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**Official Report
of Debates
(Hansard)**

Wednesday 11 May 2005

**Journal
des débats
(Hansard)**

Mercredi 11 mai 2005

**Standing committee on
justice policy**

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

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Loi de 2005 modifiant des lois
en ce qui concerne l'exécution
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Wednesday 11 May 2005

Mercredi 11 mai 2005

The committee met at 0902 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.

The Chair (Mr. Shafiq Qadri): Ladies and gentlemen, good morning to you and to the members of the committee. I call to order the meeting of the standing committee on justice policy to begin clause-by-clause consideration of Bill 128.

A copy of all amendments was received by the clerk as of 5 p.m. Monday, the agreed-upon deadline. That has been distributed, and we will now move to consideration of these amendments.

I'd also like to welcome on our collective behalf legislative counsel, Ms. Susan Klein, who is of course present here to assist us with clause-by-clause consideration.

I would now move to consideration of the package we've all received. I open the floor: Are there comments, questions or amendments to any section of the bill? Please begin.

Mr. Peter Kormos (Niagara Centre): I suppose the place to start is at the beginning, and I find myself in agreement with what appears to be the government position of voting against section 1 of the bill, which is of course amendments to the Building Code Act.

The Chair: Have you completed your comments?

Mr. Kormos: Yes.

The Chair: I open the floor.

Mrs. Liz Sandals (Guelph-Wellington): We have no amendments to propose to section 1, the amendments to

the Building Code Act. We will be proposing some amendments later on to the Municipal Act. Just so Mr. Kormos doesn't get his hopes up too high, we would propose to delete some of the language which is currently proposed to amend the Building Code Act and put that in the Municipal Act to accommodate some of the commentary we heard from some of our witnesses at hearings. I presume that the official opposition's intent is the same, that neither one of us is proposing any amendments to the Building Code Act, and that we would simply vote against section 1 of the Building Code Act, the amendments—

The Chair: Just to be clear, the first two pages of these are not proposed amendments, but notices.

Mr. Kormos: I do want to indicate that I've received a letter from Ann Dembinski. I'll give the clerk a copy so that he may distribute it to caucus members. Ms. Dembinski, of course, is president of CUPE Local 79, city of Toronto workers. She writes with reference to section 1 of Bill 128 and the requirement that building inspectors enter without warrant and so-called "inspect" on the advice of a police service. She finds it to be highly objectionable. She writes—again, you'll have copies of her letter in a few minutes—that the bill, with respect to that at least, raises very serious concerns and threatens the health and safety of municipal building inspectors.

While at first blush, as you'll recall, when we started here I was of the view that this bill was relatively benign—I'm not sure it did anything to make it easier to shut down grow-ops, but it was in and of itself benign—the reference in section 1 to the warrantless search, mandatory and without discretion, by a building inspector into a crime scene was of great concern, to the point where I can't support the bill. Not only can I not support that section, but I can't support the bill if that or a similar section is in it. That's why I'm in total agreement: Section 1 should be out, out, out.

I'm looking forward as well to any advice as to a definition of "grow-op" being imported into the bill, because we still don't have that. We don't know whether it's Grandma raising one plant so she can smoke it to relieve the impact of her glaucoma or whether it's your college student child raising two plants as part of his or her botany course. It's obvious when there's 1,000—is it Molson up in Barrie? I don't want to misname the brewery. Joe Tascona's riding, home of the biggest grow-op in Canadian history, up at Molson—we know that's a

grow-op; that's self-evident. But I'm concerned about the lack of definition here.

The Chair: Are there any further comments on the first two pages of notices?

Mr. Garfield Dunlop (Simcoe North): No. I do have a comment on the third one, though, but that's fine.

The Chair: May we proceed, then, to vote on section 1?

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote.

Nays

Brown, Brownell, Delaney, Dunlop, Kormos, Racco, Sandals.

The Chair: Section 1 is lost.

We'll move now to consideration of the first motion, page 3. Oh, I'm sorry. Section 2, page 6: Any comments, questions, debate?

