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DEBATES and PROCEEDINGS

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Bill No. 54 – *The Seizure of Criminal Property Act, 2012*

Mr. Forbes: — Thank you very much, Mr. Speaker. I rise today to enter into the debate around Bill No. 54, An Act to amend The Seizure of Criminal Property Act, 2009. And I know it's been a few years since the original bill's been introduced, but clearly there needed to be some more work done. And this is an important bill for the people of Saskatchewan when it comes to dealing with criminal property and how it's been used in the commission of a crime or as a result of criminal activity. And I'm thinking this is one that we could spend some time on because clearly it's an important bill that we get right.

You know, when you have bills that come forward as this one did in 2009, and here we are in 2012, just a few years later, and they have learned a few things about how to be much more effective when it comes to this, I think it's important that we take the time, and we take the time during debate and take the time during the committee to examine fully the implications of the bill so that there are no unintended consequences, that we get it right, and that we take a look around the world — and I will be talking about other experiences in Canada, in the States, in the United Kingdom — about some background on this because I think it's important as MLAs that we are brought up to speed on what it means when we talk about the seizure and the forfeiture of criminal property.

And so I think that that's clearly our task ahead of us right now and perhaps into the evening as well. So Bill No. 54 just really talks about, it looks like essentially nine amendments, and while they seem to be relatively straightforward, I want to give some background on that. We look at the original Act, The Seizure of Criminal Property Act, 2009. And that was passed and became effective July 1st, 2009. And it really has seven sections. One talks about the preliminary matters. The second one talks about the forfeiture of property, how, what they're going to do in terms of how to apply this law, notice of applications about real property, about personal property, interim orders, forfeiture orders, protection orders, and that type of thing, and then how do you do the proceedings.

The third section talks about the conduct of proceedings, standard of proof. And that's a big one, Mr. Speaker, when we talk about the implications here, the amendments that are brought forward, and the proof of offences, disclosure of interests, presumption re proceeds of unlawful activity, presumption from members of criminal organization, presumption for instruments of unlawful activity, and presumption re criminal organization offences.

So that's straightforward. How you can appeal, because we want to make sure at the end of the day that we all have our basic civil rights, that we are protected by the courts of law. But at the same time, this is a difficult one so there has to be some sort of sense of how do we make sure that you can appeal the orders, and then the decision by Court of Appeal and then no further appeal. And so that's very important.

It talks about the administration, director appointed, so forth, that type of thing. It talks about establishing the Criminal Property Forfeiture Fund and how that's working. And we probably will have some questions about how is that fund operating. How many applications to it have been made? How the funds, what are the uses of the fund and how that's going. And then just general other aspects that need to be taken into account.

So a very thorough, very thorough original bill but as it appears, some of the areas need to be taken a look at. For example, section 2 was looked at, section 3, section 6, and section 12, and so on and so forth. So we have some time to talk about these because it's, as I said, one that's very critical.

I just want to take a minute or two to review what the minister had set out. Again, you know, Mr. Speaker, it would be helpful if the ministers did give us a little bit more information around the bills, because if we are to do our work here in the House effectively and to make sure that we understand fully and are able to scrutinize the legislation, we do really count on the ministers to have a full and complete speech in the second reading. And so with that, I think I need to just reflect on some of the points that he made in his speech so that we can understand what the intent of the bill is.

So he talks about what the original Act:

The Seizure of Criminal Property Act, 2009 provided the authority for the provincial government to take responsibility for the seizure of criminal property processed from the police services.

And while he talks about while there's been successful seizures under this legislation since the Act came into play, counsel and operation staff have identified a series of changes to make the seizure process more efficient and effective.

So clearly there's been lessons learned over the last two or three, two and a half years, that they think they need to make amendments for this legislation. So we understand that and quite often that's the case where we want to, we have to get the bill out in front. We have to get the Act actually happening and then we see how the wheels are running. And clearly this is a case of where they want to make some amendments to make this bill

work.

So the bill will amend the definition of instrument of unlawful activity. He says:

The change will make it clear that property used to engage in unlawful activity but that has not yet resulted in the acquisition or production of property may be still subject to forfeiture.

So there you go. So that the property used to engage in unlawful activity, but that has not yet resulted in the acquisition or production of property, may be still subject to forfeiture. So I guess this must be something that they're discovering that, I think that's thinking ahead of the game here and I think that may be appropriate. Again these are kind of the questions that we'll ask in committee. What does this really mean?

Forfeiture could proceed if there is evidence of the likelihood that the activity will result in the acquisition or production of property or evidence of an intention on the part of the respondent to attain such property.

You know, I need to, I need to reflect a little bit on what my colleague, the member from Athabasca says, that talking about that you really, this is really in many ways legal language. And myself not being a lawyer, we would've appreciated some plain English here. Because clearly while the minister is a lawyer as well and this is specific, anybody reading this may feel that it's not really, they're not getting the full gist of it. So this is why we have committee proceedings and we'll be talking more about that in committee. But I think it's important that we understand that really we're talking about property that can be either used in the commission of a crime or as a result of a crime, and so when we have these kind of changes, I do think it's important for the people at home to really particularly watch committee meetings, hearings, when we get into that because we'll have specific questions about, what do you really mean by that? How does that play out in the legislation? That's very important.

As well, Mr. Speaker, he goes on to say the bill "will also specifically authorize the director to make an application to the courts by statement of claim in addition to the existing ability to proceed by notice of motion." It deals with the challenges of proof of ownership. And I understand that is a challenge, because clearly you want to make sure that you have the right property, that it doesn't belong to somebody else. But we know this is a grey area, especially when you have criminal issues at hand. What's really happening and who really owns the property and what is the rightful process here and what should we be doing?

