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Official Report of Debates (Hansard)

Monday 22 October 2001

Journal des débats (Hansard)

Lundi 22 octobre 2001

Standing committee on justice and social policy

Subcommittee reports

Remedies for Organized Crime and Other Unlawful Activities Act, 2001

Comité permanent de la justice et des affaires sociales

Rapports du sous-comité

Loi de 2001 sur les recours pour crime organisé et autres activités illégales

Chair: Toby Barrett
Clerk: Tom Prins

Président : Toby Barrett
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

Monday 22 October 2001

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE ET DES AFFAIRES SOCIALES

Lundi 22 octobre 2001

The committee met at 1529 in room 151.

SUBCOMMITTEE REPORTS

The Vice-Chair (Mr Carl DeFaria): Shall we call the committee to order?

Mr Peter Kormos (Niagara Centre): Is there a quorum?

The Vice-Chair: I think a quorum is present.

The first order of business is the report of the subcommittee on committee business dated October 16, 2001. Do I have a motion?

Mr John Hastings (Etobicoke North): I have a motion dealing with a report of the subcommittee:

Your subcommittee met on Tuesday, October 16, 2001, to consider the method of proceeding on Bill 14, An Act to encourage awareness of the need for the early detection and treatment of brain tumours, and recommends the following:

(1) That the committee have public hearings and clause-by-clause consideration on the bill on Tuesday, October 23, 2001. The committee will spend one hour considering this matter.

(2) That Mr Wood will provide the clerk with a list of witnesses to be scheduled.

Do you want me to continue, or do we deal with moving that recommendation first?

The Vice-Chair: Let's do one at a time.

Mr Hastings: All right. I move that motion dealing with the report of the subcommittee.

The Vice-Chair: Is that motion adopted? Carried.

Mr Hastings: The next one deals with a report of the subcommittee:

Your subcommittee met on Tuesday, October 16, 2001, to consider the method of proceeding on Bill 30, An Act to provide civil remedies for organized crime and other unlawful activities, and recommends the following:

(1) That on October 22, the committee will have clause-by-clause consideration on the bill.

(2) That amendments for the bill should be provided to the clerk by October 19, at 12:00 noon.

(3) That staff be available to answer questions on the bill from any committee member.

I move adoption of the same.

The Vice-Chair: Mr Hastings has moved adoption of another motion. Is that carried? Carried.

Mr Hastings: The next item deals with a report of the subcommittee:

Your subcommittee met on Tuesday, October 16, 2001, to consider the method of proceeding on Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other acts, and recommends the following:

(1) That the committee invite the Minister of Agriculture, Food and Rural Affairs and the Ontario Federation of Agriculture to come before the committee on Tuesday, October 23, 2001. Both groups will be offered 30 minutes in which to address the committee.

I move adoption of that item of the subcommittee.

The Vice-Chair: Mr Hastings has moved that item. Shall that item carry? Carried.

Mr Hastings: The next item deals with a report of the subcommittee:

Your subcommittee met on Tuesday, October 16, 2001, to consider the method of proceeding on Bill 101, An Act to protect students from sexual abuse and to otherwise provide for the protection of students, and recommends the following:

(1) That the committee hold public hearings in Toronto on the bill on October 29 and 30.

(2) That the committee conduct its clause-by-clause consideration on the bill on November 5.

(3) That amendments for the bill should be provided to the clerk by November 2, at 12:00 noon.

(4) That groups be offered 20 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations.

(5) That the clerk place an advertisement on the Ontario parliamentary channel and on the Internet. If possible, an advertisement will also be placed in the four Toronto English dailies and in the largest Toronto French newspaper. The advertisement will indicate that application for the reimbursement of travel expenses can be made in writing by submitting a claim to the clerk.

(6) That the Chair authorize the payment of reasonable requests by witnesses to have their travel expenses reimbursed.

(7) That the deadline for making a request to appear before the committee be October 24 at 12:00 noon.

(8) That the deadline for submitting written submissions be October 30 at 12:00 noon.

(9) That all witnesses be scheduled if time permits. If there are more potential witnesses than there are time slots, the subcommittee will meet on Wednesday, October 24, at 3:30 pm to determine the priority for scheduling the witnesses. If there are empty time slots, additional groups can be added to the agenda after October 24.

(10) That each party can submit a list of potential witnesses to the clerk by Wednesday, October 24, at 12:00 noon.

(11) That staff be present in the committee room to answer questions posed by any committee member.

(12) That the research officer prepare a summary of recommendations.

(13) That there be no opening comments at the start of clause-by-clause consideration of the bill.

(14) That the clerk be authorized to begin implementing these decisions immediately.

(15) That the information contained in this subcommittee report be given out to interested parties immediately.

(16) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of this bill. The Chair will call another subcommittee meeting if needed.

I'd ask for adoption.

Mr Kormos: In view of item 14, can we ask the clerk to tell us whether there was compliance with item 5; that is to say, whether the advertisements on the parliamentary channel and the Internet and in the four Toronto papers and the largest Toronto French newspaper had the notice indicating that reimbursement of travel expenses could be made in writing?

Clerk of the Committee (Mr Tom Prins): Yes. They were in the four Toronto dailies last Wednesday and in the French paper, I think, on Tuesday—that's just the publication cycle. I can get you a copy of the wording of the ad.

Mr Kormos: One further thing very quickly: in view of the consideration of the prospect of a subcommittee meeting on October 24, can the clerk give us any indication about the number of applications that have been made to appear in front of the committee?

Clerk of the Committee: I can find out and get that information to your office.

Mr Kormos: Thank you kindly.

The Vice-Chair: Mr Hastings has moved adoption of the last subcommittee report. Shall that motion carry? Carried.

If I may, for the information of people present: we allow photos to be taken, but not flash photography. If you just turn off the flash, you can still take pictures. Thanks.

Mr Kormos: Chair, if that's not at least 400 ASA film, I don't think that's going to work very well.

The Vice-Chair: Thank you, Mr Kormos. I understand from the clerk that it may—

Mr David Tilson (Dufferin-Peel-Wellington-Grey): Please proceed.

1540

REMEDIES FOR ORGANIZED CRIME AND OTHER UNLAWFUL ACTIVITIES ACT, 2001

LOI DE 2001 SUR LES RECOURS POUR CRIME ORGANISÉ ET AUTRES ACTIVITÉS ILLÉGALES

Consideration of Bill 30, An Act to provide civil remedies for organized crime and other unlawful activities / Projet de loi 30, Loi prévoyant des recours civils pour crime organisé et autres activités illégales.

The Vice-Chair: The next item for the committee is clause-by-clause on Bill 30.

There was a motion by Mrs Ecker that was approved, which reads as follows:

"That the standing committee on justice and social policy shall be authorized to meet in Toronto for one day for clause-by-clause consideration of the bill."

We'll proceed with that.

Mr Kormos: On a point of order, Chair: You do have 400 ASA film, but it's colour, and as you know, the temperature of this lighting is going to cause a colour shift in the film. If she shoots without the flash, she's going to get horrible colour. So if you're reproducing those in colour, the shot is worthless. If you're reproducing them in black and white, you might get away with it.

The Vice-Chair: Thank you, Mr Kormos. That's not a point of order. If we could just proceed—I think she has taken enough pictures. We will proceed with clause-by-clause.

Let's start with section 1. There are no amendments submitted for section 1.

Shall section 1 carry?

Mr Kormos: With respect, we are going to debate in clause-by-clause as well.

The Vice-Chair: Is there any debate on section 1?

Mr Kormos: Thank you kindly. Very quickly—and I don't intend to do this on every section, but section 1 is as good a place as any to simply make these remarks.

You know that the New Democratic Party is not happy with the bill. We weren't happy with the bill in its first incarnation, and we had some considerable public hearings when there was consideration of the first bill. One of the very specific areas toward the end of the bill was not drafted into this bill because circumstances changed in terms of that ministry's input. But our objection is a fundamental one.

We have no objection to the state having the authority to intervene to disrupt the collection of proceeds of crime and the accumulation of them—none whatsoever. We endorse, as we did in the first round of committee hearings, the Criminal Code sections. You heard, as did everybody in the committee, that some police forces are

more successful than others in utilizing those sections. We understand that those sections in the Criminal Code present a fundamentally higher hurdle for the prosecution, for the police—for the state when it's seizing proceeds of crime. That is because it's required to meet the criminal test of proof beyond a reasonable doubt.

Our concern with this bill is that it attempts to do something that is clearly within federal jurisdiction. We can say, "That's for the courts to resolve down the road on a constitutional argument or test," and I'm sure the Attorney General would have arguments, even today, based on their consultations with any number of lawyers, be they private sector lawyers or lawyers in the ministry, who have examined that issue and tried to avoid that problem down the road. But it still leaves the more fundamental issue; that is, that this bill, this piece of legislation, uses the civil test of proof to determine whether something is indeed the proceeds of crime. We submit to you that when you're dealing within a sphere of basically criminal activity, the criminal test of proof beyond a reasonable doubt, in contrast to the historic civil test of balance of probabilities—50%-49%—we believe that when you're dealing with criminal offences, and that's what we are dealing with, the test should be one of proof beyond a reasonable doubt.

We heard a myriad of submissions in the course of considering the last bill. Nobody could not have sympathy for the police. The police, it's clear, indicated they would love this bill. To be fair, and in no way to be critical, the police would also love to be able to do more warrantless searches. It's obvious. You don't have to be a rocket scientist to figure that out. The police would love, from time to time, to be able to detain people for a longer period of time than they're permitted to under the current law. The police would love, from time to time, to be able to detain people without the need of advising them of their right to counsel, as the charter obligates them to, because, yes, that would make the work of police officers much easier. I have no quarrel with that proposition.

But the reason we have those safeguards is to protect the innocent. Our fundamental concern and the reason for our non-support of this bill at this stage—and there's nothing before me today that indicates that position will change—is that this bill puts at risk people who are perfectly and thoroughly innocent Ontario residents. It puts them at risk; it puts their personal property at risk. There has been no effort to even compromise. We heard from any number of participants in the committee hearings into this bill's predecessor about the middle ground between proof "beyond a reasonable doubt" and the "balance of probabilities." You heard Mr Borovoy from the Canadian Civil Liberties Association, for whom we should have some significant regard on this issue, comment on the bill in that respect. There has been no effort to create that middle ground.

