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Chair

Mr. John Maloney

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● (1105)

[*English*]

The Chair (Mr. John Maloney (Welland, Lib.)): I call the meeting to order.

I have a quick announcement. There will be a delegation from the All China Lawyers Association, who will come in around 11:30, strictly as observers. They'll sit in the body of the room. They will be accompanied by a member of the Canadian Bar Association—again, just as observers—to see how we run our meetings.

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): I think they're human rights lawyers.

The Chair: I'm sure they are, outstanding.

We have this morning from the Department of Justice, Mr. Shawn Scromeda, who is a counsel in the criminal law policy section; Paul Saint-Denis, senior counsel in the criminal law policy section; and Simon William, who is a counsel with the strategic operations section.

Gentlemen, generally we have a presentation of roughly 10 minutes, to be followed by questioning—seven minutes in the first round, and then five-minute rounds thereafter.

Are you all going to make a presentation, or just one on behalf of all three?

Mr. Shawn Scromeda (Counsel, Criminal Law Policy Section, Department of Justice): Just one.

The Chair: Okay, Shawn, would you please proceed?

Mr. Shawn Scromeda: Thank you for the opportunity to appear before you today on Bill C-53, a bill in relation to proceeds of crime.

My remarks today will outline in brief the proposed amendments contained in Bill C-53, including the intent and rationale behind them. I'll also take some time to outline the ways in which the proposal balances valid law enforcement objectives with third-party protections. I know that was an area of some concern. Also, there are some additional corrective amendments by the bill, and I'll very briefly go over those.

Honourable members, the current proceeds of crime regime at part XII.2 of the Criminal Code allows for the forfeiture of proceeds upon application by the Crown after a conviction of an indictable offence under federal law, other than a small number of offences exempted by regulation. Currently, in order to obtain forfeiture, the Crown must show, on a balance of probabilities, that the property is the proceeds of crime and that the property is connected to the crime for which the person was convicted. The Crown can also obtain forfeiture even if no connection between the particular offence and the property is established, providing that the court is nevertheless satisfied beyond a reasonable doubt that the property is proceeds of crime.

While authorities have successfully forfeited criminal assets under the existing scheme, there are limitations in the way the current proceeds of crime measures operate that create barriers for police and prosecutors in respect of the extensive illicit gains of organized crime. The existing proceeds of crime measures can be, and we expect will continue to be, effective to obtain forfeiture in general circumstances. For example, if a person is convicted of fraud and the property can be identified as the product of that fraud, then the existing provisions can operate in a straightforward manner.

Even where it may become apparent that the identified property is not the product of the particular offence for which the conviction was obtained, the existing proceeds measures can operate so long as proof is provided beyond a reasonable doubt that the property is nevertheless the proceeds of crime.

Under the amendments suggested in the bill, these measures will continue to be available for general proceeds applications. It is, however, the situation of organized crime typically involving criminality over many years and believed to lead to substantial accumulation of wealth where the existing provisions frequently are limited in their effect in relation to the size of the problem.

Criminal organizations are believed to be involved in numerous offences leading to substantial material gain. Intelligence on the wide range of offences committed by organized crime has been documented by, for example, Criminal Intelligence Service Canada in their yearly assessment of organized crime in this country. It extends beyond traditional organized crime activities such as the illegal drug trade to other areas, including migration and trafficking in human beings, firearms trafficking, cross-border smuggling of contraband alcohol and tobacco, and economic crime. The motive for these crimes is profit, often at the expense of the weak and the vulnerable.

Economic crime frequently engaged in by organized crime, such as identity theft, credit card fraud, insurance fraud, and counterfeiting, was established in the 1998 report of the Department of the Solicitor General as taking a total of $5 billion per year from the nation's economy. This is the product of numerous individual offences committed over extended periods, but the reality is that only a small proportion of these individual crimes will ever be the subject of charges and convictions; and even where convictions are obtained, the particular crimes involved may not be ones with any associated proceeds, or even if they are, the proceeds will represent only a small part of the total proceeds of crime earned and controlled. It is for this reason that the reverse onus forfeiture power is being advanced. Bill C-53 provides a reverse onus of proof after a conviction for a criminal organization offence that is punishable by five or more years of imprisonment, or certain drug offences under the Controlled Drugs and Substances Act.

The definition of a criminal organization offence in the Criminal Code in respect of which the new power will be available includes the three special criminal organization offences that have been created in the code. These are participation in the activities of a criminal organization; committing a crime for the benefit of, at the direction of, or in association with a criminal organization; and instructing the commission of an offence for a criminal organization.

It's important to emphasize, however, that the definition also includes other indictable offences punishable by five or more years, providing that these offences were committed for the benefit of, at the direction of, or in association with a criminal organization. Therefore, the potential scope of application of the proposed new reverse onus measure in relation to the criminal organization offence definition is broad, though still connected to organized crime.

● (1110)

As noted, the reverse onus forfeiture power would also be available for certain drug offences. These are the offences of trafficking, importing and exporting, and production of drugs contrary to the Controlled Drugs and Substances Act when prosecuted on indictment. The extension of the proposed new measures to these drug offences is consistent with the logic underlying the reverse onus scheme. There are probably no offences more closely associated with organized crime than these ones. Further, there's the justification of taking special measures against the recognized societal problem of serious drug crime in and of itself.

As a prerequisite to the reverse onus scheme, the court would have to be satisfied, on a balance of probabilities, that either the offender had engaged in a pattern of criminal activity for the purpose of providing the offender with material benefit or that the income of the offender unrelated to crime could not reasonably account for all the value of the offender. Upon these conditions being satisfied, any property of the offender identified by the Attorney General would be forfeited, unless the offender demonstrated, on a balance of probabilities, that the property was not the proceeds of crime.

Concerns have been expressed about protections offered with respect to legitimate third-party interests in property that may be subject to forfeiture. This is an important issue with respect to the forfeiture power, both with respect to the proposed new reverse onus power and indeed to the existing proceeds of crime measures in the Criminal Code. In this regard, it's important to emphasize that specific protections do apply.

First, currently under the Criminal Code, prior to an order of forfeiture being made, a court is directed to require “notice to be given to and may hear any person who appears to have a valid interest in the property” subject to forfeiture. And the court may order the property or any portion of it returned to that person if the court is satisfied that the person is the lawful owner of the property or is lawfully entitled to possession and is innocent of any complicity or collusion. Under Bill C-53, this power has been specifically extended to apply to the proposed new reverse onus forfeiture as well.

In addition, under the Criminal Code, any person who claims an interest in property already forfeited, other than a person who was charged with or convicted of a designated offence in relation to the property or who has acquired title or the right to possession of that property under circumstances giving rise to a reasonable inference that the transfer was made to avoid forfeiture, may apply for an order declaring that their interest is not affected by the forfeiture. Once again, under Bill C-53, this power has been specifically extended to apply to the reverse onus forfeiture power as well.

Furthermore, a fundamental additional protection has been provided in Bill C-53. Since this bill may significantly increase the scope of forfeiture available in some circumstances, the bill also provides a special power to relieve against forfeiture. A court may, if it considers it to be in the interests of justice, decline to make an order of forfeiture against any property that would be otherwise subject to forfeiture under the scheme.

Finally, Bill C-53 provides that a court will have to be satisfied from the outset that a particular piece of property is in fact the property of the offender in order for it to be subject to forfeiture. Therefore, these existing and proposed elements of the proceeds of crime scheme do provide protection to third-party interests.

Bill C-53 also contains a number of corrective amendments to the existing proceeds of crime scheme. Very briefly, these include a correction in a discrepancy between the French and English wording of one provision, a clarification of the authority of the Attorney General of Canada in relation to the proceeds of crime, a clarification of the definition of “designated offence”, and an extension of the search warrant provisions under the Controlled Drugs and Substances Act to ensure that warrants under that act can also apply to investigations of money laundering and possession of proceeds of crime offences, where these are related to illegal drugs.

Honourable members, Bill C-53 is a carefully designed proposal that will add a useful new instrument for police and crown prosecutors, which at the same time respects fundamental principles under Canadian law, including legitimate interests in property.

My colleagues and I would be pleased to respond to any of your questions.

The Chair: Thank you, Mr. Scromeda.

Mr. Toews, for seven minutes.

Mr. Vic Toews (Provencher, CPC): Thank you, Mr. Chair.

Thank you for your presentation.

You make a distinction between a drug crime and organized crime in terms of this legislation. Can you spell out how approaching these two different types of crime is in fact different in law? Or have I missed something?

● (1115)

Mr. Shawn Scromeda: No, that's a relevant issue. I guess the first thing I'd say is that any of these drug crimes I've mentioned can also be criminal organization offences but—

Mr. Vic Toews: But they don't necessarily have to be organized criminal enterprises in order for these new provisions to apply to the drug situation.

Mr. Shawn Scromeda: Yes, with respect to the drug crimes, you don't have to go to the additional measure of proof to prove that they're criminal organization offences. In that way, that is an extension beyond the pure criminal organization offence.