So it talks about dealing with "the challenges of proof of ownership by removing the requirement to name the owner of the property as a party to an application in all cases and extend the period from 30 to 60 days during which time the director can request an order to prevent the sale, transfer of property prior to bringing a forfeiture application." So I assume what that really means is, it extends the period of time that the director has so that they can make a solid case in terms of whose property it is before it gets sold or changes hands, and then you have a problem because it's no longer the property that was

acquired either through the crime, either as part of the crime or as a result of the crime.

So this is, this is very important. And, “This change will also provide the authority for the court to extend a restraining order for any further period the courts view as appropriate.” So that’s very, very important. And so it’s really important. The bill also makes “. . . procedural changes to provide for a sealing order regarding the respondents’ affidavits, provided that evidence of a person that was not charged with an offense that is [relevant or] not relevant in making a finding of fact in an application under the Act.”

So it’s important that we take a look at these very specific comments made by the minister, and what does it really mean in terms of ordinary people understanding this? Because people should have confidence in the justice system, and clearly more and more around the world, we’re seeing this as an important component of the justice system, the forfeiture or the seizure of criminal property.

[The Assembly recessed from 17:00 until 19:00.]

[The Assembly resumed the adjourned debate on the proposed motion by the Hon. Mr. Wyant that Bill No. 54 — The Seizure of Criminal Property Amendment Act, 2012 be now read a second time.]

The Speaker: — I recognize the member for Saskatoon Centre.

Mr. Forbes: — Thank you very much, Mr. Speaker. It’s great to be back. It’s great to have this audience. It’s great to be on TV at 7 o’clock talking about something very, very important. What a crowd. What an audience. It’s great to look out and see people’s smiling, happy faces to be back at work, talking about their legislation.

So I am happy to be talking tonight about Bill No. 54, An Act to amend The Seizure of Criminal Property Act, 2009. And this one is a significant one because, you know, Mr. Speaker, as I said earlier, we have to have confidence in our judicial system, and clearly when they introduced and passed the bill, The Seizure of Criminal Property Act, 2009, they found that there were challenges that they had to address. And so that’s what we are here doing tonight and over the next few weeks and into the spring, looking at the amendments so that the Act can carry out the intentions of what it is. And really that is to enable the forfeiture of criminal property that will either be used in a criminal activity or property that was acquired through criminal activity.

And this is not a small thing. This is quite a significant thing, Mr. Speaker, because clearly as we see more and more activity, particularly around organized crime, we can’t let that go. We can’t turn a blind eye to that omission that had existed before that allowed a significant amount of economic activity to be carried on through various means of criminal activity. You know, as the face of that kind of activity has changed over the years, but as I will talk about later in my speech, it really hasn’t either. In fact, it goes back hundreds of years. It goes back hundreds of years and clearly we need to make sure that the justice system seems to be pursuing those who have profited from criminal activity. And this is one way of doing that.

Of course it's not just a clear-cut case. We have to ensure and there are critics of this type of process by Justice because you have to make sure that you protect the rights of those until they are proven guilty and that they've exhausted all their appeals. And sometimes in the case of some of the properties that are seized or about to be seized, there is a time factor. And clearly this is what we've talked about. One of the amendments talks about extending the period of time that the director can apply before the courts from 30 days to 60 days.

But as I said that sometimes there are those, and rightfully so, to make sure that justice is a balanced process, that we do protect the rights of those who are innocent, and we also protect the rights of those who unknowingly and unwillingly got caught up in something that they were unaware of and then found out that they were part of some process that they were able to acquire property. And so you have to protect that, and we have to make sure that all those bases are covered. So clearly this, as I said, is an important one, and you clearly don't want to have any unintended consequences.

So, Mr. Speaker, I want to go through some of the processes here because I think it's important that we spend some time talking about this Act tonight. I know it's one that . . . I was here in 2009 when the major piece of legislation was passed, but it's time that's well spent if we can review what got us to this place. And we can all benefit from that because what we want to do is make sure we have a good, solid, rigorous debate about this and then when we go to committee we can ask those specific questions and determine whether or not there needs to be more work done on the Bill. But tonight what we do is the debate, and I hope I can contribute in some way to the understanding of this.

And as I said, it's just really important that we think about this as part of the justice system. We think of what we try to do when it comes to criminal activity. We think about deterrents. What is a deterrent that will make criminals think twice before they continue with their ways? That if it leads to the seizure of their house, their cars, their property that before was shielded or was unreachable or untouchable but now isn't, will be a deterrent, and I think that's a good thing. And of course as well, a sense of punishment that the law will reach you no matter where you are, and if you've benefited from criminal activity that the law will make sure that rights are carried out and that you will not be able to keep those that you've benefited from.

But as I said, the seizure of property is not a straightforward thing. There's whole issues around ownership. Who owns the property? Is it clear, direct so only one person owning it? Are there multiple people owning it? And sometimes there's even mortgages involved, so credit unions, financial institutions are involved unknowingly, and their interests have to be protected as well. And the original bill that was passed in 2009 does address those things and will continue to do that.

So, Mr. Speaker, I want to review some of the pieces of information that I've been able to gather because I do think it's an important topic and we need to spend the time. And the folks at home, you know, they're wondering, what are the issues before the House this fall? What are the important concerns that are brought forward? And clearly this is one, and they want to make sure that we're being . . . keeping up to date, keeping legislation

current, and that no rock will be left unturned so that we make sure we get our work done.