In the absence of that, our response to this bill both at clause-by-clause and, quite frankly, at the end of the day in the House on third reading is going to be one of non-support. We believe that this gives the state some significant new powers and that those powers are not properly balanced by a sufficiently high standard of test in terms of the type of proof, type of evidentiary burden, that exists in the course of pursuing the goals. The goals we admire, but the test is not sufficiently high to guarantee that innocent people will not be put at risk.

Mr Michael Bryant (St Paul's): Surely a terrorist's best friend is a mobster. There is an inextricable link between organized crime and terrorism. The United Nations' General Assembly has repeatedly, through resolutions, acknowledged and emphasized the link between the drug trade, organized crime and terrorism.

The special Senate committee on security and intelligence, in its report of January 1999, reiterated this link and gave one example. "The evidence before the committee," in their words, "indicated that these rings," these alien smuggling rings, "generate substantial profit from smuggling and in some cases involve organized crime. There is concern," the committee went on to say, "that such rings could be used to smuggle terrorists."

Furthermore, we heard during committee hearings from the Criminal Intelligence Service Canada director, Richard Philippe—and it may not have been in the hearings; it may have been in a written submission. I regret I'm not sure which was the case. In any event, through the hearings we learned that the Criminal Intelligence Service Canada director reported that over a 24-hour period in this country, about $6 million worth of heroin will be imported into Canada, 21 to 43 illegal aliens will arrive, $14 million will be obtained through telefraud, and 500 vehicles will be stolen.

There is no doubt that there is a link between organized crime and terrorism through financing of terrorism, on the one hand, through to its operations, including smuggling rings, on the other hand. We need to hit terrorists, therefore, in the pocketbook, just as we're hitting organized crime in the pocketbook.

Premier Harris on September 24 committed his government to doing just that. On September 24 the Premier made a statement in the Legislature. It's important that we realize this was not a response in question period. This was not a remark made in a scrum. This was not an off-the-cuff remark. This was part of his speech on September 24 where he was outlining to the province of Ontario and the nation what the Harris government was going to be doing to fight terrorism.

He said the government was going to "look at strengthening any provincial legislation that could be used to prevent terrorist acts, including possible changes to the Remedies for Organized Crime Act to cut terrorists off financially." The Premier made that commitment, and in fact it was the only substantive commitment made by the government in terms of changing our laws. We heard from the government that they had hired a couple of security advisers as management consultants; literally they are retained as management consultants to the government.

1550

In terms of changes to our laws, on September 24, at a time when Parliament was moving forward and introduc-

ing their draft antiterrorism bill and when state assemblies south of the border were debating, if not passing, draft legislation to hit terrorists in the pocketbooks, this government was talking about making these amendments to Bill 30. When it came to my attention that the government was not in fact going to bring amendments to Bill 30, I asked the Attorney General about it on October 4.

First, he said that the Premier said "we would be reviewing the legislation." Look, the Premier made specific reference to this bill and said that the government was looking at making changes to Bill 30. Now the government, as I understand it, is not going to do that. The Attorney General basically confirmed, in his non-denial denial, that no such amendments were going to be made to Bill 30. The Attorney General said, "If you have some suggestions as to how to improve this legislation in relation to organized crime or in relation to some other unlawful activity, we're prepared to consider it." That was very kind of the Attorney General.

We have introduced amendments, as you know, Mr Chair. I'm going to be speaking to the merits of those amendments at that time. Let me say this: if Bill 30 did not need amendments—I'm sure it is going to be the position of the government in a moment that Bill 30 doesn't need any amendments—then why did the Premier say the government was going to be making antiterrorist amendments to Bill 30? Why would the Premier say otherwise? Because this government has broken that commitment, for whatever reason, we felt compelled to introduce amendments to ensure that terrorists are hit in the pocketbook by Bill 30.

Let me say this about the bill and our position on the bill—and I reserve the rest of the time, when we get to each provision, to deal with each amendment. There are two major amendments: one dealing with proportionality of a just order, one dealing with the scope of an unlawful activity, and then there is what you might call a housekeeping amendment. Those are the two major amendments, but they span a number of sections. I'm not going to repeat myself on each section. I'll do it when I get to those amendments.

I would just say this: what is this government doing to fight terrorism? What is it doing? The federal government found out about the events of September 11 in the same moment, the same hour that the provincial government did. They have tabled legislation. Not only that, but we've known for weeks now what legislation was going to be tabled before Parliament. As I said, state assemblies—Washington, Nebraska, Indiana, Colorado, California, Oklahoma, to name only a few—have tabled or they've passed legislation to join the fight against terrorism. What has this government done?

The answer is, from a legislation perspective, nothing, nor have they indicated what they are going to do. We don't know. I know that some Canadians feel they're not getting the kind of briefing from Canada's government that they feel Americans are getting from their government. I don't know if that's true or not. That may vary from day to day. But be that as it may, they're getting no indication from the Mike Harris government as to where this government is going. This would have been an obvious way to indicate the direction in which the government is going.

We already have a bill before us. We have an opportunity to get these amendments to Bill 30 made now. We don't have to wait for a bill to be reintroduced that covers much of the same ground. Surely this government is not going to introduce a separate bill just so they can get the added PR punch out of it. I would hope that would be beyond this government, to engage in that kind of politics when they could get antiterrorist tools before law enforcement officials and prosecutors right now.

Let me state the obvious. The official opposition is very open to amending the amendments before you should you have queries with the amendments you've had since Friday. I note it is really more of a courtesy than an actual deadline for the amendments to be filed on Friday, but I wanted to give the government plenty of time to consider them.

I note also that government members on Parliament Hill are willing to question their executive council. Member of Parliament Irwin Cotler has called for a couple of important changes to the federal government's antiterrorism omnibus bill. He doesn't just do it in the back room; he does it on CBC Radio. I hope government members on this committee will be willing to raise questions too, to see if we can maybe make Bill 30 better, and I think we can. I'm not pretending for a moment that the amendments that have been tabled by Ontario Liberals are not beyond amendment themselves. I would urge members to make suggestions. We are obviously very open to that.

We support Bill 30 because the two major hurdles contained in Bill 155 were addressed by this government. For that I have three people to credit: Attorney General David Young did the right thing by getting rid of the J. Edgar Hoover clause that was in this bill's predecessor, Bill 155. I'm going to credit also Dalton McGuinty and Lyn McLeod for their questioning in question period. Why? The government at first refused to accept what Ms McLeod and Mr McGuinty were saying in question period.

On December 12, 2000, the leader of the official opposition asked the Attorney General about the J. Edgar Hoover clause that would permit the Attorney General to collect personal health information without any checks and balances, to which Attorney General Flaherty said, "By virtue of those sections, personal health information is excluded from section 19 of Bill 155. So that personal health information is not available to the Attorney General or any minister pursuant to section 19 of 155."

The leader of the official opposition kept at it. He said, "Here's my reading of the bill and it is pretty clear that there are no such protections."

The Attorney General said to that, "The accusations and the interpretation made by the member opposite are inaccurate." Of course this quote would end up being overturned by his successor.

Lyn McLeod, member for Thunder Bay-Atikokan, on December 13, 2000: "So today I will ask you," Ms McLeod says to the health minister, "What protections are you prepared to put into your bill to make sure that the Attorney General has no legal right to get private health records on suspicion alone?" The health minister was outraged that anybody would question the discretion or judgment of the government. She said, "This is unbelievable, and I'm going to refer it to the Attorney General to answer." The Attorney General said he had told them three times and he invited Ms McLeod and Mr McGuinty to a briefing. Of course, subsequent to that, on February 20, 2001, Attorney General Young announced that the privacy protections would be put in place for personal information, and particularly for personal health information.

With those two major objections removed, we are supporting this bill, subject to a number of concerns that I hope are addressed in our discussion on the amendments. I hope this government for the first time, at least since I've sat on this committee, is open to an amendment from the official opposition, since my experience has been that every amendment we have put forward on a government bill has been ignored and rejected.

Mr Tilson: Somehow we've moved from debating section 1 to general statements by the three parties. I suppose that's fine. I would like to make a couple of responses to some of the comments that were made by my friends on the other side.

Mr Kormos got into what he has given us full notice he's going to get into, and that is the debate on the balance of probabilities versus the—in other words, the standard of proof tests. That is dealt with in section 16. I don't know whether he's finished with this debate on that issue. Perhaps, since he has raised it now, I could make a few comments with respect to that. We have had this out before, this debate, with Bill 155. I guess it is fair we could have it out now because obviously the New Democratic caucus feels quite strongly about it. They're entitled to do that.

Just to remind the committee what the government has stated in the House and in this committee in the past, I outline the jurisdictions where the civil test is used; in other words, the test that's being used in Bill 30, specifically section 16. It's been used in Australia since 1960 in a similar type of legislation, in Ireland since 1996, in South Africa since 1998, and in the United States. There is draft legislation before the United Kingdom and the federal state of Australia, where the balance of probabilities test is being used. The NDP doesn't have an amendment with respect to 16, so I assume they'll simply be opposing section 16 when we come to vote on that.

1600

The "beyond a reasonable doubt" test, as we know, is used in criminal proceedings. It's used specifically when you are going to incarcerate someone, or the law suggests you could incarcerate someone. This bill is about property, about seizing the assets in a civil way. I'm not going to say anything further because we've said it before with respect to debate on Bill 155 and in the House. The NDP has made their position quite clear. I understand that and I hope that will be the end of the debate, although they can move on when we come to section 16.

Mr Bryant got into the topic of terrorism and amendments that were made to Bill 155. Of course the Attorney General came, I think on the opening day that the bill was introduced, and said he was going to be making amendments, particularly to the privacy legislation. I guess Mr Bryant's free to pat his colleagues on the back, and that's OK too if he wishes to do that.

Mr Bryant: And him too.

Mr Tilson: Sure. I don't have any problem. People can pat anybody on the back. He has asked the question in this debate, which is veering off Bill 30. He may argue it's not. The government has been doing a number of things, in response to Mr Bryant's comment. I think it's fair that the government reiterate on the record what we have done. We have taken swift action since that horror on September 11. For example, to the extent that terrorists engage in unlawful activity to make profits, this bill that is before this committee, Bill 30, will give us the means to seize, freeze and ultimately forfeit the proceeds of unlawful activity, including unlawful profits made by terrorists.