It's still based on the logic of criminal organization offence, or organized crime in general, in the sense that there are no offences more clearly associated with it, but when it comes to drug crimes, we're saying that once you have a conviction on those, you don't have to have the additional level of proof that it was a criminal organization offence.

Mr. Vic Toews: All right, so we have the situation then—let's say we have a grow op in a suburban area—of a house that's being used as a grow op. The police have done all their work. They've got the search warrant, they go in, they make the seizures, they make the appropriate arrests in due course.

The fact that this might be freelancers, let's say—you know, two or three individuals running this grow op with no discernable relationship with organized crime—doesn't impede the police or the Crown from using these new provisions to seize the house or other property.

Mr. Shawn Scromeda: That's the case, yes.

Mr. Vic Toews: Okay. There was a concern expressed, and I think you've touched on it slightly, that somehow there is a reverse onus here that would violate the Charter of Rights and Freedoms.

My understanding here is that the criminal conviction occurs in the way that all criminal convictions occur, that the Crown proves every essential element of the crime beyond a reasonable doubt. It is only after every essential element of the crime has been proven beyond a reasonable doubt that we then look at this reverse onus situation.

So this law will not in any way affect the finding of criminality against an individual, but will simply impact, after the conviction has taken place by the judge, on all elements beyond a reasonable doubt. Is that correct?

Mr. Shawn Scromeda: That's correct as well.

Mr. Vic Toews: That's fine. Thank you.

The Chair: Mr. Marceau.

[*Translation*]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chairman.

I would like to thank the witnesses for being with us today. And thank you for clarifying, at the request of my colleague, Vic Toews, the question raised by a number of people regarding the constitutionality of the Bill and the fact that there is a reverse onus only once there has been a conviction; however, the Supreme Court has clearly ruled—particularly in cases involving possession of tools for breaking and entering—that there is a reverse onus even before an accused has been convicted. In my opinion, providing for a reverse onus after a conviction is equally valid under the Constitution.

I have three questions. The first relates to paragraph 1(1)(a) where you have this definition of designated offences:

> 1(1)(a) [...] any offence that may be prosecuted as an indictable offence under this or any other Act of Parliament, other than an indictable offence prescribed by regulation

Why has the phrase “other than an indictable offence prescribed by regulation” been added?

[*English*]

Mr. Shawn Scromeda: That has, in fact, always been part of the definition. The change that was made to the French—you see there is no equivalent line in English.... There were some editorial changes made on an ongoing basis by our drafters.

So the principle there isn't a new one. But there are certain offences that are excluded from the existing scheme, and I want to emphasize this. What we're talking about here is not an aspect of the reverse onus. What applies to the reverse onus are the specific offences I've already mentioned. This is with respect to the existing scheme. And certain offences are exempted from regulation, mostly in the case of other federal offences under other federal statutes that have separate forfeiture-like powers that are more appropriate in respect to forfeiture in those statutes than the Criminal Code.

If my colleague would like to—

● (1120)

[*Translation*]

Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice): Mr. Marceau, these provisions excluding certain designated offences were part of Bill C-24 in 2001. They dealt with that precise point. When we broadened the definition of what were at the time crimes that had been turned into businesses, we adopted the concept of a designated offence. Our starting point were 40 or so offences listed in relation to all criminal acts under federal law, with the exception of some offences that we were able to exclude by regulation. At the time, this provision was also included in the Bill. Here what we are doing is simply correcting the French wording.

Mr. Richard Marceau: Thank you. Mr. Scromeda, you mentioned that the court is given the discretion not to proceed with the forfeiture. Could you tell me under what circumstances the court is given that discretion or has an ability to exercise it?

[*English*]

Mr. Shawn Scromeda: Potentially the court could take a number of things into account. As in the situation mentioned earlier, a person who has been convicted of a serious drug offence, and against whom this new reverse onus power has been invoked with respect to proceeds of crime, may not be able, due to incapacity in their defence, to prove that all the property came from a legitimate origin, but it may very much appear from the general circumstances in the court that taking all of the person's property—perhaps this is a hanger-on, a person who hasn't been involved in a life of crime—would be simply disproportionate in the circumstances.

There may be also questions of hardship with respect to family, for example, that could be taken into account as well.

[*Translation*]

Mr. Richard Marceau: What I'm trying to understand is this. To give you a practical example, supposing someone is convicted of organized crime-related activities. Forfeiture of that individual's property is not automatic. There is a reverse onus. If he is able to prove that he used his salary to pay for the house or received a significant inheritance and bought the house with that money, is that not sufficient, given that this person has to prove that the property was not acquired through criminal activity? Otherwise, is this not giving the court an opening to say: "We don't want to know anything about it"? Since it isn't automatic, I don't see what the need for it is.

[*English*]

Mr. Shawn Scromeda: In general, and returning perhaps to some opening remarks here, I wouldn't want to suggest that just because this is a post-conviction situation, there are no charter concerns at all. Charter concerns may arise, and they were very much considered in the drafting of this bill. Certainly it is the experience that allowing courts discretion, especially with respect to potentially wide-ranging new powers, helps to enhance the viability of those powers.

With respect to reverse onus forfeiture in particular, there's a fundamental distinction between what is being done here and existing proceeds powers under the Criminal Code. The existing proceeds powers require, prior to forfeiture, a direct finding by the court that these are proceeds of crime; this doesn't. If you carefully read through it, you'll see that in fact it just creates—after, admittedly, some restrictions, both in terms of the offences to which it applies and certain initial elements approved from the Crown—a presumption, essentially, that everything the person has is a proceed of crime.

That could potentially be viewed as a sweeping power. There may be circumstances under which it would be very difficult to prove that it's not. In normal circumstances, part of the underlying logic of the bill is that the person is in the best position to prove, but sometimes proof is not easy, and sometimes the effect of the measure, given its potentially wide-ranging powers, could be disproportionate, and leaving that remaining discretion on the court is appropriate.

● (1125)

[*Translation*]

Mr. Richard Marceau: Could you tell me in which clause of the Bill that appears?

[*English*]

Mr. Shawn Scromeda: It's added by clause 6 of the bill, and it would be under proposed subsection 462.37(2.07). If you turn to page 6 of the bill, the section itself is proposed subsection 462.37 (2.07).

The Chair: One of these days we're going to have to go through the whole—

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Lemay and I, as former defence counsel, are drooling over these sections.

Thank you for being here. You threw a figure out, the estimation of $5 billion a year, in terms of proceeds of crime. Did you mean that for these crimes, organized crime, or the drug offences that are part of C-52, or all?

Mr. Shawn Scromeda: We're very cautious with respect to estimates of the total amount of proceeds of crime in Canada. The figure I gave was from a 1998 Solicitor General of Canada report that estimated the negative effect on the Canadian economy, from economic crime associated with organized crime. That's a distinction, I would say.

There are numerous numbers available through different estimates of total proceeds of crime in Canada and total money laundering in Canada. Given the very nature of proceeds of crime, these estimates are inherently unreliable. I mean, organized criminals do not tend to provide us with their financial estimates and we're looking from the outside at very incomplete data. A 2003 report of the Auditor General of Canada specifically mentioned that estimates of money laundering in Canada were difficult to attach specific reliability to.

It did mention in the same Auditor General report, however, that drug trafficking alone, primarily engaged in by organized crime, is considered to be, on its own, the source of multi-billion dollars in proceeds of crime each year in Canada. Most estimates I've seen are in the billions. Again, though, I wouldn't want to provide you with exact figures because I don't feel that—

Mr. Joe Comartin: Mr. Scromeda, regarding the existing law, dealing again, if you can, with these limited offences, can you tell us how much we are recovering now, where the onus is still on the criminal?

Mr. Shawn Scromeda: I do have some data in that respect, though once again not complete. But an important part of the federal response, and to some extent joint federal-provincial, is the integrated proceeds of crime initiative that has been up and running for a number of years. Data on that is that since 2000-01 there have been $70 million in seizures and $42 million in forfeiture, and additional revenue data with respect to illicitly got gains have been provided to the CRA leading to the identification of $43.7 million in federal taxes and a payment of $6.5 million of that and fines of $1.5 million.

Those are the most up-to-date figures I have, and that's more or less the range we're talking about.

● (1130)

Mr. Joe Comartin: Are those figures related to these crimes or are those from all crimes?

Mr. Shawn Scromeda: That's the full IPOC.

Mr. Paul Saint-Denis: Those are all crimes, sir.

Mr. Joe Comartin: Is there any breakdown of how many are drug or organized crime related? Does this include income tax penalties?

Mr. Simon William (Counsel, Stategic Operations Section, Department of Justice): No, it doesn't include taxes.

Mr. Joe Comartin: Okay, but all other crimes.

So the question is, have you broken that down at all as to how much of this is organized crime and how much of it is drug offences?

Mr. Simon William: No.

Mr. Joe Comartin: Is it possible to do that?

