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## STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

## COMITÉ PERMANENT DE LA JUSTICE ET DES DROITS DE LA PERSONNE

### EVIDENCE

[Recorded by Electronic Apparatus]

Tuesday, May 8, 2001

• 0836

[Translation]

**The Chair (Mr. Andy Scott (Fredericton, Lib.)):** Good morning everybody. Welcome, Mr. Ménard.

[English]

**Mr. John McKay (Scarborough East, Lib.):** Can't you just feel the love?

**The Chair:** On that note, I call the 11th meeting of the Standing Committee on Justice and Human Rights to order.

The order of the day is to hear witnesses on Bill C-24, an act to amend the Criminal Code and to make consequential amendments to other acts. We are privileged to be hearing this morning from the Minister of Justice and Attorney General and from the Solicitor General of Canada.

Welcome to both, and we look forward to moving on this piece of legislation, perhaps with more dispatch than we did on the last.

I understand, Madam Minister, that you'll be going first, followed by Mr. MacAulay. Then we'll have an opportunity for questions. With that, Madam Minister, you have the floor.

[Translation]

**Hon. Anne McLellan (Minister of Justice and Attorney General of Canada, Lib.):** Thank you, Mr. Chairman and good morning colleagues.

[English]

I'm pleased to be back before your committee today with my colleague, the Solicitor General, Minister MacAulay, to discuss Bill C-24. As you know, Bill C-24 is an act to amend the Criminal Code in relation to organized crime and law enforcement issues.

Many of you have spoken eloquently on the pervasive effect in our communities of organized crime. It is the number-one law enforcement priority of this government, and the bill before you today reflects the commitments we made to the Canadian people in the Speech from the Throne.

Governments in recent years have responded to the increasing threat of organized crime with an increasing legislative arsenal. Most recently Bill C-95, enacted in 1997, provided Canadian police with additional tools to investigate organized crime. Nevertheless, law enforcement officials and my provincial counterparts have continued to cite difficulties facing them in these investigations and prosecutions and have asked for additional legislative tools to assist them in the fight against the many manifestations of organized crime. This bill will provide them with some new and powerful tools to confront this menace.

[Translation]

Bill C-24 responds with broad and aggressive changes to the legislation which will increase the ability of law enforcement officers and prosecutors to fight organized crime.


[English]

We have held consultations with the provinces and with those involved in law enforcement and prosecution, as well as with other stakeholders in the criminal justice system. We have in many cases adapted the legislation being developed in order to address their concerns.

The report of the subcommittee on organized crime certainly informed this bill, and those of you who were involved in that process will recognize your work. I especially want to thank, on behalf of my colleague and myself, the chair of the subcommittee, Paul DeVillers, and the members of the subcommittee, not all of whom are here this morning. You did outstanding work under some very difficult constraints. Again, on behalf of Lawrence and myself, I thank you for the work you did. As I said, you will see much of that work reflected in the proposals Lawrence and I have put before you today.

I appreciate the general support for this bill voiced by members from all parties in the second reading debate. A few issues were raised during that debate concerning proposed amendments, and I will address some of those concerns now.

I would like to outline four distinct elements of Bill C-24 and how they are intended to respond to the threat posed by organized crime.

• 0840 

Bill C-24 addresses the problem of intimidation of justice system participants and responds strongly to this problem in several different ways. The bill will create a new offence for acts of intimidation directed against justice system participants or their families and friends. This offence will punish those who commit these acts with the intent of impeding the administration of justice generally or a participant in carrying out his or her duties.

[*Translation*]

Intimidation may take all kinds of forms. It may be subtle or explicit, but in all its forms, it threatens the orderly operation of our justice system. The offence of intimidation of a justice system participant would be punishable by a maximum jail sentence of 14 years.

[*English*]

The list of participants includes members of the House of Commons and of the Senate and anyone who plays a role in the administration of criminal justice. This latter group includes prospective and serving witnesses and jurors, prosecutors, police, and other public officers.

This list of those who play a role in the criminal justice system is not exhaustive. Some members have proposed that the list should be expanded to include provincial ministers of justice and public security, members of provincial assemblies, municipal mayors and counsellors, and journalists. I would note two things about proposals to extend this class. Some of those proposed for inclusion, such as provincial attorneys general and ministers of public security, are already included under the general description or as prosecutors in the case of the attorneys general. However, the committee may want to consider whether additional expressed references are desirable.

It must also be remembered that this new offence would be a serious one, punishable by up to 14 years' imprisonment, and is specifically designed to protect those with a particular role in the administration of criminal justice. I look forward to the committee's consideration of this issue, particularly in regard to the inclusion of members of provincial assemblies.


Bill C-24 also provides for better protection of the identity of jury members. There is a need to ensure that individuals called for jury duty are free to render a verdict without any undue influence, fear of reprisal, or intimidation. This bill will address that need.

Bill C-24 also responds to the recent Supreme Court of Canada ruling in *Campbell and Shirose*. The impact of this decision on federal and provincial investigations has been significant. I know you will hear from the policing community later this week in regard to their very serious concerns about the effects of the Supreme Court decision in *Campbell and Shirose*.

The government carefully considered the views and recommendations of the many individuals and organizations that commented on the white paper on this issue that was tabled in the House last June. Bill C-24 reflects a number of those views and recommendations. For example, all acts causing bodily harm have been added to those acts that are completely excluded from the protections of the scheme. There were also concerns voiced with regard to the sufficiency of the accountability scheme described under the white paper, and these have also been strongly addressed.

The most important element of the accountability scheme is the process for designating law enforcement officers as "public officers" and "senior officials" for the purposes of the scheme. Only those public officers who are especially designated will be covered by the scheme. The competent authority who will make these designations will be my colleague the Solicitor General, other ministers responsible for officers with law-enforcement authority, and provincial ministers responsible for policing.

Political responsibility and accountability is a more appropriate, more feasible, and more effective approach to ensuring this than other approaches that have been suggested, such as prior judicial authorization for acts that would otherwise be illegal. This, members of the committee, is not an appropriate role for the judiciary. The proposal for judicial involvement did not receive any support when it was presented as part of our consultations. That may be because, if a role were to be given to the judiciary, our judges would be even more involved in the investigation of crime. Our tradition has been to keep the investigative phase and the judicial phase separate and apart. This would change the balance quite radically.

• 0845 

Given the nature of undercover operations and more generally the nature of police work, it would be impossible to predict with any degree of precision what offences should be permitted. These things happen fast, as we all know, and without an opportunity to plan when you are undercover. This is very different—and I want to underscore this—from what judges do when they issue warrants. They allow some very specific action that has very clear parameters. Thus, judicial intervention has to be after the fact in order to control the legality of what has been done by the state.

Responsible ministers will and should bear the accountability for defining and applying the criteria for designating those officers who need this protection and are adequately trained to use it properly. Those criteria and training requirements will be addressed through non-legislative guidelines.

