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**Official Report
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Thursday 19 November 2009

**Journal
des débats
(Hansard)**

Jeudi 19 novembre 2009

**Standing Committee on
Justice Policy**

Interprovincial Policing
Act, 2009

**Comité permanent
de la justice**

Loi de 2009
sur les services policiers
interprovinciaux

Chair: Lorenzo Berardinetti
Clerk: Susan Sourial

Président : Lorenzo Berardinetti
Greffière : Susan Sourial

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 19 November 2009

Jeudi 19 novembre 2009

The committee met at 0933 in room 1.

The Chair (Mr. Lorenzo Berardinetti): Good morning and welcome to the Standing Committee on Justice Policy.

Today we're dealing with Bill 203, An Act to allow for better cross-border policing co-operation with other Canadian provinces and territories and to make consequential amendments to the Police Services Act.

SUBCOMMITTEE REPORT

The Chair (Mr. Lorenzo Berardinetti): The first item on the agenda is the subcommittee report dated November 2, 2009.

Mr. Dave Levac: Mr. Chairman?

The Chair (Mr. Lorenzo Berardinetti): Mr. Levac, yes.

Mr. Dave Levac: Thank you, Mr. Chairman.

Your subcommittee on committee business met on Monday, November 2, 2009, to consider the method of proceeding on Bill 203, An Act to allow for better cross-border policing co-operation with other Canadian provinces and territories and to make consequential amendments to the Police Services Act, and recommends the following:

(1) That the committee hold one day of public hearings at Queen's Park on Thursday, November 19, 2009.

(2) That the committee clerk, with the authorization of the Chair, post information regarding the committee's business one day in one English and French newspaper, where possible, in the following areas: Toronto, London, Ottawa, Hamilton and North Bay.

(3) That the committee clerk, with the authorization of the Chair, post information regarding the committee's business on the Ontario parliamentary channel and the committee's website.

(4) That groups be offered 15 minutes and individuals 10 minutes in which to make a presentation.

(5) That interested people who wish to be considered to make an oral presentation on Bill 203 should contact the committee clerk by 12 noon, Friday, November 13, 2009.

(6) That, if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties.

(7) That, if all groups cannot be scheduled, each of the subcommittee members provide the committee clerk with

a prioritized list of names of witnesses they would like to hear from by 5 p.m., Friday, November 13, 2009, and that these witnesses must be selected from the list distributed by the committee clerk to the subcommittee members.

(8) That the deadline for written submissions be 12 noon, Friday, November 20, 2009.

(9) That the research officer provide the committee with examples of other provincial and state agreements regarding cross-border policing co-operation.

(10) That the administrative deadline for filing amendments be 12 noon, Monday, November 23, 2009.

(11) That the committee meet for clause-by-clause consideration on Thursday, November 26, 2009.

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

That is my report from the subcommittee, Mr. Chair.

The Chair (Mr. Lorenzo Berardinetti): Thank you. Is there any discussion? None? Do I have a motion to adopt?

Mr. Dave Levac: I move to adopt.

The Chair (Mr. Lorenzo Berardinetti): All those in favour? Opposed? Carried.

INTERPROVINCIAL POLICING ACT, 2009

LOI DE 2009

SUR LES SERVICES POLICIERS INTERPROVINCIAUX

Consideration of Bill 203, An Act to allow for better cross-border policing co-operation with other Canadian provinces and territories and to make consequential amendments to the Police Services Act / Projet de loi 203, Loi visant à permettre une meilleure coopération avec les autres provinces et les territoires du Canada en ce qui concerne les services policiers transfrontaliers et à apporter des modifications corrélatives à la Loi sur les services policiers.

MICHAEL EMPEIGNE

The Chair (Mr. Lorenzo Berardinetti): We have some deputations. The first one is Mr. Michael

Empeigne. I apologize if I didn't pronounce it properly. Please come forward and help yourself to some water, if you want to. Good morning.

