qu'ils n'étaient qu'une façade à l'exception peut-être de la disposition prévoyant le retrait de l'avocat de la poursuite lorsque vous allez vous entretenir avec le juge pour discuter de la somme qui devrait vous être être versée ou pour lui demander si vous devriez être rémunéré au moyen de l'argent qui a été retenu. Il était important que la poursuite ne soit pas présente.

Comme les modifications ont déjà été apportées, je n'y consacrerai pas beaucoup de temps, mais il est essentiel que les communications entre un client et son avocat demeurent confidentielles. Si ces communications doivent être divulguées en présence de votre adversaire au tribunal, tout le système s'enfondrera. Ce changement revêtait donc une très grande importance.

Je saute plusieurs pages de mes notes ici. Si vous êtes patients lorsque je m'arrête, cela vous évitera probablement beaucoup de verbiage de ma part.

[*Text*]

I propose to go through the legislation and deal with the sections on a clause-by-clause basis where we have major concerns.

Clause 420.11 is what could be called the money laundering section. Arguably, it does not mean anything more than is already found in section 312 of the Criminal Code, which is the section that says that if you are in possession of property obtained by crime you are guilty of a crime yourself. This is another way of saying it. Our concern is with respect to this concept of dual criminality to which I hope that this committee will give careful consideration.

What the clause said in paragraph (b) is that if there was an act or omission which, if it had occurred in this country would be a crime, then the property is forfeitable.

Concerning this we say, that if a person arrives in Canada with property or money that he or she has obtained lawfully in the country of his or her origin in circumstances where, if that had been the case in Canada it would be a crime, that property can be forfeited.

I guess the examples you have already heard are those of the owner of a brothel from Nevada, where the brothel is lawful; the dealer in erotic material from Copenhagen, where material that would be obscene by our standards is lawful in that country; or perhaps, more innocuously, the proprietor of a bookmaking outfit from England, where that activity is lawful, who comes here with his money. This legislation permits the state to go after it. That turns our idea of fairness on its head.

This was one of our most firmly held concerns when Mr. Gold appeared before the committee of the House of Commons.

A number of recent decisions of the Supreme Court of Canada talk about the fact that where legislation is potentially unfair, it must then be struck down whether or not it is unfair in connection with the circumstances of the particular case before the court. If the authorities are saying, "Trust us, we will not do that," then, in my respectful submission, that is not good enough. It is there, the legislation permits it, and it is wrong.

The concept of dual criminality is not unique—I am not the first one to dream it up, by any means. You cannot extradite someone to another country to face a crime which is not one that we recognize here. If a person is here and is wanted in Iran, where he will be beheaded for theft, we will not send him there. We require that that country respect our laws. What we are suggesting here is really the flip side of that, in my submission.

As I understand the answer the government makes, it is along these lines. It says, "Come on, McCombs, this idea is nothing new. It is found in section 312." Section 213 is, of course, existing legislation and says:

> 312. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from . . .

[*Traduction*]

Je propose donc que nous examinions la mesure législative et que nous étudiions les articles qui nous posent des problèmes importants un à un.

L'article 420.11 est ce que l'on pourrait appeler l'article ayant pour objet de "blanchir l'argent". On peut soutenir qu'il ne veut rien dire d'autre que ce que l'on trouve déjà à l'article 312 du Code criminel, qui dispose que le fait d'être en possession de biens criminellement obtenus vous rend vous-même coupable d'un crime. C'est une autre façon de le dire. Ce qui nous inquiète, c'est ce concept de double criminalité sur lequel, j'espère, ce comité se penchera attentivement.

Ce que dit l'article à l'alinéa /b/) c'est que s'il s'agissait d'un acte ou d'une omission qui, au Canada, aurait constitué un crime, les biens sont alors confiscables.

À cet égard, nous soutenons que si une personne arrive au Canada avec des biens ou de l'argent qu'elle a obtenus légalement dans son pays d'origine, dans des circonstances où, au Canada, on aurait jugé que leur acquisition constituait une infraction, ces biens peuvent être confisqués.

Je suppose que les exemples qu'on vous a déjà donnés sont ceux du propriétaire de bordel du Nevada, où ce genre d'établissement est légal; le vendeur de matériel érotique de Copenhague où le matériel que l'on considérerait obscène au Canada serait légal dans ce pays; ou peut-être, plus innocemment, le preneur aux livres venant d'Angleterre, où cette activité est légale, qui vient ici avec son argent. Cette mesure législative permet à l'État de courir après cette personne. Voilà qui bouleverse notre conception de la justice.

Il s'agissait de l'une de nos principales préoccupations lorsque M. Gold a comparu devant le Comité de la Chambre des communes.

Un certain nombre de décisions récentes de la Cour suprême du Canada parlent du fait que lorsque la mesure législative risque d'être injuste, il faut alors déterminer si elle est injuste par rapport aux circonstances entourant l'affaire que le tribunal doit juger. Si les autorités disent: «Fiez-vous à nous, nous ne ferons pas cela», alors, avec tout le respect que je vous dois, ce n'est pas suffisant. C'est là, la loi le permet, et c'est mal.

Le concept de la double criminalité n'est pas unique—je ne suis pas le premier à l'imaginer, pas le moins du monde. On ne peut extrader une personne dans un autre pays pour un crime que nous ne reconnaissons pas ici. Si une personne est ici et est recherchée en Iran, où elle sera décapitée pour vol, nous ne l'enverrons pas dans ce pays. Nous exigeons que ce pays respecte nos lois. Ce que nous proposons ici est vraiment le contraire de cela, à mon avis.

Si je comprends, le gouvernement répond de la façon suivante. «Allez, McCombs, ce concept n'est pas nouveau. On le trouve déjà à l'article 312 du Code criminel.» Voici quelle est la teneur de l'article 312 actuellement en vigueur:

> 312. (1) Commet une infraction, quiconque a en sa possession un bien, une chose ou leur produit sachant que tout ou partie d'entre eux ont été obtenus . . .

[Text]

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

In effect, the government is saying that because we already have that kind of provision in other sections of the code, there is nothing wrong with putting it in here.

Our point of view is that 312(1)(b) is unconstitutional. It has not been used, to my knowledge, and therefore the issue as to its constitutionality has not been decided. I will concede that the authorities do not use this particular section very often, if ever, but what I am saying to the members of this committee is: Let us not compound the problem by putting another unconstitutional provision into the Criminal Code.

Also, I would ask the committee to instruct its employees and research staff to study this particular area carefully and determine whether or not the arguments against its constitutionality are strong ones. I am respectfully of the view that members of the committee will come to the conclusion that it is unconstitutional and should be discarded. Therefore, I suggest that we not include it in this bill. There is no need for it, in any event.

Senator Stanbury: I am sorry, but when you say there is no need for it, what do you mean by that?

Mr. McCombs: I cannot imagine circumstances in which legislators would want to grab property that someone had obtained lawfully in another country. I do not know that the legislators would want to see that. On the other hand, I can imagine prosecutors wanting to see that happening. However, if it is not part of the legislative intention, then why put it in?

Senator Spivak: Can you tell me the rationale behind that statement? Why would the prosecutors want to have it there? What is the rationale?

Mr. McCombs: I am not sure that I am the right person to ask, because quite frankly I would be speculating. I have never really looked at the situation from that point of view.

Senator Spivak: I figure that there must be an argument on the other side.

Mr. McCombs: I suppose one of the arguments is the one that Mr. McIsaac put to me during a discussion that we had earlier today. He said: "Suppose you had a country such as Columbia, where a military coup occurs; suppose further that you then have a corrupt military government in that country that includes drug dealers, that the government repeals all of its drug legislation, and then some drug warlord shows up in Canada with billions of dollars and wants to set up shop here." I think Mr. McIsaac would ask rhetorically: "Would we want to let him do that, or would we want to seize his property?"

I concede that hypothetically that kind of thing could happen. However, I think it is such a remote possibility that if it ever did happen, a special law could be enacted to deal with it. In my opinion, there are existing laws in place that could deal

[Traduction]

b) par une action ou omission en quelque endroit que ce soit, qui aurait constitué, si elle avait eu lieu au Canada, une infraction punissable sur acte d'accusation.

De fait, le gouvernement a tout simplement conclu qu'étant donné que cette disposition existe dans d'autres parties du Code, elle pouvait fort bien figurer ici.

Or, à notre avis l'alinéa 312(1)*b*) est anticonstitutionnel. Pour autant que je sache, il n'a jamais été invoqué et sa constitutionnalité n'a jamais été confirmée. Bien sûr, les autorités n'ont pas fait appel très souvent à cette disposition, si seulement c'est arrivé, mais mon point de vue est le suivant: Ne compliquons pas les choses en introduisant une autre disposition anticonstitutionnelle dans le Code criminel.

Par ailleurs, j'inviterais le comité à demander à ses recherchistes d'examiner cette question attentivement pour déterminer si les arguments mettant en doute sa constitutionnalité sont bien fondés. En toute déférence, je suis convaincu que les membres du Comité concluront que la disposition est invalide et qu'elle ne devrait pas être retenue. Voilà pourquoi, à mon avis, elle ne devrait pas figurer dans le projet de loi. Du reste, on peut fort bien s'en passer.

Le sénateur Stanbury: Je n'excuse, mais quand vous dites qu'on peut bien s'en passer, que voulez-vous dire au juste?

M. McCombs: Je ne peux imaginer aucune circonstance où le législateur voudrait qu'on se saisisse d'un bien que quelqu'un se serait procuré légalement dans un autre pays. Je doute que ce soit là l'intention du législateur. Par contre, il est facile d'imaginer que des procureurs souhaiteraient le faire. Cependant, si telle n'est pas l'intention du législateur, pourquoi mettre cette disposition?

Le sénateur Spivak: Pouvez-vous m'en donner la raison? Pourquoi des procureurs voudraient-ils se prévaloir d'une telle disposition? Quelle en est la raison?

M. McCombs: Je ne sais pas si je suis en mesure de répondre à votre question, parce que je ne peux que vous livrer des spéculations. Je n'ai jamais examiné la situation de ce point de vue.

Le sénateur Spivak: Il doit y exister un argument à l'appui.

M. McCombs: Je suppose que l'on pourrait invoquer l'argument que M. McIsaac m'a exposé plus tôt aujourd'hui. Il m'a dit ceci: Supposons qu'il se soit produit un coup d'État dans un pays, en Colombie, par exemple; supposons également qu'un gouvernement militaire corrompu s'installe au pouvoir dans lequel on retrouve des trafiquants de drogues, et que ce gouvernement annule toutes ses lois anti-drogue; supposons également que l'on voie arriver au Canada un de ces barons de la drogue désireux de fonder un commerce ici. Je pense que la question hypothétique de M. McIsaac est la suivante: est-ce que nous le laisserions faire, ou est-ce que nous devrions confisquer ses biens?

Bien sûr, c'est une situation hypothétique que l'on peut imaginer. Je pense qu'il s'agit là d'une possibilité très faible et que si jamais cela arrivait, il serait toujours possible de voter une mesure spéciale. À mon avis, il existe déjà des lois en vigueur

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with a situation such as that, and we could throw him out. I frankly cannot think of any other situations in which this provision could be applied.

The Chairman: Perhaps I should give you one. There is one example contained in the briefing notes that have just been prepared, although they have not yet been translated. This is really a summary of the evidence that was given before the legislative committee on this particular question of double criminality. The question was obviously put to the minister on his appearance before that committee and the notes read as follows:

> Mr. Hnatyshyn asserted that section 312 of the Criminal Code had a similar provision, and that it had not been used to apprehend people. He pointed out that it is conceivable that a South American government could repeal all of its drug control legislation. The proceeds from those activities would not be forfeitable in Canada if the bill were changed to require the activity to be a crime in the country where it took place.

Senator Spivak: Madam Chairman, could you repeat that? "The proceeds would not be recoverable . . . "?

Mr. McCombs: They would not be recoverable if that provision was taken out of the bill.

The Chairman: Mr. Hnatyshyn is saying that if we removed this section, we would then not be able to seize all of these proceeds.

Senator Stanbury: All we could do is throw the man out of the country.

Senator Spivak: But, surely, the point is that we are not entitled to that money in any event. What we are entitled to do is to prosecute the man if he continues his activities here.

The Chairman: Yes, in Canada.

Senator Spivak: Yes, but it cannot be the case that we are ever entitled to the money.

The Chairman: I would agree with you, senator.

Senator Spivak: It does not make any difference whether it is a bad or good example, they both mean the same.

Mr. McCombs: For my money, the argument that the government presents on this point just does not wash with me. Perhaps it will with members of the committee, but I do not see it.

Senator Stanbury: In any event, if we are to tailor our law to deal with every hypothetical possibility, not just in this case but in all of the other cases that one might think of, it would destroy what we know as a body of law that we have come to depend upon. If we start to attempt to deal with every hypothetical question, we simply destroy the basic principles of our own law.

Mr. McCombs: I do not quarrel with that at all, senator. I concede that that is the case. I suppose what I am trying to say is that you do not need subsection (b) to further the principles

[*Traduction*]

qu'on pourrait invoquer en de pareilles occasions et qui nous permettraient d'expulser notre milliardaire. Honnêtement, il m'est impossible d'imaginer d'autres situations où cette disposition pourrait s'appliquer.

La présidente: Peut-être que je pourrais vous en donner une. On cite un exemple dans les notes d'information qu'on nous a préparées mais qui n'ont pas encore été traduites. En fait, c'est le résumé de témoignages entendus par le Comité législatif en ce qui concerne la double criminalité. La question avait été posée au ministre lors de son témoignage et je vous lis un passage des notes:

> M. Hnatyshyn a affirmé que l'article 312 du Code criminel incluait une disposition semblable, qui n'avait jamais servi pour appréhender quelqu'un. Il a dit qu'il était inconcevable qu'un gouvernement d'Amérique du Sud supprime toute sa législation anti-drogue. Les recettes de ce genre d'activités ne pourraient être confisquées au Canada si on modifiait le projet de loi de manière à exiger que les activités en question constituent un délit criminel dans le pays où elles se sont déroulées.

Le sénateur Spivak: Madame la présidente, pouvez-vous répéter cela? «Les recettes ne seraient pas récupérables . . .»

M. McCombs: Elles ne seraient pas récupérables si cette disposition disparaît du projet de loi.

La présidente: M. Hnatyshyn affirme que si nous supprimons cette disposition, il nous serait alors impossible de confisquer le fruit de ces activités.

Le sénateur Stanbury: Tout ce que nous pourrions faire serait d'expulser le personnage.

Le sénateur Spivak: Mais bien sûr, car nous n'avons pas droit à cet argent de toute manière. Nous pouvons seulement poursuivre ce personnage s'il reprend ses activités ici.

La présidente: Oui, au Canada.

Le sénateur Spivak: Oui, on ne pourra jamais dire que nous aurions le droit de garder l'argent.

La présidente: Je partage votre avis, sénatrice.

Le sénateur Spivak: Qu'importe s'il s'agit d'un bon ou d'un mauvais exemple, les conclusions sont les mêmes.

M. McCombs: En ce qui me concerne, l'argument que le gouvernement fait valoir à ce sujet ne me convainc pas. Peut-être qu'il convaincra les membres du Comité, mais pas moi.

Le sénateur Stanbury: Quoi qu'il en soit, si nous devons confectionner nos lois de façon à prévoir toutes les situations hypothétiques, non seulement dans ce cas-ci, mais pour toutes les autres que nous pourrions imaginer, ce serait une façon de mettre en cause l'importance que nous attachons à nos lois. Si nous essayons de tenir compte de toutes les situations possibles, c'est le fondement même de la loi qui est remis en question.

M. McCombs: Je n'en doute pas, sénateur. Cela ne fait aucun doute. En somme, il n'est pas nécessaire de recourir à l'alinéa (b) pour affirmer les principes sur lesquels repose notre droit criminel. Non ce n'est pas nécessaire.

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upon which our criminal law is founded. You just do not need it there.

The Chairman: I think we will have to deal with this, honourable senators. You will receive a copy of this summary in any event and then we will speak to the officials and to the minister in due course with regard to that particular subsection, because obviously it is of considerable importance.

Mr. McCombs: Madam Chairman, the next point that I wanted to deal with is less important than many of the others, but it is next in order, so I will deal with it now. It is a small point but one that I submit is significant. Clause 420.12(1) is the clause that authorizes a judge to issue a warrant to allow a peace officer to go and seize property at a particular location. The clause requires:

> . . . that there are reasonable grounds to believe that there is in any building, receptacle or place any property in respect of which an order of forfeiture may be made . . .

and so on. The part that we are mainly quarrelling with is contained in the last four lines of that subsection where it says:

> . . . and any other property in respect of which that person or peace officer believes, on reasonable grounds, that an order of forfeiture may be made under that subsection.

A wrong-minded police officer—and I think it is fair to say that such police officers do exist—could obtain a warrant from a judge to seize particular items that, on reasonable grounds and to the satisfaction of the judge, should be seized. He goes in front of the judge and says: "Judge, we think this particular person has this much money under his mattress in his house that he obtained through drug dealing and we want to go and get it. We think that is so because we have heard on the wiretap that that is where he hides it." The police officer then obtains his search warrant under this section. However, when he arrives at the premises, he sees a television set and a whole host of other things. He then gets a truck and pulls up in front of the house with two or three other police officers and loads the truck with everything that the man owns, right down to his jockey shorts.

A police officer in such circumstances should be made to go back to the judge and obtain a warrant for all of the items that he intends to seize, and the best way to deal with that situation is to take that part right out of that subsection. There is no need for it to be there. The reason it is included is to make the police officer's job a little easier. In special cases where there is significant property seen by the police officer on the premises, the premises can be secured during the period of time that it takes to go back, see the judge and ask for a further warrant to seize the gold bars or whatever the police officer found in the house.

Believe you me, Madam Chairman—and I say this with respect—the police will read that legislation and they will say to themselves: "This means we can pretty much do what we like. Once we get that warrant, we can take anything that we think was obtained as the proceeds of crime. Mr. X has not done an honest day's work in the last ten years, therefore we

[Traduction]

La présidente: Je pense qu'il faudra régler cette question, honourables sénateurs. On vous remettra sûrement une copie de ce résumé et ensuite, nous saisirons en temps et lieu les fonctionnaires et le ministre de cet aspect particulier, car cela en vaut sûrement la peine.

M. McCombs: Madame la présidente, la prochaine question que je veux aborder est moins importante que beaucoup d'autres, mais comme elle est la prochaine sur la liste, je vais vous en parler tout de suite. Ce n'est qu'un détail, mais je crois qu'il en vaut la peine. Le paragraphe 420.12(1) permet à un juge de décerner un mandat autorisant un agent de la paix à saisir des biens dans un lieu donné. Cette disposition exige:

> . . . qu'il existe des motifs raisonnables de croire que des biens pourraient faire l'objet d'une ordonnance de confiscation . . . et se trouvent dans un bâtiment, contenant ou lieu . . .

. . . et le reste. Ce qui nous préoccupe surtout, ce sont les quatre dernières lignes du paragraphe, soit:

> . . . ainsi que tout autre bien dont cette personne ou l'agent de la paix a des motifs raisonnables de croire qu'il pourrait faire l'objet d'une telle ordonnance.

Un policier mal avisé, et je pense pouvoir dire en toute honnêté que ce genre de policier existe, ce policier pourrait donc obtenir d'un juge un mandat l'autorisant à saisir certains biens, s'il a des motifs raisonnables de croire que ces biens devraient être saisis et que le juge en soit convaincu. Il lui suffit de se présenter devant le juge et de lui dire: «Votre Honneur, nous pensons que cet individu cache sous son matelas de l'argent qu'il a obtenu par des transactionsd liées à la drogue; nous voulons nous rendre chez lui pour mettre la main sur cet argent. Nous pensons l'y trouver car l'écoute téléphonique nous a appris que c'est là sa cachette.» Le policier obtient alors un mandat de perquisition aux termes de cette disposition. Cependant, lorsqu'il arrive sur les lieux, il voit un téléviseur et une foule d'autres objets. Il va alors chercher un camion qu'il ramène devant la maison; avec deux ou trois collègues, il peut charger le camion de tout ce que possède l'individu, jusqu'à ses caleçons.

Dans de telles circonstances, le policier devrait être tenu de se présenter à nouveau devant le juge afin d'obtenir un mandat pour tous les articles qu'il compte saisir; la meilleure solution en ce cas serait de supprimer ce membre de phrase du paragraphe. Il est inutile de l'y laisser. Il s'y trouve simplement pour faciliter le travail des policiers. Si une fois sur place le policier trouve une quantité de biens, on peut garder les lieux le temps qu'il retourne demander au juge un mandat l'autorisant à saisir les lingots d'or ou autre biens qu'il aura trouvés dans la maison.

Croyez-moi, madame la présidente, et je dis cela avec tout le respect que je leur dois, les policiers liront le projet de loi et l'interpréteront ainsi: «Le projet de loi nous laisse beaucoup de latitude. Une fois que nous avons obtenu le mandat, nous pouvons prendre tout ce que nous croyons être des produits de la criminalité. Au cours des dix dernières années, M. X n'a

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think that everything he owns has been obtained with the proceeds of crime, so we are going to take everything he owns." In my submission it is not necessary, and I would ask members of the committee to seek from advisers to the committee a good reason why that provision needs to be there.

The next point was dealt with by the people, but it was bothersome to the board of directors of the association. Proposed subsection 420.12(4) says that when a warrant is executed under this section you must give a copy of the warrant upon request to the person from whom the property is seized. It is the "on request" part that I do not like because, bureaucracy being what it is, you can get the run-around. I am not suggesting sinister motives on the part of individuals, but I can envisage a circumstance where you would hear, "Oh, that is not my job; talk to so and so." The owner of the property should receive a copy as of right within about two weeks. For example, when a policeman wants a search warrant, he must swear out an affidavit and go before a judge and say, "I want to search Joe Blow's car. Here is a sworn affidavit telling you why I want to do so." The courts have now said that we are entitled to that affidavit, that we cannot make full answer in defence unless we have that affidavit. However, trying to get that affidavit is like pulling hen's teeth. No one wants to give it to you, and it takes hours of our time to get it. It is not fair. Please do not put that provision in this legislation. Why cannot the authorities just give us the damn thing?

The Chairman: Are you suggesting that the provision should read "shall be provided?"

Mr. McCombs: Yes. There may be times when the authorities will say, "It might prejudice our investigation." For example, a drug dealer may be in Peru, and you do not want him to know that you have just cleaned out his safety deposit box because you are waiting for him to come back to arrest him. In answer to that possibility, I suggest we add words such as "except in circumstances where the judge is satisfied that it is not in the interests of justice."

Next I would like to deal with proposed section 420.13, the restraining order problem. The practical effect is that once the warrant is executed a restraining order can be issued, which effectively ties up the property until a determination of guilt or innocence is made. The standard which must be met before that property can be tied up is too low. The judge need only be satisfied that there are reasonable grounds to conclude that the property is property in respect of which a forfeiture could be made. The judge need merely ask of himself or herself, "Are there reasonable grounds to believe that a forfeiture could be made?" If it is felt that there are reasonable grounds, the judge is empowered to tie up millions of dollars of property over very extended periods of time. Granted the bill contains

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jamais fait une journée de travail honnête; en conséquence, nous croyons qu'il a obtenu tout ce qu'il possède grâce aux produits de la criminalité; nous allons donc saisir tous ses biens.» À mon avis, cette disposition est inutile, et j'invite les membres du comité à demander à leurs conseillers de leur fournir une bonne raison justifiant son inclusion.

Le prochain point dont je vais parler a déjà été abordé par d'autres, mais il préoccupe le conseil d'administration de l'Association. Le paragraphe 420.12(4) du projet de loi dispose que lorsqu'on exécute un mandat décerné en vertu de cet article, il faut remettre, sur demande, un exemplaire du mandat à la personne dont les biens sont saisis. C'est l'expression «sur demande» qui me gêne, car l'appareil gouvernemental étant ce qu'il est, on obtient parfois des réponses évasives. Je ne dis pas que les fonctionnaires ont de sinistres intentions, mais j'imagine très bien une situation où l'on dirait: «Oh, ce n'est pas mon travail; adressez-vous plutôt à un tel ou un tel.» Le propriétaire des biens devrait recevoir son exemplaire dans les deux semaines qui suivent ou à peu près. Ainsi, lorsqu'un policier veut obtenir un mandat de perquisition, il fait une déclaration par écrit sous sermet, se présente devant un juge et lui explique qu'il veut fouiller la voiture de Jean Tremblay. Il lui présente sa déclaration sous serment, laquelle explique les raisons pour lesquelles il veut agir ainsi. Les tribunaux ont maintenant établi que nous avons le droit d'obtenir cette déclaration écrite sous serment et que nous ne pouvons présenter une défense complète à moins d'avoir cette déclaration. Cependant, essayer d'obtenir cette déclaration équivaut à chercher une aiguille dans une botte de foin. Personne ne veut vous la remettre et il faut des heures pour l'obtenir. C'est injuste. De grâce, ne laissez pas cette disposition dans le projet de loi. Pourquoi diable les autorités ne peuvent-elles pas nous donner simplement ce que nous leur demandons?

La présidente: Voulez-vous dire qu'il faudrait reformuler la disposition en précisant que cet exemplaire «doit être remis»?

M. McCombs: Oui. Les autorités diront peut-être, en certaines occasions, que cela pourrait nuire à leur enquête. Prenons l'exemple d'un trafiquant de drogue qui se trouve au Pérou; on ne veut pas qu'il sache que l'on vient de vider son coffre à la banque car on attend son retour pour l'appréhender. Pour parer à ce genre d'éventualité, je propose d'ajouter le membre de phrase suivant: «sauf dans des circonstances où le juge est convaincu que cela n'est pas dans l'intérêt de la justice».

J'aimerais maintenant parler de l'article 420.13 c'est-à-dire du problème des ordonnances de blocage. Dans les faits, une fois qu'un mandat est exécuté, une ordonnance de blocage peut-être rendue; celle-ci gèle les biens jusqu'à ce qu'un verdict de culpabilité ou d'innocence soit rendu. Le critère à respecter pour que les biens puissent être gelés n'est pas assez rigoureux. Le juge doit simplement être convaincu qu'il existe des motifs raisonnables de croire que les biens peuvent faire l'objet d'une confiscation. Il doit simplement se demander s'il y a des motifs raisonnables de croire que l'on puisse procéder à une confiscation. Si c'est le cas, il peut geler pendant de très longues périodes des biens d'une valeur de plusieurs millions de dollars. Il est vrai que le projet de loi contient d'autres disposi-

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other provisions which allow the order to be varied. I am saying that the test should be made on the balance of probabilities and not on the test of whether or not there are reasonable grounds. We have made this submission already, and I have been told it has been studied and rejected. Our association wishes to place on record the fact that there is the potential for grave unfairness. For example, the substantial assets of a business could be tied up for a very extended period of time on this very low test of whether or not there are reasonable grounds for forfeiture. We suggest that there be a hearing where evidence is presented and upon which the judge must decide whether on the balance of probabilities the restraining order will be issued. If the balance of probabilities indicates that the order will be issued, then by all means tie the property up, but do not tie up the property simply because a police officer steps into a witness box and provides merely reasonable grounds.

There is a hierarchy of burden in criminal law. There is the business of reasonable grounds to believe, which is what is in the existing legislation, when it comes to search and seizure, and then there is the idea of the balance of probabilities. Some of the statutory presumptions talk about balance of probabilities. Our law is clear that before you can impose criminal sanctions there must be proof beyond reasonable doubt. We are not suggesting that there should be proof beyond reasonable doubt, but that there should be, at least, a balance of probabilities.

With respect to notice of the restraining order, once again, the other side has the option of giving notice. A judge may require that notice be given unless it would result in dissipation of evidence. I would ask that the provision be put the other way around and say that it is mandatory to give notice except where certain conditions precedent are met. In other words, put the onus on the other side to satisfy the judge that notice should not be given. I can envisage situations where an individual learns months later that he is the subject of a restraining order. For example, he might show up at his safety deposit box only to find that he cannot open it and to learn that there has been a hearing. I can see cases where it would be in the interests of justice not to tell the other side. For example, there may be the concern that the individual will run off with the money, or whatever. However, let us put the onus on the investigators to satisfy a court that that notice provision should be met.

The next provision is kind of complicated. I refer to proposed subsection 420.14(6), which deals with how you vary restraining orders. There are two situations in which a judge can vary a restraining order. Let us say that a person has been charged with one of the enumerated criminal offences. In this circumstance, to get a variation, you have to satisfy the judge that the warrant should not have been issued or that the restraining order should not have been made. The second circumstance is where a person appears to be innocent. In other words, a third party is affected and says, "I did not know anything about the property being from the proceeds of crime." If the person appears to be innocent, then the judge does not have to be satisfied that the warrant should not have been issued.

[*Traduction*]

tions permettant de modifier l'ordonnance. Ce que je veux dire, c'est que le critère devrait être celui de la prépondérance des probabilités et non celui des motifs raisonnables. Nous avons déjà présenté une proposition en ce sens; on m'a dit qu'elle avait été étudiée et rejetée. Notre association tient à souligner, aux fins du compte rendu, les risques de graves injustices. Ainsi, les énormes actifs d'une entreprise pourraient être bloqués pendant très longtemps si le critère à respecter consiste simplement à déterminer s'il y a ou non des motifs raisonnables de confisquer les biens. Nous proposons la tenue d'une audience au cours de laquelle des témoignages seront présentés et à l'issue de laquelle le juge devra décider, selon la prépondérance des probabilités, s'il rendra une ordonnance de blocage. Si, selon la prépondérance des probabilités, une ordonnance doit être rendue, on pourra alors bloquer les biens sans hésitation, mais pas simplement parce qu'un policier vient à la barre des témoins présenter des motifs raisonnables.

Il y a une hiérarchie du fardeau de la preuve en droit pénal. Il y a le principe des «motifs raisonnables de croire», sur lequel s'appuie le projet de loi à l'étude, lorsqu'il est question de perquisitions et de saisies, et celui de la prépondérance des probabilités, sur lequel s'appuient certaines lois. Notre droit est clair: avant de pouvoir appliquer des sanctions pénales, il faut avoir des preuves au-delà de tout doute raisonnable. Nous ne préconisons pas la preuve au-delà de tout doute raisonnable. Nous ne préconisons pas la preuve au-delà de tout doute raisonnable, mais au moins la preuve selon la prépondérance des probabilités.

Parlons maintenant des avis concernant l'ordonnance de blocage; une fois encore, l'autre partie a le choix de donner ou non cet avis. Le juge peut demander qu'on avise la personne en cause sauf s'il estime que le fait de donner cet avis risque d'occasionner la disparition des preuves. Selon moi, la disposition devrait être inversée et stipuler qu'il est obligatoire de donner cet avis sauf dans certaines circonstances. En d'autres termes, c'est l'autre partie qui devrait avoir à convaincre le juge de l'inopportunité de donner un avis. Imaginez qu'un individu apprenne des mois plus tard qu'il est sous le coup d'une ordonnance de blocage. Il pourrait, en se rendant à sa banque, découvrir qu'il ne peut ouvrir son coffret et apprendre qu'il y a eu une audience. Je conçois que, dans certains cas, il soit dans l'intérêt de la justice de ne pas en informer l'autre partie. On pourrait, par exemple, craindre que l'individu prenne la fuite avec l'argent, etc. Laissons toutefois aux enquêteurs la charge de convaincre le tribunal au sujet de ces avis.

La prochaine disposition dont je veux parler est assez compliquée. Il s'agit du paragraphe 420.14(6), qui traite de la façon dont on modifie une ordonnance de blocage. Un juge peut modifier ce genre d'ordonnance dans deux situations. Si une personne est accusée d'une infraction criminelle désignée, il faut, pour obtenir une modification, convaincre le juge que le mandat n'aurait pas dû être délivré ou que l'ordonnance de blocage n'aurait pas dû être rendue. La deuxième situation est celle où une personne semble innocente, en d'autres termes, celle où un tiers est en cause et déclare qu'il ne savait pas que les biens étaient des produits de la criminalité. Si la personne semble innocente, le juge n'a pas à être convaincu que le mandat n'aurait pas dû être délivré. Évidemment, le fardeau de la

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That, of course, puts the onus on the party making the assertion and it is very often very difficult to accomplish that. This is a very nebulous concept which has been injected into this legislation.

I am suggesting that you consider what would happen if there were an application to vary the order that is reasonable and the judge agreed that it should be varied. He cannot do that unless he is satisfied that the warrant should not have been issued or that the restraint order should not have been made. On the other hand, the judge could find himself in a situation where he would like to agree with the applicant but he cannot because the legislation says that he cannot interfere unless the warrant should not have been issued or unless the restraint order should not have been made. If he feels, based on the information available at the time, that the warrant should have been issued, then he can do nothing although he may feel that the applicant has been treated unfairly. He cannot do anything about it. In my submission, that is not fair. The test should be whether the interests of justice require that a variation be made.

The second part about appearing to be innocent creates a class of black sheep who, by perception, seem to have property for an unsavoury purpose and it casts the onus on them to satisfy the court, on a balance of probabilities, that they are innocent. The burden should be on the Crown.

A partial answer to my complaint about the judge having his hands tied in circumstances where he wants to vary the order may be that the proposed subclause 420.14 provides a review process. Three categories of property are contemplated by this bill: Property seized by warrant; property subject to a restraining order; and property seized by a police officer. Earlier I was complaining about a police officer being given powers beyond those in the warrant. I would submit that, in the proposed subclause 420.14, there is no allowance for that consideration and that there should be. This area needs to be cleared up. I hope I can make this point clearer afterwards and, hopefully, an answer can be given by the committee. This review area does cause me a lot of concern in terms of where the proof lies or where the burden lies and what the burden should be.

The Chairman: You are getting back to paragraph (*a*) which talks about a warrant or an order which should not have been made, but it does not refer to the third category that you referred to earlier where a police officer can pick up anything else that he believes, on reasonable grounds, might be feloniously acquired.

Mr. McCombs: Perhaps a simple answer is that the officer is there purporting to act under a warrant; so that is covered. However, I feel we should clear this up, because otherwise we will tie up the courts with litigation. Perhaps we should tailor the words somewhat. I am sure it is just an oversight.

The Chairman: That would be tidied up if the government accepted your argument on the other proposed section, which

[*Traduction*]

preuve incombe alors à la partie qui fait cette affirmation et la preuve est souvent très difficile à établir. On a inséré dans la loi un concept très nébuleux.

Songez à ce qui arriverait si l'on présentait une demande de modification d'ordonnance qui soit raisonnable et que le juge reconnaisse qu'elle devrait effectivement être modifiée. Il ne pourrait le faire à moins d'être convaincu que le mandat n'aurait pas dû être délivré ou que l'ordonnance de blocage n'aurait pas dû être rendue. Le juge pourrait se trouver dans une situation où il ne demanderait pas mieux que d'accéder à la demande, mais où il ne pourrait le faire parce que la loi le lui interdit sauf s'il appert que le mandat n'aurait pas dû être délivré ou que l'ordonnance de blocage n'aurait pas dû être rendue. Si le juge estime que le mandat devait être délivré compte tenu des renseignements disponibles à l'époque, il ne peut rien faire, même s'il estime que le demandeur a été traité injustement. Il ne peut absolument rien faire, et à mon avis, c'est injuste. Le critère à prendre en considération ici devrait être de déterminer s'il est dans l'intérêt de la justice de modifier l'ordonnance.

La deuxième partie de la disposition traite de ceux qui semblent innocents; elle crée une catégorie de moutons noirs qui semblent avoir en leur possession des biens à des fins louches; c'est à eux qu'il incombe de convaincre le tribunal de leur innocence, selon la prépondérance des probabilités. Cette responsabilité devrait incomber à la Couronne.

Le mécanisme de révision prévu à l'article 420.14 résoud peut-être partiellement le problème des juges qui ont les mains liées lorsqu'ils veulent modifier une ordonnance. Le projet de loi traite de trois catégories de biens: ceux qui sont saisis au moyen d'un mandat; ceux qui font l'objet d'une ordonnance de blocage et ceux qui sont saisis par un policier. J'ai dénoncé précédemment le fait qu'un policier ait des pouvoirs plus étendus que ceux prévus dans le mandat. J'estime que l'article 420.14 ne permet pas de parer à cette éventualité et qu'il le devrait. Cette question doit être éclaircie. J'espère que je pourrai apporter des éclaircissements ultérieurement et que le Comité trouvera une solution. Cette forme d'examen me préoccupe beaucoup parce que je me demande quel type de preuve est exigé et à qui elle incombe.

La présidente: Vous revenez au paragraphe où il est question d'un mandat de perquisition qui n'aurait pas dû être délivré ou qu'une ordonnance de blocage qui n'aurait pas dû être rendue, mais ce paragraphe ne fait pas référence à la troisième catégorie dont vous avez parlé plus tôt, celle des biens qu'un agent de la paix peut saisir s'il a des motifs raisonnables de croire qu'ils ont été acquis illégalement.

M. McCombs: C'est peut-être simplement parce qu'on présume que l'agent de la paix exécute un mandat; donc, cette intervention est sous-entendue. J'estime toutefois qu'il faudrait clarifier cette question, sinon les tribunaux seront dans l'embarras. Nous devrions peut-être formuler la disposition autrement. Je suis sûr que c'est simplement un oubli.

La présidente: On règlerait le problème si le gouvernement acceptait votre argument au sujet de l'autre projet d'article,

[*Text*]

would be to not allow a policeman to pick up extra goods when he is acting under a warrant.

Mr. McCombs: Yes. He may have to go back and get another warrant.

The Chairman: If he got a warrant, then everything would be all right under this section to that extent; is that correct?

Mr. McCombs: I agree with that.

One of the main concerns of the Criminal Lawyers' Association relates to the whole purpose of the proposed legislation and its forfeiture provisions in section 420.17. I read these provisions several times before I thought I understood what they meant, but I still do not have total confidence that I understand them.

The proposed subsection 420.17(1) says that once you are found to be guilty, the court may then order forfeiture of your property if it is satisfied on the balance of probabilities that the property was the proceeds of crime and that those proceeds were from that particular crime.

If you are found guilty of doing something and the judge is satisfied on a balance of probabilities that the money or the property that is the subject of the application is from that crime, then it is forfeited. We quarrel with "the balance of probabilities" idea. A man has to be found guilty of an offence beyond a reasonable doubt, but, when it comes to taking his property, the judge only requires to be satisfied "on the balance of probabilities" that that is where the property came from. That is just unfair. It turns the criminal law on its head.

Perhaps I can jump ahead to subsection (4). Let us say that the proceeds have been commingled with other property, so that the judge cannot put his hands on the property. In those circumstances, the judge has the power to impose a fine. If he believes that the amount of money acquired was $1 million, he can impose a fine of $1 million. Subsection (4) says that he can impose a sentence of up to ten years as an alternative; so there is a penal consequence to these forfeiture orders. This penal consequence is based on a balance of probabilities. The Supreme Court of Canada, in *Regina v. Gardner*, said you cannot do that. I understand that that was put before you the other day. The situation in that case is a bit different, but I say that the principle is the same. If I can bore you for a minute, I will tell you what that case said.

Let us suppose that you are convicted of a bad crime such as a robbery. The Crown is saying, "Not only did you commit robbery, but you pistol-whipped the victim," and the accused is saying to his lawyer, "Yes. I robbed that individual but I never touched him. I did not pistol-whip anybody." The distinction is important because it determines whether he is going to jail for two years or five years. The Supreme Court of Canada says there must be a hearing to determine the issue of whether or not that aggravating fact exists. If it does then the person shall be sentenced accordingly. However, the Supreme Court of Canada decided that the Crown must prove that aggravating

[*Traduction*]

selon lequel il faudrait interdire à un agent de la paix de saisir d'autres biens que ceux prévus quand il exécute un mandat.

M. McCombs: Oui. Il lui faudrait en obtenir un autre.

La présidente: S'il en obtenait un autre, il n'y aurait plus de problème avec cet article, n'est-ce pas?

M. McCombs: Oui.

Le *Criminal Lawyers' Association* est bien préoccupé par l'objectif général du projet de loi et de ses dispositions sur la confiscation, énoncées à l'article 420.17. Je les ai lues plusieurs fois avant de les comprendre, et encore je ne suis pas tout à fait sûr d'en avoir bien saisi le sens.

Le paragraphe 420.17(1) du projet de loi dispose qu'une fois que l'accusé a été jugé coupable, le tribunal peut ordonner que ses biens soient confisqués, s'il est convaincu, selon la prépondérance des probabilités, qu'ils sont le fruit du délit en question.

Si un accusé est jugé coupable d'un délit et que le juge est convaincu, selon la prépondérance des probabilités, que l'argent ou les biens qui font l'objet de la demande ont été obtenus en rapport avec cette infraction criminelle, ils sont alors confisqués. Nous contestons l'idée de «la prépondérance des probabilités». Pour qu'il y ait verdict de culpabilité, il faut avoir la quasi-certitude que l'accusé est coupable, mais quand il s'agit de confisquer ses biens, il suffit que le juge soit convaincu «selon la prépondérance des probabilités» que ces biens ont été obtenus en rapport avec le délit. C'est injuste. C'est contraire au droit criminel.

Je passerai tout de suite au quatrième paragraphe. Disons que les produits du délit ont été fusionnés d'autres biens, si bien que le juge ne peut les confisquer. Dans ces circonstances, le juge a le pouvoir d'imposer une amende. S'il estime que la somme d'argent obtenue était d'un million de dollars, il peut imposer une amende d'un million de dollars. Le paragraphe (4) prévoit qu'il peut infliger, à défaut du paiement de l'amende, une peine d'emprisonnement pouvant aller jusqu'à dix ans; donc, les ordonnances de confiscation peuvent aussi avoir des conséquences pénales. L'imposition d'une peine est fondée sur la prépondérance des probabilités. La Cour suprême du Canada a indiqué, dans l'affaire de la «Reine c. Gardner» qu'on ne pouvait agir ainsi. Je crois comprendre qu'on vous en a parlé l'autre jour. Cette affaire est un peu différente du cas qui nous occupe ici, mais je dirais qu'en principe elle y est semblable. Si vous me permettez d'être ennuyeux pour un instant, je vous exposerai la situation.

Imaginons qu'une personne soit accusée d'avoir commis un acte répréhensible, comme un vol. La Couronne prétend qu'en plus d'avoir volé, l'accusé a frappé la victime avec son arme, tandis que l'accusé déclare à son avocat qu'il a bien volé, mais qu'il n'a jamais touché la victime. C'est une nuance importante, parce qu'elle déterminera si l'accusé devra purger une peine d'emprisonnement de deux ou de cinq ans. La Cour suprême du Canada décide qu'il faut tenir une audience pour déterminer s'il y a des circonstances aggravantes et dans l'affirmative, l'accusé sera condamné en conséquence. La Cour détermine aussi que la Couronne doit prouver qu'il y a des cir-

[*Text*]

fact, not on a balance of probabilities but beyond a reasonable doubt.

I say that this legislation with respect to forfeiture carries a potential penal consequence. We are speaking not only about property forfeiture;l we are speaking about going to jail for up to 10 years, depending on the amount of money involved. In that circumstance, you must require proof beyond a reasonable doubt before you can impose that penal consequence. That is one of the cornerstones of the system of criminal justice and what the Supreme Court of Canada said in the Gardner case.

Senator Doyle: May I ask a question at this point?

The Chairman: You may as well have things clarified as you go along, Senator Doyle.

Senator Doyle: First, the accused has to be convicted of an offence?

Mr. McCombs: Yes.

Senator Doyle: Let us use the example of the drug dealer, as we have been all along. We know that he has been acquiring income from the sale of drugs.

Mr. McCombs: Right.

Senator Doyle: If the punishment is to fit the crime, the amount of property seized should bear a relationship to the profits he is likely to have made.

Mr. McCombs: Yes.

Senator Doyle: So we seize his house, and we say that it is reasonable to suppose that the million dollars are about what he made, that since he was involved in various deals, but we cannot specifically prove that he used the money from that specific deal to buy that specific house.

Mr. McCombs: Yes.

Senator Doyle: We know that he made a million bucks out of the deal; we know he has a million-dollar house; but if we have to prove that he bought that house with the proceeds of that one particular deal, then, surely, the court will never be able to acquire a penny farthing's worth of property.

Mr. McCombs: I understand, senator, and I agree with your concern. Let us suppose he is convicted on the fact situation that you have proposed.

Senator Doyle: Yes.

Mr. McCombs: The Crown says, "We know he has a million-dollar house. He should not be allowed to have that house." He says, "Wait one second. I bought that million-dollar house when I inherited money from my mother," or, "My mother gave me that house." The judge then has a hearing to determine whether or not he is satisfied, on a balance of probabilities, that the Crown is correct. The judge may say, "I believe the Crown is probably right—"only probably right—"so I am going to order the house forfeited." I agree that it is no different from saying, "I am going to put you in jail and fine you a million dollars." He has the power to do that. The difference under this bill is that it provides additional penal consequence.

[*Traduction*]

constances aggravantes, non pas selon la prépondérance des probabilités, mais hors de tout doute raisonnable.

Les dispositions du projet de loi sur la confiscation peuvent effectivement donner lieu à l'imposition de sanctions pénales. Il n'est pas question uniquement de la confiscation de biens, mais de peines d'emprisonnement pouvant aller jusqu'à 10 ans, selon la somme d'argent en cause. Dans ces circonstances, il faut établir la preuve hors de tout doute raisonnable qu'il y a culpabilité avant d'imposer une peine d'emprisonnement. C'est une des pierres de touche du droit pénal et c'est ce que la Cour suprême du Canada a déclaré dans l'affaire Gardner.

Le sénateur Doyle: Puis-je poser une question à ce sujet?

La présidente: Il vaut mieux obtenir les précisions voulues au fur et à mesure, sénateur Doyle.

Le sénateur Doyle: D'abord, l'accusé doit être condamné pour un délit?

M. McCombs: Oui.

Le sénateur Doyle: Prenons le cas d'un trafiquant de drogue, comme nous l'avons fait depuis le début. Nous savons qu'il tire un revenu de la vente des drogues.

M. McCombs: C'est exact.

Le sénateur Doyle: Si la peine doit être proportionnée au délit, la quantité de biens confisqués doit être en rapport avec les profits qu'il est présumé avoir réalisés.

M. McCombs: Oui.

Le sénateur Doyle: Donc, nous confisquons sa maison et nous disons qu'il est raisonnable de prétendre qu'il a dû réaliser des profits d'environ un million de dollars, mais, étant donné qu'il a participé à différentes transactions, nous ne pouvons prouver avec certitude qu'il a utilisé les produits de ce délit pour acheter cette maison.

M. McCombs: En effet.

Le sénateur Doyle: Nous savons que la transaction lui a rapporté un million de dollars et qu'il possède une maison qui vaut un million de dollars; mais s'il faut prouver qu'il a acheté la maison avec les produits de la transaction en question, il est certain que le tribunal ne pourra jamais rien lui confisquer.

M. McCombs: Je comprends vos craintes, sénateur, et je suis d'accord avec vous. Imaginons qu'il soit condamné pour le délit que vous avez proposé.

Le sénateur Doyle: Oui.

M. McCombs: La Couronne affirme savoir qu'il possède une maison valant un million de dollars et qu'il ne devrait pas l'avoir. L'accusé déclare avoir acheté cette maison avec l'argent que lui a laissé sa mère ou encore que sa mère la lui a donnée. Le juge tient une audience pour se convaincre que, selon la prépondérance des proabilités, la Couronne a raison. Le juge n'a qu'a être convaincu qu'il est probable qu'elle ait raison, et seulement probable, pour ordonner que la maison soit confisquée. Je conviens que c'est comme décider de lui infliger une peine d'emprisonement et une amende d'un million de dollars. Il a le pouvoir de le faire. Ce qui est différent avec le projet de loi à l'étude, c'est qu'il prévoit, en plus, l'imposition de sanctions pénales.

[*Text*]

Senator Doyle: That is the intent of the bill.

Mr. McCombs: That there be a penal consequence in addition?

Senator Doyle: That there be consequences, whether penal or some other type. This particular bill is obviously saying there should be something else.

Now, regarding this million-dollar house, if there were a civil action and it was proved that the guy had taken the million bucks away from somebody by fraud, and he happened to own a million-dollar house, whether it was his mother's or his, he would be required to sell that house and pay his debt.

Mr. McCombs: That is right. I understand that.

Senator Doyle: This bill is not dealing with a civil action. It deals with criminal actions. If he made his money from some kind of foul vice I do not find it as heinous as you perhaps do to say, "Once we have convicted you—but not until we have done that—and once we have satisfied ourselves that there is a reasonable probability that, whether you acquired it from your mother or from whomever, you still hold onto this house, because you have been living off the avails of this terrible crime, you must forfeit it."

Mr. McCombs: I respectfully suggest that we are not talking about the same thing. As I understand the present law—never mind this bill—if a judge thinks a man has taken a million dollars by reason of a crime, he can deal with it by way of imposition of a fine. However, under this bill, he can say, "You have committed the crime of trafficking in heroin. I am satisfied that you have profited to the tune of $1 million. I am going to put you in jail for a length of time and I am going to impose a fine of $1 million upon you because you should not be in the position of profiting from that." The judge can do that now.

Senator Doyle: Yes.

Mr. McCombs: He can also give a sentence as an alternative to the fine. He can say, "If you do not pay the $1 million fine, you are going to jail for this much longer." All I am saying is that—

Senator Doyle: May I finish what you have just been saying? The judge can impose extra time to be served if the accused does not pay his fine.

Mr. McCombs: Yes.

Senator Doyle: However, the man may say, "I will serve the extra time, but I am not going to give you any money." The money then still sits out there and the ill-gotten gains can go to his ill-gotten wife or anybody else.

Senator Spivak: Ill-gotten wife?

The Chairman: Let us not carry this too far, Senator Doyle.

Senator Doyle: This act says that if you made some money and got yourself a million-dollar house, "we are going to take the house away from you," hot, cold or on Tuesday.

Mr. McCombs: And we do not care.

[*Traduction*]

Le sénateur Doyle: C'est l'intention du projet de loi.

M. McCombs: De prévoir aussi des sanctions pénales?

Le sénateur Doyle: Entre autres. De toute évidence, le projet de loi laisse entendre qu'il doit y avoir autre chose.

Maintenant, au sujet de la maison d'un million de dollars, si un procès au civil prouvait que l'accusé avait acquis un million de dollars frauduleusement, et qu'il avait une maison d'un million de dollar, que ce soit la sienne ou celle de sa mère, il devrait la vendre pour payer sa dette.

M. McCombs: C'est exact. Je comprends.

Le sénateur Doyle: Le projet de loi ne traite pas de procès au civil, mais au criminel. S'il avait acquis cet argent en rapport avec un acte criminel, je ne crois pas qu'il serait odieux, comme vous pouvez peut-être le penser, d'exiger une fois que l'accusé aura été jugé coupable, mais pas avant, et une fois qu'on aura obtenu la certitude, selon la prépondérance des probabilités, que la maison est toujours à lui, qu'il l'ait obtenue de sa mère ou de quelqu'un d'autre, que cette maison lui soit confisquée parce qu'il vit du produit de son délit.

M. McCombs: Avec votre respect, je crois que nous ne parlons de la même chose. D'après ce que je comprends de la loi actuellement en vigueur—je ne parle pas du projet de loi pour l'instant—le juge qui estime que quelqu'un s'est procuré un million de dollars de façon criminelle peut lui imposer une amende. Maintenant, d'après le projet de loi, le juge pourrait décider de condamner à une peine d'emprisonnement et à une amende d'un million de dollars un trafiquant d'héroïne, s'il est convaincu que son trafic lui a rapporté un million de dollars et qu'il n'aurait pas dû en tirer profit. Le juge pourrait agir ainsi.

Le sénateur Doyle: Exactement.

M. McCombs: Il peut aussi imposer une peine à la place de l'amende. Il peut dire: «A défaut de payer un million de dollars d'amende, vous serez incarcéré pendant tant d'années de plus». Ce que je veux dire, c'est que . . .

Le sénateur Doyle: Puis-je terminer votre dernière phrase? Le juge peut allonger la peine si l'accusé ne paie pas son amende.

M. McCombs: Exactement.

Le sénateur Doyle: Mais le contrevenant peut aussi dire: «Très bien, je vais purger la peine supplémentaire, mais vous n'aurez pas d'argent», avec la conséquence que l'argent demeure entre ses mains et le risque que les gains mal acquis aillent à son épouse mal acquise ou n'importe qui.

Le sénateur Spivak: Une épouse mal acquise?

La présidente: Il ne faudrait pas aller trop loin, sénateur Doyle.

Le sénateur Doyle: Cette loi dit que si le contrevenant a réalisé des gains et qu'il s'en est servi pour acheter une maison d'un million de dollars, le tribunal peut trouver le moyen de l'en départir.

M. McCombs: Nous n'y voyons pas d'objection.

[*Text*]

Senator Spivak: Perhaps I am the only one who is a little mixed up, but could I just get the principle established here? You are saying that because the proposed section 420.17(4) carries penal consequences, then the test is not on a balance of probabilities but beyond all reasonable doubt, which is the same for every crime in the Criminal Code; is that right?

Mr. McCombs: Yes. That is what I said.

Senator Spivak: I understand that. Would it not be better if it were not from that particular crime? What difference does it make which crime?

Mr. McCombs: Do you mean what difference does it make whether he got the house from his mother or not?

Senator Spivak: Yes, because is not the important thing that we know he committed the crime rather than establishing which proceeds are from which crime? Do you understand my point?

Mr. McCombs: I think I do.

Senator Spivak: Surely, the important thing originally is that he committed the crime beyond all reasonable doubt and then that would meet his argument. It would have been beyond all reasonable doubt and, therefore, it is fair game.

Mr. McCombs: Do you mean that the determination of guilt has been decided beyond a reasonable doubt and now the property is fair game?

Senator Spivak: Yes, it is then okay to take his mother's house. The determination of guilt should not be "probable guilt", but "guilt beyond all reasonable doubt."

Mr. McCombs: I am trying to think of a good answer to what Senator Doyle has suggested. You are really giving the judge two kicks at the accused: he is being allowed to sentence him to jail and fine him, and, alternatively, incarcerate him further for not paying the fine without Bill C-61. Bill C-61 gives the judge the additional power to forfeit, and where the money has been co-mingled, to impose a fine and to require a further imprisonment of up to ten years. I do not quarrel with any of that. I am saying that if the additional penal sanctions are going to be allowed beyond those which now exist, I say that that should be done in line with what the Supreme Court of Canada said in Gardner—that is, let "beyond a reasonable doubt" be the test.

Nobody is quarrelling with the idea that a heroin trafficker should be allowed to have his family live in a big mansion while he is in penitentiary.

Senator Doyle: Would you say, then, that the alternative to the bill is simply to increase the penalties for those particular offences?

Mr. McCombs: No, because the power is already there to impose a life sentence and an unlimited fine.

[*Traduction*]

Le sénateur Spivak: J'ignore si je suis la seule à être un peu perdue, mais pourrais-je connaître le principe qui sous-tend tout cela? Vous dites que, parce que le paragraphe 420.17(4) proposé entraîne l'imposition de sanctions pénales, le critère sur lequel on devrait s'appuyer n'est pas la prépondérance des probabilités mais bien l'exclusion de tout doute raisonnable, comme pour toutes les infractions visées par le Code criminel, n'est-ce pas?

M. McCombs: Exactement. C'est bien ce que j'ai dit.

Le sénateur Spivak: Je vois. N'aurions-nous pas avantage à ce que la propriété n'ait pas été acquise avec le produit de ce crime? En quoi le type de crime importe-t-il?

M. McCombs: Vous demandez-vous si le fait d'acquérir cette maison de sa mère ou non fait une différence?

Le sénateur Spivak: Oui, car n'importe-t-il pas plus de savoir s'il a commis le crime que d'établir quels biens ont été achetés avec quels produits du crime? Me saisissez-vous?

M. McCombs: Je crois que oui.

Le sénateur Spivak: Le plus important, certes, est d'établir d'abord, hors de tout doute raisonnable, si le contrevenant a commis le crime; après cela, celui-ci n'aurait plus rien à redire. La preuve serait établie hors de tout doute raisonnable et, par conséquent, il n'y aurait pas d'injustice.

M. McCombs: Voulez-vous dire qu'une fois la culpabilité établie hors de tout doute raisonnable, la confiscation de cette propriété ne créerait pas d'injustice?

Le sénateur Spivak: Oui, on pourrait alors saisir la maison de sa mère. La preuve de culpabilité ne devrait pas être fondée sur des probabilités, mais établie hors de tout doute raisonnable.

M. McCombs: J'essaie d'imaginer une réponse qui pourrait satisfaire le sénateur Doyle. Le projet de loi donne réellement au juge deux mécanismes pour punir l'accusé; il peut lui infliger une peine d'emprisonnement et lui imposer une amende, ou lui infliger une peine d'emprisonnement plus longue s'il néglige de payer l'amende. Or, le projet de loi C-61 permet aussi au juge de faire saisir les biens du contrevenant, et si les fonds ont été fusionnés, de lui imposer une amende et une peine supplémentaire pouvant aller jusqu'à dix ans. Je n'y vois pas d'objection. Ce que je veux dire, c'est que si le législateur a l'intention d'ajouter des sanctions pénales qui n'existent pas déjà dans la loi, il devrait le faire, selon moi, en conformité avec la décision rendue par la Cour suprême dans l'affaire Gardner, c'est-à-dire en exigeant que la preuve soit établie hors de tout doute raisonnable.

Personne ne met en doute le droit d'un trafiquant d'héroïne de permettre à sa famille de vivre dans un château pendant qu'il est incarcéré.

Le sénateur Doyle: Seriez-vous prêt à dire alors qu'au lieu de ce projet de loi, on pourrait tout simplement accroître la sévérité des peines, dans le cas de ces délits?

M. McCombs: Non, car les juges peuvent déjà imposer des peines à vie et des amendes illimitées.

[*Text*]

Senator Doyle: Surely the aim of the bill is to provide some kind of strong medicine in these particular kinds of cases.

The Chairman: I think the witness agrees with you, Senator Doyle. The only point is that it is another penalty to which he is objecting; it is an additional penalty over and above the penalties already provided, and for any penalty for a criminal sanction the test should be "beyond a reasonable doubt". As long as they abide by that test, then at least we are satisfying the possible objections of the Supreme Court of Canada.

Senator Doyle: With respect, Madam Chairman, I do not see a circumstance, unless one had receipts for everything, where it could be proven beyond a reasonable doubt that a specific house was acquired by a specific means. I am talking about visible property.

The Chairman: I should not be getting into this, but even in the example you used in the fraud case no one could prove that that particular house was acquired as a direct result of the fraud. The person, in order to pay the penalties involved, has to sell the house. Perhaps that is what you are getting at, that you are not seizing the house *per se*; you are saying "You will have to come up with something extra, and if that means selling your house or your yacht, that is the way it is."

Senator Doyle: If a man is sentenced to life, why should he worry about another ten years?

The Chairman: We have a couple of well-known criminals in our penitentiaries these days who are very much concerned with what is happening to their money on the outside.

Mr. McCombs: We still have the parole system.

The other part of the proposed section 420.17, that the association finds perhaps most disturbing, relates to a person who is acquitted. This legislation empowers the court to make a forfeiture order even if the accused is acquitted, if the court is satisfied beyond a reasonable doubt that the property is proceeds from crime.

The Chairman: That would involve a separate hearing. Are you saying that there is one hearing as to the accused's culpability, and that after he is acquitted, if he is acquitted, there is then another hearing to determine whether the property is the proceeds from crime; and then the finding has to be beyond a reasonable doubt?

Mr. McCombs: I do not think it is clear from that section whether or not there will be a separate hearing, or not because it is so vaguely worded.

The proposed subsection 420.17(2) says that if, at the end of the day, a person has been found guilty, and the Crown is saying that it wants to forfeit property other than the property that was the subject of the particular prosecution, this legislation would permit that and imposes the requirement that that be beyond a reasonable doubt.

We say that we are entitled—and the courts have stressed this very much, especially since the Charter—to make full

[*Traduction*]

Le sénateur Doyle: Évidemment, le projet de loi a pour but, au fond, de punir sévèrement ce type de crime.

La présidente: Je crois que le témoin est d'accord avec vous, sénateur Doyle. La seule chose, c'est qu'on ajoute ici une peine, ce qu'il n'approuve pas; elle s'ajoute à celles déjà prévues, et quel que soit le type de délit, le critère servant à établir la preuve devrait être l'exclusion de tout doute raisonnable. Tant qu'on respecte ce critère, au moins, on ne risque pas d'être débouté par la Cour suprême.

Le sénateur Doyle: Sauf votre respect, madame la présidente, j'arrive mal à imaginer une circonstance où, à moins de conserver des reçus pour le moindre achat, il serait possible de prouver hors de tout doute raisonnable que tel ou tel bien a été acquis avec telle ou telle ressource bien précise. Je parle de biens officiellement connus, bien entendu.

La présidente: Je ne devrais pas aborder ce sujet, mais même dans l'exemple de cette affaire de fraude que vous avez citée, personne n'a réussi à prouver que la maison avait été acquise précisément avec le produit de la fraude. Pour verser son amende, le contrevenant doit vendre la maison. Vous voulez peut-être dire que la maison n'a pas besoin d'être saisie; dès l'instant où il doit payer une amende supplémentaire, le contrevenant est obligé de vendre sa maison ou son bateau. C'est ainsi.

Le sénateur Doyle: Si un accusé se voit imposer une peine d'emprisonnement à vie, pourquoi devrait-il craindre une peine supplémentaire de dix ans?

La présidente: Nos pénitenciers comptent actuellement un certain nombre de criminels bien connus qui se préoccupent pas mal de ce qui arrive à leur argent ailleurs qu'en prison.

M. McCombs: Notre régime de libération conditionnelle est encore en vigueur.

L'autre volet de l'article 420.17 proposé qui inquiète peut-être le plus notre association concerne l'accusé qui est acquitté. Le projet de loi autorise les tribunaux à émettre des ordonnances de confiscation même si l'accusé a été acquitté, s'ils jugent hors de tout doute raisonnable que la propriété a été acquise avec les produits d'une activité criminelle.

La présidente: Il y aurait alors un autre procès. Dites-vous qu'il y aura un procès pour juger de la culpabilité de l'accusé et qu'une fois qu'il aura été acquitté, si jamais il est acquitté, il y aura un autre procès pour déterminer si la propriété a été acquise avec les produits d'une activité criminelle et qu'alors la preuve devra être établie hors de tout doute raisonnable?

M. McCombs: Je ne crois pas que cet article dise expressément qu'il y aura un autre procès, car il est plutôt vague à ce chapitre.

Le paragraphe 420.17(2) proposé dispose que si, une fois que le contrevenant a été jugé coupable, la poursuite souhaite confisquer une propriété autre que celle visée par l'accusation proprement dite, la loi le lui permettra pourvu que la preuve soit établie hors de tout doute raisonnable que son acquisition résulte des produits de l'activité criminelle.

Selon nous, nous avons le droit—et les tribunaux l'ont invoqué avec vigueur, surtout depuis l'adoption de la Charte—de

[*Text*]

answer and defence in relation to the charge the accused faces. Here we will have the additional problem of making full answer and defence with respect to this added spectre of other property that might be disclosed in the case to have been the proceeds from crime.

We are saying that it is laudable that they have obviously recognized the problem by requiring that it be beyond a reasonable doubt. We are also saying that the legislation does not help us as to whether there will be a hearing separate from the trial, whether we are supposed to have notice that the Crown will be trying to do this to the accused. It is so vague and unspecified that it dilutes the burden requirement. The accused may decide to get in the witness stand to answer the particular charge against him and make utterances in that context which provide evidence that other crimes have been committed.

It is understandable that we do not want to see the accused walk away with property, but what we have done is to force him to incriminate himself. Again, that has penal consequences because the court is empowered, by subsection 420.17(4) to impose penal consequences if the property or money is not forthcoming.

Again, this is an end run around the way things have been done in the past. It may be that, as a matter of policy, the legislators are saying: "We are sick and tired of all of this. We just want to see to it that these people don't profit from their crimes." But I predict, with respect, that this proposed subsection is going to run into all sorts of constitutional problems because it really causes two trials to take place at the same time. The accused is testifying but he does not know to which charge he is answering. If he answers to one charge, he may say things that are harmful with respect to the other charge.

If you are requiring that the Crown prove beyond a reasonable doubt that this other property is the proceeds of crime, why not make the Crown use the existing section 312 which says that if you know you are in possession of property obtained by crime you are guilty of an offense. Why add it as an appendage to a proceeding in another criminal prosecution all together? You are prosecuting the accused for a drug offence, and then, at the end of the day, you are wanting to take his house because he is a fraudsman as well. Charge him with fraud. Have a trial.

Senator Doyle: But you said yourself a moment ago that you may seize the property if the property was gained by another act, and it does not have to be proven that that specific property was the fruit of his crime.

Mr. McCombs: Under?

Senator Doyle: Under this bill. There has to be a reasonable probability.

Mr. McCombs: That is under subsection 1.

Senator Doyle: That is different from the law as it applied to fraud.

Mr. McCombs: If the property is obtained by that particular crime, yes.

[*Traduction*]

plaider afin de réfuter une accusation portée contre quelqu'un. Dans ce cas-ci, nous devrons plaider à nouveau pour protéger les autres propriétés de l'accusé que le tribunal pourrait soupçonner avoir été acquises avec des produits de criminalité.

Il est heureux, selon nous, qu'on ait reconnu sans équivoque que cela risquait de poser des problèmes en exigeant que la preuve soit établie hors de tout doute raisonnable. Le libellé de cette disposition nous ne nous aide pas à savoir s'il y aura un autre procès, pas plus qu'il savoir si la Couronne voudra infliger ce fardeau supplémentaire à l'accusé. Le libellé de cet article est si vague et peu précis que cela diminue tout le poids de l'exigence relative au fardeau de la preuve. L'accusé décidera peut-être d'aller à la barre pour répondre de l'accusation portée contre lui et il fera peut-être alors des révélations qui prouveront que d'autres délits ont été commis.

On peut comprendre qu'on ne veuille pas voir des contrevenants profiter des produits de la criminalité, mais nous le forçons à s'incriminer. Je le répète, cette disposition a des conséquences pénales, car elle permet aux tribunaux, de par le paragraphe 420.17(4), d'imposer des sanctions pénales si les biens ou l'argent n'ont pas été rendus.

Encore une fois, c'est, je crois, une conséquence de la façon dont on a agi par le passé. Peut-être que le législateur a voulu faire cesser une situation qui perdure depuis trop longtemps et faire en sorte que les criminels ne profitent plus de leurs crimes. Mais je vous prédis, avec tout le respect que je vous dois, que ce paragraphe va entraîner toutes sortes de litiges constitutionnels, car il nous oblige vraiment à plaider deux causes en même temps. En effet, l'accusé témoigne sans savoir contre quelle accusation il se défend. S'il opte pour l'une des deux, son plaidoyer peut, sans qu'il le veuille, aller dans le sens de l'autre accusation.

Si vous exigez que la Couronne prouve hors de tout doute raisonnable que cet autre bien est le produit de la criminalité, pourquoi ne pas exiger qu'elle invoque l'article 312 du Code qui stipule que: «Commet une infraction, quiconque a en sa possession quelque chose, sachant que cette chose a été obtenue *criminellement*». Pourquoi l'ajouter à la procédure suivie lors d'un autre procès au criminel? C'est un peu comme si vous poursuiviez un accusé pour possession de drogue et qu'à la fin de la journée, vous vouliez confisquer sa maison parce qu'il s'agit d'un fraudeur également. Accusez-le de fraude. Intentez-lui un procès en ce sens.

Le sénateur Doyle: Mais vous venez de dire vous-même qu'il peut être possible de confisquer le bien si celui-ci a été acquis par une autre action et qu'il n'est pas nécessaire de prouver que ce bien est le fruit de la criminalité.

M. McCombs: Aux termes de quoi?

Le sénateur Doyle: Aux termes de ce projet de loi. Il doit y avoir une probabilité raisonnable.

M. McCombs: C'est au paragraphe 1.

Le sénateur Doyle: La fraude n'est pas traitée de la même manière dans la loi.

M. McCombs: Si le bien est obtenu par ce genre de criminalité, oui.

[*Text*]

Senator Doyle: That is right. That is the difference as I see it, whether it is justifiable or not.

Mr. McCombs: That is the difference. Even though they have added the requirement of reasonable doubt, when you are talking about different property, you are joining two unrelated prosecutions, both with penal consequences: the prosecution that he is charged with—for example a drug offence—and the prosecution—I call it a prosecution because I submit that is what it is—related to the potential forfeiture of the property that has nothing to do with the drug offence.

Senator Doyle: But before he can confront this second difficulty, it has to be established, by all of the rules in the book, that have always been there, that he indeed was a drug trafficker, since he is the particular kind we are picking out here, and that he indeed made his living that way—whether we can prove that he went out and bought this glass or if he went away and bought that microphone. We know he acquired and lived by that form of income, and we are providing, in that second confrontation that he has with the courts, that they can seize it even though it cannot be established specifically that by his deed he acquired that particular piece of property or wealth.

Mr. McCombs: I see the intention, and I agree that if that—

Senator Doyle: I am guessing too.

Mr. McCombs: If that were the fact situation, then that is a desirable legislative intention, but its application covers a lot of other potential situations. We can always dream up something that seems unfair, and I do not want to go through that exercise with you. I can think of one situation that I can share with you involving keeping a common bawdy house: whether or not the person who was a registered nurse and also a registered masseuse was keeping a common bawdy-house by engaging in certain what I guess are euphamistically called "extras". This particular individual had been in business for many years, and the issue at the trial was: Does that constitute keeping a common bawdy house to provide these kinds of extras which are relatively innocuous but which represent sexually-oriented activity?

The court said that in resorting to that place for the purpose of engaging in indecent activity, at least partly for that purpose, "you are guilty of keeping a common bawdy house". At the trial, the accused testified and called psychiatrists and others to say that there was nothing wrong with this. The judge disagreed with it. The accused said, "I have been doing this for ten years". Can the judge say, "You have been engaging in crime for ten years and your business has been successful, so we will take all of your assets that have increased in value over that ten-year period"? I say that the legislation says "yes". Maybe it should.

But I am saying that if that is going to be property that is not related to the particular crime that the person is charged with, then it is not enough to require that it be proof beyond a reasonable doubt, because you are then marrying two different proceedings together and forcing the person to incriminate

[*Traduction*]

Le sénateur Doyle: C'est juste. C'est à mon avis ce qui fait la différence entre ce qui est justifiable et ce qui ne l'est pas.

M. McCombs: En effet. Même si l'on a ajouté l'exigence du doute raisonnable, lorsqu'il s'agit de biens différents, on associe ni plus ni moins deux types de procès différents, les deux pouvant entraîner l'imposition d'une peine: un premier procès pour possession de drogue, par exemple, et puis un autre procès—je dis bien procès parce qu'à mon avis c'est cela—qui pourrait entraîner la confiscation de biens n'ayant rien à voire avec l'infraction liée à la drogue.

Le sénateur Doyle: Mais avant de pouvoir lui intenter un deuxième procès, on doit établir, en bonne et due forme, que l'accusé est bel et bien un trafiquant de drogue, soit le genre de délinquant que nous poursuivons ici, et qu'il en fait son gagne-pain—que nous puissions prouver ou non que l'argent ainsi gagné lui a permis de s'acheter tel verre ou tel microphone. Nous savons qu'il a acquis des biens et qu'il a assuré sa subsistance avec ce genre de gagne-pain et nous affirmons dans ce second procès qu'on peut lui confisquer ces biens même si l'on ne peut établir de façon certaine que ses acquisitions ou sa fortune résultent des actions pour lesquelles on lui a intenté un premier procès.

M. McCombs: Je vois où vous voulez en venir et je conviens que si ce . . .

Le sénateur Doyle: Je ne fais que supposer moi aussi.

M. McCombs: Si telle était la situation, ce serait une intention législative louable, mais son application couvrirait une foule d'autres situations possibles. On pourrait toujours essayer de penser à quelque injustice mais je ne veux pas me lancer dans cette recherche avec vous. Un exemple me vient quand même à l'esprit. Je pense à une maison close dont la tenancière, une ancienne infirmière doublée d'une masseuse autorisée, se rendait coupable par les extras «qu'elle accordait». Cette dame avait été en affaires pendant des années et à l'issue du procès, on s'est demandé si elle tenait effectivement une maison close du fait qu'elle accordait des extras, qui étaient relativement inoffensifs mais tout de même à caractère sexuel.

Le tribunal a déclaré qu'en se servant de cet endroit pour s'adonner à des activités indécentes, du moins partiellement à cette fin, la personne était coupable de tenir une maison close. Au procès, l'accusée a témoigné et a fait comparaître des psychiatres et d'autres spécialistes pour dire qu'il n'y avait rien de mal à ce qu'elle avait fait. Devant le mécontentement du juge, l'accusée a déclaré qu'elle tenait ce commerce depuis dix ans. Le juge peut-il vraiment décréter que puisque cette personne a agit criminellement pendant dix ans et que ses affaires ont été florissantes, elle doit être dépossédé de tous ses avoirs, qui ont augmenté en valeur pendant cette période de dix ans? Selon ce projet de loi, la réponse serait «oui». Je ne dis pas que ce soit à tort.

Mais comme ce seront là des biens qui ne seront pas reliés au crime commis par l'accusée, il n'est pas suffisant alors d'exiger que ce soit une preuve hors de tout doute raisonnable, parce qu'on associe ainsi deux différents types de procès et on force la personne à s'incriminer elle-même. Lorsqu'elle témoi-

[*Text*]

himself. When they give evidence in relation to the crime they are charged with, they may make utterances with respect to something else.

For example, say part of the evidence adduced by the prosecution is that they know he is guilty because on such and such a day he flew to Columbia, he came back the next day and he deposited $1 million in his bank account the next morning. That evidence was heard. The accused then gets up and says, "That is not from that; that is from a fraud that I committed". At the end of the day, the judge can say, "We are going to take that money too". No one is quarelling that they should not, but I am saying that there should be a separate hearing for that separate offence.

It is complicated to try to find an answer. I realize that I am not giving you an answer. I am asking the question: Is it fair the way it is now? I submit that it is not. Why not leave it the way it is and leave that section out. Section 312 is there.

Senator Stanbury: I have a lot of questions, but I think you have done an excellent job even though you made it complicated in one way; but you have clarified some of these things about which we had considerable misunderstanding.

One of our witnesses said that this act could be applied to a shoplifter, for instance. We keep talking about drugs. That is the sexy thing to talk about from the point of view of the purpose of the bill.

Mr. McCombs: No one wants to see these heroine traffickers living off it.

Senator Stanbury: We agree in principle, and we would like to see these guys—I suppose that even girls are involved with these matters—penalized properly. The suggestion has been made that this bill applies much more broadly, and the discussions we have been having about drug offences, and so on, could apply to a shoplifter.

Mr. McCombs: That is right. I know that argument has been made, and I guess the government's answer is "trust us; we are not going to do that". But sooner or later, it will be done.

Senator Stanbury: We have had a whole series of bills where the officials have come to us and said, "I understand there may be a bit of a problem there, but you may be sure that we would never take action in such a situation". We dealt with this in connection with the immigration bills. I think that at some point today you said that the Supreme Court had—

Mr. McCombs: The potential for unfairness?

Senator Stanbury: —made it clear that that was quite improper; that we should not be passing legislation which is trusting people.

Mr. McCombs: I should clarify what I understand they said. They said that where the law has the potential to punish a person who is morally innocent, then the law must be struck

[*Traduction*]

gne en rapport avec le crime dont elle est accusée, elle peut se compromettre sous un autre chef.

Par exemple, en raison du témoignage amené par la poursuite, on sait que l'accusé est coupable parce que tel ou tel jour, il a pris l'avion pour la Colombie, il est revenu le lendemain et a déposé un million de dollars dans son compte en banque le surlendemain matin. Ce témoignage a été entendu. L'accusé se lève alors et dit que ce n'était pas le mobile, que c'était plutôt à cause d'une fraude qu'il avait commise. À la fin de la journée, le juge peut déclarer qu'il va confisquer l'argent également. Tout le monde semble dire le contraire, mais je soutiens qu'il devrait y avoir un procès distinct pour juger cette autre infraction.

Ce n'est pas facile de trouver une réponse. Je vois bien que je ne vous aide pas. Je pose plutôt la question suivante: Cette disposition est-elle juste? À mon avis elle ne l'est pas. Pourquoi ne pas laisser les choses comme elles sont et oublier cet article, puisque nous avons déjà l'Article 312 du Code.

Le sénateur Stanbury: J'ai une foule de questions à poser, mais vous avez réussi à y répondre assez bien, même si parfois vous avez compliqué un peu les choses; vous avez néanmoins éclairci de nombreux points qui étaient tellement obscurs pour nous.

Un de nos témoins a déclaré que le projet de loi pourrait s'appliquer au vol à l'étalage, par exemple. Or, nous ne cessons de parler de drogues. C'est vraiment la question qui ressort de notre étude.

M. McCombs: Personne ne veut que ces trafiquants d'héroïne restent impunis.

Le sénateur Stanbury: Nous sommes d'accord en principe, et nous souhaiterions que ces gens soient dûment pénalisés. Certains ont reproché au projet de loi d'être trop vague, et même les discussions que nous avons eues au sujet des infractions liées aux drogues etc., pourraient s'appliquer au vol à l'étalage.

M. McCombs: En effet. Je suis au courant de cet argument, et je présume que le gouvernement en guise de réponse peut demander qu'on lui fasse confiance, car il sait faire la distinction. Mais tôt ou tard, l'erreur sera commise.

Le sénateur Stanbury: À l'occasion de l'étude d'une foule de projets de loi, des hauts fonctionnaires sont venus nous dire qu'il étaient bien conscients du problème d'interprétation qui existait, mais qu'on devait leur faire confiance car ils ne prendraient jamais telle ou telle mesure. Cela s'est produit à l'occasion du projet de loi sur l'immigration. Je pense qu'à un moment donné aujourd'hui vous avez dit que la Cour suprême avait . . .

M. McCombs: La possibilité de se tromper?

Le sénateur Stanbury: . . . préciser que c'était tout à fait inapproprié; qu'il ne fallait pas adopter des lois lorsqu'une part de confiance intervenait.

M. McCombs: Permettez-moi de préciser qu'à mon avis, ce qui a été dit, c'est que lorsqu'une loi risque de punir une personne moralement innocente, cette loi doit être balayée peu

[*Text*]

down, whether or not, in the particular fact situation before it, that is the state of affairs. There is the B.C. reference case on section 94 of their highway traffic law. In that case, British Columbia had passed a law that said you could be convicted of driving under suspension and locked up for it even though you did not know your licence was under suspension. The Supreme Court of Canada said that a law like that is unconstitutional. I say that there is also potential for unfairness in this bill.

Other of our concerns were expressed by Mr. Gold when he appeared before the Commons committee, and that evidence is available to members of this committee. I chose, however, on behalf of the association, to deal with those areas that I have already raised.

Honourable senators, I recognize that it is late in the day. If there are any further questions I will try to answer them. I hope that I have been of some assistance to the committee.

Senator Stanbury: I think Mr. McCombs' evidence has been extremely helpful, Madam Chairman. There are many aspects of the bill that others have questioned, but, as he said, I think he has probably covered the ones that are of the most concern. Perhaps we can leave it at that.

Mr. McCombs: If I may, I will say this before I go. The double criminality problem is the one that I would earnestly ask members of this committee to carefully consider. In addition, proposed section 420.17 presents a complicated problem. I appreciate that there are strong policy arguments the other way, but it will cause situations of extreme unfairness in the real world because it will allow the seizure of property that has nothing to do with the prosecution of the case. That is what is wrong with this provision. There are other ways to achieve the objective of taking property away from crooks besides marrying the seizure up to the particular criminal prosecution of the day.

Those are the two aspects of this bill to which I hope senators will give the most consideration.

The Chairman: We will keep your message in mind, Mr. McCombs.

Honourable senators, we shall proceed to deal with Bill C-145 this afternoon. Its sponsor, Senator Flynn, is here. We understand that this bill is uncomplicated. Mr. Stephens from the Department of Justice has appeared on very short notice this afternoon to assist the committee, and I thank him for doing so. Mr. Stephens, could you provide to the committee members the background to this bill?

Mr. David Stephens, Senior Counsel, Judicial Affairs, Department of Justice: Honourable senators, by way of background, the province of Quebec has adopted legislation integrating three inferior courts, the Provincial Court, the Court of the Sessions of the Peace and the Youth Court, into a new Court of Quebec. I might mention that these are three courts established by the province, whose judges are both appointed and paid by the province of Quebec. There are no federally established courts involved, nor are there any federally appointed judges involved. A number of federal statutes, how-

[*Traduction*]

importe la situation. On peut citer par exemple l'affaire jugée par suite de l'application de l'article 94 de la loi sur la circulation routière de la Colombie-Britannique. Dans cette affaire, la Colombie-Britannique avait adopté une loi selon laquelle une personne pouvait être accusée de conduite sans permis et être emprisonnée, même si elle ignorait que son permis avait été suspendu. La Cour suprême du Canada a décrété qu'une telle loi était anticonstitutionnelle, et je prétends qu'il y a aussi une possibilité d'injustice dans ce projet de loi.

Certaines autres de nos préoccupations ont été exprimées par M. Gold lorsqu'il a comparu devant le Comité de la Chambre, et les membres de ce comité-ci peuvent consulter ce témoignage. J'ai choisi, toutefois, au nom de l'Association, de traiter des questions que j'ai soulevées.

Honorables sénateurs, il se fait tard. Si vous avez d'autres questions à poser, j'essaierai d'y répondre. J'espère avoir été d'une quelconque utilité au comité.

Le sénateur Stanbury: Je pense, madame la présidente, que le témoignage de M. McCombs nous a été extrêmement utile. Certains se sont attaqués à bien d'autres aspects du projet de loi, mais comme M. McCombs le dit, je pense qu'il a probablement traité de ceux qui nous préoccupaient le plus. Nous pourrions peut-être en rester là.

M. McCombs: Si vous le permettez, j'ai encore quelque chose à ajouter avant de vous quitter. Je prierais les membres du comité de se pencher attentivement sur le problème de la double criminalité. En outre, l'article 420.17 proposé semble apporter une complication de plus. Je comprends qu'il y ait de forts arguments politiques en sa faveur, mais il créera beaucoup d'injustice lors des procès parce qu'il autorisera la confiscation de biens qui ne sont nullement liés aux poursuites. C'est ce que je reproche à cette disposition. Il y a d'autres façons de confisquer les biens obtenus criminellement au lieu de lier la confiscation à d'autres poursuites.

Ce sont là les deux aspects du projet de loi sur lesquels, je l'espère, les sénateurs se pencheront tout particulièrement.

La présidente: Nous n'oublierons pas votre recommandation, monsieur McCombs.

Honorables sénateurs, passons cet après-midi à l'étude du projet de loi C-45. Son parrain, le sénateur Flynn, est ici. Nous croyons savoir que le projet de loi n'est pas compliqué. Monsieur Stephens, du ministère de la Justice, a comparu presque sans préavis cet après-midi pour aider le comité et je l'en remercie. Monsieur Stephens, pourriez-vous situer le projet de loi pour le comité?

M. David Stephens, avocat général, Affaires judiciaires, ministère de la Justice: Honorables sénateurs, en guise d'information générale, la province de Québec a adopté une loi regroupant trois tribunaux d'instance inférieure à savoir, la Cour provinciale, la Cour des sessions de la paix et le Tribunal de la jeunesse, en un nouveau tribunal, la Cour du Québec. Je souligne que ces trois cours sont de juridiction provinciale et que leurs juges sont nommés et rémunérés par la province de Québec. Aucun tribunal fédéral ni aucun juge nommé par le gouvernement fédéral n'est concerné. Néanmoins, un certain

[*Text*]

ever, refer by name to the courts that are affected by this reorganization.

The purpose of this bill, then, is to amend those statutes to remove references to the existing courts and to replace those with references to the Court of Quebec. The amendments are set out in the schedule that forms the largest part of the bill. The balance of the provisions, which are few, indeed, are simply transitional or provide for the coming into force of the bill. That will likely be on a date to be agreed upon between the two governments.

The Chairman: Have you any questions, Senator Flynn?

Senator Flynn: No.

The Chairman: This bill seems to be extremely straightforward.

Senator Flynn: If senators read subclause 2(3) of the bill, they will know exactly what it does. If, for example, in a federal law, the Sessions of the Peace Court or the Youth Court or the Provincial Court is mentioned, this bill will cause the name to be replaced by the Court of Quebec. After the proclamation of this bill there will only be one court.

The Chairman: As far as we are concerned, there is nothing of substantive concern in here, then.

Senator Flynn: There is no principle involved. My understanding is that this bill is really for purposes of flexibility. The aim of the Quebec legislation is to allow the chief judge to distribute his judges between the three former jurisdictions or occupations more easily.

The Chairman: That seems to be straightforward. Honourable senators, shall we report this bill without amendment?

Hon. Senators: Agreed.

The Chairman: On behalf of the committee, I thank you very much for appearing this afternoon, Mr. Stephens.

The committee continued *in camera*.

[*Traduction*]

nombre de lois fédérales mentionnent les cours qui sont touchées par cette réorganisation.

Le projet de loi a donc pour objet de modifier ces lois de manière à supprimer les renvois au nom des cours existantes et à les remplacer par l'appellation de Cour du Québec. Les modifications sont comprises dans l'annexe qui forme la majeure partie du projet de loi. Le reste des dispositions, qui sont peu nombreuses, n'ont qu'un caractère provisoire ou encore concernent le moment de l'entrée en vigueur du projet de loi. Il entrera probablement en vigueur à une date dont les deux gouvernements devront convenir.

La présidente: Avez-vous des questions, sénateur Flynn?

Le sénateur Flynn: Non.

La présidente: Ce projet de loi semble être tout ce qu'il y a de plus simple.

Le sénateur Flynn: Si les sénateurs lisent le paragraphe 2(3) du projet de loi, ils en comprendront exactement l'objet. Dans les cas où une loi fédérale renvoie à la Cour des sessions de la paix, au Tribunal de la jeunesse ou à la Cour provinciale, le projet de loi remplace ces noms par l'appellation Cour du Québec. Après la proclamation du projet de loi, il n'y aura plus qu'une seule cour.

La présidente: En ce qui nous concerne, il n'intervient ici aucune question de fond.

Le sénateur Flynn: Aucun principe n'est en cause. D'après ce que je comprends, le projet de loi vise simplement à assurer une plus grande flexibilité. La loi adoptée par le Québec a pour objet de permettre au juge en chef de répartir plus aisément ses juges entre les trois anciens tribunaux ou anciennes fonctions.

La présidente: Cela semble clair. Honorables sénateurs, ferons-nous rapport du projet de loi sans amendement?

Des voix: D'accord.

La présidente: Au nom du comité, je vous remercie beaucoup d'avoir comparu cet après-midi, monsieur Stephens.

Le comité poursuit à huis clos.

August 24, 1988 [Standing Senate Committee on Legal and Constitutional Affairs]

[*Text*]

I considered the kind of matter we just discussed to be the moral equivalent of the ministerial use of executive jets. I thought there would be a list of who was registered and who was not for those quiet days in the House of Commons. All of a sudden, on such a day, a member would pop up and ask why the minister flew to Halifax on the afternoon of the 23rd when there was a commercial flight leaving an hour earlier. But that is a rhetorical question in the circumstance. That is what I think we are building up here—just a whole legion of that sort of question. But, sir, with respect, I am not after that. If I had been working at this at an earlier date, I might have tried to document those kinds of issues. They are what I am calling administrative issues and will, I fear, be trouble for the government of the day, but they are not really part of an attempt to get the best functioning piece of law that we can.

The Chairman: On behalf of the committee, Mr. Daniels, I would like to thank you for your presentation. You have given us a few more items to think about in our consideration of the bill.

Honourable senators, we are pleased to have back with us this afternoon Mr. Frank Iacobucci, the Deputy Minister of the Department of Justice, to speak to us on Bill C-61. With him is Mr. Rick Mosley, whom we all know from our earlier consideration of this bill, and other officials of the department. I believe Mr. Iacobucci has an opening statement in which he will address some of the questions that have been raised by our previous witnesses.

Mr. Frank Iacobucci, Q.C., Deputy Minister, Department of Justice: Thank you, Madam Chairman. Honourable senators, I am pleased to have this opportunity to be with you and to address the issues that have been examined by this committee in relation to a fundamentally important initiative in the area of the administration of criminal justice in our country. At the outset I would like to acknowledge the presence of Rick Mosley and John McIsaac, colleagues of mines in the Department of Justice who have worked quite hard on this initiative.

Honourable senators, the present ability of offenders to enjoy the fruits of their crimes not only frustrates the deterrent aspect of sentencing but also weakens the public confidence in the Canadian system of criminal law enforcement. Existing powers of fine and imprisonment are rendered ineffective when an offender is entitled to enjoy the property accumulated through such activities as drug trafficking. This legislation is intended to be a balanced but effective initiative against criminals who are motivated by profit. In addition, this legislation, along with the Mutual Legal Assistance in Criminal Matters Act, previously Bill C-58, will fulfil Canada's commitments to the draft United Nations convention against illicit trafficking in narcotic drugs and psychotropic substances. Specifically, Article III of that draft convention, which is expected to be concluded this coming November, requires member countries to develop laws to forfeit the proceeds of drug trafficking offences and to provide for the pretrial seizure and restraint of tainted property. As you know, the means by which the government has chosen to meet those objectives has given rise to several concerns on the part of the defence bar to which I wish to respond this afternoon. Madam Chairman, I would be

[*Traduction*]

blème serait l'équivalent moral de l'utilisation des avions du gouvernement par un ministre. Vous savez bien, lorsqu'il ne se passe pas grand-chose à la Chambre des communes, il y a toujours un député pour demander pourquoi tel ou tel ministre a pris un avion du gouvernement pour se rendre à Halifax alors qu'il y avait un vol régulier une heure plus tôt. Je crains que nous ne nous retrouvions avec une foule de questions de cette nature. Quoi qu'il en soit, ce n'est pas ce qui me préoccupe. Il s'agit là de problèmes d'ordre administratif, qui placeront probablement certains gouvernements sur la sellette, mais ce n'est pas vraiment ce qui m'intéresse. Mon objectif est d'essayer d'obtenir le meilleur texte législatif possible.

La présidente: Au nom des membres du comité, je vous remercie beaucoup de votre témoignage, M. Daniels. Vous avez soulevé quelques questions très importantes, qui retiendront certainement notre attention.

Je vais maintenant accueillir M. Frank Iacobucci, sous-ministre de la Justice, qui va nous parler du projet de loi C-61. Il est accompagné de plusieurs collaborateurs de son ministère, notamment de M. Rick Mosley, avec qui nous avons déjà discuté de ce projet de loi. Si je ne me trompe, M. Iacobucci souhaite d'abord répondre à certaines des questions posées par des témoins précédents.

M. Frank Iacobucci, c.r., sous-ministre, ministère de la Justice: Merci, madame la présidente. Je suis très heureux d'avoir la possibilité de m'adresser à vous au sujet d'une initiative extrêmement importante du gouvernement en matière de justice pénale. Je tiens à souligner la présence à mes côtés de Rick Mosley et John McIsaac, du ministère de la Justice, qui ont beaucoup travaillé sur ce projet de loi.

Honorables sénateurs, le fait que les criminels aient actuellement la possibilité de jouir des fruits de leurs méfaits constitue non seulement une entrave à l'effet dissuasif des sentences, mais aussi un facteur d'affaiblissement de la confiance du public dans le système canadien de justice pénale. Le pouvoir d'imposer des amendes et des peines de prison perd de son efficacité si le contrevenant garde le droit de jouir des richesses accumulées par des activités telles que le trafic de drogues. Ce projet de loi est destiné à lutter, de manière juste mais efficace, contre les criminels motivés par le profit. Avec la Loi portant mise en œuvre des traités d'entraide juridique en matière criminelle, l'ancien projet de loi C-58, cette initiative reflète la volonté du Canada de respecter ses engagements à l'égard du projet de convention des Nations Unies contre le trafic illicite des drogues et des psychotropes. L'article III de cette Convention, qui devrait être adoptée au mois de novembre, demande aux pays membres d'adopter des lois permettant à leurs gouvernements de confisquer le produit des trafics de drogues et de saisir avant procès les biens acquis illégalement. Comme vous le savez, la solution retenue par le gouvernement pour atteindre ces objectifs a suscité de la part des avocats de la

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pleased to answer any questions that you or honourable senators may have after concluding my remarks.

The first topic on which I would like to make a few remarks is punishment before conviction. The submission has been made to this committee that Bill C-61 is fundamentally flawed on the ground that it purportedly punishes an individual before he or she is convicted. On that point, I would remind everyone that the Canadian system of criminal justice has long recognized that in appropriate circumstances the pretrial detention of an alleged offender is justified to ensure his attendance at trial. Surely the freedom of the individual cannot be placed on any plane lower than the enjoyment of the rights of property. It has been recognized in relation to the pre-trial's detention of an individual that these powers are clearly remedial rather than punitive to ensure the availability of property for forfeiture after conviction.

Dual criminality has been raised. This committee has heard evidence criticizing the lack of "dual criminality" requirements concerning the offences covered by the proposed legislation. In short, the complaint is that it is unfair, or perhaps unconstitutional, to criminalize the possession or laundering of assets that are derived from the conduct that Canadian law views as criminal, but it is not necessarily illegal in the country of origin. I gather you were provided with hypothetical examples of the Danish porn merchant and the Nevada gambler. In theory, they are at risk of criminal liability under the present law should they enter Canada with their profit. In reality, there is no record of any enforcement activity against such individuals.

The decision to criminalize the proceeds of activity that is recognized as criminal in Canada but not necessarily illegal in the country of origin, was taken when section 312 of the Criminal Code was amended in 1976. Prior to those amendments, it had been a crime since 1892 to be in the possession of property directly obtained by the commission of an act that if performed in Canada would constitute an indictable offence. So the principle of the approach being reflected in this legislation has a long history and, indeed, was recently confirmed when section 312 of the Criminal Code was amended in 1976.

I mention this background to the present proposal because I think it is worth noting the long history behind the provision and the fact that none of the witnesses before you were able to cite an actual case from that history with which to illustrate their arguments.

It is evident that Canada is entitled in the exercise of its sovereignty to declare that the possession of property obtained by certain means is illegal in this country, whether or not that is the case in its country of origin. There is no reason to believe, however, that the enforcement authorities in this country will concern themselves with the case of an individual who brings such property to this country unless the individual is or has been engaged in serious criminal activity warranting state intervention. Bill C-61 is aimed at the major crime profiteers. They have reason to fear its application—not the small-scale entrepreneur who has sold some pornography in Denmark.

[*Traduction*]

défense diverses questions auxquelles je vais m'efforcer de répondre. Je serais ensuite très heureux de répondre aux autres questions des membres du comité, madame la présidente.

Le premier sujet que je souhaite aborder concerne le fait que ces criminels seraient punis avant d'être condamnés, comme certains témoins l'ont prétendu devant votre comité. Je dois rappeler à cet égard que le système canadien de justice pénale permet depuis longtemps, dans certaines circonstances, la détention préventive d'un contrevenant présumé pour garantir sa comparution devant le tribual. Il est certain que la liberté individuelle n'a pas moins d'importance que le droit à la propriété. On admet généralement que la détention préventive revêt un caractère correctif plutôt que punitif et vise à permettre la saisie des biens après déclaration de culpabilité.

Il a été question de la double criminalité. Le comité a entendu des témoignages de personnes qui se plaignaient de l'absence de dispositions dans le projet de loi concernant la double criminalité. En clair, on allègue qu'il est injuste et peut-être même anticonstitutionnel de criminaliser la possession ou le trafic de biens provenant d'activités jugées criminelles dans le droit canadien mais pas forcément illégales dans le pays d'origine. Je crois comprendre qu'on vous a donné pour exemple le cas hypothétique d'un marchand danois de pornographie ou d'un joueur du Nevada. En théorie, ces personnes sont passibles de poursuites au criminel, selon la loi actuelle, si elles introduisent au Canada les profits de leurs activités. En réalité, il ne semble pas que de telles poursuites aient jamais été intentées.

La décision de criminaliser la possession de produits d'une activité jugée criminelle au Canada, sans être forcément illégale dans le pays d'origine, a été prise à l'occasion de la modification en 1976 de l'article 312 du Code criminel. Or, depuis 1892, la possession de biens provenant directement d'une activité illégale au Canada était considérée comme un délit. On voit donc que le principe consacré dans le projet de loi jouit d'une longue histoire, que la modification de l'article 312 du Code criminel en 1976 ne faisait qu'entériner.

Je tenais à rappeler l'origine de la proposition parce qu'il n'est pas sans intérêt d'en connaître la longue histoire et parce qu'aucun des témoins ne s'en est servi pour étayer ses arguments.

De toute évidence, le Canada est parfaitement en droit d'exercer sa souveraineté en déclarant illégale la possession de biens obtenus par certains moyens, que ceux-ci soient jugés licites ou non dans le pays d'origine. On peut se demander, toutefois, si les autorités policières du Canada prendront la peine de rechercher les personnes qui introduisent ce genre de biens dans notre pays à moins qu'ils ne proviennent de crimes suffisamment graves pour mériter l'intervention de l'État. Le projet de loi C-61 s'attaque aux grands profiteurs du crime. Ceux-ci ont tout lieu de craindre l'application de la loi, con-

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One of the objects of Bill C-61 is to ensure that Canada does not become a haven for foreign drug profits. A dual criminality requirement could weaken Canada's ability to achieve that object.

At the same time, the stability of certain drug-producing countries is of great concern. The United Nations International Narcotics Control Board in its 1986 report on the world drug situation as presented in the *U.N. Chronicle* of May 1987 stated:

> Illicit drug production and trafficking—"financed and masterminded by criminal organizations with international links and accomplices in financial circles"—are expanding. In many regions, these activities also have close ties to illegal weapons, trade, subversion and international terrorism. And vast sums of money generated by illicit trafficking are being laundered through legitimate enterprises.
>
> "This whole process undermines the economic and social order, spreads violence and corruption and imperils the very political stability and security of some countries" the Board affirms.

Several South American countries are waging an internal war against trafficking cartels. In that context, we cannot afford to impose a requirement in Canadian proceedings that the Crown must prove the state of the criminal law in the country of origin of the proceeds. It would be an impediment to effective enforcement of our domestic law, which is concerned with the possession of those proceeds in this country and not with the state of the law in their country of origin. In short, this law is aimed at discouraging people, whose proceeds come from illegal gains by Canadian standards, from bringing those proceeds to Canada.

During the testimony before this committee, I am also advised that several criticisms were directed towards the provision that forfeits the proceeds of crime as part of the post-conviction process. Here I am referring to clause 420.17. I would like to deal, Madam Chairman, with those criticisms sequentially.

The first criticism that has been levelled relates to proof on a balance of probabilities and pertains to subclause 420.17(1). First, the members of the defence bar testifying were concerned with the lowering of the standard of proof for property connected to the offence for which the offender was convicted and in expressing that concern referred to the Supreme Court of Canada decision in the *Gardiner* case.

This provision, which is reflected in the section I referred to, was drafted with the full implications of the Supreme Court's judgment in *Gardiner* in mind. In that case, the court spoke of the standards of proof required for sentencing hearings in the absence of any statutory direction as to the standard that ought to be applied. That is important. The *Gardiner* case dealt with a standard to be applied in the absence of any

[*Traduction*]

traitement aux petits entrepreneurs qui ont vendu un peu de pornographie au Danemark.

Le projet de loi C-61 a pour but notamment de faire en sorte que le Canada ne devienne pas un refuge pour les trafiquants étrangers de stupéfiants. Les dispositions de double criminalité pourraient compromettre la réalisation de cet objectif.

Par ailleurs, la stabilité de certains pays producteurs de drogues suscite de graves préoccupations. Voici un extrait du rapport de 1986 de l'Organe international de contrôle des stupéfiants des Nations unies faisant le bilan sur les drogues à l'échelle mondiale, que présente la *Chronique de l'ONU* de mai 1987:

> La production et le trafic illicites de stupéfiants «financés et dirigés par des organismes spécialisés dans le crime, s'appuyant sur des réseaux internationaux et pouvant compter sur des complices dans les milieux financiers, sont en pleine expansion. Dans bien des régions, ces activités sont intimement liées au trafic des armes, à la subversion et au terrorisme international. C'est ainsi que des sommes énormes provenant d'activités illégales sont blanchies par des entrepreneurs légitimes.
>
> Ces réseaux ont pour effet de saper l'ordre économique et social, de généraliser la violence et la corruption ainsi que de mettre en danger la stabilité politique et la sécurité de certains pays.

Plusieurs États sud-américains ont déclaré la guerre aux cartels de trafiquants à l'intérieur de leurs frontières. Nous serions donc mal venus d'exiger, dans la procédure canadienne, que la Couronne soit tenue de déterminer la nature du droit criminel dans le pays à l'origine des poursuites. Cette clause ne servirait qu'à nuire à l'application de la loi canadienne en ce qui a trait à la possession des produits du crime perpétré dans ce pays, indépendamment de ses lois. Bref, le projet de loi a pour but de décourager ceux qui tirent profit du crime d'introduire leurs recettes au Canada.

Il m'a été rapporté par ailleurs que plusieurs personnes se sont élevées, dans leur témoignage au comité, contre la disposition de confiscation des produits du crime après déclaration de culpabilité. Je pense ici à l'article 420.17. J'aimerais examiner une à une, madame la présidente, les critiques qui ont été formulées.

La première se rapporte à la preuve fondée sur la prépondérance des probabilités, et concerne le paragraphe 420.17(1). Tout d'abord, les membres du Barreau de la défense qui ont témoigné ont demandé l'assouplissement de la norme de preuve à l'égard des biens provenant d'un délit pour lequel le contrevenant a été déclaré coupable, en remettant en cause la décision de la Cour suprême du Canada dans l'affaire Gardiner.

Cette disposition du paragraphe 1 a été rédigée après analyse de toutes les implications du jugement de la Cour suprême dans l'affaire Gardiner. Dans ce procès, le tribunal a examiné les normes de preuve à appliquer dans les jugements en l'absence de directives légales. Ce fait est important. L'affaire Gardiner porte sur la norme à appliquer en l'absence de précisions dans la loi. Le Code criminel est muet à ce chapitre et les tribunaux de première instance ne s'entendent pas.

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standard specified in the legislation. The Criminal Code was silent on the issue, and the lower courts were quite divided.

In those circumstances, the court held that the standard should be proof beyond a reasonable doubt. No standard was set forth. The standard chosen by the court was proof beyond a reasonable doubt. But when we look at this situation before us, given the difficulty of piercing the organized crime veil and establishing the sources of criminal profits, we believe that the courts will accept a reduction of the standard for these limited and exceptional purposes.

In support of this proposition we can point to the Australian and the U.S. proceeds of crime legislation which have lowered the standard of proof in this context as well. The Supreme Court of the United States has recently affirmed this lower standard in the case of *McMillan v. Pennsylvania* in relation to the imposition of a sentence for another exceptional case, the use of a firearm in the commission of a felony. Accordingly, Madam Chairman and honourable senators, I am confident that this provision will withstand strict scrutiny by the courts.

The next issue I should like to refer to deals with double trials, and this is covered in subclause 420.17(2). One of the witnesses before this committee complained that this provision created a mechanism for the forfeiture of property unrelated to the conviction that had been registered by the court. Specifically, the protections of a jury trial would not be available to the accused in relation to the possession of that property, and he or she would not know what case they had to meet at the forfeiture stage.

This provision was created to avoid a specific problem which has arisen in actual cases where, although the offender may have been implicated in one offence, such as drug trafficking, he alleges that the property in question was derived from some other enterprise offence. That evidence, as you can understand, may not be forthcoming from the accused until the sentencing stage of the proceedings, and the provisions of section 13 of the Charter, which is the provision dealing with self-incrimination, prevent the use of that testimony at any subsequent proceeding.

So in order to prevent the totally inappropriate return of the asset to the offender in these circumstances, this subclause 420.17(2) provides the court with the discretion—and I emphasize this—to order the property forfeited upon proof beyond a reasonable doubt that it is derived from the commission of one of the enumerated offences in this legislation. Again, it seems to me to be totally reasonable to have this provision in the law. It is not a hypothetical situation. I believe the case was in Manitoba where that kind of circumstance did arise.

The third point under this heading deals with additional penalties. Here I am referring to subclauses 420.17(3) and (4).

A submission was made that the present available penalties are sufficient and that there is no apparent purpose to the creation of these special fines in terms of imprisonment. In response, I would indicate that these provisions were created with a specific purpose in mind because they are directly

[*Traduction*]

La Cour a jugé que la norme devait équivaloir à une preuve hors de tout doute raisonnable. Aucune norme n'a été imposée, si ce n'est qu'elle devait correspondre à une preuve hors de tout doute raisonnable. Toutefois, dans le cas qui nous intéresse, nous estimons que les tribunaux accepteront d'abaisser la norme dans les rares cas qui leur seront présentés, en raison de la difficulté de faire la lumière sur la criminalité organisée et de préciser les sources des produits du crime.

À l'appui de cette proposition, nous pouvons nous tourner vers les lois pénales australiennes et américaines applicables aux produits de la criminalité, où la norme de preuve a également été abaissée pour les mêmes raisons. La Cour suprême des États-Unis a récemment eu recours à cette norme assouplie dans l'affaire McMillan contre la Pennsylvanie, en rapport avec l'imposition d'une peine dans une autre cause exceptionnelle, à savoir l'utilisation d'une arme à feu dans la perpétration d'un crime. C'est pourquoi, madame la présidente, mesdames et messieurs, je suis persuadé que cette disposition résistera à l'examen rigoureux des tribunaux.

La deuxième question que j'aimerais examiner est celle qui se rapporte aux doubles procès, dont il est question au paragraphe 420.17(2). Un témoin a déclaré devant le comité que cette disposition autoriserait la saisie de biens non liés à une déclaration de culpabilité. Plus précisément, l'accusé ne bénéficierait pas de la protection d'un procès avec jury en ce qui a trait à ces biens et ne saurait pas de quel procès relève la confiscation des biens.

Cette disposition vise à éviter un problème bien précis qui s'est déjà présenté, où le contrevenant incriminé dans une affaire a fait valoir que les biens en question étaient le produit d'un autre délit. Naturellement, ce n'est qu'au moment de la détermination de la peine que l'accusé peut procéder à cet aveu, alors que l'article 13 de la Charte, portant sur les témoignages incriminants, interdit l'utilisation de ces témoignages dans les poursuites subséquentes.

De manière à empêcher que les biens soient indûment restitués à l'accusé dans un cas comme celui-là, le paragraphe 420.17(2) accorde au tribunal le pouvoir discrétionnaire, j'insiste sur ce terme, d'ordonner la saisie des biens s'il est convaincu, hors de tout doute raisonnable, qu'il s'agit de produits de la criminalité. Il me semble tout à fait raisonnable de prévoir une telle disposition, d'autant plus que le cas s'est déjà présenté, notamment au Manitoba.

Passons maintenant à la question des sanctions supplémentaires. Je vous renvoie ici aux paragraphes 420.17(3) et (4).

Quelqu'un a fait valoir que les sanctions prévues actuellement sont suffisantes et que les amendes spéciales assorties de peines d'emprisonnement ne sont nullement justifiées. Je répondrai que ces dispositions ont un but bien précis et visent directement les produits de la crimnalité que le contrevenant a

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related to the dollar value of the proceeds of crime that have been intentionally placed by the offender beyond the reach of the court. These provisions were created to encourage offenders to make available their proceeds of crime to the court for the purpose of forfeiture. This is consistent with the fundamental principle of Bill C-61, that an offender should not be entitled to benefit from the fruits of his crime.

As paragraph 420.17(3)(c) indicates, an offender may have placed all of his illicit assets in an off-shore haven. Despite being sentenced to a lengthy term of imprisonment for the substantive offence of, say, drug trafficking, in the absence of a provision like this the offender could enjoy his illicit proceeds upon release, with impunity. This provision will encourage the offender to make arrangements for the return of the assets to Canada to enable the court to forfeit them. The discretion that is built into the operation of both the fine instead of forfeiture and the imprisonment in default of payment of fine will ensure that this extraordinary procedure will only be applied where the court finds that the offender is seeking to avoid the reach of the court's forfeiture authority.

If the court is of the opinion that the accused is trying to avoid the reach of forfeiture, then it will be up to the court to make a determination of fine instead of forfeiture or imprisonment in default of payment of the fine.

The next topic deals with the presumption of innocence. Concern has been expressed that this legislation has created a reversal of the onus of proof, and, thereby, has destroyed the fundamental principle of the criminal law, namely, the presumption of innocence. This onus relates to the review procedure under clause 420.14 and the relief from forfeiture procedures under clauses 420.21 and 420.22.

The criticism of the representatives of the Defence Bar was directed towards the use of the words "appears innocent," and it was suggested that this expression is unknown in the Canadian criminal context. However, Madam Chairman, I should like to point out to this committee that the expression has a long and honourable history in Canadian law and can be found in such federal statutes as the Fisheries Act and the Customs Act. In addition, the expression appears in almost identical form in the relief from forfeiture provisions of section 11 of the Narcotic Control Act. I should also point out that the British Columbia Court of Appeal recently found no constitutional or Charter infirmity with this wording in a fisheries prosecution case, the *Milton* case.

A spokesman from the Ottawa Defense Lawyers Association indicated that, if these new powers were given to the police, it would just be a matter of time before they were used against a petty shoplifter or a small-time drug dealer at the National Art Gallery. The intention of this bill is that it be used against the upper echelon offender and not against so-called street crime. For that specific reason, the legislation requires the intervention of the Attorney General before any of the pretrial processes, such as special warrants or restraint orders, can be exercised. This procedure will ensure that the new powers will be exercised only in appropriate cases.

[*Traduction*]

délibérément placés hors de portée du tribunal. On cherchait ainsi à encourager les contrevenants à remettre les produits de leur crime à la disposition du tribunal aux fins de la saisie. Cela est tout à fait conforme au principe fondamental du projet de loi C-61, à savoir qu'un contrevenant ne devrait pas être autorisé à jouir du fruit de son crime.

Comme on peut le voir à l'alinéa 420.17(3)(*c*), le contrevenant pourrait bien avoir placé tous ses biens illicites dans un abri à l'étranger. Même s'il est condamné à une longue peine de prison, après avoir été trouvé coupable d'un délit grave, comme le trafic des stupéfiants, il pourrait en toute tranquillité, en l'absence de dispositions de ce genre, jouir de son bien après sa libération. Cet article encouragera le contrevenant à faire le nécessaire pour que les biens soient ramenés au Canada et saisis par le tribunal, car autrement il s'expose à une amende, si la saisie n'est pas possible, ou à une peine à défaut de paiement de l'amende. Cette mesure extraordinaire, laissée à la discrétion du tribunal, ne s'appliquera que si le tribunal juge que le contrevenant s'emploie à échapper à la saisie.

Si le tribunal estime que l'accusé cherche à se mettre à l'abri de la saisie, il pourra alors décider d'imposer une amende de la valeur du bien à confisquer ou une peine de prison à défaut du paiement de l'amende.

Je passe maintenant au sujet de la présomption d'innocence. Il a été soutenu que le projet de loi aurait pour effet d'inverser la charge de la preuve et, par conséquent, de détruire le principe fondamental du droit pénal, à savoir la présomption d'innocence. Il s'agit de la charge de la preuve dans la procédure de révision à l'article 420.14 et de l'exemption de la procédure de confiscation visée par les articles 420.21 et 420.22.

Les critiques formulées par les représentants du Barreau de la défense portaient sur l'utilisation des mots «semble innocente» qui, pour eux, n'existe nulle part ailleurs dans le droit pénal canadien. Madame la présidente, j'aimerais signaler au comité que cette expression a déjà acquis ses titres de noblesse par une longue histoire dans le droit canadien, puisqu'on la retrouve dans des textes fédéraux comme la Loi sur les pêcheries et la Loi sur les douanes. En outre, l'expression figure sous une forme pratiquement identique dans les dispositions d'exemption de saisie que comporte l'article 11 de la Loi sur les stupéfiants. Je signale enfin que la Cour d'appel de la Colombie-Britannique a jugé récemment dans un litige sur la pêche, l'affaire *Milton*, que cette expression n'était invalidée ni par la Constitution ni par la Charte.

Un porte-parole de l'Association des avocats de la défense d'Ottawa a déclaré que si ces nouveaux pouvoirs étaient accordés à la police, celle-ci ne tarderait pas à s'en servir contre les voleurs à l'étalage ou les petits revendeurs de drogue au Musée des beaux-arts. Pourtant, c'est bien le criminel d'envergure qui est visé par le projet de loi, et non les petits voyous du coin. C'est d'ailleurs la raison pour laquelle la loi exige l'intervention du procureur général avant que ne soit émis un mandat spécial ou une ordonnance de blocage. De cette façon, les nouveaux pouvoirs ne pourront être exercés que dans les cas qui le justifient.

[Text]

On the other hand, if a major shoplifting ring has accumulated tens of thousands of dollars in assets from its activities, then it seems to me that there is no reason why this new law should not be applied in those circumstances. I see no legitimate reason why such offenders should be entitled to enjoy the fruits of their crime.

Madam Chairman, in closing, I would like to thank you again for this opportunity to respond to some of the comments that have been made concerning the legislation. It is a necessary and timely initiative that will complement the Canadian criminal justice system. It is a fair and effective response to the growth of enterprise crime. I will be pleased to answer any questions from you and members of the committee.

The Chairman: Thank you, Mr. Iacobucci.

Senator Stanbury: Mr. Iacobucci, as usual, we got a good contribution from you, which helps us with our consideration of the legislation we have before us. I think you have undoubtedly satisfied a number of the concerns of the members of the committee, but I am sure they will all speak on their own behalf.

In terms of the dual criminality question, the main issue that has concerned us is the fairness of seizing property which has arisen from illegal activities, wherever they might be. I am not sure that your answer completely gets rid of that concern.

Another concern is, if the proceeds of legal activities in another jurisdiction are to be found here and are to be seized here, what is our entitlement to those moneys or that property?

Mr. Iacobucci: Regarding the first question of the dual criminality, I pointed out in my comments that this is not a new principle, but that it is in the present Criminal Code.

Senator Stanbury: I appreciate that, but there has been some suggestion that that is contrary to the Charter.

Mr. Iacobucci: As I said, it is there and I am confident that this provision would satisfy Charter arguments that might be leveled against it. You have to look at the context of the conduct; it forms the mischief here. I referred to the no enforcement action against a Canadian who goes to Nevada and does the gambling thing and comes back, or the Danish porn merchant, but that is not what is going to be done.

These provisions, as you know, are very cumbersome. They are procedurally important and time consuming, and deliberately so because we are talking about liberty of the subject, property interests of the subject that are at risk and, indeed, the interests of perhaps third parties. They are very deliberately developed and elaborate, so that I do not see prosecutors using these provisions except in cases of importance.

Senator Stanbury: I should tell you, however, that members of this committee have developed a reaction to that kind of answer. We have seen it in several bills recently, where officials have come before us and said, "We know it is there, but we don't intend to enforce it."

[Traduction]

En revanche, si un réseau important de vol à l'étalage a accumulé des dizaines de milliers de dollars grâce à ses activités, il me semble tout à fait logique de le soumettre à la nouvelle loi. Je ne vois pas pourquoi ces contrevenants devraient être autorisés à jouir du fruit de leurs crimes.

Pour terminer, madame la présidente, je tiens à vous remercier encore une fois de l'occasion qui m'a été donnée de répondre à certains des commentaires qui ont été présentés au sujet du projet de loi qui, à mon avis, vient à point nommé comme complément nécessaire du système de justice pénale au Canada. Il s'agit d'une mesure juste et efficace pour contrer la croissance de la criminalité organisée. Je me ferai maintenant un plaisir de répondre à vos questions et à celles des membres du comité.

La présidente: Merci, monsieur Iacobucci.

Le sénateur Stanbury: Monsieur Iacobucci, vous nous avez encore une fois apporté une aide précieuse pour l'examen du projet de loi qui nous a été confié. Vous avez incontestablement répondu à bon nombre des préoccupations des membres du comité, mais je suis sûr qu'ils vous le diront eux-mêmes.

Pour revenir à la question de la double criminalité, nous nous sommes surtout interrogés sur le bien-fondé de saisir des biens provenant d'activités illégales quelqu'en soit le lieu d'origine. Je ne suis pas sûr que votre réponse ait été concluante.

On s'est demandé en particulier de quel droit pourrait s'autoriser le Canada pour confisquer des produits d'activités illégales menées dans d'autres pays.

M. Iacobucci: Pour répondre à votre première question sur la double criminalité, rappelons encore une fois que ce principe n'est pas nouveau, qu'il existe déjà dans le Code criminel actuel.

Le sénateur Stanbury: D'accord, mais certains ont avancé qu'il était contraire à la Charte.

M. Iacobucci: Comme je l'ai dit, ce principe existe déjà et je suis convaincu que la disposition résistera aux arguments que l'on pourra avancer en invoquant la Charte. Il faut bien voir que c'est la gravité de la situation qui entraînera le recours à cette disposition. Celle-ci n'interviendra pas dans le cas d'un Canadien qui rapporte au Canada ce qu'il a gagné dans une séance de jeu au Nevada ni au marchand danois de pornographie.

La procédure, en effet, est trop lourde. Les formalités à remplir sont extrêmement astreignantes et onéreuses, à juste titre d'ailleurs puisque c'est la liberté et le bien de la personne qui sont en jeu, et peut-être même les intérêts de tiers. Ce n'est pas par hasard si cette procédure est si complexe: elle a pour but d'inciter les poursuivants à n'y avoir recours que dans des cas exceptionnels.

Le sénateur Stanbury: Je dois vous dire, toutefois, que les membres du comité en sont venus à se méfier de ce genre de réponse. Il est en effet arrivé plusieurs fois récemment, à l'occasion de notre étude de projets de loi, que des fonctionnaires tiennent des propos analogues: «Nous savons que la disposition existe, mais nous n'avons pas l'intention de l'appliquer.»

[*Text*]

The law does not say that you can do that. The Supreme Court does not believe in our passing pieces of legislation that say, "Trust me. We won't do it even though it is there."

Mr. Iacobucci: I do not mean this in anything but a respectful way. I agree with that philosophy that you have developed. If that were the only reason, then I would have concerns, but there are other reasons why I do not think that the dual criminality rule is appropriate.

We have to be concerned about what we are trying to do for our country. We are trying to discourage people from coming here who are, by our standards, engaged in criminal activity by bringing their proceeds to this country. I do not think it is something we want to encourage by way of newcomers to our country or, indeed, transients to our country. It is something that we want to discourage.

If we were to have a dual criminality rule—and I do not want to get involved in specifics here because that would be inappropriate—I believe there would be pressure on a number of countries, where the drug trafficking business is very powerful, to have laws passed that might be rather neutral with respect to drug dissemination and distribution such that a dual criminality rule could work against us. In fact, you would find that the people involved in this business were highly sophisticated and highly powerful. There could be pressures brought to pass legislation to make it a legal activity or to withdraw its illegal status. We would then be in a situation where we would be in effect caught by a rule that would be working against us, to the detriment to the administration of criminal justice.

Senator Stanbury: I am sure you realize that we are with you in terms of the objective. Our main concern the strong emotional pull of doing the things that you are trying to do with this bill. We would not allow that strong emotional pull to taint—you used the words "tainted property;" I guess that is as good a word as any—our judicial system of justice by talking ourselves into applying greater legal strictures, and so on, than are necessary. That is why I think we question all of these things.

I am delighted to have your answer, because it helps to explain to us what justifies it, but it seems that there are a number of small matters that could be easily remedied. They do not appear to be significant in the scheme of legislation.

One is that the bill provides that a copy of the report identifying the property seized and the location where it is being detained will be given on request to the person from whom it is seized. Why is it not simply left on the property? Why do they have to go and request it? At this point no one is guilty, it is all suspicion. This is found in paragraph 420.12(4)(c). It simply looks like an addition to the bureaucratic jungle to have to request a copy of what is being seized.

The Chairman: And apparently that is not required in similar circumstances with other types of warrants or authorities. I think that was the point that was made by our witness, was it not?

[*Traduction*]

La loi ne donne pas de directives précises. La Cour suprême nous demande de ne pas adopter de lois qui reposent uniquement sur une entente implicite.

M. Iacobucci: Je suis entièrement d'accord avec vous sur le principe que vous évoquez, mais il y a d'autres facteurs qui entrent en ligne de compte et qui expliquent pourquoi, à mon avis, la double criminalité est injustifiée.

Il est important de se préoccuper de l'évolution de notre pays. Nous essayons de décourager les gens qui se livrent à des activités jugées criminelles au Canada de venir s'installer ici, de venir y investir les produits de leurs crimes. Je ne crois pas que notre société soit intéressée à accueillir ce genre d'individus, à titre d'immigrants ou autres. C'est quelque chose que nous ne voulons pas encourager.

Si nous devions adopter ce régime de la double criminalité—et je vous fais grâce de détails que vous trouveriez impertinents—je crains fort que nous ayons à subir les pressions de plusieurs pays où les trafiquants de stupéfiants sont très puissants pour que nous adoptions des lois plutôt laxistes en matière de distribution de drogues afin que le régime de la double criminalité joue contre nous. À vrai dire, ceux qui étaient engagés dans de genre d'activités étaient extrêmement raffinés et puissants. Ils pourraient exercer des pressions pour faire adopter des lois destinées à légaliser leurs activités ou, du moins, à supprimer leur illégalité. Nous pourrions alors nous retrouver prisonniers de règlements contraires à nos intérêts et à ceux de la justice pénale.

Le sénateur Stanbury: Vous vous rendez compte, naturellement, que nous appuyons de tout coeur cet objectif. Ce qui nous inquiète, c'est l'émotivité que vous semblez introduire dans ce projet de loi. Nous voulons justement éviter d'entacher—pour paraphraser une expression que vous avez utilisée à propos des biens—notre système judiciaire par des mesures légales indûment astreignantes. C'est pourquoi nous nous voyons contraints de remettre certaines choses en question.

Je suis très satisfait de votre réponse, car elle nous aide à mieux comprendre ce qui motive ces dispositions qui, à bien des égards, se rapportent à des problèmes relativement mineurs, que l'on pourrait facilement régler autrement. Ils demeurent accessoires par rapport aux visées du projet de loi.

C'est ainsi, par exemple, que selon le libellé du projet de loi, un exemplaire du rapport comportant la désignation des biens saisis et indiquant le lieu où ils se trouvent doit être remis au saisi sur demande. La liste des biens confisqués ne devrait-elle pas être établie d'office? Pourquoi faut-il en faire la demande expresse? À cette étape de la procédure, personne n'a encore été déclaré coupable. Il n'y a que des suspects. Cette disposition se trouve à l'alinéa 420.12(4)*c*). N'a-t-elle pas pour effet de compliquer encore les tracasseries administratives, en obligeant l'intéressé à demander un exemplaire de la liste des objets saisis?

La présidente: D'ailleurs, il ne semble pas que cette exigence accompagne les autres types d'ordonnance ou de mandats. N'est-ce pas là l'argument qu'a présenté notre témoin?

[*Text*]

Senator Stanbury: I think so.

Mr. Iacobucci: Before I answer that, I neglected to answer the second part of the question that you raised with respect to dual criminality, namely, the issue of property. For example, if action is taken with respect to foreign property and proceeds, who gets the benefit of that forfeiture?

The law provides that the prosecuting authority does. For example, if the federal government were prosecuting under the Narcotic Control Act, then it would be a federal prosecution and forfeiture would go to the Consolidated Revenue Fund of the federal government; if it were done by the provincial Attorney General, then it would be done—

Senator Stanbury: It is a bit of a contest.

Mr. Iacobucci: This was recognized by the federal-provincial officials and governments concerned. Ministers were quite content. It is really not changing the nature of it. In other words, there is no race to prosecution. We will not, because of this legislation, suddenly be invading areas of prosecution that we have not prosecuted before.

With respect to the copy of the executing officer's report not being provided automatically to persons whose property is seized, in Working Paper No. 30 of the government, called "Police Powers Re Search and Seizure and Criminal Law Enforcement", in 1983, the Law Reform Commission of Canada recognized that there might be situations where an individual does not require, and perhaps does not want, an inventory after the execution of a search warrant under section 443 of the Criminal Code. For these reasons the inventory needed only to be provided on request. This provision is consistent with the recommendation of the Law Reform Commission in that respect.

Senator Stanbury: I guess that is the answer.

Mr. Iacobucci: We basically followed what they had said.

Senator Stanbury: However, I do not see it as a satisfactory answer; but that is a matter of judgment, I guess.

You have explained that the legislation is not intended to cover the simple shoplifter, and so on, but why is it not expressed as not including theft under $1,000, for instance? Why does it include things like a common bawdyhouse, but not criminal interest rates?

Mr. Iacobucci: As I mentioned in my remarks, although it is not aimed at the small shoplifter, theoretically you could have a situation where there would be—and I am not saying that this would happen—a shoplifting ring. Each offence by itself is nothing, but if you look at it on a cumulative basis you might say, "Wait a minute. Something is going on here."

Senator Stanbury: But your main defence to that is that the Attorney General has to be involved.

Mr. Iacobucci: That is right. The second thing is that the Attorney General is directly involved. We are taking it to that level of accountability because we do not want to encourage

[*Traduction*]

Le sénateur Stanbury: Oui, je pense.

M. Iacobucci: J'y reviendrai, mais je voudrais tout d'abord répondre à la deuxième partie de votre question sur la double criminalité, concernant la propriété des biens. Vous vous êtes interrogé sur le sort des biens saisis.

La loi prévoit que les biens reviennent aux autorités à l'origine des poursuites. Par exemple, si le gouvernement fédéral intente une poursuite en application de la Loi sur les stupéfiants, le montant de la saisie est versé au Fonds du revenu consolidé du gouvernement fédéral. Si l'action en justice est entreprise par un procureur général provincial, c'est alors la province . . .

Le sénateur Stanbury: Cela ressemble un peu à une compétition.

M. Iacobucci: Les autorités provinciales et fédérales se sont entendues sur ce point. Les ministres se sont montrés très satisfaits. L'enjeu n'a rien de fondamental. Personne n'est intéressé à se faire concurrence pour intenter des poursuites. Autrement dit, cette loi n'aura pas pour effet d'inciter qui que ce soit à s'immiscer dans un nouveau domaine des poursuites.

Pour ce qui est de l'exemplaire du rapport des agents d'exécution qui n'est pas remis d'office au saisi, la Commission de réforme du droit du Canada a déjà reconnu, dans son document du travail n° 30 de 1983 sur les pouvoirs de la police en matière de perquisition et de saisie et sur l'application du droit pénal, que dans certaines situations l'intéressé n'a pas besoin, et n'a peut-être même pas le désir, d'obtenir la liste des biens saisis au moyen d'un mandat de perquisition délivré en application de l'article 443 du Code criminel. C'est pourquoi la liste n'est fournie que sur demande. Cette mesure est conforme à la recommandation de la Commission de réforme du droit.

Le sénateur Stanbury: Cela répond effectivement à ma question.

M. Iacobucci: Nous nous sommes contentés de donner suite à la recommandation de la Commission.

Le sénateur Stanbury: Je ne suis cependant pas entièrement satisfait, mais c'est là une question de jugement, je suppose.

Vous avez expliqué que le projet de loi ne vise pas les petits voleurs à l'étalage. Alors pourquoi ne pas préciser que les vols de moins de 1 000 $, par exemple, ne relèvent pas de cet article? Pourquoi les maisons de prostitution sont-elles touchées alors que les taux d'intérêt usuraires ne sont pas inclus?

M. Iacobucci: Comme je l'ai déjà fait remarquer, même si la loi ne s'intéresse pas directement aux petits voleurs à l'étalage, il pourrait arriver théoriquement qu'un réseau organisé de vol à l'étalage exige une intervention. Dans ce cas, chacun des vols pourrait demeurer minime, mais le tout pourrait prendre des proportions inquiétantes sur le plan global.

Le sénateur Stanbury: Vous vous êtes défendu en disant que le procureur général doit intervenir.

M. Iacobucci: C'est exact. Le procureur général doit même intervenir directement. Nous avons prévu une intervention à ce niveau tout simplement pour éviter les poursuites dans des

[*Text*]

prosecutors to go off on small items, it is as simple as that. But we want to have the capacity. We do not know how criminal activity is arranged to try to get around these provisions, and we have to be careful of that.

Senator Stanbury: I am not sure whether I should stop there and let someone else go on, or shall I keep going for a while?

The Chairman: Yes.

Senator Stanbury: I am covering issues that were raised by the evidence, as you are aware, and I thought we should be sure that we have answers to them.

Next is the forfeiture of proceeds of crime for offences other than the present offence of conviction—and you have dealt with that to some extent. I think you have given us the rationale for it, but why shouldn't people charged with individual crimes, if found guilty, then have forfeiture required for the particular crime, rather than trying later to tack it on, without any proper procedure, to another crime they have been found guilty of?

Mr. Iacobucci: There was a case in Manitoba. Perhaps Mr. Mosley might give you the example of how that arose, and how it shows itself as being a case where the accused can play a bit of a game with enforcement authorities.

Mr. Richard G. Mosley, Senior General Counsel, Criminal and Family Law Policy Directorate: Yes. The case in question concerned a gentleman by the name of Medd and an application for restoration of moneys which had been seized on the basis that they were the proceeds of drug trafficking offences. In the course of the proceedings, Mr. Medd surprised the court and everyone concerned in the case by alleging that the proceeds in question had been obtained by the commission of another offence equally criminal but quite separate and apart from the case before the court.

The difficulty in those circumstances is that the evidence might clearly point to the origin of the property in question but there is no offence with which to charge the individual, and his own evidence cannot be used against him in subsequent proceedings for possession or, perhaps, for laundering of those proceeds. The only point of intersection between the criminal justice system and the proceeds would be that case which is before the court and in which the court has arrived at a finding, on proof beyond a reasonable doubt, that the individual is guilty of the commission of a criminal offence, and then further, during the sentencing proceedings, that beyond a reasonable doubt that property has been obtained by the commission of an enterprise crime or a designated drug offence.

Senator Stanbury: The circumstances under which an accused would actually confess that the proceeds were those of another crime sound to me to be quite unusual.

Mr. Mosley: I suggest, senator, that this sort of admission is not at all unusual and that, if this provision were not in the bill, that type of evidence from the accused would be encouraged. It is not unusual for an individual who is engaged in one form of criminal activity to be engaged in others. Prostitution, loan sharking, gaming offences and drug trafficking often go hand in hand. If the prosecution is based on the

[*Traduction*]

affaires sans importance. Mais il importe d'avoir la possibilité d'intervenir en cas de nécessité. Il est impossible de prévoir de quelle manière se déroulera l'activité criminelle, de sorte qu'il convient d'être prudent.

Le sénateur Stanbury: Je ne sais pas si mon temps est écoulé. Dois-je céder la parole à quelqu'un d'autre ou puis-je poursuivre encore un peu?

La présidente: Vous pouvez poursuivre.

Le sénateur Stanbury: J'examine les questions soulevées par nos témoins, comme vous pouvez vous en rendre compte, et il me semble important de trouver des réponses.

Passons maintenant à la confiscation des produits d'un crime autre que celui pour lequel l'accusé a été déclaré coupable. Vous avez déjà traité ce point et expliqué le bien-fondé de cette mesure, mais pourquoi ne pourrait-on pas poursuivre quelqu'un pour le crime qu'il a commis et, sur déclaration de culpabilité, confisquer les biens issus de ce crime plutôt que de procéder à des saisies sans poursuite en bonne et due forme?

M. Iacobucci: Nous nous sommes inspirés d'une affaire qui s'est déclarée au Manitoba. M. Mosley pourrait peut-être vous exposer les détails et montrer comment un accusé peut parfois se jouer des autorités.

M. Richard G. Mosley, avocat général principal, Sous-direction de la politique en matière de droit pénal et familial: Oui. L'affaire concerne un individu du nom de Medd qui avait demandé que lui soient restituées des sommes d'argent saisies parce qu'il s'agissait des produits d'un trafic de stupéfiants. Pendant le procès, M. Medd a pris le tribunal et tous les intervenants au dépourvu en faisant valoir que les produits en question provenaient de la perpétration d'un autre délit, également criminel, mais totalement distinct de celui faisant l'objet des poursuites.

Comme dans ce cas, il arrive qu'on connaisse avec certitude l'origine des biens en cause sans toutefois pouvoir accuser le prévenu d'un délit bien précis, faute de preuve, et sans pouvoir utiliser ses propres témoignages contre lui dans des poursuites subséquentes pour la possession ou pour le recyclage de ces produits. Le seul moment où le système de justice pénale peut exercer sa compétence, c'est celui de l'affaire en instance au cours de laquelle le tribunal en est arrivé à la conclusion, hors de toute doute raisonnable, que le prévenu est coupable d'un délit criminel et que les biens saisis sont le fruit de la criminalité organisée ou d'un trafic de stupéfiants au sens de la loi.

Le sénateur Stanbury: Ce cas où un accusé avoue lui-même que les produits proviennent d'un autre crime m'apparaît tout à fait exceptionnel.

M. Mosley: Je dirais, sénateur, que ce genre d'aveu est au contraire tout à fait courant et qu'il serait même encouragé si la loi ne contenait pas de dispositions destinées à contrer les abus. Il n'est pas rare qu'un individu se livre à de nombreuses activités criminelles différentes. La prostitution, les taux d'intérêt usuraires, les tripots et le trafic des stupéfiants vont souvent de pair. Si les poursuites sont intentées au titre du tra-

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source of the funds being from drug trafficking and the accused at the end of the day says, "That's all well and good, but I obtained this money from prostitution- related offences," the court would be powerless to deal with the property.

Mr. Iacobucci: He would be powerless because section 13 of our Charter provides, and quite rightly and appropriately so, for a rule against self-incrimination. The evidence he gives in that proceeding cannot be used against him for the conviction of the offence that he says he got it from. So, if we did not include this provision in the bill, then the criminal would have quite a clever avoidance technique by which to get around the forfeiture provision in the first case and the trial for the conviction of another offence in a second case.

Senator Stanbury: My next question has to do with applications for special warrants and restraining orders. There is no provision for the disclosure of previous applications to other judges who have turned down an application; there is no disclosure of the withdrawal of an application for other reasons, either. Is there any reason why we should not have provisions similar to those in the wiretap sections of the Criminal Code or the telewarrant section?

Mr. Iacobucci: The powers that were created under this bill were intended to reflect or mirror the present section 443 of the Criminal Code search warrant provisions. We tried to follow them as closely as possible. Indeed, all of the property that may be seized under this special search warrant procedure is seizable under section 443 of the Criminal Code as evidence. However, since section 443 of the code does not require notification of previous applications, these new provisions do not include a requirement for such disclosure in the application.

In the context of the review of all criminal search and seizure powers, which is part of an ongoing project of the Law Reform Commission on the criminal procedure, consideration is being given to the adoption of such a requirement. There is no evidence to suggest, however, that repeat applications or "judge shopping" is a problem at this time. I do caution and point out to senators that we are looking at this across the spectrum of other provisions. At this stage, however, we are following what is presently contained in section 443 of the Criminal Code.

Senator Stanbury: There is concern about the possibility of a peace officer's being convinced that everything a person owns comes from the proceeds of crime, and seizing everything, even though some of the things he seizes are not items mentioned in the warrant.

Mr. Iacobucci: First, senator, these extraordinary procedures are all under the aegis of the court, so that for orders to be made and for forfeiture to be made there is an appearance before a judicial body. That is the most important point to remember, in my view.

Let me also point out that the provisions of section 445 of the Criminal Code entitle a peace officer executing a section 443 search warrant to seize anything that on reasonable grounds he believes has been obtained or has been used in the commission of an offence. That section 445 is the statutory form of a seizure power that is recognized at common law—in

[*Traduction*]

fic de stupéfiants et que l'accusé finit par déclarer que son argent provient de la prostitution, le tribunal a les mains liées.

M. Iacobucci: Le tribunal est alors impuissant en raison de l'article 13 de la Charte qui prévoit, à juste titre d'ailleurs, une protection contre les témoignages incriminants. Les preuves communiquées par l'accusé au cours d'un procès ne peuvent être utilisées contre lui dans une autre poursuite. Nous avons donc inclus ces dispositions dans le projet de loi pour éviter d'inciter les criminels à avoir recours à cette technique habile pour se soustraire aux saisies dans l'affaire en cours et échapper à d'autres poursuites.

Le sénateur Stanbury: Voici maintenant une question sur les demandes de mandats spéciaux et d'ordonnance de blocage. La divulgation des demandes antérieures présentées à d'autres juges les ayant refusées n'est pas exigée. Les retraits de demande pour d'autres raisons ne sont pas non plus divulgués. Pourquoi n'a-t-on pas introduit des dispositions semblables à celles des articles du Code criminel sur les tables d'écoute ou les télémandats?

M. Iacobucci: On cherchait à faire en sorte que les pouvoirs définis dans ce projet de loi reflètent ceux que contient l'article 443 du Code criminel sur les mandats de perquisition. Nous avons tenté de les assortir du mieux possible. Du reste, tous les biens qui peuvent être saisis dans l'exécution du mandat spécial de perquisition pourraient l'être également, à titre d'éléments de preuve, en application de l'article 443 du Code criminel. Toutefois, étant donné que l'article 443 du code n'exige pas la notification des demandes antérieures, les nouvelles dispositions ne l'exigent pas non plus.

Dans le cadre de l'examen de tous les pouvoirs en matière de perquisition et de saisie, qui constituent un projet permanent de la Commission de réforme du droit sur la procédure pénale, cette exigence est à l'étude. Il faut dire, cependant, que le problème des demandes répétées ou du «magasinage des juges» ne semble pas se poser pour l'instant. Je tiens malgré tout à signaler aux sénateurs que nous étudions cette question dans une optique globale. En attendant, nous avons voulu nous conformer aux dispositions actuelles de l'article 443 du Code criminel.

Le sénateur Stanbury: On craint la possibilité qu'un agent de la paix soit convaincu que tout ce que possède une personne est le produit de la criminalité et qu'il décide de tout saisir, y compris des objets non mentionnés dans le mandat.

M. Iacobucci: Tout d'abord, monsieur le sénateur, seul le tribunal a compétence pour demander cette procédure, de sorte que les ordonnances et les saisies supposent au préalable une comparution devant un comité judiciaire. C'est là, à mon avis, un point important.

Permettez-moi d'ajouter que les dispositions de l'article 445 du Code criminel autorisent un agent de la paix chargé d'exécuter un mandat de perquisition en application de l'article 443 à saisir tout ce qui, raisonnablement, a pu être obtenu ou utilisé dans la commission de l'infraction. Cet article 445 définit des pouvoirs de saisie reconnus en common law—c'est-à-dire

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other words, without the development of a statute—and which is known as the so-called "plain view" doctrine, a doctrine in the American jurisprudence. Since the special search warrant was created on the model of an ordinary Criminal Code search warrant, it is consistent to allow for the seizure of other property which on reasonable grounds is forfeitable under the new legislation.

I referred a moment ago to the working paper 30 of the Law Reform Commission of Canada. In that paper, the Law Reform Commission described this type of seizure power as a valuable one and went on to endorse its incorporation into Canadian law. In addition, the House of Commons committee examining Bill C-61 recognized that the requirement that another warrant be obtained in these circumstances was entirely unrealistic, given the present ability of such proceeds as cash to disappear in a matter of a few minutes.

By way of final comment, I must point out that this "plain view" doctrine of seizing anything which on reasonable grounds the officer believes has been obtained by or used in the commission of offence has received judicial approval as not offending the Charter in a judgment rendered by Mr. Justice Martin in 1984. Mr. Justice Martin is one of the most distinguished criminal law experts and jurists in our country. Therefore, it has been approved from the point of view of the Charter, as well.

Senator Stanbury: Another point which has disturbed people is the undertaking by the Attorney General as to damages and costs and how those are defined. Since we now have the Nelles case and the absolute immunity of the Attorney General from actions for malicious prosecution, how does this all work to protect the interests of the innocent, or, at least, the acquitted?

Mr. Iacobucci: I would not want to make any connection between what I am about to say and the Nelles matter—that is not for me to comment upon, obviously—but I would say that the judge who hears this application for a special search warrant or restraint order will be entitled to require the Attorney General to provide an undertaking that is considered "appropriate according to all the circumstances". This wording is intentionally broad so as to enable the judge to tailor the undertaking to the circumstances of a case, and I would suggest that it will vary depending on the nature of the property that is the subject matter of the request for seizure or restraint. That will obviously be an important consideration. The execution of the warrant or the order is viewed as a continuing event as opposed to an instantaneous one, and therefore could provide for compensation for loss of business income. If an asset were crucial to a business, it would not be just the asset itself, but it could be the business income that flowed from the use of that asset, if it were connected to a business. I suggest that damages from loss of personal reputation could be compensable as a result of the undertaking. So this was not a matter of not being able to define properly; it was a matter of being deliberate, and determining that this was something that ought to be left to the judge and the circumstances of a particular case, and, therefore, not left to legislation to try to anticipate

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indépendamment de toute loi—ce qui dans la jurisprudence américaine s'appelle le principe de ce qui est «bien en vue». Étant donné que le mandat spécial de perquisition est inspiré du mandat de perquisition ordinaire prévu dans le Code criminel, il est logique de permettre la saisie des autres biens qui, pour des motifs raisonnables, apparaissent saisissables aux termes de la nouvelle loi.

Je mentionnais tout à l'heure le document de travail 30 de la Commission de réforme du droit du Canada. Dans ce document, la Commission confirme le bien-fondé du pouvoir de saisie et approuve son introduction dans le droit canadien. Par ailleurs, le comité de la Chambre des communes chargé d'examiner le projet de loi C-61 a reconnu qu'il était tout à fait irréaliste d'exiger la délivrance d'un autre mandat dans un cas de ce genre, étant donné qu'il suffit de quelques minutes pour faire disparaître des sommes d'argent.

Enfin, je dois signaler que cette doctrine de ce qui est «bien en vue» autorisant la saisie de tous les objets que, pour des motifs raisonnables, l'agent estime qu'ils ont été obtenus ou utilisés dans la commission d'une infraction, n'a pas été jugée contraire à la Charte dans une décision rendue par le juge Martin en 1984. M. Martin est l'un de nos plus grands spécialistes du droit pénal et est un éminent juriste de notre pays. Par conséquent, cette doctrine se trouve sanctionnée par la Charte elle-même.

Le sénateur Stanbury: Plusieurs personnes ont été troublées également par la question de l'engagement du procureur général à l'égard du paiement des dommages et des frais que peut entraîner un mandat. À la lumière de l'affaire Nelles et de la protection absolue du procureur général contre les poursuites abusives, comment peut-on assurer la défense des intérêts de l'innocent ou, du moins, de la personne acquittée?

M. Iacobucci: Je ne voudrais en aucune façon que mes paroles soient interprétées comme un jugement sur l'affaire Nelles—qui de toute évidence n'est pas de mon ressort—mais je dirais que le juge chargé d'examiner une demande de mandat spécial de perquisition ou d'ordonnance de blocage est habilité à exiger que le procureur général «prenne les engagements qu'il estime indiqués». La formulation a été choisie aussi générale que possible pour permettre au juge de définir les engagements en fonction de l'affaire. Ceux-ci, à mon avis, devraient varier selon la nature des biens faisant l'objet de la demande de saisie ou de blocage. Voilà un élément qui m'apparaît important. L'exécution du mandat ou de l'ordonnance n'est pas une opération ponctuelle, mais s'échelonne sur une période de temps, de sorte qu'on pourrait prévoir des indemnités en cas de perte de revenus d'entreprise. Au demeurant, si un bien est essentiel à l'exploitation d'une entreprise, c'est l'ensemble des revenus de l'entreprise qui se trouve en jeu. À mon avis, les indemnités pour pertes découlant d'une atteinte à la réputation pourraient être prévues dans le cadre des engagements. Ce n'est pas un problème de définition. Il s'agit de donner au juge la possibilité d'adapter les mesures à prendre en fonction de chaque cas particulier, plutôt que d'essayer de prévoir dans la loi tous les cas susceptibles de se présenter.

[*Text*]

in advance all of the circumstances that could arise in a particular set of facts.

I suspect what will happen is that we will see some guidance, as courts have done in other areas where there is wording that tends to be general, and there will be principles developed as to how it should be interpreted over time.

Senator Stanbury: We get objections from courts when we leave things too general and depend on them to guide us, and this is one area where it seems to me that we are not giving them very much guidance. Unfortunately, Madam Chairman, I have to run because I have an appointment in Toronto and I have a plane to catch. I do not want to shorten the discussion, and I certainly hope that others can pick it up.

The Attorney General may make copies of documents before returning them, and it is thought that there may well be a Charter implication in that. What is the rationale for the necessity of that, especially if the person has been acquitted?

Mr. Iacobucci: You are referring now to clause 420.26?

Senator Stanbury: That is right. Yes.

Mr. Iacobucci: That clause is similar to subsections 446.13 and 14 that were enacted in 1985 together with related amendments that were intended to encourage the return of property seized by the police to the true owners pending the disposition of any charges respecting the property. Included in that property may be documents having evidentiary value, and the proceedings may be lost as a consequence of the order returning them to the applicant.

So to overcome the natural reluctance which the court and the prosecution may have to lose that evidence, these provisions make allowance for copying it and for the admissibility of the copies as a statutory exception to the "best evidence" rule, which provides that you should keep the actual thing as evidence; but rather than tie up the actual thing for the process of the trial and so on, we have determined that the courts are reluctant to let property go. It is not unknown to keep property that is the subject of criminal charges tied up for a long time.

So we have put in a provision to say that copies can be made and those copies are admissible as a statutory exception to that evidence rule, but the provisions are not intended to give the prosecution any kind of advantage over the defence. Indeed, the documents and questions may be ordered returned to a third party who has no direct involvement in the criminal proceedings but might otherwise have to wait until the trial is over to recover the property. Again, this is an example of trying to balance the interests of the administration of justice with the interests of parties affected by those proceedings.

Senator Stanbury: Others may want to follow up on this. I personally would like to thank Mr. Iacobucci, because I think when we have an opportunity to reread his evidence and put it against the problems that we have had with the legislation, it

[*Traduction*]

En réalité, nous verrons sans doute les choses se préciser peu à peu, à mesure que les tribunaux donneront des interprétations, comme ils l'ont fait dans d'autres domaines où les textes de loi sont d'ordre général.

Le sénateur Stanbury: Nous essuyons les critiques des tribunaux lorsque nous nous contentons de libellés trop généraux et que nous comptons sur eux pour nous guider. Voilà justement un domaine où il me semble que nous demeurons un peu trop vagues. Malheureusement, madame la présidente, je dois m'empresser de partir pour me rendre à un rendez-vous à Toronto. Je ne voudrais pas interrompre le débat, mais j'ai un avion à prendre. J'espère que les autres pourront prendre la relève.

Le procureur général est autorisé à faire des copies des documents avant de les restituer, ce qui pourrait être contraire aux dispositions de la Charte. Quelles sont les raisons qui justifient cette prérogative, en particulier si la personne a été acquittée?

M. Iacobucci: Vous faites allusion maintenant à l'article 420.26?

Le sénateur Stanbury: C'est exact, oui.

M. Iacobucci: Cet article est analogue aux paragraphes 446.13 et 14 qui ont été promulgués en 1985 en même temps que d'autres modifications destinées à encourager la restitution des biens saisis par la police à leur propriétaire légitime en attendant un jugement concernant les accusations en rapport avec ces biens. Parmi ces biens, il peut se trouver des documents ayant valeur probante, qui risqueraient d'être perdus après restitution au demandeur.

Pour que le tribunal et le procureur de la poursuite n'aient pas à craindre la perte de preuves, nous avons pris des mesures pour permettre la copie des documents et l'admissibilité en preuve de ces copies selon la règle de la meilleure preuve, qui stipule naturellement que l'on doit conserver l'objet authentique à titre de preuve; mais plutôt que d'immobiliser cet objet authentique pendant toute la durée du procès, nous avons choisi cette solution pour éviter que les tribunaux se montrent réticents à se départir des objets. On sait qu'il arrive parfois que des objets soient conservés pendant très longtemps s'ils sont associés à des poursuites criminelles.

Nous avons donc introduit une disposition pour autoriser les copies et rendre ces copies admissibles en preuve, sans toutefois accorder au procureur de la poursuite un avantage sur la défense. En réalité, ces documents pourraient devoir, sur ordonnance, être remis à un tiers non directement intéressé par la poursuite judiciaire mais qui, autrement, pourrait avoir à attendre jusqu'à la fin du procès pour récupérer son bien. Voilà un autre exemple d'un essai d'harmonisation des intérêts de l'administration de la justice avec ceux des parties touchées par les poursuites.

Le sénateur Stanbury: Je laisse à d'autres la possibilité de poursuivre ce débat. Je remercie personnellement M. Iacobucci, qui nous a donné la possibilité de préciser certains éléments de son témoignage en rapport avec certains problèmes

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may help us a good deal. I know we will not be completely satisfied and there may well be other questions. However, my apologies, because I had better run.

Senator Fairbairn: I have just one question referring to dual criminality. I listened carefully to your explanation, but can you give us examples in other jurisdictions where dual criminality applies, or does it?

The Chairman: The lack of dual criminality?

Senator Fairbairn: Yes.

Mr. Iacobucci: Let me first say that the three of us have not made an exhaustive search of this. The concept of dual criminality has a lot of acceptance in the area of extradition. If we are talking about extraditing someone from this country to another country, our treaties in our extradition provisions of the Criminal Code have a dual criminality provision. In other words, to extradite, it is important to make sure that the conduct, when a person has been charged with an offence, would give rise to a criminal offence in both countries. That is fundamental as part of our extradition law and apparatus. In terms of domestic criminal law, I don't believe it is common among western countries to provide for dual criminality as a requirement in the context of the proceeds of crime legislation that we have before us. Extradition definitely.

Senator Doyle: This is part of the general confusion I have over dual criminality, and it is the only part of the act I am having any difficulty with at all. We recently dealt with a piece of legislation that will allow for the investigation of Canadians in this country for crimes that do not exist in this country—that is, for a non-criminal action in this country—to satisfy a treaty that we have with the United States. I keep thinking of that when I think in terms of the person who is going to be involved in a situation where he earned his money abroad in a business that was not legal where he earned it. We are at opposite ends of the same argument. I expressed considerable concern with the question of Canadians being investigated for something that was not a crime in Canada; it did not seem to alarm many other people, but there it was.

Mr. Iacobucci: Senator Doyle, the conduct has to be a crime by the laws of Canada.

Senator Doyle: Not to permit—

Mr. Iacobucci: Under this legislation.

Senator Doyle: Yes, but I am talking about the last bill we had. We get a procession of legislation over here, and this one had to do with permitting Americans to investigate people in Canada receiving assistance from Canada for something that was not a crime in Canada. It was fine to do it that way at that time, but today we are talking about another way, and I get confused about this. I should have gone to law school.

Mr. Iacobucci: I have been here on a number of occasions, and I have always had the impression that you went to law school. You should have gone.

[*Traduction*]

qui nous ont été présentés au sujet du projet de loi. J'estime que sa contribution nous a aidé énormément. Je sais que nous ne serons pas entièrement satisfaits, qu'il y aura sans doute d'autres questions, et je vous prie d'excuser mon départ précipité.

Le sénateur Fairbairn: J'ai bien écouté votre explication, mais j'aurais une autre petite question à poser concernant la double criminalité. Pourriez-vous nous donner des exemples de pays où s'applique ce régime de double criminalité?

La présidente: Où la double criminalité ne s'applique pas, plutôt?

Le sénateur Fairbairn: Oui.

M. Iacobucci: Permettez-moi tout d'abord de signaler que nous n'avons pas fait de recherches exhaustives à ce sujet. Le concept de la double criminalité est très répandu dans le domaine des extraditions. La procédure d'extradition que définit le Code criminel comprend des dispositions de double criminalité. Plus précisément, il est important de s'assurer, aux fins d'une extradition, que la conduite de l'accusé est jugée également criminelle dans l'autre pays. C'est là un aspect fondamental de la loi et de la procédure d'extradition. Pour ce qui est du droit pénal, je ne pense pas qu'il soit courant dans les pays occidentaux d'exiger la double criminalité pour intenter des poursuites. Dans le cas de l'extradition, toutefois, l'exigence est courante.

Le sénateur Doyle: C'est cette question de double criminalité qui me gêne le plus et c'est même, en fait, le seul élément du projet de loi qui me pose des difficultés. Nous avons récemment examiné un texte de loi destiné à permettre les enquêtes sur des Canadiens vivant au Canada concernant des crimes qui n'existent pas dans notre pays, uniquement pour satisfaire aux exigences d'un traité que nous avons conclu avec les États-Unis. Je ne peux m'empêcher d'y penser lorsque nous parlons de personnes ayant gagné leur argent dans des pays étrangers grâce à des activités illégales dans ce pays. Nous nous retrouvons encore dans le même dilemme. J'ai déjà exprimé de fortes réserves lorsqu'il s'agissait de faire enquête sur des Canadiens pour des actions non jugées criminelles au Canada, même si ces réserves n'ont pas trouvé beaucoup d'écho.

M. Iacobucci: Monsieur Doyle, dans le cas qui nous intéresse, les activités doivent être illégales selon les lois canadiennes.

Le sénateur Doyle: Ne pas autoriser . . .

M. Iacobucci: Dans le projet de loi que nous examinons.

Le sénateur Doyle: Oui, mais je parle du dernier projet de loi que nous avons étudié. Il était question d'autoriser les Américains à faire enquête sur des Canadiens et à recevoir l'aide du Canada relativement à des comportements non jugés criminels au Canada. Les modalités sont peut-être un peu différentes dans le cas qui nous intéresse, et je n'arrive pas à démêler le vrai du faux. J'aurais peut-être dû faire des études de droit.

M. Iacobucci: Je suis venu ici à plusieurs reprises et vous m'avez toujours donné l'impression d'être passé par une faculté de droit. Vous auriez dû faire des études de droit.

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Senator Doyle: I should have gone; there is no question about that.

Mr. Iacobucci: I am sure you would have been quite interested and successful.

I do not want to give too much evidence on the other bill, but again one has to look at the context. I assume you are refering to the Mutual Legal Assistance Bill, Bill C-58?

Senator Doyle: Yes.

Mr. Iacobucci: As you know, that comes out of a treaty context between the United States and Canada. There is provision in that bill that rests with the Attorney General not to be involved, where in fact there was a public interest not to be involved. I do not want to prejudge an Attorney General's opinion on this matter, but it might be a case where, if in fact there was no criminal law involved in the Canadian context, the Attorney General would say, "I am not going to subject a citizen of Canada to that kind of activity of assistance because he is not violating Canadian law."

Senator Doyle: Then in both of these instances you are back to the question of trust?

Mr. Iacobucci: As a lawyer, I would suggest that one has to look at the context of the legislation in question. It appears that there may be a different approach in two cases, but the approach is warranted to be different in those cases.

Senator Doyle: I am appreciative of the import of the bill and of the good arguments that exist for draconian measures. I have a problem here with this small principle that seems to be getting frayed on both sides.

The Chairman: We were very concerned about the possibility of an inequity there, just as we obviously remain concerned here. That is a major problem we have with the bill. Mr. Iacobucci.

In listening to your explanations today, the worry remains. I think you would agree that, simply because a provision or prohibition appears in our criminal law, that does not automatically guarantee its validity. Over time we have had many sections of our criminal law struck down for various reasons when they have been challenged in the courts. We have had a provision since 1892 and another section 312 since 1976, neither of which have been exercised, as you said. Therefore, they have not been challenged.

I understand that Mr. Mosley did concede in a prior appearance that it is possible that that section we have here could offend section 7 of the Charter and, by extension, the sections regarding forfeiture. The concern we have here is that we do not want to encourage putting into our criminal law obvious violations of the Charter, since they are inevitably going to be challenged in courts. We have been charged by the Supreme Court of Canada to try to ensure that those particular types of provisions do not get through in our legislation. That is basically our concern here.

You mentioned extradition. Of course, that is an area where we use it constantly. I have a paper here from the Commonwealth Law Conference, 1986, prepared by Professor Sharon A. Williams and Dean John D. McCamus of the Osgoode Hall Law School on civil liberties and the combatting of interna-

[*Traduction*]

Le sénateur Doyle: Sans aucun doute.

M. Iacobucci: Vous auriez sûrement très bien réussi.

Je ne voudrais pas épiloguer sur l'autre projet de loi, mais le contexte est très différent. J'imagine que vous parlez du projet de loi C-58 sur l'entraide juridique en matière criminelle.

Le sénateur Doyle: Oui.

M. Iacobucci: Comme vous l'avez dit, il s'agissait d'un traité conclu entre les États-Unis et le Canada. Le projet de loi autorise toutefois le procureur général à ne pas s'engager, s'il considère que l'intérêt public le justifie. Naturellement, je ne peux parler au nom du procureur général à cet égard, mais il se pourrait bien qu'après avoir déterminé que la personne faisant l'objet de l'enquête n'a pas commis de crime au sens de la loi canadienne, il décide de ne pas apporter sa collaboration.

Le sénateur Doyle: Dans les deux cas, par conséquent, nous faisons appel à la confiance?

M. Iacobucci: En tant qu'avocat, je suis porté à croire qu'il faut examiner le contexte du texte de loi. Les deux projets de loi semblent s'appuyer sur des principes différents, mais cela est justifié par la situation.

Le sénateur Doyle: Je comprends fort bien les visées de la loi et les arguments en faveur de mesures draconiennes. Ce qui me gêne, c'est que d'un côté comme de l'autre on fait une entorse à des principes.

La présidente: Nous étions extrêmement préoccupés par la possibilité d'une injustice, et ces craintes ne sont pas totalement apaisées. C'est là la principale difficulté que nous pose le projet de loi, monsieur Iacobucci.

Malgré vos explications d'aujourd'hui, nous demeurons préoccupés. Vous conviendrez sans doute que la présence d'une disposition ou d'une interdiction dans notre droit pénal n'est pas une garantie à toute épreuve. Dans le passé, de nombreux articles du Code criminel ont dû être abolis après avoir fait l'objet de contestations devant les tribunaux. Vous avez parlé d'une disposition qui existe depuis 1892 et d'une autre qui a été adoptée en 1976, l'article 312, dont personne ne s'est encore prévalu. Ces dispositions n'ont donc pas pu être contestées.

M. Mosley aurait semble-il convenu, à l'occasion d'une autre comparution, qu'il est possible que l'article en question soit incompatible avec l'article 7 de la Charte et, par voie de conséquence, avec les articles sur la saisie. Naturellement, nous voulons à tout prix éviter d'insérer dans notre droit pénal des articles contraires à la Charte, car inévitablement ils seront contestés devant les tribunaux. La Cour suprême du Canada nous a priés instamment de veiller à ce que ce genre d'articles ne soit pas introduit dans nos lois. Voilà ce qui explique nos préoccupations.

Vous avez mentionné la question de l'extradition. On sait que dans ce domaine la notion de double criminalité intervient constamment. J'ai ici un document issu de la *Commonwealth Law Conference* de 1986, rédigé par le professeur Sharon A. Williams et le doyen John D. McCamus de la Faculté de droit

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tional crimes, striking the balance. There is a section in here on double criminality, where they say:

> Double or dual criminality is a threshold requirement. The offence must be recognized as a criminal offence in the requesting and the requested state.

The paper goes on to give examples on extradition in areas where they may have political implications that are differently defined. In different countries there are obvious exceptions, but surely under our extradition proceedings, which occur fairly regularly, the legal counsel involved must provide the proper evidence of double criminality. That does not seem to create any great impediment to the process of the law or of the hearing of the case.

If there is any question here, I feel that we should not encourage the inclusion in our criminal law of questionable provisions such as this.

Mr. Iacobucci: Madam Chairman, I am familiar with the conference and the article in a general sense, because some of my colleagues were in attendance. I know the work of Professor Williams and former Dean McCamus quite well.

Again, I suggest that they were talking in the context of extradition, and I believe it is appropriate for that rule of dual criminality. In the context of this legislation, we are talking about proceeds of crime, which is international, which knows no borders in many ways. What is relevant for Canadian purposes is that, if property or proceeds flow from activities that Canadians regard as criminal, then there is an abhorrence with respect to that property or those proceeds and there is a public interest, I think, that suggests that we do not want to see our country become a haven for those individuals who are dealing in these kinds of activities to choose this country as a place where they place the proceeds and property.

I do not think this is a policy that we, as Canadians, would wish to encourage. To me, that is the point that is of very grave importance.

When I think of it in terms of the drugs and the terrorism crimes and extortion crimes, I must say that that is a matter of fundamental importance.

The Chairman: Those are crimes that would be dealt with obviously in almost any other country; so they really would not be caught in here in any case.

Mr. Iacobucci: As I said earlier in my comments, I am not so sure that the drug situation would be obvious conduct that would be regarded as unlawful in every country.

Senator Doyle: It would depend on General Noriega's mood that day as to whether or not he would pursue the crime.

Mr. Iacobucci: Exactly.

The Chairman: And how we regard General Noriega as well, I guess.

Senator Doyle: Then are we going to take anyone with a pack of Panamanian money?

[*Traduction*]

Osgoode Hall sur les libertés civiles et, dans une recherche d'équilibre, sur la lutte contre le crime international. Dans une section sur la double criminalité, on peut lire:

> La double criminalité est une exigence critique. L'infraction doit être considérée comme un crime dans les deux États.

Le document donne ensuite des exemples d'extradition dont les répercussions politiques peuvent être définies de façon différente. Certains pays font naturellement exception, mais il ne fait aucun doute que dans notre procédure d'extradition, qui intervient assez régulièrement, les juristes chargés de l'affaire doivent faire la preuve de la double criminalité. Cette exigence ne semble pas nuire indûment à l'application de la loi ni à l'audition de la cause.

La seule réserve que j'aimerais apporter, c'est que je ne juge pas opportun d'encourager l'inclusion dans notre droit pénal de dispositions contestables comme celles-là.

M. Iacobucci: Madame la présidente, je suis au courant des travaux de la conférence car certains de mes collègues y ont participé et je possède une connaissance générale de cet article. Je connais très bien les travaux du professeur Williams et de l'ancien doyen McCamus.

Il ne faut pas oublier que le débat portait sur l'extradition et que les conclusions sur la double criminalité sont justifiées dans ce contexte. Pour ce qui est du projet de loi à l'étude, il est question de produits de la criminalité internationale, qui ne connaît pas de frontières. L'important, du point de vue du Canada, c'est que les biens ou les produits découlant d'activités que les Canadiens considèrent comme criminelles, que notre société juge odieuses, ne puissent trouver refuge au Canada et que les personnes qui se livrent à ces activités ne soient pas encouragées à choisir notre pays pour écouler ces produits.

À mon avis, les Canadiens ne veulent pas encourager ce genre de politique. Ce point revêt pour moi une importance extrême.

Lorsqu'il s'agit de stupéfiants, de terrorisme et de crimes d'extorsion, il convient de ne pas prendre les choses à la légère.

La présidente: Manifestement, ces crimes sont réprimés dans pratiquement tous les autres pays, de sorte que de toute façon nous n'aurions pas à faire les premiers pas.

M. Iacobucci: Comme je l'ai dit plus tôt, il n'est pas évident que le trafic des stupéfiants soit considéré comme illégal dans tous les pays.

Le sénateur Doyle: Selon son humeur du jour, le général Noriega pourrait décider de punir ce crime ou de fermer les yeux.

M. Iacobucci: Exactement.

La présidente: Et tout dépend également de la façon de voir le général Noriega, j'imagine.

Le sénateur Doyle: Allons-nous donc nous mettre à arrêter tous ceux qui se présentent avec de l'argent panaméen?

[*Text*]

The Chairman: No one disagrees with the concept that the proceeds of crime, wherever possible, should be confiscated. That is probably the most sure way of trying to deter or discourage the activities that gave rise to it. No one here, Mr. Iacobucci, disagrees with the principle of the bill. It is only this particular application that is causing us a great deal of trouble. No doubt it will be examined later.

I wish to thank the witnesses for coming today.

The committee adjourned.