This does not mean that ministers will be involving themselves in operational police matters in a manner that might compromise the independence of the police in enforcing the law. The bill specifically provides in clause 2, proposed subsection 25.1(4), that the minister is to make the designations on the advice of a senior official and must consider only the general nature of the officer's law enforcement duties rather than that officer's involvement in any particular investigation or enforcement activity. Ministers need only be satisfied that the nature of the officer's duties requires the protection of the scheme in order to ensure that they can enforce the law in the public interest and that they have been trained to ensure that they understand the nature and scope of the immunity scheme, its limitations, and their responsibilities under it.

The accountability scheme also involves a number of other elements. First, there is a requirement for an authorization in writing by a senior official for all illegal conduct by agents acting at the direction of a public officer as well as acts committed by public officers that are likely to seriously damage or destroy property.

Second, there is a requirement for reports to be made to the competent authority regarding the commission of all illegal conduct by agents acting at the direction of a public officer as well as for acts committed by public officers that are likely to seriously damage or destroy property. The relevant minister is required to publish an annual report regarding such matters.

Third, there is a requirement for notification, in the case of destruction or serious damage to property, of the person who owns the property.

Fourth, there is the possibility of a stay of proceedings or the exclusion of evidence as a judicial sanction for police misconduct.


Fifth, there is the possibility of criminal prosecution of a law enforcement officer for misconduct that falls outside the scope of the immunity scheme.

Finally, there is the possibility of disciplinary proceedings under existing oversight bodies.

The bill provides that when engaged in the enforcement of any act of the Parliament of Canada, a public officer would be justified in doing an act or omitting to do an act that would otherwise constitute an offence only if he or she is designated by a competent authority and if that act satisfies a reasonableness and proportionality standard. That standard requires that the officer must believe on reasonable grounds that committing the act or omitting to do the act is reasonable and proportional in the circumstances, having regard in particular to the nature of the act or omission, to the nature of the law enforcement duty or function being carried out, and to the reasonable availability of other means for carrying out that duty or function.

It should be noted that the requirement to consider the reasonable availability of other techniques does not mean that acts protected by the scheme may only be used as a last resort. In some cases they will simply be the appropriate technique in the circumstances.

One of the major initiatives of Bill C-24 addresses participation in the activities of criminal organizations in a new and powerful way. First, we have proposed a new definition of “criminal organization” with new offences and sentencing regimes, which will make it easier to target and punish organized criminal activity.

• 0850 

[*Translation*]

The new proposed definition of criminal organization responds to the concerns expressed by police officers and Crown prosecutors who feel that the present definition is too complex and too narrow in scope.

The new provision will also provide police bodies and prosecutors with the required flexibility to prosecute more criminal organizations and more of the people who choose to participate in the activities of those organizations.

[*English*]

The new definition is focused to ensure that only those who pose a serious threat to society are subject to the new measures and flexible to ensure that such individuals do not evade the full force of the law by simply restructuring their organizations.

[*Translation*]

The proposed changes would reduce the number of people needed to form a criminal organization or a gang from five to three.

[*English*]

Some of my provincial counterparts and some members have asked for it to be an offence to merely be a member of a criminal organization. Separate and apart from the constitutional concerns that would attach to any proposal to ban mere membership in an organization, I believe that criminalizing participation and contribution is more effective, and indeed more comprehensive, than criminalizing mere membership.

Membership, if it can be defined, can be extremely difficult to prove since organizations often operate underground or covertly. Organizations could easily change their approach to evade a membership prerequisite.

Finally, persons who are not formal members can still do a great deal of harm to society by helping criminal organizations to either commit or facilitate crime and are often those persons directly involved in crimes committed at the street level on behalf of criminal organizations.

[*Translation*]

The proposed changes in Bill C-24 represent a more efficient and legally stronger approach in making participation in a criminal organization a criminal act.


The provisions in the bill will include all the people, not just the members who take part knowingly in activities which help achieve the criminal objectives of the organization.

[*English*]

Bill C-24 also adds new legislative provisions of particular value and effectiveness in targeting organized crime. The first set of proposals will amend the proceeds of crime provisions in the Criminal Code. Parliament adopted proceeds of crime legislation in 1988 that referred to the term “enterprise crime” and included some 20 offences identified as falling within the ambit of that term. Under Bill C-24, all indictable offences except those that will be excluded by regulation will be the subject of proceeds of crime provisions.

As we all know, organized crime operates internationally. A number of recent international instruments and conventions contain provisions regarding countries being able to give effect to foreign confiscation orders. In fact, Canada has used the enforcement systems in other countries, but it is itself unable to reciprocate. Bill C-24 will allow Canada to cooperate with its partners by facilitating the execution of forfeiture orders issued in foreign jurisdictions.

The Criminal Code contains at the present time a limited regime whereby offence-related property, that is, property that has been used to commit an indictable offence, may be seized or restrained and confiscated. This scheme, however, is limited to property used in relation to the commission of criminal organization offences. As a result of the limited application of the forfeiture scheme, we have, as in the case of proceeds of crime, two classes of criminals: those whose offence-related property is subject to confiscation, and criminals whose property has been used to commit an offence but cannot be confiscated. Instruments used to commit crime will therefore be targeted more comprehensively if Bill C-24 becomes law.

• 0855 

At the same time, and in order to ensure fairness in the process, a proportionality test has been included such that no forfeiture will occur if the forfeiture of the property in question is disproportionate to the nature and gravity of the offence and the circumstances surrounding its commission. A further protection is made available in respect of possible forfeiture involving dwelling houses in that the court will also have to consider the impact of a forfeiture order on the members of the accused's immediate family if that dwelling house is their principal residence.

I have discussed the background to and justification for the various elements of Bill C-24 and I hope that I have at least addressed some of the questions and concerns you may have. Canadians and other stakeholders are eager for us to enact this bill and to move on to the important implementation stage.

I look forward to working together to ensure the speedy passage of this bill.

Thank you very much, Mr. Chair.

**The Chair:** Thank you very much, Madam Minister.

Mr. Minister.

**Hon. Lawrence MacAulay (Solicitor General of Canada):** Thank you Andy, and colleagues.

Fighting organized crime is my number one law enforcement priority and the measures in Bill C-24 reaffirm this. The bill will give police the tools they asked for to increase their ability to infiltrate and dismantle criminal organizations. It will give police and prosecutors what they need to fight organized crime in communities and in our court rooms.

The new funding I announced on April 5, \$200 million to fight organized crime and smuggling, also gives the RCMP, federal prosecutors, and other agencies resources to build on partnerships that are already successful across the country and internationally.

Bill C-24 is an important step in a fight against organized crime. It shows that we've listened, understood, and responded to the concerns of the provinces, the police, and the communities across Canada.

On October 19 last year the committee tabled the report of its subcommittee on organized crime. Its recommendations were very helpful in preparing the bill, and we've responded to the subcommittee's recommendations with new funding for coordinated law enforcement.

Let's be clear: Canada has strong laws in place to fight organized crime. We saw results of that and the strong police cooperation in Operation Springtime 2001, the major anti-bike bust in Quebec last March. More than 2,000 police officers were involved and made over 100 arrests. The operations are a big success against fighting organized crime, but we know our laws aren't perfect and we're committed to improving them. That's why Bill C-24 was introduced, to give police even better tools to support this kind of cooperation.

