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Wednesday 4 May 2005

Journal des débats (Hansard)

Mercredi 4 mai 2005

Standing committee on justice policy

Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005

Comité permanent de la justice

Loi de 2005 modifiant des lois en ce qui concerne l'exécution de la loi et l'administration des biens confisqués

Chair: Shafiq Qaadri
Clerk: Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Wednesday 4 May 2005

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Mercredi 4 mai 2005

The committee met at 1003 in room 228.

LAW ENFORCEMENT AND FORFEITED PROPERTY MANAGEMENT STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EXÉCUTION DE LA LOI ET L'ADMINISTRATION DES BIENS CONFISQUÉS

Consideration of Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities / Projet de loi 128, Loi modifiant diverses lois en ce qui concerne les pouvoirs d'exécution, les pénalités et l'administration des biens confisqués ou pouvant être confisqués au profit de la Couronne du chef de l'Ontario par suite d'activités de crime organisé et de culture de marijuana ainsi que d'autres activités illégales.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): Mesdames et messieurs, je rappelle à l'ordre la réunion du Comité permanent de la justice. Ladies and gentlemen, may I have your attention, please. I'd like to call the committee to order.

This is the standing committee on justice policy. As you know, we'll begin public hearings on Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities.

May I call for the report on subcommittee business.

M. Bob Delaney (Mississauga–Ouest): Monsieur le Président, en français ou en anglais?

Le Président: En anglais, s'il vous plaît.

M. Delaney: D'accord.

Mr. Peter Kormos (Niagara Centre): Talk about affectations.

Mr. Delaney: I come by it honestly. I was born in Quebec.

Your subcommittee on committee business met on Monday, April 18, 2005, and recommends the following with respect to Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities:

(1) That the committee meet for the purpose of holding public hearings in Toronto on Wednesday, May 4, 2005, and if necessary on Thursday, May 5, 2005.

(2) That the clerk of the committee, as directed by the Chair, advertise information regarding the hearings in the following newspapers for one day each: L'Express Toronto, the Globe and Mail, the National Post, the Toronto Star and the Toronto Sun.

(3) That the clerk of the committee, as directed by the Chair, also post information regarding the hearings on the Ontario parliamentary channel and on the Internet.

(4) That the deadline for receipt of requests to appear be Monday, May 2, 2005, at 5 p.m.

(5) That the clerk of the committee, in consultation with the Chair, be authorized to schedule all interested presenters on a first-come, first-served basis.

(6) That the length of presentations for witnesses be 15 minutes for groups and 10 minutes for individuals.

(7) That the deadline for written submissions be Thursday, May 5, 2005, at 5 p.m.

(8) That the research officer provide a summary of presentations by Friday, May 6, 2005.

(9) That the administrative deadline for submitting amendments be Monday, May 9, 2005, at 5 p.m.

(10) That clause-by-clause consideration of the bill be scheduled for Wednesday, May 11, 2005.

(11) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

This, Mr. Chair, is the report of your subcommittee.

The Chair: Any comments or debate?

Mr. Garfield Dunlop (Simcoe North): A question on the subcommittee: I'm wondering if we could change the date or get a little more clarification around the clause-by-clause consideration. We have it scheduled for May 11. We know that's budget day and a number of us would like to go into lockdown. I'm one who would

probably like to do that. I'm wondering if there's any chance we could change that clause-by-clause to another day.

The Chair: If there's consent for that, we can move that now. Is there any comment?

Mr. Kormos: If I may, we've got to do this relatively quickly. What are you proposing?

Mr. Dunlop: A day besides—

Mr. Kormos: I know you're proposing a day besides May 11, obviously, but what date? What's available to us?

The Chair: May 12.

Mr. Dunlop: May 12 would be fine.

Mrs. Liz Sandals (Guelph–Wellington): That creates more of a problem for me in that I'm no longer able to go to public accounts two weeks in a row. I must say I prefer the Wednesday. Can we start at 9 on the Wednesday morning in the hopes that we would be done fairly expeditiously?

Mr. Kormos: Chair, I don't anticipate lengthy clause-by-clause. We're supporting the bill. My impression is everybody's supporting the bill, so I don't anticipate lengthy clause-by-clause. I'm prepared to start at 9, 9:30. I don't think it's going to take us very long at all.

Mrs. Sandals: My sense is that if we were to start—sorry, I'm just speaking out, Mr. Chair—at 9, folks who wanted to go early to the lock-up could be in reasonably early.

The Chair: Is that agreeable, Wednesday, May 11, 9 a.m.?

Mr. Dunlop: Nine would be fine with me. I don't think we should jump to conclusions before we even start our committee hearings on what might be amended. We've got a lot of deputations here and there might be a lot of recommendations coming forward.

Mr. Kormos: I'm pretty good at anticipating—

Mr. Dunlop: OK.

Interjection.

Mr. Dunlop: Then why do we have so many hearings?

Mr. Delaney: I wouldn't be betting against Peter on this one.

The Chair: Formally, Wednesday, May 11, 9 a.m. is the subcommittee meeting next. Thank you.

Any further comments, debates? No. All in favour of the subcommittee report? Any opposed? Carried.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE

The Chair: I'd now like to move to our first presenter, who is Mr. Ron Taverner, representing the Ontario Association of Chiefs of Police, as well as superintendent of police for the great riding of Etobicoke North, 23 Division.

Mr. Taverner, you'll have 15 minutes to present. Any time remaining will be distributed amongst the parties evenly. Please begin, sir.

Mr. Ron Taverner: Thank you for the opportunity to address the committee this morning. My name is Superintendent Ron Taverner of the Toronto Police Service. I'm here today as chair of the Ontario Association of Chiefs of Police substance abuse committee.

The OACP is the voice of Ontario's police leaders. Our members are senior leaders of Ontario's provincial, regional and municipal police services. We are also proud to have representation from the RCMP and First Nations Police Services on our board of directors.

Ontario's police leaders appreciate the support of our elected officials at Queen's Park for police efforts to combat marijuana grow operations in Ontario. These criminal activities pose a real and growing danger to Ontarians and the solutions must involve not just police but government and the corporate sector, as well as ordinary citizens. Our members particularly welcomed the opportunity to work with the Ontario government on the Green Tide Summit last year and the ongoing work of the Green Tide working group.

The OACP has supported the intent of the bill in principle. While the legislation is a positive step in addressing the dangers of marijuana grow operations in the province, we believe there are some issues that must be addressed before the legislation is passed in order to make it an effective tool against grow operations.

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One of the main issues raised at the Green Tide Summit was the lack of information-sharing by the stakeholder agencies, due to real or perceived issues with the privacy and freedom-of-information legislation. At that time, it was recommended that the government review and amend the existing legislation so as to remove any actual or perceived impediments to the bona fide stakeholder agencies.

In our view, Bill 128 does not address this issue. We recommend that some form of change to the provincial and municipal freedom of information and protection of privacy acts be enacted that would allow stakeholders to share information. Sectors such as electricity and insurance currently are encumbered by sector-specific legislation which prevents adequate sharing of information with police. It would be helpful if this important issue was addressed in Bill 128 or subsequent legislation.

While the focus of attention in Bill 128 is primarily on marijuana grow operations, police services recognize the illegal production facilities that produce ecstasy and methamphetamines are growing at an alarming rate. These operations present an equal if not greater potential threat to community safety.

The amendments in Bill 128 that pertain to the building code and the inspection of buildings are specific to grow operations only. We feel that these amendments should apply to all illegal drug production operations. This bill presents an opportunity to address the dangers posed by clandestine labs at the same time as illegal grow operations. Bill 128 should be amended to include these clandestine labs now, rather than waiting until they are out of control.

The Building Code Act amendments in Bill 128 require municipal inspectors to conduct inspections of buildings upon notification by police that the building contains a grow-op. We believe that municipal inspectors should also be given sufficient power to gain entry to such buildings if resistance is met or forced entry is required.

The bill also gives building inspectors the power to inspect and issue orders to rectify building code violations. However, the legislation as proposed does not extend the same power to fire, health and municipal inspectors when it comes to grow-ops. We suggest that Fire Protection and Prevention Act, health act and Municipal Act inspectors also be afforded the same power as building inspectors when confronted with grow-ops.

In British Columbia, legislation exists that permits municipalities to enact bylaws that allow for the recovery of costs in respect of enforcement of grow-ops. This includes investigation, identification, entry, securing and remediation. Bill 128 should provide the same authority to Ontario municipalities. Municipalities should be entitled to place a lien on premises in respect of such costs, which should have priority lien status for the purpose of subsection 1(2.1) of the Municipal Act, 2001. Revenues generated by such a cost-recovery bylaw could be directed toward providing resources to be used to combat grow operations.

Our police services report that the vast majority of grow operations are occurring in rental properties. There currently exists no legislative framework that requires property owners to exercise due diligence over what is taking place on their properties. This negatively impacts on law enforcement ability to seize or restrain offence-related property or proceeds of crime.