So, Mr. Speaker, as the government website talks about:

The Seizure Of Criminal Property Act, 2009 provides that property that is acquired, directly or indirectly, as a result of unlawful activity or that is, or has been, used to commit a crime may be seized and, when appropriate, sold by an order of court.

Because it's not in the interests and it's not in the business of the courts to maintain property. It's to liquidate the property, get a financial settlement, and then proceed with that. And I will talk about that in a few minutes. I've been able to print off the financial statements for the year ending March 31st, 2012, and I'll talk a bit about that later on because it is interesting how the fund, the forfeiture fund has been growing and what is it used for.

And, Mr. Speaker, the seizure of the property by the province is intended to prevent crime by taking away the proceeds of crime so they can't be subsequently used for further crime. Property under the Act includes both real and personal property and any interest in real or personal property. So it covers the whole gamut of what might be confiscated and what the purposes are. It's to stop crime and to stop any further uses in crime.

Now the Act provides that a director appointed by the Minister of Justice and Attorney General may apply to the Court of Queen's Bench for a forfeiture order respecting property located anywhere in Saskatchewan. The director then applies to the registrar of titles and to the personal property registry to register an interest in that property. This ensures that an innocent third party is not affected by the forfeiture processes. The people with an interest in that property have an opportunity to be heard prior to the property being liquidated. So there is a process and it's a clear process and it protects those third parties that find themselves caught up in this kind of process. And whether it's a bank or a credit union, a family member, there is a process for them to protect their interests. So this is important that we have this kind of thing in place.

The director may apply to the court for an interim order to ensure that the property that is or may become the subject of application for a forfeiture order is not wasted or disposed in anticipation of that order. So they don't go and sell the house or sell the car, thinking that it's better to get the cash and move the cash somewhere else so that there is a way to act quickly and in response to this.

And so, for example, this page talks about the court may make an interim order authorizing the director to investigate or list the property in an inventory, an order for search, seizure, an order for delivery, safekeeping of the property.

So it goes through all of this type of thing and it talks about the processes that happens that the court will make . . . shall order a forfeiture of the property and make a protection

order to protect third parties who have an interest in the forfeited property, holders of the prior registered interest of the property. And they talk about banks, financial institutions. In fact the Canadian government's co-owners or owners of property who were unaware of the criminal activity are entitled to the protection order.

And so it talks about what happens here. And then the Act establishes a Criminal Property Forfeiture Fund to hold all money received through the property forfeited to the Government of Saskatchewan. And that property is subject to an interim order.

And then what this happens with this is that under the direction of the Minister of Justice and the Minister of Corrections, Public Safety and Policing, it may be distributed to the police operations and to the Victims Fund under section 6 of The Victims of Crime Act, 1995. And so, Mr. Speaker, it's interesting. I pulled down off the Internet the financial statements for the criminal property fine forfeiture fund because it's interesting to know, how much money are we talking about here? What is the extent of the fund, and how much money have we got in that account? And so tonight might be a good night to be talking about that.

And of course, there's the audited statements. The Provincial Auditor has signed off, and in her opinion the financial statements present fairly the financial position of the Criminal Property Forfeiture Fund as at March 31st, 2012. And it seems to be relatively straightforward when I looked through it. I don't see any glaring things that jump out at me.

But these are the numbers that I think that members may be interested in for the year ending March 31st, 2012. The revenues for the . . . in 2012, the forfeitures were \$750,000. Three-quarters of a million dollars. That's a significant amount of money, \$750,821. Out of that we also were able . . . The fund got about \$4,800 awarded costs and the interest about 2,500. So we're talking about total revenue for the fund was, for that year, 758,000.

The previous year it was 44,620. So there must have been some significant activity, because they gathered more than \$700,000 in forfeitures. So clearly as the expertise is built up, that they're being more effective in their forfeitures processes.

It would be interesting to know how many they felt that they didn't get or how many people got away, and that's why we have the amendments today. Because if I were to read this only I would say, boy they're pretty effective. But clearly the police feel they could be doing better. The director feels he could be doing better, that some are clearly not happening.

But I assume, you know, we're talking about houses. We're talking about cars. We're talking about other properties that may be of significant value. And so it's not, I don't think it's totally unusual to hear a number about 750,000. But it would be interesting to know more about that, and maybe that's something that we could ask the minister in terms of some written questions. What exactly have been the lists of forfeitures that have been established?

The expenses: the commissions, about \$10,800; legal fees, 2,400; some registration fees. The biggest thing is property management, and of course this is something that every government wrestles with. You've got to rent an office space. And the office space rental, it looks like the property management is \$225,000. So clearly a bit of an expense. So that's the expenses for the year.

I am curious to know, what about the staff, if there's any staffing costs involved. Or is the director part of the Ministry of Justice and there's not really any extra cost?

So the surplus for the year is 512,000. At the end of the day, it looks like they have over a half a million dollars.

Now what I am interested in hearing is what did they pay out in terms of . . . And I don't actually see any claims yet being paid out, and I don't know why that is and whether it's because it's a relatively new fund and they haven't been able to establish that. They do need to establish the fund, and so they can't be going into debt. And of course what they do talk about is how this will be split evenly between police operations and to the Victims Fund. Now it doesn't say that the total amount will be split evenly, but that whatever the Victims Fund gets, it sounds like the police operations will get.