You have up to 10 minutes for your presentation. If you don't use up the whole 10 minutes, then the committee may have some questions of you.

Mr. Michael Empeigne: I know.

The Chair (Mr. Lorenzo Berardinetti): Please identify yourself for the record. We keep a record, Hansard, and if you'd identify yourself, your name.

Mr. Michael Empeigne: I'm extremely shaky.

Mr. Dave Levac: Just relax. Just tell us your name.

Mr. Michael Empeigne: Michael. I can't even say it.

The Chair (Mr. Lorenzo Berardinetti): Perfect. Thank you.

Mr. Michael Empeigne: Empeigne. I have a bit of a problem.

The Chair (Mr. Lorenzo Berardinetti): Go ahead. You can speak.

Mr. Michael Empeigne: Oh, I know I can speak. I just get this way.

Mr. Garfield Dunlop: Don't feel nervous. Just go ahead and take your time. You've got 10 minutes whether you say anything or not.

Mr. Dave Levac: You want me to sit beside you? I'll help you, okay? Here we go. All you have to do is just tell us what you think.

Mr. Michael Empeigne: I know.

Mr. Dave Levac: Okay, so let's go. Is it a little scary?

Mr. Michael Empeigne: Especially with all the people.

Mr. Lou Rinaldi: Pretend we're not here.

Mr. Dave Levac: How about you talk to me? What do you think about the bill?

Mr. Michael Empeigne: I wish I'd brought the bill with me.

Mr. Dave Levac: That's okay. It's to help the police go from—

Mr. Michael Empeigne: I know that.

Mr. Dave Levac: Oh, okay. So then tell me what you think about it.

Mr. Michael Empeigne: I read it entirely.

Mr. Dave Levac: Perfect.

Mr. Michael Empeigne: What do I think?

Mr. Dave Levac: Yes.

Mr. Michael Empeigne: Let's say, across the border—

The Chair (Mr. Lorenzo Berardinetti): Sir, if you want to, you can just talk in the microphone so all of us can hear what your presentation is.

Mr. Dave Levac: Just to make sure they can hear it. That's all. There you go.

Interjection.

Mr. Michael Empeigne: Well, it's a good idea, and one, I guess—

The Chair (Mr. Lorenzo Berardinetti): Mr. Empeigne, if you want to, we do also have the option—if you want to write down and give to us, by tomorrow at noon, your submission or your thoughts, you can do that

as well. It would be distributed to everyone. Would you prefer that, to do a written submission?

Mr. Dave Levac: He's giving you a chance to write it down on a piece of paper or have somebody write it down for you. Collect all your thoughts, put them on a piece of paper and give it to us. Do you want to do it that way?

Mr. Michael Empeigne: I guess that would be okay.

Mr. Dave Levac: Okay, we'll have somebody work with you.

Mr. Michael Empeigne: It's—

Mr. Dave Levac: It's intimidating.

Mr. Michael Empeigne: Especially with the—it's true.

Mr. Dave Levac: Yes. Why don't we do it that way?

Mr. Michael Empeigne: Okay.

Mr. Dave Levac: Okay, I'll have somebody work with you after.

Mr. Michael Empeigne: Okay. It's true.

Mr. Dave Levac: Of course it is. It is very intimidating. We used to have trouble—

The Chair (Mr. Lorenzo Berardinetti): Mr. Empeigne?

Mr. Dave Levac: He has agreed to write it down, Mr. Chairman.

The Chair (Mr. Lorenzo Berardinetti): Okay, good. You can write it down, and we will make sure that everyone gets a copy of it. Okay?

Mr. Michael Empeigne: Okay.

The Chair (Mr. Lorenzo Berardinetti): Thanks for coming out.

Our second deputation for 9:45 is Oriel Varga.

Interjection.

The Chair (Mr. Lorenzo Berardinetti): Oh, she—we need a couple of minutes?

Mr. Dave Levac: Mr. Chairman, can we take a five-minute recess? That will give her time to get set up, and then we can get somebody to help Michael.