We suggest that owners/landlords should be required to exercise all due diligence in respect of illegal, clandestine drug production activities carried out on premises owned or rented by them. Failure to exercise such due diligence would constitute a provincial offence resulting in charges, penalties and possible forfeiture of the property involved. The due diligence should include responsibility for property owners to conduct reasonable inspections, subject to appropriate conditions, respecting the rights and privileges of tenants.

As a complement to the due diligence requirements and obligations on property owners, we recommend that municipalities that choose to do so be given the explicit legislative authority to pass bylaws to establish a rental property registry and/or a landlord registry. This would provide the public with the enforcement history information pertaining to a property.

Bill 128 does not place any obligation on property owners/landlords and real estate agents acting on their behalf to inform prospective purchasers or tenants of real estate of its past enforcement history. We believe that mandating disclosure of an execution of a warrant by police and/or an order issued under applicable legislation as a result of clandestine lab production activity should be an expected part of any sale or rental transaction.

We appreciate that Bill 128's stated objective, to amend various acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities, may not allow the concerns that have been outlined to be addressed through this legislation.

Bill 128 is a good first legislative step in the fight against marijuana grow operations in Ontario. We have tried to indicate how the legislation can be improved.

We remain committed to working with the government of Ontario and our community partners to effectively address this serious threat to public safety in Ontario.

Thank you for the opportunity to address your committee. I would be pleased to answer any questions you may have.

The Chair: Thank you, Mr. Taverner. We have about seven minutes in total, to be divided evenly. We'll start with the official opposition party.

Mr. Dunlop: Thank you very much Mr. Taverner—Chief Taverner.

Mr. Taverner: You can call me whatever you want, sir, but it's not "chief."

Mr. Dunlop: We certainly appreciate your coming to the committee today, particularly when you are chair of the substance abuse committee of the Ontario Association of Chiefs of Police. I think the committee should take your advice and your presentation to heart. You're suggesting that in this legislation the opportunity is there to make amendments that can effectively improve the legislation to make it easier for you to do your job, or easier for the police services to do their job in Ontario. Is that what you're saying?

Mr. Taverner: Yes.

Mr. Dunlop: I'm interested in the part on the proceeds of crime. Could you elaborate a little bit on that? In some cases there will be some fairly substantial, I would guess, even cash available from some of these operations. Is that what you were getting at, or just the fines themselves?

Mr. Taverner: No. I think the federal proceeds-of-crime legislation is in place to deal with proceeds of crime. One of the things we are asking for is some legislative powers for the municipality to collect so that some funds can go back into the effective investigation, enforcement, entries—these sorts of things. It's very costly. What's going on right now, right across the province—these are very expensive investigations. Sometimes they take a long time to put together. It impacts on policing generally across the province when the resources are going into these things.

A safety issue comes along with that, not only for emergency personnel who are involved in these investigations but for citizens in general. That's why we're trying to increase our ability to deal with grow oper-

ations, not just marijuana grow operations but clandestine lab operations in general.

The Chair: Thank you, Superintendent Taverner. Now to you, Mr. Kormos.

Mr. Kormos: Thank you, sir. I agree with your observations about the methamphetamine labs and these other chemical operations and your observation that they may well be more dangerous, not necessarily within the context of the building they're operating in, although there are all sorts of inherent dangers in the manufacturing process, but in terms of the product they're producing. On page 7, you've got the request for additional powers for municipal inspectors to enter buildings. I'd ask legislative research to please let us know what the powers are now. I quite frankly don't know.

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The other interesting point you make is on page 9, where you propose emulating British Columbia in terms of permitting municipalities to impose liens on premises, and that brings me to landlords. I've got a letter here—from time to time you hear me railing against big corporate landlords, but then there are people like Mrs. Overend. In a letter that's been sent to the committee, she identifies herself as elderly, now having vision problems, owner of two semidetached rental units on Rodney Street in Port Colborne, currently has good tenants, but, as she says, who knows what can happen? I'm concerned about putting a landlord like Mrs. Overend—a senior citizen, doing her best—in an overly difficult position. I know you've talked about due diligence on the part of landlords. Here's an elderly woman whose vision is failing. She's doing her best. We don't want to be overly tough on these kinds of people, do we?

Mr. Taverner: No, absolutely not. We're not trying to target the good, honest citizen who owns some properties and things like that. But going along with that, it's dealing with a landlord-tenant registry that allows municipalities, if they so wish, to enact that legislation so that when a grow-op is discovered, new tenants or prospective purchasers are made aware of that, because of the dangers that are involved and remediation—

Mr. Kormos: That one's interesting. I wish Ms. Marsales was here. She'd have some comments about that. Perhaps legislative research could respond to the concerns of Mrs. Overend. I can't find anything in the bill that would put the onus on landlords, as feared by Mrs. Overend in her letter. I'm wondering if legislative research, with the assistance of civil servants, could help us determine whether or not her fears are grounded. I don't think they are, but—

The Chair: Thank you, Mr. Kormos. We now move to the government side.

Mr. Delaney: I have just one question. You stated earlier, "Municipalities should be entitled to place a lien on premises in respect of such costs, which should have priority lien status for the purpose of," etc. My question is, should the property owner himself or herself be a victim of the crime? In other words, you, for example, are transferred out of town for about two years, you rent your home to a couple who represent that they're going to live in it and, while you're out of town, you discover that your home has been turned into a grow-op. If you are duped into renting your property, are you not advocating penalizing the innocent?

Mr. Taverner: Certainly we don't want to penalize anyone who is innocent of a crime, but we feel there should be some due diligence placed on people when they're renting a premises. Obviously it's a business; they're making money from it. There should be some due diligence on them to make sure that there's no criminal activity taking place, to the best of their ability.

Mr. Delaney: How would you define that due diligence?

Mr. Taverner: What we're proposing is that there be some right of reasonable inspection of a premises, for example. We're not talking about walking into a place in the middle of the night and doing an inspection, but, on notification, having the ability to go in and make sure that the premises is not being used for a marijuana grow operation, for example.

The Chair: Thank you, Superintendent Taverner, for your remarks, the transcript of your remarks and your continued community outreach to the people of Etobicoke North.

POLICE ASSOCIATION OF ONTARIO

The Chair: I'd now like to welcome our next presenter, Mr. Bruce Miller, the chief administrative officer of the Police Association of Ontario. Mr. Miller, I remind you, you have 15 minutes in which to present, and, as you know, we'll distribute time afterward. Please begin.

Mr. Bruce Miller: Thank you, Mr. Chair. My name is Bruce Miller and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line officer for over 20 years with the London Police Service prior to taking on my current responsibilities.

The Police Association of Ontario, or PAO, is a professional organization representing over 21,000 police and civilian members from 63 police associations across the province. We've included further information on our organization in our brief.

We appreciate the opportunity to address the standing committee on Bill 128 today and would like to thank all the members for their continuing efforts for safe communities.

I was at home in London this weekend, and the headline in the London Free Press read, "Do your Neighbours Grow Pot?" The opening line stated, "Walk 10 minutes in any direction and you're likely to find a marijuana grow house."

The reality was reinforced to me about three years ago. The power went off in our home one morning. I looked outside and saw several police cruisers four or five doors down the street. I walked down to speak to the officers and was shocked to discover that the nice, elderly couple who had been living there had in fact been

operating a clandestine drug operation. Maybe that's why I took up my new position.

It seems clear that indoor marijuana cultivation can best be described as a problem that is completely out of control. Drug enforcement across Ontario has been relegated to a reactive, as opposed to a proactive, policing function in order to deal with this problem. Many other illegal drug activities cannot be investigated because of the burgeoning problem of grow-ops.

Police personnel view commercial grow operations as an increasing threat to public health and safety, as well as a major contributor to organized crime activity. Grow-ops, which are frequently set up in residential neighbourhoods, pose a particular threat to community safety. The growth of clandestine drug operations is unprecedented, and staggering in its size. I think everyone is aware of the scope of the problem, the associated dangers, links to organized crime and high financial cost to society. Our submission will centre on our recommendations to deal with this issue and why we support Bill 128.

We would like to congratulate Minister Kwinter for taking a leadership role on this issue. The minister introduced this legislation and also established the Green Tide action group to look at raising awareness and to come up with solutions. The PAO has had representation on this committee from day one.

In January of this year, we convened a meeting of front-line police experts on this subject. One of them is actually in the room today, OPP Detective Staff Sergeant Rick Barnum from the drug enforcement unit. They examined the bill, and there was universal support for it. We have copied their recommendations to you, but I'd like to take a moment to highlight some of the major ones.

First of all, the PAO believes that the legislation should be amended to cover all clandestine drug operations or so-called "problem premises." All of these problem premises have serious health and safety considerations. Methamphetamines, for example, have a very serious risk of explosion in their production. Mould has been clearly identified as a major risk in grow-ops and has also been found in other types of clandestine labs. Toxic waste is another by-product of clandestine labs.

The difficulty is that by referring only to grow-ops, we restrict the legislation to one portion of a much greater problem. We would recommend that the proposed legislation be amended to cover all drug-related problem premises. If this is not possible, we would urge the passage of this bill and suggest that new additional legislation be introduced to cover this important area.