We're providing up to $3 million to help Ontario victims and Ontario families whose loved ones were victims of the terrorist attacks in the United States. There's a toll-free line with 24-hour access that's still up and running and has been from the very beginning. We have appointed two security advisers. We are undertaking a thorough review of Ontario's emergency response plans. We have introduced legislation to increase security for documents such as birth certificates. That was done by Mr Sterling, I think, last week. We're establishing a special police unit to assist federal officers on tracking down criminal offenders who are in Ontario illegally, and we're aggressively seeking their deportation. Finally the Premier this past week met with New York Governor George Pataki to discuss economic and security issues.

I think it's unfair of the Liberals to say the government is doing nothing. We are doing something. We're doing a lot. I'm not going to get into the battle as to who's better, federal Liberals or provincial Tories. I believe the Premier of Ontario deserves a pat on the back as well, and I trust Mr Bryant will do that.

I emphasize that Bill 30 doesn't just deal with motorcycle gangs and the mafia and organized crime, the typical criminal-type things. If there's illegal activities going on specifically by terrorists, Bill 30 applies to those people as well.

With a comment as to what goes on in the United States, the legislation that's talked about in the state governments, all of that is criminal law amendments. This bill that is before us, which is the bill we have jurisdiction on, deals with the seizure of property. It's the federal government's responsibility to make amendments to the Criminal Code. He knows that. We all know that.

I trust now we can proceed with section 1.

The Vice-Chair: Are there any further comments? Shall section 1 carry? Carried.

Section 2: there is a Liberal motion.

Mr Bryant: I move that the definition of "unlawful activity" in section 2 of the bill be struck out and the following substituted:

"'unlawful activity' means an act, conspiracy to act, or omission, whether it occurred before or after this part came into force, that is an offence,

"(a) under an act of Canada or Ontario that is listed in the schedule,

"(b) under an act of another province or territory of Canada, if a similar act, conspiracy to act or omission would be an offence under an act of Ontario that is listed in the schedule if it were committed in Ontario,

"(c) under an act of Canada or Ontario not listed in the schedule or under an act of another province or territory of Canada that would be an offence under an act of Ontario not listed in the schedule if it were committed in Ontario, if the offence involves,

"(i) terrorism,

"(ii) threat of violence,

"(iii) possession of a weapon,

"(iv) hateful communications directed at an individual or identifiable group of individuals,

"(v) stalking, besetting or intimidation,

"(vi) causing a person or persons to reasonably fear for their safety, the safety of another person or persons or property,

"(vii) interference with lawful activities or the lawful use of property without reasonable justification, or

"(viii) interference with a computer or telecommunication device without lawful authority,

"(d) under an act of a jurisdiction outside Canada, if a similar act, conspiracy to act or omission would be an offence under an act of Canada or Ontario that is listed in the schedule if it were committed in Ontario, or

"(e) under an act of a jurisdiction outside Canada that would be an offence under an act of Canada or Ontario not listed in the schedule if it were committed in Ontario, if the offence involves any of the activities listed in subclauses (c)(i) to (viii). ('activité illégale')."

C'est tout.

The Vice-Chair: Are there any comments on the amendment?

Mr Bryant: Do you want me to speak to this first?

At the outset, Mr Tilson said he wants me to give the Premier a pat on the back. I will agree with the Premier of Ontario when he said on September 24 that these kinds of amendments, these kinds of changes need to be made to Bill 30. My chief witness, my big supporter for these amendments—don't take my word for it, take Mike Harris's word for it. He was right on September 24 when he said these changes needed to be made. I don't know what happened and I don't know why the government broke its commitment to bring in these changes. I understand the government is going to take the position that this bill already captures terrorist activities, to which I say there's no reference in Bill 30 to terrorism or the kind of offences that lead to terrorism.

The purpose of this section is twofold: first, we need to identify the kinds of unlawful activity that trigger these civil remedies. Right now, it says "unlawful activity." Why do we need to do that? I don't want to give a defence lawyer the opportunity to say that the new anti-terrorist omnibus bill not yet passed by Parliament, once those new laws are in place, in fact doesn't apply to Bill 30. Second, I have a concern that the over-breadth inherent in simply triggering the civil remedies upon a finding of unlawful activity is going to have a very practical problem. I believe that it is going to be actually what the provinces do together with the federal government that is going to determine whether we are successful in the war against terrorism at home. By that I mean our federal and provincial governments providing a uniform response to terrorism, contrary to the current situation where there is enormous variance between the amount different provinces spend on prosecuting crimes.

1610

Geographic disparity cannot explain why New Brunswick pays about twice as much on prosecuting crimes as Alberta. We need a uniform response from the provinces. We need the federal and provincial authorities, obviously, to be working together very closely. We have federal powers under the Criminal Code permitting the seizure of unlawful activity right now. That would be prosecuted by provincial crowns. We also have these new civil remedies, which would also be prosecuted by provincial crowns. However, it is not clear to me at all, and it was not clear despite the best efforts by the great lawyers who came before us from the Ministry of the Attorney General, whether this ministry knows who's going to be doing what.

We have to recognize what Professor Margaret Beare said at Osgoode Hall Law School. She is the head of the organized crime department at Osgoode Hall Law School. She said, "Ontario is the province that tends to use the existing Criminal Code provision for powers of seizure less than some of the other provinces." The federal tools are being used less by Ontario than other provinces. There is variance in the amount Ontario is spending on prosecutions versus other provinces. That's not just Ontario; it's all over the map. Have-not provinces are spending, per capita, a lot more than many of the have provinces.

Add to that the civil-criminal conflict that's going to take place. I'll tell you what I'm talking about here. I asked an excellent spokesperson from the Ministry of the Attorney General, Jeffery Simser, "What are we going to do? Are we going to enforce the Criminal Code provisions? Are you going to withdraw your criminal division and install more civil lawyers to enforce your proceeds-of-crime legislation?" Why do I ask that? There's an ADM civil, there's an ADM criminal and there are lawyers who work in different departments. Who does what? Are both going to go after it? Mr Simser said, "My understanding is in fact they're beefing up

their process rather than knocking it down," which would lead to the conclusion that they're budgeting for more criminal and civil crackdowns on organized crime. That doesn't bear out when you look at the budget.

The 2001-02 budget commitment is $979 million; the 2000-01 budget commitment is $971 million. That's a 0.8% increase. Inflation is expected to be somewhere around 2.8%. Just on the face of it, there are small cuts to the Ministry of the Attorney General. That doesn't even take into account the fact that all crown counsel have received approximately 30% increase in salary. That's not been accounted for in the 2000-01 budget. They're spending less even though the hope was, and this was a hope that Mr Simser articulated and that I would share, that there would be more of a commitment. There are cuts. That means that if the province of Ontario is already using the federal Criminal Code tools less, it is probably going to be using them even more less, I guess. In turn, I don't know where the money is going to come from to use these civil remedies, because of course if these laws aren't being enforced, then they're rendered a dead letter.

What does that have to do with the amendments? If we focus the offences on which Bill 30 can be used, then we will not have a situation where the Ministry of the Attorney General is using the blanket "unlawful activity" clause to crack down on offences that have nothing to do with organized crime. There is nothing in this bill that stops that wasteful management from taking place. There's no focus on, for example, terrorism. This amendment focuses the tools on terrorism. There's no focus on the types of offences involved in organized crime. That's what section 2 does and that's what the schedule does.

The schedule is pretty broad. I've got 22 federal bills and eight provincial bills to which "unlawful activity" could be applied. It is pretty broad. If you want to add some to the schedule, I would encourage you to do so. If you want to add the types of crimes—threat of violence, possession of a weapon, terrorism and on down—I would urge you to do so. This way we don't have this bill being used to seize assets and profits because of a violation of the beekeepers act.

As we heard during committee hearings, you can do that under this bill; any unlawful activity, any offence. So the example given by Alan Borovoy: if a merchant sells his or her wares contrary to Sunday shopping legislation, they could have all the profits seized—that's going to do nothing for organized crime and it is going to do nothing for terrorism.

The purpose of this section is to focus it, to ensure that we don't clog up the courts with claims having nothing to do with organized crime or terrorism. I trust the prosecutor's discretion on the one hand, but why on earth wouldn't we ensure that prosecutors do not head down the path of a wasteful use of Bill 30, but rather focus their attention on organized crime and terrorism?

Again, I agree with Mr Tilson. The government, yes, has hired a couple of management consultants to advise on security. I'd forgotten about something: Minister Sterling introduced birth control legislation, which would not have been introduced but for the questions asked by—

Mr Tilson: Birth registration.

Mr Bryant: What did I say?

Interjection: Birth control.

Mr Bryant: Dalton McGuinty would not be introducing birth control legislation, would he? Birth certificate legislation, which was—

Mr Kormos: They both lead to totalitarianism.

Mr Bryant: That's right. That's true enough. Who said committee is boring?

Just for the record, birth control crackdowns are not taking place. It is birth certificate registration. That legislation would not have come about but for the questioning, again, of the leader of the official opposition, Dalton McGuinty. And yes, I will credit Mike Harris for saying that we need changes to Bill 30. Here they are. I hope the government members on the committee will support them.

Mr Kormos: I want to speak to this amendment. I have become as fearful of our response to the terrorist attacks of September 11 as I have been of terrorism in general. I do not condemn the Premier for not coming forward with amendments to incorporate an antiterrorism package as part of this bill. Quite frankly, crime is crime. The whole business of organized crime as compared to disorganized crime is a facetious distinction. But the government has been quite clear that it purports or that it plans or that its goal is to attack the mob and biker gangs and white-collar crime of that sophisticated type. They've used illustrations of it.

I regret—and I say this to the Liberal mover of this motion—the inclusion of terrorism in, for instance, this amendment, which in and of itself stands undefined. We only have to think back a few months when a perhaps regrettable and lively action at an MPP's office received some very vocal condemnation and was certainly, if not actually identified as terrorist, equated to terrorist in some of the rhetoric that was used by some of the players. In hindsight, after September 11, it sounds almost trite. That's being dealt with by criminal charges and, who knows, other charges, and is before the courts. A court will make a determination as to whether or not anything illegal was done and, if it was illegal, what disposition there ought to be.