The Chair (Mr. Lorenzo Berardinetti): Okay, so we'll take a five-minute recess and then we'll recommence in five minutes.

The committee recessed from 0942 to 0948.

ORIEL VARGA

The Chair (Mr. Lorenzo Berardinetti): The committee is now back in session, so I call our next deputation. Oriel Varga, if you'd like to come forward. Feel free to have a seat right there. There's water there as well.

Good morning, and welcome. Just before you start, I'll just explain to you that you have up to 10 minutes to speak, and if you don't use up all your time speaking, then we might ask you some questions.

Ms. Oriel Varga: Okay. I'm going to use my full 10 minutes, thanks.

I want to first of all thank you for the ability to speak today. I've been following this bill and the discussion very closely, and I want to make sure that there are

proper checks and balances in place. I'm very concerned about the apparent loopholes in this bill. Those who wield a great deal of power, such as to give criminal charges and to hold a gun and use it, need to use their powers appropriately and ultimately need to be held accountable for their actions if there's abuse of that power. Where there are little or no ramifications for actions, there is a potential for abuse. One can even say it invites such abuse. The bill says that there can be an investigation in a location where an allegation of abuse took place, but the officers are not subject to discipline. This is very disconcerting.

0950

Let us consider a case example such as the one given by Mr. Lorenzo Berardinetti, where, say, someone says they have been wrongly arrested in Manitoba or Toronto—we need to look at it both ways. Let's consider it: If a person is wrongfully charged in Manitoba by Toronto police who are acting as Manitoba's full officers, and there is a complaint about police abusing the citizen's rights, there is presumably an investigation and public inquiry that can take place in Manitoba. But since it took place in Manitoba, there's no public pressure here in Ontario, and there's no reason to believe that there will actually be an inquiry here in Ontario.

The person will need to hire lawyers, who will participate in an inquiry which is held in Manitoba but does not include discipline. The Toronto officer is only compelled to participate in the investigation if there is an existing agreement in place extending the same rights and protections given to other officers in Manitoba. Even if this agreement exists and he or she testifies, this cannot be used against him or her if there is a disciplinary investigation here in Ontario.

If there is an investigation, and I say "if" because it's not clear there would be one, then the complainant and their lawyers from Manitoba would have to participate in the investigation here in order to get justice and, ultimately, discipline for something that happened in another province with its own rules and procedures under a supervisor who may or may not be responsible for the investigated officer's actions.

We have to ask: Who can even afford this? And why don't we just keep it simple and accountable, and have the investigation and discipline where the arrest took place, under whose jurisdiction the officer was presumably acting?

So what happens when a person is arrested in Ontario by police from Manitoba? How is this an assurance for citizens here that their rights will be protected when officers come here and may or may not be trained in Ontario law and procedures, but are given full rights and responsibilities of police officers in Ontario? What assurances are given that if they participate in the arrest of a citizen, they will provide disclosure of their notes and come for trial? Again, if there is no possibility of discipline for Manitoba police who act as police officers in Ontario when there is abuse of powers, the Ontario citizen will need to travel to Manitoba to get justice. Again, who can afford this?

There was a lot of discussion during first and second readings about the reason for this legislation. Some of you even say that this bill is precisely to provide such protections, which presumably are currently not in place. This is a troubling argument, as we already have provisions for interprovincial policing, but they do not give full status to the special constables, so their powers are somewhat limited. It also takes time to process, so there is some thought and oversight and care that takes place, which also amounts to a certain degree of checks and balances while it's being processed.

If we increase the potential to move officers from one province to another tenfold or a hundredfold by making it only seven days or effective immediately, this is clearly about something else than to ensure protections for the public. If we want these protections, we can simply ensure that the wording of the TPA is that special constables are subject to investigation under the SIU, which is what the early researchers, Bilton and Stenning, who presented the background discussion for the conference in 2003, where this legislation was first drafted, subtly suggested as a solution back in 2001. Clearly, ensuring proper protections is not the reason for this legislation, otherwise it would give us the power to discipline officers who come to Ontario.