So that's an interesting way, and I think that clearly they have done a good job of accounting for this and it raises . . . I think when we get into committee it will be a good discussion about, what have they claimed? What have been the major claims under the forfeitures? What major forfeitures have occurred to date? And that will be of a lot of interest.

I know, for example, the government did do a news release and this was back in April, April 23rd, 2010 when they actually did their first . . . And the headline says, "First success under The Seizure of Criminal Property Act, 2009." And I'll read this: "The Saskatchewan Ministry of Justice successfully completed the first application for forfeiture of property used in the commission of a crime."

Now this one was a relatively small one, Mr. Speaker: "The property forfeited was \$2,290 in cash and 3 cell phones." So that was a first success and now they're up to \$750,000, so there must've been some big catches in between. But to get \$2,200 they feel was a success. It was "used in the operation of a drug trafficking scheme known as a 'dial-a-dope' operation," and the fact that "this application is a separate case from the prosecution of the actual crime." And this was actually prosecuted under the federal Department of Justice.

And actually the minister of Justice at the time, the member from Saskatoon Southeast, was quoted as saying that, "Even though it is a relatively small amount of money and the value of the cell phones is not high, it is the first test of the new legislation brought in last year. This legislation gives us the right to seize larger ticket items, like houses and expensive cars."

So you can see that that's how we can get up to \$750,000 if that's what they were able to

raise through The Seizure of Criminal Property Act. But the question really becomes, here we are tonight and we're talking about this but . . . And this is actually, it seems like the Justice department is actually focusing in a big way on this.

This is a news release from last year, May 13th, 2011: "Saskatchewan to share information on criminal property forfeiture cases with other provinces." And this is an agreement with six other provinces to share information related to seizing the proceeds of crime. And of course the member from Saskatoon Southeast, the Justice minister at the time, felt that this was an important thing to make it a level playing field right across the province.

The other jurisdictions participating under this agreement are British Columbia, Alberta, Manitoba, Ontario — essentially everybody west of Quebec — New Brunswick and Nova Scotia. The provinces that weren't included, looks like, were Quebec, Newfoundland, and Prince Edward Island. I'm not sure what's happening there. We know that Quebec has a different kind of judicial system, and I'm not sure if we were able to dovetail with theirs or what the issues were.

But it goes on to talk about "In Saskatchewan, civil property forfeiture is covered by The Seizure of Criminal Property Act . . . [and it's] intended to seize the proceeds of crime so they cannot be used to further criminal activity." And so the minister at the time goes on talking about how it's important to ". . . strengthen the joint efforts of provinces to enhance the safety and security of our communities." But what is interesting in that is talking about how it's important to make sure the legislation is correct, is strong, is rigorous, can withstand the challenges of lawyers, and if it's not, then we have to go back to the drawing board. And of course that's why we're here tonight and then the next few months to talk about how we can strengthen that.

It's important that we do coordinate with other provinces, particularly when we talk of all the provinces west of Quebec, with Ontario, Manitoba, BC [British Columbia], Alberta, and Manitoba. That way there's some consistency and that we can make use of that. And as I said, it's really important that we make sure that our laws are seen to be effective and that people have confidence in our laws, and they're not seen to be weak and easily challenged. And people, especially when we talk about organized crime and the kind of abilities they are to make the money that they do, and whether it's through, as we talk about this dial-a-dope, drugs, illegal drugs, or other activities, it's really important that we can be able to make it a strong deterrent, that they will lose their houses, their cars, other valuable pieces of property and that the police will go after that, will go after that and be quick about it and liquidate it. And the assets will go to both further policing and to those victims who have suffered under the criminal activities.

I think this is an important aspect of our laws in Saskatchewan. And I think that it's critical that we understand this as fully as we can and that we don't take it lightly, you know. And I know that this is something that, as we've seen, it seems to be a relatively new phenomenon in the last decade or so or maybe even longer, but it seems when I look across the country that, whether it's Ontario and the work that they had done in the early 2000s, Manitoba in the mid-2000s, and then us in 2009, that it's important that we get it

right.

I just want to review. This is another review talking about asset forfeiture, a form of confiscation of assets by the state pursuant to the law. And it typically applies to the alleged proceeds or instrumentalities of crime. Now some places call it confiscation instead of forfeiture, and although it's mostly used in the USA [United States of America], other jurisdictions have introduced this civil forfeiture legislation, including Italy, South Africa, Ireland, UK [United Kingdom], Fiji, most of the Canadian provinces, Australia, the individual states, Antigua and Barbuda. In addition, the Commonwealth has introduced model provisions to serve as templates, and that's important because it's good for us to have those templates so the law can be consistent right across the country.

So it's important to do that, but as I said earlier that some civil libertarians feel that there's issues when there are greatly reduced standards for conviction and financial conflict of interest that arise out of this. But I think that we have to strike that balance and it's important to do so. I think that we cannot shy away from this. We absolutely cannot shy away from this. We cannot turn a blind eye to this and if we do, in many ways people would argue that we are only encouraging organized crime and crime that creates a lot of financial reward for those who should not be rewarded, who should not be rewarded. In fact they should be punished and know that we are after that.

So, Mr. Speaker, I think that it's important . . . We came across this review from Ontario, but it's very informative, and I think it would serve the people at home and members across the way to talk about civil forfeiture. Clearly we are on the same page here in Saskatchewan as they are in Ontario, so I think that it's important to review what is civil forfeiture, what does it mean in the history of civil forfeiture around the world, so we can clearly understand why it's important to do these amendments and why Bill 54 is important, why it's important to get it right and that we do send a clear message that we're going to be vigilant on this. We're going to make sure that there are no loopholes that organized crime or others can take advantage of and retain their significant financial rewards. And I think that would be wrong. That would be wrong.

