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# Standing Committee on Justice and Human Rights

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EVIDENCE

**Tuesday, June 13, 2006**

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**Chair**

Mr. Art Hanger

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## Standing Committee on Justice and Human Rights

Tuesday, June 13, 2006

• (1530)

[English]

**The Chair (Mr. Art Hanger (Calgary Northeast, CPC)):** I call the Standing Committee on Justice and Human Rights to order. This is our continued review of sections 25.1 to 25.4 of the Criminal Code, protection of persons administering and enforcing the law.

We have with us as witnesses today, from the Canadian Civil Liberties Association, Mr. Ken Swan and Ms. Alexi Nicole Wood, who is the director. I understand you will be making a presentation. We also have, from the Canadian Council of Criminal Defence Lawyers, Ms. Jeanine LeRoy. I understand you'll also be making a presentation.

We will begin.

Ms. Wood, would you like to start?

**Ms. Alexi Wood (Director, Program Safety Project, Canadian Civil Liberties Association):** Thank you, sir.

Mr. Chair, members of the committee, thank you for this opportunity to appear before you today.

My name is Alexi Wood. I am the director of the public safety project with the Canadian Civil Liberties Association. I am joined today by Ken Swan, a board member with our organization, and Brooke Wagner, an intern.

Five years ago, the Canadian Civil Liberties Association appeared before this committee. In our remarks at the time, we expressed concern about the breadth of the powers being given to law enforcement. We are here again today to reiterate many of those concerns.

For months now, the CCLA has been waiting for the committee to undertake this review, and we are pleased to have this opportunity today. We hope the committee will take the comments from the CCLA and others and use them to make recommendations for amendments to the legislation.

In a democratic society there is a fundamental principle that all people, regardless of their position, must obey the law. If this basic principle is going to be violated, it should require the most compelling of circumstances and must be closely scrutinized. Unfortunately, the law enforcement justification provisions of Bill C-24 do not adequately provide for either of those safeguards.

In addition, if government is going to violate this basic principle, then it is government that must demonstrate the need for such extraordinary powers. This has not been done. Several years ago,

following Campbell and Shirose, law enforcement complained that the impact of that decision was to hobble certain police investigations. However, subsequent legislation effectively addressed this concern, and police acquired the power to break certain provisions of the Controlled Drugs and Substances Act even before Bill C-24 was introduced.

The CCLA did not then, nor has it ever, objected to legislation that allows for limited power to break the law within certain carefully controlled circumstances. If there are other situations in which such powers are required, the burden is on government to come forward, identify the circumstances involved, and propose a limited law-breaking power to address them. Unfortunately, Bill C-24 creates a general law-breaking power that can be used in an infinite number of circumstances. We have viewed and continue to view this law as unwarrantedly dangerous, and we urge the repeal of this law as it is currently formulated.

In the alternative, the CCLA has several recommendations it wishes to make that could at least make Bill C-24 less bad.

The legislation allows designated public officers to determine what illegal acts they are going to undertake, as long as they believe the act or omission is reasonable and proportional in the circumstances. There are two problems with this provision.

First, there is nothing in this provision to require that the illegal act must be necessary for the protection of an overriding interest. Allowing law enforcement officers to ignore the very laws they are sworn to protect must always be seen as an extraordinary act. The CCLA therefore recommends that the legislation be amended to require that all contemplated acts of illegality be necessary, not just reasonable and proportional.

Second, the decision about usage of these extraordinary powers should not be left to the officers themselves. Officers contemplating breaking the law in the line of duty should be required to obtain prior authorization from their superiors. In the event that such authorization cannot be obtained prior to the act, officers should be required to notify their superiors as soon as possible. Currently, the proposed legislation does not provide for such internal reporting in all circumstances.

In fact, reporting, both internal and external, is only legislatively required in two limited circumstances: one, when public officers direct someone else to commit an otherwise illegal act; two, when the act or omission would likely result in serious damage to property. There is also a requirement to report a temporary delegation of the authority to commit an illegal activity.

The CCLA recommends that external reporting should be expanded to include all illegal activity undertaken by law enforcement. If law enforcement officers are going to conduct illegal activity, the activity must be closely scrutinized by public officials and by members of the public.

I would like to take a minute here to discuss the reports that are submitted.

We have canvassed the reports from provincial police as well as the RCMP and have found them insufficient. They often provide such limited information as to essentially be meaningless.

The reports do not indicate where the act took place. While we recognize that the exact location may be sensitive information, we believe that the reports should contain at least the province, because that would be essential in order to seek a possible redress. In addition, the public ought to know if the RCMP was acting as a municipal police force or was acting in its national capacities.

In one specific example, an RCMP report stated that, and I quote, "...acts or omissions...relating to the possession of stolen goods, theft over \$5,000 and conspiracy to commit an indictable offence...". That description is too vague to give the public the remotest idea of what happened.

In our opinion, the report should provide sufficient detail so as to satisfy the public that the acts are permissible under the legislation and provide enough information so as to know who to hold accountable. Where law enforcement agencies believe they ought to keep such information from the public, the law should specify the criteria that would justify such withholding, and the officer should have to apply to court for an order.

In addition, the legislation allows law enforcement agencies to delay even limited reporting now required. We recognize there may be certain circumstances where external reporting may jeopardize an ongoing investigation or put an undercover operative at risk. In such circumstances, delay in reporting may be acceptable; however, if there is going to be a delay in the reporting, it should not be left to law enforcement to make that decision. Again, if the annual report does not provide the requisite disclosure of all illegal acts, the agency at issue must apply to a court for such authorization.

The provisions cover a wide range of illegal activity, and we are mindful of the necessity for police to be able to conduct covert operations, and they may need to infiltrate criminal elements. There are some illegal acts, however, that, in the opinion of the CCLA, should never be permitted to occur.

The current legislation expressly prohibits the infliction of bodily harm, but arguably allows threats of physical violence. We recommend that the legislation be amended to explicitly prohibit such threats, as well as any act of violence, whether or not it results in bodily harm. The CCLA also recommends that law enforcement should never be allowed to instigate illegalities. In addition, compensation should be required in every case where police law-breaking has caused injury, whether personal or property, to innocent individuals. Finally, no police force should be allowed to engage in this type of conduct unless the governing legislation provides for an independent audit. An agency, independent of law enforcement and government, should have ongoing access to law enforcement

records, facilities, and personnel, so it can conduct investigations and ultimately report publicly on the way these powers are being exercised. This agency could operate in much the same way that SIRC currently does in regard to CSIS.

Again, I would like to thank the honourable chair and the members of this committee for the opportunity to appear before you today, and we welcome any questions.

● (1535)

**The Chair:** Thank you, Ms. Wood.

Ms. LeRoy.