I met with RCMP investigators in Vancouver last year. I heard about how complex and difficult the organized crime problem is and what the police need to investigate serious crimes and criminal organizations. I have also met with the Canadian Association of Chiefs of Police and the Canadian Police Association on several occasions. They expressed similar views. Their message was clear: the police need more effective tools, but they also recognize that they have to respect the privacy, rights, and freedoms guaranteed under the charter.

Based on what I have heard, I can say the bill meets the concerns of front-line police officers and senior police managers. For example, Quebec's public securities minister, Mr. Serge Ménard, said he was very happy with the bill. He said the federal government has understood the problems of Quebec and is giving them the necessary tools, and that once the new law is in place, it will be harder to set up and maintain criminal organizations. I agree.

Alberta's justice minister Dave Hancock said the bill will make it simpler and cleaner for police and prosecutors to go after the offenders without trampling on civil rights. He said we've come forward with exactly what they wanted.

Montreal police director Michel Sarrazin said the law would make it easier to conduct massive investigations like those that led to the recent biker-gang arrests last month. That is what we want to do.

And Toronto police chief Julian Fantino called the proposal a quantum leap forward.

In addition to the measures that deal with participation and intimidation, Bill C-24 will also make it easier to take the profit out of crime. This is crucial because organized crime is a business, and when we take the profit away, illegal business cannot operate.

• 0900 

The bill would also expand the seizure and forfeiture of proceeds of crime. As it stands, the courts can take away proceeds of crimes such as drug traffic, murder, and fraud. Soon they will be able to take away the unlawful proceeds of most indictable offences.

These changes will make our 13 proceeds of crime units established in 1997 even more effective. These units, which combine the resources of the RCMP and those of other police and government agencies, were created to target organized crime groups and seize their criminal profits.

To date, over \$100 million in criminal assets has been forfeited and fines imposed. More than \$180 million in assets has been seized and is subject to court proceedings and possible forfeiture. The proposals in Bill C-24 will also complement our efforts and legislation against money laundering.

I'd like to focus on the proposals in the bill on protection from criminal liability for police. We know police officers investigating things like economic crime, people-smuggling, hate crime, murder, international terrorism, and environmental crime must use many different techniques. This can on occasion include committing offences so they can infiltrate criminal gangs and effectively investigate serious crime. For example, an officer might purchase counterfeit currency for the purpose of gathering evidence, or an undercover officer who has infiltrated a smuggling operation might temporarily participate in illegal activities before the operation is actually shut down and arrests are made.

The Supreme Court has told us that the use of such techniques must be authorized by Parliament. That's why the bill sets out the rules and strict conditions under which law enforcement officers may be protected from criminal liability when they commit such acts for legitimate enforcement purposes.

Let me assure the committee that there is no blanket immunity for enforcement officers. This exemption will apply only to designated officers. The legislation includes an important element of ministerial accountability. As Solicitor General, I would make the designations for the RCMP.

I should clarify that under the new system I will not make designations for specific investigations or operations. Instead, the designations will apply to the general duties of the individual officer and groups of officers. This bill maintains the balance between ministerial accountability for law enforcement and the need to maintain the independence of the police.

In addition to these points, I would like to highlight a few other things. First, requirements for the specific action by the enforcement officer would be set in law, including a requirement for reasonable and proportional conduct. Second, certain types of conduct will be excluded entirely, including bodily harm, sexual offences, and obstruction of justice. Third, there will be a public account report and a notification to persons whose property might be lost or seriously damaged. The proposals in the bill on criminal liability and the police are necessary. They're also balanced and responsible.

Let me turn now to the new resources I announced on April 5. Over five years, \$200 million in new funding will be allocated to the RCMP, the Department of Justice, the Correctional Service of Canada, the CCRA, and the Department of the Solicitor General. We will enhance our national coordinated policy and operational response to organized crime and smuggling.

The new funds for the RCMP contained in the \$584 million the force received in the 2000 budget for organized crime enforcement improved national police services and the new communications systems.

The funds will also be used to invest in several core areas. The RCMP's intelligence-gathering capacity will be increased in Canada and abroad so the key criminal groups operating in Canada can be better targeted. Major multi-agency enforcement efforts, like the regional anti-bike squads in Quebec, will be enhanced. There will also be investments to deal with crime at the Canada-U.S. border, building on the two existing bi-national Integrated Border Enforcement Teams, or IBETs, in British Columbia. Investments will be made in new technology to support complex investigations.

The new federal prosecution strategy will be very important to the police. The idea has worked very well in other areas such as the IPOC unit I mentioned earlier.

• 0905 

The Correctional Service will use funds to improve its intelligence capacity and focus on the management of gang members in prison and on conditional release. My department and the Department of Justice are working closely with the provinces and will make investments in research and policy development.

We should also remember that the bill and the new funding will go to support our international efforts. Canada works hard to fight organized crime along with the U.S.A., throughout the Americas, within the G-8, with the European Community, and within the United Nations. The RCMP and other departments work with their G-8 counterparts on joint law-enforcement projects. They coordinate their actions to deal with smuggling, high-tech crime, and other international concerns.

In conclusion, Bill C-24 is an important step forward in the ongoing fight against organized crime. Thanks to the investments we've made in partnerships we've built over the past seven and a half years, Canada has effective tools to fight organized crime. The bill will make the national effort even more effective than before.

Thank you.

**The Chair:** Thank you very much, Mr. Minister.

I will now go to Mr. Sorenson for seven minutes.

**Mr. Kevin Sorenson (Crowfoot, Canadian Alliance):** What I have to say isn't going to take any seven minutes, but we do applaud this Bill C-24. We think there are some very positive things in it.

As you may know, some of the polls that have been taken would suggest that next to health care, people are most concerned about crime fighting and especially about organized crime. It seems to be the issue where people want to know the government is putting in place legislation that will give those people the ability to fight that kind of crime, so we do applaud it.

My first question concerns the \$200 million to be given over the next five years to help implement this legislation. The \$200 million is going to be given for the prosecution and law-enforcement part of it; this is what the bill says. I ask the Solicitor General, how much money is actually going to the RCMP—not just to implement the bill, but how much directly to the RCMP? In other words, can you give us a breakdown for the allocation of the \$200 million?


**Mr. Lawrence MacAulay:** Yes, Kevin. Of that, \$50 million will go directly towards smuggling operations, and \$40 million will be used for a new intensive federal prosecution strategy for the Department of Justice. Most of the remainder will go to increasing the RCMP's intelligence capacity to target the most threatening criminal organizations. As you know, there are quite a number of criminal organizations in this country. The money will go towards supporting multi-agency enforcement, increasing the border enforcement teams I mentioned, and of course enhancing technology. In general, that's how it will be broken down.

**Mr. Kevin Sorenson:** As to a lot of the smuggling, I've studied a little just for the speech and the debate. I looked at the drugs end of it more than anything else, as well as the different ways to bring the drugs across borders from other countries. You talked about international crime, and certainly drugs is one of the big ones in international crime. We no longer have what we call the port police. Is that correct? I understood in some of the studying we did—

**Mr. Lawrence MacAulay:** You're correct.

**Mr. Kevin Sorenson:** —that the police at the ports aren't there anymore. My question is, given that drug smuggling is a huge part of organized crime, is there going to be an increase in...are they going to be policed?