Mr. Simon William: We'll have to see.

[*Translation*]

We'll have to make some inquiries. Public Works and Government Services Canada is responsible for managing the property and determining its value. We'll have to discuss this with them. Since we are with the Department of Justice, we are not responsible for making assessments of the value of seized or forfeited property.

Mr. Joe Comartin: With these amendments, will it be possible to estimate the value for these types of crimes?

Mr. Simon William: As far as I know, there has been no assessment made of the value or of the additional monies this new legislation will bring in, in terms of the value of forfeited property. Perhaps one of my colleagues would like to add something.

[*English*]

Mr. Paul Saint-Denis: It's perhaps possible to make a bit of an extrapolation. Our main activity at the federal level is focused primarily on drug offences, so the drug offences are being carried over with these provisions.

Criminal organization offences are relatively new offences and they have not been used extensively, so I think you probably have not had a lot—

Mr. Joe Comartin: I'm sorry, Mr. Saint-Denis, what are new?

Mr. Paul Saint-Denis: The criminal organization offences are new, going back to the year 2001, I believe.

Mr. Joe Comartin: But certainly the drug offences are not.

Mr. Paul Saint-Denis: The drug offences are not new, of course. And those are the ones we primarily prosecute at the federal level.

A lot of what we obtain by way of proceeds will be as a result of drug prosecutions. There's a tremendous amount of overlap between what we're trying to do in terms of proceeds, between what we've done in the area of proceeds generally and what this is proposing here, because we still will be going after drug proceeds.

Mr. Joe Comartin: Has any analysis been done on the provincial legislation, of identifying these four provinces—Ontario, Manitoba, B.C. and Alberta—that have legislation on the civil side, where the provinces could move against these types of assets? Has there been any analysis done by the department as to the success of that? And my secondary question is the constitutionality of that legislation.

Essentially, what I want to know is, do we know what their experience has been, how successful they've been?

Mr. Paul Saint-Denis: Their experience has been fairly limited. Manitoba's has only recently come into force and I'm not sure they have actually used it.

Ontario's legislation has been in force the longest and they have used theirs successfully. I believe they have also successfully resisted constitutional challenges.

To answer your question, yes, we have looked at them. But these are not reverse onus situations but civil approaches to forfeiture. That is to say, you can go after the proceeds of an individual, the property of an individual, if you can demonstrate on a civil standard of proof that the property is from an offence of some sort.

Mr. Joe Comartin: Essentially, that's the test that's going to be in here.

The Chair: Thank you, Mr. Comartin.

Go ahead. You can respond to Mr. Comartin, but that's the last question.

Mr. Joe Comartin: It's essentially the test that's in here, although it's the person who owns the asset who is going to have to prove on a balance of probabilities.

Mr. Paul Saint-Denis: There's a tremendous difference, in that the person here, the accused, will have been convicted of an offence, whereas in the provincial statutes no conviction has occurred.

● (1135)

The Chair: Mr. Macklin.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Chair, and thank you, witnesses, for being with us today.

There were a number of questions raised in debate in the House during the period of time this bill was before the House. One of the questions that have come up, of course, deals with what Mr. Comartin was referencing at one point with respect to the amount of funds that fall into this category, and secondly, our ability to be able to retrieve some of those funds for the public good.

My question is, do you have any information, anecdotal or otherwise, as to whether our courts are in a position where they're going to be sufficiently prepared to pursue and deal with this type of recovery? In many respects it's out of character for those in the criminal field, where they would be dealing with this type of application.

Mr. Paul Saint-Denis: I'm not sure exactly what you mean by whether our courts are going to be prepared. Do you mean will the judges have a willingness to...?

Hon. Paul Harold Macklin: Will the judges have a willingness? Do you feel that they're going to be well informed enough about the importance of this process, and will they see it as part of an effective approach to dealing with the criminal structure within our society?

Mr. Paul Saint-Denis: This legislation has certainly been the subject of a fair bit of media attention, so assuming that judges follow what's going on in the real world, then they should have an idea of the importance of what we want to do here. Certainly there have been a lot of comments about the difficulty of tackling and combating organized crime and the importance of being able to go after property belonging to organized crime groups, so I'm assuming that the judges will be able to understand and appreciate the importance of this legislation.

Hon. Paul Harold Macklin: Will there be an information program going along with this directly to the bench?

Mr. Paul Saint-Denis: Normally we would send a copy of the new legislation with background information. We do that as a standard operation. We will send information to the judiciary. So I think the answer is yes on that. Plus, in the follow-up it's possible that there will be further opportunities to provide information to the legislature on what this new legislation proposes to do.

Hon. Paul Harold Macklin: Let me just go to another area of concern that was expressed, which was whether in fact the series of processes that we have in place to deal with the tracing of funds, the holding of funds, funds that may be in other people's hands.... Do we have the tools in place that will be effective, in your opinion, so we can actually follow funds and make those seizures?

Most criminal organizations are likely not going to be sitting there with the funds in their own little, shall we say, bank accounts under their own names. Are there appropriate measures in place that you believe will allow the police forces to go out and effectively pursue these funds and other assets? Could you explain in general terms what they are?

Mr. Shawn Scromeda: I'll leave most of that to my colleague Simon William, but certainly that's a challenge, tracing criminal assets. It's one of the reasons we set up the IPOC initiative, which brings together not just prosecutors but forensic accountants and others in order to do that. It remains a challenge. It will continue to be a challenge. But there are systems in place to do that, and I'll let Simon perhaps provide some additional information.

[*Translation*]

Mr. Simon William: As my colleague, Shawn, just mentioned, there is an initiative under way known as IPOC in English or UMPC in French, through which units have been set up across the country. Twelve units currently carry out investigations solely related to proceeds of crime.

As Shawn just stated, these are units that include RCMP investigators, lawyers from the Department of Justice and accountants, who work together to trace the money and investigate the people who have it or are engaging in money laundering.

I was with the unit in Montreal for six years and you're absolutely right to say that it is always a challenge. Obviously, we are refining our procedures, but so is organized crime. So it's increasingly complicated. However, we have developed such tools as FINTRAC to help us gather information on dubious transactions carried out through banks and credit unions.

So, the tools are now in place to try and trace the money, but that isn't always easy. Also, as I just mentioned, organized crime is continuing to refine its own operations, which makes things that much more difficult for us.

● (1140)

[*English*]

Hon. Paul Harold Macklin: In terms of third parties, can you give us an explanation as to how a third party who claims original ownership of these assets can in fact actually go about protecting the asset? Initially there may be a seizure, and then he or she may want to try to get it back. How does that third party go about getting it back once a seizure has taken place?

Mr. Paul Saint-Denis: Our special search warrants and our restraint order provisions in the Criminal Code allow for third parties with an interest to make that interest known to the court, allow for either a seizure order or a restraint order to be modified or varied, or even allow for the property to be returned if the individual can demonstrate an interest. As to the demonstration of the interest, of course, that will depend on individual cases, but the individual would have to be able to present the necessary documentary evidence or other evidence to justify an interest.

Mr. Shawn Scromeda: In terms of procedure, I would add that there are really two steps in the existing proceeds procedure, one prior to a forfeiture under which they can make their interests known, and one even after a forfeiture under which they can make their interests known. As I've mentioned, we also have additional protections under this one of an additional discretion in the court, which doesn't exist in the current scheme but would apply to this case, that the court can apply. Finally, there is an additional restriction in the new proposed reverse onus scheme. From the outset, this has to be property of the offender. That's not the case with respect to existing proceeds measures, but it is the case with respect to reverse onus for forfeiture.

The Chair: Thank you, Mr. Macklin.

I'd like to welcome the All China Lawyers Association, who have joined us. Welcome.

Mr. Warawa.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chair.

Thank you, witnesses, for being here this morning.

I have three questions.

The first is on the existing legislation and proposed Bill C-53. Bill C-53 requires conviction before proceeds of crime kicks in. My question relates to where the conviction occurs.

You may have heard in the news this past summer that Langley became famous for a drug tunnel that was dug on Canadian property, went under the border, and came up on American property. Three Canadians were charged in the United States. It was a joint project between Canadian and American authorities.

These individuals are Canadians who have property in Canada. If they are convicted in the United States, under present legislation and Bill C-53, would a conviction in the United States be adequate to start proceeds of crime? Does the conviction have to occur in Canada?

● (1145)

[*Translation*]

Mr. Simon William: Yes.

The sentence, or rather, the conviction must be in Canada. So, if someone has been convicted in the United States, we cannot apply Part XII.2 of the Code, which deals with the proceeds of a crime, to property held here in Canada.

We would need to lay charges and go through the whole process again here. In fact, when you look at the proceeds of crime provisions, it is clear that there is always a connection to the sentence. The individual has to have been charged, convicted and sentenced.

[*English*]

Mr. Mark Warawa: That seemed to be the obvious answer, and so I would agree with you.