**Ms. Jeanine LeRoy (Representative, Criminal Law Chambers, Canadian Council of Criminal Defence Lawyers):** Thank you.

On behalf of the Canadian Council of Criminal Defence Lawyers, I too would like to thank the committee for giving us an opportunity to express our views at this review of the law enforcement justification provisions of the Criminal Code.

My presentation will be very brief, but I do welcome your questions.

As I'm sure you know, the Canadian Council of Criminal Defence Lawyers is a national association of defence lawyers formed in 1992. The chair of the council, William Trudell, appeared before both the House and Senate committees in 2001 to speak to this legislation as it was then proposed prior to its enactment. At that time he urged the committees to proceed with caution, and he expressed the concerns of the council related to this legislation.

Specifically, he expressed a concern about the potential for the abuse of police powers. He expressed a concern about police conduct that is justified under the legislation—and my friend has already made mention, for example, of uttering threats to cause harm or indeed death. He expressed a concern about the vagueness of language in the legislation, for example, the phrase "sexual integrity". And he expressed a concern, as my friend has also raised, with respect to accountability and the reporting requirements as they exist.

Mr. Trudell indicated at that time that he wanted to look back in five or ten years and be able to assure his clients—yes, your constituents—that the legislation struck the appropriate balance. Now here we are five years later, and this committee is undertaking such a review to answer the question, has the legislation struck the appropriate balance?

It is the position of the CCCDL that given the relatively small number of times the legislation has actually been used, given the absence of resort to the emergency or exigent circumstances provisions, given the absence of judicial consideration of the legislation, given the absence of charter challenge to the legislation, and given the absence of complaints about the use of the legislation, it is really too early to tell if this legislation strikes the appropriate balance. It appears to us that the limited use that has been made of this legislation has been primarily confined to investigations of criminal organizations, and, within that context, usually to obtain false identification papers, counterfeit money, tobacco, and alcohol. However, given recent arrests of persons alleged to have committed terrorist offences, the council is aware that there may be an increase in the use of this legislation in that arena. This increase in the use of legislation may well afford this committee more, and perhaps then sufficient, information to answer the question of whether this legislation has struck the appropriate balance.

Therefore, and perhaps surprisingly to some of you, the CCCDL strongly urges this committee to conduct a further review in two to three years' time to see how all of this plays out. Perhaps at that point in time, Mr. Trudell will be able, as he hoped at his previous appearance here, to assure his clients that this legislation has struck the appropriate balance, or at the very least assure his clients that this committee is continuing to monitor the situation, is willing to hear from us and others, and is willing to address any subsequently revealed need for change. It's just too early to tell.

Thank you very much.

• (1540)

**The Chair:** Thank you, Ms. LeRoy.

We're now about to enter the question period.

Mr. Lee, you have seven minutes.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Gentlemen and gentle women, I shall lead off.

Thank you to both groups for your submissions. For the first time in these hearings, I actually enjoyed both the briefs. I thought both briefs were heading in the right direction.

I'm going to deal with an issue that has come up at the committee, which is the absence of data on which we could base a decision about whether the provisions were working well or working badly. We've had some in camera information, which has been helpful to supplement, but are either of your groups aware of any significant or material failures or even good news involving the use of the sections from the perspective that you both offer?

I'll start with the Civil Liberties Association.

**Ms. Alexi Wood:** We're actually not aware of anything, and I think that is a problem. When you look at the legislation and see the broad universe of possible illegal activity that can be committed under this legislation, there are only three very narrow times where reporting is required. So we don't know. There could be a large number of times that the legislation is being used and illegal activity is being committed, but there might not be. It's such a grey area in the rest of the universe of possible illegal activity. As I said, reporting is only required in those three very narrow circumstances.

The absence of complaints and the absence of problems being brought forward is actually of concern to our organization. We're operating in the dark. We don't know all the times when this type of illegal activity is being undertaken. That's why one of the recommendations we made is that the reporting be expanded to include all of the activity, within reason, that's being undertaken under the legislation.

**Mr. Derek Lee:** And the criminal defence lawyers?

**Ms. Jeanine LeRoy:** The short answer is no, we're not aware of any glaring problems. We agree that the reporting requirements are inadequate.

One of the other ways in which this type of information would be fleshed out, for example, is if charges resulted from some of the investigations that utilize this legislation. That would have to be disclosed. There just hasn't been any judicial consideration of the issue. From that, we assume that where there have been charges laid as a result of the investigations using this legislation, there haven't been any issues with the manner in which that investigation was undertaken.

• (1545)

**Mr. Derek Lee:** Have either of you addressed the possibilities of increased judicialization of this procedure through an amendment of some sort?

I personally shy away from increased judicialization until I see a real need for it. Right now, we don't have enough data to make a decision either way. Have you addressed the pros and cons of judicializing some element of the procedure that isn't judicialized now? Because none of it is now. Have you given any thought to that, or do you have any views on that?

**Mr. Ken Swan (Representative, Canadian Civil Liberties Association):** We haven't proposed judicializing any of the mechanisms for authorization. What we have done is to suggest that some of the delays and some of the non-reporting of provisions should be subject to judicial review at the time those decisions are taken. For example, we've asked for judicial review of a decision not to report a particular breach of the law for one of the reasons set out in the section itself.

**Mr. Derek Lee:** Thank you.

**Ms. Jeanine LeRoy:** You are aware that Mr. Peter Copeland testified on behalf of the Criminal Lawyers' Association before this committee. He argued that a form of judicial review by way of prior authorization, or certainly subsequent review, would be appropriate. I'm actually a director of that organization as well, but I am here today speaking on behalf of the CCCDL, and we are not yet taking a position that this is required at this time.

**Mr. Derek Lee:** Thank you.

If I have time, Mr. Chairman, Mr. Ignatieff has a question.

**The Chair:** Go ahead, Mr. Ignatieff.

**Mr. Michael Ignatieff (Etobicoke—Lakeshore, Lib.):** I want to thank both organizations for their presence and commend them for their longstanding work in defending the civil liberties of their fellow citizens.

I did have one question. The issue I'm raising is whether the exemption from criminal liability that these sections offer should be restricted to public officers or whether it should be extended to "other persons", which appears to designate agents of the police, commonly people with criminal records who continue to live a criminal life. It has been recommended that the phrase "other persons" be deleted and that the exemption from criminal liability should be confined simply to public officers.

I'm wondering whether both of these organizations could offer a view on that issue.

**Mr. Ken Swan:** We haven't taken any position on that subject this time, although we did look at it the last time the legislation was in this committee and at the consultations prior to that. Our view then was that those persons ought to be subject to the ordinary law and to whatever prosecutorial discretion can be exercised on their behalf and whatever arrangements can be made to accommodate the fact that they were acting, apparently or otherwise, with official blessing, or at least without official condemnation.