Everyone involved in these investigations clearly understands that grow-ops and other types of clandestine laboratories are a serious health and safety risk to emergency workers and members of the public. They have caused deaths in other jurisdictions, and immediate action must be taken to ensure that similar tragedies do not occur in Ontario. We believe that two areas must be addressed to protect both the public and those who protect them.

The first area deals with safety equipment. The PAO recommends that a working group should be established by the Ontario Ministry of Community Safety and Correctional Services to prepare regulations and standards under the Police Services Act outlining adequate mandatory equipment for drug enforcement units and front-line police personnel. Types of equipment should include outerwear, footwear and masks. In addition, regulations must be set for the provision and use of various equipment, including air-quality monitors and other related devices. The regulation must not be limited to just grow-ops, but should include all clandestine drug operations.

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The second area deals with training. Front-line police officers and drug enforcement personnel must receive training in the health and safety hazards of clandestine laboratories. We are pleased to report that the Ontario Police College is moving quickly to address this issue. We understand that at this time, as with the equipment, this training is not consistent or mandatory throughout the province. Adequate mandatory training standards must be developed and provided to all personnel. We believe that there is an opportunity to cover the costs of these two areas through the forfeiture sections in the proposed legislation.

I think everyone realizes that the scope of this problem has put a strain on police resources. Adequate funding and staffing levels for police services in this area is always a concern.

Lax federal laws and sentencing provisions help to make this a high-profit and low-risk venture. This brief is written from a provincial perspective. As a result, our submissions do not address the need for action by the federal government. Suffice it to say, we strongly believe in the need for stiffer penalties and more effective federal legislation, as Canada is quickly becoming a haven for this type of activity.

Bill 128 is a positive step forward in battling this problem. We have made some suggestions for change. These suggestions came from the learning process that we went through following the introduction of this legislation. Bill 128 will help to protect both police personnel and the communities they serve.

In closing, I'd like to thank the members of the committee for the opportunity to appear today. We greatly appreciate your interest in community safety and would be pleased to answer any questions that you may have.

The Chair: Thank you, Mr. Miller. We have about eight minutes to distribute. We'll start with Mr. Kormos.

Mr. Kormos: Thank you, sir. The courts have ruled—correct me on the terminology—using an airplane or a helicopter with thermal imaging to pick out grow-ops as a legitimate, charter-proof investigative tool. What's involved, and what are the difficulties that police have in utilizing that type of technology to at least identify grow-ops?

Mr. Miller: I suppose the first answer is that some of that technology is available, and the courts have certainly placed some limitations on it. The question is that there

just are so many grow operations and clandestine laboratories out there now that even if they were all identified, the police could never address them in a timely fashion. There are just too many. We're being overrun.

Mr. Kormos: As I understand it, conducting this type of investigation, if you're going to make it as defence-proof as you can, is incredibly labour-intensive.

Mr. Miller: That's correct. We're just trying to put the cork in the bottle in many cases; we're just going out and trying to clean up as many of these places as we can.

Mr. Kormos: From a policing perspective, how do you prioritize? How do police prioritize, or is it a mish-mash, depending upon which jurisdiction you're in?

Mr. Miller: In policing, our priority is always community safety, so we would look at it from a community safety aspect. But there is a problem with the increasing numbers of these things.

Mr. Kormos: But you're saying that you have scarce resources, that you couldn't possibly bust them all. That's what you're saying.

Mr. Miller: One of the problems it comes back to is the federal laws dealing with this issue. It is such a high-profit, low-risk venture. When you look at the penalties south of the border—

Mr. Kormos: Fair enough, but that's a different issue from your saying that you couldn't possibly bust them all because you don't have the resources. Is that accurate?

Mr. Miller: That's correct.

Mr. Kormos: Then how do you prioritize? I'm not being critical. How do you prioritize, then, as a police service? Do you go for the biggest? Do you go for the ones closest to schools? I don't know.

Mr. Miller: I think community safety is always one of the biggest factors, and certainly larger operations. But it would vary across the province with the numbers that are out there, and also with the quality of the information. There are so many factors that come into investigations.

The Chair: We now move to the government side. Ms. Sandals, please.

Mrs. Sandals: Thank you, Bruce. If we could look at your first recommendation, where you're talking about all clandestine drug operations and the effects that those might have on the premises, could you give me some information? When we look at grow-ops, when the grow-op is removed we know that the building may remain with a number of problems. If they've tapped into the electricity, there may be problems with the wiring not being up to standard and a fire hazard. We may have structural issues because of what they've done to the structure of the house. We may have health issues because of the mould issues.

I understand what you say, that while the operation is in effect there may be toxic chemicals or there may be a risk of explosion, so there is some risk to emergency workers coming in. Once the other manufacturing operations are dismantled, is the building itself inherently dangerous?

Mr. Miller: There are still the same concerns with clandestine drug labs, certainly in terms of long-term effects of toxic waste and in terms of structural deficiencies. Mould is also a big issue with all clandestine drug laboratories. So there are those same structural concerns that Bill 128 is addressing. That's why we're suggesting—if it can be done in the definition section—that we refer to these places as "problem premises" and cover off everything. But we don't want to hold up the passage of the bill. We support the bill. To be frank, the clandestine drug problem is relatively newer and we're just becoming aware of its scope. If the changes can't be made now, we'd urge the committee to pass the bill and to look at legislation this fall to address that.

Mrs. Sandals: My understanding is the wording that is currently there would allow it to be expanded beyond marijuana grow-ops in the future, so there is a hook in the legislation that would allow future expansion into other areas.

Mr. Miller: Or if there was a definition of clandestine drug labs in the legislation.

Mrs. Sandals: Thank you for clarifying that.

Mr. Dunlop: I have a couple of quick questions, Bruce. Thanks so much for coming over today.

The first is on the clandestine drug operations. You're saying that they're growing at an alarming rate as well. What kind of impact, today, are police services in Ontario having on this growth in terms of numbers? Are we catching up or are we falling behind on this, as we speak?

Mr. Miller: The true answer is that we probably don't know the complete extent of the problem. I've spoken to many drug squad officers across the province. They can go out and deal with one clandestine lab a day and still not be done at the end of the year. They're just dealing from one to one to the next one.

The problem is that drug enforcement in the other areas is being left alone. The traditional investigations we had before this—because there are just so many clandestine labs out there, and there are so many health and safety concerns with them, they are a priority for local services.

Mr. Dunlop: The more I read about this and the more we see in the media, it almost looks like we are becoming a haven for drug lords in this area. I think a lot of it has to do with the penalties. I look at the marijuana grow-op at the former Molson's plant in Barrie. The folks who were charged walked out and got $20,000 bail or something. They're probably out right now doing other ones, for all I know.

I wanted to ask a question, and maybe you can answer it or maybe the staff with the ministry can answer it. Would an operation like the Molson's plant in Barrie be included in this legislation? Is that your understanding? It's just a yes or a no; that's all I want to know on it. In the media releases etc., the bill has been billed as a residential grow-op operation. I'm wondering at what point they cut off, if they do at all.

Mr. Miller: I'd certainly want to defer to some of the experts here in this room today. My understanding is that

certain aspects would be covered, but that question is probably better answered by someone else.

Mr. Dunlop: I would like to get a response from somebody from the ministry on that, to see what the intent is, because I can't really determine myself what is expected.

The Chair: I think the procedure is we would refer that question to the parliamentary assistant.

With that, I'd like to thank you, Mr. Miller, for your deputation on behalf of the Police Association of Ontario.

1040

LARGE MUNICIPALITIES CHIEF BUILDING OFFICIALS GROUP

The Chair: I would now welcome to the floor Ms. Ann Borooah, chief building official for Large Municipalities Chief Building Officials Group. Ms. Borooah, you have 15 minutes in which to present. Please begin.

Ms. Ann Borooah: Thank you, Mr. Chair and members of the committee. As you noted, I'm here representing a group of chief building officials from the largest municipalities in Ontario, which are those with populations over 50,000 in size. That's approximately 40 municipalities. Copies of our letter, which we've provided to the committee, have been provided to the clerk.

We have support for the overall objectives of the legislation dealing with clandestine marijuana operations in Ontario municipalities, but have two major concerns with the role of chief building officials in this process. Principally, we find the legislation too prescriptive in terms of allocating responsibilities to chief building officials without actually providing additional powers in order to carry out our responsibilities.

The two issues we have are the prescriptive requirement that an inspector investigate all buildings brought to the attention of the chief building official by the police that are confirmed to have marijuana grow operations in place, and the obligation, once we have inspected those properties, to issue an order if they're deemed unsafe by the inspectors. We don't dispute our responsibility for ensuring public safety with regard to building construction, renovation and change of use under the code, but the current Building Code Act gives us more discretion to exercise those responsibilities.

In addition, in the context particularly of larger municipalities, it's often other officials who play the first response role. You'll be hearing later this morning with respect to the protocol in the city of Toronto, where in fact it's not the chief building official who plays the first response role.