But we have international agreements with the United States. They have expressed an interest in this property in Canada under our international agreements. Under those agreements, if they can express an interest in this property, then would the reverse not apply? If the conviction is an international conviction, would it not now activate us? The answer is no.

Mr. Paul Saint-Denis: Outside the International Court of Justice, there are no such things as international convictions. There is either an American conviction or a Canadian conviction. If they're prosecuted in the U.S. and convicted there, American legislation would apply. American legislation is very broad in this area. They could seek to obtain confiscation of the offender's property in Canada and the proceeds. They can do that by way of a request for mutual legal assistance or other processes.

Mr. Mark Warawa: So for any proceeds of crime to take place on the part of Canadians, there would have to be charges and a conviction—

Mr. Paul Saint-Denis: In Canada.

Mr. Mark Warawa: — before we could express an interest in that Canadian property.

Mr. Paul Saint-Denis: That's correct.

Mr. Mark Warawa: On proceeds of crime, one of my questions was the amount since 1989 when this first took effect. You shared numbers from 2000. Would it be possible to get the numbers shared with the committee for what happened since 1989, hopefully broken down so that we can see where the proceeds are coming from? Is it possible you could forward those statistics?

Mr. Shawn Scromeda: We'll use our best efforts to get you 1989. I don't have it with me right now, but I'll—

Mr. Mark Warawa: You shared 2000 on, so there are about 10 years missing there. If it could be broken down, that would be very helpful.

My last question is, where do the proceeds of crime go? Do they go into the big black hole here in Ottawa?

I spent quite a bit of time with front-line RCMP officers this summer; that was during our discussions. When they do drug investigations, if they have used their budget dollars to buy some illegal drugs and now have a charge and a conviction, the dollars they have used come right out of their police budget. Now, under proceeds of crime, if this happened it would go to Ottawa and would not end up back in those local detachment budgets. Is that correct? Where does the money go?

Mr. Paul Saint-Denis: If the money is "buy money" from a law enforcement agency, the proceeds provisions would allow them to identify themselves as a person with an interest in the property and seek to have that money returned to them. So that's a possibility.

With respect to proceeds generally, we have a procedure set out in the Seized Property Management Act that allows for proceeds being dealt with in a very specific manner. The property is confiscated, and then essentially everything, if it's not cash, is sold and turned into cash, and debts are paid off. For instance, with real estate, if there's a mortgage on a property, it's paid off. Third-party interests in the property, if it's co-owned, are also settled.

There's an office in Public Works Canada—the seized property management directorate, I think it's called— that deals with the management of property either at the time of seizure or at the time of confiscation. It will manage and ensure the proper upkeep of the property until it's disposed of, and so on.

Ultimately, once costs are taken out, once a certain amount of money has been set aside for reserves, money is then available for sharing with the provinces. If a law enforcement agency has worked with an RCMP body, resulting in the confiscation, sometimes some of that money will be shared with either a domestic jurisdiction—a province—or a foreign jurisdiction. Then what's left goes into the proceeds account, which is part of that black hole, as you called it, that is the consolidated revenue fund.

● (1150)

Mr. Mark Warawa: And are the figures, which hopefully will be shared, gross or net?

Mr. Paul Saint-Denis: The dollars that are shared are net. We will have deducted administrative costs, will have set aside some money for reserves, paid off the management costs for upkeeping the proceeds, and so on. When all of this has been taken into account, what we're left with is net. That money may be subject to some sharing.

Mr. Mark Warawa: Thank you.

The Chair: Thank you, Mr. Warawa.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I am going to start off slowly. I want to draw your attention to clause 9 of the Bill, which deals with section 462.42(1) of the Criminal Code. A section of the Narcotics Act used to allow criminal lawyers to make an application during a proceeding if a third party had an interest in the property, in order for that property to immediately be returned.

The first example that comes to mind is of someone's house or principal residence that was used for trafficking and has thus been seized. We were asked—because it was a narcotics case—to make the application while the matter was still *sub judice*, specifically within 90 days of the seizure. You can check the Food and Drugs Act or the Narcotics Act. There is a specific section that deals with this. I am therefore wondering if sub-clause 462.42(1) will replace that. Will counsel have the choice of waiting or not waiting until there is a conviction to make an application on behalf of third parties? Does the application have to be made during the proceeding? Do you follow me or have I lost you?

Mr. Paul Saint-Denis: No, no, we follow you. The provision you're referring to relates to property that has been forfeited—in other words after the trial and once the forfeiture order has been made by the court. However, provisions under section 462.34 do allow an individual to make his interest in the property known before the proceeding. It is not necessary to wait until a forfeiture order has been made following a conviction. You can apply for the property to be returned before or after the conviction, or after the forfeiture order has been made.

Mr. Marc Lemay: My colleague, Mr. Macklin, was talking about the judiciary earlier. I do think some judges will have to be informed. For your information, the judiciary was made aware of this. I was elected one year ago, and we had already heard of this Bill. But the situation isn't clear. Some judges will not be inclined to suggest waiting until there is a conviction or otherwise. And there is sub-clause 462.42(1). Because lawmakers don't like to say anything that really isn't necessary, I suppose it should be done at the end.

● (1155)

Mr. Paul Saint-Denis: The provision listed under clause 462.42 already exists. We have only slightly modified it. I believe they are primarily technical changes. The possibility of applying to have the property returned before or after a conviction is already laid out in the current provisions relating to proceeds of crime.

Mr. Marc Lemay: Is it the same? Oh, I see. That's reassuring. I would like to move on to sub-clause 6(2) of the Bill. It basically amends sub-section 462.37(3) of the Criminal Code. I'll give you a minute to look at it. I don't have the French version in front of me, but I presume it says the same thing:

[*English*]

"A court may order the offender to pay a fine if the property of any part...is located outside of Canada."

[*Translation*]

I would like someone to clarify that sub-clause for me. What is the purpose of sub-clause 462.37(3)? As I understand it, if a judge is unable to repatriate money in the amount of $1,240,000 that happens to be in Barbados, even if he has the necessary evidence, he could impose a fine of $1,240,000. Did I get that right?

Mr. Simon William: That is an option. As I said earlier, this provision has been in place since 1989. Sub-section 462.37(3) has also been around for some time. This is not a new provision. Through the vehicle of a compensatory fine, a judge may impose a fine for property located outside of Canada that cannot be repatriated for various reasons. The judge has the option of imposing a compensatory fine for property for which an order of forfeiture cannot be made.

[*English*]

The Chair: Madam Sgro.

Hon. Judy Sgro (York West, Lib.): Thank you very much.

Thank you for the information this morning.

Bill C-53 is quite interesting. Most of my concerns were addressed by my colleague Mr. Macklin. But on the issue of the ownership, when we're dealing with the grow ops and examples of those kinds of things, who usually are the owners of those kinds of properties? My point is, quite clearly, if I were into illegal activities, I don't think I'd be putting the properties in my name. They'd be in other people's names to keep my distance as much as possible.

Mr. Shawn Scromeda: That's absolutely what they do, and that's one of the reasons it is difficult. It's not just a case of simply saying, give me the list of your properties, and they hand it over and that's the case. That's why we have the IPOC units that actually go through a considerable amount of work in tracing these assets. Absolutely, they try to hide them in any way they can.

Hon. Judy Sgro: It would be very difficult, I would expect, for you to be able to prove that this individual owned it or was able to purchase it and put it in a cousin's, a friend's, or whoever's name.

Mr. Shawn Scromeda: I'll just point to the fact that in the legislation it refers to “property of the offender”. The word “own” was not used there. We felt at the time that there might be difficulty with the word “own”, and it might be restrictive. “Property of the offender” includes ownership, but also beneficial ownership of property. It might not be in your name, but in our view that would be included within the broader term “of the offender”. But yes, it still will be a matter of proof to attach that property in one manner or another to the offender.

Hon. Judy Sgro: The passage of Bill C-53 is there because currently we need it, but I think you must anticipate that this is not going to be an easy thing to follow up or go after.

● (1200)

Mr. Shawn Scromeda: Bill C-53 is intended to make it easier. Is it going to be a piece of cake afterwards? My best guess would probably be no. There still will have to be substantive efforts that have to be and will be made.

Hon. Judy Sgro: I'm very supportive and glad that we're moving forward with whatever tools we can possibly provide law enforcement to deal with these kinds of issues. When we see people living in $5-million homes and living the life of luxury while they are causing all kinds of problems in our communities, clearly we need to make sure we have the tools to deal with this.

With respect to the relationship with the provinces on Bill C-53, they're very supportive, I would expect, in the law enforcement community.

Mr. Shawn Scromeda: This bill was put in place in part following FPT resolution, the ministers of justice resolution, of January this year calling on the Minister of Justice—and the Minister of Justice in fact committed—to introduce such legislation. So yes, the concept of reverse onus legislation is something the provinces specifically have asked for.

On their support of the concept in terms of the details of the legislation, I don't want to speak for them. If they want to appear before the committee, I'd invite you to ask them, but certainly the concept of reverse onus forfeiture is one that they very much support.