1620

We have witnessed more than a few things develop since September 11, wrapped in the cloak of the fight against terrorism. There are some American legislators finally standing up in Washington, protesting that every new legislative agenda, including—whether this was simply hyperbole on the part of that legislator's part or not—George Bush's tax cuts, is being cloaked in the fight against terrorism. This particular legislator, whom I heard on a radio interview, was saying, "No, you're not going to hoodwink me, you're not going to bushwhack me, with that argument."

In the so-called fight against terrorism—and Mr Bryant refers to the two capos being appointed by Mr

Harris, one Mr Inkster and the other Mr Lewis MacKenzie—we've seen the advocacy of racial and ethnic profiling as part of the effort against terrorism, something I know that people in the various ethnic and minority and visible minority communities have found incredibly terrifying, and others with expertise certainly equal to that of former Major General MacKenzie have cited as being totally ineffective ways to deal with terrorism. Not only do they say that it's dangerous but they say it's dumb. It goes beyond merely being dangerous in terms of the racist identification of individuals or members of certain ethnic communities. Indeed, and some people were sensitive to this in the Legislature, it causes us to reflect that if we employ that type of ethnic racial profiling that Lewis MacKenzie has advocated and that the government, by virtue of his ongoing appointment, appears to have, if not totally adopted, at least condoned—I questioned in the House, in what generation, in which decade, will it be that we apologize once again to yet another group of Canadians, just as Japanese Canadians received an apology far too many years and decades after the fact?

The other capo appointed by Mr Harris was Mr Inkster, who has been far more cautious in his public statements and shown far more political acumen. But a former appointee is still standing. One Norm Gardner, the chair of the Toronto Police Services Board, endorsed and appears to advocate the utilization of police surveillance without giving any qualifications as to what gets somebody on the surveillance list or what gets you off, if indeed you aren't involved in anything illegal.

My suggestion to you is that any act which would be a terrorist act would have to, in and of itself, be a criminal act or an offence against some other statute. The legislation in that respect, the definition, in my view, of "unlawful activity," and the attempt to make it very broad—there was criticism, and Alan Borovoy was one of the critics who came here and used the illustration of the Sunday shop owner, querying whether he should be at risk of losing all of his profits. As I recall, there was one furrier in Toronto who did, for all intents and purposes, lose all of his profits as a result of Sunday shopping prosecution, but that's a different story.

I'm not happy, not comfortable, not pleased, and I appreciate the interest in importing the discussion about the fight against terrorism into this debate. But regrettably—because I usually find myself interested in creative amendments and eager to support them, sometimes knowing full well that they're not going to pass because the government has signalled to its members that it's not going to pass. I have to tell you again, I'm very uncomfortable, I'm not happy at all about flying the flag of anti-terrorism in the context of this debate. Has the government done it? Yes, the government has a number of times, I suppose most recently with its amendments to the Vital Statistics Act, the birth certificate legislation that Norm Sterling put forward. The New Democrats don't support the Liberal motion. They similarly don't support section 2 as it is contained in the bill. Again, this is where I agree wholeheartedly with Mr Bryant in terms of the overbreadth: the Trespass to Property Act, and any number of the most modest of things that constitute—Highway Traffic Act offences, however bizarre.

Your squeegee kid bill—think about it—by virtue of section 2 could become an activity. If I'm squeegeeing and accumulating whatever—this is silly; this is what Alan Borovoy is trying to illustrate. A squeegee kid who picks up 50 bucks on a really mucky day at the end of University Avenue would fall within the scope of this bill: unlawful activity, prima facie against the law, I suppose, until we see the progress of the challenges to the squeegee bill in the courts—prima facie illegal. Is the government serious that it wants to dedicate resources, or even contemplate dedicating resources, to seizing the assets of a homeless kid or adult who is a street panhandler? I think not. I would hope not. But it appears, by their adamancy about and their ongoing support for section 2, that's the way the law reads.

I understand what Mr Bryant is trying to do. I regret that I cannot agree with him and will not be supporting the amendment in that regard. At the same time, I won't be supporting section 2 when we get around to that. Sorry, Mr Tilson, I didn't want to leave you all broken up.

Mr Tilson: We are getting back to the good old days where we have three different views. It's good to hear.

The debate seems to be moving a lot into dealing with the September 11 horror. That may be appropriate, this being part of one of the many things the government is looking at. But we've got to remember, of course, that this philosophy was around a long time before September 11. It was around in Bill 155. We had substantial public hearings here. We've had debate in the House. It goes beyond terrorism but, certainly, as I've indicated before, it applies to terrorism. Having said that, I'd like specifically to look at the amendment, which is a much more narrow philosophy than the government's philosophy, which is certainly broader. The existing definition of unlawful activity is broad. It is designed not only to deal with offences within Ontario but within Canada and in fact with property that has migrated to Ontario from another jurisdiction outside of Canada—it could be another province, it could be another country—where there are similar offences.

The Ontario government doesn't want to become a haven for offshore proceeds of unlawful activity. The government's definition, which is why the government will be opposing the proposed amendment, is carefully prepared so that Bill 30 doesn't cover breaches of the law in other jurisdictions which are not breaches of the law in Ontario. That's the philosophy of the government's definition of unlawful activity.

We believe that Bill 30, as we've stated, creates civil remedies to address unlawful activity. In particular, we want to compensate and assist victims. We've got to keep remembering that that's one of the major reasons we are doing all this: to assist and compensate victims.

1630

This motion of Mr Bryant's proposes a fixed definition, a static definition, of "unlawful activity." It's what

is in the schedules that he has attached. Those who undertake unlawful activity for profit—we've seen it in the courts—are always looking for loopholes in the law. We believe this motion creates a number of loopholes.

The list is not complete. For example, it doesn't include, returning to the topic of terrorism, which specifically Mr Bryant has been bringing up, the United Nations Act. It's federal legislation. The United Nations Act was used by the federal government to freeze the accounts of terrorists in the aftermath of September 11. It doesn't include that piece of legislation. So Bill 30, if the amendment were to carry, would not apply to proceeds in that situation. The challenge of the static list is that it makes it impossible to anticipate the loopholes, which I believe—I'm sure we all agree—the bad guys are always trying to exploit. You have to try to anticipate. If you have a set of laws in a schedule that you're following to a T, what about future laws that are going to be introduced by the federal government, that are going to be introduced by the provincial government? Who would have thought—

Mr Bryant: Read the section.

Mr Tilson: I am reading the section.

The Internet—who would have thought 20 years ago of the role the Internet plays? I guess you can say this schedule is fine now, but is it going to be fine five years from now? Is it going to be fine 10 years from now, or are we going to have to come back to the House and amend the schedule?

For those reasons—and there were some comments made about funding. I disagree with that. I could outline what we have done with the 2000 budget to challenge those comments, but perhaps we could proceed on other sections.

The Vice-Chair: Are there any further comments?

Seeing none, I'll put the question on the amendment. Shall the amendment moved by Mr Bryant carry?

Ayes

Bryant, McLeod.

Nays

Beaubien, Hastings, Kormos, Ouellette, Tilson.

The Vice-Chair: The amendment is defeated.

We'll be proceeding now with section 2. Any comments on section 2?

Mr Kormos: As I indicated in my comments on Mr Bryant's amendment, section 2 remains unacceptable. It's overly broad.

I understand Mr Tilson's explanation, but that's exactly the point. This bill sets up the incredible resources that the state can muster against, conceivably, one little person. Again, if it was only guilty people who got arrested, if there could be an assurance of that, we'd probably have a far different view. If there was somehow some sort of mystical, magical way that only guilty people who definitely committed those offences got arrested, we'd probably have a far different view about process in the criminal system. If we knew that it was only going to be the most despicable of big-time drug traffickers—Howard Hampton had some very astute things to say on this when he reflected on the American experience.

Who gets targeted in these schemes? That's no discredit, I suppose, to the scheme itself, assuming that there's an adequate standard of proof that the state has to bear. But it is not the big guys. It is not the cocaine baron with his or her mansion in the hills of Cali or Medellín; it is the dumb dealer in any number of communities in the province, who may have made some significant money; no two ways about it. That's one of the big motivators for selling dope. But it is the little people out there in the total scheme of things, the seizure of whose assets doesn't even begin to make a dent in what I concede has been some incredible wealth generated, let's say, with dope and drug marketing in and of itself.

It is of little comfort for the parliamentary assistant to talk about the need not to be overly restrictive and the need maybe to have to come back to this legislation five years down the road when in the course of what he wants this bill to implicate in terms of who's eligible for having their personal property or chattels seized is somebody whose illegal conduct could be as obscure as, literally, a jaywalking ticket, a violation of the Highway Traffic Act, crossing the road against a red light or a stop sign.

That is not very comforting when you maintain the low standard of the mere civil balance of probabilities and when you're talking about the prospect of the state using all of the huge number of resources available to it to focus in on and target one tiny little person for whom the connection, the nexus, between himself or herself and this bill is literally a Highway Traffic Act violation. That's the foundation, that's the starting point—and a Highway Traffic Act violation that doesn't even have to be proved in a provincial offences court, because there needn't have been a charge laid to trigger proceedings under this bill.

New Democrats do not support section 2. We've relied very much on the astute comments made by Alan Borovoy, from the Canadian Civil Liberties Association. I refer specifically to his comments. His criticism in reference to this bill states,

"It defines 'unlawful activity' as any offence against any federal or provincial statute. Do you really wish, for example, to be able to seize the profits of a merchant who stays open in violation of Sunday closing laws? The bill would enable you to do precisely that. In our view, there is no excuse for an overbroad definition of that kind. The definition of 'unlawful activity' for these purposes should be confined to the most serious offences associated with organized crime and not just open it up to anything."

We accept Alan Borovoy's observations with respect to section 2 and other sections which similarly define unlawful activity. I join with them. They are valuable comments. His observations guide us in our firm position in opposition because of the dramatic, overbroad definition of unlawful activity in section 2.

Mr Tilson: We've had this debate out in the past too. That is the position of the Canadian Civil Liberties Association. We don't accept any level of unlawful activity. I guess I can only remind members of the committee that whether it is Sunday shopping or Bill 30, the Attorney General brings a proceeding. The court—and I hope we all have confidence in the court—has got to approve every step that the Attorney General takes. The Attorney General just can't come in and do this or that; they've got to go to the court and they've got to get approval to do things. That's all laid out.