Therefore, we recommend additional flexibility in the bill to allow municipalities to designate the appropriate official to respond to the notice from the police, where their authorities and powers may be more consistent with the issues that are found on the premises. As a fallback, we're prepared to agree to the responsibility being assigned to the chief building official, since it's mandatory for councils to appoint a chief building official, if there is a concern with respect to identifying a person who could be identified in any municipality.

We are more concerned with respect to the prescriptive requirements about what we do once we're notified. The legislation requires that we inspect, assuming that we need to enter the premises to deal with the issues. It's not always the case that it's necessary to enter the premises to determine whether or not an unsafe condition exists. In fact, there's some potential that you're putting us in a situation where we would be in conflict with the Occupational Health and Safety Act, if we have reason to believe that there's a danger to the employees who would be asked to enter the premises.

In addition, if the unsafe condition is encountered by the building inspector, we are then directed to issue an unsafe order. Under the current Building Code Act, we have more options at our disposal if we find an unsafe condition. We suggest that there's no reason to believe that chief building officials would not exercise those options if they found an unsafe condition. We recommend that the legislation be modified to allow the chief building official or other inspectors entering the premises to determine the most appropriate response.

That ends our two main points with respect to the role of chief building officials. I'd be happy to answer any questions the committee may have.

The Chair: Thank you, Ms. Borooah. We have about 10 minutes to distribute evenly.

Mrs. Sandals: I understand your first recommendation—you would prefer that the municipality be named, rather than the chief building inspector—but the second recommendation I'm a bit unclear on. It would seem to me that the way the bill is phrased, it's mandatory that there be an inspection, but then, depending on what the inspector finds and whether the building is unsafe or not, the building inspector or whoever the municipality assigns to attend would then be making their recommendation based on what they find, which would seem to be what you're requesting in the recommendation. I don't understand the distinction.

Ms. Borooah: My understanding of the legislation is that once we determine that an unsafe condition is present on the premises in the context of what's unsafe as defined under the building code and the Building Code Act, we are then required by the legislation to issue an order that it's unsafe. In the case of the current legislation, subsection 15(3) allows us the discretion whether an order is the appropriate response to the unsafe situation. We could in fact use other orders under the legislation or a co-operative approach, which is usually our first response with the owner of the premises, to work out an arrangement where the property would be remediated or made safe. Essentially, it homes in on only one of the powers we already have, and that is to issue an unsafe order, and doesn't give us a new power, but says that's the thing we have to use to respond.

What we suggest is that you allow us the discretion we currently have to use all the powers under the act to make the situation safe, or in fact if we think it's not an area

that we're best to respond to, to refer it to another official who may have better powers available to them to deal with the particular situation at hand.

Mrs. Sandals: Presumably if the first recommendation were acted on, it would be automatic that that would be distributed among the appropriate municipal officials. It would seem to me that if you find something is unsafe, as a marijuana grow-op, that a reasonable response is that you would in fact issue an order making sure that that premise is made safe. I'm just having a bit of a problem understanding the resistance to it being mandatory that you arrange to have the premise made safe.

Ms. Borooah: Our issue is that you're removing discretion we currently have to deal with an unsafe condition, where there may be a more appropriate response. We might move immediately, for example, to an emergency order, or there may be other powers within our disposal, such as requiring that they obtain a permit for work that has been undertaken, or, as I say, if it's an issue that perhaps is addressed in our property standards bylaw that wasn't identified in the first instance, we refer that matter to property standards or health if in fact it came to our attention in the first place.

Mrs. Sandals: What success rate do you have with those sorts of things being acted on, given that you may have a hostile owner here?

Ms. Borooah: You may have a hostile owner. In that case, that might be the right response. We're not saying it's not always the right response, but I think we're saying, "Trust us," that we can judge what the right response is under the circumstances. I don't think there's any reason to think we would turn our back to the issue any more than we would today when an unsafe condition is brought to our attention.

The Chair: We now move to the Tory side.

Mr. Dunlop: Thank you very much, Ms. Borooah, for being here today. Through you or the parliamentary assistant, I want to get a clarification on something I brought up earlier, and this is on Bill 128. Is it your understanding that this bill just applies to residential grow-ops, or are large commercial operations included as well? I'd like to get that clarification before we go any further in the meeting. Can the parliamentary assistant, if you would have—

Mrs. Sandals: I'm not sure that you really want me to comment on that, but I will get the legal opinion and bring it back tomorrow—

Mr. Kormos: Land or a building?

Mrs. Sandals: Yes. I'm not aware that it is restricted to residential, but I will confirm that with legal advice tomorrow.

Mr. Dunlop: OK, because I would like that. I'm thinking particularly in these large ones like we've seen. I brought up earlier the Molson's plant in Barrie, and there was a cover-up—

Mr. Kormos: So are the Tories getting soft on mere domestic residential grow-ops?

Mr. Dunlop: No. I want to know if this legislation is asking the police and building officials to cover off all of the operations there could be in the province of Ontario, or are we just referring to residential, subdivision-type developments?

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Ms. Borooah: Mr. Chair, would you like my understanding of reading the legislation?

The Chair: Please.

Ms. Borooah: I don't see anything in it that narrows it to only residential operations. I would read the amendments to the act as applying to any land or building, as noted.

Mr. Dunlop: I'm saying that to the chief building official, because when the bill was announced, when the minister did press conferences and that type of thing on it, it was billed as residential grow-op legislation. It didn't refer at that point to commercial and industrial-type buildings. I'm curious how far we would go with that.

Mrs. Sandals: I have just received confirmation from our lawyers that the act, as drafted, would apply to all buildings, and that would include residential, commercial and industrial.

Mr. Dunlop: Thank you so much.

The Chair: Any further questions, Mr. Dunlop?

Mr. Dunlop: No, that's fine at this point.

The Chair: Mr. Kormos, you have extra time. Please go ahead.

Mr. Kormos: I appreciate your submission. It's an interesting piece of legislation.

In the United States, there are provisions for what is called a sneak-and-peek warrant, and that is where you don't really have very much grounds. You can go in there, sneak and peek, find your grounds, go out, go back before the equivalent of a JP and then get your warrant.

My concern is this: Take a look at the very first section of the Building Code Act amendments. The act requires—because it's mandatory—that a building inspector, when merely notified by a police force that the building contains a marijuana grow operation—there are no bone fides required. Do you know what I mean? The police don't have to have busted the place. Therefore the police have the capacity to use building inspectors to, in effect, conduct a sneak-and-peek. Do you understand what I'm saying?

In other words, merely saying, "Ma'am, I am notifying you that that's a marijuana grow-op"—without defining "marijuana grow-op," because there's no definition. It could be grandma raising one plant, because she's got the glaucoma, or it could be a big commercial operation. Because the cops can't get a warrant, they use you, a building inspector, to go in there. Do building inspectors relish that role? That's my question.

Ms. Borooah: No. I think that was consistent with my second point, although, if I could clarify something, notwithstanding that first section of the legislation, I don't think it actually changes the restrictions on our access to the properties. However, in the event that we

are in a situation where we are attempting to enter and may in fact get some mechanism to enter the properties, we have concerns that there may be a danger to building officials that is inappropriate.

Mr. Kormos: No two ways. This is my concern. You agree with me that the act says you can enter without a warrant, which is something the police can't do, can they, insofar as most of us understand the case?

Ms. Borooah: Well, I don't actually fully agree with you. It says that we may enter with a warrant, but I don't think there have been any changes to subsection 16(1) of the Building Code Act, which requires that we have to get the consent of the occupier to enter if it's a residential premise. There may be some doubt about what the premise is at the time. These things can be grey. If it is in fact grey about whether it's residential or non-residential, I believe subsection 16(1) of the Building Code Act still applies. We would therefore be required to get a warrant if our access was denied.

Mr. Kormos: That's an interesting observation, because you talk about a conflict of sections here. Perhaps, Chair, we should ask legislative research, with the assistance of the highly capable civil service, to explain to us whether this section is meant to override the warrant provision. Because this is what's of concern. You understand what I'm saying?

This looks like this is a very fragile section. The police can't enter without a warrant, but if the act says you can enter without a warrant, then the police are going to use building inspectors—overworked, underpaid, without the tools to protect themselves from dangerous scenarios, right?—to go in there and do the front-line investigation in what could potentially be a very dangerous scenario.

I think it's an abuse of building inspectors. There doesn't even have to be reasonable grounds to believe that there is an unsafe building. The act is somehow suggesting that one potted pot, one potted plant of pot, constitutes a prima facie building code violation. Therefore, the police use the building inspector sort of like the lead dog or the lead person in a search-and-destroy mission, the most dangerous position. That causes me great concern. I don't know if that causes you concern or not.

The Chair: Thank you, Ms. Borooah, for your deputation on behalf of the chief building officials group.

ALLAN COBB

The Chair: I would now invite Mr. Allan Cobb to the floor. Mr. Cobb is coming to us in his individual capacity as a resident of Scarborough. He has provided the clerk with a written submission. Mr. Cobb, in your individual capacity, you have 10 minutes in which to address us. Please begin.