Mrs. Sandals: If I could comment, there are a number of amendments there that, seeing as we have just gotten rid of section 1 of the bill, we're not going to be proposing to alter the bill. As far as I'm concerned, we're now looking at the government and I think the PC pages, 4 and 5 as they're numbered in my package, which would be dealing with section 2 of the bill, where again the government and the official opposition would be in agreement that we should delete that section of the bill by voting against it.

The Chair: Mrs. Sandals, you're correct. We have actually dealt with section 1 in its entirety by just voting it down, so we're now proceeding to section 2, which I advise you is on page 6.

Mr. Dunlop: Mr. Chair, what you're saying is that you had a government motion, notice number 2. Now the motion that you had referring to section 1—

Interjection.

Mr. Dunlop: Oh, you're not moving it. You're withdrawing that, then?

0910

Mrs. Sandals: Yes.

Mr. Dunlop: I thought you were going to actually—

Mrs. Sandals: It was there in case we didn't withdraw that section. But seeing as we have successfully withdrawn the section, we no longer need to amend it.

Mr. Dunlop: Oh, so you put that in there just as a standby.

Mrs. Sandals: Just in case no Liberals showed up and hordes of opposition members showed up.

Mr. Dunlop: I see you followed our lead. OK.

The Chair: Now that that is settled, we will move to consideration of section 2, page 4. It is a PC motion.

Mr. Kormos?

Mr. Kormos: There are joint proposals, rather than motions by the Liberals and the Conservatives that section 2 be defeated. I suppose my question is to the government: Why do they want to defeat section 2?

Mrs. Sandals: If I may, the relevant thoughts will be proposed as amendments within the Municipal Act.

The Chair: Are there any further comments on this notice regarding section 2 of the bill?

Mr. Dunlop: Are we doing them together now? The government recommends voting against section 2, and so does the opposition in our notice number 4 and number 5, and then number 6, I assume, is the same as—

Mrs. Sandals: It would be the same. If we get rid of the bill, we can't amend it.

Mr. Dunlop: OK.

The Chair: Are we ready to vote on section 2 of the bill with regard to this notice?

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote.

Nays

Brown, Brownell, Delaney, Dunlop, Kormos, Racco, Sandals.

The Chair: So section 2 of the bill is now lost, and of course any proposed amendments referring to section 2 are now orphaned, stranded.

May I seek consent from the committee to block consideration of sections 3 to 5, seeing as there are no proposed amendments?

Mr. Kormos: One moment, Chair, if I may. We've got these different groupings here, the next grouping after purported amendments to the Building Code Act or the Crown Attorneys Act. I'm requesting the Chair to restrict groupings to groupings within a particular part of the bill. So I'll be content at this point to deal with section 3, but since section 4 is under amendments to the Crown Attorneys Act, I ask that it be treated separately.

The Chair: Are there any further comments on section 3?

Mr. Kormos: Yes. As I indicated—and I have no qualms about supporting section 3. But the mere fact of increasing fines for people who are engaging in huge marijuana grow-ops—these people don't expect to be caught. The reason, in my view, why people commit crimes is because, as I say, most of the time they don't expect to be caught. I mean, people murder other people knowing full well that the penalties for murder are the most serious penalties in the Criminal Code, and they do it—well, they do it, tragically, more often than we would wish because most murderers don't expect to be caught. They expect to hide the body, hide the murder weapon and rub their fingerprints off like some old Matlock episode.

All I'm saying is that raising the fines in and of itself is not going to help the police bust grow-ops, and that's what we heard. We heard from the Police Association of Ontario and some of the community neighbourhood groups how frustrating it was. They know where the grow-ops are, but three months to a year later—and it's no criticism of the police, because they have limited resources. Bruce Miller in effect said that there isn't a

snowball's chance in hell of busting all the grow-ops in Ontario even if and when they know where they are.

So I'm going to support the increase in fines, but at the end of the day I say let's not pretend that this is going to help police bust grow-ops.

The Chair: Any further comments on section 3? Seeing none, are we ready to vote on section 3?