That's the answer that we gave to the civil liberties association. It may not be acceptable, but we believe it is. We believe that the court can say no to the Attorney General if it's clearly not in the interests of justice, and that's what the section in the bill says. I won't add anything further, because we've got a lot of ground to cover.

1640

The Vice-Chair: Any other comments?

Mr Bryant: Yes. I just want to say, with respect to section 2, this is an opportunity for the government. I understand that the optics of supporting a Liberal amendment, I guess, are beyond the pale for this government, but we will not support section 2, for the simple reason that we want the government to go back and take a closer look at the unlawful activity section. I'm not going to repeat my arguments with respect to the amendments. I'll have an opportunity to address some of Mr Tilson's comments in subsequent sections. Now is the time to get this section right, and now is the time to make sure this section applies to terrorism and doesn't apply to the beekeepers' act, so that, fine, we can trust a judge to come up with the right resolution. But that's a big waste of the Ministry of the Attorney General's money, to roll that dice.

The Vice-Chair: I'll put the question now on section 2.

Mr Kormos: A recorded vote, please.

The Vice-Chair: A recorded vote.

Ayes

Beaubien, Ouellette, Tilson.

Nays

Bryant, Kormos, McLeod.

The Vice-Chair: I think this will require the Chair to vote.

Mr Kormos: May I speak to that, please?

The Vice-Chair: I think we are in the process of voting.

Mr Kormos: There is precedent. I'd ask that the Chair avail itself of that precedent.

The Vice-Chair: I am aware of the precedent.

Mr Kormos: You are now.

The Vice-Chair: I had actually reviewed the precedent before, with the clerks.

Mr Kormos: Unless the Chair wants to demonstrate courage rarely seen—

Mr Tilson: Mr Chair, we're in the middle of a vote.

The Vice-Chair: The Chair votes yes, to carry the section.

On sections 3 to 6, there appear to be no amendments. Can we deal with sections 3 to 6 together?

Mr Kormos: One moment, Chair.

The Vice-Chair: Is that OK? Any comments on section 3 to section 6?

Seeing none, shall sections 3 to 6 carry? Carried.

Section 7: are there any amendments on section 7?

Mr Bryant: On subsection 7(1), I move that the definition of "unlawful activity" in subsection 7(1) of the bill be struck out and the following substituted:

"'unlawful activity' means an act, conspiracy to act or omission, whether it occurred before or after this part came into force, that is an offence,

"(a) under an act of Canada or Ontario that is listed in the schedule,

"(b) under an act of another province or territory of Canada, if a similar act, conspiracy to act or omission would be an offence under an act of Ontario that is listed in the schedule if it were committed in Ontario,

"(c) under an act of Canada or Ontario not listed in the schedule or under an act of another province or territory of Canada that would be an offence under an act of Ontario not listed in the schedule if it were committed in Ontario, if the offence involves,

"(i) terrorism,

"(ii) threat of violence,

"(iii) possession of a weapon,

"(iv) hateful communications directed at an individual or identifiable group of individuals,

"(v) stalking, besetting or intimidation,

"(vi) causing a person or persons to reasonably fear for their safety, the safety of another person or persons or property,

"(vii) interference with lawful activities or the lawful use of property without reasonable justification, or

"(viii) interference with a computer or telecommunication device without lawful authority,

"(d) under an act of a jurisdiction outside Canada, if a similar act, conspiracy to act or omission would be an offence under an act of Canada or Ontario that is listed in the schedule if it were committed in Ontario, or

"(e) under an act of a jurisdiction outside Canada that would be an offence under an act of Canada or Ontario not listed in the schedule if it were committed in Ontario, if the offence involves any of the activities listed in subclauses (c)(i) to (viii). ('activité illégale')"

Mr Jerry J. Ouellette (Oshawa): On a point of order, Mr Chair: Is this motion valid, as we have already defeated the motion in section 2 whereby it requires each section to have the same information throughout the bill?

Mr Kormos: Lawyers love bills that don't have compatible sections. Where did you read that?

The Vice-Chair: I understand from legislative counsel that it is a valid motion.

Mr Bryant: Notwithstanding the efforts to gag my speech by that great civil libertarian Jerry Ouellette, let me say that I am not going to repeat the same arguments as before with respect to the other section. They apply mutatis mutandis to this one, but this is another chance for the government to reconsider.

I want to respond to what Mr Tilson said. He said, "What about the schedule? It's not exhaustive. Maybe the UN bill would not apply," to which I suggest to the members, read the full section. Besides the schedule, there are also sections (c), (d) and (e), which set out types of offences which are obviously analogous to the crimes and offences found in the schedule. In particular, the suggestion was that extraterritorial crimes, in other words crimes committed outside of Canada, which right now might be prosecuted under the legislation omitted from the schedule, could not be prosecuted under Bill 30. That's just not accurate, because (e) specifically deals with offences outside Canada.

Lastly, if the government has additional laws which it wants to add to the schedule, as I said in my opening comments, I would love to add additional matters to the schedule. Yes, getting legislation focused requires some hard work, and of course it's easy to come up with a blanket term and have it apply to everything. Yes, the Liberal amendment would be more focused, but it would also avoid the creation of a patchwork of laws across this country whereby you would have Ontario crowns pursuing civil remedies against the retailer selling his wares contrary to Sunday shopping laws, violations of the beekeepers' act, to which Mr Tilson says, "Well, that's OK. A judge will fix that." A judge will fix that, but given that the Ministry of the Attorney General has less to spend now than they did before and will need to spend more in order to cover off these new civil remedies, I say let's get this bill focused on organized crime and terrorism and not on these other activities that have nothing to do with organized crime and terrorism. I'm concerned that you'll have some provinces going after some remedies, the Ministry of the Attorney General civil office going after one remedy when the criminal office might think that that not happen, and we still have not got any clarification on that point.

Lastly, again, if there is a way in which this section, which is itself extremely broad, the amendment that is—so broad that my friend Mr Kormos cannot support it, notwithstanding his desire to support creative amendments. It's too broad for Kormos. I'm saying that "unlawful activity" in and of itself does not do justice to what this bill is trying to do, and I would urge members to reconsider the arguments made by Mr Tilson, which in fact don't apply if you actually read the section, which I know is asking a lot maybe, but you've had it since Friday. You can bring in offences not in the schedule under this new amendment. C'est tout.

1650

Mr Kormos: Because this is the identical amendment to what we debated a few moments ago—

Mr Bryant: Right.

Mr Kormos: —I made it clear that I welcome the effort to restrict the overbreadth of the bill as it is in section 2 that was criticized by Mr Borovoy. I also indicated I found the inclusion of terrorism as one of the objectives to be very regrettable from my point of view, and that's again not to say that anybody shouldn't be joining in the fight against terrorism, but it's an undefined word.

One could argue that it's obvious when terrorism is terrorism. I would respond that it wasn't obvious before September 11, because the attack on the World Trade Center was not anticipated; at least it wasn't part of the North American experience vis-à-vis terrorism, indeed even internationally. I suspect it stands alone and unprecedented in history in terms of the height of the level of devastation and the number of people killed in, candidly, what amounted to such a low-tech way. Perhaps our anticipations were far more science fiction-dictated regarding where we in prosperous North America might find ourselves vulnerable.

My position is that the language included here has nothing to do with participating or co-operating in the goals of the bill. Once again, I want to make it very clear that New Democrats are quite eager to agree and work on schema that take money away from organized crime, take their assets away. We say the way to do it is to utilize the Criminal Code and its standard of proof beyond a reasonable doubt to safeguard innocent people. We say the way to do it is by adopting, as Alan Borovoy suggested, a clear set of offences which are the more serious offences and, as he put it, those offences most frequently associated with organized crime, again so that there's some focus to the bill.

Let me, please, put into context what it means now to bandy about the word "terrorism." I'll be very brief, and I put this as an illustration, especially in the context of the anticipated federal amendments to the Criminal Code, which every person appears to agree are some pretty draconian measures, some pretty thorough encroachments on long-held senses of civil liberties, civil freedoms.

One of the conditions that September 11 has created is the opportunity to simply target people and say, "Oh, I don't like the way my neighbour sounded last night, speaking a language other than my own. I think I should report them. They might be terrorists." There's a climate that facilitates that. Is it accurate to say, "Oh, nobody would do that"? Well, no, we've witnessed some pretty atrocious conduct on the part of, yes, Ontarians, including people in other jurisdictions in North America, against any number of religious places, against any number of people of certain ethnic and cultural and racial backgrounds.

Chair, I think you know that I was on, effectively, a human rights tour of Colombia in August. Last week, Diane Francis condemned the group that went there, under the name of the Canada-Colombia Solidarity Campaign—Minga, which is an aboriginal word—condemned

us all in one fell swoop as being fronts for terrorist organizations. I reject that entirely and am prepared to engage in the debate with her on that. But when that happened, when you see a newspaper columnist in the National Post in the climate of what we are enduring post-September 11 in the prospect of some very draconian Criminal Code changes, some incredibly draconian Criminal Code changes, it illustrates how easy it is and how careful we should be about tossing around the label "terrorist" or talking about what constitutes or doesn't constitute terrorist activity.

I don't believe that the addition of "terrorism" here as a qualifier adds anything, either in terms of giving the bill more focus, which is one thing I would want out of an amendment to section 2, or in making the bill more specific. My fear is that it again responds to the climate that we're in currently, and it does so in a way that rather than being cautious about whom we point the finger at and whom we target, it shows, in my view, a lack of caution. That may not have been its intent, but it shows a lack of caution. However romantic it is to rally around the forces of good, and however valid the pursuit of stamping out terrorism is, and I think everybody agrees to that fundamental proposition, we've got to be very, very careful about what type of—what does the military call it?—collateral damage is left along the wayside. We've already seen some of that collateral damage in our own communities here in southern Ontario, and we've heard reports of it from other jurisdictions in North America. I tell you, that collateral damage is as frightening, and the victimization of people in that context is as frightening, as the terrorism itself. That's where terrorism has taken us, where we no longer have to be merely afraid of the terrorists, whoever they might be at any given point in history, but we have to be afraid of our neighbours too, because they can turn us in or misidentify us, or identify us out of malice or out of pure ignorance. Our places of worship can be subject to physical attack, or our spouses because they wear head coverings.