So he talks about civil forfeiture. What is it? Well it's the judicial transfer of title to proceeds and instruments of unlawful activity through civil proceedings.

Now they talk about Ontario, and I imagine much is the same here in Saskatchewan, that civil forfeiture legislation focuses on the connection of property and unlawful activity. And the standard of proof required for this forfeiture is the same as all civil suits, a balance of probabilities. And we have to determine that and I believe, as I've gone through my reading, that that's what we look at for that.

Now in contrast, criminal law deals with people and their criminal liability for specific acts. The Criminal Code of Canada, the Controlled Drugs and Substances Act, and numerous other statutes contain provisions that allow for the seizure or restraint of tainted assets in the course of criminal investigation and provide for forfeiture on conviction. Other federal statutes also provide for seizure, restraint, and forfeiture through adoption of the Criminal Code regime. Criminal seizure, restraint and forfeiture apply to assets

derived or obtained directly or indirectly from the commission of almost all criminal offences. So this is just one part of the tool kit, but a significant tool kit.

Criminal asset forfeiture is primarily conviction-based, meaning the Crown usually must first obtain a criminal conviction against an offender in order to seek a forfeiture order, and the Crown must establish on a balance of probabilities that the target asset arose from or was used in the commission of the offence. And so that's what we're talking about tonight.

Now interestingly, Mr. Speaker, as I said earlier, that while this may be seen to be relatively recent — it may be only a decade old or so — but as this writer describes, forfeiture law is based on, or built on one of the oldest concepts in law that dates back to the ancient Saxon law prior to the Norman Conquest of 1066. So it does go back quite a ways that criminals were not getting away with keeping the goods or the bounty of their criminal activity. People were making sure for over 1,000 years that that was not going to be the case.

But modern civil forfeiture law is now covered by statute in the same way as remedial property laws. Civil forfeitures are brought in rem, a legal action directed solely against the property, seeking a judicial finding that the origin of property lies in illegal activity or is being used as an instrument of unlawful activity. It's not an action against the person but against the property involved. So I think that's interesting, and we'd like to clarify that, if that's the case here in Saskatchewan because you're really after the property. The person has already been dealt with in the court of law and has been convicted and therefore that's not the case, that it's after the person but after the property.

Now this is an interesting paper because it talks about what happens in the United States, Australia, New Zealand, Ireland, United Kingdom, and reviews what happens in Canada. And I think it'd be worthwhile to just take a minute or two to talk about what happens in other parts of the world.

So in the States, these kind of forfeitures will have been part of the legal tradition for a long, long time. Initially forfeiture law was used to protect revenues coming largely from tariffs and to protect shipping from the threat of piracy. So we often, we do think about piracy. Of course in recent years we think of piracy around Africa, but of course, you know, we think of those days when piracy down in the Caribbean and that type of thing. And this forfeiture really stems back to, in the American tradition, to protection from pirates seizing property and being able to seize their property because of what is really derived from criminal activities.

So that's an interesting aspect that we're really talking about: old crimes that we think about in olden days when we're thinking now about new crimes and new times. But really we have to change with the times to make sure, at the end of the day, criminals are trying to acquire property, trying to distance themselves — particularly in organized crime — distance themselves from the direct activities of criminal activity and so that they're not seen to be . . . actually their hands are not touching the criminal activity, but we know it is. And this is how they're getting the property and sometimes fairly

extensive properties. And so it's important that we go after it as hard as we can.

It talks about, in the later half of the 20th century, the US [United States] pioneered the use of legislation specifically to go after unlawful assets. Congress passed the racketeer influenced and corrupt organizations, or the RICO Act, in 1970 to deal with the rising organized criminal activity, and these laws at both the federal and state levels include civil remedies. That same year the US Congress also passed the Comprehensive Drug Abuse Prevention and Control Act, which authorized the government to seize and ask the courts for a forfeiture of property used in connection with illegal drug activities.

In the late 1980s and early 1990s, Congress expanded forfeiture law and created the Department of Justice Asset Forfeiture Fund. So there you go, and that could be perhaps where we really were able to see what was happening and we needed to do the same. Proceeds from the sale of forfeited assets are deposited and subsequently used for victim restitution, as well as for law enforcement initiatives. So you see a parallel, a parallel to what we are doing here in Saskatchewan — the Victims Fund and police initiatives.

In 2000 the federal forfeiture laws were amended by the Civil Asset Forfeiture Reform Act to address specific issues, including the onus of proof with the government bearing the onus to prove, on a balance of probabilities, the property was used for illegal activity. In the US there are state and even local forfeiture laws creating hundreds of provisions.

Now what happens in Australia and New Zealand? Well criminal forfeiture has been in place in Australia since 1987. The state of New South Wales amended its forfeitures laws in 1990 to create a civil forfeiture regime for a range of unlawful activity. And more states followed with the federal government with the Proceeds of Crime Act 2002. This Act strengthened the existing conviction-based forfeiture scheme that was in the Proceeds of Crime Act 1987, and incorporated both the imposition of monetary penalty orders and the civil forfeiture of property used in, intended to be used in, or derived from crime. It goes on to talk about the Proceeds of Crime Act 2002 further created a national confiscated assets account from which, among other things, various law enforcement and crime prevention programs could be funded. So they've expanded a little further, not just having a dual purpose, but a third purpose, that crime prevention initiatives could be funded as well.