The Chair: Thank you, Ms. Sgro.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): I just have a couple of questions.

One is on the provincial forfeiture acts that are currently in place. You're saying they don't require that there be any criminal conviction, so they offer a quicker remedy. If we're trying to hit people where it hurts, which is in the wallet, the quickest way to do that.... Say someone, as my colleague said, is living the life of luxury in a $5-million mansion and we haven't been able to make a charge stick for a criminal conviction. The provincial acts can provide that, on the balance of probabilities, the assets this person is in possession of were obtained through criminal activities.

What is the interplay going to be like, when this passes, between provincial acts and the federal legislation? At what stage in the process that the court is going to be walking through under this bill does provincial action take place if someone has a claim that could be made through provincial forfeiture acts?

Mr. Shawn Scromeda: I agree with your opening points. Yes, the provincial acts are based on a different concept, being also based on the balance of probabilities. The way most people I'm aware of in this field would view them is as the two being complementary to each other. Specific powers from the Criminal Code pass pursuant to the federal government's criminal law jurisdiction; the provincial ones pass pursuant to provincial jurisdiction over property and civil rights.

I'm not aware of cases yet, given that there are so many proceeds out there and frankly more to be forfeited, where these have come into conflict, if that is the concern, like there's actually some sort of procedural conflict between them. Should that arise, I think first and foremost it would most likely be dealt with through cooperation between the provincial people seeking the application and the federal people. There's a fair level of FPT cooperation within this country.

Mr. Rob Moore: I'm wondering, is it even contemplatable, a scenario where there's a huge sum of money involved...? My colleague mentioned the black hole in Ottawa where some of this money will eventually end up if we proceed under this act. If action is taken under the provincial acts, does that money then default to the province? Could there be influence on a provincial attorney general to hold off on a criminal charge so proceedings could work their way through under a provincial forfeiture act if you're dealing with millions and millions of dollars they think they can make a claim for?

In other words, do proceedings stop when a criminal charge commences under this act if there are already proceedings contemplated under a provincial act? We're dealing with the same asset but two different ways to get at it, right? If the idea is to really hit someone where it hurts, in the wallet, could it result in criminal charges not being pursued?

● (1205)

Mr. Paul Saint-Denis: We're pursuing different goals. Under the provincial legislation the object would be to seize a particular property or group of properties. Here we're proceeding with a criminal trial, so the immediate goal will be to obtain a conviction. I don't see there being any reason why a province, having undertaken steps to try to obtain confiscation of property, would cease to prosecute an individual for a specific offence. Our goal is still to obtain the conviction. Following the conviction, if some of the individual's property has been ordered confiscated by a province, it is no longer his property, so it would fall outside the scope of whatever confiscation order arose from a federal conviction.

I don't believe there is really any real chance of conflict here. The kind of hypothetical situation you contemplate is something that could happen today in light of the fact that we can, under existing proceeds provisions, end up looking at some of the property a provincial confiscation process would look at, and there haven't been any conflicts.

The Chair: Mr. Cullen.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair.

To the witnesses, I'm sorry I was delayed.

I welcome this legislation. I've done work in my time in Parliament on money laundering and proceeds of crime and I think this is a very good step. I have a couple of questions.

The bill talks about the reverse onus with respect to assets upon conviction. I'm a full subscriber to the fact that a person is innocent until proven guilty; don't get me wrong. However, let's say a person who is alleged to be dealing in drugs is arrested and brought to trial and the person has a whole range of assets. If during the period of the trial, the person divests themselves of the assets in very clever and neat ways, which I'm sure is within their capacity if they're part of organized crime, and ultimately is convicted, but when people look there aren't many assets lying around, tell me, are there any processes or controls to deal with that?

Mr. Shawn Scromeda: That is a matter of existing law as well. It's not just a concern under this bill. Under existing proceeds measures, there are concerns that in between the time of order of forfeiture, which as you correctly point out is only after conviction, the person would be tempted to or would actually try to divest themselves of the property. That's why under the existing provisions there are extensive measures that allow for the seizure and restraint of property pending a final forfeiture order.

You might wonder why in this bill you're six pages in before you get to the reverse onus power. The reason is that there are preliminary provisions in this bill that have extended the existing powers such as that—the specific powers of seizure and restraint to prevent the property disappearing—to the new reverse onus forfeiture as well.

● (1210)

Mr. Paul Saint-Denis: Perhaps I could add another point, sir.

In section 462.4 there is the ability for the court to cancel any conveyances or transfer of property that has occurred with respect to property that's been targeted by a proceeds trial, so there are provisions existing in the code for dealing with this kind of situation.

Hon. Roy Cullen: Will there be any connection or any impact of this bill on the work and operations of FINTRAC? No, not really.

What about the issue around tax evasion? As I understand it, this bill deals with the proceeds of crime or reverse onus as it relates to certain offences on controlled drugs and substances and those carrying certain sentences. Is that correct?

Mr. Shawn Scromeda: There are three offences under the Controlled Drugs and Substances Act to which the new reverse onus will apply: trafficking is one; import-export is another; and production is the third, provided they were prosecuted on indictment.

Hon. Roy Cullen: Sometimes there's just not the evidence, or the person is actually innocent but their assets would indicate that they haven't been reporting all their income tax. Can we apply this reverse onus in that kind of seizure capability to Revenue Canada? How does that work? Is there sharing of information, at least?

Mr. Paul Saint-Denis: There are a couple of things.

First of all, under the definition of designated offences in the proceeds provisions, income tax offences are already excluded, so we cannot apply the proceeds provisions to the income tax offences, nor would we be able to deal with these new provisions under this bill to income tax evasion offences. But the Income Tax Act itself contains a number of provisions, including some fairly powerful provisions—and some would argue even more powerful provisions than here—for obtaining information and for getting at moneys and property that have been secreted in an attempt to evade taxes. So the Income Tax Act actually has its own regime, and it's a very powerful tool indeed.

Hon. Roy Cullen: So in a process of, let's say, an investigation for alleged drug offences, law enforcement people would be privy to all this information, of course, that maybe they're innocent of drug trafficking, or maybe they don't have enough evidence to charge them, but if there's clearly some tax evasion going on, could they move that over to the enforcement people at the Canada Revenue Agency?

[*Translation*]

Mr. Simon William: I referred earlier to the units that are currently in place, called IPOC Units. So, there is someone from Revenue Canada working within those units. When it has not been possible, after review of a file, to produce evidence showing that the property or assets are proceeds of crime—these things are public and Revenue Canada is still not far away—that property may be returned. A notice of assessment is then issued stating that the declared income is not consistent with the value of the property that is owned.

That is always an option. I would not say there is necessarily information exchange between Revenue Canada and the RCMP, but a representative of Revenue Canada does work within these proceeds of crime units. As a result, Revenue Canada is aware of the fact that the property is subject to a restraint or forfeiture order, because that information is public. As a result, we know if someone owns property that is not consistent with the value of his declared income.

[*English*]

The Chair: Thank you, Mr. Cullen.

We've exhausted our first round. Is there anyone on either the Conservative or the Liberal side who would like a second round? Mr. Marceau and Mr. Comartin have indicated they would like additional questions.

There being no one, Mr. Marceau is next.

[*Translation*]

Mr. Richard Marceau: I have one brief question. I want to come back to the matter of the discretion left to the court. I believe you said—and because I'm not absolutely certain, I need some clarification—that this was necessary in order to meet the Charter test. That being the case, I guess you're saying that if that discretionary power mentioned on page 6, under clause 2.07, were to be removed, it would be difficult to meet the Charter test.

Did I get that right? And if I am right, why is that the case?

● (1215)

[*English*]

Mr. Shawn Scromeda: I would certainly say it was added to enhance the viability of the legislation. I would not be so categorical as to say that without it, it doesn't pass the charter, and that with it, it's the be-all and end-all, but certainly providing discretion to courts is seen, particularly in this aspect, as enhancing the viability of the legislation, given the nature of the powers involved.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair.

I am following up with a quick point on Mr. Moore's question about the potential conflict between the provinces and federal government on this matter. Has there been any decision or challenge in the occupied field that if we proceed with this, the federal power has now occupied the field, and that takes supremacy over the provincial legislation? Has there been any test case, or any case?

Mr. Shawn Scromeda: With respect to this bill, obviously there hasn't been any test case, but I can tell you that the provincial legislation—to be specific, Ontario legislation—has been challenged under division of powers analysis and, frankly, the charter as well.

I don't think I brought the name of the case with me, but in a recent case, in a decision that came out in late May or perhaps early June, the Ontario Superior Court of Justice ruled quite strongly that their civil forfeiture legislation does not trench into the federal criminal power and that it is viable. It was also upheld on charter grounds as well.

Mr. Joe Comartin: But that was prior to this legislation where you're reversing the onus, and you're now going to apply and test it, that it's the same at the provincial level.