[*Traduction*]

La présidente: Personne ne contredit le bien-fondé de saisir dans la mesure du possible les produits de la criminalité. C'est en effet sans doute la meilleure façon de combattre les activités qui en sont à l'origine. Personne ici, monsieur Iacobucci, ne conteste le principe du projet de loi. C'est uniquement cette application particulière qui cause une gêne réelle. Nous y reviendrons sûrement plus tard.

Je remercie les témoins pour leur présence aujourd'hui.

La séance est levée.

September 1, 1988 [Standing Senate Committee on Legal and Constitutional Affairs]

REPORT OF THE COMMITTEE

THURSDAY, September 1st, 1988

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

THIRTY-FIRST REPORT

Your Committee, to which was referred Bill C-61, An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, has, in obedience to the Order of Reference of Wednesday, July 13, 1988, examined the said Bill and now reports the same without amendment, but with the following comments:

The Committee has examined Bill C-61, the Proceeds of Crime Bill, very carefully and has heard testimony from the Minister and his officials and from representatives of the Canadian Bar Association and the defence bar.

All members of the Committee strongly support the goals of this bill. We agree that there is a need for strong measures to deal with organized crime. The Committee does, however, have some concerns which it wishes to outline.

The first is the issue of dual criminality. The bill permits forfeiture of a person's property for certain named offences if the activity which produced the property took place elsewhere and would have constituted an offence *if it had occurred in Canada*. In theory, therefore, the activity could have been legal in the jurisdiction where it took place. For this reason, the bill has been characterized as lacking the requirement of dual criminality found in extradition proceedings.

Identical issues are raised by the new offence of laundering the proceeds of crime. It will become a criminal offence to launder property or proceeds obtained directly or indirectly as a result of an act or omission that, if it had occurred in Canada, would have constituted one of the named offences.

A very strong argument can be made that to convict people of an offence, or to order their property forfeit, where the underlying activity was *legal* in the jurisdiction in which it occurred would be to violate section 7 of the *Canadian Charter of Rights and Freedoms* whereby the right to life, liberty and security of the person is guranteed. We have difficulty in accepting that conviction in those circumstances would be considered to be in accord with the principles of fundamental justice required by the section.

The *Criminal Code* has long contained a provision (section 312) which makes it an offence to possess property obtained by crime and includes property which results from an act or omission that, it is had occurred in Canada, would have constituted an offence punishable by indictment. In other words, there is no requirement of dual criminality in this offence. Government officials have informed us that this part of the section has never been used. They argue that its existence is proof that the principle is accepted and, somewhat paradoxically, that the fact that no one has ever been charged is evidence that the lack

RAPPORT DU COMITÉ

Le JEUDI 1er septembre 1988

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles a l'honneur de présenter son

TRENTE ET UNIÈME RAPPORT

Votre Comité, auquel a été déféré le Projet de loi C-61, Loi modifiant le Code criminel, la Loi des aliments et drogues et la Loi sur les stupéfiants, a, conformément à l'ordre de renvoi du mercredi 13 juillet 1988, étudié ledit projet de loi et en fait maintenant rapport sans amendement, mais avec les commentaires suivants:

Le Comité a examiné très attentivement le projet de loi C-61 visant les produits de la criminalité, et a entendu le témoignage du ministre, de ses hauts fonctionnaires, ainsi que les représentants de l'Association du Barreau canadien et des procureurs de la défense.

Tous les membres du Comité appuient vigoureusement les objectifs de ce projet de loi. Nous admettons qu'il est nécessaire de prendre des mesures rigoureuses pour contrer la criminalité organisée. Le Comité émet toutefois certaines réserves dont il aimerait traiter dans les lignes qui suivent.

Le première concerne la question de la double criminalité. Le projet de loi autorise la confiscation des biens d'une personne trouvée coupable de certaines infractions désignées, si les actes qui lui ont permis de se procurer ces biens ont été exécutés à l'extérieur du Canada et qu'ils auraient été réputés criminels *s'ils étaient survenus au Canada*. En théorie, cependant, ces actes auraient tout aussi bien pu être légaux dans le pays où ils ont été exécutés. Pour cette raison, nous croyons que le projet de loi ne répond pas aux critères de double criminalité exigés dans les procédures d'extradition.

La nouvelle infraction portant sur le recyclage des produits de la criminalité pose des problèmes identiques. Sera coupable d'une infraction quiconque recyclera un bien ou ses produits obtenus directement ou indirectement par un acte ou une omission survenu à l'extérieur du Canada qui, au Canada, aurait constitué l'une des infractions désignées.

D'aucuns pourraient invoquer avec force arguments que le fait de déclarer qu'il y a culpabilité, ou d'ordonner la confiscation de biens, lorsque l'activité en litige est *légale* dans le pays où elle est survenue vont à l'encontre de l'article 7 de la *Charte canadienne des droits et libertés*, qui garantit le droit à la vie, à la liberté et à la sécurité de la personne. Nous avons beaucoup de mal à admettre qu'une déclaration de culpabilité dans ces circonstances puisse être considérée conforme aux principes de la justice fondamentale dont cet article exige le respect.

Le *Code criminel* contient depuis longtemps une disposition (article 312) qui mentionne que la possession d'un bien obtenu par la perpétration d'une activité criminelle, y compris d'un bien obtenu par une action ou omission, en quelque endroit que ce soit, qui aurait constitué, si elle avait eu lieu au Canada, une infraction punissable sur acte d'accusation, constitue une infraction. Autrement dit, le critère de la double criminalité n'est pas exigé dans ce cas pour établir qu'il y a infraction. Les hauts fonctionnaires du gouvernement nous ont informés que cette partie de l'article du *Code* n'avait jamais été invoquée.

of a dual criminality requirement in this bill will not be abused.

The Committee does not believe that this approach will be acceptable under the *Charter* should such a provision ever be used and its constitutionality challenged, whether the challenge is to a section of the *Code* that has been there for a considerable time or whether it is to a new provision introduced by this bill. On the other hand, we accept that the problem may be more theoretical than real, given that the acts committed by the people targeted by the forfeiture provisions of this bill will, in virtually all cases, be illegal in the foreign jurisdictions where they took place.

The Committee also has concerns about the provision in the bill that permits forfeiture of proceeds for offences other than the one for which the person has been convicted. If a person is convicted of a named offence but it cannot be established that the property relates to that particular offence, the property can still be ordered forfeit if the court is satisfied beyond a reasonable doubt that the property is proceeds of crime.

The Committee appreciates that the lack of a provision of this type could result in a serious loophole and could jeopardize the attainment of the goals of the legislation. On the other hand, we feel that there is a lack of legislative direction as to how this provision should operate. Will an entirely new hearing be required to determine whether other crimes have taken place? How will it differ from a trial for those very offences? How can the court avoid prejudice to the offender when deciding the sentence for the original crime for which the person has been convicted after hearing evidence related to other criminal activity relevant to the forfeiture proceedings?

The Committee pursued two specific concerns with the Minister. First, that the offence of charging a criminal interest rate, commonly called loansharking, was omitted from the list of named offences. Secondly, that when applying for special search warrants or restraint orders under this bill, there is no requirement that the Attorney General notify the judge of any previous applications made in relation to the same individual. The committee notes that both the wiretap and the telewarrant sections of the *Code* contain such a notice requirement and we believe that its inclusion is equally important in the forfeiture context. We note as well that the Law Reform Commission of Canada in its Working Paper 30 on search and seizure recommended that such a requirement be added to the general search warrant sections of the *Code*. The Committee was informed by government officials that certain other provisions of Bill C-61 reflect recommendations of the Commission.

As a result of our representations, the Minister has agreed in principle with our representations and has undertaken to proceed as outlined in his letter as follows:

Selon eux, le fait qu'elle existe prouve que le principe est généralement reconnu et que, paradoxalement, le fait qu'aucune accusation n'ait été portée dans de tels cas illustre que l'on n'exploitera pas indûment l'absence de référence à la double criminalité dans ce projet de loi.

Le Comité ne croit pas que cette argumentation serait jugée conforme à la *Charte* si la constitutionnalité de cette disposition était remise en question, que la contestation se rapporte à un article inséré dans le *Code* depuis fort longtemps ou qu'elle porte sur une nouvelle disposition introduite par ce projet de loi. Par ailleurs, nous admettons que le problème est peut-être beaucoup plus théorique que réel étant donné que les actes commis par ceux dont on voudrait confisquer les biens aux termes de ce projet de loi seront, dans presque tous les cas, illégaux dans le pays étranger où ils auront été commis.

Le Comité est également sceptique à propos de la disposition du projet de loi qui permet la confiscation des produits d'infractions autres que celles dont la personne a été trouvée coupable. Si une personne est déclarée coupable d'une infraction désignée, mais qu'on ne peut arriver à prouver que les biens ont été obtenus par la perpétration de cette infraction, le tribunal peut encore en ordonner la confiscation s'il est convaincu hors de tout doute raisonnable que les biens sont le produit de la criminalité.

Le Comité est conscient que l'absence d'une telle disposition pourrait constituer une grave échappatoire et compromettre les objectifs que cette mesure législative veut atteindre. Il nous semble par ailleurs que la façon de l'appliquer n'est pas suffisamment bien décrite. Faudra-t-il entamer un nouveau procès? En quoi celui-ci sera-t-il différent d'une audience où le tribunal aura à juger des accusations initiales? Comment le juge pourra-t-il éviter de causer préjudice au contrevenant en décidant de la peine qu'il devra imposer pour la première infraction, après avoir entendu des témoignages se rapportant à une autre activité criminelle pertinente aux procédures de confiscation?

Le Comité a formulé deux critiques au ministre. Premièrement, il déplore que le fait d'exiger des taux d'intérêt exorbitants, autrement dit, de s'adonner au prêt usuraire, n'ait pas été inclus dans la liste des infractions désignées. Deuxièmement, il constate que lorsque le procureur demande l'exécution d'un mandat spécial de perquisition ou d'une ordonnance de blocage, aux termes de ce projet de loi, le procureur général n'est pas tenu d'informer le juge que des demandes similaires ont déjà été présentées au sujet du contrevenant. Le Comité constate que les dispositions du *Code* portant sur l'écoute électronique et le télémandat exigent de tels avis, et nous croyons qu'il serait tout aussi important de les exiger dans le cas des confiscations. Nous signalons aussi que la Commission de réforme du droit du Canada, dans son document de travail n° 30 sur la perquisition et la saisie, a recommandé que cette exigence soit ajoutée à tous les articles du *Code* portant sur les mandats de perquisitions. Les hauts fonctionnaires du gouvernement ont informé le Comité que d'autres dispositions du Projet de loi C-61 ont donné suite aux recommandations de la Commission.

Après lui avoir communiqué nos vues, le Ministre s'est dit d'accord avec nos propositions et s'est engagé à procéder tel qu'il le propose dans la lettre suivante:

September 1, 1988 [Senate]

Hon. William M. Kelly: Honourable senators, with leave, I move second reading now.

The Hon. the Speaker *pro tempore:* Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

THIRD READING

The Hon. the Speaker *pro tempore:* Honourable senators, when shall this bill be read the third time?

Hon. William M. Kelly: Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*b*), I move third reading now.

The Hon. the Speaker *pro tempore:* Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

CRIMINAL CODE
FOOD AND DRUGS ACT
NARCOTIC CONTROL ACT

BILL TO AMEND—REPORT OF COMMITTEE PRESENTED, PRINTED AS APPENDIX AND ADOPTED

Hon. Joan Neiman: Honourable senators, I have the honour to present the thirty-first report of the Standing Senate Committee on Legal and Constitutional Affairs, respecting Bill C-61, to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act. I ask that the report be printed as an appendix in the *Debates of the Senate* and to the *Minutes of the Proceedings of the Senate* of this day and that it form part of the permanent records of this house.

The Hon. the Speaker *pro tempore:* Is it agreed, honourable senators?

Hon. Senators: Agreed.

(*For text of report, see Appendix "A", p. 4253.*)

The Hon. the Speaker *pro tempore:* Honourable senators, when shall this report be taken into consideration?

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 45(1)(*f*), I move that the report be adopted now.

The Hon. the Speaker *pro tempore:* Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Neiman: Honourable senators, I have only a few words to say with respect to Bill C-61. I think I am speaking for members of the committee when I say that we strongly support the goals of this bill. It has been a serious anomaly of our law that criminals could be allowed to keep and even grow wealthy on their ill-gotten gains. Possession of the proceeds of crime has long been an offence under the Criminal Code, but, until this bill, there were no means by which a court could order the property forfeit.

Despite our general support, there are some matters that concern us. These arose in the course of studying the bill. The first is the somewhat complex issue of dual criminality. Some honourable senators will be familiar with extradition law, where that principle is well established. Our extradition treaties always provide that Canada will not turn a person over to a foreign government unless the act which the person has committed, or is alleged to have committed, is a crime in both Canada and that foreign state. That requirement is missing from this bill. In fact, it permits forfeiture of a person's property for certain named offences, which, if the activity had taken place outside Canada, would have been legal, but which would have consitituted an offence if it had occurred in Canada. In theory, therefore, the activity could have been legal in the jurisdiction where it took place. We have the examples of legal gambling in the State of Nevada and legal prostitution in parts of the Netherlands.

The same approach with respect to allowing this type of forfeiture has been used with the newly created offence of laundering the proceeds of crime. We seriously question whether these provisions will comply with the Canadian Charter of Rights and Freedoms. Do they not conflict with the principles of fundamental justice by providing for the possibility of condemning a person for conduct that is legal in the place in which it occurred? We were advised by the minister and his officials that a provision has existed in the Code for many years that also lacks this dual criminality requirement, but it has never been used in a case where the underlying activity has actually been legal.

Nevertheless, the committee does not believe that this provision will be acceptable under the Charter. Should it ever be used in this particular way, it seems certain that it will be constitutionally challenged. However, we are reasonably confident that the acts committed by the people targeted by the forfeiture provisions in this bill will, in virtually all cases, also be illegal in the foreign jurisdictions in which they take place. For this reason we did not feel that we should retard the passage of the bill by insisting on appropriate amendments.

• (1420)

Another provision of the bill raises concerns because of its vagueness. It is the one that permits forfeiture of proceeds for offences other than the one of which the person has been convicted. If the court is not satisfied that the property in question relates to the offence for which the person is convicted, it can nevertheless order the property be forfeit, if it is satisfied beyond a reasonable doubt that the property is part of the proceeds of crime.

What we found lacking in this provision was any legislative direction as to how the court was to proceed to make this determination. We were left with a number of unanswered questions, and we have raised those in our report. For example, will an entirely new hearing be required to determine whether other crimes have taken place? How will it differ from a trial

for those very offences? Will the court hand down its sentence for the offence of which the person has actually been convicted before hearing the evidence of the other offences relating to the question of forfeiture? If not, will this not be very prejudicial to the offender?

Ultimately, all of these questions will have to be worked out by the courts themselves, but we regret that the statute does not give more explicit direction on how this provision should operate.

In its examination of the bill the committee concluded that there were two omissions that should be rectified. First, the offence of loan sharking is missing from the list of offences, or enterprise crimes as they are sometimes called, that trigger the forfeiture provisions of the bill. It is our understanding that this offence is commonly part of a cluster of offences that we think of as organized crime, and we could not understand why it was not included. In fact, we dealt with that particular crime in a bill just a few weeks ago, when we were considering other amendments to the Criminal Code.

The second omission is that, when an Attorney General applies for special search warrants or restraint orders under this bill, there is no requirement to notify the judge of any previous applications made in relation to the same individual. Both the wiretap and the telewarrant sections of the Criminal Code contain such a notice requirement, and we believe that its inclusion is equally important in the forfeiture context as well.

We brought these concerns to the attention of the Minister of Justice in the hope that he would give us an undertaking to bring those amendments forward at the earliest possible date. We have received a letter from the Minister of Justice in which he agrees in principle with the comments we have made. He has undertaken to pursue the matter of making the necessary amendments at an early date. That letter is attached to the committee's report. In fact, I spoke personally to the minister this morning and he assured me that he would follow this up as soon as possible. With that assurance, honourable senators, the committee is reassured and is prepared to recommend passage of this bill without amendment.

Motion agreed to and report adopted.

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read the third time?

On motion of Senator Doody, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

ADJOURNMENT

Hon. C. William Doody (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 45(1)(g), moved:

> That when the Senate adjourns today, it do stand adjourned until Wednesday next, 7th September, 1988, at two o'clock in the afternoon.

(Senator Nurgitz)

Motion agreed to.

QUESTION PERIOD

AGRICULTURE

ALBERTA—DROUGHT RELIEF PROGRAM—CRITERIA FOR QUALIFICATION

Hon. H.A. Olson: Honourable senators, I should like to ask the Leader of the Government in the Senate several questions. Before I do I wish to congratulate the Deputy Leader of the Government in the Senate for the speed with which he brought back an answer to a question I asked him last Tuesday, August 30.

Senator Doody: You were surprised!

Senator Olson: I was not surprised. Indeed, on Tuesday I mentioned his great influence and persuasive ability, and, although he demurred somewhat, saying that he did not have that great an influence, on Wednesday I received a report from the Department of Agriculture dated August 31, 1988—in other words, the next day, which is good service as far as I am concerned.

Senator Frith: He does not know his own strength!

Senator Olson: That report outlined the terms and conditions, or the criteria, for making applications under the drought relief program related to livestock. I want him to know that I appreciate that, and my confidence in his influence, if he tries, even though it was high, is even higher. However—

Senator Doody: Now for the truth!

Senator Frith: Here comes the "but"!

Senator Olson: One of the conditions for receiving the payment for the livestock is, and I quote:

> Eligibility for the second installment will depend on enrollment in forage crop insurance.

I think that it is an improper use of the terms and conditions of the federal spending power to insist that a producer buy some kind of insurance for 1989 so that he can collect from a program that was supposed to relieve the financial difficulty in 1988. The Conservatives forced this participation. Talk about socialism or all those other words that Senator Doody uses—

Some Hon. Senators: Hear, hear!

Senator Olson: —or that Senator Barootes uses every once in a while. I should think that he would be my greatest ally in trying to get this unjust condition removed from the program. I want to ask the minister—or the deputy leader again—

Senator Argue: You are elevating him!

Senator Olson: His image, in my view, has been elevated tremendously. I have never had such good service.

Appendix E:

Amendments to s. 462.3 of the *Criminal Code*

Table of Contents

An Act to amend the Customs Tariff, the Excise Act, the Excise Tax Act, the Customs Act, the Criminal Code and a related Act (Bill C-102)

Citation 1993, c. 25, s. 95

Royal Assent June 10, 1993

Hansard

Hon. Don Mazankowski (Deputy Prime Minister and Minister of Finance): Mr. Speaker, let me try to explain to the hon. member. The debt that we inherited was something in the vicinity of $200 billion. The member knows that you have to pay interest on that debt. He knows that interest compounds upon interest and that it accumulated to $400 billion plus.

We have been operating in an operational surplus since 1987. As a matter of fact, I repeat, we have not added one red cent to Canada's national debt. As a matter of fact, we have reduced it by $20 billion plus.

Hon. Herb Gray (Windsor West): Mr. Speaker, I have a supplementary question for the minister.

Surely the minister will not try and hide the fact that he and his government have supported the interest rate policy of the Bank of Canada and that interest rates are a cost of government along with all the other costs.

Why does he try to hide the fact that the public debt has moved from $168 billion to more than $423 billion since his government has taken office? Why does he not recognize that and also recognize that a major way of dealing with it is to create more economic growth and jobs for Canadians?

Hon. Don Mazankowski (Deputy Prime Minister and Minister of Finance): Mr. Speaker, the hon. member suggests that we should have lower interest rates. That is true.

When he was occupying the government benches, we saw interest rates go up to 22 per cent and 23 per cent. We have tried to do two things. We have tried to contain government expenditures against the wishes of the opposition parties. We have tried to contain inflation. The key to bringing interest rates down is to bring down inflation.

The hon. member is suggesting that we should have higher inflation and that we should spend more. That is not a recipe for lower interest rates. That is a recipe for higher interest rates.

• (1450)

[*Translation*]

TOBACCO SMUGGLING

Mrs. Lise Bourgault (Argenteuil—Papineau): Mr. Speaker, my question is to the Minister of Justice and Attorney General of Canada. The Criminal Code does not provide for the seizure of goods acquired through profits generated by the illegal sale of smuggled tobacco products because this activity is not recognized as a form of organized crime. In practice, this means that some Mohawks could buy the Manoir Richelieu with the money made from the lucrative black market for cigarettes and open a nice casino which Quebec would otherwise not allow them to own.

So as not to make fools of us all in this House, will the minister urgently introduce a retroactive amendment to the Criminal Code and eliminate this unacceptable loophole which enables criminals to launder the money made by smuggling cigarettes?

Hon. Pierre Blais (Minister of Justice, Attorney General of Canada and Minister of State (Agriculture)): Mr. Speaker, my colleague raises the important issue of smuggling. I must remind all members of this House that the Minister of Finance has tabled Bill C-102, which reinforces the legislation on smuggling.

However, it might also be appropriate to remind Canadians who are listening that smuggling is a crime. It is difficult to fight smuggling because people who buy cigarettes, among other contraband items, do not complain. I believe that if all of us in this House made Canadians aware of the danger to society of giving in and buying smuggled goods—and I am speaking to members on both sides of this House—we would probably increase their awareness of the issue. It is quite serious that Canadians snap up smuggled goods so easily.

I thank my colleague for her question and I must tell her—

Some hon. members: Order, order.

Mr. Blais: Mr. Speaker, look at what goes on on the other side when we discuss serious issues. We are giving a great deal of attention to this matter and we hope that our colleagues will co-operate by supporting Bill C-102.

Even though the implementation of the export tax was subsequently suspended by our government the Canadian duty-free operators continue to hold true to their volunteered tobacco limits. This was done on the understanding that once officials from the departments of finance and revenue were reasonably convinced that Canadian duty-free operators were not involved with the tobacco smuggling problem discussions would be held to bring the tobacco sales limits to more constructive levels.

At meetings held with representatives of the departments of finance and revenue on June 23, 1992 and September 28, 1992 it was clearly stated by some of the officials present that they were satisfied that all Canadian duty-free shops were complying to the volunteered selling limits and that they now recognized that the Canadian duty-free shops were not part of the smuggling problem.

Therefore the question is why proceed with legislation to limit the sales from Canadian duty-free shops if it has been demonstrated and recognized that Canadian duty-free shops are not part of the smuggling problem. At a time when the Canadian duty-free industry as a whole is facing significantly increased competition from the United States the only consequences of such restrictive actions will be to provide U.S. retailers with an additional competitive advantage and subsequent loss of millions of dollars in tourist revenue.

• (1415)

The Canadian duty-free industry plays a key element in the Canadian economy through its employment of hundreds of Canadian workers and the generation of substantial tax and revenue dollars to the federal and provincial governments. The vast majority of Canadian duty-free industry is composed of small to medium businesses owned by Canadian citizens.

The political agenda of our current government has been to energize and support Canadian small to medium businesses to stimulate the employment of Canadians and to promote exports in other countries. The current actions to legislate limits on the sales from Canadian duty-free shops directly contradicts such agenda. Therefore, on behalf of the Canadian Frontier Duty-Free Association I ask for your support on this most critical of issues to presently face our industry".

That sets out in capsule from what the position of the duty-free people is; that there is no need for the legislation. They are willing and have been co-operating and reporting to the revenue and customs departments any substantial increases in sales to any particular people. To proceed on anything that would unduly limit these entrepreneurs, or in fact force them out of the business or into bankruptcy would be wrong.

Let me move briefly to another area that has opened up by the very fact of this bill and the other bill before the House today. This was mentioned earlier by the hon. member from Newfoundland in his remarks. That is the loss of billions of dollars to the Canadian coffers as a result of the offshore tax havens. We have been talking about that in this party for a number of years. In last year's report the Auditor General confirmed that in his opinion hundreds of millions of dollars were leaking from the Canadian tax base as a result of offshore tax havens.

The response from the Ministry of Finance was that in the guise of competitiveness we had to allow these tax loopholes. It is interesting that when talking to Revenue Canada officials there appears to be a major rift between the Department of Revenue and the Department of Finance with respect to this. Revenue agrees it is a major problem. There is a major bleeding of our taxes through these loopholes. There are some 360 very large corporations using various tax loopholes to benefit their profits.

Revenue officials tell us that the loopholes could be closed without hurting our competitiveness. The competitiveness thing is simply a red herring. There would never and should not be taxation or double taxation of offshore income in Canada. If income is legitimately earned offshore and is brought back in and dividends are paid out to the shareholders or the corporation in Canada, there should not be taxation of that a second time if it has already been taxed in the other jurisdiction. Revenue Canada states that and I do not have a problem with that.

The key crunch is that Revenue Canada officials tell us that it is not hundreds of millions of dollars that are lost, it is billions of dollars. The member mentioned $2 billion. In fact, revenue officials have told me that it is probably higher than that. Billions of dollars per year are lost in taxes to these large corporations using their shell companies and paper transactions.

In two areas the loophole could be closed in what is called loss importation. That is where there are losses offshore, in offshore corporations. Under the present legislation those losses can be brought forward and offset against the profits of the corporation in Canada. That is a major loophole which amounts to hundreds of millions of dollars right there.

• (1420)

There is another one with Canadian source income that is allowed to be funnelled out through an offshore company. An example of that is the Canada Trust Co. case which is a fairly small one. I believe it is before the courts now. Approximately $30 million of mortgages guaranteed by CMHC were sold to a Shell company in the Netherlands. That company apparently then made the income from these CMHC guaranteed mortgages in Canada. Therefore it was income earned in Canada, taken offshore and declared as income of the offshore corporation and dividended back to the same company. The income lost in that particular case appears to be somewhere in the area of $3 million to $4 million. This is fairly small on the whole scale of things but it is an example of what I mean when I say that these tax loopholes could in fact be closed with major consequences.

Those types of things would help the totality of the Canadian economy. It would assist the regular taxpayer in understanding what is going on within the tax regime, that in fact there is a level playing field and that lower income earners are being treated the same as the huge multinationals and the wealthy corporations and taxpayers within Canada.

I just wanted to mention that and point out that there are many things we can do to try and increase the tax fairness in Canada, to try to ensure that we get back the credibility of our government and the credibility of our parliamentary system.

Mr. Lyle Dean MacWilliam (Okanagan—Shuswap): Mr. Speaker, I appreciate the opportunity to make a few comments with respect to Bill C-102. This bill of course is seeking to enact several tax and tariff measures that have been announced recently.

Some of the measures are notable, for example those addressing tobacco smuggling and tax evasion. The bill also addresses the excise tax rate on cigars and other tariff reductions in order to reduce the cross-border shopping that has been a problem until recently with Canada's high interest rates and high dollar.

Although the bill has some good points, I submit it does not really solve the initial problem which is the fact that we have the GST in the first place. The government knows full well there are many things wrong with this tax. The tax has been a real burden on the economy. It has been difficult for our small business sector to adjust to the administrative costs of this tax. It has been difficult for consumers to put up with the extra financial burden caused by this tax.

The government would solve all problems at once by simply scrapping this tax, phasing it out, getting rid of it and imposing the kind of tax reform we have been requesting for some time. I think the GST is the real source of our misery here. It is not fine tuning of some of the changes that should be made, but take the whole darn thing, do away with it and bring in a system of real tax reform.

I want to cite some very specific problems which have been brought to my attention with respect to the application of the GST. I want to turn to a very specific situation such as the purchase of a new vehicle. Let me break it down into two arguments.

First I would like to look at a private citizen, a person who does not own or operate his own business, purchasing a vehicle. Then I would like to look at the situation of a business registrant purchasing a vehicle. This is someone who pays the GST, has a small business and uses a vehicle as part of that business. This is to show some of the specific problems that have not been addressed by this particular legislation.

• (1425)

First of all the private citizen who trades in his vehicle on a new one has to pay the full cost of the GST on the purchase of that new vehicle. That is fair enough if the consumer also recognizes that in fact there is essentially a tax credit being applied with the trade-in vehicle. That tax credit however goes to the dealer who purchases that vehicle.

[Text]

• 1605

The Excise Act and the Customs Act are also being amended to add proceeds of crime provisions for tobacco smuggling and tax evasion offences. These provisions will enable federal enforcement agencies to seize and forfeit to the Crown the profits made by organized crime from the illegal sale of smuggled tobacco products.

Provisions in the Criminal Code which authorize the use of wire-taps in investigations of certain criminal activities are being broadened to cover tobacco-related offences. These amendments will allow the RCMP to obtain wire-tap authorizations for tobacco-related offences, thereby enabling them to make more effective use of the new proceeds-of-crime provisions.

The Excise Act is being amended to reinforce the marking requirements for packages of tobacco products that are exported or sold duty free in Canada. The new marking requirements will assist enforcement agencies in their efforts to combat tobacco smuggling and tax evasion by making duty free tobacco products more readily identifiable.

These measures, together with the substantial new resources allocated to Customs and the RCMP, are intended to provide enforcement agencies with the necessary support to attack organized tobacco smuggling rings and generally reduce the incentives to engage in the contraband tobacco trade, thereby stemming the loss in the government revenues attributable to tobacco smuggling. By reducing tobacco smuggling they will also complement the government's initiatives to discourage smoking in Canada.

Mr. Chairman, the bill also implements the excise tax of 4¢ per cigarette imposed on cigarettes for export or for sale through duty free shops, which was announced in February of 1992. Proportional excise tax is levied on other tobacco products for export or for sale through duty free shops. The tax was in effect for approximately eight weeks from February 13, 1992 to April 8, 1992.

The purpose of this tax is to reduce the profits of tobacco smugglers by narrowing the price differential between Canadian cigarettes for sale in the Canadian tax-paid market and those sold in other countries. It was also intended to address the problem of casual smuggling by cross-border shoppers.

However, following the introduction of this tax, it became apparent that suppliers in the United States would be able to circumvent the tax by sourcing tobacco products for the Canadian market outside of Canada. Thus, while the tax was effective in the short term as long as alternative sources of Canadian-type cigarettes were not available, it would not be an effective measure in the government's fight against tobacco smuggling in the longer term. That is why the government

[Translation]

La Loi sur l'accise et la Loi sur les douanes sont aussi modifiées de manière à y ajouter des dispositions sur les produits de la criminalité concernant la contrebande de tabac et l'évasion fiscale. Ces dispositions permettront aux organismes d'exécution fédéraux de saisir et de remettre à l'État les profits réalisés par le crime organisé dans la vente illégale de produits du tabac de contrebande.

Les dispositions du Code criminel qui permettent d'utiliser l'écoute électronique dans les enquêtes sur certaines activités criminelles sont élargies de façon à inclure les infractions relatives au tabac. Ces modifications permettront à la GRC d'obtenir des autorisations d'écoute électronique relativement à des infractions concernant le tabac, ce qui lui permettra de faire usage plus efficacement des nouvelles dispositions relatives aux produits de la criminalité.

La Loi sur l'accise est modifiée de façon à renforcer les exigences relatives au marquage des paquets de produits du tabac qui sont exportés ou vendus en franchise de droits au Canada. Les nouvelles exigences relatives au marquage aideront les organismes d'exécution dans leurs efforts visant à lutter contre la contrebande de tabac et l'évasion fiscale en permettant d'identifier plus facilement les produits du tabac en franchise de droits.

Ces mesures, ainsi que les nouvelles ressources importantes qui seront allouées à Douanes et Accise et à la GRC, visent à offrir aux organismes d'exécution l'aide dont ils ont besoin pour s'attaquer aux réseaux organisés de contrebande de tabac et à réduire en général les encouragements au commerce du tabac de contrebande, réduisant ainsi les pertes de recettes du gouvernement qui sont attribuables à la contrebande de tabac. En réduisant la contrebande de tabac, ces mesures s'ajouteront aussi aux initiatives prises par le gouvernement pour faire diminuer la consommation de tabac au Canada.

Monsieur le président, le projet de loi met aussi en œuvre la taxe d'accise de 4c. la cigarette imposée sur les cigarettes destinées à l'exportation ou à la vente dans des boutiques hors taxes, mesure qui a été annoncée en février 1992. Une taxe d'accise proportionnelle est imposée sur les autres produits du tabac destinés à l'exportation ou à la vente dans des boutiques hors taxes. Cette taxe est restée en vigueur environ huit semaines, soit du 13 février au 8 avril 1992.

Cette taxe avait pour objet de réduire les profits des contrebandiers de tabac en faisant diminuer l'écart de prix entre les cigarettes canadiennes destinées à la vente sur le marché canadien des produits sur lesquels la taxe est acquittée et les cigarettes vendues dans d'autres pays. Elle visait aussi à régler le problème de la contrebande occasionnelle pratiquée par ceux qui effectuent leurs achats outre-frontière.

Cependant, après l'instauration de cette taxe, il est devenu évident que les fournisseurs aux États-Unis seraient en mesure d'éviter de payer la taxe en s'approvisionnant en produits du tabac pour le marché canadien à l'extérieur du Canada. En conséquence, même si la taxe a été efficace à court terme tant que d'autres sources d'approvisionnement en cigarettes canadiennes n'étaient pas disponibles, elle ne serait pas une mesure efficace dans les efforts que déploie le gouvernement

CUSTOMS TARIFF

MEASURE TO AMEND

The House proceeded to the consideration of Bill C-102, an act to amend the Customs Tariff, the Excise Act, the Excise Tax Act, the Customs Act, the Criminal Code and a related act, as reported (with amendments) from a legislative committee.

Hon. Pierre Blais (for the Minister of Finance) moved that the bill be concurred in.

Motion agreed to.

• (1545)

[*Translation*]

Mr. Blais (for the Minister of Finance) moved that the bill be read the third time and passed.

Mr. Marcel R. Tremblay (Parliamentary Secretary to Deputy Prime Minister and Minister of Finance): Mr. Speaker, I am pleased to speak on third reading on Bill C-102, which contains the legislative amendments to implement a number of excise tax and tariff measures announced over the past 20 months. Many of these proposals have already been implemented through notices of ways and means motions tabled at the time of their announcement. Among the measures are tariff changes to reduce cross-border shopping and a range of initiatives to address the problem of tobacco smuggling and tax evasion.

Hon. members are no doubt aware that the growth in tobacco smuggling over the past few years has had a profound economic and social impact. Domestic sales of tobacco products have fallen significantly over the last year and a half, particularly in some parts of the country. The result of falling tobacco sales has been a substantial loss in business for those in the wholesale and retail trade.

Criminal organizations are becoming increasingly involved in the packaging of tobacco products and are using the profits from illegal sales of tobacco to finance other criminal activities.

Tobacco smuggling and tax evasion have also had a serious impact on the fiscal and social policies of the federal government. Revenues from tobacco taxes have declined as Canadian smokers switched to contraband tobacco products. This decline in tobacco tax revenues, which are used to fund important government programs and services, has considerably outpaced the decline in overall tobacco consumption. As well, government health policies to discourage smoking are being undermined by the availability of inexpensive tobacco on the black market.

Without strong action by the government, the level of smuggling would continue to increase, with the resulting costs for the public and private sectors alike. This concern was the basis for the enforcement and control measures announced by the Minister of Finance and the Minister of National Revenue last spring to deter tobacco smuggling. Bill C-102 provides the legislative authority to implement these measures, which can be summarized as follows: tighter controls on the distribution and sale of duty-free tobacco products in Canada; improved markings on tobacco products to better identify duty-free tobacco products; the addition of "proceeds of crime" provisions to the Excise Act and the Customs Act to enable law enforcement agencies to seize the profits made by organized crime from tobacco smuggling and tax evasion; and significantly higher criminal penalties for people caught smuggling tobacco into Canada or selling contraband tobacco products in Canada.

On this last point, I would like to note that amendments were proposed during consideration of this bill by the legislative committee to further increase the penalties for the smuggling and illegal sale of tobacco products under the Excise Act and Customs Act. I am pleased to report that these amendments were approved by the committee and are included in Bill C-102 for consideration by hon. members today.

I should add that over the past year the government has allocated substantial new resources to Revenue Canada and the RCMP to enable these agencies to strengthen their enforcement efforts both at the border and within Canada. These additional resources, together with the higher penalties, new controls on the sale and distribution of duty-free tobacco and the addition of "proceeds of crime" provisions in this bill are vital components of the government's measures to address the tobacco smuggling problem and will improve the government's enforcement efforts in this area considerably.

This bill also implements the excise tax on tobacco products for export or for sale through duty-free shops that was announced in February 1992.

• (1550)

The purpose of this tax was to reduce the incentive to smuggle by narrowing the price differential between Canadian tobacco products for sale in the Canadian tax-paid market and those sold in other countries.

While the tax was effective in reducing the supply of contraband tobacco products in Canada in the weeks following its introduction, it quickly became apparent that its effectiveness would be severely limited in the longer term once suppliers in the U.S. were able to obtain Canadian-type tobacco products outside of Canada. The government therefore suspended collection of the tax in April 1992, when it announced the introduction of additional tobacco enforcement and control measures, which are among those I described a few moments ago.

Bill C-102 also addresses another difficulty Canadian wholesalers and retailers have had to face: cross-border shopping.

Last year the Minister of Finance indicated to the Canadian Retail Council's National Task Force on Cross-Border Shopping that, to help deal with this serious problem, the government would be prepared to remove tariffs on imported consumer products that are not made in Canada and are purchased by cross-border shoppers, where the tariff contributes to higher prices in Canada.

The task force identified a number of products and after consultations with all interested parties it was determined that the tariffs on about 25 products could be removed. These tariff removals represent approximately $1 billion worth of annual imports and about $60 million in duty. Examples are video cassette recorders, microwave ovens, sewing machines, cameras and telephone answering machines.

Canadian consumers benefit as lower prices for these imported goods are passed on by the retailers and wholesalers. The retailers and wholesalers, and the economy in general, benefit as these measures encourage consumers to shop in Canada.

The response to this initiative has been very positive. Department of Finance officials are continuing to work with Canadian industry and the Retail Council of Canada to identify other consumer products on which tariffs can be removed.

I would also like to touch very briefly on some of the other excise and tariff measures contained in this bill.

Hon. members will recall that in the 1992 budget the Minister of Finance announced the elimination of the 8.5 cent per litre excise tax on the ethanol and methanol portions of blended fuels. This measure, which will be enacted by Bill C-102, will encourage the development and use of ethanol and methanol fuels made from renewable feedstocks. The use of these fuels provides a number of environmental benefits, such as a reduction in carbon dioxide emissions.

The bill also contains a number of other tariff changes. Most of these are technical but some of them remove duties in response to requests from Canadian businesses. These amendments cover a variety of products such as peach trays and light bars for emergency vehicles but in my view the most significant change is the extension of duty-free entry to materials and parts imported by manufacturers who make goods that are incorporated into other products that are exported.

Previously those manufacturers could only get a refund of duties after the finished products were exported. Immediate duty relief was restricted to manufacturers who were both importers of the parts and materials and exporters of the finished goods. The extension of this privilege to intermediate producers is a big step in improving the competitive position of those producers.

In conclusion, I would like to emphasize the importance of the provisions in Bill C-102. In particular, this bill contains important measures to address the cross-border shopping problem. As well, the measures that will be enacted by this bill to combat tobacco smuggling will ensure that Canadian enforcement agencies have the proper means to go after and dismantle the criminal organizations involved in the illegal tobacco trade.

I therefore ask hon. members to support the passage of this bill on third reading.

[*English*]

Mr. Bob Speller (Haldimand—Norfolk): Mr. Speaker, I welcome this opportunity to speak today on Bill C-102.

Basically this bill responds to the cross-border shopping problem and provides additional measures to counteract tobacco smuggling. I think everyone here recognizes the problems of cross-border shopping and tobacco smuggling. We as legislators have been asked by the Canadian people to do something about this problem. I know that we all feel that not enough is being done to attack this epidemic and not enough is being done to attack the whole problem of contraband cigarettes.

This bill was introduced in consultation with the tobacco industry. It is aware of the seriousness of the problem of cross-border shopping and smuggling and understands that it has a role to play in doing something about this problem. However, while this bill takes a first step to deal with the problem of smuggled tobacco by changing packaging rules and imposing stricter penalties for those who deal in these products it does nothing to address the root of the problem, which is high tobacco taxes.

Today as we study this bill I would like to speak specifically about the major problem of smuggling tobacco products in this country because it greatly affects my area of Haldimand—Norfolk. My argument is this: I believe that excessively high taxation on tobacco has created a prohibition-like environment in which otherwise law-abiding citizens are either selling or buying smuggled tobacco.

People from every walk of life, young and old, professional and welfare recipients, are in on the illegal action. All feel that they are over-taxed and for this reason have convinced themselves that buying or selling illegal tobacco is socially acceptable. They think that taxes on cigarettes are too high and that it is not a crime to buy or sell them. Many ordinary Canadians feel no compunction about buying or bypassing this tax-related law. Canadians now wink at cigarette smugglers the same way as Americans winked at the American bootleggers of the 1920s.

Smuggling is dividing communities. It is dividing native communities, inspiring the creation of criminal conspiracies, increasing violence for retailers, and goes hand in hand with the drug trade. In fact, organized crime is turning its attention to the illicit trade of tobacco because the profit from illegal tobacco is much greater than that of drugs and the penalties are not as severe.

There is no dispute in this country over the root cause of smuggling. It is high tobacco taxes which have become such a large component of the product's cost and price that they may offer a massive potential profit margin to those who are able and willing to acquire and trade in cigarettes on which no tax has been paid.

It is difficult to understand why a government would allow something illegal to occur right under its nose because it is politically correct to do so. In other words, because of pressure from non-smoking groups and my friend here in the NDP both federal and provincial governments are afraid to deal with the tobacco taxation problem. They would rather continue with their high taxation policy, which we all know is only conducive to smuggling.

One would think that the federal government, knowing that it has contributed to a billion dollar organized crime industry, might start taking seriously this whole problem of the sale of illegal tobacco. What I find so frustrating about this whole situation is that the solution is simple. We should roll back the taxes. This answer was not arrived at in recent days or recent weeks. The tobacco industry and many Canadians have been offering this government a clear solution. The rolling back of tobacco taxes is not only a peaceful solution to the problem but one which makes sheer common sense.

The fact of the matter is that the RCMP can no longer deal with the problem because the problem is just too big. The RCMP concedes that enforcement is not effective in curbing smuggling. It says what is even more problematic is that enforcement efforts will just drive the illicit tobacco trade underground and into the hands of organized crime, which I think for all of us is really a frightening thought.

• (1600)

After all, Canada has taken a lot of pride in the fact that it has been regarded as the number one country in the world in which to live. According to the UN, one of the reasons why it achieves such high marks is that it offers relative safety to Canadians. The nurturing of organized crime in Canada will not keep us at number one for very long.

Under the provision of Standing Order 78(3), I give notice of my intention to move a time allocation motion at the next sitting of the House for the purpose of allotting a specified number of days and hours for the consideration and disposal of proceedings at the said stages of the said bill.

The Acting Speaker (Mr. Paproski): Before I recognize the hon. member for Essex—Kent it is my duty, pursuant to Standing Order 38, to inform the House that the questions to be raised tonight at the time of adjournment are as follows: the hon. member for Ottawa—Vanier—Budget; the hon. member for Notre-Dame-de-Grâce—Immigration; the hon. member for Markham—Whitchurch—Stouffville—Child Pornography; the hon. member for New Westminster—Burnaby—Violence against women; the hon. member for Prince George—Bulkley Valley—Softwood lumber.

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CUSTOMS TARIFF

MEASURE TO AMEND

The House resumed consideration of the motion of Mr. Mazankowski that Bill C-102, an act to amend the Customs Tariff, the Excise Act, the Excise Tax Act, the Customs Act, the Criminal Code and a related act, be read the third time and passed.

Mr. Jerry Pickard (Essex—Kent): Mr. Speaker, it is my privilege to speak on Bill C-102, which is a very complicated bill for a lot of different Canadians.

• (1635)

I have very mixed feelings about the bill and certainly I can understand what many other Canadians have said. There certainly is a health problem with regard to smoking. Everyone in this House and everyone in this country recognizes that to be a true fact.

We also know that smoking is very tax-high revenue for the government. As mentioned earlier by my colleague, taxes have gone up some 600 per cent in the last 10 years. This shows that maybe the wrong focus has gone toward smoking and I would say alcohol as well. We look at a government that is promoting through taxation smoking and alcohol, in fact deriving the greatest share of the revenues through both, and yet many in this country would say we question the value of cigarettes and alcohol.

My colleagues on the far left of the House, the New Democratic Party, have suggested that there are extreme health problems. From hearing my colleagues from the NDP and as well some of the colleagues from across the way I have to ask why the policy is not to ban smoking in this country. It seems to me that if the health problem they are presenting and they are saying they will end the smoking issue, then it would be a logical step to ban smoking in this country. I certainly do not think that has been done either by the government side or by the NDP, who purport to be the great saviours in terms of health problems.

An hon. member: Because they are hypocrites.

Mr. Pickard: There is a major economical question involved with this bill. Absolutely no one will debate that $34 per carton of cigarettes is a very healthy revenue for the government. It has escalated so much in the last 10 years that it has become a law enforcement problem. That problem then starts to stem out into organized crime which is smuggling cigarettes into this country, causing a second social problem which is the illegal use of cigarettes in the country.

Many people in the RCMP as well as in customs and excise have compared it to our prohibition days with alcohol. Now many organized crime groups are bringing cigarettes in by the truckload and distributing them throughout the country. These illegal cigarettes are raising revenue in this country of as much as $1 billion annually. That is a tremendous problem for our law enforcement agencies. I would say that part of this bill does deal with that problem and corrects some of that. The imposition of fines of up to $200,000, the extra fines that would be imposed on people who bring illegal cigarettes into the country, is good. That portion of the bill is going to stop Canadian-made cigarettes from going over to the United States and then being brought back into Canada.

The real crux of the problem is the fact that we have escalated the cost of a product that many people in this country legally use, are addicted to and have chosen to use. We have escalated the cost of that product so much that people from every walk of life in Canada, from every sector of our society, are purchasing cigarettes illegally and at the most economical prices. It is a tendency that I see happening not only in the tobacco industry but in all facets of Canadian life.

[*English*]

Hon. Ralph Ferguson (Lambton—Middlesex): Mr. Speaker, I am pleased to take part in this debate today on Bill C-102. I want to speak very briefly on the issue of taxes and tobacco smuggling.

I want to put on record first of all that I too am very concerned about the volumes of tobacco being smuggled. About one pack in six that is consumed in Canada is indeed smuggled. It represents about $1.6 billion in federal and provincial tax revenues. Smuggling profits are estimated to be about $800 million. This represents 48 million cartons of cigarettes, eight times that of 1990, an increase of 650 per cent in smuggling in two years.

This is primarily because governments kept insisting they were going to raise the taxes on cigarettes and tobacco at both federal and provincial levels. Of course in doing so, on the pretext that it is a health risk, and we admit that it is, they have created a whole new underground economy in smuggling. That underground economy applies not just to tobacco but also applies to alcoholic beverages.

The tax rate in Canada for example is 67 per cent, compared to the United States which is 30 per cent. In Europe it is 75 per cent. The difference between the price of a carton of Canadian cigarettes in Canada versus the United States is about $35 per carton. It is not much wonder that there has been a vast increase in the volume of smuggling.

These tax increases have indeed created an underground economy, just as the GST is contributing to an underground economy based on cash being paid for services. That in itself is becoming a very serious problem in this country. We warned the government during the GST debate that this would happen, but of course it turned a blind eye.

The legislation as originally drafted would have unfairly penalized Canada's land frontier duty free shop industry in an attempt by the government to correct problems created by the government's regressive tax regime and lax enforcements. The original clause 73 would have regulated the sales of duty free shops. In terms of correspondence, one operator who lives close to my riding said: "Presently all Canadian duty free shop operators are adhering to a one carton, two tin limit on all sales of cigarettes and fine cut tobacco".

The reason for this is that these duty free shop operators recognized the problem and did not want to be part of it. They voluntarily, as an organization of their own people, put on a limit of what they would sell to people moving out of Canada, whether it is tourists from the United States or Canadians going to the United States.

The question then is why proceed with legislation limiting the sales from Canadian duty free shops if it has been demonstrated and recognized by the Department of Finance that the Canadian duty free shops are not part of the smuggling problem. At a time when the Canadian duty free shop industry as a whole is facing significantly increased competition from the United States, the only consequence of such a restrictive action would be to provide United States retailers with an additional competitive advantage and the subsequent loss of millions of dollars in tourist revenues.

The Canadian duty-free shop industry plays a key role in the Canadian economy through its employment of hundreds of Canadian workers and the generation of substantial tax and revenue dollars for the federal and provincial governments. The vast majority of the duty free shop industry is composed of small to medium sized businesses owned by Canadian citizens.

• (1650)

I had the privilege of being on the steering committee as a co-chair of that original committee that set up the Canadian duty free shop criteria. I am very proud of what these people have done. I am proud of the leadership they have shown in this regard and certainly I am very pleased that they voluntarily took the lead to try to control this terrible problem.

There has been an amendment passed in committee that recognizes their concerns and clause 73 no longer includes these duty free shops. Of course that means recognition of the fact that they are not part of the smuggling problem.

Over the last 10 years federal tobacco taxes have increased by 18.7 per cent per year on average and provincially 18.1 per cent. In 1980-81 the federal government collected $811 million in tobacco taxes. In 1990-91 the federal government collected $2.25 billion in taxes from tobacco. It has increased the taxes by 47 per cent since 1988 alone. Total tobacco sales by producers in 1991 totalled $310 million of which the federal government collected $2.25 billion in taxes. The entire Department

Senator Olson: I give this much notice because further action is essential. We are well into the spring season on the prairies, and therefore the minister may need some time to get all of the details together. I did not want to surprise him with this kind of question, because next Monday will be May 3. By that time, the farmers desperately need to know what the government intends to do in order to deliver on its solemn promise that there will a third line of defence, if and when it is needed.

ORDERS OF THE DAY

CUSTOMS TARIFF
EXCISE ACT
EXCISE TAX ACT
CUSTOMS ACT
CRIMINAL CODE

BILL TO AMEND—SECOND READING

Hon. J. Michael Forrestall moved the second reading of Bill C-102, to amend the Customs Tariff, the Excise Act, the Excise Tax Act, the Customs Act, the Criminal Code and a related Act.

He said: Honourable senators, Bill C-102 will implement a number of tariff and excise measures that have been announced in the other place over the past 20 months. The key elements of this bill include a broad range of legislative amendments to implement the government's plan. The one I have just indicated was announced last spring to combat tobacco smuggling and tax evasion, and tariff changes to address the problem of cross-border shopping announced in mid-February of 1992.

Honourable senators are aware that the growth in tobacco smuggling in Canada over the past few years has had serious consequences both for the government and the private sector. In particular, domestic sales in tobacco products have fallen significantly in many parts of the country. The decline in sales is hurting Canadian wholesalers and retailers involved in the legal tobacco trade.

Tobacco smuggling and tax evasion have also had a serious impact on this government's fiscal and social policies over the past two years. As more Canadian smokers have switched to tax-free, smuggled tobacco products, revenues from tobacco taxes have declined by significantly more than expected, based on historical consumption patterns. These revenues have been, and are, used to fund important government programs and services.

As well, honourable senators, inexpensive tobacco products available on the black market are undermining the government's health policies to discourage tobacco consumption through higher tobacco taxes.

• (1430)

To respond to the problems of tobacco smuggling and tax evasion, the Minister of Finance and the Minister of National Revenue announced in February and April of 1992 a series of measures designed to deter smuggling, including important enforcement and control initiatives.

Honourable senators may be aware that in view of the substantial increases in tobacco taxes in recent years, the current penalties under the Customs Act and the Excise Act for persons caught evading federal taxes and duties on tobacco are no longer considered an adequate deterrent to smuggling. In addition to increasing substantially the fines for smuggling and possession of contraband tobacco, Bill C-102 provides clear authority for imposing a jail term as an option for certain offences, including the sale of smuggled cigarettes. The offence of selling or possessing contraband tobacco is the most frequent charge laid by the RCMP against those involved in the illicit tobacco trade.

Bill C-102 also includes important provisions to help law enforcement agencies in their work of breaking up smuggling operations. Indeed, with the evidence that has come to light, these operations could be described as being somewhat in the sphere or orbit of organized crime.

In particular, the "proceeds of crime" provisions of the Criminal Code will be extended to allow the seizure and forfeiture to the Crown of the profits made from tobacco smuggling. As well, the wire-tap provisions of the Criminal Code will be expanded to include tobacco offences.

The problem of diversions of duty-free tobacco within Canada is addressed in Bill C-102 through the introduction of tighter controls on the sale and distribution of tax-free products in Canada. These tighter controls include limiting duty-free exports to direct exports by tobacco manufacturers, as well as limiting the number of suppliers of duty-free tobacco to diplomats and sales of duty-free tobacco through bonded warehouses.

Bill C-102 reinforces the marking requirement for packages of tobacco products that are exported or sold duty free in Canada. The requirements, which will be set out in regulations made under the Excise Tax Act, will assist enforcement agencies across the country in the identification of contraband tobacco products.

I should add that the government has already allocated substantial new resources to customs and to the RCMP to enable these agencies to strengthen their enforcement efforts both at the border and within Canada. These proposed legislative amendments are an important part of the government's efforts to combat tobacco smuggling and tax evasion. They are designed to stem the loss in revenues, provide enforcement agencies with the necessary support to attack organized tobacco-smuggling rings, and generally to reduce the incentive to smuggle tobacco products into Canada. Moreover, the reduction of tobacco smuggling will complement the government's initiatives to discourage

Bill C-102 also includes amendments to the Criminal Code and the Prohibited Goods Schedule of the Customs Tariff to correct an oversight in last year's gun control package. In general, the purpose of these changes is to permit authorized shooting competitors, manufacturers and dealers to import and export over-capacity cartridge magazines.

In conclusion, Bill C-102 is an important bill. It proposes a number of measures that will make a significant contribution to the government's efforts to address the problems of cross-border shopping and tobacco smuggling. While some of these measures, such as the elimination of the excise tax on the ethanol and methanol portions of motor vehicle fuels, have been implemented on the basis of Ways and Means Motions, other measures, such as the proceeds of crime amendments and tougher amendments for tobacco smugglers and those involved in the contraband tobacco trade, will not take effect until such time as this bill receives Royal Assent.

Honourable senators may wonder why we are dealing in this manner with customs and tariff matters which, as a rule, are dealt with at the time of consideration of national budgets. They will note that this variance in procedure is not permanent but is being tried as another method of dealing more expeditiously with matters of this nature. It may very well be that in the future we will revert to the customary practice of introducing these measures at the time of the introduction of budgets and supported by the accompanying documentation.

I thank honourable senators for their attention. At the appropriate time, I will refer the matter to the Banking, Trade and Commerce committee.

Hon. M. Lorne Bonnell: Honourable senators, let me first congratulate my good friend Senator Forrestall for his clear and concise description of this bill and for giving us most of the details.

This bill will amend the Customs Tariff and the Excise Act, the Excise Tax Act, the Customs Act, the Criminal Code and related acts. The amendments to these acts are an attempt to address the very serious issues of tobacco smuggling, tobacco tax evasion and cross-border shopping. I will take a few moments to review the amendments contained in the bill.

The purpose of the bill is to enact a number of excise tax and tariff measures which have been announced over the past 18 months in response to an increase in tobacco smuggling and the obvious loss of tax revenue. The government introduced tighter controls on the distribution and sale of duty-free tobacco products in Canada, improved the markings on tobacco products, made new provisions to facilitate seizure of assets required to organize criminal activities, and increased penalties for persons caught smuggling tobacco into Canada and for possession of contraband tobacco products in Canada.

In an attempt to combat cross-border shopping, tariffs are being removed on approximately 25 consumer products which are not made in Canada. It is the government's contention that by lowering the prices of these imported goods, consumers will be encouraged to shop at home.

Furthermore, this bill eliminates the 8.5 cent-per-litre excise tax on ethanol and methanol portions of blended fuels. It is hoped that this measure will encourage the development and use of fuels made by renewable stocks. These small measures are but the first of many needed to address the multi-faceted issue of tobacco smuggling and cross-border shopping.

I think we should ask ourselves why such amendments to these statutes are necessary. Why are Canadians taking it upon themselves to commit these acts? I believe that tobacco smuggling and cross-border shopping are symptoms of an overall tax revolt by Canadians. As noted by a fellow caucus member in the other place, "excessively high taxation on tobacco has created a Prohibition-like environment in which otherwise law-abiding citizens are either selling or buying smuggled tobacco." Unfortunately the amendments contained in this bill only go to prove that while this government may recognize the seriousness of these issues, it does not fully comprehend the profound importance of adequately addressing them.

The root of this problem is the high taxation facing Canadians day after day. Canadians have been subject to 38 tax increases since the Conservative Party was elected in 1984. That is 37 tax increases plus the very destructive and devastating goods and services tax. We on this side of the chamber hear from Canadians every day about their hatred for that very regressive and unfair tax. The number of letters we receive from individuals across the country should make the government realize how damaging the GST has been for overall employment opportunities and for growth in our economy.

However, we should recognize that, in addition to these 38 tax measures, Canadians have also been hard hit in the pocket book by other harmful pieces of legislation. For example, the passage of Bill C-22 and Bill C-91 have certainly increased costs to Canadians. By amending the Patent Act to give multinational brand name companies increased patent protection for higher-priced prescription drugs, some Canadians have been forced to forgo needed medication due to the increased costs.

I say to the government: If you do not realize it now, you will certainly realize the effects of all your regressive measures after the next election when Canadians have had an opportunity to speak at the polls.

Taxation is a complicated issue. Let us take a look at income tax rates for individuals in comparison to big business corporations. I think it is a very telling picture.

In 1984, as a percentage of the total federal budgetary revenue, personal income tax represented 41 per cent. In 1992 this figure had increased to 47 per cent. Interestingly though, big business and corporations represented 13.2 per cent of the total budgetary revenue in 1984, and in 1992 this figure had decreased to 7 per cent.

• (1500)

Individual Canadians paid $92.7 billion in taxes in 1990. That figure rose to $104.6 billion in 1991, an 11 per cent increase. In comparison, corporations paid $14.6 billion in 1991; that figure decreased to $12.4 billion in 1992. I ask you: Is this fair?

I wish to make a few comments on the tobacco industry because I believe it is imperative to understand the situation this government has created by increasing taxes. As noted by the Canadian Chamber of Commerce in their report, "The Cross-Border Shopping Issue":

> High taxes on these sin products — alcohol, beer and cigarettes — are explicit social policy decisions of the federal government and provincial governments that are meant to meet key social objectives, the most important of which is to discourage consumption of these products, cigarettes in particular. These objectives have received a considerable amount of support by an analyst. However, the taxes may have become so high on some products that they are encouraging cross-border shopping and smuggling. Most sin products have a low price elasticity of demand which means that large changes in price do not change the demand by much. Nevertheless, the taxes may now be so high as to encourage smuggling of these goods into Canada.

Honourable senators, especially those of you who are non-smokers, a legal carton of 200 cigarettes costs a smoker today $47.13. Out of this amount, the manufacturer receives $7.79 and the distributor and/or retailer collects $3.38. The remaining $35.96 is a combination of federal and provincial taxes. In comparison, during the War, honourable senators, I can well remember sending my brother a carton of cigarettes for a dollar.

An illegal carton of cigarettes sells for, on average, $22.50. The contraband tobacco trade has a street-value of $1 billion which is costing the federal and provincial governments an estimated $1.4 billion per year in lost revenues.

Over the last ten years, cigarette taxes have increased 620 per cent in comparison to alcohol taxes, which have increased 68 per cent, and personal income taxes, which have increased by 66 per cent.

The Canadian Federation of Independent Business in their report entitled, "Cross-Border Shopping in Canada— The $10 Billion Drain", found in 1991 that the price of a carton of cigarettes was 54 per cent higher in Canada than in the United States. A case of 24 bottles of beer was 40 per cent higher in Canada. The price of a litre of regular gas was 38 per cent higher than in the United States.

The report goes on to state:

> Prices for these three items have not always been so much higher in Canada. In 1984, just before the drastic increase in cross-border shopping, the differential in the price of gasoline was 17 per cent, half of today's gap. In 1979, the price of gasoline was cheaper in Canada while the price of beer was only 6 per cent higher and the price of cigarettes 19 per cent higher.

Honourable senators, I think we all recognize the importance of the revenue generated by these sin taxes. However, I believe we need to have a balanced approach in defining our taxation system. Only by creating a fair taxation system will we be able to fully address the very serious issues of cross-border shopping and tobacco smuggling.

In conclusion, honourable senators, I should like to raise one area of concern which I think the committee should examine in regard to this bill. The bill also implements the excise tax of 4 cents per cigarette, or $8 per carton, imposed on cigarettes for export or for sale through duty-free shops. The tax was in effect for only eight weeks, from February 13, 1992 to April 8, 1992, due to concerns about its long-term effects.

Honourable senators, this bill provides for the reimposition of the tax by an Order in Council. I should like to know by what authority this government intends to impose this tax. I do not believe that the government should have the authority to raise taxes by Order in Council, not by 4 per cent nor by 8 per cent.

For these reasons, I have to vote against this bill on second reading.

Hon. L. Norbert Thériault: Honourable senators, very briefly, I want to make the point again, as I have done many times in this house and in the other place, that I believe the high rates of taxation imposed on tobacco and alcohol, especially on tobacco, have caused an increase in the number of small crimes in Canada greater than any other measure ever taken by government.

I am quite aware of the ill effects of smoking, and I believe that government should try to educate people against the use of tobacco. However, as a result of the debate on free trade, a perception has been left with the Canadian people that they should be able to come and go across the border and bring goods into the country without any problem. This government has set the psychology for that perception.

EVIDENCE

OTTAWA, Tuesday, June 1, 1993

[Text]

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-102, to amend the Customs Tariff, the Excise Act, the Excise Tax Act, the Customs Act, the Criminal Code and a related act, met this day at 11:30 a.m. to give consideration to the bill.

Senator C. William Doody (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum. The purpose of the meeting today is to consider Bill C-102, an act to amend the Customs Tariff and various other acts.

The Minister of State for Finance and Privatization, the Honourable John McDermid, is present, and we thank him. Unfortunately, members of the other party in the Senate are not present at this point. I think we should start because the minister's time is limited. They can pick up when they arrive.

I understand that the minister has several officials with him. He may wish to have them join him at the table. They are Patricia Close and Brian Willis.

I understand the minister has an opening statement. Mr. McDermid, if you will, please.

Mr. John McDermid, Minister of State for Finance and Privatization: Mr. Chairman and honourable senators, it is a pleasure to be with you today. The bill that is before you for consideration contains the necessary legislative amendments to implement excise and tariff changes announced over the past 20 months. The primary purpose of the bill is to address the important issues of cross-border shopping, tobacco smuggling and tax evasion. The bill also contains routine administrative and technical tariff changes. Many of the measures have been implemented on the basis of Ways and Means Motions.

The main provisions in this bill that address the problem of smuggling and illegal sales of tobacco products are as follows: The penalties under the Customs Act for smuggling and those under the Excise Act for possession or sale of contraband tobacco products are increased substantially. The much higher penalties for persons caught evading federal tobacco taxes will act, we hope, as a deterrent to dealing in contraband tobacco products.

TÉMOIGNAGES

OTTAWA, le mardi 1er juin 1993

[Traduction]

Le Comité sénatorial permanent des banques et du commerce auquel a été renvoyé le projet de loi C-102, Loi modifiant le Tarif des douanes, la Loi sur l'accise, la Loi sur la taxe d'accise, la Loi sur les douanes, le Code criminel et une loi connexe, se réunit aujourd'hui à 11 h 30 pour en étudier la teneur.

Le sénateur C. William Doody (*président*) occupe le fauteuil.

Le président: Honorables sénateurs, nous avons le quorum. Nous sommes réunis aujourd'hui pour étudier le projet de loi C-102, Loi modifiant le Tarif des douanes et diverses autres lois.

Le ministre d'État (Finances et privatisation), l'honorable John McDermid, est parmi nous et nous l'en remercions. Malheureusement, les membres de l'autre parti au Sénat ne sont pas encore ici. Je crois que nous devrions commencer étant donné le temps limité dont dispose le ministre. Les retardataires pourront se rattraper lorsqu'ils arriveront.

Je crois comprendre que le ministre est entouré de quelques représentants. Peut-être veut-il qu'il les rejoigne à la table. Il s'agit de Patricia Close et de Brian Willis.

Je crois comprendre que le ministre a une déclaration préliminaire. Monsieur McDermid la parole est à vous.

M. John McDermid, ministre d'État (Finances et privatisation): Monsieur le président et honorables sénateurs, il me fait plaisir d'être ici aujourd'hui. Le projet de loi dont on vous a confié l'étude contient les modifications législatives nécessaires pour la mise en oeuvre des changements relative à l'accise et au tarif qui ont été annoncés depuis les 20 derniers mois. Le projet de loi qui nous intéresse s'attaque aux importants problèmes des achats transfrontières, de la contrebande du tabac et de l'évasion des taxes sur ce produit. Le projet de loi contient aussi des modifications ordinaires à caractère administratif et technique qui s'appliquent au tarif. Un grand nombre des mesures ont été mises en oeuvre grâce à des motions de voies et moyens.

Les principales dispositions de ce projet de loi qui s'attaquent au problème de la contrebande et des ventes illégales des produits du tabac sont les suivantes: les peines prévues aux termes de la Loi sur les douanes en ce qui a trait à la contrebande ainsi que celles régies par la Loi sur l'accise relativement à la possession ou à la vente de produits de tabac de contrebande sont sensiblement resserrées. Nous espérons que l'augmentation marquée des pénalités pour les gens pris à dissimuler les taxes fédérales sur le tabac décourageront la vente des produits de tabac de contrebande.

[*Text*]

Proceeds of crime provisions in the Criminal Code are being extended to cover tobacco smuggling and tax evasion offences under the Excise Act and the Customs Act. These new provisions will allow for the seizure, and forfeiture to the Crown, of profits made from the sale of contraband tobacco products and will enable law enforcement agencies to better target organized tobacco smuggling rings. If anyone read the *Globe and Mail* last Saturday morning, they probably have an idea of what is happening.

The Criminal Code is amended to expand the provisions authorizing the use of wiretaps in certain criminal investigations to include tobacco-related offences. These amendments will allow the RCMP to make more effective use of the new proceeds of crime provisions.

The controls on the distribution and sale of duty-free tobacco products through Customs bonded warehouses are tightened. The more stringent controls, which have been in effect since February 13, 1992, are intended to address the problem of illegal diversions of duty-free tobacco products within Canada.

The marking requirements under the Excise Act are strengthened for packages of tobacco products that are exported or sold on a tax- and duty-free basis in Canada. The new requirements will assist enforcement agencies across the country by making contraband tobacco products easier to identify.

The Excise Tax Act is amended to implement the excise tax imposed on tobacco products for export or for sale through duty free shops. The tax, equal to $8 per carton in the case of cigarettes, was in effect from February 13, 1992 to April 8, 1992, when a range of enforcement and control measures to counteract tobacco smuggling were announced, and collection of the tax suspended.

These proposed legislative amendments, together with the additional resources that have been allocated to Customs and the RCMP, will greatly enhance the efforts of law enforcement agencies to combat tobacco smuggling and tax evasion. By restricting the availability of contraband tobacco products, these measures will stem the losses in government tax revenues and provide relief to legitimate tobacco wholesalers and retailers. They will also complement the government's health policies to reduce tobacco consumption, particularly among young Canadians, through higher tobacco taxes.

There are two other excise tax measures in this bill, Mr. Chairman. The excise tax on the ethanol and methanol portions of blended fuels is eliminated effective April 1, 1992. This change, announced in the February 1992 budget, is

[*Traduction*]

Les dispositions relatives aux produits de la criminalité contenues dans le Code criminel sont ajoutées à la Loi sur l'accise et à la Loi sur les douanes de manière à englober les infractions relatives à la contrebande du tabac et à l'évasion des taxes. Ces nouvelles dispositions permettront la saisie des bénéfices réalisés par la vente des produits de tabac de contrebande et permettront aux autorités chargées d'exécuter la loi de mieux cibler les réseaux organisés de contrebande du tabac. Si vous avez lu le *Globe and Mail* samedi dernier, vous savez probablement ce qui se passe.

Le Code criminel est modifié afin d'y élargir les dispositions autorisant l'utilisation de l'écoute électronique dans certaines enquêtes criminelles de manière à inclure les infractions relatives au tabac. Ces amendements permettront à la GRC d'utiliser de façon plus efficace les nouvelles dispositions relatives aux produits de la criminalité.

On resserre les mesures de contrôle de la distribution et de la vente des produits du tabac non taxés par les entrepôts de douane. Les mesures plus strictes de contrôle, qui sont entrées en vigueur le 13 février 1992, visent à s'attaquer au problème de détournement illégal des produits du tabac détaxés à l'échelle du pays.

On a renforcé les prescriptions relatives au marquage aux termes de la Loi sur l'accise pour les paquets de produits du tabac qui sont exportés ou vendus en franchise au Canada. Les nouvelles prescriptions aideront les autorités chargées d'exécuter la loi partout au pays à mieux identifier les produits sur lesquels les taxes n'ont pas été payées.

La Loi sur l'accise est modifiée afin d'appliquer la taxe d'accise imposée sur les produits du tabac destinés à l'exportation ou à la vente dans des boutiques hors taxes. La taxe, qui correpond à 8 $ le carton dans le cas des cigarettes, a été en vigueur du 13 février au 8 avril 1992, alors qu'ont été annoncées une série de mesures d'exécution et de contrôle visant à lutter contre la contrebande de tabac et la perception de la taxe a été suspendue.

Ces amendements proposés, ainsi que les ressources supplémentaires qui ont été attribuées aux Douanes et à la GRC, aideront grandement les autorités chargées d'exécuter la loi à combattre la contrebande du tabac et l'évasion de la taxe sur ce produit. En limitant la disponibilité des produits du tabac de contrebande, ces mesures diminueront les pertes en revenus fiscaux et aideront les grossistes et les détaillants de produits du tabac légitimes. Elles viendront aussi compléter les lignes directrices du gouvernement en matière de santé visant à diminuer la consommation de tabac, plus particulièrement chez les jeunes Canadiens, en augmentant les taxes sur le tabac.

Ce projet de loi comporte deux autres mesures relatives à la taxe d'accise, monsieur le président. La taxe d'accise sur la partie éthanol-méthanol du mélange d'essences sera éliminée à compter du 1er avril 1992. Ce changement, annoncé dans le

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later on, will have something to do with increased taxes in the tobacco field to fund health care proposals.

The third way of combating this problem is increased surveillance and moneys to the RCMP to carry out their work and responsibilities, together with provincial police forces, primarily Ontario and Quebec, which are having major problems.

But taxation is not the answer because once you tax to a certain level, it is much easier for companies to pull up stakes in Canada, produce elsewhere and export to Canada. Therefore, you have lost jobs and revenue. It is a balancing act. The major problem is the differential in costs.

Senator Di Nino: Tell me, Mr. Minister, is it true that since that new regime has existed in Canada — i.e., the increase of the excise tax — that revenues accruing to the federal government, the Government of Ontario and the Government of Quebec have fallen substantially?

Mr. McDermid: No, that is not true.

Senator Di Nino: No? I was told by the president of one of the most important tobacco companies in Canada that in his province, Quebec, the provincial government, since the new system came into effect, is losing about $350 million a year. I find that mind-boggling.

Mr. McDermid: I stand to be corrected. We are off our projections by about $300 million in tax revenue from tobacco. It is estimated that we are losing about $1 billion a year, both provincially and federally, due to smuggling.

Senator Di Nino: $1 billion a year?

Mr. McDermid: Yes.

Senator Di Nino: That is a hell of a lot of money, Mr. Minister, in the hands of criminals. I cannot believe that you, with your advisors, cannot find a way to put an end to smuggling. It is most disturbing.

Mr. McDermid: Senator De Bané, the government has been seized with this issue for some time now and has been working in a cooperative manner with the Quebec and Ontario governments. The Ministers of Finance had this on their agenda yesterday. We have doubled our enforcement since 1992 and further enhanced enforcement just this week. Governments are taking this matter very seriously. They are concentrating their efforts on organized crime and its involvement in the tobacco industry. Organized crime is finding this practice of smuggling very profitable and with

[*Traduction*]

doit annoncer ultérieurement, aura quelque chose à voir avec les augmentations de taxes sur le tabac pour financer les propositions à cet égard.

Il existe une troisième façon de lutter contre ce problème et c'est d'accroître l'équipe de surveillance et les budgets de la GRC pour les aider à s'acquitter de leurs fonctions et à assumer leurs responsabilités, de concert avec les forces policières provinciales, surtout en Ontario et au Québec, qui sont aux prises avec d'importants problèmes.

Mais la solution ne réside pas dans la «taxation» étant donné que dès que vous imposez un certain niveau, il est beaucoup plus facile pour les entreprises de déménager leurs pénates à l'extérieur du Canada, d'aller produire ailleurs et d'exporter au Canada. Vous perdez ainsi des emplois et des revenus. C'est une question de garder l'équilibre. Le problème réside surtout dans la différence de coûts.

Le sénateur Di Nino: Dites-moi, monsieur le ministre, est-ce vrai que depuis que le nouveau régime est en place au Canada — c'est-à-dire depuis qu'on a augmenté la taxe d'accise — que les revenus que tire le gouvernement fédéral, le gouvernement de l'Ontario et le gouvernement du Québec ont chuté sensiblement?

M. McDermid: Non, ce n'est pas vrai.

Le sénateur Di Nino: Non? Le président d'une des plus importantes sociétés de l'industrie du tabac au Canada m'a dit que dans sa province, le Québec, le gouvernement provincial avait perdu 350 millions de dollars par an depuis que le nouveau régime est en vigueur. C'est ahurissant.

M. McDermid: Qu'on me corrige si je me trompe. Nous sommes en deçà de nos projections d'environ 300 millions en revenus fiscaux provenant du tabac. Selon les estimations, nous perdons environ 1 milliard par an, tant au niveau des provinces que du fédéral à cause de la contrebande.

Le sénateur Di Nino: Un milliard de dollars par an?

M. McDermid: Oui.

Le sénateur Di Nino: C'est toute une somme, monsieur le ministre, dans les mains des criminels. Je ne peux croire que vous, en collaboration avec vos conseillers, ne puissiez rien faire pour mettre fin à la contrebande. C'est très inquiétant.

M. McDermid: Sénateur De Bané, le gouvernement est aux prises avec ce problème depuis un certain temps maintenant et tente d'y trouver une solution en collaboration avec les gouvernements du Québec et de l'Ontario. Les ministres des Finances devaient en discuter hier. Nous avons doublé nos efforts d'application depuis 1992 et les avons de nouveau renforcés cette semaine. Les gouvernements s'intéressent très sérieusement à cette question. Ils concentrent leurs efforts sur le crime organisé et sa présence dans l'industrie du tabac. Le crime organisé trouve cette pratique de la contrebande très

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less risk than illegal drugs. It is of great concern to all levels of government.

All I can assure you is that we are not treating this matter lightly. Any Minister of Finance who sees half a billion dollars of revenue not coming in, is upset about it and seized with the problem.

I can assure you, senator, that the governments at both the provincial and federal level are seized with this matter and are working on it around the clock.

Senator Sylvain: Mr. Minister, while you were chatting, I was trying to make a cost benefit analysis of what this law does for us, taking into consideration the law of diminishing returns. If we are losing $1 billion a year in taxes, if regular sales and tax revenues are falling, and if we are increasing or doubling our vigilance in an attempt to stop smuggling, has anyone in your department made a cost benefit analysis to see if our efforts are paying off for Canada? Are we getting revenue from this tax? Or is the only purpose of this tax to reduce the number of smokers so that Health and Welfare will not incur huge expenses? Is this a money-making matter, or are we losing money? Is the sole purpose of this exercise Health and Welfare's concern for smokers?

Mr. McDermid: The purpose is two-fold. Part of the purpose of increased taxes is to discourage young people from smoking. That was stated when the then Minister of Finance brought the large increase into force. It was three cents a cigarette back in the 1991 budget.

Taxation moneys from cigarettes can legitimately be applied to health care, although governments do not specifically take funds and apply them to specific things. Health care costs in this country are growing at a tremendous rate and smoke-related diseases are at a high level. The more we can encourage people not to smoke, it follows that health care costs will be lower. The theory is that the user pays. If you smoke, you will pay a fair amount of tax, which helps support the tremendous amount of money we are putting into health care in this country.

Our cost of enforcement is under $100 million, but that figure is still fairly significant. Federal tobacco taxes in 1992 were $3 billion. I am not sure how you calculate cost effectiveness, but in that particular instance, yes, it is still an important source of revenue for the government.

There is a tremendous amount of tax evasion at the present time because of smuggling; that must be curtailed. The increase in fines for tobacco smugglers, with increased enforcement and a few good arrests over the next while, may

[*Traduction*]

lucrative parce qu'elle est moins risquée que le trafic des drogues illégales. Tous les paliers de gouvernement se préoccupent grandement de cette question.

Tout ce que je puis vous dire c'est que nous ne traitons pas de cette question à la légère. Tout ministre des Finances qui constate qu'il perd un demi-million de dollars de revenus, est contrarié et est saisi du problème.

Je puis vous assurer, sénateur, que les gouvernements tant au niveau provincial que fédéral sont saisis de cette question et qu'ils s'acharnent jour et nuit à y trouver des solutions.

Le sénateur Sylvain: Monsieur le ministre, pendant que vous bavardiez, j'essayais de faire une analyse de rentabilité de ce que cette loi fait pour nous, en tenant compte de la loi du rendement non proportionnel. Si nous perdons 1 milliard de dollars par an en taxes, si les recettes découlant des ventes et des taxes ordinaires diminuent, et si nous augmentons ou doublons notre vigilance pour tenter de mettre fin à la contrebande, y a-t-il quelqu'un au sein de votre ministère qui a fait une analyse de rentabilité afin de voir si nos efforts rapportent quelque chose au Canada? Cette taxe nous rapporte-t-elle quelque chose? Ou le seul but de cette dernière consiste-t-il à réduire le nombre de fumeurs pour que Santé et Bien-être n'engage pas d'énormes dépenses? S'agit-il de faire de l'argent ou en perdons-nous? Le seul but de cet exercice est-il la préoccupation de Santé et Bien-être pour les fumeurs?

M. McDermid: Le but comporte deux volets. En augmentant les taxes, on voulait en partie décourager les jeunes de fumer. Cet objectif a été énoncé lorsque le ministre de l'époque a appliqué d'importantes hausses. C'était trois sous la cigarette dans le budget de 1991.

Les recettes fiscales provenant des cigarettes peuvent légitimement être appliquées aux soins de santé, même si les gouvernements n'affectent pas nécessairement les fonds à des fins particulières. Les coûts des soins de santé dans ce pays augmentent à un rythme effarant et les maladies associées au tabagisme atteignent un niveau élevé. Il va sans dire que plus nous encouragerons les gens à cesser de fumer plus les coûts de soins de santé diminueront. La théorie veut que ce soit l'utilisateur qui paie. Si vous fumez, vous paierez des taxes élevées, ce qui aide à supporter les sommes astronomiques que nous investissons dans les soins de santé dans ce pays.

Il nous en coûte moins de 100 millions de dollars pour l'application, mais ce chiffre reste très important. Les taxes fédérales sur le tabac en 1992 étaient de 3 milliards de dollars. Je ne sais pas comment vous calculez le rapport coût-efficacité, mais dans ce cas particulier, oui, il s'agit toujours d'une importante source de revenu pour le gouvernement.

À l'heure actuelle, la contrebande des cigarettes entraîne une importante évasion des taxes sur ce produit; il faut y mettre fin. L'augmentation des amendes pour les contrebandiers de tabac, assortie du renforcement des mesures d'application pendant

Seized Property Management Act (Bill C-123)

Citation 1993, c. 37, s. 32

Royal Assent September 1, 1993

Hansard

HOUSE OF COMMONS

Friday, May 7, 1993

The House met at 10 a.m.

Prayers

GOVERNMENT ORDERS

[*English*]

SEIZED PROPERTY MANAGEMENT ACT

MEASURE TO ENACT

Hon. Don Mazankowski (for the Minister of Justice) moved that Bill C-123, an act respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circumstances, be read the second time and referred to a legislative committee in the Departmental envelope.

Hon. Doug Lewis (Solicitor General of Canada): Madam Speaker, I must say that I am extremely pleased to speak to this bill. That may sound strange, but this bill has been in the preparation stage for an awfully long time and I am pleased that it is now introduced in the House so we can deal with it.

This bill gives the government the authority and flexibility to deal with property which has been seized and restrained from the time that takes place until the property is forfeited under the Criminal Code, the Narcotic Control Act or the Food and Drugs Act.

This is a bill the importance of which will probably not be readily apparent to Canadians, but it will be greatly effective in improving Canadian society. It is an essential part of our law enforcement strategy.

This bill manoeuvres around technical and legal obstacles behind which organized crime hides the profits of the drug trade, international smuggling or other serious crimes which attack our youth, industry and society as a whole.

Where criminals are able to conceal the profits of their activities it is no secret this is used to further more crime. Organized criminals have long attempted to invest the proceeds of their crimes in legitimate business thus erecting a front for their illegitimate activities and providing a permanent and well-hidden camouflage for their crime-raised money.

Bill C-123 adds to the legislative tools given law enforcement officers from coast to coast in stripping criminals of their cover by facilitating the management of seized assets until they are forfeited and then facilitating their sale.

• (1010)

In 1989 the Government of Canada first enacted proceeds of crime legislation. The purpose of the legislation was to take action against organized crime, particularly drug trafficking and money laundering.

At that time we put a great deal of focus on the process whereby we seized property and forfeited it because we were concerned about taking away people's property. I think we got that right but this bill corrects the manner in which it is managed while it goes from the point of seizure to the point of forfeiture.

It is a weapon in crime prevention that we think will help to counter the growth of the drug trade because putting the profit potential of crime at risk will not only reduce the motivation for traffickers but will also undermine the ability of organized crime to use its accumulated profits to further finance trafficking endeavours.

From 1989 to the end of 1992 the RCMP seized some $76.3 million in suspected proceeds of crime. In the same period the courts forfeited approximately $17.7 million and levied fines of $12.5 million.

The types of assets that have been seized are what make this bill so important. There is no trick to managing a bank account. That is easy. What the RCMP and other police forces are dealing with are assets such as cars, airplanes, boats, homes and businesses. It is difficult to

manage them and maintain their value after seizure, before forfeiture and up to sale.

This act balances the Proceeds of Crime (money laundering) Act which was enacted in 1991 and which provided another set of measures to strengthen the ability of the government to use the proceeds of crime provisions effectively.

I have to say that despite the creation of these legislative tools the proceeds of crime policies have not been maximized, and that is what we are attacking in this bill.

One of the reasons we have not been able to maximize it is because there has been an absence of a coherent and effective asset management regime pending the forfeiture of the seized assets. The management of seized assets requires considerable human and financial resources, particularly where real property or ongoing businesses must be managed.

Unfortunately the proceeds of crime legislation did not clearly allocate responsibility for asset management, nor did it adequately address the need to allocate the legal responsibility for the maintenance of restrained property and the need for clear authority to advance funds as may be necessary to maintain property or compensate creditors.

It is one thing for Treasury Board to manage the operations of the government but it is quite another thing when Treasury Board is asked to advance moneys through the RCMP to make sure a ski hill is operating effectively. Those are some of the difficulties we are dealing with. What we are trying to do with this bill is to correct things.

As well as managing the assets I think it is fair to say there has been a strong demand for equitable sharing of the proceeds of crime, both domestically and at the international level.

My notes say that there is a perceived disincentive to co-operation on the part of provincial and local governments whose police forces have conducted long investigations in support of federal prosecutions. There is no question that it goes beyond a disincentive. It is something that has been advanced to me by municipalities across the country in my capacity as Minister of Justice in 1989-90 and as Solicitor General for the past two years.

• (1015)

I would not say that our police forces at the municipal, provincial and federal levels are not doing drug investigations the way they might. I would suggest that they see a much greater opportunity to put more focus on drug prosecutions and really turn the screws on these people who are making money at the expense of the public.

I want to point out that when the question of asset sharing with municipal and provincial authorities has come up, I have maintained two very strong positions. Number one, I believe that they should be shared according to the input into the solution of the crime with a certain amount for the financing of the bureau of asset management. That is fine. We are looking at 10 per cent there.

I believe in sharing with the municipalities and the provinces. I do not believe in the provinces having any control over how much goes to the municipalities. We should have an independent authority saying: "All right, this crime had a third input each by the RCMP, OPP and metro Toronto police, and it should be shared that way". That is the way I feel about it personally and I want that clearly on the record of this House. It should be shared according to input.

The second point I want to make personally is the distinction. It should not go to the actual police force. It should go to the taxing authority that is in charge of the budget of the police force. It would not go to the metropolitan Toronto police force but to the metropolitan Toronto police commission or whatever. It would go to the body that funds the police operations.

In addition to the problems I have just spoken about, the current proceeds provisions in the drug area provide for the disposition of corporate proceeds by the minister of health and welfare. I think it is fair to say this is not a function of which the minister of health and welfare in any government would be the main focus of their activities. If we combine it in legislation which puts a better focus on it and more specific responsibility then we will have a better operation.

There is also a problem in cases which are prosecuted by the provincial attorneys general. Bill C-123 provides for a correction of that. The bill provides for the creation of an office within the Department of Supply and Services which will operate on a cost mutual basis and whose primary task will be in federally initiated prosecu-

tions to manage seized, restrained and forfeited property up until the time of its sale or other disposition.

The act also provides for the sharing of corporate assets within and outside of Canada. The office will be established by the Minister of Supply and Services to allow that minister to have custody and management of any property falling under the scope of this legislation.

Once the office has possession or control over the property it will have the power to manage it in the manner it considers appropriate up until the time the property is disposed of. This includes the advancing of money at a commercial rate of interest if that is necessary to maintain the ongoing operation of the property. It is also anticipated that the office will contract out to the private sector for most of the management services required.

I will give the House an explanation of this and how it will work. If for example the RCMP is about to seize 10 video stores in Vancouver, the idea is not that 10 bureaucrats from Ottawa will fly to Vancouver and operate the video stores while they are going from seizure to forfeiture.

• (1020)

My conception of this as a chartered accountant is that we bring in receivers in bankruptcy. They are in the business of doing this. If that seizure were to take place in the city of Vancouver one would go to a receiver in bankruptcy and contract with it to have people on the ground in that area who do it most effectively rather than create a bureaucracy to be able to jump in and do those kinds of things because the private sector is in the business of doing it.

As well, the office will provide consultative and other services in relation to the seizure or restraint of property in connection with designated drug offences or property that is or may have been obtained through the proceeds of crime.

It is also important that under authority of this bill we will have the ability to share the forfeited proceeds of crime with domestic governments or with foreign governments. This is important because we have to realize that international crime is just what it is, international crime. We co-operate with many other law enforcement bodies and as we receive proceeds it is important that we be able to share with the international governments that have helped us.

In the past we have been the beneficiary of money. Specifically, last year we received approximately a million dollars in U.S. funds from the proceeds of a joint crime investigation. We have the ability to receive but we do not have the ability to reciprocate. I think that is very important.

I think we have the management down. I think we have a regime in place for the sharing of the proceeds and regulation will come forward on that.

As well, the legislation corrects an anomaly that currently affects the provinces of Quebec and New Brunswick. In most of Canada federal prosecutors conduct proceedings related to drug offences. However, in Quebec and New Brunswick drug cases investigated by local or provincial police are handled by provincial prosecutors. The new legislation will provide that where the prosecution of the offences commences at the instance of a government of a province or conducted by or on behalf of that province, any forfeited property will be disposed of as the attorney general of that province directs and not by a minister of the federal government as is currently the case.

I believe that this will be a very effective instrument in our fight against organized crime. We will be finishing off the proceeds of crime legislation that we have already passed and completing the task which will enable us to really put pressure on organized crime in their pocketbooks. That will reduce their ability to continue in an activity that is of absolutely no benefit to Canada whatsoever.

Mr. Russell MacLellan (Cape Breton—The Sydneys): Madam Speaker, I thank the Solicitor General for his remarks. This bill before the House today is well overdue. There have been a lot of shortcomings in the present legislation as the Solicitor General has mentioned. This bill goes a long way to correcting these shortcomings.

We have to look at this bill in committee. There are some questions which have to be examined. Nevertheless if the government is willing, we can move this bill along quite expeditiously.

While we can give careful study and due examination and allow the interested groups to make their comments, if the government is serious about this bill we can have it

passed by the time the House adjourns. I am hoping that is the case because as I said initially this legislation is well overdue.

The bill establishes a federal program to share forfeited proceeds of crime with other jurisdictions. These are the jurisdictions that are also involved in drug and other criminal prosecutions. It would include foreign governments as well. This would be in cases where the crime is international in nature and the police forces involved have been Canadian as well as from other countries. The question is: How are these funds to be shared? I think the Solicitor General said that a lot of this is still under review.

• (1025)

It is important that we get at least the basic parameters of how these funds are to be shared set down so that when we pass the bill and in the discussion of the bill we are able to give this very important aspect some definition to the people of Canada, particularly the police forces of Canada.

The individual police forces would not receive the money under this legislation but rather the municipal and/or provincial governments which fund the department would be the recipients.

I was encouraged by one thing the Solicitor General said. He stated that money would not just be given to the provinces and the provinces allowed to pass it on to the municipalities. I think that is absolutely necessary and is a very good point. We have to be sure that the municipal police forces receive an appropriate share of the proceeds of crime. I would be interested in more definition of how this is to be done, but I welcome the Solicitor General's unsolicited remarks in that regard.

Also, this bill will establish an office in the Department of Supply and Services to manage seized and restrained assets which have been seized in federal crime cases. Cases prosecuted by the provincial attorneys general are not covered by this legislation.

Special allowances, as the Solicitor General has said, will be made for Quebec and New Brunswick. Where the attorney general of a particular province has instigated the action, then the attorney general will have the say over how the assets are to be disposed of.

It is also important, as the Solicitor General has said, that those managing the assets be the proper people. He is aware that the RCMP cannot run ski hills very well. No reflection on the RCMP, but I think that goes without saying. There will be an advisory capacity for the minister's office and probably the Department of Justice, which I think is important.

Canada has had proceeds of crime legislation since 1989 but all the moneys and assets collected reverted to the federal government. This has been seen as unfair to the provincial and municipal governments which assisted in solving these cases, many of which were under investigation for long periods of time and which were very costly to local and provincial police departments.

What we are doing in this bill is equitably giving financial assistance to these police departments. I think the Solicitor General agrees that these departments are entitled to this because they have played integral roles in solving these very important cases.

In the past, problems have arisen with respect to the cost of managing seized and restrained assets and the Solicitor General has alluded to those. As I mentioned, there have been situations where the RCMP has found itself running pizza parlours, hotels and ski resorts. Needless to say this is problematic and they have to be addressed.

The idea of trustees in bankruptcy is a good one. It means there are going to be a lot of trustees in bankruptcy moving to coastal communities if the drug trade continues the way it has. Fine, that is free enterprise.

It is true we have not taken the initiative in obtaining and seizing these assets of crime that perhaps we should have. This bill is going to give the incentive to do that.

• (1030)

Where municipal and provincial police forces feel they are going to be making money for the federal coffers, they do not have the initiative to go that extra step, do that extra amount of footwork and the long and boring surveillance work that needs to be done to solve these cases. Now they have more initiative. There will be initiatives by the forces and their respective provincial and municipal governments. The assets must be managed, as we have said.

There is one thing I did not hear the Solicitor General mention and that is recommendation three of the report on crime prevention in Canada by the Standing Committee on Justice and Solicitor General where the committee recommends: "that a share of the moneys forfeited as proceeds of crime be allocated to crime prevention activities and that the federal government allocate 1 per cent a year of the current federal budget for police, courts and corrections to crime prevention over a five-year period. At the end of five years Canada should spend 5 per cent of the current federal criminal justice budget on crime prevention".

Maybe the federal government intends to do it through the federal budget. However it is important, even though we are giving the money to the municipal and provincial governments, that it go back into police work. There are financial constraints today. The problem is that we do not want our criminal justice system to suffer as a result of these financial restraints when we are seizing property that is the proceed of crime. That funding should go back into our criminal justice system, to the police departments for crime prevention. I think more attention should be given to this by governments.

There has to be a concerted effort not only by the federal government but by provincial and municipal governments for a meaningful thrust toward crime prevention in Canada. The whole idea of the sharing of the proceeds of crime is a good one.

The Liberal Party has been supportive of this for some time. We recommend that the proceeds of any crime operation be split among all the parties involved in a case, the percentage of which would depend on each party's level of involvement in the particular case. For us, and I am sure for others as well, this is a basic means of sharing.

Since 1989, $60 million in assets have been seized through the current proceeds of crime legislation. It is imperative that the government work more closely with law enforcement agencies in the provinces and the municipalities to find ways of making this legislation work. The Solicitor General referred to that, and rightly so. With this legislation this may happen automatically because there will be more incentive for these police agencies to work to solve these crimes if there is going to be some return for their police work in their respective jurisdictions.

However it is not all going to happen automatically. More of the crimes can be solved and more of these assets can be distributed through dialogue among the police forces and perhaps some liaison work done among the police forces to ensure that everything is being integrated, everything is being shared and there is a co-operative and good attitude toward a full assault against crime and the proceeds of crime.

I do not exactly know on what basis we are considering the sharing with foreign countries. I do think that is a fair proposal. If we are going to work with other countries, the incentive for police forces in other countries has to be the same as we have for police forces in our provinces and municipalities. The only thing I would say is that we should have some parameters on an international basis for how we share them. I think it should be reciprocal. I do not think, if we have a situation where another country does not share funds with Canada, we should through largesse share funds with them. Perhaps there can be international understandings with other countries and I think it is in the interest of other countries.

• (1035)

There can be a formula agreed to. It does not have to be a rigid formula, but basically a formula on cost sharing of the proceeds of crime. This would be welcomed. It would certainly be welcomed by the people of Canada. As has been alluded to by the Solicitor General, crime and particularly the drug trade is very much an international business. It is through international co-operation that we will make the biggest impact on solving these crimes.

We want assurances, from the Minister of Justice in particular, that the proceeds of crime will indeed find their way back to local and provincial police departments. We want assurances that this will be done but, as I said earlier, we need some parameters and some regulations on the matter. I know the Solicitor General feels the same way and he will be working to this end.

We want to be certain that provincial and municipal governments will not keep the money to build new roads and pay down their deficits. We want to be certain that their police forces, their crime prevention and criminal justice activities will benefit and that the criminal justice

system will benefit. It is very important that justice on a municipal and provincial basis will benefit from the proceeds going back to the municipal and provincial governments.

Police departments are already suffering from severe fiscal restraint. They need these funds to keep up their wars against crime, particularly the war against drugs. It is so insidious today that we need every tool to fight this war on drugs. We cannot at the same time let down our guard on the rights of citizens, on our principles of law and our principles under the Charter of Rights and Freedoms. We must, in ways that do not infringe on the rights of our citizens, do everything we possibly can to gain an upper hand in this war against drugs.

With respect to the new office to which I referred in the Department of Supply and Services, we want assurances that it will not evolve into a bureaucratic nightmare, making it very difficult for local and provincial governments to have access to the money from the seized assets the office will be managing. We need more clarification from the government of the exact function or role of this office. I hope this will be forthcoming. It will not be a difficult procedure, but maybe it will take a little time to circulate some regulations, a discussion paper or just an information sheet. It would go a long way toward not only informing but also promoting the program the government wants to foster.

We would like to know who will be paying for the operation of the office. Will its expenses be covered by the money and assets it is managing and sharing with the other levels of government? Is that how it is to be paid for, or is it to be paid for via the estimates in estimate costs? Will all three levels of government have a share in its operating costs? That is the question. The Solicitor General shakes his head indicating that they will not. That answers that question. How will an office, presumably located in Ottawa, manage assets seized in Vancouver or Halifax?

• (1040)

The Solicitor General has talked about trustees in bankruptcy, which is important. The network of liaising with trustees in bankruptcy is also important. I agree we should not be sending public servants to Vancouver or Halifax to manage the proceeds of crime from a drug bust, for instance. However there should be some idea of how the network of control and management is to be developed.

All the questions we want answered by the government are really questions of procedure. Nevertheless they are important as this process and legislation evolve. I also want to mention a couple of points to the Solicitor General who is very kindly sitting through my speech, as painful as it may be. They relate to the services presently being provided.

I will just use the RCMP as an example, but not as a scapegoat or because I feel it is going to happen. There has been a great deal of concern in Nova Scotia and certain other parts of the country that the RCMP will place its laboratories on a cost recovery basis as a means of cutting federal government expenses.

I do not want that to happen because funding is to go back to the RCMP. I do not want the government to undercut present funding for our police forces at the same time as they get the proceeds of crime. It is not only a question of taking funding away if cost recovery of the laboratories of the RCMP is demanded. It gets to be a problem of law enforcement in Canada.

Provincial and municipal police forces now have access to the RCMP laboratories. In order to save funds perhaps they will start using laboratories in the United States that may not cost as much or may provide the services at a lower rate, but they will not give the results we have been used to getting from the RCMP laboratories. We will get a lower standard of laboratory services for our police forces. Therefore we will have a reluctance to utilize the laboratory services. We will have a problem verifying a lot of what we want to verify in our fight against crime. I would ask for that not to be the case.

I would also suggest to the Solicitor General that if we are to make a meaningful assault on crime, particularly the drug trade, we have to examine some items that have already been cut. As an example I would use coastal surveillance boats in Atlantic Canada. The RCMP has operated in Nova Scotia three small boats along the coastline. It has managed to speak to fishermen and residents of the coastal communities in Nova Scotia, thereby getting a good deal of information that has led to drug seizures, to convictions and ultimately to the seizure of assets and proceeds of crime.

These boats do not operate now. The RCMP will say that they do, but actually the boats are there and no one is assigned to them. For a boat to be put in the water a complaint has to be received from a person first. The boat is brought on a trailer down to the water, launched and taken to the area of concern. The persons investigated could be in Panama by the time the RCMP coastal

cruiser gets to that particular spot. That is not the answer.

• (1045)

Also, the dialogue with the communities must be done by RCMP officers while they are doing their other functions, such as traffic control or whatever else they are doing. I think that that is not fair. The result is that if it is optional work, in most cases the RCMP officers do not have the time to do it. They are not doing it because they have other concerns. If they do not look after the job they were assigned to do and if that job is not done then they will be criticized and perhaps reported. They have to do the job they were assigned to do first, even though they may feel that something of an optional nature may be more important in the long run.

I would like to see RCMP officers assigned back on coastal surveillance and have these boats staffed by men and women of the RCMP on a regular basis as was the case before so that we can have this information flowing back the way it once was.

I want to just finish by saying that I think this bill is a major step forward. I think I have stated the questions I have and that our party has regarding this legislation. I think that with information at committee stage we should be able to answer some of these questions and I welcome that.

We are going to be recommending certainly the passage of this legislation on second reading and the opportunity to examine it, not exhaustively, not without reason, and certainly not to delay the bill in committee stage, but to get some feedback by groups that we think can provide information.

Mr. Nelson A. Riis (Kamloops): Madam Speaker, first of all I would like to say that we are happy that the Solicitor General has brought this legislation forward. To my recollection this is the third piece of legislation in this law enforcement family that will enable law enforcement officers and others to have a little better chance of fighting and combating crime in the country, particularly when it comes to dealing with drug dealers and those people who participate in that business.

I also would like to say to my hon. friend who just spoke that I appreciated his remarks as an indication of support for this general initiative taken by the government. I want to say on behalf of my party that we support this initiative. It is a little late but that is the way the world is sometimes. We appreciate the Solicitor General's work on this. I understand that it was the Solicitor General's recommendation that when we proceed to the next stage of this legislation it will go to the Standing Committee on Justice and Solicitor General. It seems to me that that would be a good idea and would facilitate its passage because the people there have done all the necessary preliminary work in the reports that they recently made public.

I must say that the publication *Crime Prevention in Canada: Toward a National Strategy*, which is the 12th report of the Standing Committee on Justice and Solicitor General may turn into a best seller in the country. People have been anxious to get copies of this because it is a very comprehensive study of the problems associated with crime prevention and more important, it lays out a whole number of recommendations that people on balance find very progressive and very useful.

Today we are moving in that direction. There is a little work to do on this legislation and I will get to that in a moment. However, I want to say to the Solicitor General that we would be prepared to see this referred to the Standing Committee on Justice and Solicitor General to ensure that its passage is completed in a most expeditious way and to ensure that it becomes law before summer. I want to say again that the Department of Justice says that the bill is aimed at promoting co-operation among all levels of law enforcement, especially when dealing with drug trafficking and smuggling.

I remember a day last August when a van from the province of British Columbia was stopped in Winnipeg. In the van 244 kilograms of high quality marijuana were found. Obviously it was confiscated. The people involved, the RCMP and the officers from the local force who, if my memory serves me, were part of a new integrated intelligence enforcement unit that was created, really did some excellent work and need to be congratulated.

• (1050)

This is an example of the kind of effort that we can achieve when there are different levels of law enforcement and different groups of people working to combat the spread of the drug trade. They combine their efforts, talents and energies and come up with these kinds of seizures and arrests.

Let us face it, we are just seeing the tip of the iceberg in this whole process. When we start looking at the extent of drug trafficking in this country, the amount of drug abuse and the amount of smuggling that takes place, particularly on the two coasts of Canada to say nothing about crossing over the land border with the United States and Alaska, we have really just begun to fight this incredible and sinister aspect of our society.

Two weeks ago I had a chance to meet with a number of people who are involved with drug enforcement in my community and representatives of agencies that deal with people who suffer from drug abuse and in their own way attempt to combat the importation and sale of drugs. They are almost at a point where they are throwing their hands up. The court system does not seem to be designed to handle it. There is an overwhelming demand on the time of present law enforcement officers. They can only seem to react to the most serious initiatives. There is a real level of frustration.

I want to say to my friend the Solicitor General that I think everyone will find this initiative to be not only a welcome one but very helpful. We appreciate this initiative.

I want to say that the bill will establish a federal program to share forfeited proceeds of crime with other jurisdictions involved in federal drug and other criminal prosecutions.

I think the Solicitor General made some important remarks in his speech today. I read from the list that goes back into August of this year some comments by the inspector of vice in the Winnipeg police force. He was delighted when he heard about this initiative because he felt this would assist them in their budgeting and provide funds for the police force.

As my friend has said, this is not quite the case. He went on record to say that the proceeds of crime will be divided up to reflect the amount of participation of the various levels presumably in the undercover work, investigations and the actions leading to arrest.

As he said, if it is one-third federal, one-third provincial and one-third municipal then that is the way the sharing would be. I think he would admit that is not in the legislation now and that is one thing we can presumably do by regulation and so on. I think we all find his remarks comforting in that respect but I will have something more to say about that in a moment.

I also want to say that the bill will establish an office within the Department of Supply and Services in order to manage the seize and restraint assets that are subject to forfeiture in the proceeds of crime in these cases that are prosecuted by the Attorney General of Canada. That is helpful to know.

To reflect some of the comments made by my colleague from the Liberal Party who spoke, we will have to ask how this office will be set up and who will support it. Will it be from the proceeds that will be collected? Will it be from just regular federal government operations? Will it be on a cost-sharing basis? This is something that is rather minor in this whole initiative and something that hopefully we can work out either again through regulation or while we are in committee dealing with this issue.

Let me go back and say that when the government introduced the proceeds of crime legislation that came into effect back in 1989, we in the New Democratic Party greeted it with some enthusiasm. It was a major step forward and a very important step.

At that time our justice critic, the member for Burnaby—Kingsway, had this to say when we discussed it at second reading: "I am pleased to rise to debate this important legislation that will ensure that Canada finally takes the long overdue step to recognize that those who profit from organized crime in many cases are able to use weak and inadequate legislation as a means of laundering the profits of crime. We in this party certainly support effective legislation that will deal with the proceeds of organized crime".

• (1055)

While praising the principle of that legislation, which in effect gives police and the courts the ability to confiscate the profits of crime, we raised examples of how the legislation would not be improved by this and we suggested a number of improvements.

Most significant was the concern that the legislation did not encompass banking and financial institutions. I remember that I raised that point myself at that time and said that as long as the banks and financial institutions are not involved to stop the laundering of drug money, it is going to be almost impossible because there is where their main problem exists. We have all sorts of stories about how banks and financial institutions that are unscrupulous have been involved in drug money laundering of one kind or another.

At that time the Canadian law enforcement agencies were not allowed to access information about bank accounts suspected to be conduits for laundering schemes, unlike the United States where financial institutions were required to report their deposits over certain amounts on a regular basis. I suggested that for Canada this legislation be amended. It certainly would have had our support at least.

Unfortunately that change was not made until Bill C-9 that was passed in the House of Commons in June 1991. I wish that our voices had been heard a little earlier but we are proud of the role that we played in the eventual passing of that legislation that resulted in banks and financial institutions being involved in helping law enforcement agencies identify money laundering particularly associated with the drug trade.

We also brought forward some other concerns. What is now section 462.47 provides for the disclosure of tax information in cases involving offences in relation to drugs. It does not allow for similar disclosure for some other enterprise crimes which were established by the legislation. This is something that we have yet to act upon and perhaps we should act now very quickly.

I also want to say that what is now section 462.3 defines enterprise crime and unlike other jurisdictions, including Australia, Britain and the United States, includes proceeds from bawdy houses. Certainly no one would disagree that those who exploit the sex trade workers and acquire property and other proceeds as a result should get away with it.

However, there was compelling evidence from the Fraser commission that was responsible for one of the most in-depth studies of prostitution in our country to show that this inclusion would drive prostitutes into organized crime.

Again, I want to point it out to my hon. friend, the Solicitor General of Canada. Whether the Fraser commission was correct or not will become clear in the upcoming years as police forces widen the net on money laundering.

Here in Ottawa and in other cities the police are using the proceeds of crime provisions to go after criminals involved in prostitution. Pimps are using shell companies to channel credit card payments from johns who frequent escort services. We have seen some interesting examples of that here in our own city of Ottawa lately.

Exercising control over another person to commit prostitution and living off the profits of prostitution are serious crimes and I am satisfied to know that this new law is being used in this way in terms of combating that.

We will have to watch carefully to see if we have not inadvertently caused prostitution to become enmeshed in organized crime. That is something we will deal with if that becomes obvious.

I want to ask a rhetorical question: How much money are we talking about here? It is interesting and rather disturbing when we speculate on just how much property is involved and how much money flows through money laundering schemes that are involved in large-scale drug smuggling and trafficking operations in Canada.

Between 1989 and 1992 over $60 million was seized. We would all recognize that this is simply the tip of the iceberg as well. We are probably talking about literally hundreds of millions if not some billions of dollars. Surely after it came into effect the new law that was used successfully in a big Canada-U.S. investigation was helpful in uncovering a $1.2 billion scheme that moved money from banks in Panama and the United States through Toronto and Switzerland.

I might say that a recent United Nations survey set the total dollar value of the illegal drug trade world-wide as second only to the amount spent on the international arms trade which we all know to be astronomical. The changes in the law regarding bank recording will be even more helpful. As was said previously, we are proud of the role we have played in seeing those provisions implemented.

When we left off before Question Period I was saying that there were a number of concerns. They will be raised at the committee stage but I want to put them clearly on the record.

One is the fact that this procedure of sharing the proceeds of crime between those participating in the successful conclusion of an inquiry or prosecution has been implemented in the United States where there is evidence that in some cases police departments have grown to view the prosecution of cases from which they are more likely to receive rewards in the form of the forfeiture of significant proceeds as being the most important cases to work on and proceed with.

Those crimes that do not involve the possibility of such a reward, such as crimes involving family violence, are not given the same attention that might have been given where there is not a dollar value attached.

I do not want to suggest for a moment that this would influence police departments in our country but it must be recognized that there is some possibility of this.

• (1215)

However this concern has also been alluded to by Department of Justice officials. It will be interesting for us to hear from the various witnesses in committee. I think it is fair to say that anything that would inadvertently shift the system away from responding to the needs of a community based on the degree of urgency or harm done and the potential for harm toward a greater interest in the number of dollars involved must be avoided.

I believe that the Solicitor General earlier today put this concern at rest, at least here on the floor of the House, when he said that it may not go directly to the police departments or to the agencies or departments involved but to those agencies that fund them. In other words, it is a bit of an arm's length relationship here.

The second concern we have is that there have been concerns expressed that the implementation of this program may be the thin edge of the wedge leading to police departments becoming more and more reliant upon proceeds of crime forfeitures for their base budget funding.

There is nothing in this bill to give any indication as to how this might be prevented. I am again just identifying concerns we will be raising in committee so that those who will be responding can be forewarned. In fact, details of how the funds are to be shared by the various levels of government are still under review although we have heard comments from the Solicitor General.

Another area of concern would be who will pay for the new office that would be struck. Obviously the new office will be established within the Department of Supply and Services. I think it is a fair question to ask. Whenever a new office, department or agency is being set up by government we ask where the money for that will come from. That is what the taxpayers of Canada are asking us to do at all times. In committee we will be asking: Who will fund this? Will it simply come from the estimates of the department? Will the proceeds of forfeited moneys from crimes be used to fund this office? Will it be shared between the various jurisdictions, for example federal, provincial, municipal and regional? These are questions that are fair to ask.

The last point is certainly frustrating in the sense that one of our primary concerns is that a significant share of the money forfeited as proceeds of crime go toward crime prevention and substance abuse prevention. This was one of the primary recommendations of the unanimous report on crime prevention tabled in this House by the chair of the Standing Committee on Justice and Solicitor General in February. It is certainly a recommendation that we in the New Democratic Party will support.

I noted with interest yesterday that when the member for Kitchener rose and introduced the government's psychoactive substances legislation he pointed out that for every dollar spent on prevention, and specifically the prevention of substance abuse, the government could expect to save $7 down the road in treatment and justice system costs. There is all kinds of evidence that $1 set aside for prevention would result time and time again in that $1 being saved a little bit further along the way.

I would like to simply say that we want to see this preventative initiative focused not only on hard drugs but on smoking and alcohol abuse as well.

We will have more to say in committee and I will leave my remarks at that.

Mrs. Beryl Gaffney (Nepean): Madam Speaker, I too am pleased to stand here and speak in this House on Bill C-123, which establishes a federal program to share forfeited proceeds of crime with other jurisdictions involved in federal drug and other federal criminal prosecutions.

I know the details of how the funds will be shared are still under review. Today individual police forces do not receive the money, but under the proposed legislation they would still not receive the money but the money would certainly go to the department that funds those same police forces, which is either the provincial or municipal government. In my case it would be the city of Nepean.

It also proposes to establish an office within the Department of Supply and Services to manage the restrained assets that have been seized in the particular federal crime cases. This office would also have an advisory function for law enforcement agencies.

Canada has had proceeds of crime legislation since 1989 but all the moneys and assets collected reverted to the federal government. In many cases this was seen as unfair to the provincial and municipal governments that assisted in cracking these cases. Many of these cases were under investigation for long periods of time and were very costly to local and provincial police departments. Problems have arisen with respect to the cost of managing seized or restrained assets.

• (1220)

In consultation with my own Nepean police services department I have been advised by the deputy chief of Nepean, Devon Fermoyle, that the Ontario police chiefs have called for a cost sharing of crime proceeds. The Ontario chiefs feel the money should be divided among the various levels involved in the cases because many of the raids—in fact probably all of the raids—do involve local forces in addition to the RCMP forces or the FBI. The moneys that are generated should also go to the municipal forces through the municipality.

Deputy Chief Fermoyle gave me one example of how in a recent bust in collaboration with a number of other levels they recovered $14,000 and yet the cost to the city of Nepean police department was $60,000. They really believe they should have been able to at least recover their costs and they have not been able to do so until this point in time. Even if there is real property on sale the money goes to the federal agency and not to the municipal agencies.

In the United States there is quite a different situation. Say for example if the FBI, the RCMP and the tobacco-firearms department in the U.S.A. are involved. They had a big bust recently in the U.S. As a result the United States government handed over $100,000 to the Canadian government. Its system is very different from ours and the federal agency is able to put this money in its pocket and obviously the local forces should be able to receive some of this money.

We on this side of the house proposed a similar scheme to this in a recent policy paper on justice issues. We have been calling for legislation such as this for a good number of years now. We have recommended that the proceeds of any crime operation be split among all parties involved in the case and the percentages would depend upon each party's level of involvement.

Since 1989 I am told that only $60 million in assets has been seized through the current proceeds of crime legislation. Obviously someone is not doing one's job. A lot more money than that should have come into the coffers if somebody had been monitoring it and ensuring that the law enforcement agencies and the government were working very closely together to make sure that this money came in.

We on this side of the House want assurances from the Minister of Justice that the proceeds of crime will indeed find their way back to local and provincial police departments through their municipalities. We want to be certain that provincial and municipal governments will not just keep this money to build new roads or pay down their deficits.

As a 10-year member of a municipal council I know that they tend to shift money from one little pocket to another or from one little pay account to another or reserve account to another. I would certainly want to make sure that the municipalities direct this money right back into police service.

Mr. Gauthier: Not in Nepean.

Mrs. Gaffney: "Not in Nepean", my colleague from Vanier says. This does happen in any municipality. I believe that the police forces are having a very difficult time these days. They have been cut back drastically due

to fiscal restraint and they need these additional funds as much as anybody else.

With regard to the proposed new office for the Department of Supply and Services, I think that is another area that we must monitor. Every time a new department is created we create a bureaucratic nightmare. I think we need to make sure that this office is efficiently run and efficiently established and that there is more clarification from the government on the exact function and role of this particular office.

Assurances also need to be given by the Minister of Justice that the proceeds of crime will definitely find their way back into the proper pockets as I mentioned a few minutes ago. Although the proposed new office is probably considered of a secondary nature with regard to this bill, I think we need to ensure that we have everything tied down if we are going to establish a new department.

• (1225)

I have a letter from the Canadian Centre on Substance Abuse. It concerns the proposed changes to the proceeds of crime legislation.

The Canadian Centre on Substance Abuse outlined a position paper that pertained to this matter that has been put out by the Federation of Canadian Municipalities and the Canadian Association of Chiefs of Police. They met and jointly agreed on the importance of this legislation.

I do have a copy of that brief here and I would like to table it for the information of the Minister of Justice. It is important that when there are agencies such as these three I have mentioned that are standing in strong support of this legislation then it needs to be passed and our police services departments need to be the recipients of these funds. We must make sure that this legislation does goes through.

I wish I had had the opportunity to read this brief but it was just handed to me this moment. I have not had the time to read it but I think it is important that it is filed and that everyone is aware of it.

Again thank you for the opportunity of speaking in the House on this very important bill. I am sure that it will pass quickly.

[*Translation*]

Mrs. Shirley Maheu (Saint-Laurent—Cartierville): Madam Speaker, I would like to take this opportunity to mention another point which so far has not been brought to the attention of the Solicitor General. It concerns a ski resort in Quebec.

Bill C-123 would authorize the minister to manage and dispose of property referred to in paragraph (*b*), and property that is from the proceeds of crime or offence-related property, when such property is forfeited to Her Majesty. It would provide that on taking possession or control thereof, the minister shall be responsible for the custody and management of the property.

When I started to look into the case of the ski resort in Quebec, I realized that it took a long time for the case to get started because there were so many searches and investigations. I believe it took about two years. At one point the forfeited property was operated, if I am not mistaken, by the RCMP. To have the RCMP operating a ski resort is positively mind boggling.

When we consider the amounts of money involved in these cases, as was said earlier by my colleagues, since 1989 all we have is $60 million, but $60 million is still $60 million. If my information is correct, the money is never deposited in a bank account and that has been the case for many years. We are talking about several million dollars that were deposited in a bank vault—this is cash—and will stay there until there is enough evidence, a sufficient number of searches have taken place and enough statements have been gathered to bring the case before the courts. Sometimes it can take years.

I think all this is incredible and pretty ridiculous. The time involved may be considerable because the procedure includes preliminary investigations, statements and searches, as I said before. The latter are initiated to find other properties, such as houses or cars, which the accused may own.

I think this is all quite unacceptable, and I will explain why. If for some reason the Crown does not gather enough evidence to lay charges it is obliged to return the money in whole or in part. Usually, as I said before, the money is put in a vault. However, when a decision is reached by the courts, it always allows for the accumulated interest. The courts always consider the real value of the money, not the amounts seized at the beginning of the investigation. This means the taxpayer has to pay the

interest on those amounts. I wonder why this money cannot be deposited in a trust account pending court proceedings. In this way Canadian taxpayers would not be stuck with paying millions of dollars in interest costs.

• (1230)

[*English*]

The brief that we have from the Canadian Association of Chiefs of Police about the proceeds of crime recommends that the federal government proceed with the proposed ethics management office establishing an audit mechanism that includes other orders of government, that participating governments be involved in the development of fair procedures for the sharing of net forfeited assets, that the federal government in consultation with the orders of government develop a mechanism which would enable direct sharing of net proceeds with entitled parties and that guidelines be provided for the use of forfeited drug proceeds in accordance with the policy thrust of Canada's drug strategy.

As my other colleagues mentioned, we proposed a similar scheme to this one but I am not sure that anyone took a real hard look at the money that is stuck in a vault. I am not talking about the money that has fingerprints on it or that was marked money in order to catch some of our drug traffickers. We are not even touching the bottom of the barrel. We are just skimming off the surface with our $60 million. Consequently once this money has filtered back down to the forces and to the levels of government that are paying the bill we could have many more millions.

[*Translation*]

We have to come up with a way to keep the money in an interest-bearing account. I have nothing against the office proposed by the minister, but that office should have a special, entirely separate bank account for the proceeds of money laundering.

[*English*]

We want the minister to assure us that the proceeds of these crimes will find their way back to local and provincial police departments. We do not want the bureaucracy eating all the money that is being made from the proceeds of crime.

This war against drugs is a difficult one. It may never be won. If we do not start putting the money back into fighting the drug lords then we will never win it.

I would like to see the minister amend this bill so that a trust account could be opened. It would be one that will not be bogged down by bureaucracy and the money will be available when the judges say it is available. It will earn interest in the meantime because we as taxpayers cannot afford any more expenses especially not from the laundering of drug money.

* * *

POINT OF ORDER

CANADIAN AIRLINES INTERNATIONAL

Mr. Nelson A. Riis (Kamloops): Madam Speaker, this may not be quite a point of order but on the day before yesterday in a speech I was making on NAFTA I inadvertently made the statement that Canadian Airlines was planning to close down its maintenance shop in Vancouver and open a new shop in Mexico. I think one might recall that I said that.

What I should have said was that sources have indicated to me that in the foreseeable future the operational maintenance base in Richmond, B.C. will be closed. The job being done by the employees there will be contracted out to a large, mega maintenance base that is presently being built in northern Mexico to serve not only Canadian Airlines but a number of other airlines.

• (1235)

I thought in light of the statement made today that I should put that on the record. I did inadvertently misspeak. The point still remains of the concern by a number of very informed sources that this will be the inevitable result of maintenance for Canadian Airlines and also other airlines as well.

Madam Deputy Speaker: I thank the hon. member.

* * *

SEIZED PROPERTY MANAGEMENT ACT

MEASURE TO ENACT

The House resumed consideration of the motion of Mr. Blais that Bill C-123, an act respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circum-

stances, be read the second time and referred to the Standing Committee on Justice and Solicitor General.

Madam Deputy Speaker: Is the House ready for the question?

Some hon. members: Question.

Madam Deputy Speaker: Is it the pleasure of the House to adopt the motion?

Some hon. members: Agreed.

Motion agreed to, bill read the second time and referred to the Standing Committee on Justice and Solicitor General.

* * *

CRIMINAL CODE

MEASURE TO AMEND

Hon. John C. Crosbie (for the Minister of Justice) moved that Bill C-90, an act to amend the Criminal Code (sentencing) and other acts in consequence thereof, be read the second time and referred to a legislative committee in the Departmental envelope.

Mr. Peter L. McCreath (Parliamentary Secretary to Minister for International Trade): Madam Speaker, the need for the reform of sentencing in Canada has long been recognized by judges, parliamentarians, law reformers and members of the legal profession.

During the past 20 years there have been calls for reform from various committees, a royal commission and from the Law Reform Commission of Canada. More recently, the Canadian Sentencing Commission which reported in 1987 and in 1988, a report of the House committee, the Standing Committee on Justice and Solicitor General, made extensive recommendations regarding the reform of sentencing, conditional release and corrections.

Bill C-90 gives Canadians for the first time a say on the purpose and principles of criminal sentencing. Extensive consultations were carried out involving both justice professionals and representatives of the community.

These consultations followed joint publication by the Solicitor General and the Minister of Justice of directions for reform, sentencing, corrections and conditional release in July 1990. The changes proposed in this bill have been broadly accepted by criminal justice professionals, provinces and territories.

Together with Bill C-36 passed by Parliament last year, Bill C-90 presents a strong and unified approach to criminal justice. I believe that sentencing practices in Canada must consistently reflect values that Canadians have told us are important to them in the treatment of offenders. Considering the fact that criminal sanctions provide for one of the most serious intrusions of the state into the lives of individuals, the absence of a policy statement from the Parliament of Canada seems quite remarkable.

Bill C-90 provides courts with clear policy direction from Parliament. The bill states that the fundamental purpose of sentencing is to contribute to the maintenance of a just, peaceful and safe society by imposing just sanctions. A statement of principles is set out, designed to establish a coherent framework of policy and process in sentencing matters and to bring consistency, fairness and accountability to the sentencing process. The establishment of a statement of the purpose and principles of sentencing has been endorsed by the Canadian Sentencing Commission, the standing committee and the former Law Reform Commission of Canada.

This is a large and detailed bill. I cannot discuss all of the provisions but would like to highlight a number which I feel are particularly important. I will start by elaborating on the statement of the purpose and principles of sentencing.

In addition to the fundamental purpose of sentencing, the bill sets out objectives which judges should consider when sentencing.

The objectives available to judges in this bill include denunciation, deterrence and separation of the offender from society. These are clearly appropriate sentencing objectives to apply to the 8 to 10 per cent of violent crime which is handled in our courts. This does not suggest, of course, that we can ever eliminate violence totally in our society. In absolute terms, wanton violence by deranged individuals is probably unavoidable except at a cost in terms of rights and freedoms which Canadians would be unwilling to accept.

• (1035)

[*English*]

Mr. Waddell: Mr. Speaker, this is the proceeds of crime bill in which property from crime is forfeited to the government. It deals with how that is to happen, how it is to be shared with the provinces and so on.

I know the figures vary. One figure being bandied about is $20 million. I have heard the figure $60 million and others. I will operate under the figure of $20 million. It is a substantial amount of money.

I am the justice critic in the New Democratic Party. We are not opposed to the bill, but we are very much opposed to what the government is going to do with the proceeds of crime. We think the proceeds of crime should go to crime prevention. That is what my amendment is about. It is very simple. The proceeds of crime should go into crime prevention, or at least part of it.

The government wants some money for debt reduction. It could put 70 per cent of the proceeds of crime into debt reduction but keep a part of the money for crime prevention. That is what my amendment says. The reason, as I will explain in my speech, is very important because it follows a principle set out in a unanimous report of the justice committee of this House of Commons called *Crime Prevention in Canada—Towards a National Strategy*, dated February 1993.

Recommendation No. 3 of the report states that we should spend some money on crime prevention and take some money from the proceeds of crime. It is very simple, but let us look at the bill and deal with the technicalities. Clause 16 reads:

> At the prescribed times, all amounts credited to the Proceeds Account that are not shared pursuant to sections 10 and 11, less such amounts as are reserved
>
> (a) for future losses,
>
> (b) to pay claims arisings from undertakings given by the Attorney General pursuant to subsections 462.32(6) and 462.33(7) of the Criminal Code, and
>
> (c) for ongoing expenses,
>
> shall be credited to the Debt Servicing and Reduction Account established by the Debt Servicing and Reduction Account Act.

The government proposes to amend this point and put them, as I understand it, into the general revenues. Whether it is debt reduction or into the general revenues, it still does not meet the test of the justice committee. I have proposed a change to this clause. My motion states that this money:

> "shall be credited seventy per cent to the Debt Servicing and Reduction Account established by the Debt Servicing and Reduction Account Act and applied thirty per cent to supplement the funding of crime prevention programs administered in whole or in part by the Attorney General".

We are not interfering with the provinces. It is the Attorney General of Canada. We in the NDP want the government to commit some of the proceeds from crime to crime prevention, and here is why.

The report I mentioned of the justice committee was an all-party report. The committee was chaired by the hon. member for Mississauga West. Recommendation No. 3 reads:

> The committee recommends that a share of the moneys forfeited as proceeds of crime be allocated to crime prevention activities and that the federal government allocate 1 per cent a year of the current federal budget for police courts and corrections to crime prevention over a five-year period.
>
> At the end of five years, Canada should spend 5 per cent of the current criminal justice budget on crime prevention.

The report clearly says that moneys forfeited as proceeds of crime should be allocated to crime prevention activities. My friends in the government say they will do that, but will they do it? We cannot be sure. We do not know. The amendment says a certain amount of moneys will be allocated.

• (1040)

I draw attention to recommendations Nos. 1 and 2 of the same justice report. I think this is a great report. It is a great step forward in fighting crime in Canada. Here is what it says:

> The committee recommends that the federal government, in co-operation with the provinces and municipalities, take on a national leadership role in crime prevention and develop a national crime prevention policy.

That is what I want to see, a national crime prevention policy. Money is needed to pay for it, right? The distinguished hon. member from Mississauga, the chair of the finance committee who is in the House, keeps telling the House: "Look at the money. You need money to pay for these programs".

The crime prevention policy should set out the following principles and initiatives:

> a. Crime prevention will be included in the mandates of the federal departments
>
> b. All levels of government are responsible for crime and they must work together

Crime occurs in communities and priorities concerning crime prevention are best determined at the local level. The primary approach taken to prevent crime and create safer communities entails a co-ordinated, multi-disciplinary effort to address the root causes of crime.

Finally:

> e. Prevention measures include law enforcement, community-based policing, social development and reduction of criminal opportunities.

Recommendation No. 2 which goes along with this says:

> The committee recommends the federal government, in consultation with the provinces and territories and the Federation of Canadian Municipalities, support the development of a national crime prevention council.

The council's job would be to promote safety, to provide the federal government with advice and to gather and analyse information.

We found that while the community of Coquitlam may be doing some great stuff in community-based policing, the community of Montreal did not know about it. Whereas the community of Montreal may have been doing some wonderful work in neighbourhood programs, the community of Coquitlam did not know about it.

Therefore we want to bring them together. We do not want to reinvent the wheel. We will do it through the national crime prevention council.

As a matter of fact the present Minister of Justice who has the right intentions and who is a good man has started the beginnings of a national crime prevention council. We have to give it some money. What better way to do it than to earmark some of those moneys from the drug dealers, criminals and so on. When we get that money it should be put it back into crime prevention.

They also say that the national crime prevention council should provide training, research, evaluation and public education on the prevention of crime. That takes money. They say that it should provide funding assistance to local governments and community organizations to implement safety initiatives.

In my own riding of Port Moody—Coquitlam a number of people are involved in Block Watch and Crime Stoppers. Even the insurance industry is now involved in community programs. The local police, the social workers, the teachers, everybody wants to get involved in crime prevention and they are doing it on the community basis. That is where it is really happening. They need some funding.

Here is a way to get some funding:

> f. include membership from federal, provincial and municipal governments, and professionals and practitioners involved in crime prevention

This is a great report of the justice committee. It is in the right direction. It received critical acclaim in the press. I will remind the government once again that recommendation No. 3 says:

> The committee recommends that a share of the moneys forfeited as proceeds of crime be allocated to crime prevention activities

That is exactly what my motion does and that is why the government should support this motion. It is the litmus test of how much this government is committed to crime prevention.

When the report came out some of the sceptics, the media and various people in Canada said: "We do not believe it. This government is actually doing something right." They said: "We will wait and see".

They take one step forward and two steps backward. That seems to be this government. Daniel Drolet who is a distinguished journalist writing recently in *The Ottawa Citizen* said the other day:

> Some critics wonder how committed the government is to crime prevention.

Now we have the answer. This is how committed it is. It is missing an opportunity to show its commitment.

• (1045)

I see my friend in the House, the distinguished critic for the Liberal Party. I look at the Liberal policy paper on crime prevention. It says that the Liberal Party is committed to money going for crime prevention. It also cites with approval the justice committee.

I see reported in *Vancouver Sun* of June 1 my friend, the member for Cape Breton—The Sydneys, the justice critic of the Liberal Party quoted as saying this: "He thinks it is a lousy idea to funnel the proceeds of crime back into prevention". He wants a separate budget. The journalist asked: "When is that going to happen?" That is a good question because it is not going to happen. I hope the member for Cape Breton—The Sydneys and the Liberal Party change their minds. Right now we have the Liberal Party and the Conservative Party not wanting to follow the unanimous report—

The Acting Speaker (Mr. DeBlois): Order, please. The hon. member's time has expired.

Mr. Waddell: Mr. Speaker, I thought I had 20 minutes for this.

[*Translation*]

The Acting Speaker (Mr. DeBlois): I remind the hon. member that as shown in the Projected Order of Business and also in the Order Paper, speeches at report stage are limited to 10 minutes. Therefore time is up.

[*English*]

Mr. Waddell: Mr. Speaker, I would make a request to the House that I be allowed to take one minute to just sum up. I will not abuse it.

Some hon. members: Agreed.

Mr. Waddell: They are in fine spirits, they give me much more than I deserve sometimes.

In closing I will say this because I want to hear from the hon. member from the Liberal Party and the government. Perhaps they will accept my amendment.

The Ottawa Citizen has an editorial today saying the Tories are missing a good investment, that this is a smart investment. It says: "The committee recommended more action to prevent crime. By identifying people at risk of becoming criminals, kids in poverty and abusive homes with bad schooling, governments can save on both crime and punishment".

I think the committee report was right. We have to earmark that money. I only ask that it be 30 per cent of the federal moneys, but it will be in there. It will be earmarked and it will be a commitment to crime prevention. It may not be historic but it will be important and it will show that the government is prepared to take seriously its own unanimous report of a House of Commons committee.

I urge the members of the House to support this amendment. I am not trying to delay the bill. I think the bill could get through today. I would like to see a commitment from the government. If I cannot get my motion by some miracle and it does not pass, I hope the government will give at least a verbal commitment from the ministry that moneys will go to the crime prevention because it is very important in Canada. Canadians want us to fight crime and the way to fight crime is to prevent it in the first place. The NDP says get tough with violent criminals, but we also say put money into crime prevention, especially among young people and stop crime from happening in the first place.

Mr. Russell MacLellan (Cape Breton—The Sydneys): Mr. Speaker, I will speak on both the amendment of the government and the amendment brought forward by my friend from the New Democratic Party.

First I want to deal with the one from the government. I am rather at a loss to explain why the amendment is here. I would appreciate it if the Parliamentary Secretary to the Minister of Justice could give some explanation.

With respect to the amendment of my colleague from Port Moody—Coquitlam, he is certainly wrong when he says we do not support his motion because we do. That piece that he quoted from a Vancouver newspaper is inaccurate. At no time did I ever say that using the proceeds of crime for crime prevention was a lousy idea. He and I were both members of the Standing Committee on Justice and the Solicitor General's task force on crime prevention.

• (1050)

We both supported the report. The report "calls for a share of the moneys forfeited as proceeds of crime be allocated to crime prevention". Also in our party paper on justice we advocate that some of the proceeds of crime be used to fund drug education programs, arguably another mode of crime prevention activity and crime prevention.

As the hon. member knows, I supported him on his motion in the legislative committee on using the funds from the proceeds of crime for crime prevention. That is fundamentally the thing to do. The misrepresentation arose when I was trying to explain to the journalists what the position of the government was. The position of the government was that it does not favour this even though, as the hon. member for Port Moody—Coquitlam has said, it goes against the report of the standing committee.

The government says it does not want to do this because it needs to be assured in a budget how much money is applicable to crime prevention. It says that if we did this from the proceeds of crime, it would be an uncertain amount and we would not have any fixed amount. If it is going to have a budget for crime prevention, it should be allotted in the estimates and should be something that everyone can rely upon.

I can understand the government's concern for wanting a fixed budget. However it is using that as a red herring. We can certainly have a budget but use the proceeds of crime for that budget. If the proceeds of crime from some event do not match what is budgeted for crime prevention, the government can supplement the amount. There is no reason it cannot be done.

As has been said, communities want crime prevention. This government used the standing committee's report on crime prevention as a linchpin for its symposium in Toronto the first week of March. If it was good enough to use as a linchpin for a symposium, why in the name of heaven can it not adopt the report?

We heard ministers at this symposium speaking time after time about how great a report this was and how we needed to work for crime prevention. But there is no commitment from the government for this report or for crime prevention.

If the government wants to have a fixed amount in the estimates, or whatever it wants to do, I can condone that as long as it is doing something for crime prevention. But it is not. It has not supported crime prevention in any sense of the word other than to speak about it and to use it as a means of glossing over the intentions and the aspirations of people who were at the symposium.

That is not good enough. There has to be a commitment. The amendment of the hon. member for Port Moody—Coquitlam gives teeth to what the standing committee says in its report. I support that because it is the first thing we have seen in this House as a means of having funding for crime prevention. If the government has an alternative, then have the government put it forward.

We in the Liberal Party are on record as having supported entirely the report on crime prevention by the standing committee. Why can the government not do that? Why can the government not come forward with tangible recommendations on the funding of crime prevention? It says that it does not want to support this amendment. Then fine, come forward with something it does want to do to fund crime prevention. It will not do it and you wonder what its intentions are. Does it really support crime prevention at all? There is nothing tangible to show that it does. We in the Liberal Party want something tangible and we are asking the government for something tangible. We are supporting the hon. member's amendment.

• (1055)

Mr. Rob Nicholson (Parliamentary Secretary to Minister of Justice and Attorney General of Canada and Minister of State (Agriculture)): Mr. Speaker, we are dealing with two amendments to Bill C–123. This is the proceeds of crime bill. It is a good bill. I believe it has support on all sides of the House and I think justifiably so.

The proceeds of crime bill is part of our drug prevention scheme. I believe, and I hope other members agree, that one of the best ways to attack crime is to attack the profits of crime. Bill C–123 fits into our strategy. It provides an effective method for managing assets that have been seized by the Crown. As well, it provides a framework for sharing the proceeds of crime with other law enforcement jurisdictions.

In my riding of Niagara Falls I heard this on a number of occasions in response to questionnaires that I regularly send out to the people. When I asked them this question they said: "Yes, share it with the jurisdictions that are on the front lines and are in the business of seizing the proceeds of crime".

This is a tremendous step in the right direction. It fits in with all the other things the government is doing. Members of the opposition can stand up and say: "We are all in favour of crime prevention. We are tough on crime but we just do not like the things that the government is doing". The government is doing an awful lot in this area.

One bill that will come before Parliament in the next couple of days that I hope will get the support of everyone is the new anti-stalking legislation. It makes it a crime for individuals who want to repeatedly follow and communicate with individuals and put individuals in fear for their safety. That is a step in the right direction. I believe and hope that it will get the support of all hon. members.

However, this is just part of it. One of the other things that we are doing, since this whole question of the government's crime prevention strategy has been raised in the House this morning, is allowing for the first time in Canadian law a prohibition order against people who like to molest children. These are convicted paedophiles. We now make it possible for a lifetime ban to be imposed, keeping them from being anywhere near public parks, swimming pools and other places where children frequent.

As well, just last night, not even 12 hours ago, we changed that bill again to affect those individuals who want to participate in voluntary organizations. I am thinking of things like the Boy Scouts and the Big Brothers organizations. We put that in the bill.

All of these things are part of a larger strategy which is to rebalance the system to make sure that victims are protected and that the rights of law-abiding citizens are considered at all times. I look at the proceeds of crime bill as just part of that particular strategy.

The hon. member for Cape Breton—The Sydneys says: "Why with the government motion are you changing the present provisions which state that the proceeds of crime will immediately go to the debt servicing reduction account". This is a laudable goal by the way. The taxpayers in this country are very interested in things going to debt reduction. However he asks why we are changing that to use the wording: "The proceeds of crime shall be credited to such account in the accounts of Canada as is prescribed". This actually gives us some flexibility. We can by regulation then decide if we want different accounts or where we want it to go so that the legislation does not tie our hands and say that it must exclusively go into the debt servicing reduction account.

I will address the point the hon. member made. He said this is the way we should fund crime prevention. Make sure of a certain percentage. In his case the amendment says 30 per cent.

• (1100)

Let us just look at 1992. Let us see how that would work. The figure that was quoted this morning was that the Crown seized $20 million in the profits of crime in 1992. This is not $20 million that we have in our hands to decide what we want to do with it. That is not the case at all. Most people would be aware that when assets are seized we have to effectively manage those assets because they are still the property of the individual from whom they have been seized. The forfeiture is not final. There are appeal processes. One example was given of a resort seized by the government. We are still within the appeal process and that has been several years.

In fact if we want to talk figures $2 million was forfeited to the Crown in 1992. Consider using the scheme of the hon. member for Port Moody—Coquitlam where 30 per cent is directed toward drug prevention.

Mr. Waddell: No. To supplement.

Mr. Nicholson: To supplement. I will pick up with what the hon. member for Cape Breton—The Sydneys said: "If it goes down one year and up the other then the government will just fill in".

I have news for this House. I do not think it is news to the members who sit on this side. We spend an awful lot more on crime prevention than 30 per cent of $2 million and we spend more than 30 per cent of the $20 million figure that was quoted. Concerning the national strategy on drug prevention, 70 per cent of those millions of dollars committed to that is for reducing demand and trying to get at the source of the problem.

There are many worth-while projects that all of us in this House are aware of which are directed toward the very laudable goal of crime prevention.

A scheme whereby the priority is set that in one year we may have $50 million of assets that are forfeited to the Crown and the next year it is $2 million or zero is not what groups that are in this area would want. It would add an uncertainty as to what they are going to get.

I know that in the land of the NDP, money is never a problem but I believe the groups we are involved with—

Mr. Waddell: Ask the premier of Ontario.

Mr. Nicholson: I say that sincerely. I know there is no problem ever with spending money and there is no problem with cash.

I believe we have to plan these things in a manner that is responsible and will be helpful to people who are trying to work in this area and responsible to the taxpayers who are paying us. Say that in one year the Crown seizes $500 million and according to the NDP it is $470 million. If that does not accord with what it is then it says: "Just write a cheque for the extra $30 million. Top it up. Just send the cheque out".

I do not think that is a good way to do it. I believe we should evaluate each project that we get involved in to make sure it does the job of reducing the demand for drugs or that it is used for crime prevention. We should be very careful without arbitrarily making up our minds in advance as to how we are going to do this.

I am asking the House to reject the NDP amendment. I believe the government amendment is a more even-handed approach to this in saying that it may be our decision. We think we can make this amount go here to supplement or replace whatever we have but at least it is open-ended and we are not tying ourselves in with legislation by insisting that it go to the debt reduction account.

The Acting Speaker (Mr. DeBlois): Is the House ready for the question?

Some hon. members: Question.

The Acting Speaker (Mr. DeBlois): Is it the pleasure of the House to adopt the motion?

Some hon. members: Agreed.

Some hon. members: No.

The Acting Speaker (Mr. DeBlois): All those in favour of the motion will please say yea.

Some hon. members: Yea.

The Acting Speaker (Mr. DeBlois): All those opposed will please say nay.

Some hon. members: Nay.

The Acting Speaker (Mr. DeBlois): In my opinion the nays have it.

And more than five members having risen:

The Acting Speaker (Mr. DeBlois): Call in the members.

The House divided on the motion, which was negatived on the following division:

(Division No. 506)

YEAS

Members

Allmand
Althouse
Anawak
Arseneault
Atwortby (Saskatoon—Clark's Crossing)
Atwortby (Winnipeg South Centre)
Blinir
Bellemare
Black
Boudria
Brewin
Caccia
Clancy
Comuzzi
Crawford
Duhamel
Ferguson
Flis
Fontana
Foster
Patron
Gaffney
Gagliano
Gardiner
Gauthier
Grey (Beaver River)
Harb
Harvard
Heap
Howlett
Hunter
Jordan
Keyes
Kilger (Stormont—Dundas)
Kindy
Langan (Mission—Coquitlam)
Langdon (Essex—Windsor)
LeBlanc (Cape Breton Highlands—Canso)
Leblanc (Longueuil)
Lee
MacLaren
MacLellan
MacWilliam
Mahen
Manley
Marchi
Marleau
Nowlan
Nunziata
Nystrom
Peterson
Phinney
Pickard
Rideout
Ris
Rompkey
Skelly (Comox—Alberni)
Tobin
Vanclief
Venne
Volpe
Waddell
Wappel
Young (Acadie—Bathurst)—64

NAYS

Members

Anderson
Andre
Atkinson
Attewell
Beatty
Belsher
Bird
Blackburn (Jonquière)
Blais
Blenkarn
Bouchard (Roberval)
Brightwell
Browes
Chadwick
Charrand
Clark (Brandon—Souris)
Cole
Côté
Couture
Davis
DeBlois
de Cotret
Dobbie
Domm
Duplessis
Epp
Fee
Feltham
Fontaine
Fretz
Greene
Hicks
Hockin
Holtmann
Horner
Hughes
Jelinek
Johnson
Jourdenais
Langlois
Lavoie
Lewis
Littlechild
Loiselle
MacDonald (Rosedale)
MacKay
Marin
Manse
McDermid
Monteith
Nicholson
Oberle
Porter
Redway
Reimer
Ricard
Richardson
Roy-Arcelin
Saint-Julien
Sobeski
Soetens
Stevenson
Tardif
Tétreault
Thorkelson
Tremblay (Québec-Est)
Van De Walle
Vankoughnet
Vien
Weiner
Wilbee
Winegard
Worthy—73

create new offences or subject a new class of persons to an existing offence.

The bill corrects anomalies, inconsistencies, archaic expressions and errors in federal statutes and deals exclusively with non-controversial matters.

The bill also repeals statutes that have ceased to have effect. The provisions of this bill were submitted as proposals to the House Standing Committee on Justice and the Solicitor General and the Senate Standing Committee on Legal and Constitutional Affairs last February. Both committees have examined the proposals and reported to the House and the Senate. Only proposals which have been unanimously approved by both committees are entered into this bill.

Mr. Russell MacLellan (Cape Breton—The Sydneys): Mr. Speaker, we did a pre-study in the Standing Committee on Justice and the Solicitor General on Bill C-125. We noted the recommendations and made suggestions. We had second reading and then went back to committee and reviewed it.

My party and I find the bill acceptable. As the parliamentary secretary has said, it is really of a technical nature.

Mr. Ian Waddell (Port Moody—Coquitlam): Mr. Speaker, on behalf of the New Democratic Party, we are in agreement with what the parliamentary secretary and the hon. member for Cape Breton—The Sydneys has said. We are in agreement with this bill.

While I am on my feet I would just remind the hon. member from Calgary of a good quote from Mick Jagger of the Rolling Stones: "You can't always get what you want, but sometimes you might just find you get what you need". Maybe he could ponder that a little bit with respect to the proceedings in the House in the last few minutes.

In any case, we are in agreement that Bill C-125 should go through. It is basically technical and cleans up some statutes.

Mr. Alex Kindy (Calgary Northeast): Mr. Speaker, I think if it is simply a bill to clean up statutes it is certainly in order to pass it. I do not know what the justice committee studied but apparently it made some corrections. I suppose they are right.

In answer to what my friend from B.C. said, I think if one has an amendment one has to believe in that amendment. That amendment was defeated and we did not get a commitment from the minister. A commitment from the minister is not worth the paper it is written on therefore I cannot support and give unanimous consent to pass the bill.

As far as the present one goes, I have no problems with its passage.

• (1200)

Mr. Don Boudria (Glengarry—Prescott—Russell): Mr. Speaker, I want to use the next few moments to bring something to the attention of this House while speaking on Bill C-125.

A few moments ago we were debating Bill C-123. We dealt with an amendment proposed by the hon. member for Port Moody—Coquitlam and I believe the amendment he was proposing to that bill was good. It was worthy of support. I supported it and so did my colleagues.

All members of Parliament should remember that there is a difference between a good bill and one that is already good which we want to make even better. The bill we were discussing at the time was already good and we wanted to make it better. That amendment was defeated but we still have to work on the premise that the bill was good because we initially said it was.

I live in a riding where smuggling is a terrible problem. It is taking a terrible toll on the constituents of my area. My colleague for Stormont—Dundas who represents a riding in Ontario that adjoins with mine told me of a recent auction sale in Cornwall where 250 cars were sold that had been seized because of smuggling at that port of entry. The fines right now are so low that it is a farce and we need to increase them. We need to do what is necessary to cut down smuggling and hopefully even stop it. Unless we get Bill C-123 passed in the very few days left in this Parliament, we are not going to have that.

We saw the shootings in my riding not that long ago. People were shooting at each other for control of that trade. That is terrible and it is incumbent upon all of us in the few days that we have left to pass that legislation which is so vital. That unanimous consent was refused earlier but I ask all colleagues in the House to take a few minutes to pause and reflect. Just maybe common sense will prevail and consent will be given. We will then debate that legislation and do what is good for the people of Canada and the people who I have the honour and privilege to represent in this House.

The Acting Speaker (Mr. DeBlois): Is the House ready for the question?

Some hon. members: Question.

The Acting Speaker (Mr. DeBlois): Is it the pleasure of the House to adopt the motion?

Some hon. members: Agreed.

Some hon. members: On division.

The Acting Speaker (Mr. DeBlois): Carried on division.

Motion agreed to, read the third time and passed.

Mr. Boudria: Mr. Speaker, I am going to do something that is somewhat unusual. I am going to ask for unanimous consent that we revert to the bill that was denied earlier. It is unusual for an opposition member to ask for the unanimous consent to deal with a government bill but I will do that now because of the reasons I have already explained in this House. I hope that compassion and common sense will prevail and we will be able to do what I am asking.

Mr. Nicholson: Mr. Speaker, let me indicate to the House the hon. member for Calgary is quite correct that the motion from the member for Port Moody—Coquitlam was defeated. It specified a percentage of the proceeds of crime that would go to crime prevention and what would stay or otherwise, as directed by the government.

The government motion that was concurred in by the House actually opens up the possibility that the government can direct the proceeds of crime to an account to be decided upon by regulation. That is a change from the original bill that indicated that all funds that came to the Crown must go into the debt reduction account. We made a change to that.

• (1205)

I did not get an opportunity but I should have touched on the report of the standing committee. It had very impressive recommendations. Certainly the minister has an *ad hoc* committee looking at that. I expect we will probably be getting recommendations as well from the *ad hoc* committee that advises the minister as to where and how the funds should be spent. I do not want the House to be left with the impression that the door was closed on this or that this was not an outstanding report by the standing committee on justice.

I think the words of the hon. member for Glengarry—Prescott—Russell should be heeded by the House. It is an excellent bill, supported on all sides of the House and the window of opportunity for passing something that our constituents have been asking for is very small. I hope all hon. members, in considering this request, will give that unanimous consent so we can move to third reading on this bill.

Mr. Kindy: Mr. Speaker, I was listening with interest to the hon. member. My experience as a former member on the justice committee is that if it is just left to regulations and the bureaucracy, the advice is never going to be followed to put the money in a fund to reduce our debt or for crime prevention.

If we are serious about this matter and if the government had been serious about this matter, it would have accepted the amendment because it was a good amendment. It was very simple for government members to vote for it because it would have directed 70 per cent of the funds to debt reduction and 30 per cent to crime prevention. If the government is still serious, it still can bring it back and have debate and so on therefore I cannot give my consent.

Mr. Angus: Mr. Speaker, I think we have to recognize that having been reported, there is no longer an option to make further amendments in this room. The other House can amend it if it so chooses. To even delay third reading in no way provides an opportunity for the government to amend the bill.

The only way we could do that is if by unanimous agreement the House reverted to report stage. I am not suggesting we do that. There comes a point in time in which we have to recognize that we tried. We did not get there, so let us move on with it.

I would encourage the hon. member to reconsider whether or not he grants unanimous consent to allow us to move this bill through third reading to get it into the other place so it can be passed into law.

The Acting Speaker (Mr. DeBlois): Is there unanimous consent?

Some hon. members: No.

[*Text*]

EVIDENCE

[*Recorded by Electronic Apparatus*]

Tuesday, May 25, 1993

• 1533

The Chairman: We have a lot of witnesses to hear from today: the Canadian Federation of Municipalities, the Canadian Police Association, and the Canadian Association of Chiefs of Police.

The order of the day is Bill C-123, an act respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain instances.

I would like each of the groups to present a short brief, and then we'll have questions to all three groups, if that's suitable. We'll start with the Canadian Federation of Municipalities.

M. Michel Hamelin (Fédération canadienne des municipalités): Merci, monsieur le président. Je m'appelle Michel Hamelin; je suis le président de la Communauté urbaine de Montréal et le président du Comité sur la sécurité et la prévention de la criminalité en milieu urbain à la Fédération canadienne des municipalités. M'accompagnent, M^me^ Donna Blake, coordonnatrice du Programme de prévention de la criminalité à la Fédération canadienne des municipalités, et M. Louis Théoret qui s'occupe de la liaison communautaire.

Monsieur le président, je vous remercie de me donner l'occasion d'aborder devant ce Comité une question dont l'importance et l'intérêt sont primordiaux pour les municipalités canadiennes.

• 1535

Nous vous félicitons de l'excellent travail que vous avez accompli concernant cette initiative et nous sommes enchantés des progrès réalisés à ce jour.

La lutte contre la criminalité représente un enjeu très important pour les municipalités. Chaque jour, les dirigeants municipaux constatent que la criminalité est devenue une préoccupation croissante pour les citoyens et citoyennes. Nous travaillons régulièrement avec des intervenants dans le domaine de la prévention de la criminalité afin de faire face aux problèmes causés par le commerce de la drogue, la prostitution, la violence chez les jeunes, les crimes contre la propriété, etc. Grâce à la FCM, les dirigeants municipaux ont été en mesure d'entreprendre l'élaboration de stratégies permettant de faire face aux problèmes de criminalité par l'intermédiaire de notre propre comité permanent sur la sécurité et la prévention de la criminalité en milieu urbain. Les gouvernements locaux étant affectés plus que tout autre par la criminalité, nous apprécions que l'on reconnaisse notre contribution à la prévention et à la lutte contre la criminalité.

Tous connaissent l'ampleur des coûts de police. La loi sur les produits de la criminalité, plus précisément le plan de partage, est une des façons de s'assurer que les municipalités continueront de faire face à la criminalité et d'investir dans la prévention et la sécurité au sein de la société canadienne. Il est clair que le but de cette loi est de traiter du facteur de responsabilité en ce qui a trait à l'administration des biens saisis.

[*Translation*]

TÉMOIGNAGES

[*Enregistrement électronique*]

Le mardi 25 mai 1993

Le président: Nous avons de nombreux témoins à entendre aujourd'hui: la Fédération canadienne des municipalités, l'Association canadienne des policiers et l'Association canadienne des chefs de police.

À l'ordre du jour le projet de loi C-123, Loi concernant l'administration de biens saisis ou bloqués relativement à certaines infractions, l'aliénation de biens après confiscation et, dans certains cas, le partage du produit de leur aliénation.

Si cela vous convient, je demanderais à chacun des groupes de nous présenter un court exposé, après quoi nous pourrons leur poser des questions. Nous allons commencer par la Fédération canadienne des municipalités.

Mr. Michel Hamelin (Canadian Federation of Municipalities): Thank you, Mr. Chairman. My name is Michel Hamelin; I am president of the Communauté urbaine de Montréal and chairman of the Canadian Federation of Municipalities Committee on Urban Safety and Crime Prevention Program. Accompanying me today are Mrs. Donna Blake, coordinator of the Crime Prevention Program, Canadian Federation of Municipalities, and Mr. Louis Théoret, who is responsible for community liaison.

Thank you, Mr. Chairman, for allowing me the opportunity to address the committee on this important issue of great relevance and interest to Canadian municipalities.

Congratulations on your excellent work on this initiative. We are very pleased with the progress to date.

Municipalities have a huge stake in fighting crime. Municipal politicians deal daily with crime as a growing concern and issue for constituents. We work regularly with stakeholders in crime prevention to deal with problems associated with the drug trade, prostitution, youth violence, property crimes and the list goes on. Through FCM, municipal politicians have been able to begin to develop strategies to deal with crime problems through our own Standing Committee on Urban Safety and Crime Prevention program. Given that crime affects local government more than any other order of government, we appreciate being recognized for our contribution in tackling crime and prevention issues.

Everyone knows that the cost of providing police services is very high. The proceeds of crime legislation and more specifically the sharing plan is one way of ensuring that municipalities can continue to deal with and invest in crime prevention and safety in Canadian society. It is clear the intent of the legislation is to address the liability factor in dealing with the management of seized goods.

[*Texte*]

Bien que notre intention ne soit pas de nuire au processus législatif ou de provoquer un retard, nous souhaitons qu'un certain nombre de préoccupations soient prises en considération. Notre objectif est de faire en sorte que cette loi serve à diminuer la criminalité, et les gouvernements municipaux sont les premiers à savoir ce qui est efficace sur le plan local. La position de la FCM est donc la suivante.

Concernant le partage des biens, une structure doit être établie pour administrer le partage juste et équitable du produit net des biens acquis par des activités illégales. Nous sommes d'accord sur le raisonnement du gouvernement fédéral concernant le partage, à savoir que les gouvernements locaux et provinciaux méritent de partager équitablement les fruits de la confiscation résultant des efforts qu'ils font pour appliquer la loi, ce qui représente des coûts significatifs pour les municipalités.

Le gouvernement fédéral semble être favorable à un partage direct avec les gouvernements provinciaux uniquement. Le partage des biens saisis par les forces de police municipales avec les provinces suivant ce que celles-ci «jugent approprié» n'est pas acceptable. La Fédération canadienne des municipalités est fermement convaincue que les produits de la criminalité devraient être directement transférés aux gouvernements municipaux. Le partage direct avec les municipalités aura pour effet d'encourager les gouvernements municipaux, par l'intermédiaire de leurs services de police, à utiliser la loi. Actuellement, il existe une certaine réticence à prendre part à des enquêtes étant donné que les dépenses ne sont jamais remboursées. Le partage direct contribuera grandement à atténuer cette préoccupation.

Un autre effet sera d'éliminer la possibilité que les gouvernements provinciaux utilisent les produits de la criminalité pour remplacer d'autres fonds envoyés aux municipalités. Ces produits doivent être utilisés pour investir directement dans les activités de prévention et dans la sécurité de nos collectivités. Les gouvernement municipaux sont pleinement en mesure d'administrer les transferts directs au sein de leur propre structure administrative.

Dans l'ensemble, le gros du financement des services de police est assuré par les gouvernements municipaux, tant pour la GRC que pour les forces de police municipales, avec une contribution relativement faible des provinces. Il est essentiel que le gouvernement qui assume le coût principal des enquêtes initiales soit celui qui reçoive les produits relatifs à la confiscation des biens.

En ce qui concerne le plan de partage des coûts, le plan de partage des biens que propose le fédéral met de l'avant une formule de répartition proportionnelle où il est question de 90, 50 ou 10 p. 100, cela calculé sur la base du produit net dans chacun des cas. Il est à noter que c'est le procureur fédéral qui déterminera la répartition des pourcentages. Pour faciliter son travail et assurer un jugement logique et équitable, la formule de partage doit être clarifiée sous certains aspects. Cette proportion de 90, 50 ou 10 p. 100 n'apparaît évidemment pas dans le projet de loi. Il s'agit de discussions qui auraient eu lieu concernant la réglementation qui rendrait le projet de loi opérationnel.

• 1540

Voici donc les aspects qui nécessitent ce besoin de clarification: Comment mesurera-t-on la participation aux enquêtes? Quelles sortes et combien d'activités faudra-t-il pour constituer une participation de 90 p. 100, par opposition à une

[*Traduction*]

Our intention is not to block the legislation or encourage delays, but we have a number of concerns we wish considered. Our goal is to make this legislation useful in reducing crime, and municipal governments know first-hand what is effective at the local level. Consequently, the FCM position is as follows.

Regarding the sharing of assets, a structure must be established to manage the equitable and fair sharing of net proceeds of goods acquired through illegal activities. We agree with the federal government's rationale for sharing, namely, that local and provincial governments deserve to share equitably in the fruits of forfeitures resulting from their enforcement efforts that result in significant costs to local municipalities.

The federal government appears to favour direct sharing with provincial governments only. Sharing assets seized by municipal police forces with the provinces for distribution "as they deem appropriate" is not acceptable. The Federation of Canadian Municipalities firmly believes that the proceeds of crime should be transferred directly to municipal governments. Direct sharing with municipalities will encourage municipal governments, through local police services, to use the legislation. Currently there exists a reluctance to become involved in investigations due to expenses that are never recovered. Direct sharing will do much to alleviate this concern.

Direct sharing will also avoid the possibility that provincial governments could use the proceeds to replace other funds directed to municipalities. The proceeds must be used to directly invest in prevention activities and in the safety of our communities. Municipal governments are fully capable of managing direct transfers within their own administrative structures.

Overall, the bulk of funding for police services is borne by municipal governments, both for RCMP and municipal police forces, with relatively small contributions from the provinces. It is essential that the government that bears the major cost for initial investigations should be the recipient of any asset proceeds.

As for the cost-sharing scheme, the proposed federal asset-sharing scheme puts forward a 90%, 50% or 10% of a pro-rated share calculated on the basis of the net proceeds in each case. It is noted that the federal prosecutor will determine the percentage breakdowns. In order to facilitate this individual's work and ensure consistent and fair judgment, the FCM believes the sharing formula needs clarification in some areas. Obviously, this 90%/50%/10% breakdown is not found in the bill. This breakdown may have been proposed in discussions regarding the regulations that would make the bill operational.

Here are some of the things that need to be clarified: How will involvement in any investigation be measured? What kinds of activities and how many will constitute a 90% involvement as opposed to a 50% or 10% contribution? In our view, all orders

[Text]

contribution de 50 ou de 10 p. 100? Tous les ordres de gouvernement, selon nous, doivent participer à l'élaboration d'une formule neutre et au choix de l'organisme ou de l'individu le mieux qualifié pour prendre cette décision.

Le plan de partage proposé est vague et a besoin d'être beaucoup mieux défini.

Pour ce qui est de l'administration des biens, nous appuyons pleinement la création d'un bureau central entièrement responsable de l'administration des produits de la criminalité saisis ou bloqués. Les municipalités ne sont pas équipées pour administrer de façon intérimaire les biens et propriétés confisqués. Cette responsabilité devrait continuer d'échoir au gouvernement fédéral bien que nous exhortions celui-ci à exercer une certaine prudence concernant le remboursement des frais généraux liés au régime d'administration. Il pourrait y avoir des coûts généraux élevés, ce qui réduirait considérablement les montants dont disposeraient les municipalités pour couvrir le coût des enquêtes et de la prevention de la criminalité.

La FCM suggère d'instaurer un mécanisme de révision des coûts autre que celui du ministère fédéral afin d'établir un coût administratif maximum pour le traitement des produits de la criminalité. Idéalement, on devrait mettre sur pied une équipe administrative nationale à laquelle les intervenants pourraient participer.

Enfin, parmi les points généraux, le processus législatif progresse selon nous de façon encourageante. Votre Comité a accompli beaucoup de travail à cet effet. En tenant compte des points que nous avons soulevés précédemment, nous sommes persuadés que les règlements relatifs à cette loi répondront aux préoccupations que nous venons d'exposer et assureront un partenariat réel entre les trois ordres de gouvernement, en ce qui a trait à la sécurité et à la prévention de la criminalité.

Comme dernière suggestion, nous recommandons qu'une clause de révision soit intégrée à la loi de façon que, dans cinq ans, par exemple, nous puissions déterminer si nous avons respecté l'esprit de la loi et si celle-ci répond aux objectifs fixés. Cette mesure nous permettrait de régler les problèmes survenant dans l'administration de la loi concernant la division des biens.

En terminant, la FCM vous remercie de lui avoir donné l'occasion de commenter cette initiative importante et se fera un plaisir de répondre à vos questions après une dernière clarification, cependant. Dans la loi on dit: «le ministre peut répartir les biens». Je pense que la loi devrait se lire: «le ministre doit répartir les *proceeds of crime* ou les biens qui seront saisis.

Merci.

The Chairman: Thank you very much.

I wonder if we could have the submission from the Canadian Police Association.

Mr. James Kingston (Canadian Police Association): Mr. Chairman, the Solicitor General over the last year and a half has come to our conferences, and this is one of the subjects he has talked about. It certainly has always been our position that those who are providing the service should share in the proceeds. Of course one of our rather blunt criticisms of this bill is that it doesn't seem to do that.

[Translation]

of government must have input in developing a neutral formula and in selecting the organization or individual best suited to make this decision.

The proposed sharing scheme is vague and needs to be much more clearly defined.

With respect to managing assets, we fully support the creation of a consolidated and fully accountable office to manage seized or restrained proceeds of crime. Municipalities are not equipped to manage property and assets on an interim basis. Federal government should retain that responsibility, but we urge the federal government to exercise some caution with respect to the recovery of overhead costs of the managing regime program. The potential exists for significant overhead costs which would result in greatly reduced proceeds being directed to municipal investigative and crime prevention costs.

The FCM suggests that a cost review mechanism be established other than the federal government ministry itself to set a maximum administrative cost for proceeds cases. Ideally, a national management team should be established in which stakeholders can become involved.

Finally, with respect to the general points, I must say that the progress of the legislation is encouraging. Your committee has achieved a great deal. With consideration of the above points, we are confident that the regulations governing this legislation will meet the concerns outlined and ensure real partnerships between the three orders of government in addressing crime and safety issues.

As a final suggestion, we recommend that a review clause be built into the legislation so that in five years, for example, we can determine whether the spirit of the legislation has been achieved and if the legislation is achieving that to which it is intended. This would provide us the opportunity to work through any problems with the administration of the act in arranging for the division of assets.

The FCM appreciates the opportunity to comment on this important initiative and looks forward to responding to your questions. However, before I do that, I would like to add one final clarification. The bill says that, "the Minister may. . .share the proceeds". I think that the bill should read: "the Minister shall. . .share the proceeds of crime or the seized goods."

Thank you.

Le président: Merci beaucoup.

La parole est maintenant aux représentants de l'Association canadienne des policiers.

M. James Kingston (Association canadienne des policiers): Monsieur le président, le solliciteur général assiste à nos conférences depuis un an et demi, et il nous a déjà parlé de cette question. Il ne fait aucun doute que nous avons toujours dit que ceux qui offrent le service devraient recevoir une part du produit de l'aliénation. Bien sûr, une de nos plus vertes critiques du projet de loi est qu'il ne semble pas prévoir ce partage.

[*Texte*]

There also seems to be some strong opposition from staff in the ministry about whether or not this should go back to the provinces or whether it finds its way back to the municipalities. I want to make it very clear that it's our position that it has to go back to the municipalities. Certainly we feel they are involved in the joint forces operations, and usually these seizures are a direct result of joint forces operations, and they in fact should share in the proceeds.

This has been the position that has been put forward to the Solicitor General. We have correspondence from him indicating that would be his wish. We thought that would be the purpose of this bill. Unfortunately, we're left to find out what the intent of this bill really is through the regulations. We have some very serious difficulty with that.

You see, really, this bill talks about sharing the assets. One of the problems we see with it is what we're really doing is creating another federal bureaucracy, and this bureaucracy could in fact eat up the profits. It should be going back to the provinces and the municipalities. It doesn't say in the bill, even though there is some sort of an understanding that they will take only 10%. . .but 10% of the net profit or 10% of what's left, we really don't know. The fundamental problem we see with it is that we don't know what these regulations are.

■ 1545

We also are somewhat disturbed. . .I'll just quote from page seven of our brief, from the backgrounder material:

> It can be argued that direct contribution to municipalities or police agencies runs the risk of distorting their investigative priorities by creating a bias in favour of "profitable" investigations at the expense of important but "less profitable" ones, fostering unnecessary competition among police forces, and distorting police budgetary processes.

Within the police service, we always say we have thin skins. Well, something like that certainly gives us a thin skin. Priorities are not set that way. These particular investigations are complex. They require a long time to achieve the result.

Right now, we're told $65 million in funds have been seized up to this particular point. I'd like to know how much of that has found its way into the policing portions of the federal government up to this point.