I've spoken with Muslim women who are now afraid to come out of their homes in Toronto because of the reaction they get for wearing traditional head coverings. As Muslims in Toronto, they're afraid to come out of their homes. Look what the terrorists have done to us. If that is what they are in fact doing to us, then the impact of that terrorist attack is far beyond the initial huge and unfathomable tragedy of 6,000 slaughtered in one brief moment. My concern is that we are being lured by the magnetic draw of that whole matter into turf in this bill that, as I say, I find at the very least regrettable.

I cannot support this amendment, again, for the same reasons as last time.

Mr Tilson: The government will be opposing this amendment as well. I won't add to what I said with respect to the first motion, other than to respond to the comment that the way the government's phraseology is prepared will create a patchwork application across the country. I'd like to respond to that. As we know, Ontario is the only jurisdiction in the country that has this type of legislation, or its equivalent. We're not creating the wheel here; we're not reinventing the wheel. I indicated the different jurisdictions, whether it be Ireland, whether it be Australia, whether it be South Africa—the legislation being passed there is similar. I simply can't accept the comment that it will be patchwork legislation.

Really, to be fair, in any form of legislation, the government of Ontario has the right to be tougher than another province; it has the right to be more compassionate than another province. The situations may differ from province to province, or they may just choose for philosophical reasons to be tougher or more—I'm trying to think of something softer, another word. They have that right.

I won't repeat the arguments we made with respect to the first motion. They apply to motion number 2 as well.

The Vice-Chair: If there are no further comments, I'll put the question on the amendment.

Mr Bryant has moved an amendment to subsection 7(1). Shall the amendment carry? The amendment is defeated.

Mr Bryant: Recorded vote.

The Vice-Chair: I think you have to ask for a recorded vote before I put the question.

Mr Bryant: I guess you didn't hear me. I did ask for a recorded vote. I always do. Mr Kormos taught me. I'll speak up next time.

The Vice-Chair: Let's have a recorded vote.

Mr Kormos: Chair, sometimes it's difficult, and different Chairs, quite frankly, adopt different styles as to when they expect—because the rules, if you've read them, as I have, are a little ambiguous about the point at which one calls for a recorded vote. There have been a couple of interpretations over the course of many years here.

1700

The Vice-Chair: Thank you, Mr Kormos. We'll have a recorded vote on it.

Ayes

Bryant, McLeod.

Nays

Beaubien, Hastings, Kormos, Ouellette, Tilson.

The Vice-Chair: The amendment is defeated.

Now we will deal with section 7. Are there any further comments? I will put the question then. It's a recorded vote.

Ayes

Beaubien, Hastings, Ouellette, Tilson.

Nays

Bryant, Kormos, McLeod.

The Vice-Chair: Carried.

Sections 8 to 12: there are no amendments. Is it the pleasure of the committee that we deal with those sections together? Agreed?

Mr Kormos: Eight to 12, exclusive of 12.

Mr Tilson: Eight to 11 inclusive.

Mr Kormos: There is an amendment to 12.

The Vice-Chair: That's correct. Sections 8 to 11. Are there any comments on those sections?

Seeing none, shall sections 8 to 11 carry? Carried.

Section 12: there is a Liberal motion.

Mr Bryant: I move that the definition of "unlawful activity" in section 12 of the bill be struck out and the following substituted—I don't know if it is appropriate to dispense with the remainder.

Mr Ouellette: Dispense.

Mr Bryant: Do I need to read it?

The Vice-Chair: If there is unanimous consent, we can dispense.

Mr Bryant: In terms of my comments, we've spoken to this and I do have a different set of concerns with respect to subsection 13(4.1), but I think we've already addressed the unlawful activity amendments.

The Vice-Chair: If there are no further comments on the amendment, would you require a recorded vote?

Mr Bryant: Oh, yes. Thank you.

Ayes

Bryant, McLeod.

Nays

Beaubien, Hastings, Kormos, Ouellette, Tilson.

The Vice-Chair: The amendment is defeated.

Are there any comments on section 12?

Seeing none, shall section 12 carry?

Mr Kormos: Recorded vote.

Ayes

Beaubien, Hastings, Ouellette, Tilson.

Nays

Bryant, Kormos, McLeod.

The Vice-Chair: Section 12 carries.

There is a Liberal amendment to section 13.

Mr Bryant: I move that section 13 of the bill be amended by adding the following subsection:

"Same

"(4.1) An order made under subsection (1) shall impose a penalty,

"(a) that acts as a denunciation of the unlawful activity;

"(b) that acts as a general deterrent against committing offences;

"(c) that provides reparations for the injuries to the victims and to the public that resulted from the unlawful activity;

"(d) that promotes a sense of responsibility in the parties to the conspiracy and an acknowledgement by them of the injuries to the victims and to the public that resulted or would be likely to result from the unlawful activity; and

"(e) that is proportionate to the unlawful activity by taking into consideration,

"(i) the injury to the victims and to the public that resulted or would be likely to result from the unlawful activity,

"(ii) the gravity of the offence that constituted the unlawful activity, and

"(iii) the degree of responsibility of each party to the conspiracy against whom the order is made."

The Vice-Chair: Are there any comments on this amendment?

Mr Bryant: This section attempts to ensure that there is proportionality and that the appropriate considerations are made with respect to an order under section 13. Why am I concerned about proportionality? As I said, once the J. Edgar Hoover clause was removed from Bill 155 under the new Bill 30, the official opposition supports this bill. I want this bill to stand the test of time. We heard from the Advocates' Society and from Mr Borovoy, who did not make any blanket condemnations against the bill in terms of its being upheld to charter scrutiny, but rather raised some very specific concerns, one with respect to federalism and whether there was perhaps a conflict between what the Criminal Code provisions were doing and what this provision is doing.

It probably can withstand that federal scrutiny under the Constitution Act, 1867. It would have been nice, with all due respect, to hear from Mr Tilson, either before or during that debate, so that we could have talked about the analogous cases where the provinces were basically also entering federal territory, one of the strongest analogies being the area of drunk driving. Provincial and federal governments both legislate in the area, and it seems sometimes that the penalties conflict, but the courts have tended to uphold it. Still, the Advocates' Society did raise concerns about that.

Secondly, proportionality under the charter—again, the concern would be that a violation of the beekeepers' act would result in the seizure of somebody's home, which nobody here would support for a moment. I know that the response of the government is, "Well, a judge wouldn't allow that," to which I say, of course, but why would we not put forth standard proportionality tests in this bill? Does it mean a little bit more work for legislators? Yes, it does. It does mean a little bit more work. But it also means that it has a better chance of standing the test of time and that we don't have an instance where law enforcement officials or prosecutors are pursuing a case in a way we don't want it to be pursued.

We want a proportional use of the Attorney General's resources and the Solicitor General's resources to crack

down on organized crime and to use Bill 30 to crack down on terrorism and organized crime because that's the purpose of this bill. We don't want it to be cracking down on the beekeepers' act or the Sunday shopping laws. That's what we want. But unless you put that in the legislation in some fashion, both through defining of unlawful activity on the one hand and ensuring that a just order under this bill is proportional on the other hand, then you run that risk. We aren't judges here, but we can tell the courts what the parameters of a proportional order are.

This becomes particularly important when we consider that we want to send a signal to law enforcement officials, to the Ministry of the Solicitor General and to the Attorney General's office that only certain kinds of activities are going to warrant Bill 30 remedies to target organized crime. That's the purpose of this section on proportionality. Why am I concerned about that? We heard from people involved in prosecuting organized crime; in particular, Roddy Allan, principal at Kroll Lindquist Avey, a forensic accounting firm. On February 20, he said: "It has to be kept in mind that linking property with an unlawful activity can be a difficult and costly task, one which police are not going to take on unless they are given the resources. Organized crime makes use of sophisticated expertise. Police will need training and access to costly outside experts. Victim compensation and support of police are two obvious applications of seized assets."

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Vaughn Collins, deputy commissioner, speaking for the Ontario Provincial Police, said, "The cost to the OPP of dealing with organized crime and, in particular, of enforcing this new statute"—he of course meant bill—"will have to be met."

We don't want fishing expeditions to be undertaken. How do we ensure that? Because I know that's what we want. We craft language, and again I invite members of the government and the third party to come up with any amendments they wish which can assist in making this section more charter-proof, more federalist-challenge-proof and ensure that the resources are directed in the proper direction, particularly given earlier comments with respect to the use of the federal tools made by Professor Margaret Beare.

Let me close by just making reference to the debate we're having on the patchwork of laws. Again, this particular amendment speaks to it as well.

I could not agree more that to some extent provinces have been referred to as "laboratories of democracy." Provinces can lead in some areas, and lead the nation in terms of tools or policies, and other provincial governments or sometimes the national government follow. But fighting terrorism is going to be difficult under our current system of federalism because we cannot have a patchwork of laws. Why? Because the terrorists will just move to wherever it's friendly. Does that mean that we just put tools down and not lead the country? Absolutely not. I'm not suggesting that.

However, if we don't have proportionality, if we don't have all of our resources going toward the fighting of organized crime and terrorism in the prosecution of this bill, then we are going to have situations where the federal crown in one province is going to be pursuing the Criminal Code seizure-of-assets test, whereas the Ontario government's going to go its own way and not do so.

Ordinarily that's OK, because there is variable prosecution in different provinces and there are different levels of resources expended and some governments are, to paraphrase Mr Tilson, tougher on crime, if you like, than others. However, the war against terrorism on an international level involves a multilateral effort; so does it involve a multilateral effort here at home, which is going to require the provincial and federal justice ministers to work together like they have never worked together before, and I include the Solicitor General in that regard.

I'm not suggesting that Ontario cannot lead, but we have to ensure that this law is being used for its purpose and not for other purposes, lest the scarce resources in the Ministry of the Attorney General be directed toward prosecutions that we don't think are the purpose of Bill 30.

Mr Kormos: This is a very interesting amendment. Once again, Mr Borovoy, when he appeared in front of this committee with respect to this bill's predecessor—and I suppose a wink is as good as a nod, because he both winked and nodded to us—said that, "Since the federal Criminal Code already contains provisions very similar to the ones at issue here, there are of course some serious constitutional questions as to whether the province has the jurisdiction to enact the bill at issue." He then went on to say, basically, "Excuse me, but we're not mandated to talk on constitutionality so I'll speak no further, but I trust you've heard what I've said."