Mr. Shawn Scromeda: I'm not sure that anything in Bill C-53 would affect that aspect. There's still a fundamental distinction between the two.

This remains very much a criminal law power. It is post-conviction. In addition to the conviction of the particular offences, there also has to be an additional level of proof of a pattern of criminality or substantial assets that are not explained other than through crime. So the connection to criminality remains in our legislation. I'm not sure I would agree that anything in Bill C-53 would put in jeopardy the provincial legislation.

Mr. Joe Comartin: Could you provide the committee with that case and the citation for it, please?

Mr. Shawn Scromeda: Certainly. I don't have it here, but I will provide it.

Mr. Joe Comartin: Let me just say, as so many others have, that there is all-party support for this legislation. My concern is primarily over the third party who is affected by this and some of the problems that actually have arisen under the provincial legislation that I expect we'll hear later on.

But going to that, there's nothing in the existing law or the amendments that we're providing in Bill C-53 that requires the prosecutor or the police to notify when they know there is joint ownership of property. Is that correct?

Mr. Shawn Scromeda: Not in that matter. There are notice requirements.

Mr. Paul Saint-Denis: There are notice requirements for the court to seek information about ownership or interest in property that is targeted for a proceeds process, but there's nothing requiring either the court or the police to indicate co-ownership, for instance, or co-interest in a property. No, there is nothing like that.

Mr. Joe Comartin: So the forfeiture can occur—actually, even under the existing legislation—without the joint owner, whether that be a spouse or a business partner, being aware in advance that the Crown is moving to seize.

● (1220)

Mr. Paul Saint-Denis: That's correct.

Mr. Simon William: I'm sorry, Paul. There is a section requiring the court to issue a notice before forfeiture to anybody who has an interest in the property—before forfeiture. I think it's section 462.39, but there is a requirement to send a notice, by the court, before—

Mr. Joe Comartin: I'm sorry, Mr. William. I don't have my copy of the code with me. Can you give me the exact section?

Mr. Paul Saint-Denis: Your question, sir, was whether or not a co-owner need be informed about a seizure or a restraint order.

Mr. Joe Comartin: Right.

Mr. Paul Saint-Denis: No, because those are applications that are made *ex parte*. They're made before the court but without anyone else present. Obviously, as soon as property is restrained or seized, the person in whose possession that property lies will be informed.

In terms of co-ownership, it's possible that the person who is not in possession of the property might not be aware immediately, particularly in cases of restraint, because the court doesn't take physical possession of the property. There's an order restraining the sale or the transfer, or things like that.

So it is conceivable for the person who is a co-owner of a house, for instance, not to be aware immediately, hence the requirement at section 462.34 for the court to inform or give a notice that there has been a restraint order committed.

Mr. Shawn Scromeda: It appears at more than one place, but at the restraint stage at subsection 462.33(5):

> Before an order under subsection (3) is made in relation to any property, a judge may require notice to be given to and may hear any person who, in the opinion of the judge, appears to have a valid interest in the property

Mr. Joe Comartin: But that's permissive; that's not mandatory.

Mr. Shawn Scromeda: Yes, and then you get to the forfeiture stage, and before making an order under section 462.37 or subsection 462.38(2) in relation to any property:

> a court shall require notice in accordance with subsection (2) to be given to...any person who, in the opinion of the court, appears to have a valid interest in the property.

So the restraint, at the restraint stage, is discretionary, though the additional reasons for the discretion are set out in the section, unless the judge is of the opinion that:

> giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property

There might be situations where giving of the notice may lead to steps being taken so that the property is no longer available.

Mr. Joe Comartin: I understand the balance we're trying to strike here in terms of assets being disposed of in an illicit fashion versus balancing off the rights of what may be a totally innocent third party.

I want to address specifically, perhaps out of self-interest, if it's a lawyer's trust account. In the initial thing, when the *ex parte* order is granted, in fact it could be registered against the lawyer's trust account.

Mr. Simon William: A restraining order?

● (1225)

Mr. Joe Comartin: Yes.

Mr. Simon William: Yes.

Mr. Joe Comartin: In terms of business assets, it's the same thing. In a partnership or a commercial operation, the same thing could happen, restraining bank accounts. Can you tell the committee if there have been any experiences like that? What I'm concerned about is the interruption of what is, for all other purposes, a valid legal commercial operation being stymied, in effect, from operating because its operational accounts have been seized and frozen.

Mr. Simon William: In section 462.34, the section after the...let's say an account has been restrained, there's a disposition there allowing an application to be made to pay for business expenses. They can file an application under section 462.34 and they can have access to that money to pay for family expenses, business expenses and legal fees. Usually, even if the account has been restrained, they still have access to the money if they go under section 462.34 for—

Mr. Joe Comartin: But that requires an application to the court, hiring a lawyer and all the rest of it.

Mr. Simon William: Yes.

Mr. Joe Comartin: I have a whole page of questions, Mr. Chair. Can I go into one other area?

The Chair: If no one else will want some time. Go ahead.

Mr. Joe Comartin: With regard to when the proceeds are actually received, I wasn't quite clear, Mr. Saint-Denis. You said that some is held in reserve in the fund. Why are moneys held in reserve, and what kind of quantity is it?

Mr. Paul Saint-Denis: I'm not sure what percentage. It's a relatively low percentage of the moneys that are held in reserve. The reserve is for ensuring that there is no deficit created as a result of dealing with costs for maintaining or preserving the property, for disposing of the property. Sometimes a given piece of property will cost more, in terms of either maintaining it and managing it or the upkeep of it and the final disposition, than the money that it will bring in on disposition. So the reserve is to deal with those kinds of situations. It's not a large percentage. I think it's 10%, but I'm not sure.

Mr. Joe Comartin: Could you ascertain and advise the committee what it is, both in terms of percentage over the last two or three years, what—

Mr. Paul Saint-Denis: The percentage is a fixed amount. It may be 5% or it may be 10%. You want to know the actual dollar figure, do you?

Mr. Joe Comartin: Yes.

Mr. Paul Saint-Denis: Okay. We can obtain that, sure.

Mr. Joe Comartin: Is any of this a source of money? Is that fund a source of money for any drug buys, or is that a different source?

Mr. Paul Saint-Denis: To my knowledge, it's not. It's not operational law enforcement money. If law enforcement is seeking drug buy money, they get that through their own budgetary processes.

Mr. Joe Comartin: Then as for the sharing of these proceeds with either provinces or foreign entities, is there a set formula as to how that sharing occurs?

Mr. Paul Saint-Denis: There is. The formula is based on a fairly straightforward...I think it's 10%, 50% and 90% that will be shared. The federal government keeps 10% of all amounts. Basically, it's to reflect the work that law enforcement will undertake, or to reflect the work, in the case of drug cases, that the drug analysis labs will undertake, or prosecutorial efforts in the area, on the one hand.

The way it works is that the amount being shared will depend on the contribution by the jurisdiction to the case that resulted in the forfeiture. If it's a slight contribution, it would be 10%, and if it's significant it will be 90%. If it's important but not quite as significant as the 90%, they'll get 50%.

Mr. Joe Comartin: The essential concern I have in this area is that I think there have been some cases indicated in the United States where there was abuse. There were prosecutions, there were seizures, motivated solely at getting funds rather than at correcting the criminal conduct, where in fact there may not even have been criminal conduct. And again, I am particularly concerned about those occurring against innocent third parties—the business partner, the spouse, or other family member. Is there any way, with the way the proceeds go now and will continue to go, where that should give us cause for concern?

Mr. Paul Saint-Denis: No, and in fact it is precisely why we share with jurisdictions, as opposed to individual municipalities or individual police departments. Regarding the abuses that were caused in the U.S., a lot of it was as a result of police forces skewing their police work in order to essentially benefit from confiscations. We've avoided that by ensuring that the police forces that do work on a particular case where there is a confiscation will not benefit directly, or in fact at all, from the confiscation that occurs.

All property that is confiscated will go to either the provincial government, if it's a provincial prosecution, or the federal government if it's a federal prosecution. The property then normally would be turned into cash via a disposal process. That money will either stay with the federal government or will be shared with jurisdictions, but now we're talking of jurisdictions, provincial governments or foreign governments, never individual police forces. So we avoid that particular problematic that arose in the U.S.

● (1230)

Mr. Joe Comartin: Has there been any consideration of some of these funds being used in the preventive area? I am thinking in particular in terms of funding some of the programs we need around gun control and prevention, that kind of thing, and dealing with the gangs in the core cities?

Mr. Paul Saint-Denis: In sharing our proceeds we enter into agreements with the jurisdictions with which we share. We have sharing agreements with most of the provinces. The sharing agreements specify that the provinces receiving the money are to use those proceeds for three broad areas. One is for law enforcement. The other two are for drug prevention and drug education. So the provinces are free to choose those areas in which they can apply the moneys they receive by way of forfeiture, by way of shared assets.

Mr. Joe Comartin: Are those formal contracts with the provinces?