At this point, we have simply left that part alone, on the basis that having lost the argument before, it didn't seem worth bringing it up again.

**Mr. Michael Ignatieff:** But if you could bring the argument up again, what position would you take?

**Mr. Ken Swan:** We don't think anybody should be permitted in advance to break the law.

**Mr. Michael Ignatieff:** Including public officers.

**Mr. Ken Swan:** Including public officers. No one should be given the kind of general authorization to break the law that this legislation shows. That was our primary position in 2001; it's our primary position in our brief today.

Having said that, if Parliament insists on doing this, then we have proposed a number of ways in which that authority might be limited.

**Mr. Michael Ignatieff:** But are you telling me that it would not be a meaningful improvement in the law to exclude or delete the phrase "other persons?"

• (1550)

**Mr. Ken Swan:** Oh, yes.

**Mr. Michael Ignatieff:** It would.

**Mr. Ken Swan:** Yes.

**Mr. Michael Ignatieff:** But in your judgment, it would be only a marginal improvement, since you don't like the whole thing to begin with.

**Mr. Ken Swan:** It wouldn't go all the way to getting us back to where we were, but it would certainly be an improvement. It would certainly remove from the group of privileged people a group who are the most notoriously uncontrollable and presumably those who are acting in circumstances that are not quite the same as sworn constables upholding the law.

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

Mr. Ménard.

[*Translation*]

**Mr. Réal Ménard (Hochelaga, BQ):** Thank you, Mr. Chair.

You are the first witnesses to suggest adding something. I understand you wish to add the word "necessary" to subsection 25.1(8). Instead of the term "reasonable and proportional", you would prefer to have something more legally restrictive. I find the concept interesting and I would like you to tell us more about it.

Am I correct to think it's subsection 25.1(8) you want amended? Perhaps you don't have the relevant provisions of the Criminal Code with you. If this is the case, our researchers will help us with this. I believe this is where you wish to make this addition.

[*English*]

**Ms. Alexi Wood:** I beg your indulgence to allow me to answer in English.

[*Translation*]

**Mr. Réal Ménard:** I have no problem with this.

[*English*]

**Ms. Alexi Wood:** Yes, you are absolutely correct. That is the provision to which that amendment would apply.

We are suggesting that instead of the phrase "is reasonable and proportional in the circumstances", which is found in paragraph 25.1(8)(c), it would be "necessary".

As I said in my opening remarks, there are two recommendations. One is that public officers themselves are the ones able to make this determination, and legally that's problematic. But then also is this bar of "reasonable and proportional" problematic. In our view, that's too low, and it should be raised to be "necessary". If an officer can sort of go through a balancing and think, well, it might not be necessary, but it's reasonable, that's too low a bar. It must be necessary. As we've said, this is such an extraordinary power we are giving to law enforcement that we need to restrict it as much as possible.

[*Translation*]

**Mr. Réal Ménard:** I do understand what you say. All agencies responsible for civil rights and liberties told us the same thing. I believe it's a reasonable position. However, what would "necessary" mean? In 2000, for example, there were 37 illegal motorcycle gangs in Canada. Infiltration and use of informers is inevitable in police investigations. You can have the greatest respect for human rights, but you still have to acknowledge that major police investigations cannot succeed without covert operations and the use of informers. Even the Supreme Court recognized that law enforcement agencies don't have to reveal their sources.

How will you define the term "necessary"? Up until now, we don't know of any abuse. Quite the contrary, the RCMP has put in place internal control mechanisms. In the federal government, three departments used these provisions in cases relating to drugs, immigration and organized crime. I find it interesting that you wish to add the term "necessary" but can you give us some details on how it would be interpreted?

[English]

**Mr. Ken Swan:** I think the word “necessary” appears throughout the Criminal Code as a test for all kinds of different activities. I haven't been able to grab one right away from the other justification sections of the Criminal Code, but it is a concept that I know appears in many sections, and perhaps before we're done I'll find a couple of examples for you.

I note that if the word is inserted in the provision where we're proposing to insert it, or where it's come up in this conversation that it might be inserted, it would nevertheless be subject to the qualifiers that the public officer or peace officer would have to reasonably believe it was necessary.

• (1555)

[Translation]

**Mr. Réal Ménard:** Okay.

[English]

**Mr. Ken Swan:** In other words, there would not be a separate objective requirement that it be necessary, but that person reasonably believed it was. It simply puts a stronger bar, a higher bar, for the police officer to consider when about to break the law.

[Translation]

**Mr. Réal Ménard:** I think this proposal is interesting. We should analyze it further, but I really have a capital of sympathy — I'm talking like a Marxist but I am not — for this proposal. I want to reassure our Chair in this regard.

You mentioned the threat of physical violence. You said that certain actions should obviously not be allowed. There are three exceptions: physical integrity, sexual assaults and murders and homicides. You want the threat of physical violence to be added to the list of prohibited actions for which no justification is admissible. In an infiltration scenario, what would this addition mean?

**Ms. Alexi Wood:** We have discussed these issues around lunch. So I am ready to answer.

**Mr. Réal Ménard:** I know I'm getting old and awfully predictable. You are not the first to say this.

I'm listening.

[English]

**Mr. Ken Swan:** Our friend has commented that there are a number of infelicities in the language in this subsection 25.1(11), and I think that's right. One of the problems is that one has to negligently cause death or bodily harm to another person to have offended against that subsection, to have gone outside the provisions of the legislation. As we see it, that could mean you could have every intention of killing somebody, but fail at it and therefore be protected by the law, whereas if you succeed, you would not be protected by the law.

My friend has already commented on the vagueness of the language, “violate the sexual integrity of an individual”, although I think that may well come from one of the Supreme Court of Canada decisions, that concept of violation of sexual integrity. I'm not quite sure, but it certainly leaves a great deal of vagueness to understand exactly what is meant.

We would have preferred, five years ago, that the specific sections we would authorize police officers and public officers to break be set out in some detail. There's no difficulty whatsoever with exempting police officers from criminal liability for offences of possession of contraband or trafficking in contraband. The problem always comes when you start dealing with offences against the person, and subsection (11), I must say, is only there because of what came out of the consultation process before the legislation was first drafted.

We would like to have it a lot stronger, and we think that dealing with the other kinds of offences, attempts, conspiracies, counselling, at the same time would be a good idea. We don't think the police officer should be going around counselling the infliction of bodily harm.

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

Mr. Comartin.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair, and thank you to the witnesses for being here.

Ms. LeRoy, if I could start with you, the point you made about whether there are incidents that we're not aware of, in the sense that if there were no charges laid it would not have come to the attention of defence counsel, the accused, or shown up in any reports.... And, Ms. Wood, you may want to answer this as well. If we needed to change the wording for the reporting function, how would we word it so that even though charges weren't laid, they still had to report it and report it publicly?