Again, we're not going to belabour this issue. We just would like to think that before this thing is passed, your committee would want to know, as we do, what is the fine point in the regulations.

Mr. Scott Newark (General Counsel, Canadian Police Association): I might add that the point, of course, is that the police are the ones who do the original investigation in terms of this type of crime, which is often very sophisticated. It requires some equally sophisticated techniques, long expensive investigations. I think what would be helpful is asking why proceeds of crime legislation exists in the first place, why we've gone toward it. The answer indicates, probably better than anything else, where the money should therefore end up.

[*Traduction*]

En outre, le personnel du ministère semble s'opposer fortement au projet de loi car il n'est pas sûr si le produit de l'aliénation devrait être payé aux provinces ou aux municipalités. Je veux être très clair sur ce point: nous estimons que le produit doit être versé aux municipalités. Il ne fait aucun doute qu'elles participent aux opérations conjointes des forces policières et, d'habitude, les saisies sont le résultat direct d'opérations conjointes. Donc, les municipalités devraient toucher une part du produit.

Nous avons fait part de cette position au solliciteur général. Nous avons des lettres de sa part qui démontrent qu'il est du même avis que nous. Nous avons cru que ce projet de loi traduirait cette volonté. Malheureusement, ce sont les règlements qui nous feront découvrir la véritable intention de ce projet de loi. Nous avons des inquiétudes très sérieuses à cet égard.

Vous voyez, on parle du partage des biens dans ce projet de loi. Le problème, c'est qu'il crée une autre bureaucratie fédérale, une bureaucratie qui pourrait absorber le produit de l'aliénation. Il devrait être versé aux provinces et aux municipalités. Le projet de loi ne l'indique pas, même s'il y a un genre d'entente voulant que le fédéral ne prenne que 10 p. 100. . .mais nous ne savons pas vraiment s'il s'agit de 10% des recettes nettes ou 10% de ce qui restera. Selon nous, le problème fondamental de ce projet de loi, c'est que nous ne savons rien au sujet des règlements.

Par ailleurs, nous sommes quelque peu inquiets. . .Permettez-moi de vous lire un paragraphe tiré de la page 7 de notre mémoire où nous citons un extrait des documents d'information:

> On pourrait dire qu'une contribution directe aux municipalités ou aux forces policières risque de fausser leurs priorités en matière d'enquête en créant un parti pris en faveur des enquêtes rentables aux dépens des enquêtes moins rentables, d'encourager une concurrence inutile entre les forces policières et de fausser les processus budgétaires de ces dernières.

Dans les services policiers, nous disons toujours que nous sommes susceptibles. Eh bien, voilà certainement le genre de chose qui nous rend susceptibles. Les priorités ne sont pas établies de cette façon. Ces enquêtes sont complexes. Il faut beaucoup de temps pour arriver à des résultats.

À l'heure actuelle, on nous dit que jusqu'à présent 65 millions de dollars de biens ont été saisis. J'aimerais savoir quel pourcentage de cette somme le gouvernement fédéral a envoyé aux forces policières jusqu'à présent.

Encore une fois, nous ne voulons pas trop insister sur la question. Nous voudrions tout simplement qu'avant d'adopter ce projet de loi, votre comité veuille savoir, comme nous, ce que l'on retrouvera dans le règlement.

M. Scott Newark (avocat général, Association canadienne des policiers): J'aimerais ajouter que naturellement, ce sont les forces policières qui font l'enquête initiale dans ce genre de crime, qui est souvent très complexe. Les enquêtes sont longues et coûteuses et exigent des techniques toutes très perfectionnées. Je pense qu'il serait utile de demander tout d'abord pourquoi il existe des mesures législatives concernant le produit de la criminalité et la réponse est sans doute que c'est pour indiquer où l'argent devrait en fin de compte être envoyé.

[*Text*]

The answer, at least from our perspective, is that it is saying that crime does not or will not pay the same way it has in the past. That is a very real deterrent to crime. As well, the dollars that come back... I mean, presumably the reason why we want to do this is so that we can continue the process of crime suppression.

That being so, I think it's a very good idea to examine whether the structure suggested in the bill is going to do that the most efficiently. The last thing I would imagine anybody really wants to see is a federal bureaucracy involved in running pizza parlours across the country, or car dealerships or anything like that. The act itself is entitled the Seized Property Management Act. I must admit, I would be more comfortable if I saw added in there the words, "...Property Management and Disposal Act".

The purpose should be to accumulate the assets to take them away from organized or sophisticated crime, to convert them, to liquidate them, and to put the money back into the hands of the people who literally are going to be in the front lines of the ongoing fight, namely, the police. I must admit, I suppose if we're talking about distributing the money to a civilian agency, I would think the one closest to the police force is the closest.

Subject to something I have not as of yet run into, large police forces have complex and sophisticated budget sections. That's what they do. They budget for how they're going to spend their money. I'm not sure why there needs to be a stop of the dollars once calculated, however it's calculated, at any bureaucracy along the way.

I don't think it's beyond our capacity to figure out how we're going to manage the assets. We agree that should be done by somebody other than the police. It requires something that's not completely consistent with ongoing police functions. But once that's done, have the property liquidated, work out the formula, however you're going to work out the formula, and then directly transfer the funds back to the people who do the job in the first place, the police.

I agree completely with Mr. Kingston and with the gentleman from the Canadian Federation of Municipalities. It is important to know how sharing is going to take place, to know, I suppose, if sharing is going to be realistic. There's a very real concern that a large administration could end up simply eating away all the profits, which is a disincentive to doing what could be extremely effective intervention in crime suppression of important and very sophisticated crime we do want to stop, that all of us have an interest in stopping.

The Chairman: Thank you very much.

From the Canadian Association of Chiefs of Police, we have ex-Chief, still-Chief Flanagan.

Mr. Thomas Flanagan (Vice-President, Canadian Association of Chiefs of Police): Mr. Chairman, thank you. I'm Vice-President of the Canadian Association of Chiefs of Police. I also chair the law amendments committee.

I have very little to say other than the fact that we support the remarks by Mr. Hamelin and the Canadian Federation of Municipalities. We would like to see this bill pass as soon as possible, but mainly we would like to see it pass. We don't want

[*Translation*]

Si nous adoptons de telles mesures, c'est à notre avis pour dire que le crime ne paie pas ou qu'il ne paiera pas de la même façon qu'il a payé par le passé. Il s'agit d'une mesure vraiment dissuasive. En outre, les sommes qui sont réinvesties... Je présume que la raison pour laquelle nous voulons faire cela c'est que nous voulons continuer de lutter contre le crime.

Je pense que c'est une très bonne idée d'examiner si la structure proposée dans le projet de loi permettra d'atteindre cet objectif le plus efficacement possible. J'imagine que la dernière chose que l'on voudrait, c'est que la bureaucratie fédérale se retrouve à administrer un peu partout au pays des pizzerias, des concessions d'automobiles ou d'autres entreprises de ce genre. La loi elle-même s'intitule Loi concernant l'administration de biens saisis. Je dois admettre que je serais plus à l'aise si la loi s'intitulait: «Loi concernant l'administration et l'aliénation de biens».

Le but devrait être d'accumuler les biens pour les retirer du crime organisé, les convertir, les liquider et remettre l'argent entre les mains de ceux qui se retrouveront sur le front pour lutter contre la criminalité, notamment la police. Je dois admettre, je suppose que si l'on parle de distribuer l'argent à un organisme civil, alors je pense qu'il faudrait le distribuer à celui qui est le plus près des forces policières.

Je ne connais aucune force policière importante qui n'ait pas un service budgétaire complexe et perfectionné. Ces services établissent le budget et décident comment l'argent sera dépensé. Je ne vois pas pourquoi il serait nécessaire qu'une fois le calcul fait, peu importe la façon dont il est fait, ces sommes passent par une bureaucratie.

Je ne pense pas que ce soit au-dessus de nos capacités de déterminer comment nous allons gérer les biens. Nous convenons que cela doit être fait par quelqu'un d'autre que la police. Ce genre de travail ne correspond pas tout à fait aux fonctions des forces policières. Mais une fois ce travail fait, que les biens sont liquidés, qu'on en est arrivé à une formule, il faudrait alors transférer directement les fonds à ceux qui font le travail en premier lieu, c'est-à-dire la police.

Je suis tout à fait d'accord avec M. Kingston et avec le représentant de la Fédération canadienne des municipalités. Il est important de savoir comment le partage sera fait, de savoir, je suppose, si le partage sera réaliste. On craint qu'une grande administration absorbe tout simplement tous les profits, ce qui découragerait une intervention extrêmement efficace pour mettre fin à ce genre de criminalité très complexe à laquelle nous voulons tous mettre fin.

Le président: Merci beaucoup.

De l'Association canadienne des chefs de police, nous recevons l'ancien chef et toujours chef Flanagan.

M. Thomas Flanagan (vice-président, Association canadienne des chefs de police): Merci, monsieur le président. Je suis vice-président de l'Association canadienne des chefs de police. Je suis en outre président du Comité des modifications législatives.

Je n'ai pas grand-chose à dire, sinon que nous appuyons les observations de M. Hamelin et de la Fédération canadienne des municipalités. Nous aimerions que le projet de loi soit adopté le plus rapidement possible, mais nous tenons surtout à ce qu'il

[*Texte*]

to do anything to obstruct the passage of the bill, whereas everyone here, I suppose, concerned mainly with the regulations. . . We hope and expect that we will have some input into those regulations, but we feel time is of the essence. I don't think I need to elaborate on that, but we would like to see this bill pass. We support it and our main thrust, as the other two or three speakers have stated, is that money does get down to the municipalities, whose taxpayers have to spend it.

• 1550

Mr. Wappel (Scarborough West): I want to begin by saying that I haven't had as much of an opportunity to review this bill as I would have liked, with the detail I would have liked, so some of the questions I'm going to ask may have been dealt with by officials at the first meeting. I haven't had a chance to review the transcript, but maybe you can help me with it.

First of all, Mr. Hamelin, on page 2 of your opening remarks you said that the federal government appears to favour direct sharing with provincial governments only. Can you direct me to the section in the bill that says that?

Mr. Hamelin: I think it's not in the bill, it's in the background.

Mr. Wappel: Don't you consider that to be a problem?

Mr. Hamelin: Yes, it is a problem because the provinces have such big budgets. How can we assure that those proceeds of crime will be directed to prevention and to police costs?

Mr. Wappel: But that's exactly the point. This bill is about as skeletal as one could get. The flesh and the muscles are all in the regulations. How can we go charging around supporting a skeleton when we have absolutely no idea what the body will look like? Don't you think that's dangerous?

M. Hamelin: Il me semble que beaucoup de projets de loi, de tous les ordres de gouvernement, sont des squelettes. C'est la réglementation qui devient importante à ce moment-là. Cela a été souligné tout à l'heure par le représentant de l'Association des chefs de police. Donc, au niveau de la réglementation, il devra y avoir un *input*.

Ce qui est important pour nous, c'est que le principe du projet de loi soit adopté. De toute façon, il n'y aura sûrement pas de réglementation tant que le projet de loi n'aura pas été adopté. L'important est d'adopter le projet de loi, de consacrer ce principe et de voir par la suite à ce que la réglementation reflète bien les aspirations de ceux qui doivent lutter contre la criminalité sur le terrain.

Mr. Wappel: Let's talk about the principle of the bill. Wouldn't you agree with the Canadian Police Association that the principle of the bill, and if not the primary principle then certainly one of the major principles, should be the prevention of drug crime and the suppression of crimes involving drugs, yet as the Canadian Police Association points out in its brief, that's not even mentioned in the bill.

[*Traduction*]

soit adopté. Nous ne voulons rien faire pour bloquer l'adoption du projet de loi et, je suppose, comme pour tous ceux qui sont ici, ce sont surtout les règlements qui nous préoccupent. . . Nous espérons qu'on nous demandera notre avis au moment de l'élaboration de ces règlements, et nous nous y attendons, mais nous estimons que le temps presse. Je ne pense pas qu'il soit nécessaire d'élaborer davantage, mais nous aimerions que ce projet de loi soit adopté. Nous l'appuyons et notre principal objectif, comme l'ont dit les deux ou trois témoins qui m'ont précédé, c'est de voir cet argent versé aux municipalités, car en fin de compte ce sont les contribuables municipaux qui doivent le dépenser.

M. Wappel (Scarborough-Ouest): J'aimerais tout d'abord dire que je n'ai pas eu l'occasion d'examiner ce projet de loi comme je l'aurais voulu, d'en faire un examen aussi approfondi que je l'aurais voulu, de sorte que les représentants du ministère ont peut-être déjà répondu lors de la première séance à certaines des questions que je vais poser. Je n'ai pas eu l'occasion de lire le procès-verbal de cette première séance, mais vous pourrez peut-être m'aider.

Tout d'abord, monsieur Hamelin, à la page 2 de vos remarques liminaires, vous dites que le gouvernement fédéral semble être favorable à un partage direct avec les gouvernements provinciaux uniquement. Pouvez-vous m'indiquer dans quel article du projet de loi on dit cela?

M. Hamelin: Je ne pense pas que ce soit dans le projet de loi, c'est dans les documents d'information.

M. Wappel: Ne considérez-vous pas cela comme étant un problème?

M. Hamelin: Si, c'est un problème car les provinces ont de si gros budgets. Comment pouvons-nous nous assurer que les produits de la criminalité seront utilisés pour la prévention et les coûts de police?

M. Wappel: Mais c'est exactement ce que je veux dire. Ce projet de loi est on ne peut plus squelettique. Tout ce qui pourrait l'étoffer se retrouvera dans le règlement. Comment pouvons-nous appuyer un tel projet de loi lorsqu'on n'a aucune idée de ce à quoi ressembleront les règlements? Ne croyez-vous pas que c'est dangereux?

Mr. Hamelin: It would seem to me that many bills, from all orders of government, are skeletal. Then, the regulations become important. This is what the representative of the Canadian Association of Chiefs of Police just said. So, as far as the regulations are concerned, we will have to have an input.

The important thing for us is that the principle of the bill be passed. Anyway, there surely won't be any regulations as long as the bill has not been passed. What is important is passing the bill, establishing this principle and ensuring that the regulations truly reflect the aspirations of those who must fight crime in the field.

M. Wappel: Parlons un peu du principe du projet de loi. N'êtes-vous pas d'accord avec l'Association canadienne des policiers pour dire que le principe du projet de loi, et si ce n'est pas le premier principe alors il s'agit certainement de l'un des grands principes du projet de loi, devrait être la prévention et la suppression des crimes reliés à la drogue, et pourtant, comme l'a mentionné l'Association canadienne des policiers dans son mémoire, on n'en parle même pas dans le projet de loi.

[*Text*]

M. Hamelin: Il n'y a pas seulement la criminalité ou le problème de la drogue. Il y a aussi toute la criminalité organisée qui s'attaque à l'ensemble de la société canadienne. La drogue est un problème important, et nous le reconnaissons tous, mais il y a aussi l'ensemble du crime organisé. Pourquoi se partagerait-on uniquement les profits tirés de la criminalité liée à la drogue et non pas les profits tirés de tous les autres genres de criminalité? J'appuie le gouvernement quand il dit que les fruits de tous les genres de criminalité, quels qu'ils soient, doivent être partagés et doivent pouvoir, au niveau des municipalités, être utilisés pour payer les coûts de police ou pour travailler à la prévention de la criminalité.

Mr. Wappel: Okay. Let me ask a provocative question. What will guarantee that the money paid to municipalities would be plowed back into the police forces, as opposed to being used to buy plows?

• 1555

M. Hamelin: C'est bien simple. La réglementation n'a qu'à prévoir que ces sommes doivent être envoyées aux municipalités pour la prévention et les coûts de police. Toutes les municipalités ont des firmes de comptables qui doivent approuver les états financiers. Si des sommes versées à la municipalité sont employées à autre chose, la firme de comptables agréés devra dénoncer ce fait. Je ne vois absolument aucun problème là si c'est dans la réglementation.

Mr. Wappel: Shouldn't that sort of thing be in the act itself?

M. Hamelin: Eh bien, je laisse aux législateurs le soin de trouver la meilleure façon de traduire leurs intentions, de déterminer si cela doit être inscrit dans la loi ou dans la réglementation. Ce qui nous importe, c'est que cela soit inscrit quelque part et se fasse le plus rapidement possible.

Mr. Wappel: The reason I ask this is that I had a private member's bill—I still do—on this subject, admittedly directed to drug crimes. In my private member's bill I specifically put it in that the money was to be given back for continued use against, in that case, the investigation of drug crimes and the suppression of drugs. My concern is that if money is plowed back and no principle is stated in the bill that it must be used for the fighting of crime, it might end up being used for other things.

M. Hamelin: Je viens de répondre à cela en disant que la réglementation ou la loi devrait préciser que ces sommes d'argent doivent servir à la lutte contre la criminalité et à la prévention. Pour ce qui est de la drogue en particulier, je pense qu'il faut consacrer autant d'argent à la prévention qu'à la lutte contre le trafic. Ce qui rend le trafic florissant, c'est qu'en bout de ligne, il y a des usagers qui veulent avoir de la drogue. Si on pouvait faire de la prévention et réduire de moitié le nombre de personnes qui achètent de la drogue, on réglerait une bonne partie de notre problème.

Il faut donc que la réglementation ou la loi précise que les sommes versées aux municipalités doivent servir uniquement à la prévention et aux coûts de police. À ce moment-là, la municipalité qui ne veut pas s'en servir à ces fins renverra l'argent au fédéral. J'ai cependant l'impression que chaque municipalité s'en servirait à ces fins-là si la loi ou la réglementation l'exigeait.

[*Translation*]

Mr. Hamelin: It's not only the problem of crime or drug crime. There's also the whole problem of organized crime which is damaging the Canadian society as a whole. Drug crime is a major problem, and we all recognize it, but there's also the problem of organized crime. Why should we only share the proceeds of crimes involving drugs and not all the proceeds of all other types of crimes? I support the government when it says that the proceeds of all types of crimes, whatever they are, must be shared and that the municipalities must be able to use these proceeds towards police costs or crime prevention.

M. Wappel: Très bien. Permettez-moi de vous poser une question provocante. Qu'est-ce qui garantira que les sommes versées aux municipalités seront réinvesties dans les forces policières plutôt que dans l'achat de charrues?

Mr. Hamelin: It is quite simple. It must be specified in the regulations that these moneys must be sent to the municipalities to be directed towards prevention and police costs. All municipalities must have their financial statements approved by accounting firms. If moneys paid to the municipality are directed towards something else, the accounting firm will have to denounce that fact. I don't see any problem whatsoever if it is specified in the regulations.

M. Wappel: Est-ce que ce genre de chose ne devrait pas se retrouver dans la loi elle-même?

Mr. Hamelin: Well, I leave it up to the legislators to find the best way to translate their intentions, to determine whether it should be specified in the Act or in the regulations. What is important to us is that it be written somewhere and that it be passed as soon as possible.

M. Wappel: La raison pour laquelle je pose la question c'est que j'avais et j'ai toujours d'ailleurs un projet de loi d'initiative parlementaire sur cette question, portant sur les crimes reliés à la drogue. Dans mon projet de loi, je précise que les sommes doivent être renvoyées pour être utilisées, dans ce cas-ci, pour faire enquête sur les crimes reliés à la drogue et pour lutter contre les drogues. Ce qui m'inquiète, c'est que s'il n'est pas précisé dans la loi que ces sommes doivent être utilisées pour lutter contre la criminalité, ces sommes risquent d'être utilisées à d'autres fins.

Mr. Hamelin: I just answered that question by saying that it should be specified in the regulations or in the Act that these moneys must be used for crime prevention and suppression. As far as drugs are concerned, I think we must spend just as much money on prevention as on the fighting of trafficking. What makes trafficking so flourishing is the fact that there are users who want to have drugs. If through prevention it was possible to reduce by half the number of people who buy drugs, we would have solved a good part of the problem.

Therefore, it must be specified in the regulations or in the Act that the moneys paid to the municipalities must be used only toward prevention and police costs. In that case, a municipality which doesn't want to use these moneys for those purposes will have to send them back to the federal government. I am however under the impression that every municipality would use it to that purpose if it was specified in the Act or in the regulations.

[*Texte*]

Mr. Wappel: In your opening remarks you talked about the 90%, 50%, and 10%. I presume that is also not in the bill. It was announced in the backgrounder or is in the regulations.

M. Hamelin: Non, ce n'est pas dans le projet de loi. Lors de discussions, on s'est fixé des *guidelines*. On disait: Si un corps policier a fait pratiquement tout le travail, il a droit à 90 p. 100, s'il a collaboré avec un autre corps policier, il a droit à 50 p. 100 et s'il a travaillé simplement par incidence, il a droit à 10 p. 100. Évidemment, ce sont des choses qui restent à préciser.

Comme on le dit dans notre mémoire, il y aurait peut-être lieu de créer un tout petit comité de quelques personnes qui pourrait agir comme arbitre dans ces circonstances. On sait aussi qu'il y a beaucoup de corps policiers qui travaillent en collaboration, et il ne faudrait pas qu'une réglementation empêche les gens de travailler en collaboration parce qu'ils se diraient: Si j'aide mon voisin, je risque de ne pas avoir d'argent, ou c'est lui qui va avoir tout l'argent. Il faut prévoir un mécanisme qui fasse en sorte que les sommes seront distribuées de façon équitable entre les corps policiers et les municipalités qui ont vraiment participé à l'arrestation des criminels en question.

The Chairman: Supplementary to that, do you think any problems would arise out of what might be seen as an inequity? Suppose there is a mechanism for sharing these funds and the municipal police say we think we had a big, important part to play in this, and they get 20%, and then the Ontario Provincial Police say we feel we had a huge, important part to play in this, and they get 20%, and the RCMP grab 60%. Do you think there may be any bickering or any problems that may arise from that?

I would ask that of any of the witnesses.

M. Hamelin: Il y aurait peut-être de légers problèmes, mais tout le monde sera certainement content de recevoir au moins quelque chose au départ. Dans notre mémoire, on vous demande de réviser le tout au bout de cinq ans.

À mon avis, entre gens intelligents, on pourrait réussir à mettre certaines balises. Si on dit 90, 50 et 10 p. 100, cela me semble plus facile à déterminer que si on dit 90, 80, 70 et 60 p. 100. Si on dit 90, 50 et 10 p. 100, avec un comité d'arbitrage très restreint, on pourra arriver très rapidement à des conclusions satisfaisantes pour tout le monde.

• 1600

Encore une fois, il vaut mieux d'avoir 10 p. 100 que de n'avoir rien du tout.

Mr. Wappel: I agree with the five-year review. I think that is a good idea.

To turn to the Canadian Police Association, I have just quickly scanned this brief. Let me cut to the quick. Having heard what Chief Flanagan said, that "time is of the essence", and we would like to see this bill passed, what is your recommendation to this committee? Your last line says:

> This Bill, by its failure to make this clear, and by its creation of an asset management oriented scheme with no third part information accountability requires a fundamental re-thinking of priorities and principles.

[*Traduction*]

M. Wappel: Dans vos remarques liminaires, vous avez parlé de 90 p. 100, de 50 p. 100 et de 10 p. 100. Je présume que ce n'est pas non plus dans le projet de loi. C'est dans les documents d'information ou dans les règlements.

Mr. Hamelin: No, it's not in the bill. During some discussions, we established guidelines. We said: if a police force practically did all the work, it is entitled to 90%, if it collaborated with another police force, it is entitled to 50% and if it simply worked on the case incidently, it is entitled to 10%. Of course, those things will have to be specified.

As we said in our brief, maybe a small committee with a handful of people should be established to act as an arbitrator in these circumstances. There are a lot of police forces who cooperate with each other and we wouldn't want to have regulations which would prevent them from working together because they would say to themselves: if I help my neighbour, I might not receive any money, or he might get all the money. We have to have a mechanism to make sure that these moneys are shared equitably between police forces and municipalities who really participated in the arrest of the criminals in question.

Le président: J'ai une question supplémentaire à vous poser à ce sujet. Croyez-vous qu'il pourrait surgir des problèmes découlant de ce que l'on pourrait percevoir comme étant une iniquité. Supposons par exemple qu'il y a un mécanisme pour partager ces fonds et que la police municipale dit qu'elle a joué un rôle important dans l'arrestation des criminels et qu'elle n'obtient que 20 p. 100, et que la police provinciale de l'Ontario dit avoir également joué un rôle très important dans cette affaire et obtient 20 p. 100 et que la GRC va chercher 60 p. 100. Est-ce que vous pensez que cela pourrait être source de chamaille ou de problèmes?

Ma question s'adresse à l'un ou l'autre des témoins.

Mr. Hamelin: There could be some small problems, maybe, but everyone would certainly be happy to receive at least something. In our brief, we're asking you for a five-year review.

In my opinion, intelligent people should manage to establish some parameters. It would seem to me that it is easier to determine if we say 90, 50 and 10% than if we say 90, 80, 70 and 60%. If we say 90, 50 and 10%, I think that a very small arbitration committee would be able to very quickly come to conclusions that would be satisfactory for everyone.

I repeat, it is better to have 10% than to have nothing at all.

M. Wappel: Je suis d'accord avec vous au sujet d'un examen après cinq ans. Je pense que c'est une bonne idée.

Je vais maintenant passer à l'Association canadienne des policiers, dont je viens de feuilleter rapidement le mémoire. Si vous le permettez, je vais entrer dans le vif du sujet. J'ai entendu le chef Flanagan dire que «le temps presse» et que vous aimeriez voir le projet de loi adopté, mais que recommandez-vous au comité? Vous dites à la dernière ligne de votre mémoire:

> Comme le projet de loi ne le précise pas clairement et comme il crée un mécanisme pour l'administration des biens sans exiger que des comptes soient rendus à un tiers, il faut en repenser complètement les priorités et les principes.

[*Text*]

The way I read that is to go back to the drawing board and start over again. Is that about it?

Mr. Kingston: Unless the committee can look at, I think perhaps, clause 10... What we are very seriously concerned about is that it is not going to find its way down to the municipalities. Our understanding is that the Province of British Columbia has a law that it goes back to their province. We also understand that the Province of Ontario is making overtures that since they already provide sustaining grants to the municipalities, it should come back to their coffers.

What we are really concerned about is that those police agencies—and not all police agencies provide human resources to joint forces operations, but most of the large ones do and they should in fact be reimbursed for that. We are seriously concerned that they are going to get exactly the same per capita grant as all of the rest of them in the provinces. What we think will ultimately happen is that people will say to devil with it, that if they are not going to be compensated for it they are not going to provide that service. Then, we all fail.

We are very, very concerned that because it is left up in the air, the fight is now going to be on. This is just a backgrounder, but the fight will now come on between the municipalities and the provinces as to whether or not they share it. I suspect that the federal government will then share it with the provinces but that the municipalities will have to get their grants from the provinces. Right now, when there are very, very slim resources, that is going to be very difficult. Again, it goes away from the fundamental position that was put forward certainly to our membership by the Solicitor General, that it would go back to the police agencies that were in fact involved.

We are seriously concerned that may not happen with the regulations unless there is some direction from the committee that clause 10 be changed and that where it says "may" it says "shall", that they "shall" share it.

Mr. Wappel: Let me put it to you, Mr. Kingston. Is it your recommendation that this bill should not proceed at the present time unless there are those amendments you have proposed? Is it that serious in your view, in your association's view?

Mr. Kingston: I think we are probably going to take the easy way, say that half a loaf is better than none, and fight those wars out with the regulations. We do think this bill is terribly flawed, but it may be better to go than not go at all. There isn't any mechanism to share it all, so perhaps sharing something is better than sharing nothing.

Mr. Wappel: Unless you are fighting over that loaf and in the end the only people who get anything are the lawyers. In that case you have gained absolutely nothing.

Mr. Newark: As one of the lawyers, I sense the difficulty as well. You have identified clearly in your questions what the gaping holes are. The question is whether on review of the legislation by the committee you have the ability—and in that

[*Translation*]

Si je comprends bien, il faut tout recommencer à zéro. Est-ce bien cela?

M. Kingston: À moins que le comité puisse faire quelque chose au sujet de l'article 10, peut-être... Nous craignons fort que le produit de l'aliénation de ces biens ne parvienne pas aux municipalités. Nous croyons savoir que la Colombie-Britannique a une loi stipulant que cet argent revient à la province. Nous savons également que l'Ontario est en train de dire que cet argent doit revenir au Trésor provincial, étant donné que la province verse déjà aux municipalités des subventions de soutien.

Nous craignons vraiment que ces services de police—il est vrai que tous les services de police ne fournissent pas des ressources humaines à des opérations conjointes, mais la plupart des grands corps de police le font et on devrait les rembourser pour cette contribution. Nous craignons fortement qu'ils reçoivent comme tous les autres corps de police des provinces exactement les mêmes crédits proportionnels à la population. Nous pensons que les gens vont finir par se dire qu'ils ne fourniront tout simplement pas ce service s'ils ne sont pas indemnisés. Dans ce cas, nous y perdrons tous.

Nous craignons que parce que la question n'est pas réglée dans le projet de loi, des querelles vont s'ensuivre. Les municipalités et les provinces vont se quereller quant au partage de cet argent. Je suppose que le gouvernement fédéral va accepter de partager avec les provinces, mais que les municipalités devront ensuite obtenir leurs subventions des provinces. Dans le contexte actuel, étant donné que les ressources sont extrêmement limitées, ce sera très difficile. C'est contraire à ce que le solliciteur général avait dit à nos membres, c'est-à-dire que les corps de police ayant participé à des opérations recevraient leur part.

Nous craignons fort que cela ne se produise pas si ce n'est pas stipulé dans les règlements, à moins que le comité ne propose une modification à l'article 10, afin que les mots «peut partager» soient remplacés par le mot «partage», c'est-à-dire que le ministre «partage» le produit de l'aliénation.

M. Wappel: Monsieur Kingston, recommandez-vous que ce projet de loi ne soit pas adopté maintenant, à moins qu'on le modifie comme vous l'avez proposé? La situation est-elle grave à ce point, d'après vous et d'après votre association?

M. Kingston: Je pense que nous serons probablement assez souples, disant que mieux vaut peu que pas du tout, et que nous chercherons à régler le problème lors de l'étude du règlement. Nous estimons vraiment que le projet de loi est terriblement imparfait, mais cela vaut mieux que pas de projet de loi du tout. Il n'institue pas de mécanisme assurant le partage complet du produit de l'aliénation, mais il est peut-être préférable de partager quelque chose que de ne rien partager du tout.

M. Wappel: À moins que vous ne vous disputiez tellement sur le partage de ce qui est disponible qu'en fin de compte seuls les avocats en retireront quelque chose. Dans ce cas, vous n'aurez absolument rien gagné.

M. Newark: Je suis moi-même avocat et j'entrevois la difficulté. Vous avez très bien identifié dans vos questions les lacunes flagrantes. Il s'agit de savoir si lors de l'étude de cette mesure, le comité peut—je suppose qu'il incombe à chaque

[Text]

sense I suppose it is more incumbent on you as individual MPs to make amendments that would be accepted in the legislation. All we can really try to do is point out to you what you have already clearly identified in the question, and it is odd, is it not, to have a bill that deals with this but fails to address that in the legislation itself? Instead, you are required to simply wait, I suppose, close your eyes, take a big jump and hope that the regulations do what you think the legislation should do. I suggest that is something, by your own question, you have indicated could be done in the amendments to the legislation that can be done at the committee stage.

This bill could end up being something we would all like to see. It could also end up being something all of us would not like to see, and that perhaps is a strong condemnation of the bill in its current form.

• 1605

The Chairman: Supplementary to that, would it be suitable to the groups of witnesses if an amendment were moved to the bill stating that when the draft regulations were tabled in the House, before implementation they be referred to the appropriate committee for study? Would that make you feel better?

Mr. Wappel: That's exactly what happened with the gun control; the regulations were brought here.

The Chairman: That might be a way of assisting you.

Mr. Flanagan: Mr. Chairman, this is exactly what we had in mind, but we would rather it come from you.

The Chairman: The chairman very seldom makes recommendations like this, but I thought it was a way we might move...

Mr. Wappel: I just want to ask a question of Chief Flanagan, and thank you for your indulgence. Chief, this may sound naive. I know the police have been waiting for this a long time; I know that all the money gets eaten up in the consolidated revenue fund, but why is time really of the essence? Why does this have to pass now? Why do we have to have half a loaf rather than a whole loaf? Why can't this wait until the new Parliament four months from now?

Mr. Flanagan: With respect, I think you've given all the answers with your questions. First of all, we don't know what's going to happen with the new Parliament or whether it will ever come up again. I don't think it's any secret that before elections, not only the police but other people had better strike while the iron is hot because the members of Parliament—it's no secret and I'm not an expert on this—not that they don't always have a very attentive ear, but they might have an even more attentive ear prior to the election.

As you have said, sir, we have been waiting a long time. Certainly the Canadian Association of Chiefs of Police does not want to be responsible for this bill not going through. I very much like what the chairman has said, because I think I said earlier we want and would very much appreciate being taken into discussions on the regulations. If this happens, I think the thing can be sorted out, but I certainly hope we wouldn't have to start all over again with this bill.

[Traduction]

député de proposer individuellement des amendements acceptables. Nous pouvons seulement vous signaler ce que vous avez déjà très bien identifié dans votre question, et il est étrange, n'est-ce pas, qu'un projet de loi traitant de cette question ne la règle pas dans le texte même du projet de loi? Au lieu de cela, on doit simplement attendre, accepter la mesure aveuglément, et espérer que les règlements feront ce que la loi devrait faire, d'après nous. D'après ce que vous avez dit dans votre question, vous pourriez faire cela en modifiant le projet de loi pendant cette étape de l'étude en comité.

Le projet de loi pourrait ainsi répondre à nos attentes. Il pourrait aussi être contraire à ce que nous voulons et il s'agit peut-être là d'une condamnation du projet de loi dans son libellé actuel.

Le président: Les groupes de témoins seraient-ils d'accord si nous proposions un amendement au projet de loi stipulant qu'au moment du dépôt du projet de règlement à la Chambre, avant sa mise en oeuvre, il sera soumis à l'examen du comité idoine? Cela vous rassurerait-il?

M. Wappel: C'est exactement ce qui s'est passé dans le cas du contrôle des armes à feu; les règlements nous ont été envoyés.

Le président: Cela pourrait peut-être vous aider.

M. Flanagan: Monsieur le président, c'est exactement ce que nous pensions, mais nous préférions que la suggestion vienne de vous.

Le président: Le président fait très rarement des recommandations de cette nature, mais j'ai pensé que nous pourrions peut-être procéder ainsi...

M. Wappel: Je voudrais poser encore une question au chef Flanagan et je vous remercie de votre indulgence. Ma question vous paraîtra peut-être naïve. Je sais que les policiers attendent une telle mesure depuis longtemps; je sais que tout l'argent se retrouve englouti dans le Trésor, mais pourquoi le temps presse-t-il? Pourquoi la mesure doit-elle être adoptée maintenant? Pourquoi devons-nous nous contenter d'un peu plutôt que de tout avoir? Pourquoi cette mesure ne peut-elle pas attendre la nouvelle législature dans quatre mois?

M. Flanagan: Sauf le respect que je vous dois, je pense que vous avez donné toutes les réponses dans vos questions. Premièrement, nous ne savons pas ce que fera la nouvelle législature et si la question reviendra sur le tapis. Nous savons tous qu'avant les élections, les policiers, comme tout le monde d'ailleurs, doivent battre le fer pendant qu'il est chaud, car les députés—je ne suis pas spécialiste en la matière, mais c'est un secret de Polichinelle—je ne veux pas dire qu'ils n'écoutent pas toujours d'une oreille très attentive, mais ils sont probablement encore plus attentifs avant les élections.

Comme vous l'avez dit, monsieur, nous attendons depuis longtemps. L'Association canadienne des chefs de police ne veut pas être tenue responsable du rejet de ce projet de loi. J'aime beaucoup la suggestion du président, car je le répète, nous voulons participer aux discussions sur les règlements et nous vous en serions très reconnaissants. En l'occurrence, je pense que nous pourrions régler cette question, mais j'espère de tout coeur que nous ne devrons pas reprendre ce projet de loi au point de départ.

[*Text*]

Mr. Fee (Red Deer): I only have three points. Mr. Kingston, I start with you because I take it you are less enamoured of this bill than any of the three groups here. You made the comment that it's half a loaf. The other two groups both refer to a five-year review. Are you going to accept half a loaf with a five-year review as being better than putting it on the shelf until it's perfect?

Mr. Kingston: Knowing what happens in Parliament and the priorities and how long it has taken this to get to here now, yes, I would accept half a loaf rather than no loaf. We're afraid that if it does get put off it will maybe take four or five years before we get it back on the table. Assets will continue to be seized and continue not to be shared.

Mr. Fee: I would like you to know that I agree with most of the concerns you raised in your brief. I certainly don't want to see another large federal bureaucracy chewing up the funds that should go to better use. I too want to know what's going into the regulations.

I appreciated the chairman's suggestion. Two of us were sitting on the other committee that had to do with regulations. We sat on the gun control bill. As a result of that, I was seconded by our whip to sit on a committee called the scrutiny of regulations. It was my way of learning how regulations are drafted. What happens is that Mr. Wappel and I end up spending a lot more time than we intend to on Thursday mornings going though a lot of regulations. I think the process the chairman suggested is far superior to that. Instead of some committee sitting in the room over in the corner of the Senate looking at them, they're out, and the public has a chance for some input and concerned groups can put their concerns on the table. I think we end up with better regulations and our committee doesn't have to fight over in the corner about what's right and wrong. Mr. Chairman, I want to compliment you on the suggestion and I hope we can do something with it.

I want to talk about the proceeds, though. The concern was expressed that the provinces were going to get the lion's share and it would go into consolidated revenue. I think we probably all have the same share if the federal government is just going to put theirs into consolidated revenue. The objective, at least for me, is that some more money is going to be made available to help reduce crime. It may not happen.

I'm assuming that the position all three of you have taken is that the municipalities, the governments closest to the people, are more likely than either the provincial or federal government to use it for crime prevention.

• 1610

Mr. Newark: I'd add to that the suggestion that I think came from the Canadian Federation of Municipalities about the regulation itself. It might be a pretty good idea to draft something on there so that if it does end up in the municipalities, that's what it's earmarked for, that it's not, as Mr. Wappel put it, used for snow-plows or if it's in the province end up in legal aid overruns.

[*Translation*]

M. Fee (Red Deer): Je n'ai que trois questions à poser. Je commence par vous, monsieur Kingston, car des trois groupes ici présents, je pense que vous êtes le moins entiché de ce projet de loi. Vous avez dit que c'était peu. Les deux autres groupes ont parlé d'un examen après cinq ans. Êtes-vous prêt à accepter ce peu assorti d'un examen après cinq ans plutôt que de mettre cette mesure de côté jusqu'à ce qu'on puisse la perfectionner?

M. Kingston: Je sais comment les choses se passent au Parlement, quelles sont les priorités et combien de temps il a fallu pour en arriver à ce point, alors, en effet, mieux vaut peu que pas du tout. Nous craignons que si l'adoption de la mesure est reportée, il faudra peut-être encore quatre ou cinq ans avant qu'elle soit proposée de nouveau. Les biens continueront d'être saisis et le produit de leur aliénation continuera de ne pas être partagé.

M. Fee: Je tiens à vous dire que je partage la plupart des préoccupations que vous avez soulevées dans votre mémoire. Je ne veux certainement pas qu'une autre grande bureaucratie fédérale s'accapare des fonds qui pourraient servir à un meilleur usage. Je tiens moi aussi à connaître le contenu des règlements.

Je remercie le président de sa suggestion. Deux d'entre nous ont siégé à l'autre comité qui a examiné des règlements. Il s'agissait du projet de loi sur le contrôle des armes à feu. Par la suite, notre whip m'a délégué à un comité chargé de l'examen de la réglementation. C'est ainsi que j'ai appris comment on rédige les règlements. En fin de compte, M. Wappel et moi passons beaucoup plus de temps que nous le voulons à examiner une foule de règlements le jeudi matin. Je pense que la méthode suggérée par le président est bien supérieure. Au lieu d'être examinés par un comité siégeant dans la salle située dans la partie de l'édifice qui appartient au Sénat, les règlements sont rendus publics et la population a la possibilité de donner son point de vue et des groupes intéressés peuvent exprimer leurs préoccupations. Je pense qu'on obtient ainsi de meilleurs règlements et notre comité n'a pas à aller se chamailler là-bas au sujet de ce qui est bon et de ce qui ne l'est pas. Monsieur le président, je tiens à vous féliciter de votre suggestion et j'espère que nous pourrons y donner suite.

Je tiens cependant à parler du produit de l'aliénation. On a dit craindre que les provinces ne se taillent la part du lion et que tous ces fonds aillent au Trésor. Je pense que nous aurons probablement tous la même part si le gouvernement fédéral verse simplement la sienne au Trésor. D'après moi, du moins, l'objectif est de consacrer plus d'argent à la répression de la criminalité. Cela ne se produira peut-être pas.

Vous êtes tous d'avis, je suppose, que les municipalités, c'est-à-dire les gouvernements les plus près de la population, sont mieux placées qu'un gouvernement provincial ou le gouvernement fédéral pour consacrer ces fonds à la prévention du crime.

M. Newark: J'ajouterai à cela la suggestion qui a été faite, je pense, par la Fédération canadienne des municipalités quant aux règlements eux-mêmes. Si une partie de cet argent doit être remise aux municipalités, il serait sans doute bon de prévoir une disposition pour garantir que l'argent soit réservé à ces fins et ne soit pas utilisé, comme le disait M. Wappel, pour acheter des chasse-neige ou, dans le cas des provinces, pour compenser les dépassements de budget de l'aide juridique.

[*Texte*]

The other thing I'd suggest be built into the regulations is some kind of openness in the process so that the individual forces that do the initial work to make the seizures are able to find out what's happened to the money.

As I read through it, one thought I had was that exempting the statute from the operation of the Privacy Act, for example, would certainly afford anybody the opportunity of finding out what actually happened, where the dollars were going. I think there should be that added public accountability context in any regulations that are drafted.

Mr. Fee: I would look to the lawyers to tell me if it is possible to exempt it.

Mr. Newark: I can even answer. The Privacy Act applies to a number of bodies by schedules, and you could make clear in legislation that there were aspects of it that were not subject to Privacy Act restrictions. It's not a constitutional document, it's simply a statute of Parliament.

Mr. Fee: Thank you.

Mr. Newark: I think you could do it. I'm exaggerating in one sense to make the point about it being exempt from the Privacy Act. I think you could structure the legislation in such a way by giving to people rights of access to information, which would functionally accomplish the same thing.

Mr. Fee: I'd like to continue my question about the Canadian Federation of Municipalities. This legislation has come through a little faster than I expected. We've had a number of bills presented to us in the last few weeks. I'd like to know if you have had discussions amongst your member municipalities about receiving the proceeds of crime.

M. Hamelin: Ces discussions, monsieur le député, ont lieu depuis de nombreuses années. Personnellement, à titre de président du Comité sur la prévention de la criminalité en milieu urbain, je peux vous dire qu'il y a au moins deux ans que la Fédération canadienne des municipalités se penche régulièrement là-dessus. Nous avons nos réunions tous les trois mois, et la question est régulièrement posée par les municipalités membres: Où en est-on rendus avec ce projet de loi?

Notre prochain congrès a lieu la semaine prochaine à Edmonton, et je suis attendu, on sait que je viens comparaître aujourd'hui devant vous et je vais sûrement me faire poser des questions. On n'aura peut-être pas des résultats concrets à rendre compte, mais les membres de la Fédération canadienne des municipalités sont impatients de voir ce projet de loi finalement adopté, avec sa réglementation certes, mais aussi mis en application.

Ce sont les élus municipaux qui sont au premier chef pris avec la criminalité dans les différents quartiers.

The Chairman: When is that conference?

Mr. Hamelin: It is next weekend in Edmonton, from Friday to Monday.

The Chairman: Thank you. We'll do what we can.

[*Traduction*]

Il faudrait aussi que les règlements prévoient une certaine transparence du processus pour que les forces qui effectuent le travail initial qui mène à la saisie de biens puissent savoir ce qu'on a fait de l'argent.

Je me disais en lisant la loi que si elle n'était pas assujettie aux dispositions de la Loi sur la protection des renseignements personnels, quiconque pourrait se renseigner pour savoir ce qui s'est passé, ce qu'on a fait de l'argent. Je pense, ainsi, qu'il faudrait inclure l'obligation de rendre compte publiquement dans tout règlement qu'on rédigera.

M. Fee: Il faudrait demander aux avocats s'il est possible d'exempter le projet de loi des dispositions de la Loi sur la protection des renseignements personnels.

M. Newark: Je pourrais même répondre. C'est en vertu des annexes de la Loi sur la protection des renseignements personnels que cette loi s'applique à un certain nombre d'organismes. Vous pourriez, par voie législative, exclure certaines dispositions du projet de loi des restrictions imposées par la Loi sur la protection des renseignements personnels. Ce n'est pas un texte constitutionnel, ce n'est qu'une loi du Parlement.

M. Fee: Merci.

M. Newark: Je pense que cela pourrait se faire. J'exagère pour souligner le fait qu'on pourrait exempter cette loi de la Loi sur la protection des renseignements personnels. Ou on pourrait inclure dans la loi des droits d'accès à l'information, ce qui reviendrait au même.

M. Fee: J'aimerais continuer ma question à propos de la Fédération canadienne des municipalités. Cette loi nous est présentée un peu plus rapidement que je ne l'avais prévu. On nous a présenté un certain nombre de projets de loi au cours des quelques dernières semaines. J'aimerais savoir si les municipalités membres de votre fédération ont eu l'occasion d'échanger leurs impressions sur le fait de recevoir, éventuellement, de l'argent qui serait le produit de la criminalité.

Mr. Hamelin: We have been having those discussions for a number of years, sir. Personally, as chairman of the Committee on Urban Safety and Crime Prevention, I can tell you that the Canadian Federation of Municipalities has been examining this issue on a regular basis for at least two years now. We meet every three months and member municipalities regularly ask for updates on the status of this bill.

Our next convention will take place in Edmonton next week and people are waiting to hear what I will have to say; they know that I am appearing here today and will surely have questions for me. We may not have concrete results to report, but I can assure you that the members of the Canadian Federation of Municipalities are anxious to see this bill and its regulations become law and be implemented.

Those who hold municipal office are in the front lines when it comes to dealing with crime in their neighbourhoods.

Le président: Quand cette conférence aura-t-elle lieu?

M. Hamelin: Elle aura lieu le week-end prochain à Edmonton, du vendredi au lundi.

Le président: Merci. Nous verrons ce que nous pourrons faire.

[*Text*]

Mr. Fee: While you're there, would you like to give a gentle jab to the president of the Alberta Municipalities Association? I'm a past president of that association. He has not written me about this legislation. You can tell him that we're here without his pushing us, but I would have appreciated a letter from him.

M. Hamelin: Parfait.

Mr. Fee: There's one statement in your brief that I wanted you to explain. You said that currently there exists a reluctance to become involved in investigations due to expenses that are never recovered. I believe the Canadian Police Association also quoted someone that said something similar to that. Could you expand on that a little bit? That concerns me immensely. It's on the second page of your brief.

M. Hamelin: Non, je pense que ce sont des canulars, des rumeurs; nos services policiers font suffisamment preuve de professionalisme pour ne pas agir uniquement en fonction de ce qui serait payant ou non-payant pour eux.

Si jamais les corps policiers avaient cette idée-là, les élus municipaux, je pense, sont là pour corriger le problème, et inversement. Si jamais les élus municipaux demandaient aux corps policiers de ne s'occuper que de ce qui est payant, je pense qu'on se ferait répondre à juste titre par nos directeurs de police et par nos policiers de nous mêler de nos affaires, parce qu'il s'agit à ce moment-là d'un travail de spécialistes face au combat qu'il faut mener contre la criminalité. Je ne prête absolument aucune bonne foi à ces commentaires-là.

Mr. Fee: Thank you. I appreciate that comment and clarification.

The Chairman: Mr. Thacker.

• 1615

Mr. MacLellan (Cape Breton—The Sydneys): Mr. Kingston, in light of what the—oh, sorry, Mr. Thacker.

The Chairman: It doesn't really matter. Please proceed.

Mr. Thacker (Lethbridge): I defer to my senior colleague.

The Chairman: Please, go ahead. It was an interesting point, whatever it was.

Mr. MacLellan: Wait until you hear what it is. It'll knock you off your seat.

I just want to clarify something, Mr. Chairman. If these regulations are presented to this committee for review, and the association agrees that this should be the case, does that alleviate all of the association's concerns regarding this bill?

Mr. Kingston: We have two concerns. First of all, the bureaucracy will eat up the profits of what it is really intended to do. If we create this gigantic bureaucracy, it may well be that when the proceeds of the crime are left to split, there will be precious little to be split.

[*Translation*]

M. Fee: Quand vous serez à votre conférence, pourriez-vous rappeler gentiment à l'ordre le président de l'Alberta Municipalities Association (Association des municipalités de l'Alberta)? J'ai été président de cette association. Il ne m'a pas écrit à propos de ce projet de loi. Vous pouvez lui dire que nous ne l'avons pas attendu pour présenter ce projet de loi, mais j'aurais quand même apprécié qu'il m'envoie une lettre.

Mr. Hamelin: Certainly.

M. Fee: J'aimerais que vous m'expliquiez l'une des déclarations que vous faites dans votre mémoire. Vous avez dit qu'à l'heure actuelle les municipalités hésitaient à participer aux enquêtes étant donné que leurs dépenses ne leur sont jamais remboursées. Je crois que l'Association canadienne des policiers a aussi cité quelqu'un qui disait quelque chose de semblable. Pourriez-vous nous fournir quelques précisions là-dessus? Cela m'inquiète beaucoup. C'est à la troisième page de votre mémoire.

Mr. Hamelin: No, I think that is an impression, a rumour; the professionalism of our police forces is such that they would never let their actions be guided by cost considerations alone.

Should our police forces ever decide to act on that basis, those who hold municipal office are there to correct the problem, and vice versa. If municipal counsellors decided to ask police forces to get involved solely in profitable activities I think that police chiefs and police officers would tell us to mind our own business, and rightly so, because it is up to them, as specialists, to determine the activities that will allow them to wage the battle against crime. I don't think such statements have any kind of basis in fact.

M. Fee: Merci. J'apprécie ce commentaire et ces éclaircissements.

Le président: Monsieur Thacker.

M. MacLellan (Cap-Breton—The Sydneys): Monsieur Kingston, à la lumière de. . .oh, je suis désolé, monsieur Thacker.

Le président: Cela ne fait rien. Continuez.

M. Thacker (Lethbridge): Je cède la place à mon collègue plus chevronné.

Le président: Procédez, je vous prie. Je ne sais pas exactement ce que vous disiez, mais c'était intéressant.

M. MacLellan: Et quand vous saurez de quoi il s'agit exactement, vous en serez renversé.

Je désire simplement une précision, monsieur le président. Si les règlements sont soumis à l'examen de ce comité, et si l'Association est d'accord avec cette façon de faire, cela suffira-t-il pour dissiper toutes les inquiétudes de l'Association en ce qui a trait à ce projet de loi?

M. Kingston: Deux choses nous préoccupent. Premièrement, nous craignons que la bureaucratie n'absorbe les profits qu'elle est censée administrer. Si nous créons cette énorme bureaucratie, il se peut qu'au moment de répartir les biens saisis, nous nous apercevions qu'il ne reste plus grand-chose à répartir.

[*Texte*]

Secondly, is it going to get back to the municipalities that are in fact providing the service? Most of these operations are joint forces operations, which would be a combination of provincial—where they have provincial—RCMP and municipal. They are long and time consuming.

I was told by Chief Barry King the other day—and I think he is national chairman of the drug strategy program for the Ontario association of chiefs, and maybe even the CACP—that they are having some problems with some of their chiefs of police, who are simply saying look, we are just not going to provide you with the resource; we just can't afford to give you the five or six personnel to work on this for months on end with no cost recovery.

The simple fact of the matter is that we are hoping that unless this thing is directed back to those particular chiefs of police who in fact do now give the resources out, whether it is Metro Toronto, whether it is Ottawa, they will take that same tack that some of the other chiefs of police are already taking because of budget restrictions, saying they are not going to provide the resource because they are not being reimbursed for it.

Our main concern is, will these regulations ensure that it gets back to the municipalities and directed to law enforcement, either prevention or apprehension, whatever is necessary?

The Chairman: Mr. Kingston, if this amendment is put through in this way, it gets the bill through and at the same time allows you a chance to come forward on the draft regulations and make representation.

Mr. Kingston: Mr. Chairman, we don't disagree with that. We would welcome that.

The Chairman: Fine.

Mr. MacLellan: Mr. Chairman, I think it is important that there comes a point when the framework of the legislation just isn't satisfactory, even if the regulations are. There is a point where unless you go a certain distance in the legislation, the regulations just aren't going to be able to cover it.

Should we have something more definitive in the legislation that would be comparable to good regulations? This may be just too bare bones a legislation even with the format that we intend to follow.

Mr. Hamelin: At least one word changed from "could" to "should".

Il faut enlever «peut» et le remplacer par «doit». À ce moment-là, le projet de loi sera bonifié. Par la suite, on pourra toujours revenir devant le Comité pour discuter au niveau de la réglementation.

S'il y a une chose à changer dans le projet de loi pour le rendre très acceptable, c'est de remplacer «peut» par «doit»: le ministre doit répartir les sommes qui sont ainsi générées par la criminalité.

The Chairman: If it was going to be changed, it would be changed to "shall".

[*Traduction*]

Deuxièmement, les municipalités recevront-elles quelque chose au bout du compte, comme ce sont elles qui fournissent les services, concrètement? La plupart de ces opérations sont des opérations conjointes, qui font appel aux forces provinciales—là où elles existent—à la GRC et aux forces municipales. Elles durent longtemps et prennent beaucoup de temps.

Le chef de police Barry King me disait l'autre jour—je crois qu'il est le président national du programme stratégique de lutte contre la drogue de l'Association ontarienne des chefs de police et peut-être même de l'Association canadienne—qu'il rencontrait des problèmes avec certains chefs de police, qui menacent de ne plus fournir les ressources nécessaires à ce genre d'opérations, car ils ne peuvent plus se permettre, disent-ils, de détacher cinq ou six personnes pendant des mois, sans récupérer leurs coûts.

Très simplement, à moins qu'on ne trouve le moyen d'acheminer les ressources vers les chefs de police qui fournissent, en fait, la main-d'oeuvre à l'heure actuelle, que ce soit dans la région métropolitaine de Toronto ou à Ottawa, nous espérons qu'ils adopteront la même politique que d'autres chefs de police qui disent que les restrictions budgétaires ne leur permettent plus de fournir les ressources humaines nécessaires à ces opérations conjointes, comme ils ne sont pas remboursés.

Notre principale préoccupation est la suivante: ce règlement garantira-t-il que les municipalités pourront profiter des produits de biens saisis et que ces sommes seront utilisées pour l'application de la loi, que ce soit par des activités de prévention ou par des arrestations, selon les besoins?

Le président: Monsieur Kingston, si cet amendement est adopté sous sa forme actuelle, le projet de loi sera adopté et vous aurez l'occasion de comparaître pour exprimer votre point de vue quant au projet de règlement.

M. Kingston: Monsieur le président, nous ne sommes pas contre; nous serions très heureux qu'on nous donne cette occasion.

Le président: Très bien.

M. MacLellan: Monsieur le président, je pense qu'il est important de se souvenir que la loi elle-même peut être inadéquate, alors que nous sommes satisfaits des règlements. Si les dispositions même de la loi n'ont pas une portée suffisante, les règlements ne suffiront pas à rétablir les choses.

Ne devrions-nous pas, en définitive, inclure une disposition dans la loi qui serait comparable à de bons règlements? Même avec ce que nous entendons faire par la suite, le contenu de cette loi est peut-être finalement insuffisant.

M. Hamelin: Nous devrions au moins remplacer le mot «peut» par le mot «partage».

We must change the word "may" to "should". That change would improve the bill. Later, we can appear before the committee again to discuss regulations.

If you were to make just one change to the bill to make it highly acceptable, that would be it: changing "may" to "should". The minister should share the proceeds of disposition of that forfeited property.

Le président: Si nous devions changer ce mot, il faudrait le remplacer par le mot «shall».

[*Text*]

Mr. Hamelin: Yes. *Devra*, shall.

Mr. Newark: Clause 10, actually.

The Chairman: Yes.

Mr. Newark: Can I also add to Mr. MacLellan's question. Obviously there are some things that can be done in the sense of the regulations, the nuts and bolts of how things get shared.

• 1620

The challenge, I suppose, for a committee of MPs on something like this, in being able to make the amendments... I would suggest there are three other areas missing in this bill. Mr. Wappel has alluded to some of them. One is the absence in the legislation itself, not in the regulations, indicating the purpose and intent of why we seize and share proceeds of crime in the first place. We alluded to that earlier in the sense of whether we call it crime prevention, crime suppression, or any other permutation or combination of it. That is not in the bill. With respect, I think the bill is where that should be, not in regulations.

Secondly, there is the notion of it being done expeditiously. In other words, although property is required to be managed, it is also required to be disposed of. It is not meant as a long-term employment project.

Thirdly, what I would stress should be in the bill as a principle is information accountability. God forbid, five years from now, if it is not working, one of the best ways... I think everybody in this room has dealt in other criminal justice areas in the correctional services area with trying to find out what happened, if you can't penetrate through what people do in doing the job, to find out where the money has gone. That should be in the bill, it strikes me, as a principle, as opposed to the nuts and bolts of the regulations.

Those are three areas, sir, that I think need to be in the bill and not just simply left to regulations.

Mr. MacLellan: What about your concern that if there is a breakdown the money will go to the province, with the responsibility of the province to turn it over to the municipality, and not to the municipality directly? Do you feel that is adequately covered in this legislation? Do you feel that the deficiency can be straightened out in the regulations?

M. Hamelin: Si vraiment le but est d'aider les corps de police et les municipalités, pourquoi est-ce que ça devrait passer par le gouvernement provincial? Ça va faire du monde de plus à contrôler cet argent-là.

Si c'est un service de police provincial qui a fait le travail, d'accord, à ce moment-là l'argent serait remis à la province. Par exemple, dans la province de Québec, c'est la Sûreté du Québec qui a fait l'enquête, et l'argent est donc remis à la Sûreté du Québec. Mais si c'est un corps de police municipal, l'argent devrait être remis directement à la municipalité. Pourquoi mettre un intermédiaire de plus?

[*Translation*]

M. Hamelin: Oui. «Devra partager», «shall».

M. Newark: C'est à l'article 10.

Le président: Oui.

M. Newark: Puis-je ajouter quelque chose à la question de M. MacLellan? Certaines modalités pourront être fixées par règlement, c'est-à-dire les aspects pratiques du partage des biens.

Dans un cas comme celui-ci, je suppose que le défi à relever pour un comité de députés c'est de pouvoir faire les amendements... Ce projet de loi a, selon moi, trois autres lacunes. M. Wappel a fait allusion à certaines d'entre elles. Premièrement, la loi—pas les règlements, mais bien la loi—ne fait aucunement allusion à l'objectif ou à l'intention de ces saisies ou du partage du produit de la criminalité. Nous y avons fait allusion auparavant quand nous nous sommes demandés si, dans le cas de ce genre d'action, nous devions parler de prévention ou de répression du crime, ou d'autres choses. Ce n'est pas dans le projet de loi. Sauf votre respect, je pense que cet objectif devrait être explicité dans le projet de loi et non pas dans les règlements.

Deuxièmement, le projet de loi ne fait pas mention du fait que les choses doivent se faire promptement. En d'autres termes, bien qu'il faille administrer les biens, il faut aussi les vendre, tôt ou tard. Il ne s'agit pas de créer un projet d'emploi à long terme.

Troisièmement, je pense qu'on devrait inclure dans le projet de loi, comme principe, le libre accès à l'information qui satisferait à l'obligation de rendre compte. Si, dans cinq ans, on se rend compte que le projet de loi ne donne pas les résultats escomptés—que Dieu nous en préserve—l'une des meilleures façons... Je pense que tous ceux qui sont présents dans cette pièce ont dans d'autres cas, qui relevaient de la justice criminelle ou des services correctionnels, essayé de découvrir ce qui s'était passé, où l'argent était passé, et se sont heurtés à l'impossibilité d'obtenir de l'information sur ce que faisaient les gens dans l'exercice de leurs fonctions. Il faudrait inclure ce droit d'accès à l'information dans le projet de loi, il me semble, comme principe, plutôt que dans les dispositions plus concrètes des règlements.

Voilà les trois choses qu'il faudrait inclure dans le projet de loi, à mon avis, monsieur, et pour lesquelles il ne faudrait pas se contenter de simples règlements.

M. MacLellan: Vous vous préoccupiez aussi du fait que l'argent ne soit pas remis à la municipalité directement s'il y a partage, mais soit versé à la province qui aura la responsabilité de le remettre à la municipalité; pensez-vous que le projet de loi tienne suffisamment compte de votre préoccupation? Pensez-vous qu'on puisse rectifier la situation dans les règlements?

Mr. Hamelin: If the purpose is really to help police forces and municipalities, why should you go through provincial governments? You will have even more people controlling the same funds.

If a provincial police force did the work, then I would agree that the money should be given to the province. For instance, in the province of Quebec, if the Sûreté du Québec carried out an investigation, the money would be given to the Sûreté du Québec. But if a municipal police force did the work, the money should be given directly to the municipality. Why add an intermediary?

[*Texte*]

Mr. Newark: I must admit that I start with the burden that Mr. Wappel does. I don't understand why the money is not going back, subject to all the sharing. I don't understand why it is not going back to police departments to administer. With respect, when it stops, every little bureaucracy it stops at on the way takes a cut. My worry is that by the time it gets to where it started, in the sense of police officers, when it gets back into the hands of what we really want it to do, there's not going to be as much left.

Mr. MacLellan: I see what you mean, and I agree with you, but do you think that the way this bill is set out the regulations can possibly change that? The regulations are only going to flesh out what is in the legislation.

Mr. Newark: To give you my opinion in the sense of having dealt with other legislation, yes, regulations could do that.

Mr. MacLellan: They could?

Mr. Newark: Yes.

The Chairman: Mr. Thacker.

Mr. Thacker: Mr. Chairman, our witnesses have called for a five-year review. Your idea about the regulations would be a good one. But I don't see any reason why it couldn't be a three-year review. This isn't a huge bill with an enormous, complex structure to it. Within three years it would also help to put more pressure on governments at two levels. I would be inclined, Mr. Chairman, if our colleagues agreed, to put a three-year review on it, which means it will very likely have to be dealt with in the next Parliament rather than the Parliament after it.

My second point is a question to Mr. Newark with respect to the balance between management of assets and disposition. When I read it I didn't pick up on the point that you alluded to that there might be more management than disposition. The bill actually does say it shall be disposed of, etc. It seemed to me, when I first read it, that it was okay in terms of disposition. What have I missed?

• 1625

Mr. Newark: I'm not sure that you've missed anything, sir. It may be that I have a greater degree of cynicism. I was referring to clause 9 of the bill, specifically paragraph 9(b), which refers to the powers of the minister. This is the Minister of Supply and Services, as well. It is not exactly the Solicitor General of Canada. It's their function to maintain public property, and in subparagraphs 9.(b)(i), (ii) and (iii)—in particular (i) and (iii)—it speaks of the ability of the minister "by advancing money at a commercial rate of interest to":

(i) maintain the ongoing operation of the property,

(iii) make improvements to the property to preserve the property and the economic worth of the property;

[*Traduction*]

M. Newark: Je dois dire que j'ai, au départ, la même difficulté que M. Wappel. Je ne comprends pas pourquoi, après le partage, l'argent n'est pas remis aux services de police, qui pourraient l'administrer. Sauf le respect que je dois à tous les intéressés, si l'argent doit passer par plusieurs paliers, chaque bureaucratie prendra sa part. Ce qui m'inquiète, c'est qu'après ce long périple, les sommes qui arriveront à filtrer jusqu'aux services de police seront bien amoindries et il ne leur restera plus grand-chose pour poursuivre les objectifs dont nous avons convenu.

M. MacLellan: Je vois ce que vous voulez dire et je suis d'accord avec vous, mais, vu le texte du projet de loi, pensez-vous que les règlements puissent changer quoi que ce soit à cette situation? Les règlements viendront simplement compléter ce qui est dans la loi.

M. Newark: D'après l'expérience que j'ai d'autres lois, je pense qu'on pourrait, effectivement, arriver à modifier les choses par le biais des règlements.

M. MacLellan: Ah oui?

M. Newark: Oui.

Le président: Monsieur Thacker.

M. Thacker: Monsieur le président, nos témoins ont demandé qu'une disposition de révision quinquennale soit intégrée à la loi. L'idée que vous avez avancée, à propos des règlements est bonne. Mais je ne vois pas pourquoi cet examen de la loi n'aurait pas lieu après trois ans. Ce n'est pas un projet de loi très volumineux avec une structure énorme et complexe. La perspective de cet examen dans trois ans exercerait aussi une pression supplémentaire sur les deux paliers de gouvernement. Si nos collègues sont d'accord, monsieur le président, je serais pour l'inclusion d'une disposition portant examen après une période de trois ans, ce qui signifie que cet examen devrait sans doute avoir lieu dans le cours de la prochaine législature plutôt que dans le cours de celle qui lui succédera.

Deuxièmement, j'aimerais poser une question à M. Newark en ce qui a trait à l'équilibre entre l'administration des biens et leur aliénation. Quand j'ai lu le projet de loi, je n'ai pas pensé comme vous au danger qu'il puisse y avoir plus d'administration que d'aliénation. Le projet de loi dit bien que les biens saisis devront être vendus, etc. J'avais cru comprendre, après l'avoir lu une première fois, que le projet de loi traitait de façon adéquate de l'aliénation des biens saisis. Qu'est-ce qui m'a échappé?

M. Newark: Je ne suis pas sûr que vous ayez raté quoi que ce soit, monsieur. Peut-être suis-je plus cynique que vous, tout simplement. Je faisais allusion à l'article 9 du projet de loi, à l'alinéa b) notamment, qui traite des pouvoirs du ministre. Il s'agit du ministre des Approvisionnements et des Services, et non pas du solliciteur général du Canada. Il est responsable du maintien de la propriété publique et à l'alinéa b), on dit que le ministre peut «consentir des avances aux taux d'intérêt du marché»:

afin de maintenir l'usage auquel les biens sont destinés,

ou afin de faire les améliorations requises pour la conservation des biens et de leur valeur économique;

[*Text*]

I understand why all of that would be necessary, in particular on the clause 6 management orders where you're seizing in advance of actual disposition. All of that potentially is necessary. My concern, though, is that we don't end up—if I can put it this way, and I will again exaggerate to make the point—having decisions made, for example, in Ottawa about when the proper market value is to sell a restaurant in Saskatoon or to change the menu in Saskatoon to attract a better level, to get a higher price.

I think the emphasis should be on the fact that these assets are there so they can be liquidated, so that the dollars that are realized from that can get back into the hands of crime prevention or crime suppression. All I'm doing is looking at the sections that are in there and saying that they would justify retention of some of that property in the way I'm talking about.

I'm looking at it in a worst case scenario, very much so, as to what's there. That's what makes me nervous about it, and I don't see anything in the legislation, for example, that expresses that as a priority. When I saw nothing in the stated purpose of the legislation in the first place in terms of crime prevention or suppression, that started to make me a little bit nervous, yes.

Mr. Thacker: Mr. Chairman, I think we can fix that up very quickly by having a clause to say that notwithstanding anything else in the act, it is the intention that the goods be disposed of as quickly as is reasonably possible.

Mr. Newark: Yes, something like that, a statement of purpose or principle.

Mr. Thacker: I don't see why we can't take a look at something like that, Mr. Chairman.

M. Hamelin: Pour ce qui est de la question de trois ans au lieu de cinq ans, en principe, on ne voit pas d'objection à ce que la loi soit révisée au bout de trois ans. On parlait de cinq ans parce que c'est un projet de loi un peu complexe, et il y aurait peut-être lieu d'acquérir un peu d'expérience avant de revoir la loi. Mais si on disait trois ans ou quatre ans, il n'y aurait aucun problème. L'important est de prévoir une date à laquelle on pourrait, tous ensemble, réviser la loi pour voir si elle a vraiment atteint les buts qu'on s'était fixés au départ.

Mr. Thacker: Mr. Chairman, my last one is really just a comment. It's obvious to me too as I read the bill, especially clause 10, that there is an ongoing political dialogue as to who the proceeds should be shared with. There's nothing in my entire experience that raises the ire of the provinces higher and with more passion than the federal government giving some recognition in law to a creature of the province, i.e. municipalities. It gets back to the fact that we're a federation rather than a unitary state. Quebec leads that charge; Alberta is right behind it, right on its heels.

The Chairman: Or beside it.

[*Translation*]

Je comprends pourquoi de telles mesures seraient nécessaires, surtout si l'on tient compte de l'ordonnance de prise en charge de l'article 6 qui vous permet de demander de prendre en charge des biens saisis avant d'en disposer. Toutes ces dispositions peuvent s'avérer nécessaires, éventuellement. Ce qui me préoccupe, toutefois, c'est d'éviter le genre de situation—permettez-moi d'exagérer, encore une fois, pour illustrer le point que je veux faire ressortir—où des décisions seront prises, par exemple, à Ottawa quant à la valeur du marché d'un restaurant qu'on veut vendre à Saskatoon, ou qu'on change à Ottawa le menu de ce restaurant à Saskatoon pour attirer une meilleure clientèle ou augmenter les marges.

Je pense qu'il faudrait mettre l'accent sur le fait que ces biens ont été saisis afin d'être liquidés, pour qu'on puisse en réaliser le produit et remettre ces sommes à ceux qui s'en serviront pour la prévention ou la répression du crime. Mais, en regardant les dispositions telles qu'elles sont rédigées, je pense qu'on pourrait les invoquer pour justifier le fait de ne pas vendre certains biens.

J'imagine bien sûr le pire des cas possibles en vertu des dispositions du projet de loi. C'est ce qui me rend nerveux; on ne parle nullement dans ces dispositions de priorité. J'ai commencé à me sentir nerveux quand je n'ai rien vu dans l'article qui définit l'objet de la loi qui traite de la prévention ou de la répression du crime.

M. Thacker: Monsieur le président, je pense que nous pouvons régler ce problème très rapidement en rédigeant un article qui précise que nonobstant toutes les autres dispositions du projet de loi, la présente loi a pour objet de faire en sorte que les biens soient vendus le plus rapidement possible, dans les limites du raisonnable.

M. Newark: Oui, quelque chose comme cela, un énoncé de principe ou d'objet.

M. Thacker: Je ne vois pas pourquoi on ne pourrait envisager quelque chose de ce genre, monsieur le président.

Mr. Hamelin: As for making it a three-year review instead of a five-year review, we see no reason, in principle, why the law should not be reviewed after three years. We spoke of a five-year period because the bill is somewhat complex and it might be useful to gain some experience before reviewing the legislation. But if you wanted to change that to a three or a four-year review, we would have no objection. The important thing is to agree on a period after which we could all sit down to review the Act together, to see whether it has really reached the objectives that were set for it at the outset.

M. Thacker: Monsieur le président, j'aimerais en dernier lieu faire une simple observation. En lisant le projet de loi, il me semble évident à moi aussi, surtout à l'article 10, que ceux qui partageront le produit de l'aliénation font l'objet d'un dialogue politique qui se poursuit. Toute mon expérience m'a appris que rien ne suscite la colère des provinces comme la reconnaissance, en loi, par le gouvernement fédéral, d'entités qui ont en fait été créées par les provinces, c'est-à-dire les municipalités. C'est dû au fait que nous sommes une fédération, plutôt qu'un État unitaire. C'est le Québec qui est à la tête du mouvement qui s'oppose à ce genre de reconnaissance et l'Alberta vient au second rang, juste après.

Le président: Ou à côté.

[*Texte*]

Mr. Thacker: Or beside it. It causes a reaction at the provincial level that just defies description. Of course, we all live in municipalities and deal with local police forces.

I don't think this committee would be able to make a legislative change that the executive council at the federal level would accept, because it would cause problems with them in all sorts of other areas of their dealings with the provinces.

So with great respect, I don't think we're going to be able to move on that one, truthfully.

M. Hamelin: Il y a peut-être une façon de répondre à cela. Étant moi-même du Québec, je peux concevoir que le gouvernement provincial puisse être réticent devant des subventions directes du fédéral à des municipalités. Mais ici, que je sache, il n'est pas question de subventions. Il est question de remettre à des municipalités des produits de la criminalité. Ce n'est absolument pas une subvention. C'est en quelque sorte payer le travail qui a été fait par un corps policier ou remettre à la municipalité des sommes d'argent que celle-ci a dû engager pour arrêter des criminels. On est loin d'une question de subventions. Si on faisait un fonds fédéral et qu'on le répartissait entre les provinces selon la population de chacune, etc., on pourrait avoir des problèmes; mais comme il s'agit tout simplement d'argent provenant de la criminalité et qu'on retourne à la municipalité qui a fait le travail, je pense que la situation n'est pas tout à fait la même que pour des cas de subventions.

• 1630

Mr. Thacker: Mr. Chairman, I agree with Mr. Hamelin, but it's a question of precedence, and I can assure him that no province will want to get into that as a question of precedence.

I noticed that clause 10 of the bill states

Where a law enforcement agency in Canada has participated. . .

It then goes on to say

the minister may. . .

which we should change to "shall"

in accordance with the regulations, share the proceeds of disposition. . .

It would be easy to put "with that law enforcement agency", but I just don't think cabinet will buy it. We can always try.

Mr. Newark: Mr. Thacker, I noticed the same phrase you're referring to when I was doing up the brief. The only agency mentioned in clause 10 are the police, a "law enforcement agency". One would think that when one is talking about sharing, one is talking about sharing with the people who are mentioned.

The other point that's fairly made is that there are other examples of federal levies, if I can put it that way, that have gone through the provinces with less than intended results. I'm thinking specifically of the victim fine surcharge. In at least two provinces that I am aware of, these have ended up in the black hole of provincial general revenue, which was not the intention of Parliament.

[*Traduction*]

M. Thacker: Ou à côté. Toute mesure de ce genre cause une réaction au niveau provincial d'une telle véhémence qu'il est difficile de la décrire. Bien sûr, nous vivons tous dans des municipalités et profitons de la présence des services de police locaux.

Je ne pense pas que ce comité puisse apporter de modifications à la loi qui soient acceptées par les hautes instances au niveau fédéral, car cela nuirait de mille et une façons à leurs rapports avec les provinces dans d'autres domaines.

Donc, avec tout le respect que je vous dois, je ne pense pas que nous puissions faire quoi que ce soit à cet égard, vraiment.

Mr. Hamelin: There may be a way around that problem. As I am myself from Quebec, I can understand that the provincial government would be reluctant to accept direct grants from the federal government to municipalities. But, as far as I know, we are not talking about grants here. We are discussing giving municipalities the proceeds of crime. That is not a grant, by any definition. In a way, it amounts to paying a police force for the work it has done or reimbursing a municipality for money it had to spend to apprehend criminals. That is very remote from the idea of a grant. If we set up a federal fund and decided to distribute the monies in it to the provinces according to each one's population, etc., we might run into problems; but since the funds in question are simply the proceeds of crime that would be returned to the municipality that provided the resources to stop the crime, I think this type of payment is quite different from a grant.

M. Thacker: Monsieur le président, je suis d'accord avec M. Hamelin, mais cela créerait un précédent, et je peux lui garantir qu'aucune province ne voudra créer un précédent de cet ordre.

Je remarque que l'article 10 du projet de loi dit que:

. . .lorsqu'un organisme chargé de l'application de la loi au Canada a participé,

Et on dit précédemment que

le ministre peut. . .

que nous allons remplacer par «partage»

conformément aux règlements, partager le produit de l'aliénation. . .

Ce serait facile d'ajouter «avec l'organisme chargé de l'application de la loi», mais je ne pense pas que ce soit acceptable au conseil des ministres. Nous pouvons toujours essayer.

M. Newark: Monsieur Thacker, j'ai remarqué cette même phrase quand je préparais le mémoire. Le seul organisme dont il est question à l'article 10 est la police, «l'organisme chargé de l'application de la loi». Comme l'article traite du partage du produit de l'aliénation de biens confisqués, on pourrait supposer que c'est avec l'organisme mentionné qu'on envisage de partager ces sommes.

On pourrait aussi dire, sans risque de se tromper, qu'il existe d'autres exemples de prélèvements fédéraux, pour les appeler ainsi, qui sont effectués par les provinces sans qu'on obtienne les résultats escomptés. Je pense, notamment, aux suramendes compensatoires. Dans deux provinces, au moins, ces suramendes ont disparu dans le trou noir des recettes générales des provinces, ce qui n'était pas l'intention du Parlement.

[*Text*]

As well, there is a recognition in legislation like this that the assets we're dealing with are much more sophisticated. Crime has become much more sophisticated and the method of diversification of property from crime has become much more sophisticated. It's become much more national.

In closing, I had not thought of the perspective that you've mentioned, but I think you're quite correct about our home province guarding its jurisdiction. It strikes me as well, however, that the electorate is increasingly challenging government to find better ways of spending money. There's a recognition that there are no new pools of money out there, and that the real skill comes in a better method of spending money. This one, by going directly to the source as opposed to stopping a couple of ways, may just be that.

It may be that the best championing of Alberta's interest, for example, is in being cost effective. Perhaps if we marketed the argument in that way we might have greater success in trying to do it, but I think it's worth a try.

The Chairman: It's been brought to my attention that paragraph 3.(d) of the act talks about

> the sharing, in certain circumstances, of the proceeds of disposition therefrom or the fine, as the case may be, with jurisdictions, the law enforcement agencies of which participated in the investigations of the offences that lead to the forfeiture or imposition of the fine.

Mr. Newark: "Jurisdictions".

The Chairman: It's spelled out there, isn't it?

Mr. Wappel: What is it? Provinces? Municipalities? What's the jurisdiction?

The Chairman: They don't define jurisdiction, but. . .

Mr. Wappel: It isn't spelled out, Mr. Chairman.

Mr. Thacker: It's provincial.

Mr. Wappel: Then it's clear from the purposes that it's not going to go to the municipalities but to the provinces, if that's the interpretation we put on jurisdiction.

Why should we be putting any interpretation on it or be letting the courts put an interpretation on it? Why don't we define what we're talking about with the word "jurisdiction"?

Mr. Thacker: They're saying they'll define it in the regulations, and that's where the battle will occur. I think "jurisdictions" could include "municipalities". It's a big battle, I'm sure.

Mr. Newark: I'd just like to include police forces.

Mr. Thacker: I'll bet $100 that the Solicitor General's file has letters from every attorney general of every province stating they want the money in their provincial fund and they'll decide how to give it out. I'm sure he has those letters.

[*Translation*]

Aussi, les lois comme celle-ci reconnaissent que les biens dont il est question sont beaucoup plus sophistiqués qu'autrefois. La criminalité est devenue beaucoup plus sophistiquée et les méthodes qu'on utilise pour diversifier les propriétés qui sont le produit de la criminalité sont devenues beaucoup plus sophistiquées aussi. Ces opérations se font beaucoup plus à l'échelle nationale.

Pour conclure, j'ajouterai que je n'avais pas pensé à cette perspective que vous avez mentionnée, mais je pense que vous avez tout à fait raison quand vous dites que notre province d'origine protège jalousement sa juridiction. D'autre part, il est vrai aussi que les électeurs demandent de plus en plus aux gouvernements de trouver des façons plus efficaces de dépenser les deniers publics. On reconnaît qu'il n'y a pas de nouvelles sources d'argent dans lesquelles les gouvernements pourront puiser et que la vraie compétence se manifeste chez ceux qui sauront trouver le moyen de dépenser l'argent du contribuable à meilleur escient. Cette méthode, qui permettrait de remettre de l'argent entre les mains de ceux dont le travail consiste à tuer le mal dans l'oeuf, est sans doute l'une de ces méthodes novatrices qu'on réclame.

Peut-être que la meilleure façon pour l'Alberta de protéger ses intérêts serait de privilégier la rentabilité. Peut-être aurions-nous plus de succès si nous présentions notre argument en ces termes; je pense que ça vaut la peine d'essayer.

Le président: On me signale que l'article 3.d) de la loi décrit un des objets de la loi en ces termes:

> de prévoir le partage, dans certains cas, du produit de l'aliénation des biens visés à l'alinéa c) ou des amendes perçues. . . avec les autorités dont les organismes chargés de l'application de la loi ont participé à l'enquête qui a mené à la confiscation des biens ou à la condamnation aux amendes.

M. Newark: «Les autorités».

Le président: C'est dit en toutes lettres, n'est-ce pas?

M. Wappel: Qui sont ces autorités? Les provinces? Les municipalités? De quelles autorités s'agit-il?

Le président: Ils ne les définissent pas, mais. . .

M. Wappel: Ce n'est pas dit en toutes lettres, monsieur le président.

M. Thacker: Ce sont les autorités provinciales.

M. Wappel: On peut donc conclure de cette disposition qui traite des objets de la loi que ces sommes ne sont pas destinées aux municipalités mais aux provinces, si c'est ainsi qu'on interprète les autorités dont il est question.

Mais pourquoi devrions-nous interpréter ce mot ou permettre aux tribunaux de l'interpréter? Pourquoi ne pas définir ce que nous entendons par «autorités»?

M. Thacker: Ils entendent en préciser le sens dans les règlements, et c'est à ce moment-là que le conflit va éclater. Je pense qu'on pourrait inclure les municipalités dans ces «autorités». Cela va susciter toute une querelle, j'en suis certain.

M. Newark: J'aimerais simplement qu'on inclue les services de police.

M. Thacker: Je suis prêt à parier 100$ qu'on trouve dans les dossiers du solliciteur général des lettres du procureur général de chaque province déclarant qu'ils veulent que cet argent soit déposé dans leur fonds provincial et que la province décidera de sa répartition. Je suis sûr que le solliciteur général a reçu ces lettres.

[*Texte*]

An hon. member: Now that you've alerted them, if they haven't, they will.

The Chairman: Thank you. Are there any further questions? I think we have this thing well in hand.

I think you will have some good things to report when you go to your conference. I want to thank all of you for taking the time to make your thoughts known. We'll be proceeding with this bill tomorrow at 3:30 p.m.

I want to explain to the witnesses what's going on here. We have this bill going on today. We have Bill C-125 going on tomorrow. We have the stalking legislation, Bill C-126, upstairs, and we have Bill C-90 being heard next door. So it's a strange situation, and we're spread a little thin on justice issues right now, but we'll do the best we can to come up with the best solution in the best interest of everyone.

• 1635

I want to thank all of you for being here and for answering our questions so candidly.

I declare this meeting adjourned.

[*Traduction*]

Une voix: Maintenant que vous les avez avertis, si ces lettres n'avaient pas encore été expédiées, elles le seront.

Le président: Merci. Y a-t-il d'autres questions? Je pense que nous avons fait un examen complet de la question.

Je pense que vous aurez des choses intéressantes à rapporter quand vous irez à votre conférence. Je veux vous remercier tous d'avoir pris le temps de nous faire part de vos opinions. Nous reprendrons l'étude de ce projet de loi demain à 15h30.

Je veux expliquer ce qui se passe aux témoins. Nous examinons ce projet de loi aujourd'hui et le projet de loi C-125 demain. À l'étage supérieur, les députés examinent la loi sur les prédateurs sexuels, le projet de loi C-126, et on étudie le projet de loi C-90 dans la salle d'audience voisine. La situation est donc quelque peu inhabituelle, et nous sommes un peu trop sollicités par les questions juridiques à l'heure actuelle, mais nous ferons de notre mieux pour trouver la meilleure solution possible, celle qui servira le mieux les intérêts de tous les intéressés.

Je veux vous remercier tous d'avoir bien voulu venir et d'avoir répondu à nos questions si ouvertement.

La séance est levée.

Thursday, May 27, 1993

The Standing Committee on Justice and the Solicitor General has the honour to present its

SIXTEENTH REPORT

In accordance with its Order of Reference of Friday, May 7, 1993, your Committee has considered Bill C-123, An Act respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circumstances, and has agreed to report it with the following amendments:

Clause 10

Strike out line 44 on page 7 and substitute the following therefor:

"the Minister shall in accordance with the"

New Clause 20

Add immediately after line 20, on page 12, the following:

"20.(1) On the expiration of three years after the coming into force of this Act, the provisions contained herein shall be referred to such committee of the House of Commons, of the Senate, or of both Houses of Parliament as may be designated or established by Parliament for that purpose.

(2) The committee designated or established by Parliament for the purpose of subsection (1) shall, as soon as practicable, undertake a comprehensive review of the provisions and operation of this Act and shall, within one year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including such recommendations pertaining to the continuation of those sections and changes required therein as the committee may wish to make.

A copy of the relevant Minutes of Proceedings and Evidence of the Standing Committee on Justice and the Solicitor General (*Issues Nos. 98, 102 and 103 which includes this report*) is tabled.

Respectfully submitted,

Le jeudi 27 mai 1993

Le Comité permanent de la justice et du Solliciteur général a l'honneur de présenter son

SEIZIÈME RAPPORT

Conformément à son ordre de renvoi du vendredi 7 mai 1993, votre Comité a étudié le projet de loi C-123, Loi concernant l'administration de biens saisis ou bloqués relativement à certaines infractions, l'aliénation de biens après confiscation et, dans certains cas, le partage du produit de leur aliénation, et a convenu d'en faire rapport avec les modifications suivantes :

Article 10

Retrancher la ligne 18 à la page 7, par ce qui suit :

«10. Le ministre doit, conformément aux»

Nouvel article 20

Ajouter immédiatement après la ligne 9, à la page 12, ce qui suit :

«20.(1) À l'expiration d'un délai de trois ans à compter de l'entrée en vigueur de la présente loi, ses présentes dispositions sont déférées au comité de la Chambre des communes, du Sénat ou des deux chambres du Parlement constitué ou désigné à cette fin par le Parlement.

(2) Le comité désigné ou constitué par le Parlement aux fins du paragraphe (1) procède, dès que cela est matériellement possible, à l'analyse exhaustive de la présente loi et des conséquences de son application. Il dispose d'un an, ou du délai supérieur autorisé par la Chambre des communes, pour exécuter son mandat et présenter au Parlement son rapport, en l'assortissant éventuellement de ses recommandations quant au maintien en vigueur de ces articles et aux modifications à y apporter.

Un exemplaire des Procès-verbaux et témoignages pertinents du Comité permanent de la justice et du Solliciteur général (*fascicules nos 98, 102 et 103 incluant le présent rapport*) est déposé.

Respectueusement soumis,

Le président,

ROBERT HORNER,

Chairman.

[*Texte*]

Mr. Nicholson: It's a bill, it's an act—

Mr. Wappel: It's the Seized Property Management Act, not an amendment. There may be consequential amendments, but it is an actual statute. I see nothing improper with adding paragraph 3.(e) unless there is some reason not to.

Mr. Nicholson: Would you like to make comments on that, sir?

Mr. Michael Dambrot (Senior General Counsel, National Strategy for Drug Prosecutions, Department of Justice): My only comment is that the essential scheme that accomplishes the crime prevention purpose is the scheme already in the Criminal Code. This bill really provides the management and sharing, which is just a small part of the overall scheme.

Mr. Wappel: I agree. That's why I said "to aid" in the prevention of crime. Is there some dastardly reason we shouldn't put it in? I mean, what harm could it do?

Mr. Nicholson: Is there any dastardly crime? No, Mr. Wappel, there is no dastardly crime. We don't have an amendment here before us to see what the wording would be. As I said—

Mr. Wappel: It's seven words: "to aid in the prevention of crime".

Mr. Nicholson: —a scheme for the management of assets seized is not specifically schemed for the prevention of crime. It is a management scheme to administer and ultimately dispose of the assets. It is not in and of itself a crime prevention scheme.

Mr. Wappel: I accept that it is not in and of itself; however, paragraph 3.(d) clearly provides that you are going to, in some circumstances, pay money to jurisdictions whose law enforcement agencies have participated in investigations. Now, what's the purpose of that? It's to give them money to allow them to continue to do just that. Why not put it in? I really am asking you.

Mr. Nicholson: The purpose of the bill is to have a fairer distribution of assets that have been seized by the Crown and become Crown property.

Mr. Wappel: That's true.

Mr. Nicholson: It's a fairer way of administering the proceeds of crime.

Mr. Wappel: The police seem to think it is going to be coming to them, or at least they seem to hope it is going to be coming to them. It isn't coming to them to buy brass buttons for the uniforms. It is coming to them to continue in the investigation and prosecution of further crimes. I don't understand why there is a difficulty with simply putting in that very simple phrase as paragraph 3.(e), following perfectly logically from paragraph 3.(d).

I have made the point, Mr. Chairman.

[*Traduction*]

M. Nicholson: C'est effectivement un projet de loi, un document législatif. . .

M. Wappel: Il s'agit bel et bien de la Loi sur l'administration des biens saisis et non pas d'un amendement. Il y aura peut-être des amendements corrélatifs, mais il s'agit d'une mesure en soi. Je ne vois rien d'incongru à ajouter l'alinéa 3.e), à moins qu'il n'y ait de bonnes raisons de ne pas le faire.

M. Nicholson: Voudriez-vous prendre la parole à ce sujet, monsieur?

M. Michael Dambrot (avocat général principal, Stratégie nationale des poursuites en matière de drogues, ministère de la Justice): Tout ce que je veux dire, c'est que le mécanisme fondamental qui permet la prévention du crime figure déjà dans le Code criminel. Pour sa part, le projet de loi ne vise que la gestion et le partage des biens saisis, ce qui n'est qu'une composante mineure du mécanisme global.

M. Wappel: Je suis d'accord. Voilà pourquoi j'ai dit «contribuer» à la prévention du crime. En quoi serait-il particulièrement abominable d'intégrer ces six mots? Quel tort cela pourrait-il causer?

M. Nicholson: Cela constituerait-il un crime abominable? Non, monsieur Wappel. Cela dit, nous n'avons pas d'amendement sous les yeux. Nous ne savons donc pas quelle serait la formulation choisie. Comme je l'ai dit. . .

M. Wappel: Cela représente sept mots: «de contribuer à la prévention du crime».

M. Nicholson: Un plan de gestion des biens saisis n'est pas précisément axé sur la prévention du crime. Il s'agit d'un mécanisme de gestion visant l'administration et, finalement, l'aliénation des biens en question. Il ne s'agit pas fondamentalement d'un mécanisme de prévention du crime.

M. Wappel: J'en conviens. Cependant, l'alinéa 3.d) précise que, dans certaines circonstances, on versera de l'argent aux autorités dont les organismes chargés de l'application de la loi ont participé aux enquêtes. Quel est l'objectif de cette disposition? Il s'agit de donner aux autorités compétentes l'argent qui leur permettra de continuer à s'acquitter de leur tâche. Pourquoi ne pas intégrer ces mots? Je vous le demande franchement.

M. Nicholson: Le projet de loi vise à assurer une distribution plus équitable des biens qui ont été saisis par la Couronne et qui deviennent propriété de la Couronne.

M. Wappel: Exact.

M. Nicholson: On cherche à établir une façon plus juste d'administrer les produits de la criminalité.

M. Wappel: Les policiers semblent penser—ou en tout cas, espérer—qu'ils recevront une part de l'argent tiré de l'aliénation de ces biens. Si on leur donne cet argent, ce n'est pas pour qu'ils achètent de beaux boutons de cuivre pour leurs uniformes, mais pour qu'ils continuent d'enquêter sur d'autres crimes et de poursuivre les criminels. Je ne comprends pas pourquoi on s'opposerait à l'insertion de cette toute petite phrase très simple qui constituerait l'alinéa 3.e). D'ailleurs, je signale que cela offre une suite parfaitement logique à l'alinéa 3.d).

J'ai présenté mes arguments, monsieur le président.

[*Text*]

The Chairman: I understand you have. I might say that even though paragraph 3.(e) might be in there, it doesn't necessarily mean that money has to be diverted to crime prevention. It doesn't have to mean that at all. So putting it in doesn't mean very much. However, I do tend to agree with the fact that this is for the administration. I don't think the seven words would adequately fit if we didn't alter the seven words.

• 1640

Mr. Thacker (Lethbridge): Mr. Chairman, I agree with the point you're making. If you look at (a), it's to authorize the minister to provide consultative and other services, (b) is to authorize the minister to manage property, (c) is to authorize the minister to dispose of property, and (d) is to give authority for the sharing of the benefits. So to add "to aid the prevention of"—crime prevention—I think would be seen to be out of place. It's superfluous to the purposes of this bill, which is an authorizing bill.

The Chairman: But if you were to say "to authorize the minister to provide money for social programs to aid in crime prevention"...

Mr. Thacker: I guess I would argue that would go against the scope of the bill.

The Chairman: Thank you. Do you wish to put forward a motion on that?

Mr. Wappel: No.

Clause 3 agreed to

On clause 4—*Minister to be responsible for management of property*

Mr. MacLellan: On a point of order before I begin, Mr. Chairman, we talked yesterday about the possibility of the regulations coming before this committee. Is there anything more on that?

The Chairman: Yes, that could be an amendment put at the end.

Mr. MacLellan: All right.

Subclause 4.(2) says:

Where property referred to in subsection (1) that is in the possession or under the control of the Minister is forfeited to Her Majesty, the Minister shall continue to be responsible for the custody and management thereof until the property is disposed of.

Mr. Chairman, I'd like to have a little more information from Supply and Services as to exactly what they're planning to set up. I have a concern that this is going to be another bureaucracy and that we're going to spend a lot of the money that is going to be received on this bureaucracy.

I realize that there are going to be some kinds of trustees in bankruptcy or liquidators, or whoever will be hired to manage some of these operations—key ski hills and so on—but I'm concerned that this is going to turn into another arm of government that's out of control. I want to have some idea of how this clause is going to be comprised, what exactly they are going to do, and how many people they are going to have to do it.

Mr. N. Bhumgara (Director General of Science and Professional Services, Department of Supply and Services): It's our intention, as I said at a previous meeting, to manage most of these assets through contracts. We don't intend to have a

[*Translation*]

Le président: Je comprends. Permettez-moi de dire que même si l'on ajoutait l'alinéa 3.e), cela ne signifierait pas forcément qu'une part de l'argent ira à la prévention du crime. Cet alinéa ne veut pas nécessairement dire cela. Par conséquent, son insertion ne porte guère à conséquence. J'ai cependant tendance à penser moi aussi que c'est une question qui concerne l'administration. Je ne pense pas que ces mots-là seraient à leur place tels quels.

M. Thacker (Lethbridge): Monsieur le président, je suis d'accord avec ce que vous nous dites. L'alinéa a) autorise le ministre à fournir des services consultatifs et autres, b) l'autorise à administrer les biens, c) à aliéner ces biens et d) à partager le produit de leur aliénation. Il me paraîtrait donc déplacé d'ajouter «pour contribuer à la prévention de» c'est-à-dire la prévention du crime. Cela ne concorde pas avec l'objectif de ce projet de loi, qui constitue une mesure habilitante.

Le président: Mais vous pourriez dire qu'il s'agit d'autoriser le ministre «à mettre des fonds à la disposition des programmes sociaux afin de contribuer à la prévention du crime»...

M. Thacker: Cela ne me paraît pas compatible avec la nature de ce projet de loi.

Le président: Merci. Voulez-vous présenter une motion à ce sujet?

M. Wappel: Non.

L'article 3 est adopté

Article 4—*Responsabilité du ministre*

M. MacLellan: Avant de commencer mon intervention, j'invoque le Règlement. Monsieur le président, nous avons dit hier qu'il était possible que les règlements soient présentés au comité. Y a-t-il du nouveau à ce sujet?

Le président: Oui, cela pourrait faire l'objet d'un amendement à la fin.

M. MacLellan: Très bien.

Le paragraphe 4.(2) est libellé de la façon suivante:

Le ministre demeure responsable, après leur confiscation au profit de Sa Majesté et jusqu'à leur aliénation, de la garde et de l'administration des biens visés au paragraphe (1) qui sont en sa possession ou dont il a la charge.

Monsieur le président j'aimerais qu'Approvisionnements et Services précise un peu mieux ce que le ministère envisage de mettre sur pied. Je crains que l'on édifie une bureaucratie supplémentaire qui finira par nous coûter très cher.

Je me rends bien compte qu'il faudra des syndics de faillites ou des liquidateurs, ou je ne sais qui d'autres pour s'occuper de ses activités—pour les stations de ski ou autres—, mais je crains que cela ne devienne un autre secteur d'activité gouvernementale qui échappera à notre contrôle. Je veux avoir une idée de la façon dont on appliquera cet article, de ce que nous ferons exactement et du nombre de personnes qui participeront à son application.

M. N. Bhumgara (directeur général, Sciences et services professionnels, ministère des Approvisionnements et Services): Comme je l'ai dit lors d'une réunion précédente, nous avons l'intention de faire gérer la plupart de ces biens par des

[Texte]

large organization. In fact, our budgetary plans are to have between a half a dozen to a dozen people at the maximum—fewer than ten—with a small budget for travel and for professional services. Beyond that, we don't see any eventuality of there being any larger an organization.

Bear in mind that we're looking at seizures estimated at best at $75 million a year, so that shouldn't account for a lot of activity. We're very conscious these days of the size of government and the number of public servants.

Mr. MacLellan: Well, the thing too is that we want some of this funding to go back to the police forces. If they're involved and they're recipients of some of the proceeds of crime, of course I think there will be more funding coming—not infinitely more, but there would be more. I think it's important to try to get some idea of exactly the scale of the operation. Thank you, you've helped in that regard.

Mr. Bhumgara: That's our budgetary plan at this time.

Mr. MacLellan: You're saying up to ten. Is that correct?

Mr. Bhumgara: That's the maximum. Both Rick Lauzon and I as director general are part-time workers on this project. We run other things in the government, mainly in the area of contracting for services. We intend to follow that modus operandi. We have contracting officers right across the country, dealing with a whole variety of things.

• 1645

Mr. MacLellan: Is it your intention that things that don't need to be managed would be sold almost immediately? Is that it?

Mr. Bhumgara: Yes.

Mr. MacLellan: You don't see any reason to hold onto them, other than perhaps to manage them until a more opportune time for sale, or to get them in a more attractive financial condition—is that correct?

Mr. Bhumgara: As I understand it, after the seizure we have an obligation to manage those assets—we're talking about business assets as opposed to moveable assets now—until such time as the courts have decided on them. It's only after forfeiture that we would take immediate action to dispose of any property.

Mr. MacLellan: I realize that, but after the courts have decided, from the time the courts have made the decision and the time you dispose of them, what would be the policy? Would it be to sell them right away or to try to wait to get the maximum return?

Mr. Bhumgara: I think it will depend very much on the circumstances, again, depending on the type of property and where it would be optimized. I don't foresee an instance where we will hang onto it for an indefinite period of time. There will be a disposal plan in place for an appropriate time, and it could be anything, depending on where the business cycle is, if it's a seasonal activity, or whatever.

Mr. MacLellan: Thank you.

[Traduction]

contractuels. Nous ne voulons pas nous doter d'une grosse organisation. En fait, notre budget prévoit qu'il y aura au maximum entre une demi-douzaine et une douzaine de personnes—plutôt moins de dix—avec des crédits limités réservés pour les frais de voyage et les services professionnels. À part cela, nous ne voyons aucune raison d'avoir une organisation plus importante.

N'oubliez pas que ces saisies se chiffrent au maximum à quelque 75 millions de dollars par an, ce qui ne nécessitera donc pas un travail énorme. Nous sommes, par les temps qui courent, très conscients des problèmes que posent la taille de l'administration et le nombre de fonctionnaires.

M. MacLellan: Il y a aussi le fait que nous voulons qu'une partie de ces fonds revienne à la police. Si celle-ci participe et reçoit une partie des produits de la criminalité, cela fera donc pour elle des fonds supplémentaires. Ce ne sera pas énorme, mais ce sera quelque chose. Je pense qu'il est important d'essayer d'avoir une idée exacte de l'ampleur de tout cela. Je vous remercie de votre aide.

M. Bhumgara: Telles sont actuellement nos intentions sur le plan budgétaire.

M. MacLellan: Vous avez parlé d'une dizaine d'employés, n'est-ce pas?

M. Bhumgara: Au maximum. Rick Lauzon et moi-même, en tant que directeur général, nous occupons de ce projet à temps partiel. Nous administrons d'autres secteurs, surtout du côté des marchés de services. Nous avons l'intention de continuer d'opérer ainsi. Nous avons des agents de négociation des contrats dans l'ensemble du pays qui s'occupent de toute une gamme de choses.

M. MacLellan: Avez-vous l'intention de vendre presque immédiatement des biens qu'il n'est pas nécessaire d'administrer? C'est bien cela?

M. Bhumgara: Oui.

M. MacLellan: Vous ne voyez pas pourquoi vous devriez les garder, si ce n'est, peut-être, pour attendre une période plus propice à leur vente ou pour redresser leur situation financière, n'est-ce pas?

M. Bhumgara: À ma connaissance, après la saisie, nous sommes tenus de gérer ces biens—je parle des biens d'entreprise, et non pas des biens meubles—jusqu'à ce que les tribunaux se soient prononcés à leur sujet. C'est seulement en cas de confiscation que nous procéderions immédiatement à l'aliénation de ces biens.

M. MacLellan: Je comprends bien, mais une fois que les tribunaux ont rendu leur arrêt, que feriez-vous en attendant l'aliénation? Chercheriez-vous à les vendre immédiatement ou attendriez-vous pour essayer de réaliser le meilleur profit possible?

M. Bhumgara: Je pense que cela dépendra beaucoup des circonstances, du type de biens et de la meilleure façon de le vendre. Je n'envisage pas de cas où nous conserverions un bien pendant une période illimitée. On prévoira un plan d'aliénation pour un moment approprié, qui pourrait varier beaucoup, selon le cycle d'activité correspondant, par exemple s'il s'agit d'une activité saisonnière.

M. MacLellan: Merci.

[Texte]

large organization. In fact, our budgetary plans are to have between a half a dozen to a dozen people at the maximum—fewer than ten—with a small budget for travel and for professional services. Beyond that, we don't see any eventuality of there being any larger an organization.

Bear in mind that we're looking at seizures estimated at best at $75 million a year, so that shouldn't account for a lot of activity. We're very conscious these days of the size of government and the number of public servants.

Mr. MacLellan: Well, the thing too is that we want some of this funding to go back to the police forces. If they're involved and they're recipients of some of the proceeds of crime, of course I think there will be more funding coming—not infinitely more, but there would be more. I think it's important to try to get some idea of exactly the scale of the operation. Thank you, you've helped in that regard.

Mr. Bhumgara: That's our budgetary plan at this time.

Mr. MacLellan: You're saying up to ten. Is that correct?

Mr. Bhumgara: That's the maximum. Both Rick Lauzon and I as director general are part-time workers on this project. We run other things in the government, mainly in the area of contracting for services. We intend to follow that modus operandi. We have contracting officers right across the country, dealing with a whole variety of things.

• 1645

Mr. MacLellan: Is it your intention that things that don't need to be managed would be sold almost immediately? Is that it?

Mr. Bhumgara: Yes.

Mr. MacLellan: You don't see any reason to hold onto them, other than perhaps to manage them until a more opportune time for sale, or to get them in a more attractive financial condition—is that correct?

Mr. Bhumgara: As I understand it, after the seizure we have an obligation to manage those assets—we're talking about business assets as opposed to moveable assets now—until such time as the courts have decided on them. It's only after forfeiture that we would take immediate action to dispose of any property.

Mr. MacLellan: I realize that, but after the courts have decided, from the time the courts have made the decision and the time you dispose of them, what would be the policy? Would it be to sell them right away or to try to wait to get the maximum return?

Mr. Bhumgara: I think it will depend very much on the circumstances, again, depending on the type of property and where it would be optimized. I don't foresee an instance where we will hang onto it for an indefinite period of time. There will be a disposal plan in place for an appropriate time, and it could be anything, depending on where the business cycle is, if it's a seasonal activity, or whatever.

Mr. MacLellan: Thank you.

[Traduction]

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M. MacLellan: Merci.

[*Texte*]

The Chairman: If you would care to read the amendment into the record, then we'll have some discussion on it.

Mr. Stupich: I move that clause 16 be amended by striking out lines 7 to 9 on page 11 and substituting the following:

> shall be credited 50 percent to the Debt Servicing and Reduction Account established by the Debt Servicing and Reduction Account Act and applied 50 percent to the funding of crime prevention programs administered in whole or in part by the Attorney General.

The Chairman: Mr. Nicholson.

Mr. Nicholson: Mr. Chairman, I'm sure Mr. MacLellan wouldn't agree to setting up another bureaucracy, after his earlier comments.

It seems to me this is a policy decision. It's already part of the Department of Justice to sponsor and support programs in the area of drug and crime prevention. It seems to me that's the appropriate part, for it to be decided within the budget as a whole.

With respect to the recommendations of the standing committee, I don't want to start making piecemeal changes to legislation when I think that deserves to be looked at in its entirety.

The way the legislation is worded it goes to the Debt Servicing and Reduction Account. I think there's a general consensus that the debt is a problem in this country. I think most people would agree that the proceeds of crime could vary. In trying to establish programs, you might have up-and-down amounts in any particular year. I think it's a better policy move to say that it's all going to the debt, at the same time recognizing the responsibility of the department, which I believe we do, in terms of initiating and helping to sustain programs in the area of drug prevention and cooperating with the provinces on that.

I don't think this is the place for it, Mr. Chairman.

The Chairman: Mr. Wappel.

Mr. Wappel: Mr. Chairman, Mr. Nicholson raises an interesting problem, I think, from a logic point of view. This committee unanimously recommended that a portion of assets seized from crime — I don't know how it was phrased in our report — be used —

The Chairman: I have it here. Would you like me to read it?

Mr. Wappel: Yes, please.

The Chairman: Recommendation 3 of the twelfth report:

> The committee recommends that a share of the moneys forfeited as proceeds of crime be allocated to crime prevention activities and that the federal government allocate one percent a year of the current federal budget for police, courts, and corrections to crime prevention over a five-year period. At the end of five years Canada should spend five percent of the current federal criminal justice budget on crime prevention.

[*Traduction*]

Le président: Si vous voulez bien nous en donner lecture pour le procès-verbal, nous pourrons ensuite en discuter.

M. Stupich: Je propose que l'article 16 soit modifié ainsi: suppression de la ligne 42, page 10, et des lignes 1 à 4, page 11, pour les remplacer par ce qui suit:

> conformément aux articles 10 et 11 sont, pour moitié, portés au Compte de service et de réduction de la dette ouvert en application de la Loi sur le compte de service et de réduction de la dette, et pour moitié affectés au financement de programmes de prévention du crime administrés en tout ou en partie par le Procureur général, après soustraction des sommes réservées.

Le président: Monsieur Nicholson.

M. Nicholson: Monsieur le président, après ce qu'il a dit, je suis sûr que M. MacLellan ne serait pas d'accord pour créer une bureaucratie supplémentaire.

Il me semble qu'il s'agit d'une décision de nature politique. Le ministère de la Justice parraine et appuie déjà certains programmes dans le domaine de la prévention de la toxicomanie et du crime. Il me semble que c'est ainsi qu'il faut procéder, c'est-à-dire prendre des décisions dans le cadre du budget global.

Pour ce qui a trait aux recommandations du comité permanent, j'aimerais mieux ne pas apporter de modifications éparses à la loi, car je pense qu'elle doit être réexaminée dans sa totalité.

D'après le texte actuel, ces fonds vont au Compte de service et de réduction de la dette. Tout le monde convient que la dette constitue un grave problème dans notre pays. Presque tout le monde conviendra que les produits de la criminalité peuvent varier. Des sommes pourraient connaître des hauts et des bas d'une année à l'autre et il me paraît plus sage que tout soit affecté à la dette, tout en reconnaissant la responsabilité du ministère, comme nous le faisons, pour ce qui est de lancer et de financer des programmes relatifs à la prévention de la toxicomanie et de coopérer à cet égard avec les provinces.

Je ne crois donc, monsieur le président, que ce soit le cadre pour en débattre.

Le président: Monsieur Wappel.

M. Wappel: Monsieur le président, le problème que soulève M. Nicholson me paraît intéressant du point de vue logique. Le comité a recommandé à l'unanimité qu'une partie des biens confisqués — je ne me rappelle pas des termes utilisés dans notre rapport — soit utilisée. . .

Le président: J'ai le texte ici. Voulez-vous que je le lise?

M. Wappel: Oui, je vous en prie.

Le président: Recommandation numéro 3 du Deuxième rapport:

> Le comité recommande qu'une portion des fonds confisqués en tant que produits de la criminalité soit affectée à des activités de prévention du crime et que le gouvernement fédéral alloue à des activités de prévention du crime, pendant une période de cinq ans, 1 p. 100 par année du budget actuellement consacré à la police, aux tribunaux et au système correctionnel. Au bout de cinq ans, le Canada devrait consacrer à la prévention de la criminalité 5 p. 100 du budget fédéral affecté au système de justice pénal.

[*Text*]

Mr. Wappel: There are two distinct things there. One percent is one thing, and the other is a share—an undefined share—of seized assets to be used for crime prevention. This, to me, presents a logical problem, because here we have a committee that has made a unanimous recommendation that a share of crime proceeds be used in crime prevention programs. We all agreed on that; we all thought it was a good idea. Now this very same committee, if we don't amend this section, is saying that the share, any share, of crime proceeds that's left over, after it has been distributed at the whim of the minister, is to be put into the Debt Servicing and Reduction Account, thereby leaving no share, no portion of any share, to be used as per the recommendation of the committee in crime prevention programs.

I would think that we are acting in a way opposite to our very own recommendations if we now pass this clause as it is shown in the draft bill. I really hadn't thought of it until the motion.

I have a problem with applying 50%. There may not be crime prevention programs; they may not need 50%. But I have no problem with the concept of providing that some portion, a share, be used in crime prevention programs as per our unanimous recommendation. Surely we can grapple with the wording of that in some way and not tie it to 50%. But I disagree. If we were to ask Canadians whether it should all go to the debt or to try to prevent some crimes, I think we'd find a general consensus that Canadians would think we should do both. Sure we want to reduce the debt; we also want to reduce crime.

• 1655

I think we'd be inconsistent with our previous report if we passed this clause as it's written.

Mr. Thacker: Mr. Chairman, my friend Mr. Waddel is right on the surface of it, but since we made those recommendations, which were all made in good faith, we've had further discussions in terms of the problems it actually causes. The whole system of government operates on estimates and their anticipation of what's going forward. The Financial Administration Act is in support of that.

It would cause chaos in terms of planning, if nothing else, to have $50 million one year, zero the third year, and $500 million the next year, depending on what happens to get seized. You just can't run programs that way, particularly when you have to be working with the municipalities and provincial governments. I'm therefore persuaded by officials that although it was a well-intentioned recommendation, it just isn't that practical when you get right down to it, with the way government actually has to operate on a day-to-day basis.

What we really wanted was to have more money allocated to crime prevention. That should be done in a regular budgetary process, as Mr. Nicholson said.

So with great respect, I think I would be against the amendment.

[*Translation*]

M. Wappel: Il y a là deux choses différentes. D'un côté on parle de 1 p. 100, et de l'autre, on mentionne une portion—non précisée—des fonds confisqués qu'il faut affecter à la prévention du crime. Cela me paraît poser un problème de logique car nous avons une recommandation unanime d'un comité, selon laquelle une portion des produits de la criminalité devrait être affectée à des programmes de prévention du crime. Nous étions tous d'accord là-dessus; cela nous a paru être une bonne idée. Et voilà que le même comité, si nous ne modifions pas cet article, dit que tout ce qui restera des produits de la criminalité une fois que le ministre en aura disposé à sa guise, doit être porté au Compte de services et de réduction de la dette; il n'en resterait donc rien, aucune portion à utiliser conformément à la recommandation du comité relative aux programmes de prévention du crime.

Il me semble que nous agissons à l'encontre de nos propres recommandations si nous adoptons l'article tel qu'il figure dans le projet de loi. Je n'y avais pas pensé avant cette motion.

Le fait de préciser «pour moitié» me pose un problème. Il n'y aura peut-être pas de programmes de prévention du crime ou ceux-ci n'auront peut-être pas besoin de cette «moitié». Je n'ai cependant rien contre l'idée de préciser qu'une portion, une partie, devra être affectée aux programmes de prévention du crime, conformément à notre recommandation unanime. Il y a sûrement moyen de modifier ce libellé pour ne pas être tenu de respecter cette proportion d'une moitié. Mais, je ne suis pas d'accord. Si nous demandions aux Canadiens s'il convient de consacrer ces sommes entièrement à la dette ou à la prévention du crime, je pense qu'ils nous répondraient pour la plupart que nous devrions faire les deux. Nous voulons certainement réduire tout autant la dette que la criminalité.

Je pense que l'adoption de cet article sous sa forme actuelle serait contraire à l'esprit de notre rapport.

M. Thacker: Monsieur le président, mon ami, M. Waddel, a apparemment raison, mais, depuis que nous avons présenté—en toute bonne foi—ces recommandations, nous avons eu d'autres discussions sur les problèmes que cela pourrait entraîner. Toute la machine gouvernementale fonctionne d'après les prévisions budgétaires et ce à quoi l'on peut s'attendre. La Loi sur la gestion des finances publiques appuie cette façon de faire.

Ce serait catastrophique, ne serait-ce que pour la planification, si l'on avait 50 millions une année, zéro l'année suivante et 500 millions celle d'après, selon la quantité de biens saisis. On ne peut pas administrer les programmes de cette façon, surtout s'il faut le faire en collaboration avec les municipalités et les gouvernements provinciaux. Les fonctionnaires m'ont donc convaincu que, même si cette recommandation partait de bonnes intentions, elle n'est en fait pas très réaliste, compte tenu de la façon dont fonctionne le gouvernement jour après jour.

Ce que nous voulions en fait, c'était que l'on affecte plus d'argent à la prévention du crime. Cela devrait se faire suivant la procédure budgétaire normale, comme l'a dit M. Nicholson.

Donc, en toute déférence, je crois que je serais contre cet amendement.

[*Text*]

The Chairman: When we tabled the twelfth report, we did ask for a comprehensive reply, which we expect will be forthcoming. Hopefully, recommendation number three will be addressed at that time.

Mr. Stupich: I think there is general widespread public agreement that we should be doing more about prevention of crime, rather than simply dealing with the results of crime.

Even if it is to some extent cosmetic, if people know that a portion of the proceeds from the seizure of property under this legislation would go to crime prevention, they'd feel a lot happier about what the government is doing.

It's so easy when things get tough for the government to cut back on programs that are financed from general revenue. If it's left simply to general revenue, one year there might be nothing available at all for crime prevention. I suppose the same thing could be said here.

The Chairman: That's what Mr. Thacker just said.

Mr. Stupich: If nothing is seized, well then. . .but at least if the legislation does say that if property is seized, there will be a contribution from the proceeds from that property to crime prevention, there will be much more certainty to the idea that something will be spent on crime prevention than if it's simply left to the whim—I think that's the word someone used—of the finance minister, at any particular time.

I would urge the committee to adopt some formula. It needn't be 50%. It could be a percentage with a cap on it that can be changed from time to time or even a cap left to regulation, or whatever, but let's allocate something from these proceeds for crime prevention.

Mr. MacLellan: Mr. Chairman, I want to ask the parliamentary secretary and perhaps officials from the Department of Justice what they plan to do about the recommendation we made. Do they plan to implement it in another way, if not here?

I think it's a good recommendation that the committee made. You could say you don't have to respond to the committee's report now, but I think we're at a juncture where we require some kind of reply from the Department of Justice.

Mr. Nicholson: Thank you, Mr. Chairman. I don't want to leave the impression that may have been left on the record concerning the government's commitment to crime prevention and a reduction in drug crimes in this country. We announced for 1992 a five-year program to spend $270 million in the area of crime and drug reduction or prevention programs. That's part of the program.

The department has the report of the standing committee, and the department will come up with a comprehensive review of it. They're looking at it very carefully, and the second part of the recommendation read by Dr. Horner said that while a certain percentage of the budget, the overall police budget, should be used, the department is obviously having a look at that. But it's having a look at it in view of the programs and the expenditures we have already committed to.

[*Traduction*]

Le président: Lorsque nous avons déposé notre douzième rapport, nous avons demandé une réponse exhaustive, que nous comptons recevoir bientôt. On peut espérer que la recommandation numéro trois y sera commentée.

M. Stupich: Je pense que, dans l'ensemble de la population, on convient qu'il faudrait faire plus en matière de prévention du crime, sans se contenter simplement de s'occuper des effets de la criminalité.

Même si cela n'est, dans une certaine mesure, que cosmétique, si les gens savent qu'une partie des biens saisis dans le cadre de cette loi seront affectés à la prévention du crime, ils seront satisfaits de ce que fait le gouvernement.

Lorsque le gouvernement se trouve dans une impasse, il est bien facile pour lui de rogner sur les programmes financés à même les recettes générales. Si tous les fonds proviennent de celles-ci, on risque, une année ou l'autre, de ne rien avoir pour la prévention du crime. Je pense que l'on pourrait dire la même chose dans ce cas-ci.

Le président: C'est ce que M. Thacker vient de dire.

M. Stupich: Si rien n'est saisi, alors. . . mais si la loi dit au moins que, si des biens sont saisis, une partie des produits de la criminalité sera affectée à la prévention, on sera beaucoup plus sûr qu'une certaine somme sera consacrée à la prévention du crime que si on laisse simplement cela à la discrétion du ministre des Finances.

Je pense que le comité devrait adopter une formule; il n'est pas nécessaire que ce soit la moitié. On pourrait prévoir un pourcentage avec un plafond que l'on pourrait modifier de temps à autre ou qui pourrait même être établi par règlement, par exemple. Mais il faut qu'une partie de ces produits de la criminalité soient affectés à la prévention.

M. MacLellan: Monsieur le président, je demanderais au secrétaire parlementaire et peut-être aux représentants du ministère de la Justice ce qu'ils ont l'intention de faire au sujet de notre recommandation. Envisagent-ils de l'appliquer sous cette forme-ci ou sous une autre?

Je pense que cette recommandation du comité est bonne. Vous pouvez nous dire que vous n'avez pas à faire part de votre réaction au rapport du comité maintenant, mais je pense que, dans les circonstances actuelles, nous avons besoin de recevoir une réponse du ministère de la Justice.

M. Nicholson: Merci, monsieur le président. Je voudrais corriger l'impression qui a pu être créée au sujet des intentions du gouvernement en matière de prévention du crime et de réduction de la criminalité reliée à la toxicomanie dans notre pays. Nous avons annoncé pour 1992 un programme quinquennal comportant des crédits de 270 millions de dollars consacrés au programme de réduction et de prévention du crime et de la toxicomanie. Cela fait partie de ce programme.

Le ministère a reçu le rapport du comité permanent et il va l'examiner à fond. Il l'étudiera soigneusement, et la deuxième partie de la recommandation qu'a lue M. Horner précise qu'il faudrait prévoir un certain pourcentage du budget pour la justice pénale, ce que le ministère étudiera évidemment. Mais il le fera en tenant compte des programmes et des dépenses à propos desquels nous avons déjà pris des engagements.

[Text]

• 1700

So I want to assure the committee that it's not something that's indefinite. The government's commitment is there, for $270 million, and I agree with Mr. Thacker. I'll state the point again: it's not a way to do it, in my opinion, to make it a percentage, a cap, or a portion of an indefinite amount. Most of the people involved with this area appreciate being able to plan long-term strategies, rather than have it dependent, in whole or in part, on whatever has been seized or becomes an asset of the Crown.

Mr. MacLellan: Mr. Chairman, I don't think that's what Mr. Thacker is saying. I don't think he's saying we don't need something to apply to crime prevention. I think he's just saying this is perhaps not the best place for it, as I understand it. This may not be the right way.

My concern, Mr. Chairman, is that Parliament prorogues and there is no obligation for the Minister of Justice to then reply to our report. They can look at it all they want over the summer and into the fall, but if there's an election in the meantime, that's it.

At least on this area, I would hope there would be something, because I agree with Mr. Wappel and Mr. Stupich: it's a very important recommendation the committee made. If we're not going to accept this recommendation that Mr. Waddell is putting forward, then what's the alternative? Unless we see something else, this is certainly the best avenue.

Mr. Nicholson: Mr. Chairman, if what happened at the end of the last Parliament is any indication of what will happen, I'll give you the example of the Daubney report. It was tabled right at the end of the 33rd Parliament; it was given a very comprehensive look by the Department of Justice, and replies were made to that report.

Indeed, Mr. MacLellan, I think you sit on the sentencing committee, which is just one of the responses to that report. So that report has had a life that has extended into the 34th Parliament, and I expect the same will apply to the reports of the Standing Committee on Justice that have come out of this Parliament, if we are interrupted by an election this summer.

Mr. MacLellan: As a result, Mr. Chairman, we have a sentencing bill that ignores most of the recommendations of the Daubney report.

Mr. Nicholson: You missed the testimony last night, Mr. MacLellan. Professor Julian spoke in glowing terms of how we had picked up and incorporated recommendations of the Daubney committee into the legislation.

Mr. MacLellan: Portions. I think he said "portions". Anyway, I don't want to get into Bill C-90 and the Daubney report.

Mr. Thacker: I call the question, Mr. Chairman.

Mr. Stupich: The Minister of Justice announced today an ad hoc advisory committee, on the Canadian Strategy on Community Safety and Crime Prevention. I am just wondering where the budget for that committee is coming from.

But apart from that matter, I just wanted to talk about this five-year program. I can recall the person who was the Attorney General of B.C. some years ago, when I was a member of that government, and he said the verbal promise

[Translation]

Je veux donc assurer au comité que ce n'est pas quelque chose de vague. Le gouvernement s'est engagé, à raison de 270 millions de dollars, et je suis d'accord avec M. Thacker. Je le répète, on ne peut pas, selon moi, parler de pourcentages, de plafonds ou de portions à propos d'un montant incertain. La plupart des personnes actives dans ce domaine souhaitent pouvoir élaborer des stratégies à long terme plutôt que de les voir dépendre, entièrement ou partiellement, de ce qui a pu être saisi ou qui est devenu un bien de la Couronne.

M. MacLellan: Monsieur le président, ce n'est pas, me semble-t-il, ce que dit M. Thacker. Il ne dit pas qu'il ne faut pas prévoir quelque chose pour la prévention du crime. Il dit simplement que ce n'est peut-être pas le meilleur endroit pour le faire. Ce n'est peut-être pas la bonne façon.

Ce qui m'inquiète, monsieur le président, c'est qu'en cas de prorogation du Parlement, le ministre de la Justice n'est pas tenu de répondre à notre rapport. Son ministère peut l'étudier autant qu'il le voudra cet été ou cet automne, mais si une élection intervient entre-temps, c'est fini.

J'espère donc qu'au moins dans ce domaine, une décision sera prise, car je conviens avec MM. Wappel et Stupich que le comité a présenté là une recommandation très importante. Si nous n'acceptons pas celle que propose M. Waddell, que pouvons-nous faire d'autre? À moins de trouver une autre solution, celle-ci est certainement la meilleure.

M. Nicholson: Monsieur le président, si ce qui s'est passé à la fin de la dernière législature constitue une référence valable, je peux vous donner l'exemple du rapport Daubney. Il a été déposé à la fin de la 33e législature et, après l'avoir étudiée de façon très approfondie, le ministère de la Justice y a répondu.

En fait, monsieur MacLellan, je crois que vous faites partie du comité qui s'occupe de la détermination de la peine, qui constitue l'une des suites données à ce rapport. L'existence de celui-ci a donc eu des prolongements dans la 34e législature, et je pense qu'il en ira de même des rapports que le comité permanent de la Justice a publié au cours de la présente législature, si une élection y met fin cet été.

M. MacLellan: Le résultat, monsieur le président, est que nous avons un projet de loi sur la détermination de la peine qui ne tient pas compte de la plupart des recommandations du rapport Daubney.

M. Nicholson: Vous n'avez pas assisté au témoignage présenté hier soir, M. MacLellan. Le professeur Julian a parlé en termes très élogieux de la façon dont nous avions intégré à ce projet de loi des recommandations du comité Daubney.

M. MacLellan: Des «portions», du rapport, je crois qu'il a employé ce terme. De toute façon, je ne souhaite pas maintenant parler du projet de loi C-90 ou du rapport Daubney.

M. Thacker: Je demande le vote, monsieur le président.

M. Stupich: Le ministre de la Justice a annoncé aujourd'hui la création d'un comité consultatif spécial concernant la Stratégie nationale sur la sécurité communautaire et la prévention du crime. Je me demande d'où viendra le budget de ce comité.

En dehors de cela, je voulais simplement parler de ce programme quinquennal. Je me rappelle que le procureur général de la Colombie-Britannique, il y a quelques années, lorsque je faisais partie de ce gouvernement, avait dit qu'une

[*Texte*]

wasn't worth the paper it was written on and a five-year promise isn't legislation. There's nothing on that paper saying that the government's really going to do it, other than a verbal promise, whereas having it in this legislation and saying that in the event something is seized that year some portion of these proceeds will be spent on crime prevention I think is a good policy.

As much as we would like to see a five-year program in effect, we could easily have two different Prime Ministers in the next six months. And with Prime Ministers changing, Ministers of Finance are also apt to change. To say that for five years we've got a plan that we're going to follow, Mr. Chairman, is dreaming in technicolour. But if you put it in the legislation, at least it's there as something for this government to go by—or whatever the government, whoever the Prime Minister, and whoever the Minister of Finance.

• 1705

Mr. Wappel: Mr. Chairman, Mr. Thacker may have been convinced by officials, but I'm certainly not convinced. I find it had to believe that officials would be opposed to receiving money. I can understand in terms of planning. You can't plan something unless you have money, but once you have the money you can make the plans.

Just take a number. If $10 million is seized in a year, obviously you can't do anything, or plan anything, in the year in which the $10 million is seized. But if you know, under this clause, you've got $10 million sitting in the bank, then next year you can plan $10 million worth of crime prevention programs, if that is your wish. No one is asking the officials to plan in advance for moneys that may or may not come in. What we're saying is that moneys that are actually in our hot little hands, we're actually holding them, either go into the debt servicing account or we use them for future plans.

The Chairman: But what Mr. Thacker is saying, Mr. Wappel, with respect, is if you legislate 50%, in one year you have $10 million —

Mr. Wappel: I'm not suggesting, for a moment, an amount. I would say something to this effect—

The Chairman: Is this an amendment to the amendment?

Mr. Wappel: I'm just throwing it out for consideration. That's all. We'll see where it goes.

But instead of a period after the word "act", you put a comma, and then you say something like this, "or may be applied", not "shall", at the discretion of the Attorney General, in whole or in part, to the funding of crime prevention programs, administered in whole or in part by the Attorney General.

That leaves it completely wide open for the Attorney General. We're talking about moneys in the hand, not moneys in the bush, and yet it does at least give some moral support to what Mr. Stupich was talking about, of putting something in the statute, that there's a recognition that not necessarily will it go to debt service but that it may go to crime prevention programs—not in any particular amount, not in any particular year—completely at the discretion of the Attorney

[*Traduction*]

promesse verbale reste paroles en l'air et qu'une promesse portant sur cinq ans ne vaut pas une bonne loi. Rien ne nous dit que le gouvernement fera vraiment quelque chose, à part cette promesse verbale; en revanche, si la loi stipulait qu'une partie du produit de la vente des biens saisis cette année sera consacrée à la prévention du crime, cela me paraîtrait une bonne politique.

Nous aimerions que l'on mette en oeuvre un programme quinquennal, mais il se peut fort bien que l'on ait deux premiers ministres différents dans les six prochains mois. Et, quand il y a changement de premier ministre, le portefeuille des Finances risque de changer de mains. Dire que nous avons un programme qui sera appliqué au cours des cinq années à venir, monsieur le président, c'est rêver en couleur. Par contre, si l'on inclut cela dans la loi, cela devient quelque chose que le gouvernement doit respecter, quel qu'il soit, quel que soit le premier ministre ou le ministre des Finances.

M. Wappel: Monsieur le président, M. Thacker s'est peut-être laissé convaincre par les fonctionnaires, mais certainement pas moi. J'ai du mal à croire que des fonctionnaires s'opposeraient à recevoir des fonds. Je comprends les préoccupations en matière de planification, car on ne peut rien planifier si l'on a pas d'argent, mais une fois que l'on a reçu ces fonds on peut faire des plans.

Prenons un chiffre. Si l'on saisit pour 10 millions de dollars de biens en une année, on ne peut bien sûr rien planifier au cours de l'année où ces biens ont été saisis. Mais si, en application de cet article, on sait que l'on dispose de 10 millions en banque, on peut élaborer en conséquence des programmes de prévention du crime pour l'année suivante, si c'est ce que l'on souhaite. Personne ne demande aux fonctionnaires de planifier en fonction de sommes qu'ils ne sont pas sûrs de recevoir. Nous disons simplement que l'argent que l'on a déjà bien au chaud au creux de la main peut être consacré au service de la dette ou à des activités futures.

Le président: En toute déférence, monsieur Wappel, M. Thacker dit que, si l'on prévoit d'affecter la moitié des fonds, l'année où l'on a 10 millions de dollars...

M. Wappel: Je ne veux pas du tout que l'on précise la somme. Je dirais plutôt quelque chose comme...

Le président: S'agit-il d'un sous-amendement?

M. Wappel: Je présente cela seulement à titre indicatif. C'est tout, nous verrons bien ce qu'il en est.

On pourrait modifier l'article en y ajoutant que les sommes peuvent être affectées, à la discrétion du procureur général, totalement ou en partie, au financement de programmes de prévention du crime, administrés entièrement ou partiellement par le procureur général.

Le procureur général a donc toute la latitude requise. Il s'agit de sommes réelles, et non pas imaginaires, et cela apporte au moins un appui moral à ce dont parlait M. Stupich, c'est-à-dire le fait d'indiquer dans la loi que ces sommes ne seront pas nécessairement portées au compte du service de la dette mais qu'elles pourront être affectées à des programmes de prévention du crime—sans que l'on précise ni le montant, ni l'année où cela doit se faire. Cela resterait à la discrétion du

[*Text*]

General, in whatever amount the Attorney General may feel is appropriate in any particular year. Surely that's reasonable.

The Chairman: Before we go any further I want to state that as well as governments having plans for funds, crime prevention programs must have continuation of funding. I think the point Mr. Thacker made, if I'm correct and correct me if I'm wrong, is that if one year you legislate some portion to go, and the next year there are no seizures and nothing to be disposed of, there is no way for crime prevention programs being able to plan their continuation. They're not a start-and-stop operation.

Mr. Thacker: But I think the stronger argument, and it is just based on my experience—maybe an official from Finance could assure us of it—is that under the Financial Administration Act there are real limitations. That's why Parliament has had to get into these special revolving funds that have a separate authority in their own right. Otherwise, under the Financial Administration Act all the money goes into the Consolidated Revenue Fund, and as of March 31 that's the end.

Then you're starting another year only with funds that have been appropriated by Parliament for that year and have gone through the estimates process. Whereas putting in this line is really trying to impose a whole different regime on Parliament, which I believe to be improper under the Financial Administration Act.

Mr. Wappel: I don't understand about the Financial Administration Act and things like that. Let me just give a simple example. You have a million dollars in the kitty, and the minister says okay, I'd like a program for five years, where somebody goes to various schools in Vancouver. We're going to fund it for five years, $200,000 a year. We've got the million dollars in the bank, we've got the $200,000 a year, we've got a five-year program.

Is it illegal under the Financial Administration Act to do something like that? We've got the money, we've got the program, we've got the time, we've got the amount of funding per year. What's the problem with that?

Mr. Peter DeVries (Director of Fiscal Policy, Department of Finance): That wouldn't be illegal if the funds were earmarked as such for a particular program.

Mr. Wappel: That's my precise point, and the Attorney General, at his complete and absolute discretion, would be able to earmark those seized funds in the bank for that program, for those periods of time, at a specific amount per year. That would be perfectly okay under the Financial Administration Act.

Mr. DeVries: But under the Financial Administration Act it would be the Minister of Finance who would first determine whether or not those funds could be allocated out of that account.

Mr. Wappel: Except we've got another act here.

• 1710

Mr. DeVries: No, he would have to sign on to that act prior to. . .

Mr. Wappel: That's an administrative, is it not?

[*Translation*]

procureur général qui pourrait chaque année choisir le montant qui lui paraîtrait adapté. Voilà qui est certainement raisonnable.

Le président: Avant d'aller plus loin, je dirais que, tout comme les gouvernements ont des plans pour l'utilisation des fonds, les programmes de prévention du crime doivent avoir un financement continu. Je me trompe peut-être, mais à mon avis, M. Thacker veut dire que, si l'on prévoit d'affecter une certaine portion une année donnée alors que l'année suivante on risque de ne rien avoir si l'on n'effectue aucune saisie, il est impossible de planifier à long terme le fonctionnement des programmes de prévention du crime. Ces programmes ne peuvent pas fonctionner par à-coups.

M. Thacker: D'après mon expérience, il me semble que l'argument le plus solide—un représentant du ministère des Finances pourrait nous le confirmer—est que la Loi sur la gestion des finances publiques impose de sérieuses limites. Voilà pourquoi le Parlement a dû créer des fonds renouvelables qui sont gérés de façon tout à fait autonome. Sinon, d'après la loi, toutes les sommes sont versées au Trésor après le 31 mars.

On recommence alors un nouvel exercice avec seulement les fonds qui ont été votés par le Parlement pour la nouvelle année et qui ont été répartis dans le cadre des prévisions budgétaires. Par contre, si l'on ajoute cette précision, cela revient à essayer d'imposer au Parlement un régime tout à fait différent que rejette, je crois, la Loi sur la gestion des finances publiques.

M. Wappel: Je ne sais pas ce qu'il en est de la Loi sur la gestion des finances publiques, entre autres. Je vais vous donner un exemple bien simple. Vous avez un million de dollars en caisse, et le ministre dit qu'il aimerait avoir un programme permettant d'effectuer pendant cinq ans des visites dans différentes écoles de Vancouver. Il sera financé pendant cinq ans à raison de 200 000 $ par an. On a un million de dollars en banque et un programme de cinq ans prévoyant 200 000 $ par an.

La Loi sur la gestion des finances publiques interdit-elle de procéder de cette façon? On a l'argent, on a le programme, on a la période, et on a la somme nécessaire chaque année. Quel problème y a-t-il?

M. Peter DeVries (directeur, Politique fiscale, ministère des Finances): Cela ne serait pas illégal si les fonds sont réservés pour un programme donné.

M. Wappel: C'est précisément ce que je veux dire, et le procureur général serait totalement libre de réserver les fonds provenant de ces saisies pour ce programme et pour les périodes en question, en fonction du montant annuel prévu. Cela serait tout à fait acceptable en vertu de la Loi sur la gestion des finances publiques.

M. DeVries: Mais, d'après cette loi, le ministre des Finances devrait tout d'abord décider si l'on peut ou non réserver les fonds.

M. Wappel: Mais, il y a une autre loi qui intervient ici.

M. DeVries: Non, il devrait d'abord répondre aux exigences de cette loi, avant de. . .

M. Wappel: C'est une exigence administrative, n'est-ce pas?

[*Texte*]

As it was indicated, the Crown has to manage the assets until the process is ended. By the time somebody is charged, convicted, and the appeal process is over, that's generally in the area of two to three years. Even though we will be as expeditious as possible in getting the regulations, we're now talking three and a half to four years already. I just don't think it's there. I think this is unnecessary.

The Chairman: Are you saying we will not be able to identify any glitches that may be within this bill in three years?

Mr. Nicholson: Dr. Horner, you're a bright guy. The people who've always sat on this committee are very bright people. I'm quite sure if you decide four, five, or ten years from now that you want to study this or any other section of the Criminal Code, you may find glitches or ways you could improve it. Certainly that is open to this committee.

If you're asking that it be placed into the Criminal Code requiring this, I'm suggesting to you that the experience is that three to five years doesn't provide you with the scope, the body of evidence, the decisions that would probably justify the expense you and others would be undertaking to get into that. That's my guess on it.

Mr. Thacker: Mr. Chairman, I have immense respect for my good friend Mr. Nicholson, but on this one I find myself in a difficult position. It's a principle. I really like the idea of parliamentarians being able to review things—

A voice: Hear, hear.

Mr. Thacker: —against the forces of government and all of that. My support might be dependent upon what treatment this is going to get at report stage and third reading. If we're going to go through quite quickly, this amendment would be quite acceptable to me.

The Chairman: Mr. Stupich, you have to go to your caucus. I understand. We're aware of that.

Mr. Stupich: There won't be any problems.

The Chairman: No problems.

Mr. Nicholson wants to speak again now.

Mr. Nicholson: My view of clauses like this: don't change. But what would be less unacceptable than three years would certainly be five years, Mr. Thacker. I believe there might more reasonably be something or a body of evidence that could be studied. Five years would put it within our next mandate or within the time period.

The Chairman: The reasoning behind the five years was that there would be a whole Parliament gone through before it would be at all looked at. That's why they thought in the next Parliament it should be looked at. This is something fairly new, you know. So you would like five years instead of three.

Mr. Thacker, you don't agree with that?

• 1735

Mr. Thacker: No. With great respect, I have immense respect for him, but three years would be better, in fact. If the god-damned Grits are in, we have to be checking this stuff, Rob.

Some hon. members: Oh, oh.

Amendment agreed to

[*Traduction*]

Comme on l'a déjà dit, la Couronne doit gérer les biens jusqu'à la fin de la procédure. Il faut compter deux à trois ans pour la mise en accusation, le jugement, et les appels. Même si nous avons l'intention de préparer les règlements avec toute la célérité possible, il faut déjà compter trois ans et demi à quatre ans. Cette disposition ne paraît donc inutile.

Le président: Vous voulez dire qu'au bout de trois ans, il sera impossible de savoir si le projet de loi présente des difficultés?

M. Nicholson: Monsieur Horner, vous êtes un homme intelligent. Ce comité a toujours eu des membres très intelligents. Je suis sûr que, si vous décidez dans quatre, cinq ou dix ans, d'examiner telle ou telle partie du Code criminel, vous trouverez toujours des petits problèmes ou des passager susceptibles d'amélioration. Le comité a toujours cette option.

Mais si vous voulez imposer cela dans le Code criminel même, je vous dirai que l'expérience a montré que trois à cinq ans ne suffisent pas pour fournir les éléments, les faits nécessaires pour prendre une décision, et pour justifier les frais que vous et d'autres engageriez. C'est mon avis.

M. Thacker: Monsieur le président, j'ai le plus grand respect pour mon ami, M. Nicholson, mais dans ce cas-ci, je me trouve dans une situation délicate. C'est une question de principe. J'aime beaucoup l'idée que les parlementaires puissent revoir ces dispositions. . .

Une voix: Bravo, bravo.

M. Thacker: . . .contre les forces mêmes du gouvernement. Mon soutien dépendra de ce qu'on en fera à l'étape du rapport et à la troisième lecture. Si nous procédons assez rapidement, je trouverais l'amendement acceptable.

Le président: Monsieur Stupich, vous devez consulter votre caucus, je comprends. Nous le savons.

M. Stupich: Cela ne posera aucun problème.

Le président: Aucun problème.

Monsieur Nicholson demande à nouveau la parole.

M. Nicholson: Je préférerais ne rien changer. Mais si vraiment il le faut, monsieur Thacker, je préférerais certainement cinq ans, plutôt que trois. Cela donnerait le temps de recueillir une quantité raisonnable d'informations ou de données à examiner. Cinq ans, ce serait dans notre prochain mandat.

Le président: Cinq ans, cela voudrait dire toute une législature avant que les dispositions soient revues. Nous avions pensé que cet examen devrait être réalisé par la prochaine législature. C'est assez nouveau, vous savez. Vous préféreriez cinq ans plutôt que trois.

Monsieur Thacker. Pouvez-vous l'accepter?

M. Thacker: Non. J'ai vraiment le plus grand respect pour M. Nicholson, mais je pense que trois ans serait un meilleur délai. Si les fichus Libéraux sont élus, il faut que nous puissions les surveiller, Rob.

Des voix: Oh, oh!

L'amendement est adopté

Mr. Speaker, I think you will find consent for the following motion. I move:

That the motion for second reading of Bill C-128 be amended by having the bill referred to the Standing Committee on Justice and Solicitor General, rather than a legislative committee in the Departmental envelope.

Some hon. members: Agreed.

Motion agreed to, bill read the second time and referred to the Standing Committee on Justice and Solicitor General.

* * *

SEIZED PROPERTY MANAGEMENT ACT

MEASURE TO ENACT

Hon. Gerry Weiner (for the Minister of Justice) moved that Bill C-123, an act respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circumstances be read the third time and passed.

Mr. Rob Nicholson (Parliamentary Secretary to Minister of Justice and Attorney General of Canada and Minister of State (Agriculture)): Mr. Speaker I am pleased to rise and speak on third reading of this bill.

Right off the top, I want to say I am not prepared to apologize, nor is the Minister of Justice or anyone on this side of the House, for the justice bills or the number of them that are before the House.

The record of this Parliament will show that there has been continuous government action taken in making this country a better place and a safer place in which to live. When people say: "My heavens, you are doing something with child pornography; you have wire-tap legislation", I make no apologies for it at all. It is part of a continuing process.

To my knowledge, there has not been one month in the last four and a half years in which this Parliament has not been seized with justice legislation. Most of my colleagues on this side of the House have welcomed that and are very pleased to see it.

• (1550)

Hon. members will know that just the changes to the Young Offenders Act alone were a considerable improvement over the provisions that prevailed in the Young Offenders Act when we began this session of Parliament.

Of course we have to react and we have to react quickly. Some of the wire-tap provisions in the Criminal Code were struck down by the Supreme Court of Canada. At that point we did not simply throw up our hands and say: "Well, that is it. We will not revisit this as we do not want to upset somebody in the opposition because we have so much in the area of justice". We did not say that. We said: "All right. If there is a problem with one of the wire-tap sections, let us have a look at it", and we have changed it.

In the area of child pornography I hope members of the House will support and expedite that. We have already had a couple of attempts at it. It was very difficult, quite frankly, to get that kind of co-operation to move a bill on pornography through the House.

The bill before us now deals with the proceeds of crime. It works in conjunction with a whole host of initiatives and I mentioned the wire-tap legislation. I will explain why we are bringing them in.

The people working against making Canada a wonderful place to live, the people involved with crime in this country, are very sophisticated. There is quite a bit of money involved with these things. Therefore, should the law be constantly updated and reviewed to make sure we have the tools to effectively combat crime?

My answer and that of members on this side of the House is that yes, Canadians want us to do that. This has been confirmed in every questionnaire I have sent out in my riding. I questioned people on a whole host of issues, including crime prevention. I asked them what they thought about the distribution of the proceeds of crime, sharing it with law enforcement jurisdictions. Overwhelmingly people said that it was a good idea.

So when my colleague, the Minister of Justice, introduces a piece of legislation I can say that it certainly goes with my complete blessing and full support. That is what we have here. This bill which deals with the proceeds of crime is a good one.

When people ask me about crime prevention, I say we must get at the profits from crime. That is one way to help prevent crime. This was mentioned in the debate on the previous bill. There is big money in pornography. Let us get to the source of that.

This bill provides for effective management of assets that are seized by the Crown. As well it gives us a regime, a framework whereby we can share the proceeds of crime with the law enforcement community. People may say: "Well, you do not have the regulations". Of course the regulations are not there but we will work that out. It is important for Parliament to state its intention to distribute the proceeds of crime in a fair manner.

Forfeiture and seizure is not an easy process. We had the example of a skiing resort in Quebec that was seized by the Crown at least three years ago. There is still an appeal process going on. The ownership of that does not preside with the Crown at the present time, but we have an obligation to effectively manage it on behalf of the individual from whom it was taken. We owe that individual an obligation until the case is decided one way or another. If it is forfeited to the Crown, we need to have a regime in place for the distribution of that.

This is one part of the government's program but it is an important part. As I say, for my money every month since this Parliament was sworn in over four years ago, we have been seized with justice issues. These issues have the support of people in my riding of Niagara Falls and a lot of ridings across the country.

• (1555)

I do not apologize for the fact that this Parliament is spending time on this. Most Canadians worry about these things and they are reassured when they see their parliamentarians bringing legislation forward that will help make this country a safer one in which to live.

Mr. Ron MacDonald (Dartmouth): Mr. Speaker, I will be splitting my time with the hon. member for Moncton who also has some things to say on this piece of legislation.

I listened with interest to the introduction of the remarks by my hon. colleague who is representing the government on this legislation. Maybe he protests just a little too much. He is unusually sensitive today to observations by the opposition.

I think it was the New Democratic member who said that some people would be cynical in wondering why the government waited until five days before probably the end of its time in office before it came in with this law and order series of legislation.

When trying to support his minister, the current Minister of Justice, the hon. member indicated that he has worked quite hard. There has been a bill a minute, a bill a day, or something like coming into the House lately dealing with justice reform.

It is too bad the former Minister of Justice was not as diligent. The former Minister of Justice, every time I read an article in the newspaper or *Maclean's*, likes to claim about all the tough work she has done in the Department of Justice. It is just too bad she did not suffer from the same work ethic the hon. member feels the current Minister of Justice has as he brings these bills in hand over fist, faster than a speeding bullet. But I guess that is what happens when a minister's eyesight is focused on another seat to occupy in the House of Commons.

Let us just say that Bill C-123 on the proceeds of crime should have been here a heck of a long time ago. This bill simply changes the legislation that has been on the books since about 1989 dealing with the proceeds of crime.

When somebody is convicted of trafficking in illegal drugs, the assets would be seized and those assets would be disposed of. The value of those assets or the assets themselves would revert to the Crown.

Clearly this was an attempt by the Crown to get right down to the root cause of this, as my colleague has said. People who sell drugs or are engaged in child pornography do so for a profit. If we could seize the profits then that would be an additional penalty to the incarceration or fine they would get under the law. It is about time that this has happened.

It is not really the federal government. We make the laws here. With the exception of the RCMP which is a federal force, it nearly always goes to the municipal police force. The municipal police force, which is controlled and paid for by municipal taxes, hunts out these low life and arrests them. It builds a case against them, takes it to the courts and sees them properly prosecuted and if convicted, incarcerated. It is the provincial and not the federal government in most cases and the municipal governments that bear the costs of the administration of justice in these and other cases.

The legislation of 1989 was good in its intent in that it was seizing the assets or the profits of the criminal activity. However, one would beg to ask why the value of that would go over to the federal government and not the provincial one.

Just to highlight my point, in my riding of Dartmouth there are two police forces. There is the RCMP in the county. It is woefully understaffed and that has caused big problems with morale and its pursuit of the administration of justice in keeping the community safe. It does the best job it can with the resources it is given.

However, to give an idea of what the municipal police forces are facing, in times of recession these types of crimes go up. In times of recession there are more break and enters. There is more violent crime. There is more trafficking in drugs. There is an increase in all kinds of criminal activity where there is a profit to be made.

In my riding of Dartmouth the current chief of police, Chief McRae, and the former chief, Chief Cole, will tell you that in the last two years because of cutbacks in transfers to the provinces by the federal government and then cutbacks in transfers from the provincial government to the municipal government, they have had to freeze their budgets.

• (1600)

They have frozen their budgets at $11 million over the last two years but there has been no freeze on the crime rate. The crime rate continues to accelerate but because of the type of downloading of debt from the federal government there has not been a corresponding increase in the level of resources given to municipal police forces like the police force in Dartmouth.

They tell me in Dartmouth that not only is crime going up as resources are frozen but they are now absorbing costs previously absorbed by the RCMP, the federal law enforcement agency. In affect costs have been downloaded from the federal government to the provincial or municipal level.

Budgets are frozen, crime is on the increase, there is no money coming to help them from anywhere and even the RCMP, which has seen its budget frozen over the last few years is now talking about charging municipal police forces user fees for forensic work. As budgets have been frozen and other costs have continued to escalate Dartmouth has lost 13 officers over a period of two years which is a 10 per cent reduction.

I called just before this bill came up and was told the cost of undercover work, if it was contracted out, would be $60 per hour per officer. Usually in drug undercover work there are at least two officers required as well as a patrol car. The work is not usually done during daylight hours so overtime is paid in many cases.

The cost of law enforcement when it comes to trying to break some of these drug rings and crack down on the distribution and sale of illegal drugs in our communities is excessive. In Dartmouth in the last year we have statistics showing there were 108 trafficking charges in a city of 68,000 to 70,000 people. There were 73 possession charges and 181 people taken into custody.

They tell me in Dartmouth there has been a significant increase in the level of crime since 1991, primarily because of the economy and this government-made recession, however there has been no increase in the level of resources given to combat these crimes. This bill goes somewhat in the direction of rectifying this.

Instead of the federal government getting the value of the assets that are confiscated in cases of criminal activity, particularly dealing with illegal drugs, some of these proceeds will go down to the provincial and municipal governments. They will not be going down to the respective police forces but hopefully they will find their way to the forces that are expending resources to get rid of the low life that is infecting our communities far too often.

This is the type of legislation that perhaps we should have more debate on. We are at third reading so it has gone to committee but there are some questions that will probably still have to be asked. It is unfortunate that we are pushing this through as quickly as we are but in the dying days of the government, with six days left before these guys opposite are kicked out of office for a good long time, I guess they are trying their very best to at least put it on the record that after nine years they did try to address some of the serious flaws in the criminal justice system.

Mr. George S. Rideout (Moncton): Mr. Speaker, the member for Dartmouth has really captured the spirit of what is going on here. There is no question that in the dying days of a dying government this type of legislation will be put on the record with no hope that it will ever be adopted.

I think we are fooling the government because we have been working night and day in order to see some of this legislation passed and see some progress. In this particular bill on the proceeds of crime I think we are all supportive of what is going on.

I can tell the member for Dartmouth who really captured the spirit of it, I know of what he speaks. I was the mayor of Moncton a few years ago and I have a real appreciation of what it is like to run a municipal police force. I appreciate the costs associated with it and the number of men and women needed on the force to just try to stem the tide of crime. As the member from Dartmouth has so eloquently said, throw in a government-made recession and the cost escalates that much more.

We were successful in Moncton in negotiating with the provincial government on something completely different. We had to look after traffic violations, speeders and those types of people and all the fines went to the province. We were able to negotiate with the province to get some of the money from fines returned to the municipality. It could be reinvested in our police forces so they could arrest more speeders and use it for other types of crime prevention.

• (1605)

I think that is what we have to be concerned about with this legislation. There is no question that the legislation has indicated that the minister can and does have the power to distribute the proceeds of crime to other levels of government.

The concern I have as I read the definitions and look at what is going on is that this legislation just provides the minister with authority. It does not make distribution mandatory. It makes it questionable as to how this money is going to be divided and whether it will actually get down to the police force that is doing the work. I think that is the critical thing.

If it just ends up in the general revenue of the provincial or municipal government coffers and is not earmarked for crime prevention, investigation and all the things that have to be done then I do not think we are really serving the citizens properly.

I am sure each and every one of us has seen some of the alarming statistics concerning the amount of money that is now earned by the drug barons of the world and the sophistication and type of equipment that is now being used by elicit drug traders. If we are not going to match that expenditure with similar expenditures within our forces then we are going to face some very serious problems.

They are simply going to dominate the situation by sheer weight of wealth and they certainly have done that in the past. At the same time we in government and particularly at the federal government level have been passing restraint on and on down the line until it gets to the municipality that is not capable of providing or having the resources to provide the proper equipment for the police force. Yet we demand that those forces arrest and control the situation.

We on this side are supportive of this legislation. We are anxious to see it better defined so we know exactly where the dollars are going. We want to see it earmarked for use primarily against the drug traffic as well as on the front lines. The troops on the front lines need the resources to fight crime. That is why we are supportive of this legislation.

The Acting Speaker (Mr. Paproski): Before I recognize the hon. member for Port Moody—Coquitlam it is my duty pursuant to Standing Order 38 to inform the House that the questions to be raised tonight at the time of adjournment are as follows: the hon. member for St. Boniface—Student aid; the hon. member for Parkdale—High Park—Crime prevention; the hon. member for Okanagan—Shuswap—Trade; the hon. member for Prince George—Bulkley Valley—Health care.

Mr. Ian Waddell (Port Moody—Coquitlam): Mr. Speaker, the justice committee report, *Crime Prevention in Canada*, says clearly in recommendation No. 3 that the share of the moneys forfeited as proceeds of crime be allocated to crime prevention activities.

This is the bill the government is presenting. It is about forfeiture of moneys and property the police have been able to get. It seems to me the government had a golden opportunity to take the second step toward a national program of crime prevention and that was to have a

guaranteed means of funding crime prevention through this mechanism. I think it would be supported by the public. An editorial in *The Ottawa Citizen* said the government missed a good investment.

The government did make an amendment to the bill today which originally said that the moneys were supposed to go to the debt reduction fund. Now it has left it open and by regulation it can still go to crime prevention.

As I said to the hon. member for Calgary a few hours ago quoting Mick Jagger: "You can't always get what you want but you will find sometimes you might get what you need". What we need is money for crime prevention. What we have is a clause that allows it to happen. I give the parliamentary secretary his due here. He said today that he would do his best to see that those moneys were allocated for crime prevention and so did the Minister of Justice. That is on the record here of the House of Commons. He can rest assured that we will keep reminding him of that particular record. Let us not lose a golden opportunity. Let us get some funds to crime prevention.

• (1610)

Before I sit down I want to add two more points. The first point is that in terms of crime prevention and moneys, the government should not forget that jobs and employment are related to violence and crime. We are seeing the beginning of youth violence in this country and it is scary whether they are breaking into the legislature in B.C. on an environmental process or whether it is the Nazi youth here in Ottawa last week against another group of youth who were protesting against the Nazis. It is scary and it is beginning.

There is overwhelming evidence to show that there is a strong connection between employment and crime, particularly violent crime. An extensive 1990 study of data from the preceding 40 years prepared by the British home office of the United Kingdom dramatically identified: "the profound importance of economic factors in the determination of crime. A comparison of personal consumption per capita, with both property and personal crimes in Britain and other countries, revealed that the significance of these factors goes beyond national borders". It goes to Canada as well.

When the study examined unemployment rates it found: "Growth in offences of violence against the person was also found to be associated with growth in unemployment during the previous year—the relation was strong". These are real studies. I have them and I will show them to the House.

There is also evidence to show that Canadians understand this connection and view crime prevention as a broadly applied policy. While politicians in general continue to subscribe to the myth of neo-Conservative, tough on crime rhetoric, recent survey data suggests that Canadians do not see an increasingly punitive justice system alone as an effective defence against crime.

A survey done for the Canadian Sentencing Commission found that the most popular solution to crime was to reduce the level of unemployment. In a poll regarding the effective ways to control crime, 41 per cent of Canadians said to reduce the level of unemployment; 27 per cent said to make sentences harsher; 13 per cent said to increase the use of non-imprisonment sentencing such as restitution to community service officers; 4 per cent said to increase the number of police officers and 10 per cent said to increase the number of social programs.

The government, in its so-called law and order agenda which is mainly full of rhetoric, is basically phoney and on the wrong track. The right track is to be tough on violent crime and criminals but at the same time balance this with a crime prevention program. We must get at people, particularly young people, before they become criminals.

Did you see the news last night and the story from Cape Breton about the 20-year old kid who murdered the people in the McDonald's? We wonder how we could have reached that obviously disturbed person earlier and perhaps helped him or the family or taken that person right out of society if that was the necessary thing to do. That is the real challenge for crime prevention in the future. That is what I call getting tough on crime. That is what I call being effective on crime. We owe it to the kids.

A kindergarten teacher could tell us about children who could be in trouble in the future. We need to intervene early and have programs for crime prevention, but we have to fund those programs.

We in the NDP give our consent today to the third reading of this bill so it gets through. We urge the government to implement its promises to this House today that money taken from criminal activities, from the forfeiture of moneys from crime, go toward crime prevention because crime prevention is the way of the future.

The Acting Speaker (Mr. Paproski): Is the House ready for the question?

Some hon. members: Question.

The Acting Speaker (Mr. Paproski): Is the pleasure of the House to adopt the motion.

Some hon. members: Agreed.

Motion agreed to, bill read the third time and passed.

The Acting Speaker (Mr. Paproski): It is my understanding that we can call it five o'clock.

SUSPENSION OF SITTING

The Acting Speaker (Mr. Paproski): If the hon. member for Abitibi were here we could carry on, or I could suspend the House.

Some hon. members: Suspend.

The Acting Speaker (Mr. Paproski): I will suspend the House to the call of the Chair.

Some hon. members: Agreed.

The Acting Speaker (Mr. Paproski): Maybe the Whip can get a hold of the hon. member.

The sitting of the House was suspended at 4.16 p.m.

SITTING RESUMED

The House resumed at 4.25 p.m.

The Acting Speaker (Mr. Paproski): Pursuant to Standing Order 30(6) the House will now proceed to consideration of Private Members' Business as listed on today's Order Paper.

Private Members' Business

PRIVATE MEMBERS' BUSINESS

[*Translation*]

STATUS OF WOMEN

MOTION FOR PAYMENT OF A SALARY TO WOMEN WHO REMAIN AT HOME

Mr. Guy Saint-Julien (Abitibi) moved:

That, in the opinion of this House, the government should consider paying a salary to women who remain at home.

He said: Mr. Speaker, we all know that, in 1991, I received many petitions from men and women in my constituency saying that a salary should be paid to women who remain at home. I tabled the petition which was deemed out of order because it requested an amount of $12,000. Immediately following this refusal, and in compliance with the procedure of the House of Commons, I took the initiative of presenting the petition in the form of a motion which read: "That, in the opinion of this House, the government should consider paying a salary to women who remain at home". We all know that the procedure of the House of Commons consists of a draw. I was lucky last month, since my name was drawn. Among the 21 motions which I tabled in this House, and which are the result of consultations with my constituents about what can be done for my constituency, I chose this particular motion.

We all know that most Canadian women spend at least part of their life being at home full time. Almost half of these women do not belong to the work force, and less than one third of those who have preschool children hold a full time job.

When it comes to raising children, Canadian parents seem full of good intentions regarding work sharing. However, for better or worse, work at home remains a woman's job.

Genetically, nothing predisposes women to housework. In practice, however, women do most of the housework. That is why I am referring to "women who remain at home" here, meaning mothers at home.

In Canada, women who stay at home work full time and even do overtime. Studies show that they work between 41 and 60 hours a week, depending on how many children they have and how old they are. Women at home are on duty 24 hours a day, 7 days a week. Try to find a more demanding job.

[*Translation*]

SEIZED PROPERTY MANAGEMENT BILL

SECOND READING—DEBATE ADJOURNED

Hon. Jean-Claude Rivest moved the second reading of Bill C-123, respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circumstances.

Honourable senators, I imagine all senators have understood this is a technical bill that will give the Government of Canada additional means to deal with crime, and especially with drug trafficking and the proceeds of these activities.

In 1991, Parliament passed legislation dealing with the proceeds of crime. The Canadian anti-drug strategy, launched in 1987 and renewed in March 1992 for another five-year period, admits that one of the best ways to deter drug traffickers is to make their business unprofitable. The proceeds of crime legislation is part and parcel of this strategy. Its purpose is to confiscate the profits of drug-related offences, which, as I said before, is an effective way to counter such activities. Attacking the potential profits of drug-trafficking acts as a deterrent to potential drug traffickers and is at the same time a well-deserved penalty for those who take part in this activity.

Honourable senators, these provisions, which were adopted by Parliament, have been used very little so far and need improvements. That is the purpose of the bill before us today, and there are two main reasons for this.

First of all, there has been an absence of an effective asset management regime pending the forfeiture of the seized assets. There is no administrative apparatus to supervise the management of these assets.

Second, there is a lack of co-operation by provincial and local police forces in investigating offences subject to the provisions of proceeds of crime legislation.

This particular bill would fill these two gaps in our current legislation. It would create a bureau within the Department of Supply and Services to manage seized, restrained and forfeited property.

Once the bureau has possession or control over the property seized or restrained in federally initiated prosecutions, it will have the power to manage it until the time the property is disposed of. This includes the advancing of money and any payments that may be necessary to maintain the ongoing operation of the property. It will also advise law enforcement agencies on the seizure or restraining of proceeds of crime.

Finally, the bureau to be created within the Department of Supply and Services would dispose of the confiscated property and administer the asset sharing program. The operations of this bureau would not generate any costs for the federal Treasury, since it would be part of the Department of Supply and Services and would be doing what the government does now with its not altogether adequate resources.

The second main component of this bill is the sharing of forfeited proceeds. This is, in fact, becoming an increasingly pressing issue, both in Canada and at the international level. In fact, provincial and local police forces are becoming increasingly reluctant to spend time and money on investigations connected with the proceeds of crime in support of federal prosecutions. Such investigations are generally very long and very costly.

Honourable senators, under present Canadian legislation, reciprocity is impossible and the purpose of the bill is to deal with this situation.

The proposed law would provide for a fair system to share the net proceeds from the disposal of confiscated goods with the governments responsible for the organizations that participated in the investigation which led to the confiscation. In the same way, proceeds could be shared with foreign governments whose legislation provides for a similar sharing program.

Finally, the bill makes changes to existing laws whereby provincial governments could dispose of the confiscated goods as they see fit. As we know, the provincial attorneys general take legal action for drugs seized as a result of investigations conducted by provincial or local police forces. It is a matter of applying to all provincial governments in Canada the system which already exists under administrative agreements between Quebec and the federal government and between New Brunswick and the federal government. This would be extended to all of Canada.

Honourable senators, that summarizes the main points of this bill. Thank you, and of course I urge you to adopt it.

On motion of Senator Lewis, debate adjourned.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FORTY-FIFTH REPORT ADOPTED

The Senate proceeded to consideration of the Forty-Fifth Report of the Committee on Internal Economy, Budgets and Administration (Budget—Transport and Communications Committee), presented in the Senate on June 3, 1993.

Hon. Thérèse Lavoie-Roux: Honourable senators, I move the adoption of this report concerning the committee on Transport and Communications.

in those Statutes and to repeal certain provisions of those Statutes that have expired or lapsed or otherwise ceased to have effect.

Motion agreed to and bill read third time and passed.

[English]

SEIZED PROPERTY MANAGEMENT BILL

SECOND READING

On the Order:

> Resuming the debate on the motion of the Honourable Senator Rivest, seconded by the Honourable Senator Lavoie-Roux, for the second reading of Bill C-123, respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circumstances.

Hon. P. Derek Lewis: Honourable senators, I am happy to speak on second reading of Bill C-123, and to say that, in principle, we support the bill.

As the Honourable Senator Rivest said on introducing this bill, this is an effort to overcome various shortcomings in present legislation aimed at combating organized crime, particularly drug trafficking and money laundering. That legislation, which might be described as "the proceeds of crime legislation", focused on the seizure and forfeiture of property used in, or earned, as a result of criminal activity. It was aimed at reducing the profit potential of crime and thereby to reduce the motivation for organized crime to finance further elicit efforts. In this it has had some success in that, in the period from 1989 to 1992, something in the order of $60 million has been realized from forfeited property. These moneys have, in the past, reverted to the federal government where the forfeited assets have resulted from criminal cases prosecuted by the Attorney General of Canada.

The present legislation did not provide explicit provision for the management and maintenance of seized property from the time of its seizure to realization, or to its return to owners where that was the ultimate outcome of the seizure. Neither did it provide for division with other jurisdictions of the proceeds of the forfeited property. In this respect, the proposed legislation is long overdue and is welcome.

The bill's object is to lessen the disincentive to various authorities to undertake cooperative investigations. It must be remembered that, in the investigation of crime, prosecution of the offenders and the seizure of property arising therefrom, several authorities are quite often involved. You may have municipal police forces, provincial police and justice officials and courts, as well as the RCMP and the federal justice department, all involved in such proceedings. However, other than the federal government, none of these authorities receive any benefit or share from the proceeds of forfeited property, even though they may have provided the cost of such services in varied amounts.

We are here, of course, dealing with cases prosecuted by the Attorney General of Canada. This can understandably be a cause of disincentive to cooperation between the various authorities who might otherwise be involved in these efforts.