Now that Criminal Proceeds (Recovery) Bill 2007 is currently before the New Zealand parliament and is expected to provide for a civil forfeiture regime for property and profits derived from significant criminal activity. So clearly, probably, most likely in the five years since then we would assume that they've passed that bill and it's now actually in place.

Ireland passed the Proceeds of Crime Act, 1996 and created the Criminal Assets Bureau to implement civil asset forfeiture in response to the public calls for action to follow the murders of a police officer and a journalist investigating organized crime in Ireland. And Ireland now has one of the most successful asset forfeiture programs in Europe.

So an interesting trigger for how Ireland decided that it had to move on this and that they

were going to do something about organized crime. And it was the murder of a police officer and a journalist that really moved that further, moved that ahead. And I think that, while it's tragic, that they really clearly got down to work and made sure that their civil asset forfeiture program was successful and met the target.

And again, it's about deterrents and it's about punishment. Clearly in Ireland they saw a situation where they needed to do something. They needed to do something and they did and it was successful. It would be interesting to know more about that. I mean it would be interesting to know, did it act as a deterrent to organized crime or are they just acquiring a significant amount of funds in their programs, and what are they using their program for?

Now United Kingdom, they have a Proceeds of Crime Act 2002, with amendments under the Serious Organised Crime and Police Act 2005, addresses the detection, recovery of criminal property under the overall supervision and control of the Assets Recovery Agency. The agency has the power to enforce its own civil forfeiture or tax cases and works to recover assets which are or represent property attained through unlawful conduct in England, Wales, Scotland, and Northern Ireland.

And again in 2007 they introduced it, and if it was passed and we wanted to create an agency called the serious organized crime agency, again it would be good to have an update to that to find out if that was the case.

So it talks about what's happening in Canada. Ontario set the precedent in Canada for doing this but British Columbia, Alberta, Saskatchewan, Manitoba, and I understand then Quebec, Quebec has since introduced or passed similar legislation. So, Mr. Speaker, then here's an interesting conundrum we have. If Quebec has this kind of legislation, why is it that they're not part of the six provinces that signed on? That would be a very, very important reason but maybe it's because of their court system. It's really important.

Ontario's Civil Remedies Act, formerly known as the Remedies for Organized Crime and Other Unlawful Activities 2001, came into force 2002, but it concerned itself only with civil matters at that time. And then it moved on to December 2005 with amendments to the Civil Remedies Act under the Law Enforcement and Forfeited Property Management Statute Law Amendment Act came into force.

And so they had a constitutional challenge June 2005, but it was dismissed, and the Ontario Superior Court of Justice agreed with Ontario's position that the Act regulated property and civil rights, the administration of justice in local matters which all fall within the provincial jurisdiction. So we have some strength that this actually is something that the provinces can be doing, and I think that's important.

As I said, that it's important that the legislation be as strong as it can be because, as you know and as we know, that the criminals with a large resource, financial resources can work hard to challenge laws that are set up to be a deterrent and punishments, and it's in their interest that if they can strike these down, they will. And so when we see that the courts agree that civil forfeiture of property does not infringe the Charter of Rights and Freedoms, it's an important ruling. And it's one that in Canada, I think that we think it

should be a good thing. And as well then in May 2007, the Ontario Court of Appeal upheld the lower court's decision, and then the court also upheld the lower court's findings that the monies in that case were unlawful proceeds.

Now interesting, this is one that I found very interesting, Mr. Speaker, because it may be something that we want to think about here in Saskatchewan. I don't know if the minister has thought about this or looked at what's been happening in Ontario. Maybe they have; we would have this question for him. But they have what they call the Safer Roads for a Safer Ontario Act, 2007. What happens here is it allows civil courts to impound and order the forfeiture of instruments of an unlawful activity, vehicles used or likely to be used by people who have two or more previous licence suspensions related to drinking and driving offences or who have continued to drive while their licence is suspended for drinking and driving.

So that's an interesting twist on this. It speaks specifically to driving issues and vehicles used in that circumstance. So while it could be maybe one that they would think is already covered under this legislation that we have, The Seizure of Criminal Property Act, in Ontario they wanted to go further, and they wanted to focus on vehicles that were used by drivers who should not be driving. And whether they've been suspended a couple of times or whether they've been caught drinking and driving more than they should be, I think that's an interesting idea, and maybe that's one that we can raise when we get to committee. Is this something that we want to go down that road, the Safer Roads for a Safer Ontario Act?

And you know, it is interesting because we've talked about this. And I talked about this in our Throne Speech response about the number of deaths in Saskatchewan on our roads and how we do have to send a clear signal that drinking and driving is not, it's just not acceptable and that those who will, will pay for that and as both a deterrent and a punishment.

And I think it's always interesting when we look across the world and across the country. What are other provinces doing? What are they doing to make sure people who engage in criminal activity get the message that it will not be tolerated? The police will come after you, and society will just not turn a blind eye but in fact think it's important to go after these people.

So what they did, they talked about how they renamed some of their legislation, and go on from there. So now Ontario, I mean clearly this is an Ontario paper. They talked about how they feel that they're a leader in this area now. And it's always interesting when you read a paper that's five years old. And now is it still the case today?

But what they did is they created the civil remedies for illicit activities office in 2000 to implement and enforce the Civil Remedies Act. And it's a way of dealing with its civil forfeiture and has a specialized team of civil lawyers who bring civil forfeiture proceedings to court on behalf of the Attorney General. So again I'm not sure what our office is called and how it's run, and this will be questions that we have during committee.