Then we must ask ourselves: What is this bill really about? Peter Tabuns asked the same question, pointing out, "You have to ask: If, in fact, we aren't currently encountering difficulties, if we aren't in a situation where investigations seem to be interrupted or in any way actually blocked or obstructed, then what is the real function of this bill?"

The speed with which to mobilize officers to come here or to move across the province is likely the real reason. This gives the potential for, at a moment's notice, say, the Olympics in Vancouver or the G8 or the Pan Am Games in Toronto to have a large mobile and accessible police force. This is, of course, not spelled out for the public, but if you go after the paper trail to where this legislation originates, its intention is made far more apparent.

In the commentary of the notes of the conference, they actually point out that it is for massive policing for large events such as the G8. The intentions of the bill were also hinted at by a number of people in their discussions during first and second reading. Mr. John O'Toole, for example, says, "Certainly the Olympics in Vancouver will be an interjurisdictional issue.... As well, there is the summit next year in Muskoka, I think it's the G8 summit in Canada, a big, big deal."

The speed at which this is being pushed through is also suspect, especially given that we are not far away from the Vancouver Olympic Games in the G8, and ensuring due diligence as this is pushed through is an issue of concern that was raised by a number of members about this bill.

Although I am sure the intention is to help with investigations across borders, the legal rights of hot pursuit and appointment of special officers already allow for all of this. Thus, the key intention of the bill and/or its

effect will be to create a highly mobile interprovincial police force that can be sent to Nova Scotia, Quebec or Vancouver etc. at a moment's notice. This bill is a huge change to policing, not a minor one, and will create new legal precedents. This is where questions of accountability and proper checks and balances are of considerable importance, and the apparent lack thereof troubling.

I will list eight reasons why we should be cautious:

(1) Lack of community consultation and input. Why has there not been extensive effort to consult with community groups? This is not clear, especially given the potential scope of change.

(2) There are many holes in this legislation. This is even observed by John O'Toole, who says that this is like a "piece of track that's missing, and you can't get from A to B." I would say that there is enough track missing to derail a train here. It leaves many questions unanswered: Who appoints; whom are the officers responsible to; whose jurisdictions do the officers belong to; who has the power to fire; who has accountability?

(3) Lack of accountability: an inquiry or an investigation, but not a right to discipline? This does not make me feel safe as a citizen.

(4) No assurances of training in local law and procedures.

(5) What happens if Ontario police refuse to violate Charter rights, say, in Vancouver, during the Olympics? For example, we already have a clear precedent here in Toronto that you can't have a full ban on signage and that this is unconstitutional—this is in *Toronto (City) v. Quickfall, 1994*. In Vancouver, the city recently passed a bylaw on ambush marketing, that you can't hold up, say, anti-Olympic signs in the street, and police can even go into people's homes and remove them from windows. This is clearly a Charter violation. What happens if police in Toronto refuse to issue tickets and fines, given that here this would be considered unconstitutional? There is currently a constitutional challenge in the courts around this.

What happens if a police officer from Ontario doesn't even want to go? The bill is a discussion between those appointing officers and the official here. Perhaps the police union should be concerned about this.

(6) Whom are they responsible to if an officer, say, comes from Nova Scotia: his supervisor here or the one in Nova Scotia? Technically here, because we appoint them. But if, as they say, this is also because they're pursuing an investigation that may have relevance in Ontario, is it not the supervisor, the person in Nova Scotia, that's in charge of the investigation? So what resources will they use? Will they be in police stations? Will they have access to those resources? What about protections to private information of citizens that gets shared between provinces? This is not clear, and when things are not clear, there is a potential for confusion, misunderstanding and misuse of powers.