Those in favour of section 3? Those opposed? Section 3 is carried.

Section 4: Comments, questions, debate? Mr. Kormos?

Mr. Kormos: No, I have no commentary on—yes, I do. The crown attorney's office, the Ministry of the Attorney General—we've been dealing with that office a lot as of late around, for instance, the dangerous offender application that's being made, because it can only be made with the authorization of the Attorney General down in Niagara region, as we talked about in the House and as the press has reported on; and, of course, the 810 application coming up in the province of Quebec and the allocation of resources.

Again, I don't dispute the goal of the section, but let's understand that crown attorneys' offices, as I know them, continue to be hard-pressed to find resources to deal with the tasks that they have at hand now. That's just a problem. We can mandate this, but once again, understand that crowns across this province are just run ragged. They've got huge caseloads, and they can't manage those as well as they would like to.

The Chair: Further comments or questions on section 4? Seeing none, are we ready to proceed to the vote on section 4?

All those in favour of section 4? All those opposed? Section 4 is carried.

Section 5: Comments or questions?

Mr. Dunlop: Mr. Chair, I have a motion that you probably have in front of you and that I'll read through.

The Chair: With respect, I think you're probably referring to section 5.1.

Mr. Dunlop: I'm sorry.

The Chair: Once again, I open the floor for comments or questions on section 5.

Mrs. Sandals: I'm sorry, did Mr. Dunlop move his motion?

The Chair: No. Mr. Dunlop's PC motion refers to the next section, which is labeled so far as section 5.1. We're now dealing with the section anterior to that, which is section 5.

Any comments or questions on section 5?

Mr. Kormos: Once again, in and of itself it's probably inoffensive, but in and of itself it's doing nothing to give the police the tools they need to shut down grow-ops. You heard the frustration in the group that was here from, I believe, the Scarborough area last week. Remember, Mr. Klees tried to trick them into saying, "Oh, it's the evil of smoking marijuana." They said, "No, no, no. That's not the issue. We know people smoke it." That's what they were saying. It's the problem of having a clandestine, illegal grow-op in a residential neighbour-

hood. That's what their grief was about, and the danger it poses to neighbouring properties when it's a big grow-op.

I'm still concerned about the lack of definition, of course. Is the government purporting to say that a grow-op is some senior citizen growing a marijuana plant to deal with the pain that he or she suffers from arthritis—do you know what I'm saying?—or an HIV-positive AIDS victim who has lost his or her appetite and is losing weight, who smokes marijuana? As you may know, Chair, marijuana apparently stimulates appetite. I was a skinny kid, so I wouldn't know.

Is that what we're talking about, or are we talking about the full-blown, large-scale, criminal-operated—the ones where you've got the hydro wires jumped and you're creating fire hazards, the ones where you've got gangs involved, so you put booby traps in to scare off other gangs that might want to rip off their weed? I still don't know that.

As I understand, the government is going to take an interesting position after we complete section 5. While motions to adjourn are not usually debatable, I'm going to ask for unanimous consent, should there be a motion to adjourn, to speak to it for no more than two minutes per caucus.

The Chair: Mr. Kormos, could you please rephrase, or refresh or re-enlighten us as to what you're asking for? **0920**

Mr. Kormos: I'm seeking unanimous consent, should there be a motion to adjourn put on the floor, that it be debatable for no more than two minutes per caucus, notwithstanding that motions to adjourn, of course, are not usually debatable.

The Chair: Do I have unanimous consent for this proposal? I hear at least some soft dissents. Mr. Kormos, your proposal has been defeated. I'd now ask for any further questions or comments on section 5.

Mr. Kormos: I am amazed that the government has now basically gutted its amendments to the building code. For all intents and purposes, those building code amendments are gone. The government was so cocky and so sure of itself about how this bill was the greatest thing since buttered popcorn. By golly, this was going to shut down grow-ops. All those marijuana plants were going to be buried in landfills and the problem of grow-ops was going to be solved.