**Mr. Lawrence MacAulay:** They are policed, will continue to be policed, and hopefully will be policed even more. I don't get into specific actions of the operations of the RCMP, but you say there are no police in this area. However, if there are drugs coming into a certain port, the RCMP's responsibility will certainly be to work there. They'll work wherever it's coming in, airports or anywhere else. It's just that this specific authority has generally been taken over by the municipal police forces across the country. But let's take a shipment of drugs. If they know, because of their intelligence in this country and internationally, that certain drugs are coming into a certain area, it makes no difference where it is, they're going to be there.

• 0910 

**Mr. Kevin Sorenson:** In the year 2000, was the RCMP's budget increased or decreased?

**Mr. Lawrence MacAulay:** It was increased by \$72 million in the past year.

**Mr. Kevin Sorenson:** What about in 2000?

**Mr. Lawrence MacAulay:** It rises by \$184 million over a three-year period, and it was \$72 million in 2000.

**Mr. Kevin Sorenson:** Thank you.

**The Chair:** Mr. Cadman.

**Mr. Chuck Cadman (Surrey North, Canadian Alliance):** I've got a quick one, thank you, Mr. Chair.

We've all heard stories about communications between various jurisdictions leaving a little to be desired occasionally. I'm wondering how much effort is being made to improve the communications between the jurisdictions. In Montreal, for example, Vancouver, provincially, how much effort is being put into that?

**Mr. Lawrence MacAulay:** I think it's fair to say, Chuck, that it's a continuing effort, not only on the federal, provincial, and municipal front. There are the meetings we've had in Iqaluit. It's a joint operation all the way through, all the time. But there are always problems with different groups in communications, possibly not on purpose. Technology has to be put in place to make sure the sharing is done properly and efficiently.

**Mr. Chuck Cadman:** Is the will there too?

**Mr. Lawrence MacAulay:** I don't think anyone is trying not to cooperate. We're always working on it, and it's working a lot better. I think when we have everybody working together, as we did in Iqaluit, that joins all the police groups and all the federal, provincial, and municipal authorities together to make sure not only that we have our information in place, but also that the dollars—not an endless amount—we do spend are not duplicated, that they're used as wisely as possible.

**The Chair:** One question.

**Mr. Kevin Sorenson:** Yes, one real quick one.

Is \$200 million enough? That's the question that comes to every minister. We could have more, but is \$200 million enough? We have a matter, I don't like calling it a pet project, but it is one that has concerned us over the years, and that's the firearms registration. When we take a look at the huge amount of money that has gone into the registration and into the firearms registry, and then we look at the \$200 million that is going into the organized crime bill, we wonder about prioritizing funds. The Minister of Agriculture says he wishes he could have had more for agriculture. Is this the kind of thing where you'll settle for \$200 million?

**Mr. Lawrence MacAulay:** Thank you very much for that question. I've done some travelling around the world. I've met with many police organizations and governments, and it's interesting. You meet with the United States government, and their budgets are somewhat different from ours. They refer to it at times as a drop in the bucket. The point is, true, we all could use more dollars in every department, I suppose, in every nation in the world. But what we have to do is use the dollars that are available as appropriately as possible. That's why we are trying to coordinate our efforts, and I think quite successfully doing it, federally, provincially, and municipally.

I don't believe there's a police force or a government agency in this country or in this world that wouldn't say they could use more dollars. But the fact is we must make sure we use what we have as efficiently as possible. Thank you.

**The Chair:** Thank you very much. The same can be said about time.


[*Translation*]

Mr. Bellehumeur.

**Mr. Michel Bellehumeur (Berthier—Montcalm, BQ):** Thank you very much.

We in the Bloc Québécois clearly welcome Bill C-24. There was so little available in the Criminal Code, and police officers had so few tools to efficiently fight organized crime that the slightest change, the slightest step forward is a great relief, and we welcome this change.

Today, our two ministers are smiling and proud of their achievement, but when you say that the message sent by police officers was clear, when you say that you consulted with police officers, with the Canadian Police Association, with the Attorney General, and that you had discussions with the provinces, etc., my question is the following: How long have we been telling you that Section 467.1 is inadequate? Two years, three years, four years? And here you come today saying that it is a great success. Anyway, the rules are going to change, and it's all for the better. Good.

• 0915 

However, there is still a little something missing. You are still lacking a small element of political courage, and I wonder why. One thing does not exclude the other. Indeed, you have changed the rules regarding criminal organizations. Perfect. Everybody had been asking for that. But the very Crown prosecutors and the very policemen who welcome Bill C-24 today are still saying that those changes are not far-reaching enough. What you should do is criminalize membership in order to include passive members of criminal organizations, the thinkers, because they exist also. They are not necessarily gang leaders, but they are the ones who think.

You quote Serge Ménard to show that this bill meets the expectations of Quebec. Maybe you should quote him fully and say—since he is the first to make that claim in Quebec—that the bill is not good enough and that membership in an organization should in itself become a crime for the reasons I have just explained.

Do not tell me about the Canadian Charter of Rights and Freedoms and do not tell me that tribunals have constitutional rights, etc. That is not what the Canadian Charter of Rights and Freedoms is meant to do. Section 1 can easily be complied with if a bill is properly drafted. There are enough lawyers in the Department of Justice who work on those files... Just on the young offenders legislation, there were four or five of them attending the debates for weeks. They were taking notes. They were doing just that. You could have assigned them elsewhere; they would have been more productive than by listening to me when I debated this bill for hours here.

[*English*]

**Mr. John McKay:** Amen.

**Some hon. members:** Oh, oh!

[*Translation*]

**Mr. Michel Bellehumeur:** Do not tell me that we cannot do both at the same time. Yes, we can change the provisions dealing with criminal organizations as you have. Very good. It is a good compromise. Perfect. But simple membership could also be made a crime.

I would like to hear your comments on this, and of course my seven minutes will not be enough because I have all kinds of questions to ask. I am concerned especially with the fact that the Minister and the Solicitor General will have to grant authorizations for police officers to commit illegal acts. It is absurd that such decisions should be of a political nature.

My first question will be on criminal organizations. This is fine, but the Department could have criminalized membership in order to include passive members and to involve everyone. Such a move would also have helped municipalities deal with bunkers.

Right now in Quebec, a number of bikers have been jailed, but strangely enough, the bunkers are still full of people. Police officers go and enforce zoning regulations, and there are people in the bunkers who take them around for a visit, and who are not affected. And they will not be bothered because they are passive members.


So what you are doing now is setting up a nice big system with big cracks in it. People will sneak through those cracks to replace those who have been jailed or “grabés” as we say in Quebec.

In summary, I think this is a good bill, but why don't you have a little more political guts and why don't you go a little step further?

[*English*]

**Ms. Anne McLellan:** Let me start and first thank Mr. Bellehumeur for his, I think, general support of what we're doing here.