• (1600)

**Ms. Jeanine LeRoy:** I think you just wrote it.

**Mr. Joe Comartin:** It is that simple.

**Ms. Jeanine LeRoy:** It's that simple. I think it's important to say somewhere in the legislation that it has to be reported whether or not charges are laid. It's that simple.

We would go further to echo the concerns of my friend, that indeed more information is required of the actual reporting itself. She is right. It shows you nothing of value.

As an aside, I would say that when I was reviewing the previous testimony you've already heard, I was very concerned to learn of the lateness of the reporting, the delay in the reporting. That has to be addressed.

**Mr. Joe Comartin:** Do you want to comment on that?

**Ms. Alexi Wood:** I'm happy to. As we stated in our opening comments, we recommend that the reporting be expanded to cover all uses of this legislation, not only the three limited circumstances it currently provides. As my friend commented, the delay...I read the legislation and there is nothing in this legislation that could prohibit law enforcement from essentially delaying indefinitely. There is no limit on that, and there's no oversight of it either.

Our recommendation is that if law enforcement is going to delay, there needs to be a judicial authorization for that delay. And third, as my friend also commented, the detail in the reports is essentially meaningless. We need sufficient detail so that members of the public can hold the relevant ministers accountable for the action that's happening.

**Mr. Joe Comartin:** Along a different line, I'm taking the opposite position from Mr. Lee. I'm inclined to feel that having prior judicial approval would be better. The difficulty I'm having with that is the exceptional case, the urgent case, the emergency case. I'm looking for some suggestions for the wording, so that in every case, unless you're faced with these circumstances, you get prior judicial approval. That would be the basic structure. What would be the exceptions that would allow the police official to not get that prior approval? Could we use the same kind of wording that is used when you don't have to get a warrant because of reasonable apprehension of a crime about to be committed?

I looked at that wording. It didn't seem to be quite good enough for this specific type of activity we're talking about here. I don't know if you've given thought to that. If you have, I would appreciate your comments.

**Ms. Jeanine LeRoy:** It's difficult to respond, because, as you know, that portion of the legislation has never been resorted to. We can't look to the police and ask when they needed to use it; they didn't need to use it. It's difficult.

I would tend to disagree that it would be difficult to craft the correct wording, because, you're right, we do it now, mostly through case law. But by way of an example, if evidence is going to be destroyed now, the police officers don't have to get the search warrant...or at least they run the risk of being told later they needed to. Or it's for the safety of the police officer. They can search that vehicle in certain circumstances if they believe the safety of the police officer is in danger.

So I'm not sure it's impossible to craft, but I'm also not sure it's necessary that they have that power, because they've never had to use it.

**Mr. Ken Swan:** The language in paragraph 25.1(9)(b) is probably not bad, as such language goes. It sets out three exceptions, where an act or omission is necessary to:

- (i) preserve the life or safety of any person,
- (ii) prevent the compromise of the identity of a public officer acting in an undercover capacity, of a confidential informant or of a person acting covertly under the direction and control of a public officer, or
- (iii) prevent the imminent loss or destruction of evidence of an indictable offence.

Those would all seem to be reasonable reasons to proceed without prior authorization, providing that what is done is within what the act permits to be done.

**Ms. Jeanine LeRoy:** My point is that those are the exigent and emergency circumstances in the Criminal Code generally. There isn't anything else that we've come to know or need.

•(1605)

**Mr. Joe Comartin:** That's all, Mr. Chair. Thank you.

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

Mr. Thompson.

**Mr. Myron Thompson (Wild Rose, CPC):** Thank you.

Thank you, folks, for coming and making your presentation. I'm gathering, Ms. Wood and Mr. Swan, that your answer to the situation is that this section should be eliminated in its entirety. Is that correct?

**Ms. Alexi Wood:** That's our first position, yes.

**Mr. Myron Thompson:** Are you likewise of the same position, Ms. LeRoy?

**Ms. Jeanine LeRoy:** Our position is that it's still too early to tell, but I strongly urge the committee to realize that they haven't had to use it. Why is it there?

**Mr. Myron Thompson:** Are you aware of the submission that was given in the testimony by the police department that was here?

**Ms. Jeanine LeRoy:** Yes, I've read it.

**Mr. Myron Thompson:** They seemed to be quite satisfied with this section. They've operated under it for five years, and they're glad it's there. As you would know, they would not like anything to be taken away, as it's presently written, nor would they want anything added to it. They think it's strong enough, and they think they're able to operate within that scope. They feel they've been quite successful, although we're waiting for the reports to verify that is the case.

But one thing has puzzled me since we've started this. I've had some conversations with a few police officers, including our chairman, who's an ex-police officer, about some of the activities of the police in regard to trying to get the job done in protecting society. That's their main mission. On the circumstances of the sequence of events that take place in undercover situations, from some of the stories I've heard, I don't know how you can possibly get prior approval or cover every aspect of it.

I think I represent a pretty solid group of citizens in this country who put their total faith and trust in a trained department, a group of people who are out there doing their utmost to protect people from the criminal element as best they can. We need to listen to these people, support them, and provide them with all the tools in the toolbox that will enable them to protect society.

As you know, the world is changing, and it's getting to be a very strange world to live in. I know that some of my colleagues would say I'm fear-mongering. But when things happen and an 11-year-old is taken off a scooter when going to a video store to get a movie, it bothers people, and it bothers me.

We've got experts in the trade; they're called the police. Within the police department, they have authorities above them. Nobody operates on their own; they all have authorities and internal controls. I think they not only look after the safety of the public, as a main idea, but make absolutely certain that they work within the scope of the law, as provided by this section. I only hope the reports we get indicate that to the fullest.

What puzzles me is that I keep hearing the comment over and over, from people such as yourselves, that we must strike a balance. I've heard from members of this committee that we must strike a balance, and you hear it from the public. We must strike a balance, but a balance according to whom? Is it according to you folks? Is it according to the general public?



The majority of the people out there put a lot of trust and faith in the police to do their jobs, and the police are trained to do that. As to faith in the politicians who are supposed to make the laws so they can operate, well, that would probably be the last place in which I'd put any trust, being a politician. But dadgummit, we have a real job to do in this world. This world is not the best and most comfortable world to live in because of the amount of crime that's around, with gangs, drugs, and all the paraphernalia.

I don't understand what you mean by striking a balance. What would make you happy in striking a balance? Would it be eliminating this section? That's what I hear you want to do. It wouldn't make a lot of people happy. The balance is according to whom? Why do we use the phrase "strike a balance" when we don't even know what it means?

That's my only question, if you want to respond to what I said.