As Senator Rivest has said, the aim of the present bill is to provide authority to the government, through the relevant minister, to make provision for the sharing of the proceeds of forfeited property with the various authorities which may have been involved in the proceedings. This will apply to both domestic and foreign governments. If this is arranged in a satisfactory manner, it should lead to an equitable division of the proceeds.

• (2020)

The bill also provides for the establishment of an office in the Department of Supply and Services which will be empowered to have custody and management of any property within the scope of the legislation. Under this provision, property management services may be engaged for both maintenance and operation of property until it is either disposed of by sale or returned to the proper owner.

There is provision in the bill to cover the cost of such maintenance and operation. I understand that services from outside the department will be engaged for such management services.

Honourable senators, while we feel that we can support the bill, there are a few points we believe must be made, which I hope can be addressed more fully when the bill goes to committee.

First, as I have said, this bill provides authority for the sharing of the proceeds of forfeited property. In fact, clause 10 of the bill provides that the minister shall — and I emphasize "shall" — share the proceeds of disposition of forfeited property in accordance with regulations.

Clause 19 of the bill authorizes the making of regulations respecting the sharing of such proceeds. In other words, although the bill provides that the proceeds shall be shared, there are as yet no provisions for what amounts are to be shared, how those amounts are to be determined, or the times or manner of the sharing.

We are not told how, when, in what amounts or proportions, or with whom the proceeds are to be shared. It is all left to regulations to be made after the bill is passed. We are left in the dark. While we may agree in principle with the bill, surely we should know what the principles of such a division will be.

It is almost like signing a blank cheque, except that in this case there will be no cheque at all, even though the minister is directed to share the proceeds. We are asked to agree to blank regulations.

As well, when this bill was introduced in the other place by the Solicitor General, it was suggested that the sharing of the proceeds would be on the basis of the proportion of input provided by the authority involved in the investigation and successful prosecution. It was further suggested that such share would go to the taxing authority in charge of the body doing the actual work on the investigation.

In other words, if a provincial police force were cooperating in the investigation, its share of the proceeds would go to the provincial government rather than directly to the provincial police force, and might then become part of the provincial general revenues and be used as such. In such a case, the share of the proceeds would not go to augment the provincial police budget, where the money could have been used to further police work in areas such as crime prevention. This might well reduce the incentive for police forces to involve themselves deeply in investigations that would not likely result in monetary benefit to them.

On the other hand, if a police force were to receive directly the share of such proceeds, it is possible that the taxing authority in charge of such a force would be tempted to reduce the police budget by the amount received from the share of the proceeds. This would appear to defeat the incentive to the police force to press such investigations. Then again, we might find that, if a police force did directly receive a share of the proceeds in proportion to the effort put into an investigation, there might be a tendency for it to keep such investigation in its own hands as long as possible in order to enhance its own portion of the proceeds. It seems to me that vying for the work would be a disincentive to cooperation among the various law enforcement agencies.

• (2030)

These are points which, I believe, need discussion and clarification.

Finally, honourable senators, there are questions with respect to the new office to be established to administer the provisions of this bill. Is it to evolve into another bureaucratic nightmare that will frustrate various governments' attempts to gain access to the proceeds of seized property or to obtain information as to their management?

How will the operation of the office be financed? Will the costs of operation be taken out of the proceeds realized from the forfeited property? In this respect, I note from what Senator Rivest said — if I understood him correctly — that there would be no cost to government from the office's operations. That is something we should look into, honourable senators.

What will be the actual function of the office? How much involvement will it have with the private sector in its operations? These are all problems upon which we should have clarification.

Honourable senators, while supporting the bill in principle, I feel there are many questions, particularly with respect to the matter of the sharing of proceeds, that require some clarification in committee.

Honourable senators, I hope the bill will go to committee for study shortly.

Hon. Senators: Hear, hear!

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read the third time?

On motion of Senator Lynch-Staunton, for Senator Rivest, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

INVESTMENT CANADA ACT

BILL TO AMEND—SECOND READING

Leave having been given to revert to Order No. 7:

On the Order:

> Resuming the debate on the motion of the Honourable Senator Ghitter, seconded by the Honourable Senator Stratton, for the second reading of Bill C-89, to amend the Investment Canada Act.

Hon. Michael Kirby: Honourable senators, I rise to make a few comments on the second reading of Bill C-89 prior to its being sent to the Standing Senate Committee on Banking, Trade and Commerce for consideration.

I wish to begin by pointing out some of the history of Bill C-89. Bill C-89 amends the Investment Canada Act, which many of you will recall was the act that replaced the Foreign Investment Review Act in 1985.

The history of foreign investment legislation in Canada goes back to the Gray Report of 1972, which was a report to the government of the day on foreign direct investment in Canada. The outgrowth of that report lead to the establishment of the Foreign Investment Review Act (FIRA) of April 1974. That act was the first piece of legislation in this country to deal with foreign investment and how government could maximize the benefit of foreign investment in the country.

EVIDENCE

OTTAWA, Wednesday, June 16, 1993

[*Text*]

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-123, respecting the management of certain property seized or restrained in connection with certain offences, the disposition of certain property on the forfeiture thereof and the sharing of the proceeds of disposition therefrom in certain circumstances, met this day at 3 p.m. to give consideration to the bill.

Senator Gérald-A. Beaudoin (*Chairman*) in the Chair.

The Chairman: Honourable senators, I call the meeting to order.

We meet today to give consideration to Bill C-123, the seized property management bill. We have several witnesses with us today. They are Mr. Michael Dambrot, Mr. Daniel Murphy, Mr. Gérard Normand, Mr. Noël Bhumgara, Chief Superintendent Ryan and Inspector B.W. Bowie.

I understand that one of you will be doing most of the talking.

Mr. Michael Dambrot, Senior General Counsel and Director, National Strategy for Drug Prosecution, Department of Justice: I shall, Mr. Chairman. Chief Superintendent Ryan also has some remarks to make.

The Chairman: Go ahead, sir.

Mr. Dambrot: The purpose of this bill is to provide some new and greatly needed features to our existing proceeds-of-crimes scheme. Canada's original proceeds-of-crime legislation was enacted in 1989 as part of the Criminal Code, the Narcotic Control Act and the Food and Drugs Act. Some additional provisions were enacted in 1991 in the Proceeds of Crime Money Laundering Act.

Despite considerable federal enforcement activity, the utilization of the scheme has not been maximized. The absence of a coherent and effective asset management regime and the low level of involvement in investigating proceeds of crime offences by local police forces, have been of significant concern.

The RCMP are of the view that there are tens of millions of dollars of uninvestigated proceeds of crime in Canada. That is not to say we are not having some successes with the current regime.

In Montreal, for example, a federal prosecutor recently obtained a conviction in a case which should result in a forfeiture of two properties with a value in excess of $1.5 mil-

TÉMOIGNAGES

OTTAWA, le mercredi 16 juin 1993

[*Traduction*]

Le Comité sénatorial permanent des affaires juridiques et constitutionnelles, à qui a été renvoyé le projet de loi C-123, Loi concernant l'administration de bien saisis ou bloqués relativement à certaines infractions, l'aliénation de biens après confiscation et, dans certains cas, le partage du produit de leur aliénation, se réunit aujourd'hui à 15 heures pour étudier le projet de loi.

Le sénateur Gérald-A. Beaudoin (*président*) occupe le fauteuil.

Le président: Honorables sénateurs, je déclare la séance ouverte.

Nous nous réunissons aujourd'hui pour étudier le projet de loi C-123 sur l'administration des biens saisis. Nous accueillons plusieurs témoins. Il s'agit de MM. Michael Dambrot, Daniel Murphy, Gérard Normand, Noël Bhumgara, ainsi que du surintendant principal chef Ryan et de l'inspecteur B.W. Bowie.

Je crois savoir que l'un d'entre vous sera le porte-parole principal.

M. Michael Dambrot, avocat général principal et directeur, Stratégie nationale des poursuites en matière de drogues: Ce sera moi, monsieur le président. Le surintendant principal Ryan aura également quelques observations à faire.

Le président: Allez-y, monsieur.

M. Dambrot: L'objet du projet de loi est d'ajouter quelques éléments dont nous avons grand besoin dans le régime actuel d'administration des produits de la criminalité. Les premières dispositions canadiennes dans ce domaine ont été adoptées en 1989 dans le cadre du Code criminel, de la Loi sur les stupéfiants et de la Loi sur les aliments et drogues. D'autres dispositions sont venues s'ajouter en 1991, dans la Loi sur le recyclage des produits de la criminalité.

Malgré les efforts considérables déployés au niveau fédéral pour appliquer ces dispositions, ce régime n'a pas été exploité au maximum. L'absence de régime cohérent et efficace de gestion des biens et la faible participation des forces policières locales aux enquêtes sur les infractions relatives aux produits de la criminalité ont donné lieu à de grandes préoccupations.

La GRC estime à des dizaines de millions de dollars les produits de la criminalité qui ne font l'objet d'aucune enquête au Canada, mais il ne faut pas en conclure que nous n'obtenons aucun résultat au moyen du régime en place.

À Montréal, par exemple, un procureur fédéral a obtenu récemment dans une cause une condamnation qui permettra de confisquer deux propriétés d'une valeur de plus de 1,5 million

[*Text*]

lion. Such results are being achieved, however, despite the fact that we are experiencing problems with the management of seized and restrained assets.

No police department is currently adequately equipped to carry out these management responsibilities. Police lack the necessary property management expertise, the budgetary mechanisms and so on, needed to finance management. They also lack familiarity with the private sector resources available to assist with the management of these assets.

Even if the police forces acquire the needed wherewithal, the problem would not be eliminated. The responsibility to manage effectively the type of assets that are the target of proceeds-of-crime cases would require the police to redirect limited resources away from their real investigative duties. The attack against the profits-of-criminal enterprises will obviously be most effective if the police are doing the work they do best and asset management is left to professional asset managers.

The management of seized or restrained assets requires considerable human and financial resources, particularly where real property or ongoing businesses must be managed. The original proceeds-of-crime provisions did not clearly establish responsibility for asset management. They did not adequately address the need to allocate the legal responsibility for the maintenance of restrained property. They did not address the related need for clear authority to advance necessary moneys for this purpose to the asset managers.

There has also been a strong demand for what is called equitable sharing, both domestically and at the international level, as a method to respond to the perceived disincentive to cooperation on the part of provincial and local governments. In an effort to resolve these difficulties, the government introduced the seized property management bill.

This legislation provides needed powers to the Minister of Supply and Services to assist the police with the management responsibilities associated with the proceeds-of-crime assets that they target. These powers would be exercised on behalf of the Minister of Supply and Services by officials in a small office within the Department of Supply and Services. This office, it is anticipated, would operate on a cost-neutral basis. Its primary task would be in federally-initiated prosecutions to plan for and manage the seizure, the restraint, the forfeiture and the disposition of properties.

[*Traduction*]

de dollars. Nous obtenons des résultats comme ceux-là même si nous éprouvons des problèmes dans la gestion des biens saisis et bloqués.

À l'heure actuelle, aucun service de police n'est suffisamment bien équipé pour s'acquitter de ces responsabilités de gestion. Ces services n'ont pas les compétences nécessaires en gestion immobilière ni les mécanismes budgétaires, par exemple, pour assurer la gestion financière. Ils ne sont pas assez au courant non plus des ressources auxquelles ils pourraient faire appel dans le secteur privé pour les aider à gérer ces biens.

Même si les services policiers se dotent de tous les moyens nécessaires, le problème ne sera pas éliminé pour autant. Pour assumer la responsabilité de gérer efficacement les types de biens qui sont en cause dans ces affaires criminelles, les services policiers devraient détourner des ressources limitées de leurs fonctions réelles, celles des enquêtes. De toute évidence, les offensives contre les activités criminelles lucratives seront plus efficaces si les services policiers font le travail qu'ils savent le mieux faire, laissant la gestion des biens à des spécialistes du domaine.

La gestion des biens saisis ou bloqués exige des ressources humaines et financières considérables, surtout lorsqu'il s'agit de gérer des biens immeubles ou des entreprises en exploitation. Les dispositions initiales sur les produits de la criminalité n'établissaient pas clairement les responsabilités en matière de gestion des biens. Elles ne tenaient pas compte adéquatement de la nécessité d'attribuer la responsabilité légale de gérer les biens bloqués, ni, non plus, de la nécessité d'autoriser clairement l'avance des fonds nécessaires aux gestionnaires des biens.

Il s'est manifesté également une forte demande de ce qu'on a appelé un partage équitable, aux niveaux national et international, comme moyen d'éliminer ce qu'on a perçu comme un obstacle à la coopération des administrations provinciales et locales. Le gouvernement a présenté le projet de loi sur l'administration des biens saisis afin de tenter de régler ces difficultés.

Cette mesure législative donne au ministre des Approvisionnements et Services les pouvoirs nécessaires pour aider les services policiers à s'acquitter de leurs responsabilités en matière de gestion des produits des activités criminelles contre lesquelles ils luttent. Ces pouvoirs seront exercés au nom du ministre des Approvisionnements et Services par les fonctionnaires d'un petit service relevant du ministère des Approvisionnements et Services. Il est prévu que ce service fonctionnera sans engagement de coûts. Sa tâche principale serait, dans les poursuites intentées à l'échelon fédéral, de préparer et de gérer la saisie, le blocage, la confiscation et l'aliénation de biens.

[*Text*]

As I have said, the bill also establishes a regime for equitable sharing of forfeited assets within and outside Canada. The office would be empowered to share, in accordance with regulations, the proceeds of disposition of forfeited property with governments responsible for law enforcement agencies that have participated in the investigation of the offence that leads to the forfeiture.

As you are no doubt aware, there is an issue outstanding concerning the appropriate government to receive the share. The Justice Department and the Ministry of the Solicitor General engaged in an extensive consultation process on this issue over a period of several months. The issue had not been resolved at the time that this bill was tabled in the house.

In the consultation process, however, the two departments consulted provincial attorneys general, provincial solicitors general, the Federation of Canadian Municipalities, the Canadian Association of Chiefs of Police, the Canadian Police Association, the Canadian Association of Police Boards, the Canadian Bar Association and the Canadian Insolvency Practitioners Association. Unfortunately, there was far from a consensus on this issue from these various consultees.

All of the provincial attorneys general and the solicitors general strongly expressed their preference that sharing be directed to provincial governments only for subsequent reallocation by them for law enforcements purposes. They said this would recognize that municipalities and municipal police forces are creatures of the province, that they were in the best position to make the kinds of allocations that were appropriate.

The municipalities and police organizations, on the other hand, strongly pressed their claim for direct sharing with municipal governments as well as provincial governments.

I should say that none of the consultees supported direct sharing with police forces. The Canadian Bar Association, in particular, strongly opposed direct sharing with police forces. What we learned from the process is that very few people support direct sharing with police forces for many policy reasons.

This is obviously a sensitive issue between provinces and municipalities. A process has been put in place to try to finally develop a consensus which does not yet exist on this issue.

Once the consensus or a decision is reached, the intention is that regulations will be prepublished and subjected to the regular regulatory review process.

There were witnesses who appeared in the House committee on behalf of the Canadian Association of Chiefs of Police, the Canadian Police Association and the Federation of Canadian Municipalities. They were asked if they preferred the bill to go

[*Traduction*]

Comme je l'ai déjà dit, le projet de loi établit également un régime de partage équitable des biens saisis tant au Canada qu'à l'étranger. Le bureau sera autorisé à partager, conformément aux dispositions d'un règlement, le produit de l'aliénation de biens confisqués avec les gouvernements dont relèvent les services d'application de la loi qui ont participé à l'enquête ayant abouti à la confiscation.

Vous le savez sans doute, le problème du partage entre les diverses instances n'est toujours pas réglé. Les ministères de la Justice et du solliciteur général ont mené d'importantes consultations sur la question pendant plusieurs mois, mais le problème n'était toujours pas résolu lorsque le projet de loi a été déposé à la Chambre.

Néanmoins, ces deux ministères ont pu consulter les procureurs et les solliciteurs généraux des provinces, la Fédération canadienne des municipalités, l'Association canadienne des chefs de police, la *Canadian Association of Police Boards*, l'Association du Barreau canadien et la *Canadian Insolvency Practitioners Association*. Malheureusement, aucun consensus ne s'est dégagé, beaucoup s'en faut, entre les diverses parties consultées.

Tous les procureurs et solliciteurs généraux des provinces préfèrent très nettement que la part revenant aux provinces soit versée aux gouvernements provinciaux, quitte à ce qu'elle soit ensuite partagée entre les services d'application de la loi. Selon eux, cette formule reconnaît que les municipalités et les forces policières municipales sont créées par les provinces et que ce sont ces dernières qui sont les mieux placées pour faire les partages qui s'imposent.

Les municipalités et les organismes policiers, par contre, ont vigoureusement réclamé pour les municipalités et les provinces une participation directe au partage.

Je dois dire qu'aucune des parties consultées ne s'est prononcée en faveur d'un partage direct avec les forces policières. L'Association du Barreau canadien, notamment, s'y est opposée énergiquement. Ce que les consultations nous ont appris, c'est que fort peu de gens sont favorables à un partage direct avec les forces policières, et ce, pour de nombreuses raisons qui tiennent à la politique.

Il s'agit de toute évidence d'une question délicate qui se pose entre les provinces et les municipalités. Un dispositif a été mis en place en vue de dégager enfin un consensus sur la question, mais l'objectif n'est pas encore atteint.

Une fois qu'il y aura consensus ou qu'une décision aura été prise, on entend publier une première version du règlement, qui sera soumis à examen ordinaire de la réglementation.

Des témoins représentant l'Association canadienne des chefs de police, l'Association canadienne des policiers et la Fédération canadienne des municipalités ont comparu au comité de la Chambre des communes. Il leur a été demandé

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forward as is or that it be held up while this issue was resolved. My understanding of their testimony is that they all prefer that the bill go forward as it is because they feel it is an important initiative for them.

The bill also contains a provision that deals with the remaining federal funds, after any applicable sharing has been distributed to provincial or local governments. Clause 16 provides that the remainder, after making allowances for losses, claims, and ongoing expenses, shall be paid into accounts as prescribed in the regulations. The purpose of this is to permit the government to give consideration to creating a new account for the purpose of providing funding for other crime prevention initiatives. No such account exists at the moment, but the matter is under active consideration.

Sharing is obviously an important element in this scheme and of equal significance is the establishment of an effective, efficient and accountable asset-management procedure. If assets are not effectively managed, there will be nothing at the end of the process available to share.

One other feature of importance, particularly for Quebec and New Brunswick, is that the legislation will provide that where prosecution of an offence was commenced at the instance of a government of a province and conducted by, or on behalf of that government, any forfeited property will be disposed of as the attorney general of that province directs. This is in response to a concern raised by the attorneys general of Quebec and New Brunswick who, unlike other provincial attorneys general, conduct some drug prosecutions which are investigated by local or provincial police agencies. Those moneys presently go to the federal treasury. Understandably, they believe that those forfeitures in their own cases should go to their governments. Clause 16 of the bill provides that change.

Finally, the bill provides for a review of the legislation after three years. This would give an opportunity to determine if this management structure and the sharing expectations are sound and whether it has been done right or should be improved.

I thank you for this opportunity to deliver these brief remarks, Mr. Chairman. My colleagues and I are ready to answer any questions you may have on the bill. Although I believe, as I have indicated, Chief Superintendent Ryan also has some remarks to make.

The Chairman: Before asking the witnesses from the RCMP for their comments, I understand that there will be some questions concerning the bill at the moment. Of course, you are in a position to answer questions about the sharing aspects.

[*Traduction*]

s'ils préféraient que le projet de loi soit adopté tel quel ou qu'on attende que le problème soit résolu. Si j'interprète fidèlement leur témoignage, tous préfèrent que le projet soit adopté dans sa forme actuelle, car ils y voient une initiative importante pour eux.

Le projet de loi comporte également une disposition sur les sommes qui restent après la remise aux provinces ou aux municipalités de la part qui leur revient. Aux termes de l'article 16, les sommes qui restent, une fois soustraits les montants réservés aux pertes, aux indemnités et aux dépenses de fonctionnement sont portées au crédit de comptes prévus par le règlement. La raison d'être de cette disposition est de permettre au gouvernement d'envisager la création d'un nouveau compte en vue de financer d'autres initiatives de prévention du crime. Il n'existe aucun compte de cette nature pour l'instant, mais la question est étudiée de près.

De toute évidence, le partage est un élément important du régime; il est tout aussi important que l'établissement d'un dispositif de gestion des biens efficace, efficient et responsable. Si les biens ne sont pas gérés efficacement, il ne restera rien à partager, en bout de ligne.

Une autre disposition de la loi qui est importante, notamment au Québec et au Nouveau-Brunswick, est que, lorsque les poursuites sont intentées à la demande du gouvernement d'une province, menées par lui ou en son nom, tous les biens confisqués seront aliénés selon les instructions du procureur général de cette province. Cette disposition répond à une préoccupation des procureurs généraux du Québec et du Nouveau-Brunswick qui, à la différence de ce qui se passe dans les autres provinces, intentent des poursuites en matière de drogues dans des causes sur lesquelles les services policiers locaux ou provinciaux ont fait enquête. En ce moment, cet argent est versé au Trésor fédéral. Ils estiment, et cela se comprend fort bien, que les biens saisis dans ces causes doivent revenir à leur gouvernement. L'article 16 prévoit ce changement.

Enfin, le projet prévoit un examen de la loi après trois ans. Cet examen devrait permettre de voir si la structure de gestion et le partage sont satisfaisants, si les choses se passent normalement ou s'il y a des améliorations à apporter.

Monsieur le président, je vous remercie de m'avoir permis de faire ces brèves observations. Mes collègues et moi sommes prêts à répondre à toutes les questions que vous pouvez avoir à poser sur le projet de loi. Je crois cependant, comme je l'ai dit, que le surintendant principal Ryan a des observations à faire.

Le président: Avant de demander leur point de vue aux témoins de la GRC, je crois que nous allons passer dès maintenant aux questions sur le projet de loi. Vous êtes évidemment en position de répondre aux questions sur le partage.

[*Text*]

It is unfortunate that the minister and his parliamentary secretary cannot be with us either today or tomorrow. However, I understand that you may speak on his behalf because there is a policy question here that has been raised by the members of the other side.

Senator Lewis: Mr. Dambrot, can you tell us what happens now where you effect a seizure? Can you give us the background? What is the procedure so that we can understand it?

Mr. Dambrot: If there is a seizure of an asset which requires management, almost inevitably it would be an RCMP case because the local police are not actively engaged in those kinds of cases. At present, the RCMP would provide whatever management is required, if management is required.

I suppose the best example of that is a case in the province of Quebec in which a ski resort was restrained under the provisions of the act. The RCMP has been responsible for the management of that ski hill. It was recently forfeited, but they have been responsible for its management for the three-year period during which it was in litigation and before the courts. The RCMP retained private managers to do the work.

That is probably the case that most underscored the need for some reform because there were many problems which were not anticipated that resulted from that case. There were difficulties in how the RCMP could obtain the funds necessary to keep the ski hill in operation. There are third parties who have interests in the property. The legislation clearly intends to respect the rights of third parties. There are many difficult problems of that, but that is the way it has been done up to the present.

Senator Lewis: I presume properties are held and eventually disposed of?

Mr. Dambrot: That is correct. They ordinarily cannot be disposed of until there is a criminal conviction of the accused and an order of forfeiture. We have the obligation to manage the property until it is forfeited, no matter how long it takes to work through that process. Once it is forfeited, the government can sell the property, subject to appeals.

Senator Lewis: If there is no conviction, the property might be returned?

Mr. Dambrot: The property would ordinarily be returned if there was no conviction.

Senator Lewis: I have not traced the offences which would result in seizure or forfeiture, but we are dealing primarily with drug offences. There are other offences, are there not?

[*Traduction*]

Il est regrettable que le ministre et son secrétaire parlementaire ne puissent comparaître aujourd'hui ou demain. Je crois savoir, cependant, que vous êtes autorisé à répondre au nom du ministre. Les membres de l'autre côté ont soulevé une question de politique.

Le sénateur Lewis: Monsieur Dambrot, pouvez-vous nous dire ce qui se passe maintenant lorsque vous faites une saisie? Pouvez-vous nous situer? Quelle est la procédure suivie, pour que nous puissions la comprendre?

M. Dambrot: S'il y a saisie de biens qu'il faut gérer, il s'agit presque inévitablement d'affaires dont la GRC est chargée, car les services locaux de police ne s'occupent pas activement de ces affaires. À l'heure actuelle, c'est la GRC qui se charge de la gestion, s'il y a lieu.

Le meilleur exemple est sans doute celui d'un centre de ski, au Québec, qui a été bloqué, en vertu des dispositions de la loi. C'est la GRC qui a été chargée de la gestion de ce centre, qui a d'ailleurs été confisqué récemment. La GRC a été responsable de la gestion pendant les trois années qu'ont duré le litige et les procédures judiciaires. Elle a retenu les services de gestionnaires du secteur privé pour effectuer le travail.

Il s'agit probablement là de l'affaire qui a fait le mieux ressortir la nécessité d'une réforme, car de nombreux problèmes ont surgi qui n'avaient pas été prévus. Ainsi, la GRC a eu du mal à obtenir les fonds nécessaires pour maintenir l'exploitation du centre de ski. Des tiers détenaient des intérêts dans ce centre. Or, l'intention du législateur est clair: il importe de respecter les droits des tiers. Tout cela pose des problèmes difficiles, mais c'est ainsi que les choses se passent pour l'instant.

Le sénateur Lewis: Je suppose que les biens sont détenus et éventuellement liquidés.

M. Dambrot: C'est exact. Normalement, les biens ne peuvent être aliénés tant que ne sont pas terminées les poursuites au criminel contre le prévenu et tant qu'il n'y a pas eu ordonnance de confiscation. Nous avons l'obligation de gérer les biens tant qu'ils n'ont pas été confisqués, peu importe le temps que cela peut prendre. Après la confiscation, il est possible au gouvernement de vendre les biens, sous réserve des appels qui peuvent être interjetés.

Le sénateur Lewis: S'il n'y a pas condamnation, les biens peuvent être rendus?

M. Dambrot: Ils sont normalement rendus à leur propriétaire s'il n'y a pas condamnation.

Le sénateur Lewis: Je n'ai pas essayé de voir quelles infractions peuvent donner lieu à des saisies et à des confiscations, mais il s'agit essentiellement d'infractions relatives aux drogues. N'y en a-t-il pas d'autres?

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Mr. Dambrot: There are other offences, but the reason our focus is on drugs is that this bill creates a federal management scheme to support federal prosecutions. That is almost invariably drug offences. Other offences come within the "proceeds of crime" scheme and are prosecuted by provincial attorneys general, but they do not fall within this scheme. This is a federal management scheme.

Senator Lewis: I understand that occasionally the provincial attorneys general may prompt offences.

Mr. Dambrot: Yes, indeed.

Senator Lewis: Which would result in forfeiture and seizure?

Mr. Dambrot: Yes. There is a list of offences which they prosecute.

Senator Lewis: In those cases, what happens to the proceeds? I am given to understand that they come from the federal government.

Mr. Dambrot: No. I did not mean to mislead you.

The problem I referred to in Quebec and New Brunswick is a special problem. If a provincial attorney general is prosecuting a "proceeds-of-crime" offence under the Criminal Code and there is a forfeiture, the proceeds of that forfeiture go to the provincial government. We have nothing, federally, to do with that.

The problem area relates to forfeitures under the Narcotic Control Act which, because of its special language, results in the forfeiture going to the federal government, even though it was a provincial case.

That problem arises only in Quebec and, to a small degree, in New Brunswick. Those are the only two provinces that undertake drug prosecutions. That problem could arise elsewhere, but it does not.

Senator Stanbury: Are the provinces saying that even though the federal government seizes the property, they should be the beneficiaries because of that peculiarity of its jurisdiction?

Mr. Dambrot: The situation is a bit worse than that. In Quebec, for example, the Montreal Urban Community Police may make a seizure. The provincial attorney general may prosecute the case under the Narcotic Control Act. If there is a forfeiture, the proceeds come to the federal government. There is no question that such a procedure is not equitable. It probably arose in the days when the Narcotic Control Act was passed and this state of affairs did not exist. The province of

[*Traduction*]

M. Dambrot: Il y en a effectivement d'autres, mais si l'attention se porte surtout sur les drogues, c'est que le projet de loi prévoit la mise en place d'un régime fédéral à l'appui des poursuites intentées à l'échelon fédéral. Il s'agit presque invariablement, dans ce cas, d'infractions relatives aux drogues. D'autres infractions relèvent du régime qui régit les «produits de la criminalité», mais les poursuites sont intentées par les procureurs généraux des provinces et les biens en cause ne sont pas gérés dans le cadre du régime fédéral.

Le sénateur Lewis: Je crois savoir que, à l'occasion, l'initiative peut venir des procureurs généraux des provinces.

M. Dambrot: C'est juste.

Le sénateur Lewis: Et il peut y avoir saisie ou confiscation?

M. Dambrot: Oui. Il y a une série d'infractions pour lesquelles ils peuvent intenter des poursuites.

Le sénateur Lewis: Dans ces cas, qu'advient-il des produits de la criminalité? Je crois savoir que la question relève des autorités fédérales.

M. Dambrot: Non. Je ne voulais pas vous induire en erreur.

Le problème dont j'ai parlé à propos du Québec et du Nouveau-Brunswick est particulier. Si le procureur général d'une province intente en vertu du Code criminel des poursuites pour une infraction où il peut y avoir confiscation de «produits de la criminalité» et qu'il y a effectivement confiscation, les biens reviennent au gouvernement provincial. Les autorités fédérales n'ont rien à y voir.

Les problèmes sont liés aux confiscations faites en vertu de la Loi sur les stupéfiants. À cause d'un libellé particulier, les biens confisqués reviennent au gouvernement fédéral même si l'affaire relève de la province.

Le problème se pose uniquement au Québec et, dans une mesure modeste, au Nouveau-Brunswick. Ce sont les deux seules provinces qui intentent des poursuites en matière de stupéfiants. Le problème pourrait se poser ailleurs, mais ce n'est pas le cas pour l'instant.

Le sénateur Stanbury: Les provinces disent-elles que, même si le gouvernement fédéral saisit les biens, ceux-ci doivent leur revenir à cause des particularités en matière de compétence?

M. Dambrot: La situation est légèrement pire. Au Québec, par exemple, la Police de la Communauté urbaine de Montréal peut effectuer une saisie. Le procureur général de la province peut intenter les poursuites en vertu de la Loi sur les stupéfiants. S'il y a confiscation, les produits reviennent au gouvernement fédéral. Il est certain que cela n'a rien d'équitable. Le problème remonte probablement à l'époque de l'adoption de la Loi sur les stupéfiants; à ce moment-là, ce

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Quebec did not start prosecuting drug offences until some time considerably later.

The Chairman: If the forfeiture is in Quebec and the prosecutor is from Quebec, the property seized would remain federal property. Is this controversial in Quebec?

Mr. Dambrot: The Narcotic Control Act is very clear. The Attorney General of Quebec has never questioned that that is what the act requires. He has merely put pressure on us, understandably, to change the law because it is not fair. We agree that it is not fair.

Senator Lewis: I am from Newfoundland. I am under the impression that some provincial prosecutions have resulted in seizure and forfeiture.

Mr. Dambrot: Other than in drug cases?

Senator Lewis: Yes.

Mr. Dambrot: That is quite possible. If there have been, those forfeitures would go to the provincial government.

Senator Lewis: Perhaps my information is incorrect, because I was given to believe they must have been drug prosecutions.

Mr. Dambrot: If they were drug prosecutions, that would be different; but, as far as I am aware, all of the drug prosecutions in Newfoundland are conducted by agents of the Attorney General of Canada.

Senator Lewis: That is the prosecution, but investigative forces might involve — in the case of Newfoundland — provincial police.

Mr. Dambrot: Yes, absolutely.

Senator Lewis: And possibly prosecution. The province, in that case, bears the cost?

Mr. Dambrot: Yes. It bears the investigative cost.

Senator Lewis: And gets no benefit?

Mr. Dambrot: At the moment.

Senator Lewis: That is the cause of a bit of friction, I suppose.

Mr. Dambrot: This sharing scheme is meant to address that exact scenario. If the constabulary to investigate a drug case in Newfoundland where the prosecution was taken by the Attorney General of Canada and there was a forfeiture, this scheme would provide for sharing back to someone — the Newfoundland government or the municipal government. That is the unresolved issue.

[*Traduction*]

genre de situation ne se présentait pas. Le Québec n'a commencé que beaucoup plus tard à intenter des poursuites pour infractions liées aux stupéfiants.

Le président: Si la confiscation est faite au Québec et que le procureur est celui du Québec, les biens saisis reviennent aux autorités fédérales? Cela ne prête-t-il pas à controverse au Québec?

M. Dambrot: La Loi sur les stupéfiants est très claire. Le procureur général du Québec n'a jamais nié cette exigence de la loi. Il est simplement intervenu auprès des autorités fédérales, de façon tout à fait compréhensible, pour qu'elles modifient la loi parce qu'elle est injuste. Nous avouons qu'elle est effectivement injuste.

Le sénateur Lewis: Je suis de Terre-Neuve. J'ai l'impression que certaines poursuites au niveau provincial ont permis des saisies et des confiscations.

M. Dambrot: Dans des causes qui ne concernent pas les stupéfiants?

Le sénateur Lewis: Oui.

M. Dambrot: C'est tout à fait possible. Si c'est le cas, les biens confisqués reviennent à la province.

Le sénateur Lewis: Mes renseignements sont peut-être erronés, car on m'a donné à croire qu'il devait s'agir de poursuites relatives aux stupéfiants.

M. Dambrot: Si c'est le cas, la situation est différente, mais, à ma connaissance, toutes les poursuites de cette nature, à Terre-Neuve, sont prises en charge par les représentants du procureur général du Canada.

Le sénateur Lewis: Pour les poursuites, sans doute, mais la police provinciale, à Terre-Neuve, peut participer aux enquêtes.

M. Dambrot: Absolument.

Le sénateur Lewis: Et peut-être aussi aux poursuites. Dans ce cas, c'est la province qui assume les coûts.

M. Dambrot: Effectivement. Elle assume les coûts des enquêtes.

Le sénateur Lewis: Mais elle n'a droit à rien?

M. Dambrot: Pour l'instant.

Le sénateur Lewis: Cela doit occasionner des frictions, sans doute.

M. Dambrot: Le régime de partage vise justement à résoudre ce genre de problème. Si un policier fait enquête dans une affaire de stupéfiants à Terre-Neuve, que les poursuites soient intentées par le procureur général du Canada et qu'il y ait confiscation, le régime prévoit un partage avec le gouvernement de Terre-Neuve ou la municipalité. C'est là le problème qui reste en suspens.

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Senator Lewis: I gather there have been discussions between the provinces and other authorities on this question for some time?

Mr. Dambrot: There have been discussions. I spoke of the consultation process, but discussions preceded that process for a long time.

Senator Stanbury: This goes back to the first bill in 1989. I remember we raised the problem. We could see the problem then.

Senator Lewis: What is the proposal, or is there any proposal? Has the sharing proposal been settled on?

Mr. Dambrot: No, it has not been settled on due to difficulty in attaining consensus. As I indicated, a completely opposing view is presented by provincial solicitors general and attorneys general, on the one hand, and umbrella groups for local police forces and municipal groups. There is an effort to find a consensus that would give satisfaction to all parties, but there has been no decision or resolution of the issue in the consultation process because it has been so difficult.

Senator Lewis: So the question of who receives the boodle is not yet settled?

Mr. Dambrot: It is not settled. There is no question that we want to give it away; it is merely a question of which level should receive it.

The Chairman: Is that done by regulation?

Mr. Dambrot: That is the proposal; to have it done by regulation.

The Chairman: At the end of negotiations?

Mr. Dambrot: After negotiations, in the end result, the minister must make a decision. The Minister of Justice is responsible for the bill.

Senator Lewis: The bill provides that the minister "shall" share the proceeds.

Mr. Dambrot: That is correct.

Senator Lewis: So if we have no regulations, how will he share it?

Senator Rivest: The minister will decide.

Mr. Dambrot: Obviously there is a pressing need for regulations.

Once the act is in place, there will be a time period between money coming into the scheme, and forfeitures and money going out. However, the intention is to move as quickly as possible to get the issue resolved and a regulatory scheme in place.

Senator Jessiman: Mr. Dambrot, you said that the Law Society or the Bar Association and others agreed that the

[*Traduction*]

Le sénateur Lewis: Je puis conclure que les discussions entre les provinces et les autres autorités se poursuivront un certain temps sur cette question?

M. Dambrot: Il y a eu des discussions. J'ai parlé de consultations, mais les discussions avaient débuté bien avant ces consultations.

Le sénateur Stanbury: Cela remonte au premier projet de loi, en 1989. Je me souviens que nous avons soulevé le problème. Nous étions conscients du problème à l'époque.

Le sénateur Lewis: Quelle est la proposition? Y en a-t-il une? Y a-t-il eu entente sur une proposition de partage?

M. Dambrot: Non, la question n'a pas été réglée à cause de la difficulté d'établir un consensus. Comme je l'ai dit, deux groupes, celui des procureurs et solliciteurs généraux des provinces et celui des polices locales et des municipalités, ont des points de vue diamétralement opposés. Il se fait des efforts pour parvenir à un consensus satisfaisant pour toutes les parties, mais il n'y a eu aucune décision, aucun règlement du problème par la consultation, parce que les difficultés sont considérables.

Le sénateur Lewis: La question du fric n'est donc pas réglée?

M. Dambrot: Non. Nous savons ce que nous voulons donner, mais il reste à savoir quel niveau doit le recevoir.

Le président: La solution sera prévue par règlement?

M. Dambrot: C'est ce qui est proposé, le recours au règlement.

Le président: À la fin des négociations?

M. Dambrot: Après les négociations, le ministre devra prendre une décision. Le projet de loi relève du ministre de la Justice.

Le sénateur Lewis: Le projet de loi dit que le ministre devra partager les produits.

M. Dambrot: C'est juste.

Le sénateur Lewis: Si nous n'avons pas de règlement, comment se fera le partage?

Le sénateur Rivest: C'est le ministre qui va décider.

M. Dambrot: Il est évident que nous avons besoin d'un règlement de façon pressante.

Une fois que la loi aura été adoptée, il y aura un certain délai entre l'entrée des fonds provenant des confiscations et le versement de fonds en vertu du partage. Néanmoins, nous entendons résoudre le problème le plus tôt possible et adopter un règlement.

Le sénateur Jessiman: Monsieur Dambrot, vous avez dit que l'ordre des avocats, l'association du Barreau et d'autres

[Text]

agencies — such as the police — should not share in this money.

Mr. Dambrot: Yes.

Senator Jessiman: But the RCMP is an agency of the Canadian government, is it not?

Mr. Dambrot: Yes. Well —

Senator Jessiman: Or is it?

Mr. Dambrot: It depends. In terms of this scheme, where the RCMP is doing local policing pursuant to contract, it will be treated as a municipal police force for the purpose of sharing. The sharing would go to the municipality or the provincial government responsible for the policing.

Senator Jessiman: So there would not be any circumstance under which they could ask or demand. . .

Clause 10 says, "Where a law enforcement agency in Canada has participated. . ." If the RCMP is participating, it is doing so on behalf of Canada. The clause says "the Minister shall", not the minister "may".

Clause 9 says, "In carrying out the purposes of this Act, the Minister may. . ." share the proceeds. However, under clause 10, the word used is not "may"; it is "shall".

I hope you do not get the superintendent of the RCMP saying. . .

Mr. Dambrot: That problem should arise for two reasons. I appreciate the way the clause is drafted. I also appreciate the issue you raised, but the clause says "the minister shall, in accordance with the regulations," and the regulations will clearly not provide for sharing with the commissioner of the RCMP or any other police force.

When you look at the purpose clause — which should shed some light on the interpretation of that clause — clause 3(*d*), where property is forfeited, provides authority for the sharing of the proceeds of disposition with jurisdictions, the law enforcement agencies of which participated in the investigation.

The Chairman: Usually the word "shall" is imperative. In that context, since the word was changed in the House of Commons, it is obviously imperative.

Mr. Dambrot: Yes, sir. It was changed in the House of Commons.

The Chairman: In the original bill, the word was "may", and it was subsequently changed to "shall". Obviously it becomes imperative.

Mr. Dambrot: The issue arose in committee in the House. The concern was that given the way the bill was drafted, there might be discretion in the minister, even with regulations, to

[Traduction]

estimaient que des organismes comme les services de police ne devaient pas avoir droit à une part des fonds.

M. Dambrot: Effectivement.

Le sénateur Jessiman: Mais la GRC est rattachée au gouvernement canadien, n'est-ce pas?

M. Dambrot: Oui, mais. . .

Le sénateur Jessiman: Est-ce bien le cas?

M. Dambrot: Cela dépend. Dans le cadre du régime et aux fins du partage, la GRC sera considérée comme un service municipal lorsqu'elle est chargée à contrat de la police locale. C'est la municipalité ou le gouvernement provincial responsable des services de police qui recevrait l'argent.

Le sénateur Jessiman: Donc, en aucune circonstance, la GRC ne pourrait demander ou exiger. . .

L'article 10 stipule: «. . .lorsqu'un organisme chargé de l'application de la loi au Canada a participé. . .» Si la GRC participe, elle le fait au nom du Canada. L'article dit bien: «Le ministre doit. . .» et non pas: «Le ministre peut. . .»

Il est vrai que l'article 9 dit: «Le ministre peut, pour l'application de la loi. . .» partager les produits de la criminalité, mais l'article 10 dit qu'il doit et non pas qu'il peut le faire.

J'espère que vous n'amenez pas le surintendant de la GRC à dire. . .

M. Dambrot: Le problème peut surgir pour deux raisons. Je comprends comment l'article est libellé. Je comprends aussi la question que vous avez soulevée, mais l'article dit que «le ministre doit, conformément aux règlements», et le règlement, c'est évident, ne prévoira pas de partage avec le commissaire de la GRC ni avec d'autres forces policières.

Si vous jetez un coup d'oeil sur l'article qui énonce l'objet du projet de loi, article qui doit éclairer l'interprétation de cette disposition, vous constaterez que le paragraphe 3 *d*) prévoit le partage du produit de l'aliénation des biens confisqués avec les autorités dont les organismes chargés de l'application de la loi ont participé à l'enquête.

Le président: Habituellement, le mot «doit» est impératif. Dans ce contexte, il l'est de toute évidence, puisqu'il a été modifié par les Communes.

M. Dambrot: C'est exact. Il a été modifié par les Communes.

Le président: Dans le texte initial, c'est le mot «peut» qui figurait. Il a ensuite été remplacé par «doit». De toute évidence, il a une nuance impérative.

M. Dambrot: La question a été soulevée au comité de la Chambre. Ce qu'on craignait, vu le libellé du projet de loi, c'est que le ministre n'ait la possibilité, même aux termes des

[*Text*]

not share. That was certainly not intended. That is how the change came about.

The Chairman: The problem remains the same. They must agree. They have no choice.

Senator Neiman: Given that whatever decision arrived at could be changed again by regulation because the Minister of Justice has the sole prerogative to make regulations, what recourse would the provinces or anyone else have if the Minister of Justice decided he was giving them too big a share or they did not like the proportion? What recourse is there, if any?

Mr. Dambrot: This issue is sufficiently sensitive, so that any minister who tampered with the — I should not use the word "tampered" — who wanted to make changes to the formula, would engage in a consultation. The stakes or the concerns at the municipal and provincial levels are very intense.

Senator Neiman: I know that. I come from the Region of Peel where we have a great interest in this legislation.

Mr. Dambrot: I used to prosecute cases there at one time.

The Chairman: You mentioned municipal authorities. Are they at the negotiating table with the Minister of Justice of Canada and the attorneys general of the provinces?

Mr. Dambrot: They are at the table, in the sense. They were part of the consultation process. There was no large meeting for the different parties, but the municipalities were consulted. The Solicitor General sent officials to meet with various municipal and police organizations summer. There was a meeting of the police board's organization in Victoria. There were a series meetings. There were direct consultations with all of the organizations I mentioned in my remarks.

Senator Neiman: Is there a constitutional question or problem of going over the provinces and giving the money directly to municipalities? Is that not a large issue?

Mr. Dambrot: There is concern about that, but. . . Excuse me for one second.

Senator DeWare: A consult.

Senator Neiman: It is serious when we talk about money.

Mr. Dambrot: The minister considered that issue. He was satisfied that there was no constitutional impediment.

The Chairman: The minister was satisfied of what?

Mr. Dambrot: That there was no constitutional impediment to sharing with municipalities.

The Chairman: Directly?

[*Traduction*]

règlements, de décider de ne pas partager. Ce n'était certainement pas là l'intention du législateur. C'est pourquoi l'amendement a été apporté.

Le président: Le problème demeure entier. Ils doivent s'entendre. Ils n'ont pas le choix.

Le sénateur Neiman: Quelle que soit la décision, elle pourrait être modifiée par règlement, étant donné que le ministre de la Justice a seul la prérogative de prendre des règlements. Quel recours auraient les provinces ou d'autres instances si le ministre de la Justice décidait que la part cédée est trop importante ou si la proportion ne leur plaisait pas? Y a-t-il un recours? Lequel?

M. Dambrot: La question est suffisamment délicate pour que tout ministre qui voudrait tripatouiller — je ne devrais pas employer ce terme — la formule procéderait à des consultations. Les enjeux ou les préoccupations sont très importants aux niveaux municipal et provincial.

Le sénateur Neiman: Je sais. Je viens de la région de Peel, où ce projet suscite un vif intérêt.

M. Dambrot: À une époque, j'agissais comme procureur dans les poursuites, dans cette région.

Le président: Vous avez parlé des autorités municipales. Prennent-elles part aux négociations avec le ministre de la Justice du Canada et les procureurs généraux des provinces?

M. Dambrot: En un sens, oui. Elles ont participé aux consultations. Il n'y a pas eu de grande réunion pour les différentes parties, mais les municipalités ont été consultées. Le solliciteur général a chargé des fonctionnaires de rencontrer divers organismes municipaux et policiers. Il y a eu une réunion des commissions de police à Victoria. Il y a eu toute une série de réunions et des consultations directes avec toutes les organisations que j'ai mentionnées dans mon exposé.

Le sénateur Neiman: Y a-t-il des obstacles de nature constitutionnelle qui empêchent de contourner les provinces et de verser directement de l'argent aux municipalités? Est-ce que ce n'est pas un problème important?

M. Dambrot: C'est un objet de préoccupation, mais. . . Excusez-moi un instant.

Le sénateur DeWare: Une consultation.

Le sénateur Neiman: C'est sérieux, lorsqu'il s'agit d'argent.

M. Dambrot: Le ministre a tenu compte du problème. Il était convaincu qu'il n'y avait aucun obstacle constitutionnel.

Le président: Le ministre était convaincu de quoi?

M. Dambrot: Qu'il n'y avait aucun obstacle constitutionnel au partage avec les municipalités.

Le président: Directement.

[*Text*]

Senator Rivest: We will have a political problem in Quebec if we try to avoid the Minister of Justice.

The Chairman: When you say the Minister of Justice —

Senator Rivest: Does that all go directly to the municipality?

Mr. Daniel Murphy, Deparment of Justice: I am not suggesting that there would not be a political —

Senator Rivest: No, I do not want to hear that from you.

The Chairman: We have to be clear, here. You mean the Minister of Justice of Canada?

Mr. Murphy: Yes, sir.

The Chairman: The Attorney General of the province concerned may object to that. He may say, "I keep that money for me, not for the municipalities." What happens then?

Senator Stanbury: That is why we need the minister here.

Mr. Murphy: That is not a question that we can answer. If we have regulations that provide for it, then we would attempt to abide by the regulations.

Senator Jessiman: But what if the regulations are contrary to what the act says? The act says, "where a law enforcement agency in Canada has participated". Let us assume it is the City of Winnipeg Police Force and their council and I am acting for the police force. I am now saying, "We want to get paid." You cannot have regulations that are contrary to what it says here. You have to share that.

Mr. Murphy: The phrase that you are referring to is what triggers the obligation to share. It is silent as to who receives.

Senator Jessiman: I know, but it says, "if a law enforcement agency has participated". Let us assume that the City of Winnipeg police seized millions of dollars worth of property. They want a piece of the action. I think they are entitled to it under this in view of the way it is worded.

Mr. Murphy: The section says that where a law enforcement agency has participated, the minister shall share in accordance with the regulations. If the regulations say that he shall share with a municipal or provincial government—

Senator Jessiman: You do not think it would be that they have to share with the law enforcement agency?

Mr. Murphy: That is certainly not the intention of the drafter.

[*Traduction*]

Le sénateur Rivest: Il y aura des problèmes politiques au Québec si nous essayons de contourner le ministre de la Justice.

Le président: Lorsque vous dites que le ministre de la Justice. . .

Le sénateur Rivest: Tout va-t-il directement à la municipalité?

M. Daniel Murphy, ministère de la Justice: Je ne veux pas dire qu'il y aurait, sur le plan politique. . .

Le sénateur Rivest: Je ne veux pas entendre cela de votre bouche.

Le président: Il faut que les choses soient bien claires. Vous voulez parler du ministre de la Justice du Canada?

M. Murphy: Oui, monsieur.

Le président: Le procureur général de la province en cause peut élever des objections. Il peut dire: «Je garde cet argent pour moi; ce n'est pas pour les municipalités.» Que se passera-t-il alors?

Le sénateur Stanbury: C'est pour cela que la présence du ministre est nécessaire.

M. Murphy: Ce n'est pas une question à laquelle nous puissions répondre. Si nous avions un règlement qui le prévoit, nous nous efforcerions de le respecter.

Le sénateur Jessiman: Et si le règlement va à l'encontre de ce que dit la loi? La loi stipule: «lorsqu'un organisme chargé de l'application de la loi au Canada a participé. . .» Supposons qu'il s'agisse de la police et du conseil de Winnipeg, et qu'ils veulent être payés. Vous ne pouvez pas prendre des règlements qui vont à l'encontre de la loi. Le partage est obligatoire.

M. Murphy: Le passage que vous citez établit l'obligation de partager, mais il ne précise pas à qui le versement doit être fait.

Le sénateur Jessiman: Je sais, mais le texte dit bien: «lorsqu'un organisme chargé de l'application de la loi au Canada a participé. . .» Supposons que la police de Winnipeg saisisse des biens valant des millions de dollars. Elle voudrait sa part. Je pense qu'elle y a droit, si je me fie au libellé du projet.

M. Murphy: L'article dit que lorsqu'un organisme a participé, le ministre doit partager les produits conformément aux dispositions du règlement. Si celui-ci stipule que le partage doit se faire avec les autorités municipales ou provinciales. . .

Le sénateur Jessiman: Vous ne pensez pas que cela veut dire que le partage doit se faire avec l'organisme d'application de la loi?

M. Murphy: Ce n'est certainement pas l'intention du rédacteur.

[*Text*]

Senator Jessiman: If I were interpreting it, I would think they would be entitled.

Mr. Murphy: It is coloured by the purpose clause to which I referred.

Senator Rivest: Is it possible that the regulation concerning the sharing could be different from one province to another?

Mr. Murphy: It has not been anticipated that it would be. Up until now the positions taken have approached it in a uniform way. I do not know that there would be any impediment to tailoring it to provinces, but that has not been contemplated up to now.

Senator Jessiman: Concerning the jurisdiction example that I gave you, it would be the City of Winnipeg not the province of Manitoba. That is, the jurisdiction as far as the police force of the City of Winnipeg would be the City of Winnipeg, not the Province of Manitoba, though it is a creature of the Province of Manitoba. I do not think that section covers this situation.

Mr. Murphy: There are lots of problems and lots of access. That is why we are in the business.

Senator DeWare: The regulations will cover it.

Senator Stanbury: My supplementary question is basic and probably there is an easy answer, but I wonder why the federal government cares. If the money is going to the province and to the municipalities, why not send it to the province and let the province fight with their own municipalities? Do we have a reason why we do not want to do that?

Mr. Murphy: We do not have a strong reason to do it one way or another. We are trying to accommodate the interests that are out there about where the sharing should go.

Senator Stanbury: By that you mean that you are trying to protect the local municipal organizations so that the provinces do not just stick it into their general funds and not pass it on for incentive purposes to the police?

Mr. Murphy: That is certainly what some of the municipal organizations have raised as their concern. We would have been happy if the provinces and municipalities could have reached a consensus, but so far that has not happened.

The Chairman: But the municipalities are delegates of the provincial Crown. If they disagree with the provincial Crown, obviously we cannot be the umpire, can we?

Mr. Murphy: In the end result.

The Chairman: In the end result we are?

[*Traduction*]

Le sénateur Jessiman: Selon mon interprétation, il y aurait droit.

M. Murphy: L'interprétation est guidée par l'article qui énonce l'objet du projet de loi.

Le sénateur Rivest: Est-il possible que le règlement qui régit le partage varie d'une province à l'autre?

M. Murphy: La possibilité n'a pas été envisagée. Jusqu'à maintenant, les formules étudiées sont uniformes. Je ne vois pas d'obstacles à une modulation selon les provinces, mais cela n'a pas été envisagé jusqu'à maintenant.

Le sénateur Jessiman: Dans l'exemple que je vous ai donné, ce serait Winnipeg qui aurait la compétence et non le Manitoba. La compétence, pour ce qui est des forces de police de Winnipeg, appartiendrait à la ville et non à la province, même si la ville est la création de la province. Je ne pense pas que cet article s'applique à cette situation.

M. Murphy: Il y a beaucoup de problèmes et de considérations en cause. C'est pourquoi nous nous occupons de l'affaire.

Le sénateur DeWare: Le règlement résoudra le problème.

Le sénateur Stanbury: Ma question complémentaire est élémentaire, et la réponse est probablement facile, mais je me demande pourquoi le gouvernement fédéral s'en mêle. Si l'argent doit être versé à la province et aux municipalités, pourquoi ne pas le faire parvenir aux provinces et les laisser se bagarrer avec leurs municipalités. Y a-t-il une raison de ne pas agir de la sorte?

M. Murphy: Nous n'avons aucune raison contraignante d'agir d'une manière ou de l'autre. Nous essayons, dans le partage, de tenir compte des intérêts en présence.

Le sénateur Stanbury: Vous voulez dire par là que vous essayez de protéger les municipalités, de manière que les provinces ne se contentent pas de tout empocher sans rien verser aux services policiers, à titre de mesure incitative?

M. Murphy: C'est là une crainte qu'ont exprimée certaines municipalités. Nous aurions été heureux que les provinces et les municipalités arrivent à un consensus, mais cela ne s'est pas produit jusqu'à maintenant.

Le président: Mais les municipalités sont les déléguées de l'État provincial. Si elles ont des différends avec lui, nous ne pouvons pas nous imposer comme arbitre, n'est-ce pas?

M. Murphy: En fin de compte.

Le président: En fin de compte, nous pouvons le faire?

[*Text*]

Mr. Murphy: No, in the end result we cannot be. If a province decided that they were to recover the moneys from the municipalities, they could do that.

Senator Rivest: In Quebec there is a law prohibiting any municipalities or agencies of the Quebec government to make a direct deal with the federal authorities.

The Chairman: With the federal authorities?

Senator Rivest: Yes. They need formal acceptance by the Quebec government. That is the practice in Quebec. However, I understand you only discussed this with associations of municipalities. Did you discuss it with particular municipalities?

Mr. Murphy: No.

Senator Rivest: Only the association, the Canadian federation?

Mr. Murphy: Yes. It was thought that to try and engage in consultations with all municipalities would be impossible.

The Chairman: Take a big municipality like Montreal, Toronto or Vancouver. What do you do?

Senator DeWare: If no one agrees the minister does it.

The Chairman: You mean the ministers — plural.

Senator Stanbury: Let the courts decide.

Senator DeWare: The ministers have the power to do that.

The Chairman: I have no problem with the ministers — provincial or federal. It is when there is a conflict between a municipality in a province with their own attorney general.

Senator Lewis: There is another aspect of this which follows from it. I presume that in the prosecution of these offences, where you avail of the services of municipal and provincial police forces, you enjoy or hope to enjoy the cooperation of those forces.

Mr. Murphy: Yes.

Senator Lewis: Whether it be a disincentive or an incentive, is that one of the objects in order to try and encourage cooperation?

Mr. Murphy: Yes it is.

Senator Lewis: Therefore, it is important that these forces be dealt with and be encouraged by receipt of some of these proceeds. Will that lead to problems between the province and the municipality or police force?

Mr. Murphy: Whether we share with municipalities or provinces, it should have some impact in terms of encouraging local police forces, because if it were municipalities they

[*Traduction*]

M. Murphy: En fin de compte, nous ne pouvons pas le faire. Si une province décide de recouvrer l'argent auprès des municipalités, elle peut le faire.

Le sénateur Rivest: Au Québec, nous avons une loi qui interdit aux municipalités ou organismes du gouvernement de traiter directement avec les autorités fédérales.

Le président: Avec les autorités fédérales?

Le sénateur Rivest: Oui. Le gouvernement québécois doit donner son autorisation officielle. C'est ce qui se fait au Québec. Cependant, je crois savoir que vous n'avez discuté qu'avec les associations de municipalités. Avez-vous eu des entretiens avec certaines municipalités?

M. Murphy: Non.

Le sénateur Rivest: Seulement avec l'association, avec la fédération canadienne?

M. Murphy: Oui. Il a semblé que ce serait impossible d'essayer de consulter toutes les municipalités.

Le président: Prenons une grande municipalité comme Montréal, Toronto ou Vancouver. Que faites-vous dans ce cas?

Le sénateur DeWare: Si personne ne s'entend, le ministre intervient.

Le président: Vous voulez dire les ministres, au pluriel.

Le sénateur Stanbury: On laisse les tribunaux décider.

Le sénateur DeWare: Les ministres ont le pouvoir de le faire.

Le président: Je n'ai aucun problème à accepter que les ministres, provinciaux ou fédéral, le fassent. La difficulté surgit lorsqu'il y a un différend entre une municipalité, dans une province, et son propre procureur général.

Le sénateur Lewis: Il y a un autre aspect qui découle de cela. Je suppose que, dans les poursuites au sujet de ces infractions, lorsqu'on se prévaut des services des polices municipale ou provinciale, on souhaite avoir leur coopération.

M. Murphy: Effectivement.

Le sénateur Lewis: Qu'il y ait incitation ou le contraire, est-ce là un des buts visés, soit favoriser la coopération?

M. Murphy: C'est juste.

Le sénateur Lewis: Il est donc important de tenir compte de ces forces policières et de les encourager en leur remettant une partie des produits de la criminalité. Cela suscitera-t-il des difficultés entre la province, la municipalité et les forces policières?

M. Murphy: Que le partage se fasse avec les municipalités ou avec les provinces, il devrait avoir pour effet d'encourager les forces policières locales; si ce sont les municipalités qui

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would be able to make use of those moneys in the budgetary process for the local police forces; if it is the provinces, they tell us that they will use the money to further law enforcement and will not put it in general revenue. Either way, there is a potential for encouraging greater municipal or provincial police involvement.

Senator Lewis: Without putting you on the spot, I suppose you would like to see it dribble down to the police forces upon whom you want to rely for assistance, is that correct?

Mr. Murphy: I would certainly like to see it happen in a way that encourages the local police forces.

Senator Lewis: Would there be an incentive to a police force to try and occupy the field and keep an investigation in their own hands if they realize they will get a greater portion by prolonging their own investigation and making it appear that they have had a bigger input.

Mr. Murphy: I am not quite sure I understand.

Senator Lewis: Would there be too much of an incentive on a particular police force to try to hog the investigation and not cooperate with other forces?

Mr. Murphy: Perhaps my friends from the RCMP might be more helpful in answering that.

Inspector B. W. Bowie, Officer in Charge, Anti-Drug Profiteering Section, RCMP Headquarters — Drug Enforcement Directorate: In the process of several years of discussion, we have taken the position that we are opposed to any of these forfeited proceeds going directly to the police forces. If that is your question, there are some fundamental and real disadvantages in that process for the very reasons you state.

Senator Lewis: And on principle too, I would think.

Mr. Bowie: Absolutely. We are talking about a process of forfeiture that is generally dependent on a conviction for an underlying, serious criminal offence. If there is a perception either in the public or by the judiciary that the police forces are getting something, then we risk the general view that police testimony in criminal cases is credible because it is impartial.

We believe that it is very dangerous to start altering the proper goals of law enforcement, which is to deliver a service to the public with a high degree of impartiality and a view towards the enforcement goals, not revenue production.

There are a great many police forces that share those concerns, even though individual members of forces may advance what I believe is a shortsighted viewpoint that they

[*Traduction*]

reçoivent l'argent, elle s'en serviront dans leur budget pour les forces policières locales; si ce sont les provinces, elles s'en serviront, nous ont-elles dit, pour améliorer les mesures d'application de la loi au lieu de les verser dans les recettes générales. De toute façon, il sera possible d'encourager une plus grande participation de la police municipale ou provinciale.

Le sénateur Lewis: Sans vouloir vous mettre sur la sellette, je suppose que vous aimeriez que l'argent se retrouve entre les mains des forces policières dont vous souhaitez obtenir l'aide. N'est-ce pas?

M. Murphy: Je voudrais que les choses de passent de manière à encourager les forces policières locales.

Le sénateur Lewis: Est-ce que ce serait un encouragement, pour les forces policières, à essayer d'occuper le terrain et à conserver la responsabilité des enquêtes si elles savent qu'elles obtiendront une plus grande part en prolongeant leur propre enquête et en montrant qu'elles ont participé davantage?

M. Murphy: Je ne suis pas sûr de bien comprendre.

Le sénateur Lewis: Est-ce que les forces policières ne seraient pas un peu trop portées à s'accaparer des enquêtes et à ne pas collaborer avec d'autres forces?

M. Murphy: Mes collègues de la GRC seraient peut-être mieux placés pour répondre à cette question.

L'inspecteur B.W. Bowie, officier responsable, Section des enquêtes économiques antidrogue, administration centrale de la GRC — Direction de la Police des drogues: Pendant les quelques années qu'ont duré les entretiens, nous nous sommes opposés à ce qu'une partie quelconque du produit des biens confisqués soit versée directement aux forces policières. Si telle est bien votre question, il y a des inconvénients fondamentaux réels à ce processus, précisément pour les raisons que vous avez données.

Le sénateur Lewis: Et pour des raisons de principe aussi, je dirais.

M. Bowie: Absolument. Nous parlons d'un processus de saisie qui, généralement, dépend d'une condamnation pour délit grave. Si le public ou la magistrature pensent que les forces policières reçoivent quelque chose, nous risquons de donner une image contraire à l'impression générale voulant que les témoignages de la police dans les causes pénales soient dignes de foi parce qu'ils sont impartiaux.

Nous croyons qu'il est très dangereux de commencer à altérer les objectifs normaux de l'application de la loi, c'est-à-dire donner un service au public avec une grande impartialité dans le but d'appliquer la loi et non de percevoir des recettes.

De très nombreuses forces policières partagent ces préoccupations, même si certains agents peuvent soutenir une opinion qui me paraît à courte vue, soit que l'argent doit leur revenir

[*Text*]

should get the money and that will allow them to do more. The reality of the situation, as has happened elsewhere, is that it is unrealistic to expect a taxing authority — whether it be municipal, provincial or federal — to allow an agency of that authority to start making windfall profits of millions of dollars, especially since those agencies, with very few exceptions do and must operate on the basis of a predetermined budget. Does that assist you in any way?

Senator Lewis: Yes. It is almost analogous to giving an officer a commission on traffic fines.

Mr. Bowie: Yes.

Mr. Murphy: The view Inspector Bowie expressed is the view that has been taken by the Canadian Association of Chiefs of Police. They do not want the money to go directly to police forces for the very reasons Inspector Bowie mentions.

Senator Lewis: Have we any assurances that this will not be a provision in the regulations?

Mr. Murphy: It is intended to be accomplished by clause 3(*d*), which says that the purpose is to share with jurisdictions the law enforcement agencies of which participated.

I can assure you that no one in the government that is involved in this is of the view that there should be direct sharing with police forces.

Senator Lewis: Possibly, then, the regulations to comply with that could not make that provision.

Mr. Murphy: That is quite likely. In any event, the intention is not to do that. The issue has been provinces and municipalities.

The Chairman: Who suggested that? The Canadian Bar Association?

Mr. Murphy: Suggested what?

The Chairman: That there would be no sharing with police forces.

Mr. Murphy: That was our position long before we consulted the Canadian bar, but it was of the same view.

Senator DeWare: And the chiefs of police as well.

Senator Rivest: And RCMP.

Senator Rivest: Give the money to the provincial government.

Mr. Gérard Normand, Counsel, National Strategy for Drug Prosecution, Department of Justice: I wish to add to what Senator Rivest said earlier when he referred to the Federation of Canadian Municipalities. As a group, they came

[*Traduction*]

pour qu'ils puissent faire davantage. Dans la réalité des faits, comme on a pu le constater ailleurs, il est peu réaliste de s'attendre qu'une autorité fiscale — municipale, provinciale ou fédérale — permette à un organisme qui relève d'elle de commencer à faire des bénéfices inattendus de millions de dollars, d'autant plus que ces organismes, à quelques très rares exceptions près, fonctionnent et doivent fonctionner au moyen d'un budget prédéterminé. Cette explication vous éclaire-t-elle?

Le sénateur Lewis: Oui. C'est un peu comme de donner une commission à un agent sur les amendes pour infractions au code de la route.

M. Bowie: C'est cela.

M. Murphy: L'opinion que l'inspecteur Bowie vient d'exposer est la position adoptée par l'Association canadienne des chefs de police. Elle ne veut pas que l'argent soit versé directement aux forces policières pour les raisons que l'inspecteur Bowie a mentionnées.

Le sénateur Lewis: Avons-nous l'assurance que ce ne sera pas là une disposition du règlement?

M. Murphy: Le paragraphe 3*d*) précise les intentions du législateur, qui sont d'assurer un partage avec les autorités dont les organismes chargés de l'application de la loi ont participé à l'enquête.

Je puis vous assurer que personne, au gouvernement, parmi ceux qui s'occupent de ce dossier, n'estime qu'il devrait y avoir un partage direct avec les forces policières.

Le sénateur Lewis: On pourrait donc dire que le règlement, s'il est conforme à la loi, ne peut prévoir ce partage direct.

M. Murphy: Vous avez très probablement raison. De toute manière, ce partage direct n'entre pas dans nos intentions. Le problème est celui qui se pose entre les provinces et les municipalités.

Le président: Qui a proposé cela? L'Association du Barreau canadien?

M. Murphy: Proposé quoi?

Le président: Qu'il n'y ait pas de partage avec les forces policières.

M. Murphy: C'était notre position bien avant que nous ne consultions le Barreau canadien, mais celui-ci est du même avis.

Le sénateur DeWare: Et les chefs de police aussi?

Le sénateur Rivest: Et la GRC.

Le sénateur Rivest: Donnez l'argent au gouvernement provincial.

M. Gérard Normand, conseiller juridique, Stratégie nationale des poursuites en matière de drogues, ministère de la Justice: Je voudrais revenir sur ce que le sénateur Rivest a dit plus tôt en faisant allusion à la Fédération canadienne des

[*Text*]

to testify, but the person who was there on their behalf was Mr. Michel Hamelin. He is aware of this. He is the person who represented the federation before the legislative committee.

The Chairman: Certainly we cannot be involved in a battle between a municipality and a provincial authority. There is no doubt about that.

Senator Rivest: That is the reason why the minister is so cautious.

Senator Stanbury: I am concerned that the provinces must surely make the same objection to the money going to the municipalities as the municipalities and the police do about the money going to the individual police forces. In other words, municipalities say that the money should not go to the police forces because they are creatures of us; the provinces say that the money should not go the municipalities because they are creatures of us. Surely that militates in favour of simply putting it into the hands of the provinces, perhaps with an agreement with the federal government as to the general manner in which the funds should be handled. If you are so opposed to the money going directly to the police force, why are we talking about it going to the municipalities? It seems to me that it is the same principle.

Mr. Dambrot: That principle is the same, but there is more to the problem of sharing with police forces because there are dangers in sharing with the police forces.

Senator Stanbury: I appreciate that. However, millions of dollars would make quite a difference to municipalities.

Mr. Bowie: Perhaps I can draw an analogy, sir. I did all my investigative work in Calgary. The revenue generated from every traffic ticket, parking ticket, or speeding ticket that was written within the confines of the city of Calgary went to the municipality of Calgary. If it was outside the boundaries of Calgary, the traffic ticket revenue went to the province. That is a very common feature. When I left the City of Calgary five years ago, the revenue from traffic tickets was in excess of $20 million per year. The parallel is there, sir, if that is of some assistance.

Senator Neiman: Mr. Chairman, I cannot spot the particular provision that makes an exception or a difference for the provinces of Quebec and New Brunswick. For example, a criminal was apprehended or a crime was committed within the region of Peel, the prosecution took place there and after successful prosecution and an order or forfeiture, it was found that the assets included a famous ski resort in the province of Quebec. Under this scheme, who receives the proceeds?

[*Traduction*]

municipalités. Comme groupe, la fédération a témoigné, mais son porte-parole était M. Michel Hamelin. Il est au courant. C'est lui qui a représenté la fédération au comité législatif.

Le président: Chose certaine, nous ne pouvons pas nous mêler de querelles entre les municipalités et les provinces. Cela ne fait aucun doute.

Le sénateur Rivest: C'est pourquoi le ministre est tellement sur ses gardes.

Le sénateur Stanbury: Je crains que les provinces n'aient la même objection à ce que l'argent soit versé aux municipalités que celles-ci et la police peuvent avoir à ce qu'il soit donné directement aux diverses forces policières. Autrement dit, les municipalités prétendent que l'argent ne doit pas être donné aux forces policières parce que celles-ci sont leur création; et les provinces soutiennent qu'il ne doit pas être remis aux municipalités parce que celles-ci sont leur création. Assurément, cela devrait inciter le gouvernement fédéral à simplement remettre l'argent aux provinces, peut-être en s'entendant avec elles sur une formule générale d'utilisation des fonds. Si vous vous opposez tellement à ce que l'argent soit versé directement aux forces policières, pourquoi envisageons-nous de le donner aux municipalités? Il me semble que le principe en cause est le même.

M. Dambrot: Le principe est le même, mais le problème du partage avec les forces policières est plus complexe, vu les dangers de ce partage.

Le sénateur Stanbury: Je le comprends, mais des millions de dollars peuvent faire toute une différence pour les municipalités.

M. Bowie: Je pourrais peut-être faire une analogie. J'ai fait toute ma carrière d'enquêteur à Calgary. Les recettes provenant des contraventions pour infraction au code, pour stationnement illégal, pour excès de vitesse données sur le territoire de Calgary allaient à la municipalité. Celles qui étaient données en dehors de ce territoire étaient remises à la province. C'est une formule très courante. Lorsque j'ai quitté Calgary, il y a cinq ans, ces recettes dépassaient les 20 millions de dollars par an. Voilà une comparaison, si toutefois elle peut être utile.

Le sénateur Neiman: Monsieur le président, je n'arrive pas à retrouver la disposition qui prévoit une exception ou une formule différente pour le Québec et le Nouveau-Brunswick. Par exemple, supposons qu'un criminel soit appréhendé ou qu'un crime soit commis dans la région de Peel; les poursuites sont intentées, il y a condamnation et ordonnance de confiscation; il a été constaté que les biens comprennent un célèbre centre de ski au Québec. Aux termes de ce régime, qui reçoit le produit?

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Mr. Dambrot: For example, under this scheme the Peel Regional Police investigated a drug case that led to the seizure and ultimate forfeiture of a ski resort. If that case were prosecuted by the Attorney General of the province, as a result of the amendment that affects Quebec and New Brunswick, it would equally affect Ontario if that happened and the forfeiture would go to the provincial government in Ontario. However, it is unlikely because the Attorney General of the province does not prosecute drug cases.

As is more likely, if the case were prosecuted by the Attorney General of Canada, then the forfeiture would go into this sharing scheme. In that instance, since it was a provincial prosecution, once the regulations are in place, there would be sharing which would lead to either going to the municipality or the province of Ontario, depending on how the regulations were finalized.

Senator Neiman: If there are several different police forces and jurisdictions involved, who will make the decision and on what basis as to the proportion that will be divided among all the different jurisdictions?

Mr. Dambrot: No regulations exist, obviously, but there will be a simple formula to decide what proportion would go for sharing and what proportion would be the share of the federal government. If the example of the case we started with which was purely a Peel Regional Police investigation, then something like 90 per cent would be shared provincially or locally and 10 per cent would stay federal, to account for our role in prosecuting and certain other involvement.

Senator Neiman: Such as administrative expenses.

Mr. Dambrot: In the case where there were multiple police forces involved, whatever the system is, there will be some requirement for someone to give an indication of the nature of contribution of the different forces. The idea we have looked at would be having the prosecutor on the case who has not got a stake in it, such as Peel Regional, as opposed to Metropolitan Toronto Police writing a report which would give an indication of the roles of the forces. That would then come to the Attorney General of Canada in order to allocate the percentages; that would be the manner in which it was broken down. The idea is to have as simple a formula as possible with minimal administrative costs.

Senator Neiman: Is it the Attorney General of Canada who makes the decision and directs the Minister of Supply and Services or the agency as to the distribution to be made?

Mr. Dambrot: That would be the idea.

[Traduction]

M. Dambrot: Aux termes du régime, la police régionale de Peel a fait enquête sur une affaire de drogues qui a abouti à la confiscation d'un centre de ski. Si c'était le procureur général de la province qui intentait les poursuites — vu la modification qui touche le Québec et le Nouveau-Brunswick et qui pourrait s'appliquer également à l'Ontario — le produit de la confiscation irait au gouvernement provincial de l'Ontario. Cela est cependant peu probable, car le procureur général de cette province n'intente pas de poursuites dans les affaires de drogues.

Si, comme il est plus probable, les poursuites sont entreprises par le procureur général du Canada, le produit de la confiscation sera partagé conformément au nouveau régime. Dans ce cas-ci, étant donné qu'il s'agit de poursuites provinciales, le partage, une fois le règlement en place, se ferait en faveur de la municipalité ou de la province de l'Ontario, dépendant des dispositions réglementaires.

Le sénateur Neiman: Si plusieurs forces policières et autorités sont en cause, qui prendra la décision et de quelle manière seront établies les proportions qui reviennent aux différentes autorités?

M. Dambrot: Il n'existe aucun règlement, de toute évidence, mais il y aura une formule simple pour calculer la proportion à partager et celle qui revient au gouvernement fédéral. Si, comme dans l'exemple que nous avons pris, il s'agit d'une enquête effectuée par la police régionale de Peel uniquement, environ 90 p. 100 iraient à la province ou à la localité, et 10 p. 100 aux autorités fédérales, étant donné leur rôle dans les poursuites et d'autres formes de participation.

Le sénateur Neiman: Et les frais administratifs, par exemple.

M. Dambrot: Dans les cas où plusieurs forces policières sont intervenues, il faudra, quel que soit le régime, donner une indication de la nature de la contribution des différentes forces. L'idée que nous avons envisagée serait de demander au procureur, qui n'a pas d'intérêt dans l'affaire, ni du côté de la région de Peel, ni de celui de la police du Grand Toronto, de rédiger un rapport donnant des indications sur le rôle respectif des forces. Il appartiendrait ensuite au procureur général du Canada de fixer les pourcentages de chacun. C'est ainsi que se fera le partage. Il s'agit de chercher la formule la plus simple possible et celle qui coûtera le moins cher sur le plan administratif.

Le sénateur Neiman: Est-ce que c'est le procureur général du Canada qui prend la décision et donne des instructions au ministre des Approvisionnements et Services ou à l'organisme en cause quant à la répartition à faire?

M. Dambrot: C'est l'idée qui est envisagée.

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Mr. Normand: To return to your original question, clauses 22 to 29 deal with this situation to cover provinces. It amends the Narcotic Control Act and the Food and Drugs Act to provide for that.

Senator Lewis: If this bill were passed tomorrow, it may be quite some time before the regulations are made because it will depend on what arrangements are finally made with the provinces and/or the municipalities.

There is no urgency in having a bill at this stage which will state that something "shall be done", when in fact you will not be able to pass the regulations for quite some time.

Mr. Dambrot: In large measure, the urgency of the bill is because of the need to have the management resource in place. The absence has been a serious impediment for the greater success of the program. The greatest aspect of the urgency is for the management. If the bill is passed, moneys that are forfeited will be subject to the sharing; even if the sharing cannot take place until the regulations are completed, the moneys that are coming in will still be in the fund for that purpose.

Senator Stanbury: That will be an incentive to get a settlement.

The Chairman: What will be done with that money? Will it be kept in a bank?

Mr. Dambrot: It will go into the proceeds account under the scheme and be available for sharing once the regulations are in place.

The Chairman: It is true that it may help the agreement.

Senator Lewis: You mentioned the management scheme is to have an office set up in the Department of Supply and Services. How big an office will that be? Will the officials actually do the maintenance and management of the forfeited property, or will that be handled by an outside contract?

Mr. Dambrot: Mr. Bhumgara is here from the Department of Supply and Services and perhaps he could explain what is anticipated.

Mr. Noël Bhumgara, Director General, Science and Professional Directorate, Supply and Services Canada: Mr. Chairman, it is not anticipated that we will have a large core of people in the department to manage these assets. It is our intention to use the private sector to manage the assets, depending on the assets. In fact that is how we became involved with the ski hill project. We arranged the contract for the management of that ski hill on behalf of the RCMP.

By virtue of our ministry's mandate, we have been able to have contracting experience with a management services organization and a variety of other things that are in our own

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M. Normand: Pour en revenir à votre question initiale, les articles 22 à 29 portent sur ce genre de situation dans le cas des provinces. La Loi sur les stupéfiants et la Loi sur les aliments et drogues sont modifiées en conséquence.

Le sénateur Lewis: Si ce projet de loi était adopté demain, il faudrait encore un certain temps avant que le règlement soit adopté, car tout dépend des ententes qui seront conclues avec les provinces et les municipalités.

Il n'est pas urgent d'adopter dès maintenant un projet disant que «quelque chose se fera» puisque vous ne pourrez pas prendre de règlement avant un certain temps.

M. Dambrot: Dans une grande mesure, le projet de loi est urgent parce qu'il faut mettre le dispositif de gestion en place. L'absence de ce dispositif a été un grave obstacle au succès du programme. C'est la gestion qui pose la plus grande urgence. Si le projet de loi est adopté, le produit des confiscations sera sujet à partage; même si le partage ne peut se faire avant que le règlement ne soit pris, l'argent sera tout de même versé dans le fonds à cette fin.

Le sénateur Stanbury: Cela favorisera la conclusion d'un règlement.

Le président: Que fera-t-on de cet argent? Sera-t-il gardé à la banque?

M. Dambrot: Il sera versé au compte des biens saisis et il pourra être partagé une fois le règlement adopté.

Le président: Il est vrai que cela peut favoriser la conclusion d'un accord.

Le sénateur Lewis: Vous avez dit que le régime serait appliqué par un service faisant partie du ministère des Approvisionnements et Services. Est-ce que ce sera un gros service? Est-ce que les fonctionnaires vont effectivement gérer les biens confisqués ou bien le travail sera-t-il confié à des contractuels?

M. Dambrot: Nous avons avec nous M. Bhumgara, du ministère des Approvisionnements et Services. Il pourrait expliquer ce qui est prévu.

M. Noël Bhumgara, directeur général, Direction générale des sciences et des services professionnels, Approvisionnements et Services Canada: Monsieur le président, nous ne prévoyons pas une très grande équipe pour gérer ces biens. Nous avons l'intention de faire appel au secteur privé pour assurer la gestion, tout dépendant des biens en cause. En fait, c'est de cette façon que nous en sommes venus à nous occuper du centre de ski. Au nom de la GRC, nous avons pris les dispositions pour conclure le marché de gestion de ce centre.

Vu le mandat de notre ministère, nous avons pu compter sur des compétences, dans une organisation des services de gestion et divers autres éléments de notre propre ministère. Nous

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department. It is contemplated that we will have a small core of people reporting to me, no more than a dozen at this time. That should be able to manage these matters for some time.

Senator Lewis: Would the cost of that office come out of the proceeds of the forfeited property?

Mr. Bhumgara: Yes. The cost of the office and the cost of managing the property itself, because there will be some costs associated with that.

Senator Stanbury: Mr. Bhumgara, I take it that you do not anticipate that this task will be so great as to require something like the Crown Assets Corporation?

Mr. Bhumgara: Certainly not. We do intend to use the Crown Assets Disposal Act to dispose of assets and for storage of movable assets, but that is a service.

Senator Stanbury: You do not need the machinery?

Mr. Bhumgara: This bill will give us all the administrative tools, in terms of the funding regimes, for us to manage these assets pending forfeiture and the disposal of the assets after forfeiture.

The Chairman: We kept the testimony of representatives of the Royal Canadian Mounted Police for the second part of the meeting. We will now hear from Mr. Ryan and Mr. Bowie.

Mr. J.T. Ryan, Chief Superintendent, Director, Drug Enforcement, Royal Canadian Mounted Police Headquarters: Mr. Chairman, members of the committee, on behalf of the Royal Canadian Mounted Police, I wish to thank you for the opportunity to appear before the committee to discuss this important piece of legislation.

The principal focus of our drug enforcement effort is directed against organized criminal groups that are active in the importation and distribution of large quantities of illicit drugs within Canada. The scope of the drug trade is international. The attack against powerful drug organizations, which extend across international boundaries, presents a unique challenge to the enforcement agencies of any country.

Despite the hundreds of millions of dollars expended on world-wide enforcement efforts over the last several decades, the international drug trade has continued to flourish, with crime groups growing more powerful.

Canadian seizures of illicit drugs have reached unprecedented levels: during the last three years, nearly 200,000 kilograms of cannabis were seized in Canada, double the total amount seized during the previous 15-year period. The

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envisageons une petite équipe qui relèvera de moi. Il ne devrait y avoir qu'une douzaine de personnes pour l'instant. Ce service devrait pouvoir assurer la gestion pendant un certain temps.

Le sénateur Lewis: Les coûts de ce service seront-ils payés sur le produit de l'aliénation des biens confisqués?

M. Bhumgara: Oui. Les frais de ce service et ceux de la gestion des biens, car cela représentera également des dépenses.

Le sénateur Stanbury: Monsieur Bhumgara, je crois comprendre que, selon vos prévisions, cette tâche ne sera pas lourde au point de justifier une organisation analogue au Centre de distribution des biens de la Couronne.

M. Bhumgara: Certainement pas. Nous allons effectivement nous prévaloir de la Loi sur les biens de surplus de la Couronne pour nous départir des biens et pour entreposer les biens meubles, mais il s'agit d'un service.

Le sénateur Stanbury: Vous n'avez pas besoin de tout un dispositif?

M. Bhumgara: Ce projet de loi nous donnera tous les moyens administratifs voulus, en ce qui concerne les régimes de financement, pour gérer les biens en attendant leur confiscation et pour nous en départir après la confiscation.

Le président: Nous avons gardé pour la deuxième partie de la réunion le témoignage des représentants de la Gendarmerie royale du Canada. Nous allons maintenant entendre MM. Ryan et Bowie.

M. J.T. Ryan, surintendant principal, directeur, Police des drogues, Administration centrale de la Gendarmerie royale du Canada: Monsieur le président, membres du comité, je voudrais vous remercier, au nom de la Gendarmerie royale du Canada, de m'avoir donné l'occasion de vous adresser la parole aujourd'hui au sujet de cet important projet de loi.

Dans ses efforts visant à réprimer le problème de la drogue, la GRC s'intéresse plus particulièrement aux organisations criminelles qui se livrent à l'importation et à la distribution de grandes quantités de drogues illicites au Canada. Le trafic des stupéfiants est un commerce d'envergure internationale, et la lutte contre les puissantes organisations de trafiquants qui débordent les frontières nationales constitue un défi unique pour les forces de l'ordre de tous les pays.

Malgré les centaines de millions de dollars qui ont été dépensés pour vaincre ce fléau au cours des dernières décennies, le trafic international des stupéfiants n'a pas cessé de prospérer, et les groupes de criminels sont encore plus puissants qu'auparavant.

Les saisies canadiennes de drogues illicites ont atteint de nouveaux sommets: durant les trois dernières années, presque 200 000 kilogrammes de cannabis ont été saisis au Canada. Ce montant représente le double du total saisi durant les quinze

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incidence of cocaine seizures is increasing at an even more dramatic rate. We have seized over seven tonnes of cocaine during the last three years. Despite seizures of this magnitude, we continue to experience full availability of illicit drugs throughout Canada, at lower prices, increased purity, and in greater volumes.

The profits available from the traffic in illicit drugs represents a double-edged threat to the success of conventional enforce measures; On the one hand, the potential for profit is a motivating factor which encourages new entrants to the drug trade; on the other hand, a criminal organization with accumulated financial resources is able to finance sophisticated importation and distribution networks, as well as being able to absorb periodic enforcement actions. As a result, the RCMP has, since 1981, focused on attacking the profits derived from the drug trade.

Our efforts in this regard were considerably enhanced by the enactment of the proceeds of crime legislation in January 1989. For the first time, police and prosecuting authorities in Canada were able to address all types of property generated by serious criminal offences, including real estate, business enterprises and bank accounts. Since 1989, the RCMP has initiated investigations which have resulted in asset seizures totalling nearly $83 million; forfeiture of assets valued at approximately $25 million have occurred in the same time period.

These new legal powers were, however, accompanied by significant problems associated with the nature of the assets being contemplated for seizure. The responsibility to effectively maintain the value of such property has presented considerable pressures on the human and financial resources of the police. Essentially, we were forced by circumstances to assume the roles of property and business managers, functions for which we have neither the money nor the expertise.

The management facility and budgetary flexibilities offered by this bill represent progressive and most welcome solutions to the problems we have experienced. Moreover, the provisions which would facilitate the sharing of the proceeds of forfeitures should function as an encouragement for greater application of this important investigative field.

We were pleased to have been afforded the opportunity to participate fully in the discussions which resulted in Bill C-123. This bill appears to be a worthwhile legislative initiative which should improve our effectiveness in attacking the proceeds generated by organized drug trafficking and other profitable criminal endeavours.

The Chairman: Are there any questions?

[*Traduction*]

années précédentes. La fréquence des saisies de cocaïne augmente à un rythme encore plus alarmant. Ainsi, la GRC a déjà saisi plus de sept tonnes métrique de cocaïne durant les trois dernières années. Malgré ces coups de filet de la police, les drogues continuent d'abonder au pays, et on peut se les procurer à meilleur marché, en plus grandes quantités et à des niveaux de pureté plus élevés.

Les profits tirés du trafic des stupéfiants compromettent doublement le succès des mesures de répression conventionnelles: d'une part, l'appât du gain est un facteur incitatif qui attire de nouveaux criminels; d'autre part, l'organisation criminelle qui a su accumuler des richesses est en mesure de financer des réseaux d'importation et de distribution élaborés et aussi d'absorber des pertes périodiques attribuables aux actions policières. La GRC a donc résolu, en 1981, de s'attaquer aux profits provenant du trafic des stupéfiants.

Nos efforts dans ce domaine ont été considérablement intensifiés avec l'établissement en janvier 1989, de la Loi sur les produits de la criminalité. Pour la première fois, les services de police étaient en mesure de s'occuper de tous les types de biens accumulés au moyen de crimes graves tel que les biens immeubles, les entreprises commerciales et les fonds déposés dans les institutions financières. Depuis 1989, la GRC a entrepris des enquêtes qui ont rapporté environ 83 millions de dollars en biens saisis, et les confiscations se sont élevées à environ 25 millions.

Ces nouveaux pouvoirs accordés par la loi se sont toutefois accompagnés de problèmes importants liés à la nature des biens qui peuvent être saisis. La responsabilité de maintenir la valeur des biens saisis occasionne des difficultés aux services de police en matière de ressources financières et humaines. Essentiellement, ces services policiers ont été mis en position d'assumer le rôle et les responsabilités d'administrateurs d'immeubles ou d'entreprises commerciales. Or, ils n'ont ni les compétences ni l'argent nécessaires pour remplir ces fonctions.

Les avantages offerts par le projet de loi en matière de gestion et en matière budgétaire sont des solutions progressistes et fort bienvenues aux problèmes que nous avons éprouvés. De plus, les dispositions facilitant le partage du produit de l'aliénation des biens confisqués devraient encourager de meilleurs mesures d'application de la loi dans cet important domaine d'enquête.

Nous sommes heureux d'avoir pu participer activement aux discussions sur le projet de loi C-123. Ce projet de loi me semble être une mesure législative fort valable, qui devrait nous permettre d'atteindre une plus grande efficacité, puisque nous nous attaquerons aux profits que rapportent le trafic de la drogue et les autres activités criminelles lucratives.

Le président: Y a-t-il des questions?

An Act to amend the Criminal Code and Customs Tariff (child pornography and corrupting morals) (Bill C-128)

Citation 1993, c. 46, s. 5

Royal Assent August 1, 1993

Hansard

As a consequential amendment to the Customs Tariff Act the definition of child pornography will be incorporated in schedule VII to the tariff. This will provide customs officials with the necessary authority to ban the importation of these materials into Canada. This, of course, will be bad news for those individuals who would love to try to import this sort of material into the country. We have seen to it that they will continue to be blocked.

In summary, Bill C-128 will amend the Criminal Code to include a specific definition of child pornography and offences for the possession, production, distribution and sale of such materials as defined. It would subject those accused of these offences to greater penalties upon conviction than those currently associated with the obscenity sections of the Criminal Code.

• (1515)

We need to reinforce the message that children are in need of protection, that they are not appropriate sexual partners. Conduct which fosters and exploits the harm and humiliation to which children are exposed must be punished.

Bill C-128 supports the government's commitment to the well-being of children as outlined in the protection component of the Brighter Futures initiative which was announced by the Minister of National Health and Welfare in April of last year.

This bill is yet another step in ensuring a brighter future for all of Canada's children. I urge the members of this House to deal with this legislation expeditiously. If and when this becomes the law of Canada, and I believe it will, hon. members can take the satisfaction of going home this summer knowing that this country is a better place in which to live because we have criminalized the possession of child pornography.

[*Translation*]

Mr. Langlois: Mr. Speaker, I rise on a point of order.

The Acting Speaker (Mr. Paproski): The hon. parliamentary secretary on a point of order.

Mr. Langlois: Mr. Speaker, if there is any time left when we have completed second reading of Bill C-128 today, I would like to request the unanimous consent of the House to proceed with third reading of Bill C-123 later today.

[*English*]

The Acting Speaker (Mr. Paproski): Does the hon. member have unanimous consent?

Some hon. members: Agreed.

Mr. George S. Rideout (Moncton): Mr. Speaker, it is a pleasure to rise on Bill C-128. I guess we could say that it is about time. There has been a flood of justice legislation over the last number of weeks. We are always faced with time constraints in trying to get legislation passed before Parliament is through for good and we are into an election.

We on this side are faced with the conundrum of not wanting to pass legislation in haste but at the same time wanting to do something that is good. We faced that dilemma with Bill C-126, the stalking bill. The committee met until last night at 10 o'clock to try to get a good bill before Parliament and finished before the session is over.

This is another example of a piece of good legislation that probably needs some fine-tuning by committee. I only hope the government will allow enough study of this particular bill while it is in committee. I hope it will not adopt the jackboot tactics it has used with other legislation, particularly Bill C-90, of trying to force legislation that needs to be studied through in a matter of hours or minutes.

That being said, we are supportive of this bill going to committee and receiving the necessary study. I do not think anyone would question that pornography has been with us almost since the beginning of history, from the time we learned how to draw.

We have seen the pornography industry grow from a $5 million industry in the seventies to a $10 billion business today. That is reprehensible when one considers that kind of money is generated from that kind of trade.

What is really even more reprehensible is the growth in child pornography. For that we say to the government: Good for you, that you are bringing this legislation forward. One thing that is a little irksome is that in the minister's own background documentation it says that the government has been urged to bring this legislation forward since 1984. Here we are in 1993, in the dying days of this Parliament, and now we are presented with the bill.

I hope not, but I think we should call Alan Borovoy before this committee and find out what more he has to say about this and we should examine the clauses of the bill.

Keith Kelly, who is the distinguished director of the Canadian Conference of the Arts and the Writers Guild, is concerned about the onus of proof in the bill. I will quote what he says in *The Toronto Star* to Mr. David Vienneau, a reporter for *The Toronto Star*. Mr. Kelly says:

> The defence of artistic merit exists but the burden of proof—and that is a costly burden—would rest with the person who is charged. We have some very real concerns about this.

Let us get him before the justice committee to tell us what the matter is.

I want to hear from my hon. friend from Saskatoon—Clark's Crossing who has had a private member's bill on this and has done a lot of work on it.

However let me recap as NDP justice critic. We are in favour of this bill. We are concerned about where it impinges on the artistic community and freedom of expression. Let us hear about that in the committee. We want to have an inclusive process. We want to tackle violent crime and at the same time we want to balance that with dealing with crime prevention. All too often the children, the victims of child pornography, end up being abusers themselves. We have to protect those children.

Mr. Chris Axworthy (Saskatoon—Clark's Crossing): Mr. Speaker, I am pleased to rise in support of the aims and objectives of this bill to criminalize child pornography and to make the possession of and all other activities dealing with child pornography a crime.

I would like to thank the member for Port Moody—Coquitlam and the member for Dartmouth for their support of my private member's bill. If that private member's bill had any small part to play in moving along the government then I am pleased that has happened.

It is late in the parliamentary session but I do not think that should prevent us from moving as quickly as possible on this bill. Like my colleagues who have already spoken I look forward to the passage of this bill. However I do have a couple of concerns that I would like to raise and have the government mull over. Hopefully in committee we can expeditiously deal with the issues, hear witnesses on some of these complex points and make the bill an even better bill. I will just briefly relate each one.

One that has been raised already is the issue of the definition of child pornography. It is never easy to define these subjects in pieces of legislation. I do think that we should look very carefully at the restrictive definition which, as has already been indicated, really narrows child pornography to the depiction of explicit sexual activity.

• (1545)

I think the vast majority of Canadians would view other areas than explicit sexual activity as pornographic when children are involved. We should explore the opportunity to expand that definition. At the moment I think it is too narrow.

Another point which is worth exploring is the issue of making importation or attempted importation of child pornography a criminal offence. That is not the case under this bill. It seems to me that it is not the case under any other legislation either.

It is clearly the case that child pornography brought into Canada if apprehended by the customs officers would be confiscated, but it is not clear that anybody would be committing an offence by importing or attempting to import it. We should look at that.

Also the bill does not cover pornographic performances involving children. Perhaps we should look at that.

Last, what we have seen in Canada with regard pornography but particularly with regard to child pornography because of the underground nature of it, is that new technology has enabled child pornography to be imported into Canada and then moved around the country very easily through the use of word processors and video recorders.

We need a process—and it was a part of my private member's bill—whereby from time to time we review the way in which child pornography is brought into Canada, produced in Canada and circulated within Canada because of the opportunities which are generated by new developments in technology. I suggest we do something like that.

While I support the government's intentions behind this bill and the thrust of it, and I know that my colleagues in the Liberal Party feel the same, there are a few things we should look at. I look forward to exploring those in the committee.

[Texte]

to prohibit pseudo child pornography, that is, where adult models are presented to appear as children. This type of pornography also promotes the sexual use and exploitation of children and conveys the message that children are appropriate objects of sexual interests.

The offences of production, distribution, and sale of child pornography would be subject to terms of imprisonment to a maximum of ten years. The offence of possession of child pornography would be subject to a term of imprisonment not exceeding five years.

Bill C-128 includes a defence of artistic merit or of an educational, scientific, or medical purpose. It is essential to include this defence in the proposed legislation in order to protect the rights of freedom of expression, which are entrenched in section 2(b) of the Canadian Charter of Rights and Freedoms, and to ensure that reach of the legislation does not extend to forms of expression that the courts consider beneficial to society.

There are also a number of consequential amendments to the Criminal Code contained in clauses 4 and 5 of Bill C-128. These amendments would include the child pornography offences in the definition of offence in part VI of the Criminal Code so that the electronic surveillance provisions will apply.

Additionally, the definition of child pornography is included in the definition of enterprise crime offence in part XII.2 of the Criminal Code so that they will fall under the proceeds of crime provisions.

Clause 6 of the bill sets out consequential amendment to the customs tariff, which incorporates the definition of child pornography in schedule 7 to the tariff, in order to provide customs officials with specific authority to ban the importation of these materials into Canada.

• 1015

Finally, clause 1 of the bill amends subsections of section 163 of the Criminal Code in order to ensure conformity with the charter in response to current case law.

Mr. Chairman, that is an outline of the contents of the bill. Ms Lieff and I will be happy to answer any questions that committee members may have.

The Chairman: Thank you very much. I'm sure we have a few questions we'd like to ask you. We'll begin with Mr. Wappel.

Mr. Wappel: Do you have any information on whether or not there are going to be any government amendments proposed to this legislation?

Mr. Piragoff: We'll see what happens. We will take the benefit of the hearings and see what witnesses propose. But at this time we don't propose any. It's really not up to the officials to propose any. It's up to the government to decide whether they wish to bring forward amendments.

Mr. Wappel: Well, that's what I'm asking you. Has the government indicated to you, to the best of your knowledge, that they would like to bring forward any amendments to this bill?

Mr. Piragoff: I have no idea what the government is thinking.

[Traduction]

pornographie juvénile, c'est-à-dire les cas où des personnages adultes sont présentés comme s'ils étaient des enfants. Ce type de pornographie encourage aussi l'utilisation et l'exploitation sexuelles des enfants et véhicule le message selon lequel ces derniers peuvent faire l'objet de désirs sexuels.

Les infractions relatives à la production, la distribution et la vente de pornographie juvénile seraient passibles d'un emprisonnement maximal de dix ans. La possession de pornographie juvénile serait passible d'un emprisonnement maximal de cinq ans.

Le projet de loi C-128 prévoit un moyen de défense si la représentation a une valeur artistique ou un but éducatif, scientifique ou médical. Ce moyen de défense est essentiel pour protéger la liberté d'expression, qui est enchâssée dans l'article 2(b) de la Charte canadienne des droits et libertés, et pour s'assurer que les dispositions du projet de loi ne s'appliquent pas aux formes d'expression que les tribunaux jugent utiles à la société.

Dans les articles 4 et 5 du projet de loi C-128, il y a aussi un certain nombre d'amendements corrélatifs au Code criminel. Ces amendements ajoutent les infractions de pornographie juvénile à la définition de l'infraction dans la Partie VI du Code criminel afin que l'on puisse appliquer les dispositions relatives à la surveillance électronique.

De plus, la définition de la pornographie juvénile est incluse dans celle de l'infraction de criminalité organisée dans la Partie XII.(2) du Code criminel; ainsi, elle sera visée par les dispositions relatives aux produits de la criminalité.

L'article 6 du projet de loi énonce l'amendement corrélatif au Tarif des douanes, qui incorpore la définition de la pornographie juvénile dans l'annexe 7 du Tarif, afin de donner aux autorités douanières le pouvoir effectif d'interdire l'importation de cette pornographie au Canada.

Enfin, l'article 1 du projet de loi modifie les paragraphes de l'article 163 du Code criminel afin d'assurer la concordance avec la Charte compte tenu de la jurisprudence actuelle.

Monsieur le président, voilà donc brièvement la teneur du projet de loi. M[me] Lieff et moi-même serons heureux de répondre aux questions des membres du comité.

Le président: Merci beaucoup. Je suis sûr que nous avons quelques questions à vous poser. Nous commencerons avec M. Wappel.

M. Wappel: Savez-vous si le gouvernement va proposer des amendements à ce projet de loi?

M. Piragoff: Nous verrons ce qui va se passer. Nous allons suivre les audiences et voir ce que les témoins proposeront. Pour l'instant, nous n'avons rien à proposer. En réalité, il n'appartient pas aux fonctionnaires de proposer quoi que ce soit. C'est le gouvernement qui doit décider s'il veut présenter des amendements.

M. Wappel: Eh bien, voilà ce que je vous demande. Autant que vous sachiez, le gouvernement vous a-t-il indiqué qu'il veut proposer des amendements à ce projet de loi?

M. Piragoff: Je n'ai aucune idée de ce que le gouvernement pense.

[*Text*]

The Chairman: There is, obviously, also the problem the courts will face. The Supreme Court of Canada has to interpret the Constitution and the Criminal Code. If the legislation is very vague, greater power is given to the judges. This is a difficulty which, in cases involving obscenity and pornography, perhaps, cannot be avoided. In other words, to a certain extent it has to be left to the courts.

Mr. Blais: The point of possession was raised by Senator Lewis at the beginning of his remarks. Since all that material is circulating underground, possession has to be targeted. If possession is not targeted, the real problem cannot be addressed. As soon as people know that possession is a crime, the situation will become quite different. At the moment it is not a crime to possess such a video or other material. Once this bill is passed it will become a crime. From my point of view, one of the major elements of this bill is contained in subclause (4).

Senator Stanbury: One of our witnesses earlier this morning made the point that the amendment in clause 163.1(b) has had an effect on the offence of explicit sexual activity. I am not sure I can explain exactly what the witness had in mind. The fact that has been added has excluded that particular aspect of the charge from the explicit sexual activity definition or the nature of the offence in clause 163.1(a)(i). Adding paragraph (b) has affected the impact of paragraph (a).

Mr. Blais: I am not sure I understand the question.

Senator Stanbury: Mr. Henry is in the room and perhaps he could speak to you later, Mr. Minister.

Mr. Blais: It should be remembered that "...the dominant characteristic of which..." has been added. This is another element which was forgotten for some time.

The Chairman: It was there for a century.

Senator Lewis: I appreciate the problem you had in the past with obscenity and pornography prosecutions.

Mr. Blais: It was not easy. Perhaps that is the reason why it was not done before.

Senator Lewis: Following our session last week on Bill C-123 relating to the disposal of proceeds of crime, I would like to direct your attention to the seizure clauses of this bill. It is interesting to note that on page 4 of the bill it states that where this material is seized and forfeited, the court shall make an order declaring the matter "...forfeited to Her Majesty in the right of the province." This is not really relevant to what we are discussing today, but it follows from Bill C-123 which dealt with the proceeds of crime. Under this bill will the proceeds go to the province?

[*Traduction*]

Le président: Évidemment, les tribunaux vont se trouver également face à un problème. La Cour suprême du Canada doit interpréter la Constitution et le Code criminel. Si la loi est trop vague, cela confère davantage de pouvoirs aux juges. C'est un problème qu'il n'est peut-être pas possible d'éviter dans les cas d'obscénité et de pornographie. Autrement dit, il faut laisser une plus grande latitude aux tribunaux.

M. Blais: Le sénateur Lewis a soulevé tout à l'heure la question de la possession. Comme toute cette pornographie est distribuée sous le manteau, nous devons nous attaquer à la possession faute de quoi nous ne remédierons pas au problème. Dès que les gens sauront que la possession est un acte criminel, la situation va changer. Pour le moment, ce n'est pas un crime que de posséder de la pornographie juvénile sous forme de vidéo ou autre. Une fois ce projet de loi adopté, cela deviendra un acte criminel. J'estime que l'un des principaux éléments de ce projet de loi figure au paragraphe (4).

Le sénateur Stanbury: L'un de nos témoins de ce matin a déclaré que la modification apportée au paragraphe 163.1b) avait des répercussions sur l'infraction relative à l'activité sexuelle explicite. Je ne suis pas certain de pouvoir expliquer exactement ce que le témoin voulait dire. Ce qui a été ajouté a exclu cet aspect particulier de l'accusation de la définition de l'activité sexuelle explicite ou de la nature de l'infraction prévue au sous-alinéa 163.1 (1)a)(i). L'ajout de l'alinéa b) s'est répercuté sur la portée de l'alinéa a).

M. Blais: Je ne suis pas certain d'avoir compris votre question.

Le sénateur Stanbury: M. Henry est dans la salle et peut-être pourrait-il vous l'expliquer tout à l'heure, monsieur le ministre.

M. Blais: N'oublions pas que nous avons ajouté «...dont la caractéristique dominante...». C'est un autre élément qui avait été oublié pendant un certain temps.

Le président: Il était là depuis un siècle.

Le sénateur Lewis: Je sais que vous avez eu des difficultés, par le passé, dans les cas de poursuites pour obscénité et pornographie.

M. Blais: Ce n'était pas facile. C'est peut-être la raison pour laquelle on ne l'a pas fait avant.

Le sénateur Lewis: À la suite de notre audience de la semaine dernière sur le projet de loi C-123 concernant les produits de la criminalité, je voudrais attirer votre attention sur les articles de ce projet de loi concernant la saisie. À la page 4 il est dit «...confisquée au profit de Sa Majesté du chef de la province». Ce n'est pas vraiment en rapport avec ce dont nous discutons aujourd'hui, mais cela découle du projet de loi C-123 concernant les produits de la criminalité. Selon ce projet de loi, la pornographie saisie est confisquée par la province?

[*Text*]

Mr. Blais: The provinces are dealing with the prosecutions themselves and that is why this clause is worded in this way. Other legislation also deals with the proceeds of crime. I presume that those documents or those videos will be destroyed, but it will be done under the control of the provinces, given that the provinces are involved in the procedure. It will avoid duplication by the federal officials and provincial officials involved. It is a correlation clause.

Senator Lewis: Although it is not really relevant to our present discussion, I was curious to hear your remarks.

Mr. Blais: We have to ensure that those documents do not return to the public domain.

Senator Lewis: If they are to be forfeited and sold, what is the province to do with them? They should be destroyed.

Mr. Blais: They will be destroyed. They will not be sold. In some drug seizures there may also be videos and perhaps money. In some cases the videos may be destroyed, but there may also be equipment which could be sold for, say, $1,000.

I do not have those details. It is up to the provinces to make those decisions in each situation. However, I can assure you that those documents and pornographic items will not go back on the market.

Senator Lewis: Section 163.1(6), on page 3 of the bill, deals with what it calls defences. That seems to be a direction that the court shall find an accused not guilty if the representation or written material that is alleged to constitute child pornography has artistic merit or an educational, scientific or medical purpose.

There seems to be some confusion as to where the onus lies. From what you said earlier, you feel that the accused does not have to prove that the work in question has artistic merit; that the accused need only raise the matter.

I am wondering whether that is the case, because the bill says it is a defence, and it is also a direction to the court. Where is the onus in that case?

Mr. Blais: The onus will be on the prosecution to prove beyond a reasonable doubt that the representation does not have artistic merit, and so on.

The Chairman: We have two theories on this. Some say it is the Crown, others say it is the accused.

[*Traduction*]

M. Blais: Ce sont les provinces qui s'occupent des poursuites et voilà pourquoi cet article est ainsi libellé. D'autres mesures législatives portent sur les produits de la criminalité. Je suppose que ces documents ou vidéos seront détruits, mais cela se fera sous le contrôle des provinces étant donné que ce sont elles qui se chargent des poursuites. Cela évitera un chevauchement inutile des responsabilités des fonctionnaires fédéraux et provinciaux. Il s'agit d'une disposition corrélative.

Le sénateur Lewis: Même si ce n'est pas directement en rapport avec l'objet de notre discussion, je voulais savoir ce que vous en diriez.

M. Blais: Nous devons veiller à ce que ces documents ne soient pas remis en circulation.

Le sénateur Lewis: S'ils sont confisqués, que va en faire la province? Ils devraient être détruits.

M. Blais: Ils seront détruits. Ils ne seront pas vendus. Dans certaines saisies de drogue, il peut y avoir des vidéos et peut-être aussi de l'argent. Dans certains cas, les vidéos peuvent être détruits, mais il peut y avoir également de l'équipement qui peut être vendu pour 1 000 $, par exemple.

Je n'ai pas de précision à cet égard. C'est aux provinces qu'il incombe de prendre une décision dans chaque cas. Je peux toutefois vous assurer que cette pornographie ne sera pas remise en circulation.

Le sénateur Lewis: Le paragraphe 163.1(6), à la page 3 du projet de loi, traite des moyens de défense. Il semble ordonner au tribunal de déclarer le prévenu non coupable si la représentation ou l'écrit qui constituerait de la pornographie juvénile a une valeur artistique ou un but éducatif, scientifique ou médical.

On ne semble pas d'accord pour ce qui est du fardeau de la preuve. D'après ce que vous avez dit tout à l'heure, vous estimez que l'accusé n'a pas à prouver que l'oeuvre en question a une valeur artistique et qu'il lui suffit d'invoquer cet argument pour sa défense.

Je me demande si c'est vraiment le cas étant donné que le projet de loi dit qu'il s'agit d'un moyen de défense et qu'il donne également une directive au tribunal. À qui incombe le fardeau de la preuve dans ce cas?

M. Blais: Le fardeau de la preuve revient à la poursuite qui devra prouver, hors de tout doute raisonnable, que la représentation en question n'a pas de valeur artistique, et cetera.

Le président: Nous avons deux théories à cet égard. Certains disent que c'est à la Couronne d'en faire la preuve et d'autres que c'est à l'accusé.

Criminal Law Amendment Act, 1994 (Bill C-42)

Citation 1994, c. 44, s. 29

Royal Assent December 15, 1994

Hansard

N/A

An Act respecting firearms and other weapons (Bill C-68)

Citation 1995, c. 39, s. 151

Royal Assent December 05, 1995

Hansard

If the Liberal Party would allow a free vote on this bill I think we would really see whether there is broad public support for this. We would see whether that is true, as the minister claims.

I think it would prove that the Liberal Party believes in true democracy between elections as well as during them. I wish it would come clean on this issue and allow that free vote to take place.

Whether a Canadian is a gun owner or not here are some principles on which this legislation should be judged. I encourage every voter to inform themselves, to judge this legislation against their own personal beliefs, not what the government, not what the media, not what the politicians are telling them. This is one nasty piece of legislation. It will affect not only our lives but also the lives of our children and our grandchildren.

The Minister of Justice is right, the legislation is about the kind of country we want to live in. Canadians owe it to themselves and the next generation to get it right. Their safety, the safety of their families, their friends, their homes and their properties is at stake.

If Canadians believe in less government and less bureaucracy then they will not support this gun control bill. If Canadians believe in less government spending then they will not support this bill. If Canadians believe in lower taxes, they will not support this gun control bill. If Canadians believe in personal freedom and personal responsibility, then they will not support this gun control legislation. If Canadians believe in every citizen's right to private property, then they will definitely not support this gun control legislation.

● (1525)

If Canadians believe in true equality and that the law should be applied equally regardless of their race or where they live, then they will not like what they read in this gun control bill. If Canadians believe in every citizen's constitutional right to life, liberty and security of the person, then they will oppose this gun control bill with every ounce of energy they have.

If Canadians believe in everyone's right and responsibility to defend themselves, their family, their property and their home, as described in the Criminal Code of Canada, then they will not like what they read in this gun control bill. If Canadians believe the federal government should not interfere in areas of provincial jurisdiction, then they will not support this gun control bill.

A recent survey conducted by Simon Fraser University learned that support for the Liberal Party's firearm registration system drops significantly as the respondents' knowledge of existing gun control laws increases and the full cost of the measures is understood.

In his attempts to confuse the issue of gun control with the issue of crime control, the minister has included some things in his legislation which I support. I maintain that if the Minister of Justice is really interested in public safety he will divide this bill into two parts. Part one would be crime control and part two would be gun control. Even though there are some monumental flaws with the crime control provisions of the bill, I think we could fix those and ensure easy passage through the House so that the police could use these tools to put real criminals behind bars where they should be.

Here is a list of measures in the bill which I think could be modified and amended and which I could support because they truly concern crime. I would support the four-year mandatory minimum sentence for the 10 violent offences committed with a firearm as long as the word firearm was replaced with the word weapon. More people are murdered with knives and other weapons than with guns. I think any criminal who uses a weapon in the commission of a crime should be subject to the same mandatory jail term.

I support using section 85 of the Criminal Code effectively, but again this mandatory sentencing provision should be extended to any weapon used in a crime, not just firearms.

I support the lifetime prohibition from possessing a restricted weapon for the conviction of violent crimes. I also support the inclusion of replica or imitation firearms under section 85 of the Criminal Code. I support the new offences for large scale smuggling and trafficking of firearms. I support the new offences for possessing stolen or smuggled firearms of a one-year minimum jail sentence. I support adding firearms trafficking to the list of enterprise crime offences.

I oppose the banning of 553,000 handguns. I oppose the banning of 19,000 restricted firearms. However, I support the proposed firearms possession certificate, in principle anyway. I support the offence for failing to report a lost or stolen firearm. I support the 10-year prohibition on possession of firearms to those convicted of serious firearms offences. I support the prohibition on possession of firearms for those convicted of stalking and drug offences. I support the tighter border controls, the inspection procedures by Canada customs. Also, I support the forfeiture of vehicles used in smuggling contraband and the proceeds of smuggling activities. I support the requirement for import-export permits for firearms moving across the border for commercial use.

I also support the requirement to record the entry or exit of firearms to or from Canada by tourists and outfitters. I add that these people bring hundreds of millions of dollars into our country, creating thousands of jobs and tourists should not be needlessly harassed at our borders.

I support the provision of minor's permits for persons between 12 and 18 to acquire firearms. I support the extension of authority to approve firearm safety courses to the provinces.

I also support the creation of a separate safety course for handgun users and I support the use of valuable police time and scarce tax revenues on cost effective crime control.

● (1530)

This is a list of the things I support. Because gun control measures will do next to nothing to deter real criminals from obtaining or using firearms, and because these measures are not a cost effective way of improving public safety, I will vote against the bill unless they are changed.

Here is a list of reasons why I am opposed to the gun control legislation. I oppose the mandatory registration of all rifles and shotguns and the provision that would make failing to register them a criminal offence. This will do nothing but make criminals out of law-abiding people.

Here are a few reasons why I oppose mandatory registration of all rifles and shotguns. It will cost hundreds of millions of dollars. It is not a cost effective way of improving public safety or saving lives. It will not help police investigate and prosecute violent criminals. It will not alter police procedures for dealing with domestic disputes. It will not reduce the use of firearms in violent crime.

It will keep the police off the street and in the office, not where they should be. It will require more government bureaucracy, not less. It will require an increase in taxes in the form of registration fees. It will also require other members of society to pay those taxes because the initial registration fees will be waived. It will target law-abiding responsible gun owners, not real criminals. It will help trace firearms but tracing will serve no real useful purpose.

Gun smugglers can already be identified without a registration system. Handgun registration has been in effect since 1934 and has not reduced handgun crime. Registration has been tried and failed in Australia and New Zealand. Hundreds of millions could save more lives if spent elsewhere.

It will have a negative effect on a billion dollar economy. It will undermine respect for the law. I cannot emphasize this more. There are jokes going around. There are ads in the newspapers in my province showing people how to hide their guns. They openly advocate that this law will not be complied with.

We have a huge problem when we put in place a law that everyone regards as being useless. It undermines respect for the law, and we must take that into consideration. We need to maintain that respect. People know this will do nothing to make society safer. In fact it will do the exact opposite. I do not have time today to go into them but there are very valid reasons for opposing the legislation because it will actually increase the risk for most people.

I am particularly opposed to the extreme penalties for persons failing to register their rifles and shotguns: a one-year mandatory jail term and up to 10 years in jail if one fails to fill out that little card the minister says is so easy. Denis Lortie killed three people and only spent 10 years in jail. Where is the justice in this legislation? It defies common sense.

I also oppose the added tax burden on law-abiding citizens, the responsible gun owners, through registration fees, permit fees, and renewal fees. Like I said before, I oppose the banning of legally owned handguns, scary looking semi-automatic rifles and so on, and the banning of all replica toy guns. I oppose those kinds of measures.

I oppose the restrictions on crossbows, the banning of one-hand crossbows and the additional restrictions on air guns. I oppose the prohibition and confiscation of guns without fair, just and timely compensation. I oppose the confiscation of thousands of firearms without compensation when the owner dies.

I oppose the use it or lose it provision which requires law-abiding handgun owners to re-establish their reason for owning a handgun every five years. I oppose the proposed controls on the purchase of ammunition and the additional and unnecessary controls on legitimate gun collectors. I oppose the prohibition of entire households from having firearms because of the actions of a single resident.

● (1535)

I oppose the exemption of certain Canadian citizens from firearms prohibition orders. All Canadians should be treated equally under the law and in this case under this law. I oppose the requirement of an import-export permit for bringing a personal use firearm into Canada.

I oppose the expanded use of orders in council to restrict or prohibit firearms. I oppose the different application of the firearms laws for remote and aboriginal communities. Canadians should be treated equally regardless of where they live, regardless of their race, and regardless of their occupation. I oppose the waste of valuable police time and scarce tax revenue on useless, ineffective gun controls.

I have 28 amendments here. At this time I will not read them all out. I have gone through a lot of things already. I think we need to have a debate because there are many things that need to be addressed. I will hold this up at a later date.

In closing, I make five recommendations to the government. I recommend holding separate votes for crime control provisions and gun control provisions. We should separate those.

I recommend early passage of crime control provisions with consideration of Reform amendments to really get tough on violent criminals.

the application. This is followed by a 28-day mandatory waiting period during which a firearms officer can conduct an investigation on applicants. Upon completion the applicants must then pass a course or test on the safe handling and use of firearms and the laws relating to them. The applicant is then photographed and his or her certificate is processed centrally by the chief provincial or territorial firearms officer. What more can you do?

In the time it takes one legal gun owner to go through this process, thousands of stolen or smuggled guns will change hands in the streets. That is the problem. If this government would take more time to identify the right problem, it would find 60 per cent of the solution.

The national debt is the problem. The deficit is a contributing factor. That is why we have to get to a zero deficit, not just 3 per cent of GDP. The lack of deterrence for the criminal misuse of firearms is the problem. Registration is not even a contributing factor.

The Liberals are identifying the wrong problem. The Minister of Justice stated in the House that last year an estimated 375,000 weapons were smuggled into Canada. In the same breath he went on to say last year approximately 3,800 firearms were lost or stolen by those who lawfully own them in Canada. In the years since 1974 a cumulative total of 65,000 firearms have been stolen or lost, not recovered.

There were 3,800 stolen or lost weapons as opposed to 375,000 smuggled guns, yet the main emphasis of our new gun control laws will be registration for legal gun owners. I believe that instead of throwing millions of dollars toward registration we should look at all possible ways to beef up our security at borders.

Let us do everything in our power to stop the 375,000 guns from finding their way into hands of criminals. Let us send a clear message to the people who bring them across the border that if they get caught, they will not just get a slap on the wrist or a fine, but a guarantee of time behind bars.

Currently we have mandatory sentences for firearms offences that are not enforced because they are plea bargained away. Therefore a mandatory sentence is utterly meaningless and useless. I can see the need for a crown prosecutor to have some latitude in handling a case. The flexibility that plea bargaining offers is intended to lead to a conviction. I realize it is necessary, but not the outright elimination of a mandatory sentence. It should be a reduced sentence.

• (1650)

A national firearms registry flies directly in the face of today's reality which is that the vast majority of people want less government regulation and intrusion in their lives, not more. A 10-year jail term for failure to register and the right to register a firearm and the right to search and seizure without a warrant are incomprehensible.

Are we headed for a police state if this bill passes in its present form? Is the minister not willing to separate the bill and debate the two separate issues? He knows full well that they are two separate issues. He knows that this party would support the amendments to the Criminal Code to make it tougher on crime. He knows he would get our support.

Why bother with this national registration issue with the same bill? Separate the two. Have the courage and conviction to have a true and honest debate. People are sick and tired of hearing about the rights of criminals. They want them caught. They want them off the streets. They want them punished and, above all, they want laws that will make people think twice about becoming criminals in the first place.

Mr. Sarkis Assadourian (Don Valley North, Lib.): Mr. Speaker, 128 years ago our founding fathers came together, gave this House power to enact laws, to ensure peace, order and good government in Canada.

Even President Clinton on his visit to this country on February 23 said Canada has shown to the world how to balance freedom with compassion and tradition with innovation. Canada set the example for the rest of the world on many occasions. This certainly is one of those occasions when we can say to the world that we set the standards and we make the examples for the rest to follow.

On October 25, 1993 the people of Canada voted for the Liberal Party. In the red book we made a promise to make our streets safe and offload the guns. Bill C-68 goes in that direction.

Public support for this bill has been enormous, 80 per cent to 85 per cent. Even in Alberta we are told 62 per cent of the population supports the bill. In my riding of Don Valley North, which I am proud to represent, 90 per cent of the population supports this bill.

In my riding I received only seven or eight representations opposing the bill. Out of those, one of them was a U.S. citizen complaining about the bill. When I asked him why he does not complain to U.S. senators, he said he lives here and has to complain to me.

Many of us receive many letters from various organizations and individuals regarding Bill C-68. I received maybe 200 letters from various parts of the country. One said in part: "It has come to my attention that someone has sent a number of misleading letters to various members of Parliament and some Reformers, including yourself".

These letters are on the subject of government policy proposals and gun controls. One says in part: "Many of these letters bear my name and address and are signed but were not written, signed or sent by me. My signature is false. I believe you have

illegal importation or smuggling of guns into this country? There it appears everyone is in agreement. That aspect is good.

However, one has to look at that aspect practically. How do we control such a provision? Such a provision cannot be effectively dealt with without registration. Without registration such an aspect cannot be dealt with whatsoever. It appears a phobia has taken over with respect to registration, that this is a restriction on legitimate gun owners.

I own a gun. How the filling out of a page, signing it and sending it in to the appropriate authorities is going to restrict me in any way with that gun is a matter I do not understand to this day. There is absolutely no restriction on legitimate gun owners.

We have to deal with the question of registration and what its possible benefits are. Sure, we have many legitimate gun owners. There are people, the criminal element, who use guns and obviously do not register them after they have stolen them or come to have them in some other way.

We have to make sure the legitimate gun owners show some responsibility. Being a legitimate gun owner means storing guns properly, which matter has been often overlooked in this country. Storage is crucial in keeping guns out of the hands of the criminal element which has used this as a source of getting guns. There are break-ins to homes where guns are not properly stored. Guns are stolen from homes of legitimate gun owners who do not properly store them.

They have to pay a price for that. That price is an offence if they do not properly store their guns. If they do not properly store their guns, they will be charged. That matter has been in effect for many years, but has not been properly enforced or the mechanism has not been in place. With registration there will be more responsibility on the part of the gun owners.

■ (1110)

As the Canadian Association of Chiefs of Police put it, the registration of firearms will help control smuggling, gun theft and the misuse of legal firearms. It continued to explain what is meant by this.

The association indicated that with respect to smuggling, guns do not have to be smuggled into this country; they can be brought in legitimately. Any member in this House who has a proper certificate can bring a dozen guns into the country.

Under the current system, the type of guns, the number of guns, and the serial numbers of the guns are not tracked when they come into Canada. A recent report indicated that customs officers are more focused on the value of the gun shipments than on any other aspect.

Once these guns are in the country, we do not know what happens to them. We lose complete track of them as to whether they get into the hands of illegitimate gun owners, et cetera. That matter will be taken care of if registration comes about.

Registration will leave a paper trail. The guns will be traced back to the source to determine how they got into illegitimate hands, if they have transferred to such hands, once they have come into the country.

Not always but generally, guns that are stolen have not been properly stored. Registration will promote safe storage which will reduce gun theft as well as reduce suicides and accidents.

One may say, how will it reduce suicides? Safe storage generally prevents the gun from getting into the hands of a person who is in a temporary state of depression. Again, as the chiefs of police so eloquently put it in their report on this matter, suicide is a permanent solution to a temporary problem.

A person with a problem becomes depressed and if there is easy access to a gun, deals with the problem on the spur of the moment. If access to the storage container is just a little more difficult, especially for young people, and if they do not have access to the ammunition, a temporary problem may pass and the permanent solution will not occur.

Certainly that is an important factor. If we can save some lives from suicides, that would be an important factor for us. That aspect and the suicides in this country are matters we have to look at very closely. It is important to prevent the senseless loss of young people's lives, those people who have been unable to deal with temporary situations and have immediately dealt with them by ending their own lives with a gun.

Of course, there is the question of collectors. No one believes that collectors should be disarmed of their gun collections. That matter can be dealt with in committee. No one indicates that firearms safety is not an important factor.

What we have to understand is that registration will in no way whatsoever cause any restrictions on legitimate gun owners. The filing of the certificate once in a lifetime for a gun is not a restriction but it is certainly a help to the authorities in enforcing the laws. It is not a restriction whatsoever on anyone in society. The question really is, what is the problem?

[*Translation*]

Mr. Bob Ringma (Nanaimo—Cowichan, Ref.): Mr. Speaker, it is with pleasure that I rise today to address this House and the people of Canada in support of the motion put forth by my hon. colleague from Yorkton—Melville.

■ (1115)

This motion suggests that firearms control and crime control be addressed separately by dividing Bill C-68 in two. By making the two issues of lawful possession of firearms and their use for criminal purposes separate, this amendment could help introduce nuance and sophistication in this debate on firearms

• (1130)

There is evidence that despite some very good material on current gun laws most Canadians lack a basic understanding of the measures already in place. Before adding to the law it is essential to find out if education programs are working. If they are not, let us fix them. Because many people are not aware of the control and limits on private firearm ownership, many do not distinguish between the legal firearm owner and user and the criminal who uses guns.

It has been argued that the lack of public awareness about the existing law extends to gun owners and law enforcement officials. This prevents the law from being applied properly. It also may prevent those directly involved in or aware of dangerous situations from informing the police and preventing tragedies.

The federal and provincial governments need to sponsor an effective public education program to inform Canadians of all aspects of current gun control laws. They should at least wait to see if current laws are working before imposing what may be unnecessary limits on Canadians. Public safety balanced with the rights of legitimate law-abiding gun owners should be the guiding principle for any changes.

The minister should also remember that for many Canadians, especially aboriginal peoples and those living in the north, firearm use is a part of their tradition and culture and may be necessary for survival. For others such as farmers, hunters and sportsmen, firearm expertise is a part of the job or a legitimate hobby.

The new bill also prohibits gun collectors from leaving their guns to members of their families after death. A number of gun collectors have come to me very concerned about this. I cannot believe the minister understands any of this when he called—as he did at the Canadian Club—lawful, responsible gun owners who disagree with parts of his bill an American style gun lobby. Comments like this show he is not recognizing, let alone understanding, the reality of many Canadians.

I believe in public safety. I believe in the kind of public safety brought about by effective laws that protect the victims and punish the criminals. I am not convinced the measures in this bill will do that.

Mr. Andy Mitchell (Parry Sound—Muskoka, Lib.): Mr. Speaker, I appreciate the opportunity to talk about Bill C-68, the firearms legislation.

As a representative from rural Ontario I have some concerns about the legislation which I intend to address in a minute. I want to express both my support and the support of my constituents for the minister's objective to curb violence in our society. That is the intent of the legislation and I fully share that. My constituents share that. It is a worthwhile objective. The debate on Bill C-68 is about the best method to curb violence in our society.

I support a number of the things the minister has proposed. I support increased criminal sanctions for the illegal use of a firearm. On average right now it is about 16 months for committing those 10 designated offences. Under this legislation it would be four years, an increase of 300 per cent in the sentence.

I agree with the sanctions individuals will have to absorb if they are caught smuggling firearms. I agree with his direction to provincial attorneys if they have evidence not to bargain away a firearms offence, go to court and find the individual guilty.

I agree with an enterprise crime for the smuggling of firearms. If someone is caught doing it, the assets they have gained can be seized by the crown and used for further criminal control. I agree with increased border controls, recognizing that we will not be able to stop every vehicle that crosses the border. If we are able to reduce it by 20 per cent or 30 per cent, it is better than not doing anything. I agree with his interdiction activities.

I was very pleased to hear that the minister agreed there are legitimate uses of firearms. He agreed that hunting is a valid pastime. He agreed that target shooting is a valid sport. He agreed that collectors have a right to collect.

• (1135)

He talked about the needs for pest control and the needs of trappers. I agree with that. I agree with his statement of the economic impact hunting has on areas like mine. Every fall thousands of people travel to Parry Sound—Muskoka to participate in hunting. They have a significant economic impact on my area.

I hope the committee studying the bill looks at ways of having that support better enshrined in the legislation because it is an important concept which should be in the legislation.

I do not agree with the comments by some of my colleagues opposite regarding self-defence. I agree fully with the minister that police officers and military officers should carry firearms for self-defence. I do not agree with arming civilians for the sole purpose of self-defence against criminals. We are not the United States. We do not settle our arguments at the end of a gun barrel. That does mean there are not legitimate uses like hunting, target shooting and gun collecting. We have to make the distinction between the two.

I have some concerns regarding some of the proposals, particularly related to registration. The minister has suggested we are going to spend $85 million to register firearms. I want to be clear that is the best way to control violence.

The minister said registration will not stop a criminal from using an illegal weapon. He indicated it will not stop somebody

remember that the good things in this bill can be supported by almost every Canadian. However, there are matters in it that affect the average Canadian. These must be corrected. There are things in this bill that affect estates. I want to see some of those corrected in committee.

• (1200)

I have voted over 2,000 times in the House of Commons and on only one occasion have I voted against the government. If further changes are not made to this legislation, I am afraid I am going to have to see the second time that I will vote against my own government. That does not sit well with me personally because I am a loyalist and a constructive worker trying to get things done. I do not want to vote against this bill, but if I must, I will. My constituents are not part of the problem with their hunting and their sports clubs that operate throughout the area.

Mr. Jim Abbott (Kootenay East, Ref.): Mr. Speaker, I respect the comments of the preceding speaker. I suggest to him that he seriously consider what we are debating today, which is an amendment by the Reform Party to split the bill into the parts that he and I agree are workable and necessary.

I also refer to the comments of my Reform colleague from Nanaimo—Cowichan. He spoke about the amendment to split the bill as being a practical solution.

For the benefit of the justice minister and his staff, I would like to set my speech around some things that have been in the public domain that his staff should have brought to his attention. However, I assume they have not, otherwise he too would be inclined to split the bill.

I would like to identify the real problem. Referring to documents that are in the public domain, I would like to read briefly from one. It is an article referring to Project Gun Runner in the Kingston *Whig–Standard Companion* of April 9, 1994 and I read in part:

> A total of 86 charges were laid during Gun Runner, which ended last April. Of the 17 guns the team bought on the black market, one came from a break-in. The rest were smuggled into Canada.

That is one out of 17. It goes on:

> Of the 243 other firearms that participating police forces seized during the operation, the vast majority came into the country illegally from the United States.
>
> "The project certainly opened our eyes to the fact that stolen guns from B&Es aren't the problem. Smuggled guns are the area of concern," says Detective Sergeant Wayne Moore of the Hamilton–Wentworth police criminal intelligence unit.
>
> Gun Runner helped open a lot of people's eyes.

It is unfortunate that many of the eyes belonging to the backbenchers and the Liberals were not opened by this information. Perhaps they should review it.

Metro Toronto firearms expert, Detective Paul Mullin says:

> It's a lucrative business—On the streets of Hamilton and Toronto a handgun is going to sell for $300 to $500.
>
> And when it comes to smuggling, handguns are an easily concealed commodity.
>
> Let's face it, 10 handguns don't add up to a carton of cigarettes in size. And at $500 apiece, that is $5,000 to be made.

Further on in the same article it describes how they are getting into the country. You name it: trains, planes, boats, trucks and cars. Last year Canada Customs seized 1,681 guns at border crossings with the U.S., an increase of 124 over the previous year. But 98 per cent of those firearms were seized from American tourists who were simply not aware of Canadian gun laws.

There are a lot of areas and ways and means of getting into Canada without coming through customs. "There are lakes and backroads and rivers and unmanned locations," says a director of intelligence services with Revenue Canada and Customs.

> And when a smuggler comes across he is usually carrying more than one or two guns.
>
> He's going to be come back with a quantity—10, 15, 20 guns. He's going to make the run worth his while because he's going to get into as much trouble for one gun as he is for 20.
>
> A Davis .380–calibre sold to a licensee for $70 may be sold to a first–level street dealer for $90. The dealer then sells it to a Canadian importer for maybe $120 and then the importer or his mule will drive it across the border and sell it for $500.

• (1205)

This article clearly delineates the fantastic profits that can be made.

Again, for the benefit of the justice minister and his researchers, they might want to take a look at a January 7 article in the Montreal *Gazette*, headlined "Illegal guns pour in from U.S.", detailing a number of illegal importations. I will cite two here:

> Toronto, September 13, 1993. Three Armenian jewel thieves enter a downtown jewellery wholesaler, pistol–whip the owner with a 9–mm Sigarms and escape with $90,000 in merchandise. Where did the gun come from? From Vermonter Wayne D. Reed.
>
> Vancouver, October 15, 1993. Five men, three of whom are jailbreakers, steal $500,000 worth of jewellery from a Birks store. They are armed with a 9–mm Cobray Mach II with the serial numbers drilled out, a .25–calibre Sundance and a 9–mm Glock pistol. Where did the guns come from?—Wayne D. Reed.
>
> Wayne D. Reed, 49, lives with his wife and four children in a lower–middle–class housing development in north Burlington.

The article continues:

> From this modest home Reed has fed since 1991 an ever–expanding hunger for guns in Canada's criminal underworld. According to his own estimates given to *The Gazette*, he has sold about 900 firearms, mostly high–powered pistols, to Mohawk Indians who smuggled them over the border into Quebec and resold them to criminals across Canada.

> The same routes developed for cigarette and booze smuggling—river crossings at Akwesasne on the St. Lawrence River, and Walpole Island on the St. Claire River north of Detroit—are now being used for the more lethal commodity, firearms.

Further on in the article it states:

> With a U.S. federal dealer's licence, Reed can legally buy and sell any firearm except machine guns. He waits for the orders to pile up so he can get a cut rate from the wholesaler by buying in quantity.
>
> Criminals place their orders through various Mohawk gun dealers who in turn place the orders with Reed or dealers like him. The Mohawks fill out U.S. federal firearms transaction forms (referred to as "yellow sheets") with false names taken from the Vermont phone books.

We have seen from Project Gun Runner and other documentation that the problem is one of illegal importation or smuggling. The fundamental problem here, although it does occasionally relate to guns that are stolen from private owners, is illegal guns.

What is the response? As the revenue critic I was very interested to read the fact sheet put out by Revenue Canada on the government's firearms control initiative. It reads in part:

> New firearms control measures, November 30, 1994. An expanded commercial permit system. All commercial import, export and in-transit shipments of firearms will require a permit in advance issued by the Solicitor General, with the approval of Foreign Affairs.

I think that Mr. Reed will shake in his boots.

> Revenue Canada will verify that every firearms shipment, import and export, is accompanied by an approval permit.

I am sure that the criminals that are bringing them in illegally will be concerned about this.

> A National Firearms Registration System. Under this system, which will be implemented by January 1, 1998:
>
> all firearms entering, leaving and moving through Canada will have to be registered in the National Firearms Registry.

Again, I am sure that Mr. Reed will be complying with that, along with the rest of the people who are smuggling guns into Canada.

> Firearms Control Enhancements: Summer, 1994
>
> Enhanced verification of the accuracy and integrity of documentation accompanying shipment of firearms;
>
> Implementation of a more rigorous inspection program at all land border crossings—100 per cent of firearms shipments are now examined.

• (1210)

That certainly gives me a lot of confidence that all of Mr. Reed's firearms are now going to be examined. Perhaps he might not care. What does this have to do with the problem? Absolutely nothing.

The enforcement activities contained in the bill are bogus in light of the fact that the government is bringing down penalties in Bill C-68 while at the same time it is loosening restrictions in a bill that was just passed through the House, Bill C-42.

These restrictions are supposed to help when there is domestic violence and in the illegal use of weapons. I have in my hand a document from the provincial court judiciary, provincial court of British Columbia where it explains that the act that was just passed will be changing assault with a weapon or causing bodily harm from an indictable offence to one that could be treated in a summary fashion in court.

How serious is the government about gaining control? We know that the Saskatoon police officers are not in favour of this. We know that there is presently a meeting of the Canadian Police Association and its members may or may not be in favour of this. We know that Saskatchewan will not be enforcing this.

I conclude by drawing to the attention of the House something I raised with the justice minister last Tuesday with a question.

The environmental extremist, Paul Watson, who allegedly was attacked by concerned residents in the Magdalen Islands was widely reported as saying that he held off his alleged assailants by using a stun gun and his fists.

I asked the justice minister this. Stun guns are prohibited weapons under section 90(1) of the Criminal Code. Mr. Watson admits to having this prohibited weapon in his possession. Would the minister confirm if the gun was confiscated, if Mr. Watson was charged for having an illegal weapon in his possession. If he was not charged, why not?

In part, the justice minister answered: "I commend the member on his knowledge of the Criminal Code but I also remind him that enforcement of such provisions is entirely a matter for the provincial authorities to which I invite his attention".

I asked, if that is the case, are we going to have two sets of laws, one for people outside of Saskatchewan and one in or is this whole thing bogus?

Hon. Raymond Chan (Secretary of State (Asia-Pacific), Lib.): Mr. Speaker, I am very pleased today to have the opportunity to speak to Bill C-68, an act respecting firearms and other weapons.

The issue of gun control has generated a tremendous amount of controversy over the last year. I have heard from many of my constituents expressing concerns on both sides of the debate. I would like to commend the Minister of Justice for introducing a bill that took into consideration the concerns of gun owners while at the same time acting to improve public safety.

I believe there is broad public support for the bill. I know it has responded to the concerns of my constituents by delivering stiffer penalties for the criminal use and smuggling of firearms.

At the same time, the bill provides a context in which legal gun owners can pursue their interest in a manner that is consistent with public safety. The creation of a national registration system is an essential part of the legislation. Registration of all firearms will improve public safety and help police fight the criminal misuse of firearms.

I understand that the registration of firearms is one of the most controversial aspects of the bill.

• (1215)

Opponents of the bill have charged registration will cost the government in excess of $1 billion. This is not true. To set up this system will cost $85 million spread over seven years. This will be recovered over time from the fees charged to gun owners.

Opponents of the bill have charged registration will not reduce the criminal use of firearms because criminals do not register their guns. They charge registration will not improve public safety. The Canadian Association of Chiefs of Police agrees with the Minister of Justice that the registration of firearms will help control smuggling, gun theft and the misuse of legal firearms.

Registration will make it more difficult for criminals to acquire illegal firearms by helping police trace and eliminate sources of firearms entering the underground market. Registration will help ensure legal gun owners are held accountable for their firearms and do not sell them illegally or give them to individuals without appropriate authorization.

Registration will promote safe storage which will reduce gun theft as well as reducing suicides and accidents. Police and women's groups both support the bill because registration will assist the police in removing guns from volatile domestic situations. The bill will help the police in enforcing the estimated 13,000 prohibition orders issued every year, to remove guns from volatile domestic situations and from individuals considered to be a risk to society.

I will vote in favour of the bill because the registration of firearms will save lives. It is critical to controlling the illegal gun trade, to prosecuting offenders, to promoting safe storage and to removing guns from the hands of dangerous individuals.

Many opponents of the bill have told the government to deal with crime control, not gun control. The bill deals harshly with the criminal misuse of firearms. I am pleased to see the bill includes minimum sentences for violent offences using firearms, a lifetime ban on owning handguns and stiff penalties for illegally importing and trafficking firearms.

I have listened to the concerns of legal gun owners in my riding. I am pleased to see the bill has also taken their concerns into consideration. To avoid undue financial hardship on the owners whose guns will be prohibited, the new legislation allows them to buy and sell to individuals owning firearms in the same category. This measure addresses one of the very legitimate concerns of gun owners.

Our government is working on many fronts to reduce crime and improve public safety. Strengthening gun control is only one part of the government's strategy on crime prevention. We must also address the social roots of crime including poverty, illiteracy and family violence.

Gun ownership is not a right, it is a privilege. It is subject to regulation by government because firearms can be dangerous. It is in the best interest of society to have some degree of regulation.

[Translation]

Mr. Ghislain Lebel (Chambly, BQ): Thank you, Mr. Speaker, for recognizing me at this time. The firearms bill introduced by the Minister of Justice is motivated by the best of intentions. I am sure.

Who in this House is for violence? Who does not want control to be exercised over violence? I do not think anyone in this place or in the general public does. Polls show that 100 per cent of the population is against violence, and already 73 per cent of the population says it wants stricter firearms control.

• (1220)

In this regard, the views of my party are no different from those expressed by the public at large. It is just that, sometimes, debates such as this one lend themselves to extremes that need to be moderated. When I hear certain members opposite tell us that 73 per cent of the population is for the proposed firearms control measures, I cannot help but wonder if all these people who are for the control measures are aware of what implementing such a system entails and how much it will cost.

A study conducted by a British Columbia university professor indicates that there are between three and seven million firearms in circulation and, if all of these weapons now had to be registered, it would cost the Canadians taxpayers, the public purse, or the hunters at the very least $500 million. That is half a billion dollars.

Of course, these figures are just thrown at us. Can they be checked? It would be rather difficult. On the other hand, if we look up in the auditor general's 1993 report how much the present registration system or firearms acquisition certificate system has cost to operate—these figures are now available—we can see that an inefficient and counterproductive system costs at the very least $50 million.

I did not pressure in any way the Auditor General of Canada to say that the current system fell short of our requirements. There is therefore reason to believe that the proposed system may well

have a starting cost of $500 million. In the current economic context, I wonder if clear information regarding the costs involved would have made a difference in how the public answered the poll.

Needless to say, this kind of bill leaves the door wide open to sheer demagogy. It has been said that even if this bill saved only one life in Canada, it would deserve our support. I say this with all due respect for the opinion of my colleagues across the way who made that claim, including the hon. member for Ottawa West, who spoke to this bill yesterday, the hon. member for Lachine—Lac-Saint-Louis and the hon. member for Nickel Belt.

Of course, I would try to contribute to the $500 million needed to save a life. However, if we invested this amount in public awareness, in the fight against spousal abuse—if that is really the purpose of this bill—, I would not think it is too much. I am convinced that investing $500 in one of these areas could certainly save more than one life, at least two, as I am sure you will agree, Mr. Speaker. This bill would then be 100 per cent cost-effective in relation to the position of my friends across the way.

There is another aspect to this bill. In this regard, I tend to side with my friends here who say that this bill should be split in two. First of all, by giving the federal government the opportunity to create new crimes as it sees fit, this bill will—in Quebec and, I assume, in all Canadian provinces—encroach on areas of provincial jurisdiction, namely civil rights and freedoms as well as the sport of hunting.

In this regard, I am very reluctant to give my support, unless it is conclusively demonstrated that the bill cannot fail to achieve the goals established. As you know, hunting generates regional revenues of $300 million a year in Quebec at a specific time of year.

• (1225)

This is a windfall for most Quebec regions: the Eastern Townships, the Upper Laurentians, the Abitibi-Témiscamingue area, the Lac Saint-Jean region, the North Shore, the Gaspé Peninsula, you name it. In these regions, some small communities live off sport and recreational activities such as hunting in the fall and fishing in the spring and summer. They could lose all of that. I am not saying that I oppose this bill, but I wonder about its consequences, which may not be obvious at this stage.

However, I do think this is a prime example of federal interference in a field of provincial jurisdiction. The Quebec environment minister also had reservations about this legislation. Sure, the initial intent is laudable and everyone supports such a measure, the Bloc perhaps more than any other party. However, given the current economic context, we have to be careful before adding an extra $500 million to the deficit. Let us not forget that our deficit is the sum total of 20 years of good intentions in Quebec. It is thanks to all those who meant well and tabled various pieces of legislation if we are now struggling with this uncontrolled and uncontrollable deficit.

As regards this aspect, I hope that those who support this legislation, as well as those who oppose it, will come to present their respective views to a parliamentary committee. There is another aspect of this bill which concerns me. I said earlier that we should make sure that the goals sought are indeed reached. In addition to being able to afford all this, we should have some assurances that these objectives are reasonably attainable. When we consider the opportunities for smuggling, in his study Professor Mauser said he is not at all sure that smuggling will be stopped.

In fact, the Canadian Association of Chiefs of Police expressed some reservations in this respect. The Reform Party's brilliant representative said earlier that a single shipment of guns can generate incredible profits, as much as 400 or 500 per cent. That is quite a lot. We had a terrible time trying to stop cigarette smuggling last year. We never succeeded, so that the federal government finally abdicated its responsibility and reduced taxes, although it needed these to pay for its current operations. It is no secret that the government raises revenue through taxes. Since the government realized it could not stop cigarette smuggling otherwise, it preferred to forgo revenues that were legally acceptable and warranted.

So will it be the same in the case of firearms? Will the government abdicate its responsibility, will they still shoot at government helicopters about to land on a reserve straddling the border between Canada and the United States, the message being: "Get out of here, this is our business". At least, that is what happened with cigarettes. I would appreciate some certainty in this respect, some assurances that smuggling is a thing of the past.

You know, we have another problem with imports not necessarily connected with smuggling. Recently, I was working on the Customs Act and the notorious procedure I mentioned here in the House during Question Period, the so-called low value shipment, a term used in the customs sector. For instance, a truck comes in from the United States, a bonded carrier with a shipment of merchandise, and they do spot checks. They look at the manifest, they look at the list and they say: Okay, Mickey Mouse watches, straw hats, whatever. They do a spot check. They take items at random from the truck and check whether these items correspond with what is on the manifest.

• (1230)

Customs officers told me that in nine cases out of ten, if not ten out of ten, they might be carrying a handgun or a firearm that is not only restricted but prohibited in Canada. In nine cases out of ten this would go unnoticed.

So that is why I have a number of questions about this bill. I am not saying I am against the bill but I am not saying I support it either. I think we should all discuss this. That is why we are debating the bill here in the House, so that in the end, we can make an informed decision.

[*English*]

Mr. Derek Wells (South Shore, Lib.): Mr. Speaker, I am pleased to have the opportunity to speak on Bill C-68, an act respecting firearms and other weapons. I particularly wanted to speak on this legislation because of the great deal of concern it has caused both myself and my constituents.

This legislation is an important part of the Liberal government's broad strategy on crime prevention. It should work in concert with previously introduced pieces of legislation relating to sentencing reform, corrections and parole reform, the Young Offenders Act and the consultation document on the National Crime Prevention Council.

I agree with the overall intent of this legislation as well as the three principles that motivated this government to introduce Bill C-68. At the same time I believe it is incumbent upon all members of this House to recognize that there are two sides which must be heard. We must recognize the sincerity with which both sides bring their views to the table.

I have constituents in my South Shore riding who are in favour of the government measures and I certainly have constituents who are opposed. For this reason, I have formed a riding committee which will meet with me on a regular basis to review the legislation in detail. This committee will be reporting to the Minister of Justice and to the Standing Committee on Justice and Legal Affairs on areas of concern with a view to offering suggestions for improvements.

I expect that people on both sides of this issue would agree with the three principles as previously outlined by the Minister of Justice in this House. In essence these principles are: one, that Canadians do not want to live in a country where people feel they want or need to possess a firearm for their protection; two, that if we are to retain our safe and peaceful character as a country, those who use a firearm in the commission of a crime will be severely punished; and three, as a government and as a country, we must acknowledge and respect the legitimate use of firearms by law-abiding Canadian citizens.

The Minister of Justice and this government have acknowledged throughout this debate their respect and consideration for the traditions of hunting, both for sustenance and for sport, as well as the use of firearms for farming, ranching and other legitimate activities. It is not the intention of this government with this legislation to interfere with these rights. As well, we wish to go on record as acknowledging that these rights will continue to exist into the future.

I would like at this time to comment on the various components on the firearms control package as outlined in the legislation.

I believe that increased penalties will act as a deterrent to the criminal use of firearms. A mandatory four-year jail term for the use of a firearm in the commission of a serious crime, in addition to charges for the offence in which the gun was used, is deemed by those concerned with law and order to be much more acceptable than the status quo.

The present law is often criticized as being inadequately enforced with charges too often dropped as part of a plea bargain or otherwise not pursued. This problem is addressed by this legislation.

In relation to the aforementioned, I fully support any change that will see young offenders who commit firearms offences being treated in the same manner as adults. The criminal penalties as outlined in the legislation will also limit access to firearms for felons, including young offenders.

Prohibition orders on the possession of restricted and non-restricted firearms for those convicted of serious violent crimes will range from 10 years to life. People convicted of stalking or drug related charges will be subject to prohibition orders.

Not only does this make good common sense, but it is a crime prevention measure that will go a long way toward restoring public confidence in the justice system. It is clear that the intention of this legislation is to offer more protection to the law-abiding citizen.

Bill C-68 includes border control measures which are directed at curtailing smuggling activities and tightening up importation regulations. In addition, the bill adds a number of new offences arising from the trade in illegal firearms or other weapons. The overall penalty provisions will put these offences among the most serious class of crimes in the Criminal Code.

The most contentious part of this legislation is the registration provision which will apply to all guns, regular, restricted, and prohibited. Many of my constituents have raised concerns or worries about the registration requirement. They are concerned about the cost, both to themselves as individuals and to the country at large. They have concerns that the system will be cumbersome. They have concerns that registration will lead to the eventual confiscation of their firearms. They are concerned that the registration system will not be secure and that others, including criminals, could gain access to the information.

an all–out debate on the subject of crime control in the House is being prevented by the government.

The bill is solely aimed at punishing law–abiding legitimate owners of firearms in Canada. These law–abiding citizens are more concerned than anyone with the safe usage and storage of firearms. Of all people they should not be the target of the legislation.

All Canadians want crime to be reduced on the streets, in our cities and in our towns. Canadians want to be able to feel that the authorities are able to control crime.

The Minister of Justice stated in the House that it was estimated some 375,000 guns were smuggled into the country and about 3,800 weapons were lost or stolen within our borders. The justice minister introduced legislation which concentrated on the 3,800 weapons loose in society.

What about the 375,000 smuggled weapons? As far as I can see the minister's actions are twofold. First, his actions are directed at punishing legitimate owners of firearms, appeasing a special interest group. Second, as some kind of afterthought his actions may do something about the real problem, the 375,000 weapons smuggled into the country. This is preposterous. Anti–gun groups are not amused. Neither are sporting groups, hunting clubs, target shooters or Olympic sports spectators. The grass-roots of Canada is not amused.

There is no reason the government cannot attempt to control smuggled weapons without slapping the faces of law–abiding citizens. My constituents therefore stand in favour of splitting the bill.

Recently I conducted a household survey in my riding and 78 per cent of my constituents said that they did not want all guns including shotguns and rifles registered. Seventy–eight per cent of my constituents said that they did not want short barrelled pistols banned. Most important, 92 per cent of my constituents want tougher mandatory sentences for criminals who use guns.

• (1305)

To date I have presented 43 petitions in the House containing over 3,000 signatures of constituents who oppose further legislation for firearms acquisition and possession. They call on Parliament to provide strict guidelines and mandatory sentences for the use or the possession of a firearm in the commission of a violent crime.

People do not have to look far for an example. They can turn to their local newspapers for examples of how the criminal justice system is letting the public down. For instance, I turn to the Penticton Herald that had an article entitled "Slap on the wrists no deterrent".

The article was about a man convicted of a weapons offence involving a restricted weapon. He was convicted, given a slap on the wrist, a $440 fine and a year's probation. Canadians must be asking themselves, if the courts do not do their part in placing a deterrent on this kind of offence, what good is it to demand that hunters and sportsmen register their shotguns and long arms.

As members of the House we ought to be doing all we can to protect our borders from those who seek to bring crime to our otherwise free and peaceful nation. We ought to make it very clear to the international criminal community, as well as our own criminal community, that Canada will put behind bars anyone who attempts to bring weapons into the country. We must ensure that is well known beyond our borders and that the maximum punishment for those bringing weapons into the country will be applied.

Not only anti–gun groups but all Canadians want smuggling stopped. I might add that all Canadians want the full force of our laws and maximum punishment delivered to persons using firearms in the commission of an offence.

While the citizens of the nation have the privilege of owning firearms, we must make it perfectly clear that we do not and will not tolerate abuse of the privilege. We must adopt a zero tolerance policy on criminals in the country.

Society has been living with handgun registration for over 60 years. Because of the difficulty our citizens face in terms of obtaining an FAC, we do not take lightly abuse of firearms laws. Virtually every constituent, firearm owner or member of an anti–gun group that contacted me during the debate of this issue has left me with one thought above all: punish the criminals who use firearms. Firearm owners, law–abiding citizens and anti–gun groups are sick and tired of legislators going after the wrong guy when dealing with the problems associated with firearms in society.

Together all groups and all Canadians ask the minister not to follow the precedent set by former ministers of justice. He should do us all a favour and split the bill. Let us do some work in the House on crime control. Canadians will continue to read in the newspaper and see on television the mayhem, the bloodshed, the heartache and the horrors lethal weapons in the hands of criminals are causing on our streets. We will continue to see and hear of such criminals walking away from their deeds in that our courts refuse to deal out maximum penalties for crimes committed with a firearm because of plea bargaining and other reasons.

In other words, by splitting the bill in half we would be allowed to deal with the two issues: first, crime control and, second, a gun registry. All sides of the House would be able to work on crime control first and most importantly. Surely the Minister of Justice would have us believe that he is so well

intended he can accommodate the desire of this side of the House and Canadians who recognize that crime control is the most important issue.

Any right thinking Canadian knows that with some 375,000 weapons being smuggled into the nation, the criminal use of firearms will continue. The criminal use of firearms does not exist because of hunters, sportsmen, gun collectors and law-abiding citizens. The criminal use is by criminals.

• (1310)

In closing, the constituents of Okanagan—Similkameen—Merritt would support the bill being split in two. By doing so we could deal with crime control and then the gun registry. We could salvage some good sections in terms of protecting our borders from international criminals. We could try to protect law-abiding Canadians at the same time.

Mr. Don Boudria (Glengarry—Prescott—Russell, Lib.): Mr. Speaker, let us start by calling what we have before us today what it really is. We have before us a motion. It is not to split the bill. That is utter and sheer nonsense. The motion asks that the House decline to give second reading to Bill C-68.

The effect of adopting such a motion is not to split the bill, no matter what words are in the motion. Any member who says that the effect of adopting such a motion is to split the bill either does not know the rules of the House at all or knows better and refuses to say so, not to put it too unkindly.

Citation 559 of Beauchesne, just in case the member across does not know how it works, is entitled: "Types of Motions". It refers to different types of motions. The motion introduced by the member is known as a dilatory motion. In that motion is a reasoned amendment. We decline to give second reading to a bill. Perhaps the reason he wants to decline giving second reading is that he would prefer to have the bill split two ways, three ways or ten ways. It does not matter, because any member voting in favour of the motion would be voting to kill the bill.

The hon. member and other hon. members have sent letters to my constituents and other constituents across Canada asking them to tell us to support the motion, the effect of which would be to split the bill. Let me say kindly that it is not true. There is no such effect. It would kill the bill.

I am a rural Canadian. I live in the riding of Glengarry—Prescott—Russell. I was born on a farm. Yes, guns were around my home. That does not mean, as some members are trying to portray, that rural Canadians want to have guns that are not registered and that they have a right to do so, or that urban Canadians want rural Canadians to be deprived of all firearms. Both concepts are wrong.

Mr. Penson: Should your father have registered his gun?

Mr. Boudria: My father died when I was four years old, in answer to the question being asked about my father.

Perhaps I could get back to the topic at hand; it would be more appropriate. There were guns in my home. Guns were not registered 40 years ago. Motorcycle drivers did not wear helmets 40 years ago. Cars did not have seatbelts and there was no such thing as a freeway in Ottawa. The concept that may escape some members across the way is that we have evolved. Things have changed. Hopefully we are here to make life better for all our constituents. That is what the Minister of Justice is trying to do.

Perhaps not all initiatives proposed by everyone with regard to gun control have been perfect. Perfection is not here, but we have a good bill before us that will go to committee. It will be a better bill when it comes out of committee because there are members of the House who will do a job for Canadians by trying to make the bill better.

[*Translation*]

And what do we want? First, we want legislation that provides stricter punitive measures for those who use weapons illegally. Second, we want to put a stop to arms smuggling or limit it as much as possible.

• (1315)

Third, and there are perhaps other elements I could enumerate, we also want to register firearms so we know who has them and how many they have. Is this such a strange concept in civilized society? After all, I register my car.

[*English*]

I do not have a dog now but when I did I had to register it. Some people are telling me if we register our firearms that automatically means it is the first step toward confiscation. No one ever attempted to confiscate my dog. It was registered. To pretend, as some hon. members have, that this is the first step toward confiscation is not right.

Some of those people saying that will someday have to justify what they are doing before their constituents. An hon. member sent me what he called his test as to whether we should support gun control. In the hon. member's test was a questionnaire. In the questionnaire of the member from the Reform Party it said: "Do you think members should vote according to the majority of their constituents?"

If that were the only test applied to the bill—not that it should always be the strict and only test any member should be governed by—to the hon. members across, this debate would have been long over. That is not the only test. The members across should not pretend it is either, because they are wrong.

The impact of the legislation on the average Canadian has to be considered. One has to ask whether making some people pay for the justice system for all is fair and just. There are people paying for the education system who do not use it. They are paying for it the same as everyone else. Why should not Canadian people as a whole pay, if it is to serve the justice of the country and their safety? Instead we are targeting many people who are innocent and law-abiding Canadians. If the system is to benefit all, why should not all of us contribute? I have no problem in that regard, and I do not own a gun.

Training program costs have been mentioned as a great inhibitor. The costs for training courses are considerable. People are complaining to me about the red tape they have to go through. Many police officers whom I have been talking with have not taken the training, yet they will be faced with it. There are major problems in administration out there.

They talk about a coalition of forces. That is not the point. The point is providing good legislation with common sense logic, fairness and justice built into the system. Decisions based on emotions will not stand up over time; but decisions based on justice, fairness and common sense will stand the test of time.

A lot of the problems, the real hype and the gearing up of emotions started with incidents such as the murder at the Just Desserts restaurant in Toronto, in Montreal and in the Quebec legislature such incidents were quickly linked to all guns in general. That was wrong. It should be targeted to certain weapons and not to people who are capable of handling weapons safely.

It is unfair to attribute the problem we are facing today in part to everyday honest people. The ferociousness of the debate does not make for constructive solutions. I have heard some very outlandish speeches in the House and more outside it.

Guns increase violence is the saying, but what about countries where there are guns in nearly every home and there is no violence?

• (1155)

I quote from a very good speech delivered by the hon. member for Cochrane—Superior two weeks ago yesterday:

> A number of inquiries conducted in various countries have shown there is no connection between the percentage of crimes involving firearms and the degree of regulation of firearms in that country. In countries with a very low rate of violent crimes or homicide like Japan or Switzerland, the presence or absence of firearms is irrelevant. However making young people socially responsible, giving them a good education and warning them against criminal behaviour, is a major factor in producing low crime rates.

If we look at Switzerland, by its nature over many years it has been a fully armed nation as far as its citizenry is concerned yet has one of the lowest crime rates in the world.

It is a culture. It is the enforcement of law. It is the values we put into society. It is the way we train people generation after generation. That will improve the legal system and the courts by taking away plea bargaining in such cases.

The justice minister has made a good start in the legislation. Let us make the justice system work and not have people on the streets who should not be there, not have innocent people become victims of law and become criminals by virtue of it. Because of lack of information or indeed a lack of memory, if someone forgets to do something, according the act as it is written now he would be charged under the Criminal Code.

Nobody would argue about the need for anti-smuggling legislation. It is motherhood. It is necessity. Everyone in Canada, gun owners and non-gun owners alike, would support restrictions against smuggling. On the possession of stolen weapons outdoor sportsmen's clubs would support restrictions on that. They enforce laws within their own clubs, their own bylaws or their own regulations. They have very severe rules in that regard.

Export-import laws are great. They prevent the inflow or outflow of illegal arms. We have a 4,000-mile boundary to handle and it is very difficult to control border problems. With a 4,000-mile border we will have a challenge on our hands with the export-import laws. However it must be done and I give the minister credit for bringing forward that part.

No one should be in illegal possession of a firearm. There is a charge in that regard. We should get rid of plea bargaining and the minister has done part of it.

There is absolutely no sympathy out there for illegal trafficking of firearms, not by sportsmen or anyone else. They know if people with firearms get into trouble it will impact on them. The message is immediately spread on radio stations, TV stations and newspapers. It is very easy to start the hype that everything is wrong in society when certain things should be corrected.

The minimum sentence of four years for a list of 10 crimes is a good start. The court system, plea bargaining and the justice system must generally be upgraded and enforced. It is supported by the general public. There will be no pity on anyone who allows the system to deteriorate in any way. Canadians want the sentence to fit the crime.

This is my fourth time around on gun legislation. None of them has been easy. None of them has been very productive in the sense of the rhetoric used. We keep coming forward with legislation. As time goes on we must pass legislation to deal with the times. We are going through difficult times but let us

Mr. Harper (Calgary West): When did you table the bill?

Mr. Milliken: January.

The hon. member has had ample opportunity to discuss this matter. They have had opposition days when they could raise this issue if they wanted to; yet we have not seen it then.

We have offered to sit at night. The hon. member does not want to do that either. Why? Because he wants to have days and days of filibuster and hold this bill up until next year or the year after.

The government is decisive. The government made promises in the red book. The government made promises to the people of Canada when it introduced this bill. The government knows how to govern. It will show leadership to Canadians and it will proceed with this bill. It will do a great job in enacting legislation that will help reduce crime in Canada and help to solve the problems confronting this country in a way that is meaningful and sensible, instead of the ranting, pillaging and raving the Reform Party is engaging in.

Mr. Preston Manning (Calgary Southwest, Ref.): Mr. Speaker, I rise today to participate in the debate on the government's gun control legislation, in particular to support the Reform amendment that the bill be split into two parts, each to be voted on separately.

In doing so I wish to vehemently protest the restrictions the government has placed on this debate in order to rush the bill through Parliament. It strikes me as supremely ironic that a government that seems incapable of imposing any kind of discipline on the criminal elements in society has no hesitancy about imposing a strict discipline on its own caucus and on the debates of this House.

For more than five years Reformers have been criss-crossing this country asking the question, what do Canadians want and, in particular, what kind of country do Canadians want for themselves and for their children as we approach the 21st century. One of the most frequent answers we get to that question is that Canadians want safe streets, safe homes and safe communities.

• (1350)

This was expressed to me very eloquently several years ago at a meeting in Toronto when in response to my questions, what do Canadians want, a man in the audience got up and said the following. He said: "Do you know what I want? I want my wife to be able to leave this hotel at 10 p.m. and go to our car in the parkade a block away without running the risk of being mugged, robbed or assaulted. I want the state to discharge the most elemental of its responsibilities, namely, its responsibility to protect the life and property of its citizens. I want to live in a country where the rights and security of law-abiding citizens and innocent victims of crime take precedence in criminal law and the Constitution over the rights and security of criminals."

There are not many MPs in this House who would disagree that increasing public safety must be a priority of this Parliament. The disagreements among us arise over what is the best way to achieve that result.

With respect to Bill C-68 and the motion to split it, the key question is this. What role does gun control have to play in making Canada a safer place? Two different answers to this question are being given in the 35th Parliament: the Reform position and the Liberal position. Canadians must decide which position maximizes public safety.

The Reform position, which has been stated eloquently by my colleagues, is that gun control will only contribute to public safety if its primary focus is on the criminal use of firearms. The diversion of police attention and financial resources into excessive regulation of the non-criminal use of firearms will not enhance public safety. Canadian voters are telling Reformers and pollsters that their number one priority for justice is strong action directed toward persons who commit violent criminal acts. Based on this position, Reform MPs have taken the lead in proposing measures to tighten up the regulation of the criminal use of firearms.

These measures include the following: implement a zero tolerance policy for criminal offences involving firearms; ensure that charges are laid in all firearms crimes and that plea bargains are not permitted; impose mandatory one-year minimum jail sentences for using any weapon in the commission of a violent crime; provide for progressively more severe penalties for repeat violent and firearms offenders; ensure that all sentences for violent crime and firearms convictions are served consecutively; provide for lifetime prohibitions from ownership of firearms for all persons convicted of violent crimes; impose the same penalty for the use of a replica firearm as for using a real gun in a violent offence; create a new offence of theft of a firearm sentence three to fourteen years; impose sentences of three to fourteen years for unlawful importation or illegal sale of a firearm for a criminal use; deem the seller of a firearm to a criminal as having aided in any future crime committed; and transfer young offenders to adult court for using firearms in the commission of an offence.

In short, the Reform Party is opposed to gun controls that are not cost effective in reducing violent crime, improving public safety and saving lives, and would repeal any gun control provisions that are not cost effective in reducing violent crime, improving public safety and saving lives.