Obviously, I am well aware of the members' views in relation to criminalizing simple membership. I can assure every member of this committee that we have looked at every possible approach and have talked to a wide range of people in relation to the possible criminalization of simple membership. We reached a conclusion, after much study, that in fact this was not the best way to go, and there are a number of reasons for that. In fact, we reached the conclusion that the approach we have is much more comprehensive. When we talk about the criminalizing of participation in and contribution to a criminal organization, we believe this is more comprehensive than dealing with the issue of mere membership.

• 0920 

People should also keep in mind that we've looked at other examples around the world. In fact, we believe there is only one jurisdiction in the world that has ever criminalized simple membership in a so-called criminal organization. Most democracies have not chosen to take that approach, whether they have rights documents or not, for the obvious reason, and you will probably hear this from some in your round tables, that the criminalization of simple membership could lead to possible abuse and overly wide application by those who would be investigating alleged membership offences.

It is a balance, I would be the first to concede that. But we feel the approach we have taken is one that is responsible in a free and democratic society. It reflects the right balance. It gets at the right problems. It is comprehensive. It will be effective. And while there are some who say membership would be nice, I think generally we have very strong support for the approach here. You heard that when this bill was introduced, and I think you will continue to hear that from the chiefs of police and the front-line officers who have to enforce these laws on a daily basis.

**The Chair:** Thank you very much.

Mr. Blaikie, one question.

**Mr. Bill Blaikie (Winnipeg—Transcona, NDP):** If this has come up already, I apologize, but at one point it was raised in the House during the initial debate at second reading whether or not there would be a willingness to explicitly extend the provisions for protection of members of Parliament, etc., to provincial MLAs, provincial attorneys general, things like that. I wonder if the minister could indicate whether they would be open to an amendment that would do that.

**Ms. Anne McLellan:** In my remarks I mentioned that I know some members—obviously yourself, Mr. Blaikie—have raised that issue. Certainly I am open to hearing the views of the committee in this regard. We have, as you know, in the legislation a list of those we view as justice system participants, and there may be some merit in considering a limited expansion of that list. But keep in mind that we are focusing here on justice system participants and those who play a role in the administration of criminal justice.

So I think if you take those two limitations as your guideposts here, there may very well be room for the inclusion of some others who are not presently in the list. I would certainly be interested in the advice and recommendations of this committee in that regard. But I do think you need to focus on what we're dealing with here, justice system participants who play a role in the administration of criminal justice.


**The Chair:** Thank you, Mr. Blaikie.

Mr. MacKay.

**Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC):** Thank you, Mr. Chair, and thank you, Ministers, Mr. Roy, and Mr. Kennedy, for being here. This is without doubt a very important piece of legislation. I applaud both your departments for bringing it forward.

I have a couple of questions, one of which is a follow-up to my colleague's, with respect to the designation of the funding. I must admit to being a bit disappointed not to have heard anyone thus far mention victims. Obviously, with organized crime there are victims, including family members, including those who are caught in the crossfire, as we've seen in some of the gang wars in Montreal. I appreciate the breakdown of some of the specifics as to where the bulk of the money will be spent, but without any argument, I suspect there is going to be, with more members of organized crime being captured, prosecuted successfully, and convicted, the need to have a greater witness protection program, a greater witness relocation. There is going to be a specific need, which already exists, for funding for the presence of victims at parole hearings on occasion—something that's lacking in the current system, and I don't see it being addressed in this legislation—and protection for victims who are also going to be witnesses.

I wonder if either or both of you could address whether that was contemplated or whether there is anything in this legislation that touches upon victims.

• 0925 

**Mr. Lawrence MacAulay:** Peter, on the victims issue, as you're aware, the subcommittee recommended that victims be able to participate in parole hearings, and there will be a positive announcement on that very shortly. It was from this committee, as a group, that the recommendation was made.

I certainly agree that there are victims, and it is a major problem. There are a number of organizations that are funded through my department that help victims, and, with the Department of Justice, they have some allocation of funding, but it's an ongoing, major issue.

The answer that I give, number one, is that we want to have less victims. By that, we have less crime. And to an extent we are successful in that area. But the fact is that, yes, we are putting on an emphasis, but even more emphasis needs to be put on dealing with victims.

Anne, if you want to add to that, there's some funding in Justice that is dealing with this.

**Ms. Anne McLellan:** I think you raise an interesting point. It is possible that as we more aggressively pursue the organized criminal element in our society, research will need to be done on the victims thereof, and on whether, for example, there is anything particular or unique in terms of needs or other issues around victims of organized crime, as opposed to victims of crime generally. I don't know the answer to that.

In the department, we certainly received additional funding last year. We have \$25 million over five years, and some of that money is going to be used to do policy work and research work in conjunction with victims groups, and, in some cases, to assist the provinces to ensure that victims have the means and opportunity to exercise all the rights that have been given to them either by us or by the provinces.

I would think that, within our general victims program within the Department of Justice, if there were identified unique issues in and around victims of organized crimes, certainly our victims policy centre would be very interested in taking that up. The one thing I must underscore, however, is that the direct delivery of services to victims is a provincial matter. The provinces make that absolutely plain. They draw a line in the sand and say it is a matter for them. What we have done to facilitate that is, of course, to change the victim surcharge. Now it is in fact automatic, and it is imposed unless an individual, an accused against whom it's going to be imposed, can make a case otherwise. That is going to lead to a substantial increase in revenues for provinces to provide direct services to victims, be they victims of organized crime or otherwise.


But victims are obviously a key concern for all of us. They must be in any balanced and compassionate justice system.

**Mr. Peter MacKay:** Thank you, Minister. I understand, then, that some of this is dependent on how the application of this new legislation comes about.

Another issue that stems from provincial jurisdiction is the preparation time that's going to be necessary for these types of cases. In many instances, of course, they're going to be very complex. There's going to be an increased need for disclosure. As I mentioned, there will be an increased need with respect to preparation of witnesses. I suspect the intimidation aspect of it is going to be costly, as well—the need to protect against witnesses subjected to intimidation. Is there a specific scheme set up recognizing that additional preparation time will be needed for essentially provincial prosecutors—with some federal prosecutors—when drugs are involved?

Stemming from that issue, I'm concerned when I hear the Solicitor General of Canada saying he doesn't get involved in the specific actions of the RCMP, when we start talking about police officers having expanded powers and receiving ministerial blessings, essentially. They're given this special designation, but the minister has just said he doesn't get involved in their specific actions. That leads me to believe this issue of ministerial accountability is somewhat vague.

Are you telling us, Minister, that if a designation is made and it turns out to be wrong or inappropriate and it results in abuses, the Solicitor General is going to say he takes responsibility for that, and that he gives his assurances that he will answer to anyone who is concerned about these designations if it turns out they were inappropriate?

• 0930 

**Mr. Lawrence MacAulay:** Peter, as an example, I had an occasion to deal with undercover agents in the RCMP in this country, and they explained to me the problems they had. But what doesn't happen in this country is that a politician or a minister gets involved in specific investigations. In the way this will be done, I will be approached and the general duty, such as undercover work or whatever, will be presented to me. I will then designate certain police officers who will be able to do this type of activity. They have to do it appropriately, though, and they have to report back yearly, in a yearly report that you will see. If they don't behave properly, then they're subject to the law, the same as anybody else is.