I don't think people like you put enough faith in the people who do the job of protecting society—our police departments. We must do all we can to support them in their cause. I trust them to take care of themselves and not go overboard in any situation because they know their limits. The limits are there, and the Charter of Rights is there.

Go for it, boys and girls. Do a good job. Look after us. We need you.

Let's get off their backs.

That's how I feel. You can comment, if you like. If not, pass on to the next one.

• (1610)

**The Chair:** Mr. Swan.

**Mr. Ken Swan:** I think I can detect a question in there, sir.

Maybe the best place to start is to say that probably all of us trust the police as much as you do. We have to trust their protection of our rights and our liberties as much as you do. Many of us have had close contact with the police. Many of us talk to them, deal with them in our work, and have them as witnesses in various proceedings. None of this is about attacking the police.

This is really about deciding to what extent the law runs the country and to what extent the police do. We're simply not prepared to allow the police to submerge without proper control and with an authority to break the law under fairly broad circumstances. It's what we mean by striking the balance. If they're going to be able to do that, we should know about it, we should be able to comment on it, and we should be able to consider whether it's in all of our best interests.

**Mr. Myron Thompson:** On that point, I would like to go back to what I said about hearing from those in the field, that virtually, through the sequence of events that take place, I don't know how that could possibly happen. Some things just happen, and you have to trust the judgment of the individual or individuals at that moment.

We can't cover everything. I really think our whole energy and emphasis should be, yes, on having the guidelines and living within them, but taking away a tool.... They won't do any more undercover work, sir. They have said that if they lose this, forget about that ever happening. They said that loud and clear. In fact, it stopped,

according to them, when the court case came that required this legislation to be developed. They stopped.

**The Chair:** Mr. Comartin.

**Mr. Joe Comartin:** On a point of order, that's not what they said, and it's not fair for Mr. Thompson to say they said it.

**Mr. Myron Thompson:** Well, maybe I'm mistaken, but that's what I heard.

**Mr. Joe Comartin:** Maybe, but that's not what they said. They didn't say they would stop the undercover work they do, which is much broader than anything they do in terms of breaking the law. What they said is they would not undertake any operations that would require them to break the law. That was the position they took after the Supreme Court—

**Mr. Myron Thompson:** Well, that's what I was trying to mean. I'm sorry I didn't get that across.

**Mr. Joe Comartin:** Okay. The undercover work they do is humungous in size compared with the few cases where they break the law.

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

Are there any more replies to Mr. Thompson?

Ms. LeRoy.

**Ms. Jeanine LeRoy:** It seems to me, sir, when you ask for whom we are achieving this balance or why you are asked to review this matter two or three years hence in order to see if you've struck the right balance, the short answer is you're striking the right balance for the courts, who review your legislation. The courts take into account the balance between the rule of law—which is your concern for living in a society that is properly patrolled, if you will, and made safer by the police—and on the other hand the rights of the citizens, including those who are accused of crimes. It's for them we're working towards ensuring that the balance is struck between the rule of law, which is your concern for safety in the community, and the rights of citizens of this country, including those who are accused of committing crimes.

The courts are the ones, whether you like it or not, who tell you ultimately whether you've struck that balance. And it's their language, "striking the balance". That's what they do every day, and that's what we help them do every day.

**The Chair:** Thank you, Ms. LeRoy.

I have a question on that point. It's an anecdotal situation, but really it's a common occurrence, if you will, in police investigations.

You have an organized criminal group. Now, they're involved in a series of fundraising activities, such as armed robberies. They go into a bank or credit union or some other institution and decide they're going to use as much violence as necessary—within some limits, I guess—such as jumping up and down on the counter, waving guns around, forcing tellers to the floor with guns in their faces, screaming at them, and cleaning out the till, and out the door they go. This group continues this kind of activity; they keep on their reign of terror. They're all balaclavaed, so nobody knows who they are.

Now a lead comes in, and there's an effort to try to obtain as much information about this group as possible and to try to get people as close to them as possible. One of them is arrested on a minor charge, or an outstanding warrant—which is in and out—and an operator decides, we don't know who we have here, but there's some connection, so let's find out. So they assault him and obtain a sample of hair from him, and lo and behold, it matches the samples in the balaclava.

Does this section apply?

• (1615)

**Ms. Jeanine LeRoy:** Well, my short answer is they are permitted to commit an assault, short of causing bodily harm or death, so that's okay, but they are not allowed, as I read the legislation, to usurp the usual manner in which one obtains evidence. So there would be an argument to be made by a defence counsel of any measure—

**The Chair:** The court of the land, right?

**Ms. Jeanine LeRoy:** Yes, in a court.

**The Chair:** Well, exactly.

**Ms. Jeanine LeRoy:** There would be an argument with respect to whether that hair sample was properly obtained.

You probably don't want to hear my argument about that now.

**The Chair:** I know what the answer is in this particular case. In this particular case—and you're absolutely right—this matter was brought before the court of the land, and on the matter, the judge ruled that in fact it was an assault—

**Ms. Jeanine LeRoy:** It was.

**The Chair:** —but it was of such a minor nature compared to the gravity of the crime and the crime spree that these people were involved in that he allowed the evidence to stand, which did in fact result in their conviction.

So now, with this legislation, this action really applies to a similar case under this legislation. What existed before this legislation is now in the law, and it allowed police officers to take some very violent criminals off the street. In fact, they were very organized. So here we are.

**Ms. Jeanine LeRoy:** If I were the police officer, I would just have a chat with this fellow I had just arrested on this warrant, convince him to give me all the information I would need to infiltrate the group, and commit the robberies right along with them, because the legislation lets me do that. You don't need to assault this guy. You can go and commit the robberies with this fellow.

**The Chair:** I don't think that's the nature of our police departments or the training they're involved in, to necessarily go and do all those things.

**Ms. Jeanine LeRoy:** But that's what they do. They're infiltrating—

**The Chair:** Yes, they are.

**Ms. Jeanine LeRoy:** —criminal organizations.

**The Chair:** And some of them take years to really infiltrate—

**Ms. Jeanine LeRoy:** Absolutely.

**The Chair:** —and obtain.... That's why you see charges reported the way they are, in very vague terms, over periods of time. Doing so

allows them to continue on with their investigations without any fear of somebody reading that and saying, “Oh, I know what that's related to”.

**Ms. Jeanine LeRoy:** But if there's an ongoing investigation, as you've heard from other witnesses before you, those matters can be addressed by sealing specific reporting items. We do that by way of warrants now.

**The Chair:** I would beg to differ with you about sealing. As a major crimes investigator, I don't know how many warrants I have had from which the seals were lifted and all the evidence was put forward. Doing so jeopardized not only the undercover operators but also the investigations over time.