The position that the Liberal government has taken on gun control is utterly predictable and typical of Liberals. If one comes to a hard choice between two options, in this case focusing scarce resources on regulating the criminal or non-

Crime is what we should be attacking here, not registration. Registration is not the answer. Therefore, let us split this bill in two and make sure that we deal with crime. As the bill is now responsible firearms owners are going to be labelled and become criminals.

Mr. Bob Speller (Haldimand—Norfolk, Lib.): Mr. Speaker, it is a pleasure to rise to speak on the motion. I have been spending the last few days listening to the debate on it.

I must say that some good ideas came from across the floor. Some good ideas also came from this side of the House of changes we could make to really reflect the concerns of some of my constituents.

Over the past few months I have been talking to a number of my constituents who have been hearing a lot of misinformation concerning this bill. It has been very difficult to really debate the bill in an open and meaningful way. I end up spending half of my time trying to explain to constituents parts of the bill that they believe are there but actually are not. I find that a very difficult way to deal with the legislation.

I have a number of concerns with the legislation but before I get into that I want to talk about those areas which I think everyone in the House supports. When Bill C-17 came into the House under the former Conservative government I could not support and voted against the sections on the increased criminal sanctions for the illegal use of firearms. One of the reasons I voted against the bill was that I did not believe it dealt with the criminal use of guns. My constituents did not feel these issues were properly dealt with.

• (1705)

I brought those points forward and I want to thank the minister for at least listening to Canadians who felt there was not enough being done to sanction people who use guns in the commission of crimes. I appreciate that he and the Prime Minister are taking our ideas and moving forward with them.

As members know, the average sanction across the board is about 16 months. The minister has increased it to four years. I would rather have seen it go higher but I see that as a positive step and a good way forward.

I also agree with what the minister is doing with the whole question of smuggling. I have talked with the Minister of National Revenue and he has indicated to me that he, along with the Solicitor General and the Minister of Justice, have a task force together. They are going to focus on smuggling.

This will not work unless smugglers are stopped at the border. There is one major place at the border where the majority of these guns are coming across. I call on the Minister of Justice and the Solicitor General to deal with that situation and to get the guns off the street. I also agree with the seizure of the assets of those people who smuggle. If assets are seized and smuggling is stopped it will go a long way in dealing with some of the problems.

I have not heard anybody on the other side thank the minister for dealing with the whole situation of young offenders with regard to handguns. I see that as a positive step forward and something we could support.

I want to get into those areas that I feel are not very well represented. Specifically, there is the whole area of registration. It is probably the area that concerns most of my constituents. When I was putting forward proposals on that, I always said that registration would have to be proven to me to be effective, efficient and affordable. When I look at some of the proposals put forward by the minister, I am concerned whether they actually meet that criteria.

I hope the members of the committee on justice will tear the bill apart, get the minister before them and get the proof whether these sorts of criteria are met. I see that as an important role of the committee and I hope it will take that challenge on.

I also wanted to split the bill. A lot of members wanted to split the bill but I have to say to my colleagues across the way that their motion does not split the bill.

Miss Grey: Make a motion.

Mr. Speller: I will make a motion. I wonder if I can have unanimous consent to move this motion. I move:

That section 80 on page 36 through to section 112 on page 51 could be removed from this bill and brought back as another bill under the name of the Canadian firearms registration system.

The Deputy Speaker: Does the member have unanimous consent to move the motion?

Some hon. members: Agreed.

Some hon. members: No.

The Deputy Speaker: There is not unanimous consent. The member has the floor on debate.

Mr. Stinson: A Liberal said no.

Mr. Speller: Mr. Speaker, a number of members on all sides of the House would support a motion like that. I hope that maybe we can work as this bill goes through its other stages to convince the minister to do something like that.

Miss Grey: Absolutely.

Mr. Speller: Mr. Speaker, I notice that you gave our hon. colleague a going over for heckling before.

The Deputy Speaker: The member has a good point. As the member for Beaver River will agree, I asked the member not to heckle her. I wonder if members on the Reform side would not heckle the member.

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, rule 22(4) of the *Rules of the Senate of Canada* states:

> (4) When "Senators' Statements" has been called, Senators may, without notice, raise matters they consider need to be brought to the urgent attention of the Senate. In particular, Senators' statements should relate to matters which are of public consequence and for which the rules and practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate. In making such statements, a Senator shall not anticipate consideration of any Order of the Day and shall be bound by the usual rules governing the propriety of debate. Matters raised during this period shall not be subject to debate.

At this stage, the proposed bill is not an Order of the Day. Therefore, it is in order for the honourable senator to proceed.

I might add that the precedents in the Senate have been such that we have commented not on matters which are on the Orders of the Day but on other matters. I rule that Senator Ghitter may proceed.

Hon. Norbert L. Thériault: Your Honour, am I to understand from your ruling that once a subject matter is placed on the Order Paper, senators are prevented from discussing it?

The Hon. the Speaker: Honourable senators, I am sorry to interrupt Senator Thériault. The rules do not provide for points of order to be raised under the rubric "Senators' Statements." The honourable senator may make a statement, but he is not allowed to raise a point of order.

Senator Ghitter may proceed.

Hon. Ron Ghitter: I anticipate that Your Honour will have the opportunity to make a further ruling at a later date.

On February 16, in relation to the question of gun registration, the Honourable Allan Rock said:

> May I deal directly with the issue of registration and how it is going to enable us to achieve the objectives of a safe and peaceful society, a more effective response to the criminal misuse of firearms and enhanced public safety.
>
> I will begin with the proposition that we live in a society in which all manner of property is licensed, registered or regulated in some way. All manner of activities are regulated either by legislation or administrative action to achieve a level of orderliness which is desirable in a civilized society. In that context, where cars, pets, and property of all description are registered or recorded for purposes of tracing ownership or reflecting transfers, surely the prospect of registering firearms is rationally justified by a society that wants to achieve a level of order....
>
> Those who engage in street crime tap into a market that is fed from one of two sources: guns that are smuggled into Canada and therefore are here illegally, or guns that are stolen from lawful owners and then traded in the underground....
>
> Surely we must choke off the sources of supply for that underground market.

• (1400)

> Surely we must reduce the number of firearms smuggled into the country. Surely we must cut down on the number of firearms stolen and traded in the underground. How do we achieve that? Through registration.
>
> The registration of all firearms will enable us to do a better job at the borders. We will never stop the smuggling of firearms entirely. There are 130 million border crossings per year....
>
> Last year approximately 375,000 firearms came into Canada. Almost all guns sold here are imported. We do not know where they are or how they got here....
>
> Registration will enable us to record what arrives and track it to the point of sale into the hands of a lawful owner. Registration will enable us to stop the kind of leakage that now occurs, to reduce the incidence of people illegally selling that which is legally imported.
>
> ...registration which obligates each of us to record the fact of our ownership of firearms will imbue the owners with a heightened sense of responsibility...
>
> Registration will reduce crime and better equip the police to deal with crime in Canadian society by providing them with information they often need to do their job....
>
> ...Registration will assist us to deal with the scourge of domestic violence....
>
> When firearms are registered, if it is necessary for a person to register and show proof of registration to buy ammunition, as it will be, the police will know what firearms are there. The police will be able to enforce those orders and lives will be saved....
>
> We have provided our estimate of the cost of implementing universal registration over the next five years. We say that it will cost $85 million....
>
> It is crucially important, in my judgment, that as we debate this question of registration, in respect of which there are strongly held views on both sides, that we do so on the real facts. Let us confine ourselves to the reality of the situation. Let us not hear that the registration system will cost $100 per firearm. Let us not hear that it is a prelude to the confiscation by the government of hunting rifles and shotguns. Let us not contend that it will cost $1.5 billion to put in place.

Controlled Drugs and Substances Act (Bill C-8)

Citation	1996, c. 19, s. 68, 70(a)&(b)
Royal Assent	June 20, 1996

Hansard

substances; to provide the mechanisms needed to implement our obligations under international agreements—this relates to the restricted production or trade of internationally regulated substances destined for medical, scientific and/or industrial purposes—and to enhance the ability of the police and the courts to enforce our laws. The bill actually provides for the seizure and forfeiture of property used in offences involving controlled substances.

The existing Narcotic Control Act and the Food and Drugs Act do not deal effectively with emerging trends in drug abuse. These trends point to the increasing availability of new illicit or new designer drugs which, under current law, can escape effective control.

Under the aegis of the drug strategy, the government remains committed to a working partnership whose "raison d'être" is the reduction of drug abuse in Canada.

● (1220)

[English]

The controlled drugs and substances bill is an integral part of the strategy. It consolidates, modernizes, enhances and streamlines drug abuse provisions contained in the two current laws. Simply put, it builds on the government's current policy on drug abuse.

Those who profit from this are undeniably resourceful, determined and cunning. Their methods, their tactics and their products are forever undergoing change. We need flexible legislation which allows those on the front lines of enforcement to adapt quickly to these new developments as they occur.

For example, one of the more recent developments in the drug underworld is the production and illicit sale of so-called designer drugs and look alike drugs. Designer drugs are potent substances with slightly different chemical structures than substances presently controlled by the Food and Drugs Act and the Narcotic Control Act, substances like stimulants, tranquillizers and pain killers. These drugs affect abusers in similar ways and can lead to the same health and social problems produced by more conventional drugs.

Look alike drugs, on the other hand, are substances made to resemble illegal drugs. The manufacturers of these malicious offerings can mimic the more powerful drugs. Much harm can result from the abuse of these drugs and primary targets of these merchants of misery are often school-age children.

The manufacture and sale of designer drugs and look alike drugs can be a very profitable business. Sadly, it is a business with terrible consequences for hundreds of thousands of customers, many of them young people.

Under the current Food and Drugs Act and the Narcotic Control Act, drugs must first be listed on a schedule to the act. This regulates the conditions for the sale of that particular substance in Canada. Only once a given substance is listed can it become an offence to sell it. To correct this deficiency the controlled drugs and substances bill proposes interpretive clauses to include these substances.

Under this proposed act, new illicit drugs appearing on the street which fit this description will be covered automatically.

The bill also permits the control of precursors. Precursors are chemical substances used to produce controlled substances. New provisions contained in this bill will enable authorities to regulate the import and export of these substances.

Other sources of drugs sold on the street are substances intended for medical or scientific use. They may be stolen from a hospital, obtained through illegal prescriptions, secured by obtaining numerous prescriptions from different doctors for the same ailment, or via a forged prescription. People who deal in diverted pharmaceutical drugs are collecting very large profits.

The bill enhances present controls that deal with this issue. Under this bill the monitoring of the distribution of drugs will continue.

[Translation]

To ensure compliance with the law and prevent diversion, inspectors, in close co-operation with law enforcement authorities would continue to visit pharmacies, hospitals, licensed dealers, dispensing practitioners, researchers and laboratory analysts.

We know there exists a criminal element which is using more and more sophisticated networks to illegally produce, sell, export or import controlled substances in Canada.

These people buy property and consumer goods to further their criminal activities and bolster their personal wealth.

As I see it, such people should be prevented from retaining illegally obtained capital and goods.

The bill before us today, together with the proceeds of crime legislation, strikes at the heart of criminal enterprise.

Together, these enactments will enable the courts to strip criminals of profits and property illegally amassed through drug dealing.

Trends in illegal production, distribution and use of controlled substances change frequently and quickly.

This bill is designed to deal with current problems and to anticipate future needs. There is no doubt that there is a very real problem of drug abuse in Canada.

Second, it will provide a control on the import and export of precursors, which are chemical substances used to produce controlled substances.

Third, it will enhance enforcement measures available to all police services, the Royal Canadian Mounted Police, and provincial and municipal police forces to suppress unlawful import, export, production and distribution of psychoactive substances.

• (1410)

It will provide for the forfeiture of any property used to commit such offences. On the home front this bill will make it easier for the police to deal with those who produce illegal drugs.

Under the old legislation new drugs were not considered to be illegal until they were analysed and identified. Needless to say this process took time. This bill instead uses a broad description to define psychoactive drugs. In the future new drugs appearing on the street that fit this new generic description would automatically be covered by the bill. This would give the police the authority to arrest traffickers dealing in these new illicit drugs.

Last but by no means least, this bill will help us better protect our young people. I do not think anyone in this House would argue with the statement that our children represent our most precious resource and that we must do everything in our power to protect them.

Unfortunately one of the facts of modern life is that our young people are often the most vulnerable to the temptations of drug use. Drug traffickers know this and take full advantage of any opportunity to peddle their deadly products in places where young people congregate. Today's schools and even playgrounds are no longer safe from the attentions of drug traffickers.

To help protect children from this influence, the bill will introduce new criteria known as aggravating factors to assist judges in determining sentences for drug traffickers. Examples of these factors include dealing drugs in a school, near a school or to minors or involving minors in drug trafficking operations.

There are also other aggravating factors, such as previous drug convictions, possession of a weapon or the use of violence while engaged in drug trafficking. These are laid out in the bill.

Generally under these new provisions a convicted drug trafficker can expect to receive a stiffer sentence, particularly a jail term. Judges who do not impose a prison term in such circumstances will be required to give the reasons for their decision.

[*Translation*]

In conclusion, I believe that the Controlled Drugs and Substances Act will give Canadians the tool they need to better protect their health which is threatened by the harmful effects of drugs.

From the Solicitor General's point of view, in terms of enforcement, this bill will give the police the power they need to organize more effective anti-drug operations, especially against major traffickers.

[*English*]

The proposed legislation will broaden the impact of existing proceeds of crime legislation which allows the police and the courts to strip the traffickers of the profits of their criminal enterprises. This bill will also enable the police to deliver a more forceful one-two punch to drug traffickers to severely curtail their deadly trade.

[*Translation*]

This is the kind of approach that the people, the courts and the police have rightly demanded to deal with this type of criminal justice problem and our government is committed to such an approach.

[*English*]

I ask members on all sides of the House to give early and full support to this bill.

I have listened to the concerns raised by opposition spokespersons about it. I believe those concerns should and will be addressed in committee when the bill is considered in detail following second reading. This is the place to go into the concerns that have been raised about the bill, its purposes, its approach and so on.

Therefore I urge hon. members to give early second reading to the bill to enable it to go quickly to committee so that all the points raised by opposition spokespersons and by other members in the House can be looked at and dealt with in the seriousness with which they were raised in the first place.

• (1415)

I say this because I believe this bill will provide important additional tools to the enforcement community and the courts to fight the drug problem everywhere in this country.

Again, I ask this House to give this bill its early and full support.

Mr. Grant Hill (Macleod): Mr. Speaker, one of the instructive things when one has been on the opposition side of the benches and one moves to the government side allows one to look back at how one referred to a bill when one was in opposition. I encourage the members opposite to do that.

I have taken the opportunity to go back into the committee hearings and look at comments made by the hon. member when he sat over here.

Is it appropriate, Mr. Speaker, for me to refer to one comment made by one member when that member was in the opposition?

The Acting Speaker (Mr. Kilger): I believe so.

Despite a gradual decline in the abuse of most drugs, there are several alarming trends emerging on the horizon. Many drugs which are abused today are extremely potent with more potentially damaging consequences. Abusers are consuming drugs by much more dangerous means and they are using drugs in more dangerous combinations.

There is a growing frustration among law enforcement officials, community leaders from across the nation and Canadians in general. They are calling on provincial governments and the Government of Canada to assign a higher priority to dealing with drug abuse and its costly impact. Demands are being made for more severe sentences, a streamlining of the judicial system and assignment of the proceeds of drug crimes to help finance education and enforcement programs.

Court delays and complexities of administering the law have only helped to fuel the public's growing concern. Some law enforcement agencies have declared that the costs of enforcing the law against drug dealers have become high.

The government recognizes that these concerns require deliberate and sustained action, including combating the evil of addiction on three fronts: education and prevention, treatment and rehabilitation, and enforcement and control.

Bill C-7 corrects the deficiencies of existing drug control legislation. It encompasses all listed substances and declares them illegal for other than legitimate medical, scientific or industrial use.

In conjunction with the proceeds of crime legislation adopted in 1988 and proclaimed on January 1, 1989, the bill will empower the courts with the right to confiscate all property and capital accumulated as a result of or used in the commission of drug related crimes. This will provide police forces and the judiciary with the tools they need in a manner consistent with the charter of rights.

With the bill Canada will fulfil its international obligations found under the 1961 single convention on narcotic drugs, the 1971 convention of psychotropic substances and an international treaty governing the trade of illicit drugs.

The proposed bill can become an effective instrument in enforcing the law and controlling the import, export, production, sale, distribution and possession of illegal drugs. The bill seeks to update, enhance and consolidate a section of the Food and Drug Act and the Narcotic Control Act, both passed long ago in the sixties.

While the whims and wants of society have become more and more sophisticated since that time, unfortunately so has the network of drug producers and dealers.

• (1535)

The bill is designed to correct certain anomalies and shortcomings in our current law. In so doing it will enable law enforcement agencies to deal more effectively with a cunning, determined and resourceful adversary, the dealer in illicit drugs.

The new main provisions of the bill include controls on the import and export of precursor chemicals used by drug manufacturers. These chemicals include substances, usually not themselves psychoactive, which criminals can change easily into illicit drugs.

The bill also provides for provisions to control the production, sale, distribution, import and export of androgenic-anabolic steroids; provisions to control the possession, production, distribution, sale, import and export of designer drugs developed by dealers for the purpose of evading current laws; provisions to search, seize and have forfeited property used or intended for the purpose of committing drug offences, also known as offence related property including fortified drug houses.

The bill also includes a complete scheme for obtaining search and seizure warrants; the expansion of offences concepts relating to trafficking and production; the enhancement of control over disposal of controlled substances including forfeiture; new provisions to control the possession, production, distribution, sale, import and export of designer drugs; provisions which will facilitate Canada's commitments under the international conventions; and treatment by the courts of drug dealing in and around schools and other public places frequented by children and dealing drugs to minors as aggravating factors at the time of sentencing.

The principal purposes of the bill are to provide one comprehensive act for the drug control policy of the government and to provide for the enforcement and control aspects of Canada's drug strategy.

I will review briefly the seven principal parts of the bill as well as the introduction. Part I sets out the offences and punishment commensurate with breaking the proposed new law. The particular offences may include possession, trafficking, importing and exporting, production, possession of property obtained as a result of certain offences, and the laundering of proceeds obtained as a result of certain offences.

Part I also sets out specific aggravating factors to be considered by the court at the time of sentencing. These are directed particularly at drug dealers who target children, those who use weapons and violence, as well as those who have previous drug related convictions. This part also included a purpose clause dealing with sentences and, more particular, encouraging rehabilitation and treatment in appropriate circumstances.

Part II deals with enforcement of the proposed act by police. This includes provisions relating to search, seizure and deten-

tion of property or illegal substances, forfeiture of offence related property, as well as a complete scheme for protecting innocent third party rights over such property and forfeiture of proceeds of drug related crimes.

Part III outlines procedures for disposal of controlled substances. Part IV covers administration and compliance.

There are seven parts to the bill and its most important provision is that it moves Canada 30 years in time from the sixties to the nineties. It codifies and empowers police while at the same time it protects citizens. It gives us a Controlled Drugs and Substances Act that has merit and is enforceable.

The Speaker: Notice was given to another Speaker and I was just given a paper indicating that the member for Oakville—Milton is splitting her time with the hon. Parliamentary Secretary to the Prime Minister. The parliamentary secretary has approximately 9.5 minutes.

Ms. Jean Augustine (Parliamentary Secretary to Prime Minister, Lib.): Mr. Speaker, I rise to speak on Bill C-7, a bill in which many in Etobicoke—Lakeshore have an interest. I am talking about individuals who work in the areas of education, prevention, rehabilitation, treatment enforcement and control. Those individuals are very interested in the general types of control substances outlined in Bill C-7.

• (1540)

Narcotics are covered under the Narcotic Control Act, as well as some from the 1961 single convention. Examples of drugs in this group are cocaine, opium, codeine, morphine and marijuana. Controlled drugs, as defined under the Food and Drugs Act, are stimulants such as amphetamines and sedatives such as barbituric acid. Restricted drugs come under the Food and Drugs Act, the so-called designer drugs, as well as the anabolic steroids, the precursors and the drugs from the 1971 convention on psychotropic substances.

The majority of the substances are diverted from legitimate manufacturers and then illegally imported and sold. Until recently dealers have been able to sell the steroids at up to 20 times their prescription value with little risk of getting caught.

The amendments to the Food and Drugs Act and its appended regulations contained in the bill have resulted in 42 androgenic-anabolic steroids and their derivatives being classified as controlled drugs.

In the grim world of the effects of illicit drugs on the lives of abusers can be severe. This is the crux of my argument. If the effects on the lives of the abusers can be severe, the penalties proposed for convicted dealers in the most dangerous drugs should be severe. Sentences for the most serious offences of trafficking, importing or exporting narcotics remain life imprisonment in the bill.

We know that the specific provisions of the bill have been given the close scrutiny they deserve by a subcommittee on Bill C-7 of the Standing Committee on Health. I will comment on the work of that committee. Members heard from many national groups and associations representing a community of thousands of people, as well as officials from the departments of health and justice.

I will quickly list some of the groups that made representations before the committee: the Canadian Medical Association, the Canadian Pharmaceutical Association, the Canadian Association of Chiefs of Police, the Royal Canadian Mounted Police, the Canadian Centre on Substance Abuse, the Department of Public Health, the city of Toronto, the Addiction Research Foundation, the Canadian Bar Association, the Canadian Foundation for Drug Policy, Lambton Families in Action for Drug Education, the Quebec Bar Association and the Criminal Lawyers Association, et cetera. Many groups appeared before the subcommittee.

The subcommittee fully addressed each and every concern with the intent of improving the bill before us today. Several amendments were made at committee stage. Some particular issues of discussion resulted in amendment. The main amendments to Bill C-7 are the ones in which my constituents are interested.

The amendments create a new offence for possession of marijuana and hashish involving certain quantities. They create a new offence for trafficking in marijuana and hashish in certain quantities. They provide for a purpose clause dealing with sentences and, more particular, they encourage rehabilitation and treatment in appropriate circumstances.

The aggravated circumstances section has been expanded to cover in or near public places usually frequented by minors. This means that when an offender has been convicted in those circumstances a judge will have to give reasons for not imposing a jail term.

The amendments will delete subsection 3(1), which was meant to cover non-scheduled substances having or presented as having the same effect as scheduled substances. There were some apprehensions among other things that it might cover herbal products.

At the same time there is a limit on the ability of inspectors to examine the records so that they may not examine the records pertaining to the medical condition of patients.

• (1545)

The bill clarifies those situations where a practitioner would be considered to be trafficking by providing that unless authorized by the regulations it will be illegal to sell a prescription to obtain a scheduled substance. Several things have been done and several amendments have been made to the original Bill C-7.

Criminal Law Improvement Act, 1996 (Bill C-17)

Citation 1997, c. 18, s. 27

Royal Assent April 25, 1997

Hansard

June 10, 1996 [House of Commons]

Mr. Michel Bellehumeur (Berthier-Montcalm, BQ)

…Another amendment in this bill is aimed at making it easier to prove that someone helped launder the proceeds from crime. I must say right away that this is a step forward. We in the opposition have sought and continue to seek a major change, or at least a tougher attitude, in this regard, given that several countries consider Canada as an ideal place to launder money. I think this amendment is a step forward, but we will still need to look very seriously into this issue at some point in time, to ensure that Canada does not keep this unenviable title of crime money laundering paradise. For the time being however, as far as the bill before us, Bill C-17, is concerned, we suggest adding to the list of ways of participating in the laundering of proceeds of crime the fact that a person accepts that money be deposited in an account under his or her name, while knowing or believing this money was derived from a designated offence. Recently, several people have received letters requesting permission to deposit certain amounts in their banks accounts. Again, this is a current concern. There was a piece on this in L'Actualité a few months ago. Those who accepted later found their bank accounts to have been emptied out. Certainly, there is an element of voluntary blindness in accepting money from some unknown source abroad, under the mere promise of an eventual profit. But it did not pay off in the end, as the defrauder, who had deposited money in their bank accounts, then took it out, along with all their savings. This may be one of the means used to hide and launder proceeds from crime and, as I said, I think it should be provided for and included in Bill C-17. Other provisions complement existing provisions regarding credit card forgery and unlawfully obtaining computer services. For instance, it will now be illegal to possess or use a computer password to unlawfully obtain computer services. We must keep up with our times, and I think that the Criminal Code was in great

need of updating, from a legal point of view, to be in step with new technologies, such as computer services.

…

June 10, 1996[House of Commons]

Mr. Jack Ramsay (Crowfoot, Ref.)

... We also support the portion of the bill which strengthens the proceeds of crime legislation by ensuring that criminals do not retain the profits of their crimes, but we cannot support Bill C-17. We do not support Bill C-17 because we are vehemently opposed to that portion of the bill which lessens the penalty for certain offences. That the justice minister felt it was necessary to slip this into an otherwise supportable bill is very regrettable in my eyes. We oppose Bill C-17 because it places Canadians at risk through continued Liberal leniency. The Reform Party will only support a judicial system, and changes within that system, that places the punishment of crime and the protection of law-abiding citizens and their property ahead of all other objectives and considerations.

...

November 28, 1996 [House of Commons]

Ms. Shaughnessy Cohen (Windsor-St. Clair, Lib.)

…We established an anti-smuggling strategy to combat illegal trade in tobacco, firearms and alcohol. We continue to implement the war crimes strategy announced in January 1995. We expanded efforts to fight organized crime by seizure and forfeiture of assets and provisions against money laundering, and on and on and on. Never, I would venture to guess in the history of our country, has there been a more prolific Minister of Justice. Never has there been a government so closely aligned with concern for Canadians and for their safety. This morning the member for Medicine Hat went out of his way to reinforce what Reform hammers home and that is the scare tactics, the irresponsible creation out of the air of statistics that are not valid. Crime has not increased. Youth crime has not gone up.

April 11, 1997 [House of Commons]

Mr. Michel Bellehumeur

…Here are some of the main areas affected by Bill C-17. The bill proposes a series of changes to deal more effectively with the proceeds of crime. Some of these changes will help the police to carry out seizures, including the money that makes the world of organized crime go round. In politics, money makes the world go round; the same is true of organized crime. I think we must have all the tools we need to seek out the proceeds of crime. If I may digress for a moment, this is what Mr. Bégin made very clear in a proposal that was rejected out of hand by the Minister of Justice on Monday, a proposal that favoured anti-biker legislation, with provisions that would help the police seize their money, their property, their bunkers, their armoured cars and their big limousines. The bill will make all this possible. I think that by cutting off their livelihood, it will be possible to get rid of the organized crime element. I just wanted to say that in passing. As for other aspects of this bill, there were several changes with respect to computer-assisted crime, counterfeiting and the fraudulent use of credit cards. I think we have to move with the times. The Criminal Code goes back many years and has to be updated regularly. That is the purpose of Bill C-17. We certainly had no objection to updating the Criminal Code. There are also provisions to deal more severely with driving under the influence. Here again, I think that considering certain court decisions, it was necessary to amend the Criminal Code in this respect. There are also provisions-and this is very important as far as the provinces are concerned-that will save money while helping counsel with court appearances. For instance, there are provisions for videoconferencing and the issuing of warrants by means of modern communications. Here again no one would have thought of this ten years ago, but, today, with informatics and the whole field of telecommunications, things like remote appearances are possible so as to save money for the provinces, which administer justice. All that is in Bill C-17. Clearly we support these provisions, but, once again, I think things could have gone further, as for example with the provisions on money laundering, because this is glossed over somewhat. Canada, let us face it, is the best country for money laundering. The Liberals opposite often boast that Canada is the finest country in the world, but in this finest country in the world, we annually launder, according to estimates, between $20 billion and $90 billion. The police estimate it as follows: only some 10 per cent of drugs are seized annually. The seizures are worth between $1.5 billion and $4.5 billion a year. A quick calculation reveals that 100 per cent would be over $20 billion. The President of the Treasury Board is looking at me with great interest. I am sure he sees a lot of numbers, but he has only to consult the Canadian crime service and the RCMP for confirmation of my figures. Bill C-17 should contain provisions to reinforce the whole matter of money laundering to further prevent it and to better equip the police so Canada loses its title. I will conclude on this point. The title is awarded by the great jurists of the world and by the Americans annually in September, because American inquiries and commissions look into the matter. Every year, the Canadian government is encouraged to

strengthen its legislation to prohibit this activity because of the border between Canada and the United States. I could go on with my speech, but I see my time has run out.

April 11, 1997 [House of Commons]

Mr. Jack Ramsay (Crowfoot, Ref.)

... We also support the portion of the bill which strengthens the proceeds of crime legislation by ensuring that criminals do not retain the profits of their crime.....

April 21, 1997 [House of Commons]

Mr. Michel Bellehumeur

Mr. Chairman, what I understand is that they are introducing the first phase because they do not know what to propose in the further phases. The minister has just said so. I understand. What I do not understand however is when he says that it was quick and effective. Again, I remind members that we have been asking the government to introduce this bill for two years now. The same thing can be said about Bill C-17. The minister spoke about it three or four times. I remind him that this bill had been introduced back in 1994. The Bloc Quebecois had to threaten the government to propose anti-biker amendments in order to get the minister to bring that bill back to the House and have it passed. There is another point I want to raise with the minister. The government of Quebec and the Bloc Quebecois raised on several occasions the issue of crime proceeds and money laundering in Canada. Again today, a newspaper mentioned that legislation on money laundering is very difficult to implement because there are so many loopholes. Reference is made to Canadian policemen; they must be the ones the minister says he has met several times. I also met several chiefs of police and policemen in Quebec, who told me almost the opposite of what the minister has been telling this House for the last little while, in particular about the legislation on money laundering, about which they were almost unanimous. I have even talked to judges and attorneys general of Canada. So, we read in the paper this morning that the police in Canada would love to have half or even one quarter of the measures that exist in similar legislation in the United States. As for the whole issue of anti-biker or anti-gang or anti-crime in general, we in the Bloc Quebecois have said repeatedly that stricter legislation is needed on money laundering. I realize that Bill C-95 contains provisions concerning the seizure of real property or other property. I know that Bill C-95 is a step forward. However, this is nothing compared with what chiefs of police have been asking for years in the way of legislation on money laundering. While the minister was at it, why did he not add some amendments on money

laundering, in order to make this activity more difficult in Canada? Now we are known as the drug trafficker's paradise. We already knew that Canada was a tax haven for money laundering. The minister should realize there is some urgency in this case as well, and even the Bloc Quebecois would have liked to see him pass legislation to deal with this. As far as money laundering is concerned, when we talk to the police, they say that between 20 and 30 billion dollars are laundered annually. A judge of the Quebec Superior Court told me it could be as much as 50 or 60 billion dollars. Again, considering the urgent nature of these demands which, I think, we made very clear to the government, the same way we did in the case of anti-biker legislation, I want to ask the minister why, when he was working on this bill, he did not introduce legislation to make it well nigh impossible to launder money, an activity that is today a disaster for the economy? And tomorrow it will be even worse for Quebec, for a sovereign Quebec, but for Canada as well.

April 21, 1997 [House of Commons]

Mr. Alan Rock

Mr. Chairman, the hon. member mentioned his interest in the issue of money laundering. As I said before, we already adopted Bill C-17. In this bill, sections 27 to 39 deal with money laundering. Most of the improvements mentioned by the hon. member have already been passed in Bill C-17. Of course we need more. As I said before, we do not see Bill C-95 as the last phase of our efforts but as an initial step. So let us start with the first step, and then in a few months or a few years we will propose other measures, but for the first time, this bill will provide a legal framework for dealing with organized crime.

April 21, 1997 [House of Commons]

Mr. Michel Bellehumeur (Berthier-Montcalm, BQ)

Mr. Speaker, I am extremely pleased to speak at this stage on Bill C-95. As my hon. colleague for Hochelaga-Maisonneuve has just said, we have co-operated throughout the day and the Bloc Quebecois proposals are what accelerated the process of getting Bill C-95, an aAct to amend the Criminal Code (criminal organizations) and to amend other Acts in consequence, passed as quickly as possible. For us in the Bloc Quebecois, this is not just a matter that has been debated here for the past week. It is a very important subject. From the start, the Bloc Quebecois has been highly aware of the problem, because it is very much present in Quebec.

As far back as 1995, we tried to convince the minister of the importance of legislation on gangs, of anti-biker gang legislation, of legislation to fight the scourge of organized crime.

You will recall that the Bloc Quebecois had to question the government on several occasions sine 1995, that we in the Bloc Quebecois, the official opposition, had to make speeches in this House in order to convince the minister. Press conferences had to be held. On several occasions, the hon. member for Hochelaga-Maisonneuve met with the police chiefs. He even played a lead role in a pressure group lobbying for action to finally be taken in this area, for the passage of legislation against the biker gangs. You will recall, as well, that we even applied to the Speaker of the House for an emergency debate to be held on the whole matter of motorcycle gangs, organized crime and money laundering. You will recall that we were told there was no emergency. In 1993, the Bloc Quebecois promised its electors to give them real power and to defend their interests and it kept asking the federal government to take action, to do something that would put an end to this scourge. Though we are not responsible for introducing legislation, because we do not have the millions of dollars and the hundreds of lawyers who work in the Department of Justice-our means are very limited-we proposed in 1995 and later in private bills some definitions and means that would allow us to really go after organized crime and gang leaders. We proposed that in good faith to the government. We tried to force it to do what it is expected to do, and that is to legislate in its own jurisdiction. But that was not enough. We had to have bombs. How many bombs went off in Quebec before the minister decided to take action? There had to be murder attempts. We had to find dynamite across Quebec. There had to be murders. There were marches in Saint-Nicolas, demonstrations by mayors and public pressure. Some innocent people were injured. Members will also recall that young Daniel Desrochers was killed in that gang war. I remember very well that one day I asked the minister what he was waiting for to legislate. He kept saying there was no rush and that no legislation was necessary. The same day, we had six incidents connected with the biker war. Bombs exploded, someone was killed, a Molotov cocktail was thrown into a restaurant in Quebec City. Dynamite was found in Longeuil. There was a shooting in Saint-Nicolas. And the minister said there was no rush.

Do you know what convinced the minister that perhaps he should do something? It was when we threatened to amend Bill C-17 which been languishing in the House for at least two or three years, to amend it and include anti-biker provisions. The minister decided to act. More than that, after repeated questioning in the House, the minister decided to go and see for himself the problems they had in Quebec City. Fortunately, the air in Quebec City had a very salutary effect on the Minister of Justice, since he came back saying there was some urgency. There are those who fell from their horse on the road to Damascus and there are others who went to Quebec City to realize that action was urgently needed on the whole issue of the biker gang war in Quebec. So the minister came back from Quebec City saying

this could not go on, a situation where people stayed home because they were afraid of being shot, because they were afraid of the biker war that was going on in a number of municipalities in Quebec. The problem is not recent. Back in 1982, a municipality, I think it was Sorel or Tracy, asked both levels of government to intervene, to pass legislation to help them fight what was starting to come to a head, in other words, all the bunkers being built and all the organized crime connected with all this.

The government of the day failed to act, and today's government, the Liberal government opposite, was not doing anything either. It took the members of the Bloc Quebecois, who are here solely to look after Quebec's interests, to make them understand that there was a problem and that immediate action was required. As I said earlier, we worked together to help the government get the bill passed as quickly as possible, in view of the fact that everyone knows elections are in the wings. We need only listen to the Prime Minister and his wife if we have any doubt at all. However, what surprises me today is that the Minister of Justice says this is just a first step. We are delighted the Minister of Justice has taken this course, as we have been pointing it out since 1995. We would have liked a bill that went further in fighting crime, but we accept the bill as it is. We will pass it in the hope that we can someday amend it as we would like in order to reach the goal we set ourselves. The Minister of Justice says it is a first step, a first stage. I asked the minister why, since he said that it was a first stage, a first step, he did not decide to go further. Quite candidly he told me that he will continue to look into this matter and see what he can do. Finally, he does not know what to do as the second, third and fourth stages. I encourage him to reread the entire private member's bill my colleague from Hochelaga-Maisonneuve introduced. I also suggest he reread the letters I wrote him in 1995 providing certain definitions in order to get to the leaders. Perhaps then the Minister of Justice will include a second stage, which we will soon have in another legislature. I hope that the Bloc Quebecois will be as strong then in order to defend Quebec's interests. I expect the minister will continue to move in the direction of the claims we made in this matter.

I can tell you right off two points the minister should consider for the second stage: the leaders and money laundering. On three occasions today, I asked the justice minister, who says that his bill goes directly after gang leaders, to show me where in Bill C-95 I could find something that dealt directly with gang leader. On three occasions he answered that it did so in a global way, that the bill had to be looked at in a global way. The minister never told me precisely where to look, and I will tell you why. It is because there is nothing in this bill which really deals with gang leaders. True, it is a step forward; true, it gives greater powers to the police; true, these are things the Bloc Quebecois had been demanding; true, we are satisfied and happy, but this bill does not go as far as we would have liked it to go. I would invite the

minister not to misinform the public, but to tell what is truly in the bill; one thing that is definitely not in it is provisions dealing directly with gang leaders.

Among the definitions that the minister has put in this bill, there are certainly good ones. This is the first time that a criminal organization and an association have been defined. These are things that we have been asking for in the House since 1995, and we were told that it was not appropriate, that it could not be done. Of course, we are very happy to find that in a bill. This is a step forward. The Bloc Quebecois has helped the government, has contributed to the drafting of a new provision that had never been seen in Canada. Thanks to the Bloc Quebecois and its repeated representations, the government was convinced to proceed. We are very happy about that. However, although a gang and an association have been defined, the provision is drafted in such a way that it is still related to an individual, to the committing of a crime. We know full well that it is not the gang leaders who do the heavy work. It is not the leaders who set the bombs that exploded. It is not the leaders who gunned down an individual. It is not the leaders who threw a Molotov cocktail in the restaurant in Quebec City or who hid the dynamite sticks in Longueuil. It is not the leaders, but people who work for them and who get orders from them. How can we catch the leaders if the bill only helps us catch those who do the work and not those who order it? On three occasions, the minister has been unable to answer this question, simply because the Bloc Quebecois is right. This bill does not reach all the way up to the leaders, and something will have to be done about that very soon. If we are to put an end to this plague, we must deal not only with the ordinary members, but also with the leaders.

Another issue that would have been very easy for the Minister of Justice to address in the bill, as we repeatedly asked him, is money laundering. As you know, Canada has the dubious honour of being the G-7 country where the most money is laundered every year. According to the statistics and to judges and law enforcement officers, it is estimated that between $30 billion and $60 billion is laundered in Canada every year. Some judges say $60 billion, while law enforcement officers say between $30 billion and $40 billion, based on how much they have seized, which represents about10 per cent of all the money laundered in Canada. Given that they seize approximately $3.5 billion, $4 billion or $5 billion per year, they estimate money laundering to represent approximately $30 billion, $40 billion or $50 billion. But regardless of the exact amount, even it were only $20 billion per year, as my hon. colleague said earlier, this is about as much as Canada's annual deficit. It is a awful lot of money.

To cover all the bases and provide a comprehensive solution to the problem of biker gangs, organized crime and money laundering, provisions dealing with these specific issues could have been included in Bill C-95. For instance, the production and distribution of $1,000 bills

could have been prohibited. Canada may be the only country in the world where such large denominations are used. According to our information, no country in the world has banknotes worth as much as $1,000. As we know it is not every John Doe that walks around with a wad of $1,000 notes in his pocket. My notebook, here, has less than 30 pages, but if it were a wad of $1,000 notes, I would have $30,000 in my hand. It is easy to carry, to pass from hand to hand. Money laundering is easy. We could simply prohibit that. It would have been very easy to include in Bill C-95 a provision about that. It would have been easy also to include in Bill C-95 provisions requiring financial institutions to report any dubious transaction of $10,000 and more. It would have been easy also to require casinos, travel agencies or any other groups which are paid or see carried about huge sums of money of $10,000 and more, to report such facts. One judge told me that, because of the current state of the legislation, he was unable, despite the bank's co-operation, to find guilty of fraud an individual who went to the bank to deposit a hockey bag full of money. He came in with the bag which he put on the counter saying he wanted to deposit some money. The bag held about $1 million in $50, $100 and $1,000 notes. Even if the bank did co-operate and even if the police did its work, there are so many loopholes in the Canadian legislation that the judge was not in a position to convict this man. Everybody goes around with bags full of dollars. Everybody does that in Canada. Oh, sure. It is total nonsense. It makes so little sense that on the very day when we are dealing with Bill C-95, we read this headline in a newspaper: Thanks to the weakness of our legislation, Canada is a paradise for traffickers. This news report says exactly what we have been repeating for two or three years: our legislation is ineffective. The report says that the Canadian legislation on the laundering of money has so many loopholes that it is extremely difficult to enforce. The Canadian police, and even those the justice minister brags about meeting a couple times, are dreaming of the day when they will have half or even only the quarter of the provisions existing in the United States. In Canada, we have to prove beyond any doubt that the money is the proceeds of criminal activities. In the United States, the onus is on the accused. Why did the minister not take the opportunity, with Bill C-95, to amend this legislation, when the government can count on the co-operation of all parties in the House to have legislation with teeth, and legislation that would meet the demands of many groups and political parties, like the Bloc Quebecois or the police association?

I will conclude by saying that this is a step in the right direction, but I would have liked the minister to listen more to the official opposition, the Bloc Quebecois. He did not agree 100 per cent with the Bloc, which would have been hard for him to do in this election period. However, I think the Bloc Quebecois made some remarkable progress here and will continue to fight and will still be here, after the next election, to ask the government for some amendments to this legislation, in order to meet the needs and the demands of Quebecers in this area.

An Act to amend the Criminal Code (criminal organizations) and to amend other Acts in consequence (Bill C-95)

Citation 1997, c. 23, s. 9

Royal Assent April 25, 1997

Hansard

April 21, 1997 [House of Commons]

Mr. Alan Rock

Mr. Chairman, what must be remembered is that the objective is not to deal with groups on the margin who may have three or four people committing crimes. The objective is to get tools into the hands of the police so they can gather evidence in relation to organizations that pose a serious risk to the safety of the community and that are engaged on a systematic basis in the commission of serious offences throughout the country.

The hon. member asked me about groups subdividing into cells of four in order to escape the strict terms of the definition. In my view if any such thing happened, the court could and would simply look beyond the artificial subdivision to the existence of the larger group on the facts and would not permit such a ruse or artifice to interfere with the enforcement of this law.

For example, just because a given biker gang which is internationally known and internationally active creates subgroups of four members each and gives them a different name would not protect them from this law. The court would be able to look at evidence of

the reality behind the artifice and would be able to conclude that the group or association was broader than just the four members and would apply the law as such.

Let me get to the hon. member's broader question which has to do with how this law works. This law works in two fundamental ways.

First of all, for the first time it establishes a formal framework which defines organized crime. That framework provides access by the police, if they are investigating such a phenomenon, to investigative tools which would not ordinarily be available: wiretaps with a different standard; extensions of wiretaps which would otherwise not be available; prolonging the period after which notice of a wiretap has to be given, which in other cases would have to be given sooner. Access to income tax information is another investigative technique or tool which would not otherwise be available to the police. That is the first thing it does. It establishes a new category of organized crime. If the police are investigating it, they can do things they would not be able to do if they were investigating other kinds of crime.

The second thing this legislation does is it establishes different consequences for organized crime as opposed to other kinds of crime. Penalties are more severe. If a person commits the same crime but does it in association with, for the benefit of, or at the direction of organized crime, then the consequences will be more significant than they otherwise would be. The proceeds of crime legislation will apply to the crime. Beyond that, the court can not only seize the proceeds of the crime, it can also seize the instruments used to commit it. If a truck is used to drive explosives from point A to point B to plant them for the gang, the truck can be seized if the evidence shows it was an instrument used in the commission of the crime. Those are the two fundamental things in the bill. There are others. The first is that it establishes something called organized crime. For the first time in our Criminal Code it creates that category. It provides for special tools for the police when they investigate this category of crime which is very, very difficult to do. There are also special consequences including harsher penalties and application for the proceeds and instruments to be seized. Those are the two items.

There is another element my friend asked about which I would like to speak to briefly. He asked how we prove it or how it works. For example, if police forces thought they were investigating a gang and wanted to have access to these provisions, and say, for example, they were applying to the electronic surveillance board or wiretap board and wanted to be relieved of the obligation of proving it was a last resort as we proposed they should be able to, they would have to show reasonable grounds to believe that what they were investigating was an organized crime offence, that a criminal organization was involved and that these

sections should pertain to that investigation. They would have to do that on proof. They would need to have evidence before the court to satisfy the reasonable grounds test and they would get the warrant under those circumstances.

April 21, 1997 [House of Commons]

Mr. Michel Bellehumeur

Mr. Chairman, what I understand is that they are introducing the first phase because they do not know what to propose in the further phases. The minister has just said so. I understand. What I do not understand however is when he says that it was quick and effective. Again, I remind members that we have been asking the government to introduce this bill for two years now. The same thing can be said about Bill C-17. The minister spoke about it three or four times. I remind him that this bill had been introduced back in 1994. The Bloc Quebecois had to threaten the government to propose anti-biker amendments in order to get the minister to bring that bill back to the House and have it passed.

There is another point I want to raise with the minister. The government of Quebec and the Bloc Quebecois raised on several occasions the issue of crime proceeds and money laundering in Canada. Again today, a newspaper mentioned that legislation on money laundering is very difficult to implement because there are so many loopholes. Reference is made to Canadian policemen; they must be the ones the minister says he has met several times. I also met several chiefs of police and policemen in Quebec, who told me almost the opposite of what the minister has been telling this House for the last little while, in particular about the legislation on money laundering, about which they were almost unanimous. I have even talked to judges and attorneys general of Canada. So, we read in the paper this morning that the police in Canada would love to have half or even one quarter of the measures that exist in similar legislation in the United States.

As for the whole issue of anti-biker or anti-gang or anti-crime in general, we in the Bloc Quebecois have said repeatedly that stricter legislation is needed on money laundering. I realize that Bill C-95 contains provisions concerning the seizure of real property or other property. I know that Bill C-95 is a step forward. However, this is nothing compared with what chiefs of police have been asking for years in the way of legislation on money laundering. While the minister was at it, why did he not add some amendments on money laundering, in order to make this activity more difficult in Canada? Now we are known as the

drug trafficker's paradise. We already knew that Canada was a tax haven for money laundering. The minister should realize there is some urgency in this case as well, and even the Bloc Quebecois would have liked to see him pass legislation to deal with this. As far as money laundering is concerned, when we talk to the police, they say that between 20 and 30 billion dollars are laundered annually. A judge of the Quebec Superior Court told me it could be as much as 50 or 60 billion dollars. Again, considering the urgent nature of these demands which, I think, we made very clear to the government, the same way we did in the case of anti-biker legislation, I want to ask the minister why, when he was working on this bill, he did not introduce legislation to make it well nigh impossible to launder money, an activity that is today a disaster for the economy? And tomorrow it will be even worse for Quebec, for a sovereign Quebec, but for Canada as well.

April 21, 1997 [House of Commons]

Mr. Alan Rock

Mr. Chairman, the hon. member mentioned his interest in the issue of money laundering. As I said before, we already adopted Bill C-17. In this bill, sections 27 to 39 deal with money laundering. Most of the improvements mentioned by the hon. member have already been passed in Bill C-17. Of course we need more. As I said before, we do not see Bill C-95 as the last phase of our efforts but as an initial step. So let us start with the first step, and then in a few months or a few years we will propose other measures, but for the first time, this bill will provide a legal framework for dealing with organized crime.

April 21, 1997 [House of Commons]

Mr. Réal Ménard (Hochelaga-Maisonneuve, BQ)

Mr. Speaker, I really feel that today we are experiencing the British parliamentary system at its best, with the opposition co-operating and the government taking action. You will recall that, in August 1995, a tragic and totally unexpected event-there had been no warning sign-happened in the riding of Hochelaga-Maisonneuve when an 11-year-old boy walking back from the toy library, a very popular place in my community, was killed for being in the wrong place at the wrong time. I must say that since that event, people have been mobilizing, first in my community, and then throughout Quebec and Canada. I am very grateful to the minister; I recognize that when dealing with an issue such as this one, there is no room for partisanship among MPs. I thank the justice minister and his assistant, David Rodier, as well as Yvan Roy, who bent over backwards to keep the dialogue going on a number of legislative measures we

thought had to be looked at in order to come up with concrete solutions to fight organized crime. Before going any further, I would also like to thank my colleague, the member for Berthier-Montcalm, our justice critic, who has been very active and perceptive in supporting the need for an antigang law.

We must be very clear with our fellow citizens. Nobody in this House claims that Bill C-95 will solve all the problems. None of us believes that passing this piece of legislation will eradicate organized crime. But what we are saying is that today we are sending a very strong message to the community as a whole to the effect that neither the official opposition nor the government will give up on this scourge. One could ask what is organized crime and how come that phenomenon has grown so much over the past few years.

I would like to propose a definition that is commonly used by police forces and to remind viewers that whenever we speak about organized crime, we are referring mainly to four elements. First, there are the proceeds of crime. Naturally, the purpose of organized crime is to make money. The second element is power, control over a specific territory. Then come fear and intimidation. The fourth and final element is corruption. You could say that organized crime does not exist in every society and you would be right. Some specific, precise conditions are required for organized crime to thrive in a society. There are at least four conditions which make cities like Montreal, Toronto, Calgary and Winnipeg, and the maritimes, good locations for organized crime. For organized crime to thrive, it needs a wealthy community where it can make money. That is why we talk about corruption in the third world, but in those countries, organized crime is quite different from its usual manifestations in urban environments. In order for organized crime to take root somewhere, it needs convenient access to major routes. Since it is an import-export trade, organized crime in Canada is concentrated in major centres across the country. For organized crime to prosper, it needs a free society, a society without dictatorial powers and oppression. Fourth, and probably the most important, is that, to prosper, organized crime needs a society where there are rights, charters and bureaucracy. We know full well-that is what police officers told me, and probably told the Minister of Justice also-that the greatest ally of organized crime is the charter of rights and freedoms, which has given it some immunity. It has been a powerful tool for organized crime. Once these conditions are met, organized crime proceeds in phases.

Operations of organized crime and its representatives have three different phases. The first one is control of a territory. Control of a territory is gained by intimidation, by generating fear. Such a territory becomes the exclusive turf of a particular group. After you control a territory, you get into money laundering. I will come back to the importance of money laundering for organized crime. I should mention that money laundering in Canada accounts

for about $20 billion, invested in legal or illegal activities. Once money has been laundered, it can be invested in legal enterprises. In Montreal, to give you an example that I know very well, organized crime has invested mostly in restaurants, bars and the like, although I do not think this is unique to Montreal. I know it is the same in other communities. So, we welcome the minister's bill. We agree that, as hon. members and as legislators, we cannot give up, that, we must assume our responsibilities and take action on such an important issue. Of course, we would have preferred to have this debate much earlier, because, as Bloc members, we have been pleading with the Minister of Justice for two years to look into what is going on in Canada's big cities.

Today, we have a bill and we will co-operate. I say to the Minister of Justice that, if I can be of any help, wherever he wants me to speak or whatever he wants me to do, he can count on my full co-operation, because, once again, partisanship has no place in such an issue. I would like to mention an extremely troubling fact. We have known for three months now that organized crime has changed the way it operates. Criminal organizations must not be underestimated, they are intelligent, well organized, and they have many means at their disposal to carry out their activities. In the past, these organizations used to limit their operations to 60 days. They were active in counterfeiting and they could detect wire tapping devices, and they were aware that, when their lines were being tapped, the warrant could not go beyond 60 days. In that sense, I find the measure the minister is providing in the legislation most appropriate, making it not only easier to get warrants to authorize wire tapping, but also not necessary to prove that it is used as a last resort and the only investigative tool available to the police. It will be a lot simpler and easier to get such a warrant. However, I must say that the way bombs are made now, the way explosives are handled by both major gangs, and I am referring of course to the Rock Machine or the Hell's Angels, is that these people now put in devices to make sure that the bombs will explode. The police had come to be able to identify which gang the bomb came from by the way it was made, and the way the explosive device was put together, the way the bomb was assembled often gave an indication of which group was responsible for it. To counter that, criminal organizations began to equip explosive devices with a timer so that no bomb ever misfire. The reason I am telling you this is obviously not to scare people but to make them understand that organized crime and its various manifestations are not something transitory that will go away and that we will not have to worry about a few weeks down the road. The justice minister is right to put forward such a bill because organized crime is a permanent fixture. Even though we passed Bill C-61 on the laundering of the proceeds of crime, organized crime has prospered. I think the measures being proposed here will be relevant and effective in helping police forces conduct investigations more quickly and produce much stronger evidence. Ultimately, attorney generals will be able to dig up evidence and initiate

legal proceedings. Criminals will stand trial and we will be able to dismantle or at least shake up the higher echelons of organized crime.

This bill contains 10 specific provisions I would like to explain to the people listening to us. First of all, the essence of this bill is that it creates the new offence of participation in a criminal organization. The bill provides that any offence for which the punishment is five years in prison or more will be deemed a criminal organization offence. Indeed the minister has cast a wide net. The bill covers drug offences, possession of stolen goods, influence peddling, and all other criminal organization offences. This is a judicious bill that defines criminal organizations as any group consisting of five or more persons. I tend to agree with this number. I know that Reform members have suggested that this number be reduced to three. But I think that, given the way organized crime works, we will be able to meet the objectives of this bill while maintaining this number at five. So a new offence has been created. The minister did not agree to the request made by the Quebec government to add a provision on crime by association. Since the beginning of this debate, the minister has been extremely reluctant to create a crime by association. I do respect the legal arguments behind his position. I think we could have created a crime by association, which would have been in compliance with both section 1 of the Charter and the legal guarantees in sections 7 to 14 of same. What is important however is not to determine if I was right, if the minister was right, or if the Quebec government was right, but to dismantle any known criminal gangs. So, a new offence is created. New provisions concerning explosives have also been added. That was also something the Government of Quebec had requested. The bill says that any person who possesses, uses, or handles an explosive substance for the benefit, in total or in part, of a criminal organization is guilty of an offence, under aggravating circumstance, and liable to imprisonment for 14 years. I think it is very important to understand how crucial this provision is, because as we know, explosives are very often used to commit crime, especially by biker gangs. This will now constitute an aggravating circumstance. This notion of aggravating circumstance is already included in the Criminal Code, since, a few years back, we had section 718.9 modified to add a number of factors that, taken into consideration by the judges, lead to tougher sentencing. If a criminal offence is committed by an organized gang, this will be considered an aggravating circumstance, especially when explosives are used. I think this is an extremely positive measure. Judges will also be given the possibility of deferring or postponing parole, or restricting eligibility to parole. It will be possible for them-and this is quite clear in the bill-when an individual is sentenced for gangsterism, to order that 50 per cent of the sentence must be served before the individual can be eligible to parole. I think this measure is extremely important because it encourages informers. One of the extremely modern ways to fight organized crime is to encourage informers to come forward. Nobody in organized crime will ever confess, agree to testify or co-operate if he or she knows that three, four or five months down the road, the person he or she informed against will be free to make trouble for them. Measures like postponing parole or aggravating

circumstances are very important measures because they favour informers, which is a key weapon, often used, to track down organized crime.

Another extremely important measure I talked about a little earlier is that it will be easier to obtain a warrant for electronic surveillance. Nowadays, electronic surveillance is a last resort measure. One has to demonstrate to the satisfaction of a judge that this is the ultimate way to conduct investigations. Thanks to the provisions of this bill, it will be easier to not only get authorization to proceed with electronic surveillance but also to extend the warrant as much as up to one year. This is extremely important. Another clause will make it easier and faster to obtain search warrants, for which one needs evidence, of course. The judge will always have to be satisfied. The bill contains an extremely interesting and original provision which provides for the forfeiture not only of the proceeds of crime, but also of vehicles used to commit offences. For example, if a truck is used to commit a crime, it could be confiscated. If a building is used-because the bill also applies to buildings-it could be confiscated. At present, there are provisions in a number of laws which allow for the forfeiture of property, but it is always done by a court order and it always pertains to property deemed to have been used in laundering of proceeds of crime. We will now be able to confiscate not only property used for the laundering of the proceeds of crime, but also property, such as a vehicle, used to commit a crime.

Another extremely interesting provision is that the judge will be able to issue an order to keep the peace, to refrain from seeing certain persons, from leaving the country, a judicial order against a person if there is sufficient evidence that that person will take part in the commission of a crime by a criminal organization. In other words, it is a preventive measure. The price of not keeping the peace could be an offence punishable by fine or imprisonment. The final measure the minister referred to concerns information and provides that the solicitor general will table an annual report on organized crime, on what progress has been made, where organized crime is active and, obviously I hope, on suggestions for fighting it. It is overall an interesting bill. It combines a number of measures called for by police and the Government of Quebec, particularly with respect to explosives. We must nevertheless realize today that we as parliamentarians have become aware of what is going on in organized crime because people have taken action. Some of them are fellow residents in my riding of Hochelaga-Maisonneuve, including the mother of young Daniel Desrochers, Josée-Anne, who circulated a petition and who used every public forum to awaken parliamentarians. I think that whoever we are and wherever we sit in this House we owe a debt of gratitude to Josée-Anne Desrochers. The police also acted and created CAPLA, the Comité d'action politique pour une loi anti-gangs. There was all sorts of pressure. As well, there was my colleague, the member for Berthier-Montcalm, who took the lead in this matter and very early on spoke to the minister on a number of occasions. He was very stubborn, obsessive and persevering, I

would say. It helped, because his efforts were not in vain. The proof is that today we have legislative measures.

Here are a few indications of the scope of organized crime, showing how its effects are felt throughout society, and how important it is for us, as legislators, to be extremely vigilant. In 1992, the underground economy was estimated at 5.2 percent of the gross national product, some $36 billion. That is in 1992 dollars. In today's dollars, those numbers would be a lot higher. The Insurance Bureau of Canada estimates that annual losses associated with unrecovered stolen vehicles-which is also one aspect of organized crime-amount to $293 million; $293 million per year for stolen vehicles. A pretty considerable sum. In 1994, Canadian chartered banks estimated their losses due to fraud at $143 million. Within organized crime, there is a sort of specialization. Some groups have become expert in what we call counterfeiting bank notes and putting them into circulation. I think this is a specialty of Asian groups, who have become quite expert at it. In 1994, the banks reported they had lost $143 million because of fraud. The most interesting number comes from very knowledgeable people in the field-the police forces-and concerns the income generated by organized crime, which is estimated at $20 billion. The figures for revenues from crime are close to the figures for the Canadian deficit. How much is the Canadian deficit? My colleague for Berthier-Montcalm, who follows these issues closely, could tell me the exact amount, but I believe it is $19 billion. The Canadian deficit is about $19 billion while revenues from crime total $20 billion per year. Is it possible, as legislators, to remain idle when confronted with this fact? I think not. However, despite all the good things I said concerning the government-and believe me, this is extremely circumstantial-the fact remains that it could have done much more. We made representations to the government. So did other groups, that is police forces and other people involved. We know perfectly well that the next step will certainly be the laundering of money. We know that. The fact that Canada is a money laundering paradise is very well known.

Canada is extremely liberal on that matter. This cannot go on. I must tell you the police community made a very important demand, that is the obligation for the major chartered banks to report any suspicious transaction over $10,000. This is extremely important for those who investigate to be able to trace back the origin of suspicious transactions. Right now, chartered banks must keep a record of all operations that they think are suspicious, but they are under no obligation to report them. I think it would have been worthwhile to include a legal provision specifying that failure to report such operations may be a punishable offence. I am convinced that banks would have co-operated, because the Canadian Bankers Association has taken some internal measures to detect dubious transactions, but all this must become an obligation. Police officers had also asked that $1,000 bills be taken out of circulation. Is there anyone in this House naive enough to think that ordinary people walk on

the street with $1,000 bills in their pockets? Mr. Speaker, if I you were to do a survey in this place, I am sure that very few of us-including yourself, the pages, the members of this House and the people in the gallery-would have a $1,000 bill in their pockets. We know full well that the $1,000 bill makes it possible for some people to carry large amounts in their pockets and we know for sure that the $1,000 bill is a boon to organized crime. The Canadian Police Association has asked that the $1,000 bill be taken out of circulation, and that is something that will have to be considered. Here is another extremely important demand: I was telling you earlier about the need to have banks divulge dubious transactions of more than $10,000, and I think that must not be restricted to the banks. Casinos could also be included in that list, as well as travel agencies and all those businesses trading in luxury items that may eventually be infiltrated and help us trace the criminal chain of command.

These are some measures we are suggesting. I think the justice minister will welcome them. I want to remind him that the reality of organized crime is not temporary. It is a huge threat. To this day, organized crime has managed to poison the life of entire communities, and I am thinking of course about the eastern part of Montreal with what happened in the riding of Hochelaga-Maisonneuve, but it is not only the eastern part of Montreal that is deeply affected by this reality. This reality is also a daily concern for the people of Saint-Nicolas, who have mobilized to fight this problem. Is it acceptable that bunkers can be built in urban centres, near residential areas, and that people can openly and publicly make money through illegal means and disturb the peace within our communities? I think not. As parliamentarians, we have a responsibility to do everything in our power to stop these people, to hold them accountable, to send them to prison and to launch investigations. Too often, over the past few years, I heard people say that it was the police's fault, because they did not build good cases. I took part in public debates, open lines and television shows where the easy argument that was used was: "If the police did a better job, it would be easier to fight organized crime". I think this argument does not withstand scrutiny because each time a police force wants to press charges, there are prosecutors and lawyers who study these cases to see how well the evidence would stand up in court, to determine if it could be challenged or not. It is not just about police resources; it is also about the Criminal Code and giving the courts the interpretation tools they need. I am not saying that adding police resources is not a good thing. I am thinking of course about the Carcajou squad, in Montreal, and GRICO. It is indeed a good thing. When, in a special squad, you have the means to shadow individuals, the more people you have in your squad, the easier it is not just to build solid cases but to act quickly. There is something that must never be forgotten. You know how devious the whole field of law is. You know the effect one decision can have on case law and how it can change the course of law. I know that my colleague, the member for Berthier-Montcalm, who is a lawyer, one of the best I would say, but not a criminal lawyer, is aware of the 1992 Stinchcombe ruling. How did this affect case law? It meant that, with respect to disclosure of evidence, the public prosecutor is obliged to file, before the trial, all the elements that contributed to the

evidence. This means that all information regarding a tail, personal notes, videotaped material, everything that contributed to the evidence must be handed over to the defence. This is fraught with consequences, because it forces those building cases to be extremely imaginative, extremely innovative in order to outwit their opponents from one trial or investigation to the next. On the whole, I think this is a bill that deserves our support. As the opposition, we are going to co-operate. We did so today. We have acted very expeditiously. I say again to the minister that, whatever we can do, whatever forum he would like to send us to, whatever demonstration we can take part in to ensure that this bill is passed before the imminent election that you know will see us back here as the official opposition, just as we are now, we will co-operate. If the minister wants us to make representations to the other House to help things along, we are prepared to do so because we have known for several months that partisanship has no place in this issue of organized crime. All my colleagues in the Bloc Quebecois agree with me that, when public safety is at stake, when the tranquillity of entire sections of the community are threatened, we have a responsibility to act quickly, not to be complacent. That is what we have done as the official opposition and that is what we will continue to do in the coming days.

April 21, 1997 [House of Commons]

Mr. Alan Rock

… What will the bill give police forces that they do not already have under the existing Criminal Code? Why do they think it will be important to them in their fight against organized crime? At the moment if police officers want to get a wiretap they have to prove a number of things to a judge first. Among those they have to prove on evidence that every other kind of investigative technique either has been tried and failed or if it was tried would fail because of the nature of the investigation. That takes police officers to the point of having to swear an affidavit or other form of particulars of what has already been done, go through the list of alternative methods and satisfy the court on evidence that it is a last resort in the investigation of a certain crime. The bill would remove that burden. It would simplify the process of getting a wiretap if the police officer is investigating criminal organization offences. Similarly with warrants. Returning to wiretaps, it would relieve police officers of a paper burden. We are not saying we should allow free access to intrusive methods because it is administratively difficult for police. We are saying we should make that change because when investigating organized crime it is almost always obvious that it is a last resort for the reasons I have already given. It is very difficult to investigate. We are taking a burden from the police which we think is undue in the circumstances of offences of this kind. Some say if it is all so easy to establish they can establish it to the satisfaction of the judge and nothing is lost. We are trying to recognize the unique character of these offences in the way

investigative tools are available to police officers. If we have the courage to conclude on the facts that it is almost always the last resort, then let us say it in the criminal law and not have the police go through the empty process of establishing it. It sends a signal as well. Furthermore, police officers have told me that they get wiretaps and the day after they start the paperwork to prepare for the renewal because they only get it for 60 days. They tell me that in the context of an organized crime offence it is absurd because those investigations take an exceptional period of time. They have to put together bits and pieces of conversations and relate them to other information. It is a very complex process. They almost always need the wiretap for longer than 60 days. In the bill we are permitting the court to provide the wiretap for an extended period so that the police will be using their resources investigating crime rather than busily working at paperwork for the extension application. Similarly notice of the wiretap has to be given after the wiretap is finished to people wiretapped so that they know it and can take proceedings. We have extended the period during which they can give notice in these cases because some of the investigations go on for an exceptional period of time. At the moment there is a very narrow category of offences for which access to income tax information can be gained. That is as it should be. Income tax is filed on an undertaking with the Canadian people. It is implicit the information be kept absolutely confidential by Revenue Canada. We do permit it at the moment for a very few offences. Officials will know the sections. Basically they deal with drug offences.

What we have proposed is significant. It is to extend the category of access to tax information to assist in investigations into organized crime offences. They cannot just walk in and take the information out of a file. They have to go before a judge, get a warrant, establish to the satisfaction of the judge that a criminal organization offence is being investigated, and that they need the information and it relates to the investigation. Then the warrant can be given and can be limited to such information as the court thinks is appropriate. Nonetheless it is an important breakthrough in terms of giving police more information to fit the puzzle together as to who has what, what are the proceeds of crime, what money is being laundered or what illegal activity is taking place? Similarly we are proposing for the first time to extend the proceeds of crime legislation beyond drug offences and the like to organized crime offences. It is not only the proceeds. Cash can be taken from their desks during the arrest. It can be instruments as well possibly including real estate if it has been fortified or modified to facilitate the commission of an offence. That is a very important point.

We spoke to the mayor of St. Nicolas or other communities where there are headquarters of organizations of great concern to the citizens. We can imagine a gang setting up in a municipality somewhere, taking over a house, fortifying it, setting up barriers so that the police could not raid it, putting concrete in front and surveillance cameras on top, modifying it and selling drugs out the back door or using it to store explosives or some other such thing.

If the real estate is modified or fortified to facilitate the commission of criminal offences, the real estate could be regarded as one of the instruments of crime and could potentially be seized after conviction for an organized crime offence. That is an extremely important tool.

The bill includes serious increases in sentences for crimes committed in association with or for the benefit of criminal organizations. I could have explosives illegally on my person and I would be subject to a maximum of five years in prison. If I am doing it for the benefit of a gang, if I am delivering the explosives to a gang or have planted them for the gang, whether or not I am part of the gang I could face up to 14 years in prison. Why? Because we are targeting organized crime which in turn is targeting us, our families and our children. That is why. That is not only important because it reflects society's denunciation of organized crime activity. It is also an important tool for the police that may be in a position of having picked people up, arrested them and charged them. Then they have a potentially serious sentence facing them. Police officers can say they are prepared to discuss with them the charge they will be brought before the court on or what submission they will make to the court in relation to the sentence if they co-operate by providing them with information they need. It is a very important tool for police that should not be underestimated.

Then there is the so-called peace bond provision which is not there now. It will let police officers bring someone before the judge and say they have reasonable grounds to fear the person will commit a criminal organization offence. They can ask the judge to look at the evidence, at the people he associates with, at what he has done in the past, at what the wiretap has turned up and at all the other circumstances. Then they invite the judge to conclude there is a reasonable basis to fear the person will commit a criminal organization offence. They can tell the judge that he has committed a number of them in the past and is still with the same group of people. They can ask the judge to look at what he has said publicly and privately. In those circumstances the court can impose for up to a year conditions on the person's liberty such as prohibiting him from communicating with other members of the group. This would seriously undermine the ability of the leadership of groups to carry on their business. The police believe that is also a valuable tool. I take the member's point. I should have to satisfy him that what we are proposing here is not only lawful but will be effective. I am able to report from my dealings with the police, the crown attorneys and the attorneys general of the provinces that we have a collection of measures. They are not enough in and of themselves but they will make a difference. They will make it that much easier for the police to tackle this dreadfully difficult problem. We will be back in the future with more proposals. This is only the first phase of what we will do. Organized crime is a menace in the country. I do not think most of us have an appreciation for what a serious

threat it is to the economy and future of the country. It is a good start. These measures will make a difference for police and that is why we are here.

September 29, 1997 [House of Commons]

Hon. Andy Scott (Solicitor General of Canada, Lib.)

…Another area where police have said they need more and sharper tools is in the fight against organized crime. Organized criminal activities are clearly a matter of growing concern for the police, the general public and the government. The recent bikers war in Quebec underscores that organized crime is not something intangible, something that happens in dark alleys hidden from view, but can and does have a direct impact on our neighbourhoods. The international trafficking in illicit drugs with associated money laundering continues to be the highest threat of all. Recognizing that organized crime knows no jurisdictional boundaries, our efforts to fight it are and will continue to be domestic, continental and international in scope. Nationally there is a strong and growing commitment among police and law enforcement agencies in all jurisdictions to work with my ministry and the Department of Justice to build stronger partnerships to combat organized crime. This fall I will be making in the House of Commons the first annual statement on organized crime to report on the implementation of the anti-gang legislation, Bill C-95, and our efforts to improve co-ordinated enforcement. Also in this regard I will be meeting tomorrow with Janet Reno, the American attorney general, to review progress and identify the next steps in our co-operative Canada-U.S. efforts to fight cross-border crime. Citizen participation in determining solutions is no longer an option. As far as we are concerned it is an obligation. We in government must not forget our obligation to keep Canadians informed of developments in the criminal justice system. We need to share information about issues of importance to Canadians in order that we can have fruitful and informed discussions on those very issues.

…

November 27, 1997 [House of Commons]

Mr. Richard Marceau (Charlesbourg, BQ)

Madam Speaker, organized crime is a major problem in Quebec and Canada, but particularly in the Quebec City area, where my riding of Charlesbourg is located. As my hon. colleague from the Reform Party mentioned earlier, there was another murder in my riding last week, in a family restaurant. As families were enjoying a quiet evening meal at the restaurant, they witnessed the cold-blooded murder of a man. This dramatic incident is but one example of the kind of violence biker gangs are responsible for in Quebec. It has reached such proportions that recently—two weeks ago I think—the Lloyds Insurance Company of London announced its intention to no longer insure bars in the Quebec City area. This shows how bad the situation is. The party that has been asking this government to do something about biker gangs since 1995 is our party, the Bloc Quebecois. After the Bloc Quebecois put a great deal of pressure on the government in Ottawa on behalf of Quebeckers, the government started to act in April 1996, but that was not enough, because too many unfortunate incidents have occurred in the past year. As I referred to a while ago, there is a very heavy concentration of biker gangs in Quebec. There are, of course, the Hell's Angels, but there is also the Rock Machine, which is apparently about to join forces with another biker gang, an international one this time, called the Bandidos. It is very clear that the government does not have the desire to put all of the law enforcement resources necessary in place to deal with this problem. In his speech, the minister claims that he has restored security in the border communities where the goods were crossing. As recently as this fall we witnessed the aborted raid at Kahnawake, where there were sizeable stocks of arms brought in from outside, and it was not the Quebec Minister of Public Security who was responsible for aborting the raid, either. This one very recent example can make us doubt the desire of this government to fight organized crime effectively.

One can also ask oneself the following question: Is the antigang legislation the government across the floor wants to see passed sufficient? Is it stringent enough? According to the Bloc Quebecois, even the definition of a criminal organization, referred to a moment ago by my hon. colleague from the Reform Party, still does not go far enough. Vagueness remains, and this could lead to challenges of the constitutional validity of this legislation. The act also authorizes the seizure of goods that have been used by criminal organizations. Although it is a nice initiative, a look at the concrete facts points to some shortcomings. Consider the cases where the police moves in to make a seizure. Two weeks ago there was a raid at the Hell's Angels hideout in Saint-Nicolas, near Quebec City. When the police arrived at the bunker, they took it over, but there was almost nothing left. Is there not a way to ensure that the police can act more quickly so that these seizure operations can really be effective against organized crime? This is a legitimate question. Concerning Bill C-95, the Minister of Justice at the time said that the object was to hit the master minds behind these criminal organizations. But at that time, the bill was not at all that clear, and I remember a discussion between my colleague for Berthier—Montcalm and the minister. My colleague had difficulty

finding in the bill what was meant by a master mind, and these people were not mentioned anywhere in the bill. So this is another weakness in the bill.

The minister also wants to give the police more flexibility to carry out investigations on money laundering. This is an excellent initiative, but we have to go further than that. We should also consider parole because, beyond these gang problems, there is for instance the Lagana case, where the lawyer succeeded in getting him paroled after he had served one sixth of the sentence. The minister will have to tighten up the law generally and also the Parole Act so as to prevent this type of criminal from going on parole so soon. In this regard, I will be introducing in a few minutes a bill to amend the Corrections and Conditional Release Act so as to make it clearer. Its purpose will be to amend section 103 of that act so that appointments to the National Parole Board will stop being subject to the political patronage they are exposed to nowadays and will instead be made under supervision by the people, and through the people under the supervision of the elected members of this House. In this way, impartial people will be appointed and they will have the necessary background to deal with this type of problem. In conclusion, many other efforts have to be made in the fight against organized crime. The government must act and it must act quickly to reassure the public, which is frightened. They have reasons to be frightened when violence reaches people in a family restaurant in a quiet and prosperous suburb. The government must come to realize that its laws and its commitment to deal with this issue are not clear. One reality that the government does not seem to recognize is the fact that biker gangs, to take only this example of organized criminal groups, are growing, and that every day there are more and more people joining these gangs. The Bloc Quebecois doubts that the government is willing to commit the necessary resources to the fight against organized crime, and we expect initiatives that are much more concrete than those that the minister is proposing today.

Corruption of Foreign Public Official Act (Bill S-21)

Citation 1998, c. 34, ss. 9 & 11

Royal Assent December 10, 1998

Hansard

December 3, 1998 [Senate]

Céline Hervieux-Payette

Honourable senators, I am pleased to rise to speak on a bill of such major importance for the conduct of international business.

Corruption is a threat to the rule of law, democracy and human rights. It undermines the principle of good governance, threatens the stability of democratic institutions and undermines the moral foundations of society. Corruption is prejudicial to international trade and free competition, and hampers economic development, particularly in developing countries. Through its OECD partners, Canada is working actively to encourage global systems for ensuring security and the improvement of the human condition and to strengthen trading ties, in order to help nations develop and prosper. We are increasingly aware that the best way to defend our national interests is to defend them within international institutions and tribunals and to put in place rules and institutions that will allow Canadians to obtain the kind of protection they need.

Bribery of public officials is one of the major problems encountered in international trade and investment. Within the OECD, it is a very important issue for Canada and for other international organizations. The OECD has 29 members, including Canada, the United States, most of the European countries, Japan and South Korea, and is the principal economic policy tribunal for the most advanced industrialized democracies.

The convention binds each signatory to establish a criminal offence of bribery of foreign public officials in international transactions and to take the necessary action, in accordance with its legal principles, to establish the responsibility of corporations in the event of bribery of a foreign public official.

Each party, or country, must ensure that these penalties are effective, appropriate and dissuasive, and that the bribery and the proceeds of the bribery can be seized. The range of penalties must be comparable to that for domestic bribery. The new offence of bribery of foreign public officials is a crime carrying a maximum jail sentence of five years. Section 67.5 of the Income Tax Act has also been amended to add this new offence to the list of Criminal Code offences to which this provision refers, thus ensuring that bribes paid to foreign public officials are not tax deductible.

The convention also requires the parties to ensure that bribes and the proceeds of bribing a foreign public official can be seized and confiscated, and to consider imposing other civil or administrative penalties. The new offence of bribery of foreign public officials is an organized crime offence authorizing the search, seizure and detention of criminal proceeds and is also considered a major offence in a charge of laundering criminal proceeds.

The convention also contains provisions dealing with enforcement, legal assistance and extradition, which Canada already meets. Where their judicial system allows it, each party is required to provide assistance with criminal and civil matters. During the negotiations, Canada said it could provide assistance to other states in criminal matters but not in civil ones.

At the G-8 Summit in Birmingham, Canada and the other G-8 members undertook to make every effort to ratify the OECD Convention by the end of 1998.

The Canadian business community considers the OECD Convention to be one of the greatest achievements to date in the international campaign to combat bribery. This convention is regarded as an opportunity to create an environment in which Canadian companies will be able to compete on the basis of quality, price and service, as it will limit the capacity of foreign competitors to use bribery to land contracts.

So far, Japan and Germany have tabled their instruments of ratification with the Secretary-General of the OECD. Also, the United States and the United Kingdom have completed their domestic procedures and should table their instruments in the coming weeks.

Five of the OECD's ten largest countries must ratify the Convention by the end of 1998 for it to come into force. We hope that Canada, as a leader in the fight against corruption, will be the fifth country to ratify the convention.

…

[December 3, 1998][Senate Committee of the Whole]

The Honourable Lloyd Axworthy, P.C., M.P., Minister of Foreign Affairs

Honourable senators, thank you for the opportunity to appear before your committee and to address Bill S-21 dealing with the bribery and corruption of foreign officials in international business transactions. This is a very important piece of legislation. I appreciate the fact that the Senate is now in deliberation on this matter.

Senator Hervieux-Payette, in presenting this bill, made a very important point. She said that corruption distorts all aspects of international trade, competition, economic development and investment. In fact, it has a corrosive effect on the fundamentals of the rule of law, democracy and human rights.

I would compliment the Standing Senate Committee on Foreign Affairs for its recent report on Asia which I had the opportunity to read last evening. It makes a very important connection between an effective business climate and an effective global system which has the responsibility to live up to the rule of law and to adhere to basic principles.

It has certainly been my experience in negotiating and working on a number of these matters that one of the most insidious influences that we now face internationally is the incidence and frequency of corruption in a wide variety of countries. It undermines not only what we do as

Canadians in our relations, but it has also had quite a dramatic and horrific effect on a number of countries.

By taking the position represented in this legislation, by setting certain standards and following up with efforts to provide a much stronger international code, we believe countries will, themselves, incorporate a broader set of standards and behaviours which will improve the general business climate internationally. We believe this effort will also impact upon the capacity of countries themselves to develop a regime which recognizes that good government, clean and honest government, is the most effective form of promotion for economic development, economic growth, and maintaining good relationships internationally.

In this sense, we are exporting not only our goods and services but certainly our values. We have learned the hard way that integrity and probity in one's behaviour result in all kinds of benefits and proper conduct. That, in itself, will result in a much better climate of relationships for all of us.

In developing our partnerships, it is important that we tackle these problems. As senators know, this has been a major focus of work in the OECD. It has commanded the attention of OECD ministers. Agreements were made just in 1997 to proceed with this.

The OECD draft was put together last spring. Since then, we have worked actively in consultation with the provinces and with the business community in Canada to see how it can be implemented. The legislation that is before you today is a result of that.

I should also like to mention that the Organization of American States has also adopted a convention on corruption which follows many of the same principles, as has the Council of Europe. What you can see is a broadening network of commitment and engagement of a number of countries in establishing these kinds of standards.

This legislation will allow Canada to honour the commitments that we have made at the OECD, as well as commitments made by the Prime Minister at the Denver Summit of the G-8 and the United Nations. I strongly believe that it will also respond to the needs of Canadian business. Most honourable senators have probably received correspondence or know that the business community, in particular the international business community of Canada, has been a strong advocate of this legislation. You will be hearing later from the transparency group who will make the point for you. To their credit, they believe that doing clean business is good business. They have been a strong promoter of this measure.

We are in a very key position at this time. Under the OECD rules, five countries are needed to ratify it in order for it to become law. Canada is the fifth country to provide the ratification. If we can do this expeditiously, we will be able to claim that we are providing the key which will unlock the door to making this happen.

The essence of the convention is the requirement that each state which is party to it will criminalize the bribery of foreign officials, and take measures to establish the liability of legal persons, which also includes corporations, for the bribery of foreign public officials. If you look at clause 3 of the bill, you will know that this is the centrepiece of the proposed legislation before you.

The provision prohibits the bribery of a foreign public official in the course of business. It would be punishable on indictment and carries a maximum penalty of five years in prison.

The bill describes facilitation payments that would be exempt from the ambit of the offence. Facilitation payments are the normal course of licensing fees and permits which one uses in terms of international trade discourse, for example, cargo fees. As well, it would not be an offence if the advantage were lawful in the foreign public official's country or public international organization. Countries have their own laws which we must recognize and by which we must play.

Reasonable expenses incurred in good faith and directly related to the promotion, demonstration or explanation of products and services, or to the execution or performance of a contract, could also be argued as a defence under the act.

Honourable senators have also heard reference to the fact that bribes paid to foreign public officials under this legislation would not be deductible under the Income Tax Act.

The bill further proposes to create two additional criminal offences, namely, the offence of possession of property or proceeds obtained from bribery of foreign public officials; and the offence of laundering the property or proceeds.

In closing, it is useful to quote Donald Johnston, a former minister of justice who is now the Secretary General of the OECD. In a recent article he was quoted as having said that integrity in commercial transactions is essential in making the global marketplace work and to assure that the public supports it. He said that the logical consequence of globalization is that honesty has to be enforced at the global, not just the national, level.

With the passage of this legislation, Canada has the opportunity to ratify the OECD convention and to bring it into force, thus ushering in a new era of international accountability.

Mr. Chairman, I believe that explains the basic intent of the legislation. I would be happy to answer any questions that members of the committee may have.

December 3, 1998 [Senate Committee of the Whole][Entire Exchange]

Senator Joyal: Clause 6 of the bill reads as follows:

A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under section 4 or 5 if the peace officer or person does any thing mentioned in either of those sections for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

My first reaction to that was to recall the McDonald commission. Are we not giving peace officers our blessing to break the law when they are conducting investigations? Were there not some commissions that made very stringent recommendations to Parliament regarding how peace officers must abide by the legislation when they conduct their investigations?

Mr. Axworthy: Senator, this is designed primarily to protect police officers doing investigations. If they seize proceeds from an illegal act, an act of bribery, they have to be given exemption, otherwise they would be liable under the act. We would have great difficulty with enforcement if we started indicting police officers for carrying out their duty of dealing with whatever exchange had taken place under a bribery charge. This is simply to ensure there is a clear sense of accountability for those who are engaged in the act. It does not drag police officers themselves into criminal conduct.

December 7, 1998 [House of Commons]

Julian Reed (Parliamentary Secretary to Minister of Foreign Affairs)

Mr. Speaker, I rise with pleasure to speak to a matter of concern to all of us, the subject of Bill S-21, the bribery and corruption of foreign public officials in international business. This bill when enacted will allow Canada to ratify the convention on combating bribery of foreign public officials in international business transactions. This convention was negotiated by the members of the Organization for Economic Co-operation and Development. The 29 member OECD, which includes Canada, the United States, most European countries, Japan and South Korea, is the major economic policy forum for the world's most advanced industrialized democracies.

It is an accepted fact that corruption distorts international trade and competition. It impedes economic development. In developing countries in particular corruption distorts public policy. It leads governments to make decisions that are not in the public interest but are in the interest of those who benefit from the bribes. Corruption also has the effect of lowering the quality of goods and services provided by the private sector in the course of meeting its contracts. If substantial bribes are being offered the money comes either by shortchanging the countries with which one has a contract or by undermining the quality of the goods and services being provided. Furthermore it has an insidious effect of threatening the rule of law, democracy and human rights. It undermines the development of competent political and democratic institutions. Where they are in the course of development, it blocks that development. Stability and security are essential preconditions for economic growth. Prosperity, sustainable development and employment engender greater security and stability. The successful promotion of Canadian values abroad can be assisted by increased economic partnerships between Canada and other countries.

The issue of the corruption of foreign public officials is not new and continues to be a major problem affecting international trade and investment. The problem has been the focus of attention within the OECD, the Organization of American States and the Council of Europe. To implement the OECD convention would enhance Canada's reputation as a world leader in

fighting corruption. It would honour the commitments Canada has made at the OECD, at the Denver and Birmingham summits of the G-8 and at the United Nations. And it would continue to ensure if not enhance Canada's standing at the OECD. Some have questioned whether what we are doing is enough.

My response is that this is a dramatic and significant first step in the right direction. I will highlight the key elements in this legislation. The essence of the convention is the requirement that each state party criminalize the bribery of foreign public officials in international business transaction and take measures to establish the liability of legal persons for the bribery of a foreign public official. This provision appears in section 3 and is the centrepiece of the proposed act. It prohibits the bribery of a foreign public official in the course of business whether directly or indirectly. It calls for significant penalties. The offence would be punishable on indictment and carries a maximum penalty of five years imprisonment. This legislation will use the definition of person found in the Criminal Code that includes Her Majesty and public bodies, bodies corporate, societies, companies and inhabitants of counties, parishes, municipalities or other districts in relation to the acts and things they are capable of doing and owning respectively. Therefore for the purpose of the offences under this proposed act, potential accused are not limited to natural persons. Corporations also fall within the scope of these offences. The bill describes facilitation payments that would be exempted from the ambit of the offence. It would not be an offence if the advantage were lawful in the foreign official's country or public international organization. Reasonable expenses incurred in good faith and directly related to the promotion, demonstration or explanation of products and services or to the execution or performance of a contract with the foreign state could also be argued as a defence. The bill would amend section 67.5 of the Income Tax Act to add this new offence to the list of Criminal Code offences referenced in that section in an effort to deny the deductibility of bribes paid to foreign public officials.

The convention requires the parties to provide that the bribe and proceeds of the bribery of a foreign public official be subject to seizure and confiscation. It requires the parties to consider the imposition of additional civil or administrative sanctions. For this reason the bill proposes to create two additional criminal offences, the offence of possession of property or proceeds obtained or derived from the bribery of foreign public officials or from laundering that property or those proceeds, and the offence of laundering the property or proceeds obtained or derived from the bribery of foreign public officials. The bill incorporates the proceeds of crime provisions of the Criminal Code for use on prosecutions of the new offences. The new offence of bribery of foreign public officials is an enterprise crime offence to permit the search, seizure and detention of these proceeds of crime and is a predicate offence for the offence of laundering of the proceeds of crime. The convention has provisions

dealing with mutual legal assistance and extradition with which Canada can comply. If possible under their legal systems, each party must also provide legal assistance in criminal and civil matters.

It is important to note the Canadian business community is behind this initiative. It considers the OECD convention as the most significant achievement to date in the international campaign against bribery and corruption. This convention is seen as an opportunity to create a level playing field on which Canadian companies can compete on the basis of quality, price and service. This was said loudly and clearly by members of Transparency International when they appeared before the Senate last week. When he appeared before the Senate, the Minister of Foreign Affairs quoted Donald Johnston, a former Canadian Minister of Justice and current Secretary General of the OECD, who said in a recent article that “Integrity in commercial transactions is essential in making the global market work and to ensure that the public supports it. A logical consequence of globalization is that honesty has to be enforced at the global, not just national, level”. With the passage of this legislation Canada has the opportunity to be the fifth country to ratify the OECD convention and to bring it into force, thus ushering in a new era of international accountability. I ask all hon. members to consider that the war on corruption is well underway. There is now no looking back.

December 7, 1998 [House of Commons]

Benoît Sauvageau (Repentigny, BQ)

Madam Speaker, like my colleague from the NDP, I too am pleased to speak today on Bill S-21. This is an act respecting the corruption of foreign public officials and the implementation of the convention on combating bribery of foreign public officials in international business transactions, and to make related amendments to other acts. The Bloc Quebecois supports this bill because it addresses the problem of corruption in international business transactions involving governments and government projects. It follows on the signature by Canada and 28 other countries of the convention on combating bribery which was signed last year. This agreement required five of the ten greatest OECD trading partners to ratify the convention by the end of 1998. Four have already either done so or stated their intention of doing so by the end of December, the United States, Germany, Japan and the United Kingdom. Canada's ratification, therefore, would allow the convention to come into effect.

Here we are at five minutes to midnight, and the government is just waking up, only a few days before the end of these sittings, and asking us to turn our work topsy-turvy in order to

get this convention put through. Obviously, we support it, but some questions could be asked about the process leading to its adoption. I will describe the convention. By signing it, the countries commit to enact legislation which will make it illegal for companies to bribe representatives of foreign governments. They also promised to develop a mechanism for overseeing the implementation of the law. Under this convention, the parties must ensure that intentionally offering or agreeing to give or offer an unfair pecuniary or other advantage to a foreign public official to obtain or retain a contract or any other unfair advantage in international trade constitutes a criminal offence. The convention also applies to kickbacks paid to persons holding public office, that is lawmakers and officials of public organizations. In addition, this convention deals with facilitation payments and requires that the parties implement rules to prevent misleading accounting practices and the use of forgeries for the purpose of bribing or covering up bribery.

The purpose of this bill, whose main thrust is found in clause 3, is to implement this convention. From now on, all OECD countries will be subject to the same rules. Bribery and kickbacks will no longer be tolerated and will in fact be considered criminal offences. This convention will ensure that businesses in Quebec and Canada have access to a more level playing field on which to compete internationally. Of course, the Bloc Quebecois joins the business community of Quebec and Canada in supporting this bill. But perhaps we could go further. There are now 28 member countries in the OECD. We all know that we also trade extensively with developing countries, APEC countries and other countries around the world. So, as far as we in the Bloc Quebecois are concerned, this convention negotiated with 28 OECD countries should be placed as quickly as possible under the aegis of the WTO. I must say I am bitterly disappointed with the Liberals' attitude. The Conservatives have spoken of threats. Here we have another example of the lack of respect of Liberal members and an example of the way they perpetuate the bad reputation politicians have in the community as a whole. When members speak in this House in a debate that is not totally conflictual and are continually being interrupted by sarcasm, jokes or private conversations, they may well wonder what happened to courtesy. Perhaps there is none in that party, it is found only among the opposition. That would be one more thing they do not have that the opposition does. They have a whip that occasionally tightens the screws. Will they understand? Perhaps the whip should move and sit there to get them to understand common sense. When they are not busy accusing or threatening the Conservatives, they are preventing other members of this House from speaking by holding their Christmas party in the House at 3.50 p.m. on a Monday. It is rather disgraceful.

…

We are pleased that the Canadian government moved quickly to implement the convention on combating bribery in international business transactions, thus becoming the fifth OECD member to do so. However, we must question the government about its true intentions, as we wonder whether it is not making a small concession to hide a more serious problem, that is the absolutely dreadful working conditions imposed on children, men and women in some parts of the world. The Canadian government could not care less, because “we must not adversely affect our companies' competitiveness”. In order to make money, increase their sale figures and preserve their competitiveness, some Canadian companies go to countries where human rights are not respected. The Senate made two very realistic recommendations: the establishment of a code of ethics for businesses that is more strict than the voluntary one, and a requirement to comply with minimal standards to be eligible for government assistance regarding international activities. But these two issues will remained unanswered for a very long time, because while it looks like the government is quick to take action, it is slower in providing concrete help. I will conclude on this point, and we will see the government in action.

December 7, 1998

André Bachand (Richmond-Athabaska (PC))

…This bill, which we will be passing and which the Senate will hopefully ratify soon afterwards, will ensure that the primary condition, set out in the first operative provision of Bill S-21 will come into effect and be enforced in five countries. I hope that the review will go further than the periodical report and include non-government and non-profit organizations. I think we should go much further than that. However, with Bill S-21, Canada meets its international obligations. That is a step in the right direction. The issue has been raised in the House and we in the Progressive Conservative Party are going to push to have it move forward. As the Bloc Quebecois members have often pointed out, the next step is human rights. In the interests of greater credibility, much more will eventually have to be done with respect to international trade as it affects human rights. The Standing Committee on Foreign Affairs and International Trade has its work cut out for it. At some point, it would be a good idea for us to give thought to what sort of policy Canada could enforce that would incorporate a number of laws and international agreements to which Canada is already a party. So Bill S-21 is speeding through. There was, however, I believe, agreement in this House that corruption should cease. But will that happen? Probably not tomorrow, but at least people will know that Canada, like four other countries, has a law, has signed a convention, and that it could push for the signing of these agreements, and perhaps even make it a kind of condition. When Canada negotiates or renegotiates international agreements or portions thereof, it must ensure that the other signatories also enact anti-

bribery legislation. Bribery used to be a way of life. If people wanted a passport in some countries, they had to bribe an official. They were told this was the way things were done, and it was hard to deal with that. Now, fortunately, because of globalization of markets, among other things, the situation has evolved and the laws and regulations governing a country are now scrutinized closely by all real and potential world trading partners. This bill is therefore a good one. It comes to us from the Senate, an institution that of course could do with some improvement. However, that shows that there are things that can be credibly accomplished within parliament, and this is our goal in the Progressive Conservative Party. We enthusiastically support Bill S-21 and assure the government and parliament, both the House of Commons and the Senate, of our full co-operation.

An Act to amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional Release Act (Bill C-51)

Citation 1999, c. 5, ss. 13 & 52

Royal Assent March 11, 1999

Hansard

September 28, 1998 [House of Commons]

Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.)

….As hon. members who represent northern constituencies will know, a new diamond mine industry is beginning to take shape in the Northwest Territories. This is expected to bring employment and economic benefits to the territories, but the high value of uncut diamonds has raised concerns about the potential for theft and the possible use of diamonds as a means of smuggling or money laundering by organized crime. To protect the new industry and Canadians, the proposed amendments would modernize old provisions dealing with the theft and illegal possession of precious metals and ores. The term previous metal would be replaced with valuable mineral to include diamonds and other non-metallic minerals. The

legislation would also create a federal power to prosecute some offences where uncut diamonds are involved to respond effectively to organized crime and interprovincial smuggling activities. This would be concurrent with provincial jurisdiction so that either level of government could prosecute. This would allow for federal prosecutions where an offence which started in the territories involved one or more provinces as well or where a major domestic or international organized crime interests are involved. The law does not affect any existing provincial powers and would leave it open to federal and provincial officials to co-ordinate who would prosecute on a case by case basis.

Fighting against organized crime effectively is a priority of this government, and we are proposing many other changes to fight various activities involving organized crime. The bill, if passed, would amend the Corrections and Conditional Release Act so that persons found guilty of organized crime activities would not be entitled to any sort of accelerated parole review. The legislation would permit electronic surveillance in the case of serious offences involving prostitution and investigation of prostitution telephone networks and indirect involvement in organized crime. Organized crime in Canada has also been linked to telemarketing fraud and related offences. My colleague, the Minister of Industry, already has amendments before parliament to criminalize various forms of deceptive telemarketing activity and to allow wiretapping to investigate them.

In this legislation I am proposing an additional amendment which would allow the proceeds of deceptive telemarketing offences, which can be a major source of income for organized crime groups, to be targeted using the existing Criminal Code proceeds of crime provisions. The government is concerned about telemarketing fraud and related practices, and we regard the confiscation of illegal profit as a major step to counteract it. The government has also been asked by the provinces for changes to Criminal Code provisions dealing with gambling. Generally gambling is a criminal offence unless the activity involved falls within one of a series of exemptions created in the Criminal Code such as those for operations conducted or licensed by the provinces or parimutuel betting on horse races approved by the minister of agriculture.

The changes I am proposing would create two new exemptions. First, it would allow dice games in operations that are conducted and managed by the provinces. Second, it would allow gambling operations on international cruise ships. I want to assure the House that changes are not intended to increase the level of gambling activity in Canada. Nor do we expect them to have this effect. What we are seeking to do is to ensure that gambling and tourism operations in Canada compete with those of other countries, especially the United States, on an equal basis. Dice games are not a major part of casino gambling, but casinos

which offer them may have a competitive advantage over those in adjacent jurisdictions. Ontario is particularly concerned that its operations offer a similar range of games to those in neighbouring U.S. states. Once this amendment takes effect it will be up to each province to decide whether it wishes to allow dice games in its casinos. In the case of international cruise ships, the amendments would allow Canadian registered cruise ships which fall under Canadian law regardless of where they are and foreign registered cruise ships in Canadian waters to offer gambling to passengers.

The changes also ensure that the operators of cruise ships which enter Canadian waters will not be charged with importing the gambling equipment in their casinos. This is expected to provide direct benefits to the cruise industry itself and indirect benefits to tourism and other business in the ports where cruise ships call. Canadian registered cruise ships can compete effectively while abroad and foreign registered ships will not be deterred from calling on Canadian ports. The cruise industry is an important and growing part of regional economies, particularly in the St. Lawrence valley of Quebec and the coastal waters of British Columbia. I am happy to be able to propose amendments which will address the economic concerns and interests of these provinces and their populations.

Another area of the criminal law which is of concern to my provincial counterparts is that of prostitution. Concerns have been expressed to my predecessor and myself that the 1997 Criminal Code amendments making it an offence to obtain the prostitution services of a person under 18 would be difficult to prosecute. The provinces had asked us to bring forward an amendment changing the offence from obtaining the services of a young person to communicating with a young person for that purpose. I am happy to propose such an amendment in this legislation. Similar wording in other prostitution offences has been held not to offend the charter by the courts. Several changes in the area of search and seizure are also proposed in this legislation.

The Criminal Code already provides the courts with the power to authorize the use of electronic surveillance of telephones and specified locations. Where this permission is given, it also authorizes police to install the necessary listening devices, but the legislation says nothing about their subsequent removal. The proposed amendments would address this situation by clarifying that judicial permission to install and use these devices also includes permission to remove them. In many cases, the initial authorization runs out before police can safely go back to retrieve the devices. In such cases, the proposed amendments would allow the courts to specifically authorize their removal. The wording governing a series of search warrant provisions would also be amended to standardize the provisions and ensure

that only public officers who have law enforcement responsibilities and peace officers could execute search warrants.

In 1997 the Criminal Code was amended to allow a justice who denies an accused person bail to also order that the accused not communicate with any witnesses or victims while in custody. This was identified by the provinces as particularly important in domestic violence cases where victims are often subjected to immediate pressure not to provide evidence or co-operate with the police. Provincial authorities have subsequently pointed out that these non-communication orders are effective only after the accused has been brought before a justice for a bail hearing. This could be several days after the initial arrest, during which time accused persons can and do contact victims or witnesses. To respond to the province's concerns, the proposed legislation would create a parallel provision allowing the first justice who sees the accused after arrest to make an immediate non-communication order. Once imposed, the temporary order would bar communication while the accused is held pending the bail hearing. It would be reviewed by the justice who hears the bail application, who could replace it with a non-communication order pending trial whether the accused is held in custody or released on bail.

This government is committed to the ongoing review of the criminal law and to the maintenance of effective legislative measures to protect society. As part of this effort, this legislation contains a series of other measures to address concerns about the legislation, adjust offences and punishments, modernize the statute and correct oversights enacted in other recent legislative initiatives. We will continue to monitor the legislation and bring forward further changes as the need for them becomes apparent. I look forward to the support of all members of the House for this important Criminal Code omnibus legislation.

October 7, 1998 [House of Commons]

Mr. Michel Guimond (Beauport—Montmorency—Côte-de-Beaupré—Île-d'Orléans, BQ)

Mr. Speaker, as I am the first member of my party to speak to this bill, I will speak for the 40 minutes accorded me. To talk on such a vast and interesting topic, I would need more than 40 minutes, but I will not invoke the Standing Orders of this House to seek unanimous consent to speak longer. I will try to limit myself to the 40 minutes allotted me. Mr. Speaker, as you are considerate toward members, I would ask you to let me know when I have only five minutes left, as is the practice in this House. First off, perhaps some of my colleagues opposite or elsewhere in this House are wondering why the Bloc Quebecois transport critic is

speaking to a bill concerning major amendments to the Criminal Code and the Controlled Drugs and Substances Act and amendments to the Corrections and Conditional Release Act. The reason is quite simple. It is not just because I am a lawyer by training, but this bill contains a provision we find very interesting. Without making any assumption about our party's position at third reading, I will say right off that this bill can be improved. We intend to make certain amendments in committee, which we believe will hold the government's attention and that of all the members of the Standing Committee on Justice and Human Rights.

Let me begin by discussing the general provisions of this bill, before getting to the one which is of particular interest to me. This bill includes amendments to permit the operation of casinos on international cruise ships that are Canadian or in Canadian waters. It also amends the Criminal Code to permit dice-games conducted and managed by a province. I am convinced that Loto-Québec will be very interested in that provision. The bill also seeks to widen the scope of the offence of obtaining the services of a prostitute under eighteen years old. It amends the Criminal Code to repeal the “year and a day rule” for offences involving homicide and criminal negligence causing death. The bill modernizes the fraud and theft provisions in respect of valuable minerals. It also modernizes the provisions concerning the offence of making likenesses of bank-notes. It ensures that only officials with law enforcement duties can execute search warrants. It provides for the authority to remove lawfully-installed electronic surveillance devices. It provides sentencing measures dealing with the consideration of outstanding charges, the offender's ability to pay a fine and addressing technical matters. It provides rules governing when conditional sentences run following the breach of a condition. It brings deceptive telemarketing offences against the Competition Act under the forfeiture provisions for the proceeds of crime. Finally, it provides a number of other technical amendments. The bill also provides for amendments to the Controlled Drugs and Substances Act that deal with aggravating factors in sentencing and the criminal liability of law enforcement officers engaged in their duties. And, finally, it provides for amendments to the Corrections and Conditional Release Act that exclude those convicted of organized-crime offences from eligibility for accelerated parole review.

Because Bill C-51 represents an important victory for the Bloc Quebecois with respect to the operation of casinos on international cruise ships, hence my remarks this afternoon, we support the bill in principle. We feel, however, that the bill does not go far enough with respect to money laundering, particularly as it does not remove $1,000 bank notes from circulation. We know that our colleague, the hon. member for Charlesbourg, introduced a private member's bill about this.

…

October 8, 1998 [House of Commons]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ)

…. The other important thing I wanted to mention about Bill C-51 is the accelerated parole review provision. I would like to speak to this briefly. In 1997, the media brought us the Lagana affair. It will be recalled that this involved a lawyer, Joseph Lagana, sentenced in 1995 to 13 years in prison for his involvement in a drug importing case and for laundering almost $47.4 million. The worse part of this story is that Mr. Lagana was released after serving only one sixth of his sentence, that is 26 months instead of the 13 years of imprisonment he had been sentenced to by the judge. The accelerated parole review procedure provided in the Corrections and Conditional Release Act benefited this major drug trafficker, who was released after serving only one sixth of his sentence because his crime was considered a non-violent offence under the law and he had not served time before. On this subject, let me digress to say a word about the application criteria of this accelerated review procedure. In 1987, the chief justice of the supreme court made a decision in the Smith affair, saying: Because they are the direct cause of the hardship experienced by their victims and their families, we must ensure these importers of narcotics bear their share of culpability for the countless serious crimes of all sorts committed by drug addicts to support their addiction. It read further: With due respect, I believe that, when convicted, these individuals, with very few exceptions, should be sentenced and actually serve long term sentences. This shows that the supreme court considers drug trafficking to be a scourge of serious magnitude that must be eradicated. In our view, since money laundering sustains this scourge, anyone who is found guilty should indeed, in the words of the supreme court justice, serve long term sentences. But the Liberal government obviously does not agree, since it is allowing criminals like Joseph Lagana to take advantage of accelerated parole reviews.

The Lagana affair prompted the Bloc Quebecois, through the member for Charlesbourg, to introduce a private member's bill to have this kind of review denied to criminals found guilty of money laundering, among other offences. While Bill C-51 is a step in the right direction, the new provisions will not apply to Mr. Lagana and others like him, because bankers and lawyers who are convicted for money laundering but not for an organized crime offence will still get away with serving one sixth of their sentence. This is totally unacceptable to the Bloc Quebecois. We will not tolerate other Lagana cases. Therefore, we are informing the House that, on Bill C-51, the Bloc Quebecois will be proposing amendments to offset the Liberal government's lack of courage on this issue. The fact that the government is making a minor

correction to a situation does not release it from all its obligations. I also want to discuss the powers of the attorney general of Canada.

….

The battle against money laundering does not seem to be a priority for this government, which takes a piecemeal approach to things. The solutions it is proposing do not go nearly far enough. There is no doubt about this government's apathy, because it could, right now, take effective action against money laundering. The Bloc Quebecois has been raising this whole issue for a long time now. Listeners will probably recall that we even made it part of our platform in the last election campaign, and that we were not short of suggestions for what this government should do about this terrible problem in Canada. As I mentioned earlier, the member for Charlesbourg introduced a private member's bill to deal with the issue. Since its purpose is to do something about the problem of money laundering, I trust that it will have the support of the government. One thing the government could easily and rapidly do, even in Bill C-51 before us, is to eliminate $1,000 bank notes, which is a top priority for the Bloc Quebecois. Canada is one of the only countries to issue such a high denomination. Police forces tell us that this makes it easier for criminals to launder their ill-gotten gains. The Bloc Quebecois is also suggesting that financial institutions should in future be required to inform the police of any dubious transaction involving $10,000 or more. This requirement would also apply to casinos and travel agencies. Despite what it is saying, the Liberal government's response to money laundering has been far from effective. Strict measures are long in coming. Because of that inertia, we must constantly raise the issue and hound the government, as we did in the case of the motorcycle gangs, for instance. The government finally decided to act following the enormous pressure exerted by the Bloc Quebecois regarding that issue. I do hope that, following our private members' bills and our representations, the government will finally take action regarding money laundering, if not with Bill C-51, then in a subsequent piece of legislation.

Since time is running out, I will conclude by saying that the Bloc Quebecois is pleased that operating casinos on cruise ships on the St. Lawrence River will now be permitted. As I said earlier, thanks to the hard work of several MPs from the Quebec City area, the government finally realized that the situation could no longer persist. The tourist industry in the Quebec City area will now be in a position to thrive even more. The Bloc Quebecois is also pleased to have made the government realize that the accelerated review process was flawed. Again, the Bloc Quebecois said repeatedly that it was unacceptable to see a notorious drug trafficker take advantage of that procedure. Unfortunately, the government did not realize the magnitude of the problem, since its proposed amendments do not go far enough. When will the government understand that it is useless to try to fight gangs if nothing is done about money laundering? In the area of crime, as in any other one, money is everything. However, the government does not seem to have understood that yet, or at least it is slow to do so. It

is slow to amend the legislation, so that Canada can finally lose its unenviable title of money laundering haven. The Bloc Quebecois supports Bill C-51, to the extent that the government is aware that the legislation has a number of flaws on which the Standing Committee on Justice and Human Rights will have to work.

October 8, 1998 (House of Commons)

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC)

… I also question the government's true commitment to fighting organized crime given that the solicitor general and the Liberal government itself could be doing much more in this area. Recent revelations from the auditor general seem to indicate that contrary to what the solicitor general announced publicly about this government's commitment to organized crime, the reality is that millions of dollars have been taken out of the RCMP budget. We also know that in the last year to year and a half we have seen the devolution of the ports police in areas like Halifax and Vancouver. I assure this House that one very prevalent factor waiting in the wings is the decision to make Halifax a post-Panamax port. With this decision there will be significantly increased traffic on that port. Instead of a specialized police force, the ports police aimed at combating organized crime and the importation of drugs, weapons and other contraband materials, now we have that duty being passed on along with other duties the current Halifax metro police and RCMP are charged with. It is not a partisan comment on my part. That is simply the conclusion that has been reached in examining these facts.

I do not reach this conclusion alone. Each year the U.S. State Department prepares a report called “International Narcotics Control Strategy Report”. In its most recent report, the State Department singled out Canada as an easy target for drug related and other types of money laundering. The same report also listed Canada in the same category as Columbia, Brazil and the Cayman Islands as an attractive location to hide illegal cash. Finally, the same report was very critical of Canada's lack of legislation to control cross-border money flow. The Canadian Police Association, as it is a very insightful group, has also echoed similar concerns. London police Chief Julian Fantino, head of the organized crime committee in the Canadian Association of Chiefs of Police, said that money laundering is an easy feat in Canada. According to some reports, the RCMP has estimated the value of laundering money in Canada between $3 billion and $10 billion.

The solicitor general recognizes this problem, should be aware of it and should act on it. During the government's first ever annual statement on organized crime, the solicitor general

promised new anti-organized crime legislation that would finally require significant steps toward combating this situation. It would also require that financial institutions report suspicious transactions and cross-border currency movements. As a matter of interest, the solicitor general's predecessor and the current Deputy Prime Minister made a similar commitment in September 1996 following the conference on organized crime. Sadly, Canadians continue to wait and organized crime continues to penetrate this country. In April of this year the present solicitor general repeated that promise again and had a conference that was very well publicized. There was a great deal of ballyhoo about the solicitor general's initiatives and spoke quite openly about his intentions for combating organized crime. He made the same promise to the police in the past year in August and in the span of nearly two years this government has made the same promise on four separate occasions but have delivered nothing. I would concede that the solicitor general has a laudable commitment to consultation as well as airline conversations but he also should know that the law enforcement community has had enough and does not want any more shallow promises. The government is incessantly holding conferences under the guise of consultation and yet there do not seem to be any meaningful consequences that come about as a result of these consultations. The solicitor general's dismal response to the problem of organized crime and this government's manipulation of consultation has become a tool of delay and frustrated police to the point where the executive director of the Canadian Police Association recently stated to the media: “Quite frankly, we don't care what this government has to say anymore”. That is a very telling comment from the Canadian Police Association when saying this in response to the government's commitment to organized crime. Are we to believe the brave talk of the solicitor general? Given his credibility problems of late, that does stretch it quite a bit. The solicitor general since June 1997 has said we would do away with any problem recognizing his statements that fighting organized crime is one of his strategic priorities. We are patiently waiting, as are the Canadian people, the Canadian Police Association and indeed all police associations across the country. Police and the public are forced to judge the solicitor general's commitment to strategic priorities by actions and results.

Words alone, no matter how tough they sound, just do not cut it when it comes to fighting organized crime. There are also significant amendments with respect to telemarketing fraud. Proceeds gained from deceptive telemarketing practices that would be subject to seizure and forfeiture under Bill C-51 are a positive step. This bill would also make it illegal to generate currency by copying bank notes by computer assisted or electronic means. Certainly forgery has become a problem in this country as it has around the world. I commend the government for this positive amendment although it is unfortunate that we have yet to see other measures aimed specifically at organized crime in this country. Given the rising market value of forged currency, this amendment would establish theft and smuggling of other valuable commodities such as diamonds, gemstones or any rock or ore. It is a positive focus of this

omnibus bill and would make offences aimed at those types of forgeries punishable under the Criminal Code.

…

October 8, 1998 [House of Commons]

Mr. John Reynolds (West Vancouver—Sunshine Coast, Ref.)

… I will discuss another story in relation to conditional sentencing. Domenico Tozzi, the greatest money launderer in Canadian history, was sentenced to 10 years and a fine of $150,000 for his role in the importation of 2,500 kilos of cocaine plus 25 tonnes of hashish. When he did not pay his fine the sentence was increased to 12 years and he was released after only serving two years in jail. I do not know what 2,500 kilos of cocaine and 25 tonnes of hashish are worth, but I would guarantee it is in the millions. A judge put him in jail for 10 years and gives him a $150,000 fine. He wondered why he should pay the fine if he would only get two more years in jail. Then our great system allowed this man back on the streets after just two years in jail.

Bill C-51 does nothing to solve that problem. We are going to make amendments to it. As my Conservative colleague said, hopefully the government and the rest of the House can work on this in a non-partisan way to bring in laws all Canadians want. Ex-lawyer Joseph Lagana was involved in the importation of 558 kilos of cocaine and in laundering $47.4 million. He was sentenced by a judge to 13 years. He was released after two years and two months to a halfway house where he is free from 6 a.m. to 11 p.m. What message does that send to Canadians? He imported cocaine which kills young people and laundered $47.4 million. That probably goes right over top of the average Canadian's head. It is astounding. Average Canadians cannot even think of figures that large. What does he get? Two years and two months. That shows young people that a life of crime pays. It creates career criminals. Will this man go back to an honest job? Will anybody in Canada be convinced that after two years and two months he has been rehabilitated? Anthony Volpato, described by the papers as one of the leading figures in the Montreal Mafia, was sentenced to six years for conspiracy to import 180 kilos of cocaine. He was freed after only one year.

This kind of sentencing has to stop and we have to make amendments to the bill to make sure it stops. Let us talk about organized crime, another area in which Bill C-51 is sadly lacking. As Bill C-51 implies organized crime figures are not choir boys. Why would we treat them that way? The minister thinks she is getting tough in Bill C-51 by eliminating the

accelerated parole hearing after one-sixth of a sentence has been served. It is better than before. Organized crime figures will still have access to day parole and be released after serving one-third of their sentences. As I said in my previous comments on conditional sentencing, this is a joke. It is objectionable, unacceptable and naive. Organized crime laughs at going to jail for a couple of years. Mr. Speaker, I am sure you like going to the movies. The part of the bill on organized crime kind of reminds me of the movie Goodfellows . In that movie three Mafia members were convicted of a crime and doing time by having pasta dinners in prison. They are sitting tight being model prisoners, knowing they will get out before their full sentence is served. The notion and the part of the movie with the Mafia members drinking Chianti and making pasta is as comical as Bill C-51 in that regard. Let me remind the justice minister that members of criminal organizations are by definition in section 2 members of a group of at least five persons, formally or informally organized, having as a primary activity the commission of an indictable offence and the members having been in the preceding five years in a series of such offences. That is very serious stuff.

In short, these people should be held for their full sentences. They should not get full parole as Bill C-51 allows. Serious crime, serious time. We have to get that message across to organized crime. These people should not enjoy the generous system of day parole, full parole and statutory release. There should be no exception for organized crime. Does the minister really believe, be it one-sixth or one-third, that these people can be rehabilitated in such a short period of time? I gave an example before of those with 13 years sentences being out in two years for crimes involving millions of dollars. They will, as the movie Goodfellows portrays so accurately, sit tight, keep up the connections while incarcerated and return to their lives of crime when released. Is the minister expecting organized crime members to have some sort of Epiphany while in prison? This is another sadly lacking element in Bill C-51 and one we cannot support. …

October 8, 1998 [House of Commons]

Mrs. Christiane Gagnon (Québec, BQ)

… If I have a few minutes left, I would like to address the part of Bill C-51 dealing with eligibility for accelerated parole review. Here again, we feel the government is not going far enough. Granted, this would be a major change. It would give teeth to our legislation dealing with certain drug traffickers. I will use the few minutes I have left to try to explain how this amendment could prove worthwhile and be improved upon by the government. In August 1997, we learned of the Lagana affair from newspaper reports. A lawyer had been sentenced in 1995 to 13 years in prison for importing cocaine and laundering $47.4 million. As we know,

Mr. Lagana was released after serving only 26 months, or one-sixth of his sentence, because he had become eligible for accelerated parole review. After serving just one-sixth of his or her sentence, any non-violent criminal who has never done time before may apply for parole. In response, the Bloc Quebecois, through the member for Charlesbourg, introduced a private member's bill to eliminate this accelerated procedure for those found guilty of money laundering.

In Bill C-51, the government wants to correct this situation. It is proposing to exclude those convicted of organized crime offences from eligibility for accelerated parole review. This amendment is a step in the right direction, but it is limited to the provision of the Criminal Code dealing with organized crime. It does not affect bankers, individuals or lawyers convicted of money laundering who are not part of organized crime. Such individuals may therefore continue to launder millions of dollars and serve only one sixth of their sentence in jail. We would have liked to see this amendment extended to include lawyers and bankers who launder money. This is a completely unacceptable state of affairs. We in the Bloc Quebecois will not stand for another case like that of Lagana. We will introduce amendments to make up for the Liberal government's lack of courage. We would also have liked to see $1,000 bank notes taken out of circulation, because we know that it is easier to launder that denomination. We are one of the only countries in the world with this denomination in circulation. We would also like financial institutions to be permitted to alert the police about suspicious transactions of $10,000 and over. I will not be able to address all the other items. Since there are a good dozen amendments in Bill C-51, it is difficult to give them the attention they deserve in a mere fifteen or twenty minutes. In conclusion, as I mentioned, we are very happy with the Criminal Code amendment having to do with cruise ships.

November 4, 1998 [House of Commons]

Ms. Eleni Bakopanos (Parliamentary Secretary to Minister of Justice and Attorney General of Canada, Lib.)

….Another change which was a priority was the provision linking the new deceptive telemarketing offences proposed by the Minister of Industry in Bill C-20 with the Criminal Code proceeds of crime provisions. When Bill C-20 was drafted and introduced it was not apparent that this was an important link. Competition Act offences are regulatory criminal law and the competition bureau would not usually consider it necessary to target proceeds from the other offences it enforces such as misleading advertising. This is not the case with deceptive telemarketing. As we have seen both from our own examination of the problem and recent media coverage, telemarketing fraud and deceptive telemarketing are capable of

generating large proceeds. They involve the use of telephone boiler rooms to contact large numbers of victims. Individual losses may be large or small, but if many victims are targeted the overall proceeds are often very large, marking confiscation a major deterrent and an important step toward compensating victims. The proceeds are so large in some cases that this sort of crime has attracted the attention of more traditional organized crime groups in Canada, making the targeting of proceeds even more important.

Both the Minister of Justice and the Minister of Industry take this matter very seriously. As soon as the need for this link was identified it was included in the bill. The offence of fraud already falls within the proceeds of crime scheme. The inclusion of deceptive telemarketing will help to ensure that criminals cannot hide their own considerable profits from forfeiture and restitution to their victims. Another organized crime priority for both Quebec and the solicitor general was the exclusion of those convicted of organized crime offences from accelerated parole review. This proved to be a fairly straightforward amendment. It was proceeded with but concerns have been voiced that it does not go far enough. As proposed, organized crime offenders would be excluded as long as the organized crime element is proven either on conviction or sentence. To go further than this and catch everything at conviction might require the restructuring of the money laundering offence. This would go beyond what is reasonable to attempt to do in an omnibus bill. The solicitor general and the justice minister were anxious to proceed with this change quickly. The criminal organization offence was added to the Criminal Code less than two years ago by the government. Fairly quick action was needed on this issue before a significant number of cases arose.

Another important organized crime issue is the potential use of rough diamonds produced in Canada as a medium of exchange by organized crime. As members of the House will know, the first ever Canadian diamond mine began production in the Northwest Territories earlier this month. This represents an important and welcome source of economic development for Canada's north, but there are concerns that the high value of rough diamonds will attract thieves and organized crime interests. For this reason the Minister of Justice wanted to move quickly to expand the Criminal Code offences dealing with precious metals to include valuable minerals other than gold, silver or platinum. This would ensure the law covers rough diamonds and any other gemstones or other similar minerals that might be discovered in Canada in the future. ....

November 4, 1998 [House of Commons]

Mrs. Christiane Gagnon (Québec, BQ)

… In introducing her bill, the justice minister was proud to announce she was out to control the activities of organized crime. And then she proceeded to introduce a change to the accelerated parole review process under the Corrections and Conditional Release Act. First of all, let us make it clear that the Bloc Quebecois has for some time been condemning the absurdity of the accelerated review process. My colleague from the Bloc Quebecois, the hon. member for Berthier—Montcalm, repeatedly questioned the Minister of Justice, asking her whether she thinks it is right for a major drug dealer like Joseph Lagana, who laundered nearly $47 million, to get paroled after serving only one sixth of his sentence. The Bloc Quebecois did not simply question the justice minister on this issue, it also proposed solutions. Indeed, my colleague, the hon. member for Charlesbourg, presented a bill to amend the Corrections and Conditional Release Act to deny high-profile drug dealers access to an accelerated parole review. The amendments proposed by the hon. member not only addressed organized crime, as the minister proposes in her bill, they also went beyond that to encompass conspiracy and money laundering. The solutions of the hon. member for Charlesbourg were even submitted to the justice committee as an amendment to Bill C-51.

We know what happened; the Liberal majority rallied around the minister and refused to pass them. This refusal is typical of the Liberal government's lack of courage as far as money laundering is concerned. If the minister really wanted to deal with this dangerous problem, she would follow up on the Bloc Quebecois proposals. Among the recommendations were the withdrawal of the $1,000 bill. In our opinion, this is an extremely sensible proposal. What we are asking of the government is very simple: not to issue any more $1,000 bills. That would have a direct effect on money laundering. Obviously, it will take this government a few years to understand, just as in the case of amendment for the cruise ships, that Canada is a money laundering centre. It will take the government even longer to realize that having $1,000 bills in circulation helps the cause of money laundering.

The Liberal government cannot be pushed. It prefers a step by step approach. It does not appreciate our telling it what to do, even when what is needed is obvious. The government, which we consider arrogant, wants to seem to be taking initiatives, although we have long been proposing solutions. Despite this strange situation, the Bloc Quebecois has not given up. We will continue to ride this government to get it to act rather than remain complacent. We have introduced private members' bills to get things moving. I know something about this because I myself introduced two private member's bills. Both were rejected by the Minister of Justice, even after I had devoted a great deal of effort to raising awareness among stakeholders. There was a great deal of support for my bills, and several members here in the House were behind me. Faced with this situation, the Liberal government had no

choice but to proceed, but it took all the credit. It turned it into a government bill and made us wait two years for the amendments to the Criminal Code, instead of giving credit to members who have the public's interests at heart. One amendment involved sex tourism; it would have made it an offence to engage in sex with children in another country. The other had to do with genital mutilation of African girls who are now Canadian citizens. I worked very hard on these two bills and they were rejected by the then Minister of Justice. After much pressure from stakeholders and from members, the Liberal government finally caved in and agreed to amend the Criminal Code, because it had no choice. We are not about to give up. After a careful review of a situation, we do everything we can to bring about the amendment of legislation that is outdated or contrary to the public's interests. The Bloc Quebecois has the interests of Quebeckers at heart.

November 5, 1998 [House of Commons]

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC)

… What was missed was the opportunity to enact in the Criminal Code stiffer penalties for those involved in organized crime activity. It failed to include mandatory minimum sentences for those motivated by gang activity to embark upon a life of crime, crime that inevitably puts people's lives at risk through drug peddling, prostitution and the type of gang warfare we have seen in the streets of Montreal and which is spreading to other cities in Canada. This bill will remove a provision that in light of advances in forensic science and health care will also focus in on some of the technological advances that have been made. The current Criminal Code disallows the prosecution of individuals convicted of murder, manslaughter or other offences after a year and a day has passed. That enactment has been made. I would embrace it as a positive measure. Obviously there are situations that unfortunately could occur. A person whose life has been threatened due to injuries related to crime and is on a life support system or in critical condition may through their own will hold on until after a year and a day has passed. The perpetrator is then not held criminally accountable under the old system.

…

I repeat my challenge to the government, though, with respect to its true commitment to crime fighting. As I mentioned earlier, the solicitor general specifically could be doing a lot more when it comes to violent crime and when it comes to organized crime. Nothing has undermined the solicitor general's performance record more than his inaction on this organized crime front which is supposedly one of the government's three strategic priorities. The solicitor general has said quite often in the House and to the media that organized crime

is big business and it is bad business. Recognizing this and doing something about it are two different things. Recognizing it, acknowledging it and saying publicly that he wants to do something about it, that is fine but the clock is running. When it comes to these types of issues, when the clock is running people are getting hurt, killed and things are happening that the government has an opportunity and I suggest a responsibility to do something about. The solicitor general has an opportunity to do just that through legislative initiatives and through resources. Resources of course are a problem that the government is wrestling with, its priorities. Where does it spend the money? Where does it cut the money? Once more to echo comments from the opposition benches, the priorities and where the cuts seem to be taking place are extremely disturbing and questionable.

All Canadians I believe are embarked on that process of questioning why the government is making cuts in the areas where there appears to be the most need. One of the areas I would describe as being the most in need is that of frontline policing and the need of police officers to have the resources to do the job they have been tasked with. That is not just partisan bluster on my part. That is the conclusion reached by the U.S. State Department when it was viewing areas in the world where organized crime was beginning to become a growth industry. There was an international report tabled, “The International Narcotics Control Strategy”. In that report the State Department singled out Canada as an easy target for drug related and other types of money laundering. The same report also listed Canada in the same category as Colombia, Brazil and the Cayman Islands as an attractive location to hide illegal cash. That same report also criticized Canada's lack of legislation to control cross-border money flow. This is a very serious problem, so much so that York police Chief Julien Santino, head of the organized crime committee of the Canadian Association of Chiefs of Police, said: “Money laundering is an easy feat here in Canada. According to these reports the RCMP has estimated that the value of laundered money in Canada is between $3 billion and $10 billion”. I express guarded support for Bill C-51 on behalf of the Conservative Party. We would have liked to have seen further amendments as are appropriate under an omnibus bill. There is a common sense need for more stringent controls and more stringent areas for the government to look at in terms of sentencing. We will be supporting this legislation and hoping for greater initiatives on the part of the solicitor general and the Minister of Justice.

November 30, 1999 [House of Commons]

Mr. Lynn Myers (Waterloo – Wellington, Lib)

Mr. Speaker, I am very pleased to rise today in support of the motion to ask the Standing Committee on Justice and Human Rights to study the issue of organized crime and analyze the legislative avenues open to parliament to fight against activities of criminal organizations.

I have 10 years experience in police service. As the former chairman of the Waterloo Regional Police, I find this of particular interest. It is certainly one where all Canadians look for leadership from their federal government to ensure our communities, wherever they are in this great country, are safe and secure for themselves and their children.

Public concern over organized crime is not limited to any one part of Canada. The RCMP reports that there are biker gang activities and criminal enterprises in several parts of this country. Indeed, the gang problem goes far beyond outlaw biker groups. In addition to biker gangs, there is a host of organized crime groups that operate and prey upon the weak in their own communities and on Canadian society. That is unacceptable.

It is commonly known that organized crime is actively involved in trafficking in illegal drugs. Last summer all of Canada saw firsthand how organized criminal snakeheads were callously smuggling Chinese people on rusty old ships to our shores. This is unacceptable as well. It is perhaps less well known that they are also involved in environmental crime, like illicit waste treatment and disposal, trade in endangered species and ozone depleting substances. They are involved in economic crime like white collar crime, for example, such as security fraud and telemarketing fraud. We also know that they are involved in the sale of counterfeit products, in violation of intellectual property rights and software piracy, money laundering and motor vehicle theft for export or for parts.

There are those who claim that the police are powerless to fight organized crime. Some argue that the police need more money. Others argue that they need less. I think we should find out what the facts are in this case.

It has been two years since parliament considered and enacted any gang legislation. The provisions contained in Bill C-95 originated in discussions with the police community and other members of the justice system in September 1996 when the then minister of justice and the solicitor general held a national forum on organized crime. This event brought together representatives from the police community, the federal and a number of provincial governments, the legal community, private industry and academics to examine the increasingly complex problem of organized crime in Canada and to recommend integrated

and effective measures to address it. Participants examined the feasibility of legislation that would provide new tools to the police, prosecutors and courts to combat organized crime.

We must recall another factor that led to the enactment of Bill C-95, and that is the public's revulsion at the violent events associated with a turf war between two rival biker gangs, the Hell's Angels and the Rock Machine in Quebec, in which not only members of the gang but also innocent bystanders were tragically affected.

The legislation that followed Bill C-95 enacted new powers in relation to the interception of private communication, proceeds of crime and property used to commit offences and other things. It also outlined for the first time in Canadian criminal law a definition of a criminal organization and created a new offence of participation in a criminal organization offence. This legislation has been in force now for two years.

This may seem like a long period of time to some, but I understand that a typically complex organized crime investigation takes several years to progress to the point where charges are laid. In fact, I know that to be the case.

Nevertheless, some of these investigations directed at criminal organizations using the tools provided in Bill C-95 have now been completed. Charges have been laid and prosecutions are proceeding. Indeed, there have been convictions. Reports have appeared in the media in recent weeks regarding some of these prosecutions, notably in the provinces of Quebec, Manitoba and Alberta.

It is important, however, to ensure that the provisions of Bill C-95 are well understood. Not every case is appropriately pursued as a criminal organization investigation or a prosecution. It is not intended to be the only tool used to combat organized crime. It is built on the tools already available in the criminal code and responded in particular to investigative and prosecutorial challenges posed by criminal organizations. These are specialized tools in that sense.

Justice officials have been working in co-operation with the solicitor general's department to provide training to police and prosecutors regarding the contents of the criminal organization legislation. Justice officials have provided full day and half day training sessions across the country to over 500 members of the provincial and federal police and prosecution services.

Law enforcement must be careful to ensure that powerful but integrate powers provided for in legislation are not used inappropriately or unnecessarily.

The committee may want to assess the extent to which the provisions are being used and their effectiveness. If there are ways to improve upon the manner in which the legislation is used, we should facilitate the sharing of these best practices. If there are improvements in the legislation that could be considered, we should assess them collectively.

In another area of organized crime, combating telemarketing fraud remains a priority for the Government of Canada, in particular within the context of its organized crime agenda.

Since the 1997 binational report, Canada in partnership with the United States has made significant strides in combating cross-border telemarketing fraud. The major legislative developments include Bill C-20, which recently added the new offence of deceptive telemarketing to the Competition Act.

It also includes Bill C-51, which amended the criminal code to link the new deceptive telemarketing offences in the Competition Act to the criminal code scheme authorizing the seizure and forfeiture of proceeds of crime for enterprise crime offences. This amendment now allows the significant proceeds generated by many telemarketing schemes to be captured.

Finally, Bill C-40, which amended the Canada Evidence Act and the Extradition Act to provide for the use of video linked testimony to be given at criminal trials and at extradition hearings.

We are building on our successes and will continue to combat telemarketing fraud through public education, information sharing and co-operative law enforcement using the new legislative tools that we have developed over the past year.

Before concluding, I would also like to address the issue of acts of intimidation directed against key players in the criminal justice system. My colleagues in the House will know that the concerns have been voiced with regard to this issue of intimidation directed against officials responsible for the investigation and prosecution of crimes: judges and persons responsible for the administration of sentences of convicted offenders, as well as members of the public who become involved in the criminal justice system as informants, witnesses or members of juries.

The intimidation of justice participants is purpose-driven. The purpose is either to interfere with the ability to secure a conviction against the accused or, in the case of an organization, against other members of the organization in the future, or to exact revenge. It is intended to destabilize the criminal justice system, particularly where the prosecution of organized crime is concerned.

The government is acting in this area and the Department of Justice is currently examining this issue. It is consulting with representatives of federal, provincial and municipal police agencies, federal and provincial prosecutors, federal and provincial correctional officers and officials and judges in all parts of Canada. The object of this exercise is to determine the scope and severity of the problem of intimidation and to develop an appropriate legislative response. I applaud this initiative. It is important for all our communities in terms of making them safer and more secure.

I will conclude by observing that organized crime is a pressing problem which takes various and many forms. The international community has identified the fight against organized crime as a priority issue. The Canadian government has taken a similar position, and rightfully so. It is important for all Canadians to have us move in this very important area.

Let us see if the Standing Committee on Justice and Human Rights can identify legislative avenues that can be effectively pursued by parliament to win the fight against the activities of criminal organizations.

I think this motion is most in order. It is useful and we should get on with passing it to make sure it goes to the committee where we can examine these and all important issues relating to organized crime.

November 30, 1999 [House of Commons]

Réal Ménard (Bloc Québécois)

Mr. Speaker, I am pleased to ask my colleague a question because he is the chair of the Standing Committee on Health, of which I am a member. I know that he has shown a wonderful sense of fair play, and it is a great pleasure to work with him.

The last report of the Criminal Intelligence Service Canada described organized crime as making $10 billion annually from drug trafficking, and an estimated $400 million from the sale of jewellery on the black market. Every year, fraudulent credit card purchases total close to $80 million.

As for economic crimes—the hon. member referred to telemarketing—losses are in the neighbourhood of $4 billion. Fraudulent use of credit cards accounts for something like $127 million. Between 8,000 and 16,000 people are smuggled into Canada illegally every year.

Car theft is still on the rise. And between $5 billion and $17 billion in illicit funds are laundered annually.

Would the hon. member agree with me that all options must be considered in our efforts to more effectively combat organized crime? It is not just a question of additional resources for the police, but all options must be considered, including—and this is something I think the committee will have to look at—the Japanese model, which prohibits the public display of crests and badges belonging to biker gangs, up to and including possible use of the notwithstanding clause.

Would the hon. member agree that all options must be considered and that the Standing Committee on Justice and Human Rights must not exclude any of them?

November 30, 1999 [House of Commons]

Mr. Lynn Myers

Mr. Speaker, I thank the hon. gentleman opposite for his question. It seems to me that what the motion today is saying is that by referring the motion to the justice and human rights committee we should analyze the legislative avenues open to parliament to fight against the activities of criminal organizations and then report back to the House.

If the question is, should we take a look at the variety of options available to the committee and ultimately to parliament and all parliamentarians, it seems to me that we should. We should take a look at the kinds of things that we as a society and we as parliamentarians should do in order to curtail criminal activity wherever it may be in this great land of ours.

As a former chairman of the Waterloo Regional Police, I can tell the House first hand that police services across our great country need parliament's assistance in this very important area. The government has done many things over the last number of years to enact the kinds of legislation that are necessary to give the police the kinds of measures they need in order to carry out their function in society, all of which enables us to live in more safe and secure communities wherever they may be in Canada.

I look forward to the report of the standing committee in this very important area. I know that under the leadership of the chairperson, who is a very capable individual, that is precisely what will be done. The committee will report back to the House in a very meaningful way and give parliament and, by extension, all Canadians the kinds of necessary analysis and tools that will help us to ensure that criminal activity is curtailed in Canada.

November 30, 1999 [House of Commons]

Mr. Gurmant Grewal

Mr. Speaker, I rise on behalf of the people of Surrey Central to speak to the Bloc supply day motion that calls on the House to order the Standing Committee on Justice and Human Rights to study the issue of organized crime, to analyse avenues available to parliament to combat these criminals, and to report back to the House by October 31, 2000.

Today the government side of the House is being forced by the opposition to discuss organized crime. We will see how little it will do, if anything. The people of Surrey Central are anxious to do something about organized crime and its effect on our country, our cities, our region, our children, and many other aspects of our lives.

The weak Liberal government that has no vision and no political will keeps our criminal justice system weak. There are less and less resources, money and effort going to our law enforcement community. We can clearly see this in Surrey. We feel the effects of the scarce resources of the RCMP which is trying to preserve and protect our communities.

The immigration minister tells the Prime Minister to adopt a new slogan. The motto is that Canada is the place to be. The Prime Minister brags about that. There is no political will on Liberal benches to give B.C. and the rest of Canada the RCMP services that are needed. Because of this, international criminals know that Canada is the number one country and the place to be.

The Liberals already know that organized crime has a great effect on our country. There is no need to study it. Illegal migrants arrive at our airports and on our coasts. They are brought here by organized criminals, and the Liberals do nothing about it.

They do nothing about corruption in our embassies. When it comes to filtering out criminals our embassies are just like sieves. In Hong Kong 2,000 visas were stolen. Are gentle people stealing them and using them? No, it is organized crime. It is criminals who stole the visas and used them to bring over 2,000 criminals into Canada, and the Liberals do nothing about it.

I did something about it when my constituents told me about corruption at the embassies at New Delhi and Islamabad. Legitimate immigrants were harassed while criminals were buying their way into Canada.

I got results. Was I lucky? No. I did the work. I had the political will to get to the bottom of these allegations of crime and corruption on behalf of the people I was elected to represent.

I took action on their behalf. I went to the RCMP. They were glad to work with me and they did a good job. People were fired as a result of my efforts and the corruption was cleaned up, for a while at least.

The Liberals keep the RCMP starved of resources: money, equipment and personnel. The Liberals do it with our military as well. They starve our emergency preparedness, too. The Liberals leave only four officers patrolling the B.C.-Washington border near my constituency. Our ports and docks are understaffed.

Perhaps only 5% of containers are inspected at the Vancouver port, but many of them contain drugs and other things being smuggled for organized crime. The Liberals are not serious about fighting organized crime. If they were they would dispatch the military on a special two-day mission to open the 95% of containers that have not been inspected. Let us get to work.

We know that there are refugee claimants on our streets selling drugs. We know they have been arrested, but the police tell us they are back on the street within hours, or at least the next day, after being slightly slapped on the wrist. Why does the government not do something about it? It is a shame.

Third world people are being enslaved into a life of crime. They are being sent to the U.S. via Canada. What do the Liberals do about it? Nothing. The CIA and the FBI in the U.S. are furious about what is happening in Canada. They are furious about our Prime Minister because he is cutting budgets, dragging his feet and not upholding Canada's part in fighting crime in North America.

The government knows about money laundering operations in our country. Organized crime has built a very large, multibillion dollar underground economy. The weak Liberal government has done nothing about it.

Last week the newspapers published 10 ways to launder money and those are the 10 ways the Liberals have refused to prevent money laundering.

As a former credit union director, I know that our federal government is not doing enough to help prevent fraud through our financial institutions. There are many areas where the government has dropped the ball on combating organized crime, including industrial espionage, white collar crime, national security risks and others.

The Liberal government should have introduced legislation to protect the rights of civil servants who come forward to expose corruption in government. It should have done this long ago. In other countries the legal rights of public servants who blow the whistle are protected. They are rewarded. In Canada we need at least to protect the public servants who report, in good faith, evidence of wrongdoing. They should not be subject to disciplinary action, as the government has shown in the last few years.

Canada needs a mechanism for our public servants to follow when they detect wrongdoing, including mismanagement, misleading information, cover-ups and other things like the issue we are debating today.

I will soon be putting forward a bill for the government to support that will protect and reward whistleblowers. The purpose of the act will be to establish a procedure and provide appropriate rewards and incentives for whistleblowing. Everyone knows about the work of Brian McAdam, who exposed corruption in our Hong Kong embassy.

The sidewinder investigation should certainly be of value and in the best interests of Canadians. My hon. colleague has already spoken about it. For three months Fabian Dawson, a Canadian journalist working out of B.C., has been publishing articles chronicling corruption in our federal government's overseas missions.

We commend these Canadians for their work, but where is the government? Where are the Liberals? Why do the Liberals not investigate what Fabian is writing about? Why do they not help him? Why will they not take action when our media uncovers things through good journalistic investigation?

Today we are looking for answers to the problem of organized crime. What can parliament do? It is easy. The people of Surrey and all Canadians know how easy it is. Contrary to the motion we are debating, there is no need to study this problem. We already know the answers. Parliament can legislate tougher penalties. Parliament can provide whistleblowers with protection and rewards so that they can come forward with the evidence of corruption, exposing the techniques and modus operandi of organized criminals and gangs like the triads.

Rather than this weak Liberal government listening to them and taking appropriate action, rewarding whistleblowers like Brian McAdam and Corporal Read, it tries to shut them up and muzzle them while intimidating and threatening them. This weak government should see to it that the laws which are already in our statute books are enforced. The government can do that by providing our law enforcement community with what it needs to get the job done.

In Surrey the RCMP is always short of staff, equipment, time and resources. There is no reason for that except that the Liberals are starving the force of what it needs. We are the fastest growing community in Canada and this government is starving our city of police protection from organized crime. It is a shame.

I ask this weak Liberal government to wake up. Rather than sitting on its hands, looking like an empty bag, it should get tough on organized crime and send a strong message to criminals around the world on behalf of the people of Surrey, B.C. and all Canadians. It should tell those criminals that Canada is not the place to be.

November 30, 1999 [House of Commons]

Mr. John Maloney

Mr. Speaker, I am very happy to rise today to speak to this matter. Certainly the debate in itself will send a message to organized criminal elements that their behaviour and activities will not be tolerated for the reasons which have been elaborated and which I will continue to elaborate.

I will be sharing my time with the hon. member for Scarborough East.

I would like to take a bit of a different tack in my address. I would like to address some of the key international activities of the federal government in addressing organized crime.

As members on both sides of the House will appreciate, international co-operation in combating organized crime is very vital. Canada, like other countries, is faced with responding to an increased movement of goods and people as our economy globalizes. At the same time, increased use of telecommunications and finance in everyday affairs shrinks our world.

To be sure, criminals are quick to try to capitalize on the opportunity that globalization and technological change present. Canadian ministers and officials are required regularly to attend meetings or conferences where key discussions and negotiations occur and where decisions are taken as to how to combat organized crime. It is a very complex issue. The objective is always to support a co-ordinated international approach to deal with this problem while recognizing that the sovereign interest of states must be respected.

An important recent meeting was the 1994 UN ministerial conference on organized transnational crime held in Naples. At that session a political declaration and global plan of action on organized crime was produced. This document has served as a framework for future multilateral activity in this area, some of which I will now describe.

At the Halifax summit of 1995, on the initiative of the Canadian government, the G-8 heads of state created an experts group on transnational organized crime, now called the Lyon Group. The Lyon Group has produced 40 recommendations on fostering closer co-operative legal assistance, law enforcement and other efforts to address the problem. This was followed by a meeting of G-8 justice and interior ministers on high tech crime in December 1997, a video conference of the G-8 ministers of justice and interior in December 1998, and most recently a meeting of G-8 ministers in Moscow on October 19 and 20 of this year where discussions focused on financial crime, high tech crime and illegal immigration.

The relationship between the Canadian and the United States governments and their agencies in combating organized crime is very important given the economic and cultural ties that we and our neighbours share. We share the same North American space and many of the same interests in combating transborder and transnational crime.

In February 1997, on the initiative of the Solicitor General of Canada and the Attorney General of the United States, it was agreed that Canada and the United States would form the Canada-United States cross-border crime forum. This agreement was reinforced by the commitment of the Prime Minister and President Clinton in April 1997 to form a bi-national body on criminal justice issues.

The Canadian group is comprised of officials from the Department of the Solicitor General, which co-chairs the forum with the U.S. Justice Department, the RCMP, the Canadian Security Intelligence Service, Correctional Service Canada, Revenue Canada, the Canada Customs and Revenue Agency, Citizenship and Immigration, Foreign Affairs, the Department

of Finance, as well as representatives from provincial governments, including Quebec, and our police forces.

The U.S. group is comprised of U.S. attorneys, officials from the FBI, the DEA, the U.S. Marshalls Service, the Immigration and Naturalization Service, U.S. Customs, the Bureau of Alcohol, Tobacco and Firearms, the Secret Service, the Internal Revenue Service and regional and state officials.

The first full meeting of the cross-border crime forum took place in Ottawa in October 1997. The forum met again in Washington on May 21, 1998. The most recent meeting of the forum was in June of this year in Prince Edward Island.

The forum provides a regular opportunity for officials from Canada and the United States to discuss transnational crime problems and strategies to improve operational and policy co-operation and co-ordination. The work of officials through the forum's subgroups on intelligence, enforcement, prosecutions and telemarketing fraud is ongoing.

Bi-national strategies and threat assessments have been developed and continue to be refined. Officials are also evaluating current priorities and examining practices and legislation on both sides of the border to support co-operation at the national level, as well as regionally and locally in communities where border crime is a serious public safety concern.

The next meeting of the forum is to take place in May or June 2000 in the United States.

Still looking at the Americas, the Secretary of State for International Financial Institutions participated on behalf of the solicitor general at a ministerial level conference on money laundering held in Buenos Aires in December 1995. The conference produced an action plan on how to deal with money laundering in the Americas in terms of strengthening law enforcement, regulatory and legal measures. The action plan is an important marker for efforts in this hemisphere to combat organized crime.

I would also note Canada's activities in the Inter-American Drug Abuse Control Commission, or CICAD as it is known by its Spanish acronym, of the Organization of American States. The focus of the commission is to address drug abuse and trafficking within the Americas, as well as related activities such as money laundering.

The Deputy Solicitor General of Canada was elected chair of CICAD's multilateral evaluation and monitoring working group at the May 1998 meeting of CICAD in Washington, D.C. This working group has developed a framework to evaluate member states' anti-drug efforts, which was completed at a meeting held August 31 to September 2 of this year.

Canada, as a member of the G-7 countries, was a founding member of the Financial Action Task Force on Money Laundering, the FATF. This task force was created at the G-7 summit held in Paris in 1989 to consider whatever measures were deemed necessary to eliminate money laundering and to develop international standards in this area.

The FATF released a report including 40 recommendations to fight money laundering, which are now considered model measures to be taken at the national and the international levels to put a stop to money laundering.

These recommendations were reviewed in 1996 to reflect the new patterns and the countermeasures taken in this area, like money laundering on the Internet.

The FATF now brings together 28 member states representing the main financial centres of the world.

Canada is also a collaborative and supportive member of the CFATF, the Caribbean Financial Action Task Force, a sister organization of the FATF.

The group members are committed to promoting and implementing the 40 FATF recommendations.

I mentioned the United Nations in my earlier comments. Canada is an active participant on crime issues in the United Nations and its specialized commissions, in particular the United Nations Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice.

A convention on transnational organized crime is being negotiated now in the UN Crime Prevention and Criminal Justice Commission. The work on this convention will have an impact on Canada's domestic policies and programs. Canada must be ready to meet its obligations and governments must take account of this.

At the same time, the convention will provide general tools for law enforcement and legal assistance among countries at the international level. It is expected that the convention will be adopted by the Millennium United Nations General Assembly in the year 2000.

A comprehensive and co-ordinated approach to combating organized crime nationally is essential to make Canada an effective international partner.

The main objectives of Canada's international activities are to promote Canadian values and policies while building a strong network for practical co-operation.

In this exercise, it is important that the federal government works in partnership with the provinces and territories, and with the communities across the country. We must ensure that our domestic arrangements and our international arrangements are compatible and support each other.

November 30, 1999 [House of Commons]

John McKay

Mr. Speaker, the motion reads:

That this House instruct the Standing Committee on Justice and Human Rights to conduct a study of organized crime, to analyze the options available to parliament to combat the activities of criminal groups and to report to the House no later than October 31, 2000.

I say at the outset that I support the motion and look forward to the reference to the committee on which I sit and which I consider to be a very important committee to the House.

I take this opportunity to congratulate the hon. member for Berthier—Montcalm for his initiative in this area. It is always appropriate that parliament oversees government initiatives and, in this particular instance, this is a valuable and worthwhile initiative.

I will speak to the irony underlying this discussion. This irony revolves around the rule of law. Canada prides itself as a nation subject to the rule of law, much to the chagrin sometimes of many of the members of the House, particularly when the rule of law comes in conflict with, for instance, the supremacy of parliament or when we have interpretations from the Supreme Court of Canada which conflict with the will of parliament. Fortunately, we all respect the rule of law and therefore are able to work out those conflicting points.

Governments are circumscribed by the rule of law. Institutions are circumscribed by the rule of law. Individuals are circumscribed by the rule of law. People in institutions cannot simply do what seems most advantageous to their self-interest, regardless of whether it be in the field of criminality or in the field of civil law.

Canadians live under the rule of law and see it as their most valuable tool to protect themselves, their families and their assets against arbitrary actions by governments, institutions, police and other individuals.

Organized crime on the other hand has no such limitations. Whether it is trafficking in people, drugs, liquor or stolen cars, organized crime challenges the very basis of our Canadian society as we know it and, therefore, it is a threat like no other threat to our civilization.

The irony is that while organized crime seeks to destroy the rule of law in order to gain its revenues, it simultaneously wishes to invest its revenues and its proceeds from its activities in the societies which have the highest standards of the rule of law, because there they provide safe and secure banking systems, safe and secure property registration systems and safe and secure judicial remedies.

The irony is resplendent that ill-gotten gains, regardless of where they come from, whether they be from North America or from other places, frequently end up here because of the rule of the law and because of the security of our various institutions.

I hope I am not naive, and there are some who might say otherwise, but I believe that organized crime will be with us forever, much like original sin, of which many of our members know a great deal. It has been around since the dawn of time and is not likely to go away soon.

Given that it is not likely to go away soon, we have to be realistic about what can or cannot be done in the area of organized crime. I believe we should support the efforts of the RCMP in

their interdictions in Sri Lanka for people smuggling, or in Akwesasne for other kinds of smuggling. The question really is whether the government is approaching this in the best possible fashion. What are the initiatives that make the most sense?

To me, hitting at profitability is what makes a great deal of sense. What hits most at profitability? I think that will be the question that determines the direction of the committee. For instance, the principles enunciated by the ministers collective of justice for the country states that taking a profit out of organized is an effective way of putting these criminals out of business and efforts to seize their illegal proceeds should be vigorously pursued. I support that view.

Let us take a look at some of the initiatives that this government has taken on in the last few years. The first initiative is the $115 million given to the RCMP to upgrade its CPIC facility. I had the good fortune of touring that facility in the last term and found it to be a useful tour. I encourage the other members to do so as well because the information held in those files is quite useful in fighting crime.

The next one was $18 million to the data bank initiative. Many of these people have no compunction about any method in order to secure their profits.

An additional $78 million to the national anti-smuggling initiative will fund 100 additional RCMP officers in major airports to help target organized criminals who use these airports as points of entry into Canada.

An additional $15 million paid annually will put more RCMP officers in Vancouver, Toronto and Montreal, and $13.8 million to the RCMP to use for workload increases. Thirteen proceeds of crime units have been created within the RCMP across Canada.

While all of these are laudable initiatives, I do not want to be circumscribing the work of the committee, assuming the motion goes forward, by simply listening to what the government says. To my mind, if those initiatives do not meet the profitability test as to cutting out the profitability of the activities of organized crime, then we probably have to ask ourselves whether that is well spent money. If the foregoing interrupts the profitability anywhere along a spectrum then, in my view, the initiative is doing a good job.

I look forward to the reference to the committee. I reflect on the last time that parliament referred an initiative to the justice committee which was in the area of drunk driving. We on the justice committee spent a great deal of time reviewing the evidence. As the evidence came before us, we started to see the patterns that were there and the gaps in the legislation. We were fortunate enough to not only be able to produce a unanimous report, but the justice committee also produced a bill which was referred back to the House and in turn proclaimed on July 1.

In my constituency, the work of the justice committee and the support that we received from the justice minister and the government in that area, and from all parties, was well received by my constituents. I look forward to this initiative also being dutifully undertaken by the

committee and that it will produce a report that will not only be of use to the government but of use to the House.

Frankly, I will be interested at looking at anything that is effective. I will also be interested in looking at initiatives which are not effective. We live in a world of limited resources. We continue to live and will always live in a world of limited resources. We as a government will always be criticized that we never apply enough resources. If the resources that are being applied are not useful and are misdirected then that should also be part of the review of the committee.

While I appreciate that there is an irony going on here, that the rule of law is being abrogated by a certain subset of criminals, ironically, the work of the committee will, I hope, return us to the rule of law. I hope that ultimately, as we examine this issue, we will continue to move ourselves back to a rule of law and a society where all people can have security of person and property.

November 30, 1999 [House of Commons]

Francine Lalonde (Bloc Québécois)

Mr. Speaker, I am pleased to rise today to speak to the Bloc Quebecois motion. It reads as follows:

That this House instruct the Standing Committee on Justice and Human Rights to conduct a study of organized crime, to analyse the options available to Parliament to combat the activities of criminal groups and to report to the House no later than October 31, 2000.

I applaud my colleagues who have worked on these important issues, sometimes at their own personal risk, particularly the hon. member for Berthier—Montcalm, who, with my colleague from Saint-Bruno—Saint-Hubert, is leading this debate, the hon. member for Saint-Hyacinthe—Bagot and the hon. member for Hochelaga—Maisonneuve who, in a way, raised the red flag after the tragic death of the young Daniel Desrochers in his riding. This young boy died in a car bombing incident involving feuding criminal gangs.

I am very proud of the work my colleagues have done. We cannot tolerate in the Quebec society, or the Canadian society for that matter, any kind of ingrained violence as a way of determining markets. This is how it works in the underworld. Neither can we allow crime to become a way of becoming rich without being punished, because all our values could be compromised in the long run.

On a number of occasions, it was pointed out that, in Quebec, which we do not like to think of as a violent society, between 1994 and 1998, criminal organizations were responsible for 79 murders and 89 attempted murders, 129 cases of arson and 82 bombings.

This is a serious situation. We know that it is not all that serious in Quebec, but we are still concerned. However, this scourge also ties in very closely with what is happening internationally. Today we are looking at the globalization of organized crime. Global crime

involves more than connections between Canada, Quebec and the United States, for example, with some ramifications in Mexico. It is much larger than that.

As I said before, we know that places that lend themselves to criminal activity become markets that are fought over internationally. We only have to look at the various gangs competing with one another with the means and the level of violence we know.

I just want to take a moment to mention that, in other countries, in Europeans countries for example—and I have been made aware of that—one type of crime that is being dealt with is the exploitation of half a million women from developing countries who are brought to western Europe each year for profitable sex crimes.

We know that young women and women are kidnapped and disappear and that they end up being exploited somewhere. When you add up all these numbers, it looks like a modern-day white slave traffic.

Then there is the whole issue of the displacement of persons. According to the International Organization for Migration, those who are involved in the organized trafficking of human beings are responsible for the displacement of one million individuals at any given time, generating $7 billion worth of business every year.

Putting an end to the trafficking of human beings was the primary goal of the European Union summit held in Finland. The aim was not to simply prevent the displacement of people. Displaced people who are charged $20,000—in the case of those from China for example—are subject to a kind of slavery and control including threats against their person.

Several migrants from Europe landed illegally in western Canada. Recently, some of them were brought here by boat in the same unacceptable fashion.

Drugs are an international scourge. Numbers vary but, according to a document we produced, there is between $100 and $500 billion in trade every year. By comparison, drugs account for 8% of international trade, or approximately $400 billion, roughly the same as oil and gas. This is a lot. Oil and gas represent an extremely important part of international trade. The drug trade is said to be of an equal value.

The stakes are enormous and profits from organized crime could be as high as one trillion dollars. I am not mistaken. I do not mean one thousand million in French, or one billion in English, I mean one trillion, which as far as I know is “un billion” in French.

This goes to show how extremely important these illicit, violent activities are with all their showy wealth. In Moscow I have seen the most sumptuous boutiques. There are 20 BMW dealerships in Moscow, and it would seem that very few are authorized dealers. There is world-wide trafficking in the resale of stolen automobiles.

Why mention this in connection with the death of the Desrochers boy? In order to indicate the extreme importance of the work my colleagues on both sides of the House will have to do. They will certainly need to know exactly what is going on, as far as international agreements are concerned, because the globalization of crime is such that it cannot be considered localized

and therefore solvable locally. This is particularly the case now that there are new approaches, such as high tech crimes, cyber attacks and crimes committed by hackers.

Now there are brilliant hackers who are able to commit financial crimes by infiltrating computer systems and then, with a few keystrokes, hiding all evidence of their crime, or transferring the proceeds from it to another country.

This field is one of extraordinarily rapid change, and it is at the service of biker gangs as much as it is for any other group. Under these circumstances, the authorities face a major challenge, because the crime must first be located and then the data has to be obtained to prove it. There is considerable urgency here.

Some countries, we have heard, want to make encryption keys mandatory. Encryption uses extremely lengthy formulas that supposedly make it impossible to get into messages and therefore protect honest people from those who want to invade their privacy. They may, however, also afford protection to dishonest people by preventing the justice system from being able to find out what they have been doing. This is what happened in Japan, when a sect carried out its plans to poison subway travellers and Japan found itself with evidence that had to be decrypted. This was a very long and difficult task and it had to be done before the criminals could be tried, and they were not able to decipher it completely.

In closing, I wish to say that, as a society, we cannot allow these crimes to go unpunished, because the entire social balance is jeopardized. What is more, young people who are struggling to make it in the world may be attracted by this way to get rich quick.

November 30, 1999 [House of Commons]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ)

Mr. Speaker, I listened carefully to the speech made by my colleague and I can see once again that the hon. member for Mercier has a very good grasp of the issue of organized crime and of its scope, in Quebec and in Canada.

Her calm and rational tone was a reflection of today's debate. Indeed, all the parties said they would support the Bloc Quebecois' motion. We feel this is a very important issue which deserves to receive all our attention, and the other parties obviously think so too.

I have a question for the my colleague, the hon. member for Mercier. I know she is very interested in what goes on at the international level. I am sure she said something about this, but I missed the beginning of her speech. I would appreciate it if she could comment about what is being done at the international level, if she had not already done so in her speech.

I realize that we must first have good national legislation. Obviously, we must first clean up our own backyard, but my question to the hon. member is about what goes on at the international level. Does the hon. member think that, once we will have cleaned up our act, there are things that must be done at the international level? Is some form of co-operation desirable? Are there useful lessons that could be learned from European countries, as the hon. member has frequent contacts with them and comes back with good ideas? I know that she

recently travelled with the Minister of Justice precisely to talk about organized crime at the international level.

I would like to hear the hon. member, because she has a unique experience. The Bloc Quebecois is lucky to have her, because she increasingly brings her great expertise to us and to all Quebecers. I would like to hear her comments on this issue.

November 30, 1999 [House of Commons]

Mrs. Francine Lalonde

Mr. Speaker, my hon. colleague is making me blush.

Indeed, I have had the opportunity to join the justice minister at the G8 Summit. Having a government with a small majority can sometimes be useful to the opposition. I know about the collaborative work being done, and the secretary of state has mentioned the Lyon Group.

To be able to work together, countries have to agree on some rules. They have to know that if an offender is sent to another country, he will be treated the same way as he would be in his own country. Therefore, it is extremely important for countries to come to an agreement, and it is not always easy, because each and every state wants to run things.

I am glad to see that the committee is considering this issue as well as parliaments around the world, so that they can exchange information. Of course, in order to be able to exchange information and make a decision when the proceeds of some crime are located, we have to decide in advance how the proceeds of crime will be divided and who will try the alleged offender.

Will foreign countries agree with the way the trial will be run? We also have to think about the severity of the penalties provided. This has become crucial because it is so very easy for criminals to go from one country to another.

I want to thank my hon. colleague for his question. I think that, from now on, parliamentarians from countries around the world will have to talk about these things. I hope the committee will be the one to initiate these discussions. I also hope that the committee of a sovereign Quebec will be able to carry on and to discuss this issue with the committee of a sovereign Canada and the committees of other jurisdictions. It will be crucial to agree on some basic rules to ensure a minimum of justice.

November 30, 1999 [House of Commons]

Mrs. Suzanne Tremblay (Rimouski—Mitis, BQ)

Mr. Speaker, I am pleased to take part in the debate on the motion, which may be made votable, introduced by the Bloc Quebecois on one of the opposition days provided for in the agreement between the parliamentary leaders of the various parties represented in the House.

The full motion reads as follows:

That this House instruct the Standing Committee on Justice and Human Rights to conduct a study of organized crime, to analyse the options available to Parliament to effectively combat the activities of criminal groups and to report to the House no later than October 31, 2000.

In March 1998, Angus Reid conducted an omnibus survey containing questions about organized crime. The results of the survey said it all: 91% of the population described organized crime as a problem, and one Canadian out of two thought that it was a serious problem; 21% of the population thought that existing efforts to combat organized crime were adequate, and 77% wanted to see such efforts increased. Finally, the same survey showed that residents of Quebec and British Columbia were more anxious about organized crime than other Canadians.

For the Bloc Quebecois to have set aside as a possible theme for this day a subject as important for our collective future as sovereignty and anti-democratic measures to control that process being dreamt up by the Minister of Intergovernmental Affairs and the Prime Minister is a sign that the situation is critical with respect to organized crime.

Since our arrival in the House in 1993, a number of incidents have had a sobering impact on our existence as ordinary citizens wishing to live in peace and harmony. Let us recall briefly some of the more tragic among them.

In 1995, during a war between biker gangs for the control of a territory, Daniel Desrochers, an 11-year old boy, was killed by the explosion of a bomb in the Hochelaga—Maisonneuve, in the east end of Montreal.

A few months later, a bomb went off in Saint-Nicolas, just south of Quebec City, and windows were shattered, including those in a baby's bedroom.

In 1997, Diane Lavigne and Pierre Rondeau, two prison guards, were killed in cold blood, presumably by bikers.

In a report by the Canadian Press published in Le Soleil of March 20, 1998, the then Quebec minister of public security, Pierre Bélanger, declared that the security and custody measures taken for the suspect had cost $1 million. Moreover, the chief crown prosecutor in Montreal, André Vincent, said Hell's Angels hitmen killed the two prison guards at random, just to destabilize the justice system. He added that these criminals intended to attack crown prosecutors and judges too.

I will add that André Tousignant, one of the Hell's Angels hitmen, was murdered and his body found on February 27, 1998, in the woods near Bromont.

These terrible incidents add to the problems faced by, among others, the Sûreté du Quebec in the fight against the so-called forced plantings of marijuana in farmlands across Quebec. In this regard, the Canadian Police Association stated in a press release on October 8 that the awful reality was that organized crime had reached epidemic proportions and that the police were frustrated by the lack of tools and resources to fight it.

The statistics are very revealing in measuring the scope of the problem of organized crime, regardless of its source. For example, the RCMP advises that, between 1994 and 1998, in general terms, there were 79 murders and 89 attempted murders in connection with biker gang wars in Quebec. These wars are also behind 129 cases of arson and 82 bombings.

If we look at an impact study on organized crime commissioned by the Office of the Solicitor General and released in 1998, we learn that the illicit sale of drugs in Canada provides revenues of $10 billion annually to those involved. Evaluations of the scope of the world market of illicit drugs vary between $100 billion U.S. and $500 billion U.S. Le Devoir of January 8, 1999 reported that, in Canada, in 1998, smuggling, which concerns all criminal organizations, involved primarily tobacco, alcohol and jewellery. It even reported that, in jewellery alone, the Canadian black market was estimated to be worth $400 million. All smuggling activities together are estimated to have cost the federal and provincial governments some $1.4 billion.

Crimes of an economic nature are on the same scale. To list them quickly, these include fraudulent telemarketing, aimed particularly at the elderly, stock market fraud and the fraudulent use of credit cards. According to the same source, it would appear that economic crimes cost the people of Quebec and of Canada a minimum of $5 billion annually.

This being the case, what has the Parliament of Canada done on the legislative, financial and international levels?

Let us look at the legislative aspect first of all. The government has passed four bills we feel it would be worthwhile to review briefly.

First there is the Witness Protection Act. Police forces are now in a position to provide better protection to those co-operating with them in obtaining evidence against criminal organizations.

Second, the Criminal Law Improvement Actenables the police to carry out storefront operations more easily. This enabled the RCMP to successfully carry out Operation Compote, resulting in charges against 50 people, one of them a Montreal lawyer.

The third is the anti-gang legislation passed in April 1997, the main thrust of which is inclusion in criminal law of the definition of gang.

This bill makes it a crime to take part in the activities of a gang and provides heavier penalties for those who commit crimes for a gang. It also authorizes the seizure of goods used for gangs' criminal activities.

It should noted that this legislation does not target the leaders of criminal gangs, since it is assumed that the individuals targeted are the ones who commit the crime. However, it is a well-known fact that in this type of criminal organization, the dirty jobs are often done by subordinates and that the leaders must be caught for these organizations to be broken up.

The fourth legislative measure is the Controlled Drugs and Substances Act, which gives police the power to conduct reverse sting operations with undercover officers.

In spite of all these legislative provisions, police forces seem unable to put an end to the activities of criminal gangs. As for the financial resources earmarked by the governments of Canada and Quebec to fight organized crime, they seem clearly inadequate. However, it must be realized that it is difficult to get a precise breakdown of all the moneys spent on the issue that we are discussing today.

Finally, at the international level, during a conference held in Montreal in 1998, the deputy commissioner of the RCMP for investigations, René Charbonneau, proposed the establishment of an international criminal tribunal to deal with drug dealers.

In light of this brief overview of organized crime in Canada, we can see that the measures and the legislation in place and the amount of money spent at this time cannot eradicate this problem. That is why the Bloc Quebecois believes it is important to examine the tools available to us to determine if they could be improved or if they could be complemented by new legislative, administrative and financial measures.

There seems to be a consensus on the urgency of passing new tougher and more explicit legislation to counter activities by criminal organizations.

Organized crime is certainly a national problem that threatens public safety. It is important that the efforts made by parliament to pass legislation that is suited to the reality faced by police match the efforts made by police in the field to uncover criminal organizations.

The federal government must show the political will to take action and must find ways to improve intelligence gathering by the police, to impose harsher sentences on members of criminal organizations and to give more teeth to its money laundering legislation.