**Mr. Peter MacKay:** That's their accountability.

**Mr. Lawrence MacAulay:** What's important is that we don't have the minister involved in operational activities at the RCMP. That was a big concern for the government and the police.

And, yes, of course I have to make sure the officers designated have the proper level of training, adequate supervision, and this type of thing, and that's what's provided. We have a very credible police force in this country in the RCMP. In fact, what this does is give them the ability—and I've seen first-hand how much they truly need this ability.... For example, they have to be able to use a stolen credit card to buy something possibly to prove they're not police officers. If they can't do that, they can't really operate undercover.

**The Chair:** Thank you very much, Mr. Minister.

Mr. Myers.

**Mr. Lawrence MacAulay:** Could I just mention one other item? If I did say we fund victims groups, Peter, we don't. It's done through the Department of Justice.

**Ms. Anne McLellan:** Could I just respond to what I think is a somewhat important question that our colleague Mr. MacKay raised in relation to prosecutorial activities?

I just want to flag for people that, obviously, both provincial governments and the federal government have a role to play. We certainly have our federal prosecutors in courts in most parts of the country, prosecuting drug offences or certain other offences in the context of organized crime. That's why the \$40 million that has been earmarked for my department is in fact largely for prosecutorial enhancement. What we want to do is create a specialized unit of federal prosecutors who have particular experience and expertise in this area.

You're right. These are complex trials. There are complex issues in and around evidence. You have multiple parties. If you look at a case like Tran, in my own city of Edmonton, you have at least 34 co-accused at the outset.

What we want to do—and I think Quebec has perhaps pioneered this model a little bit—is put together a team of experienced federal prosecutors who will work closely with police and work closely with their provincial counterparts. By doing so, we think we can be more effective and can deal with a host of issues, including those dozens, if not hundreds, of motions that defence counsellors throw at our federal prosecutors in these major trials in which you have dozens of co-accused.


We're very sensitive to the fact that if you're going to effectively fight organized crime, you not only need adequate resources for the police, you also have to have adequately resourced your federal prosecutors, in our case. And my provincial and territorial colleagues also realize they have to adequately resource their provincial prosecutors under their constitutional authority for the administration of justice.

**The Chair:** Thank you.

Mr. Myers.

**Mr. Lynn Myers (Waterloo—Wellington, Lib.):** Thank you very much, Mr. Chairman. I have three quick questions.

First of all, I want to thank the ministers for being here today. More to the point, in speaking to a number of people and Canadians across the country, I know they support the fact that Bill C-24 has been brought forward. They believe it is in fact appropriate given the circumstances and, more to the point, the problems associated with organized crime.

• 0935 

Minister MacAulay, I want to pick up on what was being said previously with respect to clause 2 and proposed sections 25.1, 25.2, 25.3, and 25.4, that being that you as a competent authority make the designations based on advice from police officers and senior officials.

When I first read the white paper of June 2000, I was a little concerned about that section. The white paper seemed to imply that there was going to be greater interference on behalf of the ministers. When I see the legislation as it is drafted now, it gives me greater comfort, because it seems to me that it's more arm's-length. I think that's precisely what police officers and people in the field wanted to see, based on their experience. I wonder how that transition took place, from what the white paper seemed to imply, to what is in the legislation as it has been drafted and which seems to me to be more reasonable.

**Mr. Lawrence MacAulay:** What do you want me to do, Lynn? Do you want me to explain where we are now, or the consultations—

**Mr. Lynn Myers:** No, I think I understand where you are now. I wondered what took place between the white paper and the legislation. The white paper seemed to be more involved.



In other words, you would have been more involved on a day-to-day basis. That's my reading of it, anyway. I think it's a good transition.

**Mr. Lawrence MacAulay:** It is a very important issue in all countries, I think—and in this one, too—to make sure solicitors general or ministers are not involved in the operational areas of the police forces in the country.

Needless to say, the Minister of Justice and I had discussions with a lot of different groups in this country, including a lot of different police forces and organizations, as I indicated. They certainly also were.... How we arrived where we did arrive was with a lot of assistance from this committee and from police organizations across the country. That is, in fact, how we got to where we are.


As I said, when I sat down—and it is certainly a very interesting experience to sit down with undercover agents who are, without a doubt, risking their lives in order to make sure we have a safer society in this country—they explained to me exactly what they needed, why it has to be them, and why it has to happen so quickly sometimes. Of course, there has to be accountability, but there are times when a police officer who is operating undercover has to do something fairly quickly, and he has to be able to do that without going back and getting a whole lot of papers signed. The big thing is to make sure they are able to operate in an effective manner in order to infiltrate these organizations.

It is more than organized crime. The example, Lynn, too, is that if you're investigating a murder and someone needs to do undercover work in order to obtain information that the police feel would convict somebody, I would not know about that. All I would know is that these people are designated, but I should not know about the specific case. What they have to be able to do is have the authority to send these people in and be able to collect the evidence in order to convict the person. That's why it's not just specifically organized crime. If it's murder or other things, they have to collect the evidence for that.

**Mr. Lynn Myers:** I applaud your ability to hear that message, because it seemed to me the message in the white paper was that we don't trust police to be able to do the job. What you're now saying, though, in effect, is that you do trust the police to do their work, and I applaud that.

**Mr. Lawrence MacAulay:** Not only do we trust the police, Lynn, the people of this nation trust the police in this country, which is very important.

**Mr. Lynn Myers:** When I was the head of the Waterloo Regional Police Service—700 police officers in a population of about 450,000 people—one of the things I saw, not on a daily basis but certainly from time to time, was the lack of coordination that exists between some of the policing authorities—in other words, provincial police, the RCMP, and local regional police. I'm glad to see that's being addressed, but I'm wondering if you could elaborate a little bit more about the kinds of efforts you're putting into this matter, because it seems to me that until and unless we get the full cooperation of policing services across the country, it's something to strive for, it's something important, and it's something that's required. I'd like to hear what you have in mind in terms of making sure that is a constant and a given.

• 0940 

**Mr. Lawrence MacAulay:** Well, Lynn, yes, last September the Minister of Justice and I had a meeting in Iqaluit with provincial and municipal counterparts. We announced a national agenda to combat organized crime.

What we're trying to do is make sure we have much more of a coordinated effort on research, and enforcement, and as Anne indicated, in legislation. In fact, that's how you reach a general consensus as to what the best approach is to use in legislation like this. If you involve all the players, you're going to have better cooperation.

That's what's taking place with this piece of legislation—making sure we involve as many people as we can. That's why the meeting last September, the meetings previous, and hopefully the meetings down the road are so important to make sure you have a coordinated effort in order to fight organized crime.

The problem is you can duplicate services, you can duplicate actions, and with that you waste funds—much needed funds—in order to fight the enemy, which is organized crime. I certainly believe we're on the proper track, but there's always need for changes.

**The Chair:** Thank you very much.

Mr. Cadman, three minutes.

**Mr. Chuck Cadman:** Mr. Chair, I think we all recognize the international scope of organized crime. We can't do it all by ourselves.

I was just wondering if you could elaborate to an extent on what degree you've involved your colleagues in Immigration and Foreign Affairs in this.