Mr. Allan Cobb: Good morning. My name is Allan Cobb and I live in Scarborough. Unfortunately, we have had two confirmed grow-op houses and one suspected grow-op house on our small crescent, Temple Bar.

I would like to commend the government for taking this epidemic seriously. I know that our community is certainly much more aware of the damage caused in a neighbourhood where there are grow-op houses. Many within the community have attended meetings organized by the police or by local councillors. Prior to Bill 128—and I am aware that it has received second reading—community and police action have been frustrated by the lack of meaningful legislation and a definite lack of appropriate penalties.

The public is still confused about the possible introduction of legislation at the federal level to decriminalize the possession of small amounts of marijuana and the existence and continuation of grow-op locations. "If only we would legalize marijuana, all would be well." This is obviously incorrect, but there still exists confusion over this issue. I am pleased that this piece of comprehensive legislation addresses this very important issue from a multitude of angles and brings together government, police services, fire departments, hydro, insurance and financial institutions.

It will still be necessary to keep a watchful eye in each community. If these lawbreakers know that local citizens are watchful of changes in the neighbourhood, maybe they will be more hesitant to start a grow operation.

We are hoping that this bill will receive speedy third reading and royal assent before the summer. A strong message will be sent to all communities across the province that Ontario does not welcome grow-op houses and will punish those who dare challenge the law.

I would like to raise a few concerns that may have already been addressed but nevertheless should be asked. We know that home purchasers should be strongly "buyer beware." Will there be protections for home purchasers who might end up in a former grow-op house that was not searched? We are now aware that children live in some of these grow-op houses. Would the Ministry of Children and Youth Services and possibly the children's aid society be involved if such a grow-op house was discovered?

The bill addresses seizure of assets. As you can imagine, several grow-op houses on one street can quickly have a large economic impact on our community. How soon might one expect that these grow-op houses will be fit for resale?

In the past, owners of some of these grow-op houses have rented to tenants, and when the property has been searched and found to be a grow-op house, the owner is often surprised. What are the responsibilities of the owner with respect to the possible conversion to a grow-op house?

Who will be the gatekeepers once this bill has received third reading and royal assent?

In summary, I once again commend the government for recognizing this issue as a serious issue and doing extensive research before bringing the bill to the House for passage. Only when there are appropriate and meaningful penalties and possible jail time will we get somewhere with the perpetrators of this crime and return to safer communities.

The Chair: Thank you, Mr. Cobb. We have about six and a half minutes to distribute.

Mr. Dunlop: Thanks so much for bringing forth your comments. I understand you had a couple of grow-ops in your own neighbourhood?

Mr. Cobb: One beside us and one across the road.

Mr. Dunlop: I wouldn't mind you elaborating a little bit more on that, just for the record, describing how it came about that they were actually discovered and how long they might have been there. I don't know a lot about residential grow-ops.

Mr. Cobb: The one across the road I think most of us were unaware of. It was the first one in the community, as far as I know. Obviously, it was being watched and likely some of the neighbours reported it. All of a sudden there was a search and it was found to be a grow-op operation.

The one beside us was sold last October 31, and this was a suspected one. We raised strong suspicions, because it was under surveillance by the police since the end of October to January, when we became more aware of it.

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Some of the signs, which I think most people who live in these communities know now, are that if it's the winter time, snow doesn't last very long on the roof; there's often a stain coming down the siding; people go in there and leave quickly; no garbage is put out, and such. Those are some of the things where one becomes aware that it is an illegal house.

Mr. Dunlop: Thank you so much for coming before the committee as an individual citizen. I appreciate it.

The Chair: Mr. Kormos.

Mr. Kormos: I suppose one of the problems is that if there were a grow operation in my neighbourhood—and if Bruce Miller's right, I only have to walk 10 minutes to find one, either down Denistoun or up Bald Street—I would be disinclined to want to publicize it, because I wouldn't want it to reflect on the remaining houses. You know what I'm saying? It may have the potential to devalue your single largest investment. If you're like most people, your home is your single largest investment. That's one of the dilemmas: On the one hand, you want to speak openly about it—here's Bruce Miller from the Police Association of Ontario. Were you here when he made his presentation?

Mr. Cobb: I was.

Mr. Kormos: Five houses down, a nice elderly couple running a grow-op, wearing tie-dyed T-shirts, no doubt. That was a dead giveaway.

Mrs. Sandals: It was cowboy boots.

Mr. Kormos: Was it cowboy boots? I only wear them in the Legislature, because it gets so deep in here from time to time that, if I didn't, my socks would get wet.

Should there be a definition of "grow-op"? There isn't one currently in the bill insofar as I'm aware. Are we talking about somebody who is growing one plant or somebody who is growing in sufficient quantities to create the dangers that people are acknowledging? One that nobody has spoken about yet is the likelihood of jumping the fuse box so as to jump the meter, and of course the inherent fire danger. Should there be a definition as to what constitutes a grow-op? Because you're a fair-minded person.

Mr. Cobb: For the first question—I think the first reaction might be that you want to hide it, because it might have an impact on your property value, but once a neighbourhood becomes aware that it's so widespread, I think you have to be vigilant and you have to point this out. I think you have to have community meetings. We have to get back to really looking very carefully in each of our communities. I don't think hiding it is going to solve it.

To your second question, I don't write bills, but it might be a good idea to have a definition of what a grow-op is.

Mr. Kormos: Did you hear my concern about the bill using unarmed building inspectors to, in effect, be the bird dog? These are hard-working people, who aren't trained the way police are. Think about it. We're told that these grow-ops, the very commercial ones, have booby traps, that they're inherently dangerous, that the police want to have proper equipment, and here we're telling building inspectors to go in there and inspect before the police even raid the joint? Is that fair to building inspectors?

Mr. Cobb: I've read some of the material on some of these houses being booby-trapped etc., and I know they are dangerous, but I would leave it to the experts as to who should go in first.

The Chair: Thank you, Mr. Cobb. We now move to the government side.

Mr. Mario G. Racco (Thornhill): Mr. Cobb, you asked a number of questions. One of the things this bill is trying to achieve is to assist any potential future buyer that the house he or she buys will be in good condition.

Mr. Cobb: I understand, though, that the house would have to be searched first. It would have to be defined as a grow-op house. Is that not true?

Mr. Racco: I will allow Ms. Sandals to get into more of the specifics, because she is the deputy to the minister. But as the objective—and of course, as you said, it is a criminal matter, which is federal jurisdiction. We are limited at the provincial level as to what we can do. That's why the bill is limited in some ways.

Mr. Chairman, I'll let Ms. Sandals answer the rest of the question.

Mrs. Sandals: Could I just get in a few points of information here? There is no intent that the building inspector would go in before the police had gone in first of all and shut down the grow-op, and then brought in the building inspector once the property is secured and made safe. I'd just like to point that out.

The other piece of information—because there has been some confusion here. The act applies to all buildings; however, the ability to enter without warrant does not apply to residential. In other words, if you were to enter a residential building, there would still be a require-

ment that you have a warrant. This act is not overriding that requirement. But when you put this all together, the order that is presumed here is very definitely that the police would go in and do what is required in terms of legal intervention and making the premise safe. Then the building inspector would come in and see if there is permanent damage that needs to be remedied, which goes to your question, Mr. Cobb, around remedying the damage so that the house can go back on sale as a real residential property that would be safe for future homeowners or tenants.

The Chair: Thank you, Mr. Cobb, for your considered remarks.

LEVINE, SHERKIN, BOUSSIDAN

The Chair: I would now invite our next presenter, Mr. James F. Diamond, solicitor from the firm of Levine, Sherkin, Boussidan, Barristers. Mr. Diamond, you have approximately 15 minutes in which to address us. Please begin.

Mr. James Diamond: I have presentations that unfortunately didn't get prepared in time to be distributed.

My name is James Diamond and I am a Toronto solicitor practising in the firm of Levine, Sherkin, Boussidan. I am counsel for the current class action being brought against the Attorney General of Ontario with respect to the constitutional validity of the civil remedies act. I am here to discuss briefly our concerns with respect to this bill as it affects the civil remedies act. I have no real standing here to discuss the other acts that this affects because that's not part of my purview and retainer as a class action counsel.

I have prepared a brief presentation, and at tab 1 is an outline of what I believe are the top three issues. Because there are only 15 or so minutes allotted, I can't get into anything significant. I do not want to revisit some of the issues that have been raised in the class action dealing with the constitutional validity of the act itself; I want to focus this just upon the draft amendments to the act.

Saying that, the first concern we had was whether or not this bill, as it affects the civil remedies act, should be proceeding while the act itself is under a significant constitutional challenge. It was raised before the Honourable Mr. Justice Loukidelis last October over a four-and-a-half-day hearing. His Honour has still reserved judgment and has indicated that he hopes to have a decision by this summer. That being the case, and not to sound confident in any manner, there is always the chance that my clients would be successful and that the act would be struck down. Our concern is, why are we amending an act that may be moot, and this exercise could be an exercise in mootness to begin with? That was the first point that my clients wanted to make.