So what's going on here? I've got a feeling—I'm not sure—that the government wants to throw in the towel after they deal with the amendment. I'm not sure; I'm just reading some body language. I feel the government wants to throw in the towel on this bill. How many times do these guys get to go back to the well?

One of the problems is this: what I've learned and what we've learned when we heard from some very skilful Toronto civil servants—remember the Toronto staff who were here last week? They weren't participants in the creation and the drafting of the bill. You heard how eager they were—that's what they said—for the city to have some ability to help deal with this problem. They acknowledge it's a serious problem. It's one that people

call their offices about and that they have to deal with. But they told me that they weren't consulted, that they weren't parties to the development of the legislation. I find that peculiar.

So here we go. Again, all I'm saying is that should there be a motion to adjourn, without unanimous consent I clearly can't speak to the motion to adjourn, but I think I've gone through the back door where I couldn't go through the front door. You understand my point. People are going to be looking at this process saying—right now, so the record will show, Kormos is shaking his head—“What is going on here? When are they going to get this thing right?”

The Chair: Are there any further comments?

Mrs. Sandals: We are clearly not talking about section 5. However, I would note the government has indicated that in response to listening to the concerns of some of our municipal partners, we will in fact be proposing amendments that accommodate some of those concerns. Nobody is gutting the bill, backing down, waltzing away or any of the other colourful descriptions, but we will be proposing amendments to accommodate some of the concerns we heard last week, in a spirit of listening to the public and our stakeholders.

Mr. Kormos: All I want to say is that my dear friend Dwight Duncan, the government House leader, has been anxious—Mr. Dunlop will know that; he's at House leaders' meetings—about him and his government meeting the legislative demands of their agenda. I've been doing my best to facilitate. I have. You heard me last week: I assured folks that I remain committed to Bill 28 being dealt with this morning, so that we could get it back into the House and vote for or against it.

I became skeptical over the course of the hearings. I said, “I can't support this bill.” All I want the record to show, and it will, is that the government is now in effect stalling its own legislative agenda. So if they're here till July, getting questions in question period about the dismal budget that's going to be produced this afternoon, they've got nobody to blame but themselves. I'm doing my best to expedite legislation through this committee, and here's the government stalling and dragging its heels. Give your head a shake, will you?

The Chair: Any further comments or questions on section 5?

Mr. Dunlop: I'll move 5.1 when we get a chance.

The Chair: Seeing none, we'll proceed to the vote on section 5.

Those in favour of section 5? Those opposed? Section 5 is carried.

We will now move to the proposal for a new section known as section 5.1. That is on page 7, a PC motion.

Mr. Dunlop, I offer you the floor.

Mr. Dunlop: In the same spirit that Ms. Sandals, the parliamentary assistant, had mentioned with listening to the stakeholders, that's why we propose this particular motion.

I move that the bill be amended by adding the following section:

“5.1 The act is amended by adding the following section:

“Separate account for money from marijuana grow and other illegal drug production operations

“14.7(1) Despite section 14.6, money described in paragraph 1 or 2 of subsection 14.6(1) that is forfeited or paid as a fine pursuant to a conviction in relation to a marijuana grow operation or other illegal drug production operation or that is the proceeds of the sale or other disposition of property of or related to a marijuana grow operation or other illegal drug production operation shall be deposited in a separate interest-bearing account in the consolidated revenue fund.

“Same

“(2) For the purpose of the Financial Administration Act, money deposited under subsection (1) shall be deemed to be money paid to Ontario for a special purpose.

“Same

“(3) The Minister of Finance may make payments out of the account described in subsection (1) for the purpose of law enforcement and the administration of criminal justice in relation to marijuana grow operations and other illegal drug production operations, including payment to municipalities of compensation for the costs, including the costs of specialized training and equipment, incurred by them in relation to marijuana grow operations and other illegal drug production operations.

“Definitions

“(4) In this section,

“‘illegal drug production operation’ means a lab for the illegal production of methamphetamine, ecstasy or marijuana or for the extraction of cannabis resin;

“‘marijuana grow operation’ means an operation for the illegal growing of marijuana.”