This amendment, and I'm looking at the language, "shall impose a penalty." It's mandatory, and it's defined as a penalty. Then it uses two of what I understand to be historic and traditional sentencing guidelines applicable in criminal law, "denunciation" and "general deterrent," and then incorporates—although this isn't exclusive to criminal law—proportionality, but it's an inherent of classic sentencing. If this bill were in dubious positioning vis-à-vis its constitutionality, with all due respect, this amendment would clearly create a quasi-criminal statute out of it.

Mr Bryant: Now for sure Ouellette's going to support it.

Mr Kormos: That will be interesting then, won't it, Mr Bryant? But do you understand what I'm saying?

Mr Bryant: Oh, I understand.

Mr Kormos: It's very interesting. I understand what you're saying, but holy moly, with this amendment you've driven this right into the turf of what I see is exclusive criminal jurisdiction. You may be wanting to equate penalty with, let's say, the concept of punitive damages, and you'd understand more about that than I would because I have no expertise in that area of law.

But when the penalty talks about a penalty that acts as denunciation and general deterrence, you then take it beyond the mere scope of what I understand to be punitive damages in the civil sense.

I think this again a most interesting amendment. I understand your injection of proportionality is quite appropriate, because there you're being restrictive in terms of what you're saying the judge can do, and that he has to be proportionate to the evil, I suppose, or whatever the language is that's being dealt with.

Clause (d) is almost whimsical, I suspect. We're supposed to be talking about organized crime here, not youth intervention services. You've got clause (d) that promotes a sense of responsibility in the parties to the conspiracy. What? You're going to get the big, super capo di tutti capi drug dealers and all of a sudden you're going to overwhelm them with their sense of responsibility to the community and they can say they're sorry and they didn't mean to import all that cocaine and get all those Toronto teenagers eating ecstasy at raves? It just seems out of place here and, if anything, it detracts from the message of the bill. The government has been trying to say this bill is all about the big bad guys, right? And that's how they dismiss—they say, "Don't worry. The courts will make sure that the people who have been contemplated, either innocent victims or tiny little players, won't be caught up in the sweep," and they've tried to assure us of the courts' role. So (d) is just, I suppose, interesting.

What I'm saying to you, with respect, is the bill isn't made any better by your amendment. I don't believe it is. I just can't see myself supporting it without some—I'd like to hear what the parliamentary assistant has to say. I'd be more excited about what the staff have to say about the amendment. I suppose perhaps we could put it to the staff. They've had the amendment since Friday. Because if I'm dead wrong on the constitutionality and the importation of criminal standards, say so, but is there any concern among the staff and from Mr Tilson—I of course want to hear what he has to say, because I trust his judgment in so many things legal.

Mr Tilson: Indeed. If the committee wants to hear from the staff, I'm quite prepared to make them available. I will say that from the government side we agree on what you're saying—well, almost everything that you're saying—that penalties are consistent with criminal law processes.

Mr Kormos: The nationalization of the big banks wasn't part of the agreement, I take it.

Mr Tilson: Right. Certainly, penalties are consistent with criminal law purposes. I'm not going to repeat your argument, because that aspect of your presentation I agree with and I think we're getting into the realm of criminal law.

Mr Kormos: As if you weren't in there far enough with the bill itself.

Mr Tilson: I'm not going to go that far in agreeing with you, Mr Kormos, but I am going to say that your reason for opposing it is quite legitimate. Now, if you still want to have members of the staff come, Mr Simser, who spoke to the committee before, is here. Would you like him to—

Mr Kormos: He's a really smart guy.

Mr Tilson: Indeed. Maybe you could identify yourself again, Mr Simser.

Mr Jeff Simser: Sure. I'm Jeff Simser. I'm a legal director in the Ministry of the Attorney General. As I understand your question, to have a section that introduces the word "penalty," while no one can ever definitively give a constitutional opinion from this particular chair and this particular microphone, I think is problematic. When we think about civil remedies, we think about damages, we think about punitive damages, we think about orders, but to talk about penalties and about purposes like denunciation and so on and so forth in a section like this is constitutionally problematic.

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Mr Bryant: Could I ask a question? Are you saying that the section as it now stands, without any proportionality test whatsoever or anything within this bill, is not problematic at all in terms of its constitutional status?

Mr Simser: The section actually does have a provision that will allow a court to make a decision on proportionality when it reviews. What 13(1) says is, "In a proceeding commenced by the Attorney General, the Superior Court of Justice may make any order that the court considers just." So if the Attorney General were asking the court to make a disproportionate order, presumably the court could find that that was not just and could refuse on that basis without getting into any of the specific elements of the proceeding.

Mr Bryant: But I just want to ask you, though—here you've come forward and questioned the constitutional status of the amendment with all the caveats that you provided. You made that statement. Does the same hold, in your opinion, for the bill itself? You said that this amendment is problematic. Does Bill 30 not have some provisions in it that are themselves problematic vis-à-vis the Constitution Act, 1867?

Mr Simser: We take the view that it doesn't. We take the view that this is a proper way to deal with property and civil rights, which is a proper head of power. We take the view that throughout the statute there are safeguards where a court may refuse to issue an order, where for example it is clearly not in the interests of justice. In other words, you could have the Attorney General making every single element of a proceeds proceeding, but because it is a de minimis proceeding, the court could still refuse to make the order even if technically the Attorney General were there. We think that the right safeguards are there in the bill. I think Mr Tilson has referred before to the other jurisdictions. These same arguments have gone on in courts in other jurisdictions, particularly in Ireland. While the argument isn't about 91 and 92, it comes to the same argument because the state is asking in those courtrooms to apply the civil standard, and the defence is saying, "No, you ought to apply a criminal standard." The courts have said,

"No, the civil standard is appropriate to deal with property in these kinds of provisions."

Mr Bryant: There are, presumably, in other statutes in Ontario efforts to make remedies defined as more than just being "just" but also to include some element of a test of proportionality. Such bills are out there, are they not?

Mr Simser: I'm not sure that I totally understand your question.

Mr Bryant: Would this be the first time an Ontario bill ever considered circumscribing what a "just" order is to a court?

Mr Simser: I'm not sure, to be honest with you.

Mr Bryant: I appreciate that, Mr Simser, Mr Tilson and Mr Kormos. If the government, which has had this section for the weekend and/or if Mr Kormos, who has had it for the weekend, wishes to move amendments to this amendment, I'm obviously very open to that.

Vice-Chair: If there are no more comments on the amendment I'll put the question.

Mr Bryant: Recorded vote.

Ayes

Bryant, McLeod.

Nays

Beaubien, Hastings, Ouellette, Tilson.

Vice-Chair: The amendment is defeated.

Now we are dealing with section 13. Are there any comments?

Mr Bryant: Just to say we don't support this section for the simple reason that—with respect, I want to agree to disagree, Mr Tilson—to suggest that there is any element of proportionality under section 13 I think is inaccurate. To say that describing an order as a just order will miraculously turn it into a proportionate order has an air of unreality to it, and that further effort to circumscribe the proportionality could have been undertaken. It was undertaken by the Ontario Liberals. That was rejected by the government and the NDP without any remedy put forward to the contrary. So we will not be supporting section 13 as it stands.

Vice-Chair: I'll now put the question on section 13. Shall section 13 carry? Carried.

There are no amendments to section 14.

Mr Kormos: Sections 14 and 15 can be dealt with, Chair.

Vice-Chair: All right. Shall we deal with sections 14 and 15 together? Are there any comments on those sections? Shall sections 14 and 15 carry? Carried.

Section 16: are there any comments on section 16?

Mr Kormos: As Mr Tilson anticipated and indicated, this is very much the crux of the issue, or at least one of the bigger cruxes of one of the bigger issues around the bill, and that is the utilization of the balance of probabilities. I remind this committee once again of the comments made by Alan Borovoy from the Canadian Civil Liberties Association, observations and analysis on his part that I accept, that I value, that I'm grateful for and that I join with. Mind you, he did say initially that there is very little in this bill that's worthy of enactment. I accept that as well. But he very specifically spoke to, as his first focused criticism, the matter of the standard of proof, the balance of probabilities versus the criminal standard of proof beyond a reasonable doubt.

Look, how much of even recent history do we have to revisit from our own criminal justice system to understand that even with that high standard of proof beyond a reasonable doubt, there are more than a few now well celebrated and notorious bad convictions that have been exposed? In view of those having been exposed, all of them very serious convictions, how many lesser faulty convictions are there that haven't been exposed because they haven't attracted the same attention by lawyers, by advocates, by the media and so on?

Notwithstanding that, proof beyond a reasonable doubt is a significantly higher standard. It is what we use to convict people of criminal offences. We are talking about criminal activity here. We are talking about criminal activity as a basis on which to take people's assets from them, their property, things they own: their homes, their bank accounts. As Mr Borovoy points out, literally, there are no exceptions here to what can be seized: their library, their books, their clothes. Mr Borovoy said, "What is not acceptable, in our view, is, as between alleged perpetrators and alleged victims, for the power and the resources of the state to be marshalled against one in favour of the other on the basis of a judgment made at the political level, and then for the state to have to do nothing more than prove its case on a balance of probabilities." Again, I value that commentary by Alan Borovoy and the Canadian Civil Liberties Association.

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I understand those who would criticize his position. Would it be much easier for the state to pursue its goals with this low standard, the balance of probability, than it will be with proof beyond a reasonable doubt? Of course it'll be much easier. But that's the whole point. Not only did we hear the very learned and capable commentary of Mr Borovoy, we heard from Ms MacDonald, who spoke in a very personal way about her very personal situation. She is the spouse of, as she acknowledges in her evidence, a former, if you will, mobster who she says has gone straight. But at the end of the day what she was trying to relate to this committee was that she perceived herself as somebody who could be in danger, put at risk, by this bill with its low standard of proof. She gave several illustrations in her own personal life of real-life events as a result of the surname she acquired upon marriage. She also expressed her real fear, personally and I think very genuinely. It was a very valuable contribution. You don't find that many people who are going to come forward with the story she had to tell to this committee.

I get back to the need for any Legislature to protect the interests of the innocent. I don't think it's a balancing act.