The second point specifically deals with some of the sections that I wanted to raise to the attention of the committee. I did not include a copy of the bill in my material, but I have a loose copy that I was able to obtain. In paragraph 5 of subsection 21(1)—if you have the standard one that was printed from the Web site, I believe it is found at pages 17 and 18. It's the second section dealing with this act. We have a concern with respect to paragraphs 4 and 5 of subsection 21(1).

As described in the preamble to the act, these are the sections which seek to amend the act so that any interlocutory order which is to be made at the interim preservation stage, before any proceeding for forfeiture occurs or is even commenced under the act, at the interlocutory order, these sections authorize not only the preservation, which is what the act as it currently stands allows, but the management, disposition and sale of property at the interlocutory stage and, in addition, empowers the Attorney General to seek orders from the court that if they are able to sell or dispose of the property at that interlocutory stage, they can pay themselves for the costs incurred in obtaining that order.

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In my presentation, I have attached at tab 2 a copy of the class action. I need not go through it today because it is more or less an efficient summary of the positions raised by my clients as to what is wrong with the act as it stands.

At tabs 3 and 4, though, I've included for the benefit of the committee, corresponding with paragraph 21(1)4, some present law dealing with what it means when the act seeks to sell or dispose of property that is perishable or rapidly depreciating in nature. That's not a foreign concept to the law of Ontario at least, as there is precedent under the current rules of procedure to seek that type of order. The problem is that the case law has determined that perishable or rapidly depreciating goods are really restricted to livestock, strawberries, those types of things, where the value is depreciating by the hour potentially.

But the next section, paragraph 5 of section 21, doesn't mention anything about "perishable" or "depreciating in nature." It is a wide net cast that says they can seek "an order to sever" any property or sell or dispose of any property at the interlocutory stage prior to commencing an application for forfeiture and seek payment of its cost reimbursement for doing so.

It is our position that such power runs completely contrary to the principle of fundamental natural justice and due process that spawns the age-old maxim that there is no such thing as pre-judgment execution, and in our submission, that's what this section is. You're empowering the Attorney General, who has no title to the goods in question that have been seized right now—none whatsoever. Until a forfeiture order is made, which would be the equivalent of a judgment in this proceeding, they have no title, but you're allowing them, ahead of that, to seize it, sell it, pay themselves, and then see what happens at the forfeiture stage. That can't be.

To boot, at tab 5 of my material, when the constitutional challenge was brought before Mr. Justice Loukidelis, the Attorney General of Ontario submitted voluminous material in response, one of which was the affidavit of one Jamieson Halfnight. This is part of the

public record, and I've reproduced it here at tab 5. The affidavit of Mr. Halfnight, a very experienced insurance litigator—it's paragraph 16, at page 5, if you're looking at the page numbers at the bottom. This is the expert witness retained by the Attorney General of Ontario to respond to our constitutional challenge, who states under oath, without being cross-examined, "It is an established principle of our Anglo-Canadian system of civil litigation between private parties that execution against a defendant is not available to a plaintiff prior to judgment." He mentions the very limited exceptions, which have no bearing here, one being what's called a Mareva injunction and one being what's called an Anton Piller order, which allows the court, prior to judgment, to seize and freeze certain assets of a defendant if the court is satisfied of a very stringent test.

Mr. Kormos: Where are those paragraphs?

Mr. Diamond: Dealing with the Mareva injunction? Starting at paragraph 33, Mr. Halfnight sets out some of the pre-judgment remedies that have been developed in the Canadian and Ontario jurisprudence that allow exceptions, very limited in scope and very difficult to obtain, to the maxim that you cannot obtain pre-judgment execution. The first two, being the Mareva injunction and the Anton Piller, are elaborated on as you go through the affidavit.

Mr. Kormos: Mareva is very difficult to obtain?

Mr. Diamond: Both are very difficult to obtain, very difficult. In fact, Mr. Halfnight swears to that effect in his affidavit.

Mr. Kormos: Do you agree?

Mr. Diamond: There's nothing to agree. That's the law, really. It's not for me to agree. That's the case law that has been developed.

If you look at paragraph 35, he states the conditions or circumstances under which such an order can be obtained, which is rare. You have to have a mountain of evidence, among other things, to convince the court to grant it.

Here in the Bill 128 proposal, you are, because of subsection (2), effectively saying that if the court is satisfied that there are reasonable grounds to believe that property as proceeds of unlawful activity is present, then the court shall make that order, except where it would be not clearly in the interests of justice.

It's a very narrow discretion the court would have in this situation, and what you're mandating the court to do in this situation is effectively to allow the Attorney General of Ontario to obtain execution of its costs before they have even obtained an order that they're entitled to the property in question.

Flowing from that, which we raise at item 3 in the overview list at tab 1, is that the structure of the bill and the amendments right now are completely deficient and silent to address the exact problem that I'm raising will happen. What happens if the Attorney General of Ontario does this—seizes something, disposes of it, pays itself—and then loses the forfeiture order? These amendments are drafted almost on the assumption on their face that the Attorney General of Ontario will succeed in every application, and that does not happen.

There is nothing in this bill to address what happens in this very real possible situation that the ultimate forfeiture order is denied and the application is dismissed. Then you have an individual whose property was seized, sold and reduced, and what happens next? That's a true shortcoming, which is born of the problems inherent with the sections I was referring to.

Lastly, as counsel for a class action, my clients cannot understand how these enlarged confiscation powers, as we call them—not forfeiture powers, but confiscation powers—seek to address the stated purpose of the act, which, I remind the committee, is "to compensate persons who suffer pecuniary or non-pecuniary losses as a result of unlawful activities." How does selling somebody's property and paying the Attorney General of Ontario—and I may add, it says "all or part of the property," so the property could be gone, disposed of, sold and completely paid to the Attorney General of Ontario. How does that seek to further the purpose to compensate people who have suffered losses as a result of unlawful activity? In my submission, it does not and cannot.

I thank you.

The Chair: Thank you, Mr. Diamond. An efficient one minute per party. Mr. Kormos.

Mr. Kormos: I'm interested in this action, because, as you know, some of us expressed concern about the civil remedies act being ultra vires—

Mr. Diamond: Mr. Kormos, I can tell you that the concerns you raised at the debate stage were echoed during the constitutional challenge and in the class action.

Mr. Kormos: You've got two clients who had, among other things, cash seized. The government has de facto possession, and that goes a long way toward securing any potential interest that they might have in terms of it being dissipated, doesn't it?

Mr. Diamond: In the old act, what would happen was that if the arm of the government, be it the police or whoever ended up taking the items—in the case of Mr. Tong, who was the one representative plaintiff whose items were actually forfeited to the government, it was taken. What happens normally is that a very quick application for an interim preservation order occurs, commenced by the Attorney General, even before the application for forfeiture is started.

The Chair: Fifteen seconds, Mr. Diamond.

Mr. Diamond: So they have de facto possession per se, but they need the rubber-stamp of the preservation order to keep it, and that's why it's done very fast. Apart from the constitutional issues that you raised yourself and that I've raised in the challenge, that section as it stands now, not subject to the amendments, I don't think we have a problem with, in terms of it being contrary to due process.

The Chair: To the government side.

Mrs. Sandals: We will make sure these documents are forwarded to legislative counsel and to the ministry's counsel. Thank you.

Mr. Diamond: Thank you.

The Chair: Mr. Dunlop?

Mr. Dunlop: I have no comments on it.

The Chair: Thanks to you then, Mr. Diamond, for your deputation.

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CITY OF TORONTO

The Chair: I now invite on behalf of the city of Toronto Mr. Edward Earle, solicitor. Mr. Earle, I remind you that you have approximately 15 minutes in which to address us. Please begin.

Mr. Edward Earle: Thank you, Mr. Chair. With your indulgence, the next speaker on your list is Pam Coburn, the general manager of municipal licensing and standards for the city, and we would propose to combine our time. It makes a lot more sense, actually, for her to speak first.

The Chair: Do I have consent from the committee for that? Agreed. Please go ahead.

Ms. Pam Coburn: Good morning, Mr. Chair, and thank you very much for the invitation and the opportunity to speak before you today. Just by way of introduction, my name is Pam Coburn. I'm the general manager of licensing and standards in the city of Toronto, and I'm also responsible as the lead agency in the development of the municipal response protocol that has been developed to deal with marijuana grow-ops and drug labs in the city of Toronto. My colleague, Ward Earle, a solicitor with the city of Toronto, has worked very closely with us to guide us through the use of the current legislation and also in this more recent process of helping us understand the bill before you and will have submissions to make as well.

I wanted to use this time this morning to share with you the experience of the municipal officials in dealing with the problems we've discovered flowing from grow operations and drug labs in our community. We don't have recommendations to resolve all the problems, but we do believe it will be helpful to share our experience with you. We have some specific advice in response with respect to the legislation in front of you and some ideas as to how it might be improved.

I'd like to review what our experience has been, discuss a little the impact on communities that we've experienced, some of the successes we've had in developing our protocol, which has actually been in development since 2003, the procedures we follow in exercising that protocol, some of the specific areas where we lack the tools, and then would make recommendations with respect to the bill in front of you.