We took that, feeling that it allows the municipalities to be reimbursed, including costs related to training and equipment.

The Chair: Thank you, Mr. Dunlop, for your section 5.1 elaboration. If there are comments—Mr. Kormos.

Mr. Kormos: I'm concerned, once again, about the lack of precision around the definitions in this amendment. However, I'm supportive of the spirit of the amendment, because we heard from Bruce Miller, amongst others, of the inadequacy of police resources within any given municipal police service board to effectively investigate and then prosecute drug operations. This is an effort to direct some of the proceeds of crime/penalties back in a dedicated way to funding those services.

Having said that, I'm no more a fan of the principle of saying, “Well, you've got to use the fines to fund the service.” That's like saying we've got to rely upon lotteries to fund health care, for instance. It can be used as an argument to undermine stable, ongoing funding, and that's a problem.

But with respect to the spirit of the amendment, I support it and I encourage other members to as well.

The Chair: Any further comments?

0930

Mrs. Sandals: We're not going to support this amendment because it's problematic in a couple of ways. It's setting up a special-purpose account, and the problem is twofold. First of all, drug cases are federally prosecuted under the Controlled Drugs and Substances Act. As a result of that, setting up a special-purpose account provincially, while we could certainly set up an account, would have no practical effect because the fines that are paid in that instance in fact go to the federal government because these crimes are federally prosecuted. So the act of setting up this account would result in an account into which no money would flow, which would seem to be not a good thing.

However, there is a system in place to accept federally collected shared proceeds of crime with Ontario. There is a memorandum of understanding that has been signed by the province and Canada to deposit these proceeds of crime into another special-purpose account which already exists and which has to do with proceeds of crime. So the proposed amendment would actually run contrary to that MOU which already exists between the province of Ontario and the federal government. We would see this as problematic in that it creates an account but I don't think the account functions in the way in which the opposition was expecting it to operate, and we see no point in setting up an account that isn't going to achieve the intended purpose.

Mr. Kormos: I heard Ms. Sandals, but I draw her attention to section 5 of her bill and the amendment, being a new 14.6(1)2: "money provided to the Attorney General." Clearly there is contemplation of money provided to the Attorney General or the government that was paid as a fine.

All I'm saying is that this is smart, anticipatory legislation, because even your bill anticipates monies flowing to the Attorney General or the government, rather than somehow being exclusively federal. But I think it's clear that you're not going to vote for the amendment in any event.

Mrs. Sandals: I believe those other sections of the bill deal with the money that does currently flow to the Attorney General, to the crown of Ontario, as opposed to, in this case, where the money clearly flows federally, so there's no purpose to the exercise.

The Chair: Any further comments with reference to section 5.1?

Seeing none, we'll proceed to the vote.

Those in favour of section 5.1? Those opposed? I declare section 5.1 lost.

I'd ask, since there are no proposed amendments for the next group, for block consideration of sections 6 to 12.

Mr. Kormos: One moment. Are they supposed to happen now?

Mrs. Sandals: I would suggest that we do section 6, perhaps, because—

Interjection.

Mrs. Sandals: Mr. Kormos would seem to be anxious to leave, so I will accommodate him and move that we adjourn.

Mr. Kormos: On a point of order, Mr. Chair: I came here to work this morning. I agreed to come here at 9 so that we could get this thing wrapped up, as Mr. Dunlop suggested, before we went into the lock-up for the budget. Now I've got the parliamentary assistant moving adjournment of the committee. These people just don't want to work.

Mrs. Sandals: On a point of order, Mr. Chair: This is not a debatable motion.

The Chair: We move to the consideration of sections 6 to 12 in block consideration. If there are specific—

Mrs. Sandals: I would move that we adjourn.

The Chair: I have a motion from the floor for adjournment.

Mr. Kormos: Recorded vote.

The Chair: A recorded vote.

Ayes

Brownell, Delaney, Racco, Sandals.

Nays

Dunlop, Kormos.

The Chair: I declare the meeting adjourned.

The committee adjourned at 0935.

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