Mr. Paul Saint-Denis: They are signed agreements.

Mr. Joe Comartin: Are those public?

Mr. Paul Saint-Denis: No, they're not.

Mr. Joe Comartin: Is the policy that governs them, which you just enunciated, public? Is it in writing?

Mr. Paul Saint-Denis: It is now. No, it wasn't public in the sense that we publicized our particular approach, but it was something that we thought was a useful approach for dealing with the provinces.

In the case of agreements with foreign jurisdictions, we will not impose the same limitations, because we do not believe it's appropriate for us to compel foreign states to use the money they receive from us in specific areas. And in the same manner, of course, we will not listen to them telling us where we should be spending our money when they share with us.

Mr. Joe Comartin: Thank you, Mr. Chair.

The Chair: As a matter of interest, Mr. Comartin, I believe the citation for the case that you had asked our witness to supply, if you want to take this down, is the Ontario (Attorney General) v. $29,020 in Canada Currency. It's recorded in 2005 Ontario Judgments, case number 2820.

It's probably too early to be reported in the ORs yet, but it's referred to in the briefing notes that our researcher has prepared for us.

Mr. Joe Comartin: Thank you.

The Chair: I'd like to thank our witnesses today for a very informed response to some very interesting questions. You certainly have assisted us in our deliberations. I am happy to dismiss you. Go home and have a good lunch.

Now, members, we have Mr. Warawa's motion that we'd like to deal with.

An hon. member: Can we have lunch?

The Chair: It's still early.

I would like to bring to the attention of the membership that new membership on this committee will be tendered in the House of Commons tomorrow, and that our first meeting of the new committee hopefully will be on Tuesday at 11 a.m., our originally scheduled time, at which time the first order of business would be electing a chair and vice-chair.

Until we do that, even the subcommittees cannot operate. I know the Subcommittee on Solicitation Laws has a meeting scheduled for Monday, which cannot go forward. You have one for Monday too on the subcommittee on the judiciary.

[*Translation*]

Mr. Marc Lemay: The week after next, not next week.

[*English*]

The Chair: So those cannot go forward until we satisfy the requirements of the rules and regulations of the House.

You have a question on that, Mr. Marceau?

[*Translation*]

Mr. Richard Marceau: Before we go to Mark's motion, I would like to know whether our researcher could do some research with respect to the discretionary power given to the court under Bill C-53 and the impact it may have on the constitutionality, or otherwise, of the Bill.

● (1235)

Mr. Robin MacKay: Yes, that would be possible.

The Vice-Chair (Mr. Richard Marceau): Thank you. I would appreciate your passing that information on to us. Quite frankly—and I am being perfectly open about this, particularly since my line of questioning made it quite clear—it bothers me to have it there. So, I would really like to have more information. If we remove it and it's unconstitutional, we won't be any further ahead. So, if some research could be done to clarify that, I think it would be useful for all concerned.

[*English*]

The Chair: Thank you very much.

Mr. Comartin, do you have a question? No?

Mr. Warawa, please present your motion.

Mr. Mark Warawa: Thank you, Mr. Chair.

Does everyone have a copy of the brief and motion?

This issue originated this last summer when I was visiting a number of the correctional facilities in the Fraser Valley. I did meet with wardens, deputy wardens, and with corrections officers. I asked the corrections officers what would be the number one issue to make the environment better for staff and for inmates. I was surprised that they said that most of the inmates have their own colour televisions and they have access to full deluxe cable, which has sexually explicit content.

In the correctional facilities you have both male and female corrections officers, and they were offended by what was being made available to the inmates. The officers assured me that it was embarrassing, disgusting and demeaning, and they also brought to my attention that 30% of the inmate population serving time at this one institution I was at, Mountain Institution, are those with a conviction on a sex offence. They've asked that we bring this back in the form of a motion, so that's what I've done.

Section 96 of the Corrections and Conditional Release Regulations allows prison officials to prohibit publications, video, and other materials that cause concerns of safety or security, or may cause humiliation or embarrassment to others. Televised sexually explicit material may be viewed by other persons, such as prison staff and other inmates, and has the potential to undermine a person's sense of personal dignity by demeaning or causing humiliation or embarrassment.

We do have an opportunity in the committee to provide policy direction to the Correctional Service of Canada that will make the environment in our correctional facilities better, and from that I have this motion that inmates in federal prisons or correctional institutions currently have access to sexually explicit material on cable television, and televised sexually explicit material may be viewed by other persons such as prison staff and other inmates, and has the potential to undermine a person's sense of personal dignity.

My motion is that the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness study the issue of limiting access to sexually explicit material on cable television in federal institutions or correctional facilities and report to the House.

I'm open to amendments to this, but I think you sense the spirit of the motion. There could be a subcommittee formed. I don't think it would need a lot of study. I know we have a lot on our agenda to deal with, but I think it's an important issue, to keep the environment of our correctional facilities safe. With that spirit, I'm hoping we'll have support from the committee.

The Chair: Mr. Cullen, you wish to respond?

Hon. Roy Cullen: Thank you, Mr. Chair.

I know, Mr. Warawa, you're an honest man and well intentioned, but I'm a little confused. If this is the number one issue for correctional officers, it has not been brought forward in labour-management discussions as an issue at all. That I find puzzling.

I'm wondering whether you actually saw any of this material being telecast, because the information I have is that this information and access to it is very tightly controlled. Any channels that specialize in or are oriented towards sexually explicit programming are not available to inmates. DVDs and CD players are not permitted, so they can't hustle in videos. I don't know where you're coming from, sir. I know you're a well-intentioned and an honest man, but I'm puzzled by this request.

● (1240)

Mr. Mark Warawa: I'd like to reply to that.

I met with a warden and deputy wardens to find out whether this is the case, and it is. They have access to the full deluxe cable package and can watch anything they want. In the full deluxe cable package offered by Shaw or Rogers to the correctional facilities, there are sexuality explicit channels at different times during the day. At the Mountain Institution where the complaint was received, the female member expressed, with support of other corrections officers, that it was embarrassing, demeaning, and provided an unsafe environment in the prison atmosphere, when the inmates would go to their cells, watch these channels, and do “disgusting things” within the privacy of their cell.

As I say, the warden said that under the charter it's the policy of Correctional Service Canada that they can watch the same programming available to any other Canadian. I personally have the basic cable channel, but apparently in Correctional Service Canada they make available the deluxe channel, which has some of these programs that provide a quality of life that may not be in their best interest and are definitely not in corrections officers' best interests.

The Chair: Mr. Marceau.

[*Translation*]

Mr. Richard Marceau: I would like to know the definition of “sexually explicit material”. What exactly does that mean? Does it mean seeing bare breasts on television? Does it mean seeing two people make love? Is it what is called full frontal nudity? What is it?

There are also some television stations that broadcast material that is, shall we say, less explicit during the day, but have a completely different philosophy in the evening. I'm thinking of Showcase, for example, which I happened upon one evening—I really don't have time to watch television, but if I did, I would watch that program—and specifically a program called *The L Word*. It seemed interesting, but would that also be considered sexually explicit?

So, where do we draw the line? I really don't know. Is there some way of defining this? That would be my question for Mark. Where do we draw the line? What is sexually explicit and who decides? Would the *Jerry Springer* show be considered sexually explicit?

[*English*]

The Chair: Perhaps we'll cover every one of them and come back to Mark for a response.

Next on the list is Ms. Torsney.

Hon. Paddy Torsney (Burlington, Lib.): Thank you.

In a prior lifetime I did have a chance to visit a number of correctional institutions, and it amazed me, having a meeting with the staff in one institution and then the inmates, that the staff complained that the inmates were getting steak, steak, steak, and the inmates complained that they were getting hot dogs, hot dogs, hot dogs. So I remember saying, let's get the facts, let's have the meal plan.

I would therefore suggest that the first step would be to ask what are the facts. It's very simple for the committee to ask. If you've already done estimates, that would have been a time to ask what the facts are. But there is information on exactly what is available in terms of cable access, and it is possible to find out in this highly unionized environment exactly what are the issues that are being brought forward in terms of management and labour negotiations. Either these officers have complained about this, are looking for some remedy through their collective bargaining process or through their systems, or they haven't. I'm sure that as a member of Parliament Mr. Warawa has some ideas about what he'd like to make different in his caucus, but that doesn't mean that's caucus unanimity.

So let's find out what the facts are, and that's easily done by a letter to the head of Corrections. Is it that it's Showcase, which is perhaps in basic TV, or is it Sex TV, or is it Playboy, is it pay per view? I mean, what they're entitled to or what they can pay for is factual. It's a letter; it's not a study. Once you get your letter, you'll know whether or not it's a study.

● (1245)

Mr. Joe Comartin: I would support Ms. Torsney. I was going to, though, raise similar concerns to those we had from Mr. Cullen.