**Ms. Jeanine LeRoy:** But that unsealing is done after a notice of application is brought before a judge, and a judge makes that ruling.

**The Chair:** It's not always the best.

**Ms. Jeanine LeRoy:** There's no question judges don't always get it right.

**The Chair:** Anyway, I just wanted your comment, and I've got it.

Now we are on to Mr. Bagnell.

**Hon. Larry Bagnell (Yukon, Lib.):** Thank you.

I'd just like to ask Ms. LeRoy about a couple of things. You suggested that we need a report further down the road because it's hardly been used, so we don't know the effect. I agree with the need for a new report.

And you suggest we don't really need this law because it's never used. But how would you know, because they don't have to report except in certain exceptional circumstances? There is no way for us to know how many times it's been used.

**Ms. Jeanine LeRoy:** And certainly we agree with you that the reporting requirements are deficient. Our main point here is that you don't have enough information to make the decisions that are being asked of you at this time. You need more time. You need more information, and you need to do whatever it takes to get that information.

• (1620)

**Hon. Larry Bagnell:** Okay.

I just want to make a point, and then I have another question. It is that it's been mentioned a couple of times that this allows people to break the law, but with this legislation in place, no one is breaking the law.

I have five or six areas in which I think there might be improvements. I'm against judicial review, and I'm against public reporting because—without getting into a long debate here, which I will do later when you're not here—I think it jeopardizes the safety of police officers.

But I do have six suggestions, four of which are pretty simple. One I had before coming into this meeting. One suggestion is more periodic review. One suggestion is an annual report that has a time limit—you have to get it in by a certain time. One suggestion is a consolidated report so we don't have to get all the police forces and fisheries officers in the country to put them all together and chase them all over the place. And the fourth suggestion is a limited period for designation, like what the RCMP have chosen to do for themselves. So those are four simple administrative ones.

The two others are more difficult. As I said, I don't like public reporting because it lets the underworld and terrorists know what we're doing, but what about in camera reporting to some organization like an all-party committee of Parliament, which might be better than nothing?

This is the last one. You know there are three laws you can't break, and I'm wondering what you think about adding a fourth one, which would be torture. I suppose you could use an international definition for it, because you'd have to have a definition.

Any of the witnesses are welcome to comment on any of the changes I have proposed.

**Mr. Ken Swan:** It's hard to imagine torture that doesn't involve bodily harm—although it's apparently possible.

**Hon. Larry Bagnell:** I brought that up before, because there's mental torture, sleep deprivation, things that people don't define as bodily harm.

**Mr. Ken Swan:** Without attempting to give a legal opinion in international law, I would have thought that any Canadian legislation that authorized torture would be contrary to the United Nations covenant and therefore, in international law at least, illegal. It probably would be declared unlawful by our own courts as well, for the same reason.

Might I suggest that you add to your list of administrative responses the one we've set out for you here, which is an independent audit of police forces, in other words, a proactive audit, not merely receiving information and considering it—a body that does the kind of audit that SIRC does for CSIS right now. It's one of the best examples we have of that kind of auditing body, a body that can ask questions, that can visit, that can look at documents.

If, to whatever extent, there is a body like that available and in place, then the concealment of some kinds of information becomes more tolerable because you know there's an auditing process going on by people whose job it is to ensure that the legislation is being followed.

So if you'd add audit to your list, we'd be very happy.

**The Chair:** Is there anything else on any of those suggestions?

**Ms. Jeanine LeRoy:** Obviously we agree with number one, since that's what we're suggesting this committee do. We would be reluctant to get behind anything that limits the reporting further.

We would suggest that with respect to number six, there are a greater number of crimes that ought to be included in that list—the robbery I mentioned, a forcible confinement. You can kidnap

someone and forcibly confine them under this legislation. You can extort from someone under this legislation.

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

Ms. Freeman.

[*Translation*]

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** I only have one comment because many of the questions I was considering were already asked.

Mr. Thompson's earlier plea was extremely interesting since there is always a dilemma between trusting the police and imposing limits on them. Courts have to interpret laws and regulations, and members of Parliament have a duty to oversee police activity. We cannot give police officers a completely open mandate. We have to give them the right laws to rely on.

Much is said about reports and control of information. It's understandable that you want everything to be reported but that would compromise surveillance and the safety of police officers. You mentioned an independent agency that would control these activities. Can you give us more details about this?

• (1625)

[*English*]

**Mr. Ken Swan:** I think we're probably thinking of—

[*Translation*]

**Mrs. Carole Freeman:** In order to have access to police records and to know how they're using these provisions. Is my question clear? Do you want me to restate it?

[*English*]

**Ms. Alexi Wood:** In our formulation of such an independent body, it would be independent from government and from the police, and this body would have access to police personnel, to police records, to all of the infrastructure of law enforcement, to conduct, as Mr. Swan pointed out, proactive independent audits. It would not just be through the receipt of information, but they would actually go into the information, on their own initiative, and look through the information. There may be circumstances where the information isn't coming to light. If there are covert operations happening, that may never see the light of day in a courtroom because by its very nature, it's covert. We don't know that it's happening. The individuals may not know they are being monitored. So this type of organization would have the power to go inside the law enforcement body. As Mr. Swan pointed out, it's something very similar to the way SIRC operates with CSIS.

SIRC receives complaints from the public, but it also has the power to go inside CSIS itself. That is a model we would look to. As for the exact way it would work, that can be left to...but SIRC works as a model. SIRC works as a type of organization that we would look to when we talk about an independent audit.

The other thing with the reporting is that currently, as I've mentioned, you can delay the reports. As I read the legislation, it could be delayed indefinitely. There's no prohibition on that. So we would add in the level of judicial authorization if a law enforcement agency was choosing to delay. On the question of the chair, in terms of jeopardizing an ongoing investigation, there would be that safeguard that would help with that as well. There would be the two levels. One is the judicial authorization, but then also the independent body would be overseeing it all.

I hope that answers—

[Translation]

**Mrs. Carole Freeman:** You have two recommendations.

**Ms. Alexi Wood:** Yes.

**Mrs. Carole Freeman:** One deals with an independent agency and the second with judicial authorization.

**Ms. Alexi Wood:** Yes.

**Mrs. Carole Freeman:** Who exactly would your independent agency report to? Who would it be accountable to?

[English]

**Ms. Alexi Wood:** It would be accountable to the public. It would publicly report. The members of SIRC see everything, but not everything is put forward in SIRC reports. SIRC has the power, for security reasons, to keep information out, but the annual reports are made public so that the public can see—

[Translation]

**Mrs. Carole Freeman:** This report would be public.

**Ms. Alexi Wood:** Yes.

**Mrs. Carole Freeman:** Okay.

[English]

**The Chair:** Monsieur Harvey.

[Translation]

**Mr. Luc Harvey (Louis-Hébert, CPC):** I traveled a lot in the past few years. I went to Africa, Eastern Europe and many countries that may be considered as police states. In these countries, the police can do anything they want. When I saw a police officer, I didn't really care much, but I noticed that local people were rather nervous.