**Ms. Anne McLellan:** You're right, to effectively fight organized crime, you not only have to have an effective domestic strategy, but you have to be working with your international partners, since organized crime, because of technology primarily, knows no borders—especially if you're looking at crimes like money laundering, since because of technology you can move money around from country to country quickly and fairly secretly.

We—my colleague the Solicitor General and I—obviously understand that if we are going to have an integrated approach to organized crime, we not only have to work with the provinces and the territories, local, provincial, and federal police forces, but you also have to work with colleagues such as the minister for national revenue, who is responsible for customs and is on the front lines of our anti-smuggling initiatives. We also have to work with the minister for immigration, because tragically, one of the new profit centres for organized criminal associations is human-smuggling.

Internationally, we discussed this in Milan a few months ago, there is this whole developing area of what we would describe as effectively a slave trade in which women and children, primarily female children, are sold into sexual slavery and other forms of slavery and brought across borders illegally and unknown to law enforcement authorities.

We're very aware of the kinds of problems that are emerging and the new profit centres, tragically, for organized crime, and we all have to work together. In fact, we and our officials.... Everything you see today is the result of interdepartmental meetings and discussions that involved our colleagues in key departments like national revenue and immigration, because they have important pieces of this and we all have to be working together.

**The Chair:** Thank you very much, Mr. Cadman, Madam Minister.

Now to Ms. Sgro.

I would advise everybody that we have nine people left and 15 minutes, and you have three minutes each.


**Mr. Lawrence MacAulay:** Can I make one small statement?

On the funding that Mr. Sorenson asked me about, I indicated that the \$50 million went directly to the RCMP. Other agencies like Revenue and Justice are involved, but it's all on the smuggling issue. I want to be sure I didn't mislead you. The \$50 million goes there, but it's not directly to the RCMP. I don't have the exact breakdown of how much is allotted to each area, but it's all to fight the smuggling activity.

**The Chair:** Thank you very much.

Ms. Sgro.

**Ms. Judy Sgro (York West, Lib.):** Minister, I'm pleased that this is finally coming forward, but I don't want to waste any of my time giving you accolades, because it will disappear and I have a slew of questions.

• 0945 

On the intimidation aspect, was consideration given to police commissioners and their role when it comes to intimidation, and what about the facts of intimidation in this bill within the department itself?

**Ms. Anne McLellan:** When you talk about a police commissioner, do you mean a member of the civil oversight authority?

**Ms. Judy Sgro:** Yes.

**Ms. Anne McLellan:** They are not covered, as you're probably aware, in this list defined as justice system participants. I guess all I can say is what I said in response to Mr. Blaikie, which is that we would be very interested in what this committee has to say about possible additions to the list. But keep in mind, as I say, what we're focusing on here are justice system participants involved in the administration of criminal justice. I think we need to be careful that our net is not swept too broadly in that regard.

We have attempted to outline those whom we believe are clearly within the definition of justice system participants and are involved in the administration of justice. However, if this committee, after hearing from others, has a view in relation to how we might modify our definition of justice system participant, we'd be very happy to take a look at that.

**Ms. Judy Sgro:** On the issue of protecting jury members, what would be the plan? How would you do that?

**Ms. Anne McLellan:** There are various ways one can do that. For example, a very simple thing would be not providing addresses of jury members, where these people live. If someone is in a court room and they have access in one way or another to the address of a jury member, it's possible that one could have people parked outside their home, cruising by their home, whatever the case may be, in an attempt to intimidate that individual.

There are ways you can protect—not anonymity as such—key privacy elements of jurors.

Monsieur Roy, do you want to add anything to that?

**Mr. Yvan Roy (Senior General Counsel, Criminal Law Policy Section, Department of Justice):** The minister has already indicated some of the measures that can be taken. If you look at the bill, there are a number of amendments that are proposed for the purpose of allowing a judge to keep these people as...how should I put it...without their identity being revealed unduly. There is of course a need, in order to have a proper trial, for the defence to have access to some information in order to have the right people sitting on that jury. But there is no point in making the addresses or the identities of these people known to the whole community. The bill is trying to do as many things as possible to achieve that goal.

If you look at the bill, I invite you to read from clause 38 on. These are the measures being contemplated by this piece of legislation.

**The Chair:** Thank you very much. That's it.

[*Translation*]


Mr. Bellehumeur, you have the floor.

**Mr. Michel Bellehumeur:** I have two remarks and one question.

Here is my first observation. I noted the fact that the Department is willing to review the definition of "justice system participants" to include major figures who have been omitted, such as members of the National Assembly and the provincial assemblies, journalists who do some very effective work in the legal systems area—as shown by Michel Auger—and thirdly, the members of municipal boards who—and this seems to have been forgotten—are involved daily in enforcing zoning regulations, especially for bunkers.

Here is my second observation. Regarding this amount of \$200 million to help implement the legislation, my understanding is that nothing in that amount will go directly to the provinces to help them implement the legislation. We have seen, with the Great Spring Clean-Up, that it costs the provinces millions of dollars to implement the Criminal Code, which is a federal jurisdiction.

Here is my question. When wiretapping takes place, there is a requirement to apply in writing with a Superior Court judge to explain the reasons for that wiretapping, give the names of the people who are going to be wiretapped, explain what type of information is being sought. This is the procedure for wiretapping operations. In this case, political officials will be authorizing police officers to commit illegal actions. This is not good. You have a problem of appreciation. Just as the Superior Court judges are informed right from the start that an eavesdropping operation is in good order, there would be no problem either if... But I see that there will be a problem with potential abuses when the decisions are made by political officials. A request should be made in the same way to a Superior Court judge, that is the case should be presented in writing, *ex parte*, with a series of justifications to make sure that there would be no abuse. If this were the case, I would congratulate you for those new provisions in the Criminal Code. But right now, I am quite concerned that it is the Solicitor General who will deal with those files, and I think many other people will agree with me on this.

• 0950 

[*English*]

**Ms. Anne McLellan:** I'm going to have Monsieur Roy respond to that in detail, but I think, Monsieur Bellehumeur, you know from my opening remarks that I have explained why, because of the nature of the activities involved in undercover operations, one would not want to seek judicial authorization.

But, Yvan, you might want to explore that a little further.

[*Translation*]

**Mr. Yvan Roy:** With pleasure, Madam Minister.

The first point to note, Mr. Bellehumeur, is that the Solicitor General is not asked to get involved in any way in a specific investigation. In fact, the bill specifically includes a ten-year clause. The bill attempts to maintain a balance between on the one hand the State's accountability for the actions of its officers, and on the other hand the necessary independence of

police bodies. That independence is in fact specifically acknowledged in the decision to which we respond with this bill, the Shirose-Campbell case. The court will insist that in a democracy, police departments must be independent from the rest of the State. This is my first point.

Second point: Why not have a judicial system? We dealt with this in our discussions before submitting our proposals to the Minister of Justice and the Solicitor General, but every time the idea was floated, I would say it did not fly. We launched a trial balloon, but it did not fly. I believe there are several reasons to that. One of the reasons is that it would change the essence of the relationship between the judiciary and the investigators. The question does not arise in countries with a civil law tradition like France or Italy, where the investigations are supervised by the examining magistrate. It is not the case here. You will of course reply that there are those warrants.