I'd like to reinforce what has been said by the many people who have appeared before you this morning. We certainly support the efforts of the province in coming forward with a bill to address this issue. As I said, we began our efforts in this respect in December 2003 at the direction of our city council. I do represent the lead agency. To tie into some of the questions and discussions earlier today, it's very clear in our protocol that we follow the police investigation. That investigation must be complete and concluded and their warrants executed before our protocol comes into action.

A little bit about exactly what the problem looks like in the city of Toronto right now: We've certainly seen an incredibly thriving industry in this area, in the city, growing from 140 cases in 2003 to more than double, 320 cases, in 2004. The tracking at this point, assuming it doesn't continue to accelerate, will certainly exceed 400 grow operations in the city of Toronto alone in this calendar year.

I've broken down some of the statistics for you with respect to what we've seen just in this past quarter of 2005. Most of the uses you see occur in residential premises. One of the concerns that has been expressed, or at least there's speculation around the table by my colleagues, is that we're seeing this move to residential premises because the rights of entry are much more restrictive for a range of city officials, including police.

The impact on communities is wide-ranging, I would suggest to you: health and safety hazards relating to the construction of electrical bypasses, alterations to the building itself, the structure and the mechanical and electrical systems in the building, as well as deterioration when these types of grow-ops and drug labs operate for long periods of time. These are obviously things that the community is exposed to, but also municipal staff, including the police, electrical authorities, health inspectors, fire inspectors, building inspectors and bylaw enforcement inspectors, all of whom, at some point or other, may use their authority to help remedy the range of various problems that present themselves in these cases.

In terms of community safety, we're very much reminded, when we go into public meetings, that local communities are very concerned about what municipal officials are doing about this and that we have a protocol that works well, is tight and responds quickly to the problems as they present themselves. In the longer term—and this really speaks to the issue where we have less direction, I guess—we have begun to see that there are numbers of properties and communities that have been used for grow-ops and remain closed and boarded, and those properties just sit. We're not entirely sure what will happen to those in the long term, but as those numbers of properties continue to accumulate in pockets of communities around the city, we're concerned about property values and how the community functions in that kind of environment.

To speak to our successes in developing a protocol, we began developing this in late 2003 with the support of the police. They were concerned about their ability to share information with us relative to their investigations. Certainly their primary concern was not to compromise the criminal investigations that were obviously underway at that point. We came to an agreement in October 2004 that once they had executed their warrants, once they had undertaken any search and seizure on the property that was necessary, they would notify, through my offices, city of Toronto municipal officials as to the fact that they

had undertaken the bust of a grow-op or a drug lab, and that our protocol then would begin to function.

The municipal officials who sit around that table are comprised of police, of course, fire officials, hydro, the Electrical Safety Authority, a representative of the medical officer of health, a chief building official, Toronto water and waste water and municipal licensing and standards, and then of course the legal department.

Our protocol again follows on the conclusion of the criminal investigation by the police. What we found is that each one of these cases may present a very different set of facts and circumstances on the ground. The property may be residential use or intended for residential use or commercial use. It may be occupied at the time of the grow-op. It may continue to be occupied after the bust. All of those things need to be taken into account, particularly the length of time the illegal activity has gone on and the amount of alteration or deterioration in the premises. All of those things are considered by the various officials in terms of determining what actions need to ensue.

Our protocol contemplates a 24-hour response time from the time we're given notice by the police. That initial response is to ensure that the premises is secured and that it's not open and available to the public, if in fact it's not remaining to be occupied at that point. We rely on the evidence of the police as to the existence of the grow operation. They have information that they provide to us that will describe to us—I guess I would say in layperson's terms, being that a police officer is not necessarily an expert on health, mould or structural matters—what they've seen in the premises. We rely on that information to issue orders under the current authorities existing in the Building Code Act to require that orders be provided to identify the conditions of the building with respect to structural, electrical and environmental contaminants or concerns. We will then further order, once we've received those engineering reports, remedial actions as they're necessary and appropriate. The remedies are again discussed among the health and fire and building officials right across the municipality. Those orders are then registered on title.

As I said, we assess the engineer's reports and we may request additional information or we may issue orders directing that remedial action be taken as a result of that information that's provided. We have just begun to move into a phase where we are prosecuting for failure to comply with the municipal orders that direct that engineering reports be provided. I'm not in a position to share anything with you at this point as to what the courts will do as we move into this phase, but it's our intention to pursue this aggressively.

Some of the areas where we lack the proper tools: There are delays in registering orders on title. This speaks to the issue, I think, of public notification and the potential for the sale of the property. The current provisions of the Building Code Act provide for a period of time pending an appeal and then potentially long delays after that, should an appeal occur.

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We also feel that, in these cases, owners and agents of owners, like realty agents, as well as property managers, should be under some positive obligation to disclose when there are orders pending that have not been resolved. Those would flow as well in the circumstances where someone might be looking to move a tenant into a premises that hadn't yet been remediated.

We believe, in these cases, that there should be authority to actually prohibit the occupancy where there is reason to believe there is an unsafe condition, pending resolution of those matters.

We also feel there should be both authority and priority to municipalities to recover the costs associated with enforcement. Clearly, enforcement in this case extends beyond the police to the municipality in terms of execution of remedial measures. In fact, under the current powers, if the municipality receives information as to the nature of the deficiencies, we can move forward to undertake those remedial actions and apply the costs of those on to the taxes for recovery. But of course, whether or not they are in fact recovered is something that we'll know further in the long term.

We also recommend, as does my colleague in the city of Toronto representing large municipalities' chief building officials, recognizing the implicit dangers to our staff in going into these premises. We believe the current authority that allows us to direct the owner of the property to bring competent officials into the building to undertake analysis of mould and structural deficiencies—it should be their responsibility, and then we work with those property owners as best we can to get them resolved and only step in and take more control over the property when that's absolutely necessary.

We recommend that there be flexibility in the legislation in order that whether it's the medical officer of health or there has been a contamination of the water/waste water system as a result of the operation, that all of those officials might arguably play a role, based on the circumstances that present themselves.

Again, I think it's appropriate to include a power to prohibit the occupancy until we know the premises has been remediated, with the ability to recover municipal costs.

If I can summarize before I turn it over to my colleague, who has some specific recommendations around the amendment of the legislation, we absolutely support the development of the legislation and the exercise that you're involved in right now. We feel the legislation should be expanded to deal with illegal drug labs as well as grow operations. We would ask that you recognize that these are sophisticated matters and costly to enforce and they actually are more effectively dealt with by using the resources of health and other officials as well.

We would also suggest, flowing from that, that the authorities might extend into the Health Protection and Promotion Act, for example, in terms of remedial powers, and that there be an expedient process to allow for public notification by early registration of these out-

standing orders on title, as well as a positive obligation being placed on owners and their agents when they're in the process of either selling or renting the properties when they have not been remediated.

Mr. Earle: You have a document in front of you called Suggested Legislative Amendments, which I've authored. That's an attempt to express in concrete form the concerns that Pam has outlined for you. Happily, I think it also to some extent encapsulates the concerns you've heard from the other speakers today.

Basically, you have three main areas. You have concern over enforcement powers, concern over cost recovery, and the issue of protection of the public, both by imposing positive due diligence requirements on the owners of property and providing means of giving notification to an unsuspecting public that a property has previously been a marijuana grow-op location.

In terms of the inspection power issue, your bill focuses on the Building Code Act, so we are also focusing on the Building Code Act in the main. You've already heard about the concerns with the new subsection 15(1.1), that we think it should be more flexible in terms of a discretion to inspect, a discretion in terms of the contact person for the police. We would also add that we don't want to be too narrow in terms of allowing the municipality to act proactively. We'd like the ability, independent of being told by the police that there's a marijuana grow operation, to acquire that information ourselves and act where a premises has been used that way, is being used that way or will be used that way, because there can be situations where information comes to our attention.

Health and safety concerns have already been mentioned. We would like some reference in the legislation that inspections would take place where it's safe to do so.

The need for a warrant: It's a hot-button issue, but in the city of Toronto, in the first quarter of this year, the police busted 83 premises. Those were the ones they were aware of. They will tell you themselves that their best estimate is that they're aware of 10% to 50% of the ones that are out there. Look at the statistics in Pam's document and you'll see that, of the 83, only four were commercial premises. We're not really dealing with the Barrie Molson brewery plant so much; we're more involved in residential situations where you have residential neighbourhoods being home to these operations. So what we are proposing is that there be some provision for a warrantless search in these circumstances.

The use of force is also an issue for us, inasmuch as the Building Code Act does not expressly address the use of force in any circumstance, that I can tell. It certainly should be addressed in this circumstance, given that our inspectors may be going out to a premise that has been investigated by the police, locked up and secured and left, and there's nobody there. So how do we get in? We want to be in compliance with the law when we undertake these types of activities.