November 30, 1999 [House of Commons]

Mrs. Suzanne Tremblay (Rimouski—Mitis, BQ)

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November 30, 1999 [House of Commons]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ)

Mr. Speaker, my comment will be along the lines of those I have made in the course of the day. It must be understood that the motion tabled by the Bloc Quebecois today, which will get hopefully a unanimous vote in the House of Commons this evening, is the product of considerable work.

The Bloc Quebecois has long been discussing and working on it. I take this opportunity to thank the members for Saint-Bruno—Saint-Hubert, Saint-Hyacinthe—Bagot, Hochelaga—Maisonneuve, Lévis-et-Chutes-de-la-Chaudière, Québec and Drummond, and, for their support, the members for Roberval and Rimouski—Mitis, who, in the past few hours, have been negotiating with the other opposition parties to come up with a motion that would receive the unanimous approval of the House. Once and for all, we will study this issue seriously and with all assumptions on the table.

It is common knowledge that drug dollars are a huge problem. The Bloc Quebecois has already tabled a bill on money laundering. Could we not in our study also look at the issue of money laundering and take the avenue proposed by the Bloc concerning, among other things, $1,000 bills and the deposit of large sums of money? Could the member respond to this question?

November 30, 1999 [House of Commons]

Mrs. Suzanne Tremblay

Mr. Speaker, I will respond quickly.

Indeed, I think we must study this issue. Our colleague from Charlesbourg has already introduced a bill to remove $1,000 bills from circulation. We are probably the only major industrialized country to have such a large bill. It is easier to carry ten $1000 bills in one's

pockets than five hundred $5 bills or two hundred $10 bills, and so on. It makes for not such a thick wad with ten $1,000 bills, and it is easier to launder them, in the casino, for example, some evening.

November 30, 1999 [House of Commons]

Ms. Sophia Leung (Vancouver Kingsway, Lib.)

Mr. Speaker, I rise today to express my support for the motion currently before the House. I will share my time with the hon. member for Wentworth—Burlington.

Organized crime is a serious national and international problem that threatens public safety. It is now a multibillion dollar enterprise in Canada. It has a negative impact upon all Canadians.

Many of the problems Canadians see every day are linked to organized crime. Whether it be a drug related burglary, a carton of smuggled cigarettes, a telemarketing scam or juvenile prostitution, it is usually part of the larger problem of organized crime. That is why fighting organized crime is a major task for the government and a key priority of the RCMP.

The federal government has done much so far to hit hard at those criminals. The government is proud of what it has accomplished, but we all know there is more work to do. The government has undertaken a number of initiatives in its fight against organized crime. This government also recognizes that in the global war on organized crime, no one country or government can win by acting alone. Take the example of human smuggling and trafficking.

The government shares the concerns and frustrations of many Canadians in relation to the challenges posed by the arrival of illegal migrants. Canadians are proud of and deeply committed to our humanitarian traditions, but it is equally true that we have no tolerance for those who would abuse this generosity. Today criminally organized smuggling and trafficking operations are conducting an extensive international trade in lives and in the forced labour of human beings.

The United Nations estimates that international smuggling and trafficking operations have grown to a $10 billion a year industry. Organized criminals are demanding as much as $50,000 from their naive or misguided victims, exploiting their simple desire for a better life. We know that this debt is typically repaid over a short and brutal lifetime of illicit activity, sexual exploitation and forced labour.

This is a truly despicable set of circumstances but we must be clear about its source and direct our rightful anger and outrage toward the criminals who seek profit in human suffering rather than toward those victims who in search for a better life allow themselves to be put into such slavery.

Let us be clear about what has been happening with respect to our recent boatloads of arrivals from China. The boats were identified, intercepted, boarded and apprehended. Nine crew members have been charged. Their passengers have been detained. Organized crime has been denied access to the source of its profit. The economic incentive has been cut off. Those who have claimed refugee status are being given a fair hearing on an accelerated basis and in

accordance with our charter, our international obligations and our proud humanitarian traditions.

Canadian government officials from the coast guard and national defence, the RCMP and Citizenship and Immigration Canada have all responded admirably under extremely stressful conditions, but the integrity of the system is something we take very seriously. Simply put, if we allow the rules to be abused and the rules are not respected, they cease to have meaning.

People smuggling and human trafficking are serious international problems. That is why we have initiated a serious international response. Canada has assumed a leading role in the development of United Nations protocols on transnational organized crime and migrant smuggling.

We have been working closely with our partners in the United States to improve our crime databases and on joint efforts to track and apprehend international criminals and terrorists. We are working along similar lines with law enforcement agencies in Australia, New Zealand and the European Union. It is worth noting that other countries are confronting similar problems, often on a significantly greater scale. This month alone Australia has seen the arrival of 10 migrant vessels carrying almost 900 people.

We are working with the People's Republic of China. Senior immigration officers along with members of the RCMP have recently returned from Beijing and the Fujian province where they met with representatives of the Chinese government, its enforcement officers and local police.

Last September I and two colleagues from the House went to China. We had discussions and negotiations with Chinese officials to work jointly to solve the human smuggling problem. This visit has helped us to advance our working relationship on human trafficking, people smuggling and the repatriation of Chinese nationals. The Chinese government has reported the recent seizure of six migrant vessels, including up to four which are thought to have been destined for Canada.

Smuggling has been around for a while. It is a fee for service operation where smugglers are paid for simple passage across international borders. They provide this service through various means which include such things as false travel documents and undetected border crossings. Their customers are sometimes economic migrants, but sometimes they are legitimate refugees who resort to smugglers as the only way to escape the source of their persecution.

Human trafficking is more akin to human slavery. The goal of traffickers is to profit from indentured human slaves. Once their debts have been imposed, the victims of human trafficking are bound to a long term repayment plan involving forced labour, prostitution and other illicit activities. These victims often have reason to fear for their lives and the lives of their family members back home.

For human traffickers, the goal is not legal status. In the first instance it is to evade detection at our ports of entry in order to enter unnoticed and force their passengers underground and into slavery as soon as possible. We are opposed to both smuggling and trafficking. But above all,

Canada will not tolerate the abuse of our system by organized criminals engaged in such deplorable human exploitation.

The Minister of Citizenship and Immigration has travelled across the country speaking with her provincial counterparts, representatives of various non-governmental organizations and other concerned citizens. She has listened to a wide range of views on the matter in order to come up with a solution to this problem.

There is no easy solution to this problem. That is why I am pleased to support the motion that is before the House. I urge all members to do so.

November 30, 1999 [House of Commons]

Mr. John Bryden (Wentworth—Burlington, Lib.)

Mr. Speaker, it is really a pleasure to rise in this debate because just yesterday I was saying that I felt that the Bloc Quebecois, despite their agenda of sovereignty, contributes mightily to this parliament. I think this motion today is an example of a very positive contribution of the Bloc Quebecois.

I do not have a lot of time, but I would like to take this debate in a particular direction. I would like to draw the Bloc's attention and this parliament's attention to the fact that organized crime has also entered the field of charities. I think this is something that should be of concern to the justice committee when it comes to act on the motion proposed by the Bloc Quebecois.

Mr. Speaker, organized crime enters the field of voluntary service in a number of ways. One way is the proliferation of various telemarketing and direct mail scams. The commercial crime squad of the RCMP has recently reported, in Montreal in fact, that there have been links to the biker gangs. They have established links to biker gangs of organizations that are engaged in soliciting funds by telemarketing.

These are the people, Mr. Speaker, who phone and chiefly prey on the senior citizens in our society, both in French and in English, I have to say. It very much is a Canadian thing because this type of activity occurs and all we Canadians, our elderly parents, actually are very vulnerable to it.

So this kind of thing is going on, Mr. Speaker. The other thing that is occurring that again I believe is the effect of organized crime, and this is the case of international organized crime where organizations take advantage of the ethnic makeup of Canada and perpetrate scams that basically involve making contact with individuals from whatever ethnic group and saying that a long lost relative has died in Africa, or Europe, or the former Yugoslavia, or the far east, and that they have been left an inheritance.

A lot of people have lost a lot of money through these scams which, again according to sources in the RCMP commercial crime squads, often are linked to international organized crime. Canada's ethnic community is very vulnerable to this kind of thing.

But, Mr. Speaker, probably the most significant penetration of organized crime into the charity field has to do with the fact that as the law stands now with respect to non-profit organizations, and especially charities, because there is so little scrutiny on the way charities operate, and so little scrutiny on the financial affairs of charities, I suggest to you, Mr. Speaker, that charities have become a major conduit for the laundering of money.

Now, Mr. Speaker, I am not going to give you chapter and verse on which charities are engaged in this or which organizations are actually involved in it because, frankly, I do not know. I am not a policeman. I am not somebody who is involved in ferreting out criminal activity. I can tell you though, Mr. Speaker, based on my research, and you know, Mr. Speaker, I am very active in examining the charity sector, I can tell you that there is a lot of evidence, and recorded evidence, that charities have been used as fronts to finance overseas ethnic conflicts and terrorism.

That stands to reason, Mr. Speaker, because a charity can collect money. Under the current rules a charity can collect in loose change, shall we say, at bingos and lotteries and all that kind of thing, more than a million dollars and there is absolutely no way that that money can be audited as it stands now. On the other side with charitable organizations that have overseas branches, again there is no mechanism, Mr. Speaker, to be sure that when that money of that charity is transferred out of this country to its parent organization in another country, that that parent organization is not using it to finance ethnic conflict or some very non-charitable activity.

Well, Mr. Speaker, what is good for international terrorism, I suggest to you, is good for international organized crime and I will say that the government has shown some interest in this area and we can hope that perhaps we will move with some kind of legislation, or some better regulations at the very least, to control charities which I point out to you, Mr. Speaker, is a $90 billion industry that has run for years and years without any kind of meaningful oversight.

And so, Mr. Speaker, I conclude my remarks. I am glad to put that on the record so that that can be part of what the justice committee considers when it follows through on the motion by the Bloc Quebecois, but I will end my remarks by saying that I think it is an excellent motion. I think it is the credit to my colleagues opposite and sometimes, Mr. Speaker, quite frankly, you know they do so well, that sometimes I wish that they were the official opposition but then, what can I say, Mr. Speaker. They would have to change their politics for me to really believe that. Thank you so much, Mr. Speaker, and I thank them as well.

Immigration and Refugee Protection Act (Bill C-11)

Citation 2001, c. 27, s. 246

Royal Assent November 01, 2001

Hansard

February 27, 2001 [House of Commons]

Mr. Keith Martin (Esquimalt—Juan de Fuca, Canadian Alliance)

… Human smuggling is an international problem. It is linked with international crime gangs. These people are criminals and we are very happy that the minister put extra penalties in the bill. There are $1 million in penalties to individuals who are profiting from the human misery that goes with human smuggling. The people who are engaged in this activity are organized criminals. They are profiting from human misery. We need to work with our partners on this matter…

April 3, 2001[Standing Committee on Citizenship and Immigration] [Entire Exchange]

Ms. Joan Atkinson: We'd be happy to provide you with examples of the research we've done in terms of some of the rationale for putting the particular weight on some of the factors that we have. We'd be happy to describe in a further meeting how we think the adaptability feature will work, and so on.

Currently the difficulty we have with the entrepreneur program versus the investor program is that the entrepreneur program is not terribly clear in that an entrepreneur is required to demonstrate that they have the ability to establish a business, but they don't necessarily have to have any business experience, whereas an investor must definitely have past business experience.

All the indications are that past business experience is a pretty good indicator of future business success. So in order to establish more objective and common standards for the selection of business immigrants, we will have a common definition that will include business experience. An investor will be an immigrant who has business experience, and so will an entrepreneur.

An investor, on the other hand, will have to have a net worth of at least $800,000, and an entrepreneur, a net worth of at least $300,000. So again, we're adding some more objectivity and consistency into the way we select entrepreneurs, by establishing a minimum threshold for net worth for this category of immigrant.

Finally, of course, the investor will have to establish to the satisfaction of an officer that they have indeed made an approved investment in Canada. We will continue with the current investor program—that is, the single federal fund outside of Quebec. The Quebec program will continue; that is guaranteed in the legislation. In the federal fund outside of Quebec, the money will be collected and then allocated to all the participating provinces according to a formula. So that provision of the investor program will remain.

Finally, I've pointed out at the bottom of the page that we will be providing new tools to identify and refuse applications by members of organized crime and persons intent on laundering assets through the investor program. We have to be vigilant, given that we are talking about fairly significant amounts of money in the investor program. We have obligations under the new proceeds of crime legislation and the regulations on tracking proceeds of crime and money laundering, and we will ensure that we have the tools available to do that in the immigration context.

The Chair: These are what clauses in the bill?

Ms. Joan Atkinson: They're clauses 12 and 14—clause 12 in terms of the selection of economic immigrants, and clause 14 for the regulation-making authority under that.

The Chair: Okay. Inky, and then John.

Mr. Inky Mark: In speaking with your officers in Hong Kong just a couple of weeks ago, one of the concerns was verification of accounts.

One thing we don't want to promote is laundering of money in this country, but the other thing that I believe North Americans must understand is there is a cultural difference between people from Asian countries and this country. They don't trust government, and you can understand why they don't. So I think there has to be more flexibility on the personal account side. If we want to know every nickel they own, it's highly unlikely they're going to tell us that.

Ms. Joan Atkinson: Assessing the net worth of investors or entrepreneur applicants is certainly one of the more challenging tasks that visa officers have. Visa officers are not forensic accountants, and they don't necessarily have that type of very detailed knowledge in terms of assessing business documentation.

As a result, in order to ensure that business immigrants have a fair assessment, we are increasingly turning to outside accounting firms. We are increasingly asking the client to get an assessment of their business performance or their net worth done by one of the big five accounting firms, because we simply don't have that expertise or knowledge amongst our visa officer cadre. We think in fact it's fairer to the applicant, rather than us trying to second guess what their documentation says, to ensure it has been vetted by a competent assessor who has the knowledge and expertise to do that and then bring that to us.

The Chair: John, have you any questions on this?

Mr. John McCallum: I could.

The Chair: I thought I saw your hand go up.

Mr. John McCallum: Well, I'll take advantage of the floor.

I just have one question about the investor program. I don't have a terribly good understanding of it. I gather money comes in and is distributed by the federal government for use in the different provinces across the country, assuming the province has some kind of an agreement.

I have a couple of questions. How much money is involved? Do all provinces have such an agreement and therefore the money is distributed to every province according to a formula? Are there one or more provinces that don't have an agreement?

Ms. Joan Atkinson: Not every province has an agreement with us in terms of the disbursement of the investor funds. The participating provinces are Ontario, Prince Edward Island, and—

Mr. Mark Davidson: British Columbia.

Ms. Joan Atkinson: —British Columbia. They're the only provinces currently getting funds under the investor program because they're the only ones who have signed the agreement.

The agreement is simply that the province set up the appropriate mechanism or the appropriate vehicle to receive the funds. It is given to the province in the context of a loan for five years. They have to return the principal to the investment fund at the end of five years and that principal gets returned to the investor.

Mr. John McCallum: Approximately how much money per year are we talking about?

Ms. Joan Atkinson: I don't have those figures with me.

I should mention we're talking about two programs, because there is also the Quebec program. Quebec runs its own investor program and has a different method of receiving and spending the funds. Then we have the program for the rest of Canada.

I can provide those figures. I don't have them here with me today, but I can certainly provide those figures.

The Chair: I thought Ontario hadn't signed on. We don't have an agreement with them and therefore we have not disbursed any of those moneys at all.

Ms. Joan Atkinson: We don't have an immigration agreement with the Province of Ontario.

The Chair: Right.

Ms. Joan Atkinson: We do with every other province.

The Chair: That is incredible.

Ms. Joan Atkinson: This is very specific to the investor program.

The Chair: Okay.

I need to ask again about competition for the best and brightest in the world, meaning entrepreneurs and potential investors who in fact create jobs. How did we come up with this $800,000 net worth, or the $300,000 net worth as an investor? On the basis of what criteria was the threshold established?

In my opinion, that's a barrier or a fence much too high. At the end of the day, is somebody prepared to bring half a million dollars? Let's face it, this is not a quick way into this country.

If you do have business experience and if you do have investment, that should be one of the criteria that allows you to at least be considered. You have to meet all those other tests in order to be admitted into this country. Again, how did we justify it and how did it compare to other countries that in fact are also looking for the best and brightest?

Ms. Joan Atkinson: The net worth in terms of the investor and the entrepreneur program was done very much in consultation with the provinces and territories that have a very direct interest in this program. They very clearly see the benefits of investors and entrepreneurs in terms of capital investment and job creation in their respective jurisdictions. The $800,000 was arrived at through discussion and negotiation with all the provinces involved.

It is also very competitive with similar programs. Other countries have investor-like programs, including Australia, the United States, and the United Kingdon. The $800,000 is very competitive with those programs in terms of the net-worth requirement.

The Chair: There's a new wrinkle here, even though the investor-immigrant program has gone back and forth over the number of years I've been here. It used to be a direct investment and the investment was defined, not passive or something. Then we went to where the government takes in all the money and guarantees it to the investor so no one gets shafted. We understand there were some real scams out there. Now we're indicating you could have a hybrid of both, but a bona fide investment in Canada could also qualify. It's going to be a hybrid of the two systems.

Ms. Joan Atkinson: It's not really. The investment will continue to have to be made in only the approved fund.

The entrepreneur, on the other hand, is a different kettle of fish, if I could use that terminology. By putting the net worth in the entrepreneur program, we're trying to promote some consistency in the way we select entrepreneurs. Currently there's no minimum net worth requirement for entrepreneurs, so these officers have very little in the way of guidance to determine what's appropriate.

If an entrepreneur wants to come to Canada and establish a business, what amount of money do they need? It's very inconsistent. What we're doing is providing a level of consistency so it's clear, both to the client and to the decision-maker, what the threshold is in terms of minimum net worth for an entrepreneur. But an entrepreneur can invest that money wherever they want. The idea behind the entrepreneur category is that those are people who are going to get directly involved in business and run businesses themselves.

The Chair: I agree with you, but you've defined investor. It says “indicates to the minister in writing and establishes to the satisfaction of a visa officer that they have made an investment in Canada”. I think you were talking about the investor and not the entrepreneur. For the entrepreneur, as you said, we're setting some sort of guideline or standard, but...

Jean and John.

Ms. Jean Augustine: I'm not too sure that my question is exactly on the investor, but the terminology here troubles me a little bit.

We define an entrepreneur to mean an “immigrant who”, and we then talk about “business immigrants”, and yet there are other places where we talk about “foreign nationals”. I want to be clear what the terminology is and how we are using it in the bill. Could we have some reasoning around that term “foreign national”? Because I have some trouble with that. As I go from the bill to regulations, you seem to be using the term “foreign nationals” and at the same time “immigrants”.

The Chair: That was a nifty way of getting into a very big discussion and a question that we all have with regard to so-called “foreign nationals”. That's a definition, Joan, that we want to probe and discuss at length. We're not going to do it right now, but thank you, Jean, for putting it in there, so that we don't lose sight of it. I want to get into the consistency of using the same thing, and foreign nationals is one question. We'll leave that for another day, if we could. A very good question.

John.

Mr. John Herron: On the fourth bullet on page 12, you mention that the objective is to identify and refuse applications by members of organized crime and persons intent on laundering assets. Now, currently, if an investor or an entrepreneur makes an application, are they required to state the name of their spouse?

Ms. Joan Atkinson: Any applicant for permanent residence in Canada has to list all the accompanying members of their family, including their spouse and dependent children.

Mr. John Herron: If they are no longer married, or are separated or divorced, or in the process of, would they be required to put the name of their spouse? Correct me.

Ms. Joan Atkinson: If they are divorced or legally separated, then they would not be required because there is no requirement under the Immigration Act or regulations to examine those people.

Mr. John Herron: Wouldn't that be something that might be, perhaps... We talk about relationships of convenience. Maybe we could have separations and divorces of convenience in that regard. Wouldn't that be a logical situation where we would want to have that information?

Ms. Joan Atkinson: Well, anything is possible in the immigration business, as we know, but if you are legally separated or divorced, then that person is no longer of any concern to the immigration department because that is no longer a legal relationship. It is no longer a standing relationship. Therefore, we believe we have no right—or no need is perhaps the best

way to put it—to examine that individual, because if you are legally separated or divorced, that person's not coming to Canada with you.

The Chair: John, you too are very crafty in getting to an area that... I think you asked a fundamental question, so I'm sure we'll get into it as we probe this particular aspect even further, but not right now. I want to move on to self-employed persons.

Mr. John Herron: I've taken very little time.

The Chair: Thank you, John. I know. But that's because usually when you do, you make an absolutely fantastic intervention. I'll give you a short supplemental.

Mr. John Herron: Do we check now through Interpol, or any of the like, whether the spouse's name or the person's name for investors or entrepreneurs might be associated with organized crime? Is that the process now?

The Chair: You know, Joan, I think that whole issue is going to be discussed—believe it or not—in the security, criminality, admissibility section—

Mr. John Herron: I'll take a yes or no.

The Chair: —which is Thursday. Yes, I'm sure.

Ms. Joan Atkinson: Yes.

The Chair: Okay, you see, John—

Ms. Joan Atkinson: Any adult member of the family, including spouse or partner or dependent child, is checked.

Mr. John Herron: Through Interpol.

Ms. Joan Atkinson: Well, they're checked against our databases. They go through the security screening system.

Mr. John Herron: Thank you.

Thank you, Mr. Chair. I appreciate it very much.

The Chair: We've got one page left, in fact. Then we're going to hold the refugee part to Thursday.

Ms. Joan Atkinson: Okay.

The Chair: Because I'm sure that that piece is also very important. So far, we've done very well. We've asked all the right questions and I was going to say we received all the right answers, but I'll leave that editorial comment for after, as we debate this.

Okay, self-employed persons.

Ms. Joan Atkinson: Self-employed persons is the third category of business immigrant, if you will. I should just say that this is not a legal text. In terms of whether we're using the words “foreign national” or “business immigrant”, we are trying to explain our policy intent in plain

language. It's not a legal text that would necessarily have all the legal terminology, just as an aside on that one.

The Chair: Are you going to scare us by saying that in the end the regulations are going to be in legalese that nobody will understand and lawyers will make money out of?

Ms. Joan Atkinson: Well, it's certainly not our intention—

The Chair: It's going to be in plain language, that's what you're—

Ms. Joan Atkinson: That's right.

The Chair: Okay.

Ms. Joan Atkinson: We're going to try to make the regulations in plain language—

The Chair: Very good, thank you.

October 1, 2001 [Standing Senate Committee on Social Affairs, Science and Technology] [Entire Exchange]

Mr. William Lenton, Assistant Commissioner, Royal Canadian Mounted Police: Honourable senators, thank you for the opportunity to speak to this issue this afternoon. I would like to introduce Superintendent Ray Lang who is the officer in charge of the immigration program within the RCMP. He will be able to answer your more technical questions.

I would like to make it clear at the outset that the RCMP is responsible for the criminal enforcement aspect of issues emanating from Citizenship and Immigration Canada and we enjoy a very good working relationship with the department.

According to the United Nations, there are between 20 million and 40 million undocumented immigrants throughout the world at present. It is also clear that North America is the destination of choice for these people. The degree of sophistication of technology these days makes it very difficult for us in law enforcement to establish the authenticity of the people who are coming to Canada. This is exacerbated by the fact that many of the jurisdictions from which these people come are either war torn or do not have the types of systems of records that we have come to expect here in Canada.

The significant impact of this on Canadian society is not to be ignored. There is a significant cost involved in processing the people who come to Canada, in integrating them, in removing those who are not permitted to stay, and in conducting investigations and prosecuting where necessary.

We have recently seen a significant increase in involvement of the criminal element in smuggling and trafficking in humans. We are increasingly concerned about the possibility of injury to or death of the migrants themselves, who some may characterize as being victimized by the process. We are also concerned about the level of physical and sexual assaults, the imposition of long-term labour, extortion and the sorts of thing that are practised by the groups that bring in these people.

Trafficking in women and children is a particular concern. The United Nations' office for drug control and organized crime declared that traffickers of people make an annual profit of some $7 billion a year from prostitution alone. This is part of a larger industry that is estimated at approximately $30 billion with respect to immigration violations.

Our mandate within the RCMP with respect to immigration matters is threefold. Our program works in concert with domestic and foreign agencies at all levels, as well as the community at large, to protect and enhance the quality of life through education, prevention and enforcement.

We have three national priorities. They are, first, combating and disrupting criminal organizations involved in facilitating illegal entry of migrants into Canada; second, investigating unscrupulous professional immigration facilitators who aid and abet the illegal entry of migrants into Canada and, third, timely acquisition and sharing of information and intelligence pertaining to the enhancement of the national program strategy that I have set out.

We believe that the proposed legislation will reinforce our ability to fight the organized crime portion of the migration problem as it links to terrorism, which is underscored by the recent events.

The elements of particular interest to us include the introduction of tougher penalties for criminal organizations convicted of facilitating the entry of migrants into Canada. The bill includes a definition of a criminal organization that is similar to that in the Criminal Code but is somewhat broader, which can help us in the unique context of immigration files. The bill establishes new offences with respect to the misuse of travel documentation. Of great importance is the introduction of the application of proceeds of crime to immigration-type offences.

We are always happy to receive new tools to fight organized crime more effectively. We look forward to the passage of this legislation which we feel will enable us to work better with CIC and other federal enforcement partners in the fight against immigration problems.

The key point we recognize is the degree of cooperation that is needed in combating this global and domestic crime.

In conclusion, we support the intent of the new legislation. We anticipate that new tools will be made available to enhance our ability to ensure the safety of Canadians and the integrity of our immigration system.

October 2, 2001 [Standing Senate Committee on Social Affairs, Science and Technology] [Entire Exchange]

Senator Beaudoin: You say that since September 11, we have all been concerned with security. Of course, that is universal. However, if I am not mistaken, you say that this bill, as drafted, does not respond to our concerns in practice. Having regard to our values, our democratic and legal systems, does this bill respond to our concerns in the present situation?

Mr. Maynard: It does not answer everything, but it answers as much as an immigration bill can. There will be other legislation to address other aspects of the terrorism and security

questions. There is the money-laundering legislation and the membership of a terrorist organization legislation. UN charters have been signed. Criminal law is to be written. We will have other laws that are not part of the Immigration Act but which address those issues. The Immigration Act is not the right forum for addressing those issues. The Immigration Act says that people who are security threats, who are members of terrorist organizations, are not admissible to Canada, and if they are in Canada, they are removable. They can be detained and put through a process to confirm that they are terrorists and, having been confirmed, they shall be deported.

That is what the act says now, and that is what Bill C-11 will say as well. There are some differences between Bill C-11 and the current act that have to with back-end processes, with the nature of the hearing process that is undertaken to determine whether a person is a terrorist. There are some changes there, but as far as front-end changes dealing with the ability to stop people at the port of entry, the ability to detain people, the ability to commence processes to determine whether they should be admissible are concerned, it is pretty much the same. I cannot see how it could be written differently to provide more protection. The bill says that we do not want terrorists in Canada. I suppose we could add the word "really" and say that we really do not want terrorists in Canada.

The Chairman: That idea sort of appeals to me.

I have a question about the transitional provisions. Transitional provisions in Canada on a whole range of public policy areas have always been such that if you are in a pipeline, you stay in the pipeline and the new provisions only apply to new entrants to the process. You say the transitional provisions have the potential to work unfairly. Is it possible to draft regulations vis-à-vis the transitional issues that would deal with your concerns?

October 3, 2001 [Standing Senate Committee on Social Affairs, Science and Technology] [Entire Exchange]

Mr. Manion: I cannot believe that somebody has not done some work on this.

My concern is not so much about the size of the immigration movement but the content of the immigration movement. My concern is that judgments about these things should be made by the Government of Canada, not by crooks, by terrorist organizations, by unscrupulous lawyers and unscrupulous immigration consultants. That is not to say that all of them are these things. Those who are insulted by these remarks probably fall within those categories.

Immigration has been very important to Canada. However, at its peak, immigration has been run by ministers who know what they are doing, with the support of cabinet. The key decisions have been made by ministers, not by officials and not by interest groups. I will stop there.

Senator Di Nino: Do you feel that we could improve Bill C-11 to deal with the kinds of concerns that you just expressed?

Mr. Manion: My own view is that it should be scrapped and started again from scratch.

Senator LeBreton: After that comment, perhaps my question is irrelevant. A phrase that I have written down which has been mentioned by almost all of the witnesses in our

deliberations on this bill is "lack of integration." There seems to be a great many silos. However, that is just a comment.

I am interested in your views on the immigrant investment program, in view of trafficking and laundering. Do you feel that there are enough safeguards in the immigrant investment program, or is that area also prone to tremendous abuse?

Mr. Manion: I think that the refugee process has become so mammoth that it is soaking up virtually all the available resources in the immigration portfolio. Governments in Canada are now spending something in the order of $4 billion per year on immigration and refugee matters. Most of that is spent unproductively. There is not enough money for enforcement. There is not enough money for visa control overseas. There is not enough money for proper coordination. There is not enough money to supervise some of these programs. They are started and then run automatically over the telephone and by paper. That is no way to run an immigration program. I am horrified by what I see and what I hear every day from friends who have connections in the immigration service.

The morale in the immigration service is dreadful and deplorable. The service believes that it is running a very badly conceived and badly led program, that nobody understands its problems and that it is not resourced to deal with its problems.

Senator LeBreton: Are there any other comments on the Immigrant Investor Program? When you consider the amounts of money that were obviously behind the event on September 11, do you think there are enough safeguards surrounding the immigrant investment program? We bring people into the country simply because they will commit to spending certain amounts of money, setting up businesses in Canada and hiring certain numbers of people. Do you have any knowledge of abuse of this program?

Mr. Collacott: I would like to speak briefly to that. There have been major problems with that program. It was suggested 10 years ago in major reports that we may not even need the program because investment is supposed to go into risk capital and there is enough risk capital in Canada. It has been very popular for immigration consultants. There is a chapter on that subject in the book by Charles Campbell entitled *Citizenship Fire Sale*. Basically, you can immigrate to Canada without meeting normal immigrant requirements through this program. The average person coming in has relatively little education and cannot speak English or French. It is tremendously popular in certain circles. It has been complicated to some extent because of special provisions for Quebec. However, long ago it was suggested that it was not really required in terms of Canadian needs.

Mr. Bissett: It is a program that is vulnerable to a lot of abuse. We know that has happened in the past. I am inclined to agree with Mr. Collacott that we really do not need it. If immigrants with a lot of money want to come to Canada and to invest their money here, they are free to come. They do not need to come through this program. The program can and has been used by the Russian mafia, by the Chinese triads and others to buy their way into Canada.

Mr. Bauer: I would agree with what has been said. It is a shadowy area, as you know and is hard to pin down. Even when people are prosecuted, as they are about once ever three years, not too many facts are revealed. I agree with the others that it is an unnecessary program. The

chaps who were involved on September 11 had lots of money available to them. This is a wonderful way to plant sleepers in a society to await the time that you push a button, which may be five years from now. It avoids difficulties with security or anything else.

Senator Keon: One of the witnesses yesterday suggested that, fundamentally, the structural framework under which Bill C-11 was written was fundamentally flawed, that what was needed was legislation that would integrate the resources that are currently with the Department of Immigration with resources that can be used to ferret out criminal activity, et cetera. In that way the legislation could provide the Department of Immigration with the resources to deal intelligently with all these people who are now overwhelming the system.

You gentlemen are obviously extremely knowledgeable. One of you suggested that the bill should be scrapped and that we start over. Another of you said that it is totally inadequate and that we should send it back.

I would like to ask all four of you what you think should be done with the legislation. If it is replaced, what kind of legislation should replace it?

Mr. Collacott: Is that an invitation for us to rewrite the legislation? After all, senator, we are all retired.

Senator Keon: I would like to hear from you about the fundamental structural framework within which perfect legislation could be written.

Mr. Bauer: Mr. Chairman, I do not think it is necessary. When we say throw the bill out and start over again, we do not mean throw everything out. There are parts of the bill that are fine. They reflect the previous act, which is working perfectly well. Last year this bill went around on the flying circus from city to city and all the interest groups complained about it. If you examine the softening that took place after that, one more tour and there will be no bill at all and everybody will just come in without having to go through any procedure.

You cannot change everything, but you can tighten up the front end so there is a more obvious obligation to consult with security people, et cetera, more time to do it and provide something to keep people from operating freely in our society while the more dubious ones are being checked.

Frankly, the most important change I would make would be to implement a professional civil service type of commission or organization for choosing members of the Immigration and Refugee Board as the current members retire.

In addition, I would avoid single member panels. The problem at the heart of this refugee issue is that the problem of numbers is constantly running into the problem of efficiency. When Mr. Showler was here the other day, he said, "We will streamline it and move more cases. We will do that by having single member boards." That means more decisions will be positive. There will be more positive decisions because reasons for the courts do not have to be written for positive decisions.

Another thing that should be forbidden completely to the board is the holding of accelerated hearings when there is not a full hearing. They do this for all sorts of groups, especially when

the group is large. These are the ones where there are dangers. Yet these people simply come in with their lawyer and a refugee control officer and have a little chat - it is all from a little piece of paper. I have seen the same paper, the same story turn up in the morning and the afternoon for two different claimants. It is routine. Lawyers recycle these things. They have their clerks do them. These people never see a member of the board. They never have to answer questions in a formal hearing. I would say that about 25 per cent to 30 per cent of these are Sri Lankans, Somalis, Mexicans and Argentineans who come in by the hundreds.

This gives nobody any knowledge of anything. Questioning is important to determine the credibility of a claimant. Questioning requires intelligence, skill and time. Those involved do not wish to spend time on questioning. You must resolve the conflict between volume and shortage of time. That means more resources and more members with lower salaries. They do not have to be paid $90,000.

October 22, 2001 [Standing Senate Committee on Social Affairs, Science, and Technology] [Entire Exchange]

Carole Brosseau, Lawyer, Research and Legislation Division, Barreau du Québec: Thank you for this opportunity to appear before the Committee to present our views on Bill C-11. I want to apologize for some of our experts and members of our Bar committee who would have liked to be here today but were unable to make themselves available due to the short notice.

First of all, Bill C-11 has undergone a number of changes, but the clarifications introduced in this Bill are both significant and meaningful. As early as 1998, the Barreau du Québec took a favourable position with respect to rules that differentiate between immigration and refugee issues. Therefore, we are happy with the way Bill C-11 is currently drafted.

However, in clause 5 and throughout Bill C-11, we have noted the very broad regulatory power conferred by this legislation, and because of a built-in flexibility, it is clear that this is quite an extensive regulatory power. Regulations create rights. The Standing Committee on Justice proposed an amendment with respect to the laying before both Houses of Parliament of certain regulations. That amendment is now part of the Bill you are considering. Although we believe it is a step in the right direction, it is not enough.

For example, regulatory powers under the Proceeds of Crime Act that passed a year ago provided for pre-publication of regulations 60 days in advance so that interested parties, such as the Barreau du Québec or others, could make their views known on the content of the regulations and their impact on either the legislation itself or money laundering.

Although this Bill provides for the tabling of regulations, there is no pre-publication period set out to allow people an opportunity to make criticisms or suggest improvements - because criticism can be constructive - to the content of the regulations. We believe there is a need to go a little further and allow for comment and careful review of any proposed regulations to be passed in support of this Bill.

My second point relates to the powers of immigration officers, as set out in the legislation. As you are aware, clause 138 provides that immigration officers have the authority and powers of a peace officer. About a year and a half ago in Quebec, given that the powers of peace officers

were being broadened on a regular basis, it was decided to introduce a code of ethics for police officers. For the same reasons, the Barreau du Québec favours including a code of ethics in regulations respecting the conduct of immigration officers. This is particularly necessary because at the present time, when someone tries to bring a complaint against an immigration officer for abuse of authority or similar reasons, the response given, to prevent an investigation from going ahead, is that this is strictly an industrial relations matter. The fact is, however, that this extends well beyond the limits of labour law. The powers of search, arrest and detention that immigration officers can now exercise must be framed in a code of ethics that would apply strictly to them. The resulting transparency would be beneficial both to the government, Canadian citizens and others who may want to avail themselves of the provisions of Bill C-11.

As regards the inadmissibility provisions under clause 30, they are problematic particularly as regards the tests set out in the Bill. It talks about reasonable grounds to believe. That test is really quite inadequate. We can come back to that later. A parallel can be drawn with Bill C-36 that was introduced after Bill C-11, but it is certainly a very poor test to apply.

With respect to misrepresentations, clause 40 in particular talks about withholding material facts or being reluctant to answer questions. When a person enters Canadian soil, he or she is not necessarily entitled to seek counsel at the time of arrival. Demonstrating such reluctance could have very serious consequences. The individual runs the risk of being removed and losing his or her status. Other than the exceptions, the consequences are quite far-reaching.

In order to counter that, it is absolutely essential that an individual entering Canada be properly informed of his rights, that he be entitled to seek legal counsel and have access to very specific information about child-care services, for example, or legal aid available in the region corresponding to the individual's point of entry into Canada. It is the whole question of confidentiality when the Federal Court or a judge has jurisdiction to determine whether certain information will or will not be passed on to the individual. Here, again, we would draw a parallel to C-36 in a number of respects. We believe it is important - and this is not particularly clear when you read the provisions dealing with confidentiality of information - to ensure that a judge has the right to review the entire file and that he is able to provide a summary of the information as soon as possible to the individual concerned, to allow him or her to make full answer and defence.

There is always a conflict between national security and the right to make full answer and defence. It is really a matter of balancing out the disadvantages. That is exactly what we are currently experiencing. It is very important - and we are indeed in favour of the judicial review approach under the circumstances - that the judge have a proper right of review.

I would also like to make some comments with respect to the ID card proposed for permanent residents. I have no objection to this. Ms Caplan announced several days ago that this card will replace the landing record. I must admit the card will be much more convenient. This is a valuable approach. However, where the card might not work so well - because we don't have all the details at this point - is with respect to the information it will contain. We are talking here about summary identification - in other words, the person's name, address and date of birth.

It is not possible, with such minimal information, to determine the person's profile.

I will now turn it over to Mr. Gervais.

Mr. Gervais: I would like to conclude by addressing a point that we believe is of the utmost importance. The Barreau du Québec, through a variety of representations made both to the federal government and provincial legislators, has always questioned the composition of organizations - be they of a judicial, quasi-judicial or administrative nature - whose role it is to make decisions about important matters. Our questions in this regard pertain mainly to the independence and impartiality of the members of such organizations. In a decision relating to immigration matters handed by the Supreme Court on October 18, 2001, in the *Law Society of British Columbia v. Mangat* case, the Court talks about the principles of independence and impartiality, reminding us of the importance of security of tenure, financial security and institutional independence for members of such organizations.

Some questions do spring to mind when reviewing the provisions of clause 153 of the Bill. I understand that this clause provides for people to hold office for a term of seven years, but there is nothing there with respect to reappointments or the appointment process per se. The clause simply states that members are appointed by the Governor in Council, without there being any specific kind of skills required, no external committee formed, no consultation of any kind and without considering standards that have always been enforced by the courts and the Supreme Court of Canada. The clause simply says that appointees are subject to removal; no process is in place or even described in the legislation whereby a commissioner who became subject to a removal order would at least be in a position to argue his case.

The system being proposed here is unusual, in that there seems to be a desire to let the Board deal with everything internally. First of all, there seems to be a desire to set aside judicial tribunals. This can be seen in powers granted the Immigration and Refugee Board, both at the trial and appeal levels, as compared to the limited powers available in cases of judicial vocation.

We are also struck by the fact that there seems to be an attempt to considerably diminish the role of legal experts within the Board. Let me explain what I mean. Clause 162 states that each division of the Board has exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction. Such questions will be decided by a single commissioner. However, when you look at the specific qualifications for the position of commissioner, you quickly see that the composition of the Board is such that few people having any legal training are required. I realize that other types of expertise may be needed and that questions of law are not the only ones to be decided, but important issues can arise and it is important to know that there is a desire to have such issues examined before a court of law.

Clause 167 also provides that a person can be represented by a barrister, solicitor or other counsel, or that someone can be designated for that purpose. But exactly what type of person would be designated? Once again, I come back to the Supreme Court ruling of October 18, 2001 in the *Law Society of British Columbia v. Mangat* case, when again, the Supreme Court recognized that in our society, we have barristers or solicitors that act as legal counsel because they are members of the Bar. As members of the Bar, society can expect such individuals to

perform their work according to certain standards of discipline and be subject to mechanisms relating to professional responsibility, liability insurance guarantees and guarantees pertaining to the behaviour of individuals who may represent other persons. There is now recognition of the option of having other people represent lawyers.

The fundamental point here for me, as both a lawyer and Crown attorney, is that I can provide guarantees. I have no objection to other persons representing people who are the subject of court proceedings. That is what the legislation already provides, and the Supreme Court makes mention of that fact. But what guarantees will such individuals have to provide? In other words, any person off the street - and I am not saying they are all like that - could pass himself off as a legal practitioner without having any specific legal skills or training, without being able to provide guarantees of any kind, without having insurance and without being subject to professional inspection. We have seen similar situations where we were required to intervene because people were engaged in the illegal practice of law before certain administrative tribunals. Once again, we are opening up administrative tribunals to charlatans while, at the same time, taking away the possibility of going before a court of law.

I find it surprising that clause 174 states that the Immigration Appeal Division is a court of record. About a month ago, the Quebec Court of Appeal was asked to rule on the constitutionality of an administrative tribunal in Quebec. It determined that the administrative tribunal was indeed an administrative tribunal, rather than a judicial tribunal, because it did not have the powers of a court of record. The first thing I read in clause 174, however, is that we are now creating an administrative body having powers that bear a striking resemblance to those currently exercised by judicial tribunals, or what are called courts of record. The Appeal Division is thus being made into a semi- or quasi-judicial court of record at the same time as decision-makers with a background in law are being cast aside and the opportunity of bringing an issue before the Federal Court is being removed. Clause 71 provides the right to proceed with an application for judicial review but according to paragraph 2(d) of clause 72, that application can be disposed of without personal appearance or representation based on nothing more than a review of the file.

I believe the wording of these provisions must be re-examined, and insofar as there is a desire to move quickly on this, I believe it would be possible to do so. There are rules in place, but there is also a need to protect the rights and privileges of people who come before commissioners or officers.

Clause 167 refers to the fact that someone can be represented before the commission, but to my knowledge, other provisions in the legislation are such that representations can be made to officers or to the minister. There is no provision stating that such individuals can be represented by a barrister or other counsel. I see that as a weakness, if we want the legislation to be truly administrative in nature.

Also, we know that through regulation, we will be tempted to consider and accept people that come to Canada to enter professional practice. One has only to read the Supreme Court's ruling in *Law Society of British Columbia v. Mangat* to see that appointments and criteria with respect to professional practice are a provincial responsibility under sub-section 92(8) of the Constitution.

We realize that this is not within the purview of the Committee, but we have always had strong feelings about it - which brings me back to my initial comment. In each of the provinces, systems are in place relating to disciplinary rules, means of verification, inspection, and criteria that set a high standard to be met by people allowed to enter into practice. Why? To represent other people. Once again, we would refer back to what the Supreme Court said in its 1989 ruling in *Andrews v. Law Society of British Columbia.* In the absence of an independent legal profession, and I quote:

[...] having the necessary experience and skills required to perform its specific duties in relation to the administration of justice and the legal process, the entire legal system would find itself in a precarious position.

That is what the Supreme Court has said. So, please, don't allow people with legal training to be shunted aside. We have been trained to represent people on the basis not only of facts, but of questions of law that go to the heart of our training and our accreditation as professionals.

The position taken by the Barreau du Québec is one of balance. We understand there are prerogatives the minister may wish to exercise; we have no major objection to that, but to ensure the appropriate balance, we have to preserve the rights of the affected parties, of the people that could benefit from the process and of the various actors who may be called upon to play a role in this context.

Senator Beaudoin: I would like to begin by thanking the representatives of the Barreau du Québec for being with us today. Welcome. We are always pleased to hear from you, particularly on bills such as C-11, C-7 and C-36. It's always nice to hear a different perspective, particularly when it's based on legal principles.

Ms Brosseau, I very much liked what you said about the fact that we have too much of a tendency to rely on delegated legislation. That is not only the case in Ottawa. The same applies to Quebec City, Toronto, Halifax, Vancouver - indeed, all the major cities of Canada. I think this is a practice that is subject to tremendous abuse. Particularly in difficult bills such as Bill C-11. We see the same thing in Bill C-7. As for Bill C-36, we may escape that to a certain extent because there is less delegation involved, given that it deals primarily with the criminal law.

Do you have any suggestions as to a possible cure for that increasing tendency to rely on delegated legislation? Of course, we can't avoid it. Parliament cannot do everything. The Governor in Council has a very important role to play, but I am wondering whether we, as parliamentarians, are doing everything we can to eliminate the kind of abuse of this practice that we are seeing throughout Western countries at this time.

Ms Brosseau: The real problem is legislating via regulation. That weakens our democracy. That is the reason why we have always criticized the practice of using regulations to legislate. Even though we trust our elected representatives, engaging in democratic debate about how we think things should work can only improve or strengthen our legislative and legal systems.

For one thing, there is more and more legislation. It seems to me the number of new bills and the pace at which they are passed into law are such that we have no choice but to get around

the system by relying on the use of regulations. Previously, much more time was taken to prepare legislation. Now, things move very quickly, either because of events or the need to react quickly, or because of the current pace of the legislative process.

You asked me whether I think there is any way of avoiding a situation where regulations would be too prominent and have a negative impact on legislation. I think we need to consider reviewing our Regulations Act, particularly the federal act, to always require pre-publication of any proposed regulations. We have criticized that weakness in many pieces of legislation. As I was saying earlier with respect to the Proceeds of Crime Act, provision was made in that case, but it was an exception. It came about as a result of tremendous pressure, particularly because of the impact of that legislation on professional bodies. Thus provision was made for pre-publication, consultations, and so on. I think that would be a way of countering this new wave or reinstating democratic control over the legislation itself.

In this way, the law could not be completely distorted in favour of regulations that would not be subject to the same controls as the law itself. That may be a possible solution. I would certainly suggest trying it. That's why we pointed out earlier that clause 5 does not go far enough, despite the amendments made to the Bill by the Standing Committee on Justice and Human Rights. As you can see, it is always useful to hold consultations when bills are being examined. They often result in better legislation. That would be one way of accomplishing such an objective.

An Act To Amend The Criminal Code (Organized Crime And Law Enforcement) And To Make Consequential Amendments To Other Acts (Bill C-24)

Citation 2001, c. 32, ss. 12 and 81

Royal Assent December 18, 2001

Hansard

April 23, 2001 [House of Commons]

Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.) moved that Bill C-24, an act to amend the Criminal Code (organized crime and law enforcement) and

to make consequential amendments to other acts, be read the second time and referred to a committee.

She said: Mr. Speaker, I am pleased today to lead off the debate on an issue of major concern to all Canadians: the problem of organized crime and the legislative tools available to our police, prosecutors and courts to address that problem.

[*Translation*]

In the Speech from the Throne, our government promised to take aggressive steps to combat organized crime, including the creation of stronger anti-gang laws.

[*English*]

Building upon the foundation that the government put in place over the past several years, including the 1997 anti-gang amendments to the criminal code, the proposed legislation would enable law enforcement to respond to the threat of organized crime in the country.

Bill C-24, an act to amend the criminal code regarding organized crime and law enforcement, responds to our commitment to law enforcement officials and to my provincial counterparts to provide additional legislative tools to assist them in the fight against the many manifestations of organized crime. The legislative measures set out in Bill C-24 seek to assist Canadian law enforcement officials in the fight against organized crime.

These proposals fall into four categories: first, measures to improve the protection of people who play a role in the justice system from intimidation; second, the creation of an accountable process to protect law enforcement officers from criminal liability for certain otherwise illegal acts committed in the course of an investigation; third, legislation to broaden the powers of law enforcement to forfeit the proceeds of crime, and in particular the profits of criminal organizations, and to seize property that was used in a crime; and, fourth, the creation of a number of new offences targeting involvement with criminal organizations.

I would like to take a few moments to acknowledge the valuable contributions made to its development by my provincial colleagues and their officials. It has been a truly collaborative effort characterized by mutual respect, patience and a commitment to the development of a broad based response to the threats of organized crime.

These efforts resulted in the adoption last September of the national agenda to combat organized crime. In Iqaluit, the solicitor general and I agreed with our provincial and territorial colleagues on an action plan. That plan has several key elements, but expanded and strengthened legislative tools were at the forefront of this national response.

We recognize that tougher and more effective laws are not the full answer to the problem of organized crime. The enforcement program that we announced when the bill was introduced demonstrates our commitment to attacking the problem on all fronts.

The first aspect of Bill C-24 involves a range of steps to deal with the intimidation of persons involved in the criminal justice system. There are those who ask why is it necessary to amend the law to deal with the intimidation of persons involved in the criminal justice system. They point to a number of provisions in the criminal code that might be employed to address this issue. The simple answer is that the existing law needs to be strengthened.

The criminal justice system depends for its proper functioning upon the participation of various members of our community. There are the professionals responsible for the investigation and prosecution of crime, the judges and those who deal with convicted offenders, and members of the public who participate as witnesses and jurors.

[*Translation*]

For all stakeholders to be able to participate effectively, they and those with whom they are associated must be free to act without being subjected to threats, prejudice, intimidation or physical injury.

[*English*]

In recent times prosecutors, judges, witnesses, police and prison guards, as well as their families, have been subjected to intimidation intended to destabilize the criminal justice system. The purpose of intimidation is to interfere with the ability to hold trials in an environment conducive to proper deliberations where participants in the system feel free to play the role expected of them.

Whether acts of intimidation are subtle or explicit they are of particular concern with regard to the prosecution of organized crime. Concern about organized crime was shared by members of parliament. Last year the subcommittee on organized crime was struck to examine a myriad of issues related to organized crime. It brought forward recommendations which included two specific criminal code amendments intended to address concerns over intimidation.

I am pleased to note that Bill C-24 implements both those recommendations. One of those recommendations called for the enactment of measures beyond those now in place to more fully protect jurors serving in trials related to organized crime.

Accordingly the government proposes changes to the jury selection process set out in the criminal code to allow a judge to order that the names and addresses of prospective jurors not be read out in open court. A judge would be empowered in appropriate cases to ban the publication of any information that could disclose the identity of a juror.

Additionally Bill C-24 not only increases the penalty associated with the existing offence of intimidation to five years imprisonment. It introduces a new offence punishable by up to 14 years imprisonment to deal with acts of intimidation that target justice system participants intended to impede the administration of criminal justice.

A new section of the criminal code would make it an offence to engage in acts of violence against a justice system participant or a family member of that participant. It would be an offence to harass, stalk or threaten these people with the intention of either provoking a state of fear in a group of persons or the general public in order to impede the administration of justice or a justice system participant in the performance of his or her duties.

I turn my attention now to the aspect of Bill C-24 that seeks to protect law enforcement officers from criminal liability when for legitimate law enforcement purposes they commit acts that would otherwise be illegal.

The Supreme Court of Canada in its unanimous 1999 judgment in Regina v Campbell and Shirose stated that the police was not immune from criminal liability for criminal activities

committed in the course of a bona fide criminal investigation. However, while observing that "everybody is subject to the ordinary law of the land", the supreme court explicitly recognized that "if some form of public interest immunity is to be extended to the police..., it should be left to parliament to delineate the nature and scope of the immunity and the circumstances in which it is available". Through Bill C-24 the government takes up the challenge offered to it by the Supreme Court of Canada and properly assumes its responsibility to provide guidance.

After issuing a consultation paper last year and engaging in much consultation the government has put the proposals before the House. The proposed scheme contemplates several means of ensuring accountability. These involve a combination of new legislative measures contained in Bill C-24, police training, as well as reliance on existing judicial and disciplinary means to ensure compliance with rules governing their use of powers given under the law.

The legislation does not propose the granting of blanket immunity to all law enforcement officers for unlawful acts committed in the course of carrying out lawful law enforcement responsibilities. However, the legislation does provide a form of very limited immunity. Colleagues need to understand that for many years law enforcement authorities were working on the basis that they had common law immunity. All the supreme court did was make it plain that there was not common law immunity but called upon parliament to put in place a legislative scheme if it saw fit.

Here is how the scheme would work. When a public officer is engaged in the enforcement of any act of the Parliament of Canada, doing that which would otherwise constitute an offence may be permissible if the following elements exist.

First, before the person can act he or she must be designated a competent authority. The individual must also believe on reasonable grounds that committing the act or failing to act is the reasonable course of action and proportional in the circumstances and including whether there is any other available means of carrying out their duty.

Nothing in the proposed scheme would provide immunity for the intentional or criminally negligent causing of death or bodily harm; the wilful attempt to obstruct, pervert or defeat the course of justice; or conduct that would violate the sexual integrity of an individual.

Another feature of the legislative package before us today is a new approach to addressing participation in the activities of criminal organizations. The bill contains a new definition of criminal organization and three new offences that effectively criminalize the full range of involvement with organized crime.

At its core, the danger of organized crime flows from the enhanced threat posed to society when people combine for the commission of serious crimes. Historically criminal law has responded to this elevated harm by punishing individuals for engaging in conspiracy and for aiding or abetting the commission of specific offences.

In 1997 in Bill C-95 parliament went further and directly targeted organizations of such individuals for the very first time by providing a definition of criminal organization, increased investigative powers and increased penalties for those committing crimes in conjunction with criminal organizations.

Law enforcement officials and provincial attorneys general have called for a simplified definition of criminal organization and for offences that respond to all harmful forms of

involvement in criminal organizations. That is precisely what we have done in the legislation before the House today.

The current definition only covers criminal organizations that have at least five members, at least two of whom have committed serious offences within the preceding five years. As well, the organizations themselves must be shown to have been committing crimes punishable by a maximum sentence of five years or more in prison.

Canada is a signatory to the United Nations convention against organized crime which affirms that a group of three persons having the aim of committing serious crimes constitutes a sufficient threat to society to warrant special scrutiny from the criminal justice system.

I believe that Canadians want our law enforcement officials to be able to target criminal groups of three or more individuals, one of whose main purposes or activities is either committing serious crimes or making it easier for others to commit serious crimes.

In conjunction with a more streamlined definition, the full range of involvement with criminal organizations is targeted in Bill C-24 by three new offences.

The first offence targets participation in or contribution to the activities of criminal organizations. Taking part in the activities of a criminal organization, even if such participation does not itself constitute an offence, will now be a crime where such actions are done for the purpose of enhancing the ability of the criminal organization to facilitate or commit indictable offences.

The bill also addresses the concern expressed by law enforcement officials and provincial attorneys general that the current requirement of proving beyond reasonable doubt that the accused was a party to a specific crime shields from prosecution those in the upper echelons of criminal organizations who isolate themselves from its day to day activities.

We know that successful recruitment enhances the threat posed to society by criminal organizations. It allows them to grow and to more effectively achieve their harmful criminal objectives. Those who act as recruiters for criminal organizations contribute to these ends both when they recruit for specific crimes and when they recruit simply to expand the organization's human capital.

Thus the expressed provisions of the proposed participation offence make it clear that the crown does not in making its case need to link the impugned participation, in this case recruitment, to any particular offence.

Some have called for mere membership in a criminal organization to be an offence. In my view such a proposal would be extremely difficult to apply and would be vulnerable to charter challenges.

The second new offence retains the core of section 467.1 of the criminal code which is the criminal organization offence introduced in Bill C-95. The new offence targets those who aid, abet, counsel or commit any indictable offence in conjunction with a criminal organization.

Unlike the existing provision, it would not require the crown to prove both that the accused has participated in or substantially contributed to the activities of a criminal organization and that he or she has been a party to the commission of an indictable offence punishable by five

or more years of imprisonment. The participation-contribution requirement has been removed entirely and the range of offences targeted has been broadened to include all indictable offences.

The third new offence deals specifically with leaders in criminal organizations. Like the participation offence, it does so not by criminalizing status but by proscribing the harmful behaviour itself.

Leaders of criminal organizations pose a unique threat to society. Operationally they threaten us through their enhanced experience and skills. Motivationally they threaten us through their constant encouragement of potential and existing criminal organization members. Accordingly in the bill we have moved aggressively to identify, target and punish those within criminal organizations, whether or not formally designated as leaders, who knowingly instruct others to commit any offence, indictable or otherwise, under any act of parliament for the benefit of, at the direction of, or in association with a criminal organization.

The penalty provisions for the three offences I have outlined confirm the government's resolve to provide a proportionate and graduated means of addressing all forms of involvement with criminal organizations and to ultimately break the back of organized crime in Canada. The participation offence I previously described is punishable by a maximum of five years of imprisonment, the party liability offence by a maximum of 14 years of imprisonment, and the leadership related offence is punishable by a maximum of life imprisonment.

Furthermore each of these punishments has been fortified by an appropriately aggressive sentencing regime. Its two critical components are mandatory imposition of consecutive sentences for the offences and a presumptive parole ineligibility period of one-half the imposed sentence. When these measures are combined with our newly expanded and improved criminal forfeiture scheme our message to organized crime is clear: crime does not, will not and must not pay in Canada, and we will take all necessary measures to ensure the continued safety of our homes, streets and communities.

Not all provisions of the bill specifically target organized crime groups. Several elements in the proposed legislation are meant to improve criminal law generally. These improvements to the law will nonetheless be extremely useful in combating organized crime.

The offences initially listed as enterprise crimes were those considered most likely to be committed by organized crime groups. Over the years, as organized crime evolved and moved into new areas of criminal activity, new offences were added to the list of enterprise crimes. Today the list of such crimes stands at over 40 with no indication that we will stop adding new offences to the list.

At the same time, by limiting the proceeds of crime provisions to certain listed offences, we have created two types of criminal: the criminal whose proceeds are subject to the proceeds of crime provisions of the code and whose illicit profits can be ordered forfeited by the courts, and the criminal whose profits fall outside the reach of the proceeds provisions of the code.

Furthermore, there is a proposal to eliminate the enterprise crime list approach and expand the application of the proceeds of crime provisions to designated offences, that is, to most indictable federal offences. In this manner the profits from the commission of most serious crimes would be subject to forfeiture. All existing protections, such as notice provisions,

applications to revoke or vary orders, appeals and remedies, will of course continue to be available to the accused and to third parties.

Canada must be in a position to offer the necessary assistance to foreign countries that have successfully investigated and prosecuted members of organized crime groups and whose courts have ordered the confiscation of tainted property located in Canada. I would like to ensure that Canada is not singled out for its inability to provide the necessary assistance to help such jurisdictions obtain the confiscated property.

Accordingly, the bill proposes a number of amendments to the Mutual Legal Assistance in Criminal Matters Act that would allow Canada to enforce foreign confiscation orders. That is important. The provisions contained in the proposed legislation would allow Canada to respond on the basis of a treaty to requests from a foreign jurisdiction for assistance in enforcing a confiscation order issued by a court in that jurisdiction in relation to proceeds of crime derived from the commission of a criminal offence for which the accused was convicted. In anticipation of a confiscation request, Canada would also be able to provide assistance in respect of a request to seize or restrain the targeted proceeds located in Canada.

The proposed amendments would also facilitate requests from Canada regarding the enforcement of restraint or forfeiture orders for proceeds of crime located in foreign jurisdictions.

The last element that I want to stress deals with offence related property. The bill contains amendments to make the offence related property forfeiture regime in the code apply to all indictable offences. As well, the present exemption from forfeiture for most real property would be eliminated.

I believe the measures I have outlined today would ensure that we have the tools necessary to combat the increased threat of organized crime. Let there be no mistake that the proposals before us would provide more effective laws and aggressive prosecution strategies to target organized crime at all levels.

I thank colleagues for their support of this initiative. I look forward to their support because the initiative would ensure that our streets and communities are safe from a most pernicious element within our society, organized crime.

April 23, 2001 [House of Commons]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ)

….Then there is the whole issue of the seizure and forfeiture of the proceeds of crime. However, in this respect we believe the department could have introduced much more relevant and daring amendments. We believe the department did not go far enough in terms of the legislative tools it is giving the courts, the police and the penal system as a whole. There is still work to be done in this respect even though progress has been made.

We are so far behind and we have so few tools to successfully fight organized crime that any change, no matter how small, must be welcomed and applauded. But while we are at it with

the help of experts to draft something that is defendable and enforceable and is what the people want, we might as well do it right. We really have to look at the whole issue.

There is one matter that scares several people, namely the amendments aimed at protecting the officers in charge of enforcing the anti-gang law. Now, a police officer investigating very specific crimes such as the trafficking of human beings, alcohol, tobacco or firearms smuggling, heinous crimes, international terrorism, crimes against the environment and everything related to drug offences, will at last be able to commit acts otherwise illegal were it not for that protection.

So that members can really understand what I am talking about, I will give an example. Criminal groups, be it biker gangs, the Italian network, Chinese triads or the Russian mafia, which is also present in Canada, are well organized. They have made it very difficult for the police to infiltrate them. Very often, in those biker gangs whose methods we are more familiar with, to determine if a new member going up every step in the organization is trustworthy and is one of them, the leader will ask him to commit certain illegal acts.

The bill says that an investigating officer could commit certain acts without fear of prosecution. This is not protection at large; murder, rape, acts of violence and so on are excluded. This is for very specific offences. For example, in a biker gang operating a large drug market, an undercover officer could be asked to sell drugs. That is an illegal act. Without protection, the police officer could be liable to prosecution for that. Yet he must do so to be accepted as a member of the biker gang, get to know more and possibly gather enough information to prosecute the guilty parties.

This is very much a societal issue. It is a complex matter and it could lead to abuse. We must be very careful in implementing the law. However, if we want to fight organized crime effectively, we must have such tools.

Some countries go much further than that, but we should begin by looking at their experience and see how this is done, see how things work and what the results will be over time. This is a step in the right direction, albeit a very small one in terms of both the offences and the people.

If memory serves, the Minister of Justice once tabled a white paper on the issue of granting immunity to any public official during the course of any investigation which is even more encompassing. At the time, my initial reaction was “They want a police state. This makes no sense. We must restrict that, we must establish a framework, we must set limits”.

Again, the minister seems to have listened. This is not a common occurrence, but we should mention it when she does so. Or else it is the department that listened to what I said, so that today such immunity is only granted to peace officers conducting investigations in very specific areas. It is very limited in scope. It is something.

Where I have questions and am anxious to hear what the Solicitor General of Canada and the Minister of Justice, who will certainly be appearing before the committee, have to say about this issue—I say this up front so they can be ready—is when it comes to giving the political arm authority to make such actions legal. Under the proposed legislation, the solicitor general would authorize such actions. Truly, if there is one thing that must not be mixed with politics, it is the law.

It would be a kindness to the minister to tell her that she is on the wrong track, that this should be left up to the courts, as is now the case for wiretapping, for certain very specific seizures outside normal court hours. It could be a judge who, as part of an investigation and upon presentation of evidence, gives authorization. It could be ex parte. It could be various ways of speeding up authorization. But it must be someone who is independent of the political arm. It must be a judge who gives authorization and who oversees the result.

This is one amendment we are going to try to make when this bill comes before the Standing Committee on Justice and Human Rights.

Generally speaking, it is not what is in the bill that is causing a problem but much more what is not. With this in mind, I think that it will be easier to work with officials of the Department of Justice and try to convince them to make certain additions to the bill.

I will conclude by saying that one thing is certain and that is that those enforcing the legislation must also be given the necessary money. It is all very fine and well to have a well-drafted bill, but the necessary money must be there for them to enforce it.

In Quebec, we have shown that when the police were given adequate financial support, they were able to do an effective job of combating organized crime, as they did in the Opération Printemps 2001, a major cleanup operation. We should continue in this vein by passing this bill.

[*English*]

April 23, 2001 [House of Commons]

Mr. Bill Blaikie (Winnipeg—Transcona, NDP)

Mr. Speaker, I am pleased to rise and say a few words on behalf of the NDP on this particular debate.

I agree with my hon. colleague from the Bloc when he says that a great deal of credit should be given to the Bloc Quebecois for pressing the matter in the House over the previous years. I understand the satisfaction it must be experiencing in seeing the government respond. By the Bloc's own analysis, some 80% of the bill includes measures that it has requested.

Quebecers have experienced, to a completely excessive and unsatisfactory degree, the somewhat dubious benefits of the activities of gangs, as have other Canadians in other provinces.

We have the bill before us and we are anxious that it not be debated at great length here in the House. We would like to see it go to committee. If we are serious about wanting the legislation implemented and used to curtail the activities of criminal gangs, we must get it through the House and into committee and look at some of its provisions.

If there are things that can be improved and clarified, and I certainly think there are, then let us go about doing that and getting the legislation into force so that we can determine through experience whether the bill will actually work. That is the only way we can find out what will work, both in terms of the ability of police to investigate and lay charges and the ability of the courts to obtain and uphold convictions.

It is certainly not the intention of the NDP to delay passage of the bill. I simply say to my colleagues in the Bloc who have, shall we say, a somewhat robust history of making the work of the Standing Committee on Justice and Human Rights somewhat difficult because of their objections to Bill C-7, the bill on the youth criminal justice act, that I imagine they will face a bit of a dilemma if that is the case.

I am not saying that is the case now, but if it turns out to be then we cannot get to this legislation until we have dealt with the youth criminal justice act. That is another piece of legislation about which, despite its inadequacies, we will not be able to learn more until we have had an opportunity to see it in practice.

This bill introduces three new offences and tough sentences that target various degrees of involvement with criminal organizations. That is all well and good. It is appropriate that these new offences be introduced. I look forward to hearing expert testimony on that in committee. Certainly in principle it is a good idea and one that we support.

Protecting people who work in the justice system from intimidation, either against them or their families, is certainly something we would support. However we would go even further, as have other members who have spoken today. We would like to see, or at least have it made clear and explicit in the legislation, that it is not just members of parliament who are protected by the legislation. Provincial ministers of justice, provincial politicians and, as the member from the Bloc said only moments ago, simple politicians, because of various zoning or other questions, may also find themselves in conflict with the interests of criminal gangs.

We may therefore want to look in committee at ways to either broaden the list of those explicitly included or to clarify the definition so it does not just apply to members of parliament.

Simplifying the current definition of criminal organization in the criminal code is another aspect of the bill which seems to be merited. We look forward to hearing more about it in committee.

Broadening the powers of law enforcement to forfeit the proceeds of crime, and in particular the profits of criminal organizations, and to seize property used in a crime are things we may well need to put into legislation so that governments have the tools at their disposal to deal more forcefully with organized crime.

An accountable process must be established to protect law enforcement officers from criminal liability when they commit what would otherwise be considered illegal actions while investigating and infiltrating criminal organizations. That is something I understand from my meetings with the Canadian Police Association earlier this year. I certainly understand the concern of police officers who work undercover in difficult situations and need more freedom to act without worrying about criminal liability. We cannot grant them absolute freedom, of course, so it is a fine line. The minister has attempted in the legislation to define what that line is.

This is something I look forward to discussing in committee because people have expressed concern about where the line is drawn. I understand and appreciate those concerns and yet I am sympathetic to what police officers have requested. We certainly accept the principle of protecting, to some degree, police officers who are engaged in this kind of activity and we

look forward to hearing from people on both sides of the issue as to where the line should be drawn.

I am particularly pleased that this legislation has come forward because I myself, some time ago in a previous parliament, brought forward a private member's bill regarding anti-gang measures. It is no secret to people who know something about Winnipeg that it has gang problems in its inner city, not just biker gangs but criminal gangs of various descriptions.

There is a great deal of interest on the part of many citizens of Winnipeg in giving the police and government the appropriate tools with which to deal with these gangs. The Manitoba NDP government is also interested in seeing much tougher measures to deal with gangs.

I will leave it at that. However I cannot resist saying that the government, when it announced in a press release that it was stepping up its fight against organized crime, stated:

> The Government will also inject an additional $200 million over the next five years to implement legislation and related prosecution and law enforcement strategies to fight organized crime. This funding will build on the $584 million that the RCMP received in the 2000 budget—

Having had the weekend I have just had, I cannot help but reflect on the kinds of resources used this past weekend in Quebec City to deal with, by and large, peaceful protesters.

I am not talking about the anarchists and the Black Bloc, the people who tried to take down the fence. I am talking about what I was going to call policing but which was, in many respects, gassing, rubber bulleting and water cannoning of people who were not trying to take down the fence or hurl stuff at the police on the other side. Most of those people were simply acting on what they thought were the rules of the game at the summit; that is, as long as they were not trying to break the perimeter and were acting outside the perimeter in a peaceful way, they would be immune from police action.

When I consider the resources that went into the summit, I sometimes wonder, as must many ordinary Canadians, why it is that when one wants a police officer in a hurry one cannot be found but when there is a summit meeting there are 6,000 of them. Where did they all come from?

How many communities were left without police protection over the last several days so that students could have their first experience of tear gas while sitting around singing or standing innocently, or perhaps curiously, looking at the wall?

I apologize for those remarks but I think some people, even some police, must feel that on occasion. I have a great deal of sympathy for police officers in the RCMP, the Sûreté du Québec and others who must sometimes wonder why the government is willing to pay so much in overtime and put so many resources into something like that. When police want resources to deal with criminal gangs or people who make life miserable for Canadians in various communities and contexts they cannot get an extra dime out of the government, but by God, just announce there is a protest coming and they get all the equipment and resources they ever wanted.

There is something not quite right here, as far as I am concerned. This legislation is a step in the right direction. We want to see certain things clarified in committee and we look forward to that process.

April 23, 2001 [House of Commons]

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC)

Mr. Speaker, I am pleased to participate in this debate and to follow the hon. member for Winnipeg—Transcona, a new member of our justice committee who brings a great deal of credibility to the debate and great oratorical skill to the House of Commons.

Our party, as are I think all parties without exception, will be supporting Bill C-24. It is somewhat of a reincarnation of legislation we saw in the last parliament. It is very important and timely to the process of dealing with the ongoing plague of organized crime in Canada. It will allow police officers and prosecutors, both through legislation and in some instances through increased resources, to combat and turn their undivided attention in some instances to the growing problem of organized crime.

Neil Young sings of rust never sleeping. Well, crime never sleeps. Crime is unfortunately becoming more and more active in many communities and I am not talking only of the big cities. Crime is becoming prevalent in small towns and rural parts of the country.

We are particularly vulnerable in coastal communities, I hasten to add. Sadly, since the disbandment of the ports police in the country that is even more the case. We are seeing an obvious attempt by organized crime to profit from illicit acts of importation, in many instances of contraband materials. I am talking about drugs, which are the chief trade, as well as guns, pornographic and contraband materials brought into the country under the radar of our current law enforcement capacity. One would hope with the greatest optimism that this legislation will help address, at least in part, this very complex problem.

There is a great need for this legislation. The RCMP, who arguably is the most affected by the issue, is I think cautiously optimistic. The new RCMP Commissioner Zaccardelli alluded to the fact that organized crime has plans to use bribes to destabilize the country's parliamentary system. That came as a shocking revelation to many when they read it in the newspapers. It raised eyebrows across the country. It demonstrated the profound epidemic of organized crime and the lengths that organized crime will go to on occasion to exert influence, and I am obviously not talking about a positive influence.

That epidemic has for many years been virtually ignored by the current government. It is therefore very encouraging to see it finally recognize the issue and give it a priority after seven years.

On Tuesday, September 12, 2000, the Quebec public security minister, Serge Ménard, urged the federal government to use the notwithstanding clause to outlaw membership in gangs such as the Hells Angels and the Rock Machine. Because such a move might be struck down by the courts as unconstitutional, he was urging the government to give at least an indication that it would not hesitate to use the notwithstanding clause.

When it comes to organized crime, one thing everyone understands is that it does not play by the rules. It does not abide by the laws, whereas of course law enforcement, prosecutorial

services and the government not only have to put laws in place but stay within the boundaries and confines of those laws, and rightly so. Therefore we are sometimes talking about a distinct disadvantage on the part of our system of enforcement vis-à-vis outlaw gangs. Extraordinary times sometimes call for extraordinary action. That is why, I am sure, the suggestion was made that the notwithstanding clause might be invoked in those circumstances.

The Department of Justice clearly suffers from constitutional constipation at times, I think, from this fear that somehow if a law is made that might be deemed unconstitutional we should refrain from enacting it.

This law will be challenged in our courts, as many laws before it have been challenged. That is part and parcel of the process. In particular, I can guarantee that the legislation that expands police powers will be the subject of numerous court challenges. We can bank on it.

We simply cannot hesitate in or refrain from introducing legislation in the fear that somewhere in the land, whether it be in the Supreme Court of Canada or in some other court, a judge may decide that this is not within the bounds of the constitution. That is part of our judiciary. That is part of the process. I guarantee that this legislation will be challenged, like other legislation has been.

However, when dealing with organized crime and the repercussions of having organized crime go unchecked we sometimes have to make laws that expand the current envelope and go beyond the realm of what has been the normal practice.

While the Quebec minister was expressing these concerns, on the very next day, September 13, the day after the call from the security minister of Quebec, Mr. Michel Auger, a journalist in Montreal with the *Journal de Montréal*, was shot five times in the back. This was most likely the action of and has been attributed widely to outlaw motorcycle gangs. I am informed that it was likely the act of someone who wanted to join one of the gangs and was part of the movement to get in, to show somehow that this person had what it takes to be involved in this type of activity. They are sometimes the most dangerous, these puppet groups, these individuals who are trying to ingratiate themselves, to earn their patch so to speak. Mr. Auger's fate and the fate of many others who have expressed opposition to organized crime and have raised the spectacle of somehow trying to get this issue under control has been that they have sometimes faced the wrath of the gangs themselves.

Criminal gangs are far-reaching now. They are branching out. As I said in my opening remarks, they are found in communities across the country, whether they be rural or urban. Many Canadians are starting to feel particularly unsafe because of this audacious presence. In the city of Halifax, there are many people who are very concerned. Individuals such as Matt Jardine and others who live in Halifax are concerned about what is happening in their city.

An outlaw motorcycle gang, the Hells Angels, now has its colours flying in radiant lights in front of its clubhouse in the city of Halifax. This is the affront to democracy. It is an affront to policing and the safe, secure feeling that people should have in their communities.

There is a real need for this legislation. Again, it is encouraging that it is being brought forward now. The minister often uses the phrase in a timely fashion, and this has been timely for many years. The time is here and we are encouraged by that.

Organized crime also is becoming very prevalent in many circles where it was traditionally unseen, such as the Internet. The Hells Angels, I am told, have one of the largest Internet sites available. It is information that is now transmitted through cyberspace, not only across this country but across the United States, North America and the world. That is very disturbing. Obviously the ability to transport information can be an extremely positive thing, but organized crime can use it for a very nefarious purpose, so there is certainly a need for legislation in that area at some future time. It is not addressed by this legislation.

The bill has taken on a very broad background, if we will, in terms of what types of organized crime we are dealing with. Eastern bloc European gangs have emerged, such as the traditional Mafiosa-Italian connections, and there are the snakehead organizations, Chinese triads, Oriental groups that are forming gangs and the traditional so-called motorcycle gangs, which are, as I have said, becoming more prevalent.

The Minister of Justice gave repeated assurances to study options for strengthening our current legislation to break the back of organized crime. Although some of those details were not discussed publicly, we do know that attempts were made to introduce legislation in 1997. We see it coming back now in this form. The minister reiterated this in her comments.

I do applaud her. I applaud the minister's initiative in bringing forward this legislation now. It has finally received priority and would allow those administering it, mainly the provinces and the law enforcement community, to attack the issue and to attack the underbelly of these gangs. In particular, this legislation allows for greater use of attacking the proceeds of crime, that is, going after the actual resources of organized crime and taking away the flow of money and the benefits received from illegal acts.

It also very clearly and specifically simplifies the definition and the composition of criminal organizations for purposes in a court. The bill targets various degrees of involvement within organizations, that is, it attaches the type of activity that is deemed to be participation in a criminal organization. Sometimes that is just watching. Sometimes it could be the person working on a dock in Halifax who turns a blind eye to an importation or to a boxcar coming in with illicit contraband material.

The legislation also would make it easier for police and prosecutors to arrest and jail those involved in organized crime and keep them in prison for longer periods of time. There is a greater element of deterrence, both specific and general, at work in the bill for those who choose this path.

The bill would allow law enforcement officials to declare forfeit the proceeds of crime from organizations, to seize the property and to perhaps put that resource back into the community that has been harmed. It allows law enforcement officers to seize things like houses, boats, cars and money and to allow the resource that has been pillaged and raped from a community to go back into it and perhaps benefit it and try to rehabilitate some of the harm that has been done.

The legislation would also strengthen rules protecting against intimidation of witnesses, jurors and their families at organized crime trials. It would strengthen the protection for federal ministers and members of parliament. It would improve protection for law enforcement

officers from criminal liability when they commit certain illicit acts while engaging in undercover operations.

One thing missing from the legislation and which has been pointed out by several members today is that it does not include provincial ministers. I believe that was perhaps a legislative oversight. I am certain it is something that can be corrected at committee.

In particular, the provisions in this bill send a very important signal that the Parliament of Canada is not going to sit back and rest on the laurels of the fine men and women who are currently working in our justice system, but that it is actually going to bolster support for them and enhance their ability to do their job and their ability to protect us, because it is that thin blue line, as it is sometimes called, that the police provide to the citizens of Canada.

We are supportive of the amendments that deal with taking away the proceeds of the crime, taking away the lifeblood. There are very positive amendments to this bill that could be tightened up. Again, hopefully we will have an opportunity to do that in the process.

Of course I mentioned the absence of protection for provincial ministers. There is also perhaps some need to protect journalists in some instances, as we saw with Mr. Auger.

There is a problem with respect to the funding for the legislation. That in and of itself is perhaps its greatest weakness. The legislation has come about, typically, with great fanfare and with announcements made in the press gallery. I think the minister has had her knuckles rapped a little in that regard. The legislation announces $200 million to address this specific problem. That comes as great news to those in law enforcement and was met with great enthusiasm by the commissioner of the RCMP and others.

However, the question, the next natural progression of that, is this: when will the money come? There were references in that very press conference to the earlier announcement of $584 million to the RCMP to upgrade CPIC, to allow for greater resources, to allow for more overtime, to allow for resources and for perhaps greater access to justices of the peace or greater access to informants. They are all important elements of the police task in protecting Canadians.

When will the money arrive? It would be very interesting to hear from the minister or members of the government how much of that $580 million, the earlier announcement, has actually been put into the coffers of the police. I suspect that the same question will be asked of this $200 million in very short order, because they are crying out for those resources. The police are desperately in need of the financial support. It is fine to make the announcement, to give the moral support here, but they need the actual resources and they need them immediately. That is a question that has yet to be answered.

There is a positive starting point here. There is certainly a determined commitment on the part of the government and on the part of all members of parliament. This has affected individual members of parliament. A member of the Bloc found himself in a very unsettling position, I am sure, when he was the subject of threatening actions on the part of an outlaw motorcycle gang.

The limitless resources of the organized criminal element highlight the fact that the police are often left feeling that they are not on a level playing field legislatively because of their limitations within the law. However, they are also under the increased pressure because

organized crime has unlimited resources and is essentially using more and better technology than is available to the police. Members of organized crime are watching the watchers. They are using videotape to tape the police to find out who is watching them. They are transmitting information about judges, about prosecutors and about police. They are sharing information about undercover officers. They are using the Internet to its maximum benefit.

This is the brave new era. This is an age wherein we should be giving the police the tools and the technology to fight organized crime on the same level that organized crime is using. Typically we have seen the government try to fix a problem that in some instances it created. I refer to the ports police. There have also been severe cuts to the RCMP in the past number of years. Clearly the RCMP was suffering budgetary restraints when it had to close its training facility in Saskatoon. Clearly when the Canadian Police Information Centre computer system was almost on the verge of collapse without an immediate influx of money, it was symptomatic of underfunding on the part of our national police force. Bill C-24 would not provide this immediate injection of funding.

There are, as I indicated, elements and commitments that we are very supportive of. What we want to see and what we want to diligently pursue is that the funding is actually going to be there. There are clauses in the bill like, for example, clause 27 at page 29, which talks about the definition of criminal organization. It now needs to be composed of three or more persons and the crown now does not need to show that the offences were committed in the previous five years.

Some of the legislation may seem technical and inconsequential to the untrained ear, but this is very important for the crown and for the police working in cohort to secure convictions. We saw a very recent sting operation in the province of Quebec and parts of Ontario that resulted in individuals being rounded up and charged. There are potentially charges there that will not be affected by the introduction of this legislation, but in the future certainly it will help in the successful prosecution of these types of offences.

One problem that I have picked up on is that Bill C-24 fails to make it a criminal offence to be a member of a group already proven to be a criminal organization. Whether or not an organization is criminal would have to be proven in each particular case, that is, it would create needless expense in some instances and a duplication of resources that would prolong many criminal trials.

There is a general consensus that the legislation is positive. Much of the technical examination of the issue came about as a result of the Shirose and Campbell case that dealt with immunity. It dealt with police officers having the ability to infiltrate crime through in some instances buying illicit substances like drugs and participating in questionable conduct themselves to prove allegiance and to prove that they were working with the gang to gain its trust so that they could break it up.

This is something that raises concern among lawyers and privacy protectors. There will be an examination by a court of law to see that it is in proportion, that it is reasonable in the circumstances. These are the types of matters that we could try to fine tune.

It will no doubt result in court challenges and that should be welcomed. Members should embrace that reality. It is our responsibility to make laws and it is the responsibility of the courts to examine and interpret those laws in some cases.

With regard to the intimidation factor, it is very important that there be as broad a definition as possible for who should be protected from intimidation. Trials cannot function if jurists, lawyers, witnesses, and in some instances police, are feeling intimidated. Intimidation and extortion are things that gangs deal in very much. They put fear into the minds of people if they come forward to testify against gang members.

I am hopeful the minister and the government will be open to certain amendments, further examination and strengthening of the legislation. I trust all members would be supporting the bill.

April 23, 2001 [House of Commons]

Mr. Dennis Mills (Toronto—Danforth, Lib.)

Mr. Speaker, I am pleased to have an opportunity to make a few remarks in support of the legislation. I would like to touch on an issue that my colleague from the Conservative Party raised during his remarks. It has to do with that part of his speech that dealt with the exposure of journalists when they are involved in doing research and writing about biker gangs.

It has a very special chord of relevance for me. During the last election campaign I met a constituent, Yves Lavigne, who wrote the book *Hell's Angels at War*, the biker gang book. He has written three books actually. *Hell's Angels: Taking Care of Business* is another one. People like Yves Lavigne have tremendous experience and insight. They think outside the box of normal police forces.

Would it be a good idea for the RCMP or other police forces to use people like Yves Lavigne, who have spent 15 or 20 years of their lives focused on a specific area of organized crime, as consultants to make sure that the police think outside the traditional box and bring these gangs to justice in a more expeditious manner?

April 23, 2001 [House of Commons]

Mr. Peter MacKay

Mr. Speaker, the member raises a very important element which is missing from the legislation itself. I agree that the police should be outsourcing to individuals who have expertise in this area. It is an incredibly overwhelming issue in terms of its complexity and the lengths that organized crime will go to infiltrate legitimate businesses.

Organized crime will seek to undermine the credible people working in the system, whether working directly in justice or as legislators, and to undermine the media who have a role in reporting and making public the activities of organized crime.

I agree that police officers should have within their mandate the ability to engage these individuals for information purposes and for their expertise. The legislation does not provide for the protection of specifically journalists, authors and those who write and have obtained special information that is helpful and relevant to the police.

I am encouraged that the issue is being fleshed out and that we will have an opportunity to correct it to make that additional protection available. Hopefully the spirit of productive debate and study at the committee level will improve this important legislation which he and other members support.

[*Translation*]

April 23, 2001 [House of Commons]

The Acting Speaker (Mr. Bélair)

It is my duty, pursuant to Standing Order 38, to inform the House that the questions to be raised tonight at the time of adjournment are as follows: the hon. member for Lévis-et-Chutes-de-la-Chaudière, Shipbuilding.

[*English*]

April 23, 2001 [House of Commons]

Mr. Stephen Owen (Vancouver Quadra, Lib.)

Mr. Speaker, I am very pleased to stand today to speak in favour of Bill C-24. I was pleased to listen to the Minister of Justice and I heard the comments made by members of the opposition who seem to have a full understanding of the issue.

If it is not understood in the Canadian public at large, it is well understood in the House by all parties and all speakers that the scale of organized crime in the country and internationally, the magnitude of the threat that it poses to our society, is something of real urgency. The bill addresses it and needs to be passed quickly and put into force.

I would like to speak about the variety and complexity of the problem internationally as well as to individuals, communities, government and private enterprises in Canada.

Internationally there is more than a trillion dollars a year in earned profits from criminal activity worldwide. The figure is growing every year. It has not been hampered and restricted by deficit cutting that governments around the world have had to undergo through the 1990s. These profits have been soaring. In terms of the critical nature of this threat, former President Clinton identified organized crime as the number one threat to national security in the post cold war world.

The citizens of my constituency, Vancouver Quadra, understand the chilling nature of the threat. It is much broader than just gang wars. It involves the supply of drugs to our schools and children. It involves property crime that is attendant on drug addiction which is fed by organized crime. It involves home invasions and the security of our homes. Ten years ago who in our society had heard the chilling terms of terror such as home invasion, carjacking or drive-by shooting? These are new terms of terror which are directly connected to the scourge of organized crime in society.

In terms of our economy, billions of dollars of laundered money are put into our society which is based on a market economy. It is corrupted by them. They debase the vigour of competition in our market economy and threaten our economic viability.

They also threaten our economic institutions. Corruption and organized criminal activity in scams with respect to banks, credit card fraud, telemarketing fraud, insurance fraud and stock market fraud are all part of the growing expanding scourge of organized criminal activity which is sapping the economic strength of the country as well as the safety of our citizens.

In terms of government agencies themselves, we have had troubling information about the infiltration and corruption of people working in government agencies at all levels in Canada and internationally.

These are major challenges for our society. They require new tools, many of which the bill provides. If we think about how we will apply those tools we have to think carefully about the new nature of criminal organizations.

Criminal organizations working in Canada and around the world are no longer monolithic crime families that are suspicious of each other or competitive with each other against criminal projects for turf. Today criminal activity is conducted in a highly networked, complex, flexible and international fashion. Criminal gangs are no longer fighting for turf with each other although that happens, and we know too sadly of the horrors in Quebec of criminal gang wars. However that is not the typical character of organized criminal activity today.

Organized criminal activity works in networks, works in cells across criminal organizations and across borders to uniquely compose a criminal operation across boundaries, gangs and criminal products. It requires a very special approach from law enforcement agencies which is not our traditional approach. It requires those agencies to be more flexible and more resourced in their response. I will be splitting my time.

I would like to comment on the new tools that are necessary and that are being applied by the bill. Monetary resources are needed for police agencies. Those have been provided for over the last two years with increased budgets and there are projected further injections of financial resources for the RCMP and other law enforcement agencies. That is critical.

The bill presents other tools. There will be stiffer penalties for participation in criminal gang activity and broader definitions of what constitutes criminal gangs and criminal activity. There are very important provisions to create the offence of intimidation of officials in the criminal justice system. It is a critical point of protection that is necessary and overdue.

The expanded definitions and increased ability to seize the proceeds of crime are important in the bill. There must be an ability to seize and forfeit property in a fashion that is efficient, quick and hits at the heart of the enterprise nature of organized crime.

The mandatory reporting provisions for suspicious financial transactions are important. Fifteen billion dollars was estimated as the amount of laundered funds from illegal activities in Canada last year.

I will conclude by addressing specifically the unique and changed nature of organized crime in society. It is flexible and networked. It crosses boundaries and is cross organizational. It is necessary to have an integrated and co-ordinated approach across the collection of criminal intelligence, police operations and prosecution of crime. These have to be working as a seamless whole.

The information and intelligence gathering must not be in a secretive closed chest fashion among competing law enforcement agencies. It must be shared in a mandatory fashion, but it must be secure and centrally analyzed. It must be disseminated on a need to know basis and the success and experience of operations have to be fed back into that intelligence system.

The operations themselves must be joint force operations, drawing across law enforcement agencies for the best and the most appropriate resources that can be uniquely composed and targeted on any particular criminal activity. It should then be shut down, redistributed and refocused on other criminal activity if it is to mimic the flexibility and the networks of criminal organizations themselves.

There must be an effective link to intensive prosecution which the bill and the organized criminal justice policy address. Dedicated legal advice must be present at the very earliest stages of an investigation to deal with the incredible complexity of criminal investigations and prosecutions, laws of disclosure, laws of search and seizure, laws of wiretapping, and laws of proceeds of crime. The best legal advice must be used at the beginning of an investigation right through to an intensive prosecution to make sure those prosecutions are successful.

I repeat that organized crime is an immense threat to society. Its magnitude is overwhelming. The bill needs to be passed as soon as possible.

April 23, 2001 [House of Commons]

Mr. Greg Thompson (New Brunswick Southwest, PC)

…. Bill C-24 would simplify the definition and composition of the criminal organization. This is very important. It would target various degrees of involvement with these organizations. It would make it easier for police and prosecutors to arrest and jail gangsters and keep them in prison for longer periods of time. It would allow law enforcement to forfeit the proceeds of crime from these criminal organizations and to seize property that was used in a crime. In other words, it would send out a message that crime did not pay. It would strengthen rules protecting against the intimidation of witnesses, juries and their families in an organized crime trial.

Last on my list is to strengthen protection for federal members of parliament and to improve protection for law enforcement officers from criminal liability when they commit certain illegal acts while engaged in undercover operations to infiltrate criminal organizations.

That sounds good. We are hoping the government does eventually come up with a bill, obviously with the help of the opposition and some of the fine amendments which I am sure will be coming from all of the parties on this side of the House because, Mr. Speaker, as you will remember, last September it was the opposition, particularly the Bloc Quebecois, that brought forward this emergency debate on organized crime in the House.

…

April 23, 2001 [House of Commons]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ)

Mr. Speaker, the bill introduced by the minister this morning contains almost 80% of what the Bloc Quebecois has been asking for over the last five or so years.

One point, however, is missing from the bill on organized crime now before us and that is the whole issue of reversing the burden of proof and the proceeds of crime.

My question for the member is a very simple one. Everyone knows that money is the sinews of war, whether politics or organized crime are involved. The comparison may be slightly imperfect, but it boils down to the same thing; there is organized crime because there is money to be made. The more money they make, the stronger and more organized they will be.

There is really nothing in the bill to facilitate the work of the police and crown prosecutors, to reverse even somewhat the burden of proof, so that it is not up to the crown to prove the illegality of an acquired asset, but rather up to organized crime to prove the legality of its origin.

My question for the member is as follows. Will he be able to support this, when he talks of amending the bill? Is it in this sense of giving additional tools to the police and crown prosecutors to facilitate proof with respect to such things as money which is, as we know, the sinews of war?

[*English*]

April 23, 2001 [House of Commons]

Mr. Greg Thompson

Mr. Speaker, this goes back to previous comments and to questions answered by my colleagues in the House. There is always that balance between charter rights and the willingness or the desire to crack down on criminals. There is a balance to be struck. Certainly that reverse onus is something worth looking at.

However, the truth is that organized crime has the resources. The government brags about the money it is putting in, but there are some prosecutions that have been going on in the country against organized crime by the Government of Canada where the cost is in excess of $10 million. The money being put in is a drop in the bucket. Not to discount the fact that $200 million over five years is a lot of money, but in comparison to the proceeds of crime, which are reaching into the billions, the point has to be made that we have to fight back with the resources we have and often that means money to fight crime. Bringing in legislation that is tough yet honours the charter is the challenge for the government. We are hoping the bill will do that given some of the amendments we will put forward from this side of the House.

April 23, 2001 [House of Commons]

Mrs. Suzanne Tremblay (Rimouski-Neigette-et-la-Mitis, BQ)

… There is also the matter of reversal of the burden of proof in connection with the proceeds of crime, to which we shall return in committee and in subsequent debates.

In the short time I have left, I would like to say how important it is for the minister to proceed with this bill, to get it in force promptly, for the House not to be recessed before it is passed, and for her to ensure the funding is made available, the cash required to make it enforceable.

April 23, 2001 [House of Commons]

Mr. Bernard Bigras (Rosemont—Petite-Patrie, BQ)

…The other aspect addressed by this bill is the whole matter of seizure and forfeiture of the proceeds of crime…

Mr. Stephen Owen (Vancouver Quadra, Lib.): Mr. Speaker, I am very pleased to stand today to speak in favour of Bill C-24. I was pleased to listen to the Minister of Justice and I heard the comments made by members of the opposition who seem to have a full understanding of the issue.

If it is not understood in the Canadian public at large, it is well understood in the House by all parties and all speakers that the scale of organized crime in the country and internationally, the magnitude of the threat that it poses to our society, is something of real urgency. The bill addresses it and needs to be passed quickly and put into force.

I would like to speak about the variety and complexity of the problem internationally as well as to individuals, communities, government and private enterprises in Canada.

Internationally there is more than a trillion dollars a year in earned profits from criminal activity worldwide. The figure is growing every year. It has not been hampered and restricted

by deficit cutting that governments around the world have had to undergo through the 1990s. These profits have been soaring. In terms of the critical nature of this threat, former President Clinton identified organized crime as the number one threat to national security in the post cold war world.

The citizens of my constituency, Vancouver Quadra, understand the chilling nature of the threat. It is much broader than just gang wars. It involves the supply of drugs to our schools and children. It involves property crime that is attendant on drug addiction which is fed by organized crime. It involves home invasions and the security of our homes. Ten years ago who in our society had heard the chilling terms of terror such as home invasion, carjacking or drive-by shooting? These are new terms of terror which are directly connected to the scourge of organized crime in society.

In terms of our economy, billions of dollars of laundered money are put into our society which is based on a market economy. It is corrupted by them. They debase the vigour of competition in our market economy and threaten our economic viability.

They also threaten our economic institutions. Corruption and organized criminal activity in scams with respect to banks, credit card fraud, telemarketing fraud, insurance fraud and stock market fraud are all part of the growing expanding scourge of organized criminal activity which is sapping the economic strength of the country as well as the safety of our citizens.

In terms of government agencies themselves, we have had troubling information about the infiltration and corruption of people working in government agencies at all levels in Canada and internationally.

These are major challenges for our society. They require new tools, many of which the bill provides. If we think about how we will apply those tools we have to think carefully about the new nature of criminal organizations.

Criminal organizations working in Canada and around the world are no longer monolithic crime families that are suspicious of each other or competitive with each other against criminal projects for turf. Today criminal activity is conducted in a highly networked, complex, flexible and international fashion. Criminal gangs are no longer fighting for turf with each other although that happens, and we know too sadly of the horrors in Quebec of criminal gang wars. However that is not the typical character of organized criminal activity today.

Organized criminal activity works in networks, works in cells across criminal organizations and across borders to uniquely compose a criminal operation across boundaries, gangs and criminal products. It requires a very special approach from law enforcement agencies which is not our traditional approach. It requires those agencies to be more flexible and more resourced in their response. I will be splitting my time.

I would like to comment on the new tools that are necessary and that are being applied by the bill. Monetary resources are needed for police agencies. Those have been provided for over the last two years with increased budgets and there are projected further injections of financial resources for the RCMP and other law enforcement agencies. That is critical.

The bill presents other tools. There will be stiffer penalties for participation in criminal gang activity and broader definitions of what constitutes criminal gangs and criminal activity. There

are very important provisions to create the offence of intimidation of officials in the criminal justice system. It is a critical point of protection that is necessary and overdue.

The expanded definitions and increased ability to seize the proceeds of crime are important in the bill. There must be an ability to seize and forfeit property in a fashion that is efficient, quick and hits at the heart of the enterprise nature of organized crime.

The mandatory reporting provisions for suspicious financial transactions are important. Fifteen billion dollars was estimated as the amount of laundered funds from illegal activities in Canada last year.

I will conclude by addressing specifically the unique and changed nature of organized crime in society. It is flexible and networked. It crosses boundaries and is cross organizational. It is necessary to have an integrated and co-ordinated approach across the collection of criminal intelligence, police operations and prosecution of crime. These have to be working as a seamless whole.

The information and intelligence gathering must not be in a secretive closed chest fashion among competing law enforcement agencies. It must be shared in a mandatory fashion, but it must be secure and centrally analyzed. It must be disseminated on a need to know basis and the success and experience of operations have to be fed back into that intelligence system.

The operations themselves must be joint force operations, drawing across law enforcement agencies for the best and the most appropriate resources that can be uniquely composed and targeted on any particular criminal activity. It should then be shut down, redistributed and refocused on other criminal activity if it is to mimic the flexibility and the networks of criminal organizations themselves.

There must be an effective link to intensive prosecution which the bill and the organized criminal justice policy address. Dedicated legal advice must be present at the very earliest stages of an investigation to deal with the incredible complexity of criminal investigations and prosecutions, laws of disclosure, laws of search and seizure, laws of wiretapping, and laws of proceeds of crime. The best legal advice must be used at the beginning of an investigation right through to an intensive prosecution to make sure those prosecutions are successful.

I repeat that organized crime is an immense threat to society. Its magnitude is overwhelming. The bill needs to be passed as soon as possible.

April 23, 2001 [House of Commons]

Mr. Gurmant Grewal (Surrey Central, Canadian Alliance)

Mr. Speaker, on behalf of the constituents of Surrey Central I am pleased to participate in the debate on Bill C-24, an act to amend the criminal code respecting organized crime and law enforcement and to make consequential amendments to other acts.

The bill has two main purposes: first, to provide new tools in the fight against organized crime; and, second, to respond to the 1999 supreme court decision in R. v Campbell and

Shirose, which put in doubt the ability of police and police informants to break the law as part of undercover operations aimed at penetrating criminal organizations.

After years of the Reform Party of Canada, now the Canadian Alliance, fighting for tougher laws to help combat gangs and other criminal organizations, the federal Liberals have finally introduced some of the legislation we have been calling for. The fact is that the weak Liberal government lacks the political will to get tough on crime, particularly on organized crime.

It has introduced this legislation because of intense pressure from the official opposition and other opposition parties and because of the pressure from police and the public in general. Combating organized crime was part of the detailed justice platform released during the election campaign by the Canadian Alliance.

The penetration of organized crime into Canadian society is a very serious matter. Criminals move from jurisdictions with strong controls to jurisdictions with weak or no controls. This criminal activity undermines Canada's financial and social systems and increases the power and influence of illegal businesses.

A staggering variety of activities such as extortion, home invasion, murder, theft, drugs and arms trafficking, counterfeit currency and passports, migrant smuggling, prostitution, Mafia, casino and lottery frauds are additional costs to society at the expense of the taxpayer and at the expense of our future. These activities make our streets unsafe.

We in Canada are also concerned that the privacy of Canadian citizens could be unreasonably invaded. There should be sufficient protection and the freedom of law-abiding citizens should be preserved. The loopholes in the system and the law are not plugged in Canada. That is the main problem. Canada is a candy store for these criminals. Unfortunately criminals have the motivation to come to Canada and commit crimes because they consider Canada to be a crime haven.

The blurred vision of the Liberals has caused the dismantling of Vancouver port police. Everyone knows that. This makes the port a gateway for the importation of drugs and narcotics. It opens up the way for criminals and makes their jobs easier rather than tougher. It is a shame that the Liberal government gives international organized criminals VIP treatment while those same criminals, according to the Immigration Act, are supposed to be inadmissible to Canada.

I remember when I was on the immigration and citizenship committee that we introduced a motion to study fraud and criminal activities under the Immigration Act not for general immigrants but for illegitimate and criminal elements coming to the country. Liberal members refused that motion.

Previous legislative attempts to deal with the problem have been ineffective. Bill C-95 did not go far enough in providing the tools needed for the law enforcement agencies to fight organized crime.

Years ago, perhaps in the early 1980s, the government of the day not only ignored the recommendations of the law enforcement agencies but it even refused to acknowledge the existence of organized criminal activities in Canada. Since that time organized crime has

significantly increased. Canada has now become a global centre and a haven for organized crime because of its laws.

Whatever the government does now it is too late and too little. The criminals are lightyears ahead of the law enforcement agencies. They have more resources, more money and better state of the art technology while the agencies on the other side even lack the law with tooth and are struggling to maintain yesterday's technology.

A Liberal dominated subcommittee of the justice standing committee on organized crime held in camera hearings on the problem and issued its report just prior to the dissolution of the House. I will talk about that report in a short while.

I also want to mention that I represented the official opposition as a member of the subcommittee on organized crime. Since the hearings were in camera I will not go into detail but will talk about some of the issues that are in the public domain.

It is sad that the recommendations of the subcommittee were not fully implemented through this bill. Even though the committee was a Liberal dominated committee, the bill of course would enhance the fight against organized crime, though not enough, and should not be delayed unduly.

I will now talk about the main features of the bill. There will be longer consecutive sentences for gang activity: up to five years for participating in a criminal organization; 14 years for carrying out indictable offences for the benefit of a criminal organization; and life for being the leader of a criminal organization.

A new definition of a criminal organization would be: only three members required instead of the current five; there is no need to prove that members participated in indictable offences in the five years preceding prosecution and providing that, in addition to indictable offences punishable by five years or more, offences can be prescribed as serious offences.

It is stated that the intention is to cover offences, such as prostitution and gambling, that are controlled by organized crime.

Another point is the protection of justice system participants. Threatening a judge, prosecutor, juror, et cetera, or a member of their family would be punishable by up to 14 years and murdering a justice system participant would be first degree murder.

The next point concerns police immunity. The solicitor general responsible for the RCMP or provincial ministers responsible for the police will be able to designate officers who may, in the course of an investigation, commit offences other than offences causing bodily harm, obstructing justice or sexual offences.

Forfeiture of property would apply to all property used in committing a crime rather than just property especially built to carry out the crime. Judges will have to determine whether the forfeiture is appropriate given the nature of the crime. Presumably a house may not be forfeited if five marijuana plants are found in it but it could be if 500 or 5,000 plants are found in it.

There are still many significant deficiencies in the bill that require further address or amendments. Even many recommendations of the subcommittee have not been addressed in the legislation. I was a member of that committee and it was a Liberal dominated committee.

There are maybe 10 points I want to mention. The relevant elements of existing legislation, resources, investigative and prosecutorial practices, should be deployed to their fullest potential and effective strategy to fill any gaps should have been developed and addressed in the legislation. The committee was concerned about it and it made very clear recommendations about it.

The criminal code should have been amended so that all its provisions related to organized crime activities could have been brought together in a specific part to be entitled enterprise crime, designated drug offences, criminal organizations and money laundering. This recommendation was not followed.

The criminal code should have been amended to allow for the designation of criminal organization offenders in a manner similar to that applicable of dangerous offenders and long term offenders provided for at section 752. This would allow, at the sentencing stage, after a conviction has been obtained, for the imposition of imprisonment for an intermediate period or for long term supervision in the community after a sentence of up to 10 years. The recommendation was not followed.

Section 184 and following the criminal code dealing with judicially authorized audio and video surveillance should have been amended to increase in non-criminal organization offences from 60 days to at least a 120 day period for which such activities could be authorized and renewed. This particular recommendation is very important if the Liberals were to listen to Canadians, to the Canadian Police Association and to front line police officers who are dealing with organized criminals. When police officers need to obtain a particular warrant they have to write about a thousand pages. A lot of work has to be done to obtain a warrant.

Once a warrant has been obtained it is valid for only 60 days, whereas the criminal activity continues for months and years probably. They then have to go back and do all the paper work again in order to obtain a warrant for wiretapping or other things. The recommendation is very important and I hope the justice minister will follow through with it. Since we are debating the bill for the first time, the government has lots of opportunity if it is sincerely listening to this.

The provisions of part VI of the criminal code should have been reviewed and amended so as to streamline and simplify the requirements and practices involved in the judicial approval and renewal of audio and video surveillance as a law enforcement investigative strategy. This recommendation was not followed.

Section 743.6(1.1) of the criminal code should have been amended to allow sentencing judges to order that offenders serve full sentences instead of half the sentences currently served, of incarceration without any form of conditional release in cases where there is evidence that a convicted person committed an offence to the benefit of, at the direction of or in association with a criminal organization.

The criminal code should have been amended so that there was a reverse onus placed on a person convicted of an enterprise crime, a designated substance offence, a criminal organization offence or money laundering whose assets have been seized, to prove that these

assets have not been acquired or increased in value as the result of criminal activity. There should be a reverse onus on the criminal rather than on law enforcement agencies to prove that. This is a very important recommendation.

If the convicted person were unable to discharge the burden of proof, as I mentioned, to the satisfaction of the court, these assets should be declared to be forfeited. This recommendation was not followed through.

The Canada Evidence Act should have been amended to codify and simplify the rules related to disclosure. The disclosure rules are so vague that jurisdictions in foreign countries refuse to co-operate with Canadian law enforcement agencies because of our stupid and ineffective disclosure laws.

The human resources expertise and technology levels should be sufficient to effectively combat organized crime. Unfortunately the funding announced by the justice minister today providing only $200 million over five years does not appear adequate and does not come close to the amount needed for frontline law enforcement officials to do their job effectively.

The funds allocated on a yearly basis would not significantly enhance police or prosecution resources when we consider that a relatively simple prosecution could cost as much as $10 million. Those resources are inadequate.

A national tactical co-ordinating committee should have been established to promote the exchange of information and sharing of experiences among field operators in order to fight organized crime. This recommendation made by the subcommittee on organized crime was not followed through again.

Because of lenient disclosure laws in Canada, as I mentioned earlier, law enforcement agencies from other countries refuse to share sensitive information with their Canadian counterparts on organized criminals operating in their country. This jeopardizes our efforts to combat crime and demoralizes our frontline officers.

One of the most disturbing features of the legislation is its failure to make it a criminal offence to be a member of a group already proven to be a criminal organization in Canada. Contrary to the justice minister's suggestions, this provision does not make participation or membership in a criminal organization illegal unless it can be proven that the person had the intention to facilitate illegal transactions for that organization.

The fact that an organization is a criminal organization would have to be proven in each particular case that goes before the court resulting in needless duplication of resources, expertise and prolonged criminal trials.

The bill fails to adequately protect other key players in the fight against crime. In particular, provincial justice ministers, MLAs, MNAs, MPPs are not granted the same level of protection as federal parliamentarians, despite the fact that they are directly responsible for the enforcement of these provisions. They need to implement the law.

We all know the case of Michel Auger who had the courage to stand up against crime and other journalists who were not given protection.

In conclusion, I urge the government to make the legislation tougher, to provide more resources to police and to encourage the aggressive use of the new tools.

In particular, the recommendations of the subcommittee, regarding forfeitures, wire tapping and serving full sentences, have not been addressed or have only been partially met. Therefore, I hope the justice minister will be open to considering amendments that would further streamline the Canadian justice system and would offer Canadians a greater measure of security through the legislation.

April 26, 2001 [House of Commons]

Mr. Kevin Sorenson (Crowfoot, Canadian Alliance)

Mr. Speaker, it is a privilege and a pleasure to stand in the House again to debate a bill that is being brought forward. Our party commends the government for bringing forward Bill C-24.

Organized crime poses an enormous threat to Canada. It poses an enormous threat to Canada's national security and economic stability. Therefore we on this side of the House welcome Bill C-24, the subject of today's debate. It is a piece of legislation that the Canadian Alliance has been demanding for some time.

In the Canadian Alliance Party we believe we need to put in place the resources to fight crime, to fight all elements of crime. As we look at the daily papers and as we turn the television sets on, we see that organized crime is becoming more prevalent on a daily basis. In 1998 the commissioner of the Royal Canadian Mounted Police, Philip Murray, said:

> Organized crime in Canada is now so pervasive that police have been reduced to putting out isolated fires in a blazing underworld economy.

What Philip Murray was saying was that in regard to organized crime there is a huge bonfire, with the whole land ablaze, and our police force has very limited resources to put out what we might call small brush fires.

An Ottawa *Citizen* article dated March 3, 1999, explained the prevalence of organized crime. It states:

> Canada is particularly vulnerable to drug trafficking—the principal source of revenue for most organized crime groups—according to the Drug Analysis Section of the RCMP. Smugglers are attracted to Canada because of the low risk of arrest due to limited police resources that have stymied investigations, relatively light penalties, and our sprawling, largely unmonitored borders.

This article highlights three of the huge concerns dealing with drug trafficking as well as organized crime. The first is limited police resources. The second is light sentences. With the light sentences being handed down, people understand that crime sometimes does pay. Of course the third point is the geographic location of Canada and the fact that it has such huge, long, unmonitored borders.

International drug trafficking is an organized criminal activity that threatens democratic institutions, fuels terrorism and human rights abuses and undermines economic development. Drug trafficking is an inherently violent activity. Violence is used by involved organizations to protect turf, settle disputes and eliminate those who oppose them. Some of those who oppose them are government members, the judiciary, investigative journalists and reporters, individuals who are willing to take a stand. We all, as a joint body here, need to be willing to take a stand.

The Canadian government estimates the revenue involved. It shocked me when I heard that the amount of revenue our Canadian government estimates is in the underground illegal drug market in Canada is $7 billion to $10 billion.

The Canadian drug market is dominated by many foreign organizations. We know of many of the countries that are involved. There are Italian based organized criminals who are involved in upper echelons of the importation and distribution of many drugs. Asian based groups are active in heroin and, increasingly, in cocaine trafficking at the street retail level in Canada. Colombian based traffickers still control much of the cocaine trade in eastern and central Canada. As well, outlaw motorcycle gangs play a major role in the importation and large scale distribution of cannabis, cocaine and other chemical drugs.

Motorcycle gangs and those involved in organized crime are not in only one or two provinces. Provinces throughout this nation are now recognizing and understanding the concerns in regard to organized crime as they deal with the motorcycle gangs and especially the drug trafficking of those gangs.

Most illicit drugs arrive in Canada by aircraft, marine container or truck. More than 9 million commercial shipments enter Canada each year, 75% at land borders and the rest at international airports, marine ports, postal facilities and bonded warehouses. Approximately 1 million marine containers holding illegal drugs enter Canadian ports annually and another 200,000 enter by truck or rail after being unloaded at United States marine ports and then moved out.

In 1995, 5.2 million trucks entered Canada from the United States. Three years ago it was estimated that by the year 2000 this number would reach 6 million to 6.8 million. We have a customs inspection rate of less than 2% and we are talking about 5.2 million vehicles that are estimated to contain drugs and are crossing the border.

At least 100 tonnes of hashish, 15 to 24 tonnes of cocaine and 4 tonnes of liquid hashish are smuggled into Canada each year. Some 50% of the marijuana available in Canada is produced in Canada, but the other 50% is brought in from other countries.

The domestic production of marijuana is estimated to be at 800 tonnes. In 1994 an RCMP operation found that $10 million worth of marijuana was exported from British Columbia to the United States.

To exemplify this point I again quote from a news article, this one appeared in the *Globe and Mail* in April 1999, just two short years ago:

> Dale Brandland, a sheriff from Washington State, testified that many marijuana growers have moved to Canada in recent years to escape harsher U.S. drug laws. U.S. police have said that organized crime groups, including the Hells Angels and various

> Asian gangs, are shipping the highly popular drug back into the United States, sometimes swapping it pound for pound for cocaine.

The 1998 sentiments expressed by the former commissioner of the RCMP regarding the prevalence of organized crime was recently echoed by the president of the Canadian Police Association who has said that organized crime is gaining the upper hand on law enforcement and it is time for tougher laws. Canadian Police Association president, Grant Obst, said:

> Things are going out of control and it is time to do something about it. The biggest problem organized crime has is they have too much money. And our biggest problem is we do not have enough.

Regarding resources this is what the president of the Canadian Police Association said:

> We are fighting a battle with a group of individuals who have it would seem an unlimited amount of dollars available to them.

The old saying goes that it takes money to make money. In Canada it takes money perhaps to be involved in organized crime and it would be very obvious that they seem to have that money.

We need to put in place resources for those individuals who are willing to fight organized crime. It is time our country takes a stand and provides them with the right resources.

Through Bill C-24 the federal government is injecting $200 million over the next five years to implement the legislation and related prosecution and law enforcement strategies. This funding is to build on the $584 million that the RCMP received in the 2000 budget to help fight organized crime.

Although the money is a welcome addition it simply is not enough. I have already discussed that the drug trafficking could be close to $10 billion per year and we are throwing $200 million more at the problem. It seems to be a drop in the bucket.

Canada's national police force cannot fulfil domestic obligations, let alone our international obligations to provide legal and police assistance in countries such as Colombia and Peru due to the previous cuts. The report on plans and priorities for the RCMP funding for 1998-99 to 2000-01 showed a continuous decline in spending for federal policing services.

The cuts affected policing services in the area of drug enforcement, customs and excise, proceeds of crime and international liaison. The cuts affected policing services in the area of drug enforcement. That is organized crime. The area of customs and excise is directly related to organized crime. The area of proceeds of crime and international liaison is also related to organized crime.

There was to be a 65% reduction of the 1996-97 funding levels for the anti-smuggling initiative despite the fact that larger sophisticated criminal organizations continue to successfully engage in the smuggling and distribution of contraband goods.

Without adequate increased funding and more highly trained skilled provincial police and RCMP officers, the bikers, the Mafia and the Asian based organized criminals will continue to have a free run and to smuggle drugs across our borders.

As we have seen in Edmonton and Calgary they will have the ability to kill innocent bystanders who are caught up in turf wars and caught up in money laundering. They will continue to intimidate and threaten. They will continue to injure and kill members of the judiciary, crime reporters, correction officers, and maybe even some day members of parliament.

I would therefore urge and recommend a significant increase in the expenditures proposed in Bill C-24. I do so with the confidence that the majority of Canadians would agree that fighting organized crime is a top priority.

A 1998 report of a national survey on organized crime and corrections in Canada revealed that Canadians support increased funding for the RCMP to combat organized crime. I will quote from page 3 of that document:

> Virtually all respondents want government to spend more money to fight organized crime; in a forced-choice situation, respondents picked organized crime as a spending priority over all other proposed options except health care.

I have only scratched the surface of this most important piece of legislation. I hope to get another opportunity in the near future to speak again to this criminal law bill. Some of the other points in the bill are well worth supporting.

We need to have a concentrated effort on everything it would take to fight organized crime. Canadians want to feel safe. We want to feel safe in our homes, in our communities, in our provinces and in our country. When we look at the survey we understand why Canadians want more money for health care. They want to feel safe. They want to feel if they become ill that the resources are there to help them.

Canadians want to be safe on their streets. They want to know the Canadian government is absolutely committed to keeping communities safe. The great fear many Canadians face is the onslaught of crime. I do not mean petty crime although we want to fight that as well. They fear organized crime because it is a direct threat to our society, to the well-being and safety of our communities, and to our children and our grandchildren.

April 26, 2001 [House of Commons]

Mr. Réal Ménard (Hochelaga—Maisonneuve, BQ)

Mr. Speaker, you know how much I have been concerned about organized crime and the fight against organized crime as the member for Hochelaga—Maisonneuve.

I have to say right off that I find this bill introduced by the Minister of Justice and her colleague, the Solicitor General of Canada, extremely positive. We will certainly have to work in committee to improve it, but I think our colleague, the member for Berthier—Montcalm and Bloc Quebecois justice critic, has also said he is relatively pleased.

I recall that in the early 1990s, we learned as parliamentarians with some stupefaction just how deep the roots of organized crime went in our societies. We were used to calling ourselves a

country of law and order, where basic freedoms thrive and where there is essentially no political corruption. This remains the case and continues to be relevant.

We came to realize in the early 1990s that the real threats we faced as parliamentarians representing a challenge for the future for all of our societies included those related to organized crime.

I think members will remember that the catalyst, the event that triggered this realization, was the killing, the car bomb that went off in Hochelaga—Maisonneuve on August 9, 1995, which for the first time in the history of crime claimed an innocent victim, a young lad of 11, Daniel Desrochers.

I do not think I am wrong to say that because of this event we as politicians realized the scope of the threat of organized crime in our societies.

This was followed by action, which I and other parliamentarians joined in. Not only did politicians realize the scope of organized crime. So did the agencies responsible for law enforcement. Police forces also called for more resources.

Members will also remember that in 1997, two years after the car bombing, the House passed a bill creating the new offence of participation in a criminal organization. A new offence was added to section 467.91 of the criminal code, namely the offence of participating in a criminal organization, of gangsterism.

That bill was passed very quickly. We were fairly convinced that it would provide a useful additional tool to law enforcement bodies and police forces.

One must admit that we had underestimated the incredible adaptability to change of biker gangs.

When we think about organized crime there are two or three realities to keep in mind. The first one is that organized crime exists across Canada. There are 36 biker gangs in all the provinces. The most powerful ones are those that have ties with the Hell's Angels which have managed to set up chapters across Canada. For a long time they had been excluded from Ontario, but last year they managed to move into the Ottawa—Vanier area.

Organized crime has three features. It is a criminal organization that is motivated by the prospect of money and it is generally a transborder organization. It must be realized that organized crime is involved in the import-export business. Some conditions must exist for organized crime to prosper.

In the early 1990s, when I began to take an interest in this issue as a member of parliament, I met a number of police officers. The officer who has been the most helpful, the best trainer and the one who gave me the most judicious advice was at the time the officer in charge at the Canadian Association of Chiefs of Police and the officer in charge of organized crime in the Montreal urban community police department. This officer was Pierre Sangollo, who today is on duty in the small city of Sainte-Julie.

Pierre Sangollo had told me “Never forget that in order for organized crime to proliferate, prosper and expand in a society it needs at least three conditions”. It needs a society with a minimum of wealth since organized crime gets richer through extortion, plundering, robbery

and fraud. Therefore organized crime needs an environment where there is a minimum of wealth.

It needs a society where there are rapid means of communication. When we look at the strategies used by organized crime we see that its members often have contacts in the harbours, in air traffic and in areas where one can make rapid connections with various continents.

To proliferate, organized crime also needs a bureaucratized society. The Canadian charter of human rights is a positive document, in its own right. Everybody is in favour of a society where the rule of law is paramount, where everyone is equal before the law and where constitutional protections exist. I am sure parliamentarians who passed the charter of human rights in 1982 never expected there would be such obstacles to the fight against organized crime, for the charter has proved to be in certain respects an ally in the proliferation of organized crime.

I will give you an example of this. Some clauses of the charter provide that everyone has a right to full justice. Some natural justice principles are entrenched in the charter of rights. My colleague and friend, the member for Chicoutimi, knows that principles of natural justice are entrenched in the Canadian Charter of Rights and Freedoms.

In the early 1990s the supreme court handed down a ruling, called the Stinchcombe ruling. Under this ruling crown attorneys have to disclose all the evidence they have against the accused.

When the subcommittee of the justice committee was struck it travelled across Canada. Crown attorneys told members that a criminal investigation involving some shadowing of members of organized crime can easily cost the state, the crown, $1 million.

With the Stinchcombe ruling members can imagine the reproduction and reprography costs involved when there are tons and tons of documents by the boxful.

When I travelled to Vancouver I was shown, while the crown was preparing the trial of some members of organized crime, a room the size of the House containing full boxes of documents used by the crown to prove its case. These documents had to be copied and provided to the defence.

This had to be done because of a principle entrenched in the charter of rights. One can imagine how complicated it can be for those implementing the act to deal with such situations.

In order for organized crime to prosper a certain number of conditions are required: a bureaucratized state where there are constitutional guarantees for all, a society where routes allow transborder trade, and a society which is bureaucratized and often acts as an ally of members of organized crime.

In spite of all this, in 1997 we passed it in good faith. I remember that the five parties in the House at the time were unanimous. We passed the bill in less than one week at all stages. In committee everyone worked in good faith; everyone acted quickly.

We had with Bill C-95 a new tool that we thought would be effective in the fight against organized crime. What was that tool? It was a definition in the criminal code creating an

infraction for gangsterism. When five people were convicted of a crime punishable by a five year term in prison they were considered to be a gang. To take part in a gang crime, to take part in its money making schemes and to commit a crime for gang members was punishable by a 14 year prison sentence.

We were convinced that with this tool, Bill C-95, we could bring down the heads of organized crime. In 1995 there were 36 biker gangs: Hell's Angels, Rock Machine, the Outriders and so one. There were 35 of them across Canada. Believe it or not, in five years, with Bill C-95, we have been able to press charges in only three cases.

Between 1995 and 2000 no more than three trials in all of Canada were conducted on the basis of Bill C-95 and the new infraction in the criminal code.

Why were we not able to bring the leaders of organized crime to justice? Because organized crime is smart. Organized crime has means. Organized crime is rich and has a formidable capacity to adapt.

What did the leaders of organized crime do? They set their various groups up as satellites. The Hell's Angels created affiliate clubs: the Spartiates and the Nomades, to name them. These affiliates recruited young people without records, people who had not in the previous five years committed an offence punishable by five years' imprisonment and who could not therefore be brought before the courts.

This is why the crown prosecutors told us “The tool you gave us with Bill C-95 does not work, and the definition of organized crime has to be changed”.

I would like to give an example of how ineffective the tool we adopted was. I have to say that the government did not drag its feet with respect to organized crime. There are at least six laws that were amended, including the proceeds of crime legislation, the Witness Protection Act, and the law that permits shadowing and setting up storefronts legally. As lawmakers we have been extremely busy with legislation on organized crime. It has not been a partisan issue in recent years.

I have a number of examples. Dominic Tozzi, one of the greatest money launderers ever caught in Canada, got out of prison two years after being sentenced to 10 years in penitentiary for laundering $27.2 million. Dominic Tozzi laundered $27.2 million. He was sentenced by a court of law to 10 years in prison, but with the applicable rules of law he was released after two years.

Antonio Volpato, one of the major figures in the Montreal Mafia, was released after serving one year of his sentence instead of six. The sentence arose from a charge of plotting to import 180 kilos of cocaine. It is rather a lot in terms of an offence.

There is also Joseph Lagana, a former lawyer and financial adviser to the mafia who served two and a half years of a 13 year sentence for importing 558 kilos of cocaine and laundering $47.4 million.

Even after passing Bill C-95 and amending six acts recently, there have been situations involving known members of organized crime. We are not dealing with young offenders

subject to the Young Offenders Act but rather known criminals capable of laundering $47 million with the support of a huge network.

These are all challenges we had to overcome in order to fight organized crime. I am sure members all have in their ridings, and there may even be some in the gallery today, people who think it is easy to crack down on criminal organizations. As parliamentarians we now know that it is extremely hard and that we need much more powerful tools than the ones we have now.

Faced with this problem the justice minister, with whom I regularly train in the gym, introduced a bill that would change the definition of organized crime slightly. The organized crime offence will be much easier to prove in court. It will no longer be necessary to have five people who have committed punishable offences in the last five years. Organized crime and the related offence of gangsterism are now defined as participating in or contributing to any activity that helps a criminal organization achieve its objectives.

It is also provided that a well known leader of a criminal organization like Mom Boucher is liable to life imprisonment. This is interesting. For a long time that was the problem. We were able to convict members of criminal organizations but not their leaders.

With the proposed amendment to Bill C-24 this should be much easier to do.

I will conclude by pointing out another positive aspect of the bill. The notion of offence related property will be broadened so that the proceeds of crime money laundering act will be used a lot more. This is another very positive aspect of the bill.

In conclusion, every citizen must feel concerned by the issue of organized crime. Organized crime affects all communities. It does not affect only poor communities.

I believe that Bill C-24, which can be improved on in committee, is an excellent piece of legislation. I will be pleased to work with the hon. member for Berthier—Montcalm and with members from all parties to improve this bill in committee between now and the month of June.

May 8, 2001 [Standing Committee on Justice and Human Rights]

Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.

… Bill C-24 also adds new legislative provisions of particular value and effectiveness in targeting organized crime. The first set of proposals will amend the proceeds of crime provisions in the Criminal Code. Parliament adopted proceeds of crime legislation in 1988 that referred to the term “enterprise crime” and included some 20 offences identified as falling within the ambit of that term. Under Bill C-24, all indictable offences except those that will be excluded by regulation will be the subject of proceeds of crime provisions.

As we all know, organized crime operates internationally. A number of recent international instruments and conventions contain provisions regarding countries being able to give effect to foreign confiscation orders. In fact, Canada has used the enforcement systems in other

countries, but it is itself unable to reciprocate. Bill C-24 will allow Canada to cooperate with its partners by facilitating the execution of forfeiture orders issued in foreign jurisdictions.

The Criminal Code contains at the present time a limited regime whereby offence-related property, that is, property that has been used to commit an indictable offence, may be seized or restrained and confiscated. This scheme, however, is limited to property used in relation to the commission of criminal organization offences. As a result of the limited application of the forfeiture scheme, we have, as in the case of proceeds of crime, two classes of criminals: those whose offence-related property is subject to confiscation, and criminals whose property has been used to commit an offence but cannot be confiscated. Instruments used to commit crime will therefore be targeted more comprehensively if Bill C-24 becomes law.

At the same time, and in order to ensure fairness in the process, a proportionality test has been included such that no forfeiture will occur if the forfeiture of the property in question is disproportionate to the nature and gravity of the offence and the circumstances surrounding its commission. A further protection is made available in respect of possible forfeiture involving dwelling houses in that the court will also have to consider the impact of a forfeiture order on the members of the accused's immediate family if that dwelling house is their principal residence.

I have discussed the background to and justification for the various elements of Bill C-24 and I hope that I have at least addressed some of the questions and concerns you may have. Canadians and other stakeholders are eager for us to enact this bill and to move on to the important implementation stage.

I look forward to working together to ensure the speedy passage of this bill.

May 8, 2001 [Standing Committee on Justice and Human Rights]

Hon. Lawrence MacAulay (Solicitor General of Canada)

…The bill would also expand the seizure and forfeiture of proceeds of crime. As it stands, the courts can take away proceeds of crimes such as drug traffic, murder, and fraud. Soon they will be able to take away the unlawful proceeds of most indictable offences.

These changes will make our 13 proceeds of crime units established in 1997 even more effective. These units, which combine the resources of the RCMP and those of other police and government agencies, were created to target organized crime groups and seize their criminal profits.

To date, over $100 million in criminal assets has been forfeited and fines imposed. More than $180 million in assets has been seized and is subject to court proceedings and possible forfeiture. The proposals in Bill C-24 will also complement our efforts and legislation against money laundering…

May 8, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

Mr. Lynn Myers (Waterloo—Wellington, Lib.): Thank you very much, Mr. Chairman. I have three quick questions.

First of all, I want to thank the ministers for being here today. More to the point, in speaking to a number of people and Canadians across the country, I know they support the fact that Bill C-24 has been brought forward. They believe it is in fact appropriate given the circumstances and, more to the point, the problems associated with organized crime.

Minister MacAulay, I want to pick up on what was being said previously with respect to clause 2 and proposed sections 25.1, 25.2, 25.3, and 25.4, that being that you as a competent authority make the designations based on advice from police officers and senior officials.

When I first read the white paper of June 2000, I was a little concerned about that section. The white paper seemed to imply that there was going to be greater interference on behalf of the ministers. When I see the legislation as it is drafted now, it gives me greater comfort, because it seems to me that it's more arm's-length. I think that's precisely what police officers and people in the field wanted to see, based on their experience. I wonder how that transition took place, from what the white paper seemed to imply, to what is in the legislation as it has been drafted and which seems to me to be more reasonable.

Mr. Lawrence MacAulay: What do you want me to do, Lynn? Do you want me to explain where we are now, or the consultations—

Mr. Lynn Myers: No, I think I understand where you are now. I wondered what took place between the white paper and the legislation. The white paper seemed to be more involved. In other words, you would have been more involved on a day-to-day basis. That's my reading of it, anyway. I think it's a good transition.

Mr. Lawrence MacAulay: It is a very important issue in all countries, I think—and in this one, too—to make sure solicitors general or ministers are not involved in the operational areas of the police forces in the country.

Needless to say, the Minister of Justice and I had discussions with a lot of different groups in this country, including a lot of different police forces and organizations, as I indicated. They certainly also were.... How we arrived where we did arrive was with a lot of assistance from this committee and from police organizations across the country. That is, in fact, how we got to where we are.

As I said, when I sat down—and it is certainly a very interesting experience to sit down with undercover agents who are, without a doubt, risking their lives in order to make sure we have a safer society in this country—they explained to me exactly what they needed, why it has to be them, and why it has to happen so quickly sometimes. Of course, there has to be accountability, but there are times when a police officer who is operating undercover has to do something fairly quickly, and he has to be able to do that without going back and getting a whole lot of papers signed. The big thing is to make sure they are able to operate in an effective manner in order to infiltrate these organizations.

It is more than organized crime. The example, Lynn, too, is that if you're investigating a murder and someone needs to do undercover work in order to obtain information that the police feel would convict somebody, I would not know about that. All I would know is that these people are designated, but I should not know about the specific case. What they have to be able to do is have the authority to send these people in and be able to collect the evidence in order to convict the person. That's why it's not just specifically organized crime. If it's murder or other things, they have to collect the evidence for that.

Mr. Lynn Myers: I applaud your ability to hear that message, because it seemed to me the message in the white paper was that we don't trust police to be able to do the job. What you're now saying, though, in effect, is that you do trust the police to do their work, and I applaud that.

Mr. Lawrence MacAulay: Not only do we trust the police, Lynn, the people of this nation trust the police in this country, which is very important.

Mr. Lynn Myers: When I was the head of the Waterloo Regional Police Service—700 police officers in a population of about 450,000 people—one of the things I saw, not on a daily basis but certainly from time to time, was the lack of coordination that exists between some of the policing authorities—in other words, provincial police, the RCMP, and local regional police. I'm glad to see that's being addressed, but I'm wondering if you could elaborate a little bit more about the kinds of efforts you're putting into this matter, because it seems to me that until and unless we get the full cooperation of policing services across the country, it's something to strive for, it's something important, and it's something that's required. I'd like to hear what you have in mind in terms of making sure that is a constant and a given.

Mr. Lawrence MacAulay: Well, Lynn, yes, last September the Minister of Justice and I had a meeting in Iqaluit with provincial and municipal counterparts. We announced a national agenda to combat organized crime.

What we're trying to do is make sure we have much more of a coordinated effort on research, and enforcement, and as Anne indicated, in legislation. In fact, that's how you reach a general consensus as to what the best approach is to use in legislation like this. If you involve all the players, you're going to have better cooperation.

That's what's taking place with this piece of legislation—making sure we involve as many people as we can. That's why the meeting last September, the meetings previous, and hopefully the meetings down the road are so important to make sure you have a coordinated effort in order to fight organized crime.

The problem is you can duplicate services, you can duplicate actions, and with that you waste funds—much needed funds—in order to fight the enemy, which is organized crime. I certainly believe we're on the proper track, but there's always need for changes.

The Chair: Thank you very much.

Mr. Cadman, three minutes.

Mr. Chuck Cadman: Mr. Chair, I think we all recognize the international scope of organized crime. We can't do it all by ourselves.

I was just wondering if you could elaborate to an extent on what degree you've involved your colleagues in Immigration and Foreign Affairs in this.

Ms. Anne McLellan: You're right, to effectively fight organized crime, you not only have to have an effective domestic strategy, but you have to be working with your international partners, since organized crime, because of technology primarily, knows no borders—especially if you're looking at crimes like money laundering, since because of technology you can move money around from country to country quickly and fairly secretly.

We—my colleague the Solicitor General and I—obviously understand that if we are going to have an integrated approach to organized crime, we not only have to work with the provinces and the territories, local, provincial, and federal police forces, but you also have to work with colleagues such as the minister for national revenue, who is responsible for customs and is on the front lines of our anti-smuggling initiatives. We also have to work with the minister for immigration, because tragically, one of the new profit centres for organized criminal associations is human-smuggling.

Internationally, we discussed this in Milan a few months ago, there is this whole developing area of what we would describe as effectively a slave trade in which women and children, primarily female children, are sold into sexual slavery and other forms of slavery and brought across borders illegally and unknown to law enforcement authorities.

We're very aware of the kinds of problems that are emerging and the new profit centres, tragically, for organized crime, and we all have to work together. In fact, we and our officials.... Everything you see today is the result of interdepartmental meetings and discussions that involved our colleagues in key departments like national revenue and immigration, because they have important pieces of this and we all have to be working together.

May 8, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

Mr. Stephen Owen (Vancouver Quadra, Lib.) Thank you, Mr. Chair, Ministers.

I have two observations that each minister may want to comment on. One is with respect to the ports police. We've heard many comments over the last few years about the elimination of the ports police. I'd like to reflect on our experience in Vancouver and wonder, perhaps to the Solicitor General, whether this is something that's common across the country. Not to exaggerate the situation, but the ports police in Vancouver were spectacularly unsuccessful in identifying and investigating cases of smuggling through the port. At the request of the Vancouver city police, working in cooperation with the RCMP, the decision to eliminate the ports police was supported. Funds were given over to the coordinated, concentrated, and much more effective, it turns out, operation of RCMP and city police, to have extra resources to take over that role.

Is this something that has happened across the country as well? Because we continue to hear

concern about the elimination of ports police, as if this is somehow a reduction in the effectiveness and the resources going to this investigation of crime.

The second observation is with respect to the increasing complexity of police investigations and prosecutions. Particularly with respect to organized crime and around such things as disclosure rules, proceeds of crime rules, now extra definitional rules, search and seizure, and wiretap evidence, it's increasingly important that lawyers be involved to give advice to the police at earlier and earlier stages if we're going to have successful prosecutions. And yet in this country, distinct from the United States, we have a tradition of recognizing the different roles of police investigation and crown counsel prosecuting crime.

I wonder if the Minister of Justice might have some comments on how we're going to respect that distinction in role while police and prosecutors become more entwined at an earlier and earlier stage.

Mr. Lawrence MacAulay: Thank you, Mr. Owen. The fact of the matter is, the RCMP and Canada Customs, as you indicated, are both very active in this area of watching the drug flow and making sure that the RCMP fulfils its mandate in that area.

There was some concern previously, and of course that's why changes are made. Changes are made in order to improve, to make sure the funding allocated, no matter who gets it—all the dollars are ours, nationally—is spent as effectively as possible. With the cooperation we've had with the RCMP and Canada Customs, and with the municipal police, it is, in fact, more effective.

Ms. Anne McLellan: In relation to your second point, Stephen, I'm going to let Yvan tell you about some of the things we are doing, and perhaps some of the changes we've made to better integrate, at least in certain ways, advice from lawyers working in and around proceeds of crime issues in terms of their advice to police.

I'll turn it over to Yvan.

The Chair: Try to be brief. We have a couple more and only two minutes left.

Mr. Yvan Roy: I'll try, thank you, Mr. Chairman.

You have those integrated proceeds of crime units, 13 of them in the whole country, where lawyers working for the Department of Justice are involved. However, in order to protect the need for crown prosecutors to be independent, they do not make the determination as to whether charges should be laid or not. They give advice as part of the investigation but they don't make the final determination as to whether we're going to court with these cases, for the very reason you give—that is, trying to keep the balance between giving advice on the one hand, and on the other, making the decision at the end of the day that a case should go to court.

May 8, 2001[Standing Committee on Justice and Human Rights][Entire Exchange]

Mr. Dave Douglas (Chief Officer, Organized Crime Agency of British Columbia): Thank you, Mr. Chairman.

It's a joint presentation this afternoon. I'm going to make some opening remarks concerning the organized crime situation in British Columbia. Then Inspector Ryan from our proceeds of crime unit is going to talk specifically about Bill C-24. His speaking notes are available to this committee, and a copy has been given to the clerk.

In British Columbia, it's safe to say, the face of organized crime has changed a great deal in the past five years. British Columbia, like the rest of the country and the law enforcement agencies around this country, faces unprecedented challenges.

Globalization is a factor. When we look at the map of the world, we see borders, but when organized crime looks at that same map, they see no borders, no jurisdictional boundaries, just a seamless capability for criminal activity. This has created a tremendous international movement of criminals and related commodities, especially in British Columbia, where the geography of organized crime kicks in with seaports, airports, extended border and coastline.

We're faced with the challenges of what we call the fusion of these criminal groups. Organized crime groups now are run like corporations, because they see the benefits of cooperation. They've developed non-traditional alliances, and the turf wars of the past that caused internal disruption are gone. They're now pooling their resources for a common criminal purpose. These groups have become very entrepreneurial and are involved in multi-commodity criminal activity, which crosses over traditional law enforcement stovepipes, such as drugs, customs, and immigration.

• 1535 

We're faced with the challenges of the new technological age. The technology that fuels legitimate activity also fuels criminal enterprise. A wide variety of transnational organized crime groups are heavily involved in cyber-crime. Russian organized crime recently attempted a cyber break-in of Citibank in an effort to steal $10 million, and we see traditional Italian organized crime moving toward online Internet gambling. They see it as an emerging trend. They've done the risk assessment, and it involves less risk than drug trafficking.

We're faced with the challenge that our police cellphones and pagers are monitored and intercepted by scanners and computers. The Hell's Angels are using the Internet to send encrypted messages between chapters. Proceeds of crime are used to finance legitimate companies, which creates unfair competition. In the Haney chapter of the Hell's Angels you'll find 32 legitimate online trading businesses.

So what does this mean for us in law enforcement? In B.C. all of our investigations go international immediately.

We are now faced with the aspect of Asian organized crime, which is laundering in excess of $1 million a day in British Columbia. The moneys are being sent offshore to be reinvested in real estate and businesses in China and Vietnam. These businesses are sold off, and the money is reinvested into illegitimate and legitimate businesses here in Canada.

The solution to organized crime, as I've said before, lies in the political will, funding, and police leadership. From my perspective I've seen that political will evolve over the last year or so. With police leadership we are beginning to mirror organized crime, developing local, national, and international partnerships; allocating our scarce human, fiscal, and material

resources to our priorities; pooling our expertise; utilizing geography and technology to our own advantage; and being innovative in the process.

In the area of funding, I think the government has to be innovative. The government has to recognize the contribution of other provincial police agencies in this country besides the RCMP. The Organized Crime Agency of British Columbia, like other provincial police agencies, has a mandate to fight organized crime nationally and internationally.

In reality police agencies such as ourselves can only expend approximately 8% to 10% of our existing police budgets on actual front-line policing projects to address the organized crime situation in Canada. We need a mechanism whereby we can come to the federal government to obtain funding for specific projects that have a national interest, such as the Hell's Angels or Asian organized crime. Right now that mechanism is not in place. I'm certainly not afraid of reaching any benchmark of accountability that would be placed on such funding.

With our current operational model, I'm confident that we will succeed in having the necessary impact on organized crime.

Inspector Mike Ryan (Proceeds of Crime Division, Organized Crime Agency of British Columbia): Thank you, Mr. Chairman.

I'll be reading from a prepared text, which Chief Douglas indicated had been handed out earlier. British Columbia has always placed a priority on attacking the financial basis of organized crime and offences committed to benefit criminal organizations. That must continue to be a priority in order to effectively stop criminal activity. To accomplish this it is paramount that some of the provisions of Bill C-95 be retained and expanded, specifically matters that relate to restraining and forfeiting proceeds of crime. Also, those provisions that extend part VI, wiretap authorizations and access to income tax information in relation to criminal organizations, must continue in order to ensure that the police have the necessary means to investigate organized crime.

Bill C-24 may, however, fall short in its effect on organized crime at an international level. Where a group of three or more persons—and persons in the Criminal Code may be real or corporate persons—has as one of its main purposes or activities the facilitation of one or more serious offences, presumably some or even all of those three persons may be located outside of Canada. While the most visible aspect of organized crime is often the acts of violence and drug abuse on the streets of Canadian towns and cities, those events are often caused by competition between rival groups regarding international distribution systems. The true power base and decision-making process are often in another jurisdiction. This legislation must include some consideration of the international aspects of organized crime in order to be effective.

Precedents for this suggestion can be found at part XII.2 of the Criminal Code, section 462.31, which covers acts or omissions that occur anywhere in regard to money laundering if those acts or omissions constitute an enterprise, crime, or designated offence in Canada. Also, at part IX, section 354, where acts or omissions respecting the possession of the proceeds of crime occur anywhere, if they had occurred in Canada, it would constitute an offence. These two offences were constituted to recognize the fluidity of criminally derived wealth, which flows easily through international boundaries.

• 1540

Criminal organizations are similarly fluid, as their members' acts of facilitation and material benefits recognize no boundaries. Consider what might occur where frauds, stock market manipulations, or weapons trafficking are committed by an organized crime group that structures itself so that one of the requisite three components is not located in Canada. In order to advance prosecutions with regard to money laundering and the possession of the proceeds of crime, it is necessary to prove the substantive offence from which the criminal benefit was derived. If the offence of participation in a criminal organization cannot be established due to international structuring, it may be impossible to attack the proceeds of crime derived from that activity.

Also, Bill C-24 states that the substantive offences must be indictable offences of five years or more or any other offence set out in the schedule. It was an anomalous situation that gambling, prostitution, and some other signature offences of organized crime were not caught by Bill C-95. All indictable offences should be included so as to make the application fully comprehensive and thus allow police and prosecutors to move forward with organized crime.

By listing offences we can expect to encounter the problem that certain offences will not be part of the legislative scheme when they are needed to counter organized crime. Advances in communication technology will create new methods of committing all profit-generating crimes, some of which have been and others that have not been heretofore utilized by organized crime groups.

All crimes related to the financial industry and the developing world of e-commerce must be considered under the umbrella of this legislation. For example, we are predicting that Internet gambling will become extremely significant to organized crime and money laundering. Yet Bill C-95 did not capture that offence as it was not punishable by imprisonment of five years or more.

The most important question surrounding Bill C-24 is whether the elements of the offence can be proven in court. While some maintain that the elements of the existing criminal organization offence are extremely difficult to prove without a confession, adequate intercepted communication, or gang member turned witness, the significant issue presented by this legislation is whether it will be seen as charter consistent.

What is of particular concern is whether proposed subsections 467.1(1) and 467.1(3) will survive, given that there is no requirement to demonstrate that the accused was a party to the offence. These provisions are reminiscent of the murder felony rule that was struck down as not having the required level of intent. The structure of this amendment breaks new ground on the required mental and physical elements and sets undefined points of intent.

The expansion of the definition of offence-related property beyond that which has been found in the Controlled Drugs and Substances Act and what has been introduced in the Criminal Code by Bill C-95 will be an extremely significant benefit to law enforcement. The seizure and forfeiture of the instrumentalities from a broader range of offences will serve to have an immediate deterrent financial impact as well as a punitive impact.

Similarly, the expansion of the definition of those offences from which the proceeds of crime can be seized and forfeited will also be a significant benefit. This could correct the situation where police investigate organized crime groups that specialize in the lucrative manufacture of counterfeit credit cards contrary to section 342 but cannot restrain or seize the proceeds of crime arising from that offence as it is not currently defined as an enterprise crime offence.

Also, there is a need to broaden access to income tax information to all designated offences, as that access is not overly intrusive and is now available only in drug and criminal organization investigations.

The initiatives to deal with intimidation are also seen to be of significant value. However, again, where the offence is applicable only to criminal justice participants, the protection should be conceptually expanded to include all vulnerable persons. It may be possible to develop no-go zones or bubble zones akin to the peace bond provisions of the Criminal Code.

What is clear is that it will become incumbent upon law enforcement to demonstrate the threat posed by organized crime. While this is an extremely difficult task, given the secretive nature of organized crime, there must be constant liaison between front-line investigators, prosecutors, and those in government who formulate criminal law policy to ensure that police have modern, charter-consistent legislation to take on criminal organizations in their totality.

• 1545 

We must remember that criminal organizations do not operate in watertight compartments of drugs-only or Criminal Code-only offences. Criminal organizations engage in offences under a range of federal and provincial statutes.

At the Organized Crime Agency of British Columbia, we have designed our enforcement approach to combat this problem from this perspective. Therefore, it is necessary that we also approach the prosecutional function from this perspective as well. There must be serious consideration given to the formation of joint federal-provincial prosecutional units to effectively marshal all resources against organized crime.

Thank you.

The Chair: Thank you very much.

And now we turn to the Canadian Police Association and le Fédération des policiers du Québec.

Mr. Mike Niebudek (President, Ontario Association of Mounted Police; Vice-President, Canadian Police Association): Thank you, Mr. Chair.

My name is Mike Niebudek. As you mentioned, I am vice-president of the Canadian Police Association. With me today is Mr. Yves Prud'homme, who is also a member of our association and also the president of the Fédération des policiers et policières municipaux du Québec. Mr. Prud'homme will address some issues after my presentation.

Organized crime effects all Canadians. It undermines our economy, reduces our security, and threatens the integrity of our political institutions. In the Province of Quebec, where organized

crime gangs have battled for territory, 150 murders have occurred over the past decades, including the murders of two prison guards and several other innocent bystanders.

The Canadian Police Association recently surveyed front-line police officers—investigators responsible for organized crime investigations in their jurisdictions. More than 50 investigators from coast to coast have responded. There is virtually agreement among these investigators that Canadian police agencies are presently ineffective in controlling organized crime in Canada.

The Canadian judiciary has not utilized existing legislation and available remedies to deal effectively with convicted criminals. Bill C-95 has not provided sufficient legislative support to fight organized crime.

Existing immigration laws and enforcement are not sufficient to deal with criminals originating form outside Canada. Police services do not have adequate funds for organized crime investigations. Greater priority needs to be placed on training and technology. Issues concerning territory, resources, and sharing of information continue to arise between agencies.

Making participation in a criminal organization a crime—it is ironic that those who choose to flagrantly live outside the laws of Canada are the first to seek refuge and protection from those very same laws when confronted with prosecution. Availing themselves of the best legal defence money can purchase, sophisticated criminals will challenge complex legal issues and strict technical compliance of changing rules of law enforcement.

We are pleased by the response contained in Bill C-24, which provides, first, escalating measures for various degrees of involvement with criminal organizations; secondly, a simplified definition of criminal organizations to address existing concerns; and thirdly, consecutive sentencing and increased parole ineligibility for people involved in organized crime.

Rehabilitation is ineffective in dealing with people who have made a lucrative living profiting on their illicit activities. Our sentencing and release practices should in fact focus on tougher measures to deter participation, provide meaningful consequences for criminal activities, and encourage participation with law enforcement by providing evidence against others within their organizations.

Our second point is on protecting people in the justice system from intimidation. The Canadian Police Association has called for greater protection for witnesses, victims, jury members, officials, police officers, and informants who are targeted by organized criminals to defeat the course of justice. With the growth of organized crime in our communities, we are seeing much bolder and aggressive acts by criminals against those who stand in their paths. Police officers, jail guards, judges, members of Parliament, prosecutors, and members of the media have been subjects of threats, intimidation, and violence. We support the proposals to strengthen the offences that deal with these types of conduct. We must be supported, however, with vigorous prosecution and tough sentencing practices to instil meaningful consequences on the abhorrent acts.

An investigator assigned to the proceeds-of-crime unit to address the proceeds-of-crime amendments involved in this legislation has told the Canadian Police Association that finding

cases for proceeds-of-crime investigations was like “shooting fish in a barrel”. His ability to conduct investigations was limited, however, by legislative demands and resources.

• 1550 

The proposals contained within Bill C-24 expand the scope of enterprise crimes for asset seizure and for exporting orders and broaden the application to any property used in the commission of a crime. These amendments address a number of shortcomings of the existing law, and we support the proposals.

[*Translation*]

Fourthly, law enforcement officers must be protected. On April 22, 1999 the Supreme Court of Canada, in the decision of *R. vs Campbell and Shirose*, ruled that the principle of Crown immunity does not cover the actions of a police officer who violates the statute, notwithstanding that those actions were taken to further a bona fide criminal investigation.

A broader base of exemptions for police officers involved in criminal investigations is required to ensure effective enforcement and adequate protection for police officers from criminal liability.

The Canadian Police Association has passed resolutions at our 1999 and 2000 annual general meetings, calling upon the Solicitor General of Canada and the Minister of Justice to introduce a statutory exemption regime that would permit effective enforcement and afford sufficient protection from liability for police officers engaged in all types of criminal investigations.

We have one issue of concern, however, with the concept of limiting immunity from certain acts. We submit that a test of reasonableness would, in any event, prevent the granting of immunity from acts such as recklessly causing death or bodily harm, sexual offences, or obstructing the course of justice.

By prescribing these limitations within law, however, we are essentially flagging for sophisticated criminals the types of crimes that will be demanded of their subject in order to establish loyalty and preclude infiltration. This may in fact cause greater harm than good, and we have expressed reservations about this approach.

In conclusion, Mr. Chairman, we are pleased to convey our support for this legislative package. There remain, however, issues that still need to be addressed and we would like to enumerate several of these for your information.

Colleagues have told us that some investigations have reportedly been abandoned due to the high cost of maintaining wiretaps, including the cost of monitoring, translation and transcription. Others fail to get off the ground.

For example, we need to streamline the criteria for obtaining warrants and electronic surveillance orders for organized crime offences.

Disclosure requirements place onerous obligations on the Crown and law enforcement to copy all documentation and materials, including sensitive witness or victim information, with little

regard for cost or efficiency. Efforts to use electronic means for transfer, such as CD-ROM disclosure packages, have generally been rebuked by the defense bar and judiciary.

There is a desperate need to strengthen our correctional system to restrict the illegal activities of organized criminals within our correctional institutions.

We must provide greater funding, technology and protection to our borders to prevent the smuggling of illegal contraband, including people, drugs, child pornography and firearms.

Sophisticated organized crime groups are exploiting technology, yet police services struggle to adopt new and emergent technologies and methods.

Ultimately, the federal government has to invest sufficient resources to provide ongoing support for a comprehensive multi- jurisdictional inter-agency approach.

I will skip some of my notes in order to allow my colleague from the Quebec Federation of Police Officers to elaborate on these points.

The Canadian Police Association advocates the development and implementation of a strategic national response to organized crime, providing greater priority, funding, support and coordination for local, provincial and federal police jurisdictions.

In closing, we appreciate the attention that the Minister of Justice, the Solicitor General of Canada, their officials, and the members of this committee have dedicated to this effort, and we are pleased to convey our appreciation and support.

• 1555 

The Canadian Police Association remains committed to working with the members of this committee, the government of Canada, and other stakeholders, to address this significant public safety concern.

Thank you. I will now give the floor to Mr. Yves Prud'homme, President of the Federation of Quebec Municipal Police.

The Chair: Thank you.

Mr. Yves Prud'homme (President, Fédération des policiers et policières municipaux du Québec, Canadian Police Association): Mr. Chairman, members of the committee, ladies and gentlemen, honourable members, I would like to thank you all for having allowed us to meet with you in order that we as well as the representatives of the Canadian Police Association present our comments on Bill C-24.

I would briefly remind you that the Federation of Quebec Municipal Police is an organization representing 120 union associations and over 8,800 municipal police officers throughout Quebec, including, obviously, the Fraternity of Police Officers of the Montreal Urban Community,

As you are no doubt aware, the increasing phenomenon of organized crime in Quebec, specially biker gangs, has led different police organizations to ask the legislator for antigang legislation in order to counter this specific type of crime.

In 1993, as President of the Montreal Urban Community Police Department Fraternity, I denounced the absence of legislative means and resources, both financial and human, and requested that the various governments support their police officers in the fight against this scourge. The government answered our concerns in part, but the complexity of Bill C-95, adopted in 1997, made our jobs just about impossible.

Today, we would like to congratulate the Minister of Justice, the Honourable Anne McLellan, for Bill C-24, which in a certain sense corrects what was lacking with the previous bill. We all agree that these criminal biker gangs are, in every aspect, gangs of individuals without scruples who do not hesitate to commit crimes, each and every one heinous, sometimes and even often leading to the death of innocent victims. These exceptional types of crimes require, in our opinion equally exceptional means to put an end to these acts of extreme violence.

We feel that Bill C-24 does not go far enough sending a clear and equivocal message to those working in this milieu.

Aside from the measures contained in Bill C-24, we feel that the government should envisage harsher deterrents, such as reverse onus, which would mean that the accused would have to demonstrate that they are not guilty of the offenses with which they are charged and the Crown would have to demonstrate that the charges laid and offenses committed are related to organized crime. This reversal of the onus should also apply to the proceeds of crime and specifically to the profits of organized crime and goods seized. Therefore, it would be up to the people affected by this measure to demonstrate that their goods do not come from the proceeds of crime.

As to access to parole, we feel that the proposed changes are insufficient. In our opinion, legislation should deny access to parole for those individuals who are found guilty of organized crime related offenses.

As to the resources required to efficiently combat these very wealthy criminal organizations, they are clearly deficient. On April 20th, we sent the Right Honourable Jean Chrétien, Prime Minister of Canada, a letter indicating how disappointed we were as to the sums allocated to fight this type of crime.

In fact, no new money has been added to the budget of municipal police organizations who participate in joint task forces with our police provincial and federal police brothers and sisters. Without the funding, it is impossible to increase the number of police officers and, by the same token, efficiently fight this type of crime.

To sum up, Mr. Chair, we support many of the amendments put forward by the minister, but we are seeking a more hardline approach in the hope that one day our zero tolerance policy will be an effective deterrent on organized crime.

Thank you for your attention.

The Chair: Thank you.

[*English*]

Finally, the Canadian Bar Association.

• 1600 

Ms. Joan Bercovich (Senior Director, Legal and Governmental Affairs, Canadian Bar Association): On behalf of the Canadian Bar Association, thank you for the opportunity to appear before you today.

As many of you know, or all of you know, the Canadian Bar Association is an association of over 37,000 lawyers across the country, and our national criminal justice section represents both crown prosecutors and defence attorneys from across the country. Our submission will be presented by Greg DelBigio today. Mr. DelBigio is an active member of our section and has appeared before this committee and others on various criminal justice matters over several years. He will present the submission and will be happy to take any questions that you might have.

Thank you.

Mr. Greg DelBigio (Member, National Criminal Justice Section, Canadian Bar Association): Thank you. I am pleased to be here. I want to thank you for the opportunity. I am pleased to be making a presentation at the same time as these police groups.

This bill is of enormous significance. We received two days' notice of this hearing, so my submissions today are not going to be complete, but silence or a failure on my part to address some points should not be interpreted as acknowledgement by the CBA or an endorsement of the provisions that I do not speak to.

The themes I'm going to speak to today are whether there's a demonstrated need for a significant change to law. Is there evidence of necessity? Is the bill an appropriately measured response to needs that exist? Once again, the CBA takes the position that some of the proposed changes are very significant; they fundamentally alter some provisions of law as they now exist.

I listened to the police groups speak and to their submissions, and I hear frustration. There's no doubt that policing is a difficult task. I have no doubt that funding would improve their opportunities to attain the objectives that they work to do. I hear them speak of proceeds of crime, and it might be that responding to proceeds of crime and money laundering is an effective way to attack organized crime. But the bill goes far beyond that.

The concern that the Canadian Bar Association has is the maintenance of the rule of law. The Supreme Court of Canada said that it is a deeply ingrained value in our democratic system that ends do not justify means. Frustration with the current ability to enforce law in an effective way must not give way to responses that are not measured and that are not necessary. If there is treachery in the criminal element, it does not follow that the police must be allowed to be equally treacherous. Such reasoning tears at the fabric of our democracy. Such reasoning undermines our rule of law. It is imperative above all that the rule of law be maintained.

The CBA takes the position that the evolution of law must be slow and measured, and it's only then that it's possible to determine the efficacy of any change that might be brought about—whether a change will enhance the ability of the police forces to obtain their objectives, or whether the change will operate in a way that is undesirable. Slow change is needed for that

reason. Historically, the law has evolved in slow and measured ways. But this bill departs from that. Rapid change in law may disrupt the law in ways that cannot be predicted….

Mr. Dave Douglas: I'd like to make a brief comment on the number of Bill C-95 investigations that we have ongoing in British Columbia. The difficulty with that legislation and putting it into an effective enforcement model is sheer dollars. It costs anywhere from $1.25 million to $1.5 million to investigate one colour-bearing member of the Hells Angels. These groups have formed themselves into a cellular structure. They're difficult to infiltrate. Once you get in there, it's costly to continue that investigation. It takes a long time.

In Edmonton recently—it's an ongoing case right now, the first test of the new anti-gang law—there are 33 accused, plus two corporations, on charges of conspiracy, money laundering, and drug trafficking. The trial should last six months. The crown's case involves 70,000 pages of documents, 450 tapes containing 4,300 conversations, and the jury will be required to bring in more than 200 verdicts. So this is a huge project, never mind for the police, for the judiciary too.

I think it boils down to, first, the ability of the police to investigate criminal organizations via Bill C-95, and that comes back to the leadership issue, where we're focusing and allocating our resources to our hard priorities and our hard targets. Furthermore, down the road, it involves the ability of the judiciary to handle the sheer volume of that kind of testimony.

May 8, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

Mr. Dave Douglas: Within the agency we have a ports component, which is a joint force operation with the RCMP, ourselves, Canada Customs, the ports corporations, and it's a component within the agency that strategically targets those kinds of organized crime groups around the ports. The Hell's Angels, I believe, have 37 members on the longshoremen's union there.

We've been very successful in the past three or four months in making numerous seizures at the port of Vancouver, both in the container port and other ports over on Vancouver Island. And we're successful at it because we strategically target key groups for enforcement. I think the sheer volume of container traffic there is somewhere in the neighbourhood of 1.5 million containers a year. So trying to detect it in any other way is almost impossible, unless by sheer luck.

• 1655 

But as I said before, by strategically targeting for enforcement those key groups who use the port of entry, we've been very successful in the last few months with seizures of tonnes of marijuana in containers, alien smuggling, and 2.5 tonnes of cocaine that were seized just off the coast of Vancouver Island. We've been very successful.

Mr. Chuck Cadman: As a percentage, how much are you actually nailing?

Mr. Dave Douglas: I'll give you a good example of this. Through the intelligence that was gained in the investigation of a recent case that involved 200 kilograms of heroin in a container that was seized, the day these people were arrested—and this is a three-year investigation that cost $7 million—there was another seizure taken in the Toronto area.

They were talking about holding back on distributing the 200 kilos of heroin so the price would be driven up in Canada and they'd make more money at it. Meanwhile, back at the ranch, because they're figuring they're going to make more money at this, they're ordering another container. In the end, we found they had already brought in 17 containers in the past year that we didn't know about. So what are we getting? It's hard to say. There are huge amounts of narcotics coming in through that port.

The Chair: Thank you very much.

Ms. Sgro.

Ms. Judy Sgro (York West, Lib.): In regard to the proceeds of crime that we talk about a lot, are you seeing any of the benefits down at your local level? This is, in particular, to the fellow from British Columbia who talked about it.

Insp Mike Ryan: Under the Seized Property Management Act and the regulations, any investigations that are prosecuted federally within British Columbia see those forfeited proceeds accruing to the federal government.

We raised this issue with the province in approximately 1997, and I'm aware that the province has written on the matter. At this point in time, the last information I had was that British Columbia does not feel that it's receiving its fair share of distribution from the federally seized proceeds-of-crime program.

Mr. Dave Douglas: I would make one comment on it. In every investigation or project that we build and the major case model that we use to start up our projects, we build in a proceeds-of-crime component. The only way to disrupt and suppress organized crime is to go after the assets. The deterrent just isn't there, so the only way to do it is to seize the assets.

In the last year we have seized in excess of our own budget in cash. We've paid for ourselves in the last year just on sheer money seizures. As I said in my opening remarks, we're faced with, from just one Asian group, Big Circle Boys, $1 million a day being laundered out of British Columbia.

I would say marijuana cultivation is huge. It has to be the number-three export of British Columbia right now.

We're making an impact, but we can get better at it, and we are getting better at it by focusing on key people for enforcement.

I'll give you an example. We target a group, and the coordinated enforcement plan involves two red dots in the middle of this cell. We use the intelligence gained through part VI intercepts to go in and take out those two people with significant money. Within two weeks, there were $2.3 million seized from that one group alone, along with the fact that the seizure

of marijuana was in the millions, the product ready to go south. There's a huge market south of the border.

The Chair: Thank you very much.

May 8, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

Mr. Peter MacKay: Thank you, Mr. Chair.

I'm wondering, from both police and Bar Association perspectives, given some of the concerns that are going to result from the inevitable charter challenges, if it would warrant exploring having this referred to the Supreme Court for a reference, to avoid the inevitable expense and distraction from the real fight against organized crime that is going to result in the prosecutors, in my view, carrying the dual purpose of prosecuting the case and, essentially, preparing the case for the federal government to fight in the Supreme Court of Canada, which is where it will ultimately be resolved. So wouldn't we really be well advised to get this done at the first instance, have the aspects, particularly, of suspension of the normal guidelines that would attach to police behaviour referred to the Supreme Court, and proceed with other elements of this legislation that we can all see the common good in?

Mr. Mike Niebudek: You're talking about specifically the immunity issue?

Mr. Peter MacKay: The immunity elements of this Bill C-24.

Mr. Mike Niebudek: I suppose the Attorney General of Canada could ask for it. How long would that take, how long a process would it be, could it be fast-tracked in order to address the concerns that...? I think it all comes to the issue of the Shirose and Campbell decision, as far as their recommendation is concerned. The judgment, I believe, did not address the fact that it should specifically be thrown through the judicial system, but I believe it only specified that the legislator needs to address it. So if it's done in a very succinct and quick manner, I don't see any opposition to that avenue.

Insp Mike Ryan: Mr. Chairman, I'd like to point out that there already exists in the Criminal Code and in the CDSA 3 examples of police immunity. Under the CDSA police regulations the police are allowed to traffic in narcotics. That is already within the fabric of Canadian law. The second example is the money laundering legislation, section 462, which allows police officers and police agents to launder money if acting under the direction of a police investigation. The third is possession of the proceeds of crime. So we do have some of those exemptions already in place.

The Shirose and Campbell portion of this legislation does present certain broad parameters for police conduct, but the police conduct that I think, from my experience as a police officer, is most encountered is the spontaneous moment when someone gives you a credit card and tells you to go and buy a stereo, and it's a stolen or counterfeit credit card. There is no time for judicial authority. At the end of the day, the police are accountable for the damage and loss of

property. I think the court of public opinion will keep the police accountable for serious breaches of criminal law that this legislation provides for.

Mr. Greg DelBigio: The decision with respect to reference is a difficult tactical decision. Often facts will assist constitutional litigation. At the very least, though, it would be necessary or appropriate that there be full representation by all groups with interest, a full complement of interveners, in this type of litigation, if it should exist. With respect to the three examples of police immunity, I believe, at least in British Columbia, there is right now a challenge ongoing with respect to the CDSA provisions, but it's still at the trial court level, so at a very early stage of test.

May 9, 2001 [Standing Committee on Justice and Human Rights]

Hon. Lawrence MacAulay (Solicitor General of Canada, Lib.)

Thank you, Mr. Chairman. I'm pleased to be here again today to discuss the spending estimates and the priorities of the portfolio of the Solicitor General.

Joining me is the Deputy Solicitor General, Madame Nicole Jauvin; RCMP Commissioner Zaccardelli; the Commissioner of Correctional Service Canada, Ms. Lucie McClung; the acting chair of the National Parole Board, Madame Renée Collette; and the director of CSIS, Mr. Ward Elcock.

As you know, last week I announced the appointment of Mr. Ian Glen as chair of the National Parole Board. He will begin his duties on May 22, and I am sure he will be pleased to meet with members of this committee in the near future. I would like to take this opportunity to thank Madame Collette for her hard work over the past number of months as acting chair of the parole board.

Before we take questions, I would like to update you on what we've done over the past year and how we plan to maintain and improve our country's public safety in the year ahead.

Since my last appearance before this committee, we've taken action on many fronts in a balanced approach to making Canada safer, and we've focused on prevention as much as punishment.

Some of the work includes: tough new money-laundering legislation and the creation of a new Financial Transaction and Reports Analysis Centre of Canada; a new law that makes criminal records of pardoned sex offenders available for background checks, giving further protection to children; proposed legislation to preserve the integrity of our charities by preventing groups with links to terrorists from getting or keeping registered charity status; new resources for police and customs to monitor smuggling activity in the light of tobacco tax increases put in place last month; and responding to the needs of victims, following recommendations by the committee after its review of the Corrections and Conditional Release Act.

But it's in the area of organized crime that we have taken our most aggressive steps. Most of you may recall that the federal, provincial, and territorial ministers responsible for justice unanimously declared organized crime a national priority.

Last September we agreed on a national agenda to combat organized crime. The agenda commits us to cooperate in a number of areas: we created a new process to coordinate policy and priorities, with a committee of deputies reporting to us each year; we agreed to work together to develop laws so that police and prosecutors have the best tools possible to fight organized crime; we agreed to start national data collection on organized crime so that we have a better sense of its impact in communities; and we agreed to support public education and crime prevention, because communities should be active partners in addressing local problems. We have already seen some results.