But it would be interesting to know if Ontario is still maintaining this. They claim that they're considered to be an international authority on civil forfeiture, and it regularly shares its expertise and best practices around the world including to the Philippines, Ireland, the UK [United Kingdom], Australia, Hong Kong, the United States, and South Africa, and it's offered assistance to other provinces in Canada. And it would be very interesting to know whether this is the case that . . . whether it is still the situation. And it goes on about working with the European Union and New York and the Caribbean and so forth.

So it's an important, it's a very important . . . It's very important that we understand what happens here. I mean I will talk about this. It's very interesting. This part, this could be like our, you know, the evening criminal news, what happens. We talk about in Saskatchewan where we have our dial-a-dope bust in that ring and we got \$2,300. But Ontario case profiles and results . . . I'll just take a few minutes. We've got some time tonight. I wouldn't mind highlighting some of these.

But since November 2003, forfeiture proceedings have been launched in over 170 cases. 170 cases. So I think I'm going to go home tonight and write some written questions. I'd be interested to know how many cases we've launched here in Saskatchewan, what the nature of the crime has been, the criminal activity, how much the assets were involved. As of July 31st, 2007, \$3.6 million in property has been forfeited under the Act and the province has an additional 11.5 million in property frozen under this Act pending completion of civil forfeiture proceedings.

So it's interesting — about 4 million in the fund and they have about 11 million, 11.5 million that's frozen because they're working it through the courts. Now I don't know how long it takes to go work its way through the courts, but up to 2007, 170 cases, 3.6 million in property forfeited, 11.5 million in property frozen, but almost \$1 million distributed to victims. That's significant. About a third of the money and more than \$900,000 awarded in grants to help prevent victimization. That's very important.

So I assume then that another . . . It'd be interesting to know how much the police initiatives got. But this is what happens in Ontario. It'd be interesting to know what happens here in Saskatchewan, and maybe we'll get those details. But 73 per cent of their cases have been related to drugs — approximately \$500,000 in property including real estate, cash, guns, cars, grow operation equipment, has been forfeited to the Crown as proceeds or instruments of unlawful activity linked to marijuana grow operations. So that's interesting. I would like to know what happens here in Saskatchewan.

They have some case studies and I think these would be interesting for us, just to take a minute to go through because I think that it's interesting.

Forfeiture of King Street East crack house in Hamilton. So on March 28, 2006, a crack house at 193 King Street East in Hamilton, along with an associated bank account containing \$10,000, was forfeited by the court order to the Crown. Police say the property, the former Sandbar Tavern, was the source of the crime, drug dealing and almost daily police calls for over 10 years. The building was the location of two crack-

related murders, numerous stabbings and drug offences, including crack cocaine possession, use, and trafficking. According to police, neighbouring businesses and residents were plagued with crimes associated with the drug trade, including robberies, burglaries, and violence. And following the forfeiture of the property, ownership was transferred to the city of Hamilton as compensation for victimization of the community.

So that's interesting that what they did in Hamilton is the city of Hamilton got the crack house. And I'm not sure what . . . It would be interesting to know what's happening with it today. But that's an interesting example of what can be done.

They talk about cash seizures. Almost \$1 million in illicit cash has been seized under this Act. In 2006, \$99,000 in cash was found in a rented car during a motor vehicle search by the Ontario police near Kirkland Lake, and it was forfeited to the Crown as proceeds. Another case, 120,000 was found. The bundled cash was found during a traffic stop and seized by the Ontario police. It was forfeited —\$120,000.

So now what they talk about is that Thunder Bay is often seen as a mid-point for money to be exchanged for drugs from British Columbia. Very interesting.

And they talk about marijuana grow operation forfeited in Oshawa. This time it was . . . Police seized the grow op equipment, plants, and dried marijuana with a street value of more than 540,000. Now I don't think the police would then liquidate the seized marijuana. Would they go out and try to get the cash value of the marijuana? Probably burn it. And I think it's . . . Well it's worth a lot of money. I don't think they would actually get the value of the money. But it's really an issue.

And this is one, I mean it's interesting because they did seize the grow op, but they note that a grow op, current or past, can drastically lower the value of the property because of resulting electrical, plumbing, mould, and drywall damage. And this is something that we've heard. We've heard this from real estate agents. In fact I think probably the other side has heard this as well from the real estate agents, that when you have a house that's been used as a grow op, that is severely damaged for a whole host of reasons, not the least is mould in the walls. And this can be, as they say in this paper, totally unusable and maybe impossible to finance and insure.

So here in 2002 alone, grow ops were estimated to have cost Ontario nearly \$100 million mostly due to electricity theft. It'd be interesting to know if SaskPower has done the same study here in Saskatchewan. How much have we lost because of electricity theft because of grow ops?

And so they talk about violence and around grow ops is a very real issue, and weapons, and all sorts of things. So 52 properties have been seized that are associated with marijuana grow operations and they're currently frozen under the Act.

Fraud is another big issue. Credit card fraud alone resulted in over 201 million to credit card companies, 70 million debit card fraud, and so on and so forth. So that's a big, big issue.