Politics is not easy. Infiltrating an organization is like having a part in a play. I can hardly see how you can train an officer, when he is on a police mission, to write a report or to reflect on whether or not he should act in a certain way. He must play his part in order to be accepted and trusted so that he can gather evidence. How is it possible to determine where this officer must stop? This is the question that's being asked today.

You talked about investigations and another possible role for the police, but things are getting more and more complicated. We shouldn't let police officers become criminals with a license. An officer never gets arrested because he always has his police badge.

Wouldn't it be better if the mandate given to an officer to infiltrate a criminal organization is strictly limited to two years? We shouldn't let him get used to these activities so they become a second nature. Without a time limit, the officer himself may become as dangerous

as a criminal. If he can have this kind of activity during his whole career, he will probably take an approach typical of police states. I believe we can draw a line by giving police officers some leeway but only for limited period of time.

•(1630)

[English]

**Mr. Ken Swan:** I don't know the answer to that. I think probably there are a number of variables that would effect how you would make those decisions. From our point of view, police officers being justified in doing something that would otherwise be breaking the law—may I use the short form of breaking the law? Police officers breaking the law are doing so on our behalf. We're authorizing that police officer to do so. So it's our complicity in that act that concerns me. It's the extent to which society has said, you may commit what would otherwise be a criminal act in order to advance our interest. I think there simply have to be limits to how much, for how long, and of what kind of justification you can offer to police officers. Otherwise they become in effect our designated law breakers. I don't think we can tolerate that.

[Translation]

**Mr. Luc Harvey:** In Montreal, the RCMP ran an exchange and double cashing operation. It was an easy way to make contact with street gangs, organized groups, drug dealers, etc. and to gather a lot of information.

Just 10 days ago, 17 persons with very disturbing intentions relating to Parliament Hill were arrested. Under these circumstances, I cannot see how you can avoid covert operations. Obviously, they must be controlled. I believe it is absolutely essential to do it in order, at least, to be on an equal footing with criminals who can cause serious harm to our population.

[English]

**Mr. Ken Swan:** If I understood you correctly, it was a money laundering operation.

[Translation]

**Mr. Luc Harvey:** Yes.

[English]

**Mr. Ken Swan:** We've said from the beginning that we don't think there's any problem with authorizing police officers to engage in what would otherwise be an offence relating to the possession of contraband or transactional offences relating to contraband. That would include dirty money. That kind of operation may very well have enormous dividends, and it may be very reasonable to authorize what would otherwise be an offence, in order to get those dividends paid.

This is a much more general provision we're talking about here.

•(1635)

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

Ms. Barnes.

**Hon. Sue Barnes (London West, Lib.):** Thank you very much.

I welcome your testimony. It's always helpful to us when we have difficult tasks before us.

I tend to agree that the lateness of the reports is a concern, and I think we should note that in our report. I also think, when you go across the land and pick up the reports, you do it individually by jurisdiction. Another witness came before us and suggested there should be one complete report for Canada on an annual basis. First, I want to know whether you think that's worthwhile. One of the things that happens when you collect data on an annual basis is you give everybody a deadline, so hopefully it would be helpful. We could get a real assessment across the country at a glance, basically.

When you answer that question, I do have some concerns about the safety after the fact from operations that have occurred. While I agree that the information tells us virtually nothing that you could get a logical conclusion from at this point, I would like to strike a balance between getting more information, to see the efficacy of the legislation, but not put anybody's personal safety.... If you go down to the point and to the extreme example, Ms. Wood, and you say this came from this geographical data and this thing, somebody's going to know what happened. I think that's very counter-productive to what we're trying to accomplish here.

What parameters when you say...? It has been suggested charges. Have charges been laid or are charges pending—those types of things. That's the type of information.... What other types of information? When we say let's get a better report, what do we really want that's not going to do harm as well as give information? It's that line that we're trying to find here, because I think we can all agree around this table, hopefully, that the reports right now don't give sufficient information.

**Ms. Alexi Wood:** I certainly understand the concern about safety, and I do want to preface my comments with that. Our recommendation regarding the geographic location is...we would consider provincial designation sufficient. The reason we would want the province in which this took place is that if you read the legislation, it's the provincial ministers who designate the peace officers who are going to be doing this. If the public needs to know who to hold accountable, they'd have to go back to that provincial minister, and if we don't know in which province it took place, then we have no way of knowing which minister to hold accountable. The same goes for the RCMP, whether it is acting in its municipal police force role or in its national police capability.

So the province in which it occurred is essential when it comes to figuring out who will be held accountable for what activity. While I understand the safety issue, it may be that a provincial designation could jeopardize an investigation, which is why we've recommended the ability to go to a judge for an override if any type of information like that was to be kept back.

I think if it's just as broad as provincial... I'm not a law enforcement expert, but if that were to jeopardize something, then they would be able to apply to a court, which would have access to the information and be able to make a decision, whether or not even the designation of which province it occurred in was problematic.

**Hon. Sue Barnes:** If every province or every jurisdiction had to do their annual report, and then somebody took the overriding Canada-wide data and put it in without the geographic...we could get a cross-Canada report without the data from individual crimes. You wouldn't put the jurisdiction in. So some of the concerns about safety...it's like a non-identifier, but you'd still get a total picture of

what occurs in Canada. For somebody who wanted to know the jurisdiction, they would have to go through a different process. Are you following what I'm trying to say?

• (1640)

**Mr. Ken Swan:** There are provisions now in the legislation that permit the delay of inclusion in a report until a time when that would not compromise an ongoing investigation, compromise the identity of an undercover officer, or endanger someone's life or safety. Those all seem to be quite reasonable reasons to delay, although we have proposed that there should be some independent scrutiny on whether those factors do exist. So simply delaying the provision of the information to the wider public would probably continue to protect the interests you're concerned about. There seems to be no reason that the information should not be collected and analyzed.

If it's being delayed, once again I would raise our favourite solution to these problems: an audit body that could look at the information before it was public and scrutinize it. Then to whatever extent it was being delayed, the audit body would give us some comfort that nevertheless it was being looked at carefully by someone with the responsibility to do so.

**The Chair:** Thank you, Ms. Barnes.

A point of order, Mr. Thompson.

**Mr. Myron Thompson:** In Ms. Freeman's questioning, I got the impression that she believed I was saying that the police should have full realm to do what they want. I hope that wasn't what she meant. I agree that we have the laws, and I want to let the police control what they do internally, within the laws. And this section is law. They're allowed to do it, and I think they're the best judges of how it could be handled. I hope I didn't mislead anybody over there, thinking that I was just saying give the police full realm. I wasn't saying that at all. I hope you got that.