• 1535 

In April, the Minister of Justice and I announced aggressive new measures in proposed amendments to the Criminal Code on organized crime and law enforcement and new funding to fight organized crime. Bill C-24 is the result of wide consultations with provinces and police. As I indicated yesterday, the bill reflects the work of the subcommittee on organized crime and has received the support of our provincial partners and police.

New resources will be used to put the new legislation in place and build on the government's investment in other areas, like the $584 million that the RCMP received in the 2000 budget for organized crime enforcement, improved national police services, and new communication systems.

On the world stage, last December, Canada was one of over 100 countries to sign a first-ever UN Convention on Transnational Organized Crime. The convention included two protocols—one on migrant smuggling, and another on trafficking in women and children—which Canada also signed.

In addition to working with the UN, we also continue our work with G-8 partners who recently reaffirmed a commitment to fight organized crime.

Our relationship with our closest neighbour, the U.S., continues to be strong, and that is most apparent in our law enforcement and intelligence agencies on both sides of the border.

Take, for example, the very successful Canada-U.S. Cross-Border Crime Forum. It brings us together on problems such as smuggling, organized crime, telemarketing fraud, money laundering, missing and abducted children, high-tech crime, and more. This year's forum will be held June 20, here in Ottawa, and when I met with U.S. Attorney General John Ashcroft in March, we discussed how much we were looking forward to chairing this forum together.

The strength of that Canada-U.S. partnership was also clear in the Ressam case. As you know, Ressam was convicted last month in the U.S. for actions related to terrorism. The verdict sent a strong message to terrorists, and it has pointed to a positive, productive partnership between Canada and the U.S. on enforcement and intelligence.

All the initiatives I've mentioned so far show the value and the strength of our partnerships across government and in our communities. Public safety depends on them. The best way to

make Canadians safe is by making sure all partners work together, and our national information systems are a good example of what practical and partnerships can produce.

The national DNA data bank is one example of such a partnership. You'll be pleased to know that the data bank has already proven to be the powerful investigative tool we designed it to be. Since it opened last June, there have been 22 matches using DNA to link crime scenes to each other or to convicted offenders. With each passing week, there are even more. Clearly the success of the data bank highlights the importance of investing in the very best technology possible.

The integration of justice information to better serve public safety is something we're actively working on with all our partners. Our investment in the renewal of CPIC, modernizing Canada's national police information system so that it's shared more broadly among criminal justice officials, is another example of new partnerships being forged. Significant progress has been made, and CPIC's most urgent needs, regarding accessibility and service disruptions, have already been addressed.

These initiatives bring partners together so that information from different databases will be shared more quickly, using the full benefit of new technology. For example, we want to be able to share police reports more quickly with prosecutors or transmit court records instantly to correctional officials.

When it comes to keeping track of offenders and sharing that information with police, we're also planning major improvements. Yesterday I announced that Correctional Service Canada and the National Parole Board are beginning an extensive $47-million upgrade on the national offender management system, OMS. Corrections officials use this national electronic system to gather, store, and retrieve files on federal offenders. The new funding will bring OMS technology into the 21st century and ensure that information-sharing on offenders is current, complete, and reliable. The upgrade is very important to the operations of Correctional Service Canada and the National Parole Board, and most importantly, will contribute to the safety of Canadians.

As you know, the federal government has put a high priority on keeping Canada safe, but more than that, it recognizes that feeling safe and secure is a fundamental right for all Canadians.

All the major indicators continue to show that Canada is among the safest countries in the world. The crime rate has declined for the past 10 years. Violent crime is down, and the homicide rate continues to fall. In the past 15 years, we've cut recidivism by more than half.

On that front, the National Parole Board will soon release its mid-year performance report, and I can tell you that the results continue to show that conditional release is a sound investment in public safety. Most offenders on day parole, full parole, or statutory release complete their sentences successfully and do not commit new crimes. But we're always looking for ways to improve the process.

I am pleased to announce today that, beginning in July this year, victims will be able to make verbal presentations at National Parole Board hearings. As you know, until now, victims could submit written statements and attend hearings as observers but were not allowed to speak. That will soon change.

Following on the recommendations of this committee, my department has directly consulted with victims and victim organizations across Canada on how best to put these recommendations in place and improve services to victims of crime. Clearly, victims have asked for a voice in the parole process, and I think it's about time we give them the opportunity to be heard.

It's my duty as Solicitor General to lead Canada's efforts in public safety so that we can continue to feel safe in our neighbourhoods. So while it's clear that we've already delivered some tangible results, we will not stop there.

We'll continue to use the tools we have and keep working to develop new ones. That means we will keep building partnerships at home and abroad, use technology to our advantage, continue our research and policy development, work on new laws and update old ones, and focus on programs that work.

We will listen to the concerns of Canadians and keep them informed on how our leadership in public safety is working for them, and we'll do our best to ensure that Canadians can continue to be proud of how safe this country really is and how their government and communities are working together to keep it that way.

Thank you, Mr. Chairman.

May 10, 2001 [Standing Committee on Justice and Human Rights]

Chief Julian Fantino (Toronto Police Service)

Mr. Chairman, you've done your homework.

First, to the honourable members of the committee, I do wish to express our appreciation for the opportunity to come here and speak about a very significant issue that we're all very concerned about. However, I don't think I need to take up a whole lot of time either with regard to the profound issues about which we speak, issues that clearly go to the very fabric of our Canadian society. This is, of course, that whole business of organized crime and its impact. Your own committee material points to a whole lot of those impacts and the economic crime cost to Canadians, and there's no need to articulate that time and time again.

However, we do have some issues that need to be addressed: the whole business of drug trafficking in our society and the ancillary crime that's associated with that, right down to the community level; the whole business of money laundering, home invasions, extortions, high-tech commercial crime. All of these things are not only the kinds of issues that make the nightly news, if you will, but we have real victims and real citizens who are constantly being victimized because of all of these issues.

I do want to get a perspective, though. I have found over the years that organized crime, in the main, has been glamorized by movies and television. It's become, I think, in the mindset of many people a source of entertainment. And I think in some cases it's almost received respectability. Organized crime is none of these things. Organized crime is the elderly being swindled out of their life savings, immigrants being forced into a life of prostitution, one of the

threats to our youth. And of course, we all know about very unfortunate, only too frequent incidents of young people overdosing on drugs and so forth. The bottom line, which we all have to appreciate, is that this is a greed-driven activity. It's mercenary in its nature, it has no conscience, and it's only done for money.

So taking the profit out of organized crime certainly is a very significant tool that needs to be put into the program for maintaining some semblance of safety, security, and quality of life and protecting our nation from the threats posed by the activities of organized crime, which are multifaceted and international in nature—it's global, as we all know.

So I wanted to come here today—and I appreciate the opportunity—to applaud the initiatives that are being proposed in Bill C-24. As you well know, Mr. Chairman, you've been on the forefront with a lot of these things, and we've been at this for a great many years. The issues we have brought forward consistently to you, the policy-makers, have been community-based. I feel that I'm here today, privileged to represent my community, to bring forward community-based issues on behalf of the citizens of the City of Toronto. That is the purpose and intent of my comments, absolutely.

Many of the amendments in Bill C-24 are absolutely critical. But I also wish to state with all candour that, as you would expect, we would hope for more work in this area, to keep the radar screen alive and continue the good work that has now resulted in Bill C-24. It's a work in progress—that's the point I wanted to make, Mr. Chairman.

In order to make significant gains in the war against organized crime, we need even more of the kinds of initiatives contained in this particular bill. I also suggest that some of the provisions contained in Bill C-24 can still be improved, to give us the intended results, which I believe are laudable indeed. For example, Mr. Chairman, members of the committee, the whole area of proceeds of crime is an excellent item. Also, the team investigative prosecution concept that is embodied in the spirit and intent of the legislation, funding to put teams in place at ground zero, if you will, to do this kind of work is very laudable. But it has to go beyond the federal offences to include some of the other offences that are hybrid in nature, but nonetheless not specifically included, as I see it, in the current proposal.

There also is a need, of course, for the federal government and the provinces to work more closely together on some of these issues, especially in the area of prosecutions and the proceeds of crime, the asset forfeiture provisions, etc. We desperately need funding to allow the Department of Justice, the provincial court attorneys, the RCMP, and our municipal and provincial police services to develop a higher effort in this area, to put together what we have termed an all-star team to combat organized crime at a national level.

May 10, 2001 [Standing Committee on Justice and Human Rights]

Chief Jack Ewatski (Winnipeg Police Service): Mr. Chairman, honourable members, thank you very much. It certainly is a pleasure to be here this morning and I thank you for this opportunity.

As the chief of police of one of the major metropolitan areas of this country, I come before the committee today to speak about the most serious threat to public safety in Canada today, that being organized crime.

As a member of the Canadian Association of Chiefs of Police organized crime committee as well as a member of the Criminal Intelligence Service Canada executive board, I can bring forward the fact that organized crime is a national law enforcement priority.

Organized crime is a real and present threat to our society here in Canada as well as to nations around the world. We cannot view organized crime activity in jurisdictional isolation because sophisticated organized crime groups operate in a global economy setting.

The social, financial, and public safety impacts of organized crime are real. The cost in human suffering as a result of activities such as prostitution and drug abuse cannot be measured by dollars alone. The negative impact to our social fabric can be seen by those who have been caught up in the web of deviant lifestyles and dependence resulting from criminal activities and by those whose actions promote a feeling of hopelessness and fear.

When one considers the financial losses associated with organized criminal activities by various criminal acts, not only to individuals but also to our economy in general, it can easily be established that organized crime costs Canadians billions of dollars each year.

Thefts, robberies, drug sales, extortion, and fraudulent acts, to name a few, account for staggering amounts of money and goods that are siphoned from the pockets of honest people, laundered through a network of illegitimate establishments, and put in the hands of those who choose to live outside of society's rules.

Safety, and more importantly, the perception of safety, is negatively affected by criminals, organized or not. It is the fear and intimidation of organized crime that strikes terror into the hearts of Canadians when accounts of violent, ruthless, and senseless acts are reported on.

The feeling of fear can be described as a silent killer of community, health, vibrancy, and spirit.

The Canadian Association of Chiefs of Police understands, as any public safety issue, that organized crime has to be attacked in a multidisciplinary three-pronged approach. Awareness, education, and enforcement are the components of this approach, and strategies must be developed for each one. One of the biggest challenges is ensuring that the Canadian public is aware of the threat that organized crime poses to our country. The heightening of this awareness must be done responsibly to ensure we are not contributing to the feeling of panic, without losing sight that organized crime is real and alive in our country.

Communication strategies must put a face on organized crime to counter the perceptions held by many who believe it only exists in other societies and not in Canada.

We must tackle the problem at the grassroots level with the youth who need to know that organized crime or any criminal lifestyle is not something to aspire to. The glamour of the gangster culture, as expressed in the name of entertainment, is not real. What has to be shown are the real consequences of criminal behaviour, including incarceration and/or a violent early death.

Enforcement needs to be swift, strong, and consistent when criminal activity occurs. Police and all the players in the criminal justice system need the tools to get the job done. We all play a role in this endeavour, and whether it's resources, training, or legislation, these tools must be available to us when needed.

As I said before, organized crime is real in this country. My peers from other jurisdictions can speak with much greater authority about criminal activity in their areas. I can tell this committee that in Manitoba organized crime exists. Motorcycle gangs, culturally based gangs, and enterprising criminals who band together in a non-traditional organized crime model have made their presence known in my province.

Drugs, prostitution, extortion, violent crime, money laundering, and credit card frauds are just some of the activities that have been linked to organized crime groups in Manitoba.

Although the level of sophistication between an international motorcycle gang and a local street gang may differ, they all have one thing in common: they prey on society by various means for their own lawless, selfish purposes, not caring about the damage they do to others.

The proposed legislation contained in Bill C-24 is in my mind a step in the right direction to enhance the capabilities of the criminal justice system to stay ahead of organized crime. These are some of the legislative tools that we as chiefs across this country have been asking for. These tools will be used by our front-line officers to be as effective as possible in dealing with this serious criminal activity.

We must be very clear in the message we want to say to those who believe in a lifestyle of organized crime. The message must come from a united voice of those tasked with public safety. And it must say loudly that Canada is the absolute worst place in the world for organized crime to operate in.

Thank you.

May 10, 2001 [Standing Committee on Justice and Human Rights]

Mr. Irwin Koziebrocki: If Commissioner Zaccardelli says to you, “I need the right to buy stolen goods”, why can't you have a specific provision in the Criminal Code that says the police, in the course of their investigation, can purchase stolen goods?

If Commissioner Zaccardelli says to you, “We need the right to purchase stolen liquor, or the liquor that breaches our customs laws”, give him the right to buy the stolen liquor. If he needs the right to purchase counterfeit money, give him the right to purchase counterfeit money.

Those are things police officers need to do in order to do their investigation. They don't need necessarily to sell drugs. That was the problem in Campbell and Shirose. They decided they weren't going to be purchasers of drugs any more, they were going to be sellers of drugs. The court said “You can't do that, you're not entitled to break the law, no one's above the law”.

You give them a blanket-type circumstance here, where a police officer can go undercover into an organized crime outfit. Let's say they're bikers, for example, and the biker says “Let's

go do this robbery". Do you go along as a police officer and take part in that particular robbery? This legislation would allow you to do that. Is that right? I'm not sure that's right.

Take a look at this particular legislation. It says you can do everything short of murder and sexual assault, effectively. The undercover police officer goes into the organization and they want to test his virtue. What do they do? If they're really bad guys, like the police say they are, they're going to ask you to do one of the crimes that are prohibited: "Go out and kill that guy. He's a fink. Prove that you belong. And go out and rape that poor woman over there, because we want you to show your mettle." What do you do when you're an undercover police officer in those circumstances?

That's the problem with this legislation. It's open-ended and it provides for virtue testing of those people who are going undercover in these circumstances. If you want specific immunities that are important for police to do their investigations, there's nothing wrong with that. You can do that. You can say that police can buy stolen goods. They can buy credit cards. They can set up a shop where people who steal things come and sell it to them. They can set up a finance company where the bad guys are going to launder their money.

Ms. Judy Sgro: But with all due respect, you realize how many volumes of documents would be required to continue to put these things in there in terms of what you're allowed to do. Technology changes. They'd have to be coming back every time you turned around to add more things in there.

Mr. Irwin Koziebrocki: That's why you're here. That's why we'll come here.

May 10, 2001 [Standing Committee on Justice and Human Rights] [Entire Exchange]

Mr. Peter MacKay: Thank you, Mr. Chair. I have a couple of quick questions along the lines of the forfeiture aspect.

It seems to me, and it's often repeated, that really the most effective way to combat organized crime is to cut off the flow of cash. I think most Canadians are startled to know that some of these criminal organizations are so far-reaching that they can actually continue to operate even within the prison system. And perhaps the most dangerous situation for a police officer to be in is to be undercover in a federal penitentiary trying to penetrate some of these organizations. From the police perspective, is there more that can be done in that instance to try to ensure that even after the fact these criminal cells are not permitted to continue?

With respect to some of the overall tools available, although Bill C-24 goes a long way if it's passed in its current form with these designations, can we do more to streamline the criteria for things like warrants, electronic wiretaps, this type of thing? It is a common complaint that it takes reams and reams of paper under the existing laws to allow police the judicially authorized interventions they're seeking.

Chief Julian Fantino: You're quite right. I think it was mentioned earlier that we had the tools before to do the job, but over the years those tools have been evaporating very quickly. Applications for warrants, or part VI applications, now go on into thousands of pages in some cases. I don't even know if everybody reads that material, but it seems now that we have to

amass it. It's no longer the substance; it's how much paper you collect, the volume of the briefs, that seem to be a benchmark as to whether you make the case or not.

Having said all of that, there is one item that I think should be considered in the proposed legislation, and that is the proceeds provision needs to be broadened beyond the specified or the designated offences, which encompasses all of the indictable offences in the federal legislation. I think that's too restrictive, because very often at the prosecution stage it would mean under these circumstances that forfeiture will no longer be available in relation to hybrid offences when the crown, for instance, elects to proceed by way of summary conviction.

That is a critical issue, and it's a point I wanted to make. I appreciate the opportunity to raise this. It may exclude such offences as theft, fraud, and money laundering, depending on how the crown elects to proceed with these particular issues. So I think we have to look at that and look at the hybrid offences issues and especially when we talk about proceeding by the crown, which is a choice they make, by summary conviction. We should embrace those offences as well.

Mr. Peter MacKay: That often has time limitations as well.

The Chair: That was very well done, I should say.

Over to Mr. DeVillers. See if you can do so well.

Mr. Paul DeVillers (Simcoe North, Lib.): I will try, Mr. Chair.

I'm always comforted when we have these hearings and we have Chief Fantino telling us we're not going far enough and Mr. Koziebrocki telling us the reverse, that we're going too far. It tells me that perhaps the legislation has achieved some of the balance we're trying to find.

However, I did hear Commissioner Zaccardelli and Chief Fantino bragging about not being lawyers. I am a lawyer. Not only that, I'm a left-leaning, bleeding heart liberal lawyer.

A voice: The worst kind.

Mr. Paul DeVillers: In spite of that, I'm able to support this legislation.

Having been on the subcommittee that did a lot of our investigation and our hearings, we learned that in regard to Mr. Koziebrocki's objection and concerns over the change in the numbers in the definition of a criminal organization, in fact what was happening is organized crime is adapting to that very legislation and breaking themselves up into cells of fewer than five people and operating in those circumstances in reaction to the legislation.

• 1020 

So I think this is a situation that does require extraordinary legislative measures to deal with it, because organized crime, as we learned on the subcommittee, is very adaptable. Similarly with the authorization, if it were specific, as is suggested, then they would curtail their activities to circumvent many of the provisions that might be put into the legislation.

That's something we learned, that organized crime is very adaptable and will adjust to the legislation. So I wonder if we could get a reaction to those concerns that we heard as a subcommittee.

May 15, 2001 [Standing Committee on Justice and Human Rights][Entire Exchange]

Mr. Marc St-Laurent

…The second amendment we want is very important to us. This is the reverse onus for the forfeiture of proceeds of crime. Bill C-95 as well as Bill C-24 provide for a reverse onus when the accused is put on parole or when an individual who has been sentenced is released after incarceration. We are glad to see that the legislator is ready to reverse the burden of proof, but we are surprised by the fact that this applies to keeping a person in custody but not to the confiscation of goods. Is a violation of a person's freedom not more significant than a violation of his or her property rights? We put this question to you. This kind of investigation is very costly. These organizations exist in order to make a profit. If we really want to combat them, we do not only need heavier sentences, we must also be able to seize their goods and to prove that these goods belong to them. They have so many dummy companies and ways to show that these goods do not belong to them that proving this kind of thing is already a burden. The act must be amended…

Mr. Bill Marra

Also here is Stéphanie McFayden, a policy analyst with FCM.

We are very pleased to be here on behalf of the federation. We do have a written brief, but unfortunately, with the short turnaround time, we have only an English version. I understand it will be translated and provided to you at a later date. My presentation will strictly highlight what is in the brief.

FCM represents the interests of all municipalities on policy and program matters within federal jurisdiction. As you probably know, over 1,000 municipalities currently are members of FCM, certainly representing a large population of our country.

I am a member of FCM's Standing Committee on Community Safety and Crime Prevention, and the issue of organized crime has been one of great concern to our committee and to the Canadian communities we represent.

As community leaders, we are aware that organized criminal activity is too much for one municipality to handle. Criminal organization have tentacles that reach far beyond our municipal boundaries; nevertheless it is at the community level that our citizens are feeling the impacts of organized crime. Outlaw motorcycle gangs, prostitution, youth gangs, drugs, shoplifting rings, violent confrontation, and certainly some of the technical scams that we're

seeing with debit cards and credit cards are all issues that we're feeling in a very significant way within our communities and on our streets.

Because we are so close to the impacts of organized crime, municipal leaders are very pleased to see the introduction of Bill C-24. We believe the initiatives described within this bill will help police forces be more effective and put a real dent in the organized crime issue.

FCM supports the proposed revisions to simplify the definition of criminal organization to make participation in such organizations an offence with much more meaningful consequences. We are also very pleased to see the initiatives around the seizure of proceeds of crimes. FCM has long supported the notion that we need to take the profit out of organized crime, and indeed we urge you to direct any proceeds of crime seized under this law back to fighting organized crime, and as you heard from your previous delegate, the expense related to organized crime and law enforcement.

We have some suggestions that we would like you to consider. I'll elaborate on two of them, and then I'll summarize rather quickly and have my friend provide you with some additional information.

As much as we endorse Bill C-24, we do believe an improvement is needed to these provisions to make them truly responsive to community needs. We urge you to amend the proposed definition of offence-related property to clearly include the notion of bunkers. I'm not personally familiar with what's happened with bunkers, but certainly my friend will elaborate later on. Our community has not had the misfortune of realizing this impact.

The bunkers, as some of you know, are the fortified clubhouses used by gangs, particularly outlaw motorcycle gangs. Communities such as Blainville, Montreal, and Quebec have seen outlaw motorcycle gangs purchase homes in residential neighbourhoods and then proceed to turn these houses literally into fortresses. These bunkers are used as places to meet and plan criminal activity, and they pose a very real threat to the neighbourhood life. Their mere presence creates an atmosphere of tension, due to these intensive fortifications. More importantly, these bunkers act as a very visible target for rival gangs, creating a focal point for violent confrontation in what should be a peaceful residential setting.

Municipal leaders are attempting to address this issue through anti-bunker bylaws. These bylaws prohibit the use of a variety of fortifications on these properties.

An amendment to add bunkers to the Criminal Code definition of offence-related property would place municipalities across the country in a much stronger position to enact bylaws so that gangs will be discouraged from establishing a clubhouse within their community.

It is important that the Criminal Code specifically authorize municipalities to pursue orders to seize and confiscate real property defined as a bunker, and in fact FCM recommends that the Government of Canada provide municipal governments recourse to civil remedies for asset forfeiture. We need to be able to act quickly and effectively to get forfeited clubhouses out of our communities and out of our neighbourhoods.

On another point, FCM is very pleased to see the added protection from organized crime to people involved in the criminal justice system that is offered in Bill C-24. However, there was a noticeable gap in the scope of these provisions, and I want to thank our friend Monsieur St-

Laurent, because he certainly made the point, as well. They need to be amended to explicitly recognize elected municipal officials.

• 1150 

As currently proposed, the list includes witnesses, jurors, police, prosecutors, prison guards, judges, members of Parliament, and senators. But there is a special need for municipal government officials to be included in this protective legislation, because we—just like members of Parliament or members of the Senate—have found ourselves targets of intimidation and threats from criminal organizations as a result of our official positions. You'll hear more on this point in a moment.

Because city councils approve budgets, bylaws, and police activities, they have a direct impact on organized crime. Examples include the anti-bunker bylaws and approving municipal police budgets. Zoning bylaws end up controlling gambling, pawn shops, pornography, and prostitution. The priority is to target organized crime.

Mr. Chairman, FCM supports the changes proposed to the Criminal Code in order to combat organized crime. The Department of Justice and the Solicitor General ought to be commended for developing a strong response to this complex problem.

In order to ensure that the changes respond to community needs, FCM recommends the following modifications to Bill C-24. The first, which I briefly described, redefines offence-related property to specifically include fortified bunkers.

The second is that municipal elected officials be included in the list of people provided with special protection under Bill C-24.

The third is that crime proceeds confiscated under this legislation be used specifically to initiate law-enforcement tactics against organized crime.

And the fourth is that the federal government allow municipalities recourse for civil remedies for asset forfeiture.

I'll turn that over to my friend, Mayor Gingras.

May 16 [Standing Committee on Justice and Human Rights]

Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.): Thank you very much, Mr. Chairman.

… Since becoming Minister of Justice I have considered my main goal to be helping to provide Canadians with an effective and responsive system of justice. In recent years this goal has become more challenging, as all of you on this committee are well aware. Today

globalization and technology are having an impact on law and the administration of justice. Take, for example, crime. Crime follows opportunity. Modern society presents opportunities for new crimes and new ways of committing old crimes, often at long distance and across borders, using telephones or the Internet, and there are new ways of concealing evidence, laundering money, and committing fraud.

So the challenge is to maximize the benefits of globalization for our citizens, while at the same time protecting them from its risks. To do this effectively, we must be willing to rethink our basic notions of sovereignty, human rights, and privacy. Most importantly, we must be willing to work around the world, in a wide variety of fora, on a host of emerging issues that are of direct relevance to the lives of Canadians here at home.

...

In the interests of predicting and adapting to the rapid changes around us, we are also embracing innovative ways to organize ourselves and deliver our services. Thus, you will see a reorientation of our federal prosecution service, the Justice Department lawyers who prosecute federal offences in the areas of illicit drugs, organized crime, proceeds of crime, income tax evasion, and a host of regulatory issues. You will see a renewed federal prosecution service, featuring more cooperative approaches with the provinces and territories and strengthened relationships both inside and outside the department.

....

May 29, 2001 [Standing Committee on Justice and Human Rights] [Entire Exchange]

Mr. Michel Bellehumeur: I have no illusions. I will not have two victories in a row.

It is an amendment that the Fédération des policiers et policières du Québec, among others, wants; its representatives came here to testify. It is about the overturning of evidence from goods and products that came from illegitimate sources. It is aimed at organized crime, among others those people who drive Mercedes cars and live in a $300,000 castle and declare an income of $25,000 per year. There is a small problem.

In all probability, it would be up to them to demonstrate that the goods came from legitimate sources.

• 2135 

I think there has been a lot written on this subject and that the police, among others, want such an amendment.

[*English*]

The Chair: Mr. Toews.

Mr. Vic Toews: I do have a concern about this, and perhaps it relates to the concern I have about the protection of property generally. I don't like to see criminals amass fortunes and not pay taxes on them, but I am concerned here. If I understand the import of the amendment, a police agency or a government agency could come in and take my house by simply alleging that it was the result of a criminal activity, because no one could be as prudent as I've been in amassing a half-million-dollar or three-million-dollar house, which I don't have.

Mr. John McKay: I'm glad you clarified that.

Mr. Chuck Cadman: But you will after this raise.

Mr. Vic Toews: They would seize that house and say, well, this is the proceeds of crime, and therefore I am now obligated on a balance of probabilities to demonstrate that it did not come from organized crime activities. I think there has to be some onus on the state to prove, at least on a balance of probabilities, that there is some connection between that house and the proceeds of organized crime. I'm just wondering what the impact of this amendment is, because if this is simply an arbitrary way for government to seize houses of citizens without demonstrating some kind of a reasonable case, I couldn't support this amendment.

The Chair: Mr. Mosley, did you want to comment?

Mr. Richard Mosley: Yes. With the greatest respect, I would suggest that the amendment would be counterproductive to what I think is the intent with which it is being presented. If you read proposed subsections 462.37(1) and 462.37(2) very carefully, the court can only make these orders where satisfied beyond a reasonable doubt. All the person who is the putative owner of the property need do is raise a reasonable doubt to defeat the application by the crown. The effect of the amendment would be to raise that bar to a balance of probabilities.

October 18, 2001 [Standing Committee on Justice and Human Rights]

Mr. Stockwell Day (Okanagan—Coquihalla, Canadian Alliance): Thanks, Mr. Chairman.

Through you, to the ministers, clearly they all recognize the world has changed since September 11, and in profound ways. We were all reminded of that, those of us who were able to be in Halifax yesterday, who watched the departing ships and saw the families obviously emotional at the departure of their loved ones. Also, for me, and I think for many others, it increases our resolve—and I think for you also, I won't question that—to make sure, as our faithful troops go to foreign shores or seas to defend our freedoms, that we are doing all we can domestically to fight against terrorism here.

That's why the Canadian Alliance, on September 18, tabled a number of provisions to do this. I recognize, for whatever reasons, that the government voted against those, but now you're

moving ahead. Some of those things we'd suggested have been looked at and in fact are entertained in the legislation.

My concern—and I preface my question with these remarks—is that when a safety net is being constructed and it's designed to catch those who would abuse the freedoms we have, when you're weaving that net of safety, you cannot leave giant holes in it. Otherwise, the good material that's there will be all for naught because there will be holes. When I think of the government's own security and intelligence services repeatedly warning of the need for more rigorous and efficient immigration and refugee laws and the Criminal Code provisions to back them up—the government's own security people—then clearly I see our concerns are echoed.

That's why I refer to comments made Tuesday of this week at an international conference on money laundering in Montreal. Sergeant Philippe Lapierre of the RCMP's national security investigation section in the counterterrorism branch talked about this, about how terrorists actually do their work within Canada.

I'm looking to the legislation as we reflect on his remarks. I'll quote him very briefly. He wasn't referring to all people coming here, and neither are we, but he said, for those who want to abuse the system, “Some [of them] are sent here with a mission and some people come on their own and are recruited.” But he said they all have the same modus operandi. They fall into this means of operating.

• 1605 

The first thing they do is claim—fraudulently—refugee status. That allows them to stay here. Then they apply for welfare and medical benefits. Then often they commit criminal acts such as fraud and petty theft—again, here's where our provisions need to be very clear—and then they often use legitimate business as a front to launder money for their own activities. I'll leave for background—although it's your own material—the names of a number of individuals who have done this, not the least of whom is, of course, Al-Marabh, a failed refugee claimant who was not deported or detained. He was facing criminal charges at the time in Massachusetts, and there's a possibility he was involved in these atrocities in New York. I can only imagine what may have happened or may not have happened had he been detained.

Quite rightly, as we look at the provisions in the act—rightly but unfortunately—there are some necessary but unfortunate restrictions on the liberties of law-abiding citizens and law-abiding claimants.

It seems to me there is a lack of balance, a real focus on the taking away of liberties, unfortunately, of those who are law abiding and law following. There seems to be a reluctance, which I don't understand, to detain and deport those who are here without proper qualifications or possibly here on a questionable basis, and that's my question. We're looking at the act. It's very detailed; there are many pages here.

Can either minister, Mr. Chairman, direct us specifically to the new clauses, the new provisions, that say the authorities have here what they've never had before—the ability through Criminal Code provisions or others to detain and if necessary deport those who are posing a danger to us? Could we identify that? And could either minister also reflect again on why there seems to be a focus—there needs to be some—on an increased police presence here,

on the internal border, but less focus on changes for people coming in on the exterior or the perimeter border?

So first, the very specific provisions, can you direct us to those? The minister talked about tools needed to identify and detain. Let's start with these provisions here, under necessary Criminal Code backup, that will be required to identify, detain, and deport where necessary. Can you direct us to the specific clauses?

Mr. Lawrence MacAulay: Thank you very much.

There are clauses not in this bill that we're aware of, like pre-arrival information, that will be available. That's in the Senate Bill S-23. It will require pre-arrival information for people who are coming to this country. As you are aware, we've put scanners at the airport that are hooked to the databanks of the RCMP and the FBI. If the fingerprints or palm prints of anybody who has committed a criminal offence are in the databanks of the RCMP or the FBI, it will immediately come back on these scanners to our airport entry points. These are some of the provisions that have been put in place in the last month in order to upgrade our systems.

October 23, 2001 [Standing Committee on Justice and Human Rights]

Commissioner Giuliano Zaccardelli (Commissioner of the Royal Canadian Mounted Police):

Thank you for the opportunity to be here today to discuss Bill C-36, the proposed Anti-terrorism Act, tabled in the House of Commons on October 15 of this year.

My remarks will be brief but will highlight three important messages. First, the RCMP is taking a measured and sustained response to terrorist activity. Second, the proposed legislative change will enable law enforcement agencies such as the RCMP to continue to fight terrorist activity in a balanced way. Third, all that we do at the RCMP is consistent with Canada's legal framework and the values that Canadians cherish.

Before I speak to you about the RCMP's measured and sustained response to terrorist activity, let me begin by setting the stage somewhat.

What is terrorist activity? Terrorist activity is indiscriminate, global in scope, and destabilizing in effect. Those who carry out terrorist activity have no respect for human life. They will stop at nothing in their effort to achieve their goals. Terrorist activity is carried out by groups and individuals willing to commit suicidal acts of mass destruction against innocent civilians. They think nothing of strapping a bomb around their waist and detonating it and themselves in a location strategically selected to result in the greatest possible loss of life and destruction of property.

• 0935 

Terrorist groups are intricate, complex, sophisticated, and clandestine criminal organizations. Terrorist groups have long-term goals, to infiltrate and assimilate in society and establish individuals with sleepers' roles.

Terrorist activity poses an extraordinary threat to society, as evidenced by the tragic events of September 11. The fight against terrorist activities calls for extraordinary action. Since the tragic events of September 11, the prime objective of the RCMP has been and will continue to be to ensure public safety. There has been a heightened awareness of the need to remain vigilant. That heightened awareness remains solidly in place at the RCMP since the attacks on Afghanistan positions by American and British forces, which began on October 7. But our actions do not stop at awareness and vigilance.

What has the RCMP done? Post-September 11, the RCMP has initiated a full-scale domestic investigation to determine if there was any Canadian involvement in the events of that tragic day. This includes an effort to determine if there are threats to Canada coming from either within the country or outside. In addition, task forces dealing with the events of September 11 have been established in key locations across Canada, with all our law enforcement partners and intelligence agencies, everyone who can contribute to this cause.

Investigative efforts are also under way in an attempt to ensure that terrorist funding is cut off. These investigations are transnational in nature and require a coordinated national and international effort by law enforcement and security agencies. As a result, the RCMP is working closely with international partners in all its activities, and because terrorist groups are intricate, complex, sophisticated, and clandestine criminal organizations, our investigations will require long-term, intensive efforts.

Our measured and sustained response was further bolstered on October 12, when the Government of Canada announced new funding to assist the RCMP in its work on the anti-terrorism plan. The RCMP received $59 million for new measures that will strengthen Canada's ability to prevent, detect, and respond to existing and emerging national security threats. The RCMP is pleased that the Government of Canada has provided this additional funding.

As I told the Standing Committee on Citizenship and Immigration last week, this money is helpful, but the RCMP and security agencies, CSIS in particular, can use even more money so that we can provide better security for Canadians in this country.

In terms of working with our partners, on the domestic front we have put into place some very concrete activities to ensure that our partners are in the loop on law enforcement initiatives with regard to terrorism. For example, all RCMP provincial headquarters have briefed their respective provincial and municipal partners on events that impacted on their jurisdictions. These regional initiatives include regular briefings of provincial departments of justice, policing services at various levels, and briefings to municipal mayors, provincial emergency measures organizations, and airport authorities.

As you can see, we are constantly sharing information with our partners, as well as evaluating the national security situation and modifying needs according to the circumstances at hand. We are also working very closely with the Solicitor General to contribute to the national security committee headed up by the Minister of Foreign Affairs. We are providing advice and intelligence on how best to ensure public safety, and of course, we are sharing information and intelligence whenever we can with our international, national, and local partners.

• 0940 

In the circumstances, we feel that we have done what we can to heighten vigilance, readiness, and response capacity. However, the RCMP supports the proposed legislation.

Some people say that Canada already has a strong legislative framework and enforcement capacity to deal with terrorist threats. It has been our experience, based on our investigation into the tragic events of September 11, that this is not true. Notwithstanding our efforts, it has become evident that there are significant obstacles preventing law enforcement organizations such as the RCMP from detecting, deterring, and destabilizing terrorist groups. Traditional investigative tools are inadequate. It is our view that Bill C-36, the proposed anti-terrorism act, will make a significant contribution to the ability of law enforcement to fight terrorism in this country and abroad.

More specifically, Bill C-36 will criminalize terrorist financing, establish a procedure to freeze, seize, and forfeit proceeds for and proceeds of terrorist activities or groups. It will enhance our ability to protect sensitive information. It will create new investigative tools and allow for preventive arrests when needed to address the serious threats posed by terrorists groups and those who would carry out terrorist activities. It will establish a means to identify and list terrorist groups.

The draft legislation proposes limits be placed on the activities of police, and as exists now, police actions are subject to the limits placed on them by the Charter of Rights and Freedoms. Let's be very clear. We are not talking about, in any way, shape, or form, acting or behaving outside of the charter and freedoms of this country.

To sum up, I want to underscore that the RCMP is very supportive of Bill C-36. Not only does Bill C-36 provide the necessary tools for law enforcement to help combat terrorist activities, but it also provides important safeguards to ensure that the exercise of these powers is not solely at the discretion of law enforcement officers. You are all aware of the involvement of the Attorney General and judges in every step of this process.

You have heard me say many times that, at the RCMP, our role is to uphold the law and to strike that balance between the protection of society and respect for individual rights. We constantly strive to make *how* things are done as important as *what* gets done. Our behaviour as an organization and as individuals must at all times be based upon integrity, honesty, professionalism, compassion, respect, and accountability. Our values must reflect those of Canadian society, and I believe they do. We will not abandon this important goal.

Thank you for the opportunity to share with you today the RCMP's views on the proposed legislation.

October 24, 2001

Professor Wesley Wark (International Relations Programme, University of Toronto):

… On terrorist financing, again this measure has been called for over a number of years by people who have watched over terrorist problems in Canada. I think it's long overdue. The one issue I would raise, with regard to the monitoring and interdiction of terrorist financing, is that as the bill currently stands, it raises the possibility of creating overlapping jurisdictions, or overlapping areas of operations, between the existing centre to monitor financial transactions that was created to pursue money-laundering issues—and now will have a function in terms of pursuing terrorist financing—and the mandate of the Canadian Security Intelligence Service, to concern itself with terrorist financing and fundraising in Canada.

Overlapping jurisdictions in the security and intelligence business is the bane of that business. We have to be careful any time we seem to be creating the circumstances to provide such overlap. I wonder whether this needs to be looked at again…

October 25, 2001

M. Jim Peterson: Thank you dear colleagues. I appreciate the opportunity to appear before your committee today to discuss those aspects of Bill C-36, the Anti-terrorism Act, which deal with terrorist financing.

I will focus on how the Bill expands the scope of the Proceeds of Crime (Money Laundering) Act (PCMLA) and the mandate of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). I will comment on new measures that affect charities and will mention our international efforts.

[*English*]

At the outset, let me assure honourable members that the government is committed to depriving terrorists of the ability to finance their activities. We believe that cutting off their funding is a key step in reining in the capacity of terrorists to function. Achieving this objective, however, will not be easy. It requires both strong domestic measures and a unified international effort.

• 0940 

As you know, the government has been working with its international partners to develop a coordinated global response to dealing with terrorist funding. Canada and its G-7 partners have moved quickly to develop and implement action plans to combat the financing of terrorism, doing so by blocking the assets of terrorists and their associates.

We're also an active member of the Financial Action Task Force on Money Laundering. We support the organization's efforts to develop and implement international standards to prevent the use of the global financial system for terrorist financing. The Honourable Paul Martin, chair of the G-20 group of finance ministers and central bank governors, has begun the task of

broadening the base of support for effective and coordinated international action through that group.

Our goal is that all jurisdictions will join with us in adopting strong domestic regimes against terrorist financing and will cooperate with us internationally to track down and deny a safe haven anywhere for terrorist funds.

[*Translation*]

Canada's participation in international efforts has already translated into domestic action, primarily through the implementation of United Nations Security Council Resolutions.

Regulations in force since February 2001 freeze property owned or controlled by the Taliban, and Osama ben Laden or his associates.

New regulations, in force since October 2nd, go further by giving the government the authority to freeze assets of other terrorists and terrorist organizations that are listed either by the U.N. or by the Governor in Council.

The government listed individual terrorists and terrorist organizations under these regulations on October 2nd, and added to that list on October 12th. These new regulations have allowed the government to work closely with the international community to ensure that any terrorist assets are subject to sanctions.

[*English*]

The federal regulator, OSFI, has on several occasions since September 11 reminded financial institutions of their obligations under these regulations and urged them to cooperate fully with law enforcement in their investigation. OSFI has also used its website to provide financial institutions with the most up-to-date information about listed terrorists.

The new regulations require financial institutions to report monthly to their regulator on whether or not they have terrorist assets in their possession and, if so, to aggregate the information about those assets. The Minister of Finance has committed to making regular reports on the terrorist assets that are identified by our financial institutions.

These regulations were an important step in our efforts to thwart the financing of terrorist activities through our Canadian FIs. They establish key terrorist financing countermeasures and provide a bridge to the anti-terrorism plan that will be accomplished, we believe, through the passage of the bill before you.

[*Translation*]

Among other things, THIS Bill introduces changes to the Criminal Code that put into law various measures set out in the United Nations Regulations of October 2nd. Most importantly, the changes make it a criminal offence to finance terrorist activities.

In addition to criminalizing terrorist financing, it is important that effective means be found to deter and detect these illicit activities.

• 0945 

To this end, changes to the Criminal Code require all persons to report to the RCMP and CSIS if they have property in their possession or control that they know belongs to a listed terrorist.

In addition, the Criminal Code amendments include monthly reporting requirements for financial institutions modeled on those established in the U.N. Regulations of October 2nd.

[*English*]

This bill also strengthens Canada's existing anti-money laundering regime both to guard against abuse of the financial system by terrorist groups and to provide law enforcement and intelligence authorities with information about terrorist financing activities. Under the current Proceeds of Crime (Money Laundering) Act, financial intermediaries must meet consumer identification and record-keeping standards and report transactions related to the identification of money laundering.

At present FINTRAC is mandated to receive and analyze reports that may be relevant to money laundering activity and to disclose key information to law enforcement authorities. The scope of FINTRAC and this bill are both expanded to encompass terrorist financing.

Let me provide a brief overview of the key measures.

[*Translation*]

FINTRAC's role will now extend beyond money laundering to include terrorist financing.

Financial intermediaries will have to report to FINTRAC any financial transactions they suspect are related to terrorist financing offences. They will also be required to report if they are in possession of terrorist assets or have knowledge about a transaction, or proposed transaction, involving such assets.

At the same time, FINTRAC will be responsible for disclosing identifying information to law enforcement agencies if the Centre suspects the information is relevant to the investigation of terrorist financing activities.

[*English*]

As well FINTRAC must report to CSIS if this information is relevant to threats to the security of Canada.

To further combat terrorist financing, FINTRAC will be allowed to share key identifying information with its international counterparts. However, new safeguards will be built into the law to ensure that the information is treated confidentially and also to limit disclosure of this information by foreign law enforcement agencies.

I would also like to assure members that the PCMLA was designed in a way that respects the privacy of individuals by ensuring that reported information is treated with the utmost care. The fundamental safeguards that were written into the law with regard to money laundering are also maintained with regard to terrorist financing. For example, the operation of FINTRAC remains at arm's length from law enforcement and is subject to the Privacy Act.

The final issue I want to mention concerns the registration and tax treatment of charities. Your bill includes income tax provisions that prevent terrorists from exploiting the tax privileges associated with charities. The bill enacts the new Charities Registration (Security Information)

Act and amends the Income Tax Act to prevent organizations that support terrorist activities from enjoying the tax privileges granted to registered charities.

The Solicitor General and the Minister of National Revenue will now be empowered to issue a certificate denying charitable status to an organization. The Federal Court will be mandated to review that certificate to ensure that it is reasonable.

• 0950 

[*Translation*]

Beyond the measures in the charities legislation to deny tax privileges, other elements of Bill C-36 relating to the criminalization of terrorist financing would support additional steps by the government. If an organization willfully provides financing for terrorist activity, then there would be grounds for proceeding with criminal sanctions and the forfeiture of assets

These new measures will protect the integrity of the registration system for charities under the Income Tax Act, and maintain the confidence of Canadian taxpayers that the benefits of charitable status are available only to organizations that operate exclusively for charitable purposes.

[*English*]

Terrorism, honourable colleagues, must and will be fought on many fronts. Canada will continue to work with its international partners in the G-7, the G-20, and the Financial Action Task Force on Money Laundering to develop and promote global standards to fight terrorist financing. Canada will see that tough laws are put in place, see that they are enforced, and see that there is a seamless web of international cooperation to deny funding to terrorists.

I mentioned earlier that strong domestic measures are needed if we are to deprive terrorists of funding and fulfill our international responsibilities. With the key elements of Canada's new money laundering regime already in place, the measures in Bill C-36 will help us achieve this objective by further strengthening and expanding the new regime. The amendments to the PCMLA in this bill will assist law enforcement agencies and CSIS by providing them with additional information to detect, investigate, and prosecute terrorist activities and to deprive them of their finances.

I thank you.

The Chair: Thank you very much, Mr. Peterson.

Now we'll turn to Mr. Toews for seven minutes.

Mr. Vic Toews (Provencher, Canadian Alliance): Thank you, Mr. Chair.

I want to commend the government for finally moving ahead on this file. Prior to September 11, it was clear that the federal government simply didn't have any interest in complying with international UN conventions. I refer not only to the suppression of terrorist bombing but to the suppression of terrorist financing, where Canada was not complying with its UN obligations. That, frankly, was a disgrace, and I'm very pleased that the government is moving ahead in this direction. We all know that money is the lifeblood of terrorist organizations,

much as it is for organized crime. Unless we make concerted efforts to stop the flow of money, we will not stop the flow of arms, nor will we stop other terrorist activities throughout the world.

Now, I listened with interest to your comments. I appreciate the briefing and your appearance here. It's clear now that FINTRAC has additional responsibilities, and I'm concerned about the financial institutions that are providing the information to FINTRAC in terms of tracking the relevant information. Are our resources, that is, the federal government resources furnished, sufficient to expeditiously analyze the information our financial institutions are providing us? Clearly, with the added responsibilities, there's going to be more information. What we don't want to see is the business of our country, particularly that of the financial institutions, bogged down because of too much paperwork. I think we have a concomitant obligation to provide appropriate resources and personnel for our agency. Has the administration by the federal government of this program received additional resources, Mr. Peterson?

Mr. Jim Peterson: Thank you very much, Mr. Toews.

• 0955 

It's a very important point, and the answer is, in short, yes. Let me just say that, yes, Bill C-36 does expand our capacity to freeze and also to seize the funds of terrorists. Prior to it, we did have in place regulations here in Canada that allowed us to freeze assets of the Taliban and assets of those associated with bin Laden. Even before this bill was in place, we were able, again by regulation, to pass another one that allowed us to expand the web beyond the Taliban and bin Laden to other terrorist assets—

Mr. Vic Toews: Thank you, Mr. Peterson.

I appreciate the fact that you're moving ahead on that, and certainly Bill C-36 is very important. What I want to know, if I could get an undertaking from you, is specifically the needed increase in resources and personnel. If you can't provide me with that today, at least undertake to provide it. That's all I require, for you to produce that in a timely fashion.

Mr. Jim Peterson: I will ask Mr. Horst Intscher, the head of FINTRAC, to outline what he's done in terms of expanding his personnel.

Mr. Horst Intscher (Director, Financial Transactions and Reports Analysis Centre of Canada, Department of Finance): Thank you, Mr. Chair.

We have begun work on creating the capacity to undertake this additional work by identifying the resources we would require. This is in terms of both analytic capacity and of information technology resources and infrastructure for the protection of the sensitive information that would be flowing to us. I understand that we expect we will require some additional resources, and I'm fairly confident that we will be able to obtain those resources through the Treasury Board.

Mr. Vic Toews: If you could then undertake to provide this committee with that information, I would certainly appreciate it.

Also, is there a liaison that goes on with the bank in determining exactly how much additional resources in terms of personnel or otherwise we require? We don't want the government going off in some direction without proper input from the financial institutions.

Mr. Jim Peterson: I think you have raised a very important point—and I'm glad you have—about the obligation imposed on our financial institutions to increase their surveillance and their reporting. Yes, the onus on our private sector institutions has increased considerably because of this. I also want to say to you that I am very proud of and grateful for the way they have responded, particularly the speed. It's not an easy task for them. I expect that in the future it'll be made slightly easier because of new computer technologies, the new IT they will bring in. We will certainly be coordinating matters with them on this front. You're quite right, there is an added onus there, and certainly an added onus on government.

Let me assure you, Mr. Toews, and the other honourable members that we will make these resources available to FINTRAC.

Mr. Vic Toews: Thank you.

The Chair: Thank you very much.

Monsieur Bellehumeur, you have seven minutes.

[*Translation*]

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ): Thank you very much.

Mr. Peterson, the Bloc Québécois has been concerned about the whole issue of money laundering for a long time. I remember asking the government about it in 1994. They were the first questions I asked during my first term and I remember very well that in 1994 the government's answer was that there were no money laundering problems.

I also remember having talked about international agreements. I was told there were no problems and that everything was fine in Canada. Today, you are singing a different tune; I'm very happy to hear you do it.

But even though we have whatever law we want, we need the political will to enforce it and the financial resources to apply it correctly.

Speaking of political will, before even looking at Bill C-36, we know very well that since the 11th of September many countries have frozen assets. Many countries have followed some money movements step by step.

• 1000 

We also know that in Canada during the last two years more than $100 billion, it seems, have left the country for certain tax havens recognized by the OECD and the Canadian government. You know all that.

We also know that it seems that Canada has now frozen about $125,000 that was being used by terrorists or terrorist groups. Before even looking at Bill C-36, I want to know the extent of the political will within the government to act in the case of money laundering. Have you done

some audits to see if the hundreds of billions of dollars that have left Canada towards tax havens are going to terrorist groups?

M. Jim Peterson: Mr. Bellehumeur, you have had a number of good initiatives in this area over the last few years. We have accepted some of your suggestions, including the one on the $1,000 bank note, which was canceled. It was a good idea, we thank you for it, and we have accepted it.

The issue of money laundering and tax havens is a difficult one. We cannot solve it alone. To do so, we need the cooperation of other countries all over the world. That is why we are now working with the international community at this tie, including G-7. Certain discussions have already started with the Finance ministers of G-7. We have also, through Mr. Martin, used our relationships within G-20 to promote the adoption of standards by each of these countries and the creation of international cooperative links.

It should also be noted that we are in a good position with other countries, for example in the Carribean because we represent...

[*Editor's note: Inaudible*]

...the International Monetary Fund and the World Bank. We have worked with them already to establish information exchange systems and to fight money laundering. But it will need more work.

We will continue. We have already supplied technical assistance to Carribean countries to help them improve their systems. Our objective is that after cooperating with all the other countries in the world there will be no more tax havens that terrorists could benefit from.

Mr. Michel Bellehumeur: Mr. Peterson, thank you for your answer but we see that at this time, when Bill C-36 has not yet been adopted, billions of dollars are leaving the country and we seem to have no control over this. It is true that it is a complex issue. However, if we really want to fight terrorism, we have to invest a lot because money is the fuel of war for them also. At this time, Canada has not invested enough in this area.

Bill C-36 is before us. My question is as follows: how will Bill C-36, and especially its clauses on money laundering, and the implementation of international agreements, guarantee us as parliamentarians, Canadians and Quebeckers that you will be able to trace the money that will leave Canada for those tax havens and that you will be able to ensure that this money will not be used by terrorist groups? That was my first question.

• 1005 

Here is my second question. To work effectively, you need technology, experts, training and people to work on the issue. I imagine that if the government is serious and has the political will to act on this, it has already foreseen how much money it will need to fight effectively against crime, money laundering and terrorist groups.

Currently, we are in limbo. In virtually all departments, we don't know how much it will cost. You, who are used to working with numbers in the Department of Finance, do you have,

within your department, evaluated the price of an effective fight, and especially the implementation of Bill C-36?

M. Jim Peterson: Thank you. We have not yet announced the exact costs but we will do so shortly. If in the beginning we do not allocate enough resources to fight terrorist financing, we will make adjustments. We will increase these resources and take your committee's suggestions into account if you have any ideas to improve our work in fighting terrorism.

[*English*]

The Chair: Mr. Blaikie.

[*Translation*]

Mr. Michel Bellehumeur: But I don't have any guarantee.

[*English*]

The Chair: You only get your seven minutes. You don't get Bill's.

[*Translation*]

M. Jim Peterson: There are never any guarantees, but we will do everything possible and I know you will help us.

[*English*]

The Chair: Mr. Blaikie, you have seven minutes.

Mr. Bill Blaikie (Winnipeg—Transcona, NDP): Thank you, Mr. Chairman.

I don't have so much a question as a comment. There seems to be an interesting theme developing here with respect to Bill C-36, and that is the need for international or transnational uniformity when it comes to dealing with unethical behaviour. We don't want to create havens for various kinds of activity, in this case terrorist activity, through a lack of uniformity.

We heard the argument yesterday that when certain laws were toughened up in the United States, terrorists moved to Canada in order to use Canada as a base for their activity. At least, that was the claim of one of the witnesses yesterday. We have heard that argument today, that it's very important to have the same or relatively the same laws in all jurisdictions so that unethical behaviour cannot move itself around, so to speak, looking for the most favourable circumstances.

I agree, Mr. Chairman, but to take another example, some argue that there needs to be some kind of uniformity with respect to poor labour standards around the world and that this needs to be enforced so that unethical business activity can't go around the world looking for the most favourable circumstances. Now, I find it passing strange, Mr. Chairman, that when this argument is made with respect to labour standards, it is regarded as a heinous notion, unrealistic—I could name a host of adjectives that have been used over the years to describe calls that have been made by the NDP and others for this kind of international uniformity when it comes to restricting unethical activity.

• 1010

I hope this might be a conceptual breakthrough. I will certainly try to ensure that it is, Mr. Chairman. If we can act internationally to constrain unethical behaviour, in this case the unethical behaviour we call terrorist activity, then surely we don't want to have havens for other kinds of unethical activity, whether it be the exploitation of working people through lack of labour standards or whether it be the exploitation of the public purse through tax havens.

It's not just havens for terrorists' money we might want to address. Perhaps we should be looking at some kind of international harmonization or international regimes so that corporate interests can't shelter their money from legitimate tax imposition, period. It doesn't have to relate to terrorist activity. I just make this point, Mr. Chairman, because I find it odd to sit and listen to all these arguments that I agree with but that fall on deaf ears when I make them myself in respect of other issues.

I have one question related to your submission, Mr. Minister, and that has to do with... You talk about banks or financial institutions having to report with respect to terrorist assets they may have. Now, I'm presuming these are already frozen assets. If they aren't, they should be, and if they are frozen, how can people add to them if they're frozen?

Mr. Jim Peterson: You're quite right. Any funds of listed terrorists that have been identified are in fact frozen and cannot be touched by the owner of that account or the institution itself.

Mr. Bill Blaikie: What would they be reporting?

Mr. Jim Peterson: They would be reporting on where they've found accounts and assets, which would in effect be frozen under the regulations now in place. Bill C-36 will give us additional rights with respect to those assets and funds, such as the ability to seize them.

You make a very interesting point on the harmonization of standards, not just those for money laundering and terrorist funding. One of the quintessential problems that has always plagued us as Canadians is the overlap, the duplication, and the contradiction of laws we have among provinces and between the federal government and the provinces.

We know that interprovincial barriers to trade in goods and services cost us an enormous amount, anywhere from $4 billion to $7 billion a year in lost growth, so I take your point about the need for good laws and perhaps for fewer laws in many cases.

The Chair: Mr. Blaikie.

Mr. Bill Blaikie: I'm not sure the minister did take my point; in fact, I'm not sure he got my point at all. Nice try. That was a nice little diversion into federal-provincial stuff, but I was talking about the international situation, core labour standards, and the WTO. Then the minister wants to rap on about interprovincial trade and the need for...sorry, but that's not what I was talking about.

Mr. Jim Peterson: You also mentioned the taxation of funds that are outside a country's border or jurisdiction. We have worked very closely with the international community to develop common laws with respect to that, and we have done so by following the OECD model draft convention for the prevention of international double taxation and tax escape or avoidance. This has been a good model to work from. It is in place with many different

jurisdictions. There will have to be a lot more work done with the so-called tax haven countries, which have traditionally been involved in a lot of offshore banking, to make sure they're not laundering money—

Mr. Bill Blaikie: And ship flagging.

Mr. Jim Peterson: —and not...you're missing my point, Mr. Blaikie. I was talking about international tax avoidance.

• 1015 

The Chair: Thank you very much, Mr. Blaikie and Mr. Peterson.

Mr. MacKay.

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC/DR): There's a real breakdown in communications on the entire spectrum here.

Speaking of information sharing, I'm interested, Minister, if you could give us perhaps some concrete examples of what it means, in the grand scheme of things, to ensure the seamless web of international cooperation. That's very powerful language, but I'm interested to know what pragmatic, concrete steps are in place to ensure that the information sharing is taking place not only between ourselves and our G-7, G-20 allies, but also within departments here in Canada. It's a question that's been asked of every minister who's appeared before us. How is the Solicitor General of Canada, CSIS, and the RCMP working closer, as a result of this legislation, to ensure that information is passed on?

Further to that, I would like to know, in, again, a very practical way, if you foresee difficulties in proving this element of terrorist fundraising as part of the criteria that the crown will bear the burden of proving. Is this ideological, religious, or political purpose behind the fundraising activity? I believe this is going to be a very difficult and tough threshold to meet in many instances. I wonder how the Department of Finance has contemplated, in real terms, how you prove this element, this purpose, this *mens rea* behind the actual fundraising activity.

Mr. Jim Peterson: With your permission, Mr. MacKay, I would like to have Yvan Roy answer the question about the religious belief, and then call on Inspector Beer to talk to you about the efforts at international cooperation.

[*Translation*]

Mr. Peter MacKay: There is no problem. Mr. Roy, you can answer in French.

Mr. Yvan Roy (Assistant Deputy Minister and Counsel to the Department of Finance): With pleasure.

The clauses in this Bill that are related to terrorist financing are of a criminal nature. You have worked in this area since you are a former solicitor. You know that the standards are high in such circumstances and that the proof must be beyond a reasonable doubt.

As for any infraction that requires a specific intent or motivation, the motivation and the specific intent will be deduced from the proof offered. In such circumstances, the proof will

most often be of a circumstantial nature. It is possible that in such cases we may have direct proof, because, as you know, such infractions may be subject to electronic surveillance. You also know that we often learn a lot about people's intentions in this area.

The Bill tries to provide the state with all the tools available in this regard, but at the same time it must balance the various interests. I have read the transcripts of the Minister of Justice before this committee and of the public servants that have appeared before you and I know that the government does not intend to attack groups that have nothing to do with terrorism. That is why you have a definition of "terrorist activity" that is in some way limited and requires a high level of proof. It is the government's wish, and it believes that it would be possible to find sufficient proof to make the appropriate deductions or, through surveillance or informers, determine the reasons for which this money is collected.

We are therefore talking about a balance of interests, of not attacking the wrong groups and of having a high standard while having the means to take the appropriate legal action.

The minister of Finance obviously has a secondary interest in this matter since the application of criminal law does not come under that department's jurisdiction, but it does have an interest as it wants those clauses to work. We believe that it will be possible to see that the right people are brought before the courts *in due course*, as you say in English.

• 1020 

[*English*]

Mr. Peter MacKay: I have a question about proposed section 83.02, specifically under the heading of “Financing of Terrorism”. It talks about:

> directly or indirectly, wilfully and without lawful justification or excuse,

It's absent the word “knowingly”. It says “wilfully”. Certainly banks in particular and other financial institutions could willingly be in possession of funds that came from a nefarious group.

I'm wondering if the addition of “knowingly” is something your department has contemplated here. I can foresee instances where money could be held, assets could be held, wilfully, and yet the excuse of knowingly...it might add clarity to that proposed section.

Mr. Yvan Roy: Mr. MacKay, if an institution, a bank, actually anyone in this country, is knowingly in possession or control of assets related in some fashion to terrorist activities, they are under obligation, by law, to freeze those assets, that is, to refuse to deal in any way, shape, or form with those assets. I would refer you back to proposed section 83.03 to that effect.

Those who knowingly continue to deal with those assets are guilty of an offence that is itself very significant in that it is punishable on summary conviction with respect to an institution by a fine of $100,000. If the state were to prosecute that case by indictment, the fine is open-ended. There is no limit that can be imposed. So the sense is that those who are dealing with money that they know is owned or controlled by terrorists are very well captured by that provision. When you're talking about the financing, which is now doing wilfully what you

should not be doing, that is, giving money to these people for that purpose, this is a different offence.

The landscape is well-covered with those two provisions, with all due respect.

Mr. Peter MacKay: What's the length of time you can freeze and hold these? I haven't found any provisions that refer directly to where those assets would go upon seizure. Is there any provision that would funnel those assets to law enforcement, for example?

Mr. Yvan Roy: Here is how the scheme is supposed to be working. You have the provision in here that says you freeze those assets, that is, you are not moving them. You have to sit on them, basically. You cannot deal with the property in any way, shape, or form. There is then an obligation in law to advise the RCMP and CSIS—the law says forthwith, immediately—about what it is you have done. These people are then tasked under the law to conduct an investigation. Once you are advised of something like this you conduct an investigation and they will then be, in due course, in a position to seize, refrain, and eventually forfeit that property.

If at the end of the day the investigation shows that actually we have been wrong, it should be the duty of the institutions—and I know they will do it—to basically stop the freezing that has taken place. The investigation having been conducted, they will be then in the position to say, we do not have suspicions any more about that property and therefore we will, from now on, continue to deal with that property.

To answer your question directly, there is not a limit on how long that property will be frozen, because of the nature of what it is we're talking about, which is an investigation. The process is you freeze, you investigate, you seize, refrain, and confiscate.

The Chair: Thank you very much, Mr. Roy.

John McKay.

Mr. John McKay (Scarborough East, Lib.): The thesis of your presentation, Minister, is that you are standardizing reporting requirements around the world.

• 1025 

Last night on CBC Carol Off did a piece on Saudi banks. To telescope the presentation, it is essentially that the Saudi banks are highly cooperative in covering for Mr. bin Laden and his colleagues. There's reasonable likelihood that most of the money that finances these operations is in Saudi Arabia.

I'm not putting that forward as evidence; I'm putting that forward as a media statement.

Not to put too fine a point on it, my recollection of moneys collected so far, essentially, is that it's chump change. So the real question is what the reach of this bill is.

I see in proposed section 83.11 that there is a requirement that authorizes foreign banks within the meaning of section 2 to report their activities.

This is my first question. If there is a Saudi bank that is listed or operating in Canada or in any of our other allies' jurisdictions, and presumably our legislation is harmonized with those other

jurisdictions, are those Saudi banks, either through this proposed section or parallel sections in other legislation, required to report as would Canadian banks? I'm using Saudi Arabia as an example. Similarly, if a Canadian bank is operating in Saudi Arabia, is there a reporting requirement that would obligate our bank to report back?

Secondly, what happens when you get it wrong? Inevitably, the crown will seize and freeze assets, which it shouldn't have done. I'm interested in knowing what will be the extent of claims for a crown immunity. What will be the access to recourse for those citizens who are aggrieved by wrongful seizures and freezings? Will there be an exposure on the part of the crown to damages?

Mr. Jim Peterson: Foreign banks operating in Canada will be subject to the disclosure provisions. Canadian banks operating abroad, through a branch in that foreign jurisdiction, will be subject to the disclosure provisions. Canadian banks operating abroad through a foreign subsidiary will not be.

On the issue of crown immunity and wrongful seizure and damages, I turn again to an expert.

Mr. Yvan Roy: Thank you, Mr. Minister.

The government has taken and will continue to take great care in making determinations on who is going to be subjected to some of these provisions. There are a number of ways where the government is going to be involved; the listing of people is certainly one of them. Another one is how these different provisions will continue to apply.

Basically, the regime you have with respect to money laundering found in the Criminal Code finds application here, and that is, if the government is going to be making some mistakes, the same regime that applies now will continue to apply in the future. Therefore, in cases where the government, for instance, has been negligent, there is a way of getting relief before the courts. The courts will always be there to stop this from happening and to obtain the appropriate damages in appropriate circumstances.

The law, as it existed before, continues to apply here, and there is no special immunity that the government will try to seek in cases involving this. This is not the goal of this new legislation. And we continue to be governed by the same laws with respect to negligence and other things of that nature.

Mr. Jim Peterson: Very simply, if you feel you're wrongly listed, you can apply to the Solicitor General, and if that doesn't work, you can apply to the court. Also, the Solicitor General is required to review the list of listed persons every two years.

• 1030 

But do you know what, Mr. McKay? There are going to be mistakes. The difficulty when there may be so many people having the same name or just a slightly different name, and things like that... It is not possible to run this system without making mistakes.

Mr. John McKay: Going back to a Canadian bank operating in a jurisdiction where we think there are terrorist assets, and in the course of normal business a transaction occurs that the Canadian subsidiary reports, what will be the follow-up on that?

Mr. Jim Peterson: If it is a foreign branch of a Canadian bank, those assets would be reported to FINTRAC; they would be reported to OSFI. Then, if the appropriate standards were met at FINTRAC, they would be reported to the RCMP and/or CSIS, if there was a threat to the security of Canada.

I'd like to call on Inspector Dave Beer to talk more about it.

Superintendent Dave Beer (Proceeds of Crime Branch, Royal Canadian Mounted Police): Thank you, Mr. Chair.

I think it's important to understand that the essence of the terrorist funding portion of this legislation is essentially to add the act of fundraising and providing funds for terrorist activity into the existing Proceeds of Crime (Money Laundering) Act.

From that perspective, and from an investigative perspective, which I think is the essence of your question, what agencies like FINTRAC and the investigative agencies are being asked to do is to recognize proceeds for crime, utilizing the legislative and investigative tools and investigative branches that were created for proceeds for crime. It's actually simply a reversal of the process.

In your particular example, where a suspicious transaction or a transaction attributed to a listed person would be reported through FINTRAC, FINTRAC would make a determination of the nature of the activity, whether or not it was suspicious, and if so, according to the Proceeds of Crime (Money Laundering) Act, for which amendments are being considered here, it would be reported to the appropriate police agency and would be investigated accordingly.

The Chair: We'll now go to Mr. Cadman.

Mr. Chuck Cadman (Surrey North, Canadian Alliance): Thank you, Mr. Chair.

To follow up on a question that I believe my colleague Mr. Peter MacKay brought up, regarding the final destination of any asset seized or forfeited, will it be returned to law enforcement? Out of the proceeds, are there going to be moneys available to law enforcement to continue the fight, and more importantly, is there any indication or any provision in this bill for restitution to victims?

I cite the Air India bombing, where we had 329 victims. I have a large Indo-Canadian community in my constituency, and many Canadian families were impacted by that. I'm sure they'd be very interested in your answer.

Are some of the proceeds and the forfeitures from terrorist funding going to be directed back towards the victims?

Mr. Yvan Roy: The legislation, as crafted, is simply an add-on to what is already in place. What I mean by that, with respect to the two areas you're referring to particularly, is the fact that the money or the assets, once they have been forfeited, are not forfeited to anyone in particular. It is the crown, whether the provincial crown in cases that will be handled by provincial attorneys general or the crown in right of Canada in cases involving the Attorney General of Canada, that will be the beneficiary of the money or the assets that have been forfeited. In other words, that goes into the federal treasury.

A voice: The general revenue.

Mr. Yvan Roy: Yes.

Regarding victims, the provisions that exist in the code—you are very familiar with them—continue to apply with respect to those offences, because these are offences that are found in the Criminal Code. So if there is to be restitution or compensation that fits within the parameters of what is already in the code, that will apply to them too. But there is nothing special, specific to the situation that is created in this legislation.

• 1035 

Mr. Chuck Cadman: Thank you.

The Chair: Mr. Paradis.

[*Translation*]

Mr. Denis Paradis (Brome—Missisquoi, Lib.): Thank you very much for you presentation, Minister.

The comments that spring to mind are related to... Minister, you mentioned in your presentation that the amendments to the Criminal Code will make it necessary for financial institutions to present monthly reports. But when we think of financial institutions, we think of certain categories of professionals who will also have to make reports I would imagine. These categories must include accountants, notaries, brokers and lawyers.

My comment is not necessarily related to legal professional privilege because I think it is important that privilege not be absolute in cases of terrorist crimes, among others, that are committed or being committed.

The first part of my question is about the necessary balance between divulging information on money held in areas where privilege applies and its disclosure to implement the law.

Here is the second part of my question. In certain parts there is mention of monthly reports. A large chartered bank can easily make monthly reports, but for a small broker or notary in Saint-Hyacinthe, it is a duty that can be a fairly onerous obligation. Have you considered dealing with the professional associations in each province to find disclosure methods that would impose less on small professionals.

M. Jim Peterson: I think that is a good suggestion. We will always be open to ideas that lessen the burden of disclosure. It is true that it would be more difficult for small businesses because they do not have the resources of major institutions. If there were to be suggestions to alleviate that burden, I would like to hear them. You may have other suggestions for us.

Richard.

Mr. Richard Lalonde (Chief, Financial Crimes, Financial Sector Policy Branch, Department of Finance): I would simply like to add that the Proceeds of Crime (Money Laundering) Act affects many financial institutions and that the scope of this Act is not quite the same in cases of reporting transactions and frozen accounts.

In the latter case, yes the financial institutions must report certain information to law enforcement authorities and to their regulatory agency, but if we look at the list of financial institutions that are subject to this, we see that it does not cover, for example, accountants, lawyers and other small businesses.

That being said, it is true that in some cases, small life insurance companies would be subject to this but most companies subject to this provision are major ones.

I do not know if I have to also answer the question regarding privilege. In this case, about the proceeds of crime the Act provides, in section 11, I believe, that nothing related to the reporting of transactions or doubtful operations removes anything from professional privilege.

• 1040 

Therefore the common law privilege that protects certain communications between a lawyer and client is well recognized in this Act. That being said, it is important that all financial intermediaries be subject to this law, otherwise there would be a...

[*Editor's note: Inaudible*]

The Chair: Thank you, Mr. Paradis and Mr. Lalonde.

Mr. Bellehumeur, three minutes.

Mr. Michel Bellehumeur: I will not ask the question I wanted to ask. Instead I will comment on your answer to Mr. Paradis' question.

I know small law firms that make big transactions. If we look at very recent history, even if it only at gangsterism in Quebec, we see that there is a lawyer whose name I will not mention because I am not sure of it, who was convicted of money laundering. There were large sums involved, millions of dollars. Are you telling us that such people are not covered?

M. Jim Peterson: We know very well that there have been cases where a few lawyers committed an infraction. I will not...

[*Editor's note: Inaudible*]

...to the bar for what we do here. It is absolutely necessary that all financial intermediaries respect the provisions of the act on money laundering and supplying terrorists with money. As lawyers, they can respect the lawyer-client privilege. They have a right to do that. But when they are not acting as lawyers, but as financial intermediaries, that is another matter. In such cases, they would be obligated to report.

Mr. Michel Bellehumeur: I mentioned a number a while ago. Currently, since September 11th, how much money has Canada seized?

[*English*]

Mr. Jim Peterson: The latest figure is $150,000. There will be further reports coming in to us, and they will have to be refined. As I've said, it's very difficult often to find out for sure whether an account that's been seized is the one that was intended to be frozen. The minister

will be giving a report in the not-too-distant future. OSFI is working on refining some of those numbers for us right now.

[*Translation*]

Mr. Michel Bellehumeur: Would an amount of $150,000 justify that? Do you think you will get more than that?

M. Jim Peterson: Certainly. Even if there wasn't a penny frozen in Canada, we would still have to be in the forefront of the nations to protect people, including Canadians, from terrorism.

Mr. Michel Bellehumeur: But not only on paper; in reality also.

[*English*]

The Chair: Thank you, Mr. Peterson.

Mr. Owen, for three minutes.

Mr. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Mr. Minister and officials, for appearing before us and giving us your thoughtful comments.

Perhaps I could just ask further questions with respect to the impact this has on lawyers. I think it's true—I think we've mentioned—a lawyer's trust account would be caught under clause 49, under the definition of entity. Under clause 51, lawyers would be caught under the professional category. I heard the answer that professional confidences would remain.

• 1045 

I'm just having a little difficulty understanding how you could retain professional confidence at the same time as reporting on a financial transaction. I think there was a suggestion that if you were acting as a conduit for a funding transaction, it would be something different from your solicitor-client privilege. Is that what is being suggested? I'd like to have a bit of a better explanation of why that is so, if that is the intent.

Mr. Jim Peterson: I guess the one possibility would be to say that anything a lawyer does is beyond the reach of the law, with respect to money laundering, helping to fund terrorists, or moving terrorist funds around the world. We don't believe that should be the case.

If a client comes in to a lawyer and says, “I want you to take this $1 million in ten-dollar bills, put it in your trust account and issue me a cheque,” should the lawyer be exempt from that or not, simply because of the privilege we've always accorded to lawyers in dealings with their clients? In that case, the lawyer could say, “Yes, I will deposit this, but I have to report it.” At that point, the client could walk out of his office and the solicitor-client privilege would be respected.

If this committee is telling us that type of transaction should not be caught by this bill, I would like a very clear signal from you.

Mr. Stephen Owen: Okay. Thank you.

I think it is very important to clarify, on the record, that this act already creates, and this amendment bill will create, an exception to the solicitor privilege or confidence with respect to the flow-through of funds that are suspicious by their nature, exceed a certain amount, or are clearly directed toward the financing of crime.

Mr. Jim Peterson: That is not denying anyone the right to get important legal advice from a lawyer. The privilege is still maintained when they do that. But when the lawyer steps beyond the bounds of giving that advice and serves as the financial intermediary, they must report it, as anybody else would have to.

The Chair: Mr. Roy,

[*Translation*]

a brief answer.

[*English*]

Mr. Yvan Roy: I'll be very brief, Mr. Chairman. I thank you very much.

The view that is taken by the government is that the solicitor-client privilege is perfectly protected by these provisions. Indeed, section 11, as referred to by Mr. Lalonde, states that clearly, in the Proceeds of Crime (Money Laundering) Act.

What you have, however—and you can refer if you want to the regulations—are the parameters that are given to the transactions a counsel should be able to conduct, without being subjected to the legislation. Let me read very briefly what that is.

The PCMLA includes, according to the regulations, the receiving or paying of funds other than—these would be covered by the privilege—those received or paid in respect of professional fees. So you don't have to disclose professional fees. You don't have to disclose either disbursements, expenses, or bail.

In other words, as the minister is stating, once you're acting as a financial intermediary you're covered; when you're acting as a lawyer, you're protected. That is the view that has been taken by the government. We think that is the state of the law, at least as we understand it.

Thank you, Mr. Chairman.

The Chair: Peter Mackay, for three minutes.

Mr. Peter MacKay: I have just a very brief follow-up question, Mr. Roy, on that point.

I guess it becomes blurry when you're acting as a financial intermediary if you, for example, engage in the setting up of an account for a client. That, to me, falls somewhere in-between the definitions you've just described. I suppose, particularly then, it comes down to the knowledge the lawyer had of the reasons for the account and the source of the funds.

• 1050 

I want to thank all of you for being here and for your expertise in this area. I think it is absolutely critical in the war against terrorism to get at the lifeblood and the source of this activity, although I think, sadly, we've all learned that the cost of terrorism is not as high as we

thought it might be when it comes to the types of activities they can engage in. Weapons of mass destruction are not necessarily the same as we thought they were before September 11.

More generally, to the minister, does your department envisage the necessity of greater technology in terms of surveillance? What accounting is there for that in your plans? What new powers do you foresee in this information gathering? On the use of electronic eavesdropping through satellites and wiretaps, is that something you can foresee FINTRAC engaging in directly, or will it be entirely left in the hands of the RCMP, CSIS, and Defence?

Mr. Horst Intscher: Thank you, Mr. Chairman.

We have no authority, and seek no authority, to conduct investigations. We are entitled to receive and analyze certain information that financial institutions are obligated to report to the government. We can also access, under arrangements, databases maintained for law enforcement purposes. We are also free to receive voluntarily provided information by law enforcement, or by citizens for that matter. But we are not entitled to go out and seek information through overt or covert investigation. We were created as an analytic body. That's our mandate, and we certainly are not seeking to expand that aspect of our mandate.

The provisions of this bill make it possible for us to look at this same data, not only through the optic of the search for money laundering, but also through the optic of the search for terrorist financing. The provisions in the bill that relate to FINTRAC are simply intended to provide us with the authority to look for a different type of activity in the same data that's already being reported to us.

The Chair: Thank you very much.

Mr. Grose, three minutes.

Mr. Ivan Grose (Oshawa, Lib.): Thank you.

My question may only serve to prove how difficult this is going to be. We talk about confiscation and lifting exemptions for charities. At the moment, the United States and Britain are bombing Afghanistan, in the hope of hitting a few terrorists, I understand. But the United States is also dropping food. The United Nations is supplying food, and half a dozen well-recognized charitable organizations are supplying food.

Inasmuch as we don't know what the terrorists look like, with a couple of exceptions, they are probably benefiting from this food. Food is often used as a weapon of war. How in the world do you separate the wheat from the chaff?

Mr. Jim Peterson: Mr. Grose, you raise one of the very difficult questions we're called upon to face. These are tough calls. The law deals with financing terrorists; it does not proscribe humanitarian efforts to help other people. So one would have to look very closely at every transaction, to make sure that line is drawn.

Mr. Ivan Grose: But it's going to be a very difficult line to draw.

Mr. Jim Peterson: I'm sure the person you should talk to on this is the CCRA minister, Mr. Cauchon. We have about 76,000 to 77,000 registered charities in Canada today, and a lot of these involve those very difficult types of distinctions.

• 1055

Our effort here is to make sure a charity that funds terrorists, or directs money to terrorist activities, is de-certified, has its tax status removed, and has its funds forfeited to other charities or to the crown. Our effort here is to deny tax status to it and the capacity to exist.

In the case where a charity is supplying food to refugees in Afghanistan, I have no doubt the CCRA would tell you that is not financing a terrorist activity.

The Chair: Thank you, Mr. Grose and Mr. Peterson.

At your suggestion, we'll see if we can arrange to have Minister Cauchon here at 11:30.

Some hon. members: Oh, oh!

The Chair: Mr. Fitzpatrick.

Mr. Jim Peterson: I didn't realize I had such power. I've never had that before.

Mr. Brian Fitzpatrick (Prince Albert, Canadian Alliance): Thank you, Mr. Chair, and thank you, gentlemen, for taking the time to come here.

I have some difficulties with the reporting requirements under this legislation. I think Mr. Blaikie raised the point already. Under proposed section 83.1 it's mandatory that you report to the Commissioner of the RCMP and the Director of CSIS if you have funds or assets. I'm sure there are provisions where they have to be frozen as well. Then we have the money laundering requirements, which I'm not totally familiar with, but I imagine they impose burdens and obligations on third parties that are holding assets, and so on.

The question that comes to mind is if we have those two requirements, why do we have proposed section 83.11, where on a monthly basis these institutions have to report to their regulatory agencies with these monthly reports?

I'm going to try to put this in perspective. In Ontario there are probably thousands of financial planners, insurance agents, and small independent operators. They're going to be filing monthly reports, I presume, with the Ontario Securities Commission. I doubt whether the Securities Commission has anybody who's going to monitor and go through these reports. They have lots of obligations already.

What are they supposed to do with these things? By that stage the assets are frozen, this has been reported to the RCMP and CSIS, and the money laundering thing has already kicked in. Now they must also have somebody in business continuously monitoring these accounts and sending these reports to the Securities Commissioner, or, if you're in the insurance business, the Superintendent of Insurance.

So they are getting thousands of pieces of paper every month, and I'm sure they're not going to look through these things. What are they supposed to do—box them up and ship them to the Commissioner of the RCMP, CSIS, or the intelligence community? What's the purpose of this mountain of paperwork that I think you're really creating under proposed section 83.11?

Just as another point, two experts on terrorism were here yesterday. I think they basically said the cattle were out of the barn. This legislation should have been in place a long time ago. The

al-Qaeda network is probably underground, and they're three steps ahead of us on this sort of thing.

What's the purpose of the mountain of paperwork under proposed section 83.11?

Mr. Jim Peterson: Look, if this committee today, or after the law is enacted, as you may amend it, has better and less onerous ways to do this, then we welcome those suggestions. We will, I can assure you, be working with financial institutions to try to alleviate that burden as much as possible.

It's obvious why FINTRAC would want this information. We don't want to duplicate its activities. Our financial intermediaries are already reporting to FINTRAC on money laundering, so we think it just makes sense to add one more report, i.e. on terrorist financing. We think that helps the institutions that have to report, as opposed to reporting to a different institution.

You may ask why we want them to report on a monthly basis as well to the Superintendent of Financial Institutions—

Mr. Brian Fitzpatrick: The Securities Commission also.

• 1100 

Mr. Jim Peterson: OSFI, which is where we will be getting the reports federally.

Part of the role of OSFI is not to act as a cop but to ensure that these institutions are safe and sound. Part of that investigation into whether an institution is safe and sound, protecting depositors and policyholders, is their system of governance. That goes into OSFI's calculation.

If they get information on the types of activities that are coming through, and can monitor the information that comes in, then that is again one of the aspects of the governance of a particular institution. So that is part of the reason we think it's important that they report to the regulator as well.

I'm not particularly as worried about the big institutions, because they have the capacity to do this, but I think it will be a factor in a lot of smaller institutions being told, “We want you to be very prudent and we want you to adhere to the law as well.”

The Chair: Your time is up, Mr. Fitzpatrick.

Mr. Lee, three minutes.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

Mr. Peterson, as you know, Parliament has a constitution based in unfettered power to send for a person's papers and records, and although that can only be changed explicitly by statute by Parliament, in clause 70, which deals with proposed subsection 59(1) of the proceeds of crime act, the PCMLA, there is wording that refers to the case of an order for production of documents. On the face of it, it might be interpreted to actually impinge on Parliament's constitutional right to send for a person's papers and records.

So my question is, is this why the change in wording to insert conditions on responding to orders for production of documents? Why the change in wording?

Secondly, was it intended to bushwhack Parliament's constitutional right? The answer to that question is either a simple yes or no. If it is yes, we have another set of issues. If it is no, then could we have that confirmation today, or later in writing in due course, so it can be confirmed on the record that it is not the intention of the statute to impinge on Parliament's PPR authority?

Mr. Jim Peterson: I can't imagine, Mr. Lee, that it would be, but I shall ask Mr. Roy to respond to your very precise question.

Mr. Yvan Roy: I would like to give you a precise answer to your precise question, but I'm not sure I would be in a position to do so, because I'm not sure I got the question as clearly as I should.

Section 59, as it is to be amended, simply, by my way of reading it at least, refers to an addition with respect to the financing of terrorist activities. In the production orders, it is with respect to judicial orders that can be issued for the purpose of getting information. I do not see anything in it that would touch in any way, shape, or form the privilege of Parliament to seek information and documents. But I should hear you more.

Mr. Derek Lee: To clarify this, if I may, the wording says that an official at the centre shall reply to an order for production of documents only if there if there is a CSIS act or a certificate referred under section 60.1. There must be a certificate.

If the order for production of documents includes orders that Parliament would make under PPR, then it is arguable that Parliament would have to ensure some kind of a section 60.1 certificate. Of course, that is not the case now, and in my view never should be.

I'm asking for clarification. Why the change in wording to require the certificate? I'm going to assume that no one ever thought of this. The government was not thinking of this—and that's good, ignorance is bliss—but if they were, if someone in government was thinking of parliamentary orders for production when they wrote this, then they're trying to bushwhack Parliament and I want a confirmation of the intention—not just for now but in case this issue comes up later. I want it very clear on the record that it is no one's intention, around this table, in the House, or in government, to impinge on Parliament's PPR. If you read the wording of the section, and consider my words now, I think you'll understand what I'm getting at.

• 1105 

Mr. Jim Peterson: Mr. Lee, I can assure you that as we poured through the minutiae of these very detailed amendments, the thought never crossed our minds. But I think it's a very good point you've brought out. I think we owe you a response, and we'll get it to you as soon as possible. Thank you very much for your stellar sweeping.

The Chair: Thank you very much, Mr. Peterson and Mr. Lee.

Mr. Bellehumeur, three minutes.

[*Translation*]

Mr. Michel Bellehumeur: The current provisions of the Criminal Code have allowed the seizure of $150,000 related to terrorism. We know that in Canada billions of dollars are laundered annually. Even if we increase the infractions, the applicable penalties, and if you get the power to freeze these sums for longer, if there is no political will to conduct inquiries and go the distance, you won't necessarily seize more money. That's what I want you to understand. I'm not saying that it is not necessary. I understand that it is necessary to do so and in fact we are asking that it be done, but we need more than information and powers that are on paper. Political will is needed, and I don't feel that the federal government has it. That was not a question but a comment.

I will now ask my question. It touches on something else that concerns me. Does the proposed section 83.28 apply to lawyers? Can you tell me if subsection 83.28(8) applies to lawyers? If that is not the case, we have a problem.

Mr. Jim Peterson: Thank you Mr. Chairman.

You are right. When we started working on the money laundering bill, we believed that between $5 and $17 billion were being laundered annually. So we have succeeded.

I will let Mr. Roy answer the specific questions you have asked.

Mr. Yvan Roy: Thank you Minister.

Your questions, Mr. Bellehumeur, bring me to a clause in the bill that allows for a specific kind of inquiry.

Mr. Michel Bellehumeur: You are forcing someone to testify.

Mr. Yvan Roy: We are forcing someone to testify. I believe that the Minister of Justice said to you that this means of inquiry is already allowed under other acts. In fact, because here it can be used in cases of mutual assistance.

You are asking if a lawyer could be called to testify before this committee. The answer is yes since there are no limitations in this area.

A lawyer can be called upon to testify before any court of law but there are limits as to what he can say during his testimony and the court will recognize those limits. What are they? The lawyer-client privilege.

If you are a lawyer, that does not mean that you can't testify or be forced to do so, but there are impassable limits, in other words that privilege we all know.

The Vice-Chair (Mr. Denis Paradis): Thank you very much Mr. Roy and Mr. Bellehumeur.

We will move on to Mr. McKay.

[*English*]

Mr. McKay.

Mr. John McKay: The way in which money is traditionally transferred from jurisdiction to jurisdiction in certain countries is a fairly informal network. Literally, somebody will walk

into a shop on the Danforth, write a cheque for $1,000, the individual will charge a fee and phone somebody in another country, Afghanistan, Pakistan, you name the country, and the transaction is completed.

• 1110 

The British bill I think—and I'm not absolutely certain, having gone through it—provides for seizure of cash really in any form, and there's no $10,000 threshold or anything like that.

I don't really know whether this is a large item or a small item. I do know it is a traditional way of doing transactions in certain kinds of cultures. I would expect that at least criminal activity takes place in these kinds of transactions. Certainly it's not all criminal activity by any means—there may not even be large percentages of criminal activity—but I should imagine it would be a way of doing transactions that defeats the intention.

Can you give to this committee any assurances, either within this bill or outside of this bill, that those kinds of transactions, if you will the nickel and dime transactions, are being monitored, and whether in fact... I'll put it dramatically: this bill seems to cover the big ones, but there's a whole bunch of fish swimming through the net because the net is not tight enough.

Mr. Jim Peterson: Thank you, Mr. McKay.

I have no terribly satisfactory answer for you on this. A Hawala-type operation is an alternative remittance system. It is, we believe, caught by the current money laundering law and will also be caught under the terrorist provisions that are brought in to the bill.

Having said that, we then go from a question of what can you do to stop these things to recognizing that they may be highly movable and portable, that they may not have a big infrastructure, and certainly are not registered.

One of the discussions we're undertaking with our international counterparts, and it will be a big part of the discussions of the Financial Action Task Force on Money Laundering on this is how can we deal with this type of informal, non-registered, highly mobile type of remittance system?

Dave, maybe you'd like to say something about this. Maybe, Horst, you have some thoughts on it.

Mr. Horst Intscher: I would note that, in our view, these types of remittance systems are caught under the definition of money services businesses, and therefore are subject to the record keeping and reporting requirements of the Proceeds of Crime (Money Laundering) Act. They will be subject to compliance audits by FINTRAC, as are other money services businesses.

In addition, to the extent that they do not reveal themselves to us as reporting entities, when their remittances in any way come in contact with the regular, the formal financial system, there will be an additional means of ascertaining what their activities are and taking steps to bring them into compliance with the act.

If they fail to comply with the record keeping and reporting requirements, they are opening themselves up to serious sanction under the provisions of the act that relate to failing to report. Perhaps Mr. Beer might have something to add.

The Chair: Mr. Beer.

Supt Dave Beer: The question is a very astute one, and there's no question that informal systems such as you described will pose quite a challenge.

• 1115 

Let me revert to the question raised earlier by Mr. Peter MacKay about the importance of international communication and understanding. The extent to which these informal systems exist, and taking the opportunities to learn more about them; the extent to which they will be more difficult to trap, inasmuch as they're outside of the traditional banking sector or the traditional financial sector; the extent to which we can use other investigative techniques and powers, dealing with them more in terms of a substantive offence than purely a money laundering offence or a terrorist funding activity—these will be important to gaining some success. But you're absolutely right; it would be very challenging.

The Chair: Thank you very much, Mr. Beer.

Mr. Peter MacKay.

Mr. Peter MacKay: Thank you, Mr. Chair. To all of you again, I'm very heartened to hear the minister say, in a very frank way, that this is going to take some time. We're not always going to get it right. We're going to learn from the experience of other countries. I think that's a very healthy approach to take, Minister. This is something we're all going to be going through collectively, both here in this country and across the world.

I have two very quick questions, specifically to follow up my colleague, Mr. Bellehumeur. The first deals with the investigative hearings described at proposed subsection 83.28(8), in clause 4. I believe that is the specific subsection that talks about exemptions from disclosure of things that might otherwise be considered privileged, both as to demands for testimony and the production of documents, which might crop up in the case of a lawyer representing a client.

The other question I had relates specifically to instances where there has been a seizure, for whatever period of time. I think we can all foresee instances where, because of the complexity of cases involving financial transactions—and I've been involved in ones that dealt with vehicles or with incredible volumes of documents because of the attempts to avoid leaving a money trail... I'm wondering what safeguards there are for those whose assets have been seized.

Mr. Roy, you referred to the fact that cases may come to light—sometimes months or years down the road—where considerable sums of money have been frozen. Is there a compensatory scheme? Is there recourse for an individual to say, “Look, I've lost a great deal of money in interest while my assets have been tied up through this procedure”? Is there a fallback for them? God forbid that this happen, but it could, and it has in the past.

The Chair: Mr. Roy.

Mr. Yvan Roy: Thank you, Mr. Chairman.

As I indicated when I tried to answer a question from the other Mr. McKay, the law as it stands continues to apply in those circumstances. If there were, on the part of the state, negligence that could be ascribed to the behaviour, the law will continue to apply. Therefore redress would be available before the appropriate courts in those circumstances.

I also expressed, when I answered the question coming from Mr. McKay, the thought, and certainly the wish, that the guidelines given to government officials are to use provisions like this only in appropriate cases. We are not supposed to use provisions like this to go on a wild goose chase.

That is certainly not what is expected and not what has happened with respect to money laundering, for which we've had such provisions. We've had experience for the past 13 or 14 years, and it has not happened. It is not expected that it will happen with the provisions proposed to Parliament for adoption here. They are targeted to terrorism, but sit within the general context of the law. The protections that exist in that context continue to apply here. There is nothing removing governmental actions here from the general application of the law.

Mr. Peter MacKay: No, I appreciate that.

The Chair: Thank you very much. I have to go to Madam Allard.

Madam Allard.

[*Translation*]

Ms. Carole-Marie Allard (Laval East, Lib.): I have a question for Mr. Roy. Mr. Roy, you have often testified before our committee regarding the study of another bill that was very important for my constituents of Laval-East.

• 1120 

In fact, you know that once again last weekend a young teenager was shot by a biker. That is very tragic.

Previously we studied an antigang bill and now we are looking at an antiterrorist bill. Can you tell us if the concept of participation in the antigang bill is related to the one in the antiterrorist bill? I know that this is not about finances, but I would like to benefit from Mr. Roy's knowledge.

Mr. Yvan Roy: Thank you madam.

I worked closely on the development of the bill to which you refer, C-24. My involvement in the preparation of Bill C-36 was not as great since I had changed jobs in the meantime. However I am happy to say that the concepts in Bill C-24 were used by the writers of Bill C-36. Incidentally, the participation and facilitation concepts that were studied by this committee in the context of Bill C-24 are in Bill C-36. If they were relevant for C- 24, they should also be for C-36.

Ms. Carole-Marie Allard: I would like to ask you another question Mr. Roy. We have the impression that the antiterrorist bill broadens the powers of the Federal Court, gives certain

powers to the judges of the Superior Court and also to the judges of Court of Quebec to decide on releases. In the end, are we not diluting the powers of the judicial system by giving multiple jurisdictions to multiple courts? Have we considered the creation of a special tribunal for terrorists acts so that it could rule on a case from beginning to end?

Mr. Yvan Roy: As far as I know, there has been no question of creating a specific special court for this. It has been established—and you yourself have remarked that it is in the Bill—that there must be judicial supervision of many powers given to the State. That is why the judges of different jurisdictions have supervisory responsibilities.

The basic principle adopted is that when federal government measures are at issue, we use the Federal Court to decide and supervise the judicial powers, and when the case is more provincial in nature we use the provincial and superior courts to supervise everything.

We have created special tribunals in very special cases. I do not believe that this is something that we should favour. I prefer to have judges with an extensive knowledge of the law look at these questions and consider the numerous elements and interests that have to be taken into account in such difficult circumstances.

The Chair: Thank you Ms. Allard and Mr. Roy.

[*English*]

A last question goes to Mr. Sorenson.

Mr. Kevin Sorenson (Crowfoot, Canadian Alliance): Thank you, Mr. Chairman.

I want to thank you for coming. I found this very fascinating. When we talk about the war on terrorism, obviously travel and dollars—being able to limit their financing—are two of the key roles in fighting terrorism.

Part of what we're concerned with here is there are no institutions, I would imagine, here in Canada with “Al-Qaeda Inc.” bank accounts. We realize from witnesses there are many small cell groups active in Canada. CSIS has said there have been 50 organizations raising money for terrorist organizations in the past. So we know there are large organizations, but there are also these little cell groups. In the past week, in Fort McMurray, three terrorists were arrested with 15 different aliases and all these different credit cards.

• 1125 

What I'm driving at is this. Various financial institutions are going to be required to determine if these larger organizations are active in their territory and using their banks as an institution. But how effective are little banks in Fort McMurray, with three individuals—and maybe another four individuals in a small little cell group—going to be?

And what is the cost to them going to be? Have we anticipated any administrative costs we can expect these administrations to have to come up with ?

We talk about summary convictions, and you also mentioned that larger institutions may be able to handle or absorb these. Summary convictions of $100,000 may be a fairly small conviction for a very large group, but these little cell groups... My concern is—though I never

really thought I'd ever hear myself say this—for some of the institutions. Are they going to put someone in charge of that?

My other question, very quickly, involves the example where $150,000 has been seized. How many different groups are represented within this dollar amount, and how did it come about? Did it come about as a result of banking institutions coming to CSIS or RCMP, or did it come about through the RCMP saying: “These are individuals; let's seize their personal accounts”?

The Chair: Thank you, Mr. Sorenson.

Mr. Peterson.

Mr. Jim Peterson: Thank you very much, Mr. Sorenson.

On your second point, the $150,000 that was announced previously was the result of financial institutions coming forward, having recognized some of the terrorists who were listed.

On your issue concerning small financial institutions, maybe in smaller communities, not having the resources, to the extent they're linked into one of the major financial institutions I suspect it will not be long before they are online with certain types of communications systems that will hopefully alleviate this burden.

I know part of the work of FINTRAC and Horst Intscher is not to act as cops, but to work with all types of institutions on implementation. Maybe he could say a few words about that.

Mr. Horst Intscher: The approach we are going to take with all reporting entities, really, is to work with them in partnership to help them understand their compliance responsibilities and achieve compliance in as easy and unburdensome a way as possible.

To assist them in making some of the determinations they have to make, we have issued some guidelines. We will be continually revising the guidelines, to flag for them things they should keep in mind when they conduct transactions. Also, to help them report to us in a simple manner, we're establishing very simple electronic reporting means that they'll be able to use.

We will be calling on them periodically to ask if they have any problems and whether we can help them or help provide training materials.

Mr. Kevin Sorenson: Some of these are very small credit unions—

The Chair: Mr. Peterson wants to make another point, Mr. Sorenson, and this will be the final point.

Mr. Jim Peterson: Having been so graciously cut off, thanks, Mr. Chairman.

The Chair: Not at all.

[*Translation*]

M. Jim Peterson: I would like to answer Mr. Bellehumeur's question. Do we have the will to go after the money launderers and the terrorists?

I can assure all of you that there is a great will to do so within the government. We will do everything in our power, everything possible, which should be the duty of every one of us.

[*English*]

I want to thank you all very much, Mr. Chairman, and especially you, for this opportunity to appear before you. If you have other questions arising out of your deliberations that involve us, we'll be pleased to work with you. Good luck.

The Chair: I'm sure you've enjoyed your first appearance before the justice committee so much you'll be anxious to come back.

Mr. Jim Peterson: Certainly.

The Chair: I would also note, further to your suggestion earlier that we have the minister responsible for the CCRA drop by, that our staff here is capable of practically anything. We're going to suspend, to allow the opportunity to change cards, and we'll have the minister responsible for CCRA before us very shortly.

October 30, 2001

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ): First of all, I would like to thank you for joining in with all the others who have voiced their concerns regarding the possible application of Bill C-36. Quite sincerely, I agree with everything you have said, from A to Z. I have been saying the same things over and over again ever since the bill was first tabled.

To sum up, the way the bill is drafted, there is the possibility of abuses, and I think that all six of you share this point of view. You are not questioning the rationale for such legislation, but it does allow for abuses. Individual rights and freedoms, and even the rights and freedoms of society, could be threatened by potential abuses of the legislation.

The bill places far too much power in the hands of individuals. The balance that the government has been trying so hard to attain, which seems to have been an important element right from the outset, is the balance between national security and rights and freedoms. Obviously, this objective has not been reached. I think that everyone also agrees that a sunset clause is needed.

Here is my question: Would it be possible to add something to this bill that would shed more light on the rationale for its introduction? I will explain what I mean by that.

I am convinced that we need such legislation, if only to implement here in Canada certain international conventions that we have yet to implement. We also need such legislation to deal with the whole problem of money laundering. At present, Canada is far, far too lax, and we really have to think about this problem.

Yet it seems to me that something is lacking. I am thinking aloud along with you, and I would like you to tell me whether I am completely mistaken or if it would be possible to do a better job of delineating the reasons for such legislation and the way we would like to see it applied in Canada. I think that a precondition is missing for the application of Bill C-36.

I know there are provisions in the Criminal Code... I do not have an example with me, but at the very beginning of the Criminal Code, there is a section on people who threaten the stability

of the government or the democratic nature of a government. The offence is set out at the very beginning of the Criminal Code. We should add a similar precondition to Bill C-36, saying that the legislation applies once the offence has been proved beyond all reasonable doubt.

I am also worried about the new principles having to do with suspicion, etc. Could we use the principles that are well-known in Canada that say "when there are reasonable grounds to believe that such and such an individual or such and such an organization is threatening the democratic nature" or "attempts to overthrow a government or destabilize it financially or an order of government politically?" Could we use something like that? I have not made up my mind about the terms of the definition, but could we add some kind of precondition for the application of the legislation, which would naturally go along with a sunset clause requiring a review and Parliament voting on the legislation again, since this is such an exceptional piece of legislation?

Could that reassure the people who are worried that the use of Bill C-36 could harm people's individual and collective rights?

October 30, 2001

Mr. Michel Bellehumeur: I think that you're right to say that in times of crisis we must be careful not to go to the other extreme. Right now, Canadians and Quebeckers are looking for security because of the events we all know about. They're going to grasp at anything we give them if we tell them it's good for national security and their own security. You can be sure that people will grasp at that. I think you have the right to ring the alarm when things go too far and you're doing that this morning. As parliamentarians, we must listen to what you are saying.

We must look at this as objectively as possible without getting into specifics, without grasping at that false sense of security. It must be said that no legislation is going to stop men or women who decide to die for a cause. Yes, you can have legislation, but you also have to look for balance. We don't have that balance here. Quite clearly, we don't have it.

As far as I'm concerned, I'm in favour of a sunset clause. I'm also in favour of respecting international conventions. But the way it's worded... Even international conventions, as you said earlier, refer to certain clauses of the Criminal Code. I have some serious problems right now. Yes, I want those international conventions, but they refer to clauses of the Criminal Code which actually go very far concerning hazardous products. When ordinary people stand in front of a truck carrying nuclear products, that is considered a terrorist act.

I think that the hate propaganda provisions aren't a problem, anymore than those that pertain to laundering proceeds of crime. I also think that the registry of charity organizations, except for the very secret part of putting people on the list or not, is still acceptable, depending on a review of those cases. However, for the rest of the legislation, I would like to see a sunset clause.

In the U.S.A., there is a sunset clause setting out that it's for three years, renewable for two years thereafter; so it's a maximum of five years. In France, the legislation clearly spells out

that it dies on December 31, 2003. I think that it's even more complex in Great Britain: there are things that are done every year with some kind of vote. I think it would be normal to do that here, save for the exceptions I've just mentioned. Do you agree on that?

• 1105 

Mr. Pierre Bosset: Yes, generally speaking. The time limit is necessary and it is even in the spirit of the international conventions on human rights that Canada has ratified, which provide that in times of emergency, you can temporarily suspend human rights on condition you say so. In this case, we did not proclaim a state of emergency. We could have done that. Canada does have an Emergency Measures Act that was passed here a dozen years ago but it wasn't raised in this case. But we are faced with exceptional circumstances and everyone agrees on that. And because we are facing exceptional circumstances, this bill has to be limited as to its duration.

I think the enumeration of the nevralgic or problematic aspects of the bill that you've made are pretty close to the consensus of the witnesses you have before you. At the very least, I think the lawmaker would not err in attaching a sunset clause to the provisions you've just mentioned.

[*English*]

October 30, 2001

Prof. Julius Grey: As to the first part, I agree with you. Raising funds is not economic, it's an issue of property or direct working of a terrorist organization. It's the same thing as happens with a criminal gang, a Mafia, in Canada. It's just as criminal to launder their money as it is to do the actual violent business they may be doing. That's not economics. It's the same with destruction of property. I don't object in that area, because when you destroy property, you may also destroy people—setting fire to something destroys both. That's not what I worry about.

What I worry about is disruption to people's economic interests, and there you're perfectly right. You're saying there could be tremendous havoc with our markets with all sorts of things. I agree with you, and I think these things can be prohibited. For instance, I don't know if you followed the case, but a 16-year-old hacker in Montreal did a tremendous amount of damage. A hacker can do a considerable amount of harm. Nevertheless, I think we must distinguish between that and terrorism. The reason I don't want activities that are intended, for instance, to harm the economy, so-called economic espionage etc., to count as terrorism is not that I think these are nice and proper things for people to do, but that I think they should be dealt with under the normal Criminal Code provisions. They do not deal with that type of intimidation, a threat to somebody's life or direct property, setting fire, throwing bombs, sending envelopes full of white powder, whether or not they contain the suspect substance. That is a different type of terror and a different type of intimidation.

I bring back my point. There are a great many things people do in our society that are terrible. If we classify too many of them as terrorist, we're basically undoing the whole idea, because

they're no longer that exceptional and that special. So with the economic stuff, it's not that I wish to approve, for instance, harming markets intentionally, it's that I don't think they amount to terrorism, and there is a provision in the Criminal Code.

October 31, 2001

Ms. Pierrette Venne: I have one final question to ask.

Since the coming into force of the Proceeds of Crime Act, many lawyers have come to complain about the new provisions being imposed upon them. They are required to declare suspicious operations. They have told the media and everyone who would listen that this is an infringement on solicitor-client privilege and that it will turn lawyers into informants working for the State. We know that in the future, under Bill C-36, the Money Laundering Act will also cover the funding of terrorist activities. This is what will be in force.

Given that lawyers are not supposed to facilitate crime, why are these lawyers coming to tell us that they feel constrained by this Money Laundering Act which will heretofore also apply to the funding of terrorist activities? Do you have an explanation to give us in this regard?

The Chair: Mr. Potter.

Mr. Simon Potter: Madam, thank you for giving me the opportunity to speak to you about this matter, because it is often misunderstood.

Lawyer associations have never come to ask that lawyers be allowed to commit crimes. That is not it. What we want to do is to protect the confidentiality of what a client may tell his or her lawyer. This confidentiality is absolutely essential to the proper administration of justice and to the protection of individuals vis-à-vis the State, vis-à-vis their adversaries, vis-à-vis their competitors. Without this confidentiality, clients will not be open with their lawyers. This confidentiality must be protected.

With regard to the proceeds of crime and, now, terrorist activities, clients must be able to speak openly to their lawyer without the latter suddenly feeling the need to right away run to the police to report some suspicious thing that his or her client may have revealed. We must protect the confidentiality of the solicitor-client relationship. This does not mean that lawyers must be allowed to participate in these crimes, not at all, but the lawyer who is told something by his or her client must be allowed to keep this information confidential.

• 1730 

[*English*]

The Chair: Mr. Lomer.

Mr. Michael Lomer: In the course of my function as a defence lawyer, I may have clients confess all sorts of things to me. If it were the law that I had to then tell the crown what that confession was—and then turn myself into a witness, I might add—our administration of justice would cease to function. It just would not work, because defence lawyers would then

be perceived, quite accurately, as being Trojan horses for the prosecution. That's not the way we work it in an adversarial system.

On that point, I point to proposed subsection 83.1(1), where it says a person in Canada has to tell both the RCMP commissioner and the director of CSIS. Is there some sort of jurisdictional thing that you have to tell both of them? I don't get that. Is it to keep the left and the right hands knowing what's going on at the same time?

Leaving aside that curious “and”, the part I draw your attention to is information about a transaction—

[*Translation*]

Ms. Pierrette Venne: What provision are you speaking about?

Mr. Simon Potter: It is proposed section 83.1, Madam.

[*English*]

Mr. Michael Lomer: If you look at proposed paragraph 83.1(1)(b), where it talks about “information about a transaction”, that clearly would be a transaction in the past. If I were defending somebody, that would mean if my client came to me and told me about that transaction, under this law I would be required to turn around and tell the commissioner of the RCMP and the director of CSIS. That's a clear violation of solicitor-client privilege. The section has to be changed. It has to at least acknowledge that defence lawyers defending people charged with these offences can actually receive information without the obligation to turn it over to the police.

The Chair: Thank you.

I think Mr. Ouimet wants to speak to this, and then I'm going to go to Madam Carroll and Mr. MacKay. We're over time here.

[*Translation*]

Mr. Ouimet.

Mr. Gilles Ouimet: With regard to the solicitor-client relationship in particular, there is also a provision according to which a lawyer may not divulge the fact that he or she has made a report or has communicated the information required under the law.

This provision will undermine the very basis of the trust relationship between a lawyer and his or her client, to the extent that the client will have no way of knowing if his or her lawyer has made such a declaration or not. This is a provision that may cause problems in certain situations.

The Chair: Thank you very much.

[*English*]

Madam Carroll, for three minutes, and then Peter MacKay.

Ms. Aileen Carroll (Barrie—Simcoe—Bradford, Lib.): Thank you, Mr. Chair.

Fortunately for me, since I have only three minutes, John McKay asked Mr. Potter a lot of what I wanted to ask, so it's on the record and I'm grateful for that.

Mr. Potter, I would just like to ask you, in reference to page 15 of your brief and the sunsetting, is the bar recommending that the entire bill be sunsetted when you say that? In the second paragraph you say there are some portions that are of general value and should be retained past the operation. Could you just elaborate on that?

Mr. Simon Potter: Thank you very much. By the way, as you come from the riding where my brother lives, it's a question I'm very happy to answer for his benefit.

Ms. Aileen Carroll: I'll tell him.

Mr. Simon Potter: There are three sections in the bill that deal with hate crimes, for example, that make them hate crimes even if they are carried over the Internet. We have no problem with those three sections, and in our submission we identify precisely which three sections they are. We want the rest of the bill sunsetted. We don't see a need to sunset those three.

Ms. Aileen Carroll: I have a supplementary question, Mr. Chair.

I've had some people mention to me that sunsetting would create a dilemma for a defence lawyer, that he's in a process, looking at a timeline, and evidence is going to be submitted. Would a sunset clause have a negative impact on his or her ability to defend?

Mr. Simon Potter: Well, my answer is there should be no problem with a sunset clause. What we are dealing with here is essentially massive increases in police powers, and I don't see any difficulty with those police powers—which didn't exist yesterday, which apparently will exist in a few weeks time—not existing in a few years. I don't see the difficulty there.

Some people have suggested you don't want to find yourself in the middle of a police investigation and suddenly have your power disappear. I can understand it might be problematic for the police, but we don't run our society for the police.

• 1735 

Ms. Aileen Carroll: Thank you.

I have one last question, for Professor Magnet. I listened carefully to what you said about this bill being modelled on the United Kingdom's bill of 2000, that we aren't the U.K., we don't have Northern Ireland, and we're not a superpower, and generally, you hit a lot of chords with me. Do you think a sunset clause is sufficient, then, to take out a bill that is, in your view, so untypically Canadian?

Prof. Joe Elliot Magnet: I think a sunset clause is necessary for the reasons my colleagues have put forward, but I don't think it's sufficient; in other words, I have not seen the justification put forward for these powers. So I fear that even if we were to clean up our act in three or five years, we still would have eroded our juridical culture, we would have damaged our society, we would have created disaffection, and possibly we would have done some good, but we've seen no justification that we would. In other words, we lack the strategic dimension here as to what we're responding to. We all know about September 11, but we don't know

anything else. So until that justification is made, until we have better strategic information, I would say these measures are not to be implemented.

Ms. Aileen Carroll: Do the Brits have a sunset clause?

Prof. Joe Elliot Magnet: No.

November 1, 2001

Ms. Pierrette Venne: Thank you, Mr. Chairman.

I would like to talk about the financing of terrorism activities. As you know, on Monday of this week, the American secretary asked international financial action groups to draw up international criteria to counter the financing of terrorism.

I'd like to ask you whether you believe it is possible to arrive at a consensus on the means to take to curtail the financing of terrorist activities. According to you, what should those criteria be?

• 1115 

Perhaps we could include them in Bill C-36, since we are amending the Proceeds of Crime (Money Laundering) Act, and add the financing of terrorist activities to our changes.

[*English*]

The Chair: Mr. Westwick.

Mr. Vincent Westwick: This is a difficult question to answer because grappling with the aspects of financing of terrorism is new to all of us. What has impressed us in the bill is that there are tools provided. I would simply repeat the point that Mr. Adkins made the last time, namely that we're not sure whether they will be adequate enough; we're not sure of their full application, but we like what we see so far.

The Chair: Mr. Adkins.

Det S/Sgt Brian Adkins: I think that's a very challenging question as well. I don't know whether you could get an answer to that question right now with the urgency of this bill. But I think it raises a valid point that should be considered down the road.

The other thing is we are unique in Canada, and it's very important that we take a look and ask what's going to be affected here. There may be things we may agree with internationally. There may be things we can't agree with. So I think whatever we do has to be tailored in Canada. The chiefs have many relationships back and forth with policing across the world, and of course you're familiar with Interpol. I think those are issues. But that's a question that has to be studied to get a successful answer.

The Chair: Mr. Obst.

Const Grant Obst: Just quickly, I think Madame Venne has hit on a good point. I can't address specifically your question with respect to financing of terrorism. But there are a number of additional tools laid out in this bill that many of us in law enforcement, even the more mature investigators, are going to be dealing with for the first time. We've been talking about a sunset clause and about a review and about timing for any one of those, and I'm thinking that what we should probably be talking about is some strategy where we stay in touch with each other—not constantly; I think heard the amount of time of six months talked about. That might not be a good idea and perhaps that should be examined a little closer, so that we can see how these new things are working. Mr. Niebudek indicated we may be back saying they're not working—we need this changed, we need that changed—and I don't think we should lose sight of that.

The Chair: Mr. Knight.

Mr. Leo Knight: Thank you, Mr. Chairman.

In response to the member's question, I referred in my presentation to a report from the assistant director of Interpol to a subcommittee on crime in Washington, D.C. I have a copy of that report. If the member would like, I can make it available to him.

The Chair: Thank you very much.

And now to Mr. Owen for three minutes.

Mr. Stephen Owen (Vancouver Quadra, Lib.): Thank you all for appearing before us today.

I'd like to make just one observation. First of all, we've talked a lot regularly in this committee about the extraordinary new powers of this bill. It's a complicated, large bill and it addresses very important issues before us.

But I think it's useful to remember that much of what is in this bill is simply an extension of what we already have. I am thinking of many of the tools that have been provided to deal with organized crime before, whether it's with respect to money laundering, proceeds of crime, or electronic surveillance, whether it's the penalties, whether it's participating, directing, or facilitating those criminal organizations. I suppose it's not unusual that these are simply applied now to terrorism, because terrorist organizations are the ultimate criminal organization.

But when we talk about these extraordinary powers we realize that most of them already exist. Even the investigative hearing exists now in the mutual legal assistance provisions we have with respect to cooperation with other countries.

I'd like to place two questions that relate to that statement. One is with respect to the cooperation among law enforcement agencies, particularly internationally, given what we know about the international quality of terrorist organizations. It speaks to the situation that is sometimes called subcontracting. This may be part of the concern with the extended powers to the CSE to intercept communications that begin or are directed to Canada when they have a foreign target.

In the past there has been concern that security forces in different countries do in each other's countries what they are not allowed to do in their own countries without judicial authorization and then swap the information.

• 1120 

First of all, I'd like to know if that happens. If it happens, is it necessary for it to happen in order to deal with the international nature of crime? If it is necessary for it to happen, do these new powers to the CSE allow security forces, intelligence forces, to do within a new prescribed law what they feel is necessary, but were not able to do within the law previously?

The second question goes to the convergence of terrorism and organized crime. It has been suggested certainly to me in previous inquiries I've been involved with that organized crime actually has a very strategic reason for financing terrorism, and that's because it diverts resources.

What we're seeing immediately now from complaints or concerns expressed by people in Montreal is their worry that the resources are going to be diverted from the initiative towards organized crime, which hits that area of Canadian society in a particularly violent way, to terrorism. It would seem to me, if that is the case and there is some redirection going on, it may at least prove the objective of the point that was made earlier, that organized crime is financing terrorism. I wonder if any of you might have any comments on those two questions.

The Chair: Thank you very much.

First, Mr. Westwick.

Mr. Vincent Westwick: On the first point about agencies doing work in other countries and then exchanging—that sort of thing—quite frankly, I'd never heard about that until I heard about it on TV the other night. It's not something that happens in the police world. It's not a regular practice at all. I can't speak for the intelligence community in that sense, but it certainly doesn't happen in the police community. In addition to the ethics of policing, I think there are also the charter applications in terms of the evidentiary value of the fruits of that kind of exercise. They would be very questionable. But I would say that's simply not the way police in Canada do business.

The Chair: Mr. Niebudek.

Mr. Mike Niebudek: I'll cover your two questions, but you did make a comment about the sunset clause before, and I'm amazed as to the amount of attention this sunset clause issue is getting.

First of all, if one were to tell me that they expect in two years to get rid of terrorism, I would ask them what colour the sky is in their world. It's not going to happen. We know that. That's a given.

So why are we knocking a sunset clause for this particular bill when we're not doing it for Bill C-24, for example, or any other bill that we've enacted to protect society because of new trends and new ways people are committing crimes. That's a comment on that issue.

As for the CSE, the Communications Security Establishment, I digress, like my colleague from the chiefs association. I can't answer that question. That's probably one question that would be left to the intelligence community, as was mentioned.

With regard to the organized crime funds diverted into terrorism, it is not something I am personally aware of. The only thing I've heard was one of the media a couple of days ago alluded to that. If members of organized crime divert funds into terrorism or other organizations, then they're dealt with as terrorists according to the....

The Chair: Thank you very much.

Mr. Adkins is next.

Det S/Sgt Brian Adkins: Yes, I think the first question is a difficult one to answer, and as I said, it's best left to other people who are in that business.

With regard to the second question, I think you make an important nexus, Mr. Owen, between organized crime and between terrorism, because many times terrorism has been financed by the activities of organized crime. It's just under a different area. When you start hearing about false identifications and all these other things, these are all part and parcel of the issue. I think it's important to recognize that.

It's important to recognize as well that the terrorist investigations are things that will be going on. Those other investigations will continue at the same time. Sometimes they will be the same people in relation to those organized crime activities—those credit card activities, those things that strike at the heart of the economy and that debilitate everyone.

Mr. Stephen Owen: We may not need parallel resources. The same resources can be targeted at both.

Det S/Sgt Brian Adkins: Well, I don't think that will be possible just because of the type of people you're looking at and the types of groups that are there. As a result of September 11, you have an issue that has to be dealt with, and there have to be resources committed to that. You're not going to be able to say we're going to get two abilities here to do something. You're going to have to say we're committed to that.

The Chair: Leo Knight.

Mr. Leo Knight: Thank you, Mr. Chairman.

Mr. Owen, in response to the second part of your question, as a former deputy attorney general of British Columbia, I know you worked extensively with the former Coordinated Law Enforcement Unit. You appreciate the difficulties and the intrinsic complexity of an organized crime investigation.

• 1125 

You can take it that because of the convergence with terrorism we're seeing—and certainly this has been demonstrated in a number of matters, such as fake identities and identity theft, etc.—the complexity of those types of investigations is increasing exponentially. I know

you're aware of just how complex and how difficult they are. Well, they've just become a lot more difficult.

The Chair: Ms. Boniface.

Commr Gwen Boniface: I wanted to add something on the link that I think exists between organized crime and terrorism in terms of funding.

There's great opportunity for organized crime to take advantage when governments' economies have been destabilized. As we see in areas of the world where we have officers working in UN missions, organized crime greatly takes advantage of the instability of the country.

I would make the link from that front as well as in terms of organized crime and terrorism. On the second front, in the sense of their high levels of organization, the clandestine work and sophistication and money organized crime and terrorist groups have gives them very similar abilities to work amongst and inside groups and evade law enforcement, strictly because of how well funded they are.

November 1, 2001

Mr. James Aldridge: I appreciate that, Mr. Chairman. I do appreciate it, and let me end with this. It's in the conclusion of my paper, but I would like to say it.

There is a kind of pattern that has emerged in the last year or so in the way we as a country are reacting to a number of evils that confront us. In order to combat evil, money laundering for example, Parliament has enacted a law that has been challenged by law societies for overreaching itself and affecting solicitor-client privilege. I understand that this matter will be proceeding into the courts on the alleged overreach of the money-laundering bill: a recognized evil and an overreach.

Last spring the House passed Bill C-24 on organized crime, which is now before the Senate. It recognized the evil of organized crime and the necessity to pass laws about organized crime, but that included provisions enabling designated police officers to commit acts and/or omissions that would otherwise constitute crimes. In my view and the view of many other people, that is overreaching the power needed to combat the evil. In order to pursue the legitimate fight against evils of terrorism, the government has now presented a bill that, despite the best intentions of the drafters, may result in overreaching, with draconian measures being taken against legitimate political dissent and potentially subjecting Canadians to dire consequences without basic procedural standards.

I suppose the general point I would make to parliamentarians is try to focus—if I may say this with the greatest of respect—on the precise evil you are trying to address and restrict the laws to those evils. I think that will result in a healthier evolution of our legal system.

November 6, 2001

Mr. Stephen Owen (Vancouver Quadra, Lib.): Thank you all for being here, including Professor Mendes. I hope he can stay for a couple more minutes. Time is short, and we could use many hours to gain from your experience.

I have a few comments that might attract some reply. Professor Cameron's ideological profiling is an interesting idea around ideological, religious, and political motivation. In fact, it's intended to profile people with those motivations who intend to intimidate by committing very serious crimes. So within that subset of perversity that would cause people to intend to intimidate through very serious crimes, you're trying to profile, but I can see that this causes anxiety, and I can understand that.

• 1655 

I'm wondering whether a non-discrimination clause, one making it clear in the definition section what the purpose of the inclusion of motivation is, might be of assistance.

Sunset, not sunset, is it... does it perhaps... Professor Mendes, because the court sees justice as not being static, would the court perhaps be more likely to find some of the unique provisions constitutional at this time if they knew there were a sunset clause? That's a question.

The problem with lists and the unfairness that can occur, a problem we're all wrestling with and one you raised, is that the proceeds of or for crime, a real target of this legislation, requires, as we've heard, a lot about freezing. You have to have a process where you can both give notice and have an immediate effect, and that's something that will be a bit of a challenge.

From an international point of view, in particular with respect to the U.K., Amnesty International has often been very critical of security forces using pre-emptive killings of IRA operatives. One of the things about preventive arrest is that it's within the law, a very measured, overseen process, designed to avoid putting security forces in the position of facing imminent and very serious consequences by moving outside the law or even being instructed to move outside the law in those cases.

Professor Schwartz, in terms of customary and conventional international law, I think that the purpose—and you may have identified this—of that exemption was to exempt those involved in an armed conflict that might come within international law's definition of a just struggle against oppression. It might also come under the international law prohibition against targeting non-combatants, as you've mentioned, and that would apply to states as well as, I would think, to...

November 6, 2001

Mr. Stephen Owen: Thank you to Professor Schwartz in particular, because you referred to the CBA brief.

One of the deep and enduring difficulties the CBA has is with the effect on solicitor-client privilege or relationship. Of course this isn't new in this legislation; it was in the money-

laundering legislation previously and has now been extended to cover terrorism and proceeds of crime.

It occurs to me—and I'd value your comment on this—that the problem we're getting here is that the historical relationship between solicitor and client, or barrister and client, grew out of a judicial process, but the practice of law has broadened to such an extent that many solicitors are simply performing functions that some other financial officer might perform. Therefore, the bar is caught in the breadth of its practice, which is good, but the threat to a privilege that was meant to apply to a much narrower practice traditionally.

Of course, the difficulty with having this breadth of practice and having solicitor-client privilege apply to the whole thing is that it leaves a large hole in an attempt to stop money laundering or financing of terrorist activity. I wonder if you have an observation on this.

Prof. Bryan Schwartz: Yes. I don't claim to be fast enough or wise enough to have all the answers on this issue right now, but it does seem to me that some more creative thinking could be done along the lines you suggest of not just looking at practice comprehensively, but saying that when you are defending an alleged terrorist there should be much more protection for the relationship than when you are acting as a conveyance or a financial officer.

To reiterate an earlier suggestion I made, I'm not saying it's a traditional solicitor-client relationship when your lawyer can look at information without conveying it to you. But is that better than saying nobody on your team can look at it at all, only the judge? This isn't something we've done before, but as you're suggesting, extraordinary times may call for extraordinarily creative thinking. It may be there's a way we can have this balance between public security and the continuing role of lawyers that is a little bit better than the one we have in the proposed bill.

Mr. Stephen Owen: There are provisions with respect to intercepted communications where lawyers for accused can actually have access to the transcripts and such without sharing them with their client.

November 8, 2001

Mr. Michel Bellehumeur (Berthier—Montcalm, BQ)

The alarm bells went off in 1995, and the government did not seem to want to take action. As we well know, customs and the border have been like a sieve for many years. It is well known that a lot of money laundering is done in Canada and that Canada has signed international conventions but has not put them into effect. So now the government wants to make up for lost time and do so very quickly.

Today I am wondering whether we are not going about things the wrong way and whether the committee should not draft a report similar to the Senate report, providing general recommendations, rather than adopting the bill clause by clause. Should we not report back to the Minister of Justice, so that she and her officials can draft another bill that she can bring back to the committee for consideration, so that we can be sure that no mistakes are made.

Even if we put in a sunset clause to take effect after three or five years, those mistakes will be in force for that time.

During those three years, mistakes will be made. Many people have talked to us about the 1970s and as a Quebecker, I could tell you some things about that as well. Mistakes can also be made regarding refugees or charities that are on the list. Mr. Allmand, your organization was on the terrorist list before this legislation. If the bill passes, the list will be secret. Who will be on the list? Perhaps even the Bloc Québécois.

Are we not making a mistake here, and should we not take this time instead to give general direction to the minister, so that she can go back and do her homework? There might be less pressure on her than during the period following September 11th, and she can come back to us with a bill that is more consistent with our Criminal Code and better suited to our institutions and our know-how, which is different from that of the United States, Great Britain and France. That will be my only question, and I believe that it is a very important one.

Dr. Anu Bose (Executive Director, National Organization of Immigrant and Visible Minority Women of Canada):

… I move, Mr. Chairperson, to speak on money laundering because that is what I did my doctorate in, money laundering in the informal economy and the institution of *Hawala* as practised in India. Unfortunately, an arrest here and an arrest there will not address this problem, since a great deal of money is transferred around the world through an informal underground clearing-house system that swaps money to move funds from place to place. It has been described in some detail in Hilary Mackenzie's article in *The Ottawa Citizen of October 20, and I would refer your researchers to that.*

It is a situation based entirely on trust, contrary to Fukuyama's characterization of developing countries as low-trust societies. There are no rules, no regulations, and no direct communication between the parties. All the transactions are done through the broker, who gets a percentage as a commission. It's cheap, efficient, and a welcome change from nationalized banks with extortionate rates, bureaucratic procedures, and surly clerks. FINTRAC would be well advised to keep this on their research agenda.

We are concerned as to who will foot the bill for national security. The Honourable Minister of Finance has led us to believe that he does not have in mind incurring a deficit in his budget. So where are the moneys to be found, especially now when economists tell us that we are experiencing a mild recession due to the fallout from September 11? Will there be further cuts in spending on health and education, which will affect the most vulnerable sectors of our society, especially those from visible minorities? Will our social capital base be further eroded? Will Canada's international aid budget, which is at a 30-year low, be further jeopardized in the present climate? Even the president of the Public Policy Forum has seen fit to warn the federal government that the preoccupation with terrorism could compromise future competitiveness and living standards. Forty-four percent of Canadians now have inadequate work-based skills and are unable to function in the knowledge economy.

In conclusion, the NOIVMW constituency is composed of women, some of whom have had to flee from terror, oftentimes state directed or state inspired, in their countries of origin. They

and their families came to Canada to rebuild their lives and live in peace. They certainly do not wish to be victims of terror from within or without. NOIVMW asks you, the elected representatives of the Canadian people, to look for a balance between individual liberty and collective security. To let national security concerns trump our cherished freedoms would be to hand the victory to the very same terrorists that this bill purports to control.

Mr. Brian Fitzpatrick (Prince Albert, Canadian Alliance)

… Another comment that has been made—I've heard it over and over again, but I'm not exactly in agreement with it—is why are we concerned about economic matters? I take issue with that. This is more than just acts of violence. If somebody shuts down our energy source in January, we have problems. The way our financial system works in this world today, with the global economy and so on, if somebody can shut down the information systems that the financial services sector relies upon, we have big problems. I really do think that terrorists are bent on destabilizing society through whatever ways they can. So to confine something to a pure act of violence is not sufficient in this area. I think they would use any means available to them to achieve their purposes. If they could destabilize our economy, our system, or our way of doing something, they would do so. I just want to make that comment.

I want to zero in on the idea of mistaken identity under this concept. With all due respect, the people on the U.S. list are predominantly of Muslim and Arab background. What I've heard about the Canadian list is that it's the same thing. I'm quite sure there are a lot of common names in the Arabic and Muslim communities.

I'm just thinking about this thing. If it were in a different context, and the name of John McKay, Andrew Scott, or John Maloney were put on a list and the money-laundering provisions were in place, with the requirement to report all the financial institutions and having the ability to freeze and close down things and so on, I think we would probably realize that there would be a lot of injustice occurring with that sort of system.

This is a concern I have with the listing provisions. If a mistake is made, I think it could have very harmful effects on a lot of innocent people. There really isn't a lot of protection in there if you want to get your name taken off. You can apply to the Solicitor General, and if the Solicitor General is sympathetic to your cause, your name might be taken off. But other than that, there isn't a whole lot more in the bill. That's something I would like the spokesman from the Muslim community to address. We've heard from union people and other groups, and that's something I would like to hear.

I have had a look at the Senate report, and I think they've done a very thoughtful analysis of this piece of legislation. I'd be curious to hear your response to their proposals with regard to this bill….

November 20, 2001

Ms. Anne McLellan: Keep in mind, Mr. Cotler, that you yourself have written fairly eloquently and persuasively on this very point, and I'm not going to repeat what you have said.

• 1335

I have made it absolutely clear from the outset that what we have to do is reorient the way we go about dealing with these kinds of horrific acts. As we know, and as you've written yourself very recently, our criminal justice system is generally premised on the fact that a crime is committed, an investigation takes place, charges may be laid, the courts do what they do, and so on. What we learned on September 11 is that this simply is not the kind of approach that is going to work in and of itself. Of course, it will continue to play some role, nobody's suggesting otherwise, but we must for the sake of innocent civilians in our country—and I think of those in other countries who are our allies—understand the modern face of terrorism. It is globalized, it uses technology, it is sophisticated, it does not care how many people it kills, how many innocent people's lives are destroyed in the pursuit of its objective. We know they raise money worldwide. They launder billions of dollars daily throughout the world. In fact, it calls upon us to take a new approach as part and parcel of our criminal law. We are called upon to do this as members of a civilized community, as members of a global community who understand the invidious nature of terrorism and how it strikes at the right of every one of us to human security and safety.

This legislation acknowledges the fact that in instrumental ways, be it through information gathering, be it through law enforcement, we need new tools to help provide the human security and safety that all Canadians have a right to and, quite truthfully, all members of the civilized world have a right to.

November 20, 2001

Mr. Richard Mosley: This adds a number of offences, under the Security of Information Act, to the definition of "enterprise crime offence" in the Criminal Code. The addition of new proposed section 28 is to ensure that part XII.2 of the code, with regard to proceeds of crime, is applicable to the Security of Information Act. If and when Bill C-24 comes into effect, neither provision would be required. There is a coordinating amendment in the package to address this fact for new proposed section 28.

(Amendment agreed to—See *Minutes of Proceedings*)

(Clause 29 as amended agreed to on division)

(On clause 30)

The Chair: Amendment G-60 is on page 128 of the first package.

• 2405

Mr. Richard Mosley: This is a technical and consequential amendment further to the last change, because there are now 28 sections and not 27 sections in the act.

(Amendment agreed to—See *Minutes of Proceedings*)

(Clause 30 as amended agreed to on division)

(Clauses 31 to 33 inclusive agreed to on division)

(On clause 34)

Mr. Stephen Owen: Mr. Chair, with respect to clause 52, the amendments that are suggested are amendments to a provision of Bill C-22, which Parliament has already passed, and the words “reasonable grounds to suspect” already exist in that legislation passed by Parliament.

The implication of this provision, this clause, is to add the underlined words “or a terrorist activity financing offence”. So the effect is to enlarge that section to apply to terrorist financing in addition to the money-laundering or proceeds of crime legislation previously dealt with. So we're not actually dealing with the phrase “reasonable grounds to suspect”; we're extending what is already passed by Parliament to cover terrorist financing offences as well.

The Chair: I'm going to go to the vote on BQ-34.3, an amendment to clause 52.

(Amendment negatived)

The Chair: Monsieur Bellehumeur, I take it from your enumerating all of those that you believe there is enough common argument in this that we would apply the vote on BQ-34.3 on clause 52 to the balance that you identify.

[*Translation*]

Mr. Michel Bellehumeur: No, but I was saying it was the same principle. If the committee votes against my amendment BQ-34.3, it should also vote on my other amendments. I want you to understand that the principle of BQ-34.3 is the same as is contained in the others. The term I wanted to change was the same one. It wasn't that it applied. Vote on that as a block of amendments if you will, but vote so that the record will show that you rejected those amendments, Mr. Chairman.

[*English*]

(Clause 52 agreed to)

Mr. Richard Mosley: This is an amendment to delete the word

[*Translation*]

“d'activités”, in French,

[*English*]

at line 39 to clarify that the suspicion here is on money laundering, not on activities resulting in money laundering.

(Amendment agreed to—See *Minutes of Proceedings*)

The Chair: Then we have amendment BQ-43.

June 11, 2001 [House of Commons]

Hon. Lawrence MacAulay (for Minister of Justice and Attorney General of Canada)

… I would like to note the importance of the provisions in the bill regarding proceeds of crime. Right now there are a number of offences in which illegal profits can be seized by police and ordered forfeited by courts, like drug trafficking or murder.

The bill also expands the range of offences to include almost all indictable offences. This would mean that police could take away the proceeds of crime from criminals more effectively….

…The law enforcement justification under Bill C-24 is not a blank cheque for law enforcement officers, far from it. It is a balanced system with strict limits and conditions. It responds to very real and substantial law enforcement needs. Together with the other provisions on criminal organizations, intimidation and proceeds of crime, the bill represents a major step forward in the public safety agenda.

September 19, 2001 [Senate]

Hon. Wilfred P. Moore moved the second reading of Bill C-24, to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts.

He said: Honourable senators, I am pleased today to begin debate at second reading of Bill C-24. This bill is an extremely important piece of legislation, one that is being put forward to provide vital new tools to help law enforcement and criminal justice officials in the fight against organized crime and to provide law enforcement generally.

We are all aware of the significant problem of organized crime in this country and, indeed, worldwide. Criminal groups have become involved in a wide range of illegal activities that include illegal trafficking in drugs and control of organized prostitution. Other activities of criminal groups include smuggling of people, illegal traffic in firearms, cross-border smuggling of contraband such as tobacco and alcohol, serious economic crime such as credit card fraud, insurance fraud, stock market fraud, and even environmental crimes such as the illegal dumping of toxic wastes.

Canadians and persons around the world are paying a serious price for these crimes. We pay in health costs linked to drug abuse and related illnesses such as HIV and hepatitis. The smuggling of people, often under dangerous conditions, threatens human lives and often leads to slavery-like conditions for those persons paying the criminal gangs that transport them. Financial and telemarketing fraud schemes cost victims thousands, sometimes tens of

thousands of dollars. Frequently, the victims are people who can least afford it, such as elderly persons on fixed incomes.

Finally, for many crimes, the whole country pays in terms of insurance rates, interest rates and lost tax revenues.

Honourable senators, we must not forget the cost in terms of public safety and public security. In some areas, the open activity of organized criminal groups has led to an atmosphere of lawlessness and fear. There has been a significant number of murders of gang members by other gang members. Innocent third parties have also been killed. In addition to killings, local officials and ordinary citizens have been threatened and intimidated.

(1530)

All of this is unacceptable, honourable senators. We have laws in place that help to deal with these problems, but these must be strengthened. Bill C-24 addresses this need with respect to organized crime, as well as making general improvements in our law enforcement capability.

The proposals of the bill fall into four categories. The first is measures to improve the protection of people who play a role in the justice system from intimidation. Second is the creation of an accountable process to protect law enforcement officers from criminal liability for certain otherwise illegal acts committed in the course of an investigation. Third is legislation to broaden the powers of law enforcement to forfeit the proceeds of crime, in particular the profits of criminal organizations, and to seize property that was used in crime. Fourth is the creation of a number of new offences targeting involvement with criminal organizations.

The first aspect of Bill C-24 involves a range of steps to deal with the intimidation of persons involved in the criminal justice system. The criminal justice system depends for its proper functioning upon the participation of various members of our community. These are the professionals responsible for the investigation and prosecution of crime, the judges and those who deal with convicted offenders, and members of the public who participate as witnesses and jurors.

For criminal justice stakeholders to be able to participate effectively, they and those with whom they are associated must be free to act without being subjected to threats, prejudice or physical injury. In recent times, prosecutors, judges, witnesses, police and prison guards, as well as their families, have been subjected to such intimidation. As we are also aware, journalists who provide the important service of reporting on crime have also come under threat. Bill C-24 includes a number of provisions to deal with this intimidation.

Honourable senators, new provisions of the Criminal Code will provide greater protection of jurors by limiting access to names, addresses and occupations of potential jurors. Jurors should not have to question whether their involvement in a case may lead to physical or emotional harm to them or their loved ones. By protecting the privacy of jurors, we can take the necessary steps to address this problem.

Also, Bill C-24 makes important changes to the Criminal Code's treatment of the offence of intimidation itself. First, the bill increases the penalty associated with the existing offence of

intimidation to five years imprisonment. Furthermore, a new intimidation offence has been added to the Criminal Code, with a maximum penalty of 14 years. This new offence deals specifically with acts of intimidation that target justice system participants and journalists. The new section makes it an offence to harass, stalk or threaten these people with the intention of provoking a state of fear so as to impede the administration of justice or impede such persons in the performance of their duties.

I turn my attention now to the aspect of Bill C-24 that seeks to protect law enforcement officers from criminal liability when, for legitimate law enforcement purposes, they commit acts that would otherwise be illegal.

The Supreme Court of Canada, in its 1999 judgment in Regina v. Campbell and Shirose, stated that the police were not immune from criminal liability for criminal activities committed in the course of a bona fide criminal investigation. However, while observing that "everybody is subject to the ordinary law of the land," the Supreme Court explicitly recognized that:

...if some form of public interest immunity is to be extended to the police..., it should be left to Parliament to delineate the nature and scope of the immunity and the circumstances in which it is available.

Honourable senators, law enforcement officers do need a limited justification for acts or omissions that would otherwise be illegal when they undertake these acts and omissions for the purpose of good-faith investigations. In the absence of sufficient protections in the current law of Canada, the Supreme Court's judgment has had a significant negative impact on law enforcement in Canada. The impact has been especially great on undercover operations targeting organized crime.

As noted in the white paper entitled "Law Enforcement and Criminal Liability," tabled in the Senate in June 2000, long- accepted and valuable law enforcement techniques have been called into question by that ruling. For example, the judgment has called into question the legality of routine purchases by law enforcement officers of contraband to gather evidence for prosecutions. Similarly, the judgment has affected the ability of law enforcement officers to pose as criminals by participating, temporarily and in a controlled manner, in the activities of their targets. In a wide range of areas, the vital public interest of ensuring that law enforcement can effectively gather evidence and infiltrate criminal groups has been affected. Particular affected areas include investigations into the smuggling of people, illegal traffic in firearms, hate crimes, cross-border smuggling of contraband such as tobacco and alcohol, international counterterrorism investigations, the use of counterfeit payment cards, and offences related to fisheries and environmental protection. While the impact is perhaps most critical in regard to organized crime, it covers a wide range of criminal activity, including terrorism.

Bill C-24 responds to this situation. Under the bill, a public officer engaged in the enforcement of an act of the Parliament of Canada would be able to engage in conduct that would otherwise constitute an offence, provided certain important limiting conditions are satisfied.

First, before the officer can act, he or she must be designated by a competent authority. Further, as a fundamental condition and limitation of the scheme, the officer must also believe on reasonable grounds that committing the act or omission is reasonable and proportional in

the circumstances. Under law, this determination of reasonableness and proportionality will be made with regard to such matters as the nature of the actual act or omission, the nature of the investigation, and the reasonable availability of other enforcement techniques.

Nothing in the proposed scheme would provide immunity for the intentional or criminally negligent causing of death or bodily harm, the wilful attempt to obstruct, pervert or defeat the course of justice, or the conduct that would violate the sexual integrity of an individual.

The scheme includes ministerial accountability through the designating role of responsible ministers as competent authorities. The designations may be subject to specific conditions. Further, if designations are misused, they can be taken away.

The scheme also requires the special authorization of certain acts and omissions by senior officials responsible for law enforcement. Except in exigent circumstances, such authorization is required for acts or omissions that would likely lead to the serious loss or damage to property and for the direction, by officers, of all acts or omissions by agents.

Furthermore, there is a provision for public annual reports by all competent authorities, as well as for a full parliamentary review of the limited justification scheme within three years.

Honourable senators, the provisions applying to the limited justification scheme do not propose the granting of blanket immunity to law enforcement officers. Rather, there are numerous safeguards. For many years, law enforcement authorities were working on the basis that they had common- law immunity. What the Supreme Court did was make it plain that there was not common-law immunity and called upon Parliament to put in place a legislative scheme if it saw fit. This is what the law enforcement justification scheme will do, through a balanced and effective scheme with strict limitations and conditions.

Another major set of provisions in the legislation before us today is a new approach to criminal organization offences. The bill contains a new definition of "criminal organization" and three new criminal organization offences.

In 1997, in Bill C-95, Parliament directly targeted criminal organizations by providing a definition of "criminal organization," increased investigative powers and increased penalties for those committing crimes in conjunction with criminal organizations. While these provisions have been of benefit, our experience with them has shown that they can be improved.

(1540)

Law enforcement officials and provincial Attorneys General have called for a new definition of "criminal organization" and for offences that respond to the full range of involvement in criminal organizations. This bill responds to these priorities.

The new definition of "criminal organization" will target criminal groups of three or more individuals, one of whose main purposes or activities is either committing serious crimes or making it easier for others to commit serious crimes. This is an improvement on the current definition, which refers to five or more individuals, which required proof of the commission of a series of offences over five years and did not adequately include the concept of facilitation of

offences. This new definition also more closely follows internationally accepted definitions of organized criminal groups.

The new definition also clarifies that the definition of "criminal organization" does not apply to a group of persons that forms randomly for the immediate commission of a single offence. This helps to appropriately limit the scope of the definition.

I now move to Bill C-24's improvements to the law on proceeds of crime. Currently, the proceeds-of-crime provisions are directly related to the designated drug offences and a list of other offences referred to as "enterprise crimes." Over the years, as organized crime evolved and moved into new areas of criminal activity, new offences were added to the list of enterprise crimes. Today, the list of such crimes stands at over 40, with no indication that we will stop adding new offences to the list.

Bill C-24 eliminates the list approach and expands the application of the proceeds of crime to all federal indictable offences. This should be subject to the exception of indictable offences that are excluded by regulation. In this manner, the profits from the commission of most serious crimes would be subject to forfeiture. This will simplify and expand our approach with respect to proceeds of crime. However, existing protections to ensure that seizures are appropriate and subject to defined procedural requirements will remain in place.

Other provisions of Bill C-24 will give criminal justice officials new powers with respect to foreign confiscation orders. The ease with which financial resources can be transferred around the world presents a challenge for all countries in the attempt to fight crime by seizing its proceeds. Canada must be in a position to play its part in addressing this challenge and offering necessary assistance to countries that have successfully investigated organized crime within their jurisdiction and ordered their assets to be confiscated.

Accordingly, the bill proposes a number of amendments to the Mutual Legal Assistance in Criminal Matters Act that would allow Canada to enforce foreign confiscation orders.

An additional element of Bill C-24 that I will highlight for consideration of the Senate deals with offence-related property. The bill contains amendments to make the offence-related property forfeiture regime in the Criminal Code apply to all indictable offences under the code and expands the application of the regime to all real property, subject to a proportionality test.

As I stated, three new criminal organizational offences have also been created. These replace and substantially improve upon the criminal organization offence that was created at section 467.1 of the Criminal Code by Bill C-95.

The first offence targets participation in or contribution to the activities of criminal organizations. Taking part in the activities of a criminal organization, even if such participation does not itself constitute an offence, will now be a crime where such actions are done for the purpose of enhancing the ability of the criminal organization to facilitate or commit indictable offences. This is an important recognition in law that those who knowingly help criminal organizations in this way are criminals themselves.

The second new offence targets those who aid, abet, counsel or commit any indictable offence in conjunction with a criminal organization. The emphasis in this provision is the commission

or other direct involvement in indictable offences when this is done for the benefit of criminal organizations.

The third new offence deals specifically with leaders in criminal organizations. Leaders of criminal organizations pose a unique threat to society. Operationally, they threaten us through their enhanced experience and skills. Motivationally, they threaten us through their constant encouragement of potential and existing criminal organization members. By effectively targeting the leaders of criminal organizations, we go after those who ultimately are the most responsible for the wide range of harm caused by organized crime and should bear the heaviest responsibility. This section makes it an offence for an individual as a member of a criminal organization to knowingly instruct, directly or indirectly, the commission of an offence for the benefit of, at the direction of, or in association with a criminal organization.

Honourable senators, we must ensure that the leaders of criminal organizations are not able to hide behind the screen of activities engaged in by their subordinates or agents when in fact these leaders are ultimately responsible for these activities.

These three new offences should mark a major step forward in the fight against organized crime. Nevertheless, some questions have arisen as to why Bill C-24 does not simply make it an offence to be a member of a criminal organization.

Honourable senators, quite aside from the Charter of Rights and Freedoms considerations that would be raised by a membership offence, the three new offences that I have just mentioned will be more effective tools than a provision that criminalizes membership. Membership can be extremely difficult to prove because organizations often operate underground or covertly. Further, the criminal groups may decide to continually change the indicators of membership in order to stay one step ahead of the law. Also, simply targeting membership would fail to recognize that individuals who are not formal members of organized gangs often play a role in facilitating crimes and benefiting criminal organizations. The approach that Bill C-24 takes with respect to criminal organization offences will therefore be preferable to criminalizing membership.

I should also emphasize that the penalty provisions for the three new criminal organization offences will proceed on an increasing scale of seriousness. The participation offence is punishable by a maximum five years of imprisonment, the party liability offence by a maximum of 14 years of imprisonment, and the leadership- related offence by a maximum of life imprisonment. Enhanced sentencing provisions are also added, including mandatory imposition of consecutive sentences for the offences and a presumptive parole ineligibility period of one half the imposed sentence. Given the serious harm caused by organized crime in Canada, we must ensure that the punishments we impose adequately reflect the nature of the illegal activity.

Honourable senators, as I have indicated, the threat posed by organized crime is very real and very grave. While we have tools in place to help deal with this, these tools must be improved. At the same time, we must ensure that the tools that we put in place are appropriate tools. The provisions of the criminal law must not be allowed to overshoot their appropriate scope. We must ensure, while fighting organized crime and making improvements generally to the

effectiveness of law enforcement, that we do not have unwanted negative impacts on the lives of ordinary Canadians.

In this last regard, I am heartened by the knowledge that the Department of Justice engaged in extensive consultations on the provisions of this bill before it was introduced. These consultations included but were not limited to the consultative process on the law enforcement justification provisions that occurred with respect to the white paper tabled in the Senate in June 2000. In addition to that public paper, stakeholders representing a wide range of interests were brought in for a number of extensive meetings on all provisions of this legislative project. Numerous suggestions were made and acted upon. This has helped ensure that Bill C-24 will be a balanced, responsible and effective piece of legislation.

After most serious reflection and work, honourable senators, the appropriate balance has been maintained. I believe that Bill C- 24 reflects the law enforcement needs of this country and does so in a reasonable and fully accountable manner. I urge all honourable senators to lend their support to this bill.

(1550)

Hon. A. Raynell Andreychuk: Honourable senators, I have a question for the Honourable Senator Moore. We have before us today an immigration bill that touches upon some of the international activity involving the movement of people. Thankfully, most people move for valid reasons. However, we are aware that we must monitor both some immigration and some refugee issues. The honourable senator has now introduced legislation that is aimed at some of the criminal activity occurring internationally.

We have been graphically reminded of terrorism. With these pieces of legislation, how does the government propose to attack what are now interrelated issues? Whenever we talk about terrorism, we get into the criminal activity that is prevalent both offshore and onshore and the migration of people, legally and illegally. What we are missing is some national strategy to attack it all rather than what appears more and more to be a piecemeal activity. Would the honourable senator care to comment on that?

Senator Moore: I thank the honourable senator for her question. I am not sure what will come out of the deliberations in the House of Commons as a result of what happened last week. This legislation was drafted and prepared before those events took place. I appreciate your comment with respect to the obvious overlap of the responses that may be required and the authorities that will be needed. Perhaps legislation that will address your concerns will be forthcoming. In reply to an earlier question today concerning the immigration bill, our leader said that other changes may be forthcoming with respect to that statute and, perhaps, with respect to this one.

Senator Andreychuk: Honourable senators, we must look at trafficking in migrants and an international convention, as well as some national enabling legislation. We should then look at drug strategies and gangs and criminal activity strategies and money laundering. More and more, the international community is saying that these activities are all interrelated. Perhaps we have not been so successful because we have been looking at the nature of the activities in

a segmented way. Surely it is time to see how we can draw them all together in a more coherent way so that we might be more successful.

Perhaps I should not have used the September 11 incident. However, it has been of some concern that trafficking in migrants is an activity that is very much like trafficking in drugs. It moves one step ahead of those who wish to enforce the laws because we have only one convention over here for certain purposes and we have not interrelated the administration, the services, the conventions and the laws.

Senator Moore: I do not know whether that was a question or an observation of merit. I hope this legislation will answer some of those questions. To repeat what I said earlier, as we move forward, perhaps we will see other legislation come forward that will tighten up the overlapping issues that you raise.

Hon. Pierre Claude Nolin: Honourable senators, I also have a few questions for the honourable senator. A few years ago, we studied a bill in response to a decision from the Supreme Court in the *Feeney* case. The Supreme Court decided that it was unconstitutional for a policeman to gain access to a private dwelling without a warrant, regardless of the fact that in the *Feeney* case the accused had signed a statement to the effect that he had committed the crime for which he was accused. Those of us involved in the Legal Committee remember that case. We helped to craft an amendment to the Criminal Code. That was an important piece of legislation because the court said that the Criminal Code was not respectful of the Charter.

If I look at the second group of remarks that the honourable senator alluded to in his speech, he talked about commission of infractions by law enforcement officers. What kind of control is built into the bill to ensure that the court will not tell us, in one or two years hence, "Gentlemen, we understand what you tried to do. We agree with the principles stated in section 25.1(2), but you breached the Charter because of paragraphs (1), (2), (3) and (4). Go back and do your work and correct the code"?

What is in this bill to ensure that we will not have to redo it in two years?

Senator Moore: Honourable senators, I should like to have an opportunity to go through the bill and respond in complete detail. It is certainly the thrust of the bill to put in place provisions that will enable officers to do their job without abusing their office. They will be limited to the scope of their activities proportionate to the nature of the offence they are investigating and not beyond that. Perhaps we can go into that in more detail at committee, but that is how I understand the nature of it.

Senator Nolin: We will look at that thoroughly in committee, but if you look at the way the bill is written, it covers two types of situations. In the first situation, there is no urgency. There is a set of rules for when an officer is asking a superior for a warrant and the superior is then asking the responsible person in charge — basically, federal and provincial ministers — to grant the request. That is for normal, non-urgent business.

There is another set of sections that deal with urgency. If you recall the Feeney case, it would have been labelled "urgent." Even then, we crafted a set of techniques where, even in an urgent situation, the police officer needed a warrant. That is why I asked the question. If it is not

urgent, they go to the minister to get permission to commit an illegal act. If it is not urgent and they can go to the minister, they can go in front of another authority that is much more or less influenced by the internal matter of the organization — that is, the department or the police organization.

Does the honourable senator understand my concern? I think we all share this concern. We are all in favour of giving the police all the tools they require, and even more, to help them in the proper performance of their job, but there are some limits. It is our responsibility to ensure that those limits are not crossed but, if they must be crossed, that they are crossed properly. That is my concern.

On motion of Senator Stratton, for Senator Kelleher, debate adjourned.

September 25, 2001 [Senate]
Hon. James F. Kelleher

Honourable senators, it gives me great pleasure to rise today to give second reading to Bill C-24, to amend the Criminal Code, specifically addressing the issues of organized crime and law enforcement.

The onus on us as senators as we deal with this bill is particularly heavy given the events of two weeks ago in the United States. While this bill was not written to address the evils of terrorist organizations operating within our borders but to deal primarily with organized gangs and organized crime, we should determine what effect it may have in giving support to law enforcement agencies as they combat all parts of crime planned and organized by groups of people.

I also approach the discussion of this bill not only as a senator but also as a former Solicitor General responsible for police enforcement at the federal level in Canada and as a lawyer who has a healthy respect for the Charter of Rights and Freedoms.

Last week, Senator Moore gave us a fairly thorough review of the contents of Bill C-24. I see no need to repeat that. However, there are some aspects of this bill and the government announcements that surrounded its presentation in the House of Commons and the Senate that I wish to emphasize.

First, I believe it is very important that our Standing Senate Committee on Legal and Constitutional Affairs study this bill thoroughly. This is one of the bills that was rushed through the House of Commons with some enthusiasm from virtually all sides before the summer break. I, too, applaud many aspects of this bill. I recognize the need to pass legislation to help combat organized crime. However, I do not believe we should act with too much haste. This is a relatively large bill, and we should look at its wording carefully to determine if it effectively grapples with the matter of organized crime in a way that we as senators can agree with and support.

This bill has been introduced and presented to us as creating three new offences, all of which relate to participation in a criminal organization. In fairness, Bill C-24 does not so much create three new offences as it clarifies and expands upon an existing offence. Having said that, these

improvements are welcomed and long overdue and should greatly assist law enforcement officials in their fight against organized crime.

(1730)

One of the most controversial aspects of this legislation is that in some instances it creates prosecutorial immunity for the police should they commit a crime while in the course of an investigation. These provisions result from the Supreme Court of Canada decision in *Regina v. Campbell & Shirose*, which declared that the police were not immune from criminal liability for criminal activities committed in the course of an investigation. The court charged us, as parliamentarians, to determine when and for what crimes there should be immunity.

This bill allows police to take reasonable and proportional illegal action when investigating or infiltrating criminal organizations. Before an officer can break the law, authorization from the minister responsible for the police force is required. There are limits expressed in the statute so that there would be no police immunity for intentionally or recklessly causing death or bodily harm, for sexual offences, or for deliberately obstructing the course of justice. Of course, there is the possibility that these clauses could very well become the subject of constitutional challenges once this bill becomes law.

As senators, we can never forget the protections afforded by the Charter of Rights and Freedoms. Thus, we must do our very best to ensure that all clauses in all bills comply with the Charter. Unfortunately, this is not always an easy task. Absent a court challenge, it is not always certain whether a clause will be in compliance with the Charter. Our job is to seek the best balance possible, not to run roughshod over the Charter, but not to run scared of it, either. If, despite our best efforts, a challenge is made before the courts, then we must accept that as a fair and just part of the process.

At this point, what concerns me more than any possible court challenge is the question of who should be authorizing these new police powers — a minister of the Crown or a judge. Some who approve this power being given to the police and who appeared before the Justice and Human Rights Committee in the other place suggested there might be some comfort in having the authorization in the hands of a member of the judiciary, someone who is immune from partisan politics and might be more measured and responsive to such police requests.

I could not agree more. If we are to ensure public confidence in these provisions, we must guard against even the appearance of political influence. I am very surprised that the government does not also see it this way, especially given all the problems arising from the APEC conference. As senators, we have the benefit of reviewing the recently released report of Justice Hughes about that conference. One of the key principles coming from that report is that when police are performing law enforcement functions, they should be entirely independent of the government.

The last matter I wish to touch upon today is one which, as a former Solicitor General, greatly concerns me. When this bill was first introduced, the Minister of Justice announced an additional $200 million to fight organized crime. If this government can waste hundreds of millions of dollars attempting to register the guns of innocent Canadians and still not get it

right, then I have a hard time believing that $200 million is nearly enough to combat organized crime.

As senators, we must determine how much is really needed to effectively implement this legislation. If the financial resources are not forthcoming, then I question the point of even dealing with this bill.

While on the subject of money and resources, honourable senators, I should mention that I am pleased to see the expanded provisions allowing for greater seizure of assets tied to organized crime. It is time that we went after the rewards of organized crime and reclaimed these resources for the benefit of us all. Ideally, we could use the proceeds of these seizures to add to the resources necessary to effectively fight organized crime.

Honourable senators, Bill C-24 is an important bill, but it does require further study. I know that the committee will do an excellent job and I look forward to its report.

On motion of Senator Joyal, debate adjourned.

November 21, 2001[Standing Senate Committee on Legal and Constitutional Affairs]

Senator Kelleher: Therefore, the police could be involved in committing terrorist acts in the course of their investigations if they were so permitted; is that correct?

Mr. MacAulay: Falling under this legislation, if a terrorist organization is involved, it could also be involved in organized crime, which would tie the two together under this legislation. One could be investigating a terrorist organization for organized crime activity. That could very well take place.

Ms McLellan: Senator, your question is a good one. One might have authorization for law enforcement officials to participate in a money-laundering scheme, the money of which is used to finance terrorist activities.

Senator Kelleher: The question is timely, in light of Bill C-36, to let the people of Canada know that this can also involve terrorist activities.

Ms McLellan: Indeed. Money laundering is probably a good example where we know that terrorist organizations raise money here and around the world, and we might want to authorize our law enforcement authorities to go undercover and participate, for example, in a money-laundering operation, in order to reveal the full extent of the operation, to lay charges and to blow it apart.

Mr. MacAulay: I had the privilege of meeting an undercover officer who was involved in this type of activity and who explained the need for this kind of legislation.

Mr. Paul Kennedy, Senior Assistant Deputy Solicitor General: There are many serious criminal offences that the police are not authorized to do, for example, murder, sexual offences, assault causing bodily harm and obstruction justice. The definition of terrorist activity is at the high end, and includes offences that put lives in jeopardy. The officers are not authorized to do that under this scheme.

As part of the normal investigation done of such organizations, there are support or ancillary activities that they have to be involved in. The Minister of Justice referred to money laundering. Another example is the preparation of false documents. These are all tools that people have to commit terrorist activities. The officers will be working with these people to find out who is doing what and to infiltrate the groups. You can take from there that the officers will be doing things such as bombings. That would defeat the purpose. However, they have to go in at the entry-level and investigate to be able to take action. There are thresholds that are off the table and are not done.

Senator Kelleher: We had a MacDonald Royal Commission on that several years ago.

Mr. Kennedy: Yes, I am aware of that.

Mr. Antonio Nicaso, Journalist, Author: I realize that time is short and you have much consultation to reflect upon. I would like to provide you with a few quick points on organized crime in Canada.

We are a microcosm, a kind of laboratory, where underworld groups interact, cooperate, commingle funding, share the burden of criminal operations and provide infrastructure to each other. Organized crime operates in every part of Canada. Some groups have their turfs, although no one has a geographic monopoly. Some groups have their specialties, but no one completely monopolizes a market. Organized crime arises in any segment of the society where there is a profit to be made, from the drug underworld to the stock markets. There are no limits except the limits that we can successfully and forcefully impose.

The Canadian Security Intelligence Service estimates that at least 18 groups operate in Canada, and that number does not allow for new groups that break away from mother cells and form their own operations. Organized crime groups are not of any specific ethnic sector, although there are mafias specific in background to Eastern Europe, Asia, Europe and South America. There are also commercial mafias, white-collar cartels that manipulate stock markets, launder money and monopolize segments of industry.

Organized crime feeds all of the needs of society that are forbidden, over-taxed or over-regulated. Many of these are called victimless crimes or non-violent initiatives. I am thinking here of drug addiction and illegal migrant transit and the smuggling of cigarettes and liquor. However, the underpinning of these and other activities is enforcement by violence. Organized crime acts, as does legitimate government and commerce, in the role of provider and protector.

In these times when mighty issues related to terrorism are being dealt with by the Government of Canada and the governments of the world, we must be careful that other serious issues do not fall by the wayside.

The relentless campaign of criminal activity in Canada has been subject to grave underestimation for decades. Due to lack of attention, lack of funding, lack of political will or over-sensitivity to ethnic groups, and, at times, all four at once, criminal organizations have been permitted to grow to an incredible power in this country.

Criminal groups, ranging from small organizations that prey on ethnic communities to truly transnational cartels that operate vast networks, find Canada an appealing place to do business. Canada, within the world of organized crime, is perceived in three ways. It is perceived as a haven, as a transit country and as a source country for drug manufacturing, producing and refinement materials.

As a haven, it only requires a casual reading of media reports to discover the presence of wanted criminals from the former Soviet Union, from Sicily and other parts of Italy, from China and the Caribbean. While entering Canada is relatively easy, remaining here, protected by the Charter of Rights and Freedoms, is even easier. From Canada, these global criminals can make huge fortunes in the U.S market while remaining protected by the laws of Canada. We must ask ourselves why they feel safe coming here.

As a transit country, one must only look to the cartels that bring their product, whether illegal migrants or narcotics, through Canada and into the United States. An example of this is the Caruana-Cuntrera, a Sicilian mafia group, one of the major organized crime groups in the world. They found it easier to ship cocaine from South America around the United States by boat into Canada and then down into the United States market. We must ask ourselves why is organized crime afraid of American laws and borders and not afraid of ours.

As a source country, one must only examine the huge growing number of marijuana operations in British Columbia, an industry that produces a product that rivals the quality of the product of Mexico, and the relative ease in Canada of obtaining precursor chemicals needed in the production of methamphetamine and ecstasy has created a cottage industry that itself reaps significant profits for organized crime. We have to ask ourselves why Canada has turned into the Mexico of the north and become the pharmaceutical support system to the mafias.

Post September 11, perhaps the most successful anti-organized crime initiative will happen, as it seems is the Canadian way, by accident. The crackdown on terrorism will result in a success against transnational criminals and that success can only be called a shameful accident. The impact of anti-terrorism measures has effectively frozen many criminal operations in place. Huge shipments of drugs are piling up in Asia and South America as border control is tightened and massive quantities of drug profits are backing up in Canada. Without reparation of the drug profits, further shipments are halted. Temporarily, organized crime is suffering a collateral damage. All this is good because, currently, there are no significant police operations underway against organized crime: The investigators and resources have been diverted to combat terrorism.

It is interesting to note that, with all the efforts being made against terrorism, terrorism itself has claimed no lives within Canada. Organized crime, however, has claimed more than 150 people in Quebec alone. Is this not a form of terrorism, when children cannot play in the streets, women cannot work in safety, when businessmen who resist organized crime are beaten to death? Maybe the political will and spirit that have somehow emerged to battle the Osama bin Ladens of the world will be focused on the underworld kingpins that call Canada home.

This bill before you is not everything to everyone. Civil libertarians will doubtless find flaws to probe, issues to examine and water to be added to the wine. That is their job and our civil libertarians in Canada are known around the world for their effectiveness.

Law enforcement agencies might suggest the bill is not strong enough, that they need more muscle and more power and more money. They might suggest, and here I agree with them completely, that an integrated policy on organized crime, ranging from correction to immigration, to the judicial system, to taxation, is needed.

Bear in mind that we live in extraordinary times. At this time and place, we have the beginning of a national understanding of the depths of organized crime and we have the right people with the right expertise to do the job. All that is needed is adequate funding, adequate laws and adequate political will. There have been many more incidents of underworld murder than there have been cases of law enforcement abuse.

This bill has strong elements to be proactive, instead of reactive. It can do away with the sad image of fighting organized crime in a way that brings forward a picture of firefighters running from fire to fire, dousing the hot spots, then moving on to the next, only to have the flames arise behind them.

This bill can enhance other Canadian strategies, notably the money laundering legislation and anti-gang bill. The time is right to fit in another interlocking piece of legislation that will strengthen and complete a national strategy against organized crime.

I do not envy you in your efforts to balance the broad spectrum of needs and demands being made upon you. However, I believe it can be done and it must be done.

As you can tell from my accent, I come from a country that has suffered mightily through a century of complacency towards organized crime and has suffered through its relentless corruptions. Please remember that it was only when the mafia of Italy directly attacked the state, murdering judges, journalists, police officials and women and children, and bombed the cultural centres of Italy, that laws were enacted to protect the country.

It was the mafia's fear of the state that led them to these excesses. We should look closely at why. In Canada, we fear organized crime, but organized crime does not fear us.

[*Translation*]

Senator Beaudoin: Mr. Auger, you say that the legislation before us is better than none at all. You also say that the Americans have a head start on us in this area. Could you tell us how they operate?

Mr. Auger: I would say that the Rico statute, which is more or less the equivalent of the provisions of Bill C-24 in the Criminal Code, is such that organized crime in the United States is targeted.

In Quebec in particular, there was a spectacular trial recently where Maurice Boucher was accused of murdering a prison guard. In his arguments, the defence attorney said: "My client is perhaps a major criminal leader, but how could a criminal leader collude with a little

informer?" To undermine the credibility of the witness, the defence attorney used the facts that the individual was a member and a leader of a criminal organization. To the best of my knowledge, using an argument like that to acquit an individual is not customary in court.

If it had been in the United States, Maurice Boucher would not have been accused of murder. He would have been accused of leading a criminal organization which has committed murder, is involved in drug trafficking, and so on. Why? Because it is easier to prove that there is a criminal organization that is to determine who ordered the action. The American prosecutor must show that the organization committed the crime, that there are individuals who follow orders and others who give them.

In Canada, accusing someone of a very specific crime is much more complex. In my case, the police identified the shooter. They are 100% sure that he is the shooter. However, they do not have enough proof to obtain a warrant for a wiretap. They put him under surveillance. They used all kinds of techniques, DNA and all that, they identified up to 15 people who participated in the crime. Each individual did his part. One made the weapon, the other passed it on, another obtained information from confidential government documents, and so on. Other individuals conducted surveillance activities for up to two days before the crime took place outside *Journal de Montréal* offices. Each person had a role to play and everyone is interchangeable. It is an organization. That is the current difficulty.