In terms of cost recovery, there's been discussion before you about the BC legislation. The city of Surrey has a bylaw, which is a very straightforward bylaw, which basically allows for cost recovery whenever remedial action is taken. So we're proposing the same type of amendment to the Municipal Act. Currently, section 427 of the Municipal Act allows a municipality to take remedial action, cover the costs incurred by it, place it as a lien on taxes. We would suggest the same type of language in respect of enforcement costs. We're talking about the whole range of enforcement costs: investigation, identification, entry, securing, remediation, repair and maintenance, not only by the city, but also by health, police, fire and, we think, the electrical utility as well.

I also have some reference in here to the other potential sources of funding from ill-gotten gains, if you will. The Crown Attorneys Act and the Remedies for Organized Crime and Other Unlawful Activities Act, which you are proposing to amend—I think we appreciate that while we are on a list to receive those proceeds, we're fairly well down that list. If there were an opportunity to consider moving us up or finding some other way, perhaps in the case of particular marijuana grow-op situations, where, if real property is being seized and forfeited and liquidated and there are proceeds available, that some of that come back to the municipality to compensate us for our enforcement costs.

Finally, the protection of the public portion: What I'm proposing is a section added to the Municipal Act, which would do three things.

It would require landlords and owners of property to exercise due diligence in a reasonable way with respect to properties that they are renting to ensure they're not being used for illegal activities.

There should be a positive obligation placed on owners and their representatives when they're selling property to disclose any contraventions of bylaws or legislation that have flowed from a marijuana grow-op situation. This is not an entirely original idea. I think there's a private member's bill right now that's sitting on your docket, Bill 181, which has a provision in there that does address this type of issue as well.

Finally, there's the notification of the public. Where orders are registered on title under the Building Code Act or where we have the ability to effectively prevent occupancy of a premise until deficiencies have been remedied, notification or the establishment of a registry might be more of an issue, but it's a bit of a trade-off. If that doesn't happen, the establishment of a registry where we could publicly list properties, indicate they were used as a marijuana grow-op, give the address, list the contraventions, would be quite useful to us.

I think that's basically my summary, Mr. Chairman, and I'll submit to any questions you may have.

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The Chair: Thank you, Mr. Earle and Ms. Coburn. We have about three minutes per party. We'll start with the government side, Mr. Delaney.

Mr. Delaney: One short question: With regard to the obligations of landlords, what do you suggest as due diligence?

Mr. Earle: I think one of the suggestions that was made earlier was a good one from the chiefs of police association, which was to have a reasonable inspection requirement subject to the rights of tenants.

Mr. Delaney: And after the property has been occupied?

Mr. Earle: That would be the situation. You have tenants in the premises and the landlord would conduct reasonable inspections subject to their rights.

Mr. Delaney: Do they not now have that right?

Mr. Earle: They do, but I guess what we're proposing is that there would be a separate obligation to exercise that right in the public interest and that failure to do so would be a provincial offence.

Mr. Delaney: Thank you.

The Chair: Any further questions from the government side?

Mrs. Sandals: I just wanted to ask, if I'm looking at page 2, section 2(a) of your submission, which is "More Flexibility," you seem to be suggesting in there that in fact you want the ability to enter premises prior to the police investigating and securing the premises, which seems to be contradictory to some of the other comments we've heard, that people are concerned that the police enter and secure the premises and that the municipal inspection would come along after that. This seems to be something that is somewhat different than we've heard from other speakers. Would you comment on the notion that you would be able to enter before the police have actually identified that it's a grow-op?

Mr. Earle: I think that any protocol respecting entry would be subject to common sense, which is that we're not going to put our people in harm's way. I think the point here is more that we have the ability under this provision to act where we've obtained information independently of the police, as opposed to solely through their notification.

Mrs. Sandals: Thank you.

The Chair: We'll turn to the Tory caucus. Mr. Dunlop.

Mr. Dunlop: I'd like to thank you both for coming and sharing your time together. What I'm getting from your overall summary is that on this document, the one by Ms. Coburn, you're actually looking at three possible areas of amendments that you'd like to see made to the legislation, being on the back page. I thought I heard you agree that we should also include other drug labs, as well as just the marijuana grow-ops. Am I correct on that?

Ms. Coburn: Yes, sir, absolutely.

Mr. Dunlop: So you're actually suggesting four possible amendments to the legislation: the three that you've got outlined, plus the fourth one?

Ms. Coburn: Yes.

Mr. Dunlop: I think that's all I really wanted to say, other than the fact that I did want you to maybe elaborate a little more on the health and safety aspect, just a comment more than anything else. I talked to some police officers who were actually involved in the commercial grow-op at the Molson plant in Barrie.

Mr. Kormos: An historic grow-op; a great Canadian grow-op.

Mr. Dunlop: Yes, the great Canadian grow-op.

I understand it is a scary situation when you enter a facility like that. Whether it's a building inspector, a hydro inspector or a police officer, there are a lot of areas of safety to the workers or to the employees in that area. I'm glad to see that you've included that as well.

The Chair: Mr. Kormos.

Mr. Kormos: I appreciate your participation, because yours is, may I say it, coming from the horse's mouth. These are the people who are being called upon to perform the new roles that are prescribed by the legislation. This is a huge, huge uncontrolled economy, clearly. I mean, tonnes of this stuff is being grown, and not just in Toronto. It's amazing that the police are busting—you said 83 in the last year?

Ms. Coburn: In the first quarter of 2005.

Mr. Kormos: So you've got tonnes of the stuff being seized. It's a huge, uncontrolled, untaxed economy. Maybe if we started by taxing rolling papers we'd make some headway. Think about it. Every corner store I'm in, there's a huge display of rolling papers but there's no Daily Mail tobacco for sale any more behind the counter. I just don't get it. Clearly somebody is ingesting this stuff, right?

Look, the whole issue around building inspectors—because I read the preliminary findings of the protocol development that refer to how the first responder in all cases will be Toronto Police Services, and it suggests that the local hydro utility already has the power to disconnect an illegally connected service. Is that accurate? Am I correct on that?

Ms. Coburn: The police have been concerned that there are quite a number of these premises that have actually been wired and rewired. There are booby traps—doorknobs and window screens and the like. Given the fact that the electrical bypass often taps into the main line at the street—presumably that work hasn't been undertaken by a properly trained official, one would assume—when they have a warrant to execute, the police will contact the electrical authority, at least in the city of Toronto, and they will come and cut off the service at the street. So that will avoid those kinds of problems without people having to enter into the premises.

Mr. Earle: I'm quoting the minister here, I think, but my understanding is they currently shut off the power pursuant to an Ontario Energy Board order or policy, as opposed to actual legislation, which is what is proposed now.

Mr. Kormos: OK, and that's fair enough. Again, you folks aren't concerned about some aging, greying Jerry Garcia fan who is growing one plant in his or her sunroom, are you?

Ms. Coburn: We would respond when the police have concluded in a criminal investigation that there is a grow-op. As you pointed out earlier today, I think, it has not been defined, but we do deal with undertaking remedial work in properties for a variety of reasons, which

is why we're asking for the flexibility to do what we know how to do, and if we find that there are unsuspecting people involved, there are other remedies at our disposal as a community.

Mr. Kormos: But again, to be fair, you're not interested in these de minimus situations. That's not what your focus is, is it?

Ms. Coburn: It certainly hasn't been our experience in the exercise of the protocol to this point, no.

Mr. Kormos: You heard my concern about the literal wording of (1.1), where it makes it mandatory that a building inspector utilize his or her warrant list power to enter when notified by the police that the building contains a marijuana grow-op. Do you share any of my concern? It's one thing to say, "That's not what's intended," but I'm worried about the wording of the section. Do you share my concern? Notification means—well, it means notification. You folks know what it takes to get a warrant, for instance. You know how much evidence you've got to have for a JP, if only you had JPs, because I've heard the dilemma the city of Toronto is in because the government won't appoint JPs. But that's a separate issue, isn't it?

Do you share any of my concerns about the literal wording of this section that requires a building inspector to enter? Because that could mean entry before the police have—I appreciate you're saying you want some of the ability to conduct your building inspection powers, but surely there's got to be some discretion here on the part of the building inspector. We want a building inspector to say, "Not a snowball's chance in hell am I going in there until the police or the fire services have been in." Isn't that fair, to give the building inspector that discretion?

Ms. Coburn: I think it actually speaks to the very point we're making about having the appropriate officials involved at the right time. It has been a part of our protocol from time to time, and I think this may have been what Ward was alluding to earlier—from time to time, we will hear from communities that they are concerned about a grow operation. We're in touch with the local police, and they will tell us, "We have this premises under surveillance; there's an ongoing investigation. Our preference would be that you keep your officers away," and we're absolutely happy to comply.

The Chair: Thank you, Ms. Coburn and Mr. Earle from the city of Toronto, municipal licensing and standards.

I advise committee members that this committee stands adjourned—

Mr. Kormos: One moment, Chair. Think about it, to the government members: If you taxed rolling papers, you could call it the Zig-Zag tax and get huge new revenues from this previously untaxed economy.

The Chair: Thank you, Mr. Kormos. I'm advised that is not a point of order, however insightful.

This committee stands adjourned until Thursday, May 5, at 10 a.m.

The committee adjourned at 1150.

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