**Mr. Michel Bellehumeur:** A hundred and eighty-five.

**Mr. Yvan Roy:** You mentioned wiretapping. We could think of the search warrant. The big difference, the vital difference in our view is that such warrants deal with specific actions with specific limitations. The judge hears the evidence and say that he or she authorizes someone to be wiretapped for 60 days. The idea here is to give law enforcement officers the required flexibility to act within clearly specified parameters. And those parameters, as we tell you, Members of Parliament, are the parameters which make it possible for officers to act when it is impossible to know in advance what type of offence may take place. We were told by people who do that kind of work that decisions are made on the spot and that there is no time to refer it all to the judicial authority.

The third reason or third part of my explanation, Mr. Bellehumeur, is that we looked at the situation in other common law countries. We looked at the Australian system. In 1995, they had a ruling of their High Court on Ridgeway which was somewhat similar to the ruling of our Supreme Court on Shirose-Campbell, and the response in Australia was to give that power directly to the police.

In the United States, there is a whole range of models, but what I am saying in essence is that in none of those models it has been felt that a judge would be the appropriate authority. Ultimately, the judge will have to decide whether what has been done was legal. In other words, there is a fear that the judge might become involved in the investigation and might not be able, eventually, to be sufficiently detached to determine whether the actions were legal or not. Those are the reasons that were put forward and accepted.


**The Chair:** Thank you, Mr. Roy.

[*English*]

Mr. Owen.

**Mr. Stephen Owen (Vancouver Quadra, Lib.):** Thank you, Mr. Chair, Ministers.

I have two observations that each minister may want to comment on. One is with respect to the ports police. We've heard many comments over the last few years about the elimination of the ports police. I'd like to reflect on our experience in Vancouver and wonder, perhaps to the Solicitor General, whether this is something that's common across the country. Not to exaggerate the situation, but the ports police in Vancouver were spectacularly unsuccessful in identifying and investigating cases of smuggling through the port. At the request of the Vancouver city police, working in cooperation with the RCMP, the decision to eliminate the ports police was supported. Funds were given over to the coordinated, concentrated, and much more effective, it turns out, operation of RCMP and city police, to have extra resources to take over that role.

• 0955 

Is this something that has happened across the country as well? Because we continue to hear concern about the elimination of ports police, as if this is somehow a reduction in the effectiveness and the resources going to this investigation of crime.

The second observation is with respect to the increasing complexity of police investigations and prosecutions. Particularly with respect to organized crime and around such things as disclosure rules, proceeds of crime rules, now extra definitional rules, search and seizure, and wiretap evidence, it's increasingly important that lawyers be involved to give advice to the police at earlier and earlier stages if we're going to have successful prosecutions. And yet in this country, distinct from the United States, we have a tradition of recognizing the different roles of police investigation and crown counsel prosecuting crime.

I wonder if the Minister of Justice might have some comments on how we're going to respect that distinction in role while police and prosecutors become more entwined at an earlier and earlier stage.

**Mr. Lawrence MacAulay:** Thank you, Mr. Owen. The fact of the matter is, the RCMP and Canada Customs, as you indicated, are both very active in this area of watching the drug flow and making sure that the RCMP fulfils its mandate in that area.

There was some concern previously, and of course that's why changes are made. Changes are made in order to improve, to make sure the funding allocated, no matter who gets it—all the dollars are ours, nationally—is spent as effectively as possible. With the cooperation we've had with the RCMP and Canada Customs, and with the municipal police, it is, in fact, more effective.

**Ms. Anne McLellan:** In relation to your second point, Stephen, I'm going to let Yvan tell you about some of the things we are doing, and perhaps some of the changes we've made to better integrate, at least in certain ways, advice from lawyers working in and around proceeds of crime issues in terms of their advice to police.

I'll turn it over to Yvan.

**The Chair:** Try to be brief. We have a couple more and only two minutes left.

**Mr. Yvan Roy:** I'll try, thank you, Mr. Chairman.

You have those integrated proceeds of crime units, 13 of them in the whole country, where lawyers working for the Department of Justice are involved. However, in order to protect the need for crown prosecutors to be independent, they do not make the determination as to whether charges should be laid or not. They give advice as part of the investigation but they don't make the final determination as to whether we're going to court with these cases, for the very reason you give—that is, trying to keep the balance between giving advice on the one hand, and on the other, making the decision at the end of the day that a case should go to court.

**The Chair:** Thank you very much.

Mr. Blaikie?

Mr. DeVillers, the former chairman of the subcommittee on organized crime.

By the way, I would bring it to everyone's attention that Mr. MacKay, Mr. McKay, Mr. Maloney, Mr. Myers, Monsieur Bellehumeur, Mr. DeVillers, and your chair were all members

of the subcommittee on organized crime, which informed, I think, this legislation.

**Mr. Paul DeVillers (Simcoe North, Lib.):** Thank you, Mr. Chair, because that was the point I wanted to make. I wanted to thank all of the committee members, our interpreters, our clerk staff, and especially our drafters, Mr. Rosen and Ms. Casavant for all the work they did.

I do have to ask, however, why all the recommendations weren't accepted. I'm thinking in particular of the recommendations dealing with sentencing; parole eligibility; number nine, where the subcommittee was suggesting that there be a discretion given to sentencing judges to put in different requirements for parole eligibility; and recommendation six, dealing with dangerous offenders, to have sentencing provisions similar to what we have under dangerous and long-term offenders.

I'm asking whether consideration was given to those recommendations and what the rationale might have been.

**Ms. Anne McLellan:** In fact, Paul, let me reassure you that we did consider all of the recommendations in the report. I think we acted on many of them, in fact, but not, you're quite right, on all of them.

• 1000 

Certainly I'll leave it up to the Solicitor General to comment on issues in and around parole and parole eligibility.

In terms of recommendation 6, I don't know whether there's anything you want to add, Monsieur Roy. This recommendation would allow for the designation of criminal organization offenders to be dangerous offenders or long-term offenders provided in section 752 of the Criminal Code.

If you look in fact at what we're doing on sentencing, we're extending sentences in some cases. We're going to consecutive sentences in some cases. I think we took the sentencing issue very seriously, but what we decided was rather than go to, as a general rule, an indeterminate sentence, depending on the nature of the accused person before you, any prosecutor could seek a dangerous offender designation. But we feel that on the sentencing side we've sent a very powerful signal in relation to key aspects of organized crime activity.

For example, under the rubric of leadership, if you're a leader, you can be sentenced to a maximum of life. In terms of the causing of death in the course of intimidating a justice participant, that's first-degree murder.

In addition, we've moved to consecutive sentencing in relation to some of these offences. So we think we've sent a very clear and powerful message to those who are involved in organized crime in this country that we take this very seriously. If you get caught and you're prosecuted, you're going to do big time.

**Mr. Paul DeVillers:** Thank you.

**The Chair:** Thank you very much, and I thank both ministers for your time today.

**Ms. Anne McLellan:** Thank you.

**The Chair:** I will suspend while the witnesses for the next round table find their way to the table.

Thank you very much.