The reality of organized crimes here is that our legal system is designed to deal with individuals and not criminal organizations that have become more and more powerful. This reality is the 170 victims of murder in Quebec to gain control of drug trafficking.

Personally, I was shot six times in the back. If a bill like C-24 had been in force, I would not have been a victim. Criminals have just realized the importance of this bill. The act is not even in force, but the Hells Angels have closed their bunker, they have stopped wearing their colours, they have stopped the parades and demonstrations of force.

A young boy was killed three weeks ago in Montreal. He was waiting in line. A member of the Hells Angels was celebrating his having been made a member of the group. He simply used a firearm - that is the charge that is before the court - to wipe the boy out because he wanted to show how powerful he was. This is what criminal gangs of today are like. They use all means - especially illegal ones - to arrive at their goal which in the end, is money.

In my opinion, legislation has not kept pace with the reality of organized crime in Canada.

[*English*]

Mr. Nicaso: I have some personal experience with the RICO statute. I left Italy after a car bomb attempt on my life. After the first publication of the regional code of the Mafia, I moved to the United States. I had the opportunity to deal with people like Mayor Giuliani, free people who had put much effort into fighting organized crime. I spoke with them many times. They were very pleased with the RICO statute. To fight organized crime, a police officer needs a complete piece of legislation.

For example, recently, in Europe, they passed a charter of rights in which they define association in a very specific way. It says that they would allow association only for political,

cultural and recreational reasons, but not for criminal reasons. That would allow them to criminalize membership.

In the Unites States, they use RICO to attack criminal enterprise because the only way to fight organized crime is to hit them in their pocket. Unfortunately, when I said that Canada is an easy spot, there is a reason for that. We have to consider that, before 1989, we did not have money-laundering legislation. It was harder to import cheese into this country than a piece of luggage full of cash, dirty money.

During that time, many criminal organizations moved into Canada. That is because Canada is still an easy place in which to invest money. We should not underestimate the fact that we allow people to invest $300,000 in this country as a landed immigrant. In Quebec, we recently had a case involving the wife of a wanted criminal from Italy. She invested $300,000 in Canada. No one asked her where the money came from.

In 1994, all the leaders of the world signed an agreement at the United Nations summit in Naples. For the first time, they defined organized crime. It was a correct definition of organized crime.

In Bill C-95 there is a definition of organized crime that does not exist. I say that for one simple reason. That is because it refers to five or more people, and formally or informally organized crime. The characteristic of organized crime is the formality of their structure. It is the fact that there is a hierarchical structure. Bill C-24 is a better approach.

It is important to create a national strategy and to deal with organized crime in a different way. In Canada, there is still a much lower risk of prosecution and detention than in other countries, for example, in Europe and in the United States. In the United States, they have mandatory prison terms. Here, we have a Club Med instead of a penitentiary. We do not consider drug traffickers as dangerous offenders. That is a mentality that we should change. We should be thinking about organized crime in a large way. Police officers need a piece of legislation that deals exclusively with the definition of organized crime. They need to do other things to attack organized crime in different ways.

Mr. Nicaso: On many occasions I have defined Canada as a welcome wagon for organized crime. That is for one simple reason. According to criminal intelligence services, we have at least 18 different organized crime groups in this country. They move their resources and they invest, work and operate in this country. We must ask ourselves why they love and come to Canada. I have an answer for that. Before 1989, we did not have money-laundering legislation.

I have just published a book on one of the major organized crime groups in Canada, and in the 1980s they deposited more than $35 million in cash in five Montreal banks without problems.

After the *Campbell and Shirose* decision, the kingpin of this organization was under surveillance. He told fellow drug traffickers: "I do not go in the United States. I feel safer in Canada." He is not the only one who says that.

This man admitted that he imported into Canada 1,500 kilograms of cocaine. He received a conviction for 18 years. He will be released in 2003. He is now in a medium security detention facility in Northern Ontario. He is wanted in Italy, where he had two convictions, one of 30

years and another one of 21 years for international drug trafficking and his Mafia associations. He is wanted in Germany, England and France. He was arrested in Canada in 1998, convicted in 2000. He will be released on parole in 2003. This is the way we deal with drug traffickers in this country.

We did not have a currency law before January 2000. That is why we have a concentration of organized crime in Canada. When I said that Canada is a welcome wagon for organized crime, it is because it is relatively easy to enter and leave the country, because we do not require visas for people coming from Europe, we do not have a system to check people and we have cases where people are wanted in Italy and they are living in Montreal without a problem.

We wish to focus on the traditional organized crime, but we must also look at the Russian Mafia, the Colombian cartels, the Triads and so forth. Why are they all in this country?

Another aspect to this issue is mandatory prison terms. In the United States, three years means three years; in Canada, three years does not mean three years.

It is very easy to get a Canadian passport. A good example is the situation with Ahmed Ressam, who was arrested at the Canada-United States border. He was planning to bomb the Los Angeles airport.

Mr. Prud'homme: You are right, and I am going to give you a concrete example of what I have experienced. The Sherbrooke Hells Angels based a biker in Iqaluit to sell hashish from Sherbrooke. Similar examples are to be found around the world.

A police money-laundering operation in Montreal from 1990 to 1994 revealed that the Sherbrooke Hells Angels' cocaine came through the Hells Angels international group and that the work was being done in co-operation with the Montreal mafia. The Colombians were in cahoots with the Hells Angels for the sake of exporting the cocaine. This is a problem that has to be dealt with on a worldwide basis. This is a difficult problem to deal with in the big cities; imagine what it is like for small towns in remote areas.

In greater Granby, with a population of about 60,000 people, the police are under surveillance. Files are kept on them. Officers are even visited at home. Organized crime is taking action against officers. No longer is the police officer investigating the criminal; the criminal is investigating the officer. In a municipality of 200 or 300 residents, there are surely members of organized crime.

November 22, 2001[Standing Senate Committee on Legal and Constitutional Affairs]

Ms Perkins-McVey:

…In general, we believe that better use of current resources to enable law enforcement officers to do their jobs is perhaps the best way to beat organized crime.

One of the significant questions to think about is, will this bill solve the problem? We suggest it will not. Yesterday you heard the Minister of Justice McLellan talk about the fact that this

bill is different from Bill C-36 because it is meant to deal with the profit motive. Our position is that this bill does not focus sufficiently on taking away the profit motive of crime. If we were to look at decriminalizing soft drugs and prostitution, that takes some of the profit motive away from some of these persons involved in organized criminal activities. We believe that focussing laws such as the money-laundering legislation that has already been passed, which takes away the profit motive, will have a far better effect on combating organized crime than some of these overbroad offences that are contemplated in Bill C-24.

November 28, 2001[Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Marc St-Laurent, Deputy Chief, Investigations Division, Montreal Urban Community Police Department

…Our disappointment with Bill C-95 is matched by our delight with Bill C-24. We are therefore enthusiastic and confident about the future, because this bill to fight organized crime at last meets our expectations. We support the amendments proposed in the bill, in particular the new definitions of "criminal organization" and "criminal organization offence." We also support, needless to say, the measures designed to protect justice system participants and provide immunity for peace officers. We believe that the new rules governing the seizure and forfeiture of offence-related property and proceeds of crime are better than the current rules…

.. The other element we feel is important is the reversal of the burden of proof where applications for the forfeiture of proceeds of crime are made. We all know how difficult and costly it is to prove that something is the proceed of a crime, particularly because organized crime members often use dummy corporations in transactions involving real estate and goods. Would it not make sense to require organized crime members to reveal the source of their goods, if they have been found guilty of being an organized crime member? Those are the two recommendations we would like a future bill to incorporate.

November 28, 2001[Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Mike Ryan, Inspector, Organized Crime Agency of B.C.

Thank you for the opportunity to appear today. I, too, have a prepared text and will make a copy available at the end of today.

The Organized Crime Agency of British Columbia feels that Bill C-24 represents an opportunity for law enforcement in Canada to significantly advance prosecutions in regard to organized crime groups.

The broadening of the definition of enterprise crime to include all indictable offences under the Criminal Code and any act of the federal Parliament provides a significant opportunity for law enforcement to seize the proceeds of crime from the broadest range of profit-motivated offences engaged in by organized crime groups. Without the expansion of this definition, the proceeds of crime from offences such as forging or falsifying a credit card cannot be seized.

Earlier this year, my agency seized an illegal credit card factory that held at risk a total of $330 million in credit potential. The proceeds of crime from this offence could not be seized due to the current restricted definition.

Expanding the definition of offence-related property will also be of significant assistance. As such, seizures from a broader range of offences will be a significant deterrent to prevent organized crime groups from investing in profit-motivated crimes.

Currently, under the Controlled Drugs and Substances Act, $1 million in a bank account that can be proven to be assembled for the purposes of concluding a drug deal can be seized. If the $1 million is proved to have been assembled for the purposes of wash trading in securities, acquiring illegal weapons or explosives, or financing any other non-drug offence, it cannot be seized….

…It should be pointed out as well that the 1997 amendments contained several provisions that allowed police officers to traffic and purchase illegal drugs to counter drug dealing. Other provisions in the Criminal Code allow police to launder money, to be in possession of proceeds of crime and to possess restricted or prohibited weapons for the purposes of an investigation. These exemptions are already in Canadian law and have existed for some time. They permit law enforcement officers to do certain things that are technically illegal. These exemptions have proven their worth in the battle against organized crime and without incident or suggestion of abuse.

…

November 28, 2001[Standing Senate Committee on Legal and Constitutional Affairs]

Senator Pearson: In that sense, do you think this bill will be helpful in dealing with the way in which the pimps and others are working under the aegis of organized crime?

Mr. Ryan: Yes, I do. For example, you may be able to seize the proceeds of crime from the drug activity in which these young persons are involved, when the proceeds flow upwards to the groups or individuals that organized these young people. However, you are not able to seize the offence-related property such as the cars that they have obtained as a result of extortion. That is the dichotomy.

A difference that was not touched upon is the fact that under the CDSA or the drug legislation the police can make application for income tax records, where it is necessary, with the judicial authority to do so. That still remains to be addressed. If the offence is gambling, the police cannot make application for income tax records.

Organized crimes groups do not take one type of crime. They cover gambling, several different types of drugs, extortion from prostitution and move with some degree of fluidity between them. These barriers within the legislation present problems.

Senator Pearson: This bill will take out some of them, will it not?

Mr. Ryan: Yes, it will remove some of those barriers.

November 28, 2001[Standing Senate Committee on Legal and Constitutional Affairs]

Mr. Asselin: If I may, I believe that you all agree that what has allowed organized crime to take on the importance that it now has, is due not only to the intimidation factor but also due to wealth. They line their pockets in two ways: through drug trafficking and through the proceeds of crime.

At this time, because of the laws regulating certain types of drugs and other substances, peace officers can also engage in drug trafficking, importing, and production, in order to infiltrate these groups and dismantle their organization. Under the Criminal Code, they are allowed to launder the proceeds of crime, and in so doing, commit the same offence, with less supervision and fewer restrictions than are included in the Criminal Code with Bill C-24. The use of such means has not yet led to any abuse.

For example, as Mr. St-Laurent told you, since the regulation allowing us to engage in trafficking and possession of drugs came into effect in 1997, we have undertaken a dozen operations. Those who are assigned to such activities are hand picked. We have 12 such officers. Bill C-24 stipulates that the Quebec Minister of Public Security will designate which law enforcement agencies have the qualification or expertise to undertake such activities.

With respect to drugs, on the 150 police agencies in Quebec - at least until recently - only the Sûreté du Québec and the Montreal Urban Community Police Service were involved in laundering the proceeds of crime and in drug trafficking operations. Of those two agencies, only our ultra-specialized and properly trained units are involved.

I believe that the supervision is even greater than what is stipulated in the Criminal Code at this time.

November 28, 2001[Standing Senate Committee on Legal and Constitutional Affairs]

Mr. St-Laurent: No, I do not mean internally. I am telling you that there is always an a judicial control after the fact. We cannot carry out operations that lead to arrest without disclosing how it was done and by what means. A judge will always evaluate what police officers have done to determine whether it was just, acceptable and reasonable. It will be evaluated. Otherwise, police officers will not be allowed to do it.

Let me come back to the example given just now by Mr. Ryder. Currently, police officers are protected by the law. They can use force up to and including lethal force, in cases where they deem that their lives or citizens' lives are endangered. They are not asked to have prior judicial authorization, they are left to act according to their discretion.

Afterwards, they will evaluate whether what was done was just and reasonable. Currently, with the narcotics act, we are doing exactly the same thing. Mr. Ryder mentioned other exceptions provided for by the act, aimed at the proceeds of crime or arms trafficking.

Infiltration is a means of investigation. There are not countless ways to investigate and fight organized crime. There is electronic eavesdropping, searches, shadowing and infiltration.

Without these means we cannot work. You have just deprived us of one of these means with the *Campbell and Shirose* decision.

The *Campbell and Shirose* decision did not say that police officers cannot engage in infiltration, but rather that it must be monitored by legislators. They chose monitoring, which is not unlike what they did with the Narcotic Control Act. We should apply the same principle and provide judicial protection to police officers. In our former operations, we always avoided, as much as possible, committing any offences and we always made sure that there would be no victims. The police officer was certain that he would not be found guilty because he did not intend to commit a criminal act. He was doing his work and he was trying to set up a file in order to arrest criminals.

In today's debate, it is as if police officers had asked for the right to commit criminal acts, which is not the case and never will be. We are tested in our daily work and we have to engage in infiltration.

I just mentioned a case that did not involve organized crime and that is reality. We arrest the individual and interrogate him. If he has nothing to say, the young person might be abducted in two months, but we will have done all that we could do. We cannot go any further than that, and legislators must find the best way of proceeding.

Senator Moore: In your remarks, you mentioned that the police should be targeting the businesses that these organized criminals are in. We have heard from witnesses before you of the millions, if not billions, of dollars that have been generated and are out there. In the course of your research, where is this money deposited, and does Bill C-24 not give the police the tools they need to chase down and seize those monies?

Mr. Lavigne: I have always been of the opinion that Revenue Canada investigators should be the people tasked with dealing with money laundering and proceeds of crime. The untouchables who finally nailed Al Capone and who fought organized crime in the U.S. in the 1920s and 1930s were not police officers. They were Revenuers who worked for the Department of Treasury. Al Capone got nailed on tax evasion. There needs to be more cooperation. There has always been a reluctance to bring the tax people in. It is a power struggle, but I think these agencies should cooperate more.

Money laundering is, in one sense, well understood and, in another sense, truly improperly understood. The Hells Angels do not put this money into foreign bank accounts. They put it in a plastic pipe and bury it in their backyard. I carry a shovel in the trunk of my car, hoping one day I will luck out. Five million dollars was found in California in a Hells Angels' front yard in a plastic pipe.

Most criminals, the smart ones, will not flash the cash, because if they do, they will get hit on for money. They look grubby. Look at the Volpe brothers in Toronto, who were the organized crime in Ontario - the only organized crime as far as the media was concerned. One of them ran a parking lot, wore a little windbreaker and pants, and read books every day. You would not make him for an organized crime figure. They bury their money.

The Colombians are the guys with the accountants who run the money through the system. The others are pretty smart.

Senator Moore: Where is the bikers' money in Canada? Is it in banks or buried?

Mr. Lavigne: In British Columbia, they nearly spent $250,000 of it buying a seat on the Vancouver Stock Change and running a member for public office in White Rock. They own a lot of businesses.

A police officer has to prove a crime was committed. Revenue Canada just walks in and says, "Prove to me these assets are legal." This is where the police and Revenue Canada can work together. The police identify the Hells Angels, their wives, their associates, their friends, their network. Revenue Canada hits all those people: Mr. Big, his wife, his girlfriends, his family, his parents, her parents, their associates, and audits all of them. Four apartment buildings will be in his second girlfriend's name. A fleet of limousines that work the airport will be in the name of an associate. If all these people eventually get audited, the noose gets really tight. Even if no one is ever charged, they will have to forfeit all this money, which is very damaging to organized crime. Money is their power. It corrupts. It buys stuff.

I would love to see Revenue Canada do that. It is such an easy thing to do, because they know who all the bad guys are. Bikers are so obvious. Audit them. The corner stores get audited every day. Legitimate business people get audited every day. It frightens them. I think that would probably be the best way at this moment in time to hurt organized crime.

[*Translation*]

Senator Joyal: I would like to go back to the issue of society's control over the police, because that is an important part of your presentation. There are a number of organizations in the system that are responsible for ensuring that the police respect the law. These organizations are also responsible for ensuring that police forces respect codes of ethics and that officers are reprimanded if abuses occur. For example, the new legislation on police forces in Quebec provides for a police review board. If we give this board a mandate, as part of the powers that are granted under clause 25 of the bill, it will be able to do its work and satisfy our concern as a democratic society that the rule of law is respected and that the proper balance is maintained.

We need the police. That is absolutely clear. We recognize it. But we have to see how we can set up some controls over the police to ensure that, if the police does not fight crime efficiently, there is some organization that will make it possible for journalists to do their job and alert the public accordingly.

You don't seem to consider these organizations very important, or effective. I mentioned the Quebec provincial police review council; there are similar councils for the RCMP and in other provinces.

Mr. Paul E. Kennedy, Senior Assistant Deputy Solicitor General, Office of SADSG, Police and Security, Solicitor General Canada:

…The big cases are done with joint force operations. They must be done that way in order to have effective sharing of information. Thirteen proceeds of crime units have been established federally. There is a reference to Revenue Canada. Those units are involved with various agencies including customs and the revenue agency. There are forensic accountants involved.

If there is not a proceeds of crime criminal case, the matter is turned over to the Canada Customs and Revenue Agency. They follow up with a revenue assessment - either civilly on based on tax evasion, as the case may be. There is that collaboration.

All of those techniques are used. We are aware that Al Capone was not discovered only today. The Canada Customs and Revenue Agency has a permanent SI unit that investigates what we used to call net worth cases. If you have a lifestyle that you cannot justify, they do a net worth assessment. We use all the tools available to us.

I wanted to raise that to say that we are aware of all of the techniques employed; none of us fell off the turnip truck. It may be that a journalist can tell us how to do policing better. Everyone is open to ideas. It is a challenging environment. Every time we pass a law, people respond. We seize property used for criminal activity. Therefore, people use rental property…

An Act To Amend The Criminal Code, The Official Secrets Act, The Canada Evidence Act, The Proceeds Of Crime (Money Laundering) Act And Other Acts, And To Enact Measures Respecting The Registration Of Charities In Order To Combat Terrorism (Bill C-36)

Citation 2001, c. 41, ss. 14 and 33

Royal Assent December 18, 2001

Hansard

October 16, 2001 [House of Commons]

Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.)

...We are all aware that the lifeblood of terrorist organizations is money. Bill C-36 proposes new measures under the criminal code to combat the financing of terrorism. It includes measures related to the seizure, restraint and forfeiture of terrorist property. The new measures related to financing would allow us to effectively go after the heart of terrorist financing networks.

For example, it would be an offence to collect or provide cash knowing that it would be used to facilitate or carry out an offence that constitutes terrorist activity. It would be an offence to provide financial services knowing that they would be used to facilitate or carry out terrorist activity or to benefit a terrorist group. Persons in the financial services industry who knowingly engage in transactions related to terrorism could find themselves charged criminally.

These measures are also subject to safeguards including substantive and procedural requirements governing seizure, restraint and forfeiture. Third party interests including those of the innocent families of those involved would be protected.

...The bill also amends the proceeds of crime or money laundering legislation. Fintrac's mandate would be expanded to gather, analyze and disclose information on terrorist money laundering. The safeguards built into the Fintrac process would be maintained.
...

October 16, 2001 [House of Commons]
Mr. Vic Toews (Provencher, Canadian Alliance)

There are a number of amendments to other acts in the bill, including the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act, the National Defence Act and many others. We must be diligent in ensuring that all amendments to these acts strike the appropriate balance between national security and the right of the public to be informed of government business. The leader of the PC/DR coalition has been especially vigilant in respect of this disclosure. He has mentioned it in various questions and other statements, as have other members of the House.
...

October 16, 2001 [House of Commons]
Mr. Michel Bellehumeur (Berthier--Montcalm, BQ)

As far as money laundering is concerned, for at least five or six years now the Bloc Quebecois has been saying over and over that the borders between Canada and the United States are as full of holes as a sieve and that Canada enjoys the wonderful international reputation of being a country where money laundering is easy and where there may be the least monitoring of this.

I know that this is being corrected. I know that we have not been a voice crying out unheard in the wilderness for those five or six years. I know that the government has amended some laws

in response to overtures by the Bloc Quebecois. I know that as far as Bill C-36 is concerned the criminal code is also being amended, with a far more specific objective: terrorist groups. This is a good thing.

I do not, however, think that the wake up call of the events of September 11 was necessary for this to happen. Actions could have been taken back when we started talking about the situation, back when we began to address the problem represented by Canadian customs and the Canada-U.S. border.

The final objective is to work with the international community to bring terrorists to justice and address the root causes of their hatred.
...

October 16, 2001 [House of Commons]
Mr. James Rajotte (Edmonton Southwest, Canadian Alliance)

Mr. Speaker, an expert on money laundering has been quoted in news reports today as calling Canada the Maytag of the north, well known to terrorists and other criminals as a good place to launder money.

The justice minister and the finance minister both assured us that the government had the legal power to seize and freeze the financial assets of bin Laden and other terrorists. If that was the case, will the Prime Minister explain why this new bill changes the very law that his government said had the powers already?

October 16, 2001 [House of Commons]
Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.)

Mr. Speaker, as I have indicated before in the House, under section 3(2) of the United Nations Act we do have the power to commence civil forfeiture proceedings, but what we are doing in the anti-terrorism legislation is putting in place a strengthened and more formal process by which we have the power to seize, to restrain and to seek civil forfeiture. Let me make it absolutely plain that under section 3(2) of the United Nations Act that presently exists we do have the power to seek civil forfeiture of frozen assets.

October 16, 2001 [House of Commons]
Mr. James Rajotte (Edmonton Southwest, Canadian Alliance)

Mr. Speaker, section 3(2) of the United Nations Act is the act that the government is changing under this law. Two senior ministers weeks ago asserted that the government had the legal power to seize and freeze bank accounts, and yet at the first opportunity they have changed the law. Why did two senior ministers state in the House that the government had these powers?

October 16, 2001 [House of Commons]

Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.): Mr. Speaker, we do have that power and in the legislation what we are doing is streamlining and formalizing that process.

November 22, 2001 [Committee][Entire Exchange]
Mr. Jay Hill (Prince George—Peace River, PC/DR) Mr. Speaker, under Bill C-36 persons who believe they should not be on the terrorist list must ask the solicitor general to remove their names. If the solicitor general does not make a decision within 60 days, people must apply to the courts for redress. Could the solicitor general assure the House that he will make his decision within 60 days so that innocent, wrongfully accused or wrongfully listed Canadians are not required to go to court to have their names removed?
Hon. Lawrence MacAulay (Solicitor General of Canada, Lib.) Mr. Speaker, I can assure my hon. colleague that I would evaluate the situation and a decision would be made promptly.

November 29, 2001 [Senate]
Hon. Sharon Carstairs (Leader of the Government)

We need to be able to protect Canadians and prevent terrorist acts from being committed in the very first place. We need investigative tools that will help us gain information on terrorist groups before they engage in their attacks. We need preventive arrest powers to help us interfere with and destabilize terrorist groups who are in the planning stages of an attack. We need new Criminal Code offences that allow us to convict those who facilitate, participate in and direct terrorist activity. These must include a preventive aspect that applies whether or not the ultimate terrorist acts are carried out. We also need to be able to stop the flow of money that terrorists need to carry out their terrible acts. These are some of the gaps that Bill C-36 would fill.

An Act To Amend The Criminal Code (Proceeds Of Crime) And The Controlled Drugs And Substances Act And To Make Consequential Amendments To Another Act (Bill C-53)

Citation 2005, c. 44, s. 1

Royal Assent November 25, 2005

Hansard

September 27, 2005 [House of Commons]

Hon. Paul Harold Macklin (Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Lib.)

Mr. Speaker, I am pleased to rise today in debate on Bill C-53, An Act to amend the Criminal Code (proceeds of crime) and the Controlled Drugs and Substances Act and to make consequential amendments to another act.
[*Translation*]

First and foremost, this bill seeks to amend the Criminal Code to put in place a reverse onus with respect to certain proceeds of crime applications. The new measures would apply to those convicted of a criminal organization offence or a serious drug offence and will provide that, subject to certain conditions, the property of such an offender identified by the Crown can be forfeited by order of a court unless the offender proves that the property is not the proceeds of crime. In effect, these new provisions would add a new, more aggressive forfeiture method to the Criminal Code, in addition to the proceeds of crime forfeiture provisions that already exist. This legislation also makes a number of corrective amendments to the current forfeiture of crime provisions for the purpose of ensuring clarity in these provisions. The proposed new reverse-onus forfeiture power under Bill C-53 builds upon the current proceeds of crime scheme in the Criminal Code.

The current provisions originate from legislation put in place in 1989. They are part of the criminal process that comes into play when a court is imposing sentence on an offender. At their core, they are fundamentally designed to put in practice the straightforward principle that crime ought not to pay. By allowing the government to claim the proceeds of crime, these provisions directly attack the illicit economic gain that is the prime motivation of many types of criminal activity, especially organized crime activity. As such, proceeds of crime legislation is absolutely vital in helping to deter this type of crime and to undermine the criminal groups that are responsible for it.
[*English*]

These proceeds of crime provisions are found at part XII.2 of the Criminal Code. They allow for the forfeiture of proceeds upon application by the Crown after a conviction for an indictable offence under federal law, other than a small number of offences exempted by regulation. These offences, for which this current procedure is available, are referred to as designated offences under the code.

Currently, in order to obtain forfeiture the Crown must show on a balance of probabilities that the property is the proceeds of crime and the property is connected to the crime for which the person was convicted. Alternatively, the Crown can also obtain forfeiture even if no connection between the particular offence and the property is established, provided that the court is nevertheless satisfied beyond a reasonable doubt that the property is proceeds of crime.

Attached to these existing forfeiture tools are other related powers. These include, for example, powers allowing special search warrants to find property that may be proceeds of crime; the powers of restraint and seizure of property pending resolution of criminal proceedings to ensure that the property does not disappear before a possible forfeiture order; and provisions for court proceedings to permit relief from forfeiture where appropriate in order to ensure the protection of legitimate interests in property, including third party interests.

These existing proceeds of crime measures have proven to be fair and effective powers under the Criminal Code. However, there are strong arguments that they have not been effective enough.

While Canadian authorities have managed to seize, restrain and ultimately forfeit substantial suspected criminal assets, these amounts are believed to represent a relatively small proportion of the total amount of proceeds of criminal activity in Canada.

Organized crime groups in particular are believed to have control of sizeable financial assets that are the product of illicit financial activity that have not successfully been recovered by Canadian authorities. There is a substantial international dimension in this as well, as criminal groups transfer illicit gains out of the country, or indeed, transfer illicit gains from activities in other countries into Canada.

While our current proceeds of crime provisions are effective, the government is of the view that they can and should be improved upon, especially in relation to organized crime. We must build upon the current provisions in order to make them more effective. In particular, there are limitations in the way the current provisions operate that create barriers for police and prosecutors.

While criminal organizations are believed to be involved in numerous offences leading to substantial illicit material gain, convictions are typically obtained only with respect to a small number of offences. It is not always the case that these offences have associated proceeds. For example, if such a criminal is convicted of murder, no particular proceeds will in general be associated with that one offence. Even for other types of offences that often do involve economic gain, such as drug trafficking, it frequently is the case that arrests will take place just before a major drug transaction takes place. While the organization itself likely will have been involved in numerous other trafficking activities, the particular offence for which the person is charged in that case would have involved an offer to traffic, for which there may be few or no related proceeds. Even where conviction does take place for an offence for which there are related proceeds, and forfeiture of these proceeds is possible, the particular offence and associated proceeds will very often only represent a small proportion of the total offences and illicit accumulation of property for which the criminal organization is responsible.

This means that the Crown often has to rely on the second branch of the current proceeds test, requiring proof beyond a reasonable doubt that the property is nevertheless the proceeds of criminal offences. This often means that even after a successful prosecution, there is a prospect of substantial additional proceeds litigation with sometimes doubtful prospects of success to

obtain property, which in the organized crime context very much appears from the outset to be proceeds of crime.

It is for this reason that a new reverse onus proceeds of crime forfeiture power is needed. It is the view of the government that there are certain criminal circumstances under which it is legitimate to presume that the identified assets of an offender are proceeds of crime. Of course, it should still be open to an offender to prove on a balance of probabilities that assets are in fact not proceeds of crime. However, failing such proof, the property should be forfeited by the order of the court. This is the basis of the proposed new power under Bill C-53.

This is a type of procedure that has already been adopted in a number of other democracies in respect of proceeds of crime. It is a power that federal, provincial and territorial ministers responsible for justice have identified as needed in Canada as well.
...

September 27, 2005 [House of Commons]

Mr. Art Hanger (Calgary Northeast, CPC)

Mr. Speaker, I find this legislation interesting in the sense that quite a battle has raged onward with law enforcement and its legislators in trying to address the whole issue of proceeds. I remember as a serving officer that in an investigation there was always this matter of trying to seize the goods, whether it was a drug trafficker or some other organized criminal group. There were so many loopholes in the law that many of the organized criminal groups or individuals would simply sign their proceeds over to their lawyer and the Crown could not touch them. For the most part I think that is basically where the legislation sits today.

The other part of it was an issue that would deal with perishable seizures. For instance, there were individuals who went into ranching. Perhaps they would have 500 head of cattle. All the cattle were bought with illicit money from the drug trade. How does one look after 500 head of cattle? Who looks after 500 head of cattle? Is the Crown responsible for looking after 500 head of cattle? The issue became a moot point because nobody wanted to do it. Of course the proceeds would slip away and again end up in the hands of the lawyer who was defending the person.

I am curious. When it comes to an outright seizure, what does the state have to do to prove that the goods were obtained through illegal activity? What hoops does the Crown have to jump through? The legislation can say a certain thing, but until we see it all played out on the ground, we will not really know how effective it is going to be.

September 27, 2005 [House of Commons]

Hon. Paul Harold Macklin

Mr. Speaker, the principle being advanced here is very clear and distinct in what we are really trying to say. I agree with the hon. member to the extent that if we can take the profits out of crime, then there really is not any particular reason for pursuing that sort of activity.

With respect to the member's specific concerns about the ability of our legal system to trace money and to hold money, there are in place already certain provisions that will permit that money to be held, and even if it could be shown to be in the lawyer's hands, to be held pending the hearing process.

The other option that is offered in this legislation that is of some interest to the member is that first of all, in order for the reverse onus to apply, the Crown would first be required to prove, on a balance of probabilities, either that the offender engaged in a pattern of criminal activity for the purpose of receiving a material benefit or--and here is the one that likely comes closer to fitting the member's concern--that the legitimate income of the offender cannot reasonably account for all of the offender's property.

This is broad and far-reaching. It goes well beyond the present legislation where we are limited really to the proceeds of that particular act of criminality, unless we can prove beyond a reasonable doubt that something did come from and can be identified as proceeds of crime by itself.

The member's concerns are legitimate. It is something that should be raised at committee. We should ask the experts to make sure that they have the tools in place to allow for the tracing and following of moneys. I believe that this new bill will really go a long way toward taking profit out of crime. Then I think we will see some positive results in terms of our law enforcement.
…

September 27, 2005 [House of Commons]

Mr. Randy White (Abbotsford, CPC)

... That is my preamble to my examples of this bill, which is really talking about seizure of assets, and it is a good thing.

Not too long ago there was a drug bust. It not only included drugs, but about eight or ten feet away in the rafters there was about $400,000 all wrapped up in plastic which the police took out of the building. This case went to court and the judge, in his infinite wisdom, gave all the money back to the dealers because they said they did not know it was there, that it was just something that must have been up in the rafters. Poor dears. He virtually gave the drug dealers $400,000 because in that courtroom with that defence lawyer, they did the wrong thing. They went after the defence of that drug money.

Although we have laws in this country, the problem is that lawyers on the defence side and the judges making the decisions are making the wrong decisions applicable to laws like this. It is not just the law that has seizure of assets that is important, it is the application of the law within the courtroom. I do not know what it is going to take for us in our society to go to the defence lawyers and say that we all have a problem, that for goodness' sake they know where

the $400,000 has come from. It cannot be given back to the dealers. They would just use it to buy and sell again.

I cannot say how many times I have been involved in situations where money has been seized, put in trust because it cannot be given back to the dealers, when in fact the lawyers can get their hands on it. They go in on behalf of the dealers, charge a fee of the amount that is in the trust account, get all the money out of the trust account, give part of it back to the dealers and keep a good chunk of change for themselves. Those lawyers out there know who I am talking about. That is trafficking. It is wrong. It is stupid. It is not just a matter of setting a law to seize assets, it is the application of the law after it is made. These laws are not made to be broken or challenged. They are not made to have application under the Charter of Rights and Freedoms. They are made to prevent illegal use of money.
…

September 27, 2005 [House of Commons]

Mr. David Tilson (Dufferin—Caledon, CPC)

Mr. Speaker, would the member comment on the reverse onus section that is in the bill? As I understand it, for the reverse onus section to apply, the Crown has to prove on the balance of probabilities that the offender has engaged in a pattern of criminal activity and the court then makes a ruling to seize whatever the material is.

As one of my colleagues has said that it is some reverse onus clause. This is the first thing that has to happen. The Crown has to prove on the balance of probabilities that either the offender engaged in a pattern of criminal activity for the purpose of receiving material benefit or the legitimate income of the offender cannot reasonably account for all the offender's property.

After the court makes the ruling, then comes what I gather the government calls the reverse onus clause. The offender has to prove on the balance of probabilities that the property is not from the proceeds of crime.

What does the member think of the reverse onus clause?

September 27, 2005 [House of Commons]

Mr. Randy White

Mr. Speaker, in effect the onus is still on the Crown to prove that it has a repeat offender, more or less. In most cases that money is not found with a repeat offender. This is somebody who is sent out with little or no record. There will be a big problem resulting from that.

September 28, 2005 [House of Commons]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ)

...In order to fight crime better in general, and especially organized crime, the Bloc has long sought changes in the Criminal Code to provide a reverse onus of proof in proceeds of crime applications. This would force offenders, once convicted of a serious offence, to demonstrate on a balance of probabilities that their property was not acquired through criminal activity.

Organized crime is one of the most serious social issues that we face—all the more so in view of the fact that Quebec has been the scene for ten years of a bloody war among the various criminal motorcycle gangs. This is a war, we should remember, that has cost more than 160 lives, including entirely innocent victims who had the misfortune to find themselves in the way of these bikers.

In the name of public safety, but also and especially to support the police forces in their attempts to counter organized crime, we have campaigned fiercely for substantial changes to the current legal system in order to put more tools at the disposal of crown attorneys and police forces.

By amending the Criminal Code in accordance with the letter and spirit of Bill C-53, we will be taking a huge step forward, and I know already that our efforts will be welcomed by both the police forces and all crown attorneys.

The Bloc Québécois has been pressing the federal government for years to introduce effective legislation for fighting criminal gangs. During the 2000 election campaign, the Bloc carried on this battle, demanding that Ottawa amend the Criminal Code to give police and crown attorneys more effective weapons for fighting and eliminating organized crime.

I would like to take this opportunity to salute the hon. member for Hochelaga, who has been working on this issue for years, that is, since the death of young Daniel Desrochers, 10 years ago. My colleague is a leader in the fight against organized crime.

On October 27, 2004, with the support of the Conservative member for Provencher and the NDP member for Windsor—Tecumseh, I tabled Bill C-242. This bill served as a working paper for the legislation introduced by the Minister of Justice. I want to salute the courage of the minister, and particularly the determination that he has shown in finally convincing cabinet of the merits of the Bloc Québécois' proposal and of the need to follow up on it. It is unfortunate that, for too long, the Liberal government dragged its feet in the fight against organized crime.

It took the Bloc's determination and the government's minority status in the House to force a debate and the tabling of this legislation. Indeed, it was in March 2005 that opposition parties got together to have a motion, of which I was the sponsor, adopted by the House, challenging the government to propose, by May 31, 2005, legislative provisions that would reflect my Bill C-242. Bill C-53 was introduced in the House on May 30, at the very last minute.

Once it is passed, this legislation will greatly streamline the rules of evidence regarding the seizure of goods belonging to a person found guilty of certain offences. More specifically, the bill will amend the Criminal Code so that the goods—identified by the Crown—of a person

found guilty of an offence involving a criminal organization, or found guilty of trafficking, importing, exporting or producing drugs, can be confiscated by the court, unless the offender can show, on a balance of probabilities, that his assets are in no way related to his criminal activities, and that they are not proceeds of crime.

In order for the reverse onus to apply, the Crown would first be required to prove, on a balance of probabilities, either that the offender engaged in a criminal organization offence or two serious offences for the purpose of receiving material benefit, or that the legitimate income of the offender cannot reasonably account for all of the offender's property. I would point out in passing that a serious offence means a criminal act punishable by a maximum prison sentence of five years or more.

At present, in order to obtain an order of forfeiture, the Crown must prove, on a balance of probabilities, that the property is the proceeds of crime and that the property is connected to the crime for which the person was convicted. The Crown therefore must do two things: first, convict the accused and second, prove the illegal and illegitimate origin of the property in order to seize it.

The Charter rightly imposes respect of the right of accused persons to be presumed innocent. It is therefore fundamental that the Crown begin by establishing proof beyond any reasonable doubt of the guilt of the accused, before the reversal of the burden of proof intervenes in the equation. The Crown must prove, beyond any reasonable doubt, that the accused is guilty of a criminal offence and designate the property it wishes to seize because it is the proceeds of a crime. The accused must again prove, this time—I repeat—by the balance of probabilities, the legitimate origin of the property the Crown wants to confiscate from him.

The Bloc has been saying for years that this reversal of the burden of proof is necessary to battle organized crime and money laundering effectively. Organized crime represents an ongoing threat to society and so it is essential to have effective measures in place to facilitate the battle against this scourge.

Given the many negative effects of organized crime, in both in its social and economic aspects, there is ample justification for strengthening the legislation to fight crime.

Economically, organized crime generates huge revenues, which are often reinvested in the legitimate world, but without making a positive contribution to it. The resulting tax evasion deprives governments of considerable revenues, and gangsters refine their techniques every day to avoid having their assets reviewed by the courts.

Very simply, it is becoming particularly frustrating for ordinary taxpayers to see notorious criminals display ostentatiously and condescendingly the proceeds of their illegal activities. How many times have we heard comments from citizens disgusted with the administration of justice when they see individuals with a plainly criminal past being convicted of a crime and then resuming their jet-set lifestyles as if nothing had happened, because they know full well that these people have not earned an honest dollar in their lives?

As lawmakers, we have to act to restore the public's confidence in its justice system. It has become imperative that criminal organizations be sent a clear signal that the days are over when they could shamelessly make a fast buck without facing punishment. From now on, criminals will have to face the consequences of their actions and, in that sense, they will no longer be able to benefit from their criminal and illegal activities.

Let us not be fooled. There is nothing wrong with calling for the seizure of goods constituting the proceeds of crime. It is common sense. Period.

By amending the Criminal Code to reverse the burden of proof as regards the acquisition of luxury items by an individual found guilty of gangsterism, we are giving police and the Crown another means to eradicate this problem. An individual found guilty and sentenced accordingly will still, at the end of the sentence, have to demonstrate that their assets were acquired using legitimate means.

It will become particularly difficult for a criminal to show that his luxury home, his chalet in the north, his condo in Florida, his shiny motorcycle, his sports cars, and his entire lifestyle correspond to declared income more often than not so low it hovers around the poverty line.

Such a legal initiative could also complicate the widespread practice by criminals of using front men. We know that individuals register their assets in the name of their spouse, parents or friends in order to avoid having major financial assets in their own name that could be confiscated by the government. The bill must take into account this particular reality whereby these front men are very often forced to obey the criminals.

I believe this is one of the concerns raised by our NDP colleagues. I can assure them that I will do everything in my power to reassure them in this regard. The analysis that lead to the introduction of Bill C-53 was largely inspired by a number of international legal precedents. The OECD's financial action task force on money laundering, the FATF, had proposed, in one of its 40 recommendations to fight money laundering, adopting measures allowing for the confiscation of assets.
…

September 28, 2005 [House of Commons]

Mr. Joe Comartin (Windsor—Tecumseh, NDP)

...The basic principle is that proceeds of crime should be forfeited and that the Crown should not have to prove what are proceeds of crime using the criminal standard, but rather using the civil standard. Rather than having to prove beyond a reasonable doubt that the gains were from criminal activity, the prosecutor would only have to establish a reasonable belief that there was a gain. The onus would shift to the convicted person to establish that the assets, the cash or whatever the assets are, were not received as proceeds of a crime.

There is a jurisdictional issue here. Manitoba and Ontario both have legislation that deals with the proceeds of crime. We have to be very careful that we do not further complicate the receipt of these assets by the Crown by overlapping jurisdictions. For that reason, when the bill goes

to committee, as it obviously will from the support it has received, that will be one of the issues that will have to be addressed. Hopefully, we will hear from provincial attorneys general or their representatives with regard to their position on the bill.

There is one that gives me greater concern and I have expressed this to my confreres on the committee. I have heard from the Canadian Bar Association and other legal groups. They are concerned about the reverse onus applying to assets that are mixed with those of other individuals.

The commercial wing of the Canadian Bar Association used the example of a person who was in a business relationship and unbeknownst to that person, one of the partners or associates had been engaged in organized crime activity and some of the money invested in the firm had come from those activities, but the person was an innocent third party. That person would be faced with the Crown moving against an asset in which the person had an interest. It is important that we build in protections for that business partner. I believe it is possible to do that without undermining the effectiveness of the legislation, but the legislation as drafted does not address this point, at least not to my satisfaction.

The second area where we run into this is with respect to family assets. The immediate stereotype involves someone in a full time relationship with another person. We assume that individual would know if the other person was engaged in organized crime or drug activity, the two criminal areas that the clauses of the bill control, but that in fact is not the case. It is not unusual for family members—and it does not necessarily mean a spouse or a partner; it may be a more extended family member—with joint assets with the person who has been convicted of an offence to have no knowledge that the asset was obtained by way of proceeds from crime. We need to be sure that we protect those innocent third parties.

There is one final point that I want to make, and this came up in a completely different context. The commissioner of the RCMP was before the committee, and I have to say that my memory is fading on this point as I cannot remember if he was before the justice committee or the subcommittee on public security. He raised concerns about police forces becoming dependent on the proceeds of crime. Where these funds go is also very much an issue.

Commissioner Zaccardelli was very clear that he felt it was inappropriate for any police force in this country, and I think he would probably say anywhere in the world, to become dependent as the recipients of the proceeds of crime once they are forfeited to the Crown. That is another issue that very much has to be addressed, with regard to the role that the crown attorneys and the police forces would play at the local level. That needs to be addressed.
…

September 28, 2005 [House of Commons]

Hon. Peter Adams (Parliamentary Secretary to the Minister of Human Resources and Skills Development and Minister responsible for Democratic Renewal, Lib.)

…Under the proposed scheme, the court would have to be satisfied on a balance of probabilities that either the offender has engaged in a pattern of criminal activity for the

purpose of providing the offender with material benefit, or that income of the offender unrelated to crime cannot reasonably account for the value of all the property of the offender. Upon these conditions being satisfied, any property of the offender identified by the Attorney General will be forfeited unless the offender demonstrates, again on a balance of probabilities, that the property is not proceeds of crime. The court, however, would be permitted to set a limit on the total amount of property forfeited as may be required by the interests of justice.

I want to comment on the particular offences that would be subject to this reverse onus set of provisions. These offences do not comprise all of the designated offences that are subject to the current proceeds of crime scheme under the Criminal Code. It is important to emphasize this. It is also important to emphasize that the current forfeiture scheme under the code will continue to exist and be available for this wider range of offences. Indeed, at the discretion of the Crown the current forfeiture scheme will also be available even for the particular offences identified in the reverse onus forfeiture scheme.

What Bill C-53 adds, however, is an additional special forfeiture power for which the Crown, at its discretion, may apply in respect of the narrower class of offences that I just mentioned. Ultimately, the new forfeiture power is targeted at organized crime and its main activities. That is why the legislation specifically identifies criminal organization offences as the basis for the reverse onus forfeiture.

These criminal organization offences are crimes that logically can support a presumption that substantial property of the offender is the proceeds of crime. A core aspect of the definition of criminal organization is that it is a group formed for the purpose of committing offences to obtain “material benefit”. There is, therefore, a logical basis founded on the definition of criminal organization itself for the underlying presumption inherent in the reversal of the onus. There is also the justification of taking special measures to address the substantial societal harm caused by organized crime.

The one other category of offences to which the reverse onus provisions will apply are the serious drug offences of trafficking, importing and exporting, and production of illegal drugs where these offences are prosecuted on indictment. There are probably no offences more closely associated with organized crime than these serious drug offences, so it was thought entirely in keeping with the purpose of this legislation to include them. There is also the justification of taking special measures against such drug offences that represent matters of recognized societal harm in their own right. These are the offences that the government puts forward in Bill C-53 as appropriately being subject to the reverse onus forfeiture which my colleague was discussing earlier.
…

September 28, 2005 [House of Commons]

Mr. Vic Toews (Provencher, CPC)

... The key purpose of the bill is to provide a reverse onus of proof in proceeds of crime related to organized criminal activity. The provisions in the bill have long been a part of the Conservative Party platform and I hope to see the legislation passed as quickly as possible.

Indeed, it is noteworthy that the bill generally speaking enjoys all-party support, something that is all too rare in the House of Commons.

I hope that some of the explanation that the parliamentary secretary gave just a moment ago in the House will assure some members of the New Democratic Party that the interest of innocent third parties are preserved. The bill does not need too much retinkering or amendments. I am concerned that the bill, which appears to be on the face of it a relatively good bill, not be held up any further.

The reverse onus provision for proceeds of crime was recommended by the subcommittee on organized crime but was not included in the government's last bill addressing organized crime, Bill C-24, which was tabled and passed in 2001.

I want to note that there are serious shortcomings in our organized crime legislation. This is an important step to address some of those shortcomings, but there are many other issues that need to be addressed.

I know that it is quite onerous now when we are prosecuting organized criminal organizations that in each specific case there has to be a reproving of the fact that the organization is a criminal organization. Quite frankly we should adopt some of the legislation from other jurisdictions and I specifically refer to the RICO laws in the United States that have been very effective in attacking organized crime. We could learn a lot from that legislation. It respects I believe due process. It respects the constitutional safeguards not only in the American constitution but in the Canadian constitution as well. We should not hesitate to adopt similar procedures where it is in the best interest of Canadian public security.

I make the comment that we do not consider this the fight against organized crime to be at an end simply because we are agreeing to what is an important amendment because in the overall picture it is still a relatively small step.

I feel compelled to point out that the Liberals did not act on the reverse onus measure until they faced significant provincial pressure from the provincial ministers of justice as well as the opposition justice critic since the beginning of this minority Parliament.

I know that certain provinces, including my home province of Manitoba, have passed similar legislation. I do not think we should hesitate in moving forward with federal legislation. The provinces did so out of desperation. They were not receiving any help from the federal government and quite frankly had to move ahead. I support what the provinces generally speaking have been doing. However, it is a much more cumbersome process that the provinces had to adopt.

I strongly believe that the level of government that is primarily responsible for the enforcement of the criminal law should also be responsible for passing appropriate legislation dealing with the proceeds of crime. We should not leave it to the provincial governments to do it under their constitutional jurisdiction under property and civil rights. It is cumbersome and

not as effective. This is the right approach and we should not hesitate. I do not think there would be any province standing in the way of Parliament in terms of taking those steps.

Organized crime is a problem that reaches across nations, oceans and boundaries affecting communities everywhere. The violence, the welfare and the financial implications of organized crime are far reaching. Globalization and technological revolution has made it possible for organizations to exert enormous influence on an international scale.

Generally speaking, we are asking our police forces to face a 21st century problem with all of the technological advantages that organized crime has with essentially 19th century tools. Many of our evidentiary laws are old laws.

They are simply not updated often enough in order to keep abreast of the changes in technology, so we need to, on an ongoing basis, ensure that our police forces have not only the appropriate frontline police resources but indeed the legal resources in the form of effective laws. This is one such step in bringing our criminal law essentially out of the 19th century and into the 21st century. In that sense it is a quantum leap for Canada. Unfortunately, we have not learned from the examples which other countries have gained and therefore we are still far behind other countries in terms of addressing issues of organized crime.

The extent of collaboration within and among criminal groups has broadened greatly. The available technology has improved their ability to conduct organized crime by leaps and bounds, and therefore Canada has become a very attractive place for these types of criminals. According to Criminal Intelligence Service Canada, virtually every major criminal group in the world is active in Canada.

In 1998 the Department of the Solicitor General of Canada, now the public safety department, commissioned an independent study to assess the cost of certain activities related to organized crime. It was found that the economic costs of organized crime, I am not talking about the economic profits to organized crime, but the costs, amount to at least $5 billion a year. Frontline police officers who are struggling to maintain their fight on existing technology simply do not have the resources to compete with the new and emerging technologies to which these criminal organizations have access.

The reverse onus provision for proceeds of crime is vital for an effective war on organized criminal activity. At present, in order to obtain an order of forfeiture, the Crown must prove on a balance of probabilities that property is the proceeds of crime and that the property is connected to the crime for which the person was convicted. The Crown must prove that the accused or convicted person owns the property and that the property is the proceeds of crime.

Again, given the resources available to many criminal organizations, accountants, lawyers and the like, they have learned to distance themselves from their assets. Often criminal organizations do not use the regular types of security that other businessmen would have to use. They enforce their security in ways that legitimate business people do not and should not.

If there is no connection between the offence and the property established, the court nevertheless may order forfeiture of the property if it is satisfied beyond a reasonable doubt that the property is the proceeds of crime. That is the existing law now.

The amendments introduced in Bill C-53 provide that once an offender has been convicted of the appropriate crime, that is a criminal organization offence or certain offences under the Controlled Drug and Substances Act, the court shall order the forfeiture of property of the offender identified by the Crown unless the offender proves on a balance of probabilities that the property is not the proceeds of the crime. Once the conviction is made now, any property belonging to the accused is forfeited unless the accused establishes that the property is not the proceeds of the crime.

There have been some concerns about the constitutionality of the legislation. I think, however, it is very clear that there are no constitutional problems. The reverse onus provision does not impinge on individual liberty rights secured by the Constitution, but rather relate to property rights once he or she has already been convicted of a criminal offence.

We are not talking about double jeopardy. We are not talking about reverse onus in the establishment of an essential element to a criminal offence. This is an appropriate constitutional response of the federal government under its criminal law powers or a provincial government under its rights to regulate property and civil rights.
…

September 28, 2005 [House of Commons]

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC)

… The bottom line is Parliament needs to send a message that crime does not pay. Unfortunately, our criminal justice system is in such a shambles right now after 12 years of Liberal rule, that many people are getting exactly the opposite message. I cannot help but be reminded of the case of Paul Coffin who was recently convicted for defrauding this very government of $1.5 million. While he repaid much of the money, he received no jail time and kept about $500,000. The message in that case for many Canadians is that crime does pay.

Nevertheless, Bill C-53 would ensure that those who are engaged in serious criminal enterprise, especially the illegal drug trade, would never profit from their crimes. Currently, those involved in this illicit trade in my part of Canada clearly see their crime as a profitable enterprise even when caught and convicted.

Apart from the potential stigma of a criminal conviction, those who run the marijuana grow houses in B.C. really do make a good profit. Even upon conviction there is rarely any jail time and the fines are a fraction of the income received from this illegal activity. They see the fines as simply the cost of doing business. My hope is that Bill C-53 is a first small step in a movement to suppress the grow houses, the smuggling of marijuana and cocaine over our borders and related violence that accompanies the drug trade.

With that in mind, I would like to focus on a couple of aspects of the bill that the minister and the justice committee may want to examine in greater detail as Bill C-53 moves through Parliament. First is the 10 year limitation on seeking forfeiture. Currently clause 6.1 of the bill says that the court may impose forfeiture only if it is convinced that:

> within 10 years before the proceedings were commenced in respect of the offence for which the offender is being sentenced, the offender engaged in a pattern of criminal activity for the purpose of directly or indirectly receiving a material benefit, including a financial benefit;

I believe we may want to reconsider limiting forfeiture in this way. It is important to remember that the individuals involved with most crime families and criminal organizations have been involved in criminal activity their whole lives. Yet, according to the bill, if such a criminal were to be prosecuted for organized crimes that took place more than 10 years before being charged, they apparently would be legally entitled to keep the proceeds of their crimes. Admittedly, such circumstances would be uncommon, yet I do not believe we would want to allow a free pass to such criminals.

Consider the case of a mobster who has lived his whole life off the avails of crime, who is finally ratted out by an informant for murders he committed earlier in his criminal career, yet there is no evidence of criminal activity for the past decade. The police finally have the evidence they need to put the don behind bars. However, even with the conviction and jail sentence, the mobster and his family keep the ill-gotten millions he amassed over his criminal career.

The second area the minister and the committee might want to examine further is the sheltering of ill-gotten gains in someone else's name. This problem was brought to my attention recently through round table meetings I have been holding across Canada as part of our party's task force on safe streets and healthy communities.

The leader of the official opposition asked me and Jim Flaherty, a former attorney general of Ontario and Conservative candidate, to head up this task force as we seek solutions to the problem of violent, drug related crime in Canadian society, the same crimes that Bill C-53 helps to address in part.

Police officers have related to me their frustration at attempting seizure of criminally derived assets from a spouse or a family member who are given title to a car, house or other property. Yes, the bill allows for fines in lieu of seizure where assets are inextricably comingled or found to be beyond the direct reach of authorities. However, I suspect that this obvious loophole for sheltering criminal assets could be tightened significantly.

The third area the minister and the justice committee may want to consider is the sheltering of assets overseas by such criminals. Again, the bill allows for fines in lieu of seizure where assets appear to be beyond the direct reach of Canadian authorities, yet fines may never be paid while criminal assets continue to exist beyond the reach of Her Majesty's government. Indeed, even if this new legislation is effective domestically, then we can well anticipate that the smarter and wealthier criminals will seek to deposit and invest their funds offshore.

According to the International Monetary Fund, estimates of money laundering worldwide amount to anywhere from $590 billion to $1.5 trillion.

According to the most recent Criminal Intelligence Service of Canada report:

> —recent law enforcement projects in B.C. have discovered organized crime groups capable of laundering proceeds of crime derived from the cross-border smuggling of cocaine and marijuana, totaling approximately C$200 million.

That is just in B.C.

> The Financial Action Task Force on Money Laundering, an international-based organization, has recently identified the following worldwide trends in money laundering typologies also evident in Canada: these include the use of wire transfers, and organized crime's utilization of gatekeepers, as they act as intermediaries with financial institutions in addition to providing an appearance of legitimacy. In addition, casinos, including on-line casinos, white-label Automated Teller Machines (ATMs), and money service businesses, such as currency exchanges are increasingly employed by organized crime groups to launder their money in Canada.
>
> While organized crime groups based in Canada are laundering money here and abroad, Canada is also used by foreign-based groups for the purposes of laundering the proceeds of crime due to the stability of the economy and the soundness of its financial sector. There are individual facilitators and criminal organizations who specialize in providing money laundering services to a number of other organized crime groups.These individuals and criminal groups are not necessarily involved in other types of criminal activity but they do provide an essential component to the successful operation of criminal networks even though they may not be core members of the organization. Some marihuana brokers, for instance, have tasked individuals outside of their criminal organizations with converting the U.S. cash into Canadian currency through currency exchanges on their behalf.

While Parliament is considering the very subject of seizing criminal assets, it is a most appropriate time to be examining how we might strengthen our efforts to reduce the laundering of funds and to repatriate criminal assets from foreign jurisdictions.

Some questions that need answers include the following. Is there more that can be done domestically to track the flow of funds overseas? What is needed domestically to help these efforts? Do we need to impose an anti-money laundering regime on money service businesses and currency exchanges? Do we need more resources for police or for FINTRAC, the Financial Transactions and Reports Analysis Centre of Canada? we be looking at new treaties with certain offshore banking havens? Alternatively, are there any jurisdictions that have become extremely problematic for Canada in our fight against organized crime for which the application of limited sanctions may be appropriate?

If the Minister of Justice is serious about forfeiture, then these questions also must be addressed more fully. While legislation alone cannot answer all of these questions, they must be answered all the same.

As I conclude my comments on Bill C-53, I leave members with some thoughts based on what I have been hearing from Canadians as I have travelled across Canada these past weeks as co-chairman of our party's task force on safe streets and healthy communities. Several themes have been repeated at these meetings, including dismay at the toothlessness of the Youth Criminal Justice Act, light or non-existent jail time for serious violent crimes and lax immigration rules that allow criminals to exploit the system. In addition, illegal drugs were fingered as a common denominator in most crimes, while unstable family environments were identified as the starting point for many career criminals.

October 6, 2005 [Committee][Entire Exchange]

Hon. Roy Cullen (Etobicoke North, Lib.): ... The bill talks about the reverse onus with respect to assets upon conviction. I'm a full subscriber to the fact that a person is innocent until proven guilty; don't get me wrong. However, let's say a person who is alleged to be dealing in drugs is arrested and brought to trial and the person has a whole range of assets. If during the period of the trial, the person divests themselves of the assets in very clever and neat ways, which I'm sure is within their capacity if they're part of organized crime, and ultimately is convicted, but when people look there aren't many assets lying around, tell me, are there any processes or controls to deal with that?
Mr. Shawn Scromeda: That is a matter of existing law as well. It's not just a concern under this bill. Under existing proceeds measures, there are concerns that in between the time of order of forfeiture, which as you correctly point out is only after conviction, the person would be tempted to or would actually try to divest themselves of the property. That's why under the existing provisions there are extensive measures that allow for the seizure and restraint of property pending a final forfeiture order....

November 1, 2005 [Committee][Entire Exchange]

Hon. Roy Cullen: ... Finally, in the context of solicitor-client privilege, you raised a point in your submission. It may be somewhat off topic as well, but in the context of proceeds of crime and anti-money laundering, I know there was an issue with respect to solicitor-client privilege and lawyers sharing information with FINTRAC. The problem with that, of course, is that while 99% of lawyers are law-abiding citizens, the 1% who perhaps aren't are exempted. The criminals, and that's who we're talking about here, will launder their money through those types of lawyers, and that's why the government took a very broad-scope approach. I know there are discussions with the Bar Association, FINTRAC, Finance, and the government. Could you report? Do you know where that's at?
Ms. Joan Bercovitch: Discussions are under way. We're not at liberty to discuss the status at this time.

November 15, 2005 [Committee][Entire Exchange]

Mr. Shawn Scromeda (Counsel, Criminal Law Policy Section, Department of Justice): The "interests of justice" is a term that is considered and used often by the courts. Some of the considerations underlying this provision relate to the very nature of the forfeiture itself. Reverse-onus forfeiture is based on a presumption that property is the proceeds of crime, not on a direct finding by the court that it is the proceeds of crime. It's a distinction from our current proceeds-of-crime regime.

The effects of this are potentially wide-ranging. There may be circumstances where it is simply too difficult for an accused or a third party to mount an effective defence. I think we've heard, especially, some concerns about third parties who may be affected by reverse-onus forfeiture but who may not have the means or the capability to do this.

Given that we are proposing a fairly aggressive widening of the forfeiture power, it is felt that as a balance to that, discretion on the part of the court to address situations where the total amount of forfeiture may be disproportionate to what appears to be the total underlying criminality, or where, as I said, there might be third-party interests involved that haven't been adequately represented, which the court can raise of its own motion, is the sort of consideration we think the court would bring into play under "interests of justice".

I guess I would point out, as well, that other legislation that, in part, provided something of a model for ours--the Irish legislation, the U.K. legislation, civil forfeiture regimes in the provinces, although this is not civil forfeiture--also has, in terms of nature, an aggressive nature, and has similar provisions. It does not further qualify the "interests of justice", but uses the term, "in the interests of justice" to provide some judicial discretion on the total amount of forfeiture.
…

Hon. Roy Cullen: I'm confused now. I thought you just finished saying that the crown prosecutor would put together a case that says, "Look, even though we only have this one conviction on this small drug deal"--I guess they'd have to have a history of criminality--"this individual has all these assets. So we're proposing to the court that all these assets be subject to this reverse onus. There's a presumption that they were derived from the proceeds of crime." What kind of judicial discretion is needed? I don't follow.

Mr. Shawn Scromeda: The additional tests that we have set out for the pattern of criminality are specifically set in the legislation on a balance of probabilities, which isn't the normal criminal conviction standard. We have put in hurdles, but the hurdles are not very high. It is a potentially very broad forfeiture power, and ìt could lead, in some circumstances, potentially to excessive forfeiture. If a judge feels that it is excessive, based on the total amount of presumed criminality or apparent criminality, he could restrain that through the discretionary limit on the amount of total forfeiture.

Hon. Roy Cullen: Why couldn't that be left to the accused or the convicted, his or her attorney, to make that case and to limit it?

Mr. Shawn Scromeda: There may be circumstances in which it's difficult to demonstrate the legitimate origin of property that still does have a legitimate origin.

Hon. Roy Cullen: What about that third-party issue you raise? Give me some more information on that and why that might be an issue.

Mr. Shawn Scromeda: That was an issue, I believe, that came up in testimony before the committee. Although we do already have and have incorporated into the reverse onus scheme the right of third parties to make an application, there may be circumstances in which third parties are unable to do that. Given the fact that we've broadened the nature of the forfeiture power here, it was thought, as part of a balancing mechanism to that, including the third-party interest, to expand the ability of a judge, where he sees it's in the interests of justice, to relieve against forfeiture. And one of those, as I say, might be third party, where an unrepresented third-party hasn't made a case, but it's nevertheless clear to the judge that this property is not justified to be taken away. He may, of his own motion, say this is not in the interest of justice.

November 15, 2005 [Senate]
Hon. Pierre Claude Nolin

… In essence, Bill C-53 would apply to any offence that can be prosecuted by indictment, thus the more serious offences. Clause 6 lists those offences, namely any criminal organization offence punishable by five or more years of imprisonment and any offence under section 5, 6 or 7 of the Controlled Drugs and Substances Act or any activities related to such an offence, prosecuted by indictment.

That gives you an idea of the framework to which this rather extraordinary reverse onus of proof measure applies. That is why it applies to the more serious offences.
Clause 6 states the circumstances that could lead to forfeiture and to the reverse onus of proof by which the offender must prove that his property is not proceeds of crime.

A court imposing sentence on an offender convicted — and I must emphasize this small, yet highly important, nuance that it is only when the offender is convicted that the reverse onus of proof can apply — of a designated offence, those I have just mentioned, shall, on application of the Attorney General, order that any property of the offender be forfeited if the court is satisfied, on a balance of probabilities, that within ten years before the proceedings were commenced in respect of the offence for which the offender is being sentenced the offender engaged in a pattern of criminal activity for the purpose of directly or indirectly receiving a material benefit, including a financial benefit; or the income of the offender from sources unrelated to designated offences cannot reasonably account for the value of all the property of the offender.

If the offender shows that his property is not proceeds of crime, the court cannot order the forfeiture.

As you can see, honourable senators, once the offender has been convicted, the onus of proof is transferred, after certain criteria are met, from the Crown to the convicted offender, who now has to prove that the property is not the proceeds of criminal activity.

Allow me to quote a few statistics to convince honourable senators of how much of a problem money laundering is in Canada. The RCMP reports that approximately CAN $17 billion, is laundered in Canada each year. This is not a small-time operation. Bill C-53 is designed to curb — since eliminating it would be impossible — this highly questionable criminal activity.

As I indicated previously, Bill C-53 flows logically from the amendments to the Criminal Code that we passed back in 2001, precisely to improve the conditions surrounding the whole issue of restitution or forfeiture of the proceeds of crime. Needless to say, police associations across the country unanimously support this bill. In fact, they would really have liked us to pass such an amendment back in 2001. Unfortunately, that proved to be impossible. The time has come to act; so, let us act. The police associations agree with us on this issue.

In conclusion, I wish to remind you that, contrary to some Supreme Court rulings that challenged the reverse onus of proof before a conviction, those of you who might be concerned about respecting the Charter in the context of a reverse onus of proof will not find any basis in what the government is proposing, since this reverse onus of proof applies only after an accused has been convicted.

Considering the very large number of rulings that they have made, it is very likely that the courts, which have already found it highly important for Canada to do everything possible to deal with organized crime and the dangerous consequences of criminal activities, will accept this new reverse onus of proof once an accused is convicted.
…

November 15, 2005 [Senate]
Hon. Larry W. Campbell

… The proceeds of criminal activity allow organized criminals to commit further crime, recruit additional members and facilitate generally the criminal operation of their groups. I think all honourable senators would agree that organized crime demands specific, focused and sustained responses.

Honourable senators, the proposed reforms in Bill C-53 build on the existing forfeiture provisions in the Criminal Code. The current proceeds of crime scheme allows for the forfeiture of proceeds upon application by the Crown after a conviction for an indictable offence under federal law, other than a small number of offences exempted by regulation.

In order to obtain forfeiture, the Crown must show on a balance of probabilities that the property is the proceeds of crime and that the property is connected to the crime for which the person was convicted. The Crown can also obtain forfeiture even if no connection between the particular offence and the property is established, provided the court is nevertheless satisfied beyond a reasonable doubt that the property is proceeds of crime.

The existing proceeds of crime provisions that remain under Bill C-53 will continue to be effective in obtaining forfeiture of proceeds of crime in general circumstances. For example, if a person is convicted of theft and property can be identified as the product of that theft, then the existing proceeds provisions can operate to remove any illicit gain. Even where it may become apparent that identified property is not the product of the particular theft, the existing proceeds provisions can operate, provided proof is provided beyond a reasonable doubt that the property is proceeds of crime.
While these current provisions can be effective, their effectiveness can be limited in comparison with the extensive illicit gains accumulated by organized crime. The existing provisions are most effective with respect to discrete types of criminality, where property is clearly associated with a single offence or small number of offences. That is often not the situation with respect to organized crime.

Further, it must be recognized that obtaining forfeiture of the proceeds of crime can be an especially difficult task for police and Crown prosecutors in situations of sophisticated criminality and active concealment of the criminally derived nature of assets.

Honourable senators, although criminal organizations are believed to be involved in extensive criminality leading to substantial illicit gains, the particular crimes for which convictions are finally obtained against these criminals may not be one with the associated proceeds, or even if they are, the proceeds will represent only a small part of the total proceeds of crime earned and controlled by these organizations. It is for this reason that the reverse onus forfeiture power is being advanced. Bill C-53 contains a fundamental improvement on the current scheme to address this proceeds of crime challenge in relation to organized crime.

Bill C-53 provides an additional forfeiture power — in addition to the existing powers that will remain — that allows for the application of a reverse onus of proof after conviction for a criminal organization offence that is punishable by five or more years of imprisonment or certain drug offences under the Controlled Drugs and Substances Act when prosecuted on indictment.

The definition of a criminal organization offence in the Criminal Code includes the three special criminal organization offences that have been created in the code, namely: participation in the activities of a criminal organization; committing a crime for the benefit of, at the direction of or in association with a criminal organization; and instructing the commission of an offence for a criminal organization. The definition of a criminal organization offence also includes other indictable offences punishable by five or more years when committed for the benefit of, at the direction of or in association with a criminal organization.

These criminal organization offences are crimes that logically can support a presumption that substantial property of the offender is the proceeds of crime. A core aspect of the definition of criminal organization is that it is a group formed for the purpose of committing offences to obtain material benefit. There is, therefore, a logical basis for the underlying presumption inherent in the reversal of the onus.

Honourable senators, as I noted earlier, the one other category of offences to which the reverse onus provisions would apply are the serious drug offences of trafficking, importing and exporting, and the production of illegal drugs, where these offences are prosecuted on indictment. There are probably no offences more closely associated with organized crime than these listed serious drug offences, so it was thought to be in keeping with the purpose of the legislation to include them. Our laws have traditionally taken special measures against such drug offences as they represent matters of recognized societal harm in their own right.

While additional offences are not directly included in the scope of this scheme, it should be recalled that many other offences can be prosecuted as criminal organization offences, provided that it is demonstrated that the offences were committed for the benefit of, at the direction of or in association with a criminal organization, so the scheme can apply more broadly in this manner, provided the link with organized crime is made.

An Act To Amend The Criminal Code (Auto Theft And Trafficking In Property Obtained By Crime) (Bill S-9)

Citation 2010, c. 14, s. 7

Royal Assent November 18, 2010

Hansard

October 5, 2010 [House of Commons]

Mr. Bob Dechert

Mr. Speaker, I am pleased to speak today to Bill S-9, An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime). This bill targets property crime, in particular auto theft which continues to cause serious harm to Canadian communities. To this end, Bill S-9 would create a new offence of motor vehicle theft, a new offence to address tampering with an automobile's vehicle identification number and new offences to address trafficking in property obtained by crime.

...

Both the VIN tampering offence and the distinct motor vehicle theft offence would offer benefits to the criminal justice system not offered by the current offence used to cover these activities, “possession of property obtained by crime” found in section 354 of the Criminal Code. A conviction for either of these offences would clearly and more accurately document a person's involvement in an organized vehicle theft ring as part of the criminal record. This, in turn, would help police and crown prosecutors to deal appropriately with these people in subsequent investigations and prosecutions. The House will note that the VIN tampering offence contains an express exception in subsection 353.1(3) to ensure that those individuals who must remove or alter a VIN in the course of legitimate auto repairs, maintenance or modification are not captured under the ambit of this offence.

(1610)

A question was raised in the Senate committee on why this express exception is required when subsection 353.1(1) also contains a lawful excuse defence. I will take a moment to explain how the provision works.

...

Bill S-9 also proposes to create offences to address trafficking and property obtained by crime. The proposed trafficking offences are intended to target the entire length of the marketing chain that processes the proceeds of theft and other crimes like fraud. One form of trafficking in property obtained by crime is the movement of stolen automobiles and their parts. This is where organized crime is most involved in auto theft, either through car- theft rings, chop shops, or re-VINing a car for the sophisticated international rings that smuggle stolen luxury cars to foreign locations.

Currently, section 354 of the Criminal Code, the general offence of possession of property obtained by crime, which carries a maximum of 10 years imprisonment for property valued over $5,000, is the principal Criminal Code offence used to address trafficking and property obtained by crime. This possession offence does not adequately capture the full range of activities involved in trafficking.

Both proposed offences have higher penalties than the existing offence of possession of property obtained by crime. If the value of the item trafficked exceeds $5,000, anyone convicted of this offence could face imprisonment for up to 14 years. If the value does not exceed $5,000, it would be a hybrid offence and subject to imprisonment for up to five years on indictment or up to six months on summary conviction.

In the auto theft example, the trafficking offences would capture all of the players in a chop-shop operation, whereas the offence of possession of property obtained by crime would apply only to those in possession of property such as stolen cars or car parts. In order to avoid detection and reduce the probability of multiple counts in the event of an arrest, chop shops have very little inventory at any given time. It is to be noted, however, that the trafficking offences address dealings involving all property obtained by crime, not just the results of auto theft and chop-shop operations.

I am pleased that the trafficking offences also provide the Canada Border Services Agency with the legislative tools necessary to allow them to detain property, including stolen cars about to be exported from Canada, in order to determine whether they are stolen and to allow the relevant police agency to recover them and take the appropriate action. Bill S-9 is a comprehensive piece of legislation that addresses many of the activities that organized crime undertakes in relation to auto theft and other forms of property crime.
...

October 5, 2010 [House of Commons]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ)

Mr. Speaker, I listened to my colleague's speech. Personally, I am quite worried by the Conservatives' approach to crime. The bill before us today deals with the issue of serious and violent crime. Yet at the same time, the government is doing everything in its power to abolish the gun registry, which the police want to have at their disposal because it helps them in their work. This morning we spoke about another bill concerning justice and white-collar crime. This government, just like the Liberal government before it, is refusing to address the issue of tax havens. Even if white-collar criminals are put in prison for a while, if they can hide their money in tax havens around the world and spend the rest of their days living off the proceeds of their crime, it is not much of a deterrent.

Does my colleague have the same worries about the Conservative government's doublespeak and hypocrisy when it comes to justice issues? They play the tough guy and boast that they are tough on crime. But when it comes time to take real measures, and not just change the length of a prison sentence in a bill—and you have to wonder if criminals often read the Criminal Code—that is another story. They need to do more than just grandstand. We need real, meaningful measures to fight crime and, in terms of prevention, measures for gun control and control of tax havens. Is that not doublespeak right there? The government has done nothing in terms of prevention, but it has been very big on repression.

October 5, 2010 [House of Commons]

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.)

...

Perhaps what is most modern about the bill is the respect that it gives to vehicle identification numbers.
[*Translation*]

We believe it is useful to add measures concerning vehicle identification numbers and we would like to discuss this measure in committee. That is the kind of innovative measure that could help combat the problem of auto theft in Canada.
[*English*]

The obliteration of VIN numbers is a low-risk, high-profit tactic of organized criminal gangs. This provision should help crack down on organized criminal activity, a main source of auto

theft in Canada. By denying criminal gangs access to a primary source of funding, the currency of gangs, we can inhibit them from developing their activities elsewhere. The possession of property: to be in possession of a stolen car:
[*Translation*]

The provision concerning the possession of stolen vehicles is interesting and also merits discussion. That is another measure that could prove to be a useful tool for police forces. We need to be innovative in order to combat criminals who steal vehicles, who themselves are becoming increasingly sophisticated.
…

October 5, 2010 [House of Commons]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ)

We need to take action quickly. These vehicles are generally stripped for parts, and are rarely exported. They are exported, but not much. This is where organized crime comes in. These individuals place orders for certain types of motor vehicles, which are then stripped for parts. The thief is one thing. Yes, he is a criminal, but the ones who place the orders are the worst ones. These types of orders are generally made through organized crime groups. So we must find a way to punish them.

The question was put to Criminal Intelligence Service Canada, and this was its reply:

The Insurance Crime Prevention Bureau has identified an increase in four main fraud techniques that are used by organized crime to steal vehicles. These include: the illegal transfer of Vehicle Identification Numbers (VINs) from wrecked vehicles to similar ones that have been stolen; a legitimate VIN is used to change the legal identity of a stolen vehicle of the same make, model, and colour, a process called “twinning”.

Let us consider the example just given. The VIN from a wrecked Honda Civic 1998 can be used for a stolen Honda Civic 1999. This is where we are being asked to take action.

October 25, 2010 [House of Commons]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.)

Thus, with Bill C-26, the government created a separate offence for theft of a motor vehicle, and this offence is also included in Bill S-9. The mandatory minimum sentence for this offence is six months' incarceration for a third offence or in the case of an indictable offence.

This is important because all studies show that motor vehicle theft in certain cities is quite well organized. The evidence from various police forces, including municipal and provincial forces

and our national police force, the RCMP, has clearly indicated that to be the case. When someone is on their third such offence, it becomes quite serious. The criminal justice system must therefore send a clear message that this kind of criminal behaviour is unacceptable.

The new offences provide for a broad definition of trafficking. This would cover selling, giving, transferring, transporting, importing, exporting, sending or delivering property obtained by crime or offering to do any of those things.

Thus, the new legislative provisions would target all the middlemen involved in moving stolen property, from the initial criminal act through to the ultimate consumer. That is very important. Of course it happens in other cities, but we know that in Montreal and Winnipeg in particular, most motor vehicle thefts are committed by organized crime groups. This means there is a network of individuals whose only goal and mission is to steal cars. The orders often come from outside Canada, with requests for x number of certain models, for instance, Lexus vehicles from a given year, Chevrolets from a given year, specific models and colours of BMWs from another year, and so on. The crime of motor vehicle theft is driven by the network.

May 6, 2010 [Senate]
Sponsor Hon. John D. Wallace

As I previously mentioned, Bill S-9 has three main components: the creation of a distinct offence of "theft of a motor vehicle"; second, a new offence for altering, obliterating or removing a Vehicle Identification Number, or its VIN; and third, new offences for trafficking in, and possessing for the purpose of trafficking, property obtained by crime, including the importing or exporting of such goods.
...
Why is it that this distinct offence of theft of a motor vehicle is necessary? Property crime, and in particular auto theft, remains an issue of paramount importance for most Canadians. Yes, there has been a downward trend in auto theft rates, thanks mostly to the innovative policing policies and technological advances, but despite that, it still remains one of the highest-volume offences in Canada, averaging about 400 auto thefts per day. Yes, that is correct — 400 auto thefts each day. The goal of this bill is to assist the police in reducing these auto theft rates even further, so that when police apprehend these criminals, the repeat offenders will be incarcerated and removed from the streets.

Auto thefts hit Canadians in their pocketbooks. I know that we have cited the dollar value provided by the Insurance Bureau of Canada many times before, but it is extremely important that it not be forgotten; namely, that the total cost of auto theft to Canadians is approximately $1.2 billion each year. Without a doubt, these substantial costs are ultimately borne by taxpayers, the insurance industry, policyholders, governments and victims.
...

Auto thefts are often committed as random acts by individual criminals, but increasingly, organized crime is becoming more and more deeply entrenched into the auto theft industry. It is estimated that roughly 20 per cent of all stolen vehicles are linked to organized crime

activity. The financial motivation to commit auto theft is high, and indeed the profits made from the theft of motor vehicles form a very substantial source of income for organized crime.

As stated before, organized crime groups participate in the trafficking of stolen vehicles in at least three ways. First, organized crime is involved in the process of altering the legal identity of a vehicle by changing its VIN. Second, they operate "chop shops," where stolen vehicles are disassembled and their parts are trafficked, often to unsuspecting customers. Third, high- end, late model luxury sedans and sports utility vehicles are exported from Canadian ports to foreign locations in Africa, the Middle East and Eastern Europe. Bill S-9 creates new tools that will address each of these unlawful activities.

This first form of criminal involvement — VIN tampering — is a process that involves stripping the vehicle of all existing labels, plates and other markings that bear the true Vehicle Identification Number, and then manufacturing replacement labels, plates and other markings bearing a false VIN that was obtained from imported or salvaged vehicles.

There is currently no offence in the Criminal Code that directly prohibits tampering with a VIN. Like trafficking, the current Criminal Code provision that is used to address VIN-tampering is the general offence of "possession of property obtained by crime" that is found in section 354 of the Criminal Code.
...
This will be an additional offence, so that a person could be charged with both "possession of property obtained by crime" under section 354 of the Code, as well as the proposed VIN-tampering offence, which in combination could result in a longer sentence.
...
An advantage that both the new VIN-tampering offence and the new distinct motor vehicle theft offence would have over the current offence used to cover these activities — namely, possession of property obtained by crime under section 354 of the Code — is that a conviction for these new offences will more clearly and accurately document, as part of their criminal record, a person's involvement in an organized vehicle theft ring. This will most definitely assist police and Crown prosecutors in dealing more appropriately with those particular offenders in any subsequent investigations and prosecutions.

Finally, Bill S-9 will also create new offences that target the trafficking in property obtained by crime, or the possession of such property for the purpose of trafficking. These amendments are extremely significant, and while my comments to this point have focused on auto theft, I want to be clear that the proposed trafficking offences are intended to target more broadly the entire criminal marketing chain that processes the proceeds of theft and other property crimes, including, for example, fraud.

These new offences will, however, also directly address the present auto theft problem. The trafficking in property obtained by crime includes the movement of stolen automobiles and their parts. This is where organized crime is most involved in auto theft, either through car theft rings, "chop shops" that dismantle stolen cars for parts, the act of "re-VINning" a vehicle to hide its identity, or the sophisticated international rings that smuggle stolen high-end luxury vehicles from Canada.

The new trafficking offence broadly defines trafficking to include the selling, giving, transferring, transporting, exporting from Canada, importing into Canada, sending, delivering or dealing with in any other way, as well as offering to do any of the above, in respect of property obtained by crime. This definition addresses the myriad ways in which criminal enterprises seek to get their ill-gotten gains to the eventual market. Bill S-9 also creates an offence of possession of property obtained by crime for the purpose of trafficking in order to capture this unlawful activity even at its initial stage, where the goods have not yet started to move through the illegal marketing chain.

Some might question why these new offences are necessary when the Criminal Code already prohibits the possession of property obtained by crime. Currently, section 354 of the Criminal Code — that is, the general offence of "possession of property obtained by crime" — which carries a maximum of 10 years' imprisonment for property valued over $5,000, is the principal Criminal Code offence that is now used to address trafficking in property obtained by crime. This possession offence does not, however, adequately capture the full range of activities that are involved in trafficking. The trafficking of property obtained by crime is an enterprise crime, and it is what motivates property crime more generally. With these new offences, Bill S-9 will be targeting all of the activities that are undertaken by criminal enterprise, and thereby making it considerably more difficult for organized crime, or individuals, to engage in these types of illegal behaviour.

The proposed new trafficking offences will capture all of the players who are involved in a trafficking operation, such as a chop shop, whereas the existing "possession of property obtained by crime" offence applies only to those who are actually in possession of the property, such as the stolen vehicles. By their very nature, operations such as chop shops have very little inventory at any given time in order to avoid detection and reduce the probability of multiple counts in the event of an arrest. These new offences go to the heart of what motivates property crime generally, and are specifically intended to address the entire chain of criminal acts that together yield the financial benefits that ultimately make property crime so lucrative.

Another extremely important point is that both of the proposed new trafficking offences will also have higher penalties than the existing offence of possession of property obtained by crime since trafficking is considered to be a more serious matter than simple possession. ... Honourable senators, it is also important to note that these new trafficking offences will make available to Canada Border Services Agency the necessary authority to allow them to detain property, including stolen cars that are about to be exported from Canada, in order to determine if they are stolen and to allow the appropriate police agency to recover them.
…

May 26, 2010 [Senate]

Hon. Larry W. Campbell

Honourable senators, I am pleased to speak to you today as the critic on Bill S-9, An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime). Bill S-9

replicates Bill C-26 as it was passed by the House of Commons in the previous session. As honourable senators will recall, Bill C-26 was being reviewed by the Senate in the last session when Parliament prorogued.

I would refer honourable senators to the speech I made on Bill C-26 on October 29, 2009, as my feelings on this legislation have not changed. However, I will briefly address the main legislative changes that the bill proposes. This bill deals with trafficking, importation and exportation of property obtained by crime, but its main purpose is to target auto theft. This bill establishes the distinct offence of theft of a motor vehicle. It creates a new offence for altering or removing a VIN — the vehicle identification number — and creates new offences for trafficking in and possessing for the purpose of trafficking property obtained by crime.
This bill will give law enforcement agencies more ability to target organized crime groups, specifically those who have profited greatly from auto theft crime in the past.

We are all aware that auto theft in Canada is a serious problem. Motor vehicle theft is estimated to cost Canadian taxpayers in excess of $1.2 billion a year, and the dangers involved put their safety at risk. Nonetheless, auto crime has declined substantially in recent years. This is due in large part to the hard work and dedication of Canadian police forces. Our law enforcement agencies have been able to evolve and adapt to changes in criminal activity, and so should our legislation.

I support this bill. It is another good step in the ongoing fight against auto theft in Canada. However, there are some issues I would like to see raised in committee when this bill is studied. Some of the statistics that have been used in the study and discussion of this legislation are not as up to date as they can or should be. We cannot expect our justice system to effectively battle vehicle theft if our legislation is based on old data.
I would also like to see some more concrete evidence to support the implementation of minimum sentencing for third-strike vehicle theft offences. Honourable senators, the changes proposed by Bill S-9 are an important step towards reducing auto theft in Canada. This bill should be sent to committee to be studied without delay.

May 26, 2010 [Senate Committee][Entire Exchange]

Hon. Robert Nicholson, P.C., M.P., Minister of Justice and Attorney General of Canada:
With this legislation, the government will update the Criminal Code to address the problems created by complex auto theft rings and other forms of property crime undertaken by organized criminals in Canada today. The bill proposes to create a separate offence of theft of a motor vehicle, which would carry a mandatory prison sentence of six months for conviction of a third or subsequent offence when it is prosecuted by indictment. It will establish a new offence of altering, destroying or removing a vehicle identification number, VIN, and it will make it an offence to traffic in property obtained by crime and make the possession of such property for the purpose of trafficking an offence.

This bill is part of our government's efforts to crack down on those criminals who choose to participate in auto theft and in other aspects of serious property crime. It is painfully clear that organized crime is significantly involved with auto theft in this country.

In recent years, our auto theft rates have remained at unacceptably high levels, while the number of recovered stolen vehicles has declined. This indicates an increased involvement of organized crime in auto theft. Law enforcement experts tell us that when a car is not recovered, organized auto theft rings have likely exported it to a foreign country. It used to be that over 90 per cent of stolen cars were recovered. Today that has fallen to 70 per cent, nationwide, with recovery rates varying by cities.

In large cities in Ontario, Quebec, and Nova Scotia, organized crime groups are believed to be more active in thefts, thanks in part to readily accessible ports, which allow cars to be shipped out of the country quickly and with relative ease. Out of the approximately 147,000 automobiles stolen every year, police and insurance experts estimate that about 20,000 of these cars are shipped abroad.

To this end, the creation of a distinct offence of motor vehicle theft sends a strong message to potential thieves that the criminal justice system is serious about fighting theft in Canada. The government's proposed offence would be a hybrid offence with a maximum of 10 years imprisonment on indictment and 18 years imprisonment on summary conviction.

A distinct offence of motor vehicle theft will help give the courts a better idea of the background of the offender for bail hearings and sentencing purposes. Indeed, this reasoning holds true for the proposed VIN, vehicle identification number, tampering offence that I will discuss in a moment.

Conviction for either of these offences would more clearly and accurately document a person's involvement in an organized vehicle theft ring as part their criminal record. This in turn would help the police and Crown prosecutors to deal appropriately with those people in subsequent investigations and prosecutions.

The theft of a motor vehicle for profit usually involves an elaborate cycle of theft, disguising the vehicle, and resale or export. One of the ways in which vehicles are disguised and resold is through the tampering of the vehicle identification number, the VIN. There is currently no offence in the Criminal Code directly prohibiting the alteration, obliteration or removal of a VIN. Currently under the Criminal Code, those who tamper with VINs are often charged under section 354, the offence of ``possession of property obtained by crime.'' This offence includes a provision stating that proof of possession of a vehicle with a removed or obliterated VIN is, in the absence of evidence to the contrary, proof that the vehicle was obtained by crime.

Organized crime is also involved in auto theft and property theft in general, through the trafficking of property obtained by crime in chop shops or other theft rings that deal with a wide variety of stolen property.

The proposed trafficking offences in Bill S-9 would begin to address these problems. Trafficking in property obtained by crime, along with other criminal activity such as drug trafficking, prostitution and fraud, is one of the many activities that makes organized crime profitable in this country. The bill would make it a crime to traffic in, or possess for the purpose of, trafficking property obtained by crime, including importing or exporting.

Currently, section 354 of the Criminal Code, the general offence of possession of property obtained by crime, which carries a maximum of 10 years for property valued over $5,000, is the principal Criminal Code offence that is used to address trafficking in property obtained by crime. However, this possession offence does not adequately capture the full range of activities involved in trafficking.

The proposed offences would provide a wide definition of trafficking that would include the selling, giving, transferring, transporting, importing, exporting, sending or delivering of goods or offering to do any of the above, of property obtained by crime. This new law would target all the middlemen who move stolen property, from the initial criminal act through to the consumer.

Both proposed trafficking offences have higher penalties than the existing offence of possession of property obtained by crime. If the value of the item trafficked exceeds $5,000, anyone convicted of this offence could face up to 14 years in prison. If the value does not exceed $5,000, it would be a hybrid offence and subject to imprisonment up to five years on indictment or six years on summary conviction. This penalty would be consistent with the existing penalty scheme already in the Criminal Code.

It is also worth noting that if any indictable offence is found to have been committed for the benefit or at the direction of or in association with a criminal organization, an additional offence would apply. It would be open to the Crown to prove the additional element of a link to organized crime and obtain a separate conviction under section 467.12 of the Criminal Code. The maximum penalty for this offence is 14 years, which, as you I am sure are aware, must be served consecutively to any other offence for crime.

The proposed trafficking offences would also respond to the concerns of stakeholders such as the Insurance Bureau of Canada that has long advocated for stronger enforcement to prevent the export of stolen vehicles. Under the Customs Act, in order for the Canada Border Services Agency to apply the administrative powers of the Customs Act to the cross-border movement of property obtained by crime, such goods must first be expressly classified somewhere in federal law as prohibited goods for the purpose of importation or exportation. This bill would supply that classification provision.

Today, Canada Border Services Agency officers are only authorized to examine and detain goods entering or exiting Canada in order to determine whether or not the importation or exportation complies with federal legislation controlling the movement of goods across our borders.

The mandate of the CBSA does not include a broad law enforcement role, and its officers therefore have limited authority to deal with the movement of stolen property. The express prohibition provision in this bill would allow CBSA officers to examine and detain stolen goods, which could ultimately result in the police laying criminal charges. With this proposed amendment, the CBSA officers could identify targets, conduct examinations and detain these goods. They would then search law enforcement databases to determine whether the goods had been reported stolen, and refer the case to the police in appropriate cases.

Depending on where I am in the country, I hear about organized crime chop shops and export schemes that move automobiles and automobile parts out of this country. I hear about the deficiencies in the current law. Law enforcement officials wonder how many people possess the stolen goods. They talk about the chop shops and remark that they may arrest the people at the chop shop but miss many others involved in the crime.

Senator Wallace: As you point out, minister, with this and other bills initiated through your department, there seems to be a focus on organized crime. There are serious issues in the country and we have to adjust the Criminal Code and other laws to adapt to those issues.

I wonder if there is anything more you would like to add in relation to the impact you see this bill having on organized crime. I have recently heard that, on average, 400 auto thefts occur in this country each day. Obviously, many of those thefts relate to criminal organizations. Therefore, I wonder about the impact you hope this bill would have on criminal activity.

Mr. Nicholson: That is part of that message. The face of crime in this country has changed over the last 20 or 30 years. The operations law enforcement agencies are going up against are becoming more sophisticated. I hear this all the time. Crime is becoming borderless, and this is why you have the provisions with respect to Canada Border Services Agency.

It is not just a question of someone stealing a car and trying to sell it to someone in the next town. I pointed out that 20 per cent of these cars are being shipped out of the country; they are gone. This is why they cannot be located.

They all tell me the same thing. They say that even though crime is becoming more sophisticated, the Criminal Code has not been updated in over 100 years. You have to update the laws to respond to the current challenges. That is what they were telling me. If you have

any witnesses from the law enforcement side, I am sure they will confirm what I am telling you.

Senator Angus: In your opening remarks, you said the reason behind this legislation is to stop or minimize the theft of vehicles because the laws are not tough enough. Is the prime reason for the great volume of auto thefts the weakness of the present legal regime, or are there other more sinister reasons?

Mr. Nicholson: I think it is a little more complicated than that, senator. Two types of activity are going on in this country, and this bill addresses both of them. On one occasion, we wanted to address one part of it, and then I asked why we are not doing the other, so now we have everything.

We are talking about two types of crime. One is the organized crime that steals a car for the purposes of chop shops, exporting the car or parts, or somehow recycling the stolen car. That is part of it. I have heard loud and clear from law enforcement agencies in a number of major Canadian cities that this is a big problem. As well, I hear from other individuals that there are people who are unsophisticated, not part of organized crime necessarily, that will steal the car and abandon it, steal the car again, that sort of thing. The bill addresses both aspects of that crime.

We have talked at some length about the organized crime part of it, but, again, making it a separate offence allows the Crown attorney to know what they are talking about. I have had Crown attorneys tell me they are not sure what the individual has been found guilty of, and guess what? It is actually more dangerous to steal a car than many times stealing other types of property in this country. Why? Because many times, you are putting people at danger. People get killed when people drive recklessly or are trying to escape detection. Having this as a separate offence allows everyone to know what he or she is dealing with. If this individual has taken the wrong path into the career of serial car thief, the Crown and everyone should know about that involvement.

Senator Lang: I would like you to elaborate on the fact that 90 per cent of the vehicles were recovered a number of years ago and now we are down to 70 per cent, which is significantly different from the point of view of numbers being recovered. We are at 20,000 vehicles being exported from this country at present, in part because of the laws that are in place.

Have the law enforcement agencies that you have spoken to, and the provincial authorities, given any indication to you that with the passage of this bill — and maybe even a tougher bill once Senator Baker gets finished with it — that they will be able to negate the 20,000 vehicles shipped out of this country? Will passage of this bill put a number of the crime rings out of business?

Mr. Nicholson: In my opening comments, I touched on the increased sophistication in this business and that it knows no borders. I commented that there are large-scale operations and the present provisions in the Criminal Code are not adequate to stop these operations. One

provision that is very well received concerns the changes with respect to the duties and the ability of agents of the Canada Border Services Agency to intercept property that is being shipped in and out of this country. Senator Angus mentioned containerization. I have heard it again and again that the present laws are inadequate in giving the borders services agencies the ability to look and find out what is going on in relation to what is coming in and going out of the borders of this country. A car in and of itself is not a prohibited good. It is not like an illegal drug or an illegal gun. The laws have to be changed; they have to be updated. I have said to those who work with me putting this together that it is one of my favourite parts of this proposed legislation. I am very interested in the new provisions of the Criminal Code and I am pleased to have this bill. Changing the provisions with respect to Canada Border Services agents — and my colleague the Minister of Public Safety has direct responsibility — is one of my favourite parts of this bill because I have heard it again and again that these cars are being shipped out of this country and the present laws are completely inadequate to deal with this activity.

May 27, 2010 [Senate Committee][Entire Exchange]

Caroline Xavier, Director General, Corporate Secretariat Directorate, Canada Border Services Agency: Bill S-9 creates specific offences: the offence of auto theft; the offence of tampering with a vehicle identification number, a VIN; and the offences of trafficking in property obtained by crime and possession of property obtained by crime for the purpose of trafficking. This bill will have a direct and positive impact on the CBSA in that it expressly prohibits the importation and exportation of property obtained by crime.

Senator Joyal: What authority do you have when you suspect that goods going through the border are the proceeds of some criminal activity?

On what basis can you intercept goods you suspect are the proceeds of criminal activity?

Ms. Xavier: There is an export program that exists and it is a part of the agency's mandate. Under the current program, the person must go to the agency or the exit point before going, for instance, to the United States or to the maritime port in order to declare the goods to be exported and the specific information concerning those goods. That will not change.

In the Customs Act now, we have those authorities for our strategic export control. We have a strategic export control program as part of our current Customs Act authorities.

The reporting element required for a consumer or traveller right now will still continue to exist. These authorities will allow us to be able to look at the documentation we are receiving in advance, perhaps, and take more of an investigative lens or an intelligence-type lens to them. We will look at where these goods are destined and be able to work with our police authorities and RCMP partners to determine whether there could be an infraction or a prohibited good.

Right now, if a good is prohibited, such as a stolen vehicle, for example, we cannot detain it. We can only call the local police authority.

Richard Dubin, Vice-President, Investigative Services, Insurance Bureau of Canada: With organized crime so pervasive in the business of auto theft and with the profits so high, it is not surprising that intelligence authorities suspect that terrorist groups may be financing themselves with auto theft. A July 16, 2007, article in The Boston Globe cited the FBI's belief that dozens of vehicles stolen from the United States have been used as car bombs in Iraq. The Insurance Bureau of Canada is aware of approximately 200 stolen vehicles that were shipped

to the Middle East as part of Project Globe and another investigation where stolen vehicles were sent to Lebanon.

June 02, 2010 [Senate Committee][Entire Exchange]
Senator Wallace: You may know one of the aims of the bill is to deal with the importation and exportation of stolen automobiles. We understand that a significant part of that criminal business, if not all of it, is linked to criminal organizations.
In that context, does your department have any statistics or information you can give us at all about the extent of that illegal trade across the border, not only of automobiles but also of automobile parts that result from chop shop operations?
Mia Dauvergne, Senior Analyst, Policing Services Program, Canadian Centre for Justice Statistics, Statistics Canada: We do not have information specifically on the involvement of organized crime in motor vehicle theft. As Ms. McAuley explained earlier, we can use vehicle recovery status as the proxy measure. Beyond that, we do not have anything at this time.

An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts (Bill C-75)

Citation 2019, c. 25, s. 179

Royal Assent June 21, 2019

Hansard

September 24, 2018 [Committee]

<u>Ms. Megan Walke</u> (London Abused Women's Shelter)

London [Ontario], as Peter will attest, is a hub of trafficking activity. Girls and women are recruited both from and to London. The lead with our London Police Service human trafficking unit recently said that trafficking is an epidemic in society.

The trafficking unit provided service to many girls between the ages of 11 and 17. These girls and women are trafficked by their boyfriends, family members, and organized crime. By

organized crime, we often think of bikers or the Mafia, but I'm talking about small gangs that exist in communities across the country.

We need to recognize that there is a relationship between organized crime, male violence against women in intimate relationships, and trafficking. As has been stated already, trafficking of women and girls is highly profitable, unlike trafficking of weapons or drugs, where the trafficker has to continue to spend more money to get more supplies. Traffickers can make money off of the same woman over and over again.

Many women we work with have been forced by their pimps to bring home every day between $1,500 and $2,000. This means that they are providing sexual services and fulfilling the porn-fuelled fantasies of anywhere between 15 and 20 men per day.

We ask that you please try to understand and acknowledge that there is a relationship between prostitution and trafficking and that prostitution is inherently harmful, violent, and dehumanizing. Prostitution fuels trafficking.

March 21, 2019 [Senate]
Hon. Kim Pate

… Third, and finally, Bill C-75 will bring into force Criminal Code provisions passed as part of former Bill C-452 and relating to the prosecution of exploitation and human trafficking.

Honourable colleagues, I believe we all agree on the need for urgent action to end the exploitation of women and girls. Findings of the UN special rapporteur on violence against women, the house Justice Committee's report on human trafficking, and the Thunder Bay Police Services Board Investigation, as well as testimony at the Inquiry into Missing and Murdered Indigenous Women and Girls have all emphasized that Indigenous women and girls are particularly at risk and they unequivocally link this reality to Canada's colonial legacy of discrimination against Indigenous peoples and the failure to ensure the safety and to uphold the rights of Indigenous women and girls.

Criminal law responses to exploitation and trafficking too often risk missing the mark, however. Fundamentally they fail to address underlying social and economic inequalities that too often result in women and girls being exploited. Even within the criminal justice system, however, law enforcement activities have been criticized for failing to hold accountable those who are profiting from exploitation at the highest level. If they are to live up to their laudable purpose, Bill C-75's provisions on trafficking must go beyond the current processes that too often focus on arresting exploited women and those involved in trafficking schemes at the lowest levels.

Bill C-75's first measure is a presumption of exploitation wherever a person who is not exploited lives with or is habitually in the company of a person who is exploited. This provision aims to facilitate proof of exploitation, in particular given the power imbalances

faced by exploited and marginalized women that prevent far too many from reporting their exploiters, let alone providing witness testimony. Yet as the Canadian Centre to End Human Trafficking has noted, those most frequently arrested on the scene of illicit businesses and in the immediate presence of exploited women are often exploited women themselves and low-level managers, some of whom were also formerly exploited women. They are not leaders of trafficking organizations and most certainly not those who are profiting most from them at the highest levels.

The second key provision imposes a reverse onus on those convicted of exploitation, intended to facilitate forfeiture of proceeds of crime. Again, this is a provision whose effectiveness relies on the ability to hold those profiting at the greatest levels accountable. Those who seek to profit from exploitation too often see it as a "low-risk, high-profit" enterprise because of the reusable nature of human beings, as compared, say, to trafficking in drugs or firearms, and the anonymity that corporate law affords to those who wish to use lawful corporate structures to carry out human trafficking. I trust these provisions will be considered in depth at committee so as to ensure they meet the objective of holding accountable those who choose to establish and profit from illicit businesses that perpetuate the exploitation of women and girls.

April 02, 2019 [Senate]
Hon. Pierre-Hugues Boisvenu

…Fifth, Bill C-75 would reclassify more than 150 criminal offences. More specifically, more than 110 indictable offences will be hybridized. Some of the indictable offences that would become hybrid offences include defrauding the government, breach of trust and conspiracy.

By reducing the penalties for fraud and other white collar crimes, this bill would discourage the whistle-blowers from denouncing fraud. Take, for example, those who courageously denounced crimes in Quebec's construction industry. I remind senators of the infamous Michael Applebaum, the former mayor of Montreal found guilty of eight charges, including fraud against the government and breach of trust. Bill C-75 will make it possible for white collar criminals to get reduced penalties through summary trials and sentences of two years less a day.

Why reduce sentences for criminals like Michael Applebaum who steal from taxpayers and undermine the credibility of our institutions? There was also the notorious Bernard Trépanier, whom you probably know as "Mr. Three Per Cent." He was to be tried in two criminal cases related to the Quebec construction industry, one for his alleged involvement in the Faubourg Contrecœur scandal and the other for charges of fraud and corruption involving a municipal contracts kickback scheme.

April 08, 2019 [Senate Committee][Entire Exchange]
Arnold Viersen, Member of Parliament, Co-Chair, All-Party Parliamentary Group to End Modern Slavery and Human Trafficking: Bill C-75 would also finally bring into force the former Bill C-452, which was proposed by former NDP Member of Parliament Maria

Mourani. This bill contained three important tools to fight human trafficking: A reverse burden of proof in cases of human trafficking, the ability for courts to seize the proceeds of crime for human trafficking offences and consecutive sentencing for human trafficking offences.
Mr. Viersen: I did come prepared with a few quotes from some of the police officers I've spoken with and have worked with. There's Detective Sergeant Dominic Monchamp from Montreal's human trafficking unit. He says that having consecutive sentencing, certainly acts as a deterrent:

> I think that this message will restore the balance. Handing down consecutive sentences will restore the balance. These individuals are going to have to think before they act. They will no longer see this type of crime as being worthwhile. That is how they currently see it.

Gordon Perrier from the major crime division in Winnipeg said:

> The amendments in Bill C-452 will enhance our ability to remove the profit from exploitation of this crime. I know from my own experience as an organized crime investigator, that forfeiture and consecutive sentences work. Deterrence and breaking the cycle of profitability can change behaviour and prevent others from entering that offending cycle of behaviour, greed, and disrespect for others.

Budget Implementation Act, 2019, No. 1 (Bill C-97)

Citation	2019, c. 29
Royal Assent	June 21, 2019
Provisions Amended	2, 9.3, 9.5, 29, 30, 35, 55, 55.1, 56.1, 73.21, 73.22

Hansard

May 01, 2019 [Standing Committee on National Finance][Entire Exchange]

Hon. Bill Morneau (Minister of Finance): ...Another way we're helping to protect Canadians is by combatting financial crime. I know this committee has done a lot of work in this regard and I know that you've looked at how we can best do that, and I'd like to thank the committee for that work. With this legislation, we know we can help improve Canada's

anti-money laundering and anti-terrorist financing framework, strengthening the resources, intelligence and information sharing needed to identify and meet evolving threats, while also continuing to protect the privacy rights of Canadians and manage the regulatory burden on the private sector.
…

Mr. Pierre-Luc Dusseault: I will be brief. Last year, Canadians made investments of $353 billion in the 12 most notorious tax havens. As Minister of Finance, you have a similar budget, that is to say approximately $350 billion for the federal state. What is your reaction to that figure?

Hon. Bill Morneau: I don't know if those figures are accurate.

Mr. Pierre-Luc Dusseault: Those figures on direct foreign investment came from Statistics Canada.

Hon. Bill Morneau: I'm going to ask Mr. Marsland to answer that question. What I can tell you, however, is that we introduced several measures in the budget to ensure that we have a system that will protect our economy and allow us to fight money laundering and the funding of terrorist activities. In our opinion, this is very important for our economy. Over the past few years, we have done several things to improve the system, notably as concerns effective ownership, so as to know who the real beneficiaries are in organizations. Mr. Marsland, what do you think of those figures?

Mr. Andrew Marsland: I'm sorry. I'm not familiar with the actual numbers you're quoting, so I can't comment on them.

Mr. Pierre-Luc Dusseault: Direct foreign investments in 2018…

May 02, 2019 [Standing Committee on National Finance][Entire Exchange]

Mr. Mark Schaan (Director General, Marketplace Framework Policy Branch, Innovation, Science and Economic Development Canada): Thank you, Mr. Chair. [*English*] Today the changes we're discussing are related to the Canada Business Corporations Act. They follow on from changes that were part of budget 2018, related to beneficial ownership transparency. In budget 2018, we introduced changes to the Canada Business Corporations Act to require corporations to hold information related to beneficial ownership and those who exercised significant control over privately held corporations registered under the Canada Business Corporations Act.

That was part of a broad federal-provincial-territorial agreement that was reached by ministers of finance in 2017 as a commitment from all jurisdictions to be able to proceed with the same agreement arrangements within their own corporate statutes. The change

we're introducing here is a further clarification of the rules we set out in those amendments, which is related to who can access that initial information.

In particular, the changes specify that an investigative body would be able to access these records upon request. Notably, those investigative bodies in question are police tax authorities and any investigative body added by regulations, so we've left ourselves some flexibility in the future.

The investigative body can make a request if it has reasonable grounds to suspect that the information would be relevant to an investigation of one of the offences set out in the schedule and at least one of the requested corporation itself, a CBCA corporation sharing, an investor of significant control with the requested corporation, or another entity over which one of the requested corporation's investors of significant control has investor of significant control-like control.

It establishes penalties for non-compliance and it also sets out some safeguards for the usage and request of that register of significant control, notably that an investigative body must file an annual report to the director of Corporations Canada on aggregate use of the request power. It also sets out that investigative bodies must keep records when they use the request power.

The Chair: It's open to discussion. The finance committee did a study on the money laundering and terrorism financing act. Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: That's why I'm asking the following question. Mr. Schaan, is the $5,000 fine enough to encourage private companies to keep their information up to date?

Mr. Mark Schaan: Thank you for the question. There are two aspects of the penalties set out in the bill. First, the $5,000 fine is only for administrative errors made by a company that doesn't comply with the details described in the bill. Moreover, the bill includes an additional fine of $200,000 and a prison term of up to six months for non-compliance with the provisions of the bill.

It's a distinction between the two types of penalties. There are administrative penalties for an organization that simply makes an administrative error in their registry of beneficial owners or for failure to do so in an administrative manner. Then the second type of penalty is for a clear contravention of the spirit of the law, which is when you knew of information related to a beneficial owner that you failed to include. That can be up to $200,000 and up to six months in prison.

We do think that balance is right in terms of administrative burden for the vast majority of these private corporations that are small and medium-sized enterprises, but there's also the significance of a significant fine and prison time for those who are bad actors using corporate shells.

Mr. Greg Fergus: For those bad actors—and thank you for making that distinction—is it up to $200,000 and up to six months in prison per error, or is it in general for being a bad actor?
If someone is purposely trying to falsify information, if they're laundering money and the extent of that.... Is that a maximum or is there some discretion involved there for the prosectors?

Mr. Mark Schaan: The courts and the Public Prosecution Service would be those who would interpret the penalty scheme, but it's essentially for intentional non-compliance. If they were able to articulate before the courts that they felt that there were multiple counts of intentional non-compliance, for each entry or other factors, the courts may be in a position to adjudicate that there's warrant for multiple penalties of a similar offence.

Mr. Greg Fergus: Thank you.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair. Thank you for following up on the report of the Standing Committee on Finance on this subject. Although this falls short of the committee's expectations, it's still a step in the right direction. My first question concerns the registry maintained by investigative bodies. It isn't specified how long the investigative bodies must maintain the registry of requests, which records all the details of each request and the follow-ups. First, what's the purpose of this measure?

Mr. Mark Schaan: Investigative bodies must prepare a report each year. The first bill, the 2018 budget bill, stated that the registry spoke for companies. It's necessary to maintain an annual registry containing all the changes made. [*English*] On a going forward basis, corporations will have to maintain their registry of significant control, including any changes that are brought to their attention.

In terms of the investigative bodies, they'll have to file annually as to the number of records they've requested. In terms of how long they would keep them for, that would be subject to the particular laws that they're subject to on information management.
[*Translation*]

In this context, if an investigation continues, it's necessary for investigative bodies to maintain these documents.

Mr. Pierre-Luc Dusseault: You referred to the significant participation in the company. I think that we're talking about 20% or 25% in this case. Is that correct? Why did you choose this figure for the significant participation? It seems fairly high. People who may have bad intentions could quite easily bypass this 25% rule.

Mr. Mark Schaan: Thank you for the question. Your question has two important points. First, the definition of control rating has two aspects. The first aspect is the percentage of

shares that a person holds and that give the person control, which is 25%. The bill also includes a definition of a person who controls a company with less than 25%.

We think we've captured that because we have both aspects. There's also an important linkage to other aspects of our total approach to money laundering, terrorist financing and proceeds of crime, in that enterprises already, under FINTRAC regulations, when they utilize a Canadian financial institution, are required to deposit with their financial institution any beneficial ownership information related to the exact-same percentage. We see this as boots and suspenders in that it also provides ease for the corporation in that the same requirements they're subject to for banking purposes are the same requirements they're subject to for corporations. We think that parallel actually builds a strong system

Mr. Pierre-Luc Dusseault: I have a question about the registry, and not necessarily the registry maintained by the investigative bodies. Is the ultimate purpose of this measure to create a central registry of beneficial ownership of companies registered at the federal, provincial and territorial levels? Will there be a central registry of all this information? My personal idea would be to make it public. I'm not talking about all of it, of course, but some of it. I know that the government doesn't support this position. Will there at least be a central registry?

Mr. Mark Schaan: Thank you for the question. This project is broader than the scope of the bill. The project to improve the system of transparency with regard to corporate profits in Canada involves all the provinces and territories. All the stakeholders agreed to carry out the work in two phases. The first phase, which is described here, requires each company to maintain these records and documents. Investigators must also have access to them. [*English*]

The second piece of this project is to work with the provinces and territories to identify how we want to move forward with further access, recognizing that in the world of money laundering, terrorist financing and tax evasion, you need a coherent system across all of the corporate registries, because if you only do one, then everyone just re-registers in a potential other jurisdiction.

The second phase of this is to work with the provinces and territories to identify how we would like to be able to share this information and what makes the most practical sense in terms of who should have access and how we should store it. For right now, corporations have to hold it and competent authorities can access it when there's a suspicion and a linkage to an investigation. The second phase is who else and where it should be stored.
...

Mr. Greg Fergus: ...Seriously, following up on a comment from Monsieur Dusseault, in regard to the 25% significant ownership threshold that we've established, could you speak to some of the other thresholds that other jurisdictions are doing? I'm speaking in particular of what the U.K. and the EU are offering.

Mr. Mark Schaan: I'm trying to remember. Darryl will look that up. In the world of publicly traded corporations, it's a 10% threshold because the feeling there is that the transparency of ownership when it's a share of a publicly traded corporation is of a different order, in part because the transparency isn't so much about money laundering or crime necessarily, but about who potentially has access to the proxy and who can control decision-making.

In the U.K. and the EU it's.... There we go. Ian knows this.

Mr. Ian Wright (Director, Financial Crimes Governance and Operations, Financial Systems Division, Financial Sector Policy Branch, Department of Finance): Within the general world, and within the Financial Action Task Force discussions, it's generally 25%. That's the number that's tossed around, although there are variances. I think that's seen as an appropriate balance between the burden placed upon reporting entities and individuals who fail to report versus the ability to control a company. The ability to get collusion among five, six, eight or 10 individuals is much less of a risk than when you only have to get two or three or four people joined. That said, I think there will be further discussion on that number. A lot of discussion is going on internationally and with our colleagues in other countries on what thresholds are appropriate as the threats and the risks begin to grow.

Mr. Mark Schaan: We did quite a bit of international scanning as we developed this project. The one piece where I think we made a number of improvements, which relates more to the 2018 changes than these, was around the fact that the registry needs to include the actual person at the end of the chain for the beneficial owners.

From the U.K. model, we learned of their requirement to list only the next entity, which means that you end up having to follow a chain of a series of numbered corporations to finally get to the ultimate owner, whereas we've asked corporations to go as far down the chain as they can.

Mr. Greg Fergus: Mr. Chair, I'd appreciate it if Mr. Wright and Mr. Schaan could perhaps send to the committee the latest scan of the international standards from the U.K. and the EU in particular. It was my understanding that they were going to move to a threshold lower than 25%, if not now, then soon.

Mr. Mark Schaan: I could do so.

The Chair: Okay. If you could get us that....You mentioned, in your opening remarks, that there are safeguards for the usage. Could you outline the key three? There is some fear about access out there. We heard that during our hearings.

Mr. Mark Schaan: One is the types of offences the investigative bodies would potentially be able to secure these records for. The schedule of offences is essentially those that have a tie to money laundering, proceeds of crime and terrorist financing. The second threshold is that there needs to be a reasonable nexus between the information and the investigative body. It can't be a fishing expedition. The third is the duty to report. The investigative

bodies have to file an aggregate to the director of Corporations Canada so that there can be some transparency as to how often a power is being used and who is using it.

The Chair: Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: I'll be brief. You said earlier that, to find the identity of the natural person who owns a company, you sometimes need to go through a whole series of companies, which may own each other, until you can find the owner of the company concerned. This company may be the subject of an investigation.

Take the example of a case where the information isn't accurate. In other words, the company has done everything in its power to discover the identity, but it has made a mistake or it hasn't succeeded because the person concerned doesn't co-operate and disclose their identity. To what extent does the legislation enable us to take action? How does the legislation address this issue? Criminals are unlikely to co-operate and identify themselves at the end of this chain of companies.

Mr. Mark Schaan: That's a good question. It generated a great deal of discussion in the team that helped develop the bill. First, we must establish that this issue is the reason for the two types of penalties. It's not the companies' fault if they fail in their efforts to investigate the people who control the shares in the company. The second important aspect is the incorporation of other tools.[*English*] This is just one tool. What we've tried to do, across the overall approach to money laundering and terrorist financing, is to create a set of tools that can collaborate with each other, so among the tax authorities and the investigative bodies and the additional resources that have been placed there. You're right. We can't place too much burden on the corporation, because its full-time job is not to investigate, ultimately, who may be shareholders in their enterprise. Its full-time job is to run the company.

This is one more tool for competent authorities, amongst other things such as tax filing, tax investigations and financial authorities. We hope that it's an additional aspect of the overall effort, recognizing that it has limitations but that these can be made up for in other zones.

The Chair: Okay. Thank you. From subdivision A, we will turn to strengthening the anti-money laundering and anti-terrorism financing regime, subdivision B. We have with us Paul Saint-Denis, senior counsel, criminal law policy; Mr. Trudel, director general, specialized services sector; and Ms. Trotman, director, financial crimes. Okay, Mr. Saint-Denis, the floor is yours.

Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice): Thank you, Mr. Chairman. The proposal contained in the bill is a very simple one. We are proposing to amend the offence of money laundering with an additional mental element of recklessness. This would mean that this modified offence would have three potential mental elements as alternatives: one of knowing, one of believing and one of

being reckless as to the origins of the property that may be proceeds of crime. We believe that, with this amendment, it will be easier for prosecutors to prosecute certain types of the money laundering offences.

The Chair: Okay. Are there any questions on this section? Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: Thank you, Mr. Saint-Denis. I would like to ask you and your team whether other countries use the recklessness test and what results these countries achieve.

Mr. Paul Saint-Denis: In Australia, I think that the federal government uses the recklessness test when it prosecutes money laundering offences. However, I don't know to what extent convictions for this offence are based on the recklessness test or other tests such as knowledge or belief.

Mr. Greg Fergus: Perhaps I should have asked about the differences between Canada and other countries that have been very successful in their fight against money laundering. For example, does their criminal code contain elements that aren't found in our code?

Mr. Paul Saint-Denis: It should be noted that money laundering is a particularly difficult offence to prove. In particular, it must be demonstrated that the individual knew that the amounts they were dealing with were proceeds of crime. I think we could say that no country is very successful when it comes to this offence.

In Canada, we actually have two possible charges when we believe that an individual has committed a money laundering offence. In addition to the money laundering charge, we have a related charge of possession of property obtained by crime. We'll charge the individual with both offences, but the crown will drop the money laundering charge, which is much more complex, and keep only the possession charge. This charge is easier to prove, and the penalty is the same as the penalty for money laundering, namely, a maximum penalty of 10 years in prison.

However, to answer your question more directly, I can't think of any specific country that has been very successful in its money laundering prosecutions.

Mr. Greg Fergus: I asked this question because, during the study that we conducted last year, we learned that Canada didn't score well in the report of the financial action task force, or the FATF. I wouldn't say that we were the worst, but we weren't the best. I imagine that there are examples in other countries that we could learn from. This was the basis for our recommendations.

Mr. Paul Saint-Denis: It's important to remember that common law applies in Canada. A number of FATF member countries have a civil law regime, where the approach to prosecutions is completely different.

Mr. Greg Fergus: I completely agree. That's why we focused on the United States and the United Kingdom.

Mr. Paul Saint-Denis: When the FATF came to assess Canada's measures to fight money laundering and terrorist financing, we held several discussions on the distinction between the prosecution of a possession offence and a prosecution of a money laundering offence. The FATF is particularly interested in money laundering and terrorist financing. When we explained to its representatives that we institute proceedings for the related offence of possession, they were less interested because the offence wasn't money laundering. Yet these two offences are very similar. In Canada, the crown will opt for the least difficult method to achieve the same result. In other words, the crown will institute proceedings for possession. However, for the FATF, this method isn't ideal. I think that we were penalized because we don't choose the ideal solution, which would be to prosecute for money laundering.

That said, we must nevertheless recognize that money laundering offences are extremely complex. The investigators must have extensive financial analysis expertise, which is very costly. As your committee likely learned during its study, not only was the RCMP reorganized, it also reassigned its staff to focus more on national security issues. Since fewer investigators were available, fewer money laundering investigations were conducted.

As a result, the FATF has described Canada as less than stellar in the investigation and prosecution of money laundering.

[*English*]

The Chair: Mr. Wright, I believe you wanted in. Go ahead.

Mr. Ian Wright: Yes, maybe I'll add a little bit to that. This change to the Criminal Code is, we feel, necessary, but it's not necessarily sufficient for us to address the broader issues that we have with prosecuting and trying to enforce money laundering and terrorist financing. Budget 2019 has quite an extensive suite of other activities and other funding that we're bringing forward. There's the ACE team. There's this trade-based money laundering centre that's being created. There's funding provided to the RCMP to support the federal policing and funding for FINTRAC.

I think we should look at this as one part of a broader effort by the government to strengthen overall, and hopefully that will then lead to stronger enforcement, prosecutions, investigations and such.

….

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair. Obviously, this is a step in the right direction. However, I'm not convinced that it will help catch people who are involved in professional money laundering. It's often a chain of people, as we said earlier. The person at the end of the chain, a money laundering professional, is well protected. They've set up

barriers and walls everywhere to protect themselves and to avoid knowing everything that goes on with the offence until the money or proceeds reach them.

Will this really resolve the issue? The person can still protect themselves fairly easily from charges, even with the addition of the recklessness test.

Mr. Paul Saint-Denis: Your observation is fair. Of course, people who engage in professional money laundering are three, four or five degrees removed from the offence that generates the proceeds of crime. We know that. The addition of the recklessness test may help in some cases, even in the case of money laundering professionals.

However, you're right to believe that this tool won't resolve the issue. That goes without saying. However, we believe that this tool will help us in cases where the current tools wouldn't give us the means to successfully institute proceedings.

We hope that this will be a useful additional tool. That said, no single response or legislative amendment will resolve the issue of professional money laundering. The things that we have here will help, but I think that professional money laundering will remain an issue.

Mr. Pierre-Luc Dusseault: We need to find one, however. That's the challenge.

Mr. Paul Saint-Denis: If there were a solution, I'm fairly certain that we would have found it by now.

…

The Chair: Thank you, both. Thank you, all. We'll turn to subdivision C, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. Ms. Trotman, go ahead.

Ms. Tamara Trotman (Director, Financial Crimes Governance and Operations, Financial Systems Division, Financial Sector Policy Branch, Department of Finance): I will be dealing with amendments relating to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, or the PCMLTFA. The first set of proposed amendments would add the Competition Bureau and Revenu Québec as disclosure recipients of the Financial Transactions and Reports Analysis Centre of Canada, or FINTRAC, intelligence. This is intended to support the investigation of tax evasion and mass marketing fraud.

The second set of amendments modifies the timing and the discretion of the director of FINTRAC to make public certain information related to an administrative monetary policy. These amendments will also clarify the information for which confidentiality orders could be issued in an administrative monetary penalty litigation, which would exclude the identity of the reporting entity, the nature of the violations and the amount of the penalty imposed.

Finally, there are technical amendments that clarify terminology and improve readability of the text.

Thank you.

The Chair: Does anyone have any questions? Just to start, can you expand on what mass marketing fraud is?

Ms. Tamara Trotman: Sure. The Competition Bureau has a central role in the fight against deceptive marketing practices and mass marketing fraud, which can include communication via traditional mail, telephone or email. The Competition Bureau included them as disclosure recipients in these proposed amendments to the legislation because they do have a large intelligence-gathering function.

The Chair: Is that also via the Internet, via phone calls?
…

Ms. Tamara Trotman: That's correct.

Mr. Pierre-Luc Dusseault: My question has to do with the administrative monetary penalties and the issue that was flagged by a court, I believe. The court deemed the process to be overly vague and subjective, saying it lacked clear criteria. Does this remedy the problem?

Ms. Tamara Trotman: Thank you for the question. I'm going to switch languages to answer.
[*English*] Yes, this is intended to remove the discretion of the director of FINTRAC, so it would make the naming automatic when an administrative penalty has been either issued or following an appeal process. The entity would be named automatically.

[*Translation*]

Mr. Pierre-Luc Dusseault: It concerns only the naming of the entity. However, does it remedy the underlying issue, in other words, the overly vague and broad nature of the director's discretion? Entities being penalized didn't really know how the director had arrived at the specified amount, finding it excessive.

[*English*]

Ms. Tamara Trotman: Exactly. The second piece of the proposed amendments would allow for an ongoing court proceeding, and if the courts had issued a confidentiality order, FINTRAC would still be able to name the entity, the amount of the penalty and what it was for.

Mr. Ian Wright: I would also add that outside of this FINTRAC is revamping the process, and they are working on issues around ensuring greater visibility and transparency within how fines are determined and how the process works. That's separate from this. This is just a procedure talking about the naming process, but FINTRAC is working quite actively to address the issues raised by the court in the proceedings you're referring to.

[*Translation*]

Mr. Pierre-Luc Dusseault: Therefore, the problem still stands. Only part of it has been addressed.

[*English*]

The Chair: Is there anyone else on this section? Thank you on subdivision C. We'll move to subdivision D, the Seized Property Management Act.

[*Translation*]

Mr. Nicholas Trudel (Director General, Specialized Services Sector, Receiver General and Pensions Branch, Department of Public Works and Government Services): Thank you, Mr. Chair.

I am going to briefly describe the status quo in relation to the Seized Property Management Act and, then, explain how it will work after the amendments are made.
[*English*]

Currently, my organization is responsible for administering seized property that's being seized pursuant to federal criminal charges only. There are specific charges for which the act is eligible. These are specific charges under the Criminal Code, the Controlled Drugs and Substances Act and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. These are very specific charges for which we are able to serve, and this would be upon issuance of a management order by a judge.

The current legislation and the limits that it has prohibit serving cases such as the fraud case that was described pursuant to your question, Mr. Chair.

Also, these criminal cases I think are not static. Although they may start out as a federal criminal charge, as a prosecution proceeds and investigations proceed, what began as an expected federal criminal charge may conclude ultimately in some other outcome: acquittal, a lesser charge, a plea bargain, etc.

The inability to provide services beyond the current scope of the act has some challenges associated with it. Firstly, if we're unable to serve law enforcement as a service provider for the management of these assets, that law enforcement is required to manage the assets themselves. If they are laying charges beyond or haven't laid charges yet, these assets remain with law enforcement to do. That means they spend law enforcement resources managing assets.

Certainly, the uncertainty of outcome from the outset of an investigation through to the end can prohibit the confiscation or seizure of assets or suspect assets. Lastly, as a challenge, it could spell inefficiency, in that we have multiple levels of organizations—provincial, municipal, federal—all maintaining the capacity to deal with seized assets.

The changes to the act would allow my organization to serve any federal public official, provincial public official or municipal public official. We would be able to serve any offence: a specific violation of any provincial or federal law for assets that are connected to an offence, or when assets are believed to be intended for the commission of an offence. It's a much broader ability to support and we'll be authorized to manage and dispose of those assets and provide advice to client organizations.

It would require consent. Provinces, territories and municipalities would choose to use those services. This is not imposed. It's available to them if they so choose. Our minister or his representatives would be required to agree to provide the service, with a mutual agreement between the two of us. They would also need to agree to share the net proceeds, so if the outcome is that a seized asset is forfeited to the Crown and sold or liquidated and costs are recovered—that's how the program is paid for under the current act and how it will continue to be paid for after the proposed amendments—then the net proceeds of sale are shared with the jurisdictions that participated in the law enforcement action. That's also part of the existing regime.

Really, it represents a broadening of who we can offer services to and in what context, but the core function remains as it is today.

The Chair: In terms of proceeds from the sale of assets, is that shared now?

Mr. Nicholas Trudel: Yes.

The Chair: It is shared now and based on an agreement with the provinces or whatever.

Mr. Nicholas Trudel: That's correct. The current regulations, which aren't affected by these amendments, specify the sharing methods, both within Canada and abroad with foreign jurisdictions that participate in a prosecution.

The Chair: Could you give me an example of an asset that would need management? Would it be a yacht or whatever?

Mr. Nicholas Trudel: It's pretty much anything you can imagine. There are two general categories of assets. These are assets that are used in the commission of an offence. These are offence-related properties such as a vehicle used to smuggle, a property used for a clandestine lab, etc., and then there are the proceeds of crime themselves: the cash, the fancy cars, the luxury properties that folks would buy. They also include things such as businesses that can be used to launder money.

Prior to conviction, these assets, although seized, remain the property of the accused, so they need to be maintained. A business may need to continue to be run or a luxury vehicle may need to be preserved in the state in which it was seized. Even a residence may continue to be occupied by the accused while the process unfolds, and that can take years.

The Chair: Okay. Are there any other questions? To the witnesses, if you have anything you want to add, just put up your hand and we'll catch you.

Mr. Fergus.

[*Translation*]

Mr. Greg Fergus: I have a simple question, Mr. Trudel. Was the amendment added at the request of the provinces and territories so that the government would help them with the disposal of assets?

Mr. Nicholas Trudel: My program staff are very engaged with their provincial and municipal counterparts.

In some cases, we already have mutual aid agreements in place. A number of provinces have signed memoranda of understanding regarding either the management of a particular case or the rules and procedures for co-operation. It's important to understand that a criminal case involving an asset is ever-changing. The process can be initiated with the expectation that it will take place at the federal criminal level, but the outcome can be completely unexpected. The asset may indeed be seized, but by another authority.

Therefore, we need to make sure we dovetail our approaches. The support being proposed is very much in line with the active co-operation that already happens between municipal, provincial and federal police authorities. They, too, work together very closely to determine how best to pursue the investigation.

Mr. Greg Fergus: Thank you, Mr. Trudel.

[*English*]

The Chair: Are there no other questions?
...

Mr. Greg Fergus: I guess I would try to figure out how we are taking into account, of course, the advent of Bitcoins, or cryptocurrencies, the abstracted term for it. How are we dealing with that, with crypto-wallets and the like?

Ms. Tamara Trotman: We're currently following the previous parliamentary review of the PCMLTFA at the regulatory stage. We're currently developing—

Mr. Greg Fergus: That's the 2013...?

Ms. Tamara Trotman: It was 2012, but yes, that's correct. We're currently in the process of the second phase of regulatory amendments. We're developing regulations related to virtual currencies, which include things like Bitcoin, etc. I guess it was in June of last year, in 2018, that we went out with the prepublication version, and are trying to finalize, before the end of this session, the regulations in that respect.

Mr. Greg Fergus: I have other colleagues around the table who are more adept than I am at understanding cryptocurrencies and that whole aspect. Forgive me if I'm out of my

league on this one. It just seems like we're catching up to the last report, of 2012, in 2018. My sense from a lot of the testimony....

Sorry, Kim, you weren't there, but Pierre-Luc and Tom were there, or Dan was there, and Francesco.

I'm just trying to figure this out. There were a lot of demands for us to really try to get ahead of the game, because the market has evolved enormously since six years ago.

Ms. Tamara Trotman: Currently the Financial Action Task Force, which is the international standard-setting body in the space of financial crimes—money laundering, counter-proliferation and terrorist financing—is in the process of developing guidance around what they call virtual “assets”, what we call virtual “currencies”. Our legislation is largely compliant with the direction they are moving in. However, we're coming out in advance of the agreement on that standard internationally. We are slightly ahead of other jurisdictions in that respect.

Mr. Greg Fergus: Very good. Thank you.

The Chair: I believe Mr. Trudel wanted in.

Mr. Nicholas Trudel: To carry on with regard to the question, we've already seen some confiscation of virtual currency. We're dealing with our first case. Part of the benefits of the amendments we're proposing is that we will be able to lend that expertise to other jurisdictions within Canada. You can imagine a small municipality or provincial detachment that comes across a virtual currency confiscation. They may not have the capacity to know exactly how to handle it technically.

That's something we've worked on with the RCMP, in contact with colleagues internationally, in terms of figuring out how best to do this. We know that in some instances the real owner is invisible and not necessarily in Canada, so you can't necessarily lay a criminal charge within Canada. The amendments that we propose here and the expertise that we have, with the other changes that are proposed, would help us to get after these kinds of more complex assets that are used by more sophisticated operators.

May 27, 2019 [Standing Committee on National Finance]
Mr. Francesco Sorbara

Mr. Chair. I'd just like to comment that in the media recently, there has been much talk about the reports recently issued by the Government of British Columbia with regard to money laundering. As a committee, we were tasked to do a five-year review of anti-money laundering and terrorist financing. It was an exhaustive study that we did for a number of months. We travelled here in Canada and abroad. The review is something that the committee was tasked to do and did quite judiciously, and it is something that our government has obviously dedicated resources to in budget 2019.

It concerns all Canadians from coast to coast to coast that Canada has become or is a centre point for money laundering. It's very fitting to see that in budget 2019 we are continuing to undertake a number of measures, which I think all parties would applaud, in terms of fighting money laundering whether with regard to its impact on house prices in Vancouver or Toronto, or with regard to the impact in general of lost tax revenues for our government to fund the services we need.

The proposed amendment would add a reference to compliance agreements in the provision that makes public naming automatic in certain circumstances with respect to violations related to the proceeds of crime, money laundering and terrorist financing.

It's also being proposed that a level playing field be ensured so that all regulated entities that commit a violation will be named, including when a compliance that remains in place between the reporting entity and Financial Transactions and Reports Analysis Centre of Canada, otherwise known as FINTRAC, would also ensure that there is no advantage for regulated entities to enter into a compliance agreement with FINTRAC to avoid naming.

June 10, 2019 [Senate]
Hon. Elizabeth Marshall

...
Honourable senators, I want to say a few words now about money laundering. This issue was referred to the Standing Senate Committee on Legal and Constitutional Affairs, but I was interested in this topic. I was doing a bit of research before that section of the bill was referred to another committee. I want to talk about it and then, later on, I can refer to what the Legal and Constitutional Affairs Committee had to say about the issue.

Honourable senators, in Budget 2019, the government lays out its concerns regarding money laundering. For the past few years, the issue of money laundering has played out in the media in British Columbia. Last year, the B.C. government retained retired RCMP Deputy Commissioner Peter German to conduct an independent review of money laundering in Lower Mainland casinos. His report was released in March 2018.

More recently, two other reports have been released on money laundering in real estate, luxury cars and horse racing. These reports were commissioned in September 2018, following a widespread concern about the province’s reputation as a haven for money laundering.

The first report was from an expert panel on money laundering, which was appointed by the B.C. government to review money laundering in the real estate sector. The second report was from Peter German’s second review into money laundering, focusing on the construction industry, real estate, luxury cars and horse racing.

The C.D. Howe Institute also released a report entitled, *Why We Fail to Catch Money Launderers 99.9 percent of the Time*. In this report, author Kevin Comeau says that Canada's anti-money laundering protections, especially as they pertain to real estate, are among the weakest of those of Western liberal democracies and billions are being laundered in Canada annually.

In addition, the House of Commons Finance Committee issued a report in November of last year on their review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

The Standing Senate Committee on Banking, Trade and Commerce also issued a report in 2013 titled as follows: *Follow the Money: Is Canada Making Progress In Combatting Money Laundering and Terrorist Financing? Not Really.*

The federal government has been criticized for not taking enough action to counter money laundering.

Budget 2019 commits $11 million this year and $141 million over five years to the RCMP, Public Safety Canada, Canada Border Services Agency and FINTRAC to strengthen Canada's anti-money laundering and anti-terrorist financing regime.

In addition to the funding, Bill C-97 proposes amendments to the Criminal Code and Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

As I mentioned earlier, this section of the budget implementation act on money laundering was referred to the Standing Senate Committee on Legal and Constitutional Affairs, and I will comment further on this item later in my speech.

June 17, 2019 [Senate]
Hon. Peter M. Boehm

...Our colleague, Senator Marshall, referenced money laundering in her speech. We all know of the report from May out of British Columbia about the staggering amount of laundered money that seeped into the economy of that province last year — more than $7 billion, in fact. Worse still, that places British Columbia fourth, behind Alberta, Ontario, and the Prairie provinces. The report that uncovered the depth of the problem was prepared by British Columbia's Expert Panel on Money Laundering, which was chaired by Professor Maureen Maloney. Evidently, money laundering is a national concern.

The report estimated that, in 2018, $40 billion worth of proceeds of crime seeped into the Canadian economy.

Colleagues, we can surely all agree that, so far, Canada's laws haven't gone far enough in tackling what is a critical issue.
[*English*]

Senator Wetston and Senator Downe have been especially strong in this chamber on the subject and on the corresponding matter of beneficial ownership. In recognition of the very real impact dirty money has on Canadians — for example, increased house prices — Bill C-97 seeks to strengthen Canada's anti-money-laundering rules. The suite of amendments includes changes to the Canada Business Corporations Act, the Criminal Code, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, and the Seized Property Management Act.

These amendments, once Bill C-97 passes, will improve timely access to beneficial ownership information; add "recklessness" to the offence of money laundering, which would have the effect of criminally punishing people who, knowing the money might be illegal, moved money on others' behalf despite the potential criminal nature of doing so; add the Competition Bureau and Revenu Québec to the list of entities entitled to financial intelligence information from the Financial Transactions and Reports Analysis Centre of Canada, FINTRAC; broaden access to specialized asset-management services and increase transparency in administrative monetary penalty procedures and clarify confidentiality of proceedings. That last point, covered by clause 111 of Bill C-97, will ensure that any regulated entity found to have committed an infraction under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act will be named publicly, as will their financial penalty, by FINTRAC.

This is an especially important change. We cannot underestimate the power of "naming and shaming" when it comes to ensuring companies follow the rules. In that spirit, just last week, the Financial Services Committee of the United States House of Representatives passed the Corporate Transparency Act. While it still must make its way through the rest of the legislative process, the Corporate Transparency Act is intended to require companies to publicly disclose their true beneficial owners to FinCEN, the United States Treasury Department's Financial Crimes Enforcement Network. Corporations would need to disclose those names as soon as the company is established and would also need to provide FinCEN annually with updated lists of beneficial owners to ensure the public registry is accurate. The intention is to make it much more difficult for criminals and other bad actors to launder their ill-gotten gains through anonymous shell companies.

It is my hope that Parliament will soon look at implementing similar legislation in Canada.

To further combat the far-reaching problem of money laundering here at home, the government very recently committed new funding for the RCMP. Minister of Finance Bill Morneau and Minister of Border Security and Organized Crime Bill Blair announced on Thursday that the RCMP will receive $10 million for improved technology that will help the RCMP with its investigations.

British Columbia's own Finance Minister, Carole James, welcomed the announcement but stressed that there needs to be more of a focus on enforcement.

Appendix F

An Act to Amend The Criminal Code (Auto Theft and Trafficking in Property Obtained By Crime), S.C. 2010, c. 14 (Bill S-9. 2010)

Originating Enactment – *Criminal Code*, ss. 355.1-355.4

Table of Contents

An Act To Amend The Criminal Code (Auto Theft And Trafficking In Property Obtained By Crime), S.C. 2010, c. 14 (Bill S-9, 2010)

Citation 2010, c. 14

Royal Assent November 18, 2010

Hansard

October 5, 2010 [House of Commons]

Mr. Bob Dechert

Mr. Speaker, I am pleased to speak today to Bill S-9, An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime). This bill targets property crime, in particular auto theft which continues to cause serious harm to Canadian communities. To this end, Bill S-9 would create a new offence of motor vehicle theft, a new offence to address tampering with an automobile's vehicle identification number and new offences to address trafficking in property obtained by crime.

...

Both the VIN tampering offence and the distinct motor vehicle theft offence would offer benefits to the criminal justice system not offered by the current offence used to cover these activities, "possession of property obtained by crime" found in section 354 of the Criminal Code. A conviction for either of these offences would clearly and more accurately document a person's involvement in an organized vehicle theft ring as part of the criminal record. This, in turn, would help police and crown prosecutors to deal appropriately with these people in subsequent investigations and prosecutions. The House will note that the VIN tampering offence contains an express exception in subsection 353.1(3) to ensure that those individuals who must remove or alter a VIN in the course of legitimate auto repairs, maintenance or modification are not captured under the ambit of this offence.

(1610)

A question was raised in the Senate committee on why this express exception is required when subsection 353.1(1) also contains a lawful excuse defence. I will take a moment to explain how the provision works.

...

Bill S-9 also proposes to create offences to address trafficking and property obtained by crime. The proposed trafficking offences are intended to target the entire length of the marketing chain that processes the proceeds of theft and other crimes like fraud. One form of trafficking in property obtained by crime is the movement of stolen automobiles and their parts. This is where organized crime is most involved in auto theft, either through car- theft rings, chop shops, or re-VINing a car for the sophisticated international rings that smuggle stolen luxury cars to foreign locations.

Currently, section 354 of the Criminal Code, the general offence of possession of property obtained by crime, which carries a maximum of 10 years imprisonment for property valued over $5,000, is the principal Criminal Code offence used to address trafficking and property obtained by crime. This possession offence does not adequately capture the full range of activities involved in trafficking.

Both proposed offences have higher penalties than the existing offence of possession of property obtained by crime. If the value of the item trafficked exceeds $5,000, anyone convicted of this offence could face imprisonment for up to 14 years. If the value does not exceed $5,000, it would be a hybrid offence and subject to imprisonment for up to five years on indictment or up to six months on summary conviction.

In the auto theft example, the trafficking offences would capture all of the players in a chop-shop operation, whereas the offence of possession of property obtained by crime would apply only to those in possession of property such as stolen cars or car parts. In order to avoid detection and reduce the probability of multiple counts in the event of an arrest, chop shops have very little inventory at any given time. It is to be noted, however, that the trafficking offences address dealings involving all property obtained by crime, not just the results of auto theft and chop-shop operations.

I am pleased that the trafficking offences also provide the Canada Border Services Agency with the legislative tools necessary to allow them to detain property, including stolen cars about to be exported from Canada, in order to determine whether they are stolen and to allow the relevant police agency to recover them and take the appropriate action. Bill S-9 is a comprehensive piece of legislation that addresses many of the activities that organized crime undertakes in relation to auto theft and other forms of property crime.
...

October 5, 2010 [House of Commons]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ)

Mr. Speaker, I listened to my colleague's speech. Personally, I am quite worried by the Conservatives' approach to crime. The bill before us today deals with the issue of serious and violent crime. Yet at the same time, the government is doing everything in its power to abolish the gun registry, which the police want to have at their disposal because it helps them in their work. This morning we spoke about another bill concerning justice and white-collar crime. This government, just like the Liberal government before it, is refusing to address the issue of tax havens. Even if white-collar criminals are put in prison for a while, if they can hide their

money in tax havens around the world and spend the rest of their days living off the proceeds of their crime, it is not much of a deterrent.

Does my colleague have the same worries about the Conservative government's doublespeak and hypocrisy when it comes to justice issues? They play the tough guy and boast that they are tough on crime. But when it comes time to take real measures, and not just change the length of a prison sentence in a bill—and you have to wonder if criminals often read the Criminal Code—that is another story. They need to do more than just grandstand. We need real, meaningful measures to fight crime and, in terms of prevention, measures for gun control and control of tax havens. Is that not doublespeak right there? The government has done nothing in terms of prevention, but it has been very big on repression.

October 5, 2010 [House of Commons]

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.)

…

Perhaps what is most modern about the bill is the respect that it gives to vehicle identification numbers.
[*Translation*]

We believe it is useful to add measures concerning vehicle identification numbers and we would like to discuss this measure in committee. That is the kind of innovative measure that could help combat the problem of auto theft in Canada.
[*English*]

The obliteration of VIN numbers is a low-risk, high-profit tactic of organized criminal gangs. This provision should help crack down on organized criminal activity, a main source of auto theft in Canada. By denying criminal gangs access to a primary source of funding, the currency of gangs, we can inhibit them from developing their activities elsewhere. The possession of property: to be in possession of a stolen car:
[*Translation*]

The provision concerning the possession of stolen vehicles is interesting and also merits discussion. That is another measure that could prove to be a useful tool for police forces. We need to be innovative in order to combat criminals who steal vehicles, who themselves are becoming increasingly sophisticated.
…

October 5, 2010 [House of Commons]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ)

We need to take action quickly. These vehicles are generally stripped for parts, and are rarely exported. They are exported, but not much. This is where organized crime comes in. These individuals place orders for certain types of motor vehicles, which are then stripped for parts.

The thief is one thing. Yes, he is a criminal, but the ones who place the orders are the worst ones. These types of orders are generally made through organized crime groups. So we must find a way to punish them.

The question was put to Criminal Intelligence Service Canada, and this was its reply:

The Insurance Crime Prevention Bureau has identified an increase in four main fraud techniques that are used by organized crime to steal vehicles. These include: the illegal transfer of Vehicle Identification Numbers (VINs) from wrecked vehicles to similar ones that have been stolen; a legitimate VIN is used to change the legal identity of a stolen vehicle of the same make, model, and colour, a process called "twinning".

Let us consider the example just given. The VIN from a wrecked Honda Civic 1998 can be used for a stolen Honda Civic 1999. This is where we are being asked to take action.

October 25, 2010 [House of Commons]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.)

Thus, with Bill C-26, the government created a separate offence for theft of a motor vehicle, and this offence is also included in Bill S-9. The mandatory minimum sentence for this offence is six months' incarceration for a third offence or in the case of an indictable offence.

This is important because all studies show that motor vehicle theft in certain cities is quite well organized. The evidence from various police forces, including municipal and provincial forces and our national police force, the RCMP, has clearly indicated that to be the case. When someone is on their third such offence, it becomes quite serious. The criminal justice system must therefore send a clear message that this kind of criminal behaviour is unacceptable.

The new offences provide for a broad definition of trafficking. This would cover selling, giving, transferring, transporting, importing, exporting, sending or delivering property obtained by crime or offering to do any of those things.

Thus, the new legislative provisions would target all the middlemen involved in moving stolen property, from the initial criminal act through to the ultimate consumer. That is very important. Of course it happens in other cities, but we know that in Montreal and Winnipeg in particular, most motor vehicle thefts are committed by organized crime groups. This means there is a network of individuals whose only goal and mission is to steal cars. The orders often come from outside Canada, with requests for x number of certain models, for instance, Lexus vehicles from a given year, Chevrolets from a given year, specific models and colours of BMWs from another year, and so on. The crime of motor vehicle theft is driven by the network.

May 6, 2010 [Senate]

Sponsor Hon. John D. Wallace

As I previously mentioned, Bill S-9 has three main components: the creation of a distinct offence of "theft of a motor vehicle"; second, a new offence for altering, obliterating or removing a Vehicle Identification Number, or its VIN; and third, new offences for trafficking in, and possessing for the purpose of trafficking, property obtained by crime, including the importing or exporting of such goods.
...
Why is it that this distinct offence of theft of a motor vehicle is necessary? Property crime, and in particular auto theft, remains an issue of paramount importance for most Canadians. Yes, there has been a downward trend in auto theft rates, thanks mostly to the innovative policing policies and technological advances, but despite that, it still remains one of the highest-volume offences in Canada, averaging about 400 auto thefts per day. Yes, that is correct — 400 auto thefts each day. The goal of this bill is to assist the police in reducing these auto theft rates even further, so that when police apprehend these criminals, the repeat offenders will be incarcerated and removed from the streets.

Auto thefts hit Canadians in their pocketbooks. I know that we have cited the dollar value provided by the Insurance Bureau of Canada many times before, but it is extremely important that it not be forgotten; namely, that the total cost of auto theft to Canadians is approximately $1.2 billion each year. Without a doubt, these substantial costs are ultimately borne by taxpayers, the insurance industry, policyholders, governments and victims.
...

Auto thefts are often committed as random acts by individual criminals, but increasingly, organized crime is becoming more and more deeply entrenched into the auto theft industry. It is estimated that roughly 20 per cent of all stolen vehicles are linked to organized crime activity. The financial motivation to commit auto theft is high, and indeed the profits made from the theft of motor vehicles form a very substantial source of income for organized crime.

As stated before, organized crime groups participate in the trafficking of stolen vehicles in at least three ways. First, organized crime is involved in the process of altering the legal identity of a vehicle by changing its VIN. Second, they operate "chop shops," where stolen vehicles are disassembled and their parts are trafficked, often to unsuspecting customers. Third, high- end, late model luxury sedans and sports utility vehicles are exported from Canadian ports to foreign locations in Africa, the Middle East and Eastern Europe. Bill S-9 creates new tools that will address each of these unlawful activities.

This first form of criminal involvement — VIN tampering — is a process that involves stripping the vehicle of all existing labels, plates and other markings that bear the true Vehicle Identification Number, and then manufacturing replacement labels, plates and other markings bearing a false VIN that was obtained from imported or salvaged vehicles.

There is currently no offence in the Criminal Code that directly prohibits tampering with a VIN. Like trafficking, the current Criminal Code provision that is used to address VIN-

tampering is the general offence of "possession of property obtained by crime" that is found in section 354 of the Criminal Code.
...
This will be an additional offence, so that a person could be charged with both "possession of property obtained by crime" under section 354 of the Code, as well as the proposed VIN-tampering offence, which in combination could result in a longer sentence.
...
An advantage that both the new VIN-tampering offence and the new distinct motor vehicle theft offence would have over the current offence used to cover these activities — namely, possession of property obtained by crime under section 354 of the Code — is that a conviction for these new offences will more clearly and accurately document, as part of their criminal record, a person's involvement in an organized vehicle theft ring. This will most definitely assist police and Crown prosecutors in dealing more appropriately with those particular offenders in any subsequent investigations and prosecutions.

Finally, Bill S-9 will also create new offences that target the trafficking in property obtained by crime, or the possession of such property for the purpose of trafficking. These amendments are extremely significant, and while my comments to this point have focused on auto theft, I want to be clear that the proposed trafficking offences are intended to target more broadly the entire criminal marketing chain that processes the proceeds of theft and other property crimes, including, for example, fraud.

These new offences will, however, also directly address the present auto theft problem. The trafficking in property obtained by crime includes the movement of stolen automobiles and their parts. This is where organized crime is most involved in auto theft, either through car theft rings, "chop shops" that dismantle stolen cars for parts, the act of "re-VINning" a vehicle to hide its identity, or the sophisticated international rings that smuggle stolen high-end luxury vehicles from Canada.

The new trafficking offence broadly defines trafficking to include the selling, giving, transferring, transporting, exporting from Canada, importing into Canada, sending, delivering or dealing with in any other way, as well as offering to do any of the above, in respect of property obtained by crime. This definition addresses the myriad ways in which criminal enterprises seek to get their ill-gotten gains to the eventual market. Bill S-9 also creates an offence of possession of property obtained by crime for the purpose of trafficking in order to capture this unlawful activity even at its initial stage, where the goods have not yet started to move through the illegal marketing chain.

Some might question why these new offences are necessary when the Criminal Code already prohibits the possession of property obtained by crime. Currently, section 354 of the Criminal Code — that is, the general offence of "possession of property obtained by crime" — which carries a maximum of 10 years' imprisonment for property valued over $5,000, is the principal Criminal Code offence that is now used to address trafficking in property obtained by crime. This possession offence does not, however, adequately capture the full range of activities that are involved in trafficking. The trafficking of property obtained by crime is an enterprise crime, and it is what motivates property crime more generally. With these new offences, Bill

S-9 will be targeting all of the activities that are undertaken by criminal enterprise, and thereby making it considerably more difficult for organized crime, or individuals, to engage in these types of illegal behaviour.

The proposed new trafficking offences will capture all of the players who are involved in a trafficking operation, such as a chop shop, whereas the existing "possession of property obtained by crime" offence applies only to those who are actually in possession of the property, such as the stolen vehicles. By their very nature, operations such as chop shops have very little inventory at any given time in order to avoid detection and reduce the probability of multiple counts in the event of an arrest. These new offences go to the heart of what motivates property crime generally, and are specifically intended to address the entire chain of criminal acts that together yield the financial benefits that ultimately make property crime so lucrative.

Another extremely important point is that both of the proposed new trafficking offences will also have higher penalties than the existing offence of possession of property obtained by crime since trafficking is considered to be a more serious matter than simple possession. ... Honourable senators, it is also important to note that these new trafficking offences will make available to Canada Border Services Agency the necessary authority to allow them to detain property, including stolen cars that are about to be exported from Canada, in order to determine if they are stolen and to allow the appropriate police agency to recover them.
…

May 26, 2010 [Senate]

Hon. Larry W. Campbell

Honourable senators, I am pleased to speak to you today as the critic on Bill S-9, An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime). Bill S-9 replicates Bill C-26 as it was passed by the House of Commons in the previous session. As honourable senators will recall, Bill C-26 was being reviewed by the Senate in the last session when Parliament prorogued.

I would refer honourable senators to the speech I made on Bill C-26 on October 29, 2009, as my feelings on this legislation have not changed. However, I will briefly address the main legislative changes that the bill proposes. This bill deals with trafficking, importation and exportation of property obtained by crime, but its main purpose is to target auto theft. This bill establishes the distinct offence of theft of a motor vehicle. It creates a new offence for altering or removing a VIN — the vehicle identification number — and creates new offences for trafficking in and possessing for the purpose of trafficking property obtained by crime. This bill will give law enforcement agencies more ability to target organized crime groups, specifically those who have profited greatly from auto theft crime in the past.

We are all aware that auto theft in Canada is a serious problem. Motor vehicle theft is estimated to cost Canadian taxpayers in excess of $1.2 billion a year, and the dangers involved put their safety at risk. Nonetheless, auto crime has declined substantially in recent years. This is due in large part to the hard work and dedication of Canadian police forces. Our law

enforcement agencies have been able to evolve and adapt to changes in criminal activity, and so should our legislation.

I support this bill. It is another good step in the ongoing fight against auto theft in Canada. However, there are some issues I would like to see raised in committee when this bill is studied. Some of the statistics that have been used in the study and discussion of this legislation are not as up to date as they can or should be. We cannot expect our justice system to effectively battle vehicle theft if our legislation is based on old data.
I would also like to see some more concrete evidence to support the implementation of minimum sentencing for third-strike vehicle theft offences. Honourable senators, the changes proposed by Bill S-9 are an important step towards reducing auto theft in Canada. This bill should be sent to committee to be studied without delay.

May 26, 2010 [Senate Committee][Entire Exchange]

Hon. Robert Nicholson, P.C., M.P., Minister of Justice and Attorney General of Canada: With this legislation, the government will update the Criminal Code to address the problems created by complex auto theft rings and other forms of property crime undertaken by organized criminals in Canada today. The bill proposes to create a separate offence of theft of a motor vehicle, which would carry a mandatory prison sentence of six months for conviction of a third or subsequent offence when it is prosecuted by indictment. It will establish a new offence of altering, destroying or removing a vehicle identification number, VIN, and it will make it an offence to traffic in property obtained by crime and make the possession of such property for the purpose of trafficking an offence.

This bill is part of our government's efforts to crack down on those criminals who choose to participate in auto theft and in other aspects of serious property crime. It is painfully clear that organized crime is significantly involved with auto theft in this country.

In recent years, our auto theft rates have remained at unacceptably high levels, while the number of recovered stolen vehicles has declined. This indicates an increased involvement of organized crime in auto theft. Law enforcement experts tell us that when a car is not recovered, organized auto theft rings have likely exported it to a foreign country. It used to be that over 90 per cent of stolen cars were recovered. Today that has fallen to 70 per cent, nationwide, with recovery rates varying by cities.

In large cities in Ontario, Quebec, and Nova Scotia, organized crime groups are believed to be more active in thefts, thanks in part to readily accessible ports, which allow cars to be shipped out of the country quickly and with relative ease. Out of the approximately 147,000 automobiles stolen every year, police and insurance experts estimate that about 20,000 of these cars are shipped abroad.

To this end, the creation of a distinct offence of motor vehicle theft sends a strong message to potential thieves that the criminal justice system is serious about fighting theft in Canada. The government's proposed offence would be a hybrid offence with a maximum of 10 years imprisonment on indictment and 18 years imprisonment on summary conviction.

A distinct offence of motor vehicle theft will help give the courts a better idea of the background of the offender for bail hearings and sentencing purposes. Indeed, this reasoning holds true for the proposed VIN, vehicle identification number, tampering offence that I will discuss in a moment.

Conviction for either of these offences would more clearly and accurately document a person's involvement in an organized vehicle theft ring as part their criminal record. This in turn would help the police and Crown prosecutors to deal appropriately with those people in subsequent investigations and prosecutions.

The theft of a motor vehicle for profit usually involves an elaborate cycle of theft, disguising the vehicle, and resale or export. One of the ways in which vehicles are disguised and resold is through the tampering of the vehicle identification number, the VIN. There is currently no offence in the Criminal Code directly prohibiting the alteration, obliteration or removal of a VIN. Currently under the Criminal Code, those who tamper with VINs are often charged under section 354, the offence of ``possession of property obtained by crime.'' This offence includes a provision stating that proof of possession of a vehicle with a removed or obliterated VIN is, in the absence of evidence to the contrary, proof that the vehicle was obtained by crime.

Organized crime is also involved in auto theft and property theft in general, through the trafficking of property obtained by crime in chop shops or other theft rings that deal with a wide variety of stolen property.

The proposed trafficking offences in Bill S-9 would begin to address these problems. Trafficking in property obtained by crime, along with other criminal activity such as drug trafficking, prostitution and fraud, is one of the many activities that makes organized crime profitable in this country. The bill would make it a crime to traffic in, or possess for the purpose of, trafficking property obtained by crime, including importing or exporting.

Currently, section 354 of the Criminal Code, the general offence of possession of property obtained by crime, which carries a maximum of 10 years for property valued over $5,000, is the principal Criminal Code offence that is used to address trafficking in property obtained by crime. However, this possession offence does not adequately capture the full range of activities involved in trafficking.

The proposed offences would provide a wide definition of trafficking that would include the selling, giving, transferring, transporting, importing, exporting, sending or delivering of goods

or offering to do any of the above, of property obtained by crime. This new law would target all the middlemen who move stolen property, from the initial criminal act through to the consumer.

Both proposed trafficking offences have higher penalties than the existing offence of possession of property obtained by crime. If the value of the item trafficked exceeds $5,000, anyone convicted of this offence could face up to 14 years in prison. If the value does not exceed $5,000, it would be a hybrid offence and subject to imprisonment up to five years on indictment or six years on summary conviction. This penalty would be consistent with the existing penalty scheme already in the Criminal Code.

It is also worth noting that if any indictable offence is found to have been committed for the benefit or at the direction of or in association with a criminal organization, an additional offence would apply. It would be open to the Crown to prove the additional element of a link to organized crime and obtain a separate conviction under section 467.12 of the Criminal Code. The maximum penalty for this offence is 14 years, which, as you I am sure are aware, must be served consecutively to any other offence for crime.

The proposed trafficking offences would also respond to the concerns of stakeholders such as the Insurance Bureau of Canada that has long advocated for stronger enforcement to prevent the export of stolen vehicles. Under the Customs Act, in order for the Canada Border Services Agency to apply the administrative powers of the Customs Act to the cross-border movement of property obtained by crime, such goods must first be expressly classified somewhere in federal law as prohibited goods for the purpose of importation or exportation. This bill would supply that classification provision.

Today, Canada Border Services Agency officers are only authorized to examine and detain goods entering or exiting Canada in order to determine whether or not the importation or exportation complies with federal legislation controlling the movement of goods across our borders.

The mandate of the CBSA does not include a broad law enforcement role, and its officers therefore have limited authority to deal with the movement of stolen property. The express prohibition provision in this bill would allow CBSA officers to examine and detain stolen goods, which could ultimately result in the police laying criminal charges. With this proposed amendment, the CBSA officers could identify targets, conduct examinations and detain these goods. They would then search law enforcement databases to determine whether the goods had been reported stolen, and refer the case to the police in appropriate cases.

Depending on where I am in the country, I hear about organized crime chop shops and export schemes that move automobiles and automobile parts out of this country. I hear about the deficiencies in the current law. Law enforcement officials wonder how many people possess

the stolen goods. They talk about the chop shops and remark that they may arrest the people at the chop shop but miss many others involved in the crime.

Senator Wallace: As you point out, minister, with this and other bills initiated through your department, there seems to be a focus on organized crime. There are serious issues in the country and we have to adjust the Criminal Code and other laws to adapt to those issues.

I wonder if there is anything more you would like to add in relation to the impact you see this bill having on organized crime. I have recently heard that, on average, 400 auto thefts occur in this country each day. Obviously, many of those thefts relate to criminal organizations. Therefore, I wonder about the impact you hope this bill would have on criminal activity.

Mr. Nicholson: That is part of that message. The face of crime in this country has changed over the last 20 or 30 years. The operations law enforcement agencies are going up against are becoming more sophisticated. I hear this all the time. Crime is becoming borderless, and this is why you have the provisions with respect to Canada Border Services Agency.

It is not just a question of someone stealing a car and trying to sell it to someone in the next town. I pointed out that 20 per cent of these cars are being shipped out of the country; they are gone. This is why they cannot be located.

They all tell me the same thing. They say that even though crime is becoming more sophisticated, the Criminal Code has not been updated in over 100 years. You have to update the laws to respond to the current challenges. That is what they were telling me. If you have any witnesses from the law enforcement side, I am sure they will confirm what I am telling you.

Senator Angus: In your opening remarks, you said the reason behind this legislation is to stop or minimize the theft of vehicles because the laws are not tough enough. Is the prime reason for the great volume of auto thefts the weakness of the present legal regime, or are there other more sinister reasons?

Mr. Nicholson: I think it is a little more complicated than that, senator. Two types of activity are going on in this country, and this bill addresses both of them. On one occasion, we wanted to address one part of it, and then I asked why we are not doing the other, so now we have everything.

We are talking about two types of crime. One is the organized crime that steals a car for the purposes of chop shops, exporting the car or parts, or somehow recycling the stolen car. That is part of it. I have heard loud and clear from law enforcement agencies in a number of major Canadian cities that this is a big problem. As well, I hear from other individuals that there are people who are unsophisticated, not part of organized crime necessarily, that will steal the car

and abandon it, steal the car again, that sort of thing. The bill addresses both aspects of that crime.

We have talked at some length about the organized crime part of it, but, again, making it a separate offence allows the Crown attorney to know what they are talking about. I have had Crown attorneys tell me they are not sure what the individual has been found guilty of, and guess what? It is actually more dangerous to steal a car than many times stealing other types of property in this country. Why? Because many times, you are putting people at danger. People get killed when people drive recklessly or are trying to escape detection. Having this as a separate offence allows everyone to know what he or she is dealing with. If this individual has taken the wrong path into the career of serial car thief, the Crown and everyone should know about that involvement.

Senator Lang: I would like you to elaborate on the fact that 90 per cent of the vehicles were recovered a number of years ago and now we are down to 70 per cent, which is significantly different from the point of view of numbers being recovered. We are at 20,000 vehicles being exported from this country at present, in part because of the laws that are in place.

Have the law enforcement agencies that you have spoken to, and the provincial authorities, given any indication to you that with the passage of this bill — and maybe even a tougher bill once Senator Baker gets finished with it — that they will be able to negate the 20,000 vehicles shipped out of this country? Will passage of this bill put a number of the crime rings out of business?

Mr. Nicholson: In my opening comments, I touched on the increased sophistication in this business and that it knows no borders. I commented that there are large-scale operations and the present provisions in the Criminal Code are not adequate to stop these operations. One provision that is very well received concerns the changes with respect to the duties and the ability of agents of the Canada Border Services Agency to intercept property that is being shipped in and out of this country. Senator Angus mentioned containerization. I have heard it again and again that the present laws are inadequate in giving the borders services agencies the ability to look and find out what is going on in relation to what is coming in and going out of the borders of this country. A car in and of itself is not a prohibited good. It is not like an illegal drug or an illegal gun. The laws have to be changed; they have to be updated. I have said to those who work with me putting this together that it is one of my favourite parts of this proposed legislation. I am very interested in the new provisions of the Criminal Code and I am pleased to have this bill. Changing the provisions with respect to Canada Border Services agents — and my colleague the Minister of Public Safety has direct responsibility — is one of my favourite parts of this bill because I have heard it again and again that these cars are being shipped out of this country and the present laws are completely inadequate to deal with this activity.

May 27, 2010 [Senate Committee][Entire Exchange]

Caroline Xavier, Director General, Corporate Secretariat Directorate, Canada Border Services Agency: Bill S-9 creates specific offences: the offence of auto theft; the offence of tampering with a vehicle identification number, a VIN; and the offences of trafficking in property obtained by crime and possession of property obtained by crime for the purpose of trafficking. This bill will have a direct and positive impact on the CBSA in that it expressly prohibits the importation and exportation of property obtained by crime.

Senator Joyal: What authority do you have when you suspect that goods going through the border are the proceeds of some criminal activity?

On what basis can you intercept goods you suspect are the proceeds of criminal activity?

Ms. Xavier: There is an export program that exists and it is a part of the agency's mandate. Under the current program, the person must go to the agency or the exit point before going, for instance, to the United States or to the maritime port in order to declare the goods to be exported and the specific information concerning those goods. That will not change.

In the Customs Act now, we have those authorities for our strategic export control. We have a strategic export control program as part of our current Customs Act authorities.

The reporting element required for a consumer or traveller right now will still continue to exist. These authorities will allow us to be able to look at the documentation we are receiving in advance, perhaps, and take more of an investigative lens or an intelligence-type lens to them. We will look at where these goods are destined and be able to work with our police authorities and RCMP partners to determine whether there could be an infraction or a prohibited good.

Right now, if a good is prohibited, such as a stolen vehicle, for example, we cannot detain it. We can only call the local police authority.

Richard Dubin, Vice-President, Investigative Services, Insurance Bureau of Canada: With organized crime so pervasive in the business of auto theft and with the profits so high, it is not surprising that intelligence authorities suspect that terrorist groups may be financing themselves with auto theft. A July 16, 2007, article in The Boston Globe cited the FBI's belief that dozens of vehicles stolen from the United States have been used as car bombs in Iraq. The Insurance Bureau of Canada is aware of approximately 200 stolen vehicles that were shipped to the Middle East as part of Project Globe and another investigation where stolen vehicles were sent to Lebanon.

June 02, 2010 [Senate Committee][Entire Exchange]

Senator Wallace: You may know one of the aims of the bill is to deal with the importation and exportation of stolen automobiles. We understand that a significant part of that criminal business, if not all of it, is linked to criminal organizations.

In that context, does your department have any statistics or information you can give us at all about the extent of that illegal trade across the border, not only of automobiles but also of automobile parts that result from chop shop operations?

Mia Dauvergne, Senior Analyst, Policing Services Program, Canadian Centre for Justice Statistics, Statistics Canada: We do not have information specifically on the involvement of organized crime in motor vehicle theft. As Ms. McAuley explained earlier, we can use vehicle recovery status as the proxy measure. Beyond that, we do not have anything at this time.