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

**Mr. Myron Thompson:** I thought that's what you were saying.

**The Chair:** Thank you, Mr. Thompson, for the point of clarification.

Mr. Warawa.

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

I also want to thank the witnesses for being here today. I found it interesting and informative to hear your perspective.

I tried not to put words in your mouth, but I did make some notes here. What I think was said was there may be an increase in the use of this legislation occurring. I think Ms. LeRoy mentioned that, and that the reporting requirements are inadequate. Ms. Wood said that we don't know what's really happening. Also, Ms. LeRoy said that we don't know if it works, and you want to have a two- or three-year review.

So there is a concern expressed. Yet there's a lack of tangible evidence to base those concerns on. You have a concern and you're expressing it. That's legitimate. But one of the questions I'd like answered is, what are your concerns based on? As this legislation was being developed, were you in opposition to that? I think yes. Again, what are your concerns based on? If you were opposed before, you remain opposed and don't support the legislation. But in some examples, I think Mr. Swan said he may. I want to clarify that.

I'm starting from a premise that I trust the courts. The judges are human, so all decisions could be critiqued. But the premise I start from is a trust in the courts of Canada. We live in an incredible country, and I believe we have to trust our courts.

We need to start from a premise that we trust our police officers. I won't take it as far as trusting politicians, but that would be a wonderful goal to aim for.

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

• (1645)

[Translation]

**Mrs. Carole Freeman:** Perhaps he can't trust himself!

[English]

**Mr. Mark Warawa:** I think the goals are good—to hold us all to a standard—and I applaud your efforts in that respect.

On May 30 we had the RCMP make a presentation. I'd like to take about a minute and half to read their example, the Project CHARNY:

...an organized crime group was believed to be involved in making and selling Canadian counterfeit currency. The investigative unit in Montreal acquired the services of a civilian agent and made application to utilize the agent, accompanied by a designated member, to attempt to purchase counterfeit currency from the crime group.

.....

A senior official granted the authorization to permit the agent and designated member to purchase the counterfeit currency. The designated member, who was also an undercover operator, and the agent purchased a large quantity of Canadian counterfeit currency shortly thereafter.

During the course of this investigation the senior officials granted a total of four authorizations. In this same case the criminal operations officer for the division authorized the designated member on five other occasions to purchase items offered for sale by the crime group. Of these five authorizations, two were not acted upon.

These authorizations permitted designated members to purchase and possess counterfeit currency, false passports, false social insurance cards, and false driver's licences from members of this criminal organization.

The RCMP purchased, as evidence, approximately \$250,000 of counterfeit currency, false passports, false social insurance cards, and false driver's licences from subjects in Montreal and Toronto. Searches conducted at residential addresses resulted in the seizure of equipment used to falsify documents, enabling investigators to lay criminal charges against those responsible for the operation.

As this scenario has illustrated, by utilizing the law enforcement justification in circumstances such as this, investigators are better able to identify and attempt to infiltrate the organized crime groups involved in the actual production of the counterfeit currency and counterfeit identification cards, thereby dismantling the criminal organization.

My question will be for Mr. Swan. I think you said you support the use of this legislation in this instance. Where do you draw the line on where we could use legislation like this and where we could not? And on what tangible evidence are your concerns based?

**Mr. Ken Swan:** We've taken the position from the outset that there are a number of laws that need not apply to police officers in

the performance of their duty. Among those are laws relating to the possession of contraband materials and laws relating to transactions involving contraband materials.

All of the authorizations and conduct in the example you gave, which I have in front of me too, fall clearly into the kinds of justification we were quite prepared from the beginning to grant to police officers. We think there are probably a number of other areas where specific targeted provisions of the Criminal Code need not apply to police officers in the course of their duty—properly authorized, perhaps, with appropriate safeguards, perhaps. There's no reason, for example, to keep police officers from purchasing counterfeit money, just as there's no reason to keep police officers from purchasing drugs when they do so to enforce the law.

**Mr. Mark Warawa:** Would they be breaking the law without this legislation?

**Mr. Ken Swan:** They would be breaking the law without this legislation, but there's no need for this legislation for them to be able to do it. Much more targeted, much more modest, much more carefully controlled legislation that we could have supported five years ago would have permitted, so far as I can see—except for vagaries such as conspiracy to commit an indictable offence, whatever that means... Everything else I could see in the RCMP's report consists of things we would have no difficulty permitting police, properly controlled and properly audited, to engage in.

What this legislation does is much broader. It says police officers can break any number of laws, except ones that result in certain kinds of harm, when they think it's reasonable and proportionate to do so. We just don't think that kind of legislation is appropriate. It creates a class of people who have the right to decide in advance when it's reasonable and proportional to break the law, and have justification for it. That's what we think is wrong with this legislation.

• (1650)

**Mr. Mark Warawa:** So the line is where?

**Mr. Ken Swan:** The line should be drawn carefully through the Criminal Code, section by section. It should not be a blanket authorization in advance to break any law subject to a relatively low test of when it's appropriate to break that law.

**Ms. Alexi Wood:** For example, following the Campbell and Shirose decision, the Controlled Drugs and Substances Act was amended, and there are regulations pursuant to that act that allow police to break certain provisions of the Controlled Drugs and Substances Act. That's a narrowly tailored, limited use of police legitimate law-breaking. What the CCLA has objected to, and what we continue to object to, is this broad-sweeping principle, this broad-sweeping law that allows almost unfettered discretion, without government ever having to come forward and say, this is why we need the law; this is why we need to be able to do this.

As we said in our beginning comments, we start from the basic principle that we all need to obey the law. If we're going to create a class of people who are exempt from that, we need to have some basis on which to know that we actually need to do that. Here we just have this broad-sweeping brush of ability to get around certain laws. It's very different in the Controlled Drugs and Substances Act regulations. I think when we say we're opposed to this legislation, that's what we mean. We mean we're opposed to this *carte blanche*, as opposed specifically to the narrowly tailored regulations that follow from the Controlled Drugs and Substances Act.

**Mr. Mark Warawa:** Is there time for the others to add their comments? No?

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

That brings our afternoon questioning to an end.

I really would like to thank the witnesses for appearing and presenting to the committee their views of these particular sections. Now we will be deliberating in reference to finalizing the review by way of a report. That's what we will be discussing now in the latter part of this afternoon.

At this point in time, I would like to suspend for one minute until the witnesses have an opportunity to leave. Perhaps any other members of the public would leave also. We will be entering an in camera session. Thank you.

*[Proceedings continue in camera]*

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