Now the other one — we haven't really got too much into this, but I know in BC it's a big issue, Ontario it's a big issue — that two cars have been seized and forfeited by court order under the Act as a result of street racing incidents. And naturally the cars were destroyed. And, Mr. Speaker, if you don't believe it, I have a picture here of the car being destroyed by the police. So they clearly weren't going to sell this street car to somebody else and get the . . . you know, to get the money. They did not want the car to exist. And it was the first time street racing cars were destroyed under civil forfeiture legislation. The York Regional Police had impounded cars after they had been stopped for speeding and dangerous driving in separate incidents involving street racing in 2003 and '04. But this time they had it with the cars and they were just going to take them out of commission and they had done that.

Gang house, clubhouse, gang clubhouses frozen. This was one in Oshawa. Hells Angels clubhouse. That was among other things allegedly used to sell alcohol illegally. I think that that's an interesting one.

It talks about the different grants and what they've used to use the money for: sometimes for fingerprint identification; Peel police Internet child exploitation unit; canine unit; vehicle to help locate missing kids and elderly people quickly.

So they are doing this and I'm sure . . . And it would be interesting for us to see, as we're starting out on this process, what we'd be using the funds. And as I said, now that we've got over \$500,000 in our account and it's growing quickly, that we want to make sure that we're doing the right thing with it.

So as they look forward to . . . You know, they conclude by looking forward to where they would go with this and that the caseload has been steadily increasing. It's expected to continue as enforcement personnel from government bring forward more and more cases for civil forfeiture proceedings, especially in the areas of mortgage and telemarketing fraud.

So, Mr. Speaker, I think that it's an interesting thing to review what happens around the world, what's happening in Ontario. They seem to be leading the way in those concerns. And it's not just getting the money, but if it's getting property and how to dispose of that property, whether it's destroying street racing cars because you really can't sell them; you've just got to run them over with a big front-end loader. That's what you've got to do to take them out of commission, but that's what you've got to do.

And so I wonder, Mr. Speaker, if they allowed the people who had those cars to watch as they were being destroyed. That would be an interesting thing. That would hurt, watching your car being run over by a front-end loader and having nothing being done about that. That would be an . . . They've got pictures but did they actually, you know, who was allowed to watch this?

But it's an interesting solution and I think like what they did with the crack house in Hamilton — they turned it over to the city of Hamilton. I'm not sure what they're doing with it. But clearly it's a way of being creative to compensate society for the kind of

things that criminals are doing. And we will not tolerate this. We will not turn a blind eye to this and I'm hoping that the minister has covered all the bases with this. And clearly in committee we'll be asking the questions to make sure that there are no more loopholes in this.

And we'd be interested to know some of the lessons we've learned from other provinces. Are they doing something around specializing in confiscating cars that have been used by people who are habitually drunk drivers or driving without a licence? And will that be part of this process too? I think that's an important thing when we talk about safer roads in Saskatchewan. And that's something that we really do need to address in Saskatchewan. We've talked about the challenges that we have here that for some strange reason . . . And it's just something that we have to do as much as we can to stop the deaths and accidents that we have on our provincial highways, in our streets, in our cities. And whether you're driving or walking, this cannot be tolerated.

So I hope in some small way I've been able to add something to the discussion tonight. I think it's an important discussion that we have. I think that we want to make sure, as I've said, that it can be both a punishment for those people who have committed the crime but also to a deterrent for those who are thinking about committing a crime or to engage in a process, that Saskatchewan Justice will not stand idly by, will not turn a blind eye but in fact go after proceeds from a crime, whether they be real or property or whether they be used in the crime or as a result of crime.

People should feel rest assured though that if there are proceeds from a crime — and let's say it's a mortgage or an expensive car — that there is protections in place for those who are innocent third parties. And whether that be a financial institution, whether that be a bank, credit union, a family member, if there is proof that they did not knowingly participate in the crime or had anything to do with it, that there are processes in place.

But we will be asking questions about this. Clearly when you have an account of 500,000, and it's grown quickly from really essentially over just a few years, what is the plan? The auditor has given it a clean audit, and so they must be doing things well. We'd be curious to know about the staffing because clearly they talk about costs involved in terms of property management. I'm not sure what that is, and we'd ask more questions about that.

And I think that it's a good time to reflect. Over a couple of years this is what the minister has done. Well what are the problems? What can we do to make sure that all the bases are covered? And in fact in many ways if this is one more tool in the tool kit to fight crime as it changes over periods of time, as we said earlier from previous before 1066 to seizing the property of pirates in the Caribbean to the drug trade in our province here, dial-a-dope, I think that we need to do all that we can. But it's our job as the opposition to make sure we ask the questions for this and that there is confidence in the system that when you see these major crimes, or small crimes, that in fact that justice will prevail and that we will see that justice is carried out, and that's so critical.

So, Mr. Speaker, clearly this is an initiative that the government wants to see move

forward and they see that they want to continue on. And I see the good things that have happened in Ontario and other provinces. We see the coordination between the six provinces across the western part of Canada. So this is important that we make sure we're able to cross provincial lines so that if there is criminal activity and if they think they can get away just by hiding in another province, that won't happen. That won't happen. We will ensure that the innocent are protected, but those that are not, we will go after them.

So with that, Mr. Speaker, I know that members here have many items they want to talk about tonight, and I know that they will have a lot to say about this bill and other bills. It's our job to do that. And so, Mr. Speaker, that the bill before us, Bill No. 54, An Act to amend The Seizure of Criminal Property Act, 2009, while it's a relatively straightforward one, there's some three pages, that I think it's important that we take some time to review all that it means and that we get it done right. And we won't be back here too many more times, but if we have to be, we will be with that. So, Mr. Speaker, I would move adjournment of Bill No. 54, An Act to amend The Seizure of Criminal Property Act, 2009. Thank you.