I'm a bit worried about our crossing into what are straight operational matters and labour-management matters. That's treading on some pretty dangerous grounds. On the other hand, I suppose—and I think this is where Mr. Warawa is coming from—if this is a policy issue by the department, then we probably do have a right, even a responsibility, to consider it, although I must admit the material that I find most offensive on cable is the violent material. I'm just surprised that hasn't been included in the motion, and I think if we're going to get into this, I would want to look at... I hate to think of the idea of our spending time on developing a whole censorship set of rules.

Having made those comments, I'll go back to repeating that I support Ms. Torsney, that what we should be doing at this point is finding out what in fact is shown, although I would like to also find out what analysis they've done on the violent material that's shown on a lot of cable TV.

The Chair: Mr. Toews.

Mr. Vic Toews: I'm concerned about this issue. I know there is some vagueness in the term "sexually explicit", but that's the point the committee has to take a look at. We're not going to define what pornography is, or what sexually explicit means. We're going to take a look at what the material is rather than try to define that, then try to make the determination as to whether the programming that is being given to prisoners is appropriate, especially if they are sexual offenders.

What bothers me more than the issue of sexually explicit or violent is the fact that there are prison guards who say that this is degrading to them as prison guards, as women who have to work inside these institutions. And if there's any suggestion here that we as parliamentarians don't have a role to play in the working conditions of female prison guards, I'm actually quite astounded that anyone would suggest that. That's what I am concerned about, and that's what we need to address.

I note that last night we voted on a bill that talked about the psychological harassment of workers in workplaces under federal jurisdiction. And as I recall, most of the NDP supported it, and the Liberals and the Bloc—

Mr. Joe Comartin: And you voted against it.

Mr. Vic Toews: The point, Ms. Torsney, is that the NDP voted in favour of that and the Bloc voted in favour of that. I would think that if these individuals are concerned about psychological harassment in the workplace, and we have prison guards saying that they are in fact being degraded by a policy that has been implemented by this government, we have an obligation to take a look at that.

So all I'm saying is that I support the suggestion that we look at exactly what kind of material is being shown on these televisions, what kind of access they have, and then determine what witnesses are appropriate once we have that evidence.

The Chair: Ms. Sgro, please.

Hon. Judy Sgro: I appreciate the interest and I think it's something that could be of interest to all of us, but I guess I'm looking at what we have on our own work plate, which is some very significant work that we have to get done first. That's number one.

Second, we need to know what the facts are. Any of us who visit all kinds of different places hear all kinds of stories. If the issue is whether it's deluxe versus basic cable, I find enough stuff on basic cable, frankly, from sexually explicit stuff to too much violence, that I'd object to the whole basic cable being shown. But that's not the way we have to deal with things.

We have Correctional Service Canada. I think we should get the facts from them, and if at some time in the future we have time on our hands—but I think we have a lot of work ahead of us already—it is one of the things we could certainly talk about at a later date. Let's get the facts so we know exactly what we're dealing with before we vote on the motion.

● (1250)

The Chair: Monsieur Lemay, please.

[*Translation*]

Mr. Marc Lemay: I was a criminal lawyer for 30 years. I obviously went into penitentiaries all across Quebec, because that was part of my job. I can tell you that I often saw what my colleague, Mark, referred to. There is also the way inmates treat the prison guards. They play hardball; it's no kindergarten there and there is a lot of rough stuff that goes on.

My preference would be for us to gather more facts, because this is extremely dangerous. We couldn't really start a review if we don't have all the facts. I would like to see us go a bit further first.

Quite frankly, after hearing what I did during my first two weeks on this committee, I have realized that we have so much work to do that I really have no idea how we're actually going to accomplish it. So, I would like to see us hold off on this until we get more facts, and possibly call some witnesses from one of the institutions to appear before the Committee.

People say things and, in terms of detention, the situation is not the same in Quebec as in the other provinces. It's the same thing with institutions for women. I have been to Kingston and elsewhere. It's not the same; things are completely different.

So, I would like to have more information before we make a decision that could have significant consequences, particularly since there has been a suggestion made with respect to violent television programming. Newscasts are sometimes even more violent. But that is a whole other debate. I think that would be going too far.

[*English*]

The Chair: We've had three individuals indicate a second request. I will allow brief comments from Monsieur Marceau, Mr. Cullen, and Ms. Torsney. Then I would ask Mr. Warawa to wrap up.

[*Translation*]

Mr. Richard Marceau: First of all, I would like to thank Mark Warawa for bringing forward this important issue. Indeed, having dealt with prison guards, I know that the situation is not easy, particularly for female guards.

My suggestion is that Mark, who brought forward this motion, sit down with you, Mr. Chairman, and tell you exactly what facts he is interested in having, and what started some lights flashing on the dashboard—if I can put it that way—and that you then send a letter to the Correctional Service of Canada to request that they provide us with all the facts, as Paddy, Joe and Vic have already mentioned. From there we will see what has to be done. We will have the facts and we can then make an enlightened decision; Mark can simply be asked to keep his motion on the Committee's agenda.

[*English*]

The Chair: Ms. Torsney.

Hon. Paddy Torsney: I would obviously like to support what Monsieur Marceau is supporting. I would also like to clarify that my comment for the facts should be never taken as anything less than.... I'm responding to what Mr. Toews tried to imply, that I somehow didn't care about the employees in our federal institutions, which is absolutely incorrect. I would take, and hope most of the men on this committee would take, quite a bit of exception to the suggestion that it's only women working in the prisons who would be offended by sexually degrading material toward women. I would think Mr. Comartin and Mr. Macklin would be—as I would hope Mr. Toews would be—equally offended to see the degradation of any human being, and that it's not a question of just protecting women or men within our institutions.

The Chair: Ms. Torsney, just a minute, please.

Mr. Vic Toews: The evidence before this committee is that it was women who objected, and that's what I based my comments on. The evidence here is that women objected.

If you wish to put words in my mouth, do so, but do it correctly.

● (1255)

The Chair: Thank you, Mr. Toews.

Go ahead, Ms. Torsney.

Hon. Paddy Torsney: So I think it would be instructive to find out from the labour-management group what issues are before them on this front and to be very clear about what material is coming in and what codes it meets in terms of our community standards, because there are clearly some people who would be interested in restricting access to all kinds of material for the general population and for the inmate population.

The Chair: Thanks, Ms. Torsney.

Mr. Cullen.

Hon. Roy Cullen: I want to make a brief intervention to correct an impression that might have been left by certain members opposite, that the policy of the government is that all prisoners have to be treated equally and therefore have to have equal access to television programs. That is not the case. The head of an institution, and this is applied day in and day out, has the right and the responsibility to say for certain inmates that they would not be permitted to have access to any channels, or to certain channels.

The other point is that these specialty channels are not available within the institutions, and there is very tight control over those prisoners who are, let's say, sexual offenders. That material—any kind of material that would have sexually explicit information—would be denied.

I think there's a good suggestion floating around here that we contact Correctional Service Canada to ask them what the policy is and then take it from there.

The Chair: Thank you, Mr. Cullen.

Mr. Warawa, the final word is yours.

Mr. Mark Warawa: Thank you, Mr. Chair.

I appreciate the healthy discussion here.

I agree, it's good to get all the facts. I think having just a letter coming from Correctional Service Canada will not provide us with all the facts. It will provide one perspective. It will provide what their present policy is. Without a direction, they've adapted a policy. The question is, did the government provide that as direction, or is it a policy that Correctional Service Canada has created whereby they're permitting this type of material into our federal institutions? Does this come from the government, or does this direction come from Correctional Service Canada?

I would support having a letter, but that will not provide all the facts. It will provide only one perspective.

With the workload we have, I think an appropriate way of getting all the facts would be to hear from some witnesses in the form of a subcommittee of this justice committee. Whether or not there would be an appetite to do that, I'm sensing it would not be entertained until after we received a letter from Correctional Service Canada. I would be willing to go step by step in that direction to get some of the facts.

Regarding whether or not it's a labour-management matter, I don't believe it is. I heard this concern from both a warden and correctional staff. So it's not a labour matter; it's an issue that has been raised from—

An hon. member: It's been raised in the labour-management—

Mr. Mark Warawa: That's just a response to some of the comments that were made.

Yes, we do need the facts. I support Mr. Comartin's suggestion that we look also at violent content. Anything that's going to make the environment of our prisons less safe or humiliating to staff and inmates I think is where we have to go.

So I would support the suggestion, and we can deal with the motion after we receive the letter from Correctional Service Canada.

The Chair: Okay. I suppose we have two options in light of the discussion. We could defer the vote on this until after we receive letters from Correctional Service Canada, and perhaps even from the union, or we can call for a vote right now.

Ms. Sgro, don't leave yet.

Hon. Judy Sgro: No, I won't.

The Chair: Okay.

Mr. Mark Warawa: It would be fine if we deferred the vote until after—

The Chair: I think we need unanimous consent to do that.

Some hon. members: Agreed.

The Chair: Okay, we'll defer the motion and we'll write those letters.

Thank you. The meeting is adjourned.

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