(7) The bill invests a great deal of power into the police chief. I'm assuming that the appointing officer is a police chief, which is reasonable to assume. This is a lot of power when what is at stake is potentially to bring

hundreds or thousands of police officers here or move them to another province. And if hundreds or thousands of officers get moved to Vancouver for the Olympic Games, what are the local responsibilities of police here? Will they not be needed here? This leaves much to be desired.

The bill has far-reaching consequences to communities and civil liberties of hundreds and thousands who may come out and express their inalienable Charter rights to expression, association and assembly, and yet the community was not at the table. The lack of discussion and awareness of this bill brought me to speak today. As a member of No Games Toronto, I am well aware of what's going on in Vancouver. Billions of taxpayer dollars are being spent, and millions on policing—upwards of \$6 million for the Games, and counting. The cost of security will be \$900 million, according to a recent, October 25, article by Peter Zimonjic, and about 4,500 Canadian Forces, 5,000 private security guards and 7,000 RCMP and municipal officers from jurisdictions from across the country. That's the key point here.

The Chair (Mr. Lorenzo Berardinetti): Ms. Varga, I just wanted to let you know you have about one minute left.

Ms. Oriel Varga: One minute? Oh, dear. Can I have two?

There are simultaneous massive crackdowns on civil liberties already taking place. The RCMP are visiting people's friends, families, neighbours, employers—all the way to Toronto, I had a visit from the RCMP for being in touch with a number of open critics of the Games in Vancouver. What is the assurance that local police will not be doing the same and what are the assurances that the citizen's rights are protected?

We also need to discuss the issue of who will be paying the cost of this mobile police force. After all, the Toronto community was not asked if we wanted to spend \$2.4 billion on the Pan Am Games. The community was not asked whether we could issue a blank cheque for a two-week party we can't afford. During a recession when we are already in massive debt, we desperately need the money to go directly, not in some convoluted manner, to affordable housing, the TTC and education.

My final point is that abuses—

The Chair (Mr. Lorenzo Berardinetti): Ms. Varga—

Ms. Oriel Varga: I'm sorry, can I have another half a minute?

The Chair (Mr. Lorenzo Berardinetti): Half a minute? Okay. With the committee's indulgence, half a minute.

Ms. Oriel Varga: This is my final point. My final point is that the abuses of police officers' police powers, when they occur, do not happen uniformly. Police typically protect the interests of those already in power, and it is usually marginalized communities—the homeless population, First Nations communities and racialized communities—who are targeted and impacted most by the increases in police powers. Yet these communities are largely not here—they're not here at all, I would argue—

to speak about the potential of abuse that this new and far-reaching legislation presents. We need to table this until there is full community discussion.

The Chair (Mr. Lorenzo Berardinetti): That completes your time.

Mr. Dave Levac: On a point of order, Mr. Chairman: It sounds to me like you have not been able to cover all the points that you wanted to cover. If you have a written construct of your full presentation, I would welcome that to be submitted to the committee for consideration.

The Chair (Mr. Lorenzo Berardinetti): You can submit that, your written submission, by tomorrow at 12 noon. That's the deadline.

Ms. Oriel Varga: So 12 noon? And who do I submit it to?

The Chair (Mr. Lorenzo Berardinetti): The clerk will give you the information.

Mr. Dave Levac: Thank you, Mr. Chairman.

The Chair (Mr. Lorenzo Berardinetti): Thank you.

Is Mr. Owen Leach here? I don't think Mr. Owen Leach is present. He was scheduled for 9:55; we're now at 10:02. We've had no communication at all today from him, so if he does show up, we can do the same thing and ask him to give a written submission, because it's 10:02.

As Chair, I'm going to move that we adjourn until clause-by-clause consideration on Thursday, November 26, 2009.

Mr. Dave Levac: Mr. Chairman, again, if we can get in touch with Mr. Leach to let him know that he would have an opportunity to submit in writing—because he took the time to register.

The Chair (Mr. Lorenzo Berardinetti): We'll try to do that.

We're now adjourned.

The committee adjourned at 1002.

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