Safeguarding innocent people is a sufficiently worthy goal. When you talk about criminal conduct, because that's what we are talking about here, the same standards used to determine criminal culpability should be used to determine whether or not somebody has committed a crime. That's why the standard is there, to protect the innocent, not to make it harder for police.

When we are talking about the capacity of the state to rally all of its huge resources, should it choose to, against one little person, with the incredible limitations, with this unlimited scope, this is where I had sympathy with the Liberal amendments that tried to limit the scope of the offences. I understood their purpose but I had some concerns about other elements of it. You know, a crime of any stature or status, a municipal bylaw, can provoke, prompt an attack, an assault upon a resident, a person in this province under this statute. That can provoke it. That can be the groundwork, the rationale for it.

We do not, cannot, live with this standard of proof. Our objections were made very clearly in the last round in committee hearings. We moved numerous amendments, the Liberals did too, and the response of the government has been very clear. We very specifically oppose section 16. It is very much at least one of the hearts of the matters, and 16, if passed, means of course that we'll oppose the bill.

Mr Bryant: Let me say at the outset that if we had proportionality and had limited the scope of unlawful activity, then I would have a lot less concern for this particular provision because in fact we would be targeting organized crime and terrorism with a balance-of-probabilities test. Now, of course, the rubber hits the road, and what's the Liberal position on this particular provision? There is obviously a necessity for this province to catch up to organized crime. Since Mike Harris has been in power, the government of Ontario has lost over $1 billion to organized crime. That's coming from Minister Flaherty and his successor. In doing so, that's going to require tools that have permitted profits and assets to escape seizure up until the present.

I hope that support of this provision is not seen as lack of support for the use of the federal tools which, again, according to the organized crime czar at Osgoode Hall Law School, are used less by this province than other provinces. What justifies the lower test, which is what it is, than the criminal test? We have a very different liberty, security of the person, interest at stake. We are talking about profits emanating from an offence. We are not talking about the limitation of a person's liberty or security. As such, a civil remedy is naturally going to be one of the balance of probabilities—and balance of probabilities has been applied in other areas where it is only, I say with some concern, property rights at stake.

When one considers what is happening to this province when it comes to organized crime, and if it is the view of the Ministry of the Attorney General—and I tend to agree with the ministry's position that it can withstand charter scrutiny. At the risk of beating this issue to death, it would have been a lot easier to make that case had we circumscribed the offence at the outset in the proportionality test. But I'm going to say one more time, with respect to this offence, that I just think it is obvious, and certainly looking at the budget of the Attorney General, that this is going to be the case. Are criminal crowns going to pursue the Criminal Code seizure-of-asset provisions using the "reasonable doubt" test—the question answers itself—when they have the option of the "balance of probabilities" test? Then the concern comes down to this, that we've got every other province in the country pursuing one test and one kind of remedy and this province is pursuing something different.

I just hope that the federal and provincial Ministers of Justice are going to address this because, as far as I can tell, there is no transfer payment balancing out the amount that provinces are investing in this. In order for our attack on organized crime to be uniform, we are going to need a uniform approach. It is with a lot of concern, obviously, and some hesitation that we support this provision. Given that the property interests are at stake and not liberty and security of the person, we are willing to accept the commitment from this government as to the future of this provision and accept the commitment from this government that it is not going to simply abandon the federal tools.

As Mr Simser said earlier in the hearings, it should be the goal of the ministry to beef up both the federal and the provincial prosecution, although I do look forward to hearing how the ministry is going to work out those obvious conflicts that are going to arise.

The Vice-Chair: I'll ask the members to be very brief because we have a vote today.

Mr Kormos: Quickly, I'm very curious about the distinction you put forward between liberty and security of the person versus property rights. I understand the fundamental arguments. But, good grief, the bill doesn't restrict the amount of property. I think there's a piece—is it the executions act that limits what could be seized even on a judgment, that you have to leave somebody the tools of their trade so they can continue to earn a living? If it isn't the executions act, it is an act that should be called the executions act.

Taking somebody's home doesn't affect their liberty and security of person? Taking the place they live in doesn't affect their liberty and security? Taking the tools of their trade that enable them to earn a living, if they can, doesn't affect their liberty and security? In the context of this bill, that distinction is very academic, especially with the acknowledgement of the incredible effectiveness of the federal legislation but for the fact that it requires some significant resources to put into place.

That's an acknowledgement. That argument, I say to the parliamentary assistant, is basically an acknowledgement that this is, yes, a much faster route to go regardless of the fact that we may catch all sorts of other types of fish in the course of going after the shark. This is a faster route to go. That's what the parliamentary assistant would say, "Oh yes, this will eliminate the need for the huge resources." I'm troubled, again, by the

distinction somehow between liberty and security of the person versus property when the seizure of property can directly impact on liberty and security of the person in ways that imprisonment wouldn't even.

Mr Tilson: I'm not going to repeat what I said at the beginning of this afternoon, other than just to respond to the last comments about seizing a house or someone's tools. We are talking about unlawful proceeds from unlawful acts as approved by a court.

Mr Kormos: On the balance of probabilities.

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Mr Tilson: On the balance of probabilities. If it's established that there have been unlawful acts and that this property has been used in that process, I can only say, are Australia, Ireland, Great Britain, South Africa, the United States all wrong? It goes on everywhere, and to say it's not going on throughout the rest of the country—this legislation doesn't exist in the other provinces. I'm not going to repeat what I said earlier, Mr Chairman.

Mr Kormos: Recorded vote, please.

The Vice-Chair: So, shall section 16 carry?

Ayes

Beaubien, Bryant, Hastings, McLeod, Ouellette, Tilson.

Nays

Kormos.

The Vice-Chair: Carried. I think we should be able to deal with sections 17 to 25 together.

Interjection.

The Vice-Chair: Is there an amendment to section 21?

Can we deal with sections 17 to 20 together? Agreed.

Shall sections 17 to 20 carry? Carried.

Section 21: there is a Liberal amendment.

Mr Bryant: I move that clause 21(1)(e) of the bill be struck out. I'd prefer if I just let Ms McLeod speak to this amendment on our behalf.

Mrs Lyn McLeod (Thunder Bay-Atikokan): I'm very pleased that my colleague picked up this seemingly small almost housekeeping kind of issue toward the end of the bill. Just so people are aware of what clause 21(1)(e) is, for the record, it begins, "21(1) The Lieutenant Governor in Council may make regulations," and proceed to clause (e), which we've proposed striking out, "respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the purpose of this act."

I appreciate the fact that this has become standard fare in legislation presented by the current government. Nevertheless, I intend to speak out against this clause whenever it appears in legislation. I think the government began most noticeably with Bill 26, the large omnibus bill referred to as the bully bill, to give itself regulatory powers beyond the scope that any government has ever sought before.

This government has been chastised at least twice in courts of law for the extent to which it is building regulatory power into its legislation. The courts of course have no power to force governments to remove those kinds of regulatory powers because governments make laws, but I do believe that this government time and time again has sought to remove from the duly elected Legislature the ability to consider any significant amendments to legislation. They've given themselves the power by regulation without recourse to the Legislature to supersede even their own laws. One justice indicated that there was a clause in an education bill referred to as the Henry IV clause and said that no government should give itself the power to put itself above its own laws. I subscribe very strongly to that belief and for that reason I will speak against, whenever I have an opportunity, the giving of broad regulatory power to the government through cabinet.

The Vice-Chair: Any other comments? Seeing none, I'll put the question.

Mrs McLeod: Recorded vote.

Ayes

Bryant, Kormos, McLeod.

Nays

Beaubien, Hastings, Ouellette, Tilson.

The Vice-Chair: The amendment is defeated.

Shall section 21 carry? Carried.

There are no amendments to sections 22 to 25. Is it all right to deal with those sections together? Agreed.

Shall sections 22 to 25 carry?

Mr Kormos: Recorded vote.

Ayes

Beaubien, Bryant, Hastings, McLeod, Ouellette, Tilson.

Nays

Kormos.

The Vice-Chair: Those sections carry.

Section 26 is the short title. Shall section 26 carry?

Mr Kormos: Recorded vote.

Ayes

Beaubien, Bryant, Hastings, Ouellette, Tilson.

Nays

Kormos.

The Vice-Chair: Carried.

There is a Liberal motion with respect to a schedule that was referred to in previous amendments that were defeated. Does the member still wish to put the motion?

Mr Bryant: I seek direction from the Chair. The fact that the chance of it passing is negligible I don't think rules it out of order. If you are taking the position that it is out of order because it requires a precursor section to have passed, then I'm going to, on this front, defer to your ruling.

The Vice-Chair: There is a precedent. First of all, I can't see how a schedule would appear in a bill that has no reference to the schedule. Since those motions were defeated, I don't think it would be in order to proceed with the schedule. Also, there is a precedent from Erskine May that reads as follows: "An amendment cannot be admitted if it is governed by or dependent upon amendments which have already been negatived."

Mr Bryant: My only concern, Vice-Chair, is that having defeated one of those amendments yourself personally, you may be betraying a reasonable apprehension of bias on this particular procedural point. But I will not make that assertion. Rather, I accept your judgment on this one.

The Vice-Chair: Thank you, Mr Bryant. That amendment then has not been moved.

We'll proceed to the long title of the bill.

Mr Kormos: Recorded vote, please.

Ayes

Beaubien, Bryant, Hastings, Ouellette, Tilson.

Nays

Kormos.

The Vice-Chair: Shall Bill 30, as amended, carry?

Mr Kormos: Recorded vote.

The Vice-Chair: All those in favour?

Mr Tilson: On a point of order, Mr Chair: Where are the amendments? There were no amendments.

The Vice-Chair: That's correct.

Mr Kormos: It doesn't matter. As amended—it just carried.

The Vice-Chair: OK. That's correct, Mr Tilson. Thank you.

I'll read the—

Mr Kormos: Can we have an in favour and opposed recorded vote on that?

The Vice-Chair: Right. Shall Bill 30 carry?

Ayes

Beaubien, Bryant, Hastings, McLeod, Ouellette, Tilson.

Nays

Kormos.

The Vice-Chair: Shall I report the bill to the House?

Mr Kormos: Recorded vote, please.

Ayes

Beaubien, Bryant, Hastings, McLeod, Ouellette, Tilson.

Nays

Kormos.

The Vice-Chair: That completes the business of the committee. We are adjourned.

The committee adjourned at 1750.

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